



INTERNATIONAL HUMANITARIAN LAW AND THE CHALLENGES OF CONTEMPORARY ARMED CONFLICTS

RECOMMITTING TO PROTECTION IN ARMED CONFLICT
ON THE 70TH ANNIVERSARY OF THE GENEVA CONVENTIONS

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CHAPTER 2

CONTEMPORARY AND FUTURE CHALLENGES IN THE CONDUCT OF HOSTILITIES

1. URBANIZATION OF ARMED CONFLICTS

As the world urbanizes, so too does conflict. Increasingly, fighting takes place in urban areas, and civilians bear the brunt of it. The ICRC knows from direct observation that the use in populated areas of explosive weapons that have wide area effects continues to be a major cause of injury and death among civilians and of damage to civilian objects. Even when services that are indispensable for sustaining life in urban areas are not directly targeted, they are disrupted as an indirect result of attacks, or become more and more degraded until they are at the point of breakdown.² In some cases, services are deliberately denied to specific areas, in order to exert pressure on civilians living there. Inhabitants are left without sufficient food or water, sanitation and electricity, and deprived of health care; such privation is aggravated when cities are besieged. In addition, fighting in urban centres results in widespread displacement. Once fighting stops, unexploded ordnance and/or other forms of weapon contamination, and the lack of essential services, prevent many of the displaced from returning. Many of these consequences are not unique to cities, but they occur on a significantly larger scale in urban warfare and may require a different humanitarian response.

IHL imposes limits on the choice of means and methods of warfare, protecting civilians and civilian infrastructure against unacceptable harm and destruction. Even so, the devastating humanitarian consequences of urban warfare raise serious questions regarding how parties to such conflicts interpret and apply relevant IHL rules. In this section, the ICRC presents its views and shares the findings of new multidisciplinary research on (a) the protection of civilians against the effects of hostilities during urban warfare; (b) the use of explosive weapons in populated areas; and (c) the protection of the civilian population during sieges.

A) THE PROTECTION OF CIVILIANS AGAINST THE EFFECTS OF HOSTILITIES DURING URBAN WARFARE

Military and civilian people and objects are often intermingled in cities. For parties involved in urban hostilities, this intermingling presents important challenges, both militarily and in terms of avoiding civilian harm. Because urban warfare endangers civilians in ways particular to it, the protection afforded by the principles and provisions of IHL is critical. Policies can also be an effective tool to protect civilians and limit the effects of urban warfare, but they must not be used to offer protection to civilians that would be weaker or less than that afforded by IHL.

IHL prohibits attacks directed at civilians and civilian objects, as well as indiscriminate attacks – that is, attacks that strike military objectives and civilians or civilian objects without distinction. IHL also prohibits attacks that may be expected to cause incidental civilian harm that would be excessive in relation to the concrete and direct military advantage anticipated. While the existence of the principle of proportionality is uncontested and is applied daily by military commanders, the key concepts on which it relies (“incidental civilian harm”, “military advantage”, and “excessiveness”) would benefit from further clarification, which the ICRC has sought to support.³

2 ICRC, *Urban Services during Protracted Armed Conflict: A Call for a Better Approach to Assisting Affected People*, 2015; available at https://www.icrc.org/sites/default/files/topic/file_plus_list/4249_urban_services_during_protracted_armed_conflict.pdf.

3 To that end, the Université Laval and the ICRC organized a meeting of experts on the principle of proportionality: see ICRC, *The Principle of Proportionality in the Rules Governing the Conduct of Hostilities under International Humanitarian Law*, 2018; available at https://www.icrc.org/en/download/file/79184/4358_002_expert_meeting_report_web_1.pdf. The ICRC has also taken part in processes involving experts and organized by other institutions: see International Law Association Study Group, *The Conduct Of Hostilities and International Humanitarian Law: Challenges of 21st Century Warfare*, 2017; available at <https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=3763&StorageFileGuid=11a3fc7e-d69e-4e5a-b9dd-1761da33c8ab> (this report also discusses the notions of “military objective” and “precautions in attack”); Chatham House, *Proportionality in the Conduct of Hostilities: The Incidental Harm Side of the Assessment*, research paper, 2018; available at <https://www.chathamhouse.org/sites/default/files/publications/research/2018-12-10-proportionality-conduct-hostilities-incident-harm-gillard-final.pdf>.

