

Libya, Airstrikes and Treatment of Detainees

INTRODUCTORY TEXT: Civilian objects and civilians are protected from direct attack by IHL rules governing the conduct of hostilities. This case discusses the increase in the strikes launched against civilians and civilian objects in Libya. It addresses, amongst other matters, a specific incident in which two strikes hit the buildings in the Daman complex, including the Tajoura migrant and refugee detention centre. It also discusses the allegations of mistreatment of the detainees, a point raised by a report prepared by the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. WAR IN LIBYA: HOW DID IT START, WHO IS INVOLVED, AND WHAT HAPPENS NEXT? (18 MAY 2020)

[**Source:** The Guardian, “War in Libya: How did it start, who is involved, and what happens next?”, 18 May 2020, available at <https://www.theguardian.com/world/2020/may/18/war-in-libya-how-did-it-start-what-happens-next>]

[...]

[1] Haftar launched a new assault to unseat the UN-recognised government in April 2019, triggering some of the most significant fighting on Libyan soil since the battle to overthrow Col Muammar Gaddafi in 2011.

[...]

WHAT ARE THE ORIGINS OF LIBYA'S WAR?

[2] Oil-rich Libya has been in chaos since the Arab spring movement and Nato bombing campaign that toppled Gaddafi in 2011. Attempts to build a democratic state after Gaddafi fell disintegrated into a new civil war between rival governments in 2014.

[...]

WHO IS CURRENTLY FIGHTING WHOM?

[3] Since 2014 the fighting has mainly been between rival centres of political power in east and west Libya: the Tripoli administration, known as the Government of National Accord (GNA), led by Sarraj, and the Tobruk administration, which decamped to the eastern city after disputed elections. The Tobruk government appointed Haftar to lead the Libyan National Army (LNA) and restore its sovereignty.

[4] While the GNA is officially recognised by the UN as Libya's legitimate government, it holds little power on the ground, and some distrust its Islamist politics. Haftar's supporters say he is a bulwark against extremism, while others see him as another would-be military dictator.

WHAT IS THE INTERNATIONAL COMMUNITY DOING?

[5] Over the last few years foreign powers have increasingly intervened in Libya's civil war to defend their own strategic and economic interests. The GNA is backed by the UN and western countries, but its main allies are Turkey, Qatar and Italy. The LNA enjoys the support of Russia, Egypt, the UAE, Saudi Arabia and, to a lesser extent, France and Jordan.

[6] The foreign parties have flooded Libya with weapons and drones, ignoring a UN arms embargo. Russia has sent mercenaries and Sudanese men have been recruited to fight alongside the LNA [...]

[...]

B. ICC, PROSECUTOR'S REPORT TO THE UNSC PURSUANT TO UNSCR 1970 (2011)

[Source: ICC Prosecutor, "Eighteenth Report to the UNSC pursuant to UNSCR 1970 (2011) 'Referring the situation in Libya'", 9 November 2019, available at <https://www.icc-cpi.int/Pages/item.aspx?name=191024->

1. INTRODUCTION

1. On 26 February 2011, the United Nations Security Council (“Council”) unanimously adopted Resolution 1970 (2011), referring the situation in Libya since 15 February 2011 to the Prosecutor of the International Criminal Court (“ICC” or the “Court”). The Council invited the Prosecutor to address it every six months on actions taken pursuant to this resolution. This is the eighteenth report and update on the activities of the Office of the Prosecutor (“OTP” or “Office”) regarding the situation in Libya.

2. STATUS OF CURRENT CASES

[...]

3. ONGOING INVESTIGATION AND MONITORING OF CRIMES ALLEGEDLY COMMITTED IN LIBYA SINCE FEBRUARY 2011

20. [...] Following the renewal of clashes in and around Tripoli on 4 April 2019 and their escalation since June 2019.

21. On 16 April 2019, the Prosecutor issues a preventive statement calling on all parties and armed groups involved in the fighting to fully respect the rules of international humanitarian law, including by taking all necessary measures to protect civilians, and civilian infrastructures, including schools, hospitals and detention centres. [...]

[...]

23. Reports indicate that, since early April 2019, more than 100 civilians have been killed, 300 injured and 120,000 displaced as a result of the armed conflict. UNSMIL reports that more than 37 attacks have been registered against health workers and facilities, including hospitals, field hospitals and civilian and military ambulances, resulting in at least 11 deaths and more than 33 injured.

