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N.B. As per the disclaimer ^[1], 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.

One humanity: shared responsibility. Report of the Secretary-General for the World Humanitarian Summit

[Source: United Nations General Assembly, Seventieth session, Doc. A/70/709,

2 February 2016, available at:

<https://consultations.worldhumanitariansummit.org/bitcache/e49881ca33e37...> [2]
, footnotes omitted]

I. Introduction

[...]

II. The road to Istanbul

8. When I called for the World Humanitarian Summit in 2012, I was deeply troubled by the growing number of people in crisis and the dramatic increase in funding requirements. Humanitarian aid organizations that had been created to offer urgent life-saving assistance were increasingly tied down providing services year after year to people who might never go home, in countries whose road to peace might be arduous and long. Since then, the sense of urgency for this Summit has only risen. The number of people in need of humanitarian assistance and the related funding requirements have hit record highs. Terror and the deliberate brutalization of women and children, aerial bombardments and indiscriminate shelling of residential neighbourhoods, with thousands of people trapped and starved in besieged areas, tens of thousands escaping war and destruction on dangerously overcrowded boats and millions on the move in search of a better life have all acquired a harrowing familiarity.

[...]

14. Above all, people everywhere have expressed their desire for change, not only in the World Humanitarian Summit consultations, but across the other recent United Nations reviews and reform processes. Change that results in global leaders finding political solutions to end suffering and prevent crises and to uphold the international laws they have agreed to. Change that reaches the most marginalized and furthest behind. Change that gives a voice and leadership to affected people and local organizations as primary agents of their own destiny. Change that promotes self-reliance rather than perpetuating dependence on international assistance. Change that ushers in a new model of how Governments, local

communities, the private sector and aid organizations work together for people in crisis. Change that inspires global leaders, international organizations and other stakeholders to assume their responsibilities with a greater sense of urgency and determination to deliver better for those who need it the most. People are looking to the World Humanitarian Summit to deliver that change.

[...]

IV. Humanity: a shared responsibility – confronting the challenges of our time together

[...]

A. Core responsibility one: political leadership to prevent and end conflicts

[...]

B. Core responsibility two: uphold the norms that safeguard humanity

Even wars have limits: minimizing human suffering and protecting civilians require strengthened compliance with international law.

46. Over the past 150 years and in the past two decades in particular, we have invested considerable effort and political will in strengthening the international legal frameworks governing the rules of war, promoting the protection of civilians, restricting the use and transfer of certain arms and ammunition, setting up human rights monitoring mechanisms and establishing courts to address the most serious violations of international humanitarian and human rights law. Human rights advocacy and the protection of civilians are now a universal affair. Yet, our global landscape is still blighted with the brazen and brutal erosion of respect for international human rights and humanitarian law. Every day, civilians are deliberately or indiscriminately injured and killed. Air strikes rip families apart. Women and girls are abused and sold as sexual slaves. Populations in besieged areas are deliberately starved, intimidated and deprived of essential goods for years. Journalists are detained or killed. Schools, hospitals and places of worship are bombed with alarming frequency and at alarming levels. Monuments that have stood as emblems of culture and

civilization for millenniums are deliberately reduced to rubble. The brutality of today's armed conflicts and the utter lack of respect for the fundamental rules of international humanitarian law on care for the wounded and sick, humane treatment and the distinction between civilians and combatants threaten to unravel 150 years of achievements and cause a regression to an era of war without limits.

[...]

48. Flouting the most basic rules governing the conduct of war has become contagious, creating further risks that their application will be reinterpreted and blurred. The failure to demand and promote respect for our shared norms, enforce the law and support or cooperate with national and international monitoring and accountability mechanisms contributes to the erosion of the rule of law and brings about great human suffering. When States disrespect or undermine international humanitarian and human rights law, including through expansive interpretations, other States and non-State actors regard it as an invitation to do the same. A global society without a common adherence to rules and norms surely cannot be our goal. Indifference and inertia cannot be our mantra. We can, and we must, do better.

[...]

Respect and protect civilians and civilian objects in the conduct of hostilities

Uphold the cardinal rules

50. All State and non-State parties to armed conflict must comply with the customary rules of distinction, proportionality and precautions. Attacks directed against civilians, persons hors de combat and civilian objects, the use of indiscriminate means such as improvised explosive devices and the use of civilians to shield military objectives are all prohibited. Schools, hospitals, places of worship and other critical civilian infrastructure must

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51. State and non-State parties must refrain from expansive and contentious interpretations that dangerously expand the range of weapons, tactics, targets and incidental civilian casualties considered permissible. They must repel any inclination to broaden or blur the rules and, instead, apply the law with the requirements of humanity in mind. Counter-terrorism efforts, asymmetric warfare and the emergence of new threats and enemies cannot legitimize the loosening, or the outright dismissal, of rules that are aimed at sparing civilians and limiting harm to what is necessary to weaken the enemy. At a time when most conflicts are non-international, it is critical for impartial humanitarian actors to engage in dialogue with States as well as non-State armed groups to enhance their acceptance, understanding and implementation of obligations under international humanitarian and human rights law.

