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Analysis of the Extent of Protection Accorded to Civilians, Civilian Populations, and Civilian Objects by International Humanitarian Law in Armed Conflicts

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Protecting civilians, civilian populations, civilian objects, and other persons who do not actively participate in hostilities is a cornerstone of International Humanitarian Law. The 1949 Geneva Conventions and the 1977 Additional Protocols I and II constitute an international humanitarian legal framework for protecting civilians, civilian populations and civilian objects during armed conflicts. Facts have it that civilians, civilian populations, and persons who no longer take an active part in warfare are the ones who suffer the most from the effects of war. International Humanitarian law seeks to ensure that civilians and civilian populations are not subjected to attacks, actual violence, or threats of violence during armed conflicts of international and non-international nature. This Article analyzes the extent to which civilians, civilian populations, and civilian objects are protected by International Humanitarian Law whereby more specifically, the author analyzes relevant provisions of Geneva Convention IV Relative to the protection of Civilian Persons in Time of War of 1949, Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, of 1977, and Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, of 1977 and finally recommends inter alia that international humanitarian law should develop a new body of Law to protect innocent civilians following the emerging global war on terrorism owing to increased difficulties of distinguishing terrorists from civilians.

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INTRODUCTION

In contemporary armed conflicts, innocent civilian constitutes an overwhelming majority of victims and have, at times, been deliberately targeted. For over sixty years, civilians have, to a large extent, been victimized by armed conflicts worldwide. Persons who are highly exposed to risks include women and children, who are often killed, raped, sexually abused, kidnapped, and enslaved whereby at times children are forced to be soldiers.¹ Equally, the displaced persons add up to the category of the vulnerable persons who are equally mistreated.²

Protecting civilians during war is founded on the universally accepted rules of International Humanitarian Law.³ It is therefore a central concern of International Humanitarian Law. Such a protection guaranteed by the same extends to their public and private properties.

This article aims to analyze the extent to which International Humanitarian Law protect civilians, civilian populations and civilian objects during war time. Specifically, the author analyzes relevant provisions of Geneva Convention IV Relative to the protection of Civilian Persons in Time of War of 1949, Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, of 1977, and Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, of 1977.

Definition of Key Terms

Civilians and Civilian Populations Defined

The initial endeavours to explain the meaning of civilians came in place in 1977 with enactment of Article 50 of Additional Protocol I and Article 4

(A) of the Third Geneva Convention and Article 43 of the first Additional Protocol). Article 50 (1) refrains from directly defining civilians, instead defines them negatively.

Basically, Civilians are all persons who are not combatants. To be exact, precise and more specific, Civilians are persons who are not members of the armed forces of the party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces, members of other militias, and members of other volunteer corps, such as organized resistance movements belonging to a party to a conflict in or outside their territorial borders, even though the territory is under occupation, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the four conditions of combatancy i.e. such militias, volunteer corps or, organized resistance movements are commanded by a person bearing responsibility for his subordinates, have a fixed recognisable distinct sign from a distance, carry arms openly, and they conduct their operations in accordance with laws and customs of war). Furthermore, it includes inhabitants of a non-occupied territory who having been approached by an enemy took up arms to resist the invasion without organizing themselves into regular armed units as far as they carry arms openly and respect laws and customs of war. The herein above combatants have a right to be conferred with qualify prisoner of war status upon capture. On the other hand whosoever is not a combatant is a civilian. Whenever it is doubtful as to whether a person is a civilian or combatant that particular person shall be deemed to be a civilian.⁴

¹ Protecting civilians in armed conflict available at [globalsolution.org](https://www.globalsolution.org).

² Civilian protection under international law overview available at www.icrc.org/war-and-law/protectedpersons/civilians/overview/civilians-protection.htm.

³ www.securitycouncilreport.org.

⁴ McDonald A., (2004) the challenges to international humanitarian law and the principle of distinction and protection from increased participation of civilians in hostilities available at www.asser.org.

Part IV of Protocol I Additional to the Geneva Conventions,⁵ defines the terms civilian and civilian population as follows.

Article 50⁶ defines a civilian as:

'Any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1)(2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian shall be considered to be a civilian'.

Persons referred to in Article 4 (A) (1), (2), (3), and (6) of the third Geneva Convention are members of armed forces, members of the military and volunteer corps, members of regular armed forces, and members of organized resistance movements.⁷

Article 43⁸ mentions armed forces as including all organized armed forces, groups, and units under command and responsible for the conduct of their subordinates.⁹

The civilian population comprises all persons who are civilians, as per Article 50 (2).¹⁰

For the purposes of the principle of distinction, only the persons who do not continuously conduct hostilities on behalf of the parties to the conflict or who do so on a temporary basis are deemed civilians entitled to protection under the Geneva Conventions.

