

Humanitarian Law Consideration in the Bombardment of Military Targets and Objects: The Syrian Armed Conflict in Perspective

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It is a norm in warfare as the case of Syria, where bombardment of both military and civilian objects has featured prominently. Children, women and indeed the civilian population are often severely affected in the course of these military attacks. The result has been the bombardment of both physical targets and objects as well as direct hit on established International Humanitarian Law principles by warring parties. Both State and non-state actors would appear culpable in this regard. Against this background, the article seeks to examine the concept of military targets and objects, its features and relationship with the principles of proportionality, military necessity and humanity in International Humanitarian Law. It specifically beams a search light on the Syrian armed conflict by examining the bombardment of military objects and targets in the conflict and success of the application to relevant IHL principles. It further critiques the application of IHL principles in war times particularly as it relates to Syria, while noting the failure of the existing legal and institutional regime. The article concludes by advocating for an urgent need to regulate the bombardment of military objects and targets in war times to avoid the avoidable loss of lives and properties experienced in Syrian conflict.

Introduction

International humanitarian Law (IHL) limits means and methods of warfare by parties to an armed conflict and requires them to respect and protect civilians and captured combatants.³ One of the fundamental tenets of this IHL is “civilian immunity” and the principle of “distinction.” IHL recognizes that casualties are inevitable during armed conflict; however, it imposes a duty on

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³Report prepared by the International Committee of the Red Cross Geneva, “International Humanitarian Law and The Challenges of Contemporary Armed Conflicts,” in *28th International Conference of the Red Cross and Red Crescent 2-6 December 2003*, accessed 20 June, 2020,

https://www.icrc.org/en/doc/assets/files/other/ihlcontemp_armedconflicts_final_ang.pdf.

warring parties at all times to distinguish between combatant and civilian and ascertain military targets and objects.⁴ One of the cornerstones of IHL is the principle of distinction, described by the International Court of Justice (ICJ) as a ‘cardinal’ principle of IHL.⁵ It also prescribes that belligerent parties must at all times distinguish between civilian objects and military objects and direct their operations only against military objects.⁶ It is a trite under international law that a civilian will not enjoy any protection from military attack, once such civilian is directly participating in hostilities. Furthermore, IHL prohibits indiscriminate attacks, particularly attacks that are directed at a specific military object or carried out by deploying weapons that cannot be directed at a specific military object.⁷ Furthermore, when attacking a lawful target, precautionary measures to spare civilians must be taken. One major goal of IHL is to ensure the protection of civilians in armed conflict. However, it is expedient to examine the class of objects that can be attacked and constitutes military targets. This propels the need for making criteria aimed at clarifying what are legitimate and illegitimate targets. In addition, attacks on objects involve the greatest danger for persons who are civilians beyond any doubt.

This article discusses the humanitarian law consideration in the bombardment of military Targets and objects. It defines what military objects and targets are and how international humanitarian law has laid emphasis on the minimization of civilian loses and damage to civilian property in conjunction with proportionality and precautions on attack. It specifically examines the bombardment of military targets and objects in the Syrian conflict, noting its implication in International Humanitarian Law. It also examines the shortcomings of the existing legal framework on military targets and objects in contemporary armed conflict. Furthermore, it examines the need for a better implementation of international humanitarian law through the making of international targeting standards a model to operate the principle of proportionality and distinction. In conclusion, it advocates more proactive measures by the global community in ensuring that the principle of humanity is upheld in the bombardment of military targets and objects.

⁴ Laurie R. Blank, “Taking Distinction to the Next Level: Accountability for Fighters’ Failure to Distinguish Themselves from Civilians,” *Valparaiso University Law Review* 46, no. 03 (2012): 765-802, accessed 20 June, 2020, <https://scholar.valpo.edu/cgi/viewcontent.cgi?article=2242&context=vulr>.

⁵ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Rep 226 (1996) (Nuclear Weapons), (78).

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (entered into force 7 December 1978) 1125 UNTS 3 (Additional Protocol I or AP I), art. 48; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. I: Rules (International Committee of the Red Cross and Cambridge University Press 2005, revised 2009) (ICRC Study), r 7.

⁷ It is suggested that attacks consist of Acts of violence as soon as they have violent consequences, even if the attacker uses no violence. Micheal N. Schmit, “Wired warfare: computer network attack and *jus in bello*” *International Review of the Red Cross* 84, no. 365 (June 2002): 377.

The Concept of Military Objects and Targets

It is important to note that there is an historical shift from the prohibition of attacks on undefended towns and villages⁸ to the law on the conduct of hostilities to the rule that only military objects may be attacked, the need to define the latter has become imperative. The principle of distinction is practically worthless without definition of at least one of the categories between which the attacker has to distinguish.⁹ From the point of view of the philosophy of IHL, it would have been more satisfactory to define civilian object. However, an object is not categorised as military object by its intrinsic character, but by its use by the enemy or potential use for the attacker that, hence, the need to define military objects.¹⁰ Indeed, every object other than those benefitting from special protection¹¹ may become legitimate object of attack. Hence, it has not been possible to formulate an exhaustive list of military objects. Most definitions formulated may appear abstract or vague, but provides a list of examples. Additional Protocol 1 (AP I)¹² provides a definition with an open list of examples of civilian objects which are presumed not to be military objects.¹³ Only a material, tangible thing can be a target.¹⁴ Immaterial objects for example, victory, cannot be attacked but only achieved. Article 52(2) of protocol 1 provides for a definition of military objects which is considered as reflecting international law.¹⁵ It states that an object must cumulatively fulfill two criteria to be a military objective. First, the object has to contribute effectively to the military action of the enemy exemplified by an object's "nature, location, purpose or use", this attests to the fact that not all objects of a military nature can be categorised as military objects. Second, its destruction, capture or neutralization has to offer a definite military advantage for the other side.¹⁶

⁸The Convention (IV) respecting the Laws and Customs of War on Land, Article 25 and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

⁹ Marco Sassòli, "Legitimate Targets of Attacks Under International Humanitarian Law", in *Informal High-Level Expert Meeting on the Reaffirmation and Development of International Humanitarian Law Cambridge, January 27-29, 2003*, accessed April 17, 2021, <https://www.hpcrresearch.org/sites/default/files/publications/Session1.pdf>

¹⁰ *Ibid.*

¹¹ Those specially protected objects, e.g., dams and hospitals, may not be used by those who control them for military action and should therefore never become military objectives. If they are however used for military purposes, even they can under restricted circumstances become military objectives (CF., for example, Protocol 1, Art. 56 (2) and the protocol additional to the Geneva Convention IV, Art 19).

