

**International Institute of Humanitarian Law**

***The Manual on the Law of Non-  
International Armed Conflict***

***With Commentary***

Drafting Committee

Professor Michael N. Schmitt  
George C. Marshall European Center for Security Studies

Professor Charles H.B. Garraway  
Royal Institute of International Affairs (Chatham House)

Professor Yoram Dinstein  
Tel Aviv University

Sanremo, 2006

This document should not be interpreted as representing the views of the  
government of any member of the Drafting Committee.

## Foreword

The new San Remo Manual relating to Non-International Armed Conflicts is a sequel to the well-known *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, published in 1995. The new Manual – including both black-letter rules and commentary – has been prepared for the San Remo International Institute of Humanitarian Law by Yoram Dinstein, Charles Garraway and Michael Schmitt.

It reflects the results of a major Project launched by the Institute under the directorship of Dr. Dieter Fleck. The overall framework of the Project was expounded and its background papers printed – under the aegis of the Institute – in volume 30 (2000) of the *Israel Yearbook on Human Rights*. The Project itself is perhaps not entirely finished, but the Executive Board of the Institute felt that the Manual should be prepared as soon as possible considering the urgent need for its use during the military courses organized by the Institute.

The sphere of non-international armed conflicts is gaining increasing importance and attention due to the growing frequency and menace of internal wars. The imperative need to come up with an authoritative restatement of the law governing these conflicts has been particularly obvious in the context of the military courses the Institute runs on a regular basis. Students and Faculty alike are acutely aware of the all too often burning issues that are so passionately debated.

The new Manual will meet the requirements of our military courses, but it will equally be available to other interested institutions and parties. Given the volatile nature of the field, we fully expect users of the Manual to come up with suggestions to further elucidate the law and improve both the black letter rules as well as the commentary in future editions of the text.

I would very much like to thank the Drafting Committee of the Manual as well as the members of the Institute who co-operated and gave useful comments and suggestions.

Prof. J. Patrnoic  
President, IIHL

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## PREFACE

This Manual is a guide for behaviour in action during non-international armed conflict. While not a comprehensive restatement of law applicable in such conflicts, it nevertheless reflects the key principles contained in that law. It is not meant to replace the advice of legal officers or other legal authorities. This Manual is a revision of the 2001 San Remo Code of Conduct in Non-International Armed Conflict, which has been in use in military courses at the International Institute of Humanitarian Law since its completion.

The accompanying commentary is designed to offer guidance on the application of the Rules, as well as to indicate their basic sources.

Compliance with this Manual will benefit every party to the hostilities, as well as those not taking part in them. There are numerous reasons that this is so. First, the provisions that the Manual contains are compatible with effective and efficient conduct of operations. For instance, the limitation on the excessive use of force is consistent with the military principle of economy of force. Similarly, violations by one side are likely to encourage reciprocal misconduct by the other, thereby igniting a cycle of violence that detracts from the achievement of military aims. Second, non-compliance through harsh and inhumane behaviour will alienate potential allies, both on the domestic and international level. Third, compliance will facilitate ending the hostilities and promote resolution of the conflict. The key to successful conflict termination is an ability to negotiate and compromise in good faith. Misconduct in military operations generates mistrust and resentment that will inevitably frustrate such endeavours. Finally, "winning the peace" in the long term following a non-international conflict presupposes national reconciliation. Such reconciliation can only come about if the parties believe they can live and work together, something they will have difficulty doing with those who have treated them inhumanely.

The authors wish to thank all those who provided comments on the original Code of Conduct. In particular, they thank Michel Bourbonniere and Michael Cottier, both of whom were instrumental in preparation of that document.

## Chapter 1: Introduction

### 1.1 Definitions

#### 1.1.1 Non-international armed conflict

**a. Non-international armed conflicts are armed confrontations occurring within the territory of a single State and in which the armed forces of no other State are engaged against the central government.**

**b. Internal disturbances and tensions (such as riots, isolated and sporadic acts of violence, or other acts of a similar nature) do not amount to a non-international armed conflict.**

Non-international armed conflicts do not include conflicts in which two or more States are engaged against each other. Nor do they encompass conflicts extending to the territory of two or more States. When a foreign State extends its military support to the government of a State within which a non-international armed conflict is taking place, the conflict remains non-international in character. Conversely, should a foreign State extend military support to an armed group acting against the government, the conflict will become international in character. Admittedly, it is sometimes difficult to determine in the circumstances of a protracted non-international armed conflict whether there exists a government.

Express treaty law governing non-international armed conflict is rather limited. It includes Common Article 3 of the 1949 Geneva Conventions for the Protection of War Victims; the 1977 Protocol Additional (II) to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-international Armed Conflict; the 1980 Convention on Certain Conventional Weapons, as amended, and its Protocols; the 1998 Statute of the International Criminal Court; the 1997 Ottawa Convention banning anti-personnel

land mines; the 1993 Chemical Weapons Convention; and the 1954 Hague Convention for the Protection of Cultural Property and its 1999 Second Protocol. Numerous other treaties also bear on non-international armed conflict and are cited in this Manual. Of course, unless it is reflective of customary international law, treaty law binds only States Parties thereto.

3. In addition to treaty law, there is a growing body of customary law applicable in non-international armed conflict. Of particular note, the International Court of Justice has recognized Common Article 3 as customary international law.<sup>1</sup>

4. There is an important issue of “threshold” relating to non-international armed conflicts. Common Article 3 merely requires that the armed conflict not be of “an international character” and occur “in the territory of one of the High Contracting Parties”. However, the threshold is higher under Additional Protocol II. By Article 1.1, the Protocol only applies to conflicts between the armed forces of a High Contracting Party “and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of the territory as to enable them to carry out sustained and concerted military operations” though it is possible for there to be an intern-connection between two separate conflicts, as in those of Liberia and Sierra Leone. The Article further requires, as does Common Article 3, that the conflict take place “in the territory of a High Contracting Party.”

Although this Manual does not deal with human rights law as such, it should be noted that such law continues to apply, subject to any derogations made under applicable treaties.

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<sup>1</sup> The International Court of Justice has opined that Common Article 3 represents customary international law in both international and non-international armed conflict. *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.)*, Merits, 1986 ICJ Rep. 4 (June 27), at paras. 118-120.

### 1.1.2 Fighters

**a. For the purposes of this Manual, fighters are members of armed forces and dissident armed forces or other organized armed groups, or taking an active (direct) part in hostilities.**

**b. Medical and religious personnel of armed forces or groups, however, are not regarded as fighters and are subject to special protection unless they take an active (direct) part in hostilities.**

1. The term “fighters” does not appear in any binding treaty and is used here solely for the purposes of the present Manual. It must be appreciated that fighters include both members of the regular armed forces fighting on behalf of the government and members of armed groups fighting against the government. The term “fighters” has been employed in lieu of “combatants” in order to avoid any confusion with the meaning of the latter term in the context of the international law of armed conflict.

2. The phrases “active participation” and “direct participation” in hostilities are often used interchangeably. For example, Common Article 3 of the Geneva Conventions uses the word “active”, whereas Article 13.3 of Additional Protocol II uses the word “direct.” There is no substantive distinction between the two terms in this context. What is required is “a sufficient causal relationship between the active participation and its immediate consequences.”<sup>2</sup>

3. It is important to distinguish active (direct) participation in hostilities from participation in the war effort. The former term is much more restrictive. Examples of active (direct) participation in hostilities include such activities as attacking the enemy, his materiel or facilities; sabotaging enemy installations; acting as members of a gun crew or artillery spotters; delivering ammunition; or gathering

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<sup>2</sup> Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (ICRC, Yves Sandoz et al. eds, 1987), at para. 4787 [Commentary].



military intelligence in the area of hostilities. It would not include, however, general contributions to the war effort, such as working in a munitions factory.

4. Under Article 13.3 of Additional Protocol II, the loss of protection exists only “for such time as [civilians] take a direct part in hostilities.” However, this limitation is not confirmed by customary international law. Such an approach would create an imbalance between the government’s armed forces on the one hand and members of armed groups on the other, inasmuch as the former remain legitimate targets (under international law) throughout the conflict. Moreover, the proposition is impractical to implement on the ground. Ordinary soldiers would be required to make complex and immediate assessments as to whether an individual’s participation in hostilities is ongoing, at a time when the facts available are incomplete or unclear.

5. As for the special protection of medical and religious personnel, see Rule 3.2.

### **1.1.3 Civilians**

**Civilians are all those who are not fighters.**

For the purposes of this Manual, civilians who actively (directly) participate in hostilities are treated as “fighters”.

### **1.1.4 Military objectives**

**Military objectives are objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralisation, in the circumstances at the time, offers a definite military advantage.**

1. This definition reflects that set forth in Article 52.2 of Additional Protocol I. Although Additional Protocol I is widely ratified, some

countries, led by the United States, strenuously object to certain aspects of it. Despite this, there is no objection to the definition of military objectives, which is now considered to be customary international law for both international and non-international armed conflict, as confirmed by Article 2.6 of the 1996 Amended Protocol II to the Conventional Weapons Convention and by Article 1(f) of the Second Protocol to the Hague Cultural Property Convention, both of which are applicable in non-international armed conflict.<sup>3</sup>

2. Attention must be focused on the phrase “use.” What it ultimately means is that every civilian object is liable to become a military objective as a result of use (or abuse) by the enemy for military purposes. Thus, even a hospital, church, school, or cultural object can become a military objective. Having said this, it must be borne in mind that any attack against such an objective is qualified by the rule of proportionality (see Rule 2.1.1.4 below).

3. As for the other expressions, “nature” means that the object has an intrinsic military significance (such as an ammunition depot, a tank, a headquarters, or a military barracks). “Location” relates to selected areas that have “special importance to military operations” (e.g., a mountain pass). “Purpose” indicates that it is known, based on reliable intelligence or other information, that the enemy intends to use (or abuse) the object militarily in the future.<sup>4</sup>

4. It is generally understood that “the military advantage anticipated from an attack is intended to refer to the advantage anticipated from

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<sup>3</sup> In international armed conflict, the United States interprets this phrase as including objects that contribute to the enemy’s warfighting or war sustaining capability. This phrase includes “[e]conomic targets of the enemy that indirectly but effectively support and sustain the enemy’s war-fighting capability.” US Navy, Marine Corps, Coast Guard, Commander’s Handbook on the Law of Naval Operations, NWP 1-14M, MCWP 5-2.1, COMDTPUB P5800.7, 1995, para. 8.1.1, reprinted in its annotated version as Vol. 73 of the International Law Studies [NWP 1-14M]. However, this issue is not relevant to non-international armed conflict.

<sup>4</sup> Commentary, *supra* note 2, paras. 2020-2024.

the attack considered as a whole and not only from isolated or particular parts of the attack.”<sup>5</sup>

5. The advantage in question must be military in character. A purely political, psychological, economic, social, or moral advantage would not meet the test.

#### 1.1.5 Civilian Objects

**Those objects are objects that do not constitute a military objective.**

This definition is drawn from Article 52.1 of Additional Protocol I. It is also found in Article 2.7 of Amended Protocol II to the Conventional Weapons Convention, which applies in non-international armed conflict. It now represents customary international law. On the definition of “military objective”, see Rule 1.1.4.

#### 1.1.6 Attacks

**Attacks are acts of violence against the adversary, whether in offence or defence.**

The term “attack” is a term of art in the law of armed conflict. The definition in this provision is drawn from Article 49 of Additional Protocol I. Attacks are narrower in scope than “military operations.” Insofar as non-international armed conflict is concerned, the ICRC Commentary to Article 13 of Additional Protocol II notes that from the beginning of the Diplomatic Conference, it was agreed that the same meaning should be given to the term “attack” in both Protocols.<sup>6</sup>

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<sup>5</sup> United Kingdom, Statement Made on Ratification of Additional Protocol I, January 28, 1998, reprinted in Documents on the Laws of War (Adam Roberts and Richard Guelff eds., Oxford UP, 3<sup>rd</sup> ed., 2000), at 511.

