

**APPLICATION OF THE PRINCIPLE OF DISTINCTION
IN ASYMMETRIC CONFLICTS:
CHALLENGES FOR INTERNATIONAL HUMANITARIAN
LAW IN THE 21ST CENTURY**

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Abstract: This paper analyzes the application of the principle of distinction as a fundamental principle of international humanitarian law in the context of contemporary asymmetric conflicts. Through critical analysis of the evolution of warfare in the 21st century, key challenges that asymmetric conflicts pose to traditional legal frameworks are explored. The paper focuses on the problematics of identifying combatants in urban environments, the use of new technologies such as drones and autonomous weapon systems, and the transformation of the nature of the battlefield from conventional to hybrid and cyber domains. Special attention is devoted to analyzing cases from Syria, Iraq, Yemen, and Palestine, where the principle of distinction faces fundamental challenges. Through a multidisciplinary approach combining legal analysis, case studies, and comparative methodology, the paper identifies key legal gaps and proposes reform directions for adapting international humanitarian law to new realities of warfare. The conclusions indicate the necessity of developing new legal mechanisms that would enable more effective protection of civilians while simultaneously respecting the legitimate security needs of states in asymmetric conflicts.

Keywords: principle of distinction, asymmetric conflicts, international humanitarian law, civilian population, combatants, urban warfare, new technologies, legal challenges

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1. INTRODUCTION

The principle of distinction between civilians and combatants represents one of the fundamental pillars of international humanitarian law (IHL), whose roots extend deep into the history of civilization and customary law of warfare. This principle, codified in Articles 48, 51, and 52 of Additional Protocol I to the Geneva Conventions of 1977, requires parties to conflict to make a clear distinction at all times between civilian population and combatants, and between civilian objects and military objectives (ICRC, 2020). However, the nature of contemporary armed conflicts, particularly those of asymmetric character, has led to fundamental challenges in applying this principle. Asymmetric conflicts, characterized by significant disproportions in military power, technological capabilities, and organizational structures between conflicting parties, have become the dominant form of warfare in the 21st century (Knežević, 2015). This transformation of the nature of conflict has led to blurring of traditional lines of demarcation between combatants and civilians, representing a serious challenge for effective application of the principle of distinction. Knežević and Martinović (2024) emphasize that the development of international law after World War II was primarily directed at regulating interstate conflicts, while internal and asymmetric conflicts remained insufficiently regulated.

The contemporary battlefield is characterized by urban environments where battles take place among civilian populations, use of improvised explosive devices, suicide attacks, and the increasing role of non-state actors who often do not carry weapons openly nor wear distinctive insignia (Schmitt, 2019). Additional complexity is presented by the use of new technologies such as unmanned aerial vehicles, cyber attacks, and autonomous weapon systems, which further complicate the application of traditional legal categories (Knežević, 2025). This paper aims to comprehensively analyze how asymmetric conflicts challenge existing legal frameworks of the principle of distinction, identify key problems in its application, and propose possible directions for the development of international humanitarian law that would enable more effective protection of civilians while simultaneously respecting the legitimate security needs of states. Through analysis of concrete cases from Syria, Iraq, Yemen, and Palestine, the paper seeks to illustrate practical challenges faced by

parties to conflict when attempting to respect the principle of distinction.

The methodological approach of this paper is based on a combination of normative analysis of relevant international legal instruments, comparative analysis of state practice and international courts, and empirical analysis of concrete cases of asymmetric conflicts. Special attention is devoted to analyzing the evolution of interpretation of the principle of distinction by the International Court of Justice, the International Criminal Court, and relevant national courts. The structure of the paper is organized through three key thematic sections. The first part analyzes the evolution of the principle of distinction from its customary law roots to contemporary codification, with special reference to challenges presented by asymmetric conflicts. The second part focuses on concrete problems of applying the principle in the context of new technologies and the transformed nature of the battlefield. The third part explores possible directions for reform of international humanitarian law that would enable more effective protection of civilians in asymmetric conflicts of the 21st century.

