The London School of Economics and Political Science

The International Humanitarian Actor as 'Civilian Plus':
The Circulation of the Idea of Distinction in International Law

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Abstract

This socio-legal study reconceptualizes the principle of distinction in international humanitarian law (IHL). Moving away from the dominant vision of fixed civilian and combatant entities separated by a bright line, it introduces an alternative vision of how distinction works in different places and at different times, or what we might think of as 'a new law of distinction'. This account is grounded in the practices of international actors across a number of global sites: from Geneva and The Hague to civil–military training programmes in Europe and the operational context of South Sudan. The main character of interest is the international humanitarian actor, who is situated alongside other international actors, such as NATO soldiers, UN peacekeepers and UN civilian actors. As is shown, the everyday interactions of these actors are shaped by contests over distinction. In the law of distinction that is distilled from these practices, qualities of 'civilianness' and 'combatantness' float around in the air, able to attach to any individual at any given moment, depending upon their self-presentation, behaviour and context. Three new figures emerge around these qualities: the 'civilian plus', the 'mere civilian' and the 'civilian minus'. The 'civilian plus', this study proposes, represents a special status that international humanitarian actors disseminate on a daily basis. This special status relies upon a concept of civilianness that is relative, contingent and aligned with an already-fragmented civilian category in IHL. The distinction practices of humanitarian actors also have an important performance component, designed to influence the perceptions of an omnipresent observer – the 'phantom local'. The overarching aim of this inquiry is to uncover and contend with distinction's perpetually disrupted nature. The study dismantles the idea of distinction as we know it, enabling us to recognize distinction in strange and unfamiliar forms.

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CHAPTER 1: INTRODUCTION TO THE STUDY

Introduction

A common vision of the principle of distinction positions civilians and combatants as separate entities, divided by a fixed and stable bright line. As soon as one reaches for distinction and its promise of clarity, however, the line dissolves. It dims, moves or disappears. Even as distinction eludes one's grasp, many people reach for it, in many different places and in many different ways. In sites as disparate as Geneva, The Hague, civil–military training grounds in Europe and South Sudan, international actors can be found producing distinction. In many instances, the things they are doing with distinction render it unrecognizable as a civilian–combatant binary. One of the most important insights of this study is that distinction means many things to many people. This is a deceptively simple discovery that implicates our most fundamental assumptions about the ways in which international humanitarian law (IHL) is enacted on a daily basis.

Ultimately, it may be determined that the principle of distinction in IHL cannot bear the load that such practices impose on it. Before arriving at such a conclusion, however, one must make sense of the relevant practices. Drawing on original empirical material, this socio-legal study embarks on this pressing task. Taking a sideways look at distinction, it uncovers distinction's myriad forms and functions, illuminating how international actors – of whom many are unconventional from a legal standpoint – make and remake distinction on a daily basis. As this study sets about the delicate work of untangling competing perceptions and mindsets, it pieces together a practice-based law of distinction. An important methodological contribution of this study is its interrogation of the doctrine–practice divide. As it follows the idea of distinction across multiple global sites, it locates law's meaning in very different spaces and places. It is not only distinction that is found in all of these contexts, but – more precisely – the *disorder* of distinction. Crucially, this includes

legal doctrine and the codification of the legal rule in the First Additional Protocol to the Geneva Conventions of 1949 (AP I).

The main character of this story is a particular kind of civilian: the international humanitarian actor.[1] Seizing upon signifiers of 'civilianness', humanitarian actors present themselves as harmless, innocent and external to the fight. To operationalize their vision of distinction, they enact a range of everyday distinction practices. In this context, South Sudan is treated as a (conflict-affected) site of everyday life, as are the civil–military training spaces where frontline actors gather to learn legal and operational rules. While humanitarian actors ground these practices in international law and the traditional humanitarian principles, they also seek to manage local perceptions. In this task, they are guided by the imputed perceptions of an amorphous local onlooker, which this study terms the 'phantom local'. This figure merges three different (local) audiences for distinction: armed actors, authorities and the beneficiaries of humanitarian services. In the operational context of South Sudan, the visual life of distinction comes to the fore. Humanitarian actors deploy emblems, signs and symbols in the hopes of controlling the optics of distinction for observers – both real and imagined.

By enacting these distinction practices, humanitarian actors produce a figure who is unfamiliar to IHL – the 'civilian plus'. This special status, grounded in the social value of the role performed by humanitarian actors in war, attempts to capitalize on all that is strong about the civilian and to escape all that is weak. The 'civilian plus' relies upon a fragmentation of IHL's civilian category; however, this study argues that civilianness is already relative. It is proposed that civilians who cannot claim a special status are thereby relegated to having 'mere civilian' – or perhaps even 'civilian minus' – status. When humanitarian actors are situated alongside other international actors operating in armed conflicts – such as NATO soldiers, UN peacekeepers and other civilian actors – contests unfold along numerous fault lines.

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[1] This actor is defined in Section 1.2.3.

Insofar as the distinctions that are enacted do not map onto a civilian–combatant binary, these dynamics are typically obscured in IHL. This study makes these practices legible in all of their complexity, treating them as valid engagements with a legal rule that is already deeply disrupted.

1.1 Background of the study

Historically, there has been a lack of attention to the civilian in IHL doctrine. It is the combatant, not the civilian, who has traditionally been at the centre of the development of the laws of war.[2] Some legal version of the combatant has existed since the 12th century,[3] and the requirements for combatant status were laid out in early IHL treaties such as the Hague Regulations of 1907.[4] In contrast, the civilian was not introduced as a protected legal figure until much later. The general conceptualization of the civilian, as someone who should be spared from violence in war, emerged in the 19th century.[5] Prior to this, the term 'civilian' was used quite differently than its use in the modern context.[6] For example, in the 18th century, 'civilian' referred to Europeans of the East India Company who were 'not in military employ'; thus, a civilian came to be understood as a 'non-military man or official'.[7] It was only as recently as 1977, with AP I, that the civilian was formally defined in international law, at the same time as the principle of distinction was

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[2] Karma Nabulsi, 'Evolving Conceptions of Civilians and Belligerents: One Hundred Years after the Hague Peace Conferences', in Simon Chesterman (Ed.), *Civilians in War* (London: Lynne Rienner Publishers), pp. 9–24.

[3] Helen Kinsella, *The Image Before the Weapon: A Critical History of the Distinction between Combatant and Civilian* (Ithaca, NY and London: Cornell University Press, 2011), p. 29.

[4] Article 1 and 2 ('Qualification of Belligerents') of Annex to Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 ('1907 Hague Regulations').

[5] Kinsella, supra, p. 28. See also Michael Schmitt, 'Discriminate Warfare: The Military Necessity–Humanity Dialectic of International Humanitarian Law', in David Lovell and Igor Primoratz (Eds.), *Protecting Civilians During Violent Conflict: Theoretical and Practical Issues for the 21st Century* (Ashgate, 2012), Chapter 6, pp. 87–88 ('Discriminate Warfare'). Schmitt argues that the principle of distinction is introduced as a customary law norm in the St. Petersburgh Declaration. Citing the Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Saint Petersburg, 29 November / 11 December 1868.

[6] Kinsella, supra, pp. 28–29.

[7] Ibid., p. 29.

delineated.[8] The principle of distinction requires parties to a conflict to distinguish between the civilian population and combatants, as well as between civilian objects and military objectives.[9] It stipulates that the civilian population, as well as individual civilians, shall not be the object of attack in armed conflict.[10] This AP I definition of the civilian has been described as negative or residual, referring to anyone who is not a combatant.[11]

The lack of engagement with the civilian in IHL has been largely reflected in an equivalent lack of attention to the concept in the relevant scholarly literature. While the combatant figure has pre-occupied international lawyers and scholars for years, scholars have taken longer to scrutinize the ways in which the civilian is constituted, produced and disseminated.[12] However, a number of recent contributions have taken the civilian category seriously.[13] Building on this burgeoning scholarship, the present study redirects attention to a neglected set of actors: international actors who operate in armed conflicts and, in particular, international humanitarian actors who deliver assistance to war-affected populations.

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[8] As per Amanda Alexander, 'The Genesis of the Civilian', *Leiden Journal of International Law,* Vol. 20, 2007, pp. 359–376, 359–360 ('Genesis').

[9] Article 48 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3, Can TS 1991 No 1 (AP I) and Article 13 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609, Can TS 1991 No 2 (AP II). See Marco Sassoli, 'Legitimate Targets of Attacks under International Humanitarian Law', International Humanitarian Law Research Initiative, 2003, available at: http://www.hpcrresearch.org/sites/default/files/publications/Session1.pdf ('Targets').

[10] Article 52(1) of AP I.

[11] Article 50 of AP I. Discussed in Cecilie Hellestveit, 'The Geneva Conventions and the Dichotomy between International and Non-International Armed Conflict: Curse or Blessing for the "Principle of Humanity"', in Kjetil Mujezinovic Larsen, Camilla Guldahl Cooper and Gro Nystuen (Eds.), *Searching for a 'Principle of Humanity' in International Humanitarian Law* (Cambridge University Press, 2013), pp. 86–123, 102; Avril McDonald, 'The Challenges to International Humanitarian Law and the Principles of Distinction and Protection from the Increased Participation of Civilians in Hostilities', *Spotlight on Issues of Contemporary Concern in International Humanitarian Law and International Criminal Law*, Working Paper, University of Tehran Round Table, April 2004.

[12] Kinsella, supra, p. 6; Claire Garbett, *The Concept of the Civilian: Legal Recognition, Adjudication and the Trials of International Criminal Justice* (Oxford: Routledge, 2015), p. 3.

[13] Kinsella, supra; Amanda Alexander, supra ('Genesis'); Garbett, supra.

From a legal standpoint, many of these international actors are unconventional. Traditionally, states have been positioned as the main actors engaged in making international law,[14] including IHL.[15] At the same time, the development of IHL has been demonstrably pluralistic, with non-state actors playing a significant role.[16] This study understands IHL as a body of law and a practice with room for the contributions of non-traditional actors.[17] Moving away from the traditional focus on collective entities, the study contributes to the literature on individual actors – particularly those occupying lower-level and frontline roles.[18] It does not claim that these individuals necessarily shape positive law by contributing to treaties and conventions. However, it treats these unconventional actors as lawmakers in the broadest sense of the word. Through their everyday practices and interactions, these individuals produce IHL's civilian–combatant distinction at multiple global sites.[19]

The impetus for this study came from my personal experience as an international humanitarian actor. While based in West Darfur, Sudan as Head of Mission for the non-governmental organization (NGO) War Child Canada from 2009–2011, I experienced first-hand how international actors struggle with distinction. On a day-

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[14] Jean d'Aspremont, 'International Law-Making by Non-State Actors: Changing the Model or Putting the Phenomenon into Perspective?', in Math Noortmann and Cedric Ryngaert (Eds.), *Non-State Actor Dynamics in International Law: From Law-Takers to Law Makers* (London: Routledge, 2010).

[15] Michael Schmitt and Sean Watts, 'State *Opinio Juris* and International Humanitarian Law Pluralism', *International Law Studies,* Vol. 91, 2015, pp. 171–215; Sandesh Sivakumaran, 'Who Makes International Law: The Case of the Law of Armed Conflict', unpublished paper, 2017 ('Who Makes IL').

[16] Leslie Green, *The Contemporary Law of Armed Conflict*, 3rd edition (Manchester University Press, 2008), pp. 26–64; Martha Finnemore, *National Interests in International Society* (Cornell University Press, 1996), Chapter 1; Schmitt and Watts, supra, p. 172. On the role of non-state actors in producing customary law, compare Sivakumaran, supra ('Who Makes IL') (advocating an expansive approach) and Schmitt and Watts, supra, p. 174 (calling for a narrow approach). See also Chapter 2 of this study.

[17] Sivakumaran, supra ('Who Makes IL'), arguing that IHL is made by the 'community of international humanitarian lawyers', which includes states, 'state-empowered' actors (*e.g.* ICRC, international tribunals) and non-state actors (*e.g.* academics, NGOs, non-state armed groups); Amanda Alexander, *The Idea of the Civilian in International Law* (unpublished PhD thesis, 2013), p. 136 ('PhD Thesis').

[18] Jutta Brunee and Stephen Toope, *Legitimacy and Legality in International Law* (Cambridge: Cambridge University Press, 2010); Kate Parlett, *The Individual in the International Legal System: Continuity and Change in International Law* (Cambridge: Cambridge University Press, 2011), Chapter 3; Michael P. Scharf, 'International Law in Crisis: A Qualitative Empirical Contribution to the Compliance Debate', *Cardozo Law Review*, Vol. 31, 2009, pp. 45–97; Lassa Oppenheim, *International Law: A Treatise* (Longmans, Green,1905).

[19] For a similarly broad approach to law-making, see Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law* (Cambridge: Cambridge University Press, 2016).

to-day basis, international humanitarian NGOs in Darfur grappled with whether they should: participate in joint security planning with non-humanitarian actors; accept military offers of in-kind resources; conduct joint projects with the African Union (AU)/UN hybrid mission; travel in armed convoys; and engage in long-term development work and human rights advocacy. While the answers to these questions shifted as conflict dynamics fluctuated, what was striking was how these answers were routinely formulated in terms of distinction. Notably, this distinction did not always track along with a civilian–combatant binary. The more relevant divide was sometimes humanitarian–military or humanitarian–civilian, or even humanitarian–humanitarian.

Whatever fault line these distinction practices mapped on to, they constituted civilian actors' efforts to distinguish themselves. This corner of civilian activity is typically overlooked, because IHL puts the main onus of upholding the civilian–combatant separation on the parties to the conflict. For example, combatants are required to (visually) distinguish themselves[20] and a warring state must distinguish its armed forces from its civilian population.[21] While IHL imposes clear reciprocal duties to uphold distinction on those engaged in fighting, the responsibilities of civilians in this respect are only implied. It can be gleaned from the AP I definition that civilians must not wear a uniform, carry a weapon or participate in hostilities.[22] However, the notion that civilians might otherwise be obliged to take active steps to distinguish themselves – such as by physically distancing themselves or modifying their conduct – is not something that IHL attends to. The present study illuminates

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[20] See Chapter 2. Article 4(a)(4) of Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135, Can TS 1965 No. 20 (GC III). Michael Bothe et al. (Eds.), *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949,* 2nd edition (Brill: 2013[1982]), pp. 281–283 (states must ensure their armed forces are easily distinguishable from members of the enemy armed forces and civilians); William Ferrell, 'No Shirt, No Shoes, No Status: Uniforms, Distinction, and Special Operations in International Armed Conflict', *Military Law Review*, Vol. 78, 2003, pp. 94–140, 105–106.

[21] Article 51(7) of AP I. See also Article 58(b) of AP I.

[22] See Chapter 2.

these hidden distinction practices and explores their implementation by international humanitarian actors.[23]

1.2 The research question and central claims

When contemplating the distinction practices of international humanitarian actors, such as those depicted in Darfur, it might seem that the obvious question is whether these practices *align* with IHL's principle of distinction. While answering this question would certainly generate findings about compliance, the framing is problematic because it potentially obscures significant aspects of actual practice.[24] It is proposed that a more interesting possibility to consider is whether a law of distinction might be distilled *from* the practices of international actors. Two crucial moves are required here. The first move is to question the assumption that the civilian–combatant distinction is, in fact, the distinction of greatest significance. When a bright line civilian–combatant binary is defended, distinction is obviously at play. The presence of distinction is more difficult to discern, however, when the activities of interest appear to implicate a different fault line, altogether. These dynamics must be incorporated into the story of distinction, without prejudgment as to whether they can properly be accommodated by IHL. The second move required is to interrogate the utility of the traditional doctrine–practice divide. By foregrounding practice, this study uncovers the messiness of distinction at every level – from the articulation of IHL in Geneva to daily decision-making in South Sudan.

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[23] On the self-protection efforts of the general civilian population, see: Erin Baines and Emily Paddon, '"This is How We Survived": Civilian Agency and Humanitarian Protection', *Security Dialogue*, Vol. 43, No. 3, 2012, pp. 231–247; Betcy Jose and Peace A. Medie, 'Understanding Why and How Civilians Resort to Self-Protection in Armed Conflict', *International Studies Review*, Vol. 17, No. 4, 2015, pp. 515–535; Frédéric Mégret, 'Beyond the "Salvation" Paradigm: Responsibility to Protect (Others) vs. the Power of Protecting Oneself', *Security Dialogue,* Vol. 40, No. 6, 2009, pp. 575–579.

[24] On the limits of a compliance focus see Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001), p. 485 (a compliance focus 'silently assumes that the political question—what the objectives are—has already been solved'). See also Kinsella, supra, p. 4.

1.2.1 The research question

The two moves outlined above are embedded in this study's central research question, which is framed as follows: *How does the idea of distinction circulate in the practices of international actors?* Inspired by multi-sited ethnography,[25] this three-part study follows the idea of distinction to Geneva and The Hague (Part I), civil–military training grounds in Europe (Part II) and the operational context of South Sudan (Part III). Each part attends to a particular set of international actors and produces a unique insight about distinction. The research question opens up fruitful avenues of inquiry, ultimately generating the conceptual claims at the centre of this study.

1.2.2 Central claims

The first conceptual claim this study advances relates to the civilian entity in IHL. Resisting the urge to view everything through a civilian–combatant prism, this study explores how qualities of 'civilianness' and 'combatantness' attach to particular individuals. It shows civilianness to be a relative and contingent concept and draws attention to the way in which the idea of distinction circulates within *civilian–civilian* relations. To capture the fact that another distinction is at play in the practices of international actors, the study introduces the figure of the 'civilian plus'. As the thick sociological description of these practices reveals, this figure – similar to the civilian in IHL – is plagued by complexity, fragility and fragmentation. Recognizing this, the intention is not to replace the idea of a unified civilian category with another equivalently unitary category. Rather, the 'civilian plus' is offered as a useful shorthand, much in the same way that certain international actors employ the

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[25] George Marcus, 'Ethnography In/Of the World System: The Emergence of Multi-Sited Ethnography', *Annual Review of Anthropology,* Vol. 24, 1995, pp. 95–117; Sally Engle Merry, 'Ethnography of the Global', Workshop at the Berkeley Centre for the Study of Law and Society, February 2013; See also Mark-Anthony Falzon, 'Introduction: Multi-Sited Ethnography: Theory, Praxis and Locality in Contemporary Research', in Mark-Anthony Falzon (Ed.), *Multi-Sited Ethnography: Theory, Praxis and Locality in Contemporary Research* (Burlington, VT: Ashgate, 2009), pp. 1–24.

principle of distinction as a bright line. The study proposes that the existence of a 'civilian plus' status relies upon a fragmentation of the wider civilian category, and gives rise to two corollaries: the 'mere civilian' and 'civilian minus'. It is argued that international humanitarian actors equate 'humanitarianness' with the highest degree of 'civilianness', available. Their 'civilian plus' status is grounded in the social value of the role they play delivering assistance in war, as well as their virtuousness and moral uprightness. The 'mere civilian' represents a default status that humanitarian actors seek to transcend, but also one that they strive to reclaim when their civilianness is under threat. The 'civilian minus' label is shown to be one that most humanitarian actors assiduously try to avoid; encroachment by combatants provokes serious anxiety, in this respect.

The second conceptual claim this study articulates is that the distinction practices of international humanitarian actors are designed to influence the perceptions of a local audience. Even as humanitarian actors take steps to distinguish themselves, they also recognize that it is other actors – observing them from the outside – who discern the intended distinction (or not). This study investigates how the perspectives of local actors are rallied for the purpose of distinction. It is proposed that the *actual* perceptions of the myriad of local actors who are present in armed conflict are collapsed into the *ascribed* perceptions of a monolithic observer. This omnipresent figure, the 'phantom local', conflates three audiences of distinction: beneficiary-perceivers (whose trust must be gained), attacker-perceivers (whose violence must be averted) and authority-perceivers (whose permission to operate must be secured).[26] Of these three audiences, only the attacker-perceivers are strictly relevant for distinction in the sense of targeting in the conduct of hostilities. Tracking the way in which the phantom local is summoned thus sheds light on whether and how the principle of distinction in IHL is stretched beyond its intended function. In situations where international actors believe that onlookers cannot tell them apart, the prospect of a 'phantom foreigner' also looms.

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[26] See Chapter 4.

International humanitarian actors worry that local observers lump all internationals together into a single amorphous foreign entity; the distinction practices they engage in aim at dispelling any confusion in this respect. Part III of this study, which examines how the idea of distinction circulates in the operational context of South Sudan, illuminates the ways in which humanitarian actors deploy signs and symbols to manage the optics of distinction.

A third, methodological, claim pertains to an interrogation of the traditional **doctrine-practice** divide. In order to gain insight into the global circulation of the idea of distinction, this multi-sited study attends to numerous contexts, spaces and places.[27] The fact that distinction takes on myriad forms and surfaces in a variety of contexts for different reasons, is in itself noteworthy. This study makes the case that settings as dissimilar as Geneva and South Sudan should be understood as sites where the meaning of IHL is articulated, disseminated and shaped.[28] Crucially, the study does not simplistically juxtapose the practices of international actors with an inert legal doctrine; nor does it frame the practices in question as interfering with a rule that is otherwise orderly. Instead, it shows that the disorderliness of distinction is located at every level, from the AP I codification of the principle of distinction to the co-location of humanitarian actors with armed UN forces in South Sudan.

1.2.3 Defining the humanitarian actor

In a study that grapples with the boundaries between actors, it would be problematic to firmly delineate the categories of interest at the outset. Doing so would predetermine the operative lines, anticipating the study's key findings and

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[27] See Sarah Nouwen, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (Cambridge: Cambridge University Press, 2013), p. 235, FN 45 ('Moving between The Hague, Gulu, Khartoum, Darfur, Kampala, and headquarters of international organizations, the study does not focus, like classic anthropology, on the culture of one community, traditionally a village') ('Complementarity'). See also Akhil Gupta and James Ferguson (Eds.), *Anthropological Locations: Boundaries and Grounds of a Field Science* (Oakland, CA: University of California Press, 1997).
[28] On the need to study unorthodox locales, see David M. Trubeck and John Esser, 'Critical Empiricism in American Legal Studies: Paradox, Program, or Pandora's Box?', *Law and Social Inquiry,* Vol. 14, 1989, pp. 1-52, p. 45.

impeding the implementation of a practice-based approach. Having said that, for analytical purposes, it is helpful to begin with a broad sense of who the actors of interest are and how they connect. In this study, the relationship between the international humanitarian actor category and IHL's civilian category is of central importance. However, the boundaries of these categories are far from straightforward: it is not obvious whether international humanitarian actors should be treated as civilians or considered a separate category in their own right. It is no coincidence that this relationship, which is of greatest concern to this study, also poses the biggest challenges in definitional terms. Indeed, uncovering this relationship is one of the main endeavours of this inquiry.

Even before the term 'humanitarian' is brought into contact with IHL, it is plagued with indeterminacy.[29] It is too simplistic to declare that a humanitarian actor is someone who provides humanitarian assistance[30] – though this is potentially a useful point of departure. Further, no category of 'humanitarian actor' exists as such in IHL doctrine. It is argued in Chapter 3 that IHL is embedded with a narrow fantasy of a very particular kind of humanitarian actor: the Red Cross figure. Problematically, few international actors who actively deliver humanitarian assistance in contemporary armed conflicts resemble this figure. While some typologies of humanitarian actors usefully grapple with the diversity of the role,[31] none meets the requirements of this study. What is needed is a new typology that

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[29] Monika Krause, *The Good Project: Humanitarian Relief NGOs and the Fragmentation of Reason* (Chicago, IL and London: University of Chicago Press, 2014), p. 109; Samir Elhawary and Sara Pantuliano, 'UN Integration and Humanitarian Space', Panel at University of Ottawa Centre for International Policy Studies, 31 January 2012, video available at: https://www.youtube.com/watch?v=3SfTYAVvHyU.

[30] Humanitarian assistance is defined here as the provision of humanitarian relief – namely humanitarian and protection assistance involving food, water, sanitation, shelter and health services, as well as humanitarian coordination. This excludes post-conflict development activities, while recognizing that many actors who identify as humanitarian also engage in work across the relief–development continuum. For a similar definition, see: Kubo Macak, 'Principles of Neutrality and Impartiality of Humanitarian Action in the Aftermath of the 2011 Libyan Conflict', in Andrew J. Zwitter et al. (Eds.), *Humanitarian Action: Global, Regional and Domestic Legal Responses* (Cambridge: Cambridge University Press, 2014), pp. 447–474, 447.

[31] Discussed in Abby Stoddard, 'Humanitarian NGOs: Challenges and Trends', *Humanitarian Policy Group,* Briefing paper, No. 1, July 2003, p. 3; Krause, supra, p. 110.

explicitly engages with the categories of IHL and attends to both humanitarian and non-humanitarian actors.

Ultimately, I made the decision to delineate the proposed groupings broadly, while tentatively reserving conclusions about the operative boundaries. As a placeholder, this study sets up three broad categories of international actors:[32]

(i) **International humanitarian actors**: the International Committee of the Red Cross (ICRC) and Red Cross family; UN humanitarian agencies (UNHCR, UNICEF, OCHA); international humanitarian NGOs (MSF, Oxfam).

(ii) **Other international civilian actors**: civilian staff of peacekeeping missions (UNMISS); political and diplomatic actors (EU and UN human rights monitors).

(iii) **International military actors**: military actors affiliated with EU or UN peacekeeping missions (UNMISS) or deployed as international military forces (NATO).

The reference to 'other international civilian actors' (group ii) reflects the understanding that civilian humanitarian actors also have civilian status under IHL. The fact that humanitarian actors are not folded into this category of international civilian actors also hints at the possibility that (some) humanitarian actors might claim a special status. The next section provides a more detailed overview of the study, outlining its three-part structure and the substantive arguments that are advanced in each part.

1.3   Overview of the study

This study fractures the idea of distinction, presenting it in unfamiliar forms. It takes the view that distinction cannot be found in one place – particularly not, say, in the text of the Geneva Conventions or the dominant vision of distinction that circulates

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[32] The organizations listed in brackets comprise a non-exhaustive set of examples of the actors scrutinized in this study. Police and private international actors, such as those engaged in business activities or employed by private military and security companies, are not considered in detail.

in Geneva and The Hague. An alternative vision is described: one that detaches civilianness from the civilian and accounts for the disrupted nature of distinction. The study shows how, on a daily basis, international actors break down distinction and build it back up. Through these everyday practices, they construct and reconstruct distinction in new ways.

To illuminate how, where and why international actors draw the line, the study explores a number of global sites where the idea of distinction circulates. The selected sites are delineated according to separate yet overlapping groups of practices: Intellectual, Pedagogical and Kinetic. The following table provides an overview of the relevant sites and actors.

Table 1. Overview of sites and actors

Part	Site(s)	Actors
I. Distinction and the Intellectual	Geneva; The Hague	International lawyers; legal advisors; judges; legal academics; witnesses
II. Distinction and the Pedagogical	Civil–Military Cooperation (CIMIC) training by NATO, Italy; Civil–Military Relations (CMR) training by the Swedish Armed Forces, Sweden; Comprehensive Approaches to Multi-Dimensional Peace Operations (CAMPO) training by the German Center for International Peace Operations (Zif), Germany	International humanitarian actors; other international civilian actors; international military actors
III. Distinction and	South Sudan	

the Kinetic		

1.3.1 Part I: Distinction and the Intellectual

Part I explores how the idea of distinction circulates historically and doctrinally, as well as in the practices of international actors in Geneva and The Hague. The main international actors of interest are those who are more traditionally thought of as legal actors: lawyers, legal officials, judges and (legal) academics.[33]

Chapter 2 opens with a snapshot of the dominant vision of distinction, which sets up a fixed, stable and bright line civilian–combatant binary. The discussion proceeds to demonstrate how this vision is unsettled and undermined, and it offers an alternative vision that captures these perpetual disruptions. Attention is paid to distinction in the conduct of hostilities, the rules of humanitarian assistance and crimes against humanity cases at the International Tribunal for the Former Yugoslavia (ICTY). Historical context is provided to show that distinction has never been stable as the mythical civilian figure suggests. In the alternative vision of distinction, qualities of civilianness and combatantness are shown to float around in the air, attaching to any given individual at any given moment. Whereas civilianness is signified by harmlessness, non-participation, innocence and vulnerability, combatantness is associated with dangerousness, complicity and guilt. As the notion of a unified civilian category crumbles, the civilian figure that emerges is beset by contradiction. The civilian is at once a cherished ideal, imbued with extraordinarily high expectations and aspirations, and a fragile entity – routinely questioned, beleaguered and undermined. These tensions provide a crucial clue as to why

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[33] The inclusion of academic discourse here is uncontroversial, as academic writing is officially recognized as a source of public international law. See Article 38 of the Statute of the International Court of Justice, 18 April 1946, 3 Bevans 1179, 59 Stat 1055, TS No 993.

international humanitarian actors might carve out a special civilian status – the 'civilian plus' – for themselves.

Following this establishment of the disrupted nature of the civilian–combatant distinction, **Chapter 3** introduces international humanitarian actors into the picture. It proposes that IHL's vision of the humanitarian actor is embedded with a Red Cross fantasy, to the exclusion of other kinds of humanitarian actors. Identifying the enactment of AP I as the moment at which the humanitarian actor entered the legal scene, the chapter suggests that IHL may define (some) humanitarian actors as special civilians. The question of whether such a status is desirable is explored through a debate between two competing perspectives. First, the 'help the helpers help' position favours a special status for humanitarian actors, based on the social value of the tasks they perform in war. Second, the 'humanitarian exceptionalism' position warns that a special status could estrange humanitarian actors from others, including the populations they serve. This study espouses a qualified version of the second outlook, applying its relational logic to IHL's civilian category. The concern is expressed that delineating a special status for humanitarian actors could mobilize law to downgrade the status of other civilians. Chapter 3 closes by looking ahead to the actual practices of international actors, which are explored in Parts II and III. At odds with IHL's narrow conceptualization of the humanitarian actor, a wide swath of international actors make claims to humanitarianness on a daily basis. The practice-based law of distinction that this study elucidates aligns with the alternative vision of distinction introduced in Chapter 2.

1.3.2 Part II: Distinction and the Pedagogical

The Pedagogical realm has a strong normative aspect; in this sphere of practice, distinction is taught, learned and explicitly brought into question. In treating the Pedagogical realm as its own domain, this study makes the case that training reveals something new that cannot be gleaned from the doctrine, scholarship and practice

of the Intellectual realm, or the day-to-day operations of the Kinetic realm. Part II considers the way in which unconventional actors such as NATO soldiers, UN peacekeepers and humanitarian NGO actors produce distinction at civil–military training programmes in Sweden, Italy and Germany.

Since the end of the Cold War, international institutions such as the EU, the UN and NATO have steadily moved towards comprehensive, integrated and multi-dimensional international missions.[34] These missions are imbued with values such as 'working together' and are accompanied by imagery of walls coming down and boundaries being dismantled between international actors.[35] **Chapter 4** presents the three training programmes that were selected for scrutiny in this study – all of which were designed to prepare actors for participation in comprehensive missions. The programmes are led, respectively, by NATO's Multi-National Civil–Military Cooperation Group (CIMIC), the Swedish Armed Forces (SWEDINT) and the German Centre for Peace Operations (Zif). The training spaces also serve as venues where international actors learn about the importance of upholding IHL's principle of distinction. This chapter expands on the concept of everyday distinction practices (see below), explaining how humanitarian actors imagine and assert their civilian status in the Pedagogical realm.

Chapter 5 weaves together the original empirical findings from the three civil–military training spaces. It explores the way in which international actors understand distinction and struggle over who draws the line, as well as how and where. When humanitarian actors lead training sessions, they ground the need for distinction in both international law and perceptions of the 'phantom local'. They also explain that, by following the traditional humanitarian principles – humanity, impartiality,

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[34] Joanna Macrae and Nicholas Leader, 'Shifting Sands: The Search for "Coherence" Between Political and Humanitarian Responses to Complex Emergencies', *Humanitarian Policy Group Report,* No. 8, August 2000, p. 9.

[35] Jonathan Goodhand, 'Contested Boundaries: NGOs and Civil–Military Relations in Afghanistan', *Central Asian Survey,* Vol. 32, No. 3, 2013, pp. 287–305, 287. See also Victoria Metcalfe et al., 'UN Integration and Humanitarian Space: An Independent Study Commissioned by the UN Integration Steering Group', *Stimson and Overseas Development Institute,* 2011 ('Stimson Report').

independence and neutrality – humanitarian actors strive to *be* distinct and *be seen* to be distinct. Other – differently-situated – international actors fault humanitarian actors for implementing distinction too strictly or for doing so inconsistently. In particular, they resist the notion that humanitarianness corresponds with a higher degree of civilianness, or 'civilian plus' status. Meanwhile, international military actors are taught to foster interaction with civilians, as part of the comprehensive mission ethos. It is not until trainees embark on practical exercises that simulate the operational context that the goal of 'working together' overtly clashes with the commitment to 'upholding distinction'. When (non-humanitarian) actors have to make choices between these competing ideals, distinction rarely comes out on top.

1.3.3 Part III: Distinction and the Kinetic

Unconventional actors are again at the forefront in Part III, which focuses on interactions between international humanitarian actors (NGOs, UN, ICRC), UN civilian actors and UN peacekeepers operating in South Sudan. Whereas Pedagogical practices have a very strong normative component, Kinetic practices tend to be more practical – and potentially reactive. As the Kinetic realm is where one finds distinction in motion, it sheds light on the way in which distinction is enacted as a day-to-day matter on the ground. Here, official policies and normative debates are brought into contact with the mundaneness of daily decision-making, revealing the nuances of what international actors actually do.[36] It is also in the Kinetic realm that the most intense relationships between international actors are formed, as these actors routinely come into physical contact.[37] Another crucial element of Kinetic practices is the relevance of optics. Distinction has a more explicit visual life in the operational context; the way in which signs and symbols are

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[36] Kai Koddenbrock, *The Practice of Humanitarian Intervention: Aid Workers, Agencies, and Institutions in the Democratic Republic of the Congo* (Routledge, 2016), pp. 59, 62 (to make sense of international intervention, operational practice must be taken seriously).
[37] Slim makes a similar point regarding civil–military policies; see Hugo Slim, 'The Stretcher and the Drum: Civil–Military Relations in Peace Support Operations', *International Peacekeeping,* Vol. 3, No. 2, 1996, pp. 123–140, 129, 131 ('Stretcher').

deployed reveals much about whose perceptions are being managed, and why. A final noteworthy aspect of the Kinetic realm is the way in which it exposes conflicts that are otherwise concealed. This is explained in more detail, below.

Chapter 6 engages with the recent history of conflict and international intervention in South Sudan. South Sudan is a global site where international actors struggle with distinction in the context of an integrated UN mission with a robust Protection of Civilians (PoC) mandate. Civilianness is shown to be a beleaguered concept in South Sudan, and international humanitarian actors want to do everything they can to claim the highest degree of civilianness possible. As UN integration policies and structures encourage different kinds of international actors to work together towards a common goal of peace, many of the same dynamics explored in Part II arise. Additionally, humanitarian actors live and work inside displacement settings ('PoC sites') that are guarded by armed UN forces, and humanitarian actors must navigate daily decisions about military asset use. This chapter revisits previous discussions of humanitarian distinction practices, describing the specific form they take in the Kinetic realm. A key difference between the Pedagogical and Kinetic realms is that, in the operational context of the latter, the explicit appeal to law mostly slips away; international actors focus instead on the need to appease the 'phantom local'. Humanitarian signs and symbols play a crucial role here, and this study highlights two relevant critiques from the scholarly literature. First, there are charges that humanitarian actors visually distinguish themselves primarily for marketing or branding purposes. Second, there are allegations that safeguarding humanitarian symbols overshadows the importance of assisting populations in need. These critiques resurface in the empirical findings from South Sudan, and it is often humanitarian actors, themselves, who express these misgivings.

Chapter 7 delves into the original empirical material from South Sudan. As at the civil–military training grounds, in South Sudan, international actors can be found struggling with each other over who draws the line, as well as how and where. The

findings from South Sudan build on the discoveries from the Intellectual and Pedagogical realms, providing a further layer of thick sociological description. Investigation of the operational context allows for deeper insights into intra-civilian tensions. When international humanitarian actors dissociate from UN civilian actors, they do so partly because of the latter's affiliation with armed UN forces; humanitarian actors also wish to remind UN civilians that they have no legitimate claim to humanitarianness. The empirical material from South Sudan also introduces further nuance to the findings from the civil–military training grounds. While the explicit reference to law recedes markedly in the operational context, law is not entirely absent. The chapter shows that international actors in South Sudan self-conceptualize according to the civilian and combatant categories of IHL. Rather than appealing to static civilian and combatant entities, however, international actors behave as though different degrees of civilianness and combatantness are available. These qualities are assigned to individuals by the 'phantom local', who observes the interactions of international actors. A conflict also emerges in the Kinetic realm between upholding distinction and implementing the traditional humanitarian principle of humanity. To capture the way in which humanitarian actors navigate this conflict, two Weberian ideal types are elucidated.[38] The first type prioritizes distinction and takes a long-term view. The second type treats distinction as a principle that must be balanced with – and potentially subsumed by – the need to reach war-affected populations. What these two types battle over is nothing less than the meaning of humanitarianness.

Chapter 8 brings the study to a close. It outlines the main contributions of the study to the relevant literature and reflects on the implications of the findings. It reiterates what is exposed through this investigation: that the idea of distinction, as it circulates in the practices of international actors, is perpetually disrupted. Contemplating the desirability of a special status for international humanitarian actors, the study reflects upon the potential winners and losers. A significant

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[38] The term 'ideal' here does not have normative connotations.

downside of the 'civilian plus', it is proposed, is the fact that its existence is premised upon there being lesser forms of civilianness. This is to say that a special status for humanitarian actors downgrades the civilianness of other actors, at least in a relative sense. Perplexingly, war-affected populations are likely to find themselves on the losing side of this arrangement. This is a perverse outcome, especially when one considers that, without populations in need, there is no reason for humanitarian actors to exist.

1.4 Discipline and methodology

The present section situates the study in the relevant disciplines, articulates its definition of the field and outlines its key methodological moves. First, this study employs a socio-legal approach to understand how distinction is enacted from the bottom-up on an everyday basis. Second, the study's definition of the field highlights the interactions of differently situated actors, so as to illuminate how struggles over distinction shape the relationships of interest. Third, the study draws on ethnographic methods in order to understand how distinction is seen through the eyes of international actors.

1.4.1 A socio-legal study

To shed light on the way in which international actors produce distinction, this study brings the disciplinary field of international law[39] into contact with the field of humanitarian studies.[40] It employs a socio-legal approach to understanding law in

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[39] On international law as a field, see Yves Dezalay and Bryant G. Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press, 1998). On IHL as a sub-field, see Frédéric Mégret, 'Thinking about what International Humanitarian Lawyers "Do": An Examination of the Laws of War as a Field of Professional Practice', in Wouter Werner, Marieke de Hoon and Alexis Galán (Eds.), *The Law of International Lawyers: Reading Martti Koskenniemi* (Cambridge: Cambridge University Press, 2017), pp.265-296 ('IHL Lawyers').
[40] Michael N. Barnett, 'Humanitarian Governance', *Annual Review of Political Science*, Vol. 16, 2013, pp. 379–398, 393 (designating 'humanitarian studies' as a field) ('Governance'). See also Kjersti Lohne and Kristin Bergtora Sandvik, 'Legal Sociology of Humanitarianism', *Oslo Law Review*, Vol. 4, No. 1, 2017, pp. 4–27 (treating humanitarian studies as a conglomeration of different disciplinary contributions).

everyday life, which finds its analogue in the study of everyday humanitarianism. In socio-legal studies, law is viewed as a historical and culturally-specific mode of social organization, taking different forms both within and across social strata.[41] With this bottom-up approach to the study of law, it is a legitimate task to study how rules work in practice.[42] One might ask, for example, how a given actor perceives, understands, experiences, uses or avoids law.[43] This has the potential to reveal how individual actors engage with law in unexpected ways.[44] Scrutiny of practice is also instructive because IHL rules are open to alternative – and potentially contradictory – meanings.[45] Some IHL provisions may, in fact, be deliberately encoded with ambiguity, and a certain amount of indeterminacy may be deemed desirable.[46] Focusing on practice can thus illuminate subtle dynamics that might otherwise be unaccounted for, such as the fact that that IHL civilian–combatant distinction is not the only fault line along which the relationships of international actors are organized.

The international actors examined in Parts II and III identify, adopt, apply, develop and promulgate IHL norms and rules. However, their engagement with IHL is not simply instrumental; these actors also self-conceptualize according to IHL's civilian and combatant categories. To understand this self-conceptualization, it is necessary to think about law's constitutive role. The socio-legal study of **law in everyday life** is amenable to this kind of analysis, as it engages with law's instrumental and

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[41] As articulated by the Centre for Socio-Legal Studies at the University of Oxford.

[42] On law from the 'bottom up' and from outside legal institutions, see: Susan Silbey and Ayn Cavicchi, 'The Common Place of Law: Transforming Matters of Concern into the Objects of Everyday Life', in Bruno Latour and Peter Weibel (Eds.), *Making Things Public: Atmospheres of Democracy* (Cambridge, MA: MIT Press, 2005), pp. 556–565; David Cowan, Linda Mulcahy and Sally Wheeler, 'Introduction', in David Cowan, Linda Mulcahy and Sally Wheeler (Eds.), *Major Works in Socio-Legal Studies* (London: Routledge, 2013), p. 5.

[43] Paraphrasing Cowan, Mulcahy and Wheeler, supra, p. 5.

[44] Susan Silbey and Austin Sarat, 'Critical Traditions in Law and Research', *Law and Society Review,* Vol. 21, 1987, pp. 165–174, 173. Cited in Austin Sarat and Thomas R. Kearns, 'Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life', in Austin Sarat and Thomas R. Kearns (Eds.), *Law in Everyday Life* (University of Michigan Press, 1993), p. 60.

[45] Alexander, supra, p. 14, ('PhD Thesis').

[46] Kinsella, supra, p. 189. Citing Abram Chayes and Antonia Chayes, 'On Compliance', *International Organization,* Vol. 47, No. 2, pp. 175–205, 189 (on indeterminacy); Theodor Meron, *War Crimes Law Comes of Age* (Oxford: Oxford University Press, 1998), p. 159 (on deliberate ambiguity). See also Chapter 2.

constitutive aspects.[47] This approach recognizes that law is shaped by the way in which actors use it, but that its constitutive power delimits the way in which actors are able to employ it.[48] This introduces an important caveat to the approach delineated above – namely that actors cannot *avoid* or *ignore* law, entirely. Even if international humanitarian actors in South Sudan were to fail to cite IHL on a daily basis, their civilian identity would continue to shape their self-perception and the organization of their affairs. In their daily interactions with others, humanitarian actors constitute and reconstitute distinction – whether or not this distinction maps onto a civilian–combatant binary. A socio-legal examination of the everyday also invites a closer look at practices that might, on the surface, seem to have very little to do with law.[49] As Sarat and Kearns point out, 'motives, needs, emotions, anxieties, aspirations that are not entirely fixed by legal meanings or by legal forces operate throughout without totally losing their identity to law'.[50] A focus on everyday practice also highlights the multiplicity of actors who engage with IHL, drawing attention to the role of unconventional actors.[51] This last element is a crucial aspect of the present study's effort to interrogate the traditional doctrine–practice divide.

As noted above, the study of law in everyday life finds a parallel in the concept of **everyday humanitarianism**.[52] The latter occupies a corner of the broader literature on humanitarianism, situated in what some refer to as the field of humanitarian

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[47] Sarat and Kearns, supra, pp. 29, 32.

[48] Ibid., p. 55; Barbara Yngvesson, 'Inventing Law in Local Settings: Rethinking Popular Legal Culture', *Yale Law Journal,* Vol. 98, No. 8, 1989, pp. 1689–1709.

[49] Sarat and Kearns, supra, p. 55.

[50] Ibid.

[51] Sally Engle Merry, 'International Law and Sociolegal Scholarship: Towards a Spatial Global Legal Pluralism', in Austin Sarat (Ed.), *Special Issue: Law and Society Reconsidered (Studies in Law, Politics and Society)*, Vol. 21, 2007 (on the link between socio-legal studies and legal pluralism). See also Lianne M. Boer, 'The Greater Part of Juriconsults: On Consensus Claims and their Footnotes in Legal Scholarship', *Leiden Journal of International Law,* Vol. 29, 2016, pp. 1021–1042, 1041–1042 (study of practice shows that 'the law is "made" by those working with it, and there are very many people doing so, in many different capacities').

[52] See, *e.g.*: Udan Fernando and Dorothea Hilhorst, 'Everyday Practices of Humanitarian Aid: Tsunami Response in Sri Lanka', *Development in Practice,* Vol. 16, No. 3/4, 2006, pp. 292–302; Anais Aresseguier, 'The Moral Sense of Humanitarian Actors: An Empirical Exploration', *Disasters*, Vol. 42, No. 1, 2018, pp. 62–80.

studies.[53] Relatively speaking, scholars of international law have been slow to embark on a comprehensively interdisciplinary engagement with humanitarianism.[54] As a consequence, the rich insights of the humanitarianism literature have not yet meaningfully infused what Drumbl terms the 'international legal imagination'.[55] Where IHL scholars have taken up the issue of humanitarianism, a doctrinal and normative approach to law has predominated. This can be explained, in part, by the need to clarify IHL's application to issues such as state consent for humanitarian activities, humanitarian access to beneficiaries and the deliberate targeting of humanitarian actors by violent actors.[56] Without denying the pressing nature of such concerns, much could also be learned from a (critical) socio-legal approach to the theory and practice of humanitarianism.[57] An important methodological contribution of the present study is to demonstrate the form that such an inquiry might take.

Bringing these threads together, this study employs the concept of **everyday distinction practices**. These refer to the day-to-day competent performances that

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[53] Contributions to the broader literature on humanitarianism have been generated by academics in a wide range of individual disciplines, including anthropology, sociology, political science and international relations. See, *e.g.*: Liisa H. Malkki, *The Need to Help: The Domestic Arts of International Humanitarianism* (Duke University Press, 2015); David Mosse (Ed.), *Adventures in Aidland: The Anthropology of Professionals in International Development* (New York, NY: Berghahn, 2013); Silke Roth, *Passionate Professionals: The Paradoxes of Aid Work* (Routledge, 2015) ('Paradoxes of Aid'); Didier Fassin and Mariella Pandolfini (Eds.), *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions* (New York, NY: Zone Books, 2010); Didier Fassin, *Humanitarian Reason: A Moral History of the Present* (University of California Press, 2011) ('Humanitarian Reason'); Krause, supra; Antonio Donini (Ed.), *The Golden Fleece: Manipulation and Independence in Humanitarian Action* (Virginia: Kumarian Press, 2012) ('Golden Fleece'); Zoe Marriage, *Not Breaking the Rules, Not Playing the Game: International Assistance to Countries at War* (London: Hurst, 2006).
[54] Lohne and Sandvik, supra, p. 5.
[55] Mark Drumbl, *Re-imagining Child Soldiers in International Law and Policy* (Oxford: Oxford University Press, 2012), p. 9 (a 'normative, aspirational, and operational mix of international law, policy, and practice— constituted as it is directly and indirectly by a broad constellation of actors').
[56] See, *e.g.*: Claudie Barrat, *Status of NGOs in International Humanitarian Law* (Leiden: Brill Nijhoff, 2014); Johanna Grombach Wagner, 'An IHL/ICRC Perspective on "Humanitarian Space"', *Humanitarian Exchange Magazine*, No. 32, December 2005; Dapo Akande and Emanuela-Chiara Gillard, 'Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict', *International Law Studies,* Vol. 92, No. 483, 2016 ('Consent').
[57] On the need for a legal sociology of humanitarianism, see Lohne and Sandvik, supra.

international humanitarian actors engage in to operationalize distinction.[58] Such practices materialize in the Pedagogical and Kinetic realms, assuming different forms to reflect the demands of each respective context. While South Sudan is perhaps more obviously a site of everyday life – albeit a conflict-affected one – professional training spaces are also venues where everyday life unfolds.[59]

1.4.2 The field as a relational social space

This multi-sited study interrogates the way in which international actors produce distinction through practice. The relevant **field**[60] is defined as a relational social space where differently-situated international actors come into contact and struggle over distinction. This definition is loosely based on Lohne and Sandvik's formulation of the field in their proposal for a legal sociology of humanitarianism,[61] but with two key adjustments. First, the present study focuses on IHL and, more specifically, the enactment of a particular IHL rule. Second, the study emphasizes the role of non-humanitarian actors, scrutinizing their perception of and response to the distinction practices of humanitarian actors.

A crucial aspect of this study's articulation of the field is the *relational* nature of the social space. Although relational thinking is gaining momentum in the literature on humanitarianism,[62] the choice to adopt a relational approach in a project concerned with distinction might seem curious. While the notion of relationship is likely to conjure images of embrace, connection and coming together, the idea of distinction is likely to evoke efforts to turn away, to separate and to be apart. Accordingly, it

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[58] See Chapters 4 and 6. The reference to 'competent performances' comes from Emanuel Adler and Vincent Pouliot (Eds.), *International Practices* (Cambridge: Cambridge University Press, 2011), p. 6, p. 15. Drawing more generally on Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977), pp. 78–86 ('Outline').

[59] See Sarat and Kearns, supra, for a treatment of bureaucratic conferences and meetings as everyday life.

[60] For a general discussion of the field, see, *e.g.*, Pierre Bourdieu, *The Field of Cultural Production* (Cambridge: Cambridge University Press, 1993) ('The Field').

[61] See Lohne and Sandvik, supra, pp. 10–11, 15 (also hinting at a role for non-humanitarian actors).

[62] Larissa Fast, *Aid in Danger: The Perils and Promise of Humanitarianism* (University of Pennsylvania Press, 2014), p. 8; Roth, supra, p. 91 ('Paradoxes of Aid').

might be tempting to conceptualize distinction practices as a form of *dis*engagement. This impulse must be resisted, however, for the simple reason that it conceals the manner in which struggles over distinction shape the relationships of interest. Even as humanitarian actors strive to maintain separation from other international actors, they are often still intertwined and bound together with these actors.[63] This study takes seriously humanitarian distinction practices as a legitimate form of engagement with others.[64]

A concerted effort is also made to account for the practices and perspectives of non-humanitarian international actors who share the social space. These other actors have goals of their own, some of which directly conflict with the distinction that humanitarian actors propound. As this study uncovers, these other international actors can often be found erasing lines faster than humanitarian actors can draw them. To implement its relational approach, this study frames the actions of international actors as forms of **interaction.**[65] At the centre of these interactions are conflicting interpretations of what distinction requires, and from whom. The interactions in question play a role in not only driving social reality,[66] but also producing a law of distinction. Through its efforts to distil a law of distinction from the practices of international actors, this study avoids the pitfalls of the socio-legal 'gap study'. In such a study, socio-legal scholars simplistically set legal doctrine (law 'in the books') against practice on the ground (law 'in action'). [67] The present study

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[63] See Matthew Desmond, 'Relational Ethnography', *Theory and Society,* Vol. 43, No. 5, 2014, pp. 547–579, 554. Citing George Marcus, *Ethnography through Thick and Thin* (Princeton, NJ: Princeton University Press, 1998), p. 90.

[64] This move is inspired by studies of detachment in the Science and Technology Studies literature, especially Matei Candea, Joanna Cook, Catherine Trundle and Thomas Yarrow, 'Introduction: Reconsidering Detachment', in Candea et al. (Eds.), *Cultivating Detachment: Essays on the Limits of Relational Thinking* (Manchester University Press, 2015), pp. 1–31, 2.

[65] Thomas Hylland Eriksen, *Small Places, Large Issues: An Introduction to Social and Cultural Anthropology* (London: Pluto Press, 2010), p. 53 ('conceptualising whatever people are up to as interaction calls attention to the reciprocal character of agency, and most acts are not only directed towards other agents, but shaped by the relationship').

[66] See Robert Emerson, Rachel Fretz and Linda Shaw, *Writing Ethnographic Fieldnotes*, 2nd edition (London: University of Chicago Press, 2011/1995), p. 2

[67] Defined, respectively, in Trubeck, supra, as 'the prescriptive rules of legal doctrine as authoritatively interpreted' and the 'actual behaviour of citizens'. See David Nelkin, 'The Gap Problem in the Sociology of Law: A Theoretical Review', *Windsor Yearbook of Access to Justice*, Vol. 35, 1981, pp. 35–61.

locates disorder at every level, in action as well as the books. The inclusion of the Pedagogical realm (Part II) is crucial in this respect. It introduces an also-messy site that resides somewhere in between the normative articulation of a legal rule and its implementation in conflict zones.

1.4.3 Qualitative empirical methods

The empirical component[68] of this study was developed through a grounded theory approach.[69] This approach is an iterative process that is primarily inductive, but has deductive aspects, as well.[70] Although the research was guided by a foreshadowed problem (*i.e.* how the idea of distinction circulates) it did not begin with a specific hypothesis.[71] Rather, it left open the possibility of adjusting the research plan in response to surprising discoveries.[72] Riles describes the task of sorting out the relationships between various discoveries as a process of 'unwinding'; in this process, the scholar faces an intellectual risk, as she must follow where the material leads her.[73] In the present study, the empirical material led to the discovery of the 'civilian plus' and the 'phantom local' (see Section 1.2, above). In terms of the concrete research methods employed, all three parts of this study rely on textual and discourse analysis.[74] Parts II and III, which make up the main empirical component,

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[68] On empirical approaches in international legal scholarship, see: Elena Baylis, 'The Transformative Potential of Rigorous Empirical Research', *American Society of International Law Annual Meeting*, Vol. 104, March 2010; Gregory Shafer and Tom Ginsburg, 'The Empirical Turn in International Legal Scholarship', *American Journal of International Law,* Vol. 106, No. 1, pp. 1–48.

[69] See Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis* (SAGE, 2006).

[70] Charmaz, supra, pp. 4, 188.

[71] Bronislaw Malinowski, *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea* (London: Routledge, 1922/1984), p. 9.

[72] Alan Bryman, 'The Debate about Quantitative and Qualitative Research: A Question of Method or Epistemology', *The British Journal of Sociology*, Vol. 35, No. 1, 1984, pp. 75–92, 78; David Silverman (Ed.), *Doing Qualitative Research: A Practical Handbook*, 3rd edition (London: SAGE, 2010), p. 274.

[73] Annelise Riles, 'Afterword: A Method More than a Subject', in David Cowan and Daniel Wincott (Eds.), *Exploring the 'Legal' in Socio-Legal Studies* (London: Palgrave, 2016), pp. 257–264, 260; Annelise Riles, 'Anthropology, Human Rights and Legal Knowledge: Culture in the Iron Cage', *American Anthropologist,* Vol. 108, pp. 52–65, 2008.

[74] This includes international treaties and conventions, general principles of law, customary law, jurisprudence and academic writing. It also includes various manuals and 'grey literature' produced by international humanitarian, military and peacekeeping actors.

are further based on interviews, surveys, focus group discussions and participant observation, all of which were carried out at the field research sites.[75] Informed by ethnographic approaches developed in the discipline of anthropology, these empirical methods aim to see through the eyes of international actors, describing and explaining their motivations, actions, interpretations, values and patterns of meaning.[76] These empirical methods are elaborated upon in Chapter 4.

Conclusion

While this study problematizes the civilian–combatant distinction of IHL, the claim at its centre is not that distinction does not exist. Rather, it argues that *many distinctions* circulate in the practices of international actors. Although the international actors scrutinized in this study may not be lawmakers in the conventional sense of shaping treaties or legal conventions, they enact distinction on a daily basis. The present study can certainly shed light on whether and why a given actor might comply with an IHL rule, but the aim is to go beyond concerns of legal compliance.[77] By attending to practices and perceptions, it offers insights into behaviours that might seem surprising from a legal perspective – such as international actors jostling with each other for a status that should not exist in international law. Rather than attempt to compartmentalize various dynamics into categories of law and non-law, this study illuminates the interplay of law, practice and perception across a range of international sites. While the actual practices of international actors are always at the forefront of the analysis, these practices are

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[75] At the civil–military training grounds, over 200 hours of participant observation hours were logged. Furthermore, 38 interviews were conducted (mostly in the form of small focus group discussions) and 17 perception surveys were administered to trainees. In South Sudan, 100 hours of participant observation were completed and 113 interviews were conducted; 55 of these interviews were with key informants and the rest took the form of focus group discussions. Ten expert interviews were carried out over Skype, and the rest took place in person.

[76] Bryman, supra, pp. 77–88. On methodological borrowing in socio-legal studies, see David Cowan and Daniel Wincott, 'Exploring the "Legal"', in Cowan and Wincott, supra, pp. 1–32, pp. 5, 14. For a socio-legal study employing anthropological methods, see Nouwen, supra ('Complementarity').

[77] Koskenniemi, supra, p. 485 (a compliance focus 'silently assumes that the political question—what the objectives are—has already been solved'). See also Kinsella, supra, p. 4 (identifying this as a problem with respect to the principle of distinction, specifically).

contextualized by a concerted engagement with questions of what the law of distinction is and what it should be.

PART I: DISTINCTION AND THE INTELLECTUAL

Introduction to Part I

Part I of this study follows the idea of distinction to Geneva and The Hague, in order to explore the way in which it circulates in the practices of international actors at these sites. Two competing visions of distinction are introduced. The dominant vision sets up the civilian and the combatant as bounded entities, separated by a fixed and stable line. Although this vision is deeply disrupted on multiple levels, it remains the orthodoxy. To capture the myriad disruptions plaguing the idea of a bright line civilian–combatant binary, an alternative vision of distinction is elucidated. In this alternative vision, civilianness is shown to be a relative concept that can be pushed in competing directions. This study proposes that the alternative vision represents distinction as it actually is.

Leaving the humanitarian actor waiting in the wings, Chapter 2 draws on legal treaties, conventions and the practices of actors at the ICTY to elucidate these competing visions of distinction. Chapter 3 then outlines the emergence of the humanitarian actor in international law, focusing on the relationship between this figure and the civilian category in IHL. Looking ahead to the latter parts of this study, the empirical findings demonstrate that humanitarian actors disseminate a 'civilian plus' status in their everyday practice. While this special status relies upon a fragmentation of IHL's civilian category, exploration of the Intellectual realm exposes how distinction is already characterized by messiness and disorder.

CHAPTER 2: HOW THE IDEA OF DISTINCTION CIRCULATES
IN GENEVA AND THE HAGUE

Introduction

This chapter opens with a snapshot of the dominant vision of IHL's principle of distinction, which is based on the AP I formulation. This vision propounds a bright line civilian–combatant binary that is fixed and stable, accompanied by a unified civilian category. The principle of distinction is positioned as central to IHL as a body of law, and respect for it is deemed essential for IHL's functioning. After establishing the dominant vision, the chapter proceeds to show how this bright line binary has been disrupted – both historically and doctrinally, and in the practices of international actors. An alternative vision of distinction is offered and three unfamiliar figures are introduced: the 'civilian plus', the 'mere civilian' and the 'civilian minus'.

The disruptions in question are drawn from legal texts, doctrine and practice. First, the enactment of GC IV in 1949 is identified as a crucial legal moment when the civilian category splintered. Next, attention is drawn to AP I rules such as direct participation in hostilities (DPH), which impugn the dominant vision. Third, the treatment of civilianness in crimes against humanity cases at the ICTY is shown to push civilianness in different directions. While *Martic* introduces a potentially vulnerable combatant who might be protected like a civilian, *Milosevic* places a high burden on civilians to demonstrate that they are worthy of protected status. As these engagements with distinction are contemplated, the dominant vision becomes increasingly difficult to sustain.

2.1 The dominant vision of distinction

When IHL's principle of distinction is mentioned, the mind of the international lawyer is likely to instantly latch on to a bright line civilian–combatant distinction. While this thought may be accompanied by an awareness of the mythical qualities of this binary framework, the dominant vision continues to exert a strong pull on the legal imagination. In this section, three features of the dominant vision of distinction are examined. First, the dominant vision tracks along with the strict interpretation of the principle of distinction, as formally codified in AP I. Second, it ties observance of the principle of distinction to the implementation of IHL as a wider body of law. Third, it treats the AP I rule as the continuation of a longer history of civilian protection.

2.1.1 The AP I rule

This discussion opens by considering the AP I distinction in some detail. As a 'second best' to eradicating the use of force globally, IHL's aim is to limit destruction and suffering in armed conflict.[78] While contemporary international lawyers often use IHL, 'laws of war' or 'laws of armed conflict' interchangeably as translations of *jus in bello*,[79] the respective terms have symbolic and political implications that must be acknowledged.[80] Though the present study employs the term IHL, this does not indicate a belief that concerns of humanity eclipse military imperatives in the relevant doctrine.[81] So long as an appreciation of military

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[78] Gabriella Blum, 'The Laws of War and the "Lesser Evil"', *Yale Journal of International Law*, Vol. 35, No. 1, 2010, pp. 1–69, 7 ('Lesser Evil').

[79] As in Theodor Meron, 'The Humanization of Humanitarian Law', *American Journal of International Law,* Vol. 94, No. 2, 2000, pp. 239–278. For a critique of this practice, see Amanda Alexander, 'A Short History of International Humanitarian Law', *European Journal of International Law,* Vol. 26, No. 1, 2015, pp. 109–138, 112–113 ('Short History').

[80] David Kennedy, *Of War and Law* (Princeton University Press, 2006), p. 83 ('War'); Blum, supra, p. 8 ('Lesser Evil').

[81] Alexander, supra, p. 135 ('Short History'). On the concept of unnecessary suffering, see Chris Jochnick and Roger Normand, 'The Legitimation of Violence: A Critical History of the Laws of War', *Harvard International Law Journal,* Vol. 35, No. 1, Winter 1994, pp. 49–95, 66.

imperatives is required for securing state buy-in, [82] it can be said that IHL is animated by a 'push and pull' between humanity and military necessity. [83] This balancing informs the principle of distinction, which allows parties to the conflict to kill those deemed legitimate targets, while protecting those outsight the fight.[84]

As codified in AP I, the principle of distinction requires parties to the conflict to distinguish between the civilian population and combatants, as well as between civilian objects and military objectives.[85] Article 48 states: [86]

> In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

This rule offers protection to civilians and civilian objects, while opening up combatants and military objectives to attack.[87] While combatants can be legally targeted in war, civilians who do not directly participate in hostilities cannot.[88] AP I also provides that the 'civilian population' is comprised of all persons who are civilians, and that the presence of non-civilians in this population does not change its civilian character.[89] However, this assertion has its limits, and, at a certain point, a large proportion of soldiers may change the status of the population.[90] Civilians are

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[82] Mégret, supra, p. 271 ('IHL Lawyers').

[83] Sivakumaran, supra, p. 26 ('Who Makes IL?'). In this study, military necessity relates to achieving a legitimate military purpose or meeting an identified military objective. On debates about the status of humanity as an IHL principle, compare Meron, supra (arguing that humanity is at the centre of IHL), with, *e.g.*: Schmitt, supra, pp. 87–88 ('Discriminate Warfare'); Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge: Cambridge University Press, 2004), p. 114 ('CoH'), pp. 8–9.

[84] While there is some mention of civilian objects and IHL's 'protected persons' in this study, the focus is on individual civilians and civilian populations.

[85] Sassoli, supra ('Targets'). See also AP I and AP II.

[86] Article 48 of AP I. See also Article 52 of AP I.

[87] Yoram Dinstein, 'The Principle of Proportionality', in Larsen and Nystuen (Eds.), supra, pp. 72–85, 74 ('Proportionality').

[88] *Prosecutor v. Tihomir Blaskic,* IT-95-14-A, Appeal Judgment, ICTY, 29 July 2004, para. 109; *Prosecutor v. Stanilav Galic,* IT-98-29-A, Appeal Judgment, ICTY, 30 November 2006, para. 130.

[89] Art 50(1) and 50(3) of AP I.

[90] '*Blaskic* Appeal Judgment', supra, para. 115.

referred to generically in AP I, regardless of the state to which they belong.[91] While this treatment does not delineate a difference between a state's own civilians and those belonging to the enemy state, protections are understood to have been designed with the latter in mind.[92] At the same time, there are some rules that govern the state's relationship with its own population, specifically. Article 58(b), for example, stipulates that a warring state must not locate military objectives in densely populated areas.[93]

AP I defines a 'civilian object' as that which is not a military objective.[94] Where there is doubt as to whether something constitutes a military objective, if it is normally dedicated to civilian purposes, it is presumed to be a civilian object.[95] Article 50(1) also articulates a presumption in favour of civilian status for individuals [96] It stipulates that, in the event of doubt as to whether a person is a civilian, that person should be presumed to be so. This presumption is revisited later in this section. As an aside, the principle of proportionality does not modify the principle of distinction's prohibition on the intentional targeting of civilians. However, it introduces the possibility that civilians can be lawfully killed in war if the harm they are expected to incur is not deemed excessive in relation to the military advantage anticipated from a given course of action.[97] The immunity accorded to civilians under AP I is thus not without limits.

