

PRACTICAL MEASURES TO STRENGTHEN THE PROTECTION OF CIVILIANS DURING MILITARY OPERATIONS IN ARMED CONFLICT

This technical compilation of practical measures is submitted on behalf of the following contributing States: Belgium, France, Germany, the United Kingdom, the United States, [. . .].

The purpose of this technical compilation is to identify practical measures that States can implement to strengthen the protection of civilians in military operations in the context of armed conflict, consistent with their existing obligations in international humanitarian law (IHL, also often referred to as the law of war or law of armed conflict).¹

Concerns have been raised regarding civilian casualties in current armed conflicts, especially civilian casualties in urban warfare when explosive weapons have been used. The causes of harm to civilians in current armed conflict can be complex and involve a range of factors, including incidental harm caused during lawful attacks directed against military objectives, deliberate targeting of civilians in violation of IHL, mistaken or lack of identification of the presence of civilians, or the use of human shields by terrorist groups. Although recognizing this complexity and the need to continue to consider comprehensively all sources of risk to civilians, the promotion of the broad range of practical measures to strengthen the protection of civilians in military operations conducted by responsible States can yield immediate and concrete results.

Under a strong convergence of legal, humanitarian, and strategic imperatives, responsible militaries have developed programs of compliance with IHL and a broad range of other practical measures to reduce the likelihood of harm to civilians and civilian objects. These practices, including training, operational procedures and methodologies, and diverse weapon systems and capabilities, when applied together, can be mutually reinforcing and be even more effective than when applied individually. Moreover, the sharing and promotion of these practical measures among States could lead to their wider implementation, which would strengthen the protection of civilians in current and future armed conflicts.

This paper: (1) recognizes key IHL requirements for the protection of civilians; (2) identifies general measures that States can take to strengthen implementation of existing legal requirements and to improve civilian protection in military operations; and (3) identifies specific good practices that States can implement to improve civilian protection in military operations.

I. Key IHL Requirements for the Protection of Civilians

IHL requirements must be implemented to help effectuate the goal of protecting civilians, although IHL recognizes that civilian casualties are a tragic but, at times, unavoidable consequence of armed conflict.

¹ The paper is not intended to and does not create new obligations under international law or modify existing obligations and is without prejudice to the discretion States have with regards to the manner in which they fulfill their legal obligations and in taking possible further policy measures to enhance the protection of civilians. The discussion of particular IHL obligations is without prejudice to other obligations under IHL that may be applicable. The listing of a particular practice should also not be understood as an indication that the practice is undertaken out of a sense of legal obligation under customary law.

IHL includes, *inter alia*, obligations to distinguish between the armed forces and civilian population, which apply both to parties in conducting attacks and to parties in defending against attacks.

In conducting attacks, a party to an armed conflict must, *inter alia*:

- refrain from any use of weapons that are prohibited as inherently indiscriminate;
- only make military objectives the object of attack, and refrain from making civilians or civilian objects the object of attack;
- refrain from attacks expected to cause death or injury to civilians and damage or destruction to civilian objects excessive in relation to the concrete and direct military advantage expected to be gained; and
- take precautions to reduce the risk of harm to civilians and other protected persons and objects in accordance with applicable international law. Such precautions can include, *inter alia*: effective advance warnings; cancelling or suspending an attack; and choice in the means or method of attack.

Outside the context of conducting attacks, a party to an armed conflict has obligations to take precautions to protect the civilian population, individual civilians, and civilian objects under their control against the dangers resulting from military operations. Such precautions can include, in accordance with applicable international law, *inter alia*:

- refraining from placing military objectives in densely populated areas;
- removing civilians and civilian objects from the vicinity of military objectives;
- establishing areas where civilians are protected; and
- using distinctive and visible signs to identify certain specially protected persons and objects, such as hospitals and cultural property, in accordance with applicable international law.

A party to an armed conflict must also refrain from the use of “human shields.” In particular, parties to a conflict may not use the presence or movement of protected persons or objects

- to attempt to make certain points or areas immune from seizure or attack;
- to shield military objectives from attack;
- or otherwise to shield or favor one’s own military operations or to impede the adversary’s military operations.

II. General Measures to Strengthen Implementation of IHL and Civilian Protection in Military Operations

The following general measures can be taken by States to strengthen the implementation of existing legal requirements and to improve civilian protection in military operations:

1. Instituting effective programs within their armed forces to help ensure compliance with IHL obligations related to the protection of civilians, which include:
 - a. Dissemination of IHL to the armed forces and periodic training of members of the armed forces on IHL;
 - b. Legal advisers advising commanders and other decision-makers within the armed forces on IHL;

- c. Instructions, regulations, and procedures to implement IHL standards and to establish processes for ensuring compliance with IHL;
 - d. Internal mechanisms for the reporting of incidents involving potential IHL violations;
 - e. Assessments, investigations, inquiries, or other reviews of incidents involving potential IHL violations; and
 - f. Corrective actions, as appropriate.
2. Implementing, where appropriate, the specific good practices on civilian protection described below.
 3. Developing, reviewing, and routinely improving other practices and policies to help protect civilians in military operations.
 4. Supporting, as appropriate, the efforts of other States or parties to a conflict to implement their legal obligations and to improve the protection of civilians during military operations.
 5. Sharing and exchanging, as appropriate, with other States information about policies, and practices, and lessons learned related to the protection of civilians.

