**Rule 70. Weapons of a Nature to Cause Superfluous Injury or Unnecessary Suffering**

***International Committee of the Red Cross***

[***https://www.icrc.org/customary-ihl/eng/docs/v1\_rul\_rule70***](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70)

***Rule 70. The use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is prohibited.***

**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**

The prohibition of the use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is set forth in a large number of treaties, including early instruments such as the St. Petersburg Declaration and the Hague Declarations and Regulations.*[[1]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_1)*  The prohibition on the use of chemical and biological weapons in the Geneva Gas Protocol was originally motivated by this rule.*[[2]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_2)*  Its reaffirmation in recent treaties, in particular Additional Protocol I, the Convention on Certain Conventional Weapons and its Protocol II and Amended Protocol II, the Ottawa Convention banning anti-personnel landmines and the Statute of the International Criminal Court, indicates that it remains valid.*[[3]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_3)*  The rule is also included in other instruments.*[[4]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_4)*
Numerous military manuals include the rule.*[[5]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_5)*  Sweden’s IHL Manual, in particular, identifies the prohibition of means and methods of warfare which cause superfluous injury or unnecessary suffering, as set forth in Article 35(2) of Additional Protocol I, as a rule of customary international law.*[[6]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_6)*  Violations of this rule constitute an offence under the legislation of many States.*[[7]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_7)*  It has been relied upon in national case-law.*[[8]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_8)*
Numerous resolutions of the UN General Assembly, as well as some resolutions of the OAS General Assembly, recall this rule.*[[9]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_9)*  The rule has also been recalled by several international conferences.*[[10]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_10)*
In their submissions to the International Court of Justice in the *Nuclear Weapons case*, numerous States referred to the rule.*[[11]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_11)*  In its advisory opinion, the Court affirmed that the prohibition of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering was one of the “cardinal principles” of international humanitarian law.*[[12]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_12)*

**Non-international armed conflicts**

The prohibition of the use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering was included by consensus in the draft of Additional Protocol II but was dropped at the last moment without debate as part of a package aimed at the adoption of a simplified text.*[[13]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_13)*  There was no indication, however, of any objection to the rule as such in this context.
When adopting the Ottawa Convention banning anti-personnel landmines and the Convention on Certain Conventional Weapons, applicable to non-international armed conflict pursuant to an amendment to Article 1 in 2001, States declared that they were basing themselves, *inter alia*, on the prohibition of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering.*[[14]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_14)*  Amended Protocol II to the Convention on Certain Conventional Weapons, also applicable to non-international armed conflicts, prohibits “the use of any mine, booby-trap or other device designed or of a nature to cause superfluous injury or unnecessary suffering”.*[[15]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_15)*
Military manuals which are applicable in or have been applied in non-international armed conflicts also include the rule.*[[16]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_16)*  It is also contained in the legislation of several States.*[[17]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_17)*  It has been relied upon in national case-law.*[[18]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_18)*
During the conflicts in the former Yugoslavia, the prohibition of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering was included in the agreements relating to what were then regarded as non-international armed conflicts.*[[19]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_19)*  In addition, in 1991, Yugoslavia denounced Slovenia’s alleged use of “soft-nosed bullets” because they caused “disproportionate and needless injury”.*[[20]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_20)*
Practice is in conformity with the rule’s applicability in both international and non-international conflicts, as States generally do not have a different set of military weapons for international and non-international armed conflicts.*[[21]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_21)*
No official contrary practice was found with respect to either international or non-international armed conflict. No State has indicated that it may use means or methods of warfare causing unnecessary suffering in any type of armed conflict. Practice shows that parties to a conflict abstain from using in non-international armed conflicts weapons prohibited in international armed conflicts. In the *Tadić case* in 1995, the International Criminal Tribunal for the Former Yugoslavia stated that:
Indeed, elementary considerations of humanity and common sense make it preposterous that the use by States of weapons prohibited in armed conflicts between themselves be allowed when States try to put down rebellion by their own nationals on their own territory. What is inhumane, and consequently proscribed, in international wars cannot but be inhumane and inadmissible in civil strife.*[[22]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_22)*

