

Statement of Canada

Workstream 5: Achieving Meaningful Protection for Hospitals in Armed Conflict 4th Round of Consultations

Canada is grateful for the extensive work undertaken so far by the ICRC and the co-chairs. As previously noted, Canada emphasizes that 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.

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. Canada further recommends distinguishing the areas in which the law is clearly established under IHL - from those that remain unsettled, and where further development through practice or study is required.

As IHL applies to both State and non-State actors, Canada suggests that the recommendations consistently use the formulation "parties" rather than "States" alone. This would ensure that all actors bound by IHL are appropriately captured and that no relevant party is excluded from the scope of the recommendations.

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 suggest the following:

- On “Civilian Harm” and “indirect or reverberating effects”: The humanitarian focus of the rules on precaution and proportionality is clear: to avoid, and in any event minimize, incidental loss of civilian life, injury to civilians, and damage to civilian objects. Interpretations that seek to broaden this framework by invoking “civilian harm” in an expansive sense, or by extending obligations to increasingly indirect or reverberating effects, risk upsetting the balance between military necessity and humanity. IHL recognizes that – even with all feasible precautions – certain civilian harm may not always be preventable. Moreover, as effects become more remote, assessments of precaution and proportionality grow more speculative and impractical. We therefore recommend replacing general references to “civilian harm” and “indirect” or “reverberating” effects with the more precise formulation: “incidental loss of civilian life, injury to civilians and damage to civilian objects.”
- On the “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. We therefore recommend revising paragraph 5 to reflect that this area of law is still unsettled. Canada further emphasizes that the applicability of the rules of precaution and proportionality neither require nor depend on adopting a “multi-object” approach to buildings or other objects that have become

military objectives. The applicable IHL principles must be respected and, depending on the circumstances, may function to limit or constrain the targeting of such objects

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

1. First, on 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. Second, on adding a cross reference to point 5 under point 2 regarding military objective.
3. Third, on the useful references made to the protection of humanitarian personnel and to the evacuation of the wounded and sick.

Canada looks forward to engaging constructively with the second draft of recommendations. Thank you very much.

Additional suggestions provided in writing

Canada offers the following proposals to enhance both the substance and the framing of the document:

On the additional point for consideration:

- Under point 1, Canada suggests clarifying that in case of doubt whether a civilian hospital is being used to make an effective contribution to military action, it shall be presumed not to be so used.

Canada notes the following recommendations:

- Canada finds it useful to underscore practical considerations for the evacuation of the wounded and sick.

Canada wishes to propose some concrete suggestions to further refine the text:

- Canada welcomes the mention of the Declaration on the Protection of Humanitarian Personnel and further support parties taking practical actions to ensure greater respect for and protection of medical personnel and humanitarian personnel exclusively engaged in medical duties.
- Under point 2: Canada recommends referring to point 5 on the military objective test.