Under Article 50, a civilian is defined in a negative manner as anyone who is not a combatant.[98] As explained in the ICRC Commentaries to the APs, the drafters of

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[91] Dinstein, supra, p. 159 ('CoH').
[92] Blum, supra, p. 58 ('Lesser Evil') (a state was deemed not to need a reason to protect its own people); Frits Kalshoven, 'Civilian Immunity and the Principle of Distinction', *American University Law Review*, Vol. 31, 1982, p. 855.
[93] Article 58(b) of AP I; discussed in Blum, supra, p. 58 ('Lesser Evil').
[94] Art 52 of AP I.
[95] Art 52(3) of AP I.
[96] See also Article 13 of GC IV.
[97] Article 51(5) of AP I; discussed in Dinstein, supra, pp. 144–145 ('CoH').
[98] Art 50 of AP I. Discussed in Avril McDonald, supra; Hellestveit, supra, p. 102; Garbett, supra; Kinsella, supra.

AP I purposely chose to use a negative definition.[99] The aim was to expand the breadth of coverage to all those who are not combatants, rendering the civilian category more – not less – precise. Beyond this, another stated benefit of the binary is that it does away with the problem of having an 'undistributed middle' between the civilian and combatant categories.[100] The formulation is ostensibly alternative and exhaustive: every individual must fall into one of these two categories, and those who belong to one do not belong to the other.[101] This approach espouses the benefits of comprehensiveness and clarity. It is viewed as a solution to defining the civilian that is clear, inclusive and *ne varieteur*.[102] As it tracks closely with the text of the AP I distinction, the dominant vision espouses the same benefits of clarity and inclusion.

This promise of clarity quickly fades as soon as one contemplates the contemporary basis of civilian protection in armed conflict. It is proposed that contemporary protection is based on the following characteristics: harmlessness, non-participation in war, innocence and vulnerability.[103] As for how these four features fit together, it is submitted that the rationale for contemporary protection is primarily to protect those who are deemed harmless; this harmlessness relates to their non-participation in conflict, and the concept of innocence is folded into this. As is explained later in this chapter, the concept of vulnerability is also important: in the ICTY jurisprudence, there are debates over whether the vulnerability of a soldier *hors de combat* renders him 'like' a civilian. Further, in GC IV of 1949 and AP I, civilians deemed extra vulnerable receive special treatment. As is discussed below, many of these terms were used differently in past wars.[104]

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[99] Claude Pilloud, Yves Sandoz, Christophe Swinarski et al. (Eds.), *ICRC Commentary on Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: ICRC, 1987), pp. 609–611 ('AP Commentary'). Discussed also in Kinsella, supra, p. 142.

[100] Dinstein, supra, p. 142 ('CoH').

[101] Andrew Alexandra, 'Private Military and Security Companies and the "Civilianization" of War', in Lovell and Primoratz (Eds.), supra, pp. 183–189, 187.

[102] Pilloud et al. (Eds.), supra, p. 610 ('AP Commentary').

[103] Historically, concepts of loyalty and value to society were also important bases for protection in war. See Section 2.1.3.

[104] See Section 2.1.3.

According to the ICRC Commentary on the APs, the protection of civilians under IHL is connected to 'the inoffensive character of the persons to be spared and the situation in which they find themselves'.[105] The implication is that protection is not solely based on an individual's status as either civilian or combatant. Instead, protection under the APs of 1977 hinges on an individual's conduct.[106] While the armed/unarmed marker may thus serve as an indicator of an individual's civilian status in contemporary armed conflict, protection depends upon the nuances of actual participation.[107] The concept of DPH was introduced into IHL for this reason, and it now forms part of the dominant vision. At the same time, the fluidity introduced by the idea of DPH impugns the dominant vision, because it unsettles the notion of a fixed and stable line. This idea is picked up below, in Section 2.2.3.

Scholars critique the AP I definition of the civilian in other ways. Dinstein observes that IHL does not 'tell us who or what the protected persons and objects are';[108] Crawford adds that the civilian is given 'short shrift' in this legal instrument.[109] Garbett proposes that the lack of visual markers or features to confirm civilian identity means that designating someone a civilian involves interpreting aspects of their appearance or conduct 'that are understood *not* to characterize combatant status'.[110] While Garbett emphasizes that the protections accorded to the civilian entity in AP I are limited, she also contends that AP I solves what was previously an

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[105] Pilloud et al. (Eds.), supra, p. 610 ('AP Commentary').

[106] GC IV of 1949 implies that the primary basis for protecting civilians from harm is their lack of combatant status. See also Section 2.2.3.

[107] Hugo Slim, *Killing Civilians: Method, Madness, and Morality in War* (New York, NY: Oxford University Press, 2010), p. 210 ('Killing Civilians'). See also *Prosecutor v. Blagoje Simic et al.,* Case No. IT-95-9-T, Trial Judgment, ICTY, 17 October 2003, para. 659 (mere possession of a weapon does not create 'reasonable doubt' of civilian status); *Prosecutor v. Pavle Strugar,* Case No. IT-01-42-A, Appeal Judgment, ICTY, 17 July 2008, paras. 167, 178 (emphasizing actual harm caused by the civilian who directly participates in hostilities).

[108] Dinstein, supra, p. 114 ('CoH').

[109] Emily Crawford, *Identifying the Enemy: Civilian Participation in Armed Conflict* (Oxford: Oxford University Press, 2015), p. 233. See also Alejandro Lorite Escorihuela, 'Humanitarian Law and Human Rights Law: The Politics of Distinction', *Michigan State Journal of International Law,* Vol. 19, No. 2, 2011, pp. 300–407, p. 333.

[110] Garbett, supra, p. 100.

ambiguous civilian status.[111] Alexander takes a different view, proposing that AP I *introduces* ambiguity. In her account, delegates to the AP conferences in the 1970s were able to codify broad protections for civilians by suggesting not only that they already existed, but also that they were at the core of IHL.[112] Alexander proposes that the legal rules that were thereby introduced were in fact open to competing interpretations, containing a range of 'cautious disclaimers and imprecise provisions'.[113] Parts II and III of this study probe the ambiguity of distinction, illuminating empirically how competing interpretations of distinction materialize in the practices of international actors.

2.1.2 The centrality of distinction

The second aspect of the dominant vision is that it positions the principle of distinction at the centre of IHL. The ICRC Commentary on the APs of 1977 refers to the principle of distinction as 'the basis for the law of armed conflict'.[114] It states that the 'entire system established in The Hague in 1899 and 1907 and in Geneva from 1864 to 1977' is founded on this principle.[115] The International Court of Justice (ICJ) describes the principle as a 'fundamental' component of IHL, and links this to the principle being 'intransgressible'.[116] Crawford describes this principle as

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[111] Ibid., p. 69.
[112] Amanda Alexander, 'International Humanitarian Law: Postcolonialism and the 1977 Geneva Protocol I', *Melbourne Journal of International Law,* Vol. 17, No. 1, 2016, pp. 21–22 ('Postcolonialism').
[113] Ibid.
[114] Pilloud et al. (Eds.), supra, p. 438 ('AP Commentary').
[115] Ibid., p. 598. This study engages primarily with the Hague Regulations of 1899 and 1907, the Geneva Conventions of 1949 and the APs of 1977. The relevant citations are as follows: 1907 Hague Regulations, supra (for a list of the relevant Hague instruments, see: Final Act of the International Peace Conference, the Hague, 1899, Laws of Armed Conflicts 41, 42; Final Act of the Second International Peace Conferences, The Hague, 1907, Laws of Armed Conflicts 45, 45–6); Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31, Can TS 1965 No 20 ('GC I'); Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85, Can TS 1965 No 20 ('GC II'); Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135, Can TS 1965 No 20 ('GC III'); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287, Can TS 1965 No 20 ('GC IV'). See also AP I and AP II, supra.
[116] *Legality of the Threat or Use of Nuclear Weapons,* Advisory Opinion, ICJ Reports 1996, International Court of Justice, 8 July 1996, para. 257.

the cornerstone of IHL – a fulcrum around which IHL revolves.[117] While IHL instruments do not provide a civilian–combatant distinction in non-international armed conflicts,[118] Sassoli *et al.* propose that the principle of distinction *must* exist in NIACs if IHL is to be respected.[119] They write: 'Civilians can and will only be respected if government soldiers and rebel fighters can expect those looking like civilians not to attack them.'[120] Here, again, respect for distinction is inextricably linked to the broader implementation of IHL.

In a critique of the ICRC's strict approach to the principle of distinction, Berman addresses the tendency to link the principle of distinction to IHL as a wider body of law. He contends: 'The destabilization of *jus in bello* by means of its own categories…cannot be held back through avowedly counter-realistic fiats about the rigorous difference between combatants and civilians.'[121] He holds that such decrees, in fact, facilitate the very destabilization that the ICRC is trying to avert.[122] This points to why disruptions to the dominant vision are often concealed or downplayed: they threaten to destabilize not only distinction, but also an entire body of law.

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[117] Crawford, supra, p. 1. Crawford also interrogates the dominant vision. See below.

[118] Ibid., pp. 15, 73. On the under-regulation of NIACs, in general, see: Sandesh Sivakumaran, 'Re-Envisaging the International Law of Internal Armed Conflict', *European Journal of International Law,* Vol. 22, No. 1, 2011, pp. 219–264, 219 ('Re-Envisaging'); Dino Kritsiotis, 'Humanitarian Warfare: Towards an African Appreciation' ('Humanitarian Warfare'), in Jeremy I. Levitt (Ed.), *Africa: Mapping New Boundaries in International Law* (Oxford: Hart, 2008), pp. 149–180, 152.

[119] Marco Sassoli, Antoine Bouvier and Anne Quintin (Eds.), *How Does Law Protect in War?* (Geneva: ICRC, 2011), Chapter 5, p. 1 ('Casebook'). The principle of distinction in NIACs is sourced in customary international law. See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume I* (Cambridge: Cambridge University Press, 2009), p. 3.

[120] Sassoli et al. (Eds.), supra, p. 89 ('Casebook').

[121] Nathaniel Berman, 'Privileging Combat? Contemporary Conflict and the Legal Construction of War', *Columbia Journal of Transnational Law,* Vol. 43, No. 1, 2004, pp. 1–71, 54 (discussing the 'part-time combatant').

[122] Ibid., p. 54. See also Nicholette Boehland, *The People's Perspectives: Civilian Involvement in Armed Conflict* (Oxford: Oxford University Press, 2010).

2.1.3 A long history of civilian protection

The third characteristic of the dominant vision of IHL's principle of distinction is that it frames AP I distinction as the culmination of a long history of civilian protection. Thurer, for example, identifies GC I of 1864 as the earliest legal moment at which victims of war became the focal point.[123] However, this legal instrument does not, in fact, mention the civilian; instead, it allocates protection to wounded combatants. While the Hague Regulations of 1899 and 1907 are routinely cited as key components of the legal architecture of civilian protection in war,[124] these instruments primarily assign protection to prisoners and inhabitants of occupied territories. Moreover, the Hague Regulations do not prohibit the bombing or starvation of those outside the fight, nor do they prohibit reprisals.[125] In 1949, GC IV was the first convention to elucidate explicit protection for the civilian as a legal entity. For example, GC IV prohibits the use of collective punishment, intimidation or terror against civilians,[126] as well as the forcible transfer of civilians unless it is a temporary measure.[127] GC IV also refers to the category of 'protected persons', which includes those taking no active part in hostilities. Fighters who have lain down their arms and soldiers *hors de combat* are included in this category.[128] As noted in Chapter 1, GC IV does not, in fact, define the civilian.[129] Moreover, it focuses primarily on civilians under occupation and those in enemy territory. It does not deal with citizens who are in a territory controlled by their own government; nor does it deal with the issue of targeting in the conduct of hostilities.

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[123] Daniel Thurer, 'Dunant's Pyramid: Thoughts on the "Humanitarian Space"', *International Review of the Red Cross,* Vol. 89, No. 865, 2007, p. 50.

[124] Crawford, supra, pp. 14, 50 (as inferred in Pilloud et al. (Eds.), supra, p. 598 ('AP Commentary')); Judith Gardam, *Non-Combatant Immunity as a Norm of International Humanitarian Law* (Dordrecht: Martinus Nijhoff Publishers, 1993) ('NCI'). See also Richard Shelley Hartigan, *The Forgotten Victim: A History of the Civilian* (Chicago, IL: Precedent Publishing, 1982).

[125] Jochnick and Normand, supra, p. 76; Alexandra, supra, p. 116 ('Short History').

[126] Article 33 of GC IV.

[127] Article 49 of GC IV.

[128] Article 3 of GC IV.

[129] Nabulsi, supra, p. 11; Crawford, supra, p. 233. See also Chapter 1.

Alexander challenges claims that AP I represents the culmination of a long history of civilian protection. She depicts the contemporary civilian as a 20th century project, with its immediate precursor being the private citizen.[130] Law accorded little protection to the private citizen in earlier conflicts; this figure was seen not only as passive, but also as potentially dangerous, with her fate tied to that of her state.[131] Alexander connects the emergence of the contemporary civilian to the advent of aerial warfare, the engagement of the home front in war and the dissemination of propaganda regarding women and children.[132] During WWI, ideology combined with technological advances to render the non-combatant population vulnerable, and yet also valuable as a target.[133] It was these twin features of vulnerability and value that came to define the contemporary civilian.[134] In Chapter 3 it is argued that humanitarian actors disseminate a special status that both relies upon and seeks to transcend the civilian's vulnerability.

In sum, the dominant vision of a bright, fixed and stable binary distinction continues to exert a strong hold over international lawyers. While it contains within it the seeds of its own undoing, the clarity it promises remains appealing. In the remainder of this chapter, a number of disruptions to this vision are canvassed that, collectively, make the dominant vision all but impossible to sustain.

2.2 Disrupting the dominant vision

The present section engages with IHL doctrine and practices that impose a strain on a bright line civilian–combatant distinction. To provide some necessary context, the first section of this discussion considers the historical bases for protection in war. The second section contemplates uneven entitlements granted to civilians under GC

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[130] Alexander, supra, p. 34 and Chapter 4 ('PhD Thesis').
[131] Alexander, supra, p. 375 ('Genesis').
[132] Amanda Alexander, 'The Good War: Preparation for a War Against Civilians', *Law, Culture and the Humanities,* 2016, pp. 1–26, 3 ('Good War').
[133] Alexandra, supra, p. 365 ('Genesis').
[134] Ibid.

IV, in terms of access to protection and assistance. The third section examines four IHL rules that implicate or interact with IHL's principle of distinction. While the prohibition on perfidy is designed to police the civilian–combatant line, three other IHL rules – direct participation in hostilities, the presumption in favour of civilian status and the expansion of the combatant category – potentially imbue those in the civilian category with qualities of combatantness. The fourth section shifts to the ICTY, proposing that the adjudication of crimes against humanity pushes civilianness in different directions. The fifth and final section outlines an alternative vision of distinction, which is elaborated upon throughout the remainder of this study.

2.2.1 Historical approaches to protection in war

This discussion begins with the concept of innocence, elucidating how its meaning evolved and how protection in war increasingly came to be associated with an individual's harmlessness and non-participation in fighting. The aim is not to provide an extensive account of historical approaches, but to convey a general sense of how the rationale for protection changed over time. Attention is drawn to the absence of a binary configuration for organizing protection and the shifting relevance of an armed/unarmed marker.

Historically, **innocence** was connected to internal sentiment. Going back to the 5th century, Saint Augustine of Hippo conceptualized innocence as an internal spiritual condition – one that would be difficult to ascertain from the exterior.[135] In *City of God*,[136] he elucidated a tentative guilt–innocence opposition upon which protection in war was to be based.[137] This did not map onto a soldier/not-soldier dichotomy. Instead, several types of actors were singled out for protection due to their imputed innocence: those not involved in fighting; those no longer involved in fighting; and

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[135] Colm McKeogh, *Innocent Civilians: The Morality of Killing in War* (New York, NY: Palgrave, 2002), p. 26.
[136] Hartigan, supra, p. 29.
[137] Ibid., p. 36.

women and children.[138] In practice, Augustine believed that very few individuals were, in fact, innocent. Members of those populations whose leaders had committed wrongs were seen to share the burden of (moral) guilt for their leader's unjust acts.[139]

Over time, innocence came to be associated more strongly with **non-participation** in fighting and an individual's concomitant **harmlessness**. As articulated by Francisco de Vitoria in the 16th century, innocence could be determined through the presence or absence of objectively verifiable criteria such as the bearing of arms or conduct. [140] Those who were not involved in war fighting were deemed to pose no threat of harm and to lack responsibility for the war.[141] Bearing arms triggered a presumption of guilt, as armed individuals posed an immediate threat;[142] being unarmed, on the other hand, attracted a presumption of innocence.[143] These were rebuttable presumptions, and the potential for guilt was always present. [144] Protection was conceptualized as a contingent concept – an approach that also found favour in the medieval texts of Honore Bonet [145] and the writings of Grotius[146] and Vattel.[147]

Vitoria's interpretation of innocence continued to influence more recent iterations of just war theory. For example, Walzer described innocent people as those who had done – and were doing – nothing too warlike so as to entail a loss of rights.[148] Despite this move to tie innocence to more objective criteria such as the bearing of

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[138] Ibid., pp. 31, 36.
[139] McKeogh, supra, p. 65.
[140] Ibid., p. 85; Hartigan, supra, p. 90.
[141] Ibid.
[142] McKeogh, supra, p.86.
[143] Ibid., p. 87; Betcy Jose, 'Would the Protected Please Stand Up? Historical Ambiguity and the Distinction Principle', in Edward Lorenz, Dana Aspinall and J. Michael Raley (Eds.), *Montesinos' Legacy: Defining and Defending Human Rights for Five Hundred Years* (London: Lexington Books, 2014), p. 58.
[144] Kinsella, supra, p. 68.
[145] Discussed in Alexander, supra, p. 33 ('PhD Thesis').
[146] Kinsella, supra, pp. 75–81. Hartigan, supra, p. 99.
[147] Jose, supra, p. 59.
[148] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York, NY: Basic Books, 2015), p. 146.

arms, the concern with internal sentiment did not disappear entirely after Vitoria's time. An example of how it resurfaced later can be found in the 1863 Lieber Code,[149] which introduced a hierarchy of protection based on loyalty.[150] The Code delineated three sub-categories of unarmed citizens: loyal, disloyal (sympathizing with the rebellion) and manifestly disloyal (giving 'positive aid and comfort' to the rebellious enemy).[151] Those deemed loyal citizens were to be protected as much as possible from war, while war's burden was to be placed on those belonging to the latter two categories.[152] The logic was that the external sign of (not) bearing arms only mattered if it was not contradicted by internal sentiment.[153] What is noteworthy about the Lieber Code approach, for the purposes of the present discussion, is how it set up internal divisions within the category of unarmed actors.

While innocence increasingly overlapped with harmlessness and non-participation in conflict, the latter also developed as separate bases for protection in war. The notion of sparing those who are **harmless** featured prominently in canonical decrees and chivalric codes; in the latter codes – as well as various medieval texts – harmlessness was equated with weakness.[154] Under the canonical decrees of the 10th and 11th centuries, certain classes of people, their property and their actions were protected in war.[155] Without going into the details of these approaches to protection, what is striking is their lack of reliance on a civilian–combatant binary. In the 17th century, Hugo Grotius carried forward the idea from the canonical decrees and chivalric codes that certain classes of people should be spared in war. He counted among

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[149] Also known as General Orders, Number 100, *Instructions for the Government of Armies of the United States in the Field* (War Department, Washington, DC, 24 April 1863) ('Lieber Code'). Discussed also in Kinsella, supra, p. 86; Alexander, supra, p. 363 ('Genesis'). For an argument that the Lieber Code is the prototype of contemporary IHL, see Geoffrey Best, *Humanity in Warfare: Modern History of the International Law of Armed Conflicts* (New York, NY: Columbia University Press, 1980), p. 171; Stephanie McCurry, 'Enemy Women and the Laws of War in the American Civil War', *Law and History Review,* Vol. 35, No. 3, 2017.
[150] Discussed in Kinsella, supra, pp. 86, 172.
[151] Article 155 of the 'Lieber Code', supra. See also Emily Camins, 'The Past as Prologue: The Development of the "Direct Participation" Exception to Civilian Immunity', *International Review of the Red Cross,* Vol. 90, No. 872, 2008, pp. 853-881, p. 863.
[152] Article 156 of the 'Lieber Code', supra.
[153] Kinsella, supra, p. 86.
[154] G.W. Coopland, *The Tree of Battles of Honore Bonet: An English Version with Introduction by G. W. Coopland* (Liverpool: Liverpool University Press, 1949), p. 130.
[155] Kinsella, supra, p. 26.

them women, children, the elderly and those holding certain peacetime occupations such as merchants, clerics and farmers.[156] The rationale for protection was grounded in these persons' (in)ability to fight, as well as their value to society.[157] A variation on this concept of value to society is introduced in Chapter 3, in connection with the special acts that humanitarian actors perform in armed conflicts. By the 18th century, the main criterion for claiming protection in war was **non-participation** in unjust acts. Emer de Vattel proposed that those offering no resistance and not participating in fighting – such as women, children, the aged and the sick – should not be harmed in war.[158] Here, it was not individuals' sex, age or occupation that formed the basis for immunity, but the assumptions these characteristics generated about their participation.[159]

Reflecting on this brief historical discussion, the lack of a binary configuration for organizing protection is evident. As Kinsella illuminates, there is nothing inevitable about the civilian and combatant entities; IHL defines these entities and thereby produces the subjects it claims to protect.[160] What is also noteworthy is how consistently a high burden to secure protection is imposed on those who are not engaged in fighting. It is only the most innocent, harmless, worthy and removed individuals – typically women, children and the elderly – who are deemed to merit protection.[161] Furthermore, the concept of contingent protection means that an individual's claim to protection can be forfeited if he or she behaves in a manner that is deemed (potentially) threatening. Without overstressing continuity between past and present approaches, many of these dynamics continue to play out in

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[156] Jose, supra, p. 56; Hartigan, supra, p. 99.
[157] Jose, supra, p. 56.
[158] Emer de Vattel, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin of Nature and Natural Law and on Luxury,* Bela Kapossy and Richard Whitmore (Eds.) (Indianapolis, IN: Liberty Fund, 2008), Book 3, Chapter 8, sections 72, 145, 147, available at: http://oll.libertyfund.org/titles/vattel-the-law-of-nations-lf-ed. Discussed in McCurry, supra, p. 669, pp. 282–283.
[159] Hartigan, supra, p. 108.
[160] Kinsella, supra, pp. 190–195.
[161] For an argument that it is women who are the essential non-combatants or civilians, see: Kinsella, supra, p. 16; McCurry, supra, p. 669.

contemporary wars. Enduring debates about women [162] and children [163] who participate in armed conflict offer an example. While these individuals may initially be deemed innocent due to assumptions about gender or age, this calculus changes the moment they join the fight.

Having provided some historical context, the discussion now turns to the treatment of the civilian category in GC IV.

2.2.2 GC IV of 1949: The civilian disaggregated

Before the civilian was defined in IHL, and before the principle of distinction was codified in AP I, GC IV of 1949 splintered the civilian category. It did this by allocating some civilians who were deemed especially vulnerable additional entitlements to protection and assistance that other civilians could not claim. This study proposes that this splintering rendered civilianness relative. That is, civilians who were singled out for special treatment acquired 'civilian plus' status, while those who were left behind were relegated to 'mere civilian' (and perhaps 'civilian minus') status. Recognizing that the civilian category was already fragmented before AP I is absolutely crucial for making sense of the everyday distinction practices that humanitarian actors engage in.

As mentioned above, GC IV does not define the civilian entity that is supposed to be the object of legal protection. The overarching impression given by proponents of the dominant vision of distinction, however, is that GC IV contains a unified civilian category made up of those lacking combatant status. In fact, this legal instrument does something that significantly undermines the notion of a unified

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[162] Judith Gardam, 'Women and the Law of Armed Conflict: Why the Silence?', *International and Comparative Law Quarterly,* Vol. 46, 1997 ('Women'); Orly Maya Stern, *Gender, Conflict and International Humanitarian Law: A Critique of the 'Principle of Distinction'* (Routledge, 2018); Garbett, supra, pp. 92–93.

[163] Drumbl, supra; Rene Provost, 'Targeting Child Soldiers', *European Journal of International Law Blog EJIL: Talk!,* 12 January 2016, available at: http://www.ejiltalk.org/targeting-child-soldiers/. Alex Sinha, 'Child Soldiers as Super-Privileged Combatants', *International Journal of Human Rights,* Vol. 17, No. 4, 2013, pp. 584–603.

civilian category: it disaggregates the civilian population for the purposes of receiving protection and accessing humanitarian assistance.[164] In some instances it does so on the basis of social characteristics such as age and gender. In the context of occupation, for example, Article 50 states that the Occupying Power shall not impede any preferential measures in regard to food, medical care and protection for children younger than 15 years, expectant mothers and mothers of children under 7 years.[165] There are further provisions in GC IV that single out certain civilians for special treatment. Some of these relate to setting up hospitals and safety zones to protect designated groups,[166] granting the passage of essential supplies to pregnant women and children[167] and providing members of listed groups with special access to evacuation.[168] Article 16(2) further stipulates that the wounded and sick, the infirm and expectant mothers 'shall be the object of particular protection and respect'.[169] This last provision addresses not only those who would otherwise be categorized as civilians, but also fighters who have become vulnerable by virtue of being *hors de combat*. It is important to recall, here, that IHL's protections were first designed for wounded soldiers on the battlefield, and that the concept of 'wounded and sick' was subsequently expanded to all those who are particularly vulnerable and in need of care.[170]

From a relational perspective,[171] the question that arises here is how IHL situates individuals who are accorded special treatment in relation to other members of the general civilian population. The ICRC Commentary to GC IV stipulates that granting something extra to certain segments of the civilian population is not

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[164] Thanks to Dino Kritsiotis for this point, in response to the author's presentation on the 'Emotional Warfare' panel at the conference 'The Historicization of International Law', 2016, Uppsala, Sweden.
[165] Article 50 of GC IV.
[166] Article 14 of GC IV (providing for hospitals and safety zones that aim at protecting certain groups from the effects of war).
[167] Article 23 of GC IV (granting passage to essential supplies for pregnant women and children).
[168] Article 17 of GC IV (granting special access to evacuation for members of listed groups).
[169] Article 16(2) of GC IV.
[170] Discussed in Sandoz, supra, p. 101 ('Land Warfare'), citing the definition of 'wounded and sick' in Article 8(a) of AP I.
[171] See Chapter 1 for an overview of this study's relational approach.

supposed to take anything away from others.[172] According special respect or protection to some individuals, it states, does not free belligerents from their obligation to respect and protect the wider civilian population.[173] The Commentary further asserts that special protections are 'not instead of, but in addition to the protection given generally'.[174] This study challenges such claims. It counters that, even if what is given is 'in addition to' general civilian protection, something *is* taken away from civilians who are not accorded special treatment. That is, allocating extra entitlements to some segments of the civilian category functions to render civilianness *relative*.[175]

Weil contemplates the drawbacks of establishing different degrees of normative intensity in international law.[176] He suggests that dropping the norm/non-norm distinction could interfere with the quality of a given international norm.[177] Even if there are morally sound reasons to accord a higher position to certain norms, the prospect of unlimited gradation pushes international law in the direction of relativity and randomness.[178] Applying these insights to the present investigation, the risk of singling out some civilians for special protection is that it fundamentally alters the concept of (general) civilian protection. It is proposed that those who are accorded special treatment acquire a 'civilian plus' status, while civilians who are not singled out take on 'mere civilian' status.[179] There are also hints that a 'civilian minus' status is in circulation. This figure's existence becomes more explicit in the discussion of DPH and other doctrinal engagements (see below).

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[172] 1958 Commentary to GC IV re: Art 16(2) of GC IV.

[173] Ibid.

[174] Ibid.

[175] This is not to say that humanitarian assistance that accords preferential treatment to especially vulnerable populations cannot be impartial. See Dapo Akande and Emanuela-Chiara Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict* (UN Office for the Coordination of Humanitarian Affairs, 2016), p. 9 ('Oxford Guidance'). See also Chapter 3.

[176] Prosper Weil, 'Towards Relative Normativity in International Law?' *American Journal of International Law,* Vol. 77, 1983, pp. 413–442. Weil speaks generally about international legal norms such as the designation of certain offences as international crimes.

[177] Weil, supra.

[178] Ibid., pp. 421, 430, 440–441.

[179] Engeland argues that these IHL rules establish a 'sub-category' of civilians and introduce individuals who potentially 'fall in between the categories' of civilians and combatants. See Anicee van Engeland, *Civilian or Combatant? A Challenge for the 21st Century* (Oxford: Oxford University Press, 2011), pp. 75, 161.

Combined with the other disruptions of the dominant vision that are discussed here, this fracturing of the civilian category illuminates why contests might occur along civilian–civilian lines. If civilianness is a matter of degree, then individuals seeking protected status will naturally wish to claim the most robust iteration with the highest level of entitlements. As Parts II and III of this study highlight, international (non-humanitarian) civilian actors express serious anxiety regarding the prospect of a spectrum – or hierarchy – of civilian actors.

A few further remarks are merited here on how AP I delineates the populations that are entitled to receive assistance and protection in armed conflict. The relevant AP I rules deviate somewhat from the GC IV approach that has just been outlined.[180] Significantly, AP I expressly states that humanitarian assistance is for the entire civilian population, rather than only specified vulnerable groups.[181] Nonetheless, AP I stipulates that certain members of the civilian population, including children, expectant mothers and nursing mothers, have priority access to assistance and protection.[182] Both women and children are again referred to in these AP I provisions as 'the object of special respect'.[183] So, while AP I provides that humanitarian assistance should be given to the entire civilian population, it still engages in disaggregation of the sort envisioned in GC IV.

2.2.3 AP I of 1977: The civilian in question

Four AP I rules are examined here, in turn: the prohibition on perfidy, the concept of direct participation in hostilities, the presumption in favour of civilian status and the expansion of the combatant category. In the previous section, it was argued that,

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[180] The humanitarian actor under AP I is discussed separately in Chapter 3.
[181] Articles 69 and 70 of AP I
[182] Articles 70 and 70(1) of AP I. See also Article 76 of AP I (additional protection for women); Article 77 of AP I (additional protection for children); Article 76 of AP I (evacuation of children).
[183] Articles 76 and 77 of AP I; see also Article 4(3d) of AP II (special protection for captured children with DPH who are younger than 15).

by setting up a sliding scale of entitlements, IHL defines civilianness in relative terms. The present discussion reiterates this point, bringing the prospect of a 'civilian minus' status to the fore. Individuals assigned this status creep ever closer to the combatant category and the prospect of being considered a legitimate target in armed conflict.

In contemporary armed conflict, the prohibition on **perfidy** functions to uphold IHL's civilian–combatant distinction: it requires those engaged in fighting to stay on their side of the line. Briefly, this prohibition forbids those engaged in war fighting from feigning civilian status in an attempt to deceive or to secure concomitant benefits.[184] Compliance with this rule is incentivized by the fact that a soldier who misleadingly wears civilian clothing may be legally targeted during this time.[185] Historically, this prohibition was grounded in concerns about the honour and dignity of the fighter.[186] Whatever the underlying motivation, perfidy is, in essence, about trust. It goes to the issue of whether one can have confidence that the person in front of them is who or what they appear to be.[187] The overall thrust of the prohibition on perfidy is to preserve and reinforce the notion of a binary civilian–combatant distinction. It also puts a premium on authentic civilianness. That is, IHL outlaws the feigning of civilian status, while it treats many other forms of deception as lawful ruses.[188] All of this suggests that the prohibition on perfidy stabilizes the dominant vision of distinction. To complicate that claim, however, it could also be argued that the prohibition on perfidy imposes a strain on the bright line binary by revealing the capacity for authentic and fake civilians.

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[184] See Article 37 of AP I, based on Article 23(b) of the Hague Regulations; Article 37(1) in Pilloud et al. (Eds.), supra, p. 435 ('AP Commentary'); Rule 65 of the ICRC Customary Law Study, supra; Blum, supra, p. 41 ('Lesser Evil').

[185] Gabriella Blum and Philip Heymann, 'Law and Policy of Targeted Killing', *Harvard National Security Journal*, Vol. 1, 2010, p. 146.

[186] Blum, supra, p. 41 ('Lesser Evil').

[187] Ibid.

[188] On lawful ruses in customary IHL, see Rule 57 of the ICRC Customary Law Study, supra.

While the IHL rules on perfidy bar combatants from feigning or simulating civilian status, the **Article 44(3) exception** provides that, in specified circumstances, combatants are relieved of the obligation to distinguish themselves from the general civilian population.[189] While combatants must still carry weapons openly while engaging directly in hostilities, they are permitted to blend in with the civilian population between combat phases.[190] The effect of this provision, which accommodates the tactics of irregular fighters, is to expand the combatant category.[191] Those who oppose this IHL rule argue that it leads parties to the conflict to regard civilians as potential combatants in disguise.[192] This points again to the trust issue, suggesting that one's appearance might not be an accurate indication of one's status. It should be stressed that, when within sight of the enemy, persons are prohibited from feigning protected status in order to carry out a hostile act.[193] Nonetheless, the Article 44(3) exception imbues the principle of distinction with compromise and has a destabilizing impact on the dominant vision of a civilian–combatant binary.

Whereas the two provisions discussed thus far address combatants who look like civilians, the concept of **direct participation in hostilities (DPH)** is concerned with civilians who join in the fighting. While AP I provides for the most robust form of civilian immunity that has so far been codified in positive law, it also contains the crucial caveat that civilians who participate in war may lose their immunity.[194] As stipulated in Article 51(3): 'Civilians shall enjoy the protection

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[189] Article 43(3) of AP I states that, where a combatant cannot distinguish himself due to the nature of hostilities, 'he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly: (a) during each military engagement, and (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate'.

[190] Yves Sandoz, 'Land Warfare', in Andrew Clapham and Paola Gaeta (Eds.), *Oxford Handbook of International Law in Armed Conflict* (Oxford: Oxford University Press, 2014), pp. 91–117, 96 ('Land Warfare').

[191] Crawford, supra, pp. 41–42; Kinsella, supra, p. 6.

[192] United Kingdom Ministry of Defence, *The Joint Service Manual of the Law of Armed Conflict*, JSP 383 (2004), 4.5.1. Cited in Crawford, supra, p. 43.

[193] Sandoz, supra, pp. 95–96 ('Land Warfare').

[194] Article 51(3) of AP I; Crawford, supra, p. 233. See also comments above regarding the principle of proportionality, which also shows that civilian immunity has limits.

afforded by this part, unless and for such time as they take a direct part in hostilities.'[195] While the dominant vision of distinction sets up the civilian and combatant categories as alternative and exhaustive, DPH introduces temporal fluidity. At any given time, there may be actors located in the civilian category who have recently engaged in fighting or are about to do so. These individuals, who would otherwise have civilian status, may be lawfully targeted on the basis of their conduct.[196] Furthermore, unlike combatants, they are liable for prosecution due to their acts, as well as punishment by a Detaining Power. Civilians who directly participate are thus treated differently from combatants, as well as from civilians who do not DPH.[197]

In the mid-2000s, international lawyers expected the concept of DPH to re-invigorate IHL.[198] However, the intensive global discussions of DPH that ensued did not ultimately have the desired effect. On the contrary, delving into DPH drew attention to the fact that the principle of distinction was widely viewed as 'a disputed concept, one that was open to multiple reasonable interpretations'.[199] Contemplating the implications of DPH for a binary distinction, some commentators suggest that it allows actors to cross the civilian–combatant line.[200] This view maintains the binary formulation but jettisons the notion of a bright line.

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[195] Article 51(3) of AP I. See also Article 13(3) of AP II. On special problems with DPH in NIACs and the notion of a 'continuous combat function', see Dinstein, supra, p. 42 ('CoH'). See also Rule 6 of ICRC Customary Law Study, supra ('Civilians are protected against attack, unless and for such a time as they take a direct part in hostilities').

[196] On the relationship between status and conduct, see Dinstein, supra, p. 42 ('CoH').

[197] A combatant is entitled to PoW status upon capture, and can engage in certain types of violent conduct. Discussed in Crawford, supra, p. 48.

[198] Naz Modirzadeh, 'Folk International Law: 9/11 Lawyering and the Transformation of the Law of Armed Conflict to Human Rights Policy and Human Rights Law to War Governance', *Harvard National Security Journal*, Vol. 5, No. 1, 2014, pp. 225–304, 301 ('Folk IL').

[199] Ibid., p. 302. It also exposed the lack of agreement regarding what actually constitutes DPH. For the relevant ICRC guidance and critiques, see: International Committee of the Red Cross, 'Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law', *International Review of the Red Cross*, Vol. 90, No. 872, December 2008, pp. 991–1047 ('ICRC Interpretive Guidance'); Ryan Goodman and Derek Jinks, 'The ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law: An Introduction to the Forum', *NYU Journal of International Law and Politics*, Vol. 42, 2010, pp. 637–640.

[200] McKeogh, supra, pp. 138, 140 (arguing that AP I actually did away with a 'no man's land' or gap between the civilian and combatant categories that had previously been occupied by irregular fighters).

Others contend that DPH sets up a third category of actor.[201] While Hellestveit maintains that IHL's principle of distinction has, in fact, 'always been stretched' to cover a third category,[202] she goes on to characterize the distinction as 'otherwise orderly'.[203] This latter view is not all unusual. Many commentators zealously disseminate the dominant vision, even as they acknowledge it is undermined in significant ways. This attests to the appeal of the dominant vision and the clarity that it promises.

Further to the promise of clarity, Article 50(1) of AP I provides that, in cases of doubt, there is a **presumption in favour of civilian status**. Ostensibly, this supports the vision of a broad, unified civilian category populated by all those who are not combatants. Although it may be argued that all legal doctrine is imbued with some level of doubt or ambiguity, what is interesting here is the explicit inclusion of 'doubtful' civilians in the civilian category. Reflecting on the function of doubt in Article 50(1), Kinsella proposes that it 'becomes an integral attribute of the category itself as well as the basis for the injunction to extend the category'.[204] Through this presumption, Kinsella argues, IHL admits that the distinction between combatant and civilian is imprecise.[205] Put differently, IHL asserts that only some individuals in the civilian category are 'definitely' civilians.[206]

In the previous discussion of access to protection and assistance under GC IV of 1949, it was proposed that the allocation of special entitlements to particularly vulnerable civilians relativizes civilianness. The doctrinal engagements from AP I that are discussed here continue this process. While the prohibition on perfidy incentivizes combatants to stay on their side of a binary configuration, it also

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[201] Kinsella, supra, p. 144 (DPH sets up a new category of civilian); Dinstein, supra, pp. 58, 175, 177 ('CoH') and Richard Baxter, 'So-Called "Unprivileged Belligerency": Spies, Guerrillas, and Saboteurs', *British Yearbook of International Law*, Vol. 28, 1951, pp. 323–345, 328 (on the concept of unprivileged belligerents).
[202] Hellestveit, supra, pp. 102–103.
[203] Ibid., p.103.
[204] Kinsella, supra, pp. 143, 144, 185.
[205] Ibid., p. 5.
[206] For a broader discussion of civilian ambiguity, see Slim, supra, pp. 182–184 ('Killing Civilians').

confirms that some individuals who appear to be civilians may be soldiers in disguise. Concepts such as DPH, the Article 44(3) exception and the presumption in favour of civilian status go further. They allow qualities of combatantness to attach to individuals who would otherwise be categorized as civilians. An individual assigned 'civilian minus' status is potentially dangerous and complicit – a participant in the fight. A 'mere civilian' not only lacks 'civilian plus' status, but also slides closer to 'civilian minus'. Crucially, all of this fragmentation happens prior to, and apart from, anything international humanitarian actors do with distinction.

2.2.4 The ICTY: Civilianness pushed in different directions

As a branch of international law, international criminal law (ICL) plays an important role in interpreting and enforcing IHL.[207] International criminal tribunals are significant forums where the figure of the civilian is constituted, articulated, produced and disseminated. However, it should be clarified at the outset that the 'civilian' protected under ICL from offences such as crimes against humanity is not necessarily the AP I civilian accorded with target immunity in the conduct of hostilities.[208] This is examined in more detail, below, with the cases of *Martic*[209] and *Milosevic*[210] used as entry points for a discussion of the way in which civilianness is pushed in different directions at the ICTY.[211] These contests over civilianness impugn the dominant vision of distinction and the idea of a stable civilian category. As Garbett observes, the navigation of the concept of the civilian at the ICTY

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[207] Claus Kress, 'Towards Further Developing the Law of Non-International Armed Conflict: A Proposal for a *Jus in Bello Interno* and a New *Jus Contra Bellum Internum*', *International Review of the Red Cross,* Vol. 96, No. 893, 2015, pp. 30–44, 33; Sivakumaran, supra, pp. 232–233 ('Re-Envisaging').

[208] For a discussion of different definitions of terms in IHL and ICL, see Sivakumaran, supra, p. 239 ('Re-Envisaging'). For a discussion of why transposing the AP I definition of the civilian in ICL is potentially problematic, see Robert Cryer et al. (Eds.), *An Introduction to International Criminal Law and Procedure*, 3rd edition, (Cambridge: Cambridge University Press, 2014), p. 231.

[209] *Prosecutor v. Milan Martic*, Case No. IT-95-II-A, Appeal Judgment, ICTY, 8 October 2008 ('*Martic* Appeal Judgment').

[210] *Prosecutor v. Dragomir Milosevic,* Case No. IT-98-29/1-T, Trial Judgment, ICTY, 12 December 2007 ('*Milosevic* Trial Judgment').

[211] The Court was established under UN Security Council (UNSC), *Security Council Resolution* 827 (1993), [International Criminal Tribunal for the Former Yugoslavia (ICTY)], 25 May 1992, S/RES/827.

undermines the IHL premise 'that all persons are either civilian or combatant'.[212] Again, the fluidity that is shown sheds light on the reason why humanitarian actors might promulgate 'civilian plus' status.

First, in *Martic*, soldiers *hors de combat* were found to be victims of crimes against humanity. The implication was that qualities associated with contemporary civilianness – particularly harmlessness and vulnerability – could attach to individuals who would otherwise be categorized as combatants, entitling them to be protected like civilians. What is more, ICTY judges entertained the possibility that solders *hors de combat* could also be classified as 'civilians' for the purpose of crimes against humanity. While the ICTY Appeals Chamber ultimately rejected this latter proposition, it may yet see the light of day in other international tribunals.

The first issue to be considered here is the breadth of the civilian category in the context of crimes against humanity. While war crimes, as a category of offence, explicitly protect combatants, those rendered *hors de combat* and civilians, crimes against humanity are primarily designed to protect civilians. In brief, crimes against humanity are systematic crimes that are committed as part of a general policy of attacking a civilian population.[213] In Article 5 of the ICTY Statute, this category of crime is constructed in such a way that certain underlying offences (*i.e.* murder) must be committed in the context of an attack directed against 'any civilian population'.[214] This latter requirement is referred to as the *chapeau* element, and it refers to an attack that is widespread or systematic in nature;[215] neither the nationality nor the ethnicity of the civilians against whom the attack is directed are relevant.[216]

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[212] Garbett, supra, p. 149.

[213] Article 5 of the UN Security Council, 1993, Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002), 25 May 2003 ('ICTY Statute').

[214] Ibid.

[215] *Prosecutor v. Dusko Tadic,* Opinion and Judgment, Case No. IT-94-I, Trial Judgment, ICTY, 7 May 1997, para. 727 ('*Tadic* Trial Judgment').

[216] William J. Fenrick, 'The Crime against Humanity of Persecution in the Jurisprudence of the ICTY', *Netherlands Yearbook of International Law,* Vol. 32, 2001, p. 86.

This construction of the offence prompts questions about: whether specific civilians must be the target of the underlying offence; whether and to what extent the civilian population must be composed entirely of civilians; and the meaning of the term 'civilian' in both contexts. These issues came to the fore in the trial and appeal of Milan Martic. Martic had held various governmental positions within the Serbian Autonomous Region of Krajina, and subsequently became Commander of the Republic of Serbian Krajina (RSK) forces. He was accused of – amongst other offences perpetrated individually or as a member of a Joint Criminal Enterprise – planning and ordering the shelling of civilian areas and the civilian population of Zagreb in May 1995. Some, but not all, of the victims of these attacks were soldiers *hors de combat*.

A key question that arose in the *Martic* appeal was how the term 'civilian' in Article 5 of the ICTY Statute should be defined. In the trial judgment, the ICTY Trial Chamber had found that defining the civilian too expansively would 'impermissibly blur' the distinction between combatant and non-combatant.[217] Following suit, the Appeals Chamber applied the narrow AP I definition of the civilian,[218] citing the 'fundamental character of the notion of the civilian' in both IHL and ICL.[219] The Chamber also noted that the AP I definition accords with the ordinary meaning of the term 'civilian', as a person who is not a member of the armed forces.[220] The ICTY had not always hewn to such a narrow definition of the civilian, however. In *Kordic and Cerkez*, the Appeals Chamber appeared open to a more expansive interpretation of 'civilian' – one that could include members of the armed forces

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[217] '*Martic* Trial Judgment', supra, para. 56. A similar approach is followed in '*Blaskic* Appeal Judgment', supra, paras. 113–114; '*Galic* Appeal Judgment', supra, FN 437 (members of armed forces cannot claim civilian status); *Prosecutor v. Mrksic et al.*, Case No. IT-95-I3/I-T, Trial Judgement, ICTY, 27 September 2007, para. 461.

[218] '*Martic* Appeal Judgment', para. 299. Following *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23/IT-96-23/I-A, Appeal Judgment, ICTY, 12 June 2002, para 91.

[219] '*Martic* Appeal Judgment', supra, para. 91.

[220] Ibid., para. 297.

placed *hors de combat.*[221] A number of ICTY trial judgments have also evinced a broader approach to defining the civilian.[222] In *Prosecutor v. Kupresic,* the ICTY Trial Chamber held that the word 'civilians' in Article 5 should be interpreted broadly, 'the more so because the limitation in Article 5 constitutes a departure from customary international law'.[223]

The second key question in the *Martic* appeal was whether all individual victims of crimes against humanity must be civilians. Article 5 of the ICTY statute is silent on this point.[224] While retaining the *chapeau* requirement of 'any civilian population', the Appeals Chamber found that, within the wider civilian population, each individual victim does not have to be a civilian in the IHL sense.[225] Accordingly, members of armed forces who have been rendered *hors de combat* may also be victims of crimes against humanity.[226] One question that *Martic* left unresolved is what would happen in a scenario where every single individual targeted in an attack failed to meet the AP I definition of a civilian. This was clarified in the *Mrksic* appeal, wherein the Appeals Chamber found that a population composed entirely of those who were *hors de combat* – in that case, prisoners of war – did not meet the criteria of 'any civilian population'.[227] To date, most international tribunals have followed *Martic* in excluding soldiers *hors de combat* from the civilian population.[228] The Extraordinary

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[221] *Prosecutor v. Dario Kordic and Mario Cerkez,* Case No. IT-95-14/2-A, Appeal Judgment, ICTY, 17 December 2004, paras. 421–422. Note that the Appeals Chamber also held that the AP I definition of civilians and civilian populations was relevant to crimes against humanity (para. 97).

[222] See, *e.g.: Prosecutor v. Kupresic et al.,* Case No. IT-95-16-T, Trial Judgment, ICTY, 14 January 2000; *Prosecutor v. Momcilo Krajisnik*, Trial Judgment, Case No. IT-00-39-T, ICTY, 27 September 2006, para. 706; *Prosecutor v. Fatmir Limaj et al*, Case No. IT-03-66-T, Trial Judgment, ICTY, 30 November 2005, para. 186.

[223] '*Kupresic et al.* Trial Judgment', supra, para. 549. Citing *Prosecutor v. Klaus Barbie,* French Court of Cassation (Criminal Chamber), 20 December 1985, 78 ILR 125. For an argument that there was slippage in these earlier cases between the use of the term 'civilian' in the underlying offence and the *chapeau* requirement, see Joakim Dungel, 'Defining Victims of Crimes against Humanity: *Martic* and the International Criminal Court, *Leiden Journal of International Law,* Vol. 22, 2009, pp. 727–752, para. 743.

[224] Discussed also in Dungel, supra, p. 736.

[225] '*Martic* Appeal Judgment', supra, para. 307. Citing, *e.g.,* '*Blaskic* Appeal Judgment', supra, paras. 114–115.

[226] '*Martic* Appeal Judgment', supra, para. 307. The Appeals chamber found this to reflect customary international law (para. 309).

[227] *Prosecutor v. Mrksic et al.*, Case No. IT-95-13/1-A, Appeal Judgment, ICTY, 5 May 2009, paras. 33–e5. The same attack was still prosecuted as a war crime.

[228] The International Criminal Court, Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia have followed the *Martic* Appeal Judgment in excluding soldiers *hors de combat*

Chambers in the Courts of Cambodia (ECCC) will soon revisit the issue, in two cases involving attacks by the Khmer Rouge against its own soldiers in the 1970s.[229]

In *Martic,* the ICTY Appeals Chamber established the category of a suddenly-vulnerable combatant who merits the same protection as a civilian. This was the case, even if the Appeals Chamber did not go so far as to move the bright line by including soldiers *hors de combat* in the civilian population. Considering the rationale for protection in contemporary armed conflict, it is perhaps not so surprising that soldiers *hors de combat* have emerged as figures worthy of special protection. It is important to recall that IHL's protections were originally designed for wounded, sick or captured combatants. [230] Kinsella reminds that the justifications for contemporary civilian protection have essentially been 'grafted onto' these protections for combatants. [231] Going back further, it was Rousseau who first articulated the idea that once a soldier becomes wounded, sick or captured, he ceases to be an instrument of the state; instead, he becomes an individual with rights that merit protection.[232]

Turning now to the *Milosevic* trial, the issue of attacks directed at a civilian population arose in the context of crimes against humanity and the war crime of

from the civilian population: *Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07, Judgment pursuant to Article 74 of the Statute, ICC, 7 March 2014, para. 1102; *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, Case No. SCSL-04-15-T, Trial Judgment, SCSL, 2 March 2009, para. 82; Case 001(*Prosecutor v. Kaing Guek Eav*), Case No. 00I/18-07-2007-ECCC/TC, Trial Judgment, ECCC, 26 July 2010, paras. 304–305; Case 002/01 (*Prosecutor v. Nuon Chea and Khieu Samphan*), Case No. 002/19-09-2007/ECCC/TC, Trial Judgment, ECCC, 7 August 2014. See also the more expansive approach of the International Criminal Tribunal for Rwanda: *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Judgment, ICTR, 2 September 1998, para. 582.

[229] Case No. 003/07-09-2009-ECCC-OCIJ, ECCC and Case No. 004/07-09-2009-ECCC-OCIJ, ECCC. Compare the Amicus Curiae submissions of Rachel Killean, Eithne Dowds and Amanda Kramer, 'Soldiers as Victims at the ECCC: Exploring the Concept of "Civilian" in Crimes Against Humanity', *Leiden Journal of International Law*, Vol. 30, 2017, pp. 685–705 (articulating a human rights–based definition of the civilian); with Catherine Drummond, Philippa Webb and Dapo Akande, *Amicus Brief for Cases 003 and 004*, submitted to the Co-Investigating Judges of the ECCC, 19 May 2016 (finding a narrower approach more consistent with law).

[230] Sandoz, supra, pp. 100–101 ('Land Warfare'); Kinsella, supra, p. 122.

[231] Kinsella, supra, p. 122.

[232] Discussed in Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Ithaca, NY: Cornell University Press, 2011), p. 79 ('Empire').

terrorizing the civilian population.[233] It is suggested that the ICTY in this case imposed a heavy burden on civilians to demonstrate their worthiness of civilian status. They not only had to show that qualities of combatantness did not attach to them at the time of the attack, but they also had to make the case that qualities of civilianness did. The practices canvassed at this trial introduced further instability to the civilian–combatant distinction, setting high standards for appearance, comportment and behaviour for those claiming civilianness. This is relevant for thinking about how international humanitarian actors imagine and assert their own civilian status, and why they might seize onto particular civilian signifiers in their everyday practice.

In *Milosevic,* the Trial Chamber explained that the term 'civilian' is defined negatively to include any person who is not a member of the armed forces or an organized military group belonging to a party to the conflict.[234] The Trial Chamber also noted that, in some circumstances, it may be difficult to ascertain whether a given individual is a civilian.[235] The Chamber highlighted the general requirement that combatants distinguish themselves by wearing a uniform (or distinctive sign) and carrying weapons openly.[236] It went on to list other factors that may be helpful in identifying civilians, such as the activities they were engaging in at the relevant time, their age and their sex.[237] When considering the legal status of one particular victim, the Trial Chamber cited an expert report stating that the victim's clothing 'would have enabled the shooter to identify her as civilian'.[238] The Chamber proceeded to comment on the victim's age (13 years) and height, concluding that these

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[233] '*Milosevic* Trial Judgment', supra, paras. 875, 882, 921–924. The subsequent *Milosevic* appeal is not covered in detail here, as the focus in this discussion is the handling of civilian status at the trial, rather than the overall outcome of the case. See *Prosecutor v. Dragomir Milosevic,* Case No. IT-98-29/1-A, Appeal Judgment, ICTY, 12 November 2009.

[234] '*Milosevic* Trial Judgment', supra, para. 945. Citing *Prosecutor v. Stanilav Galic,* IT-98-29-T, Trial Judgment, ICTY, 5 December 2003, para. 47. This paragraph draws on Garbett's account and first-person observation of the trial. See Garbett, supra, pp. 107–112.

[235] '*Milosevic* Trial Judgment', supra, para. 945.

[236] Ibid., paras. 945–946.

[237] Ibid., citing the '*Galic* Trial Judgment', supra, para. 50. The Appeals Chamber in the *Milosevic* appeal found no error with this approach. '*Milosevic* Appeal Judgment', supra, para. 198.

[238] '*Milosevic* Trial Judgment', supra, para. 353, citing P514, Expert report by Lt. Patrick van der Weijden, p. 43. Discussed in Garbett, supra, p. 112.

characteristics gave 'no reason to identify the victim as a combatant'.[239] When seeking to establish the civilian status of a particular witness, the prosecution in *Milosevic* routinely emphasized victim characteristics such as age, occupation, clothing and other aspects of appearance, as well as the individual's actions at the relevant time.[240] The defence rarely interrogated the civilian status of the witnesses who testified, except when they were young males – insinuating that their male gender and youthful age gave rise to the possibility that they could have been combatants.[241] Significantly, the civilians who testified as witnesses at the *Milosevic* trial also claimed that they had not worn a military uniform or military insignia (as a combatant would have). Garbett identifies three further ways through which they asserted their civilian status: they emphasized their choice to not engage in military conduct or operations;[242] they recounted their efforts to go about their everyday lives as normally as possible during the conflict;[243] and they spoke of a shared experience of the conflict, connecting themselves to others who were beset by the same threats of harm.[244]

At the *Milosevic* trial, the establishment of civilianness required something more than presenting as the combatant's opposite. The emphasis on characteristics such as age, sex and conduct summoned signifiers of harmlessness, non-participation and vulnerability. When attention was drawn to the fact that a particular victim had been wearing a woman's dress, for example, femaleness was linked to notions of vulnerability, harmlessness and a particular vision of civilianness.[245] Based on her observations of this trial, Garbett finds that international actors at the ICTY delineate a positive definition of the civilian to supplant IHL's negative one.[246] To do so, they introduce clear markers of civilian identity and draw on social

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[239] Ibid.
[240] Garbett, supra, p. 109.
[241] Ibid., pp. 110–112.
[242] Ibid., pp. 105–106.
[243] Ibid., p. 106.
[244] Ibid., p. 107
[245] On gender and the principle of distinction, see Stern, supra; Kinsella, supra.
[246] Garbett, supra, p. 98.

characteristics of group membership.[247] Dinstein, for his part, views such efforts as an exercise in futility. He characterizes the attempt to identify unequivocal civilian markers as 'chimerical' and emphasizes the difficulty of ascertaining what constitutes normal life in times of armed conflict.[248] While Dinstein's point about the elusiveness of definitive markers is well taken, what is interesting for this study is the fact that international actors cast about for such markers.

While it should be kept in mind that the civilian figure in ICL is not always one and the same as that in IHL, the *Milosevic* trial and *Martic* appeal show how civilianness and combatantness might attach to any given individual at any given moment.

2.2.5 Description of an alternative vision

Having unsettled the dominant vision of distinction in numerous ways, the chapter now moves to elucidate an alternative vision. This study claims that the alternative vision captures what distinction actually looks like when it is investigated from all angles with due appreciation of multiplicity. In this alternative vision of distinction, the civilian and combatant figures are not arranged in a binary configuration as bounded, stable entitles. Indeed, they are no longer in the picture, as such – though the civilian figure is reintroduced subsequently in a strange new form. Letting go of these fixed categories for a moment, the first step is to move away from static entities and to think instead about the qualities of civilianness and combatantness. Each of these qualities is associated with a set of signifiers. Civilianness, as noted, is connected to harmlessness, non-participation, innocence and vulnerability. Combatantness, in contrast, is linked to danger, complicity and participation in conflict. These qualities can be affixed to any individual in accordance with their appearance and behaviour, as well as the surrounding context.

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[247] Ibid.
[248] Dinstein, supra, p. 143 ('CoH').

In this alternative vision, the civilian who directly participates in hostilities, for example, poses a threat of harm to those engaged in fighting. In the moment of participation, qualities of combatantness attach to this individual, who can be targeted like a combatant. Consider also the case of *Martic* at the ICTY, where the soldier *hors de combat* – who was a victim of crimes against humanity – was essentially treated as part of the civilian population. This wounded, sick or captured (former) fighter was deemed to merit the same protection as a civilian. Notably, commentators who argue that the ICTY's approach in *Martic* was too narrow emphasize the harmlessness and vulnerability of soldiers *hors de combat* at the moment of targeting.[249] As the suddenly vulnerable soldier *hors de combat* looks out at a suddenly dangerous civilian, they might find themselves sharing a status – one that is unfamiliar to IHL: the '**civilian minus**'.[250]

When features of vulnerability and harmlessness attach to individuals who are already imbued with qualities of civilianness, another unfamiliar figure emerges. Under GC IV and AP I, civilians who are deemed especially vulnerable – such as pregnant mothers and young children – are accorded additional entitlements beyond what they would have if their civilianness were to only assume ordinary form. This produces another new figure, the '**civilian plus**'. This figure possesses the characteristics of the ordinary civilian, but it is entitled to special treatment due to ascribed innocence and vulnerability. In between the 'civilian plus' and the 'civilian minus', it is proposed that there is a middle status – the '**mere civilian**'. This status is available to those civilians who are not eligible for special treatment, but who do not present any of the features of combatantness. While the 'mere civilian' is not stripped of any core quality of civilianness, this entity may be relatively worse off

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[249] Dungel, supra; William A. Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (New York, NY: Cambridge University Press, 2006), p. 191. Citing '*Kupresic* Trial Judgment', supra; Handsdeep Singh, 'Critique of the *Mrskic* Trial Judgment: A Re-Evaluation on Whether Soldiers *Hors De Combat* Are Entitled to Recognition as Victims of Crimes Against Humanity'*, The Law and Practice of International Courts and Tribunals,* Vol. 8, 2009, pp. 247–296, 293, 296; Kai Ambos and Steffen Wirth, 'The Current Law of Crimes Against Humanity: An Analysis of UNTAET Regulation 15/2000', *Criminal Law Forum,* Vol. 13, No.1, 2002, pp. 1–90.
[250] This study is primarily interested in civilians and not those categorized as 'protected persons' under IHL.

than both the 'civilian plus' and the mythical civilian figure associated with the dominant vision. It is important to emphasize the dynamism of this alternative vision of distinction. While the three new civilian figures are presented here as discrete entities, the process through which an individual claims (or is assigned) one of these designations depends upon shifting factors of self-presentation, behaviour and circumstance.

Conclusion

This chapter opened by outlining the dominant vision of distinction. Tracking along closely with the AP I formulation of the rule, the dominant vision propounds a bright line that is fixed and stable, accompanied by a unified civilian category. The chapter then proceeded to disrupt this vision, drawing on IHL treaties and conventions and the practices of international actors at the ICTY. An alternative vision of distinction was elucidated – one in which any individual could be imbued with qualities of civilianness or combatantness, depending on the circumstances. The IHL principle of distinction was revealed to be an already-disrupted rule, with a civilian category characterized by fragmentation. The overarching point is that this messiness and disorder exists independently of anything that international humanitarian actors might do with the idea of distinction. The alternative vision also provides a crucial clue as to why international actors might jostle with each other along fault lines that do not appear to exist in international law.

Given the myriad disruptions to the dominant vision that were canvassed in this chapter, one might ask why the dominant vision remains the orthodoxy. As a first observation, the stakes are high – this is so even before one considers issues relating to the material treatment of civilians in war. Because of distinction's positioning at the centre of IHL, anything that destabilizes distinction is viewed as a threat to an entire body of law. Gordon's insights on the power of legal regimes may also shed some light. Gordon locates this power in a given regime's ability 'to persuade people

that the world described in its images and categories is the only attainable world in which a sane person would want to live'.[251] This study proposes that the main allure of the dominant vision of distinction is the clarity that it promises. This speaks to the appeal of a world in which there is a unified civilian category that extends the law's protection to all those who are deemed worthy of it. Thus, belief in civilian and combatant entities is sustained, despite awareness that this vision is not even internally consistent; consider, for example, how IHL allows civilians who directly participate in hostilities to be targeted. The vision also persists despite proponents' knowledge that it may ultimately be unattainable, as a matter of fact. By showing how the world appears through the prism of the alternative vision, the present study extends an invitation to contemplate the messiness of distinction. Whether or not the alternative vision represents a world in which we would like to live, the goal of this investigation is to expose what is concealed and to illuminate distinction's already-disrupted nature.

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[251] Robert W. Gordon, 'Critical Legal Histories'*, Stanford Law Review*, Vol. 36, No. 57, 1984, pp. 56–125, 109.

CHAPTER 3: THE HUMANITARIAN ACTOR
AND THE IDEA OF DISTINCTION

Introduction

In Chapter 2, it was proposed that contemporary civilianness is grounded in the following attributes: harmlessness, non-participation, innocence and vulnerability. It is submitted here that humanitarianness is based partly on these same qualities, but that humanitarian actors are imbued with additional characteristics that are not available to other civilians. This is the social value of the role they play in delivering humanitarian assistance in armed conflicts, and the virtue associated with this role. As stated in the ICRC Commentary on the APs, IHL gives personnel participating in relief actions status 'to allow them to act effectively for the benefit of a civilian population lacking essential supplies'. [252] Second, and connected to this important role, humanitarian actors are viewed as admirable or virtuous for their sacrifice. This emphasizes their vulnerability and paints them as having esteemed moral character. Bringing this all together, the humanitarian actor is depicted as engaged in important tasks, vulnerable due to the exposure to harm that results from this kind of work and an agent who should be shielded from harm by virtue of being innocent and posing no danger to others.[253]

This chapter examines how the idea of distinction circulates with respect to international humanitarian actors. The status of humanitarian actors in international law is considered from three angles. First, there is the question of how IHL constitutes humanitarian actors. The chapter argues that IHL has a narrow vision of humanitarianness: it is embedded with a Red Cross fantasy, and humanitarian actors who resemble the Red Cross figure may assert claims to higher degrees of

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[252] Pilloud et al. (Eds.), supra, p. 832 ('AP Commentary').

[253] For an argument that an instrumentalist approach to protecting humanitarian actors gives way to a virtue ethics approach post-9/11, see Elise Leclerc-Gagné, *The Construction of the Humanitarian Worker as Inviolate Actor* (unpublished PhD thesis, 2014), p. 113.

civilianness. Second, there is a separate normative question of what IHL *should* provide. This is explored through the prism of a debate between two perspectives: 'help the helpers help' (favouring a special status) and 'humanitarian exceptionalism' (wary of a special status). On balance, this study supports a qualified version of the latter view. Third, there is the question of how humanitarian actors envision their own civilianness. It is argued that the distinction practices of humanitarian actors treat civilianness – and perhaps also humanitarianness – as a relativized and contingent concept.

3.1 How IHL constitutes the humanitarian actor

IHL is one of several bodies of law that are relevant to the delivery of humanitarian assistance in armed conflict. While the international community may be progressing towards a coherent law of humanitarian assistance,[254] at this juncture, humanitarian assistance is regulated by a patchwork of laws. A number of domestic and international bodies of law set out the rights of war-affected individuals to receive humanitarian assistance, the obligations of warring parties to allow humanitarian assistance, the rules pertaining to humanitarian actors and the laws concerning third party states that are not participants in a given conflict.[255] While an examination of international human rights law (IHRL) is outside the scope of this study, decisions about how IHL and IHRL, respectively, apply impact the legal classification and regulation of the practices of humanitarian actors.[256]

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[254] See Zwitter et al. (Eds.), supra.

