

ICRC, Statement - War in Cities; What is at Stake?

INTRODUCTORY TEXT: *This keynote speech, given by ICRC President Peter Maurer in the context of the ICRC's Research and Debate cycle on "War in Cities", addresses the main legal and operational challenges of urban warfare. It focuses particularly on the immediate and long-term consequences for the civilian population of the use of explosive weapons in densely populated areas, and on the concrete steps that must be taken to improve the protection of civilians affected by armed conflicts in urban areas.*

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WAR IN CITIES: WHAT IS AT STAKE?

[Source: International Committee of the Red Cross, President Peter Maurer's Statement, 4 April 2017, available at: <https://www.icrc.org/en/document/war-cities-what-stake-0>]

[...]

[1] For centuries, wars were predominantly fought across vast battlefields, pitting thousands of men, large army corps and heavy weaponry against each other in open fields. Cities could be besieged or sacked but fighting rarely took place on the streets. Today's armed conflicts look quite different: city centers and residential areas have become the battlefields of our time. Wars have moved into the lives, cities and homes of ordinary people in a more vicious way than ever before.

[2] The more we can do to understand urbanisation and its challenges and complexities, the better we can adjust our humanitarian response.

Two thirds of the global population is predicted to be living in cities by 2030, and urban centres are under pressure as they struggle to absorb this rapid increase.

At the same time, armed conflicts are increasingly fought in urban environments with some 50 million people bearing the brunt of the consequences.

A staggering 96% of urban growth is expected to take place in developing countries in cities that already face fragility.

Out of the 65 million people who are forcibly displaced, 75% live in urban areas.

[3] When wars are fought in cities, the vital infrastructure that makes communities function is damaged or destroyed. There is often no safe water to drink, electricity to power homes and businesses, or health services to vaccinate or cure disease. Health and humanitarian workers are deliberately attacked, and people are forced to leave looking for safety.

[4] ICRC recently completed a report, drawing on 30 years of evidence, to analyse the humanitarian response in urban areas and the progressive deterioration of essential services during protracted armed conflicts. The report showed, to a considerable extent, the problems stem from the complexity of urban systems and their dependence on large-scale, interconnected infrastructures that rely on the availability of qualified staff to ensure service delivery.

[5] When a city is under fire, educational and employment opportunities are lost. As a result, large numbers of people are internally displaced or seek refuge in neighbouring countries, overburdening the capacities of the host city's infrastructure. It also leads to a 'brain drain' effect as specialist skills of engineers, urban planners and medical staff are lost.

[...]

Most people killed in urban conflict are civilians

[6] Logic follows that where there are more people and more weapons, there are more victims. An overwhelming percentage of people killed or injured by explosive weapons in populated areas are civilians. Civilians, not military targets. These are people who are not taking part in the conflict. They are mothers and fathers and children who are not part of the fight and simply wish to lead their lives without the constant threat of bombs or gunfire.

[7] The Geneva Conventions and International Humanitarian Law speak very clearly to the obligation during armed conflicts to protect the civilian population and civilian objects. The specific challenges posed by urban warfare should be taken into account: armed forces need to be prepared to address such challenges considering the overarching objective of the laws of war – which is to protect civilians.

[8] Explosive weapons, which have a wide impact area, have a significant likelihood of indiscriminate effects when used in densely populated areas. These include large bombs, imprecise artillery, multi-barrel rocket launchers and certain types of improvised explosive devices.

[9] In their urban operations, armed forces have to take into account the vulnerability of large numbers of people due to their dependence on urban services and the intricacy and interconnectedness of these essential services.

[10] They must avoid or minimize harm to civilians, including in their choice of means and methods of attack.

[11] In addition to the high risk of incidental civilian death, injury and disability, heavy explosive weapons tend

to cause extensive damage to critical civilian infrastructure, triggering debilitating "domino effects" on interconnected essential services such as health care, water and electricity supply systems.

[...]

[12] ICRC is not blind to the difficulties of the battlefield. Notably, too often, an enemy will hide and fight in populated areas and endanger the civilian population, a practice which is prohibited under IHL. The anonymity of big urban areas supports the unfortunate strategy of human shields, which is often at the origin of a vicious cycle of behaviour leading to the disrespect of the law.

[13] The multiplicity of roles individuals can take – from daylight civilian to night-time fighter and back – adds to the complexity of a battlefield, in which civilian and military areas are increasingly intertwined.

Our call for limits to the fighting

[14] ICRC works to remind all parties to take precautions – in peacetime and in conflict - to protect their people, and avoid situating military objects within or near densely populated areas, not to [...] use the civilian population to shield military activities and not to behave in a way, which exposes civilians to risks.

[15] Military commanders have to face these challenges and have the responsibility to minimize the incidental effects on civilians of an attack. [...]

