

A. UN Doc. S/15834

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.

[Source: UN Doc. S/15834 (June 20, 1983)]

MISSION TO INSPECT CIVILIAN AREAS IN IRAN AND IRAQ WHICH HAVE BEEN SUBJECT TO MILITARY ATTACK

Report of the Secretary-General

1. On May 2, 1983, the Permanent Representative of the Islamic Republic of Iran called on me to convey his Government's request that I send a representative to visit civilian areas in Iran which have been subject to military attack by Iraq. He indicated that,

should the Government of Iraq wish to invite the representative to visit Iraq, the Government of Iran would welcome it.

2. [...] On May 3, 1983, I discussed the matter with the Permanent Representative of Iraq, who, after consulting his Government, informed me on May 12, 1983 that Iraq would also wish the representative to visit civilian areas in Iraq which had been subject to military attack by Iran. [...]
3. I informed the Security Council on May 12, of my intention to dispatch a small mission [...]. As agreed with the two Governments, the task assigned to the mission was to survey and assess, as far as possible, the damage to civilian areas in the two countries said to have suffered war damage and to indicate, where possible, the types of munitions that could have caused the damage. The mission was not expected to ascertain the number of casualties or the value of the property damage in those areas. The mission was assigned the responsibility of presenting to me an objective report on its inspections and observations. [...]
8. The mission has reported to me that during discussions in the Ministry of Foreign Affairs of each State, there was mention of alleged violations of the Fourth Geneva Convention of 1949. [...]
9. The mission has reported to me that it met officials of the International Committee of the Red Cross (ICRC) in Geneva to discuss its findings as well as the relevant portions of the ICRC memorandum of May 7, 1983 circulated to States parties to the Geneva Conventions of 1949. [...]
11. The report that the mission has submitted to me is annexed.

Annex

Report of the mission

Introduction

1. The mission toured war zones in Iran from May 21 to May 26, 1983, and war zones in Iraq from May 28 to May 30, 1983. [...]
2. The mission was instructed (a) to determine whether civilian areas had been subject to damage or destruction by military means, such as air bombardment, artillery shelling, missile and rocket attacks or use of other explosives; (b) to assess the extent of such

damage and destruction as far as possible; (c) to indicate, where possible, the types of munitions used. While the mission was not expected to ascertain the number of casualties, it kept in view the obvious correlation between the extent of damage to civilian areas and the probable extent of loss of life, taking into consideration the degree to which such areas were populated at the time the damage was inflicted. The statistics on casualties provided by the two Governments are mentioned in the report of the mission without comment. [...]

4. The mission wishes to place on record that, in the circumstances in which it worked, it was not in a position to verify the information given by the authorities concerned relating to the location of military units or installations, distances from lines of hostilities, situation of communications or economic installations of strategic or military significance etc. Therefore, the mission had to rely in that regard essentially on the information provided by the respective Government supplemented by whatever information it could ascertain by its own observations.
5. In accordance with its instructions, the members of the mission at no point discussed with any official of either Government or any other person the possible content of its report. Also, it made it a point not to discuss with one Government what it had observed or ascertained during its visit to the territory of the other State. The members of the mission did not make any substantive statement or comment to the press. [...]

I. Tour of war zones in Iran

7. The itinerary drawn up by the Government of Iran included visits to civilian areas which had suffered war damage relatively recently as well as in the past. The dates of its visits to the various sites are indicated in brackets. The times indicated are local times. Casualty figures relate to civilians.

A. Dezful (May 21, 1983)

Information presented to the mission by the Iranian authorities

8. [...] The distance [of the city] to the border is approximately 80 km.

9. The authorities said that the city had been attacked on April 20, April 22 and May 12, 1983, on each occasion by a surface-to-surface missile from a westerly direction. Three sites of impact within the city were the Cholian area, the Afshar hospital area and the Siah-Poshan area, respectively. [...] Some buildings had had to be demolished by bulldozers to gain access to the third site to evacuate the dead and wounded, and many bodies were said to be still buried [sic] under the debris.
10. The distance to the lines of hostilities was not provided. A major air base is situated 8 km north-west of the city towards Andimeshk. There are no troops stationed in the city, and the nearest major area where combat troops were deployed was about 80 km away. There are air defence detachments deployed in the city. There are no factories of any military significance in the city.
11. The mission was also informed that there had been over 50 previous missile attacks from September 1980 to date. There had been, in the same period, over 6,000 impacts from aerial bombardment and shelling. Those had caused total casualties of 600 killed and more than 2,500 injured. There had been destruction of varying degree to 1,300 houses, 32 schools and 22 mosques.