¹² The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, Article 52(2).

¹³ *Ibid.* Article 52(3)

¹⁴ Yves Sandoz, Swinarski and Bruno Zimmevmann (eds), *Commentary on the Additional Protocol of 8 June 1977 to the Geneva conventions of 12 August 1949*, (International Committee of the Red Cross, Geneva 1987).

¹⁵ "U.S position the US Air Force intelligence Targeting Guide", Air Force Pamphlet 14-210 at para A 4.2.2 and A 4.2.2.3 (1 February 1998), accessed March 5, 2020, [w.w.w.Fas.org/irp/dodder/uas/atam 14-210/part 17.html](http://www.fas.org/irp/dodder/uas/atam%2014-210/part%2017.html).

¹⁶ See, for example, national military manuals with the same or similar definition in, J.M Henckaerts and LDoswald-Beck., *Customary International Humanitarian Law*, Vol II, Part 1 (Cambridge University Press, UK. 2005), 183-184.

Going forward, in recent times, there has been arguments supporting the claim that computer data should also be classified as military objects under IHL rules, although, this has generated arguments for and against. According to Mačák,¹⁷ in spite of the dearth of State practice on the matter, the concept of military objects in IHL should properly be construed to include computer data. He further argued that data is an ‘object’ for the purposes of the IHL rules on targeting. The interpretation proposed by Mačák is openly evolutive in character, which suggests that categorising computer data as a military objective is evolving and not generally acceptable. This is, however, the rule rather than an exception in this area. IHL distinguishes between military objects and military objectives. An object which is military in nature may not be lawfully targetable since it fails to fulfil the criteria for a military objective.

It pertinent to note that as far back as 1982, there had already been predictions via a commentary which observed with a degree of foresight that ‘in the dynamic circumstances of armed conflict, objects which might have been military objects in times past, may no longer be such today and vice versa’.¹⁸ Thus, it has been predicted that the form of warfare will change as well as military objects as its classification. Mačák argued further that with rapid development of information technology in the decades following the adoption of API has entailed an unprecedented challenge for IHL. Both civilian life and military operations depend to a growing degree on information and activities confined to cyber-space, with little or no ramifications in the physical world. If the law of armed conflict is to retain its relevance, it should also reflect this change. Hence, computer data are objects under IHL¹⁹ this argument is plausible and logical considering the form of warfare in recent times and the astronomical increase in the use of information technology, computer data should be categorised as military objects in realm of modern warfare in IHL.

The Rationale behind the Limitation of Attacks to Military Objectives

The rule that only military objects may be attacked is based on the principle that while the aim of a conflict is to prevail politically, acts of violence for that purpose may only aim at overcoming the

¹⁷Kubo Mačák, “Military Objectives 2.0: The Case for Interpreting Computer Data as Objects under International Humanitarian Law.” *Israel Law Review* 48 (2015): 55-80.

¹⁸ Michael Bothe, Karl Josef Partsch and Waldemar A Solf, *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949* (Martinus Nijhoff 1982): 277; ICRC Commentary (n 19) 635 para 2017; Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 2nd edn., (Cambridge University Press 2010): 84–85; Gary DSolis, *The Law of Armed Conflict: International Humanitarian Law in War* (U.K: Cambridge University Press 2010) 519.

¹⁹ Ibid.

military forces of the enemy.²⁰ Acts of violence against persons or objects of political, economic or psychological importance may sometimes be more efficient to overcome the enemy, but are never necessary, because every enemy can be overcome by weakening sufficiently its military forces. Once its military forces are neutralized, even the politically, psychologically or economically strongest enemy can no longer resist.

In contemporary conflicts, some question the philosophy behind the limitation to military objects, pointing out that the aim of the conflict is the capitulation of a dictatorial government or modifying its decisions. While it is true that the aim of every armed conflict is to defeat the enemy's will, acquiring non-military advantage over the enemy can more effectively accomplish that aim.²¹ Under the widely used theory of "effects based targeting", the desired aim will result from the effects of attacking specific links, mode or objects.²² This theory does not necessarily imply that this desired aim may go beyond the weakening of the military forces of the enemy or that the physical effects must go beyond the military. It is true that if the enemy is seen as a system, attacks upon certain targets, which politically, financially or psychologically sustain an enemy regime, may have a greater impact than attacks that affect military operations.²³ In many countries the centre of gravity is not in the armed forces. To aim at persons or objects other than the armed forces may appear indiscriminate, particularly if those attacking are not prepared to occupy the enemy country, if there is no fighting on land. In such situation, aerial bombardment may "run out of military targets", while the enemy government is not yet ready to give in.²⁴

Furthermore, during the Kosovo air campaign, NATO listed government ministries among the legitimate military objects, independently of their contribution to military action.²⁵ The attack against the Belgrade Radio and TV station was justified by some claiming that the transmitters were integrated into the military communication network,²⁶ while others, including officials of NATO

²⁰ The Declaration Renouncing the use, in time of war, of Explosives Projectiles under 400 Grammas weight PmbI, Nov. 29 1868, also known as St. Petersburg Declaration of 1868, Preamble to Paragraph 2.

²¹ James E. Baker, "When Lawyers Advise Presidents in Wartime, Kosovo and the Law of Armed conflict" *Naval College Review* 55, no. 11(2002): 22.

²² *Ibid.*

²³ Adam Roberts, "The Law of war after Kosovo" *International Law Studies* 78, no. 401 (2002): 418, John Warden, "The enemy as a system," *Airpower Journal* 40 (1995).