**Definition of means of warfare which are of a nature to cause superfluous injury or unnecessary suffering**

The prohibition of means of warfare which are of a nature to cause superfluous injury or unnecessary suffering refers to the effect of a weapon on combatants. Although there is general agreement on the existence of the rule, views differ on how it can actually be determined that a weapon causes superfluous injury or unnecessary suffering. States generally agree that suffering that has no military purpose violates this rule. Many States point out that the rule requires that a balance be struck between military necessity, on the one hand, and the expected injury or suffering inflicted on a person, on the other hand, and that excessive injury or suffering, i.e., that which is out of proportion to the military advantage sought, therefore violates the rule.*[[23]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_23)*  Some States also refer to the availability of alternative means as an element that has to go into the assessment of whether a weapon causes unnecessary suffering or superfluous injury.*[[24]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_24)*
In its advisory opinion in the *Nuclear Weapons case*, the International Court of Justice defined unnecessary suffering as “a harm greater than that unavoidable to achieve legitimate military objectives”.*[[25]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_25)*
A relevant factor in establishing whether a weapon would cause superfluous injury or unnecessary suffering is the inevitability of serious permanent disability. The US Air Force Pamphlet, for example, lists as one of the bases for the prohibition of poison the “inevitability of … permanent disability”.*[[26]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_26)*  The rule prohibiting the targeting of the eyes of soldiers with lasers, as laid down in Protocol IV to the Convention on Certain Conventional Weapons (see Rule 86), was inspired by the consideration that deliberately causing permanent blindness in this fashion amounted to the infliction of superfluous injury or unnecessary suffering.*[[27]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_27)*  When adopting the Ottawa Convention banning anti-personnel landmines, States were basing themselves, in part, on the prohibition of means of warfare which are of a nature to cause superfluous injury or unnecessary suffering.*[[28]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_28)*  The serious disabilities that are frequently the result of the use of incendiary weapons prompted many States to propose a ban on their use against personnel (see commentary to Rule 85).
A related issue is the use of weapons that render death inevitable. The preamble to the St. Petersburg Declaration states that the use of such weapons “would be contrary to the laws of humanity”, and it was this consideration that led to the prohibition of exploding bullets by the Declaration.*[[29]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_29)*  The US Air Force Pamphlet, for example, states that “the long-standing customary prohibition against poison” is based, in part, on “the inevitability of death” and that international law has condemned “dum-dum” bullets because of “types of injuries and inevitability of death”.*[[30]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_30)*  Several military manuals and official statements state that weapons that render death inevitable are prohibited.*[[31]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_31)*

**Definition of methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering**

The prohibition of methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering was first introduced in Additional Protocol I.*[[32]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_32)*  When adopting the Convention on Certain Conventional Weapons and the Ottawa Convention banning anti-personnel landmines, States were basing themselves on the prohibition of “weapons, projectiles and material and *methods* of warfare of a nature to cause superfluous injury or unnecessary suffering” (emphasis added).*[[33]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_33)*  The Statute of the International Criminal Court also includes the use of “*methods* of warfare which are of nature to cause superfluous injury or unnecessary suffering” (emphasis added) as a war crime.*[[34]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_34)*
Numerous States have included the prohibition of methods of warfare that cause superfluous injury or unnecessary suffering in their military manuals and legislation.*[[35]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_35)*  It is also referred to in official statements and other practice.*[[36]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_36)*  This practice includes that of States not, or not at the time, party to Additional Protocol I.*[[37]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_37)*  However, States articulating this rule do not give any examples of methods of warfare that would be prohibited by virtue of this rule.