<sup>6</sup> Commentary, *supra* note 2, para. 4783 & fn 19.

## **1.2 General principles**

### 1.2.1 Introduction

**a. All military operations must comply with the principles of distinction, prohibition of unnecessary suffering, and humane treatment.**

**b. Military necessity has already been taken into account in the formulation of these rules. Therefore, where not mentioned explicitly as an exception in the rules, military necessity cannot serve as a justification for their violation.**

1. These principles are based on customary international law. They are derived from the fundamental tenet that the right of belligerents to choose methods or means of warfare is not unlimited. This tenet was expressed in the 1874 Brussels Declaration<sup>7</sup> and the 1880 Oxford Manual. It was first formally codified in the 1899 Hague Regulations, and reaffirmed in the 1907 version thereof.<sup>8</sup> It subsequently appeared in Additional Protocol I,<sup>9</sup> as well as other instruments, such as the 1980 Conventional Weapons Convention.<sup>10</sup> Inclusion in the Conventional Weapons Convention is of particular relevance in light of the 2001 extension of the entire agreement to non-international armed conflict.<sup>11</sup> Thus, it represents the first treaty acknowledgement of the tenet in the context of such conflicts.

2. International tribunals have also recognized the centrality of the tenet. The Nuremberg Tribunal held that the rules included in the 1907 Hague Regulations “were recognized by all civilized nations and

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<sup>7</sup> The Brussels Declaration was the first comprehensive code regarding the laws of armed conflict. Although never ratified, the Brussels Declaration served as the basis for the Hague Regulations of 1899 and 1907.

<sup>8</sup> Art. 22.

<sup>9</sup> Art 35.1.

<sup>10</sup> Preamble.

<sup>11</sup> Convention on Conventional Weapons, amendment to Article 1, Dec. 21, 2001, available in ICRC Treaty Data, <http://www.icrc.org/ihl>.

were regarded as being declaratory of the laws and customs of law.”<sup>12</sup> The International Court of Justice came to the same conclusion in its Advisory Opinion on the Threat or Use of Nuclear Weapons.<sup>13</sup>

3. The Appeals Chamber of the ICTY confirmed the applicability of the principle to non-international armed conflict in the *Tadic* case. There, the appellate chamber held that customary rules had developed to govern “internal strife,” covering “such areas as protection of civilians from hostilities, in particular from indiscriminate attacks, protection of civilian objects, in particular cultural property, protection of all those who do not (or no longer) take active part in hostilities, as well as prohibition of means of warfare proscribed in international armed conflicts and ban of certain methods of conducting hostilities.”<sup>14</sup> In particular, the chamber cited General Assembly Resolution 2444 of 1968 (“Respect of Human Rights in Armed Conflict”), which recognized the “necessity of applying basic humanitarian principles in *all* armed conflict,” and which was adopted unanimously. Among those principles was the declaration that “the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited.”<sup>15</sup>

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<sup>12</sup> Trial of the Major War Criminals, 14 Nov. 1945 – 1 Oct. 1946, Nuremberg, 1947, vol. I, p. 254.

<sup>13</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 ICJ Rep. 226 (July 8), at para. 77. See also, Legal Consequences of a Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, General List. No. 131, (July 9, 2005), at para. 86; Report of the Secretary General on Aspects of Establishing an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (May 3, 1993), UN Doc. S/25704, 32 ILM 1159 (1993). The Security Council approved the report unanimously.

<sup>14</sup> International Criminal Tribunal for Yugoslavia, *Prosecutor v. Tadic*, Decision on The Defence Motion For Interlocutory Appeal on Jurisdiction, Appeals Chamber, Case IT-94-1, (Oct. 2, 1995), at para. 127.

<sup>15</sup> Para. 110, citing UNGA Res. 2444 (XXIII), Respect for Human Rights in Armed Conflicts, Dec. 19, 1968, reprinted in *The Laws of Armed Conflict*, (Dietrich Schindler & Jiri Toman eds., Nijhoff, 4th ed., 20040), at 511.

4. The principle of military necessity was first articulated in the Lieber Code of 1863, a guide for conduct by Union forces during the United States Civil War.<sup>16</sup> It has often been reiterated in military manuals.<sup>17</sup>

5. The International Military Tribunal at Nuremberg, in the case of *List and Others (Hostages Trial)* reiterated an essential limitation on this principle widely recognized as customary law. In response to defence claims that the principle justified the killing of “innocent members of the population and the destruction of villages and towns in the occupied territory,” the Tribunal found that “military necessity or expediency do not justify a violation of positive rules.”<sup>18</sup> However, given the extensive codification of the *jus in bello*, the principle of military necessity has little practical bearing on the conduct of hostilities except insofar as it is retained in treaty form in specific situations.<sup>19</sup>

6. For an example of an explicit incorporation of military necessity in a rule pertaining to the conduct of hostilities, see Rule 4.1b.

### 1.2.2 Distinction

**A distinction must always be made in the conduct of military operations between fighters and civilians. A distinction must also always be made between military objectives and civilian objects.**

1. The principle of distinction is the “foundation on which the codification of the laws and customs of war rests.”<sup>20</sup> It seeks to shield those who are not actively (directly) participating in armed conflict

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<sup>16</sup> Art. 14.

<sup>17</sup> See, e.g., NWP 1-14 M, *supra* note 3, para. 5-2 and accompanying footnotes.

<sup>18</sup> 15 Annual Digest and Reports of Public International Law Cases, Case No. 215, p. 647 (1948).

<sup>19</sup> Hague IVR 23 g; 1929 Geneva, art. 1.; GCI, arts. 12, 42; GCIII, arts. 8(3), 23, 76(3), 126(2), 126(2); GC IV, arts. 16(2), 27(4), 49(2), 53, 55(3), 83(3), 78(1), 55(3); HCP, arts. 4(2), 11(2); GPI, art. 54(5), 62(1), 71(3); HCPP, art. 6; GPII, art. 6.

<sup>20</sup> Commentary, *supra* note 2, para. 1863.

from its effects by prohibiting direct attacks upon civilians or objects that do not constitute legitimate military objectives. It also underpins the rule of proportionality see Rule 2.1.1.4). The terms “fighters,” “civilians,” “military objectives,” and “civilian objects” are defined in Rules 1.1.2—1.1.5.

2. The principle of distinction has roots stretching back to the Lieber Code.<sup>21</sup> Since then, it has been confirmed in numerous legal instruments, including the Hague Regulations, which (as discussed above in the commentary to Rule 1.2.1, represent customary international law). The principle of distinction permeates the Geneva Conventions in the sense that those instruments set forth categories of protected persons. Additional Protocol I, in Article 48, refers to the principle of distinction as a “basic rule.” Most recently, in the *Nuclear Weapons* Advisory Opinion, the International Court of Justice recognized distinction as one of two “cardinal” principles of the law of armed conflict, the other being unnecessary suffering.<sup>22</sup>

3. Today, it is indisputable that the principle of distinction is customary international law for both international and non-international armed conflict. Article 13 of Additional Protocol II sets forth the general principle that “the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations.” The application of the principle of distinction as a customary rule in non-international armed conflicts is emphasized in the ICRC Commentary to the Article.<sup>23</sup> In *Tadić*, the ICTY Appeals Chamber also found the principle of distinction to be customary law in non-international armed conflict.<sup>24</sup>

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<sup>21</sup> Art. 22.

<sup>22</sup> *Supra* note 13, para. 78.

<sup>23</sup> *Supra* note 2, para. 4761.

<sup>24</sup> *Supra* note 14, paras. 122 & 127.

### 1.2.3 Unnecessary Suffering

**Using means or methods of combat that are of a nature to cause superfluous injury or unnecessary suffering to fighters is forbidden.**

1. “Means or methods” is a term of art in the law of armed conflict. Means of combat are the instruments used in the course of hostilities, specifically weapons. By contrast, methods of combat are the techniques or tactics for conducting hostilities. It is possible to employ a legitimate means of warfare through an illegitimate method or vice versa (e.g., use of a small arm in such a way as to cause wounds leading to great suffering or a slow and lingering death).

2. The prohibition of means or methods of combat that cause “unnecessary suffering to combatants” is one of the two cardinal principles of the law of armed conflict cited by the International Court of Justice in the *Nuclear Weapons* Advisory Opinion.<sup>25</sup> Although of ancient lineage (consider the prohibition on the use of poison), this principle was initially codified in the Lieber Code.<sup>26</sup> The 1868 St. Petersburg Declaration specifically addressed the use of weapons “which uselessly aggravate the suffering of disabled men or make their death inevitable.”<sup>27</sup> Article 23(e) of the 1899 Hague Regulations similarly prohibited the use of “arms, projectiles, or materiel of a nature to cause superfluous injury.” The 1907 version of that article was translated from the authentic French text as “calculated to cause unnecessary suffering.” This latter formulation seemed to imply a degree of intent on the part of those employing the weapons.

3. Article 35.2 of Additional Protocol I prohibits the employment of “weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.” Therefore, while adopting both “unnecessary suffering” and “superfluous injury”

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<sup>25</sup> *Supra* note 13, para. 78.

<sup>26</sup> Art. 16.

<sup>27</sup> Preamble.



as possible consequences, the Protocol omits the term “calculated” and adds “methods.” The ICC Statute, albeit addressing international armed conflict, employs the Additional Protocol I language in Article 8.2(b)(xx). By contrast, the ICTY Statute, in Article 3, adopted the narrower 1907 Hague IV approach, thereby reintroducing a mental element through use of the term “calculated.”

4. Although the terms “unnecessary suffering” and “superfluous injury” were merely alternative translations of the original French text “*maux superflus*” contained in the Hague Regulations, the expressed aim in the use of both terms in Additional Protocol I and elsewhere was substantive. The intent in these instruments was to “cover simultaneously the sense of moral and physical suffering.”<sup>28</sup>

5. Article 3.3 of the Amended Protocol II to the Conventional Weapons Convention, which specifically addresses weapons, uses the wider Additional Protocol I terminology (“of a nature to cause superfluous injury or unnecessary suffering”). Amended Protocol II expressly applies to non-international armed conflict.<sup>29</sup>

6. In *Tadic*, the ICTY’s appellate chamber specifically dealt with the use of weapons in non-international armed conflicts, noting “Elementary considerations of humanity and common sense make it preposterous that the use by States of weapons prohibited in armed conflict between themselves be allowed when States try to put down rebellion by their own nationals on their own territory. What is inhumane, and consequently proscribed in international wars, cannot but be inhumane and inadmissible in civil strife.”<sup>30</sup>

7. As a *general* proposition there is no doubt that this Rule reflects customary international law. However, the applicability of the general principle to specific weapons will be discussed in Rule 2.2 *et seq.*

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<sup>28</sup> Commentary, *supra* note 2, para. 1426.

<sup>29</sup> Art. 1.2 & 1.3

<sup>30</sup> *Supra* note 14, para. 119.

#### 1.2.4 Humane treatment

**Civilians and those who are hors de combat must be treated humanely, without adverse distinction, such as that founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. Examples of inhumane treatment include:**

- a) Genocide;**
- b) Collective punishment;**
- c) Torture and degrading or inhumane treatment;**
- d) Medical or scientific experiments;**
- e) Sexual violence;**
- f) Ethnic cleansing;**
- g) Kidnapping;**
- h) Hostage-taking;**
- i) Enslavement; and**
- j) Forced mass movement of civilians.**

1. Insofar as non-international armed conflict is concerned, the broad requirement of humane treatment is derived from both Common Article 3(1) of the Geneva Conventions and Articles 2.1 and 4.1 of Additional Protocol II. It now reflects customary international law.<sup>31</sup>

2. The humane treatment principle features in all four of the Geneva Conventions.<sup>32</sup> Indeed, the ICRC Commentary thereto described the principle as “the *leitmotif*” of the Conventions.<sup>33</sup> As to its precise scope, the Commentary found the principle so central to the law that “it seems useless and even dangerous to attempt to make a list of all the factors which make treatment humane.”<sup>34</sup> Despite the difficulty of precisely delineating humane treatment, it is clear from the Commentary that it is a situational standard. For instance, climate is cited as a possible factor, as is the capability of the side with control over individuals (be they wounded, sick, shipwrecked, prisoners, or

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<sup>31</sup> See also ICC, art. 8.2(c) & (e).