Cease bombing and shelling populated areas

52. Whether by shelling, aerial bombardment or suicide or car bombs, the use of explosive weapons in populated areas is the primary killer of civilians in conflict. The effects of such weapons are widely known. Those who plan or decide to launch barrel bombs, mortars, rockets or other explosives with wide-area effects into urban areas can easily anticipate that they will cause excessive harm and destruction by killing large numbers of civilians, destroying homes, severely hindering critical services and leaving behind explosive remnants of war for years. While the use of many of such weapons is not per se prohibited by international law, the cardinal rules of distinction, proportionality and precautions circumscribe the use of explosive weapons in populated areas and must always inform military planning and decision-making.

53. Firm political commitments to constrain the use of such weapons are an essential step. States should improve, collect and exchange good policies, practices and lessons learned on minimizing impacts on civilians and on practical measures that civilians in exposed areas can take to protect against explosive weapons. Experts should simulate their effects in urban areas and make the results available for all military forces. Targets and indicators are needed to monitor progress in reducing their humanitarian impact in populated areas. The reckless bombardment and shelling of civilian neighbourhoods must be consistently recorded, investigated and referred to relevant national and international courts.

Ensure full access to and the protection of humanitarian and medical missions

Meet the essential needs of the population

54. States bear the primary responsibility to respect and ensure the human rights of all individuals within their territory and subject to their jurisdiction. Parties to armed conflict have the obligation to meet the essential needs for food, water, medical care and shelter of persons living under their control. Affected people have a right to receive assistance, including from impartial humanitarian organizations. This is a core obligation of parties to conflict and a fundamental prerequisite of humanity. Where people's essential needs are not

being met, parties to armed conflict have an obligation to allow and facilitate access for impartial humanitarian assistance. This is not a mere technical requirement. It is essential to save lives and reduce suffering and must always override the political interests of parties to armed conflict and their allies. Denying humanitarian access to besieged areas in order to achieve military gains is deplorable and against the law.

[...]

56. Under international humanitarian law, organizations that are impartial and humanitarian are entitled to offer their services. Yet, in today's reality, many humanitarian organizations struggle daily to gain access to people in need. States do not enjoy unfettered discretion to turn down offers of humanitarian assistance if persons are in need of relief. Whenever the essential needs of civilians are not being met, the States concerned must not arbitrarily withhold consent to humanitarian relief operations. The onus for securing access cannot rest solely on humanitarian actors, and States should justify any refusal of relief. Mechanisms to verify and inspect humanitarian convoys can be useful in overcoming reticence about allowing access for humanitarian relief. State and non-State parties must ensure freedom of movement of humanitarian personnel and adopt clear, simple and expedited procedures to facilitate their rapid and unimpeded access. States, and the Security Council in particular, play a critical role in ensuring humanitarian access. Where access to people in need is arbitrarily denied or hindered, such acts must be effectively addressed at the highest political level. States and the Council must ensure accountability and work to overcome instances of arbitrary denial of access.

57. Member States and the Security Council should also ensure that counter- terrorism or counter-insurgency measures do not inhibit humanitarian action or prevent funding for humanitarian operations. Measures should include the necessary exemptions to allow humanitarian organizations to engage in dialogue and coordinate with all parties to armed conflict in order to reach those in need and alleviate suffering.

[...]

Speak out on violations

59. Remaining silent while serious violations of international law are unfolding is morally unacceptable and undermines the legal obligations of States. Our common humanity demands that we do everything we can to prevent and end violations and hold perpetrators accountable. Gathering facts, taking preventive and protective action, including speaking out against violations, recognizing the suffering of victims and advocating for proactive solutions are among the most basic duties owed to people enduring the effects of armed conflict.

[...]

Seek the facts

[...]

61. Where national fact-finding endeavours are insufficient, the Security Council or the Human Rights Council, and States, including those party to armed conflict, should mandate independent and impartial commissions of inquiry to assist the international community in ascertaining the facts and recommending the way forward in protecting rights. States should also make use of the International Humanitarian Fact-Finding Commission's role of enquiry into serious violations of international humanitarian law in all types of armed conflict and strive to make its findings available to affected parties.

