

# SMART OPERATIONS: RETHINKING OPERATIONAL ART TO EFFECTIVELY PROTECT CIVILIANS

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## **ABOUT THE SERIES**

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# SMART OPERATIONS: RETHINKING OPERATIONAL ART TO EFFECTIVELY PROTECT CIVILIANS

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“‘Iron fist’ for the terrorists, and a ‘velvet glove’ for the people.”<sup>1</sup>

—General J. J. Singh, Chief of the Army of India (2005–7)

**Abstract:** The changing nature of armed conflict, where most of the victims are civilians accompanied by the devastation of civilian objects, requires rethinking the elements of operational art, which are adversary-centric at the expense of noncombatants who are ubiquitous in present-day battlefields. Respect for, and compliance with International Humanitarian Law (IHL) is a panacea to violations against noncombatants in contemporary warfare. The principle of distinction is a sine qua non for the protection of civilians. The rules of targeting are at the heart of IHL, while the principle of distinction is the keystone in targeting guided by rules of engagement as the practical application of the legal constraints to combat. As such, the cognitive skills of the military in IHL are vital to the prevention of civilian death, mitigate incidental injury, and limit collateral damage in hostilities. This paper addresses the issue of how to mitigate civilian harm in contemporary hostilities through discourse analysis and a desktop survey. It is noted that the failure to master IHL at the operational and strategic levels in professional military education—as evidenced by doctrinal gaps in the application of operational art and military decision-making processes—renders the integration of humanitarian norms utopian. The oversight also reinforces the reticence to mitigate civilian harm in modern-day conflicts. This paper, inspired by prospect theory in military decision-making processes, posits that effective civilian protection requires smart operations involving a framework for enhanced risk analysis and mitigation of civilian harm in military decision-making processes. In executing smart operations, belligerents demonstrate effective integration of IHL into strategy, operations, and tactics, thereby enhancing prospects of return to peace.

**Keywords:** Course of action, jus ad pacem, military decision-making process, risk analysis, and mitigation.

## Introduction

Carl von Clausewitz remarked that war is a true chameleon whose nature changes depending on its environment.<sup>2</sup> With the growing urbanization of warfare and the prominence of asymmetric combat operations, civilians are increasingly getting victimized in the battlespace.<sup>3</sup> The nature of warfare has changed since the instruments of the Law of Armed Conflict (LoAC) were adopted, starting with the law of the Hague emanating from the two Peace Conferences held in 1889 and 1907. International Humanitarian Law (IHL) is a branch of LoAC constituting what is termed the Geneva Law, comprising the Geneva Conventions that were adopted mainly in 1949 after the Second World War. Two Additional Protocols to the 1949 Geneva Conventions were adopted in 1977 (Protocol I and Protocol II) and a third in 2005 (Protocol III). LoAC has been developed to adapt to the evolving nature of warfare; however, its “cardinal principles remain constant, regardless of the changing context, and are essential to its very existence.”<sup>4</sup> The evolution of warfare continually challenges IHL, while threats to civilians have diversified and multiplied in hostilities.

As this discussion focuses on the protection of civilians in armed conflicts, the more focused expression of the IHL will be used instead of the broader LoAC. International armed conflicts (IACs) and non-international armed conflicts (NIACs) are both governed by different rules of IHL. However, as the civil war between rival armed groups in Sudan has exhibited, armed conflicts, like the Russian invasion of Ukraine or the fighting between the State of Israel and the Hamas nonstate armed group (NSAG), have proven that civilian harm poses the same threats in IACs as they do in NIACs. Nonetheless, NIACs involving NSAGs pose the greatest challenge due to their prevalent noncompliance with IHL. Moreover, contemporary NIACs are fought by a myriad of nonstate actors, including state-sponsored private military corporations, which raise complex challenges for classification purposes.<sup>5</sup> Hence, this paper discusses armed conflicts generally without drawing the distinction.

Since it is beyond question that Africa is the battleground for more than 70 percent of the world's ongoing hostilities, the discussion places more emphasis on the protection of civilians in Africa.<sup>6</sup> Arguably, more than 60 percent of the United Nations (UN) Security Council's peace and security agenda involves conflicts in Africa. Many innocent civilians in Africa — in countries such as the Democratic Republic of the Congo (DRC), Central African Republic (CAR) among others directly affected by armed conflicts—have suffered, and continue to suffer, from the appalling consequences of these hostilities, including the destabilization of the general economy and continuous massacres of innocent civilians, rendering the continent of Africa the poorest globally. Different stakeholders, including the UN and the African Union (AU), deploy tremendous resources and efforts

to find effective solutions for how to better protect civilians or mitigate harm in conflicts.

IHL requires that both combatants and noncombatants should understand their humanitarian obligations during hostilities. To be sure, the obligation on non-combatants is the prohibition on active participation in hostilities lest they waive their immunity from attacks. All parties to a conflict are obliged to incorporate IHL into their legislation, military manuals, and training to enhance protection of noncombatants. Troops must reinforce the distinction between civilians who are immune from direct attack under IHL, and combatants, including those directly participating in hostilities.<sup>8</sup> However, states and NSAGs remain essentially unanswerable to civilians for the harm they cause in what David Miliband calls the “age of impunity,” an era characterized by the total disregard for the rule of law, particularly IHL, that allows the suffering of civilians to continue unabated.<sup>9</sup>

In addition to the urbanization of indiscriminate warfare, other challenges of contemporary conflict include new forms of aggression such as cyberwarfare; the use of new technologies of warfare, including unmanned aerial vehicles; the exploitation of a civilian population for mass intelligence gathering, including deprivation of their livelihoods in protracted conflicts to influence operations; the prevalence of NSAGs and mercenaries, terrorism, and concomitant brutal counterterrorism measures; the destruction of the natural environment; and the question of how to enhance respect for IHL.<sup>10</sup> With the emergence of new means and methods, contemporary warfare is multidomain and multidimensional, with a multiplicity of actors including states, nonstate actors, and international organizations.<sup>11</sup> In this precarious environment, the principles underlying IHL are more relevant now than ever.

International Human Rights Law (IHRL) is now within the fabric of modern military operations.<sup>12</sup> For military commanders, understanding IHRL is critical when engaging in contemporary operations.<sup>13</sup> The most dramatic trend for LoAC in the past decade is the increasing salience of IHRL in the juridical-military calculus; essentially, what Theodor Meron termed the “humanization of humanitarian law.”<sup>14</sup> Although progress has been made on the normative and policy fronts toward protecting civilians, the reality on the ground continues to be ominous. Peace and security are at the heart of the UN Charter. Conflict prevention and resolution are key ideals for all states.<sup>15</sup> However, the provisions promoting peaceful settlement of disputes are not pronounced in the charter and have not been complemented by the laws for the prevention of war and the maintenance of peace known by the Latin term *jus ad pacem*, as specific rules also known as *lex specialis* to promote the use of negotiation to prevent and resolve armed conflicts.<sup>16</sup>

This paper addresses the question of why protection remains a challenge from a military perspective, considering increased advocacy for humanitarian obligations and the wide dissemination of IHL by the International Committee of the Red Cross (ICRC) and other actors. The paper also outlines not only how to mitigate harm done to civilians, but how to prevent such harm from occurring in the first place. The discussion explores why civilians constitute the bulk of the victims in contemporary hostilities, exposing the gaps in integrating IHL in the military, which trickles down to operational art, military decision-making process (MDMP), targeting, and, eventually, the rules of engagement.<sup>17</sup> The paper also exposes the gap in defining and integrating “risk” as an element of operational art. It postulates a revision to include risk analysis, mitigation, and methodology to guide identifying, assessing, and mitigating civilian harm.