**Interpretation**

Although the existence of the prohibition of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is not contested, views differ as to whether the rule itself renders a weapon illegal or whether a weapon is illegal only if a specific treaty or customary rule prohibits its use.
While most military manuals prohibit weapons that cause unnecessary suffering as such,*[[38]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_38)*  some indicate that the weapons covered by this prohibition must be determined by the practice of States to refrain from using certain weapons in recognition that they cause unnecessary suffering.*[[39]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_39)*
In their submissions to the International Court of Justice in the *Nuclear Weapons case*, France and the Russian Federation stated that a weapon can only be prohibited by virtue of this rule if States choose to prohibit the weapon by treaty.*[[40]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_40)*  Most other States, however, did not express such a requirement and assessed the legality of the effects of nuclear weapons on the basis of the rule itself.*[[41]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_41)*
In its advisory opinion in the *Nuclear Weapons case*, the International Court of Justice analysed the legality of the effects of nuclear weapons on the basis of the rule itself and independent of treaty law, as did the judges in their individual opinions.*[[42]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_42)*

**Examples**

The following weapons have been cited in practice as causing unnecessary suffering if used in certain or all contexts: lances or spears with a barbed head;*[[43]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_43)*  serrated-edged bayonets;*[[44]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_44)*  expanding bullets;*[[45]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_45)*  explosive bullets;*[[46]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_46)*  poison and poisoned weapons, including projectiles smeared with substances that inflame wounds;*[[47]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_47)*  biological and chemical weapons;*[[48]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_48)*  weapons that primarily injure by fragments not detectable by X-ray, including projectiles filled with broken glass;*[[49]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_49)*  certain booby-traps;*[[50]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_50)*  anti-personnel landmines;*[[51]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_51)*  torpedoes without self-destruction mechanisms;*[[52]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_52)*  incendiary weapons;*[[53]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_53)*  blinding laser weapons;*[[54]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_54)*  and nuclear weapons. *[[55]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22Fn_66_55)*  There is insufficient consensus concerning all of these examples to conclude that, under customary international law, they all violate the rule prohibiting unnecessary suffering. However, there is agreement that some of them are prohibited and they are discussed in subsequent chapters.

*[[1]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_1)* St. Petersburg Declaration (cited in Vol. II, Ch. 20, § 1); Hague Declaration concerning Asphyxiating Gases (*ibid.*, § 2); Hague Declaration concerning Expanding Bullets (*ibid.*, § 3); 1899 Hague Regulations, Article 23(e) (*ibid.*, § 4); 1907 Hague Regulations, Article 23(e) (*ibid.*, § 5).

*[[2]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_2)* See, e.g., the military manuals of Australia (*ibid.*, §§ 34–35), France (*ibid.*, §§ 55–56) and Germany (*ibid.*, § 59).

*[[3]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_3)* Additional Protocol I, Article 35(2) (adopted by consensus) (*ibid.*, § 6); Convention on Certain Conventional Weapons, preamble (*ibid.*, § 8); Protocol II to the Convention on Certain Conventional Weapons, Article 6(2) (*ibid.*, § 13); Amended Protocol II to the Convention on Certain Conventional Weapons, Article 3(3) (*ibid.*, § 15); Ottawa Convention, preamble (*ibid.*, § 16); ICC Statute, Article 8(2)(b)(xx) (*ibid.*, § 17).

*[[4]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_4)* See, e.g., Oxford Manual of Naval War, Article 16(2) (*ibid.*, § 21); ICTY Statute, Article 3(a) (*ibid.*, § 27); San Remo Manual, para. 42(a) (*ibid.*, § 28); UN Secretary-General’s Bulletin, Section 6.4 (*ibid.*, § 30); UNTAET Regulation No. 2000/15, Section 6(1)(b)(xx) (*ibid.*, § 31).

*[[5]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_5)* See, e.g., the military manuals of Argentina (*ibid.*, §§ 32–33), Australia (*ibid.*, §§ 34–35), Belgium (*ibid.*, §§ 36–38), Benin (*ibid.*, § 39), Bosnia and Herzegovina (*ibid.*, § 40), Burkina Faso (*ibid.*, § 41), Cameroon (*ibid.*, §§ 42–43), Canada (*ibid.*, §§ 44–45), Colombia (*ibid.*, §§ 46–47), Congo (*ibid.*, § 48), Croatia (*ibid.*, §§ 49–50), Dominican Republic (*ibid.*, § 51), Ecuador (*ibid.*, § 52), France (*ibid.*, §§ 53–56), Germany (*ibid.*, §§ 57–59), Hungary (*ibid.*, § 60), Indonesia (*ibid.*, § 61), Israel (*ibid.*, §§ 62–63), Italy (*ibid.*, §§ 64–65), Kenya (*ibid.*, § 66), Republic of Korea (*ibid.*, § 67), Madagascar (*ibid.*, § 68), Mali (*ibid.*, § 69), Morocco (*ibid.*, § 70), Netherlands (*ibid.*, §§ 71–72), New Zealand (*ibid.*, § 73), Nigeria (*ibid.*, §§ 74–76), Romania (*ibid.*, § 77), Russian Federation (*ibid.*, § 78), Senegal (*ibid.*, § 79), South Africa (*ibid.*, § 80), Spain (*ibid.*, § 81), Sweden (*ibid.*, § 82), Switzerland (*ibid.*, § 83), Togo (*ibid.*, § 84), United Kingdom (*ibid.*, §§ 85–86), United States (*ibid.*, §§ 87–93) and Yugoslavia (*ibid.*, § 94).

