

Syria, Deconfliction of Humanitarian Facilities

INTRODUCTORY TEXT: *This case deals with mechanism known as “humanitarian deconfliction”.*

Deconfliction seeks to prevent attacks on relief facilities, units, and personnel by the parties to an armed conflict. Based on the summary of the report by the Board of Inquiry into certain incidents involving deconflicted facilities in Syria, the case discusses certain issues involved in the deconfliction system, and its relationship with IHL.

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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.

Security Council, Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry

[**Source:** UN Security Council, “Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in northwest Syria since 17 September 2018 involving facilities on the United Nations deconfliction list and United Nations-supported facilities” (Annex), UN Doc. S/2020/278, 6 April 2020, available at: <https://undocs.org/S/2020/278>]

1. On 1 August 2019, I [António Guterres, UN Secretary-General] announced my decision to establish a United Nations Headquarters Board of Inquiry to investigate certain incidents that had occurred in northwest Syria since 17 September 2017, when the Memorandum on Stabilization of the Situation in the Idlib De-escalation Area was signed by the Russian Federation and Turkey, in which facilities on the United Nations deconfliction list or supported by United Nations were destroyed or damaged as a result of military

operations.

2. On 13 September 2019, I proceeded to convene the Board and tasked it to review and investigate the following specific incidents:

(a) damage done to the Martyr Akram Ali Ibrahim Al-Ahmad Secondary School in Madiq Castle, Governorate of Hama, on 28 April 2019;

(b) damage done to the Rakaya Primary Health Care Centre in Rakaya Sijneh, Governorate of Idlib, on 3 May 2019;

(c) damage done to, and deaths and injuries occurring at, Kafr Nabutha Primary Health Care Centre and Surgical Unit in Kafr Nabutha, Governorate of Hama, on 7 May 2019;

(d) damage done to, and deaths and injuries occurring at, Nayrab Palestine Refugee Camp in Aleppo, Governorate of Aleppo, on 14 May 2019;

(e) damage done to, and injuries occurring at, the As-Suqylabiyah National Hospital in As-Suqylabiyah, Governorate of Hama, on 26 May 2019;

(f) damage done to Kafr Nobol Surgical Hospital in Kafr Nobol, Governorate of Idlib, on 4 July 2019;

(g) damage done to, and injuries occurring at, Ariha Protection Centre in Ariha, Governorate of Idlib, on 28 July 2019.

[...]

Humanitarian deconfliction

24. The Board noted that OCHA [Office for the Coordination of Humanitarian Affairs] defined deconfliction as the exchange of information and planning advisories by humanitarian actors with military actors in order to prevent or resolve conflicts between the two sets of objectives — humanitarian and military — to remove obstacles to humanitarian action and to avoid potential hazards for humanitarian personnel. The Board was informed that OCHA had established deconfliction mechanisms in a variety of settings, Syria being just one. Through those mechanisms, OCHA notified parties to the conflict of United Nations static locations and mission movements, as well as the static locations and movements of other humanitarian actors. [...]

25. In 2014, OCHA, at the request of the Humanitarian Country Team in Damascus, established a humanitarian deconfliction mechanism in Syria, which was described in a Guidance Document. [...] OCHA served as a channel between those humanitarian organizations that chose to provide deconfliction

information and designated focal points of the international coalition forces, the Russian Federation and Turkey. In order to increase awareness at the political level, OCHA also shared deconfliction information through the mechanism with the Chairs of the International Syria Support Group in Geneva — the Russian Federation and the United States. OCHA did not communicate deconfliction information directly to the Government of Syria, the Russian Federation being expected to share the information with it. OCHA also did not communicate deconfliction information to armed opposition groups that were present in the area concerned.