The discussion is anchored by prospect theory in MDMP, which posits that the decision-maker’s reference point determines the domain in which one makes the decision.<sup>18</sup> The central argument is that compliance with IHL should not be the end but the means to protecting civilians in hostilities, with the goal of ending conflicts to achieve peaceful and inclusive societies and to significantly reduce all forms of violence everywhere, in line with the UN Sustainable Development Goal (SDG) 16 and the purposes of the UN Charter.<sup>19</sup> Civilian harm mitigation should be the moral, ethical, and legal standard to assess military operations’ credibility and overall effectiveness.<sup>20</sup> This paper contributes to the search for methods and means to protect civilians better when peace fails. In doing so, the paper introduces the concept of smart operations that incorporate an element of *jus ad pacem* since conflict prevention to secure peace is an assured way to protect civilians. Smart operations have a potential impact of enhancing the protection of civilians and ending conflicts. Compliance with IHL increases the prospects for conflict resolution.<sup>21</sup>

## **Doctrinal Gaps Contributing to Victimization of Civilians in Hostilities**

Numerous deaths, extensive incidental injuries of civilians, and excess collateral damage to civilian objects characterize contemporary armed conflicts. Hostilities pitting NSAGs operating within populated areas against government forces using superior military means are a recurring pattern, exposing civilians and civilian objects to the harmful effects of hostilities. Civilians form the majority of victims in contemporary hostilities, constituting about 90 percent of war casualties.<sup>22</sup> According to Action on Armed Violence (AOAV), a monitoring group, at least 33,846 non-combatants were killed or wounded during 2023 globally, an increase of 62 per cent in 2022.<sup>23</sup> The UN reported a 53 percent increase in civilians killed across twelve on-going armed conflicts worldwide

in 2022.<sup>24</sup> Approximately 94 percent of the victims of explosive weapons in populated areas were civilians in seventeen conflict-affected areas in 2022.<sup>25</sup> The number of active conflicts globally remain at historically high levels, and the number of civilian casualties is likely to increase with the continuing massacre that began in October 2023 in Gaza, the Russian invasion of Ukraine, and the escalating violence in Africa, particularly the DRC, the Horn of Africa, and the Sahel region.<sup>26</sup> Already, in the first quarter of 2024, Action on Armed Violence indicated that civilians accounted for 85 per cent of deaths and injuries were recorded in incidents of explosive violence around the world.<sup>27</sup>

Both government forces and NSAGs have been implicated in violence against civilians in at least fifteen armed conflicts in areas such as Burkina Faso, Cameroon, the DRC, Ethiopia, Mali, Mozambique, and South Sudan.<sup>28</sup> The intermingling of armed groups with civilians has become a preferred strategy in present-day warfare, where other actors have used the tactic as a justification to circumvent the requirement to take precautions to minimize civilian harm. The ubiquity of civilians in today's hostilities requires a smart approach to military operations to avoid civilian deaths, mitigate incidental injury, and diminish collateral damage.

Military forces have three main levels of command—namely strategic, which translates the political aim into military objectives; operational, which translates broad strategic-level objectives and guidance into concrete tasks for tactical forces; and tactical, which directs the specific use of military forces in operations to implement the operational-level plan.<sup>29</sup> As such, the legality of political direction, cognitive skills of commanders, and the clarity of strategic objectives and operational orders are critical to the tactical implementation of the mission on the ground. For this reason, and to enhance respect for humanitarian norms governing the conduct of hostilities, states are required to integrate IHL obligations into military training, doctrine, and all levels of military planning and decision-making.<sup>30</sup>

Literature on the protection of civilians has concentrated on peacekeeping operations.<sup>31</sup> However, the protection of civilians in armed conflict is a cornerstone of the Fourth Geneva Convention. The protection of civilians is also a major concern in International Criminal Law, as exemplified by the establishment of the International Criminal Court. From an IHL-integration perspective, the concept of operational art is focused on the enemy, with little or no consideration for protecting civilians during warfighting. Article 82 of Additional Protocol I (API) of the 1949 Geneva Convention requires the involvement of legal advisers in planning military operations.<sup>32</sup> While this may serve as a backdoor for bringing in perspectives on how civilians can be protected, it does not necessarily mean that legal advisers' inputs may prevail or influence how



other staff involved in planning operate.

Nevertheless, targeting is an exercise that requires a multitude of perspectives beyond the legal, ethical, and political. A humanitarian perspective is not limited to humanities experts, nor are military experts the only ones to incorporate military goals in their thinking. Viewing difficult situations from multiple perspectives provides a more holistic picture.<sup>33</sup> The ICRC has observed that humanitarian considerations are trumped by political, security, or economic interests in contemporary armed conflicts,<sup>34</sup> hence the necessity for multidimensional perspectives in conducting contemporary operations, where the need to protect civilians is more critical and imperative.

*Omission of Include International Humanitarian Law in Strategic-Level Professional Military Education*

Contemporary warfare is characterized by long-term counterinsurgency and stability operations requiring a genuine understanding of both IHL and IHRL, including other relevant connected bodies of law, instead of large-scale military clashes backed by sovereign states.<sup>35</sup> However, IHL and IHRL are hardly packaged-and-delivered as courses in professional military education curricula at the strategic and operational levels. While this does not negate the reality that commanders and their staff's effectiveness in analyzing missions and the mitigating risks depends on the depth of their cognitive schemas and the extent of their knowledge of IHL, it also relies on the military institutional culture when integrating the principles of IHL to inform their strategic approach to operations. Military culture alludes to the core beliefs, norms, attitudes, and values that troops share. It guides their perception of and decisions about strategy, operations, and tactics.<sup>36</sup> The ICRC has reported that high levels of IHL training result in greater adoption of norms of restraint by combatants.<sup>37</sup> The lack of training may help explain why NSAGs may be more prone to violating IHL.

Achieving better protection for civilians in armed conflict depends on the respect for, implementation of, and enforcement of IHL. Decisions about targeting involve complex operational, strategic, tactical, legal, ethical, social, and political assessments. It must also involve the need for flexibility in responding to changing circumstances on the ground. As targeting is a dynamic process, the cognitive skills and judgment of the commander are critical. While Article 83 of API requires states to disseminate IHL to the military and civilians alike, a survey of renowned higher learning institutions for professional military education shows that IHL and IHRL are not part of the curriculum in war colleges and national defense colleges worldwide. For example, the curricula at the United States Army War College, the National Defense University (United States), and the National Defence Colleges in Bangladesh, India, Kenya, and



Nigeria do not include IHL.<sup>38</sup>

Only a few command and staff colleges, such as the one in Malawi, teach these critical humanitarian courses that are vital for protecting civilians and their rights during hostilities. Thus, a lack of knowledge or understanding of IHL at the strategic level affects its integration into military culture and decision-making. For argument's sake, the popularity and frequency of the use of the term IHL in academia and civil society circles, as opposed to the term LoAC by the military, underscores the point that IHL is mastered more in academic institutions than in the military, where LoAC is the lingua franca.

### *Oversight of International Humanitarian Law as an Element of Operational Art*

The term operational art alludes to “the pursuit of strategic objectives, in whole or in part, through the arrangement of tactical actions in time, space, and purpose.”<sup>39</sup> Operational art applies to all types and aspects of operations. Granted, risk is included as one of the elements of operational art. However, the framework does not address the requirement for risk assessment and the need for commanders to mitigate risk—particularly, mitigating risk of civilian harm.<sup>40</sup> The explanation of risk as an element of operational art needs to include a risk assessment and mitigation framework, which ought to address questions of protecting civilians and mitigating harm inflicted on them and their objects. Contemporary warfighting cannot depend on chance but on a methodological risk assessment and mitigation framework derived from accurate intelligence. A framework for risk analysis and mitigation as an element of operational art is necessary for commanders to consider IHL obligations during operations.

The need for greater specificity in the description of risks to civilians, and the requirement to mitigate such risk, is critical for commanders when considering all applicable factors, including IHL, to make informed operational decisions. Given the imperative to protect civilians in contemporary conflicts, operational art should incorporate a risk analysis methodology, especially regarding IHL obligations to improve decision-making by commanders to mitigate civilian harm.<sup>41</sup>

### **The Discrepancy in the Definition of Risk**

The definition of risk differs between risk management and risk as an element of operational art. In the context of risk management, control is exercised through taking action to eliminate a hazard or reduce its risk.<sup>42</sup> As an element of operational art, risk is viewed as a challenge for commanders to create and maintain conditions necessary to seize, retain, and exploit the initiative.<sup>43</sup> The

willingness to incur risk, or risk appetite, is perceived as the key to exposing an enemy's weaknesses that the enemy considers beyond reach. However, large-scale force-on-force conflicts are becoming much less frequent. The discrepancy in understanding the different definitions of risk affects the assessment of it by military commanders in armed conflict, in that they may focus more on the adversary than on the protection of civilians.

Today, military commanders face operational situations in which some action must be taken. While two or more actions are available for undertaking, all potential actions may have negative ethical consequences.<sup>44</sup> Modern militaries are increasingly executing operations that include asymmetric warfare, counterinsurgency, and nation-building; such operations often involve complex ethical issues, such as an adversary's use of noncombatants as cover. In contemporary hostilities, the protective scope of IHL is still of the utmost concern in discourse.