[16] The onus is on them to explain their choices, notably their choice of weapons, when they conduct hostilities in populated areas. [...] Unsurprisingly, [...] ICRC has a discussion with senior commanders, who feel unduly hampered by the multiplicity of restricting rules in achieving their military objectives in fighting an adversary, who does often not respect those rules.

[17] The intricacies of asymmetric warfare are particularly difficult to manage in such environments; the balance between military necessity and protection of civilians particularly complicated to find in situations of imbalance.

[18] We see this debate as one of the entry points through which the non-reciprocal character of the rules of IHL is challenged by the asymmetry of many conflicts and by demands to consider reciprocity of behaviour when making judgements under IHL. The debate on the use of force in fighting terrorism (or the war on terror as some call it) is rooted in such complexities of urban battlefields.

[19] There is another aspect to consider in this debate: With massive impact of warfare in urban areas widely communicated due to social media and the prevalence of smartphones, there is at least in one part of global public opinion a tendency to consider any civilian victim of armed conflict as a result of violations of IHL. In other parts of the public populist demands for more intensified warfare and no restraining rules in fighting terrorism is condoning torture, indiscriminate bombings and targeted killings.

[20] This polarization of public opinion around IHL has been recognized by the most recent study on people in war. While many support IHL and its protective role, a notable group of people in Europe and the US

support the departure from a more balanced approach.

[21] The underlying principle in all of this discussion can never be forgotten: foremost it is civilians who must be protected and all should err on the side of their protection. It is on this premise that the ICRC is calling on all parties to armed conflicts to avoid the use of explosive weapons, which have a wide impact area in densely populated areas. But I would add that it is first and foremost the dimension of suffering of civilians in complex, interconnected urban areas, which eventually has to lead States and other armed actors, to rethink military strategy in densely populated areas.

[...]

When neighbourhoods are under siege

[22] IHL sets out clear rules about humanitarian conduct that are relevant to siege. These rules must be respected, further elaborated and refined to avoid starvation and the collapse of health and water services generating severe humanitarian consequences for besieged populations. Humanitarian workers need better access to repair damaged infrastructure, days of tranquility are needed to be able to substitute the lack of services, safety zones around hospitals need to bring minimal stability to the most vulnerable. Negotiations must allow for the disentanglement of civilians and fighters.

[23] The utmost care is needed during evacuations of people from cities under siege. In urban environments there can be a multiplicity of groups controlling different territories; the frontlines change and multiply, all of which increases difficulty of contact, security guarantees and access.

[...]

Fragile cities on the brink of conflict

[24] There is a second and related trend occurring in cities that we must pay close attention to as we adjust our response.

[25] The rapid urbanisation we are seeing is creating fragile cities — places like Bamako and Caracas — where violence is accelerating, fueled by the drug trade, mass unemployment and civil unrest.

[26] It is not outright war, but plain violence that kills in those cities, which enter the vicious circle of fragility, violence, and, possibly, conflict. In some of the most violent cities in Latin America as many people died by firearm violence as in Syria — a country at war.

[...]

[27] The correlation between urbanization and violence is unquestionably a complex one, with many factors at play, such as social inequality, unequal distribution of resources, lack of investment, low levels of education and high unemployment. This is particularly troublesome as we know that an increasing

percentage of global wealth comes from economic growth in urban areas. Urban violence therefore does not only endanger people's lives but also potentially affects the global economy.

[28] More than 1.5 billion people, including 350 million of the world's extreme poor, live in an environment of continuous fragility, violence and conflict. That's a huge number of people at risk – it's reported that ten times more people die outside of conflict than in times of conflict.

[29] And the lines between violence and armed conflict are increasingly blurred. ICRC works to reduce this fluidity through legal guidance – but what we know is that violence contributes to fragility, and that fragility can quickly lead to conflict.

[...]

Discussion

I. Urban Violence:

1. (*Paras [2], [24] – [29]*)

- a. What is Peter Maurer referring to when he mentions in *para. [2]* “cities that already face fragility”? Does the ICRC have a mandate to act in situations that are not armed conflicts? From the extracts reproduced above, what can you gather is the ICRC position with regards to situations of violence which do not meet the minimum thresholds of intensity and organization required for them to be classified as NIACs?
- b. Does or should IHL apply to urban violence in Latin American cities? What would be the advantages and risks of applying IHL in such situations?

II. Targeting of Persons:

2. (*Paras [5] – [6], [13]*)

- a. The ICRC President notes in *para. [6]* that “civilians, not military targets” bear the consequences of attacks in populated areas. Under what circumstances can civilians become legitimate targets? In IACs? In NIACs? What criteria should be met for a certain act to qualify as an act of direct participation in hostilities under ICRC’s Interpretative Guidance? (P I, Art. 51 (3); ICRC Interpretative Guidance on the notion of Direct Participation in Hostilities)
- b. (*Para. [13]*) When does IHL protect a “day-light” civilian and “night-time fighter” against attacks? (P I, Art. 51 (3); P II, Art. 13 (3); CIHL Rule 6)

III. Conduct of Hostilities:

3.