Systematically condemn serious violations

62. Whenever serious violations of international humanitarian and human rights law occur, Governments, global leaders and other relevant individuals must systematically condemn them. Even where we may not be able to stop violence and suffering immediately, we have a minimum responsibility to speak out and ensure that the facts are known. The experience of the United Nations has shown that speaking up earlier usually strengthens its role. In the context of my Human Rights Up Front initiative, I have asked all United Nations senior officials to do so and I encourage all United Nations staff to act with moral courage in the face of early, serious and large-scale violations. I also exhort all relevant actors and

stakeholders to end the double standard of condemning the violations of some but not of others. This weakens the collective resolve to prevent conflicts and our credibility in demanding compliance with the law.

[...]

Uphold the rules: a global campaign to affirm the norms that safeguard humanity

[...]

Actively promote compliance and engage in regular dialogue

[...]

71. The International Conference of the Red Cross and Red Crescent also has a key role to play in this respect. The thirty-second International Conference recommended the continuation of a State-driven intergovernmental consultation process to find agreement on features and functions of a potential forum of States and to find ways to enhance the implementation of international humanitarian law, using the potential of the International Conference and international humanitarian law regional forums. I encourage States to actively support the next phase of the process, which will be facilitated by Switzerland in conjunction with the International Committee of the Red Cross.

[...]

Discussion

Fundamentals of IHL

1. Is the bleak picture the Secretary-General describes of the realities of contemporary armed conflicts an indication that IHL rules are not adequate? Which of the problems mentioned are in your view not adequately regulated by IHL?
2. How could the respect of existing rules of IHL be improved?
3. (Para. 48) Can you provide examples of "expansive interpretations" which

undermine IHL and invite others to do the same?

4. (Paras 48, 50) Which are the necessary conditions in order to establish a customary rule? Is customary law also binding for armed groups? Does IHL provide legal basis for its respect by armed groups?

5. (Para. 50) Which provisions of IHL oblige parties to international and to non-international armed conflicts to spare schools, hospitals, places of worship and other critical civilian infrastructure from military force? From military use? Should such provisions be adopted in the cases they are missing?

Wounded, sick and shipwrecked

6. (Paras 46, 50) Does IHL protect wounded and sick persons because of the conflict? Does this protection apply to both civilians and combatants? (GC I-II, Art. 12 ^[3]; GC I-II, Art. 13 ^[4]; P I, Art. 10 ^[5]; P II, Arts. 7 ^[6]-8 ^[7]; CIHL, Rules 109 ^[8]-111 ^[9])

Conduct of hostilities

7. (Paras 50 – 53)

a. Does IHL distinguish not only between persons, but also between objects on the battlefield? If so, how is such a distinction to be made? (P I, Art. 52 ^[10]; CIHL, Rule 10 ^[11])

b. Which kind of attacks are considered as indiscriminate under IHL and prohibited as such? (P I, Art. 51 ^[12]; CIHL, Rules 11 ^[13]-12 ^[14])

c. May the presence of the civilian population be used in order to shield military objectives from attacks? If not, does such a prohibition persist in case of voluntary human shields? (P I, Art. 51(7) ^[12]; CIHL, Rule 97 ^[15])

d. On which rules on the conduct of hostilities could targets and indicators be defined to improve their respect? What could these targets and indicators be? (P I, Arts. 51 ^[12] and 57 ^[16]; CIHL, Rules 1 - 21 ^[17])

Humanitarian access and assistance

8. (Paras 54 – 57)

a. Does the civilian population have a right to be assisted during armed conflicts? If so, are the belligerent parties obliged to give consent for relief carried out by impartial organizations? In what circumstances? In occupied territories, does the occupying power have a similar obligation? (GC IV, Art. 23 ^[18]; GC IV, Art. 59 ^[19]; P I, Arts. 69

[20] and 70 [21]; P II, Art. 18 [22]; CIHL, Rules 55 [23] and 56 [24])

b. Do impartial humanitarian organizations have a right to engage in dialogue with armed groups about their respect of IHL? Even when an armed group is labelled as “terrorist” by the State fighting against it? By the UN? (GC I-IV, Art. 3 [25])

State responsibility

9. (Paras 59 – 61)

a. Are States’ obligations under IHL only directed towards other belligerent parties? Are there any erga omnes obligations? How would your response change if you consider armed non-state actors instead of States? (GC I-IV, Art. 1 [26]; P I, Art. 1 [27])

b. On what basis could you argue that States have an obligation to condemn violations of IHL committed by other States and armed groups?

ICRC

10. (Para. 71) Are the resolutions adopted by the International Conference of the Red Cross and Red Crescent binding upon states? If not, which function could they have in order to recommit states to their obligations under IHL? How could a regular forum for States contribute to better implementation of IHL?

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