

CO-CHAIRS' SUMMARY
REGIONAL WORKSHOP ON “RECLAIMING THE PROTECTION OF CIVILIANS
UNDER INTERNATIONAL HUMANITARIAN LAW”, VIENNA, AUSTRIA,
21 – 22 FEBRUARY 2013

A Regional Workshop for Europe on Reclaiming the Protection of Civilians under International Humanitarian Law (IHL) was held in Vienna from 21 – 22 February 2013, co-hosted by the Government of Austria and the Government of Norway. The Workshop was attended by participants from 35 European countries, including representatives from Government, the military as well as academia. It was also attended by representatives of the United Nations, the European Union, the International Committee of the Red Cross (ICRC), Non-Governmental Organisations and independent experts. The Governments of Indonesia, Argentina and Uganda participated in order to share experiences from previous regional workshops in Jakarta 2010, Buenos Aires in 2011 and Kampala 2012 respectively.

The workshop was formally opened by the Austrian Federal Minister for European and International Affairs, Michael Spindelegger, and the Norwegian Minister of Foreign Affairs, Espen Barth Eide. Both ministers pointed out that the protection of civilians in armed conflicts is a common and on-going foreign policy concern of both Austria and Norway in order to diminish the tremendous human suffering inflicted on civilians in armed conflicts.

The Austrian Federal Minister Spindelegger emphasized that on-going crises in Syria, Mali and the Sahel region have again highlighted the importance and urgency of strengthening the protection of civilians in armed conflicts. Minister Spindelegger further noted that the protection of women and children, who are often the most vulnerable, as well as of journalists, whose role as providers of information is crucial for the fight against impunity, are key themes within the protection of civilians and a priority of Austria's engagement in that field. Furthermore Spindelegger stressed the urgent need to improve compliance of parties to armed conflict with international humanitarian law, in particular by promoting the rule of law on all levels, and taking appropriate measures and implementing sanctions to fight impunity in cases of non-compliance.

The Norwegian Minister Eide underlined that the fact that civilians are so severely affected in armed conflict is often due to either lack of knowledge of or lack of respect for the rules of international humanitarian law by the parties to the conflicts. There is a need to ensure that all parties to a conflict are aware of the rules, and that those who violate them are held accountable. He also stressed that even those military actors who strive to respect humanitarian law find this very challenging in the complex conflicts we are seeing today, where a number of different actors are engaged, many of whom do not respect international law. It is therefore very important to engage in concrete discussions on the practical steps that need to be taken to implement international law relating to the protection of civilians, Mr Eide said. As positive developments Minister Eide pointed to the diminishing tolerance for civilian losses during armed conflicts, in which the raising influence of the role of the media in reporting about civilian casualties has played an important role. Finally, Minister Eide welcomed the ICRC initiative on Health Care in Danger.

I Impact of armed conflicts on civilians

- In the course of the discussion of the impact of armed conflicts on civilians, some of the major challenges with regard to the protection of civilians in armed conflicts such as the following were highlighted. Many of the conflicts throughout the world are characterized by targeted and indiscriminate attacks against civilians, the widespread use of explosive weapons in populated areas, violence against health care, arbitrary detention, forced recruitment of children, sexual and gender-based violence, and significant displacement of people, both across and within borders.

The plight of civilians is often exacerbated by the lack of rapid and unimpeded access to those in need of life-saving humanitarian assistance.

- In order to ensure humanitarian access, there is a need to engage early with all relevant actors, including non-State armed groups, as well as local communities, local protection actors, and other humanitarian actors including faith-based organizations. **The different needs and vulnerabilities** of civilians should be taken into account. The importance of having a gender perspective was particularly stressed, as was the need to **develop context-specific protection strategies**.
- The **United Nations Security Council (UNSC)** should do more to ensure compliance by parties to conflict with international humanitarian and human rights law and to implement its own thematic resolutions on the protection of civilians, e.g. by consistently condemning attacks against civilians, demanding compliance and enforcing it through targeted sanctions and/or arms embargoes, or by mandating and supporting the work and recommendations of international commissions of inquiry and fact-finding missions.
- The complexity of many situations of widespread and armed violence has led to many debates on their **legal qualification**. For many countries, this may be considered a politically sensitive issue. At the same time, it is clear that the way situations are qualified has a significant impact on the protection of the civilians affected. However, it was broadly recognized that regardless of the classification of a given situation, there are always legal rules that apply to the protection of civilians and that must be respected.