26. The deconfliction mechanism was open to all humanitarian organizations operating in Syria. Participation in it was purely voluntary. Under the mechanism, as it was operating at the time of the incidents under investigation, OCHA received deconfliction information from those organizations that chose to participate and transmitted that information exactly as it was received. It did not verify that information, and responsibility for its accuracy rested entirely with the submitting organization. (According to a subsequent iteration of the Guidance Document, OCHA was to check the data that it received against a map and, in the event of discrepancy, was to revert to the humanitarian actor that provided the information to address the issue before transmitting the information to the parties.) The template that participating organizations were to use when submitting deconfliction information contained an assurance by that organization that the information that it was submitting was true and correct. It also stated that the submitting organization accepted that OCHA would share the data with the coalition forces, Turkey, the Russian Federation and the Chairs of the International Support Group.

27. Although this was not addressed in the version of the Guidance Document that was being used at the time of the incidents under investigation, the Board was informed that it was OCHA's standard practice to request the parties to acknowledge receipt of the deconfliction information that was transmitted to them. The Guidance Document also did not address the question of what was to happen if a facility or operation that had been deconflicted through the mechanism was hit or otherwise affected by military operations. The Board was informed that it had become the practice for OCHA to notify the parties and request an investigation. [...]

28. The Board noted that OCHA had explained to Member States and to humanitarian organizations that, from a legal point of view, the purpose of the deconfliction mechanism was to help parties to the conflict to comply with their existing obligations under international humanitarian law and that it did not in any way dilute those obligations.

29. The Board was informed that OCHA had recently made a number of adjustments to the deconfliction mechanism. [...] [S]ince September 2019, the mechanism had become a seven-step process: a participating humanitarian organization submitted its deconfliction information to a centralized email address, using the relevant standard form on OCHA's website; OCHA mapped the coordinates and sent the mapping back to the participating organization for validation; the humanitarian organization validated and confirmed the

deconfliction information; OCHA assigned a reference number to the deconfliction notification; OCHA sent the deconfliction information to the international coalition forces, Turkey and the Russian Federation, as well as to the Chairs of the International Syria Support Group (though, if the humanitarian organization specifically requested this, OCHA would only notify the party or parties that the organization had specified); OCHA requested an acknowledgement of the deconfliction information from those parties; and the parties provided that acknowledgement.

Findings of the Board on the incidents and their attribution

30. The Board reached the following conclusions regarding the facts, causes and attribution of the incidents enumerated in its terms of reference. [...]

[...]

Incident (b): Damage done to the Rakaya Primary Health Care Centre in Rakaya Sijneh, Governorate of Idlib, on 3 May 2019

39. The Rakaya Primary Health Care Centre is located in Rakaya Sijneh village, in the Sub-district of Heish, District of Al-M'ara, Governorate of Idlib. [...] The Centre is located in the middle of the village, about 50 metres from the main road, and is surrounded by residential houses. [...]

[...]

41. The area of Rakaya Sijneh was controlled by armed opposition groups and Hayat Tahrir al-Sham at the time of the incident. The Board was informed that there were no military locations near the Centre; and it received no information to contradict that. It was informed that individuals affiliated with Hayat Tahrir al-Sham might conduct police patrols near the Centre, but it received no information that individuals affiliated with armed opposition groups or Hayat Tahrir al-Sham would enter the facility.

42. The Board recalled that the Permanent Representative of the Syria had written to me [to the UN Secretary-General] and to the President of the Security Council on 16 July 2019, stating that all health-care facilities in Idlib Governorate had been overrun by terrorist groups, that they no longer served their original purpose, that they could not be considered hospitals, health-care centres or even civilian objects under international humanitarian law and that they had been converted by armed terrorist groups into military posts, prisons, arms depots, workshops for manufacturing weapons and explosives, sharia courts and launch pads from which to fire shells and rockets at residential districts and safe areas (S/2019/572). The Board stated that, in the case of the Centre, it had received no information to corroborate these assertions. On the contrary, it found that health care services were being provided at the Centre at the time of the incident.

[...]

