

# MONITORING INTERNATIONAL HUMANITARIAN LAW IN IRAQ

*A project of the International Humanitarian Law Research Initiative*

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## Conduct of Military Operations in Urban Areas

May 2004

*This policy brief reviews the rules of International Humanitarian Law (IHL) applicable to the conduct of hostilities in urban environments, and identifies key legal provisions designed to enhance the protection of civilians in these areas.*

Urban warfare constitutes one of the most serious threats to the security and integrity of civilians in times of war. It represents, consequently, one of the most challenging areas for IHL in practice.

Urban settings are inherently civilian in nature. They are planned and built to host civilian communities, assets and activities and are rarely designed to sustain attacks from invading parties. Civilian populations are, therefore, highly vulnerable to the effects of hostilities conducted in urban areas, as they may find themselves involuntarily at the center of the battlefield. Furthermore, the parties to the conflict often use the urban and civilian character of the environment to gain tactical advantages against their opponents by mixing with the civilian population, finding shelter within civilian buildings and using civilian infrastructure for their logistical support. These difficulties are particularly prominent in occupied territories where armed militants tend to select urban settings to stage their attacks against occupation forces.

There is no rule in IHL prohibiting explicitly the conduct of hostilities in urban settings. Rather, it is expected that parties will engage each other in situations where they are the least exposed to attacks. Implementing IHL, in these circumstances, implies specific challenges in terms of dissemination, training, and planning of operations. Poorly planned operations in urban areas increase considerably the exposure of civilians and combatants alike to lethal threats and can turn otherwise legitimate military operations into humanitarian tragedies. The methodological implementation of the relevant IHL obligations in urban areas promotes the protection of civilians in these settings.

### **Basic IHL Rules Governing the Conduct of Hostilities: The Principle of Distinction**

One of the key principles of international humanitarian law is the requirement to distinguish between civilians and combatants, i.e. that the use of armed force may only aim to weaken or neutralize the enemy's military capability. Hence, civilians may not be attacked.

Urban environments complicate greatly efforts to apply this principle — buildings, streets, bridges, and civilians present numerous obstacles to the targeting of military assets. However, the fact that military operations are being conducted in urban areas does not relieve armed forces or armed resistance from respecting the rules of IHL. On the contrary, all sides are expected to apply the same or higher level of diligence with respect to the rules of IHL that they would in a non-urban setting, regardless of whether other parties to the conflict respect the rules of IHL. In particular, the law requires additional measures to ensure

the protection of the civilians most exposed to the hostilities through the proper use of targeting tactics and weapons technology.

According to the basic IHL principle of distinction, civilians are generally immune from attack. [Art. 51](#) of Additional Protocol I, which has gained a customary status in international law, states that civilians “shall enjoy general protection against dangers arising from military operations.”

The mixture of military targets and civilian assets in an urban setting may prevent the conduct of major military operations in urban areas if such operations are likely to cause disproportionate damages to the civilian population and infrastructure. Article 51 provides, in particular, that the mere presence of armed combatants in a city does not imply that the whole city becomes a military target. The grouping of military targets into a single military objective is therefore explicitly prohibited in IHL.

Civilians are defined broadly as persons “who are not members of the armed forces.”<sup>1</sup> The protection that IHL grants to individual civilians is subject to one condition, namely that they do not “take a direct part in hostilities.”<sup>2</sup> The direct participation in hostilities, as defined by the International Committee of the Red Cross (ICRC), refers to “acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces.” This definition implies that any other acts, e.g. providing food or water to armed militants, that fall short of causing harm to the enemy’s armed forces, do not amount to direct participation in hostilities. A civilian who partakes in direct hostilities becomes a legitimate target of attack for as long as he or she participates in the hostilities. (See the briefing note on [Direct Participation of Civilians in Hostilities Under International Humanitarian Law](#) on IHLRI [thematic pages](#).)

Under the principle of distinction, civilian objects (including infrastructure, buildings, equipment, supplies, and so on) should also be spared from attacks. [Art. 52](#) of Additional Protocol I defines civilian objects as “all objects which are not military objectives”. Under Article 52, military objectives are limited to “those objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”<sup>3</sup> Therefore, legitimate military objectives can include such objects as bridges, roads and civilian infrastructure used by the military, assuming that the criteria of Article 52 are met.

