**Practice Relating to Rule 1. The Principle of Distinction between Civilians and Combatants.**

**International Committee of the Red Cross**

**https://www.icrc.org/customary-ihl/eng/docs/v2\_rul\_rule1**

**Note: *Practice related to situations of doubt as to the character of a person is included under Rule 6C*.**

**Section A. The principle of distinction**

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**I. Treaties**

**Additional Protocol I**

Article 48 of the 1977 Additional Protocol I provides: “[T]he Parties to the conflict shall at all times distinguish between the civilian population and combatants.”

*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977, Article 48. Article 48 was adopted by consensus. CDDH, Official Records, Vol. VI, CDDH/SR.41, 26 May 1977, p. 161.*

**Additional Protocol II (draft)**

Article 4(1) of the draft Additional Protocol II submitted by the ICRC to the CDDH provided: “In order to ensure respect for the civilian population, the parties to the conflict … shall make a distinction between the civilian population and combatants.”

*CDDH, Official Records, Vol. I, Part Three, Draft Additional Protocols, June 1973, p. 37.*

**Ottawa Convention on Anti-Personnel Mines**

According to the preamble to the 1997 Ottawa Convention on Anti-Personnel Mines, States Parties based their agreement on various principles of IHL, including “the principle that a distinction must be made between civilians and combatants”.

*Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Ottawa, 18 September 1997, preamble.*

**Convention on Cluster Munitions**

According to the preamble to the 2008 Convention on Cluster Munitions, States Parties based their agreement on the prohibition of the use, development, production, stockpiling, retention or transfer of cluster munitions on various principles of IHL, including “the rule[…] that the parties to a conflict shall at all times distinguish between the civilian population and combatants”.

*Convention on Cluster Munitions, Dublin, 30 May 2008, preamble, § 20.*

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**II. Other Instruments**

**Lieber Code**

Article 22 of the 1863 Lieber Code states: “[A]s civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms.”

*Instructions for the Government of Armies of the United States in the Field, prepared by Francis Lieber, promulgated as General Order No. 100 by President Abraham Lincoln, Washington D.C., 24 April 1863, Article 22.*

**Oxford Manual**

Article 1 of the 1880 Oxford Manual provides: “The state of war does not admit of acts of violence, save between the armed forces of belligerent States. Persons not forming part of a belligerent armed force should abstain from such acts.”

*The Laws of War on Land, adopted by the Institute of International Law, Oxford, 9 September 1880, Article 1*

**Memorandum of Understanding on the Application of IHL between Croatia and the Socialist Federal Republic of Yugoslavia**

Paragraph 6 of the 1991 Memorandum of Understanding on the Application of IHL between Croatia and the Socialist Federal Republic of Yugoslavia requires that hostilities be conducted in accordance with Article 48 of the 1977 Additional Protocol I.

*Memorandum of Understanding on the Application of International Humanitarian Law between Croatia and the Socialist Federal Republic of Yugoslavia, Geneva, 27 November 1991, § 6.*

**Agreement on the Application of IHL between the Parties to the Conflict in Bosnia and Herzegovina**

Paragraph 2.5 of the 1992 Agreement on the Application of IHL between the Parties to the Conflict in Bosnia and Herzegovina requires that hostilities be conducted in accordance with Article 48 of the 1977 Additional Protocol I.

*Agreement between Representatives of Mr. Alija Izetbegović (President of the Republic of Bosnia and Herzegovina and President of the Party of Democratic Action), Representatives of Mr. Radovan Karadžić (President of the Serbian Democratic Party), and Representative of Mr. Miljenko Brkić (President of the Croatian Democratic Community), Geneva, 22 May 1992, § 2.5.*

**San Remo Manual**

Paragraph 39 of the 1994 San Remo Manual states: “Parties to the conflict shall at all times distinguish between civilians or other protected persons and combatants.”

*Louise Doswald-Beck (ed.), San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994, Prepared by international lawyers and naval experts convened by the International Institute of Humanitarian Law, Cambridge University Press, Cambridge, 1995, § 39.*

**UN Secretary-General’s Bulletin**

Section 5.1 of the 1999 UN Secretary-General’s Bulletin states: “The United Nations force shall make a clear distinction at all times between civilians and combatants …”.

*Observance by United Nations Forces of International Humanitarian Law, Secretary-General’s Bulletin, UN Secretariat, UN Doc. ST/SGB/1999/13, 6 August 1999, Section 5.1.*

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**III. Military Manuals**

**Argentina**

Argentina’s Law of War Manual (1989) provides: “The parties to the conflict must distinguish at all times between the [civilian] population and combatants.”

*Argentina, Leyes de Guerra, PC-08-01, Público, Edición 1989, Estado Mayor Conjunto de las Fuerzas Armadas, aprobado por Resolución No. 489/89 del Ministerio de Defensa, 23 April 1990, § 4.01.*

**Australia**

Australia’s Defence Force Manual (1994) states that the law of armed conflict “establishes a requirement to distinguish between combatants and civilians, and between military objectives and civilian objects. This requirement imposes obligations on all parties to a conflict to establish and maintain the distinction.”

*Australia, Manual on Law of Armed Conflict, Australian Defence Force Publication, Operations Series, ADFP 37 – Interim Edition, 1994, § 504.*

Australia’s LOAC Manual (2006) states:
The LOAC establishes a requirement to distinguish between combatants and civilians, and between military objectives and civilian objects. This requirement imposes obligations on all parties to a conflict to establish and maintain the distinction.

*Australia, The Manual of the Law of Armed Conflict, Australian Defence Doctrine Publication 06.4, Australian Defence Headquarters, 11 May 2006, § 5.4; see also §§ 2.11 and 9.13.*

**Belgium**

Belgium’s Law of War Manual (1983) provides: “A distinction must always be made between the civilian population and those participating in hostilities: the latter may be attacked, the former may not.”

*Belgium, Droit Pénal et Disciplinaire Militaire et Droit de la Guerre, Deuxième Partie, Droit de la Guerre, Ecole Royale Militaire, par J. Maes, Chargé de cours, Avocat-général près la Cour Militaire, D/1983/1187/029, 1983, p. 26.*

**Benin**

Benin’s Military Manual (1995) provides: “A distinction shall be made at all times between combatants and civilians.”

*Benin, Le Droit de la Guerre, III fascicules, Forces Armées du Bénin, Ministère de la Défense nationale, 1995, Fascicule II, p. 5 and Fascicule III, p. 11.*

**Burundi**

Burundi’s Regulations on International Humanitarian Law (2007) states: “In order to spare the civilian population … the parties to an [armed] conflict must at all times distinguish between the civilian population and combatants”.

*Burundi, Règlement n° 98 sur le droit international humanitaire, Ministère de la Défense Nationale et des Anciens Combattants, Projet “Moralisation” (BDI/B-05), August 2007, Part I bis, p. 31; see also Part I bis, pp. 15, 40, 63 and 80.*

**Cameroon**

Cameroon’s Instructor’s Manual (1992) requires “respect for the principle of distinction, that is to say, the definition and separation of soldiers and civilians”.

*Cameroon, Droit International Humanitaire et Droit de la Guerre, Manuel de l’Instructeur en vigueur dans les Forces Armées, Présidence de la République, Ministère de la Défense, Etat-major des Armées, Troisième Division, Edition 1992, p. 55.*

Cameroon’s Instructor’s Manual (2006) states: “The soldier in combat must distinguish between combatant and non-combatant.”

*Cameroon, Droit des conflits armés et droit international humanitaire, Manuel de l’instructeur en vigueur dans les forces de défense, Ministère de la Défense, Présidence de la République, Etat-major des Armées, 2006, p. 21; see also pp. 41 and 67.*

It must be emphasized that [a responsibility of] command regarding the law of armed conflict and international humanitarian law is to:

…

- ensure respect for the principle of discrimination; that is to say to make a distinction between combatants and civilians as well as protected persons (prisoners of war, the wounded, medical personnel).

*Cameroon, Droit des conflits armés et droit international humanitaire, Manuel de l’instructeur en vigueur dans les forces de défense, Ministère de la Défense, Présidence de la République, Etat-major des Armées, 2006, p. 175, § 481.*

**Canada**

Canada’s LOAC Manual (1999) states: “Commanders shall at all times distinguish between the civilian population and combatants.”

*Canada, The Law of Armed Conflict at the Operational and Tactical Level, Office of the Judge Advocate General, 1999, p. 4-1, § 4; see also p. 2-2, § 12.*

Canada’s LOAC Manual (2001) states:
1. Distinction. The principle of distinction imposes an obligation on commanders to distinguish between legitimate targets and civilian objects and the civilian population. It is of primary importance when selecting targets.
2. This obligation is, of course, dependent on the quality of the information available to commanders at the time decisions are made. Commanders must make reasonable, good faith efforts to gather intelligence and to review the intelligence available to them.