*[[6]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_6)* Sweden, *IHL Manual* (*ibid.*, § 82).

*[[7]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_7)* See, e.g., the legislation of Azerbaijan (*ibid.*, § 96), Belarus (*ibid.*, § 97), Canada (*ibid.*, § 99), Colombia (*ibid.*, § 102), Congo (*ibid.*, § 103), Georgia (*ibid.*, § 104), Ireland (*ibid.*, § 105), Italy (*ibid.*, § 106), Mali (*ibid.*, § 107), New Zealand (*ibid.*, § 109), Nicaragua (*ibid.*, § 110), Norway (*ibid.*, § 111), Spain (*ibid.*, §§ 112–113), United Kingdom (*ibid.*, § 115), United States (*ibid.*, § 116), Venezuela (*ibid.*, § 117) and Yugoslavia (*ibid.*,§ 118); see also the draft legislation of Argentina (*ibid.*, § 95), Burundi (*ibid.*, § 98) and Trinidad and Tobago (*ibid.*, § 114).

*[[8]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_8)* See, e.g., Japan, District Court of Tokyo, *Shimoda case*, Judgment (*ibid.*,§ 120).

*[[9]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_9)* UN General Assembly, Res. 3076 (XXVIII) (*ibid.*,§§ 214 and 217), Res. 3102 (XXVIII) (*ibid.*, § 215), Res. 3255 (XXIX) (*ibid.*,§§ 217–218), Res. 31/64 (*ibid.*,§§ 217 and 219), Res. 32/152 (*ibid.*,§§ 217 and 220), Res. 33/70 (*ibid.*, § 217), Res. 34/82 (*ibid.*,§§ 217 and 222), Res. 35/153 (*ibid.*,§§ 217 and 223), Res. 36/93 and 37/79 (*ibid.*,§§ 217 and 224), Res. 38/66, 39/56, 40/84, 41/50, 45/64, 46/40, 47/56, 48/79, 49/79, 50/74, 51/49, 52/42, 53/81 and 54/58 (*ibid.*, § 224); OAS, General Assembly, Res. 1270 (XXIV-O/94) (*ibid.*, § 229) and Res. 1565 (XXVIII-O/98) (*ibid.*, § 230).

*[[10]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_10)* See, e.g., 22nd International Conference of the Red Cross, Res. XIV (*ibid.*, § 231); 26th International Conference of the Red Cross and Red Crescent, Res. II (*ibid.*, § 234); Second Review Conference of States Parties to the Convention on Certain Conventional Weapons, Final Declaration (*ibid.*, § 236); African Parliamentary Conference on International Humanitarian Law for the Protection of Civilians during Armed Conflict, Final Declaration (*ibid.*, § 237).

