

“Reclaiming the Protection of Civilians under International Humanitarian Law” Co-chairs’ summary

The Norwegian Government, in cooperation with the Governments of Argentina, Austria, Indonesia and Uganda, hosted the Global Conference on Reclaiming the Protection of Civilians under International Humanitarian Law in Oslo on 23–24 May 2013. The Global Conference concluded a series of regional workshops in Jakarta (2010), Buenos Aires (2011), Kampala (2012) and Vienna (2013). Experts from governments, the military and humanitarian organisations, as well as other relevant actors, have come together to engage in a global dialogue on how to strengthen the protection of civilians under international humanitarian law (IHL). The Global Conference gathered approximately 300 participants, including representatives of 94 States.

The Conference focused on discussing the main challenges faced in protecting civilian populations affected by armed conflicts, and on identifying practical measures that can effectively address these challenges. The increasingly asymmetric and protracted nature of modern armed conflicts, in which many parties to conflicts show no respect for IHL, and the fact that hostilities increasingly take place in urban areas, are some of the main challenges identified. To address these challenges, a number of practical measures to be taken by the different actors operating in conflict areas have been suggested that can serve as recommendations with a view to improving the situation for civilians.

Recommendations:

1. Reducing harm to civilians in military operations

- Regardless of whether or not a situation amounts to an armed conflict, States must apply all relevant law aimed at protecting civilians. In situations of armed conflict, this includes in particular IHL, as well as applicable human rights law and domestic law. The relevant legal regimes should be applied in a manner that affords the greatest degree of protection to civilians.
- States and other parties to an armed conflict must ensure that IHL is properly reflected in all doctrines and procedures pertaining to the use of force, that education and practical, scenario-based training in IHL are provided at all levels, and that legal advisors are made available to the armed forces and are consulted by them.
- In addition, States and other relevant actors should seek to identify other possible practical measures, over and beyond their legal obligations, which may be taken before, during and after operations to reduce and minimise incidental civilian harm. Such measures may include particular restrictions on the use of indirect fire or other methods or means of warfare in areas where there is a risk of incidental harm to civilians. To be effective, these measures should be properly incorporated into the relevant rules of engagement and tactical directives, as well as into the training of relevant personnel.
- In the choice of methods and means of warfare, parties to an armed conflict must take into account both the immediate risk of incidental harm to civilians caused by the attack as well as the longer-term impact on the civilian population caused by the use of certain weapons and the presence of explosive remnants of war, by the destruction of essential infrastructure, and by forced displacement.

- With respect to explosive remnants of war and landmines, States and other relevant actors should at the earliest possible stage provide risk education, issue warnings, carry out marking and fencing of affected areas, and engage in clearance and destruction activities.
- The use of explosive force in military operations in densely populated areas has devastating humanitarian consequences for civilians. In particular, the use of explosive weapons with a wide area effect should be avoided.
- The rules and principles of international law, including the fundamental IHL rules on distinction, proportionality and precautions in attack, govern the use of all modern methods and means of warfare. To avoid incidental harm to civilians, those using unmanned aerial vehicles (UAVs) to carry out attacks must take all feasible precautions before an attack, including obtaining sufficient and reliable information about the conditions in the area of attack and the likelihood of civilians being in the vicinity, by drawing on all available intelligence.

2. Strengthening the protection provided by humanitarian actors to civilians affected by armed conflict

- Parties to armed conflicts should take all necessary measures to ensure rapid and unimpeded access by humanitarian actors to all those in need of protection and assistance.
- In order to ensure rapid and unimpeded access to populations in need of assistance and protection:
 - States and other relevant actors should take active measures to facilitate humanitarian access;
 - States should not place unnecessary bureaucratic burdens on humanitarian actors;
 - States should ensure that counter-terrorism regulations do not unnecessarily hamper and criminalise the activities of humanitarian agencies, and humanitarian organisations must retain the ability to engage with all relevant parties and actors, including non-State armed groups.
- Active humanitarian diplomacy should be promoted to facilitate rapid and unimpeded humanitarian access and to ensure respect for, and the protection of, humanitarian personnel and assets, including medical personnel, hospitals and ambulances in all circumstances.
- In the planning and conduct of humanitarian operations, the different needs and vulnerabilities of the affected population should be taken into account. The gender perspective is particularly important, as is the need to develop context-specific protection strategies.

