

Principles of international law governing legitimate military objectives

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Abstract

The direct military attacks in international armed conflicts may be against military targets and civilian objects alike, and so these attacks are legitimate, so do not result in an international responsibility, must be directed to the legitimate military targets without objects and civilian objects, and then may ask international law two conditions in these goals even can be counted legitimate military objectives may strikes her, the two effective contribution to military action, and to achieve a definite military advantage when directing attacks against it, and most of the development of international humanitarian law legal principles that limit the persistence of hostile forces to strike and attack targets and objects without distinction, so as not to attack these targets, damage to civilians and civilian objects, and perhaps the most prominent of these principles, the principle of distinction, which requires the distinction between civilians and combatants and between civilian objects and military dignitaries, and the principle of proportionality between the generated feature or desired investigation of the attack and damage and its expected on civilians and the environment

Introduction:

The rules of international humanitarian law seek, through what is approved by its basic principles, on which this law rests most of its weight, to establish the essence of the distinction between civilian objects and military objects, or more accurately, between what is considered a military target that thus falls outside the framework of protection and the scope of guarantees, and what is considered a civilian target that has no connection. By its nature, location, purpose, or use, it is subject to military action, and its destruction, seizure, or complete or partial neutralization, under the circumstances existing at the time, does not provide a definite military advantage.

Legitimate military targets are those objects that may be targeted during armed conflicts without this entailing responsibility for the state or the attackers.

As for civilian targets, they may not be targeted because they are not a party to the armed conflict. Therefore, the rules of international law place two basic restrictions on military commanders: the necessity of distinguishing between military targets and civilian targets, and the principle of proportionality, which prevents a military commander from attacking a soldier if it appears to him that he will inflict great harm on civilians as a result.

Therefore, we will discuss this topic in three sections as follows:

The first requirement: what is meant by a legitimate military target.

The second requirement: conditions for a legitimate military target

The third requirement: the legal principles governing legitimate military objectives.

The first requirement

What the legitimate military target is ⁽¹⁾

The term military objective is often used to describe the overall plan for a specific mission, such as seizing a particular hill, reaching a river, or freeing hostages. Military objective can also refer to a specific target to be neutralized or destroyed. The laws of war use the term in the latter sense to specify a location, facility, or property. Ordinary individuals who, under the prevailing circumstances, constitute a legitimate military target. This means that certain objects or individuals would be unlawful targets according to the concept of the violation. For example, any direct attack on a civilian population or on any places, sites or objects used solely for humanitarian, cultural or religious purposes is prohibited. ⁽²⁾

The most important thing that distinguishes legitimate targets is their military character and their susceptibility to military attack during armed conflicts, and they differ from civilian objects that international humanitarian law prohibits attacking in any way ⁽³⁾

In accordance with the First Protocol annexed to the Geneva Conventions of 1977, warring parties must distinguish between civilian objects and military targets so that their military operations are directed exclusively against military targets ⁽⁴⁾

The International Committee of the Red Cross (I.C.R.C) has tried to establish a distinction between civilian objects and military targets, as it was necessary to identify and define non-military targets in order to determine their protection, but disagreement arose over how to find this definition, so some tried to develop a definition that

1 The General Assembly did not clarify in its resolutions the concept of a military target, despite the increasing international support for the principle of distinguishing between military targets and civilian targets, as this principle requires setting a practical definition of the military target. However, in 1969, the International Law Council, meeting in Edinburgh, referred to the definition of military targets using the nature of the target. In addition to the assignment for which it was designated as a criterion for definition, he then referred to civilian goals, when he mentioned the means that the survival of the civilian population is indispensable for and the goals that by their nature serve the purposes of humanity and peace, such as places of worship and cultural places.

Alexandra Boivin, the legal Regime Applicable to targeting military objectives in the context of contemporary warfare, research paper series-collection des travaux de recherché, centreuniversitaire de droit international humanitarian, February 2006, p13.

2 Hanan Ashrawi, War Crimes What the Public Should Know, 2nd edition, translated by Ghazi Masoud, Azmana Publishing House, Amman 2007, p. 311.

3 Rashid Hamad Al-Anzi, Legitimate Military Objectives in International Law, Law Journal, Third Issue, Year 31, Scientific Publishing Council - Kuwait University, Kuwait, 2007, p. 18.

4 Article 52 of the First Additional Protocol to the Geneva Conventions of 1977.

enumerated military targets and all others become civilian targets, while others argued that it is better to define civilian targets and all others become military targets.

The first step (I.C.R.C) in 1970 was to consult many experts on the definition of civilian objects and military targets. (I.C.R.C) proposed a general definition for non-military targets, and this definition was in line with the humanitarian point of view, as the proposal came in its first paragraph. With a general definition of non-military objectives, it describes them as “those objectives designated primarily and necessary for the civilian population.” The proposal added in its second paragraph some examples of non-military objectives, such as homes and facilities that shelter the civilian population, or that contain or produce their food resources and water sources. ⁽⁵⁾

The Diplomatic Conference, in its fourth session and all its bodies, approved a definition of civilian objects in the First Protocol, which stated that civilian objects should not be the subject of attack or deterrence attacks, and civilian objects are all objects that are not military targets.

Attacks are limited to military objectives only, and military objectives, with regard to objects, are limited to those that make an effective contribution to military action, whether by their nature, location, purpose, or use, and whose complete or partial destruction, capture, or neutralization, in the circumstances prevailing at the time, definitely provides a military advantage.

If doubt arises as to whether a property ordinarily devoted to civilian purposes, such as a place of worship, a home or other dwelling, or a school, is being used to make an effective contribution to military action, it shall be presumed that it is not, thus, we find that international humanitarian law emphasizes the protection of military targets and considers them civilians protected from attacks or exposure to them in any way.