In addition, IHL requires parties to conflict to take a range of precautions in attack and against the effects of attacks to protect civilians and civilian objects. With regard to precautions in attack, all feasible precautions must be taken to avoid or at least minimize incidental civilian harm. Feasible precautions are those that are possible in practice, taking into account all of the circumstances ruling at the time, including humanitarian and military considerations. The understanding of what precautions are feasible may evolve over time, depending on a number of factors, including technological developments, or with the identification of new techniques, tactics or procedures that make it possible to minimize incidental civilian harm. In this regard, lessons-learned processes/exercises may bring new feasible precautions to light.

Unless circumstances do not permit, effective advance warning must be given of attacks that may affect the civilian population. Most attacks in urban areas may well do so.⁴ The effectiveness of a warning should be assessed from the perspective of the civilian population that may be affected. It should reach and be understood by as many civilians as possible among those who may be affected by the attack, and it should give them time to leave, find shelter, or take other measures to protect themselves. Advance warnings do not relieve the party carrying out the attack from the obligation to take other precautionary measures, and civilians who remain in the area that will be affected by the attack – whether voluntarily or not – remain protected.

The principles of distinction, proportionality and precautions are complementary, and all three must be respected for an attack to be lawful.

Debate has arisen with respect to the relevance of expected incidental harm to civilians in the form of disease and mental trauma when implementing the principles of proportionality and precautions. In the ICRC's view, it is important to consider incidental harm that is foreseeable, such as contamination when targeting a military objective in a city that contains toxic industrial chemicals, or the spread of disease due to incidental damage to municipal sewage systems. This is particularly relevant when an attacker expects to cause incidental damage to water or sewage systems in a city where cholera or other similarly contagious diseases are already present, as has been the case in some recent conflicts.

As for mental health, while IHL prohibits acts whose primary purpose is to terrorize the civilian population, psychological trauma has long been seen as an inevitable consequence of conflicts. The psychological effects of hostilities might also be less easily anticipated than physical injuries or death. Yet, it is broadly accepted today that human health encompasses physical and mental health. In this regard, there is some indication of awareness in some recent military manuals that the psychological effects of hostilities should be taken into account. This may be an area in which the practice of belligerents in the future might be influenced by evolving research and understanding. In their operations, the ICRC and its Movement partners see significant mental health and psychosocial needs, which require broader acknowledgement and better ways to address the harm caused.⁵

Several of the rules mentioned above apply specifically to attacks within the meaning of IHL: that is, to military operations most likely to cause harm to civilians. Nonetheless, parties to conflict must take constant care to spare the civilian population in *all* military operations. These include troop movements and manoeuvres preparatory to combat, such as during ground operations in urban areas. The specific protection afforded to particular objects may also go beyond attacks. For instance, objects indispensable to the survival of the civilian population must neither be attacked nor otherwise destroyed, removed or rendered useless. This includes a city's drinking-water supply network and installations.

4 For hospitals and medical facilities, including those located in urban areas, that have lost their protection because they are used for acts harmful to the enemy, *there is a specific rule on warnings prior to attack*.

5 See background document, "Addressing mental health and psychosocial needs of people affected by armed conflicts, natural disasters and other emergencies", 33IC/19/12.2, 2019.

Compliance with IHL during the conduct of hostilities in urban areas, as anywhere else, depends on what the commander knew, or should have known, at the time of the attack, based on information reasonably available from all sources in the circumstances. Given the intermingling of civilians and military objectives in urban areas, it is critical that information collected when planning an operation in urban areas does not focus solely on verifying that targets are military objectives – a key requirement, of course – but also on assessing the incidental civilian harm, including the indirect or “reverberating” effects, that may be expected. Practices such as assuming the presence of civilians in all civilian buildings and assessing patterns of civilian life, among others, may help overcome difficulties – created by the physical environment of a city – in accurately assessing civilian presence.

Challenges raised by attacks in urban areas

Services essential to the civilian population in urban areas rely on a complex web of interconnected infrastructure systems.⁶ The most critical infrastructure nodes within a system enable the provision of services to a large part of the population and damage to them would be most concerning when it causes the whole system to fail. Such nodes are also described as a “single point of failure”. Services depend on the operation of people, hardware and consumables, each of which can be disrupted directly or indirectly. For instance, a damaged electrical transformer can immediately shut down the supply of water to an entire neighbourhood or hospital, drastically increasing the risks posed to public health and well-being. In addition, over time, direct and indirect effects can have a cumulative impact on a particular service – leaving large parts of the system in disarray – which becomes much more difficult to address. This cumulative effect will influence the incidental-harm assessment and analysis during protracted hostilities: in the proportionality assessment, the civilian harm expected from damaging the last electric power distribution line of a city will be significantly greater than that expected from damaging one of many functioning distribution lines, as that loss can be made up by redundancy in the power distribution grid.

