



SUPPLEMENTARY HUMAN DIMENSION MEETING

on International co-operation to address violations of international humanitarian law and international human rights law

**28-29 March 2022
(Vienna)**

ANNOTATED AGENDA

BACKGROUND

All OSCE participating States have expressed “their determination to fulfil all of their human dimension commitments and to resolve by peaceful means any related issue, individually and collectively, on the basis of mutual respect and co-operation” (Helsinki 1975). OSCE participating States have also affirmed that OSCE “norms, principles and commitments” are seen as a way of “moving us closer to democracy, peace and unity throughout the OSCE area” (Astana 2010) in order to avoid conflict and resolve it by peaceful means.

In the event of armed conflicts, OSCE participating States have committed to “in all circumstances respect and ensure respect for international humanitarian law including the protection of the civilian population” (Helsinki 1992). In the same document, they recalled “that those who violate international humanitarian law are held personally accountable”.

In more concrete terms, this translates to a commitment for each participating State to “ensure that its armed forces are, in peace and in war, commanded, manned, trained and equipped in ways that are consistent with the provisions of international law and its respective obligations and commitments related to the use of armed forces in armed conflict, including as applicable the Hague Conventions of 1907 and 1954, the Geneva Conventions of 1949 and the 1977 Protocols Additional thereto, as well as the 1980 Convention on the Use of Certain Conventional Weapons” (Budapest 1994).

The obligations of participating States in times of armed conflict, both as State Parties to the above-mentioned conventions and under customary international law, put limits on the means and methods of warfare as well as impose requirements regarding the treatment of protected and especially vulnerable persons, in particular civilians.

In addition to the rules of international humanitarian law, human rights law acts as a distinct but complementary body of law, which does not cease to be applicable in armed conflict and, in general, applies both in times of peace and armed conflict. Hence, OSCE commitments, *inter alia*, related to freedom of movement (Vienna 1989), the prohibition of torture and ill-treatment (Vienna 1989, Copenhagen 1990, Moscow 1991) or freedom from arbitrary arrest or detention (Copenhagen 1990, Moscow 1991), the protection of displaced persons (Maastricht 2003, Vilnius 2011), the right to seek asylum (Istanbul 1999) and the dignified treatment of all

individuals wanting to cross borders, in conformity with relevant international law and OSCE commitments (Ljubljana 2005) remain crucial also in the context of armed conflict.

Following Russian Federation's military attack on Ukraine, the violations of the international humanitarian law and international human rights law should be urgently discussed.

This SHDM will provide a platform for an exchange of views among OSCE participating States, OSCE institutions and executive structures, international organizations, civil society and other stakeholders on the role of international co-operation to address violations of international humanitarian law (IHL) and international human rights law (IHRL). Discussions will focus on the legal frameworks that provide rules during international armed conflict and obstacles to their implementation. Participants will explore how co-operation can facilitate the investigation and documentation of IHL and human rights violations, reflecting on good practices and challenges in this area as well as the role of human rights defenders. Tools that enable them to safely conduct their work, including in times of international armed conflict, and recommendations for states to address threats to defenders will also be discussed during the meeting.

Day 1

13.00 – 14.00

OPENING SESSION

Opening remarks

Introductory addresses

Technical Information

14.00 – 16.00

SESSION I: Requirements and application of international humanitarian law and international human rights law

Protection of the civilian population is one of the primary and basic rules of international humanitarian law (IHL) stemming from 1949 Geneva Conventions and their 1977 Additional Protocols as well as customary rules. States are bound to protect the civilian population and all those no longer participating in hostilities from attack, any form of violence and acts of terror. IHL expressly prohibits attacks against civilians as “the only legitimate object which States should endeavor to accomplish during the war is to weaken the military forces of the enemy” (St. Petersburg Declaration, Preamble). Therefore, intentional direct attacks against the civilian population as such or against individual civilians not taking direct part in hostilities constitutes a war crime in international armed conflicts (Statute of the International Criminal Court, Article 8(2)(b)(i)). These principles also apply in the context of urban warfare.

During the active phase of hostilities, States need to allow and facilitate rapid and unimpeded access of humanitarian relief to civilians in need, including food and medical consignments. At the same time, the safety and security of humanitarian relief personnel (the International Committee of the Red Cross, the National Societies, etc.) is an indispensable condition for the delivery of humanitarian relief to civilian population in need. Humanitarian corridors need to be created and implemented in good faith for evacuation purposes and for passage of medical and food supplies.