24. Mitiga Airport in Tripoli has reportedly been hit by indiscriminate shelling seven times since the end of July 2019, including on 1 September 2019, when projectiles hit civilian parts of the airport causing damage to an airplane carrying dozens of passengers. Zuwara airport has also reportedly been the target of airstrikes.

[...]

27. On 10 August 2019, a car bomb attack in Benghazi killed five people, including three United Nations staff members, and injured multiple other civilians, including two further United Nations staff members. [...]

[...]

4. COOPERATION

[...]

5. CONCLUSION

[...]

C. UNSMIL-OHCHR, THE AIRSTRIKES ON THE DAMAN BUILDING COMPLEX, INCLUDING THE TAJOURA DETENTION CENTRE, 2 JULY 2019 (2020)

[Source: UNSMIL-OHCHR, “The Airstrikes on the Daman Building Complex, including the Tajoura Detention Centre, 2 July 2019”, 27 January 2020, available at https://unsmil.unmissions.org/sites/default/files/unsmil-ohchr_report_airstrikes_at_tajoura-27012020.pdf]

1. INTRODUCTION

1. Published jointly by the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), this report focuses on two airstrikes that targeted the Daman building complex in Tajoura, on 2 July 2019. It is based on information collected, verified and analyzed by UNSMIL.

2. Tajoura is a town in north western Libya, in the Tripoli district. The Daman building complex, which is located in a former industrial zone, comprises various facilities belonging to the Government of National Accord (GNA). The complex is also the headquarters of the local Daman Brigade, a pro-GNA armed group from Tajoura affiliated with the Ministry of Interior. At the time of the airstrikes, according to the Department of Combatting Illegal Migration (DCIM), the Tajoura Detention Centre was holding around 616 migrants and refugees, with the section of the hangar directly hit holding some 126 persons.

2. METHODOLOGY

[...]

3. BACKGROUND

5. Based on the site visits, interviews conducted and the evidence obtained, UNSMIL confirms that between

23:28 and 23:39 on 2 July 2019, a foreign aircraft conducted an attack on the Daman complex in Tajoura, which struck two buildings in the complex. The first explosion occurred in a vehicle repair workshop and maintenance facility approximately 105 meters eastwards of the detention centre. According to DCIM officials, the vehicle repair workshop and maintenance facility were overseen by the Daman Brigade and used to provide services to all GNA security agencies in Tajoura. DCIM officials stated that the workshop had no connection to the detention centre. The second explosion took place 10 minutes later and struck a section of the large hangar housing the detention centre holding migrants and refugees. According to witnesses interviewed by UNSMIL, both explosions were followed by the sound of a fighter jet. Witnesses reported that they heard the sound of a drone overhead after the second explosion.

6. DCIM reported that at least 53 migrants and refugees were killed in the attack, namely 47 men and six boys. Those killed were reportedly citizens of Algeria, Chad, Bangladesh, Morocco, Niger and Tunisia. DCIM also stated that 87 male migrants and refugees were injured. [...]

[...]

8. According to DCIM officials in Tajoura, all the casualties at the detention centre were caused by the airstrikes. Migrants and refugees interviewed by UNSMIL alleged that three fatalities occurred through gunfire.

4. INCIDENT

4.1. Airstrike on the vehicle repair workshop and maintenance facility

9. On 2 July 2019, the first airstrike hit the vehicle repair workshop and maintenance facility at 23:28. This was confirmed by DCIM, as well as video footage from a surveillance camera on site. The airstrike damaged the structure. According to DCIM officials, the same facility had been hit by an airstrike on 7 May 2019, resulting in the destruction of a vehicle. Interlocutors of the Daman Brigade stated that combat vehicles and ammunition had been moved out of the Daman complex in mid-April to avoid airstrikes.

4.2. Technical examination of the workshop explosion scene

10. Based on its investigation, UNSMIL assesses that the vehicle repair workshop and maintenance facility, located 105 meters to the east of the detention centre, were hit by an air-delivered bomb. [...] There were no signs of a secondary explosion.

11. [...] UNSMIL observed some rounds of 23 mm ammunition on the floor of the building. Interlocutors reported that this was old ammunition left at the start of the conflict. Imagery retrieved by UNSMIL confirms that a pickup vehicle, equipped with a twin machine gun or machine cannon, was probably inside the

workshop at the time of the explosion. Other destroyed military-type equipment was visible on site, which was likely destroyed earlier and, according to Daman Brigade interlocutors, also dated to the onset of the conflict.

