

*What does targeting mean in international humanitarian law (IHL)? How does IHL limit who and what may be targeted in armed conflict? On what bases are some persons and objects protected from direct attack, and what conditions must be fulfilled for an attack to be lawful? The rationale of international humanitarian law is to provide a minimum of humanity in armed conflict by seeking to minimize the level of harm caused to those not or no longer taking part in hostilities. The rules on targeting are central to this aim, as they determine against whom and under what circumstances armed force may be used, even in the heat of hostilities.*

*VERSION FRANCAISE => CLIQUEZ SUR LE LIEN SUIVANT: Coup de projecteur sur **Les règles de ciblage en droit international humanitaire** disponible sur le site du blog Quid Justitiae de la Clinique de droit pénal et humanitaire (traduction de l'Université Laval).*

## Defining "targeting"

*Targeting* can be defined as the use of force by warring parties – whether States' armed forces or organized armed groups – against individuals or objects outside of their control. Targeting is regulated by international humanitarian law and more specifically by the rules governing the conduct of hostilities, which define and limit who or what can be targeted, and under what conditions.

## When do targeting rules apply?

To assess the lawfulness of a targeting decision, one must first determine whether IHL applies to the situation at hand (see Classification of conflict). Beyond deciding if IHL applies or not, one must also assess which IHL rules will apply to the facts at hand, depending on whether such facts relate to the conduct of hostilities (historically designated as "Hague Law") or to the treatment of persons in the power of a party to the conflict (historically designated as "Geneva Law"). The rules on the conduct of hostilities apply to persons or objects not in the hands of the attacking party to the conflict. On the contrary, rules on the treatment of persons apply only to individuals in the power of a party (such as internees, prisoners of war, detainees, the wounded and sick, inhabitants of occupied territory) and entail that such persons are *hors de combat* and thus protected from attack at all times. As regards objects, while a party to a conflict may attack buildings that are military objectives during hostilities, it may not necessarily destroy the same kinds of objects within an occupied area, over which it has control.

The rules relating to the treatment of persons in the power of a party to the conflict differ rather significantly between international and non-international armed conflict (IAC and NIAC), for instance in the level of detail provided on the treatment of certain categories of persons. Conversely, much of the rules relating to the

conduct of hostilities apply as customary international humanitarian law to both IAC and NIAC. The classification of the conflict may however be of relevance for certain rules protecting particular objects, such as those enshrined in Additional Protocol I to which some States are still not party.

## **Cardinal rules**

Three cardinal rules must be fulfilled in order for an attack to be lawful under international humanitarian law. This analysis presupposes that lawful means and methods of warfare are used in such targeting, as any attack using prohibited means or methods would automatically be unlawful.

### ***Distinction***

The principle of distinction is the cornerstone of international humanitarian law. In IACs, it is translated into a rule, which requires that parties to an armed conflict always distinguish between combatants on the one hand, and civilians and persons hors de combat on the other, and that they only target combatants. In NIAC, it requires that parties to an armed conflict always distinguish between fighters and persons who do not, or no longer take a direct part in hostilities, and that they only target fighters and civilians directly participating in hostilities during such participation. Accordingly, combatants and arguably fighters must distinguish themselves (i.e., allow their enemies to identify them) from all other persons who may not be attacked. The rule relating to distinction thus protects civilians from direct attack, unless and for such time as they take a direct part in hostilities (Article 51(3) of Additional Protocol I, Rule 6 of the ICRC's Customary IHL Study).

Similarly, parties to an armed conflict must always distinguish between military objectives and civilian objects, and only target military objectives (Articles 48 and 51(2) of Additional Protocol I, Rules 1 and 7 of the ICRC's Customary IHL Study). In addition, some objects, which are already protected due to their civilian nature, such as medical objects, cultural property or religious objects, also benefit from special protection (see for instance Article 19 of Geneva Convention I and Rule 28 of the ICRC's Customary IHL Study). Special protection can be lifted only under specific circumstances and by following strict requirements (see for instance Article 21 of Geneva Convention I and Rule 28 of the ICRC's Customary IHL Study. See also e.g. Articles 53, 54, 55, 56 and 85(4) of Additional Protocol I; Articles 14 and 16 of Additional Protocol II). Specially protected objects may also normally not be used for military purposes by the party controlling them.

In case of doubt regarding the classification of an individual or an object, they shall be presumed to be civilian in nature and, as such, protected from attack (Article 52(3) of Additional Protocol I, Rules 5 and 10 of the ICRC's Customary IHL Study). The principle of distinction also entails the prohibition of indiscriminate attacks (Article 51(4) of Additional Protocol I, Rule 11 of the ICRC's Customary IHL Study).

Any attack in violation of the rule of distinction is always unlawful. However, even when the attack is directed against a lawful military objective in accordance with the rule of distinction, additional requirements must be fulfilled under the proportionality rule and the obligation to take feasible precautions.

## ***Proportionality***

Even when the target is a military objective, the proportionality rule prohibits attacks which are “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” (Article 51(5) (b) of Additional Protocol I, Rule 14 of the ICRC's Customary IHL Study). The responsibility to assess the proportionality of an attack based on the circumstances, intelligence and information available at the time of the launching of the attack, lies primarily on the commander in charge of the attacking party. Applying proportionality in practice therefore inevitably depends on a subjective assessment of the expected concrete and direct military advantage and the anticipated incidental effects on civilians or civilian objects resulting from the attack, and of the risk of those effects being ‘excessive’ in relation to such advantage.