Given this complexity and interconnectedness of essential service systems, it is particularly important to consider not only incidental civilian harm directly caused by an attack but also reverberating effects, provided they are foreseeable.⁷ As for any type of incidental harm, what is reasonably foreseeable – or should have been foreseen – will vary, depending on the circumstances of the attack and the target; however, patterns of incidental civilian harm can be foreseen based on past experience of the effects of urban warfare. What is foreseeable will be informed and evolve, in particular, through: analysis of the effects of past attacks; studies on the effects of conflicts; better modelling of weapons’ effects; better understanding of the infrastructural set-up and interdependency between services; and new technologies to better assess the condition or status of infrastructure and service delivery during the conflict. In this respect, it is important that armed forces rigorously apply short feedback loops and other lessons learned as part of the targeting cycle or other decision-making processes, to prevent the repetition of mistakes and inform future assessments of effects that had not been adequately anticipated or mitigated in the past. In particular, recent conflicts have shown the devastating effects that urban warfare has on critical civilian infrastructure and the delivery of essential services to the population, especially when explosive weapons with a wide impact area are used.

Displacement within cities, or to other areas, is one of the many harmful effects on civilians of urban warfare.⁸ In addition to the threat to civilian lives, and the disruption of essential urban services, one of the key drivers of long-term displacement is the damage or destruction of civilian homes typically caused by the use of heavy explosive weapons. While displacement is not expressly mentioned in the principles of proportionality and precautions as a relevant type of civilian harm, depending on the circumstances it may increase

6 ICRC, *Urban Services during Protracted Armed Conflict: A Call for a Better Approach to Assisting Affected People*, 2015; available at https://www.icrc.org/sites/default/files/topic/file_plus_list/4249_urban_services_during_protracted_armed_conflict.pdf.

7 See *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, 2015, 32IC/15/11, pp. 52–53; available at <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>. (Subsequent references to this report will cite it as the *IHL Challenges Report 2015*.)

8 See ICRC, *Displaced in Cities: Experiencing and Responding to Urban Internal Displacement Outside Camps*, ICRC, 2018, pp. 18ff.; available at <https://shop.icrc.org/displaced-in-cities-experiencing-and-responding-to-urban-internal-displacement-outside-camps-2926.html>. See also chapter III. 1) on internally displaced persons.

the risk of death, injury or disease. More generally, the displacement of civilians expected when incidentally damaging their homes will affect the weight to be given to that damage under these principles.

Another challenge of urban warfare is that many objects are used simultaneously for military and civilian purposes. For example, a firing position might be situated on the rooftop of a civilian house or an apartment in a multistorey building used as a command post. Similarly, a power station may provide electricity to both a military barracks and the rest of the city. If its use for military purposes renders a civilian object – or the separable part thereof – a military objective, it will become a lawful target. However, the prevailing view,⁹ shared by the ICRC, is that the principles of proportionality and precautions remain relevant, not only with regard to incidental damage to other civilian objects, but also in terms of the consequences for civilians of impairing the civilian use of that object. Under this view, for instance, the attack must be directed at the rooftop of the civilian house or at the specific apartment in the multi-storey building, provided it is feasible in the circumstances, to avert the possibility of civilians losing their homes and livelihoods.

Finally, during ground operations in urban areas, troops are likely to become involved in firefights and call for fire support. The danger and urgency of such situations significantly increases the likelihood and extent of incidental civilian casualties and damage – as the ICRC has observed repeatedly. As further discussed below, fire by troops in contact with the enemy, as well as fire support, must respect all the rules governing the conduct of hostilities.

Protecting the urban population against the effects of attacks

Civilians can be protected most effectively when they are not in the midst of combat. Because urban warfare occurs among civilians, it is critical that parties implement their obligation to take all feasible precautions to protect civilians and civilian objects under their control from the effects of attacks. For example, avoiding to locate military objectives within or near densely populated areas, or more generally, employing strategies and tactics that take combat outside populated areas, are means to try to reduce urban fighting altogether.

