

Civilians Under Fire Restore Respect for International Humanitarian Law

Executive Summary

The scale and severity of human suffering in current armed conflicts represent a distressing race to the bottom in disregard for the basic rules regulating armed conflict. Civilian deaths and injuries resulting from explosive weapons have increased by 52% over the last four years.¹ The world is currently witnessing the greatest population displacement since World War II.² This is not merely the tragic, inevitable consequence of conflict, and it cannot be excused by the fog of war. Much of this loss of life and human suffering is avoidable. This is precisely what international humanitarian law, also known as the law of armed conflict, is for – to limit the effects of armed conflict.

There is ample evidence that basic rules are being violated on a daily basis by both non-state armed groups and state parties to conflict, even by those with the most advanced equipment and training. Parties to conflict deliberately target civilians as well as their homes, hospitals, schools, and other infrastructure; use indiscriminate force in populated areas; and fail to take precautions in the conduct of hostilities. This is most acutely evident in Syria and Yemen where much of the harm visited upon civilians is foreseeable and preventable. The lack of investigation and public accounting by the parties to conflict of the impact of their military operations on civilians speaks to the permissiveness of the current climate. Civilians cannot afford such indifference to the basic rules intended to protect them during armed conflict.

Concerted and deliberate effort is needed to restore respect for civilians in situations of armed conflict. A lack of restraint in the conduct of hostilities fuels protracted conflict and often complicates the process of negotiating political settlements. Conversely, rigorous adherence to the norms of international humanitarian law by one party encourages adherence by other parties to conflict. To counteract the current trend of violence against civilians, President Obama should spearhead a series of initiatives that unequivocally communicate the United States' intentions to rigorously minimize civilian harm in its own military operations while calling on others to respond in kind.

More specifically, President Obama should:

- 1. Issue a presidential statement affirming respect for the protections to which civilians and civilian objects are entitled, including humanitarian and medical facilities and personnel;**
- 2. Adopt and implement, including through training, a standing operational policy on civilian protection and harm mitigation applicable to all branches of the armed services;**
- 3. Condition U.S. support for and cooperation with foreign forces (both state and non-state) on compliance with international humanitarian law; and**
- 4. Set clear benchmarks for enhanced measures by all parties to mitigate civilian harm in Syria and Yemen.**

Safeguarding civilian lives and restoring respect for international humanitarian law demands a concerted effort to raise the mitigation of civilian harm from the tactical margins to the strategic center of U.S. policy. In light of current events and the World Humanitarian Summit in May, President Obama has a unique opportunity to cement his legacy in favor of a rules-based international order. The U.S. should not underestimate the power of its example and leadership to this end.

Missing: Respect for Civilians

Violence experienced by civilians in armed conflict is reaching new heights in current conflicts, to a level not seen since the Second World War.³ Civilians regularly experience an onslaught of violence by both state and non-state parties to conflict. Today we are witnessing a race to the bottom: intentional targeting of civilians in direct contravention of international law, indiscriminate use of force during hostilities, rampant disrespect for the protections to which civilians are entitled, disregard for the most basic norms of humanity in war, and an apparent absence of incentives for parties to conflict to rein in even the most egregious misconduct.

Global conflict trends reveal destructive violence across the world and insufficient measures to ensure the protection of civilians during armed conflict. The International Institute for Strategic Studies found that 2014 was one of the deadliest years in recent history.⁴

- Globally, 42 active conflicts contributed to 180,000 fatalities in 2014.⁵ By contrast, 2008 saw 63 active conflicts result in around 56,000 fatalities.
- In places such as Iraq, Syria, Pakistan, and Afghanistan, explosive weapons⁶ are responsible for the greatest number of casualties.
- Action on Armed Violence (AOAV) reports that between 2011 and 2014, 144,545 people were killed by explosive weapons, 112,262 of whom were civilians – a 52% global increase in civilian casualties from explosive weapons in this time frame.⁷
- Of the 10,395 explosive violence incidents recorded between 2011 and 2014, 61% occurred in populated areas; in those populated areas, 90% of the casualties were civilians.⁸

Conflicts and persecution in 2014 also newly displaced an estimated 13.9 million people. Of these, 11 million remained within the borders of their own country – the highest figure for internal displacement on record in a single year.⁹ Per day, an average of 42,500 people were forced to flee their homes in 2014.¹⁰ Worldwide, as of the end of 2014, 59.5 million people were displaced, 19.5 million of whom were refugees.¹¹ In 2014, the greatest portion of asylum applications received by the United Nations High Commissioner for Refugees (UNHCR) were from unaccompanied or separated children from 82 countries.¹² Children account for at least half the world's refugees and 250,000 under-age soldiers globally.¹³

