



SIXTH COMMITTEE

CHECK AGAINST DELIVERY

Statement by

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Status of Protocols Additional to the Geneva Conventions of 1949 and
relating to the protection of victims of armed conflicts

Agenda Item 81

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Thank you, Mr. Chairperson,

In all its years, Israel has contended with security threats, including acts of war and terrorism, while remaining committed to the Law of Armed Conflict. Israel maintains that promoting compliance with the Law of Armed Conflict is of utmost importance and takes its obligations under that body of law very seriously.

Contemporary armed conflicts entail many challenges for militaries – including the challenge of asymmetrical warfare, which has become a common concern for many States. We live in an era in which many non-state actors do not see themselves as bound by the Law of Armed Conflict. Rather, they systematically violate the rules, while abusing the adherence of democratic, law-abiding States to international law. Unfortunately, Israel faces these challenges in its northern and southern regions, where terrorist organizations regularly operate from within civilian areas. These organizations embed their weapons among civilians, while regularly targeting Israeli civilians and undermining regional stability and security. On Israel's northern border, the tension caused by Hezbollah, does not only destabilize an already volatile area, but also places UNIFIL's peacekeeping force at risk, and impedes it from discharging its mandate. There is no doubt that parties to armed conflicts contending with such challenges must always meticulously comply with the applicable rules. When seeking to interpret or identify these rules – both in the context of treaty law and customary international law, the practice of States involved in asymmetric warfare is indispensable.

Israel maintains that the Law of Armed Conflict also continues to serve as the relevant legal framework for regulating the conduct of hostilities in relation to emerging or developing realms of warfare, such as cyberspace. In this field, too, the law must be applied through the meticulous application of accepted legal methodologies for interpreting international treaties and for identifying customary international law. When dealing with treaty provisions, the regular rules of treaty interpretation must be applied to ascertain the relevance and applicability of the provisions at hand in the cyber domain. With respect to customary law, identifying applicable law will require examining the existence of general State practice accompanied by *opinio juris*, substantiating the existence of a rule in cyberspace. In this regard, it cannot be automatically presumed that a customary rule applicable in the domains of land, air or sea, is also applicable to the cyberspace domain, since some rules of the Law of Armed Conflict have been crystallized in a domain-specific context.

Mr. Chairperson,

Israel is not a party to the Additional Protocols, but is fully committed to the customary rules that are reflected in some of their provisions. In this regard, Israel reiterates its position, shared by other States, that some provisions in the Additional Protocols do not reflect customary law. In Israel's view, among those provisions in the First Additional Protocol that, in whole or in part, do not reflect customary law, are, for example, the provisions found in articles 1(4), 35(3), 55, 43 to 45, 37(1) and the articles concerning belligerent reprisals, alongside a considerable number of other provisions in the First and Second Additional Protocols. Assertions to the contrary, made by certain actors, lack substantiation in sufficient State practice and *opinio juris*.

Mr. Chairperson,

The State of Israel acknowledges the important contribution of the ICRC and its humanitarian work around the world. Israel welcomes and appreciates the ICRC's initiative to update its Commentaries of the Geneva Conventions and their Additional Protocols, in consideration of the changes that have transpired in armed conflict over the past half-century and the need to ensure their continued relevance. At the same time, Israel remains concerned with certain methodologies employed throughout the project and with several conclusions included in the three Commentaries published thus far, which do not always reflect the current state of the law.

With a view to addressing these concerns and to the forthcoming work on updating the ICRC's Commentary of Additional Protocol 1, we once again stress the need to take into account and reflect state practice in the course of the interpretation, application and identification of the Law of Armed Conflict. We also stress the importance of consulting with States, receiving their input, and providing greater weight to their positions, interpretations, and views, given the States' primary role in creating, interpreting, and applying international law. While Israel appreciates certain adaptations made by the ICRC in this regard, as the work on the project is ongoing, there is still much more that can and should be done in this regard.

Mr. Chairperson,

Israel believes that a substantial understanding of the Law of Armed Conflict, both in theory and in practice, should be required as an imperative qualification for those involved in international bodies applying and interpreting rules of the Law of Armed Conflict. This is especially critical with regards to institutions with judicial or investigative functions, such as international courts, tribunals, and investigative bodies. Expertise and thorough familiarity and knowledge in the field of the Laws of Armed Conflict are indispensable in the proper function of these institutions.

Such professional standards are crucial in upholding this body of law and striking the appropriate balance it seeks to maintain between military necessity and humanitarian concerns, as well as preventing fragmentation and competing interpretations. This will also maintain the credibility of such institutions.

Mr. Chairperson,

In our efforts to strengthen compliance with the existing body of the Law of Armed Conflict, the State of Israel continues to ensure that all aspects of its military operations comply with these rules. The IDF provides educational programs to military personnel in various positions and ranks and operates training simulators designed to prepare fighting forces for combat in urban areas, including by simulating the presence of civilians in the vicinity of sensitive sites. IDF operations are accompanied by ongoing independent and professional legal advice on the Law of Armed Conflict, which is complemented by robust and multi-layered investigative mechanisms and subject to civilian oversight.

Furthermore, Israel's Supreme Court regularly hears petitions relating to the Law of Armed Conflict, including in real time, while hostilities are ongoing. The extent of judicial review over the IDF's activity is internationally recognized and unique in its scope.

The Government of Israel remains committed to upholding its obligations under the Law of Armed Conflict in a dedicated and thorough manner.

I thank you, Mr. Chair.