²⁴ Baker, "When Lawyers Advise Presidents", 416.

²⁵ Lord Robertson, "Kosovo one year on achievement and challenge" accessed February 11, 2020, <http://www.nato.int/kosoro/rep2000/index.html>

²⁶ "ICTY Report," Note 4 at paragraph 71-73.

statements mentioned generically the media among the legitimate objects of attacks.²⁷ It was pointed out that the targets were an essential part of the propaganda machinery of the regime²⁸. Others suggest that at least media inciting to commit war crimes or other international crimes are legitimate targets.²⁹ They however do not explain why objects contributing to violations of *jus in Bello* (law in war) should be treated more harshly than objects contributing to violation of *Jus ad bellum* (the rules on the legality of the use of force). Proponents of some contemporary strategic theories have gone as far as suggesting that the civilian support for the enemy war effort is a legitimate objective of attacks.³⁰ Others seem to consider everything used to prolong the war as a military object³¹

It may furthermore be argued that the limitation to military objectives obliges belligerents to give hypocritical justification for their attacks³². For example, the interruption of power supply with the aim of propelling the civilian population to rise up against the regime or remain in total black out, hence, the claim that the power stations also produce power for the military is made by the opposition. Also, attacking a radio station because it maintains the morale of the population may be justified by claiming it also serves as a military communication relay station. Attacking factories belonging to a decision-maker to show him that he too will be personally affected if he does not support to their cause, they have to claim that cigarette factories support the military effort.

However, according to the basic distinction and absolute separation between *jus ad bello* and *jus in bello*, the rules applying to those fighting for just cause and to their enemies must be the same. From practical point of view, the respect of IHL could otherwise not be obtained, as, at least between the belligerents, as it is always controversial which belligerent is resorting to force in conformity with

²⁷U.S Secretary of Defence William S. Cohen and Chairman of the joint chiefs of staff Gen. Henri H. Shelton. Joint statement on the Kosovo after action review (October 14, 1999), accessed 11 February, 2020, <http://www.defense.gov/news/Oct1999/b10141999-bt478-99.html>.

²⁸W.J Fenrick, 'Targeting and proportionality during the NATO Bombing Campaign against Yugoslavia' *European Journal of International Law* 12 (2011): 496.

²⁹ Ibid.

³⁰J.W Crawford, 'The Law of non-combatant immunity and the Targeting of National Electrical Power systems' *Fletcher forum of world Affairs* (1997): 21, quoted in W.J Fenrick, 'Targeting and proportionality during the NATO Bombing', above n. 26, 491.

³¹Yves Sandoz, "The International Committee of the Red Cross as guardian of international humanitarian law", accessed February 10, 2020, <https://www.icrc.org/en/doc/resources/documents/misc/about-the-icrc-311298.html>.

³² Major Jeanne M. Meyer, "Tearing Down the Façade: A critical look of the current law on Targeting the will of the Enemy and Air Force Doctrine," 2001, accessed February 10, 2020 <https://go.gale.com/ps/anonymous?id=GALE%7CA92044662&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=00948381&p=AONE&sw=w>

the jus ad bellum and which violates it.³³ From humanitarian point of view, the victims of the conflict on both sides need the same protection, and they are not necessarily responsible for the violation of the Jus in bello committed by “their” party. For similar reason, the same rules must apply in fighting dictatorial and democratic regimes.³⁴ The experience of the Second World War has shown that aerial bombardment affecting civilian population did not succeed in undermining neither popular support to the regime nor sufficiently disrupting the economy. In addition, it has been argued that targeting infrastructure benefitting also the civilian population in the Federal Republic of Yugoslavia and Iraq has increased rather than decreased popular support for presidents Milosevic and Saddam Hussein in their respective countries.³⁵ No one has formulated the criteria’s, other than the direct contribution to military action, which would guarantee a minimum of humanity in an armed conflict and yet be assessed objectively and applied independently of the causes attributed to the parties and the nature of the regime involved.

Military Targets

Under the AP I, a target is military if it makes an effective contribution to military action. Some argues that this does not imply the need for a target’s direct connection with specific combat operation.³⁶ A military manual substitutes “war fighting or war sustaining capability” for military action and includes target that “indirectly but effectively support and sustain the enemy’s war fighting capability³⁷. However, to include “war sustaining capability” means to abandon the limitation to military objectives and to admit attacks on political, financial and psychological targets, as long as they influence the possibility or the decision of enemy to continue the war. Those who suggest a broad interpretation of the concept of military objects mention that targeting of bank accounts, financial institution, shops and entertainment sites may prove in the long run more destructive than attacks on dual use targets³⁸. If this argument held sway in certain societies, the willingness of the military or government to continue the war can be affected by attacks on places like hospital maternity wards, kindergartens, religious shrines or homes for the elderly.

³³“Treaties, States Parties and Commentaries by International Committee of The Red Cross”, accessed February 10, 2020 <https://ihl-databases.icrc.org/ihl>.

³⁴ Ibid.

³⁵ The first Civil war involved Iraq and Iran from 1980-1988

³⁶ Stephan Oeter, *Means and methods of combat* (Oxford University Press, UK 1995), 442.

³⁷ A.R Thomas and James C. Duncan (eds), *Annotated supplement to the commander’s Handbook on the Law of naval operation* Vol 73,(Newport, R.I : Naval War College 1999), 8.1.1.

Meyer, “Tearing Down the Façade,” above n. 30, 181

³⁸ Ibid, 181.

