

SUMMARY OF IHL RULES FOR THE PROTECTION OF CIVILIANS AND THE ENVIRONMENT

Rule prohibiting attacks directed at civilians or civilian objects – The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.

The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.

[Rules 1 and 7, ICRC Customary Law Study*; Art. 48, 1977 Add. Protocol I].

Rule prohibiting indiscriminate attacks – Indiscriminate attacks are prohibited.

Indiscriminate attacks are those:

- which are not directed at a specific military objective;
- which employ a method or means of combat that cannot be directed at a specific military objective; or
- which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law,

and consequently, in each case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

[Rules 11 and 12, ICRC Customary Law Study; Art. 51 (4), 1977 Add. Protocol I].

Rule of proportionality – Launching an attack 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, is prohibited.

[Rule 14, ICRC Customary Law Study; Art. 51 (5)(b), 1977 Add. Protocol I].

Rule on the protection of the natural environment – Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions.

[Rule 44, ICRC Customary Law Study].

The obligation to take feasible precautions in attack – In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

Each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.

[Rules 15 and 17, ICRC Customary Law Study; Art. 57 (1) and (2)(a)(ii), 1977 Add. Protocol I].

* "ICRC Customary Law Study" refers to Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law Vol. 1: Rules, Cambridge Univ. Press, 2005.



ICRC

INFORMATION NOTE NO. 4

National Nuclear Security Administration / Nevada Site Office



SUMMARY

Nuclear weapons raise a number of concerns under international humanitarian law. These concerns are primarily related to the impact these weapons can have on civilians and civilian areas, and to their effects on the environment. Their use in Hiroshima and Nagasaki in 1945 and subsequent studies have shown that nuclear weapons have immediate and long-term consequences due to the heat, blast and radiation generated by the explosion and, in many cases, the distances over which these forces are spread.

The sheer scale of the casualties and destruction resulting from the use of a nuclear weapon in or near a populated area and its long-term effects on health and the environment raise serious questions about the compatibility of this weapon with international humanitarian law.

NUCLEAR WEAPONS AND INTERNATIONAL HUMANITARIAN LAW

THE APPLICABLE RULES OF INTERNATIONAL HUMANITARIAN LAW

International humanitarian law (IHL), also known as the law of armed conflict or the law of war, is a set of rules that seek, for humanitarian reasons, to alleviate the effects of armed conflict. It regulates the conduct of hostilities, establishing that the right of the parties to an armed conflict to choose means and methods of warfare is not unlimited. IHL protects persons who are not, or who are no longer, participating in the hostilities, such as civilians and wounded or captured combatants. It also protects civilian objects (i.e. objects that are not military objectives).

IHL does not specifically prohibit nuclear weapons. Nevertheless, their use in armed conflict is regulated by the general rules of IHL, which restrict how weapons may be used and outline measures to be taken to limit their impact on civilians and civilian areas. The most relevant rules are:

- the rule prohibiting attacks directed at civilians or civilian objects;
- the rule prohibiting indiscriminate attacks;
- the rule of proportionality in attack;
- the rule on the protection of the natural environment; and
- the obligation to take feasible precautions in attack.

Protocol I (1977) additional to the Geneva Conventions contains the most recent treaty formulation of these rules. In the view of the ICRC, the rules identified in this information note reflect customary IHL and are applicable in all armed conflicts.¹

¹ A summary of these rules is found in the text box on the back page of this information note. Although not discussed in this information note, an additional IHL rule pertinent to the use of nuclear weapons is the prohibition on the use of weapons of a nature to cause superfluous injury or unnecessary suffering [Rule 70, ICRC Customary Law Study, Art. 35(2) 1977 Add. Protocol I]. The main issue arising under this rule is the impact of radiation on combatants.