Origin of Civilian Protection under International Humanitarian Law

Initiatives towards the protection of war victims dates back as victims themselves. The efforts emerged in antiquity and the middle ages in all continents.¹¹ Early international humanitarian

instruments adopted to protect combatants wounded on the battlefield were as a result of efforts of Henry Dunant, a Swiss, who, after a battle of Solferino, having witnessed the dead bodies and wounded civilians lying helpless took action to support the formation of voluntary groups or societies that could be trained in times of peace to care for the wounded in war time. He also called upon states to contract an international instrument to protect the wounded.¹²

The first 1864 Geneva Convention went through revisions in 1906 and again in 1929 when a new Convention related to treating prisoners of war was adopted. However, noteworthy is the Convention to protect the civilian population. The Draft of this Convention was presented by International Committee of the Red Cross (ICRC) to the XVth International Red Cross Conference held in Tokyo in 1934. It was expected that the Committee that the draft Convention would be adopted in 1940. Notwithstanding, the beginning of the Second World War in September 1939 changed all that was expected. ICRC's call upon states to apply the Tokyo draft based on reciprocity but the attempt unsuccessful. Civilians remained without appropriate protection during the Second World War.¹³

In the aftermath of the Second World War, four Geneva Conventions were adopted in 1949, supplemented by 1977 two additional protocols. The Geneva Conventions have a few provisions which deal with the general protection of civilians and civilian populations against the effect of hostilities.¹⁴

Before 1949, the Geneva Conventions protected the wounded, the sick, the shipwrecked, and

⁵ Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of International armed conflict.

⁶ See note 5 above.

⁷ Article 4 (A) (1), (2), (3), (4), (6) of the Third Geneva Convention Relative to the Treatment of Prisoners of war and Article 43 of Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of International armed conflict.

⁸ See note 6 above.

⁹ Article 43 note 7 above.

¹⁰ See note 10 above.

¹¹ Geneva Conventions and the Protection of victims of war available www.enote.com/geneva-convention-protection-war-reference/Geneva-conventions-protection-victims-war.

¹² See note 12 above.

¹³ Solf W.A., Protection of civilians against the effects of hostilities under customary international law and under protocol I available at www.avilr.org/pdf_

¹⁴ Geneva Convention and the protection of victims of war available at www.enotes.com/geneva_conventions_protection_victims_war_reference/Geneva_conventions_protection_victims_war.

captured combatants. The Geneva Conventions recognized the changes in the nature of hostilities and created legal protection for all persons who do not form part of armed forces or armed groups. Such protection accorded to civilians also covers civilian property. This protection was later reinforced by adopting the additional protocols to the Geneva Convention in 1977.¹⁵

International Humanitarian Law is the natural result of centuries of warfare, as a result of which the rules and customs applicable in regulating the conduct of armed conflicts have emerged. This development was driven by soldiers who understood that violence and destruction, exceeding actual military necessity, are wasteful of some scarce resources. On top of that, they are counter-productive to reaching the political goals for which military forces are established.¹⁶

In recent armed conflicts, innocent civilians often make up an overwhelming majority of violence and have, at times, been subject to intentional attacks. The most vulnerable groups of people who are at greater risk are women and children (who are taken and forced to become soldiers), who are often killed, raped, sexually harassed, kidnapped, enslaved.¹⁷

Protecting civilians in situations of hostilities has come to be a central purpose of many contemporary peacekeeping operations. In general, it is evident that both civilians and military peacekeepers understand the moral duty as well as operational significance of protecting civilians and civilian populations when conducting their duties in peacekeeping missions. Following the increased number, frequency, size and mandate of peacekeeping missions the United Nations has tried putting civilians' protection at the centre of these operations.

As such, International humanitarian Law holds that civilians who find themselves under the hands of enemy forces must be treated with humanity in all situations without discrimination

of any kind whatsoever. They must be protected against all forms of violence and degrading treatment, including murder and torture. Moreover, they are entitled to a fair trial, affording all essential judiciary guarantees in case of prosecutions.¹⁸

Protection of civilians in armed conflicts as contained in International Instruments

At this juncture, the author analyzes protection accorded to civilians by the Geneva Conventions, in particular, the Geneva Convention IV Relative to the Protection of Civilian Persons in times of war of 1949, Protocol Additional to the Geneva Conventions relating to the protection of victims of International Armed Conflict of 1977, Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed conflicts of 1977 commonly referred to as the fourth Geneva Convention, Additional Protocol I and Additional Protocol II respectively.

