

Statement of Canada

Workstream 6: Use of ICTs During Armed Conflict 4th Round of Consultations

Canada sincerely thanks the Co-Chairs and the ICRC for their dedicated leadership and guidance throughout this initiative.

We applaud your efforts to produce a draft outcome that reflects the breadth of our workstream consultations. It provides a strong basis for translating the political momentum generated by this initiative into concrete and operation-oriented recommendations to strengthen respect for IHL *in practice*.

Canada welcomes the clear reaffirmation that ICT activities conducted in the context of, and associated with, an armed conflict are subject to international humanitarian law, including its core principles.

We also welcome the recognition that not all cyber operations cause harm or are designed to do so. Indeed, just as digital technologies relied upon in civilian life deliver positive and protective outcomes, ICTs used in armed conflict can also enhance compliance with IHL.

Additional references to positive uses, including their potential to reduce civilian casualties and physical destruction compared to kinetic operations, would further strengthen the document.

Canada finds it useful that the draft identifies the key trends and operational realities underpinning the proposed recommendations. This underscores their practical relevance in mitigating risks of IHL violations.

At the same time, Canada recommends that the document length should be reduced considerably, with a clear focus on practice-oriented recommendations that encourage compliance and facilitate implementation.

Canada is concerned about the use of the chapeau phrase “it is essential for States and parties”, which may give rise to confusion about the nature of the recommendations in this document. An alternative could be “it is recommended that”, “it is vital that”, or similar.

Importantly, the outcome document should not advance new or definitive interpretations of legal questions that remain under debate. In Canada’s view, IHL, as it currently stands, remains fit for purpose when faithfully interpreted and applied by all parties.

Any legal discussion should be restricted to settled law, or at a minimum, clearly acknowledge where legal aspects remain unsettled, reflecting our ongoing and good

faith discussions. This would ensure an outcome document that is global in nature, and which be readily used by all parties.

In this context, we reiterate our reservations concerning broad statements on the protection of civilian data or the classification of data as an object for the purposes of IHL. Further discussion is needed on how data is characterized under existing IHL frameworks.

Additionally, there is still no consensus on whether mere disabling constitutes an attack under IHL. Therefore, the draft's assertion that attacks include "operations that may disable equipment or systems and require action [...] to restore their functionality" should be removed.

Further, Canada reiterates that, when assessing the military use of civilian ICT infrastructure, the existing IHL rules governing the identification of military objectives provide the appropriate and sufficient legal framework.

Canada strongly encourages the use of well understood IHL language to describe IHL obligations. "Due diligence" is not an IHL term found in treaties. It should not be presented in the draft as reflecting a settled legal obligation.

Finally, Canada cautions against interpretations that effectively broaden the scope of the humanitarian focus of the rules of precautions and proportionality to encompass the avoidance or minimization of "civilian harm" in a broader and more indeterminate sense. This risks upsetting IHL's careful balance between military necessity and humanity.

Where appropriate, general references to "civilian harm" should be replaced with "incidental loss of civilian life, injury to civilians and damage to civilian objects".

Thank you.