Global Initiative to Galvanize Political Commitment to International Humanitarian Law
Written Comments on the First Round of State Consultations

United States of America
July 21, 2025

General Comments

The United States supports the goals of improving implementation of international humanitarian law (IHL) and strengthening protections for civilians and other war victims in armed conflict. The initial round of State consultations has demonstrated the keen interest of States in working through the ICRC's Global Initiative to Galvanize Political Commitment to IHL to further these goals. However, these consultations have also highlighted potential pitfalls that should be addressed in the interest of achieving an outcome that will be effective and garner broad political support from States.

We recommend orienting this initiative and the proposed outcomes around practical steps that support improved implementation of IHL rather than contentious issues of legal interpretation. The best way to galvanize political support for IHL and ultimately create real-world benefits for those who are affected by armed conflict, would be through **the exchange of good practices for implementing IHL obligations**. The bulk of preventable humanitarian suffering in conflicts today results from parties failing to implement in any way, and in some cases deliberately violating, existing rules of IHL; not from parties applying "overly permissive" interpretations of those rules. A focus on developing new legal interpretations will lead to divisive debates over the outcome of this initiative, will undermine the goal of galvanizing universal political support for better IHL implementation, and will ultimately fail to produce humanitarian benefits.

As we have seen from the first round of consultations, it is a challenge for States to meaningfully participate in seven separate workstreams operating simultaneously. To make this initiative more effective, the number of proposed recommendations coming out of the workstreams should be limited to enable States to review and provide substantive input on each one. **Streamlining the initiative to focus on a few core deliverables** that will avoid divisive debates would give it the best chance of generating practical solutions to address widely recognized challenges in IHL implementation.

Finally, this initiative takes place in a challenging geopolitical context with ongoing armed conflicts in different regions that include accusations of IHL violations. As we've already seen in some of the State consultations, there is a risk in an initiative like this that some participants will see the process as an opportunity to score political points rather than advance shared humanitarian objectives. We appreciate the ICRC's efforts at each meeting to reemphasize the importance of non-politicized and non-contextualized discussions, but the risk remains that future meetings of this initiative will be derailed absent **proactive steps by the organizers to ensure non-politicized dialogue**.

We support the ICRC's goal of improving the implementation of IHL by galvanizing the political support of States and understand the urgency driven by suffering in ongoing armed conflicts around the world. We believe the steps outlined above would strengthen this initiative and make it more likely to achieve its ultimate goal of having practical humanitarian benefits. In the interest of informing the development of the progress report, we have also provided specific comments on each of the workstreams in turn.

Workstream 1 – Prevention Good Practices
May 13, 2025

Thank you to the ICRC, Australia, Austria Kenya, and the UAE for leading this workstream, which the United States believes could help improve protections for war victims by exchanging and compiling good practices submitted by States for the prevention of IHL violations. We encourage the Chairs to invite States to submit good practices and consider others' submissions. A compilation of State submissions could be of great, enduring value and would complement other outcomes and recommendations.

One good practice that the United States would like to highlight is establishing an overarching program for the implementation of IHL. The U.S. Department of Defense (DoD) has issued DoD Directive 2311.01, DoD Law of War Program. This directive establishes overarching departmental policy to comply with the law of war in military operations. It is issued by a senior official with the authority to assign responsibilities, for example for training personnel and for making available legal advisers. The Directive provides procedures for reporting incidents. It is a publicly available document, posted online.[1] The directive provides a framework for the armed forces to implement IHL in a comprehensive and systematic way. It is updated regularly in light of lessons learned. We believe issuing a policy directive like this is a useful good practice, but we would be eager to hear from other States that may have similar programs or alternative approaches.

In response to the concept note, the United States wanted to briefly address three factors that, in our experience, maximize the chances that measures to implement IHL will be effective.

First, preventing IHL violations depends on the leadership of commanders and in particular, their establishment of a moral and ethical command climate. The international criminal law doctrine of command responsibility is based on the duty of military commanders "to take appropriate measures as are within their power to control the forces under their command for the prevention of violations of the law of war."[2] Although serious failures of this obligation can result in complicity, good leadership prevents violations and facilitates reporting and responses to violations.

A second critical factor is military discipline. A connection has long been drawn between undisciplined forces and pillage or other IHL violations. As with command responsibility, however, the positive effects of military discipline on compliance should also be recognized. The good order and discipline that armed forces strive to achieve for military reasons provides the same self-control needed to refrain from violations under the stresses of combat.

And a third factor is the internalization of IHL in the ethos and daily work of the armed forces. The DoD Law of War Manual begins by explaining "The law of war is of fundamental importance to the Armed Forces of the United States. The law of war is part of who we are."[3] In

[1] Available at: https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231101p.pdf.