*Canada, The Law of Armed Conflict at the Operational and Tactical Level, Office of the Judge Advocate General, 13 August 2001, § 204.*

*403.* *Distinction principle*
1. To ensure respect for and protection of the civilian population and civilian objects, commanders shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives.
…
*411.* *Protection of civilians and civilian objects*
1. The protection of civilians and civilian objects is a fundamental principle of the LOAC. Parties to a conflict have a duty to distinguish between civilians and combatants as well as between civilian objects and military objectives. Civilians are entitled to protection from the dangers arising from military operations. In conducting operations care should always be taken to spare civilians and civilian objects.

*Canada, The Law of Armed Conflict at the Operational and Tactical Levels, Office of the Judge Advocate General, 13 August 2001, §§ 403 and 411.*

**Central African Republic**

The Central African Republic’s Instructor’s Manual (1999) states in Volume 2 (Instruction for group and patrol leaders): “Parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian property.”

*Central African Republic, Le Droit de la Guerre, Fascicule No. 2: Formation pour l’obtention du certificat technique No. 2 (Chef de Groupe), du certificat Inter-Armé (CIA), du certificat d’aptitude de Chef de Patrouille (CACP), Ministère de la Défense, Forces Armées Centrafricaines, 1999, Chapter I, Fundamental Rules, § 7; see also Le Droit de la Guerre, Fascicule No. 3: Formation pour l’obtention du Brevet d’Armes No. 1, du Brevet d’Armes No. 2 et le stage d’Officier de Police Judiciaire (OPJ), Ministère de la Défense, Forces Armées Centrafricaines, 1999, Chapter III, Section 1.*

**Chad**

Chad’s Instructor’s Manual (2006) states that “a distinction must be made between civilians and … combatants”.

*Chad, Droit international humanitaire, Manuel de l’instructeur en vigueur dans les forces armées et de sécurité, Ministère de la Défense, Présidence de la République, Etat-major des Armées, 2006, p. 87; see also pp. 21 and 42.*

**Colombia**

Colombia’s Circular on Fundamental Rules of IHL (1992) states: “The Parties to the conflict must at all times make a distinction between civilians and combatants in order to protect the civilian population and civilian objects.”

*Colombia, Transcripción Normas Fundamentales del Derecho Humanitario Aplicables en los Conflictos Armados, Circular No. 033/DIPL-SERPO-526, Policía Nacional, Dirección General, Santafé de Bogotá, 14 May 1992, § 7.*

Colombia’s Basic Military Manual (1995) provides for the obligation “to distinguish between combatants and the civilian population”.

*Colombia, Derecho Internacional Humanitario – Manual Básico para las Personerías y las Fuerzas Armadas de Colombia, Ministerio de Defensa Nacional, 1995, pp. 48–49.*

**Côte d’Ivoire**

Côte d’Ivoire’s Teaching Manual (2007) provides in Book I (Basic instruction):
Lesson 1 *Basic notions of IHL*
…
The Law of War is based on three fundamental principles:

- The principle of distinction;

- The principle of limitation;

- The principle of proportionality.

The *principle of distinction* specifies who and what can be attacked and who and what cannot be attacked.
…
NB: For the soldier, the principle of distinction is the most important.

*Côte d’Ivoire, Droit de la guerre, Manuel d’instruction, Livre I: Instruction de base, Ministère de la Défense, Forces Armées Nationales, November 2007, pp. 13 and 14–16.*

II. *The fundamental principles of IHL*
Just as military operations are based on principles concerning attack, defence, withdrawal, etc., the law of armed conflicts contains a set of well-defined principles. These concrete principles reflect the realities of conflicts. They represent a balance between the principle of humanity and military necessity, and they are valid at all times, in all places, and in all circumstances. It is essential that these rules are known by all combatants. They must permanently be taken into consideration in every activity of assessment, planning, and military training or operation. The following principles can be found throughout the texts of the law of armed conflicts.
II.1. *Distinction*
At all times, a distinction must be clearly made between combatants and civilians or the civilian population as such.

*Côte d’Ivoire, Droit de la guerre, Manuel d’instruction, Livre III, Tome 1: Instruction de l’élève officier d’active de 1ère année, Manuel de l’élève, Ministère de la Défense, Forces Armées Nationales, November 2007, p. 12; see also Droit de la guerre, Manuel d’instruction, Livre III, Tome 2: Instruction de l’élève officier d’active de 2ème année, Manuel de l’instructeur, Ministère de la Défense, Forces Armées Nationales, November 2007, p. 13; Droit de la guerre, Manuel d’instruction, Livre IV: Instruction du chef de section et du commandant de compagnie, Manuel de l’élève, Ministère de la Défense, Forces Armées Nationales, November 2007, p. 13.*

Chapter 2. *Combatants and objectives*
In order to ensure respect for and protection of the civilian population and civilian objects, military leaders must at all times distinguish between civilian populations and combatants, and between civilian objects and military objectives.

*Côte d’Ivoire, Droit de la guerre, Manuel d’instruction, Livre IV: Instruction du chef de section et du commandant de compagnie, Manuel de l’élève, Ministère de la Défense, Forces Armées Nationales, November 2007, p. 17.*

**Croatia**

Croatia’s LOAC Compendium (1991) states that a distinction must always be made between combatants and civilians.

*Croatia, Compendium “Law of Armed Conflicts”, Republic of Croatia, Ministry of Defence, 1991, p. 37.*

Croatia’s Instructions on Basic Rules of IHL (1993) requires all relevant personnel to distinguish between combatants and civilians in order to protect the civilian population and civilian property.

*Croatia, Instructions “Basic Rules of International Humanitarian Law Applicable in Armed Conflicts”, Republic of Croatia, Ministry of Defence, 1993, § 7.*

**Djibouti**

Djibouti’s Manual on International Humanitarian Law (2004) states that IHL “has several principles [one of which is] … distinction: the obligation to always distinguish between combatants and the civilian population”.

*Djibouti, Manuel sur le droit international humanitaire et les droits de l’homme applicables au travail du policier, Ministère de l’Intérieur, Direction Générale de la Police, 2004, p. 11.*

**Ecuador**

Ecuador’s Naval Manual (1989) states: “The law of armed conflicts is based largely on the distinction to be made between combatants and noncombatants.”

*Ecuador, Aspectos Importantes del Derecho Internacional Marítimo que Deben Tener Presente los Comandantes de los Buques, Academia de Guerra Naval, 1989, § 5.3; see also §§ 8.1 and 11.1.*

**France**

France’s LOAC Summary Note (2001) states: “The civilian population and civilian objects must be spared and distinguished at all times from combatants and military objectives.”

*France, Fiche de Synthèse sur les Règles Applicables dans les Conflits Armés, Note No. 432/DEF/EMA/OL.2/NP, Général de Corps d’Armée Voinot (pour l’Amiral Lanxade, Chef d’Etat-major des Armées), 1992, Part I, preamble; see also Fiche didactique relative au droit des conflits armés, Directive of the Ministry of Defence, 4 January 2000, annexed to the Directive No. 147 of the Ministry of Defence of 4 January 2000, p. 4.*

France’s LOAC Manual (2001) imposes the obligation “to distinguish between military objectives, which may be attacked, and civilian objects and persons, which must not be made the object of deliberate attack”.

*France, Manuel de droit des conflits armés, Ministère de la Défense, Direction des Affaires Juridiques, Sous-Direction du droit international humanitaire et du droit européen, Bureau du droit des conflits armés, 2001, p. 13.*

**Germany**

Germany’s Military Manual (1992) states that it is prohibited “to injure military objectives, civilians, or civilian objects without distinction”.

*Germany, Humanitarian Law in Armed Conflicts – Manual, DSK VV207320067, edited by the Federal Ministry of Defence of the Federal Republic of Germany, VR II 3, August 1992, English translation of ZDv 15/2, Humanitäres Völkerrecht in bewaffneten Konflikten – Handbuch, August 1992, § 401; see also § 429.*

**Guinea**

Guinea’s Soldier’s Manual (2010), under the heading “Principles of the law of war”, states:
The law of [w]ar rests on three fundamental principles:
1. Principle of distinction
…
Principle of distinction defines:

- who … can be attacked;

- who … cannot be attacked.

…
NB: For a soldier, the principle of distinction is the most important one.

*Guinea, Soldier’s Manual, Ministry of National Defence, 2010, p. 2.*

**Hungary**

Hungary’s Military Manual (1992) provides that a distinction must always be made between combatants and civilians.

*Hungary, A Hadijog, Jegyzet a Katonai, Föiskolák Hallgatói Részére, Magyar Honvédség Szolnoki Repülötiszti Föiskola, 1992, p. 60.*

**Israel**

With reference to Israel’s Law of War Booklet (1986), the Report on the Practice of Israel states: “In principle, the IDF (Israel Defense Forces) accepts and applies the principle of distinction.”