As the international humanitarian law prohibits the attack on non-military targets because they are considered civilian targets, it specifies some areas, buildings, and certain places that are sacred, and institutions designated for humanitarian purposes, because of their importance to civilians.

It can be said that civilian targets are determined according to the concept that is contrary to military targets. Civilian targets are those targets that do not directly or indirectly support the war effort, and that striking or destroying them does not achieve a military advantage for the party that strikes them, and refraining from striking them achieves humanitarian aspects that require consideration. In addition, international humanitarian law not only prohibits striking civilian targets, but also prohibits striking some targets that have a military character or targets belonging to the armed forces, making them like civilian targets because of the nature of their humanitarian work

⁵ -Hossam Ali Abdel Khaleq Al-Sheikha, Responsibility and Punishment for War Crimes, New University Publishing House, Alexandria, 2004, p. 134.

during the period of fighting, and because striking or destroying them does not achieve a military advantage for the parties that do so. ⁽⁶⁾

It is not easy to define the concept of objects or come up with a definition that is comprehensive and robust, as it will also require defining the concept of the opposite, that is, the military target, and delving into the depths of the texts is almost unanimous in identifying the common features of military targets despite the marked disparity in the circumstances of concluding each of them. ⁽⁷⁾

The First Protocol of 1977 annexed to the Geneva Conventions defined the concept of military objectives as: ((...which make an effective contribution to military action, whether by their nature, location, purpose, or use, and whose complete or partial destruction, seizure, or neutralization is achieved under the circumstances prevailing at that time was a definite military advantage)).

Some people question this definition, and the reason for skepticism is that the expressions used in it are unregulated and allow for varying interpretations of the limits of the obligations imposed on the attacker. This would make it difficult to consider the definition a complete expression of customary international law. Phrases such as “an effective contribution to military operations” or “a proven military advantage” are not precise enough for the purpose of establishing a secure basis for a rule of international law. ⁽⁸⁾

The rule stipulates that only military objectives are the subject of attack. Although the goal of the conflict is to achieve political victory, the acts of violence that are provoked for this goal must be directed to victories over the enemy’s military forces. ⁽⁹⁾

Although attacks are limited to military targets, civilian objects may be attacked by completely or partially destroying them or seizing and disabling them in order to achieve a military advantage for the attacking party by weakening the morale of the other party, because these targets are often struck when civilians are inside or near them. Among them are those that spread panic and fear among the civilian population of the opposing party in the event of striking indispensable civilian objects. ⁽¹⁰⁾

It must be noted that anything that accidentally causes harm to a protected person or protected object is not always a war crime. Although military targets are considered legitimate targets under customary law, attacking forces are still forced to choose whether or not the expected harm will be proportional to the military advantage if it is

⁶ - Suhail Hussein Al-Fatlawi and Imad Muhammad Rabie, Encyclopedia of International Humanitarian Law, Dar Al-Thaqafiyya, Amman, 2009, p. 174.

⁷ - Muhammad Thamer, International Protection Measures for Cultural and Civil Property and Journalists in International Humanitarian Law, Al-Atak Book Industry, Beirut 2014, p. 54.

⁸ - Rashid Hamad Al-Anzi, previous source, p. 19

⁹ - Marco Sassoli ‘legitimate targets of attacks under international humanitarian law ‘program on humanitarian policy and conflict research at Harvard university ‘Cambridge ‘January ‘2003 ‘p30.

¹⁰ - Ismail Abdel Rahman Muhammad, Criminal Protection of Civilians in Times of Armed Conflict, Part 1, General Book Authority, Cairo, 2007, p. 19.

taken into account that the choice must often be made in circumstances characterized by incomplete information, then the laws of war provide military commanders with ample freedom of discretion when the target must be struck due to military necessity. If the damage is excessive compared to the specific direct military advantage expected, the act becomes a war crime.

The second requirement

Conditions for a legitimate military target

Determining whether a military target may be attacked, or a civilian object that may not be attacked, is an extremely difficult matter, as Article (52) of the First Protocol annexed to the Geneva Conventions of 1977, I have mentioned some of the conditions that must be met in order for a military target to be considered permissible to direct military operations against without triggering international responsibility. These conditions are the target's effective contribution to military action and the achievement of a definite military advantage. **Therefore, we will discuss these two conditions in the following two branches:**

First branch

Effective contribution to military action

One of the most important elements determining the definition of military operations is its nature and location, as well as its purpose and uses. Accordingly, the question of whether or not an object contributes to military action depends on the impact that this object has or does not have on the level of hostilities ⁽¹¹⁾. **To determine the object's effective contribution to hostilities, it must contain several elements:**

First- The nature of the object:

The examiner of the objects will find that there are objects that are military in nature and there are objects that are civilian in nature. The buildings and camps of the armed forces, military aircraft, warplanes, weapons and ammunition stores belonging to the military forces, and military vehicles are military objects by nature. These objects, regardless of their uses, are viewed as military objects and there is no consequence to targeting them. ⁽¹²⁾

¹¹ - Alexander Balgli-Balou, Protection of Journalists and Media in Times of Armed Conflict, Selections from the International Review of the Red Cross, 2004, p. 254.

