Chapter 1: Conduct of hostilities

Click on "CHAPTER BIBLIOGRAPHY" or "SPECIFIC BIBLIOGRAPHY" to see content

Chapter bibliography


Introduction

Specific bibliography

Suggested reading:


Further reading:


(See supra Fundamentals of IHL, Historical Development of International Humanitarian Law)

Cases and Documents

- ICJ, Nuclear Weapons Advisory Opinion [Para. 75]
- France, Accession to Protocol I [Para. 8]
- Colombia, Constitutional Conformity of Protocol II [Para. 9]

II. The protection of the civilian population against the effects of hostilities

Specific bibliography

Suggested reading:


Further reading:


1. Basic rule: Art. 48 of Protocol I

[CHL, Rule 7]

Quotation 1

Article 48: Basic rule

In order to ensure respect for and protection of the civilian population and civilian objects, the 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.

[Source: Protocol I]

Quotation 2
Considering: [...] That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy; That for this purpose it is sufficient to disable the greatest possible number of men. [...] 

(Source: Declaration Renouncing the Use, in Time of War, of certain Explosive Projectiles under 400 Grammes Weight, Saint Petersburg, November 29/December 11, 1868, paras 2-3 of the Preamble; original text in French; English translation in Parliamentary Papers, vol. LXV, 1869, p. 656; reprinted from Schindler, D. & Toman, J. (eds), The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents, 4th ed., Leiden, Boston, M. Nijhoff, 2004, p. 91; also available on http://www.icrc.org/ihl)

Cases and Documents

- Belgium, Public Prosecutor v. G.W.
- ICRC Appeals on the Near East
- Israel/Gaza, Operation Cast Lead
- Israel, Human Rights Committee’s Report on Beit Hanoun
- United States/United Kingdom, Report on the Conduct of the Persian Gulf War
- Case Study, Armed Conflicts in the former Yugoslavia (Para. 13)
- Federal Republic of Yugoslavia, NATO Intervention
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (Paras 229-230)

SPECIFIC BIBLIOGRAPHY

Suggested reading:


Further reading:


2. Field of application

P I Art. 49

SPECIFIC BIBLIOGRAPHY

Suggested reading:


a. acts of violence in defence and offence

CASES AND DOCUMENTS

- United States/United Kingdom, Report on the Conduct of the Persian Gulf War

SPECIFIC BIBLIOGRAPHY

Suggested reading:


b. no matter where, including attacks on the party’s own territory under enemy control

SPECIFIC BIBLIOGRAPHY

Further reading:


SPECIFIC BIBLIOGRAPHY

Further readings:


Further readings:


3. Principles

a. only military objectives may be attacked

(See infra, 4. Definition of Military Objectives)

b. even attacks directed at military objectives are prohibited if the expected incidental effects on the civilian population are excessive

(See infra, Conduct of Hostilities, 6. Prohibited Attacks, c. Indiscriminate Attacks, dd) Principle of Proportionality)
Further readings:


SPECIFIC BIBLIOGRAPHY

**Suggested reading:**

5. Definition of the civilian population

PI Art. 50

Introductory text

The principle of distinction can only be respected if not only the permissible objectives but also the persons who may be attacked are defined. As combatants are characterized by a certain uniformity and civilians by their great variety.

The attack on a military objective does not become unlawful because of the risk that a civilian who works or is otherwise present in it may come to harm during the course of the attack.

Although not directly participating in hostilities, civilians only lose their protection from attack and the effects of hostilities if and for such time as they directly participate in hostilities. This argument, which could be invoked to justify acts that otherwise qualify as extra-judicial executions, is, at a minimum, incompatible with the wording of Art. 50(1) of Protocol I.

Because of the difficulties in identifying such persons in the conduct of hostilities, it also puts other civilians at risk.

Thus, under this definition there is no category of “quasi-combatants”, i.e. civilians contributing so fundamentally to the war effort (e.g. workers in ammunition factories) that they lose their civilian status although not directly participating in hostilities. Indeed, in IHL there can logically be no such category. If the civilian population is to be protected, only one distinction is practicable: the distinction between those who (may) directly participate in hostilities, on the one hand, and all others, who do not, may and cannot militarily hinder the enemy from obtaining control over their country by means of a complete military occupation, no matter what their contribution to the war effort may be otherwise, on the other.

To allow attacks on persons other than combatants would also violate the principle of necessity, because victory can be achieved by overcoming only the combatants of a country – however efficient its armament industry and however genial its politicians may be. All this obviously does not preclude military objectives, such as armament factories, from being attacked; subject to the principle of proportionality – the attack on a military objective does not become unlawful because of the risk that a civilian who works or is otherwise present in it may come to harm during the course of the attack.

If one person so defined is a civilian, any number of such persons constitute the civilian population. According to proportionality as a general principle of law, the presence of individual non-civilians among a great number of civilians does not deplete the latter of the character of a civilian population, nor does it mean that the non-civilians may not be individually attacked provided that the necessary precautions are taken.

CASES AND DOCUMENTS

- Israel/Gaza, Operation Cast Lead [Part I, paras 237-248, Part II, paras 393-437]
- European Court of Human Rights, Komnov v. Latvia
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [para 118]

Suggested reading


Further reading:

- HLAJKOVA Monika, “Reconstructing the Civilian/Combatant Divide: A Fresh Look at Targeting in Non-international Armed Conflict”, in Journal of Conflict and Security Law

SPECIFIC BIBLIOGRAPHY

- P I Art. 50(1) [CIHL, Rule 5]
Under IHL, lawful methods of warfare are not unlimited. In particular, IHL prohibits certain kinds of attacks. The civilian population may never be attacked; this prohibition includes attacks the purpose of which is to terrorize the population. IHL also proscribes attacks directed at civilian objects. Even those attacks directed at a legitimate military objective are regulated by IHL; such attacks must not be indiscriminate, i.e., the weapons utilized must be capable of being directed at the specific military objective and the means used must be in proportion to the military necessity. The principle of proportionality prohibits attacks, even when directed at a military objective, if they “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” This principle is the inescapable link between the principles of military necessity and humanity, where they pull in opposite directions. Although military advantage, which may be taken into account, is qualified, the principle of proportionality remains very difficult to apply, and any attempt to weigh the expected military advantage against the anticipated civilian losses or damage to civilian objects is inevitably dependent on subjective value judgements, especially when both probabilities, i.e. gaining the advantage and affecting civilians, can be gauged with less than 100% accuracy.

