

# The Principle of Distinction; oscillation between Military objectives and Civilian objects in IHL

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**Abstract:** *The International Humanitarian Law (IHL) governs events that occur in a state during armed conflict. It limits the effects of an International Armed Conflict (IAC). There are six principles in IHL. This paper intends to discuss about the Principle of Distinction. Principle of Distinction distinguishes every act and person involved in armed conflict. This distinction is generally between combatants and civilians. The key international legal instruments that govern IHL are Geneva Conventions (GC) I to IV and its Additional Protocols (AP) I and II. These GC provisions and AP provisions are used to justify the military objectives and the civilian objects in an armed conflict. This paper aims to discuss the exceptional situations as well. In Non-International Armed Conflicts (NIAC), IHL limits methods and means of warfare and people who are not directly participate in hostilities (DPH). Either IAC or NIAC the application of IHL principles remain still. The principle of distinction is used to apprehend the distinction between military objectives and*

*civilian objects. In war, before conducting an attack it is vital to refer and analyse the situation under principle of distinction. This principle of distinction assists to discern whether the attack will gain the expected military advantage. It is important to calculate the collateral damage and to justify the military necessity in the light of principle of distinction. There is only a delicate distinction between military objective and civilian object. It is important to understand this distinction before planning an operation during a conflict. The inability to address this delicate distinction had led to many problematic outcomes among states in aftermath of war. Therefore, this paper aims to discuss about the tenuous area that leads to contradictions between military objectives and civilian objects.*

**Keywords:** *Distinction, Military objectives, Civilian object*

## 1. Introduction

International Humanitarian Law constitutes a reaffirmation and the development of the traditional international law of war (jus in bello). Most rules of the law of war now extended even to those armed conflicts that the parties don't regard as wars. The term International Humanitarian Law (IHL) takes this in to account. International Humanitarian Law sets certain bounds to the use of force against an adversary. It determines both the relationships of the parties to conflict with one another and relationship with neutral states. Certain provisions of international

humanitarian law are also applicable in relationship between the states and its own citizens.

In armed conflict, belligerent may apply only that amount and kind of force necessary to defeat the enemy. Acts of war are only permissible if they are directed against the military objectives, if they aren't likely to cause unnecessary suffering and if they are not perfidious. In international armed conflicts, international humanitarian law formally recognizes and defines distinct categories of persons who don't or no longer directly participate in hostilities as a "protected

person". Wounded, sick and shipwrecked prisoners of war and civilians are fallen under this category of protected persons. While no formal categories of protected persons exist in non-international armed conflict (NIAC). The applicable international humanitarian law notwithstanding grants material protection to those who don't further engage in hostilities.

Under the aforementioned persons who enjoy general protection, international humanitarian law grants special protection to certain groups of persons, women, children, refugee, displaced persons, missing persons, medical and religion personnel, humanitarian relief personnel, journalists, pregnant mothers and personnel involve in peace keeping missions are who entitle to protection under civilian category of international humanitarian law (IHL). International law regarding persons taking part in or affected by an international armed conflict makes a fundamental distinction between combatants, who have become legitimate military objective and civilians, a distinction being a leading principle and an unchangeable bottom line in international humanitarian law applicable in international armed conflicts. This distinction concludes the international legal status of the two categories.

International law applicable in international armed conflict ascertained which persons are entitled to the status of combatant or of civilian regardless of the basic classification.

## **2. Military Objectives**

Firstly, significance of the military objectives and civil objects should be clearly observed. The boundary between military objectives and civil objectives remains a critical problem. Referring to article 52 of Additional Protocol I (AP I) of the Geneva Conventions (GC). This becomes most heavily debated provisions of the Additional Protocol

and significantly in military circles of western countries has been extremely contentious to it. Article 52 of AP I firstly demand military objectives to be objects which by their nature, location, purpose or use make an effective contribution to military actions. Hence under the military objectives, the installations, buildings or ground sectors which are directly involved in the military endeavour of the belligerent. This makes an effective contribution to the military operations due to their inclusion in the military dispositions of adversary; this is controversial to the restrictive definitional approach states in the Hague Rules of Warfare. Boundless interpretations of "military objective" have been developed. For example, Total Warfare Doctrines advanced by Air Marshall Trenchard in 1928 mentions military objective as "any objective which will contribute effectively towards the destruction of the enemy's means of resistance and lowering of his determination to fight".

