

CHALLENGES TO HUMANITARIAN ACTION IN CONTEMPORARY CONFLICTS: ISRAEL, THE MIDDLE EAST AND BEYOND

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1. INTRODUCTION

The latest developments in the Middle East region are of great concern to the International Committee of the Red Cross (ICRC). The current level of violence, displacement and destruction in and around Syria is unprecedented in a region that has already suffered conflict and instability for most of its modern history. According to recent figures released by the United Nations (UN), over 100,000 people have died from the fighting in Syria; more than six million have been forced to flee their homes, including two million who have found refuge in neighbouring countries.¹ This is putting an immense strain on host communities and governments.

With no tangible signs of political progress in sight and with humanitarian improvements barely noticeable, the situation in Syria is having a profound impact on the region and putting pressure on fragile ethnic and religious balances within any number of communities. The ICRC is concerned, in particular, with the situation in Lebanon, which is hosting over 500,000 refugees amidst a fragile equilibrium between different communities.² We are also concerned about the situation in Iraq – a country subject to increasing sectarian violence that killed over 1,000 people in the month of May alone, according to UN figures.³

For many, the regional instability resulting from the Arab Spring – be it in Egypt, Yemen, Bahrain or Tunisia – has outlasted the euphoria of social transformation. While this transformation is of critical importance in addressing the rising needs and expectations of the vast majority of the population (that is, those under the age of 30), governments seem to be insufficiently prepared to engage with their demands and to find innovative ways to tackle rampant poverty, unemployment and ineffective public services.

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¹ 'Syria at Risk of Sliding Further into Chaos, Senior UN Officials Tell Security Council', *UN News Centre*, 16 July 2013, http://www.un.org/apps/news/story.asp?NewsID=45423#.Uim-49Ldf_A.

² Data as of 5 September 2013: see figures of the UN High Commissioner for Refugees, <http://data.unhcr.org/syrianrefugees/country.php?id=122>.

³ 'April Deadliest Month in Iraq in Five Years', *UN News Center*, 2 May 2013, http://www.un.org/apps/news/story.asp?NewsID=44806#.UinBudLdf_A.

Last, but certainly not least, is the continued alienation of the Palestinian population living under occupation in the West Bank and the Gaza Strip, or displaced in refugee camps across the region. Their dire situation further demonstrates the need to find practical steps to rebuild basic human capital within Palestinian communities, which is sorely needed to generate hope and stability in the region as a whole.

All of these situations must be seen against the background of an international order in profound transformation, with power centres moving south and east and the traditional international system shifting towards a multi-polar world. More influential, though, the disintegration of traditional power bases are hindering the stability and resilience of fragile states and increasing the risk of civil disturbance, and even war, in today's global environment. These developments naturally pose extraordinary challenges for states, international organisations and legal systems.

Without a renewed commitment from governments to address the growing social inequities and other sources of instability in the region, any quest for peace and prosperity will remain elusive. As a neutral humanitarian organisation, the ICRC can only remind the parties to these conflicts that, without respecting the basic tenets of international humanitarian law in these testing times, it is most unlikely that the various communities will find their way towards reconciliation and be prepared to share the burden of a just peace after decades of conflict. Considering that the customary core of that law is older than the state-based system itself, the specific nature and extraordinary significance of international humanitarian law in these difficult times provide a legitimacy beyond today's international system. Rather than being outdated, humanitarian law is very much a contemporary and future-oriented body of law.

2. CHALLENGES TO HUMANITARIAN ACTION

Keeping in mind the ultimate goal of fostering stability and prosperity, we cannot tackle today's challenges without a critical analysis of the policies that brought us to the place where we now find ourselves. It is in this context that I would like to make a few remarks on the challenges facing humanitarian action in Israel and the occupied territories.

A few weeks ago, Israel entered its 47th year of active military control over the West Bank and the Gaza Strip. It is one of the longest sustained military occupations in modern history. While the shape and degree of this military occupation has varied, Israel has retained throughout effective control over the territories it occupied as a result of the Six Day War in 1967, and over the Palestinian population living there.

The constant pressure that Israeli occupation has imposed on the Palestinian population has had a profound impact on both the Palestinian and the Israeli economies, cultures and societies. Beyond the recurring excesses of armed violence and ensuing grief among the people affected and trauma among the broader community, the lack of progress on issues of major humanitarian concern further illustrates the inability of a generation of decision makers to find constructive ways to bring concrete improvements to the lives of millions of Palestinians.

The ICRC's role is to work together with the parties to the conflict to ensure proper implementation of international humanitarian law in these situations; to find practical ways to

improve the life, health and dignity of those affected; and to offer its humanitarian services when needed.⁴

As its name implies, international humanitarian law is designed primarily to serve the basic humanitarian interests of people affected by armed conflict. Whether displaced, under siege or occupation, facing attacks from a regular army or rebel groups, or being detained or held hostage, all are in dire need of protection. The international community is well aware of the dangers inherent in armed conflict marked by unregulated violence. The purpose of humanitarian law is to lay down a series of inviolable standards of humanity, as well as to preserve core values, even in the midst of horrific violence.

