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Introduction

In light of the escalating hostilities in various areas and contexts in the region, the recurring targeting of civilian infrastructure has raised concerns regarding both the immediate and long-term adverse effects on the civilian population.

International humanitarian law (IHL) governs the conduct of parties to armed conflicts with the aim of protecting civilians and mitigating the impacts of such conflicts. This body of law comprehensively and clearly outlines the duties of the belligerents in safeguarding civilian infrastructure, which is an essential condition for protecting civilians.

The Syria Regional Desk at the Diakonia IHL Centre presents this document in the form of a set of questions and answers as a contribution to remind all parties involved in armed conflicts of their legal obligations, whether they are States, non-state armed groups, or Occupying Powers.

This document is not exhaustive in its coverage of all relevant legal provisions, but it addresses most of the issues and questions pertaining to the protection of civilian infrastructure.

1. What is civilian infrastructure in the context of armed conflict?

IHL does not provide a definition for “civilian infrastructure”. For the purpose of this paper, civilian infrastructure refers to the physical and organizational structures and facilities that support the daily life of a civilian population and are critical for a functioning society. Civilian infrastructure can include transportation networks, such as roads, bridges, and airports; utilities like water supply, electrical grids, and sewage systems; healthcare facilities, including hospitals and clinics; educational institutions, such as schools and universities; housing and residential areas; communication systems, such as telephone and internet networks; public services, like government buildings and administrative offices.

As this paper will elaborate further, in times of armed conflict, all civilian infrastructure, like any other civilian object, is generally protected from attacks. Civilian infrastructure that provides essential services which are indispensable for the survival of the civilian population is afforded additional protection under IHL, as damaging or destroying these facilities can have severe and long-lasting consequences for civilian populations.

2. What are the relevant international legal frameworks governing the protection of civilian infrastructure during armed conflicts?

IHL exclusively applies to situations of armed conflict, whether they are international (IAC) or non-international (NIAC). IHL prescribes rules governing the conduct of the parties to the conflict, aiming at protecting those who are not or no longer participating in hostilities. It further aims to constrain violence to the minimum extent required to accomplish the conflict’s objectives, which is primarily to weaken the military forces of the enemy.1

IHL designates specific rules for the protection of all civilian objects and, in particular for the protection of civilian infrastructure that provides essential services. These legal provisions, which are intended to shield civilian infrastructure from undue harm during both international and non-international armed conflicts, are to be found in the Geneva Conventions of 1949 and their Additional Protocols of 1977.

Moreover, these rules have evolved as binding IHL customary norms to all parties to any armed conflict regardless of the application of certain treaties to them. The obligation to protect civilian infrastructure is enshrined in several customary rules such as the obligation to distinguish civilian objects from military objectives,2 the prohibition of indiscriminatory attacks,3 proportionality and precautionary measures in attacks,4 and the prohibition of attacks against objects indispensable to the survival of the civilian population.5

1. Declaration Renouncing the Use, in Time of War, of certain Explosive Projectiles under 400 Grammes Weight, Saint Petersburg, November 29/December 11, 1868, paras 2-3 of the Preamble.
5. ICRC, Customary IHL Study, Rule 54.
International Human Rights Law (IHRL), applies at all times, i.e., both in peacetime and in situations of armed conflict. IHRL interacts with IHL in a complementary manner, the two bodies of law reinforce one another. Damage to civilian infrastructure providing essential services often results in preventing civilians from fully enjoying their fundamental human rights including the right to health, the right to food as well as the right to an adequate standard of living.

Hence, as civilian infrastructure plays a pivotal role in providing essential services to the civilian population, recognized as a protected object under IHL and as the beneficiaries of the rights and protections enshrined by IHRL, both branches of law mutually complement each other in overseeing the safeguarding of this infrastructure. It is noteworthy that, for the purposes of International Criminal Law (ICL), the interplay between IHL and IHRL holds paramount importance in classifying certain actions as war crimes, crimes against humanity, or a combination thereof, leading to accountability for violations.