II Protection of civilians against the effects of hostilities

- While the nature of warfare is changing compared to traditional conflicts, the rules and principles of **International Humanitarian Law** remain relevant and fully applicable to **modern warfare**, including in cyberspace and to the use of weaponized drones /UAVs.
- The international community's tolerance of civilian losses in armed conflicts has diminished in the last years. There is also a growing recognition among the military of the need to take further measures to protect civilians. In military operations where policies not to use weapons that may be inaccurate or have a wide area impact (such as indirect fire or airdropped munitions) in urban areas have been implemented, the rate of **civilian casualties** has been drastically reduced.
- Nevertheless, more efforts have to be undertaken in order to avoid civilian harm in conflict situations. The use of explosive weapons with a wide area impact in populated areas should be avoided. The need to take a comprehensive approach to the protection of civilians was also emphasized, including the importance of taking into account the longer-term impact on civilians linked to the use of certain weapons and remnants of explosive ordnances. International Humanitarian Law has an important role to play in the area of disarmament and arms control, both as a stimulus for additional efforts and as a criterion to evaluate existing measures. The need to take duly into account the longer-term harm to the civilians caused by the destruction of essential infrastructure as well as forced displacement was also strongly emphasized.
- There is a need to **enhance transparency and improve accountability** with regard to the use of weaponized drones/UAVs. Moreover, specific challenges with regard to the targeting process have to be adequately addressed. It is essential to ensure sufficient and reliable information about the conditions in the area of attack. Requiring additional information about the military target and about the likelihood of the presence of civilians nearby, for instance by the use of human intelligence, was mentioned as a concrete and useful measure in this regard. The availability of

information on post-strike investigation mechanisms as well as on redress of civilian harm was also considered as useful in this context.

- The world's growing reliance on technology increases the vulnerability with regard to the use of **cyber-attacks**. The tendency of such actors' attacking critical infrastructure means there is a growing need to take measures to protect such infrastructure against attack and to provide for concrete civil-military defence measures, even in peacetime.

III Prevention of violations of IHL during warfare situations

- In order to prevent violations of IHL, it is important to take into account that there are actors who have no **knowledge of IHL**, as well as states and non-state actors who have the requisite knowledge, but deliberately choose to disregard the rules.
- There is a need to establish a sustained and constructive **dialogue with armed groups** operating in a conflict situation. States should refrain from adopting national legislation, policies or other measures that have the effect of inhibiting humanitarian actors in their efforts to engage non-State armed groups for humanitarian purposes, including undertaking activities aimed at promoting respect for international humanitarian law.
- The obligation not only to respect, but also to **ensure respect of IHL** was emphasized. States have to work to influence the behavior of all parties to a conflict to respect IHL. When a State or Organization is not itself able to influence an actor directly, it may be necessary to mobilize other States who can influence the actors.
- The implementation of different **UNSC Resolutions on Women, Peace and Security** in all its aspects was encouraged, including measures to prevent atrocities. Concrete measures could be: Women Protection Advisors, ensuring the participation of women in peace processes and state-building and ensuring prosecution of those responsible for violations of IHL. There was recognition also of the urgent need to take a broad range of measures to combat **sexual and gender-based violence**, including ensuring that victims have access to justice.

IV Enhancing compliance with IHL, Recording and documenting the effects of hostilities.

- Documenting how military operations are conducted, including systematic and meticulous casualty recording by both civil society and the parties to conflicts **enhances the understanding of the humanitarian impact of armed conflicts**. It also presents a tool to deter or **prevent** violations of international humanitarian and human rights standards and to ensure that those who violate the rules are held accountable. Moreover, civilian casualty tracking and analysis of incidents by parties to conflicts allow forces to learn from past experiences, changing tactical directives to minimize incidental harm to civilians in future operations and make amends to civilians harmed. This has been done by the International Security Assistance Force (ISAF) and recently established by the African mission in Somalia (AMISOM).
- Several mechanisms can be used for effective documentation: **casualty tracking and analysis by parties to conflicts and recording conducted by civilian actors, fact finding missions, commissions of inquiry and reports from peace-keeping operations**. Other sources that contribute to documentation have increased with the development of communications technologies, permitting real time tracking of violations, and democratized information dissemination. The collection of information must meet **transparency standards** in the methodology applied, to comply with verification **requirements** and allow for **correction**

whenever necessary. Complementarity of mechanisms involved in documentation gives room for more cooperation in view to be able to assess specific situations of concern.

- There is an urgent need to strengthen the **protection of victims and witnesses**, including journalists, media personnel and citizen journalists. In order to avoid possible tampering with or misuse of documentation with regard to possible perpetrators, it may be necessary to take appropriate measures to protect specific data.
- Journalists are expected to **observe principles and ethical standards**. This cannot, however, constitute a pre-condition for the exercise of their independent work and for their protection as civilians. **Training** must be provided if strict quality criteria for documentation and recording of the effects of hostilities are to be observed.

V Enhancing compliance with IHL, including accountability for war crimes, crimes against humanity and genocide

- In order to change the behaviour of those operating in violation of IHL, there is a need to understand what is driving the different parties to a conflict and what incentives might be used to bring about improved compliance. Experience from situations where **transitional justice** has been implemented, provides important lessons on how to prevent recurrence of crimes, from which can be further drawn the need for a comprehensive approach, including measures such as investigations and criminal proceedings, truth seeking, reparations and institutional reforms, including vetting of personnel in order to ensure that perpetrators of crimes do not have any further role in the society. Context-specific solutions have to be found. Effective participation of victims and civil society in transitional justice processes should be ensured.
- There is a need for States to **use their leverage to raise the political costs for non-compliance** with IHL, including through the exertion of diplomatic pressure, by public denunciation or “naming and shaming” of such actors. Other measures include targeted sanctions and the referral of situations to the ICC. States play a central role and need to work together in order to improve the implementation of IHL. States also need to preserve the watermark of current IHL standards and avoid attempts to weaken existing norms, including by addressing double-standards. The role of civil society is critical to increase political pressure.