4.3. Airstrike on the detention centre

12. The second airstrike struck the Tajoura hangar housing the migrants and refugees at 23:39 on 2 July 2019. This was confirmed by representatives of Tajoura DCIM as well as video footage from a surveillance camera on site. Three sections of the hangar were affected by the airstrike. The second section from the southern end of the building – the section for men and boys – sustained a direct hit and was completely destroyed, while the sections to its north and south sustained light damage.

13. According to migrants, refugees, and DCIM representatives interviewed by UNSMIL, 126 migrants and refugees were detained inside the section hit by the airstrike. Migrants and refugees indicated that they were not allowed to leave following the initial airstrike and that some who had done so were forced to return to the hangar that was later hit by the airstrike. Moreover, migrants and refugees stated they were locked inside the hangar during the attack and that some in another section managed to escape after opening the doors. DCIM officials confirmed to UNSMIL that the door of the section impacted by the airstrike was kept locked to prevent migrants and refugees from escaping following the first airstrike, stating they had not expected a second airstrike to take place.

14. [...] According to a respected international humanitarian organization that arrived at the Detention Centre one hour after the airstrike, there were “bodies everywhere, and body parts sticking out from under the rubble. Blood [was] all around”. Photos viewed online taken in the immediate aftermath of the airstrike depict extensive destruction and blood. [...]

15. [...] Following the second explosion, the footage shows migrants and refugees attempting to open from the outside a door in the remainder of the collapsed wall.

16. In addition to the migrants and refugees killed and injured in the incident, 96 migrants and refugees allegedly went missing after the incident, according to DCIM. Neither the Head of Tajoura DCIM nor migrants and refugees could confirm this number to UNSMIL or provide information on the whereabouts of the missing.

[...]

4.4. Technical examination of Detention Centre explosion scene

18. Based on its investigation, including examination of the munitions found at the site, UNSMIL assesses that the Tajoura detention centre was hit by an air-delivered bomb. [...] At the time of the UNSMIL visit on 3

July 2019, a Libyan forensic investigation, led by the Ministry of Interior, was being conducted at the site of the explosion. UNSMIL officially requested to be informed of the outcome of the investigation. At the time of finalization of this report, this information had yet to be received.

[...]

20. The entry points of the bombs at both buildings – approximately the centre of the structures - suggest that the ordinance used was guided. There is however, insufficient evidence to determine the type of guidance system used. Guided bombs of the type indicated in this incident have so far not been known to be in the possession of the Libyan armed forces, LNA or armed groups in Libya.

4.5. Alleged shootings at the detention centre

21. According to several witnesses interviewed, the Head of the detention centre entered the hangar between the first and the second airstrike and shot dead three male migrants and refugees who were trying to open the doors and escape from the building. Interviewees did not provide the names of the victims or any other details, noting their fear of reprisals by Tajoura DCIM personnel. Migrants and refugees also stated they had heard gunshots fired at migrants and refugees who tried to escape from the complex. The surveillance camera footage shows at least one DCIM guard handling what appears to be an assault rifle outside the hangar between the two attacks. The surveillance camera footage, however, does not confirm whether shots were fired in any direction or at migrants and refugees between the two airstrikes.

22. UNSMIL raised the allegations with the Director of Tajoura DCIM, who rejected them. While confirming that DCIM security personnel were equipped with guns, including at least three AK-47 assault rifles, he stated that no DCIM security personnel had used guns to attack or shoot any migrants and refugees at the detention centre. Other officials also denied these allegations, as did other credible independent sources.

5. DETENTION CONDITIONS AND TREATMENT IN DETENTION

23. Migrants and refugees interviewed by UNSMIL reported that prior to the airstrikes; they were routinely subjected to torture and other ill-treatment by personnel at the Tajoura detention 7 centre. They indicated having been beaten with various objects (such as water pipes, metal bars, rifle butts and sticks), forced into uncomfortable positions (such as squatting for prolonged periods), punched and kicked. UNSMIL monitors observed the serious consequences of the squalid conditions of detention of migrants and refugees on their physical and mental health, particularly as many had already suffered from traumatic experiences. [...]

24. Migrants and refugees also stated that a number of them were forced to work in the vehicle repair workshop, especially those with experience in vehicle maintenance. [...] In interviews conducted by UNSMIL in May 2019, two migrants and refugees had stated that at least four migrants and refugees at the Tajoura

detention centre were taken to the workshop and ordered to repair damaged cars, load, clean weapons, and ammunition after the outbreak of hostilities around Tripoli on 4 April 2019.

