

**CO-CHAIRS' SUMMARY  
REGIONAL WORKSHOP  
RECLAIMING PROTECTION OF CIVILIANS UNDER INTERNATIONAL HUMANITARIAN LAW  
BUENOS AIRES, ARGENTINA  
7 - 8 NOVEMBER 2011**

**Preamble**

A regional workshop on Reclaiming protection of civilians under International Humanitarian Law (IHL) was held in Buenos Aires 7 – 8 November 2011 co-hosted by the Government of Argentina and Norway. The government of Indonesia participated in order to share experiences from the first regional workshop in Jakarta 2010. In addition, the workshop gathered participants from 20 countries in the region, the ICRC, academics, military and non-governmental organisations.

The workshop was formally opened by the State Secretary for Foreign Affairs of Argentina, Alberto D'Alotto and the State Secretary for Foreign Affairs of Norway, Espen Barth Eide. State Secretary D'Alotto emphasized that the lack of adequate protection for the civilian population in armed conflicts requires a serious commitment from the international community to address this deficiency. He stressed that a coherent protection strategy should include the study of both the causes and consequences of the violations of IHL. State secretary Barth Eide underlined the need to identify practical measures and recommendations that are built on experience from the field and suitable to effectively address the humanitarian challenges at hand. He also emphasized that the main cause of humanitarian harm in armed conflict is not a lack of relevant rules in international humanitarian law, but lack of respect for and strict implementation of these rules.

Coronel Riza Yasma from the Indonesian Armed Forces referred to the experiences and conclusions of the first regional workshop held in Indonesia in November 2010.



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**Main causes of civilian harm during armed conflict**

- The majority of victims in contemporary armed conflicts are civilians. One of the main causes for civilian deaths and casualties during armed conflicts is the proliferation of non-international armed conflicts, and more particularly in urban centres or densely populated areas, where civilians come into close contact with combatants and hostilities and are therefore more vulnerable to becoming targets or to be incidentally hit.
- A main problem identified was that humanitarian organisations often lack access to the civilian population in need, which directly affects the right of the civilian population to humanitarian assistance. In order to ensure unimpeded access, humanitarian organisations should be able to dialogue with all parties to conflicts including non-state armed groups. Obstacles to humanitarian access include bureaucratic hurdles, counter-terrorism measures and strategies as well as anti-narcotic policies, which risk criminalising some of the activities of humanitarian agencies. Also, increased resort to humanitarian activities by the military or private military contractors, often in the context of "hearts and mind" approaches, creates confusion among the population between humanitarian organisations on the one hand and the military on the other, leading to a security risk for humanitarian organisations.

**Qualification of armed conflicts and the applicable legal framework**

- The qualification of armed conflict and the applicable legal framework is not always easy to determine and parties to conflicts can be difficult to identify. This raises questions on which legal framework governs such activities as detention or the use of force.
- However, regardless of the qualification of the situation, there is always a legal framework protecting the civilian population, in particular IHL, international human rights law and domestic law. The relationship between these bodies of law is subject to discussions. It was argued that both the military and law enforcement agencies should be trained in IHL and HR law, as they both could intervene in contexts where they should apply one or other body or both bodies of law.

**Implementation of IHL in asymmetric conflicts**

- The concept of asymmetric conflict has to do with the means and methods of warfare rather than with the qualification of the conflict. New technologies in warfare were discussed. It was argued that they represent both possibilities and challenges with respect to IHL, being able to afford better protection in some instances (for instance through more precise weaponry), but also posing threat when uncontrolled or ill-used. In Latin-America the issue of new technologies (such as cyber technologies) seems not to be yet on the top of the agenda.

## **The rule of proportionality and the meaning of “excessive” civilian losses and damage, i.a. in military operations in urban and other populated areas**

- The principle of proportionality seeks to strike a balance between the principle of humanity and the principle of military necessity, requiring that expected civilian loss must not be excessive in relation to the direct and concrete military advantage anticipated. This military advantage does not include political advantages, long term aims, nor is the legitimacy of the war (*jus ad bellum*) relevant for it. The protection of a military's own forces cannot go to the detriment of the principles of proportionality. Procedural aspects are extremely important, in particular the principle of precaution. It requires verification that the target is military and not civilian, that feasible precautions are taken to minimise civilian injury, death and damage, and to effectively warn the civilian population before an attack.
- Fact finding after hostilities is critical to ensure that the principles of distinction, proportionality and precaution are respected.

### **Enhancing compliance – accountability mechanisms**

- Individual criminal responsibility is one of the tools to enforce compliance with IHL. In this context, the work of the International Criminal Court (ICC) was discussed as an actor contributing to the protection of civilians. Different issues related to the functioning of ICC were raised, such as: legitimacy, including the selection of situation and cases, effectiveness, the interaction of peace and justice, complementarity, cooperation from states, and reparations for the victims.
- Fact finding mechanisms during and after conflicts are an indispensable step in establishing accountability. There is an urgent need for states to cooperate with fact finding and accountability mechanisms for them to be effective.

### **Enhancing compliance – monitoring implementation of IHL: recording and documenting data**

- Documentation during and after an armed conflict is essential to prevent further violations, to protect civilians and to promote accountability in post conflict situations. Concerns were raised regarding restrictions on access to conflict zones for free media as well as the practice of embedded journalism.
- Important elements in getting credible documentation are: presence in the battlefield as soon as possible, the use of quantitative and qualitative data, the need for relevant expertise and registration and analysis of all different versions of the facts. Science, such as forensic anthropology, plays a key role in documenting and gathering physical evidence, as demonstrated in many Latin American countries.
- Parties to conflict have a duty to assess the impact of their actions on civilians. Parties to conflict should improve documentation and transparency, complying with their obligation to investigate violations under IHL and enable assessment by independent monitors.