



UNITED STATES MISSION TO THE UNITED NATIONS

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**Statement of the United States of America
73rd United Nations General Assembly, Sixth Committee (Legal) Session
Agenda Item 83: Status of the Protocols Additional to the
Geneva Conventions of 1949
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Thank you Mr. Chairman. The United States has long been a strong proponent of the development and implementation of international humanitarian law (IHL), which we often also refer to as the law of war or the law of armed conflict. We recognize the vital importance of compliance with its requirements during armed conflict. Accordingly, the United States continues to ensure that all of our military operations comply with IHL, as well as all other applicable international and domestic law. We similarly call on all States and parties to armed conflicts to ensure that they comply fully with applicable IHL.

The United States is a party to the Third Additional Protocol to the 1949 Geneva Conventions relating to the adoption of an additional distinctive emblem, but it is not a party to the 1977 Additional Protocols to the 1949 Geneva Conventions.

The United States has, under successive Administrations, urged the Senate to give its advice and consent to ratification of Additional Protocol II to the Geneva Conventions, and this treaty is pending before the Senate for its advice and consent. Extensive interagency reviews, including one completed in 2011, have found U.S. military practice to be consistent with the Protocol's provisions. It also found that any issues could be addressed with reservations, understandings, and declarations. We believe these conclusions remain valid today. Although the United States continues to have significant concerns with many aspects of Additional Protocol I, Article 75 of that Protocol sets forth fundamental guarantees for persons in the hands of opposing forces in an international armed conflict. The U.S. Government has chosen out of a sense of legal obligation to treat the

principles set forth in Article 75 as applicable to any individual it detains in an international armed conflict, and we expect all other nations to adhere to these principles as well.

Proper implementation of IHL obligations is critical to reducing the risk to civilians and civilian objects during armed conflict. As we have seen in recent conflicts, it is a tragic reality of war that egregious harm to civilians can occur even when parties comply with their obligations under IHL. Thus, it is all the more critical for parties to comply with IHL, including the principles of distinction and proportionality, as well as the obligations of both attacking and defending parties to take precautionary measures for the protection of the civilian population and other protected persons and objects. In taking precautions for the protection of civilians, the United States routinely imposes, as a matter of policy, certain heightened standards that are more protective of civilians than would otherwise be required under IHL. Moreover, the United States always seeks to adhere to applicable IHL requirements during armed conflicts and encourages all States and parties to armed conflicts to do the same. There are many practical measures that States can take to help effectively implement IHL. I would like to mention three examples.

The first is Weapons Reviews: The U.S. Department of Defense policy has for many years required the legal review of the intended acquisition or procurement of weapons or weapon systems. This review includes ensuring that such acquisition or procurement is consistent with the law of war. Although the United States is not bound by Article 36 of Additional Protocol I, and customary law does not require “weapons reviews,” as such, we view the review of the legality of weapons as a best practice for implementing customary law and treaty law relating to weapons. Such reviews may be especially important with respect to weapons that incorporate in novel ways emerging technologies, such as new developments in artificial intelligence. It is important to consider any risks that such novel applications entail as well as the potential to use emerging technologies in upholding compliance with IHL, such as by reducing the risk of civilian casualties. Under a U.S. Department of Defense policy that addresses the use of autonomy in weapons systems, the Department of Defense conducts two reviews that include both legal and policy considerations pertinent to certain types of autonomous and semi-autonomous weapon systems—once prior to making the decision to enter into formal development of the weapon, and another before the

weapon is fielded. However, even weapons that are not subject to this special policy review process receive a legal review in accordance with DoD policy. Conducting legal reviews of weapons is a practical measure that all States can take to support their compliance with IHL.

The second example is Sharing State Practice: States can further improve their implementation of IHL through the voluntary and non-politicized sharing of State practice, including official publications, policies, and procedures. Through such exchanges, States can learn how other States have implemented their IHL obligations and can identify good practices that they may wish to incorporate into their own procedures. The State-driven intergovernmental process on strengthening respect for IHL, under Resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent, provides a valuable opportunity to create a non-politicized space for this type of regular exchange and dialogue. The United States recently submitted an official proposal to create an online repository of official State documents regarding their practice and policies related to their implementation of IHL. This outcome could also be complemented by, and is without prejudice to, whatever other outcomes States may agree upon. We look forward to further progress under this initiative in advance of and during the 33rd International Conference in December 2019.

The third example is ICRC Notification and Access: Providing the ICRC notification of and access to detainees in non-international armed conflicts (NIACs) can also improve the implementation of IHL. For many years, the U.S. military has adhered to the policy and practice of notifying the ICRC about detainees in U.S. custody and allowing the ICRC timely access to them, consistent with Department of Defense regulations and policies. This policy and practice is now codified as a requirement under U.S. domestic law. The U.S. military has found this practice beneficial, in part because of the ICRC's practical experience in understanding the challenges of detention and the "confidential" modalities under which access is granted. The "confidential" modalities help ensure a frank, constructive, and non-politicized dialogue with the ICRC that has proven very valuable. The United States believes that providing ICRC notification and access to detainees in military detention facilities is a good practice for parties to armed conflict, as it can help them identify better ways to implement IHL and further ensure the humane treatment of detainees.

In sum, conducting weapons reviews, sharing State practice under appropriate modalities, and providing the ICRC with notice of and access to detainees are three practical and non-politicized ways that States can enhance their implementation of IHL and help further ensure compliance. These three examples reflect broader categories of mechanisms that States can use to implement their commitment to the fundamental principles of IHL into their military operations so as to provide concrete humanitarian benefits. Although the fundamental principles of IHL are clear and universally recognized, how these principles apply in particular circumstances or how these principles might be most effectively implemented is not always as clear and universally recognized.

We therefore encourage all States to implement these measures and similar measures for the sound and efficacious implementation of IHL. We also look forward to continuing to work with other States including our allies and partners, as well as the ICRC, on further strengthening the implementation of and respect for IHL.

Thank you, Mr. Chairman.