Furthermore, it has been suggested that there is need for restriction on the number of legitimate targets in “international forms of armed conflicts”, such as peace enforcement operations conducted on behalf of the international community, particularly in situations when the enemy do not launch counter attacks. The main difficulty of this approach lies in defining the scope of application of such special rules and in abandoning the traditional equality of belligerents before IHL. Taken literally, the separate requirement that the attack must offer a definite military advantage means that even an attack on an objective of military nature would not be lawful. If its main purpose is to affect the morale of the civilian population and not to reduce the military strength of the enemy.³⁹

Article 8(1) (b) of the 1954 Hague Convention for the protection of cultural property states that in the event of armed conflict, cultural property placed under special protection must be situated at an adequate distance from any military object constituting a vulnerable point such as aerodrome, broadcasting station, establishment engaged upon work of natural defence, a post or railway station of relative importance or a main line of communication. For instance, broadcasting stations are regarded as military objects and can be targeted⁴⁰ cultural properties located around it can be attacked. The aim of this provision is to ensure that specially protected cultural property must be placed far away from any location which could become a military object. However, this may not be practicable to achieve in the midst of an actual conflict.

Persons Who May Be Targeted

In armed conflicts, combatants are regarded military objects, hence, police officers when incorporated into the armed forces can be categorised as combatants. A civilian, including police officer not incorporated into the armed forces, who unlawfully take a direct part in hostilities, will no longer enjoy protection against attacks, as long as they directly participate. Anyone who is not a combatant is a civilian benefitting from the protection provided for by the law on the conduct of hostilities. Together, the categories of civilian and combatant are mutually exclusive and in complement to one another, which is very important for the completeness and effectiveness of the IHL⁴¹, in effect or where others may be attacked but may not and do not defend themselves. Such privilege or disadvantage, respectively, would never be respected and would undermine the whole fabric of IHL in a given conflict.

³⁹ Major Jeanne M. Meyer n. 30 at 181.

⁴⁰ Ibid.

⁴¹ See for generally ICRC guidelines for military manuals & instruction on the protection of the environment in times of armed conflict 1994 submitted pursuant to UN General Assembly Resolution A/RES/48/30 of 9 December 1993.

Under IHL there may be no category of partial- combatant”, i.e., of civilians contributing fundamentally to the military effort or the war effort (e.g., workers in ammunition factories) that they lose their civilian status although not directly participating in hostilities⁴². If the civilian population are to be protected only one distinction appears practicable: The distinction between those who (may) directly participate in hostilities, on the one hand and all others, on the other hand who do not, may not, and cannot hinder the enemy militarily from obtaining control over their country in turn of a complete military occupation, regardless of whatever their contribution to the war effort may be otherwise. Permitting attacks on persons other than combatants would violate the principle of distinction, because victory can be achieved by overcoming only the combatants of a country, however efficient its armament producers, scientist and politician may be⁴³.

The notion that some civilians may be targeted because of their fundamental contribution to the war effort, although they do not directly participate in hostilities, may be based on a misunderstanding or failure to distinguish between military objects that may be attacked and persons who may be the target of an attack⁴⁴. Military objects, such as armament factories may be attacked and, subject to the principle of proportionality. The attack on a military object however does not become lawful because of the risk that a civilian who works or is otherwise present in military objective may be harmed by such an attack. There is, therefore, no military necessity that the armament worker or the weapons development scientist might be targeted individually. For instance, aerial bombardment of the residential area where the armament worker or scientist lives or attack by enemy ground force capturing his factory. In the latter illustration the question would furthermore arise as to how he could surrender. Allowing such attacks would furthermore put the rest of the civilian population at risk. Similar thoughts must be expressed concerning politicians, Civil servants, scientists and propaganda officials⁴⁵. In addition, it would be very difficult to draw a line. For instance, it could be argued that an International law professor who through his publications justifies the legitimacy of war (or of violations of life) may be regarded as a less legitimate target than an attack on foreign ministry officials or spokesperson.⁴⁶

⁴² Robert Wayne Gehring, “Protection of Civilian Infrastructures”, accessed February 10, 2020 <https://scholarship.law.duke.edu/lcp/vol42/iss2/5>.

Robert Wayne Gehring, ‘Protection of Civilian Infrastructures’, accessed 10 February, 2020 <https://scholarship.law.duke.edu/lcp/vol42/iss2/5>.

⁴³ Ibid.

⁴⁴ Meyer, “Tearing Down the Façade“, 166.

⁴⁵ Sassòli, “Legitimate Targets of Attacks”.

⁴⁶ Ibid.

Protected Persons

The law of Geneva serves to provide protection for all those who as a consequence of an armed conflict, have fallen into the hands of the adversary. The protection envisaged is hence, not protection against the violence of war itself, but against the arbitrary power which one party acquires in the course of an armed conflict over persons belonging to the other party. Protection of this type was granted, for the first time in 1864, to the wounded soldiers in the field. Since 1949 it extends to all categories of persons mentioned in the four Geneva conventions of that year viz:⁴⁷.

- i. The convention (I) for the Amelioration of the condition of the wounded and sick in Armed forces in the field (the first or Red Cross Convention)
- ii. The convention (II) for the Amelioration of the condition of wounded, sick and shipwrecked members of the Armed forces at sea (the second or sea Red Cross convention)
- iii. The convention (III) relative to the treatment of prisoners of war (third or prisoner of war convention) and⁴⁸
- iv. The convention (IV) relative to the protection of civilian person in time of war (the fourth or civilians convention)⁴⁹

Humanitarian Consideration in the Bombardment of Non-Military Targets and Objects

The only legitimate goal to be accomplished during war is, in line with of the 1868 St. Petersburg Declaration, is “to weaken the military forces of the enemy”. One method by which a belligerent party may seek to accomplish this goal by eliminating those objects which may be regarded as “military objectives” in the narrowest, most literal sense of the term. For instance, launching an attack on units of the enemy armed forces, their armored cars and mobile artillery, and military installations such as fixed gun emplacements and ammunition depot⁵⁰.

Another method is denying the enemy the acquisition or production of weapons. This may be done by cutting off the supply of weapons or of raw materials required for their production (by blockades

⁴⁷ Frits Kalshoven and Liesbeth Zegveld, *Constraints on the waging of war*, (U.K.: Cambridge University Press, 2001), 51-53.

⁴⁸ Levis, H.S, “Prisoners of war in international armed conflict,” in *59 U.S Naval War College International Law Studies*, Newport 1979.