International humanitarian law is intended to strike a balance between military necessity and humanitarian considerations. It does not exist to endorse particular political objectives or guide military endeavours to permanently change the very landscape or demography of a territory; to force people to leave their homes; or to seize land and resources away from communities. Humanitarian law is, and will remain, a tool for the protection of the life and dignity of civilians and thus for a modicum of stabilisation in the midst of conflict and armed violence.

This is obviously a difficult mission. The call for military force to put an end to existential threats cannot easily be counterbalanced with the requirements for discriminate targeting and proportionate use of force under international humanitarian treaties. So far, most military commanders would agree that respect for the core rules of international humanitarian law is an essential component of successful military operations, once ‘success’ is defined in the context of the long-term legitimate security goals of a state, recognised under international law.

Yet, in the age of terror and counter-terror operations, the political objectives of military campaigns are increasingly predicated on the concrete outcome of particular military operations. The prohibition of threats becomes the end goal of political strategies without much vision on how to address potential disparities and bring back stability. We may ask ourselves how can one balance in this context intrinsic humanitarian considerations with short-term political and security objectives.

3. MAINTAINING A HUMANITARIAN FRAMEWORK

These are critical questions for which there are no easy answers.

As ICRC President, I would like to reiterate a series of key points that we believe are essential for maintaining a regulated framework for the conduct of hostilities and military occupation, and thereby ensuring basic standards of humanity in conflict.

The rules set out in the Geneva Conventions represent universal legal standards recognised by states and international courts alike as paramount in armed conflict and military occupation.

In addition to the Hague Regulations of 1907, which are recognised by Israeli courts as customary international law,⁵ and other treaties applicable to the occupied Palestinian territory – that

⁴ For more information on ICRC activities to help people affected by war, see <http://www.icrc.org/eng/what-we-do/index.jsp>.

⁵ David Kretzmer, ‘The Law of Belligerent Occupation in the Supreme Court of Israel’ (2012) 94 *International Review of the Red Cross* 207, 212.

is, the West Bank, East Jerusalem and the Gaza Strip – the Fourth Geneva Convention⁶ provides a critical and universally accepted, legally binding framework to ensure respect for the life and dignity of people living under military occupation. The ICRC is convinced that compliance with and respect for international humanitarian law, while by no means a panacea, would significantly reduce human suffering on both sides, help to restore confidence and ultimately offer the best chance of preparing the ground for a peaceful resolution of the conflict.

Despite certain legal discussions on the applicability of specific provisions of the Convention to the situation in the occupied Palestinian territory – which, in our view, is beyond doubt – the critical issue to consider is what steps are needed to restore and improve the living conditions of affected Palestinians with a view both to ensuring respect for their basic rights and offering the prospect of a future political solution to the conflict.

In these circumstances, the positions expressed by the ICRC over the years on recurring violations of international humanitarian law in the occupied Palestinian territory remain central.⁷

The Israeli government's settlements policy, favouring as it does transferring and establishing Israeli citizens in the occupied territory, not only amounts to a violation of the Fourth Geneva Convention but also profoundly alters the economic and social landscape of the West Bank. These changes hinder its development as a viable nation and undermine future prospects for reconciliation.

The location of the separation barrier – to the extent that it encroaches into the occupied West Bank, including East Jerusalem – further undermines the living conditions of the affected communities, depriving them of normal economic and social connections, hindering access to their jobs, their fields, their schools, their healthcare centres, and so on. The fact that the barrier now reaches deep into Palestinian territory, with a projected total length of more than twice that of the 315 kilometre Green Line, is seriously curtailing freedom of movement in certain areas of the West Bank and effectively cuts the land into small isolated parcels. The simultaneous expansion of settlements throughout the West Bank, served by the road network of those settlements, is effectively increasing the isolation of Palestinian communities. As stated in the Advisory Opinion of the International Court of Justice, the separation barrier contravenes several of Israel's international legal obligations, including rules of international humanitarian law.

The situation is particularly stark for Palestinians living in East Jerusalem. Restrictions imposed on urban planning, residence permits and access to the West Bank impose constant pressure on that community, which is unable to lead a normal life even after decades of occupation.

Finally, the social and economic situation of the population living in the Gaza Strip represents one of the most depressing sights in the region. For over four decades, Israel has maintained effective control over the Strip through various coercive measures that have impeded its development. These closure measures have severely limited economic and social contacts with the

⁶ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (entered into force 21 October 1950) 75 UNTS 287.

⁷ See, eg, Pierre-Yves Fux and Mirko Zambelli, 'Mise en œuvre de la quatrième Convention de Genève dans les territoires palestiniens occupés: historique d'un processus multilatéral (1997–2001)' (2002) 84 *International Review of the Red Cross* 661.

West Bank, and undermined efforts to stabilise the social situation. They have also impeded efforts to build proper democratic institutions across areas under Palestinian administrative authority. In the view of the ICRC, Israel continues to be bound by obligations under occupation law that are commensurate with the degree to which it exercises control.