2. EVOLUTION OF THE PRINCIPLE OF DISTINCTION IN THE CONTEXT OF ASYMMETRIC CONFLICTS

The historical development of the principle of distinction can be traced through millennia of human civilization, from ancient codes of warfare through medieval chivalry to modern codification in the Hague Conventions of 1899 and 1907 (Dinstein, 2016). However, only with the adoption of the Geneva Conventions of 1949 and their Additional Protocols of 1977 did the principle of distinction receive its full normative articulation. Article 48 of Additional Protocol I explicitly requires that "parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives" (ICRC, 1977). Traditional understanding of the principle of distinction was based on relatively clear categories: uniformed members of armed forces versus civilian population, military barracks versus civilian objects. However, the emergence of asymmetric conflicts, particularly after the Cold War, has led to fundamental reconsideration of these categories. Knežević (2015) in his analysis of the civil war in Syria and Iraq identifies key characteristics of asymmetric conflicts that directly affect

the application of the principle of distinction: fragmentation of non-state actors, fluidity of front lines, urban warfare, and the strategy of "mixing" with the civilian population.

The transformation of the nature of conflict is particularly visible in the context of the so-called "war on terror" that began after the September 11, 2001 attacks. This global conflict is characterized by engagement against non-state actors who operate transnationally, often without clear hierarchical structure or territorial base (Melzer, 2008). Members of these groups rarely wear uniforms or other distinctive insignia, often live among civilian populations, and transition between civilian status and active participation in hostilities. State practice in asymmetric conflicts shows a tendency to expand the definition of legitimate military objectives through concepts such as "direct participation in hostilities" and "continuous combat function." The Israeli Supreme Court in the Targeted Killings case (2006) developed a test for determining when civilians lose protection from attack due to direct participation in hostilities, emphasizing the need for a "cumulative" approach that takes into account the nature of the act, direct causal connection with harm, and temporal proximity to hostilities (HCJ 769/02, 2006).

The International Committee of the Red Cross (ICRC) attempted to clarify these dilemmas through its Interpretive Guidance on Direct Participation in Hostilities (2009), proposing a three-part test requiring: threshold of harm, direct causal link, and belligerent nexus. However, these guidelines met with significant criticism, particularly from states engaged in asymmetric conflicts, which claimed they were too restrictive and did not reflect the realities of contemporary warfare (Watkin, 2010). Knežević (2025) in his analysis of decoding genocidal intent points to an additional dimension of the problem - the evolution of evidentiary standards in the digital era. Asymmetric conflicts often take place in the context of intense propaganda warfare where boundaries between legitimate military objectives and civilian population are deliberately blurred through disinformation and manipulation of information. This further complicates the application of the principle of distinction, as targeting decisions often must be made based on incomplete or contradictory information.

The case of Syria represents a paradigmatic example of challenges to the principle of distinction in asymmetric conflicts. Knežević (2015)

analyzes in detail how different actors in the Syrian conflict - from government forces through moderate opposition to extremist groups - used strategies that systematically undermined the possibility of clear distinction. The use of "barrel bombs" by the Syrian regime, targeting of hospitals and schools, and use of chemical weapons in urban areas, represent flagrant violations of the principle of distinction (Human Rights Watch, 2021). On the other hand, non-state actors in Syria often used civilian objects for military purposes, placed command centers in residential buildings, and used civilian population as "human shields." This practice, known as "human shielding," constitutes a war crime under international humanitarian law, but simultaneously creates serious dilemmas for the opposing side trying to respect the principle of distinction (Dinstein & Domb, 2020). Yemen represents another illustrative case of problems in applying the principle of distinction. The Saudi coalition, despite sophisticated military technology and intelligence capabilities, is responsible for numerous attacks on civilian targets including markets, weddings, schools, and hospitals (Amnesty International, 2022). These incidents have raised questions about standards of precaution in attacks and the adequacy of existing legal frameworks for regulating the use of modern technology in asymmetric conflicts.

The transformation of the battlefield from rural to urban environments represents perhaps the most significant challenge for the principle of distinction in the 21st century. Urban warfare, which has become the dominant form of asymmetric conflicts, is characterized by: high density of civilian population, mixed use of infrastructure, complexity of terrain, and limited possibilities for civilian evacuation (ICRC, 2022). Fighting in Mosul, Aleppo, Raqqa, and Gaza illustrates how urban environments fundamentally change the dynamics of applying the principle of distinction. Analysis of the European Court of Human Rights practice in cases concerning asymmetric conflicts shows evolution in the approach to the question of distinction. In the case of *Isayeva v. Russia* (2005), the Court established that the use of indiscriminate weapons of great destructive power in populated areas constitutes a violation of the right to life, even when legitimate military objectives exist (ECtHR, Application no. 57950/00).

