



Armed conflict in Sudan: a recap of the basic IHL rules applicable in non-international armed conflicts

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On 15 April 2023, the world watched the eruption of hostilities in Khartoum, the capital of Sudan, which also spread to other parts of the country, notably Darfur. As in most conflicts fought in urban settings, civilians have been greatly affected by the fighting, in this case between the Sudanese Armed Forces and the Rapid Support Forces. Multiple medical facilities and critical infrastructures have been damaged or destroyed, thousands of people are currently displaced and humanitarian organizations are facing difficulties to reach people in need.

In this post, ICRC legal advisers Julie Lefolle and Jelena Nikolic summarize the basic rules of international humanitarian law (IHL) that apply in situations of non-international armed conflicts, aiming to protect those who are not, or no longer fighting against the effects of hostilities, including persons deprived of their liberty, and medical and humanitarian personnel.

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For the past several weeks, the world has watched a humanitarian crisis unfold across Sudan.

As in many other armed conflicts, civilians are the most affected by the disastrous consequences of the fighting. From the outset, hostilities started in Khartoum and other major cities, causing significant destruction and hundreds of deaths and injuries. Medical facilities and critical infrastructures have been damaged or destroyed, resulting in significant humanitarian needs and limited access to essential services. Thousands of people have been displaced within the country and throughout the region.

This most recent crisis comes on top of an already difficult humanitarian situation in the country, which has been affected by conflicts and violence for several decades. Humanitarian actors such as local and international NGOs and international organizations, including the ICRC and the Sudanese Red Crescent Society, are once again trying to respond to humanitarian needs that far outpace our and others' capacity to respond. Moreover, relentless fighting and other obstacles have made it difficult for humanitarian actors to rapidly deliver much needed assistance.

The ICRC's method is *neutral and impartial humanitarian action*, and our guiding framework is *international humanitarian law* (IHL).

This post therefore outlines the key rules of IHL applicable in non-international armed conflicts which aim to protect people who are not, or are no longer participating in hostilities, and govern issues surrounding humanitarian access.

Non-international armed conflict

Like the majority of armed conflicts taking place today in the world, the conflict in Sudan is a non-international armed conflict.^[1] As opposed to *international armed conflicts*, which exist whenever there is a resort to armed force between two or more states regardless of the level of intensity of the fighting,^[2] a non-international armed conflict requires that a certain level of intensity of violence be reached between a state and a sufficiently organized armed group, or between two or more organized armed groups.^[3] The intensity of violence is indicated by factors such as the number of confrontations, the type of weapons and military equipment used, the extent of material destruction and the number of civilians fleeing combat zones.^[4] On the other hand, the level of organization of the parties is generally manifested by a certain command structure and the capacity of the concerned actors to conduct military operations and to apply IHL rules.^[5]

In Sudan, the criteria of organization and of intensity were met within the first days of the conflict as high intensity fighting broke out. In consequence, the Common Article 3 to *Geneva Conventions* and the *Second Additional Protocol* ^[6] are fully applicable, as are the norms of *customary international humanitarian law* and a number of *weapons treaties to which Sudan is a party*. *Human rights law and refugee law* are also important legal frameworks which complement legal protection to the victims of conflict.

IHL rules have two overarching objectives: *reducing the human suffering caused by the hostilities*, including *limits to the choice of weapons*, and *protecting people who do not or no longer participate in hostilities*, including humanitarian and medical workers, and members of the armed forces who are wounded, who have died, or who have fallen in enemy hands. IHL provisions also give parties to the conflict and impartial humanitarian organizations important ground rules on humanitarian access and the provision of humanitarian activities.

The parties to the conflict in Sudan have reaffirmed their commitment to respect IHL rules in various public statements and agreements since the outbreak of hostilities, including in the *Jeddah Declaration of Commitment*, published in May 2023.^[7]

Rules on the conduct of hostilities

Under the laws of war, both international and non-international, there are three cardinal principles that regulate the way in which a party to an armed conflict may carry out military operations, i.e. may conduct hostilities. These are the principles of distinction, proportionality, and precautions, all *customary international law obligations*. They aim to protect civilians against the effect of hostilities, even when the attacks are carried out with *new technologies* and *cyber means*.