When urban fighting cannot be avoided, all parties have an obligation to take precautions to spare civilians from the effects of attacks. The obligation of the party carrying out an attack to give effective advance warning is mirrored by that of the party in control of the area to remove civilians and civilian objects from the vicinity of military objectives to the maximum extent feasible.

Unfortunately, far too often in contemporary conflicts, parties do the exact opposite and deliberately endanger the civilian population and civilians under their control by using them as human shields, which is absolutely prohibited. Civilians used as human shields remain protected, and – while it does raise practical challenges – the other party must take all feasible precautions to avoid harming these civilians and must take them into account in proportionality assessments.

B) THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

One of the defining features of urban warfare is the use of explosive weapons with a wide impact area (also referred to as “heavy” explosive weapons), i.e. of weapons that typically deliver significant explosive force from afar and over a wide area.¹⁰ While generally not a cause for concern when used in open battlefields, these weapons have devastating effects for the civilian population when employed against military objectives

9 For an account of this debate with regard to proportionality, which would apply *mutatis mutandis* with regard to precautions, see ICRC, *The Principle of Proportionality in the Rules Governing the Conduct of Hostilities under International Humanitarian Law*, pp. 37–40; International Law Association Study Group, *The Conduct Of Hostilities And International Humanitarian Law: Challenges of 21st Century Warfare*, pp. 11–12.

10 These are: i) weapons that have a wide impact area because of the large destructive radius of the individual munition used, i.e. its large blast and fragmentation range or effect (such as large bombs or missiles); ii) weapons that have a wide impact area because of the lack of accuracy of the delivery system (such as unguided indirect-fire weapons, including artillery and mortars); and iii) weapons that have a wide impact area because the weapon system is designed to deliver multiple munitions simultaneously over a wide area (such as multi-barrel rocket launchers). See ICRC, *IHL Challenges Report 2015*, p. 49.

located in populated areas,¹¹ such as towns and cities. Their footprints are all over recent and ongoing armed conflicts such as those in Afghanistan, Gaza, Iraq, Libya, Somalia, Syria, Ukraine, and Yemen: death, severe injuries (often leading to lifelong disabilities), mental and psychological trauma, and large-scale destruction of houses, hospitals, schools, and infrastructure indispensable for the functioning of essential services – everything that makes a city work, and on which its inhabitants depend for their survival.

Beyond the direct impact on the lives, health and property of civilians, there is a wide array of indirect or reverberating effects that spread across the networks of interconnected urban services and affect a much larger part of the civilian population than those present in the immediate impact area of the attack. These increasingly known and foreseeable consequences are exacerbated in protracted armed conflicts, where the long-term and at times irreversible degradation of essential services increases the suffering of civilians. The gendered impact of heavy explosive weapons' use in populated areas is also often overlooked: the different social roles of men and women will influence the chances of who will be injured or killed – men, women, boys, or girls –, and impact the nature of the stigma faced by survivors. Moreover, heavy bombing and shelling is a major cause of displacement; displaced populations are exposed to further risks, including sexual violence, particularly against women.

IHL questions raised by the use of explosive weapons in populated areas

In its 2015 report, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*,¹² the ICRC outlined key IHL questions raised by the use of explosive weapons with a wide impact area in populated areas. Those questions are summarized here, followed by additional issues.

The use of explosive weapons with a wide impact area against military objectives located in populated areas is not prohibited *per se* under IHL, but it is regulated by the rules on the conduct of hostilities – notably the prohibition against indiscriminate attacks, the prohibition against disproportionate attacks, and the obligation to take all feasible precautions in attack. Because of the close proximity of military objectives to civilians and civilian objects, the particular vulnerability of civilians in urban environments as a result of their dependency on interlinked essential services, and the wide-area effects of the explosive weapons of concern, the use of such weapons in populated areas typically results in significant civilian harm, raising serious questions about the interpretation and application of the relevant IHL rules.

In its 2015 report, the ICRC noted that the inherent inaccuracy of certain types of explosive weapon systems – such as many of the artillery, mortar and multiple-rocket launcher systems in use today, in particular when using unguided munitions, as well as unguided air-delivered bombs and rockets – raises serious concerns under the prohibition against indiscriminate attacks. Their low accuracy makes it very difficult to direct these weapons against a specific military objective as required by this rule: there is a high risk therefore that they will strike military objectives and civilians and civilian objects without distinction. While increasing the accuracy of delivery systems would help reduce the weapons' wide-area effects in populated areas, their accuracy could be obviated by the use of large-calibre munitions – i.e. munitions that have a large destructive radius relative to the size of the military objective – which might still be contrary to IHL.