⁴⁹ Dietrich Schindler and Jiri Toman, *The Laws of Armed conflicts, A collection of conventions resolutions and other documents* (Dordrecht: MartinusNijhoff, 1988) 3rded.

⁵⁰ Judith Gail Gardam, “Proportionality and Force in International Law,” *The American Journal of International Law* Vol. 87, No. 3 (1993), pp.413, accessed 15 June, 2020, <https://www.jstor.org/stable/2203645>.

or measures of economic warfare) or by selecting arms factories as a target of military operations (bombardment, Sabotage)⁵¹. Also, considering the fact that long-distance aerial bombardment became serious possibility, such objects are generally categorised as military objects. It is of interest to refer in this connection to an instrument preceding that development by a long time, the 1907 Hague Convention IX concerning Bombardment by Naval forces in Time of war. Article 2 of the 1907 Hague Convention (IX) allows the bombardment of military works, military or naval establishment, depot of arms of war material. Certain principles have long been recognized from which a prohibition to regard given objects as military objects can be deduced⁵². Particular importance is attached to the rules laid down in Resolution xxviii of the 20th international conference of the Red Cross and Red Crescent (Vienna 1965) and Resolution 2444 (XXII) of the United Nations General Assembly, 1968.

These resolutions reaffirm some principles for observance by all governmental and other authorities responsible for action in armed conflict, of which the under listed are of relevance:

- a. That it is prohibited to launch attacks against the civilian population as such;
- b. That distinction must be made at all times between persons taking part in hostilities and members of the civilian population to the effect that the latter be spared as much as possible⁵³.

Article 2 of the 1907 Hague Convention states that the bombardment of objects which may be destroyed although they are situated in an undefended locality, it must be preceded by a warning, unless for military reasons immediate action is necessary, the commander shall take all due measures in order that the town may suffer as little harm as possible. Article 6, dealing with naval bombardment in general, provides that if the military situation permits, the commander of the attacking naval force, before commencing bombardment, must do his utmost to warn the authorities⁵⁴.

⁵¹ Paskins, B. & M Dockrill, *The Ethics of war*, (Minneapolis, 1979).

⁵² Ibid: Howard S. Levie (ed.), "Document on Prisoners of war," *US Naval war college international law studies* 60(1979)

⁵³ Resolution 2444 (XXIII) of the United Nations General Assembly, 19 December 1968 "Respect for Human Rights in Armed Conflicts," accessed 18 May, 2020

<https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/52d68d14de6160e0c12563da005fdb1b/2a611a39fb67b146c125641e005272c1?OpenDocument>.

⁵⁴ Meyer, M.A (ed): *Armed conflict and the new law: Aspects of the 1977 Geneva protocols and the 1981 weapon convention* (London, 1989).

Implications under IHL

The Syrian armed conflict started as a peaceful protest but later evolved to a full-blown war with its gory adverse effect, began as an offshoot of the 2010 Arab Spring.⁵⁵ The tension which started in Tunisia had huge influence on the situation in other countries of North Africa and in the Middle East. Although the aftermath of uprisings in each nation proceeded in various ways and effects of them were different.⁵⁶

The wave of Arab unrest that started with the Tunisian revolution in December 2010, reached Syria on March 2011, when citizens of the city of Deraa gathered to demand the release of fourteen school children who were arrested and reportedly tortured after writing on a wall, the well-known slogan of the mass uprisings in Tunisia and Egypt: “The people want the downfall of the regime.” Government’s harsh response made the conflict spread all over the country in a very short time. The conflict was initially described as a struggle between President Assad regime and opposition forces, seeking to create a democratic Syria; but over the time, the situation became far more complex and murkier.⁵⁷

The Syrian civil war began in March 2011, when Syrian President Bashar Al-Assad in his response to peaceful opposition to his regime used disproportionate force, which led to the surge of armed opposition by rebel groups. Shortly after, other extremist groups such as the Islamic State of Iraq and Syria ISIS⁵⁸, was formed to seize territory in Syria.⁵⁹ The War in Syria started as a protest

⁵⁵ Lucy Rodgers, David Gritten, James Offer and Patrick Asare, “Conflict Background”, *BBC News*, 09 October 2015, cited in Sajid Karim and Md. Nazmul Islam, “Syrian Crisis: Geopolitics and Implications,” *Biiss Journal*, Vol. 37, NO. 2, APRIL 2016: 107-132, accessed 21 November, 2020,

⁵⁶ Marian ŽUBER and Samuel Sahel Moussa, “Arab Spring as A Background of Civil War in Syria,” *International Conference Knowledge-Based Organization* Vol. XXIV No 1 2018, accessed 21 November 2020,

https://www.researchgate.net/publication/326653652_Arab_Spring_as_a_Background_of_Civil_War_in_Syria

⁵⁷ Ted Galen Carpenter, “Tangled Web: The Syrian Civil War and Its Implication”, *Mediterranean Quarterly*, Vol. 24, No. 01, winter (2013).

⁵⁸ Christopher M. Blanchard and Carla E. Humud, “The Islamic State and U.S Policy,” *ISIS as The Islamic State* (aka the Islamic State of Iraq and the Levant, ISIL/ISIS, or the Arabic acronym *Da'esh*) is a transnational Sunni Islamist Insurgent and terrorist group that controlled large areas of Iraq and Syria from 2014 through 2017. The group attracted a network of global supporters and its leader, Abu, Bakr al Baghdadi, received pledges of affiliation from groups in several other countries. A series of terrorist attacks attributed to the group or individuals it has inspired have claimed hundreds of lives on four continents since November, 2015, including in the United States. “Congressional Research Service7-5700” (R43612), accessed 20 February 2020, www.crs.gov.