[2] U.S. Department of Defense Law of War Manual § 18.4 (June 2015, Updated July 2023).

[3] U.S. Department of Defense Law of War Manual, Preface, p. iv (June 2015, Updated July 2023).

combat, the implementation of the IHL often depends individual service members having internalized its rules. In this regard, the DoD Law of War Manual emphasizes the importance of honor as a fundamental IHL principle and vital medium for IHL implementation. In addition, there are many prosaic efforts to internalize compliance with IHL in the conduct of armed forces. For example, lawyers advise on regulations, doctrine, or standard operating procedures to ensure that legal compliance is part of the default and presumed way of acting, embedded into the regular way of doing things.

In response to one of the interventions at the consultation, we take this opportunity to note that the United States has firmly and consistently rejected the view that Common Article 1 of the 1949 Geneva Conventions obliges a State to ensure that all other States or parties to a conflict respect the Conventions. That interpretation of the 1949 Geneva Conventions is not supported by the text of the treaty or the rules of treaty interpretation. The United States also rejects assertions that a similar obligation exists as a matter of customary IHL.

We look forward to further engagements in this workstream to share good practices and lessons learned for the prevention of IHL violations.

Workstream 2 – National IHL Committees
May 7, 2025

Thank you to the ICRC, Germany, Peru, the Philippines, and the United Kingdom for the opportunity to participate in this consultation. The United States does not have a national IHL committee as we understand the ICRC to define them, but the United States does have personnel, institutions, and processes for advising on and implementing its IHL obligations, including a working group established by the Department of Defense to support implementation of IHL at the domestic level. These written comments provide information on these efforts and recommendations on how to frame the future direction of this workstream to have the greatest impact in strengthening IHL implementation.

The U.S. Department of Defense's overarching policy directive on the law of war, DoD Directive 2311.01, DoD Law of War Program, establishes the DoD Law of War Working Group to advise the General Counsel of the Department of Defense on law of war matters and to develop and coordinate on law of war initiatives and issues. The Group is chaired by a representative from the DoD Office of the General Counsel and includes representatives from international law and national security law offices from the Army, Navy, Air Force, and Marine Corps, as well as the Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff.

For example, this group has developed and coordinated updates to the DoD Law of War Program policy directive, analysis regarding the legality of new means or methods of warfare, and the DoD Law of War Manual, which, to ensure consistency in legal interpretation, serves as the authoritative statement on the law of war within the DoD.

The DoD Law of War Working Group has assisted in the preparation of national reports on IHL implementation, such as the U.S. report submitted to the 34th quadrennial International Conference of the Red Cross and Red Crescent.[4]

The U.S. Government also has mechanisms to coordinate among departments and agencies of the U.S. Government to advise on IHL and inform the development of related government policy. The U.S. Government has internal processes in place to promote coordination and collaboration between lawyers from relevant agencies including the Executive Office of the President, the Department of Justice, the Department of State, and the Department of Defense.

We recommend that this workstream recognize the important role that governmental mechanisms like these can have in achieving some of the objectives of national IHL committees. Although we support the important work that national IHL committees undertake in countries that have deemed such committees to be appropriate for their domestic system, we should avoid an outcome that suggests national IHL committees are preferred over other mechanisms that States may use for similar purposes. That said, we do recognize the benefits of engaging with

[4] Available at: https://rcrcconference.org/pledge-report/report-on-pledge-strengthen-domestic-implementation-of-international-humanitarian-law-in-military-operations-2/.

non-governmental experts on IHL, and as a notable example we very much value our ongoing dialogue with the ICRC on IHL.

Workstream 3 – IHL and Peace
May 26, 2025

Thank you to the ICRC, Colombia, Ethiopia, and Saudi Arabia for organizing this workstream. We concur with many of the points made during the first consultation emphasizing that respect for IHL during armed conflict facilitates the restoration of peace. As explained in U.S. Department of Defense Law of War Manual, non-hostile relations between belligerents contemplated by IHL, including local communication between belligerent forces, can contribute to the restoration of peace through:

- ceasefires or local armistices that implement a general armistice;
- armistices that are a prelude to a peace treaty;
- the permanent cessation of hostilities through a peace treaty;
- agreements on the repatriation of POWs or retained personnel after the cessation of hostilities;
- measures to protect civilians from the effects of minefields, mined areas, mines, booby-traps, and other devices, such as information sharing with another party or parties to the conflict; and
- the provision of certain assistance to facilitate the marking and clearance, removal, or destruction of explosive remnants of war, in cases where a user of explosive ordnance that has become explosive remnants of war does not exercise control of the territory.[5]

Moreover, IHL rules that, provide fundamental protections for persons who fall into the hands of the enemy require that parties recognize their common humanity and help build trust that can be a foundation for the restoration of peaceful relations.

