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DISTINCTION BETWEEN CIVILIAN OBJECTS AND MILITARY OBJECTIVES

A.	General (practice relating to Rule 7)	§§ 1–315
	The principle of distinction	§§ 1–46
	Attacks against military objectives	§§ 47–104
	Attacks against civilian objects in general	§§ 105–198
	Attacks against places of civilian concentration	§§ 199–264
	Attacks against civilian means of transportation	§§ 265–315
B.	Definition of Military Objectives (practice relating to Rule 8)	§§ 316–659
	General definition	§§ 316–369
	Armed forces	§§ 370–416
	Places where armed forces or their materiel are located	§§ 417–462
	Weapons and weapon systems	§§ 463–492
	Lines and means of communication	§§ 493–525
	Lines and means of transportation	§§ 526–560
	Economic installations	§§ 561–596
	Areas of land	§§ 597–633
	Presence of civilians within or near military objectives	§§ 634–659
C.	Definition of Civilian Objects (practice relating to Rule 9)	§§ 660–685
D.	Loss of Protection from Attack (practice relating to Rule 10)	§§ 686–758
	Civilian objects used for military purposes	§§ 686–718
	Situations of doubt as to the character of an object	§§ 719–758

A. General

The principle of distinction

I. Treaties and Other Instruments

Treaties

1. Article 48 AP I provides that “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 . . . civilian objects and military objectives”. Article 48 AP I was adopted by consensus.¹

¹ CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 161.

2. Article 24(1) of draft AP II submitted by the ICRC to the CDDH provided that “in order to ensure respect for the civilian population, the Parties to the conflict... shall make a distinction... between civilian objects and military objectives”.² This proposal was amended and adopted by consensus in Committee III of the CDDH.³ The approved text provided that “in order to ensure respect and protection for... civilian objects, the Parties to the conflict shall at all times distinguish... between civilian objects and military objectives”.⁴ Eventually, however, it was deleted in the plenary because it failed to obtain the necessary two-thirds majority (36 in favour, 19 against and 36 abstentions).⁵

Other Instruments

3. Paragraph 6 of the 1991 Memorandum of Understanding on the Application of IHL between Croatia and the SFRY requires that hostilities be conducted in accordance with Article 48 AP I.

4. 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 AP I.

5. Paragraph 39 of the 1994 San Remo Manual provides that “Parties to the conflict shall at all times distinguish between... civilian or exempt objects and military objectives”.

6. Section 5.1 of the 1999 UN Secretary-General’s Bulletin states that “the United Nations force shall make a clear distinction at all times... between civilian objects and military objectives”.

II. National Practice

Military Manuals

7. Military manuals of Argentina, Australia, Belgium, Benin, Cameroon, Canada, Croatia, France, Germany, Hungary, Israel, Netherlands, New Zealand, Nigeria, Philippines, Spain, Sweden, Switzerland, Togo and US require that a distinction be made between military objectives and civilian objects.⁶

² CDDH, *Official Records*, Vol. I, Part Three, Draft Additional Protocols, June 1973, p. 40.

³ CDDH, *Official Records*, Vol. XV, CDDH/215/Rev.1, 3 February–18 April 1975, p. 288, § 113.

⁴ CDDH, *Official Records*, Vol. XV, CDDH/215/Rev.1, 3 February–18 April 1975, p. 319.

⁵ CDDH, *Official Records*, Vol. VII, CDDH/SR.52, 6 June 1977, p. 135.

⁶ Argentina, *Law of War Manual* (1989), § 4.01; Australia, *Defence Force Manual* (1994), §§ 210, 504 and 913; Belgium, *Law of War Manual* (1983), p. 26; Benin, *Military Manual* (1995), Fascicule III, p. 11; Cameroon, *Instructors’ Manual* (1992), p. 86; Canada, *LOAC Manual* (1999), p. 4-1, § 4, see also p. 2-2, § 12; Croatia, *LOAC Compendium* (1991), p. 37; France, *LOAC Summary Note* (1992), Part I, preamble; France, *LOAC Teaching Note* (1999), p. 2; France, *LOAC Manual* (2001), p. 13; Germany, *Military Manual* (1992), §§ 401 and 454; Hungary, *Military Manual* (1992), p. 60; Israel, *Law of War Booklet* (1986), Chapter 1; Israel, *Manual on the Laws of War* (1998), pp. 38 and 42; Netherlands, *Military Manual* (1993), p. V-1, § 2; New Zealand, *Military Manual* (1992), § 205; Nigeria, *Military Manual* (1994), p. 41, § 9 and p. 42, § 11; Philippines, *Soldier’s Rules* (1989), p. 20; Spain, *LOAC Manual* (1996), Vol. I, § 4.1; Sweden, *IHL Manual* (1991), Section 3.2.1.5, p. 41; Switzerland, *Basic Military Manual* (1987), Article 25(1); Togo, *Military Manual* (1996), Fascicule III, p. 11; US, *Air Force Pamphlet* (1976), § 5-3(b).

8. Indonesia's Military Manual provides that "the targets of every military operation should be distinguished at all times".⁷
9. Sweden's IHL Manual considers that the principle of distinction as stated in Article 48 AP I is part of customary international law.⁸

National Legislation

10. The Report on the Practice of India states that India's laws and regulations applicable to internal conflicts do not explicitly mention the distinction between civilian objects and military objectives. The report indicates, however, that domestic legislation concerning terrorist activities

confer certain powers on armed forces as well as police personnel which enable them to destroy arms dumps, prepared or fortified positions or shelters from which attacks are made as well as structures used as training camps for armed volunteers or utilized as a hide-out by armed gangs or absconders, etc.⁹

11. Under Ireland's Geneva Conventions Act as amended, any "minor breach" of AP I, including violations of Article 48 AP I, is a punishable offence.¹⁰

12. Under Norway's Military Penal Code as amended, "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 Geneva] Conventions . . . is liable to imprisonment".¹¹

National Case-law

13. No practice was found.

Other National Practice

14. The Report on the Practice of Bosnia and Herzegovina provides several examples of alleged respect for and violations of the distinction between civilian and military targets.¹²

15. The Report on the Practice of Botswana asserts that the government of Botswana endorses the principle of distinction as found in Article 48 AP I.¹³

16. In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, Egypt invoked the requirement to "distinguish between . . . civilian objects and military objectives".¹⁴

⁷ Indonesia, *Military Manual* (1982), § 91.

⁸ Sweden, *IHL Manual* (1991), Section 2.2.3, p. 19.

⁹ Report on the Practice of India, 1997, Chapter 1.3, referring to *Armed Forces (Special Powers) Act* (1958), *Armed Forces (Punjab and Chandigarh) Special Powers Act* (1983), Section 4(b), *Punjab Disturbed Areas Act* (1983), Section 5 and *Armed Forces (Jammu and Kashmir) Special Powers Act* (1990).

¹⁰ Ireland, *Geneva Conventions Act as amended* (1962), Section 4(1) and (4).

¹¹ Norway, *Military Penal Code as amended* (1902), § 108(b).

¹² Report on the Practice of Bosnia and Herzegovina, 2000, Chapter 1.3.

¹³ Report on the Practice of Botswana, 1998, Answers to additional questions on Chapter 1.3.

¹⁴ Egypt, Written statement submitted to the ICJ, *Nuclear Weapons case*, 20 June 1995, § 17.

17. The Report on the Practice of Egypt states that Egypt recognises the obligation to distinguish between civilian objects and military objectives. It further notes that the principle of distinction between civilian objects and military objectives is said to be well established in Egypt's practice and *opinio juris* and is thus considered to be a customary rule of IHL.¹⁵

18. 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 that "all parties must at all times make a distinction between the civilian population and military objectives in order to spare the civilian population".¹⁶

19. In 1983, in a statement before the lower house of parliament, a German Minister of State pointed out that the principle of distinction between civilian objects and military objectives was one of the five basic principles of the LOAC and that it applied equally to the attacker and the attacked.¹⁷

20. In an explanatory memorandum submitted to the German parliament in 1990 in the context of the ratification procedure of the Additional Protocols, the German government expressed the opinion that the principle of distinction between civilian objects and military targets enshrined in Article 48 AP I was a well-established rule of customary law, binding on all States.¹⁸

21. The Report on the Practice of India states that "when [the armed forces] are called upon to deal with an internal conflict, they are bound to follow the principles regarding distinction between military objects and civilian objects so as to avoid indiscriminate attacks".¹⁹

22. The Report on the Practice of Indonesia states that "according to the practices of the Indonesian armed forces, the distinction between civilian and military objects is compatible with the provisions stipulated in Article 52 of Protocol I".²⁰

23. In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, Iran stated that "some of the principles of humanitarian international law from which one can deduce the illegitimacy of the use of nuclear weapons are: . . . Distinguishing between military and civilian targets."²¹

24. The Report on the Practice of Iran states that "the *opinio juris* of Iran recognizes the distinction between military objectives and civilian objects".²²

¹⁵ Report on the Practice of Egypt, 1997, Chapter 1.3.

¹⁶ France, Etat-major de la Force d'Action Rapide, Ordres pour l'Opération Mistral, 1995, Section 6, § 66.

¹⁷ Germany, Lower House of Parliament, Statement by Dr Mertes, Minister of State, 14 October 1983, *Plenarprotokoll* 10/29, p. 1927.

¹⁸ Germany, Lower House of Parliament, Explanatory memorandum on the Additional Protocols to the Geneva Conventions, *BT-Drucksache* 11/6770, 22 March 1990, p. 111.

¹⁹ Report on the Practice of India, 1997, Chapter 1.4.

²⁰ Report on the Practice of Indonesia, 1997, Chapter 1.3.

²¹ Iran, Written statement submitted to the ICJ, *Nuclear Weapons case*, 19 June 1995, p. 2; see also Written statement submitted to the ICJ, *Nuclear Weapons (WHO) case*, undated, p. 1.

²² Report on the Practice of Iran, 1997, Chapter 1.3.

25. In its oral pleadings before the ICJ in the *Nuclear Weapons case* in 1995, Japan stated that “with their colossal power and capacity for slaughter and destruction, nuclear weapons make no distinction . . . between military installations and civilian communities”.²³

26. According to the Report on the Practice of South Korea, it is South Korea’s *opinio juris* that the distinction between civilian objects and military objectives is part of customary international law.²⁴

27. The Report on the Practice of Kuwait asserts that the Iraqi army did not respect the principle of distinction between civilian objects and military targets during its withdrawal from Kuwait.²⁵

28. According to the Report on the Practice of Nigeria, it is Nigeria’s *opinio juris* that the distinction between civilian objects and military objectives is part of customary international law.²⁶

29. The Report on the Practice of Pakistan states that the distinction between civilian objects and military objectives seems to be well respected in Pakistan.²⁷

30. The Report on the Practice of Spain considers that the principle of distinction between military and non-military objectives is a fundamental principle which should be taken into consideration when planning, directing and executing a military attack.²⁸

31. In reply to a question in the House of Lords concerning the Gulf War, the UK Parliamentary Under-Secretary of State of the Ministry of Defence stated that:

The Geneva Conventions contain no provisions expressly regulating targeting in armed conflict. The Hague Regulations of 1907 and customary international law do, however, incorporate the twin principles of distinction between military and civilian objects, and of proportionality so far as the risk of collateral civilian damage from an attack on a military objective is concerned. These principles and associated rules of international law were observed at all times by coalition forces in the planning and execution of attacks against Iraq.²⁹

32. In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, the UK stated that “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”.³⁰

²³ Japan, Oral pleadings before the ICJ, *Nuclear Weapons case*, 7 November 1995, Verbatim Record CR 95/27, p. 36.

²⁴ Report on the Practice of South Korea, 1997, Chapter 1.3.

²⁵ Report on the Practice of Kuwait, 1997, Chapter 1.3.

²⁶ Report on the Practice of Nigeria, 1997, Chapter 1.3.

²⁷ Report on the Practice of Pakistan, 1998, Chapter 1.3.

²⁸ Report on the Practice of Spain, 1998, Chapter 1.3.

²⁹ UK, House of Lords, Statement by the Parliamentary Under-Secretary of State for Defence, 22 July 1991, *Hansard*, Vol. 531, Written Answers, col. 43.

³⁰ UK, Written statement submitted to the ICJ, *Nuclear Weapons case*, 16 June 1995, § 3.67.

33. 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”.³¹

34. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that Article 48 AP I “is generally regarded as a codification of the customary practice of nations, and therefore binding on all”.³² The report further stated that “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 legitimate military targets and civilian objects”.³³

35. The Report on the Practice of the SFRY (FRY) states that the “armed conflict in Croatia in which [the] YPA participated was particularly characterized by the disregard of the obligation to respect the distinction between civilian objects and military objectives”. The report considers, however, that:

In evaluating the official position of [the] FRY, it is important to point out that during October 1991 [the] Chief of General Staff of the YPA issued two orders instructing troops to strictly comply with rules of humanitarian law . . . The fact that the YPA had sent a commission of inquiry to Dubrovnik to establish the effects of [the] shelling indicates the awareness of the need to respect the distinction between civilian objects and military objectives. *Opinio juris* existed, however, the relevant rule was not respected in practice.³⁴

36. The Report on the Practice of Zimbabwe refers to the principle of distinction as set forth in Article 52 AP I and states that this principle can undoubtedly be regarded as a customary rule of IHL. The report also points out that the distinction between civilian and military objectives is more problematic in non-international armed conflicts, as guerrillas tend to mingle with the civilian population and civilian facilities, rendering the principle difficult to implement.³⁵

III. Practice of International Organisations and Conferences

37. No practice was found.

³¹ US, Letter from the Department of the Army to the legal adviser of the US armed forces deployed in the Gulf region, 11 January 1991, § 8(E), Report on US Practice, 1997, Chapter 1.4.

³² US, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, Appendix O, The Role of the Law of War, 10 April 1992, *ILM*, Vol. 31, 1992, p. 625.

³³ US, 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.

³⁴ Report on the Practice of the SFRY (FRY), 1997, Chapter 1.3.

³⁵ Report on the Practice of Zimbabwe, 1998, Chapter 1.3.

IV. Practice of International Judicial and Quasi-judicial Bodies

38. In its judgement in the *Blaškić case* in 2000, the ICTY Trial Chamber held that “the parties to the conflict are obliged to attempt to distinguish between military targets and civilian . . . property”.³⁶

V. Practice of the International Red Cross and Red Crescent Movement

39. To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that there is a duty to distinguish between civilian objects and military objectives.³⁷

40. In an appeal issued in 1984 in the context of the Iran–Iraq War, the ICRC stated that “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”.³⁸

41. 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 that “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”.³⁹

42. 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”.⁴⁰

43. 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”.⁴¹

44. In 1994, in a Memorandum on Respect for International Humanitarian Law in Angola, the ICRC stated that “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”.⁴²

³⁶ ICTY, *Blaškić case*, Judgement, 3 March 2000, § 180.

³⁷ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, § 387.

³⁸ 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.

³⁹ ICRC, Memorandum on the Applicability of International Humanitarian Law, 14 December 1990, § II, *IRRC*, No. 280, 1991, p. 24.

⁴⁰ ICRC, Communication to the Press No. 93/25, Nagorno-Karabakh conflict: 60,000 civilians flee fighting in south-western Azerbaijan, 19 August 1993.

⁴¹ ICRC, Communication to the Press No. 93/31, Georgia: ICRC Activities in Abkhazia, 20 September 1993.

⁴² ICRC, Memorandum on Respect for International Humanitarian Law in Angola, 8 June 1994, § II, *IRRC*, No. 320, 1997, p. 503.

45. 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 that “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”.⁴³

VI. Other Practice

46. No practice was found.

Attacks against military objectives

Note: For practice concerning the destruction of enemy property, see Chapter 16.

I. Treaties and Other Instruments

Treaties

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

48. Article 2 of 1907 Hague Convention (IX) allows the bombardment of “military works, military or naval establishments, depots of arms or war *matériel*, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbour”.

49. Article 48 AP I provides that “in order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict . . . shall direct their operations only against military objectives”. Article 48 AP I was adopted by consensus.⁴⁴

50. Article 52(2) AP I provides that “attacks shall be limited strictly to military objectives”. Article 52 AP I was adopted by 79 votes in favour, none against and 7 abstentions.⁴⁵

51. Upon ratification of AP I, Australia declared that “it is the understanding of Australia that the first sentence of paragraph 2 of Article 52 is not intended to, nor does it, deal with the question of incidental or collateral damage resulting from an attack directed against a military objective”.⁴⁶

52. Upon ratification of AP I, Canada stated that:

It is the understanding of the Government of Canada in relation to Article 52 that . . . the first sentence of paragraph 2 of the Article is not intended to, nor does it,

⁴³ 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.

⁴⁴ CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 161.

⁴⁵ CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 168.

⁴⁶ Australia, Declarations made upon ratification of AP I, 21 June 1991, § 5.

deal with the question of incidental or collateral damage resulting from an attack directed against a military objective.⁴⁷

53. Upon ratification of AP I, France stated that “the Government of the French Republic considers that the first sentence of paragraph 2 of Article 52 does not deal with the question of collateral damage resulting from attacks directed against military objectives”.⁴⁸

54. Upon ratification of AP I, Italy declared that “the first sentence of paragraph 2 of [Article 52] prohibits only such attacks as may be directed against non-military objectives. Such a sentence does not deal with the question of collateral damage caused by attacks directed against military objectives.”⁴⁹

55. Upon ratification of AP I, New Zealand stated that “the first sentence of paragraph 2 of [Article 52] is not intended to, nor does it, deal with the question of incidental or collateral damage resulting from an attack directed against a military objective”.⁵⁰

56. Upon ratification of AP I, the UK stated that:

It is the understanding of the United Kingdom that . . . the first sentence of paragraph 2 [of Article 52] prohibits only such attacks as may be directed against non-military objectives; it does not deal with the question of collateral damage resulting from attacks directed against military objectives.⁵¹

57. Article 24(1) of draft AP II submitted by the ICRC to the CDDH provided that “in order to ensure respect for the civilian population, the parties to the conflict shall confine their operations to the destruction or weakening of the military resources of the adversary”.⁵² This proposal was amended and adopted by consensus in Committee III of the CDDH.⁵³ The approved text provided that “in order to ensure respect and protection for . . . civilian objects, the Parties to the conflict . . . shall direct their operations only against military objectives”.⁵⁴ Eventually, however, it was deleted in the plenary, because it failed to obtain the necessary two-thirds majority (36 in favour, 19 against and 36 abstentions).⁵⁵

Other Instruments

58. Article 24(1) of the 1923 Hague Rules of Air Warfare provides that “aerial bombardment is legitimate only when directed at a military objective”.

⁴⁷ Canada, Reservations and statements of understanding made upon ratification of AP I, 20 November 1990, § 8(b).

⁴⁸ France, Declarations and reservations made upon ratification of AP I, 11 April 2001, § 12.

⁴⁹ Italy, Declarations made upon ratification of AP I, 27 February 1986, § 8.

⁵⁰ New Zealand, Declarations made upon ratification of AP I, 8 February 1988, § 4.

⁵¹ UK, Reservations and declarations made upon ratification of AP I, 28 January 1998, § j.

⁵² CDDH, *Official Records*, Vol. I, Part Three, Draft Additional Protocols, June 1973, p. 40.

⁵³ CDDH, *Official Records*, Vol. XV, CDDH/215/Rev.1, 3 February–18 April 1975, p. 288, § 113.

⁵⁴ CDDH, *Official Records*, Vol. XV, CDDH/215/Rev.1, 3 February–18 April 1975, p. 319.

⁵⁵ CDDH, *Official Records*, Vol. VII, CDDH/SR.52, 6 June 1977, p. 135.

59. Article 7 of the 1956 New Delhi Draft Rules provides that “in order to limit the dangers incurred by the civilian population, attacks may only be directed against military objectives”.
60. Paragraph 6 of the 1991 Memorandum of Understanding on the Application of IHL between Croatia and the SFRY requires that hostilities be conducted in accordance with Article 52(2) AP I.
61. 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 52(2) AP I.
62. Paragraph 41 of the 1994 San Remo Manual states that “attacks shall be strictly limited to military objectives”.
63. Section 5.1 of the 1999 UN Secretary-General’s Bulletin states that “military operations shall be directed only against combatants and military objectives”.

II. National Practice

Military Manuals

64. The principle that attacks must be strictly limited to military objectives is set forth in the military manuals of Australia, Belgium, Benin, Cameroon, Canada, Colombia, Croatia, Ecuador, France, Germany, Indonesia, Italy, Kenya, South Korea, Lebanon, Madagascar, Netherlands, New Zealand, Nigeria, Philippines, Romania, South Africa, Spain, Sweden, Switzerland, Togo, UK and US.⁵⁶
65. The US Air Force Pamphlet explains that:

⁵⁶ Australia, *Defence Force Manual* (1994), §§ 210, 524, 531 and 913; Belgium, *Teaching Manual for Soldiers* (undated), pp. 10 and 20; Belgium, *Law of War Manual* (1983), p. 26; Benin, *Military Manual* (1995), Fascicule I, p. 17, Fascicule II, pp. 5 and 18 and Fascicule III, p. 14; Cameroon, *Instructors’ Manual* (1992), p. 111; Canada, *LOAC Manual* (1999), p. 4-1, § 5; Canada, *Code of Conduct* (2001), Rule 1; Colombia, *Circular on Fundamental Rules of IHL* (1992), § 7; Colombia, *Instructors’ Manual* (1999), p. 17; Croatia, *Basic Rules Manual* (1993), § 7; Croatia, *Commanders’ Manual* (1992), § 9; Ecuador, *Naval Manual* (1989), § 8.1.1; France, *LOAC Manual* (2001), p. 13; Germany, *Military Manual* (1992), § 441; Indonesia, *Military Manual* (undated), § 91; Italy, *IHL Manual* (1991), Vol. I, § 12; Italy, *LOAC Elementary Rules Manual* (1991), § 9; Kenya, *LOAC Manual* (1997), Précis No. 2, p. 15, Précis No. 3, p. 14, and Précis No. 4, p. 1; South Korea, *Military Law Manual* (1996), p. 86; Lebanon, *Teaching Manual* (undated), Article 7; Madagascar, *Military Manual* (1994), Fiche No. 3-O, § 9, see also Fiche 4-T, § 2; Netherlands, *Military Manual* (1993), p. V-1, § 2 and p. V-5; Netherlands, *Military Handbook* (1995), pp. 7-36, 7-39 and 7-43; New Zealand, *Military Manual* (1992), §§ 515(1), 524(1)(c), 622(1) and 624(1)(c); Nigeria, *Military Manual* (1994), p. 39, § 5(b); Nigeria, *Soldiers’ Code of Conduct* (undated), § 2; Philippines, *Soldier’s Rules* (1989), § 2; Romania, *Soldiers’ Manual* (1991), p. 4; South Africa, *LOAC Manual* (1996), § 25(b); Spain, *LOAC Manual* (1996), Vol. I, §§ 2.3.(b).1, 4.1 and 4.5.(b)2; Sweden, *IHL Manual* (1991), Section 3.2.1.5, pp. 41 and 52; Switzerland, *Basic Military Manual* (1987), Articles 25(1) and 28; Togo, *Military Manual* (1996), Fascicule I, p. 18, Fascicule II, pp. 5 and 18 and Fascicule III, p. 14; UK, *Military Manual* (1958), Articles 283 and 288; UK, *LOAC Manual* (1981), Section 4, p. 13, § 4(a); US, *Air Force Pamphlet* (1976), § 5-3(b); US, *Rules of Engagement for Operation Desert Storm* (1991), § 2; US, *Naval Handbook* (1995), § 8.1.1.

The requirement that attacks be limited to military objectives results from several requirements of international law. The mass annihilation of enemy people is neither humane, permissible, nor militarily necessary. The Hague Regulations prohibit destruction or seizure of enemy property "unless such destruction or seizure be imperatively demanded by the necessities of war." Destruction as an end in itself is a violation of international law, and there must be some reasonable connection between the destruction of property and the overcoming of enemy military forces. Various other prohibitions and the Hague Regulations and Hague Convention IX further support the requirement that attacks be directed only at military objectives.⁵⁷

National Legislation

66. Under Ireland's Geneva Conventions Act as amended, any "minor breach" of AP I, including violations of Articles 48 and 52(2) AP I, is a punishable offence.⁵⁸

67. Under Norway's Military Penal Code as amended, "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 Geneva] Conventions . . . is liable to imprisonment".⁵⁹

National Case-law

68. No practice was found.

Other National Practice

69. The Report on the Practice of Angola asserts that military objectives were the only targets of attack during the war of independence, but that the civil war that followed independence was characterised by confusion between military objectives and civilian objects. The report provides a list of examples of alleged attacks against civilian objects.⁶⁰

70. It is reported that, during the War in the South Atlantic, both parties directed their hostile acts only against military objectives.⁶¹

71. At the CDDH, Canada stated that the first sentence of draft Article 47(2) AP I (now Article 52(2)) "prohibits only attacks that could be directed against non-military objectives. It does not deal with the result of a legitimate attack on military objectives and incidental damage that such attack may cause."⁶²

72. In a military communiqué issued during the 1973 Middle East conflict, Egypt emphasised that only military objectives could be attacked.⁶³

⁵⁷ US, *Air Force Pamphlet* (1976), § 5-3(b)(2); see also *Field Manual* (1956), § 56.

⁵⁸ Ireland, *Geneva Conventions Act as amended* (1962), Section 4(1) and (4).

⁵⁹ Norway, *Military Penal Code as amended* (1902), § 108(b).

⁶⁰ Report on the Practice of Angola, 1998, Chapter 1.3.

⁶¹ Carlos Horacio Cerdá, *El respeto del Derecho Internacional Humanitario durante el Desarrollo del Conflicto Armado del Atlántico Sud*, Report on the Practice of Argentina, 1997, Chapter 1.3.

⁶² Canada, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 179.

⁶³ Egypt, Military Communiqué No. 2, 6 October 1973.

73. In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, Egypt invoked the requirement to “direct operations only against military objectives”.⁶⁴

74. 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 that “attacks may only be directed against military objectives”.⁶⁵

75. At the CDDH, the FRG stated that the first sentence of draft Article 47(2) AP I (now Article 52(2)) “is a restatement of the basic rule contained in Article 43 [now Article 48], namely that the Parties to a conflict shall direct their operations only against military objectives. It does not deal with the question of collateral damage caused by attacks directed against military objectives.”⁶⁶

76. According to the Report on the Practice of Iran, “Iran always insisted that war must be limited to battlefronts . . . and that all targets were military objectives”.⁶⁷

77. The Report on the Practice of Kuwait notes that the choice of targets is strictly limited to military objectives. An attack on a military objective should be allowed only in case of possible gain in the field of operation.⁶⁸

78. The Report on the Practice of Malaysia notes that in practice the security forces direct their attacks only against military targets or targets of military importance.⁶⁹

79. At the CDDH, Mexico stated that it believed Article 47 AP I (now Article 52) to be so essential that it “cannot be the subject of any reservations whatsoever since these would be inconsistent with the aim and purpose of Protocol I and undermine its basis”.⁷⁰

80. At the CDDH, the Netherlands stated that the first sentence of draft Article 47(2) AP I (now Article 52(2)) “prohibits only such attacks as may be directed against non-military objectives and consequently does not deal with the question of collateral damage caused by attacks directed against military objectives”.⁷¹

81. The Report on the Practice of Nigeria states that, during the Nigerian civil war, the Nigerian air force, in its raids against rebel enclaves, distinguished

⁶⁴ Egypt, Written statement submitted to the ICJ, *Nuclear Weapons case*, 20 June 1995, § 17.

⁶⁵ France, Etat-major de la Force d'Action Rapide, Ordres pour l'Opération Mistral, 1995, Section 6, § 66.

⁶⁶ FRG, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 188.

⁶⁷ Report on the Practice of Iran, 1997, Chapter 1.3.

⁶⁸ Report on the Practice of Kuwait, 1997, Chapter 1.5.

⁶⁹ Report on the Practice of Malaysia, 1997, Answers to additional questions on Chapter 1.3.

⁷⁰ Mexico, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 193.

⁷¹ Netherlands, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 195.

between military targets and civilian objects, bombing military targets while assiduously avoiding non-military targets.⁷²

82. In 1991, in reports submitted to the UN Security Council on operations in the Gulf War, Saudi Arabia stated that its air force had carried out numerous sorties against “military targets in Iraq and Kuwait, while avoiding civilian targets”.⁷³

83. In 1993 and 1995, the government of Spain made specific statements in connection with the armed conflicts in the Gulf and Bosnia and Herzegovina, endorsing the principle that attacks must be directed only against military objectives.⁷⁴

84. On the basis of a statement by the Syrian Minister of Foreign Affairs before the UN General Assembly in 1997, the Report on the Practice of Syria asserts that Syria considers Article 52(2) AP I to be part of customary international law.⁷⁵

85. In 1938, during a debate in the House of Commons, the UK Prime Minister Neville Chamberlain listed among rules of international law applicable to warfare on land, at sea and from the air the rule that “targets which are aimed at . . . must be legitimate military targets and must be capable of identification”.⁷⁶

86. At the CDDH, the UK stated that it did not interpret the obligation in the first sentence of Article 47(2) API (now Article 52(2)) “as dealing with the question of incidental damage caused by attacks directed against military objectives. In its view, the purpose of the first sentence of the paragraph was to prohibit only such attacks as might be directed against non-military objectives.”⁷⁷

87. A training video on IHL produced by the UK Ministry of Defence emphasises that military operations must be directed only against military objectives.⁷⁸

88. In reply to questions in the House of Lords and House of Commons concerning military operations during the Gulf War in 1991, the UK Under-Secretary of State for Defence and the Minister of State for the Armed Forces stated that

⁷² Report on the Practice of Nigeria, 1997, Chapter 1.3.

⁷³ Saudi Arabia, Report dated 30 January 1991 on the progress of operations for the liberation of Kuwait, annexed to Letter dated 30 January 1991 to the President of the UN Security Council, UN Doc. S/22180, 31 January 1991, p. 2; Letter dated 6 February 1991 to the President of the UN Security Council, UN Doc. S/22200, 6 February 1991, p. 1.

⁷⁴ Spain, Report by the Minister of Foreign Affairs and Minister of Defence to the Congress Commission on Foreign Affairs on Action by the International Community in Iraq and Developments in Bosnia and Herzegovina, 18 January 1993, *Actividades, Textos y Documentos de la Política Exterior Española*, Madrid, 1993, p. 240; Press Conference by the Minister of Foreign Affairs and Minister of Defence, 31 August 1995, *Actividades, Textos y Documentos de la Política Exterior Española*, Madrid, 1995, p. 248.

⁷⁵ Report on the Practice of Syria, 1997, Chapter 1.3, referring to Statement by the Syrian Minister of Foreign Affairs before the UN General Assembly, 1 October 1997.

⁷⁶ UK, House of Commons, Statement by the Prime Minister, Sir Neville Chamberlain, 21 June 1938, *Hansard*, Vol. 337, col. 937.

⁷⁷ UK, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 169, § 153.

⁷⁸ UK, Ministry of Defence, Training Video: The Geneva Conventions, 1986, Report on UK Practice, 1997, Chapter 1.3.

it was a policy of the allies to attack only military targets and facilities that sustained Iraq's illegal occupation of Kuwait.⁷⁹

89. In 1950, the US Secretary of State stated that "the air activity of the United Nations forces in Korea has been, and is, directed solely at military targets of the invader".⁸⁰

90. At a news briefing in December 1966, the US Deputy Assistant Secretary of State for Public Affairs stated, with reference to inquiries concerning reported incidents resulting from bombing in the vicinity of Hanoi on 13 and 14 December 1966, that "the only targets struck by U.S. aircraft were military ones, well outside the city proper".⁸¹

91. In December 1966, in reply to an inquiry from a member of the US House of Representatives asking for a restatement of US policy on targeting in North Vietnam, a US Deputy Assistant Secretary of Defense wrote that "United States policy is to target military targets only. There has been no deviation from this policy."⁸²

92. At the CDDH, the US stated that the first sentence of draft Article 47(2) AP I (now Article 52(2)) "prohibits only such attacks as may be directed against non-military objectives. It does not deal with the question of collateral damage caused by attacks directed against military objectives."⁸³

93. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the US stated that "the military actions initiated by the United States and other States co-operating with the Government of Kuwait... are directed strictly at military and strategic targets".⁸⁴

94. In 1991, in a diplomatic note to Iraq concerning operations in the Gulf War, the US stated that "the United States and other coalition forces are only attacking targets of military value in Iraq".⁸⁵

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

⁷⁹ UK, House of Lords, Statement by the Parliamentary Under-Secretary of State for Defence, 27 February 1991, *Hansard*, Vol. 526, Written Answers, col. 52; Statement by the Minister of State for the Armed Forces, 28 February 1991, *Hansard*, Vol. 186, Written Answers, col. 611.

⁸⁰ US, Statement by the Secretary of State, Dean Acheson, 6 September 1950, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 140.

⁸¹ US, News briefing by Deputy Assistant Secretary of State for Public Affairs, Robert McCloskey, 22 December 1966, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 426.

⁸² US, Letter from Deputy Assistant Secretary of Defense Goulding to US Representative Ogden Reid from New York, 30 December 1966, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 428.

⁸³ US, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 204.

⁸⁴ US, Letter dated 17 January 1991 to the President of the UN Security Council, UN Doc. S/22090, 17 January 1991, p. 2.