The proportionality rule is central to IHL, as it gives effect to the compromise between the principles of humanity and military necessity underpinning it and thus makes IHL a realistic and reasonable framework for hostilities. Proportionality is supplemented by several obligations to take feasible precautions, which play a crucial role in ensuring that distinction and proportionality are given concrete effects on the battlefield.

## ***Precautions***

Once the requirements under the rules of distinction and proportionality have been fulfilled, the attacking party is also required to take all feasible precautions to avoid, or at least minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects (Article 57 of Additional Protocol I, Rule 15 of the ICRC's Customary IHL Study). Such precautionary measures include target verification, choice of appropriate means and methods of warfare, assessment of the effects of attacks, issuing advance warning, ensuring appropriate target selection to avoid or at least minimize harm to civilians, and exercising ongoing control during the execution of attacks, including suspending or canceling any attack if the target proves not to be a military objective or if the attack appears to be disproportionate (Article 57 of Additional Protocol I, Rules 16 to 21 of the ICRC's Customary IHL Study).

Because of their very nature, armed conflicts cause destruction and suffering. While IHL targeting rules are by no means a way to render hostilities harmless, their unconditional respect by warring parties, as a legal requirement, is absolutely crucial to limit harm and thus give way to sustainable peace, once hostilities have ended.

## **Teaching resources**

### ***The Law***

A detailed overview of the IHL framework on targeting during the conduct of hostilities can be found in “The Law” chapters on the Principle of Distinction and Conduct of Hostilities. See also the chapters on Fundamentals of IHL and IHL and Human Rights regarding the applicability of IHL to the use of force.

### ***The Practice***

A selection of related case studies from The Practice illustrates:

Applicability of IHL rules on the conduct of hostilities: • UK, Unlawful killings in Afghanistan - **NEW** • ICRC, International Humanitarian Law and the challenges of contemporary armed conflicts in 2015 • United States of America, The Death of Osama bin Laden

Principle of distinction: Targetability of persons • Somalia, The Death of Bilal Al-Sudani - **NEW** • Switzerland, Swiss Criminal Federal Court finds Liberian commander guilty of war crimes - **NEW** • Chad/France, Airstrikes against a Non-State Armed Group • Iraq/Syria/UK, Drone Operations against ISIS • Civil War in Nepal • Libya, The Use of Lethal Autonomous Weapon Systems

Principle of distinction: Targetability of objects • The Netherlands, Fighting in the Chora District (Afghanistan) - **NEW** • Federal Republic of Yugoslavia, NATO Intervention • Libya, Airstrikes and Treatment of Detainees • Afghanistan, Strikes on Drug-Processing Facilities • Israel/Palestine, Operation Protective Edge (Gaza, 13 June - 26 August 2014) • Central African Republic, No Class: When Armed Groups Use Schools

Proportionality and precautions: Obligation to protect civilians from the effects of hostilities: • US, Civilian Harm Mitigation and Response Action Plan - **NEW** • Yemen, Humanitarian Impact of the Conflict • ICRC, Statement - War in Cities; What is at Stake? • Syria, the Battle for Aleppo • Colombia, Case of the Santo Domingo Massacre • Federal Republic of Yugoslavia, NATO Intervention

## **A to Z**

Relevant definitions can be found in the “A to Z” section:

Armed forces, Armed groups, Attacks, Bombardment, Civilian objects, Civilian population, Civilians, Civilians taking part in hostilities, Classification of persons, Collective punishments, Combatants, Conduct of hostilities, Customary International Humanitarian law, Direct participation in hostilities, Distinction, Distinctive emblems, Drones, Fighters, Fundamental principles of IHL, Hors de combat, Hospital zones and localities, hospital and safety zones and localities, Hospitals, Human shields, Indiscriminate attacks, Journalists, Law enforcement, Law of Geneva, Law of the Hague, Loss of protection, Means of warfare, Methods of warfare, Military advantage, Military necessity, Military objectives, Precautions in attack, Presumptions, Proportionality, Protected objects, Protected persons, Protection of children, Protection of the civilian population, Status, Targeted killings, Use of force, Warning, Weapons.

## **To go further**

Additional guidelines, commentaries, rules, documents and resources can help explore the law on targeting under international humanitarian law further:

ICRC Customary International Humanitarian Law Study, Chapters 1-5, and 7-14.

Nils Melzer, *Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law*, ICRC (2009).

ICRC & Laval University, *International expert meeting report: The principle of proportionality* (2016).

Jelena Pejic, *Extraterritorial targeting by means of armed drones: Some legal implications*, International Review of the Red Cross, Vol. 96, No. 893 (2014), pp. 67–106.

ICRC, *Explosive Weapons with Wide Area Effects: A Deadly Choice in Populated Areas* (2022).

Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas (2022).

ICRC, *Reducing Civilian Harm in Urban Warfare: A Commander's Handbook* (2021).

ICRC, *Reducing Civilian Harm in Urban Warfare: A Handbook for Armed Groups* (2023).

ICRC, *Twelve Issues for 2022: What States Can Do to Improve Respect for International Humanitarian Law*, pp. 4-6.

ICRC, *International humanitarian law and the challenges of contemporary armed conflicts* (2019), pp. 7-18.

Helen Durham et al, *Gendered impacts of armed conflict and implications for the application of IHL*, Humanitarian Law and Policy Blog (2022).