

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, 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. In particular, states must ensure that national legislation is brought into line 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 constraint imposed on a person in exercising law enforcement functions, ranging from physical restraint by hand or with a restraining device (like handcuffs), through “less lethal” weapons – like batons, tear gas, electroshock weapons (commonly known as tasers) and rubber bullets – to using firearms and other potentially lethal force. 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 any use of force, but even more to the use of lethal or potentially lethal force, which must remain a measure of last resort in order to respect the right to life.

Force may be used only if other means remain ineffective or without any promise of achieving the intended result.

“The term “use of force” is generally understood as any constraint imposed on a person in exercising law enforcement functions.”

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.

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

International human rights law

The most relevant right with regard to the use of force in law enforcement operations is the right to life.¹ This right cannot be derogated from.²

In many 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 deprivation of life without violating the right to life: when absolutely necessary (a) in defence of 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 (Article 2).

-
- 1 Universal Declaration of Human Rights (UDHR), Art. 3; International Covenant on Civil and Political Rights (ICCPR), Art. 6; American Convention on Human Rights (ACHR), Art. 4; European Convention on Human Rights (ECHR), Art. 2; African Charter on Human and Peoples' Rights (AChHPR), Art. 4; Arab Charter on Human Rights, Art. 5. Depending on the specific case and the international human rights treaties applicable, other human rights may also become relevant, especially the right to security and the right to personal integrity. Art. 3 UDHR; Art. 9 ICCPR; Arts. 4, 6 AChHPR; Arts. 5,7 ACHR; Art. 12 ASEAN Human Rights Declaration; Art. 5 ECHR.
 - 2 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*.

The most relevant right with regard to the use of force in law enforcement operations is the right to life. This right cannot be derogated from.

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 security, the right to personal integrity, 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.³

International humanitarian law

Law enforcement operations are also carried out during armed conflict, outside or alongside the conduct of hostilities.⁴ 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 that they respect international obligations and standards.

WHICH PRINCIPLES 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, Article 3). “Law enforcement officials may use force only when strictly necessary.” The use of force in law enforcement operations must be an exceptional measure to pursue a legitimate law enforcement objective. This means that, in carrying out their duty, law enforcement officials may resort to the use of force only if other means short of the use

The use of force in law enforcement operations must be an exceptional measure to pursue a legitimate law enforcement objective.

³ See ICRC, *The Use Of Force in Armed Conflicts: Interplay Between the Conduct of Hostilities and Law Enforcement Paradigms*, Appendix 3 and 6, 2013, available at: <http://www.icrc.org/eng/assets/files/publications/icrc-002-4171.pdf>.

⁴ For a better understanding of the interplay between the conduct of hostilities and law enforcement paradigms during armed conflict, see the corresponding ICRC report (above note 3).

of force (like peaceful settlement of conflicts, methods of persuasion, negotiation and mediation) have been ineffective or would not achieve the legitimate law enforcement objective. The use of firearms, however, is a measure of last resort only permissible where necessary to counter an imminent or grave threat to life or physical integrity (see below), and when less violent means are not or would not be effective. In any use of force, only the lowest amount of force necessary to achieve a legitimate law enforcement objective may be applied. Whenever possible, there must be a differentiated use of force (e.g. verbal warning, show of force, “less-than-lethal” force, lethal force). The possibility to choose between different available weapons should enable an appropriate use of force in response to a given situation, allowing authorities to effectively pursue a legitimate law enforcement objective while minimizing death and injury.

In any use of force, only the lowest amount of force necessary to achieve a legitimate law enforcement objective may be applied.

- *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. The type and level of force used and the harm that it can cause to the subject posing the threat must be weighed against the gravity of the threat posed by the subject and the law enforcement objective to be achieved (overall balancing between anticipated harm, including to the person(s) posing the threat and to innocent bystanders versus the benefit of averting harm to other people and the importance of the law enforcement objective).
- *Precaution* (measures pertaining to the planning and control phase of operations). Law enforcement operations must 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 must 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.

Law enforcement operations must 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).

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

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 firearms⁵ 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.

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 the use of firearms, Principle 9 is regularly mentioned in international case-law relating to arbitrary deprivation of life; 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 person(s) subject to the use of force.

“Less-than-lethal” or “less lethal” weapons or techniques may be described as those that, within the strict constraints of their expected or reasonably foreseen use, are designed to carry a lower risk of death or serious injury than firearms. However, depending on the specific injury mechanism of the weapon and the circumstances in which it is used, such weapons may also cause death or serious injury (e.g. a plastic bullet at close range, or riot control agents in enclosed spaces). This is why the injury risks of the specific weapon must be assessed before use and their use strictly controlled accordingly.⁶ In the same way, a weapon described as “lethal” can have a non-fatal outcome.

5 In international law, a firearm is defined as “any portable barreled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive”. Ammunition, which is decisive for the effects of a firearm, is defined as “the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm”. See United Nations, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition Supplementing the United Nations Convention against Transnational Organized Crime, Articles 3(a) and (c), available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-c&chapter=18&clang=_en. Such weapons, in their expected or reasonably foreseen use in combination with their specific design, have kinetic and penetrating effects, which are likely to cause serious injury or death. This constitutes potentially lethal force.

6 “Less-lethal” weapons or techniques may be described in this way. See also, ICRC, The Use of Weapons and Equipment in Law Enforcement Operations, 2020; UN, Guidance on Less-Lethal Weapons in Law Enforcement, 2019, available at: https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf.

WHAT DO STATES NEED TO DO AT THE NATIONAL LEVEL TO ENSURE THAT THE USE OF FORCE IN LAW ENFORCEMENT OPERATIONS UPHOLDS 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, 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).

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

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

 facebook.com/icrc
 twitter.com/icrc
 instagram.com/icrc



ICRC

International Committee of the Red Cross
19, avenue de la Paix
1202 Geneva, Switzerland
T +41 22 734 60 01
shop.icrc.org
© ICRC, March 2022