Provisions of IHL also provide for restrictions in the choice of weapons used. Weapons that are not directed at a specific military objective or the effects of which cannot be limited as

required are by nature indiscriminate and shall not be employed. Moreover, the assessment of the effects of weaponry used must take into account the consequences of the actual impact, the blast and fragment effects caused by the impact. The use of weapons likely to cause civilian casualties due to their indiscriminate and uncontained nature would amount to a war crime. Additional treaties have been adopted to regulate, restrict or ban the use of certain weapons, such as the Convention on Certain Conventional Weapons or the Convention on Cluster Munitions.

The well-recognized complementary nature of IHL and international human rights law (IHRL) in situations of armed conflict accentuates the obligation of States to respect, protect as well as fulfill civil, political, economic, social and cultural rights stemming from universal and regional human rights treaties (e.g. ICCPR, ICESCR, ECHR, etc.). The prohibition of torture and inhumane treatment, the prohibition of slavery, and of arbitrary deprivation of liberty, the core of the right of adequate food and the right to health are examples of rights and freedoms that States need to observe also in an armed conflict.

The protection of vulnerable and marginalized groups such as women, children, persons with disabilities and minorities without adverse distinction or discrimination is of particular importance.

Refugees and internally displaced persons (IDPs) are amongst those particularly vulnerable as armed conflict and flight increase the risk of human rights violations. OSCE participating States have recognized the need to protect the rights of persons at risk of displacement or already affected by it during all phases of the conflict cycle. (MC Decision 3/2011) They have committed to respect the right to seek asylum (Istanbul 1999) and to promote dignified treatment of all individuals wanting to cross borders, in conformity with relevant international law and OSCE commitments (Ljubljana 2005). Those who flee their country as a result of conflicts or situations of generalized violence are entitled to protection (1951 Convention Relating to the Status of Refugees and its 1967 Protocol, art. 3 CAT, art. 6 and 7 ICCPR). The *non-refoulement principle* prohibits sending individuals back to territories where they may face torture, ill-treatment or other irreparable harm.

States are also recommended to apply the *UN Guiding Principles on Internal Displacement*, which compile and clarify the protection needs and entitlements of internally displaced persons. Displaced persons have a right to return voluntarily and in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.

This session seeks to outline the legal framework that provides rules during international armed conflict and what type of violations of IHL and IHRL occur. It will also explore the protection needs of refugees and internally displaced persons. As such, this session lays the groundwork for the discussions in the following sessions.

Questions for discussion:

- What can be done by the international community to reduce the risk of IHL and IHRL violations in an international armed conflict?
- What challenges arise relating to the protection of internally displaced persons and refugees?
- How can inter-governmental organizations contribute to the improvement of respect, protection and fulfilment of human rights and freedoms, including the rights of vulnerable and marginalized groups in situations of international armed conflict?

Day 2

10.30 – 12.30

SESSION II: Investigation and documentation of international humanitarian and human rights law violations

The investigation and documentation of alleged violations of IHL and IHRL is critical in order to ensure accountability, both relating to the responsibility of States as well as the liability of individual perpetrators. The former establishes liability of States for actions of its leadership and armed forces; whereas accountability of individual perpetrators may be established in a criminal procedure against persons who committed or ordered (command responsibility) the commission of international crimes, such as war crimes, genocide or crimes against humanity.

It is also essential to secure effective remedies for victims and to prevent the risk of recurrence. The investigation and documentation of IHL and IHRL violations also contributes to maintaining discipline within armed forces.

Under IHL, States have an obligation to investigate war crimes and, if appropriate, prosecute the suspects, as well as to prevent all violations of humanitarian law (Geneva Convention I, Art. 49, Geneva Convention II, Art. 50, Geneva Convention III, Art. 129, Geneva Convention IV, Art. 146 and Additional Protocol I, Art. 85-86). In addition, commanders have a duty to prevent and whenever necessary respond to IHL violations by initiating criminal or disciplinary measures (Additional Protocol I, Art. 87).

Human rights treaties, which complement IHL, impose on States a duty also to investigate alleged violations of human rights. Hence, the documentation and investigation of reported IHRL violations complements the investigation of IHL violations in situations of armed conflict. Any such investigation of both alleged IHL as well as IHRL violations needs to be conducted in an impartial, prompt, thorough and transparent manner in order for it to be effective and credible, with due regard to what is feasible in the active phase of hostilities.