[255] Felix Schwendimann, 'The Legal Framework of Humanitarian Access in Armed Conflict', *International Review of the Red Cross,* Vol. 93, No. 884, 2011, pp. 993–1008, 995–996.

[256] On the relationship between IHL and IHRL with respect to humanitarian assistance, see: Rebecca Barber, 'Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law', *International Review of the Red Cross*, Vol. 91, No. 874, 2009, p. 395; Ruth Stoffels, 'Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps', *International Review of the Red Cross*, Vol. 86, No. 855, September 2004, pp. 515–546, 516; Emily E. Kuijt, 'A Humanitarian Crisis: Reframing the Legal Framework on Humanitarian Assistance', in Zwitter et al. (Eds.), supra, pp. 54–80, 61; Lohne and Sandvik, supra, p. 12. Humanitarian actors are also expected to comply with domestic laws in states in which they carry out their operations. See: David Fisher, 'Domestic Regulation of International Humanitarian Relief in Disasters and Armed Conflict: A Comparative Analysis', *International Review of the Red Cross,* Vol. 89, No. 866, 2007, pp. 345–372; Emanuela Chiara-Gillard, 'The Law Regulating Cross-

Maintaining the focus on IHL, this section considers how IHL constitutes humanitarian actors with respect to the civilian category. It also addresses the related question of who is properly considered a protected humanitarian actor under IHL. It suggests that, by the time humanitarian actors were conceptualized as a category of actor in AP I, IHL had already set at least some humanitarian actors apart from the wider civilian population. Implicitly, humanitarianness is connected here to a higher form of civilianness. While there is little room for this prospect in the dominant vision of distinction, it is compatible with the alternative vision's fragmented civilian category. The treatment of the humanitarian actor in the Rome Statute of the International Criminal Court (ICC) and the public pronouncements of the UN further give the impression that a special status is carved out for humanitarian actors within the IHL civilian category. While the exact shape of this humanitarian actor is hazy, it refers to the Red Cross figure.

3.1.1 The emergence of the humanitarian actor

While the provision of succour to certain individuals in war formed part of the first GC in 1864, it was not until the 1970s that IHL explicitly attended to the civilian actors delivering what would today be called humanitarian assistance. In this study, AP I of 1977 is identified as the first legal moment at which the humanitarian actor was codified as a category in its own right. It will be recalled that this was the very same moment that the civilian was first formally defined, albeit in a negative way. It was argued in Chapter 2 that, before IHL explicitly defined the civilian in AP I, GC IV of 1949 splintered the civilian category. It is proposed here that the category of the humanitarian actor was also effectively split apart before it was explicitly contemplated in AP I. The Red Cross figure, or someone bearing a likeness to this figure, was positioned as a paradigmatic humanitarian actor, while the status of other self-identifying humanitarian actors was left opaque.

Henri Dunant's mythical experience at the Battle of Solferino is typically cited as the birthplace of contemporary humanitarian assistance, but humanitarianism as a broader practice has much earlier antecedents.[257] A social commitment to caring and providing for society's most vulnerable can historically be identified in diverse societies and a plethora of world religions.[258] In Europe, going back to the Black Death Pandemic of the Middle Ages, the introduction of Public Health Boards to care for those who were ill and to dispose of bodies may be considered an early version of European disaster medicine.[259] The Western tradition of Christian charity is often cited as having played a central role, with the movement to abolish slavery in the mid-1800s deemed an early iteration of contemporary humanitarianism.[260] The humanitarians who came before Dunant did not limit their activities to emergency relief; rather, they took an expansive view of suffering and made no claims to be outside of politics.[261]

Dunant's vision of humanitarianism, which informed early IHL instruments, was a very specific one. In calling for an international convention that would create European societies dedicated to the care of wounded soldiers, Dunant is credited for having launched 'the idea of a permanent, voluntary, and international organization that would care for victims of war'.[262] Significantly, Dunant's vision revolved primarily around military actors providing medical assistance to sick and wounded soldiers.[263] States were the central actors providing relief at this time, and

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[257] Barnett, supra, pp. 5–6 ('Empire').
[258] Elizabeth Ferris, 'Faith and Humanitarianism: It's Complicated', *Journal of Refugee Studies,* Vol. 24, No. 3, 2011, pp. 606–623, 608. Again, the focus here is on the Western world.
[259] Discussed in Eleanor Davey, with John Borton and Mathew Foley, 'A History of the Humanitarian System: Western Origins and Foundations', *Humanitarian Policy Group Working Paper,* June 2013, p. 6 ('History').
[260] Discussed in John Ashworth, 'The Relationship between Capitalism and Humanitarianism', *The American Historical Review*, Vol. 92, No. 4, 1987, pp. 813–828.
[261] Barnett, supra, pp. 5–6 ('Empire').
[262] Antonio Cassese, 'Current Challenges to International Humanitarian Law', in Clapham and Gaeta (Eds.), supra, pp. 3–19, 4.
[263] Jean-Henry Dunant, *A Memory of Solferino* (Geneva: International Committee of the Red Cross, 1986). Discussed in Christopher Greenwood, 'Historical Development and Legal Basis', in Dieter Fleck (Ed.), *Handbook on International Humanitarian Law,* 2nd edition (Oxford: Oxford University Press, 2008), pp. 1–43,

there was little consideration of private actors engaged in relief activities. [264] Dunant's vision infused the GC of 1864, and the protection of religious and medical personnel belonging to the military was codified in positive law before any mention was made of civilian actors providing help.[265] This emphasis on military actors as the providers and recipients of assistance continued in several IHL instruments that followed, with some exceptions.[266] Article 15 of the Hague Conventions of 1899 mentioned the 'delegates of relief societies for prisoners of war',[267] and the Hague Convention of 1907 again referred to 'relief societies for prisoners of war'.[268] The GCs of 1929 also referred to 'relief workers', though the actors delivering relief were not addressed in further detail. Prior to WW II, there was no conception that all of the delegates delivering relief in war belonged to a common category. [269] The individuals who delivered assistance were typically connected to the relief societies they worked for, such as the ICRC (see below) or the Young Men's Christian Association.[270]

During WWI and – especially – WWII, a marked shift occurred with respect to practice on the ground. Civilian actors became more engaged in the provision of assistance, and civilians – particularly interned civilians and those in occupied territories – increasingly became the recipients of assistance. [271] This changing landscape was partially captured in GC IV of 1949, wherein IHL averted to the notion of civilian humanitarian actors providing assistance to civilian populations at

22 ('What shocked Dunant after the Battle of Solferino was the lack of any systematic effort by the armies concerned to care for the wounded'). On the national societies of the Red Cross as an auxiliary of state armies, see Marc-Antoine Perouse de Montclos, 'The (de)Militarization of Humanitarian Aid: A Historical Perspective', *Humanities,* Vol. 3, 2014, pp. 232–243, 241.

[264] Nicholas Stockton, 'The Accountable Humanitarian', *Humanitarian Accountability Partnership,* 2005, available at: http://hapinternational.org/pool/files/the-accountable-humanitarian-2-12-05.pdf (arguing that it was the Great Powers that wanted humanitarian 'neutrality' due to fears that one-sided relief would be advantageous for opponents).

[265] Barrat, supra, p. 303.

[266] Prior to WW I, diaspora populations played a prominent role in assisting civilian populations. See Barnett, supra, p. 82 ('Empire').

[267] Article 15 of 1899 Hague Convention, supra.

[268] Article 15 of 1907 Hague Convention, supra.

[269] Leclerc-Gagné, supra, p. 52.

[270] Ibid.

[271] Ibid., p. 65.

risk.[272] Crucially, the GCs of 1949 introduced a right of humanitarian initiative.[273] No express mention had yet been made of a humanitarian actor category,[274] though actors providing assistance were said to be protected as 'persons taking no part in hostilities' under Common Article 3 to the GCs.[275] In the GCs of 1949, the relevant provisions on protection and relief were explicitly concerned with the recipient populations, rather than the actors delivering assistance.[276] The protection accorded to relief actors under these legal instruments may be viewed as akin to that provided to the general civilian population in armed conflict.[277]

As of the GCs of 1949, neither the civilian nor the humanitarian actor had been defined in IHL. At this point in the discussion, a second thread will be woven into the account in order to introduce some complexity. Before the humanitarian actor was introduced as a category in AP I, IHL positioned one type of humanitarian actor as the object of special treatment and privilege. It is proposed that IHL's vision of humanitarianness was shaped by its fantasy of the Red Cross[278] figure as the paradigmatic humanitarian actor.[279] Today, the ICRC enjoys international legal personality, and a range of privileges and immunities are ascribed to it under international and domestic law.[280] The ICRC has been described as a hybrid

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[272] See, *e.g.*, Article 142 of GC IV (obligations on the detaining power to assist relief societies in performing their tasks). Discussed in Kate Mackintosh, 'Beyond the Red Cross: The Protection of Independent Humanitarian Organizations and their Staff in International Humanitarian Law', *International Review of the Red Cross*, Vol. 89, No. 865, March 2007, pp. 113–130.

[273] Article 9 of GC I; Article 9 of GC II; Article 9 of GC III; Article 10 of GC IV. On the role of human rights law in this respect, see Stoffels, supra. See also Article 30 of GC IV (the right of all protected persons to have access to 'any organization that might assist them') and Article 142 of GC IV.

[274] Helen Durham and Phoebe Wynn-Pope, 'Protecting the "Helpers": Humanitarians and Health Care Workers During Times of Armed Conflict', *Yearbook of International Humanitarian Law*, Vol. 14, December 2011, pp. 327–346, 334.

[275] Common Article 3 of GC I-IV.

[276] Durham and Wynn-Pope, supra, p. 336. See also Chapter 2.

[277] Durham and Wynn-Pope, supra, p. 334.

[278] This refers to the ICRC, the International Federation of the Red Cross (IFRC) and the Red Cross national societies.

[279] Drawing on Mégret's description of IHL's treatment of warfare as a 'fantasy of sameness', wherein two opposing armies face each other on the battlefield, each in uniform and bearing arms. See Frédéric Mégret, 'From "Savages" to "Unlawful Combatants": A Postcolonial Look at International Humanitarian Law's "Other"', in Anne Orford (Ed.), *International Law and its Others* (Cambridge: Cambridge University Press, 2006), pp. 265–317, 307 ('IHL's Other').

[280] On the ICRC's international legal personality, see Knut Dormann and Louis Maresca, 'The ICRC and its Contribution to the Development of IHL in Specialized Instruments', *Chicago Journal of International*

between a classic international – or intergovernmental – organization and an NGO.[281] Returning briefly to Dunant's experience at Solferino, Dunant imagined a Red Cross movement that would promote and safeguard humanitarian ideals.[282] The Red Cross actor materialized in early IHL instruments as a twinkle in Dunant's eye, informing GC 1864 and securing the Red Cross figure as the touchstone of humanitarian assistance.[283] In the Geneva conferences of 1863–1864, the Red Cross emblem was the only humanitarian symbol accorded legal protection. At the time, it was deemed universal and easy to recognize, with its key stated role being to protect medical personnel and medical facilities in armed conflict.[284] The GCs of 1949 also recognized the legitimacy of three further humanitarian emblems: the red crescent, the red lion and the red sun; a red crystal followed in 2003 in the Third Additional Protocol to the GCs.[285] Use of these emblems was restricted to members of the ICRC family, as well as to medics and some military actors.[286]

Staying with the GCs of 1949 for a moment, the Red Cross figure is treated as the benchmark for humanitarian relief in a number of ways. Common Article 3 of the GCs, for example, refers to an impartial humanitarian body 'such as' the ICRC.[287] Article 63 of GC IV stipulates that, in the context of occupied territories, the

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Law, Vol. 5, 2004–5, pp. 217–232, 217. See also: Article 4 of AP I (ICRC serves as a substitute for the Protecting Power, where appropriate); UNGA, *General Assembly Resolution* 45/6 (1990), A/RES/45/6 (confirming ICRC observer status at the UN General Assembly); Bruno Demeyere, 'Turning the Stranger into a Partner: The Role and Responsibilities of Civil Society in International Humanitarian Law Formulation and Application', *Harvard Program on Humanitarian Policy and Conflict Research Thematic Brief,* 2016, pp. 8–9 (special privileges and immunities granted to ICRC and related personnel by states on a case-by-case basis); Els Debuf, 'Tools to Do the Job: The ICRC's Legal Status, Privileges and Immunities', *International Review of the Red Cross,* Vol. 97, No. 897/8, 2016, pp. 319–344, 324.

[281] Debuf, supra, p. 324. While its mandate comes from states, the ICRC was founded in 1863 as a private organization named the International Committee for the Relief of Military Wounded. Since 1994, the ICRC has had international organization status in Switzerland.

[282] See, *e.g.*, Greenwood, supra, p. 22.

[283] Debuf, supra, pp. 320–321.

[284] International Federation of the Red Cross, 'The Emblem Debate', available at: http://www.ifrc.org/en/who-we-are/the-movement/emblems/the-emblem-debate/.

[285] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem, 8 December 2005 (AP III).

[286] Discussed in Mackintosh, supra. See also Baptiste Rolle and Edith Lafontaine, 'The Emblem that Cried Wolf: ICRC Study on the Use of Emblems', *International Review of the Red Cross,* Vol. 91, No. 876, December 2009, pp. 759–778.

[287] See Common Article 3 of GC I-IV.

occupying power may not require any changes in the personnel or structure of relief societies such as the ICRC that could prejudice relief activities.[288] A common provision of the GCs also stipulates that, with the consent of the parties to the conflict, the ICRC 'or any other impartial humanitarian organization' may undertake humanitarian activities to protect and provide relief to civilian persons.[289] In the above examples, the actors covered are either Red Cross actors or organizations that resemble the Red Cross. Article 63(c) of GC IV opens out a bit further, according a right of humanitarian initiative to 'special organizations of a non-military character' that work to improve the living conditions of the civilian population.[290]

While this expansion of the category was accelerated with AP I (see below), the positioning of the Red Cross as the relief provider *par excellence* has been an unchanging feature of IHL. It is not altogether surprising that this was the case in 1949, given the state of practice on the ground at the time. What is striking, however, is how IHL's fixation with the Red Cross continued in AP I, even though the practice of humanitarian assistance had begun to significantly transform. Of particular note, humanitarian NGO actors had started to emerge as key players in humanitarian responses prior to the codification of the APs.

The first recognizable humanitarian NGO, the Save the Children Fund, was formed in 1919 out of the experience of WWI.[291] There was an exponential increase in the number of humanitarian NGOs following WWII, with approximately 200 formed between 1945 and 1949.[292] It was not until the Nigeria-Biafra conflict of the late 1960s, however, that humanitarian NGOs came to truly dominate the international response. [293] De Waal describes the experience in Biafra as both totem and taboo

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[288] Art 63(a)(b) of GC IV.
[289] Cited in Mackintosh, supra, pp. 115–116. See also above.
[290] Article 63(c) of GC IV.
[291] See Peter Walker and Daniel Maxwell, *Shaping the Humanitarian World* (London: Routledge, 2009), p. 25.
[292] Barnett, supra, p. 112 ('Empire').
[293] Alex de Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa* (Oxford: James Currey, 1997), p. 73. The UN's involvement in Biafra was marginal, in large part because the conflict was initially

for humanitarian NGOs. [294] It was a groundbreaking logistical effort that demanded considerable courage, but humanitarian actors also found themselves mired in ethical issues relating to the diversion of aid and the prolonging of the war.[295] The widely publicized nature of the Biafra conflict captured the attention of the international community. Media coverage not only highlighted the impact of the famine and the conflict, but it also showcased the role of non-state actors in the humanitarian response.[296] Although the ICRC had, by this time, long been active in its work as IHL guardian and in delivering material relief to wounded soldiers and prisoners of war, Biafra marked its first large-scale relief operation.[297] Perceived shortcomings in ICRC's handling of this response – particularly the way in which it had interpreted its commitment to neutrality – also galvanized the formation of Medecins Sans Frontieres (MSF) in 1971.[298] Despite this surge of engagement in the delivery of assistance by humanitarian NGOs, no direct mention of them was made in the APs of 1977. In the following section, the treatment of humanitarian actors under the APs is examined in more detail.

3.1.2 The humanitarian actor under AP I: Who is protected?

The present section considers who is a humanitarian actor under AP I, and the following section examines how this humanitarian actor category fits with the civilian category. It is suggested that IHL – in the narrow sense of law 'in the books' – appears to constitute certain humanitarian actors as special civilians. While the ICRC and other members of the Red Cross family clearly fall into this special group, it is less certain whether other humanitarian actors, such as NGOs, should also.

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categorized as an internal conflict. See Mie Vestergaard, 'Biafra, 1967–1970: Ethical Dilemmas of Humanitarian Relief', *Online Atlas on the History of Humanitarianism and Human Rights*, available at: http://hhr-atlas.ieg-mainz.de/articles/vestergaard-biafra.
[294] De Waal, supra, pp. 72–73.
[295] Ibid.
[296] Kevin O'Sullivan, 'Humanitarian Encounters: Biafra, NGOs and Imaginings of the Third World in Britain and Ireland, 1967–70', *Journal of Genocide Research,* Vol. 16, No. 2–3, 2014, pp. 299–355, 299.
[297] De Waal, supra, pp. 67–68.
[298] Ibid., p. 76. See also Eleanor Davey, 'Famine, Aid and Ideology: The Political Activism of Médecins Sans Frontières in the 1980s', *French Historical Studies*, Vol. 34, No. 3, 2011, pp. 529–558 ('Famine').

Although the ICRC is one of the largest international humanitarian organizations operating today, [299] as an empirical matter, most humanitarian assistance in contemporary armed conflict is delivered by actors outside the Red Cross family. [300] The implication is that a significant number of self-identifying humanitarian actors may not be explicitly protected under AP I. [301] Because the humanitarianness of these other actors is illegible to IHL, they are relegated to 'mere civilian' status. There may also be a 'civilian minus' status in circulation. The Rome Statute, for example, allocates protection to humanitarian actors 'as long as they are entitled to the protection given to civilians'. [302] This idea is revisited below.

Although this study finds that humanitarian actors were first contemplated as a type of actor in AP I, it merits emphasis that there is no category of 'humanitarian actor', as such, in IHL. [303] The GCs of 1949 do not contain any special provisions relating to personnel participating in relief actions, [304] and the draft version of AP I initially contained no separate provision for such personnel. [305] As ultimately formulated, the APs introduce explicit protections for certain humanitarian actors – typically referring to them as 'relief personnel'. Their protection is premised on their ability to deliver assistance in a manner that is humanitarian, impartial and without adverse

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[299] Jakob Kellenberger, 'The Role of the International Committee of the Red Cross', in Clapham and Gaeta (Eds.), supra, pp. 20–34, 20.

[300] In 2007, approximately 58 per cent of humanitarian assistance was delivered by NGOs. See Peter Walker and Kevin Pepper, *Follow the Money: A Review and Analysis of the State of Humanitarian Funding* (Medford, MA: Feinstein International Center, 2007). In 2015 and 2016, funding to NGOs as a proportion of total international humanitarian assistance (from private, governmental and EU donors) was 38 and 35 per cent, respectively. This reflects only direct funds, and does not account for all of the resources sub-granted to NGOs by other aid recipients, such as UN agencies. Development Initiatives, *Global Humanitarian Assistance Report 2018*, available at: http://devinit.org/wp-content/uploads/2018/06/GHA-Report-2018.pdf, Chapter 4.

[301] Mackintosh, supra, p. 113; Beth Eggleston and Carrie McDougall, *Independent Report: Expert Roundtable on the Protection of Humanitarian Personnel* (Geneva: ICRC, December 2010), p. 6; Julia Brooks, 'Protecting Humanitarian Action: Key Challenges and Lessons From the Field', *A Report for Harvard Humanitarian Initiative and ATHA*, October 2016, p. 11, available at: http://www.atha.se/sites/default/files/atha_key_challenges_in_the_protection_of_humanitarian_action .pdf (IHL 'privileges certain categories of aid workers above others, while leaving the majority of aid workers, primarily NGO and [international] NGO staff, with general civilian protection').

[302] See Section 3.1.3.

[303] See Chapter 1; see also Durham and Wynn-Pope, supra, p. 337.

[304] See above; see also Pilloud et al. (Eds.), supra, p. 831 ('AP Commentary').

[305] Pilloud et al. (Eds.), supra, p. 831 ('AP Commentary')

distinction.[306] This emphasis on conduct and modalities of assistance helps to explain the slipperiness of the humanitarian actor category.

Turning to the relevant provisions, Article 71(3) of AP I stipulates that relief personnel shall be assisted by each party to the conflict to the fullest extent practicable; their movements and activities are only to be limited in cases of imperative military necessity.[307] Humanitarian actors are also entitled to humane treatment under Article 75 of AP I and Article 4 of AP II.[308] Furthermore, customary IHL affords them protection. Rule 31 of the 2005 ICRC Customary Law Study stipulates that 'Humanitarian relief personnel must be respected and protected'.[309] IHL further prescribes limits to the conduct of humanitarian actors: relief personnel must not exceed the terms of their mission, for example, and they must adhere to the security requirements of the party in whose territory they carry out their duties.[310]

Turning first to Red Cross actors, the ICRC, IFRC and national Red Cross societies have a special position in IHL treaties,[311] and they are mentioned by name in AP I. The continuing influence of the Red Cross figure can also be detected in the ICJ's 1986 *Nicaragua* decision,[312] where the Court found:

> If the provision of humanitarian assistance is to escape condemnation as an intervention in the internal affairs of [another State], not only must it be limited to the purposes hallowed in the practice of the Red Cross,

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[306] Akande and Gillard, supra, p. 14 ('Oxford Guidance').

[307] Article 71(3) of AP I. See also 71(4) of AP I (relief personnel must not exceed the terms of their mission).

[308] Article 75 of AP I; Article 4 of AP II.

[309] Rule 31 of the 2005 ICRC Customary Law Study, supra. Rule 32 also states that 'objects used for humanitarian relief operations must be respected and protected'.

[310] Article 71(4) of AP I. For a discussion of the wider regulatory environment, see also Harvard Program on Humanitarian Policy and Conflict Research, 'Humanitarian Action under Scrutiny: Criminalizing Humanitarian Engagement', Harvard Program on Humanitarian Policy and Conflict Research Working Paper, February 2011 ('HPCR').

[311] Barrat, supra, p. 4.

[312] *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Merits),* Nicaragua v. United States, ICJ Reports 1986, para. 243.

namely to prevent and alleviate human suffering…it must also, and above all, be given without discrimination to all in need.

While the central positioning of the Red Cross figure in contemporary IHL is beyond dispute, two other types of humanitarian actors are of concern to this study: humanitarian NGOs and UN humanitarian actors.

In this section, humanitarian NGOs are considered first. Barrat catalogues a further 13 categories in addition to Red Cross actors, under which humanitarian actors might claim protection in international armed conflict (IAC).[313] The NGO MSF, for example, likely fits into the following categories: medical personnel, substitute protecting power, impartial humanitarian body, relief society, social organization and organization assisting protected persons.[314] While Barrat's forensic cataloguing of these categories is sound, her conclusion that humanitarian NGOs as a larger group are 'comprehensively covered' by IHL provisions comes with serious caveats.[315] She leaves out, for example, multi-mandate NGOs that engage in essential life-saving humanitarian activities but also work on human rights, statebuilding or peacebuilding.[316] In fact, in an era in which the international community pushes policies of coherence and integration that often draw humanitarian assistance into the fold of political or peacekeeping objectives (see Chapter 4), a potentially significant number of organizations are excluded in Barrat's analysis. While a respected impartial humanitarian organization such as MSF may meet the criteria for a number of the categories contained in the APs, it is not clear how smaller or lesser known NGOs fare. Humanitarian NGOs do not have a

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[313] Barrat, supra, p. 338, Table 1. The listed categories are: voluntary aid society, civil defense organization, medical personnel, religious personnel, substitute protecting power, impartial humanitarian body, organization assisting POWs, relief society, international religious organization, organization approved by parties, social organization, organization engaged in family reunion and organization assisting protected persons. The listed organizations in NIACs include: the ICRC, the IFRC, the national Red Cross Society, medical personnel, religious personnel, impartial humanitarian bodies and relief societies.

[314] Barrat, supra, p. 340, Table 2.

[315] Ibid., p. 343.

[316] Ibid., p. 344.

crystallized international legal personality,[317] and their logos and emblems are not protected under IHL in the same manner as those of the Red Cross.[318] It is thus proposed that the extent to which humanitarian NGOs are entitled to IHL protection often depends on their approximation of the Red Cross figure.[319] In the same way that IHL's traditional paradigm of war fails to encapsulate the dynamics of contemporary conflict,[320] IHL's treatment of the humanitarian actor neglects a wide swath of actors who are engaged in delivering assistance in environments of armed conflict. A limited number of humanitarian actors may be able to claim further protection as 'associated personnel' of the UN, if they sub-contract or act as implementers for the UN.[321] Affiliation with the Red Cross may also provide humanitarian NGOs access to further protection.[322]

As for UN actors, they are in a different legal position from humanitarian NGOs,[323] and also from Red Cross actors. Many of the UN humanitarian agencies that operate in contemporary armed conflicts emerged after WWII. The UN Relief and Rehabilitation Administration (UNRRA), which was extremely active in the years 1943–1947, was subsequently split into separate agencies, including UNICEF and (what eventually became) UNHCR.[324] Aside from whatever protections UN

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[317] Kuijt, supra, pp. 66–67.

[318] Koenrad Van Brabant, 'Operational Security Management in Violent Environments', *Humanitarian Policy Network Good Practice Review,* June 2000, p. 336; Demeyere, supra, p. 11.

[319] For an argument that NGOs that follow Red Cross–style principles may claim IHL's protections, see Kuijt, supra, pp. 66–67.

[320] See Nicolas Lamp, 'Conceptions of War and Paradigms of Compliance: The "New War" Challenge to International Humanitarian Law', *Journal of Conflict and Security Law*, Vol. 16, No. 2, 2011, pp. 225–262. See also Mégret, supra, p. 311 (the laws of war have 'exported and universalized a highly particular form of inter-state conflict') ('IHL's Other').

[321] Erin Weir, 'Conflict and Compromise: UN Integrated Missions and the Humanitarian Imperative', *Kofi Annan International Peacekeeping Training Centre Monograph* (June 2006), p. 44; Mackintosh, supra, p. 114; Christiane Bourloyannis-Vrailas, 'The Convention on the Safety of United Nations and Associated Personnel', *International and Comparative Law Quarterly,* Vol. 44, 1995, pp. 560–590, 564–566. See also the discussion in Chapter 4 regarding affiliation with UN missions.

[322] Erin Weir, supra, p. 44.

[323] Fast attributes this to the state-centric nature of international law and the fact that the wider status of the UN is that of an institution composed of member states. See Fast, supra, p. 204.

[324] Davey et al., supra, p. 9 ('History').

humanitarian actors might claim under IHL, [325] the blue laurel wreath of the UN and its logo are explicitly protected under international law. [326] Additionally, individual UN humanitarian actors are covered by international legal instruments such as the 1994 *Convention on the Safety of United Nations and Associated Personnel* and the 1946 *Convention on the Privileges and Immunities of the United Nations*. [327]

The next section considers the relationship between humanitarian actors as a bounded group and the IHL civilian category.

3.1.3 The humanitarian actor under AP I: (Special) civilian status

To examine how the humanitarian actor is constituted *vis a vis* the civilian category in AP I, it is helpful to bracket the differences between different kinds of humanitarian actors.[328] Article 71(2) of AP I stipulates that, in IACs, those engaged in war fighting are required to respect and protect[329] humanitarian actors as civilians.[330] When emphasis is put on the 'as civilians' language, it is suggested that IHL gives humanitarian actors civilian status, full stop. Fast and Barrat, respectively,

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[325] Laurie R. Blank, 'The Limits of Inviolability: The Parameters for Protection of United Nations Facilities During Armed Conflict', *International Law Studies*, Vol. 93, 2017, pp. 45–101, 62 (on IHL as the *lex specialis* governing protection in armed conflict).

[326] On the treatment of the UN flag and logo in the Rome Statute, see Article 8(2)(b)(vii) of UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998.

[327] UN Convention on the Safety of United Nations and Associated Personnel, 9 December 1994, 2051 UNTS 363 ('1994 Convention'); UN Convention on the Privileges and Immunities of the United Nations, 13 February 1946, 21 UST 1418, TIAS No. 6900, 1 UNTS 15 ('1946 Convention'). Discussed in Bourloyannis-Vrailas, supra; Blank, supra, p. 50. For debates about the application of the '1994 Convention' and its relationship to IHL, see Tristan Ferraro, 'The Applicability of International Humanitarian Law to Multinational Forces', *International Review of the Red Cross,* Vol. 95, No. 891/2, pp. 561–612.

[328] See also Demeyere, supra, p. 13. Demeyere frames the question about NGO status as follows: 'Can "ordinary" NGOs have any more special status under IHL than that accruing to "ordinary" civilians, in recognition of the special assistance they are ready to deliver?'

[329] The term 'respect' here is interpreted to mean 'to spare, not to attack', while protect means 'to come to someone's defence, to lend help and support'. See Jean Pictet (Ed.), *Commentary: IV Geneva Convention, Relative to the Protection of Civilian Persons in Time of War* (Geneva: ICRC, 1958), p. 146 ('Commentary'). Discussed in Durham and Wynn-Pope, supra, p. 337.

[330] Article 71(2) of AP I. There is no equivalent rule in AP II, though medical relief is clearly protected under Article 9 of AP I. Protections for humanitarian actors in NIACs 'as civilians' can be derived from customary law. Mackintosh, supra, p. 118.

agree with this line of reasoning.[331] Barrat further highlights that the APs extend the requirement of 'respect and protect' to all non-combatants.[332] Alternatively, one can emphasize the fact that the APs explicitly attend to personnel engaged in the provision of relief, and that this aims to remedy what was previously a lack of protection under IHL. Durham and Wynn-Pope take this view, contending that the AP I obligation to 'respect and protect' humanitarian actors provides these actors with 'more substantial footing and a specific status' under IHL than what they previously had under the GCs.[333] This study is persuaded by the latter view, though it maintains that only Red Cross actors and actors resembling the Red Cross figure are legible to IHL in this way. In the following section, this is fleshed out with support from sources both within and beyond IHL.

To begin, scholars often promulgate the claim that humanitarian actors have special status without explaining the specific legal basis of this claim. In an examination of crimes against humanity, for example, Fernandez and Estapa mention as an aside that humanitarian personnel have 'differentiated status' from other civilians.[334] In other instances, scholars flag a special status but do not refer to humanitarian actors who do not belong to the Red Cross. In a discussion of IHL rules on perfidy and the misuse of emblems, Bartels remarks that IHL accords special protection to Red Cross actors, while 'a "regular" civilian "only" enjoys regular/standard protection'.[335] Bartels hangs a question mark around these findings, intimating a lack of clarity in IHL on this matter. The special status of the Red Cross figure also receives attention in the ICRC Commentary to the APs. The authors of the Commentary find:[336]

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[331] For an argument that IHL protects humanitarian actors as civilians, see Fast, supra, p. 197; Barrat, supra, p. 323.

[332] Barrat, supra, p. 323.

[333] Durham and Wynn-Pope, supra, p. 337.

[334] Rosa Fernandez and Jaume Estapa, 'Towards a Single and Comprehensive Notion of "Civilian Population" in Crimes Against Humanity', *International Criminal Law Review,* Vol. 17, 2017, pp. 47–77, 51.

[335] Rogier Bartels, 'Killing with Military Objects Disguised as Civilian Objects is Perfidy', Just Security blog, March 2015, available at: https://www.justsecurity.org/21285/disguising-military-weapons-civilian-equipment-perfidy-or-be/.

[336] Pilloud et al. (Eds.), supra, p. 832 ('AP Commentary'). Referring to GC I-IV of 1949, AP I and AP I.

> Apart from the personnel involved in actions under the responsibility of the ICRC, who consequently enjoy the protection of the red cross emblem, personnel participating in relief actions are only protected, outside the régime of the Protocol, by general rules applicable to civilians of States which are not Parties to the conflict. Such persons certainly enjoy the general protection of populations against certain consequences of war, and, as civilians, may not be attacked, but not all of them are covered by the Fourth Convention which excluded certain categories from its field of application….

In this account, the entitlements of non–Red Cross humanitarian actors are not clear; but it does appear that ICRC personnel are granted something more than civilian status.[337]

The possibility that humanitarian actors are constituted as special civilians finds some support in international criminal law. Article 8(2)(e)(ii) of the Rome Statute prohibits intentional attacks against buildings, material, medical units and transport systems, as well as personnel using the 'distinctive emblems of the Geneva Conventions in conformity with international law'.[338] Further, Article 8(2)(b)(iii) prohibits intentional attacks against 'personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission' in accordance with the UN Charter, 'as long as they are entitled to the protection given to civilians or civilian objects' under IHL.[339] This latter provision merits careful scrutiny for its treatment of the humanitarian actor in relation to the civilian of IHL.[340] Of note, the Rome Statute also deems intentional attacks against the general civilian population war crimes.[341] If humanitarian actors were protected as members of the wider civilian population, one might expect that they would be amply covered

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[337] The only other humanitarian actors who have unambiguous claims to special protection are UN humanitarian actors (see above) and medical personnel of the armed forces. See Brooks, supra, p. 10.

[338] Article 8(2)(e)(ii) of the Rome Statute, supra. Schwendimann, supra, p. 1005 (noting that a nexus with an armed conflict is required).

[339] Article 8(2)(e)(iii) of the Rome Statute, supra. See also Article 4 of the Statute of the Special Court for Sierra Leone, 2178 UNTS 138, 145; 97 AJIL 295; UN Doc. S/2002/246, Appendix II.

[340] See Durham and Wynn-Pople, supra, p. 339 ('relief workers who maintain their civilian status according to the Geneva Conventions are better protected than ever before').

[341] Article 8(2)(b)(i) of the Rome Statute, supra (prohibiting 'Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities').

by that provision. The separate provision thus appears to treat humanitarian actors as a category of actor that is separate from the wider civilian population.[342]

While the general civilian population is protected from targeting under IHL, and attacks against civilians are also prohibited as war crimes, the treatment of humanitarian actors conveys that humanitarianness is associated with a higher form of civilian status. This is further amplified in the Resolutions and public pronouncements of the UN Security Council, the UN General Assembly and other UN leadership regarding attacks on humanitarian actors.[343] Ultimately, this study takes the view that Red Cross actors and those who resemble them are treated as 'civilian plus' actors in international law. The protections that IHL accords other humanitarian actors are, comparatively speaking, opaque. These latter actors might be able to claim 'civilian plus' status, or they might be allocated 'mere civilian' status. The Rome Statute language ('as long as they are entitled to the protection given to civilians') also highlights the fact that humanitarian actors can *lose* civilian protection. This might happen, for example, if an individual humanitarian actor were to directly participate in hostilities.[344] It has been argued that participation in peace enforcement operations may generate the same result.[345] Thus, it may be that a 'civilian minus' status – if not a recategorization as a combatant – can be assigned to some humanitarian actors. As a point of clarification, humanitarian actors who

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[342] Leclerc-Gagné also highlights that the prohibition on attacks against the wider civilian population appears only two clauses prior to Article 8(2)(b)(iii). Leclerc-Gagné, supra, pp. 137–139.

[343] United Nations Security Council, 'Increased Attacks on Aid Workers Due to Lack of Respect for International Humanitarian Law, Deputy Secretary-General Tells Security Council', *United Nations Meetings Coverage*, 19 August 2014, SC/11524. Resolutions calling for those engaged in war-fighting to respect and protect humanitarian actors include: UNSC, *Security Council Resolution* 2139 (2014), 22 February 2014, S/RES/2139; UNSC, *Security Council Resolution* 1894 (2009), 11 November 2009, S/RES/1894; UNSC, *Security Council Resolution* 1502 (2003), 26 August 2003, S/RES/1502. See also: UNGA, *General Assembly Resolution* 52/167 (1997), A/RES/52/167 (condemning any act or failure to act 'which obstructs or prevents humanitarian personnel from discharging their humanitarian functions'); UNGA, *General Assembly Resolution* 53/164 (1998), A/RES/53/164; UNGA, *General Assembly Resolution* 54/192 (1999), A/RES/54/192.

[344] See Chapter 2 for a discussion on DPH.

[345] Humanitarian actors and personnel involved in peacekeeping missions are protected, as opposed to those involved in peace enforcement. A.P.V. Rogers, *Law on the Battlefield*, 3rd edition (Manchester: Manchester University Press, 2012), p. 319.

operate without (state) consent do not lose civilian status under IHL.[346] When consent is withheld, no duty arises to facilitate the rapid and unimpeded passage of relief supplies, equipment and personnel.[347]

It has been suggested here that a special civilian status for some humanitarian actors may be found in IHL. While such a status is not available in the dominant vision of distinction, given its unified civilian category, the alternative vision of distinction reveals how the distinction line dims and moves, and how civilianness is relativized. Viewed through the prism of this alternative vision, special civilian status for humanitarian actors constitutes simply one more carve-out from the civilian category. This prompts an important normative question, which is discussed in the next section.

3.2 Whether a special status for humanitarian actors is desirable

Earlier in this chapter, it was noted that the role played by humanitarian actors in armed conflict is socially valuable; it imbues humanitarian actors with virtue and shows them as embodying esteemed moral character. This section presents two competing views on whether these characteristics should ground a special (civilian) status for humanitarian actors. As a point of clarification, although the first outlook is perhaps the favoured view of international lawyers, it is in fact aligned with the alternative vision of distinction elucidated in Chapter 2. The second outlook is a more marginal view, but it is compatible with the dominant vision of distinction because it supports a unified civilian category. Complicating matters, individual commentators might explicitly subscribe to the dominant vision as it applies in the conduct of hostilities, yet still come out in support of a special status for humanitarian actors.[348]

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[346] Akande and Gillard, supra, p. 51 ('Oxford Guidance').
[347] Ibid.
[348] Durham and Wynn-Pope serve as one example.

3.2.1 Two competing perspectives

First, the 'help the helpers help'[349] position is grounded in the belief that humanitarian actors should have an extra layer of inviolability that protects them and enables them to execute their tasks.[350] In short, a special status enables humanitarian actors to save lives and assist war-affected populations without becoming targets, themselves.[351] Special protections are viewed here as a means to an end – that of ensuring that war-affected populations receive humanitarian assistance and protection.[352] Observing how the GCs of 1949 accord humanitarian actors the same protection as other civilians under the principle of distinction, Durham and Wynn-Pope submit that 'it is questionable whether such general protection would be adequate'.[353] Additional protection is merited, they suggest, because humanitarian actors often face greater risk to their personnel, supplies and facilities than the general civilian population.[354] This perspective embeds global efforts to develop further protection for humanitarian actors in the years following the APs, such as through all of the relevant UN resolutions and the Rome Statute provisions cited above (see Section 3.1). Implicit support for a special status can also be detected in claims that the protection problems humanitarian actors face can be remedied through further laws, or by strengthening compliance with existing laws.[355]

A significant drawback of the 'help the helpers help' position is that it fails to contextualize the status of humanitarian actors alongside other members of IHL's civilian category. To get at this missing piece, this study engages with the more relational approach of the 'humanitarian exceptionalism' perspective. Although

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[349] Based on the 'protecting the helpers' language of Durham and Wynn-Pope, supra.

[350] This tracks along with Durham and Wynn-Pope's arguments in Durham and Wynn-Pope, supra.

[351] Fiona Terry, 'The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action', *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 173–188; Demeyere, supra, p. 4.

[352] Durham and Wynn-Pope, supra, p. 340.

[353] Ibid., p. 334.

[354] Ibid., pp. 334, 329, 339.

[355] Ashley Jackson, 'Protecting Civilians: The Gap between Norms and Practice', *Humanitarian Policy Group,* Policy Brief No. 56, April 2014 ('Then as now, the problem remains that neither states nor armed groups sufficiently or consistently comply with these provisions', p. 2). See also Brooks, supra, p. 11.

much of this literature is not explicitly concerned with international law, this study identifies a number of fruitful contact points between the 'humanitarian exceptionalism' view and the legal view of the civilian.

Proponents of the 'humanitarian exceptionalism' perspective[356] greet the idea of a special status for humanitarian actors with wariness. Scholars in the field of humanitarian studies have engaged extensively with the figure of the humanitarian-as-outsider.[357] In this literature, the humanitarian actor appears separate, distant and perhaps even estranged from other actors in her midst – as well as from the wider context in which she works.[358] Through their attempts to set themselves apart, humanitarian actors may drift further and further away from the very people who legitimize their presence in conflict zones.[359] An important argument advanced in this literature is that the altruistic humanitarian act of 'saving lives' relies upon an imbalance. While the life of the humanitarian actor is freely risked, the life of the vulnerable individual is treated as a bare life in need of saving.[360] Through a routine calculus, these lives are weighed against each other, as humanitarian actors decide whether a given course of action falls within the limits of acceptable sacrifice.[361] Fast queries the expectation that humanitarian actors should receive exemption from violence. [362] She problematizes the legal treatment of humanitarian actors as a 'special category of civilians deserving attention and protection'[363] and asks whether this treatment might undermine legal protection for the broader civilian

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[356] While this is a composite perspective, this phrase is employed in Fast, supra, p. 112.
[357] A term used in Didier Fassin, 'Inequality of Lives, Hierarchies of Humanity: Moral Commitments and Ethical Dilemmas of Humanitarianism', in Ilana Feldman and Miriam Ticktin (Eds.), *In the Name of Humanity* (Duke University Press, 2010), pp. 239–255 ('Inequality of Lives').
[358] Fast, supra, p. 5.
[359] Building on a point made by Fassin, supra ('Inequality of Lives').
[360] Didier Fassin, 'Humanitarianism as a Politics of Life', *Public Culture,* Vol. 19, No. 3, 2007, pp. 499–520, 500 ('Politics of Life'). Citing Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Daniel Heller-Roazen (Trans.) (Stanford, CA: Stanford University Press, 1998). See also Fassin, supra ('Inequality of Lives').
[361] Monique J. Beerli, 'Saving the Saviors: Security Practices and Professional Struggles in the Humanitarian Space', *International Political Sociology,* Vol. 12, No. 1, 2018, pp. 70–87, 70.
[362] Fast, supra, p. 112.
[363] Ibid., pp. 22, 197.

population.[364] These are the very dynamics that the present study aims to expose through its introduction of the 'civilian plus', 'mere civilian' and 'civilian minus' figures. Sometimes, what is privileged might not be the life of the humanitarian actor, but the symbols of humanitarianism – of which the Red Cross emblem is the paradigmatic example. The risk is that preserving the purity of these symbols may become an end, in itself.[365]

Benthall suggests that the larger narrative of humanitarianism is akin to a moral fairy tale, with its main characters being the victim in distress, the villain and the humanitarian saviour figure.[366] Slotting these characters into the dominant vision of distinction, the (civilian) humanitarian saviour would be situated in a category alongside the (civilian) victim in distress. Together, these two entities would be juxtaposed with the combatant, who would be characterized as a 'villain' and positioned on the other side of the distinction line.[367] Taking the alternative vision of distinction, a different picture would materialize. Qualities of combatantness and civilianness would hover around. The combatant 'villain' would attract features of combatantness, while the humanitarian actor would attract the highest degree of civilianness and the victim in distress would attract a lower degree of civilianness. In this picture, the humanitarian actor and the victim would not share the same status. One would be legible as a 'civilian plus' while the other would be a 'mere civilian'. When civilianness is relativized as per the alternative vision of distinction, it is easier to see how granting something special to some civilians takes something away from those who are not singled out for special treatment.

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[364] Ibid., p. 205.

[365] Krause, supra, pp. 113, 144; Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca, NY: Cornell University Press, 2014), pp. 37–38.

[366] Jonathan Benthall, *Disasters, Relief and the Media* (London: I.B. Taurus, 1993). Discussed also in de Waal, supra, pp. 82–83. On humanitarian heroism, see also: Hugo Slim, *Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster* (Oxford: Oxford University Press, 2015), p. 73 ('Humanitarian Ethics'); David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton, NJ: Princeton University Press, 2004), p. 15 ('Dark Sides').

[367] While there is not space to do so here, much could be said about the position of the combatant as a villain in this vision. The painting of members of war-affected population as victims in distress also merits scrutiny.

When considered in a vacuum, granting a special status to humanitarian actors may seem merited and morally sound. Doing so could potentially enhance the safety of humanitarian actors and improve their access to beneficiaries. However, when one considers the possibility that humanitarian virtue may be founded upon the devaluation of the lives of populations in need, the prospect of a special status acquires a different hue. In the logic of the 'humanitarian exceptionalism' perspective, giving something extra to humanitarian actors marshals IHL to further entrench pre-existing inequalities between humanitarian actors and the populations they serve. On a more practical note, there is one further aspect of the 'help the helpers help' viewpoint that is potentially problematic: the assumption that a special status would actually enable humanitarian actors to do their work without becoming targets, themselves. As discussed in Chapter 2, Alexander characterizes the twin features of the civilian as vulnerability and value; value, in this account, refers to the civilian's appeal as a target.[368] Contemplating a special status for humanitarian actors, one might wonder whether a special status could have the perverse effect of making them even more valuable as targets. To the extent that violence against humanitarian actors is intentional as well as performative,[369] this prospect merits serious consideration. This issue is revisited in the empirical component of this study.[370]

3.2.2 A special status for humanitarian actors: *Qui bono*?

A question that lingers on the edges of this discussion is: Who benefits from granting a special status to humanitarian actors? Here, it is important to consider which interests are furthered and which interests are stifled or supressed. As a general matter, designating the recipients of assistance as 'beneficiaries' might

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[368] See Chapter 2. See also Alexander, supra, p. 365 ('Genesis').

[369] As argued in Laura Hammond, 'The Power of Holding Humanitarianism Hostage and the Myth of the Protective Principles', in Michael Barnett and Thomas Weiss, *Humanitarianism in Question: Politics, Power, and Ethics* (Ithaca, NY: Cornell University Press, 2008), pp. 172–195. Discussed also in Roth, supra, p. 32 ('Paradoxes of Aid'). See also Section 5.2.1.

[370] See, *e.g.*, Section 5.4.

impede an investigation of who the actual beneficiaries are.[371] Proponents of granting a special status for humanitarian actors extol the benefits for the receiving populations, first and foremost. The 'help the helpers help' position, as outlined above, posits that secure access for humanitarian actors translates into the delivery of assistance to populations in need. Thus, the beneficiaries of humanitarian assistance are the beneficiaries of a special status for humanitarian actors. Those who take this view highlight the heightened risks faced by humanitarian actors and the value of their social role, positioning humanitarian actors as vehicles or instruments for assistance. The virtue of humanitarian actors and the sacrificial nature of their duties implicitly inform this outlook.

Consider now the 'humanitarian exceptionalism' perspective, which draws attention to the way in which human lives are valued. As a baseline, this perspective frames the relationship between humanitarian actors and war-affected populations as one that is unequal. If humanitarian actors are able to claim a special status in international law, they may mobilize law to imbue their lives with (extra) value. Humanitarian actors are already set apart from the populations they serve, and a special status would give legal imprimatur to this imbalance. The figure of the 'mere civilian' conveys these implications. Civilian populations with this designation have something less than those with 'civilian plus' status, and something less than they would have under a unified civilian category wherein all civilians are considered equal. It is in part because the civilian as an idea is beleaguered, undermined and questioned at every turn (see Chapter 2) that there is an impetus for humanitarian actors to escape the vulnerability of the civilian – however illusory such an escape might be. Setting up civilian populations as having 'mere civilian' status further compounds this fragility, as well as the imbalance between humanitarian actors and other civilians.

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[371] For critiques of the beneficiary category, see Krause, supra, p. 40. Krause makes two key arguments regarding beneficiaries: first, only a subset of populations in need receive services, in practice, or benefit from an intervention; second, beneficiaries form part of a commodity that is sold to donors in a quasi market). See also Roth, supra, p. 9 ('almost everyone involved in the aid sector could be considered a beneficiary') ('Paradoxes of Aid').

Having outlined why this study espouses a qualified version of the 'humanitarian exceptionalism' outlook, the next section considers the actual practices of humanitarian actors.

3.3 The special status humanitarian actors actually produce

The present section distils a practice-based law of distinction from activities in the Pedagogical and Kinetic realms. Reserving an empirical examination of actual practice for Parts II and III, the discussion works backwards from such practice to elucidate how the idea of distinction circulates. To simplify matters, humanitarian actors are mostly treated as a bounded group.

3.3.1 The 'civilian plus'

The way in which international humanitarian actors conceptualize their own humanitarianness basically aligns with the alternative vision of distinction elucidated in Chapter 2. Humanitarian actors understand civilianness to be a relative and contingent concept, and they perceive varying degrees – or kinds – of civilianness that might be claimed. The status that they imagine themselves to have, which they seek to promulgate and safeguard, is '**civilian plus**' status.[372] While the civilian aspect of the 'civilian plus' figure attracts the same target immunity accorded to all civilians in armed conflict, the 'plus' aspect is intended to provide humanitarian actors with something more – an added layer of inviolability in a legal, as well as a

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[372] The term 'civilian plus' is not to be confused with Hilhorst's concept of the 'humanitarian plus'. The latter refers to humanitarian actors who engage in development activities that go beyond life-saving humanitarian services. In Hilhorst's conceptualization, the 'plus' indicates that the actor in question has overstepped the bounds of traditional humanitarian action. In the present study, the 'plus' modifies a given actor's civilian status and sets the relevant individual up as a sort of super-civilian. See Dorothea Hilhorst, 'Dead Letter or Living Document? Ten Years of the Code of Conduct for Disaster Relief', *Disasters*, Vol. 29, No. 4, 2005, pp. 351–369, 359.

practical, sense.[373] The public pronouncements that humanitarian actors make about their special status closely mirror those of the 'help the helpers help' perspective, outlined previously (see Section 3.2). Humanitarian actors highlight the social value of the role they play in armed conflicts, suggesting that anything extra that is given to them will ultimately translate into the delivery of assistance to populations in need. They also draw attention to the risks they face in armed conflicts, depicting 'civilian plus' status as a shield against those who might harm them. In light of these stated functions, this study argues that the 'civilian plus' figure is grounded in the heroism and vulnerability of humanitarian actors. As is shown in the proceeding sections, some of the other international actors who encounter humanitarian actors on an everyday basis question the stated rationale for a special status. With notable echoes of the 'humanitarian exceptionalism' outlook, they contend that humanitarian actors merely seek to secure their position as virtuous saviours. They suspect the 'civilian plus' is grounded in both exclusivity and superiority. These allegations, and other misgivings about a special status, are revisited in Parts II and III.

3.3.2 The corollaries: 'Mere civilian' and 'civilian minus'

The status that humanitarian actors wish to transcend is that of the '**mere civilian**' – a default status that is assigned to individuals who are 'only' ordinary civilians. On a daily basis, humanitarian actors deploy 'civilian plus' status to differentiate themselves from those with 'mere civilian' status. Humanitarian NGO actors may try to distance themselves from other civilian actors, for example, because they believe that the ordinary civilianness of these actors is inadequate to meet their needs. A further possibility is that humanitarian actors deploy a special status in the service of turf wars and intra-civilian competition.

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[373] Practical and juridical aspects of inviolability are also discussed in Lisa Smirl, *Spaces of Aid: Post Disaster Relief and Reconstruction* (Chicago, IL: University of Chicago Press, 2015), pp. 31, 40, 94–95.

The status that humanitarian actors are most fearful of being assigned is that of '**civilian minus**'. This latter status may attach to humanitarian actors when they are treated as 'force multipliers' or a second front in armed conflict.[374] Humanitarian actors who are seen to lack competence and humanitarian credentials, or who are viewed as helping the 'other side', may also be seen to have tainted civilianness.[375] When humanitarian actors are faced with the prospect of 'civilian minus' status, the 'civilian plus' status may perform a cleansing or purifying function. In such situations, humanitarian actors assert the highest degree of civilianness in the hopes of staving off any qualities of combatantness that might attach to them. When operating in the same space as international military forces, for example, humanitarian actors may be anxious that they will be tainted through proximity. Although IHL does not explicitly require civilian actors to physically distance themselves from combatants, humanitarian actors understand that such strategies are necessary for safeguarding their (special) status. As the prospect of contamination looms, the 'civilian plus' can eradicate any suggestion that the humanitarian actor in question is a combatant, or is complicit in what combatants do. When the 'civilian plus' is deployed in this way, it can be said that humanitarian actors are not trying to transcend the (mere) civilian so much as they are attempting to claw back the promise of ordinary civilianness.

Looking ahead to the empirical findings that are explored in Parts II and III, this discussion has distilled a law of distinction from the practices and interactions of international actors. While this practice-based law relies upon a fragmented civilian category and a relativized concept of civilianness, the civilian category – as emphasized – is already fragmented. Though the 'civilian plus' and its corollaries serve as analytically useful concepts, the law of distinction depicted here – similar to

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[374] As when Colin Powell referenced the role of humanitarian NGOs in the global war on terror as 'A force multiplier for us. Such an important part of our combat team'. Cited in Martin Woollacott, 'Humanitarians Must Avoid Becoming Tools of Power', *The Guardian* (2 April 2004). See also Sarah Kenyon Lischer, 'Military Intervention and the Humanitarian "Force Multiplier"', *Global Governance,* Vol. 13, No. 1, 2007, pp. 98–118.
[375] See Chapters 5 and 7.

the alternative vision it echoes – is dynamic, rather than static. This captures the way in which, on an everyday basis, international humanitarians exert themselves to attract the qualities of civilianness they hope to embody and to repel the qualities of combatantness they wish to disclaim.

Conclusion

As this chapter has shown, the relationship between humanitarianness and civilianness is far from straightforward – whether one looks to legal texts or the practices and perceptions of international actors. The first part of this chapter entertained the possibility that IHL constitutes some humanitarian actors as special civilians. It was argued that IHL is embedded with the fantasy of the Red Cross figure, which limits the types of humanitarian actors who are legible to IHL. In the second part of this chapter, it was recognized that a special status for humanitarian actors might seem warranted, given that it would incentivize the role they play in war. However, concern was also expressed that such a special status could come at too dear a cost. Not only could it perpetuate exceptionalism and further distance humanitarian actors from the populations they serve, but it could also mobilize law to downgrade the civilianness of others. It was submitted that, whichever position one takes on the desirability of a special status, humanitarian actors, as a matter of daily practice, promulgate 'civilian plus' status. A practice-based law of distinction was introduced to capture these dynamics. Reliant upon a relativized version of civilianness, this law tracks along with the alternative vision of distinction.

With respect to the question of what drives the distinction practices of humanitarian actors, it was suggested that both heroism and vulnerability are at play. Humanitarian actors are seen as more vulnerable than other civilians due to the risks that accompany their tasks. By dint of their role as helpers, they are also deemed more worthy of protection. While humanitarianness may be performed as an exaggerated or elite form of civilianness, this should not obscure the extent to which

it is tied up with anxiety and fear. The ultimate fear may be one of physical attack, but there is also a more immediate anxiety provoked by the everyday encroachment from – and contamination by – actors imbued with qualities of combatantness or the wrong kind of civilianness. It is also important to consider whether humanitarian actors are afraid of the very populations they seek to help – a possibility that casts the 'civilian plus' in an unflattering light.

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Conclusion to Part I

Part I of this study considered the treatment of distinction in traditional legal sources such as treaties and conventions, and the way in which competing visions of civilian status materialize in the practices of international actors. It also examined how the antecedents of IHL's civilian–combatant distinction circulated, historically. An alternative vision of distinction was articulated, exposing the instability of distinction and challenging the dominant vision of a bright, fixed and stable line. According to the alternative vision, different degrees of civilianness can be distributed and claimed, translating into 'civilian plus' status and its corollaries. When a practice-based law of distinction is distilled from the everyday practices of international humanitarian actors, it resembles this alternative vision. A point that merits constant repetition is that the chaos of distinction is not only located in the operational context, but, as this exploration of the Intellectual realm has demonstrated, also in legal doctrine; it also has historical precursors. Given that the practices of international actors in Geneva and The Hague are characterized by messiness and fragmentation, it would be misguided to think that actors at civil–military training grounds and in South Sudan *introduce* instability. This should be kept in mind as the discussion leaves the Intellectual realm and follows the idea of distinction to a new set of global sites, where unconventional actors make and remake distinction on a daily basis.

PART II: DISTINCTION AND THE PEDAGOGICAL

Introduction to Part II

As the discussion enters Part II, it moves into the Pedagogical realm. This domain of activity occupies a middle space between theory and practice – a significant in-between place where those who are expected to implement the relevant rules are trained and taught. This sphere of activity is often overlooked when high-level concepts, norms, rules and aspirations are juxtaposed with day-to-day operational dynamics on the ground. This study establishes civil–military training spaces as important venues where humanitarian distinction practices come into contact with the practices and perceptions of other international actors. These dynamics are framed as having legal significance, and law's reach is felt here in two main respects. First, law shapes the international actors who attend the trainings and their interactions with each other. Not only is their conduct governed by IHL and the various rules and norms of civil–military interaction that are disseminated, but these actors also self-conceptualize as belonging to IHL's civilian or combatant categories. Second, a practice-based law of distinction can be distilled from the practices and interactions of these international actors. At the three civil–military training grounds investigated in the discussion, a 'civilian plus' status for humanitarian actors is promulgated and contested, and this special status is as disrupted as the civilian figure who humanitarian actors seek to transcend. Contests over distinction ensue: international actors struggle over who draws the line to delineate their relationships with each other, and how and where this line should be drawn. The 'phantom local' figure serves as a crucial reference point in these encounters, as international actors quarrel over how their interactions are perceived by onlookers. The first chapter in this part, Chapter 4, lays the foundation for the exploration of the original empirical findings, which follows in Chapter 5.

CHAPTER 4: CIVIL–MILITARY TRAINING SPACES

Introduction

Leaving behind the courtrooms and other Geneva- and Hague-based practices, Part II of this study explores how the idea of distinction circulates at training venues in Sweden, Germany and Italy. The international training programmes examined here deal with one variant of civil–military relations, which is the interaction of external or international civilian and military actors who are involved in international missions in armed conflicts.[376] While the selected trainings are all delivered in Europe, they have a global dimension, as they prepare a diverse set of international actors to deploy to a variety of conflict contexts. The civil–military training grounds also present a challenging site for humanitarian actors to enact their vision of distinction, because the main thrust of the programmes is to encourage civilian and military actors to interact and work closely together.

The discussion opens by briefly outlining the relevant methodology employed in the empirical component of this study. It then explains the rationale for studying training venues, in general, and civil–military training venues, in particular. Next, it outlines the training programmes that are examined in this study and provides a birds-eye view of the distinction practices that humanitarian actors implement in the Pedagogical realm. Three aspects of these practices are addressed: humanitarian actors' appeals to IHL and civil–military guidelines; their formation of a distinct identity through adherence to the traditional humanitarian principles; and their summoning of the perceptions of an omnipresent observer – the 'phantom local'.

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[376] Michael Pugh, 'The Challenge of Civil–Military Relations in International Peace Operations', *Disasters*, Vol. 25, No. 4, 2001, pp. 345–357, 346 ('Civil–Military Relations').

4.1 Research methods, design, ethics

The present section elaborates on the discussion of research methods in Chapter 1, whilst also touching on issues of research design and ethics.[377]

4.1.1 Research methods

In addition to engaging with textual and discourse analysis, Parts II and III of this study draw on findings from interviews, focus group discussions, perceptions surveys and participant observation. In research, interviews and focus group discussions serve as important tools when a researcher seeks specific information.[378] Focus groups are useful for testing general sentiments and gathering feedback on points that have arisen elsewhere. Simple perceptions surveys supplement interview findings and inform interview planning, and participant observation enables the researcher to learn things that come up in natural conversation. The latter method is especially useful when the researcher seeks to make sense of complex social relationships or patterns of interaction, as was the case in the present study.[379] Participant observation also gives the researcher access to practical non-verbal knowledge, which can reveal disconnects between what people claim to do and what they actually do.[380] This technique is invaluable for illuminating the tacit

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[377] This methodological discussion covers both Part II and Part III. The main difference in the methods used in these two realms is that participant observation formed the primary method in the Pedagogical realm (Part II), whilst interviews were the primary method in the Kinetic realm (Part III).

[378] The interviews carried out for this study were semi-structured; they typically lasted between 1 and 1.5 hours each and were guided by a series of prompts. For the research conducted for Part II, interviewees were selected to represent a range of backgrounds (*e.g.* military actors, peacekeeping actors, political actors, security forces, humanitarian actors) and levels (*e.g.* front-line operator, trainer). For the research conducted for Part III, the interviewees in South Sudan were primarily selected through a modified snowball sampling process.

[379] Bryman, supra, p. 81.

[380] Michael Burawoy et al., *Ethnography Unbound: Power and Resistance in Modern Metropolis* (Berkeley and Los Angeles, CA: University of California Press, 1991), p. 2; Kathleen DeWalt and Billie De Walt, *Participant Observation: A Guide for Fieldworkers,* 2nd edition (Plymouth: AltaMira Press, 2011), Chapters 7 and 8.

practices and assumptions of international actors, including those relating to distinction.[381]

4.1.2 Research design

In terms of epistemology, this study falls closer to the interpretive end of the positivist–interpretivist spectrum. It thus aims not to explain so much as to engender understanding.[382] For this reason, it focuses on descriptive inference, which permits high levels of authenticity, richness and trustworthiness in the findings.[383] In order to enhance the reliability of the research, a well-defined and vigorous coding frame involving precise coding rules was developed.[384] To strengthen the validity of the research, both data triangulation (*i.e.* drawing on different sources of data) and method triangulation (*i.e.* drawing on mixed methods) were employed.[385] In terms of the falsifiability of the research, it should be pointed out that this study does not concentrate on causal relationships. However, the intention is not to ignore potential causal relationships, but to keep the causal aspect open-ended.[386] Finally, as for the generalizability of the research,[387] the study's multi-sited approach permits a certain level of typicality and transferability. In particular, the inclusion of three different civil–military training sites helps to situate and contextualize the findings from South Sudan.

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[381] This links to Bourdieu's concept of *habitus.* See Bordieu, supra ('Outline'). See also Krause, supra, p. 37 (the taken-for-granteds of humanitarian actors play a crucial role in their decision-making).

[382] John Macionis and Linda Gerber, *Sociology,* 7th edition (Toronto: Pearson, 2011), p. 33.

[383] On the value of a descriptive approach in the study of law, see Anne Orford, 'In Praise of Description', *Leiden Journal of International Law,* Vol. 25, 2012, pp. 609–625, 616; Drumbl, supra, Preface and Acknowledgments.

[384] As per Lee Epstein and Gary King, 'The Rules of Inference', *University of Chicago Law Review,* Vol. 69, No. 1, Winter 2002, p. 85.

[385] Uwe Flick, *An Introduction to Qualitative Research* (SAGE, 2009), pp. 136, 443–453.

[386] Anna MacDonald, 'Local Understandings and Experiences of Transitional Justice: A Review of the Evidence', Justice and Security Research Program, Paper No. 6, July 2013, p. 7.

[387] On ethnographic methods and generalizability, see John Gerring, 'Mere Description', *British Journal of Political Science,* Vol. 42, No. 4, 2012, pp. 721–746, 726. See also Desmond, supra, p. 573 (the most important part about generalizability is being right).

4.1.3 Research ethics

This section will briefly consider issues of informed consent, reflexivity and positionality in connection with the empirical research. First, informed consent was obtained by all research participants, in writing or – as in the case of less literate populations – orally.[388] Concerted efforts were made in terms of data storage and encryption to prevent sensitive information from being disclosed – especially to authorities in South Sudan.

Second, reflexivity refers to a researcher's scrutiny of the experience of conducting research, and concerns how the researcher interacts with research participants and represents them in written reports.[389] In research connected to armed conflict, it is particularly important to reflect on how combatants are approached, how violence is written about and how the views of vulnerable individuals are represented.[390] In the present research, specific issues arose in terms of reflexivity at the NATO CIMIC training site, where I also served as a trainer.[391] Recognizing that the power structure of the instructor–student relationship might carry over into the interviews conducted for this study, myself and the NATO hosts emphasized to trainees that interviews were voluntary and in no way a *quid pro quo*. In order to minimize any problems that may have arisen from wearing this extra hat, I decided to act strictly as a trainee-observer at the training venues in Sweden and Germany.[392]

Third, concerns of positionality require a researcher to confront the ways in which aspects of identity such as gender, age, race and class influence the experience of

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[388] As per Annex A of the *Research Ethics Policy and Procedures* of the London School of Economics.

[389] Charmaz, supra, pp. 188–189.