44. In January 2019, OCHA transmitted deconfliction information regarding the Centre by email to the Russian Federation. It did not send deconfliction information to the international coalition forces, to Turkey or to the Chairs of the International Syria Support Group in Geneva. The Board found that the coordinates for the Centre that UNFPA's implementing partner had been provided to OCHA and that OCHA had transmitted to the Russian Federation were accurate.

45. The Board understood that there was an escalation of hostilities in southern Idlib in April and May 2019. It was told that, on 1 May 2019, two barrel bombs were dropped on Rakaya Sijneh, one falling approximately 100 metres from the Centre, causing damage to its doors and windows. [...]

46. The day of the incident — 3 May 2019 — was a Friday, so the Centre was functioning with reduced staff. [...] At around 11:30 am, an explosion occurred approximately 15 metres from the Centre. [...].

47. The façade, main entrance, reception area, toilets, dispensary, walls, windows and doors of the Centre sustained damage and the external guard room was destroyed. [...] Due to the incident, the Centre went out of service and remained closed at the time that the Board was writing its report. [...]

[...]

49. In the light of the information available to it, the Board concluded that it was highly probable that the Government of Syria had conducted the airstrike. However, the evidence that it had been able to gather was not sufficient for it to reach a conclusive finding on the attribution of the incident.

[...]

Incident (c): Damage done to, and deaths and injuries occurring at, Kafr Nabutha Primary Health Care Centre and Surgical Unit in Kafr Nabutha, Governorate of Hama, on 7 May 2019

51. The Kafr Nabutha Primary Health Care Centre was located in Kafr Nabutha, in the Sub-district of Madiq Castle, District of As-Suqylabiyah, Governorate of Hama. [...] The Centre was in the northern part of the town. It was located in a building with an annex in a compound of some 300 square metres, surrounded by a wall. [...]

[...]

53. [...] The Board was informed that there were no military concentrations or encampments near the Centre and that the "Free Syrian Army" and other fighting factions did not have any presence in the town. The Board received no other information suggesting that there were military locations near the Centre, nor any information suggesting that individuals affiliated with armed opposition groups or Hayat Tharir al-Sham would

enter the facility.

[...]

55. In March 2018, OCHA transmitted deconfliction information regarding the Centre by email to the Russian Federation. It did not send deconfliction information to the international coalition forces, to Turkey or to the Chairs of the International Syria Support Group in Geneva. The Board found that the coordinates for the Centre [...] transmitted to the Russian Federation were accurate.

56. The Board understood that the Government of Syria and its allies launched a military offensive in the area around Kafr Nabutha on or around 27 April 2019. Heavy fighting took place between the Government and its allies and armed opposition groups and Hayat Tahrir al-Sham, involving both air and ground attacks. [...] [T]he Centre was damaged during the continuing offensive, most probably on 1 and on 7 May 2019, and that, as a result of those incidents, the building, its doors and windows and the property inside, as well as the compound wall, sustained damage. No one was killed or injured. [...]

57. Based on the information that it had received, the Board found it plausible that the damage to the Centre was attributable to the Government of Syria and its allies. It noted that it had received no information suggesting that other parties to the conflict had hit the facility.

Incident (d): Damage done to, and deaths and injuries occurring at, Nayrab Palestine Refugee Camp in Aleppo, Governorate of Aleppo, on 14 May 2019

58. The Neirab Refugee Camp is located 13 kilometres east of the city of Aleppo, in the Sub-district of Jabel Saman, District of Saman, in the Aleppo Governorate. Aleppo international airport and Nayrab military airport are nearby. [...] The Camp was established between 1948 and 1950 for Palestine refugees who had fled to Syria in 1948. [...] UNRWA [United Nations Relief and Works Agency] had a number of installations in the Camp, including schools, a food-distribution centre, a health centre, a community centre and a training centre, as well as an office, through which it served the Camp's residents. These installations were all marked as United Nations buildings. [...]

[...]

60. In April 2018, OCHA transmitted by email to the international coalition forces and to Turkey deconfliction information relating both to the Camp in its entirety and to UNRWA's individual installations within it. OCHA did not send that information to the Russian Federation or to the Chairs of the International Syria Support Group. The Board received no information indicating that the deconfliction information had been brought to the attention of armed opposition groups active in the area.