*Report on the Practice of Israel, 1997, Chapter 1.1, referring to Conduct in the Battlefield in Accordance with the Law of War, Israel Defense Forces, 1986, Chapter 1.*

Israel’s Manual on the Rules of Warfare (2006) states that “a distinction has to be made between combatants and non-combatants”.

*Israel, Rules of Warfare on the Battlefield, Military Advocate-General’s Corps Command, IDF School of Military Law, Second Edition, 2006, p. 29.*

**Mexico**

Mexico’s Army and Air Force Manual (2009), in a section on the 1977 Additional Protocol I, states: “The parties to a conflict must always distinguish between civilians and combatants.”

*Mexico, Manual de Derecho Internacional Humanitario para el Ejército y la Fuerza Área Mexicanos, Ministry of National Defence, June 2009, § 260.*

**Netherlands**

The Military Manual (1993) of the Netherlands states: “The parties to the conflict must at all times distinguish between the civilian population and combatants.”

*Netherlands, Toepassing Humanitair Oorlogsrecht, Voorschift No. 27-412/1, Koninklijke Landmacht, Ministerie van Defensie, 1993, p. IV-1, § 1.*

The Military Manual (2005) of the Netherlands lists the “distinction between civilian and military” as one of five “generally accepted principles of the humanitarian law of war”.

*Netherlands, Humanitair Oorlogsrecht: Handleiding, Voorschift No. 27-412, Koninklijke Landmacht, Militair Juridische Dienst, 2005, §§ 0221 and 0223.*

**New Zealand**

New Zealand’s Military Manual (1992) states: “The principle of distinction … imposes an obligation on commanders to distinguish between legitimate military objectives and civilian objects and the civilian population when conducting military operations, particularly when selecting targets.”

*New Zealand, Interim Law of Armed Conflict Manual, DM 112, New Zealand Defence Force, Headquarters, Directorate of Legal Services, Wellington, November 1992, p. 2–4, § 205.*

**Nigeria**

Nigeria’s Military Manual (1994) states: “The main aim for all commanders and individual combatants is to distinguish combatants and military objectives from civilian persons and objects at all times.”

**Peru**

Peru’s IHL Manual (2004) states: “A distinction must be made at all times between … combatants and civilians.”

*Peru, Manual de Derecho Internacional Humanitario para las Fuerzas Armadas, Resolución Ministerial Nº 1394-2004-DE/CCFFAA/CDIH-FFAA, Lima, 1 December 2004, § 27.a(2)(a).*

The Principle of Distinction establishes the obligation to observe a distinction between those who take part in the hostilities and those who do not. The distinction between people and objects that are considered military objectives and those that are not is important, because it determines whether or not a target can be attacked.

*Peru, Manual de Derecho Internacional Humanitario para las Fuerzas Armadas, Resolución Ministerial Nº 1394-2004-DE/CCFFAA/CDIH-FFAA, Lima, 1 December 2004, § 18.*

Commanders must take all necessary measures and ensure that their subordinates distinguish between people … that are considered military objectives and those that are not both in the conduct of operations and in their behaviour during engagements.

*Peru, Manual de Derecho Internacional Humanitario para las Fuerzas Armadas, Resolución Ministerial Nº 1394-2004-DE/CCFFAA/CDIH-FFAA, Lima, 1 December 2004, § 24.c.(1).*

Peru’s IHL and Human Rights Manual (2010) states: “A distinction must be made at all times between … combatants and civilians”.

*Peru, Manual de Derecho Internacional Humanitario y Derechos Humanos para las Fuerzas Armadas, Resolución Ministerial No. 049-2010/DE/VPD, Lima, 21 May 2010, § 19, p. 224; see also § 61(a), p. 264, and § 122(a), p. 313.*

**Russian Federation**

The Russian Federation’s Regulations on the Application of IHL (2001) states:
While getting military units ready for combat operations and controlling them during hostilities, commanders shall be guided by the principles of international humanitarian law: the principles of legality, distinction, proportionality, humanity and military necessity.
…
The principle of *distinction* means making a distinction, under any circumstances, between the civilian population and servicemen, as well as between civilian objects and military objectives, which helps ensure protection of civilian persons and objects during combat operations and concentrate the force’s effort against the enemy military objectives.

*Russian Federation, Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation, Ministry of Defence of the Russian Federation, Moscow, 8 August 2001, § 17.*

**Sierra Leone**

Sierra Leone’s Instructor Manual (2007) states:
The aim of the instruction of law of war within the armed forces is to ensure that, in fulfilling their mission, each and every member of them respects the fundamental rules of the law, which is based on the distinction that must be made at all times between military objectives and civilian persons and objects, and protects all civilians and persons not or no longer involved in combat actions, irrespective of the situation, place, time or any other circumstances.

*Sierra Leone, The Law of Armed Conflict. Instructor Manual for the Republic of Sierra Leone Armed Forces (RSLAF), Armed Forces Education Centre, September 2007, p. 10.*

In every military operation a *distinction must be made between combatants and non-combatants* …For example those taking direct part in hostilities may be attacked and those not or no longer taking part in hostilities may not be attacked.

*Sierra Leone, The Law of Armed Conflict. Instructor Manual for the Republic of Sierra Leone Armed Forces (RSLAF), Armed Forces Education Centre, September 2007, pp. 18–19; see also p. 35.*

[emphasis in original]

**Spain**

Spain’s LOAC Manual (2007) states that “a distinction must be made between civilians and combatants”.

*Spain, Orientaciones. El Derecho de los Conflictos Armados, Tomo 1, Publicación OR7–004, (Edición Segunda), Mando de Adiestramiento y Doctrina, Dirección de Doctrina, Orgánica y Materiales, 2 November 2007, § 3.1.a.*

**Sweden**

Sweden’s IHL Manual (1991) states: “A distinction shall always be made between persons participating in hostilities and who are thereby legitimate objectives, and members of the civilian population, who may not constitute objectives in warfare.”

*Sweden, International Humanitarian Law in Armed Conflict, with reference to the Swedish Total Defence System, Swedish Ministry of Defence, January 1991, Section 3.2.1.5, p. 40.*

**Switzerland**

Switzerland’s Basic Military Manual (1987) states: “The Parties to the conflict must at all times make a distinction between the civilian population and combatant troops.”

*Switzerland, Lois et coutumes de la guerre (Extrait et commentaire), Règlement 51.7/II f, Armée Suisse, 1987, Article 25(1).*

**Togo**

Togo’s Military Manual (1996) provides: “A distinction shall be made at all times between combatants and civilians.”

*Togo, Le Droit de la Guerre, III fascicules, Etat-major Général des Forces Armées Togolaises, Ministère de la Défense nationale, 1996, Fascicule II, p. 5 and Fascicule III, p. 11.*

**Ukraine**

Ukraine’s IHL Manual (2004) states:
Principle of distinction means that during preparation for and conduct of combat a clear distinction must be made between civilians and combatants [and] between civilian objects and military objectives, with a view to ensuring protection of the civilian population and civilian objects from the consequences of hostilities and to concentrating the actions of forces exclusively against the enemy’s military objects.

*Ukraine, Manual on the Application of IHL Rules, Ministry of Defence, 11 September 2004, § 2.1.7.*

**United Kingdom of Great Britain and Northern Ireland**

The UK Military Manual (1958) refers to “the division of the population of a belligerent State into two classes, namely, the armed forces and the peaceful population”.

*United Kingdom, The Law of War on Land being Part III of the Manual of Military Law, The War Office, HMSO, 1958, § 86.*

The UK LOAC Manual (2004) states:
Since military operations are to be conducted only against the enemy’s armed forces and military objectives, there must be a clear distinction between the armed forces and civilians, or between combatants and non-combatants, and between objects that might legitimately be attacked and those that are protected from attack. The principle of distinction, sometimes referred to as the principle of discrimination or identification, separates combatants from non-combatants and legitimate military targets from civilian objects.

*United Kingdom, The Manual of the Law of Armed Conflict, Ministry of Defence, 1 July 2004, §§ 2.5–2.5.1.*

The UK LOAC Manual (2004), as amended in 2010, states:
Since military operations are to be conducted only against the enemy’s armed forces and military objectives, there must be a clear distinction between the armed forces and civilians, or between combatants and non-combatants, and between objects that might legitimately be attacked and those that are protected from attack.

*United Kingdom, The Manual of the Law of Armed Conflict, Ministry of Defence, 1 July 2004, as amended by Amendment 3, Ministry of Defence, September 2010, § 2.5–2.5.1.*

**United States of America**

The US Air Force Pamphlet (1976) states: “In order to insure respect and protection for the civilian population and civilian objects, the parties to the conflict must at all times distinguish between the civilian population and combatants.”

*United States, Air Force Pamphlet 110-31, International Law – The Conduct of Armed Conflict and Air Operations, US Department of the Air Force, 1976, § 5-3(b).*

The US Naval Handbook (1995) states: “The law of armed conflicts is based largely on the distinction to be made between combatants and noncombatants.”