- a. (*Paras [7] – [8], [21]*) Are explosive weapons a prohibited means of warfare as such? Is their use in densely populated areas prohibited by IHL? How is their use in such areas restricted by IHL, if at all? Even if they are aimed at military targets, could the use of explosive weapons with wide impact areas within densely populated areas potentially violate the IHL prohibition of indiscriminate attacks? Why? (P I, Arts 48, 51 (4) (5) and 57; CIHL Rules 7, 11 and 24)
- b. (*Para. [8]*) How would you define a “densely populated area”? How do you think this language compares with that used in Art. 51(5)(a) of Protocol I? Is area bombardment prohibited in IHL, even if more precise

weapons or alternative methods of warfare are not available to the Party? (P I, Art. 51 (5) (a); CIHL Rule 13) c. (*Paras [7], [9] – [10], [13]*) According to Peter Maurer, what additional factors should ideally be taken into account by those who plan attacks in populated areas? Should the fact that the consequences of attacks by explosive weapons in urban areas are likely to spread beyond the immediate vicinity of the impact zone affect proportionality calculations? Must every foreseeable, though indirect or even remote, consequence of an attack be taken into account in the proportionality calculation? (P I, Arts 51 (5) (b) and 57 (2) (a); CIHL Rules 14 and 15)

d. (*Paras [3] – [4], [9], [11]*) Given the interdependence of vital urban infrastructure systems, could attacks with explosive weapons in densely populated areas, in some circumstances, violate the prohibition of attacks against objects indispensable to the survival of the civilian population? (P I, Art. 54 (2); CIHL Rule 54)

4. (*Paras [12], [14]*)

a. Why, in your opinion, does President Maurer refer in *para. [12]* to the strategy of human shields as “often at the origin of a vicious circle of behaviour leading to the disrespect of the law”? Is the use of human shields prohibited in IHL? In both IACs and NIACs? Are the obligations of the attacker relaxed if the defender uses human shields? (GC III, Art. 23(1); GC IV, Art. 28; P I, Art. 51(7) and (8); P II, Art. 13(1))

b. What is the difference, in terms of protection under IHL, between involuntary and voluntary human shields? Can the behaviour of voluntary human shields qualify as an act of direct participation in hostilities? Why? Why not? According to the ICRC, should voluntary human shields be included in proportionality calculations? Why? Why not? (ICRC Interpretative Guidance on the notion of Direct Participation in Hostilities)

c. (*Para. [12]*) Is conducting hostilities in populated areas *per se* in violation of IHL? Under what circumstances could it be?

d. (*Para. [14]*) Is it always a “feasible” precautionary measure for parties to avoid placing military objectives in the vicinity of civilian objects? In your opinion, is it more difficult for armed groups to comply with the obligation to take passive precautions? Why? (P I, Art. 57; CIHL Rule 15)

5.

a. (*Para. [23]*) Is there an obligation under IHL to evacuate civilians under siege? Only those in the immediate vicinity of a military objective? In your opinion, is it always “feasible” to find a safe place of evacuation in a small urban area? Isn’t the forced movement of civilians prohibited under IHL? In both IACs and NIACs? Are there exceptions to this prohibition? (GC IV, Arts 17 and 49; P I, Arts 58 and 78; P II, Art. 17; CIHL Rules 22, 24 and 130)

b. (*Para. [14]*) Does IHL require States to take any precautionary measures in peacetime? (GC I, Art. 47; GC II, Art. 48; GC III, Art. 127; GC IV, Art. 144; P I, Arts 82 and 83; P II, Art. 19)

IV. Compliance: Challenges posed by Urban Warfare:

6. (*Paras [16]– [18]*)

a. What do you think of President Maurer’s statement in *para. [16]*, that “senior commanders [...] feel unduly hampered by the multiplicity of restricting rules in achieving their military objectives in fighting an adversary, who does often not respect those rules”? What do you make of the criticism that IHL imposes unfair obligations on more powerful but law-abiding Parties in asymmetric conflicts, with proliferating armed groups?

b. What challenges may arise when assessing the respect for the principle of proportionality in the light of the reverberating effects in an urban environment? In the case, for example, a structure hosting the communication systems of an urban area is targeted as a dual object used as command and control

structure by one Party to the conflict, can it be considered in your opinion an object indispensable to the survival of the civilian population, in the light of its necessity for the emergency response? (P I, Arts 54(2) and 57; CIHL Rules 14 and 54)

c. Are, in your opinion, the existing IHL rules sufficient to regulate the use of explosive weapons in densely populated areas? Can the challenges identified by President Maurer here be addressed if parties simply complied with existing rules of IHL, or are new rules necessary? If so, what should those rules cover?

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