The law of targeting lies at the heart of IHL. The principle of distinction is the keystone in the law governing targeting.<sup>45</sup> This semantic discrepancy in defining risk contributes to the oversight in considering IHL in MDMP. To ensure integration of and compliance with IHL, operational art should encompass a risk mitigation matrix to enable commanders to conduct an IHL assessment in a given situation, with the purpose of achieving better outcomes to mitigate civilian harm.<sup>46</sup>

#### *Adversarial-Centric Military Decision-Making Process*

In terms of how commanders make decisions in combat, most military doctrines center the MDMP, which is a linear process of identifying, evaluating, and choosing the best course of action.<sup>47</sup> The MDMP is an effective process for developing plans, courses of action, and solutions to problems. However, processes must adjust to the environment in which they are utilized, for the sake of avoiding losing relevance in solving contemporary problems. The MDMP framework has not been updated to reflect the contemporary operating environments, the cultural upbringing and competencies of military personnel, and the nature of multidomain operations it must now guide.<sup>48</sup> The MDMP needs to articulate the synthesis required for mission analysis, and elaborate on the risks obtained in operation and how to mitigate them, including the mitigation of civilian harm.

#### **Smart Operations Defined**

The nature of contemporary counterinsurgency and stability operations has broadened the scope of military operations, in that commanders must engage

in various activities beyond traditional combat-related roles. Concomitant with this expanded range of military responsibility is an expanded scope of legal responsibilities for commanders that requires them to know, understand, and comply with different branches of law.<sup>49</sup> Along with questions of the responsibility to protect, IHRL, International Refugee Law (IRL), and other humanitarian laws are now within the fabric of modern military operations.<sup>50</sup> It is critical for military commanders engaging in contemporary operations to understand both IHL and IHRL.<sup>51</sup>

Today's hostilities with amorphous battlefields, characterized by their complexity and scope, require meticulous planning to mitigate civilian harm. Technically, modern-day operations demand seamless coordination between and among different actors, as well as judicious use of cutting-edge technologies to maximize efficiency while minimizing risks to civilians, essential services, and humanitarian assistance. Legally, troops must comply with IHL, IHRL, and IRL among others during planning and execution of military operations. Compliance with the law is a matter of legality, or moral or ethical obligations, and a matter of legitimacy and operational success. Failing to adequately account for legal constraints in planning can potentially lead to undesirable consequences. In addition to the question of individual accountability, troops can lose credibility, thereby increasing risks and their safety; they may also face geopolitical backlash, undermine international support, or risk the alienation of civilian populations, which, in turn, may complicate reconstruction and a return to peace.

The prospect theory in the MDMP posits that the decision-maker's reference point determines the domain in which one makes the decision. For example, if the domain is one of losses, the decision-maker will tend to be risk seeking.<sup>52</sup> If the domain is about gains, then the decision-maker will be risk averse. On this footing, this paper proposes the term smart as a frame of reference to propel a decision-maker to a domain of adherence with IHL to mitigate civilian harm. As a concept, smart operations entail using kinetic and nonkinetic elements in adherence to legal constraints in combat, with the goal of protecting civilians without compromising military advantage in armed conflicts. The concept of smart operations seeks to facilitate contextually sensitive legal and ethical decision-making by military personnel.<sup>53</sup> Smart operations should be grounded in law, particularly IHL, IHRL, and IRL, to better protect civilians from harm.<sup>54</sup> Therefore, apart from compliance with the obligation to teach and learn IHL, armed forces should also be familiar with IHRL and IRL, including the law relating to internally displaced persons and other humanitarian legal regimes.

In addition to using kinetic force, smart operations may include soft approaches and cultural intelligence to enable troops to accomplish their mission more effectively in compliance with IHL. Just like multidimensional operations

involving diplomats, military forces, civilian police, and humanitarian agencies, smart operations should equally involve multidimensional and multiagency perspectives. When a conflict is civil in character, the operations must create a “conceptual space for diplomacy, economic incentives, political pressure, and other measures to create a desired political outcome of stability. . .if possible.”<sup>55</sup> Striking the right balance between political desirability, legal compatibility, and military feasibility to protect civilians is the acme of smart operations.<sup>56</sup>

### **Conceptual Framework for Smart Operations**

The protection of civilians in contemporary military operations takes place alongside broader protection efforts, including the promotion and protection of human rights and humanitarian protection, which seek to prevent, mitigate, and stop violations of human rights and fundamental freedoms, ensure that these rights are respected and protected by duty bearers, and ensure that access to essential services and humanitarian assistance is maintained.<sup>57</sup>

When comparing alternative courses of action, modern military decision-makers must often consider both the military effectiveness and the ethical consequences of the available alternatives.<sup>58</sup> Missions today must protect civilians through force if necessary, and address an expansive range of root causes from which threats to civilians emanate.<sup>59</sup> Compliance with the law does not only demonstrate military professionalism but also enhances the prospects of peace, as it creates an environment where parties can efficiently resolve the conflict.<sup>60</sup>

For example, the UN Security Council’s resolutions on protecting civilians in armed conflict have stressed the need to address root causes of armed conflict to enhance the protection of civilians in the long term. The most effective and sustainable way of protecting civilians is to ensure stability, peace, and security through inclusive political processes and sustainable solutions to conflict, and to support states to fulfill their responsibility to protect civilians and respect, protect, and fulfill the human rights of individuals on their territory.<sup>61</sup> Following is a description of the conceptual framework of what should characterize smart operations.

#### *Comprehensive and Integrated Approach to Military Operations*

Smart operations to mitigate civilian harm require a comprehensive and integrated approach.<sup>62</sup> In this sense, a comprehensive approach to protect civilians and mitigate civilian harm should consider and address various factors that influence and threaten civilians’ safety and security in both the short and long term, including political, security, and socioeconomic factors, as well as gender

dynamics. Such an approach recognizes that protecting civilians requires the full range of capacities and capabilities available to the mission and to other actors. An integrated approach to protecting civilians involves multistakeholder and multidimensional strategic coordination, including with civilians, the police, and the military. Comprehensive and integrated analysis, planning, and execution are critical to ensure that a mission can effectively mitigate civilian harm.<sup>63</sup>

With the prevalence of civilians with different needs in contemporary conflicts, the military cannot be the only actor responsible for protecting troops during armed violence. And with the proliferation of NSAGs who attack aid workers, the humanitarian-aid space is shrinking but also becoming overcrowded with actors with different, sometimes competing, interests in conflicts. A comprehensive and integrated approach requires meticulous coordination and interoperability of the military with other humanitarian actors, including law enforcement, to extend or restore state authority in areas where civilians have become reliant on or subjected to unaccountable governance by NSAGs.<sup>64</sup> The police and the judiciary, for example, are essential in creating protective environments through their efforts to build the capacity of institutions and tackle impunity.<sup>65</sup> The collaboration between various actors should be carried out without political biases, and also be in accordance with the principles of humanitarian, particularly independence, humanity, neutrality, and impartiality of humanitarian actors to avoid adverse effects.<sup>66</sup>

#### *Comprehensive Preparation for the Battlespace to Mitigate Civilian Harm*

The first question in MDMP should be about the specific legal framework within which the hostilities are to be conducted. Comprehensive Preparation for the Battlespace requires accurate information on general locations of legally protected persons, objects, installations, and areas, all factors that help shape the decision-making process.<sup>67</sup> Accurate information at appropriate levels is critical to inform this early decision-making phase and subsequent courses of action.<sup>68</sup> Likewise, intelligence is a vital factor in shaping the commander's planning process and, later, developing courses of military action. The commander must be apprised of their legal framework as part of the initial framing of the problem, clearly understanding the implications of the legal status of their operations. The legal framework will shape all military activity, from the strategic, to operations, to the tactical level.<sup>69</sup>

#### *Risk Analysis and Mitigation of Civilian Harm Framework*

Efforts to mitigate harm to civilians are expected to inform operational planning and the conduct of operations. This process should be taken before, during, and after the implementation of operations. Before an operation, a

thorough risk assessment must be conducted, and contingency plans for protecting civilians and mitigating civilian harm must be developed in systematic consultation with the relevant civilian components. This exercise will identify and analyze direct and indirect negative consequences, including civilian displacement; the impact on livelihoods, health, and education; possible reprisals against the civilian population; and resulting explosive remnants of war. The mitigation measures meant to address these consequences should be identified and included in operational plans, contingency plans, and other orders. This exercise should be informed by a gender analysis to address, integrate, and account for the differentiated impacts of operations on different population groups. Operations should be followed by an after-action review that analyses the impact of the operations, including community perceptions, and identifies lessons learned for future operations.<sup>70</sup>

### *Protection of Civilians and Mitigation of Harm Strategies*

To express willingness to comply with IHL, commanders should develop a strategy for the protection of civilians and mitigation of harm complete with a matrix of courses of action to ensure success. The strategy should set out the required strategic objectives; assess threats, risks, and capacity; prioritize among threats; and define the mission approach, activities, roles, and responsibilities for the protection of civilians and coordination mechanisms internally and with other actors. The mission's protection of civilians and mitigation of civilian harm strategy must be informed by age- and gender-sensitive analysis. As appropriate, its core elements must be integrated into mission planning documents, including the mission concept, strategy/plan, component/ section-level planning documents, conflict analysis, results-based budget, and comprehensive performance assessment system.<sup>71</sup>