[390] Dyan Mazurana, Lacey Andrews Gale, and Karen Jacobsen, 'A View from Below: Conducting Research in Conflict Zones', in Dyan Mazurana, Lacey Andrews Gale and Karen Jacobsen (Eds.), *Research Methods in Conflict Settings: A View from Below* (Cambridge: Cambridge University Press, 2013) pp. 3–23.

[391] Training sessions led by the author at NATO are not included in this study.

[392] A fourth civil–military training, which took place at the Kofi Annan International Peacekeeping Training Centre in Accra, Ghana, serves as background for this study but is not explicitly addressed.

fieldwork and the observations made.[393] My status as a white Canadian female from a well-known UK educational institution inevitably influenced the way in which I interacted with others, how others viewed me and the conclusions I drew from what I saw and heard.[394] Furthermore, at the outset of the field research, I recognized that my professional background as a humanitarian actor was potentially accompanied by a personal bias against – or poor appreciation of – actors using violent means. I thus knew that it would be important for me to spend time with and get to know military actors working for the EU, UN and NATO, so as to confront the way in which humanitarian actors are seen from the other side. Interacting informally with military actors through shared meals and lodging at the training grounds was immensely helpful in this respect. Ultimately, my developing understanding of the perspectives and motivations of non-humanitarian actors significantly influenced the final research product. Instead of looking through the eyes of the actor for whom I feel the most affinity, this investigation situates humanitarian actors in a shared social space with those holding competing goals and priorities.

4.2 Following distinction in three civil–military training programmes

Civil–military training programmes can offer unique insights into the circulation of the idea of distinction amongst international actors. While few of the actors who participate in these training programmes are traditionally thought of as legal actors, IHL permeates the training venues and the day-to-day practices of participants. Trainees identify as civilians and combatants, offer competing visions of the idea of distinction and engage in contests over who should draw the line. Given that civil–military training venues are often overlooked as a legal research site, their value is outlined here in some detail.

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[393] Eriksen, supra, p. 29. See also Rahel Junz, 'Reflexive Inquiry', in Mark B. Salter and Can E. Mutlu (Eds.), *Research Methods in Critical Security Studies: An Introduction* (New York, NY: Routledge, 2013), pp. 63–66.
[394] On reflexivity and positionality in socio-legal research in conflict, see Sarah Nouwen, 'As You Set Out for Ithaka: Practical, Epistemological, Ethical and Existential Questions about Socio-legal Empirical Research in Conflict', *Leiden Journal of International Law,* Vol. 27, No. 1, 2014, pp. 227–260 ('Ithaka').

4.2.1 Rationale for studying civil–military training programmes

In this section, three benefits of studying civil–military training venues are highlighted: they are sites where legal rules and norms are disseminated; they complement investigations of the operational context; and their artificiality creates unusual opportunities for research.

First, civil–military training grounds are venues where overt attempts are made to **disseminate international rules and norms** and to shape the behavioural ideals of international actors. Given that the training programmes are explicitly designed to address the contact point between civilian and military actors, they inevitably put IHL's civilian–combatant distinction in issue. The three training programmes investigated here were designed to help military and peacekeeping actors navigate their relationships with civilians, in general, and humanitarian actors, in particular. This is not to say that the goal of the programmes is to engender respect for the distinction between different actors. On the contrary, the CIMIC, SWEDINT and CAMPO programmes transmit the message that it is appropriate – and indeed desirable – to merge different spheres of activity. Their cherished mantra is not 'safeguarding distinction', so much as 'working together'. Shaped by the comprehensive push and its attendant emphasis on demolishing boundaries, [395] these training programmes showcase the external forces that push back against the distinction practices of humanitarian actors. The CIMIC approach propounded at NATO poses additional problems for distinction. Under this rubric, the explicit aim of civil–military contact is to dominate the landscape and win the military mission.[396]

To accede to the vision of distinction that humanitarian actors promulgate, international military actors must often adapt their mindset, as well as their

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[395] Goodhand, supra, p. 297.
[396] See Section 4.1.2.

behaviour. Humanitarian actors might, for example, ask military actors to stay out of certain spaces with their weapons, or warn them against presenting themselves as humanitarian actors. A significant finding of this study is that military actors often experience such entreaties as a demand made by humanitarian actors, rather than the fulfilment of their own obligations under international law. It should be clarified that few of the military actors who attend the three training programmes under study are soldiers engaged in strictly traditional combat roles. When the military trainees deploy to their respective operational contexts, most are explicitly tasked with engaging with civilians in some form. Given this, it might be expected that they would be better acquainted with demands for distinction than the average soldier. As Chapter 5 illustrates, however, such familiarity with the civilian sphere does not automatically translate into receptivity to the need to uphold the civilian–combatant distinction. On the contrary, these military actors are especially keen to foster contact with civilians, as they understand that sustained interaction with civilian actors can help them meet their own goals.

The second reason to examine civil–military training spaces is that doing so enriches and **complements the investigation of civil–military interaction in operational contexts**. As mentioned, this study is primarily interested in frontline actors, rather than high-level policymakers or elites. Almost all of the actors in the civil–military training programmes are returning from frontline work in the field, on a break between stints, or preparing for a new mission. At their most useful, the programmes establish a temporary space where these international actors can take stock of and make sense of their experience in the field. Trainees bring their knowledge and experiences with them from the operational context, and their unique individual experiences also shape their engagement with the lessons. In this respect, there is a natural overlap with Part III of this study. Trainees' first-hand accounts of their experiences in deployment zones offer granular, thick descriptions of how contests over distinction materialize in the operational context.[397] To varying

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[397] Some stories from the field that relate to South Sudan have been shifted to Part III of this study.

degrees, these training grounds also bring civilian and military actors together in face-to-face interaction.

Third, rather than measuring how well the training programmes mimic the 'real' world, the present study looks at the **artificial aspects of the training**, showcasing facets of distinction that are often hidden from view. Simulation exercises, for example, afford an opportunity to observe complex patterns of interaction as if in slow motion. Trainees can literally pause the action as a simulation exercise unfolds, and they might even be granted a chance at a do-over. This kind of iterative process is rarely witnessed in other contexts. It is also through these types of exercises that tensions between competing ideals start to emerge: commitments that seem possible to uphold simultaneously in the relevant texts, or in the classroom, suddenly rub up against each other, and trainees must negotiate this friction. This aspect of training thus begins to edge closer to the operational context.

On a final note, while their topical focus renders these training programmes especially relevant for the present study, there is another benefit to having the civil–military paradigm track along with the civilian–combatant distinction in IHL. The alignment could potentially bolster compliance with the legal rules on targeting in the conduct of hostilities, as the civil–military dichotomy orders actors in war into an approximation of IHL's civilian–combatant distinction. [398] Undermining this prospect, however, is the fact that the civil–military paradigm is not imbued with an ethos of separation, but of bridged spheres. There is also a sense in which this alignment might actually be problematic. That is, *because* the civil–military paradigm resonates so well with the dominant vision of distinction, it perpetuates the deeply embedded assumption that the civilian–combatant divide is the most important distinction in operation. The awkward terminology of 'humanitarian civil–military

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[398] On military training and IHL compliance, more generally, see Elizabeth Stubbins Bates, 'Towards Effective Military Training in International Humanitarian Law', *International Review of the Red Cross,* Vol. 96, No. 895/6, 2015, pp. 795–816.

relations'[399] encapsulates this attempt to graft everything onto a binary logic, as does the treatment of humanitarian–peacekeeper interactions as a form of civilian–military relations (see below). This kind of thinking elides other important contests, such as those cutting along a civilian–civilian fault line.

4.2.2 Overview of the training programmes

At each of the three training grounds examined here, trainers disseminate civil–military guidelines that govern the conduct of international actors in armed conflict. These guidelines contain operational guidance drawn from IHL and other bodies of law, and the guidelines, themselves, are typically regarded as a form of non-binding or 'soft' law.[400] The most widely cited guidelines are: the '**Oslo Guidelines**' on the use of Foreign Military and Civil Defence Assets in Disaster Relief;[401] the '**MCDA Guidelines**' on the use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies;[402] the Inter-Agency Standing Committee **(IASC) Reference Paper** on Civil–Military Relationship in Complex Emergencies;[403] and the **IASC Non-Binding Guidelines** on the Use of Military or Armed Escorts for Humanitarian Convoys.[404] While civil–military guidelines have traditionally been developed with respect to international military interventions (*e.g.* the International Security Assistance Force in Afghanistan), they

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[399] Used primarily by the UN Office for the Coordination of Humanitarian Affairs (OCHA).

[400] See, *e.g.*, Gabriella Venturini, 'International Disaster Response Law in Relation to Other Branches of International Law', in Andrea de Guttry, Marco Gestri and Gabritella Venturini (Eds.), *International Disaster Response Law* (Asser Press, 2012), pp. 45–64, 53 (treating the IASC guidance as soft law).

[401] UN OCHA, *Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief*, November 2007, available at: https://docs.unocha.org/sites/dms/Documents/Oslo%20Guidelines%20ENGLISH%20(November%202007).pdf ('Oslo Guidelines').

[402] UN OCHA, *Guidelines on the use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies* (March 2003), available at: https://docs.unocha.org/sites/dms/Documents/01.%20MCDA%20Guidelines%20March%2003%20Rev1%20Jan06.pdf ('MCDA Guidelines').

[403] Inter-Agency Standing Committee, *Civil–Military Relationship in Complex Emergency: A Reference Paper* (2004), available at: http://www.refworld.org/pdfid/4289ea8c4.pdf ('IASC Reference Paper').

[404] Inter-Agency Standing Committee, *Non-Binding Guidelines on the Use of Armed Escorts for Humanitarian Convoys* (February 2013), available at: http://www.refworld.org/pdfid/523189ab4.pdf ('IASC Guidelines').

are increasingly generated in connection with UN peacekeeping missions.[405] This context-specific guidance engages directly with the global guidelines cited above, often identifying the most relevant aspects of the international guidelines.[406] In the proceeding sections, the three training programmes are briefly outlined.

NATO CIMIC training

In terms of contemporary global trends, international governments are tying humanitarian assistance ever more closely to political and security goals while, at the same time, military forces are increasingly receiving mandates and funding to work closely with humanitarian actors.[407] More and more, military forces are interacting with the same local populations that humanitarian actors typically engage with to deliver assistance.[408] The NATO CIMIC training programme examined here responds to all of these trends and prepares actors to adapt to this state of affairs.

The one-week Functional Specialist CIMIC course is run by the NATO Multi-National Civil–Military Cooperation Group (MNCG) and takes place in Motta di Livenza, Italy. It has the stated goal of providing trainees with a basic understanding of NATO CIMIC policies, principles and tasks.[409] The training is specifically geared towards 'functional specialists' – soldiers with a civilian area of expertise, such as medicine or psychology. Serving as 'CIMIC personnel' in NATO missions, these individuals bridge the gap between military institutions and civilian organizations. CIMIC, or civil–military cooperation, is the main rubric under which NATO

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[405] These have been developed in contexts including Haiti, the DRC, Sudan and South Sudan. For access to publically available guidelines, see UN OCHA, *Civil–Military Coordination Co-ordination Tools*, available at http://www.unocha.org/what-we-do/coordination-tools/UN-CMCoord/publications. Discussed in Victoria Metcalfe and Michelle Berg, 'Country-Specific Civil–Military Coordination Guidelines', Humanitarian Policy Group Working Paper, August 2012.

[406] Metcalfe and Berg, supra, p. 1.

[407] Lisa Schirch, 'Research Gaps on Civil–Military Policy Trends', Humanitarian Practice Network, May 2014, available at: http://www.odihpn.org/humanitarian-exchange-magazine/issue-61/research-gaps-on-civil–military-policy-trends.

[408] Schirch, supra.

[409] NATO Multi-National CIMIC Group, *Functional Specialist Course,* available at: http://www.cimicgroup.org/Cimic%20Courses/cimic_courses/cimic_functional_specialist_course_cfsc.

soldiers engage with civilian actors. CIMIC is a specific variant of civil–military relations – one that presupposes cooperation between the relevant actors. This terminology, and that of 'civil–military dialogue',[410] is also employed to govern interactions with (civilian) humanitarian actors.

NATO's approach to civil–military relationships is organized around the achievement of military objectives. Military actors learn about, and work closely with, civilian actors in order to fulfil the military mission.[411] The civilian activities that CIMIC units engage in are considered part of a range of non-combat tools a commander may employ 'to dominate whatever landscape is being faced'.[412] A landscape might refer to the media, the civilian population, intelligence or even broader nation-building objectives.[413] When military actors deliver services to the local population as part of CIMIC, they do not do so to provide assistance to those in need, *per se*, but to ensure force protection and to win 'hearts and minds'.[414] The aim is to 'create civil–military conditions that will offer the Commander the greatest possible moral, material and tactical advantages'.[415]

Civil–military relations at SWEDINT

The Swedish Armed Forces offer a two-week training programme on Civil–Military Relations (CMR) at the Swedish Armed Forces International Centre (SWEDINT), located on a military base an hour outside of Stockholm. The course aims at

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[410] Simone Haysom and Ashley Jackson, '"You Don't Need to Love Us": Civil–Military Relations in Afghanistan, 2002–2013', *Stability*, Vol. 2, No. 2, 2013, p. 2.

[411] Michael Pugh, 'Civil–Military Relations in Peace Support Operations: Hegemony or Emancipation?', Overseas Development Institute Seminar on Aid and Politics, February 2001, available at: https://www.odi.org/sites/odi.org.uk/files/odi-assets/events-documents/3774.pdf ('ODI Seminar'). Citing Western European Union, WEU 1999 – WEU (1999), *WEU Draft Concept on Civil–Military Cooperation (CIMIC)*, WEU Brussels, WEU- DMS 99246, 17 February 1999.

[412] Raj Rana, 'Contemporary Challenges in the Civil–Military Relationship: Complementarity or Incompatibility?', *International Review of the Red Cross,* Vol. 86, No. 855*,* 2004, pp. 565–591, 573–574.

[413] Ibid., p. 574.

[414] Georg Frerks, 'Who Are They? Encountering International and Local Civilians in Civil–Military Interaction', in Gerard Lucius and Sebastiaan Rietjens (Eds.), *Effective Civil–Military Interaction in Peace Operations: Theory and Practice* (Springer, 2016)*,* pp. 29–44, 31.

[415] *WEU Draft Concept on CIMIC*, supra.

preparing international civilian, military and police actors to cooperate and coordinate with each other in international peace support operations under the aegis of the UN, the EU or NATO. The relations of interest in this training programme are those between soldiers or peacekeepers working for an international mission, on the one hand, and the wide array of local and international civilian actors in the conflict context, on the other. The training also responds to the fact that international military forces play an increasingly prominent role in crisis response and peace support operations. In an effort to help trainees learn the requisite skills, the training makes use of innovative 'mixed reality'[416] simulation exercises.

The CMR training is not a course run by, or devoted to the practices of, the UN Office for the Coordination of Humanitarian Affairs (OCHA). However, many of the trainees are preparing to serve as peacekeepers in UN missions. The SWEDINT training thus provides some coverage of the OCHA approach to civil–military relations, which is very different from the NATO CIMIC approach outlined previously. OCHA is tasked with overseeing the relationships between various international UN actors, and it plays a particularly active role in settings with an integrated UN mission. [417] OCHA is also the UN agency responsible for humanitarian coordination, and it guides what the UN terms 'humanitarian civil–military' relations. As noted previously, this terminology fuses the humanitarian sphere with the traditional civil–military relations paradigm. In contrast to NATO's CIMIC approach, OCHA uses the framework of civil–military coordination, or CM-Coord. While CIMIC presupposes cooperation – which can include joint planning and shared assets – OCHA keeps the level of interaction open. Typically, OCHA aims for a more modest arrangement of coordination, or simple co-existence. Co-existence involves, at most, information sharing about the needs of the local

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[416] 'Mixed Reality' brings together virtual reality exercises with other forms of simulation, such as live role play.
[417] UN OCHA, 'Humanitarian Civil–Military Coordination (UN-CMCoord)', available at: http://www.unocha.org/what-we-do/coordination-tools/UN-CMCoord/overview.

population and the movements of humanitarian actors.[418] Unlike CIMIC, UN CM-Coord emphasizes civilian leadership; when it brings civilian and military actors into dialogue, its aim is not to win a military mission.

Comprehensive approaches at Zif

The final training programme analysed here is the Comprehensive Approach in Multi-Dimensional Peace Operations (CAMPO). This week-long programme is run by the German Centre for International Peace Operations (Zif),[419] and it takes place at the Akademie Schmöckwitz outside of Berlin. It is facilitated by training staff from Zif and the Command and Staff College of the German Armed Forces in Hamburg, and involves guest lectures by high-level actors such as UN diplomats. The stated aim of the CAMPO training programme is to prepare trainees to follow a comprehensive approach when deploying multi-dimensional peacekeeping operations. Participants include a mixture of civilian and military actors, most of whom are engaged in EU or UN missions. Because of the dominant presence of UN peacekeeping actors at the CAMPO programme, trainees also engage quite heavily with the UN OCHA CM-Coord approach.

At all three of the training grounds, civilian and military trainers deliver the classroom sessions. Both NATO and SWEDINT invite international humanitarian actors who are active practitioners to supplement the lessons delivered by non-humanitarian trainers. Some of the (non-humanitarian) civilian trainers have either previously worked as humanitarian actors or have extensive experience of engaging with humanitarian actors. It is the invited humanitarian trainers who do most of the work of imparting a vision of distinction to the trainees. They hope to deepen the military's appreciation for humanitarian principles and to enrich the military's

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[418] Victoria Wheeler and Adele Harmer (Eds.), 'Resetting the Rules of Engagement: Trends and Issues in Military–Humanitarian Relations', Humanitarian Policy Group Report, March 2006, p. 13.
[419] In German: *Zentrum fur Internationale Friedenseinsatz* (Zif). English description of course: Zif, 'Comprehensive Approaches to Multi-Dimensional Peacekeeping Operations', available at: http://www.zif-berlin.org/en/training/zif-training-courses/specialization-courses/campo.html.

understanding of the diversity of international civilian actors. [420] While some of the trainers are of a more academic bent, very few have extensive formal legal training. [421] This reflects the fact that these civil–military training programmes are designed to practically prepare international actors to engage in comprehensive missions.

4.3 Everyday distinction practices in the Pedagogical realm

This study introduces the concept of everyday distinction practices, which refers to the day-to-day competent performances that international humanitarian actors engage in to operationalize distinction.[422] There are important differences between the performance of these distinction practices and their materialization in the Pedagogical and Kinetic realms, and it is partly because of this variation that each realm produces a unique insight about distinction. The present discussion outlines in broad strokes the form that everyday distinction practices take at the civil–military training grounds, highlighting the appeal to law, the adherence to principles and the invocation of local perceptions. The focus is primarily on the way in which humanitarian actors articulate their vision of distinction; other actors are brought more fully into the discussion in Chapter 5.

4.3.1 The appeal to law

The explicit appeal to law assumes two forms at the civil–military training grounds. First, humanitarian actors make direct references to international law, IHL or the Geneva Conventions. Second, they draw on operational civil–military guidelines. There is evident slippage in these appeals between a civilian–combatant binary and iterations of distinction that depart from this binary – the foremost example being a humanitarian–military distinction. This study argues that the 'civilian plus' circulates

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[420] This is reminiscent of humanitarian actors who engage in joint doctrine development exercises with military actors. Discussed in Metcalfe and Berg, supra.

[421] Across the three training programmes, the ICRC, MSF and OCHA trainers at CIMIC stand out as having the strongest grasp of international law and legal principles.

[422] See also Chapter 1.

in such reconceptualizations of distinction. When humanitarian actors appeal to a humanitarian–military fault line, they do not depict themselves as 'mere civilians' who are separated from combatants by a bright line. Implicitly, and in some instances overtly, they carve out space for themselves from the wider civilian category. As they do so, they draw on IHL for authority.[423] It is important to recognize that this muddling of distinction can be detected in research reports, high-level pronouncements and public communications. A report by the Overseas Development Institute, for example, discusses how integrated missions and 'hearts and minds' initiatives are seen by humanitarian actors as 'challenging the distinction between humanitarian and military action required by international humanitarian law'.[424] This same report refers to the distinction between 'military, civilian, and humanitarian functions', as well as 'the distinction between humanitarian and politico-military responses'.[425] It is thus not only in the utterances of humanitarian actors at the training grounds that different iterations of distinction proliferate.

Turning now to the **public communication** of humanitarian organizations, humanitarian actors – ranging from the ICRC to UN humanitarian actors and humanitarian NGOs – routinely make appeals to IHL's principle of distinction. Such direct appeals can primarily be found in policy and strategic documents, as well as public communications addressing issues of humanitarian access and security. Amongst all international humanitarian actors, **the ICRC** most consistently cites IHL and explicitly ties the protection of humanitarian actors to IHL's principle of distinction. This makes sense, given the ICRC's positioning as the custodian of IHL.[426] An emblematic ICRC statement is the following: 'the fundamental principle

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[423] Although the focus here is on the civilian category, note also that the combatant and military categories are often used interchangeably. Not all members of armed forces are combatants under IHL – a key example being medical and religious personnel. Also, there is no combatant status, as such, in NIACs. See Rule 3 of 'ICRC Customary IHL Database', supra; see also Chapter 2. In a practical sense, equating all 'military actors' with combatants may generate confusion about the status of civilian members of military or peacekeeping forces; it may also mislead about the status of armed peacekeepers belonging to a UN mission that is not deemed a party to the conflict.
[424] Wheeler and Harmer (Eds.), supra, p. 2.
[425] Ibid., pp. 14, 46.
[426] See Chapter 3.

of [IHL] according to which a distinction must always be made between combatants and non-combatants is the cornerstone of the protection afforded to the personnel of humanitarian organizations'.[427] The preamble to the Red Cross Code of Conduct also states that, in the event of armed conflict, the Code will be interpreted in accordance with IHL.[428]

Amongst **UN actors**, UN-OCHA makes the clearest pronouncements on distinction. It also frequently swaps a civilian–combatant distinction for a humanitarian–military one. OCHA's 'CM-Coord Handbook' has a section entitled 'Distinction between Humanitarian and Military Actors'. It provides: 'Humanitarian organizations are civilian organizations and unarmed. They rely on the protection provided by IHL and the acceptance of their humanitarian mandate by all parties.'[429] OCHA also cites the Geneva Conventions as the source of the principle of distinction 'between combatants and non-combatants', equating the latter with those no longer participating in hostilities. OCHA further describes the civilian–military distinction used in CM-Coord as having been derived from the IHL principle of distinction, and notes that it 'specifically refers to the distinction between military and humanitarian actors'. Finally, the OCHA CM-Coord guidance stipulates that, if military and humanitarian actors 'carry out similar activities, the distinction between them and their mandates becomes very difficult to maintain, even if humanitarians are not cooperating directly with the military'.[430]

As for **humanitarian NGOs**, the Humanitarian Charter associated with the Sphere Handbook[431] explicitly cites IHL's principle of distinction and frames it as a

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[427] ICRC, 'Respect for and Protection of the Personnel of Humanitarian Organizations', ICRC Report, ICRC Resource Centre, 19 September 1998.

[428] ICRC, *Red Cross Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief* (ICRC, 1996), Preamble.

[429] UN OCHA, *Civil–Military Coordination Handbook* (OCHA, 2015), available at: https://www.unocha.org/sites/unocha/files/CMCoord%20Field%20Handbook%20v1.0_Sept2015_0.pdf ('OCHA CM-Coord Handbook').

[430] Ibid.

[431] *The Sphere Project: Humanitarian Charter and Minimum Standards in Humanitarian Response*, 2011 edition (Practical Action Publishing, 2011) ('Sphere Handbook').

civilian–combatant distinction. However, it refers solely to the protection of the local civilian population in armed conflict, and not to the status of humanitarian actors, as such. The same Charter also affirms the primacy of the humanitarian imperative, which holds that 'action should be taken to prevent or alleviate human suffering arising out of disaster or conflict, and that nothing should override this principle'. [432] Nothing is said explicitly about the compatibility of upholding distinction and delivering on the humanitarian imperative. While these ideals are successfully held in balance in the civil–military training programmes, they begin to diverge in the Kinetic realm (see Part III). Coming back to public communications, individual humanitarian NGOs also draw on the principle of distinction and disseminate a humanitarian–military divide. One large NGO, CARE, refers to distinction as the central principle guiding its engagement with military actors.[433]

The **civil–military guidelines** mentioned previously also highlight the importance of distinction, often citing the need for separation between military and civilian (including humanitarian) spheres. [434] The guidelines stipulate that distinction is achieved by: avoiding the co-location of humanitarian and military actors; ensuring that military actors wear a uniform at all times; clearly identifying vehicles as civilian or military; and promoting distinction in public communication and conduct.[435] The guidelines reiterate that military engagement in humanitarian assistance is only permitted in exceptional or unavoidable circumstances. [436] They also include a number of other rules that implicate distinction, such as: 'last resort' rules pertaining to the use of military assets, including armoured vehicles, air assets and weapons, by humanitarian actors; the 'red lines'[437] of humanitarian actors; and rules regarding the creation of 'area security' by military actors. Despite this concrete engagement with

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[432] 'Sphere Handbook', supra, p. 20.
[433] CARE International, *Policy Framework for CARE International's Relations with Military Forces*, 2009, available at: http://expert.care.at/downloads/careexpert/CARE_CIV-MIL_Policy.pdf.
[434] Voluntary Organizations in Cooperation in Emergencies, 'VOICE Position on Civil–Military Relations in Humanitarian Action: Recommendations to the European Union', 2009 ('VOICE Paper').
[435] Metcalfe and Berg, supra, p. 1.
[436] Ibid., p. 2.
[437] This typically refers to an upper limit of violence against humanitarian personnel, facilities or activities that humanitarian actors are not willing to tolerate

distinction, a conflicting theme running throughout the guidelines is the *interdependency* of diverse international actors operating in armed conflict.[438] At the level of the text, these ideas of interdependency and distinction seem possible to observe simultaneously. International actors can take what they need from each other whilst also remaining safely ensconced in their respective spheres. There are moments in all three training programmes, however, when this notion starts to strain. While international humanitarian actors call for limited contact, other international actors are keen to discover the possibilities that exist for collaboration.

Notably, none of the sources canvassed here imposes the burden of implementing distinction on humanitarian (or other civilian) actors. Further, many distinction-related rules in the civil–military guidelines explicitly demand something of military actors. The latter are to wear uniforms, identify their vehicles, communicate their combatant status and restrict direct involvement in humanitarian assistance. This squares with IHL rules. As noted in Chapter 1, IHL explicitly puts an onus on military actors and combatants to uphold distinction; the requirements of civilians in this respect tend to be more implicit. However, as an empirical matter, this study finds that international humanitarian actors frequently take the initiative to perform distinction practices. Intuiting that military actors have little incentive to maintain separation, humanitarian actors take it upon themselves to dissociate and physically distance themselves from military actors.

4.3.2 Adherence to the traditional humanitarian principles

In addition to grounding their distinct status in international law, humanitarian actors draw upon the traditional humanitarian principles of humanity, impartiality, independence and (sometimes) neutrality to assert their humanitarianness. While an in-depth examination of these principles lies outside the scope of this study, the principles are outlined here in their traditional formulation in order to orient the

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[438] 'VOICE Paper', supra.

reader. [439] First, **humanity** denotes that human suffering must be addressed wherever it is found.[440] This is sometimes also referred to as the 'humanitarian imperative'. In Pictet's original formulation of the principles, humanity is positioned as the core principle at the top of a hierarchy.[441] Today, the more common practice is to place the principles on equal footing. Second, the principle of **neutrality** requires that a humanitarian actor 'may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature'.[442] In Pictet's words: 'Like the swimmer, who advances in the water but who drowns if he swallows it, the ICRC must reckon with politics without becoming a part of it.'[443] Third, the principle of **impartiality** denotes a commitment to focusing on the needs of individuals and the urgency of their distress, rather than discriminating on the basis of nationality, race, religious belief, class or political opinion.[444] It is the needs-based nature of humanitarian assistance that distinguishes it from other, politically oriented, activities. Finally, the principle of **independence** holds that it is not permissible for an outside power to influence or cause a humanitarian actor to deviate from his or her ideals. [445] Although the principle of independence emphasizes autonomy, the delivery of humanitarian assistance inevitably forces humanitarian actors to make contact with – or rely upon – warring parties, beneficiaries, donors and others. [446]

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[439] See: Jean Pictet, *The Fundamental Principles of the Red Cross, Commentary* (Geneva: Henry Dunant Institute, 1979) ('Principles'); Denise Plattner, 'ICRC Neutrality and Neutrality in Humanitarian Assistance', *International Review of the Red Cross,* No. 311, 1996; Francois Bugnion, *The International Committee of the Red Cross and the Protection of War Victims* (Geneva: Macmillan, 2003).

[440] 'IASC Reference Paper', supra.

[441] Pictet, supra ('Principles'). Listing the seven fundamental principles hierarchically as humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

[442] See IFRC, 'The Seven Fundamental Principles: Neutrality', available at: http://www.ifrc.org/en/who-we-are/vision-and-mission/the-seven-fundamental-principles/neutrality/.

[443] Quoted in Slim, supra, p. 67, FN 7 ('Humanitarian Ethics').

[444] See IFRC, 'The Seven Fundamental Principles: Impartiality', available at: http://www.ifrc.org/en/who-we-are/vision-and-mission/the-seven-fundamental-principles/impartiality/. See also: Article 70(1) of AP I; Article 18(2) of AP II.

[445] Pictet, supra, pp. 61–62 ('Principles').

[446] Slim, supra, p. 73 ('Humanitarian Ethics').

The ICRC commits to following the humanitarian principles in all of its humanitarian work, and these principles are enshrined in its Code of Conduct.[447] Hundreds of humanitarian agencies aside from the ICRC espouse the same general commitment, having signed up to the Code of Conduct and subscribed to a **Red Cross meta-narrative**.[448] It was proposed in Chapter 3 that IHL's narrow vision of humanitarianness is shaped by its Red Cross fantasy. When non–Red Cross actors exert themselves to demonstrate their likeness to Red Cross workers, their bid for humanitarianness, in some respects, perpetuates the very Red Cross fantasy they seek to surmount. A more general observation is that there is considerable variation across the humanitarian community with respect to commitment to the principles.[449] This is the case at the most abstract and rhetorical level, even before one attends to the complexities of on-the-ground implementation. [450] In contemporary practice, many humanitarian actors do not claim to be neutral. [451] A commitment to humanity, impartiality and independence is shared by a wide array of humanitarian actors, but it is evident that these terms mean different things to different people. What is primarily of interest for the present discussion is how the traditional humanitarian principles connect to IHL's principle of distinction.

This study contends that international humanitarian actors cultivate a certain amount of ambiguity around **the relationship between distinction and the traditional humanitarian principles**. It is only once one enters the Kinetic realm that tensions between distinction and the humanitarian principles become impossible to ignore; a wedge materializes between competing ideals.[452] Staying with

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[447] See: Peter Walker, 'Cracking the Code: The Genesis, Use and Future of the Code of Conduct', *Disasters,* Vol. 29, No. 4, 2005, pp. 323–336; Hilhorst, supra, pp. 353, 361 (discussing the difference between the traditional humanitarian principles and the code of conduct).

[448] Katherine Davies, *Continuity, Change and Contest: Meanings of 'Humanitarian' from the 'Religion of Humanity' to the Kosovo War* (London: Humanitarian Policy Group, 2012); Urvashi Aneja-Bod, *Contesting the Humanitarian Regime in Political Emergencies: International NGO Policies and Practices in Sri Lanka & Afghanistan, 1990– 2010* (unpublished DPhil thesis, 2013), p. 7; De Waal, supra, p. 135.

[449] On the Dunantist/Wilsonian typology, see Stoddard, supra.

[450] Discussed also in Koddenbrock, supra, pp. 57, 63.

[451] On neutrality, see Hugo Slim, supra, p. 70 ('Humanitarian Ethics'); de Waal, supra, pp. 76–77.

[452] Leaving the principle of distinction aside, a recognized dilemma in humanitarian assistance is that between the principle of humanity, on the one hand, and a commitment to impartiality and neutrality, on

the Pedagogical realm for now, humanitarian actors in the civil–military training programmes frame commitment to the humanitarian principles as compatible with distinction. More than this, adherence to the humanitarian principles is seen to set them apart from other kinds of actors, because these principles are not – at least in theory – designed for non-humanitarian actors.[453] Further in this vein, the principles can be described as part of a distancing discourse that enables the defence of boundaries.[454] They comprise the 'long spoon' that humanitarian actors use in order to avoid being corrupted by other actors. [455] These dynamics are explored in a wider literature that grapples with how, or whether, humanitarian actors might ever be separated from politics.[456]

A final issue to consider is the precise **legal status** of the traditional humanitarian principles. This study treats the traditional principles as quasi-legal.[457] While they form part of a larger legal regime relating to humanitarian assistance,[458] they are largely moral values that guide operational practice rather than strict legal requirements. The legal status of the principles is debated by (legal) scholars. Some take the view that following the humanitarian principles is an IHL requirement[459] or that following the principles allows humanitarian actors to claim IHL protections.[460] These arguments can easily be discerned with respect to the principle of impartiality, because IHL explicitly requires humanitarian assistance to be impartial in character.[461] However, it is less clear what IHL requires from humanitarian actors in terms of neutrality and independence. Further, the concept of 'humanity' as a

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the other. Sometimes, providing assistance to populations in need (humanity) may require humanitarian actors to accept conditions imposed by the parties to the armed conflicts, thus violating neutrality and impartiality. Discussed in Barrat, supra, p. 344.

[453] Joost Herman, 'International Law and the Humanitarian Space in the Twenty-First Century: Challenged Relationships', in Zwitter et al. (Eds.), supra, pp. 11–32, p. 31; Macak, supra, p. 447.

[454] Fernando and Hilhorst, supra, p. 300.

[455] Nicholas Leader, 'Proliferating Principles; or How to Sup with the Devil Without Getting Eaten', *Disasters,* Vol. 22, No. 4, 1998, pp. 288–308.

[456] See Barnett and Weiss (Eds.), supra, Chapter 1.

[457] Herman, supra, p. 31. See also Macak, supra, p. 447.

[458] See Aneja-Bod, supra.

[459] HPCR, supra, p. 4.

[460] Kuijt, supra, pp. 66–67.

[461] See Chapter 3.

traditional humanitarian principle refers to a very specific idea, and it is not to be confused with the IHL concept that governs the conduct of hostilities.[462] On the other side of the debate, some scholars contend that there is nothing legal about the traditional humanitarian principles. These scholars depict the principles as having been developed in isolation from law,[463] and as bureaucratic slogans.[464] As stated above, this study takes the middle ground between these opposing perspectives. It does not espouse the view that the four main humanitarian principles are strictly required under IHL, nor does it claim that they have nothing to do with law. This outlook suggests that, if a conflict emerges between IHL's principle of distinction and the traditional humanitarian principles, from a legal perspective, distinction should be prioritized. However, as the discussion of South Sudan in later chapters shows, distinction does not necessarily serve as a trump, in practice.

It merits emphasis that international humanitarian actors who espouse the traditional humanitarian principles do not always (or only) rely upon them for legal protection. Rather, humanitarian actors believe that these principles offer moral guidance, ensure services are provided appropriately, and afford them actual protection on the ground. With regard to this last point, humanitarian actors wish to demonstrate that their agenda is purely a humanitarian one, and that they are not implicated in the conflicts in which they operate.[465] This latter aspect alludes to the important role of perception, which is elaborated upon in the following section.

4.3.3 The invocation of local perceptions: The 'phantom local'

This study proposes that humanitarian distinction practices have a performance component that is geared towards influencing the perceptions of local onlookers.[466]

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[462] As explained in Chapter 2, the principle of humanity in IHL is balanced with military necessity in the conduct of hostilities.

[463] De Waal, supra, p. 153.

[464] Koddenbrock, supra, p. 63.

[465] Mackintosh, supra, p. 129.

[466] The term 'local' is employed very loosely, referring to someone other than a fellow international actor who intervenes in or responds to a conflict. It can refer to national, regional or foreign actors.

The important role assigned to perception is reflected in pronouncements that neutrality is 'in the eye of the beholder'[467] and that impartiality and independence must be 'experienced and perceived by the outside world'.[468] Whatever the complex interests, needs, thoughts, experiences and desires of the local actors in armed conflicts, they are effectively subsumed when the humanitarian performance of distinction positions them as an audience. More than this, routinized humanitarian distinction practices tend to replace the actual perceptions of these local actors with the imputed perceptions of an amorphous local spectator. To capture the way in which humanitarian actors collapse a plurality of local audiences into a composite observer, this study introduces the figure of the 'phantom local'. [469] As conceptualized here, the 'phantom local' embodies three sets of observers: armed actors (attacker-perceivers), local authorities (authority-perceivers) and war-affected populations (beneficiary-perceivers).[470] This merger effectively conflates those who might use violence against humanitarian actors, those who might impede the delivery of humanitarian services and those who might not trust humanitarians to deliver appropriate life-saving services. Scholars note how the fear of attack and violence shapes the humanitarian imagination,[471] and how humanitarian actors can be fearful and mistrustful of even the individuals they seek to help.[472]

While the Pedagogical realm is a step removed from the operational context, local perceptions are routinely invoked at the civil–military training grounds. Typically,

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[467] Hilhorst, supra, p. 358.

[468] Thurer, supra, p. 60.

[469] Inspired by Walter Lippman, *The Phantom Public* (Transaction Publishers, 2006[1926]) (referring to a monolithic public with mythical and fictional qualities); Meredith Rossner et al., *The Process and Dynamics of Restorative Justice: Research on Forum Sentencing* (Sydney: University of Western Sydney, 2013), p. 43 (referring to the phantom magistrate); Kennedy, supra, p. 29 (referring to the imaginary bystander of human rights initiatives) ('Dark Sides').

[470] Other important audiences that are not discussed here include donors and the media. See, *e.g.*: Alexander Cooley and James Ron, 'The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action'. *International Security,* Vol. 27, 2002, pp. 5–39; Krause, supra, p. 48; Koddenbrock, supra, pp. 56–57.

[471] Fast, supra, p. 3 (the security practices of humanitarian actors 'help to create a situation in which fear threatens to eclipse the humanitarian imagination'). See also Chapter 3.

[472] Mark Duffield, 'Risk-Management and the Fortified Aid Compound: Everyday Life in Post-Interventionary Society', *Journal of Intervention and Statebuilding,* Vol. 4, 2010, pp. 453–474, 471; Roth, supra, p. 183 ('Paradoxes of Aid'); Hilhorst, supra, p. 361.

humanitarian actors pair the appeal to law with an emphasis on the need to appease local onlookers. In the Kinetic realm, the ascribed perceptions of the 'phantom local' do most of the heavy lifting when humanitarian actors urge other international actors to support their vision of distinction.

It should be underscored that, as individuals and a collective, humanitarian actors are intellectually aware that there is no such thing as a monolithic observer witnessing their every move. The promulgation of the 'phantom local' in everyday practice co-exists with concerted attempts by practitioners, scholars and policymakers to understand the actual views of different local actors.[473] Generating definitive findings on whether, when, and how local actors draw distinctions between different kinds of international actors has proven to be an enormous challenge. Perceptions of distinction are transient, context-specific and ever-shifting; they are highly dependent not only on how a humanitarian organization presents itself in a given moment, but also on the constellation of international actors who were historically active or are currently active in the setting in question.[474]

This study argues that there is a cognitive dissonance at play with respect to humanitarian actors' wielding of local perceptions.[475] Whatever humanitarian actors might know to be true about the multiplicity of local actors tends to be suppressed in their day-to-day implementation of distinction practices. As this study's empirical findings attest, there is something about distinction – or, more precisely, the way in which local perceptions are rallied to distinction's end – that engenders a flattening of local actors. When humanitarian actors invoke the 'phantom local', they hold up

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[473] See: Abu-Sada (Ed.), supra ('Eyes of Others'); Francois Cooren and Frederik Matte, 'At the Limits of Perception: Humanitarian Principles in Action', in Caroline Abu-Sada (Ed.), *Dilemmas, Challenges, and Ethics of Humanitarian Action: Reflections on Médecins Sans Frontières Perception Project* (Montreal and Kingston: McGill-Queens University Press, 2012), pp. 29–47 ('Dilemmas'); Antonio Donini et al., 'Mapping the Security Environment: Understanding the Perceptions of Local Communities, Peace Support Operations, and Assistance Agencies', Feinstein International Famine Centre, June 2005 ('Security').

[474] Caroline Abu-Sada, 'Introduction', in Abu-Sada (Ed.), supra, p. 5 ('Dilemmas'). Hugo Slim, 'How We Look: Perceptions of Humanitarian Action', Centre for Humanitarian Dialogue, Presentation April 2004, available at: http://www.hugoslim.com/Pdfs/How%20We%20Look.pdf ('How We Look').

[475] For an application of theories of cognitive dissonance to the field of humanitarian assistance, more broadly, see Marriage, supra.

the mirror of local perceptions to see how they, themselves, are reflected. These dynamics are captured nicely in Cooley's concept of the 'looking glass self', which describes an individual's ability to think about how he or she is perceived by others.[476] There is insufficient evidence at this juncture to make definitive claims about the overall accuracy of what humanitarian actors see in the mirror.[477] It is not the ambition of this study to fill this gap. Instead, the modest aim is to shed light on the *ascribed* perceptions of local actors – to offer a thick sociological description of what are, in essence, perceptions of perceptions. The primary concern is not whether a given perception is objectively correct, but that humanitarian actors believe something to be true and act accordingly.[478] There are further layers to this excavation, as this study takes an interest in the hidden and ambiguous elements of humanitarian distinction practices. In her study of the Mende in Sierra Leone, Ferme describes how a mirror 'mimetically doubles that which is in front without giving away that which is behind the reflection'.[479] Understanding what is concealed, Ferme observes, is crucial to making sense of the visible.[480] This highlights an immense advantage of integrating the perspectives of other (non-humanitarian) international actors into the present investigation. The suspicions these other actors voice, and even the way in which they gossip about humanitarian actors, bring hidden aspects of humanitarian distinction practices to the surface. This goes some distance to illuminating the actual functions of distinction.

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[476] Charles Horton Cooley, *Human Nature and the Social Order* (New York, NY: Scribner, 1902).

[477] Swann and Ely's notion of a 'battle of wills' speaks to this. The battle unfolds when there is a clash in perceptions between the 'perceiver' and the 'target' individual about the target's self-conception. William Swann and Robin Ely, 'Battle of Wills: Self-Verification versus Behavioral Confirmation', *Journal of Personality and Social Psychology*, Vol. 46, pp. 1287–1302. See also Schirch, supra (citing the need for more evidence on actual local perceptions of distinction).

[478] This outlook is grounded in subjectivist ontology. It is informed by W.I. Thomas' 'Thomas theorem', which stipulates that if we believe something to be real, its consequences are real enough because we behave as though it does exist. See W.I. Thomas, 'The Relation of Research to the Social Process', in Morris Janowitz, (Ed.), *W.I. Thomas on Social Organization and Social Personality* (Chicago, IL: University of Chicago Press, 1966 [1931]), pp. 289–305. See also Mark J. Smith, *Social Science in Question* (London: Open University Press/SAGE, 1998).

[479] Mariane Ferme, *The Underneath of Things: Violence, History and the Everyday in Sierra Leone* (Berkeley, CA: University of California Press, 2001), p. 7.

[480] Ferme, supra, p. 2.

Conclusion

This chapter has established that civil–military training grounds illuminate facets of distinction that cannot be discovered elsewhere. The conceptual alignment between the civil–military paradigm and the civilian–combatant distinction of IHL was presented as both a risk and an opportunity. While this setup is amenable to bolstering compliance with the IHL rule, the organizing framework also draws the eye towards the civilian–combatant divide, to the exclusion of other fault lines. An important contribution of this study is thus its investigation of how civilian–civilian tensions arise in these training settings. The chapter also introduced the everyday distinction practices that international humanitarian actors engage in, depicting three interwoven elements of law, principle and perception.

As discussed, the conceptual messiness of distinction is apparent in the high-level communications of humanitarian actors. The 'civilian plus' circulates whenever humanitarian actors promulgate a binary that singles them out from other civilians; the humanitarian–military distinction constitutes the prime example of this. Further, at the level of text it may seem as though competing goods can be simultaneously achieved. Distinction can be respected, the guidelines imply, even as some actors are incentivized to demolish boundaries. It was also argued that humanitarian actors do not make clear and consistent claims about the relationship between distinction and the traditional humanitarian principles. This allows conflict to fester between distinction and the principle of humanity, until it subsequently erupts in the Kinetic realm. Finally, when humanitarian actors advocate for distinction, they often supplement legal arguments with an invocation of the 'phantom local'. Here, they invite other international actors to look in the mirror that they hold, urging them to see the same reflection as they do. What they want, ultimately, is for other international actors to agree to the course of action that is dictated by these perceptions. While the invocation of an omnipresent observer is useful in this way, this study interrogates the manner in which it transforms local actors into an

audience for the performance of distinction. While this may not be the intention of humanitarian actors, the move interrupts and potentially overrides the actual needs and desires of local populations who are caught up in war. By taking seriously how other international actors critique the distinction practices of humanitarian actors, it is possible to discern what lies beneath these distinction practices – behind the reflection, so to speak. Chapter 5 delves into these dynamics in greater detail, exploring the empirical findings from the three civil–military training grounds.

CHAPTER 5: THE CIRCULATION OF DISTINCTION
AT THE CIVIL–MILITARY TRAINING GROUNDS

Introduction

This chapter investigates the way in which humanitarian distinction practices are implemented in the Pedagogical realm, exploring how qualities of humanitarianness, civilianness and combatantness are thought to attach to individuals. In the shared social space of civil–military training venues, humanitarian distinction practices are put to the test. Most of the actors at the training spaces do not espouse the same goals as humanitarian actors. They may entertain different visions of distinction or rank distinction further down their list of priorities. It is because of these varied outlooks that the training grounds are sites of struggle, and it is through these struggles that distinction is constituted and reconstituted. Eschewing the assumption that the most important divide is a civilian–combatant one, this chapter investigates a wide range of line-drawing practices and captures numerous distinctions at play. The discussion is organized into five main sections, addressing: (1) what the civilian–combatant distinction is; (2) who draws the line; (3) how the line is drawn; (4) where the line is drawn; and (5) how the line is erased. The question of why, which aims to uncover the underlying motivations of humanitarian distinction practices, is touched on at various points throughout the discussion.

The chapter begins with an extended introductory section, which provides an **overview of the empirical findings** from the civil–military training grounds. A discovery that emerges early in this discussion is the haziness around the term 'distinction', as deployed by international actors. When the IHL rule is disseminated to participants in the three training settings, it becomes clear that many actors view it as a negotiable concept rather than a hard and fast rule. As a power struggle ensues over who should forge distinction in practice, humanitarian actors proceed to implement the everyday distinction practices that were introduced in Chapter 4.

When they try to persuade other international actors to accede to their vision of distinction, they draw authority from IHL, soft law principles from civil–military guidelines, and the quasi-legal traditional humanitarian principles. Legal rules are thus explicitly cited, but law's authority is routinely sublimated to concern about appearances. This escalates in the Kinetic realm, as explained in Part III. The 'phantom local' serves as an important pivot point here, and the way in which local perceptions are leaned on highlights the instrumental function of distinction. A more general observation is that humanitarian actors enact distinction for more than simply a desire to comply with law or to secure legal protection.

Further complexities come to light when the perspectives of other international actors are brought into the picture. International civilian and military actors detect a stubborn sense of exceptionalism underlying humanitarian distinction practices. They fault humanitarian actors for performing distinction too strictly, for doing so unevenly or for misrepresenting what the 'phantom local' sees. These other international actors accuse humanitarian actors of carving out a special status for themselves. Here, non-humanitarian actors downplay the extent to which they, too, actively single out humanitarian actors from the wider civilian category. The circulation of the 'civilian plus' figure attracts consternation from international civilian actors who cannot make legitimate claims to humanitarianness, as they fear their own civilianness might be undermined. This pushback gives more concrete form to the theoretical discussion in Part I about the relativization of civilianness. Meanwhile, some military actors imply that characteristics of combatantness can attach to humanitarian actors, especially when they become entangled in armed conflicts. Humanitarian actors who are seen to lack proper humanitarian credentials or standards of professionalism are also viewed as having the status of 'civilian minus'. Significantly, even as international military actors argue that humanitarian actors are too enmeshed in the conflict, they actively foster contact with humanitarian actors and even engage in humanitarian-like tasks, themselves. Through such practices, these other international actors effectively dim, erase or

move the lines that humanitarian actors draw. It should be reiterated that the picture that is painted is not one of static statuses, though the 'civilian plus' and its corollaries are analytically helpful. Instead, international actors behave as though qualities of civilianness and combatantness float around, and the 'phantom local' assigns these qualities to individual actors as it sees fit.

Each part of this discussion opens with an encounter between international actors. Drawing inspiration from Goffman, these encounters condense the practices and interactions of international actors into concentrated form.[481] The vignettes anchor the analytical discussion that follows, foreshadowing the themes that are addressed. While the international humanitarian actor is, in a sense, the main character of this study, what is actually followed in this empirical investigation is the idea of distinction. This idea manifests in the lines that are drawn to differentiate between the various actors, and these processes of line-drawing reveal much about the shape-shifting nature of distinction.[482]

5.1 The civilian–combatant distinction

An enormous advantage of the Pedagogical realm is that it explicitly engages IHL's principle of distinction, presenting an opportunity to investigate how various international actors understand this legal rule. When international actors reach for the bright line binary distinction associated with the dominant vision – and they do reach for it, repeatedly – what they tend to find in its place is a confused, fuzzy and fragmented idea. This complicated engagement with distinction, as it relates to the conduct of hostilities, serves as the shaky foundation upon which the status of international humanitarian actors is overlaid.

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[481] Goffman defines an encounter as the 'natural unit of social organization in which focused interaction occurs'. See Erving Goffman, *Encounters; Two Studies in the Sociology of Interaction* (Eastford, CT: Martino Fine Books, 2013[1961]), p. 8.
[482] This approach is guided by Desmond's articulation of relational ethnography. See Desmond, supra, p. 548. See also Krause, supra, p. 110 (on the need to examine such line-drawing practices in the humanitarian field, specifically).

In the elaborate fictional land of the Batari people, an armed conflict is being fought between state armed forces and the Batari Liberation Army fighters. Members of the Batari civilian population are caught in between, and they are in urgent need of life-saving humanitarian services as well as protection from the ongoing violence. It is into this context that the CAMPO trainees are plunged, tasked with designing and implementing an international response to the unfolding crisis. Initially, the trainees are arranged into 'mixed' groups of international actors; each group contains a police officer, a peacekeeper, a human rights officer and so on. The groups are tasked with identifying who is a civilian in the land of Batari. Remarks on the haziness of the civilian category fly around the room, as trainees struggle in earnest to come to a consensus. In an earlier training session, the CAMPO trainees have learned that 'It's very rough to say "civilians"', and that the civilian is 'not that easy to describe'. Now, they wonder: Is it only the members of the local Batari population who are truly civilians under international law? What about individuals belonging to the non-Batari population who also reside in the area? Might some of the Batari Liberation Army fighters who do not carry weapons be civilians? To cope with this complexity, one group establishes different compartments in the civilian category. They differentiate unarmed liberation fighters from members of the local population, labelling them as different kinds of civilians. The other groups mostly arrive at indeterminate answers to this question. At the outset of the next exercise, the CAMPO trainer instructs trainees to leave their 'mixed' groups behind and gather in what he jokingly refers to as their 'single ethnicities'. He tells them to sort themselves into four groups representing four possible categories of international actor: Group 1: humanitarian and development; Group 2: civilian; Group 3: military; and Group 4: police. The civilian group, the CAMPO trainer explains, includes international civilian actors who are 'political and diplomatic and everything'. Everything, evidently, except for humanitarian (or development) actors.[483] After Group 1, comprised of humanitarian actors, concludes their presentation, the military trainer invites Group 2, comprised of civilians, to the front of the room with the following prompt: 'OK, now it's the civilians, since we are already in that sector.'

This part of the discussion explores how the frontline practitioners who attend civil–military training programmes learn about, and conceptualize, IHL's civilian–combatant distinction. In the scholarly literature on civil–military relations, civilian actors are generally treated as a bounded group, juxtaposed with military actors as

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[483] Two further issues that are not examined here include: (1) the pairing of humanitarian actors with actors carrying out long-term development work; and (2) the treatment of police actors as civilians or combatants.

their 'other'. This is not to say that there is a complete lack of nuance: some scholars and practitioners who engage with civil–military relations do, in fact, nod to plurality within the civilian and military categories.[484] As is shown here, many actors identify or cast around for a bright line in the hopes of slotting everyone into a stable civilian–combatant binary.[485] The dominant vision of distinction thus serves as a favoured starting point for some. Ultimately, however, international actors tend to perceive blurred lines and a confusion of categories – disruptions that are more in line with the alternative vision of distinction.

5.1.1 Civilian sub-categories at CAMPO

In the vignette from the CAMPO training programme, above, trainees grapple with IHL's civilian category in different ways. When the trainees are immersed in the land of the Batari, they strain to fit every actor on the ground into the civilian–combatant binary. While most groups find themselves at a loss, one group forges ahead by delineating sub-categories of civilians. This does not contravene the formal lessons of the CAMPO training, but instead amplifies a trainer's earlier observation that the category of the civilian is something of an approximation. As the focus shifts to international actors, the fuzziness around the civilian category is carried forward. A number of unstated assumptions about the international civilian are discernible in the second exercise. First, the move to establish Group 1 (the humanitarian and development group) as a separate category from Group 2 (the civilian group) notionally splits the humanitarian actor from the civilian. When the trainer jokingly invites trainees to leave their 'mixed' groups behind and return to their 'single ethnicities', this insinuates that humanitarian actors might even belong to a different ethnicity from other international civilians.[486] But then, when the humanitarian group finishes delivering their presentation, the trainer treats them as

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[484] See, *e.g.*: Slim, supra, pp. 126, 128 ('Stretcher'); Pugh, supra, p. 2 ('ODI Seminar').
[485] See Chapter 2.
[486] Garbett finds that some civilian witnesses at the ICTY sub-divide the civilian population into different ethnic groupings and other affiliations. Garbett, supra, p. 130. See also Chapter 2.

part of the civilian sector. This latter framing suggests that the humanitarian actor is not in a category of its own so much as it is a sub-set of the wider civilian category. This endorses the suggestion of another CAMPO trainer, who transmitted in an earlier session: 'Within the civilians, we have humanitarians.' This comment was made during a CAMPO lesson on the different 'categories' of international civilians that the CAMPO trainees needed to be familiar with. Waving a hand at the multitude of actors falling within the broader civilian category, the trainer advises that trainees 'have to understand and distinguish the different things'. There is a nod to diversity within the humanitarian category, as well. A trainer states, 'There is not one humanitarian community with the same interests', and notes that there are 'an enormous number of humanitarian organizations'.

In the various formulations articulated above, the presence of the 'civilian plus' is discernible. As a perceptual matter, the possibility of a carve-out for humanitarian actors is rendered plausible by this shaky interpretation of the civilian category. The trainers and trainees at CAMPO do not treat IHL's civilian–combatant distinction – as it relates to the traditional conduct of hostilities – as a fixed, bright line binary. Instead, they understand it as a point of departure that is both unsatisfactory and malleable. On a further note, in another CAMPO exercise, international actors are divided not into civilians and combatants, but into state and non-state actors. A trainer suggests that various non-state actors can be differentiated according to a metric of 'niceness': 'On the nice side we have NGOs. On the not-too-nice side, we have armed actors and privatization of violence.' While humanitarian NGOs are given a high 'niceness' ranking in this formulation, their positioning in a category with armed actors is also treated as unproblematic. Notably, no mention is made of the civilian–combatant distinction in connection with this. While trainees often claim that humanitarian actors demand a special status for themselves, it is evident that the former also treat humanitarian actors differently from other civilians.

5.1.2 In search of a bright line at SWEDINT

During a training session at SWEDINT, a military trainer asks trainees what they would do in situations of hybrid warfare where they cannot discern between civilians and combatants. A UN civilian trainee responds that, following the UN Department of Peacekeeping Operations (DPKO) policy for UN missions, 'when in doubt, assume someone is civilian'. When the same question arises with respect to international actors, a military trainee proposes dividing international actors into 'armed versus unarmed'. He points out that this fits with the framework of civil–military relations and 'it's the best term we have'. He goes on to note the difficulty of drawing this line when civilian security actors are armed, or when politicians and donors take on the appearance of military actors. Still, he believes that the preferred approach is to situate all international civilians together in one unified category; he includes humanitarian actors in this category, as well. Later, during a chat in the hallway outside the classroom, a civilian trainer at SWEDINT reflects on these exchanges. He proposes that, in theory, anyone should be able to look at international actors and say 'You're either a combatant or you're not'. However, he laments that there are blurred lines in practice, especially where military forces engage in humanitarian activities or humanitarian actors use military assets and start to resemble a military force. He describes a photograph he once took of a military officer wearing civilian clothes, recalling: 'It was a conflict area and he wanted to melt into the population. I know that is illegal, but you also have humanitarians dressing up in field gear…and you start asking, who is who?' He identifies a 'grey zone' of relationships between international humanitarian actors and other civilian actors. He proposes that this is not a legal issue to be resolved by IHL, but a matter of 'what our respective organization means'.[487]

Several SWEDINT trainees also weigh in on the civilian–combatant distinction. One military trainee pronounces: 'Not all civilians are civilians. There are different

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[487] See Section 5.4.

kinds.' Another military trainee vociferously opposes this splitting, and his comments reflect an important strand of critique against the 'civilian plus'. He alleges that the humanitarian actors he encounters in conflict zones seek special treatment. In his words: 'They don't want to associate with the military...but again they want an extra distinction.' He offers the example of the MSF hospital bombing in Kunduz Afghanistan by US forces.[488] 'They want to say the hospital in Kunduz is MSF, to be seen as special. But all I know, they are civilians.' He ventures: 'Next thing you will have special groups, like "MSF civilian".' His colleague backs him up, stating resolutely that all non-military actors are just 'civvies'. For both of these SWEDINT trainees, the dominant vision of a bright line civilian–combatant binary leaves no room for the 'different kinds' of civilians their colleague proposes. They suggest that, if humanitarian actors were to draw a line in the civilian category, they would do so in order to be special. This interpretation captures the essence of the 'humanitarian exceptionalism' outlook outlined in Chapter 3.

5.1.3 Competing visions of distinction at NATO

At the NATO CIMIC training, trainees also learn about what NATO terms the 'civil dimension' of the operational context. They are taught that it encompasses a plethora of actors, including NGOs, governmental organizations, donors, international organizations, media, internally displaced persons (IDPs), refugees, civilian populations and local authorities. With a faint echo of the CAMPO trainer's 'niceness' metric (see above), one NATO military trainer sorts actors into good and bad – leaving room for a disorderly in-between. In conflict zones, he proposes, 'We have good guys and bad guys. Everything in the middle is a mess, including NGOs'. Contemplating who is civilian amongst international actors, one NATO trainer reaches for a bright line binary that positions civilians who DPH on the combatant side. He asserts: 'It is very simple. You're civilian if you are not carrying a weapon

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488 See Section 5.2.

and you're not participating in hostilities.'[489] When asked in a subsequent interview how this perspective translates in comprehensive international missions, he ponders, 'Now that is interesting….This is so hard, this is the nub edge of it. It's about perceptions'.

At another point in the NATO training, international civilian actors are configured similarly to Russian nesting dolls. First there are international humanitarian actors, who are nestled within international civilian actors, who are nestled within the larger civilian landscape. In this conceptualization, humanitarian actors are depicted as a sub-category of civilian actors, much as in the conceptualization at CAMPO described previously. Intriguingly, one of the military trainers at NATO also refers to humanitarian actors as '*civilian* civilians'. Expanding on this, she says that when military actors use the word 'civilian' in the context of a UN peacekeeping mission, they typically use it as shorthand for UN police; they do not digest it as a reference to humanitarian actors. Another military trainer at NATO counters that the term 'civilian' is meant to capture all international civilian actors. Here, again, is potential pushback against the notion of a special civilian status for humanitarian actors. First, he emphasizes that, under international law, 'humanitarians are just civilians. There is no other kind of civilian'. Following this, he suggests that if humanitarian actors were to say otherwise, 'this must be something special the humanitarians have created for themselves, because that's not the law'.

As with the SWEDINT trainee who scoffs at the notion of the 'MSF civilian' (see above), this NATO trainer depicts humanitarian actors as clamouring to claim a special status for themselves. The possibility that international law allocates such a status to humanitarian actors is foreclosed, as is the prospect that other (non-humanitarian) international actors might actively participate in the dissemination of a carve-out for humanitarian actors. Meanwhile, some international military actors who participate in the civil–military trainings do exactly that. Several examples of

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[489] As discussed in Chapter 2, civilians who DPH still have formal civilian status under IHL, but are treated differently from civilians who do not directly participate.

this were offered above, such as the reference at the CAMPO training to the separate ethnicity of humanitarian actors. In addition, the NATO military trainer who uses the term '*civilian* civilians' casually refers to 'our civilian and humanitarian colleagues' during a coffee break. When asked to expand on this remark, she attributes it to unconscious impulse. She simply thinks of them as two separate groups.

5.1.4 Concern for local perceptions

The 'phantom local' circulates in the commentary from the three civil–military training programmes. For example, when the civilian trainer at SWEDINT speaks of politicians taking on the appearance of military actors, or the blurring of lines between humanitarian and military actors, he leaves it opaque just who it is that observes international actors and draws these conclusions. He is not a humanitarian actor, himself, but his concern for optics sounds very much like the anxiety humanitarian actors express regarding the ways in which they are perceived. This attests to the fact that other, non-humanitarian international actors share the sense that local populations observe them and draw conclusions about who is who. Accordingly, there is receptiveness to the importance of local perceptions and, potentially, shared concerns about optics. As is shortly demonstrated, attention to perceptions can sometimes have unintended consequences. If optics pose the main concern, then some military actors reason they must find ways to get close to humanitarian actors without being seen.

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While the focus of this discussion is on the civilian category, it should be noted that peacekeeping trainees at CAMPO and SWEDINT also struggle to locate themselves on the civilian–combatant divide. Unlike the military trainees at NATO, who can cleanly be slotted into IHL's combatant category, peacekeeping actors might have

formal civilian or combatant status under IHL.[490] When this issue arises at the CAMPO training, the formal training sessions teach that (UN) peacekeepers should be categorized as combatants. As one trainer explains, peacekeeping actors are increasingly being given Chapter VII mandates under the UN Charter and Rules of Engagement. This renders them military contingents, and the peace operations they engage in are, in essence, combat operations – even if softer-sounding terms are employed. The implication is that the peacekeeping trainees are to think of themselves as combatants from whom humanitarian actors seek to distinguish themselves. Another CAMPO trainer adds that it is not only the robust mandate and the use of force that create tensions between humanitarian actors and peacekeeping, but also a (perceived) lack of impartiality on the part of peacekeepers.[491]

This opening section of the empirical discussion has demonstrated that the international military actors who participate in civil–military training programmes struggle to locate a bright civilian–combatant line. While perceptions of blurring and confusion abound, international actors nonetheless set about forging the distinction in practice. It is not the case that the dominant vision of distinction is initially intact but then suddenly falls apart when actors consider the status of international humanitarian actors. Rather, distinction is formulated in a blurry and fragmented way at the outset, and this vision is carried forward or superimposed on international humanitarian actors.

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[490] Members of peacekeeping operations benefit from the protection afforded to civilians by IHL, except where: (1) the operation becomes a party to the conflict; or (2) the individual member of the operation directly participates in hostilities. Civilian personnel of a peacekeeping operation will continue to benefit from IHL's protection to civilians even if the operation becomes a party to the conflict (so long as they do not directly participate in the hostilities). See International Group of Experts, *Leuven Manual on the International Law Applicable to Peace Operations* (Cambridge: Cambridge University Press, 2017), pp. 97–99.
[491] On impartiality in peacekeeping, more generally, see Emily Paddon Rhoads, *Taking Sides in Peacekeeping: Impartiality and the Future of the United Nations* (Oxford: Oxford University Press, 2016). See also Chapter 7.

5.2 Who draws the line?

This section of the discussion explores the question of who, amongst international actors, is responsible for forging IHL's civilian–combatant distinction in practice. It is demonstrated that international humanitarian actors take the lead on this, entreating other international actors to accede to their vision. The discussion is broken into two parts: the first part advances the claim that humanitarian actors take charge with distinction; the second part examines the perspectives of other international actors on this point. A power struggle is uncovered here, as distinction practices threaten the balance of power in the humanitarian–military relationship.