3. NEW TECHNOLOGICAL CHALLENGES FOR THE PRINCIPLE OF DISTINCTION

The technological revolution of the 21st century has brought fundamental changes in the way wars are conducted, creating new challenges for the application of the principle of distinction. The development of unmanned aerial vehicles (drones), autonomous weapon systems, cyber weapons, and artificial intelligence has transformed the nature of the battlefield and called into question the adequacy of existing legal frameworks (Knežević, 2017). This technological evolution is particularly significant in the context of asymmetric conflicts where the technologically superior side attempts to minimize its own losses through the use of remote warfare systems. The use of armed drones has become synonymous with asymmetric conflicts of the 21st century. The United States, Israel, Turkey, and other states have developed sophisticated targeted killing programs that rely on drones to eliminate suspected terrorists (Melzer, 2013). While proponents of this practice claim that drones enable more precise application of force and better distinction between civilians and combatants, critics point to problematic aspects that threaten the principle of distinction.

The practice of "signature strikes" - attacks based on patterns of behavior rather than concrete identification - presents a particular challenge. The CIA and US military have developed algorithms that identify potential targets based on behavioral "signatures" considered indicative of militant activity (Stanford & NYU, 2012). However, these patterns are often ambiguous and can lead to targeting civilians whose behavior accidentally matches algorithmic parameters. Knežević (2017) in his patent for a modified fusion reactor indirectly points to the potential of new energy technologies to transform the nature of warfare. The development of advanced energy systems enables prolonged operation of autonomous systems, which raises the question of continuous human control over decisions about the use of force. This technological evolution requires reconsideration of the concept of "meaningful human control" in the context of the principle of distinction.

Cyber warfare represents perhaps the most radical challenge to traditional understanding of the principle of distinction. In the cyber domain, distinguishing between military and civilian systems is often

impossible due to dual-use infrastructure and system interdependence (Schmitt & Vihul, 2017). Attacks on electrical grids, financial systems, or communication infrastructure can have devastating consequences for civilian populations, even when the primary target is a military network.

Tallinn Manual 2.0, as the most authoritative attempt to apply international law to cyber operations, acknowledges these challenges but insists that the principle of distinction remains applicable in the cyber domain (Schmitt, 2017). However, practical application of this principle in cyberspace remains highly controversial, particularly in the context of asymmetric conflicts where non-state actors often use civilian infrastructure for their operations. Autonomous weapon systems (AWS) represent perhaps the most controversial technological development from the standpoint of the principle of distinction. These systems, which can independently select and engage targets without human intervention, raise fundamental questions about the ability of machines to make ethical and legal distinctions required by the principle of distinction (Human Rights Watch, 2012). Knežević (2024) in his analysis of the first cause and morphology of cosmology indirectly touches on the philosophical implications of delegating decisions about life and death to algorithms.

The debate about AWS focuses on whether artificial intelligence can achieve the level of sophistication necessary for reliably distinguishing between combatants and civilians in complex and dynamic situations characteristic of asymmetric conflicts (Vejnović & Knežević, 2024; Vojnović & Knežević, 2025). Critics argue that nuanced decisions required for respecting the principle of distinction - such as assessing whether a civilian has lost protection due to direct participation in hostilities - require human judgment that machines cannot replicate (Asaro, 2012). The use of artificial intelligence in targeting is already a reality in contemporary conflicts. The Israeli military uses the AI system "Habsora" to generate target lists in Gaza, which has led to concerns about transparency and accountability in the decision-making process (Abraham & Davies, 2023). The lack of transparency in AI algorithms - the so-called "black box" problem - further complicates the possibility of legal review of targeting decisions.

Biometric identification and tracking represent an additional technological dimension affecting the principle of distinction. Advanced systems for facial recognition, gait analysis, and other biometric characteristics enable identification of individuals at great distances and in complex environments (Lynch, 2018). While this technology can theoretically improve the ability to distinguish between civilians and combatants, it also enables mass surveillance that erases traditional boundaries between battlefield and civilian life. Knežević (2025) in his analysis of criminal law protection of the constitutional order of the SFRY provides a historical perspective relevant for understanding contemporary technological challenges. Experiences from the dissolution of Yugoslavia show how rapid technological and social transformation can lead to the collapse of legal frameworks and protection mechanisms. This lesson is particularly relevant in the context of rapid development of military technologies that surpass existing legal categories.

