

The Resolution of Disputes Concerning the Protection of Civilians in Areas of Engagement in Armed Conflict: Based on the Additional Protocols to the Geneva Conventions

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Abstract: Nowadays, with frequent local wars, the forms and means of armed conflicts are changing. So, when it comes to protecting civilians in war zones, there are often difficulties. These difficulties are caused by a variety of factors, which have often been seen in local wars in recent decades. On the question of who should bear the responsibility for protecting civilians and to what extent, people from different positions often have different answers. This article seeks to build on the Geneva Additional Protocol I to explain why warring parties should follow the principles of distinction and proportionality in conflict and how they can protect the fundamental rights of civilians. Through case analysis and legal analysis, this paper focuses on the changes in the forms and modes of war in recent decades and summarizes the main difficulties in protecting civilians in war zones in today's international environment. At the same time, by interpreting the provisions of Additional Protocol I to the Geneva Conventions, this paper draws a conclusion that the application of international law norms to implement the principle of distinction and proportionality in armed conflict can protect the basic rights of civilians in war zones in various ways.

Keywords: International Humanitarian law, Geneva Conventions, Rights of civilians, principle of distinction, principle of proportionality

1. Introduction

In modern civilized society, advocating peace and opposing war has always been the goal of all countries. In war, the personal safety and basic rights of civilians are also the consensus of the international community. Unfortunately, in recent decades, the frequency of local wars in the world has not been reduced by the efforts of countries in the cause of peace, and in all wars, one can always see the sad news of civilian casualties and even deaths. Therefore, how to fully and effectively protect the basic rights of civilians in war by legal means is a major problem facing all mankind today.

The most controversial of these is how to protect civilians and civilian facilities that are located in the area of fire, are caught up in the conflict on the front lines of the battlefield, or are for one reason or another mixed with armed personnel and military targets. The main reason for this problem is that the form of war and the operational thinking of the armed forces have changed greatly in recent decades, which has led to a great difference between the battlefield of modern war and that of the two

World Wars. Three of these changes have a huge impact on the security and fundamental rights of civilians living on land.

2. Major Issues Facing the Protection of Civilians in War Zones

2.1. The Military's Long-range Strike Capability Has Been Upgraded

During the Cold War, ballistic missiles, cruise missiles and other weapons with long-range strike capability were increasingly installed in the world's militaries. The widespread use of long-range weapons has blurred the boundaries of the battlefield, allowing belligerent forces to strike directly at valuable targets outside the traditional battlefield. These targets are outside the traditional battlefield, so they are not far from civilians. In the armed conflict in Yemen in 2022, a coalition of Saudi Arabia and other countries used missiles to attack a communications building in the Hodayai area of Yemen, which resulted in the death of many civilians, including children [1]. In this incident, belligerents can choose to weaken their opponents by attacking important facilities outside the battle zone, such as attacking communications facilities to cut off enemy military communications, but strikes against these facilities are more likely to cause civilian casualties than traditional battlefield confrontations, because they are located in areas where civilians normally operate.

2.2. The Development of Militias and Paramilitaries in the Organization

In the local wars that followed the Second World War, especially in the newly independent former colonial countries, many paramilitary and militia groups were organized either spontaneously by the locals or with the acquiescence and support of the authorities of the belligerent countries, owing to the chaos of the military administration and rising nationalism. The existence of these military organizations has blurred the definition of armed personnel and civilians in war, and has also blurred the line between civilian and military facilities. A more representative example is the Vietnam War, in the early 1960s, more than 300,000 people joined the South Vietnam Liberation Front and its armed groups, and operated in southern Vietnam, Laos, and Cambodia. A large number of these people were not officially armed, but armed farmers who opposed the southern Vietnamese authorities, lived with civilians for a long time, and launched attacks against U.S. and southern Vietnamese forces [2]. Such groups, which are indistinguishable from civilians, present a legal dilemma. On the one hand, strikes against these fighters will inevitably affect civilians in the same area as them, but it is impossible for the military not to take action against these fighters on the battlefield. On the other hand, if the warring parties seriously violate the interests of civilians under the pretext of identifying and clarifying the militia forces, it will trigger a serious humanitarian crisis. In August 1965, for example, U.S. Marines set fire to civilian buildings in the village of Cam Na in response to local militants. This is a serious violation of the basic rights of the local civilian population [3]. From the above, it is not difficult to see that the development of militia groups has put warring armies in a dilemma between eliminating potential threats and protecting civilians, and at the same time provided them with an excuse to relax the scope of their strikes.

