Uphold the Norms that Safeguard Humanity

Analytical Paper on WHS Self-Reporting on Core Responsibility 2 of the Agenda for Humanity

Executive Summary:

This paper highlights the achievements, challenges, measures of progress, and good practice based on an analysis of self-reporting on commitments pledged at the World Humanitarian Summit (WHS). It includes recommendations, presented by the author, to further advance Core Responsibility 2 of the Agenda for Humanity - Upholding the norms that safeguard humanity.

Achievements highlighted in the self-reports largely focused on advocacy, guidance or training across all five transformations of Core Responsibility 2. Other activities included field support for monitoring and reporting of violations; efforts to initiate and adopt Security Council or General Assembly resolutions; promotion of accession and implementation of core international instruments; and, support to intergovernmental processes, initiatives or mechanisms, including a forum of States on international humanitarian law. Barriers to progress included the need for States to tackle impunity and strengthen compliance, underpinned by strengthened State political will; lack of human and financial resources; insecurity/conflict; and lack of data or common approaches to monitoring and reporting. Examples of good practice highlight support for a forum of States on international humanitarian law and activities to address the humanitarian impact of the use of explosive weapons in populated areas and strengthen child rights.

Stakeholders did not on the whole emphasize the gap between legal rules and practice in their self-reports. While some stakeholders highlighted initiatives to support accountability, action to gain significant momentum to strengthen compliance was remarkably absent from reports, despite last year’s urgent call. Understanding the factors that are needed to improve practice is pivotal to ensure effective implementation of Core Responsibility 2. To this end, recommendations include: more timely action by State parties to violations in international law to support preventive action; fostering a deeper dialogue between military planners/commanders and frontline impartial humanitarian agencies at country level to reduce and prevent the potential negative humanitarian consequences of military decisions; an International Law Commission study on the arbitrary withholding of consent to humanitarian relief operations; investment in frontline monitoring and reporting of violations; and adequately resourcing of accountability mechanisms, including the International Criminal Court (ICC).

1 This paper was authored by Jane Backhurst (Christian Aid) with data analysis and drafting support provided by OCHA. The views expressed in this paper are those of the author and do not necessarily reflect the views of the United Nations Secretariat.
Core Responsibility 2 – Uphold the norms that safeguard humanity

Background

The Agenda for Humanity sets the post-WHS framework for collective action, change and mutual accountability through five core responsibilities. Core Responsibility 2 focuses on upholding the norms that safeguard humanity. The five transformations of Core Responsibility 2 frame the responsibilities of States and armed groups under the law of armed conflict or international humanitarian law, and the duties of a broader group of actors under international human rights and refugee laws so that the ultimate aims of the Summit are reached: aid gets to those who need it most, safely, and civilians are better protected. As situations of armed conflict have driven an 80 percent increase in the cost of humanitarian need in five years, from USD 9 billion in 2012 to a projected USD 22.1 billion in 2017, and fundamental rules of international humanitarian law are flouted, respect for international law has become increasingly critical. Exposing the “utter lack of respect for the fundamental rules of international humanitarian law”, the then United Nations Secretary-General Ban Ki-moon called for a reaffirmation of humanity at the WHS, appealing for the protection of civilians to be at the centre of decision-making. In this respect, he appealed that “ensuring the centrality of protection and preserving the humanity and dignity of affected people in all circumstances must drive our individual and collective action”.

To date, stakeholders made 900 commitments towards Core Responsibility 2. For this first reporting period of June-December 2016, 66 stakeholders provided 176 report records (representing about 18 percent of overall records) that referenced progress towards one or more of the five transformations of Core Responsibility 2; Member States (42 percent) and non governmental organizations (NGOs) or faith-based organizations (33 percent) contributed a significant proportion of reporting. A comprehensive and balanced assessment of progress in meeting commitments has been tempered by a relatively limited reporting period, the broad nature of many commitments (some of which would require indicators against which progress can be measured in a consistent manner), and a potential bias due to the majority of reports emanating from stakeholders based in North America and Europe.

This paper highlights the achievements, challenges, measures of progress, and good practice based on an analysis of self-reports. It also includes recommendations, presented by the author, to further advance Core Responsibility 2.