In addition, if a military objective is targeted and the principle of proportionality is respected, but civilians or civilian objects may nevertheless be affected by the attack, precautionary measures must be taken.

Felicitas, =>; IHL...
SPECIFIC BIBLIOGRAPHY

Suggested reading:

Further readings:
- MEYROWITZ Henry, “Le bombardement stratégique d’après le Protocole I aux Conventions de Genève”, in Fundamentals of IHL, D. Sources of Contemporary International Humanitarian Law, III. Fundamental principles of International Humanitarian Law, 2) Principles of International Humanitarian Law; c) proportionality, P I Art. 51(4)(a) [CIHL, Rule 12(a)]

CASES AND DOCUMENTS

aa) attacks not directed at a specific military objective
- United States/United Kingdom, Report on the Conduct of the Persian Gulf War
- Georgia/Russia, Human Rights Watch’s Report on the Conflict in South Ossetia [Paras 65-74]
- ICTY, The Prosecutor v. Gotovina and Markač
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [paras 256, 255-256, 261]

specification

bb) use of weapons which cannot be directed at a specific military objective
- Israel, Operation Cast Lead [Part II, paras 395-399]
- Israel, Human Rights Committee’s Report on Beit Hanoun [Para. 34]

cc) treating different military objectives as a single military objective
- United States/United Kingdom, Report on the Conduct of the Persian Gulf War
- PI Art. 51(4)(b) [CIHL, Rule 12(b)]

specification

dd) principle of proportionality
(See also supra, Fundamentals of IHL, D. Sources of Contemporary International Humanitarian Law, III. Fundamental principles of International Humanitarian Law, 2) Principles of International Humanitarian Law; c) proportionality
- United States/United Kingdom, Report on the Conduct of the Persian Gulf War
- Georgia/Russia, Human Rights Watch’s Report on the Conflict in South Ossetia [Paras 65-74]
- ICTY, The Prosecutor v. Gotovina and Markač
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [paras 291-292]

also covers reasonably foreseeable incidental effects

CASES AND DOCUMENTS

- ICRC, The Challenges of Contemporary Armed Conflicts
- ICJ, Nuclear Weapons Advisory Opinion [Para. 43]
- Israel, The Targeted Killings Case [Paras 40-46]
- Israel, Human Rights Committee’s Report on Beit Hanoun [Paras 38-42]
- United States/United Kingdom, Report on the Conduct of the Persian Gulf War
- ICTY, The Prosecutor v. Kupreski et al. [Para. 529]
- Federal Republic of Yugoslavia, NATO Intervention [Part A, paras 4, 18-79 and Part B, paras 75-78]
- Afghanistan, Drug Dealers as Legitimate Targets
- Afghanistan, Goldheard Saved from Attack
- Afghanistan, Assessment of ISAF Strategy
- Civil War in Nepal [Part II]
- ECHR, Isayeva v. Russia
- Georgia/Russia, Human Rights Watch’s Report on the Conflict in South Ossetia [Paras 28-30, 41-47]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 65-67]
- Iran: Victim of Cyberwarfare
- ICTY, The Prosecutor v. Gotovina and Markač
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015
- Autonomous Weapon Systems
- Israel/Palestine, Operation Protective Edge (Gaza, 13 June - 26 August 2014)
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [paras 155, 160, 168, 179, 204-206]

SPECIFIC BIBLIOGRAPHY

Suggested reading:
Further readings:

**d. attacks against the civilian population or (civilian objects) by way of reprisals**

(See infra State Responsibility 2. Consequences of Violations c. Application of The General Rules on State Responsibility e) Admissibility of Reprisals)

**CASES AND DOCUMENTS**

- United Kingdom and Australia, *Applicability of Protocol I* [Part C]
- United States, *President Respects Protocol I*
- ICRC, *Interim Memoranda*
- Democratic Republic of Congo, *Conflict in the Kasai* [Part III, paras 12-23; 37]
- *Israel: Blockade of Gaza and the Flotilla Incident*
- European Court of Human Rights, *Konov v. Latvia*

**7. Loss of protection: The concept of direct participation in hostilities and its consequences**

- P I, Art. 51(d) and (21)

**CASES AND DOCUMENTS**

- *Australia/Afghanistan, Inquiry into the Conduct of Australian Defence Forces*
- ICRC, *The Challenges of Contemporary Armed Conflicts*
- ICRC, *Interpretative Guidance on the Nature of Direct Participation in Hostilities*
- ECHR, *Kosovo v. Hungary*
- *Israel, The Targeted Killings Case* [Para 24-40]
- Israel, *Detention of Unlawful Combatants* [Part A, paras 13 and 21; Part B]
- *Inter-American Commission on Human Rights, Tablada* [Paras 178 and 188]
- ICG, *The Prosecutor v. Thomas Lubanga Dyilo* [Paras 259-267]
Further reading:


8. The civilian population is not to be used to shield military objectives

P I Art. 51(7) [IHL, Rule 97]

Introductory text

IHL prohibits attacks against the civilian population and civilian objects. IHL also prohibits abuse of this prohibition: civilians, the civilian population and certain specially protected objects may not be used to shield a military objective from attack.[49] The decisive factor for distinguishing the use of human shield from non-compliance with the obligation to take passive precautions[50] is whether the interfering between civilians and combatants, and/or military objectives, is the result of the defender’s specific intention to obtain ‘protection’ for its military forces and objectives, or simply of a lack of care for the civilian population.