25. On 6 July 2019, migrants and refugees remaining at the Tajoura detention centre started a hunger strike, refusing daily food. They stated that the centre was not a safe location and complained about forced labour. Some migrants and refugees reported being forced to work inside the facility, including cleaning, cooking, offloading heavy items, and washing the vehicles of DCIM officials. They also reported that some of them were taken out of the detention facility to work in the port offloading military items.

[...]

6. REACTIONS TO THE ATTACKS BY LIBYAN AUTHORITIES AND THE INTERNATIONAL COMMUNITY

6.1. Libyan authorities

29. During a press conference on 3 July 2019, the LNA spokesperson, Mr. Ahmad Mismari, reported that the LNA air force had conducted air strikes in the Tripoli area on 2 July and had targeted the Daman Brigade site because the latter had received ammunition supplies. Mr. Mismari added that in the night between 2 to 3 July, the LNA air force had attacked a legitimate target in Tajoura following intelligence gathering on the ground. He stated that LNA was not responsible for the second explosion that hit the detention centre, which he termed as a crime carried out by terrorist groups. He expressed hope that an independent investigation would be conducted into the incident.

30. The statements of the LNA spokesperson were preceded by reports on pro-LNA social media that LNA fighter planes had carried out airstrikes against an ammunition depot of armed groups in Tajoura, blaming these groups for using migrants and refugees as human shields. Other posts on pro-LNA social media claimed that the Tajoura detention centre had been hit by “mortar fired from militias.”

31. On 3 July 2019, GNA issued a statement condemning the attack and accusing the LNA of having targeted the Tajoura detention centre. The statement described the attack as a war crime involving direct, purposeful and precise targeting. [...]

6.2. United Nations Security Council

32. [...] On 6 November, the ICC Prosecutor referred to the attack on Tajoura Detention Centre in her briefing to the UN Security Council.

6.3. United Nations Secretary-General

[...]

7. APPLICABLE LAW

34. A number of armed conflicts involving multiple parties exist in Libya. The incident examined in this report took place in the context of the most recent ongoing round of hostilities that begun with the LNA “march on Tripoli”. These recent hostilities mainly took place in the context of a non-international armed conflict opposing on one side GNA, its affiliated armed groups and supportive third States and LNA on the other side. In addition, a number of airstrikes appear to have been conducted by foreign aircraft in support of LNA against GNA and its affiliated armed groups. This raises the question of whether, in addition to the non-international armed conflict, a parallel situation of international armed conflict may also exist between third States supporting the LNA and the GNA.

7.1. International humanitarian law

35. [...] Libya is a party to the four Geneva Conventions of 1949 and to Additional Protocols I and II of 1977. It is also a party to a range of other international humanitarian law instruments concerning means and methods of warfare. [...]

[...]

7.2. International human rights law

[...]

40. Libya is a party to eight of the nine core United Nations human rights treaties, [...]. Accordingly, Libya is bound to respect, protect, promote and fulfil the human rights of all persons within its jurisdiction. This includes the right to afford an effective remedy to those whose rights have been violated (including the provision of reparations) and the responsibility of the State to investigate and bring to justice perpetrators of human rights violations. Libya is also bound by relevant rules of international human rights law, which form a part of customary international law.

7.3. International criminal law

41. International criminal law provides the means of enforcement at the international level for egregious violations of international human rights law and serious violations of international humanitarian law, which are recognized as attracting individual criminal liability. Libya is not party to the Rome Statute of the International Criminal Court. However, pursuant to the Rome Statute, the Security Council referred the situation of Libya to the Prosecutor of the Court in resolution 1970 (2011). The Court in consequence possesses jurisdiction over war crimes, crimes against humanity and genocide as defined in the Rome Statute committed in Libya. A

detailed listing of acts constituting war crimes under the Rome Statute is contained in Article 8 of the Statute. In the context of non-international armed conflict, these comprise serious violations of Common Article 3 of the Geneva Conventions and other serious violations of the laws and customs of international law applicable in non-international armed conflict. In the context of international armed conflict, these comprise grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict.

42. [...] Efforts by authorities undertaken since 2011 to remedy inadequacies of the legal framework remain incomplete and include [...]; failure to criminalize war crimes and crimes against humanity; [...]; and expansive or overbroad application of amnesties, immunities and limitations preventing the investigation and prosecution of crimes under international law, in particular crimes committed during and after the 2011 conflict and crimes committed by public officials in the performance of their duties.