'This is really IHL'

It is early spring in Motta di Livenza, Italy, and a group of front-line functional specialists is gathered at the NATO CIMIC training to hear from humanitarian actors. At the beginning of her session, the MSF trainer grabs the edge of her shirt between her thumb and forefinger. 'Normally I speak to the Italian military with my uniform on; today is my first time without my uniform. I have my T-shirt, that is my uniform. It's the thing that protects us. For us it is a white T-shirt with a logo.' This mention of a uniform elicits appreciative nods around the classroom. The MSF trainer takes pains to elaborate on why humanitarian actors must position themselves neutrally in the conflict. She states: 'It is a matter of perception: the military is part of the conflict and NGOs will be in danger if seen in this way.' She elaborates on how MSF's strict approach to distinction has also ensured its continued access to populations in need. It has enabled the organization to safely operate in insurgent-controlled parts of Afghanistan, for example, 'where even NATO wasn't able to go'. Later in the training session, she broaches the delicate issue of the then-recent bombing of the MSF hospital in Kunduz, Afghanistan, by US coalition forces. She implores the trainees – some of whom are US soldiers – to explain to her how this happened. Staving off charges that she is letting her emotions get the best of her, she reiterates that her concerns about the bombing are legally grounded. As she phrases it: 'This is really IHL. We approach this all from IHL.' Reflecting on the session, a trainee who is a military doctor voices approval; he refers solemnly to MSF as 'my brother in uniform'. Another trainee grasps why MSF is upset about the bombing, but he also senses that MSF is seeking special treatment. 'What makes that an MSF hospital, as opposed to other hospitals they don't call an MSF hospital? It would still be civilian…' Contemplating MSF's emphasis on neutrality, one of the military trainers states 'Yes! We get it, totally. But just MSF or ICRC'.

International military actors[492] hold varying perceptions of humanitarian distinction practices and their stated justification. While some are receptive, others question why humanitarian actors should be the ones to draw the line. The final comment from the above vignette ('But just MSF or ICRC') exemplifies the circulation of the Red Cross fantasy. International military actors tend to treat the ICRC – and often MSF, as well – differently than other humanitarian actors.

5.2.1 Who forges the distinction?

The present discussion begins with an examination of the way in which humanitarian actors communicate the need for distinction at civil–military training venues. At the training sessions facilitated by humanitarian actors at NATO, it is striking how consistently the reference to international law is twinned with an appeal to local perceptions. At some point in their respective training sessions, the humanitarian trainers from MSF, ICRC and OCHA identify international law as the source of the civilian–combatant distinction. They mention international law in general terms or refer, more specifically, to IHL and the Geneva Conventions. However, the appeal to law's authority rarely stands on its own. Consistently, it is accompanied by a reference to perceptions. Here, the 'phantom local' can be found hard at work. In some instances, it is summoned as a monolithic entity (as when a humanitarian actor refers generically to the prospect of 'being seen'); at other times, one of the more specific manifestations of the 'phantom local' is summoned to make a particular point. When a humanitarian actor intimates that the 'bad guys' monitor the interactions of international actors, for example, she invokes the attacker-perceiver to ground anxieties about personal safety. Although participants at the civil–military training programmes are sometimes persuaded by arguments about safety issues, they often disagree about the modalities of violence against humanitarian actors. One point of contention is whether the blurring of lines between different international actors actually endangers humanitarian actors.

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[492] The perceptions of other international civilian actors are examined in Section 5.4.

Hammond articulates a lucid critique on this front, underscoring what she terms the 'trope of confusion'.[493] She contends that the focus on blurring suggests that humanitarian actors are targeted by mistake or through misunderstanding.[494] Instead, she argues that the intentional violence against humanitarian actors is performative – designed to elicit media attention and to send a message about security levels and a disregard for humanitarian principles.[495] These dynamics are revisited in Part III of this study.[496]

Turning now to the lessons delivered by humanitarian actors at the NATO CIMIC training, the MSF trainer's session is examined first. In her discussion of the Kunduz bombing (see opening passage, above), the MSF trainer is emphatic: 'This is really IHL. We approach this all from IHL.' A few moments before she utters this, however, she also conveys: 'It is a matter of perception.' Although she does not specify whose perceptions pose a concern, the mention of danger suggests that it is the attacker-perceiver who is watching. She draws on the traditional humanitarian principles to clarify the logic of her argument, tacitly putting distinction on the same plane as these principles. She explains that humanitarian actors uphold the humanitarian principles as both a legal obligation and a 'moral and operational necessity', and states that adhering to the principles enables humanitarian actors to access war-affected populations and to keep themselves safe. Elsewhere in her session, she imparts: 'Distinction is hard; we are all in white cars. This is why the bad guys sometimes target us.' Here, she suggests that local observers cannot discern between a car with an MSF flag and a car with a UN logo, nor between the black and blue UN. For this reason, MSF painted their cars pink in the Democratic Republic of Congo (DRC). 'Pink to make the difference. Pink! OK?!'[497] This

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[493] Hammond, supra, p. 176.
[494] Ibid. See also: Silke Roth, 'Aid Work as Edgework: Voluntary Risk-Taking and Security in Humanitarian Assistance, Development and Human Rights Work', *Journal of Risk Research,* Vol. 18, No. 2, pp. 139–155, 141 ('Edgework'); Roth, supra, p. 32 ('Paradoxes of Aid').
[495] Hammond, supra, p. 177 ('It is thus perhaps aid agencies themselves who are most confused about their own role in armed conflict and unable to prevent themselves from being implicated in it').
[496] See Chapter 6; see also Section 7.3.2.
[497] On emblems and logos, see Chapter 4.

reference to the black UN refers to UN forces and their affiliates; the blue UN refers to UN humanitarian and development actors. Humanitarian NGOs, as a larger group, express concern about the adverse impact on local perceptions when black UN actors accompany blue UN actors, or when black UN actors use equipment that is branded blue UN.[498] In these accounts, qualities of combatantness – signifying guilt, complicity and participation in the conflict – are seen to hover around black UN actors. This leads blue UN actors – and other humanitarian actors not belonging to the UN – to fear that these qualities might affix to them, as well, if they were to get too close.

At the NATO CIMIC training, the ICRC trainer explains that, according to IHL, 'if you are in the convoy you are the military objective'. For this reason, the ICRC will usually 'bluntly refuse military escorts, because we do not want to be integrated into the military'. In the same breath as he invokes IHL, the trainer hastily adds 'And then there is the issue of image – how you are seen on the other side. It's all based on acceptability, we have to walk the talk, live it on a daily basis, so there is no misrepresentation'. He also explains that the intentional targeting of ICRC staff 'is where we cross the red line. It's not collateral damage, by chance the shell has landed next to our office'. The attacker-perceiver is activated in this account. Here, again, it is as though the 'phantom local' plucks qualities of combatantness from the air and assigns them to humanitarian actors – rendering the latter legitimate targets. The ICRC trainer also conveys the importance of maintaining a purely humanitarian image, without which the organization cannot ensure 'acceptance'.[499]

During her session at the NATO CIMIC training, the OCHA trainer extols the importance of maintaining distinction in the operational context. She states: 'This

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[498] Han Dorussen and Marian de Vooght, 'Putting Civilians First: NGO Perceptions and Expectations of UN Peacebuilding', Folke Bernadotte Academy Brief 01, 2018, p. 3 ('FBA Report').

[499] On 'acceptance' and humanitarian security practices, see, *e.g.*: Jan Egeland, Adele Harmer and Abby Stoddard, *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments* (OCHA, 2011); Ruben Andersson and Florian Weigand, 'Intervention at Risk: The Vicious Cycle of Distance and Danger in Mali and Afghanistan', *Journal of Intervention and Statebuilding,* Vol. 9, 2015, pp. 519–541.

distinction comes from IHL, between combatant and non-combatant, between the military and the non-military humanitarian aid worker.'[500] Immediately before she cites IHL, she says: 'For the humanitarian community it is not possible to be seen closely interacting with military actors or armed actors that may be seen as parties to the conflict or [as committing] violence against the local population.' This reference to parties to the conflict summons the authority-perceiver and the attacker-perceiver. It is also insinuated that the beneficiary-perceiver will harshly judge any humanitarian actor who fails to stay away from armed actors who harm civilian populations.

In these training sessions, international humanitarian actors do not solely entreat other actors to comply with international law; they also consistently invoke the 'phantom local' as the animating force of their distinction practices. This local spectator witnesses the patterns of interaction amongst international actors, assigning qualities of civilianness and combatantness to individuals. Turning now to the perspectives of other international actors participating in the training programmes, the proceeding section shows that some are persuaded by the appeal to international law while others are sympathetic to the need to appease the phantom local and still others reject both rationales.

5.2.2 The perspectives of other international actors

When it comes to the question of who should draw the distinction line, some military actors refuse to accept that humanitarian actors should be in control. As Pugh notes, military actors generally hold the position of power in the humanitarian–military relationship. [501] When humanitarian actors delineate boundaries in the name of distinction, they may be seen to disturb this arrangement. Although a humanitarian NGO actor in South Sudan depicts humanitarian actors as the Ginger Rogers to the military's Fred Astaire (see Chapter 7), the distinction

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[500] See Chapter 4.
[501] Pugh, supra p. 5 ('ODI Seminar'); Pugh, supra, p. 349 ('Civil–Military Relations').

practices of humanitarian actors may lead military actors to feel as if they are the ones on the back foot.

During a focus group discussion at NATO, a military trainer argues that the complaints of humanitarian actors about the blurring of lines are misguided. She contends: 'What we're trying to figure out is where the line *is*. It's not a blurring, it's the *location*.' Although her search for a line seems to conjure the dominant vision of distinction, her insistence that the line is not static also constitutes a departure from this vision. From this trainer's vantage point, the question should always be about what arrangement works best in a given setting. She cannot fathom why humanitarian actors would have a monopoly on deciding the location of this line. Listening in, another military trainer gently pushes back: 'You have to respect the distinction between military and civilians. We have to create the environment for military and civilians to do their work.' While he agrees that the line is not static, he is sympathetic to the argument that humanitarian actors should be in control. Invoking the 'phantom local', he says if there is a 'mix up' in the eyes of local actors, it is international civilian actors and humanitarian NGOs who are put at risk. What is remarkable in these exchanges is how the military trainers (do not) engage with IHL. Neither of these NATO trainers believe that one can find the civilian–combatant line 'in the books' of law. Rather, they feel this line is forged anew by international actors in response to the demands of a particular operational context.

During a classroom session at the NATO CIMIC training programme, a military trainer primes trainees for learning about distinction. When teaching them why they need to understand humanitarian actors as a group, he explains: 'Maybe you are working together, maybe it's people you cannot target; your targeting officer needs to know. You can't target their buildings and if you are bombing nearby, you might need to use a special type of bomb.' He elaborates: 'We want to avoid collateral damage, targeting of humanitarian facilities or personnel, or civilians in need, and this is very much in line with IHL.' Other military trainers at NATO link appeals to

distinction by humanitarian actors to a commitment to the traditional humanitarian principles. One military trainer says of humanitarian actors, 'especially in theatre, they don't want to link…they want to remain impartial'. Touching on the principles as well as optics, another trainer states 'NGOs, international organizations, sometimes they won't meet up. If they share a room and coffee with us, they can be seen as taking sides by people outside. We need to respect their neutrality, independence'. In this depiction, the 'phantom local', taking hazy form as the 'people outside', assigns qualities of combatantness to humanitarian actors who interact with military actors. As discussed below, some military actors conclude that if the concern is with appearances, they must simply avoid detection when trying to get close to humanitarian actors.[502]

At the SWEDINT training venue, one trainer points to perceptions as the reason why it makes sense to let humanitarian actors forge the distinction. This trainer advises military actors to think carefully about why humanitarian actors would assert a separation between actors. He explains that if military actors are themselves targets and meet with humanitarian actors, they put the former 'in harm's way'. Invoking the 'phantom local' in the form of the attacker-perceiver, he urges military actors to be careful about meeting with humanitarian actors because 'everyone knows'. At the CAMPO training, a trainee reflects on similar lessons about distinction. This trainee is baffled by the notion that humanitarian actors need to keep their distance from military actors. He speculates: 'Shouldn't humanitarians be right there with the military so that their own personnel can be safe, and they can get access to people in need?' A civilian UN trainee responds that humanitarian actors do not see it in this way: 'No, they refuse to be close to [military actors], they are just separate.' If a particular humanitarian actor uses a military escort, this trainee explains, other 'humanitarians say you are endangering the lives of the relief workers'. In these exchanges, trainees essentially debate whether the distinction humanitarian actors enact satisfy the 'phantom local', who mostly appears in the form of the attacker-

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[502] See Section 5.5.

perceiver. The first CAMPO speaker believes that the physical protection military actors offer eclipses whatever qualities of combatantness might be bestowed upon the humanitarian actor by the 'phantom local'.

Returning to the SWEDINT training, local perceptions are once again at issue, but this time the concern is not about protecting humanitarian actors from violence. One military trainee suggests that the main audience for distinction is, in fact, the 'customers' of humanitarian projects.[503] He says of humanitarian actors:

> It is like if they associate with military they will get less customers. If you are in a village and you see NGOs talking to tanks and helicopters, you might be a bit scared of them – even doctors or people who bring you food…so maybe you won't be pushed towards these people.

In this trainee's view, beneficiary populations can tell the different actors apart and they adapt their behaviour accordingly. It is important to scrutinize exactly how the concept of association works here. One reading is that local 'customers' deem a humanitarian actor standing near a tank to attract signifiers of combatantness such as participation and complicity. Alternatively, given that the main concern in this particular account is trust, it may be that these humanitarian actors fail to exhibit sufficient levels of civilianness – certainly not the degree required to ground a claim of humanitarianness. At the CAMPO training, a military trainer also connects distinction to beneficiary trust. He suggests that, when humanitarian actors struggle with other international actors over drawing the line, it is because humanitarian actors 'don't want to lose their privileged position with vulnerable groups'. In contrast to the SWEDINT trainee, however, he doubts that local populations can discern the identity of a given international actor. 'For them, it's all the same.' In this depiction, the 'phantom local' looks on at the blur of international actors and finds its counterpart: the 'phantom foreigner'.[504] The figure of the 'phantom foreigner'

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[503] On donors as the customers of humanitarian projects, see Krause, supra.

[504] An account of international actors in Iraq following the 2003 intervention also alludes to the 'phantom foreigner', proposing that there was 'almost no possibility of distinction'. See Alexandre Carle and Hakim

makes another appearance in the comments of a police trainee at SWEDINT. The trainee also feels that local populations generally cannot tell who is who amongst international actors, though he is confident that international actors can make an impression if they try. When deployed as an EU police officer in Afghanistan, he often conversed casually with local actors about how they saw the passing vehicles of international actors. He relays: 'Some thought they were military, ISAF, NATO, UN…only the few who were interested in the different actors in Afghanistan knew who was who.'[505] From this he concludes: 'If we didn't have time to introduce ourselves and speak to them, they might not know.' A military trainee chimes in: 'Whoever goes near to the people, is the one who will be known.' Solving the problem of identification, of course, does not dispose of the issue of association. As conveyed in the previous story about talking to tanks, local actors may be able to identify a humanitarian actor, but they may see this actor as part of the conflict because of their proximity to military actors or objectives.

Beyond protesting that humanitarian actors should have a monopoly on drawing the distinction line, military actors also express misgivings about *how* humanitarian actors draw the line. The following section explores two specific strands of this critique.

5.3 How the line is drawn

When international military actors fault humanitarian actors for how, when and where they enact distinction, the underlying message is that military actors want to be in charge of drawing the line. If they were in this position, then they would not be subject to the proclivities of humanitarian actors. Of course, humanitarian actors do not see themselves as simply drawing the line on a whim. What others adjudge as

Chkam, 'Humanitarian Action in the New Security Environment: Policy and Operational Implications in Iraq', *Humanitarian Policy Group Background Paper* (London: Overseas Development Institute, 2006), p. 7.
[505] On local perceptions of international actors in Afghanistan, see Larry Minear and Antonio Donini, 'International Troops, Aid Workers, and Local Communities: Mapping the Perceptions Gap', *Humanitarian Exchange Magazine,* No. 32, December 2005 ('Perceptions').

equivocation is, for humanitarian actors, often a nuanced recalibration based on the changing nature of a situation. To understand this practice it is useful to keep in mind the alternative vision of distinction, which is characterized by dynamism and fragmentation. Humanitarian actors worry that if they fail to express their civilianness to a sufficient degree, they may be viewed as having 'mere civilian' or 'civilian minus' status.

'We have magical frontlines'

In a training session at CAMPO, a military trainer shares a story from Haiti where he offered to arrange a military convoy for humanitarian NGOs. Initially, the NGOs turned him down: 'The humanitarians refused to associate.' Subsequently, however, it became clear that there was no other way for them to travel safely and they changed their minds. All of the logistical arrangements were worked out and the necessary preparations were made. When it ultimately came time to travel, however, the humanitarian NGOs 'fought over how much distance to have between the cars, because they didn't want to be seen with [the military]'. This dismayed the CAMPO trainer. He had viewed the agreement to join the convoy as an explicit decision to associate; he was incredulous that humanitarian actors would insist on avoiding an association that they had already agreed to. Weighing in, another CAMPO military trainer proposes that whether a given humanitarian request for distinction is reasonable is contingent on the pressures of the operational context. In a major conflict area with clear frontlines, he understands when humanitarian actors say 'I do not want to mingle because my only protection is to be seen as non-partisan'. In less fraught settings, however, he thinks such refusals to mingle are misguided. He elaborates: 'It's hard when you say, "We have magical frontlines that aren't real on the ground".'

This discussion highlights two grievances on the part of military actors with respect to the way in which humanitarian actors draw the line: first, military actors accuse humanitarian actors of taking an overly strict approach to distinction; second, military actors fault humanitarian actors for being inconsistent in their distinction practices. Whichever critique is activated, it is apparent that military actors often digest humanitarian distinction practices at the individual level. They experience the enactment of distinction as a personal affront and believe it to be motivated by anti-military bias.

5.3.1 The strict performance of distinction

The topic of information sharing is a contested matter in the field of military–humanitarian interaction,[506] and it is a key avenue through which distinction is addressed at all three civil–military training grounds. When it comes to dialogue, other international actors accuse humanitarian actors of instituting the bottleneck. To be sure, humanitarian actors often make no attempt to hide their reluctance to share information with military forces. Humanitarian actors cite fears that any information they provide could be used for military purposes,[507] or could more generally interfere with their ability to operate. This stance positions humanitarian actors as the withholding party in the relationship. As is shown here, military actors understand this reticence to share information – and to associate, more generally – to be fuelled by anti-military sentiment.

At the NATO CIMIC training, the ICRC trainer outlines the ICRC's approach to dialogue with the military. He acknowledges that understanding the local context may require some form of proximity to international military actors, perhaps in order to receive warnings about dangerous areas. This depiction holds that, whatever risk is incurred by getting closer to military actors, the danger that is *averted* through such contact is of bigger concern. A number of NATO trainees still voice dissatisfaction with this approach. They view it as limited because humanitarian actors do not offer to share anything in return. At the SWEDINT training, a military trainee argues that humanitarian actors communicate poorly with other international actors in conflict zones. He suggests that this is because humanitarian actors lack appropriate training, but he also notes that such training might be for naught, as 'some don't care'. The insinuation is that the reticence of humanitarian actors stems from a distaste for military actors.

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[506] Humanitarian Policy Group (HPG), 'The Concept of Protection: Towards a Mutual Understanding', Humanitarian Policy Group and ICRC Roundtable on Civil–Military Coordination, December 2011, p. 9.
[507] FBA Report, supra, p. 5. Humanitarian actors also fault military actors for not sharing with them – for example, with respect to the 'caveats' under which some peacekeeping forces operate.

Using the case of Afghanistan as an example, one trainee at SWEDINT says of the ICRC:

> I can see why they want to stay away from uniforms. The only way they could work in harsh places was because they weren't doing police, military, or spy [activities]….So imagine if the Taliban sees the uniforms, especially foreign military, having connection with ICRC. They will think they are all carrying information, reporting on insurgents, and ICRC could no longer work there.

This trainee deems the refusal to share information and to be seen near people in uniform an appropriate interpretation of the demands of distinction. In this account, ICRC actors simply seek to ensure that their humanitarianness is not compromised by contact with actors who attract qualities of combatantness. A military trainee at SWEDINT further suggests that asking a humanitarian actor for information about 'bad guys' is like 'asking a journalist to reveal their source for a story'. If humanitarian actors provide military forces with information about a target and this target is subsequently hit, 'The rebels will know where it came from, and this puts them at risk'. His colleague at SWEDINT concedes this point, but argues that humanitarian actors could at least engage in 'trusted information sharing'. They could, for example, pass along their assessments of the needs of local populations. Other trainees at SWEDINT insist that, if the primary concern is the safety of humanitarian actors, then this would surely be bolstered, rather than undermined, by such actors talking to military actors. One military trainee proposes: 'The situation has changed, this era of terrorism. Hospitals and NGOs themselves can be targeted. So they need to talk to us, meet with us.' Another military trainee contributes: 'We never know where the civilians are going, it could be a rebel area.' Over at NATO, a military trainee has the impression that humanitarians simply think that 'as military we are going to harass them, for information, and nothing else'. In these last few accounts, military actors insist that the physical protection

they can provide for humanitarian actors outweighs the risks engendered through information sharing.

The issue of withholding information flows seamlessly into the broader refusal of humanitarian actors to associate with military actors. A SWEDINT trainee laments that there is simply no relationship between humanitarian actors and military actors, because the former decline to meet. During the delivery of a group presentation at CAMPO, a police trainee mimics a military actor, performing robotic and machine-like moves with his hands. This performance draws knowing titters from around the room, but the laughter belies a deep-seated resentment. In subsequent conversation, a number of military actors express distress that others view them as mindless perpetrators of violence. A CAMPO trainer suspects that the operating humanitarian mindset is as follows: 'I never talk to you because you're a killing machine.' A trainee offers that he has no problem with humanitarian actors seeking to avoid association in the field, so long as it is for reasons he can understand. If it is simply done out of ideological motivations, however, 'then I am angry'. Another CAMPO trainee adopts his trainer's choice of words (see opening vignette, above) to mimic a humanitarian actor saying 'We don't want to mingle with you, you're military'. He cannot shake the feeling that humanitarian actors believe 'You're the killer and I'm the peace angel'. One military trainer at NATO proposes that humanitarian actors are driven away not by loathing, but by fear. He says that they are 'often instinctually scared of military and rank and uniform'. A military trainee at NATO corroborates this: 'at tactical level, NGOs look afraid to talk to you'. This combination of fear and loathing resonates with a suggestion made previously, that the 'civilian plus' status embodies both heroism and vulnerability.[508] Whatever the underlying reasons may be for the refusal to associate, a NATO trainee protests the result: 'It is a cold liaison!' Evoking the notion of the 'long spoon', a NATO trainer adds, 'What they will put in your face is the humanitarian principles'.

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[508] See Chapter 3.

Evidently, military actors often experience humanitarian distinction practices as a move to push them away. However, as is demonstrated in the following section, military actors also fault humanitarian actors for pushing *and* pulling.

5.3.2 The inconsistent performance of distinction

One SWEDINT trainee describes the relationship with humanitarian actors in conflict zones as 'non-symbiotic', and even 'parasitic'. This generates 'frustration and dislike from uniformed personnel'. His colleague elaborates, with more than a hint of exasperation, 'They want to stay far away from us when it suits them, but they use us when they want [something]'. Growing palpably irritated, he protests: 'How am I supposed to take you seriously when you reject me and don't want to talk to me, but ask for help a week later?' Sounding now like a spurned lover, he likens humanitarian NGOs to an ex-girlfriend who 'only calls when she wants to cuddle'. A military trainee at SWEDINT paints the following picture: humanitarian actors 'don't always run away from us, but they sometimes don't want to associate with us, but also sometimes they need us'. His colleague depicts the relationship with humanitarian actors as one of love and hate. 'When humanitarians have armed men around them, they love them because they need their help. But when they don't need them in this way, they hate them.'[509] At the CAMPO training, a military trainer addresses an imaginary humanitarian actor: 'First you don't like us, but then you want us when you need us later.' In his experience, the smaller the humanitarian organization is, the more challenging this dynamic. This alludes to issues of competence and professionalism, which are explored in Section 5.4, below. Another CAMPO trainer chimes in, saying of international military forces: 'Shit hits the fan and, last minute, NGOs do want them.'

It comes to light here that military actors take humanitarian distinction practices personally. From the perspective of these training participants, humanitarian actors

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[509] See also Slim, supra, p. 133 ('Stretcher') (humanitarian NGOs who strove to distance themselves from US military forces in Somalia in the 1990s were 'just appalled').

do not legitimately draw on the protections afforded to civilians under international law. Nor do they simply try to appease the 'phantom local', avoiding contamination through contact with those who fail to embody the right kind of civilianness. Instead, they are like mercurial ex-lovers who love their armed partner when needed, but are prepared to discard the partner until the inevitable point at which 'shit hits the fan' again. As in the previous discussion of who draws the line,[510] issues of power and control are activated. The possibility that humanitarian actors might deem themselves superior is especially enervating for military actors. Lest the impression be given that this is all one-sided, it is shown later that military actors view humanitarian actors through the prism of their own grievances.

During their respective sessions at the NATO CIMIC training, the ICRC and MSF trainers appear carefully attuned to such sensitivities. For her part, the MSF trainer stresses that MSF is not anti-militaristic. She opines: 'Being a soldier is no less noble than being a humanitarian worker.' She goes on: 'We have nothing to say against war in itself.' Following the *jus in bello*, humanitarian assistance is solely concerned with 'who needs help because of the war'. When explaining why military and peacekeeping actors must leave their weapons outside MSF programme sites, she underscores 'Our problem is not with *you*'; it is rather with 'your uniforms, your colours, but activities too'. She adds: 'This is why it's so important to dialogue with you but make sure the distinction is clear.' The ICRC trainer also engages in a bit of relationship damage control. He says of the connection between the military and the ICRC: 'It's historic. From the very beginning we have had the same working environment. We've always been present during warfare.' He continues: 'So it's important to have a dialogue. You are operators but also potential victims: the wounded dead [*this elicits snickers from the soldiers in the room*]…so you can benefit from a relationship with us.' In the discussion of the treatment of civilianness at the ICTY in Chapter 2, it was noted that the injured soldier might be deemed to merit

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[510] See Section 5.2.

protection like a civilian. In a similar vein, in this ICRC account, the combatant 'operator' becomes subject to the care of humanitarian actors, once wounded.

As elucidated above, other international actors sometimes experience the distinction practices of humanitarian actors as a personal affront. This might happen not only when humanitarian actors cleave to a strict implementation of distinction, but also when they enact distinction in what appears to be an erratic manner. When humanitarian actors strive to physically distance themselves or they change their minds about what distinction requires in a given scenario, other actors read into these moves feelings of hostility as well as a sense of superiority. Further complications emerge when humanitarian actors are found to draw lines within the civilian category, as discussed next.

5.4 Where the line is drawn

Drawing on the everyday distinction practices of international actors, this two-part discussion unearths the existence of fault lines within the civilian category. The first part focuses on how international humanitarian actors delineate boundaries between themselves and international civilian actors. The second part examines allegations that humanitarian actors should instead have a lesser civilian status, akin to 'civilian minus'. All of these practices are compatible with the alternative vision of distinction, and it is important to keep the dynamism of this vision in mind. To claim the highest degree of civilianness available, humanitarian actors showcase their non-participation, harmlessness, innocence and vulnerability. They also emphasize the social value of their role in war, and the fact that it is this role that separates them from other civilians. Meanwhile, other international actors question whether certain humanitarian actors can make authoritative claims to humanitarianness, or even civilianness.

5.4.1 The 'civilian plus'

At the training places, international humanitarian actors ground their 'civilian plus' status explicitly in the social value of their role in war. They bolster this effort by invoking the 'phantom local' and stressing how hard they must work to influence local perceptions. They do not tend to overtly extol their own virtue or moral uprightness in explicit terms, as they are perhaps aware of the alienation this might engender. Nonetheless, other international actors read feelings of superiority into such distinction practices. In a world where civilianness is relative and the civilian category is broken up into pieces, (non-humanitarian) international civilian actors find themselves in a precarious position. As civilians, they do not wish to be affiliated with actors belonging to IHL's combatant category. When international humanitarian actors produce a special civilian status for themselves, it activates fears on the part of other civilians that their own claims to civilianness are under threat. International civilian actors also resent the notion that humanitarian actors might be positioned above them in a hierarchy.

'I know you are allergic to the uniforms beside me'

Having been allocated roles as part of a joint international assessment mission in a mythical conflict zone, SWEDINT trainees gather in a virtual reality exercise room. Each team encompasses a diverse set of international actors, including military forces and civilian members of a UN political mission. Their assigned task is to conduct an assessment of local needs, and their virtual journey begins with a drive in a UN vehicle to the headquarters of a local humanitarian NGO named HELP. As the lights dim, the action unfolds on a large screen at the front of the room. Before long, the virtual HELP representative appears before the vehicle and greets the joint assessment team; he is friendly, wearing a blue T-shirt, black trousers and a black hat. Once this virtual encounter is underway, the lights come on and the trainees relocate to another training room. There they are faced with a live actor, now in female form, who serves as the real (though simulated) HELP representative. The team takes their seats, and the UN civilian leading the team introduces himself. He states that he is from the UN mission, then hastily appends 'but we are civilian'. Gesturing to his military counterparts, he says: 'I know you are allergic to the uniforms beside me.' The NGO representative nods, and confirms that her commitment to independence does indeed require that she keep her distance from the military. She takes this a step further, now alleging that the entire UN is 'a military of sorts'. Bristling at this, the UN civilian tries to salvage the

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encounter. He assures her that he will not bring his military and police team members to their next meeting. The prospect of being jettisoned does not sit well with the rest of his team. Teetering on the edge of her seat, a military team member admonishes: 'Don't apologize for the military, we are part of the team!' Her military colleague rallies to her side, lamenting: 'If we continue to put up the boundaries between us, we are never going to function together.'

As explained previously, humanitarian actors might promulgate a 'civilian plus' status when interacting with international actors, be they civilian or military.[511] Nonetheless, it is at the humanitarian–civilian contact point that the circulation of this special status is easiest to discern. In such encounters, it becomes apparent that humanitarian actors stake a claim to a different kind of civilianness than that which is available to other civilian actors. However, as mentioned in Chapter 1, lawyers and scholars routinely overlook these intra-civilian tensions. In the literature on civil–military relations and humanitarianism, there is also a tendency to assume that the humanitarian–civilian relationship is warmer than the humanitarian–military relationship.[512] It may certainly be the case that, overall, humanitarian actors have more in common with UN civilians than they do with UN military actors. Nonetheless, this study's empirical findings suggest that humanitarian–civilian relationships may sometimes be the prickliest.[513] Further, humanitarian actors are more likely to be confused for international civilian actors than uniformed soldiers or peacekeeping actors. This discussion begins with a brief examination of divisions within the civilian category before moving on to an analysis of how other international civilian actors react to the 'civilian plus'.

Drawing lines within the civilian category

During the role play exercise at SWEDINT (see opening passage, above), the humanitarian NGO representative from HELP calls for separation not only from

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[511] See Chapter 3.

[512] See 'FBA Report', supra, p. 4. An NGO respondent states: 'Our best ties are with the civilian section for sure because most of the time with civilian affairs and human rights and political affairs, but mostly civilian affairs actually, we have common interests.'

[513] See also Barnett, supra, pp. 16–17 ('Empire') (citing a veteran humanitarian actor who would rather have a beer with a soldier than with a human rights activist).

international military actors, but also from international civilian actors belonging to the UN. This is a clear example of the dissemination of the 'civilian plus' figure, and the humanitarian actor assigns 'civilian minus' status to UN civilians, painting them as 'military'. This encounter is tinged with artificiality, especially as a volunteer actor plays the role of the HELP representative. Still, this volunteer has been instructed to act in this way and her behaviour emulates the posture that international humanitarian actors in South Sudan adopt with respect to the UN integrated mission.[514] During the SWEDINT exercise, the UN civilian who is leading the joint assessment team is placed in an awkward position. In order to successfully move the meeting forward, he needs to ingratiate himself with the humanitarian actor. He believes he can achieve this by burnishing his civilian credentials, but doing so also requires him to distance himself from the military members of his assessment team. When he attempts this delicate move, his military colleagues lash out. The thrust of their outbursts encapsulates the mentality of comprehensive missions. 'We are part of the team', they claim, before pronouncing that erecting boundaries will impede them from getting things done. This encounter perfectly captures the tension between the 'working together' mantra of comprehensive missions and the need to implement distinction. The heated nature of this encounter also exhibits how the emotions of individual actors shape these exchanges, and how some actors take the distinction practices of humanitarian actors personally.

At all three civil–military training venues, military actors draw attention to conflicts between civilian actors. At the NATO CIMIC training, several participants describe humanitarian actors as being in competition with other civilians, such as those working for UN missions or the US State Department. They argue that the 'bigger battle' amongst international actors is along this humanitarian–civilian divide. Alluding to the existence of a 'civilian plus' figure, a military trainee contends that, when humanitarian actors separate themselves from other civilian actors, 'This divides the civilian population into castes'. From this individual's perspective, 'UN,

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[514] See Chapter 7.

NGOs…everyone should be the same'. At CAMPO, a military trainer argues that if the concern is about meeting the needs of war-affected populations, then 'It's the relationship amongst the civilian actors that is decisive'. This outlook is essentially a variation of the 'working together' mantra, focusing on civilians. Another CAMPO trainer is wary of depicting any given relationship as more consequential than another. He calls instead for a more holistic conversation that captures the overall diversity of international actors.

Evidently, military actors detect considerable friction between different kinds of international civilian actors. When they allude to line-drawing practices within the civilian category, military actors tend to imply that such practices are something that civilian actors bring about. It was shown here, however, that military actors often participate in the relativization of civilianness.[515]

The perspectives of other international civilian actors

A preliminary point is that other international civilian actors, such as humanitarian actors, see themselves as outside of the fight; they, too, fear being targeted with violence. They believe that all the features of civilianness – harmlessness, non-participation, innocence and vulnerability – attach to them, and they might even see themselves as having some claim to a 'civilian plus' status, given that they also perform an important social role in armed conflicts.[516] The 'civilian minus' status is one that they are eager to avoid, and it looms large when they participate in comprehensive or integrated missions alongside military actors. A special civilian status for humanitarian actors thus generates fears in these other civilians that their own civilianness will be downgraded.

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[515] See, *e.g.*, Section 5.1.

[516] The present study does not investigate whether non-humanitarian international civilian actors have a special status under IHL. For a brief examination of this issue, see Smirl, supra, pp. 40, 94–95.

As a civilian trainer at SWEDINT confides, when he has previously worn clothing with a UN logo or travelled in UN vehicles in conflict zones, he has felt at best 'identified, but not protected'. He does not feel immune from violence as a UN civilian, he says, 'because the UN is a target'. He is alarmed by the possibility that humanitarian actors might seek to position him on the other side of the distinction line, closer to the military actors he tries to distance himself from. His commentary attests to a tacit assumption that there are multiple distinctions in practice, not just a civilian–combatant divide. The following passage is also instructive. It shows how a UN civilian might link his fate to humanitarian actors, and highlights the twin features of vulnerability and value that Alexander deems characteristic of the civilian figure.[517] A civilian trainee at SWEDINT contends that attacks against humanitarian actors are rarely due to confusion. Instead, 'there are bandits who do not respect the law, and they will target people, kidnap humanitarians and demand ransom, for economic reasons'. It is a serious concern, this individual adds, 'because we can be killed'. This 'we' is striking. The individual who is speaking is not a humanitarian actor, but a civilian actor who deploys with UN political and peacekeeping missions. Nonetheless, he aligns himself with humanitarian actors because he shares their fears about being seen as complicit or as participating in the conflict. Similar to the SWEDINT trainer, above, who feels unprotected by the UN logo, this individual may feel even *more* at risk than humanitarian actors that qualities of combatantness will fasten to him. It was suggested previously that the extra protection engendered by a special status might, in fact, heighten the appeal of humanitarian actors as targets. [518] While it is unclear whether a special status would help UN civilian actors in a practical sense, being downgraded to 'mere civilian' or 'civilian minus' status would surely not assist them.

Contemplating how events unfolded in the simulated encounter with the HELP representative, a UN civilian trainee at SWEDINT says the dynamics resonated with her experience of working with the UN mission in the DRC (MONUSCO). When

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[517] See Chapters 2 and 3.
[518] See Chapter 3.

she introduces herself to humanitarian actors in the operational context, she is always careful to emphasize her civilian status. In fact, she takes the very same approach her fellow trainee did in the simulation exercise. 'We are from MONUSCO, but we are civilians.' A civilian trainer at SWEDINT describes an incident in which humanitarian actors rebuffed him when he was working for the UN mission: 'I was slapped on my fingers by UNHCR, and I was UN mission so I thought we were UN as much as them…the feeling of being told off that I had nothing to do here, that was the first time I had the feeling, "Yeah, right! We are not the same."' Sounding very similar to the military actors who accuse humanitarian actors of implementing distinction unevenly, [519] a civilian trainee says that humanitarian actors 'don't like us until they need us. And they will always need us'. Another civilian trainee asserts that humanitarian actors can be 'so focused on what they do that they forget we are not there to babysit them'. This depiction of humanitarian actors as a burden also arises in South Sudan, where humanitarian actors live under UN protection in the Protection of Civilian sites.[520] A UN civilian trainee suspects that humanitarian actors look down on those of his ilk. 'The humanitarians never liked us because we did not deliver the goods. We are too bureaucratic, people don't have time and energy to stomach our bureaucracy.' This comes back to the caution offered previously against assuming that there is greater affinity between humanitarian actors and other civilians. Even when humanitarian actors work with the same populations as UN civilians, for example, their approaches differ in important ways. Further, although one might expect greater alignment between UN civilians and humanitarian actors who also work for the UN, the story of the SWEDINT trainee being rebuffed by UNHCR in the field attests that this is not always the case. One UN civilian trainee warns that if humanitarian actors constantly criticize or struggle with UN mission actors, then humanitarians might find that the UN mission does not help them when they need it. A colleague disputes this last claim, countering that the UN mission is more likely to try to foster the relationship, in case humanitarian actors eventually become useful.

[519] See Section 5.3.
[520] See Chapter 7.

The commentary of the last two speakers highlights the peril of dismissing what might appear to be bickering or idle gossip between different kinds of international actors. The first UN civilian actor hints that constant criticism by humanitarian actors could adversely impact the way in which UN actors interpret their obligations to assist the latter under international law. This shows how interpersonal spats can inform and potentially overshadow the observance of legal mandates, such as the requirement that UN mission actors facilitate humanitarian access. As a matter of day-to-day reality, these two speakers are evidently concerned with avoiding the criticism of, and extracting information from, humanitarian actors. As is now explained, humanitarian claims to superiority prove especially irksome for other civilian actors.

At the CAMPO training, a number of international civilian actors have the impression that humanitarian actors look down on them. A UN civilian trainee says she only recently discovered prejudice against the UN mission. At a training event she attended, a humanitarian actor professed the view: 'I think all UN people are assholes.' She adds: 'It feels personal, how can you talk like this?' A civilian trainee also has the feeling that humanitarian actors 'think they are superior to everybody else – military, police, but even amongst civilians'. This individual says that MSF and other 'hardcore' humanitarians see UN civilians as essentially useless, and rank military actors and peacekeepers 'down at the bottom'. One UN civilian trainee suspects that humanitarian actors write her off when she drives in a UN mission vehicle. Another civilian trainee adds that, in social settings, humanitarian actors 'will talk to you as friends, but when you come to work they will freeze you. They are just separate'.[521] One civilian trainee says she has to deal with similar tensions inside the civilian component of the UN mission, as well. She proposes that each part of the civilian side elaborates 'a specific nationalism. Within the mission, can you imagine? This is mine, this is yours. Everybody wants the lead'. This mention of

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[521] Incidentally, this last speaker from the CAMPO training programme works for the UN Mission in South Sudan. See also Chapter 7.

occupational nationalities resonates with the CAMPO trainer's reference to the 'ethnicities' of different actors and the claim that civilian actors arrange themselves into castes.[522] It also serves as an important reminder that international missions are replete with power struggles and perceived hierarchies, only a limited portion of which are examined in this study.

In the previous commentary from the CAMPO training, the demarcation of boundaries between humanitarian actors and other international civilian actors is overtly linked to value judgments. Other civilians have the sense that humanitarian actors who set themselves apart judge them harshly or look down on them. Some civilian actors report having positive social experiences with humanitarian actors outside of work, but feel frozen out by them at the office. In these scenarios, it is difficult to discern whether the relevant dynamics should be categorized as a simple turf spat or whether these actors can be said to be jostling for a better kind of (legal) civilian status. It is proposed here that the construction of civilianness by international actors, according to differing degrees and gradations, is inflected with emotions as well as value judgments. One UN civilian trainee at CAMPO speculates on the way in which humanitarian actors see her versus the way in which they view her fellow trainee, who is a UN police actor in the DRC. She draws attention to the issues of gender and visual signifiers. 'Humanitarians probably see your police uniform. You are MONUSCO and you have a weapon and you are a man.' She remarks, however, that 'You see masculinity in humanitarian aid too'. Recounting her experience as a UN civilian actor in the DRC, she describes the humanitarian actors who would arrive in Goma, where they had a 'nice apartment and pool, but one to two hours away from real conflict. These guys, these cowboys, they come and go'. To conjure an image of these humanitarian actors, she puffs herself up and pulls back her shoulders. 'They are the hero of Oxfam. Oh, we say, "Another hero is coming". He thinks he is the most interesting man in Goma…Sometimes I see the cowboys, I just smile.' This gendered account offers an interesting counterpoint

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[522] See Section 5.1 and earlier in this section.

to the traditional association of the military with masculinity, and humanitarian assistance with femininity.[523] While there is not space within this study to address these issues in more detail, the overarching point is that international civilian actors also bring their own biases, misgivings and grudges to their encounters with humanitarian actors.

It was noted previously that international civilian actors who deploy with political or peacekeeping missions risk being associated with military actors working for the same mission. Similar to humanitarian actors, these other international civilian actors are curious about whether local populations can distinguish between the various international actors. They, too, hold up the mirror of local perceptions and try to imagine how observers see them. Alluding to the prospect of a 'phantom foreigner', a civilian trainer at SWEDINT suspects that local actors cannot tell who is who because so many international actors come from Western countries. Invoking an angry beneficiary-perceiver, one UN civilian trainee reports that when local populations become embittered with UN military actors in the DRC, UN civilian actors are also faced with protests and marches. A UN civilian trainee disagrees, arguing that local actors in the DRC know very well who is who. He claims that it is 'easy to identify MONUSCO, with their white and black vehicles. OCHA has the emblems, every organization has their emblem and logo, even the NGOs'. [524] In his experience, locals are also able to identify the different humanitarian actors: 'This one is Merlin, this one is IRC, this one is Save the Children, this one is ICRC, this one is MSF.' These distinctions are accompanied by value judgments. He goes on: 'Locals know MSF, who is in the bush, we know they do not fight, they come with medicine…we know also that the Red Cross cannot be attacked.' This perspective offers yet another example of the circulating Red Cross

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[523] To date, there has been insufficient scholarly attention devoted to gender in the (historical) study of humanitarian practice, as argued in Esther Moller, Johannes Paulmann and Katharina Stornig, 'Call for Proposals for Conference on "Gender and Humanitarianism: (Dis) Empowering Women and Men in the Twentieth Century", 2017, available at: http://www.ieg-mainz.de/media/public/Call%20for%20Papers/CfP_Gender_and_Humanitarianism_2017.pdf.

[524] French to English translation carried out by the author.

fantasy, wherein – once again – MSF is accorded the same special status. Here, an international civilian actor propagates the fantasy, and he says nothing of whether the other named humanitarian actors – OCHA, IRC, Merlin and Save the Children – cannot be attacked.

On a further note, a UN civilian trainee at CAMPO suggests that UN civilian actors are unreasonably hard on humanitarian actors. When her colleagues say to her, 'Be careful with the humanitarians', she takes this with a grain of salt. As an individual, she has developed various techniques for warming relations with humanitarian actors: she engages them on a personal level, maintains an open attitude and shares information generously. Another UN trainee at CAMPO takes care not to defend the UN when speaking to humanitarian actors:

> I have this feeling that I want to get sympathy from the humanitarians and get close to them, so I can do that by separating myself from [my] institution…but you have to be careful, if you want to stay in your organization. So I'll criticize [the UN mission] while giving an option of collaboration.

When confronted by the distinction practices of humanitarian actors, these UN civilian actors find ways to engage with humanitarian actors and engender proximity. In some instances, they make headway by shrugging off their institutional affiliation and fostering interaction at the individual level. In so doing, they assure humanitarian actors that if they (the UN civilian actors) possess the wrong kind of civilianness, it will not be transmitted to the humanitarian actors. These techniques have interesting parallels with military actors' 'rush to the intimate'[525] – a practice that is expanded upon, below.

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[525] See Section 5.5. The phrase comes from Ann Laura Stoler and David Bond, 'Refractions Off Empire: Untimely Comparisons in Harsh Times', *Radical History Review*, Vol. 95, 2006, pp. 93–107.

5.4.2 The 'civilian minus'

The Red Cross fantasy is alive and well in the above discussion of the 'civilian plus', and one military trainee at SWEDINT offers a twist on this. He respects the ICRC's desire to maintain separation from others because ICRC actors are not 'total humanitarians…I would even say they are translating military language into civilian language'.[526] While this is clearly intended as a compliment, the allegation that humanitarian actors might edge into the military sphere is more often articulated as a critique. International military actors believe that some humanitarian actors attract qualities of combatantness because of their entanglement in the conflicts in which they operate. While the impugned activities very rarely comprise direct participation in hostilities under IHL,[527] they often create a perception that humanitarian actors might be complicit. Humanitarian actors who are seen to lack humanitarian credentials are also seen as dangerous. As is shown below, international military actors do not tend to view their own efforts to engender proximity with humanitarian actors as problematic.

<div align="center">

'You are feeding the armed groups'

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A white Land Rover emblazoned with a black UN on its side comes to a stop a few metres in front of a checkpoint manned by local armed actors. After a few terse exchanges, the vehicle drives slowly away and one of the men at the checkpoint can be heard muttering 'There is no need for the UN here, we provide security'. While this encounter takes place on-screen as part of a virtual reality simulation exercise, it galvanizes a heated discussion amongst SWEDINT trainees about humanitarian actors who pay at checkpoints. Noting how armed actors set up roadblocks and checkpoints as a tactic to garner resources, one trainee reproaches humanitarian actors who pay to reach populations on the other side. He charges: 'You are feeding the armed groups…trying to be special and giving money to armed groups, you're fuelling the armed conflict.' Although the intentions of humanitarian actors may be noble, another trainee asserts, this does not give them a free pass in dealing with armed actors. When they pay at checkpoints, give food, treat the wounded and provide other forms of aid, humanitarian actors 'bring care to the enemy' and 'prolong the rebellion'. Further, their sheer presence in the conflict zone renders them part of the conflict.

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[526] For a reference to the ICRC and MSF as the 'military of the humanitarians', see Section 7.2.
[527] See Chapter 2.

Humanitarian actors inevitably become part of the wars in which they operate, one trainee says, 'even if they are in the middle'. One trainee recounts an incident in which, as a member of the international military forces in Afghanistan, he was called to assist a humanitarian NGO who was stuck at a roadside. When he and his colleagues arrived at the scene, the first question from the NGO was whether they had to bring their guns. 'I couldn't believe it. Do you grasp the severity of the events happening around [you]? They act like it's a fairy tale and we're fucking being shot at.' Another trainee bemoans: 'We are not the enemy.'

The following three-part discussion considers humanitarian actors who accept political funds and help the 'other side'; who are deemed to lack competence and credentials, and; who become too close with international military actors. While the first two issues are explored from the perspective of military actors, it will be argued that the third issue constitutes a blind spot for the latter.

Too close to the conflict – Political funding and helping the 'other side'

A first sticking point for trainees at the three training grounds is how humanitarian actors garner resources for their programming in conflict zones. Many trainees cannot fathom how humanitarian actors are able to accept money from – but not be beholden to – (political) donors. At the NATO CIMIC training, military trainees fixate on the fact that humanitarian actors accept funding from the very same organizations they claim to distance themselves from. After the ICRC trainer delivers a training session on the traditional humanitarian principles, a trainee alights on the ICRC's use of government funding. He inquires: 'Are *you* not too close with government?' The trainer responds that government donors are not permitted to dictate where assistance is delivered, or how. Unconvinced, a number of trainees shake their heads in disbelief. Equally, NATO trainees are bewildered by MSF's extremely strict funding policies. When the MSF trainer explains that her organization does not accept money from Coca Cola, given its link with health problems, a trainee sputters 'You….are too complicated!' Over lunch in the cafeteria, another military trainee voices incredulity: 'As if people in Afghanistan care about Coca Cola.' As summoned by the military actors, the 'phantom local'

faults humanitarian actors for their reliance on political donors, but is not bothered by the use of resources from corporate purveyors of unhealthy products.

Allegations of 'civilian minus' status become more glaring when participants discuss how humanitarian actors perpetuate armed conflicts. Critiques of this nature are not new, and in the 1990s they galvanized the development of the 'Do No Harm' agenda inside the humanitarian community. The central insight of Do No Harm is that 'when international assistance is given in the context of a violent conflict, it becomes a part of that context and thus also of the conflict'.[528] It is also recognized that, while humanitarian actors may adopt a neutral position with respect to the parties to an armed conflict, their actions and the aid they provide inevitably interact with the conflict context.[529] Contemporary humanitarianism is embedded with responses to such critiques, such as the move to professionalize the humanitarian sector.[530] Still, international military actors view humanitarian actors as working against them when they provide assistance to all. As flagged in Chapter 4, what international military actors fault here is not a violation of the traditional humanitarian principles, but the effort to *uphold* principles of neutrality and impartiality.[531] Such activities are anathema for international military actors because they potentially help their adversaries win the war.

At the NATO CIMIC training, a military trainee outlines a hypothetical scenario in which a suicide bomber badly injures one of his fellow soldiers in battle. If a doctor working for MSF provides care that allows this bomber to return to the fight, international military forces will become hostile towards MSF, as well as other humanitarian actors. In such instances, the trainee believes that military discipline

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[528] Mary B. Anderson, *Do No Harm: How Aid Can Support Peace – Or War* (London: Lynne Reinner Publishers, 1999).

[529] Anderson, supra, p. 1.

[530] See, *e.g.*, Peter Walker and Catherine Russ, 'Fit for Purpose: The Role of Modern Professionalism in Evolving the Humanitarian Endeavour', *International Review of the Red Cross,* Vol. 93, No. 884, 2011, pp. 1193–1210.

[531] This is different from the aforementioned critiques about funding, which essentially go to a breach of independence or neutrality.

plays a crucial role, because 'It's harder to stay rational'. A NATO military trainer corroborates this, adding that when a soldier's unit comes under attack, the most difficult thing is to not blame international humanitarian actors who have helped 'the other side'. As the humanitarian actor participates in or becomes complicit in the conflict, his or her status is downgraded to 'civilian minus'. What is striking about such accounts is how characteristics of combatantness are seen to attach to humanitarians doing quintessentially humanitarian activities. Unlike the issue of political funding, which could potentially compromise the independence and impartiality of humanitarian actors, the provision of services based on need is at the heart of the humanitarian endeavour. Moreover, such activities are consistent with the role of civilian humanitarian actors under IHL.[532] This is one clear example of dissonance between what IHL provides and what international actors perceive.

The MSF trainer confronts this last issue directly at the NATO CIMIC training. She explains that, when MSF treats a wounded combatant in an armed conflict, 'In that moment he's not a combatant, really. He's a human.' Reflecting on this, a civilian trainee at NATO notes that the MSF trainer 'got everyone going' in her session. He surmises: 'It's good for these guys in uniform to see someone like her talk about what it would be like on the other side, how they understand the humanitarian principles.' The implication here seems to be that humanitarian actors may have one interpretation of the humanitarian principles, but other international actors are entitled to have another. At the CAMPO training, a military trainer refers to humanitarian NGOs as 'unguided missiles' during a session. A humanitarian actor who is present balks at this, protesting: 'Are you calling me a weapon system?' Most trainees take this to be an amusing joke, but the humanitarian actor does not laugh. While the imagery of a missile depicts the humanitarian actor as nudging closer to the combatant category, the use of the word 'unguided' dovetails with the next strand of critique that is examined here: the allegation that some humanitarian

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[532] Note that IHL explicitly empowers those who qualify as humanitarian actors to assist all parties to the conflict.

actors lack the competence and credentials to make authoritative appeals to distinction.

Questioning humanitarian credentials

Aside from the ICRC and MSF actors, the other international humanitarian actors who operate in armed conflicts are evidently something of a mystery to military actors.[533] More than this, military actors doubt that the smaller or lesser known humanitarian actors possess the requisite competence, professionalism or humanitarian credentials to perform distinction. These humanitarian actors are also alleged to pose a potential danger to those around them.

Returning to the virtual reality exercise at SWEDINT,[534] a UN civilian trainee recalls how the local NGO HELP faced resistance when trying to execute her vision of distinction. This trainee surmises that an ICRC actor would have had an easier time. 'If we compare someone who is famous and not famous, this is it. The Geneva Conventions is basically them. And HELP, what does this organization stand for, what do they do? ICRC has worked hard for their fame in comparison.' At the CAMPO training, a military trainer says that the ICRC is the only humanitarian actor 'I really respect. The rest, it's a political thing'. She describes the individuals who work for small, lesser known NGOs as 'funny figures' and 'strange characters'. By sending young people 'who have no idea' to work in dangerous conflict zones, she argues that 'NGOs can *cause* danger…these guys are idealistic, emotional. They don't grasp the complexity, politically, of the place they're going to'. Another CAMPO trainer proposes that 'bigger organizations are more professional. You also have the exotic guys on the side, who can be a problem'. His colleague adds: 'Yes, it's an old stereotype but for sure still applies to the small ones. They barely have mission statements, and the necessity to get money leads them to this activity and that.' Humanitarian actors who engage in human rights work are also viewed as

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[533] See also Weir, supra, p. 41.
[534] See also Section 5.4.1.

problematic. One military trainer at CAMPO says this kind of activity leads humanitarian actors to 'burn their fingers'. A police trainee confesses that she is generally wary of humanitarian actors. There is 'always a suspicion that maybe they are working for someone else'. Smirking at this, another trainee questions whether one can trust that humanitarian actors are who they appear to be. She submits, with a raised eyebrow, 'Maybe they are not really humanitarian'. As is discussed in Part III, humanitarian actors who fail to stay away from the human rights arena in South Sudan are also seen to be playing with fire.[535]

One military trainer at the NATO CIMIC training says exasperatedly of humanitarian organizations that there are 'millions of them. We only know the hugest ones'. A trainee suggests that less organized NGOs endanger people and risk injury to their staff. At the SWEDINT training, a military trainee also proposes that some NGOs are simply in conflict zones on holiday. He is suspicious of humanitarian actors who 'want freedom, no responsibility, and not to be like military or diplomatic [actors]'. Another military trainee calls for humanitarian actors to prove that they can 'deliver the goods'. In a subsequent CAMPO training session, a trainer induces laughter when he introduces a new use for the acronym CIA: 'Confused International Agencies'. Later, over dinner, the same trainer softens his view. He confesses: 'I find I miss the messy humanitarians, who care about people.'[536] His colleague dismisses this as overly sentimental. 'You don't go somewhere as a professional and try to save [people]. You have to be cool-headed and rational. Otherwise you will cause trouble.' There is overlap here with claims that some humanitarian actors are too idealistic or emotional to behave with adequate professionalism in conflict zones (see above). This denigration of the effort to 'save lives', however, is not consistently espoused by CAMPO trainers. At other junctures in the training, trainees are reminded that humanitarian actors are

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[535] See Chapter 7.
[536] This outlook encapsulates a key strand of pushback against the move to professionalize humanitarian assistance. Discussed in Eric James, 'The Professional Humanitarian and the Downsides of Professionalization', *Disasters,* Vol. 40, No. 2, 2016, pp. 185–206.

not the only ones in conflict zones who save people. Indeed, there is a mixed message in this respect in all three of the civil–military training programmes. Even as they fault humanitarian actors for being naïve, military actors at the CAMPO and NATO trainings also express an earnest desire to help.[537]

Reminiscent of the previous discussion of international civilian actors, the way in which international military actors understand the distinction practices of humanitarian actors is shaped by a larger set of grievances. While international military actors express concern that humanitarian actors are anti-military, they also bring their own prejudgments and misgivings to their encounters with humanitarian actors.[538] The crucial difference, of course, is that while humanitarian actors want to disassociate from international military actors, military actors seek to foster proximity. Here we arrive at a significant blind spot of international military actors: they do not appear to grasp how their efforts to engage with humanitarian actors could undermine the latter's civilianness.

Too close to the conflict – Proximity to international military actors

The final way in which humanitarian actors might attract a 'civilian minus' label is through contact with international military actors. Although this prospect is something that few international military actors concede, others are quick to flag it. A SWEDINT trainer, who previously held the position of humanitarian–military coordinator, explains how this association can taint the civilian status of humanitarian actors:

> [T]he moment you get too close to the military, you are sort of lost…I noticed when I was advising people in the field, people would say 'It's so great, I was invited to a military BBQ'. You have to be really cautious and tell them 'The military is likely to open their arms and invite you to everything, and these are the people you need distance from'.

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[537] See Section 5.5.2.
[538] See Sections 5.3 and 5.4.2.

While acceding to military advances in the social sphere might seem innocuous to humanitarian NGOs, the trainer argues that this familiarity and comfort spills over into operational decision-making. When humanitarian actors happily accept military support, he says, 'I feel like asking them, putting them in a chair and saying, "Are you out of your mind?!" There is no thinking about what the consequences would be'.[539] To flesh out the way in which humanitarian actors become tainted, he offers two stories of affiliation. In the first story, the humanitarian actor becomes tainted in the eyes of the phantom local. In the second story, the concern is not optics so much as actual influence.

The first example comes from Darfur, where some humanitarian NGOs acquired the habit of carelessly relying on UN assets. The SWEDINT trainer describes an incident in which an NGO in Darfur asked the UN/AU hybrid mission, UNAMID, to recover the NGO's broken vehicle. OCHA recommended that this NGO refrain from direct communication with UNAMID and advised that if the decision were made to accept help from UN forces, the NGO's logo should be removed from the car. The NGO, however, disregarded this advice. As a result, 'UNAMID was driving a convoy with a broken NGO car on top of it'. This generated concerns with respect to the visual optics, as humanitarian NGOs in Darfur would be associated with the UN mission. In this account, the 'phantom local' spots the convoy as it makes its way along the sandy road in Darfur. It sees the UNAMID and NGO logos juxtaposed and assigns qualities of combatantness to the humanitarian actors.

The SWEDINT trainer's second story demonstrates that affiliation concerns will not always be about what is externally observed. Instead, proximity might lead one to become inappropriately influenced as a matter of actual fact. The context of this story is an intervention in the Middle East,[540] wherein members of an international

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[539] In Part III, two ideal types of humanitarian actor are introduced. This individual aligns with the first ideal type, which takes a long-term view and prioritizes distinction over other goals. See Chapter 7.
[540] Location withheld to protect confidentiality.

military coalition developed a close relationship with the UN humanitarian–military coordinator. As the SWEDINT trainer explains, this coordinator became so friendly with the military that he started to advocate on their behalf with the wider humanitarian community. Having developed sympathy for the military perspective, this UN humanitarian coordinator over-identified and 'took that line'. He began telling UN humanitarian agencies to deliver services in places where the coalition forces wanted them to work for strategic reasons. As the conflict progressed, other humanitarian actors grew uncomfortable with the coordinator's positioning and showed increasing reluctance to approach the UN mission. In the end, there was considerable professional fallout for this individual as a result of his missteps. The message is that one's humanitarianness can become compromised even when there are no witnesses to it. The SWEDINT trainer's parting advice to humanitarian actors is as follows: 'You need to know what game you're playing in.'

The final section expands on some of the dynamics introduced in the present discussion.

5.5 How the line is erased

While international humanitarian actors are depicted in this study as taking the lead on forging distinction, they do not have a monopoly on this role. There is a myriad of ways in which international military actors try to bend, move or erase the lines that humanitarian actors draw. This two-part discussion explores how lines get erased through comprehensive approaches to international missions and the direct engagement of military actors in humanitarian-like tasks.

5.5.1 The comprehensive approach

The present section returns to the tension between 'working together' and 'upholding distinction', delving into the implications of the comprehensive approach.

'Are you not here? You are here!'

At the NATO CIMIC training, an experienced member of the ICRC finds himself standing at the front of the classroom, facing a group of uniformed trainees whom he must convince about the importance of distinction. Broaching the issue of comprehensive missions, he breaks the bad news. 'It's beautiful, fantastic, but we are not part of it. We are not part of the end state; our job is not to have peace and security. This is your job, and [the job] of politicians and governments. Our job is to take care of victims of armed conflict. We're in the picture, but not contributing.' Plunging forward, he notes that when humanitarian actors make such pronouncements to their military counterparts in war zones, they are typically met with denial. Soldiers will say: 'Great to have you on board. Are you not here? You are here! So great to have you as part of the comprehensive approach.' He softens his tone now, perhaps recognizing the looming prospect of trainee alienation. He allows: 'They have the right to have this perception.' Concessions made, he returns firmly to his original course. Perceptions are invoked again, but this time it is those of an undefined omnipresent observer – the phantom local. 'But in the end the issue is this perceived neutrality: we are not going to plan, analyse, deploy together.' Intimating that the trainees sitting before him will get it right, he concludes 'As far as this is understood, life is beautiful and everything is happy'.

As discussed previously, attendees of civil–military training programmes are taught the importance of simultaneously 'working together' and 'upholding distinction'. The overall impression is one of humanitarian actors scrambling to draw and safeguard lines faster than other international actors can erase or move them.

The inevitability of comprehensive approaches

A uniting theme that cuts across the three civil–military training programmes is the inevitability of comprehensive and integrated approaches to international missions. At the outset of the NATO CIMIC training, a military trainer asserts that resistance is an exercise in futility. 'We don't have a choice. We operate in the same

environment…we have to interact with each other. We have a dialogue, it must take place at all levels, so it's better for us to prepare for this and get ready for it.' At the CAMPO training site, a trainer likewise notes that, in any global contemporary intervention, international military and civilian actors find themselves together, and international humanitarian actors must simply 'swallow the pill' that peacekeeping, military and police actors are involved. Ultimately, the trainer explains, the comprehensive approach requires every participant to know the 'whole picture'. A high-level UN guest speaker at the CAMPO training also encourages trainees not to let their individual roles take on undue importance. 'It's not really about being a police officer, a political affairs officer…it's about being part of a political process.'

Once the vision for the wider mission is intact, a CAMPO trainer explains, room can be made for different perspectives, clear definitions of the scope of work for all parties and the delineation of boundaries. The trainer imposes the following temporal sequence: work together first, enact distinction second. Another CAMPO trainer proposes that upholding the civilian–combatant distinction should not constrain attempts to collaborate with humanitarian actors. On the contrary, military actors should actively pursue joint planning and coordination. These teachings do not avert to the possibility that qualities of combatantness might attach to humanitarian actors through such contact. Seen in this light, the refusal of humanitarian actors to interact with international military actors is both disagreeable and surmountable. With ominous implications for the distinction humanitarian actors forge, this trainer advises 'Don't think about boundaries, "this I cannot cross"'. A CAMPO peacekeeping trainee deduces from these training sessions that, when international actors adopt competing mindsets, this entrenches divisions and generates friction in the mission. The trainee surmises that international actors must find better ways to relate with humanitarian actors, for the simple reason that they need each other. Although humanitarian actors insist that they are not part of the comprehensive approach, another trainee adds that they still need to 'know its results'.

International humanitarian actors grasp the inevitability of comprehensive approaches.[541] They are well aware that both blue UN and black UN actors will be present in any conflict zone in which they operate, and that they will need to find ways of navigating relationships with these persons.[542] This is not to imply, however, that they entertain the same visions as other international actors regarding the kinds of relationships that are desirable.[543] When a humanitarian trainer from OCHA leads a training session at NATO, she articulates the perspective of UN humanitarian actors regarding comprehensive approaches.[544] Echoing comments that the ICRC trainer made during his session (see opening vignette, above), she states: 'We say to NATO, do not include us under your umbrella because we are nearby and maybe working in the same environment or doing the same things. We are not part of this comprehensive approach.' She explains that humanitarian actors handle civil–military relations in a different way, guided not by CIMIC but instead by CM-Coord.[545] The latter approach, the OCHA trainer explains, is not about succeeding in a military mission. Instead, it aims to 'protect and promote the humanitarian principles, avoid competition, minimize inconsistency and, when appropriate, pursue common goals'.