⁵⁹ See John B. Bellinger, “Make ISIS Leaders Face Justice”, *New York Times*, April 2, 2015, <https://www.nytimes.com/2015/04/03/opinion/make-isis-leaders-face-justice.html>; Kelemen, see also, Jared Malsin, “Assad's Regime is Still Using Chemical Weapons in Syria”, *New York Times* September 14, 2016, <http://time.com/4492670/syria-chemical-weapon-aleppo-assad-regime>; Robins-Early, Lucy Rodgers et al, “Syria: The Story of the Conflict” War crimes and crimes against humanity are being committed across the board by all parties, *BBC News Report* March 11, 2016,

against the Assad regime, however, it escalated into a protracted civil war. The International Committee of the Red Cross (ICRC) in its statement through the spokesman Hicham Hassan on Sunday 15 July 2012⁶⁰ classified the conflict in Syria to be a full-blown civil war, which implied that IHL principles became applicable throughout the country. The war gradually developed into a large scale non-international armed conflict with parties deploying means and methods of warfare in the quest to overpower each other. The Syrian government was actively engaged in warfare with the Free Syrian Army⁶¹ and other opposition forces.⁶²

A group of Syrian hackers known as the Syrian Electronic Army published a fake tweet announcing explosions in the White House and injury to the US President. The effects were immediate and momentous: the Dow Jones Industrial Average index of the New York Stock Exchange dropped with the effect of erasing \$136 billion of equity market value.⁶³ It should be noted that all of this occurred without any effect on physical objects, whether the servers of Twitter or the stock exchange, or the Internet infrastructure carrying the data in question. Although the consequences of this particular attack were short-lived, it revealed the extent of damage that could possibly be caused by means of cyber operations. Any such large-scale damage to civilian property in the physical world would certainly not escape the regulatory reach of IHL.⁶⁴ It is imperative to note this classical example of attacks that ordinarily do not appear to be military objects, but a cursory look reveals that it could be classified as military objectives. This form of attack has been on the increase in recent times in modern day warfare as seen in the Syrian conflict.

Another major flash point in the Syrian conflict which has led to hundreds of thousands of deaths, millions of displaced people, and the damage and destruction of the country's cultural heritage by warring parties. Although it is generally accepted that the conflict start date is 15 March 2011, but

<http://www.bbc.com/news/world-middle-east-26116868>, A UN commission of inquiry has evidence that all parties to the conflict have committed war crimes - including murder, torture, rape and enforced disappearances.

⁶⁰ TemitayoFamutimi, "Syrian Conflict now a civil war- ICRC", *The Punch Newspaper*, July 16, 2012 (Vol. 17 N0. 20, 185) 74.

⁶¹ The FSA has remained a brand name only. Meanwhile, there are also independent military alliances, which vary from more moderate to more extreme groups. The differences between the self-identified FSA and the independent groups have not, however, significantly hindered their cooperation as they have continued to cooperate operationally to achieve their common objectives. U.N. Gen. Assembly, Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, ¶ 25, U.N. Doc. A/HRC/22/59 (Feb. 5, 2013); see also Guide to the Syrian Opposition, BBC News, accessed 20 January, 2020, <http://www.bbc.co.uk/news/world-middle-east-15798218>.

⁶² Zachary Lauband Jonathan Masters, "Syria's Crisis and the Global Response," *Council on Foreign Relations* September 11, 2013, accessed 20 January, 2020, <http://www.cfr.org/syria/syrias-crisis-global-response/p28402>.

⁶³ Max Fisher, "Syrian Hackers Claim AP Hack that Tipped Stock Market by \$136 Billion. Is it Terrorism?" *Washington Post*, April 23, 2013.

⁶⁴ Michael N Schmitt, 'The Law of Cyber Warfare: Quo Vadis?' *Stanford Law & Policy Review* 25 (2014): 297 (attacks causing the deletion of state-maintained digitised records).

later became an "armed conflict" which changed the nomenclature of the unrest from an internal disturbance to full blown armed conflict recognised by IHL and officially declared in June 2012.⁶⁵

The cultural heritage in Syria had been profoundly involved in the conflict since the beginning, when the eighth-century al-Omari mosque was shelled.⁶⁶ Syria contains some of the most globally varied and important cultural heritage in the Mediterranean: religion and tangible and intangible heritage have intertwined over many millennia. The country hosts six World Heritage sites, which are all now on the List of World Heritage in Danger, and 11 sites on the World Heritage Tentative List.⁶⁷ However, while it has been argued that Syria's world heritage is deserving of special legal protection,⁶⁸ and international investigation has often focused on these conspicuous sites.⁶⁹

It is noteworthy to observe that Syria's cultural heritage has been under attack since the inception of the conflict which had resulted in partial or total destruction of such properties. It is also pertinent to note that both national and international legal framework for protection of cultural property⁷⁰, which often times have not been effectively applied or enforced.⁷¹ The Syrian conflict is peculiar as it involves both State and non-State actors.⁷² Cultural properties are not military objects⁷³, and should not ordinarily be an object of military attack. However, it has been under attack in the Syrian

⁶⁵ Arimatsu, Louise, and Mohuba Choudhury, *The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya*. International Law Series, (London: Chatham House, 2014).

⁶⁶ Human Rights Watch, "They Burned My Heart: War Crimes in Northern Idlib during Peace Plan Negotiations," Uploaded on May 12, 2021, <https://www.hrw.org/report/2012/05/02/they-burned-my-heart/war-crimes-northern-idlib-during-peace-plan-negotiations>

⁶⁷ While only 11 sites have been nominated, they make up 12 submitted nominations on the World Heritage Tentative List, as Dura Europos (8 June 1999) and Mari, Tell Hariri (8 June 1999) were submitted separately, but have a twelfth nomination as a joint submission (Mari and Europos-Dura sites of the Euphrates Valley (23 June 2011).

⁶⁸ Silvia Perini, "Towards a Protection of the Syrian Cultural Heritage: A Summary of the National and International Responses," *Girona*, vol. 3, (Spain: Heritage for Peace, 2015).