Convention IV Relative to the Protection of Civilian Persons in Time of War of 1949

This Convention, which was adopted on August 12, 1949, defines humanitarian protection for civilians in war zones and outlaws the practice of total war. Part II of the Convention incorporates provisions for the general protection of civilian populations against some negative effects of war. It extends protection to the whole of the countries' populations in conflict, without discrimination on grounds of race, nationality, religion, or political opinion, and is intended to eliminate the suffering caused by war to mankind.¹⁹

Geneva Convention IV provides for establishment of hospitals and safe sanctuaries before and after the eruption of hostilities within their territories or in the occupied areas to protect certain classes of civilians. Article 14²⁰ reads:

'In time of peace, the High contracting parties and, after the outbreak of hostilities, the parties thereto, may establish in their own territory and, if the need arises, in occupied

¹⁵ See note 15 above.

¹⁶ Solf W.A., note 14 above.

¹⁷ See note 2 above.

¹⁸ See note 18 above.

¹⁹ Article 13 of the Fourth Geneva Convention.

²⁰ The fourth Geneva Convention of 1949.

areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick, and aged persons, children under fifteen, expectant mothers and mothers of children under seven'.

These zones may be established by a solitary action, which can later be mutually recognized by an agreement.²¹

Article 15 of the Convention provides for establishing neutralized zones in areas where fighting occurs. These zones serve as sanctuaries for the wounded and the sick and a few civilians who take no part in hostilities and who, even though they reside in combat zones, do not associate themselves with any activity of a military nature. The Convention speaks for itself that:

*'Any party to the conflict may, either direct or through a neutral state or some humanitarian organization, propose to the adverse party, to establish in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons without distinction, wounded and sick...or noncombatants, and civilian persons who take no part in hostilities and who while they reside in the zones performing no work of military character.'*²² (Emphasis by author)

The Convention goes further to guarantee the right to exchange family news of personal kind as per Article 25 of the Convention, which makes it clear that when the territory of a contracting party is occupied the occupying territory shall enable all persons to give and receive information of personal nature back and forth family members.

In all circumstances, protected persons are entitled to respect for their persons, their honour, family rights, religious convictions, and practices of manners and customs. Moreover, the law requires that they should always be treated humanely, and protected accordingly, in respect of all acts of violence or threats, insults, and public curiosity. More specifically, women are entitled to protection against attacks on their

honour, including protection against rape, forced prostitution, or any form of indecent assault.²³

Without prejudice to their state of health, age, and sex, all protected persons are at all times entitled to treatment with the same consideration by the party to the conflict in whose power they are, without discrimination of any kind whatsoever on grounds of race, religion, or political opinion. However, conflicting parties may take such measures of control and security concerning protected persons as may be necessary as a natural result of the war.²⁴

International Humanitarian Law not only protect civilians from attacks by the enemy state but also prevent the use of civilians to shield military objects. Article 28 of the Convention provides that an area may not be immune from attacks by the presence of protected persons.

On top of that, protested persons are immune from collective punishments, pillage (that is, looting or plundering, especially during war and reprisals (An intentional violation of international Law as retaliation to punish a state that has already broken them) as well as being punished for acts which they have not personally committed. Article 33 of the

Geneva Convention IV stipulates that:

*'No protected person may be punished for an offence he or she has not personally committed Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.'*²⁵

Additional Protocol I relating to The Protection of Victims of International Armed Conflicts of 1977

Protocol I reaffirms and supports the customary principle prohibiting attacks on civilians and civilian objects and requires that distinctions be made between military and civilian objectives. It also requires that the armed forces commanders

²¹ Solf W.A note 17 above.

²² Article 15 (a) and (b) see note 21 above.

²³ Article 27 see note 23 above.

²⁴ See note 24 above.

²⁵ Article 33 note 25 above.

take precautions to avoid excessive damage to civilians and civilian property over the anticipated military advantage.²⁶

This Protocol apply to all land, air, or sea warfare affecting civilian populations, individual civilians, or civilian objects on land. Moreover, it covers all attacks from the sea or the air against objectives on land without prejudice to the rules of customary or international Law applicable in armed conflict at sea or in the air.

The provisions of Additional Protocol 1 are additional to the rules relating to humanitarian protection enshrined in part II of the Fourth Geneva Convention, other international agreements between state parties, and other rules of international Law dealing with the protection of civilians and civilian objects on land, at sea or in the air against the effects of warfare.²⁷

Civilian population and individual civilians are entitled to protection against consequences of military operations. To achieve this, rules which are additional to other applicable rules of international Law are to be followed and respected in all situations, viz, that civilian population and individual civilians, shall not be the object of attack, that acts, or threats of violence, whose main purpose is to spread horror among the civilian population are declared unlawful as per Article 51 (1) and (2) of the Additional Protocol I to the Geneva Conventions.

