OEWG on PAROS
Panel Discussion
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The Application of International Humanitarian Law to Military Operations in, or in Relation to, Outer Space: Implications for Civilians and Essential Civilian Services

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Thank you Mr. Chair. Good morning, everyone.

Thank you for the opportunity to contribute to this discussion on the application and implementation of international humanitarian law (IHL) to military operations in, or in relation to, outer space.

Before turning to IHL, let me say a few words on what is at stake.

As a humanitarian organization, the ICRC has long been concerned about the potential human cost of military operations in, or in relation to, outer space.

Essential civilian services, including water, electricity, sanitation, waste management, healthcare and food production, increasingly depend on space-based technologies. Navigation, communications and remote-sensing satellites are becoming indispensable to the functioning of essential services.

Humanitarian organizations, including the ICRC and the Red Cross and Red Crescent national societies, rely on satellite services to respond to the needs of people affected by armed conflict and other emergencies.

Space-based communications, navigation, imagery and data support every phase of humanitarian action: assessing needs, locating affected populations, maintaining contact with humanitarian teams, planning and delivering relief, and supporting recovery and reconstruction.

Without these services, reaching affected populations and responding to their humanitarian needs may become extremely difficult, or even impossible.

At the same time, space systems have become an integral part of modern military operations. Outer space is increasingly viewed as an operational domain. Dedicated military strategies and space commands have been established, while kinetic and non-kinetic counterspace capabilities continue to be developed, tested and deployed. Consequently, the likelihood of space systems being targeted during armed conflict also increases.

Against this background, the ICRC is concerned about the risk that military operations affecting space systems could disrupt essential civilian services on Earth, including humanitarian relief and emergency response.

These risks may arise from physical damage or destruction, electronic interference including jamming and spoofing, cyber operations, directed-energy capabilities, and the creation of space debris.

Importantly, these risks are not confined to satellites in orbit. A space system may comprise a space component, a ground component and the links between them. It may also depend on

digital infrastructure, including software, data, communications networks and systems used to command, control or receive services from space objects.

Interference with ground stations, control facilities, data links or other information infrastructure may disrupt a space-based service as effectively as an operation against the satellite itself.

Measures aimed at protecting critical space-based services to civilians, as well as services supporting humanitarian operations, should therefore consider the space system as a whole, including its space, ground and information components.

Against this background, military operations in, or in relation to, outer space do not occur in a legal vacuum.

As reaffirmed in the Outer Space Treaty, States Parties must carry on their activities in outer space in accordance with international law.

Of particular relevance to today's discussion are the Charter of the United Nations, the treaties governing outer space, the law of neutrality and, of course, international humanitarian law.

Let me be clear that nothing in IHL, including as applied to outer space, can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations. This has been reaffirmed in the preamble of the First Additional Protocol to the Geneva Conventions in 1977.

In other words, IHL and the UN Charter are complementary. Any resort to force by States, including in outer space, always remains governed by the prohibition of the threat or use of force under the UN Charter. At the same time, IHL contributes to the prevention of an arms race in outer space by containing rules that prohibit or limit the development and use of weapons, means and methods of warfare.

Against this legal framework, and building on the broader international law perspective we have just heard from Dr. Erin Pobjie, let me now briefly highlight some of the key rules of IHL that are particularly relevant to today's discussion.

International law restricts certain military activities in outer space, including the choice of weapons, means and methods of warfare involving outer space. In particular, it prohibits the placement in orbit, installation on celestial bodies, or stationing in space of objects carrying nuclear weapons or other weapons of mass destruction. It also prohibits weapons that are by nature indiscriminate, or of a nature to cause superfluous injury or unnecessary suffering, or long-term, severe and widespread damage to the natural environment. A number of specific types of weapons are also prohibited by international law.

Furthermore, IHL limits the means and methods of warfare, regulates the conduct of hostilities, and provides protection to certain persons, objects and activities, including medical services and humanitarian activities.