While some exchanges of views and technical cooperation are taking place regarding the humanitarian consequences of the continued closure of the Gaza Strip, the ICRC has been unable to engage in any meaningful dialogue with the Israeli government on the impact on Palestinians of Israel's annexation of East Jerusalem, the routing of the West Bank barrier and the presence and further expansion of Israeli settlements. The ICRC has therefore opted to engage with civil society, academia and the Israeli public directly in explaining its position regarding the discrepancies between international humanitarian law and the Israeli government's policies in the occupied Palestinian territories. Each of these policies has distinct and complex consequences from a humanitarian perspective. The main common feature is undoubtedly the steady loss of Palestinian land, coupled with increasing restrictions in terms of movement and access to services. Both the demographic balance and the physical map of the occupied Palestinian territory have been transformed over the years to the clear detriment of Palestinian communities.

As in the case of my predecessors, I certainly recognise the Israeli government's need to ensure the security of its own population and territory. This is an inalienable right of any state, subject to the understanding that any measures to ensure national security must remain in accordance with the rules and procedures prescribed by international law. There may be no exceptions to compliance with the rules of humanitarian law, given its unique and universal character.

The separation barrier is a case in point. In the way in which it was planned, constructed and is operated, it cannot be justified as a security measure. As I said before, it consolidates and perpetuates the illegal presence of settlements, and its cumulative effects have led to consequences of a magnitude and gravity well out of proportion with what may be the legitimate security concerns of Israel. It cannot be reconciled with the duties of an occupying power.

As the ICRC witnesses this region's tragic descent into instability and armed violence, and as we view the resurgence of radical ideologies to justify unspeakable violence against civilians, we wonder too about the uncharted territory where unrestrained military power and dominance will lead the region.

International humanitarian law is probably the last universal bulwark against such unacceptable abuses. While that law has never prevented any state from maintaining its basic security prerogatives in times of crisis, it does provide not only a minimum binding legal framework but also a space for thinking and engaging critically about the human consequences of security policies. It is therefore paramount that a sincere and effective dialogue be maintained at all levels on how consistent the policies and practices of the parties to conflict really are with the basic provisions of humanitarian law.

Some of you may wonder about the traditional policy of ICRC confidentiality in such dialogue.⁸ As in other regions of the world, the ICRC remains fully committed to engage with

⁸ International Committee of the Red Cross, 'Doctrine sur l'approche confidentielle du Comité international de la Croix-Rouge (CICR)' (2012) 94 (887) *International Review of the Red Cross* 1.

all sides in a bilateral confidential dialogue on issues of humanitarian concern in order to offer a space for pragmatic improvements. The purpose of confidentiality is precisely to enable candid talks in an atmosphere of trust, to explore with the parties concerned the best possible practices and, ultimately, to find practical solutions in compliance with international norms and standards. This is particularly important in situations of armed conflict, which sometimes pose difficult dilemmas for those responsible for the actual implementation of the law. The ICRC intends to remain a reliable partner in approaching these sensitive tasks, whether in the context of active hostilities, detention or occupation. Such a dialogue is critical for maintaining a proper balance between legitimate military necessity and imperative humanitarian interests.

Alternatively, when a confidential dialogue is unlikely to result in concrete improvements for the populations affected, it does not make much sense to remain silent on important discrepancies between public policies and legal frameworks. In such cases, the ICRC believes that it has the responsibility under its humanitarian mission to become involved in a more public manner in violations of international humanitarian law. The sustained and unwavering attitudes of parties that violate some of the core rules of the law not only comes at a tragic cost to the people affected by those violations; it also occurs at the profound detriment of that party's own strategic thinking, planning capabilities and, ultimately, its own long-term national interests. The role of the ICRC is to maintain a watchful eye on these choices, propose its guidance when necessary and offer humanitarian assistance when needed.

4. IN CONCLUSION

I would like to close this talk with a call for a comprehensive dialogue on core humanitarian challenges. While international law has established clear legal obligations for the parties to armed conflict, the reality is that humanitarian organisations such as the ICRC are facing growing dilemmas in working towards the implementation of those rules and in deciding how best to orientate their work in connection with conflict, whether in Israel and the occupied territories, the broader Middle East or anywhere else in the world.

The dilemmas to which I alluded in this talk, may be summarised as follows:

- how to determine a practical and acceptable balance between the legitimate security requirements of the parties to a conflict while effectively protecting the civilian population;
- how to remain committed to confidential dialogue on humanitarian concerns with the parties to a conflict while at the same time meeting the growing requirement for greater public engagement and transparency;
- whether to focus on the short-term humanitarian needs of populations affected by protracted conflicts or to invest in the resilience and self-sufficiency of these communities.

The future of humanitarian action depends on our ability to engage on these issues with the parties to armed conflict in a practical and proactive manner. The ICRC is not here to impose standards and give lessons on these dilemmas, but rather to engage in real dialogue and find the best possible outcomes in any given context. Rather than pushing a strict advocacy or doctrinal line, the ICRC proposes to establish a structured dialogue on these dilemmas, share experiences, and identify practical solutions in line with international humanitarian law.