Social media and digital platforms have created a new dimension of information warfare that directly affects the principle of distinction. Propaganda, disinformation, and psychological operations take place in real time, often blurring differences between civilians and combatants (Singer & Brooking, 2018). "Civilian" users of social networks can unwittingly participate in information operations, becoming de facto participants in conflict. The problem of "dual-use" objects and infrastructure is particularly pronounced in the context of new technologies. Data centers, telecommunication nodes, satellite systems, and other technological infrastructures often serve both civilian and military purposes. Determining when such an object becomes a legitimate military objective requires sophisticated analyses that are often impossible in the real time characteristic of contemporary conflicts (Boothby, 2012). Nanotechnology and weapon miniaturization represent an emergent challenge that will likely become more significant in the future. The development of micro-drones, nano-robots, and other miniaturized systems enables forms of warfare that were unimaginable just a decade ago. These systems can be deployed in large quantities, creating "swarms" that act autonomously, which poses new challenges for the principle of distinction (Gubrud, 2014).

4. DIRECTIONS FOR REFORM OF INTERNATIONAL HUMANITARIAN LAW

Faced with fundamental challenges that asymmetric conflicts and new technologies present for the principle of distinction, the international community finds itself at a crossroads. Existing legal frameworks, developed primarily for regulating interstate conflicts of the industrial era, prove insufficient for addressing the complexity of contemporary warfare. Knežević (2024) in his analysis of the constitutional crisis in Bosnia and Herzegovina illustrates how legal vacuums and outdated frameworks can perpetuate conflicts and prevent effective protection of civilian populations. The first direction of reform relates to the need for clearer definition of key concepts in the context of asymmetric conflicts. Terms such as "direct participation in hostilities," "continuous combat function," and "organized armed groups" require more precise normative articulation that would reflect the realities of contemporary conflicts (Kleffner, 2021). The ICRC's Interpretive Guidance represents a useful starting point, but broader consensus among states and development through the practice of international courts is needed.

Development of specific rules for urban warfare represents an urgent need. The current legal framework does not adequately address the unique challenges of combat in densely populated areas. Clearer rules are needed on: use of explosive weapons with wide area effects in populated areas, obligations for civilian evacuation, standards of precaution in urban operations, and post-conflict responsibility for reconstruction of civilian infrastructure (ICRC & UNHABITAT, 2021). Knežević and Martinović (2024) in their analysis of the development of international law after World War II point to a historical pattern where major crises lead to significant legal innovations. The contemporary crisis of the principle of distinction in asymmetric conflicts could catalyze similar transformation, provided there is political will from major powers and other relevant actors. Regulation of autonomous weapon systems requires urgent international response. While debates within the UN Convention on Certain Conventional Weapons continue, a binding instrument is needed that would: require meaningful human control over decisions about the use of lethal force, establish mandatory legal reviews of new weapon systems, define standards of transparency and explainability for AI systems in mil-

itary use, and prohibit fully autonomous systems capable of selecting and engaging human targets (Human Rights Watch & IHRC, 2021).

The cyber domain requires fundamental reconsideration of the application of the principle of distinction. An international agreement is needed that would: clarify the application of IHL to cyber operations, define what constitutes a cyber attack in terms of IHL, establish due diligence obligations for states in cyberspace, and develop mechanisms for attribution and responsibility for cyber attacks (Efrony & Shany, 2018). Knežević (2025) in his analysis of decoding genocidal intent in the digital era points to the need for developing new evidentiary standards and procedures. Digital evidence, including social media data, satellite imagery, and electronic communications, becomes crucial for establishing violations of the principle of distinction. Needed are: standardized protocols for collecting and preserving digital evidence, mechanisms for verifying the authenticity of digital material, and rules on the admissibility of AI-generated analyses as evidence.