The role of IHL in facilitating the restoration of peace should not lead to misconceptions about the essential nature of IHL as a body of law that is specially adapted the circumstances of armed conflict and that is fundamentally consistent with effective combat operations. IHL establishes humanitarian constraints on the conduct of hostilities, but nothing in IHL obliges belligerents to seek peace or to stop waging war altogether. The *jus ad bellum* governs when a State may resort to war, and this workstream should avoid addressing the legal basis for the use of force. We would welcome further exchange of practice on the role that IHL can play in peace and mediation efforts.

[5] U.S. Department of Defense Law of War Manual § 12.1.2.2 (June 2015, Updated July 2023) (footnotes omitted).

Workstream 4 – Protection of Civilian Infrastructure
April 15, 2025

Thank you to the ICRC, Algeria, Costa Rica, Sierra Leone, and Slovenia for organizing this workstream. We have provided a few comments in response to the guiding questions listed in the concept note.

Guiding Question #1: How is the definition of "military objective" under Article 52 of the First Additional Protocol of 1977 (and its equivalent under customary international law) understood by your State, and what elements of the notion could benefit from more precision when applied in practice?

The United States is not a party to the First Additional Protocol of 1977 (API). However, in our view the definition of "military objective" in Article 52(2) can be interpreted consistent with customary international law. The United States generally understands military objectives to include classes of persons, in particular, combatants, such as military ground, air, and naval units, or unprivileged belligerents, and civilians taking a direct part in hostilities.[6]

Consistent with the definition of military objective in API and the Convention on Certain Conventional Weapons (CCW) Amended Mines Protocol and CCW Protocol III on Incendiary Weapons, we also understand that military objectives, insofar as objects are concerned, include any object which by its nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

The definition of military objective is always considered to be met as a matter of law with regard to certain categories of objects, for example, military equipment (other than identifiable medical equipment or transport), military bases, and objects that contain military objectives, such as missile production and storage facilities and facilities in which combatants are sheltering or billeting.

Further information on U.S. perspectives regarding the definition of military objective is provided in section 5.6 of the DoD Law of War Manual.[7]

The definition of military objective is deliberately a flexible one; it needs to apply in a broad range of different contexts, including changing circumstances, such as developments in means and methods of warfare. We would accordingly be skeptical of efforts to develop new

[6] "At a minimum, taking a direct part in hostilities includes actions that are, by their nature and purpose, intended to cause actual harm to the enemy. Taking a direct part in hostilities extends beyond merely engaging in combat and also includes certain acts that are an integral part of combat operations or that effectively and substantially contribute to an adversary's ability to conduct or sustain combat operations. However, taking a direct part in hostilities does not encompass the general support that members of the civilian population provide to their State's war effort, such as by buying war bonds." U.S. Department of Defense Law of War Manual § 5.8.3 (June 2015, Updated July 2023) (footnotes omitted).

[7] Available at: https://ogc.osd.mil/Portals/99/Law%20of%20War%202023/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.pdf?ver=Qbxamfouw4znu1I7DVMcsw%3d%3d.

rules or interpretations of IHL that seek to define the concept more narrowly as a matter of international law. Although we welcome opportunities to share State practice on distinguishing between military objectives, on the one hand, and, on the other, civilians or civilian objects, whether in planning and conducting attacks or by the party subject to attack, it would be challenging and ultimately counterproductive to try to redefine the legal concept of military objective.

An object that makes an effective contribution to the enemy's war-fighting or war-sustaining capabilities can qualify as a "military objective" if its total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.[8] The definition of "military objective" needs to be flexible enough to cover military action justified by the principle of military necessity. Directing attacks against "war-sustaining infrastructure" that constitute a military objective could be the most effective way of disabling an adversary and prevailing in the shortest possible time. A more restrictive interpretation of military objective that immunized "war-sustaining infrastructure" from attack, although at first glance more humanitarian, might actually increase the suffering of the civilians by extending armed conflict.

Guiding Question #2: What measures can States undertake to ensure the content of the rules and principles protecting civilian infrastructure under IHL remain protective for current and future generations?

First it is important to clarify that although "civilian objects" are protected, "civilian infrastructure" is not as such protected under IHL. IHL prioritizes the protection of civilian lives over the protection of civilian objects, and civilian infrastructure may not constitute a civilian object. When "civilian infrastructure," or infrastructure that is owned by civilians or is used by civilians, constitutes a military objective, it forfeits its protection from being made the object of attack. For example, a bridge or power plant could constitute a military objective under the circumstances, even though these objects might also be described as "civilian infrastructure."

