Mr. Bruno Demeyere
Leagal Advisor, International Committee of the Red Cross (ICRC)

Excellencies,
Ladies and Gentlemen,

Allow me to acknowledge and thank the organizers for inviting the International Committee of the Red Cross to participate and present at this prestigious event. With this august audience of senior naval policy makers and practitioners, the ICRC feels privileged that its humanitarian perspective has been sought and hopes that its contributions will provide useful insights to this important discussion on enhancing maritime security.

The ICRC's first and foremost concern is maintaining humanity in armed conflict and other situations of violence. From the legal perspective, it is of utmost important to first assess which legal framework applies to any given operation. This will be determined based upon the question whether it takes place in peacetime or in time of armed conflict.

When an armed conflict breaks out, the law of armed conflict (also called "international humanitarian law") applies, and the ICRC's role is to remind States of the commitments undertaken on the basis of this legal framework. Below the threshold of an armed conflict, and this are the situations which have been most relevant the last few years in the maritime domain, treaty-based commitments of a protective nature have also been undertaken by your governments. These commitments include human rights law, refugee law and maritime search and rescue obligations. The ICRC is aware of the increasing importance of maritime security operations, and we acknowledge that such operations legitimately address a wide variety of different threats and activities at sea. Yet it is our role to remind all of you of the fact that such operations may also trigger humanitarian consequences, which have to be mitigated in line with the treaty commitments undertaken.

Excellencies, Ladies and Gentlement,

Navies, Coast Guards, and other maritime law enforcement agencies are tasked with the important responsibility of ensuring maritime security. Accordingly, in the Naval context, the Navy or the coast-guard may, in certain circumstance, lawfully use force against a vessel owned or operated by another state, or registered therein. One such example is where the Navy or Coast Guard suspects a violation of their State's fisheries legislation, and attempt to board such a vessel but meet with resistance. In principle, such measures do not constitute an international armed

conflict between the States affiliated with the vessels, in particular where the force is exercised against a private vessel. In general, the use of force in maritime law enforcement operations is regulated by legal notions similar to those regulating the use of force under human rights law. Thus, force may only be used as a matter of last resort and to the strictest extent necessary.

However, there may be situations where the use of force at sea is motivated by something other than a State's authority to enforce a regulatory regime applicable at sea. Depending on the circumstances, such a situation may qualify as an international armed conflict – to which the law of armed conflict, also referred to as international humanitarian law, applies. Accordingly, a distinction can be made between different instances where force might be used in the naval context. Firstly, if such use of force takes place in the context of a maritime law enforcement operation (for example as part of the fight against piracy), it will generally not trigger an armed conflict. Secondly, if the use of force cannot be considered as enforcing a regulatory regime applicable at sea, then it could give rise to an international armed conflict, and the provisions of, among other rules, the Second Geneva Convention must be complied with. At its core, this treaty stipulates that once an enemy combatant at sea is wounded, sick or shipwrecked, he or she may no longer be attacked, but must be respected and protected.

The 1949 Geneva Conventions and their 1977 Additional Protocols have passed the test of time in many situations of armed conflict over their respective almost seventy and forty years of existence. They still constitute the bedrock of international humanitarian law and provide fundamental rules protecting persons who are not, or are no longer, taking a direct part in hostilities. These persons include wounded and sick members of armed forces, the shipwrecked, prisoners of war, and civilians.

Naval battles have been fought for several thousand years. Yet, when the first Geneva Convention of 1864 was adopted, conferring protection on wounded and sick members of the armed forces , its rules only applied to warfare on land. The eventual inclusion of victims of warfare at sea in humanitarian treaty law was achieved only several decades later through a separate treaty on warfare at sea, the 1899 Hague Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864. The distinction thus established in the protection of victims of armed conflict between warfare on land and warfare at sea was maintained in 1949 by the adoption of two different Conventions to apply on land and at sea respectively. Accordingly, the Second Geneva Convention of 1949 seeks to protect the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

In the years following the adoption of the 1949 Geneva Conventions and their 1977 Additional Protocols, the International Committee of the Red Cross (ICRC) published a series of Commentaries that were primarily based on the negotiating histories of these treaties and on prior practice. Since their publication in the 1950s and 1980s respectively, the Commentaries on the Geneva Conventions of 1949 and their Additional Protocols of 1977 have become a major reference for the application and interpretation of those treaties.