The Protocol further bans indiscriminate attacks. It speaks for itself under Article 51 (4) unequivocally that:

Indiscriminate attacks are prohibited. Indiscriminate attacks are, those which are not directed at the specific military objectives, those which employ a method or means of combat which cannot be directed at a specific military objective, or those which employ a method or means of combat the effects of

which cannot be limited as required by this Protocol, and consequently, in each such case are of a nature to strike military objectives and civilians or civilian objects without distinction.' (Emphasis by aythor)

Indiscriminate attacks may be *inter alia* attacks by bombardment or by any methods or means that treats as a single military objective several clearly separated and distinct military objectives located in a city, town, village, or other area containing a similar concentration of civilians or civilians objects, and an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.²⁸

Under this Protocol, civilian objects are exempted from being target of attacks or reprisals, which shall only be limited to military objectives. This means that whereas civilian objects remain unlawful objects of attack, military objectives are the lawful objects to be targeted. Article 52²⁹ stipulates clearly that:

'Civilian object shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2'.

Attacks are confined to military objectives. In so far as objects are concerned, military objectives entails objects by whose nature, location, purpose, or use significantly contribute to military action and whereby its total or partial destruction, capture, or neutralization, in the prevailing circumstances at the time, offers a definite military advantage. Wherever it is doubtful as to whether an object normally used for civilian purposes is used to contribute to military action effectively, the presumption is that it is not so used.³⁰

International Humanitarian Law also accords protection to cultural objects, places of worship,³¹

²⁶ Additional Protocol I see note 9 above.

²⁷ See note 27 above.

²⁸ Article 51 (5) (a) and (b) see note 28 above.

²⁹ See note 28 above.

³⁰ Article 52 (1) – (3) note 30 above.

³¹ Article 53 note 31 above reads ‘ Without prejudice to the provisions of the Hague Convention for the protection of cultural property in the event of Armed conflict of 14 May 1954, and of other relevant international instruments, it is prohibited (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship

objects indispensable for the survival of civilian population,³² natural environment,³³ as well as works, and installations containing dangerous forces.³⁴

Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts of 1977

This Protocol develops and supplements Article 3, common to the Geneva Conventions, without modifying its existing application conditions. It applies to all armed conflicts that are not covered by Article 1 of the Protocol Additional to the Geneva Conventions relating to the protection of victims of international Armed conflicts (Protocol I) which occur in the territory of state parties between its armed forces and dissident armed forces or other organized armed groups, which under responsible command, exercise such control over a party of its territory.³⁵

The Protocol also imposes an obligation for humane treatment to civilians without discrimination of any kind whatsoever. Article 4 (1)³⁶ spells that:

'Persons who do not participate directly and those who participate no more in hostilities or who have ceased to take, whether or not their liberty has been restricted, are entitled to respect to their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It

is prohibited to order that there shall be no survivors'.

It is not permitted for civilians to be exposed to acts of violence to life, health, physical or mental wellbeing, including murder, cruel treatment such as torture, mutilation, and corporal punishment, as well as acts of collective punishments, taking of hostages, terrorism, outrages upon personal dignity, slavery, pillage, and threats to commit any of the above.³⁷

Important International Humanitarian Law Principles for the Protection of Civilians, Civilian Populations, and Civilian Objects

At this juncture, the author discusses essential international humanitarian law principles dedicated to protecting civilians, civilian populations, and civilian objects. The author discusses protection accorded to civilians' civilian populations and civilian objects by the principle of distinction, precautionary principle, proportionality principle, and the principle of military necessity.

The Principle of Distinction

The principle of distinction is one of the fundamental principle of international humanitarian Law rests.³⁸ This principle of customary International Humanitarian Law holds that parties to hostilities must always distinguish between civilians and combatants and between civilian

which constitute the cultural or spiritual heritage of peoples, (b) to use such objects in support of the military effort, (c) to make such objects the object of reprisals.

³² Article 54 (1) note 32 above spells 'Starvation of civilians as a method of warfare is prohibited.

(2) It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food- stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether , in order to starve out civilians to cause them to move away or for any other motive.'

³³ Article 55 (1) note 33 above stipulate that, 'Care shall be taken in warfare to protect the natural environment against wide-spread long-term and severe damage. This protection includes a prohibition of the use of methods of warfare which

are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population'.

³⁴ Article 56 (1) note 34 above states 'Works or installations containing dangerous forces namely dams, dykes, and nuclear electrical generating stations, shall not be made the object of attack, even if these objects are military objectives located at or in the vicinity of these works or installations shall not be made the object of attack if such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population'.

³⁵ Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflict 1977.

³⁶ See note 36 above.

³⁷ Article 4 (2) (a) –(h) note 37 above.