*[[11]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_11)* See, e.g., the oral pleadings and written statements in the *Nuclear Weapons case* of Australia (*ibid.*, § 123), Ecuador (*ibid.*, § 133), Egypt (*ibid.*, § 135), France (implicitly) (*ibid.*, § 136), India (*ibid.*, § 144), Indonesia (*ibid.*, § 147), Islamic Republic of Iran (*ibid.*, § 147), Italy (*ibid.*, § 149), Japan (*ibid.*, § 151), Lesotho (*ibid.*, § 153), Marshall Islands (*ibid.*, § 155), Mexico (*ibid.*, § 159), Netherlands (*ibid.*, § 162), New Zealand (*ibid.*, § 165), Russian Federation (*ibid.*,§§ 171–172), Samoa (*ibid.*, § 175), Solomon Islands (*ibid.*, § 178), Sweden (*ibid.*, § 182), United Kingdom (*ibid.*,§§ 191–192) and United States (*ibid.*,§§ 202–203); see also the written statements in the *Nuclear Weapons (WHO) case* of Nauru (*ibid.*, § 161), Rwanda (*ibid.*, § 173), Samoa (*ibid.*, § 174), Solomon Islands (*ibid.*, § 177) and Sri Lanka (*ibid.*, § 179).

*[[12]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_12)* ICJ, *Nuclear Weapons case*, Advisory Opinion (*ibid.*, § 238).

*[[13]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_13)* Draft Additional Protocol II, Article 20(2) (*ibid.*, § 7).

*[[14]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_14)* Ottawa Convention on Anti-Personnel Mines, preamble (*ibid.*, § 16); Convention on Certain Conventional Weapons, preamble (*ibid.*, § 8).

*[[15]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_15)* Amended Protocol II to the Convention on Certain Conventional Weapons, Article 3(3) (*ibid.*, § 15).

*[[16]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_16)* See, e.g., the military manuals of Australia (*ibid.*, § 34), Benin (*ibid.*, § 39), Bosnia and Herzegovina (*ibid.*, § 40), Canada (*ibid.*, § 45), Colombia (*ibid.*, §§ 46–47), Croatia (*ibid.*, §§ 49–50), Ecuador (*ibid.*, § 52), Germany (*ibid.*, §§ 57–59), Italy (*ibid.*, §§ 64–65), Kenya (*ibid.*, § 66), Republic of Korea (*ibid.*, § 67), Madagascar (*ibid.*, § 68), Nigeria (*ibid.*, §§ 74 and 76), South Africa (*ibid.*, § 80), Togo (*ibid.*, § 84) and Yugoslavia (*ibid.*, § 94).

*[[17]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_17)* See, e.g., the legislation of Azerbaijan (*ibid.*, § 96), Belarus (*ibid.*, § 97), Colombia (*ibid.*, § 102), Nicaragua (*ibid.*, § 110), Spain (*ibid.*, § 113), Venezuela (*ibid.*, § 117) and Yugoslavia (*ibid.*,§ 118); see also the legislation of Italy (*ibid.*, § 106), the application of which is not excluded in time of non-international armed conflict, and the draft legislation of Argentina (*ibid.*, § 95).

*[[18]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_18)* See, e.g., Argentina, National Court of Appeals, *Military Junta case*, Judgment (*ibid.*,§ 119).

*[[19]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_19)* Memorandum of Understanding on the Application of International Humanitarian Law between Croatia and the Socialist Federal Republic of Yugoslavia, para. 6 (*ibid.*, § 25); Agreement on the Application of International Humanitarian Law between the Parties to the Conflict in Bosnia and Herzegovina, para. 2.5 (*ibid.*, § 26).

*[[20]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_20)* Yugoslavia, Ministry of Defence, Examples of violations of the rules of international law committed by the so-called armed forces of Slovenia (*ibid.*, § 209).

*[[21]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_21)* The use of riot-control agents and expanding bullets by police forces outside situations of armed conflict is addressed in the commentary to Rules 75 and 77.

*[[22]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_22)* ICTY, *The Prosecutor v. Duško Tadić aka “Dule”*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeals Chamber, 2 October 1995, Case No. IT-94-1-AR72, § 119.

*[[23]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_23)* See, e.g., the military manuals of Australia (cited in Vol. II, Ch. 20, § 35), Canada (*ibid.*,§§ 44–45), Ecuador (*ibid.*, § 52), France (*ibid.*,§§ 54–56), Germany (*ibid.*, § 58), New Zealand (*ibid.*, § 73), South Africa (*ibid.*, § 80), United States (*ibid.*,§§ 88–89 and 93) and Yugoslavia (*ibid.*, § 94); the legislation of Belarus (*ibid.*, § 97); the statements of India (*ibid.*, § 144), Netherlands (*ibid.*, § 162), United Kingdom (*ibid.*,§§ 191–192) and United States (*ibid.*,§§ 194, 202 and 206).

