

70th Anniversary of the 1949 Geneva Conventions
United Nations Security Council Briefing on upholding IHL
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First of all, I would like to thank you, also in the name of the Geneva Academy of International Humanitarian Law and Human Rights, for inviting me to share with you some thoughts on the occasion of this important anniversary from the perspective of a scholar, practitioner and teacher of IHL to younger generations.

This younger generation uses twitter, intensively, so, before coming here, I tweeted to ask them what they thought was the key message I should convey to you today. And one message was repeatedly mentioned: the importance of common Article 1 to the four Geneva Conventions and the obligations it contains to **'respect and ensure respect for the conventions in all circumstances'**. To put it in more prosaic terms, again, speaking to students, I often say that article 1, that requires **the respect of IHL** is an everlasting reminder of the central value underpinning any legal system, that our **common humanity** must be the measure of all things and that **we need to ensure respect of IHL**, because ultimately, we are all in this together.

I will then build my remarks around common article 1 and will develop three specific points, illustrating this idea that 'we are all in this together'

- 1) **The protracted nature of contemporary armed conflicts and the value of IHL mainstreaming;**
- 2) **The prevalence of non-international armed conflicts and the need to increase ownership of humanitarian norms among armed non-state actors**
- 3) **Recognising the benefits of peer-pressure.**

Let me start then with my first point:

One unfortunate feature of contemporary armed conflicts is their protracted nature. As such, they have long term consequences on civilians who are unable to live their lives normally often for decades. It also deeply impacts the mental and physical health of all those facing such traumatising events, reducing the possibilities to build a solid future in the aftermath of a conflict. In these circumstances, no institution can afford to work in isolation. Other bodies of law, such as human rights or refugee law are obviously relevant, but also the norms pertaining to human, economic and social development.

Because IHL may remain applicable for a long period of time in a given situation, there is a need to mainstream IHL in all pertinent legal systems and build bridges between implementing institutions to create efficient, coordinated and more integrated responses to prolonged situations of violence. This is already done to a certain extent. For example, on the 15th of April 2019, the World Health Organization denounced the violation of IHL in the context of the combats between the different parties to the armed conflict in Libya, in which 147 persons died and 614 were injured, among them medical personnel. This call to respect IHL by an institution for which IHL is not necessarily the primary mandate is interesting **even more so when we know that the words 'IHL' or 'armed conflict' are not mentioned once in the WHO Constitution.** This, to me, is a sign that the global international community feels the need to be more involved in the implementation of humanitarian norms, and I believe it is a good thing.

There is no need to reinvent the wheel. Creating new ways to implement IHL using existing mechanisms is possible. It is well known that the financial and economic rebuilding of a country coming out of a conflict can lead to a more sustainable peace and benefit the reconstruction of the society. The UN Peacebuilding Fund for example, precisely aims, and I quote from the website at providing 'for a more sustained engagement in support of countries emerging from conflict and supporting peacebuilding activities which directly contribute to post-conflict stabilization'. The Fund though is also available as an 'Immediate Response Facility', typically for countries that are within 5 years of conflict or have a significant risk of lapsing into

conflict'. In these situations, IHL often remains applicable. Thus, out of the 33 countries that receive funding from the United Nations Peacebuilding Fund, at least 11 of them, are in a situation of armed conflict to which IHL is applicable. As a way to implement Common Article 1, one could imagine some kind of conditionality between the behaviour of the parties to the conflict and the financial aid they may receive through the Fund, of course without prejudicing the civilian population.

Let me now continue with my second point:

According to the latest figures, for several years now, the majority of armed conflicts are of a non-international character, that is they involve armed non-state actors. The existence of these actors is often the symptoms of deeper societal issues. But it is not the object and purpose of IHL to evaluate the legality or legitimacy of the resort to armed violence of any party to the armed conflict be it a state or a non-state actor. What matters is the protection of the civilians and those who have laid down their arms. The Geneva Conventions, their additional protocols and customary IHL have evolved to address and regulate the behaviour of armed non-state actors. It is today uncontroversial that organized armed groups are bound by IHL, including on norms pertaining to conduct of hostilities.

It has been long recognised by humanitarian actors, but also international organisations, like the UN, that engaging armed non-state actors on compliance with international norms is a critical element in any effort to strengthen the protection of civilians. According to a recent study, at least five different UN organs and agencies have drafted policies or guidelines on engagement with armed non-state actors (UNOCHA, DPKO the UNSG, UNICEF and UNHCR).

However, how armed non-state actors **understand** international humanitarian norms, how **they value them**, or to what extent they have **the necessary capacity to actually implement** these norms are issues which have been neglected by the international community. Academic and policy research has shown that if one strives for better implementation of IHL, humanitarian norms must be reflected in the local norms and values of armed groups, or in other words, it is important **to increase their ownership of international law.**

In May of this year, you held a briefing on the impact of counter-terrorism legislation on IHL and humanitarian action. I will not repeat here the debate, only to say that labelling any kind of armed non-state actors as ‘terrorist’ groups obviously limits the possibility of humanitarian engagement with these actors. But more generally, experts tend to agree that it is also important to consider armed non-state actors not only as perpetrators of violations of international law, but also as actors who can play sometimes a positive role in the implementation of IHL, if only because they are often very close to their constituencies.

I will now turn to my third and final point on **recognising the benefits of peer-pressure**.

Evaluation among peers is a well-known process in the scientific community. Any article will always be peer-reviewed before publication in a scientific journal. Even fiercer, are the evaluations by your own students on any possible aspects of your teaching skills. It is by no means agreeable to read about one’s limitations, one’s weaknesses in the elaboration of an argument and capacity to convince. But the beauty of peer-reviews is that they always lead to a better final product, a product which is more pertinent and one which meaningfully contributes to the general debate.

Since the 32nd International Conference of the Red Cross and Red Crescent Movement, States have tried to find ways to strengthen respect for IHL. Even if consensus has not been found yet, all States reaffirmed that IHL remains the appropriate international legal framework for regulating the conduct of parties to armed conflict and reiterated their willingness to work towards improving its implementation.

At the international level, mechanisms like the Universal Periodic Review, has proved to be feasible for matters as sensitive politically as respect for human rights norms. Recognizing the benefits of peer-pressure remains an interesting way forward to better the overall system of IHL protection.

Allow me to finish my remarks, by quoting a novelist, whose words were also of universal reach and who just left us last week. In her acceptance speech for the Nobel

price on literature, Toni Morrison emphasised the importance of language, and I quote **'partly as a system, partly as a living thing over which one has control, but mostly as an agency, as an act with consequences'**. In 1949, the language of the Geneva Conventions laid the foundation of an innovative and courageous legal system. As a lawyer, I believe of course in the power of the law. But so do humanitarians that often take immense risks to alleviate the suffering of others, so do students and scholars who discuss for hours the significance of a particular treaty provision, and so do you, States and the UN Security Council when you debate and adopt resolutions on the protection of health care, children, women or persons with disabilities in armed conflict. But because you are States, and because you are the UN Security Council, in a state-centric system like ours, you are the ones that have control, you are the ones to be the agents of change, and have this immense privilege to be able to act with consequences **towards a better 'respect of the Geneva Conventions and to ensure their respect'** for the sake of our common humanity. And we, scholars, students, humanitarians and victims count on you, **because we are all in this together.**

Thank you for your attention!