Observations by the mission

12. Dezful is a sizeable city situated on the southern bank of the Dez River, which separates it from the air base area located to the north of the city. There is a dam about 20-25 km to the north-east. There are two bridges over the Dez River in the city. The city is not situated on any major communications route. Within the time available, the mission was unable to determine whether there were installations of strategic or economic importance located in the city other than those indicated by the Iranian authorities. [...]
16. The observations by the mission and examination of the evidence presented to it support the claim that the first three sites were hit by surface-to-surface missiles, which the team identified as Scud-B missiles. Although the mission could not inspect all the damaged buildings, the extent of the property damage claimed appears to be plausible. [...]

D. Musian **(May 22, 1983)**

Information presented to the mission by the Iranian authorities

32. The mission was informed that the town had a population of 5,000 people, mostly Arabic speaking. It is 6 km from the border. The area is mainly agricultural and is not in a military zone. However, there were oil installations nearby in Abu Ghareib and Biad. It was occupied on about October 8, 1980 after 15 days of fighting during which 60 persons were killed. The number of injured was not known, since most of the inhabitants had fled on the outbreak of hostilities. It was recaptured on March 22, 1982 after one week of fighting. The authorities further stated that the town had been largely destroyed before it was retaken and that many buildings had been blown up by explosives. Thirty-three outlying villages had also been destroyed. Five hundred and eighty families had been taken prisoner. Since its recapture, it had been under frequent bombardment until a month prior to the mission visit. The distance to the front line was not given.

Observations by the mission [...]

34. The mission formed the impression that the buildings still standing had been damaged by shelling and direct fire, and, in some cases, by planting high explosives. However, in the areas that had been razed to the ground the extent of destruction indicated that high-explosive charges and engineering equipment might have been used.

E. Dehloran **(May 22, 1983)**

Information presented to the mission by the Iranian authorities

35. Dehloran is located about 25 km from the border. The mission was informed that it had been attacked more than 50 times by air since the outbreak of hostilities in September 1980 and that about 60 per cent of it had been destroyed. One hundred

persons had been killed, and 500 others injured. The town had been occupied three times by Iraqi forces, and, in the course of the latest occupation, the power station and waterworks had been destroyed. Most of the inhabitants had fled the town during the first attack, and the population of 45,000 before then had dwindled to 5,000. There is no factory located within or near the town. No troops were stationed in the area in 1980. The authorities stated that since March 1982, when the town was recaptured by Iranian troops, no military units have been deployed in the area. There are, however, a small air defence detachment, a gendarmerie unit and a reconstruction unit stationed in the town. The distance to the front line was not given.

Observations by the mission

36. [...] From what the mission could observe, more than half the town had been heavily damaged beyond repair. Almost all the buildings in the other areas were damaged to varying degrees. The damage appeared to have been caused by both shelling and aerial bombardment.
37. Apart from the air defence and the gendarmerie units located in the town, the mission observed a number of personnel in military uniform and military vehicles. It was informed that they belonged to reconstruction teams. [...]
39. The mission is of the view that the destruction described was caused by aerial bombardment and exchange of fire on the occasions when the town changed hands and by subsequent shelling.

F. Abadan (May 23, 1983)

Information presented to the mission by the Iranian authorities

40. The population of the city before the hostilities was 400,000, with another 200,000 people in its suburbs. The authorities stated that soon after the town was attacked in September 1980 most of the population had been evacuated. The city remained subject to heavy shelling and aerial bombardment. Only about 70,000 inhabitants remained and were currently helping in the reconstruction of the city. Twelve hundred

persons had been killed and 7,000 injured, of which 79 were maimed. Civilians taken prisoner numbered 2,228. The damage to 40,000 houses ranged from 20 per cent to 100 per cent. The city was still under shelling and direct fire, and daily casualties averaged 1 person killed and 6 or 7 injured. There was very little aerial bombardment. Before the hostilities, there had been one gendarmerie border post and no military units located in the city. The nearest military unit, one infantry battalion was stationed in Khorramshahr some 30 km away. After the city was attacked and the road to Ahvaz cut on October 20, military units to defend the city had had to be brought in by air and through the Bahmanshir River.