These rules apply to military operations conducted in the context of an armed conflict, including operations occurring in outer space or whose effects extend to outer space.

Of particular relevance is the principle of distinction.

Direct attacks against civilians and civilian objects, including civilian space objects and civilian components of space systems, are prohibited. A civilian object may not be attacked unless and for such time as it qualifies as a military objective under IHL.

Civilian or commercial ownership does not, in itself, determine whether an object is civilian or military. Equally, the military use of one component or function does not automatically mean that every connected component of a space system becomes a military objective. This determination must be made carefully with respect to each object or component concerned and in light of its use at the relevant time.

Even when a space object or another component of a space system qualifies as a military objective, any attack remains subject to the principles of proportionality and precautions, as well as all other applicable rules of international law.

This requires, among others, an assessment of all foreseeable direct and indirect incidental harm to civilians and civilian objects, both in outer space and on Earth.

Such an assessment must include the potential consequences of impairing the civilian functions of a dual-use system, including the interruption of essential civilian and humanitarian services.

While existing international law provides an important framework for regulating military operations in, or in relation to, outer space, from a humanitarian perspective the ICRC has also recommended States in previous multilateral discussions to consider measures to minimize the risk of civilian harm arising from threats to space systems. Let me mention a few examples.

To start with, the ICRC has called upon States to refrain from conducting or supporting military operations or other activities designed or expected to disrupt, destroy, physically damage or otherwise disable space systems necessary for the provision of essential civilian services and the protection and for the functioning of persons and objects specifically protected under international law.

In addition, the risks to civilians are compounded by the simultaneous civilian and military use of many space systems. Civilian or commercial satellites, payloads, ground facilities and information infrastructure may support essential civilian services and humanitarian operations while also being used for military activities during armed conflict. This places civilian activities and services at heightened risk. When developing military space capabilities, or using them during armed conflict, careful consideration must therefore be given to the potential human and societal consequences.

The ICRC encourages States, whenever feasible, to physically or technically separate or segment space systems, or parts thereof, used for military purposes from those used for civilian purposes. This is particularly important for systems necessary for essential civilian services, humanitarian operations, medical services, objects indispensable to the survival of the civilian population, and persons and objects specifically protected under international law.

Separation or segmentation may concern not only satellites and payloads, but also ground facilities, communication links, data, software and other supporting information infrastructure.

Recognizing the humanitarian risks posed by space debris, the ICRC has also called upon States not to develop, test or use kinetic counter-space capabilities or conduct other harmful operations against space systems that are designed or expected to create space debris.

The ICRC also recommends that States identify, register, mark, announce or otherwise indicate space systems within their jurisdiction or control that should be spared from the effects of military space operations. Any such mechanism should take account of the entire space system, avoid revealing operationally sensitive humanitarian information or technical vulnerabilities, and supplement, rather than replace, the protection already afforded by international law.

Additional measures could include strengthening the resilience and redundancy of services supporting humanitarian relief and emergency response, identifying civilian and humanitarian dependencies before military operations are undertaken, and cooperating with commercial operators that provide essential civilian or humanitarian services.

Such measures, whether developed through legally binding instruments or other complementary arrangements, should build upon and strengthen existing international law, including IHL.

Mr. Chair, Distinguished delegates,

In our view, a clear and strong reaffirmation that military operations in, or in relation to, outer space do not occur in a legal vacuum, but are constrained by existing international law, including IHL, is critical to fulfilling the OEWG's mandate.

Humanitarian considerations should be a cornerstone of any multilateral discussion and of any normative development with regard to space security, including within the framework of this OEWG.

The OEWG should help clarify how existing international law, including IHL, applies to military operations in, or in relation to, outer space. It is equally important to identify practical measures that minimize civilian harm arising from military space operations and strengthen compliance with international law.

The ICRC stands ready to support the OEWG in this important work.

Thank you.