³⁸ McDonald A., (2004 note 4 above.

objects and military objectives during armed conflict.³⁹

Hostile states have an obligation at all times to make a distinction between civilians and combatants. Attacks are lawful only when directed towards and against military personnel. As opposed to this, attacks are unlawful when directed towards civilians.⁴⁰

State practice establishes this rule as a customary international law norm which is applicable to both international and non-international armed conflicts. The term combatant as used in this rule refers to persons who do not enjoy the protection against attack accorded to civilians but does not imply a right to combatant status or prisoner of war status. This rule has to be read together with the prohibition to attack persons recognized as *hors de combat*⁴¹ as well as with the rule that civilians are entitled to protection against attacks unless at the material time directly participate in hostilities.⁴²

To avoid attacking civilians and civilian populations during hostilities and their effects, it is crucial at this point to make it clear who and what may be attacked. The first rule regarding attacks (by acts of violence) is that, the objective which has to be attacked must be a military objective. However, even though a military objective is a target of attack, the attack becomes unlawful if excessive collateral damage affecting civilians or civilian objects is expected.⁴³ In other words, this is to say that even where a lawful object is subject of attack an enemy state must ensure that civilians are not victimized by such an attack directed towards a lawful object.

The principle of distinction was expressed as early as 1868 in the St. Petersburg Declaration that the only legitimate object which states should

endeavour to accomplish during war is to weaken the military forces of the enemy'.

This is to mean that, military necessity is not a *carte blanche* for direct attacks on civilians or civilian objects. Respecting this principle makes it possible for humanitarian Law to fulfil its ends of protecting civilians, civilian populations and civilian objects from the consequences of armed conflict.

Watkins argues that the capability of combatants to plan and execute their operations and protect the state, as well as the ability of the international community to render them answerable for failure, depends on the clarity and relevance of the distinction principle.⁴⁴

Many ancient cultures had rules concerning the conduct of hostilities. As these rules evolved through time and culture, their focus was to protect those engaged in hostilities, and they were acceptable only if they provided some military advantage or fulfilled some military purpose. For example, as early as the 5th century B.C., Sun Tzu wrote,

*"Treat the captives well, and care for them... Generally, in war the best policy is to take a state intact; to ruin it is inferior to this. Sun Tzu's apparent concern for captives and enemy property and persons was not born from a humanitarian desire to preserve his adversary but as part of the overall goal to conquer that enemy."*⁴⁵

Several key provisions of the Hague Regulations annexed to the 1907 Fourth Hague Convention, the 1949 Geneva Convention, and their Additional Protocols of 1977 enshrined the principle of distinction between civilian objects and military objectives. Article 25 of the Hague Regulations prohibits the attack or bombardment, by any means whatsoever, of towns, villages,

³⁹ Sassoli M., Legitimate targets of attacks under international humanitarian law available at www.hpcresearch.org

⁴⁰ Henckaerts J., & Beck L.D., (2005) Customary international humanitarian law, volume I at p/3.

⁴¹ Persons who can no longer participate actively in hostilities by reasons of wounds or illness.

⁴² See note 42 above.

⁴³ See note 43 above.

⁴⁴ Mc Donald A note 11 above.

⁴⁵ Jensen E.T., The ICJ's Uganda v. Kenya: A barrier to the principle of distinction and an entry point for lawfare available at www.law.du.edu/documents/.

dwellings, or buildings that are undefended. Article 27 states categorically that:

'In sieges and bombardments all necessary steps must be taken to avoid damage to civilians, as far as possible, buildings used for religion activities, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, especially when they are not used for military purposes'.

The principle that any military object can be attacked is because, while a conflict aims to prevail politically, acts of violence for that purpose may only aim to overcome the military forces of the adverse party. Violence against persons or objects of political, economic, or psychological importance may sometimes be more efficient to overcome the enemy but is not necessary because every adverse party can be overcome by weakening sufficiently when its armed neutralized, even the politically, psychologically or economically strongest enemy can exist no more.⁴⁶

There are such objects that may be used to serve military as well as civilian purposes (normally referred to as dual-use especially in times of war), such as communication facilities, transport, and power facilities. For example, roads used by civilians may be used to transport military weapons and electric plants which generate power for both military and civilian purposes. Can these be objects of attack? Marco Sassoli speaks for himself that:

*'When an object is used for both military and civilian purposes may be held that even a secondary use turns it into a military objective. However, if the effects on the civilian use of the object imply excessive damage to civilians an attack to such a dual use object may nevertheless be unlawful under the proportionality rule'.*⁴⁷

Generally speaking, military objects are legitimate targets of attack.