Yemen after five months looks like Syria after five years.
Peter Maurer, President of the ICRC¹⁴

This race to the bottom is exemplified strikingly in Syria and Yemen. While state and non-state actors cause egregious civilian suffering in conflicts worldwide, the scale of suffering resulting from a lack of compliance with basic norms of international humanitarian law is most striking in Syria and Yemen. Moreover, the behavior shows no signs of abating, and increasingly it involves – directly or indirectly – many of the same protagonists. The situations are further complicated by the interests of, and continuous extensive support by, powers not directly involved in hostilities. As a result, it is vital to examine how respect for norms should be reinforced in order to safeguard civilian lives in light of these factors. Efforts to induce greater respect for fundamental norms of international humanitarian law in Syria and Yemen will, therefore, necessitate comparably decisive measures to address the main drivers of civilian harm in both contexts. The United States is involved in both armed conflicts through direct and indirect means and is well-placed to introduce such measures.

Syria

Since March 2011, the Syrian civil war has claimed between 200,000 and 250,000 lives, around 115,000 of which were likely civilians.¹⁵ The Violations Documentation Center reports that at least 27,000 Syrian civilians were killed by explosive weapons such as mortars, artillery, or rockets; nearly 19,000 of those deaths were the result of Syrian government air attacks.¹⁶ While UN Security Council Resolution 2139 urged all parties to the conflict to end the indiscriminate use of barrel bombs and other weapons in populated areas, the use of explosive weapons in urban areas continues.

- According to a June 2015 report from the UN Secretary-General, Syrian government aerial bombardment in urban areas has accounted for over 90% of deaths and injuries to children during the conflict.¹⁷
- In 2015 alone, AOA reports that 4,205 Syrian civilians were killed or injured by explosive weapons.¹⁸
- Human Rights Watch found that from the time Resolution 2139 was adopted in February 2014 to January 2015, Syrian government forces dropped over 1,000 barrel and conventional bombs on Aleppo.¹⁹ The Syrian Network for Human Rights reported that Syrian government barrel bombs killed 6,163 civilians in the same time frame.^{20,21}
- Human Rights Watch has reported that Russian and Syrian forces used internationally banned cluster munitions at least 20 times in an offensive that began September 30, 2015.²²

Dropped from a high altitude over heavily populated areas, they [barrel bombs] are crude, ruthless and indiscriminate. A favorite regime tactic is to drop several in sequence in order to kill or maim the ordinary Syrians who have come to help the victims of the first attack.

*Syrian doctor in Aleppo*²³

Syrian government forces have been particularly predatory in their systematic targeting of water systems, hospitals, markets, and bakeries. Siege-like conditions in numerous locations – for which multiple parties are responsible – have cut off thousands of people from critical fuel resources, food, and medical assistance. At one point in 2014, estimates placed the number of Syrians living under siege conditions²⁴ between 440,000²⁵ and 640,000²⁶ people. This led Amnesty International and others to allege that the Syrian government was conducting a deliberate campaign of starvation as a method of warfare.²⁷

The conduct of the Islamic State (IS) is characterized by indiscriminate attacks on civilians and arbitrary and summary executions as seen, for example, by its attack on the Palestinian Yarmouk refugee camp in Damascus in April 2015 and its videotaped beheadings of journalists and aid workers.²⁸ Human Rights Watch and the United States Holocaust Memorial Museum both report extensive IS brutality and evidence of crimes against humanity and war crimes perpetrated by the extremist group, especially against Yazidis and other minorities in northern Iraq.²⁹ These crimes include systematic rape, ethnic cleansing, torture, and extrajudicial killings.

Since September 2015, the involvement of Russian air power has heightened the risks of direct and indirect harm to civilians, including in areas previously considered stable.

