

conserve or protect at least 30 percent of the ocean by 2030.”<sup>37</sup> The administration has not yet indicated whether it will transmit the treaty to the Senate for its advice and consent to ratification.

## INTERNATIONAL ECONOMIC LAW

### *The United States Accepts the WTO's Fisheries Subsidies Agreement*

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In April 2023, the United States accepted the World Trade Organization's (WTO) Agreement on Fisheries Subsidies,<sup>1</sup> the first WTO deal that focuses on environmental issues and just the second agreement reached under the WTO's auspices.<sup>2</sup> “We are proud to be among the first WTO members to accept this agreement. . . . It will help improve the lives of fishers and workers here in the United States and elsewhere,” remarked U.S. Trade Representative Ambassador Katherine Tai.<sup>3</sup> Adopted at the WTO's twelfth ministerial conference in June 2022, the agreement, which establishes three disciplines that prohibit certain forms of fisheries subsidies,<sup>4</sup> is the result of more than two decades of negotiations.<sup>5</sup> The world's top five fisheries subsidizers—China, the European Union, Japan, South Korea, and the United States—have already signed on to the agreement,<sup>6</sup> which will enter into force upon acceptance by two-thirds of the WTO's membership.<sup>7</sup> Though an important initial step, the agreement is only partial. Negotiations continue on “outstanding issues . . . [to] achieve a comprehensive agreement on fisheries subsidies.”<sup>8</sup>

Governments pay an estimated \$35 billion a year in fisheries subsidies<sup>9</sup> (defined by the WTO as “financial contributions” by a government or public body that confer a “benefit”).<sup>10</sup> Subsidies drive overfishing by reducing operating costs. The Food and Agriculture

<sup>37</sup> Signing of the High Seas Treaty, *supra* note 1.

<sup>1</sup> World Trade Organization Press Release, United States Formally Accepts Agreement on Fisheries Subsidies (Apr. 11, 2023), at [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_11apr23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_11apr23_e.htm) [<https://perma.cc/75WJ-LNRL>] [hereinafter U.S. Formally Accepts Agreement].

<sup>2</sup> See World Trade Organization, Agreement on Fisheries Subsidies, at [https://www.wto.org/english/tratop\\_e/rulesneg\\_e/fish\\_e/fish\\_e.htm](https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm) [<https://perma.cc/YSU2-QHMH>]. The first agreement was the Trade Facilitation Agreement.

<sup>3</sup> U.S. Formally Accepts Agreement, *supra* note 1.

<sup>4</sup> See World Trade Organization, Agreement on Fisheries Subsidies, Arts. 3–5, WTO Doc. WT/MIN(22)/33 - WT/L/1144 (2022) [hereinafter Fisheries Subsidies Agreement].

<sup>5</sup> Office of the United States Trade Representative Press Release, Fact Sheet: WTO Agreement on Fisheries Subsidies (Aug. 2022), at <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2022/august/fact-sheet-wto-agreement-fisheries-subsidies> [<https://perma.cc/7U9M-S49Y>].

<sup>6</sup> See Members Submitting Acceptance of Agreement on Fisheries Subsidies, at [https://www.wto.org/english/tratop\\_e/rulesneg\\_e/fish\\_e/fish\\_acceptances\\_e.htm](https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_acceptances_e.htm).

<sup>7</sup> Ministerial Decision of 17 June 2022, para. 3, WTO Doc. WT/MIN(22)/33 - WT/L/1144 (2022), at [https://www.wto.org/english/news\\_e/news22\\_e/wtmin22w22.pdf](https://www.wto.org/english/news_e/news22_e/wtmin22w22.pdf) [hereinafter Ministerial Decision].

<sup>8</sup> *Id.*, para. 4.

<sup>9</sup> See Rashid Sumaila et al., *Updated Estimates and Analysis of Global Fisheries Subsidies*, 109 MARINE POL'Y 103695 (2019).

<sup>10</sup> Agreement on Subsidies and Countervailing Measures, Art. 1, at [https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf) [hereinafter SCM Agreement].