61. Aleppo and the territory east of the city, where the Camp is located, were under the control of the Government of Syria at the time of the incident. Armed opposition groups controlled the territory to the west of Aleppo and Hayat Tahrir al-Sham was present in that area. Liwa al-Quds (the “al-Quds Brigade”) had a strong presence at the Camp and at the nearby Nayrab military airport, approximately 600 metres to the north. Either Iranian forces or Iranian-backed militia were located near Aleppo international airport, immediately to the north of Nayrab military airport.

62. In the evening of 14 May 2019, some time before or around 7:00 pm, projectiles landed inside the Camp, hitting houses and apartments. Ten persons were killed. A further person died of his injuries 15 days later. Five of those who died were children between 6 and 11 years old. The Board understood that a further 29 persons were injured, 19 seriously. [...]

63. The Board found that it was probable that the strike was carried out either by armed opposition groups or by Hayat Tahrir al-Sham, noting that the vast majority of the evidence provided to it was to that effect. However, there was no evidence that allowed it to reach a conclusive finding.

[...]

Incident (g): Damage done to, and injuries occurring at, Ariha Protection Centre in Ariha, Governorate of Idlib, on 28 July 2019

74. The Ariha Protection Centre — also known as the Child Friendly Space — was located in the community of Ariha, in the Sub-district of Ariha, District of Ariha, Governorate of Idlib. The Centre was in a stand-alone, single-story building, rented from a private landlord, and situated in the middle of the community of Ariha. [...] The area was under opposition control at the time of the incident. However, the Board received no information suggesting that there were military centres or camps near the Centre at that time. The Board was informed that, before renting the Centre, the organization running it had ensured that its landlord was neither affiliated with nor belonged to any armed group.

75. The Centre provided child-protection services. [...]

76. In September 2018, OCHA transmitted deconfliction information regarding the Centre by email to the Russian Federation. It did not send deconfliction information to the international coalition forces, to Turkey or to the Chairs of the International Syria Support Group in Geneva. The Board found that the coordinates [...] were accurate.

77. The Board was informed that there had been no attacks in Ariha before July 2019. At around midday on 27 July 2019, there was an airstrike, which impacted about 50 metres from the Centre, causing damage to its doors and windows. Since it was a Saturday, there were no staff or beneficiaries at the Centre, so no one

was killed or injured. [...] The following day, at somewhere around 11:00 am to 11:45 am, there was another airstrike on Ariha. It impacted about two or three metres in front of the Centre, causing the entire façade and the walls of the building to collapse. The implementing partner's assets and furniture inside the Centre were lost, burned or damaged. Its staff member who had stayed overnight at the Centre was hit by falling rubble, suffering minor injuries to his chest, hand and leg. [...]

[...]

79. Having considered all the evidence available to it, the Board found it highly probable the airstrike had been conducted by the Government of Syria and/or its allies. However, the evidence before it was not sufficient for it to reach a conclusive finding.

Conclusions

[...]

Access of United Nations personnel to the north-west of the Syria Arab-Republic

[...]

86. The Board noted [...] [that] under OCHA's auspices, some armed opposition groups in northwest Syria had signed a "Declaration of Commitment on Compliance with IHL [...] and Humanitarian Assistance". By this Declaration, armed opposition groups committed themselves to protect and assist civilians and to respect international humanitarian law at all times. The Declaration also emphasized the responsibility of signatories for the implementation of local deconfliction arrangements and [...] and for the investigation of alleged violations. However, the Board was unable to access information about the implementation of the Declaration. [...]

[...]

Humanitarian deconfliction

93. [...] The Board identified a number of concerns regarding the Guidance Document that OCHA had issued as a standard operating procedure for the mechanism and the process of its implementation.