3. Promoting compliance with IHL during armed conflicts

- States have an obligation not only to respect IHL but also to ensure respect for IHL and they should do their utmost to encourage States and other parties to an armed conflict to comply with IHL.
- States should use their leverage, individually or collectively, to raise the political costs of non-compliance with IHL, for instance through exerting diplomatic pressure, by publicly denouncing non-compliance or by “naming and shaming” parties operating in violation of their international obligations. Other possible measures might include targeted sanctions and the referral of situations to the ICC.
- When a State or organisation is not itself able to influence a party to the conflict directly, it may be necessary to mobilise other States or organisations that can influence the parties in question. In order to influence conduct that is in violation of IHL, there is a need to understand the underlying motivation for such conduct and to consider what incentives could

be used to bring about improved compliance.

- States should refrain from adopting national legislation, policies or other measures that inhibit humanitarian actors in their efforts to engage with non-State armed groups for humanitarian purposes, including activities aimed at promoting respect for IHL. There is a need for increased engagement and dialogue with non-State armed groups in order to increase respect for IHL among such actors. Instruments such as unilateral declarations by non-State armed groups, special agreements between governments and non-State armed groups, and so-called “Deeds of Commitment” have been instrumental and the use of such measures should be encouraged.
- States and other actors should participate actively in processes that seek to explore and identify concrete ways and means of strengthening compliance with IHL.
- The various UN Security Council resolutions on the protection of civilians and on women, peace and security should be implemented in all their aspects, including measures to prevent atrocities.
- States should take measures to combat sexual and gender-based violence, including ensuring that victims have access to justice. Women, including women’s grassroots groups, should be empowered so that they can participate actively in decision-making processes, before, during and after situations of armed conflict. It should be recalled that conflict-related sexual violence, including rape, may constitute serious international crimes.

4. Enhancing documentation of the conduct of military operations.

- The parties to a conflict should ensure proper documentation of the conduct of military operations, including by recording the types and locations of explosive weapons used, mapping areas that may be contaminated by unexploded ordnance and, where possible, by conducting systematic casualty recording, preferably also including gender disaggregated data. States should also, as far as possible, exercise transparency with regard to the information recorded, both during and after an armed conflict.
- Civilian casualty tracking and the analysis of incidents by parties to a conflict should be used to learn from past experiences, adapt tactical directives to minimise incidental harm to civilians in future operations and make amends to the civilians harmed.
- All relevant mechanisms should be used to ensure effective documentation. This includes data acquisition and analysis by multiple actors, including civil society organisations, official fact-finding missions and commissions of inquiry.
- To ensure reliability, the collection of information should meet professional and transparency standards for the methodology used. It should also comply with verification requirements and allow for correction whenever necessary. In order to avoid the possible tampering with or misuse of documentation concerning possible perpetrators, it may be necessary to take appropriate measures to protect specific data.
- States, as well as other parties to an armed conflict, must ensure that journalists’ right to protection as civilians is respected at all times. They should find ways to improve the protection of journalists and other media actors reporting from conflict areas, and respect their right to carry out their work.

5. Strengthening accountability

- Individual criminal responsibility is key to ensuring compliance with IHL. The prevention and prosecution of serious international crimes is first and foremost the obligation of States. States

must adopt national legislation for the prosecution of persons suspected of genocide, crimes against humanity, war crimes and gross violations of human rights. States should under no circumstances grant amnesties for serious international crimes.

- There is a need for States to cooperate on fact-finding and accountability mechanisms if they are to be effective. Existing regional justice mechanisms such as *ad hoc* tribunals as well as the ICC should be strengthened, as they are cornerstones of the fight against impunity for serious international crimes. States that have not yet done so should consider ratifying or acceding to the ICC Statute.
- The effective participation of victims and civil society actors in transitional justice processes should be ensured.
- A comprehensive approach to a concrete situation should include measures such as investigations and criminal proceedings, truth-seeking, reparations and institutional reforms, and the vetting of personnel in order to ensure that those most responsible for serious international crimes do not have any further position of authority in the society concerned.