Most significant progress made across reporting on Core Responsibility 2 – Uphold the norms that safeguard humanity

Achievements highlighted in the self-reports have been grouped by the five transformations of Core Responsibility 2.

2A - Respect and protect civilians and civilian objects in the conduct of hostilities

Reporting records for transformation 2A largely focused on three areas of progress: demining; advocacy; and guidance or training. Thirteen stakeholders reported funding or implementing demining or mine risk education programmes. As an example, Norway supported global mine action in 20 countries in 2016, including launching and contributing to the Global Demining Initiative.


Please note that all reporting inputs related to “eradicate sexual and gender-based violence and treat survivors with dignity” (a subsection of transformation 2D) were extracted from the dataset used as the basis of this paper. For an analysis of self-reporting on gender-based violence, please see Addressing Gender-based Violence in Emergencies, drafted by Emily Krasnor (UNFPA).
Initiative for Colombia, along with other donors. The Danish Refugee Council reported on its efforts to clear mines and explosive remnants of war.

Progress on advocacy focused on building an evidence base or launching campaigns on issues such as the use of explosive weapons in populated areas and efforts towards a political declaration on this issue; access to hard-to-reach areas; promoting the Safe Schools Declaration; and both thematic and situation-specific protection of civilians, including children and particularly vulnerable groups, medical and relief personnel, and journalists. In its report, Luxembourg commended civil society and NGOs for broadening awareness of the concept of the “use of explosive weapons in populated areas” to a wider audience. InterAction pursued recommendations from its policy brief Civilians under Fire: Restore Respect for International Humanitarian Law.

Training and guidance activities focused on a range of issues related to the prevention of increased risks to civilians through dissemination of and training on respect for international humanitarian law, and using guidance such as the Lucens Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict and the Kigali Principles on the Protection of Civilians. Self-reports also included remedial action such as legal assistance for victims of violations. Particularly noteworthy was a three-day meeting organized by Geneva Call in November 2016 of 21 armed groups and humanitarian agencies to discuss recruitment, release and reintegration of children as well as the protection of schools from military use and attack. The meeting identified practical measures armed groups could take to ensure compliance with international standards and resulted in new pledges by two armed groups – Sudan People’s Liberation Movement–North (SPLM–N) and Alliance of Patriots for a Free and Sovereign Congo (APCLS).

Other activities highlighted under transformation 2A focused on field support for monitoring and reporting of violations; efforts to initiate and adopt Security Council resolutions; and, support to intergovernmental processes, like France’s proposal to improve the effectiveness of peacekeepers in protecting civil populations within the framework of peacekeeping reform. The UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) reported that it adopted a child protection framework in 2016 and is working to ensure that functioning referral systems for child protection cases exist.

2B - Ensure full access to and the protection of humanitarian and medical missions

Many stakeholders’ self-reports tagged to transformation 2B reconfirmed adherence to or outlined efforts to promote the humanitarian principles that undergird humanitarian action. Again, activities of most stakeholders focused on advocacy, training and/or guidance initiatives. These focused on the safety and security of humanitarian personnel, principled humanitarian action, protection of humanitarian and medical missions, and the centrality of protection. For example, Action Against Hunger reported that it partnered with the Advanced Training Program on Humanitarian Action (ATHA) to create an interagency working group to address the need for greater protection of aid workers. The Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP) reported the development and dissemination of a pilot of the first-ever guide on evaluating humanitarian protection. Switzerland reported its financial support to the Centre of Competence on Humanitarian Negotiation in Geneva, which came into operation in October 2016 and aims to facilitate the analysis and exchange of good practice in humanitarian negotiations.

Eleven Member States reported their active promotion of the flagship resolution on the protection of medical personnel and facilities in armed conflict, Security Council resolution 2286 (2016), or
of General Assembly resolution 71/129 (2016) on the safety and security of humanitarian personnel and protection of UN personnel. Canada reported that it co-leads with Switzerland an informal States group on Security Council resolution 2286.

Ukraine reported on measures it has taken to establish clear, simple and accelerated procedures for rapid and unimpeded delivery of humanitarian aid, including to non-government controlled territories in eastern Ukraine.