⁸⁵ US, Department of State, Diplomatic Note to Iraq, Washington, 21 January 1991, annexed to Letter dated 22 January 1991 to the President of the UN Security Council, UN Doc. S/22130, 22 January 1991.

on all".⁸⁶ The report further stated that "CINCCENT [Commander-in-Chief, Central Command] conducted a theater campaign directed solely at military targets".⁸⁷

96. In 1996, in the context of an internal armed conflict, the head of the armed forces of a State confirmed in a meeting with the ICRC that specific instructions had been given to soldiers to limit attacks to military objectives.⁸⁸

III. Practice of International Organisations and Conferences

United Nations

97. In a resolution adopted in 1938 concerning the protection of civilian populations against air bombardment in case of war, the Assembly of the League of Nations stated that "objectives aimed at from the air must be legitimate military targets and must be identifiable".⁸⁹

Other International Organisations

98. No practice was found.

International Conferences

99. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

100. No practice was found.

V. Practice of the International Red Cross and Red Crescent Movement

101. To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that they have an obligation to limit attacks strictly to military targets.⁹⁰

102. In an appeal issued in October 1973, the ICRC urged all the belligerents in the conflict in the Middle East (Egypt, Iraq, Israel and Syria) to observe forthwith, in particular, the provisions of, *inter alia*, Article 47(1) of draft AP I which

⁸⁶ US, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, Appendix O, The Role of the Law of War, 10 April 1992, *ILM*, Vol. 31, 1992, p. 625.

⁸⁷ US, 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. 644.

⁸⁸ ICRC archive document.

⁸⁹ League of Nations, Assembly, Resolution adopted on 30 September 1938, § I(2), *Official Journal*, Special Supplement No. 182, Records of the XIXth Ordinary Session of the Assembly, pp. 15–17.

⁹⁰ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, § 428.

stated in part that “attacks shall be strictly limited to military objectives”. All governments concerned replied favourably.⁹¹

VI. Other Practice

103. In 1980, an armed opposition group expressed its acceptance of the fundamental principles of IHL as formulated by the ICRC, including the principle that “attacks shall be directed solely against military objectives”.⁹²

104. In 1982, in a meeting with the ICRC, an armed opposition group insisted that it had always limited its attacks to military objectives.⁹³

Attacks against civilian objects in general

Note: *For practice concerning the destruction of enemy property, see Chapter 16.*

I. Treaties and Other Instruments

Treaties

105. Article 52(1) AP I provides that “civilian objects shall not be the object of attack”. Article 52 AP I was adopted by 79 votes in favour, none against and 7 abstentions.⁹⁴

106. Article 2(1) of the 1980 Protocol III to the CCW states that “it is prohibited in all circumstances to make . . . civilian objects the object of attack by incendiary weapons.”

107. Article 3(7) of the 1996 Amended Protocol II to the CCW provides that “it is prohibited in all circumstances to direct [mines, booby-traps and other devices], either in offence, defence or by way of reprisals, against . . . civilian objects”.

108. Pursuant to Article 8(2)(b)(ii) of the 1998 ICC Statute, “intentionally directing attacks against civilian objects, that is, objects which are not military objectives” constitutes a war crime in international armed conflicts.

Other Instruments

109. Pursuant to Article 3(b) of the 1990 Cairo Declaration on Human Rights in Islam, it is prohibited “to destroy the enemy’s civilian buildings and installations by shelling, blasting or any other means”.

110. In the 1991 Hague Statement on Respect for Humanitarian Principles, the Presidents of the six republics of the former Yugoslavia accepted to apply the fundamental principle that “civilian property must not be attacked”.

⁹¹ ICRC, *The International Committee’s Action in the Middle East, IRRIC*, No. 152, 1973, pp. 584–585.

⁹² ICRC archive document. ⁹³ ICRC archive document.

⁹⁴ CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 168.

111. Paragraph 6 of the 1991 Memorandum of Understanding on the Application of IHL between Croatia and the SFRY requires that hostilities be conducted in accordance with Article 52(1) AP I.

112. 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 52(1) AP I.

113. Section 5.1 of the 1999 UN Secretary-General's Bulletin states that "attacks on . . . civilian objects are prohibited".

114. The 2000 UNTAET Regulation No. 2000/15 establishes panels with exclusive jurisdiction over serious criminal offences, including war crimes. According to Section 6(1)(b)(ii), "intentionally directing attacks against civilian objects, that is, objects which are not military objectives" constitutes a war crime in international armed conflicts.

II. National Practice

Military Manuals

115. Military manuals of Argentina, Australia, Belgium, Benin, Cameroon, Canada, Colombia, Croatia, Ecuador, France, Germany, Italy, Kenya, Lebanon, Madagascar, Netherlands, New Zealand, Nigeria, South Africa, Spain, Togo, UK, US and SFRY (FRY) prohibit attacks against civilian objects.⁹⁵

116. Argentina's Law of War Manual provides that intentionally attacking civilian objects is a grave breach.⁹⁶

117. The US Air Force Pamphlet states that:

In addition to the grave breaches of the Geneva Conventions of 1949, the following acts are representative of situations involving individual criminal responsibility: . . . (4) aerial bombardment for the deliberate purpose of . . . destroying protected areas, buildings or objects.⁹⁷

⁹⁵ Argentina, *Law of War Manual* (1989), §§ 4.03 and 4.45; Australia, *Defence Force Manual* (1994), §§ 210, 503(b) and 531; Belgium, *Teaching Manual for Soldiers* (undated), p. 10; Belgium, *Law of War Manual* (1983), pp. 26 and 27; Benin, *Military Manual* (1995), Fascicule III, p. 12; Cameroon, *Instructors' Manual* (1992), p. 150; Canada, *LOAC Manual* (1999), p. 4-4, § 32; Colombia, *Circular on Fundamental Rules of IHL* (1992), § 7; Colombia, *Instructors' Manual* (1999), p. 16; Croatia, *Commanders' Manual* (1992), § 11; Ecuador, *Naval Manual* (1989), § 8.1.2; France, *LOAC Summary Note* (1992), § 1.5; France, *LOAC Manual* (2001), p. 85; Germany, *Military Manual* (1992), § 451; Italy, *IHL Manual* (1991), Vol. I, § 13; Italy, *LOAC Elementary Rules Manual* (1991), § 11; Kenya, *LOAC Manual* (1997), Précis No. 4, p. 2; Lebanon, *Teaching Manual* (undated), Article 7; Madagascar, *Military Manual* (1994), Fiche No. 3-O, § 11; Netherlands, *Military Manual* (1993), p. V-5; Netherlands, *Military Handbook* (1995), p. 7-43; New Zealand, *Military Manual* (1992), §§ 524(2)(b) and 624(2)(b); Nigeria, *Manual on the Laws of War* (undated), § 6; South Africa, *LOAC Manual* (1996), § 28(a); Spain, *LOAC Manual* (1996), Vol. I, § 4.5.b.(2).b; Sweden, *IHL Manual* (1991), Section 3.2.1.5, p. 53; Togo, *Military Manual* (1996), Fascicule III, p. 12; UK, *LOAC Manual* (1981), Section 4, p. 14, § 5(a); UK, *Military Manual* (1958), § 288; US, *Air Force Pamphlet* (1976), § 5-3(a)(1)(a); US, *Rules of Engagement for Operation Desert Storm* (1991), § G; US, *Naval Handbook* (1995), § 8.1.2; SFRY (FRY), *YPA Military Manual* (1988), § 73.

⁹⁶ Argentina, *Law of War Manual* (1989), § 8.03.

⁹⁷ US, *Air Force Pamphlet* (1976), § 15-3(c)(4).

National Legislation

118. Argentina's Draft Code of Military Justice punishes any soldier who

attacks or . . . commits acts of hostilities against civilian objects of the adverse Party, causing their destruction, provided that said acts do not offer a definite military advantage in the circumstances ruling at the time, and that the said objects do not make an effective contribution to the adversary's military action.⁹⁸

119. Australia's ICC (Consequential Amendments) Act incorporates in the Criminal Code the war crimes defined in the 1998 ICC Statute, including "attacking civilian objects" in international armed conflicts.⁹⁹

120. Azerbaijan's Law concerning the Protection of Civilian Persons and the Rights of Prisoners of War provides that, in international and non-international armed conflicts, attacks against civilian objects are prohibited.¹⁰⁰

121. Under Burundi's Draft Law on Genocide, Crimes against Humanity and War Crimes, it is a war crime in international armed conflicts to intentionally direct attacks against "civilian objects, that is, objects which are not military objectives".¹⁰¹

122. Canada's Crimes against Humanity and War Crimes Act provides that the war crimes defined in Article 8(2) of the 1998 ICC Statute are "crimes according to customary international law" and, as such, indictable offences under the Act.¹⁰²

123. Congo's Genocide, War Crimes and Crimes against Humanity Act defines war crimes with reference to the categories of crimes defined in Article 8 of the 1998 ICC Statute.¹⁰³

124. Under Croatia's Criminal Code, it is a war crime to commit or order the commission of "an attack against . . . civilian objects".¹⁰⁴

125. The Draft Amendments to the Penal Code of El Salvador provide a prison sentence for "anyone who, during an international or non-international armed conflict, attacks civilian objects".¹⁰⁵

126. Under Estonia's Penal Code, "an attack against an object not used for military purposes" is a war crime.¹⁰⁶

127. Under Georgia's Criminal Code, any war crime provided for by the 1998 ICC Statute, which is not explicitly mentioned in the Code, such as

⁹⁸ Argentina, *Draft Code of Military Justice* (1998), Article 293, introducing a new Article 877(2) in the *Code of Military Justice as amended* (1951).

⁹⁹ Australia, *ICC (Consequential Amendments) Act* (2002), Schedule 1, § 268.36.

¹⁰⁰ Azerbaijan, *Law concerning the Protection of Civilian Persons and the Rights of Prisoners of War* (1995), Article 15.

¹⁰¹ Burundi, *Draft Law on Genocide, Crimes against Humanity and War Crimes* (2001), Article 4(B)(b) and (D)(l).

¹⁰² Canada, *Crimes against Humanity and War Crimes Act* (2000), Section 4(1) and (4).

¹⁰³ Congo, *Genocide, War Crimes and Crimes against Humanity Act* (1998), Article 4.

¹⁰⁴ Croatia, *Criminal Code* (1997), Article 158(1).

¹⁰⁵ El Salvador, *Draft Amendments to the Penal Code* (1998), Article entitled "Ataque a bienes protegidos".

¹⁰⁶ Estonia, *Penal Code* (2001), § 106.

“intentionally directing attacks against civilian objects, that is, objects which are not military objectives” in international armed conflicts, is a crime.¹⁰⁷

128. Germany’s Law Introducing the International Crimes Code punishes anyone who, in connection with an international or a non-international armed conflict, “directs an attack by military means against civilian objects, so long as these objects are protected as such by international humanitarian law”.¹⁰⁸

129. Under Hungary’s Criminal Code as amended, a military commander who “pursues a war operation which causes serious damage to . . . goods of the civilian population” is guilty, upon conviction, of a war crime.¹⁰⁹

130. Under Ireland’s Geneva Conventions Act as amended, any “minor breach” of AP I, including violations of Article 52(1) AP I, is a punishable offence.¹¹⁰

131. Italy’s Law of War Decree as amended states that “bombardment, the sole purpose of which is . . . to destroy or damage objects which are of no military interest,” is prohibited.¹¹¹

132. Under Mali’s Penal Code, “intentionally directing attacks against . . . civilian [objects] which are not military objectives” constitutes a war crime in international armed conflicts.¹¹²

133. Under the International Crimes Act of the Netherlands, “intentionally directing attacks against civilian objects, that is, objects that are not military objectives” is a crime, when committed in an international armed conflict.¹¹³

134. Under New Zealand’s International Crimes and ICC Act, war crimes include the crime defined in Article 8(2)(b)(ii) of the 1998 ICC Statute.¹¹⁴

135. Nicaragua’s Draft Penal Code punishes “anyone who, in the context of an international or internal armed conflict, attacks civilian objects”.¹¹⁵

136. Under Norway’s Military Penal Code as amended, “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 Geneva] Conventions . . . is liable to imprisonment”.¹¹⁶

137. Slovakia’s Criminal Code as amended punishes a commander who in a military operation intentionally “causes harm to the . . . property of civilians or the civilian population”.¹¹⁷

¹⁰⁷ Georgia, *Criminal Code* (1999), Article 413(d).

¹⁰⁸ Germany, *Law Introducing the International Crimes Code* (2002), Article 1, § 11(1)(1).

¹⁰⁹ Hungary, *Criminal Code as amended* (1978), Section 160(a).

¹¹⁰ Ireland, *Geneva Conventions Act as amended* (1962), Section 4(1) and (4).

¹¹¹ Italy, *Law of War Decree as amended* (1938), Article 42.

¹¹² Mali, *Penal Code* (2001), Article 31(i)(2).

¹¹³ Netherlands, *International Crimes Act* (2003), Article 5(5)(a).

¹¹⁴ New Zealand, *International Crimes and ICC Act* (2000), Section 11(2).

¹¹⁵ Nicaragua, *Draft Penal Code* (1999), Article 464.

¹¹⁶ Norway, *Military Penal Code as amended* (1902), § 108(b).

¹¹⁷ Slovakia, *Criminal Code as amended* (1961), Article 262(2)(a).

138. Spain's Penal Code punishes

anyone who, during an armed conflict, . . . attacks . . . civilian objects of the adverse party causing their destruction, provided the objects do not, in the circumstances ruling at the time, offer a definite military advantage nor make an effective contribution to the military action of the adversary.¹¹⁸

139. Under Trinidad and Tobago's Draft ICC Act, it is a punishable offence to commit a war crime as defined in Article 8(2)(b)(ii) of the 1998 ICC Statute.¹¹⁹

140. Under the UK ICC Act, it is a punishable offence to commit a war crime as defined in Article 8(2)(b)(ii) of the 1998 ICC Statute.¹²⁰

141. Under Yemen's Military Criminal Code, "attacks on public and private civilian installations" are war crimes.¹²¹

National Case-law

142. The Report on the Practice of Colombia refers to a decision of the Council of State in 1994 which considered the guerrilla attack on the Palace of Justice as a terrorist attack directed against a civilian object.¹²²

143. In 1997, a court in Croatia sentenced 39 people, both soldiers and commanders, to prison terms ranging from 5 to 20 years on charges which included attacks on civilian property, churches, schools and a dam.¹²³

Other National Practice

144. The Report on the Practice of Belgium states that Belgium considered itself bound by the prohibition of attacks on civilian objects even before the adoption of AP I.¹²⁴

145. In a letter to the President of the UN Security Council in 1992, Croatia expressed strong protest over attacks it alleged were carried out against the civilian population and civilian facilities in the wider area of the town of Slavonski Brod launched by Serbs from Bosnia and Herzegovina and the UN Protected Area territories in Croatia and which it considered contrary to Articles 51 and 52 AP I.¹²⁵

146. On the basis of a military communiqué issued by Egypt during the 1973 Middle East conflict, the Report on the Practice of Egypt states that Egypt considers that civilian objects should be immune from attacks. The report also

¹¹⁸ Spain, *Penal Code* (1995), Article 613(1)(b).

¹¹⁹ Trinidad and Tobago, *Draft ICC Act* (1999), Section 5(1)(a).

¹²⁰ UK, *ICC Act* (2001), Sections 50(1) and 51(1) (England and Wales) and Section 58(1) (Northern Ireland).

¹²¹ Yemen, *Military Criminal Code* (1998), Article 21(7).

¹²² Report on the Practice of Colombia, 1998, Chapter 1.3, referring to Council of State, *Administrative Case No. 9276*, Judgement, 19 August 1994.

¹²³ Croatia, District Court of Split, *RA. R. case*, Judgement, 26 May 1997.

¹²⁴ Report on the Practice of Belgium, 1997, Chapter 1.3.

¹²⁵ Croatia, Letter dated 24 August 1992 to the President of the UN Security Council, UN Doc. S/24481, 25 August 1992, p. 3.

refers to a letter from the Counsel of the Egyptian President to the US Secretary of State condemning Israeli attacks on civilian objects.¹²⁶

147. In a declaration on Yugoslavia adopted in 1991, the EC and its member States, the USSR and the US stated that they were “particularly disturbed by reports of continued attacks on civilian targets by elements of the federal armed forces and by both Serbian and Croat irregular forces”.¹²⁷

148. 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 that “civilian property shall not be made the object of attack”.¹²⁸

149. According to the Report on the Practice of Iran, during the Iran–Iraq War, Iranian authorities, including the Ministry of Foreign Affairs and the parliament, condemned Iraqi attacks on civilian objects, which Iran always regarded as war crimes. The report further points out that Iran always insisted that war must be limited to battlefronts and that it had no intention of attacking civilian objects. When Iraq accused Iran of bombarding civilian targets, Iranian military communiqués denied these allegations and claimed that Iranian attacks were limited to military or economic facilities. The report concludes that “in practice, civilian objects were not targeted, except [in] reprisal”.¹²⁹

150. In 1984, in reply to criticism for alleged attacks against civilian objects during the hostilities against Iran, the President of Iraq stated that “our aircraft did not bomb civilian targets in Baneh during their raid of 5 June; they bombed a camp in which a large body of Iranian forces was concentrated”.¹³⁰

151. At the CDDH, Mexico stated that it believed draft Article 47 AP I (now Article 52) to be so essential that it “cannot be the subject of any reservations whatsoever since these would be inconsistent with the aim and purpose of Protocol I and undermine its basis”.¹³¹

152. In a communiqué issued in 1992, the Council of Ministers of Mozambique stated that it considered that:

¹²⁶ Report on the Practice of Egypt, 1997, Chapter 1.3, referring to Military Communiqué No. 63, 26 October 1973 and Letter from Hafez Ismail, Counsel to the Egyptian President, to Henry Kissinger, US Secretary of State, 11 October 1973.

¹²⁷ EC, USSR and US, Declaration on Yugoslavia, The Hague, 18 October 1991, annexed to Letter dated 21 October 1991 from the Netherlands, the USSR and the US to the UN Secretary-General, UN Doc. A/C.1/46/11, 24 October 1991.

¹²⁸ France, Etat-major de la Force d’Action Rapide, Ordres pour l’Opération Mistral, 1995, Section 6, § 66.

¹²⁹ Report on the Practice of Iran, 1997, Chapter 1.3, see also Chapter 6.5 (definition of war crimes).

¹³⁰ Iraq, Message from the President of Iraq, annexed to Letter dated 10 June 1984 to the UN Secretary-General, UN Doc. S/16610, 19 June 1984, p. 2.

¹³¹ Mexico, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 193.

RENAMO's behaviour, namely . . . launching offensives against civilian targets, in a deliberate strategy of conquest of territories and strategic positions . . . constitutes a grave and systematic violation that seriously jeopardizes the General Peace Agreement.¹³²

153. The Report on the Practice of Russia considers that while there are no clear-cut criteria of distinction between military objectives and civilian objects, the relevant military instructions refer to the prohibition of attacks on civilian objects and the protection of these objects.¹³³

154. The Report on the Practice of Rwanda considers the prohibition on targeting civilian objects as a required precaution in attack.¹³⁴

155. In 1992, in a note verbale addressed to the UN Secretary-General, Slovenia expressed its readiness to provide information concerning violations of IHL committed by members of the Yugoslav Army during the 10-day conflict with Slovenia, including "bombing, shooting and destroying civilian targets and private property".¹³⁵

156. In its written statement submitted to the ICJ in the *Nuclear Weapons case* in 1995, Sweden stated that "under the principle of distinction, an attack on a civilian population or civilian property is prohibited".¹³⁶

157. In 1996, during a debate in the UN Security Council on the situation in Lebanon, the UAE stated that arbitrary bombings of civilian regions were a violation of IHL and of GC IV and referred to an ICRC statement condemning such actions on the part of Israel.¹³⁷

158. At the CDDH, following the adoption of draft Article 47 AP I (now Article 52), the UK stated that it "welcomed the reaffirmation, in paragraph 2, of the customary law rule that civilian objects must not be the direct object of attack".¹³⁸

159. In 1996, during a debate in the UN Security Council on the situation in Lebanon, the UK stated that attacks directed at civilian targets must be put to an end.¹³⁹

160. In 1966, in reply to an inquiry from a member of the US House of Representatives asking for a restatement of US policy on targeting in North Vietnam,

¹³² Mozambique, Communiqué issued by the Council of Ministers, 20 October 1992, annexed to Letter dated 23 October 1992 to the UN Secretary-General, UN Doc. S/24724, 28 October 1992, p. 4.

¹³³ Report on the Practice of Russia, 1997, Chapter 1.3.

¹³⁴ Report on the Practice of Rwanda, 1997, Chapter 1.6.

¹³⁵ Slovenia, Note verbale dated 5 November 1992 to the UN Secretary-General, UN Doc. S/24789, 9 November 1992, p. 2.

¹³⁶ Sweden, Written statement submitted to the ICJ, *Nuclear Weapons case*, 20 June 1995, p. 3; see also Written statement submitted to the ICJ, *Nuclear Weapons (WHO) case*, 2 June 1994, p. 3.

¹³⁷ UAE, Statement before the UN Security Council, UN Doc. S/PV.3653, 15 April 1996, p. 17.

¹³⁸ UK, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 169, § 153.

¹³⁹ UK, Statement before the UN Security Council, UN Doc. S/PV.3653, 15 April 1996, p. 13.

a US Deputy Assistant Secretary of Defense wrote that “no United States aircraft have been ordered to strike any civilian targets in North Vietnam at any time . . . We have no knowledge that any pilot has disobeyed his orders and deliberately attacked these or any other nonmilitary targets in North Vietnam.”¹⁴⁰

161. In 1974, at the Lucerne Conference of Government Experts on Weapons which may Cause Unnecessary Suffering or have Indiscriminate Effects, the head of the US delegation stated that “the law of war also prohibits attacks on civilians and civilian objects as such”.¹⁴¹

162. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the US stated that “over 52,000 coalition air sorties have been carried out since hostilities began on 16 January. These sorties were not flown against any civilian or religious targets.”¹⁴²

163. In 1993, in its report to Congress on the protection of natural and cultural resources during times of war, the US Department of Defense stated that:

The United States considers the obligations to protect natural, civilian, and cultural property to be customary international law . . . Cultural property, civilian objects, and natural resources are protected from intentional attack so long as they are not utilized for military purposes.¹⁴³

III. Practice of International Organisations and Conferences

United Nations

164. In a resolution on Lebanon adopted in 1996, the UN Security Council stated that it was gravely concerned by all attacks on civilian targets.¹⁴⁴

165. In a resolution adopted in 1999 on the protection of civilians in armed conflicts, the UN Security Council strongly condemned “attacks on objects protected under international law” and called on all parties “to put an end to such practices”.¹⁴⁵

166. In 1995, in a statement by its President, the UN Security Council condemned “any shelling of civilian targets” in and around Croatia.¹⁴⁶

¹⁴⁰ US, Letter from Deputy Assistant Secretary of Defense Goulding to US Representative Ogden Reid from New York, 30 December 1966, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 428.

¹⁴¹ US, Statement of 25 September 1974 at the Conference of Government Experts on Weapons which may Cause Unnecessary Suffering or have Indiscriminate Effects, Lucerne, 24 September–18 October 1974, reprinted in Arthur W. Rovine, *Digest of United States Practice in International Law, 1974*, Department of State Publication 8809, Washington, D.C., 1975, p. 713.

¹⁴² US, Letter dated 8 February 1991 to the President of the UN Security Council, UN Doc. S/22216, 13 February 1991, p. 1

¹⁴³ US, Department of Defense, Report to Congress on International Policies and Procedures Regarding the Protection of Natural and Cultural Resources During Times of War, 19 January 1993, p. 202.

¹⁴⁴ UN Security Council, Res. 1052, 18 April 1996, preamble.

¹⁴⁵ UN Security Council, Res. 1265, 17 September 1999, § 2.

¹⁴⁶ UN Security Council, Statement by the President, UN Doc. S/PRST/1995/38, 4 August 1995, p. 1.

167. In a resolution adopted in 1938 concerning the protection of civilian populations against air bombardment in case of war, the Assembly of the League of Nations stated that “objectives aimed at from the air must be legitimate military objectives and must be identifiable”.¹⁴⁷

168. In a resolution adopted in 1995, the UN General Assembly condemned “the use of cluster bombs on civilian targets by Bosnian Serb and Croatian Serb forces”.¹⁴⁸

169. In a resolution adopted in 1996 on the situation of human rights in Sudan, the UN General Assembly urged the government of Sudan “to cease immediately all aerial attacks on civilian targets and other attacks that are in violation of international humanitarian law”.¹⁴⁹

170. In a resolution adopted in 1993 on the situation of human rights in the former Yugoslavia and in Bosnia and Herzegovina, the UN Commission on Human Rights condemned “attacks against non-military targets”.¹⁵⁰

171. In a resolution adopted in 1994 on the situation of human rights in Bosnia and Herzegovina, the UN Commission on Human Rights condemned the “attacks against civilian targets”.¹⁵¹

172. In a resolution adopted in 1994, the UN Commission on Human Rights called upon the government of Sudan “to explain without delay the circumstances of the recent air attacks on civilian targets in southern Sudan”.¹⁵²

173. In a resolution adopted in 1995, the UN Commission on Human Rights condemned “the use of cluster and napalm bombs against civilian targets by Bosnian and Croatian Serb forces”.¹⁵³

174. In 1996, in a report on UNIFIL in Lebanon, the UN Secretary-General noted that in the text of a partial ceasefire concluded on 27 April 1996, Israel agreed not to fire or aim any kind of weapon at civilians or civilian targets in Lebanon.¹⁵⁴

175. The prohibition of direct attacks against civilian objects was a constant preoccupation in the periodic reports on the situation of human rights in the former Yugoslavia submitted by the Special Rapporteur of the UN Commission on Human Rights. For example, in his third report in 1993, the Special Rapporteur considered the shelling of civilian objects as a feature of the situation in Bosnia and Herzegovina, citing the bombing of the central mosque in Sarajevo and of the city of Dobrinja.¹⁵⁵ In the final recommendations of his fifth periodic

¹⁴⁷ League of Nations, Assembly, Resolution adopted on 30 September 1938, § I(2), *Official Journal*, Special Supplement No. 182, Records of the XIXth Ordinary Session of the Assembly, pp. 15–17.

¹⁴⁸ UN General Assembly, Res. 50/193, 22 December 1995, § 5.

¹⁴⁹ UN General Assembly, Res. 51/112, 12 December 1996, § 8.

¹⁵⁰ UN Commission on Human Rights, Res. 1993/7, 23 February 1993, § 10.

¹⁵¹ UN Commission on Human Rights, Res. 1994/75, 9 March 1994, § 1.

¹⁵² UN Commission on Human Rights, Res. 1994/79, 9 March 1994, § 6.

¹⁵³ UN Commission on Human Rights, Res. 1995/89, 8 March 1995, § 5.

¹⁵⁴ UN Secretary-General, Report on UNIFIL, UN Doc. S/1996/575, 20 July 1996, § 24.

¹⁵⁵ UN Commission on Human Rights, Special Rapporteur on the Situation of Human Rights in the Former Yugoslavia, Third periodic report, UN Doc. E/CN.4/1994/6, 26 August 1993, § 37.

report, the Special Rapporteur requested that in the conduct of hostilities in the UN Protected Areas, the parties refrain from all further shelling of civilian objects.¹⁵⁶

176. In 1994, in its final report on grave breaches of the Geneva Conventions and other violations of IHL committed in the former Yugoslavia, the UN Commission of Experts Established pursuant to Security Council Resolution 780 (1992) stated that:

The concealment of Bosnian Government forces among civilian property may have caused the attraction of fire from the Bosnian Serb Army which may have resulted in legitimate collateral damage. There is enough apparent damage to civilian objects in Sarajevo to conclude that either civilian objects have been deliberately targeted or they have been indiscriminately attacked.¹⁵⁷

Other International Organisations

177. Addressing the President of the UN Security Council as members of the Contact Group of the OIC in 1992, Egypt, Iran, Pakistan, Saudi Arabia, Senegal and Turkey protested against “the continued aggression of the Serbian elements who, through artillery and air attacks on civilian targets, continue to violate the principles of the Charter of the United Nations, international humanitarian law and the basic norms of civilized behaviour”.¹⁵⁸

International Conferences

178. The Plan of Action for the years 2000–2003 adopted in 1999 by the 27th International Conference of the Red Cross and Red Crescent requested that all the parties to an armed conflict take effective measures to ensure that:

in the conduct of hostilities, every effort is made – in addition to the total ban on directing attacks against the civilian population as such or against civilians not taking a direct part in hostilities or against civilian objects – . . . to protect civilian objects including cultural property, places of worship and diplomatic facilities.¹⁵⁹

IV. Practice of International Judicial and Quasi-judicial Bodies

179. In its advisory opinion in the *Nuclear Weapons case* in 1996, the ICJ stated that “the cardinal principles contained in the texts constituting the fabric of

¹⁵⁶ UN Commission on Human Rights, Special Rapporteur on the Situation of Human Rights in the Former Yugoslavia, Fifth periodic report, UN Doc. E/CN.4/1994/47, 17 November 1993, §§ 10, 45, 65–67, 92–96, 161–164 and 235.

¹⁵⁷ UN Commission of Experts Established pursuant to Security Council Resolution 780 (1992), Final report, UN Doc. S/1994/674, 27 May 1994, Annex, § 206.

¹⁵⁸ OIC, Contact Group on Bosnia and Herzegovina, Letter dated 5 October 1992 from Egypt, Iran, Pakistan, Saudi Arabia, Senegal and Turkey to the President of the UN Security Council, UN Doc. S/24620, 6 October 1992, p. 1.

¹⁵⁹ 27th International Conference of the Red Cross and Red Crescent, Geneva, 31 October–6 November 1999, Res. I, Annex 2, Plan of Action for the years 2000–2003, Actions proposed for final goal 1.1, § 1(a).

humanitarian law are the following. The first is aimed at the protection of the civilian population and civilian objects."¹⁶⁰

180. In its judgement in the *Kupreškić case* in 2000, the ICTY Trial Chamber stated that:

The protection of civilians in time of armed conflict, whether international or internal, is the bedrock of modern humanitarian law . . . Indeed, it is now a universally recognised principle, recently restated by the International Court of Justice [in the *Nuclear Weapons case*], that deliberate attacks on civilians or civilian objects are absolutely prohibited by international humanitarian law.¹⁶¹

181. In the *Blaškić case* before the ICTY in 1997, the accused was charged with "unlawful attack on civilian objects" in violation of the laws or customs of war.¹⁶² In its judgement in 2000, the ICTY Trial Chamber held that "the parties to the conflict are obliged to attempt to distinguish between military targets and civilian persons or property. Targeting civilians or civilian property is an offence when not justified by military necessity."¹⁶³ It found the accused guilty of "a violation of the laws or customs of war under Article 3 of the Statute and recognised by Article 52(1) of Additional Protocol I: unlawful attacks on civilian objects".¹⁶⁴

182. In the *Kordić and Čerkez case* before the ICTY in 1998, the accused were charged with "unlawful attack on civilian objects" in violation of the laws or customs of war.¹⁶⁵ In an interlocutory decision in this case in 1999, the ICTY Trial Chamber held that it was "indisputable" that the prohibition of attacks on civilian objects was a generally accepted obligation and that as a consequence, "there is no possible doubt as to the customary status" of Article 52(1) AP I as it reflects a core principle of humanitarian law "that can be considered as applying to all armed conflicts, whether intended to apply to international or non-international conflicts".¹⁶⁶ In its judgement in 2001, the ICTY Trial Chamber stated that:

Prohibited attacks are those launched deliberately against . . . civilian objects in the course of an armed conflict and are not justified by military necessity. They must have caused . . . extensive damage to civilian objects. Such attacks are in direct contravention of the prohibitions expressly recognised in international law including the relevant provisions of Additional Protocol I.¹⁶⁷

¹⁶⁰ ICJ, *Nuclear Weapons case*, Advisory Opinion, 8 July 1996, § 78.

¹⁶¹ ICTY, *Kupreškić case*, Judgement, 14 January 2000, § 521.

¹⁶² ICTY, *Blaškić case*, Second Amended Indictment, 25 April 1997, § 8, Count 4.

¹⁶³ ICTY, *Blaškić case*, Judgement, 3 March 2000, § 180.

¹⁶⁴ ICTY, *Blaškić case*, Judgement, 3 March 2000, Section VI, Disposition.

¹⁶⁵ ICTY, *Kordić and Čerkez case*, First Amended Indictment, 30 September 1998, §§ 40 and 41, Counts 4 and 6.

¹⁶⁶ ICTY, *Kordić and Čerkez case*, Decision on the Joint Defence Motion, 2 March 1999, § 31.

¹⁶⁷ ICTY, *Kordić and Čerkez case*, Judgement, 26 February 2001, § 328.