### **Integration of International Humanitarian Law into the Military Decision-Making Process and Operational Orders**

IHL should be integrated into the operational and tactical decision-making process and operational orders during armed conflict to create the necessary conditions for the law to be respected in operations. The task commander needs to assess whether one may lawfully execute the given mission within the applicable legal framework while analyzing a superior's orders.<sup>72</sup> Therefore, commanders should be knowledgeable in, and conscious of, their obligations under IHL and the potential humanitarian impact of their actions. The commander's planning guidance to his staff should include the necessary direction to ensure that subordinates incorporate legal and humanitarian factors into their analysis.<sup>73</sup> Constraints shape planning, and may be expressed in the form of rules of engagement or of fire-support coordination measures.<sup>74</sup>

*Command Responsibility or Hierarchical Accountability*

Command responsibility, or hierarchical accountability, is a tenet of IHL. Accordingly, commanders are to be held criminally responsible if they knew, or should have known, that subordinates would commit war crimes but did nothing to prevent them, or if they fail to act against (punish or report) subordinates who have already committed a war crime. Other superiors, such as staff officers, who do not have operational command responsibility are still criminally liable if they become aware of current or pending crimes that their subordinates commit and that they do not prevent or report to their superiors.<sup>75</sup> Further, commanders have the responsibility to ensure adequate training of their troops in IHL, IHRL, and other relevant humanitarian norms. Therefore, commanders should verify their subordinates' knowledge of their rights and obligations under IHL, ensuring that they are adequately trained.<sup>76</sup>

**Smart Courses of Action: Protecting Civilians in Contemporary Hostilities**

After mission analysis, the commander directs the completion of an estimate.<sup>77</sup> Commanders continue to review the mission throughout the estimate process and subsequent execution. The courses of action development is based on the direction given by the commander after mission analysis. Therefore, the commander's planning guidance is an opportunity for the commander to direct the staff to design courses of action that minimize the humanitarian impact of operations, including emphasizing the areas where compliance with IHL is critical.<sup>78</sup> A commander chooses a course of action based on several considerations, including military effectiveness, logistic feasibility, and ethical violation. In this case, smart operations should focus on the legal, ethical, and humanitarian concerns that influence and constrain contemporary military operations. Following are proposed guidelines to support military decision-making by evaluating ethical implications of potential IHL in contemporary armed conflicts.<sup>79</sup>

*Delineating Battlefield: The Case of Urbanization of Warfare*

Contemporary armed conflicts do not have defined battlefronts. Today, the battlefields are in urban areas. These highly populated environments span across borders and blur the lines between combatants and civilians. The 1949 Geneva Conventions require that all parties to armed conflicts, and those who support them, should respect IHL, particularly its rules on the conduct of hostilities that protect civilians and civilian objects.<sup>80</sup> In addition to attackers, defenders also have a duty (to the maximum extent feasible) to remove the civilian population under their control—including individual civilians and civilian objects—from the vicinity of military objectives; to avoid locating military objectives within or near densely populated areas; and to take other necessary precautions to



protect the civilian population against the dangers resulting from combat operations.<sup>81</sup>

Military commanders should make protecting civilians from the effects of hostilities a strategic priority, determining the planning and conducting of all military and security operations in populated areas. On their parts, states should join the new Political Declaration on Explosive Weapons in Populated Areas. In adopting resolution 2573, the UN Security Council demanded that parties to armed conflicts prevent, reduce, and mitigate the damage that armed conflict cause in urban centers.<sup>82</sup>

#### *Protection of Civilian Objects and Prevention of Collateral Damage*

As seen in the Russian invasion of Ukraine, the current armed conflict in Gaza and the West Bank, and the internecine war in the DRC, among others, civilian objects have constantly and consistently been deliberately targeted in modern conflicts.<sup>83</sup> However, according to Article 8 of the Rome Statute, it is a war crime to intentionally direct attacks against civilian objects. Article 52(1) of API prohibits attacking civilian objects that are not considered military objectives. Military objectives are those that, “by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”<sup>84</sup> If there is a question as to whether an object that is “customarily dedicated to civilian purposes is being used for military purposes, and thus subject to targeting, a presumption that the object retains its protected civilian status attaches until facts on the ground indicate otherwise.”<sup>85</sup> Two cumulative criteria must be satisfied before targeting an object: the object must make an “effective contribution” to the adversary’s military action, and attacking the object must offer a “definite military advantage.”<sup>86</sup> If an object does not meet this criteria, it should not be targeted.

Commanders should make informed decisions on collateral damage and incidental injury before attacking. Michael Schmitt and Eric Widmar state that proportionality does not require a strict calculus of comparison nor a balancing test arriving at an equilibrium, but that the possible collateral damage should preclude an attack when it is likely to be “excessive”—that is, “when there is a significant imbalance between the military advantage anticipated, on the one hand, and the expected collateral damage to civilians and civilian objects, on the other.”<sup>87</sup> Therefore, given the increased risk of unintended harm to civilians and collateral damage of civilian objects, any foreseeable collateral damage or incidental injury to an attacker when planning, approving, or executing an attack must be thoroughly considered during the proportionality calculation to protect civilians.

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### *Smart Targeting: Preventing Indiscriminate Attacks*

The concept of military necessity is often abused, especially when used as an excuse for using force rather than limiting it.<sup>89</sup> Even when a lawful military object is the intended target, the use of indiscriminate weapons or those that cause superfluous injury or unnecessary suffering is prohibited.<sup>90</sup> With the interdependency or interconnectedness of essential services, the complexity of today's battlefield requires proficiency in the law of targeting and marksmanship. Although there is no explicit provision on the principle of distinction between civilian objects, military objects, and the prohibition of directing attacks against civilian objects in NIAC, the general protection in Article 13 of Additional Protocol II of the 1949 Geneva Convention is broadly interpreted to cover that provision.<sup>91</sup> The prohibition on direct attacks against civilian objects has been included in Article 3(7) of the Amended Protocols II to the Convention on Certain Conventional Weapons and Article 2(1) of Protocol III to the Convention on Certain Conventional Weapons, which have been made applicable to NIAC.<sup>92</sup> For IAC, API encapsulates the crux of the law of targeting.<sup>93</sup> The five constituent elements of targeting are target, weapon, execution of the attack, collateral damage and incidental injury, and location. Rules of engagement represent the practical application of IHL to military operations.<sup>94</sup> The existence of an armed conflict is the precedent triggering the application of IHL.<sup>95</sup> The legality of an engagement depends on full compliance with the rules set out for each category.<sup>96</sup>

A target is generally approached in two ways: dynamic, affording military forces time to process information and plan rigorously before engaging a target, and deliberate, which is compressed in time to prosecute spontaneously identify targets through a deliberate targeting process.<sup>97</sup> If a target qualifies as a military objective and the utilized used is lawful, Article 57 of API—which is applicable to IAC—requires that those planning or approving attacks must take constant care to spare the civilian population, individual civilians, and civilian objects.<sup>98</sup> Regarding specific precautions in attack requirements, attackers are obligated to verify that the targets are not civilians, civilian objects, or subject to special protection.<sup>99</sup> Troops need to be aware that Article 57 of API requires continuous assessment of the situation and, if need be, suspension and cancellation of attack to comply with IHL and rules of engagement.<sup>100</sup> Attacks should be limited strictly to military objectives. Parties to both IAC and NIAC must respect the distinction between civilian objects and military objects by not directing attacks against civilian objects.<sup>101</sup>

Attackers are also required to take feasible precautions in the choice of means (weapons) and methods (tactics) of attack to minimize “incidental loss of civilian life, injury to civilians and damage to civilian objects.”<sup>102</sup> Attackers must also use tactics that will minimize collateral damage.<sup>103</sup> Beyond weapon and tactic options, attackers must consider the full range of targets that, if attacked, would yield similar military advantage. When options are available, the attacker must select the objective that “may be expected to cause the least danger to civilian lives and civilian objects.”<sup>104</sup>

#### *Data-Driven, Evidence-Based Analysis, Planning, and Decision-making*

New technologies can help troops anticipate, prevent, and respond to threats facing civilians, engaging local populations more efficiently. Mitigating civilian harm should be at the center of decisions related to the deployment and tasking of assets, and the acquisition, analysis, and sharing of derived information. New enabling technologies can support efforts and help build collective mission capacity for data-driven, evidence-based analysis, planning, and decision-making.<sup>105</sup>

