Opening remarks

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Excellences, ladies and gentlemen, dear friends and colleagues,

It is my pleasure to join Professor Pocar in welcoming you to the 42nd Sanremo Roundtable.

This year’s roundtable takes place on the 70th anniversary of the four Geneva Conventions of 1949. Thus, before I turn to contemporary and future challenges related to new technologies in warfare, I would like to suggest three lessons from the remarkable success of the Geneva Conventions that might be useful for our discussions in the coming days.

First, defining limits for warfare is possible. In 1949, only four years after the tremendous suffering of the Second World War, and at the beginning of the Cold War, States negotiated the 429 Articles of the Geneva Conventions in only 4 months. Since then, the Conventions have achieved universal ratification. To us, this is compelling example of what can be achieved when States come together, driven by the common purpose to preserve a minimum of humanity even in times of armed conflict.

Second, international humanitarian law has a real impact in armed conflicts. When we look at the news, read the reports of fact finding missions, or follow international criminal law trials, we see shocking and unacceptably high levels of suffering caused by armed conflicts and by a lack of respect for IHL. In light of this reality, some may ask whether IHL is still relevant,
and whether it is worth thinking about new rules. I am not convinced by narratives on the ‘erosion’ of IHL. While the ICRC witnesses the horrors of armed conflict first hand, it is in exactly these conflicts that we also see how IHL is respected! We see quiet, every day achievements of IHL – when a military takes care in its targeting to not fire on civilian buildings, when a wounded person is allowed through a checkpoint, when a child on the frontlines receives food and other humanitarian aid, and when detainees are able to send a message to their families. These success stories prove that respect for IHL is possible and happening.

And third, we do not have to reinvent the wheel. The Geneva Conventions and other rules of IHL remain today as relevant as 70 or 40 years ago: IHL is up to the contemporary challenges. IHL does not ask the impossible. States were not carried away by idealism when they negotiated the Geneva Conventions. They designed a body of law for extreme circumstances of armed conflict, striking a careful, pragmatic balance between military necessity and humanity.

And most importantly, when States adopt IHL treaties, they always do so with a view to regulating future conflicts – which are likely to involve means and methods of warfare unknown at the time the treaty is negotiated.

These positive lessons should, however, not divert our attention from the fact that more needs to be done: respect for IHL is far from perfect – parties to armed conflicts need to invest more into implementing IHL. And existing rules of IHL are not always clear – we need government and non-governmental lawyers to interpret and clarify the law. One important occasions to do so is this Sanremo roundtable on the IHL implications of new technologies of warfare.

When we discuss about new technologies in the next two days – such as cyber tools, autonomous weapons systems, artificial intelligence, or weapons in outer space – we will not speak about hypotheticals or abstract future developments. In fact, some of these means or methods of warfare are used in contemporary armed conflicts, and an increasing number of States are developing relevant capacities.

In the ICRC’s view, new technologies in warfare hold great promise, but they are pose great risks. Technological advances can certainly have positive effects on the protection of civilians in armed conflict when used to that end: weapons can be used with more precision; military decisions can be better informed; and military aims can be achieved without the use of kinetic force or physical destruction. At the same time, new means of warfare and the way they are employed can also pose new risks to combatants and civilians. Moreover, some of them pose questions on the role of the human in warfare.
For example, cyber operations during the past years have shown the potential human cost that cyber operations can cause. Attacks on the medical sector, attacks on critical infrastructure, or attacks on plants containing dangerous forces can cause significant human harm. While today’s cyber operations have fortunately not lead to human casualties, much is unknown on how this technology will evolve, which capabilities and tools the most sophisticated actors develop, and to what extent the use of cyber operations during armed conflicts might be different from the trends observed so far.

The development of autonomous weapons system, including systems that incorporate artificial intelligence and machine learning, pose their own set of issues. For the ICRC, the primary concern is a loss of human control over the use of force. If the user of an autonomous weapon system is uncertain about the exact timing, location and circumstances of the actual use of force, the effects are difficult to predict. This poses important risks for civilians in the area where this weapon system is used.

When we think about new technologies of warfare from a legal point of view, the ICRC is of the firm view that IHL applies to the use of new means and methods of warfare. As I said before, IHL treaties are necessarily developed with regard to future conflicts, and rules such as those on legal reviews of new weapons underline that States consider existing rules relevant and applicable to future means and methods of warfare. On this issue, we are closely aligned with many States and with the International Court of Justice, which has stressed that the established principles and rules of humanitarian law apply ‘to all forms of warfare and to all kinds of weapons’, including ‘those of the past, those of the present and those of the future’.\(^1\) Importantly, however, acknowledging IHL applicability does not legitimize the use of new technologies of warfare. Moreover, it does not set aside ius ad bellum – the UN Charter must be respected in all circumstances. IHL defines additional limits if parties to armed conflicts decide to employ new technologies in warfare.

The recognition that IHL applies to the use of new technologies in warfare brings us to what we believe should be the core of discussion among States and other experts, namely the question of how IHL applies to the digitalization of warfare.

Weapons that can select and attack targets without human intervention have been a focus of discussions among States for the last six years. But even when discussing weapons that can operate autonomously, we must always

\(^1\) International Court of Justice, Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, para. 86.
keep in mind that it is humans that have to comply with and implement IHL. This responsibility cannot be transferred to a machine or a computer program. In the ICRC’s view, human control must be maintained for both legal and ethical reasons. Combatants need to retain a level of control that allows them to make the context-specific legal judgements in specific attacks as required, for instance, by the IHL rules on distinction, proportionality and precautions in attack. The design or use of an autonomous weapon should not prevent the user from making these judgements. In the ICRC’s view, legal and ethical concerns should inform the establishment of internationally agreed limits on autonomy in weapon systems. A human-centered approach will also be necessary to ensure that any broader applications of artificial intelligence and machine learning in armed conflict – such as in decision-making – preserve the necessary human judgement.

With regard to cyber warfare, our key message is that despite the interconnectivity that characterizes cyber space, the principles of distinction, proportionality and precautions can be respected. Cyber tools are not inherently indiscriminate. In fact, many of the cyber attacks that have been observed appear to have been rather discriminate from a technical perspective. Being able to target an attack will not necessarily make the attack lawful under IHL – but it shows that fundamental IHL principles on the conduct of hostilities can be respected.

However, IHL rules protecting civilian objects may only provide the full scope of legal protection if States recognize that cyber operations that impair the functionality of civilian infrastructure are subject to the rules governing attacks under IHL. Moreover, the ‘datafication’ of our societies makes it necessary to recognize that civilian data are afforded the same protection as physical civilian objects: it does simply not make sense to accept that traditional archives qualify as civilian objects and are protected against attack but that digital archives, in the form of data, would not.

To conclude, I would like to reiterate that it is important and timely to advance debates on military, humanitarian, legal, and ethical questions posed by new technologies of warfare. I am delighted to see that in this room, we have people with great expertise on cyber technology, artificial intelligence, autonomous weapon systems, outer-space operations, and the use of new technologies in humanitarian operations. We have experts with a technological background, we have military operators, we have policy makers, we have humanitarians, and we have lawyers. I hope that we will learn from each other and be able to advance discussions on IHL implications of new technologies of warfare.