

**LEGITIMATE TARGETS OF ATTACKS
UNDER INTERNATIONAL HUMANITARIAN LAW**

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***Background Paper prepared for the Informal High-Level Expert
Meeting on the Reaffirmation and Development
of International Humanitarian Law,
Cambridge, January 27-29, 2003***



BACKGROUND PAPER

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By Marco Sassòli¹

I. The basic principle of distinction

According to an uncontroversial principle of customary international humanitarian law (IHL), parties to an armed conflict must distinguish between the civilian population and combatants and between civilian objects and military objectives. In order to spare civilians and the civilian population from hostilities and their effects, it is essential to define who and what may be attacked. The first rule regarding attacks (by acts of violence²) is that the intended target must be a military objective. Once a military objective is the target, under additional rules, which are not discussed here, the attack may nevertheless become illegal if excessive collateral damage affecting civilians or civilian objects must be expected. Furthermore, even when attacking a lawful target, precautionary measures to spare civilians have to be taken.

While the main aim of the law is to protect persons, it is appropriate to discuss first what objects may be attacked. This permits to clarify the criteria, which make targets legitimate. In addition, attacks on objects involve the greatest danger for persons who are beyond any doubt civilians.

II. Objects which may be targeted

1. The definition of military objectives

With the historical shift from the prohibition of attacks on undefended towns and villages (Cf. Art. 25 of the Hague Regulations) as the focus of the law on the conduct of

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² It is suggested that attacks consist of acts of violence as soon as they have violent consequences, even if the attacker uses no violence. Michael N. Schmitt, "Wired warfare: Computer network attack and *jus in bello*" (2002) 84 International Review of the Red Cross 365 at 377.

hostilities to the rule that only military objectives may be attacked, the need to define the latter has become imperative. The principle of distinction is practically worthless without a definition of at least one of the categories between which the attacker has to distinguish. From the point of view of the philosophy of IHL it would have been more satisfactory to define civilian objects. However, as it is not due to its intrinsic character, but according to its use by the enemy or potential use for the attacker that an object becomes a military objective, military objectives had to be defined. Indeed, every object other than those benefiting from special protection³ may become a legitimate object of attack. For this same reason it has neither been possible to formulate an exhaustive list of military objectives, although such a list would have greatly simplified the rule's practical implementation. Most definitions are therefore abstract but provide a list of examples. Protocol I provides a definition (Cf. Art. 52 (2) of Protocol I) with an open list of examples of civilian objects which are presumed not to be military objectives (Cf. Art. 52 (3) of Protocol I).

Only a material, tangible thing can be a target.⁴ Immaterial objectives, e.g. victory, cannot be attacked, but only achieved. Article 52 (2) of Protocol I provides for a definition of military objectives which is considered as reflecting customary international law, including by the U.S. which opposes Protocol I for other reasons.⁵ Under that definition, an object must cumulatively fulfil two criteria to be a military objective. First, the object has to contribute effectively to the military action of the enemy. This is

³ Those specially protected objects, e.g., dams, dikes, 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., e.g., Art. 56 (2) of Protocol I and Art. 19 of Convention IV.)

⁴ Yves Sandoz, Christophe Swinarski & Bruno Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva (Dordrecht: Martinus Nijhoff Publishers, 1987) at paras. 2007-2008 [ICRC Commentary]; Yoram Dinstein, "Legitimate Military Objectives Under The Current Jus In Bello" in Andru E. Wall, (ed.), *Legal and Ethical Lesson of NATO's Kosovo Campaign*, Volume 78, US Naval War College's International Law Studies, 2002 at 142.