Sometimes, "dual-use" is used to describe these objects. However, from the legal perspective, such objects are either military objectives or they are not; there is no intermediate legal category. If an object is a military objective, it is not a civilian object and may be made the object of attack. However, it will be appropriate to consider in applying the principle of proportionality the harm to the civilian population that is expected to result from the attack on such a military objective.[9]

We recommend three measures to enhance the protection of civilians in military operations in current and future conflicts. First, States or parties controlling the civilians and civilian objects should take effective precautions to separate civilians from the military

[8] *See* U.S. Department of Defense Law of War Manual § 5.6.6.2 (June 2015, Updated July 2023) and sources cited in footnotes 223 and 224 (explaining that "military action," as used in the first part of the definition of military objective, has a broad meaning that encompasses the war-fighting or war-sustaining capability of an opposing force).

[9] *See* U.S. Department of Defense Law of War Manual § 5.6.1.2 (June 2015, Updated July 2023).

objectives. The party controlling civilians and civilian objects has the primary responsibility for the protection of civilians and civilian objects and it has the greater opportunity to minimize risk to civilians. For example, if parties to a conflict avoid embedding their bases in densely civilian-populated areas, this will reduce significantly the likelihood of urban warfare.

Second, States should encourage the development of new technologies and weapons to enable more accurate and precise operations against military objectives. For example, a range of weapons systems and other technical capabilities can further enable discriminate military operations in different environments and operational contexts, such as technology that results in more precise kinetic effects, weapons designed to avoid or minimize the occurrence of explosive remnants, and capabilities that can neutralize military objectives with temporary or reversible effects. Other kinds of advancements in new technologies, such as Intelligence Surveillance and Reconnaissance capabilities and AI tools that help commanders, planners, and other decision-makers can further enhance battlefield awareness of the presence of civilians.[10]

Third, States should share good practices for implementing the IHL principles of distinction and proportionality and the obligation to take precautions in planning and conducting attacks. In this regard, the U.S. approach is to describe the IHL obligations to take precautions, including the requirement to take feasible precautions in planning and conducting attacks, as rules based on the IHL principle of proportionality and not a separate and independent principle of IHL. The United States has often shared good practices for implementing these IHL principles and obligations, including in a 2019 Working Paper joined by Belgium, France, Germany, the United Kingdom that was submitted to international discussions on addressing the humanitarian consequences of the use of explosive weapons in populated areas.[11] Pertinent practices can include, for example, issuing military procedures and doctrine on targeting processes, collateral damage estimation methodologies, and weaponeering processes, as well as considering civilian protection issues in the course of operational planning, including potential measures to mitigate risks to the civilian population, such as hospital and safety zones, civilian evacuation measures, the delivery of warnings, and adjusting the timing of operations and the places where enemy forces are engaged.

[10] For further discussion see U.S. Working Paper, *Humanitarian benefits of emerging technologies in the area of lethal autonomous weapon systems*, U.N. Doc. CCW/GGE.1/2018/WP.4, available at: https://docs.un.org/en/CCW/GGE.1/2018/WP.4.

[11] Available at: https://assets.gov.ie/static/documents/united-states-written-submission-18-november-2019.pdf.

Workstream 5 – Achieving Meaningful Protection for Hospitals in Armed Conflict
May 28, 2025

Thank you to the ICRC, Nigeria, Spain, and Uruguay, for organizing this consultation. The protection of medical care during armed conflict is one of the oldest principles in the law of war. The United States has long supported fundamental guarantees regarding the protection of the wounded and sick in armed conflict and the medical personnel who care for them, and we are looking forward to this discussion. We recommend focusing the future of this workstream on sharing State practice for implementing rules of IHL applicable to the protection of hospitals, as opposed to debates over legal interpretation. The following written comments are organized around the outline provided in the concept note.

Session I – Misuse of Medical Facilities leading to a Loss of Specific Protection

A. Acts harmful to the enemy

Under IHL, as a general matter, the protection to which medical facilities are entitled does not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. The 1949 Geneva Conventions distinguish between civilian medical facilities and military medical facilities in certain respects. Both facilities forfeit protection if they commit acts harmful to the enemy and both must refrain from all interference, direct or indirect, in military operations.

A hospital may not be used as a shelter for able-bodied combatants or fugitives, as an arms or ammunition depot, as a military observation post. Acts that are part of a medical facility's humanitarian duties, such as caring for the wounded and sick, are not a basis for depriving the medical facility of protection. For example, the fact that sick or wounded members of the armed forces are nursed in hospitals, or the presence of small arms and ammunition taken from such combatants and not yet handed to the proper service, shall not be considered acts harmful to the enemy. The temporary presence of combatants or other military objectives within a medical facility does not automatically constitute an act harmful to the enemy.

