

Security Council, Resolution 2139 (2014)

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: UN Doc. S/RES/2139 (22 February 2014), Available at:
<http://www.un.org/en/sc/documents/resolutions/2014.shtml>]

The Security Council,

[...]

[2]Reaffirming its strong commitment to the sovereignty, independence, unity and territorial integrity of Syria, and to the purposes and principles of the Charter of the United Nations,

[3]Being appalled at the unacceptable and escalating level of violence and the death of well over 100,000 people in Syria, including over 10,000 children [...].

[4]Expressing grave alarm at the significant and rapid deterioration of the humanitarian situation in Syria, in particular the dire situation of hundreds of thousands of civilians trapped in besieged areas, most of whom are besieged by the Syrian armed forces and some by opposition groups, as well as the dire situation of over 3 million people in hard-to-reach areas, and deploring the difficulties in providing, and the failure to provide, access for the humanitarian assistance to all civilians in need inside Syria,

[6]Expressing grave concern at the increasing number of refugees and internally displaced persons caused

by the conflict in Syria, which has a destabilising impact on the entire region, and underscoring its appreciation for the significant and admirable efforts that have been made by the countries of the region, notably Lebanon, Jordan, Turkey, Iraq and Egypt, to accommodate the more than 2.4 million refugees who have fled Syria as a result of the on-going violence, while acknowledging the enormous political, socioeconomic and financial impact of the presence of large-scale populations in these countries, and underscoring the need for all parties to respect and maintain the security and civilian character of camps for refugees and internally displaced persons,

[...]

[8]Calling on all parties to immediately end all violence which has led to human suffering in Syria, save Syria's rich societal mosaic and cultural heritage, and take appropriate steps to ensure the protection of Syria's World Heritage Sites,

[...]

[10]Expressing its regret that its presidential statement of 2 October 2013 (S/PRST/2013/15) has not delivered as expected and has not yet translated into meaningful progress on the ground, and that humanitarian aid delivery continues to be impeded throughout Syria, while condemning all cases of denial of humanitarian access and recalling that arbitrary denial of humanitarian access and depriving civilians of objects indispensable to their survival, including wilfully impeding relief supply and access, can constitute a violation of international humanitarian law,

[...]

1. Strongly condemns the widespread violations of human rights and international humanitarian law by the Syrian authorities, as well as the human rights abuses and violations of international humanitarian law by armed groups, including all forms of sexual and gender-based violence, as well as all grave violations and abuses committed against children in contravention of applicable international law, such as recruitment and use, killing and maiming, rape, attacks on schools and hospitals as well as arbitrary arrest, detention, torture, ill treatment and use as human shields, as described in the United Nations Secretary-General's report on children and armed conflict in Syria (S/2014/31);

[...]

1. Demands that all parties, in particular the Syrian authorities, fully implement the provisions of the 2 October 2013 statement by the President of the Security Council (S/PRST/2013/15) including through facilitating the expansion of relief operations, in accordance with applicable provisions of international humanitarian law and the UN guiding principles of humanitarian emergency assistance;
2. Calls upon all parties to immediately lift the sieges of populated areas, including in the Old City of Homs (Homs), Nubl and Zahra (Aleppo), Madamiyet Elsham (Rural Damascus), Yarmouk (Damascus),

Eastern Ghouta (Rural Damascus), Darayya (Rural Damascus) and other locations, and demands that all parties allow the delivery of humanitarian assistance, including medical assistance, cease depriving civilians of food and medicine indispensable to their survival, and enable the rapid, safe and unhindered evacuation of all civilians who wish to leave, and underscores the need for the parties to agree on humanitarian pauses, days of tranquillity, localised cease-fires and truces to allow humanitarian agencies safe and unhindered access to all affected areas in Syria, recalling that starvation of civilians as a method of combat is prohibited by international humanitarian law;

3. Demands that all parties, in particular the Syrian authorities, promptly allow rapid, safe and unhindered humanitarian access for UN humanitarian agencies and their implementing partners, including across conflict lines and across borders, in order to ensure that humanitarian assistance reaches people in need through the most direct routes;
4. Urges all parties, in particular the Syrian authorities, to take all appropriate steps to facilitate the efforts of the United Nations, its specialized agencies, and all humanitarian actors engaged in humanitarian relief activities, to provide immediate humanitarian assistance to the affected people in Syria, including by promptly facilitating safe and unhindered humanitarian access to populations in need of assistance in all areas under their control, and encourages further cooperation between the United Nations, its specialized agencies and all parties concerned, including Syrian civil society organisations, to facilitate access and the delivery of assistance in the entirety of the Syrian territory;
5. Demands that all parties respect the principle of medical neutrality and facilitate free passage to all areas for medical personnel, equipment, transport and supplies, including surgical items, and recalls that under international humanitarian law, the wounded and sick must receive, to the fullest extent practicable, and with the least possible delay, medical care and attention required by their condition and that medical and humanitarian personnel, facilities and transport must be respected and protected, and expresses grave concern in this regard at the removal of medical supplies from humanitarian shipments;
6. Also demands that all parties take all appropriate steps to protect civilians, including members of ethnic, religious and confessional communities, and stresses that, in this regard, the primary responsibility to protect its population lies with the Syrian authorities;

[...]