- The Syrian Observatory for Human Rights reported that Russian attacks caused 185 civilian deaths between September 20 and October 30.^{30,31}
- Border crossings from Turkey into Syria, highways, and trucking hubs used by humanitarian actors to deliver supplies from Turkey have been hit by Russian airstrikes, cutting off many thousands of people from aid.³²
- In December 2015, a UN official estimated that 260,000 people had been newly displaced by Russian air operations.³³ Many people have fled to the closest border areas with Turkey³⁴ while, under pressure to stem the flow of refugees to Europe, Turkey has severely restricted access by

Syrians. Displaced Syrians are now effectively trapped between Russian airstrikes and the border.³⁵

In its own coalition airstrikes against IS targets in Iraq and Syria, the U.S. has exercised great caution in targeting, specifically in populated areas like Raqqa.³⁶ The U.S. military's robust policies and procedures used to determine targets significantly limit the risk of civilian casualties and model practices that should be adopted by the other parties in Middle East conflicts. There is cause for concern, however, over the conduct of non-state armed groups receiving training, weapons, and logistical support from the U.S. government. The U.S. has instituted rigorous and systematic efforts to vet and train non-state armed groups receiving its support. However, it is unclear whether this includes instruction in the basic principles of international humanitarian law and explicitly sets out any consequences of failure to meet their legal obligations. Groups in the Syrian opposition, including the Free Syrian Army, have been accused of abductions, conscripting child soldiers, and using schools or other civilian objects as military bases.³⁷ Providing training and assistance for state and non-state allies is a lethal recipe for civilians when such support is not strictly conditioned on compliance with the rules of war and reinforced through end-use monitoring.

Yemen

Between March 2015 and January 2016, Yemen's conflict has produced at least 8,100 civilian casualties (deaths and injuries), with the civilian death toll reaching 2,800, according to the UN High Commissioner for Human Rights.³⁸ Airstrikes have been the leading cause, resulting in 2,862 civilian deaths and injuries.³⁹

- Action on Armed Violence reports that, between January 1 and July 31, 2015, explosive weapons in general accounted for 5,239 deaths and injuries, of which 4,493 were civilians.⁴⁰
- When explosive weapons were used in populated areas, Yemeni civilians comprised 95% of reported deaths and injuries.⁴¹ Human Rights Watch reported numerous airstrikes which had no apparent military target or manifestly failed to distinguish between civilian objectives and military objectives.⁴²
- The UN Office of the High Commissioner for Human Rights estimates that, between March 26 and June 30, 2015, coalition airstrikes were responsible for nearly two-thirds of damaged or destroyed civilian public buildings throughout Yemen.⁴³

Beyond their immediate impact, air strikes can have reverberating effects that harm civilians for months and years. Cluster munitions, provided by the U.S. and other countries, not only take civilian lives but also contaminate farmland and residential areas, creating the ongoing risk of death and injury.⁴⁴ By July 2015, just four months into the conflict, destruction and damage to water infrastructure had left 80% of the population – 20 million people – without access to clean water.⁴⁵ As one of the poorest and most water insecure countries in the Middle East, Yemen was already highly dependent on imports, meaning the nearly year-long conflict has left its population increasingly desperate. In the governorates hit hardest by the conflict – Saada, Taiz and Aden – nearly all of the population is in need of humanitarian assistance, and food prices in some areas have increased by 300%.^{46,47} Humanitarian organizations providing life-saving aid in Yemen are also not spared by coalition airstrikes.⁴⁸

The Houthis and other forces aligned with former President Saleh also stand accused of abuses, including mistreating prisoners and indiscriminate attacks on civilians. In September 2015, Human Rights Watch reported that Houthi militias unlawfully detained civilians and aid workers,⁴⁹ and in October the organization reported that Houthi and allied forces fired rockets and mortars into populated areas in Taiz city.⁵⁰ The shelling of Taiz was part of a months-long battle surrounding the city that led many to argue that the Houthis were laying siege to the city.⁵¹ Following reports of kidnapping and detention of professional journalists, Reporters Without Borders classified the Houthis as the second largest hostage-takers of journalists after IS.⁵² In early January 2016, Houthi forces based armed fighters near a school for the blind in Sanaa, which led to the targeting of the school by Saudi-led coalition forces and injuries to four civilians.⁵³

Rather than respond to the calls by the UN High Commissioner for Human Rights and international human rights organizations for an independent inquiry into possible violations of international humanitarian law and human rights in Yemen, Saudi Arabia and its coalition partners effectively blocked a proposal by the Netherlands at the UN and established a national inquiry, which has yet to demonstrate either the capacity or will to credibly investigate violations of international humanitarian law and international human rights law in an effective and independent manner. Recently, another recommendation for an independent commission of inquiry on violations of international law came from the UN's Panel of Experts on Yemen; the Panel's report documents significant abuses of human rights in the country, and its release offers another opportunity for independent investigation of violations on all sides of the conflict.⁵⁴