The trainer from MSF quizzes the trainees on whether a military commander can sit with a humanitarian actor (such as one from MSF) at a table in a conflict zone and give orders: 'You do a hospital here, change that convoy time.' When the NATO trainees tentatively answer this question in the negative, the MSF trainer responds emphatically: 'MSF will never sit at [a] table with military partners.' It becomes clear later in her training session that she does not intend this literally, because MSF actors do, in practice, engage with military actors discreetly behind the scenes. Her

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[541] This comes across in the 'FBA Report', supra.
[542] 'FBA Report', supra, p. 3.
[543] See also Chapter 4.
[544] This session is delivered via Skype, rather than in person.
[545] Also discussed in Chapter 4.

point is that the advent of comprehensive missions does not make MSF a 'partner' of military actors in any sense of the word.

The SWEDINT training also includes a series of sessions facilitated by invited representatives of humanitarian organizations, all of whom extol the importance of distinction. Reflecting on these sessions, one SWEDINT military trainee shares: 'I was *so* surprised when MSF and ICRC came in on day one of training and said "No contact". Why not?' On further reflection, she says that she could 'sort of understand' where the humanitarian actors were coming from. Her military colleague offers: 'I found it a bit provocative. It's like you have your goal, and we have our goal and we can't cooperate. But we *do* have the same goal, we're all here for the country to get better.' In this trainee's view, the humanitarian trainer who calls for separation between actors is 'making it too easy for himself to distinguish himself. It should be an integrated mission – see how flexible the military are'. When he deploys to conflict zones, he shares: 'We do CIMIC hugs in my team.' This mention of a 'CIMIC hug' offers an appropriate jumping off point for considering the active steps that international military actors take to erase the lines drawn by humanitarian actors.

A 'rush to the intimate'

The efforts military actors make to learn about, get to know and approach humanitarian actors are reminiscent of what Stoler and Bond term a 'rush to the intimate' in counter-insurgency operations.[546] Participants in the NATO CIMIC training express a sincere desire to foster proximity with civilians; in particular, they are keen to increase contact with international humanitarian actors. Depicting the humanitarian sphere as part of a crowded landscape of international civilian actors, a military trainer at NATO proposes: 'We need to fight complexity with knowledge.' One trainee offers: 'The goal is to have positive feelings between military and

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[546] Stoler and Bond, supra. Discussed also in Derek Gregory, 'The Rush to the Intimate: Counterinsurgency and the Cultural Turn', *Radical Philosophy*, Vol. 150, 2008, pp. 8–23.

NGOs.' A NATO trainer highlights the importance of building friendships and advises trainees to 'show them who you really are, as military and humans'. Another NATO trainer recommends that trainees draw attention to commonalities between humanitarian and military actors, such as a mission-first focus, courage and an emphasis on getting things done. Ultimately, trainees learn, the onus to foster interactions with humanitarian actors is on military actors. As one NATO trainer puts it: 'We have the gun and uniform, so it's for us to open the door.'

During another training session at NATO, a military trainer explains that smaller and less organized humanitarian actors lack the 'absorptive capacity' to engage with military actors. Another military trainer urges trainees to distinguish between individuals and institutions when fostering relationships in conflict zones. Individuals, it is intimated, offer leverage points for entry. By way of example, the trainer tells the story of a humanitarian organization that initially refused to speak with international military forces in a conflict zone.[547] Eventually, 'one employee said he would talk to me in his brother's shop if [we] didn't tell his boss, so that worked'. The lesson imparted is that what cannot be accomplished at the organizational level can be achieved through one-on-one interaction. This resonates with the techniques that UN civilian trainees at CAMPO say they have developed for improving relations with humanitarian actors.[548] One reservist trainee at NATO, who splits his time between military service and civilian life, says it is easy for him to gain the trust of humanitarian actors because he can 'speak civilian'. He refrains from using acronyms, makes an effort to be less 'aggressive' and strives to put every message in a 'way they want to hear it'. He is adamant that, even when a military actor behaves in this way to get humanitarian actors on side, still, 'you are a soldier'.

Participants in the SWEDINT training also discuss the value of fostering relationships at the individual level. One trainee looks for international humanitarian actors of his own nationality in a conflict zone, so 'we can talk'. Another trainee

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[547] Location withheld to protect confidentiality.
[548] See Section 5.4.1.

submits: 'It's all personality. If you connect with someone, it's easy to exchange information.'[549] His fellow trainee adds: 'It's one thing to communicate with the organization as a whole, but easier one on one.' A SWEDINT trainee also proposes that established international humanitarian organizations are easier to work with than new, smaller NGOs because the former are more professional. This comment squares with the previous discussion of how smaller and lesser known NGOs are seen to lack professionalism.[550] At the same time, it is at odds with the NATO trainer's story of how a humanitarian actor hid his interaction with the trainer from his boss (see above). It was not professionalism that made the contact possible, but the willingness of the individual humanitarian actor to bend his organization's rules. Moving on, a SWEDINT military trainee who deploys as a UN peacekeeper adds that UN humanitarian actors are 'easier for military' to deal with than NGOs, because the former are part of the UN family. Another military trainee is heartened by potential disconnects between the official pronouncements of humanitarian actors and what they are, in practice, willing to do behind closed doors. He explains that humanitarian actors sometimes speak with him in private, and that when they face security problems, 'they even stay in our camp'.

These efforts to erase the line sit uneasily with accusations that humanitarian actors are too close to the conflict. As discussed (see Section 5.4.2), international military actors accuse humanitarian actors of feeding and caring for the enemy. These same military actors grow frustrated when humanitarian NGO actors do not want to be seen with them and their guns on the roadside. Not only this, but they actively strive to get close to humanitarian actors and foster interaction. This suggests that, when international military actors protest against entanglement with humanitarian actors in armed conflict, they are narrowly concerned with conflict actors who fight for the other side. The exception to this is where international military actors take issue with humanitarian actors who receive funding from donors on the 'good' side of the

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[549] See also 'FBA Report', p. 4 (direct experience with individuals influences humanitarian actors' views of particular organizations or actors).
[550] See Section 5.4.2.

conflict. Perhaps this problem is easier for military actors to see because they do not feel personally implicated. Ultimately, these military actors are primarily fixated upon how they might achieve their own goals through contact with humanitarian actors. Notably, some of the measures these military actors adopt – such as 'speaking civilian' – downplay their own combatantness.

Not all military trainees think that engendering proximity to humanitarian actors is the right move; some recognize that it can also compromise the civilianness of humanitarian actors. One NATO trainee allows: 'We have a different mission than the humanitarians, and we approach the local population differently.' When another trainee, befuddled, inquires, 'Why can't we work together?' his colleague proffers: 'Because humanitarians think we endanger them. We are military and we are political, we are not there for the same reason as humanitarians.' Another trainee contributes: 'When I hear them say they need to stay impartial, it's a challenge for me. But if that's what keeps them safe, I guess they have to use that.' Thus, separation from humanitarian actors is simply something 'we'll have to respect'. In these latter accounts, the 'phantom local' takes the form of the attacker-perceiver, viewing humanitarian actors who get too close to military actors as meriting 'civilian minus' status.

These pronouncements regarding the need to reinforce – or at least not interfere with – the lines drawn by humanitarian actors represent the minority view at the training grounds. The next section examines an aspect of military activity that generates more mixed feelings amongst military actors: their direct engagement in humanitarian-like tasks.

5.5.2 Military actors do humanitarian things

This section shows that participants in the civil–military training programmes are divided on whether military actors should engage in activities that exceed the scope

of the traditional combat role. When military actors assume a more expansive role, their claims to humanitarianness undermine the distinction practices of humanitarian actors.

<center>*'What you bring to the fight'*</center>

During one of the NATO CIMIC training sessions, a military trainer advises that when trainees arrive in a new area of operation, they should take immediate steps to show 'what you bring to the fight'. It is evident that the battle in question does not take place on the conventional battlefield, and the training sessions on 'CIMIC projects' illuminate the true arena. CIMIC projects are focused and time-bound projects that are designed to have an immediate and tangible impact, thereby increasing acceptance of foreign troops, ensuring force protection and – in some cases – supporting intelligence gathering. Practitioners sometimes refer to them as quick impact projects, or QIPs. To prepare trainees to implement such projects, a military trainer shares his experiences working with fishing cooperatives in the Horn of Africa. Testing the trainees, he inquires: 'Why would I work with fishing cooperatives?' Going for laughs, one trainee ventures facetiously: 'Because you like fish?' After allowing a brief moment of levity, the trainer provides the real answer. The end game is to empower the capacity of the fishermen so they won't join the pirates. 'I made some QIPs for them, courses in mending fishing nets, materials, teaching skills…' Another benefit of the contact this fostered, he says, is that fishermen shared information about weapons smuggling in the area. When he asks trainees why certain kinds of CIMIC projects are executed in particular locations, it prompts a chorus of: 'CIMIC is in support of the military mission.' During another training session, a military trainer depicts the daily duties he carried out on a recent afternoon in the conflict zone where he was deployed. He checked on the refurbished water pumps in the internally displaced persons camps and approved the release of funds for the water pumping station. Next: 'There were soccer uniforms to be dropped off for a community team, heated disputes to resolve, an influential Mullah to visit.' He concludes: 'It is surely my fight in my area of operation.'

Discussions about the militarization of humanitarian assistance flow in one of two directions: they either refer to direct engagement by military forces in the delivery of humanitarian assistance or they refer to the use of military logistical, security and other assets by humanitarian actors.[551] The present discussion, which focuses on

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[551] Peter Hoffman and Thomas Weiss, *Sword and Salve: Confronting New Wars and Humanitarian Crises* (Rowman and Littlefield Publishers, 2006), p. 20. See Pugh, supra, p. 352 ('Civil–Military Relations').

findings collected from research on the NATO and CAMPO training programmes, is concerned with the former variant.[552]

A more expansive role for the military

Most participants in the three civil–military training programmes agree that the comprehensive approach is a good thing. However, the more specific issue of military actors stepping away from their traditional combat role elicits apprehension. One moment, trainees are taught that humanitarian actors are not the only ones who can help local populations caught up in war. At another moment, they are reminded that they are soldiers first, and that every single thing they do is about winning the military mission. While some training sessions convey the desirability of soldiers carrying out CIMIC projects (NATO) and having peacekeeping actors implement QIPs (CAMPO), there is palpable anxiety about mission creep.

The present section elucidates the expansive conceptualization of the military's role on the contemporary battlefield before attending to the pushback and calls for a narrower approach. During a CAMPO training session, it is suggested that the military's job in contemporary conflict should be interpreted broadly. Trainees learn that international military forces are increasingly engaged in stabilization and counter-insurgency tasks that involve humanitarian-like activities. One CAMPO trainer emphasizes that, however much these tasks might look humanitarian, they remain combat operations. At the NATO training, participants are also reminded that, even if they 'do a lot of the same things' as humanitarian actors, this does not make them humanitarian actors. Citing the example of military forces building schools, a NATO military trainer tests the trainees: 'Do we have a military NGO?' The trainees respond with an unambiguous collective 'No'. The difference, all agree, is that everything NATO does is designed to achieve its military mission. The trainers convey that humanitarian NGOs primarily seek to support the civilian

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[552] The issue of military asset use by humanitarian actors is examined in Part III.

population and that, unlike NATO, they do not have a military 'second mission'. A military trainee later explains what this means to him: 'In the end we're all soldiers first….If I'm doing humanitarian relief in a war zone, my hand will be on my weapon. That's a big mental thing. I'm here to help you, but don't try anything, I will kill you.' Still, it bothers him that humanitarian actors might see him as itching to pick up a gun. Having emphasized the centrality of combatantness to his identity, he insists that 'No one hates war more than a soldier'.

While military actors are frequently reminded that they are not humanitarian actors, many depict themselves as being in a helping role or sharing a concern for 'common humanity'. Contemplating the sessions led by humanitarian trainers on this topic (see below), several NATO trainees are irritated by the concern for the motivations of military actors. One military trainee insists: 'We really can provide a service. Don't worry about what our motives may be, in the end we're helping somebody.' His fellow trainee chimes in: 'I can help you help these people, but you're not letting me help them by providing whatever I can provide.' A NATO trainer validates such reactions: 'Our underlying thing is humane: we *stop* the conflict. Most missions, the most bullets are shot on the range.' Likewise, another trainer submits: 'The military is not just killing people, or hurting civilians. We are even looking after civilians.' A trainer adds: 'We have in common the humanity…we do it with kinetic force, they do it by helping.' Here, combatantness and humanitarianness are folded together as though the commonalities outweigh the differences.

As highlighted previously, one CAMPO trainer emphasizes that humanitarian-like activities are combat tasks when performed by military actors – including peacekeeping actors. Undermining this message, another CAMPO trainer asserts that humanitarian actors are not the only ones here 'to save the world'. The armed actors who engage in multi-dimensional peacekeeping operations, this trainer contends, want the very same thing. Over lunch, the trainer recalls a civil–military training programme for EU actors that he had attended. He reports: 'They reassured

each other why they cannot work together, while people drown. No one answered the question "What can I contribute?"' He thinks this is preposterous. 'You're arguing over the colour of the life belt, while people are drowning.' For this trainer, humanitarianness is nothing more or less than saving lives.[553] Similar dynamics unfold in South Sudan, where there is discernible friction between humanitarian actors and UNMISS actors regarding technical expertise.[554]

A narrower role for the military

The international humanitarian community explicitly recognizes the experience and resources that military actors can bring to a context.[555] However, in addition to questions of capability, there are also doubts that military actors can deliver aid appropriately while engaged in fighting war or carrying out peace enforcement tasks.[556] For this reason, humanitarian actors tend to vociferously oppose the direct engagement of military actors in humanitarian-like activities in conflict settings.[557] Although CIMIC projects or QIPs might appear humanitarian on the surface, humanitarian actors take issue with the underlying aims of such work.[558] The goal of winning 'hearts and minds', for example, clashes with humanitarian commitments to deliver needs-based aid in a neutral and impartial manner.[559]

During a training session at NATO, the OCHA trainer notes that humanitarian actors are troubled by 'the association, mobilization and utilization of humanitarian assistance to achieve other objectives'. When military actors engage directly in so-called humanitarian activities, she contends, this generates confusion. 'The goal is different. Is the population understanding that? Do you think I will still have access

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[553] The reference to the colour of a life belt alludes to the issue of humanitarian signs and symbols, which is addressed in Part III.
[554] See Chapter 7.
[555] 'Sphere Handbook', supra, p. 60.
[556] Pugh, supra, p. 352 ('Civil–Military Relations').
[557] This refers only to armed conflicts; natural disasters and public health emergencies may be different.
[558] Weir, supra, p. 41.
[559] Also discussed in ibid. See also 'FBA Report', supra.

to the Taliban side?' The risk of misunderstanding, she explains, is heightened by *a priori* local ideas that all foreigners are the same. Both humanitarian and military actors are foreign, have means, operate in times of crisis and say they are 'here to help'. When military forces and peacekeepers perceive and present their tasks as complementary to humanitarian actors, they fuel the underlying confusion. She reiterates: 'What's important for us is distinction.'

This passage touches upon many of the themes that have already been woven throughout this empirical discussion. First, while the trainer brings everything back to distinction in this lesson, she does not lean primarily on IHL for authority. No mention is made, for example, of what IHL might permit or require of military actors in connection with these humanitarian-like projects. Instead, the prospect of 'confusion' is invoked in an attempt to persuade military actors to stay within their proper sphere of activity. The insinuation is that humanitarianness cannot survive the claims upon it that military actors impose. While it is initially unclear whose confusion the OCHA trainer is referring to, she soon calls on the 'phantom local'. This figure shapeshifts, assuming the form of the 'population', the 'Taliban side' and, finally, 'locals'. The 'phantom foreigner' appears, as well. The starting point is that 'all foreigners are the same', and that muddling deepens when military or peacekeeping actors engage in tasks that are the purview of (civilian) humanitarian actors. It is important to note that the 'association' the speaker problematizes is both actual and perceived.[560] This has parallels with the SWEDINT trainer's two stories about affiliation that were discussed above.[561] It will be recalled that the first story of perceived affiliation involved an NGO in Darfur that allowed UNAMID to recover its broken down car, which led to the NGO logo being visibly displayed alongside the black UN logo. The second story went to actual influence: a humanitarian actor ended up compromising his values when he became too close to international military forces. The direct engagement of military actors in

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[560] As evident from the delivery of the full session, which is not cited in full here.
[561] See Section 5.4.2.

humanitarian assistance, it follows, potentially compromises humanitarianness in ways that go beyond optics.

In training sessions run by military and peacekeeping actors there is a detectable – albeit marginal – thread arguing for military actors to swim in their appropriate lane. Coincidentally, at both CAMPO and NATO, this thread revolves around the construction of schools. At the CAMPO training programme, one trainer makes a disparaging reference to international military forces building schools in the Balkans in the 1990s. The trainer elaborates: 'We now understand this is not our role…so we first ask: Is this our job?' Similarly, at NATO, a military trainer describes a scenario in West Africa wherein NATO accidentally damaged a local school. NATO arranged for local civilian contractors to repair the school while NATO forces took care to stay 'out of sight'. In this trainer's view, it would not have been appropriate for soldiers to fix the school themselves. 'That should be the distinction: so you shouldn't see military working on civilian [things].' While the CAMPO trainer, above, focuses on what properly falls within the military sphere, the NATO trainer anchors distinction in visibilities. A distinction problem was thus averted in the case of the school repairs, because NATO forces remained out of sight.

It is important to pay close attention to trainees' interpretation of the emphasis on optics. If the concern is interpreted as being about being seen together, then some military actors may believe that their 'rush to the intimate' may continue so long as it takes place outside of the public eye. NATO trainees thus swap stories of how they make headway with humanitarian actors 'behind the scenes' and without 'being seen together'. At the SWEDINT training, one trainee advocates downplaying the differences between military and humanitarian actors. The uniforms that military actors wear, he proposes, are really just 'a piece of cloth'. At the NATO training, it is proposed that military actors should remove their uniforms altogether. Recalling the reservist trainee at NATO who says he is able to 'speak civilian', the suggestion is also floated in that training programme that military actors might make progress

by *looking* civilian – that is, by donning civilian clothing. In one of the training sessions, a trainer shows a photo of himself participating in a running race organized by a UN humanitarian agency in the Horn of Africa. Referring to the green military uniform of a NATO soldier, he notes that humanitarian NGOs are usually opposed to 'interacting with people dressed like a vegetable'. He advises, however, that trainees can 'easily take down the wall' by removing their 'vegetable or salad dress'. In subsequent conversation, several trainees voice discomfort with the notion of removing their uniforms. One trainee likens this to cheating, 'especially in civilian perceptions'. It will be recalled from the earlier examination of civil–military guidelines[562] that military actors are also expected to wear uniforms in order to uphold IHL's principle of distinction.

The NATO trainer described above essentially advocates that military actors should renounce the trappings of combatantness to foster interaction with humanitarian actors. While military actors might expect that meeting in secret or shedding uniforms will dispel anxieties about association, this will only go to the optics part of the equation.[563] Although the everyday distinction practices of humanitarian actors have a clear performance component that pertains to influencing the phantom local – being *seen to be* distinct – this does not eclipse the fact that humanitarian actors equally aim at *being* distinct.

Conclusion

A central finding of this empirical investigation is that non-humanitarian international actors are not very receptive to the distinction(s) that humanitarian actors enact. From the perspective of these other actors, humanitarian actors appear either overly strict or inconsistent in their appeals to distinction. It is evident that some international military actors take distinction personally; they see it not as something the law requires, but something that humanitarian actors demand from

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[562] See Chapter 4.
[563] See above in this section; see also Section 5.4.2.

them. Also, some military actors portray humanitarian actors as 'civilian minus' actors who are part of the conflict. Meanwhile, military actors encroach upon humanitarian actors in various ways: they participate in the comprehensive approach, they directly engage in humanitarian-like activities and they embark on a 'rush to the intimate' in order to foster interaction. International civilian actors express their own misgivings about humanitarian distinction practices, and the prospect of a 'civilian plus' status for humanitarian actors does not sit well with them. Problematizing the common assumption that humanitarian actors get along better with civilian actors than with military actors, this chapter has identified marked intra-civilian tensions in the Pedagogical realm.

By empirically describing and analysing the existence of a series of distinctions amongst international actors, the chapter has demonstrated that the civilian–combatant divide is not the only – or even the most significant – distinction at play. Overall, practices at the civil–military training grounds map onto the alternative vision of distinction (see Chapter 2), characterized by dynamism and a fragmented civilian category. While individual actors self-conceptualize as civilians or combatants in a general sense, their everyday organization of relationships belies the notion of discrete entities with static statuses. They might reach for a bright line distinction and its promise of clarity, but they may also behave as though individuals might be imbued with qualities of both civilianness and combatantness. An exception here is the 'rush to the intimate' that military actors engage in, which ignores how (their own) characteristics of combatantness might be transmitted to humanitarian actors through contact or proximity. Further, although international humanitarian actors seek to tie humanitarianness to the highest degree of civilianness available, there is a shared understanding amongst international actors that the 'phantom local' has the final say. And yet, international actors are the ones who project ascribed perceptions onto the 'phantom local' in its various manifestations. In the everyday encounters of international actors, it often seems as

though the main function of the 'phantom local' is to provide an avenue through which international actors might speak to each other about distinction.

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Conclusion to Part II

Part II of the study has followed the idea of distinction to the Pedagogical realm, illuminating how an important IHL rule is disseminated at global civil–military training spaces. It has demonstrated that the training programmes reveal something unique about the idea of distinction that cannot be distilled from the Intellectual and Kinetic realms. At the same time, these other two realms naturally spill into this one. The lessons taught in the training programmes draw on an intellectual formation of distinction, but trainees understand the lessons through the prism of their operational experiences. The empirical discussion in this part has illuminated not only how distinction is taught, but also how this teaching is received and contested by the international actors who are expected to operationalize it upon deployment. In all three of the training programmes examined here, the 'civilian plus' and its corollaries circulate. While the reality of the Pedagogical realm is undeniably messy, the discussion in Part I established that IHL's principle of distinction is characterized by disorder at every level.

In the empirical investigation conducted in Chapter 5, other actors could be found to question the harmlessness, innocence and vulnerability of humanitarian actors. Many also were shown to express reservations that the role humanitarian actors play in war merits a special status. When humanitarian actors disseminate the 'civilian plus' status in the name of providing help to war-affected populations, other actors see them as seeking to promote a heroic, virtuous and exclusive identity. When humanitarian actors call for distinction, others see them as craving ambiguity. On balance, non-humanitarian international actors are more inclined to see

humanitarian actors as the actual beneficiaries of a special civilian status for humanitarian actors – not populations in need. While the perspectives of other international actors help to expose the hidden functions of distinction as enacted by humanitarian actors, these perspectives cannot simply be taken at face value. As has been stressed throughout this discussion, other international civilian and military actors have priorities that differ from those of humanitarian actors. Thus, the distinction practices of humanitarian actors may represent, for these other actors, an inconvenience or an impediment to achieving their goals. This part has also proposed that the affective dimension of these relationships should not be overlooked. When other international actors believe that humanitarian actors look down on them, feelings of resentment and hostility are engendered that impact on their treatment of humanitarian actors and their interpretation of their obligations under international law. The empirical findings from the Pedagogical realm suggest that the answer to the 'why' question – as in, why humanitarian actors produce distinction in a particular manner – ultimately depends on who is asked.

PART III: DISTINCTION AND THE KINETIC

Introduction to Part III

South Sudan offers another challenging context in which humanitarian actors strive to enact their vision of distinction: it is the site of both an armed conflict and an integrated UN mission with a robust Protection of Civilians (PoC) mandate.[564] Building on the discoveries from the Intellectual and Pedagogical realms, Part III of this study follows the idea of distinction to the Kinetic realm. Its focus is on international actors working on the frontlines of armed conflict – particularly international humanitarian actors (primarily NGO, UN and ICRC actors), UN civilian actors and UN peacekeeping actors.

In the Kinetic realm, international actors come into direct physical contact with each other and engage in contests over distinction. In contrast to the Pedagogical realm, which has a strong normative bent, the Kinetic realm tends to be more practical and reactive. In the operational context, classroom lessons about IHL's principle of distinction are not routine. The relevant rules might be disseminated to individual frontline actors by Heads of Mission or staff at the headquarters, or perhaps not at all.[565] Although international actors may not explicitly cite a legal rule, they continue to perpetuate the idea of distinction. Through their practices and interactions, international actors in South Sudan constitute and reconstitute distinction on a daily basis. The distinction they produce relates strongly to the alternative vision of distinction outlined in Chapter 2. The 'phantom local' is at the centre of things in the Kinetic realm, dispensing degrees of civilianness (or combatantness) to international actors. Issues of appearance are at the fore, and humanitarian actors deploy signs and symbols to signal their separateness. A significant twist is the conflict that emerges between enacting distinction and implementing a particular traditional humanitarian principle – the principle of

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[564] See Section 6.1.2.
[565] See Section 7.1.

humanity. Suddenly, humanitarian actors can be found to erase lines or argue that they never should have been drawn in the first place. The first chapter in this part, Chapter 6, lays the foundation for the empirical investigation that follows in Chapter 7.

CHAPTER 6: SOUTH SUDAN AS A SITE

Introduction

This chapter explains the rationale for devoting attention to the operational context, in general, and South Sudan, in particular. It begins with a brief overview of South Sudan's recent conflict history, as well as the history of UN intervention in South Sudan. It then elaborates on how the everyday distinction practices of humanitarian actors materialize in the Kinetic realm. The first way in which they are materialized is through an appeal to law. In the operational context, explicit appeals to IHL and the Geneva Conventions mostly drop away; instead, humanitarian actors appeal to operational rules contained in civil–military guidelines. As is shown in this chapter, the 'civilian plus' and 'phantom local' figures circulate in these guidelines. The second way in which distinction practices are materialized in the Kinetic realm is through adherence to the traditional humanitarian principles. In contrast to the Pedagogical realm, in the Kinetic realm in South Sudan, the traditional humanitarian principles no longer appear to align with the implementation of distinction. To capture this disconnect, this chapter sorts the approaches of humanitarian actors into two ideal types: the first ideal type prioritizes distinction and views it as a trump and the second ideal type balances distinction with other, competing, ideals. The third element of humanitarian distinction practices in the Kinetic realm pertains to the use of humanitarian signs and symbols. In this chapter, important criticisms are canvassed regarding the way in which humanitarian actors deploy their emblems, with the most debilitating critiques voiced by humanitarian actors, themselves.

6.1 Following distinction to South Sudan

For international lawyers, South Sudan may appear to be a very different site from Geneva and The Hague – a far cry from IHL texts and the courtroom decisions of the Intellectual realm. This socio-legal study treats South Sudan as a site where the everyday life of law unfolds. Even if international actors in South Sudan do not

receive the teachings of distinction in the same way as those in the Pedagogical realm, they still cite the 'rule book' – although a minority of humanitarian actors are willing to toss it aside. Furthermore, international actors in South Sudan make and remake distinction on the ground as they go about their daily routines.

6.1.1 Rationale for studying the operational context

In armed conflict zones, different kinds of international actors cross paths with each other as they execute their respective tasks. In such settings, international legal rules, norms and high-level policies come into contact with the pressures of day-to-day operations. Koddenbrock argues that the visible and public face of international intervention is sustained by disregard for operational practice.[566] He observes that normative debates about the traditional humanitarian principles tend to treat the relevant principles as free-floating – untethered by what goes on 'on the ground'.[567] Marriage also highlights the need to look beyond official discourse: humanitarian actors may invoke rules or principles at the same time as they ignore or breach them, in practice.[568] Koddenbrock and Marriage each refer specifically to the traditional humanitarian principles (see Chapter 4), but it is worth contemplating how these insights might also apply to IHL's principle of distinction. More precisely, it is important to consider what the relationship between distinction and the traditional humanitarian principles might look like in the context of on the ground practice. A further question that was raised in Chapter 2 is why the dominant vision of distinction is preserved when it is so obviously under strain. One possibility was advanced in this respect: we want to live in a world where there is a bright line civilian–combatant distinction. Adding to this, it can be said that disregard for operational practice helps to sustain distinction in its dominant form. This points to the value of following the idea of distinction to conflict zones, where it is supposed to be upheld by international actors.

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[566] Koddenbrock, supra, p. 59.

[567] Ibid., p. 68.

[568] Marriage, supra, p. 10.

A central reason why South Sudan was selected as the operational site is that South Sudan is a difficult place for humanitarian actors to implement their vision of distinction. When international actors arrive in South Sudan to work for UNMISS or an international humanitarian organization, their identities interact with the murky civilian–combatant dynamics that are already in place. South Sudan is a context where the civilian status of local populations – and indeed the very concept of civilianness – is questioned and undermined at every turn. No one is ever seen to be fully outside the fight. Even before the outbreak of conflict in 2013 (see below), there was a long history in South Sudan of intentionally targeting civilians – especially those seen to sympathize with the opposition.[569] While the international community treats the internally displaced persons (IDPs) residing in South Sudan's 'Protection of Civilian' (PoC) sites as civilians, the Government of South Sudan and various non-state armed actors routinely question the civilian status of these IDPs. They allege that (ex-)combatants flow in and out of the sites on a daily basis and that UN forces do not fulfil their gatekeeping role. There is empirical evidence to support these claims.[570] For example, it is widely acknowledged that IDPs have been smuggling weapons into the PoC site in Bentiu, Unity State, typically hiding them in charcoal and firewood.[571] One respondent for the present study proposes that this activity goes undetected because UNMISS lacks the capacity to search all 130,000 IDPs living on-site. It is also recognized that some segments of the South Sudanese population move seamlessly between civilian life and armed vigilante practice or opportunistic criminality.[572]

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[569] Michael Arensen, *If We Leave We Are Killed: Lessons Learned from South Sudan Protection of Civilians Sites* (International Organization for Migration, 2016), p. 15.

[570] See, *e.g.*, Caelin Briggs, *Protection of Civilians Sites: Lessons from South Sudan for Future Operations* (Norwegian Refugee Council, 2017), pp. 64–66 (emphasizing the need to maintain the civilian character of the PoC sites).

[571] Arensen, supra, p. 58.

[572] Field interviews, 2015. On criminality in the PoC sites, see Flora McCrone, *Field Notes on Criminality and Insecurity in South Sudan's UN Protection of Civilian Sites* (Justice Africa, 2016).

In this fraught setting, humanitarian actors fear that the ambiguity of the civilian status of local populations will be grafted onto them. They hope to escape the civilian as a compromised idea, and they strive to avoid the material treatment that has befallen local civilian populations. The successful dissemination of a 'civilian plus' status, whether to cleanse them of qualities of combatantness or to distance them from those with lower degrees of civilianness, acquires high stakes in South Sudan. As mentioned previously, however, such an escape might be illusory; a special status for humanitarian actors might turn them into more enticing targets. Aspects of the international intervention that generate further anxieties about distinction are explored in Section 6.1.2, below.

The discussions of methodology in Chapters 1 and 4 of this study also apply in the Kinetic realm.[573] The bulk of field research in South Sudan was carried out in August and September 2015. The capital, Juba, in Central Equatoria State, served as the main base, and trips were made by a UN Humanitarian Air Service helicopter to 'deep field' sites in Bor, Jonglei State and Bentiu. Field observation and interviews were conducted in and around the PoC sites where IDPs reside, in Juba, Bor and Bentiu. While the Kinetic realm offers a form of authenticity that cannot be found elsewhere, it also has its drawbacks. In addition to posing challenges for ethics and access, the Kinetic realm also presents difficulty for researchers trying to make sense of complex patterns of interaction as they unfold in real time in an unstable context. These drawbacks were partially averted by the author's familiarity with South Sudan and extensive network of contacts in the area.[574]

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[573] As noted previously, interviews and focus group discussions were the core research methods used in South Sudan; they were supplemented by participant observation.
[574] Previous work experience in this setting in 2010, 2011 and 2014 made South Sudan the preferred choice over similar conflict-affected contexts that host international missions.

6.1.2 Overview of South Sudan: Conflict and intervention

Between 1983 and 2005, the country that was then called Sudan was engulfed in a violent north–south conflict. The two main parties were the Sudan People's Liberation Movement/Army (SPLM/A) and the Sudanese government, based in Khartoum.[575] The official end to the conflict was signalled by the signing of the Comprehensive Peace Agreement (CPA) in 2005; this agreement provided for, among other things, a future referendum on southern Sudanese independence.[576] In July 2011, the Republic of South Sudan came into being, following a referendum in which 99 per cent of residents in Southern Sudan voted in favour of independence.[577] Back in 2005, in order to oversee the implementation of the peace ushered in by the CPA, the multi-dimensional integrated UN Mission in the Sudan (UNMIS) was installed with headquarters in Khartoum.[578] Following the Republic of South Sudan's independence in 2011, this mission was officially replaced by the UN Mission in South Sudan (UNMISS).[579] Authorized under Chapter VII of the UN Charter, this integrated mission's mandate was to 'consolidate peace and security and to help establish conditions for development' in South Sudan.[580] As stated in the Status of Forces Agreement (SoFA) signed by UNMISS and the Government of South Sudan (GoSS), UNMISS committed to following the international legal rules regarding the conduct of military personnel, including the 1949 GCs and the Additional Protocols.[581]

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[575] Wendy Fenton and Sean Loughna, 'The Search for Common Ground: Civil–Military Coordination and the Protection of Civilians in South Sudan', *Humanitarian Policy Group Working Paper,* December 2013, p. 5.

[576] Fenton and Loughna, supra, p. 5.

[577] Ibid.

[578] As per UNSC, *Security Council Resolution* 1590 (2005), 24 March 2005, S/RES/1590.

[579] UNSC, *Security Council Resolution* 1996 (2011), 8 July 2011, S/RES/1996.

[580] Ibid. Chapter VII entitles UN forces to engage in robust use of force, and to use 'all necessary means' to protect civilians and humanitarian actors, and for self-protection. See Koddenbrock, supra, p. 79.

[581] See Section Four of the Status of Forces Agreement between the United Nations and the Government of the Republic of South Sudan Concerning the United Nations Mission in South Sudan, available at: http://www.un.org/en/peacekeeping/missions/unmiss/documents/unmiss_sofa_08082011.pdf. South Sudan ratified GC I-IV of 1949 and AP I-III in 2013.

The initial jubilation that greeted South Sudan's independence was short-lived. In December 2013, there was a serious spike in armed violence as different factions of the SPLA began to fight – first in the capital, Juba, then elsewhere throughout the country.[582] At the root of this conflict was a struggle for power between President Kiir and former Vice President Riek Machar. The conflict also took on an ethnic dimension, pitting the country's two main ethnic groups – the Dinka and the Nuer – against each other.[583] When civil war erupted in South Sudan in December 2013, tens of thousands (and eventually hundreds of thousands) of IDPs sought refuge at UNMISS bases. At several sites, UNMISS staff opened the gates and allowed in those seeking physical protection from the armed violence.[584] These sites came to be referred to as 'Protection of Civilian', or PoC, sites. By not referring to them as IDP camps, international actors hoped to emphasize their temporary status.[585] In response to the December 2013 violence, the UN Security Council Resolution 2155 of May 2014 reinforced UNMISS and 'reprioritized' its robust PoC mandate, as well as: its human rights monitoring activities; support for the delivery of humanitarian assistance; and oversight of the implementation of the Cessation of Hostilities (COH) agreement.[586] In terms of the conflict status, it is generally agreed that South Sudan has been in a non-international armed conflict since December 2013.[587] While peace agreements were signed in 2015 and 2017, they did not hold and, at the date of writing, the conflict situation continues. The next section of the discussion addresses UN integration in more detail, and elaborates on the UN mission's PoC mandate.

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[582] Lauren Ploch Blanchard, 'Conflict in South Sudan and the Challenges Ahead', Congressional Research Service Report, 2016.

[583] For background on the conflict, see African Affairs, *Making Sense of South Sudan, Virtual Issue* (2016), available at: https://academic.oup.com/afraf/pages/south_sudan_virtual_issue.

[584] See Briggs, supra, p. 12.

[585] Arensen, supra, p. 12; Damian Lilly, 'Protection of Civilians Sites: A New Type of Displacement Settlement?' *Humanitarian Exchange Magazine,* No. 62, September 2014, available at: http://odihpn.org/magazine/protection-of-civilians-sites-a-new-type-of-displacement-settlement/.

[586] UNSC, *Security Council Resolution* 2155 (2014), 27 May 2014, S/RES/2155.

[587] See, *e.g.*, Geneva Academy, Rule of Law in Armed Conflicts (RULAC) project, 'Non-International Armed Conflict in South Sudan', available at: http://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-south-sudan#collapse4accord.

An integrated UN mission

To some extent, integration policies have already been addressed in this study. Such policies overlap with comprehensive approaches to international missions, and many of the participants in the civil–military training programmes are deployed as part of an integrated mission. A few more remarks will be made here on the UN variant of integration.

With the release of the landmark Brahimi Report in 2000, there was a shift in the UN towards more robust peace support operations, greater emphasis on PoC mandates and the introduction of Integrated Mission Task Forces.[588] Integration, as a general concept, gained momentum in subsequent years. There was an explicit linkage of development and security by the mid-2000s,[589] and increasing conceptualization of a relief–development continuum.[590] The integrated approach was to apply to all contexts where the UN had a country team and multi-dimensional peacekeeping operation or political mission. For UN actors, the integrated presence entailed: a shared vision of strategic objectives; closely aligned or integrated planning; a set of agreed results, timelines and responsibility for delivering tasks relating to the consolidation of peace; and agreed mechanisms for monitoring and evaluation.[591]

Until 2008, much of the wider conversation about UN integration was concerned with structural issues.[592] Since that time, the focus has gradually shifted towards strategic planning and issues of implementation. A question that has yet to be satisfyingly resolved is where humanitarian actors – especially NGOs – should fit in

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[588] United Nations, *UN Report of the Panel on United Nations Peace Operations*, UN Report A/55/305 – S/2000/809, August 21 2000, pp. 34–37 ('Brahimi Report').
[589] United Nations, *UN High-Level Panel on Threats, Challenges, and Change. A More Secure World: Our Shared Responsibility* (New York, NY: United Nations, 2004), p. viii.
[590] United Nations, *UN Report of the Secretary General's High Level Panel: Delivering as One* (2006). Available at: http://www.un.org/events/panel/resources/pdfs/HLP-SWC-FinalReport.pdf.
[591] Metcalfe et al., supra, p. 1 ('Stimson Report').
[592] For a discussion of the 'triple hat' approach to UN leadership and co-location under UN integration, see OCHA, *Policy Instruction: OCHA's Structural Relationships within an Integrated UN Presence* (OCHA, 2009).

relation to the civilian and military components of these missions. Through integration and the coordination mechanisms that accompany it, such as the Cluster system, humanitarian assistance has drawn closer to UN missions.[593] Proponents of a closer relationship between the humanitarian sphere and UN missions emphasize the overall aim of attaining peace and the importance of coordination and unified action.[594] Essentially, the 'working together' mantra of the comprehensive approach applies to UN integrated missions.[595]

Opponents of a close relationship between humanitarian actors and UN integrated missions contend that integration: leads to blurred lines between different spheres of activity; undermines the ability of humanitarian actors to access and earn the trust of beneficiaries; increases threats to aid worker security; subordinates humanitarian action to political agendas; and dilutes humanitarian leadership.[596] Concerns about distinction are implicit in these accounts, and they are sometimes voiced more overtly, as well. In a 2015 survey, humanitarian actors reported a perceived 'lack of distinction' between humanitarian actors and integrated peacekeeping operations (or special political missions) in six countries, including South Sudan.[597]

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[593] Barrat, supra, p. 345.

[594] Discussed in Daniel Philpott and Gerard Powers (Eds.), *Strategies of Peace: Transforming Conflict in a Violent World* (Oxford: Oxford University Press, 2010), p. 280; Sylvain Beauchamp, 'Humanitarian Space in Search of a New Home', in Benjamin Perrin (Ed.), *Modern Warfare: Armed Groups, Private Militaries, Humanitarian Organizations, and the Law* (Vancouver: UBC Press, 2012), pp. 199–234, 207. See also IASC, IASC Reference Group on Principled Humanitarian Action: Summary of Report on Integration', available at: https://interagencystandingcommittee.org/system/files/legacy_files/IASC%20Paper%20on%20Integration_1%20July%202013.pdf.

[595] See Part II.

[596] See Metcalfe et al., supra ('Stimson Report'). See also: Schirch, supra; Marit Glad, *A Partnership at Risk? The UN-NGO Relationship in Light of Integration* (Norwegian Refugee Council*,* 2011), p. 5; Steering Committee for Humanitarian Response, *Some NGO Views on the Humanitarian Implications of Implementing the Brahimi Report* (Geneva: Steering Committee for Humanitarian Response, 2000); Antonio Donini, 'Between a Rock and a Hard Place: Integration or Independence of Humanitarian Action', *International Review of the Red Cross*, Vol. 92, No. 880, 2010, p. 52 ('Integration'); Cecilia Hull, *Integrated Missions: A Liberia Case Study* (Division of Defence Analysis, Swedish Defence Research Agency, 2008).

[597] The six countries cited are Afghanistan, South Sudan, Somalia, the Democratic Republic of Congo, Sudan and the Central African Republic. See IASC, 'Review of the Impact of UN Integration on Humanitarian Action', 2015, pp. 36–37, available at: https://interagencystandingcommittee.org/system/files/150908_un_integration_review_-_iasc_pha_tt_2015.pdf.

A Protection of Civilians (PoC) mandate

Most UN peacekeeping missions deployed globally since the 1990s have had PoC tasks included in their mandate.[598] The PoC agenda can be understood as separate from the coherence or integration agendas, though they are not mutually exclusive and PoC mandates often give rise to similar issues.[599] Under a robust Chapter VII PoC mandate, international peacekeeping, military and police actors are tasked with using force to protect civilians. They may also be assigned the task of creating security conditions 'conducive to the delivery of humanitarian assistance'.[600] In the context of PoC agendas, international humanitarian actors are often engaged in protection activities alongside a range of other international actors, who interpret the term 'protection' in very different ways.[601]

As for the phenomenon of the PoC site, it is not entirely new.[602] However, it is generally regarded as an exceptional solution for protecting displaced populations. What differentiates PoC sites from other displacement settings is the fact that they are guarded by armed UN peacekeepers and located on or around UN bases. At the time that field research was conducted in 2015, the displaced populations residing in the sites showed little sign of moving out. In December 2017, more than 200,000 IDPs resided in South Sudan's PoC sites.[603] While UNMISS has emphatically

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[598] Koddenbrock, supra, p. 75, FN 20. On the historical development of the UN PoC mandate, see Haidi Willmot and Scott Sheeran, 'The Protection of Civilians Mandate in UN Peacekeeping Operations: Reconciling Protection Concepts and Practices', *International Review of the Red Cross,* Vol. 95, No. 891/2, 2013, pp. 517–538, 519–524.

[599] For a historical perspective on the overlap and cyclical recurrence of stabilization and integrated intervention modes, see Sultan Barakat, Sean Deely and Steven Zyck, '"A Tradition of Forgetting": Stabilization and Humanitarian Action in Historical Perspective', *Disasters,* Vol. 34, No. S2, 2010, pp. 297–319.

[600] This is the case with the UNMISS Mandate in South Sudan.

[601] Eva Svoboda, 'The Interaction between Humanitarian and Military Actors: Where Do We Go from Here?', *Humanitarian Policy Group*, Policy Brief No. 58, 2014, p. 2. See also Chapter 7.

[602] Lilly, supra.

[603] As of December 2017, approximately 210,000 IDPs were residing in South Sudan's PoC sites. The first PoC site was closed in December 2017, in Melut, Upper Nile. See UNMISS, 'First Protection of Civilians Site Successfully Closed in South Sudan as Families Choose to Return Home', UNMISS Press Release, 20 December 2018, available at: https://unmiss.unmissions.org/first-protection-civilians-site-successfully-closed-south-sudan-families-choose-return-home.

insisted that a more sustainable approach is needed, the sites continue to serve as a visible protection outcome in line with the mission's PoC mandate.[604]

Despite UNMISS's robust Chapter VII mandate, UN forces in South Sudan have earned a reputation for inactivity and risk aversion.[605] They are accused of being reluctant to leave their bases and to use force to protect civilians.[606] Since the establishment of the PoC sites, a particular concern has been the concentration of international protection resources at the sites. One UN humanitarian actor describes the PoC sites as the 'visible eyesore of the conflict', and another individual notes 'there's 201,000 in PoCs, but four point something million outside PoCs, and the latter are not being served'.[607] A UN humanitarian actor adds: 'There are places we want to go…but we can't. We want to ensure safety and dignity of people in the PoC [site] but the forces can only do perimeter protection, not the details. It's very limited.' Tellingly, in interviews conducted for this study, UN mission actors consistently interpreted questions about their wider PoC mandate as referring only to the PoC sites.

The enforcement of the Chapter VII mandate in South Sudan also varies as UNMISS commanders come and go. As one UNMISS actor explains, the implementation of the Rules of Engagement (RoE) is 'not constant or linear, you sensitize the mission on it, and then you start again'. A UNMISS military actor adds: 'A battalion commander might be around for a year; you need to explain to them that they need to push RoE to the limit, so they feel they can act also outside the PoC site.' The way in which UN forces respond to threats of violence against IDPs is attributed to individual personalities and, many suggest, the national origin of particular battalions. While certain nationalities are perceived as 'going the mile',

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[604] Field interview, 2015.
[605] See Arensen, supra, p. 33.
[606] United Nations, *Evaluation of the Implementation and Results of Protection of Civilians Mandates in United Nations Peacekeeping Operations: Report of the Office of Internal Oversight Services* (A/68/787, 2014), pp. 7–8 (finding UNMISS peacekeepers used force less than 10 per cent of the time when civilians were attacked).
[607] Field interview, 2015.

other nationalities are rumoured to have a 'no body bag policy'. The latter are deemed to lack the will to respond robustly to threats against civilians.[608]

Since the outbreak of violence in December 2013, many international humanitarian actors have been housed 'inside the wire' of the PoC sites. Co-location with a UN peacekeeping mission in this manner is unusual for humanitarian actors. Generally speaking, global guidance on civil–military interaction discourages humanitarian actors from co-locating with military actors in armed conflict zones or complex emergencies.[609] As part of the response to December 2013, however, the UN Humanitarian Country Team for South Sudan (HCT) approved the use of (military) force protection by humanitarian actors so they could be based in the sites.[610] This formed a blanket clearance for the use of Military and Civil Defence Assets (MCDA) by humanitarian actors within the sites, avoiding the need for case-by-case clearance, as is usually required.[611] Apart from this, general rules regarding the use of military assets as a 'last resort' are in place.[612] In 2015, the HCT asked to be informed of future decisions by humanitarian actors to co-locate in the PoC sites, noting that the behaviour of one agency 'may have an impact on the perception of the broader humanitarian community'.[613] In parallel with the accusations noted above that UNMISS has been reticent to work outside the PoC sites, humanitarian actors – with the exception of the ICRC and MSF – have also been faulted for concentrating staff and resources within the PoC sites.[614]

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[608] See also 'Sudan Accuses U.N. Peacekeepers of Killing Seven Civilians in Darfur', *Reuters*, 27 April 2015, available at: http://www.reuters.com/article/2015/04/27/us-sudan-darfur-unamid-idUSKBN0NI1SC20150427?feedType=RSS&feedName=worldNews&rpc=69.

[609] South Sudan Civil–Military Advisory Group, *Guidelines for the Coordination between Humanitarian Actors and the United Nations Mission in South Sudan (UNMISS)*, endorsed 6 December 2013 ('Humanitarian–UNMISS Guidelines').

[610] UN OCHA, 'Frequently Asked Questions: UN Humanitarian Civil–Military Coordination, Military Civil Defense Assets and the Use of Military Escorts in South Sudan' ('Humanitarian Civil–Military Guidelines'). See also UN, *Agreement of Division of Roles and Responsibilities between UNMISS and the Humanitarian Country Team in UNMISS POC Sites*, February 2014.

[611] 'Humanitarian Civil–Military Guidelines', supra; 'Oslo Guidelines', supra.

[612] See Chapter 4, and below.

[613] 'Humanitarian–UNMISS Guidelines', supra.

[614] As discussed in Arensen, supra, p. 40.

6.2 Everyday distinction practices in the Kinetic realm

Chapter 4 provided an overview of everyday distinction practices, outlining how international humanitarian actors appeal to IHL, profess adherence to the traditional humanitarian principles and invoke local perceptions. In the Pedagogical realm, humanitarian actors treat the production of distinction partly as a matter of legal compliance and partly as a matter of appeasing local onlookers. This picture changes in the operational context of South Sudan. Here, local perceptions are the main reference point for the vision of distinction that humanitarian actors propound. Furthermore, adherence to the traditional humanitarian principles is no longer seen to (only) reinforce a distinct humanitarian identity. In some instances, upholding the traditional humanitarian principle of humanity and strictly implementing distinction appear to be mutually exclusive propositions. A further difference in the operational context is the deployment of humanitarian signs and symbols to assert distinction visually. These points are elaborated upon in the proceeding sections.

6.2.1 The appeal to law

In comparison with the Pedagogical realm, in the Kinetic realm of South Sudan, one is much less likely to hear a frontline actor citing the Geneva Conventions – though some individuals certainly do. As noted in Chapter 4, in numerous global mission settings, international actors come together to draft their own fit-for-purpose civil–military guidelines. When humanitarian actors in the Kinetic realm mention the rules or the 'rule book', they are often referring to these context-specific civil–military guidelines.

This part of the discussion considers how the idea of distinction circulates in two civil–military guidance documents from South Sudan: South Sudan guidelines for the humanitarian–UNMISS relationship and South Sudan humanitarian civil–military coordination guidance. As is demonstrated, the civilian–combatant

distinction is only one of the distinctions mentioned in these guidelines. References are also made to a civilian–military distinction,[615] a humanitarian–military distinction and a humanitarian–UNMISS distinction. This last iteration is important to scrutinize for the way in which it positions UNMISS civilian actors. This study proposes that it pushes them to the other side of the line in a fragmented civilian category, allocating them a lower degree of civilianness. The implication is that, when frontline humanitarian actors in South Sudan enact distinction with respect to the wider UN mission, they do not break the rules so much as follow them. In both sets of civil–military guidelines that are examined here, the 'phantom local' also circulates. Vague references are made to the 'neutral perception' of humanitarian actors and the prospect of 'any perception' that humanitarian actors may be affiliated with the military.

As with the international civil–military guidelines examined in Chapter 4, the civil–military guidance reviewed here is treated as non-binding guidelines or soft law. The focus of this inquiry is not on the (lack of) formal penalties that flow from breaches of these civil–military guidelines, but on the attitudes of international actors to alleged breaches of the rules.

First, the **South Sudan guidelines for the humanitarian–UNMISS relationship** outline rules for the use of UNMISS assets and UNMISS armed escorts by humanitarian actors. It is stipulated that 'UNMISS will evaluate and respond to each request on a case-by-case basis, in accordance with its own priorities and capacities'. There is also guidance against allowing weapons, military equipment or uniformed personnel to be transported on humanitarian assets, 'except when uniformed personnel are afforded IHL protected status' – for example, when conflict casualties are evacuated by air.[616] UNMISS civilian staff are permitted to travel on UN

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[615] See Chapter 4 for a discussion of slippage between the military and combatant categories.
[616] This is referred to as CASEVAC. See 'Humanitarian–UNMISS Guidelines', supra.

Humanitarian Air Service (UNHAS) flights with UNMISS approval, but 'UNMISS shall not charter UNHAS branded aircraft for use by the peacekeeping mission'.[617]

This guidance document also follows global guidelines on 'last resort',[618] and the reference to a humanitarian–military distinction is again noteworthy here. The rules are also important to the empirical discussion that follows, in which attention is drawn to an incident in which humanitarian actors flew in a helicopter without going through the proper channels.[619] The guidance stipulates: 'As a general rule, to promote distinction between military and humanitarian actors, humanitarian actors should not use UNMISS' assets or armed escorts.' Humanitarian actors are to consider such use only as a last resort in exceptional circumstances, when the following criteria are met: the objective of the mission is humanitarian 'and the mission clearly maintains its humanitarian and civilian character'; there is an urgent and immediate humanitarian need; there is no comparable humanitarian alternative; the use of the asset/escort is limited in time and scale, with a clear exit strategy; and the use does not compromise the capacity of humanitarian actors to operate safely and effectively in the longer term.[620]

The guidance also states that these rules are in place 'to prevent a blurring of lines between the humanitarian community and UNMISS'.[621] The guidance further emphasizes that both humanitarian actors and UNMISS actors must 'ensure distinction of each other's activities'. As required by the global UN DPKO Civil–Military Coordination policy,[622] UNMISS is only to engage in relief assistance as a last resort. The military's main role is to help create a safe and secure environment so as to facilitate the delivery of humanitarian assistance and to enable the protection of civilians. The South Sudan Humanitarian–UNMISS guidance also

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[617] 'Humanitarian–UNMISS Guidelines', supra.
[618] See also Chapter 4.
[619] See Chapter 7.
[620] 'Humanitarian–UNMISS Guidelines', supra.
[621] As demonstrated in Chapter 7, frontline actors often use these two distinctions interchangeably.
[622] UN Department of Peacekeeping Operations, *Civil–Military Coordination Policy,* September 2002, available at: http://www.refworld.org/pdfid/451ba7624.pdf.

instructs UNMISS to avoid engaging directly in humanitarian assistance to 'win hearts and minds'.

Under the heading 'Distinction of Activities', the guidance stipulates that 'civil–military principles' require a 'clear distinction of the identities, functions and roles of humanitarian actors and those of UNMISS'. It outlines specific measures, such as: 'Arms should never be carried in humanitarian premises or means of transport; Identification of staff, relief supplies, premises, vehicles, boats, and aircraft should promote distinction of respective identities; Communication materials and strategies as well as public statements should ensure clarity of purpose and/or mandate.' For example, the guidelines instruct that, if UNMISS actors are asked about humanitarian issues, UNMISS should redirect these inquiries to OCHA or 'the most relevant aid agency present'. The importance of perceptions is further highlighted in the following statement, in which the 'phantom local' circulates: 'Any perception that humanitarian organizations may have become affiliated with the military could impact negatively on the security of their staff and on humanitarian access.'[623]

Second, there are the **South Sudan humanitarian civil–military coordination guidelines.**[624] This guidance says the following of the civilian–military distinction: 'At all times, a clear distinction must be maintained between combatants and civilians, who are granted immunity from attack by IHL. Military personnel must refrain from presenting themselves as civilian/humanitarian workers, and vice versa.' While this framing tracks more closely with the civilian–combatant distinction than the humanitarian–UNMISS guidelines (see above), it is noteworthy that the humanitarian actor is singled out from other civilians – both as an object and a subject of simulation. The guidance provides that, in complex emergencies such as South Sudan, 'the flexibility to use MCDA is greatly constrained and the importance

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[623] 'Humanitarian Civil–Military Guidelines', supra.
[624] 'Humanitarian Civil–Military Guidelines', supra. See Chapter 4 for a discussion of how the humanitarian sphere is grafted onto the civil–military paradigm.

of distinction becomes paramount as outlined in [IHL]'.[625] This depiction of distinction as 'paramount' is important, as it suggests that distinction should outrank or overpower other rules. The empirical discussion demonstrates, however, that distinction does not always serve as a trump in the operational context of South Sudan.

Perception is also allocated an important role in the civil–military coordination guidance: 'In complex emergencies, the risks to perception of humanitarian assistance, access and acceptance, as well as security of affected people and humanitarian workers must be examined thoroughly.'[626] The guidance also advises that, rather than using armed escorts and other 'deterrence' measures, humanitarian actors should request 'area security' from UNMISS, in order to enable them to maintain some separation from military actors. Area security might involve: UNMISS 'clearing' and patrolling important road networks; maintaining a presence in an area where humanitarian actors need to operate; or providing aerial flyovers. In such scenarios, UNMISS actors are not supposed to be visible, nor are they to supposed to accompany the convoy. This is what separates the concept of area security from more direct reliance on military assets. Finally, the guidance provides that humanitarian actors are to develop mitigating measures when the use of UNMISS assets or armed escorts could 'have a negative impact on the neutral perception of humanitarian workers'. With regard to the need to Do No Harm,[627] the guidance acknowledges that military assets 'can provide unique advantages in terms of capability, availability, and timeliness'; however, 'the immediate positive effects must be carefully balanced with long-term negative effects'.[628] This temporal horizon is significant. Chapter 7 explores how humanitarian actors who adopt short-

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[625] Here the guidance directs readers to the 'MCDA Guidelines', supra.

[626] This guidance document does not use the language 'no comparable humanitarian alternative' when discussing resort to military assets. Instead, it refers to a lack of appropriate civilian assets. See 'Humanitarian Civil–Military Guidelines', supra.

[627] See Section 5.4.2.

[628] 'Humanitarian Civil–Military Guidelines', supra.

term versus long-term thinking arrive at different decisions about using UNMISS assets.

The main points to take away from the guidance perused here are as follows. First, the guidelines are informed by, and infused with, IHL rules. Second, the distinction being promulgated is only sometimes a civilian–combatant binary aligned with the dominant vision of distinction. Even at the level of text, the 'civilian plus' figure and its corollaries circulate. While nothing is said of qualities of civilianness and combatantness floating around, the treatment of the civilian category most resembles the alternative vision of distinction. Third, even at this normative level, the emphasis on perceptions is marked and the presence of the 'phantom local' is discernible. How things appear, and what onlookers witness, is given concerted attention. When humanitarian actors resort to the use of a UNMISS asset without following the proper 'last resort' guidance, they are likely in contravention of these civil–military guidelines. This point becomes important with respect to the story of the unauthorized helicopter trip in Chapter 7. This study proposes that, apart from such breaches, when humanitarian actors in South Sudan promulgate the 'civilian plus' or direct their performance of distinction towards the 'phantom local', they follow these rules, rather than contravene them.

6.2.2 Adherence to the traditional humanitarian principles

To reiterate an argument that was made previously, this study proposes that humanitarian actors cultivate a certain amount of ambiguity around the relationship between distinction, on the one hand, and the traditional humanitarian principles, on the other.[629] As discussed in Part II, treating the humanitarian principles as a 'long spoon' or a 'distancing discourse' gives the impression that upholding distinction and implementing the principles go hand in hand. While leaving a certain amount of wiggle room at the level of abstract principles may enable humanitarian

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[629] See Chapter 4.

actors to defend a range of practices on the ground, there comes a point when it is impossible to uphold all commitments at once. [630] In the Kinetic realm, the pressures of the operational context drive a wedge between commitments to distinction and commitments to the traditional humanitarian principle of humanity. It will be recalled that the principle of humanity requires actors to address human suffering wherever it is found. This entails going to hard-to-reach places in order to deliver humanitarian services. In some cases, getting to these places safely requires humanitarian actors to use military assets or other military resources. Such reliance undermines distinction, because it allows for the intermixing of civilian and military spheres.

To capture the way in which humanitarian actors grapple with this dilemma in the Kinetic realm, this study characterizes humanitarian actors according to **two ideal types**. The first ideal type takes a strict approach to distinction, treating it as a lynchpin of humanitarianness. These humanitarian actors narrowly interpret 'last resort' policies on military asset use and take a long-term view of the implications of their everyday choices for their future operations. For the first ideal type, distinction serves as a trump; this aligns with the paramount status of distinction in the civil–military guidelines (see above). The second ideal type is typified by a more flexible approach to the performance of distinction, treating it as a norm that should be balanced with other objectives. These actors typically take a short-term view of the consequences of their choices, and they ground humanitarianness in the humanitarian imperative. They view the first ideal type as out of touch with the values that should motivate humanitarian actors, while the first type faults them for being short-sighted. In Chapter 7, the split between these two types is brought into stark relief in episodes of decision-making about the use of UNMISS assets.

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[630] See also Koddenbrock, supra, p. 66 (making a similar point with respect to the humanitarian principles, more generally).

6.2.3 The invocation of local perceptions

Both physically and metaphorically, humanitarian actors use signs, symbols and spatial referents in their distinction practices. This discussion highlights the differences in the legal protection of Red Cross, UN and humanitarian NGO emblems; compares the signifiers of humanitarianness with those of civilianness; and examines two critiques relating to the deployment of humanitarian symbols. The more general point is that there is a strong visual (or optical) life of distinction in the Kinetic realm. International humanitarian actors invest considerable resources to manage the way in which the 'phantom local' perceives their interactions with other international actors. It is suggested that this has adverse implications for war-affected populations, flattening them out into an audience for the performance of distinction.

Humanitarianness and humanitarian symbols

A first observation is that the symbols of various humanitarian actors receive different levels of protection under international law. It remains the case that there is no humanitarian symbol more powerful or widely recognized than the Red Cross emblem.[631] This emerges from, and perpetuates, the Red Cross fantasy that was introduced in Chapter 3. Revisiting earlier arguments about humanitarian exceptionalism, it may be more appropriate here to speak of Red Cross exceptionalism. According to the dominant narrative of the ICRC, IHL serves as the primary authority for the legal protection of humanitarian assistance; the Red Cross emblem serves as the visible manifestation of this legal protection.[632] On this account, the misuse of the emblem threatens to dilute the power of humanitarian symbols by blurring the lines between persons and objects that fall within IHL's

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[631] The focus here is on the Red Cross emblem, specifically, rather than the sun, crescent, lion or crystal.
[632] Rolle and Lafontaine, supra, p. 763, FN 10.

protective remit and those that do not.[633] The policing of the Red Cross emblem suggests that if the emblem is used by the wrong person or in the wrong way, there will be a threat of contamination. Again, a crucial feature of the legal treatment of the Red Cross emblem is exclusivity: humanitarian NGO actors, for example, cannot expect the same treatment of their own symbols. Many humanitarian NGOs express concern about this disparity.[634] Some even call for a new humanitarian symbol or legal emblem to visibly signify NGOs' adherence to the humanitarian principles.[635] While no such symbol has yet materialized, observers suggest that a number of processes and objects already serve as emblems for humanitarian NGOs. Examples range from organizational logo signs,[636] T-shirts, car stickers and flags[637] to the standard operating procedures of humanitarian actors, including their manner of dress and the white Land Cruisers they drive.[638] The emblems and logos of UN humanitarian actors are better protected than those of NGOs, as the blue laurel wreath of the UN and its logo are explicitly protected under international law. [639]

Bracketing these disparities in the law's treatment of different humanitarian emblems, a separate question is how the visual cues of humanitarianness relate to those associated with civilianness. As mentioned in Chapter 2, IHL provides little indication of the visual signification of civilianness.[640] Starting from the assumption that civilians do not wear military uniforms and do not bear arms, it can be said that humanitarian actors present differently.[641] The most crucial discrepancy is that

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[633] Ibid., pp. 759–761. See Article 37 of AP I (perfidy); see also Articles 23 and 27 of the 1906 GC (misuse or abuse of the emblem). The UN has also condemned misuse of the emblem. See Article 9.7 in UN Secretary-General (UNSG), Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law, UN Doc ST/SGB/1999/13, 6 August 1999, available at: http://www.unhcr.org/refworld/docid/451bb5724.html. See also Rule 59 of the ICRC Customary Law Study, supra.

[634] Demeyere, supra, p. 11. See also Rolle and Lafontaine, supra. See Chapter 3.

[635] Mackintosh, supra, p. 126.

[636] Linda Polman, *War Games: The Story of Aid and War in Modern Times* (Viking, 2011), p. 20.

[637] Nicholas Stockton, 'In Defence of Humanitarianism', *Disasters,* Vol. 22, No. 4, 1998, pp. 352–360, 358.

[638] See Smirl, supra; Mackintosh, supra.

[639] See Chapter 3.

[640] See Chapter 2.

[641] As Barker observes: 'For one thing, aid workers look like aid workers and not like civilians.' Camilla Barker, 'Aid Workers Could Secure Better Protection Under the Protection of Civilians Mandate',

humanitarian actors have recourse to an arsenal of signifiers that the wider civilian population cannot use, such as the aforementioned T-shirts with logos, car stickers and flags. Of course, humanitarian actors do not tend to simply emblazon the word 'humanitarian' on their clothing, equipment and facilities. More often, they signify the particular organization they belong to, such as UNICEF, Mercy Corps or World Vision. This brings us to the first critique of humanitarian symbols.

Two critiques of humanitarian symbols

The first critique pertains to whether the distinction humanitarian actors promulgate is an alibi for hidden interests. In an operational context such as South Sudan, the very same logos and emblems that humanitarian actors emblazon themselves – as well as their equipment, facilities and projects – with to assert distinction are often used for marketing purposes and to achieve 'visibility' for donors.[642] It can be exceedingly difficult to discern where the effort to disseminate civilian status ends and where economics-driven marketing begins. In some instances, the individuals who deploy these symbols may not be certain, themselves. Similar issues arise with respect to the demarcation and policing of 'humanitarian space'[643] by humanitarian actors. Although humanitarian actors claim that safeguarding the humanitarian space is about serving the victims of war, counter-arguments are articulated that it is about organizational survival[644] or excluding outsiders from the humanitarian

International Law Grrls, 15 August 2014, available at: https://ilg2.org/2014/08/15/aid-workers-could-secure-better-protection-under-the-protection-of-civilians-mandate/.