41. The mission was taken to one of the oldest and largest hospitals in the city, whose location was well known, and was informed that it had been hit the previous day by a 120-mm mortar shell which had caused no casualties. The mission was also later taken to a second hospital on the outskirts of the city which was said to have been bombed from the air at an early stage in the hostilities.
42. An oil refinery complex located near the city was said to have been almost destroyed and the remaining installations to be under constant attack. The mission was not taken to that area because, the Iranian authorities said, it was not a civilian area and could be considered an economic installation of military significance and, therefore, a legitimate target.

Observations by the mission [...]

44. On inspecting the first hospital, the mission was shown various points of past damage. It found shrapnel and glass fragments caused by one very recent impact of a shell which had made a gaping hole in the corner of one of the wards. The mission also observed that the roof of another ward, which was clearly marked with a red cross on both sides, had received several direct hits, four of which had penetrated the roof and caused damage inside. The mission was also shown a part of a canister of a bomb which was said to be one of the two found in the hospital grounds and was positively identified as belonging to a cluster bomb of the same type found in other cities [...].
45. The second hospital building showed signs of considerable damage that had been repaired. [...]

46. [...] It is also evident that the city remains under fire.
47. During the visit to the first hospital, at about 0900 hours on May 23, 1983, the mission heard sounds of artillery or mortar fire. While in Khorramshahr, the mission was informed that three shells had hit the Abadan refinery, and one had dropped in the city a kilometre from the first hospital the team visited. That could not be verified by the mission.
48. From its observations, the mission is of the opinion that the evidence supports the claim that the city had been under a prolonged siege. It was clear that the destruction seen had been caused by aerial bombardment, artillery fire and direct fire.

G. Khorramshahr (May 23, 1983)

Information presented to the mission by the Iranian authorities

49. Before September 1980, the population of Khorramshahr had been 200,000. On September 22, 1980, it had been heavily bombarded and attacked by two army divisions. An infantry battalion stationed in the city, supported by civilians, had resisted for 40 days, after which the larger part of the city north of the Karun River was occupied by Iraqi forces and remained under occupation until late March 1982. Two hundred persons, including whole families, had been killed in the initial fighting. During the evacuation of the population several thousand civilians had been killed, and thousands more wounded, and a large number had been taken prisoner (no precise figures were given).
50. The Iranian authorities stated that their troops had recaptured the city in March 1982 without much fighting. Of about 23,000 residential and other units, it was found that 8,000 buildings had been totally levelled, including 120 mosques and religious establishments, 100 schools, 2 colleges, 4 major hospitals and several clinics. Of about 15,000 residential units, 60 per cent had been destroyed and were beyond repair. A large number of shops had been looted and burned. From 50 to 60 vessels of foreign registration had been sunk or heavily damaged. Another 1,000 private vessels of Iranian registration, of all types and sizes, had also been destroyed or sunk. [...]

Observations by the mission [...]

55. The scene in the northern part of the city supported the version of events given by the authorities. Although the mission could not conduct detailed inspections, the nature and extent of the destruction gave the impression that, apart from air and artillery bombardment, high-explosive charges and engineering equipment had been used. [...] The mission was not in a position to determine whether the open spaces had been mined, and, if so, to what extent they had been cleared.
56. From what it could observe of the almost total devastation of the city, the mission is of the opinion that in those parts where buildings were still standing the destruction was the result of intensive shelling and bombardment in the course of the hostilities. However, in those areas of the city which were completely levelled, it was evident that other means, such as high-explosive demolition charges and engineering equipment, must have been deliberately employed. [...]