The Tribunal found the accused guilty of “a violation of the laws or customs of war, as recognised by Article 3 [of the ICTY Statute] (unlawful attack on civilian objects)”.¹⁶⁸

183. In its final report to the ICTY Prosecutor in 2000, the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia stated that:

Attacks which are not directed against military objectives (particularly attacks directed against the civilian population) . . . may constitute the *actus reus* for the offence of unlawful attack [as a violation of the laws and customs of war]. The *mens rea* for the offence is intention or recklessness, not simple negligence.¹⁶⁹

V. Practice of the International Red Cross and Red Crescent Movement

184. To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that “civilian objects may not be attacked, unless they become military objectives”.¹⁷⁰

185. In an appeal issued in October 1973, the ICRC urged all the belligerents in the conflict in the Middle East (Egypt, Iraq, Israel and Syria) to observe forthwith, in particular, the provisions of, *inter alia*, Article 47(2) of draft AP I which stated in part that “objects which are not military objectives shall not be made the object of attack, except if they are used mainly in support of the military effort”. All governments concerned replied favourably.¹⁷¹

186. 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 that “the following general rules are recognized as binding on any party to an armed conflict: . . . It is forbidden to attack civilian persons or objects.”¹⁷²

187. In a joint statement issued in 1991, the Yugoslav Red Cross and the Hungarian Red Cross expressed their deep concern about “the protracting internal conflict in Yugoslavia” and urged the parties to the conflict “to save all non-military targets . . . and not to use them for military purposes”.¹⁷³

188. In a communication to the press in 1993, the ICRC reminded the parties to the conflict in Nagorno-Karabakh of their obligation “to refrain from attacking civilians and civilian property”.¹⁷⁴

¹⁶⁸ ICTY, *Kordić and Čerkez case*, Judgement, 26 February 2001, Section V, Disposition.

¹⁶⁹ 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, § 28.

¹⁷⁰ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, § 209.

¹⁷¹ ICRC, The International Committee's Action in the Middle East, *IRRC*, No. 152, 1973, pp. 584–585.

¹⁷² ICRC, Memorandum on the Applicability of International Humanitarian Law, 14 December 1990, § II, *IRRC*, No. 280, 1991, p. 24.

¹⁷³ Yugoslav Red Cross and Hungarian Red Cross, Joint Statement, Subotica, 25 October 1991.

¹⁷⁴ ICRC, Communication to the Press No. 93/25, Nagorno-Karabakh conflict: 60,000 civilians flee fighting in south-western Azerbaijan, 19 August 1993.

189. In a communication to the press in 1993, the ICRC reminded the parties to the conflict in Georgia of their obligation “to refrain from attacking civilians and civilian property”.¹⁷⁵

190. In a press release issued in 1994 in the context of the conflict in Yemen, the ICRC stated that “attacks against civilians and civilian property are prohibited”.¹⁷⁶

191. In 1994, in a Memorandum on Respect for International Humanitarian Law in Angola, the ICRC stated that “attacks on civilians or civilian objects are prohibited”.¹⁷⁷

192. 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 that “it is prohibited to direct attacks against civilian persons or objects”.¹⁷⁸

193. In a communication to the press in 2000, the ICRC reminded both the Sri Lankan security forces and the LTTE of their obligation to comply with IHL, which provided for the protection of the civilian population against the effects of the hostilities. The ICRC called on both parties to ensure that the civilian population and civilian property were protected and respected at all times.¹⁷⁹

VI. Other Practice

194. In 1979, an armed group wrote to the ICRC to confirm its commitment to IHL and to denounce attacks against civilian objectives it claimed had been carried out by one of the parties to the conflict.¹⁸⁰

195. In 1980, an armed opposition group expressed its acceptance of the fundamental principles of IHL as formulated by the ICRC, including the principle that “the parties to the conflict shall at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian objects”.¹⁸¹

196. In their commentary on the 1977 Additional Protocols, Bothe, Partsch and Solf state that:

The concept of general protection [in Article 13(1) AP II], however, is broad enough to cover protections which flow as necessary inferences from other provisions of

¹⁷⁵ ICRC, Communication to the Press No. 93/31, Georgia: ICRC Activities in Abkhazia, 20 September 1993.

¹⁷⁶ ICRC, Press Release No. 1773, Fighting in Yemen, 9 May 1994; see also Press Release No. 1775, Yemen: ICRC active on both sides appeals to belligerents, 12 May 1994.

¹⁷⁷ ICRC, Memorandum on Respect for International Humanitarian Law in Angola, 8 June 1994, § II, *IRRC*, No. 320, 1997, p. 503.

¹⁷⁸ 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.

¹⁷⁹ ICRC, Communication to the Press No. 00/13, Sri Lanka: ICRC urges both parties to respect civilians, 11 May 2000.

¹⁸⁰ ICRC archive document. ¹⁸¹ ICRC archive document.

Protocol II. Thus, while there is no explicit provision affording general protection for civilian objects other than the special objects covered by Arts. 14 to 16, the protection against direct attack of para. 2 also precludes attacks against civilian objects used as dwellings or otherwise occupied by civilians not then supporting the military effort. The definition of civilian objects in Art. 52(2) of Protocol I provides the basis for construing the extent of such protection of civilian objects.¹⁸²

197. In 1992, an armed opposition group requested that the ICRC put pressure on the government to stop the aerial bombardment of civilian objects.¹⁸³

198. In 2001, in a report on Israel and the occupied territories, Amnesty International stated that:

It is a basic rule of customary international law that civilians and civilian objects must never be made the targets of an attack. This rule applies in all circumstances including in the midst of full-scale armed conflict. Due to its customary nature it is binding on all parties. Israel is prohibited from attacking civilians and civilian objects. Palestinians are also prohibited from targeting Israeli civilians, including settlers who are not bearing arms, and civilian objects.¹⁸⁴

Attacks against places of civilian concentration

Note: For practice concerning attacks on open towns and non-defended localities, see Chapter 11, section C. For practice concerning attacks against buildings dedicated to religion, education, art, science or charitable purposes, see Chapter 12, section A.

I. Treaties and Other Instruments

Treaties

199. No practice was found.

Other Instruments

200. Article 6 of the 1956 New Delhi Draft Rules states that "it is also forbidden to attack dwellings, installations... which are for the exclusive use of, and occupied by, the civilian population".

II. National Practice

Military Manuals

201. Cameroon's Instructors' Manual prohibits the bombardment of residential areas.¹⁸⁵

¹⁸² Michael Bothe, Karl Joseph Partsch, Waldemar A. Solf (eds.), *New Rules for Victims of Armed Conflicts*, Martinus Nijhoff, The Hague, 1982, p. 677.

¹⁸³ ICRC archive document.

¹⁸⁴ Amnesty International, *Israel and the Occupied Territories: State Assassinations and Other Unlawful Killings*, AI Index MDE 15/005/2001, London, 21 February 2001, p. 2, see also p. 29.

¹⁸⁵ Cameroon, *Instructors' Manual* (1992), pp. 111 and 150.

202. The Military Manual of the Dominican Republic states that “under the laws of war, you are not allowed to attack villages, towns, or cities. However, when your mission requires, you are allowed to engage enemy troops, equipment, or supplies in a village, town or city”.¹⁸⁶

203. Ecuador’s Naval Manual states that “the wanton or deliberate destruction of areas of concentrated civilian habitation, including cities, towns, and villages, is prohibited”.¹⁸⁷

204. Indonesia’s Directive on Human Rights in Irian Jaya and Maluku provides that “towns, villages and residences, even if used for food-stuff and equipment stockpile, should not be attacked”.¹⁸⁸

205. Romania’s Soldiers’ Manual states that “attacks of cities [and] villages” are prohibited.¹⁸⁹

206. The US Rules of Engagement for Operation Desert Storm gives the following instruction:

Do not fire into civilian populated areas or buildings which are not defended or being used for military purposes. [S]chools . . . will not be engaged except in self-defense. Do not attack traditional civilian objects, such as houses, unless they are being used by the enemy for military purposes and neutralization assists in mission accomplishment.¹⁹⁰

207. The US Naval Handbook states that “the wanton or deliberate destruction of areas of concentrated civilian habitation, including cities, towns, and villages, is prohibited”.¹⁹¹

National Legislation

208. Azerbaijan’s Criminal Code provides that “directing attacks against . . . living places” constitutes a war crime in international and non-international armed conflicts.¹⁹²

209. Under the Criminal Code of the Federation of Bosnia and Herzegovina, it is a war crime to commit or order the commission of “an attack on . . . a [civilian] settlement”.¹⁹³ The Criminal Code of the Republika Srpska contains the same provision.¹⁹⁴

210. Under Croatia’s Criminal Code, it is a war crime to commit or order the commission of “an attack against . . . [civilian] settlements”.¹⁹⁵

¹⁸⁶ Dominican Republic, *Military Manual* (1980), p. 3.

¹⁸⁷ Ecuador, *Naval Manual* (1989), § 8.5.1.1.

¹⁸⁸ Indonesia, *Directive on Human Rights in Irian Jaya and Maluku* (1995), § 9(b).

¹⁸⁹ Romania, *Soldiers’ Manual* (1991), p. 34.

¹⁹⁰ US, *Rules of Engagement for Operation Desert Storm* (1991), §§ B, C and G.

¹⁹¹ US, *Naval Handbook* (1995), § 8.5.1.1.

¹⁹² Azerbaijan, *Criminal Code* (1999), Article 116(7).

¹⁹³ Bosnia and Herzegovina, Federation, *Criminal Code* (1998), Article 154(1).

¹⁹⁴ Bosnia and Herzegovina, Republika Srpska, *Criminal Code* (2000), Article 433(1).

¹⁹⁵ Croatia, *Criminal Code* (1997), Article 158(1).

- 211.** Under Slovenia's Penal Code, it is a war crime to commit or order the commission of "an attack . . . on built-up areas".¹⁹⁶
- 212.** Uruguay's Military Penal Code as amended punishes anyone who carries out "an unjustified attack against . . . schools".¹⁹⁷
- 213.** Under the Penal Code as amended of the SFRY (FRY), it is a war crime to commit or order the commission of "an attack on . . . a [civilian] settlement".¹⁹⁸

National Case-law

- 214.** No practice was found.

Other National Practice

- 215.** In 1996, during a debate in the UN Security Council, in a brief report of alleged violations of IHL by the Taliban, Afghanistan stated that, during the 1994 failed coup, more than 3,000 rockets had rained down on the innocent civilian population of Kabul and on residential areas of the town.¹⁹⁹
- 216.** In 1992, in letters addressed to the UN Secretary-General and President of the UN Security Council respectively, Azerbaijan referred to data provided to the UN Fact-Finding Mission in the region concerning illegal actions by Armenia, including the destruction of and damage caused to residential buildings.²⁰⁰
- 217.** In 1996, during a debate in the UN Security Council, Botswana commented on the numerous violations of the fundamental human rights of the Afghan civilian population documented by international human rights organisations, listing among such violations the bombing of residential areas.²⁰¹
- 218.** In 1972, in a statement before the UNESCO General Conference, China criticised the US for having "wantonly bombarded Vietnamese cities and villages".²⁰²
- 219.** In 1993, the German Chancellor strongly criticised the "brutal siege and the shelling of the Muslim town of Srebrenica".²⁰³
- 220.** In reply to a message of 9 June 1984 from the UN Secretary-General, the President of Iran stated that:

In the course of more than three and a half years since the beginning of this war, Iraq has repeatedly attacked our residential areas in contravention of all international

¹⁹⁶ Slovenia, *Penal Code* (1994), Article 374(1).

¹⁹⁷ Uruguay, *Military Penal Code as amended* (1943), Article 58(12).

¹⁹⁸ SFRY (FRY), *Penal Code as amended* (1976), Article 142(1).

¹⁹⁹ Afghanistan, Statement before the UN Security Council, UN Doc. S/PV.3648, 9 April 1996, p. 3.

²⁰⁰ Azerbaijan, Identical letters dated 11 June 1992 addressed respectively to the UN Secretary-General and the President of the UN Security Council, UN Doc. S/24103, 16 June 1992, p. 1.

²⁰¹ Botswana, Statement before the UN Security Council, UN Doc. S/PV.3648, 9 April 1996, p. 15.

²⁰² China, Statement before the General Conference of UNESCO, 25 October 1972, *Selected Documents of the Chinese Delegation to the United Nations*, The People's Press, Beijing, 1972, p. 239.

²⁰³ Germany, Statement by the Chancellor, Helmut Kohl, 19 April 1993, *Bulletin*, No. 31, Presse- und Informationsamt der Bundesregierung, Bonn, 21 April 1993, p. 270.

and humanitarian principles . . . The Government of the Islamic Republic of Iran, however, in order to show its good faith, responds positively to your proposal on ending attacks on residential areas . . . I deem it necessary to underline that the good will shown by the Islamic Republic of Iran in response to your proposal to stop attacks on civilian areas is conditional on the total ending of the Iraqi régime's criminal acts of bombarding Iranian cities.²⁰⁴

221. In 1991, in a letter addressed to the UN Secretary-General during the Gulf War, Iran stated that:

In accordance with the same principles governing its foreign policy and consistent with the very strong and clear position adopted against bombardment of civilian areas in Iraq by allied forces, the Islamic Republic of Iran cannot remain but alarmed at numerous reports of horrifying attacks by government forces against innocent civilians.²⁰⁵

222. According to the Report on the Practice of Iran, during the Iran–Iraq War, the Iranian authorities accused Iraq on many occasions of having carried out attacks on civilian objects such as schools, houses, hospitals and refugee camps.²⁰⁶

223. In 1983, Iraq's Deputy Prime Minister and Minister for Foreign Affairs declared the readiness of Iraq "to sign a special peace treaty between Iraq and Iran, under United Nations supervision, wherein the two parties undertake not to attack towns and villages on the two sides, in spite of the continuation of the war".²⁰⁷

224. In reply to a message from the UN Secretary-General of 9 June 1984, the President of Iraq stated that:

I wish to remind you, first of all, that since the armed conflict began the Iranian side has continually resorted to the bombing of our frontier towns and villages and other civilian targets and for a long time persisted in denying it even after the facts had been verified by the United Nations mission . . . I would also like to remind you that, in June 1983, on behalf of Iraq I took the initiative of proposing the conclusion under international auspices of an agreement between Iran and Iraq under which the two parties would refrain from bombing civilian targets . . . I therefore have the pleasure to inform you that the Iraqi Government accepts your proposal on condition that Iran is committed thereby, and that you make effective arrangements as soon as possible to supervise the implementation by the two parties of their commitments.²⁰⁸

²⁰⁴ Iran, Letter dated 10 June 1984 to the UN Secretary-General, UN Doc. S/16609, 10 June 1984, p. 2.

²⁰⁵ Iran, Letter dated 22 March 1991 to the UN Secretary-General, UN Doc. S/22379, 23 March 1991; see also Letter dated 12 March 1992 to the President of the UN Security Council, UN Doc. S/23703, 12 March 1992.

²⁰⁶ Report on the Practice of Iran, 1997, Chapter 1.3.

²⁰⁷ Iraq, Statement by the Deputy Prime Minister and Minister for Foreign Affairs, Tarek Aziz, 25 May 1983, annexed to Letter dated 27 May 1983 to the UN Secretary-General, UN Doc. S/15804, 27 May 1983.

²⁰⁸ Iraq, Message from the President of Iraq, annexed to Letter dated 10 June 1984 to the UN Secretary-General, UN Doc. S/16610, 19 June 1984, p. 2.

225. The Report on the Practice of Jordan states that Islam prohibits attacks against civilians and mentions an order given by Caliph Abu Bakr (632–634 AD) proscribing the destruction of any dwelling. The report adds that, considering the time at which it was issued, this order should be highly esteemed.²⁰⁹

226. In 1996, during a debate in the UN Security Council on the situation in Lebanon, South Korea called upon both parties to the conflict to cease targeting areas populated by civilians.²¹⁰

227. In 1971, during a debate in the Third Committee of the UN General Assembly concerning respect for human rights in armed conflicts, Liberia stated that it “agreed wholeheartedly with the principle that . . . dwellings . . . should not be the object of military operations as affirmed in [principle 5] of General Assembly resolution 2675 (XXV)”.²¹¹

228. In 1993, in a declaration concerning a report on violations of human rights in Rwanda, the Rwandan government asked the FPR to cease all attacks against civilian targets such as camps for displaced persons, hospitals and schools.²¹²

229. On the basis of replies by army officers to a questionnaire, the Report on the Practice of Rwanda states that an attack against civilians can be defined as an attack against purely civilian targets such as a town or a village exclusively inhabited by civilians.²¹³

230. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, Saudi Arabia stated that “the cities of the Kingdom of Saudi Arabia have been bombarded by 26 missiles, which have landed in purely civilian localities of no military value”.²¹⁴

231. In 1986, during a debate in the UN Security Council concerning the Iran–Iraq War, the UK voiced strong criticism of the recurrent bombing of civilian centres, qualifying it as a violation of international law under the Geneva Conventions.²¹⁵

232. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the US denounced Iraq’s firing of surface-to-surface missiles at Saudi Arabia and Israel and stated that “particularly in regard to Israel, Iraq

²⁰⁹ Report on the Practice of Jordan, 1997, Chapter 1.4.

²¹⁰ South Korea, Statement before the UN Security Council, UN Doc. S/PV.3653, 15 April 1996, p. 11.

²¹¹ Liberia, Statement before the Third Committee of the UN General Assembly, UN Doc. A/C.3/SR.1890, 1 December 1971, § 8.

²¹² Association rwandaise pour la défense des droits de la personne et des libertés publiques *Rapport sur les droits de l’homme au Rwanda, octobre 1992–octobre 1993*, Kigali, December 1993, p. 73.

²¹³ Report on the Practice of Rwanda, 1997, Replies by Rwandan army officers to a questionnaire, Chapter 1.4.

²¹⁴ Saudi Arabia, Report dated 30 January 1991 on the progress of operations for the liberation of Kuwait, annexed to Letter dated 30 January 1991 to the President of the UN Security Council, UN Doc. S/22180, 31 January 1991, p. 2.

²¹⁵ UK, Statement before the UN Security Council, UN Doc. S/PV.2666, 24 February 1986, pp. 21–22.

has targeted these missiles against civilian areas in an obvious sign of Iraqi disregard for civilian casualties".²¹⁶

III. Practice of International Organisations and Conferences

United Nations

233. In a resolution adopted in 1983 in the context of the Iran–Iraq War, the UN Security Council condemned "all violations of international humanitarian law, in particular, the provisions of the Geneva Conventions of 1949 in all their aspects, and calls for the immediate cessation of all military operations against civilian targets, including city and residential areas".²¹⁷

234. In a resolution adopted in 1986 in the context of the Iran–Iraq War, the UN Security Council deplored "the bombing of purely civilian population centres".²¹⁸ This statement was repeated in a subsequent resolution adopted in 1987.²¹⁹

235. In a resolution on Lebanon adopted in 1996, the UN Security Council condemned attacks on civilian targets, including residential areas.²²⁰

236. In a resolution on Georgia adopted in 1998, the UN Security Council condemned the deliberate destruction of houses by Abkhaz forces.²²¹

237. In a resolution adopted in 1999 on children in armed conflicts, the UN Security Council strongly condemned "attacks on objects protected under international law, including places that usually have a significant presence of children such as schools and hospitals" and called on all parties concerned "to put an end to such practices".²²²

238. In 1986, in a statement by its President in the context of the Iran–Iraq War, the UN Security Council declared that:

The members of the Security Council continue to deplore the violation of international humanitarian law and other laws of armed conflict. They express their deepening concern over the widening of the conflict through the escalation of attacks on purely civilian targets, on merchant shipping and oil installations of the littoral States.²²³

239. In 1988, in a statement by its President in the context of the Iran–Iraq War, the UN Security Council declared that:

²¹⁶ US, Letter dated 30 January 1991 to the President of the UN Security Council, UN Doc. S/22173, 30 January 1991, p. 2; see also Letter dated 22 January 1991 to the President of the UN Security Council, UN Doc. S/22130, 22 January 1991, pp. 1–2; and Letter dated 8 February 1991 to the President of the UN Security Council, UN Doc. S/22216, 13 February 1991, p. 2.

²¹⁷ UN Security Council, Res. 540, 31 October 1983, § 2.

²¹⁸ UN Security Council, Res. 582, 24 February 1986, § 2.

²¹⁹ UN Security Council, Res. 598, 20 July 1987, preamble.

²²⁰ UN Security Council, Res. 1052, 18 April 1996, preamble, § 5.

²²¹ UN Security Council, Res. 1187, 30 July 1998, § 4.

²²² UN Security Council, Res. 1261, 25 August 1999, § 2, see also § 18.

²²³ UN Security Council, Statement by the President, UN Doc. S/PV.2730, 22 December 1986, p. 3.

The members of the Security Council . . . strongly deplore the escalation of the hostilities between [Iran and Iraq], particularly against civilian targets and cities that have taken a heavy toll in human lives and caused vast material destruction, in spite of the declared readiness of the belligerent parties to cease such attacks.²²⁴

240. In 1998, in a statement by its President, the UN Security Council strongly condemned “the targeting of children in armed conflicts” and expressed its readiness “to consider appropriate responses whenever buildings or sites that usually have a significant presence of children such as, *inter alia*, schools, playgrounds, hospitals, are specifically targeted”.²²⁵

241. In Resolution 2675 (XXV) adopted in 1970, the UN General Assembly stated that:

Dwellings and other installations that are used only by civilian populations should not be the object of military operations. Places or areas designated for the sole protection of civilians, such as hospital zones or similar refuges, should not be the object of military operations.²²⁶

242. In a resolution adopted in 1995 on the situation of human rights in the former Yugoslavia, the UN General Assembly condemned “the shelling of residential areas”.²²⁷

243. The UN Commission on Human Rights has repeatedly condemned attacks against villages in the conflict in southern Lebanon. In 1989, for example, the Commission condemned the bombing of villages and civilian populations and qualified such acts as a violation of human rights.²²⁸ Further resolutions referred to the bombardment of villages and civilian areas in southern Lebanon as a violation of human rights.²²⁹

244. In a resolution adopted in 1994 on the situation of human rights in the former Yugoslavia, the UN Commission on Human Rights condemned “the deliberate, murderous shelling” of cities and other civilian areas.²³⁰

245. In a resolution adopted in 1994 on the human rights situation in Iraq, the UN Commission on Human Rights reiterated its deep concern about the destruction of Iraqi towns and villages.²³¹

246. In a resolution adopted in 1998 concerning the human rights situation in southern Lebanon and western Bekaa, the UN Commission on Human rights deplored “the continued Israeli violations of human rights in the occupied

²²⁴ UN Security Council, Statement by the President, UN Doc. S/PV.2798, 16 March 1988, p. 2.

²²⁵ UN Security Council, Statement by the President, UN Doc. S/PRST/1998/18, 29 June 1998, pp. 1–2.

²²⁶ UN General Assembly, Res. 2675 (XXV), 9 December 1970, §§ 5 and 6.

²²⁷ UN General Assembly, Res. 50/193, 22 December 1995, § 6.

²²⁸ UN Commission on Human Rights, Res. 1989/65, 8 March 1989, § 1.

²²⁹ UN Commission on Human Rights, Res. 1990/54, 6 March 1990, § 1; Res. 1991/66, 6 March 1991, § 1; Res. 1992/70, 4 March 1992, § 1; Res. 1993/67, 10 March 1993, § 1; Res. 1994/83, 9 March 1994, § 1; Res. 1995/67, 7 March 1995, § 1; Res. 1998/62, 21 April 1998, § 1.

²³⁰ UN Commission on Human Rights, Res. 1994/72, 9 March 1994, § 7, see also § 32.

²³¹ UN Commission on Human Rights, Res. 1994/74, 9 March 1994, preamble.

zone, demonstrated in particular by . . . the bombardment of peaceful villages and civilian areas, and other practices violating the most fundamental principles of human rights".²³²

247. In 1995, following consultations, the Chairman of the UN Commission on Human Rights issued a statement indicating the consensus of the Commission concerning the situation of human rights in Chechnya, in which the Commission especially deplored "the serious destruction of installations and infrastructure used by civilians".²³³ In a further statement in 1996, the Chairman of the Commission repeated that such wilful destruction was reprehensible and called upon the parties to desist immediately and permanently from any bombardment of civilian towns and villages.²³⁴

248. In resolutions adopted in 1988 and 1989 in the context of the situation in the Israeli-occupied territories, the UN Sub-Commission on Human Rights reaffirmed that GC IV was applicable and considered that attacking and destroying properties and homes was a war crime under international law.²³⁵

249. On 9 June 1984, in a message addressed to the Presidents of Iran and Iraq, the UN Secretary-General stated that:

Deliberate military attacks on civilian areas cannot be condoned by the international community . . . Therefore, I call upon the Governments of the Republic of Iraq and of the Islamic Republic of Iran to declare to the Secretary-General of the United Nations that each undertakes a solemn commitment to end, and in the future refrain from initiating, deliberate military attacks, by aerial bombardment, missiles, shelling or other means, on purely civilian population centres.²³⁶

250. In a statement to the UN Security Council in 1992, the UN Secretary-General reported that "heavy artillery has been used against the civilian population" during the bombardment of the area of Dobrinja, a suburb of Sarajevo close to the airport, adding that these attacks were occurring "despite an agreement . . . by the Serb side to stop shelling civilian areas".²³⁷

251. In 1996, in a report on UNIFIL in Lebanon, the UN Secretary-General referred to an agreement adopted in the summer of 1993. Although the document was not transmitted to the UN, the Secretary-General stated that, based on public statements by Israeli and Hezbollah officials, "it would appear that the Islamic Resistance agreed to refrain from targeting villages and towns in northern Israel, while IDF agreed to refrain from doing the same in Lebanon;

²³² UN Commission on Human Rights, Res. 1998/62, 21 April 1998, § 1.

²³³ UN Commission on Human Rights, Statement by the Chairman, 27 February 1995, UN Doc. E/CN.4/1995/176-E/1995/23, 7 July 1995, § 594.

²³⁴ UN Commission on Human Rights, Statement by the Chairman, 24 April 1996, UN Doc. E/CN.4/1996/177-E/1996/23, 7 July 1996, § 371.

²³⁵ UN Sub-Commission on Human Rights, Res. 1988/10, 31 August 1988, § 3; Res. 1989/4, 31 August 1989, § 3.

²³⁶ UN Secretary-General, Message dated 9 June 1984 to the Presidents of Iran and Iraq, UN Doc. S/16611, 11 June 1984.

²³⁷ UN Secretary-General, Statement to the UN Security Council, 26 June 1992, UN Doc. S/24201, 29 June 1992, p. 1.

there has been no mention of limitations concerning attacks on military targets".²³⁸

252. In 1998, in a report on the situation in Sierra Leone, the UN Secretary-General noted that the office of his Special Envoy continued to receive information about the "destruction of residential and commercial premises and property."²³⁹

253. In 1998, in a report on UNOMSIL in Sierra Leone, the UN Secretary-General mentioned that elements of the former junta continued to shell population centres such as Koidu and Daru.²⁴⁰

254. In 1993, in a report on the situation of human rights in the former Yugoslavia, the Special Rapporteur of the UN Commission on Human Rights condemned the parties to the conflict for the shelling of civilian objects, including residential areas, houses, apartments and schools.²⁴¹

Other International Organisations

255. In 1982, during a debate in the UN General Assembly, Denmark condemned, on behalf of the EC, the invasion of Lebanon by Israeli forces and in particular the bombardment of residential areas in Beirut.²⁴²

256. In a resolution adopted in 1992 on the crisis in the former Yugoslavia, the Parliamentary Assembly of the Council of Europe severely criticised the YPA for the repeated shelling of Dubrovnik and other Croatian cities.²⁴³

257. In a resolution adopted in 1992 on the situation in Bosnia and Herzegovina, the OIC Conference of Ministers of Foreign Affairs expressed its strong condemnation of the deliberate destruction of cities.²⁴⁴

International Conferences

258. In 1993, in a report submitted to the President of the UN Security Council, the Chairman of the Minsk Conference of the CSCE on Nagorno-Karabakh suggested that an official Security Council denunciation should be made of all bombardments and shelling of inhabited areas and population centres in the area of conflict.²⁴⁵

²³⁸ UN Secretary-General, Report on UNIFIL, UN Doc. S/1996/575, 20 July 1996, § 5.

²³⁹ UN Secretary-General, Fifth report on the situation in Sierra Leone, UN Doc. S/1998/486, 9 June 1998, § 37.

²⁴⁰ UN Secretary-General, First progress report on UNOMSIL, UN Doc. S/1998/750, 12 August 1998, § 33.

²⁴¹ UN Commission on Human Rights, Special Rapporteur on the Situation of Human Rights in the Former Yugoslavia, Fifth periodic report, UN Doc. E/CN.4/1994/47, 17 November 1993, §§ 162–164.

²⁴² EC, Statement before the UN General Assembly by Denmark on behalf of the EC, UN Doc. A/ES-7/PV.26, 19 August 1982, p. 13.

²⁴³ Council of Europe, Parliamentary Assembly, Res. 984, 30 June 1992, § 9.

²⁴⁴ OIC, Conference of Ministers of Foreign Affairs, Res. 1/5-EX, 17–18 June 1992, § 89.

²⁴⁵ CSCE, Minsk Conference on Nagorny Karabakh, Report by the Chairman to the President of the UN Security Council, UN Doc. S/26184, 28 July 1993, Annex, § 16(b).

IV. Practice of International Judicial and Quasi-judicial Bodies

259. No practice was found.

V. Practice of the International Red Cross and Red Crescent Movement

260. In an appeal issued in October 1973, the ICRC urged all the belligerents in the conflict in the Middle East (Egypt, Iraq, Israel and Syria) to observe forthwith, in particular, the provisions of, *inter alia*, Article 47(2) of draft API which stated in part that “objects designed for civilian use, such as houses, dwellings, installations . . . shall not be made the object of attack, except if they are used mainly in support of the military effort”. All governments concerned replied favourably.²⁴⁶

261. In a press release issued in 1984 in the context of the Iran–Iraq War, the ICRC stated that:

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. The result was loss of human life on a large scale, and widespread destruction of strictly civilian objects.²⁴⁷

262. In a letter to the Ministry of Defence of a State in 1994, the ICRC pointed out that “the deliberate bombardment of a residential area is a serious violation of the law”.²⁴⁸

VI. Other Practice

263. In 1979, an armed opposition group wrote to the ICRC to confirm its commitment to IHL and stated in particular that it would “avoid attacks on urban areas”.²⁴⁹

264. Rule A6 of the Rules of International Humanitarian Law Governing the Conduct of Hostilities in Non-international Armed Conflicts, adopted in 1990 by the Council of the IHL, provides that “the general rule prohibiting attacks against the civilian population implies, as a corollary, the prohibition of attacks on dwellings and other installations which are used only by the civilian population”.²⁵⁰

²⁴⁶ ICRC, *The International Committee’s Action in the Middle East*, *IRRC*, No. 152, 1973, pp. 584–585.

²⁴⁷ 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.

²⁴⁸ ICRC archive document. ²⁴⁹ ICRC archive document.

²⁵⁰ IHL, Rules of International Humanitarian Law Governing the Conduct of Hostilities in Non-international Armed Conflicts, Rule A6, *IRRC*, No. 278, 1990, p. 393.

Attacks against civilian means of transportation

I. Treaties and Other Instruments

Treaties

265. Article 3 *bis* of the 1944 Chicago Convention provides that “all States must abstain from using force against a civilian plane in flight”.

Other Instruments

266. Based on several documents supplying evidence of outrages committed during the First World War, the 1919 Report of the Commission on Responsibility lists violations of the laws and customs of war which should be subject to criminal prosecution, including the destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers or crew and the destruction of fishing boats.

267. Article 33 of the 1923 Hague Rules of Air Warfare provides that “belligerent non-military aircraft, whether public or private, flying within the jurisdiction of their own state, are liable to be fired upon unless they make the nearest available landing on the approach of enemy military aircraft”.

268. Article 34 of the 1923 Hague Rules of Air Warfare provides that:

Belligerent non-military aircraft, whether public or private, are liable to be fired upon, if they fly (1) within the jurisdiction of the enemy, or (2) in the immediate vicinity thereof and outside the jurisdiction of their own state or (3) in the immediate vicinity of the military operations of the enemy by land or sea.

269. Article 6 of the 1956 New Delhi Draft Rules prohibits attacks against “installations or means of transport, which are for the exclusive use of, and occupied by, the civilian population”.

270. Paragraph 41 of the 1994 San Remo Manual states that “merchant vessels and civil aircraft are civilian objects unless they are military objectives in accordance with the principles and rules set forth in this manual”.

271. Paragraph 62 of the 1994 San Remo Manual provides that “enemy civil aircraft may only be attacked if they meet the definition of a military objective”.

272. Paragraph 63 of the 1994 San Remo Manual states that the following activities may render enemy civil aircraft military objectives:

- (a) engaging in acts of war on behalf of the enemy, e.g., laying mines, minesweeping, laying or monitoring acoustic sensors, engaging in electronic warfare, intercepting or attacking other civil aircraft, or providing targeting information to enemy forces;
- (b) acting as an auxiliary aircraft to an enemy’s armed forces, e.g., transporting troops or military cargo, or refuelling military aircraft;
- (c) being incorporated into or assisting the enemy’s intelligence-gathering system, e.g., engaging in reconnaissance, early warning, surveillance, or command, control and communications missions;

- (d) flying under the protection of accompanying enemy warships or military aircraft;
- (e) refusing an order to identify itself, divert from its track, or proceed for visit and search to a belligerent airfield that is safe for the type of aircraft involved and reasonably accessible, or operating fire control equipment that could reasonably be construed to be part of an aircraft weapon system, or on being intercepted clearly manoeuvring to attack the intercepting belligerent military aircraft;
- (f) being armed with air-to-air or air-to-surface weapons; or
- (g) otherwise making an effective contribution to military action.