Organization estimates that more than one-third of fish stocks are overfished.<sup>11</sup> More than \$22 billion in subsidies (approximately 63 percent) are capacity-enhancing, “allow[ing] vessels to travel farther, stay at sea longer and catch more fish than they could normally afford to, resulting in a depletion of fish populations beyond sustainable levels.”<sup>12</sup> It is estimated that “85% of all commercial stocks are now fished up to their biological limits or beyond.”<sup>13</sup> According to a 2018 study, without subsidies, as much as 54 percent of the high seas fishing industry would be unprofitable.<sup>14</sup> The elimination of subsidies would likely lead to a significant increase in fish biomass.<sup>15</sup> Beyond depleting fish stocks, overfishing “can impact entire ecosystems . . . creat[ing] an imbalance that can erode the food web and lead to a loss of other important marine life.”<sup>16</sup> It can also result in the loss of jobs,<sup>17</sup> particularly in coastal communities, and food insecurity for populations that rely on fish for animal protein.<sup>18</sup> The World Bank has estimated the economic losses of overfishing at \$83 billion annually.<sup>19</sup> Though fisheries subsidies are “fully subject to the disciplines of the [WTO’s Subsidies and Countervailing Measures] Agreement,”<sup>20</sup> that agreement focuses on the trade distortions caused by subsidies and not their environmental impacts.

The Fisheries Subsidies Agreement establishes three disciplines for WTO members.<sup>21</sup> The first prohibits members from “grant[ing] or maintain[ing] any subsidy to a vessel or operator engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.”<sup>22</sup> A “vessel or operator . . . [is] considered to be engaged in IUU

<sup>11</sup> See Food and Agriculture Organization, *The State of World Fisheries and Aquaculture: Towards Blue Transformation*, at xvi (2022), at <https://www.fao.org/3/cc0461en/cc0461en.pdf> [<https://perma.cc/LG89-QEXS>] [hereinafter *FAO Report*].

<sup>12</sup> Pew, *Most Long-Distance Fishing in Foreign Waters Dominated by Only a Few Governments* (May 27, 2022), at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/05/most-long-distance-fishing-in-foreign-waters-dominated-by-only-a-few-governments> [<https://perma.cc/77TL-S9TB>].

<sup>13</sup> Ganapathiraju Pramod, Katrina Nakamura, Tony J. Pitcher & Leslie Delagran, *Estimates of Illegal and Unreported Fish in Seafood Imports to the USA*, 48 *MARINE POL’Y* 102, 102 (Sept. 2014).

<sup>14</sup> See Enric Sala et al., *The Economics of Fishing the High Seas*, 4 *SCI. ADVANCES* (June 2018).

<sup>15</sup> See Ernesto Fernández Monge & Reyna Gilbert, *Ending Harmful Subsidies Could Increase Amount of Fish in the Ocean*, *Research Shows*, PEW (June 7, 2021), at <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/06/07/ending-harmful-subsidies-could-increase-amount-of-fish-in-the-ocean-research-shows> [<https://perma.cc/7VMS-THU8>].

<sup>16</sup> World Wildlife Fund, *Overfishing*, at <https://www.worldwildlife.org/threats/overfishing> [<https://perma.cc/PX5T-EF8E>] [hereinafter *Overfishing*].

<sup>17</sup> Almost 38 million people work in the fisheries industry. See *FAO Report*, *supra* note 11, at 68.

<sup>18</sup> *Overfishing*, *supra* note 16.

<sup>19</sup> See World Bank, *The Sunken Billions Revisited: Progress and Challenges in Global Marine Fisheries 3* (2017).

<sup>20</sup> GATT/WTO Rules on Subsidies and Aids Granted in the Fishing Industry: Note by the Secretariat, para. 10, WTO Doc. WT/CTE/W/80 (1998).

<sup>21</sup> The agreement pertains to subsidies to “marine wild capture fishing and fishing related activities at sea.” Fisheries Subsidies Agreement, *supra* note 4, Art. 1. It thus does not apply to onshore packaging or processing. It also does not apply to “aquaculture and inland fisheries” or “government-to-government payments under fisheries access agreements.” *Id.* Art. 1 nn. 1–2. “[F]ish” is defined broadly as “all species of living marine resources, whether processed or not.” *Id.* Art. 2(a).

<sup>22</sup> *Id.* Art. 3.1. “[F]ishing” is defined as “searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish.” *Id.* Art. 1(b). “[F]ishing related activities” include “any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea.” *Id.* Art. 1(c). IUU fishing refers to activities specified in paragraph 3 of the Food and Agriculture Organization’s *The International*

fishing” if a determination is made by: (1) a coastal member “for activities in areas under its jurisdiction”; (2) a flag state member “for activities for vessels flying its flag”; or (3) a regional fisheries management organization or arrangement (RFMO/A) “in areas and for species under its competence.”<sup>23</sup> Minimum evidentiary and procedural requirements seek to ensure the fairness of that determination.<sup>24</sup> Subsidizing members retain some control over the prohibition through the power to set its duration by “tak[ing] into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator.”<sup>25</sup> The subsidizer’s discretion is limited, however, by the requirement that the prohibition be “at least as long as the sanction resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.”<sup>26</sup> This discipline will assist in the fight against IUU fishing,<sup>27</sup> which represents between 13 percent and 31 percent of reported catches worldwide,<sup>28</sup> perhaps encouraging countries to improve monitoring and enforcement.