¹² - Legitimate military targets include: armed forces and military personnel participating in hostilities, sites and installations occupied by armed forces, for example contested targets in battle, military installations such as barracks, ministries, military facilities, ammunition or fuel depots, vehicle parks, airports, and missile launch pads, and naval bases. Legitimate infrastructure-related targets include communications, command and control lines and media – railways, roads, bridges, tunnels, Channels that have fundamental military importance. Legitimate targets related to communications include radio and television stations, telephone calls, and telegraphs that are of fundamental military importance. Legitimate military industrial targets include factories that produce weapons, vehicles, and communications equipment for the army, for metallurgical, engineering, and chemical industries that by their nature or purpose are essentially military, and storage and transportation facilities that These industries serve, and military objectives related to military research include experimental research centers for developing war weapons and

As for civilian objects by their nature, they are those that do not, by their nature, contribute to military operations, as they include homes, hospitals, civilian objects that are not used for military purposes, and objects covered by special protection. Distinctive insignia and signs guarantee this protection, and which may not be the target of attack.

It is prohibited to attack or bomb cities, villages, and residences. Historical monuments, museums, cultural, educational, artistic, scientific, and religious institutions are considered among the civilian objects that may not be attacked. Parties to the conflict must respect and protect them by refraining from using these places or the means designated for their protection or the places directly adjacent to them for purposes that might expose them to harm. To be destroyed or damaged in the event of armed conflict. But the real problem is when the target has a dual benefit (military and civilian). In this case, the military commander has the moral and legal responsibility to protect civilian targets from attack and to verify that the target being attacked is a military target, To take all practical precautions with the aim of avoiding or minimizing incidental casualties to civilians and civilian targets, and to refrain from launching an attack that could cause casualties among civilians or civilian targets that are disproportionate to the expected military results, and to establish an effective system for collecting intelligence information from potential targets and evaluating it, and to direct his forces to take advantage of the modern technical means available in order to accurately identify targets during military operations. ⁽¹³⁾

Second - Uses of the object:

It is established that only military uses are the subject of military operations, and even when attacking targets, all necessary precautions must be taken by each party for the purpose of identifying and verifying the actual use or not of military contributions, or whether this would harm civilian objects. ⁽¹⁴⁾

Therefore, it can be said that there is no dividing line between what can be considered a civilian target and a military target. The target is considered by its nature first and then by the extent of its participation in the armed conflict. The hospital is by nature a civilian target, but it can be targeted when it is used by snipers or when it is placed above them are anti-aircraft sites or radars. It is clear to us that military targets are not considered a legitimate target that may be attacked at all times and circumstances. There are targets that are military in nature, but they are used for humanitarian purposes. For example, if we take the hospitals that are designated for treating military wounded and sick, and their means of transport that transport the wounded, they are originally of a military nature, except that they It is not permissible to attack it, and the same applies to ships and ships designated for transporting wounded members of the armed forces

equipment, Legitimate energy targets include facilities that supply energy to national defense institutions, such as coal and other types of fuel, and factories that produce gas or electricity primarily for military consumption.

¹³ - Ahmed Fathi Sorour, *International Humanitarian Law: A Guide to Application at the National Level*, 3rd edition, International Committee of the Red Cross, Cairo, 2006, p. 407.

¹⁴ - Ahmed Abu Al-Wafa, *The General Theory of International Humanitarian Law in International Law and Islamic Sharia*, Dar Al-Nahda Al-Arabiya, Cairo, 2006, p. 98.

or for combating diseases, and military hospital ships established or prepared by states specifically to assist, treat, and transport the wounded, sick, and shipwrecked. They are protected from attack or capture, except that they lose protection if they are used in serving the war effort or if it provides military assistance or information to one of the parties to the conflict. ⁽¹⁵⁾

Likewise, aircraft used to evacuate the wounded and sick, i.e. aircraft used for medical purposes, whether they are in the service of civilians or designated to serve members of the armed forces, are not considered a legitimate military target because they are not used in military operations. The use takes them out of the scope of the military target and into a civilian target that is not permissible. Being exposed to attack, but if its use changes to helping transport uninjured members of the armed forces to carry out an attack on a site, then it falls outside the scope of protection, meaning it becomes a legitimate target that does not expose those who attack it to responsibility. ⁽¹⁶⁾

The explanatory memorandum to the First Protocol annexed to the Geneva Conventions prepared by the International Committee of the Red Cross explained by saying: (Most civilian objects can be important objects for the armed forces, and therefore a school or hotel are civilian objects, but they become military objectives if they are used to shelter soldiers or as a command center. But the seriousness of the matter arises in determining whether a civilian object has turned into a military object. It cannot be left to the discretion of the military command without the presence of legal controls governing it, which include the object actually participating in hostilities, that is, carrying out actions that, by their nature or purpose, aim to cause real harm to people and equipment. enemy forces)

The first protocol annexed to the Geneva Conventions placed a fundamental restriction on counting a civilian object as a military target, which is that in the event of suspicion that this civilian object has become a military target, it remains a civilian object that may not be attacked unless it is proven that it actively participated in hostilities. The doubt will be interpreted in favor of the object. If doubt arises whether a property normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling, or a school, is used to make an effective contribution to military action, it is assumed that it is not. ⁽¹⁷⁾

Third - Target location:

The location of the target is of great importance in terms of the possibility of targeting it or avoiding it. If the military target is in a sensitive location, that is, in the event of a strike, it causes great damage to civilians, their objects, and other protected objects,

¹⁵ -Article 34 of the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Armed Forces at Sea of 1949 stipulates that “the due protection of ships, hospitals and sick wards on ships shall not be suspended unless they are used, contrary to their humanitarian duties, in acts harmful to the enemy.” However, It is not permissible to grant protection to it except after giving it a warning that specifies, in all appropriate cases, a reasonable period of time, without it being heeded. In particular, ships and hospitals are not permitted to use a secret code for their radio communications for other means of communications.)

¹⁶ - Article 39 of the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Armed Forces at Sea of 1949 stipulates that: “Medical aircraft, i.e. aircraft used entirely for the evacuation of the wounded, sick and shipwrecked, as well as for transporting medical personnel and medical missions, may not be attacked. On the part of the parties to the conflict concerned....))