II. National Practice

Military Manuals

273. Australia's *Commanders' Guide* states that "civilian vessels, aircraft, vehicles and buildings may be lawfully attacked if they contain combatant personnel, military equipment, supplies or are otherwise associated with combat activity inconsistent with their civilian status".²⁵¹

274. Australia's *Defence Force Manual* states that:

Civil aircraft in flight (including state aircraft which are not military aircraft) should not be attacked. They are presumed to be carrying civilians who may not be made the object of direct attack. If there is doubt as to the status of a civil aircraft, it should be called upon to clarify that status. If it fails to do so, or is engaged in non civil activities, such as ferrying troops, it may be attacked. Civil aircraft should avoid entering areas which have been declared combat zones by the belligerents.

Civil aircraft which have been absorbed into a belligerent's air force and are being ferried from the manufacturer to a belligerent for this purpose, may be attacked.²⁵²

275. Benin's *Military Manual* states that:

Foreign civilian aircraft may be attacked when escorted by enemy military aircraft. When flying alone they can be ordered to modify their route or to land or alight on water for inspection . . . If a foreign civilian aircraft refuses to modify its route or to land or alight on water, it may be attacked after due warning.²⁵³

276. According to Burkina Faso's *Disciplinary Regulations*, it is prohibited to attack "the crew and passengers of civil aircraft".²⁵⁴

277. According to Cameroon's *Disciplinary Regulations*, it is prohibited to attack "the crew and passengers of civil aircraft".²⁵⁵

278. Cameroon's *Instructors' Manual* states that "belligerents must . . . distinguish between military and civilian aircraft . . . As a result, only enemy

²⁵¹ Australia, *Commanders' Guide* (1994), § 951.

²⁵² Australia, *Defence Force Manual* (1994), §§ 852 and 853.

²⁵³ Benin, *Military Manual* (1995), Fascicule II, p. 8.

²⁵⁴ Burkina Faso, *Disciplinary Regulations* (1994), Article 35(2).

²⁵⁵ Cameroon, *Disciplinary Regulations* (1975), Article 32.

military aircraft may be attacked; civilian, private or commercial aircraft may only be intercepted.”²⁵⁶

279. Canada’s LOAC Manual states that civilian aircraft and vehicles are military objectives “if they contain combatants, military equipment or supplies”.²⁵⁷ With respect to civil aircraft, the manual specifies that:

Civil aircraft (including state aircraft which are not military aircraft) in flight should not be attacked. They are presumed to be carrying civilians who may not be made the object of direct attack. If there is doubt as to the status of civil aircraft, it should be called upon to clarify that status. If it fails to do so, or is engaged in support of military activities, such as ferrying troops, it may be attacked. Civil aircraft should avoid entering areas which have been declared combat zones by the belligerents, since this increases the risk of their being attacked.²⁵⁸

280. According to Congo’s Disciplinary Regulations, it is prohibited to attack “the crew and passengers of civil aircraft”.²⁵⁹

281. Croatia’s LOAC Compendium provides that “civilian aircraft escorted by enemy military aircraft” and “civilian aircraft that refuse to modify their routes, land or alight on water if so ordered and after warning” are proper targets in the air. The manual adds that “civilian aircraft that do not violate the airspace of a belligerent” are protected aircraft.²⁶⁰

282. Ecuador’s Naval Manual provides that:

Civil passenger vessels at sea and civil airliners in flight are subject to capture but are exempt from destruction. Although enemy lines of communication are generally legitimate military targets in modern warfare, civilian passenger vessels at sea, and civil airliners in flight, are exempt from destruction, unless at the time of the encounter they are being utilized by the enemy for a military purpose (e.g., transporting troops or military cargo) or refuse to respond to the directions of the intercepting warship or military aircraft. Such passenger vessels in port and airliners on the ground are not protected from destruction.²⁶¹

283. According to France’s Disciplinary Regulations as amended, it is prohibited to attack “the crew and passengers of civil aircraft”.²⁶²

284. Germany’s Military Manual provides that enemy aircraft used exclusively for the transport of civilians may neither be attacked nor seized. Their protection ends

if such [aircraft] do not comply with conditions lawfully imposed upon them, if they abuse their mission or are engaged in any other activity bringing them under

²⁵⁶ Cameroon, *Instructors’ Manual* (1992), p. 113.

²⁵⁷ Canada, *LOAC Manual* (1999), p. 4-2, § 10.

²⁵⁸ Canada, *LOAC Manual* (1999), p. 7-4, § 38.

²⁵⁹ Congo, *Disciplinary Regulations* (1986), Article 32(2).

²⁶⁰ Croatia, *LOAC Compendium* (1991), p. 44.

²⁶¹ Ecuador, *Naval Manual* (1989), § 8.2.3(6).

²⁶² France, *Disciplinary Regulations as amended* (1975), Article 9 bis (2).

the definition of a military objective . . . Such aircraft may be requested to land on ground or water to be searched.²⁶³

285. Hungary's Military Manual provides that "civilian aircraft escorted by enemy military aircraft" and "civilian aircraft that refuse to modify their routes, land or alight on water if so ordered and after warning" are proper targets in the air. The manual adds that "civilian aircraft that do not violate the airspace of a belligerent" are protected aircraft.²⁶⁴

286. Kenya's LOAC Manual provides that "specifically protected transport shall be allowed to pursue their assignment as long as needed. Their mission, contents and effective use may be verified by inspection (e.g. aircraft may be ordered to land for such inspection)."²⁶⁵ The manual further states that:

Subject to prohibitions and restrictions on access to national air space, foreign aircraft except enemy military aircraft may not be attacked. Foreign civilian aircraft may be attacked:

- (a) when escorted by enemy military aircraft, or
- (b) when flying alone under the conditions stated below.

Foreign civilian aircraft can be ordered to modify their route or to land or alight on water for inspection . . . If a foreign civilian aircraft refuses to modify its route or to land or alight on water, it may be attacked after due warning. The provisions of this part governing foreign civilian aircraft can be applied by analogy to neutral military aircraft.²⁶⁶

287. According to Morocco's Disciplinary Regulations, it is prohibited to attack "the crew and passengers of civil aircraft".²⁶⁷

288. New Zealand's Military Manual states that:

Civilian vessels, aircraft, vehicles and buildings may be lawfully attacked if they contain combatant personnel or military equipment or supplies or are otherwise associated with combat activity inconsistent with their civilian status and if collateral damage would not be excessive under the circumstances.²⁶⁸

The manual further states that:

Civil aircraft (including State aircraft which are not military aircraft) in flight should not be attacked. They are presumed to be carrying civilians who may not be made the object of direct attack. If there is doubt as to the status of a civil aircraft, it should be called upon to clarify that status. If it fails to do so, or is engaged in non-civil activities, such as ferrying troops, it may be attacked. Civil aircraft should avoid entering areas which have been declared combat zones by the belligerents, since this increases the risk of their being attacked.²⁶⁹

²⁶³ Germany, *Military Manual* (1992), §§ 1034–1036, see also § 463.

²⁶⁴ Hungary, *Military Manual* (1992), p. 71.

²⁶⁵ Kenya, *LOAC Manual* (1997), Précis No. 3, p. 12.

²⁶⁶ Kenya, *LOAC Manual* (1997), Précis No. 4, pp. 10–11.

²⁶⁷ Morocco, *Disciplinary Regulations* (1974), Article 25(2).

²⁶⁸ New Zealand, *Military Manual* (1992), § 516(3), see also § 623(3).

²⁶⁹ New Zealand, *Military Manual* (1992), § 628(1).

289. Nigeria's Military Manual states that "the military character of the objectives and targets must be verified and precaution taken not to attack non-military objectives like merchant ships, civilian aircraft, etc."²⁷⁰ The manual further states that foreign aircraft "of no military importance shall not be captured or attacked except [when] they are of a dubious status, i.e., when it is uncertain whether it is a military objective or not. In that case, it may be stopped and searched so as to establish its status."²⁷¹ The manual also states that "specifically protected . . . transports recognised as such must be respected . . . though they could be inspected to ascertain their contents and effective use"²⁷²

290. According to Nigeria's Manual on the Laws of War, "civilian aircraft belong[ing] to the enemy flying outside their own territory, in a zone controlled by the state or close to it, or near the battle zone can be shot down only when they do not comply with landing orders"²⁷³

291. According to Senegal's Disciplinary Regulations, it is prohibited to attack "the crew and passengers of civil aircraft"²⁷⁴

292. Togo's Military Manual states that:

Foreign civilian aircraft may be attacked when escorted by enemy military aircraft. When flying alone they can be ordered to modify their route or to land or alight on water for inspection . . . If a foreign civilian aircraft refuses to modify its route or to land or alight on water, it may be attacked after due warning.²⁷⁵

293. With respect to civil aircraft, the US Air Force Pamphlet states that:

If identified as a civil aircraft, air transport in flight should not be the object of attack, unless at the time it represents a valid military objective such as when there is an immediate military threat or use. An unauthorized entry into a flight restriction zone might in some conflicts be deemed an immediate military threat. Wherever encountered, enemy civil aircraft are subject to instruction in order to verify status and preclude their involvement . . . Civil aircraft on the ground, as objects of attack, are governed by the rules of what constitutes a legitimate military objective as well as the rules and principles relative to aerial bombardment. As sources of airlift they may, under the circumstances ruling at the time, qualify as important military objectives. Civil aircraft entitled to protection include nonmilitary state aircraft and a state owned airline. The principle of law and humanity protecting civilians and civilian objects from being objects of attack as such, protects civil aircraft in flight, because civil aircraft are presumed to transport civilians. Such an aircraft is not subject to attack in the absence of a determination that it constitutes a valid military objective.²⁷⁶

294. The US Air Force Commander's Handbook states that "civilian vehicles, aircraft, vessels . . . may be the object of attack if they have combatant personnel

²⁷⁰ Nigeria, *Military Manual* (1994), p. 45, § 16(a).

²⁷¹ Nigeria, *Military Manual* (1994), p. 45, § 16(d).

²⁷² Nigeria, *Military Manual* (1994), p. 45, § 16(f).

²⁷³ Nigeria, *Manual on the Laws of War* (undated), § 20(d).

²⁷⁴ Senegal, *Disciplinary Regulations* (1990), Article 34(2).

²⁷⁵ Togo, *Military Manual* (1996), Fascicule II, p. 8.

²⁷⁶ US, *Air Force Pamphlet* (1976), § 4-3.

in them and if collateral damage would not be excessive under the circumstances".²⁷⁷

295. The US Naval Handbook provides that:

Civil passenger vessels at sea and civil airliners in flight are subject to capture but are exempt from destruction. Although enemy lines of communication are generally legitimate military targets in modern warfare, civilian passenger vessels at sea, and civil airliners in flight, are exempt from destruction, unless at the time of the encounter they are being utilized by the enemy for a military purpose (e.g., transporting troops or military cargo) or refuse to respond to the directions of the intercepting warship or military aircraft. Such passenger vessels in port and airliners on the ground are not protected from destruction.²⁷⁸

National Legislation

296. Argentina's Draft Code of Military Justice punishes any soldier who

destroys or damages, in violation of the rules of international law applicable in armed conflict, non-military vessels or aircraft of the adverse Party or of a neutral State, without military necessity and without giving time or adopting measures to provide for the safety of the passengers and the preservation of the documentation on board.²⁷⁹

National Case-law

297. No practice was found.

Other National Practice

298. In a communiqué issued in 1973, the Belgian government condemned the deliberate destruction of a Libyan Boeing by Israeli air force units because it "condemns all violence of which innocent civilians are the victims".²⁸⁰

299. The Report on the Practice of Iran states that during the Iran-Iraq War, the Iranian authorities accused Iraq on many occasions of having carried out attacks against civilian objects, including civilian aircraft, trains and merchant ships.²⁸¹

300. The Report on the Practice of Malaysia states that no civilian aircraft may be attacked.²⁸²

301. The Report on the Practice of Peru refers to a scholar who wrote that in 1879, during a conflict against Chile, a Peruvian admiral refused, on

²⁷⁷ US, *Air Force Commander's Handbook* (1980), § 2-2.

²⁷⁸ US, *Naval Handbook* (1995), § 8.2.3(6).

²⁷⁹ Argentina, *Draft Code of Military Justice* (1998), Article 291, introducing a new Article 875(2) in the *Code of Military Justice as amended* (1951).

²⁸⁰ Belgium, Government communiqué, 22 February 1973, *RBDI*, Vol. XI, 1975, p. 375.

²⁸¹ Report on the Practice of Iran, 1997, Chapter 1.3.

²⁸² Report on the Practice of Malaysia, 1997, Answers to additional questions on Chapter 1.4.

humanitarian grounds, to attack an enemy vessel that he believed to be a transport ship.²⁸³

302. Following investigations by the ICAO Secretary-General into the shooting down of two civil aircraft by the Cuban air force on 24 February 1996, a debate took place on 26 July 1996 in the UN Security Council, during which Poland asserted that the principle that States must refrain from resorting to the use of weapons against civil aircraft in flight was well established in customary international law and codified in Article 3 *bis* of the 1944 Chicago Convention. According to Poland, an attack against a civilian aircraft in flight violates elementary considerations of humanity.²⁸⁴

303. Following investigations by the ICAO Secretary-General into the shooting down of two civil aircraft by the Cuban air force on 24 February 1996, a debate took place on 26 July 1996 in the UN Security Council, during which the US claimed that "Cuba violated the principle of customary law that States must refrain from resorting to the use of weapons against civil aircraft in flight – a principle that applies whether the aircraft are in national or international airspace". According to the US, an attack against a civilian aircraft in flight violates elementary considerations of humanity.²⁸⁵

III. Practice of International Organisations and Conferences

United Nations

304. In resolutions adopted in 1986 and 1987 in the context of the Iran–Iraq War, the UN Security Council deplored attacks against civilian aircraft.²⁸⁶

305. In a report on Angola in 1993, the UN Secretary-General described an incident which took place on 27 May 1993 whereby "UNITA ambushed a train . . . as a result of which up to 300 people, including women and children, died and hundreds of others were wounded. UNITA alleged that the train was ferrying troops and weapons and not civilians, as claimed." Noting that UNAVEM helicopters evacuated 57 seriously injured civilians, mostly women and children, from the site, the Secretary-General supported "the statement made by the President of the Security Council to the press on 8 June 1993 in which the Council strongly condemned the 27 May train attack and urged UNITA's leaders to make sure that its forces abide by the rules of international humanitarian law".²⁸⁷ In a subsequent resolution, the UN Security Council reiterated "its strong condemnation of the attack by UNITA forces, on 27 May 1993,

²⁸³ Report on the Practice of Peru, 1998, Chapter 1.3, referring to E. Angeles Figueroa, *El Derecho Internacional Humanitario y los Conflictos Armados*, Lima, 1992, pp. 119–120.

²⁸⁴ Poland, Statement before the UN Security Council, UN Doc. S/PV.3683, 26 July 1996, p. 19.

²⁸⁵ US, Statement before the UN Security Council, UN Doc. S/PV.3683, 26 July 1996, p. 3.

²⁸⁶ UN Security Council, Res. 582, 24 February 1986, § 2; Res. 598, 20 July 1987, preamble.

²⁸⁷ UN Secretary-General, Further report on UNAVEM II, UN Doc. S/26060, 12 July 1993, § 5.

against a train carrying civilians, and reaffirm[ed] that such criminal attacks are clear violations of international humanitarian law".²⁸⁸

306. In 1996, in a statement by its President in connection with the shooting down of two civil aircraft by the Cuban air force, the UN Security Council stated that:

The Security Council strongly deplores the shooting down by the Cuban air force of two civil aircraft on 24 February 1996, which apparently has resulted in the death of four persons.

The Security Council recalls that according to international law, as reflected in article 3 bis of the International Convention on Civil Aviation of 7 December 1944 added by the Montreal Protocol of 10 May 1984, States must refrain from the use of weapons against civil aircraft in flight and must not endanger the lives of persons on board and the safety of aircraft. States are obliged to respect international law and human rights norms in all circumstances.²⁸⁹

307. Following investigations by the ICAO Secretary-General into the shooting down of two civilian aircraft by the Cuban Air Force in 1996, the UN Security Council adopted a resolution on the conclusions of the ICAO report, in which it condemned:

the use of weapons against civil aircraft in flight as being incompatible with elementary considerations of humanity, the rules of customary international law as codified in article 3 *bis* of the Chicago Convention, and the standards and recommended practices set out in the annexes of the Convention.²⁹⁰

308. In 1993, in a report concerning the situation in Abkhazia, Georgia, the UN Secretary-General stated that he was particularly shocked by deliberate attacks on Georgian aircraft, which had resulted in heavy civilian losses.²⁹¹

Other International Organisations

309. No practice was found.

International Conferences

310. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

311. In its final report to the ICTY Prosecutor in 2000, the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia stated, concerning the "attack on a civilian passenger train at the Grdelica Gorge on 12 April 1999", that "the bridge was a legitimate military

²⁸⁸ UN Security Council, Res. 851, 15 July 1993, § 18.

²⁸⁹ UN Security Council, Statement by the President, UN Doc. S/PRST/1996/9, 27 February 1996.

²⁹⁰ UN Security Council, Res. 1067, 26 July 1996, § 6.

²⁹¹ UN Security Council, Report concerning the situation in Abkhazia, Georgia, UN Doc. S/26551, 7 October 1993, § 17.

objective. The passenger train was not deliberately targeted". The Committee did not refer specifically to the civilian character of the passenger train, but implied that, had the train been intentionally targeted, or had there been in the conduct of the attack against the bridge a sufficient "element of recklessness in the conduct of the pilot or weapons systems officer", an investigation could have been opened.²⁹²

V. Practice of the International Red Cross and Red Crescent Movement

312. To fulfil its role of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces the following rules of IHL applicable to foreign aircraft:

Subject to prohibitions and restrictions on access to national air space, foreign aircraft, except enemy military aircraft, may not be attacked. Foreign civilian aircraft may be attacked:

- a) when escorted by enemy military aircraft;
- b) when flying alone: under the conditions stated in this chapter.

Foreign civilian aircraft can be ordered to modify their route or to land or alight on water for inspection . . . If a foreign civilian aircraft refuses to modify its route or to land or alight on water, it may be attacked after due warning.²⁹³

313. In an appeal issued in October 1973, the ICRC urged all the belligerents in the conflict in the Middle East (Egypt, Iraq, Israel and Syria) to observe forthwith, in particular, the provisions of, *inter alia*, Article 47(2) of draft AP I which stated in part that "objects designed for civilian use, such as . . . installations and means of transport . . . shall not be made the object of attack, except if they are used mainly in support of the military effort". All governments concerned replied favourably.²⁹⁴

314. In an appeal issued in 1979 with respect to the conflict in Rhodesia/Zimbabwe, the ICRC specifically requested that the Patriotic Front "cease the shooting down of civilian passenger aircraft".²⁹⁵

VI. Other Practice

315. No practice was found.

²⁹² 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, § 62.

²⁹³ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, §§ 466–469.

²⁹⁴ ICRC, The International Committee's Action in the Middle East, *IRRC*, No. 152, 1973, pp. 584–585.

²⁹⁵ ICRC, Conflict in Southern Africa: ICRC appeal, 19 March 1979, §§ 5 and 6, *IRRC*, No. 209, 1979, pp. 88–89.

B. Definition of Military Objectives

General definition

I. Treaties and Other Instruments

Treaties

316. Article 2 of 1907 Hague Convention (IX) allows the bombardment of “military works, military or naval establishments, depots of arms or war *matériel*, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbour”.

317. Article 19 GC I and Article 4 Annex I GC I and Article 18 GC IV and Article 4 Annex I GC IV use the term “military objectives” without, however, defining it.

318. The 1954 Hague Convention does not define a military objective, but Article 8 provides that refuges intended to shelter movable cultural property, centres containing monuments and other immovable cultural property of very great importance may be placed under special protection, provided that they:

- a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication;
- b) are not used for military purposes.

319. Article 52(2) AP I provides that:

In so far as objects are concerned, 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.

Article 52 AP I was adopted by 79 votes in favour, none against and 7 abstentions.²⁹⁶

320. Upon ratification of AP I, Canada, France and Spain stated that the term “military advantage” as used in Article 52(2) AP I was understood to refer to the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of the attack.²⁹⁷

321. According to the identical definitions provided by Article 2(4) of the 1980 Protocol II to the CCW, Article 2(6) of the 1996 Amended Protocol II to the CCW and Article 1(3) of the 1980 Protocol III to the CCW:

²⁹⁶ CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 168.

²⁹⁷ Canada, Reservations and statements of understanding made upon ratification of AP I, 20 November 1990, § 10; France, Reservations and declarations made upon ratification of AP I, 11 April 2001, § 10; Spain, Interpretative declarations made upon ratification of AP I, 21 April 1989, § 6.

“Military objective” means, so far as objects are concerned, any object which by its nature, location, purpose or use makes 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.

322. Article 1(f) of the 1999 Second Protocol to the 1954 Hague Convention defines a military objective as:

An object which by its nature, location, purpose, or use makes 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.

323. Upon signature of the 1998 ICC Statute, Egypt declared that “the military objectives referred to in article 8, paragraph 2 (b) of the Statute must be defined in the light of the principles, rules and provisions of international humanitarian law”.²⁹⁸

Other Instruments

324. Article 15 of the 1863 Lieber Code provides that:

Military necessity admits of all direct destruction of life or limb of “armed” enemies, and of other persons whose destruction is incidentally “unavoidable” in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy’s country affords necessary for the subsistence and safety of the army. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.

325. Article 24(1) of the 1923 Hague Rules of Air Warfare provides that “aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent”.

326. Article 7 of the 1956 New Delhi Draft Rules provides that:

Only objectives belonging to the categories of objective which, in view of their essential characteristics, are generally acknowledged to be of military importance, may be considered as military objectives. Those categories are listed in the annex to the present rules.

However, even if they belong to one of those categories, they cannot be considered as a military objective where their total or partial destruction, in the circumstances ruling at the time, offers no military advantage.

327. Paragraph 40 of the 1994 San Remo Manual adopts the same definition of military objectives as Article 52(2) AP I.

²⁹⁸ Egypt, Declarations made upon signature of the 1988 ICC Statute, 26 December 2000, § 4(b).

II. National Practice

Military Manuals

328. Military manuals of Argentina, Australia, Belgium, Benin, Cameroon, Canada, Colombia, Croatia, France, Germany, Hungary, Italy, Kenya, Madagascar, Netherlands, New Zealand, South Africa, Spain, Sweden, Togo, UK and US use a definition identical to that of Article 52(2) AP I.²⁹⁹

329. Australia's Defence Force Manual specifies that "the objective must be measured by its effect on the whole military operation or campaign and the attack should not be viewed in isolation. Military advantage includes the security of friendly forces."³⁰⁰

330. Belgium's Regulations on the Tactical Use of Large Units states that "an objective is the final goal of an action. It is defined as either an area of land of tactical importance or as enemy elements that have to be destroyed or neutralised."³⁰¹

331. Ecuador's Naval Manual states that:

Military objectives are combatants and those objects which, by their nature, location, purpose or use, effectively contribute to the enemy's war-fighting or war-sustaining capability and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of the attack. Military advantage may involve a variety of considerations, including the security of the attacking forces.³⁰²

332. Germany's Military Manual states that "the term 'military advantage' refers to the advantage which can be expected of an attack as a whole and not only of isolated or specific parts of the attack".³⁰³

333. Indonesia's Directive on Human Rights in Irian Jaya and Maluku provides that "only property which contributes to the objectives of rebels ('GPK') may be attacked".³⁰⁴

334. Italy's IHL Manual states that "the military advantage expected from an attack must be evaluated in the light of the attack as a whole and not only of

²⁹⁹ Argentina, *Law of War Manual* (1989), §§ 4.02(2) and 4.19; Australia, *Defence Force Manual* (1994), §§ 525 and 916(c); Belgium, *Law of War Manual* (1983), p. 27; Benin, *Military Manual* (1995), Fascicule I, pp. 12–13; Cameroon, *Instructors' Manual* (1992), p. 81, see also p. 17; Canada, *LOAC Manual* (1999), p. 4-1, § 8; Canada, *Code of Conduct* (2001), Rule 1, § 4; Colombia, *Instructors' Manual* (1999), pp. 16 and 17; Croatia, *LOAC Compendium* (1991), p. 7; France, *LOAC Teaching Note* (2000), p. 2; France, *LOAC Manual* (2001), p. 90; Germany, *Military Manual* (1992), § 442; Hungary, *Military Manual* (1992), p. 18; Italy, *IHL Manual* (1991), Vol. I, § 12; Kenya, *LOAC Manual* (1997), Précis No. 2, p. 11; Madagascar, *Military Manual* (1994), Fiche No. 2-SO, § C; Netherlands, *Military Manual* (1993), pp. V-2 and V-3; New Zealand, *Military Manual* (1992), § 516(1), see also § 623(1); South Africa, *LOAC Manual* (1996), § 24(d)(iii); Spain, *LOAC Manual* (1996), Vol. I, §§ 4.2.b and 4.2.b.(2); Sweden, *IHL Manual* (1991), Section 3.2.1.5, pp. 53–54; Togo, *Military Manual* (1996), Fascicule I, pp. 13–14; UK, *LOAC Manual* (1981), Section 4, p. 13, § 3(b)(2); US, *Air Force Pamphlet* (1976), § 5-3(b)(1).

³⁰⁰ Australia, *Defence Force Manual* (1994), § 525.

³⁰¹ Belgium, *Regulations on the Tactical Use of Large Units* (1994), § 210.

³⁰² Ecuador, *Naval Manual* (1989), § 8.1.1. ³⁰³ Germany, *Military Manual* (1992), § 444.

³⁰⁴ Indonesia, *Directive on Human Rights in Irian Jaya and Maluku* (1995), § 9(a).

isolated elements or parts of the attack and must be evaluated on the basis of the information available at the time".³⁰⁵

335. The Military Manual of the Netherlands notes that "the definition of 'military objectives' implies that it depends on the circumstances of the moment whether an object is a military objective. The definition leaves the necessary freedom of judgement to the commander on the spot."³⁰⁶

336. New Zealand's Military Manual specifies that:

The military advantage at the time of attack is that advantage from the military campaign or operation of which the attack is a part considered as a whole and not only from isolated or particular parts of that campaign or operation. Military advantage involves a variety of considerations including the security of the attacking forces.³⁰⁷

337. Spain's LOAC Manual states that the military advantage to be gained from an attack has to be interpreted as "that which is anticipated, in the concrete circumstances of the moment, from the attack as a whole, and not from parts thereof".³⁰⁸

338. Sweden's IHL Manual considers that:

According to the definition [of military objectives contained in Article 52(2) AP I,] it is up to the attacker to decide whether the nature, location, purpose or use of the property can admit of its being classified as a military objective and thus as a permissible object of attack. This formulation undeniably gives the military commander great latitude in deciding, but he must also take account of the unintentional damage that may occur. The proportionality rule must always enter into the assessment even though this is not directly stated in the text of Article 52.³⁰⁹

339. The US Naval Handbook states that:

Military objectives are combatants and those objects which, by their nature, location, purpose or use, effectively contribute to the enemy's war-fighting or war-sustaining capability and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of the attack. Military advantage may involve a variety of considerations, including the security of the attacking force.³¹⁰

340. The YPA Military Manual of the SFRY (FRY) defines military objectives as "any object which by its nature, location, purpose or use effectively contributes to military action and whose total or partial destruction offers a military advantage during the attack or in the further course of the operations".³¹¹

³⁰⁵ Italy, *IHL Manual* (1991), Vol. I, § 12. ³⁰⁶ Netherlands, *Military Manual* (1993), p. V-3.

³⁰⁷ New Zealand, *Military Manual* (1992), § 516(1), see also § 623(1).

³⁰⁸ Spain, *LOAC Manual* (1996), Vol. I, § 4.2.b.(2).

³⁰⁹ Sweden, *IHL Manual* (1991), Section 3.2.1.5, p. 54.

³¹⁰ US, *Naval Handbook* (1995), § 8.1.1. ³¹¹ SFRY (FRY), *YPA Military Manual* (1988), § 71.

National Legislation

341. Italy's Law of War Decree as amended states that "it is lawful to bombard directly enemy targets whose destruction, whether total or partial, may be to the advantage of the military operations".³¹²

342. Spain's Penal Code punishes:

anyone who, during an armed conflict . . . attacks . . . civilian objects of the adverse party causing their destruction, provided the objects do not, in the circumstances ruling at the time, offer a definite military advantage nor make an effective contribution to the military action of the adversary.³¹³

National Case-law

343. No practice was found.

Other National Practice

344. The Report on the Practice of Algeria, referring expressly to the notion of "effective contribution" to military action resulting from the nature, location, purpose or use of an object, asserts that the criteria set forth in Article 52(2) AP I were already taken into consideration during the Algerian war of independence.³¹⁴

345. The Report on the Practice of Botswana asserts that the government of Botswana endorses Article 52 AP I and no official document was found rejecting the definition of a military objective provided in Article 52(2) AP I.³¹⁵

346. The Report on the Practice of Colombia notes that the government and the Defensoría del Pueblo (Ombudsman's Office) adopt the definition of military objectives laid down in Article 52 AP I in order to draw a distinction between military objectives and civilian objects.³¹⁶

347. According to the Report on the Practice of Iran, during the Iran–Iraq War, Iran always insisted that it had no intention of attacking civilian objects, all targets being "military objectives or objects which by their nature, location, purpose or use made an effective contribution to military action".³¹⁷

348. On the basis of the reply by Iraq's Ministry of Defence to a questionnaire, the Report on the Practice of Iraq states that the Iraqi armed forces consider that the definition of a military objective set forth in Article 52(2) AP I is part of customary international law.³¹⁸

³¹² Italy, *Law of War Decree as amended* (1938), Article 40.

³¹³ Spain, *Penal Code* (1995), Article 613(1)(b).

³¹⁴ Report on the Practice of Algeria, 1997, Chapter 1.3.

³¹⁵ Report on the Practice of Botswana, 1998, Answers to additional questions on Chapter 1.3.

³¹⁶ Report on the Practice of Colombia, 1998, Chapter 1.3, referring to Defensoría del Pueblo, *Cuarto informe anual del defensor del pueblo al congreso de Colombia*, Santafé de Bogotá, September 1997, pp. 64–65.

³¹⁷ Report on the Practice of Iran, 1997, Chapter 1.3.

³¹⁸ Report on the Practice of Iraq, 1998, Reply by the Iraqi Ministry of Defence to a questionnaire, July 1997, Chapter 1.3.

349. According to the Report on the Practice of Israel, the IDF has no generally applicable definition of what constitutes a “military target”, but its practice most closely reflects the definition found in Article 52(2) AP I.³¹⁹

350. Prior to the adoption of UN General Assembly Resolution 47/37 in 1992 on the protection of the environment in times of armed conflict, Jordan and the US submitted a memorandum to the Sixth Committee of the UN General Assembly entitled “International Law Providing Protection to the Environment in Times of Armed Conflict”. The memorandum stated that “the customary rule that, in so far as objects are concerned, 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” provides protection for the environment in times of armed conflict.³²⁰

351. The Report on the Practice of Jordan states that the definition of a military objective set forth in Article 52(2) AP I is part of customary international law.³²¹

352. The Report on the Practice of Malaysia notes that although no written law defines the term military objective, the security forces describe military objectives as “targets of military interest” and “military targets”. While the former may include civilian objects like the runway of a civilian airport, the latter only refers to objects belonging to the military. The military character of a target will thus depend on the circumstances and the degree of strategic advantage it offers.³²²

353. At the CDDH, Mexico stated that it believed draft Article 47 AP I (now Article 52) to be so essential that it “cannot be the subject of any reservations whatsoever since these would be inconsistent with the aim and purpose of Protocol I and undermine its basis”.³²³

354. Referring to military documents using similar wording, the Report on the Practice of the Philippines affirms the customary nature of Article 52(2) AP I.³²⁴

355. On the basis of a statement by the Syrian Minister of Foreign Affairs before the UN General Assembly in 1997, the Report on the Practice of Syria asserts that Syria considers Article 52(2) AP I to be part of customary international law.³²⁵

³¹⁹ Report on the Practice of Israel, 1997, Answers to additional questions on Chapter 1.3.

³²⁰ Jordan and US, International Law Providing Protection to the Environment in Times of Armed Conflict, annexed to Letter dated 28 September 1992 to the Chairman of the Sixth Committee of the UN General Assembly, UN Doc. A/C.6/47/3, 28 September 1992, § 1(i).

³²¹ Report on the Practice of Jordan, 1997, Chapter 1.3.

³²² Report on the Practice of Malaysia, 1997, Chapter 1.3 and answers to additional questions on Chapter 1.3.

³²³ Mexico, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 193.

³²⁴ Report on the Practice of Philippines, 1997, Chapter 1.3.

³²⁵ Report on the Practice of Syria, 1997, Chapter 1.3, referring to Statement by the Syrian Minister of Foreign Affairs before the UN General Assembly, 1 October 1997.

356. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the UK stated that “operations by United Kingdom forces have involved aerial attacks on Iraqi installations supporting Iraq’s capacity to sustain its illegal occupation of Kuwait”.³²⁶

357. In 1972, the General Counsel of the US Department of Defense stated that:

In the application of the laws of war, it is important that there be a general understanding in the world community as to what shall be legitimate military objectives which may be attacked by air bombardment under the limitations imposed by treaty or by customary international law. Attempts to limit the effects of attacks in an unrealistic manner, by definition or otherwise, solely to the essential war making potential of enemy States have not been successful. For example, such attempts as the 1923 Hague Rules of Air Warfare, proposed by an International Commission of Jurists, and the 1956 ICRC *Draft Rules for the Limitation of Dangers Incurred by the Civilian Population in Time of War* were not accepted by States and therefore do not reflect the laws of war either as customary international law or as adopted by treaty. [The General Counsel then refers to Articles 1 and 2 of the 1907 Hague Convention (IX) and Article 8 of the 1954 Hague Convention as reflecting customary international law.] The test applicable from the customary international law, restated in [Article 8 of] the Hague Cultural Property Convention, is that the war making potential of such facilities to a party to the conflict may outweigh their importance to the civilian economy and deny them immunity from attack. Turning to the deficiencies in the Resolutions of the Institut de Droit International [adopted at its Edinburgh Session in 1969], and with the foregoing in view, it cannot be said that Paragraph 2, which refers to legal restraints that there must be an “immediate” military advantage, reflects the law of armed conflict that has been adopted in the practices of States.³²⁷

358. In 1987, the Deputy Legal Adviser of the US Department of State stated that “the United States has no great concern over the new definition of ‘military objective’ set forth in Article 52(2) of Protocol I”.³²⁸

359. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that:

When objects are used concurrently for civilian and military purposes, they are liable to attack if there is a military advantage to be gained in their attack. (“Military advantage” is not restricted to tactical gains, but is linked to the full context of a

³²⁶ UK, Letter dated 21 January 1991 to the President of the UN Security Council, UN Doc. S/22115, 21 January 1991.

³²⁷ US, Letter from J. Fred Buzhardt, General Counsel of the Department of Defense, to Senator Edward Kennedy, Chairman of the Subcommittee on Refugees of the Committee on the Judiciary, 22 September 1972, *AJIL*, Vol. 67, 1973, p. 123.

³²⁸ US, Remarks of Michael J. Matheson, Deputy Legal Adviser, US Department of State, The Sixth Annual American Red Cross-Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions, *American University Journal of International Law and Policy*, Vol. 2, 1987, p. 436.

war strategy, in this instance, the execution of the Coalition war plan for liberation of Kuwait.)³²⁹

360. In 1992, in a review of the legality of extended range anti-armour munition, the US Department of the Air Force relied on the definition of military objectives set forth in Article 52(2) AP I.³³⁰

361. The Report on US Practice states that:

The *opinio juris* of the U.S. government recognizes the definition of military objectives in Article 52 of Additional Protocol I as customary law. United States practice gives a broad reading to this definition, and would include areas of land, objects screening other military objectives, and war-supporting economic facilities as military objectives. The foreseeable military advantage from an attack includes increasing the security of the attacking force. In any event, the anticipated military advantage need not be expected to immediately follow the success of the attack, and may be inferred from the whole military operation of which the attack is a part.³³¹

III. Practice of International Organisations and Conferences

United Nations

362. No practice was found.

Other International Organisations

363. No practice was found.

International Conferences

364. During the Diplomatic Conference on the Second Protocol to the 1954 Hague Convention, France, Israel, Turkey and US, at that time not party to API, referred to the definition of Article 52(2) AP I as an authoritative definition of a military objective. Several other States stressed that the definition of a military objective in the Second Protocol should follow the exact wording of Article 52(2) AP I, including Argentina, Denmark, Germany, Sweden, Switzerland and UK. Another group of States, including Austria, Cameroon (speaking on behalf of the African group), China, Egypt, Greece, Romania and Syria (speaking on behalf of the Arab group) agreed to rely on Article 52(2) AP I, but to tighten its definition so that cultural property could only become a military objective "by its use" and not "by its location, nature or purpose".³³²

³²⁹ US, 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. 623.

³³⁰ US, Department of the Air Force, The Judge Advocate General, Legal Review: Extended Range Antiarmor Munition (ERAM), 16 April 1992, § 7.

³³¹ Report on US Practice, 1997, Chapter 1.3.

³³² Diplomatic Conference on the Second Protocol to the 1954 Hague Convention, The Hague, 15–26 March 1999 (proceedings to be published by UNESCO).

IV. Practice of International Judicial and Quasi-judicial Bodies

365. In its final report to the ICTY Prosecutor in 2000, the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia stated that “the most widely accepted definition of ‘military objective’ is that of Article 52 of Additional Protocol I”.³³³ It added that:

Although the Protocol I definition of military objective is not beyond criticism, it provides the contemporary standard which must be used when attempting to determine the lawfulness of particular attacks. That being said, it must be noted once again [that] neither the USA nor France is a party to Additional Protocol I. The definition is, however, generally accepted as part of customary law.³³⁴

V. Practice of the International Red Cross and Red Crescent Movement

366. To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that the following can be considered military objectives:

- a) the armed forces except medical service and religious personnel and objects;
- b) the establishments, buildings and positions where armed forces or their materiel are located (e.g. positions, barracks, stores);
- c) other objects which by their nature, location, purpose or use make an effective contribution to military action, and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offer a definite military advantage.³³⁵

367. In an appeal issued in October 1973, the ICRC urged all the belligerents in the conflict in the Middle East (Egypt, Iraq, Israel and Syria) to observe forthwith, in particular, the provisions of, *inter alia*, Article 47(1) of draft API which defined military objectives as “those objectives which are, by their nature, purpose or use, recognized to be of military interest and whose total or partial destruction, in the circumstances ruling at the time, offers a distinct and substantial military advantage”. All governments concerned replied favourably.³³⁶

VI. Other Practice

368. In a resolution adopted during its Edinburgh Session in 1969, the Institute of International Law gave the following definition of a military objective:

³³³ 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, § 35.

³³⁴ 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, § 41.

³³⁵ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, § 55.

³³⁶ ICRC, *The International Committee's Action in the Middle East, IRRC*, No. 152, 1973, pp. 584–585.

There can be considered as military objectives only those which, by their very nature or purpose or use, make an effective contribution to military action, or exhibit a generally recognised military significance, such that their total or partial destruction in the actual circumstances gives a substantial, specific and immediate military advantage to those who are in a position to destroy them.³³⁷

369. In 2000, in a report on the NATO bombings in the FRY, Amnesty International, having referred to the definition of military objectives contained in Article 52(2) AP I, stated with regard to the bombing of the Serbian State radio and television (RTS) that:

Disrupting government propaganda may help to undermine the morale of the population and the armed forces, but...justifying an attack on a civilian facility on such grounds stretches the meaning of "effective contribution to military action" and "definite military advantage" beyond the acceptable bounds of interpretation.³³⁸

Armed forces

Note: *For practice concerning attacks against combatants, see Chapter 1, section A.*

I. Treaties and Other Instruments

Treaties

370. The preamble to the 1868 St. Petersburg Declaration states that "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy".

Other Instruments

371. According to Article 24(2) of the 1923 Hague Rules of Air Warfare, "military forces" are military objectives.

372. Article 5(1) of the 1938 ILA Draft Convention for the Protection of Civilian Populations against New Engines of War provides that "aerial bombardment is prohibited unless directed at combatant forces".

373. Paragraph I(1) of the proposed annex to Article 7(2) of the 1956 New Delhi Draft Rules stated that "armed forces, including auxiliary or complementary organizations, and persons who, though not belonging to the above-mentioned formations, nevertheless take part in the fighting" are military objectives considered to be of "generally recognized military importance".

³³⁷ 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, § 2.

³³⁸ Amnesty International, *NATO/Federal Republic of Yugoslavia: "Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force*, AI Index EUR 70/18/00, London, June 2000, p. 43.

II. National Practice

Military Manuals

374. Australia's Defence Force Manual lists among military objectives "all persons taking a direct part in hostilities, whether military or civilian".³³⁹

375. Belgium's Law of War Manual considers combatants to be military objectives.³⁴⁰

376. Benin's Military Manual considers the armed forces, with the exception of medical and religious personnel and objects, to be military objectives.³⁴¹

377. Cameroon's Instructors' Manual states that the armed forces are considered military objectives, with the exception of religious and medical personnel.³⁴²

378. Canada's LOAC Manual considers that combatants, airborne troops and unlawful combatants are "legitimate targets".³⁴³

379. According to Colombia's Instructors' Manual, combatants are military objectives.³⁴⁴

380. According to Croatia's LOAC Compendium, military objectives include the armed forces.³⁴⁵

381. The Military Manual of the Dominican Republic states that "under the laws of war, you are not allowed to attack villages, towns, or cities. However, when your mission requires, you are allowed to engage enemy troops, equipment, or supplies in a village, town or city."³⁴⁶

382. Ecuador's Naval Manual provides that combatants and troop concentrations are military objectives.³⁴⁷

383. According to France's LOAC Summary Note, combatants are military objectives.³⁴⁸

384. Germany's Military Manual provides that military objectives include, in particular, armed forces.³⁴⁹

385. According to Hungary's Military Manual, military objectives include the armed forces.³⁵⁰

386. Israel's Manual on the Laws of War states that "any soldier (male or female!) in the enemy's army is a legitimate military target for attack, whether on the battlefield or outside of it".³⁵¹

³³⁹ Australia, *Defence Force Manual* (1994), § 527(d), see also § 916(a) ("armed forces except medical and religious personnel").

³⁴⁰ Belgium, *Law of War Manual* (1983), p. 27.

³⁴¹ Benin, *Military Manual* (1995), Fascicule I, p. 12.

³⁴² Cameroon, *Instructors' Manual* (1992), p. 17.

³⁴³ Canada, *LOAC Manual* (1999), p. 4-1, § 7 and p. 4-2, §§ 12-14.

³⁴⁴ Colombia, *Instructors' Manual* (1999), p. 15.

³⁴⁵ Croatia, *LOAC Compendium* (1991), p. 7; see also *Commanders' Manual* (1992), § 4 ("combatants").

³⁴⁶ Dominican Republic, *Military Manual* (1980), p. 3.

³⁴⁷ Ecuador, *Naval Manual* (1989), § 8.1.1.

³⁴⁸ France, *LOAC Summary Note* (1992), § 1.2; see also *LOAC Teaching Note* (2000), p. 2 ("military units").

³⁴⁹ Germany, *Military Manual* (1992), § 443. ³⁵⁰ Hungary, *Military Manual* (1992), p. 18.

³⁵¹ Israel, *Manual on the Laws of War* (1998), p. 42.

387. Italy's IHL Manual provides that the armed forces are military objectives.³⁵²
388. Kenya's LOAC Manual provides that "the armed forces except medical service and religious personnel and objects" are military objectives.³⁵³
389. According to South Korea's Military Law Manual, combatants are military objectives.³⁵⁴
390. According to Madagascar's Military Manual, military objectives include "armed forces, with the exception of medical units and religious personnel and objects".³⁵⁵
391. The Military Manual of the Netherlands notes that "combatants who are part of the armed forces" are military objectives "under all circumstances".³⁵⁶
392. New Zealand's Military Manual states that combatants are military objectives.³⁵⁷
393. According to Nigeria's Military Manual and Soldiers' Code of Conduct, combatants are military objectives.³⁵⁸
394. According to the Soldier's Rules of the Philippines, enemy combatants are military objectives.³⁵⁹
395. South Africa's LOAC Manual states that military objectives include "the armed forces, with the exception of medical and religious personnel and objects".³⁶⁰
396. Spain's LOAC Manual states that "the armed forces, except medical and religious personnel" are military objectives.³⁶¹
397. Sweden's IHL Manual states that "persons participating in hostilities . . . are thereby legitimate objectives".³⁶²
398. Switzerland's Basic Military Manual considers that the armed forces are military objectives liable to attack.³⁶³
399. Togo's Military Manual considers the armed forces, with the exception of medical and religious personnel and objects, to be military objectives.³⁶⁴
400. The UK LOAC Manual states that military objectives include "concentrations of troops and individual enemy combatants".³⁶⁵

³⁵² Italy, *IHL Manual* (1991), Vol. I, § 12; see also *LOAC Elementary Rules Manual* (1991), § 4 ("combatants").

³⁵³ Kenya, *LOAC Manual* (1997), Précis No. 2, p. 11.

³⁵⁴ South Korea, *Military Law Manual* (1996), p. 86.

³⁵⁵ Madagascar, *Military Manual* (1994), Fiche No. 2-SO, § C, see also Fiche No. 2-O, § 4 and Fiche No. 4-T, § 1.

³⁵⁶ Netherlands, *Military Manual* (1993), p. V-3; see also *Military Handbook* (1995), p. 7-36 ("combatants").

³⁵⁷ New Zealand, *Military Manual* (1992), § 516(1), see also § 623(1).

³⁵⁸ Nigeria, *Military Manual* (1994), p. 39, § 5(a); *Soldiers' Code of Conduct* (undated), § 1.

³⁵⁹ Philippines, *Soldier's Rules* (1989), § 2.

³⁶⁰ South Africa, *LOAC Manual* (1996), § 24(d)(i), see also § 34.

³⁶¹ Spain, *LOAC Manual* (1996), Vol. I, § 4.2.b, see also § 4.2.b.(1).

³⁶² Sweden, *IHL Manual* (1991), Section 3.2.1.5, p. 40.

³⁶³ Switzerland, *Basic Military Manual* (1987), Article 28.

³⁶⁴ Togo, *Military Manual* (1996), Fascicule I, p. 13.

³⁶⁵ UK, *LOAC Manual* (1981), Section 4, p. 13, § 3(b)(2).

401. The US Air Force Pamphlet considers that “troops in the field are military objectives beyond any dispute”.³⁶⁶

402. According to the US Naval Handbook, combatants and troop concentrations are military objectives.³⁶⁷

403. According to the YPA Military Manual of the SFRY (FRY), the armed forces are a military objective.³⁶⁸ The manual further specifies that “it is permitted to directly attack only members of the armed forces and other persons – only if they directly participate in military operations”.³⁶⁹

National Legislation

404. Italy’s Law of War Decree as amended provides that the armed forces are military objectives.³⁷⁰

National Case-law

405. No practice was found.

Other National Practice

406. In 1950, the US Secretary of State stated that “the air activity of the United Nations forces in Korea has been, and is, directed solely at military targets of the invader. These targets [include] enemy troop concentrations.”³⁷¹

407. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the UK stated that attacks had been directed against Iraq’s air force and land army.³⁷²

408. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the US stated that it considered the “occupation forces in Kuwait and southern Iraq” as legitimate military targets. It also stated that it had attacked Iraq’s naval forces in the northern Gulf and specified that “these attacks have been on Iraqi units that are engaged in operations against coalition forces”.³⁷³ In another such report, the US stated that the Republican Guard remained a “high priority” target.³⁷⁴ In a subsequent report, the US reiterated that it considered “the Republican Guard and other

³⁶⁶ US, *Air Force Pamphlet* (1976), § 5-3(b)(2). ³⁶⁷ US, *Naval Handbook* (1995), § 8.1.1.

³⁶⁸ SFRY (FRY), *YPA Military Manual* (1988), § 49.

³⁶⁹ SFRY (FRY), *YPA Military Manual* (1988), § 67.

³⁷⁰ Italy, *Law of War Decree as amended* (1938), Article 40.

³⁷¹ US, Statement by the Secretary of State, Dean Acheson, 6 September 1950, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 140.

³⁷² UK, Letter dated 28 January 1991 to the President of the UN Security Council, UN Doc. S/22156, 28 January 1991, p. 1.

³⁷³ US, Letter dated 22 January 1991 to the President of the UN Security Council, UN Doc. S/22130, 22 January 1991, p. 1.

³⁷⁴ US, Letter dated 30 January 1991 to the President of the UN Security Council, UN Doc. S/22173, 30 January 1991, p. 1.

ground troops in the Kuwaiti theater of operations" as a legitimate target of attack.³⁷⁵

409. In 1991, during a news briefing concerning the Gulf War, the US Secretary of Defense stated that the "mainstay of Saddam's command forces, the Republican Guard units located near the Iraqi/Kuwaiti border" were considered military targets and had been attacked.³⁷⁶

410. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that Iraq's air forces, naval forces and army units, including the Republican Guard, had been included among the 12 target sets for the coalition's attacks.³⁷⁷

III. Practice of International Organisations and Conferences

411. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

412. No practice was found.

V. Practice of the International Red Cross and Red Crescent Movement

413. To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that "the armed forces except medical service and religious personnel and objects" are military objectives.³⁷⁸

VI. Other Practice

414. In 1985, in a report on violations of the laws of war in Nicaragua, Americas Watch listed "members of the Popular Sandinista Army and militias", as well as "members of ARDE, FDN, MISURA and MISURASATA [two Indian organisations fighting against the Nicaraguan government]", as persons which "can arguably be regarded as legitimate military objectives subject to direct attack".³⁷⁹

³⁷⁵ US, Letter dated 8 February 1991 to the President of the UN Security Council, UN Doc. S/22216, 13 February 1991, p. 1

³⁷⁶ US, News Briefing by the US Secretary of Defense and the Chairman of the Joint Chiefs of Staff, Washington, 23 January 1991, annexed to Letter dated 25 January 1991 to the President of the UN Security Council, UN Doc. S/22168, 29 January 1991, p. 3.

³⁷⁷ US, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, 10 April 1992, Chapter VI, The Air Campaign, pp. 96–98.

³⁷⁸ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, § 55.

³⁷⁹ Americas Watch, *Violations of the Laws of War by Both Sides in Nicaragua: 1981–1985*, New York, March 1985, p. 33.

415. In 1986, in a report on the use of landmines in the conflicts in El Salvador and Nicaragua, Americas Watch listed the following persons as legitimate military objectives subject to direct attack:

1. In Nicaragua
 - (a) Members of the Popular Sandinista Army and Militias
 - (b) Members of ARDE, FDN, KISAN and MISURASATA [two Indian organizations fighting against the Nicaraguan government]
2. In El Salvador
 - (a) Members of the Salvadoran combined armed forces and civil defense forces
 - (b) Members of the FMLN.³⁸⁰

416. In 1989, in a report on violations of the laws of war in Angola, Africa Watch listed “members of the armed forces and civil defense of Angola and other armed forces assisting the defense of Angola, such as the Cuban armed forces”, as well as “members of UNITA armed forces and other armed forces assisting UNITA, such as the South African Defense Force and South West Africa armed forces”, as persons which “may be regarded as legitimate military objectives subject to direct attack by combatants and mines”.³⁸¹

Places where armed forces or their materiel are located

I. Treaties and Other Instruments

Treaties

417. Article 2 of the 1907 Hague Convention (IX) allows the bombardment of “military works, military or naval establishments, depots of arms or war *matériel*”.

418. Under Article 8 of the 1954 Hague Convention, cultural property may be placed under special protection provided, *inter alia*, that it is situated “at an adequate distance . . . from any important military objective constituting a vulnerable point, such as, for example, . . . [an] establishment engaged upon work of national defence”.

Other Instruments

419. According to Article 24(2) of the 1923 Hague Rules of Air Warfare, “military works [and] military establishments or depots” are military objectives.

420. Article 5(1) of the 1938 ILA Draft Convention for the Protection of Civilian Populations against New Engines of War provides that “aerial bombardment is prohibited unless directed at . . . belligerent establishments”.

³⁸⁰ Americas Watch, *Land Mines in El Salvador and Nicaragua: The Civilian Victims*, New York, December 1986, pp. 99–100.

³⁸¹ Africa Watch, *Angola: Violations of the Laws of War by Both Sides*, New York, April 1989, p. 139.

421. Paragraph I of the proposed annex to Article 7(2) of the 1956 New Delhi Draft Rules stated that “the objectives belonging to the following categories are those considered to be of generally recognized military importance”, that is:

- (2) Positions, installations or constructions occupied by the [armed forces], as well as combat objectives (that is to say, those objectives which are directly contested in battle between land or sea forces including airborne forces).
- (3) Installations, constructions and other works of a military nature, such as barracks, fortifications, War Ministries (e.g. Ministries of Army, Navy, Air Force, National Defence, Supply) and other organs for the direction and administration of military operations.
- (4) Stores of arms or military supplies, such as munition dumps, stores of equipment or fuel, vehicle parks.

422. Section 5.4 of the 1999 UN Secretary-General’s Bulletin states that “military installations and equipment of peacekeeping operations, as such, shall not be considered military objectives”.

II. National Practice

Military Manuals

423. Australia’s Defence Force Manual gives “military equipment, units and bases” as examples of military objectives.³⁸²

424. Belgium’s Teaching Manual for Soldiers considers that “all objects occupied or used by enemy military forces (positions, barracks, depots, etc.)” are military objectives.³⁸³

425. Belgium’s Law of War Manual considers that “the army, its positions, provision of its supplies, its stores, workshops, arsenals, depots, defence works, . . . war buildings, etc.” are military objectives.³⁸⁴

426. Benin’s Military Manual considers “the establishments, positions and constructions where armed forces and their materiel are located (e.g. positions, barracks and depots)” as military objectives.³⁸⁵

427. Cameroon’s Instructors’ Manual considers military positions, barracks and depots as military objectives.³⁸⁶

428. Canada’s LOAC Manual considers that “military bases, warehouses . . . buildings and objects that provide administrative and logistical support for military operations are generally accepted as being military objectives”.³⁸⁷

³⁸² Australia, *Defence Force Manual* (1994), § 527(a), see also § 916(b).

³⁸³ Belgium, *Teaching Manual for Soldiers* (undated), p. 20.

³⁸⁴ Belgium, *Law of War Manual* (1983), p. 26.

³⁸⁵ Benin, *Military Manual* (1995), Fascicule I, p. 12.

³⁸⁶ Cameroon, *Instructors’ Manual* (1992), p. 17.

³⁸⁷ Canada, *LOAC Manual* (1999), p. 4-2, § 9.

- 429.** According to Croatia's LOAC Compendium and Commanders' Manual, military objectives include military establishments and positions.³⁸⁸
- 430.** According to Ecuador's Naval Manual, proper targets for naval attack include such military objectives as naval and military bases ashore; warship construction and repair facilities; military depots and warehouses; storage areas for petroleum and lubricants; and buildings and facilities that provide administrative and personnel support for military and naval operations, such as barracks, headquarters buildings, mess halls and training areas.³⁸⁹
- 431.** France's LOAC Summary Note considers military establishments, installations, and materiel and positions of tactical importance to be military objectives.³⁹⁰
- 432.** Germany's Military Manual provides that military objectives include, in particular, "buildings and objects for combat service support".³⁹¹
- 433.** According to Hungary's Military Manual, military objectives include military establishments and positions.³⁹²
- 434.** According to Italy's IHL Manual, "military quarters, military works and establishments, defence works and preparations" are military objectives.³⁹³
- 435.** According to Italy's LOAC Elementary Rules Manual, military objectives include military establishments and positions.³⁹⁴
- 436.** Kenya's LOAC Manual provides that "the establishments, buildings and positions where armed forces or their material are located (e.g. positions, barracks, stores, concentrations of troops)" are military objectives.³⁹⁵
- 437.** According to Madagascar's Military Manual, military objectives include "establishments, constructions and positions where the armed forces and their materiel are located (for example positions, army barracks, depots)".³⁹⁶
- 438.** The Military Manual of the Netherlands considers that positions of military units, such as artillery positions, constitute military objectives "under all circumstances".³⁹⁷
- 439.** New Zealand's Military Manual states that "military bases, warehouses . . . buildings and objects that provide administrative and logistic support for military operations are examples of objects universally regarded as military objectives".³⁹⁸

³⁸⁸ Croatia, *LOAC Compendium* (1991), p. 7; *Commanders' Manual* (1992), § 4.

³⁸⁹ Ecuador, *Naval Manual* (1989), § 8.1.1.

³⁹⁰ France, *LOAC Summary Note* (1992), Part I, § 1.2.

³⁹¹ Germany, *Military Manual* (1992), § 443.

³⁹² Hungary, *Military Manual* (1992), p. 18. ³⁹³ Italy, *IHL Manual* (1991), Vol. I, § 12.

³⁹⁴ Italy, *LOAC Elementary Rules Manual* (1991), § 4.

³⁹⁵ Kenya, *LOAC Manual* (1997), Précis No. 2, p. 11.

³⁹⁶ Madagascar, *Military Manual* (1994), Fiche No. 2-SO, § C, see also Fiche No. 2-O, § 4 and Fiche No. 4-T, § 1.

³⁹⁷ Netherlands, *Military Manual* (1993), p. V-3.

³⁹⁸ New Zealand, *Military Manual* (1992), § 516(2), see also § 623(2).

440. South Africa's LOAC Manual states that military objectives include "the establishments, buildings and positions where armed forces or their material are located".³⁹⁹

441. According to Spain's LOAC Manual, "establishments, constructions and positions where armed forces are located [and] establishments and installations of combat support services and logistics" are military objectives.⁴⁰⁰

442. Switzerland's Basic Military Manual lists the armed forces and "their materiel, sites and buildings occupied by them (barracks, fortresses, arsenals) . . . and establishments directly linked to the activity of the armed forces" among military objectives.⁴⁰¹

443. Togo's Military Manual considers "the establishments, positions and constructions where armed forces and their materiel are located (e.g. positions, barracks and depots)" as military objectives.⁴⁰²

444. The UK LOAC Manual states that military objectives include "buildings".⁴⁰³

445. The US Air Force Pamphlet considers that "an adversary's military encampments . . . are military objectives beyond any dispute".⁴⁰⁴

446. According to the US Naval Handbook, proper targets for naval attack include such military objectives as naval and military bases ashore; warship construction and repair facilities; military depots and warehouses; petroleum/oils/lubricants (POL) storage areas; and buildings and facilities that provide administrative and personnel support for military and naval operations, such as barracks, headquarters buildings, mess halls and training areas.⁴⁰⁵

National Legislation

447. Cuba's Military Criminal Code includes "military installations, other military objects and objects intended for use by military units or institutions" in a list of military objects.⁴⁰⁶

448. According to Italy's Law of War Decree as amended, "military quarters, military works and establishments, defence works and preparations, depots of arms and war materiel" are military objectives.⁴⁰⁷

National Case-law

449. No practice was found.

³⁹⁹ South Africa, *LOAC Manual* (1996), § 24(d)(ii).

⁴⁰⁰ Spain, *LOAC Manual* (1996), Vol. I, § 4.5.b.(2).a.

⁴⁰¹ Switzerland, *Basic Military Manual* (1987), Article 28.

⁴⁰² Togo, *Military Manual* (1995), Fascicule I, p. 13.

⁴⁰³ UK, *LOAC Manual* (1981), Section 4, p. 13, § 3(b)(2).

⁴⁰⁴ US, *Air Force Pamphlet* (1976), § 5-3(b). ⁴⁰⁵ US, *Naval Handbook* (1995), § 8.1.1.

⁴⁰⁶ Cuba, *Military Criminal Code* (1979), Article 33(1).

⁴⁰⁷ Italy, *Law of War Decree as amended* (1938), Article 40.

Other National Practice

450. The Report on the Practice of Algeria states that tanks and munitions and ammunition stores were considered military objectives during the war of independence.⁴⁰⁸

451. In 1983, in reply to criticism of alleged attacks against civilian objects during the hostilities against Iran, the President of Iraq stated that "our aircraft did not bomb civilian targets in Baneh during their raid of 5 June; they bombed a camp in which a large body of Iranian forces was concentrated".⁴⁰⁹

452. The Report on the Practice of Lebanon states that, according to an advisor of the Lebanese Ministry of Foreign Affairs, any position used by the occupying army for military purposes is considered a military objective.⁴¹⁰

453. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the UK listed ammunition storage depots among the targets the Royal Air Force had attacked.⁴¹¹

454. In 1950, the US Secretary of State stated that "the air activity of the United Nations forces in Korea has been, and is, directed solely at military targets of the invader. These targets [include] . . . supply dumps."⁴¹²

455. In 1966, in the context of the Vietnam War, the US Department of Defense stated that "military targets include but are not limited to . . . POL facilities, barracks and supply depots. In the specific case of Nam Dinh and Phu Li, targets have been limited to . . . POL dumps."⁴¹³

456. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that Iraq's military storage and production sites had been included among the 12 target sets for the coalition's attacks.⁴¹⁴

III. Practice of International Organisations and Conferences

457. No practice was found.

⁴⁰⁸ Report on the Practice of Algeria, 1997, Chapter 1.3.

⁴⁰⁹ Iraq, Message from the President of Iraq, annexed to Letter dated 10 June 1984 to the UN Secretary-General, UN Doc. S/16610, 19 June 1984, p. 2.

⁴¹⁰ Report on the Practice of Lebanon, 1998, Interview with an advisor of the Lebanese Ministry of Foreign Affairs, Chapter 1.3.

⁴¹¹ UK, Letter dated 13 February 1991 to the President of the UN Security Council, UN Doc. S/22218, 13 February 1991, p. 1.

⁴¹² US, Statement by the Secretary of State, Dean Acheson, 6 September 1950, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 140.

⁴¹³ US, Department of Defense, Statement on targeting policy in Vietnam, 26 December 1966, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 427.

⁴¹⁴ US, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, 10 April 1992, Chapter VI, The Air Campaign, p. 98.

IV. Practice of International Judicial and Quasi-judicial Bodies

458. In 1997, in the case concerning the events at La Tablada in Argentina, the IAC iHR stated that a military base is a “quintessential military objective”.⁴¹⁵

V. Practice of the International Red Cross and Red Crescent Movement

459. To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that military objectives include “the establishments, buildings and positions where armed forces or their material are located (e.g. positions, barracks, stores)”.⁴¹⁶

VI. Other Practice

460. In 1985, in the context of the conflict in El Salvador, the FMLN declared “those places visited by military elements, both from the army of the puppet regime as well as foreign military personnel involved in repressive and genocidal activities against the popular revolutionary movement” to be military objectives. It also considered houses or any other property leased to foreign military advisers as military objectives.⁴¹⁷

461. In 1985, in a report on violations of the laws of war in Nicaragua, Americas Watch listed “military works, military and naval establishments, supplies, vehicles, camp sites, fortifications, and fuel depots or stores which are or could be utilized by either party to the conflict” as objects which “can arguably be regarded as legitimate military objectives subject to direct attack”.⁴¹⁸ This view was reiterated in its 1986 report on the use of landmines in the conflicts in El Salvador and Nicaragua.⁴¹⁹

462. In 1989, in a report on violations of the laws of war in Angola, Africa Watch listed “military works, military and naval establishments, supplies, vehicles, camp sites, fortifications, and fuel depots or stores that are, or could be, utilized by any party to the conflict” as objects which “may be regarded as legitimate military objectives subject to direct attack by combatants and mines”.⁴²⁰

⁴¹⁵ IACiHR, *Case 11.137 (Argentina)*, Report, 18 November 1997, § 155.

⁴¹⁶ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, § 55.

⁴¹⁷ Communication by the FMLN, June 1985, § 4, *Estudios Centroamericanos*, Universidad Centroamericana José Simeón Cañas, Vol. XL, Nos. 441–442, July–August 1985, p. 581.

⁴¹⁸ Americas Watch, *Violations of the Laws of War by Both Sides in Nicaragua: 1981–1985*, New York, March 1985, p. 33.

⁴¹⁹ Americas Watch, *Land Mines in El Salvador and Nicaragua: The Civilian Victims*, New York, December 1986, pp. 99–100.

⁴²⁰ Africa Watch, *Angola: Violations of the Laws of War by Both Sides*, New York, April 1989, pp. 139–140.

Weapons and weapon systems

I. Treaties and Other Instruments

Treaties

463. Article 2 of the 1907 Hague Convention (IX) allows the bombardment of “the ships of war in the harbour”.

Other Instruments

464. According to paragraph I(5) of the proposed annex to Article 7(2) of the 1956 New Delhi Draft Rules, “rocket launching ramps” are military objectives considered to be of “generally recognized military importance”.

II. National Practice

Military Manuals

465. Belgium’s Law of War Manual considers that military vehicles and aircraft are military objectives.⁴²¹

466. Cameroon’s Instructors’ Manual considers that enemy warships are military objectives.⁴²²

467. Canada’s LOAC Manual considers that “military aircraft, weapons [and] ammunition are generally accepted as being military objectives”.⁴²³

468. Croatia’s LOAC Compendium states that proper targets in the air include “enemy military aircraft violating national airspace or flying over the high seas”.⁴²⁴

469. Ecuador’s Naval Manual considers that “proper targets for naval attack include such military objectives as enemy warships and military aircraft, naval and military auxiliaries . . . military vehicles, armour, artillery, ammunition stores”.⁴²⁵

470. Germany’s Military Manual provides that military objectives include, in particular, “military aircraft and warships”.⁴²⁶

471. Hungary’s Military Manual states that proper targets in the air include “enemy military aircraft violating national airspace or flying over the high seas”.⁴²⁷

472. The Military Manual of the Netherlands considers that materiel used by armed forces, such as tanks, vehicles, and aircraft, constitute military objectives “under all circumstances”.⁴²⁸

⁴²¹ Belgium, *Law of War Manual* (1983), p. 26.

⁴²² Cameroon, *Instructors’ Manual* (1992), p. 111.

⁴²³ Canada, *LOAC Manual* (1999), p. 4-2, § 9(b), see also p. 8-7, § 47 (enemy warships and military aircraft).

⁴²⁴ Croatia, *LOAC Compendium* (1991), p. 44.

⁴²⁵ Ecuador, *Naval Manual* (1989), § 8.1.1.

⁴²⁶ Germany, *Military Manual* (1992), § 443.

⁴²⁷ Hungary, *Military Manual* (1992), p. 71.

⁴²⁸ Netherlands, *Military Manual* (1993), p. V-3.