94. With respect to the Guidance Document, the Board considered that it did not explicitly situate the deconfliction mechanism within the context of international humanitarian law. This had led to implementing partners misinterpreting it as a replacement for or alternative to the standards established by that law. The Document also did not make clear the purpose of the mechanism, with the result that implementing partners had understood it in different ways. The Document emphasized that the mechanism was designed to identify

and protect humanitarian personnel, offices, facilities, distribution sites, IDP sites, routes that mobile clinics took and so on; yet OCHA had cautioned against use of the mechanism as a “protection tool”.

95. The participation of all of the relevant parties to the conflict in the mechanism was crucial to its effective implementation, the Board observed; yet the Guidance Document did not provide for the communication of deconfliction information to the Government of Syria; and it remained unclear whether deconfliction information had been transmitted and received by it. The Guidance Document also did not provide for the communication of deconfliction information to armed opposition groups.

96. The version of the Guidance Document that appeared on OCHA’s website at the time that the incidents occurred was also unclear and lacking in a number of respects. [...] [I]t did not provide detailed guidance on how the coordinates of deconflicted facilities should be established; and it did not address the question of what follow-up actions should be taken in the event that an incident occurred at a facility that had been deconflicted through the mechanism. [...]

97. The Board observed that these concerns, which had been communicated to it by implementing partners, had led to mistrust in the mechanism and hampered its effective implementation.

[...]

99. As appeared from the incidents that it had been tasked to investigate, deconfliction information had not been systematically shared with all of the entities listed in the Guidance Document. [...] There was also a lack of consistency in the way in which participating organizations established the coordinates of deconflicted facilities; yet there was a need to establish them in a standardized way. [...] Furthermore, parties had not been systematically required to acknowledge receipt of deconfliction information that was communicated to them, nor to signify their acceptance of the humanitarian nature of the facilities concerned. This, the Board observed, had led to scepticism about and a lack of confidence in the mechanism among participating organizations, aggravated by the fact that several facilities that had been deconflicted through the mechanism had been hit.

[...]

Recommendations

[...]

103. In the light of its findings, the Board made the following recommendations:

[...]

7. With regard to the “deconfliction mechanism” managed by OCHA:

a. OCHA should consider renaming it as “Humanitarian Notification Mechanism” to highlight its distinct nature, in the overall framework of international humanitarian law;

[...]

c. OCHA should directly notify all parties to the conflict, including the Government of Syria, of the deconfliction information, unless for security reasons an implementing partner formally requests that such information is not brought to the attention of one or more parties;

d. Armed opposition groups relevant in the northwest of the Syria should be involved in the deconfliction mechanism;

e. OCHA should consistently request all parties involved with the deconfliction mechanism to acknowledge receipt of the deconfliction information;

[...]

j. Only specifically identified sites or installations inside a refugee camp should be submitted for deconfliction, rather than the camp in its entirety.

[...]

Discussion

I. Classification of the Conflict and Applicable Law

1. (*Paras 44, 56 and 61*)

a. How would you classify the situation in Syria between the Government and its allies and armed opposition groups, such as Hayat Tahrir al-Sham? Has the threshold of a non-international armed conflict (NIAC) been reached? (GC I - IV, Art. 3) b. Does the presence of foreign forces in Syria (Russian Federation, Turkey, Iranian forces, International coalition forces) change the classification of the conflict? How? Is the involvement of those forces governed by the law of international armed conflicts (IACs) or the law of NIACs? What is the relevance of possible consent of the Syrian Government to their involvement in this regard? (GC I - IV, Arts 2 and 3)

II. Deconfliction Mechanism

2. (Paras 24, 25, 27, 28, 29 and 99)