¹⁷ - Article 52, third paragraph of the first protocol attached to the Geneva Conventions of 1977.

then in this case attacking it is avoided. Likewise, civilian targets may be exposed to attack if they are in a location. Close to legitimate military objectives, such as areas of engineering works or facilities that contain production capacities, such as dams and nuclear stations for generating electrical energy. Military objectives located near these objectives may not be exposed to military operations if this leads to heavy losses among civilians.

Accordingly, facilities that contain a high risk are not the subject of attack, even if they are military targets, if this would cause the release of dangerous forces that cause great damage. ⁽¹⁸⁾

The location of the target does not change its nature, but the location of the target can have a primary impact. The commercial center in the military base is vulnerable to bombing as it is a legitimate military target. A commercial ship anchored in a military port may become a military target because of its location if it constitutes the road leading to the combat sites.

At the same time, some military targets cannot be targeted, as we have shown, because of the sensitive location in which they are located. If a military facility is located in the middle of a populated area and an attack on it would cause a humanitarian catastrophe. It is not permissible to use it unless it achieves a definite military advantage. What must be emphasized is that the proportionality between the military advantage sought from

¹⁸ - Article 56 of the First Protocol annexed to the Geneva Conventions of 1977 stipulates that: (1- Engineering works or installations that contain dangerous forces, namely dams, bridges, and nuclear stations for generating electrical energy, shall not be the subject of attack, even if they are military objectives if such This attack may cause the release of dangerous forces that cause heavy casualties among the civilian population. Other military objectives located near or in the vicinity of these engineering works or installations may not be exposed to attack if such an attack would cause the release of dangerous forces from the engineering works or installations. Facilities that cause heavy casualties among the civilian population - 2 - They are stopped to protect themselves against attack stipulated in the first paragraph in the following cases:

→With regard to dams or bridges, if they are used for other than their normal uses in support of military operations in a regular, important and direct manner, and such an attack is the only possible way to end that support.

→ With regard to nuclear power plants, if these plants provide electrical energy to support military operations on a regular, significant, and direct basis, and such an attack is the only possible way to end such support.

The civilian population and individual civilians shall, in all circumstances, continue to enjoy all types of protection guaranteed to them by international law, including the protection provided by the preventive measures stipulated in Article 57. If protection ceases or any of the engineering works, installations or military objectives mentioned in the first paragraph of the attack takes all scientific precautions to avoid the release of dangerous forces

← It is prohibited to make any of the engineering shapes, facilities, or military objectives mentioned in the first paragraph a target for deterrence attacks.

→The parties to the conflict shall seek to avoid establishing any military objectives in the vicinity of the works or installations mentioned in the first paragraph. However, the establishment of installations whose sole purpose is to defend the works or installations protected against attack is permitted. It must not, in and of itself, be a reason for attack, provided that it is not used in hostilities, unless this is to carry out defensive operations necessary to respond to attacks on protected works or protected installations, and its armament is limited to weapons capable only of repelling any hostile action against protected works or installations.

→The High Contracting Parties and the parties to the conflict are working to conclude more agreements among themselves to provide additional protection for objects that contain a dangerous force.

→ In order to facilitate identification of the objects protected by this Article, the Parties may mark these objects with a special sign consisting of a group of three bright orange circles on the same axis as specified in Article 16 of Appendix No. 1 to this Protocol ((Protocol)). Failure to do so shall not be exempt. The presence of this mark prevents a party to the dispute from its obligations under this article in any way)

this attack and the losses incurred by civilians or the violation of humanitarian principles must be taken into account.

Fourth - The purpose or aim of the object:

International action has settled on providing protection for some targets that have a military character and treating them as civilian targets due to their humanitarian nature. Exposing them to military operations does not achieve a military advantage for the other party, in addition to attacking them causing severe harm to civilians. These targets include:

- Military medical institutions.
- Military targets that attack may cause damage and losses.

These objectives are originally and by their nature military objectives, as they provide services to the enemy army, but their purpose is not military. Rather, the purpose is to provide humanitarian services to individuals who are exposed to injuries that render them incapable of protecting themselves and carrying weapons. This category is guaranteed special protection by the Geneva Convention due to its characteristic. Weakness: Therefore, institutions that provide medical or humanitarian services to these people are not suitable to be a military target because one of the most important conditions for a military target is that its destruction achieve a definite military advantage.

Military objectives may be attacked only when they actually make an effective contribution to military operations and not at all times. Saying otherwise negates all protection for civilian objects. If a target is considered military only, because it can be transformed into anything that might be useful for military operations, the result is that no civilian target will remain protected.

The service that the object performs is the control in its regard. The latter is a civilian or military target, so it turns the radio and television stations into a base that broadcasts and is managed by the military and transmits information and transmits information to and from them. Here, it ceases to be a civilian media outlet and becomes a legitimate military target because it has become part of the army and in the service of Military action. ⁽¹⁹⁾

Therefore, the purpose of the object is very important in determining whether the target is military or civilian, and the purpose or goal of the object is related to its future uses and not what the opponent intends to use of it. The purpose of the object as an independent basis for classifying it as a military target is determined after its original state is crystallized before its actual use.

¹⁹ - Alaa Fathi Abdel Rahman, *International Protection for Journalists During Armed Conflicts in Light of International Humanitarian Law and Islamic Jurisprudence*, Dar Al-Fikr Al-Jami'i, Alexandria, 2010, p. 289.