Although the rules applicable to civilian hospitals and military hospitals are the same in many respects, the 1949 Geneva Conventions differentiate between the two in addressing conditions that expressly do not deprive a facility of protection. Furthermore, as a practical matter, the indicia for when a civilian hospital is likely to be deemed to have committed acts harmful to the enemy could be different than the indicia for when a military medical unit or hospital has committed acts harmful to the enemy, given that the military medical service is part of the armed forces.

B. The warning requirement

The purpose of the warning is to enable the party that is misusing the medical facility to cease its actions and to avoid forfeiting the protection of the medical facility. The warning therefore should be addressed to those using the medical facility to commit acts harmful to the enemy. It could also be appropriate to provide the warning generally through loudspeakers,

leaflets, or other broadcasts or public messages, especially if the belligerents have not arranged for direct communication channels between them.

The operational context and the degree and nature of the misuse of the medical facility to commit acts harmful to the enemy would be important factors, among others, to consider in naming the time limit for the warning. For example, if forces did not seem to intentionally misuse the hospital to commit acts harmful to the enemy, and the operational consequences of the misuse were not significant, those factors would counsel in favor of a longer time limit.

The warning requirement does not prohibit the exercise of the right of self-defense. There may be cases in which, in the exercise of the right of self-defense, a warning is not "due". For example, forces receiving fire from a hospital may exercise their right of self-defense and use force as necessary and proportionate.

Session II – Relationship between Acts Harmful to the Enemy and the Notion of a "Military Objective"

As a legal matter, the concept of acts harmful to the enemy is distinct from the notion of a military objective, which insofar as objects are concerned, include any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Certain objects belonging to the armed forces and used in military operations are categorically recognized as military objectives and in practice, the definition in the 1977 Additional Protocol I is not assessed as regards to them. So, if a military hospital building has forfeited its special protection from being made the object of attack because the building is being used to commit acts harmful to the enemy, then the military building may have the same legal status as any other military base that is used by that party to the conflict and does not have a protected status.

The guiding questions pose the issue of whether the hospital building as a whole forfeits protection or whether only the part of the hospital that is used to commit acts harmful to the enemy forfeits protection. Whether the hospital building as a whole forfeits protection will depend on the nature of its misuse, among other factors. For example, if the hospital is intentionally misused as a base of operations, then it may be the case that the particular location in the building where forces are operating is largely irrelevant. If that portion of the building is destroyed, then the forces may move different portion of the building to continue using the building as a base of operations.

The guiding questions also ask about measures short of destroying a medical facility. Military operations that are intended to prevent an adversary from misusing the hospital do not necessarily constitute an attack under the IHL rules applicable to attacks. For example, a search of the hospital building may be conducted if militarily necessary and does not constitute an "attack."

Session III – When Medical Facilities become Liable to Attack or may be subject to Incidental Harm

Although we appreciate the focus of the guiding questions on the obligations of the party that is seeking to remedy the misuse of the hospital, it is important to recognize that for objects and personnel to qualify for protected medical status, they must be exclusively assigned to or engaged in medical care. The party that uses ostensibly medical personnel and facilities for military purposes is the one that has put them at risk and is the party responsible for the resulting harm to those facilities and personnel. This discussion, through its focus on the attacking force, should not excuse, accept, or even encourage violations by the defending force, such as its use of a civilian hospital and its patients as human shields. The civilian harm is best avoided in this situation by the defending force ceasing its misuse of the hospital or its personnel and patients.

A. Interpreting the Rule of Proportionality

The law does not create a category of "dual-use" objects. If the hospital building constitutes a military objective, it is not a civilian object. Similarly, individuals at the hospital who are combatants, whether privileged or unprivileged, are not protected as civilians, even if they ostensibly provide medical care under certain circumstances. Therefore, the harm to such persons and objects is not considered harm to civilians and civilian objects under the proportionality prohibition on excessive attacks. On the other hand, for example, the harm to the civilians in hospital would be considered in the application of the proportionality prohibition on excessive attacks.

B. Interpreting the Rule of Precautions

Regarding what precautions are feasible, this will depend greatly on the context and factors. Relevant factors include the effect of taking the precaution on mission accomplishment; whether taking the precaution poses a risk to one's own forces or presents other security risks; the likelihood and degree of humanitarian benefit from taking the precaution; the cost of taking the precaution, in terms of time, money, or other resources; or whether taking the precaution forecloses alternative courses of action. Feasible precautions could include warnings, weaponeering, and adjusting the timing of the attack.[12]

[12] For more information, see the U.S. Department of Defense Law of War Manual § 5.11 (June 2015, Updated July 2023)

Workstream 6 – Upholding IHL in the Use of ICTs during Armed Conflicts
May 15, 2025

Thank you to the organizers for their work setting up this session and for their thoughtful guiding questions.