The U.S. continues to sell weapons and provide tactical support for Saudi Arabia's and its coalition partners' military operations in Yemen despite the credibly reported and widespread civilian casualties, destruction of critical infrastructure and civilian property, and human suffering caused by these operations.⁵⁵ According to media reports, the U.S. has attempted to advise the Saudi government on international humanitarian law requirements and has advocated for operational restraint and a lifting of import restrictions.⁵⁶ Despite the position of influence the U.S. would be expected to have given all the support it provides Saudi Arabia, the U.S. does not appear to have had a substantial impact on Saudi Arabia's adherence to fundamental norms regulating the conduct of hostilities. The November 2015 U.S. decision to issue an export license for \$1.29 billion in ordnance to resupply Saudi operations in Yemen publicly signals that the U.S. intends to support the coalition regardless of how that coalition operates in the conflict.⁵⁷

Attacks on medical facilities and personnel

Among the most troubling of signs of erosion of the fundamental norms of humanity in war are the now all too frequent attacks on medical facilities and personnel. Care for the sick, infirm, and wounded during conflict and the special protection to which medical personnel and facilities are entitled, lie at the heart of the preservation of humanity during armed conflict. However, respect for these rules is now in jeopardy.

- The International Committee of the Red Cross's Health Care in Danger project found that between January 2012 and December 2014, "at least 4,275 people were victims of violence against health care in 4,770 acts or threats of violence."⁵⁸
- Actual incidents of violence occurred 2,398 times in 11 countries, with 91% of incidents perpetrated against local health-care providers.⁵⁹
- Violence against health care workers often results in the loss or disruption of services for the surrounding population, with effects lasting long after weapons have been put down. The Health Care in Danger project found that in 375 cases, health care facilities were damaged as a result of violence, and in 71 of those cases, the entire structure was destroyed.⁶⁰

Today... sophisticated military weapons are being – purposefully or mistakenly – aimed at hospitals and clinics. With total impunity, essential medical services are being destroyed as a military strategy, both by national armies and by international coalitions, in Afghanistan, in Syria and in Yemen. And ultimately the people that this hurts the most are patients who no longer have access to healthcare.

Vickie Hawkins, Executive Director of MSF UK⁶¹

The pervasive attacks on medical facilities by all parties to the conflicts in Syria and Yemen and their devastating consequences also exemplify this trend. Whether the result of intentional targeting, misidentification, or incidental harm, these repeated attacks necessitate concrete measures to ensure respect for the neutrality of medical facilities and personnel and to safeguard access to critical medical services amidst ongoing hostilities.

- In Syria, Physicians for Human Rights (PHR) reports that 336 attacks on medical facilities have occurred since the beginning of the conflict and 697 medical personnel have been killed.⁶²
- According to PHR, the Syrian government and allied Russian forces are responsible for 90% of these attacks on medical facilities.⁶³
- In quick succession within three months, three MSF health facilities in Yemen were struck by Saudi-led coalition airstrikes, leaving staff and patients injured and the surrounding areas with diminished access to medical care.⁶⁴ Alarming, in response to the airstrike on MSF's hospital in Taiz, a letter from the Permanent Representative of Saudi Arabia to the UN Secretary-General and the President of the Security Council warned humanitarian organizations not to operate in areas where Houthi forces are present lest they become collateral damage. However, it is precisely under these circumstances that the neutrality of medical and other humanitarian personnel and facilities must be respected to ensure civilians and wounded fighters who are *hors de combat*⁶⁵ have access to urgent medical care in areas of hostilities.⁶⁶
- Throughout Yemen, at least 600 health facilities no longer function due to a lack of fuel, supplies, and personnel, and 15.2 million people lack access to basic health care because of the ongoing conflict.⁶⁷

The U.S. attack on MSF's trauma hospital in Kunduz, Afghanistan on October 3, 2015 was a reminder of the dangers medical workers face on the frontlines and the critical importance of rigorous respect for medical neutrality in contemporary armed conflicts. The U.S. Department of Defense (DoD) investigation into this incident found significant human and technological error, as well as a failure to follow existing rules of engagement regarding the authorization of strikes on buildings.

DoD is now reportedly putting in place corrective measures to prevent the recurrence of such events.^{68,69} In doing so, the U.S. government should be mindful of the heightened disrespect for, and vulnerability of, medical services and personnel in areas of armed conflict. It is essential that the U.S. widely communicate the steps taken in response in order to set an example that others should follow. How the U.S. handles the aftermath of the Kunduz attacks, in both the short and long term, has the potential to either reinforce a downward spiral or, conversely, help restore respect for international humanitarian law, in particular the protection of medical personnel and facilities.