**2C - Speak out on violations**

Although transformation 2C had the least number of report records (25) compared to other transformations of Core Responsibility 2, there are several encouraging initiatives: the United Kingdom and Austria, among others, reported co-sponsoring General Assembly resolution 71/248 (2016) which established the international, impartial and independent mechanism (IIIM) to assist in the investigation and prosecution of those responsible for the most serious crimes under international law committed in Syria since March 2011. Finland noted that it contributed EUR 1 million to the establishment of the IIIM. Several States also raised the importance of using the good offices of the International Humanitarian Fact-Finding Commission, and reported nominating members to the Commission or carrying out advocacy encouraging States to recognize its competence.

Monitoring, investigating or researching violations were core actions included in self-reports on speaking out. The Office of the United Nations High Commissioner for Human Rights (OHCHR) reported progress on the development of a common UN information management system (CIMS) on violations of human rights and international humanitarian law, with the endorsement of the system by the UN Deputy Secretary-General in July 2016; however, the lack of engagement of various entities in relevant country-level exercises was noted as an impediment. CARE International reported that its paper, The Dangers of Silence, aimed to foster discussion among peers and partners of the relative costs of speaking out and remaining silent in the face of attacks on humanitarian and civilian targets. ACT Alliance reported on a new global mechanism to systematically respond to urgent calls for greater and safer humanitarian access from its partners and their communities.

**2D - Take concrete steps to improve compliance and accountability**

Self-reports under transformation 2D focused on political, technical and financial cooperation with international criminal tribunals. Member States in particular expressed support for the Rome Statute, and detailed assistance provided to the ICC to enhance the efficiency and effectiveness of judicial proceedings. The European Union reported that it made a public statement voicing its concerns regarding the possible withdrawal of Burundi, Gambia, and South Africa from the ICC (The governments of the Gambia and South Africa have since revoked withdrawal from the Rome Statute). Estonia and Japan reported donating to the ICC Trust Fund for Victims.

Some stakeholders continued to express support for the Accountability, Coherence and Transparency (ACT) Group initiative to develop and promote, inter alia, the Code of Conduct regarding Security Council action against genocide, crimes against humanity and war crimes, as well as the French-Mexican initiative on collective and voluntary agreement among the Permanent Members to refrain from the use of veto in the case of mass atrocities. Luxembourg reported that it took part in the development of a template letter for use by members of the ACT group to request Security Council members to support a draft resolution aimed at preventing or ending atrocities.
The United Kingdom reported that it continues not to vote against credible draft resolutions on timely and decisive action to end genocide, crimes against humanity or war crimes.

Several stakeholders also reported carrying out training or issuing guidance in support of improving compliance with, and accountability for violations of, international humanitarian law, among other activities.

2E - Uphold the rules: a global campaign to affirm the norms that safeguard humanity

Stakeholders focused action on the commitment to a global effort to demand greater compliance with international law instruments by convening regular meetings of States to discuss progress and challenges in implementation with the aim to strengthen compliance and mutual accountability. Fifteen States, including Greece, Belgium and Spain reported their support for resolution 2 on strengthening compliance with international law of the 32nd International Conference of the Red Cross and Red Crescent, including taking part in the informal and formal meetings in 2016 of this intergovernmental process. Slovenia’s national committee on international humanitarian law tasked the relevant ministries to prepare action plans to follow-up on the resolutions of this conference.

Member States also committed to promote accession and implementation of core international instruments such as the Anti-Personnel Mine Ban Convention (APMBC) or the Arms Trade Treaty (ATT), using advocacy, training and guidance as aids. New Zealand sponsored a Pacific capacity-building workshop in support of ATT implementation in Samoa in September 2016. Belgium supported ATT outreach by providing expertise for legal workshops. Canada publicly advocated for universal adoption of the APMBC at the General Assembly and other fora, and agreed to join the APMBC Committee on Enhancement of Cooperation and Assistance to help State parties achieve the goal of a mine free world.

Oxfam International reported that it campaigns to improve international humanitarian law compliance through country-specific work such as its report on Yemen, Picking up the Pieces.

The main barriers/ challenges to progress

About 50 percent of self-reports under Core Responsibility 2 referenced challenges or barriers to progress. The four main challenges cited across all five transformation are listed below.