In the 2015 report, the ICRC also noted that, in addition to the direct effects of an attack using heavy explosive weapons, indirect or reverberating effects must also be taken into account when assessing the expected incidental civilian harm as required by the rules on proportionality and on precautions in attack, insofar as they are reasonably foreseeable in the circumstances.¹³ For example, as noted above, incidental damage caused by heavy explosive weapons to critical civilian infrastructure – such as vital water and electricity facilities and supply networks – can severely disrupt services essential to civilian survival, notably health care, the

11 The terms 'populated areas' and 'densely populated areas' are used interchangeably here, to refer to a concentration of civilians or of civilians and civilian objects, be it in a city, town or village, or in a non-built-up area, and be it permanent or temporary. See, notably, Art. 1(2) of Protocol III to the 1980 Convention on Certain Conventional Weapons.

12 ICRC, *IHL Challenges Report 2015*, pp. 47–53.

13 On the question of when reverberating effects are reasonably foreseeable, see chapter 2, section 1) a. on the protection of civilians against the effects of hostilities during urban warfare.

provision of electricity, and water and sanitation services. As these services are for the most part interdependent, damage to any one component of a service will often have a domino effect on other essential services, triggering humanitarian consequences far beyond a weapon's impact zone. Based on direct observation of the extensive civilian harm caused by the use of heavy explosive weapons in populated areas, there is significant doubt that armed forces sufficiently factor in such reverberating effects, as required by the rules of proportionality and precautions in attack.

Where explosive weapons with a wide impact area are used to provide covering fire for own or friendly forces under attack, some States invoke the notion of "self-defence" to suggest that IHL restrictions on the use of force, including on the choice of weapons, could be less stringent compared to such restrictions in pre-planned attacks, and to justify the use of weapons that carry a high risk of indiscriminate effects in the circumstances. However, even the use of force in "self-defence" is circumscribed by the absolute prohibitions against indiscriminate and disproportionate attacks, and by all other IHL rules governing the conduct of hostilities, which apply in defensive as well as offensive situations. In the ICRC's view, the protection of own or friendly forces is a relevant military consideration impacting on the feasibility of precautions. It is also a relevant military advantage when assessing the proportionality of an attack, but only insofar as it is "concrete and direct", which is primarily the case when troops are under attack (i.e. in "self-defence" scenarios). In all such circumstances, force protection must be balanced against humanitarian considerations, such as the extent of incidental civilian harm expected to result from the use of heavy explosive weapons. In this respect, the greater the risk of incidental civilian harm anticipated from the attack, the greater the risk to its own forces the attacking party may have to be prepared to accept. At any rate, force protection can never justify the use of indiscriminate fire as a measure to avoid the exposure of own or friendly forces.

At times, explosive weapons with a wide impact area (most commonly artillery or other indirect-fire weapon systems) are used to harass the enemy, to deny them freedom of movement, or to obstruct their activities ("harassing", "interdiction" or "suppressive" fire). This takes the form of a continuous flow of fire – often of low or moderate intensity – intended to deliver effects over an area or on specific objects or persons, depending on the circumstances. However, to be lawful, harassing, interdiction or suppressive fire must be directed at a specific military objective, and must use means capable of being so directed. Yet in practice it is not always clear that this is the case.

When using indirect-fire weapon systems such as artillery, many armed forces apply fire adjustment techniques such as "walking fire" against a target or "bracketing" a target, in order to be able to strike the target after several rounds of fire. Such techniques consist in firing rounds progressively closer to the target, recording their impact and making adjustments (corrections) before firing "for effect" at the target (fire in salvos). Such methods of adjusting fire within a populated area in themselves pose a significant risk of civilian harm, in that the "adjustment" rounds are likely to land off-target and strike civilians and/or civilian objects. The use of such techniques in populated areas therefore raises questions under the prohibition against indiscriminate attacks.