1. Strongly condemns the arbitrary detention and torture of civilians in Syria, notably in prisons and detention facilities, as well as the kidnappings, abductions and forced disappearances, and demands the immediate end of these practices and the release of all arbitrarily detained persons starting with women and children, as well as sick, wounded and elderly people and including UN personnel and journalists;
2. Urges all parties to take all appropriate steps to ensure the safety and security of United Nations personnel, those of its specialized agencies, and all other personnel engaged in humanitarian relief activities, without prejudice to their freedom of movement and access, stresses that the primary responsibility in this regard lies with the Syrian authorities and further stresses the need not to impede these efforts;
3. Stresses the need to end impunity for violations of international humanitarian law and violations and abuses of human rights, and reaffirms that those who have committed or are otherwise responsible for such violations and abuses in Syria must be brought to justice;

[...]

Discussion

I. Conflict classification and applicable law

1. *(Para. 1)*

- a. From the facts of the present case, how would you classify the conflict in Syria? What are the IHL rules applicable?
- b. What is the importance of customary IHL in terms of the law of non-international armed conflicts? Is the customary IHL of non-international armed conflicts the same for armed groups and for States?
- c. What other branch(es) of international law also inform the legal framework applicable to the present case? What is the relationship between these different legal frameworks?
- d. Why does the Resolution refer to the human rights abuses committed by armed groups? Are armed groups bound by international human rights law (IHRL)? By IHL? Why/Why not?

II. Humanitarian assistance

1. *(Preambular para. [10])*

- a. When may outside organisations provide assistance to persons affected by armed conflicts? What kind of assistance may be provided? To what categories of beneficiaries? (CIHL, Rule 55; GC I-IV, Art. 3; GC IV, Arts. 23 and 59; P I, Arts 69 and 70; P II, Art. 18 (2))
- b. Does the provision of humanitarian assistance require the consent of the territorial state? Even if the assistance is to be delivered to areas controlled by the enemy? (CIHL, Rule 55; GC I-IV, Art. 3; GC IV, Arts. 23 and 59; P I, Arts 69 and 70; P II, Art. 18 (2))
- c. Is a state confronted with a NIAC free to give or withhold its consent? When, if ever, does the withholding of consent violate IHL? (CIHL, Rule 55; GC I - IV, Art. 3; P II, Art. 18 (2))
- d. Does IHL prohibit an arbitrary withholding of consent? When is withholding of consent arbitrary?

2. *(Paras. 4 – 8)* Under IHL, is Syria under an obligation to allow access by international aid organizations to all those in need? To allow access to the ICRC? If Protocol II were applicable, would your answer to the above question change? Would Syria be under an obligation to allow access to international aid organizations in situations where the government is unable to meet the humanitarian needs of the population? (CIHL, Rule 55; GC I-IV, Art. 3; P II, Art. 18 (2))

3. *(Paras. 4 – 8)*

- a. a) What are the differences between the ICRC and other international or non-governmental organizations? What is the importance of neutrality for a humanitarian organization?
- b. b) Generally, why do you think States are reluctant to allow humanitarian organizations to engage with armed groups? What could be done to deal with the problem?

4. *(Para 5)* Is the deliberate starving of civilians forbidden by IHL? In non-international armed conflicts? In the present case? Is it a war crime? A crime against humanity? (CIHL, Rule 53; GC I-IV, Art. 3; P II, Art. 14; P I, Art. 54)

5. *(Para. 5)* Do the demands listed in para. 5 of the Resolution have their equivalent under IHL? Is there an obligation under IHL for parties to agree on “humanitarian pauses” and “days of tranquillity” to enable

safe relief actions by humanitarian agencies?

6. (*Paras. 8 and 11*) What are the parties' obligations in relation to the treatment of wounded or sick people under the IHL of non-international armed conflicts? Are medical workers under obligation to prioritize when it comes to caring for wounded and sick persons? In the present case (CIHL, Rule 110; GC I-IV, common Art. 3(2); P II, Art. 7)

III. Internally displaced persons and refugees

1. How does the IHL of non-international armed conflicts protect internally displaced persons and refugees?

IV. Detention

1. (*Para. 11*)
 - a. What legal framework would you use to assess whether or not a detention is arbitrary in the present case? Are the legal bases for your assessment the same for detention by governmental forces and armed groups? (CIHL, Rule 124; GC I-IV, Art. 3; GC III, Art. 21; GC IV, Art. 42, 78; ICCPR, Art. 9)
 - b. When can a civilian be said to have been arbitrarily detained in the context of an IAC? NIAC? Can UN personnel ever be detained? (GC I-IV, Art. 3; P II, Art. 5; GC IV, Arts. 42, 78; P I, Art. 75; ICCPR, Art. 9)
 - c. Can IHL offer some protection against enforced disappearances? Please explain why/why not with reference to the present case?