*[[24]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_24)* See the military manual of the United States (*ibid.*, § 88) and the statement of the United Kingdom (*ibid.*, § 191).

*[[25]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_25)* ICJ, *Nuclear Weapons case*, Advisory Opinion (*ibid.*, § 238).

*[[26]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_26)* United States, *Air Force Pamphlet* (*ibid.*, § 88).

*[[27]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_27)* See, e.g., Sweden, Declaration made upon acceptance of Protocol IV to the Convention on Certain Conventional Weapons (*ibid.*, § 14) and the military manuals of France (*ibid.*, §§ 55–56).

*[[28]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_28)* Ottawa Convention, preamble (*ibid.*, § 16).

*[[29]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_29)* St. Petersburg Declaration, preamble (*ibid.*, § 1).

*[[30]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_30)* United States, *Air Force Pamphlet* (*ibid.*, § 88); see also Ecuador, *Naval Manual* (*ibid.*, § 52) and United States, *Air Force Commander's Handbook* (*ibid.*,§ 89) and *Naval Handbook* (*ibid.*, § 93).

*[[31]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_31)* See, e.g., the military manual of Belgium (*ibid.*, § 36), Ecuador (*ibid.*, § 52) and United States (*ibid.*, § 93) and the statements of Egypt (*ibid.*, § 135), India (*ibid.*, § 144), Russian Federation (*ibid.*,§§ 171–172) and Solomon Islands (*ibid.*, § 178); see also the statements of Australia (*ibid.*, § 121) and New Zealand (*ibid.*, § 164).

*[[32]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_32)* Additional Protocol I, Article 35(2) (adopted by consensus) (*ibid.*, § 6).

*[[33]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_33)* Convention on Certain Conventional Weapons, preamble (*ibid.*, § 8); Ottawa Convention, preamble (*ibid.*, § 16).

*[[34]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_34)* ICC Statute, Article 8(2)(b)(xx) (*ibid.*, § 17).

*[[35]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_35)* See, e.g., the military manuals of Argentina (*ibid.*, § 33), Australia (*ibid.*, §§ 34–35), Belgium (*ibid.*, § 36), Benin (*ibid.*, § 39), Colombia (*ibid.*, § 46), Croatia (*ibid.*, § 49), Dominican Republic (*ibid.*, § 51), Ecuador (*ibid.*, § 52), Germany (*ibid.*, §§ 57–59), Hungary (*ibid.*, § 60), Italy (*ibid.*, § 64), Kenya (*ibid.*, § 66), Netherlands (*ibid.*, § 71), Spain (*ibid.*, § 81), Sweden (*ibid.*, § 82), Togo (*ibid.*, § 84) and United States (*ibid.*, §§ 88 and 93) and the legislation of Azerbaijan (*ibid.*, § 96), Belarus (*ibid.*, § 97), Canada (*ibid.*, § 99), Colombia (*ibid.*, § 102), Congo (*ibid.*, § 103), Georgia (*ibid.*, § 104), Ireland (*ibid.*, § 105), Mali (*ibid.*, § 107), New Zealand (*ibid.*, § 109), Nicaragua (*ibid.*, § 110), Norway (*ibid.*, § 111), Spain (*ibid.*, §§ 112–113), United Kingdom (*ibid.*, § 115) and Yugoslavia (*ibid.*, § 118) ); see also the draft legislation of Argentina (*ibid.* , § 95), Burundi (*ibid.*, § 98) and Trinidad and Tobago (*ibid.*, § 114).

*[[36]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_36)* See, e.g., the statements of Australia (*ibid.*, § 123), Egypt (*ibid.*, § 135), France (*ibid.*, § 139), Federal Republic of Germany (*ibid.*, § 140), Islamic Republic of Iran (*ibid.*, § 147), Mexico (*ibid.*, § 159), Netherlands (*ibid.*, § 162), New Zealand (*ibid.*, § 165), Sri Lanka (*ibid.*, § 179), United Kingdom (*ibid.*, § 192), United States (*ibid.*, §§ 196 and 198), Yugoslavia (*ibid.*, § 208) and Zimbabwe (*ibid.*, § 210) and the practice of France (*ibid.*, § 138).