⁵ See for the U.S. position the *US Air Force Intelligence Targeting Guide*, Air Force Pamphlet 14-210 *Intelligence* at paras. A4.2.2. and A4.2.2.3. (1 February 1998), online: <www.fas.org/irp/doddir/uasf/afpam14-210/part17.htm> and "Reconnaissance, Surveillance, and Target Acq Sppt for Joint Op", JP 3-55 at para. 3a (14 April 1993), online: <www.fas.org/irp/doddir/dod/jp3-55ch4.htm>; Horace B. Robertson Jr., "The Principle of the Military Objective in the Law of Armed Conflict" in Michael N. Schmitt (ed.), *The Law of Military Operations – Liber Amicorum Professor Jack Grunawalt*, volume 72, US Naval War College's International Law Studies, 1998 at 204-207; Michael J. Matheson[at the time Deputy Legal Adviser of the U.S. State Department], in "The Sixth Annual American Red Cross-Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary international Law and the 1977 Protocols Additional to the Geneva Conventions" 2 (1987) American University Journal of International Law and Policy, at 436 [The Sixth Annual Conference]. On the correspondence of Art. 52 (2) of Protocol I with customary law see generally Marco Sassòli, *Bedeutung einer Kodifikation für das allgemeine Völkerrecht - mit besonderer Betrachtung der Regeln zum Schutze der Zivilbevölkerung vor den Auswirkungen von Feindseligkeiten*, (Basel: Helbing&Lichtenhahn, 1990) at 359-376; *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, online: <<http://www.un.org/icty/pressreal/nato061300.htm>> at para. 42 [ICTY Report]; Critical W. Hays Parks, "Air War and the Law of War" (1990) 32 The Air Force Law Review 1, at 147-156; Jeanne M. Meyer, "Tearing Down the Façade: A Critical look at the Current Law on Targeting the Will of the Enemy and Air Force Doctrine" (2001) 51 The Air Force Law Review 143 at 164-182.

exemplified by an object's "nature, location, purpose or use", which clarifies that not only objects of a military nature are military objectives. Second, its destruction, capture, or neutralization has to offer a definite military advantage for the other side. Characterizing the contribution as "effective" and the advantage as "definite", as stipulated in article 52 (2) of Protocol I, the drafters tried to avoid too large an interpretation of what constitutes a military objective, in effect excluding *indirect* contributions and *possible* advantages. Without this restriction, the limitation to "military" objectives could be too easily undermined. Both criteria must be fulfilled "in the circumstances ruling at the time": Without this limitation to the actual situation at hand, the principle of distinction would be void, as every object could *in abstracto*, under possible future developments, e.g., if used by enemy troops, become a military objective. Several States have clarified, when ratifying Protocol I, their understanding that a specific area of land may be a military objective if its total or partial destruction, capture or neutralisation in the circumstances ruling at the time offers a definite military advantage. According to additional declarations of understanding, the military advantage anticipated from an attack is intended to refer to the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of the attack. An attack as a whole must however be a finite event, not to be confused with the entire war.⁶

2. The rationale behind the limitation of attacks to military objectives

The rule that only **military** objectives 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 military forces of the enemy (Cf. Preamble para. 2 of the Declaration of St. Petersburg of 1868). 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.

3. Would attacks on non-military objectives not be more effective in contemporary armed conflicts?

Particularly in contemporary conflicts, some question the philosophy behind the limitation to military objectives, pointing out that the aim of the conflict is the capitulation of a (dictatorial) government or modifying its decisions. It is true that the aim of every armed conflict is to defeat the enemy's will. Acquiring a non-military advantage over the enemy can more effectively accomplish that aim.⁷ Under the widely used theory of "effects based targeting", the desired aim will result from the effects of attacking specific links, nodes or objects.⁸ In our view, this theory does not necessarily imply that

⁶ Françoise Hampson, « Means and Methods of Warfare in the Conflict in the Gulf » in Peter Rowe (ed.), *The Gulf War 1990-91 in International and English Law*, (London: Sweet&Maxwell, 1993) at 94; Dinstein, *supra* note 3 at 145.

⁷ Meyer, *supra* note 4 at 143-182; James E. Baker, "When Lawyers Advise Presidents in Wartime, Kosovo and the Law of Armed Conflict" (2002) 55 *Naval War College Review* 11 at 22.

⁸ Tony Montgomery, "Legal perspective from the EUCOM Targeting Cell" in Andru E. Wall, *supra* note 3, 189 at 190.