8. FINDINGS

43. The Daman building complex includes installations and sites of the Ministries of Interior (including the local DCIM branch and its detention centre, which have been located at the complex for several years), Justice, and Social Affairs. The Daman complex also houses the headquarters of the Daman Brigade and contains other military objects directly contributing to the current hostilities, such as weapons systems, munitions and military vehicles. Personnel of the Daman Brigade, which controls the complex, are administratively part of the Ministry of Interior and carry service numbers and service ranks. At the same time, the Daman Brigade maintains its de facto command structure, making it a hybrid security actor. The Daman Brigade forms part of the fighting forces of GNA and actively participates in the current hostilities in Tripoli.

44. While it appears that the airstrikes of 2 July 2019 were conducted by aircraft belonging to a foreign State, it remains unclear whether these air assets were under the command of the LNA or were operated under the command of that foreign State in support of the LNA. In any event the party under whose command the aircraft was operating is bound by international humanitarian law. [...]

45. The second airstrike struck the Tajoura detention centre, causing the death of at least 53 migrants and refugees and injuring at least 87. UNSMIL is not able to verify the precise number of those killed and injured, due to the fact that bodies and body parts were strewn widely following the airstrike, and the authorities have not provided a list of those injured and killed. [...]

46. The Tajoura detention centre is a civilian object, albeit located in a complex which includes other objects that may have constituted military objectives at the time of the attack, including the headquarters of the Daman Brigade and a workshop and maintenance facility. The precise location of the detention centre within the Daman complex was well known, and UNSMIL had additionally provided its coordinates to the parties to

the internal armed conflict, including to the LNA Crisis Committee, on 5 May 2019. [...]

[...]

49. In addition, the guards prevented detainees from fleeing the building following the first airstrikes thereby preventing them to seek shelter. There are grounds to believe that migrants and refugees could have been saved, and their right to life protected, had they not been prevented from exiting following the first airstrike.

[...]

[...]

9. RECOMMENDATIONS

51. To the parties to the conflict, particularly the GNA and the LNA, as well as any other parties to the conflict and any relevant third States supporting either party to the conflict:

- Conduct independent, impartial and thorough investigations into the airstrikes on the Daman complex, in particular into the related alleged violations of international human rights and international humanitarian law, including violations of the right to life, with a view to ensuring swift prosecution of those responsible; and make the findings public. [...]

To the responsible Libyan authorities:

- Conduct an independent, impartial and thorough investigation into allegations that three migrants and refugees were shot dead by DCIM at the Tajoura detention centre. [...]

Discussion

I. Qualification of the conflict and applicable law

1. How would you classify the situation in Libya under IHL? If there exists one or more armed conflicts, who are the parties to it? What is the relevance of foreign involvement in the conflicts? Would the question of whether the LNA, the GNA or another party may be considered the government of Libya have a bearing on your determination?

2. (*Document C, para. [34]*) If the UNSMIL-OHCHR Report is correct in classifying the conflict between the GNA and the LNA as a non-international armed conflict (NIAC), does Additional Protocol II, to which Libya is a party, apply? (GC I-IV, Art. 3; P II, Art. 1)

3. (*Document C, para. [34]*)

- a. What does the UNSMIL-OHCHR Report mean when it also states that there are a number of states “supporting” the GNA? Why does this not affect their classification of the conflict between the GNA and the LNA as a NIAC?
- b. Could the applicable law be different if the LNA is supported by states? What is the “parallel classification theory” mentioned in the Report?
- c. If there were, indeed, a parallel international armed conflict (IAC) to the NIAC, how would we determine which body of law applied to the airstrikes? Would the applicable law depend on who actually carried them out? On who/what was targeted? Does this matter for the legality or otherwise of the airstrikes? (GC I-IV, Art. 2; ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, para. 573)

4. (*Document C*, paras [5], [21] – [22])

- a. Does IHL apply to attacks against the migrant detention centre? Even if their detention is not related to the armed conflict but aims at hindering them from migrating to Europe?
- b. Does IHL apply to the alleged shooting of the migrants by the detaining authorities? If so, IHL of IAC or IHL of NIAC?

II. Qualification of the persons

5. (*Document C*, para. [6])

- a. What is the status of refugees and migrants held in the Tajoura Detention Centre under IHL? Is the legal status of refugees different from that of other migrants? Does this status depend on the classification of the conflict and/or on something else? (GC IV, Arts. 4, 44; P I, Arts 50, 73; P II, Art 13)
- b. What would the status of the migrants and the refugees be if the conflict were classified as an IAC instead of a NIAC? Can we know for certain who would be a protected person and who would not with the information we have access to? Why? Why not?
- c. Does the determination of who was a protected person matter for the legality of the aerial attack? For that of the alleged shooting on migrants by the detaining authorities? (GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147; P I, Arts. 11 and 85; ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, paras 163-166)

6. (*Document C*, para. [43])

- a. What is the status of the Daman Brigade personnel? Does this depend on the classification of the conflict

or who they are fighting against? Is the notion of “belonging” applicable to a non-international armed conflict? (GC III, Art. 4; P I, Arts. 43, 44, 47(1); ICRC Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law)

b. What does UNSMIL mean when it calls the Daman Brigade a “hybrid security actor”? Are there any special IHL rules which address “security actors”?

