

# Customary Rules of International Humanitarian Law Applicable in Armed Conflicts of a Non-International Character

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## A STUDY BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS

### The Principle of Distinction

#### *Distinction between civilians and combatants*

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.

Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

Civilians are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians.

Civilians are protected against attack, unless and for such time as they take a direct part in hostilities.

#### *Distinction between civilian objects and military objectives*

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.

In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Civilian objects are all objects that are not military objectives.

Civilian objects are protected against attack, unless and for such time as they are military objectives.

#### *Indiscriminate attacks*

Indiscriminate attacks are prohibited.

Indiscriminate attacks are those:

- (a) which are not directed at a specific military objective;
  - (b) which employ a method or means of combat which cannot be directed at a specific military objective; or
  - (c) 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 such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

Attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are prohibited.

### ***Proportionality in attack***

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.

### ***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 do everything feasible to verify that targets are military objectives.

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.

Each party to the conflict must do everything feasible to assess whether the attack 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.

Each party to the conflict must do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective or that the attack 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.

Each party to the conflict must give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit.

When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects. *[A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]*

### ***Precautions against the effects of attacks***

The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.

Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas. *[A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]*

Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives. *[A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character]*

## **Specifically protected persons and objects**

### ***Medical and religious personnel and objects***

Medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy.

Punishing a person for performing medical duties compatible with medical ethics or compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited.

Religious personnel exclusively assigned to religious duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy.

Medical units exclusively assigned to medical purposes must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy.

Medical transports assigned exclusively to medical transportation must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy.

Attacks directed against medical and religious personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited.

### ***Humanitarian relief personnel and objects***

Humanitarian relief personnel must be respected and protected.

Objects used for humanitarian relief operations must be respected and protected.

### ***Personnel and objects involved in a peacekeeping mission***

Directing an attack against personnel and objects involved in a peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law, is prohibited.

### ***Journalists***

Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities.

### ***Protected zones***

Directing an attack against a zone established to shelter the wounded, the sick and civilians from the effects of hostilities is prohibited.

Directing an attack against a demilitarized zone agreed upon between the parties to the conflict is prohibited.

Directing an attack against a non-defended locality is prohibited.

## Cultural Property

Each party to the conflict must respect cultural property:

- A. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives.
- B. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity.

The use of property of great importance to the cultural heritage of every people for purposes which are likely to expose it to destruction or damage is prohibited, unless imperatively required by military necessity.

Each party to the conflict must protect cultural property:

- A. All seizure of or destruction or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited.
- B. Any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited.

## Works and Installations Containing Dangerous Forces

Particular care must be taken if works and installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, and other installations located at or in their vicinity are attacked, in order to avoid the release of dangerous forces and consequent severe losses among the civilian population.

## The Natural Environment

The general principles on the conduct of hostilities apply to the natural environment:

- A. No part of the natural environment may be attacked, unless it is a military objective.
- B. Destruction of any part of the natural environment is prohibited, unless required by imperative military necessity.
- C. Launching an attack against a military objective which may be expected to cause incidental damage to the environment which would be excessive in relation to the concrete and direct military advantage anticipated is prohibited.

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 to 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. [*A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character*]

The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon. [*A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character*]

## Specific Methods of Warfare

### *Denial of quarter*

Ordering that no quarter will be given, threatening an adversary therewith or conducting hostilities on this basis is prohibited.

Attacking persons who are recognized as hors de combat is prohibited. A person hors de combat is:

(a) anyone who is in the power of an adverse party;

(b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or

(c) anyone who clearly expresses an intention to surrender;

provided he or she abstains from any hostile act and does not attempt to escape.

Making persons parachuting from an aircraft in distress the object of attack during their descent is prohibited.

### *Destruction and seizure of property*

The destruction or seizure of the property of an adversary is prohibited, unless required by imperative military necessity.

Pillage is prohibited.

### *Starvation and access to humanitarian relief*

The use of starvation of the civilian population as a method of warfare is prohibited.

Attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population is prohibited.

The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.