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.⁹ In many countries the centre of gravity is not in the armed forces. To aim at an impact on persons other than the armed forces may appear particularly indicated if those attacking are not prepared to occupy the enemy country, if there is no fighting on land. In such a situation, aerial bombardment may “run out of military targets”, while the enemy government is not yet ready to give in.¹⁰

During the Kosovo air campaign NATO listed government ministries among the legitimate military objectives, independently of their contribution to military action.¹¹ The attack against the Belgrade radio and TV station was justified by some claiming that the transmitters were integrated into the military communications network,¹² while others, including official NATO statements mentioned generically the media among the legitimate objectives of attacks.¹³ The latter interpretation inherently challenged the concept of military objectives. It was pointed out that the targets were an essential part of the propaganda machinery of the regime.¹⁴ Others suggest that at the least, media inciting to commit war crimes or other international crimes are legitimate targets.¹⁵ They however do not explain why objects contributing to violations of *ius in bello* (the humanitarian rules to be respected in warfare) should be treated more harshly than objects contributing to violations of *ius ad bellum* (the rules on the legality of the use of force). Proponents of some contemporary strategic theories go as far as suggesting that the civilian support for

⁹ Adam Roberts, “The Law of War After Kosovo” in Andru E. Wall, *supra* note 3, 401 at 418; John Warden, “The Enemy as a system” (1995) 1 *Airpower Journal* 40.

¹⁰ Roberts, *supra* note 8 at 416.

¹¹ Lord Robertson, “Kosovo one Year on Achievement and Challenge” (21 March 2000), online: <<http://www.nato.int/kosovo/repo2000/index.htm>>.

¹² See ICTY Report, *supra* note 4 at paras. 71-73.

¹³ U.S. Secretary of Defense 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), online: <http://www.defenselink.mil/news/Oct1999/b10141999_bt478-99.html>; General Wesley K. Clark, “Effectiveness and determination” (2 June 1999), online: <<http://www.nato.int/kosovo/articles/a990602a.htm>>; The Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, UK, H.L., Parliamentary Debates, Vol. 600, at col. 38 and 41 (26 April 1999), online: <<http://www.publications.parliament.uk/pa/ld/ldvol600.htm>>; James A. Burger, “International humanitarian law and the Kosovo crisis: Lessons learned or to be learned” (2000) 82 *International Review of the Red Cross* 129 at 131-132; ICTY Report, *supra* note 4 at para. 74, and Amnesty International, “Collateral Damage” or Unlawful Killings? *Violations of the Laws of War by NATO During Operation Allied Force*, (2000) at 38-44.

¹⁴ Rather favourable to such a justification W. J. Fenrick, “Targeting and Proportionality during the NATO Bombing Campaign against Yugoslavia” (2001) 12 *E.J.I.L.* 489 at 497; Sceptical George Aldrich, “Yugoslavia’s Television Studios as Military Objectives” (1999) 1 *International Law Forum* 149 at 150; ICTY Report, *supra* note 4 at paras. 47 and 76; Paolo Benvenuti, “The ICTY Prosecutor and the Review of the NATO Bombing Campaign against the Federal Republic of Yugoslavia” (2001) 12 *E.J.I.L.* 503 at 522-524; Human Rights Watch, *Civilian Deaths in the NATO Campaign* (2000) at 15.

¹⁵ ICTY Report, *supra* note 4 at para. 76; Fenrick, *supra* note 13 at 496.

the enemy war effort is a legitimate objective of attacks.¹⁶ Others seem to consider everything used to prolong the war as a military objective.¹⁷ It may furthermore be argued that the limitation to military objectives obliges belligerents to give hypocritical justifications for their attacks.¹⁸ When they interrupt the power supply to show the civilian population that it will live in the dark as long as it does not get rid of a regime, they have to claim that the power stations also produce power for the military. When they attack a radio station because it maintains the morale of the population, they have to claim that the station also serves as a military communications relay station. When they attack factories belonging to a decision-maker to show him that he too will be personally affected if he does not give in, they have to claim that cigarette factories support the military effort.