1. Compliance and tackling impunity: Stakeholders reported key barriers to progress as the lack of compliance by parties to the conflict to international humanitarian law; lack of accountability; and the limited efforts to pursue respect for conventions which aim to minimise suffering, such as the APMBC, ATT, and the Convention on Cluster Munitions. Some noted that this was due to a continued lack of knowledge or understanding of international humanitarian law. This in turn may undermine negotiations for humanitarian access. Others noted that improving compliance and accountability is hampered by the time required to ratify treaties or change culture. Many pointed to a lack of political will (exemplified through continued vetoes of Security Council resolutions in the face of grave violations) as an indication that the international system is too politicized to hold parties accountable. Other examples cited by stakeholders as revealing a lack of political will will include limited State ratification of or respect for treaties, cooperation with the ICC, and the use of domestic courts and other mechanisms to pursue accountability. NGOs noted that the general lack of support by States for Core Responsibility 2 makes it difficult for them to gather wide support for the issue or to speak out.
2. **Financial and human resources:** Stakeholders reported that a lack of resources hindered the implementation of some treaties, the full functioning of tribunals or the provision of assistance, among other things. The lack of direct funding to local and national actors undertaking protection work was cited as undermining the ability of these actors to document violations and strengthen resilience to risks related to them. Capacity constraints, including the need for highly skilled or technical staff for certain projects, limited direct or sustained field engagement and research.

3. **Insecurity / conflict:** Terrorism, violent extremism, organized crime, intra-state conflicts and other security issues were cited by stakeholders as barriers to humanitarian protection and assistance, resulting in the temporary withdrawal of staff, halting of programmes and/or constant (re) negotiation of access. Direct threats to staff and deliberate targeting of medical missions by State and armed opposition groups were also highlighted as challenges in a number of reports.

4. **Lack of data and/or common approaches to monitoring and reporting:** Stakeholders expressed concern with the lack of a commonly agreed framework or system to monitor and measure progress. They cited that data collection was difficult to undertake as researchers had to investigate in insecure environments; specialist expertise was usually needed; and the work was labour-intensive. Most noted that more research and better information management tools were required to capture good practice/lessons learned and to collect data on which to base reports and advocacy campaigns.

**Measuring progress**

Stakeholders reported that they used existing internal systems or frameworks for monitoring, reporting and evaluation. Some noted progress was also assessed by reporting to or using reports prepared for the Security Council, General Assembly, UN treaty bodies, and the International Conference of the Red Cross and Red Crescent, among others. A number of stakeholders noted that regular internal discussions, meetings with counterparts (e.g. Inter-Agency Standing Committee, Security Council and other working groups), field missions, and research or analyses by academia or think tanks were also useful channels for assessing progress. In a handful of cases, stakeholders reported on WHS-specific processes, including the establishment of indicators and focal point/working group systems.

**Gaps between the actions of stakeholders and those that are further needed to implement Core Responsibility 2**

This section presents the author’s assessment of gaps between the actions of stakeholders included in self-reports and those that are further needed to advance Core Responsibility 2.

In their self-reports, stakeholders on the whole did not emphasise the gap between legal rules and practice, but focused on progress in awareness-raising about the relevance and importance of treaties, including the APMBC and ATT that support the protection of civilians, and the dissemination of and training on international humanitarian law. While some stakeholders highlighted initiatives to support accountability, action to gain significant momentum to strengthen compliance was remarkably absent from reports despite last year’s urgent call. No stakeholder returned to the “watchdog” proposal to identify early signs of violations in international law. While
stakeholders reported against the commitment for a global campaign to promote the norms that safeguard humanity, no stakeholder cited progress towards a specific campaign per se.