<sup>32</sup> GCI, art. 12; GCII, art. 12; GCIII, arts. 13, 20, 46; GCIV, arts. 27, 37, 127.

<sup>33</sup> See, e.g., Jean Pictet, Commentary: IV Geneva Convention (ICRC, 1958), at 204.

<sup>34</sup> *Id.*; Jean Pictet, Commentary: I Geneva Convention (ICRC, 1952), at 53.

civilians) to care for them.<sup>35</sup> The principle of humane treatment serves as an underlying minimum requirement in both international and non-international armed conflict.

In particular, where somebody is arrested or detained, information must be provided to their relatives as to their whereabouts and conditions.

3. The prohibition of adverse distinction on the grounds of “race, colour, religion or faith, sex, birth or wealth, or any other similar criteria” is drawn from Common Article 3. Note that only distinctions that are adverse are forbidden. This criterion was inserted into both Common Article 3 and Additional Protocol II to stress that “favourable distinctions may be made quite lawfully.”<sup>36</sup>

4. The ICRC Commentary to Article 3(1) emphasizes that its list was merely illustrative. Specifically, it states that any protected person is entitled to humane treatment, “without distinction of any sort.” As to the reason it chose to enumerate particular bases of discrimination, this was done solely for the purpose of leaving “no possible loophole.”<sup>37</sup> This is particularly essential in the context of non-international armed conflicts, which are so often caused by religious, ethnic, and similar tensions.

5. Protocol II includes language, political or other opinion, and national or social origin as prohibited bases of adverse distinction.<sup>38</sup> These criteria are drawn from the law of human rights. Whereas it is clear that there is an increasing overlap of human rights law and the law of armed conflict, particularly in non-international armed conflict, the extent to which customary international law encompasses these expanded grounds is unclear in the latter context (bearing in mind that a non-international armed conflict usually involves a political dispute or clash between ethnic groups).

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<sup>35</sup> *Id.*

<sup>36</sup> Commentary, *supra* note 2, para. 4484.

<sup>37</sup> GCI Commentary, *supra* note 34, at 55.

<sup>38</sup> Art. 2.1.

6. Genocide: Participating in genocide in any way is forbidden. Genocide is any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group; or
- e) Forcibly transferring children of the group to another group.<sup>39</sup>

7. Collective Punishment: Collective punishment is a penalty imposed upon persons or groups for acts that they have not committed.<sup>40</sup> Additional Protocol II, Article 4.2(b), contains an express prohibition on collective punishment.

8. Torture and Degrading or Inhumane Treatment: Common Article 3(1) of the Geneva Conventions prohibits torture, mutilation, and cruel or degrading treatment. Additional Protocol II, in Article 4.2(e), adds a prohibition of corporal punishment. Torture is the intentional infliction of severe pain or suffering, whether physical or mental, for such purposes as punishment, obtaining information or a confession, intimidation or coercion, or a reason based on any kind of discrimination. A major form of torture is mutilation, which includes permanent disfigurement, permanent disablement, and the removal of any part of the body, unless justifiable on medical grounds or carried out in the victim's interest. Corporal punishment, defined as the application of physical force that results in pain, is also excluded. Degrading treatment would include, for instance, publicly parading captured personnel in a manner subjecting them to ridicule and insult.

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<sup>39</sup> Genocide, art. III. See also ICTY, art. 4.2; ICTR, art. 2.2; ICC, art. 6.

<sup>40</sup> See also GCIV, art. 33 in the context of international armed conflict.

9. Medical or Scientific Experiments: Medical or scientific experiments conducted on individuals in the power of another party to the hostilities are forbidden unless they are justifiable on medical grounds and based on free and informed consent. The Rule is reflected in Additional Protocol I, Article 11, and Additional Protocol II, Article 5.2(e). It is today considered customary in nature.

10. Sexual Violence: Sexual violence is expressly prohibited in Additional Protocol II, Article 4.2(e). Examples of sexual violence include rape, sexual slavery, enforced prostitution, sterilisation, indecent assault, and degrading treatment of similar nature.<sup>41</sup> Sexual violence can be committed against persons of either sex and irrespective of age.

11. Ethnic Cleansing: Ethnic cleansing has come to the fore as a major problem in recent conflicts, such as those in the Balkans during the 1990s. It must be repudiated in all circumstances as a violation of the principle of distinction (see Rule 1.2.2).

12. Kidnapping: The abduction of civilians, for whatever reason, is forbidden. This is a particularly grave phenomenon against the background of “disappeared persons” (see Rule 3.6 & 3.11).

13. Hostage-taking: Common Article 3 to the Geneva Conventions and Article 4.2(c) of Additional Protocol II forbid taking hostages for any purpose.

14. Enslavement: Article 4.2(f) of Additional Protocol II specifically forbids enslavement in any form during non-international armed conflict. Examples of enslavement include trafficking in persons, particularly women and children, for sexual or any other unlawful purposes.<sup>42</sup>

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<sup>41</sup> See ICC, art. 8.2(e)(vi).

<sup>42</sup> See ICC, art. 7.2(c).

15. Forced Mass Movement of Civilians: Pursuant to Additional Protocol II, Article 17, ordering the mass movement of civilians is forbidden unless necessary for their safety or required by important military reasons. If mass movement of civilians is ordered, care must be taken to provide satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Additionally, the civilians involved may not be forced to move outside the country for reasons connected with the conflict.<sup>43</sup>

## **Chapter 2: Conduct of Military Operations**

### **2.1 Targeting**

#### 2.1.1 General rule

**Attacks must be directed only against fighters or military objectives.**

This rule is based on the principle of distinction (see Rule 1.2.2), as it applies to the direct targeting of persons and objects. Since the term “attacks” (defined in Rule 1.1.6) means acts of violence, it is clear that any military operation that does not entail violence (or violent consequences, such as death, injury, destruction, or damage) is beyond the scope of the prohibition. For instance, the prohibition would not extend to a propaganda campaign directed against the civilian population. On the other hand, a computer network attack causing violent consequences would amount to an “attack”, notwithstanding the fact that the means of attack are non-kinetic.

##### *2.1.1.1 Attacking civilians and civilian objects*

**Attacking the civilian population as such, as well as individual civilians, is forbidden. It is also forbidden to attack civilian objects, unless they become military objectives. Certain**

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<sup>43</sup> See also ICC, art. 8.2(e)(viii).

**categories of individuals and objects are subject to special rules of protection.**

1. This prohibition is drawn directly from Article 13.2 of Additional Protocol II and has been included in Article 8.2(e)(i) of the ICC Statute. Both include an element of acting purposefully, the former by forbidding making the civilian population or individual civilians the “*object* of attack,” the latter through specific use of the word “*intentionally*.” Thus, the prohibition in this rule is of *direct* attack; the secondary effects of military operations on civilians or civilian objects are subject to the principle of proportionality (see Rule 2.1.1.4).

2. The prohibition on attacking civilians or the civilian population is found in numerous other sources. Common Article 3(1)(a) of the Geneva Conventions requires humane treatment of those taking no active part in hostilities and includes a prohibition on violence to life and person. General Assembly Resolution 2444 affirmed “the following principles for observance by all governmental and other authorities responsible for action in armed conflict...(b) that it is prohibited to launch attacks against the civilian population as such.”<sup>44</sup> In *Tadic*, the Appeals Chamber of the ICTY stated that this was “declaratory of the principles of customary international law regarding the protection of civilian populations ... in armed conflicts of any kind.”<sup>45</sup>

3. Neither Common Article 3, nor Additional Protocol II, contain any express prohibition on attacking civilian objects; rather, the ICRC Commentary to Additional Protocol II specifically mentions that “civilian objects do not enjoy a general protection, but some are protected because of their nature and function, in order to ensure that the civilian population will be safeguarded.”<sup>46</sup> However, the *Tadic* decision suggested that the principle of distinction now applies to

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<sup>44</sup> GA Res. 2444, *supra* note 15.

<sup>45</sup> *Supra*, note 14, para. 112.

<sup>46</sup> Commentary, *supra* note 2, para. 4759.

civilian objects generally in non-international armed conflict.<sup>47</sup> This Manual adopts the *Tadic* approach of extending protection to all civilian objects. Of course, when a civilian object becomes a military objective within the definition of Rule 1.1.4, it loses its protection.

4. Special rules of protection are found in Chapter 3 (Treatment of Persons) and Chapter 4 (Treatment of Objects and Places).

#### *2.1.1.2 Loss of civilian protection*

**Civilians lose their protection from attack if they take an active (direct) part in hostilities.**

See commentary on Rule 1.1.2 regarding active (direct) participation in hostilities.

#### *2.1.1.3 Indiscriminate attacks*

**Indiscriminate attacks are forbidden. Indiscriminate attacks are those that are not specifically directed against fighters or military objectives.**

1. Indiscriminate attacks are those that “are of a nature to strike military objectives and civilians or civilian objects without distinction.” It is expressly set forth in instruments dealing with international armed conflict, in particular Articles 51.4 and 51.5 of Additional Protocol I, but, in that it lies at the core of the principle of distinction (see Rule 1.2.2), it is clearly equally applicable to non-international armed conflict.

2. Indiscriminate attacks may result from either an indiscriminate means or method of combat. The topic of indiscriminate *means* of combat is dealt with separately in Rule 2.2.1.1. Indiscriminate *methods* of combat employ a “means” that in itself is capable of discrimination.

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<sup>47</sup> *Supra* note 14, paras. 119 & 127.



3. There are two types of indiscriminate methods of combat. The first is the carrying out of attacks where no attempt is made to identify specific military objectives. The classic modern example is the Iraqi use of SCUD missiles against Israel during the 1991 Gulf War. Although their guidance systems were unsophisticated, they were capable of being used discriminately against military objectives, for instance troop concentrations in desert areas. However, in this case, they were fired blindly into Israeli population centres with no attempt to identify and target specific military targets therein.

4. The second method is an attack that treats a number of clearly separate and distinct military objectives collocated with civilians or civilian objects as a single entity, such as carpet-bombing an entire urban area containing dispersed legitimate targets. This prohibition only applies where it is militarily feasible to conduct separate attacks on each of the objectives. If it is not, then the issue is proportionality, not discrimination.

5. The appellate chamber in *Tadic* found this prohibition to be a customary rule of international law applicable to non-international armed conflict. However, it noted that the extension of rules applicable in international armed conflict “has not taken place in the form of a full and mechanical transplant of those rules to internal conflicts; rather, the *general essence of those rules*, and not the detailed regulation they may contain, has become applicable to internal conflicts.”<sup>48</sup> Therefore, one should be cautious whenever applying provisions – or interpretations thereof – intended for application in international armed conflict to situations of non-international armed conflict (see paragraph 7 of the commentary accompanying Rule 1.2.3).

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<sup>48</sup> *Supra* note 14., paras. 126-27.

#### *2.1.1.4 Proportionality*

**An attack is forbidden if it may be expected to cause incidental loss to 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. It is recognised that incidental injury to civilians and collateral damage to civilian objects may occur as a result of a lawful attack against fighters or military objectives.**

1. The rule of proportionality derives from the general principle of distinction (see Rule 1.2.2). The principle was first codified in Additional Protocol I, Articles 51 and 57. In the context of non-international armed conflict, it appears in a number of instruments. The Conventional Weapons Convention cites proportionality in relation to the indiscriminate placement of weapons in both the original 1980 Protocol II on the Use of Mines, Booby Traps and Other Devices [Article 3.3(c)] and in the 1996 Amended Protocol II on the same subjects [Article 3.8(c)]. By these documents, a placement that causes excessive incidental injury or collateral damage is forbidden. Along the same lines, Article 7(c) of the 1999 Second Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict forbids attacks that may cause incidental damage to cultural property protected under the Convention that would be “excessive in relation to the concrete and direct military advantage anticipated.”

