



# ICRC

## ADVISORY SERVICE

### ON INTERNATIONAL HUMANITARIAN LAW

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## The use of force in law enforcement operations

States often face situations in which their officials have to use force to maintain or restore public security, law and order in armed conflicts or situations of violence that do not meet the threshold of applicability of international humanitarian law (IHL). Force in law enforcement operations can be used by persons who exercise State powers, including in particular police and military forces; such use of force is mainly governed by international human rights law and domestic law. The use of force in law enforcement operations has to be strictly regulated by States. Notably, States must ensure that national legislation is brought into conformity with their international obligations and sanction their officials if they have used force in an excessive or otherwise arbitrary way.

### What is the use of force?

When conducting operations to maintain or restore public security, law and order – namely law enforcement operations – State officials can resort to a variety of measures, including, under stringent conditions, the use of force. The term “use of force” is often defined under national law. However, it is generally understood as any physical constraint imposed on a person, ranging from physical restraint by hand or with a restraining device to use of firearms or other weapons. Force may be used only if other means remain ineffective or without any promise of achieving the intended result. This is an important consideration when resorting to the use of lethal or potentially lethal force in order to respect the right to life.

### Which legal regimes govern the use of force in law enforcement operations?

The use of force in law enforcement operations is mainly governed by international human rights law, which is applicable at all times (in peacetime as well as during armed conflicts), and by domestic law, as well as, in armed conflicts, by a few IHL provisions.

*International human rights law*

The most relevant right as regards the use of force in law enforcement operations is the right to life<sup>1</sup>. This right cannot be derogated from.<sup>2</sup>

In most human rights treaties, what is prohibited is a deprivation of life that is “arbitrary”, meaning not in compliance with international rules and standards pertaining to the right to life, or with domestic law. This implies that there are circumstances under which the use of lethal or potentially lethal force by State officials is authorized. The European Convention on Human Rights is the only human rights treaty that mentions in an exhaustive way the circumstances under which the use of force can result in a deprivation of life without violating the right to life: when absolutely necessary (a) in defence of

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<sup>1</sup> Universal Declaration of Human Rights, Art. 3; International Covenant on Civil and Political Rights, Art. 6; American Convention on Human Rights, Art. 4; European Convention on Human Rights, Art. 2; African Charter on Human and Peoples’ Rights, Art. 4; Arab Charter on Human Rights, Art. 5.

<sup>2</sup> The only exception is the European Convention on Human Rights, in which the right to life is considered as non-derogable “except in respect of deaths resulting from lawful acts of war” (Art. 15(2)). So far, this provision has had no real impact in practice since no European State has ever derogated from the right to life and the European Court of Human Rights has never resorted to this exception *proprio motu*.

any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection (Art. 2).

Depending on the circumstances, other rights and prohibitions might be affected as a consequence of the use of force against persons, for instance, the right to freedom of expression and the right to peaceful assembly.

The UN Code of Conduct for Law Enforcement Officials (CCLEO) of 1979 and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) of 1990 provide further guidance on the use of force in law enforcement operations. According to BPUFF, “[e]xceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles” (Principle 8).

Even if constituting *soft law* standards, these instruments have been widely used by different human rights bodies to determine if the use of force was arbitrary in a particular case.

*International humanitarian law*

Law enforcement operations are also carried out during armed conflict, outside or alongside the conduct of hostilities.<sup>3</sup> While the rules governing the conduct of hostilities do not apply to such operations, IHL does contain a few provisions on the use of force in law enforcement operations:

- Article 43 of the Hague Convention IV of 1907 provides that the Occupying Power “shall take all [...] measures [...] to restore, and ensure [...] public order and safety”.
- In the same vein, Article 42 of the Geneva Convention III relative to the Treatment of Prisoners of War of 1949 establishes that the use of weapons against those “who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.”

#### Domestic law

In accordance with the principle of legality (see below), provisions on the use of force in law enforcement operations are also to be found in domestic legal orders. These can take a variety of forms within the domestic legal and administrative framework related to security (e.g. laws, military and police manuals, rules of engagement, standard operating procedures), provided they respect international obligations and standards.

#### Which principles and requirements govern the use of force in law enforcement operations?

The following principles and requirements govern the use of force in law enforcement operations:

- **Legality** (BPUFF, Principle 1). States must adopt and implement rules and regulations on the use of force by their officials. The legal and administrative framework must regulate all circumstances

surrounding the use of force (who, when and how).

