

United Kingdom intervention

Session 2: Protecting civilians and other protected persons and objects from the dangers arising from ICT activities during armed conflict

1. Thank you, co-Chair.
2. The UK would like to express its gratitude to the ICRC and the co-Chairs from Mexico, Luxembourg and Switzerland for convening us in Geneva to discuss this important topic.
3. The UK reiterates that IHL applies to operations in cyberspace conducted in the furtherance of hostilities in armed conflict, just as it does to other military operations.
4. The ICRC's background paper raises a number of interesting topics that warrant consideration. But we must not lose sight of the substantial degree of convergence that exists between States on the applicability of IHL's core principles.
5. Those core principles are distinction, proportionality, humanity and military necessity.
6. The background paper and our expert speaker are right to note that some of the most fundamental IHL rules apply only to attacks.
7. In the UK's view, a cyber operation is capable of being an attack for the purposes of IHL where it has the same or similar effects to kinetic action that would constitute an attack. This is necessarily a factual assessment that falls to be considered on a case-by-case basis.
8. Although IHL contains a number of rules that only apply to attacks, it is important to stress that all relevant rules of IHL must be observed when planning and conducting cyber operations. And it is important to recall that such rules offer protections to civilians even where cyber operations do not amount to an attack.
9. I will comment in a little more detail on one such rule.
10. In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects.
11. This obligation is broader in scope than, for example, the limitations imposed by the rule of proportionality. Not only because it applies to all military operations. But also because the obligation does not specify the type of harm that should be avoided.

12. 'Sparing' the civilian population and civilian objects covers a wide range of adverse impacts that go beyond the type of incidental harm considered in proportionality assessments.
13. These adverse impacts must be taken into account in all decision making relating to military operations that can have an adverse effect on civilians.
14. The UK's view on the nature of this obligation, and many other IHL obligations relevant to our discussion today, was outlined only last week in a publication entitled "Conflict, Hunger and IHL: a Practitioner's Legal Handbook". Although that publication is focussed on how IHL protects against food insecurity in times of armed conflict, the analysis of the relevant IHL obligations is of general application and so highly relevant to our discussions today.
15. In the interests of time, I will end my comments on this session here. Thank you Chair.

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Session 3: Protecting civilians and other protected persons from information spread in violation of IHL during armed conflict

1. Thank you, co-Chair.
2. The UK agrees, as reaffirmed in the ICT resolution at the 34th International Conference, that the prohibition on encouraging or inciting violations of IHL applies when done through digital means.
3. I will focus my comments on the protections for persons deprived of their liberty. The UK agrees that the protection against public curiosity afforded to prisoners of war applies to the digital space. Publishing photos of prisoners of war on social media in a humiliating fashion, for example, may well fall foul of this rule.
4. The UK has for many years been concerned to uphold the protections afforded to prisoners of war.
5. As long ago as the 28th International Conference, the UK Government and the British Red Cross made a joint pledge to establish and promote an up-to-date and practical interpretation of the requirement to protect prisoners of war against insults and public curiosity. Noting that this was especially important in light of the widespread availability of social media, television and the existence of modern communications technology.
6. In December 2007, we published guidance for media organisations and individual journalists on the general principles that should apply in light of IHL. This guidance is re-issued by the Government and British Red Cross as and when new conflicts demand.
7. Thank you.

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Session 4: The risk of harm arising from the military use of civilian ICT infrastructure and the involvement of civilians in ICT activities during armed conflict

1. Thank you, co-Chair.
2. The issue of so-called dual-use infrastructure is neither new nor unique to cyberspace. The primary relevant question is whether the object of attack is a military objective or a civilian object.
3. Provided civilian ICT infrastructure has not for the time being become a military objective, expected incidental harm to it should be considered in proportionality assessments.
4. Even where civilian ICT infrastructure has become a military objective, a proportionality assessment is required.
5. When conducting proportionality assessments, it is necessary to consider the scope of incidental harm that must be taken into account. Provided the incidental harm is death or injury to civilians, or damage to civilian property, its geographic or temporal proximity to an attack is not determinative. Nor is the number of causal steps between the attack and the harm.
6. Instead, what matters is whether the harm meets the criteria of causation and foreseeability. The incidental harm to be considered is the harm which would not occur but for the attack, and that was reasonably foreseeable at the time the attack was planned or launched, on the basis of information from all sources that is reasonably available at the relevant time.
7. Finally, given it has been raised in discussions, the UK wishes to reiterate its longstanding position with respect to the scope of Common Article 1 of the Geneva Conventions. Common Article 1 concerns the duty to ensure that all those within a State Party's jurisdiction respect the Conventions. It does not impose an obligation on a State Party to ensure that other States respect the Conventions.
8. Thank you.