



UNITED STATES MISSION TO THE UNITED NATIONS

799 UNITED NATIONS PLAZA
NEW YORK, N.Y. 10017-3505

**Statement by Stephen Townley, Counselor for Legal Affairs
69th Session of the UN General Assembly Sixth Committee
Status of the Protocols Additional to the Geneva Conventions of 1949
and Relating to the Protection of Victims of Armed Conflicts
Agenda Item 79**

Thank you Mr. Chairman.

The United States has long been a strong proponent of the development and implementation of international humanitarian law, which we often also refer to as the law of war or the law of armed conflict, and we recognize the vital importance of compliance with its requirements during armed conflict. President Obama has consistently reaffirmed the need for nations to work together within a rule of law framework in addressing the numerous security challenges currently confronting States; as he stated in his address to the U.N. General Assembly in September, “all of us -- big nations and small -- must meet our responsibility to observe and enforce international norms.” Accordingly, the United States continues to ensure that all of our military operations that are conducted in connection with armed conflict comply with international humanitarian law, and all other applicable international and domestic law.

As we reported in the last discussion of this agenda item in this Committee two years ago, the United States announced its intent to seek the U.S. Senate’s advice and consent to ratification of Additional Protocol II, and this treaty is pending on the calendar of the Senate. An extensive interagency review found that U.S. military practice was consistent with the Protocol’s provisions, and we believe it remains so 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. Indeed, in the recently updated Department of Defense Directive on its Detainee Program, specific reference is made to the principles in Article 75 of Additional Protocol I.

We have also been pleased to see further discussion of weapons review in the context of the informal expert meeting on Lethal Autonomous Weapons Systems (LAWS), held last spring under the auspices of the Convention on Certain Conventional Weapons (CCW). The United

States believes that the importance of conducting the legal reviews of weapons to determine their consistency with the State's international obligations, which for Parties to Additional Protocol I is reflected in parts of Article 36, warrants the international community's renewed attention, and not just as it relates to Lethal Autonomous Weapons Systems. The U.S. Department of Defense has long-standing policies and processes for conducting the legal review of weapons when acquiring new weapons. Moreover, under a Department of Defense policy with respect to the use of autonomy in weapon systems, two reviews, including both legal and policy considerations, are conducted of certain types of autonomous weapon systems -- once prior to making the decision to enter into formal development of a weapon, and again before a weapon is fielded. The United States supports continued informal discussions on Lethal Autonomous Weapon Systems within meetings of States Parties to CCW and we hope that such discussions will continue to address the importance of conducting such reviews when developing or acquiring new weapons. We also hope the CCW will serve as a useful vehicle for a broader exchange of good practices in this area, while recognizing States' needs to protect certain national security and proprietary information.

I'd like to take this opportunity to discuss two recent, broader initiatives. The first is the Swiss-ICRC initiative on strengthening compliance with IHL, to which the Swiss and ICRC Presidents referred in a recent published statement on the 150th anniversary of the 1864 Geneva Convention. Although the United States recognizes the progress States have made in improving the implementation of IHL over the past decades, more can and should be done. We therefore support efforts to establish a dedicated forum in which States can engage with each other in substantive, non-politicized discussions about the ways they have implemented IHL. Such a forum would foster serious engagement on how States address their most pressing issues. The United States supports the concept of States reporting on their own practice, as well as discussions of particularly timely topics. We fully support the idea, also recently suggested by Presidents Burkhalter and Maurer, that such a forum could be a vehicle to facilitate capacity-building. We look forward to the further development of this initiative in advance of the 32nd International Conference of the Red Cross and Red Crescent.

The second initiative I'd like to discuss is the multi-year ICRC project related to the legal protections for persons deprived of their liberty in relation to non-international armed conflicts (NIACs). The United States supports this continuing effort to ensure that IHL remains practical and relevant in providing legal protection to detainees and internees, and to inform the ICRC's presentation of a range of options and recommendations to the 32nd International Conference. We were pleased to participate in the first of two consultations with government experts, which addressed the conditions of detention and the protection of particularly vulnerable groups. We look forward to participating in the next round of discussions this month, which will consider the grounds and procedures for deprivation of liberty in non-international armed conflict, as well as transfers from one authority to another. We would emphasize that the situations in non-international armed conflict that may warrant detention can be quite varied, operationally

complex, and logistically challenging. As we continue these discussions hosted by the ICRC, we must remain mindful that, apart from legally required baseline protections, detention procedure and processes must remain flexible, practical, and appropriate for the particular situation. We look forward to extensive discussion among State participants on their practical experiences and views on these issues.

With respect to both of these initiatives, we highlight that nations will need to find the right way to address the conduct of, and frequent violations of IHL by, non-state actors. It is important that international mechanisms not in any way lend legitimacy to non-state actors. On the other hand, in discussing non-international armed conflict, it will be critical to address the conduct of non-state actors. We look forward to exchanging views with others on how this can best be achieved, as the actions of non-state actors undoubtedly will remain an important topic as we work toward a world where IHL is better implemented across the full range of ongoing conflicts.

We would also briefly like to signal our strong support for ongoing work to establish a Montreux Document Forum where issues relating to private security companies can be considered.

In conclusion, let me once again reaffirm our commitment to IHL and to its effective implementation.

Thank you Mr. Chairman.

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