If the defender violates the prohibition to use human shields, the “shielded” military objectives or combatants do not cease to be legitimate objects of attack merely because of the presence of civilians or protected objects.[50] It is generally agreed that involuntary human shields nevertheless remain civilians. Care must therefore be taken to spare them when attacking a legitimate objective.[51] It is in an extreme case, if the anticipated incidental loss of life or injury among involuntary human shields is excessive in relation to the concrete and direct military advantage expected from attacking the military objective or combatants, an attack directed against the latter may become unlawful.[52] The status of voluntary human shields is more controversial. Some consider that acting as voluntary human shields constitutes direct participation in hostilities, which would cause the persons concerned to lose protection against the effects of hostilities while they act as human shields. Others object, first, that in order to classify an act as direct participation, the act must provoke, through a physical chain of causality, harm to the enemy or its military operations. Human shields are a moral and legal rather than physical means to an end: to hinder the enemy from attacking. Second, the theory considering voluntary human shields as civilians directly participating in hostilities is self-defeating. If it were correct, the presence of human shields would not have any legal impact on the ability of the enemy to attack the shielded objective – but an act which cannot have any impact whatsoever upon the enemy cannot possibly be classified as direct participation in hostilities. Third, the distinction between voluntary and involuntary human shields refers to a factor, i.e. the voluntary involvement of the target, which is very important in criminal law and, to a lesser extent, in law enforcement operations, but is completely irrelevant in IHL. A soldier of a country with universal compulsory military service is just as much (and for far as long) a legitimate target as a soldier who is a member of an all-volunteer army. Fourth, the distinction is not practicable. How can a pilot or soldier launching a missile know whether the civilians he observes around a military objective are there voluntarily or involuntarily? What counts as a voluntary presence?

Further reading:

- Colombia, Constitutionality of IHL Implementing Legislation [Paras D. 3.3.1-5.4.3., Para. E.1]
- Afghanistan, Drug Dealers as Legitimate Targets
- Afghanistan, Code of Conduct for the Mujahideen [Arts 7, 9, 20-21]
- United Kingdom, Code of Conduct for Soldiers
- United States, The Obama Administration’s Interim Standards
- Civil War in Nepal [Part II]
- ECHR, Alzheimer v. Russia [Paras 132-136]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 48-51]
- Mali, Conduct of Hostilities
- Engaging Non-state Armed Groups on the Protection of Children
- Syria, Code of Conduct of the Free Syrian Army
- Malaysia/Philippines, Conflict over the Spratly of Sulu
- US, Obama's Speech on Drone Policy
- ICHR, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Israel, Blockade of Gaza and the Flotilla Incident
- European Court of Human Rights, Korovin v. Latvia
- General Assembly, The use of drones in counter-terrorism operations
- U.S., Lethal Operations against Al-Qa'ida Leaders
- United States of America, The Death of Osama bin Laden
- Private Military Security Companies
- Syria, Press conference with French President Francois Hollande and Russian President Vladimir Putin
In spite of the many detailed provisions designed to guarantee their protection, cultural objects are still often collateral victims of modern conflicts. In most cases, their irreparable destruction often constitutes a serious obstacle to the restoration of normal relations between former belligerents. Cultural objects are thus of great importance for the survival of the civilian population, such as water, medical equipment (including transport used for medical purposes) and food. [35] Medical equipment (including transport used for medical purposes) is a final group of specially protected objects against which attack is prohibited. [36]

9. Protected Objects

Introductory text

In order to further safeguard the civilian population during armed conflicts, IHL protects specific objects from attack. It prohibits attacks against civilian objects, which are all objects not defined as military objectives. [33] Thus, a civilian object is one failing to contribute to military action because of, for example, its location or function, and because its destruction would provide no military advantage. In addition, IHL grants some objects, most of which are civilian objects anyway, special protection. In addition to the general protection afforded to them as civilian objects, special protection means that these objects may not be used for military purposes by those who control them and should therefore never become military objectives under the two-pronged test of the definition of military objectives. Second, even if they meet the test and are effectively used for military purposes, specially protected objects may only be attacked under restricted circumstances and following additional precautionary measures. For each category, the specific rules on these issues are different.

Specially protected objects include: cultural objects. [32]

Case and Documents

Israel, House Demolitions in the Occupied Palestinian Territory [Parts D and E]
ICTY, The Prosecutor v. Ragc [Part A., paras 39 and 57]
Croatia, Prosecutor v. Rajko Radišević and Others
Libya, NATO Intervention 2011
Iraq, Forced displacement and deliberate destruction

sBibiliography

Suggested reading:


b. specially protected objects

aa) cultural objects

P. I, Art. 52(1) [ICHL, Rule 9]
• United States. United Kingdom. Report on the Conduct of the Persian Gulf War
• ICTY. The Prosecutor v. Stigler [Part B., paras 229-233 and 298-329]
• Colombia. Constitutionality of IHL Implementing Legislation [Paras 2, and E.3]
• Afghanistan. Destruction of the Bamyan Buddhas
• Georgia. Russia. Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 52-55]
• Cambodia. Thailand. Border Conflict around the Temple of Preah Vihear
• Mali. Destruction of World Cultural Heritage
• Mali. Accountability for the Destruction of Cultural Heritage
• Syria. Destruction of Cultural Heritage

SPECIFIC BIBLIOGRAPHY

Suggested reading:

Further reading:

bb) objects indispensable to the survival of the civilian population

P. I. Art. 54 (EHL Rules 52 and 54)

CASES AND DOCUMENTS

• ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2014 iPara. 206
• water

Cases and Documents

• Water and Armed Conflicts
• Israel. Operation Cast Lead [Part II, paras 913-989]
• ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2014 [Paras 155, 160]

SPECIFIC BIBLIOGRAPHY

Suggested reading:

Further reading:

cc) works and installations containing dangerous forces

P. I. Art. 56 (EHL Rule 42)

Cases and Documents

• Croatia. Prosecutor v. Raiko Radulovic and Others
• Colombia. Constitutionality of IHL Implementing Legislation [Paras 2, and E.3]
• Iran. Violent of Cyberwarfare

SPECIFIC BIBLIOGRAPHY

Suggested reading:
• md) medical equipment

Cases and Documents

• Israel/Lebanon/Hezbollah. Conflict in 2006 [Part I, paras 172-177]
c. the natural environment

Suggested reading:


Further reading:

\textbf{Suggested reading:}


\textbf{Cases and Documents}

- Art. 57(2)(b) [CHIL, Rule 10]
- Art. 57(2)(c) [CHIL, Rule 10]
11. Precautionary measures against the effects of attacks

Introductory text

Contrary to Art. 57 of Protocol I (Art 57) which lays down rules for the conduct to be observed in attacks on the territory under the control of the enemy, Art. 58 of Protocol I relates to specific measures which every Power must take in its own territory in favour of its nationals, or in territory under its control. These precautionary measures against the effects of attacks (which are often referred to as “Conduct of Defence” (Art 58)) include three specific obligations that Parties to a conflict shall discharge “to the maximum extent feasible” (Art 58).