L. Baneh (May 26, 1983)

Information presented to the mission by the Iranian authorities

73. Baneh has 13,000 inhabitants and is about 20 km from the border. The mission was informed that the town had been attacked on the day before its visit, that is, on May 25, at about 1015 hours by two of four aircraft coming from a westerly direction. Twenty-two bombs had been dropped in the north-eastern section of the town, of which some had landed outside the town limits. Five had failed to function. The rest had fallen in an area 300 m in diameter. The aircraft had also strafed the town with machine-guns. Eight persons had been killed, of whom 3 were women and 5 were children. Seventy-three had been injured, of whom about 70 per cent were children, 20 per cent women and 10 per cent men.
74. The authorities stated that, since the outbreak of hostilities, no military operations had been conducted in that part of the country by either side, except for the air attack the previous day. There is no major military installation in the area. There is a small supply depot of about 150 men solely in support of internal security operations. It is

located about 1-1.5 km from the area of impact, to the north-east of the town. The town is on a very small side road, with no industry of military significance.

Observations by the mission

75. Baneh is a small town situated in mountainous terrain. [...] It is not near any major communication lines and has no industry of any significance, being mainly an agricultural town. The only military installation observed was the small supply depot already mentioned, which contained several large trucks.

76. The area affected is residential and showed a large number of fragment marks, but there was no major property damage. A large number of window panes had been broken.

[...]

77. Although the mission was not, in general, expected to estimate the number of casualties, it felt that, in the circumstances, it would be inappropriate not to take note of the evidence of an incident which had occurred only one day before its visit.

78. The mission was taken to the graveyard to see the bodies of the dead just before burial. There were the bodies of two women and five children in open coffins. The mission was informed that another woman who had been evacuated to a hospital in a nearby town had succumbed to her wounds.

79. The mission was then taken to a hospital where 56 of the wounded were said to be under care, the others having been sent to hospitals in nearby towns. Two doctors showed the mission 1 young boy, 8 women and 14 children of ages 2-12 who had suffered moderate to severe wounds the preceding day. One baby had been prematurely delivered by Caesarian operation, as its mother was severely wounded. Because of the time factor the mission could not visit the other wounded.

[...]

81. From its observations and examination of the evidence presented to it, the mission is of the view that the town had been subjected to aerial bombardments with cluster bombs. Such bombs are mainly effective against personnel, and this would explain

the high number of casualties and the relatively low damage to property. The mission is therefore of the opinion that the details of the incident as reported were reasonably accurate. The mission is not in a position to judge whether the intended target could have been the supply depot. [...]

II. Tour of war zones in Iraq

83. The itinerary drawn up by the Government of Iraq included visits to civilian areas which had suffered war damage relatively recently as well as in the past. The dates of its visits to the various sites are indicated in brackets. The times indicated are local times. Casualty figures relate to civilians. [...]

C. Khanagin (May 28, 1983)

Information presented to the mission by the Iraqi authorities

92. Khanagin is 8 km from the border. Its population was 52,000 before the hostilities began. The town and a nearby oil refinery had been shelled and bombarded by air even before September 4, 1980. Many residential areas had been evacuated. The authorities stated that on September 22, 1980, Iraqi forces had crossed the border in retaliation and subsequently advanced some 45-50 km beyond it. Between September 1980 and June 1982, the town had been beyond artillery range but had been attacked three times by air. On June 18, 1982, the Iraqi forces had started to withdraw from their advanced position and, by June 28, had withdrawn to the border. Since then, the town had been under rocket and artillery attack. Sites affected included hospitals and schools. About 4 per cent of the town had been damaged beyond repair. The distance to the front line was not given.
93. In an attack on a residential area on September 4, 1982, 8 women and children had been killed and 19 injured, and some houses had been destroyed. On December 18, 1982, a school had been hit, 20 children and 1 teacher had been killed and 50 children injured. About two months prior to the mission's visit a supermarket had been hit by rockets. Seven persons had been killed and 19 injured, including women and children.

In all, 66 inhabitants had been killed and 455 injured, including 33 maimed. The last artillery attack, on May 16, 1983, had resulted in 1 person killed and 8 injured.

94. The authorities stated that no major military operations had been mounted from the town at any time. No military units were stationed in the city, except for air defence detachments comprising militia men. There were two supply routes 6-10 km from the town. An oil refinery is located at a distance of 2 km from the town.