2. Although the Amended Protocol on Mines applied to non-international armed conflict from the beginning,<sup>49</sup> the original Protocol did not, and was only extended to non-international armed conflict in 2001 as a result of the amendment to Article 1 of the basic Convention.

3. The relative absence of express mention of proportionality in instruments governing non-international armed conflict should not be construed as meaning that it is inapplicable in such conflict. On the

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<sup>49</sup> Art. 1.2 & 1.3.

contrary, the ICRC Commentary to Additional Protocol II labelled it as one of “the general principles relating to the protection of the civilian population which apply irrespective of whether the conflict is an international or internal one.”<sup>50</sup>

4. Thus, it is not enough that an attack is carried out against fighters or military objectives. All attacks must also be conducted bearing in mind the principle of proportionality, i.e., the collateral damage to civilian objects and incidental injury to civilians must not be excessive in relation to the “concrete and direct military advantage anticipated.” As a result, targeting is a delicate and important task. It must be realized that decisions are based on reasonable expectations rather than results. In other words, honest mistakes often occur on the battlefield due to the “fog of war” or when it turns out that reality does not match expectations.

5. Proportionality is not an exact science and it is impossible to draw in advance hard and fast rules as to what outcome is proportionate to military advantage. The key word is “excessive”. It is essential not to produce a result where there is no proportionality at all between the ends sought and the expected harm to civilians and civilian objects. The guiding principle in a proportionality assessment is reasonableness. “Excessive” indicates unreasonable conduct in light of the circumstances prevailing at the time.

6. Certain terms found in the proportionality rule require explanation. The “may be expected” wording raises the issue of the requisite knowledge of those who plan and carry out the attack. The test is objective in nature. In other words, if the attacker knew *or should have known* that the civilian damage or injury caused would be excessive relative to the anticipated military advantage, the rule will have been violated.

7. The second phrase requiring clarification is “concrete and direct military advantage.” It requires a rather broad interpretation. It is

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<sup>50</sup> Commentary, *supra* note 2, para. 4772.

generally accepted as a matter of customary international law that “the military advantage anticipated from an attack is intended to refer to the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of the attack.”<sup>51</sup> This point was emphasized in the ICC Statute through reference to the “*overall* military advantage.”<sup>52</sup>

8. The term “military advantage” is often narrowly defined, but an overly restrictive interpretation is untenable under customary international law. There is no reason at all to construe military advantage as if it were confined to issues such as “ground gained” or “annihilating or weakening the enemy armed forces.”<sup>53</sup> Military advantage includes a broad range of issues extending from “force protection” to diverting the attention of the enemy from an intended site of invasion. In any event, restrictive references to controlling ground and weakening the enemy armed forces, if taken literally, are unsuited for application by analogy to non-international armed conflicts. In many such conflicts, there will be no ground to be gained or enemy “armed forces.” This is particularly so in conflicts that do not meet the threshold requirements of Additional Protocol II, but may nevertheless constitute an armed conflict within the definition of Common Article 3.

9. Despite the unique character of non-international armed conflicts, it is clear that the advantage against which incidental injury and collateral damage are assessed must be military in nature. The rule of proportionality should guide the resolution of issues such as “dual-use” objects, such as a national electrical grid. Military advantage accruing from attack on such a grid must be weighed against effects causing injury or death to civilians or damage or destruction to civilian objects. An example would be deprivation of electricity to public hospitals possessing insufficient backup generators. The fact that collateral damage and incidental injury are extensive does not

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<sup>51</sup> UK Statement, *supra* note 5.

<sup>52</sup> Art. 8.2(b)(iv)

<sup>53</sup> Commentary, *supra* note 2, para. 2218.

necessarily mean that they are excessive.<sup>54</sup> At the same time, one must bear in mind that the long-term effects on the civilian population may be substantial. The crux of the issue is whether these long-term (reverberating) effects are foreseeable in light of the information reasonably available to the attacker at the time.<sup>55</sup> It would be unreasonable to expect those who plan or execute attacks to take into account all possible future consequences, however remote. This can only be decided on a case-by-case basis taking into account all the surrounding circumstances.

#### 2.1.2 Precautions in planning and carrying out attacks

- a) **All feasible precautions must be taken by all parties to minimise both injuries to civilians and damage to civilian objects.**
- b) **When a reasonable choice between methods or means used in an attack exists for obtaining a similar military advantage, the methods or means expected to minimise the danger to civilians and civilian objects must be selected.**
- c) **An attack must be cancelled or suspended if it becomes apparent that the target is not a fighter or military objective or is subject to special protection, or if the expected injury to civilians and/or the expected damage to civilian objects would be excessive in relation to the concrete and direct military advantage anticipated.**
- d) **When a reasonable choice is available between several military objectives for obtaining a similar military advantage, the objective expected to minimise the danger to civilians and civilian objects must be selected.**

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<sup>54</sup> In the view of the drafters, the ICRC statement apparently to the contrary in its Commentary is incorrect *id.* para. 1980

<sup>55</sup> See, e.g., UK Statement, *supra* note 5.

1. Neither Common Article 3 nor Additional Protocol II set forth any requirements for precautions in planning and carrying out attacks. However, such precautions are implicit in the general tenet, outlined in Article 13.1 of Additional Protocol II, that “the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations.” This tenet was already recognized by customary international law at the time the Additional Protocols were drafted.<sup>56</sup>

2. In the *Tadic* judgement, the ICTY’s appellate chamber cited with approval UN General Assembly Resolution 2675’s admonishment that “in the conduct of military operations, every effort should be made to spare civilian populations from the ravages of war and all necessary precautions should be taken to avoid injury, loss or damage to civilian populations” and stated that it was “declaratory of the principles of customary international law...in armed conflicts of any kind.”<sup>57</sup>

3. The text of this Rule is largely based on Article 57 of Additional Protocol I. A provision requiring all feasible precautions to be taken to protect civilians can also be found in Article 3.10 of Amended Protocol II to the Conventional Weapons Convention, which in itself repeats a provision contained in Article 3.4 of its original Protocol II. In addition, a similar provision can be found in relation to cultural property in Article 7(b) of the Second Protocol to the Hague Cultural Property Convention. That this is a standard acceptable in the context of non-international armed conflict is apparent from the fact that both instruments apply to such conflicts.

4. “Feasible precautions” are defined as “those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military

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<sup>56</sup> Commentary, *supra* note 2, para. 4761.

<sup>57</sup> *Tadic*, *supra* note 14, paras. 111-112, citing UN GA Res. 2675 (XXV), Basic Principles for the Protection of Civilian Populations in Armed Conflicts, Dec. 9, 1970, reprinted in Schindler, *supra* note 15, at 353. The resolution was adopted with a vote of 109-0, with 18 abstentions/absences.

considerations.”<sup>58</sup> Among the most evident of feasible precautions is the review of intelligence and other forms of information concerning the target and surrounding area. Assessment of information should be based on all sources that are reasonably available at the relevant time.

5. When there is a choice of methods and means for conducting an attack, those that minimise civilian danger must be selected. For instance, a munitions factory may be attacked at night if its workers are not present. Similarly, a computer network attack against a communications facility may offer a reasonable alternative to a kinetic attack against the same facility with less risk to civilians and civilian objects. Or, when striking military objectives in an urban area, the use of precision munitions rather than unguided weapons may need to be considered. Comparable factors arise in Article 3.10 of Amended Protocol II to the Conventional Weapons Convention, which, when considering the protection of civilians from weapons to which the article applies, refers to “the availability and feasibility of using alternatives.”

6. Article 57 of Additional Protocol I does not contain an explicit reference to the reasonableness of choices facing the attacker. However, such a condition is implicit in the term “feasible” (practicable or practically possible), which appears twice in Article 57.2. Additionally, a requirement of “reasonable precautions” is contained in Article 57.4 in the context of military operations at sea or in the air.

7. Rule 2.1.2c has been drawn from Article 57.2(b) of Additional Protocol I and, with regard to cultural property, Article 7(d)(ii) of the Second Hague Protocol. These requirements apply primarily to those executing or controlling attacks. For example, the receipt of new target intelligence may reveal that the intended target is in fact not (or no longer) a military objective; initial intelligence might have been faulty or the military activities that previously occurred at the targeted facility may have ceased. The attacker may even come to realize that

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<sup>58</sup> CCW APII, art. 3.10.

the target is an object that enjoys special protection under the law. Perhaps most commonly, an attacker may become aware of the presence of unexpected civilians in or near the target that would alter the proportionality calculation.

8. The requirement to select that military objective which best minimises danger to civilians and civilian objects whenever a similar military advantage will result from attack on those targets is drawn from Article 57.3 of Additional Protocol I. As an example, it may be possible to achieve the same military advantage by destroying railway bridges away from populated areas rather than attacking railway stations within such areas. Indeed, in the context of modern combat, rather than attacking the bridges, it may be possible to mount computer network attacks that disrupt elements of the railway control system without unduly affecting use by the civilian population.

9. Again, there is no requirement to select an objective if doing so would be militarily “unreasonable”. As an example, one of the possible objectives may be so much more heavily defended than the others, that it would be unreasonable to select it as the target. Risk to the attacker is a relevant factor. Munitions availability is another. Aside from the fact that certain systems may be unavailable, the attacker will need to take into account future requirements and replenishment. For instance, when the number of precision-guided munitions is limited, it would be imprudent for the attacker to expend them early in the conflict without considering possible future needs and capabilities.

## **2.2 Means of Combat**

### 2.2.1 General principles

**Weapons and the use thereof must comply with the principles of distinction and unnecessary suffering.**



1. No weapons may be *used* in breach of either the principle of distinction (see Rule 1.2.2) or that of unnecessary suffering (see Rule 1.2.3). Although, in principle, any weapon that by nature fails to comply with these principles is prohibited in itself, consensus over the legality of a weapon on the basis of nature is often difficult to achieve (absent an applicable treaty provision). Examples include depleted uranium weapons and cluster munitions. Given the difficulty of achieving consensus over the nature of weapons, it is with regard to the “use” prohibition that the two principles set forth in this Rule will most effectively come into play.

2. Even if the use of a weapon is lawful in principle, such use may be expressly limited in circumstances where civilians or civilian objects are particularly likely to be affected. For instance, the use of incendiary weapons may be curtailed against military objectives in residential areas (see Rule 2.2.3.3).

#### *2.2.1.1 Indiscriminate weapons*

**Weapons that are indiscriminate by nature are forbidden. An indiscriminate weapon is one incapable of being specifically directed against fighters or military objectives or which has effects on civilians and civilian objects that are uncontrollable.**

1. This Rule deals with weapons that are by their very nature incapable of discriminate use. Its formulation is based on Article 51.4(b) & (c) of Additional Protocol I.

2. In its *Nuclear Weapons* Advisory Opinion, the International Court of Justice pointed out that “humanitarian law, at a very early stage, prohibited certain types of weapons...because of their indiscriminate effect on combatants and civilians.”<sup>59</sup> Although this statement primarily referred to international armed conflict, as noted above in the commentary on Rule 1.2.3, the ICTY Appeals Chamber opined in *Tadic* that weapons restrictions applicable in international armed

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<sup>59</sup> *Supra* note 13 , para. 78.

conflict apply equally, as a general principle, in non-international armed conflict.<sup>60</sup> As will be discussed below, this general principle is subject to certain exceptions. That said, it is clear that Rule 2.2.1.1 reflects customary international law applicable in non-international armed conflicts.

2. Examples of indiscriminate weapons, the effects of which cannot be limited, include biological weapons, free-floating naval mines, and computer viruses coded so as to spread randomly through networks that include civilian systems. Biological weapons have been prohibited in treaty law, specifically the 1925 Gas Protocol and the 1972 Biological Weapons Convention. Free-floating naval mines were prohibited in the 1907 Hague Convention VIII.