As an initial matter, we would like to highlight that whether information and communication technologies (ICT) activities during armed conflict pose a threat or risk of harm to civilians or civilian objects depends on the nature of the ICT activities at issue and their intended use, among other factors. The term "ICT activities" can be understood to include many ordinary activities like sending an email or text message. For the purposes of this workstream, we think it is useful to focus on **ICT activities that are used as a means or method of warfare.** In those cases, their use could pose a threat or risk of harm, and their use must comply with applicable international humanitarian law (IHL) rules on the conduct of hostilities.

For example, ICT activities may in certain circumstances constitute an "attack" for purposes of applying the IHL rules on conducting attacks. Other ICT activities that are used as means or methods of warfare are not "attacks" even if colloquially they are described as "cyber attacks." This is further explained in the U.S. Department of Defense (DoD) Law of War Manual.[13] ICT activities could be also used as non-forcible means and methods of warfare, and must be consistent with applicable rules regarding, for example, propaganda, information-gathering, and bribery.

We have concerns with the premise of the guiding question on the alleged harm that information spread through ICT activities in armed conflict may cause. As a general matter, information is not inherently harmful, and the degree to which information can be harmful or used to incite or cause harmful acts, may depend on the context, the nature of the information, the purpose of its dissemination, the audience, and other relevant factors. We also think it would be useful to distinguish between information that is for consumption by persons, like an email message, and information that is for processing by computers, such as computer code, which is intended to affect their operation and which can result in physical effects when computers control other machinery.

With respect to your guiding question on whether there are relevant differences in how ICT activities manifest or pose risks in international versus non-international armed conflicts, we believe that, as a practical matter, certain characteristics that are commonplace in non-international armed conflicts (NIACs) may pose risks in the conduct of hostilities, including risks related to ICTs. For example, in a NIAC, non-State armed groups often seek to blend in with the civilian population and to use ostensibly civilian infrastructure and resources to conduct and sustain their operations. The use of ostensibly civilian ICT infrastructure by a non-State armed group to conduct and sustain its operations could make it more difficult for a State to identify the armed group's communications infrastructure and other military objectives, although ostensibly

[13] *See* U.S. Department of Defense Law of War Manual § 16.5 (June 2015, Updated July 2023), *available at* https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF.

civilian ICT infrastructure could be used for military purposes in international armed conflicts (IACs) as well.

Ensuring that the use of ICT activities as a means or method of warfare complies with the State's obligations under international humanitarian law is a critical step to mitigate the human cost of ICT activities during armed conflict. The United States has been proactive in this regard. For example, in 1999, the U.S. Department of Defense issued an assessment of international legal issues in information operations.[14] The U.S. DoD Law of War Manual includes a chapter on cyber operations. Such guidance supports the work of legal advisers who support commanders and other decision-makers when planning and conducting cyber operations in armed conflict.

IHL rules and principles protect civilians and other protected persons and objects by limiting ICT activities that are used as means and methods of warfare in armed conflict. What specific rules or principles apply to a specific ICT activity, depends on what type of means or method of warfare the ICT activities constitute.

For example, when ICT activities in armed conflict constitute an attack, those activities must comply with the rules governing attacks, including requirements of the principles of distinction and proportionality. ICT activities also could be used to seize or destroy enemy property, even if not constituting an attack. In this case, the ICT activities must comply with the rules on the seizure or destruction of enemy property, including the rule that enemy property may not be seized or destroyed unless imperatively demanded by the necessities of war.

Some ICT activities may constitute neither an attack nor the seizure or destruction of enemy property. For example, ICT activities could constitute non-forcible means and methods of warfare. As a case in point, ICT activities that involve the dissemination of propaganda must comply with applicable IHL rules on propaganda, including the prohibition on incitement of violations of IHL.

As for so-called "reverberating effects," this is a novel and ill-defined concept not reflected in existing IHL. Such terms tend to confuse – rather than clarify – States' obligations.

States must comply with their obligations under IHL related to the protection of medical personnel and facilities, including when using ICT activities as a means or method of warfare. For example, the respect and protection accorded to medical personnel and facilities under IHL means that they "must not be knowingly attacked, fired upon, or unnecessarily prevented from discharging their proper functions,"[15] and parties to a conflict must take feasible precautions to reduce the risk of incidental harm to the civilian population and other protected persons and objects, including medical personnel and facilities.