#### *Constructive Engagement and Dialogue*

The primary responsibility for respecting IHL, and ensuring respect in return, falls on states and parties behind armed conflicts. In asymmetric warfare, parties to the conflict should demonstrate political will and good faith in protecting those affected by armed conflicts.<sup>106</sup> Regardless of the enemy’s nature, combatants must comply with IHL in their operations. For example, the Indian Army’s counterinsurgency (COIN) doctrine states that insurgents are citizens who have legitimate grievances. Insurgencies are viewed by Indian troops as political problems. The understanding is that there are no purely military solutions that effectively counter armed rebellions. Hence, the Indian counterintelligence doctrine makes policing less violent than some Western militaries’ coercive compellent force.<sup>107</sup>

Smart courses of action that use discriminatory force to mitigate civilian harm may also help garner legitimacy in the mission area, a lesson that can be learned from the example of American troops that sought to coerce cooperation using indiscriminate force in Mogadishu in 1992.<sup>108</sup> Despite the alleged breach of rules of IHL, during operations in Afghanistan, American troops were increasingly working with—rather than against—civilians to win their hearts and minds, which is critical in contemporary conflicts. Therefore, constructive engagement and dialogue with locals is beneficial—they are crucial intelligence sources since they know the terrain and can provide actionable and timely intelligence.<sup>109</sup> Further, IHL recognizes the inherent need of negotiations and

dialogues to end hostilities, which can afford better protection to civilians.<sup>110</sup>

*Sparing Noncombatants from the Effects of Hostilities*

Civilians and their objects must be spared as much as possible from the effects of armed conflicts. According to Article 8 of the Rome Statute, intentionally directing attacks against individual civilians not taking direct part in hostilities constitutes a war crime. In IACs, the distinction between combatants and civilians in Article 48 of API is the sine qua non of protection for individuals. Article 51(2) of API operationalizes the principle of distinction and specifies that the civilian population and individuals shall not be an object of attack. It prohibits acts or threats of violence aimed at terrorizing the civilian population. Accordingly, civilians are individuals who are not members of the armed forces and are immune from direct attack during hostilities.<sup>111</sup>

To better protect civilians, everyone should be considered a civilian unless they are members of the armed forces, an organized armed group with continuous combat function, or civilians who directly participate in hostilities. If there is doubt about a person being a civilian, that person should be considered a civilian.<sup>112</sup> Special protection should be accorded to vulnerable groups, particularly women, children, and people with disabilities who are affected by conflict differently.<sup>113</sup> Parties to the conflict must adopt specific protections for vulnerable persons, such as children and persons with disabilities. Further, parties must adhere to the 2022 “Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas” (“Dublin Declaration”), which seeks to better protect civilians against the use of explosive weapons in populated areas.<sup>114</sup>

The challenge of civilians being used as human shields is commonplace as a tactic in today’s conflicts.<sup>115</sup> Despite tactical challenges to determine whether a human shield is participating voluntarily or involuntarily, involuntary human shields do not lose their protected civilian status, so attackers must carefully consider any expected harm to them.<sup>116</sup> Therefore, in disseminating IHL, civilians should be informed that voluntary human shields forfeit their immunity from attack when they provide themselves as physical obstacles to combat operations. Their voluntary cover of combatants erodes the protection they are accorded in the proportionality assessment, or when taking precautions.<sup>117</sup>

*Article 35 Additional Protocol I Test: Humanizing New Technologies of Warfare*

The advent of fully autonomous weapon systems has raised questions about the distinction between indiscriminate weapons and the indiscriminate use of

weapons. There is no question that autonomous weapon systems include very accurate weapons. The issue, instead, is whether such weapon systems can distinguish lawful from unlawful targets on the battlefield, including the ability to interpret ambiguous human behavior. Therefore, the question is whether using autonomous weapon systems, in a particular environment and combat context, will meet the requirements of LoAC.<sup>118</sup> The answer is in Article 35 of API, which prohibits indiscriminate weapons or weapons that cause unnecessary suffering or superfluous injury.<sup>119</sup> Hence, developers of autonomous weapon systems should be aware of the legal constraint embodied in Article 35 of API.

### *Preventing Weapons from Falling into the Wrong Hands*

Another challenge is the inadequate regulation of the availability and misuse of conventional weapons. Some malign actors are acquiring weapons that are eventually aimed at civilians without regard to human rights and IHL. Under the Geneva Conventions and customary international law, states have an obligation to ensure respect for IHL. This obligation includes a responsibility to ensure that the arms and ammunition they transfer do not end up in the possession of persons likely to use them to violate IHL. The Arms Trade Treaty is meant to address such concerns. Clause 12 of the Kigali Principles on the Protection of Civilians enjoins States parties to be vigilant when monitoring and reporting any human rights abuses or signs of impending violence in the areas their personnel serve. By way of extension, states that endorsed the Kigali Principles should be vigilant in monitoring the flow of arms and ammunition on the continent to prevent them from getting into the hands of perpetrators of human rights and IHL violations.

### *Ensure Safe Access for Humanitarian Assistance and Provision of Essential Services*

Humanitarian workers have faced many overlapping challenges in their efforts to reach populations most in need, including death, injuries, looting, and kidnapping. In most situations, governments and NSAGs impede access to conflict-affected communities, limiting the ability of humanitarian actors to assist civilians in need. It is a war crime under Article 8 of the Rome Statute to intentionally direct attacks against personnel, installations, material, units, or vehicles involved in a humanitarian assistance mission if they are entitled to the protection given to civilians and civilian objects under IHL. According to Article 9 of the Rome Statute, it is a crime against humanity to intentionally inflict conditions of life through inter alia, the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population when committed as part of a widespread or systematic attack against civilian populations with knowledge of the attack.

The Sanremo Guiding Principles posit that every human being has a right to

humanitarian assistance.<sup>121</sup> The primary responsibility to protect and provide assistance to the victims is borne by the authorities who have effective control of the territory where those victims reside.<sup>122</sup> To realize this right, it is critical to ensure victims have access to aid and the humanitarian actors.<sup>122</sup> Such humanitarian assistance must be subjected to the consent of the state in whose territory the operations will be carried out. The consent must not be arbitrarily withheld. It is the same case for NIACs, where humanitarian assistance is intended for civilians in territory under the effective control of an NSAG.<sup>123</sup> Humanitarian assistance consists of any material indispensable to the survival of victims, such as foodstuffs, water, medication, medical supplies and equipment, minimum shelter, and clothing; services, such as medical services, tracing services, religious and spiritual assistance; and civil defense.<sup>124</sup> Article 8 of the Rome Statute makes it a war crime to intentionally starve civilians by depriving them of objects indispensable to their survival, including willfully impeding relief supplies, as a method of warfare.

All parties to a conflict, whether IAC or NIAC, have the obligation to allow and facilitate rapid passage of humanitarian relief for civilians in need.<sup>125</sup> Belligerents should ensure unimpeded humanitarian access and protection of all aid workers, ensuring that their sanctions and counterterrorism measures do not negatively impact the delivery of such assistance. Article 4 of the Tallinn Manual 2.0 also requires the protection of critical infrastructure for state functions.<sup>126</sup> Parties to armed conflict should implement UN Security Council Resolution 2573, which recognizes the importance of protecting critical infrastructure, personnel, and goods during hostilities.<sup>127</sup> In addition to respecting protective, demilitarized, neutralized zones under the Geneva Convention I Article 14 of the Fourth Geneva Convention, innovations such as humanitarian corridors, humanitarian notification to belligerents, and the signing of deeds of commitment by NSAGs have helped ensure populations at risk have access to humanitarian aid.<sup>128</sup>

*Incentivize Compliance with International Humanitarian Law: Dealing with Non-state Armed Groups*

The proliferation of NSAGs lacking an organized structure presents a challenge to compliance with IHL in contemporary armed conflicts.<sup>129</sup> Since extent entities can influence the behavior of armed forces and armed groups, the onus to ensure compliance with IHL rests on those who have influence over the groups, who must also inculcate a culture of respect for the laws and customs of war.<sup>130</sup> Some NSAGs also control territory and have established *rebelocracies*, which are forms of social order in long-term civil wars.<sup>131</sup> In most cases, people living in territories controlled by NSAGs are at the mercy of their rebellious captors. The use of the term terrorist act in the context of armed conflict

lious captors. The use of the term terrorist act in the context of armed conflict is not only confusing but also disincentivizes NSAGs to abide by the laws and customs of armed conflict, including IHRL.<sup>132</sup> Therefore, when engaging with an NSAG, the relevant stakeholders should incentivize the protection of civilians and the mitigating of civilian harm, encourage the illegal armed groups to prevent or stop attacks on civilians, seek a group's meaningful commitment to desist from attacks on civilians, and improve their understanding and respect for IHL and IHRL. The relevant stakeholders must also alleviate tensions, identify grievances, and build confidence among parties to the conflict.