Second branch

Achieving a definite military advantage

The issue of achieving a definite military advantage is one of the most important conditions for an attack on a target, whether it is a military target or a civilian that has been transformed into a military target. This is what was stated in the First Protocol attached to the Geneva Conventions of 1977, “Attacks are limited to military targets only, and military targets with regard to objects are limited to Those that make an effective contribution to military action, whether by their nature, location, purpose, or use, and whose complete or partial destruction, capture, or neutralization, in the prevailing circumstances, provides a definite military advantage))⁽²⁰⁾

All objects that do not contribute effectively to military action and whose total or partial destruction, disabling or seizing do not provide a definite military advantage may not be the target of attack or deterrence attacks. (39) International humanitarian law does not aim to prevent or limit wars, but rather Its role is limited to organizing war after resorting to it in order to reduce the human tragedies resulting from it. In order to achieve this goal, many texts include the convention and customary rules that regulate the relationship between the warring parties, as international humanitarian law requires that the goal of war be a legitimate goal and the military goal The only legitimate effort that states should pursue during armed conflicts is to weaken the enemy's military power to achieve victory. As a result of this goal, the warring parties use humanitarian means and methods of combat to weaken the strength of the military opponent, even when there is a military necessity. International humanitarian law is based on a balance between military necessities and humanitarian considerations in attacking a legitimate military target to achieve a military advantage.

The preamble to the St. Petersburg Declaration of 1868 stated that the only legitimate purpose aimed at by states during war is to weaken the enemy’s military forces, and this is achieved by attacking military targets. The First Additional Protocol attached to the Geneva Conventions of 1977 added a concrete and direct word in describing the military advantage to be achieved from the attack.⁽²¹⁾

Accordingly, it is not permissible to attack targets that do not achieve a tangible and direct military advantage. Since military necessity is a departure from the rules of protection in international humanitarian law, there must be a legitimate military goal, which, as we explained previously, is to weaken the enemy’s power and achieve

²⁰ - Article 52, paragraph 2, of the First Protocol annexed to the Geneva Conventions of the year 1977

²¹ - Article 51, paragraph B/5, of the First Additional Protocol of 1977 stipulates that “An attack that could be expected to cause loss of civilian life, injury to civilians, or damage to civilian objects, or to cause a combination of these losses and damages, exceeds what It is expected that this attack will result in a tangible and direct military advantage.)

military necessity. Otherwise, all unnecessary violence then becomes a mere act of brutality, and this is what was confirmed by the Tokyo Court. In the Shimoda case in 1963, when its decision stated: If the idea of military necessity is accepted to justify the use of nuclear weapons in the cities of Hiroshima and Nagasaki, this will legitimize any action carried out by combatants, no matter how extreme or heinous. The requirement that the attack on the target be achieved is a military advantage. Definitely means that even an attack on a target that is military in nature is not legitimate if it is If its primary purpose is to completely destroy the civilian population and not to limit the enemy's military power, then the military advantage is purely military in nature, as is evident from the use of a specific and direct term.

Exceeding the military advantage would lead to the commission of a war crime in accordance with the Statute of the International Criminal Court: intentionally launching an attack with the knowledge that such attack will result in consequential loss of life or injury to civilians, damage to civilian property, or widespread, long-term and severe damage to the natural environment. Its excessiveness is clear compared to the scope of expected, direct, tangible military gains. ⁽²²⁾

The third requirement

Legal principles governing legitimate military objectives

Military targets require legal principles to govern and control them so that enemy forces do not go further in striking these targets and the collateral damage that will result from this attack will be to civilians and civilian objects. When directing attacks against a military target, it must be confirmed that the target is a legitimate military target and not a civilian target, and a distinction must be made, also between civilians and combatants so that this does not entail international responsibility. Likewise, achieving a definite and direct advantage must be within limits, such as the principle of proportionality between this advantage and the damage that this attack will cause.

Based on the above, we will discuss the legal principles governing military targets in two sections, the first of which will be devoted to discussing the principal distinction and the second section will discuss the principle of proportionality.

First section

the principle of distinction

In order to ensure respect for and protection of the civilian population and civilian objects, parties to the conflict are required at all times to distinguish between the civilian population and combatants, as well as between civilian objects and military objectives, and to direct military operations only against military objectives.

This principle has found its place in international humanitarian law in Article 22 of the Hague Regulations relating to the Laws and Customs of War on Land, which stipulates that: ((The belligerents do not have an absolute right to choose the means of harming the enemy)) although it does not explicitly mention the principle of distinction, it

²² -Article 8, paragraph 2/b/4 of the Statute of the International Criminal Court.

deduces from it an important principle that obligates combatants to limit military operations to combatants and military objectives, not civilians and civilian objects.

This principle was affirmed in the First Protocol annexed to the Geneva Conventions in 1977, which stated: “The parties to the conflict shall endeavor to distinguish between the civilian population and combatants, between civilian objects and military objectives, and then direct their operations exclusively against military objectives, in order to ensure respect and protection.” Civilian population and civilian objects. ⁽²³⁾

It is clear from this text that the principle of distinction is divided into two parts. The first part is based on the distinction between the civilian population (non-combatants) and combatants, and the second is based on the distinction between military targets and civilian objects. **Accordingly, we will discuss each section separately.**

First: the distinction between civilian populations and combatants

Since countries became aware of war, the idea of distinguishing between combatants and non-combatants has emerged as a military custom that must always be observed, even though many armies turn a blind eye to this and strike in a way that does not distinguish between these two groups. ⁽²⁴⁾

This principle was not stable in Western jurisprudence, and its ideas did not crystallize until the 17th century, when intellectual systems developed with the emergence of the idea of regular armies affiliated with the state, and some rules began to appear on the horizon that reject the participation of any individual outside the regular army in acts of war after war was considered a conflict between states. Governments as units are distinct from peoples. This principle became more firmly established and recognized to a greater extent when the preamble to the Declaration of St. Petersburg in 1868 referred to it in its second paragraph, stating that “the only legitimate objective that should be observed by states during war is to weaken the military forces of the enemy.” ⁽²⁵⁾

The principle of distinction between combatants and non-combatants has not been spared from criticism, which is considered the result of the famous principle stated by Jean-Jacques Rousseau that war is only a state-to-state relationship and not a people-to-people relationship, as Anglo-American jurisprudence in its entirety refused to acknowledge that principle and went to establish the fact that the relationship The hostility between combatants also extends to their civilian compatriots, recognizing that work is being done to provide them with protection as long as they do not contribute to the ongoing hostilities. ⁽²⁶⁾

The distinction between military personnel and civilians has an important impact in determining military operations. Military personnel are the only ones who are the

²³ -Article 48 of the First Additional Protocol to the Geneva Conventions of 1977.