*United States, The Commander’s Handbook on the Law of Naval Operations, NWP 1-14M/MCWP 5-2.1/COMDTPUB P5800.7, issued by the Department of the Navy, Office of the Chief of Naval Operations and Headquarters, US Marine Corps, and Department of Transportation, US Coast Guard, October 1995 (formerly NWP 9 (Rev. A)/FMFM 1-10, October 1989), § 5.3; see also §§ 8.1 and 11.1.*

The US Naval Handbook (2007) states: “The principle of distinction is concerned with distinguishing combatants from civilians and military objects from civilian objects so as to minimize damage to civilians and civilian objects.”

*United States, The Commander’s Handbook on the Law of Naval Operations, NWP 1-14M/MCWP 5-12.1/COMDTPUB P5800.7, issued by the Department of the Navy, Office of the Chief of Naval Operations and Headquarters, US Marine Corps, and Department of Homeland Security, US Coast Guard, July 2007, § 5.3.2.*

**Zimbabwe**

Zimbabwe’s Code of Conduct for Combatants (1993) states: “During hostilities a distinction must be made between civilians and military objectives.”

*Zimbabwe, Code of Conduct for Combatants, Joint publication of the Zimbabwe Defence Forces and the International Committee of the Red Cross Regional Delegation in Harare, 1993, p. 15.*

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**IV. National Legislation**

**Colombia**

Colombia’s Directive No. 10 (2007), whose objective is to prevent the killing of protected persons, states:
In view of the new circumstances and modalities of the criminal acts of illegal armed groups which operate more and more frequently disguised as civilians, the armed forces must undertake all possible efforts to distinguish the civilian population and to protect the civilian population in all circumstances.

*Colombia, Directive No. 10, 2007, § IV.*

**Denmark**

Denmark’s Military Criminal Code (1973), as amended in 1978, provides:
Any person who uses war instruments or procedures the application of which violates an international agreement entered into by Denmark or the general rules of international law, shall be liable to the same penalty [i.e. a fine, lenient imprisonment or up to 12 years’ imprisonment].

*Denmark, Military Criminal Code, 1973, as amended in 1978, § 25(1).*

Any person who deliberately uses war means [“krigsmiddel”] or procedures the application of which violates an international agreement entered into by Denmark or international customary law, shall be liable to the same penalty [i.e. imprisonment up to life imprisonment].

*Denmark, Military Criminal Code, 2005, § 36(2).*

**Ireland**

Under Ireland’s Geneva Conventions Act (1962), as amended in 1998, any “minor breach” of the 1977 Additional Protocol I, including violations of Article 48, is a punishable offence.

*Ireland, Geneva Conventions Act, 1962, as amended in 1998, Section 4(1) and (4).*

**Norway**

Norway’s Military Penal Code (1902), as amended in 1981, provides:
Anyone who contravenes or is accessory to the contravention of provisions relating to the protection of persons or property laid down in … the two additional protocols to [the 1949 Geneva] Conventions … is liable to imprisonment.

*Norway, Military Penal Code, 1902, as amended in 1981, § 108(b).*

**Peru**

Peru’s Decree on the Use of Force by the Armed Forces (2010) states:
The following principles are recognized by the norms of international humanitarian law as applying before, during and after the use of force:

…

b. *Distinction* … is the differentiation which must be made between those who directly participate in hostilities and those who do not.

*Peru, Decree on the Use of Force by the Armed Forces, 2010, Article 7(b).*

**Spain**

Spain’s Royal Ordinances for the Armed Forces (2009) states: “In the conduct of any operation, [members of the armed forces] must take into account the principle of distinction between civilians and combatants … in order to protect the civilian population.”

*Spain, Royal Ordinances for the Armed Forces, 2009, Article 111.*

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**V. National Case-law**

**Colombia**

In 2004, in the *Constitutional Case No. C-037/04*, the Criminal Chamber of Colombia’s Constitutional Court stated that according to “the principle of distinction … parties to a conflict must distinguish between combatants and non-combatants (the civilian population), as the latter cannot be the object of attack”.

*Colombia, Constitutional Court, Constitutional Case No. C-037/04, Judgment of 27 January 2004, pp. 35–36.*

In 2006, in the *Constitutional Case No. T-165/06*, the First Appeals Chamber of Colombia’s Constitutional Court stated:
[W]ith regard to the conduct of hostilities, it is important to note that IHL is ruled by fundamental principles, such as the principles of distinction, limitation and proportionality. Indeed, … the principle of distinction imposes on weapon bearers the obligation to distinguish in their military actions between combatants and non-combatants.

*Colombia, Constitutional Court, Constitutional Case No. T-165/06, Judgment of 7 March 2006, pp. 7–8*

In 2007, in the *Constitutional Case No. C-291/07*, the Plenary Chamber of Colombia’s Constitutional Court stated:
[T]he essential principles of international humanitarian law have acquired *ius cogens* status, based on the fact that the international community as a whole has recognized their peremptory and imperative nature … Among the essential principles of international humanitarian law with *ius cogens* status applicable in internal armed conflicts … [is] … the principle of distinction.

*Colombia, Constitutional Court, Constitutional Case No. C-291/07, Judgment of 25 April 2007, p. 70.*

The general duty to distinguish between civilians and combatants is an essential duty binding the parties to any non-international armed conflict to differentiate at all times between civilians and combatants in order to protect civilians and their property. Indeed, parties to a conflict are bound to make every effort to distinguish between military objectives and civilians … This rule is found in international treaties applicable in internal armed conflicts and is binding on Colombia. It forms part of customary international humanitarian law and has attained *ius cogens* status.

*Colombia, Constitutional Court, Constitutional Case No. C-291/07, Judgment of 25 April 2007, p. 78.*

[footnote in original omitted]

**Germany**

In 2010, in the *Fuel Tankers* *case*, the Federal Prosecutor General at Germany’s Federal Court of Justice investigated whether war crimes or other crimes under domestic law had been committed in the course of an airstrike which was ordered by a colonel (*Oberst*) of the German armed forces against two tankers transporting fuel for the International Security Assistance Force in Afghanistan stolen by the Taliban near Kunduz and which resulted in the deaths of a number of civilians. The Federal Prosecutor General stated:
Pursuant to § 170 para. 2 StPO [Penal Procedure Code], the investigation proceedings which were initiated by the order of 12 March 2010 against Colonel (*Oberst*) Klein and Company Sergeant Major (*Hauptfeldwebel*) Wilhelm due to suspected offences under the VStGB [International Crimes Code] and other offences are to be terminated as a result of the investigations conducted and based on the sources of information set out hereafter and on the reasons given in detail hereafter.

*Germany, Federal Court of Justice, Federal Prosecutor General, Fuel Tankers case, Decision, 16 April 2010, p. 1.*

Colonel (*Oberst*) Klein’s actions were lawful under international law and therefore justified under domestic criminal law [hence not constituting murder] …
In the assessment of the lawfulness of military attacks in non-international armed conflict which result in the killing of persons, the victims’ status under the international law of armed conflict is of particular relevance. One must distinguish whether the victims are armed fighters of the adverse party, civilians directly participating in hostilities, or other civilians.

*Germany, Federal Court of Justice, Federal Prosecutor General, Fuel Tankers case, Decision, 16 April 2010, p. 59.*

**Israel**

In its judgment in *Physicians for Human Rights v. Prime Minister of Israel* in 2009 concerning the humanitarian situation in the Gaza Strip consequent to the start of Israeli military operations (“Cast Lead”) there in December 2008, Israel’s High Court of Justice stated: “One of the fundamental principles of international humanitarian law is the principle that distinguishes combatants and military targets from civilians and civilian targets, and grants protection to the latter.”

*Israel, High Court of Justice, Physicians for Human Rights v. Prime Minister of Israel, Judgment, 19 January 2009, § 21.*

**Spain**

In 2010, in the *Couso case*, which concerned the killing of a Spanish journalist in Baghdad on 8 April 2003 by troops of the United States of America, the Criminal Chamber of Spain’s Supreme Court referred to norms of IHL relevant to the case under review, including Article 48 of the 1977 Additional Protocol I.

*Spain, Supreme Court, Couso case, Judgment, 13 July 2010, Section II(II), Sexto, § 2, p. 13.*

**Venezuela**

In 2001, in the *Ballestas case*, the Colombian government requested the preventive detention and extradition of a Colombian citizen belonging to the armed group known as the Ejército de Liberación Nacional (National Liberation Army) for the crimes of rebellion, kidnapping, wrongful death, seizure and diversion of aircraft. The Chamber of Criminal Appeals of Venezuela’s Supreme Tribunal of Justice stated: “In wartime, distinctions must be made between combatants and non-combatants.”

*Venezuela, Supreme Tribunal of Justice, Ballestas case, Judgment, 10 December 2001, p. 8.*

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**VI. Other National Practice**

**Belgium**

A report submitted to the Belgian Senate in 1991 noted that the principle of distinction remained the foundation of the law of armed conflict.