Avoiding the use of wide-impact explosive weapons in populated areas

In its 2015 report, the ICRC reiterated a position it had first expressed like this in 2011: "due to the significant likelihood of indiscriminate effects and despite the absence of an express legal prohibition for specific types of weapons, the ICRC considers that explosive weapons with a wide impact area should be avoided in densely populated areas".¹⁴

14 *Ibid.*, pp. 48–49. The ICRC first published its position on explosive weapons in populated areas in ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, 2011, 32IC/15/11, pp. 40–42; available at <https://www.icrc.org/en/doc/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf> (subsequent references to this report will cite it as the *IHL Challenges Report 2011*). A similar call was made by the Movement in 2013. See Resolution 7 of the 2013 Council of Delegates, "Weapons and international humanitarian law", CD/13/R7, para. 4; available at <https://www.icrc.org/en/doc/assets/files/red-cross-crescent-movement/council-delegates-2013/cod13-r7-weapons-and-ihl-adopted-eng.pdf>.

The ICRC has called on all States and parties to armed conflicts to adopt a policy of avoidance of use of heavy explosive weapons in populated areas, regardless of whether or not such use would violate IHL, based on three observations:

- the grave pattern of civilian harm caused by the use of these weapons and the humanitarian and moral imperative to prevent, or at least reduce, such levels of destruction and suffering
- the objective difficulty of employing – in conformity with the prohibitions against indiscriminate and disproportionate attacks – explosive weapons with a wide impact area against military objectives situated in populated areas
- the persistent lack of clarity on how States, and parties to armed conflicts in particular, interpret and apply said IHL rules with regard to the use of heavy explosive weapons in populated areas. As the ICRC has previously stated, “there are divergent views on whether these rules sufficiently regulate the use of such weapons, or whether there is a need to clarify their interpretation or to develop new standards or rules. Based on the effects of explosive weapons in populated areas being witnessed today, there are serious questions regarding how the parties using such weapons are interpreting and applying IHL.”¹⁵

An avoidance policy suggests a presumption of non-use of such weapons owing to the high risk of incidental civilian harm, which could be reversed if sufficient mitigation measures can be taken to reduce such risk to an acceptable level. These include measures and procedures related to targeting and to the choice of weapons that significantly reduce the size of the explosive weapon’s area of impact, and other measures to minimize the likelihood and/or extent of incidental civilian harm. Such policies and practices should be developed well in advance of military operations and faithfully implemented during the conduct of hostilities, shared with partner forces or supported parties in the context of such operations, and taken into consideration when deciding on the transfer of heavy explosive weapons as well as when providing support to a party to an armed conflict.

Changing behaviour through “good practice”

Given the complex challenges of conducting hostilities in urban environments, and the unique vulnerabilities of civilians living there, it is critical that military policies and practices pay sufficient attention to the protection of civilians, including in the choice of means and methods of warfare. While instances of express limitations on heavy explosive weapons and associated methods of warfare in populated areas can be found, these are scattered or mission-specific and rarely part of a consistent approach towards military operations conducted in such environments. Information available to the ICRC to date indicates that only a limited number of States appear to have specific guidance and training on urban warfare or the conduct of hostilities in populated areas – although some positive movement can be seen.

To support policy development in this regard by States and parties to armed conflicts, the ICRC recommended, in a recently published report, a number of good practices for implementing an avoidance policy and for facilitating compliance with IHL rules on the conduct of hostilities in populated areas.

In light of the large-scale destruction and civilian suffering witnessed in today’s armed conflicts, the ICRC continues to call on all parties to armed conflict to take urgent action by reviewing their military policies and practice and by ensuring that their doctrine, education, training and weapons are adapted to the specificities of urban and other populated environments and to the vulnerability of civilians therein.

C) THE PROTECTION OF THE CIVILIAN POPULATION DURING SIEGES

The history of warfare is full of instances of sieges being used as a method of warfare. Some of them are notorious for their exceedingly high death tolls. Contemporary conflicts in the Middle East have again drawn the attention of the international community to sieges and other encirclement tactics.

Sieges often have grave consequences for large numbers of civilians. Recent sieges were accompanied by bombardment and sometimes intense fighting between besieging and besieged forces, creating constant danger for the civilians trapped in the besieged area. Little or no electricity and degraded public services are also

¹⁵ See ICRC, *IHL Challenges Report 2015*, p. 51.

characteristic features of sieges. Families are forced to make impossible choices with the little food and water available. Factors such as age, gender-specific roles, or disabilities, may exacerbate difficulties in accessing scarce resources. The consequences are hunger, malnutrition, dehydration, illness, injury and death.