### *The Principle of Proportionality*

The other basic IHL principle concerning the conduct of hostilities is the principle of proportionality, which holds that force should be sufficient to destroy a given military objective without resulting in excessive civilian casualties and damages. For instance, [Art. 51](#) of Additional Protocol I prohibits attacks “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” It implies that even if a given target fulfils the requirements of the principle of distinction, its destruction may still be illegal if it may be expected to cause excessive damages to individuals and assets protected by the law.

[Art. 57](#) of Additional Protocol I offers further guidance about the proportionate use of force, in the context of the precautions that an armed force should take before an attack. Under Article 57, those who plan or decide upon an attack shall:

- do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives;
- take all feasible precautions in the choice of means and methods of attack in order to avoid, or minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects; and
- refrain from deciding to launch any attack on a target which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.<sup>4</sup>

Military commanders are responsible for the selection of targets, and are obligated to respect the above-mentioned rules. Before making a targeting decision, they must have available the necessary information to evaluate the legality of a given attack on a potential target. They must evaluate all functions of the given target, and weigh the proportionality of the military gain against the potential civilian losses.

These are among the most difficult and critical decisions that military planners have to make in the course of military operations. It is therefore important that they are given very clear rules of engagement based on IHL. In harsh and unstable conditions, such as the ones encountered in urban warfare, full compliance with the provisions of IHL may be difficult to achieve. This is why IHL, in order to avoid or at least minimize civilian losses in all attacks, lays out a set of obligations outlining precautionary measures. In particular, military planners must select the means and methods of attack with a view to avoiding or minimizing the impact on civilians. In addition, wherever possible, they should provide advance warning to the civilian population to allow them to flee the targeted area. (See [Art. 57](#) of Additional Protocol I.)

[Art. 58](#) of Additional Protocol I provides specific obligations on the defending party to take basic precautionary measures against the effects of attacks, such as removing the civilian population and civilian objects from the vicinity of military objectives and avoiding locating military objectives within or near densely populated areas. In this context, the use of human shields constitutes a grave breach of IHL.

Although codified in Additional Protocol I, both the principle of distinction and the principle of proportionality have also become part of customary law, and as such are binding on all states as well as armed groups subject to the customs and laws of war.<sup>5</sup>

### **Specific IHL Rules Governing the Protection of Civilian Objects**

The needs of the civilian population are particularly acute in the context of urban warfare. All combatants must pay special attention to the applicable rules of IHL. Specifically, in the context of an occupation, the Occupying Power cannot destroy private or public property in the occupied territory “unless such destruction is rendered absolutely necessary by military operations.” ([Art. 53](#) of the Fourth Geneva Convention.)

Other IHL rules impose more specific obligations on combatants to protect civilian objects. Such obligations include the following:

- The obligation under [Art. 12](#) of Additional Protocol I to protect medical units;

- The obligation under [Art. 15](#) of Additional Protocol I to protect civilian medical and religious personnel;
- The obligation under [Art. 53](#) of Additional Protocol I to protect cultural objects and places of worship;
- The obligation under [Art. 54](#) of Additional Protocol I to protect objects indispensable to the survival of the civilian population such as foodstuffs and drinking water installations (and to not make such objects the object of reprisals);
- The obligation under [Art. 55](#) of Additional Protocol I to protect the natural environment; and
- The obligation under [Art. 56](#) of Additional Protocol I to protect works and installations containing dangerous forces.

### **Specific IHL Rules Governing Humanitarian Assistance During an Occupation**

One of the dangers of urban warfare is that the civilian population will be cut off from access to basic necessities like food, water and medical care. Specifically, in the context of an occupation, the Occupying Power (“to the fullest extent of the means available to it”) has the obligation to ensure that the civilian population in the occupied territory has access to sufficient food and medical supplies ([Art. 55](#) of the Fourth Geneva Convention), as well as the obligation to maintain medical services ([Art. 56](#) of the Fourth Geneva Convention). If the occupied territory is inadequately supplied, the Occupying Power “shall agree to relief schemes...and shall facilitate them by all means at its disposal.” ([Art. 59](#) of the Fourth Geneva Convention.)