1. They must “endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives” (Art 58). In most cases, only specific categories of the population (i.e. children, the sick or women) are evacuated; sometimes the entire population is evacuated. It should be underlined that, when carrying out such measures, occupying powers remain bound by the strict limitations spelled out in Art. 49 of Convention IV.

2. They must “avoid locating military objectives within or near densely populated areas” (Rule 32). This obligation, which covers “both permanent and mobile objectives […] should already be taken into consideration in peacetime” (Rule 32).

3. They must “take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations” (Rule 33).

Practically speaking, the “other measures” are chiefly building shelters to provide adequate protection against the effects of hostilities for the civilian population, and the training of efficient civil defence services. The wording, however, clearly indicates that these obligations are weaker than those of an attacker. They have to be taken only “to the maximum extent possible,” and the defender only has to “endeavour to remove” the civilian population and “avoid” locating military objectives nearby. While responsibility for the protection of the civilian population against the effects of hostilities is shouldered by both the attacker and the defender, its weight is not equally distributed.

Cases and Documents

- UN, Secretary-General’s Reports on the Protection of Civilians in Armed Conflict
- Israel, Operation Cast Lead (Part I, paras 151-155; Part II, paras 439-498)
- ICRC, UN Security Council Assessing Violations of International Humanitarian Law (Parts C and D)
- United States/United Kingdom, Report on the Conduct of the Persian Gulf War
- Civil War in Nepal (Part II, paras 439-498)
- EUR, Tatsiyeva v. Russia (Paras 15, 23, 26-28, 69-70)
- Georgia/Russia, Human Rights Watch’s Report on the Conflict in South Ossetia (Paras 18-25)
- ECHR, Isayeva v. Russia
- The armed conflict in Syria
- Israel/Palestine, Operation Protective Edge (Gaza, 13 June - 26 August 2014)
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (para 218)

Suggested reading:


Further reading:


12. Presumptions

P I, Arts 50(1) and 52(3)

Cases and Documents

- France, Accession to Protocol I (Part B, para. 9)
- Belgium, Public Prosecutor v. G.W.
- United States/United Kingdom, Report on the Conduct of the Persian Gulf War
- Human Rights Committee, Guerero v. Colombia
- Afghanistan, Drug Dealers as Legitimate Targets
- ECHR, Khatsiyeva v. Russia (Paras 21, 132-139)
- European Court of Human Rights, Komkov v. Latvia

13. Zones created to protect war victims against the effects of hostilities

GC I, Art. 23; GC IV, Arts 14 and 15; P I, Arts 59 and 60; CIHL, Rules 35-37

Introductory text

While IHL mainly tries to protect civilians and other categories of protected persons by obliging combatants to identify positively military objectives and to only attack them, respecting civilians wherever they happen to be, it also foresees different types of zones aimed at separating civilians from military objectives. The following table summarizes the different types of protected zones. They have in common the purpose of protecting war victims from the effects of hostilities (but not from falling under the control of the enemy) by assuring enemy forces that no military objectives exist in a defined area where war victims are concentrated. Thus, if the enemy respects IHL, the war victims run no risk of being harmed by the effects of hostilities. The risk with such zones is that they presuppose the willingness of the enemy to respect IHL. Hence, they are pointless against an enemy determined to violate IHL. On the contrary, such zones may then lead to the displacement of civilians and help the enemy target and abuse civilians by concentrating them in a confined location. Established under jus ad bellum, and meant to prevent certain areas and the war victims in them from falling into enemy hands.
Protected Zones under IHL

Cases and Documents

- Sri Lanka, Jaffna Hospital Zone
- Sri Lanka, Conflict in the Vanni [Paras 12-16]
- Case Study, Armed Conflicts in the former Yugoslavia [14]
- Bosnia and Herzegovina, Constitution of Safe Areas in 1992-1993
- Netherlands, Responsibility of International Organizations [Paras 2.4 and 2.6]
- ECHR, Isayeva v. Russia [Paras 16 and 186]

Suggested reading:

- BOUVIER Antoine, “Zones protégées, zones de sécurité et protection de la population civile”, in BOUSTANY Katia & DORMOY Daniel, Perspectives humanitaires entre conflits, droit(s) et action, Brussel, Bruylant, 2002, pp. 251-269.

Further reading:

  a. open cities

SPECIFIC BIBLIOGRAPHY
14. Civil defence

P I, Arts 61-67

Sspecific BIBLIOGRAPHY

Suggested reading:


SCHULTZ E., Civil Defence in International Law, Copenhagen, Danish National Civil Defence and Emergency Planning Directorate, 1977, 59 pp.

Footnotes

[1] See HR, Art. 21

[2] Those specially protected objects, e.g., dams, dikes, and hospitals, may not be used by those who control them for military action and should therefore never become military objectives. If they are however used for military purposes, even they can under restricted circumstances become military objectives. (See, e.g., P I, Art. 56(2) GC IV, Art. 19)

[3] See P I, Art. 52(2)

[4] Indeed, only a material object can be a military objective under IHL, as immaterial objectives can only be achieved, not attacked. It is the basic idea of IHL that political objectives may be achieved by a belligerent with military force only by directing the latter against material enemy objectives or encompassing attacks, they can only be considered “attacks” if they have military consequences.

[5] In practice, however, one cannot imagine that the destruction, capture, or neutralization of an object contributing to the military action of one side would not be militarily advantageous for the enemy: it is just as difficult to imagine how the destruction, capture, or neutralization of an object could be a military advantage for one side if that same object did not somehow contribute to the military action of the enemy.

