DISTINGUISHING BETWEEN MILITARY AND NON-MILITARY OBJECTS OF ATTACK IN ARMED CONFLICTS

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INTRODUCTION

CONFLICTS are as old as man. It may be said that man's interaction with his environment inevitably leads to conflict. Thus, the origins of conflict could even be traced to the Holy Bible[1], where conflict existed in the story of Adam's fall from grace and eventual banishment from the Garden of Eden by God.

Armed conflicts are a natural progression of conflicts and typify situations where arms are introduced into conflicts. From the earliest times, armed conflicts have been resorted to by man as a (futile) means of resolving disputes. The twentieth century witnessed two devastating World Wars where human deaths (both of combatants and non-combatants) and suffering, destruction and despoiling of the environment, occurred on a horrendous scale. Ten million deaths were estimated to have occurred in the First World War, with a ratio of twenty combatants to one civilian, excluding about twenty-one million deaths caused by epidemics. In the Second World War, an estimated forty million people died including about as many civilians as combatants.

Inspite of the resolve of mankind to stop the scourge of war after the Second World War, armed conflicts have persisted, almost unabated. No fewer than 97 armed conflicts took place since then. Some of these conflicts were of an international character, while others ere non-international in nature. Nigeria itself has fought a horrific civil war. Armed conflicts have also occurred in Chad, Sudan, Angola, Mozambique, Rhodesia, Liberia, Sierra Leone, Western Sahara, Ethiopia/Eritrea, and the Great Lakes Region comprising the Democratic Republic of Congo (formerly Zaire) Rwanda, Burundi, Uganda, Congo Brazzaville, and the Central African Republic, in the African region.

It is in the face of this inevitable and undeniable evidence of the ubiquity and recurrence of armed conflicts with their attendant toll on human, natural and material resources, that the law of armed conflict has emerged on the international plane to

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[1] Book of Genesis chapters 3 to 18

regulate armed hostilities. Thus, the law of armed conflict or International Humanitarian law, as it is otherwise known, is concerned with the "Jus in bello" – the regulation of armed conflict, and is not strictu sensu bothered with the "jus ad bellum[2]" or the "jus contra bellum[3]".

The very essence of the law of armed conflict is the introduction of humanity or humanitarianism into armed conflicts. In other words, since empiricism has shown that armed conflicts cannot be wished away, or legislated away, [4]they should be conducted employing "the rules of the game". A primary rule of the law of armed conflict is that only legitimate objects may be attacked in an armed conflict situation. Thus, non-legitimate objects may not be attacked by either party to an armed conflict. The distinction between legitimate and non-legitimate objects and the rules that relate to them in armed conflicts is essentially the thrust of this paper.

MEANING OF LEGITIMATE OBJECTS OF ATTACK

Definitions:

It is proposed in this segment of the paper to clarify the terms that are germane to the subject under consideration. The word "legitimate" is defined as: in accordance with a law or rule, justifiable[5]. Similarly, "object" is defined to mean:

> Something solid that can be seen or touched; person or thing to which an action ... is directed; purpose[6].

Again, the word "attack" is defined as "... to hurt or defeat[7]".

The term "armed conflicts" have been described in the following way:

> an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.[8]

From the foregoing, we may surmise that legitimate objects of attack in armed conflicts are persons or things that can lawfully or justifiably be hurt when people resort to the use of armed force to settle disputes.

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[2] The legality or otherwise of armed conflict.
[3] The prohibition of armed conflict.
[4] See the prohibition of armed conflicts by Article 2(4) of the United Nations Charter, and Article 51 which provides only three exceptions.
[5] Hawkins, J.M (1995): Oxford Mini-reference Dictionary; Oxford University Press, Oxford; p. 232
[6] Ibid, P. 278.
[7] Ibid; p. 22.
[8] The Appeals Chamber of the International Tribunal on War Crimes in Former Yugoslavia in its decision on Jurisdictional Issues in the Tadic case (Case No. 17-94-1-AR 72).

What Constitutes Military Objectives?

