From land, to sea, to air -
From the trenches to the city:

IHL and the changing realities in
the conduct of hostilities during the
past century

42ND SAN REMO ROUNDTABLE ON CURRENT ISSUES OF IHL: 4-6 SEPTEMBER 2019

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I. From land, to sea, to air – Multiplication of warfare domains
   1. When and why?
   2. What are the humanitarian/other impacts?
   3. What are the legal challenges under IHL?

II. From the trenches to the city - Urbanization of warfare
   1. When and why?
   2. What are the humanitarian impacts?
   3. What are the legal challenges under IHL?
I.1. MULTIPLICATION OF WARFARE DOMAINS: WHEN AND WHY?

- **Multidimensional battlespace** (land, sea, air, cyber, outer space) as a result of the development of new technologies
- **First World War** as a turning point
  - E.g. Eric Germain
I.2. MULTIPLICATION OF WARFARE DOMAINS: WHAT ARE THE HUMANITARIAN/OTHER IMPACTS?

- Potential increase in deadliness
- Increase in the ratio civilian-military casualties
  - “All of the above cited material includes discussion of the difficulty of compiling such statistics. (…) Nonetheless, it seems more than fair to conclude that since the turn of the twentieth century, civilian deaths have outnumbered military deaths in nearly all wars.”

I.3. MULTIPLICATION OF WARFARE DOMAINS: WHAT ARE THE LEGAL CHALLENGES UNDER IHL?

Issues

- Do existing rules apply to the new warfare domains?
- Should new rules be adopted?

States’ reaction

- Reluctance to adopt specific rules to cope with new warfare domains
- General recognition that IHL principles apply to these new warfare domains.

Development of “soft law” instruments/experts documents/ “international operational manuals”

- 1923 Hague Rules of Air Warfare
- 1994 San Remo Manual on Naval Warfare
- 2009 Manual on International Law Applicable to Air and Missile Warfare
- The Woomera Manual for military space operations (expected date 2021)
## I.3. MULTIPLICATION OF WARFARE DOMAINS: WHAT ARE THE LEGAL CHALLENGES UNDER IHL?

### Impact of international operational manuals

- May influence State practice
- May be used by courts, tribunals, organizations
- May in turn contribute to customary law
- Rapid and flexible; less political
- Room for progressive interpretations

### Disadvantages

- Not legally binding per se
- Legal uncertainty
- Not State-driven
- Lack of representativeness of experts
- Lack of clarity in methodology

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“For the better or worse, this is the “age of the manual” and their continued drafting by private experts signifies a need to fill gaps that have been unwittingly left by States as new technologies and capabilities emerge. The status of these International Operational Law Manuals is self-declared to be non-binding and yet they do seem to nonetheless attract significant normative traction.”

II.1. URBANIZATION OF WARFARE: WHEN AND WHY?

- Disappearance of the distinction between the “front” and the “rear”
- Multiplication of NIACs, with OAG operating within cities
  - E.g. Spanish Civil War
  - Cold War
  - War a/ terror
- Inevitable trend of urbanization and multiplication of “megacities”
  - According to the United Nations (UN) World Urbanization Prospects report, urban population growth is accelerating. Only 30% of the world’s population lived in cities in 1950, but the figure was 54% in 2014 and is projected to rise to 66% in 2050.
II.2. URBANIZATION OF WARFARE: WHAT ARE THE HUMANITARIAN IMPACTS?

- Killings of civilians
- Destruction of cultural heritage
- Displacements
- Disintegration of urban services: power, water and food supplies are cut off. Health care becomes poor or non-existent.
- Related challenges for humanitarian organizations. Access. Evacuation etc.
- Long-term impacts (economic, education, healthcare)

Peter Maurer, “Aleppo is experiencing “one of the most devastating urban conflicts in modern times”.”
II.3. URBANIZATION OF WARFARE: WHAT ARE THE LEGAL CHALLENGES UNDER IHL?

• How to **ensure respect** for existing rules?
• How to **interpret** current rules and principles in the context of the urbanization of warfare?
  • Is there room for **clarification** or even **evolutionary interpretation** within contemporary international humanitarian law and, if yes, how much?
• E.g. **Proportionality** in urban warfare and “**reverberating effects**” or “**knock-on effects**”
CONCLUSION

1) Evolution of warfare has taken many different forms (new warfare domains, new weapons, new types of armed conflicts and urbanization of warfare)

2) Potential for increased casualties in particular among the civilian population and long-term disruptions of societies

3) Legal challenges

• In the context of new warfare domains, issue whether the law should be developed. States reluctances and development of international operational manuals as second-best solutions.

• In the context of the urbanization of warfare, the main legal issue pertains to the interpretation to be given to key legal rules and principles of IHL such as the principle of proportionality.

• Such evolutions in the realities of armed conflicts must go hand in hand with evolutionary interpretations of IHL, while respecting the balance between the principles of military necessity and humanity.
THANK YOU FOR YOUR ATTENTION!