Recklessness with civilian lives must stop

Much of this loss of life and human suffering is avoidable. This is precisely what international humanitarian law is for: to ensure military necessity is balanced with considerations for human life during armed conflict. Yet, much of the loss of life and human suffering witnessed in Syria and Yemen is the consequence of conduct prohibited under international humanitarian law.

Also known as the law of armed conflict, international humanitarian law establishes the minimum requirements to help ensure that armed conflicts are not conducted without limits. These minimum requirements apply in both international and non-international armed conflicts, including Syria and Yemen. International humanitarian law protects civilians, the wounded and sick, and people deprived of their liberty in relation to a conflict by limiting the permissible means and methods of warfare. It requires all parties to a conflict to distinguish between civilians and civilian objects and military objectives.⁷⁰ It accepts that hostilities may cause incidental harm to civilians, but nonetheless requires parties to the conflict to take "feasible precautions" to minimize harm.⁷¹ It prohibits attacks that would be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects excessive in relation to the concrete and direct military advantage anticipated.⁷² Civilian property, such as dwellings, schools, transportation, sites of worship, and cultural property, are civilian objects and may not be targeted unless they are being used for military purposes.⁷³ Even under these circumstances, all feasible precautions must be taken to minimize harm to civilians and civilian objects. These norms have been created specifically for the exigencies of warfare and any exceptions have been built into the law or take into account the balance between protecting civilian lives and military necessity.

There is ample evidence that both state and non-state actors are violating these basic rules on a daily basis – even those actors with the most advanced equipment and training. Violations include failure to distinguish between military objectives and civilians and civilian objects, indiscriminate and disproportionate attacks, and failure to take all feasible precautions in the conduct of hostilities. The scale of civilian harm currently experienced by the people of Syria and Yemen is not merely the tragic, inevitable consequence of conflict, and cannot be excused by the fog of war. Much of the harm visited upon these civilians is indiscriminate, foreseeable, and preventable. The unbroken repetition of civilian harm day after day suggests, at worst, intentionality and continuous recklessness, or, at best, negligence on the part of all of the parties to these conflicts. The failure of the parties to investigate and publicly account for the impact of their military operations on civilians speaks to their indifference and reveals the absence of consequences for their consistent failure to adhere to basic rules.

International humanitarian law requires the parties to the Geneva Conventions to both respect *and* ensure respect for these fundamental rules.⁷⁴ At a minimum, this means states must not encourage violations by others and should exert influence to stop violations when they do occur. Furthermore, inherent in respect for universal norms is an expectation that adherence by one party encourages adherence by others, including one's adversaries.⁷⁵ An environment of compliance is cultivated through one's own policies and practices. As such, complying with international humanitarian law and promoting respect for fundamental norms by others is an act of self-interest. Mutual compliance benefits everyone. When adversaries choose not to respond in kind, the exercise of restraint may be more difficult and costly, but it is critical to the long-term maintenance of a global order in which civilians are protected.

Enough is enough. Even war has rules. It is time to enforce them.
*UN Secretary-General Ban Ki-moon*⁷⁶

The current scale of civilian harm suggests that the incentives and mutual expectations of compliance with the most basic rules of armed conflict are missing, with devastating short- and long-term costs. This is acutely visible in Syria and Yemen. Yet, as armed conflicts proliferate globally, civilians cannot afford casual indifference to international humanitarian law. The costs go beyond the extensive loss of life; beyond the suffering of those who survive air strikes, small arms fire, and personal violence; beyond the widespread damage to civilian infrastructure; and beyond the challenge of day-to-day survival in displacement.

Civilian harm creates and entrenches societal divisions, fuels violent reprisals, and makes the work of reconciliation and sustainable political settlement more difficult. Unconstrained conduct during armed conflict can mean the loss of credibility in the eyes of other protagonists. This in turn can keep critical stakeholders from coming to the negotiation table or concluding agreements because they do not trust the integrity of the other negotiating parties. A lack of restraint in armed conflict can also trigger retribution by adversaries. Although retaliation against civilians is unlawful, some parties may rationalize their own misconduct by citing the civilian harm caused by their adversaries. The result for civilians is even more suffering; they suffer from both direct harm and from their continuous exposure to risk, compounded over time as the fighting drags on.