The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted.

### *Deception*

Ruses of war are not prohibited as long as they do not infringe a rule of international humanitarian law.

The improper use of the white flag of truce is prohibited.

The improper use of the distinctive emblems of the Geneva Conventions is prohibited.

The use of the United Nations emblem and uniform is prohibited, except as authorized by the organization.

The improper use of other internationally recognized emblems is prohibited.

Improper use of the flags or military emblems, insignia or uniforms of the adversary is prohibited. [*A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character*]

Use of the flags or military emblems, insignia or uniforms of neutral or other States not party to the conflict is prohibited. [*A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character*]

Concluding an agreement to suspend combat with the intention of attacking by surprise the enemy relying on that agreement is prohibited.

Killing, injuring or capturing an adversary by resort to perfidy is prohibited.

### ***Communication with the enemy***

Commanders may enter into non-hostile contact through any means of communication. Such contact must be based on good faith.

Parlementaires are inviolable.

Commanders may take the necessary precautions to prevent the presence of a parlementaire from being prejudicial.

Parlementaires taking advantage of their privileged position to commit an act contrary to international law and detrimental to the adversary lose their inviolability.

## **Weapons**

### ***General principles on the use of weapons***

The use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is prohibited.

The use of weapons which are by nature indiscriminate is prohibited.

### ***Poison***

The use of poison or poisoned weapons is prohibited.

### ***Biological weapons***

The use of biological weapons is prohibited.

### ***Chemical weapons***

The use of chemical weapons is prohibited.

The use of riot-control agents as a method of warfare is prohibited.

The use of herbicides as a method of warfare is prohibited if they:

- (a) are of a nature to be prohibited chemical weapons;
- (b) are of a nature to be prohibited biological weapons;
- (c) are aimed at vegetation that is not a military objective;

(d) would cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which may be expected to be excessive in relation to the concrete and direct military advantage anticipated; or  
(e) would cause widespread, long-term and severe damage to the natural environment.

### ***Expanding bullets***

The use of bullets which expand or flatten easily in the human body is prohibited.

### ***Exploding bullets***

The anti-personnel use of bullets which explode within the human body is prohibited.

### ***Weapons primarily injuring by non-detectable fragments***

The use of weapons the primary effect of which is to injure by fragments which are not detectable by X-rays in the human body is prohibited.

### ***Booby-traps***

The use of booby-traps which are in any way attached to or associated with objects or persons entitled to special protection under international humanitarian law or with objects that are likely to attract civilians is prohibited.

### ***Landmines***

When landmines are used, particular care must be taken to minimize their indiscriminate effects.

A party to the conflict using landmines must record their placement, as far as possible. [*A rule applicable in an international armed conflict and arguably also in an armed conflict of a non-international character*]

At the end of active hostilities, a party to the conflict which has used landmines must remove or otherwise render them harmless to civilians, or facilitate their removal.

### ***Incendiary weapons***

If incendiary weapons are used, particular care must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

The anti-personnel use of incendiary weapons is prohibited, unless it is not feasible to use a less harmful weapon to render a person hors de combat.

### ***Blinding laser weapons***

The use of laser weapons that are specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision is prohibited.

## Treatment of Civilians and Persons Hors de Combat

### *Fundamental guarantees*

Civilians and persons hors de combat must be treated humanely.

Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.

Murder is prohibited.

Torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited.

Corporal punishment is prohibited.

Mutilation, medical or scientific experiments or any other medical procedure not indicated by the state of health of the person concerned and not consistent with generally accepted medical standards are prohibited.

Rape and other forms of sexual violence are prohibited.

Slavery and the slave trade in all their forms are prohibited.

Uncompensated or abusive forced labour is prohibited.

The taking of hostages is prohibited.

The use of human shields is prohibited.

Enforced disappearance is prohibited.

Arbitrary deprivation of liberty is prohibited.

No one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees.

No one may be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time it was committed; nor may a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed.

No one may be convicted of an offence except on the basis of individual criminal responsibility.

Collective punishments are prohibited.