Observations by the mission

95. The mission visited the school, the supermarket and the residential areas mentioned. On inspection, it saw that the schoolyard had been hit by two shells, many fragments of which had shattered windows and penetrated into two classrooms. There was one impact outside the supermarket entrance which had scattered fragments against the facade. In the residential area on the outskirts attacked in September 1980, four houses had been badly damaged and two more lightly damaged. The nearby refinery and its residential area had been heavily damaged. In that area a number of military emplacements were seen.
96. In the opinion of the mission, the oil refinery was the main targets of the attack, but a number of civilian targets at some distance from it had also been hit. The estimate of damage to the town appeared to be accurate.
97. During its visit to Khanaqin, the mission heard sounds of four rounds of artillery or mortar fire from the direction of the border. It was informed that these came from Iranian guns, but that claim could not be verified.

D. Kirkuk (May 29, 1983)

Information presented to the mission by the Iraqi authorities

98. The population of the city was 200,000 before September 1982, and remains at the same level. The city is 140 km from the border and, thus, not within range of Iranian artillery. The nearest land operations were near the border 70 km north of Khanaqin. According to the authorities, the city had been heavily raided by air from September

23, 1980 until February 26, 1982. The raids, which were particularly intense in the first days of the hostilities, had been concentrated on residential areas, and targets hit included a hospital, a school, a market-place and a graveyard. There was a good civil defence system, and, therefore, casualties were limited. There had been a total of about 50 successful raids and a great number that were not successful. The authorities stated that cluster and fragmentation bombs, rockets and machine-guns were used, as were napalm and booby-traps in civilian areas.

99. There was heavy damage to residential areas, 120 units as well as 15 public buildings having been destroyed, of which nearly all had been rebuilt, as it was government policy to restore damaged property as quickly as possible. Such reconstruction work also was the target of attacks. Casualties since September 1980 had totalled 30 killed and 245 injured.
100. An air base and a training centre for logistic personnel were located about 25 km and 10 km respectively, from the city. Kirkuk is in an oil-producing area, and the nearest oil installation was 10 km away. There were numerous small factories and workshops of no military significance in the city, many of which had been destroyed by attacks and then rebuilt.

Observations by the mission

101. The mission was taken to five sites. At the first site, it was shown one house which had been destroyed in a residential area located about 200 m from an oil-storage area where four of seven storage tanks had also been destroyed. At the second site, in a residential area across from a railway station and bus terminal, a house had been destroyed and two other buildings damaged and rebuilt. At the third site, in another residential area, a local health centre had been destroyed and some houses damaged. In yet a fourth residential area, two houses had been destroyed and rebuilt. At the fifth site, a shopping area in the old part of the city had been destroyed [...]. The mission was informed that at that particular site, rockets had been used, resulting in 12 persons killed and 53 injured. The facade of a nearby mosque had been slightly damaged. The distances between the five sites averaged 1 km. The incidents were well documented, and, to support their claim, the authorities showed the mission photographs of the

munitions allegedly used, including cluster bombs, and of the damaged buildings before they were rebuilt. The mission was not shown parts of the munitions used, as those were said to have been sent to Baghdad. [...]

102. Since those events had taken place in an early stage of the hostilities, and most of the damage had been repaired, the mission was unable physically to inspect or verify the type of the munitions used in the various sites. However, the mission is of the view that the evidence, i.e., photographs and still visible damage, supports the claims concerning damage to property. [...]