[642] On humanitarian branding and marketing, see: Anne Vestergaard, 'Humanitarian Branding and the Media: The Case of Amnesty International', Copenhagen Business School, Working paper No. 81, 2006; Leclerc-Gagné, supra, pp. 59–60 (discussing branding activities in WWI); Barnett, supra, p. 387 ('Governance'); Cooley and Ron, supra; Hugo Slim, 'Marketing Humanitarian Space: Argument and Method in Humanitarian Persuasion', Centre for Humanitarian Dialogue, May 2003 ('Marketing'); Krause p. 48; Koddenbrock, supra, pp. 56, 63; James, supra, p. 192.

[643] This study does not directly intervene in the perennial debates on humanitarian space because it aims at reconceptualizing the relationships of international actors. On humanitarian space, see: Beauchamp, supra, p. 2; Sarah Collinson and Samir Elhawary, *Humanitarian Space: A Review of Trends and Issues* (London: Overseas Development Institute, 2012); Marcos Ferreiro, 'Blurring of Lines in Complex Emergencies: Consequences for the Humanitarian Community', *Journal of Humanitarian Assistance*, 24 December 2012.

[644] Nicholas Leader, 'The Politics of Principle: The Principle of Humanitarian Action in Practice', *Humanitarian Policy Group,* Report 2 (London: Overseas Development Institute, 2000); Collinson and Elhawary, supra; Hilhorst, supra, p. 357.

establishment.[645] In South Sudan, humanitarian actors are accused of deploying distinction, in the IHL targeting sense, as a cover for turf spats and competition for donor resources.[646]

The second critique that merits examination is that which claims that humanitarian actors treat the protection of humanitarian symbols as an end in itself, rather than a means to the end of helping populations in need. Hopgood picks up this thread, critiquing the ICRC's claim about the relationship between IHL and the Red Cross emblem (see above).[647] Hopgood proposes that it was not IHL, but the suffering of the victims of war, that originally empowered the Red Cross emblem.[648] This suffering, in turn, gave the law moral authority.[649] The true aim of policing the emblem, he alleges, is not to preserve the emblem's protective functioning, as the ICRC claims.[650] Rather, it is to uphold the sacred value of the symbol, itself.[651] Bringing this perspective into conversation with the 'humanitarian exceptionalism' outlook,[652] the ultimate concern is that protecting the humanitarian symbol may take on more importance than protecting the victims of war.[653]

A related criticism, which also emerges in the empirical discussion, is that distinction's main function is to protect or privilege the lives of humanitarian actors. Hammond's articulation of the 'trope of confusion'[654] points to the importance of asking what the signs and symbols of humanitarian actors actually represent. It may be that what is symbolized is actually a state of exception, inequality or hypocrisy.[655] Humanitarian actors, themselves, are alert to this possibility, and there are some operational contexts in which they seek to make no impression at all. They remove

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[645] Collinson and Elhawary, supra, pp. 3–4. Fast, supra, pp. 6, 10.
[646] See Section 7.3.1.
[647] Hopgood, supra, p. 38.
[648] Ibid.
[649] Ibid., p. 38 (also arguing that this suffering serves as a totem).
[650] Ibid., pp. 38–40
[651] Ibid., pp. 38–40.
[652] See Chapter 3.
[653] Hopgood, supra, p. 37. See also Krause, supra, p. 113.
[654] See Section 5.2.
[655] Smirl, supra, p. 95.

branding and logos and drive in local vehicles, all in an attempt to maintain a low profile and achieve invisibility.[656] These practices are revisited in Chapter 7.[657]

Implications for war-affected populations

Recognizing that populations in need ostensibly serve as the *raison d'etre* for humanitarian actors and justify their presence in armed conflicts, it is important to scrutinize how summoning the 'phantom local' affects these populations. This study depicts the 'phantom local' as a composite figure that collapses the beneficiary-perceiver, the attacker-perceiver and the authority-perceiver.[658] When this amorphous entity is invoked, the actual lives, desires and perspectives of war-affected populations are flattened. The recipients of humanitarian assistance might take on the specific form of the beneficiary-perceiver or be folded together with the attackers and the authorities. In either scenario, the main role assigned to beneficiary populations is to serve as an audience for the performance of distinction. Coming back to the 'humanitarian exceptionalism' perspective, such treatment of war-affected populations exacerbates inequalities that already characterize the humanitarian-beneficiary encounter. When this point is considered alongside allegations that distinction serves as an alibi for other interests, or that protecting humanitarian purity is prioritized over alleviating suffering, the implications of humanitarian distinction practices for populations in need appear rather bleak. This is a significant finding, especially given how humanitarian actors claim that their distinction practices enable them to alleviate the suffering of war-affected populations.

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[656] Eggleston and McDougall, supra p. 3.
[657] See Section 7.3.2.
[658] See Chapter 4.

Conclusion

This chapter has provided a broad overview of the conflict context and touched on several elements of international intervention in South Sudan. It was emphasized that, over many years of violent conflict in South Sudan, the idea of the civilian has been undermined and transgressed. International humanitarian actors who conduct operations in South Sudan are concerned that the ambiguity of civilianness in this context might be grafted onto them. They also fear encroachment by international actors operating in the same space, and are anxious that qualities of combatantness – or the wrong kind of civilianness – might affix to them if they do not maintain separation. They assert a claim to 'civilian plus' status, hoping to avoid the prospect of being assigned 'mere civilian' or 'civilian minus' status by the 'phantom local'. It was also highlighted that there are few explicit appeals to IHL in the Kinetic realm. However, frontline actors do engage with civil–military guidance, and this guidance supports many distinctions. A clash was also flagged in the operational context between distinction and adherence to the traditional humanitarian principles. The two ideal types of humanitarian actor address this conflict in different ways, and their disagreement implicates the very meaning of humanitarianness. Humanitarian actors belonging to the second ideal type join other international actors in asking whether the aims underlying distinction practices are less than virtuous. Many of these conflicts are worked out through the deployment of – and reaction to – humanitarian symbols on a daily basis. Moving on, Chapter 7 explores how contests over distinction shape the everyday encounters of international actors in South Sudan.

CHAPTER 7: HOW THE IDEA OF DISTINCTION
CIRCULATES IN SOUTH SUDAN

Introduction

This chapter follows the idea of distinction to a final global site, examining how it circulates in the operational context of South Sudan. While every effort is made to bridge the Kinetic and Pedagogical realms, some of the material from South Sudan warrants slightly different treatment to reflect the realities of the operational context. Unlike at the civil–military training grounds, for example, in South Sudan, IHL rules are not a habitual topic of conversation for international actors. Nonetheless, distinction influences frontline actors' self-conceptualization and encounters with each other. It is activated when humanitarian actors put up a 'no weapons' sign at a site where they deliver services, or when a humanitarian actor travels on a UNMISS helicopter and everyone gossips about it. With these adjustments in mind, the present chapter explores four main topics: (1) who draws the line; (2) how the line is drawn; (3) where the line is drawn; and (4) how the line is erased. One again, reflections on the 'why' question are woven throughout the discussion.

The discussion begins with a brief **overview of the empirical findings.** It demonstrates that, as at the civil–military training grounds, in the context of South Sudan, international humanitarian actors take the lead in forging distinction. They lean heavily on the ascribed views of the 'phantom local' to ground their vision of distinction, and this figure sometimes assumes tangible form (*e.g.* as the GoSS, SPLA soldiers or IDPs in a PoC site). A new dimension to charges of inconsistency also arises in South Sudan, as humanitarian actors often draw a line in circumstances where distinction is already compromised. The attempt to construct a 'humanitarian hub' within the confines of the PoC sites, which are armed by UN peacekeepers, epitomizes these dynamics. This thick description of how the line is drawn in

everyday practice brings to light a conflict between upholding the principle of distinction, on the one hand, and meeting the needs of war-affected populations, on the other. While the first ideal type of humanitarian actor chooses distinction every time, others view this as a misguided interpretation of what humanitarianness is about.

As in the Pedagogical realm, in the Kinetic realm of South Sudan, humanitarian actors behave as though IHL's civilian category is fragmented. They imagine and disseminate a 'civilian plus' status in their routine practices, seeking to claim the highest degree of civilianness available. The move to enact distinction *vis a vis* UNMISS civilian actors generates palpable tensions with these other civilians. International humanitarian actors also draw lines within the humanitarian category, behaving as though there are different kinds of humanitarianness to be distributed, as well. Such practices attract accusations that distinction serves as a cover – perhaps for garnering donor resources or excluding others. As in the Pedagogical realm, in the Kinetic realm, some humanitarian actors are accused of having 'civilian minus' status due to their entanglement in conflict dynamics or lack of competence and credentials. Similar to the military actors in the civil–military training programmes, UNMISS actors contest the vision of distinction that humanitarian actors espouse. These UN actors are motivated by the same 'working together' ideals that shape the civil–military training programmes, and, from their vantage point, distinction is an impediment. The discussion closes by examining the attitudes of humanitarian actors who would, themselves, erase the line. It is suggested that these internal critiques encompass the most devastating indictment of the 'civilian plus'.

7.1 Who draws the line?

As in the Pedagogical realm, in the Kinetic realm, international humanitarian actors take it upon themselves to enact distinction on a daily basis. They see themselves as

engaged in a delicate dance with other international actors, responsible for keeping an appropriate distance from both the civilian and the military component of UNMISS. Humanitarian actors who take a strict approach to distinction (*i.e.* the first ideal type) also believe it is their responsibility to communicate the importance of distinction to colleagues who might not share their priorities (*i.e.* the second ideal type). Such divisions introduce a new dimension to the contests over distinction that were examined in the Pedagogical realm; the battle underway is amongst humanitarian actors over what humanitarianness entails. While this study contends that humanitarian actors are the ones who forge distinction, the proceeding section shows that their practices are animated by the ascribed perceptions of the 'phantom local'.

'We constantly negotiate, renegotiate, define, redefine our position'

For the head of one international humanitarian NGO in Juba, the effort to safeguard distinction whilst operating alongside an integrated mission is akin to a delicate dance – one, he suggests, that is underappreciated by other international actors. 'Fred Astaire, he got all the fame, but Ginger Rogers danced backwards, in high heels.' The challenge, as he sees it, is to hold the line in the midst of evolving circumstances. 'We constantly negotiate, renegotiate, define, redefine our position. Goalposts are constantly moving and changing, we are changing.' When it comes to implementing IHL's civilian–combatant distinction in South Sudan, one UN humanitarian actor proposes that humanitarian actors in the field play the most significant role. These individuals negotiate distinction on a daily basis, and the decisions they make are of more consequence than what international donors, staff based at HQ or the written rules say. This individual states: 'To be frank, I believe that those in the field are at the coalface and will work out appropriate arrangements regardless of overarching guidelines…so long as humanity remains the guiding light.' A humanitarian NGO actor contemplates the relationship between the rules in the books and operations on the ground. He suggests that, even where staff can cite the relevant guidelines on military asset use chapter and verse, they tacitly understand that if they follow the proper process they will never accomplish their goals. A UN humanitarian actor corroborates this: 'What is written is good, the policy is really good. But when you're out, on the ground, if you follow every single word, you won't be able to do anything.' This individual suggests: 'In particular situations…[you] want to react. You just have to bend the rules. I do what I believe is right, whether it's within or against the rules; I just follow my guts.'

In contrast to the humanitarian guest trainers who teach in the civil–military training programmes, the frontline actors who deploy to South Sudan are more divided on the importance of distinction.[659] In the opening vignette, the head of one NGO depicts himself as engaged in a high-stakes dance with actors he must maintain separation from. Meanwhile, some of his humanitarian colleagues believe that they will never accomplish their goals if they prioritize distinction. The notion that an individual humanitarian actor might 'follow his guts' raises pressing questions about how distinction as a legal rule is operationalized by international actors in conflict zones. This discussion first considers who takes the lead in forging distinction, then contemplates how individuals engage with the 'rule book' in South Sudan.

7.1.1 Who forges the distinction?

International humanitarian actors find themselves enmeshed with a variety of other international actors in South Sudan. This is by virtue of sheer physical proximity, interreliance and policies and structures that are intentionally designed to foster contact. In the face of such encroachment, international humanitarian actors are eager to ensure that only qualities of civilianness – and ideally those of the highest degree – attach to them. To this end, they emphasize that their approach to protecting local civilian populations has little in common with the PoC mandate of UNMISS actors. Humanitarian actors further insist on maintaining separation from those who use violent means, lest the qualities of combatantness that attach to these other actors rub off on them. As one humanitarian NGO actor explains: 'Protection for us relates to the community; for the UN, it is all about force.' On a day-to-day basis she feels it is the responsibility of her organization to implement distinction and hold the line, because otherwise UN forces will not observe it. 'We do not allow them to enter our work areas….they cannot come in here with their weapons. The

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[659] Note that the international humanitarian actors studied in South Sudan represent a much larger range of organizations than the ICRC, MSF and OCHA trainers who lead sessions at the civil–military training programmes discussed in Part II. This also helps to explain the diversity of views.

[UNMISS] patrol can drive up to the gates or pass by, but no weapons can enter. They know this.' Another humanitarian actor contributes:

> For us humanitarians, protection is all activities that involve individuals receiving assistance with safety and dignity and their rights are respected, as with child protection. But for [UNMISS], they only look at the 'safety' aspect of the people, but not the 'dignity'. So I, as an IDP am safe, but I'm not dignified.

Another humanitarian actor explains how conceptualizations of 'access' also differ:

> We as humanitarians need access free from the military, in order to get to civilians. But for UNMISS they need access for their military patrols. So we need to clarify that 'access' doesn't mean the same thing for us....If UNMISS has good talks with SPLA or government, they are pleased. They think they are acting on our behalf to get access. But we say 'No, please don't'.

While this perspective captures the mainstream view amongst humanitarian actors in South Sudan, some humanitarian actors propose that a certain amount of interreliance with UNMISS is inevitable. A humanitarian actor in Unity State explains: 'For the UN to protect the people here, they need humanitarian agencies to come and provide the assistance and all the services. For humanitarians to be more secure and safe, they need UNMISS to provide protection.' This particular actor does not call for the direct use of UNMISS assets,[660] but instead advocates for a form of 'area security' that the civil–military guidelines in South Sudan permit.[661] This might involve mine clearing, securing assurances from armed actors that vehicles are allowed to move, or repairing airstrips.

Meanwhile, what most non-humanitarian international actors in South Sudan want is to foster contact with humanitarian actors. This is in keeping with the overall thrust of UN integration and the goal of working together to achieve peace in South Sudan. As the humanitarian actor in the opening vignette sees it, these other international actors advance while humanitarian actors dance backwards. This dancing imagery nicely captures how reactive the move to draw the line is in the

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[660] See Section 7.2.2.
[661] See Chapter 6.

Kinetic realm. Humanitarian actors take the lead in forging distinction and try to maintain a certain amount of separation, but they do so within the confines of a larger dance orchestrated by others. They assign not only armed UN forces but also UNMISS civilian actors to the role of Fred Astaire. Qualities of combatantness, or the wrong kind of civilianness, float around these other international actors, and humanitarian actors might become contaminated if they are not careful. While humanitarian actors are constrained in this sense, this section demonstrates that there is still considerable agency in their practices.

In South Sudan, the context-specific guidelines that have been developed to guide the relationships of international actors are infused with international law.[662] In contrast to the Pedagogical realm, in the Kinetic realm of South Sudan, explicit appeals to IHL recede and invocations of the 'phantom local' take centre stage. Although this figure is routinely summoned in monolithic form in South Sudan, humanitarian actors also offer more fine-grained accounts of what they believe the beneficiary-perceiver, authority-perceiver and attacker-perceiver to see. These ascribed perceptions then become a site of contestation for international actors, who disagree with each other over what is reflected in the mirror that humanitarian actors hold up.

This section focuses on a particular iteration of the phantom local, the **beneficiary-perceiver**. International humanitarian actors refer to the beneficiaries of their projects as a key audience – and the term 'audience' is one they employ – for the performance of distinction in South Sudan's PoC sites. They want to ensure that beneficiaries can differentiate them from other international actors and trust them to provide appropriate services.[663] When it comes to enacting distinction, one humanitarian actor asserts that the perceptions of beneficiaries matter above all else. For this individual, the 'element of distinction is purely from their perspective'.

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[662] See Chapter 6.
[663] See Chapter 3 for a discussion of the beneficiary category.

International humanitarian actors emphasize that beneficiary perceptions significantly vary across the different PoC sites in South Sudan. The PoC site in Bor hosts the smallest population of IDPs. One humanitarian actor thus suggests that IDPs residing on site have a very good idea of who is who amongst international actors. Another humanitarian actor agrees: 'Civilians in Bor can tell you who everyone is…they are a closed audience in a small camp that does not move in and out, they deal with only so many internationals or outsiders.' By comparison, the PoC sites in Bentiu and Juba host fluctuating IDP populations. In these larger, more porous, sites, the prospect of a 'phantom foreigner' looms. The same individual who describes the Bor site as a small camp says that, in these larger sites, he 'would expect that people there have no idea who is with what agency and what they are doing'. A number of humanitarian actors at the Bentiu and Juba PoC sites are indeed distressed at the prospect of IDPs confusing them with the UN forces that guard the site. One humanitarian NGO actor recalls being called 'Mongbatt' by IDPs when he first arrived. He suspects they mistook him for the Mongolian battalion of UNMISS, because the latter were the first foreigners present when the site formed. In this account, qualities of combatantness affix to the humanitarian actor simply because he is present in the same physical space as armed UN forces. Another humanitarian NGO actor recalls how IDPs voiced anger with his organization after UNMISS announced there would be no accompanied daily firewood patrols out of the PoC site. Despite the fact that his NGO had nothing to do with this UNMISS decision, IDPs accused him: 'You don't help us anyway.' Such comments exemplify how a focus on distinction might engender a flattening of war-affected populations. Instead of examining whether the IDPs are being helped, the humanitarian actor who is consumed by worries about distinction fixates on whether the IDPs think he is a UNMISS actor. This is not to say that it is a bad thing for humanitarian actors to imagine how local actors see them, but the narrower claim here is that, when enacting distinction, the former sometimes treat the latter as less than three-dimensional.

These concerns about IDP confusion are more palpable in conversations with humanitarian actors working for NGOs, as opposed to the UN. One UNICEF staff member, who also resides in the large Bentiu PoC site, is confident that the visual cues his organization transmits help beneficiaries to distinguish UNICEF from other international actors. He elaborates: 'People look at [the UN] as very big, but people here are very quick to distinguish. They can tell you who runs the clinic, who provides medicine, who dug a bore hole.' Hearing these comments by the UNICEF staff member, a humanitarian NGO actor working in the same site balks. He counters that UN humanitarian actors fail to sufficiently differentiate themselves from the UN mission presence in the PoC sites. He suspects that many IDPs perceive UNICEF to be affiliated with UNMISS.

At the Juba office of a humanitarian NGO, the Head of Mission links distinction practices to the cultivation of beneficiary trust. 'If I give them a Puritab[664] to put in their jerry can, they need to know it's not an anti-pregnancy tab or won't convert you into a Muslim. Any sort of misconception needs to be sorted at the beneficiary level.' Given that his NGO cannot reach the entire population of South Sudan, his aim is that, for 'the people we do reach, we are seen as someone who is there to work with them, assist in a dignified way'. The hope is that this reputation will be transmitted to other communities through word of mouth. He intimates that the perceptions of the beneficiary-perceiver rank above those of the authority-perceiver. If the GoSS requests a list of beneficiary names, for example, his organization must refuse. 'Again, it's a question of trust.' He believes that, when IDPs arrived at the gates of (what became) the PoC sites in December 2013, they approached his NGO for help because 'they knew we weren't perpetrators or military assets'. The staff of his organization always ask to wear his NGO's T-shirt, he adds, because 'they do protect us, people know that these guys provide water, etcetera. They immediately associate us with a need, which is not just felt, but also expressed'.

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[664] This is the brand name of tabs for water purification.

Building on the Chapter 6 discussion of signs and symbols, the function of the NGO T-shirt in this account merits close attention. Initially, this humanitarian actor talks about securing beneficiary trust. When he mentions the T-shirt, however, the goal shifts to protecting humanitarian actors. It is instructive to recall Hopgood's argument that the suffering of the victims of war imbues both law and the Red Cross emblem with authority.[665] When the humanitarian actor in South Sudan says that his organization's T-shirt protects staff because the symbol is associated with needs, the suffering of vulnerable populations grounds the humanitarian actor's humanitarianness and civilianness. Another humanitarian actor in South Sudan intertwines the safety of humanitarian actors with the quality of humanitarian programming.[666] This individual looks at the situation 'from the eyes of beneficiaries, because ultimately they will determine whether my intervention is successful or otherwise, whether my team is safe'. The actor makes a similar point to the previous humanitarian actor, but the linking of humanitarian safety to programme quality has additional implications. It could be that the protection referred to here is from the attacker-perceiver, whose perceptions are simply folded together with those of the beneficiary-perceiver. A further sentiment lurking beneath the surface might be that beneficiaries, themselves, pose a potential threat to humanitarian actors. This latter possibility was averted to previously in this study, where it was noted that some humanitarian actors are fearful and mistrustful of the persons they seek to assist.[667]

7.1.2 The individual in the field, the rules in the book

As outlined in Chapter 6, context-specific guidelines have been developed to guide civil–military interactions and inform decision-making around the use of UNMISS assets. What is of interest in the present discussion is how the individual actors who are responsible for enacting distinction on a daily basis understand and deploy these

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[665] See Chapter 6.
[666] See Chapter 5 on 'acceptance' approaches to security.
[667] See Chapter 3.

rules. [668] According to one global study, the implementation of civil–military guidelines by humanitarian actors is uneven and the guidelines are sometimes honoured in the breach.[669] Even actors who actively participate in writing the guidelines might not explicitly draw on the rules in their advocacy, training, decision-making or practice on the ground.[670] Staff turnover in the field, and the tendency to send low-level staff to coordination meetings, may also adversely impact the dissemination of the rules.[671] Turning now to the specific case of South Sudan, the remainder of this section canvasses the attitudes of humanitarian actors to the written rules.

One humanitarian NGO actor proposes that it is for the head of each humanitarian organization in Juba to translate the rules from organizational headquarters (HQ) to the field. While there might be formal agreement at the HQ level regarding civil–military interactions, 'what it boils down to is practical application. It's really [for the Heads of Mission] to make sure global best practices get filtered down to staff'. Another NGO actor suggests that humanitarian actors based at HQ fall short in this respect. Residing far away from South Sudan, they 'commit a sin of not briefing staff before they go out', fail to train staff in IHL and often do not require staff to sign codes of conduct. It is further suggested that HQ staff might not appreciate the importance of safeguarding distinction. One humanitarian actor believes that some HQ staff endorse a short-term vision that aligns with brief project cycles. This leads them to lose sight of the need to maintain humanitarian space – which he equates with enacting distinction – in the 'years to come'.[672] Donor contracts often perpetuate short-term thinking by restricting funding to brief cycles, though they could conceivably create incentives for upholding distinction – such as by forbidding the use of military assets.

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[668] On the relationships between headquarters and the field with respect to security issues, see Beerli, supra.
[669] Metcalfe and Berg, supra, pp. 5–6.
[670] Ibid.
[671] Goodhand, supra, p. 297.
[672] See Chapter 6.

Coming back to the encounter presented at the opening of this discussion, one humanitarian actor in South Sudan asserts that those at the coalface figure out how to conduct themselves 'regardless of overarching guidelines'. He views this as unproblematic, 'so long as humanity remains the guiding light'. This is a classic example of how ambiguity is preserved around the relationship between distinction and the traditional humanitarian principles. This platitude about humanity as a guiding light conceals the fact that, in some instances, a staunch commitment to humanity might invite the undermining of distinction.[673] The comments of two other humanitarian actors obliquely refer to this prospect. Following the rulebook, they both suggest, means not getting anything done. While it may be that these individuals are poorly trained (as suggested above), it is striking how often humanitarian actors cite distinction while compromising it in the name of other ideals. This marks an overt rejection that distinction should be prioritized over other strong values. This idea will be revisited in the discussion of the first and second ideal types, below.[674]

7.2 How the line is drawn

In this section, two aspects of daily life in South Sudan that impose serious operational pressures on the implementation of distinction are considered: co-location in the PoC sites and the use of UNMISS assets. Bringing in the perceptions of other international actors, such actors accuse humanitarian actors of implementing distinction too strictly, and inconsistently. As at the civil–military training grounds, in South Sudan, some international actors take humanitarian distinction practices personally.

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[673] Section 7.2 examines how these dynamics play out within South Sudan's PoC sites and in decision-making about military asset use.

[674] See Section 7.4.2.

7.2.1 Co-location in the PoC sites

A discussion of how the line is drawn in the Kinetic realm must attend to the spatial dimension of distinction practices. Consider the construction of a 'humanitarian hub' in South Sudan's PoC sites. The delineation of a separate space for humanitarian actors represents a move to assert distinction within a discrete segment of a larger setting – the PoC site – in which distinction is already compromised. While humanitarian actors invest resources in asserting distinction on site on a daily basis, other international actors both resent their presence on site and interpret it as a tacit agreement to affiliate.

'Why do you eat in our cafeteria?'

As one UN civilian actor notes, the PoC sites in South Sudan are spaces where the UN mission 'comes closest' to humanitarian actors. Another UN civilian surmises: 'I've never seen another example where humanitarians and UNMISS work so closely.' This issue of physical proximity is also flagged by a humanitarian NGO actor living in one of the PoC sites. He is concerned that the mere fact of his presence on site undermines his organization's efforts to distinguish itself from UNMISS. An individual working for a different humanitarian NGO picks up this thread. He explains that co-locating with UN military forces leads 'fiercely independent' humanitarian NGOs to fear that they are compromising the humanitarian principles of neutrality, independence and impartiality. It is adhering to these principles, he explains, that helps humanitarian actors demonstrate they are distinct. OCHA plays a pivotal role in mediating relationships between humanitarian actors and military actors in South Sudan, and one OCHA staff member contemplates how his own presence in the PoC site impinges on these efforts. In a setting dominated by machine guns and people in uniform, he often finds himself eating breakfast in the same room as the soldiers. He must subsequently impress upon these very people the importance of distinction. He wonders: 'How do you have that conversation?' His concerns appear to be well-founded. When a UNMISS peacekeeper is subsequently asked whether such casual proximity affects his thoughts about distinction, he replies: 'If you are so concerned, why do you eat in our cafeteria, why do you drink our water, why sleep in our camp, why use our toilets?'

In order to be close to the displaced populations they serve and to ensure the safety of humanitarian personnel, many humanitarian organizations opt to reside in South Sudan's PoC sites. The decision to live in such close physical proximity makes humanitarian actors anxious that their vision of distinction may be compromised

before they even get out of bed in the morning. The perspectives of other international actors that are canvassed here confirm that these fears are justified.

Enforcing distinction while living together

As noted previously, following the establishment of the PoC sites in South Sudan, humanitarian actors received formal permission from the UN Humanitarian Country Team to reside in the PoC sites.[675] Humanitarian actors believe that qualities of combatantness hover around the PoC sites because they are guarded by armed UN forces. They raise the prospect of the 'phantom foreigner', worrying that local actors lump together all of the international actors who reside in the sites. A UNMISS civilian actor recalls lengthy conversations in the early days of the Bentiu PoC site about whether humanitarian actors would come there. One humanitarian NGO actor submits that humanitarian actors made the decision knowing that it would blur the lines and adversely impact local perceptions. For this individual, the blurring was between the 'humanitarian sphere' and 'military approaches to protection'. Another humanitarian actor describes the PoC sites as a 'mélange', with principled humanitarian actors wanting 'to be as far away from the mission as possible'. Despite efforts to construct a separate 'humanitarian hub' lying physically apart from the UN base, one humanitarian actor remarks 'You can only separate so much, they are still all together'.

Efforts to delineate a 'humanitarian hub' in South Sudan's PoC sites harken back to a story told by the CAMPO trainer about his efforts to arrange a convoy for humanitarian actors in Haiti.[676] He thought that, by joining the convoy, the humanitarian actors were agreeing to associate; but they surprised him by haggling over the distance between vehicles. Much like at the PoC sites, in Haiti, the humanitarian actors likely knew their participation in the convoy already undermined distinction. Nonetheless, they sought as much separation as possible

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[675] See Chapter 6.
[676] See Section 5.3.

within the constraints of the circumstances. The aim, from the humanitarian actors' perspective, was to preserve distinction to the greatest extent possible within a larger context in which it was polluted. Everything was a matter of degree and subtle gradations. A given individual might be imbued with qualities of civilianness in one moment and combatantness in the next. From the vantage point of other international actors, however, the behaviour of humanitarian actors could appear erratic.

Much as the PoC sites pose a problem for distinction, they also facilitate access to populations in need – at least to the war-affected populations in South Sudan who reside in the sites. [677] One humanitarian actor explains: 'We don't like the PoC site set-up, being associated with military, but we know that we have no other choice. Do we want to reach the people we want to reach?' Distinction and humanity are again in tension here. While distinction requires separation from armed UN forces, humanity calls for the delivery of services to those in need. This is fleshed out in the discussion of military asset use, below. This humanitarian actor also raises the spectre of being associated with the military, which resonates with conversations at the civil–military training grounds. It was proposed in Part II of this study that concerns about affiliation or association are about optics as well as actual influence. Living with UNMISS actors in the PoC sites might affect how humanitarian actors position themselves with respect to the conflict in South Sudan, how they make operational decisions on a day-to-day basis and how they select who receives their humanitarian services. But beyond this, there are also perceptions, as humanitarian actors also follow the traditional humanitarian principles to *demonstrate* that they are distinct.

Having examined attempts to earn the trust of the beneficiary-perceiver (see Section 7.1, above), the discussion now turns to the **attacker-perceiver**. Although living under the protection of UN forces in the PoC sites is supposed to keep

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[677] See Section 6.1.

humanitarian actors safe, humanitarian actors also want the attacker-perceiver to see that they are separate from armed UN forces. As the head of one international NGO in South Sudan contends, it is the safety of humanitarian actors that is paramount. 'My biggest concern is safety and security of my personnel; that trumps everything, irrespective of what needs are. If I am unable to ensure their safety, my team members, then it's pointless to try to get the work done.' This perspective represents a marked departure from that of the humanitarian actor quoted above, who claims that distinction is purely from the perspective of the beneficiaries.[678]

A humanitarian actor who resides in the Bentiu PoC site says that managing the perceptions of nearby SPLA soldiers requires daily effort. He recounts an incident in which an SPLA soldier behaved menacingly towards him near the entrance gate to the PoC site. At the time, this humanitarian actor was standing close to the armed UN peacekeepers who guarded the site. He suspects that simply standing there put 'me and the peacekeepers in his head, as the same kind of thing'. Another humanitarian NGO actor residing in the same PoC site shares that SPLA soldiers called him both 'UN' and 'military'. In an effort to mitigate this confusion, he spent a lot of time chatting to SPLA soldiers near the entrance to the POC site. '[If] something happened, I wanted them to know me.' Despite these exertions, he reports that a recent incident alarmed him. Upon observing an altercation between humanitarian actors and SPLA soldiers at the entrance to the site, he intervened and asked an SPLA soldier he was well acquainted with to tell his fellow soldiers not to 'threaten humanitarians'. To this, the first soldier responded: 'But you're UN.' The humanitarian NGO actor was aghast, imploring: 'You know me, you are my friend. Am I UN?' The soldier replied: 'Well, you are military as well.' The humanitarian actor pushed on, brandishing his civilian credentials: 'Do you ever see me carrying a gun?' Lifting up his shirt, he asked: 'Do I have an imaginary gun, an invisible gun?' Finally, he reminded the soldier that his humanitarian NGO 'has always been your friend, we always come here'. While this particular incident was resolved peacefully,

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[678] See Section 7.1.

the humanitarian actor concludes: 'That was a point where I was feeling a little close [to UNMISS].' In this encounter, qualities of combatantness circle around the humanitarian actor, who is seen to have an inappropriate affiliation with armed UN forces.

This exchange between the humanitarian NGO actor and the SPLA soldier is reminiscent of the virtual reality session at SWEDINT, where the actor playing the HELP representative claimed the entire UN is a military, of sorts.[679] In this story from South Sudan, however, the armed actor sweeps the humanitarian NGO actor into the UN, as well. It is likely that this very prospect led the HELP representative at SWEDINT to insist on maintaining separation from all UN actors.[680]

Some humanitarian actors voice doubts about whether it is truly necessary for them to reside in the PoC sites. In Bor, a number of humanitarian actors live 'outside the wire' because security conditions are deemed more favourable than in Bentiu or Malakal. Pointing to the looser arrangements in Bor, a humanitarian NGO actor in the Bentiu PoC site contends that humanitarian actors would achieve more by living outside the site. He thinks it is unnecessary to resort to the help of UNMISS 'unless there was a bunch of bullets – say I had to get to the airport'. He deduces that his colleagues are too risk-adverse and bureaucratic to find ways of working outside the PoC sites.

It has been noted that humanitarian actors avoid UN forces partly because the latter use violent means. Complicating this picture, many humanitarian actors worry that UN forces will *not* use force to protect the populations residing in the PoC sites. These anxieties stem from UNMISS' poor track record of implementing its PoC mandate in South Sudan.[681] A related concern is that UN forces, themselves, fail to

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[679] See Chapter 5.
[680] It is implicit in the commentary above that the SPLA soldiers have a negative judgment of the UN peacekeeping actors. As is discussed below, there are also concerns that UN forces are too friendly with the SPLA.
[681] See Section 6.1.

keep their distance from the SPLA, when the latter are understood to commit violence against the local population.[682] A possible UNMISS–SPLA affiliation might send the message that UN forces would not use force robustly to protect the sites – for example if SPLA soldiers were to breach the perimeter.[683] One humanitarian actor highlights the optics of UN forces being linked to the SPLA: 'This is a big problem. IDPs see it, that can't be good….There has to be some sanctity to the PoC [site]. I know it's porous as hell, but at least the visual has to matter a bit.' Invoking the beneficiary-perceiver, humanitarian actors are apprehensive that, if IDPs feel unprotected, their view of the humanitarian actors who are on site to provide services will be clouded.

Humanitarian–UNMISS tensions

As noted, some humanitarian actors question whether it is truly necessary for them to reside in South Sudan's PoC sites. It turns out that many UNMISS actors, both civilian and military, wonder the same thing. One humanitarian actor attributes strains in the humanitarian–UNMISS relationship to the trajectory of PoC site development after December 2013:

> My sense is that the mission, as a body, was caught by surprise with the emergency. Before, the base was airtight; they went out on missions. Now, suddenly, you have 20,000 people living in there, 200 humanitarians, everyone is taking your food, your shower, your place, so you get angry…[UNMISS] couldn't see that this wasn't people's fault. I'm here as a humanitarian because of these 20,000 people, and they are here because of the war.

A humanitarian NGO actor reports 'huge fights' in the early days of the PoC sites, including an alleged incident in which UNMISS actors locked humanitarian actors

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[682] See Chapter 6.
[683] One example is the perimeter breach that occurred at the Bor PoC site in 2014. See Radio Tamazuj, 'Armed Youth, Uniformed Gunmen Attack UN Camp in Bor Killing 60', *Radio Tamazuj*, 17 April 2014, available at: https://radiotamazuj.org/en/article/armed-youth-uniformed-gunmen-attack-un-camp-bor-killing-60.

out of the bathrooms in Malakal. He shares the story of a UNMISS engineer who took scissors and cut off a plug that was powering the small cluster of humanitarian tents on site. The engineer apparently told humanitarian actors that they could not simply show up and expect to be provided with electricity. The individual recounting this altercation says that he urged the UNMISS actor to stop cutting, entreating: 'You are talking like I came to your cabin in the woods and we're guests. Do you know why we are here?…Do you know what will happen to you if we just leave?' At the Bor PoC site, a humanitarian actor has a similar message for UNMISS: 'You would not be able to do this without us.' He wishes UN forces would appreciate that, in the absence of humanitarian services, the physical protection that UN forces provide is for naught. He suspects that UN forces dismiss humanitarian actors in South Sudan as being completely disorganized.[684]

Picking up the theme of the cabin in the woods, another humanitarian actor contends that UNMISS actors treat the PoC sites as a personal home. When humanitarian actors request an extension to a PoC site to make space for more IDP, 'UNMISS doesn't see it as a programmatic purpose, it's as though you requested a piece of land to lay down on yourselves'. Although he reports that intergroup relations in the Bentiu PoC site are less fraught than in the Malakal site, he maintains that 'If there is a water flow [problem], if they have to switch off valves, they'll switch off humanitarians'. He also recalls that, in the site's early days, 'They would give you bad looks as a humanitarian when you would take a shower'. Then, 'you'd go to a meeting, they'd say, "These humanitarians, they don't know what they do, it's us and them"'.

The larger story being told here is one of hostility and resentment in the humanitarian–UNMISS relationship. The remarks of the last speaker merge the issue of water-hogging in the PoC site seamlessly with a coordination meeting at which UNMISS actors not only profess an 'us and them' mentality, but also claim

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[684] See Section 7.3.

that humanitarians 'don't know what they do'.[685] These accounts provide important context for the OCHA actor's concerns about living alongside UNMISS actors (see opening vignette, above). The OCHA actor routinely finds himself surrounded by armed UN peacekeepers on site, sharing meals with them at one moment and trying to impress upon them the need for separation in the next. These dynamics acquire a new hue when one considers that these UNMISS actors might also view the PoC site as their own home. When a UN peacekeeper is asked about whether this is the case, he confirms the OCHA actor's fears. He cannot fathom how humanitarian actors could feel so comfortable living and working in 'his' environment, if distinction is so important to them. From his perspective, humanitarian actors who reside in the PoC sites are no different from those who actively rely on UNMISS forces for protection or logistics. Their claims to distinction are weak, he argues, because 'they still use us'. Notably, this peacekeeper is more sympathetic when the ICRC and MSF wish to keep interactions with the military 'behind the curtain'. He explains: 'They don't want to face retaliations and people on the ground need them. People in need come first.' He calls these two organizations the 'military of the humanitarians….they are self-sufficient, they have planes, they go in in any emergency'. Similar to the SWEDINT trainee who praises ICRC actors for not being 'total humanitarians',[686] this UN peacekeeper ties humanitarianness to what is, in his view, the right kind of combatantness. Humanitarian actors who 'still use us' are, in contrast, seen to exhibit the wrong kind of combatantness. This adds a further dimension to the findings from the Pedagogical realm. It will be recalled that, at the civil–military training spaces, military actors do not recognize how their 'rush to the intimate' undermines the civilianness of humanitarian actors. In South Sudan, some UN peacekeepers judge harshly those humanitarian actors who rely upon them.[687]

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[685] While electricity cutting incidents and the like have abated since the early days of the PoC sites, the mistrust and resentment behind these stories was still palpable at the time of the field research in 2015.
[686] See Section 5.4.2.
[687] See Section 7.4.1.

Continuing with this exploration of how the line is drawn, the proceeding section draws attention to the way in which humanitarian actors make decisions about the use of UNMISS assets.

7.2.2 The use of military assets

One form of the militarization of humanitarian assistance, as outlined in Part II, is the direct engagement of military actors in humanitarian-like activities. Another variant is the use of military logistical, security and other resources by humanitarian actors.[688] This section grapples with the latter variant. Returning now to the two ideal types of humanitarian actor, it will be recalled that the first type prioritizes distinction every time and takes a long-term view, while the second balances distinction with other values and focuses on immediate need. The ways in which these two types grapple with military assets raise fundamental questions about the conceptualization of humanitarianness.

'You become tainted'

One day in 2015, a group of international humanitarian actors[689] takes a flight with UN peacekeeping forces in a UNMISS helicopter in South Sudan. According to the rumours circulating in connection with the incident, the humanitarian actors have not obtained permission from OCHA to take this flight. When the helicopter lands at its destination, the humanitarian actors embark on some humanitarian activities in an area where UNMISS peacekeepers are conducting a force patrol; UN civilian human rights monitors are also present, gathering information from the local population. The trip goes smoothly and the humanitarian actors return to their point of origin unharmed. As word spreads, however, the conduct of these humanitarian actors attracts the ire of the wider humanitarian community. Many humanitarian actors are aghast at the optics of flying with UNMISS peacekeepers in transport marked with the black UN logo, and delivering services in such close physical proximity to a force patrol. They deem this unsanctioned helicopter flight an ill-judged move that undermines distinction, putting all humanitarian actors in South Sudan at risk. Reflecting on the incident, one humanitarian actor is sympathetic to the impulse to reach populations in need. Nevertheless, he wishes his colleagues would consider the reasoning

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[688] Hoffman and Weiss, supra, p. 20; Slim, supra, pp. 124–125 ('Stretcher').
[689] The identity of the organization was widely acknowledged in private conversations but is not included here for reasons of confidentiality.

behind appeals to distinction. 'Why is it important for me not to board a UNMISS helicopter, why should I use a non-military asset?' The answer, he imparts, is 'you become tainted'. Amongst humanitarian actors, there is a small but discernible current of opinion that goes a different way. The fastidious commitment to distinction, some humanitarian actors assert, interferes with the alleviation of suffering. One humanitarian actor charges that the commitment to Do No Harm is mistranslated as Do No Good.

Questions regarding the use of military assets by humanitarian actors came to the fore in the 1990s, when humanitarian actors in Somalia, Rwanda and the Balkans resorted to the use of military protection by local and international forces.[690] In terms of concrete benefits, these assets can prevent humanitarian actors from being soft (unprotected, easy) targets for violence by armed actors, and they can also help them gain access to populations that are difficult to reach.[691] However, whatever the potential gains in terms of safety and access, military asset use can also generate problems of association for humanitarian actors and impede adherence to the traditional humanitarian principles.[692] Military asset use might, for example, incentivize the delivery of assistance to some segments of the war-affected population, but not others.

Two ideal types of humanitarian actor

The **first ideal type** of humanitarian actor in South Sudan proposes that, when deciding whether to use the capacity and resources of other international actors, the foremost consideration should be distinction. When it comes to declining offers to use UNMISS assets, a humanitarian actor of this type states: 'We are constantly challenged, negotiating, trying to explain to people why we do this.' Some of the people this message must be conveyed to, another humanitarian actor emphasizes, are fellow members of the humanitarian community. They might not understand

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[690] Pugh, supra, p. 352 ('Civil–Military Relations').

[691] See Van Brabant, supra, pp. 74–87; see also Mackintosh, supra, p. 122.

[692] See also Pugh, supra, p. 352 ('Civil–Military Relations'); Michael Pugh, 'The Role of Armed Protection in Humanitarian Action', In *Humanitarian Action: Perception and Security*, European Commission Seminar proceedings (Lisbon: European Commission Humanitarian Office and International Committee of the Red Cross, 27–28 March 2007).

that they should not rely upon or get too close to armed actors. The humanitarian actor who alleges that humanitarian actors become tainted by using UNMISS assets (see above) flags the fact that UNMISS has previously allowed the SPLA to travel on its flights. He contends that any humanitarian actors who now travel with UNMISS – and maybe even those who elect not to – are therefore compromised. This point is important: individuals who are several degrees removed from the decision of a particular humanitarian actor may still be seen to acquire features of combatantness. He elaborates: 'People will perceive us as part of UNMISS, which for some is code for supporting the SPLA.' The ultimate concern of using military assets, one humanitarian NGO actor argues, is 'we need trust, and to be distinct'.

As for the 'last resort' rules around military asset use, humanitarian actors belonging to the first ideal type advocate a stringent approach. One humanitarian actor is dismissive of colleagues who bend the last resort rules. He notes that some humanitarian actors say 'Oh, we use these assets because there's not enough donor money' – even though this is not an acceptable last resort scenario according to the rules. Those who adopt a more lenient approach are also faulted for yielding to the temptation of short-term gains. When humanitarian actors view rigid principles and guidelines as disabling, a humanitarian actor argues, they fail to understand that 'As [humanitarian] space collapses we can leverage this to negotiate access, ensure safety and welfare of staff'. One humanitarian actor recognizes that others tie humanitarianness to the need to reach vulnerable populations, at any cost. 'Yes, the humanitarian imperative is front and centre, getting to that place to provide assistance is paramount.' The problem, however, is that 'What is immediate, might not be best'. Another humanitarian actor contends that those who flout the civilian–combatant divide in South Sudan in order to reach war-affected populations simply 'haven't calculated that distinction has been compromised'. In these last few statements, the long-term time horizon does important work. These humanitarian actors do not dispute that alleviating suffering is central to their role; what they propose, however, is that relying on military assistance to help some people in need

now, might adversely impact both distinction and the potential to help more people at a later time. There may be a sleight of hand, here, suggesting that no is proposing distinction as a trump, but upholding distinction is simply one way to fulfil the traditional principle of humanity.

As for the unauthorized helicopter incident, humanitarian actors of the first ideal type propose several possible reasons why the humanitarian actors may have boarded the UNMISS flight. Some float the possibility that it was done out of malicious intent or a competitive instinct, enabling the actors to get a 'leg up' over other humanitarian actors; however, this view tends to be rejected out of hand. One humanitarian actor suggests the motivation was mostly one of ignorance: 'They don't understand that by using these assets, it is detrimental.' Another humanitarian actor also blames a lack of knowledge: 'It seems some humanitarians here didn't know about the humanitarian principles – that they can't just jump into a vehicle with a UN logo on it.' This last commentator does not avert to the possibility that the traditional humanitarian principle of humanity might well prompt a humanitarian actor to jump into UN transport to deliver services. As with the UN humanitarian actor who trusts that arrangements will be worked out 'so long as humanity remains the guiding light',[693] this fuzzy treatment implies that distinction and humanity are mutually reinforcing. A further issue to address is the assumption that ignorance may have driven the humanitarian actors to take the unauthorized helicopter flight. Cutting against this belief, rumour has it that one of the individuals who took the flight protested: 'These are not *our* principles.' The individual is said to have attributed the principle to OCHA, instead.[694]

When humanitarian actors belonging to the **second ideal type** navigate military asset use, their understanding of humanitarianness drives a wedge between

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[693] See the opening vignette of Section 7.1.

[694] For a study of how MSF staff understand and interpret the humanitarian principles, see Dorothea Hilhorst and Nadja Schmiemann, 'Humanitarian Principles and Organizational Culture: Everyday Practice in Médecins Sans Frontières-Holland', *Development in Practice,* Vol. 12, Nos. 3 and 4, 2002, pp. 490–500.

upholding distinction and implementing the traditional humanitarian principle of humanity. Advocating for a more flexible approach, they position distinction as a good that must compete with other priorities. A humanitarian actor says of last resort rules around military asset use: 'It's "last resort". It doesn't say "No"!' One humanitarian actor, who has repeatedly had his requests for humanitarian transport on a UN Humanitarian Air Services helicopter declined, laments that this has impeded his efforts to reach populations in need outside the PoC site. Sounding not unlike a 'civilian minus', he proposes that these refusals 'took the weapons out of our hands, because we didn't have any other option. We watch UNMISS go for missions here and there, but we can't do it'. The insinuation that a UNMISS mission is akin to a humanitarian mission is also worth noting. This viewpoint clashes with that of humanitarian actors who emphasize the differing definitions of protection, access and so on between humanitarian actors and UNMISS.[695]

Whatever inequality exists between humanitarian actors and war-affected populations at the outset,[696] it may be reinforced and exacerbated by humanitarian distinction practices. As humanitarian actors of the second ideal type in South Sudan point out, when humanitarian actors refuse to use military assets, they often do not elect to proceed without the assets – they simply do not travel at all. One humanitarian actor contends: 'It's really costly, the risk management is stopping people from getting out to where the need is.' From this vantage point, distinction inappropriately privileges the personal safety of humanitarian actors over the delivery of services to war-affected populations. In attempting to avoid being tainted by the combatantness that floats around military assets, actors of the first type are seen to relinquish their humanitarianness. Another common refrain voiced by humanitarian actors of the second ideal type claims that there is a fixation on delivering services inside the PoC sites, despite the fact that most people in need of services reside elsewhere. One individual bluntly states: 'It's a distortion.' It merits emphasis that these critiques all come from humanitarian actors. As is shown in the

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[695] See Section 7.1.
[696] See Chapter 3.

proceeding section, the misgivings articulated by humanitarian actors of the second ideal type resonate with the views expressed by many UNMISS actors.

The perspectives of UNMISS actors

A UNMISS civilian actor working in the Bor PoC site praises humanitarian actors belonging to the first ideal type for their strict approach to distinction. However, the actor thinks that such humanitarian actors are few and far between, and that most have become 'too comfortable using UN assets and not all following the humanitarian principles'. This sweeping reference to 'the humanitarian principles' obscures whether distinction or humanity, are – respectively – in or out.

The view that humanitarian actors are too quick to use UNMISS assets is far from an isolated one. However, the UNMISS actors interviewed for this study contend that humanitarian actors are not comfortable with the idea of using UNMISS assets. They see humanitarian actors who take a stringent approach to distinction as obsessed with the purity of their humanitarianness. Humanitarian actors of the second ideal type, however, are admired, because they 'bend the rules' to reach populations in need. One UNMISS military actor alleges that humanitarian actors of the first ideal type treat proximity to UNMISS 'like cursing the prophet'. He believes that, if a humanitarian actor wishes to travel with UNMISS to places in South Sudan where no one is providing services, they should be supported to do so. Another UNMISS military actor decries those who take a 'fundamentalist' approach to enforcing the humanitarian principles, calling a particular humanitarian actor known for zealously enforcing distinction 'the Taliban guy'. This muddled treatment of the relationship between distinction and the traditional humanitarian principles shows that humanitarian actors are not the only ones who cultivate ambiguity.

Echoing the findings from the Pedagogical realm, the findings from the Kinetic realm in South Sudan show that international actors also express frustration with

humanitarian actors who are inconsistent in their usage of military assets. They cannot comprehend the logic that leads humanitarian actors to vociferously insist on keeping their distance at one moment, and to be ready on a whim to use military assets in another. One UNMISS military actor recounts a story of an armed escort he helped to arrange in Pibor – a county in Boma State, South Sudan. Although humanitarian actors initially requested that he organize the escort, his efforts were undermined when the actors abruptly broke off from the convoy. He recalls: 'They just changed their minds and left the area, just screwed off. I thought, "What's the point of being here?" They are keen to go on their own, they moan about us, but then this happens.' What irks this military actor is that, once humanitarian actors asked for the escort, he took this as an explicit agreement to associate. This resonates with the CAMPO trainer's story about the convoy he arranged in Haiti, where humanitarian actors argued over the distance between cars.[697] From the perspectives of these non-humanitarian actors, there is an on/off switch for association. This clashes with the notion that humanitarian actors navigate subtle gradations and degrees of civilianness that can be acquired or lost. The mention of how humanitarian actors 'moan about us' also shows that some UNMISS actors experience distinction practices as a personal affront.

The same UNMISS actor who accuses humanitarian actors of taking a fundamentalist approach to distinction also reports that even 'the Taliban guy' will rely on UNMISS for evacuation in the event of danger. After sharing his personal misgivings about this, he is quick to add that, as a member of UNMISS, he recognizes that humanitarian actors may need to limit their reliance on military assets. He clarifies: 'We're fine with DPKO use being last resort.' This splitting of the individual perspective from the institutional outlook is detectable in the practices of international civilian actors, as well (see below). It is worth recalling here the humanitarian NGO actor residing in the Bentiu PoC site, who says that he would rely on UNMISS assets if there were a 'bunch of bullets' and he had to get to

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[697] See Chapter 5, and above.

the airport. This particular individual – whose diligent approach to implementing distinction in all other respects would likely attract a 'fundamentalist' label from the UNMISS military actor – believes that distinction must give way in a life-or-death situation. While making an exception for cases of evacuation is perfectly reasonable from his perspective – and likely compliant with international law – the UNMISS military actor seizes on this reliance as proof of prevarication.

In sum, from the perspective of other international actors in South Sudan, international humanitarian actors try to have it all. They police the boundaries between actors, then overstep these boundaries when they deem it necessary.

7.3 Where the line is drawn

This part of the discussion explores where humanitarian actors in South Sudan draw lines on an everyday basis, focusing on the delineation of lines within the civilian category. The first section addresses the relationship with UNMISS civilian actors and examines claims that humanitarian actors enact humanitarian–humanitarian distinctions in order to attract donor resources. The second section considers how some humanitarian actors attract a 'civilian minus' label because they are too close to the conflict or lacking competence and credentials.

7.3.1 The 'civilian plus'

On a day-to-day basis in South Sudan, humanitarian actors disseminate a 'civilian plus' status to set themselves apart from – and perhaps above – other international civilian actors. All of the practices discussed here depend upon the relativization of civilianness, aligning with the alternative vision of distinction elucidated in Chapter 2.

A noticeable feature of humanitarian distinction practices in South Sudan is that distinction is enacted with respect to UNMISS civilian actors. In some cases, humanitarian actors profess the general need to assert distinction from UNMISS as a wider mission. Elsewhere, they highlight concerns that are specific to UN civilian actors, extending beyond the latter's membership in the mission. One humanitarian actor elaborates on why he cannot be seen with UNMISS civilian actors: '[W]e have access to places because of our neutrality. We try to distinguish ourselves, by toning down our connections.' Anticipating his critics, he stresses, 'it's not out of purity, it's to get access'. This forging of a line within the civilian category provokes vexed responses from some UNMISS civilian actors. They fear that humanitarian actors are nudging them closer to the combatant category, disregarding their own anxieties about being associated with UN forces. One UNMISS civilian actor recalls an incident in which she and her civilian colleagues were interviewing local war-affected populations in South Sudan. Unexpectedly, armed UN peacekeepers came up behind her with their weapons visible. While she acknowledges that 'We're not exactly humanitarians', she is adamant that being seen with military forces troubled her in the same way that humanitarian actors profess it bothers them. The deployment of distinction to draw lines within the humanitarian category also attracts condemnation from other international actors in South Sudan. Many attribute this to interagency competition and the fight for donor resources. One UN civilian actor wonders aloud if humanitarian actors might not, in fact, aim for ambiguity in some cases. They fly a flag in the name of distinction, but this flag conveys many other things.

In South Sudan, humanitarian actors sometimes make sweeping statements about the need to be distinct from other international actors. What is of interest, presently, is how they cite the need for separation from the wider UN mission. A classic example of this is shown when a humanitarian actor simply states: 'The UN mission, we're not part of that.' Summing up the humanitarian–UNMISS relationship across South Sudan's various PoC sites, one humanitarian actor says: 'I know we are not ideal, I know there are many mistakes done, but we simply need to try to stay away.' In this account, maintaining separation from UN civilian actors is placed on the same plane as dissociating from armed UN forces. The former may be imbued with too low a degree of civilianness, or even combatantness. This is quite consistent with the South Sudan civil–military guidelines, which, as noted in Chapter 6, provide for a humanitarian–UNMISS distinction. However, some distinction

practices depart from the guidelines, such as when humanitarian NGOs call for a separation from UN humanitarian actors.

Enforcing distinction from UNMISS civilian actors

A central reason why humanitarian actors strive to avoid affiliation with UNMISS civilian actors is the latter's connection to UN forces. Qualities of combatantness may affix to UN civilian actors because of the structure of the mission: 'UNMISS is a mission with a military component, and we can't be seen to have anything to do with this.' Alternatively, more specific entanglements of UNMISS civilians with armed actors may be problematized. UN civilians work 'with the military people, they fly with their assets, they go on patrol'. Crucially, humanitarian actors also express misgivings about UNMISS civilians that are not tied to UN mission membership. One individual alleges, 'the real tension is actually with UN civilians, not the UN military'. It is hinted that UNMISS civilians pose a bigger concern than military actors because they 'are willing to break the rules' and 'they don't follow orders; they say "We're not in the military"'. In Part II of this study, it was noted that it is commonly assumed that relations between humanitarian actors and other civilians are less fraught than humanitarian–military relations.[698] This narrative conveniently aligns with the dominant vision of distinction in IHL, which revolves around the civilian–combatant divide, to the exclusion of other distinctions. This study's empirical findings dispel the notion that shared interests and overlapping mandates translate into positive humanitarian–civilian relationships. It is evident that humanitarian actors in South Sudan are deeply concerned about how UNMISS civilian actors express their own civilianness.

Also of note, humanitarian actors accuse UNMISS civilian actors of competing with them, though UNMISS actors lack the requisite technical expertise and skills to deliver humanitarian services. One humanitarian actor says that UNMISS civilians

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[698] See Section 5.4.

think 'they are all humanitarians'. Another adds: 'They don't know how to measure arms and say "famine".' In such accounts, humanitarian actors treat UNMISS civilian actors as 'mere civilians', at best, often hinting that a 'civilian minus' status would be appropriate. The 'civilian plus' status helps humanitarian actors set themselves apart from UNMISS civilian actors, and they exert themselves on a daily basis to assert this special status. A more general observation is that humanitarian actors tie expertise to the 'civilian plus' status (see Section 7.3.2, below).

Widening out to the UN mission as a whole, UNMISS' posture with respect to the Government of South Sudan (GoSS) poses a number of concerns for humanitarian actors. It is acknowledged at mission level that UNMISS has a political character; this 'can mean that some positions or activities are not considered neutral by all parties in the country'. [699] Here, neutrality requires separation from armed actors who are potentially implicated in the conflict, and also from the prospect of politicization in various forms. Humanitarian actors frame the **UNMISS–GoSS relationship** as both too warm and too cold. Their first allegation is that UNMISS is too friendly with state actors in South Sudan.[700] A humanitarian actor ventures that UNMISS has been too quick to 'jump into normal relations' with the GoSS, simply because the UN mission is so desperate for the country to find peace. While the international community was heavily involved in the 2011 referendum for independence, after the resurgence of violence in 2013, donors were more reluctant to be seen supporting the GoSS.[701] Humanitarian actors believe that the failure of the wider UN mission to sufficiently distance itself from the state after December 2013 has generated wariness from the international donors they rely upon for funding. More generally, humanitarian actors believe that if they become entangled with UNMISS, they will, themselves, become too close to the GoSS.

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[699] 'Humanitarian–UNMISS Guidelines', supra, p. 2.
[700] See also 'FBA Report', p. 4 (finding that NGOs tend to view the work of UNPol and UN Civil Affairs as supporting governmental and transitional authorities).
[701] For a discussion of how donors and other international actors changed approaches after the December 2013 violence, see Jeremy Astill-Brown, 'South Sudan's Slide into Conflict: Revisiting the Past and Reassessing Relationships', Chatham House Research Paper, December 2014.

On the other hand, humanitarian actors fear that, if the UNMISS–GoSS relationship becomes strained, state actors will block their own access to war-affected populations. Their specific charge is that UNMISS aggravates state actors by speaking out on political and human rights issues.[702] One humanitarian actor accuses UNMISS civilian human rights monitors of 'jumping up and down about human rights violations'. Another humanitarian actor vents: 'There are some complete idiots in the UN system, getting up on Human Rights day and saying blah blah blah.' A humanitarian actor submits that his fellow humanitarian actors in South Sudan mostly fail to appreciate the need to carefully modulate their interactions with UN human rights monitors. A point that has not yet been addressed in this discussion with respect to the unauthorized helicopter trip[703] is that UNMISS human rights monitors were also present. Contemplating this fact, the same individual says that his colleagues 'kind of get why we can't have soldiers in the heli[copter] with us, but they don't understand why not human rights monitors'. The implication is that the civilianness of human rights actors is tarnished by the political nature of their actions.

This last speaker who addresses the helicopter trip fits with the first ideal type of humanitarian actor.[704] However, not all who belong to the first ideal type call for a similar civilian–civilian distinction. A particularly thorny issue, which is examined shortly, is the engagement of some humanitarian actors in human rights advocacy and similar activities. As for actors belonging to the second ideal type, they generally find efforts to dissociate from other civilian actors dubious. One such humanitarian actor reports chilly relations in South Sudan between humanitarian NGOs and

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[702] One example of an official UN report about human rights violations in South Sudan is the following: *The State of Human Rights in the Protracted Conflict in South Sudan* (UNMISS and UNOHCHR, 2015), available at: https://reliefweb.int/sites/reliefweb.int/files/resources/UNMISS_HRD4December2015.pdf.
[703] See Section 7.2.2.
[704] See Section 7.2.2.

actors working for the Inter-Governmental Authority on Development (IGAD). [705] He protests: 'Are we really going to exclude someone…because they are with a panel of experts?' Humanitarian actors who urge a more tempered approach to distinction fear that such practices drive other civilian actors away. This risks isolating humanitarian actors and impeding their understanding of what goes on around them in South Sudan.

A final dynamic to consider with respect to a humanitarian–UNMISS distinction is the treatment of **UN police actors**, or UNPol. According to the general perceptions of humanitarian actors in South Sudan, UNPol actors appear to occupy a middle position between armed UN peacekeepers and UN plainclothed civilian actors. [706] Invoking the beneficiary-perceiver, one humanitarian NGO actor contends that distinction must be strictly enforced from UNPol actors in the PoC sites. If he calls UNPol in response to a security incident in the middle of the night: 'You've got a distinction problem with the community because you called them…you make a call and UNPol shows up. That's distinction: I've just called in a mission actor.' Having said this, he confides that he feels more respect for UNPol actors than he does for UN humanitarian actors, because the former work hard to protect civilians in South Sudan: 'I feel affinity with anyone who is getting their hands dirty, and that extends to the mission.' Significantly, some of the actors for whom this humanitarian actor feels the most respect are those he seeks to be distinct from. As has been pointed out throughout this study, international actors often experience humanitarian distinction practices as a personal affront, linking the performance of distinction to bias or feelings of superiority on the part of

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[705] On the relationship between humanitarian NGOs and accountability mechanisms, see Dapo Akande and Emanuela-Chiara Gillard, 'Humanitarian Actors' Engagement with Accountability Mechanisms in Situations of Armed Conflict: Workshop Report', *Anuario De Direito Internacional,* 2016, pp. 105–132 ('Accountability').

[706] While police actors are often legally categorized as civilians, the status of international police who are deployed as part of a UN peacekeeping mission or with international forces raises special issues. See Metcalfe and Berg, supra, pp. 3–4. In South Sudan, UN peacekeeping forces are primarily responsible for guarding the PoC sites and patrolling the perimeters; UNPol actors oversee security inside the PoC sites. See Briggs, supra, p. 75.

humanitarian actors.[707] This commentary from South Sudan suggests that there is not necessarily a straightforward correlation between distinction practices and feelings of affinity.

The perspectives of UNMISS civilian actors

UNMISS civilian actors are well aware that humanitarian actors are reticent to be seen with them. While some take umbrage, others are more understanding. One UNMISS civilian actor concedes: 'UNMISS is never neutral, [it] tries to be impartial, but not really. Humanitarians are well aware of that perception.'[708] This individual feels that, though he has civilian status under IHL, only 'the humanitarians are civilian in nature, literally and figuratively'. He emphasizes the fact that humanitarian actors have 'no uniform' – an observation that is interesting to hold up alongside claims made by humanitarian actors that their T-shirts and logos are their uniform.[709] Although humanitarian actors often depict their 'uniform' as protecting them, this UN civilian actor thinks that the absence of a uniform is what sets humanitarian actors apart. He states that every uniform is associated with a party to the conflict in South Sudan, and he depicts UNMISS civilian actors as also wearing a uniform. He continues: 'I am very confident about what I am. I am not humanitarian. We are clearly told that at the induction. They say "We are not humanitarian, we are the black UN". My car is painted with black. So, that I know so well.' While this individual has no illusions about his (lack of) humanitarianness, he emphasizes that it is part of his mandate, as a UN civilian, to support humanitarian actors.

The above account constitutes a fascinating example of how non-humanitarian actors participate in carving out a special civilian status for international humanitarian actors. While few other UNMISS civilian actors go so far as to

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[707] See Section 5.3.
[708] This individual was interviewed at the SWEDINT training, but is based in South Sudan.
[709] See Section 5.2.

propound the 'civilian plus', some of this actor's colleagues voice support for clear boundaries and a division of labour.[710] Their views are based partly on eradicating the prospect of a 'phantom foreigner' and partly on ensuring strategic variation across the different international organizations operating in South Sudan. One individual notes that UN actors tend to be big, slow and risk averse, while also noting that 'You've got your ICRCs and your MSFs, and we know they're going to be on the front line'. Once again, the Red Cross (and MSF) fantasy informs the way in which humanitarianness is conceptualized. No mention is made of the qualities that other humanitarian actors, such as small NGOs, are deemed to possess.[711]

When humanitarian actors disseminate a 'civilian plus' status, UNMISS civilian actors feel that the prospect of being downgraded to 'mere civilian' or 'civilian minus' status looms large. As indicated by the UNMISS civilian actor who recoils when UN forces come up behind her unexpectedly (see opening vignette, above), UNMISS civilian actors are keen to affirm their own civilianness. They are also concerned that high-level UNMISS leadership appears to be driving the mission closer to the military. One international civilian actor working for the International Organization for Migration (IOM) imparts: '[T]here's less distinction between the black and the blue UN. I think we get lumped together. I think the UN is not as appreciated, the logo, because in a conflict both sides like to use the message "Oh, you're helping the other side more".' A UNMISS civilian actor says of vehicles driving around South Sudan with black and blue UN logos, 'who the hell knows the difference'. Putting a different spin on the 'phantom local' and 'phantom foreigner' concepts, one UNMISS civilian actor reports that the South Sudanese staff who work for UNMISS routinely ask her if she is military. She says, exasperatedly: 'I wonder why they think that. They aren't thinking creatively, aren't piecing it together.' Finally, one UNMISS civilian actor suggests that, as requests to various international actors for help merge over time, the rather banal fact is that 'People get lazy'.