The second discipline prohibits “grant[ing] or maintain[ing] subsidies for fishing or fishing related activities regarding an overfished stock.”<sup>29</sup> Coastal members “under whose jurisdiction the fishing is taking place” or an RFMO/A “in areas and for species under its competence” determine whether a fish stock is “overfished” on the basis of the “best scientific evidence available.”<sup>30</sup> Nonetheless, members may grant or maintain subsidies “if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.”<sup>31</sup> That level is determined by coastal members or RFMO/As based on “reference points such as maximum sustainable yield . . . commensurate with the data available for the fishery.”<sup>32</sup> Importantly, this discipline links subsidies to sustainability.

The third discipline comprises three obligations. Members are prohibited from “grant[ing] or maintain[ing] subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.”<sup>33</sup> Members are required to “take special care and exercise due restraint when

*Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (2001). The extension of this discipline to “fishing related activities” encompasses the use of forced labor and was advocated by the United States. See *The Use of Forced Labor on Fishing Vessels – Submission of the United States 1* (May 26, 2021), at <https://ustr.gov/sites/default/files/IssueAreas/Trade%20Organizations/WTO/US.Proposal.Forced.Labor.26May2021.final%5B2%5D.pdf> [<https://perma.cc/B64G-ZHQP>]. See generally Office of the U.S. Trade Representative Press Release, *United State Urges WTO Members to Address Forced Labor on Fishing Vessels in Ongoing Fisheries Subsidies Negotiations* (May 26, 2021), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/united-states-urges-wto-members-address-forced-labor-fishing-vessels-ongoing-fisheries-subsidies> [<https://perma.cc/53W7-Y366>].

<sup>23</sup> Fisheries Subsidies Agreement, *supra* note 4, Art. 3.2.

<sup>24</sup> See *id.* Art. 3.3(b).

<sup>25</sup> *Id.* Art. 3.4.

<sup>26</sup> *Id.*

<sup>27</sup> See Jacob Katz Cogan, *Contemporary Practice of the United States*, 116 *AJIL* 858, 859 (2022).

<sup>28</sup> See Pramod et al., *supra* note 13, at 102.

<sup>29</sup> Fisheries Subsidies Agreement, *supra* note 4, Art. 4.1.

<sup>30</sup> *Id.* Art. 4.2. There is no obligation, however, that members assess fish stocks.

<sup>31</sup> *Id.* Art. 4.3.

<sup>32</sup> *Id.* Art. 4.3 n. 11.

<sup>33</sup> *Id.* Art. 5.1.

granting subsidies to vessels not flying that Member's flag."<sup>34</sup> Members are also required to "take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown."<sup>35</sup> Together, these provisions seek to prohibit subsidies in situations where members have attenuated control of the subsidies' impact on fish stocks, creating a high risk to sustainability.

Additional provisions seek to ensure the implementation of these three disciplines. One requires technical assistance and capacity-building assistance for developing countries.<sup>36</sup> The agreement creates a voluntary funding mechanism to support such assistance.<sup>37</sup> Another institutes a notification and transparency regime that requires that members disclose information through the subsidies notification process established under the Agreement on Subsidies and Countervailing Measures (SCM Agreement).<sup>38</sup> Members must provide information regarding the "type or kind of fishing activity for which the subsidy is provided" (including its form, amount, policy objective of the subsidy, its duration, and its trade effects) and, to the extent possible, the "status of the fish stocks in the fishery for which the subsidy is provided"; "conservation and management measures in place for the relevant fish stock"; "fleet capacity in the fishery for which the subsidy is provided"; names and identification of the fishing vessels; and catch data in the fishery of the subsidy.<sup>39</sup> Other measures require members to provide the Committee on Fisheries Subsidies, which is tasked with "review[ing] annually the implementation and operation of" the agreement,<sup>40</sup> with information on their implementation of the disciplines, their fisheries regimes, IUU determinations, and RFMO/As to which they are a party.<sup>41</sup> The White House has praised these "robust transparency provisions."<sup>42</sup> If necessary, the agreement's implementation can be enforced through the WTO's dispute settlement mechanism, including provisions of the SCM Agreement.<sup>43</sup>

The agreement has received broad support. U.S. Trade Representative Katherine Tai commended the agreement for prohibiting fisheries subsidies that "deplete our fisheries resources . . . [and] create unfair competition for U.S. and other fishers and workers that compete fairly."<sup>44</sup> Senate Finance Committee Chair Ron Wyden praised U.S. acceptance of the agreement, stating that, "[w]hile there's still more work to be done, this agreement is an

<sup>34</sup> *Id.* Art. 5.2.