F. Al-Faw **(May 30, 1983)**

Information presented to the mission by the Iraqi authorities

106. The town had 42,000 inhabitants before the hostilities started. The current population is about 3,000 most of its inhabitants having abandoned the town by mid-1981, since it had come under almost daily bombardment from September 1980. It is located on the border about 500 m from the mouth of the Shatt-al-Arab, which is about 800 m wide. At this time, it is the only station in Iraq used for off-shore loading of oil in the Gulf. There is no oil refinery.
107. According to the authorities, between September 1980 and December 1981, there had been 136 air raids, the last having taken place in December 1981. Since the outbreak of hostilities, the town had been under daily shelling, with an average of 20-30 shells every day. The town was also under direct fire from tanks and machine-guns from across the river. Total casualties to date were 96 killed and 236 injured, of whom many were maimed. Eighty per cent of the casualties were from shelling, 10 per cent from air attacks and 10 per cent from other means. Three thousand houses had been hit, of which 50 per cent had been totally destroyed, and 30-40 per cent were beyond repair. No repairs had been attempted because of the constant threat from shellings. There are no military units located near the town, but Iraqi artillery deployed about 10 km from the town had been used to return fire from the other side. The town had not been used at any time for launching military operations, and the river had not been crossed in either direction during the hostilities. There were no military units in the

city, except for border forces along the Shatt-al-Arab.

Observations by the mission

108. The mission was taken to visit six sites. At the first, it was shown an unoccupied house which, it was told, had been hit two days earlier by a shell. One wall of the house had collapsed, but no point of impact or shell fragments were found. At the second, a power plant on the edge of the town towards the river and several workshops in the vicinity had been hit on May 20, 1983, and three people were said to have died, but the plant was still functioning. At the third site, 8 houses, 400 m from a transformer, had been destroyed by an air raid in early 1981. At the fourth site, near some oil-storage tanks 8-10 prefabricated houses had been destroyed, as had most of the tanks. At the fifth site, in a residential area, two houses had been completely destroyed and several more damaged to varying degrees evidently by artillery. The sixth site was five km outside the town, where water-storage tanks had been destroyed at the start of the hostilities.
109. During its tour, the mission saw about 40 large oil-storage tanks grouped in various parts of the town. Most of the tanks had been destroyed or damaged.
110. The mission is of the opinion that the oil installations were the main target of the attacks. The power station could have been another target. However, it was clear that in the course of the shelling, a large number of residential and other buildings had been hit and heavily damaged. [...]

B. Security Council Resolution 540 (1983)

[Source: UN Doc. S/RES/540 (October 31, 1983), available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/540\(1983\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/540(1983)) ^[2]]

The Security Council,

Having considered again the question entitled “The situation between Iran and Iraq”, [...]

Recalling the report of the Secretary-General of June 20, 1983 (S/15834) on the mission appointed by him to inspect civilian areas in Iran and Iraq which have been subject to military attacks, and expressing its appreciation to the Secretary-General for presenting a factual, balanced and objective account, [...]

Deploring once again the conflict between the two countries, resulting in heavy losses of civilian lives and extensive damage caused to cities, property and economic infrastructures,

Affirming the desirability of an objective examination of the causes of the war, [...]

2. *Condemns* all violations of international humanitarian law, in particular, the provisions of the Geneva Conventions of 1949 in all their aspects, and calls for the immediate cessation of all military operations against civilian targets, including city and residential areas; [...]

C. Letter of June 28, 1984 from Iraq to the Secretary-General

[Source: UN Doc. S/16649 (June 28, 1984)]

Letter dated June 28, 1984 from the deputy permanent representative of Iraq to the United Nations addressed to the Secretary-General

I wish to refer once again to what was stated in the letter from His Excellency President Saddam Hussein, President of the Republic of Iraq, which he addressed to you on June 10, 1984 in reply to your appeal addressed to both Iraq and Iran to end the bombardment of purely civilian centres and in which he affirms that it was essential for both sides to refrain from concentrating their military forces in or near civilian centres, so that there would be no intermingling during military operations. I wish also to refer to my letter addressed to

you on May 21, 1984, in which I explained to you that the Iranian side was using the town near the Iraqi frontier as centres for concentrating its forces and making them point of departure for the attack which it intended to launch against Iraqi territory and towns.