[6] One cannot imagine how it could do this other than by its “nature, location, purpose or use.” Those elements foreseen in Art. 52(2) only clarify that not only objects of a natural life are military objectives.

[7] Characterizing the contribution as “effective” and the advantage as “definitive” – as Art. 52(2) does – avoids that everything can be considered as a military objective, taking into account indirect contributions and possible advantages; thus, the limitation to “military” objectives could be too easily undermined.

[8] If force could be used to achieve the political aim by directing it at any advantage, not just military objectives, even the civilian population as such would be attacked, as they might well influence the enemy government. Then, however, there would be no more contributions and possible advantages; thus, the limitation to “military” objectives could be too easily undermined.

[9] This variety justifies the presumption of civilian status provided for in P I, Art. 50(1)

[10] The definition of civilians benefiting from protected civilian status under the Convention IV is more restrictive in that it excludes those in the power of their own side, but it is also complementary to that of the combatant. (See GC IV, Art. 4)

[11] See P I, Art. 51(7) and infra, Conduct of Hostilities, II. The protection of the civilian population against the effects of hostilities, 71 Loss of protection: The concept of direct participation in hostilities and its consequences

[12] See P I, Art. 50(2)

[13] See P I, Art. 50(3)

[14] See P I, Art. 51(2) and 85(3) P II, Art. 13


[16] See P I, Art. 59(2)

[17] See HR, Art. 22 P I, Art. 51(4) and (5)

[18] See P I, Art. 51(5)(b)

[19] See HR, Arts 22 and 27; GC IV, Art. 19 (concerning hospitals); P I, Art. 57(2)

[20] See P I, Arts 51(3), 52, 55, 54(2), 55(3) and 85(3)

[21] See supra

[22] See P I, Art. 51(3)- P II, Art. 13(3)

[23] See ICR, Intensive Guidance on the Notion of Direct Participation in Hostilities


[26] See ICR, Intensive Guidance on the Notion of Direct Participation in Hostilities

[27] See P I, Art. 58 and infra Conduct of Hostilities, II. The protection of the civilian population against the effects of hostilities, 11 Precautionary measures against the effects of attacks

[28] See P I, Art. 52

[29] See P I, Arts 54(8) and 57

[30] See P I, Arts 51(8)(b) and 57

[31] See HD, Arts 26 and 27; P I, Arts 48, 52, and 85(3)


[33] See P I, Art. 54- P II, Art. 14

[34] See P I, Arts 55, 56, and 85(3)

[35] See P I, Art. 56(2)

[36] See P I, Art. 55; see also Convention of 10 December 1976 on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)

[37] See GC I, Arts 11(2) and 11(4); GC II, Art. 23 and 27; and 38(3); GC IV, Arts 19 and 21; 22; P I, Arts 20 and 21; P I, Art. 51

[38] See P I, Art. 50(7)

[39] See P I, Art. 57(2)(b)

[40] See HD, Art. 28 GC IV, Arts. 19 (concerning hospitals); P I, Art. 57(2)(c)

[41] See P I, Art. 57(2)

[42] See P I, Art. 57(2)(a)

[43] See P I, Art. 57(2)(c)

[44] See supra Conduct of Hostilities, II. The protection of the civilian population against the effects of hostilities, 10 Precautionary measures in attack


[46] See P I, Art. 58(1)

[47] See P I, Art. 58(a)

[48] See P I, Art. 58(b)


[50] See P I, Art. 58(c)

III. Means and methods of warfare

P I, Arts 22-24

Introductory text

[We are deeply grateful to Dr. Théo Bourbuche-JHL consultant, who wrote his PhD thesis (L’interdiction des maux superflus : contribution à l’étude des principes et règles relatifs aux moyens et méthodes de guerre en droit international humanitaire, Graduate Institute of International and Development Studies, Geneva, 2008) on the concept of superfluous injury or unnecessary suffering, for this contribution.]

Under IHL the term “rules on means and methods of warfare” refers to a complex and large set of norms that are relatively fragmented and not systematically identified as such. While the term “means of warfare” commonly relates to the regulation of weapons, the term “methods” covers a broader array of rules depending on the definition considered. Traditionally, with regard to weapons, “means” encompasses weapons, weapons systems or platforms employed for the purposes of attack, whereas “methods” designates the way or manner in which the weapons are used. However, the concept of method of warfare also comprises any specific, tactical or strategic, ways of conducting hostilities that are not particularly related to weapons and that are intended to overwhelm and weaken the adversary, such as bombing, as well as the specific tactics used for attack, such as high altitude bombing. The term “methods” is rather new in treaty law (64).

State practice offers examples of these two understandings of “methods”. The IHL governing means and methods of warfare contains two types of norms: general principles banning certain effects, and specific rules addressing particular weapons or methods. The distinction between “means” and “methods” is also related to the way IHL regulates the use of weapons. This branch of law either prohibits the use of certain weapons in any circumstances due to their inherent characteristics or it merely restricts and limits certain ways of using all weapons or certain specific weapons. For example, the prohibition of indiscriminate effects may be relevant in relation to the very nature of the effects of a weapon and at the same time for any type of weapon that can potentially be used indiscriminately.

Suggested reading: 

Historically, prohibitions and limitations on means and methods of warfare were prompted by the concern to protect combatants, which saw the emergence of the principle prohibiting weapons causing superfluous injury or unnecessary suffering and the ban on specific weapons, such as explosive projectiles weighing less than 400 grams or dum-dum bullets, as well as particular methods like killing or wounding treacherously. Protocol I laid down elaborate principles and rules governing means and methods of warfare aimed at protecting the civilian population and objects, such as the prohibition of indiscriminate attacks, including those which employ a method or means of combat the effects of which cannot be limited as required by the Protocol. While most of the treaty norms pertaining to means and methods of warfare apply only in times of international armed conflict, international customary law applicable to non-international armed conflicts progressively evolved to contain the same rules in this regard.