#### **Key points**

1. In spite of the challenges posed to the traditional laws of war by modern urban combat, *urban warfare is not a lawless situation*. IHL applies to its fullest extent in an urban setting.
2. In the situation that currently obtains, *all parties are expected to adhere to the rules of IHL and observe the principles of distinction and proportionality in order to avoid unnecessary damage to the civilian population*. Violations on the part of armed elements do not relieve occupation forces from respecting the rules of IHL.
3. Under the principle of distinction, civilians should be protected from attack. This protection is subject to one condition — that a civilian does not “take a direct part in hostilities.”<sup>6</sup> *A civilian who does take part in direct hostilities becomes a legitimate target* for as long as he or she participates in the hostilities.
4. The principle of distinction also states that *civilian objects* (including infrastructure, buildings, equipment, supplies, and so on) *should not be attacked*, unless they meet the specific criteria of military objectives.
5. Under the principle of proportionality, *the use of military force should be proportionate* — i.e., sufficient to destroy a given military objective without resulting in excessive civilian casualties and damages.

Notes:

1. [ICRC Commentary to Article 50 of the First Additional Protocol at p.610](#); More precisely, under [Article 50](#) of the First Additional Protocol civilians are all those who do not “belong to the categories of persons referred to in [Article 4A\(1\), \(2\), \(3\) and \(6\)](#) of the Third Geneva Convention and in [Article 43](#) of the First Additional Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.”

Article 4A(1) consists of “Members of the armed forces of a party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.”

Article 4A(2) consists of “Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war.”

Article 4A(3) consists of “Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.”

Article 4A(6) consists of “Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.”

Article 43 states:

1. “The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, ‘inter alia’, shall enforce compliance with the rules of international law applicable in armed conflict.
2. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.
3. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.”

2. [The ICRC Commentary to Article 51 of the First Additional Protocol at p.618](#) defines “hostile acts” as “acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces.”

3. [The ICRC Commentary to Art. 52 at p.636](#) offers a further gloss on the definition of “military objective.” According to the Commentary:

“A closer look at the various criteria used reveals that the first refers to objects which, by their ‘nature,’ make an effective contribution to military action. This category comprises all objects directly used by the armed forces: weapons, equipment, transports, fortifications, depots, buildings occupied by armed forces, staff headquarters, communications centres, etc.

The second criterion is concerned with the ‘location’ of objects. Clearly, there are objects which by their nature have no military function but which, by virtue of their location, make an effective contribution to military action. This may be, for example, a bridge or other construction, or it could also be, as mentioned above, a site which is of special importance for military operations in view of its location, either because it is a site that must be seized or because it is important to prevent the enemy from seizing it, or otherwise because it is a matter of forcing the enemy to retreat from it. It should be noted that the Working Group of Committee III introduced the location criterion without giving reasons.

The criterion of ‘purpose’ is concerned with the intended future use of an object, while that of ‘use’ is concerned with its present function. Most civilian objects can become useful objects to the armed forces. Thus, for example, a school or a hotel is a civilian object, but if they are used to accommodate troops or headquarters staff, they become military objectives. It is clear from paragraph 3 that in case of doubt, such places must be presumed to serve civilian purposes.

Other establishments or buildings which are dedicated to the production of civilian goods may also be used for the benefit of the army. In this case the object has a dual function and is of value for the civilian population, but also for the military. In such situations the time and place of the attack should be taken into consideration, together with, on the one hand, the military advantage anticipated, and on the other hand, the loss of human life which must be expected among the civilian population and the damage which would be caused to civilian objects.

Finally, destruction, capture or neutralization must offer a ‘definite military advantage’ in the circumstances ruling at the time. In other words, it is not legitimate to launch an attack which only offers potential or indeterminate advantages. Those ordering or executing the attack must have sufficient information available to take this requirement into account; in case of doubt, the safety of the civilian population, which is the aim of the Protocol, must be taken into consideration.”

4. [The ICRC Commentary to Art. 51 at p.624](#) states explicitly that Article 51 was based on the wording of Article 57, and that “reference may be made to Article 57 ‘(Precautions in attack)’ for further details.”

5. Neither US nor Iraq has ratified Protocol 1 of the 1949 Conventions, which expands and reaffirms the protection of civilians in armed conflict and constraints on the means and methods of warfare. However, the U.S. is a signatory to Protocol I and has recognized many of its aspects as part of customary international law, applicable to all State parties to armed conflict. (See the [1987 speech](#) of Michael Matheson of US State

Department).

6. [The ICRC Commentary to Article 51 of the First Additional Protocol at p.618](#) defines “hostile acts” as “acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces.”

***This policy brief is presented by the International Humanitarian Law Research Initiative at the Harvard Program on Humanitarian Policy and Conflict Research. This initiative provides information on legal aspects of the current conflict in Iraq. It has been developed by a team of Harvard-based experts on IHL to meet the needs of policy makers, practitioners and the media concerning current challenges in the application of international humanitarian law in Iraq.***

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