I wish to refer also to the note sent to you by the Permanent Representative of Iraq on June 23, 1984. We have ascertained that the Iranian authorities have actually assembled numerous military units in the following Iranian cities: Abandan, Mohammarah, Khosrowabad, Ahvaz, Hoveyzeh, Bisitin, and Andi-meshk. The Iranian authorities' use of purely civilian centres for military purposes in order to prepare fresh aggression against Iraq is a clear violation of the agreement reached through you to avoid the bombardment of civilian centres, as well as being a violation of article 28 of the Fourth Geneva Convention, signed on August 12, 1949, relative to the protection of civilian persons in time of war, which prohibits the use of the presence of protected persons to render certain points or areas immune from military operations and to turn such towns into military centres. This prohibition was reaffirmed clearly in Protocol I, signed in Geneva in 1977. Article 58, paragraph (b), states the necessity of avoiding the establishment of military targets in or near densely populated areas. In stressing once again the necessity of taking swift and appropriate measures to verify that and the necessity of the Iranian side's abiding by its commitments, we confirm what we warned of at the start, namely, that the Iranian régime intends to use the agreement to conceal its aggressive, expansionist intentions for the purpose of low duplicity, which places such situations outside the scope of what was stated in your letter of June 9, 1984 concerning the avoidance of the bombardment of purely population centres.

We emphasize our strong desire for faithful implementation of the agreement and for United Nations bodies to perform their duties well. We enclose a list containing information about the Iranian military forces present in the above-mentioned towns.

(Signed) Tariq Aziz Deputy Minister and Minister for Foreign Affairs

D. Letter of June 29, 1984 from the Secretary-General to Iran and Iraq

[Source: UN Doc. S/16663 (July 6, 1984)]

Text of messages dated June 29, 1984 from the Secretary-General addressed to the President of the Islamic Republic of Iran and to the President of the Republic of Iraq

I am deeply gratified and encouraged that the Governments of Iran and Iraq are implementing in good faith their undertakings to refrain from military attacks on purely civilian areas. While there have been reports of civilian casualties, I have reason to believe that both Governments are determined to honour the commitments made in response to my appeal. This is to be commended by the international community.

I feel I should underline once again, now that the inspection arrangements are in place, that compliance with the undertakings is principally the responsibility of the two Governments. In this respect I must point out that, inasmuch as my appeal as well as the responses of the two Governments were motivated by a desire to spare innocent civilian lives, I am deeply concerned that allegations have been made that civilian population centres are being used for concentration of military forces. If this were indeed the case, such actions would constitute a violation of the spirit of my appeal and of basic standards of warfare that the international community expects to be observed.

I am sure you will understand that, until this ruinous conflict can be stopped, I have a special responsibility to make every effort to mitigate the suffering it causes. [...]

Discussion

1.

- a. May a party to a conflict deliberately attack a hospital as described, e.g., in Abadan or Khorramshahr in Iran, or Khanagin in Iraq? Or a mosque? A school? Is a power station in a modern society an object necessary for the survival of the civilian population? (HR, Art. 25 ^[3]; P I, Arts 48 ^[4], 51(2)-(3) ^[5], 52 ^[6] and 54 ^[7]; P II, Arts 13 ^[8] and 14 ^[9]; CIHL, Rules 7-10 ^[10] and 54 ^[11]) How would the fact that troops were stationed in each of these locations affect these determinations? (GC IV, Art. 19 ^[12]; P I, Arts 51(7) ^[5] and 52(2) ^[13]; CIHL, Rule 10 ^[14])
- b. Are civilians accorded protection by IHL? For example, from indiscriminate attacks? (P I, Art. 51(4)-(5) ^[5]; CIHL, Rules 11-13 ^[10]) What constitutes an indiscriminate attack? The aerial bombardment with cluster bombs in the town of Baneh, Iran (para. 81 of the UN Mission report above)? Are women and children not granted special protection under IHL? (E.g., GC I, Art. 12(4) ^[15]; GC II, Art. 12(4) ^[16]; GC III, Art. 14 ^[17]; GC IV, Arts 14 ^[18] and 27 ^[19]; P I, Arts 76 ^[20] and 77 ^[21]; CIHL, Rules 11-13 ^[10]) Did the described attacks violate those provisions?
- c. Under IHL, are oil wells or refineries considered as military objectives that may be attacked? Are power plants? (HR, Arts 25 ^[3] and 27 ^[22]; P I, Arts 48 ^[4], 52 ^[6] and 85(3) ^[23]; CIHL, Rules 7-10 ^[10]) If a party to a conflict knows when attacking a military objective that a civilian object might be hit, what, if any, prior action must be taken? (GC IV, Art. 19 ^[12]; P I, Art. 57(2)(c) ^[24]; CIHL, Rule 20 ^[25]) May any means be used to disable a military objective that is determined as such, or to subdue the opposing forces? Including the use of cluster and fragmentation bombs, rockets and machine-guns, as well as napalm and booby-traps in civilian areas, as Iraqi authorities claimed were used in Kirkuk? (HR, Art. 22 ^[26]) Under IHL, are a certain number of civilian casualties permitted in an attack on military objectives? If so, how many constitute a permissible loss? (P I, Art. 57(2)(a)(ii)-(iii) ^[24]; CIHL, Rules 14 ^[27] and 17-18 ^[10])

