

Statement of Canada

Workstream 4: Protecting Civilian Infrastructure 4th Round of Consultations

Canada is grateful for the extensive work undertaken thus far by the ICRC and the co-chairs. As previously noted, Canada emphasizes that the humanitarian promise of IHL is rooted in its pragmatism and we offer our comments with the goal of strengthening the practical contributions of this process.

First, the focus on practicality must align with the intended objective of this document. Recommendations should be read as a concise, practical, step-by-step guide instead of a lengthy text.

Second, to ensure that identified best practices are clearly presented as such - across all workstreams, Canada recommends avoiding the use of the chapeau phrase “it is essential”. An alternative could be “it is recommended that”, “it is vital that”, or similar,

Third, we share the concern that overly permissive interpretations of IHL’s rules have the potential to undermine the protection that IHL affords to civilians and civilian objects. At the same time, we are concerned that overly restrictive interpretations can also lead to adverse humanitarian consequences. For those reasons, we offer the following:

- “Civilian Harm”: The humanitarian focus of the rules on precautions and proportionality is clear: avoiding - and in any event - minimizing loss of civilian life, injury to civilians and damage to civilian objects. Interpretations that purport to extend the reach of the rules – requiring parties to armed conflict to avoid or minimize “civilian harm” in the broadest sense – risk introducing imbalance into the relationship between military necessity and humanity. IHL recognizes that – even with all feasible precautions – certain civilian harm may not always be preventable. We recommend that general references to “civilian harm” therefore be replaced by: “incidental loss of civilian life, injury to civilians and damage to civilian objects”.
- “Indirect or Reverberating Effects”: We have a similar concern with respect to interpretations that overstate the extent to which IHL’s rules of attack extend to indirect effects. The more indirect the death, injury and damage, the more speculative and impractical the precautionary and proportionality exercises become. We therefore recommend that references to “indirect” and/or “reverberating” effects be replaced by: “incidental loss of civilian life, injury to civilians and damage to civilian objects”.

- “Definition of Military Objective”: Abstract approaches that require parties to treat a single object as if it were several risk undermining the realism that gives IHL its practical force. This is a complex topic, and we therefore recommend revising paragraph 5 to reflect that this area of law is still unsettled and warrants further study.

Conscious of our limited time, Canada will provide more detailed textual suggestions on the following topics:

1. Supporting the presumption that where there is doubt about whether an object that is normally dedicated to civilian purposes is being used to effectively contribute to military action, shall be presumed to not be so used.
2. Framing the references to military objective as a practical checklist,
3. Providing practical examples of objects indispensable to the survival of the civilian population

Canada will provide these proposals in writing to the ICRC and co-chairs and would be happy to share those with any other interested parties. Thank you

Additional suggestions provided in writing

In reference to three points mentioned above, Canada suggests:

- That a note be added clarifying that in case of doubt whether an infrastructure 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 so.
- Regarding “Military objective”: Canada recommends reconceiving this point as a practical checklist. An object qualifies as a military objective only if both below points are satisfied according to article 52(2) Additional Protocol I:
 - 1: Effective contribution to military action (by nature, location, purpose, or use)
 - 2: Definite military advantage (the attack must offer an advantage that is concrete and direct, not speculative)
 - Both points must be satisfied concurrently. Failing either of them means the object is civilian.

- On “Objects that are indispensable to the survival of the civilian population”:
Canada recommends adding examples from Article 54 Additional Protocol I: that could include drinking water installations.
- Canada also suggests the following addition for consideration under point 3.f.to include “a place of worship, a house or other dwellings, or a school”. This language is consistent with Article 52(3) of Additional Protocol I.