

ANNEXE 7.

ICRC RULE 8.

http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter2_rule8

Rule 8. Definition of Military Objectives

Rule 8. 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 partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Summary

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

International armed conflicts

This definition of military objectives is set forth in Article 52(2) of Additional Protocol I, to which no reservations have been made.^[1] At the Diplomatic Conference leading to the adoption of the Additional Protocols, Mexico stated that Article 52 was 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”.^[2] The definition has been used consistently in subsequent treaties, namely in Protocol II, Amended Protocol II and Protocol III to the Convention on Certain Conventional Weapons, as well as in the Second Protocol to the Hague Convention for the Protection of Cultural Property.^[3]

Numerous military manuals contain this definition of military objectives.^[4] It is supported by official statements.^[5] This practice includes that of States not, or not at the time, party to Additional Protocol I.^[6]

This definition of military objectives was found to be customary by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia.^[7]

Non-international armed conflicts

Although this definition of military objectives was not included in Additional Protocol II, it has subsequently been incorporated into treaty law applicable in non-international armed conflicts, namely Amended Protocol II to the Convention on Certain Conventional Weapons and the Second Protocol to the Hague Convention for the Protection of Cultural Property.^[8] It is also contained in Protocol III to the Convention on Certain Conventional Weapons, which has been made applicable in non-international armed conflicts pursuant to an amendment of Article 1 of the Convention adopted by consensus in 2001.^[9]

Military manuals which are applicable in or have been applied in non-international armed conflicts incorporate this definition of military objectives.^[10] It is also contained in some national legislation.^[11] In addition, the definition is included in official statements pertaining to non-international armed conflicts.^[12]

No contrary practice was found with respect to either international or non-international armed conflicts in the sense that no other definition of a military objective has officially been advanced. The Report on US Practice explains that the United States accepts the customary nature of the definition contained in Article 52(2) of Additional Protocol I and that the formulation used in the US Naval Handbook, namely effective contribution to “the enemy’s war-fighting or war-sustaining capability”,

reflects its position that this definition is a wide one which includes areas of land, objects screening other military objectives and war-supporting economic facilities.^[13]

Interpretation

Several States have indicated that in their target selection they will consider the military advantage to be anticipated from an attack as a whole and not from parts thereof.^[14] The military manuals of Australia, Ecuador and the United States consider that the anticipated military advantage can include increased security for the attacking forces or friendly forces.^[15]

Many military manuals state that the presence of civilians within or near military objectives does not render such objectives immune from attack.^[16] This is the case, for example, of civilians working in a munitions factory. This practice indicates that such persons share the risk of attacks on that military objective but are not themselves combatants. This view is supported by official statements and reported practice.^[17] Such attacks are still subject to the principle of proportionality (see Rule 14) and the requirement to take precautions in attack (see Rules 15–21). The prohibition on using human shields is also relevant to this issue (see Rule 97).

Examples

State practice often cites establishments, buildings and positions where enemy combatants, their materiel and armaments are located and military means of transportation and communication as examples of military objectives.^[18] As far as dual-use facilities are concerned, such as civilian means of transportation and communication which can be used for military purposes, practice considers that the classification of these objects depends, in the final analysis, on the application of the definition of a military objective.^[19] Economic targets that effectively support military operations are also cited as an example of military objectives, provided their attack offers a definite military advantage.^[20] In addition, numerous military manuals and official statements consider that an area of land can constitute a military objective if it fulfils the conditions contained in the definition.^[21]

^[1] Additional Protocol I, Article 52(2) (adopted by 79 votes in favour, none against and 7 abstentions) (cited in Vol. II, Ch. 2, § 319).

^[2] Mexico, Statement at the Diplomatic Conference leading to the adoption of the Additional Protocols (*ibid.*, § 353).

^[3] Protocol II to the Convention on Certain Conventional Weapons, Article 2(4) (*ibid.*, § 321); Amended Protocol II to the Convention on Certain Conventional Weapons, Article 2(6) (*ibid.*, § 321); Protocol III to the Convention on Certain Conventional Weapons, Article 1(3) (*ibid.*, § 321); Second Protocol to the Hague Convention for the Protection of Cultural Property, Article 1(f) (*ibid.*, § 322).

^[4] See, e.g., the 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, United Kingdom and United States (*ibid.*, § 328), Ecuador (*ibid.*, § 331), Indonesia (*ibid.*, § 333), United States (*ibid.*, § 339) and Yugoslavia (*ibid.*, § 340).