- a. What is the humanitarian deconfliction mechanism? How does it work? Does the mechanism impose any binding obligation on the parties in the arrangement? b. How does the deconfliction mechanism compare with the IHL obligations incumbent upon parties to the conflict (*para. 28*)? Does it foresee standards of conduct that are not otherwise contemplated by IHL? How would you “situate a deconfliction mechanism in the context of IHL” (*para. 94*)? c. Does the deconfliction mechanism prohibit parties to the conflict from using deconflicted facilities for military purposes (*para. 42*)? What about IHL? Could the deconfliction mechanism safeguard against attack if a deconflicted humanitarian facility was used for military purposes? Must a humanitarian organization inform the deconfliction mechanism if a deconflicted facility is used for hostile purposes? What would be the risks of such a notification? (CIHL, Rule 8) d. What is the relevance of a deconfliction mechanism in view of IHL? What are the advantages and disadvantages of a deconfliction mechanism for the sites listed? For humanitarian sites not listed? In your opinion, would such a mechanism negatively affect humanitarian facilities that are not listed under the deconfliction mechanism? If so, in law or in fact? e. Had OCHA provided the deconfliction data to all parties to the conflict in Syria, would that have made the deconfliction mechanism effective (*paras 26, 44, 55, 60, 76 and 94*)? Why do you think deconfliction data were not directly provided to the government of Syria and not at all to armed groups? f. If there was a discrepancy in the deconfliction data provided to a party to the conflict, would that be an excuse for an IHL violation? g. Should or could OCHA have verified whether deconflicted facilities were actually protected under IHL? h. (*Para. 103*) Why could a humanitarian organization request a deconfliction mechanism not to inform a party of the position of its facilities “for security reasons”?

3. (*Para. 86*) What would be the legal effect of the declaration of commitment by armed groups in northwest Syria? Is such a declaration necessary for armed groups to be bound by IHL? To comply with the deconfliction arrangements? For investigation of alleged IHL violations (by armed groups)? (GC I - IV, Art. 3; see also the Case-study, Geneva Call and the Chin National Front)

III. Conduct of Hostilities

4. What is the difference under IHL between an attack against a deconflicted facility and against a facility that has not been deconflicted?

5. Could all facilities that are not legitimate targets under IHL be notified to the parties through a deconfliction mechanism?

6. (*Paras 41, 42, 53, 56, 74 and 77*) Are health centers, e.g. the Rakaya Primary Health Care Centre and Kafr Nabutha Primary Health Care Centre and Surgical Unit, protected under IHL? What about the Ariha

Child Protection Centre? When would such objects lose protection? Does the control of the areas where the objects were located by armed opposition groups make the objects legitimate targets? What about the presence of fighters near the objects? (GC I - IV, Art. 3; GC I, Art. 21; GC II, Art. 34; GC IV, Art. 19; P I, Arts 13 (1) and 57 (2); P II, Art. 11; CIHL, Rules 8, 10 and 28)

7. Are the following legitimate targets of attacks under IHL:

a. (*para. 41*) Police patrols? In IACs? In NIACs? (see also the Case-Study, Sudan, Report of the UN Commission of Enquiry on Darfur, para.422) b. (*para. 42*) Health facilities controlled by terrorist groups? When could they lawfully be attacked under IHL? (P II, Art. 11 (2); CIHL, Rule 28) c. (*para. 74*) A child protection facility rented from an owner who is a member of an armed group? d. (*para. 103*) A refugee camp? Why should “only specifically identified sites or installations inside a refugee camp” be submitted for deconfliction”?

8. Assuming that the damages to the objects investigated by the Board of Inquiry were incidental to lawful attacks, would the deconfliction of the facilities have any effect on the assessment of the lawfulness of such incidental attacks? (CIHL, Rules 15 and 16)

9. (*Paras 58, 61, 86 and 94*) Was the attack on the refugee camp, including the UN installations, lawful under IHL? Does the presence of the “al-Quds Brigade” in the camp make it a military objective? Was the attack carried out in violation of the commitment under the deconfliction mechanism? (CIHL, Rules 7 and 8)

10. (*Para. 103*) Do you agree with the recommendation of the Board of Inquiry to rename the deconfliction mechanism into “Humanitarian Notification Mechanism”? Would this highlight its distinct nature from the framework of IHL? Would that make the mechanism more harmonious with IHL?