Distinction

The principle of distinction requires that the parties to an armed conflict distinguish at all times between those who do and those who do not take active part in hostilities. Civilians cannot be attacked unless and for such time as they directly participate in hostilities.^[8]

Regarding objects, attacks must only be directed against military objectives.^[9] Civilian objects are all objects which are not military objectives, and state practice has shown that some objects such as civilian areas, towns, cities, villages, residential areas, buildings and houses and schools, civilian means of transportation, hospitals, medical establishments and medical units, places of worship, and the natural environment are considered *prima facie* civilian objects.^[10] In addition, IHL specifically prohibits direct attacks against drinking water installations and supplies and irrigation works and of other objects indispensable to the survival of the civilian population.^[11]

Proportionality

Even when attacks are launched against legitimate targets, they are illegal under IHL if they are not proportionate. In fact, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.^[12] In other words, a military objective may be attacked only after an assessment leading to the conclusion that civilian losses and damage are not expected to outweigh the military advantage foreseen. An attack must also be cancelled if it becomes apparent that the circumstances underlying that assessment have changed.

In urban centers like Khartoum, civilians and military objectives are often found in the same areas, and the risk of carrying out attacks that will destroy or damage the critical infrastructure necessary to supply vital services, such as electricity, water and sanitation, health care, food or education is high even

when primary target remains a legitimate military objective. This creates greater risks to public health and people's livelihoods, which may in turn lead to the massive displacement of populations and significant humanitarian needs.

Precautions

In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.^[13]

For example, parties shall avoid locating military objectives within or near densely populated areas, therefore for instance avoid placing tanks or military bases within cities, to protect the population against possible attacks and its effects.

Another way of applying the principle of precautions is through selecting the means and methods used in hostilities that is causing the least effect on the civilian population. Today, the use of *explosive weapons with wide impact in populated areas* is the main cause of civilian harm. In cities like Khartoum, Gedaref, Merowe, Al Obeid and in the region of Darfur, civilian infrastructure, such as hospitals, schools, water facilities and electricity networks can easily be damaged or destroyed because of their proximity to military objectives. Lawful targets in their vicinity therefore must not be attacked unless everything possible has been done to avoid damaging these infrastructures and unless civilian harm, including the damages' foreseeable as reverberating effects,^[14] is not disproportionate to the military advantage achieved.

Finally, the obligation to take all feasible precautions to protect civilians and avoid causing incidental harm to them might require parties to the conflict to allow civilians to leave an area, or evacuate them from it, if they are endangered by hostilities. However, unless it is for the security of the civilian population or for "imperative military reasons", parties are prohibited from forcibly displacing civilians.^[15] If such lawful displacement must be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition.^[16]

Use of explosive weapons

The use of explosive weapons with a wide impact area, whether ground- or air-launched – such as large bombs and missiles, heavy artillery and mortars, rockets (including multi-barrel rocket launchers), and large improvised explosive devices – should be avoided in urban and other populated areas because of the significant difficulty to distinguish between civilians and persons participating in hostilities in carrying out the military operation, and the high likelihood of indiscriminate effects. Therefore, parties should not use such weapons in urban and other populated areas,^[17] unless sufficient mitigation measures have been taken to limit their area effects and the consequent risk of civilian harm.^[18]

Protection of persons taking no active part in the hostilities

All persons not, or no longer participating in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds or detention shall in all circumstances be treated humanely without distinction based on race, nationality, sex, and similar criteria.^[19]

Therefore, those persons should not be killed, tortured, subjected to outrages upon their personal dignity, in particular, humiliating and degrading treatment, and should not be taken hostage.^[20] Of particular concern in Sudan are reports of sexual violence emerging since the outbreak of the conflict. IHL prohibits all acts of sexual violence – including but not limited to rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization – against women, men, boys, and girls.^[21]

Persons deprived of their liberty

While rules applicable in non-international armed conflicts are not as extensive on the protections accorded to persons deprived of liberty in connection to the conflict as it is the case with IACs, the basic protections under Common Article 3 and Additional Protocol II apply to ensure the adequate treatment and conditions in the detention. The personal details of persons deprived of their liberty must be recorded in order to prevent their disappearance,^[22] and detainees must be allowed to receive visitors, especially near relatives, to the degree practicable^[23].

The dead

One of the disastrous consequences of the armed conflict is the death of hundreds of individuals, both combatants and civilians. Since the outbreak of fighting in Sudan, many bodies were not collected and cared for, but rather remained in the streets. Under IHL, whenever circumstances permit, parties have the obligation to take all possible measures to search for, collect and evacuate the dead without adverse distinction^[24] and to record all available information prior to disposal and mark the location of the graves. Moreover, all possible measures must be taken to prevent dead bodies from being despoiled.^[25]

Medical missions

According to ICRC estimations, only 20% of health facilities in Khartoum are still functioning.^[26] IHL provides specific protection to the hospitals and medical personnel, units and transport exclusively assigned to medical duties which must be respected and protected in all circumstances; they shall not be compelled to carry tasks which are not compatible with their humanitarian mandates nor required to give priority to any person except on medical grounds.^[27]

Humanitarian access

Considering the scale of humanitarian needs in Sudan since beginning of the conflict, ensuring access for humanitarian actors is key to be able to assist the affected population.

