

International Humanitarian Law in Urban Warfare

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Introduction

Urban environments have increasingly been at the forefront of a number of armed conflicts. This should come as no surprise, since an urban setting has the capability of producing a number of advantages for the defending side by negating any numerical or mechanical advantage the opposing force may have. In addition, cities make it easier for combatants to hide and blend in with the civilian population and conduct irregular military activities. While this might constitute an advantage for the conduct of military operations, it means that civilians could become entrenched in a combat situation. Therefore, it is of paramount importance that all sides of a conflict maintain the utmost regard for international humanitarian law.

As defined by the International Committee of the Red Cross (ICRC, 2004), international humanitarian law is “a set of rules which seek to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare” (ICRC, 2020). International humanitarian law is especially important with regard to urban warfare, as in these areas, civilians have an increased chance of being drawn into the conflict. The Committee of the Red Cross estimates that around 50 million people globally are currently bearing the consequences of urban warfare. As urban areas become increasingly common in today's world, this number will undoubtedly rise even further (ICRC, 2020).

The main aim of international humanitarian law is to limit the effects of armed conflict, thereby reducing the suffering of civilians and non-combatants in an international armed conflict (IAC) or in a non-international armed conflict (NIAC). In line with the current conflict in Ukraine, this contribution will focus on the scope of international humanitarian law in an international armed conflict, between two or more internationally recognised States. As such, this InfoFlash aims to provide a general overview of three of the main principles which are of special interest in an urban environment: the principles of distinction, proportionality, and precaution.

The Principle of Distinction

The principle of distinction is of fundamental importance to international humanitarian law. According to Rule 1 of the International Committee of the Red Cross' database on customary international law and Article 48 of Additional Protocol 1 to the Geneva Conventions, “all parties to a conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants and may not be directed against civilians.” With regard to the setting of urban warfare, three dimensions of this principle are of further interest. These dimensions are the prohibition of indiscriminate attacks, the prohibition to use human shields, and the obligation to protect civilian objects.

a) The Prohibition of Indiscriminate Attacks

The International Committee of the Red Cross identifies the use of heavy explosions in urban and other populated areas as a principal cause of civilian harm in today's armed conflicts (ICRC, 2022). However, in line with Article 51(4) of Additional Protocol 1 to the Geneva Conventions, those attacks are in principle prohibited. In the abovementioned Article, indiscriminate attacks are described as “those which are not directed at a specific military objective, those which employ a method or means of combat which cannot be directed at a specific military objective, or those which employ a method or means of combat the effects of which cannot be limited” (United Nations Human Rights Office of the High Commissioner of Human Rights, 2016). This prohibition heavily limits the use of explosions in an urban area, as a distinction cannot be made in principle between civilian and military objectives. If explosions are to be used, they are only allowed after a proportionality assessment and the taking of precautions (ICRC, 2020).

b) The Prohibition to Use Human Shields

Defenders may want to use the civilian population as a “shield” to protect their military equipment or personnel against attacks, for example by placing military equipment in or near a hospital or school where a number of civilians are gathered (Shamsi, 2021). However, all parties should at all times respect the prohibitions as contained in Article 51(7) of Additional Protocol 1 to the Geneva Conventions to not use individual civilians or the civilian population as a whole to render certain points or areas immune from military operations. Again, in the event that human shields are used by either party, a proportionality assessment weighing the “collateral damage” and the anticipated military advantage must be conducted. If the assessment concludes that the collateral damage would be too large for the anticipated military advantage gained, the attack will constitute a violation of international humanitarian law (Vestner, 2019).

c) The Obligation to Protect Civilian Objects

In addition to protecting the civilian population, all sides of a conflict also have the obligation to protect a number of civilian objects from harm. Article 52(2) of Additional Protocol 1 to the Geneva Conventions states that attacks shall be limited to military objectives. Those military objectives are defined as “objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances at the time, offers a definite military advantage.” Moreover, according to Article 54 of Additional Protocol 1, objects indispensable to the survival of the civilian population, like agricultural areas, drinking water installations, also enjoy enhanced protection when not used solely by members of the armed forces.

The Principle of Proportionality

Closely linked to the principle of distinction is the principle of proportionality. This principle aims to balance military necessity with humanitarian considerations (Gillard, 2018). Both Rule 14 of the International Committee of the Red Cross' database on customary international law and Article 51(5) of Additional Protocol 1 to the Geneva Conventions state that belligerents must "refrain from attacks which could cause incidental loss of civilian life, injury to civilians, and damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage." As such, a complete and thorough proportionality assessment is a legal requirement before deciding on whether to conduct a military strike.

Whilst in theory the rule is clear and universally accepted, it is difficult to determine exactly what falls within the scope of that proportionality assessment. The assessment on whether proportionality has been complied with consists of three steps, which must be kept in mind when planning a military strike. First of all, international humanitarian law dictates that attacks which primarily target civilians are in principle not allowed. However, "collateral damage" is allowed, to a certain degree. In all cases, the humanitarian consequences must be incidental to the attack conducted against the military objectives. Secondly, the humanitarian consequences must be weighed against the advantage gained by the attack as a whole, thus conducting the proportionality assessment. However, thirdly, one must always keep in mind that only certain types of incidental harm fall within the scope of the proportionality assessment, like death or injury of civilians and damage to civilian objects, as seen in the previous section (Gillard, 2018).

The Principle of Precaution

Both rule 15 of the International Committee of the Red Cross' database and Article 57 of Additional Protocol 1 to the Geneva Conventions contain the principle of precaution. According to this principle, "constant care shall be taken to spare the civilian population, civilians and civilian objects." Consequently, several steps have to be taken before deciding upon an attack.

First of all, in line with Article 57 of Additional Protocol 1, military planners should first and foremost always make sure that the objectives envisioned are of a military, and not of a civilian nature. Connected to this, when there indeed is a military objective envisioned, the planners must make sure that in the choice of means and the method of attack, "all feasible precautions are taken with a view to avoiding or minimising incidental loss of civilian life, injury to civilians, and damage to civilian objects." Secondly, an "advance warning" has to be issued to the civilian population, unless circumstances do not permit. Thirdly, when selecting between different military objectives with similar military advantages, the objective ultimately selected must be the one which causes the least danger to both civilian life and to civilian objects.

Article 58 of Additional Protocol 1 to the Geneva Conventions adds that every party to a conflict must “endeavour to remove the civilian population, any individual civilians and civilian objects under their control from the vicinity of military objectives, avoid locating military objectives within or near densely populated areas, and take all other necessary precautions to protect the civilian population and civilian objects under their control against the dangers resulting from military operations.”

The duty to take precautions is a continuous obligation. It applies up until, and sometimes even during the execution of the attack. While it remains context dependent and relies on the specific evaluation of the importance of the military objectives envisioned and the humanitarian cost of such an attack, it is still an obligation of primordial nature, to prevent unnecessary harm to the civilian population in an urban environment (Neuman, 2017).

Conclusion

All warfare naturally places the civilian population in harm's way. However, as cities become increasingly populous in today's globalised world, it comes as no surprise that war is increasingly situated in those urban environments. This leads to civilians becoming increasingly entrenched in combat situations. It could even be that one party to a conflict deliberately uses the urban landscape as its battlefield of choice, as this could negate certain advantages its opponent may have. To avoid and to ease the humanitarian consequences of war, it is the responsibility of all parties in conflict to strictly adhere to the rules of international humanitarian law. As such, this InfoFlash aims to provide a relatively brief overview of some of the main principles of international humanitarian law in order to provide a greater understanding of the legal obligations for agents conducting military operations in urban environments.

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