*[[37]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_37)* See, e.g., the military manuals of the United States (*ibid.*,§§ 88 and 93), the legislation of Azerbaijan (*ibid.*, § 96), the statements of the Islamic Republic of Iran (*ibid.*, § 147), Sri Lanka (*ibid.*, § 179), United Kingdom (*ibid.*, § 192) and United States (*ibid.*, § 196) and the practice of France (*ibid.*, § 138).

*[[38]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_38)* See, e.g., the military manuals of Argentina (*ibid.*, § 33), Australia (*ibid.*, §§ 34–35), Belgium (*ibid.*, §§ 36–38), Benin (*ibid.*, § 39), Bosnia and Herzegovina (*ibid.*, § 40), Burkina Faso (*ibid.*, § 41), Cameroon (*ibid.*, §§ 42–43), Canada (*ibid.*, §§ 44–45), Colombia (*ibid.*, §§ 46–47), Congo (*ibid.*, § 48), Croatia (*ibid.*, §§ 49–50), Dominican Republic (*ibid.*, § 51), Ecuador (*ibid.*, § 52), France (*ibid.*, §§ 53–56), Germany (*ibid.*, §§ 57–59), Hungary (*ibid.*, § 60), Indonesia (*ibid.*, § 61), Israel (*ibid.*, §§ 62–63), Italy (*ibid.*, §§ 64–65), Kenya (*ibid.*, § 66), Republic of Korea (*ibid.*, § 67), Madagascar (*ibid.*, § 68), Mali (*ibid.*, § 69), Morocco (*ibid.*, § 70), Netherlands (*ibid.*, §§ 71–72), New Zealand (*ibid.*, § 73), Nigeria (*ibid.*, §§ 74–76), Romania (*ibid.*, § 77), Russian Federation (*ibid.*, § 78), Senegal (*ibid.*, § 79), South Africa (*ibid.*, § 80), Spain (*ibid.*, § 81), Sweden (*ibid.*, § 82), Switzerland (*ibid.*, § 83), Togo (*ibid.*, § 84), United Kingdom (*ibid.*, §§ 85–86), United States (*ibid.*, §§ 89–90 and 92–93) and Yugoslavia (*ibid.*, § 94).

*[[39]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_39)* See, e.g., the military manuals of Argentina (*ibid.*, § 32) and the United States (*ibid.*, §§ 87–88 and 91).

*[[40]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_40)* See the oral pleadings and written statements in the *Nuclear Weapons case* of France (*ibid.*, § 136) and Russian Federation (*ibid.*,§§ 171–172).

*[[41]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_41)* See, e.g., the oral pleadings and written statements in the *Nuclear Weapons case* of Ecuador (*ibid.*, § 133), Islamic Republic of Iran (*ibid.*, § 147), Japan (*ibid.*, § 151), Lesotho (*ibid.*, § 153), Marshall Islands (*ibid.*, § 155), Mexico (*ibid.*, § 159), Nauru (*ibid.*, § 161), Netherlands (*ibid.*, § 162), New Zealand (*ibid.*, § 165), Samoa (*ibid.*, § 175), Sweden (*ibid.*, § 182), United Kingdom (*ibid.*,§§ 191–192) and United States (*ibid.*, § 202); see also the written statements submitted in the *Nuclear Weapons (WHO) case* by Samoa (*ibid.*, § 174) and Sri Lanka (*ibid.*, § 179).

*[[42]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_42)* ICJ, *Nuclear Weapons case*, Advisory Opinion (*ibid.*, § 238), including the judges’ individual opinions (*ibid.*,§§ 239–245).

*[[43]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_43)* See, e.g., the military manuals of New Zealand (*ibid.*, § 73), South Africa (*ibid.*, § 80), United Kingdom (*ibid.*, § 85) and United States (*ibid.*, § 87); see also UN Secretariat, Existing rules of international law concerning the prohibition or restriction of use of specific weapons, Survey (*ibid.*, § 227).