A civilian object means anything which is not a military objective (that is, objects that by their nature, creation, purpose, or use make an objective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances existing at the time offers a definite military advantage. Civilian objects should not be objects of attack or reprisals.⁴⁸

This principle applies both in international and non-international armed conflicts. Article 13 (2) of Additional Protocol II of 1977, relating to the protection of victims of non-international armed conflict of 1977, prohibits attacks directed towards individual civilians and civilian populations. On the other hand, threats and actual acts of violence which aim at terrifying civilians are declared unlawful when aimed at spreading terror among civilians.⁴⁹

The same prohibition is accorded to civilians as such by the Rome Statute of 1998 establishing the International Criminal Court. In unequivocal terms, it prohibits deliberate attacks against civilians. The wording of the Statute of the International Criminal Court criminalizes the herein-mentioned acts if they are done deliberately. This is to mean that one may not be held liable for accidental attacks on civilian populations, individual civilians or civilian property. Article 8 (2) (b)⁵⁰

'Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following: Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in

⁴⁶ Sassoli M., note 40 above.

⁴⁷ See note 47 above.

⁴⁸ www.enote.com.geneva_onventions_protections_victims_war.

⁴⁹ Article 13 (2) note 38 above.

⁵⁰ The Statute of the international Criminal Court of 1998.

accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; Attacking or bombardment, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives.' (Emphasis by author)

The Principle of Proportionality

The principle of proportionality which is enshrined in Article 51 (5) (b) of the Additional Protocol I, is another basic principle protecting civilians during armed conflicts. It states that, even though there may be a military target, it is unlawful to attack it if it may seem that the harm to civilians or civilian property or to civilians and civilian property altogether is excessive to the expected military advantage. This entails that, in effecting an attack to a military target the harm caused to civilians or civilian property must be proportional and not excessive of the direct military advantage anticipated.⁵¹ Article 51 (5) (b)⁵² spells that:

'An attack which may be expected to cause incidental loss of civilian life, to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'. (Emphasis by author)

To the contrary, civilian deaths may not be unlawful provided that the said deaths or injury to civilian properties is proportional and not excessive of the military advantage expected. This stand also seems to be recognized by the International Criminal Court. Moreno Ocampo, the former prosecutor of the International

Criminal Court when the United States invaded Iraq, wrote:

*'Under international humanitarian Law and the Rome Statute, the death of civilians during an armed conflict, no matter how grave and regrettable, does not in itself constitute a war crime. International humanitarian Law and the Rome Statute permit belligerents to carry out proportionate attacks against military objectives, even when it is known that some civilian deaths or injuries will occur. A crime occurs if there is an intentional attack directed against civilians (principle of distinction) (Article 8(2)(b)(i)) or an attack is launched on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage (principle of proportionality) (Article 8(2)(b)(iv)).'*⁵³

The Precautionary Principle

This is another principle that, together with other principles herein discussed, makes International Humanitarian Law complete. Chapter IV of Additional Protocol II incorporates this principle, which requires that in military operations, constant care must be taken to spare the civilian population, individual civilians, and civilian objects.⁵⁴

The principle dictates that precaution has to be taken by the planners of attacks by doing everything practicable to substantiate that the objectives to be attacked are not civilians, civilian populations or civilian objects and are not conferred with special protection but are purely military objectives within the meaning of paragraph 2 of Article 52 and that the provisions of this Protocol do not prohibit them to be attacked. They are also obliged to take all necessary precautions in the choice and methods of attack to avoid adverse consequences to civilians, civilian populations and civilian objects such as reducing incidental loss of civilian life, injury to civilians and damage to civilian objects, or desist from executing any attack which is

⁵¹ The principle of proportionality available at www.diakonia.se.

⁵² See note 35 above.

⁵³ Annexe 10, International Criminal Court available at icc-cpi.int/sites/default/files/Relatedrecords.

⁵⁴ Article 57 note 50 above.

anticipated to result to loss of civilian life, injury to civilian objective, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage expected.⁵⁵

It is declared expressly that an attack has to be cancelled or suspended if it is obvious that the objective is not a military objective or is that which enjoys special protection in International Humanitarian Law or may cause harm to civilians, civilian populations and civilian property. Article 57 (2) (b)⁵⁶ reads:

'An attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'.