Conversely, continuous and consistent adherence to the law not only safeguards civilians from the effects of ongoing hostilities, it also fosters trust and underpins credibility. This credibility is critical. It attracts cooperation to solve problems and cultivates support for agreements that would not otherwise be possible. Parties are more likely to enter into negotiations, more likely to comply with agreements reached, and more likely to respond to exhortations to respect civilians when they have good reason to believe that the other parties will do the same. An environment of compliance cultivated through state practice may, in turn, prompt non-state armed groups to establish their own good practices, for example, as reflected in a Deed of Commitment to implement and hold themselves accountable to certain norms in armed conflict.⁷⁷

Reverse the race to the bottom

Norms limiting human suffering can be traced back to the oldest traditions of societies in armed conflict. The United States was instrumental in the early codification of these norms, particularly during the U.S. Civil War and following World War II. More recently, U.S. military forces have demonstrated willingness to institute corrective measures when there is an apparent and avoidable pattern of civilian harm, for example, in the adoption of new Tactical Directives in Afghanistan, created in response to the high number of civilian deaths and injuries resulting from U.S. airstrikes.⁷⁸ U.S. leadership was also instrumental in creating and growing the Civilian Casualty Tracking Cell, which became the Civilian Casualty Mitigation Team of NATO's International Security Assistance Force (ISAF) in Afghanistan.⁷⁹ In July 2012 and October 2015, the U.S. Army adopted doctrinal guidance on the protection of civilians to systematize appropriate measures, including mitigating civilian harm, in its operations.⁸⁰ This is the first such doctrine among armed forces globally. Current U.S. operations against IS in Syria and Iraq involve concrete tactical measures that minimize the risk of harm to civilian populations and DoD has taken positive steps for timely disclosure of civilian casualties resulting from these operations.⁸¹

Presidential Policy Directive (PPD)-27 (2014) regulating conventional arms transfers also seeks to promote restraint "in shaping the international security environment."⁸² Critically, PPD-27 seeks to encourage comparable action by others and recognizes a vital U.S. role in global norm-setting through U.S. cooperation with the UN Register of Conventional Arms and the Wassenaar Arrangement to further promote restraint and transparency in international arms transfers.⁸³ While there is much good practice that can be built on – both in terms of U.S. military operations as well as promoting respect of fundamental norms as part of U.S. foreign policy – the scale of civilian harm in current conflicts clearly illustrates the need for additional measures.

For example, while PPD-27 signals the right intention of preventing U.S. arms from being used by military forces unwilling or unable to comply with international humanitarian law and the intention to use U.S. access and influence in this regard, it does not explicitly prohibit arms transfers where it is likely they would be used to commit human rights abuses or serious violations of international humanitarian law. Rather, this is but one consideration among many other interests. In the meantime, the ongoing pattern of civilian harm resulting from Saudi operations in Yemen indicates that Saudi Arabia is unable or unwilling to bring its conduct in line with international humanitarian law. As long as civilians are exposed to indiscriminate and disproportionate attacks in Yemen, it is unrealistic to expect any change in the ongoing indiscriminate and disproportionate attacks in Syria. PPD-27 thus puts civilians at risk.

Counteracting current trends, and using U.S. norm-setting influence to restore respect for civilian lives in armed conflict, demands a more concerted effort that raises the mitigation of civilian harm from the tactical margins to the strategic center of U.S. policy. It demands articulated policy objectives of increased respect for protected persons in accordance with international humanitarian law by all parties to conflict. States have long recognized the dangers unregulated warfare poses for the conduct of international relations. The U.S. should build on this long history of broad consensus supporting limits on warfare. A world where humane limits on armed conflict are respected and consistently implemented by all parties not only benefits the U.S., it is also in the interest of all states.

Restore respect for civilians in armed conflict

President Obama came into office on the promise to restore U.S. respect for a rules-based international order. Just a few months after being sworn in, he delivered a speech on national security from the National Archives in Washington, D.C. In that speech, he repeatedly noted the overarching importance of society governed by the rule of law. He voiced the need for respect for democratic values and legal systems if the future was to differ from the past:

We seek the strongest and most sustainable legal framework for addressing these issues in the long term – not to serve immediate politics, but to do what's right over the long term. By doing that we can leave behind a legacy that outlasts my administration, my presidency, that endures

for the next President and the President after that – a legacy that protects the American people and enjoys a broad legitimacy at home and abroad.⁸⁴