3. What are the specific legal obligations of parties to the conflict regarding the protection of civilian infrastructure?

IHL imposes an unequivocal obligation upon the parties to a conflict to consistently distinguish between civilian objects and military objectives in their conduct of military operations and to only direct attacks against military objectives. The respect of the principle of distinction stands as a foundational requirement for protecting civilians and civilian objects, which is the principal objective of IHL. It is imperative to recognize that civilian infrastructure constitutes civilian objects and, as such, should not be targeted unless and for such time as they are used for military purposes which would turn them into military objectives.

Furthermore, civilian infrastructure that provides essential services for the civilian population, or that is acknowledged as indispensable to the survival of the civilian population, is provided additional protection under IHL which explicitly prohibits “attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population”.

Parties to the conflict are also bound to respect and protect the human rights of the civilian population under their control. Attacks against civilian infrastructure are likely to negatively affect or deny the exercise of the civilian population’s human rights, including the right to life, health, an adequate standard of living, and human dignity.

4. What is considered indiscriminate or disproportionate attacks on civilian infrastructure?

Indiscriminate attacks are categorically prohibited under the established principles of IHL and are closely tied to the principle of distinction. An indiscriminate attack is not directed at a specific military objective. It includes situations where combat methods or means are employed and their effects cannot be limited to a specific military objective. Meaning that such attacks endanger not only military objectives but also civilian infrastructure.

Civilian infrastructure objects are protected from direct attack but might be vulnerable to the ramifications of indiscriminate attacks. Given that indiscriminate attacks are not directed at a specific military objective, they can result in the partial or total destruction of civilian infrastructure especially when such indiscriminate attacks target areas in close proximity of these facilities. The prohibition of area bombardment follows a similar rationale, treating multiple, clearly separated and distinct military objectives located in a populated area as a single military objective.

8. For the operational purposes of this paper, ICL provisions and analysis are not addressed comprehensively.
10. ICRC Customary IHL Study, Rule 54; Additional Protocol I, Article 54; Additional Protocol II, Article 14.
11. Additional Protocol I, Article 51(4); ICRC, Customary IHL Study, Rule 11.
5. What constitutes a military objective under IHL?

IHL provides that attacks must be strictly limited to military objectives and that civilian objects must not be the object of attacks or reprisals.\(^{15}\) Civilian objects are negatively defined as all objects that are not military objectives. An object must meet two criteria in order to be qualified as a military objective: it has to effectively contribute, by virtue of its nature; location; purpose; or use, to the military action, and its total or partial destruction; capture; or neutralization must offer a definite military advantage to the attacker in the circumstances ruling at the time.\(^{16}\)

The element of “effective contribution” means that the object plays a significant and direct role in military operations, enhancing the military capabilities or objectives of one of the parties to the conflict. For instance, military bases, weapons storage facilities, military equipment and ammunition, and command headquarters are military objectives by virtue of their nature since they by default effectively contribute to the military action of one party and offer a definite military advantage to the other party when attacked. The “use” and “purpose” criteria mainly refer to objects that are used for military purposes. For instance, if, at the time of attack planning, a school is being used to accommodate enemy troops, it may be deemed a military target due to its military purpose. Any other object that does not satisfy all the definition interlinked elements of the military objective is considered civilian and therefore is protected from direct attack.

Merely presuming that an object contributes to the military action of an adversary does not confer an immediate and inherent right to attack that object. For example, targeting a power plant, which provides essential services to the civilian population under the control of the opposing party, and attempting to justify this action by pointing to its general utility in enhancing the adversary’s capabilities, as well as arguing that depriving the civilian population of electricity would exert pressure on the adversary’s military and economic capacities, runs contrary to the definition of a military objective. While the precise meaning of the terms “effective contribution” and “definite advantage” depend heavily on contextual factors, the military advantage gained from the attack must be “direct and specific”, which means that the advantage must be “substantial and relatively close, and that advantages which are

\(^{15}\) Geneva Convention IV, Article 33; Additional Protocol I, Article 52(1) and (2) ICRC; Customary IHL Study, Rule 7

\(^{16}\) Additional protocol I, Article 52(2).
hardly perceptible and those which would only appear in the long term should be disregarded.” In other words, it is not legitimate to launch an attack which only offers potential or indeterminate advantages.