The Principle of Military Necessity

Just like the other two principles discussed above, the principle of military necessity is significant in International Humanitarian Law. It commands that in case of attack against military objectives, such an attack must aim to confer an attacking state with a military advantage over an enemy state. On top of that, in case of any injury to civilians and their belongings, the same shall be proportional and not excessive of the expected military advantage. This is to say that no matter how grave the effects on civilians may seem, if the attack was necessary and can be deemed proportional to the adverse impacts on civilians and civilian population, the same cannot constitute a war crime.⁵⁷

However, the principle of necessity seems to be abused by parties to armed conflicts in that it has been used as a justification for violating strict rules of International Humanitarian Law. Schmitt (2005), states that:

'The premise that military necessity can justify departure from the strict rules of international humanitarian Law finds its roots in the Germany nineteenth century doctrine kriegstaison geht kriegsmanier (necessity in war overrules the manner of warfare). Prior to World War I various German writers argued that extreme necessity could deprive the laws of their binding force. Specifically, this elevation of necessity over legal norms was justified when the sole means of avoiding severe danger was to avoid the war or when compliance with the Law might jeopardize the conflict's ultimate objective'.

Despite such a position, in contemporary International Humanitarian Law, where the principle of civilian protection lies at the heart of it, it finds no place. The protection of civilians cannot be abused in the name of military necessity. Attacking civilians on the pretext of military necessity is contrary to the rules of International Humanitarian Law. States are generally obliged to balance between military necessity and humanity.

The 1863 Lieber Code was the first instrument to incorporate the principle of military necessity. The Code's three articles on military necessity provided the touchstone for the subsequent principle development.⁵⁸ Article 14⁵⁹ reads:

'Military necessity as understood by modern civilized nations consist in the necessity of those measures which are indispensable for securing the ends of the war and which are lawful according to the modern law and usages of war'.

The rule permits direct damage to the life, hand, or limb of armed enemies and other damage to people, which are collateral and inevitable in the event of war.⁶⁰ Notwithstanding, those fighting against other fighters are still responsible to their fellow fighters and God. Generally speaking, with this principle, one can safely conclude that it does not permit acts of cruelty or cause others to suffer

⁵⁵ Article 57 (2) note 56 above.

⁵⁶ Article 57 see note 56 above.

⁵⁷ Schmitt M.A., (2010) Virginia journal of international law, military necessity, and humanity in international: preserving the delicate balance available at www.vjil.org.

⁵⁸ Schmitt M.A., note 58 above.

⁵⁹ Lieber Code of 1863.

⁶⁰ Article 15 note 59 above.

as retaliation. It should in no way be construed to mean any acts in the conduct of war which can render the move to return to peace a difficult thing.⁶¹

The Fourth Geneva Convention of 1949 totally prohibits the acts of occupying territory to destroy real properties belonging to individuals or government unless it is of absolute necessity militarily to do so. Article 53⁶² provides that:

'Any destruction by the occupying power of real or personal property belonging individually or collectively to private persons or to the State or to other public authorities or to social or cooperative organizations is prohibited except where such destruction is rendered absolutely necessary by military operations'.

Analysis of the extent of protection accorded to civilians by International Humanitarian Law

From the herein above discussion, it is evident that civilians, civilian populations, and civilian objects are absolutely immune from deliberate attacks and all deliberate acts or threats of violence so far as a civilian or civilian population does not participate actively in hostilities. This entails that International Humanitarian Law outlaws deliberate attacks on civilians unless such an attack is collateral or incidental and proportional to the military advantage anticipated as well as facilitated by military necessity.

Furthermore, International Humanitarian Law (Geneva Convention IV specifically) protects civilians, civilian populations and objects, even states that are not party to it. This is to say that even if a state is not party to the Convention, its citizens can enjoy the protection should the state in question accept and apply the provisions of the Convention.

Again, International Humanitarian Law requires high contracting parties to enter into reciprocal arrangements for further protection accorded to civilians, civilian populations, and objects. At the same time, it is prohibited for the states to make

such arrangements to derogate from the protection already accorded to civilians, civilian populations, and civilian objects.

On the other hand, it is also learnt that civilians, civilian populations, and civilian objects enjoy absolute protection in the sense that International Humanitarian Law forbids attacks where there is a likelihood that damage to civilians and civilian objects may not be proportional or maybe more than the military advantage anticipated. This entails that if a military attack leads to civilian deaths and damage to civilian property when measured with respect to the military advantage anticipated, then it follows, therefore, that such an attack is unlawful. In other way round, this is to say that even when a lawful object is subject to attack, an enemy state must ensure that civilians are not victimized by such an attack directed towards a lawful object.

Albeit such an absolute protection accorded to civilians, civilian populations and civilian objects, as explained in the preceding paragraphs, the principle of military necessity seem to derogate and water down such protection accorded by International Humanitarian Law by which states are allowed to attack where such an attack may cause injury to civilian property but is of military necessity to do so. Notwithstanding the permission, the permitting Article echoes the absoluteness of the protection accorded to civilians and civilian objects. Article 53⁶³ states that, 'Any destruction by the occupying power of real or personal property belonging individually or collectively to private persons, or the state or to other public authorities, or to social or cooperative organizations, is prohibited except where such destruction is rendered necessary by military operations.'