The immobility of or a reticence for swift action by the Security Council seems to prevail over initiatives to address Security Council stalemates or bias through the ACT Group initiative supported by 27 States and the Code of Conduct which the ACT Group promotes and which is supported by two Permanent Members (United Kingdom, France). This was reflected in progress in relation to responses to Syria, Iraq and South Sudan. The Security Council required two years to arrive at an agreed resolution for unimpeded humanitarian access in Syria (August 2014), and nearly three years for a resolution on a political solution to the conflict (December 2015). However, since the WHS there have been five Security Council resolutions, renewing the mandate for cross-border access, and renewing and extending the mandate for the Organisation for the Prohibition of Chemical Weapons – UN Joint Investigative Mechanism. There have been eight attempts at referring the situation in Syria to the ICC. To gain some momentum towards compliance in Syria, in December 2016, the General Assembly passed a resolution establishing the IIIM. Regarding other critical situations, the Security Council adopted resolution 2299 (2016) which inter alia called attention to the protection of civilians in Iraq, and there were no resolutions on the situation of the protection of civilians in Yemen. Two Security Council resolutions were adopted to extend the mandate of the UN Mission in South Sudan and reauthorize the Regional Protection Force (respectively, resolutions 2326 (2016) and 2327 (2016). The absence of certain Security Council members from the express pursuit of Core Responsibility 2 is of note due to their status as Permanent Members of the Security Council.

This paper also assesses the gap by comparing the challenges highlighted in Core Responsibility 2 of the Agenda for Humanity, and particularly the widening gap between what is legally acceptable and practice, with those highlighted in the 2017 UN Security-General's report on the protection of civilians. One year after the WHS, the 2017 report paints a bleak picture of progress: targeted attacks on civilians, medical and relief workers, and civilian infrastructure, all immune from direct attack; incidental loss and damage cited as a justification for massive civilian losses, while the attacks blatantly had not sufficiently distinguished between civilian and military actors, and therefore could be construed to have violated the principle of discrimination during attack; the use of chemical weapons; the denial of consent to humanitarian relief leading to starvation, or chronic and severe impediments to humanitarian relief as the basis of claims that consent had been arbitrarily denied; and action that flies in the fact of the rule of proportionality.

It is crucial to identify the factors that underpin this downward spiral in practice. Understanding the factors surrounding the alleged violations is critical: does the alleged violation amount to a refusal to respect the law and an intention to flout the law? Does it result from a lack of knowledge of the law and/or how to apply it? Is it the product of a low rate of adoption of a treaty? Is it the consequence of a potential culture of impunity due to what may be perceived as slow or unavailable enforcement mechanisms, or a bias within the Security Council? Understanding and taking appropriate action to address these factors is pivotal to ensure effective implementation of Core Responsibility 2 and effective humanitarian protection and assistance.

**Highlights of good practice**

- Self-reports strongly indicate that there is increasing support for the inclusive, State-driven intergovernmental process towards a forum of States on international humanitarian law.
• The UN Special Representative of the Secretary-General for Children and Armed Conflict and the Security Council Working Group continued practical action to strengthen respect for the Optional Protocol to the Convention on the Rights of the Child including through *inter alia* dialogue, dissemination, and listing those responsible for grave violations of children’s rights in situations of armed conflict. Judicious and systematic collaboration with the government of Colombia led to the timely and careful demobilisation of children formerly involved with the military, and pathways to rehabilitation to support the best interests of the child.

• To increase the connectivity between policy development and frontline response, InterAction continues to host visiting field staff, such as two Syrian American Medical Society physicians who briefed on the crisis in Aleppo and attacks on hospitals. InterAction’s Protection Working Group supported the rollout of the IASC Protection Policy, including conducting missions to three contexts.

• Austria led a process to develop a political declaration on the humanitarian impact of the use of explosive weapons in populated areas. In addition, based on an initiative of Austria, 29 Member States committed to promote the implementation of the UN Plan of Action to strengthen cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO) on the safety of journalists in November 2016. At the 33rd session of the Human Rights Council Austria initiated a resolution on the safety of journalists.

**Recommendations**

The increasing State support for the intergovernmental process towards a forum of States on international humanitarian law will help to facilitate understanding, knowledge and compliance. Alone it is insufficient to improve respect for international humanitarian law. Additionally, other mechanisms must support the implementation of the spirit and letter of the range of refugee law, international human rights law and law of armed conflict rules that protect civilians.

Greater efforts are needed to reduce and halt the targeting of civilians and civilian property for which there is no legitimate military objective under international humanitarian law; to distinguish between civilian and military objects; to ensure that military actors are accountable for demonstrably greater efforts to minimize civilian injuries, deaths and damage to civilian property in both non-international and international armed conflicts; and to fulfil the obligation of all parties to armed conflicts to facilitate the delivery of impartial humanitarian relief to populations under their effective control, where the basic needs of women, children and men are not otherwise being met.