The intention of any military action always should be to influence the political will of the antagonist especially in the defensive circumstances where energies determine to pursue its goals where violence must be broken. There is a distinct advantage through the article 52 of AP I over lists of admissible military objectives proposed in past, namely the flexibility of its practical implementation and this can have adverse effects where it can have wide margins of interpretation let the belligerents to construe it with completely different results according to their particular interests. It can also be alleged that the officer in charge of the operative action should have knowledge on determining the specific target as lawful military objective, needs peruse

information as to the accurate nature, exact purpose and use of the objective concerned.

Military objectives generally include armed forces, military aircrafts and warships, buildings and objects for combat service support and commercial objectives which make an effective contribution in military action. On aforesaid objectives, the ICRC (International Committee on Red Cross) and Diplomatic Conference employ an abstract definition in order to limit the scope of term military objective. Repeated criticisms are present due to wide margin of interpretation. At the heart of the category of military objectives are the armed forces of the adversary, including all military auxiliary organizations and paramilitary units fighting side by side with regular armed forces as well the regular units of army, navy, air force, all militia and other groups who fight for enemy. This includes any part of the population in non-occupied territory on the approach of foe, spontaneously takes up arms to defend the invading force and guerrilla forces in occupied territories. Lawful combatants include paramilitary and armed law enforcement agencies which are incorporated with equipment serving for combat purposes namely warships and military aircrafts.

The installations and objects for immediate combat service support of military nature such as barracks, fortifications, staff buildings, military command and control centres, military airfields, part facilities of Navy, Ministries of military nature for instance national defence, installations for supply service are traditional military objectives. Buildings and objects for combat service support has an additional layer of meaning which arose problematic consequences in delimitation rather than in cases dealing with buildings of obvious military function. Logistical bases of armed forces, stores of arms

or military supply munitions dumps, fuel stores and etc. parliament of a country can be considered as a military objective on the notion that it's the place decisions on the defence are made, in counter argument it can be claimed that since it deals with the politicians where the majority is of civilian individuals this should be an objective refrain from attacking similar as civilian objectives.

The most delicate distinction is between permissible military objectives and civilian objects concerns the commercial aspects which makes an effective contribution to the military action. This is a highly debated area. The ICRC's 1956 list includes means of communication, broadcasting networks, television stations, telephone and telegraph installations and all these are of fundamental military importance industries with importance to conduct war. For instance, in April 1999 NATO bombed the Serbian state television and radio station in Belgrade. A committee appointed by the prosecutor of ICTY assessed that attack is legitimate since it targeted at disrupting command, control and communication network but in contrary it's debatable on the legal basis stating that attack had been made because the station was a part of propaganda machinery. The attack on the Baghdad television station during Iraqi Freedom Operation by America and in Sri Lankan context LTTE attack on Central Bank, Colombo and attack on Katunayake International Airport can be recalled.

Regarding disputes on "industries of fundamental importance for the conduct of war" it's indisputable that industries production of armament falls within this category, heavy industries providing metallurgical engineering and chemical products for consistency of the conflict and installations for production of electrical energy for the military purposes is licit military

objectives. Excluding this aspect would result in dangerous opportunities to immunize armaments production of subcontracting and decentralising production in to civilian forms that would ultimately erode the basis of entire system tempting states ignoring the whole regulatory framework, to return to approaches of total war which directly aims the economic potential of the adversary. This dilemma should be sensibly answered with implementation of pertinent rules by bona fide interpretation of requirements of article 52 AP I.

The Para troops are lawful military objectives as article 42 of AP I but not crew members of parachuting from an aircraft in distress and objects by their nature, location, purpose or use make an effective contribution towards war actions. The debatable issue emerged on the air force crews parachuting are that, under what circumstances that the military aircraft may be fired. Parachute troops and airborne combat units it's beyond doubt that are legitimate military objectives since parachuting from a military aircraft in prima facie fall under offensive category, when comparing and contrasting military and civil objectives "military advantage" becomes significant. This means the benefit that can be expected from attack as a whole but not isolated or specific parts of attack and linked military objective. Both render towards determining definite military advantage especially under article 52 AP I.