Military objectives are objectives which in view of their essential characteristics are generally acknowledged to be of military importance. However, they cannot be considered as a military objective where their total or partial destruction in the circumstances ruling at the time, offer no military advantage[9]. A military advantage refers to a situation favourable to the attacker against its adversary, and the ultimate military advantage is the capitulation of the adversary or enemy. Thus, any action taken by a party to an armed conflict which is not directed at the achievement of this overall aim is not and cannot come within the ambit of a military objective.

It is therefore paramount that parties to armed conflicts distinguish, at all times, between the civilian population and combatants and between civilian and military objectives and they must direct their operations only against military objectives[10]. Military objectives refer to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances, ruling at the time, offer a definite military advantage[11].

Military Objectives/Targets:

Legitimate military targets which can be attacked in furtherance of military objectives include:[12]

a. **Military targets:** armed forces and persons who take part in the fighting; positions or installations occupied by armed forces as well as objectives that are directly contested in battle, military installations such as barracks, war ministries, munitions or fuel dumps, storage yards for vehicles, air fields, rocket launch ramps, and naval bases.

b. **Infrastructure targets:** Lines and means of communications, command, and canals-that are of fundamental military importance.

c. **Communication targets:** broadcasting and television stations, and telephone and telegraph exchanges of fundamental military importance.

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[9] Article 7 of the International Committee of the Red Cross Draft Rules for the Limitations of Dangers Incurred by the Civilian Population in Time of War 1956.

[10] Art 48 of the Additional Protocol (1977) to the Geneva Conventions of 1949. See also SHAW M.N. (2003): INTERNATIONAL LAW; Cambridge University Press; Fifth Edition, U.K; Pp. 1063-1068.

[11] Art. 52(2) Protocol 1 (1977).

[12] By the Provisions of Art-7(2) of the Draft Rules of the ICRC 1956.

d. **Industrial targets:** factories producing arms, transport and communication equipment for the military; metallurgical, engineering, and chemical industries whose nature or purpose is essentially military; and the storage and transport installations serving such industries.

e. **Research targets:** experimental research centers for the development of weapons and war material.

f. **Energy targets:** installations providing energy mainly for national defence, such as coal and other fuels, and plants producing gas or electricity mainly for military consumption. Attack on nuclear power stations and hydroelectric dams are generally, but not always, prohibited by the laws of war.

It is to be noted that the use of the verb "include" before listing the objects which constitute military targets indicates that the lists as seen above are not exhaustive of military targets or objects. Thus, any of other objects that is sui generis to those listed above may qualify as military object provided it is of military importance and will confer a definite military advantage to those attacking it. Any object that does not fall within the meaning of military targets is a non-military object.

Non-Military Objectives/Targets:

The civilian population and any of the objects expressly protected by conventions or agreements are not military objectives and cannot be targeted during armed hostilities[13]. The same can be said of:

a. The means indispensable for the survival of the civilian population.

b. Those objects which, by their nature or use, serve primarily humanitarian or peaceful purposes such as religious or cultural needs.

c. Dwellings or other buildings sheltering the civilian population, so long as these are not used for military purposes to such an extent as to justify action against them under the rules regarding military objectives.

d. Civilians and persons hors de combat who do not take a direct part in hostilities.

e. An injured enemy who surrenders or who is hors de combat.

f. The sick.

[13] The Edinburgh Resolution of the Institute of International Law 1969, Concerning the Distinction Between Military and Non-Military Objectives and the Problems Associated with Weapons of Mass Destruction.

g. Medical and Aid personnel, establishments, transports and materiel.

h. Captured combatants and civilians under the authority of an adverse party.

i. Religious personnel, such as Chaplains, Ministers and Imams,[14]

The Distinction Between Military and Non-Military Objects:

The importance of the distinction between military and non-military objects during hostilities can be gleaned from the Advisory Opinion of the International Court of Justice on the LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS[15], where it stated, inter alia, that:

> The cardinal principles contained in the texts constituting the fabric of humanitarian law are the following. The first is aimed at the protection of the civilian population and civilian objects and established the distinction between combatants and non-combatants; states must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets.