In situations of armed conflict, as in times of peace, parties have the primary responsibility to meet the needs of the population living under their control. If civilians are suffering from undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, parties have the obligation to consent to exclusively humanitarian and impartial relief action, carried out without any adverse distinction, for the civilian population. [28]

Under IHL, impartial humanitarian organizations have the right to offer their services to carry out humanitarian activities, in particular when the needs of the population affected by an armed conflict are not fulfilled.[29] Once impartial humanitarian relief schemes have been agreed to, the parties to the armed conflict, as well as other states concerned, are expected to allow, and facilitate the rapid and unimpeded passage of the relief schemes, subject to their right of control. This includes the facilitation of all administrative and bureaucratic aspects, and the provision of all the necessary security guarantees and safe passage.

Parties also have the obligation to respect and protect humanitarian relief personnel and objects used for humanitarian relief operations and to ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be restricted and only temporarily. Harassment, intimidation, and arbitrary detention of humanitarian relief personnel is prohibited. [30]

Allowing and facilitating humanitarian access in line with IHL obligations is essential as it enables humanitarian actors to reach populations affected by the conflict and to provide essential services such as food, water, electricity, medical assistance, and family contacts to those affected by the conflict.

The ICRC is explicitly mentioned by Common Article 3(2) of the Geneva Conventions as having a right to offer services to the parties to the conflict in its capacity as an impartial humanitarian organization. This right is also called a “right of initiative”, and it includes the right to offer services such as visiting persons deprived of their liberty in connection with a non-international armed conflict[31] or playing a role of neutral intermediary if the situation requires so[32].

The ICRC reiterates its call for all parties to fulfil their legal obligations under IHL in order to avoid further civilian suffering and loss of life, and to minimize potentially long-lasting effects of the fighting on Sudan and its population.

[1] According to ICRC legal analysis, there are more than 100 armed conflicts around the world involving more than 60 states and 100 non-state armed groups as parties to those conflicts. Around 90 of those conflicts are of non-international nature. See the following *tweet*.

[2] ICRC Commentary of *Article 2* common to the Geneva conventions, 2016, para. 201-273;

[3] ICRC Commentary of *Article 3* common to the Geneva conventions, 2020, para 448-485;

[4] ICTY, Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj (Haradinaj et al.), Case No. IT-04-84-T, Trial Chamber Judgment, April 3 2008, §49

[5] ICTY, Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj (Haradinaj et al.), Case No. IT-04-84-T, Trial Chamber Judgment, April 3 2008, §60

[6] Sudan ratified the Additional Protocol II in 2006

[7] US Department of State, *Jeddah Declaration of Commitment to Protect the Civilians of Sudan*, May 11 2023

[8] *Article 13.2 APII & CIHL rules 1 and 6*

[9] *CIHL rule 7*

[10] ICRC Database CIHL study, Rule 9, *Examples*

[11] *Article 14 APII*

[12] *CIHL rule 14*

[13] *Article 13.1 APII and CIHL rule 15*

[14] ICRC, *War in Cities: The ‘reverberating effects’ of explosive weapons*, Humanitarian Law & Policy, March 2 2017; ICRC, *Explosive weapons with wide area effects: a deadly choice in populated areas*, Humanitarian Law & Policy, January 25 2022

[15] *Article 17 APII and ICRC Commentary of article 17 APII*, 1987, para.4853

[16] *Article 17.1 APII*

[17] Eirini Giorgou, *Explosive weapons with wide area effects: a deadly choice in populated areas*, Humanitarian Law and Policy blog, January 25 2022

[18] ICRC, *Explosive weapons with wide area effects: a deadly choice in populated areas*, January 2022, p.146, Recommendation 5

[19] Article 3 common of the Geneva Conventions

[20] Article 3.1 common of the Geneva Conventions and Article 4.1–2 APII

[21] Article 3 common to the GCs, Article 4 APII

[22] CIHL rule 117

[23] CIHL rule 126

[24] Article 8 APII and CIHL rule 112

[25] Article 8 APII and CIHL rule 113

[26] Sudan: Vital surgical supplies reaching hospitals in Khartoum | ICRC

[27] Article 9 APII

[28] Article 18(2) APII

[29] Article 3 Common to the Geneva conventions

[30] Application of the principle of distinction. CIHL rule 1

[31] ICRC, ICRC detention work: Why, where, who? October 15 2015

[32] The ICRC as a neutral intermediary. Historical and contemporary perspectives – Cross-Files | ICRC Archives, audiovisual and library | Cross-Files | ICRC Archives, audiovisual and library

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