THE UNIQUE CHARACTERISTICS OF NUCLEAR WEAPONS

As has been detailed in various studies, nuclear weapons have severe consequences, particularly when used in or near populated areas.² The unique characteristics of nuclear weapons were highlighted by the International Court of Justice (ICJ) in its 1996 Advisory Opinion on the Legality of Nuclear Weapons:

"[The Court] also notes that nuclear weapons are explosive devices whose energy results from the fusion or fission of the atom. By its very nature, that process, in nuclear weapons as they exist today, releases not only immense quantities of heat and energy, but also powerful and prolonged radiation. According to the material before the Court, the first two causes of damage are vastly more powerful than the damage caused by other weapons, while the phenomenon of radiation is said to be peculiar to nuclear weapons. These characteristics render the nuclear weapon potentially catastrophic. The destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilization and the entire ecosystem of the planet."³

These features raise important questions about the compatibility of nuclear weapons with the rules of IHL governing the use of weapons.

² See the ICRC information notes: "The Effects of Nuclear Weapons on Human Health", "Climate Effects of Nuclear Weapons and Implications for Global Food Production", and "Humanitarian Assistance in Response to Nuclear Weapon Use".

³ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, I.C.J. Reports 1996 (hereafter ICJ Advisory Opinion), para. 35.

NUCLEAR WEAPONS AND IHL

The rule prohibiting attacks directed at civilians or civilian objects (rule of distinction) requires the parties to an armed conflict to distinguish at all times between civilians and combatants and between civilian objects and military objectives. Attacks must only be directed against military objectives. Attacks aimed at civilians or civilian objects are prohibited.

The prohibition on indiscriminate attacks seeks to prohibit attacks of a nature to strike military objectives and civilians or civilian objects without distinction. This rule prohibits the use of weapons that are not, or that cannot be, directed at a specific military objective or that have effects that cannot be limited as required by IHL.

There are serious questions as to whether nuclear weapons can be used in accordance with these essential IHL rules.

- Nuclear weapons are designed to release heat, blast and radiation and, in most instances, to disperse these forces over very wide areas. This raises questions as to whether such weapons can be directed at a specific military objective. The use of a single 10 to 20 kiloton bomb (the yield of the bombs used in Hiroshima and Nagasaki) in or near a populated area, for example, would be likely to kill or severely injure very large numbers of civilians. The heat generated by the explosion could cause severe burns to exposed skin up to three kilometres from the epicentre. Massive destruction of buildings and infrastructure within several kilometres from the epicentre is also foreseeable.

- The effects of a nuclear weapon will depend on a variety of factors (e.g. the size and type of weapon; whether it explodes high in the air or at ground level; the terrain and climate of the target area). Therefore, there is a serious risk that it will not be possible to control or limit some consequences as required by IHL. This is particularly true for the fires, and possibly firestorms, that can result from the heat generated by a nuclear explosion. The same concern applies to radioactive fallout. While it is certain that radioactive particles will fall in the immediate area affected by the explosion, whether such particles are distributed further afield will depend on weather conditions, particularly the prevailing winds, which may carry particles to locations far from the site of the explosion. Recent studies have also highlighted the potential of nuclear weapons to seriously affect the global climate and future food production.

Serious issues are also raised by **the rule of proportionality in attack**. This rule recognizes that incidental civilian casualties and damage to civilian objects may occur during an attack against a military target but requires, if an attack is to proceed, that the concrete and direct military advantage anticipated outweigh the foreseeable incidental impact on civilians.

In the view of the ICRC, a party intending to use a nuclear weapon would be required to take into account, as part of the proportionality assessment, not only the immediate civilian deaths and injuries and damage to civilian objects (such as civilian homes, buildings and infrastructure) expected to result from the attack, but also the foreseeable long-term effects of exposure to radiation, in

particular illnesses and cancers that may occur in the civilian population.