In other words, the obligation to respect the distinction between military objects and non-military objects, as well as between persons participating in the hostilities and members of the civilian populations is a fundamental principle of international law. Thus, only military objects may be attacked during armed conflicts.

In the case of doubt as to whether an object is military or civilian, the doubt is to be resolved in favour of the latter. This is because Article 52 of the Additional Protocol I of 1977 provides that:

> In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house, or other dwelling places or school is being used to make an effective contribution to military actions, it shall be presumed not to be so used.[16]

Types of Armed Conflicts:

The term "armed conflict" is used to include war, guerilla warfare and other situations in which there is resort to armed force between different parties to a dispute. An armed conflict may be:

[14] See also the Rules of the ICRC Regarding Non-International Armed Conflicts in International Review of the Red Cross, September – October 1978, p. 247.

[15] ICJ Reports, 1996, p. 22 at 257.

[16] In the light of this provision, it would seem that parties in recent armed conflicts such as the Liberian and Sierra Leonean Civil Wars and the Israeli/Gaza Wars, are in clear breach by attacking non-military objects.

a. International,
b. Non-International;
c. Internal;
d. Internationalised; and
e. Eclectic.

International Armed Conflict:

This is a conflict between two or more countries. It is a war fought by states. Examples of this include the Israeli /Arab War of 1967, the United Kingdom /Argentina War of 1982, the Ethiopia /Eritrea War.

Non – International Armed Conflicts:

This kind of armed hostilities takes place between a government and an armed group or some armed groups within its territory. Examples include the Nigerian Civil War between the government of Nigeria and the Biafran secessionists, the Sierra Leonean Civil War between the government of Sierra Leone and Soldiers and fighters of the Revolutionary United Front (R.U.F.).

Internal Armed Conflicts:

This is an armed conflict between armed groups within the territory of a state. An example of this is the armed hostilities in Sierra Leone in the 1990s between the R.U.F. and the Kamarjoors (hunters) militias.

Internationalised Armed Conflicts:

This is typified by an armed conflict that originates in the territory of one state and then spreads to other states or their territories. Examples of this include, the Civil Wars in Sierra Leone and Liberia that had reverberations in other neighbouring countries, and the rebel uprising in the Democratic Republic of Congo (formerly Zaire) that threatened to engulf the whole of the Great Lakes Region.[17]

Eclectic Armed Conflicts:

This term refers to what is otherwise described as twenty- first century wars and constitutes armed conflicts that are neither international, internal, non-international or internationalised in the strict sense. Included in this kind of conflict are terrorism

[17] A term used in reference to the following countries collective: Congo (D.R.C), Congo Brazzaville, Central African Republic, Uganda, Rwanda and Burundi.

and suicide bombings. Examples of such conflicts are the activities of groups such as the AL-Qaeda, Hamas and the E.T.A. separatists in Spain who frequently carry out killings and bombings in other countries other than their countries of origin.

THE GENEVA CONVENTIONS OF 1949

The Geneva Conventions of August 12, 1949 and their subsequent Additional Protocols of 1977 constitute a milestone in the law of armed conflict and it is for this reason that we intend to discuss them, albeit briefly, because their provisions are germane to our subject of study.

The Geneva Conventions of 1949 resulted largely from the untiring efforts of the International Committee of the Red Cross (ICRC).[18] The Conventions resulted from the revisions of three former conventions: The Geneva Conventions of 1929 for the Relief of the Wounded and Sick in Armies in the Field, the Xth Hague Convention of 1907 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention; and the 1929 Convention on the Treatment of Prisoners of War. A fourth Convention on the Treatment of Civilians was added.

The Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, Convened by the Swiss Federal Council, as trustee of the Geneva Conventions, was held from April, 21 to August 12, 1949. After four months of continuous debate, with representatives of sixty-three Governments and those of the ICRC (as experts) present, the following four conventions were adopted.

a. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

b. Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949.

c. Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949.

d. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of August 12, 1949.