The overarching principle of IHL governing means and methods of warfare stipulates that the right of the parties to a conflict to choose means and methods of warfare is not unlimited. The principles prohibiting the means and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and the principle prohibiting means and methods of warfare causing indiscriminate effects are derived from this. Protocol I does not list the latter principle among the basic rules under the section on means and methods of warfare, but in the section on the protection of the civilian population against effects of hostilities. Indeed, this principle protects only civilians. Protocol I further prohibits means or methods of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

The relationship between the general principles and the specific rules on weapons remains a delicate issue, notably concerning the extent to which the latter merely crystallize the former. For example, the prohibition to cause superfluous injury or unnecessary suffering is considered by some to outlaw in and of itself certain weapons in the absence of a particular rule, while others assert that it must be translated by States into specific prohibitions before it can produce proper legal effects. The latter approach is questionable, however, as it appears to confuse the normative value of the principle per se with the issue of its interpretation and application to specific weapons. First, it is well recognized that a weapon not covered by a specific norm remains regulated by the general principles. Second, States do rely on the principles themselves, including to prohibit methods of warfare.

Furthermore, the States parties to Protocol I are under an obligation to assess the legality of new weapons, means or methods of warfare, including in the light of the general principles. Hence legal rules with a normative value of their own.

Outside the Geneva Conventions and Protocols, IHL contains a series of prohibitions and limitations of use for specific weapons. Certain weapons are forbidden in all circumstances because of their characteristics or others are only governed by restrictions in use. Such as several treaty regimes are in place, a weapon can be both prohibited and its use limited.

Specific prohibited methods of warfare not particularly related to weapons primarily comprise the denial of quarter and perfidy. There is nevertheless no agreed list of specific prohibited methods, which may vary in State practice and according to scholars. Some include as specific prohibited methods of warfare those aimed at spreading terror, reprisals, the use of human shields, and the manipulation of the environment. Conversely, others treat those methods as distinct prohibitions, separate from the issue of methods.

Besides norms on means and methods of warfare per se, IHL also contains additional obligations with regard to the choice of means and methods when planning and deciding on an attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects. Those precautionary measures in attack, while being designed with reference to the protection of civilians and civilian objects, might be considered relevant for other types of means and methods of warfare to ensure respect for all relevant norms of IHL.

The exact content and scope of the term "method of warfare" within the principles and rules of IHL that refer to it remain unclear. Indeed, although the prohibition of superfluous injury or unnecessary suffering traditionally concerns the nature of means of warfare, it also covers the way to use weapons as well as specific methods with particular features. Contemporary challenges in the field of the regulation of means and methods of warfare include the issue of the interaction between the general principles in the case of a means of warfare that allows for better compliance with IHL rules protecting civilians but conversely may cause superfluous injury or unnecessary suffering to combatants.

### SPECIFIC BIBLIOGRAPHY

**Suggested reading:**
- **CRAWFORD Emily & PERT Alison, "Means and Methods of Warfare", in CRAWFORD Emily & PERT Alison, International Humanitarian Law, Cambridge, CUP, 2015, pp. 195-234.**
- **ICRC, "Special Issue on Means of Warfare", in IRRC, Vol. 87, No. 859, 2005, 604 pp.**

**Further reading:**

### 1. The basic rule: Art. 35 of Protocol I

#### [ICHL, Rule 76]

**Quotation**

Part III: Methods and means of warfare [...]  
Section I: Methods and means of warfare  
Article 35 – Basic rules  
1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.  
2. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. [...]  

[Source: Protocol I]

### CASES AND DOCUMENTS

- [IHL, Nuclear Weapons Advisory Opinion [Para. 24]]
- United States, Memorandum of Law: The Use of Lasers as Anti-Personnel Weapons [Paras 4 and 8]
- [Israel], Palestinian Authority, Conflict, 2005 [Part I, paras 249-263]
- United States, Surrendering in the Persian Gulf War
- [Afghanistan, Annexment of ISAF Strategy]
- [Afghanistan, Code of Conduct of the Mujahideen [Art.4]]
- **ECR, Isayeva v. Russia [Paras 19, 23, 105,167,193]**
- [Georgia][Russia], Human Rights Watch’s Report on the Conflict in South Ossetia [Paras 8, 20-22, 28]
- [Georgia][Russia], Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 58-63]
- [Autonomous Weapon Systems]

### SPECIFIC BIBLIOGRAPHY

**Suggested reading:**

### 2. Prohibited or restricted use of weapons

**Introductory text**

Lowering the level of cruelty between combatants and protecting those hors de combat and the civilian population in a more effective manner requires the regulation and, ultimately, the prohibition of certain means of warfare. To this end, several provisions of IHL applicable to international armed conflicts limit the means of warfare, i.e., weapons. These provisions aim, in particular, to prohibit weapons causing “superfluous injury or unnecessary suffering.” In practice, the application of this basic rule is always a compromise between military necessity and humanity, as the principle of “superfluous injury or unnecessary suffering.”
unnecessary suffering" has been interpreted as referring to harm that would not be justified by military utility, either because of the lack of even the slightest utility or because utility is considerably outweighed by the suffering caused. Although this standard may seem too vague to be effective, it has nevertheless led to efforts to prohibit and restrict certain conventional weapons.[71] and weapons of mass destruction.[72] Although the Geneva Conventions and Additional Protocols limit means and methods of warfare (including those severely damaging the environment).[73] they neither prohibit nor restrict the use of any specific weapon; however, various other conventions do.[74] Recognizing that it is much easier to prohibit a weapon's use prior to its incorporation into a State's arsenal, Protocol I also places constraints on the development of new weapons.[75]

CASES AND DOCUMENTS

- Itinfras. UN Security Council Assessing Violations of International Humanitarian Law
- Case Study: Armed Conflicts in the former Yugoslavia[76]
- Israe‌l-Palestine. Operation Protective Edge (Gaza 13 June - 26 August 2014)

SPECIFIC BIBLIOGRAPHY

Suggested reading:


Further reading:


a. explosive bullets

[CILH, Rule 78]

SPECIFIC BIBLIOGRAPHY

Suggested reading:


a. dum-dum bullets

[CILH, Rule 77]