²⁴ - He who participates directly in hostilities is considered a combatant, while he who does not participate directly in hostilities or has stopped doing so is considered a non-combatant. Ahmed Abu Al-Wafa, previous source, p. 77.

²⁵ - Bayda Ali Wali, The Basic Principles Governing the Waging of War in International Humanitarian Law, Al-Qadisiyah Journal of Law and Political Science, issues 1, 2, College of Law, Al-Qadisiyah University, Al-Diwaniyah, 2011, p. 411.

²⁶ -Salah El-Din Amer, Introduction to the Study of the Law of Armed Conflict, Dar Al-Fikr Al-Arabi, Cairo, 1976, p. 71.

subject of armed military conflict, while civilians are persons who enjoy humanitarian protection and are not directed to military actions in any way.

States often designate a civilian area as a theater for military operations, and there may be a large civilian population in this area, especially those who live close to the state's borders.

The idea of distinction was possible in the eighteenth and early nineteenth centuries because the boundaries between combatants and civilians were clear and it was easy to remove civilians and civilian targets from armed conflict unless the matter was related to popular action. ⁽²⁷⁾

This principle was legally recognized in the instructions of Professor Francis Lieber, enacted for US federal forces during the Civil War by US President Abraham Lincoln on April 24, 1863.

The stability of this principle has been the basis of traditional jurisprudence for protecting peaceful civilians and working to spare them from the scourges and evils of war. However, traditional jurisprudence has gone to adhere to the formality of this distinction between fighters and other peaceful civilians to the extent of obliging these others to play the role of mute witnesses to the amusements of war because it is a condition for them to benefit from the principle of differentiation is not to contribute in any way to the conduct of military operations. ⁽²⁸⁾

The real challenge to the principle occurred during World War II, as World War II was the best evidence of countries' lack of respect for these international conventions. Civilians were the target of military operations and massacres were committed against them on the basis that striking civilians inflicts heavy losses on the other side and affects the morale of its soldiers on the battle fronts.

As a result of the devastation inflicted on civilians in World War II, the International Committee of the Red Cross requested refraining from striking civilians and avoiding indiscriminate bombing. The Committee developed a draft convention to determine responsibility for targeting civilians in times of war.

There are many international documents and agreements that require protecting civilians who did not participate in military operations, not attacking them, and distinguishing them from combatants, including the St. Petersburg Declaration of 1868, and the Hague Convention on Land Warfare in 1907, which attempted to limit military operations to combatants only and did not permit striking civilians or the areas they inhabit.

The four Geneva Conventions of 1949 affirmed the principle of distinction between combatants and non-combatants, especially Common Article 3, which concerns non-

²⁷ - Popular uprising: It is the people taking up arms on their own initiative to confront and resist the invading forces without having sufficient protection to form regular armed units.

²⁸ -Hamed Sultan, Aisha Rateb, and Salah El-Din Amer, Public International Law, Dar Al-Fikr Al-Arabi, Alexandria, 1978, p. 736.

international disputes ⁽²⁹⁾ and Article 4 of the Fourth Convention ⁽³⁰⁾ Then the two additional protocols came in 1977 to confirm and increase the scope of this distinction between combatants and non-combatants.

This principle has been affirmed in many international resolutions. In the twentieth conference of the International Committee of the Red Cross in 1965, the Committee demanded in Resolution No. 28 that the distinction between individuals who take their positions in military places and civilian individuals must be present at all times. ⁽³¹⁾

The United Nations General Assembly also endorsed this principle in its resolution on respect for human rights in armed conflicts, which was adopted unanimously, as the resolution stated: ((It is prohibited to launch attacks against the civilian population as such, and a distinction must be made at all times between persons participating in hostilities and the civilian population so as to avoid the civilian population as much as possible)) ⁽³²⁾

²⁹ - Article 3 common to the four Geneva Conventions of 1949 stipulates that: "In the event of an armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict is obligated to apply, as a minimum, the following provisions:

← Persons taking no direct part in the hostilities, including members of armed forces who have laid down their arms, and persons placed hors de combat by sickness, wounds, detention or any other cause, shall in all circumstances be treated humanely, without any adverse distinction based on race or colour, religion or belief, sex, birth, wealth or any other similar criterion. For this purpose, the following actions are prohibited in relation to the above-mentioned persons, and remain prohibited at all times and places:

- a) Attacks on life and physical integrity, especially murder in all its forms, mutilation, cruel treatment and torture.
- b) Taking hostages
- c) Attacks on personal dignity, especially humiliating and degrading treatment
- d) Issuing judgments and implementing punishments without conducting a previous trial before a legally constituted court that provides all necessary judicial guarantees in the eyes of civilized peoples.

→ He collects the wounded and sick and takes care of them

It is permissible for an impartial humanitarian body, such as the International Committee of the Red Cross, to offer its services to the parties to the conflict, and the parties to the conflict must work to stop this through special agreements, to implement all or some of the other provisions of this agreement, and the implementation of the above provisions does not affect the situation. law for the parties to the dispute.