2.

- a. Is Security Council Resolution 540, para. 2, referring to violations of any of the above-mentioned IHL provisions? Which attacks and what destruction described in the report fall under “the Geneva Conventions”?

- b. Was the destruction of the areas of Khorramshahr which were completely levelled by high-explosive demolition charges and engineering equipment while under Iraqi control a clear violation of Convention IV? Even if the destruction happened just before those areas were retaken by Iranian forces? Even if the destruction occurred while fighting was going on in Khorramshahr? Under which conditions could such destruction be compatible with IHL? (GC IV, Art. 53 ^[28])

3.

- a. Is it clear that such violations actually occurred in the towns visited by the UN Mission? In all cases? Are such violations of IHL easy to determine? Are some IHL violations, e.g., torture, easier than others to assess? Is it easier to establish violations of the Law of Geneva than of the Law of The Hague? Did or could the UN Mission provide clear conclusions? What explains the vague language found in its report, e.g., such events “appear plausible” or “the extent of destruction gave the impression that ...”?
- b. What factors make a “fact-finding” mission so difficult in these situations? Is it not particularly difficult because such facts must be assessed subsequent to events (sometimes even years later)? And because of the standards used in evaluating those facts? (P I, Art. 52 ^[6]) How does one really know or determine whether or not a military objective was actually located nearby at the time of attack? And then whether the attack was proportional to the significance of that military objective at that time? Or whether or not the attack was a mistake? Or whether the casualties were really part of the civilian population? On what elements should the fact-finding mission rely to assess the proportionality? To assess the objective importance of the military objective attacked? The exact extent of the civilian losses? The military plans of the attacker? (P I, Arts 51(5)(b) ^[5] and 57(2)(a)(iii) ^[24])
- c. Can general conclusions be drawn from this mission for the possibilities and difficulties of fact-finding, with regard to IHL, on the conduct of hostilities?

4.

- a. If the facts are accurately stated in Document C., has Iran violated Art. 58(b) of Protocol I ^[29]? Art. 28 of Convention IV ^[30]? Are the inhabitants of the said

- Iranian towns protected persons under Convention IV? (GC IV, Art. 4 ^[31])
- b. Is the UN Secretary-General right in stating in Document D. that the use of civilian population centres for the concentration of military forces constitutes a violation of basic standards of warfare? (P I, Arts 51(7) ^[5] and 58 ^[29]; CIHL, Rules 7-10 ^[10] and 22-24 ^[10])
 - c. If the Iranian government used civilian centres as cover for its military forces, is the Iraqi government entitled to bomb those areas? Or at least the military forces situated in those areas? What precautionary measures must Iraq then take? (P I, Arts 50(3) ^[32], 51(7) and (8) ^[5], 57 ^[24] and 58 ^[29]; CIHL, Rules 7-10 ^[10] and 15-24 ^[10]) Are Iran and Iraq bound by these provisions of Protocol I although they are not party to the Protocol? Which of these provisions can be considered customary international law and hence applicable to both parties?
5. If civilians and civilian objectives in Iran and Iraq were attacked, what obligations do States party to the Conventions have with regard to such violations of IHL? Does the action taken by the UN fulfil the obligations of the States Parties? (GC I-IV, Art. 1 ^[33], Arts 49 ^[34]/50 ^[35]/129 ^[36]/146 ^[37] respectively; P I, Art. 86 ^[38]; CIHL, Rules 139 ^[39] and 158 ^[40])

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