- **Necessity** (CCLEO, Art. 3). “Law enforcement officials may use force only when strictly necessary.” The use of force in law enforcement operations has to be an exceptional measure of last resort in order to pursue a legitimate aim. Only the lowest amount of force necessary may be applied. Whenever possible, there must be a differentiated use of force (e.g. verbal warning, show force, “less-than-lethal” force, lethal force).
- **Proportionality** (BPUFF, Principle 5(a)). The degree of force used and the potential harm it can cause must be strictly proportionate to the seriousness of the offence and the legitimate objective to be achieved.
- **Precaution** (obligations pertaining to the planning and control phase of operations). Law enforcement operations have to be carefully planned in order to avoid, as much as possible, the use of force and to minimize the risk to bystanders (BPUFF, Principle 3). State officials shall endeavour, to the greatest extent possible, to limit damage and injury, and respect and preserve human life (BPUFF, Principle 5(b)). Training, weapons and equipment must be given accordingly (BPUFF, Principle 2).
- **Accountability** (BPUFF, Principles 7, 22-24). Use of force that causes death or injury must be reported promptly. Any excessive or otherwise arbitrary use of force has to be properly investigated and, when required, punished as a criminal offence and/or incur disciplinary measures depending on the seriousness of the case. Both superior officers and State officials under their command can be held responsible.

The Inter-American and European Courts of Human Rights and the United Nations (UN) Human Rights Committee have notably developed an extensive jurisprudence fleshing out all these principles and requirements.

Principles of (military) necessity, proportionality and precaution also

exist in the rules governing the conduct of hostilities under IHL, but they have distinct meanings and operate differently.

#### In which situations can firearms and other forms of lethal or potentially lethal force be used in law enforcement operations?

According to Principle 9 of the BPUFF, resorting to firearms is authorized exclusively in the following situations, and only when less extreme means are insufficient to achieve these objectives:

- Self-defence or defence of others against the imminent threat of death or serious injury;
- Prevention of the perpetration of a particularly serious crime involving a grave threat to life;
- Arrest of a person presenting a danger of perpetrating such a crime and resisting authority, or prevention of his or her escape.

In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

According to the BPUFF (Principles 14 and 16), the use of firearms while policing unlawful and violent assemblies and controlling persons in custody or detention is also limited to the above-mentioned situations.

Although the BPUFF principles refer only to use of firearms, Principle 9 is regularly mentioned in international case-law relating to arbitrary deprivation of life, and the use of other forms of lethal or potentially lethal force should be similarly limited.

Whether a use of force constitutes lethal or potentially lethal force does not only depend on the weapon used. The outcome of the use of any weapon will depend on a combination of factors, in particular the technical characteristics of the weapon (its mechanism of injury) and the context of its use. The context includes the manner and circumstances in which the weapon is used and the particular vulnerabilities of the victim(s).

A weapon described as “less-than-lethal” or “less lethal” can kill in a

<sup>3</sup> For a better understanding of the interplay between the conduct of hostilities and law enforcement paradigms during armed conflict, see the ICRC report of the 2013 expert meeting on this topic, available at: <http://www.icrc.org/eng/assets/files/publications/icrc-002-4171.pdf>.

particular circumstance (e.g. a plastic bullet at close range, or riot control agents in enclosed spaces) in the same way that a weapon described as "lethal" can have a non-fatal outcome.

**What do States need to do at the national level to ensure that the use of force in law enforcement operations respects international rules and standards?**

In order to respect international rules and standards governing law enforcement operations, States must take specific measures before and after the use of force:

*Preventive measures before resorting to the use of force*

- Enactment of a legal and administrative framework on the use of force consistent with international rules and standards (BPUFF, Principle 1).
- Selection, training and capacity-building of State officials in accordance with international rules and standards, including teaching of police ethics, human rights and alternatives to the use of force (BPUFF, Principles 19-21).
- Provision of State officials with adequate equipment, including weapons and ammunition, as well as self-defensive equipment and alternative weapons to firearms to ensure a differentiated use of force (BPUFF, Principle 2).

*After the use of force*

- Provision of medical and psychological assistance to injured or affected persons, including State officials (BPUFF, Principle 5(c)). Assistance must primarily be given according to needs, taking into account vulnerable groups such as children and women, among others.
- Notification of the relatives of the injured or affected persons (BPUFF, Principle 5(d)).
- Provision for a system of reporting on the use of firearms (BPUFF, Principle 11(f)).
- Effective reporting and investigation of any use of force resulting in death or injury (BPUFF, Principles 22-24). To be effective, these investigations

must be conducted promptly and in an independent and impartial manner, and must involve the participation of the victims and/or their next of kin. They also have a right to remedy and reparation.

- Review of training programmes and operational procedures in the light of particular incidents (BPUFF, Principle 20).