

EDITORIAL

The rules on the conduct of hostilities prescribe the rights and duties of belligerents in their conduct of military operations. Transformations, revolutions and changes of all kinds in armed conflict constantly challenge international humanitarian law. Modern warfare features growing inequality in arms, the emergence of transnational terrorist networks, the privatization of traditional military activities and the near or total collapse of some states. These structural characteristics of warfare today are sometimes beyond the scope of international humanitarian law, but they are also shaking its foundations or having repercussions on the application of certain of its fundamental principles. This issue of the *Review* illustrates some aspects of present-day methods of warfare and the applicable rules.

The methods and means employed depend on the overall objective that the parties to a conflict seek to attain. Sir Rupert Smith stresses that the use of force must correspond to the utility of force, thus to the purpose of the confrontation which is the root cause of the conflict. We are therefore at the meeting point between the two bodies of law regulating when and why the use of force may be initiated (*jus ad bellum*) and how the resultant hostilities must be conducted (*jus in bello*).

In legal terms, in order to uphold the fundamental distinction between the civilian population and combatants and between civilian objects and military objectives it is essential to determine what a military objective is. Modern warfare increasingly involves civilians in both international and non-international armed conflict, and military operations are shifting away from the clearly identifiable battlefield. As even civilians may participate in hostilities and civilian objects may be transformed by their use into military objectives, this determination is far from obvious.

To prevent the entire civilian population from being placed at risk, international humanitarian law restricts attacks to those on combatants and persons directly participating in hostilities. It is not a perfect system – a civilian academic who is an arms technology specialist may be much more instrumental in the outcome of the war than a simple soldier. The basic principle of distinction is even more difficult to uphold in internal wars. The ICRC, together with experts, is currently endeavouring to find more subtle criteria in order to provide interpretative guidelines for the notion of direct participation in hostilities. The goal is to achieve better protection of the civilian population through clear and practicable criteria which stand the test in the reality of warfare today.

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The law on the conduct of hostilities is composed of a variety of specific rules designed primarily to protect the civilian population against the effects of hostilities. “Terror attacks” on the civilian population or indiscriminate bombardments are prohibited, as they do violate the basic principle of distinction. The law also prohibits the abuse of protection, in particular by using civilians or civilian objects to shield a military objective. Such objectives do not cease to be legitimate targets for attacks merely because of the proximity of civilians or protected objects, but their presence does mean that precautionary measures in and against the attacks have to be taken by both parties to a conflict.

The general principle of proportionality inherent in all international law proscribes any action by the parties to a conflict beyond what is necessary to achieve the desired result. As formulated in the 1977 Additional Protocol I, attacks are prohibited if they may be expected to cause incidental loss of civilian life, injury to civilians or damage to civilian objects that would be excessive in relation to the anticipated concrete and direct military advantage of the attack. Some states have, however, held that the military advantage anticipated from an attack can only be considered as a whole, and not only in relation to isolated or particular parts of the attack.

Similarly, with regard to the legality of the use of force and in particular the right of self-defence, the principle of proportionality relates not to the direct military advantage but to the attacks and the purpose thereof. While the different legal regimes and standards in *jus ad bellum* and *jus in bello* pursue different aims and lead to different interpretations, they both greatly affect the conduct of hostilities. Despite the contradictory reference to the “survival of a State” in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice stated that proportionality has to be upheld in both *jus ad bellum* and *jus in bello*: “[A] use of force that is proportionate under the law of self-defence, must, in order to be lawful, also meet the requirements of the law applicable in armed conflicts which compromise in particular the principles and rules of humanitarian law”.

International humanitarian law must therefore be respected independently of any argument of *jus ad bellum* and, as stated in the preamble to Protocol I, “the provisions of the Geneva Conventions ... must be fully applied in all circumstances ... without any adverse distinction based on the nature or origin of the armed conflict”. The excessive use of force, the targeting of civilians and destruction of the civilian infrastructure are not only deemed unnecessary, indiscriminate or disproportionate methods of warfare; they are also barriers to maintaining a minimum of humanity in the worst of situations.

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