### *Taming the Proliferation of Mercenaries to Ensure Accountability*

Outsourcing of military functions has become prevalent in recent years. In the “age of entropy,” some private military corporations have more power than states.<sup>134</sup> Some private military corporations have been engaged to augment the state's capacity to project force, train foreign forces, and provide security or regime protection. In some cases, countries have outsourced private military corporations to evade accountability for committing or being complicit in cases of abuses. Article 47 of API states that mercenaries do not enjoy immunity in hostilities. The UN and the AU have outlawed the use of mercenaries in hostilities. Therefore, states should enforce the prohibition of mercenaries in contemporary conflicts, as they have a propensity to prolong conflicts and exacerbate the suffering of civilians.

### **Jus ad pacem: Toward Smart Operations for Conflict Resolution**

The purpose of war has been the annihilation of the enemy. However, since adopting the humanitarian norms embodied in the Geneva Conventions, the purpose of warfighting morphed into defeating or weakening the adversary, not annihilating them. While it is not the duty of troops to resolve conflicts, ending conflicts is in the best interests of belligerents and civilians. The UN SDG 16 calls on states to achieve peaceful and inclusive societies, alongside significantly reducing all forms of violence everywhere.<sup>135</sup> An important step to achieving this goal is to protect civilians from hostilities by ending ongoing conflicts. Therefore, compliance with IHL should not be the end but the means to protect civilians amid hostilities, with the goal of ending the conflicts to secure peace. Peace is a common good; the very essence of establishing the UN in 1945. However, noncompliance with the law for political, security, and economic interests weakens accountability for violations, increases the severity of the humanitarian consequences of the conflict, and seriously undermines global peace and security.<sup>136</sup>

The fact that most of the victims of contemporary armed conflicts are civilians



necessitates a multidimensional approach to end armed conflicts. While *jus ad bellum* (law prohibiting the use of force in International Law) cannot guarantee preventing an armed conflict, *jus in bello* (the law governing the conduct of hostilities) has not been fully followed by parties to conflicts to protect civilians. As it is impossible to entirely prevent armed conflict, when enforcing the laws and customs of war, effort must be made to resolve the conflict.

By and large, armed conflicts result from the failure of bargaining. Warfighting presents a collective action problem of mutual destruction. Stopping the annihilation requires persuasion by interlocutors to remind the warring belligerents that they will be responsible for reconstruction in the postwar era. External actors, including IHL advocates, can also use the bargaining theory to explain the deleterious costs of conflict and incentivize the benefits of a ceasefire.<sup>137</sup> In negotiating with NSAGs generally, Mark Freeman and Mariana Casij Peña have provided useful insights:

“Naturally, adequate conditions for negotiation depend on the existence of a credible threat, without which there is neither the capacity to deter violence nor bargaining power in any negotiation. Yet, sticks (deterrents) are insufficient on their own; carrots (incentives) are also needed. Those incentives must be tailored to the target group's origins, identity, codes, structure, goals and strategies—just as needs to be done when negotiating with conventional guerrillas. These variables, in turn, are closely related to what the groups might expect to attain in the negotiation itself, which might include recognition of their identity; legalization of their right to association; safe passage through rival turf; temporary ceasefire; social inclusion measures; better prison conditions; or legal leniency measures, such as amnesty or a halt to extradition.”<sup>138</sup>

For purposes of bargaining, external actors should bargain with belligerents through coercive diplomacy (assurance, inducement, and persuasion).<sup>139</sup> For example, a carrot (incentive) can be the possible lifting of sanctions against any warring parties if they agree to share power or resources. An example of a stick (threat of consequences) would be more punitive or severe sanctions imposed on them.<sup>140</sup> Another sweetener can be an offer of the broadest possible asylum envisaged in Article 6(5) of Additional Protocol II at the end of NIAC, except for persons suspected or accused of or sentenced for war crimes, genocide, or crimes against humanity.<sup>141</sup> Needless to say, blanket amnesty for war crimes cannot be granted—even in situations of transitional justice. where possible.

When parties avoid cooperation, they end up in a worse situation, and when the parties cooperate, there is a possibility of optimum mutual benefit. Hence the need to accept the decentralized power-sharing arrangement by belligerents where possible.

Stathis Kalyvas has gone beyond Paul Collier's categorization of war as something beyond greed and grievance.<sup>142</sup> Kalyvas notes that a convergence of local and supralocal imperatives endows civil wars with their complex character, straddling the divide between the political and the private, the collective and the individual.<sup>143</sup> This points to the importance of identifying "local cleavages" (local dynamics) to address the question of reconciliation and peacebuilding in civil wars. As Paul Staniland rightly notes, politics does not end when the first bullet is fired.<sup>144</sup> Therefore, understanding these local dynamics may help policymakers devise effective strategies and interventions for conflict prevention.

The ICRC is the guardian of IHL, the UN Human Rights Council oversees global respect for and enforcement of IHRL, and the UN High Commissioner for Refugees focuses on IRL; however, there is no dedicated body to encourage incentives and benefits to promote the use of negotiation to prevent and resolve armed conflicts.<sup>145</sup> The omission of a *lex specialis* and an institution to promote conflict prevention and resolution may have contributed to internecine wars, thereby exacerbating the abuses against civilians. The best option to protect civilians is to end hostilities. The fact that until recently, the UN focused on *jus ad bellum*, while the ICRC has been concerned with *jus in bello*, stalled the development of *jus ad pacem*, which is the link between the two bodies of law. This is where regional actors, such as the AU, would come in to focus on ending wars or resolving conflicts.

Smart operations should create room for peace negotiations by ensuring compliance with IHL, while aiming for the cessation of hostilities and conflict resolution as the main goal. Knowledge of and compliance with IHL is not the end but the means to cessation of hostilities. The obligation to disseminate IHL under Article 83 of API applicable to IACs and Common Article 3 of the Geneva Conventions, as well as Article 19 of Additional Protocol applicable to NIACs, is meant for the military and civilians alike. The dissemination of IHL should include a clarion call for active citizenship to ensure oversight and diagonal accountability of belligerents.<sup>146</sup> Civil society should develop the capacity for oversight of belligerents and conflict resolution as a sure way to protect civilians. While human rights defenders have been staunch advocates of IHRL, the ICRC has not been complemented much by civil society.

If there is a need for diagonal accountability to oversee compliance with the law, then there should be community-based approaches to develop IHL advocates

who would ensure that states integrate IHL and adhere to its dictates. Community leaders, human rights defenders, journalists, lawyers, and other civil society representatives can create worthwhile IHL advocates to protect civilians during armed conflicts.<sup>147</sup> Therefore, disseminating IHL should be accompanied by awareness of dispute resolution and conflict prevention techniques. The common denominator and the confluence of these three streams of law is to protect humankind. If the purpose of the UN Charter is to save succeeding generations from the scourges of war, then ending warfare is the most viable option to protect civilians.

## Conclusion

Warfare has evolved, but operational art and MDMP have not. In contemporary armed conflicts, civilians are the primary victims of IHL violations committed by state and nonstate actors. Protecting civilians from the harmful effects of hostilities has never been easy; hence, the goal should be to prevent war altogether.<sup>148</sup> Ensuring repression of hostilities is fundamental, but more effort should be focused on avoiding violations in the first place. The nature of contemporary counterinsurgency and stability operations has broadened the scope of military operations, so commanders must now engage in activities outside of those customarily considered combat-related.<sup>149</sup> Though IHL is the international law that regulates armed conflicts, there is no established *jus ad pacem* to encourage, support, and sustain peace negotiations.<sup>150</sup> The expanded role of the military requires broadening their perspectives and the understanding and application of *jus ad bellum*, *jus in bello*, and *jus ad pacem* to better protect civilians.

As discussed in this paper, the concept of smart operations provides a basis for effectively integrating IHL at a strategic level to mitigate civilian harm. The execution of smart operations also requires commanders and their troops to be adequately conversant with both IHL and IRL since these legal regimes are prominently relevant to contemporary armed conflicts. Through strict compliance with IHL and observance of international human rights, refugee law, and other humanitarian rules, belligerents enhance the opportunity for negotiations and thereby increase the prospects of ending hostilities and returning to peace, which is the ideal situation for protecting civilians.