6. Is it possible for a civilian infrastructure object to qualify as a military objective?

The principles and regulations of IHL are unequivocal and unyielding, with no exceptions, irrespective of the circumstances. Even authorised exemptions should never be interpreted as a justification for initiating any form of hostilities and attacks. As a result, civilian infrastructure objects are categorically regarded as protected from attacks unless they can be conclusively proven to meet the criteria of a military objective as explicitly defined in IHL.

The decision to target a civilian infrastructure object must be made after a thorough and realistic evaluation to ascertain its conformity with the two interlinked components of the military objective definition. Additionally, it should be understood that any such attack is only permissible for the duration during which the object serves a military purpose.

A civilian object may be used for military purposes, thus rendering an attack permissible provided that there is a definite conclusion that such an attack would yield a clear military advantage and is restricted to the period when it serves a military function.

It is essential to exercise a strict interpretation of the law when designating civilian objects as military objectives. For instance, the mere presence of some military personnel within a water treatment facility does not justify designating the entire facility as a military objective unless there is substantiated evidence of those military forces using the facility for launching attacks or storing ammunition. Additionally, any attack against a military objective also needs to be in line with the other fundamental IHL principles of proportionality and precaution (further elaborated below).

It is important to note that IHL explicitly stipulates that “in case of doubt whether an object which is normally dedicated to civilian purposes […] is being used to make an effective contribution to military action, it shall be presumed not to be used.” It is important to draw attention to the specific wording which underscores the threshold of “effective contribution” for classification as a military objective.

In summary, the possibility of designating a civilian infrastructure object as a legitimate military objective necessitates rigorous evaluation in accordance with the principles of IHL, notably the principle of distinction.

7. Are civilian infrastructure objects with dual-use functions considered legitimate military objectives?

Within the context of armed conflicts, certain civilian infrastructure possesses dual-use functionality, serving both civilian and military purposes. For instance, power plants exemplify such dual-use objects, fulfilling critical roles in both civilian and military sectors.

Under IHL, attacks against such dual-use objects, like any other attack, must comply with the principle of distinction, which entails the fulfillment of the interconnected elements of the definition of military objective, as well as the principle of proportionality, and precaution. While these criteria establish the legitimacy of an attack, it is essential to acknowledge that the consequences of targeting a dual-use object can have substantial impact on civilian population. For instance, when considering an attack on this specific category of objects (e.g., a power plant), that, in a given situation may serve both civilian and military functions, special attention must be given to the effects of such an attack that can ripple through the provision of critical services, including health care, access to clean water, and other essential amenities necessary for the survival and well-being of the civilian population in that given situation.


18. ICRC, Customary IHL Study, Rule 10; Additional Protocol I, Article 52(3).

19. It is important to note that this dual-use categorization extends beyond power plants and encompasses a range of objects that exhibit similar duality in their functionality. These objects may simultaneously serve civilian needs and military purposes.
The stance of the International Criminal Tribunal for the Former Yugoslavia (ICTY) reinforces this perspective. The ICTY endorsed the notion that a dual-use object qualifying as a military objective due to its essential contribution to the adversary’s combat activities could lead to disproportionate consequences. Therefore, the determination of which dual-use objects qualify as military objectives on one hand and are indispensable for the survival and well-being of the civilian population on the other, is essentially context-specific. This means that in certain situations where a population heavily relies on the services provided by these dual-use infrastructure objects, attacking and destroying them may potentially violate the principles of proportionality and the prohibition against depriving civilians of objects that are essential for their survival.

8. Is the sole determination of the military objective status of a civilian infrastructure object sufficient to justify its attack?