*Belgium, Senate, Report, Enquête parlementaire sur l’existence en Belgique d’un réseau de renseignements clandestin international, 1990–1991 Session, Doc. 1117-4, 1 October 1991, § 20.*

**Denmark**

In 2008, in a joint cost benefit analysis of a possible introduction of a national moratorium on all cluster munitions, Denmark’s Ministry of Defence and Ministry of Foreign Affairs stated:
[The] provisions, which are outlined below, are generally recognized as being an expression of customary international law. …
The purpose of international humanitarian law is to protect the victims of war as much as possible. The central provision in this regard is API [1977 Additional Protocol I] Article 48, which states that:

Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

It follows from API that military attacks that do not respect the distinction between civilians and military targets are illegal.

*Denmark, Ministry of Defence and Ministry of Foreign Affairs, A Cost Benefit Analysis of a Possible Introduction of a National Danish Moratorium on All Cluster Munitions, 1 April 2008, p. 15.*

**Djibouti**

In 2010, in the History and Geography Textbook for 8th Grade, Djibouti’s Ministry of National Education and Higher Education stated: “The [Additional] Protocols of 1977 reaffirmed and spelled out in detail … [the principle] of distinction: ‘(…) [P]arties to the conflict shall at all times distinguish between the civilian population and combatants …’ (art. 45, Protocol I, see also art. 13, Protocol II).”

*Djibouti, Ministry of National Education and Higher Education, History and Geography Textbook for Eighth Grade, 2010, p. 188.*

**Ecuador**

In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, Ecuador stated: “The use of nuclear weapons does not discriminate, in general, military objectives from civilian objectives.”

*Ecuador, Written statement submitted to the ICJ, Nuclear Weapons case, 20 June 1995, § D.*

**Egypt**

In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, Egypt stated:
The distinction between combatants and non-combatants is one of the most important victories and accomplishments of international law since the early beginnings of the nineteenth century. Any authorization of nuclear weapons will definitely cause this principle to collapse.

*Egypt, Written statement submitted to the ICJ, Nuclear Weapons case, 20 June 1995, § 24; see also §§ 17 and 35(B)(4).*

**Finland**

In 2004, in a report to Parliament on Finland’s human rights policy, Finland stated:
In an armed conflict, the individual is protected not only by human rights law but also by the rules of international humanitarian law. The rules of humanitarian law are essentially based on two basic principles: the applicability of IHL to all armed conflicts irrespective of the reason of the conflict, and the distinction between combatants and civilians.

*Finland, Government report to Parliament on the human rights policy of Finland 2004, Ministry of Foreign Affairs, Helsinki, 2004, p. 82.*

**France**

The instructions given to the French armed forces for the conduct of Opération Mistral, simulating a military operation under the right of self-defence or a mandate of the UN Security Council, state: “All parties must at all times make a distinction between the civilian population and military objectives in order to spare the civilian population.”

*France, Etat-major de la Force d’Action Rapide, Ordres pour l’Opération Mistral, 1995, Section 6, § 66.*

In 2008, the Minister of Defence of France stated:
[France] is a party to the 1977 Additional Protocol I to the 1949 Geneva Conventions, which defines the major fundamental principles of protection of the civilian population against the effects of hostilities, in particular … the principle of discrimination … France considers this document to be a fundamental pillar of international humanitarian law and wishes it to become universal as soon as possible, in order to allow for the requirements of humanity during armed conflicts to be better respected.

*France, Response from the Minister of Defence to parliamentary written question No. 20626, Journal officiel de la République française, 6 May 2008, p. 3812.*

In 2009, the Minister of Foreign and European Affairs of France stated:
[O]ne of the essential principles of international humanitarian law is that a distinction must be made at all times and in all circumstances between combatants and non-combatants … There are few conflicts in which that principle is fully respected.

*France, Minister of Foreign and European Affairs, “The Savaging of Humanitarian Law”, New York Times, 28 January 2009, p. 1.*

In 2009, the Minister of Foreign and European Affairs of France stated:
Violations of humanitarian law are ever increasing, as the current crises are unfortunately there to remind us, whether we are looking at Darfur, Somalia, Gaza, Sri Lanka or the Kivus. … The means and methods of warfare know no limitation or restraint, [such as] distinction of targets …
We must react!

*France, Minister of Foreign and European Affairs, “International Humanitarian Law, an Imperative”, La Croix, 12 February 2009, p. 1.*

In 2009, the President of France stated:
We cannot resign ourselves to the suffering of millions of women and men who are victims of wars …
…
All parties to a conflict, and in the first place States, shall strictly respect their commitment to apply the provisions of international humanitarian law. One of its main principles is the distinction between civilian and military objectives: and yet, it is the civilian population who pays, by far, the highest price in armed conflicts. This is a scandal, this is unacceptable.

*France, Address by the President of the French Republic on the 90th Anniversary of the International Federation of Red Cross and Red Crescent Societies, 4 May 2009, p. 2.*

**Germany**

In 2010, in reply to a Minor Interpellation in the Bundestag (Lower House of Parliament) titled “Killing of German nationals by a US drone attack – Intervention of the German judiciary”, Germany’s Federal Government wrote:

15. How does the Federal Government evaluate the legality of acts of targeted killing of persons within the context of international and non-international armed conflicts …?

International humanitarian law distinguishes in international and non-international armed conflicts between, on the one hand, armed forces opposing one another (international armed conflict) or armed forces and opposed organized armed groups (non-international [armed conflict]) and, on the other hand, civilians.

*Germany, Lower House of Federal Parliament (Bundestag), Reply by the Federal Government to the Minor Interpellation by Members Jerzy Montag, Hans-Christian Ströbele, Omit Nouripour, further Members and the Parliamentary Group BÜNDNIS 90/DIE GRÜNEN, BT-Drs. 17/3916, 23 November 2010, p. 6.*

**India**

In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, India concluded: “The use of nuclear weapons in an armed conflict is unlawful being contrary to the conventional as well as customary international law because such a use cannot distinguish between the combatants and non-combatants.”

*India, Written statement submitted to the ICJ, Nuclear Weapons case, 20 June 1995, p. 4; see also p. 5.*

**Israel**

In 2008, in a background paper on Israel’s operations in Gaza, Israel’s Ministry of Foreign Affairs stated: “A core principle of the law of armed conflict is the ‘principle of distinction’ – the obligation to ensure at all times that a distinction is made between combatants and civilians.”

*Israel, Ministry of Foreign Affairs, background paper, Responding to Hamas Attacks from Gaza: Issues of Proportionality, December 2008, § 1.*

In 2009, in a report on Israeli operations in Gaza between 27 December 2008 and 18 January 2009 (the “Gaza Operation”, also known as “Operation Cast Lead”), Israel’s Ministry of Foreign Affairs stated:
The first core principle of the Law of Armed Conflict, as reflected both in treaty law and in customary international law, is that “the Parties to the conflict shall at all times distinguish between the civilian population and combatants … and accordingly shall direct their operations only against military objectives.” The principle imposes obligations on both parties to an armed conflict.

*Israel, Ministry of Foreign Affairs, The Operation in Gaza 27 December 2008–18 January 2009: Factual and Legal Aspects, 29 July 2009, § 94.*

[The 1977] Additional Protocol I, art. 48. Although the State of Israel is not a party to the Additional Protocols to the Geneva Conventions, it accepts that this provision, as with certain others addressing the principles of distinction and proportionality, accurately reflects customary international law. See *Public Committee against Torture in Israel v. Government of Israel*, HCJ 769/02 at § 20 (11 December 2005).

*Israel, Ministry of Foreign Affairs, The Operation in Gaza 27 December 2008–18 January 2009: Factual and Legal Aspects, 29 July 2009, § 94, footnote.*

**Japan**

In its oral pleadings before the ICJ in the *Nuclear Weapons case* in 1995, Japan stated: “With their colossal power and capacity for slaughter and destruction, nuclear weapons make no distinction between combatants and non-combatants.”

*Japan, Oral pleadings before the ICJ, Nuclear Weapons case, 7 November 1995, Verbatim Record CR 95/27, p. 36.*

**Lebanon**

The Report on the Practice of Lebanon refers to a 1996 report by the Lebanese Ministry of Justice, which stated that Israel had committed serious violations of the 1949 Geneva Conventions by failing to distinguish between civilians and combatants.

*Report on the Practice of Lebanon, 1998, Chapter 1.4, referring to Report by the Lebanese Ministry of Justice on possibilities for legal action against Israel, 12 April 1996.*

**Malaysia**

In 2010, during the consideration of the Status of the 1977 Additional Protocols by the Sixth Committee of the UN General Assembly, a statement of the delegation of Malaysia was summarized by the Committee in its records as follows:
8. [The delegate of Malaysia] said that …
…
10. … [t]he laws of naval warfare incorporated the fundamental principles of international humanitarian law, including necessity and proportionality …
11. [In the case of the attacks by the Israel Defense Forces on the Mavi Marmara and five accompanying vessels in May 2010] … [n]aval forces were … under an obligation to distinguish between civilians and combatants.