473. New Zealand's Military Manual states that "military aircraft, weapons [and] ammunition are examples of objects universally regarded as military objectives".⁴²⁹

474. Spain's Field Regulations stipulates that objects useful in war, *inter alia*, arms, munitions, machines and tanks, are objects on which an attack is lawful.⁴³⁰

475. According to Spain's LOAC Manual, "military vehicles, warships and military aircraft [and] materiel, objects and goods belonging to the armed forces and which serve no medical or religious purpose" are military objectives.⁴³¹

476. The UK LOAC Manual states that military objectives include "minefields [and] weapons".⁴³²

477. The US Air Force Pamphlet considers that an adversary's "armament, such as military aircraft, tanks, antiaircraft emplacements . . . are military objectives beyond any dispute".⁴³³

478. The US Naval Handbook specifies that "proper targets for naval attack include such military objectives as enemy warships and military aircraft, naval and military auxiliaries, . . . military vehicles, armor, artillery, ammunition stores".⁴³⁴

National Legislation

479. Cuba's Military Criminal Code includes "weapons and munitions" in a list of military objects.⁴³⁵

480. According to Italy's Law of War Decree as amended, "warships and military aircraft" are legitimate military targets.⁴³⁶

National Case-law

481. No practice was found.

Other National Practice

482. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, Kuwait stated that "Kuwait Air Force aircraft also took part in joint air operations directed primarily against ground-to-ground missile sites, missile launchers, artillery positions and concentrations of Iraqi mechanized units".⁴³⁷

483. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the UK stated that it had targeted Iraq's fixed and mobile SCUD missile launchers and its chemical and biological warfare installations,

⁴²⁹ New Zealand, *Military Manual* (1992), § 516(2), see also § 623(2).

⁴³⁰ Spain, *Field Regulations* (1882), § 880. ⁴³¹ Spain, *LOAC Manual* (1996), Vol. I, § 4.5.b.(2).a.

⁴³² UK, *LOAC Manual* (1981), Section 4, p. 13, § 3(b)(2).

⁴³³ US, *Air Force Pamphlet* (1976), § 5-3(b)(2). ⁴³⁴ US, *Naval Handbook* (1995), § 8.1.1.

⁴³⁵ Cuba, *Military Criminal Code* (1979), Article 33(1).

⁴³⁶ Italy, *Law of War Decree as amended* (1938), Article 40.

⁴³⁷ Kuwait, Letter dated 28 January 1991 to the President of the UN Security Council, UN Doc. S/22164, 28 January 1991, p. 1.

production and storage capability.⁴³⁸ In another such report, the UK stated that it had attacked “elements of the Iraqi air defence system” and specified that “the Royal Air Force [had] attacked surface-to-air missile sites, artillery positions, ammunition storage and Silkworm surface-to-surface missile sites”.⁴³⁹

484. In 1966, in the context of the Vietnam War, the US Department of Defense stated that military targets “also include those anti-aircraft and SAM sites which endanger the lives of American pilots... In the specific case of Nam Dinh and Phu Li, targets have been limited to... air defense sites.”⁴⁴⁰

485. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the US stated that military targets included “Iraqi biological and chemical warfare facilities, mobile and fixed surface-to-surface missile sites... and the air defense networks that protect these facilities” as well as “Iraqi artillery positions”.⁴⁴¹ In another such report, the US stated that “surface-to-surface missile capabilities remain as high priority targets”.⁴⁴² In the same report, the US stated that “the naval forces of the United States have also engaged Iraqi patrol and mine-laying craft in the Northern Arabian Gulf”.⁴⁴³ In a subsequent report, the US stated that allied attacks had targeted “air defence, combat aircraft in the air and on the ground, nuclear, biological and chemical storage facilities”, as well as “air defence radars and missiles in Kuwait” and “surface-to-surface missile capabilities”.⁴⁴⁴ In the same report, the US reiterated that “the naval forces of the United States and the allied coalition have continued to engage Iraqi patrol and mine-laying craft in the Northern Arabian Gulf”.⁴⁴⁵

486. In 1991, during a news briefing concerning the Gulf War, the US Secretary of Defense stated that “air defence units and radars”, “SCUD missile launchers” and “the factories where Iraq has produced chemical and biological weapons, and until recently, continued working on nuclear weapons” were considered military targets and had been attacked.⁴⁴⁶

⁴³⁸ UK, Letter dated 28 January 1991 to the President of the UN Security Council, UN Doc. S/22156, 28 January 1991, p. 1.

⁴³⁹ UK, Letter dated 13 February 1991 to the President of the UN Security Council, UN Doc. S/22218, 13 February 1991, p. 1.

⁴⁴⁰ US, Department of Defense, Statement on targeting policy in Vietnam, 26 December 1966, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 427.

⁴⁴¹ US, Letter dated 22 January 1991 to the President of the UN Security Council, UN Doc. S/22130, 22 January 1991, p. 1.

⁴⁴² US, Letter dated 30 January 1991 to the President of the UN Security Council, UN Doc. S/22173, 30 January 1991, p. 1.

⁴⁴³ US, Letter dated 30 January 1991 to the President of the UN Security Council, UN Doc. S/22173, 30 January 1991, p. 1.

⁴⁴⁴ US, Letter dated 8 February 1991 to the President of the UN Security Council, UN Doc. S/22216, 13 February 1991, p. 1.

⁴⁴⁵ US, Letter dated 8 February 1991 to the President of the UN Security Council, UN Doc. S/22216, 13 February 1991, p. 2.

⁴⁴⁶ US, News Briefing by the US Secretary of Defense and the Chairman of the Joint Chiefs of Staff, Washington, 23 January 1991, annexed to Letter dated 25 January 1991 to the President of the UN Security Council, UN Doc. S/22168, 29 January 1991, p. 3.

487. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that Iraq's strategic integrated air defense system, its nuclear, biological and chemical weapons research, production and storage facilities and its Scud missiles, launchers, and production and storage facilities had been included among the 12 target sets for the coalition's attacks.⁴⁴⁷

III. Practice of International Organisations and Conferences

488. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

489. No practice was found.

V. Practice of the International Red Cross and Red Crescent Movement

490. No practice was found.

VI. Other Practice

491. In 1985, in a report on violations of the laws of war in Nicaragua, Americas Watch listed "weapons [and] other war materiel" as objects which "can arguably be regarded as legitimate military objectives subject to direct attack".⁴⁴⁸ This view was reiterated in its 1986 report on the use of landmines in the conflicts in El Salvador and Nicaragua.⁴⁴⁹

492. In 1989, in a report on violations of the laws of war in Angola, Africa Watch listed "weapons and other war material" as objects which "may be regarded as legitimate military objectives subject to direct attack by combatants and mines".⁴⁵⁰

Lines and means of communication

I. Treaties and Other Instruments

Treaties

493. Under Article 8 of the 1954 Hague Convention, cultural property may be placed under special protection provided, *inter alia*, that it is situated "at

⁴⁴⁷ US, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, 10 April 1992, Chapter VI, The Air Campaign, pp. 96 and 98.

⁴⁴⁸ Americas Watch, *Violations of the Laws of War by Both Sides in Nicaragua: 1981-1985*, New York, March 1985, p. 33.

⁴⁴⁹ Americas Watch, *Land Mines in El Salvador and Nicaragua: The Civilian Victims*, New York, December 1986, pp. 99-100.

⁴⁵⁰ Africa Watch, *Angola: Violations of the Laws of War by Both Sides*, New York, April 1989, p. 139.

an adequate distance . . . from any important military objective constituting a vulnerable point, such as, for example, . . . [a] broadcasting station . . . or a main line of communication”.

Other Instruments

494. According to Article 24(2) of the 1923 Hague Rules of Air Warfare, “lines of communication . . . used for military purposes” are military objectives.

495. Article 5(1) of the 1938 ILA Draft Convention for the Protection of Civilian Populations against New Engines of War provides that “aerial bombardment is prohibited unless directed at . . . lines of communication or transportation used for military purposes”.

496. Paragraph I of the proposed annex to Article 7(2) of the 1956 New Delhi Draft Rules provided that “the objectives belonging to the following categories are those considered to be of generally recognized military importance: . . . (7) The installations of broadcasting and television stations; telephone and telegraph exchanges of fundamental military importance.”

II. National Practice

Military Manuals

497. Australia’s Defence Force Manual cites “facilities which support or enhance command and control, such as communications facilities” as military objectives.⁴⁵¹

498. Ecuador’s Naval Manual considers communications and command and control (C3) facilities, as well as “lines of communication and other objects used to conduct or support military operations”, as proper targets for naval attack.⁴⁵²

499. According to Italy’s IHL Manual, “lines and means of communication which can be used for the needs of the armed forces” are military objectives.⁴⁵³

500. South Korea’s Military Law Manual states that “transmission towers and electronic communication facilities used for military operations” can be regarded as military objectives.⁴⁵⁴

501. New Zealand’s Military Manual states that “command and control points are examples of objects universally regarded as military objectives”.⁴⁵⁵

502. Sweden’s IHL Manual states that:

How and to what extent a given object can effectively contribute to the adversary’s military operations must be decided by the commander. This need not imply that the property in question is being used by the adversary for a given operation . . . It

⁴⁵¹ Australia, *Defence Force Manual* (1994), § 527(c).

⁴⁵² Ecuador, *Naval Manual* (1989), § 8.1.1. ⁴⁵³ Italy, *IHL Manual* (1991), Vol. I, § 12.

⁴⁵⁴ South Korea, *Military Law Manual* (1996), p. 87.

⁴⁵⁵ New Zealand, *Military Manual* (1992), § 516(2), see also § 623(2).

may even be a question of means of communication . . . that indirectly contribute to the adversary's military operations.⁴⁵⁶

503. Switzerland's Basic Military Manual considers "lines of communication . . . of military importance" as military objectives.⁴⁵⁷

504. The US Air Force Pamphlet states that:

Controversy exists over whether, and the circumstances under which, other objects, such as civilian transportation and communications systems, dams and dikes can be classified properly as military objectives . . . A key factor in classification of objects as military objectives is whether they make an effective contribution to an adversary's military action so that their capture, destruction or neutralization offers a definite military advantage in the circumstances ruling at the time.⁴⁵⁸

505. The US Naval Handbook considers communications and command and control facilities, as well as "lines of communication and other objects used to conduct or support military operations", as proper targets for naval attack.⁴⁵⁹

National Legislation

506. Cuba's National Defence Act lists "communications facilities and equipment" among the objects integrated within the "Military Reserve of Facilities and Equipment of the National Economy" to guarantee the necessities of defence in wartime.⁴⁶⁰

507. According to Italy's Law of War Decree as amended, "lines and means of communication which can be used for the needs of the armed forces" are military objectives.⁴⁶¹

National Case-law

508. No practice was found.

Other National Practice

509. The Report on the Practice of Algeria states that:

Leaving aside the objects which do not really raise questions of interpretation such as tanks or weapons and munition depots, the National Liberation Army of Algeria resorted to "economic sabotage" throughout the war. Roads, bridges, railway tracks and telephone lines were preferred targets. It even happened that harvests of important French colonisers were burned or fuel depots used by the French army destroyed. . . Even the petroleum industry which had barely emerged was not spared. In fact, everything which was considered to form part of "the economic machinery of the enemy" had to be brought down.⁴⁶²

⁴⁵⁶ Sweden, *IHL Manual* (1991), Section 3.2.1.5, p. 54.

⁴⁵⁷ Switzerland, *Basic Military Manual* (1987), Article 28.

⁴⁵⁸ US, *Air Force Pamphlet* (1976), § 5-3(b)(2). ⁴⁵⁹ US, *Naval Handbook* (1995), § 8.1.1.

⁴⁶⁰ Cuba, *National Defence Act* (1994), Article 119(c).

⁴⁶¹ Italy, *Law of War Decree as amended* (1938), Article 40.

⁴⁶² Report on the Practice of Algeria, 1997, Chapter 1.3, referring to *El Moudjahid*, Vol. 1, pp. 22 and 25–26, *El Moudjahid*, Vol. 2, p. 151 and *El Moudjahid*, Vol. 3, pp. 153–154.

510. According to the Report on the Practice of Iran, radio and television stations were considered military objectives during the Iran–Iraq War.⁴⁶³

511. The Report on the Practice of Lebanon refers to a communiqué issued in 1997 by the Lebanese Ministry of Foreign Affairs which stated that “all radio stations and media installations in Lebanon are civilian targets. Israel does not have the right to attack them, regardless of their political orientation.”⁴⁶⁴

512. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the UK stated that “Iraqi military command and control has been severely damaged and increasingly Iraq has moved to alternative, less effective means of communication. Iraq’s ability to sustain a war has been steadily reduced.”⁴⁶⁵

513. During the Korean War, the US reportedly attacked communication centres in North Korea.⁴⁶⁶

514. In 1950, the US Secretary of State stated that “the air activity of the United Nations forces in Korea has been, and is, directed solely at military targets of the invader. These targets [include] . . . communications lines.”⁴⁶⁷

515. In 1991, in reports submitted to the UN Security Council on operations in the Gulf War, the US included command and control centers among Iraq’s military targets.⁴⁶⁸

516. In 1991, during a news briefing concerning the Gulf War, the US Secretary of Defense stated that “command and control [and] communications facilities” were considered military targets and had been attacked.⁴⁶⁹

517. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that Iraq’s leadership command facilities, its telecommunications and command, control and communication nodes had been included among the 12 target sets for the coalition’s attacks.⁴⁷⁰ The report specified that:

To challenge [Saddam Hussein’s] C3 [command, control and communication], the Coalition bombed microwave relay towers, telephone exchanges, switching rooms,

⁴⁶³ Report on the Practice of Iran, 1997, Chapter 1.3.

⁴⁶⁴ Report on the Practice of Lebanon, 1998, Chapter 1.3, referring to Communiqué of the Lebanese Ministry of Foreign Affairs, 29 February 1997.

⁴⁶⁵ UK, Letter dated 28 January 1991 from the UK to the President of the UN Security Council, UN Doc. S/22156, 28 January 1991, p. 1.

⁴⁶⁶ Robert F. Futrell, *The United States Air Force in Korea 1950–1953*, Office of Air Force History, United States Air Force, Washington, D.C., Revised edition, 1983, p. 516.

⁴⁶⁷ US, Statement by Dean Acheson, Secretary of State, 6 September 1950, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 140.

⁴⁶⁸ US, Letter dated 22 January 1991 to the President of the UN Security Council, UN Doc. S/22130, 22 January 1991, p. 1; Letter dated 8 February 1991 to the President of the UN Security Council, UN Doc. S/22216, 13 February 1991, p. 1.

⁴⁶⁹ US, News Briefing by the US Secretary of Defense and the Chairman of the Joint Chiefs of Staff, Washington, 23 January 1991, annexed to Letter dated 25 January 1991 to the President of the UN Security Council, UN Doc. S/22168, 29 January 1991, p. 3.

⁴⁷⁰ US, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, 10 April 1992, Chapter VI, The Air Campaign, pp. 95–96.

fiber optic nodes, and bridges that carried coaxial communications cables . . . More than half of Iraq's military landline communications passed through major switching facilities in Baghdad. Civil TV and radio facilities could be used easily for C3 backup for military purposes. The Saddam Hussein regime also controlled TV and radio and used them as the principal media for Iraqi propaganda. Thus, these installations were also struck.⁴⁷¹

In the same report, the Department of Defense stated that "microwave towers for everyday, peacetime civilian communications can constitute a vital part of a military command and control (C2) system . . . Attack of all segments of the Iraqi communications system was essential to destruction of Iraqi military C2."⁴⁷²

III. Practice of International Organisations and Conferences

518. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

519. In its final report to the ICTY Prosecutor in 2000, the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia stated that:

The precise scope of "military-industrial infrastructure, media and other strategic targets" as referred to in the US statement and "government ministries and refineries" as referred to in the NATO statement is unclear. Whether the media constitutes a legitimate target group is a debatable issue. If the media is used to incite crimes, as in Rwanda, then it is a legitimate target. If it is merely disseminating propaganda to generate support for the war effort, it is not a legitimate target.⁴⁷³

The Committee further stated that:

The media as such is not a traditional target category. To the extent particular media components are part of the C3 (command, control and communications) network they are military objectives. If media components are not part of the C3 network then they may become military objectives depending upon their use. As a bottom line, civilians, civilian objects and civilian morale as such are not legitimate military objectives. The media does have an effect on civilian morale. If that effect is merely to foster support for the war effort, the media is not a legitimate military

⁴⁷¹ US, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, 10 April 1992, Chapter VI, The Air Campaign, p. 96; see also James P. Coyne, Plan of Attack, *Air Force Magazine*, April 1992, pp. 40-42.

⁴⁷² US, 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. 623.

⁴⁷³ 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, § 47.

objective. If the media is used to incite crimes, as in Rwanda, it can become a legitimate military objective. If the media is the nerve system that keeps a war-monger in power and thus perpetuates the war effort, it may fall within the definition of a legitimate military objective.⁴⁷⁴

With respect to NATO's attack against the radio and television station in Belgrade, the Committee noted that:

The attack appears to have been justified by NATO as part of a more general attack aimed at disrupting the FRY Command, Control and Communications network, the nerve centre and apparatus that keeps Milošević in power, and also as an attempt to dismantle the FRY propaganda machinery. Insofar as the attack actually was aimed at disrupting the communications network, it was legally acceptable.

If, however, the attack was made because equal time was not provided for Western news broadcasts, that is, because the station was part of the propaganda machinery, the legal basis was more debatable. Disrupting government propaganda may help to undermine the morale of the population and the armed forces, but justifying an attack on a civilian facility on such grounds alone may not meet the "effective contribution to military action" and "definite military advantage" criteria required by the Additional Protocols . . . While stopping such propaganda may serve to demoralize the Yugoslav population and undermine the government's political support, it is unlikely that either of these purposes would offer the "concrete and direct" military advantage necessary to make them a legitimate military objective.⁴⁷⁵

V. Practice of the International Red Cross and Red Crescent Movement

520. No practice was found.

VI. Other Practice

521. In 1985, in a report on violations of the laws of war in Nicaragua, Americas Watch listed "objects which, while not directly connected with combat operations, effectively contribute to military operations in the circumstances ruling at the time, such as transportation and communication systems and facilities" as objects which "can arguably be regarded as legitimate military objectives subject to direct attack".⁴⁷⁶ This view was reiterated in its 1986 report on the use of landmines in the conflicts in El Salvador and Nicaragua.⁴⁷⁷

⁴⁷⁴ 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, § 55.

⁴⁷⁵ 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, §§ 75–76.

⁴⁷⁶ Americas Watch, *Violations of the Laws of War by Both Sides in Nicaragua: 1981–1985*, New York, March 1985, p. 33.

⁴⁷⁷ Americas Watch, *Land Mines in El Salvador and Nicaragua: The Civilian Victims*, New York, December 1986, pp. 99–100.

522. In 1989, in a report on violations of the laws of war in Angola, Africa Watch listed "objects that, while not directly connected with combat operations, effectively contribute to military operations in the circumstances ruling at the time, such as transportation and communication systems and facilities" as objects which "may be regarded as legitimate military objectives subject to direct attack by combatants and mines".⁴⁷⁸

523. In 1999, in a letter to the NATO Secretary-General concerning NATO's bombing in the FRY, Human Rights Watch stated, with respect to the argument that the Serbian State radio and television headquarters in Belgrade was a legitimate target for NATO to attack, that "while stopping such propaganda may serve to demoralize the Yugoslav population and undermine the government's political support, neither purpose offers the 'concrete and direct' military advantage necessary to make them a legitimate target".⁴⁷⁹

524. In a report on the NATO bombing in the FRY issued in 2000, Human Rights Watch stated that it considered the bombing of the Serbian State radio and television headquarters in Belgrade to be "one of the worst incidents of civilian death" with respect to target selection. It asserted that there was no evidence that the radio and television headquarters met the legal test of military necessity in target selection, as it made no direct contribution to the military effort in Kosovo, and added that in this case the purpose of the attack seemed to have been more "psychological harassment of the civilian population" than to obtain direct military effect. The report further stated that "the risks involved to the civilian population in undertaking the urban attack thus grossly outweighed any perceived military benefit".⁴⁸⁰

525. In 2000, in a report on the NATO bombings in the FRY, Amnesty International concluded that "in one instance, the attack on the headquarters of Serbian state radio and television (RTS), NATO launched a direct attack on a civilian object, killing 16 civilians. Such attack breached article 52(1) of Protocol I and therefore constitutes a war crime."⁴⁸¹

Lines and means of transportation

Note: *Practice concerning military vehicles, ships and aircraft have been included in the subsection on weapons and weapon systems above.*

⁴⁷⁸ Africa Watch, *Angola: Violations of the Laws of War by Both Sides*, New York, April 1989, p. 140.

⁴⁷⁹ Human Rights Watch, Letter to the NATO Secretary-General, 13 May 1999.

⁴⁸⁰ Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, New York, 7 February 2000, p. 7.

⁴⁸¹ Amnesty International, *NATO/Federal Republic of Yugoslavia: "Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force*, AI Index EUR 70/18/00, London, June 2000, p. 25.

I. Treaties and Other Instruments

Treaties

526. Under Article 8 of the 1954 Hague Convention, cultural property may be placed under special protection provided, *inter alia*, that it is situated “at an adequate distance . . . from any important military objective constituting a vulnerable point, such as, for example, an aerodrome . . . a port or railway station of relative importance or a main line of communication”.

Other Instruments

527. According to Article 24(2) of the 1923 Hague Rules of Air Warfare, “lines of . . . transportation used for military purposes” are military objectives.

528. Article 5(1) of the 1938 ILA Draft Convention for the Protection of Civilian Populations against New Engines of War provides that “aerial bombardment is prohibited unless directed at . . . lines of communication or transportation used for military purposes”.

529. Paragraph I of the proposed annex to Article 7(2) of the 1956 New Delhi Draft Rules provided that:

The objectives belonging to the following categories are those considered to be of generally recognized military importance:

- ...
- (5) Airfields . . .
- (6) Those of the lines and means of communication (railway lines, roads, bridges, tunnels and canals) which are of fundamental military importance.

II. National Practice

Military Manuals

530. Australia’s Defence Force Manual cites “transport facilities which support military operations” and “transportation systems for military supplies, transportation centres where lines of communication converge, [and] rail yards” as examples of military objectives.⁴⁸²

531. Canada’s LOAC Manual considers that “ports and airfields are generally accepted as being military objectives”.⁴⁸³ The manual adds that “transportation systems for military supplies; transportation centres where lines of communication converge; [and] railyards may constitute military objectives depending on the circumstances”.⁴⁸⁴

⁴⁸² Australia, *Defence Force Manual* (1994), §§ 527(b) and 527(f).

⁴⁸³ Canada, *LOAC Manual* (1999), p. 4-2, § 9(a).

⁴⁸⁴ Canada, *LOAC Manual* (1999), p. 4-2, § 11(a), (b) and (c).

532. Croatia's *Commanders' Guide* includes "military means of transportation" among military objectives.⁴⁸⁵
533. Ecuador's *Naval Manual* lists airfields, bridges, railyards, docks, port facilities, harbours and embarkation points as military objectives.⁴⁸⁶
534. According to France's *LOAC Summary Note*, "military means of transportation" are military objectives.⁴⁸⁷
535. Italy's *LOAC Elementary Rules Manual* includes "military means of transportation" among military objectives.⁴⁸⁸
536. South Korea's *Military Law Manual* considers highways, railways, ports and airfields used for military operations as military objectives.⁴⁸⁹
537. Madagascar's *Military Manual* states that "military means of transportation" are military objectives.⁴⁹⁰
538. The *Military Manual of the Netherlands* states that:

Whether a road or railway constitutes a military objective depends on the military situation on the spot. The answer to the question of whether the acquisition of such an object at that moment yields a definite military advantage is decisive for the qualification of the object.⁴⁹¹

539. New Zealand's *Military Manual* states that "[military] transport, ports [and] airfields are examples of objects universally regarded as military objectives".⁴⁹² The manual further considers that "transportation systems for military supplies, transportation centres where lines of communication converge, railyards . . . may be attacked if they meet the criteria for military objectives".⁴⁹³
540. Spain's *Field Regulations* stipulates that bridges and railway equipment are legitimate objects of attack.⁴⁹⁴
541. Switzerland's *Basic Military Manual* considers "means of transportation of military importance" as military objectives.⁴⁹⁵
542. The *US Air Force Pamphlet* states that:

Controversy exists over whether, and the circumstances under which, other objects, such as civilian transportation and communications systems, dams and dikes can be classified properly as military objectives . . . A key factor in classification of objects as military objectives is whether they make an effective contribution to an adversary's military action so that their capture, destruction or neutralization offers a definite military advantage in the circumstances ruling at the time.⁴⁹⁶

⁴⁸⁵ Croatia, *Commanders' Manual* (1992), § 4.

⁴⁸⁶ Ecuador, *Naval Manual* (1989), § 8.1.1. ⁴⁸⁷ France, *LOAC Summary Note* (1992), § 1.2.

⁴⁸⁸ Italy, *LOAC Elementary Rules Manual* (1991), § 4.

⁴⁸⁹ South Korea, *Military Law Manual* (1996), p. 87.

⁴⁹⁰ Madagascar, *Military Manual* (1994), Fiche No. 2-O, § 4.

⁴⁹¹ Netherlands, *Military Manual* (1993), p. V-3.

⁴⁹² New Zealand, *Military Manual* (1992), § 516(2), see also § 623(2).

⁴⁹³ New Zealand, *Military Manual* (1992), § 516(4), see also § 623(4).

⁴⁹⁴ Spain, *Field Regulations* (1882), § 880.

⁴⁹⁵ Switzerland, *Basic Military Manual* (1987), Article 28.

⁴⁹⁶ US, *Air Force Pamphlet* (1976), § 5-3(b)(2).

543. The US Naval Handbook lists airfields, bridges, railyards, docks, port facilities, harbours and embarkation points as military objectives.⁴⁹⁷

National Legislation

544. Cuba's Military Criminal Code includes "means of transportation" in a list of military objects.⁴⁹⁸

545. Cuba's National Defence Act lists "means of land, air and water transport [and] airfields, ports and port installations, and plants, workshops, service centres, fuel stores and other installations intended for the exploitation, maintenance and repair of transport facilities and equipment" among the objects integrated within the "Military Reserve of Facilities and Equipment of the National Economy" to guarantee the necessities of defence in wartime.⁴⁹⁹

National Case-law

546. No practice was found.

Other National Practice

547. According to the Report on the Practice of Algeria, the destruction of railways, bridges and roads was part of a policy of "economic sabotage" conducted by the ALN during the war of independence.⁵⁰⁰

548. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the UK stated that it had attacked "main Iraqi military airfields".⁵⁰¹ In a further report it stated that "airfields" and "bridges vital to the military supply effort to and from Kuwait" had been attacked.⁵⁰²

549. During the Korean War, the US Joint Chiefs of Staff informed General MacArthur that mass air operations against industrial targets in North Korea were "highly desirable". The Joint Chiefs of Staff accordingly designated, *inter alia*, the following targets: the railway yards and shops at Pyongyang, the railway yards and shops at Wonsan, the railway yards and shops and the harbour facilities at Chongjin, the railway yards at Chinnampo, the railway yards and shops and the docks and storage areas at Songjin, the railway yards at Hamhung and the railway yards at Haeju.⁵⁰³

550. In 1966, in the context of the Vietnam War, the US Secretary of Defense stated that:

⁴⁹⁷ US, *Naval Handbook* (1995), § 8.1.1.

⁴⁹⁸ Cuba, *Military Criminal Code* (1979), Article 33(1).

⁴⁹⁹ Cuba, *National Defence Act* (1994), Article 119(a) and (d).

⁵⁰⁰ Report on the Practice of Algeria, 1997, Chapter 1.3, referring to *El Moudjahid*, Vol. 1, pp. 25–26.

⁵⁰¹ UK, Letter dated 28 January 1991 to the President of the UN Security Council, UN Doc. S/22156, 28 January 1991, p. 1.

⁵⁰² UK, Letter dated 13 February 1991 to the President of the UN Security Council, UN Doc. S/22218, 13 February 1991, p. 1.

⁵⁰³ Robert F. Futrell, *The United States Air Force in Korea 1950–1953*, Office of Air Force History, US Air Force, Washington, D.C., Revised edition, 1983, pp. 186–187.

We are directing the aircraft against military targets, only military targets, and those particularly associated with the lines of communication between North Vietnam and South Vietnam over which they are sending the men and equipment which are the foundation of the Viet Cong effort to subvert the Government of South Vietnam.⁵⁰⁴

551. In 1966, in the context of the Vietnam War, the US Department of Defense stated that:

U.S. policy is to target military targets only, particularly those which have a direct impact on the movement of men and supplies into South Vietnam. These targets include but are not limited to roads, railroads, bridges [and] road junctions . . . In the specific case of Nam Dinh and Phu Li, targets have been limited to railroad and highway bridges, railroad yards . . .⁵⁰⁵

552. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the US included "supply lines" among Iraq's military targets.⁵⁰⁶ In another such report, the US stated that "the supply lines leading from Iraq into Kuwait" were to be targeted by coalition forces.⁵⁰⁷

553. In 1991, during a news briefing concerning the Gulf War, the US Secretary of Defense stated that "airfields" were considered military targets and had been attacked.⁵⁰⁸

554. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that Iraq's airfields, its port facilities, and its railroads and bridges had been included among the 12 target sets for the coalition's attacks.⁵⁰⁹ In the same report, the US Department of Defense stated that:

A bridge or highway vital to daily commuter and business traffic can be equally crucial to military traffic, or support for a nation's war effort. Railroads, airports, seaports and the interstate highway system in the United States have been funded by the Congress in part because of US national security concerns, for example; each proved invaluable to the movement of US military units to various ports for deployment to Southwest Asia (SWA) for Operations Desert Shield and Desert

⁵⁰⁴ US, Secretary of Defense, Statement on targeting policy in Vietnam, 2 February 1966, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 427.

⁵⁰⁵ US, Department of Defense, Statement on targeting policy in Vietnam, 26 December 1966, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 427.

⁵⁰⁶ US, Letter dated 22 January 1991 to the President of the UN Security Council, UN Doc. S/22130, 22 January 1991, p. 1.

⁵⁰⁷ US, Letter dated 8 February 1991 to the President of the UN Security Council, UN Doc. S/22216, 13 February 1991, p. 1.

⁵⁰⁸ US, News Briefing by the US Secretary of Defense and the Chairman of the Joint Chiefs of Staff, Washington, 23 January 1991, annexed to Letter dated 25 January 1991 to the President of the UN Security Council, UN Doc. S/22168, 29 January 1991, p. 3.

⁵⁰⁹ US, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, 10 April 1992, Chapter VI, The Air Campaign, pp. 96-98.

Storm. Destruction of a bridge, airport, or port facility, or interdiction of a highway can be equally important in impeding an enemy's war effort.⁵¹⁰

III. Practice of International Organisations and Conferences

555. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

556. In its final report to the ICTY Prosecutor in 2000, the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia stated, concerning the "attack on a civilian passenger train at the Grdelica Gorge on 12 April 1999", that the railway bridge on which the train was hit "was a legitimate military objective".⁵¹¹

V. Practice of the International Red Cross and Red Crescent Movement

557. No practice was found.

VI. Other Practice

558. In 1985, in a report on violations of the laws of war in Nicaragua, Americas Watch listed "objects which, while not directly connected with combat operations, effectively contribute to military operations in the circumstances ruling at the time, such as transportation and communication systems and facilities" as objects which "can arguably be regarded as legitimate military objectives subject to direct attack".⁵¹² This view was reiterated in its 1986 report on the use of landmines in the conflicts in El Salvador and Nicaragua.⁵¹³

559. In 1989, in a report on violations of the laws of war in Angola, Africa Watch listed "objects that, while not directly connected with combat operations, effectively contribute to military operations in the circumstances ruling at the time, such as transportation and communication systems and facilities,

⁵¹⁰ US, 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. 623; see also James P. Coyne, Plan of Attack, *Air Force Magazine*, April 1992, pp. 40–42.

⁵¹¹ 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, § 62.

⁵¹² Americas Watch, *Violations of the Laws of War by Both Sides in Nicaragua: 1981–1985*, New York, March 1985, p. 33.

⁵¹³ Americas Watch, *Land Mines in El Salvador and Nicaragua: The Civilian Victims*, New York, December 1986, pp. 99–100.

airfields, ports" as objects which "may be regarded as legitimate military objectives subject to direct attack by combatants and mines".⁵¹⁴

560. Following NATO's air campaign in the FRY in 1999, Human Rights Watch stated that:

The attacks on the Novi Sad bridge and six other bridges in which civilian deaths occurred... also were of questionable military effect. All are road bridges. Most are urban or town bridges that are not major routes of communications. Human Rights Watch questions individual target selection in the case of these bridges. U.S. military sources have told Human Rights Watch that bridges were often selected for attack for reasons other than their role in transportation (for example, they were conduits for communications cables, or because they were symbolic and psychologically lucrative, such as in the case of the bridge over the Danube in Novi Sad). The destruction of bridges that are not central to transportation arteries or have a purely psychological importance does not satisfy the criterion of making an "effective contribution to military action" or offering a "definite military advantage," the baseline tests for legitimate military targets codified in Protocol I, art. 52.⁵¹⁵

Economic installations

I. Treaties and Other Instruments

Treaties

561. Article 2 of the 1907 Hague Convention (IX) allows the bombardment of "workshops or plant which could be utilized for the needs of the hostile fleet or army".