*[[44]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_44)* See, e.g., the military manuals of the Netherlands (*ibid.*, §§ 71–72).

*[[45]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_45)* See, e.g., the military manuals of Australia (*ibid.*, § 34) (“hollow point weapons”), Ecuador (*ibid.*, § 52), France (*ibid.*, §§ 55–56), Germany (*ibid.*, §§ 57–59), Netherlands (*ibid.*, §§ 71–72), Russian Federation (*ibid.*, § 78), South Africa (*ibid.*, 80), United States (*ibid.*, § 91) and Yugoslavia (*ibid.*, § 94); see also the military manuals of New Zealand (*ibid.*, § 73), United Kingdom (*ibid.*, 85) and United States (*ibid.*, § 87), which prohibit “irregularly shaped bullets”; see also UN Secretariat, Existing rules of international law concerning the prohibition or restriction of use of specific weapons, Survey (*ibid.*, § 227).

*[[46]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_46)* See, e.g., the military manuals of Germany (*ibid.*, § 58) and Russian Federation (*ibid.*, § 78); see also UN Secretariat, Existing rules of international law concerning the prohibition or restriction of use of specific weapons, Survey (*ibid.*, § 227).

*[[47]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_47)* See, e.g., the military manuals of Ecuador (*ibid.*, § 52), Netherlands (*ibid.*, § 72), New Zealand (*ibid.*, § 73), South Africa (*ibid.*, § 80), United Kingdom (*ibid.*, § 85) and United States (*ibid.*, §§ 87, 89, 91 and 93); see also UN Secretariat, Existing rules of international law concerning the prohibition or restriction of use of specific weapons, Survey (*ibid.*, § 227).

*[[48]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_48)* See, e.g., the military manuals of Australia (*ibid.*, §§ 34–35), France (*ibid.*, §§ 55–56) and Germany (*ibid.*, § 59).

*[[49]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_49)* See, e.g., the military manuals of Australia (*ibid.*, § 34), Ecuador (*ibid.*, § 52), France (*ibid.*, §§ 55–56), Germany (*ibid.*, § 59), Netherlands (*ibid.*, §§ 71–72), New Zealand (*ibid.*, § 73), South Africa (*ibid.*, § 80), United Kingdom (*ibid.*, § 85) and United States (*ibid.*, §§ 87, 89, 91 and 93); see also UN Secretariat, Existing rules of international law concerning the prohibition or restriction of use of specific weapons, Survey (*ibid.*, § 227).

*[[50]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_50)* See, e.g., the military manuals of Germany (*ibid.*, § 59) and Netherlands (*ibid.*, § 72).

*[[51]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_51)* See, e.g., the military manuals of France (*ibid.*, §§ 55–56).

*[[52]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_52)* See, e.g., the military manuals of France (*ibid.*, §§ 55–56).

*[[53]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_53)* See, e.g., the statements of Colombia (*ibid.*, §§ 130–131), Mauritania (*ibid.*, § 156), Mexico (*ibid.*, §§ 157–158) and Norway (*ibid.*, § 166) and the reported practice of Zimbabwe (*ibid.*, § 211); see also UN Secretariat, Existing rules of international law concerning the prohibition or restriction of use of specific weapons, Survey (*ibid.*, § 227).

*[[54]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_54)* See, e.g., Sweden, Declaration made upon acceptance of Protocol IV to the Convention on Certain Conventional Weapons (*ibid.*, § 14) and the military manuals of France (*ibid.*, §§ 55–56).

*[[55]](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70%22%20%5Cl%20%22refFn_66_55)* See, e.g., the oral pleadings and written statements in the *Nuclear Weapons case* of Ecuador (*ibid.*, § 133), Egypt (*ibid.*, § 135), India (*ibid.*, § 144), Islamic Republic of Iran (*ibid.*, § 147), Japan (*ibid.*, § 151), Lesotho (*ibid.*, § 153), Marshall Islands (*ibid.*, § 155), Sweden (*ibid.*, § 182) and Zimbabwe (*ibid.*, § 210) and the written statements in the *Nuclear Weapons (WHO) case* of Samoa (*ibid.*, § 174) and Solomon Islands (*ibid.*, § 177).