⁶⁹ Amnesty International and American Association for the Advancement of Science 2013; World Heritage Committee (2014); Abdulkarim, Maamoun, "Annual Report Damascus: Directorate General of Antiquities and Museums (2013); Cunliffe, Emma, Wendi Pederson, Manuel Fiol et Al," Satellite-based Damage Assessment to Cultural Heritage Sites in Syria. Geneva. UN Institute for Training and Research (2014)

⁷⁰ International community has responded from time to time for enhancing the extent of protection of cultural property. From the Leiber Code to the Second Protocol (1999), to the provisions of the Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict, (also referred to as the Hague Convention).

⁷¹ The protection of cultural heritage today has become an important subjectmatter in a network of policy fields, which makes it necessary to understand the most important objectives of these legal instruments, to discuss how they interrelate and how they may support each other.

⁷² Ozden Oktav and Emel Parlar Dal, "Violent non-state actors and the Syrian Civil War: The ISIS and YPG Cases," accessed September 20, 2020, <https://www.researchgate.net/publication/322184450>.

⁷³ Humanitarian tradition has two dimensions: first, protection of the physical welfare of the person by providing him/ her medical aid, food, shelter and freedom from torture; and second, protection of spiritual and emotional welfare by enabling mobility, family life and access to cultural life.

conflict by parties to the conflict. A major setback with the existing legal framework is lack of enforcement and the inability to prosecute violators as observed in the Syrian conflict.

In the quest to quash the opposition in the war in Syria, the regime determined to suppress the revolution, deployed all military might at its disposal to rain death and destruction upon the Syrian people. The regime used rocket-propelled grenades, artillery shells, and long-range ballistic missiles carrying chemical and functional projectiles. The use of chemical weapons has arguably been one of the most serious disasters in the ongoing conflict.⁷⁴ These attacks have been carried out by the Assad forces, against the Syrian revolution and the country's nascent civil society.⁷⁵

In December 2012, the Syrian regime shelled the residential areas in Homs City. The attack marked the first recorded instance of the use of chemical ballistic missiles by the regime. Such violations have been ongoing; the regime has since carried out dozens of military operations using internationally-banned chemical substances.⁷⁶ The Human Rights Watch report "documented 85 such horrific incidents, which have claimed the lives of thousands of civilians in flagrant violation of international law."⁷⁷ The chemical weapons that were used by the Syrian regime are banned by multiple international conventions under any circumstances.⁷⁸

Although, there have been many chemical attacks in Syria⁷⁹, unfortunately, only three have been confirmed by the international community: the attack near Aleppo; the attack near Damascus in March 2018; and the attack on Homs in December 2012.⁸⁰ The armed opposition groups and the regime accused each other of using chemical weapons in all three instances, but preliminary

⁷⁴ Abdul Wahab, "Chemical Weapons in Syria: A Record of Facts, Evidence and Silence" (2018) accessed September 20, 2020, [br<span class="cite_title."](#)

⁷⁵ The nature of these weapons can be summarized as follows: Weapons of mass destruction, providing the regime with a high capability to destroy structures, kill people, and cause great physical and psychological damage. Weapons of terror, sowing fear and panic among the civilian population by targeting their places of residence. This would greatly deter the enemies of the regime, on the one hand, while driving a wedge between the fighting groups and the nascent civil society by sowing discontent among the ranks of the revolution, on the other. An extra bargaining chip at the regional and international levels; Assad has long threatened to attack the region as a whole if the security of his regime is challenged by international powers.

⁷⁶ Human Rights Watch, "Targeting Life in Idlib Syrian and Russian Strikes on Civilian Infrastructure," *HRW* (2020), accessed 20 November 2020, <https://www.hrw.org/report/2020/10/15/targeting-life-idlib/syrian-and-russian-strikes-civilian-infrastructure>.

⁷⁷ *Ibid.*

⁷⁸ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Hereinafter Chemical Weapons Convention or "CWC"), art. 1(1) accessed July 15, 2020, <https://www.opcw.org/chemical-weapons-convention/articles/article-i-general-obligations>.

⁷⁹ Arms Control Association, "Timeline of Syrian Chemical Weapons Activity," (2012), accessed May 13, 2020, <https://www.armscontrol.org/factsheets/Timeline-of-Syrian-Chemical-WeaponsActivity>

⁸⁰ *Ibid.*

evidence suggests Assad's involvement. World leaders and indeed the international community condemned the use of chemical weapons in Syria. In 2012, President Obama referred to Syria's use of chemical weapons as crossing a legal "red line," which would warrant a response from the US military.⁸¹ The Independent Inquiry again reported reasonable grounds to believe that "Government forces had committed crimes against humanity of murder and of torture, war crimes and gross violations of international human rights law and international humanitarian law."⁸²

Reports on the Syrian conflict reveals that children and women had higher odds of death by explosive weapons and chemical weaponry, relative to shootings and compared with civilian men.⁸³ Explosive weapons were most lethal among children compared with both civilian men and women. On the other hand, civilian men constituted the largest share of the civilian death toll, mostly being killed by shells, shootings, and executions.⁸⁴ Other studies of direct deaths from weapons in the Syrian conflict have examined their impact on children.⁸⁵

Bombardment of Military Targets and Objects in the Syrian Armed Conflict: A Violation of IHL Principles?

It is evident that there has been gross violation of International Humanitarian Law in the on-going Syrian conflict, with adverse effect mostly on the civilian population. The pertinent issue is the propriety of the attacks that has characterised the conflict, as most of the targets of attacks are not military targets or objects. The attack has caused more civilian casualty with parties to the conflict wrestling for superiority and control of various parts of the country. In July 2013, the United Nations (U.N.) reported that more than 100,000 people had been killed, a figure that has further risen in the meantime.⁸⁶ At the end of 2013, over two million refugees had fled the country.⁸⁷

⁸¹ Glenn Kessler, "President Obama and the 'Red Line' on Syria's Chemical Weapons," *Washington Post*, 6 September 2013, https://www.washingtonpost.com/news/factchecker/wp/2013/09/06/president-obama-and-the-red-line-on-syrias-chemical-weapons/?utm_term=.Oef064c6dfe

⁸² U.N. Gen. Assembly, "Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic", at *Summary*, U.N. Doc. A/HRC/21/50 (Aug. 16, 2012).