2.3. An Increase in Terrorist Activities

In recent decades, global terrorist activities have been increasing, and terrorism has become another important factor that seriously threatens world peace and human development in addition to local wars. This is because the military actions launched by terrorist organizations are the same as the general wars between countries. On the one hand, the only purpose of terrorist organizations is to use group means to promote their own beliefs and propositions, so they will not be satisfied with the rule or economic interests of a certain region and will inevitably export violence and killing to the outside

world. Therefore, there is no compromise option for countries in the fight against terrorism. The long-term existence of a terrorist organization is unacceptable to human society. On the other hand, due to the narrowness and blindness of the activities of terrorist organizations, they do not consider the development of the region under their control, international rules and international public opinion and other political factors, so they often take more extreme measures in the process of war. For example, during the ISIS takeover of Mosul in 2016, it made extensive use of "human shields", using civilians as hostages and bunkers to counter attacks by Iraqi security forces [4]. In military operations where "human shields" are used in tactical operations against terrorists, there is an obvious legal dispute over who is responsible for the deaths of hostages and trapped civilians in such operations. First of all, there is no doubt that terrorist organizations bear the primary responsibility for these civilian casualties, but as mentioned above, terrorist organizations do not act in a manner consistent with the spirit of international law or the norms of human society, so international law can only serve as a punishment for them after the fact but cannot regulate their behavior. Therefore, the obligation to protect these civilians who are subjected to terrorist activities falls on the side of the armed forces fighting terrorist organizations. There is no doubt that the elimination of terrorist organizations is the common goal of all mankind and an action in line with international justice, but the casualties of the people caught in terrorist activities caused by this process will be attributed to the anti-terrorist armed forces to a certain extent. Therefore, to what extent anti-terrorist forces need to undertake such an obligation is also a major problem of how to protect civilians in war zones through international law.

Articles 48, 50, and 51 of Protocol I of the Geneva Conventions are fundamental parts of international humanitarian law, crucial for protecting civilians in conflict situations. These provisions provide a legal basis for the principle of distinction, which involves differentiating between civilians and combatants, as well as civilian objects and military objectives in armed conflicts. Here is a detailed analysis of these articles and why they form the legal basis for the principle of distinction.

3. The Principle of Distinction

3.1. Legal Foundation

Article 48 establishes a fundamental rule in the principle of distinction within international humanitarian law. It mandates that all parties in a conflict must consistently differentiate between civilians and combatants, and between civilian objects and military objectives. This critical article forms the cornerstone of the principle of distinction, ensuring that military operations are exclusively directed against military targets, thereby substantially reducing the risk and harm to civilian lives and property.

Article 50 provides an essential definition of "civilians". It states that any person who does not fall under the categories of combatants shall be regarded as a civilian. This definition plays a pivotal role in the practical application of the principle of distinction, as it clearly delineates who is entitled to protection. It also underscores that only those actively engaged in hostilities are to be considered legitimate targets in military operations.

Article 51 elaborates on the protection measures for civilians. It includes a strict prohibition on direct attacks against civilians or civilian objects. Furthermore, it refines the application of the principle of distinction by explicitly forbidding any attacks that may cause disproportionate damage or harm to civilian populations, thereby significantly strengthening the safeguards provided to them.

In unison, these articles lay down the legal foundation for the principle of distinction. They clearly define and differentiate civilians from combatants and outline the protective measures for each group. This demarcation ensures the respect and upholding of fundamental human rights and protections for non-combatants in the milieu of armed conflicts. Additionally, these provisions actively promote the adoption of necessary and prudent precautions by parties engaged in conflict. This is done in the

planning and execution stages of military operations, with the aim of minimizing casualties and damage to civilian populations and infrastructures. In doing so, they uphold and reinforce the core humanitarian principles within the framework of international law.

3.2. Legal Function

The principle of distinction holds a central position in international humanitarian law, placing critical responsibilities on warring parties during armed confrontations. This principle compels the parties in a conflict to consistently differentiate between civilians and combatants, and between civilian structures and military targets. Its chief aim is to protect civilians and civilian infrastructure from the impact of warfare, aiming to minimize unintended loss of life and damage to non-combatant property [5].

In accordance with this principle, those engaged in combat are obligated to direct their operations solely against military targets. Military objectives are identified as objects which, due to their nature, location, purpose, or application, significantly contribute to military activities. The destruction, capture, or neutralization of these targets should offer a clear military advantage, considering the prevailing circumstances. This categorization automatically excludes civilian properties, which encompass all items not classified as military objectives. The principle mandates that combatants refrain from attacking civilian properties, except when these are utilized for military purposes and thus become legitimate military targets [6,7].

A crucial component of the principle of distinction is the prohibition against non-discriminatory attacks. Such attacks are either not aimed at a precise military target or involve tactics or weaponry that cannot differentiate between civilian and military assets. International law forbids these attacks as they inherently breach the principle of distinction. This prohibition includes attacks likely to cause collateral civilian casualties or damage to civilian property, which would be disproportionate to the anticipated direct military gain.