*Malaysia, Statement by the delegation of Malaysia before the Sixth Committee of the UN General Assembly on the Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflict, 18 October 2010, as published in the summary record of the 13th meeting, 8 December 2010, UN Doc. A/C.6/65/SR.13, §§ 8, 10 and 11.*

**New Zealand**

In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, New Zealand stated: “Discrimination between combatants and those who are not directly involved in armed conflict is a fundamental principle of international humanitarian law.”

*New Zealand, Written statement submitted to the ICJ, Nuclear Weapons case, 20 June 1995, § 71.*

**Nigeria**

According to the Report on the Practice of Nigeria, it is Nigeria’s *opinio juris* that the principle of distinction between combatants and civilians is part of customary international law.

*Report on the Practice of Nigeria, 1997, Chapter 1.1.*

**Norway**

In 2009, in a statement on “Cluster Munitions and the Oslo Process” at a NATO Parliamentary Assembly, Norway’s Deputy Minister of Defence (State Secretary) stated:
[A]ll States in all conflicts and operations have an obligation under international humanitarian law to separate between civilians on the one hand and combatants on the other, the first being entitled to protection and respect in situations of armed conflict. This is one of the most fundamental principles of the Law of Armed Conflict or International Humanitarian Law.

*Norway, Statement by the Deputy Minister of Defence (State Secretary) on “Cluster Munitions and the Oslo Process”, 23 May 2009.*

In 2009, in a statement at the Second Review Conference of the Ottawa Convention on Anti-Personnel Mines, Norway’s Minister of Foreign Affairs stated: “The principle of distinction is a cornerstone of all international humanitarian law instruments.”

*Norway, Statement by the Minister of Foreign Affairs at the Second Review Conference of the Ottawa Convention on Anti-Personnel Mines, 3 December 2009.*

**Philippines**

In 1991, in a Letter Directive to Commanders of Major Services and Area Commands, the Chief of Staff of the armed forces of the Philippines stated that all units must distinguish between combatants and the civilian population in order to ensure that civilians receive the respect and protection to which they are entitled.

*Philippines, Letter Directive to Commanders of Major Services and Area Commands, Office of the Chief of Staff, 1991, § 3a.*

**Saudi Arabia**

In its written statement submitted to the ICJ in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* in 2004, Saudi Arabia stated:
The Separation Wall imposes suffering and hardship, which does not distinguish between the civilian population and combatants. The Declaration of High Contracting Parties to the Fourth Geneva Convention of 1949, 5 December 2001, makes clear the obligation of the occupying Power to make such distinctions:

“The participating High Contracting Parties call upon the parties to the conflict to ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They also call upon the parties to abstain from any measures of brutality and violence against the civilian population whether applied by civilian or military agents and to abstain from exposing the civilian population to military operations.”

*Saudi Arabia,Written statement submitted to the ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 30 January 2004, p. 14.*

**Solomon Islands**

In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, Solomon Islands stated:
Under international law it is clear beyond any doubt that the use of a nuclear weapon against civilians, whatever the nature or size and destructive power of the weapon, will be rendered illegal by virtue of the application of the customary rule which states that belligerents must always distinguish between combatants and non-combatants and limit their attack only to the former. This is an old and well-established rule which has achieved universal acceptance.

*Solomon Islands, Written statement submitted to the ICJ, Nuclear Weapons case, 19 June 1995, § 3.47; see also Written statement submitted to the ICJ, Nuclear Weapons (WHO) case, 10 June 1994, § 3.38.*

**Somalia**

In 2011, in its report to the Human Rights Council, Somalia stated: “The Government forces are also bound to respect customary IHL rules relating to the prohibited methods and means of warfare[,] including the [principle] of distinction”.

*Somalia, Report to the Human Rights Council, 11 April 2011, UN Doc. A/HRC/WG.6/11/SOM/1, § 76.*

In 2011, during the consideration of Somalia’s report to the Human Rights Council, a statement of the delegation of Somalia was summarized by the Council as follows: “The principle … of distinction … must be respected in the conduct of military operations.”

*Somalia, Statement by the Delegation of Somalia before the Human Rights Council during the consideration of the report of Somalia, published in the Report of the Working Group of the Human Rights Council on the Universal Periodic Review, 11 July 2011, UN Doc. A/HRC/18/6, § 68.*

In 2011, in its comments on the concluding observations of the Human Rights Council concerning Somalia’s report, Somalia’s Transitional Federal Government stated: “The Government is committed to … taking all necessary measures to … ensure compliance with IHL including the core principles of distinction between combatants and civilians”.

*Somalia, Comments by the Transitional Federal Government of Somalia on the concluding observations of the Human Rights Council concerning the report of Somalia, submitted 21 September 2011, § 98.73.*

**South Africa**

In its consideration of the legality of the attack by the South African defence forces on the SWAPO base/refugee camp at Kassinga in Angola in 1978, the South African Truth and Reconciliation Commission stated: “International humanitarian law stipulates that a distinction must at all times be made between persons taking part in hostilities and civilians.”

*South Africa, Truth and Reconciliation Commission Report, 1998, Vol. 2, pp. 52–55, §§ 44–45.*

**Spain**

In 2010, in its report to the UN General Assembly on the status of the 1977 Additional Protocols, Spain stated:
Article 85 entitled “Principle of Humanity”, contained in Title IV on Operations [of the Royal Ordinances for the Armed Forces (2009)] clearly embodies the spirit of the [1949] Geneva Convention and its [1977] Additional Protocols, as it provides that “[the] … conduct [of members of the armed forces] in any conflict or military operation must conform to the applicable rules of the international treaties on international humanitarian law to which Spain is a party”.
That is further developed in Chapter VI on Ethics in Operations, which goes into specific duties under international humanitarian law … the principle of the distinction between civilians and combatants.

*Spain, Report on the Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflict, 5 May 2010, Section 2.*

**Sweden**

In 2007, in an answer to a question in Parliament, the Swedish Minister of Trade stated:
Then we have the humanitarian law principles regarding distinction, proportionality and unnecessary suffering, to which particular attention should be given. This means that a distinction must be drawn between military targets on the one hand and the civilian population and its property on the other, and that attacks may only be targeted at military targets.

*Sweden, Answer by the Minister of Trade to a Parliamentary interpellation on the sale of cluster munitions to the United States, 13 November 2007, Parliamentary Protocol 2007/08:23, § 18, Anf. 124.*

**United Kingdom of Great Britain and Northern Ireland**

In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, the United Kingdom stated: “The parties to an armed conflict are required to discriminate between civilians and civilian objects on the one hand and combatants and military objectives on the other and to direct their attacks only against the latter.”

*United Kingdom, Written statement submitted to the ICJ, Nuclear Weapons case, 16 June 1995, § 3.67.*

In 2003, in reply to a written question in the House of Commons, the UK Minister of State for the Armed Forces, Ministry of Defence, wrote: “Cluster bombs have been used against targets for which they were the most appropriate available weapon and where they could be used in accordance with international law, including with the principles of proportionality and discrimination.”

*United Kingdom, House of Commons, Written answer by the Minister of State for the Armed Forces, Ministry of Defence, Hansard, 8 April 2003, Vol. 403, Written Answers, col. 139W.*

In 2003, in reply to a written question in the House of Commons asking whether he would “make it his policy not to use cluster bombs in urban or populated areas in Iraq”, the UK Secretary of State for Defence wrote:
Cluster bombs are only used strictly in accordance with international law. This includes the principles of distinction and proportionality as well as precautionary measures to be taken in planning and conducting an attack, as contained in the First Additional Protocol of 1977 to the Geneva Conventions of 1949. The targeting process takes account of these principles in matching the type of weapon used to the target to be attacked. There will be circumstances when it would be considered more appropriate to use other munitions than cluster bombs. These circumstances are more likely to arise in urban or populated areas as cluster bombs engage targets that cover an area.

*United Kingdom, House of Commons, Written answer by the Secretary of State for Defence, Hansard, 14 April 2003, Vol. 403, Written Answers, col. 571W.*

The UK Government Strategy on the Protection of Civilians in Armed Conflict (2010) states: “IHL requires parties to a conflict to respect and protect civilians. In the conduct of military operations they must distinguish at all times between combatants and civilians”.

*United Kingdom, Foreign and Commonwealth Office, Government Strategy on the Protection of Civilians in Armed Conflict, March 2010, p. 4.*

**United States of America**

In explaining the US government’s position on the basic principles applicable in armed conflicts before the Third Committee of the UN General Assembly in 1968, the US representative stated that the principle of distinction, as set out in draft General Assembly Resolution 2444 (XXIII), constituted a reaffirmation of existing international law.