Therefore, to advance the protection of civilians and mitigate civilian harm, military operations should ensure systematic integration of human rights and other specific protection-related concerns, including those related to gender and children, into peace processes and peace agreements. All relevant actors, such as the UN, regional organizations, states, and nonstate actors, must engage belligerent interlocutors on their responsibility to protect civilians and

protect, promote, and respect IHL and IHRL where relevant, as well as hold alleged perpetrators of violations accountable.<sup>151</sup> Given their local knowledge, community-based approaches are also critical to protecting civilians and mitigating civilian harm. Since it is unrealistic to expect to prevent conflicts completely, compliance with IHL demonstrates professionalism, protects noncombatants, and enhances the prospects of peace, as it creates an environment where parties can efficiently resolve the conflict and achieve peace as envisaged in UN SDG 16.

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39. Army Doctrine Publication (ADP) 3-0, *Unified Land Operations* (Washington, DC: Army Headquarters, 2011), [https://www.army.mil/e2/downloads/rv7/info/references/ADP\\_3-0\\_ULO\\_Oct\\_2011\\_APD.pdf](https://www.army.mil/e2/downloads/rv7/info/references/ADP_3-0_ULO_Oct_2011_APD.pdf).
40. The Chairman of the Joint Chiefs of Staff Manual (CJCSM) on Joint Risk Analysis (CJCSM 3105.01) requires commanders to provide an explicit and tangible articulation of risk to better align ends, ways, and means to maximize the probability of success in meeting strategic objectives. See Chairman of the Joint Chiefs of Staff (CJCS) Manual, "Joint Risk Analysis Methodology," CJCSM 3105.01A (Washington, DC: Department of Defense, October 12, 2021).



41. The CJCSM 3105.01 provides a Joint Risk Analysis Methodology (JRAM) to assist Commanders in conducting a risk assessment for operations. The JRAM uses a framework with three major components and four steps or activities to address risk comprehensively. The three major components are (1) risk appraisal, (2) risk management, and (3) risk communication. The four steps include: (1) problem framing, (2) risk assessment, (3) risk judgment, and (4) risk communication. The JRAM is an analytical tool for commanders to reduce risks against adversaries to ensure success in operations. Risk analysis and mitigation and military judgment help determine risk levels, mitigation strategies, and acceptable risk levels to problem sets and strategic objectives. See CJCS Manual, "Joint Risk Analysis Methodology."
42. US Department of the Army, Army Techniques Publication (ATP) 5-19, Risk Management (Washington, DC: Government Printing Office, 2014).
43. ADRP 3-0, Unified Land Operations.
44. Reed et al., "A Principles-Based Model," 195.
45. Article 48 of API. Schmitt and Widmar, "On Target," 379-409.
46. Larry Kay, "It's Time to Update the Military Decision-Making Process," From the Green Notebook, October 12, 2020, <https://fromthegreennotebook.com/2020/10/12/its-time-to-update-the-military-decision-making-process>.
47. Shortland, Alison, and Barret-Pink, "Military (In)Decision-Making Process."
48. Kay, "It's Time to Update the Military Decision-Making Process."
49. Stigall, Blakesley, and Jenks, "Human Rights and Military Decisions," 1370.
50. Stigall, Blakesley, and Jenks, "Human Rights and Military Decisions," 1375. See also Al-Skeini and Others v. Secretary of State for Defence.
51. Stigall, Blakesley, and Jenks, "Human Rights and Military Decisions," 1380.
52. Shortland, Alison, and Barret-Pink, "Military (In)Decision-Making Process."
53. Reed et al.
54. Reed et al., "A Principles-Based Model."
55. "The Protection of Civilians in United Nations Peacekeeping," United Nations, Policy (May 1, 2023), para 8, 3.
56. Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (London: Penguin, 2006), 270; Podder and Roy, "Use of Force to Protect Civilians in United Nations Peacekeeping," 10.
57. Mike Jackson, "The Realities of Multidimensional Command: An Informal Commentary," in *The Challenges of High Command: The British Experience*, ed. Geoffrey Till and Gary Sheffield (London: Palgrave Macmillan, 2003), 139-45; Podder and Roy, "Use of Force to Protect Civilians in United Nations Peacekeeping," 11.
58. "The Protection of Civilians in United Nations Peacekeeping," United Nations, Policy, para 10.

59. Reed et al., "A Principles-Based Model," 195–211.
60. Gilder, "The UN and the Protection of Civilians," 336; Timothy Donais and Eric Tanguay, "Protection of Civilians and Peacekeeping's Accountability Deficit," *International Peacekeeping* 28, no. 4 (2021): 553, 566, <https://doi.org/10.1080/13533312.2021.1880900>.
61. Kuwali, *If Right, Fight it Right*, 54–58, 63–65.
62. See "The Protection of Civilians in United Nations Peacekeeping," United Nations, para 9.
63. Report of the Special Committee on Peacekeeping Operations (A/75/19) (2021), para 129, <https://documentys.un.org/doc/undoc/gen/n21/068/37/pdf/n2106837.pdf?token=QkjzwayY8+92tvNIGm4fe+true>.
64. "The Protection of Civilians in United Nations Peacekeeping," United Nations, para 3, 3.
65. Hunt, "To Serve and Protect," 13.
66. Hunt, "To Serve and Protect," 12.
67. IHL, "Guiding Principles on the Right to Humanitarian Assistance," Principle 8.
68. Also known as Intelligence Preparation of the Battlefield (IPB).
69. ICRC, "Decision-Making Process in Military Combat Operations," para 6.
70. ICRC, "Decision-Making Process in Military Combat Operations," para 7.
71. "The Protection of Civilians in United Nations Peacekeeping," United Nations, para 55.
72. "The Protection of Civilians in United Nations Peacekeeping," para 75.
73. That is to say, when extracting and deducing the immediate superior commander's intent, the tasks (specified and implied) necessary to fulfil the mission, the applicable constraints, and the potential changes in the situation.
74. ICRC, "Decision-Making Process in Military Combat Operations," para 7.
75. ICRC, "Decision-Making Process in Military Combat Operations," para 10.
76. ICRC, "Decision-Making Process in Military Combat Operations," paras 1–2.
77. ICRC, "Decision-Making Process in Military Combat Operations," para 20.
78. Also known as Commander's Planning Guidance and the plan for staff work.
79. ICRC, "Decision-Making Process in Military Combat Operations," para 11–12.
80. Reed et al., "A Principles-Based Model," 196.
81. See the 1948 Geneva Conventions.
82. Article 58, Additional Protocol I to the 1949 Geneva Conventions; Schmitt and Widmar, "On Target," 404.
83. ICRC, Report on IHL and the Challenges of Contemporary Armed Conflicts.
84. The harm to civilians is technically labeled "incidental injury," while that to civilian objects is "collateral damage." Schmitt and Widmar, "On Target,"

- 405.
85. Article 52(2) API.
  86. Article 52(3) API.
  87. Schmitt and Widmar, "On Target," 392.
  88. Schmitt and Widmar, "On Target," 405.
  89. Schmitt and Widmar, "On Target," 405–6.
  90. Briefing to UN Security Council Open Debate on Protection of Civilians, delivered on May 25, 2022, by Robert Mardini, Director General, International Committee of the Red Cross.
  91. In LoAC parlance, targeting implies "attack," an act of "violence against the adversary, whether in offence or defence." Article 35(2), Article 49(1), and Article 51(4) of API. See also Article 22, 1907 Hague Convention IV.
  92. Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, June 8, 1977 (entered into force December 7, 1978) (AP II); Michael Bothe, Kar Joseph Partsch, and Waldemar A. Solf, eds., *New Rules for Victims of Armed Conflict* (The Hague: Martinus Nijhoff, 1982), 677.
  93. "Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as Amended on 3 May 1996" (Amended Protocol II), United Nations Treaty Collection, <https://geneva-s3.unoda.org/static-unoda-site/pages/templates/the-convention-oncertain-conventional-weapons/amended&2bprotocol/>. See also "Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III)," United Nations Treaty Collection, <https://geneva-s3.unoda.org/static-unoda-site/pages/templates/the-convention-oncertain-conventional-weapons/2bprotocol/bill>.
  94. Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3 (API), [https://www.icrc.org/en/doc/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf).
  95. ICRC, "Decision-Making Process in Military Combat Operations."
  96. Schmitt and Widmar, "On Target," 379–409.
  97. Schmitt and Widmar, "On Target," 379–409.
  98. Ekelhof and Persi Paoli, "The Human Element in Decisions about the Use of Force."
  99. Article 57(1) API
  100. Article 57(2)(a)(i) API; Schmitt and Widmar, "On Target," 401.
  101. Ekelhof and Persi Paoli, "The Human Element in Decisions about the Use of Force."
  102. See Art 48, Protocol Additional to The Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, 36. Art 13, Protocol Additional to The Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977, 90,

