

## **Workstream 4 : Protecting Civilian Infrastructure**

**Guiding question n°1: How is the definition of “military objective” under Article 52 of the First Additional Protocol of 1977 (and its equivalent under customary international law) understood by your State, and what elements of the notion could benefit from more precision when applied in practice?**

Answer:

The basic principle is that civilian infrastructures in general are protected and are to be protected from attacks under IHL. Accordingly, civilian infrastructure cannot be made the object of a direct attack unless it qualifies as a 'military objective' and unless the basic principles and other applicable rules on the conduct of hostilities are respected in the situation at stake. Those are imperative cumulative conditions.

The act of launching deliberate attacks against civilian objects, i.e. objects which are not military objectives, is a war crime under international and Belgian criminal law.

In order to determine whether a given infrastructure qualifies as a military objective, Belgium strictly applies the rules of IHL and verifies the fulfillment of both cumulative conditions under article 52 AP I, namely: firstly, whether the infrastructure (by its nature, location, use and/or destination) contributes effectively to the military action and, secondly, whether its total or partial destruction, capture or neutralization - in given circumstances of time and place - offers a definite military advantage. Conform art.52, Par 3 of Additional Protocol I to the Geneva Conventions, in case of doubt (whether an infrastructure is being used to make an effective contribution to military action), a presumption in favor of its civilian status will apply to an infrastructure which is normally dedicated to civilian purposes, such as a school or a hospital.

BEL does not consider infrastructure permitting war sustaining activities (those that indirectly support a party to an armed conflict's war effort, without directly contributing to its military action) as being a military objective that may legitimately be attacked.

Additionally, it is important to emphasize that even if the target qualifies as a military objective, its attack would only be lawful, and accordingly authorized, if the attack complies with the principles of proportionality and precaution in attacks, as well as other rules of IHL as applicable. In particular, it is important, for the proportionality test, to consider the anticipated direct as well as indirect effects of such an attack, to be considered on the basis of the information available before the launch and insofar as there is a causal link which can be established between the reasonably foreseeable collateral damage resulting from those effects and the attack.

Finally, specific civilian infrastructures are afforded special or enhanced protection under IHL inter alia because they have a special significance to humanity or because they are of vital importance to the survival of the civilian population. This is for instance the case of installations containing dangerous forces, medical facilities, cultural property, or civil defense facilities, etc. Except in few circumstances and under strict conditions through which they may lose its protection, the act of launching deliberate attacks against a specially protected infrastructure constitute a war crime under both international and Belgian criminal law.

**Guiding question n°2: What measures can States undertake to ensure that the content of the rules and principles protecting civilian infrastructure under IHL remain protective for current and future generations?**

Answer:

An important prerequisite to ensure respect for IHL rules and principles is education. IHL training is to be provided to all members of the armed forces but also to a wider audience (magistrates, journalists, political authorities, civilian population including, eventually, managers of dual-use infrastructures).

Adopting appropriate doctrine and operational procedures, fully reflecting the rules and principles of IHL (notably by specifying clearly which persons and goods are to be protected and under which conditions), and ensuring those doctrines and procedures are known and correctly applied by the members of the armed forces also lead to better implementation and respect of the legal framework.

The fight against impunity also matters when attempting to maintain the protective status of IHL. This is ensured by criminalising, within our national legislations, the grave breaches of IHL and by ensuring the prosecution of people suspected of having committed or ordered the commission of such crimes. Repressing and prosecuting IHL violations brings justice to the victims, contributes to the confirmation of the applicable rules and contributes to the incentive to respect said rules (for present and future generations).

Civilian infrastructures are especially impacted in urban conflicts. In order to strengthen implementation and boost compliance with IHL, Belgium has signed the so-called “EWIPA Political Declaration” aimed at strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas, adopted in Dublin on 18 November 2022. During the 2024 International Conference of the Red Cross and Red Crescent, Belgium, together with the European Union, its Member States and EU National

Societies, has also submitted a pledge entitled 'Urban warfare: preventing and reducing the humanitarian consequences, through which it is committed inter alia:

- to support the dissemination and meaningful implementation of the EWIPA declaration;
- to support the clarification, strengthening and dissemination of the legal and policy frameworks with respect to the protection of civilians in urban warfare;
- to review and adapt military practices and policies in order to strengthen by prioritizing the protection of civilians including from the use of EWIPA in the elaboration and review of military doctrine and planning process for urban warfare, as far as not yet done; and
- to identify the protection of civilians not only as an obligation under IHL, but also as a strategic objective prior to military operations.