³⁰ - Article 4 of the Fourth Geneva Convention of 1949 stipulates that: "The persons protected by the Convention are those who find themselves, at a given moment and in whatever form, in the event of a conflict or occupation, under the authority of a party to the conflict who is not a national or an occupying state that is not a national." Her subjects

The Convention does not protect nationals of a state that is not associated with it. As for nationals of a neutral state who are in the territory of a belligerent state, and nationals of a belligerent state are not considered protected persons as long as the state to which they belong is represented with normal diplomatic representation in the state under whose authority they are.

However, the provisions of Chapter Two have a broader scope of application, as Article 13 states

Persons protected by the Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, of 12 August 1949, or the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked in Armed Forces at Sea, of 12 August 1949, or the Geneva Convention concerning Treatment of Prisoners of War dated 12 August 1949

³¹ - Fadi Muhammad Deeb Al-Shuaib, The Use of nuclear weapons in International Law, Al-Halabi Jurist Publications, Beirut, 2013, p. 112.

³² - United Nations General Assembly Resolution No. 2444 (XXIII) of 12/19/1968

Under the Statute of the International Criminal Court, intentionally directing attacks against the civilian population as such or against individuals not directly participating in hostilities would constitute a war crime. ⁽³³⁾

Second: Distinguishing between military targets and civilian objects:

This principle requires parties to a conflict at all times to distinguish between military objectives that assist in a military attack, and civilian objects during the course of hostilities as well as in the event of occupation, and this is confirmed by the text of Article 48 of the First Additional Protocol in 1977 ⁽³⁴⁾

A military objective is considered to be those objects or places which, by their nature or use, assist in military action, and whose destruction or disabling provides a military advantage. As for non-military objectives, they include objects, objects and places that serve humanitarian purposes, especially for the civilian population, such as places of worship, hospitals, and buildings that shelter civilians, provided that they are not used for military purposes. Therefore, the attack may not be directed at non-military targets, as protecting these targets provides the greatest possible amount of protection for the civilian population.

The Statute of the International Criminal Court considers intentionally directing attacks against civilian sites, that is, sites that do not constitute military objectives, a war crime at the level of international armed conflicts, ⁽³⁵⁾ but even with regard to armed conflicts that are not of an international character, it is considered intentionally directing attacks against buildings, materials, medical units, and means of transportation are also war crimes. ⁽³⁶⁾

However, this principle is often violated through the use of carpet bombing, or what is called carpet bombing, which was used during World War II, where carpet destruction reaches approximately six kilometers in length and two kilometers in width, and this type of bombing has become the preferred and routine procedure for the US Air Force from Afghanistan and Iraq.

³³ - Article 8, paragraph 2(b)(1) regarding international armed conflicts and paragraph 2(e)(1) regarding armed conflicts that are not of an international character of the Statute of the International Criminal Court.

³⁴ - International Humanitarian Law Series No. 9, Protection of Civilian Objects in International Humanitarian Law, 2008, p. 3, published on the Internet at <http://www.mezan.org/upload/8798.pdf>

³⁵ - Article 8, paragraph 2(b)(2) of the Statute of the International Criminal Court.

³⁶ - Article 2(e)(2) of the Statute of the International Criminal Court.

Second section

The principle of proportionality ⁽³⁷⁾

The principle of proportionality is one of the fundamental principles applied in the context of armed conflicts of all kinds, international and internal. This principle aims to reduce the losses or suffering resulting from military operations, whether for people or things. Therefore, if the means of combat used are not compatible with the military advantage sought from the military operation, then they may not be used. An example of this is an indiscriminate attack that is expected to cause significant losses to civilians or civilian facilities that far exceed the resulting military advantage. ⁽³⁸⁾

This principle was approved in the form of the rule of the St. Petersburg Declaration in 1868 regarding the prohibition of the use of certain missiles in time of war, stating that “the only legitimate goal that a state should pursue during war is to weaken the enemy’s military forces.” Accordingly, the exclusion of the largest number of forces is sufficient to achieve this purpose and may be exceeded if weapons are used, they unjustifiably increase the suffering of people hors de combat and make their death inevitable.

The principle of proportionality imposes on the attacker to ascertain the results achieved when he targets military targets. The same applies to the tangible and direct military advantage that imposes this determination on him and is even considered an essential matter. It is not possible to be sufficiently certain that the expected advantage must be a military advantage, which is usually represented by gaining territory or destroying or weakening the enemy's military forces. The phrases (concrete and direct) also suggest that the intended advantage must be relatively large and immediate, and exclude the advantage that is difficult to realize or that only appears in the long term. ⁽³⁹⁾

Therefore, proportionality is achieving a balance between the tangible and direct military advantages resulting from the success of military operations and the harmful effects likely to occur among civilians and civilian objects as a result of these operations. In other words, the principle of proportionality refers to the necessity of balancing the attack that is expected or intended to be launched against the opponent between what may be Caused by the loss of civilians or civilian objects, or both, and the direct or expected military advantages resulting from the attack. ⁽⁴⁰⁾

The International Court of Justice acknowledged this principle in its advisory opinion issued in the case of nuclear weapons and the World Health Organization’s case

³⁷ - The main reason behind the emergence of the principle of proportionality is the eternal conflict between two ideas. The first prevents the use of methods and means of combat, to the extent that enables fighters to achieve the military goal and defeat the opponent. The roots of this idea go back to the theory of just war, while the second prevents the preservation of casualties as much as possible. Those who do not contribute to combat operations (civilians) or those who are covered by special protection, with a call to reduce unjustified pain and injury to fighters. Ahmed Abbas Nima Al-Fatlawi, *The Problem of Conventional Weapons between the International Community and International Law*, Al-Halabi Legal Publications, Beirut, 2013, p. 41.