Also imperative is the obligation to implement feasible precautions during attacks. This involves all practical efforts to ensure that the intended targets are indeed military objectives, not civilians or civilian structures, and to select methods of attack that aim to prevent or minimize incidental civilian harm. Additionally, if it becomes evident that the target is not a military objective, or the attack might result in disproportionate civilian casualties, the attack must be halted or postponed.

The principle of distinction further obligates combatants to visibly separate themselves from civilians. This distinction is vital for enabling the opposing forces to identify combatants and avoid mistakenly targeting civilians. However, combatants who do not distinguish themselves do not forfeit their rights under international humanitarian law. Rather, this underscores the importance of clarity in military operations.

Beyond these direct duties, the principle of distinction also has implications for how combatants treat individuals captured by the adversary. It affects the categorization of prisoners of war and their entitled treatment, as well as the safeguarding of civilians not actively involved in hostilities.

In essence, the principle of distinction imposes various duties on warring factions, aimed at safeguarding civilians and civilian structures during armed conflict. These duties include targeting only military objectives, avoiding non-discriminatory attacks, taking feasible precautions during attacks, differentiating themselves from civilians, and adhering to rules regarding the treatment of captured individuals. These responsibilities are integral to the humanitarian objectives of international law, striving to mitigate the impact of armed conflicts and shield those not engaged in combat.

4. The Principle of Proportionality

4.1. Legal Foundation

Geneva Conventions Protocol I, Article 57, stands as a crucial element of international humanitarian law, recognized globally as the foundational legal framework for the principle of proportionality in international conflicts. This principle, integral to international law, insists on the proportionality of force applied in conflicts relative to the achieved legitimate military objectives.

Article 57 explicitly instructs that during conflicts, all parties must undertake all possible measures to prevent or at least significantly reduce civilian casualties and damage to civilian property while carrying out attacks. This involves evaluating the potential civilian impact when selecting targets and determining attack strategies, ensuring that this impact remains proportionate to the direct military benefit expected. The provision underlines the illegality of any assault anticipated to result in disproportionate civilian harm.

Furthermore, Article 57 underscores the necessity of providing timely warnings to civilians when feasible, intending to minimize civilian losses. This aspect showcases the practical implementation of the proportionality principle in military engagements, focusing on reducing civilian suffering.

To encapsulate, Geneva Conventions Protocol I, Article 57, establishes the legal foundation for the principle of proportionality in international law. It mandates the careful evaluation of civilian consequences in military operations, ensuring these consequences are balanced against the military goals. Such stipulations play a pivotal role in civilian protection and in regulating the exertion of force in international conflicts.

4.2. Legal Function

The proportionality principle in armed conflict, a core aspect of international humanitarian law, mandates that those engaged in hostilities balance military necessity with humanitarian principles. This principle stipulates that the damage to civilians and civilian infrastructure should not be disproportionately high compared to the direct and tangible military benefit anticipated from an offensive. The goal is not to completely avoid civilian casualties, which may be impractical in conflict situations, but to ensure that these casualties are proportionate to the military goals pursued [8].

In line with this principle, parties in a conflict are required to meticulously assess the expected military benefit of any offensive. This benefit should be considered in terms of its contribution to the broader military campaign, not merely immediate tactical success [9]. Before initiating an offensive, it's also necessary to predict the potential unintended damage to civilians and civilian structures. This prediction involves a thorough understanding of various factors, including the civilian population in the area and the characteristics of the location.

A key aspect of this principle is the subjective judgment where the expected military gain is balanced against the predicted unintended civilian damage. Should the civilian harm appear excessive in relation to the military gain, the offensive ought to be aborted. Parties must undertake all reasonable steps to reduce civilian casualties. This entails selecting combat techniques and weapons that are less likely to cause substantial civilian harm and, when feasible, issuing prior warnings to civilians [10].

Ongoing evaluation during the operation is vital. If the offensive results in disproportionate civilian casualties, it must be halted or modified accordingly. Military leaders and planners are accountable for these evaluations and decisions, considering available intelligence, weapon selection, and the strategies used [11].

Breaches of the proportionality principle may lead to war crimes charges, holding those involved in the conflict responsible for actions causing disproportionate civilian harm [12].

In contemporary conflicts, where the line between combatants and civilians is often blurred and warfare is frequently urban-based, the significance of the proportionality principle is heightened. It acts as both a moral and legal compass, ensuring that force in armed conflicts is neither random nor excessive.

To sum up, the proportionality principle is a fundamental part of the legal structure regulating armed conflicts. It places significant responsibilities on parties in conflict, ensuring military pursuits do not result in undue civilian distress [13]. Although implementing this principle can be challenging, it is indispensable for humanizing warfare and reducing its catastrophic consequences.