Precursors of the 1949 Conventions include the Hague Regulations of 1899, the 1907 and 1929 Conventions, but the 1949 Conventions represent the first attempt to

[18] The ICRC, for example, was largely responsible for the convention on the Treatment of Prisoners of War 1929.

comprehensively regulate armed conflicts and its victims. In 1977, two Additional Protocols were added to the 1949 Conventions.[19]

The foundation of the Geneva Conventions system is the principle that persons not actively engaged in warfare should be treated humanely.[20] This, of course, flows from the fact that such persons are not legitimate military objects and therefore not desiring or worthy of attack. Thus, practices like hostage taking, torture, reprisal and illegal executions against persons protected by the Conventions are prohibited. Similarly there are provisions relating to standard of care of prisoners of war and the prohibition of deportations and indiscriminate destruction of property in occupied territories.

Common Article 2 of the Conventions provides that the Conventions apply to all cases of declared war or of any other armed conflict. Thus the provisions of these Conventions apply to all parties to an armed conflict and the application cannot be derogated from on the ground that a party is not a signatory to the Conventions. This is because the rules codified by the Conventions on the humane treatment of victims of war, and the distinction betweens legitimate objects of attack and non-legitimate objects are rules of customary international law, binding on all people(s).

THE PRINCIPLES OF THE LAW OF ARMED CONFLCIT (JUS IN BELLO)

The objective in this segment of our study is to highlight the fundamental principles of the Law of armed conflicts. The principles to be depicted below are not claimed to be exhaustive, but they certainly represent some of the major rules governing the subject and do have some bearing in the determination of what does or does not constitute a legitimate object of attack in an armed conflict situation.

a. **The Principle of Proportionality:** belligerents are not to inflict harm on their adversaries out of proportion with the object (or purpose) of warfare, which is to destroy or weaken the military strength of the enemy.

b. **The Principle of Humanity:** persons placed *hors de combat*[21] and those not directly participating in hostilities shall be respected, protected and treated humanely. Again, the right of the parties to the conflict to choose methods or means of warfare is not unlimited.

[19] Also, in 1980, the United Nations made a Declaration Concerning the use of Conventional Weapons in Armed Conflicts.
[20] M.N. Shaw, Op.cit; p.1055.
[21] Persons who are in no position to fight or offer a military threat (usually referring to captured or wounded soldiers or those who have surrendered or laid down their arms).

c. **The Principle of Inviolability:** the victims of war have a right to the respect of their lives, integrity, and of the attributes inseparable from their personality. To this end:

   i. A man who has fallen in combat is inviolable: an enemy surrendering shall have his life spared.[22]

   ii. Torture, inhuman or degrading punishment is forbidden.[23]

   iii. Everyone is entitled to recognition as a person before the law.

   iv. Everyone has the right to respect for his honour, family rights, convictions and customs.[24]

   v. Anyone who is sick and or suffering shall be sheltered and given care.

   vi. Everyone has the right to exchange news with his family and to receive relief.[25]

   vii. No one may be arbitrarily deprived of his own property.

d. **The Principle of Non-Discrimination:** all persons shall be treated without any distinction based on race, sex, nationality, language, social standing, wealth, political, philosophical or religious opinions or on any other similar criteria.[26]

e. **The Principle of Security:** everyone has the right to security of person. To this end:

   i. No one shall be held responsible for an act which he has not committed.

   ii. Reprisals, collective punishment the taking of hostages and deportations are prohibited.[27]

   iii. Everyone shall benefit from customary legal guarantees.[28]

   iv. No one may renounce the rights accorded to him by the conventions.

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[22] See Article 41 of Protocol 1 (1977).
[23] Article 75, Protocol 1.
[24] Ibid.
[25] Article 5, 32-34 of Protocol 1.
[26] See the Preamble and Arts. 10 and 75 of Protocol I and Art. 2 of Protocol II.
[27] Article 75 of Protocol I.
[28] Ibid.

f. **The Principle of Neutrality:** humanitarian assistance is never an interference in conflicts. To this end:

   i. Medical personnel are not objects of attack provided they are not involved in hostilities. They are given protection as healers.