The notion of “siege”

There is no definition of “siege” or “encirclement” under IHL. A siege can be described as a tactic to encircle an enemy’s armed forces, in order to prevent their movement or cut them off from support and supply channels. The ultimate aim of a siege is usually to force the enemy to surrender, historically through starvation and thirst, though in contemporary conflicts besieging forces usually attempt to capture the besieged area through hostilities. Sieges or other forms of encirclement may also be part of a larger operational plan: for instance, they can be used to isolate pockets of enemy forces left behind during an invasion.

A siege that does not involve attempts to capture an area through assault may be aimed at obtaining a military advantage in relative safety for the armed forces of the besieging party. It avoids the hazards of urban fighting for the besieging party and may also be a means to limit the heavy civilian casualties often associated with urban fighting.

Conversely, sieges that do involve attempts to capture an area through assault may increase the intensity of the fighting and the associated risks of incidental harm for civilians. This is particularly the case if the besieged forces are left with no option other than to fight or surrender.

Under IHL, it is not prohibited to besiege an area where there are only enemy forces or to block their reinforcement or resupply, including to achieve their surrender through starvation. It is also not prohibited to attack military objectives within a besieged area, provided such attacks can be carried out in conformity with the principles of distinction, proportionality and precautions.

Unfortunately, civilians are often trapped within when entire towns or other populated areas are besieged, causing unspeakable suffering. IHL offers vital protection to these civilians by imposing limits to what the parties can do during such sieges.

The scope of the parties’ obligation to allow civilians to leave a besieged area

Throughout history, besieging and besieged forces have prevented civilians from leaving besieged areas. For the besieging forces, the main purpose was often to hasten the surrender of the besieged forces, because civilians have to rely on the same supplies as the enemy forces. At the Nuremberg trials, the practice of using artillery to prevent civilians from leaving a besieged area was deemed an extreme, but not unlawful, measure.

The law has evolved considerably since then. It has developed even beyond the essential, but limited, provisions of the Geneva Conventions on the evacuation of specific categories of vulnerable people.

Today, sieges are lawful only when directed exclusively against an enemy’s armed forces.

First, shooting at or otherwise attacking civilians fleeing a besieged area would amount to a direct attack on civilians and is absolutely prohibited.

Second, IHL rules apply to the conduct of hostilities during sieges. As shown in the following paragraphs, the implementation of several rules stemming from the principle of precautions requires both parties to allow civilians to leave the besieged area whenever feasible. In particular, constant care must be taken to spare the civilian population in all military operations, and all feasible precautions must be taken, notably in the choice of means and methods of warfare, to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. In a besieged area where hostilities are taking place, and in view of the risk that poses to them, one obvious precautionary measure is to evacuate civilians, or at least allow them to leave. Parties must also give effective advance warnings of attacks that may affect the civilian population, the purpose of which is precisely to enable civilians to take measures to protect themselves.

The besieged party has obligations, too. It must take all feasible precautions to protect the civilian population under its control from the effects of attacks. This can entail allowing civilians to leave or otherwise removing them from the vicinity of military objectives, for example by evacuating them from a besieged area where hostilities are ongoing or expected to take place.

The besieged party might be tempted to prevent the civilian population from leaving because having a besieged area cleared of civilians would make it easier for the besieging forces to starve out the besieged forces, or give the former more leeway when attacking military objectives in the besieged area. However, IHL categorically prohibits using the presence of civilians to render certain areas immune from military operations, for instance in attempts to impede the military operations of the besieging forces. This would amount to using the civilian population as human shields.

Finally, treaty and customary IHL prohibit the starvation of the civilian population as a method of warfare. The implication is that the plight of civilians deprived of supplies essential to their survival in a besieged area can no longer be used by a besieging party as a legitimate means to subdue its enemy. It is therefore the ICRC's view that a belligerent aiming to use starvation as a method of warfare against enemy forces, besieged in an area in which civilians are also trapped, must allow the civilians to leave the besieged area, because experience shows that in practice these civilians will share the privation caused by a siege and may be expected to be left with their basic needs unmet.

The protection of civilians leaving, or being evacuated from, a besieged area

Civilians may flee a besieged or otherwise encircled area or be voluntarily evacuated; they may also be evacuated against their will by a party to the conflict.