Subsequently Unmanned Aerial Vehicles (UAVs) which are used to target control and have been equipped with armaments and Unmanned Combat Aerial Vehicles (UCAVs) over the past decades had become popular since 2002 where the first UCAV was sent in targeting of high ranked Taliban by CIA. UAV and UCAV have mostly been used in Somalia, Yemen, Pakistan for various purposes like surveillance and intelligence or in order to

support ground troops. According to the manual published by the Harvard University on Humanitarian Policy and Conflict Research in 2009. This further claim that UAV which doesn't carry a weapon and which can't control a weapon which is used solely for intelligence purpose of surveillance and reconnaissance (ISR functions) don't raise the question on *ius in bello* and UCAV which carries and launches a weapon, which can target directions, supporting ISR functions is itself a weapon; i.e. Predator Drone.

Civilians present under the military objectives are not protected against the attacks directed at those objectives; i.e., civilian workers in an arms production plant will not prevent opposing armed forces from attacking military objective. The persons who are not combatants under the article 4 of Geneva Convention (GC III) and article 43 of AP I must be seen as civilians. Both civilian population and individual civilians according to article 51 of AP I enjoy general protection against dangers arising from military operations and the civilians taking up arms against the military becomes legitimate military objective; i.e., actions of Iraqi forces during Operations Iraqi Freedom where Iraq deliberately used civilians to physically shield their operations. Attacks against such installations remain licit in the principle but the "principle of Proportionality" may cause the attacker difficulties during attempt of justifying.

Enemy military aircrafts are lawful military objectives which can be warned at the aerial war zones to make them crash landed. The crew members and the passengers who could save become unlawful combatants and mercenaries. They shall become the prisoners of war (POWs) according to article 4 of GC III. Military aircrafts used against violence are permitted to be attacked even there are civilians on board according to general rule. This doesn't prevent aircraft from being a

military objective and rationale behind this is, those passengers voluntarily run the risk of being shot down. Other enemy public aircraft shouldn't be attacked without early warnings. Such aircrafts are permitted to be attacked only when they escort military aircraft, fly through an aerial zone interdicted by the adversary and take part in hostilities. The planes and helicopters used by the government organs which doesn't make for military tenacities and don't take part in hostilities aren't legitimate military objectives.

### 3. Civilian Objects

The civilian objects are which granted protection from being attacked under any consequence. They are prohibited to fire or to bombard even for the purpose of terrorizing the civilian population unless they take direct part in hostilities. Attacking civilian objects in reprisal is also constrained. The principle of non-combatant military is the logical significance of the fundamental principle of limited warfare. This principle makes the distinction between military and civilian objects. Under "military necessity", the civilian population or individual civilians are not permissible objects to be attacked. The terror attack too has to be considered as grave breaches in the war crimes. The Yugoslav or the Serbian Army has repeatedly made terror attacks on civilian population during war in Croatia in 1991, Soviet warfare in Afghanistan during 1980s, Iraqi attacks with "Scud" missiles on Saudi Arabia and Israeli cities during the Kuwait war in 1991 becomes the recent examples for blatant illegitimate belligerent practices.

Defending the localities building and installations that could be fire or bombard in order to break down active resistance and to eliminate military objectives located; i.e., conquering and destructive fire

bombardments and still should be locally limited to actual resistance and actual military objectives. The civilian population covers "defended localities", comprises legal military objectives but entire city or the village don't become military objective due to mere fact that some combatants with enemy force remain there. The wholesale destruction is permissible only when violence is justified by military necessity to neutralise enemy resistance and to destroy specific military objectives located within that territory.

In advance it's proscribed to attack safety zones and neutralised zones which are designed in the sole purpose of giving shelter to the wounded and sick soldiers and to civilians who hasn't taken part in hostilities referring to article 23 of GC I, article 14 and 15 of GC IV, medical and religious personnel as in article 12 and 15 of AP I, hospital ships in article 22 of GC II, hospitals and related personnel like doctors, nurses as in article 19 of GC I and article 18 and 20 of GC IV, objects indispensable for the serving of the civil population; i.e. production of food stuffs, clothing and drinking water installations with the intension of mala fide to deprive the civilian population of their supply as in article 54 of AP I and article 14 OF AP II any exception from this prohibition would be permissible only on the friendly territory under cogent military necessity according to article 54 of AP I, the coastal life boats and installations as per article 27 of GC II, cultural objects as in article 53 of AP I, aircrafts prohibited by the international law employ for exchange of prisoners and medical aircrafts as per articles 36, 37 of GC I, article 39 of GC II, article 17 of AP I and civilian aircraft where public travel.