7. (*Document B, para. [27]*) What is the status of UN civilian personnel? Are they to be regarded just like any other civilians? Would their status be different if instead of being civilian they were military?

8. (*Document B, para. [23]*) According to the ICC Prosecutor, medical personnel is being increasingly targeted. What is their status under IHL? Does this depend on whether they are civilian or military medical personnel? On the classification of the conflict? (GC I, Arts. 24, 25, 26; GC II, Art. 36; GC IV, Art. 20; CIHL, Rule 25)

III. Conduct of Hostilities: Airstrikes against civilian infrastructure in Libya

9. (*Document B, paras [21]-[27]*) The Report of the ICC Prosecutor references multiple incidents in which civilians were killed or civilian property was destroyed during the strikes. What are the determining factors in the assessment of whether such attacks do or do not violate IHL? (P I, Arts. 51(3), 52; CIHL, Rules 6-12)

10. (*Document B, para. [23]*) Is the targeting of medical facilities and medical units lawful under IHL? Are there circumstances justifying attacks against such facilities and units? Which conditions must be satisfied for this to be the case? (GC I, Arts. 19, 21, 22; GC IV, Arts. 18, 19; P I, Art. 8, 12, 13; CIHL, Rule 28)

11. (*Document B, para. [21]*) The Report by the ICC Prosecutor also refers to the bombing of civilian parts of an airport as “indiscriminate”. May civilian parts of an airport which has military parts be attacked? Be destroyed? Under what circumstances would such a destruction be unlawful under IHL? Do indiscriminate attacks amount to a war crime? In IACs? In NIACs? What about disproportionate attacks? (P I, Arts. 48; 51 (4) and (5) and 52 (1) - (2); P II 13 (1); CIHL, Rules 7, 8, 9, 10, 11 and 12))

12. (*Document B, paras [21]-[27]*) According to the ICC Prosecutor, an increasing number of schools, hospitals, detention centres are being hit during the strikes. If they were hit accidentally, does this constitute a violation of IHL? A war crime? (P I, Art. 57; CIHL, Rules 15-21)

IV. Conduct of Hostilities: Airstrikes on the Daman Building Complex

13. What IHL principles govern targeting? What is a legitimate target? How would you define the notion of military objective? And what about civilian objects? Do they apply equally in IACs and NIACs? (P I, Arts 48

and 52 (1)-(2); P II 13 (1); CIHL, Rules 7-10)

14. (*Document C*, paras [9]; [29]; [43]-[44])

a. (*Document C*, para. [43]) Do you think the Daman complex as a whole could be targeted? Under what conditions? Does the fact that the Daman complex contained some buildings which were unquestionably military objectives mean that the complex as a whole was a military objective? What does IHL say about the treating separate military objectives as one? (P I, Art. 51 (4)-(5); CIHL, Rule 10)

b. (*Document C*, para. [29]) What is the basis for the LNA's determination of the Daman complex are legitimate military targets? What do you think the intelligence they refer to would have had to establish in order for the Daman complex to be a legitimate military objective? (P I, Art. 52(2); CIHL, Rule 8)

c. What is UNSMIL's opinion on this? Does the UNSMIL-OHCHR Report accept the LNA's argument that Daman complex was a military objective? What criteria did they use to reach a decision?

d. (*Document C*, para. [9]; [29]) What is the significance of the statements made by the GNA and the LNA concerning the nature of the Daman complex? Can this influence the assessment of the complex as a military target *ex post facto*?