*United States, Statement before the Third Committee of the UN General Assembly, UN Doc. A/C.3/SR.1634, 10 December 1968.*

In 1991, in response to an ICRC memorandum on the applicability of IHL in the Gulf region, the US Department of the Army pointed out that “the obligation of distinguishing combatants and military objectives from civilians and civilian objects is a shared responsibility of the attacker, defender, and the civilian population as such”.

*United States, Letter from the Department of the Army to the legal adviser of the US Army forces deployed in the Gulf region, 11 January 1991, § 8(E), Report on US Practice, 1997, Chapter 1.4.*

In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that Article 48 of the 1977 Additional Protocol I “is generally regarded as a codification of the customary practice of nations, and therefore binding on all”.

*United States, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, 10 April 1992, Appendix O, The Role of the Law of War, ILM, Vol. 31, 1992, p. 625.*

The law of war with respect to targeting, collateral damage and collateral civilian casualties is derived from the principle of discrimination; that is, the necessity for distinguishing between combatants, who may be attacked, and noncombatants, against whom an intentional attack may not be directed, and between legitimate military targets and civilian objects.

*United States, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, 10 April 1992, Appendix O, The Role of the Law of War, ILM, Vol. 31, 1992, p. 621.*

According to the Report on US Practice: “It is the *opinio juris* of the United States that … a distinction must be made between persons taking part in the hostilities and the civilian population to the effect that the civilians be spared as much as possible.”

*Report on US Practice, 1997, Chapter 1.4.*

In March 2010, in a speech given at the Annual Meeting of the American Society of International Law, the US State Department’s Legal Adviser stated:
[T]his Administration has carefully reviewed the rules governing targeting operations to ensure that these operations are conducted consistently with law of war principles, including:

- First, the principle of *distinction*, which requires that attacks be limited to military objectives and that civilians or civilian objects shall not be the object of the attack;

…

In U.S. operations against al-Qaeda and its associated forces – including lethal operations conducted with the use of unmanned aerial vehicles – great care is taken to adhere to these principles in both planning and execution, to ensure that only legitimate objectives are targeted.

*United States, “The Obama Administration and International Law”, Speech by the Legal Adviser of the US Department of State given at the Annual Meeting of the American Society of International Law, Washington DC, 25 March 2010.*

[emphasis in original]

**Viet Nam**

In 2008, during a debate in the UN Security Council on the protection of civilians in armed conflict, the representative of Viet Nam stated that “parties to armed conflict should comply with the [principle] … of humanitarian law relating to distinction”.

*Viet Nam, Statement before the UN Security Council during a debate on the protection of civilians in armed conflict, 27 May 2008, p. 14.*

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**VII. United Nations**

**UN General Assembly**

In Resolution 2444 (XXIII), adopted in 1968, the UN General Assembly affirmed Resolution XXVIII of the 20th International Conference of the Red Cross and the basic humanitarian principle applicable in all armed conflicts laid down therein that “distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible”.

*UN General Assembly, Res. 2444 (XXIII), 19 December 1968, § 1(c), voting record: 111-0-0-15.*

In Resolution 2675 (XXV), adopted in 1970, the UN General Assembly recalled that “in the conduct of military operations during armed conflict, a distinction must be made at all times between persons actively taking part in the hostilities and civilian populations”.

*UN General Assembly, Res. 2675 (XXV), 9 December 1970, § 2, voting record: 109-0-8-10.*

**UN Secretary-General**

In 1998, in a report on protection for humanitarian assistance to refugees and others in conflict situations, the UN Secretary-General noted that the changing pattern of conflicts in recent years had dramatically worsened the problem of compliance with international law and listed as an example that “in situations of internal conflicts, whole societies are often mobilized for war and it is difficult to distinguish between combatants and non-combatants”.

*UN Secretary-General, Report on protection for humanitarian assistance to refugees and others in conflict situations, UN Doc. S/1998/883, 22 September 1998, § 12.*

The report pursuant to paragraph 5 of UN Security Council resolution 837 (1993) on the investigation into the 5 June 1993 attack on UN forces in Somalia noted:
The [1949 Geneva] Conventions were designed to cover inter-State wars and large-scale civil wars. But the principles they embody have a wider scope. Plainly a part of contemporary international customary law, they are applicable wherever political ends are sought through military means. No principle is more central to the humanitarian law of war than the obligation to respect the distinction between combatants and non-combatants. That principle is violated and criminal responsibility thereby incurred when organizations deliberately target civilians or when they use civilians as shields or otherwise demonstrate a wanton indifference to the protection of non-combatants.

*Report pursuant to paragraph 5 of Security Council resolution 837 (1993) on the investigation into the 5 June 1993 attack on United Nations forces in Somalia conducted on behalf of the UN Security Council, UN Doc. S/26351, 24 August 1993, Annex, § 9.*

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**VIII. Other International Organizations**

**European Union**

In a declaration adopted on the occasion of the 50th anniversary of the Geneva Conventions in 1999, the EU stated that it deplored the persistence of violations of IHL. It added that present-day conflicts often did not make the important distinction between combatants and civilians and that children and other vulnerable groups were targets of the conflicts.

*EU, Declaration on the occasion of the 50th anniversary of the Geneva Conventions, 12 August 1999, Pesc/99/77 10394/99 (presse 247).*

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**IX. International Conferences**

**International Conference of the Red Cross (1965)**

The 20th International Conference of the Red Cross in 1965 solemnly declared:
All Governments and other authorities responsible for action in armed conflicts should conform at least to the following principles: … that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible.

*20th International Conference of the Red Cross, Vienna, 2–9 October 1965, Res. XXVIII.*

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**X. International and Mixed Judicial and Quasi-judicial Bodies**

**International Court of Justice**

In its advisory opinion in the *Nuclear Weapons case* in 1996, the ICJ considered the principle of distinction between combatants and non-combatants to be one of the “cardinal principles contained in the texts constituting the fabric of humanitarian law” and also one of the “intransgressible principles of international customary law”.

*ICJ, Nuclear Weapons case, Advisory Opinion, 8 July 1996, §§ 78–79.*

**International Criminal Tribunal for the former Yugoslavia**

In its judgment in the *Blaškić case* in 2000, the ICTY held that “the parties to the conflict are obliged to attempt to distinguish between military targets and civilian persons”.

*ICTY, Blaškić case, Judgment, 3 March 2000, § 180.*

In its final report to the ICTY Prosecutor in 2000, the Committee Established to Review the 1999 NATO Bombing Campaign Against the Federal Republic of Yugoslavia stated: “One of the principles underlying IHL is the principle of distinction, which obligates military commanders to distinguish between military objectives and civilian persons or objects.”

*ICTY, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, The Hague, 14 June 2000, § 29.*

**Special Court for Sierra Leone**

In the *Sesay case* before the SCSL, the accused Sesay and Kallon, senior commanders in the Revolutionary United Front (RUF), Junta and Armed Forces Revolutionary Council (AFRC)/RUF forces, and the accused Gbao, senior commander in the RUF and AFRC/RUF forces, were each charged with … eight counts of war crimes, and two counts of other serious violations of international humanitarian law. In its judgment in the case in 2009, the Trial Chamber adopted “the view of the ICTY Appeals Chamber in the *Blaskić* case that there is an absolute prohibition against targeting civilians in customary international law”.

*SCSL, Sesay case, Judgment, 2 March 2009, § 81.*

(footnote in original omitted)

**Eritrea-Ethiopia Claims Commission**

In its *Western Front, Aerial Bombardment and Related Claims (Eritrea’s Claim)* partial award in 2005, the Eritrea-Ethiopia Claims Commission, in considering the principle of distinction between civilians and combatants, stated:
The provisions of [the 1977 Additional] Geneva Protocol I … represent the best and most recent efforts of the international community to state the law on the protection of the civilian population against the effects of hostilities. The Commission believes that those provisions reflect a generally shared view that some of the practices of the Second World War … should be outlawed for the future, and the Commission considers them to express customary international humanitarian law. Those provisions … emphasize the importance of distinguishing between civilians and combatants.

*Eritrea-Ethiopia Claims Commission, Western Front, Aerial Bombardment and Related Claims, Eritrea’s Claim, Partial Award, 19 December 2005, § 95.*

[footnotes in original omitted]

**Inter-American Commission on Human Rights**

In 1997, in the case concerning the events at La Tablada in Argentina, the Inter-American Commission on Human Rights underlined the obligation of the contending parties, on the basis of common Article 3 of the 1949 Geneva Conventions and customary principles applicable to all armed conflicts, “to distinguish in their targeting between civilians and combatants and other lawful military objectives”.