The Geneva Conventions I, II, III and IV and the Additional Protocols I and II supported by the customary law identify a series of specifically protected objects against which the use of any

sort of force is restrained. These shouldn't be used as objects to attack, other hand they shouldn't be used by belligerent for hostile purposes in the framework of military operations. Precise localities are declared as the safety zones to provide safe shelters for the wounded and sick, for children and mothers and elderly people, such zones serve as lodging for protected persons but they should forbid from containing any military object. They must be located in areas which all probability isn't relevant for the conduct of hostilities; i.e., neutralised zones around the Anglican Cathedral in port Stanley on the Falkland Islands where it made conclusion between the Argentine and British authorities on 13 June 1982. This becomes an example for such agreement in contemporary practice.

All the Geneva Conventions and the two Additional Protocols refers to an absolute protection for medical and religious personnel, to hospital ships, to religious places like churches, temples and mosques as in articles 19 and 24 of GC I, regarding military hospitals, military medical personnel and chaplain attached to the armed forces, this is extended by articles 12 and 15 of AP I to civilian medical and religious personnel. In non-international armed conflict protection for medical and religious personnel and medical units and transportation means referred as in articles 9 and 11 of AP I. Hospital ships already enjoy this privilege under the Hague Conventions of Hospital Ships of 1904. This proviso is consolidated by article 22 and 35 of GC II. As another argumentative category "protection on the objects indispensable for the survival of the civilian population" has been emerged. In international customary law this isn't recognized in the principle of proportionality and sets boundaries of attacks on such objects where the damage and destruction logically lead to significant grave sufferings for the civilian as a whole or

individually; some common examples are food stuffs, agricultural areas for the production of food, live stocks, drinking water installations like water tanks, supplies and irrigation works. It's restricted even to attack, remove, to destroy or to render useless such objects indispensable for survival of civilians, rendering useless consist acts like deliberately pollution through chemicals or water reservoirs or contamination of the crops by defoliants.

An irrigation channel shall not be destroyed to interrupt agricultural production and due to its importance for the sustenance of civilian population this may be allowed with permission if the irrigation channel is used as defensive position by the militants in occupation and field of crops burst down to clear the area for artillery. Another debatable aspect is installation of electrical power supply installations on concern on the extent that the power supply serves military purposes in maintaining military installations makes it undoubtedly a military objective. The elimination of power supply network can lead to a considerable disruption to civilian infrastructures like drinking water supply and a recent example is Operation Desert Storm in 1991 in Iraq. A significant protection is provided for the cultural objects through Hague Convention on the Protection of Cultural Property in the event of armed conflict and provisions of article 53 of AP I and article 16 of AP II extent it to protective regimes of historical monuments works of art and places of worship which constitute the cultural heritage.

In operation military leaders to have a role to protect civilians. A military leader should verify the military nature of the objective that is to be attacked as in article 57 of AP I, select the means and methods of minimizing the incidental injury and damage to civilian life

and objects, abstain from landing any attack which would be excessive related to concrete military advantage anticipated, give advance warning for the civilian population, select the military objectives with least military incidental damage, should take feasible precaution in attacking apply equally to the operations of UCAVs, missile attacks and remotely controlled weapons. Attacks against the military objectives should be conducted in manner where maximum precaution will be taken to protect civilian population complying with article 1 of AP I. operations which may affect the civilian population shall be preceded by an effective warning unless situations don't allow.

#### 4. Conclusion

It's clear that in general view, military objectives and civil objects seems to have very significant distinctive features but in-depth analysis it's proved that there is only a delicate distinction between military objectives and civilian objects in conclusion. Application of International Humanitarian Law (IHL) to the problematic circumstances dealing with the military objectives and civil objects should be done in a sensible manner in accordance with the application of principle of proportionality, military advantage, military necessity, distinction, precautions, limitations in warfare supplemented with Geneva Convention I, II, III and IV , Additional Protocols I and II to the conventions and related conventions such as Hague Conventions, Petersburg Declaration of 1868, Rome Statute ICC of 1998 and Ottawa Treaty of 1997 and the recent cases such as Operation Desert Storm, Iraqi Freedom Operation, Serbian, Taliban and ISIS attacks and application of Humanitarian Law on the situations with the opinions from ICRC

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#### Author Biography



I am a LLB graduate. I have done my Masters in Social Work and a Diploma in Human Rights. I am currently reading for my MSc in Clinical and Counselling Psychology and MSc in International Relations at John Moore's University. I am interested in research areas such International Humanitarian Law and Defence and Strategic Studies. I am currently serving as a Counter-Terrorism Analyst in an institution affiliated to government sector. I have been awarded with several awards as a delegate in Model United Nations Conferences.