Under IHL, any attack against a legitimate military objective, in order to be lawful, needs to be in line with the principles of proportionality and precaution. IHL mandates that all parties to the conflict adhere to the principle of proportionality in attack. This principle unequivocally prohibits launching attacks that would cause excessive harm to civilians or civilian objects when compared to the expected concrete and direct military advantage. Therefore, even if attacking a civilian infrastructure object is expected to create a concrete and direct military advantage, it remains prohibited to proceed with the attack if it would cause disproportionate harm to the civilian population.

When making the proportionality assessment, parties to the conflict must take into account not only the immediate harm that may arise from the attack but also the potential reverberating or long-term harm that could befall the civilian population. This comprehensive evaluation includes the considerations of the specific context and circumstances surrounding the target. For instance, launching an attack on a power plant that serves as the primary source of electricity for hospitals and other vital services in a particular region is likely to be deemed disproportionate. This assessment takes into account the potential harm that could imperil the survival of this population. It is imperative to interpret the principle of proportionality consistently with the norm that forbids attacks on civilian objects that are essential for the survival of the civilian population.

In summary, the sole determination of the military objective status of a civilian infrastructure object is not sufficient to justify an attack. The principle of proportionality mandates a careful balancing act, weighing the expected military advantage against the potential harm to civilian population, both immediate and reverberating. This comprehensive assessment is central to minimizing harm to civilians and upholding the core principles of IHL during armed conflicts.

9. What measures should be taken to minimize harm to civilian infrastructure during armed conflicts?

IHL stipulates that, in the conduct of military operations, “constant care” must be taken to spare the civilian population and civilian objects. Parties to the conflict are under an obligation to take all feasible precautions to prevent or minimize harm caused to civilians or civilian objects during attacks. Once the attacking party has verified the military objective status of a civilian infrastructure object and ensured compliance with the proportionality requirements, a series of precautionary measures must be put in place when planning an attack to avoid or minimize harm to the civilian population and civilian objects. These measures should account for various factors, including the object’s location, the type and timing of the attack, in addition to its precise location as well as the choice of weapon to be employed.

22. Additional Protocol I, Article 57(1); ICRC Customary IHL Study, Rule 15.
23. Ibid.
The duty to exercise “constant care” to spare the civilian population and civilian objects demands that parties to the conflict maintain an ongoing assessment of the situation, continuously adapting their military operations to prevent or minimize harm to civilians and civilian objects. This means that the obligation to take precautions is not limited to the planning and execution of individual attacks, but also extends to the broader military strategy and tactics used by the parties to the conflict.

10. Are there any recent developments or changes in the interpretation and application of IHL related to civilian infrastructure protection?

One of the most relevant developments relevant to IHL interpretation and application in contemporary armed conflicts is the concept of feasibility of precautionary measures in attack. Article 57(2)(a)(i) of Additional Protocol I sets out a rule requiring those who plan or decide upon and attack to “do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives...”.

The “everything feasible” stipulation encompasses the utilization of all military and technical resources at the disposal of the attacking party. Given that individuals responsible for planning or authorizing an attack rely on information provided to them, it is their duty to acquire additional and precise information to ensure compliance with the obligations outlined in this provision and others. Consequently, the presence of advanced technological resources for reconnaissance and intelligence, such as drones or satellites, as well as precision-guided munitions, elevates the level of responsibility for those involved in the planning and authorization of attacks. They are tasked with the duty of exclusively targeting legitimate military objectives and thoroughly assessing the potential extent of collateral harm to civilians and civilian objects.