562. Under Article 8 of the 1954 Hague Convention, cultural property may be placed under special protection provided, *inter alia*, that it is situated "at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point".

Other Instruments

563. According to Article 24(2) of the 1923 Hague Rules of Air Warfare, "factories constituting important and well-known centres engaged in the manufacture of arms, ammunition or distinctively military supplies" are military objectives.

564. Paragraph I of the proposed annex to Article 7(2) of the 1956 New Delhi Draft Rules provided that:

The objectives belonging to the following categories are those considered to be of generally recognized military importance:

⁵¹⁴ Africa Watch, *Angola: Violations of the Laws of War by Both Sides*, New York, April 1989, p. 140.

⁵¹⁵ Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, New York, 7 February 2000, p. 11.

- ...
- (8) Industries of fundamental importance for the conduct of the war:
- (a) industries for the manufacture of armaments such as weapons, munitions, rockets, armoured vehicles, military aircraft, fighting ships, including the manufacture of accessories and all other war material;
 - (b) industries for the manufacture of supplies and material of a military character, such as transport and communications material, equipment for the armed forces;
 - (c) factories or plants constituting other production and manufacturing centres of fundamental importance for the conduct of war, such as the metallurgical, engineering and chemical industries, whose nature and purpose is essentially military;
 - (d) storage and transport installations whose basic function it is to serve the industries referred to in (a)–(c);
 - (e) installations providing energy mainly for national defence, e.g. coal, other fuels, or atomic energy, and plants producing gas or electricity mainly for military consumption.
- (9) Installations constituting experimental, research centres for experiments on and the development of weapons and war material.

II. National Practice

Military Manuals

565. Australia's Defence Force Manual gives as an example of military objectives:

power stations [and] industry which support military operations... industrial installations producing materiel for combat forces, fuel dumps and distribution centres supplying military users, industrial installations that repair and replenish lines of communication and other economic targets the destruction, capture or neutralisation of which offers a definite military advantage.⁵¹⁶

The manual adds that "economic targets that indirectly but effectively support operations are also military objectives if an attack will gain a definite military advantage".⁵¹⁷

566. Belgium's Law of War Manual states that:

The purpose of combat between belligerents is to weaken and eliminate the power of resistance of the enemy.

This resistance is provided in the first place by the armed forces of a Party to the conflict. As a result, acts of violence are in the first place directed against the military potential of the adversary (the army, its positions, provision of its supplies, its stores, workshops, arsenals, depots, defence works, vehicles, aircraft, war buildings, etc.).

But this resistance also depends on the economic power of the adversary (its war industry, its production capacity, its sources of supply, etc.); in short, its economic

⁵¹⁶ Australia, *Defence Force Manual* (1994), §§ 527(b) and 527(f).

⁵¹⁷ Australia, *Defence Force Manual* (1994), § 527(g).

potential. The breaking up of this economic potential has of course a direct influence on the armed forces' capacity to resist, so that this economic potential also becomes a war objective.⁵¹⁸

567. Canada's LOAC Manual considers that "petroleum storage areas are generally accepted as being military objectives".⁵¹⁹ The manual adds that "industrial installations producing material for armed forces; conventional power plants; and fuel dumps may constitute military objectives depending on the circumstances".⁵²⁰

568. Croatia's LOAC Compendium considers that supply and maintenance bases, namely locations where goods other than medical are produced, processed or stored, are military objectives.⁵²¹

569. Ecuador's Naval Manual states that:

Proper economic targets for naval attack include enemy lines of communication used for military purposes, rail yards, bridges, rolling stock, barges, lighters, industrial installations producing war-fighting products, and power generation plants. Economic targets of the enemy that indirectly but effectively support and sustain the enemy's war-fighting capability may also be attacked.⁵²²

570. Germany's Military Manual provides that military objectives include, in particular, "economic objectives which make an effective contribution to military action (transport facilities, industrial plants, etc.)".⁵²³

571. Hungary's Military Manual considers that supply and maintenance bases, namely locations where goods other than medical are produced, processed or stored, are military objectives.⁵²⁴

572. According to Italy's IHL Manual, "depots, workshops [and] installations... which can be used for the needs of the armed forces" are military objectives.⁵²⁵

573. New Zealand's Military Manual states that "energy installations [and] war supporting industries are examples of objects universally regarded as military objectives".⁵²⁶ The manual further states that:

Industrial installations producing materiel for combat forces, fuel dumps and distribution centres supplying military users, and industrial installations that repair and replenish lines of communication (such as conventional power plants and vehicle plants), and other economic targets may be attacked if they meet the criteria for military objectives.⁵²⁷

⁵¹⁸ Belgium, *Law of War Manual* (1983), p. 26.

⁵¹⁹ Canada, *LOAC Manual* (1999), p. 4-2, § 9(a).

⁵²⁰ Canada, *LOAC Manual* (1999), p. 4-2, § 11(d), (e) and (f).

⁵²¹ Croatia, *LOAC Compendium* (1991), p. 51.

⁵²² Ecuador, *Naval Manual* (1989), § 8.1.1. ⁵²³ Germany, *Military Manual* (1992), § 443.

⁵²⁴ Hungary, *Military Manual* (1992), p. 83. ⁵²⁵ Italy, *IHL Manual* (1991), Vol. I, § 12.

⁵²⁶ New Zealand, *Military Manual* (1992), § 516(2), see also § 623(2).

⁵²⁷ New Zealand, *Military Manual* (1992), § 516(4), see also § 623(4).

In general, the manual considers that:

Economic targets that indirectly but effectively support enemy operations may also be attacked to gain a definite military advantage. For example, an 1870 international arbitral tribunal recognized that the destruction of cotton was justified during the American Civil War since the sale of cotton provided funds for almost all Confederate arms and ammunition. Authorization to attack such targets will be reserved to higher authority.⁵²⁸

574. According to Spain's LOAC Manual, "economic-industrial objectives which make an effective and real contribution to military action" are military objectives.⁵²⁹

575. Sweden IHL Manual states that:

How and to what extent a given object can effectively contribute to the adversary's military operations must be decided by the commander. This need not imply that the property in question is being used by the adversary for a given operation... It may even be a question of... energy resources or factories that indirectly contribute to the adversary's military operations.⁵³⁰

576. Switzerland's Basic Military Manual considers "plants, factories and establishments directly linked to the activity of the armed forces" as military objectives.⁵³¹

577. The US Naval Handbook states that:

Proper economic targets for naval attack include enemy lines of communication, rail yards, bridges, rolling stock, barges, lighters, industrial installations producing war-fighting products, and power generation plants. Economic targets of the enemy that indirectly but effectively support and sustain the enemy's war-fighting capability may also be attacked.⁵³²

National Legislation

578. Cuba's National Defence Act lists among the objects integrated within the "Military Reserve of Facilities and Equipment of the National Economy" to guarantee the necessities of defence in wartime:

facilities and equipment for the handling and storage of cargo, agricultural machinery, construction machinery, and other facilities, installations and machinery intended for works of engineering [and] facilities and equipment for... automation, meteorology, topographical and geodesic systems.⁵³³

⁵²⁸ New Zealand, *Military Manual* (1992), § 516(5), see also § 623(5).

⁵²⁹ Spain, *LOAC Manual* (1996), Vol. I, § 4.5.b.(2).a.

⁵³⁰ Sweden, *IHL Manual* (1991), Section 3.2.1.5, p. 54.

⁵³¹ Switzerland, *Basic Military Manual* (1987), Article 28.

⁵³² US, *Naval Handbook* (1995), § 8.1.1.

⁵³³ Cuba, *National Defence Act* (1994), Article 119(b) and (c).

579. According to Italy's Law of War Decree as amended, "depots, workshops [and] installations . . . which can be used for the needs of the armed forces" are military objectives.⁵³⁴

National Case-law

580. No practice was found.

Other National Practice

581. According to the Report on the Practice of Iran, during the Iran–Iraq War, Iran always insisted that it had no intention of attacking civilian objects, all targets being "military objectives or objects which by their nature, location, purpose or use made an effective contribution to military action, and thus most economic objectives were regarded as military objectives". The report cites refineries, petrochemical complexes, power stations, railway stations, radio and television stations and bridges as examples of economic objectives which were targeted by the Iranian air force and concludes that "the definition of military objectives from Iran's point of view is a broad one which includes economic objectives too".⁵³⁵

582. The Report on the Practice of Lebanon refers to a statement by the General Director of the Ministry of Justice in 1997 in which he stated that he considered the bombardment of economic installations to be a war crime.⁵³⁶

583. In 1991, in a report submitted to the UN Security Council on operations in the Gulf War, the UK stated that Iraq's oil refining capacity had been specifically targeted with the objective of "reducing Iraq's military sustainability".⁵³⁷

584. During the Korean War, the US Joint Chiefs of Staff informed General MacArthur that mass air operations against industrial targets in North Korea were "highly desirable". The Joint Chiefs of Staff accordingly designated, *inter alia*, the following targets: the two munitions plants at Pyongyang, the three chemical plants at Hungnam, the oil refinery at Wonsan, the naval oil-storage tank farm at Rashin, the "Tong Iron Foundry" and the "Sam Yong Industrial Factory" at Chinnampo.⁵³⁸

585. In 1950, the US Secretary of State stated that "the air activity of the United Nations forces in Korea has been, and is, directed solely at military targets of the invader. These targets [include] . . . war plants."⁵³⁹

⁵³⁴ Italy, *Law of War Decree as amended* (1938), Article 40.

⁵³⁵ Report on the Practice of Iran, 1997, Chapter 1.3.

⁵³⁶ Report on the Practice of Lebanon, 1998, Chapter 6.5, referring to Statement by the General Director of the Lebanese Ministry of Justice, *al Raii al ordonia*, 23 December 1997.

⁵³⁷ UK, Letter dated 28 January 1991 to the President of the UN Security Council, UN Doc. S/22156, 28 January 1991, p. 1.

⁵³⁸ Robert F. Futrell, *The United States Air Force in Korea 1950–1953*, Office of Air Force History, US Air Force, Washington, D.C., Revised edition, 1983, pp. 186–187, see also pp. 517–518 (discussing the North Korean metals and mining business as a target category).

⁵³⁹ US, Statement by the Secretary of State, Dean Acheson, 6 September 1950, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 140.

586. In 1966, in reply to an inquiry from a member of the House of Representatives asking for a restatement of US policy on targeting in North Vietnam, a US Deputy Assistant Secretary of Defense wrote that “the United States has not targeted such installations as textile plants, fruit-canning plants, silk factories and thread cooperatives”.⁵⁴⁰

587. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that Iraq’s electricity production facilities, its oil refining and distribution facilities and its military production sites had been included among the 12 target sets for the coalition’s attacks.⁵⁴¹

588. In 1993, in its report to Congress on the protection of natural and cultural resources during times of war, the US Department of Defense stated that:

Natural resources that may be of value to an enemy in his war effort are legitimate targets. The 1943 air raids on the Ploesti oil fields in Romania, and the Combined Bomber Offensive campaign against Nazi oil, were critical to allied defeat of Germany in World War II, for example . . . During Desert Storm, Coalition planners targeted Iraq’s ability to produce refined oil products (such as gasoline) that had immediate military use, but eschewed attack on its long-term crude oil production capability.⁵⁴²

589. The Report on US Practice states that:

The *opinio juris* of the U.S. government recognizes the definition of military objectives in Article 52 of Additional Protocol I as customary law. United States practice gives a broad reading to this definition, and would include . . . war-supporting economic facilities as military objectives.⁵⁴³

III. Practice of International Organisations and Conferences

United Nations

590. In a resolution adopted in 1989 on the situation of human rights and fundamental freedoms in El Salvador, the UN Commission on Human Rights expressed its concern at “the systematic destruction of the economic infrastructure as a consequence of the armed conflict” and requested that all parties put an end to “attacks on the economic infrastructure”.⁵⁴⁴

⁵⁴⁰ US, Letter from Deputy Assistant Secretary of Defense Goulding to US Representative Ogden Reid from New York, 30 December 1966, reprinted in Marjorie Whiteman, *Digest of International Law*, Vol. 10, Department of State Publication 8367, Washington, D.C., 1968, p. 428.

⁵⁴¹ US, Department of Defense, Final Report to Congress on the Conduct of the Persian Gulf War, 10 April 1992, Chapter VI, The Air Campaign, pp. 96–98.

⁵⁴² US, Department of Defense, Report to Congress on International Policies and Procedures Regarding the Protection of Natural and Cultural Resources During Times of War, 19 January 1993, p. 204.

⁵⁴³ Report on US Practice, 1997, Chapter 1.3.

⁵⁴⁴ UN Commission on Human Rights, Res. 1989/68, 8 March 1989, preamble and § 5.

Other International Organisations

591. No practice was found.

International Conferences

592. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

593. No practice was found.

V. Practice of the International Red Cross and Red Crescent Movement

594. No practice was found.

VI. Other Practice

595. In 1985, in a report on violations of the laws of war in Nicaragua, Americas Watch listed as objects which "can arguably be regarded as legitimate military objectives subject to direct attack":

objects which, while not directly connected with combat operations, effectively contribute to military operations in the circumstances ruling at the time, such as . . . otherwise non-military industries of importance to the ability of a party to the conflict to conduct military operations, such as raw or processed coffee destined for export.⁵⁴⁵

This view was reiterated in its 1986 report on the use of landmines in the conflicts in El Salvador and Nicaragua.⁵⁴⁶

596. In 1989, in a report on violations of the laws of war in Angola, Africa Watch listed as objects which "may be regarded as legitimate military objectives subject to direct attack by combatants and mines":

objects that, while not directly connected with combat operations, effectively contribute to military operations in the circumstances ruling at the time, such as . . . otherwise nonmilitary industries of importance to the ability of a party to the conflict to conduct military operations, such as diamonds or petroleum destined for export.⁵⁴⁷

⁵⁴⁵ Americas Watch, *Violations of the Laws of War by Both Sides in Nicaragua: 1981–1985*, New York, March 1985, p. 33.

⁵⁴⁶ Americas Watch, *Land Mines in El Salvador and Nicaragua: The Civilian Victims*, New York, December 1986, pp. 99–100.

⁵⁴⁷ Africa Watch, *Angola: Violations of the Laws of War by Both Sides*, New York, April 1989, p. 140.

Areas of land

I. Treaties and Other Instruments

Treaties

597. Upon ratification of AP I, Canada stated that:

A specific area of land may be a military objective if, because of its location or other reasons specified in [Article 52] as to what constitutes a military objective, its total or partial destruction, capture or neutralization in the circumstances governing at the time offers a definite military advantage.⁵⁴⁸

Similar statements were made upon signature and/or ratification of AP I by FRG, Italy, Netherlands, New Zealand, Spain and UK.⁵⁴⁹

598. In a declaration made upon ratification of AP I, France stated that:

A specific zone may be considered as a military objective if, due to its location or for any other criteria mentioned in Article 52 [AP I], its total or partial destruction, capture or neutralisation in the circumstances governing at the time offers a decisive military advantage.⁵⁵⁰

It made a similar interpretative declaration upon ratification of the 1998 ICC Statute.⁵⁵¹

599. Upon ratification of the CCW, the UK issued a declaration to the effect that "a specific area of land may be a military objective if, because of its location or other reasons [nature, purpose or use], its total or partial destruction, capture or neutralisation in the circumstances ruling at the time offers a definite military advantage".⁵⁵² Similar statements were made upon ratification of the CCW and/or acceptance of some of its Protocols by the Netherlands, Pakistan and US.⁵⁵³

Other Instruments

600. No practice was found.

⁵⁴⁸ Canada, Statements of understanding made upon ratification of AP I, 20 November 1990.

⁵⁴⁹ FRG, Declarations made upon ratification of AP I, 14 February 1991, § 7; Italy, Declarations made upon ratification of AP I, 27 February 1986, § 7; Netherlands, Declarations made upon ratification of AP I, 26 June 1987, § 7; New Zealand, Declarations made upon ratification of AP I, 8 February 1988, § 4; Spain, Declarations made upon ratification of AP I, 21 April 1989, § 7; UK, Declaration made upon signature of AP I, 12 December 1977, § f; UK, Reservations and declarations made upon ratification of AP I, 28 January 1998, § j.

⁵⁵⁰ France, Reservations and declarations made upon ratification of AP I, 11 April 2001, § 12.

⁵⁵¹ France, Interpretative declarations made upon ratification of the 1988 ICC Statute, 9 June 2000, § 6.

⁵⁵² UK, Declaration made upon ratification of the CCW, 13 February 1995, § (b).

⁵⁵³ Netherlands, Declaration made upon ratification of the CCW, 18 June 1987, §§ 1 and 4; Netherlands, Declaration made upon acceptance of the 1996 Amended Protocol II to the CCW, 25 March 1999, § 3; Pakistan, Declaration made upon acceptance of the 1996 Amended Protocol II to the CCW, 9 March 1999, § 5; US, Declaration made upon acceptance of the 1996 Amended Protocol II to the CCW, 24 May 1999, § 4.

II. National Practice

Military Manuals

- 601.** Australia's Defence Force Manual includes among military objectives "areas of land which are of direct use to defending or attacking forces, eg land through which an adversary is likely to move its forces or which may be used as a forming up point preceding an attack".⁵⁵⁴
- 602.** Belgium's Regulations on Armoured Infantry Squads defines the objective of a mission as "a vital area of land to be conquered or defended".⁵⁵⁵
- 603.** Belgium's Regulations on Tank Squadrons states that the objective of a tank squadron in attack is "an area of land whose capture requires the enemy's destruction or withdrawal".⁵⁵⁶
- 604.** Belgium's Regulations on the Tactical Use of Large Units states that "an objective is the final goal of an action. It is defined as either an area of land of tactical importance or as enemy elements that have to be destroyed or neutralised."⁵⁵⁷
- 605.** Benin's Military Manual considers "an area of land of tactical importance" as a military objective.⁵⁵⁸
- 606.** According to Canada's LOAC Manual, "a specific area of land may constitute a military objective".⁵⁵⁹
- 607.** According to Croatia's Commanders' Manual, military objectives include "tactically relevant points of terrain".⁵⁶⁰
- 608.** Ecuador's Naval Manual states that "proper naval targets also include geographic targets, such as a mountain pass".⁵⁶¹
- 609.** France's LOAC Summary Note includes "areas of land of tactical importance" among military objectives.⁵⁶²
- 610.** Italy's IHL Manual states that "areas of land that would be useful to capture or deny to the enemy in order to achieve a military operation" are military objectives.⁵⁶³
- 611.** Italy's LOAC Elementary Rules Manual includes "areas of tactical importance" among military objectives.⁵⁶⁴
- 612.** Madagascar's Military Manual states that military objectives include "areas of land of tactical importance".⁵⁶⁵

⁵⁵⁴ Australia, *Defence Force Manual* (1994), § 527(h), see also § 916(b) ("areas of land which armed forces use or which have military significance such as hills and bridgeheads").

⁵⁵⁵ Belgium, *Regulations on Armoured Infantry Squads* (1972), p. 3.

⁵⁵⁶ Belgium, *Regulations on Tank Squadrons* (1982), § 537(b)(2), see also §§ 536(b)(2) and 539(b)(2).

⁵⁵⁷ Belgium, *Regulations on the Tactical Use of Large Units* (1994), § 210.

⁵⁵⁸ Benin, *Military Manual* (1995), Fascicule I, p. 13.

⁵⁵⁹ Canada, *LOAC Manual* (1999), p. 4-1, § 8. ⁵⁶⁰ Croatia, *Commanders' Manual* (1992), § 4.

⁵⁶¹ Ecuador, *Naval Manual* (1989), § 8.1.1.

⁵⁶² France, *LOAC Summary Note* (1992), Part I, § 1.2.

⁵⁶³ Italy, *IHL Manual* (1991), Vol. I, § 12.

⁵⁶⁴ Italy, *LOAC Elementary Rules Manual* (1991), § 4.

⁵⁶⁵ Madagascar, *Military Manual* (1994), Fiche No. 2-O, § 4.

613. The Military Manual of the Netherlands notes that the government of the Netherlands has declared that “an area of land can constitute a military objective as long as it fulfils the conditions thereof”.⁵⁶⁶

614. New Zealand’s Military Manual states that:

An area of land may be a military objective, provided that the particular area offers a definite military advantage to the defending forces or those attacking. This would include a tract of land through which the adverse Party would be likely to move its forces, or an area the occupation of which would provide the occupant with the possibility of mounting a further attack.⁵⁶⁷

615. Spain’s LOAC Manual states that “the capture or preservation of a specific area of land constitutes a military objective when it meets all the requirements laid down in Article 52 AP I and it confers a concrete military advantage taking into account the circumstances ruling at the time”.⁵⁶⁸

616. Sweden’s IHL Manual states that:

The definition [of military objectives contained in Article 52(2) AP I] is intended to apply only to property or objects. Thus for example, areas of land cannot be included; but this does not prevent an area objective if it is a matter of hindering an enemy advance by means of artillery fire or mining. Attacks on an area are permitted as long as the attack cannot be classified as indiscriminate.⁵⁶⁹

617. Togo’s Military Manual considers “an area of land of tactical importance” as a military objective.⁵⁷⁰

618. The UK LOAC Manual states that military objectives include “areas of land which either have military significance such as hills, defiles or bridgeheads or which contain military objects; or . . . minefields”.⁵⁷¹

619. The US Naval Handbook states that “proper naval targets also include geographic targets, such as a mountain pass”.⁵⁷²

National Legislation

620. The Report on the Practice of Spain notes that the fact that a particular zone may be considered a military objective provided it fulfils the requirements of Article 52(2) AP I is consistent with the possibility provided for under Spanish law of establishing zones of interest for national defence, comprising “expanses of land, sea, or airspace declared as such because they constitute or may constitute a permanent base or an effective aid to offensive action necessary for such purpose”.⁵⁷³

⁵⁶⁶ Netherlands, *Military Manual* (1993), p. V-3.

⁵⁶⁷ New Zealand, *Military Manual* (1992), § 516(6), see also § 623(6).

⁵⁶⁸ Spain, *LOAC Manual* (1996), Vol. I, § 4.4.d; see also § 2.3.b.(1).

⁵⁶⁹ Sweden, *IHL Manual* (1991), Section 3.2.1.5, p. 54.

⁵⁷⁰ Togo, *Military Manual* (1996), Fascicule I, p. 13.

⁵⁷¹ UK, *LOAC Manual* (1981), Section 4, p. 13, § 3(b)(1).

⁵⁷² US, *Naval Handbook* (1995), § 8.1.1.

⁵⁷³ Report on the Practice of Spain, 1998, Chapter 1.3, referring to *Zones and Installations Law* (1975), Article 2.

National Case-law

621. No practice was found.

Other National Practice

622. In an explanatory memorandum submitted to the Belgian parliament in 1985 in the context of the ratification procedure of the Additional Protocols, the Belgian government stated that “the notion of ‘military objective’ must be understood as meaning that a specific zone, as such, which by its location or other criteria enumerated in Article 52 makes an effective contribution to enemy military action, can be considered a military objective”.⁵⁷⁴

623. At the CDDH, Canada stated that:

A specific area of land may also be a military objective if, because of its location or other reasons specified in Article 47 [now Article 52 AP I], its total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.⁵⁷⁵

624. At the CDDH, the FRG stated that it had been able to vote in favour of Article 47 of draft AP I (now article 52) on the basis of the understanding that:

A specific area of land may be a military objective if, because of its location or other reasons specified in Article 47 [now Article 52 AP I], its total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.⁵⁷⁶

625. At the CDDH, the Netherlands stated that it interpreted Article 47 of draft AP I (now Article 52) to mean that:

A specific area of land may be a military objective if, because of its location or other reasons specified in Article 47 [now Article 52 AP I], its total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.⁵⁷⁷

626. At the CDDH, the UK stated that:

A specific area of land might be a military objective if, because of its location or for other reasons specified in Article 47 [now Article 52 AP I], its total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offered a definite military advantage.⁵⁷⁸

627. At the CDDH, the US expressed its understanding that:

⁵⁷⁴ Belgium, House of Representatives, Explanatory memorandum on a draft bill for the approval of the Additional Protocols, 1984–1985 Session, Doc. 1096-1, 9 January 1985, p. 10.

⁵⁷⁵ Canada, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 179.

⁵⁷⁶ FRG, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 188.

⁵⁷⁷ Netherlands, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 195.

⁵⁷⁸ UK, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 169, § 153.

A specific area of land may be a military objective if, because of its location or other reasons specified in Article 47 [now Article 52 AP I], its total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.⁵⁷⁹

628. In 1992, in a review of the legality of extended range anti-armour munition, the US Department of the Air Force stated that:

An area of land can be a military objective if by its nature, location, purpose or use it makes an effective contribution to military action and its total or partial destruction, denial, capture or neutralization offers a definite military advantage, in the circumstances ruling at the time. Most areas which would be mined in war would meet this definition.⁵⁸⁰

629. The Report on US Practice states that:

The *opinio juris* of the U.S. government recognizes the definition of military objectives in Article 52 of Additional Protocol I as customary law. United States practice gives a broad reading to this definition, and would include areas of land . . . as military objectives.⁵⁸¹

III. Practice of International Organisations and Conferences

630. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

631. No practice was found.

V. Practice of the International Red Cross and Red Crescent Movement

632. No practice was found.

VI. Other Practice

633. No practice was found.

Presence of civilians within or near military objectives

I. Treaties and Other Instruments

634. No practice was found.

⁵⁷⁹ US, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 204.

⁵⁸⁰ US, Department of the Air Force, The Judge Advocate General, Legal Review: Extended Range Antiarmor Munition (ERAM), 16 April 1992, § 7.

⁵⁸¹ Report on US Practice, 1997, Chapter 1.3.

II. National Practice

Military Manuals

635. Australia's Defence Force Manual states that:

The presence of noncombatants in or around a military objective does not change its nature as a military objective. Noncombatants in the vicinity of a military objective must share the danger to which the military objective is exposed.

Civilians working in a store on a military air base may not necessarily be taking . . . a direct part [in hostilities]. However, stores, depots, supply columns and military installations are clearly military objectives which may be attacked, regardless of the presence of civilian workers.

Civilians who are not directly involved in combat but are performing military tasks are not combatants. If they are killed or injured during an attack on a legitimate military objective there is no breach of LOAC provided the death or injury is not disproportionate to the direct and concrete military advantage anticipated from the attack. The presence of civilians on or near the proposed military objective (either in a voluntary capacity or as a shield) is merely one of the factors that must be considered when planning an attack.⁵⁸²

636. Canada's LOAC Manual states that:

For targeting purposes, the presence of civilians who are authorized to accompany the armed forces without actually being members thereof (such as crews of military aircraft, war correspondents, supply contractors or members of services responsible for the welfare of the armed forces) does not render a legitimate target immune from attack. Such persons run the risk of being attacked as part of a legitimate target.⁵⁸³

637. Colombia's Instructors' Manual states that "a military objective remains a military objective even if civilians are inside it. Civilians within or in the immediate vicinity of a military objective share the risk to which the objective is exposed."⁵⁸⁴

638. Croatia's LOAC Compendium considers that supply and maintenance bases are military objectives and that civilian personnel working there share the risk of attack.⁵⁸⁵

639. Ecuador's Naval Manual states that:

Deliberate use of noncombatants to shield military objectives from enemy attack is prohibited. The presence of non-combatants within or near military objectives does not preclude an attack on such objectives . . . Unlike military personnel (other than those in a specially protected status such as medical personnel and the sick and wounded) who are always subject to attack, whether on duty or in a leave capacity, civilians are immune from attack unless they are engaged in direct support of the enemy's armed forces or provide them with logistical support. Civilians who provide command, administrative or logistical support to military operations are

⁵⁸² Australia, *Defence Force Manual* (1994), §§ 526, 532 and 550.

⁵⁸³ Canada, *LOAC Manual* (1999), p. 4-4, § 34.

⁵⁸⁴ Colombia, *Instructors' Manual* (1999), p. 18.

⁵⁸⁵ Croatia, *LOAC Compendium* (1991), p. 51.

exposed to attacks while performing such duties. Similarly, civilian employees of navy shipyards, the merchant navy personnel working on ships carrying military cargo, and the workers on military fortifications can be attacked while they carry out such activities.⁵⁸⁶

640. Germany's Military Manual states that "civilians present in military objectives are not protected against attacks directed at these objectives; the presence of civilian workers in an arms production plant, for instance, will not prevent opposing armed forces from attacking this military objective".⁵⁸⁷

641. Hungary's Military Manual considers that supply and maintenance bases are military objectives and that civilian personnel working there share the risk of attack.⁵⁸⁸

642. Madagascar's Military Manual states that "a military objective remains a military objective even if civilians are present inside it".⁵⁸⁹

643. The Military Manual of the Netherlands considers that:

Acts such as the manufacturing and transport of military materiel in the hinterland certainly do not constitute a direct participation in hostilities. In addition, it has to be borne in mind that the fact that civilians are working in, for example, a weapons factory does not convert such an industrial object into a civilian object. Such a case has to be assessed in the light of the definition of a military objective.⁵⁹⁰

644. New Zealand's Military Manual states that "civilians employed in industries or other activities connected with the war effort may lose while on the job some or all of their protection as civilians but they do not, as a result, become combatants".⁵⁹¹

645. Spain's Field Regulations deals with the question of whether protection should be granted to "individuals who, forming part of a field army, are nonetheless not combatants in the strict sense of the word, such as employees and operatives of administrative and technical bodies, drivers, cleaners".⁵⁹² According to the manual, such individuals "who are not military personnel but follow armies to the battlefield are naturally exposed to the same dangers and cannot expect to be treated differently; but once their position and functions have been identified, they must be respected".⁵⁹³

646. Spain's LOAC Manual states that "indirect objectives" are objectives:

which may not be the object of a direct attack but which can suffer the consequences of an attack upon a military objective. Such is the case for civilians... who may suffer the effects of an attack upon a legitimate military objective due to:

⁵⁸⁶ Ecuador, *Naval Manual* (1989), §§ 11.2 and 11.3.

⁵⁸⁷ Germany, *Military Manual* (1992), § 445. ⁵⁸⁸ Hungary, *Military Manual* (1992), p. 83.

⁵⁸⁹ Madagascar, *Military Manual* (1994), Fiche No. 2-SO, § D.

⁵⁹⁰ Netherlands, *Military Manual* (1993), p. V-5.

⁵⁹¹ New Zealand, *Military Manual* (1992), § 802(2).

⁵⁹² Spain, *Field Regulations* (1882), Article 853.

⁵⁹³ Spain, *Field Regulations* (1882), Article 855.

- their proximity to a military objective aimed at shielding that objective against attack;
- their carrying out activities supporting military operations (units of workers, workers in arms factories, etc.).⁵⁹⁴

The manual further provides that civilian personnel who accompany and render services to the armed forces “do not have the protected status of the civilian population but are entitled to the status of prisoner of war in case of capture”.⁵⁹⁵

647. Switzerland’s Basic Military Manual considers that:

Civilians who are inside or in the immediate vicinity of military objectives run the risks to which the military objectives are exposed. For example, the presence of civilian workers inside a weapons factory does not prevent the enemy from attacking this military objective.⁵⁹⁶

648. The US Naval Handbook states that:

Deliberate use of noncombatants to shield military objectives from enemy attack is prohibited. Although the principle of proportionality underlying the concept of collateral damage and incidental injury continues to apply in such cases, the presence of non-combatants within or adjacent to a legitimate target does not preclude attack of it . . . Unlike military personnel (other than those in a specially protected status such as medical personnel and the sick and wounded) who are always subject to attack whether on duty or in a leave capacity, civilians, as a class, are not to be the object of attack. However, civilians that are engaged in direct support of the enemy’s war-fighting or war-sustaining effort are at risk of incidental injury from attack on such activities.⁵⁹⁷

National Legislation

649. No practice was found.

National Case-law

650. According to the Report on the Practice of Japan, the judgement of the Tokyo District Court in the *Shimoda case* in 1963, which concerned the dropping of the atomic bomb, can be interpreted as having denied the existence of the concept of so-called quasi-combatants, whereby civilians who do not directly partake in hostilities, but indirectly contribute to hostile acts by working in transportation, communication and industrial facilities would be regarded as military objectives.⁵⁹⁸

⁵⁹⁴ Spain, *LOAC Manual* (1996), Vol. I, § 4.4.e, see also § 2.3.b.(1).

⁵⁹⁵ Spain, *LOAC Manual* (1996), Vol. I, § 5.2.a.(2).

⁵⁹⁶ Switzerland, *Basic Military Manual* (1987), Article 28 and commentary.

⁵⁹⁷ US, *Naval Handbook* (1995), §§ 11.2 and 11.3.

⁵⁹⁸ Report on the Practice of Japan, 1998, Chapter 1.2, referring to Tokyo District Court, *Shimoda case*, Judgement, 7 December 1963.

Other National Practice

651. In an explanatory memorandum submitted to the Belgian parliament in 1985 in the context of the ratification procedure of the Additional Protocols, the Belgian government stated that “each person, even a civilian, who is located inside a military objective, is exposed to the consequences of the risks that objective runs”.⁵⁹⁹

652. In 1989, a US memorandum of law concerning the prohibition of assassination stated that:

Civilians who work within a military objective are at risk from attack during the times in which they are present within that objective, whether their injury or death is incidental to the attack of that military objective or results from their direct attack . . . The substitution of a civilian in a position or billet that normally would be occupied by a member of the military will not make that position immune from attack.⁶⁰⁰

653. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that:

Civilians using those bridges or near other targets at the time of their attack were at risk of injury incidental to the legitimate attack of those targets . . . The presence of civilians will not render a target immune from attack; legitimate targets may be attacked wherever located (outside neutral territory and waters).⁶⁰¹

III. Practice of International Organisations and Conferences

654. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

655. No practice was found.

V. Practice of the International Red Cross and Red Crescent Movement

656. To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that “a military objective remains a military objective even if civilian persons are in it. The civilian persons within

⁵⁹⁹ Belgium, House of Representatives, Explanatory memorandum on a draft bill for the approval of the Additional Protocols, 1984–1985 Session, Doc. 1096-1, 9 January 1985, p. 10.