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[710] See the discussion of integration policies in Section 7.4.1.
[711] See also Section 7.3.2.

One UNMISS civilian actor speaks of the hostility that humanitarian actors feel towards him – particularly those not belonging to the UN. Raising up his hands in an abrasive manner, he impersonates a humanitarian NGO actor, exclaiming: 'No no no no, that's wrong, don't do things that way.' He experiences humanitarian distinction practices as a rejection of himself and what he stands for. Indeed, many UNMISS civilian actors harbour the suspicion that humanitarian actors look down on them. One UNMISS civilian actor explains that, when he travelled to meet with international humanitarian actors in South Sudan, 'The last thing they would do is sit down with us'. Another UN civilian actor adds: 'Their independence makes them think they are somehow above us. Yes, I get paid more than you, but you're just doing a stint, you won't be working here forever. They can rub you the wrong way.' These insinuations of a humanitarian superiority complex help to explain why UNMISS civilian actors are so opposed to the 'civilian plus'. The splintering of civilianness might not only nudge them closer to UN forces, but it might also situate them beneath humanitarian actors in a hierarchy of virtue. Here, the UNMISS civilian actor who professes that only 'the humanitarians are civilian in nature' (see above) stands out as something of an outlier.

Drawing lines within the humanitarian category

When certain humanitarian actors take steps to differentiate themselves from other humanitarian actors, they are often criticized for doing so to promote their organizational brand.[712] The possibility that distinction is a cover for turf spats and competition for donor resources makes a 'civilian plus' status for humanitarian actors even more difficult for other civilian actors to swallow. As suggested in Chapter 6, it is difficult to verify whether a particular flag is flown for distinction in the IHL targeting sense, or to promote particular organizations. Other international actors in South Sudan, however, are quick to argue that it is the latter. One UN

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[712] See also Chapter 6.

civilian actor wonders aloud if humanitarian actors may not, in fact, aim at ambiguity in their use of signs and symbols (see opening vignette, above). An international civilian actor who conducts long-term development work in South Sudan highlights the pressure that humanitarian organizations are under to secure funds. She shares: 'Sometimes I think distinction is a lie, an excuse for visibility.'

Although most humanitarian actors in South Sudan earnestly protest such charges, some belonging to the second ideal type[713] ask similar questions. If distinction is deployed in the service of other goals, such as branding or marketing humanitarian projects, then this might well impact where distinction is deemed to sit in the order of things. Certainly, it puts a question mark around the belief that humanitarianness is grounded in distinction as much as in the imperative to alleviate suffering. One humanitarian actor believes that humanitarian actors 'use' distinction when it suits them, whether this is to win the 'resource wars' with other organizations or to protect staff. This leads him to wonder whether the distinction that humanitarian actors promulgate is valid or honest. Notably, this individual accords the protection of humanitarian actors the same validity as branding initiatives. Managing the perceptions of the attacker-perceiver, he suggests, is no worthier a cause than influencing what might be termed the donor-perceiver. [714] In either case, humanitarian actors instrumentalize distinction to some end – stated or otherwise. A senior UN humanitarian actor in Juba also believes that humanitarian actors are too motivated by economic interests. In his view, the traditional humanitarian principle of humanity is the principle that humanitarian actors have forgotten. Recalling Pictet's original formulation of the principles, he emphasizes that humanity was positioned at the top of the hierarchy. [715]

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[713] See Section 7.2.2.

[714] On donors as another audience, see: Cooley and Ron, supra; Krause, supra, p. 48; Koddenbrock, supra, pp. 56–57.

[715] See Chapter 4.

These allegations that humanitarian actors use distinction for marketing purposes and that they fail to deliver services to populations in need impugn their virtue and suggest that they are not fulfilling their valued social role. This could fatally undermine their main rationales for protecting humanitarian actors in war.[716] At the very least, it would seem to weaken the legitimacy of the claims they make of holding something more than 'mere civilian' status. The next section explores the possible existence of a 'civilian minus' status for humanitarian actors.

7.3.2 The 'civilian minus'

International humanitarian actors may disseminate a 'civilian plus' status to carve out space from the wider civilian category or to wipe away the suggestion that characteristics of combatantness attach to them. The present section delves into the notion of a 'civilian minus' status for humanitarian actors, exploring how their claims of harmlessness and their humanitarian credentials might be impugned. The opening encounter highlights the differential positioning of humanitarian NGO and UN humanitarian actors.

<div align="center"><i>'I go without force protection'</i></div>

> *A number of humanitarian NGO actors report that they struggle over distinction with UN humanitarian actors in South Sudan's PoC sites. As one individual confides: 'We had to make compromises here. Not all NGOs want to be seen, even with the UN humanitarian agencies.' It has not escaped the notice of UN humanitarian actors that humanitarian NGOs might attempt to keep their distance. One UN humanitarian actor faults the 'close' relationship between UN humanitarian actors and the UN peacekeeping mission. UN humanitarian actors, for example, are quick to rely upon UNMISS for protection when they travel outside of the PoC sites. Another UN humanitarian actor has noticed humanitarian NGOs avoiding him in public, and he interprets this as a warning sign. It suggests to him that other, potentially violent, actors such as the SPLA might also question his humanitarian status. He attempts to mitigate any potential downgrading of status in practical ways, such as by traveling without UNMISS outside of the PoC sites, whenever possible. 'What I do, and this is just me, I go without force protection because I want*

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government and SPLA to see me first as a humanitarian, and second as UN.' He makes
these adjustments not to ingratiate himself with humanitarian NGOs so much as to
influence local perceptions of his status. As for humanitarian NGOs, the authority of
certain humanitarian actors to perform distinction is brought into question. Some
humanitarian actors, it is argued, lack competence and professionalism; others step too far
outside the bounds of what is properly their humanitarian role.

The first part of this discussion considers two respects in which humanitarian actors are accused of being too close to the conflict in South Sudan: UN humanitarian actors' affiliation with UNMISS and all humanitarian actors' performance of humanitarian tasks. The second part of the discussion addresses allegations that some humanitarian actors lack the requisite competence and credentials.

Too close to the conflict – Entanglement with UNMISS and helping the enemy

A key insight from the Kinetic realm is that humanitarian actors, themselves, utter some of the harshest critiques of humanitarian distinction practices. This is also the case with respect to proximity to UNMISS: humanitarian NGO actors level numerous accusations at UN humanitarian actors on this front. A humanitarian NGO actor characterizes living with UN humanitarian actors in the PoC sites as a compromise, conveying that humanitarian NGOs do not implement distinction practices in tandem with UN humanitarian actors. UN humanitarian actors might be deemed to lack the authority to claim a special 'civilian plus' status, and may even be seen to possess 'civilian minus' status. In either case, they are not seen to embody a sufficient degree of civilianness. When humanitarian actors police each other's conduct in this way, an evident concern is contamination through the poor choices of others. The humanitarian actor who tells the story of the helicopter trip says of his colleagues who took the flight, 'you become tainted'.[717] But what he is also saying is: '*I* become tainted'. In such accounts, the 'phantom local' assigns characteristics of combatantness (or a lower degree of civilianness) not only to the

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[717] See Section 7.2.2.

humanitarian actors who make poor choices, but also to individuals who were not even present when the transgression occurred.

Some UN humanitarian actors are concerned that affiliation with UNMISS will adversely impact their status.[718] In terms of what this exact status is, UN humanitarian actors appear attuned to the prospect of attracting a 'mere civilian' status, rather than a 'civilian minus' status. In the opening vignette, the UN humanitarian actor who interprets being pushed away by humanitarian NGOs as a 'warning sign' clings to his humanitarianness more than his civilianness. While he understands that other humanitarian actors might view him as compromised by his connection to UNMISS, he tends to think of himself as having a special 'civilian plus' status. Evidently, his attempts to forgo force protection when traveling outside of the PoC sites are not (primarily) about assuaging the concerns of other humanitarian actors. Here, the authority-perceiver and the attacker-perceiver – assuming tangible form as the GoSS and the SPLA, respectively – galvanize his dissociation from UNMISS.

The above accounts shed new light on the situation facing the OCHA actor who worries about sharing a cafeteria with UNMISS forces in the PoC site.[719] Not only does his fellow UN humanitarian actor describe the relationship with UNMISS as 'close', but the humanitarian NGOs he believes he represents do not see themselves as implementing distinction alongside him. On the contrary, humanitarian NGO actors take steps to distance themselves from him and his UN colleagues. All of these practices point to a dynamic and fractured conceptualization of humanitarianness. Similar to the treatment of civilianness in the alternative vision of distinction, in this perspective, humanitarianness is organized around nuanced gradations and perceived hierarchies.

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[718] As noted, UNMISS actors generally say that UN humanitarian actors are easier for them to work with than non-UN humanitarian actors.

[719] See Section 7.2.1.

As noted, humanitarian actors worry that the 'phantom local' will confuse or mistake them for other international actors.[720] An additional fear is palpable in South Sudan, namely that it is humanitarian actors' very humanitarianness that renders them enticing targets. Here, humanitarianness is not linked to a high degree of civilianness, but to combatantness. As humanitarian actors perform routinized tasks, they may be viewed as participants in the conflict who are neither harmless nor innocent. This idea revisits the Chapter 6 discussion about the actual meanings and representations of the signs and symbols of humanitarianism. In South Sudan, one humanitarian NGO actor is curious about what the SPLA thinks of humanitarian NGOs. Alluding to the existence of the 'phantom foreigner', he wants to know if his organization's T-shirts 'mean anything to them'. He refines this: 'Not even that, I want to know what they think of me because of my white skin.' He reasons that, if the SPLA has qualms with white Western actors, or indeed any actor who seeks to provide humanitarian services, then wearing a T-shirt will do nothing to ensure protection. Another humanitarian actor contemplates the reliance on visual cues of humanitarianness in South Sudan, and expresses similar worries: 'The question is always, if you wear [our organization's] T-shirt or hat, is it going to protect you or expose you?'

A further issue is how armed actors in South Sudan view the populations that humanitarian actors assist.[721] Doubts about the civilian status of IDPs help to explain why armed actors might take issue with international actors providing services in the PoC sites. One humanitarian actor who works in the Bor PoC site speaks of how he was once confronted by a group of local armed actors who berated him for 'helping our enemy'. This particular individual is South Sudanese, working as a national staff member of an international NGO. This fact, and the mention of white skin (see above), highlights the differential threats that local humanitarian actors face in South Sudan – whether due to ethnicity, nationality or involvement in local politics. While there is not room to address this issue within

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[720] See, *e.g.*, Section 7.2.1 for a discussion of how this unfolds in the PoC sites.
[721] See also Chapter 6.

the confines of the present study, other scholars have turned their attention to the matter.[722] On a final note, this accusation of 'helping our enemy' resonates with the misgivings expressed by international military actors in the Pedagogical realm about humanitarian actors assisting the 'other side'.[723]

Questioning humanitarian credentials

At the civil–military training places explored in Chapter 5, some international actors question the competency and credentials of humanitarian actors. They accuse humanitarian actors of blurring lines and, in so doing, potentially endangering others around them.[724] One UNMISS civilian actor describes humanitarian actors working in South Sudan's PoC sites as 'young and green'. She contends that they do not have a solid understanding of the humanitarian principles by which they are supposed to abide. A UNMISS civilian actor based in Bor also accuses humanitarian NGO actors of being 'third world groupies' and 'eager beaver, energizer bunnies' who are 'padding the CV'. She laments: 'Most experienced people end up going to Bentiu and Malakal. I get saddled with the kids.' On the other hand, some humanitarian actors stay too long and become 'very worn after they've done time in the PoC sites'. A UNMISS military actor considers the difference between UN and non-UN humanitarian actors. The former 'get paid better, it's a gravy train. They are slightly less altruistic, let's say'. NGO actors are deemed to be more virtuous, because they want to 'make the world a better place'.

The humanitarian actors who travelled with UNMISS on the unauthorized helicopter flight in South Sudan did not belong to an unknown or peripheral agency.[725] However, as at the civil–military training places,[726] the general claim in

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[722] On security risks to local humanitarian actors, see Andersson and Weigand, p. 17; Roth, supra, p. 34 ('Paradoxes of Aid'); Egeland et al., supra.
[723] See Section 5.4.2.
[724] Ibid.
[725] The identity of the organization is withheld to protect confidentiality.
[726] Ibid.

South Sudan is that smaller, lesser known humanitarian organizations are the least predictable. Even amongst humanitarian actors, the Red Cross (and MSF) fantasy circulates, though room is also made for a few other named organizations. The head of an international humanitarian NGO says: 'Every year we watch ICRC stand by itself. Oxfam, Mercy Corps, MSF will not use military assets or escorts. They might be even more principled than CARE, Save [the Children], Concern, Goal.' Apart from these reputable organizations, he explains, there are concerns about the decision-making of the myriad smaller humanitarian organizations operating across South Sudan. These concerns extend beyond issues of distinction. While ICRC's move to 'stand by itself' is lauded, one humanitarian NGO actor denigrates humanitarian actors who go 'cowboy'. The latter undermine joint planning amongst international actors in South Sudan, fail to coordinate with others in the UN humanitarian Cluster system and refuse to engage in collective needs assessments. Interestingly, MSF is cited as one of the 'cowboy' organizations but touted as doing an excellent job of asserting distinction.

Aside from going 'cowboy', humanitarian actors might unwittingly send signals that compromise their claims to virtue.[727] Looking at humanitarian actors from the vantage point of the beneficiary-perceiver, one humanitarian actor in Juba wonders: 'What do you see when you see these big NGOs? The vehicle? It's probably brand new. I'm on the street begging for money. I see big offices, new offices. People say they're sending money, where is it going?' He suggests that more agile humanitarian actors with smaller offices and older vehicles get 'further into the community because they're not saying "I'm going to tell you what to do". Instead, they say "I'm going to work with you, we've got these programs"'. He also notes that expatriate humanitarian actors go to parties and become intoxicated in public. 'This person is here for fun, are they here to help?' This recalls the accusations from the civil–

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[727] Such behaviours call to mind Goffman's depiction of expressive incongruities an individual might exhibit in performing a given role; he offers the example of the surgeon who picks his nose prior to entering the operating room. Goffman, supra, p. 101.

military training grounds that unprofessional humanitarian NGO actors go to conflict zones on holiday.[728]

On a final note, humanitarian actors who engage in activities outside their remit, such as human rights work and advocacy, may be seen as compromising their civilianness. One humanitarian actor explains that, when humanitarian actors spend time behind the frontlines of conflict, they develop feelings of solidarity for the victims of violence. He believes that the impulse to speak out against atrocity is triggered when 'you start to see through someone else's eyes'. This account offers a striking counterpoint to the way in which humanitarian actors typically ascribe perceptions or 'see through the eyes' of the phantom local.[729] Instead of holding up a mirror to grasp how local actors perceive *him,* this humanitarian actor looks out at the world through the local actor's eyes in order to feel what *he* feels. While his empathic approach is laudable for the gesture of solidarity, the fact remains that participating in human rights activities could generate serious problems for humanitarian actors in South Sudan. One humanitarian NGO actor proposes that such practices are more likely to undermine distinction than anything a UNMISS actor might do. [730] Accordingly, this individual contends that all human rights work should be left to international human rights organizations such as Amnesty International and Human Rights Watch. The CAMPO trainer's warning that humanitarian actors 'burn their fingers' when they stray outside their remit[731] could also apply to humanitarian actors in South Sudan.

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[728] For more on how the personal lives of humanitarian actors affect their safety, see Fast, supra.

[729] Compare with Section 7.1, wherein a humanitarian actor sees through the eyes of the beneficiary to ensure that his own team is safe.

[730] See the earlier discussion of UNMISS' navigation of human rights issues, particularly relating to the concern that the mission might aggravate the GoSS.

[731] See Section 5.4.2.

7.4 How the line is erased

This last section of the empirical discussion draws together and revisits many of the themes that have been introduced in this chapter. The focus is on the pressures that are put on distinction in the operational context, particularly efforts made to erase – as opposed to reinforce – the lines that humanitarian actors forge. The first section considers the policies, structures and practices of the integrated UN mission in South Sudan. The second section gives the last word to international humanitarian actors, some of whom erase the line or question whether it should be drawn in the first place.

7.4.1 The UN integrated mission

As a specific iteration of comprehensive approaches, UN integration encourages different kinds of international actors to work together towards the shared aim of peace. The distinction practices of humanitarian actors are treated by UNMISS actors as an obstacle that needs to be surmounted.

'Everything is blurred'

Many of the struggles over distinction in South Sudan are traced back to the presence of an integrated UN mission. As one humanitarian NGO actor sums up: 'A huge problem right now is humanitarian distinction in the context of the UN integrated mission.' Other humanitarian actors say, of integration's impact: 'We've created a problem', and 'everything is blurred'. A consistent refrain amongst humanitarian NGO actors is that there needs to be a humanitarian 'carve out' – a clear separation between themselves and international actors who participate in integration structures and policies. International actors who belong to the integrated UN mission in South Sudan articulate varied responses to these calls for separation. One UNMISS peacekeeper appreciates that humanitarian actors need to draw the distinction line as they see fit. He accepts that they should take the lead, and simply offers: 'If they need help we're happy to support.' Other members of the UN forces, however, wish to exert an influence on how and where the line is drawn; they actively strive to close the distance that humanitarian actors introduce between them. A Military Liaison Officer who works for UNMISS proposes that the trick is to not act too much like a soldier. 'You really have to adapt yourself and think of people's interests and speak to who they are. When I'm talking to humanitarians, maybe I'll say [here he switches to a much softer and

high-pitched voice, adopting a mischievous look] "Is everything ok? Do you need help?"
Like, sympathetic.' A UN peacekeeper goes further: 'In our training, we get the impression
that the humanitarians will not talk to us because we are military, but there are ways to
make it happen. For example, I will wear civilian clothes to go visit MSF in the north. I
won't carry a gun to go to Pibor.'

It has been noted that there are civil–military guidelines in place to regulate the relationships of international actors in armed conflict settings. These guidelines provide little assistance, however, when it comes to the relationships between diverse components of UN integrated missions and humanitarian actors.[732] On a daily basis in South Sudan, tensions arise as international humanitarian actors try to maintain separation while other international actors try to foster interaction.

The policy and practice of UN integration

One humanitarian NGO actor in Juba is adamant that 'NGOs need to find ways to maintain their independence from all parts of the mission', but concedes that simple necessity often drives humanitarian actors to engage with UNMISS. Humanitarian actors can be drawn into the orbit of a UN integrated mission in a myriad of ways. They must navigate: participation in the humanitarian Cluster system; reliance upon the UN for various forms of logistics support; the presence of armed actors in the spaces in which they work; and UN efforts to represent their interests in humanitarian access negotiations. UN humanitarian actors might make different decisions about distinction than humanitarian NGOs, in this respect.[733] The discussion that follows focuses primarily on the distinction practices of humanitarian NGOs.

One humanitarian NGO actor proposes that UN integration policy is not necessarily problematic in and of itself, but the way in which it is implemented in practice discourages respect for distinction. Concerns about practice extend

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[732] Metcalfe and Berg, supra, p. 3. See also Section 7.1.
[733] The former may opt to co-locate their offices inside UN mission compounds, generating some of the same distinction concerns that arise through co-location in South Sudan's PoC sites.

upwards to the highest level of public communication. UNMISS leadership has, at times, depicted a close association between the mission and humanitarian actors in South Sudan. When Hilde Johnson was the head of UNMISS in 2014, for example, she stated that UNMISS had successfully built an important partnership with humanitarian actors who had remained in South Sudan when the violence spiked.[734] In claiming this, she implied alignment between the mission and humanitarian actors, which, for humanitarian actors, undermined their vision of distinction.[735] Another noteworthy aspect of Johnson's statement was the suggestion of 'a' partnership between UNMISS and humanitarian actors. In contrast to this mission-level narrative in Juba, this study's empirical findings attest that there is no such thing as a singular relationship across South Sudan.

Expressing similar views to those relating to the PoC sites and the use of military assets, international humanitarian actors fear that proximity to the UN integrated mission blurs the lines between them. Again, concerns about a possible association with UNMISS include – but extend beyond – optics. In terms of actual influence, a UN humanitarian actor who is deeply enmeshed with the UN mission might be influenced by UNMISS about which populations to serve.[736] In regard to perception, the threat of UN integration galvanizes especially vague conjurings of the 'phantom local'. Humanitarian actors wave imprecisely at the prospect of 'confusion'; they flag 'perception issues' and observe that 'it negatively affects us if they see us as the same'.

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[734] International Peace Institute, 'UN Special Representative to the Secretary General Hilde Johnson: South Sudan Crisis Changed UNMISS Mindset', July 2014, available at: https://www.ipinst.org/2014/07/srsg-johnson-south-sudan-crisis-changed-unmiss-mindset.

[735] See also the Chapter 4 discussion on civil–military guidelines; these guidelines call for the promotion of distinction in both public communication and conduct.

[736] See also Section 7.3.2.

The perspectives of UNMISS actors

While some international actors help to reinforce the line drawn by humanitarian actors, others embark on their own 'rush to the intimate'.[737] Coming back to the opening vignette (see above), a UN peacekeeper says he is happy to help when humanitarian actors need support. He also observes that not all humanitarian actors enact distinction in the same way. Alluding to the two ideal types, he claims that distinction practices vary by organization: 'Some want to keep it, others are more flexible.' Another UNMISS military actor states that he understands the need for separation between actors. That being said, he still expects humanitarian actors to share information with UN forces.[738] He would be satisfied if humanitarian actors were to 'give us info about bad guys doing A, B, C, D' and then say 'you guys go'. This would allow UN forces to do their job, while recognizing that humanitarian actors must prioritize access to people in need. He believes such information exchanges leave the civilianness of humanitarian actors intact.

A UNMISS military actor confesses his envy: 'Sometimes I am a bit jealous of how much [humanitarian actors] know. They seem quite effective in what they do. For us, our mission, it is a huge beast. It has to be that way. Maybe they envy us for our access to resources.' Others nod to a humanitarian superiority complex. Noting that UN military actors tend to rotate in and out of South Sudan fairly frequently, one UNMISS actor has the impression that humanitarian actors see the questions asked by UNMISS actors as 'very basic'. He is convinced that 'We bore them. It's more about humanitarians being busy and not having time [for] us'. Further: 'If there is no conflict we have nothing to offer, because we just do security.'[739] Another UNMISS military actor cannot fathom why interreliance does not lead to respect. 'They might not like us, but they fucking need us. We feel dismissed as arrogant.'

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[737] See Section 5.5.1.
[738] See Section 5.2.
[739] This last point rubs up against the general sentiment that, in times of conflict, humanitarian actors must be careful to maintain separation from military actors.

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Much like at the civil–military training grounds, these international actors take the everyday distinction practices of humanitarian actors personally.

A UNMISS civilian actor is also puzzled by the way in which humanitarian actors treat UN forces in South Sudan,[740] alleging that humanitarian actors go too far in their performance of distinction. Humanitarian actors have requested, for example, that her uniformed UNMISS colleagues refrain from participating in local patrols in certain parts of South Sudan. She relays that UN peacekeepers are incredulous about such requests: 'We can't be here because of a uniform?!' Particularly in the early days of the mission, she explains, 'because we were not used to working so closely with humanitarians, our uniformed colleagues were unhappy and could not understand why [humanitarians] would not want them, but then would call whenever they heard a shooting'.[741] While humanitarian actors may understand themselves to be engaged in a delicate dance, other international actors perceive them to be prevaricating, muddled, and even hostile. These tensions can be attributed, at least in part, to discord between different actors' visions of distinction. International military actors who are wary of humanitarian distinction practices doubt that being found in proximity to combatants will undermine the civilianness of humanitarian actors.

Elsewhere in South Sudan, one UNMISS military actor appears to be catching more flies with honey. The UN MLO who is cited in the opening vignette (see above) adapts his behaviour for humanitarian actors. He changes the pitch of his voice and works hard to endear himself to them. He understands this shapeshifting to be an integral part of his role as an MLO.[742] Notably, his efforts to 'make people feel special' are not reserved solely for humanitarian actors. He does the same thing

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[740] The UN civilian actors cited in this paragraph were interviewed at the SWEDINT training venue; however, they are based in South Sudan.

[741] This scenario tracks along very closely with the accusations by participants of the civil–military training programmes that humanitarian actors are inconsistent in their appeal to distinction (see Section 5.2). Note that the first speaker was interviewed at the SWEDINT training.

[742] The MLO mainly serves as a conduit between the civilian and military components of the UN mission.

when visiting other international civilian actors, such as UN Civil Affairs and UN Human Rights officers. When he approaches these civilians, he says: 'I really need your help on this patrol. I have this specific task for you, it's so valuable.' This is perhaps the smoothest example of the 'rush to the intimate' described previously in this study. As noted, some of his colleagues on the military side of UNMISS also try to get close to humanitarian actors by downplaying their combatantness. The UN peacekeeper who wears civilian clothing and leaves his weapon behind when visiting MSF sounds much like his counterparts at the civil–military training grounds.[743]

The techniques employed by the UNMISS MLO attest to the importance of individual personalities in shaping relationships at the institutional level in South Sudan. This emerges as a recurring theme in conversations with different kinds of international actors. One UNMISS military actor proposes that the relationship dynamics between humanitarian actors and others are in fact heavily based on personality. A UNMISS civilian actor adds: 'Things are so personality based, what you get at HQ is not what you will see in implementation.' A humanitarian NGO actor confirms this from his side, as well. He contrasts his 'very poor' relationships with a particular UNMISS coordinator in one location with his generally 'good' relationship with UNMISS elsewhere, highlighting the trust he has for specific individuals in specific locations. Moreover, his feelings towards individual UNMISS actors have concrete implications for whether or not he lets them come close. An UNMISS actor he gets along with and trusts will be brought with him to places and receive information about his movements. In contrast, a humanitarian NGO actor in the Bor PoC site explains: 'We don't tell the UN everything, and when we accompany people to a given place we will not say to the UN "Come with us".' The latter approach appears to be the norm in South Sudan.

However, not everything can be neatly traced to feelings of affinity between individuals. It is worth recalling the humanitarian NGO actor who, while

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[743] See opening vignette, above; see also Section 5.5.2.

emphasizing his strong respect for UNPol's effectiveness, remains adamant that he must maintain separation from UN Police.[744] Part of the concern is that these actors belong to the UN mission, and part also pertains to core differences in their beliefs, such as whether protection can be achieved through violent means.[745] One humanitarian actor traces the tensions between international actors in South Sudan – which she describes as 'palpable' – to unmet expectations on both sides. 'UNMISS wanted humanitarians to do certain things. Humanitarians thought UNMISS should do things as [part of] its PoC mandate.' In her view, it is imperative that UNMISS actors come to grips with the limitations of humanitarian NGOs – for example, in terms of capacity. Contemplating this, one UNMISS civilian actor alleges that capacity is not the issue so much as a lack of will to deliver services outside PoC sites. This individual claims, 'We try to push the organizations to work outside', but humanitarian actors stay inside, where life is easier. Meanwhile, humanitarian actors are seen as slow to accept that UNMISS actors must make decisions on the basis of mission priorities, such as those relating to the safety of UN staff, UN reputation and UN 'stay and deliver' policies.[746] One UNMISS civilian actor sees humanitarian actors as having wildly unrealistic expectations of the UN mission, treating it as 'a redeemer or Jesus Christ'.[747] In contrast to concerns that humanitarian actors look down on others from a higher perch, the claim here is that humanitarian actors expect too much.

7.4.2 Humanitarian actors do humanitarian things

This last section of the discussion on South Sudan finishes with two stories from the operational context. It embarks on a rich description at the micro-level of how different humanitarian actors reason through the implementation of distinction in the Kinetic realm.

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[744] See Section 7.2.1.
[745] See also Chapter 6 and Section 7.1.
[746] See, more generally, Egeland et al., supra.
[747] This interview took place at the SWEDINT training.

'In a true emergency, I think distinction isn't something that matters'

There has recently been active fighting in Upper Nile, South Sudan, and most humanitarian actors have had to leave the area for security reasons. There is no steady provision of humanitarian services. Civilian populations residing in Upper Nile have mostly been required to fend for themselves, while also being targets of violence. Pointing to this situation, a humanitarian NGO actor inquires: 'If you're wounded, do you care if our [international NGO] or a UN surgeon operates? Do you care who your food comes from, in a true emergency?' He goes on to say: 'Where there is an acute need, in an emergency, I think distinction isn't something that matters. I think it matters more on a policy level: What will the rest of the world, the government here, the press think?' Subsequently, he acknowledges that the above attitude is open to accusations of short-term thinking. He ventures: 'I think it's an ethical dilemma. You don't care about distinction at that point in time, but then you think: Do you want someone who is a non-mutual party doing that work?' Another humanitarian NGO actor in South Sudan also vacillates on this issue. He initially espouses a strong commitment to distinction, attesting to the way in which it infuses all of his decision-making on a daily basis. However, he also believes that, at a certain point, its observance is diametrically opposed to helping populations in need. Discussing the plight of war-affected populations in South Sudan's Southern Unity state, he explains: 'For obvious reasons, I support distinction as much as possible. But I think it hits a threshold where the need to just get in and provide services and do something outweighs the distinction risks. That comes way, way, down the line, [when] you've tried everything else.' In a context in which war-related violence leads to many civilian deaths daily, he probes: 'So we're not going to bring food in because it would involve a military helicopter? Really?'

It will be recalled that the first ideal type of humanitarian actor prioritizes distinction and takes a long-term view. In contrast, the second type balances distinction against other goals on a case-by-case basis, tending to prioritize the immediate need to help. The two speakers in the opening vignette begin from diametrically opposed positions, but they work their way towards each other. This suggests that humanitarian actors cannot simply be statically characterized as belonging to the first or second ideal types. To some extent, each individual may be capable of both types of thinking and assume a particular outlook as a default. Considering these two accounts side by side illuminates the crucial work that the temporal aspect performs in the production of distinction and the conceptualization of humanitarianness.

The second ideal type, reconsidered

In the above encounter, the first speaker initially exhibits all of the proclivities of the second ideal type. Leaning on the importance of implementing the principle of humanity, he draws attention to injured and hungry people in need of service. In a 'true emergency', he argues, distinction does not matter. Or, he adjusts, it matters – but only to those who are removed from the pressing needs of the victims of war. Here he cites the world, the press and the GoSS as the relevant audiences, couching these diverse stakeholders as the 'policy level'. Having said this with firm conviction, he senses he is open to critique, particularly by humanitarian actors who might think of the longer-term implications. In his words: 'You don't care about distinction at that point in time, but…' The reference to a non-mutual party also casts the UN surgeon in a different light than before. Previously, the surgeon was treated as almost a pair of disembodied hands that could heal. In this second take, the UN surgeon forms part of an international mission with political and military aspects. He is potentially implicated in, or at least not doing enough to stop, the conflict in South Sudan – the same conflict that led to the injury of the wounded person before him.

The temporal aspect of the distinction calculus is pivotal: the very same scenario looks completely different when the humanitarian NGO actor widens his perspective beyond immediate needs. It is also important to note how the 'phantom local' is mobilized in this account. Initially, the 'phantom local' takes the form of the (wounded) beneficiary-perceiver, who simply wishes to have needs met and is ostensibly unconcerned with which international actor will provide the service. Next, when the goal of meeting the needs of war-affected populations is juxtaposed with the importance of upholding distinction, distinction matters to three stakeholders: local government, the press and the world. While the GoSS is not at the kind of remove that the press and the world are, it is insinuated that the

perceptions of the authority-perceiver can be dealt with once the humanitarian imperative is met.

The first ideal type, reconsidered

Turning now to the second speaker from the opening encounter (see above), this humanitarian actor begins by encapsulating the tendencies of the first ideal type. He positions distinction as a priority and states that it inflects all of his daily decisions. Taking this as a point of departure, he, too, finds himself in situations where enforcing distinction seems impossible without compromising humanity. While he asserts that this only comes 'way, way, down the line', when all other options have been exhausted, his commitment to distinction comes with a caveat. He supports distinction, but only 'as much as possible'. Here, he begins to sound more like the second ideal type, emphasizing that there are other values and priorities to consider. He averts to the risks of compromising distinction, but he believes that, at a certain point, 'the need to just get in and provide services and do something' prevails. Again, the temporal aspect does crucial work here, as he shifts to focus on immediate need. His crossover to the second ideal type is complete when he says: 'So we're not going to bring food in because it would involve a military helicopter? Really?'

Picking up this thread, one humanitarian actor confides that he has discreetly joined UNMISS forces on a few unauthorized trips outside of the PoC site where he resides. He says that had he not gone on these journeys, 'I wouldn't have been able to see anything'. He elaborates: 'I would think twice if bending the rules involved a bunch of agencies, but if I, just myself, if I could see myself, touch the ground, then I can come back.' At one point he asserts that he does not feel personally bound by the rule of distinction. Subsequently, he modifies this to say that he believes that

distinction is subsumed by other pressing priorities.[748] In a similar vein, a UN humanitarian actor contends that distinction should not stand in the way of responding to vulnerable populations who have nowhere else to turn for help. 'When you are between a rock and a hard place, you have to choose. There are pluses and minuses. Maybe I will lose on distinction, but I will win on something…I would gain more than I would lose.' Another humanitarian actor is adamant that distinction stands in the way of real humanitarian work. He alleges that distinction prevents humanitarian actors 'from even thinking about what could be possible – it's hampering *thinking* even before *doing*'. He offers the hypothetical situation of armed attack on UN food distribution to local civilian populations in South Sudan, and proposes:

> If we remove all distinction issues, the best scenario is to plunk in a bunch of peacekeepers, set a perimeter, do patrols, lay the smack-down. 'No shit's going down while we're here.' That's what we could do if we removed everything we know about distinction.

This individual's attention is not on the identity of the international actor providing the service, but on the service, itself, and the fact that it is provided. From this perspective, competent military engagement in humanitarian assistance is preferable to a humanitarian organization doing it poorly for the sake of ensuring it is purely humanitarian. This perspective can be contrasted with that of the discussion in Chapter 5 regarding the direct engagement of military actors in humanitarian activities.[749] It was noted there that, while humanitarian actors recognize the capability of military actors to deliver humanitarian assistance, they question whether it can be done appropriately. Far from disseminating the 'civilian plus' figure, or even 'mere civilian' status, this humanitarian actor in South Sudan appears to link humanitarianness to a sort of virtuous 'civilian minus'. This imagined humanitarian actor is more agile, and does not let fears of proximity to armed actors

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[748] While it appears that other members of the humanitarian community are not aware of this individual's discreet trips with UNMISS, the much-discussed unauthorized helicopter trip suggests how opinions might divide.
[749] See Section 5.5.2.

stand in the way of getting things done. The abdication of distinction is explicit here: the individual openly admits that his plan requires neglecting 'everything we know about distinction'.

Conclusion

This empirical exploration has investigated the way in which humanitarian actors implement their everyday distinction practices in the presence of an integrated UN mission with a robust PoC mandate. It was demonstrated that frontline humanitarian actors in South Sudan invoke the 'phantom local' at most every turn to ground their appeals to distinction. The lone individual who speaks about seeing 'through the eyes' of local populations for the purposes of solidarity stands out from his humanitarian colleagues, with the latter often peering through local eyes to assess the success of their distinction performance. Living and working inside South Sudan's PoC sites, which are protected by armed UN forces, imposes challenges for drawing the line on a daily basis. The decision of some humanitarian actors to rely upon UNMISS assets also puts the commitment to distinction under strain. Looking in from the outside, other international actors accuse humanitarian actors of being overzealous and inconsistent in their performance of distinction. Meanwhile, pressing questions arise as to where humanitarian actors in South Sudan draw the line. It is evident that the practices of many humanitarian actors depend upon a relativized and contingent concept of civilianness. This comes to light especially in their attempts to dissociate from UNMISS civilian actors. UNMISS civilian actors push back against the move to draw lines within the civilian category, fearing that their own civilianness might be tarnished by humanitarian distinction practices. Other international actors propose that some humanitarian actors might actually attract qualities of combatantness, earning them a 'civilian minus' status. An overarching point made in the empirical discussion is that distinction is not something humanitarian actors seek to preserve from external threats, only. On the contrary, humanitarian actors hold different visions of distinction and disagree with

each other regarding what it means to actualize (or compromise) distinction on a daily basis in South Sudan. The moral uprightness and virtue symbolized by the 'civilian plus' are seen in a very different light when one considers that the promulgation of this status might interfere with alleviating the suffering of war-affected populations.

<p style="text-align:center">*</p>

Conclusion to Part III

Deepening and complicating the insights gleaned from the Intellectual and Pedagogical realms, this chapter's discussion of the Kinetic realm has showcased the difficulty of enforcing distinction in the context of ongoing conflict. On a day-to-day basis in South Sudan, international humanitarian actors summon local perceptions to ground their need for distinction. Distinction must be enacted, humanitarian actors argue, not (only) because international law demands it, but also because the 'phantom local' is watching. Similar to the civil–military training grounds, where international actors fault humanitarian actors for enforcing distinction either too strictly or inconsistently, in South Sudan, similar criticisms materialize. The unique challenge that emerges for humanitarian actors in South Sudan is to maintain separation from international actors with whom they are already associated. Co-location in the PoC sites showcases this conundrum in a spatial and concrete way.

The move humanitarian actors make to draw lines within the civilian category, carving out a 'civilian plus' status for themselves, once again meets with pushback. One reason that other international actors resist these practices is that they digest them at the individual level and take distinction personally. A further reason is that distinction impedes their efforts to work together and blocks their attempts to dissolve the boundaries between international actors. This is not the full story,

however, as some humanitarian actors, themselves, question whether distinction should serve as a trump. This introduces a new dimension to contests over distinction, illuminating the fact that the conceptualization of humanitarianness is as complex and loaded as that of civilianness or combatantness. This study argues that the conflict between enforcing distinction and implementing the principle of humanity is obscured outside of the Kinetic realm because humanitarian actors cultivate ambiguity around this relationship. When the operational context forces humanitarian actors to make difficult choices in this respect, questions about distinction's true function are brought into stark relief.

Chapter 8, which serves as the concluding chapter of this study, brings this study to a close.

CHAPTER 8: CONCLUSION TO THE STUDY

Introduction

This study has shown how the everyday practices and interactions of differently-situated international actors shape, and are shaped by, IHL's principle of distinction. It has been emphasized throughout the discussion that even – and perhaps especially – when international actors enter into contests over distinction, they are bound up relationally in their struggles with each other. This multi-sited study has interrogated the idea of distinction across three domains: the Intellectual, the Pedagogical and the Kinetic. As the idea of distinction was followed across each of these three realms, it was not only the civilian–combatant distinction that was broken up; other, unfamiliar, distinctions were also introduced and subsequently shattered – such as that between the 'civilian plus' and the 'mere civilian'. By devoting attention to unconventional actors and choosing unconventional sites of study, this study has revealed that many distinctions are constituted and reconstituted by international actors in many places, on a daily basis. The dynamics that have been scrutinized here are mostly hidden, both to IHL and to legal scholars. This opacity can largely be attributed to the tendency to see everything through the prism of a civilian–combatant divide. While this study has foregrounded actual practice, it has also taken care to show that messiness is not confined to the operational context. At every level, including legal text and doctrine, the disorder of distinction is palpable.

This concluding chapter reflects on what this study has accomplished. The first section outlines the core contributions to the relevant literature. It also highlights the limitations of the study and proposes potential avenues for further research. The second section contemplates the study's wider implications; it revisits the question

of a special status in law for international humanitarian actors, offering final remarks on the humanitarian actor as a 'civilian plus'.

8.1 Contributions of the study

The originality of this study derives from its theoretical offerings and the methodological approach it espouses. These aspects, in turn, shape the impact this study has on the relevant scholarly literature. The first part of this discussion outlines the contribution of the study to the literature on the civilian and the theory and practice of humanitarianism. The second part elucidates the study's methodological contributions, highlighting its multi-sited style and socio-legal approach, as well as its interrogation of the doctrine–practice divide. The third part revisits the two main conceptual claims at the heart of this inquiry, the 'civilian plus' and the 'phantom local', specifying the substantive contributions that the study has made in this respect. The fourth part identifies the limitations of the study, specifying what it did and did not set out to achieve.

8.1.1 Contributions to the literature

In Chapter 1, it was noted that, until recently, legal scholars have not paid adequate attention to the civilian. This study contributes to the burgeoning **literature on the civilian** by showing how the civilian is produced in the practices and interactions of international actors operating in armed conflicts. In this study, the international humanitarian actor was not treated as an isolated entity. Instead, this actor was situated alongside other international civilian and military actors, as well as the general civilian populations that comprise IHL's civilian category. Many of the other international actors examined in this study, such as NATO soldiers and UN peacekeepers, do not share the goals or worldview of humanitarian actors. By attending to the perspectives of the former actors, this study has showcased how distinction is produced on the ground, through struggle and contestation. This

grounded empirical investigation complements other emerging scholarship on the civilian, much of which adopts a normative or more critical genealogical approach to distinction. Effort has also been made in this investigation to engage with the relevant history, in order to appropriately contextualize and situate contemporary practice. It has been demonstrated that the idea of a stable distinction – and the related notion of a unified civilian category populated by (equally) protected civilians – is more myth than historical reality. This understanding should inform the way in which we think about contemporary practices that impugn the idea of a bright line binary and a mythically pure civilian.

The study has also highlighted the efforts that international humanitarian actors make to distinguish themselves from others, introducing the concept of everyday distinction practices. This marks an important contribution to the IHL literature, as little attention has been paid to the need for *civilian* actors to enact distinction. While the civilian self-protection literature generated by political science scholars addresses the way in which civilians strive to protect themselves in war,[750] scholars immersed in the study of the civilian as a legal entity have not yet grappled with these dynamics. This study has offered a way of doing so. It has focused on the specific case of international humanitarian actors and considered the ways in which their distinction practices could interfere with the efforts of other civilians – such as UNMISS civilian actors in South Sudan – who also seek to distinguish themselves. A final contribution of this study to our understanding of the civilian is its elucidation of the important role that perceptions play in the practices of international actors. This remedies a notable gap in the legal literature, which, to date, has paid insufficient attention to the ways in which the perceptions of individual actors shape the implementation of international legal rules. This is elaborated upon further, below.

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[750] See Chapter 1.

A concerted effort has been made in this study to implement a genuinely interdisciplinary approach, putting the theory and practice of humanitarianism into direct conversation with international law. As a consequence of this engagement, the study makes a number of contributions to the **literature on humanitarianism**. First, it contributes to the literature on everyday humanitarianism by positioning civil–military trainings and armed conflicts as sites in which everyday humanitarian practices unfold, and illuminating the ways in which law and the daily practices of humanitarian actors are co-constitutive. Second, it adds to the literature that adopts a relational understanding of humanitarian practice. By bringing the practices of international humanitarian actors into contact with the practices, perceptions and preferences of other kinds of international actors, this study has revealed how so much of daily humanitarian practice revolves around interactions with others. Third, this study makes a crucial contribution to scholarship that deals explicitly with the figure of the humanitarian actor, by identifying the limitations of IHL's understanding of the humanitarian actor and arguing that humanitarian actors are protected according to their ability to approximate the Red Cross figure. The study has also grouped critiques of humanitarian practice into a 'humanitarian exceptionalism' outlook. It espoused a qualified version of this view, and articulated the form the 'humanitarian exceptionalism' critique might take if it were to engage more explicitly with law and legal rules. In doing so, the study has generated a potentially debilitating critique of what it has termed the 'help the helpers help' position. This critique is expanded upon in Section 8.2, below.

8.1.2 Methodological contributions

One of the dyads this study has collapsed is the **doctrine–practice divide**. It has taken the view that there is no definitive and inert legal doctrine of distinction to be found in a text or single practice. Rather, it has attended to the multiplicity of ways in which distinction can be deployed, describing how the idea of distinction circulates in a wide variety of places and in the practices of many different actors. In

this study, a PoC site in South Sudan was treated as the same kind of place as a courtroom at the ICTY, in terms of its significance for distinction. As the chaos and disarray of distinction have been uncovered everywhere, this study has revealed distinction to be perpetually disrupted. This is a very different finding than what might have been concluded in a compliance-focused inquiry. Indeed, many of the dynamics uncovered in this study would have been completely overlooked had IHL rule been taken as a given and all departures from it framed as violations.

An overarching claim of this socio-legal study has been that law is constituted by activity in the Intellectual, Pedagogical and Kinetic realms. A crucial move this study has made, in this respect, has been to position the **practices of international actors** at the centre of things. This has facilitated a concerted engagement with the ambiguity and indeterminacy of IHL rules and highlighted the large swath of actors who enact distinction on a daily basis. As this study has pursued the idea of distinction across a number of global sites, it has consistently found ambiguity at its side. Ambiguity is the shadow that follows distinction around, allowing different actors to speak to each other about distinction without realising – or, perhaps, knowing full well – that they are not even having the same conversation. This fact has both confounded this investigation and yielded one of its most important discoveries. The revelation that distinction means many things to many people is deceptive in its simplicity; however, this finding could have enormous implications for our understanding of the daily enactment of IHL.

As for the practices of unconventional actors, one reason they are routinely overlooked is because few of these individuals are thought of as traditional legal actors. This multi-sited study makes an unorthodox contribution to the literature on the individual in international law by attending, in particular, to lower-level, frontline actors. A further reason for the neglect of these unconventional actors is the nature of their practices. As this study has shown, some of their distinction practices reshape distinction beyond recognition. The study has identified a number of new

fault lines, and, while these may be unfamiliar, they are not inexplicable. The study has sought to capture and analyse the relevant dynamics by introducing the 'civilian plus', 'mere civilian' and 'civilian minus' figures (see also below). It has argued that these strange entities have as much relevance to the everyday interactions of international actors as the civilian–combatant divide – if not more. Such revelations also highlight the value of applying a socio-legal lens. Noting that doctrinal and normative approaches have had an outsized influence in the scholarship on law and humanitarianism, this study has charted an alternative path. Espousing concern for the everyday aspects of both subjects, this study has elucidated a different way of putting humanitarianism in contact with the international legal imagination.[751] The benefits of this critical and socio-legal approach are considerable: it shines a light on aspects of distinction's production that would not otherwise be revealed.

8.1.3 Substantive and theoretical contributions

This study has elucidated a practice-based law of distinction, distilled from the everyday practices and interactions of a range of international actors operating at diverse global sites. This law of distinction very closely resembles the alternative vision articulated in Chapter 2 of this study, and it integrates the perceptions international actors have of themselves and each other. To give shape to this practice-based law, the study has introduced the 'civilian plus' and its corollaries. It has also proposed that international actors direct their performance of distinction to the figure of the 'phantom local'. This entity, as imagined by international actors, assigns qualities of civilianness and combatantness to individuals as it deems appropriate.

The core substantive contribution of this study comes from its **reconceptualization of the civilian**. The study has framed the way in which international lawyers tend to think about distinction as a dominant vision. This is

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[751] Drumbl, supra, p. 9.

not to say that everybody truly believes in the existence of this vision, but merely that it is what the mind reaches for when IHL's principle of distinction is invoked. This vision is characterized by a bright line binary distinction – one that is generally thought to be fixed and stable. Further, the vision contains the seeds of its own disruption: the concept of DPH, for example, is connected to the dominant vision, yet it also destabilizes that vision. This study has articulated an alternative vision of distinction – one that captures the collective impact of all the disruptions of the dominant vision. In this alternative vision, the civilian and combatant are no longer treated as static entities who are juxtaposed. Instead, qualities of civilianness and combatantness are detached from these entities; these qualities float around with the potential to affix to any individual, depending on their comportment, behaviour and the situation in which they find themselves.

The study has not made the claim that this alternative vision is what distinction *should look like*; rather, it has argued that it reflects what distinction *actually looks like*. As the discussion moved through the Pedagogical and Kinetic realms, it revealed that international humanitarian actors relativize civilianness and detach civilianness from the civilian on a daily basis. They seek to disseminate an image of themselves as 'civilian plus' – a status that is positioned apart from, and above, the 'mere civilian' and the 'civilian minus'. A more general point here is that distinction circulates not only in civilian–combatant relations, but also in civilian–civilian relations. Crucially, this study has not suggested that the 'civilian plus' is a stable entity. On the contrary, the 'civilian plus' is characterized by the same fragmentation and disruption that plagues the mythical civilian. The perceived existence of these different civilian entities, which respectively embody different degrees of civilianness, provides an important clue as to the shape of the distinction contests that international actors engage in. It has been demonstrated that international humanitarian actors link humanitarianness to the highest degree of civilianness available, while other actors—both civilian and combatant—push back against such practices.

The second substantive contribution of this study is its articulation of the important **role of perception** in understanding distinction. This study has engaged with several layers of perception. First, there were the self-perceptions of international humanitarian actors and their perceptions of other international actors. Next, there were the perceptions that other international actors actually have of humanitarian actors. Further, there were the perceptions all international actors have of how they are seen by local actors. This study has framed this last set of perceptions as a sort of mirror that may or may not produce an accurate reflection. Much is concealed behind this reflection, and this study has worked both to unearth what is hidden and to show what is visible. The figure of the 'phantom local' captures the way in which international actors invoke the perceptions of local actors in armed conflicts. It has been argued that, whatever international humanitarian actors know to be true about the multiplicity of local actors, rallying local perceptions to distinction's end engenders a flattening of these local actors.

To elucidate the functions of distinction, both manifest and hidden, this study has scrutinized how and when the 'phantom local' is invoked. Attention has been paid to whether international actors summon a monolithic observer in a given instance, or perhaps one of its more specific iterations – the beneficiary-perceiver, attacker-perceiver or authority-perceiver. The invocation of the **attacker-perceiver**, it has been suggested, maps most easily onto IHL's principle of distinction, as narrowly conceived. Identifying the times at which humanitarian actors appeal to the attacker-perceiver is helpful for untangling which practices go to targeting in the IHL sense, and which do not. Having said that, the way in which humanitarian actors invoke this figure also departs from the dominant vision of a fixed civilian–combatant binary. Humanitarian actors behave as though the attacker-perceiver plucks qualities of combatantness from the air, affixing them to humanitarian actors who have become tainted or compromised – perhaps through their proximity to international military actors. More generally, the routine summoning of the attacker-perceiver in

this study's empirical findings shows the extent to which anxieties about personal safety shape humanitarian practice. The way in which other international actors respond when humanitarian actors invoke this figure also showcases a lack of agreement about the modalities of violence against humanitarian actors. Many of the non-humanitarian actors who attend civil–military trainings or operate in South Sudan doubt that the 'blurring of lines' between different international actors endangers the lives of humanitarian actors. Even in the civil-military training programmes, with their more normative bent, conversations about 'blurring' or 'confusion' are not typically resolved with reference to obligations under international law. Instead, practical concerns and competing views on perceptions are foregrounded.

Consider also how humanitarian actors deploy the **beneficiary-perceiver**. When humanitarian actors enact distinction, they also seek to secure the trust of this entity. It is proposed that such practices are double-edged for beneficiary populations. On the one hand, they position the recipients of assistance at the forefront of the humanitarian endeavour, evincing an understanding on the part of humanitarian actors that the impressions made on war-affected populations matter. On the other hand, they also position beneficiary populations as an audience for the performance of distinction. While this practice might be wholly unintentional, it engenders a subtle shift. Instead of asking what beneficiaries need,[752] humanitarian actors fixate on what beneficiaries *see:* Do they know who is who amongst international actors? Do they view humanitarian actors as inappropriately enmeshed with other international actors engaged in political or conflict-related tasks? Will they approach someone wearing a T-shirt with a particular organization's logo and trust that individual to provide appropriate assistance? While these questions do need to be asked, after a certain threshold, it may be that preoccupation with what the victims of war see, think and feel about humanitarian actors displaces concerns about how they might be helped. Taken to the extreme, a fixation on local perceptions

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[752] It is important to consider the limitations of framing those who receive services as beneficiaries, and the attendant focus on need that this provokes.

reconfigures the victims of war from *receivers* of aid to *perceivers* of aid. In light of Hopgood and Krause's respective observations about the sanctity and purity of humanitarianism, there is a danger that the performance of distinction might become an end in itself.

8.1.4 Limitations of the study

One of the most significant challenges in executing an interdisciplinary study of this nature is deciding what should be included in, or excluded from, the investigation. Some of the threads that were not ultimately pursued in this study represent potential avenues for future exploration, while other topics were avoided because they have been well attended to by scholars.

It is important to reiterate that this study is not about **compliance** with IHL's principle of distinction. It was a deliberate choice to avoid this line of inquiry, and the study's most important findings flow from this choice. The study suggests that the question should not be whether a given actor follows the law of distinction, but how international actors make and remake distinction as a matter of grounded practice. Thus, it refrains from simply juxtaposing the practices of international actors with a rule of distinction found 'in the books'.

There are several other topics or concepts that this study has mostly avoided, either because they are well-trod scholarly ground or because they were seen to have limited analytical promise. The **humanitarian space** paradigm is one such example. This concept was only mentioned briefly, as this study has taken the view that it obscures more than it clarifies. Debates over the humanitarian space have always been both heated and unresolved, and this study has sought new ways of rethinking the relationships in question. A similar point can be made regarding debates on **the politics of humanitarianism**. By taking a socio-legal approach, this study has tried to reinvigorate and breathe fresh life into these perennial debates about

humanitarian practice. It is also hoped that the methodology employed could be adopted to consider other types of actors. The status of police actors deployed with international missions, for example, poses interesting questions for IHL's civilian–combatant distinction.

Some strands of this study offer interesting avenues for future research. One limitation of this single-author study, as mentioned, is that it was not possible to conduct an extensive empirical investigation of **(actual) local perceptions of distinction**. While articulating definitive findings on this matter might not be possible for the reasons identified in Chapter 4, much work can and should be done to expand on the efforts of those who have chipped away at this question over the past decade or so. A related point is that, for analytical purposes, this study has employed a simplified **categorization of 'local' and 'international' actors**. It is important that future projects probe these categories further. Such inquiries should recognize, for example, the fact that many 'local' actors might well be foreigners and that many individuals working for international humanitarian organizations are in fact 'local' actors. A study of distinction practices that more explicitly attends to the nuances within organizations and between different types of humanitarian actors would form a welcome contribution to the literature on humanitarianism.

Another aspect of the study's empirical findings that merits further attention pertains to the **feelings and emotions** of international actors. While conducting field research for the study, it was striking how frequently international actors – without prompting – chose to speak about their feelings towards other international actors in their midst. Feelings of hostility and resentment, as well as affinity and respect, seemed to shape not only their interactions with each other but also their interpretations of their obligations under international law. Fascinating empirical material was gathered and coded in connection with this, but there was simply not enough room to address the affective dimension within the confines of the present study. I will pursue the emotional life of distinction in my next research project,

building on the present study's efforts to grasp the actual practice of IHL by individual actors on the ground.

Finally, an important avenue for future research, which it is hoped that other scholars will take up, is the work of **untangling the various uses of distinction**. While this study has made an earnest foray in this respect, there is certainly more to be done to tease apart the functions of distinction as practiced by international actors. One of the most demanding aspects of this untangling work is determining the underlying motivations of humanitarian actors' distinction practices. An intellectually honest but admittedly unsatisfactory summary of what this study has discovered with respect to the 'why' question is as follows: it depends on who you ask. In order to understand the 'why' of these distinction practices, it will be necessary to further probe the disconnect between what international actors say they do and what they actually do. Some of the practices canvassed in this study suggest that these actors might not be altogether sure, themselves. The perspectives of other (non-humanitarian) international actors have helped to reveal much of what lies beneath humanitarian distinction practices, but it would be misguided to think that these external perceptions reveal the truth about distinction. As noted, these other actors also view humanitarian actors through the prism of their own biases and grievances. Both civilian and military actors working for international missions have their own reasons for not wanting to support the vision of distinction that humanitarian actors propound. In the present study, the technique of participant-observation was absolutely crucial in grappling with some of these dynamics. A NATO soldier might have bemoaned the special distinction demanded by humanitarian actors in a simulation exercise in a civil–military training programme, but in a subsequent interview profess respect for humanitarian actors and the concerns they articulate regarding personal safety. This adds further nuance to the point made above – that the 'why' of distinction depends not only on who is asked, but also when and where they are asked. Further engagement with these questions by scholars in other disciplines would be welcome, particularly from (legal)

anthropologists with the training and resources to carry out fine-grained qualitative studies. Having suggested this, it should be recognized that turning towards a micro-level inquiry might generate other challenges. For example, it might be difficult to generalize the empirical findings and link them back to the legal categories in question. This highlights a key benefit of this multi-sited investigation's approach to its object of study. The micro and the macro were consistently put into conversation with each other, so as to enable an understanding of how the practices in question implicate the relevant legal rule.

8.2 Implications of the study

What does it mean if distinction is a perpetually disrupted idea? Nouwen's articulation of the two souls dwelling in each socio-legal scholar strikes a chord: [753] one soul seeks to clarify and explain, while the other is overwhelmed by the complexity of what has been found.[754] There is a temptation to simplify what is messy, but, given the multiplicity this study has contended with, it seems problematic to offer neat assertions about what should be done.

As a point of clarification, it is not necessarily desirable to have legal rules that reflect empirical reality. Alexander locates the value of IHL's civilian entity in its very artificiality: it aims not to reflect but to supplant the realities of war-affected populations.[755] Whatever distance there is between a real-life civilian and the IHL version, from this vantage point, is understood as an achievement.[756] Taking a cue from this, the present study does not issue a call for legal reforms that make the principle of distinction more reflective of actual practice.

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[753] Nouwen, supra, p. 233 ('Ithaka').
[754] Ibid.
[755] Alexander, supra p. 36 ('PhD Thesis').
[756] Ibid., pp. 35–36.

This study has argued that, from the vantage point of IHL, the humanitarianness of a given actor hinges on the extent to which he or she reflects IHL's Red Cross fantasy. The study has found that it could plausibly be argued that IHL does indeed constitute such humanitarian actors as special civilians. By allocating them 'civilian plus' status, IHL effectively sets this subset of humanitarian actors apart from other civilians. The special status thus relies upon and perpetuates the relativization of the civilian category. When the actual practices of international humanitarian actors are examined, it becomes apparent that a much greater number of humanitarian actors than those legible to IHL disseminate 'civilian plus' status. Amongst these humanitarian actors, there is a tacit understanding that one's claim to this special status depends upon one's likeness to the Red Cross figure. Humanitarian actors espouse a commitment to the humanitarian principles in order to affirm this distinct humanitarian identity, and they subscribe to a Red Cross meta-narrative, more generally. Humanitarian actors such as NGO actors express anxiety that their own emblems are not protected to the same extent as those of the Red Cross, so they attempt to resemble Red Cross actors and effectively maintain this fantasy in circulation. This effect is bolstered by the practices of other international civilian and military actors, who evidently hold the ICRC – and often MSF – actors in higher regard than other humanitarian actors. Intriguingly, this is not necessarily because they deem these two organizations to possess a higher degree of civilianness. In some instances, it is their combatant-like qualities that the other actors esteem.

This study proposes that the special civilian status promulgated by humanitarian actors is grounded in both heroism and vulnerability. Their heroism comes from the social value of the role that humanitarian actors perform in war, as well as the connotations of virtue and moral uprightness that flow from the tasks they perform. Their vulnerability also stems from this role, which is seen to render humanitarian actors more at risk of harm than other civilians. The move to protect humanitarian actors from violence, embodied in the 'help the helpers help' perspective, responds

to these twin features. It sets humanitarian actors up as worthy of special protection and suggests that law should be mobilized to secure this end. A concern this study articulates with respect to this outlook is its failure to approach IHL's civilian category holistically. Part of the problem is that those who wish to 'help the helpers help' generally focus on one side of the equation. That is, they fixate on bestowing something extra to humanitarian actors. What often drops off from the analysis, however inadvertently, are the implications for other civilians who are not singled out for special treatment.

As a preliminary point, a practical issue arises with respect to the idea of giving humanitarian actors a special status. It may be the case that no escape from the civilian's vulnerability is ultimately possible. As noted at various junctures in this study, a special status for humanitarian actors might increase their appeal as targets. Aside from this practical point, the stakes of (further) relativizing civilianness must also be considered. To give shape and texture to this concern, this study has introduced the 'mere civilian' and 'civilian minus' figures. These entities have been presented as the necessary consequences of the 'civilian plus', and they represent a fate that humanitarian actors seek to evade. However, these corollaries do not merely exist to highlight the power of the 'civilian plus' (though that is an important aspect of what they do). More than this, they reflect the cost of a special status for the humanitarian actor. This study has proposed that this cost is a downgraded status for some other civilian, somewhere else.

With respect to the implications for other international actors, the findings from South Sudan capture the stakes poignantly. In particular, this study has highlighted the anxiety of UN civilian actors that the distinction practices of humanitarian actors might adversely impact their own civilian status. On an everyday basis in South Sudan, humanitarian actors jostle with other civilians in the hopes of claiming the highest degree of civilianness available. Indeed, the whole point of the 'civilian plus' is to set humanitarian actors apart from these other actors; the latter are

viewed as having the wrong kind of civilianness, or even qualities of combatantness. In the case of UN civilian actors, the threat of contamination comes first from their involvement in wider UN peacekeeping missions. Notably, humanitarian actors also view UN civilians as compromised in ways that have nothing to do with the latter's involvement with armed UN peacekeepers. The 'civilian plus', it emerges here, is also used by humanitarian actors to convey to UN civilians that they have no legitimate claim to humanitarianness.

While this study has focused on international actors, it has frequently noted that international actors are not the only ones who reside in IHL's civilian category. Of particular concern are the consequences of the 'civilian plus' status for local war-affected populations. Earlier in this concluding chapter, it was reiterated that the distinction practices of humanitarian actors serve to flatten out populations in need. By transforming the recipients of assistance into the beneficiary-perceiver, humanitarian actors set them up as an audience for distinction. The possibility that these distinction practices might perpetuate or entrench pre-existing inequalities between humanitarian actors and the populations they serve merits serious attention. Coming back to the 'civilian plus', there is a further dimension to be considered here, as well. Local civilian populations, who are not eligible for such a special status, might find themselves relegated to 'mere civilian' status at best, or 'civilian minus' status at worst. When the 'phantom local' is invoked in monolithic form, populations caught up in war's upheaval are repackaged into the beneficiary-perceiver and subsequently lumped together with the attacker-perceiver and the authority-perceiver. This collapsing of different kinds of local actors becomes more ominous when one considers that a special status for humanitarian actors renders local civilian populations 'mere civilians', and perhaps not even that. Bringing these observations together, it may be that humanitarian distinction practices – or, more precisely, the dissemination of the 'civilian plus' and the invocation of the 'phantom local' – enact a kind of violence against war-affected populations.

Conclusion

This study has sought to make distinction strange and unfamiliar, reconceptualizing it in new forms. It is only when we recognize these three new civilian figures (the 'civilian plus', the 'mere civilian' and the 'civilian minus') that we can begin to fathom why international actors struggle with each other for recognition of different degrees of civilianness. As this study has demonstrated, the distinction between civilians and combatants is, in fact, more a matter of degree than the proponents of the dominant vision would likely acknowledge. Nonetheless, the dominant vision of distinction is sustained in large part because of the continued allure of its promise of clarity. Many of the international actors examined in this study, from NATO soldiers to UN peacekeepers and international humanitarian actors, continue to reach for this bright line binary, even as it slips through their grasp.

This study has elucidated an alternative vision of distinction – one based on the practices of international actors and which captures the collective impact of various disruptions to the dominant vision; one that is reminiscent of the world in which we actually live. According to the practice-based law of distinction that has been distilled, any individual at any given moment may be assigned qualities of civilianness or combatantness. Here, civilianness is both relative and contingent; it can be lost or downgraded at the slightest indication that one is not correctly behaving like a civilian. This vision informs the everyday practices of international humanitarian actors, who engage in contests over distinction with other international actors. These dynamics dilute the power of the dominant vision, but their continued neglect also attests to this very power. If it achieves nothing else, this study extends an invitation to spend time in a world where distinction's perpetually disrupted nature no longer remains hidden.

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