11. Does an Occupying Power bear additional obligations for safeguarding civilian infrastructure?

The law of occupation is grounded in a principle that prohibits the Occupying Power from exploiting its authority for purposes other than those directly related to its military interests and the needs of the local population, in accordance with the principles of IHL.24 This principle further mandates that the Occupying Power must refrain from utilizing the territory’s inhabitants, resources, or other assets for the benefit of its own territory or population.25

An Occupying Power bears primary responsibility to ensure the basic needs of the civilian population under its control are met.26 This responsibility becomes more crucial if the Occupying Power is unable to meet these needs, and in such situations, IHL stipulates that the Occupying Power must agree to relief schemes offered either by States or impartial humanitarian organizations as well as allow and facilitate the rapid and unimpeded passage of such essential aid in territories under its control.27 Since the “Occupying Power is responsible for the provision of supplies for the population [it is] under a definite obligation to maintain at a reasonable level the material conditions under which the population of the occupied territory lives”.28 By virtue of this obligation stemming from the principle that an Occupying Power must use its authority in favour of the interests, needs, and well-being of the local population, including meeting their basic needs, it could be concluded that attacks against civilian infrastructure that deprive the local population of accessing these needs

27. Geneva Convention IV, Article 59; Additional Protocol I, Article 70; ICRC Customary IHL Study, Rule 55.
might be contrary to this obligation. Moreover, IHL prohibits the Occupying Power from destroying “real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities”.

12. Are there any special rules or protections in place for particularly vital civilian infrastructure, such as medical units?

In addition to the overarching protection afforded by IHL to all civilian objects, specific rules and safeguards have been put in place to reinforce the protection of certain types of objects including medical units, vehicles, and other transport; cultural objects and places of worship; objects indispensable to the survival of the civilian population; natural environment; works and installations containing dangerous forces; non-defended localities; and demilitarized zones. Among these, medical units occupy a pivotal role in the civilian infrastructure, as they are responsible for delivering essential services for the civilian population. The category of medical units consists of a diverse range of facilities, including civilian and military hospitals, blood transfusion centres, medical and pharmaceutical stores and materials, and stocks of medical material and pharmaceutical products. Whether fixed or mobile, permanent or temporary, medical units are accorded special protection under IHL. They are safeguarded from any form of attack, destruction, or requisition in all circumstances.

A fundamental rule of IHL is the prohibition of using medical units to shield military objectives from attack. These units are mandated to adhere strictly to their humanitarian duties. However, if, in exceptional circumstances, a medical unit were to be used for activities that deviate from its humanitarian mission and may cause harm to the enemy, the protection of the unit is not automatically forfeited. Protection endures unless a due and reasonable warning has been issued and the warning remains unheeded.

13. Is military use of civilian infrastructure, such as schools or hospitals, prohibited under international law?

Parties engaged in armed conflicts frequently resort to the utilization of civilian infrastructure for military purposes. This practice takes on various forms, such as situating their military personnel and/or equipment within or near these civilian infrastructures particularly when they hold strategic or military importance. In other cases, parties may seek to exploit the protected status accorded to the civilian infrastructure by locating military objectives or launching attacks in close proximity to these facilities, actions that are expressly prohibited under the principles of IHL.

Although IHL does not specifically prohibit the use of civilian objects for military purposes, it imposes on parties involved in armed conflicts the duty to protect civilians and civilian objects under their control against the adverse effects of attacks. Objects granted special protection, including hospitals and other essential infrastructure, must always be protected against the perils arising from military operations mainly by refraining from using them for military purposes.

Of equal importance is the prohibition against the improper use or misuse of the distinctive emblems
stipulated by the Geneva Conventions\textsuperscript{40} including the red cross and crescent. These distinctive emblems are designated for the exclusive use of medical services and are essential for ensuring their protection in the context of armed conflicts. This prohibition against their misuse or improper use possesses an absolute character, irrespective of the motivations or intentions of those engaging in such practices, which can involve the placement of military personnel or equipment in facilities bearing these distinctive emblems. The scope of this prohibition extends to include other emblems recognized as protective symbols for cultural properties and installations containing dangerous forces.

\textsuperscript{40} Geneva Convention I, Articles 39, 44, 53, and 54; Geneva Convention II, Articles 4(1), 44, and 45; Additional Protocol I, Article 38(1); Additional Protocol II, Article 12.
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