SPECIFIC BIBLIOGRAPHY

Suggested reading:


a. certain conventional weapons

CASES AND DOCUMENTS

- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons
- Amendment to Article 1 of the 1980 Convention, in Order to Extend it to Non-International Armed Conflicts
- Autonomous Weapon Systems

SPECIFIC BIBLIOGRAPHY

Suggested reading:


Further reading:


a) mines

[CIHL, Rules 80-83]

CASES AND DOCUMENTS

- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction
- Geneva Conventions, Protocol adhering to a total ban on anti-personnel mines

SPECIFIC BIBLIOGRAPHY

Suggested reading:
Further reading:


**bb) incendiary weapons**

[CIL, Rules 84 and 86]

**CASES AND DOCUMENTS**

- Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III to the 1980 Convention)
- Inter-American Commission on Human Rights, Tablada (Para. 186)

**SPECIFIC BIBLIOGRAPHY**

Suggested reading:


Further reading:


**cc) non-detectable fragments**

[CIL, Rule 78]

**CASES AND DOCUMENTS**

- Protocol on Non-Detectable Fragments (Protocol I to the 1980 Convention)

**SPECIFIC BIBLIOGRAPHY**

Suggested reading:


**dd) blinding weapons**

[CIL, Rule 80]

**CASES AND DOCUMENTS**

- Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention)
- United States Memorandum of Law: The Use of Lasers as Anti-Personnel Weapons

**SPECIFIC BIBLIOGRAPHY**

Suggested reading:


**ee) explosive remnants of war**

[CIL, Rule 84]

**CASES AND DOCUMENTS**

- Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention)
- Case Study, Armed Conflicts in the former Yugoslavia (Para. 26)

**SPECIFIC BIBLIOGRAPHY**

Suggested reading:


**ff) cluster munitions**

**CASES AND DOCUMENTS**

- Convention on Cluster Munitions
• The armed conflict in Syria

SPECIFIC BIBLIOGRAPHY

Suggested reading:
Further reading:

b) other weapons for which limitations are under discussion
– light weapons
– anti-vehicle mines
– fragmentation weapons
d. chemical weapons
[CIHL, Rules 74-76]

CATEGORIES AND DOCUMENTS

• The Geneva Chemical Weapons Protocol
• Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993
• Switzerland, Prohibition of the Use of Chemical Weapons
• UNICRC, The Use of Chemical Weapons

SPECIFIC BIBLIOGRAPHY

Suggested reading:

Further reading:
• poison
• poison

SPECIFIC BIBLIOGRAPHY

Suggested reading:
• bacteriological and biological weapons
[CIHL, Rule 73]

CATEGORIES AND DOCUMENTS

• The Geneva Chemical Weapons Protocol
• Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993
• ICRC, Biotechnology, Weapons and Humanity

SPECIFIC BIBLIOGRAPHY

Suggested reading:

Further reading:
• nuclear weapons

Quotation
3. Mr. PAOLINI (France) made the following statement: [...] [Already in 1973, the French Government noted that the CRC did not include any regulations on nuclear weapons in its drafts. In participating in the preparation of the additional Protocols, therefore, the French Government has taken into consideration only conflicts using conventional weapons. It accordingly wishes to stress that in its view the rules of the Protocols do not apply to the use of nuclear weapons.]


Further reading:


h. “new means and methods”  

P. Art. 36  

As a measure of precaution, Art. 36 of Protocol I requires the States Parties to assess whether the use of any new weapon or of any new method of warfare that they develop or plan to acquire or deploy in operations is allowed by, and compatible with, international law.  

The rapid evolution of new military technologies and the development of potentially devastating means and methods of warfare lends added resonance to this legal review.  

The parties to Protocol I are obliged to conduct such reviews, but it would also be appropriate for States that are not parties to Protocol I to do so. This would allow them to verify that their armed forces act in conformity with international rules regulating the use of means and methods of warfare.  

Art. 36 does not specify the practical modalities of such reviews, which are left to the parties to decide. It is understood that the legal review should cover the weapons themselves and the ways in which they might be used. Particular attention should be paid to the potential effect of the weapon concerned on both civilians (prohibition of indiscriminate effects) and combatants (prohibition of unnecessary suffering).  

CASES AND DOCUMENTS  

ICRC, New Weapons  

United States, Memorandum of Law: The Use of Lasers as Anti-Personnel Weapons [Para. 2]  

UN, Statement of a Special Rapporteur on Drone Attacks  

US, Obama’s Speech on Drone Policy  

ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011  

Autonomous Weapon Systems  

General Assembly, The use of drones in counter-terrorism operations  

U.N., Lethal Operations against Al-Qa’ida Leaders  

ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [para 21-241]
3. Prohibited methods of warfare

Introductory text

The concept of method of warfare encompasses any tactical or strategic procedure meant to outwedge or weaken the adversary.

The limitations or prohibitions to resort to specific methods of warfare stipulated in IHL are predicated on three premises:

- the choice of the method of warfare is not unlimited[76]
- the use of methods of a nature to cause unnecessary suffering or superfluous injury is forbidden[77]
- the only legitimate object of war is to weaken the military forces of the enemy[78]

Contemporary IHL forbids, for instance, methods of warfare involving terror[79] starvation[80] reprisals against protected persons and objects[81] ill-treatment[82] the taking of hostages[83] enforced enrolment of protected persons[84] and deportations[85]

Under the specific heading “prohibited methods of warfare”, two methods of warfare are usually discussed, namely perfidy and denial of quarter.

Unlike ruses of war[86] which are lawful, perfidy[87] is outlawed in IHL. Ruses of war are intended to mislead an adversary or to induce him to act recklessly. Perfidy, on the contrary, invites the confidence of an adversary and leads him to believe that he is entitled to or is obligated to provide protection under the rules of IHL.

The main aim of the prohibition of the denial of quarter[88] is to protect combatants when they fall into enemy hands by ensuring that they will not be killed. The objective is to prevent the following acts: to order that there shall be no survivors, to threaten the adversary therewith, or to conduct hostilities on this basis.

Most cases of perfidy and denial of quarter are grave breaches of IHL and hence war crimes.