Respective investigations imply the collection of evidence in various forms, including physical, forensic, digital and audio-video, as well as its verification and validation. Information can be collected through open source intelligence (OSINT), a term referring to information that can legally be gathered from free, public sources. Research can also involve communication with inter-governmental and local organizations on the ground as well as interviews with refugees, humanitarian workers and representatives of relevant authorities. The information collected needs to be assessed against international law, which in the context of IHL violations implies appraising the weapons used, and identifying the chain of command to determine responsibility.

States bear the primary responsibility for the identification and countering of potential violations. However, regional and international organizations have also established mechanisms of inquiry and investigation of different aspects of alleged IHL and/or IHRL violations, including Commissions of Inquiry and Panels of Experts (i.e. United Nations, European Union), the so-called Moscow Mechanism established by OSCE participating States, or the International Humanitarian Law Fact-Finding Commission established by Additional Protocol I. Such mechanisms have a central role in independent fact-finding and often are the only accountability mechanism promoting State and individual responsibility.

The International Criminal Court is the first permanent international court established with jurisdiction to investigate and bring to justice individuals for IHL and IHRL violations that amount to genocide, crimes against humanity and war crimes whenever States are unable or unwilling to carry out the investigation or to prosecute (art. 17, Statute of the International Criminal Court).

This session will discuss how information on alleged IHL and human rights violations can be investigated and documented in the context of an international armed conflict, which tools and methodologies have been developed to this end and what challenges arise in the collection of information. It will also examine how such investigations contribute to accountability, including how collected evidence is used by national and international courts.

Questions for discussion:

- What challenges arise in the course of the investigation and documentation of IHL and IHRL violations in situations of international armed conflict?
- What are lessons learned and good practices in the area of documentation and investigation of IHL and IHRL violations, both at the national and the international level?
- What role do national and international courts play in the accountability for violations of IHL and conflict-related human rights violations?

14.30 – 16.30

SESSION III: Digital technologies that support human rights defenders

The digital space is offering valuable opportunities for human rights defenders (HRDs) around the world, including in settings of armed conflict. HRDs increasingly rely on digital technologies to improve human rights fact-finding, to expose and document alleged violations of human rights and international humanitarian law. The use of open source intelligence tools and techniques enables them to gather information while working safely and remotely, to generate scale in reporting, and to accelerate fact-finding and verification of data through a variety of means such as geo-localisation, social media investigation, video and audio forensics etc.

Organisations who previously used paper-based documentation or database systems have now access to well-structured digital databases, enabling them to use information in a much more efficient way. Various open-sourced communities emerged in the past years, contributing to exchange knowledge among HRDs through the development of tools, including databases that enable the search for relevant legal sources, advice on the safe preservation and management of large amounts of information or ways to capture photos and videos that are easily verifiable and therefore can be used to investigate and prosecute international crimes.

At the same time, being exposed to the digital space, HRDs have become the target of new threats, including from State actors using surveillance software in order to identify and target them. HRDs are usually under-resourced and left alone to tackle and mitigate these risks and security problems, including internet disruption, hacking and account compromise, malware on devices, cyberbullying, and communication surveillance.

As HRDs are being targeted online across platforms and devices by both State- and non-State actors, ensuring their protection is a cross-sectorial effort. For example, one of the global IT

companies has recently launched a privacy-protected version of its site to prevent surveillance and censorship. Other initiatives, such as steps to deactivate satellite data to monitor the flow of displaced people in order to protect them from potential threats of armed forces, are illustrative of the need to rethink and amend protection mechanisms in light of new technologies.

As technologies have become more invasive, a strong civil society community has developed to address the new threats. Efforts range from pro-bono assistance to trainings and the creation of open source tools aiming at strengthening their security. Digital security helplines and rapid-response emergency assistance have been developed, for example, to provide 24/7 services in different languages to improve HRDs' digital security practices. Other tools have been created to help civil society to detect and respond to serious threats, and to provide practical advice to HRDs on strengthening of their security protocol for the use of technical devices.

This session will discuss tools used by HRDs in order to identify and document alleged violations of human rights and international humanitarian law, but also the threats that arose from using the digital space. The session will explore tools that could be used by HRDs to conduct their work safely in a conflict setting. Finally, it will explore what States and tech companies could do in order to address threats for HRDs.

Questions for discussion:

- How do digital technologies impact the work of human rights defenders in a conflict setting, and are women and men impacted in different ways?
- What are practices, tools and lessons learned to support HRDs in the digital space?
- What concrete actions can States take to further the safety of human rights defenders online?

16:30 – 17:30

CLOSING SESSION

Rapports from the working sessions
Comments from the floor
Closing remarks

17:30

Closing of the meeting

* * * * *