#### *2.2.1.2 Indiscriminate use of weapons*

##### **Using weapons indiscriminately is forbidden.**

1. This Rule draws on Additional Protocol I, Article 51.4(a), as well as the principle of distinction (see Rule 1.2.2). It is unquestionably customary in nature.

2. The classic example of weapons that were indiscriminately used was that of the V-1 and V-2 rockets launched against large metropolitan areas near the end of the Second World War. Their guidance systems were so rudimentary that the rocket could not be effectively aimed at any specific military objective within the targeted area. Thus, they were as likely (indeed, more so) to strike civilians and civilian objects as military objectives. Even in more modern armed conflicts, similar problems arise, the best example being that of the SCUD missiles launched by Iraq in 1991 (see commentary accompanying Rule 2.1.1.3).

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<sup>60</sup> Tadic, *supra* note 14, paras. 119 & 127.

### *2.2.1.3 Unnecessary suffering*

#### **Using weapons of a nature to cause unnecessary suffering or superfluous injury to fighters is forbidden.**

1. The prohibition on the use of weapons which are of a nature to cause unnecessary suffering or superfluous injury to fighters is also included in Rule 1.2.3, which deals with both methods and means of combat (see accompanying commentary).

2. During an armed conflict, fighters constitute legitimate targets; they can be injured and even killed. However, it has been considered ever since the St. Petersburg Declaration of 1868 that there is no reason to cause fighters suffering that is unnecessary or injury that is superfluous. Thus, it would not be permitted to add an element of additional pain to the wounding process. Typically, this is an issue of weapon design or it involves the altering of a fielded weapon or ammunition purely to exacerbate suffering (for example, through inflammation of the wound by smearing an irritant on the bullet before firing).

### **2.2.2 Prohibited weapons**

#### **Using the following weapons is absolutely forbidden:**

- a) Poison and poisoned weapons;**
- b) Biological and bacteriological weapons;**
- c) Gas, and other chemical weapons, including riot control agents when such agents are used as a method of warfare;**
- d) Exploding anti-personnel bullets;**
- e) Weapons that mainly injure by fragments which escape detection by x-rays; and**
- f) Laser weapons designed to cause permanent blindness.**

1. **Poison or Poisoned Weapons:** The ban on use of poison and poisoned weapons is among the oldest in the law of armed conflict, stretching back to ancient times. In light of its codification in Article

23(a) of the Hague Regulations, the prohibition has unquestionably achieved customary international law status in international armed conflict. In *Tadic*, the ICTY Appeals Chamber generally extended the weaponry provisions of international armed conflict to non-international armed conflict.<sup>61</sup> Certain types of poisons may also fall within the prohibitions imposed in relation to biological, bacteriological, and chemical weapons (see below).

2. Biological and Bacteriological Weapons: The 1925 Gas Protocol prohibited the use “of bacteriological methods of warfare.” Although the prohibition only applied “in war,” which at the time would have been interpreted as a reference to international armed conflict, the question of such weapons was revisited in the 1972 Biological Weapons Convention. Essentially an arms control document, it requires each State Party to undertake “never *in any circumstances* to develop, produce, stockpile or otherwise acquire or retain: 1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and of quantities that have no justification for prophylactic, protective or other peaceful purposes; 2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.”<sup>62</sup> The “in any circumstances” language confirms its applicability to both international and non-international armed conflict. It will be noted that the Convention does not refer to “use.” However, it is understood that use is impossible without acquiring or retaining the weapon in the first place. There is no question that the use of biological and bacteriological weapons is prohibited by contemporary international law in both international and non-international armed conflicts.

3. Gas or Other Chemical Weapons: The 1925 Gas Protocol prohibited “the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices.” Article I.1 of the 1993 Chemical Weapons Convention obligates each State Party “never under any circumstances: a) to develop, produce, otherwise

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<sup>61</sup> *Tadic*, *supra* note 14, paras. 119 & 127.

<sup>62</sup> Art. 1.

acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone; b) to use chemical weapons; c) to engage in any military preparations to use chemical weapons; d) to assist, encourage, or induce, in any way, anyone to engage in any activity prohibited” by the Convention. The Convention also contains provisions requiring the destruction of chemical weapons and chemical weapons production facilities.<sup>63</sup> As noted with reference to biological and bacteriological weapons, the “under any circumstances” verbiage demonstrates the Chemical Weapons Convention’s applicability in non-international armed conflict.

4. In *Tadic*, the Appeals Chamber, when dealing with the extension to non-international armed conflicts of the prohibition of means of warfare proscribed in international armed conflicts, specifically took as an example the use of chemical weapons. The Chamber referred to statements by the European Community “condemning *any* use of these weapons” and stated that there had “emerged a general consensus in the international community on the principle that the use of those weapons is also prohibited in internal armed conflict.”<sup>64</sup> There is, thus, no question that the use of chemical weapons is prohibited by international law in both international and non-international armed conflicts.

5. The only two issues that deserve serious examination relate to the use of non-lethal chemical weapons against human beings and the use of herbicides. As to the former, Article I.5 of the Chemical Weapons Convention proscribes the use of “riot control agents as a method of warfare.” They are defined as chemicals, not otherwise identified as toxic or precursor chemicals, “which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.”<sup>65</sup> The term “method of warfare” is not, unfortunately, defined by the Convention. The

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<sup>63</sup> Art. I.2-4.

<sup>64</sup> *Supra* note 14, paras. 120 & 124.

<sup>65</sup> Art. II.7.

United States has taken the position that certain defensive uses are not methods of warfare.<sup>66</sup>

6. Since a non-international armed conflict may consist in part of riot situations, it is important to bear in mind that the use of riot control agents to control a riot is perfectly permissible. Admittedly, it is not always easy to determine when a riot has ended and “above the threshold” fighting has started (see discussion of the threshold issue in the commentary accompanying Rule 1.1).

7. As far as herbicides are concerned, the Chemical Weapons Convention refers to them only in its preamble and there is no operative clause prohibition. This is due to a “package deal” with the United States, which had used herbicides extensively during the war in Viet Nam. However, the United States has in the meantime renounced the right to use herbicides, except “for control of vegetation within US bases and installations or around their immediate defensive perimeters.”<sup>67</sup> Given this a background, it is a fair conclusion that the prohibition of herbicides currently constitutes customary international law in both international and non-international armed conflicts, subject to the rather limited American reservation.

8. Exploding anti-personnel bullets: Since the 1968 St. Petersburg Declaration, it has been widely accepted that exploding projectiles must not be used against personnel. The prohibition is equally applicable in international and non-international armed conflicts. It does not affect the use of artillery shells, except that, under the St. Petersburg Declaration, the minimum permissible weight of such shells is set at 400 grammes when directed at personnel. In this regard, it must be understood that, with developments in technology since 1868, it is the principle, rather than the exact weight in grammes, that determines what projectiles are allowed to be used. Under the 1923 Hague Rules of Aerial Warfare, the “use of explosive

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<sup>66</sup> Executive Order 11, 850 (1975).

<sup>67</sup> *Id.*

projectiles by or against aircraft is not prohibited.”<sup>68</sup> Although the Hague Rules were never adopted in a legally binding form, they undoubtedly reflect customary international law in this respect.

9. Weapons that inflict injury primarily by fragments which escape detection by x-rays: Pursuant to Protocol I to the Conventional Weapons Convention, it is prohibited to use any weapon “the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.” As noted above, the Convention and its Protocols were extended to non-international armed conflict in 2001. The prohibition is generally accepted in both international and non-international armed conflict.

10. Laser weapons designed to cause permanent blindness: Pursuant to Article I of Protocol IV to the Conventional Weapons Convention, adopted in 1995, it is prohibited to employ laser weapons specifically designed as a “combat function” to cause permanent blindness to the naked eye (or to an eye with corrective eyesight devices). Once more, this Protocol has been extended to non-international armed conflicts and is generally accepted.

11. The text of present Rule conspicuously leaves out two types of weapons, expanding bullets and nuclear weapons.

12. Expanding bullets are defined as “bullets that expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pieced with incisions.” The use of such bullets has been prohibited in international armed conflicts since the 1899 Hague Declaration IV.3. While there is no doubt that the prohibition represents customary international law in international armed conflicts, recent State practice indicates that hollow-point and similar bullets are widely used against terrorists, hostage-takers, etc., because of the need to stop them instantaneously and minimize the risk of their exploding themselves or otherwise harming their victims. In light of such State practice, it is doubtful whether this age-old

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<sup>68</sup> Art. 18.

prohibition can be regarded as applicable in non-international armed conflicts.

13. Ever since Hiroshima, international lawyers and laymen alike have hotly debated the legality of using nuclear weapons. In the *Nuclear Weapons Advisory Opinion*, the International Court of Justice, by the barest majority (7-7, the President casting the deciding vote) ruled “there is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such.”<sup>69</sup> The Court went on to say “a threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other obligations which expressly deal with nuclear weapons; it follows from the above mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.”<sup>70</sup> Of particular relevance in this regard is the principle of distinction (see Rule 1.2.2). It must also be noted that large sections of the globe are today nuclear-free by treaty

14. Notwithstanding these observations, since nuclear weapons are not prohibited by nature, there are still certain circumstances in which the legality of their use cannot be excluded. For instance, the release of a tactical “clean” bomb against a military formation in the middle of the desert would not necessarily be in breach of the law of armed conflict.

15. Although no nuclear weapons have yet been used in a non-international armed conflict, it is regrettably not implausible that they may come into use, in which case the above considerations (all based on international armed conflicts) may become applicable.

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<sup>69</sup> *Supra* note 13, para. 105.

<sup>70</sup> *Id.*



## 2.2.3 Restrictions on the use of specific weapons

### 2.2.3.1 *Booby traps*

**It is forbidden to use booby-traps in connection with objects entitled to special protection or with certain other objects likely to attract civilians. It is also prohibited to use booby traps in any city, town, village, or other area containing a concentration of civilians in which combat between ground forces is not taking place or does not appear imminent, unless they are placed on or in the close vicinity of a military objective or measures are taken to protect civilians from their effects.**

1. Booby-traps are devices designed or adapted to kill or injure which function unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act. This section addresses booby traps that are activated when disturbed or approached, by lapse of time, or manually by remote control.

2. The definition and commentary, as well as the Rule, derive from Article 7 of Amended Protocol II to the Conventional Weapons Convention, which applies in both international and non-international armed conflict.

3. It is forbidden in all circumstances to use booby traps in connection with:

- a) Internationally recognized protective emblems, signs or signals;
- b) Sick, wounded or dead persons;
- c) Burial or cremation sites or graves;
- d) Medical facilities, equipment, supplies or transportation;
- e) Children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
- f) Food or drink;

- g) Kitchen utensils or appliances, except in military establishments, locations or supply depots;
- h) Religious objects;
- i) Historic monuments, works of art or places of worship;
- j) Animals, either dead or alive; or
- k) Apparently harmless portable objects that are specifically designed and constructed to explode.

#### 2.2.3.2 *Land mines*

**All feasible precautions must be taken to protect civilians from the effects of land mines, especially anti-personnel land mines.**

1. Precautions include such activities as fencing, signs, warnings, and monitoring. Information regarding the delivery of remotely delivered mines must be recorded and, when feasible, their location should be marked on the ground. Additionally, a record must be kept of the location of all mines. Those who control territory must clear, remove, destroy or safely maintain all minefields, mined areas, and mines in that territory as soon as possible after hostilities have ceased.