15. (*Document C*, paras [43]; [29]-[31]; [46])

a. Did UNSMIL consider the Tajoura Detention Centre to be a legitimate military target? What do they say about the lawfulness of its targeting?

b. (*Document C*, paras [29]-[30]) If what the LNA claims is true, namely that the second strike on the Daman complex was carried out by unspecified terrorist groups, would this also be a violation of IHL?

c. (*Document C*, para. [31]) Would the deliberate targeting of the Tajoura Detention centre be a war crime, as argued by the GNA? (Rome Statute of the ICC, Art. 8)

16. (*Document C*, paras [5]; [9]-[11]; [43]; [46])

a. (*Document C*, para. [5]) What did the DCIM say about the use of the vehicle repair shop? What did they say about its connection or lack thereof to the Tajura Detention Centre? Do you think the connection between the vehicle repair shop and the GNA is enough to render it a legitimate military target for the LNA? (P I, Art. 52 (2); CIHL, Rule 8)

b. (*Document C*, para. [9]) Does the fact that the personnel say that all ammunition and combat vehicles were moved out in mid-April to avoid the repair shop being targeted change your previous answer? Why?

Why not?

c. (Document C, paras [11]; [43]; [46]) What did UNSMIL think about the bombing of the vehicle repair shop? What did they consider to be the factors pointing towards it being a legitimate military objective? And what about those pointing in the opposite?

17. (Document C, paras [29]; [43]; [46]) Taking into account the explanations given by the LNA and the assessment made by UNSMIL-OHCHR, do you think that the airstrikes against the Daman complex and, specifically, the Tajoura Detention Centre, respected the proportionality principle? Should they be assessed individually or as a whole? (P I, Art. 57; CIHL, Rules 15-21)

18. (Document C, para. [29]) What does the reference made by the LNA to on-ground intelligence concerning the nature of the Daman complex as a military target say about their compliance with the IHL principle of precautions? Which precautions does IHL require from the attacking party? (P I, Art. 57, 58; CIHL, Rules 15-24)

19. (Document C, para. [46]) Why does UNSMIL stress the fact that the coordinates of the Tajoura Detention Centre were public? What is the role of this statement in the assessment of the attack?

20. (Document C, paras [9], [46])

a. What is the relevance of the statement by the Daman Brigade according to which all military equipment etc had been removed from the area in order to discourage the targeting of the area? Do you think this indicates that the Daman Brigade respected the IHL principle of passive precautions? (P I, Art. 58; CIHL, Rules 22-24)

b. (Document C, para. [46]) What other precautions could they have taken? Had the Daman Brigade been able to take more measures, under IHL should it have? (P I, Art. 58; CIHL, Rules 22-24)

c. Should the Tajoura Detention Centre have been placed elsewhere according to IHL? Since it was not a military objective, should it have been placed in the Daman complex together with buildings which arguably were? (P I, Art. 58; CIHL, Rules 22-24)

d. Should the refugees and migrants have been evacuated after the first attack? Should they have had the right to leave the centre after the first airstrike? (GC IV, Art. 38 (4); P II, Art. 5 (1) (b))

21. (Document C, para. [20]) Concerning, instead, the use weapons during the strikes, if UNSMIL is correct in presuming that guided munitions were used, do you think this shows compliance with IHL? What does IHL say about means and methods of warfare? (P I, Art. 57 (2) (a) (ii); CIHL Rule 17)

22. In the light of the information available to you, do you believe that the strike carried out by the LNA,

which hit the repair shop, was in accordance with IHL? Is your reply different for the strike which hit the Tajoura Detention Centre?

V. Use of lethal force under IHL and IHRL

23. (*Document C, paras [8]; [13]; [19]-[22]*)

a. If what the refugees and migrants allege is true, namely that the Head of the Tajoura Detention Centre shot 3 people dead between the first and second airstrike, was this a violation of IHL (if IHL was at all applicable to such conduct)? Would this depend on the classification of the conflict? What IHL prohibitions may have the DCIM violated if the conflict was an IAC? Had the detainees been escaping, would the DCIM agents have been authorised to employ lethal force under IHL? (GC I-IV, Art. 3; GC IV, Art. 147; P I, Art. 75; 85; P II, Art. 4)

b. Did the refusal of DCIM to allow detainees to leave the hangar between airstrikes amount to a violation of IHL? Do belligerent parties have an obligation to protect detainees from the effects of hostilities? Are these the same in both international and non-international armed conflicts? (GC IV, Arts 83; 85; 88, P II, Art. 5 (1) (b) – (2) (c); CIHL, Rule, 121)

