

Statement

« Reminder of the fundamental rules of International Humanitarian Law applicable in the context of the conflict between Hamas, other armed groups, and Israel »

adopted at the plenary session of November 30th

1. International Humanitarian Law is neither empty promise nor charity, but a body of law which engages all parties to the conflict and all States across the world to ensure its enforcement. It establishes the rights and obligations of the parties to the conflict. It is based on the principle of humanity.

2. Since the attacks perpetrated by Hamas on the morning of 7 October and the Israeli military operations that followed, civilian losses in occupied Palestinian territory and in Israel have attained an unprecedented level. The French National Human Rights Commission (CNCDH), as the national committee for the implementation of international humanitarian law, wishes to shed light on the public debate by realligning certain fundamental rules of international humanitarian law, the law which is applicable during armed conflict. Moreover, the CNCDH remains vigilant concerning the repercussions of the conflict on French society, notably in its role as the independent national rapporteur on the fight against racism, antisemitism and xenophobia.

Application of international humanitarian law

3. Armed confrontation between the occupying army and armed groups present on Palestinian territory or in neighboring countries is recurrent and has led to numerous violations of international humanitarian law. The attacks perpetrated by Hamas on 7 October, due to their scale, and their obvious purpose to spread terror

amongst the civilian population, as well as the escalation of violence which followed in Gaza and the West Bank due to the Israeli response, justify a restatement of certain fundamentals of international humanitarian law.

Function of international humanitarian law

4. International humanitarian law applies in any armed conflict, whatever the cause, and its fundamental rules apply without distinction, whatever the classification of the conflict. Likewise, international humanitarian law is based on the principle of equality of belligerents and must be respected by all parties to the conflict. No reason, nor circumstance may justify its violation.

Fundamental rules of international humanitarian law

5. The CNCDH wishes to recall certain fundamental rules of international humanitarian law pertaining to the protection of persons and the conduct of hostilities, in particular the special protection guaranteed to hospitals, the specificities of siege warfare, and the right to humanitarian assistance.

Protection of persons

6. International humanitarian law unequivocally and absolutely prohibits murder in all forms, as well as hostage-taking, inhuman or degrading treatment, and torture. Whenever any

person is in the power of the enemy, that person must be treated with humanity and their dignity must be respected. Anyone whose capture is not justified for reasons of security or motives linked to the initiation of criminal proceedings should be immediately released.

7. The wounded must be cared for and attended to. If the party in whose power they are cannot provide adequate care, the wounded must be transferred to an authority able to do so. The dead must be identified and registered, and a burial, however temporary, must be made offered to them. The bodily integrity of the dead must be fully respected. Relatives without news of individuals - either because they have been captured or because they have died - have the right to know what has happened to them. Moreover, when members of the same family are separated due to hostilities, they have a right to family reunification.

8. While civilian evacuations may be authorized, the forcible transfer of civilians is prohibited. Forcible transfer of the population consists of obliging civilians to leave their habitual places of residence against their will when there is no valid justification under international humanitarian law. Evacuations consist of a temporary removal of civilians from one zone to another in order to protect them from the effects of hostilities. Civilian evacuations can only be undertaken if the security of the population or imperative military reasons so demand. Furthermore, in the case of evacuation, all possible measures must be taken in order that civilians are received under satisfactory conditions, notably in terms of shelter, hygiene, health, safety and nutrition. Finally, a person who does not wish to evacuate cannot be forced to do so, and those who have been evacuated must be returned to their homes as soon as hostilities in their sector have ended.

Conduct of hostilities

9. The parties to the conflict must distinguish between civilians and combatants at all times. Attacks can only be directed against combatants. Attacks must not be directed against civilians. The provisions relative to the conduct of hostilities in international humanitarian law may be resumed in three cardinal rules: distinction, proportionality and precautions. With regard to the distinction between civilian objects and military objectives, the latter are limited to those objects which by their nature, or because of their use or their location, make an effective contribution to military action of a party to the conflict and whose total or partial destruction or neutralization offers the

enemy a definite military advantage. Any attack on object which does not correspond to this definition is prohibited.

10. Moreover, when an attack is carried out against a military objective, the person carrying out the attack must respect the proportionality rule, according to which it is prohibited to launch an attack that may be expected to cause incidental damage to civilian objects or the civilian population which would be excessive in relation to the concrete and direct military advantage anticipated. In order to implement this rule, the attacker must take all feasible precautionary measures in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, the damage that could be caused to civilian objects or to the civilian population. Likewise, those who are attacked must adopt passive precautionary measures in order to refrain, to the maximum extent feasible, from using civilian objects to establish themselves or carry out military operations.

Special protection afforded to hospitals

11. In addition to such rules, applicable in all circumstances during an armed conflict, certain civilian objects, such as hospitals, enjoy special protection under international humanitarian law. Above all, medical structures and their staff must be respected and protected at all times. The functioning of hospitals should never be impeded. On the contrary, everything should be done to facilitate their activities. A hospital can only lose its protection if it becomes a military objective and if the hospital is used to commit an act harmful to the enemy. Even in this case, however, taking into account the activities carried out in a hospital and the concentration of civilians there, the damage that an attack against a hospital would cause would inevitably be disproportionate, making this attack unlawful.