As far as anti-personnel land mines are concerned, their use is completely prohibited by the 1997 Ottawa Treaty, to which many countries are contracting Parties. But even as regards non-contracting Parties, certain safeguards protecting civilians apply. These include the following:

- a) Anti-personnel land mines must be detectable by standard mine detection equipment;
- b) Anti-personnel land mines must be equipped with self-destruct devices and backup self-deactivation features unless used in controlled, marked, and monitored minefields;
- c) Remotely delivered anti-personnel land mines must always be equipped with self-destruct devices and backup self-deactivation features; and
- d) Advance warning of the delivery of remotely delivered anti-personnel land mines must be given, whenever possible, if the land mines will affect civilians.

3. Remotely delivered anti-vehicle land mines must, whenever possible, be equipped with self-destruct devices and backup self-deactivation features. Advance warning of their delivery must be given, whenever possible, if they will affect civilians.

4. These specified precautions derive from Protocol II and Amended Protocol II to the Conventional Weapons Convention, both of which apply in non-international armed conflict.

#### 2.2.3.3 *Incendiary weapons*

**In the use of incendiary weapons, particular care must be taken to avoid, and in any event to minimise, incidental loss of civilian life, injury to civilians, and damage to civilian objects.**

1. This Rule derives primarily from Protocol III to the Conventional Weapons Convention, which applies in both international and non-international armed conflict. For States Parties thereto, there is an absolute prohibition on the use of air-delivered incendiary weapons within a concentration of civilians. Incendiaries other than air-delivered weapons may be used against a military objective only if the military objective is clearly separated from any concentration of civilians and all possible precautions are taken both to limit the incendiary effects on the military objective and minimize injury to civilians and damage to civilian objects. Incendiary weapons may only be used against forests, or other kinds of plant cover, that are used to cover, conceal or camouflage fighters or military objectives. This restriction does not apply where such forests or plant cover are themselves military objectives.

2. As regards non-contracting parties, the use of incendiary weapons is subject to the principles of distinction (see Rule 1.2.2) and the rule of proportionality (see Rule 2.1.1.4), which regulate the use of all weapons.

## **2.3 Methods of combat**

### 2.3.1 No quarter

**It is forbidden to order that there shall be no survivors, to threaten an adversary therewith, or to conduct hostilities on this basis.**

This Rule mirrors the language of Additional Protocol I, Article 40. It is applicable to non-international armed conflict as customary international law.<sup>71</sup> Additional Protocol II includes an abbreviated form of the Rule as Article 4.1.<sup>72</sup>

### 2.3.2 Surrender

**Killing or wounding fighters who have effectively indicated their wish to surrender or are defenceless is forbidden. Fighters lose this protection if they subsequently engage in any hostile action.**

1. This Rule is drawn from the 1899 and 1907 Hague Regulations, Article 23(c); Common Article 3 of the Geneva Conventions; Additional Protocol I, Article 41; and Additional Protocol II, Article 4. It unquestionably reflects customary international law applicable in both international and non-international armed conflict.

2. The desire to surrender may be communicated by any means likely to be understood, such as laying down weapons and raising arms above one's head or displaying a white flag.

3. Non-international armed conflicts are radically different from international armed conflicts where it comes to post-surrender treatment of enemy fighters. One of the hallmarks of international armed conflict is that lawful combatants who are hors de combat are

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<sup>71</sup> See also ICC, art. 8(e)(x).

<sup>72</sup> "It is prohibited to order that there shall be no survivors."

entitled to prisoner of war status. This is not the rule in non-international armed conflicts and, as a result, captured personnel of armed groups may be put on trial for treason or other crimes, and heavily punished. It should be understood, however, that trial and punishment must be based on due process of law. It is strictly prohibited to summarily execute captured personnel.

### 2.3.3 Flag of truce

**Attacking fighters who are displaying a white flag is forbidden, provided those displaying it have ceased all hostile action.**

1. This Rule is drawn from the 1899 and 1907 Hague Regulations, Article 32. In light of extensive State practice, it unquestionably reflects customary international law applicable in both international and non-international armed conflict. The Rule has been limited to fighters because civilians enjoy protected status at all times unless they take an active (direct) part in hostilities.

2. The white flag can be used in armed conflict for two purposes. One is as a flag of truce indicating a desire to negotiate, the other as a flag of surrender (see commentary accompanying Rule 2.3.2). The use of a white flag to indicate a desire to negotiate does not necessarily imply a desire to surrender. For instance, negotiations may be held with a view to effecting a local cease-fire during which the wounded and dead can be carried off the field. Whether the purpose is to negotiate or surrender, it is never allowed to open fire on those hoisting the white flag, unless they engage in hostile action.

### 2.3.4 Improper use of protected distinctive emblems or neutral military emblems, insignia, flags or uniforms

**It is prohibited to make improper use of protected distinctive emblems or neutral military emblems, insignia, flags, or uniforms, including those of the United Nations.**

1. This Rule is drawn from a number of sources, some of long-standing. They include 1899 and 1907 Hague Regulations, Article 23(f); 1949 Geneva Convention I, Articles 44 and 53; Additional Protocol I, Articles 38 and 39; and Additional Protocol II, Article 12. It is well accepted as reflecting customary international law applicable in both international and non-international armed conflict.

2. It is disallowed to use distinctive protective emblems such as the Red Cross or the Red Crescent for other than their specified purpose. The protection due to these distinctive emblems would be completely undermined if fighters were permitted to employ them in order to deceive the enemy.

3. Similarly, fighters cannot feign the status of neutral military personnel (including United Nations forces) with a view to deceiving the other side. These prohibitions are absolute.

4. Protective emblems are displayed in Annex I.

#### 2.3.5 Improper use of enemy military emblems, insignia, flags or uniforms

#### **It is prohibited to make use of enemy military emblems, insignia, flags, or uniforms during combat.**

1. This Rule is drawn from the 1899 and 1907 Hague Regulations, Article 23(f), and Additional Protocol I, Article 39. It is generally accepted as customary international law applicable in non-international armed conflict.

2. Fighters are prohibited from feigning the status of enemy military personnel during combat. Additional Protocol I, Article 39.2, limits the prohibition to a period during which the individual concerned is “engaging in attacks or in order to shield, favour, protect, or impede military operations.” The limitation on use for the purpose of shielding, favouring, protecting, or impeding is not universally

accepted and does not constitute customary international law applicable in armed conflict. Similarly, there is no consensus regarding the extent of time during which it is unlawful to wear enemy uniforms or otherwise feign enemy status. The main issue is whether such deception can be used in approach to or withdrawal from a military engagement. There is no doubt that an escaping detainee who is not engaging in combat may don an enemy uniform to effect his or her escape.

### 2.3.6 Perfidy

**Displaying the white flag falsely, or pretending to surrender, be wounded, or otherwise have a protected status is forbidden if the intent in doing so is to kill or wound an adversary.**

1. Article 37.1 of Additional Protocol I defines perfidy as “acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence.”<sup>73</sup> Examples include falsely using the white flag and feigning incapacitation by wounds or sickness.

2. According to the article, it is prohibited “to kill, injure, or capture an adversary by resort to perfidy.” The reference to capture does not appear in the original 1899 and 1907 Hague Regulations, Article 23(b), prohibition and is not binding on non-contracting Parties to Additional Protocol I.

3. Article 8.2(e)(ix) of the Statute of the International Criminal Court applies the prohibition to non-international armed conflict, limiting it to killing and wounding. The prohibition in that form is well accepted as customary international law with regard to both international and non-international armed conflict.

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<sup>73</sup> See also ICC, art. 8.2(e)(ix).

4. Perfidy is to be distinguished from ruses, which are permissible. Ruses are acts which are intended to mislead an adversary or to induce him to act recklessly, but do not violate any rule of humanitarian law. Examples include the use of camouflage, decoys, mock operations and misinformation.<sup>74</sup>

### 2.3.7 Location of military objectives

**Whenever feasible, military objectives must not be located within or near densely populated areas.**

1. This Rule is drawn from Additional Protocol I, Article 58, and the principle of distinction (see Rule 1.2.2).

2. As a matter of “passive precautions,” a party to the conflict should take those measures within its power to keep military objectives away from densely populated areas. It must be understood, however, that this rule is not always easy to implement, particularly in the case of non-international armed conflicts. For example, ministries of defence are often located in the centre of capital cities.

### 2.3.8 Human shields

**The use of civilians (as well as captured enemy personnel) to shield a military objective or operation is forbidden. It is also forbidden to use them to obstruct an adversary’s operations.**

1. This Rule is drawn from Additional Protocol I, Article 51.7, and is undoubtedly reflective of customary international law in both international and non-international armed conflict.

2. Should civilians voluntarily elect to shield a military objective or obstruct military operations, they would in almost all circumstances be taking an active (direct) part in hostilities, and, for the purposes of this Manual, could be treated as fighters.

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<sup>74</sup> GPI, art. 37.2.



### 2.3.9 Terrorising civilians

**Acts or threats of violence intended primarily to spread terror among civilians are forbidden, even if this is done for military purposes.**

1. This Rule is drawn from Additional Protocol II, Article 13.2, and is accepted as reflective of customary international law applicable in a non-international armed conflict. In addition, Article 4.2(d) of the Protocol prohibits acts of terrorism “at any time and in any place whatsoever” against “persons who do not take a direct part or have ceased to take a direct part in hostilities.”

2. The prohibition applies to all fighters, both armed groups and the government’s armed forces. Any justification of such acts on the grounds that terrorising the civilian population may shorten the duration of the conflict must be rejected, irrespective of the extent to which it may be factually accurate in a given situation.

### 2.3.10 Starvation of civilians

**Deliberate starvation of civilians as a method of warfare is forbidden.**

1. This Rule is based on Additional Protocol I, Article 54, and Additional Protocol II, Article 14. It unquestionably applies in both international and non-international armed conflict.

2. The prohibition obviously applies to foodstuffs, drinking water, and the means of production thereof (such as agricultural areas, crops, irrigation works, livestock, and drinking water installations). By extension, all objects indispensable to the survival of civilians should be protected, especially medications. The protection means that the enemy is not permitted to attack, destroy, remove, or render useless the aforementioned items.

3. The limitation applies only to the intentional starvation of civilians. It must be borne in mind that, in wartime, provisions are likely to be scarce and that the civilian population will suffer accordingly. Thus, incidental starvation of the population as a result of hostilities does not violate this Rule. When it occurs, humanitarian assistance should be allowed and facilitated (see Rule 5.1).

### **Chapter 3. Persons under Special Protection**

#### ***3.1 Wounded, sick or shipwrecked***

**a) Attacking or otherwise harming the wounded, sick, or shipwrecked is forbidden.**

**b) The wounded, sick, or shipwrecked must be searched for, collected, and protected against pillage and ill treatment whenever circumstances permit.**

**c) The wounded, sick or shipwrecked must be treated humanely and cared for with minimum delay.**

1. This Rule is drawn from primarily from Common Article 3(2) of the Geneva Conventions and Additional Protocol II, Articles 7 and 8.

2. The wounded and sick are persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, newborn babies, and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility.<sup>75</sup>

3. Shipwrecked persons are “persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune

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<sup>75</sup> GPI, art. 8(a).

affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility.”<sup>76</sup>

4. The wounded, sick, and shipwrecked must be searched for, collected, and protected against pillage and ill treatment whenever the circumstances permit. Such efforts must be conducted without adverse distinction or delay, particularly after an engagement. Wounded, sick, and shipwrecked must also receive, to the fullest extent possible, the medical care and attention that their condition requires. Pursuant to Article 9 of Additional Protocol II, priority in the treatment of the wounded and sick may only be based on medical grounds.

### ***3.2 Medical and religious personnel***

**a) Attacking medical and religious personnel is forbidden, unless they are taking an active (direct) part in hostilities.**

**b) Medical and religious personnel must not be required to perform tasks other than appropriate medical and religious duties. They must be given all available assistance when performing their duties.**

1. This Rule derives from Additional Protocol II, Articles 9 and 10.<sup>77</sup>

2. The term “medical personnel” includes those civilian or military individuals who are permanently or temporarily assigned by a party to the conflict exclusively to medical purposes, to the operation or administration of medical units; or to the operation or administration of medical transports.<sup>78</sup>

3. The term “religious personnel” refers to individuals who are exclusively engaged in spiritual work and attached to armed groups or armed forces, medical operations, or civil defence functions.<sup>79</sup>

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<sup>76</sup> GPI, art. 8(b).