Echoing this, in his final State of the Union address, President Obama warned of instability that may plague many parts of the world for decades and called for “a patient and disciplined strategy” including leadership that “strengthens the international order we depend on.”⁸⁵ Similarly, in her remarks to the UN Security Council Open Debate on the Protection of Civilians in January 2016, U.S. Ambassador to the UN Samantha Power stressed the need to ensure harm to civilians does not constitute a “new normal” in armed conflicts: “I hope we also send an equally urgent message: no matter how frequent, heinous, or blatant the assaults on civilians, whether in Syria or elsewhere, this Council will never accept them as the new normal, as somehow inevitable.”⁸⁶

If President Obama and his administration are committed to ensuring this legacy, now is the time to act. He can define the legacy of his administration and build on a proud historical precedent by putting the U.S. in the lead to restore respect for civilians in armed conflict. In addition to bringing these measures to bear on bilateral and multilateral dialogue concerning specific armed conflicts, the Obama administration should use these measures as the basis for the U.S. contribution to the World Humanitarian Summit taking place in Istanbul in May 2016, using this occasion to call for and lead a global effort to restore respect for international humanitarian law in the conduct of armed conflict.

Specifically, President Obama should:

- 1) **Issue a presidential statement affirming respect for the protections to which civilians and civilian objects are entitled, including humanitarian and medical facilities and personnel.**

International humanitarian law exists to safeguard humanity during armed conflict and the protection of civilians lies at the heart of these norms. Yet, there is no respect for civilians if their homes, property, and critical infrastructure are subject to targeted attack and indiscriminate violence. There is no respect for civilians if the wounded and sick cannot safely seek treatment and if civilians cannot safely seek humanitarian services, for example, to reunite separated families and to access food, temporary shelter, and clean water.

A statement by President Obama would signal to all state and non-state parties to conflicts U.S. intentions to both implement and expect of others concrete measures to minimize civilian harm during armed conflict, including – critically – through respect for medical neutrality. In this regard, to set the example it would have others follow, the U.S. should communicate clearly, explicitly, and transparently the disciplinary action, legal proceedings, and corrective measures being taken following its investigation into the U.S. strikes on MSF’s hospital in Kunduz, Afghanistan.

- 2) **Adopt and implement, including through training, a standing operational policy on civilian protection and harm mitigation applicable to all branches of the armed services,** irrespective of the specific theater or type of operation. This policy should ensure that the U.S. sets the highest standard of protection when armed force is used, that civilian harm is mitigated, and that any harm caused is appropriately addressed and credibly investigated. In this regard, standing policies should include:
 - i) **A limit on the use of explosive weapons with wide-area effects in populated areas in all current and future operations and a call to allies and adversaries to adopt comparable measures.**

The use of explosive weapons in populated areas can mean devastating harm for civilians and should be limited as a matter of policy. Successive Tactical Directives in Afghanistan reduced civilian harm from airstrikes using explosive weapons, saved many Afghan lives, and demonstrated that this is not only tactically feasible but also strategically desirable. New tactical directives for current and future U.S. operations should set a further example, building on these positive and successful measures.

The U.S. should additionally bring the adoption of such measures to bear on bilateral and multilateral negotiations on Syria and Yemen, calling on both allies and adversaries to respond with comparable measures. The U.S. should also share its experience in international discussions, for example in settings such as the discussions recently convened by Austria aimed at strengthening the protection of civilians from the use of explosive weapons in populated areas.

ii) **A baseline trigger, consistent across all branches of the armed services, for investigations on civilian casualties resulting from U.S. military operations.**

The policy should include the presumptive release via an electronic reading room of civilian casualty investigations – redacted as appropriate – within 120 days of completion.

iii) **The inclusion of international humanitarian law and measures to mitigate civilian harm in appropriate joint publications, supporting doctrine, and joint planning applicable to all branches of the armed services.**

Relevant elements of international humanitarian law should be referenced in joint publications and doctrine, for example, in the course of upcoming reviews of joint publications on Peace Operations, Multinational Operations, Joint Targeting, and other relevant publications.⁸⁷ All joint planning documents should include annexes that set out applicable international humanitarian law and measures to be undertaken to mitigate civilian harm in a manner relevant to specific operations. Lessons learned from operational measures to mitigate civilian harm should be gathered and incorporated into joint doctrine and planning over time.