Another relevant restriction stems from **the rule on the protection of the natural environment**. Under this rule all means and methods of warfare must be employed with due regard to the protection and preservation of the natural environment and all feasible precautions must be taken to avoid, and in any event minimize, incidental damage to the environment. Thus, any decision to use nuclear weapons must take into account the potential impact on and damage to the environment.⁴

The obligation to take precautions in attack requires that in the conduct of military operations, constant care be taken to spare civilians and civilian objects. Among other measures, each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.

Like the rule of proportionality, the implementation of this obligation would require the immediate and long-term incidental civilian casualties and damage expected to result from the explosion of a nuclear weapon to be taken into account in the planning of an attack using such weapons. Owing to these potential consequences, it may become necessary to refrain from using nuclear weapons and to find alternative, less destructive means.

⁴ Protocol I (1977) additional to the Geneva Conventions contains a related rule in this area. Article 35(3) prohibits the use of methods and means of warfare which are intended, or may be expected, to cause widespread, long-term, and severe damage to the natural environment. This rule, however, has not become part of customary law with regard to nuclear weapons as several States, most notably France, the United Kingdom and the United States, have consistently objected to its application to nuclear weapons.



A hearing before the International Court of Justice on the legality of the threat or use of nuclear weapons. The Court held public hearings on this matter from 30 October to 15 November 1995 and issued its Advisory Opinion on 8 July 1996

ADDITIONAL REMARKS

The argument has been made by some States and commentators that low-yield nuclear weapons could be compatible with IHL. However, after examining the issue in 1996, the International Court of Justice stated that none of the States claiming the legality of nuclear weapons under such circumstances had presented precise scenarios in which these weapons would be used, or had addressed the associated risk of escalation to a more devastating nuclear war.⁵ In addition, while the use of low-yield nuclear weapons in a remote area might not

have immediate effects on civilians, there would remain significant concerns about radiological contamination of the environment and the impact of radiation on combatants.

It has also been argued that nuclear weapons may be legitimately used in response to the unlawful use of a nuclear weapon by another State. “Belligerent reprisals” have, subject to certain restrictions, been a traditional method of enforcing the law of armed conflict. In recent decades, however, the trend has moved towards prohibiting reprisals in the form of attacks against the civilian population, even though the prohibition is not yet considered a rule of customary IHL. Article 51(6) of Protocol I (1977) additional to the Geneva Conventions explicitly prohibits “attacks against the civilian population by way of reprisals”.

The International Court of Justice did not express a view on the use of a nuclear weapon as a reprisal in response to the first use of a nuclear weapon by another State. The Court only noted that any reprisal must be proportionate to the violation it aims to stop.⁶ This limitation is also supported by many military manuals. However, several military manuals highlight that reprisals carry a danger of escalation through repeated reprisals and counter-reprisals. Indeed, the use of a nuclear weapon as a reprisal would be likely to result in a further escalation involving an even greater use of nuclear weapons by both parties, with catastrophic humanitarian consequences.

⁵ ICJ Advisory Opinion, para. 94. “The Court would observe that none of the States advocating the legality of the use of nuclear weapons under certain circumstances, including the ‘clean’ use of smaller, low yield, tactical nuclear weapons, has indicated what, supposing such limited use were feasible, would be the precise circumstances justifying such use; nor whether such limited use would not tend to escalate into the all out use of high yield nuclear weapons. This being so, the Court does not consider that it has a sufficient basis for a determination on the validity of this view.”

⁶ This assessment differs from the one required under the rule of proportionality in IHL.

THE POSITION OF THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT

In the view of the ICRC, these are some of the primary issues and concerns that arise when considering the use of nuclear weapons under international humanitarian law. These concerns led the International Red Cross and Red Crescent Movement’s Council of Delegates to conclude in 2011 that “**it is difficult to envisage how any use of nuclear weapons could be compatible with the requirements of international humanitarian law, in particular the rules of distinction, precaution and proportionality**”. This view is similar to that taken by the International Court of Justice in its 1996 Advisory Opinion, in which it concluded that the use of nuclear weapons would “generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law”.