International Humanitarian Law Principle of distinction guarantees civilians maximum protection by the law by obligating states to always distinguish between civilian and military objectives. It is difficult to apply in contemporary armed conflicts due to the proximity of civilians

⁶¹ Article 16 note 60 above.

⁶² See Article 3 of the Fourth Geneva Convention of 1949.

⁶³ Article 53 see note 63 above.

to military operations and their increased assumption of traditional military functions, leading to confusion regarding applying the principle of distinction. Historically, civilians have often participated to the war effort, such as in production of armaments or by providing economic, political, and administrative support. However, they did not take part at the battlefield save for a few civilians who were involved in military operations. Contemporarily, due to changes in the nature and arena of armed conflicts, more and more civilians find themselves involved in armed hostilities.

One can safely conclude that the protection of civilians and civilian population is absolute as far as the civilians do not take an active participation in an armed conflict. This is to say, civilians cease to enjoy protection under the Geneva Conventions when they actively participate in hostilities. Civilians are deemed to take a direct part in hostilities and consequently lose their protection at the time when they perform acts which in their nature aim at supporting a party to the conflict as a result of which the other party is harmed by directly killing, injuring, or destroying or harming the other part's military operations and or fighting capacity.⁶⁴ In an event where a civilian participates directly in hostilities, he waives his right to absolute protection from attacks and becomes a legitimate object of attack.

It should be noted that, civilians who have waived their immunity by directly involving themselves in hostilities lose protection against direct attack for the duration of each specific act amounting to direct participation in hostilities. This includes any preparation and geographical deployment or withdrawals constituting an integral part of a hostile act.

Therefore, the contemporary challenge of International Humanitarian Law is to provide clear criteria for the distinction between peaceful civilians and civilians who directly participate in hostilities.⁶⁵ It is essential to distinguish between state armed forces or organized armed groups

(whose function is to conduct hostility on behalf of the party to an armed conflict) and civilians (who do not directly participate in hostility or who do so merely in a spontaneous, sporadic, or unorganized way). According to the ICRC Interpretive Guidance, all members who are not members of state armed forces or organized armed groups belonging to the party to an armed conflict are civilians and, therefore, are protected against direct attack unless and for such time they directly participate in hostilities.⁶⁶

Recalling the words of Moreno Ocampo, who wrote:

'Under international humanitarian Law and the Rome Statute, the death of civilians during an armed conflict, no matter how grave and regrettable, does not in itself constitute a war crime. International humanitarian Law and the Rome Statute permit belligerents to carry out proportionate attacks against military objectives, even when it is known that some civilian deaths or injuries will occur. A crime occurs if there is an intentional attack directed against civilians (principle of distinction) (Article 8(2)(b)(i)) or an attack is launched on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage (principle of proportionality) (Article 8(2)(b)(iv)).'

CONCLUSION

The purpose of this Article was to analyze the extent to which civilians, civilian populations and civilian objects are protected by the International Humanitarian Law whereby, more specifically, the author analyzed relevant provisions of Geneva Convention IV Relative to the protection of Civilian Persons in Time of War of 1949, Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, of 1977, and Additional Protocol II relating to the Protection of Victims of armed forces on-International Armed Conflicts, of 1977 and arrived to the conclusion that generally speaking International humanitarian Law as we know it

⁶⁴ As above.

⁶⁵ See note 59 above.

⁶⁶ Note 60 above.

today accords absolute protection not only to individual civilians and civilian population but also to civilian properties. Derogation to these strict rules of protection of civilians is only justifiable in exceptional circumstances, as explained hereinabove.

Notwithstanding such absolute protection derogate only in exceptional circumstances, there are various challenges to this protection due to the increased involvement of civilians in hostilities as well as the emergence of other types of conflicts which do not fall in either category of internationally recognized types of armed conflicts namely international and non-international armed conflicts. For example, the war on terror has subjected individual civilians and civilian populations to be direct targets of attack.

This issue is further worsened by the fact that terrorists are not in an armed conflict in its real sense rather, they conduct their terrorists' operations normally amidst and against civilians, and it is difficult to make a distinction between them and protected civilians since they do not wear uniforms.

Having seen the above challenges to civilian protection, the author is of the view that it is high time now that a different body of Law should be developed to regulate war on terror specifically to protect innocent civilians who fall outside the purview of International Humanitarian Law and who find themselves having no protection in International Humanitarian Law.

The author proposes that, to ensure absolute and maximum protection for civilians, civilian populations, and civilian objects, International Humanitarian Law should do away with rules that permit states to derogate from absolute protection in the name of military necessity or proportionality.

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