The issue of forcible evacuation of a besieged area has raised questions with respect to forced displacement. Under IHL, forced displacement is prohibited, unless the security of the civilians involved or imperative military reasons so demand. Prohibited acts of forced displacement can include those resulting from unlawful acts under IHL by the parties in order to coerce civilians to leave, including in the conduct of hostilities.¹⁶ As hostilities during sieges entail a high risk of incidental civilian casualties, the security of the civilians involved may require their evacuation from the besieged area, but the evacuation must not be carried out in a way that would amount to forced displacement as a result of unlawful acts.

To ensure that displacement is not forced or unlawful, it must last no longer than required by the circumstances. Displaced persons have a right to return voluntarily and in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.¹⁷ Although temporary evacuations may be necessary, and even legally required, sieges must not be used to compel civilians to permanently leave a particular area.

From a practical perspective, safe evacuations are best organized when the parties to the conflict agree on the necessary procedures. In the absence of such an agreement, both parties remain obliged to take all feasible precautions to avoid causing incidental harm to civilians fleeing during hostilities.

In case of displacement, regardless of whether civilians flee or are evacuated from a besieged area, all possible measures must be taken to ensure that the civilians in question are received under satisfactory conditions of shelter, hygiene, health, safety (including from sexual and gender-based violence) and nutrition and that members of the same family are not separated.

16 ICTY, *Prosecutor v. Milomir Stakic*, Judgment (Appeals Chamber), IT-97-24-A, 22 March 2006, paras 281, 284–287; ICTY, *Prosecutor v. Blagojevic and Jokic*, Judgment (Trial Judgment), IT-02-60-T, 17 January 2005, paras 596 and 600–601.

17 See chapter III. 1) on internally displaced persons.

The besieging party may decide to screen displaced persons for security reasons, such as finding out whether members of the besieged forces intermingled with the civilians leaving the besieged area. Screening and other security measures undertaken by the besieging party must be conducted with full respect for IHL and human rights law, particularly with regard to humane treatment, living conditions and relevant procedural safeguards in cases of detention, and the prohibition against collective punishment.

The protection of civilians and the wounded and sick who remain in a besieged or encircled area

Civilians who remain in a besieged area continue to be protected as civilians, unless and for such time as they take a direct part in hostilities. The mere fact of remaining in a besieged area – whether voluntarily, forcibly, or as human shields – does not amount to taking a direct part in hostilities. In addition, the presence of besieged fighters among the civilian population does not mean that the civilians lose their protection from direct attack. The besieged and besieging forces therefore remain bound by all the rules protecting civilians against the effects of hostilities.¹⁸

Furthermore, the IHL rules on starvation and on relief operations are designed to ensure – in combination – that civilians are not deprived of supplies essential to their survival.

First, in addition to the prohibition against using starvation of the civilian population as a method of warfare, IHL prohibits attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population. Even when such objects are also used by the enemy armed forces, operations against them are prohibited if they can be expected to leave the civilian population with such insufficient quantities of food or water as to cause its starvation.

Second, during a siege, the parties continue to be bound by IHL obligations relating to relief operations and humanitarian access. IHL provides that impartial humanitarian organizations have a right to offer their services in order to carry out humanitarian activities, in particular when the needs of the population affected by the armed conflict are not being met. Once impartial humanitarian relief operations have been agreed to, the parties to the armed conflict – which retain the right to control the humanitarian nature of relief consignments – must allow and facilitate rapid and unimpeded passage of these relief operations.

The commander of a besieged force who is not in a position to provide the supplies essential to the survival of the civilian population under its control must consent to humanitarian relief operations for civilians. Similarly, the commander of a besieging force must allow humanitarian access to and relief operations for civilians remaining in the besieged area. This is subject to the parties' right of control and ability to impose temporary and geographically limited restrictions required by military necessity at the time and place of on-going hostilities.

Finally, IHL contains extensive rules relating to respect and protection for the wounded and sick, as well as the persons and objects assigned to care for them. The Geneva Conventions contain a few explicit provisions on the evacuation of the wounded and sick from besieged areas and the passage of medical personnel and medical equipment into such areas. More generally, parties must take all possible measures to search for, collect and evacuate the sick and wounded, and must provide – to the fullest extent practicable and with the least possible delay – the medical care and attention required by their condition. All these rules apply not only to civilians; they also benefit wounded and sick members of an enemy's armed forces. The applicability of these rules to sieges is uncontested.

¹⁸ See chapter II. 1) a. on the protection of civilians against the effects of hostilities during urban warfare.