<sup>35</sup> *Id.* Art. 5.3. Developing countries, including least developed countries, are also given two-year exemptions from the IUU and overfished stock disciplines. *See id.* Arts. 3.8, 4.4.

<sup>36</sup> *See id.* Art. 7.

<sup>37</sup> *See id.*

<sup>38</sup> *See* SCM Agreement, *supra* note 10, Art. 25.

<sup>39</sup> Fisheries Subsidies Agreement, *supra* note 4, Art. 8.1.

<sup>40</sup> *See id.* Art. 9.

<sup>41</sup> *See id.* Arts. 3.3, 8.3, 8.4, 8.6.

<sup>42</sup> White House Press Release, Fact Sheet: Marking the One Year Anniversary of the National Security Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses (June 27, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/27/fact-sheet-marking-the-one-year-anniversary-of-the-national-security-memorandum-on-combating-illegal-unreported-and-unregulated-fishing-and-associated-labor-abuses> [<https://perma.cc/C52N-HGPH>].

<sup>43</sup> *See* Fisheries Subsidies Agreement, *supra* note 4, Art. 10. Some limitations apply. *See id.* Art. 10.1 n. 17.

<sup>44</sup> Office of the U.S. Trade Representative Press Release, Remarks by Ambassador Katherine Tai at Signing of the United States' Instrument of Acceptance of the WTO Agreement on Fisheries Subsidies (Apr. 2023), at <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2023/april/remarks-ambassador-katherine-tai-signing-united-states-instrument-acceptance-wto-agreement-fisheries> [<https://perma.cc/L5R7-THCW>] [hereinafter Tai Remarks].

important first step towards cracking down on harmful government subsidies that deplete fishing stocks and undercut the hardworking fishers in the Pacific Northwest and around the country.”<sup>45</sup> Senator Tom Carper, chair of the Environment and Public Works Committee, “applaud[ed] [Ambassador Tai] for taking action to ratify the WTO agreement on fishery subsidies, which will help protect our oceans and reduce unsustainable fishing practices.”<sup>46</sup> Senator Sheldon Whitehouse said the agreement was “an important step towards leveling the playing field for the domestic fishing industry and cracking down on illegal fishing practices.”<sup>47</sup> The Stop Funding Overfishing coalition described the agreement as “a critical step towards ensuring the ocean’s sustainability.”<sup>48</sup>

Left unresolved by the agreement was a general prohibition on subsidies that contribute to overcapacity and overfishing. A draft text considered during the negotiations would have included a general prohibition and a list of examples of prohibited subsidies, such as “subsidies to construction, acquisition, modernisation, renovation or upgrading of vessels” and “subsidies to the purchase/costs of fuel, ice, or bait.”<sup>49</sup> Exceptions would have applied to subsidies that “are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.”<sup>50</sup> Exceptions would also have been given to developing countries for a period of time and under certain circumstances, such as “if [the country’s] share of the annual global volume of marine capture production does not exceed [a to-be-determined] per cent.”<sup>51</sup> No consensus was reached, however, on these issues. The United States would like there to be “greater transparency on the use of forced labor on fishing vessels” in the final agreement.<sup>52</sup> More broadly, according to Ambassador Tai, “[w]e want additional, ambitious disciplines, which will improve the lives of fishers and workers here in the United States and elsewhere.”<sup>53</sup>

The twelfth ministerial conference tasked negotiators to continue their work “with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement.”<sup>54</sup> In December 2023, following the completion of the most recent week of negotiations, the chair, Ambassador Einar Gunnarsson of Iceland, said that “[w]e stand at a critical juncture for successfully concluding

<sup>45</sup> U.S. Senate Committee on Finance Press Release, Wyden Statement on WTO Fisheries Subsidies Agreement (Apr. 12, 2023), at <https://www.finance.senate.gov/chairmans-news/wyden-statement-on-wto-fisheries-subsidies-agreement-> [<https://perma.cc/4TJJ-NN95>].

<sup>46</sup> Senator Tom Carper, @SenatorCarper, X (Apr. 12, 2023, 10:31 a.m.), at <https://x.com/SenatorCarper/status/1646158998045859843>.