⁶⁰⁰ US, Executive Order 12333 and Assassination, Memorandum prepared by the Chief of the International Law Branch, Office of the Judge Advocate General, Department of the Army, 2 November 1989, reprinted in Marian Nash (Leich), *Cumulative Digest of United States Practice in International Law, 1981–1988*, Department of State Publication 10120, Washington, D.C., 1993–1995, pp. 3415–3416.

⁶⁰¹ US, 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, pp. 624 and 625.

such an objective or its immediate surroundings share the danger to which it is exposed."⁶⁰²

VI. Other Practice

657. Oppenheim states that:

Sections of the civilian population, like munition workers, which are closely identified with military objectives proper, may, while so identified, be legitimately exposed to air attack and to other belligerent measures aiming at the destruction of the objectives in question.⁶⁰³

658. In 1985, in a report on violations of the laws of war in Nicaragua, Americas Watch stated that:

Persons providing only indirect support to the Nicaraguan army by, *inter alia*, working in defense plants, distributing or storing military supplies in rear areas, supplying labor and food, or serving as messengers or disseminating propaganda . . . may *not* be subject to direct individualized attack or execution since they pose no immediate threat to the adversary. However, they assume the risk of incidental death or injury arising from attacks against legitimate military targets.⁶⁰⁴ [emphasis in original]

This view was reiterated in its 1986 report on the use of landmines in the conflicts in El Salvador and Nicaragua.⁶⁰⁵

659. In 1989, in a report on violations of the laws of war in Angola, Africa Watch stated that:

Persons providing only indirect support to the Angolan, Cuban, or South African armed forces or UNITA by, *inter alia*, working in defense plants, distributing or storing military supplies behind conflict areas, supplying labor and food, serving as messengers, or disseminating propaganda . . . may not be subject to direct individualized attack because they pose no immediate threat to the adversary. They assume, however, the risk of incidental death or injury arising from attacks and the use of weapons against legitimate military targets.⁶⁰⁶

⁶⁰² Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, § 56.

⁶⁰³ Lassa Oppenheim, *International Law. A Treatise*, Vol. II, Disputes, War and Neutrality, Sixth edition, revised, Hersch Lauterpacht (ed.), Longmans, Green and Co., London/New York/Toronto, 1944, p. 416, § 214ea.

⁶⁰⁴ Americas Watch, *Violations of the Laws of War by Both Sides in Nicaragua: 1981–1985*, New York, March 1985, p. 32.

⁶⁰⁵ Americas Watch, *Land Mines in El Salvador and Nicaragua: The Civilian Victims*, New York, December 1986, p. 98.

⁶⁰⁶ Africa Watch, *Angola: Violations of the Laws of War by Both Sides*, New York, April 1989, p. 138.

C. Definition of Civilian Objects

I. Treaties and Other Instruments

Treaties

660. Article 52(1) AP I defines civilian objects as “all objects which are not military objectives”. Article 52 AP I was adopted by 79 votes in favour, none against and 7 abstentions.⁶⁰⁷

661. Article 2(5) of the 1980 Protocol II to the CCW and Article 2(7) of the 1996 Amended Protocol II to the CCW define civilian objects as “all objects which are not military objectives”.

662. Article 1(4) of the 1980 Protocol III to the CCW defines civilian objects as “all objects which are not military objectives”.

663. Upon signature of the 1998 ICC Statute, Egypt declared that “civilian objects [referred to in article 8, paragraph 2 (b) of the Statute] must be defined and dealt with in accordance with the provisions of [AP I] and, in particular, article 52 thereof”.⁶⁰⁸

Other Instruments

664. No practice was found.

II. National Practice

Military Manuals

665. Military manuals of Argentina, Australia, Cameroon, Canada, Colombia, Kenya, Madagascar, Netherlands, South Africa, Spain, UK and US define civilian objects as all objects which are not military objectives.⁶⁰⁹

666. Benin’s Military Manual defines civilian objects as “any object which is not a military object or which is not used for military purposes”.⁶¹⁰

667. Croatia’s Commanders’ Manual defines civilian objects as “those objects that are not used for military purposes”.⁶¹¹

668. Ecuador’s Naval Manual defines civilian objects as “all civilian property and activities other than those used to support or sustain the enemy’s war-fighting capability”.⁶¹²

⁶⁰⁷ CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 168.

⁶⁰⁸ Egypt, Declarations made upon signature of the 1988 ICC Statute, 26 December 2000, § 4(b).

⁶⁰⁹ Argentina, *Law of War Manual* (1989), §§ 4.02(2) and 4.45; Australia, *Defence Force Manual* (1994), §§ 530 and 916; Cameroon, *Instructors’ Manual* (1992), p. 17; Canada, *LOAC Manual* (1999), p. 4-4, § 36; Colombia, *Instructors’ Manual* (1999), pp. 16-17; Kenya, *LOAC Manual* (1997), Précis No. 2, p. 11; Madagascar, *Military Manual* (1994), Fiche No. 2-SO, § D, see also Fiche No. 2-O, § 6 and Fiche No. 4-T, § 1; Netherlands, *Military Manual* (1993), p. V-3; South Africa, *LOAC Manual* (1996), § 24(e); Spain, *LOAC Manual* (1996), Vol. I, § 4.5.b.(2).b; UK, *LOAC Manual* (1981), Section 4, p. 13, § 3(c); US, *Air Force Pamphlet* (1976), § 5-3(a)(1)(b).

⁶¹⁰ Benin, *Military Manual* (1995), Fascicule I, p. 13.

⁶¹¹ Croatia, *Commanders’ Manual* (1992), § 6. ⁶¹² Ecuador, *Naval Manual* (1989), § 8.1.2.

669. France's LOAC Summary Note states that "civilian objects are those objects that are not used for military purposes".⁶¹³

670. Italy's LOAC Elementary Rules Manual defines civilian objects as "those objects that are not used for military purposes".⁶¹⁴

671. Sweden IHL Manual states that:

Seen against the background of the enormous destruction of civilian property associated with the Second World War and all later conflicts, application of [Article 52 AP I] could bring about an appreciable humanizing of warfare – people would no longer need to experience the catastrophe of bombed-out homes and ruined cities. However, Article 52 cannot be expected to bring about such great changes in warfare... [An] important reason [for this] is the lack of a definition of civilian objectives.⁶¹⁵

672. Togo's Military Manual defines civilian objects as "any object which is not a military object or which is not used for military purposes".⁶¹⁶

673. The US Naval Handbook defines civilian objects as "all civilian property and activities other than those used to support or sustain the enemy's war-fighting capability".⁶¹⁷

674. The YPA Military Manual of the SFRY (FRY) defines civilian objects as "objects which are not military".⁶¹⁸

National Legislation

675. The Report on the Practice of Cuba asserts that objects not listed by the National Defence Act among the "Military Reserve of Facilities and Equipment of the National Economy" should be considered as civilian objects.⁶¹⁹

National Case-law

676. No practice was found.

Other National Practice

677. On the basis of the reply by Iraq's Ministry of Defence to a questionnaire, the Report on the Practice of Iraq defines civilian objects as objects whose utilisation is confined exclusively to civilian purposes. According to the report, an object should always be considered as civilian if it does not have a major effect on military operations and is indispensable to civilians.⁶²⁰

⁶¹³ France, *LOAC Summary Note* (1992), § 1.1.

⁶¹⁴ Italy, *LOAC Elementary Rules Manual* (1991), § 6.

⁶¹⁵ Sweden, *IHL Manual* (1991), Section 3.2.1.5, p. 53.

⁶¹⁶ Togo, *Military Manual* (1996), Fascicule I, p. 14.

⁶¹⁷ US, *Naval Handbook* (1995), § 8.1.2. ⁶¹⁸ SFRY (FRY), *YPA Military Manual* (1988), § 73.

⁶¹⁹ Report on the Practice of Cuba, 1998, Chapter 1.3, referring to *National Defence Act* (1994), Article 119.

⁶²⁰ Report on the Practice of Iraq, 1998, Reply by the Iraqi Ministry of Defence to a questionnaire, July 1997, Chapter 1.3.

678. The Report on the Practice of Malaysia states that no written laws in Malaysia define the concept of “civilian objects”.⁶²¹

679. At the CDDH, Mexico stated that it believed draft Article 47 AP I (now Article 52) to be so essential that it “cannot be the subject of any reservations whatsoever since these would be inconsistent with the aim and purpose of Protocol I and undermine its basis”.⁶²²

III. Practice of International Organisations and Conferences

680. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

681. No practice was found.

V. Practice of the International Red Cross and Red Crescent Movement

682. To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that “civilian object means any object which is not a military objective”.⁶²³

VI. Other Practice

683. In 1985, in a report on violations of the laws of war in Nicaragua, Americas Watch stated that:

For purposes of the Nicaraguan conflict, the following should be considered civilian objects immune from direct attack:

Structures and locales, such as a house, dwelling, school, farm, village and cooperatives, which in fact are exclusively dedicated to civilian purposes and, in the circumstances prevailing [at] the time, do not make an effective contribution to military action.⁶²⁴

This view was reiterated in its 1986 report on the use of landmines in the conflicts in El Salvador and Nicaragua.⁶²⁵

684. In 1989, in a report on violations of the laws of war in Angola, Africa Watch stated that “structures and locales, such as houses, churches, dwellings,

⁶²¹ Report on the Practice of Malaysia, 1997, Chapter 1.3.

⁶²² Mexico, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 193.

⁶²³ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, § 57.

⁶²⁴ Americas Watch, *Violations of the Laws of War by Both Sides in Nicaragua: 1981–1985*, New York, March 1985, p. 32.

⁶²⁵ Americas Watch, *Land Mines in El Salvador and Nicaragua: The Civilian Victims*, New York, December 1986, p. 99.

schools, and farm villages, that are exclusively dedicated to civilian purposes and, in the circumstances prevailing at the time, do not make an effective contribution to military action" should be considered civilian objects immune from direct attack by combatants, as well as by landmines and related devices.⁶²⁶

685. In 2000, in a report on the NATO air campaign against the FRY, Human Rights Watch used the definition of a military objective contained in Article 52(2) AP I.⁶²⁷

D. Loss of Protection from Attack

Civilian objects used for military purposes

I. Treaties and Other Instruments

686. No practice was found.

II. National Practice

Military Manuals

687. Australia's Defence Force Manual lists among military objectives "objects, normally dedicated to civilian purposes, but which are being used for military purposes, eg a school house or home which is being used temporarily as a battalion headquarters".⁶²⁸ The manual specifies that:

For this purpose, "use" does not necessarily mean occupation. For example, if enemy soldiers use a school building as shelter from attack by direct fire, then they are clearly gaining a military advantage from the school. This means the school becomes a military objective and can be attacked.⁶²⁹

The manual also considers that "civilian aircraft, vessels, vehicles and buildings which contain combatants, military equipment or supplies" are also military objectives.⁶³⁰

688. Belgium's Teaching Manual for Soldiers states that objects occupied or used by enemy military forces are military objectives "even if these objects were civilian at the outset (houses, schools or churches occupied by the enemy)".⁶³¹

⁶²⁶ Africa Watch, *Angola: Violations of the Laws of War by Both Sides*, New York, April 1989, p. 139.

⁶²⁷ Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, New York, 7 February 2000, p. 7.

⁶²⁸ Australia, *Defence Force Manual* (1994), § 527(i).

⁶²⁹ Australia, *Defence Force Manual* (1994), § 530.

⁶³⁰ Australia, *Defence Force Manual* (1994), § 527(e); see also *Commanders' Guide* (1994), § 951.

⁶³¹ Belgium, *Teaching Manual for Soldiers* (undated), pp. 20–21.

689. Cameroon's *Instructors' Manual* considers that "depending on the military situation, [civilian objects] can become military objectives (e.g. a house or bridge used for tactical purposes by the enemy)".⁶³²

690. Canada's *LOAC Manual* states that "where a civilian object is used for military purposes, it loses its protection as a civilian object and may become a legitimate target".⁶³³ The manual further states that "civilian vessels, aircraft, vehicles and buildings are military objectives if they contain combatants, military equipment or supplies."⁶³⁴

691. Colombia's *Instructors' Manual* states that "objects which are normally civilian can, depending on the military situation, be converted into military objectives (for example a house or a bridge used for tactical purposes by the defender and therefore liable to attack)".⁶³⁵

692. Croatia's *Commanders' Manual* states that "civilian objects must not be attacked unless they have become military objectives".⁶³⁶

693. France's *LOAC Summary Note* states that "civilian objects may not be attacked, unless they have become military targets".⁶³⁷

694. Israel's *Manual on the Laws of War* states that:

A situation may arise where the target changes its appearance from civilian to military or vice versa. For instance, if anti-aircraft batteries are stationed on a school roof or a sniper is positioned in a mosque's minaret, the protection imparted to the facility by its being a civilian object will be removed, and the attacking party will be allowed to hit it... A reverse situation may also occur in which an originally military objective becomes a civilian object, as for instance, a large military base that is converted to a collection point for the wounded, and is thus rendered immune to attack.⁶³⁸

695. Italy's *LOAC Elementary Rules Manual* states that "civilian objects must not be attacked unless they have become military objectives".⁶³⁹

696. Kenya's *LOAC Manual* provides that "objects which are normally civilian objects can, according to the military situation, become military objectives (e.g. house or bridge tactically used by the defender and thus a target for an attacker)".⁶⁴⁰

697. Madagascar's *Military Manual* states that "objects which are normally civilian can, depending on the military situation, become military objectives (for example, a house or bridge used for tactical purposes by the defender and thus becoming a military objective)".⁶⁴¹

⁶³² Cameroon, *Instructors' Manual* (1992), p. 17.

⁶³³ Canada, *LOAC Manual* (1999), p. 4-5, § 37.

⁶³⁴ Canada, *LOAC Manual* (1999), p. 4-2, § 10.

⁶³⁵ Colombia, *Instructors' Manual* (1999), p. 16.

⁶³⁶ Croatia, *Commanders' Manual* (1992), § 11.

⁶³⁷ France, *LOAC Summary Note* (1992), § 1.5.

⁶³⁸ Israel, *Manual on the Laws of War* (1998), p. 38.

⁶³⁹ Italy, *LOAC Elementary Rules Manual* (1991), § 11.

⁶⁴⁰ Kenya, *LOAC Manual* (1997), Précis No. 2, p. 11.

⁶⁴¹ Madagascar, *Military Manual* (1994), Fiche No. 2-SO, § D.

698. The Military Manual of the Netherlands considers that civilian objects, such as houses and school buildings, can be used in such a way that they become military objectives, for example if they house combatants or are used as commando posts.⁶⁴²

699. The Military Handbook of the Netherlands states that “non-military buildings and other objects not used for military purposes or of no military importance” may not be attacked.⁶⁴³

700. The Aide-Mémoire for IFOR Commanders of the Netherlands prohibits attacks on “objects with a strict civilian or religious character, unless they are used for military purposes”.⁶⁴⁴

701. New Zealand’s Military Manual provides that “civilian vessels, aircraft, vehicles and buildings may be lawfully attacked if they contain combatant personnel or military equipment or supplies or are otherwise associated with combat activity inconsistent with their civilian status”.⁶⁴⁵

702. Russia’s Military Manual prohibits “the bombardment by military aircraft or warships of cities, harbours, villages and dwellings . . . provided they are not being used for military purposes”.⁶⁴⁶

703. According to Spain’s LOAC Manual, “civilian objects can become military objectives if by their location, purpose or use, they may assist the enemy, or if their capture, destruction or neutralisation offers a definite military advantage”.⁶⁴⁷

704. The US Air Force Pamphlet states that “the inherent nature of the object is not controlling since even a traditionally civilian object, such as a civilian house, can be a military objective when it is occupied and used by military forces during an armed engagement”.⁶⁴⁸

705. The US Rules of Engagement for Operation Desert Storm gives the following instruction:

Do not fire into civilian populated areas or buildings which are not defended or being used for military purposes . . . Do not attack traditional civilian objects, such as houses, unless they are being used by the enemy for military purposes and neutralization assists in mission accomplishment.⁶⁴⁹

National Legislation

706. No practice was found.

⁶⁴² Netherlands, *Military Manual* (1993), p. V-3.

⁶⁴³ Netherlands, *Military Handbook* (1995), pp. 7–36 and 7–43.

⁶⁴⁴ Netherlands, *Aide-Mémoire for IFOR Commanders* (1995), § 12.

⁶⁴⁵ New Zealand, *Military Manual* (1992), § 516(3), see also § 623(3).

⁶⁴⁶ Russia, *Military Manual* (1990), Section II, § 5(m).

⁶⁴⁷ Spain, *LOAC Manual* (1996), Vol. I, § 2.3.b.(1).

⁶⁴⁸ US, *Air Force Pamphlet* (1976), § 5-3(b)(2).

⁶⁴⁹ US, *Rules of Engagement for Operation Desert Storm* (1991), §§ B and G.

National Case-law

707. The Report on the Practice of Colombia refers to a decision of the Council of State which considered that when civilian means of transportation are used by combatants they become military objectives.⁶⁵⁰

Other National Practice

708. In a military communiqué issued in 1973, Egypt stated that it condemned attacks against civilian objects, unless such objects were used in military operations.⁶⁵¹

709. On the basis of interviews with members of the armed forces, the Report on the Practice of Malaysia notes that a civilian object would not be regarded as such if it was to be used to contribute to military action, such as in the production of military equipment.⁶⁵²

710. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense stated that "civilian objects are protected from direct, intentional attack unless they are used for military purposes, such as shielding military objects from attack".⁶⁵³

711. In 1993, in its report to Congress on the protection of natural and cultural resources during times of war, the US Department of Defense stated that "cultural property, civilian objects, and natural resources are protected from intentional attack so long as they are not utilized for military purposes".⁶⁵⁴

712. In 1991, the Ministry of Defence of the SFRY issued a document entitled "Examples of violations of the rules of international law committed by the so-called armed forces of Slovenia", which included the following example:

Along the road to the frontier with Austria, over 100 heavy lorries were forced to stop and were used to create a barrier to block a YPA unit marching to the frontier. Drivers of the lorries were banned to leave their vehicles, whereby they became hostages, and it was quite clear that their vehicles had lost [their] status of civilian vehicles as they were used to create a barrier to military traffic. Thus, these vehicles became an object of legitimate attack. Simultaneously, the stopped military convoy was fired upon from the barricade, so that there was no choice for the army: as the lives of soldiers was endangered, the barricade had to be eliminated by force.⁶⁵⁵

⁶⁵⁰ Report on the Practice of Colombia, 1998, Chapter 1.3, referring to Council of State, *Administrative Case No. 7013*, Judgement, 13 December 1993.

⁶⁵¹ Egypt, Military Communiqué No. 18, 8 October 1973.

⁶⁵² Report on the Practice of Malaysia, 1997, Interviews with members of the Malaysian armed forces, Chapter 1.3.

⁶⁵³ US, 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. 622.

⁶⁵⁴ US, Department of Defense, Report to Congress on International Policies and Procedures Regarding the Protection of Natural and Cultural Resources During Times of War, 19 January 1993, p. 202.

⁶⁵⁵ SFRY (FRY), Ministry of Defence, Examples of violations of the rules of international law committed by the so-called armed forces of Slovenia, July 1991, § 1(iii).

III. Practice of International Organisations and Conferences

713. No practice was found.

IV. Practice of International Judicial and Quasi-judicial Bodies

714. No practice was found.

V. Practice of the International Red Cross and Red Crescent Movement

715. To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that “objects which are normally civilian objects can, according to the military situation, become military objectives (e.g. house or bridge tactically used by the defender and thus a target for an attacker)”.⁶⁵⁶

716. In an appeal issued in October 1973, the ICRC urged all the belligerents in the conflict in the Middle East (Egypt, Iraq, Israel and Syria) to observe forthwith, in particular, the provisions of, *inter alia*, Article 47(2) of draft AP I which stated that “objects designed for civilian use, such as houses, dwellings, installations and means of transport, and all objects which are not military objectives, shall not be made the object of attack, except if they are used mainly in support of the military effort”. All governments concerned replied favourably.⁶⁵⁷

VI. Other Practice

717. In a resolution adopted during its Edinburgh Session in 1969, the Institute of International Law stated that:

Existing international law prohibits all armed attacks . . . on non-military objects, notably dwellings or other buildings sheltering the civilian population, so long as these are not used for military purposes to such an extent as to justify action against them under the rules regarding military objectives.⁶⁵⁸

718. In 2001, in a report on Israel and the occupied territories, Amnesty International stated that civilian objects “may be attacked while they are being used for firing upon Israeli forces. But they revert to their status as civilian objects as soon as they are no longer being used for launching attacks”.⁶⁵⁹

⁶⁵⁶ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, § 58.

⁶⁵⁷ ICRC, *The International Committee's Action in the Middle East*, *IRRC*, No. 152, 1973, pp. 584–585.

⁶⁵⁸ 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, § 4.

⁶⁵⁹ Amnesty International, *Israel and the Occupied Territories: State Assassinations and Other Unlawful Killings*, AI Index MDE 15/005/2001, London, 21 February 2001, p. 29.

Situations of doubt as to the character of an object

I. Treaties and Other Instruments

Treaties

719. Article 52(3) AP I states that “in case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used”. Article 52 AP I was adopted by 79 votes in favour, none against and 7 abstentions.⁶⁶⁰

720. Article 3(8)(a) of the 1996 Amended Protocol II to the CCW provides that “in case of doubt as to whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used”.

721. Upon signature of the 1998 ICC Statute, Egypt declared that “civilian objects [referred to in Article 8, paragraph 2(b) of the Statute] must be defined and dealt with in accordance with the provisions of [AP I] and, in particular, article 52 thereof. In case of doubt, the object shall be considered to be civilian.”⁶⁶¹

Other Instruments

722. Paragraph 6 of the 1991 Memorandum of Understanding on the Application of IHL between Croatia and the SFRY requires that hostilities be conducted in accordance with Article 52(3) AP I.

723. 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 52(3) AP I.

724. Paragraph 58 of the 1994 San Remo Manual provides that “in case of doubt whether a vessel or aircraft exempt from attack is being used to make an effective contribution to military action, it shall be presumed not to be so used”. The commentary on this paragraph states that “this rule, the so-called rule of doubt, imposes an obligation on a party to the conflict to gather and assess relevant information before commencing an attack”.

II. National Practice

Military Manuals

725. Argentina’s Law of War Manual provides that “in case of doubt concerning the military use of an object which is usually dedicated to civilian purposes, that object must be considered as civilian”.⁶⁶²

⁶⁶⁰ CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 168.

⁶⁶¹ Egypt, Declarations made upon signature of the 1988 ICC Statute, 26 December 2000, § 4(b).

⁶⁶² Argentina, *Law of War Manual* (1989), § 4.45, see also § 4.02(2).

726. Australia's Defence Force Manual states that "in cases of doubt whether an object which is normally dedicated to civilian purposes, such as a church, is being used to make an effective contribution to military action, it should be presumed to be a civilian object".⁶⁶³

727. Benin's Military Manual states that "whenever there is a doubt concerning the nature of an objective, it must be considered as a civilian object".⁶⁶⁴

728. Cameroon's Instructors' Manual states that in case of doubt as to whether an object is military or civilian in character, it should be considered as a civilian object.⁶⁶⁵

729. Canada's LOAC Manual states that:

In the case of doubt as to whether an object which is normally dedicated to civilian purposes (such as a place of worship, a house or other dwelling, or a school) is being used to make an effective contribution to military action, it shall be presumed not to be so used.⁶⁶⁶

730. Colombia's Instructors' Manual states that "in case of doubt all objects which are normally dedicated to civilian purposes must be considered civilian".⁶⁶⁷

731. Croatia's LOAC Compendium affirms that in case of doubt as to whether an object is military or civilian in character, it should be considered as a civilian object.⁶⁶⁸

732. France's LOAC Manual states that "in case of doubt, an object usually affected to a civilian use must be considered as civilian and shall not be attacked".⁶⁶⁹

733. Germany's Military Manual provides that "an objective which is normally dedicated to civil purposes shall, in case of doubt, be assumed not to be used in a way to make an effective contribution to military action, and therefore be treated as a civilian object".⁶⁷⁰

734. Hungary's Military Manual affirms that in case of doubt, objects must be considered to be civilian.⁶⁷¹

735. Israel's Manual on the Laws of War states that "in cases where there is doubt as to whether a civilian object has turned into a military objective, the Additional Protocols state that one is to assume that it is not a military objective unless proven otherwise".⁶⁷²

736. Kenya's LOAC Manual states that "in case of doubt whether an object which is normally dedicated to civilian purposes (e.g. a place of worship, a

⁶⁶³ Australia, *Defence Force Manual* (1994), § 528, see also § 530 and *Commanders' Guide* (1994), § 976.

⁶⁶⁴ Benin, *Military Manual* (1995), Fascicule I, p. 13.

⁶⁶⁵ Cameroon, *Instructors' Manual* (1992), p. 17.

⁶⁶⁶ Canada, *LOAC Manual* (1999), p. 4-5, § 38.

⁶⁶⁷ Colombia, *Instructors' Manual* (1999), p. 16.

⁶⁶⁸ Croatia, *LOAC Compendium* (1991), p. 7.

⁶⁶⁹ France, *LOAC Manual* (2001), p. 90. ⁶⁷⁰ Germany, *Military Manual* (1992), § 446.

⁶⁷¹ Hungary, *Military Manual* (1992), p. 18.

⁶⁷² Israel, *Manual on the Laws of War* (1998), p. 38.

house or other dwelling, a school) is a military objective, it shall be considered as a civilian object".⁶⁷³

737. Madagascar's Military Manual states that "in case of doubt, an object which is usually dedicated to civilian purposes (such as a place of worship, school, house or other type of dwelling) will be considered as civilian".⁶⁷⁴

738. The Military Manual of the Netherlands states that "in case of doubt whether an object which usually serves civilian purposes, such as a house, a school, a church, is used for military purposes, it must be assumed to be a civilian object".⁶⁷⁵

739. New Zealand's Military Manual states that "if there is a substantial doubt concerning whether an object normally used for civilian purposes is, in the circumstances, a military objective, it shall be presumed not to be a military objective".⁶⁷⁶

740. Nigeria's Military Manual provides that when "hospital ships, coastal rescue craft, ships sailing under special agreements . . . are of a dubious status, i.e., when it is uncertain whether it is a military objective or not, in that case, it may be stopped and searched so as to establish its status".⁶⁷⁷

741. Spain's LOAC Manual states that "in case of doubt, an object which is normally dedicated to civilian purposes, such as a house, a school or a place of worship, must be considered to be a civilian object".⁶⁷⁸

742. Sweden IHL Manual states that:

During military operations it may often be difficult to establish within a short space of time whether property should be classified as a civilian object or a military objective. To avoid meaningless destruction as far as possible, a so-called *dubio rule* is included in Article 52 [AP I]. This states that in case of doubt whether an object which is normally dedicated to civilian purposes is being used in the adversary's military activity, it shall be presumed that it is not being so used. Among such normally civilian objects are mentioned particularly places of worship, houses and other dwellings, and schools.⁶⁷⁹

743. Togo's Military Manual states that "whenever there is a doubt concerning the nature of an objective, it must be considered as a civilian object".⁶⁸⁰

744. The US Air Force Pamphlet states that "in case of doubt whether an object which is normally dedicated to civilian purposes, such as a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used".⁶⁸¹

⁶⁷³ Kenya, *LOAC Manual* (1997), Précis No. 2, p. 11.

⁶⁷⁴ Madagascar, *Military Manual* (1994), Fiche No. 2-SO, § D.

⁶⁷⁵ Netherlands, *Military Manual* (1993), p. V-3.

⁶⁷⁶ New Zealand, *Military Manual* (1992), § 524(3), see also §§ 516(7) and 623(7) (following the language of Article 52(3) AP I more closely).

⁶⁷⁷ Nigeria, *Military Manual* (1994), p. 45, § 16(d).

⁶⁷⁸ Spain, *LOAC Manual* (1996), Vol. I, § 4.2.b.(2), see also § 2.3.b.(1).

⁶⁷⁹ Sweden, *IHL Manual* (1991), Section 3.2.1.5, p. 55.

⁶⁸⁰ Togo, *Military Manual* (1996), Fascicule I, p. 14.

⁶⁸¹ US, *Air Force Pamphlet* (1976), § 5-3(a)(1)(b).

National Legislation

745. Under Ireland's Geneva Conventions Act as amended, any "minor breach" of AP I, including violations of Article 52(3) AP I, is a punishable offence.⁶⁸²

746. Under Norway's Military Penal Code as amended, "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 Geneva] Conventions . . . is liable to imprisonment".⁶⁸³

National Case-law

747. No practice was found.

Other National Practice

748. The Report on the Practice of Iraq states that the practice adopted by the Iraqi armed forces is that in case of doubt concerning the nature of objects, they must be considered as civilian objects.⁶⁸⁴

749. The Report on the Practice of Israel states that:

In principle, in cases of significant doubt as to whether a target is legitimate or civilian, the decision would be to refrain from attacking the target. It should be stressed that the introduction of the adjective "significant" in this context is aimed at excluding those cases in which there exists a slight possibility that the definition of the target as legitimate is mistaken. In such cases, the decision whether or not to attack rests with the commander in the field, who has to decide whether or not the possibility of mistake is significant enough to warrant not launching the attack.⁶⁸⁵

750. The Report on the Practice of Malaysia does not expressly mention the presumption in favour of the civilian character in the list of norms applicable to the country's armed forces, but it states that this principle is applied in practice since civilian property is not considered as a military objective. This principle is said to conform to the practice aimed at winning the hearts and minds of the civilian population during the communist insurgency period.⁶⁸⁶

751. At the CDDH, Mexico stated that it believed draft Article 47 AP I (now Article 52) to be so essential that it "cannot be the subject of any reservations whatsoever since these would be inconsistent with the aim and purpose of Protocol I and undermine its basis".⁶⁸⁷

752. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense commented on Article 52(3) AP I to the effect that:

⁶⁸² Ireland, *Geneva Conventions Act as amended* (1962), Section 4(1) and (4).

⁶⁸³ Norway, *Military Penal Code as amended* (1902), § 108(b).

⁶⁸⁴ Report on the Practice of Iraq, 1998, Reply by the Iraqi Ministry of Defence to a questionnaire, July 1997, Chapter 1.3.

⁶⁸⁵ Report on the Practice of Israel, 1997, Chapter 1.3.

⁶⁸⁶ Report on the Practice of Malaysia, 1997, Answers to additional questions on Chapter 1.3.

⁶⁸⁷ Mexico, Statement at the CDDH, *Official Records*, Vol. VI, CDDH/SR.41, 26 May 1977, p. 193.

This language, which is not a codification of the customary practice of nations, causes several things to occur that are contrary to the traditional law of war. It shifts the burden for determining the precise use of an object from the party controlling that object (and therefore in possession of the facts as to its use) to the party lacking such control and facts, i.e. from defender to attacker. This imbalance ignores the realities of war in demanding a degree of certainty of an attacker that seldom exists in combat. It also encourages a defender to ignore its obligation to separate the civilian population, individual civilians and civilian objects from military objectives, as the Government of Iraq illustrated during the Persian Gulf War.⁶⁸⁸

Noting that the US Naval Handbook does not refer to such presumption, the Report on US Practice concludes that the US government does not acknowledge the existence of a customary principle requiring a presumption of civilian character in case of doubt.⁶⁸⁹

III. Practice of International Organisations and Conferences

United Nations

753. No practice was found.

Other International Organisations

754. No practice was found.

International Conferences

755. At the CDDH, an exception to the presumption of civilian status was submitted. It provided that the presumption of civilian use for objects which are normally dedicated to civilian purposes would not apply "in contact zones where the security of the armed forces requires a derogation from this presumption". Such an exception was defended on the grounds that "infantry soldiers could not be expected to place their lives in great risk because of such a presumption and that, in fact, civilian buildings which happen to be in the front lines usually are used as part of the defensive works". The exception was criticized by other delegates on the ground that "it would unduly endanger civilian objects to permit any exceptions to the presumption".⁶⁹⁰

IV. Practice of International Judicial and Quasi-judicial Bodies

756. No practice was found.

⁶⁸⁸ US, 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. 627.

⁶⁸⁹ Report on US Practice, 1997, Chapter 1.3.

⁶⁹⁰ CDDH, *Official Records*, Vol. XV, CDDH/III/224, Report to Committee III on the Work of the Working Group, pp. 331–332.

V. Practice of the International Red Cross and Red Crescent Movement

757. To fulfil its task of disseminating IHL, the ICRC has delegates around the world teaching armed and security forces that “in case of doubt whether an object which is normally dedicated to civilian purposes (e.g. a place of worship, a house or other dwelling, a school) is a military objective, it shall be considered as a civilian object”.⁶⁹¹

VI. Other Practice

758. No practice was found.

⁶⁹¹ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, 1987, § 59, see also § 464 (ships of dubious status).