First, however, according to the basic distinction and absolute separation between *ius ad bellum* and *ius in bello*, the rules applying to those fighting for a just cause and to their enemies must be the same. From a practical point of view, the respect of IHL could otherwise not be obtained, as, at least between the belligerents, it is always controversial which belligerent is resorting to force in conformity with the *ius ad bellum* and which violates the *ius contra bellum*. From a 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 *ius ad bellum* committed by "their" party. Second, for similar reasons, the same rules must apply in fighting dictatorial and democratic regimes. Third, the experience of the Second World War has shown that extensive aerial bombardment affecting the civilian population did not succeed in undermining neither popular support to the regime nor in sufficiently disrupting the economy.  In addition, it has been argued that targeting infrastructure benefiting also to 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. Fourth and most importantly, no one has come forward with criteria, other than the direct contribution to military action, which could 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 regimes involved. The Commentary to the German military manual in our view correctly concludes: "If the intention directly to influence the enemy population's determination to fight were recognized as a legitimate objective for military force, then no limit to warfare would remain."¹⁹

The aforementioned objections must also be raised against the government's determination to fight as the decisive criteria. It is in addition difficult to determine what

¹⁶ J. W. Crawford, "The Law of Noncombatant Immunity and the Targeting of National Electrical Power Systems" (1997) 21 Fletcher Forum of World Affairs 101 at 101-102, quoted in Fenrick, *supra* note 13 at 491, n. 6.

¹⁷ Burger, *supra* note 12 at 132.

¹⁸ Meyer, *supra* note 4, in particular at 170-171 and 178.

¹⁹ Stephan Oeter, "Means and Methods of Combat" in Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts* (Oxford: Oxford University Press, 1995) at para. 442. James E. Baker, "When Lawyers Advise Presidents in Wartime, Kosovo and the Law of Armed Conflict" (2002) 55 Naval War College Review 11 at 22, admits that an effects based concept of military objectives "sends the law hurtling down the slippery slope toward collateral calamity".

influences a government. Experts and officials admit, e.g., that they ignore what made President Milosevic finally accept NATO's demands.²⁰

4. When is a target still military?

Under Protocol I, a target is military if it makes an effective contribution to military action. Some commentators argue that this does not imply the need for a target's direct connection with specific combat operations.²¹ A military manual substitutes "war-fighting or war-sustaining capability" for military action and includes targets that "indirectly but effectively support and sustain the enemy's war-fighting capability".²² However, to include "war-sustaining capability" means to abandon the limitation to military objectives, and to admit attacks on political, financial (e.g. the main export industry, the stock market or taxation authorities) and psychological targets, as long as they influence the possibility or the decision (which are two different things) of the enemy to continue the war. Those who suggest a large interpretation of the concept of military objectives mention that targeting of bank accounts, financial institutions, shops and entertainment sites may prove in the long run more destructive than attacks on dual-use targets.²³ If this argument was decisive, in some societies it may be hospital maternity wards, kindergartens, religious shrines or homes for the elderly whose destruction would most affect the willingness of the military or of the government to continue the war.

Some favour a flexible definition allowing the concept of military objectives to expand or contract according to the intensity, duration, subjects and location of the conflict.²⁴ It is thus suggested to restrict the number of legitimate targets in "interventional kinds of armed conflicts", such as peace enforcement operations conducted on behalf of the international community, as long as the enemy does not launch counter-attacks.²⁵ Others suggest that more severe restraints should apply when the declared purpose is to promote the cause of human rights.²⁶ The main difficulty of such approaches lays in defining the scope of application of such special rules and in abandoning the traditional equality of belligerents before IHL.

²⁰ Cohen and Shelton, *supra* note 12.

²¹ Dinstein, *supra* note 3 at 145, with further references.

²² A.R. Thomas and James C. Duncan (eds.), *Annotated Supplement to The Commander's Handbook on the Law of Naval Operations*, Volume 73, Naval War College's International Law Studies, 1999 at para. 8.1.1; Sceptical Dinstein, *supra* note 3 at 145-146.

²³ Meyer, *supra* note 4 at 181.

²⁴ Hamilton De Saussure, in *The Sixth annual Conference*, *supra* note 4 at 512; Fenrick, *supra* note 13 at 494.

²⁵ Ove Bring, "International Humanitarian Law after Kosovo: Is *Lex lata* Sufficient?" (2002) 71 *Nordic Journal of International Law* 39 at 50-54.