While these Commentaries undoubtedly retain their historic value, the ICRC decided in 2011 to embark, together with a number of renowned external experts, on an ambitious project to update the Commentaries, seeking to reflect the significant developments in the application and interpretation of the Conventions and their Additional Protocols in the intervening years.

After the completion of the updated Commentary on the First Geneva Convention (GC I) in March 2016, the online launch of the updated Commentary on GC II on 4 May 2017 constituted the second milestone of this important project, which involved senior naval experts from around the world, whose input has greatly contributed to the richness of the analysis found in the final product which, we hope, by giving practical guidance on how to operationalize the treaty, will be of great value to all naval operators and other military professionals.

Excellencies, Ladies and Gentlemen,

The core obligation under GCII is to respect and protect the wounded, sick, shipwrecked and dead in all circumstances; they must be treated humanely and cared for without any adverse distinction. To achieve the protective purpose of GC II, it is paramount that the parties to the armed conflict, after each engagement, take all possible measures to search for and collect casualties. The parties might be the only actors sufficiently close to the victims to search for and collect them. Article 18 of the Convention thus requires the parties, after each engagement and without delay, to take all possible measures to search for and collect the wounded, sick, shipwrecked and dead at sea, without discriminating between their own and enemy personnel. This provision is at the core of the Convention, and we have gone to great length to analyze "who needs to do what" in order to implement the treaty obligations of a Party to a conflict.

Once collected, the wounded, sick and shipwrecked – whether friend or foe - must receive "adequate care" as soon as possible. This includes providing the medical care and attention required by their condition, as well as other forms of non-medical care, such as provision of food, drinking water, shelter, clothing, and sanitary and hygiene items. The parties are furthermore required to record information that can assist in the identification of the wounded, sick, shipwrecked and dead, and to forward this information to the power on which they depend. This is crucial so that families can be appraised of the fate of their loved ones. Specific obligations pertaining to the dead include respectful and honourable treatment, burial, and respect for their resting place.

In order to operationalize the core notion that wounded, sick and shipwrecked members of the armed forces are to be respected and protected, the Second Convention confers protection to certain categories of vessels. Most prominently among these are hospitals ships and coastal rescue craft. Hospital ships are 'ships built or equipped by (a State) specially and solely with a view to assisting the wounded, sick and shipwrecked, to treating them and to transporting them'. The operation of hospital ships constitutes one way in which parties to the conflict can carry out their obligation to protect and care for the wounded, sick and shipwrecked at sea. To be able to fulfil this function, hospital ships enjoy special protection "at all times", and they may neither be attacked nor captured. The hospital ship's personnel and crew are likewise accorded special protection, owing to the vital role they play in the ship's performance of its humanitarian functions.

At present, only a small number of States have military hospital ships. The updated commentaries point out that one option available to parties seeking to comply with their obligations to respect and protect the shipwrecked, wounded and sick is to transform merchant vessels into hospital ships. It is important to note that once a merchant vessel has been transformed into a hospital ship by a party to the conflict, it may not "be put to any other use throughout the duration of hostilities".

Two issues pertaining to hospital ships in particular have become topical since 1949. First, whether communications to and from a hospital ship may be encrypted and, second, whether and to what extent such ships may be armed. Our updated Commentaries analyses these questions in great detail.

In addition, GC II affords protection to small craft used by the State or by officially recognized search and rescue organizations. Coastal rescue craft have long rendered assistance to those in distress at sea and might be the only vessels available for this purpose to the vast majority of States, which do not have hospital ships. Yet, owing to their small size and speed, at the time of the adoption of GC II, rescue craft were considered difficult to identify and were often suspected of engaging in intelligence-gathering for the enemy.

Coastal rescue craft that satisfy the conditions for protection may not be attacked, captured or otherwise prevented from performing their humanitarian tasks. This protection extends, however, only "so far as operational requirements permit". Hence, operational considerations by a reasonable commander may justify interference with rescue craft by, for example, preventing them from performing their humanitarian tasks in a given sea area. Since the reasonableness will, of

course, depend on the prevailing circumstances, it is impossible to define the terms in an abstract manner. In this context, it is important to emphasize that this provision cannot be read in isolation from the rules of Additional Protocol I regulating the conduct of hostilities. Thus, coastal rescue craft may only be the object of an attack if they qualify as a "military objective" in the sense of IHL.