<sup>77</sup> See also ICC, art. 8.2(e)(ii).

<sup>78</sup> GPI, art. 8(c).

<sup>79</sup> GPI, art. 8(d).

4. The Red Cross or Red Crescent emblem should be displayed by medical and religious personnel, medical units and premises, and on medical transports.<sup>80</sup> However, the failure to display an emblem does not deprive such persons and objects of their protection.

### ***3.3 United Nations and humanitarian assistance personnel***

**Attacking United Nations or humanitarian assistance personnel is forbidden, unless they are taking an active (direct) part in hostilities.**

United Nations and humanitarian assistance personnel are entitled to special respect. They should be given all available support when performing their duties. United Nations military personnel enjoy civilian status so long as such personnel do not actively (directly) participate in hostilities.<sup>81</sup>

### ***3.4 Women***

**The specific needs of women for protection, health, and assistance during armed conflict must be respected.**

1. The Rule is drawn primarily from Additional Protocol I, Article 76.
2. In addition to the prohibition of sexual violence against women (see Rule 1.2.4), including forced pregnancy, women are entitled to special protection in maternity cases.<sup>82</sup> In addition, it is forbidden to carry out the death penalty against pregnant women and caregivers of young children.<sup>83</sup>

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<sup>80</sup> GPII, art. 12.

<sup>81</sup> ICC, art. 8.2(e)(iii).

<sup>82</sup> See, e.g., GCIV, art. 23.

<sup>83</sup> GPII, art. 6.4.

### **3.5 Children**

**a) Children affected by armed conflict are entitled to special respect and protection.**

**b) Children under the age of 18 may not participate actively in hostilities.**

1. Article 4.3 of Additional Protocol II requires that “children shall be provided with the care and aid they require.” It also lays down a number of particular requirements on which this commentary is based.

2. Whenever necessary for their protection, children must be evacuated temporarily from the area of hostilities to a safer place within the country in keeping with the wishes of their parents or guardians. Steps should be taken to facilitate the reunion of temporarily separated families. Children are entitled to education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care. Sentencing a person to death for an offence committed when that person was under the age of 18 is forbidden.<sup>84</sup>

3. Children under the age of 18 may not participate actively in hostilities, even if they volunteer to do so. Active participation in hostilities includes such activities as gathering information, transmitting orders, transporting ammunition and food, sabotage, and engaging in combat.<sup>85</sup>

4. As to the age restriction, Article 4.3(c) Additional Protocol II requires that children who have not attained the age of 15 years shall not be allowed to take part in hostilities. The age limit was increased to 18 by the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which

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<sup>84</sup> The death penalty prohibition is found in GPII, art. 6.4.

<sup>85</sup> See also ICC, art. 8.2(e)(vii).

addresses both international and non-international armed conflict.<sup>86</sup> Although not necessarily reflective of customary law, the undesirability of children participating in conflict is generally recognized.

### ***3.6 Persons whose liberty has been restricted***

**Any person interned or detained for reasons related to the hostilities must be treated humanely, and information about his or her status and location should be made available to his or her family.**

1. This Rule is based on Article 5 of Additional Protocol II. It should be noted that it only applies to those detained “for reasons related to the armed conflict.”<sup>87</sup>

2. The principle of the humane treatment of detainees requires, as a minimum, observation of the following standards. Detainees shall be:

- a) Provided with adequate food and drinking water and safeguarded as regards health, hygiene, the rigours of the climate and dangers caused by military operations;
- b) Allowed to receive individual or collective relief;
- c) Allowed to practise their religion; and
- d) Provided with acceptable working conditions, if made to work.

3. Common Article 3 to the Geneva Conventions also requires the humane treatment of those who are detained, although it does not set forth specific requirements.

4. Families have a right to know the fate of their relatives. Neither armed groups nor armed forces are allowed to bring about the “disappearance” of any person who has been arrested or otherwise detained (with the intention of removing them from the protection of the law for a prolonged period). This prohibition extends to refusal to

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<sup>86</sup> Arts. 1 & 2.

<sup>87</sup> GPII, art. 5.1.

acknowledge deprivation of freedom or give information on the fate or whereabouts of such persons.<sup>88</sup>

### **3.7 Alleged offenders**

**No person may be convicted for a crime related to the hostilities except in a fair trial before an independent impartial tribunal ensuring the principles of due process of law.**

Common Article 3 to the Geneva Conventions, which reflects customary international law, provides that judgements may only be pronounced by a “regularly constituted court, affording all the judicial guarantees which are recognized as indispensable.” Additionally, Article 6.2 of Additional Protocol II specifies a number of due process requirements that must be observed when alleged offenders are brought to trial.<sup>89</sup> As a result of taking these provisions together, alleged offenders must be afforded, at minimum, the following rights:

- a) To be informed without delay of the particulars of the alleged offence;
- b) To have a decision on the lawfulness of the detention (habeas corpus);
- c) To be tried without undue delay;
- d) to examine, or have examined, witnesses;
- e) To have the necessary means of defence, including time to prepare a defence and counsel of own free choosing;
- f) To be present at trial;
- g) to public proceedings (unless the court decides to hold certain in camera sessions for security reasons);
- h) To free assistance of an interpreter if the accused cannot understand or speak the language used in the court;
- i) Not to be compelled to testify against oneself or to confess guilt;
- j) To presumption of innocence;

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<sup>88</sup> ICC, art. 7.1(i) & 7.2(i).

<sup>89</sup> See also ICC, art. 8.2(c)(iv).

- k) Not to be convicted of an offence except on the basis of individual penal responsibility;
- l) To appeal; and
- m) To be advised on the judicial and other remedies available and of the time limits within which they may be exercised.

### **3.8 Internally displaced persons**

#### **Internally displaced persons are entitled to special protection.**

1. Internally displaced persons are those who have had to leave their homes in order to avoid the effects of hostilities, other violence, human rights violations, or natural or man-made disasters, but who remain within their own country.<sup>90</sup> Internally displaced persons who participate actively (directly) in hostilities become fighters, and, resultantly, lose their protection under this Rule.

2. Internally displaced persons are civilians and entitled to all the general protections provided for civilians in this Manual. As a result of the unique circumstances of internally displaced persons, the following specific protections apply:

- a) Attacks against their camps or settlements are forbidden;
- b) Should internment be deemed absolutely necessary, they must not be subjected to harsher conditions of internment than other civilians;
- c) Withholding information from them regarding the fate and whereabouts of missing relatives is forbidden;
- d) Cooperation with authorities or international organizations attempting to establish the fate and whereabouts of internally displaced persons reported missing is required; and
- e) Families that are separated by displacement should be allowed to reunite as quickly as possible.

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<sup>90</sup> Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, April 17, 1998, at introduction & para. 2.



### **3.9 Refugees**

**Refugees may not be expelled or involuntarily returned to the frontiers of a territory where their life or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. Those who have committed serious crimes, whether under international or domestic law, are excluded from protection as refugees.**

Refugees are persons who have left their country of origin owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, and are outside the country of their nationality. The principle expressed in this Rule is known as “non-refoulement”. It reflects customary international law.<sup>91</sup>

### **3.10 Journalists**

**Journalists engaged in their professional activities enjoy civilian status, even when they accompany fighters, unless they take an active (direct) part in hostilities.**

Journalists who perform their professional duties during non-international armed conflict retain their civilian status in the same way as those in international armed conflict.<sup>92</sup> This status is not detrimentally affected when they accompany fighters. However, should journalists take an active (direct) part in hostilities, they become fighters themselves, and thus are not entitled to civilian protection. Individual self-defence by journalists does not amount to active (direct) participation in hostilities.

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<sup>91</sup> This Rule is drawn from the 1951 Refugee Convention, which remains applicable during non-international armed conflict.

<sup>92</sup> GPI, art. 79.

### ***3.11 Missing persons***

**Each party to the conflict shall search for persons who have been reported missing as soon as circumstances permit.**

The search for missing persons will typically take place either during a cease-fire or at the end of an armed conflict. However, it is an issue of great importance to the families and the duty cannot be shirked, even after a long stretch of time following the disappearance of a person. Tracing missing persons should be conducted with the assistance of the ICRC, UNHCR, and other international agencies, bearing in mind that some missing persons may have become refugees abroad.

### ***3.12 Dead persons***

**a) A search for the dead must be conducted, particularly after an engagement, as soon as circumstances permit.**

**b) Bodies must be treated with dignity.**

**c) Gravesites shall be marked and respected.**

1. Paragraphs a) and b) of this Rule are based on Article 8 of Additional Protocol II. The specific requirement regarding graves is found in Article 17 of the 1949 Geneva Convention on the Wounded and Sick on Land; its inclusion in this Rule is a specific application of the general requirements set forth in Article 8.

2. Following every major engagement, a search must be conducted for dead persons of both sides. If necessary, a cease-fire should be agreed upon for that purpose.

3. Dead bodies must be protected against degradation and disposed of decently. Bodies may not be mutilated in any way. With a view to the identification of the dead, each party to the conflict must record all

available information prior to disposal of bodies, as well as the location of the graves.

3. Protection of gravesites must be regarded as a high-priority. Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or the families.

## **Chapter 4: Treatment of Objects and Places**

### **4.1 General protection**

- a) Parties to the conflict must do everything feasible to protect civilian objects in their area of control from the effects of hostilities.**
- b) Seizing or destroying property, in connection with a military operation, is forbidden unless required by military necessity.**
- c) Pillage is forbidden.**

1. Paragraph a) is drawn from Article 58 of Additional Protocol I. It is based on the general principle of distinction (see Rule 1.2.2).

2. Paragraph b) is drawn from Article 23(g) of the 1899 and 1907 Hague Regulations. It is recognized as applying to non-international armed conflict in the Statute of the International Criminal Court, Article 8.2(e)(xii).

3. This provision is the prime example in which military necessity justifies behaviour (seizure or destruction of property) which otherwise would be unlawful (see rule 1.2.1 and accompanying commentary). It is clear that, whereas extensive devastation to property may be caused by hostilities during armed conflict, there is no general license for disregard of property rights

3. “Pillage” means taking property without consent for private or personal use. The prohibition of pillage is set forth in Article 4.2(g) of Additional Protocol II.<sup>93</sup>

## **4.2 Objects subject to special protection**

### 4.2.1 Medical units, facilities and transports

**Attacking medical units, facilities and transports is forbidden. This protection may cease if they are used to commit hostile acts, but only after a warning has been given. The warning should set, if appropriate and feasible, a reasonable time limit within which to end such activity.**

1. This Rule is drawn from Article 11 of Additional Protocol II.<sup>94</sup>

2. Medical units, facilities, and transports, like medical personnel (see Rule 3.2), are entitled to special protection. Although protection can cease as a result of the commission of hostile acts, this can occur only after due warning. An opportunity must be given to the other side to abide by the rules, and an attack can only be made if it is clear that the warning has been ignored.

### 4.2.2 Cultural property

- a) Particular care must be taken to avoid damage to cultural property, places and objects. They may not be attacked unless they become military objectives by function.**
- b) Every effort should be made to avoid locating military objectives near cultural property.**
- c) Pillaging, seizing, or vandalizing cultural property is forbidden.**

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<sup>93</sup> See also ICC, art. 8.2(e)(v).

<sup>94</sup> See also ICC, art. 8.2(e)(ii).

**d) Certain cultural property is entitled to enhanced protection.**

1. The protection of cultural property in non-international armed conflict is dealt with in the Hague Cultural Property Convention and its Second Protocol, as well as Article 16 of Additional Protocol II. These Rules draw on those instruments.

2. Cultural property consists of buildings and objects dedicated to religion, art, or history that form part of the spiritual or cultural heritage of a people. Examples include:

- a) Historical monuments;
- b) Places of worship;
- c) Archaeological sites;
- d) Works of art; and
- e) Scientific collections.