³⁸ - Ahmed Abu Al-Wafa, previous source, p. 82.

³⁹ - Daniel Muñozrogas and Jean-Jacques Frazier, *Sources of Behavior in War in Understanding and Preventing Violations of International Humanitarian Law*, Selections from the International Review of the Red Cross, 2004, p. 74.

⁴⁰ - Hisham Bashir and Ibrahim Abd Rabbo Ibrahim, *Introduction to the Study of International Humanitarian Law*, National Center for Legal Publications, Cairo, 2012, p. 119.

regarding whether or not an attack with nuclear weapons would constitute a violation of international humanitarian law, as it decided that “respect for the environment is one of the elements that requires whether the act is consistent with the principle of necessity and proportionality or not)).

The principle of proportionality relates, first of all, to the means and method used, provided that the chosen target of the attack is a military target, within the framework of international humanitarian law, and therefore this principle prohibits the attack if the expected collateral injuries are excessive compared to the value of the military target. ⁽⁴¹⁾ Despite the obligation to direct military attacks only against military targets and to keep civilian objects away from intentional attacks, this is very difficult, as it is known that there are many legitimate military targets that are located in cities or close to civilian population centers and civilian objects. Therefore, the principle of proportionality would place legal and moral restrictions on combatants as they conduct their military operations near those buildings, making a comparison between what can be avoided by attacking military targets and what could result in damage to civilians or civilian objects in return. Therefore, the lack of focus on the principle of the military objective may lead to ignoring civilian casualties or considering them unlucky victims who fall during legitimate military operations, and therefore the principle of proportionality plays a role in Limiting such an idea when it requires a permanent weighting of war operations with the humanitarian aspect.

Article 57, paragraph 3, of the First Protocol annexed to the Geneva Conventions of 1977 is a consecration of the principle of proportionality, as it stipulates that: (The target to be chosen, when possible, among several military targets to obtain a similar military advantage, should be the target against which the attack is expected to result. Objectives that are less than the extent of the danger to civilian lives and civilian objects.)

The above article urged that the advantage sought to be achieved from an attack on a military target be proportional to the expected harm to civilians in accordance with the principle of proportionality.

Therefore, an attack that can be expected to cause loss of civilian lives, injury to civilians, or damage to civilian objects, or to cause a combination of these losses and damages, exceeds what is expected to result in that attack, which is a tangible and direct military advantage. This attack is considered Among the indiscriminate attacks that do not take into account the principle of proportionality, the military advantage must not be less in terms of the damage caused to civilians and their dignitaries, that is, there is no proportionality between them and the losses inflicted on civilians and their dignitaries. ⁽⁴²⁾

⁴¹ Louise Dusser Ald Beck, International Humanitarian Law and the Advisory Opinion of the International Court of Justice on the Legality of the Threat and Use of nuclear weapons, International Review of the Red Cross, 2010, No. 1997, pp. 44 and 53.

⁴² -Article 51 of Paragraph 4 of the First Protocol to the Geneva Convention of 1977 clarifies indiscriminate attacks, stipulating that: (Indiscriminate attacks are prohibited.

→ Those that are not directed at a specific military target

← Or those that use a method or means of combat that cannot be directed at a specific military objective

→ Or those that use a method or means of combat whose effects cannot be limited as required by this right ((Protocol)) and therefore would, in every such case, strike military targets, civilians, or civilian objects without discrimination.)

Accordingly, international humanitarian law enshrines the principle of proportionality and requires warring parties to take the necessary precautions to avoid harm to the civilian population and civilian objects by refraining from carrying out any attack that is expected to cause human casualties among civilians or damage to civilian objects, or that this attack may result in losses or damage that is disproportionate to the military advantage to be achieved, and therefore any attack whose target is clearly non-military, or that the target enjoys special protection under the provisions provided by the rules of international humanitarian law for civilian objects and cultural property, must be cancelled.

Therefore, achieving the equation between military necessity and the principle of humanity is difficult and delicate, especially during the conduct of military operations. The matter requires a skilled and tough commander who devotes all his effort and work to equalize the balance of this equation. Regulating the balance of this equation and achieving it continuously depends to a large extent on prior peacetime training for the soldiers and officers on all hostilities on the one hand, and on the rules of international humanitarian law on the other hand, so that their reluctance to fire in places of reluctance is automatic.

Conclusion

Through research, we found that the international humanitarian law defines military targets, and considers all other targets to be civilians that are protected from being targeted by attack in any form. Civilian targets are defined according to the concept that is contrary to military targets.

There are also some areas and buildings, certain places that are sacred, and institutions designated for humanitarian purposes that are important to civilians and enjoy protection. They may not be attacked or destroyed because targeting them does not achieve a military advantage.

Civilian objects may be attacked by completely or partially destroying them or seizing and disabling them if such an attack would achieve a military advantage for the attacking party.

Article 52 of the First Protocol annexed to the 1977 Geneva Convention stipulates some conditions that must be met in order for a target to be considered a military target against which military operations may be directed without incurring international responsibility as a result of that attack. These conditions are the target's effective contribution to military action, and to determine the effective contribution of the target. In military work, several elements must be present: the nature of the object, the uses of the object, the location of the target and the purpose or aim of the object. Likewise, achieving a definite military advantage in striking a target is a basic condition for a military target.

Directing attacks against a military target must ensure that the target is legitimate military and not civilian. A distinction must be made between civilians and combatants so that this does not entail international responsibility. Likewise, achieving a definite military advantage must be within the limits of the principle of proportionality.