   ii. No one shall be compelled to give any information concerning the wounded or sick who are or have been under his care if such information would in his opinion prove harmful to them or to their families. [29]

   iii. No one shall be molested or convicted for having given treatment to the wounded or sick. [30]

g. **The Principle of Normality:** protected persons must be able to lead as normal a life as possible. This is only a means of keeping an adversary from being in a position to do harm.

h. **The Principle of Protection:** the state must ensure the protection, both national and international, of persons fallen into its power.

i. **The Principle of Limitation:** '*ratione personae*'. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations.[31] To this end:

   - the parties to the conflict shall at all times distinguish between the civilian population and combatants, so as to spare the population and civilian objects. This is also known as "the principle of distinction";

   - the civilian population shall not be the object of attack, even by way of reprisals;

   - acts or threats of violence, the primary purpose of which is to spread terror among the civilian population are prohibited;

   - the parties to the conflict shall take all possible precautions to spare the civilian population or, at least, to cause the least possible incidental injuries and damages;

j. **The Principle of Limitation:** 'ratione loci'. Attacks must be limited strictly to military objectives. To this end:

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[29] See Article 16 (3) of Protocol 1.
[30] Article 18 (3) Geneva Convention for the Sick and Wounded in the Field 1949.
[31] Article 51 (1) Protocol I. Also, see generally the remaining provisions of this Article.

i. it is prohibited to attack localities which are undefended;

ii. it is forbidden to commit any acts of hostility against buildings dedicated to science or charity and against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;[32]

iii. it is forbidden to attack works and installations which may release forces dangerous to the civilian population;

iv. the population shall not be used to shield military objectives from attacks;

v. it is forbidden to destroy objects indispensable to the survival of the populace; and

v. pillage is prohibited.[33]

k. The Principle of Limitation: 'ratione conditionis'. It is prohibited to employ against anyone weapons and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. In this regard:

i. Indriscriminate attacks are prohibited;

ii. Attacks are forbidden which may be expected to cause loss and injury to civilians, and damage to civilian objects would be excessive in relation to the concrete and direct military advantage anticipated;[34]

iii. Care sh. '' be taken in warfare to protect the natural environment;

iv. Starvation of civilians as a method of warfare is prohibited;

v. Acts of war based on perfidy are prohibited.

CONCLUSION

The legitimate objects of attack in armed conflict situations are military objectives. Such military objectives will quality for attack if they (will) confer a definite military advantage on the attacker, the paramount military advantage in armed hostilities being the weakening or destruction of the adversary. Thus military necessity must justify any attack during armed conflicts, and there can be no military necessity where such an attack will not result in any definite military advantage.

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[32] Article 53 of Protocl I.

[33] See Article 33 (2) Geneva Convention on the Protection of Civilians 1949.

[34] This Rule is embodied both in the 1977 Protocols and the 1980 Convention Restricting or Banning the use of certain Conventional Weapons.

The law of armed conflict or Jus in bello, as we have seen, in its regulation of armed hostilities, have been consistent and persistent in its insistence that a distinction must always be drawn between combatants and other legitimate objects of attack, and non-combatants and other non-legitimate objects of attack. It can only be hoped that warring parties at all times take painstaking steps to mark and respect this distinction.

The following are therefore proferred by way of suggestions.

Firstly, there should be greater commitment on the part of the international community to stop resorting to armed conflicts as a means of settling disputes. Similarly, states should be more inclined towards the settlement of disputes, internal and international, by peaceful means. Adherence to democratic tenets and good governance will goal long way towards eradicating armed hostilities within the territory of states.

Secondly the international community, through the use of sanctions on erring nations can reduce significantly the resort to armed hostilities by states, and when armed hostilities do infact occur, appropriate sanctions including enforcement measures, should be brought to bear on parties to armed conflicts who violate the rules regarding the non-attacking of non-legitimate objects of attack.

Thirdly, the provisions of the Genocide Convention should be binding on warring parties whether they are signatory to it or not. In this way, war crimes will be significantly reduced.

Again, the consent of warring states to fact-finding missions, aid agencies and protecting powers, should be done away with, in favour of granting these parties compulsory access to war zones to ascertain, that the rules of war are kept.

Finally, states should educate their armed forces on the applicable rules relating to the conduct of armed conflict.