III. Specific Good Practices to Improve the Protection of Civilians During Military Operations

The following good practices can be implemented where States deem relevant and appropriate, whether individually or in combination with other States, to improve the protection of civilians during military operations:

1. Commanders, at all levels, exercising leadership necessary to reduce the risk of harm to civilians and civilian objects. This may include:
 - a. Setting a command climate that fosters discipline, IHL compliance, and an understanding of the importance of civilian protection.
 - b. Determining the appropriate application of accountability and other corrective measures to ensure that the forces under their command respect IHL and effectively implement other good practices to protect civilians.
2. Training personnel on practices that reduce the likelihood of civilian casualties. This may include:
 - a. Training commensurate with each person's duties and responsibilities,
 - b. Additional training before an individual or unit is deployed to an active theater of military operations.
 - c. Practical learning, such as the use of exercises, simulations of complex operational environments that include civilians, and the use of specialized, realistic training environments, such as urban warfare training centers.
3. Developing, acquiring, and fielding intelligence, surveillance, and reconnaissance systems that contribute to the protection of civilians by enabling more accurate battlespace awareness.

4. Developing, acquiring, and fielding a range of weapons systems and other technical capabilities that further enable discriminate military operations in different environments and operational contexts, such as technology that results in more precise kinetic effects, weapons designed to avoid or minimize the occurrence of explosive remnants, and capabilities that can neutralize military objectives with temporary or reversible effects.
5. Issuing military procedures, including doctrine (such as tactics, techniques, and procedures), standard operating procedures, and special instructions, that address the effective conduct of military operations across the targeting cycle. This may include:
 - a. Targeting processes for analyzing, selecting, and prioritizing targets and matching the appropriate responses against them, considering operational requirements and capabilities.
 - b. Collateral Damage Estimation Methodologies to conduct collateral damage analyses and to produce collateral damage estimates that assist commanders in understanding risks to civilians and in applying the principle of proportionality.
 - c. Weaponeering processes to determine the specific means required to create a desired operational effect (*e.g.*, destruction, neutralization, suppression, or disruption), and for taking actions to mitigate the risk of collateral damage, such as the appropriate pairing of weapons and targets, aim points, timing or angle of weapons fire, and munition fuzing.
6. Issuing to the armed forces rules of engagement (ROE) to ensure that the individuals within the chain of command best positioned to make judgments relevant to accomplishing the mission and to protecting civilians are empowered to do so. This may include:
 - a. Authorizing subordinates to take additional precautions to mitigate previously unanticipated risks to civilians that they discover or to refrain from conducting an attack when such action would best achieve the commander's intent if the commander had known about such risks;
 - b. Procedures for presenting to more senior commanders for decision certain potential attacks on targets that involve higher risks of incidental harm; and
 - c. Requirements for additional review or higher-level approval before certain sensitive military objectives may be attacked.
 - d. Requirements for fielded forces at the tactical level to apply sound judgment and to comply with IHL continually when dynamic weapon employment occurs outside of deliberate targeting processes.
7. Conducting assessments and other reviews that assist in reducing civilian casualties by identifying risks to civilians and evaluating efforts to reduce such risks. This may include:
 - a. General assessments of the risks to the civilian population that inform operational planning and other civilian protection measures, such as the identification of places and facilities for placement on a "no-strike" or "special authorization" list, including places and facilities that are protected from the effects of military operations under international law and places and facilities whose destruction may have entail significant risk of collateral damage, such as dams.
 - b. Assessments or other reviews of reports of specific incidents involving civilian casualties.

8. Considering civilian protection issues in the course of operational planning. This may include consideration of:
 - a. Risks of death or injury to the civilian population, including risks that have been specifically identified in assessments and those risks posed by the potential placement of military bases, facilities, or forces.
 - b. Potential measures to mitigate risks to the civilian population, such as hospital and safety zones, civilian evacuation measures, the delivery of warnings, and adjusting the timing of operations and the places where enemy forces are engaged.
 - c. The likely military and humanitarian effects from the implementation of such potential measures, including possible responses by an adversary or another party that would place civilians at greater risk and possible risks to civilians posed by inaction or delay.
9. Communicating with impartial humanitarian organizations, such as the International Committee of the Red Cross, or other relevant non-governmental organizations, including to encourage them to assist in efforts to distinguish between military objectives and civilians by appropriately marking protected facilities, vehicles, and personnel and by providing updated information on the locations or movements of such facilities, vehicles, and personnel.
10. Studying past operations to identify lessons learned with respect to civilian protection and incorporating those lessons into military doctrine and other military guidance and procedures.