With respect to the question on civilian data, we note that, although data can simply mean a collection of information, we understand that "data" in this context is intended to refer to data

[14] U.S. Department of Defense Office of General Counsel, *An Assessment of International Legal Issues in Information Operations*, (2nd Edition Nov. 1999), available at: https://digital-commons.usnwc.edu/ils/vol76/iss1/4/.

[15] U.S. Department of Defense Law of War Manual §§ 7.8.2, 7.10.1 (June 2015, Updated July 2023).

stored on computers in potentially large quantities. It is not fully clear what is intended by "civilian data" as some data that is owned by civilians could also be a military objective. Moreover, espionage and tampering with an adversary's data, even if that data were in the hands of civilians or did not qualify as a military objective, could also be justified by military necessity and would not be prohibited under IHL. Data captured or copied from the enemy also may be used in propaganda efforts, provided such use is consistent with other rules of IHL.

With respect to ICT activities involving the encouragement of IHL violations, we should emphasize again that IHL rules generally do not address ICT activities as such. However, ICTs must not be used to encourage or incite IHL violations and the ICT activities themselves must not violate an applicable IHL rule. For example, the sending of text or visual messages to people's phones, the posting of material on websites, or similar uses of ICTs, must not be used to encourage or incite violations of IHL. The U.S. DoD Law of War Manual explains that "[p]ropaganda must not: (1) incite violations of the law of war; nor (2) itself violate a law of war rule."[16] DoD policy and military doctrine on information operations emphasize that such operations must be conducted in accordance with applicable law.[17] Legal advisers support commanders in ensuring that operations are conducted in accordance with applicable law by advising during the planning and conduct of such operations.

It is also worth recalling that, depending on the circumstances, use of ICTs to support information operations can reduce the risk to the civilian population and suffering in armed conflict. For example, information operations can: convince forces to surrender and end the fighting sooner; convince forces to move away from areas where civilians are; and deceive the adversary into taking actions that reduce the necessity for use of destructive means of warfare.

DoD policy on detention operations specifically includes protection against public curiosity as a requirement for the humane treatment of any detainee in DoD custody or control.[18] The DoD Law of War Manual provides the rules on public curiosity found in the Third and Fourth Geneva Conventions, and also articulates the protection of detainees against public curiosity as a requirement applicable to all detainees. The DoD Law of War Manual explains

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[16] U.S. Department of Defense Law of War Manual § 5.26.1.3 (June 2015, Updated July 2023).

[17] *E.g.,* U.S. Department of Defense, *Strategy for Operations in the Information Environment*, p.14 (July 2023), available at: https://media.defense.gov/2023/Nov/17/2003342901/-1/-1/1/2023-DEPARTMENT-OF-DEFENSE-STRATEGY-FOR-OPERATIONS-IN-THE-INFORMATION-ENVIRONMENT.PDF ("Senior leaders and standardized accountability processes will ensure OIE remain strategically and legally sound, ethically acceptable, demonstrate appropriate return on investment, and are agile and adaptable to rapid changes in the IE."); Army Doctrine Publication 3-13, *Information*, ¶5-48 (Nov. 2023), available at: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN39736-ADP_3-13-000-WEB-1.pdf ("Several fundamentals guide commanders in planning for and executing inform information activity tasks, to include— Tell the truth. Timely release of information and OPSEC. Compliance with law and policy.").

[18] U.S. Department of Defense Directive 2310.01E, *DoD Detainee Program*, ¶3.4b, March 15, 2022, *available at*: https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231001e.pdf ("All detainees will be respected as human beings without any adverse distinction based on race, color, religion or faith, political or other opinion, national or social origin, sex, birth, wealth, or other similar criteria. They will be protected against threats or acts of mistreatment or violence, including rape, forced prostitution, assault, theft, public curiosity, bodily injury, reprisals, torture, and cruel, inhuman, or degrading treatment or punishment. They will not be subjected to medical or scientific experiments or to sensory deprivation intended to inflict suffering or serve as punishment.").

that "[i]n order to protect detainees against public curiosity, among other reasons, DoD policy has generally prohibited the taking of photographs of detainees except for authorized purposes."[19] Generally prohibiting the taking of photographs of detainees without authorization facilitates implementation of the protection against public curiosity. This practice enables competent authorities to determine when photographs of detainees are taken, and that such taking of photographs is appropriate and consistent with applicable law.

[19] U.S. Department of Defense Law of War Manual § 8.2.2.3 (June 2015, Updated July 2023).

Workstream 7 – Naval Warfare
June 4, 2025

Thank you to the ICRC, Egypt, and Indonesia for organizing this consultation. The United States offers the following initial comments on the direction of this workstream.