Facilities that store or display cultural property, and locations where a large amount of cultural property is concentrated, are also entitled to protection.<sup>95</sup>

2. Cultural property should not be used for military purposes, unless there is no alternative. The decision to so use it for such purposes should be taken by a senior officer whenever possible. If used for military purposes, cultural property may be attacked. However, in such cases, an effective warning must be given whenever circumstances permit.<sup>96</sup>

3. The word “function” is used in this Rule in accordance with its usage in the Second Protocol to the Hague Cultural Property Convention.<sup>97</sup> “Function” generally involves “use”, although in certain limited circumstances it may also involve “purpose” (see

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<sup>95</sup> HCP, art. 1, GPII, art. 16. See also ICC, art. 8.2(e)(iv).

<sup>96</sup> HCPP, art. 6 (b).

<sup>97</sup> HCPP, art. 6(a)(i).

discussion of “military objective” in Rule 1.1.4 above). It can never refer to “nature” or “location.”

4. Placement of military objectives near cultural property must be avoided. Similarly, cultural property, to the extent feasible, must be removed from the vicinity of military objectives or otherwise safeguarded against damage.<sup>98</sup>

5. Commanders who are in control of areas where cultural property (such as a museum) is located must take special care to protect it from pillage, not only by their own troops, but also by others.<sup>99</sup>

6. In order to qualify for enhanced protection, the property, place, or object must:

- a) Be of the greatest importance for humanity;
- b) Not be used for military purposes or to shield military sites; and
- c) Comply with certain other administrative requirements.<sup>100</sup>

#### 4.2.3 Dams, dykes and nuclear electrical generating stations

**Attacking dams, dykes, or nuclear electrical generating stations is forbidden if the attack might cause the release of water or radioactivity and, as a result, excessive collateral damage to civilian objects and incidental injury to civilians.**

1. Particular care must be taken in attacking works and installations containing dangerous forces (namely those cited in this Rule) so as to avoid releasing those forces, thereby causing severe losses among the civilian population.

2. Under Additional Protocol II, Article 15, it is prohibited to attack dams, dykes, or nuclear electrical generating stations if “such attack

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<sup>98</sup> HCPP, art. 8(a).

<sup>99</sup> HCP, art. 4.3.

<sup>100</sup> HCPP, art. 10.

may cause the release of dangerous forces and consequent severe losses among the civilian population.” In this relatively absolute form, the prohibition applies only to contracting parties and does not reflect customary international law. However, as formulated, the Rule is clearly customary, inasmuch as it is grounded in the rule of proportionality (see Rule 2.1.1.4 and accompanying commentary).

#### 4.2.4 Natural environment

**Damage to the natural environment during military operations must not be excessive in relation to the military advantage anticipated from those operations.**

1. Articles 35.3 and 55 of Additional Protocol I, which address damage to the natural environment in terms of “widespread, long-term, and severe damage” in the context of international armed conflict, have not been accepted as customary international law in either international or non-international armed conflict. However, the natural environment is a civilian object. As such, parts of the environment benefit from all the rules regarding protection of civilian objects. Like other civilian objects, they may become military objectives by virtue of their nature, location, purpose or use (see Rule 1.1.4).

2. The 1976 Environmental Modification Convention prohibits “*modifying*” the environment as a method of combat if doing so results in widespread, long-lasting or severe effects on the environment.<sup>101</sup> Examples of phenomena that could be caused by the use of environmental modification techniques include: earthquakes; tsunamis; an upset in the ecological balance of a region; changes in weather patterns (clouds, precipitation, cyclones of various types and tornadic storms); changes in climate patterns; changes in ocean

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<sup>101</sup> Art. I.

currents; changes in the state of the ozone layer; and changes in the state of the ionosphere.<sup>102</sup>

#### 4.2.5 Protected zones

**Parties to the hostilities may designate protected zones by agreement. Attacking such zones or otherwise making them the object of military operations is forbidden. Protected zones must be demilitarised.**

1. This Rule draws on Additional Protocol I, Article 60. Such zones have been set up during numerous international and non-international armed conflicts, thereby supporting the extension of the provisions of Article 60 into the latter through State practice.

2. A protected zone is an agreed upon place or area, including waters, designated for the sole protection of civilians and persons who have ceased to take an active (direct) part in hostilities. Examples include hospital zones or similar refuges. If agreed upon, such zones may be extended to include the airspace above them.

3. A zone is demilitarised when:

- a) There are no fighters or mobile weapons and military equipment present;
- b) Fixed military installations or establishments in the zone are not used for hostile purposes;
- c) No hostile acts are committed by those in the zone; and
- d) All activities within the zone that are related to military operations have ceased.

4. A substantial breach of these conditions will result in loss of protected zone status. Any other protection granted to persons, places,

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<sup>102</sup> Set forth in the “Understanding Relating to Article II” accompanying the Convention.



or objects, as per this Manual (e.g., the protection of medical facilities, Rule 4.2.1), would be unaffected.

## **Chapter 5: Humanitarian Assistance and Protection**

### **5.1 *Humanitarian Assistance***

**Humanitarian assistance should be allowed and facilitated by those engaged in military operations whenever essential needs in an emergency are not being met.**

1. This Rule and the accompanying commentary are based on Article 18.2 of Additional Protocol II, with the incorporation of the more specific guidance set forth in Additional Protocol I, Article 70.
2. Humanitarian assistance consists of any material or service essential to the health and safety of civilians and others who have ceased to take an active (direct) part in the hostilities. Examples include food, water, medical supplies, shelter, and clothing.
3. The need for humanitarian assistance may arise from the effects of hostilities, other violence, natural or man-made disasters, or any other cause.
4. Those in control of an area which humanitarian assistance operation transit or occur may set technical conditions for such operations. They are entitled to verify that the assistance effort conforms to the conditions and purpose of its delivery. Such steps should not unduly impede or delay the provision of humanitarian assistance.
5. Diverting humanitarian assistance to other purposes (particularly for political, military, or criminal reasons) is forbidden unless the diversion is urgently necessary in the interest of the persons who require it. Recipients may not be taking an active (direct part) in hostilities.

6. An impartial humanitarian body, such as the ICRC, may offer its services to the parties to the conflict for the assistance to and the protection to the victims of the conflict.

## ANNEX I: PROTECTIVE EMBLEMS

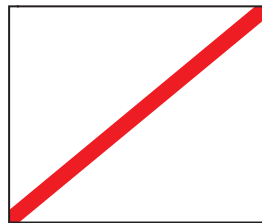


Medical and Religious Services and Red Cross or Crescent Organizations

1949 Geneva Convention I, Art. 38

1977 Protocol I Additional, Art. 18

1977 Protocol II Additional, Art. 12



Hospital and Safety Zones and Localities

1949 Geneva Convention IV, Art. 14 and

Annex I, Art. 6



Cultural Property

1954 Hague Cultural Property Convention, Art. 16  
and Regulations, Art. 20



Works and Installations Containing Dangerous Forces  
1977 Protocol I Additional, Art. 56.7



Truce  
1907 Hague Convention IV, Annexed Regulations, Art.32



United Nation Emblem

**Mines:** There are no specific signs to represent minefields and mined areas. However, the signs must be in accordance with the provision stipulated in the Technical Annex of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996.

1. Size and Shape: a triangle or square no smaller than 28 centimetres (11 inches) by 20 centimetres (7.9 inches) for a triangle and 15 centimetres (6 inches) per side for a square;
2. Colour: red or orange with a yellow reflecting border

## TABLE OF REFERENCED TREATIES\*

CONVENTIONS AND STATUTES	Abbreviation
2000 Optional Protocol the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; <i>Available on-line at the ICRC IHL Database: <a href="http://www.icrc.org/ihl">www.icrc.org/ihl</a></i>	Child OP
1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 698</i>	HCPP
1998 Rome Statute of the International Criminal Court; <i>Extracted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 667</i>	ICC
1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 645</i>	OC
1996 Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices to the UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 536</i>	CCW APII

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\* Most treaties relevant to non-international armed conflict may be found on-line in the ICRC Humanitarian Law Database, [www.icrc.org](http://www.icrc.org)

1995 Protocol IV on Blinding Laser Weapons to the UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 535</i>	CCW PIV
1994 Statute for the International Criminal Tribunal for Rwanda; <i>Extracted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 615</i>	ICTR
1993 Statute of the International Criminal Tribunal for the former Yugoslavia; <i>Extracted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 564</i>	ICTY
1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction; <i>Reprinted in The Laws of Armed Conflict, Fourth Edition, Edited by Dietrich Schindler &amp; Jiri Toman, Nijhoff, at p. 239</i>	Chemical
1989 Convention on the Rights of the Child; <i>Reprinted in Human Rights, A Compilation of International Instruments, Volume I (First Part), UN Doc. ST/HR/1/Rev.5, 1994, at p. 174</i>	CRC
1980 Protocol I on Non-Detectable Fragments to the UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 527</i>	CCW PI
1980 Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices to the UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which	CCW PII

May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 528</i>	
1980 Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons to the UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 533</i>	CCW PIII
1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 419</i>	GPI
1977 Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 481</i>	GPII
1976 UN Convention on the Prohibition of Military of Any Other Hostile Use of Environmental Modification Techniques; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 406</i>	ENMOD
1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction; <i>Reprinted in The Laws of Armed Conflict, Fourth Edition, Edited by Dietrich Schindler &amp; Jiri Toman, Nijhoff, at p. 135</i>	BWC



1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 371</i>	HCP
1951 Convention Relating to the Status of Refugees; <i>Reprinted in Human Rights, A Compilation of International Instruments, Volume I (Second Part), UN Doc. ST/HR/I/Rev.5, 1994, at p. 638</i>	Refugee
1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 195.</i>	GCI
1949 Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 221.</i>	GCII
1949 Geneva Convention Relative to the Treatment of Prisoners of War; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 243.</i>	GCIII
1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 299.</i>	GCIV
1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 179</i>	Genocide

1929 Convention for the Amelioration of the Condition of the Wounded in Armies in the Field; <i>Reprinted in The Laws of Armed Conflict, Fourth Edition, Edited by Dietrich Schindler &amp; Jiri Toman, Nijhoff, at p. 409</i>	1929 Geneva
1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other gases, and of Bacteriological Methods of Warfare; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 155</i>	Gas
1923 Draft Hague Rules of Aerial Warfare; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 139</i>	HRAW
1907 Regulations Respecting the Laws and Customs of War on Land, Annexed to 1907 Hague Convention IV Respecting the Laws and Customs of War on Land; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 73</i>	Hague IV R
1907 Hague Convention VIII Relative to the Laying of Automatic Submarine Contact Mines; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 103</i>	Hague VIII
1899 Convention (II) with Respect to the Laws and Customs of War on Land, with Annex of Regulations; <i>Reprinted in The Laws of Armed Conflict, Fourth Edition, Edited by Dietrich Schindler &amp; Jiri Toman, Nijhoff, at p. 55</i>	Hague IIR
1899 Hague Declaration 2 Concerning Asphyxiating Gases; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 59</i>	Hague 2

1899 Hague Declaration 3 Concerning Expanding Bullets; <i>Reprinted in Documents on the Laws of War, Third Edition, Edited by Adam Roberts &amp; Richard Guelff, OUP, 2000, at p. 63</i>	Hague 3
1868 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight (St. Petersburg Declaration); <i>Reprinted in The Laws of Armed Conflict, Fourth Edition, Edited by Dietrich Schindler &amp; Jiri Toman, Nijhoff, at p.3</i>	St. Petersburg
1863 General Order No. 100, U.S. Department of Army, Instructions for the Government of Armies of the United States in the Field (Lieber Code); <i>Reprinted in The Laws of Armed Conflict, Fourth Edition, Edited by Dietrich Schindler &amp; Jiri Toman, Nijhoff, at p. 3.</i>	Lieber