^[5] See, e.g., the statements of France (*ibid.*, § 364), Iran (*ibid.*, § 347), Iraq (*ibid.*, § 348), Israel (*ibid.*, § 364), Jordan (*ibid.*, § 351), Syrian Arab Republic (*ibid.*, § 355), Turkey (*ibid.*, § 364) and United States (*ibid.*, §§ 350, 360 and 364).

[6] See, e.g., the practice of France (*ibid.*, § 364), Islamic Republic of Iran (*ibid.*, § 347), Iraq (*ibid.*, § 348), Israel (*ibid.*, § 364), Kenya (*ibid.*, § 328), Turkey (*ibid.*, § 364), United Kingdom (*ibid.*, § 328) and United States (*ibid.*, §§ 328, 350, 360 and 364).

[7] Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, Final Report (*ibid.*, § 365).

[8] Amended Protocol II to the Convention on Certain Conventional Weapons, Article 2(6) (*ibid.*, § 321); Second Protocol to the Hague Convention for the Protection of Cultural Property, Article 1(f) (*ibid.*, § 322).

[9] Protocol III to the Convention on Certain Conventional Weapons, Article 1(3) (*ibid.*, § 321).

[10] See, e.g., the military manuals of Benin, Canada, Colombia, Croatia, Germany, Italy, Kenya, Madagascar, South Africa and Togo (*ibid.*, § 328), Ecuador (*ibid.*, § 331) and Yugoslavia (*ibid.*, § 340).

[11] See, e.g., the legislation of Italy (*ibid.*, § 341) and Spain (*ibid.*, § 342).

[12] See, e.g., the statements of Colombia (*ibid.*, § 346) and Philippines (*ibid.*, § 354).

[13] Report on US Practice (*ibid.*, § 361) referring to United States, *Naval Handbook* (*ibid.*, § 339).

[14] See the statements of Australia (*ibid.*, § 329), Canada (*ibid.*, § 320), France (*ibid.*, § 320), Germany (*ibid.*, § 332), Italy (*ibid.*, § 334), New Zealand (*ibid.*, § 336), Spain (*ibid.*, §§ 320 and 337) and United States (*ibid.*, § 359).

[15] See the military manuals of Australia (*ibid.*, § 329), Ecuador (*ibid.*, § 331) and United States (*ibid.*, § 339).

[16] See, e.g., the military manuals of Australia (*ibid.*, § 635), Canada (*ibid.*, § 636), Colombia (*ibid.*, § 637), Croatia (*ibid.*, § 638), Ecuador (*ibid.*, § 639), Germany (*ibid.*, § 640), Hungary (*ibid.*, § 641), Madagascar (*ibid.*, § 642), Netherlands (*ibid.*, § 643), New Zealand (*ibid.*, § 644), Spain (*ibid.*, §§ 645–646), Switzerland (*ibid.*, § 647) and United States (*ibid.*, § 648).

[17] See, e.g., the statements of Belgium (*ibid.*, § 651) and United States (*ibid.*, §§ 652–653).

[18] See the practice cited in *ibid.*, §§ 417–492.

[19] See the practice cited in *ibid.*, §§ 493–560.

[20] See the practice cited in *ibid.*, §§ 561–596.

[21] See, e.g., the military manuals of Australia (*ibid.*, § 601), Belgium (*ibid.*, §§ 602–604), Benin (*ibid.*, § 605), Ecuador (*ibid.*, § 608), France (*ibid.*, § 609), Italy (*ibid.*, §§ 610–611), Madagascar (*ibid.*, § 612), Netherlands (*ibid.*, § 613), New Zealand (*ibid.*, § 614), Spain (*ibid.*, § 615), Sweden (*ibid.*, § 616), Togo (*ibid.*, § 617), United Kingdom (*ibid.*, § 618) and United States (*ibid.*, § 619) and the statements of Belgium (*ibid.*, § 622), Canada (*ibid.*, §§ 597 and 623), Federal Republic of Germany (*ibid.*, §§ 597 and 624), France (*ibid.*, § 598), Italy (*ibid.*, § 597), Netherlands (*ibid.*, §§ 597, 599 and 625), New Zealand (*ibid.*, § 597), Pakistan (*ibid.*, § 599), Spain (*ibid.*, § 597), United Kingdom (*ibid.*, §§ 597, 599 and 626) and United States (*ibid.*, §§ 599 and 627–628).



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