Additionally, in support of standing policies, **direct the Secretary of Defense to establish a Civilian Casualty Mitigation Office in the Department of Defense** to serve as a center for data collection, research, and collection of good practice with a view to continuously improving upon methods to minimize harm to civilians arising from U.S. military operations. Such a center could additionally serve as a basis to stimulate dialogue with U.S. allies on relevant policies and practices to minimize harm to civilians and to contribute to multilateral efforts to enhance collective practice, for example to establish commitments to limit the use of explosive weapons in populated areas.

3) **Condition U.S. support for and cooperation with foreign forces (both State and non-State) on compliance with international humanitarian law.**

The U.S. should ensure that responsible security assistance is part of the solution, not the problem. PPD-27 should therefore be revised and upgraded to prohibit the transfer of arms in instances when the recipient is likely to use the arms to commit human rights abuses or serious violations of international law. Implementation should additionally be reinforced with transparent assessments prior to commencing arms transfers and periodic review once arms transfers have commenced.

The U.S. should require at a minimum that those receiving U.S. arms, intelligence, and other security assistance (a) make a public commitment to fully comply with international humanitarian law; (b) provide international humanitarian law training to their forces and adopt appropriate rules of engagement as well as disciplinary measures for non-compliance; (c) undertake battle damage assessments with a view to incorporating corrective measures to minimize civilian harm in ongoing operations; (d) undertake and publicize investigations of alleged civilian casualty incidents and incorporate additional measures into doctrine, training and planning accordingly; and (e) have a track record of compliance with international humanitarian law and/or have taken significant measures to correct for previous incidents of civilian harm. Civilian harm mitigation policies and concrete measures should form part of theater-specific coordinated coalition operations, including those carried out against the Islamic State.

- 4) **Set clear benchmarks for enhanced measures to mitigate civilian harm in Syria and Yemen, including:**
- i) **Condition continued support for the Saudi-led coalition's military operations in Yemen on the adoption of measures to enhance compliance with international humanitarian law and to minimize civilian harm.**

The U.S. should suspend its sale of air-to-ground munitions to the Saudi-led coalition until its conduct is brought in line with international humanitarian law. The U.S. should additionally indicate that the coalition must, by a certain date, improve its targeting efforts and the manner in which it conducts hostilities, including by: (a) refraining from indiscriminate and disproportionate use of force, including attacks on medical facilities, schools, and other civilian objects; (b) adopting as appropriate new directives and rules of engagement, including tactical directives limiting the use of explosive weapons with wide area effects in populated areas; (c) fully lifting import restrictions; and (d) initiating, or cooperating with, credible, independent investigations into incidents of civilian harm.

- ii) **Include in the negotiations concerning the situation in Syria commitments by all state and non-state parties to the conflict to minimize harm to civilians arising from hostilities while negotiations are ongoing.**

This should include explicit commitments to: (a) refrain from indiscriminate and disproportionate use of force, including attacks on medical facilities, schools, and other civilian objects, adopting as appropriate new directives and rules of engagement for their respective forces to this end; (b) lift all sieges and permit freedom of movement of civilian populations and their access to essential goods and services; (c) facilitate and allow access by humanitarian organizations to populations in greatest need, including by agreeing to and respecting temporary ceasefires and other arrangements to facilitate humanitarian access; and (d) cooperate with independent investigations concerning incidents of harm to civilians and put forth recommendations to mitigate such harm.

- iii) **Use the example of the Civilian Casualty Tracking Cell set up by the U.S. in Afghanistan and coalition operations in Iraq and Syria as an example for other countries engaged in conflict.**

Such a cell gathers and analyzes operational data and information on alleged civilian harm (drawing on both internally generated and externally sourced information) in order to inform real-time decision-making and adoption of measures to better protect and mitigate harm to civilians. The U.S. should encourage and, where appropriate and necessary, provide technical assistance to all partner nations engaged in conflict to implement similar cells in order to understand better the impact of their operations on the civilian population and adopt measures to better protect civilians.

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Endnotes

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https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter17_rule53?OpenDocument&highlight=53 and here: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule55

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<https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape> and United States Holocaust Memorial Museum: Simon-Skjoldt Center for the Prevention of Genocide, “*Our Generation is Gone: The Islamic State’s Targeting of Iraqi Minorities in Ninewa*,” Bearing Witness Trip Report, November 2015. Report can be found here: <http://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf>

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- ⁷² This is the rule of proportionality in the conduct of hostilities. See Rule 14 in Customary International Humanitarian Law database: https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14
- ⁷³ Rule 9 of the Customary International Humanitarian Law database sets out the definition for “civilian objects:” https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter2_rule9
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