24. (*Document C, paras [8]; [21]*)

a. Since witnesses claim that the people in the Tajoura Detention Centre were shot while they were trying to escape, would this impact the assessment under IHL in any way? Are there any specific rules under IHL concerning the treatment of detainees who attempt to escape? Does IHL regulate the use of force against detainees? (GC IV, Art. 120; CIHL, Rule 89)

b. Does international human rights law (IHRL) apply to the use of force in an armed conflict? If so, under what circumstances? In which cases does IHRL authorise the use of lethal force? Where do we find the rules on the use of force? Do you think that the alleged killing of these three people would be lawful under IHRL? (ICCPR, Art. 6; ECHR, Art. 2; ACHR, Art. 4; AfCHPR, Art. 4; **See also** ICRC Expert Meeting, “The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms”, Case Study: “Escape Attempt and Riots in Detention, p. 33; UN Basic Principles on the Use of Force and Firearms, Principle 9; UN Code of Conduct for Law Enforcement Officials)

c. When addressing the interplay between IHL and IHRL in situations such as these, reference is often made to the so-called “conduct of hostilities” and “law enforcement” paradigms. How would you define these? Was force employed against escaping detainees to be examined in light of the law enforcement or conduct of hostilities paradigm? (**See also** ICRC Expert Meeting, “The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms”)

d. Based on the witness statements, and on the fact that we know the detainees to be migrants and refugees, rather than people detained for imperative security reasons linked to the armed conflict, do you think IHL or IHRL should be applied when assessing these allegations? Do you think UNSMIL would agree?

VI. Conditions of Detention: Treatment of Migrants and Refugees

25. Was it lawful to detain the people held in the Tajoura detention centre? Under IHL (if applicable)? Under IHRL? Under international refugee law?

26. (*Document C, para. [23]*)

a. If the allegations made by the people in the Tajoura detention centre concerning torture and ill-treatment proved to be true, what international law obligations would this violate? Would these obligations be the same under IHL and IHRL? (GC I-IV, Art. 3; CIHL, Rules 90, 91; see also *ICTY, Furundžija Trial Chamber Judgment*, 51-65)

b. Are the rules prohibiting torture and ill-treatment the same in international and non-international armed conflicts? Would their breach be regarded in the same way? (GC IV, Art. 147; P I, Art. 75, 85)

27. (*Document C, paras [24]-[25]*)

a. (*Document C, para. [24]*) Taking into account the allegations made by the migrants and refugees, do you think that forcing them to work violated IHL (if at all applicable)? If they were forced to work in the vehicle repair shop? Would the answer to this question depend on what kind of tasks the people were being made to do? Specifically, do you think there is any difference between repairing cars or loading and cleaning weapons and ammunition? (GC III, Arts 49, 50, 51, 52, 53; CIHL, Rule 95)

b. (*Document C, para. [25]*) Do you think that the “cleaning, cooking, offloading heavy items, and washing the vehicles of DCIM officials” referred to in para. 25 would amount to forced labour under IHL? Why? Why not?

c. (*Document C, para. [25]*) And what about the offloading of military items in the port? Could the migrants and refugees detained in the Tajoura Detention Centre be made to do this kind of labour?

28. (*Document C, para. [16]*) Was the DCIM under any IHL obligation concerning the 96 people who allegedly went missing following the airstrike? Who would these obligations be owed to? Just the people who vanished or also towards their families? What is the position of IHL concerning the so-called “missing”? What should the DCIM have done after these people disappeared? (GC IV, Arts. 26; P I, Art. 33; CIHL, Rule 117)

VII. Obligation to Investigate, effective remedy and international criminal law

29. (*Document C, para. [18]; [51]*)

a. Do you agree with the Recommendation given by UNSMIL, namely, that all parties must conduct an independent and transparent investigation into the strikes against the Daman building complex? Is this merely a “recommendation” or are the parties under an international obligation to do so? Does IHL oblige belligerent parties to conduct an investigation following an attack? What is your answer under international human rights law? If your answer differs, which prevails? (GC IV, Art. 147; P I, Art. 85)

b. Do you agree with the Recommendation given by UNSMIL, namely, that all parties must conduct an independent and transparent investigation into the allegations concerning the killings of the three detainees? Is this merely a “recommendation” or are the parties under an international obligation to do so? If so, are the obligations to investigate the same under IHL and under IHRL? Does IHL give any information on the requirements the investigation has to meet? May IHRL be used to specify these missing requirements under IHL? (GC I, Arts 49 and 50; GC II, Arts 50 and 51; GC III, Arts 121, 129 and 130; GC IV, Arts 131, 146 and 147; P I, Art. 87)

30. (*Document C, para. [40]*) Is Libya under a duty to provide an effective remedy to the victims of the alleged violations? Does this duty stem from IHL or IHRL?

31. (*Document C, para. [42]*) Is Libya breaching its international obligations by failing to criminalise war crimes? And by failing to investigate their alleged perpetration? (GC I-IV, Art. 1; GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147; CIHL Rule 158)