5. Conclusion

In summary, the enforcement of international law norms to uphold the principles of distinction and proportionality in armed conflict can effectively safeguard the fundamental rights of civilians in war-torn areas through several methods. This article proposes four specific strategies.

The initial approach to implement the principle of distinction involves establishing explicit legal provisions and military guidelines. Countries should develop and implement precise national legislation and military directives that categorically forbid assaults on civilians and non-military objectives. These legal structures should clearly differentiate between military and non-military targets, providing clear-cut rules for identifying and protecting civilians in war zones. The adoption of such laws and directives would lay a solid foundation for adhering to the principle of distinction, ensuring that military actions comply with international law and ethical standards.

In addition to legal frameworks, the second strategy focuses on extensive training for military personnel. This training should aim to instill an understanding of the legal and ethical significance of the distinction principle among service members and equip them with the necessary skills to accurately distinguish between military and non-military targets during combat. The training should encompass practical decision-making drills in simulated war scenarios, allowing personnel to apply the principle of distinction in diverse situations. Through such comprehensive training, nations can markedly decrease the likelihood of civilian casualties and damage to civilian infrastructure.

Regarding the principle of proportionality, the third suggestion is to establish a decision-review process. This process would entail evaluating the potential civilian impact of a military initiative against its expected military gain. It should involve legal experts and military analysts who evaluate potential damages before an operation and offer advice on whether to proceed. This review would guarantee that every military action undergoes scrutiny for its proportionality, thus reducing unnecessary civilian damage and ensuring alignment with international humanitarian law.

The fourth proposition is the creation of an in-depth damage assessment and accountability system. Rigorous laws and policies should be enacted that require detailed evaluations of civilian impact before and after military actions. This encompasses pre-operation evaluations of potential civilian impact, post-operation inquiries into actual damage inflicted, and the formation of an accountability framework for actions that breach the principle of proportionality. Such a system would increase the transparency and responsibility of military operations. By legally mandating thorough assessments of proportionality for each military action and stipulating repercussions for violations, this method would effectively protect civilian lives and property.

If these suggestions are implemented, they would considerably enhance the application of the principles of distinction and proportionality in armed conflicts. By integrating these principles into law and military protocol, nations can more effectively shield civilians and ensure their military operations are conducted humanely and in compliance with the law. Adhering to these principles aligns with international humanitarian law and preserves the dignity and rights of individuals in conflict zones. As the nature of warfare changes, it is critical that legal and military practices adapt to continue safeguarding the most vulnerable in times of conflict.

References

- [1] Human Rights Watch, Yemen Events of 2022. Retrieved from <https://www.hrw.org/world-report/2023/country-chapters/yemen>.
- [2] Gravel Edition. (1971) *The Pentagon Papers Volume 1, Chapter 5, "Origins of the Insurgency in South Vietnam, 1954-1960"* Boston: Beacon Pres.
- [3] CBS-TV. (1965) TV news shows Marines burning village. Retrieved from <https://www.history.com/this-day-in-history/tv-news-shows-marines-burning-village>.
- [4] Human Rights Watch. (2016) *Iraq: Feared ISIS Use of "Human Shields", Executions*. Retrieved from <https://www.hrw.org/news/2016/11/04/iraq-feared-isis-use-human-shields-executions>.
- [5] Kasher, Asa. (2007) *The principle of distinction*. *Journal of Military Ethics*, 6(2), 152-167.
- [6] Maxwell, Mark David, and Richard V. Meyer. (2007) *The principle of distinction: Probing the limits of its customariness*. *Army Law*, 1.
- [7] Robertson, Horace B. (2017) *The principle of the military objective in the law of armed conflict. The Development and Principles of International Humanitarian Law*. Routledge, 531-557.
- [8] Sweney, Gabriel. (2005) *Saving lives: the principle of distinction and the realities of modern war*. *Int'l Law*. 39, 733.
- [9] Kalshoven, Frits, et al. (1982) *Civilian Immunity and the Principle of Distinction*. *American University Law Review*, 31(4), 855-896
- [10] Rogers, A. P. V. (2016) *The principle of proportionality. The Legitimate Use of Military Force*. Routledge, 189-218.
- [11] Sloane, Robert D. (2015) *Puzzles of Proportion and the Reasonable Military Commander: Reflections on the Law, Ethics, and Geopolitics of Proportionality*. *Harv. Nat'l Sec. J.*, 6, 299.
- [12] Fenrick, William J. (1982) *The Rule of Proportionality and Protocol in Conventional Warfare*. *Mil. L. Rev.* 98, 91-93.
- [13] Barber, Rebecca J. (2010) *The proportionality equation: balancing military objectives with civilian lives in the armed conflict in Afghanistan*. *Journal of Conflict & Security Law*, 15(3), 467-500.