²⁶ Michael Bothe, "The Protection of the Civilian Population and NATO Bombing on Yugoslavia: Comments on Report to the Prosecutor of the ICTY" (2001) 12 *E.J.I.L.* 531 at 535; ICTY Report, *supra* note 4 at para. 37; Richard B. Bilder, "Kosovo and the 'New Interventionism': Promise or Peril?" (1999) 9:1 *J. Transnat'l L. & Pol'y*, 153 at 171-172, thinks that NATO practice in the Kosovo campaign reveals rather the opposite, i.e. that in a humanitarian intervention it may be legitimate to attack additional targets to put pressure on the leadership.

Taken literally, the separate requirement that the attack must offer a definite military advantage means that even an attack on an objective of a 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.²⁷

5. Dual-use objects

A dual-use object serves both civilian and military purposes. Particularly in times of war, the military uses civilian infrastructure, telecommunications and logistics also for military purposes. In industrialized countries power-generating stations are crucial for civilian access to clean water, but they also provide power to war industries – and in an integrated power grid all stations provide power to both.²⁸ In the era of high technology, the construction of computer hardware and software may be essential for military purposes, while it may be nearly impossible to identify that technology actually destined or useful for military purposes.²⁹ When a certain object is used for both military and civilian purposes, it may be held that even a secondary military use turns it into a military objective. However, if the effects on the civilian use of the object imply excessive damages to civilians, an attack on such a dual-use object may nevertheless be unlawful under the proportionality rule. In practice, it may admittedly be extremely difficult to determine the importance of the military use and of the military advantage in destroying the object, in particular if the military has priority access to all remaining infrastructure. Under the wording of Protocol I, an attack on a dual-use object is in any event unlawful if the effect on the civilian aspect is intended, but the respect of that particular rule is impossible to assess in the heat of the battle.³⁰

6. Infrastructure potentially useful for the military

The civilian power grid may in the future be used for military purposes even if a separate military grid exists. Factories producing agricultural machines or toys may be converted into tank and ammunition factories. In the case of lines of communication, the question is even more important whether their destruction is justified before they are actually used for military purposes, simply because they could be used so. Are all bridges and railway lines of a country military objectives from the very first day of a war, independently of where fighting erupts and where troops have to move to and fro? Some authors answer in the affirmative.³¹ NATO mentioned bridges generically as military objectives during the Kosovo air campaign.³² Some authors include at least bridges which could replace those

²⁷ As was the case in Kosovo according to Meyer, *supra* note 4 at 176.

²⁸ Hays Parks, *supra* note 4 at 141.

²⁹ Dinstein, *supra* note 3 at 155.

³⁰ Attacks on bridges in Yugoslavia during the Kosovo air campaign were however justified by U. S. military sources discussing with Human Rights Watch by the fact that they were “psychologically lucrative” (Human Rights Watch, *supra* note 13 at 10); See also Meyer, *supra* note 4 at 179.

³¹ Dinstein, *supra* note 3 at 150-151.

³² See Clark, *supra* note 12; *Kosovo Targeting*, online: <www.nato.int/pictures/1999/990402/b990402e.gif> and Maps and aerial views of post-and pre-strikes used during the Press Conference by Commodore David Wilby (6 April 1999), online: <www.nato.int/structur/medialib/1999/m990406a.htm> quoted in Péter Kovács, “Intervention armée des

situated on the supply lines among the military objectives, while still others are of the opinion that bridges may only be attacked if supplies destined to the front must pass over them.³³ This question is particularly acute when a party declares to limit itself to aerial bombardments. What is, in such a situation, the definite military advantage in hindering the movement of enemy ground troops?³⁴ However, if bridges were not considered as military objectives in such a situation, why would tanks still be legitimate targets?

A possible solution may be to allow attacks on objects of a military nature even before they have an impact on military operations,³⁵ while objects that are military because of their location, purpose or use could only be attacked at the moment they actually provide an effective contribution to military action.³⁶ If an objective is military simply because it could be converted into something useful for the military,³⁷ nothing remains as civilian and therefore as protected.³⁸ For some authors, it is sufficient that the likelihood of military use is reasonable and not remote.³⁹ According to the text of Protocol I, the object must however “make” (in the present tense) an effective contribution to military action. Admittedly, as the purpose can turn an objective into a military one, an intended future use may be sufficient,⁴⁰ but not a possible future use. In any case, even apart from the presumptions foreseen by the treaty law⁴¹, there can be no presumption that something is a military objective, and those wishing to attack it have therefore first to ascertain that it actually is.