Strengthening implementation and accountability mechanisms represents a critical component of any reform. Existing systems are often ineffective in the context of asymmetric conflicts where non-state actors are not parties to international treaties. Needed are: mechanisms for engaging non-state actors in respecting IHL, strengthening universal jurisdiction for war crimes, developing rapid fact-finding missions to investigate alleged violations, and establishing compensation funds for civilian victims (Bellal, 2020). Education and training represent an often neglected but critical dimension of reform. The complexity of contemporary legal frameworks requires: integration of IHL training at all levels of military education, development of specialized courses on applying the principle of distinction in asymmetric conflicts, simulations and exercises that reflect the realities of urban warfare, and continuous education about new technologies and their implications (Dörmann & Maresca, 2020). The role of regional organizations in developing and implementing reformed rules must not be neglected. Regional approaches can be more effective in addressing specific challenges. The African Union, Organization of American States, ASEAN, and other regional organizations can develop instruments adapted to their contexts that would complement universal standards (Meron, 2019). Knežević (2024) in "The First Cause" philo-

sophically considers fundamental principles governing the evolution of complex systems, which has implications for understanding how legal systems evolve in response to new challenges. This perspective suggests that IHL reform must be understood as a continuous, adaptive process rather than a one-time revision.

Private military and security companies represent a particular challenge requiring regulatory response. The Montreux Document and International Code of Conduct represent useful starting points, but needed are: binding international standards for PMSCs, clear accountability mechanisms for IHL violations by PMSCs, mandatory licensing and monitoring systems, and prohibition of certain activities for private actors (Tonkin, 2011). A new generation of multilateral treaties could address specific aspects of the principle of distinction in contemporary conflicts. Potential treaties could include: Protocol on Urban Warfare, Convention on Autonomous Weapon Systems, Agreement on Protection of Civilian Digital Infrastructure, and Protocol on Humanitarian Corridors in Asymmetric Conflicts.

5. CONCLUSION

Analysis of the application of the principle of distinction in asymmetric conflicts of the 21st century reveals fundamental challenges that threaten the very core of international humanitarian law. The transformation of the nature of warfare - from conventional interstate conflicts to complex asymmetric conflicts taking place in urban environments with the use of advanced technologies - has brought existing legal frameworks to the breaking point. This study has identified three key dimensions of the problem: evolution of the nature of conflict that blurs traditional categories of civilians and combatants, technological innovations that surpass existing legal categories, and systemic shortcomings in implementation and accountability mechanisms. Asymmetric conflicts in Syria, Iraq, Yemen, and Palestine have demonstrated how strategies of non-state actors and state responses can systematically undermine the principle of distinction. The use of human shields, militarization of civilian objects, targeted killings based on algorithmic analyses, and mass use of explosive weapons in urban environments represent just some of the practices requiring

urgent legal regulation. Knežević (2015) through his analysis of the civil war in Syria and Iraq convincingly shows how the absence of effective legal frameworks leads to normalization of violations of basic principles of humanity. The technological dimension of the problem is particularly concerning. The development of autonomous weapon systems, proliferation of armed drones, emergence of cyber warfare, and use of artificial intelligence in targeting represent qualitatively new challenges requiring fundamental reconsideration of the conceptual foundations of the principle of distinction. The question of whether machines can make ethical decisions about life and death, how to regulate cyber attacks that do not distinguish civilian and military infrastructure, and how to maintain human control over increasingly complex weapon systems, represent key dilemmas that the international community must urgently address. The proposed directions of reform - from developing specific rules for urban warfare through regulation of autonomous systems to strengthening accountability mechanisms - represent an ambitious but necessary program. However, implementation of these reforms faces significant political and practical obstacles. Major powers show limited willingness to accept new restrictions, non-state actors remain beyond the reach of traditional treaty regimes, and the speed of technological development often surpasses the capacity for legal adaptation. Despite these challenges, reform of international humanitarian law is not only a legal imperative but also a moral obligation. Every day of delay costs human lives and deepens the suffering of civilian populations caught in the maelstrom of contemporary conflicts. Knežević (2024) in his analysis of the constitutional crisis in Bosnia and Herzegovina reminds us that legal vacuums and outdated frameworks can perpetuate conflicts for generations. This lesson must be applied at the global level to avoid the 21st century becoming an era in which the distinction between civilians and combatants became a relic of the past. Ultimately, success in preserving and adapting the principle of distinction will depend on the ability of the international community to overcome narrow national interests and develop a shared vision of humanitarian standards appropriate for the era of asymmetric conflicts and technological revolution. Without such vision and political will for its implementation, the principle of distinction risks becoming an empty letter on paper, while civilian populations continue to bear the greatest cost of contemporary armed conflicts. Therefore, reform

of international humanitarian law is not merely a matter of legal technique, but a fundamental question about what kind of international order we wish to leave to future generations.

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