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**Strengthening of the coordination of humanitarian and
disaster relief assistance of the United Nations, including
special economic assistance**

Security Council
Seventy-fourth year

Letter dated 1 April 2019 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the Chair's summary of the second annual retreat on international humanitarian law, on the theme "Protection of critical civilian infrastructure in armed conflict" (see annex), which was organized by the Permanent Mission of Spain to the United Nations at the Greentree Foundation on 4 and 5 March 2019.

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 75, and of the Security Council.

(Signed) Agustín Santos Maraver



Annex to the letter dated 1 April 2019 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General

Second annual retreat on international humanitarian law: protection of civilian critical infrastructure in conflict

Chair's summary

On 4 and 5 March 2019, the Permanent Mission of Spain to the United Nations organized the second annual retreat on international humanitarian law at the Greentree Foundation. A total of 23 delegations participated in the retreat, including 10 Security Council members.

The high-level opening session was hosted by the Director for the United Nations of Spain, Javier Gassó, and also included opening remarks by the Permanent Observer and Head of Delegation for the International Committee of the Red Cross, Robert Mardini.

The retreat focused this year on the protection of civilian infrastructure in armed conflict, with a special focus on the protection of schools and hospitals. Field practitioners, humanitarian and legal experts, academics and representatives of Member States, the United Nations Secretariat and civil society organizations participated.

The meeting was conducted under the Chatham House Rule regarding non-attribution, and was broken down into six complementary panels on: (1) the protection of essential civilian infrastructure: the legal obligations incumbent on parties to armed conflicts and specific commitments in relation to the protection of schools and hospitals; (2) urban warfare and partnered military operations: the limitation of damage to civilian infrastructure and military use of educational, health-care and other civilian infrastructure; (3) information, monitoring, the investigation of violations, attribution and accountability; (4) the obligation to protect civilian infrastructure and “humanitarian deconfliction”; (5) communication with all parties to armed conflicts, including listed terrorist groups, with a view to impartially meeting needs in the context of neutral, impartial and independent humanitarian action; and (6) the preservation, maintenance and restoration of essential civilian infrastructure.

The meetings brought together various inspiring ideas, which led to a fruitful and enriching debate. The points raised during the discussion are summarized as follows:

1. Contemporary warfare is often conducted in urban areas, which are essentially civilian and densely populated, and have complex and integrated life-sustaining systems. Consequently, conflicts can affect civilians directly, such as when they are killed or wounded, or indirectly, when attacks destroy civilian infrastructure or render it inoperable. There has also been a shift in the actors involved in conflicts, with the proliferation of non-State actors and the increasing number of States acting in supporting relationships or in alliance, with the aim to, inter alia, reduce exposure and liability. Under these circumstances, the protection of civilian infrastructure becomes essential, as its damage or destruction can have enduring effects for the civilian population. Attacks affecting medical facilities and educational institutions have particularly harmful and long-lasting effects.

2. Civilian infrastructure, including schools and hospitals, is considered to be “the infrastructure necessary for the functioning of an essential service and whose

damage or destruction has a significant impact on the delivery of that service”. Critical civilian infrastructure enjoys special protection under international humanitarian law; however, there are marked differences in the degree of legal protection afforded to hospitals and schools, as medical facilities are given more protection compared to other civilian infrastructure. In this context, the international community has tried to increase the protection of schools through non-binding instruments, such as the Safe Schools Declaration.

All panellists agreed that, in order to reduce damage to civilian infrastructure, the use of heavy explosive weapons in urban areas must be reduced. In this regard, one of the participants remarked that militaries face the dilemma of using heavy weapons in urban areas or sustaining heavy military casualties. Discussions indicated that this is not an either/or issue and that the consequences of the choice of weapons used should be considered.

3. The importance of human infrastructure was also highlighted by one of the panellists. This refers to the personnel component that ensures that places such as hospitals and schools can fulfil their function. Similarly, the importance of involving the local population in humanitarian assistance in order to maximize impact and success was also underlined.