Recommended action to address the above-mentioned issues includes:

**Build understanding**

i. Foster a deeper dialogue between military planners and commanders and frontline local and national impartial humanitarian agencies at country level to reduce and prevent the potential negative humanitarian consequences of military decisions. This could contribute

“If we are genuinely interested in protecting civilians and workers to ensure respect for IHL, some changes with bold resolve become imperative.”

Humanitarian Aid International
toward the inclusive, State-driven intergovernmental process for a forum of States on international humanitarian law and engage members of the International Law Commission and the International Humanitarian Fact-Finding Commission. Discussions could include practical protection concerns such as targeting, proportionality, precautions, good practice reported by the Monitoring and Reporting Mechanisms (MRM) on grave violations of children’s rights in situations of armed conflict, the use of explosive weapons in populated areas, the practical measures to implement Security Council resolution 2286 (2016) and dissemination of the Lucens Guidelines.

ii. Request the International Law Commission, in advance of its 70th anniversary, to prepare a study on the arbitrary withholding of consent to humanitarian relief operations building on the work of legal scholars for the Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict.

Strengthen implementation

iii. Invest in the capacity of local, national and international civil society actors, including legal aid groups, to gather information on the protection of civilians, and monitor and report on violations in international law. Investment could pursue relevant practice exemplified by the MRM and support the provision of independent assessment of progress to implement Security Council resolutions that promote the protection of civilians and humanitarian access.

iv. Step up implementation of the IASC Protection Policy across all humanitarian agencies and Humanitarian Country Teams (HCT), with active engagement of frontline responders. Ensure timely and robust action by HCTs to address pivotal risks and threats, and the timely development of a whole of system protection strategy for specific contexts. Ensure greater investment in preventive and remedial action as a practical way to support the centrality of protection.

Enhance respect and State practice

v. Reinforce the ICC and other accountability mechanisms. This includes the provision of adequate resources to the ICC and strengthening the role of the ICC Prosecutor to initiate an investigation by lowering the requisite threshold. It is crucial to strengthen universal jurisdiction and domestic prosecution for international crimes alongside this.

vi. Timely implementation of the commitment of States Parties to respect and ensure respect for the law of armed conflict. Establish a regular forum for informal briefings from frontline responders building on the Arria-Formula Meetings to identify and discuss early signs of escalating violations of international law. Expedite the review of the Security Council with specific targets in the coming year to ensure more timely action on early warning from frontline humanitarian responders.
vii. Strengthen respect for rules regarding the means and methods of warfare. Cease military supplies and diplomatic support to any party that does not comply with the fundamental international humanitarian law principles of distinction, proportionality and precaution. State parties to the Geneva Convention to accept the International Committee of the Red Cross (ICRC)’s assessment that the rule of proportionality is customary international humanitarian law in all armed conflicts. Ratify and accede to the ATT, the Convention on Cluster Munitions, and ensure that national legislation implements international obligations.

viii. Promote and strengthen principled humanitarian action. Ensure that humanitarian action is not implicitly or otherwise linked to any military action whether or not determined by the Security Council under Chapter VII of the UN Charter. Recommendations made by States must be determined by the humanitarian needs of communities at risk, not the security interests of donors. Humanitarian action must not be a substitute for expedited settlement of disputes under Chapter VI of the UN Charter.

About this paper
All stakeholders who made commitments at the World Humanitarian Summit (WHS) in support of advancing the Agenda for Humanity were invited to self-report on their progress in 2016 through the Platform for Action, Commitments and Transformation (PACT) (agendaforhumanity.org). The information provided through the self-reporting is publicly available and forms the basis, along with other relevant analysis, of the annual synthesis report. The annual synthesis report will be prepared by OCHA and will highlight trends in progress, achievements and gaps that need more attention as stakeholders collectively work toward advancing the 24 transformations in the Agenda for Humanity. In keeping with the multi-stakeholder spirit of the WHS, OCHA invited partners to prepare short analytical papers that analyze and assess self-reporting in the PACT, or provide an update on progress on initiatives launched at the WHS. The views expressed in this paper are those of the authors and do not necessarily reflect the views of the United Nations Secretariat.

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