- <https://documentys.un.org/doc/undoc/gen/n21/068/37/pdf/n2106837.pdf?token=QkjzwayY8+92tvNIGm4fe+true>. See also the 27th International Conference of the Red Cross and Red Crescent, Plan of Action for the Years 2000–2003, sections 185–86 and 188–93.
103. Art 57(2)(a)(ii) API.
  104. What the military calls tactics are referred to as “methods” of attack in LoAC parlance. Schmitt and Widmar, “On Target,” 402.
  105. Article 57(3) API. Schmitt and Widmar, “On Target,” 403.
  106. “The Protection of Civilians in United Nations Peacekeeping,” para 33.
  107. See Common Article 3 to the Geneva Conventions. See also The Prosecutor v Duško Tadić, Case No. IT-94-1-A (Judgement on Appeal), July 15, 1999.
  108. Podder and Roy, “Use of Force to Protect Civilians in United Nations Peacekeeping,” 8.
  109. Podder and Roy, “Use of Force to Protect Civilians in United Nations Peacekeeping,” 6.
  110. For example, Community Liaison Assistants (CLAs) can support uniformed and civilian personnel in their interactions with communities, local authorities, and other local actors in peace support operations. They assist with information gathering, threat or needs assessments, conflict mediation, early warning, local-level protection planning, coordination of and follow-up on field visits and patrols/operations, and strengthening the resilience of local communities. See Podder and Roy, “Use of Force to Protect Civilians in United Nations Peacekeeping,” 9; “The Protection of Civilians in United Nations Peacekeeping,” para 29.
  111. Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 6(5).
  112. See Art 37, Protocol Additional to The Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, 37, <https://documentys.un.org/doc/undoc/gen/n21/068/37/pdf/n2106837.pdf?token=QkjzwayY8+92tvNIGm4fe+true>. See also Article 4A(1), (2), (3), and (6) of the Third Geneva Convention and Article 43 of API; Jean-Marie Henckaerts and Louise Doswald-Beck, eds., Customary International Humanitarian Law (CIHL), Rule 5; Schmitt and Widmar, “On Target,” 381–82.
  113. Combatants may be attacked solely based on their status except for hors de combat (out of combat). Schmitt and Widmar, “On Target,” 385.
  114. United Nations, “Peace and Conflict,” May 23, 2023.
  115. “Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas,” <https://EWIPA-Political-Declaration-Fine-REV-25052022.pdf> See also ICRC, November 18, 2022, <https://www.icrc.org/en/document/>

- milestone-political-declaration-brings-hope.
116. There are two types of human shields: voluntary and involuntary. See “Philippines: Mistreatment, Hostage-Taking in Zamboanga,” Human Rights Watch, September 19, 2013, <https://www.hrw.org/news/2013/09/19/philippines-mistreatment-hostage-taking-zamboanga>.
  117. Schmitt and Widmar, “On Target,” 389.
  118. Nils Melzer, “Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law,” International Committee of the Red Cross, May 2002, 56, [https://www.icic/en/doc/assets/files/other/icrc\\_oo20990.pdf](https://www.icic/en/doc/assets/files/other/icrc_oo20990.pdf). See also Schmitt and Widmar, “On Target,” 389; Michael N. Schmitt, “Human Shields in International Humanitarian Law,” *Columbia Journal of Transnational Law* 47 (2009): 292.
  119. Schmitt and Widmar, “On Target,” 398.
  120. ICRC, Report on IHL and the Challenges of Contemporary Armed Conflicts.
  121. IHL, “Guiding Principles on the Right to Humanitarian Assistance,” Principle 1.
  122. IHL, “Guiding Principles on the Right to Humanitarian Assistance,” Principle 4.
  123. IHL, “Guiding Principles on the Right to Humanitarian Assistance,” Principle 6.
  124. OCHA, Oxford Guidance on the Law Relating to Humanitarian Relief Operations, paras D and E, 6–7.
  125. IHL, “Guiding Principles on the Right to Humanitarian Assistance,” Principle 9.
  126. With regards to International Armed Conflicts (IAC), see Article 9 of the Geneva Conventions I, II, and III, Article 10 of the Geneva Convention IV, and Article 70 Additional Protocol I. With regards to Non-International Armed Conflicts (NIAC), see Common Article 3 to the Geneva Conventions and Article 18 (2) Additional Protocol II. See also Rules 31, 32, 56, and 50f Customary International Humanitarian Law.
  127. Michael N Schmitt and Liis Vihul, eds., *Tallin Manual 2.0 on the International Law Applicable to Cyber Warfare* (Cambridge: Cambridge University Press, 2017); Terence Check, “The Tallinn Manual 2.0 on Nation-State Cyber Operations Affecting Critical Infrastructure,” *American University National Security Law Brief*, 13, no. 1 (2023): 16–19, <https://digitalcommons.wcl.american.edu/nslb/vol13/iss1/1>.
  128. Conflict and insecurity have been the most significant drivers of acute insecurity for around 117 million people in nineteen countries and territories in 2022. Crops were destroyed, livestock stolen, land spoiled, roads blocked, and farmers driven from their fields. See “Peace and Conflict,” United Nations.
  129. See Article 23 of the Geneva Convention I, Article 14 of the Geneva Con-

- vention IV, Article 16, the Geneva Convention, Article 59 Additional Protocol I (API), Article 64 API.
130. ICRC, "Report on IHL and the Challenges of Contemporary Armed Conflicts," 74.
  131. ICRC, "Report on IHL and the Challenges of Contemporary Armed Conflicts," 75.
  132. Ana Arjona, *Rebelocracy: Social Order in the Colombian Civil War* (Cambridge: Cambridge University Press, 2016).
  133. "The Protection of Civilians in United Nations Peacekeeping," para 45.
  134. "The Protection of Civilians in United Nations Peacekeeping," para 45; ICRC, "Report on IHL and the Challenges of Contemporary Armed Conflicts."
  135. Sean MacFate, *The New Rules of War: Victory in the Age of Durable Disorder* (New York: HarperCollins, 2019).
  136. "The 17 Goals."
  137. ICRC, "Report on IHL and the Challenges of Contemporary Armed Conflicts," 75.
  138. Matthew O. Jackson and Massimo Morelli, "The Reasons for Wars: An Updated Survey," in *Handbook on the Political Economy of War*, ed. Chris Coyne (Cheltenham, UK: Elgar, 2011), 34-57.
  139. Freeman and Peña, "Negotiating with Organized Crime Groups," 644-45. See also Mark Freeman and Vanda Felbab-Brown, *Negotiating with Violent Criminal Groups: Lessons and Guidelines from Global Practice* (Barcelona: IFIT, 2021), 11, <https://ifit-transitions.org/publications/negotiating-with-violent-criminal-groups/>.
  140. Roger Boesche, *The First Great Political Realists: Kautilya and His Arthashastra* (Oxford: Lexington Books, 2003), 78.
  141. Thomas C. Schelling, *Arms, and Influence*, rev. ed (1966; New Haven, CT: Yale University Press, 2008).
  142. See also Rule 159 of Customary International Humanitarian Law, Volume II, Chapter 44, Section D.
  143. Stathis N. Kalyvas, "The Ontology of 'Political Violence': Action and Identity in Civil Wars," *Perspectives on Politics* 1 (2003): 475-94. See Paul Collier and Anke Hoefler, "Greed and Grievance in Civil War," *Oxford Economic Papers* 56, no. 4 (May 2000), <https://www.jstor.org/stable/3488799>.
  144. Kalyvas, "The Ontology of 'Political Violence.'"
  145. Paul Staniland, "States, Insurgents, and Wartime Political Orders," *Perspectives on Politics* 10, no. 2 (2012): 243-64.
  146. Freeman and Peña, "Negotiating with Organized Crime Groups," 645.
  147. ICRC, *Report on IHL and the Challenges of Contemporary Armed Conflicts*, 76.
  148. "The Protection of Civilians in United Nations Peacekeeping," para 58; Anna Lührmann, Kyle L. Marcuardt, and Valeriya Merchkova, "Constraining Government: New Indices of Vertical, Horizontal, and Diagonal Accountability," *American Political Science Review* 114, no. 3 (2020): 811-20.

149. Dan Mahanty, "Five Ways to Protect Civilians in Contemporary Armed Conflicts," WritePeace (blog), SIPRI, August 29, 2023, <https://www.sipri.org/commentary/blog/2023/five-ways-protect-civilians-contemporary-armed-conflict>.
150. Stigall, Blakesley, and Jenks, "Human Rights and Military Decisions," 1380.
151. Freeman and Peña, "Negotiating with Organized Crime Groups," 645.
152. "The Protection of Civilians in United Nations Peacekeeping," para 40.



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