Specifics related to siege warfare

12. A siege is not a prohibited method of warfare as such, unless its purpose is to subject the civilian population to reprisals or collective punishment. Regardless, its consequences almost invariably lead to violations of international humanitarian law. The aim of the siege is to restrict, or even prohibit, any movement of goods and people across a given territory in order to force the adversary to surrender. Firstly, the civilian population affected by an armed conflict has the right to leave the territory in which they

are located if they fear for their safety. When any entry or exit of people is prohibited, the civilian population finds itself trapped in the middle of hostilities, putting it in serious danger, whereas international humanitarian law provides that parties to a conflict must do everything possible to minimize the consequences of armed conflict against civilians and civilian objects. Likewise, the fact that civilians do not leave a danger zone, either because they do not wish to or because they cannot, should never render them a lawful target of attack. Civilians who refrain from participating in hostilities must never be targeted. Secondly, preventing the delivery of water and food, as well as the targeting of specific objects indispensable to the survival of the population throughout a given territory, leads to the insufficient supplying of civilian populations. Starvation as a method of warfare is strictly prohibited by international humanitarian law. Thirdly, carrying out prolonged power cuts or refusing to allow fuel to enter the territory inevitably leads to the malfunctioning of medical structures: operating theaters can no longer be used, people requiring respiratory assistance may be deprived of oxygen, etc. Fourthly, when ‘humanitarian corridors’ are opened, they must remain strictly reserved for the passage of civilian goods and people, and no obstacles can obstruct their use.

Humanitarian assistance

13. In order for international humanitarian law to give effect to the protection it offers to the civilian population, there are rules relating to humanitarian assistance, which is a right for civilians affected by armed conflicts. The parties to the conflict therefore have the obligation to authorize relief operations for the benefit of civilians. The occupying power must ensure that the population receives adequate medical and food supplies. If this proves impossible, the occupying power must authorize relief operations, carried out by humanitarian organizations or by third States, and to facilitate these operations. When humanitarian assistance is intended for the civilian population, is provided in an impartial manner and includes medical equipment and foodstuffs, it must reach those who need it without delay. In such circumstances, the parties to the conflict cannot refuse access to humanitarian organizations, which would be considered arbitrary. As a corollary to the right of the civilian population to receive vital assistance, humanitarian personnel must be

respected and protected. They should never be targeted. The safety of humanitarian personnel is an essential prerequisite for the effectiveness of humanitarian action.¹

14. All of these rules – protection of persons, humanitarian assistance and the conduct of hostilities – are universal in scope and constitute the cornerstone of international humanitarian law. Their respect is required without delay from the parties to the conflict; third States must do everything possible to ensure that international humanitarian law is scrupulously respected by all parties to the conflict. Under the terms of Article 1 common to the four 1949 Geneva Conventions to which 196 States are parties, including France, all States in the world have the obligation to respect and ensure respect for international humanitarian law. In this regard, the CNCDH wishes to recall that the obligation to ensure respect for international humanitarian law is of a customary nature, meaning that all States – even those outside the conflict – must do everything in their power to ensure respect for international humanitarian law by those engaged in armed conflict. The CNCDH recognizes the efforts undertaken by France in this direction and encourages the government to do more. The Commission emphasizes that, in all its relations with parties to the conflict, France must systematically continue to remind them of their obligations and do everything to prevent or put an end to any violation of these obligations. The CNCDH recommends in particular that the parties to the conflict be reminded of the need to protect all persons not participating in hostilities, to facilitate the rapid and unhindered passage of humanitarian relief, and to do everything possible to respect the integrity of civilian objects and protect humanitarian personnel.

15. Furthermore, the CNCDH reiterates that contravening these fundamental prohibitions constitutes international crimes which must be prosecuted both by national courts, when they are competent, and by the International Criminal Court, already seized of the situation. To this end, the CNCDH recalls that France, like all States in the world, has the obligation to search for and prosecute persons alleged to have committed, or to have ordered to be committed, violations of these fundamental rules and, where appropriate, to condemn them.

16. The CNCDH considers that France, which recently adopted a manual on the law of

military operations² and a strategy on influence through law³, along with a humanitarian strategy⁴, must set an example and make respect for international humanitarian law, based on the principle of humanity, a priority to guarantee the protection of civilian populations. International humanitarian law is more relevant than ever and its respect contributes to the facilitation of peacebuilding.

Endnotes :

1. CNCDH (2020) *Opinion on the Respect and Protection of Humanitarian Personnel*. Plenary Assembly of December 14, 2020, JORF n°0307 of December 20, 2020.
2. Ministry of the French Armed Forces (2022) *Military Operations Law Manual*.
3. Ministry of Europe and Foreign Affairs, Ministry of Justice, *Influence through Law, France's Strategy 2023-2028*.
4. Ministry of Europe and Foreign Affairs, *France's Humanitarian Strategy 2018-2022*. This strategy is currently under review.

Independent national human rights institution, the National Consultative Commission on Human Rights (CNCDH) advises the public decision-making process with regards to human rights and international humanitarian law, and controls and the effectiveness in France of rights protected by international human rights conventions. The CNCDH is a collegial and independent institution, accredited by the United Nations. The CNCDH is also the national committee for the implementation of international humanitarian law.



Commission nationale consultative des droits de l'homme
20 Avenue Ségur - TSA 40 720 - 75334 PARIS Cedex 07

Tel : 01.42.75.77.09
Mail : cncdh@cncdh.fr
www.cncdh.fr