4. Regarding the protection of humanitarian objects in armed conflict, discussions arose about the term “humanitarian deconfliction” (a United Nations term for a system in which voluntary notifications are provided on the movements and locations of humanitarian actors). First, everybody agreed that the use of the term “deconfliction” in a humanitarian context creates confusion, as it is a military term generally used to refer to positions of military partners. Several participants favoured the term “notification to the parties”. Second, some of the participants underlined that the purpose of this notification is to increase security and improve parties’ acceptance of humanitarian actors. As such, it is not intended to improve the safety of the entire civilian population (although field practice does vary). Finally, the main point highlighted was the problem of the reversal of international humanitarian law obligations. The popularization of humanitarian deconfliction has created the illusion that everything that is not subject to the notification system can be attacked. Humanitarian deconfliction should not be an excuse for shielding parties to armed conflict from their international humanitarian law obligations and responsibilities.

5. Reference was also made to the problem sometimes referred to as the “international humanitarian law exceptionalism narrative”, which relates, on one hand, to non-State armed groups that repudiate their international humanitarian law obligations, and on the other, to States that justify unlawful behaviour on the grounds that their enemy is a “terrorist”. The problem, as highlighted by one of the panellists, is that some forms of violence that would be lawful under international humanitarian law become unlawful under counter-terrorism frameworks. For example, attacks against lawful military objectives are not war crimes under international humanitarian law, but they may be criminalized by States, thus reducing incentives for non-State armed groups to comply with the law and refrain from conducting attacks against civilians or civilian objects. Similarly, humanitarian action in armed conflict, as described in international humanitarian law, may be criminalized because it often requires acting in areas controlled by non-State armed groups and any economic contact with these groups may run afoul of counter-terrorism provisions.

6. Emphasis was placed on the difference between a war crime and a violation of international humanitarian law, as not all such violations constitute war crimes. For example, the Geneva Conventions of 1949 each contain a relatively short list of grave breaches constituting war crimes. However, the same Conventions contain many other inviolable provisions (for example, details on how prisoners of

war and civilian internees are to be treated), but these are not war crimes. Participants felt that all violations of international humanitarian law are relevant and should be reported, mapped and studied.

7. The issue of respect for international humanitarian law by military forces was also addressed. Military forces face a “trilemma” when taking decisions during conflicts. First, they must ensure the protection of civilians and infrastructure; second, they must ensure the success of the military mission; and third, they must ensure the protection of their own troops. This trilemma partly explains why violations of international humanitarian law keep being committed. There are, of course, other causes that need to be addressed. In particular, one of the panellists insisted on the importance of integrating international humanitarian law into military doctrine, which is a very significant element of military education. Other factors mentioned were the values and norms of society, the ethos of the armed forces and peer influence.

8. One of the panellists stressed the potential for humanitarian actors to increase respect for international humanitarian law through dialogue with the parties. He expressed concern about three circumstances that impede humanitarian assistance and protection in armed conflict. First, impartial humanitarian action may be criminalized under certain national and international legal regimes. Second, sanction regimes can obstruct the import and delivery of items for humanitarian operations. Finally, there were criticisms about restrictive donor funding clauses that reduce the possibility of action.

9. Evidence was presented of the preventive effect of information, surveillance, monitoring and investigation mechanisms with regard to international humanitarian law violations. There are myriad such mechanisms, with different mandates, operations and uses. One example is the Surveillance System for Attacks on Health Care, created by the World Health Organization to monitor attacks on health-care infrastructure during conflicts. It was agreed that the international community might benefit from mapping these mechanisms, as well as from a standardized and permanent analysis of the data, trends, good practices and lessons learned. There were discussions about the opportunity and feasibility of impartial and systematic investigations into grave international humanitarian law violations.

10. Finally, with regard to accountability and attribution of responsibility for international humanitarian law violations, it was noted that there is an increasing trend towards the prioritization of domestic courts for the prosecution of individual criminal responsibility. This is evidenced by the proliferation of non-judicial investigative mechanisms, such as the International Impartial and Independent Mechanism of the Syrian Arab Republic, whose role is the collection of evidence that can be used in the future by national, regional or international courts. Other examples of this practice are the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant and the Independent Investigative Mechanism for Myanmar.