The convictions and religious practices of civilians and persons *hors de combat* must be respected.

Family life must be respected as far as possible.

### ***The Wounded, sick and shipwrecked***

Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the wounded, sick and shipwrecked without adverse distinction.

The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones.

Each party to the conflict must take all possible measures to protect the wounded, sick and shipwrecked against ill-treatment and against pillage of their personal property.

### ***The dead***

Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction.

Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.

The dead must be disposed of in a respectful manner and their graves respected and properly maintained.

With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.

### ***Missing persons***

Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.

### ***Persons deprived of their liberty***

Persons deprived of their liberty must be provided with adequate food, water, clothing, shelter and medical attention.

Women who are deprived of their liberty must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women.

Children who are deprived of their liberty must be held in quarters separate from those of adults, except where families are accommodated as family units.

Persons deprived of their liberty must be held in premises which are removed from the combat zone and which safeguard their health and hygiene.

Pillage of the personal belongings of persons deprived of their liberty is prohibited.

The personal details of persons deprived of their liberty must be recorded.

The ICRC may offer its services to the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict in order to verify the conditions of their detention and to restore contacts between those persons and their families.

Persons deprived of their liberty must be allowed to correspond with their families, subject to reasonable conditions relating to frequency and the need for censorship by the authorities.

Civilian internees and persons deprived of their liberty in connection with a non-international armed conflict must be allowed to receive visitors, especially near relatives, to the degree practicable.

The personal convictions and religious practices of persons deprived of their liberty must be respected.

Persons deprived of their liberty in relation to a non-international armed conflict must be released as soon as the reasons for the deprivation of their liberty cease to exist.

The persons referred to may continue to be deprived of their liberty if penal proceedings are pending against them or if they are serving a sentence lawfully imposed.

### ***Displacement and displaced persons***

Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.

In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.

Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.

The property rights of displaced persons must be respected.

### ***Other persons afforded specific protection***

The specific protection, health and assistance needs of women affected by armed conflict must be respected.

Children affected by armed conflict are entitled to special respect and protection.

Children must not be recruited into armed forces or armed groups.

Children must not be allowed to take part in hostilities.

The elderly, disabled and infirm affected by armed conflict are entitled to special respect and protection.

## Implementation

### *Compliance with international humanitarian law*

Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control.

The obligation to respect and ensure respect for international humanitarian law does not depend on reciprocity.

Each State must make legal advisers available, when necessary, to advise military commanders at the appropriate level on the application of international humanitarian law.

States and parties to the conflict must provide instruction in international humanitarian law to their armed forces.

States must encourage the teaching of international humanitarian law to the civilian population.

### *Enforcement of international humanitarian law*

States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law.

Parties to non-international armed conflicts do not have the right to resort to belligerent reprisals. Other countermeasures against persons who do not or who have ceased to take a direct part in hostilities are prohibited.

### *Responsibility and reparation*

A State is responsible for violations of international humanitarian law attributable to it, including:

- (a) violations committed by its organs, including its armed forces;
  - (b) violations committed by persons or entities it empowered to exercise elements of governmental authority;
  - (c) violations committed by persons or groups acting in fact on its instructions, or under its direction or control;
- and
- (d) violations committed by private persons or groups which it acknowledges and adopts as its own conduct.

A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.

### *Individual responsibility*

Individuals are criminally responsible for war crimes they commit.

Commanders and other superiors are criminally responsible for war crimes committed pursuant to their orders.

Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible.

Every combatant has a duty to disobey a manifestly unlawful order.

Obedying a superior order does not relieve a subordinate of criminal responsibility if the subordinate knew that the act ordered was unlawful or should have known because of the manifestly unlawful nature of the act ordered.

### *War crimes*

Serious violations of international humanitarian law constitute war crimes.

States have the right to vest universal jurisdiction in their national courts over war crimes.

States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.

At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes.

Statutes of limitation may not apply to war crimes.

States must make every effort to cooperate, to the extent possible, with each other in order to facilitate the investigation of war crimes and the prosecution of the suspects.