*Inter-American Commission on Human Rights, Case 11.137 (Argentina), Report, 18 November 1997, § 177.*

According to an Inter-American Commission on Human Rights report on the human rights situation in Colombia issued in 1999, IHL prohibits
the launching of attacks against the civilian population and requires the parties to an armed conflict, at all times, to make a distinction between members of the civilian population and persons actively taking part in the hostilities and to direct their attacks only against the latter and, inferentially, other legitimate military objectives.

*Inter-American Commission on Human Rights, Third report on the human rights situation in Colombia, Doc. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, 26 February 1999, § 40.*

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**XI. International Red Cross and Red Crescent Movement**

**ICRC**

To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that a distinction must be made between combatants and civilians at all times.

*Frédéric de Mulinen, Handbook on the Law of War for Armed Forces, ICRC, Geneva, 1987, § 387.*

In an appeal issued in 1979 with respect to the conflict in Rhodesia/Zimbabwe, the ICRC stated: “Fundamental humanitarian rules accepted by all nations – such as the obligation to distinguish between combatants and civilians, and to refrain from violence against the latter – have been largely ignored.”

*ICRC, Conflict in Southern Africa: ICRC appeal, 19 March 1979, § 2, IRRC, No. 209, 1979, p. 87.*

In a press release issued in 1984 in the context of the Iran–Iraq War, the ICRC stated:
In violation of the laws and customs of war, and in particular of the essential principle that military targets must be distinguished from civilian persons and objects, the Iraqi armed forces have continued to bomb Iranian civilian zones.

*ICRC, Press Release No. 1480, Conflict between Iran and Iraq and breaches of international humanitarian law: a renewed ICRC appeal, 15 February 1984, IRRC, No. 239, 1984, pp. 113–115.*

In several press releases issued in 1992, the ICRC reminded the parties to the armed conflict in Afghanistan of their duty to distinguish at all times between combatants and civilians.

*ICRC, Press Release No. 1712, Afghanistan: Appeal for Compliance with Humanitarian Rules, 5 May 1992; Press Release No. 1724, Kabul: ICRC urges respect for civilians as medical facilities struggle to cope, 20 July 1992; Press Release No. 1726, Afghanistan: Renewed ICRC Appeal for Compliance with Humanitarian Rules, 14 August 1992.*

In a Memorandum on the Applicability of International Humanitarian Law sent in 1990 to all States party to the Geneva Conventions in the context of the Gulf War, the ICRC stated:
The following general rules are recognized as binding on any party to an armed conflict: … a distinction must be made in all circumstances between combatants and military objectives on the one hand, and civilians and civilian objects on the other.

*ICRC, Memorandum on the Applicability of International Humanitarian Law, 14 December 1990, § II, IRRC, No. 280, 1991, p. 24.*

In a communication to the press in 1993, the ICRC reminded the parties to the conflict in Georgia of their obligation “to distinguish at all times between combatants and military objectives on the one hand, and civilians and civilian objects on the other”.

*ICRC, Communication to the Press No. 93/31, Georgia: ICRC activities in Abkhazia, 20 September 1993.*

In a communication to the press in 1993, the ICRC reminded the parties to the conflict in Nagorno-Karabakh of their obligation “to distinguish at all times between combatants and military objectives on the one hand and civilians and civilian property on the other”.

*ICRC, Communication to the Press No. 93/25, Nagorno-Karabakh conflict: 60,000 civilians flee fighting in south-western Azerbaijan, 19 August 1993.*

In 1994, in a Memorandum on Respect for International Humanitarian Law in Angola, the ICRC stated: “A clear distinction must be made in all circumstances between civilians and civilian objects on the one hand and combatants and military objectives on the other.”

*ICRC, Memorandum on Respect for International Humanitarian Law in Angola, 8 June 1994, § II, IRRC, No. 320, 1997, p. 503.*

In 1994, in a Memorandum on Compliance with International Humanitarian Law by the Forces Participating in Opération Turquoise in the Great Lakes region, the ICRC stated:
A clear distinction must be made, in all circumstances, between civilian persons who do not participate in confrontations and refrain from acts of violence and civilian objects on the one hand, and combatants and military objectives on the other.

*ICRC, Memorandum on Compliance with International Humanitarian Law by the Forces Participating in Opération Turquoise, 23 June 1994, § II, reprinted in Marco Sassòli and Antoine A. Bouvier, How Does Law Protect in War?, ICRC, Geneva, 1999, p. 1308.*

In a communication to the press in 1999, the ICRC called upon all the parties to the internal conflict in Sierra Leone to abide by the rules of IHL and in particular to make a clear distinction between combatants and civilians so as to protect persons not or no longer taking part in hostilities.

*ICRC, Communication to the Press No. 99/02, Sierra Leone: ICRC pulls out of Freetown, 14 January 1999.*

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**XII. Other**

**Institute of International Law**

In a resolution adopted at its Edinburgh Session in 1969, the Institute of International Law recalled:
The obligation to respect the distinction between military objectives and non-military objects, as well as between persons participating in the hostilities and members of the civilian population, remains a fundamental principle of the international law in force.

*Institute of International Law, Edinburgh Session, Resolution on the Distinction between Military Objectives and Non-military Objects in General and Particularly the Problems Associated with Weapons of Mass Destruction, 9 September 1969, § 1.*

**Americas Watch**

In 1985, in a report on violations of the laws of war in Nicaragua, Americas Watch stated:
Certain general principles of the customary law of armed conflict were recognized in U.N. General Assembly Resolution 2444 (XXIII), 13 January 1969, which was adopted by unanimous vote. This resolution affirms … that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population.

*Americas Watch, Violations of the Laws of War by Both Sides in Nicaragua: 1981–1985, New York, March 1985, pp. 19–20.*

**Africa Watch**

In 1989, in a report on violations of the laws of war in Angola, Africa Watch stated:
United Nations General Assembly Resolution 2444, *Respect for Human Rights in Armed Conflicts* … adopted by unanimous vote on December 19, 1969, expressly recognized this customary principle of civilian immunity and its complementary principle requiring the warring parties to distinguish civilians from combatants at all times … Furthermore, the International Committee of the Red Cross has long regarded these principles as basic rules of the laws of war that apply in all armed conflicts. The United States government also has expressly recognized these principles as declaratory of existing customary international law.

*Africa Watch, Angola: Violations of the Laws of War by Both Sides, New York, April 1989, p. 126.*

**International Institute of Humanitarian Law**

The Rules of International Humanitarian Law Governing the Conduct of Hostilities in Non-international Armed Conflicts, adopted in 1990 by the Council of the International Institute of Humanitarian Law, provides: “The obligation to distinguish between combatants and civilians is a general rule applicable in non-international armed conflicts.” The commentary on this rule notes that it is based on the St. Petersburg Declaration, Article 25 of the Hague Regulations, UN General Assembly Resolutions 2444 (XXIII) and 2675 (XXV), common Article 3 of the 1949 Geneva Conventions and Article 13(2) of the 1977 Additional Protocol II.

*International Institute of Humanitarian Law, Rules of International Humanitarian Law Governing the Conduct of Hostilities in Non-international Armed Conflicts, Rule A1 and Commentary, IRRC, No. 278, 1990, Commentary, pp. 387–388.*

**Helsinki Watch**

In 1992, in a report on war crimes committed in the conflict in Bosnia and Herzegovina, Helsinki Watch stated that:
United Nations General Assembly Resolution 2444, adopted by unanimous vote on December 19, 1969, expressly recognized the customary law principle of civilian immunity and its complementary principle requiring the warring parties to distinguish civilians from combatants at all times.

*Helsinki Watch, War Crimes in Bosnia-Hercegovina, Vol. I, New York, August 1992, p. 203.*

**International Institute of Humanitarian Law**

In 1995, the International Institute of Humanitarian Law stated that any declaration on minimum humanitarian standards should be based on “principles … of *jus cogens*, expressing basic humanitarian considerations[s] which are recognized to be universally binding”. According to the Institute, this includes the principle that “in the case where the situation is characterized by hostilities, the difference between combatants and civilians shall be made”.

*International Institute of Humanitarian Law, Comments on the Turku Declaration of Minimum Humanitarian Standards submitted to the UN Secretary-General, §§ 1 and 12, reprinted in Report of the Secretary-General prepared pursuant to UN Commission on Human Rights resolution 1995/29, UN Doc. E/CN.4/1996/80, 28 November 1995, pp. 8–9.*

**Section B. Attacks against combatants**

Quick navigation

**I. Treaties**

**St. Petersburg Declaration**

The preamble to the 1868 St. Petersburg Declaration states: “[T]he only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy.”

*Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, St. Petersburg, 29 November–11 December 1868, preamble.*

**Additional Protocol I**

Article 48 of the 1977 Additional Protocol I states: “Parties to the conflict … shall direct their operations only against military objectives.”

Article 52(2) of the 1977 Additional Protocol I states: “Attacks shall be limited strictly to military objectives.” *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977, Article 48. Article 48 was adopted by consensus. CDDH, Official Records, Vol. VI, CDDH/SR.41, 26 May 1977, p. 161.*