CASES AND DOCUMENTS

- Colombia, Constitutionality of IHL Implementing Legislation [Paras 4, D.5.4.4, E.2 and Dissenting opinion]
- Afghanistan, Code of Conduct for the Mujahideen [Arts 23-25, 54]
- Georgia/Russia, Human Rights Watch’s Report on the Conflict in South Ossetia [Paras 75, 76, 82-83, 87-89]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 94-100]

a. giving or ordering no quarter

P.J. 40 (CILR, Rule 40)

CASES AND DOCUMENTS

- British Policy Towards German Shipwrecked
- Belgium, Public Prosecutor v. G.W.
- Israel, Navy Sinks Dhow off Lebanon
- ICRC, Human Rights Memoranda
- United States, Surrendering in the Persian Gulf War
- Inter-American Commission on Human Rights, Tablada [Paras 182-185]
- Civil War in Nepal

SPECIFIC BIBLIOGRAPHY

Suggested reading:


b. perfidy: the distinction between perfidy and permissible ruses of war

P.J. 37 (CILR, Rules 57-65)

CASES AND DOCUMENTS

- United States Military Court in Germany, Trial of Skorzeny and Others
- Bosnia and Herzegovina, Using Uniforms of Peacekeepers

SPECIFIC BIBLIOGRAPHY

Suggested reading:


Further reading:

- JON HELLER Kevin, “Disguising a Military Object as a Civilian Object: Prohibited Perfidy or Permissible Ruse of War?”, in International Law Studies, Vol. 91, 2015, pp. 517-539.

wearing of enemy uniforms

CASES AND DOCUMENTS

- United States Military Court in Germany, Trial of Skorzeny and Others
- Bosnia and Herzegovina, Using Uniforms of Peacekeepers

SPECIFIC BIBLIOGRAPHY

Suggested reading:


starvation of civilians

(See infra, Conduct of Hostilities, IV. International Humanitarian Law and Humanitarian Assistance)

CASES AND DOCUMENTS

- Angola, Famine as a Weapon
- The armed conflict in Syria
- Israel, Blockade of Gaza and the Paltilla Incident
- Yemen, Naval Blockade
- Yemen, Potential Existence and Effects of Naval Blockade

SPECIFIC BIBLIOGRAPHY

Suggested reading:


4. Cyber warfare

The term cyber warfare can be defined as the means and methods of warfare that rely on information technology and are used in situations of armed conflict. The second part of the definition is of importance: IHRL will only apply to cyber operations occurring during – or triggering by themselves – an armed conflict. The debates on whether a cyber-attack may amount to a “use of force” or even an “armed attack” under the UN Charter, which is ius ad bellum issues, are distinct, but parallel to the question of whether a cyber-attack alone can trigger the applicability of IHRL of international or of non-international armed conflict. Considering the beginning of an armed conflict itself, a majority of experts conclude that “inconvenience, irritation, stress, or fear […] do not qualify as collateral damage because they do not amount to ‘incidental loss of civilian life, injury to civilians, damage to civilian objects’” [94].

Firstly, as one can imagine, the issue of interconnection also affects the question of proportionality: in particular the obligation for parties to take passive precautions in segregating between military objectives and the civilian population and civilian objects [95].

In the light of such new challenges, legal experts met in Tallinn to discuss whether and how the rules of IHRL could actually be applied to cyber operations. This resulted in The Tallinn Manual on the International Law Applicable to Cyber Warfare [96], which brings some clarification to some of the issues mentioned here as well as to numerous other ones, and at least presents the remaining challenges. The Tallinn Manual makes many useful suggestions in this respect.

Further reading:


Further reading:


Footnotes

[61] See P. I, Part III, Section I.

SPECIFIC BIBLIOGRAPHY

• Iran, Victim of Cyberwarfare
• ICRC, International humanitarain law and the challenges of contemporary armed conflicts in 2011
• ICRC, International humanitarain law and the challenges of contemporary armed conflicts in 2015 [para 97-223]
86 See, for example, the antipersonnel mines regime set out in the 1997 Ottawa Convention (Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction) and Art. 3(3) of the Protocol on Mines, Booby-Traps and Other Devices [Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996 (Protocol II to the 1980 Convention)].

87 See HR, Art. 260; P I, Art. 40

88 See P I, Art. 37

89 See P I, Art. 37(2)(a)(i)

90 See HR, Arts 22, 23(a) and 24; P I, Art. 35

91 For example, dum-dum bullets, mines, incendiary weapons, non-detectable fragments, and cluster munitions.

92 For example, chemical weapons, use of poison, bacteriological and biological weapons, and – without success – nuclear weapons.

93 See P I, Arts 35(3) and 55; see also Convention of 10 December 1976 on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, Geneva, May 18, 1977


95 See P I, Art. 29

96 See HR, Art. 22; P I, Art. 35(1)

97 See HR, Art. 23(c); P I, Art. 35(2)

98 See 1868 St Petersburg Declaration, Preamble

99 See P I, Art. 51(2); P II, Art. 13

100 See P I, Art. 51(2); P II, Art. 13

101 See CG I-IV, Arts 49(4)(b)/(2) respectively; P I, Arts 20 and 41-46

102 See HR, Arts 20 and 41; GC I, Art. 16; GC II, Art. 18; GC IV, Arts 16 and 17; P II, Art. 4

103 See GC I-IV, common Art. 3; GC IV, Art. 34; P I, Art. 75

104 See GC III, Art. 139; GC IV, Art. 51

105 See GC IV, Art. 49; P II, Art. 17; see also supra, Civilian Population, IV, Special Rules on Occupied Territories

106 See HR, Art. 28; P I, Art. 37(2)

107 See HR, Art. 27; P I, Art. 40

108 See HR, Art. 25(3); P I, Art. 37(1)


110 See P I, Art. 49(1); “1. ‘Attacks’ means acts of violence against the adversary, whether in offence or in defence.”

111 The issue of "neutralization", but this time of targets, is also discussed in relation to the definition of "attacks" under IHL.

112 See P I, Art. 52(2); “military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”

113 See P I, Art. 51(3)(b)


115 See P I, Art. 58