⁸³ James Denselow, Keyan Salarkia and Jess Edwards, "a report of Blast Injuries on Children: The impact of explosive weapons on children in conflict," Save the Children Fund (2019), accessed 12 November 2020, <https://reliefweb.int/sites/reliefweb.int/files/resources/CH1325872.pdf>.

⁸⁴ Debarati Guha-Sapir et al., "Civilian deaths from weapons used in Syria," (2015), accessed November, 10, 2020, <https://www.researchgate.net/publication/282296188>

⁸⁵ Dardagan H and Salama H, "Stolen futures. The hidden toll of child casualties in Syria," (2013), accessed October 12, 2020, www.everycasualty.org/downloads/reports/Stolen-Futures.pdf.

⁸⁶ U.N. Secretary-General, "Opening Remarks at Press Encounter" (2013), accessed September 30, 2020, <http://www.un.org/apps/news/infocus/speeches/statments-full.asp?statID=1928#.Un0BbpOVEaU>.

⁸⁷ See Stories from "Syrian Refugees: Discovering the Human Faces of a Tragedy," *UNHCR* data page, accessed September 30, 2020, <http://data.unhcr.org/syrianrefugees/syria.php>.

Reports reveal that there are as many as 1,000-armed opposition groups in Syria, commanding some 100,000 fighters.⁸⁸ The largest armed opposition group is the Free Syrian Army (FSA), formed by Army deserters in 2011.

There have been reports of the use of chemical weapons (CW) in Syria, the reports revealed specifically that there have been attacks with phosphorous bombs, vacuum bombs, poisonous gases, especially cyanide, unknown yellow dust materials, and fissile and incendiary bombs. Chemical bombs were used in the countryside of Aleppo, I dlib countryside, Raqqa countryside, Damascus countryside, and Homs.⁸⁹ In addition, it was reported that the Syrian regime might have used a substance known as the Element 15 hallucinogenic material-maybe its phosphorus), most recently in Aleppo.⁹⁰ The Syrian Regime and the armed opposition are both accusing each other for the use of CW. One thing however is certain, such use is a violation of international law as it strongly prohibits any use of chemical weapons.⁹¹ It also bans acts of military nature against civilians during armed conflicts.⁹²

It is evident that no humanitarian consideration was made by parties to the Syrian conflict in the bombardment of military targets and objects, leading to a high number of civilian casualties which is a gross violation of International Humanitarian law. As gleaned from the above analysis, most of the objects of military attacks were not military targets or objects, rather the attacks were premised on battle for superiority by warring parties with no or less humanitarian consideration for civilian lives and objects. In the quest for military supremacy, the basic principles of proportionality, humanity and military necessity were grossly violated by warring parties in the conflict. This resulted to a large number of avoidable civilian deaths and destruction of cultural properties.

⁸⁸ BBC, "See Syria Crisis: Guide to Armed and Political Opposition." *BBC NEWS*, October 17, 2013. The FSA Supreme Military Council itself has claimed to control some 900 military units totalling around 300,000 members. See Basma Atassi and Mohammed Haddad, "Interactive: Mapping Syria's Rebellion," *AL JAZEERA*, July 19, 2013.

⁸⁹ Human Rights Watch, "Death by Chemicals, The Syrian Government's Widespread and Systematic Use of Chemical Weapons" (2017), accessed November 20, 2020, <https://www.hrw.org/report/2017/05/01/death-chemicals/syrian-governments-widespread-and-systematic-use-chemical-weapons>.

⁹⁰ Orient News, "Facts and Evidence of Chemical Weapons in Syria," *Orient News*, April 17, 2013, <http://www.orient-news.net/ar/news/show/3010>.

⁹¹Article 1 of the Chemical Weapons Convention Prohibits the following: To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone; To use chemical weapons; To engage in any military preparations to use chemical weapons; and to undertake not to use riot control agents as a method of warfare

⁹² Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War.

Conclusion

Principles of military necessity, proportionality and humanity exist in fragile equipoise in International Humanitarian Law. Since war is inevitable, it cannot be conducted without restriction, for states are responsible for the well-being of their populations (including combatant) and must therefore agree with potential enemies on limitations that safeguard their interest. Also, it is crucial to raise the bar in the effective implementation of the principle of distinction which forms the bedrock for determining what constitutes military target and objects. Furthermore, in the conduct of such military operations by both State and non-State actors, distinction between military targets and objects and civilian objects should be made.

The basic principles of IHL such as humanity proportionality, military necessity and distinction, though laudable has been flagrantly disregarded in the Syrian Conflict. The Syrian situation, is likely to enforce less incentive to comply with IHL principles on the part of the State armed forces and non-State forces. The result, as illustrated by the widespread massacres and other war crimes committed by all sides in Syria, is a downward spiral characterized by increased disregard for the laws of war and for the fate of the civilian population, further embedding the deep feelings of hostility between the opposing sides and making a political solution the harder to reach.

The Syrian situation has once again exposed the failures of the existing legal framework of IHL, particularly the challenges of implementation, hence, the need for urgent global attention in this regard. Thus, it is suggested that with it may be time to the enactment of a comprehensive and detailed global legislation that will fill gap created by IHL as exemplified in Syria, to forestall future occurrence. However, achieving this may be unrealistic, considering the failures of existing legal frameworks. Arguments have been made to the effect that a major challenge in International Law is law making and implantation. The former appears easy, and the latter an uphill task, while it can be argued further that unlike Municipal laws whose legislative body is well established, structured and formulated; same cannot be said of International Law. Also, implementation of International Law and treaties all well as effective punitive sanctions for violations have not largely successful as exemplified in the Syrian Conflict. The non-existence of Standing army and, the need for ratification by Countries and the challenge of drawback clauses are all clogs in the wheel of successful implementation of International Law.

Finally, it has been argued that due to the shortcomings highlighted, there may be need to explore political solutions as options in armed conflicts like the situation in Syria, particularly as it relates to bombardment of military targets and objects.