<sup>47</sup> Office of Sen. Sheldon Whitehouse Press Release, Whitehouse Applauds United States Formally Submitting Acceptance to International Fisheries Agreement (Apr. 11, 2023), at <https://www.whitehouse.senate.gov/news/release/whitehouse-applauds-united-states-formally-submitting-acceptance-to-international-fisheries-agreement> [<https://perma.cc/22NU-QNNC>].

<sup>48</sup> Stop Funding Overfishing Press Release, 180 Organizations Around the Global Urge World Leaders to Ratify and Improve the WTO Agreement on Fisheries Subsidies (July 2023), at <https://stopfundingoverfishing.com/statement> [<https://perma.cc/C8MT-MMS8>].

<sup>49</sup> Agreement on Fisheries Subsidies – Draft Text, Art. 5.1, WTO Doc. WT/MIN(22)/W/20 (June 10, 2022), at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W20.pdf>.

<sup>50</sup> *Id.* Art. 5.1.1.

<sup>51</sup> *Id.* Art. 5.5(b)(i).

<sup>52</sup> Tai Remarks, *supra* note 44.

<sup>53</sup> *Id.*

<sup>54</sup> Ministerial Decision, *supra* note 7, para. 4.

[a second agreement] on fisheries subsidies.”<sup>55</sup> It was his hope, he continued, “that this new draft of the disciplines on subsidies contributing to overcapacity and overfishing . . . will help [members] bridge the remaining divides in their positions as we begin our final push to conclude the negotiations in time for MC13.”<sup>56</sup> The chair’s draft adopts a “‘hybrid approach’, which combines the use of an indicative list of subsidies that contribute to overcapacity or overfishing and a sustainability test for members to demonstrate that measures are implemented for healthy fish stocks.”<sup>57</sup> The draft “also includes the ‘two-tiered approach’, whereby the largest subsidizers would be subject to more scrutiny.”<sup>58</sup> A separate “standalone discipline concern[s] subsidies contingent on fishing or fishing-related activities outside the subsidizing member’s jurisdiction.”<sup>59</sup> Negotiations will continue in January 2024. The thirteenth ministerial is scheduled for February 26–29, 2024, in Abu Dhabi.

The Fisheries Subsidies Agreement incentivizes members to reach a new accord. Failure to adopt “comprehensive disciplines” within four years of the agreement’s entry into force will automatically result in its termination, absent a decision by the WTO General Council.<sup>60</sup>

#### INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

##### *The Department of Defense Updates the Law of War Manual*

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The U.S. Department of Defense (DoD) has updated its *Law of War Manual* to recognize the presumption that persons or objects are protected from being targeted unless the information available at the time indicates they are military objectives.<sup>1</sup> The update, the third set of revisions since the *Manual’s* publication in 2015,<sup>2</sup> makes two significant substantive changes: (1) it revises Section 5.4.3 on “Assessing Information in Conducting Attacks”; and (2) it adds Section 5.5.3 on “Feasible Precautions to Verify Whether Objects of Attack Are Military Objectives.”<sup>3</sup> The 2023 update comes amid broader efforts within the U.S. government to

<sup>55</sup> World Trade Organization Press Release, Fisheries Subsidies Chair Circulates New Text in “Final Push” to Reach Agreement at MC13 (Dec. 21, 2023), at [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_21dec23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_21dec23_e.htm) [<https://perma.cc/S5R8-SMHV>].

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See Fisheries Subsidies Agreement, *supra* note 4, Art. 12.

<sup>1</sup> See U.S. Dep’t of Defense Office of General Counsel, Department of Defense Law of War Manual (2015; updated July 2023), at <https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF> [<https://perma.cc/8QZQ-U5A4>] [hereinafter Law of War Manual]. When quoting the *Law of War Manual*, any internal footnotes have been omitted.

<sup>2</sup> See U.S. Dep’t of Defense Press Release, DoD Announces New Law of War Manual (June 12, 2015), at <https://www.defense.gov/News/Releases/Release/Article/605562> [<https://perma.cc/L6RZ-BQ9N>]. The two prior updates were both issued in 2016. See Law of War Manual, *supra* note 1, at 1207.

<sup>3</sup> See Caroline Krass, Department of Defense Issues Update to DOD Law of War Manual on Presumption of Civilian Status and Feasible Precautions to Verify Military Objectives (July 31, 2023), at <https://lieber.westpoint.edu/departement-of-defense-update-law-of-war-manual> [<https://perma.cc/3EAN-QE6Z>]. Additionally, the discussion of “Heightened Identification Requirements in Conducting Attacks” (Section 5.4.3.3, formerly