The Role of State Action in Rule Making

As the International Conference of the Red Cross and Red Crescent has emphasized, States have the primary responsibility in the development of IHL.[20] Academic efforts like the San Remo Manual can be useful to consider, but ultimately international law can only be developed through State action – whether through the adoption of new legal instruments or through the general and consistent practice of States done out of a sense of legal obligation.

Skeptical of Proposals to Dramatically Rethink the Law of Naval Warfare

As the concept note recognizes, the law of naval warfare has deep historic roots going back to the Hague Conventions of the early 20th Century and beyond. We disagree however with assertions that in recent decades the fundamental character of the maritime domain or of IHL has changed such that we need a fundamental "rethink" of the law applicable to naval warfare. For example, there have always been significant civilian uses of the maritime domain, and the law has always sought to protect civilians and other persons and vessels not participating in the conflict.

As a case in point, consider the law of blockade. Existing law in this area already accounts well for both military and humanitarian considerations. Under IHL, a belligerent may use a blockade "to deprive the adversary of supplies needed to conduct hostilities," but "a blockade may not be used for the purpose of starving the civilian population, and the expected incidental harm to the civilian population may not be excessive in relation to the expected military advantage to be gained from employing the blockade."[21] Similarly, "neutral vessels and aircraft engaged in the carriage of qualifying relief supplies for the civilian population and the sick and wounded should be authorized to pass through the blockade cordon, subject to the right of the blockading force to prescribe the technical arrangements, including search, under which passage is permitted."[22] In these and other legal requirements there is an accounting for both military and humanitarian considerations.

Similarly, rules relating to neutral commerce and carriage of contraband and the belligerent right of visit and search of merchant vessels and civil aircraft, developed in treaty and custom, reflect consideration of both the right of neutral parties to continue lawful commerce and the right of belligerents to effectively prosecute the conflict.

Environmental Impacts of Hostilities at Sea

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[20] *See* Resolution 2 of the 34th International Conference of the Red Cross and Red Crescent (IC) and Resolution 1 of the 31st IC "emphasizing the primary role of States in the development of international humanitarian law".

[21] U.S. Department of Defense Law of War Manual §§ 13.10.1; 13.10.2.5 (June 2015, Updated July 2023).

[22] *Id.* § 13.10.3.3.

The concept note, experts, and States participating in this workstream have touched on the environmental impact of hostilities at sea. As the United States has explained before, although compliance with IHL rules, including, for example, prohibitions on wanton destruction, help protect the natural environment:

> IHL, as reflected by the term "humanitarian," is an anthropocentric body of law, which prescribes duties, rights, and liabilities for human beings and prioritizes the protection of human life. Attempts to apply IHL to the environment that deviate from this traditional focus could conflict with existing IHL requirements or diminish existing IHL protections for civilians, detainees, or other persons protected by IHL.[23]

The United States continues to reject Articles 35(3) and 55 of the 1977 Protocol (I) Additional to the Geneva Conventions of August 12, 1949 as overly broad and ambiguous and not part of customary international law. We also note that the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD), to which the United States is a party, does not prohibit damage to the environment as a result of armed conflict, but creates obligations not to use modification of the environment itself as an instrument of war.

Proposed Direction for this Workstream

The United States welcomes further discussion on the application of the law of naval warfare and recognizes that there may be aspects of the existing law that would benefit from further dialogue to share state practice. In this regard, Article 34 of the Second Geneva Convention of 1949 provides that "[i]n particular, hospital ships may not possess or use a secret code for their wireless or other means of communication." This rule was formulated before developments in modern communications technology made encryption commonplace. In light of the requirement for encryption in modern communications systems and navigational technology, and the goal of ensuring that hospital ships can effectively fulfill their humanitarian mission, the United States routinely employs hospital ships with the capability to conduct encrypted communications. Other States have not objected to this practice and we know that some States have taken the same view. There may be value in further exchange of practice in this area.

Here, we are also mindful of discussions on new or emerging technologies in warfare that are ongoing in other fora, and we would not want to duplicate those discussions here. To the extent that the co-chairs wish to invite further general discussion on technological developments, it is important to recognize that technologies can bring both risks and opportunities. There can be humanitarian concerns posed by new technologies. But technologies can also be used to facilitate humanitarian activities or to mitigate harm to civilians. Therefore, it is essential that we approach new technologies from an objective viewpoint, that we avoid being overly speculative

[23] *Comments of the United States on the International Law Commission's draft principles on the protection of the environment in relation to armed conflicts*, October 6, 2021, available at: https://legal.un.org/ilc/sessions/73/pdfs/english/poe_us.pdf.

in our consideration of future technologies, and that we not inappropriately stigmatize technology.