In this context a misunderstanding should be avoided. Article 8 (1) (b) of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict mentions that cultural property placed under special protection must be situated at an adequate distance “from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication”. Some authors mention this rule as evidence that all mentioned infrastructure, *e.g.* broadcasting stations, are military objectives.⁴² However, the purpose of the article is to ensure that specially protected cultural property must be placed away from any location which **could** become a military objective, as it would be impossible to remove it in the midst of an actual conflict.

forces de l’OTAN au Kosovo, *Fondements de l’obligation de respecter le droit international humanitaire*” (2000) 82 *Revue internationale de la Croix-Rouge* 103 at 124, n. 67.

³³ Bothe, *supra* note 25 at 534; Benvenuti, *supra* note 13 at 508; Human Rights Watch, *supra* note 13 at 10.

³⁴ Bothe, *supra* note 25 at 534.

³⁵ Bring, *supra* note 24 at 41, however points out that according to the wording of Art. 52(2) of Protocol I the object must make (in the present tense) an effective contribution to military action.

³⁶ Robertson, *supra* note 4 at 209.

³⁷ As Dinstein, *supra* note 3 at 155 seems to suggest.

³⁸ Peter Rowe, “Kosovo 1999: The air campaign – Have the provisions of Additional Protocol I withstood the test?” (2000) 82 *International Review of the Red Cross* 147 at 152.

³⁹ Schmitt, *supra* note 1 at 385.

⁴⁰ ICRC Commentary, *supra* note 3 at para. 2022.

⁴¹ See Art. 52 (3) of Protocol I, and the criticism of Hays Parks, *supra* note 4 at 136-137.

⁴² Fenrick, *supra* note 13 at 496; Dinstein, *supra* note 3 at 156-157.

III. Persons who may be targeted

Combatants are military objectives. Police officers are combatants if they are incorporated into the armed forces. Civilians, including police officers not incorporated into the armed forces, who unlawfully take a direct part in hostilities, lose their protection against attacks, as long as they directly participate. Everyone else who is not a combatant is a civilian benefiting from the protection provided for by the law on the conduct of hostilities. Together, the categories of civilians and combatants are mutually exclusive and in complement to one another, which is very important for the completeness and effectiveness of IHL, in effect avoiding circumstances where some people may fight but may not be fought against 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.

Under IHL there may be no category of "quasi-combatants", i.e., of civilians contributing so 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 hostilities.⁴³ If the civilian population shall be protected, only one distinction is 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 the form of a complete military occupation - regardless of whatever their contribution to the war effort may be otherwise. To allow attacks on persons other than combatants would violate the principle of necessity, because victory can be achieved by overcoming only the combatants of a country - however efficient its armament producers and however genial its scientists and politicians may be. The suggestion 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 a failure to distinguish between objectives that may be attacked and persons who may be the target of an attack. Military objectives, such as armament factories, may be attacked, and, subject to the principle of proportionality, the attack on a military objective does not become unlawful because of the risk that a civilian who works or is otherwise present in a 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, e.g. through aerial bombardment of the residential area where he lives or by enemy ground forces capturing his factory. In the latter example the question would furthermore arise as to how he could "surrender"? To allow 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 officials.⁴⁴ In addition, it would be very difficult to draw a line. Why should, e.g., international law professors who justify the legitimacy of a war (or of violations of IHL) be less legitimate targets than foreign ministry officials

⁴³ Robert Wayne Gehring, «Protection of Civilian Infrastructures» (1978) 42:2 Law and Contemporary Problems 86 at 105-109, with numerous further references to practice and doctrine. Contra Hays Parks, *supra* note 4 at 120-134, at least for those participating in the "military effort". While he criticizes at length Protocol I, he does not explain where he draws the line between the "military effort" and the "war effort".

⁴⁴ Dinstein, *supra* note 3 at 158.

or TV speakers? In both World Wars, German and British men could not have been incorporated so extensively into the armed forces if they had not been replaced by women in their functions essential for the society and the continuation of the war. Were those women all quasi-combatants?