In comparison with armed conflicts on land, the past decades have not seen many armed conflicts take place at sea (or in other waters). This does not, however, justify complacency. In the event of an armed conflict that takes place wholly or in part at sea, the provisions of GC II must already be known and their contemporary meaning understood. This understanding must be ensured in peacetime, including through prevention activities such as the training of armed forces and especially naval forces. The Commentary constitutes an easily accessible tool which allows a better understanding of the legal obligations to protect wounded, sick and shipwrecked members of the armed forces at sea.
In parallel to these IHL sources, GC II also interacts with other sources of international law regulating activities at sea. This includes the 1982 UN Convention on the Law of the Sea ("UNCLOS"). The outbreak of an armed conflict at sea does not terminate or suspend the applicability of most provisions of UNCLOS; they remain in operation and apply simultaneously to GC II during an armed conflict. This complementarity is reflected in the updated Commentary on GC II. The term "warship", for example, used several times in GC II, must be interpreted based on the definition provided for in Article 29 of UNCLOS.

There are also a number of treaties adopted under the auspices of the International Maritime Organization ("IMO"), in particular the Safety of Life at Sea Convention and the Maritime Search and Rescue Convention. With regard to those IMO treaties that do not expressly limit their scope of application by exempting warships, the question arises to what extent and how they apply during an armed conflict that takes place wholly or partly at sea. No clear answer to this question currently exists, and we are calling States' attention to this important question so as to have an opportunity to come up with your own analysis.

Excellencies, Ladies and Gentlemen,

In recent years the ICRC has renewed and deepened its operations with naval and maritime states. With a natural emphasis on the Asian-Pacific and Indian Ocean contexts, we have initiated a series of events, workshops, and meetings bringing together senior naval officers from across the continent to examine the humanitarian impact of their operations and the application and practical implications of IHL and other relevant law.

Now in its fourth year, the flagship event for us in this regard is our "Law of Armed Conflict at Sea" Workshop, which recently brought together 28 senior naval officers from 19 maritime powers across Asia. This closed-door and confidential event, most recently hosted Kuala Lumpur, provides senior syndicate exercises on relevant International Humanitarian Law and Law of the Sea, covering: Means and Methods of Naval Warfare, Maritime Targeting, Command Responsibility, and Maritime Rules of Engagement.

The ICRC is also expanding its engagement with naval and coastal states into subjects related to maritime security operations and law-enforcement at sea that, below the threshold of "armed conflict", do not come under the Geneva Conventions. Touching on the critical subjects of human trafficking and migration, counter-terrorism at sea, and the use of force in law enforcement and counter-piracy, we are currently developing workshops and courses that reflect the concerns and growing needs of maritime states across the region.

Finally, the ICRC recognises the enormously important and life-saving role that navies and coast guards throughout the region often play in Humanitarian Assistance and Disaster Response operations. We recognise the critical importance of coordinating our neutral, impartial, and independent humanitarian action with HADR actors and call on them to respect their commitments under established guidelines for the use of military and civil defence assets in humanitarian response and disaster management,

including whenever natural disasters strike during armed conflict the relevant International Humanitarian Law.

The ICRC stands ready to discuss these question further with you on a bilateral basis, including when it comes to supporting your States' efforts to being familiar with the applicable legal frameworks, and to being aware of the humanitarian consequences both maritime security operations and armed conflict at sea may engender.

In conclusion, Excellencies, Ladies and Gentlemen,

The ICRC acknowledges that maritime security threats are a growing and legitimate strategic concern for States across the world today, linked to challenges of a diverse nature, such as the fight against terrorism, global migration phenomena, piracy etc. In this respect, in an admittedly difficult environment, commendable efforts are made by States to making sure that, whether acting alone or together, their protection mission is effective.

When discussing, designing and implementing the maritime security architecture, either at the national or international level, States must however never forget to consider the humanitarian consequences their naval operations may entail (both in peace and conflict times). At all times, these operations need to be conducted in line with all applicable legal frameworks, including international human rights law and the law of armed conflict.

When it comes to armed conflict at sea in particular, the Second Geneva Convention of 1949 is of utmost importance in that it reminds us that the law of armed conflict also contains, inherently, a requirement to respect and protect the enemy when he or she is wounded, sick or shipwrecked at sea. The ICRC's recently published Commentary on that Convention provides States an easily accessible tool on how to implement this Convention. Thus, we strongly encourage the esteemed audience assembled here today to take this tool into account as part of your efforts to seek "Greater Maritime Security".

The ICRC wishes, once again, to warmly thank the Sri Lanka Navy for this opportunity to participate in this important event, and to thank you very much for your attention.