

# EXPLOSIVE VIOLENCE IN DENSELY POPULATED AREAS MENACE TO HUMANITY

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**Abstract:** *Residential buildings being targeted by bombs, killing civilians, destroying civilian objects is today common in densely populated areas. In armed conflicts those who are involved in hostilities do not respect the law of war by killing civilians with impunity in contravention of the Geneva Conventions of 12 August 1949. Use of explosive devices in densely populated areas by both state forces and non-state forces is emerging as a new menace to peace and security of humanity. The author seeks to illustrate the facts of violations of international humanitarian law and challenges facing the United Nations in guaranteeing peace and security. Reading this article will reveal how much the world still requires to maintain peace and security to civilian populations. Explosions leave emotional harm to persons causing them unnecessary anxiety, psychosocial trauma and in some cases terminal illnesses.*

**KEYWORDS:** *Disarmament, explosives, civilians, civilian populations, asymmetric warfare, sovereignty of states, IHL, and peace and security of mankind.*

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Many types of explosive weapons exist, and many are in use by national military forces and armed groups. These include aircraft bombs, artillery shells, missile and rocket warheads, mortar bombs and improvised explosive devices (IEDs). Some are launched from the air, others from the ground. After this analysis of the situation of armed conflicts and evaluating some of the critical challenges, I can conclude by saying that the existing law of war and the developing international criminal criminal law still require some amendments, adjustments and contextualised jurisprudence.....	27
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## BACKGROUND

*In the time since the 1969 Report was submitted, the world has witnessed dramatic changes on many fronts: political, economic and social, but the reality, and above all, the consequences of armed conflict have, sadly, not changed. Human suffering, death, disfigurement, destruction and loss of hope for the future continue to constitute, as they always have, the immediate and longer-term effects of war on societies and the individuals who make them up. In addition to international and non-international armed conflicts, the world has recently been faced with a surge in acts of transnational terrorism, reopening certain dilemmas about the relationship between states security and the protection of the individual. This phenomenon has also led to a*

*re-examination of the adequacy of international humanitarian law in a way not experienced since the drive to complement the Geneva Conventions with the two Additional Protocols.* 28<sup>th</sup> International Conference of the Red Cross and Red Crescent Geneva, December 2003

The period following the Second World War and the Cold War has been characterised by substantive Non-International Armed Conflicts mentioned in Common Art. 3 of the 4 Geneva Conventions of 1949.<sup>1</sup> There are more conflicts of non- international character and increasing proliferation of the use of explosives in hostilities.<sup>2</sup> Several atrocities caused by explosive violence bring unnecessary sufferings to civilian populations, civilians and civilian objects contrary to the spirit and letter of the Geneva Conventions and their Additional Protocols. Credible reports received from the United Nations Office for Coordinating Humanitarian Affairs (UNOCHA) is alive to the fact of increased use of explosive violence.<sup>3</sup>

In evolutionary way the theatre of war has shifted from designated battle fields to residential and populated areas, a reality that is challenging the wisdom of law and irrelevancy in the international customs of armed conflicts and stipulated international laws.

Such revolution in the concept of armed conflict has made it difficult to redefine and interpret such notions of belligerency, combatants, conventional weapons and true identity of parties involved directly or indirectly in the armed conflicts. There is a demonstration of uncontrollable use of prohibited weapons by terrorists, diminished principle of distinction, and confused meaning of the term warfare. Laws dealing with collateral damage to civilians and their objects are losing meaning with time.

The Fourth Geneva Convention of 1949 is focused on the protection of civilians, civilian populations and their objects during armed conflicts. Since 1949, when the Four Geneva Conventions were adopted and the Two Additional Protocols of 1977 and that of 2005, a lot has changed in the sense law has had about armed conflicts. Typology of armed conflict has changed dramatically while the cogent rules contained in the Geneva Conventions remain as

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<sup>1</sup> accessed 26 February 2015, <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument>.

<sup>2</sup> accessed 26 February 2015, <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=AE2D398352C5B028C12563CD002D6B5C>.

<sup>3</sup> 'Explosive Violence: January 2015', AOA, accessed 23 February 2015, <https://aoav.org.uk/2015/explosive-violence-january-2015/>.

they were in over six decades back. Civilians are now directly targeted with impunity by the so called fighters. Residential areas have become the battle field while there is no any warning to evacuate residents and safeguard their objects.

Mr. Pitso Montwedi, the Chief Director of Human Rights and Humanitarian Affairs Directorate reflected on revolution of the battlefield saying,

“Today’s wars have little in common with the battles of the 19th century. The fighting has gradually moved from clearly defined battlefields to populated areas. Traditional war between armies of opposing states is the exception, while non-international conflicts have become a norm. Nowadays, civilians are increasingly bearing the brunt of armed conflicts.”<sup>4</sup>

Hospitals, schools, and objects meant for civilians such as water, electricity and infrastructures are being destroyed by violence.<sup>5</sup> Governments lose power to protect the rights of civilians during Non-International Armed Conflicts. Museums, places of worship, markets, and residential quarters are attacked. The unfolding reality in Syria, Iraq, Gaza Strip, Yemen and Libya reveal that the use of explosives has substantively increased. There is untold humanitarian disaster and many civilian victims of the on-going conflicts around the globe.

Many civilian populations are displaced. Properties and lives are destroyed. Many civilians suffer unnecessary fatal injuries while a lot more are suffering from psycho pathologies caused by rampant explosive violence. There are so many untold hostilities against women and children. Several rape cases and attacks on the sick have been reported in the recent years. Horrors of Islamic State and Boko Haram whose method of killing has become increasingly inhuman and unlawful are disturbing the conscience of humanity. It appears that international criminal law, its institutions and International Customary Humanitarian Law rules and practices are slowly becoming irrelevant to the modern Non-International Armed Conflicts.

Warfare targeting civilians is in violation of the Fourth Geneva Convention and the Additional Protocol II of 1977. The armed conflict is causing many civilian casualties, damaging or destroying buildings that civilian population rely on for their need for survival.

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<sup>4</sup> ‘The Geneva Conventions 150 Years Later ... Still Relevant?’, Article, *International Committee of the Red Cross*, (23 October 2014), <https://www.icrc.org/en/document/geneva-conventions-150-years-later-still-relevant>.

<sup>5</sup> ‘Explosive Weapons in Populated Areas | OCHA’, accessed 11 September 2015, <http://www.unocha.org/what-we-do/explosive-weapons-populated-areas>.

Deployment of explosives in populated areas,<sup>6</sup> indiscriminately destroy lives and civilian objects.<sup>7</sup> Damage to vital water and electrical supply systems for example, can have an equally harmful impact on health care at times when hospitals are overwhelmed with casualties, and more generally, hampering people's ability to survive.<sup>8</sup>

*In recent and on-going hostilities, artillery, mortars, air-delivered general purpose bombs, rockets and multiple launch rocket systems, among other explosive weapons, have taken a terrible toll on civilians, causing death, injury, disability and trauma. The use of such weapons in populated areas – where there is a strong likelihood of indiscriminate effects due to their imprecision or large blast and fragmentation range – is unacceptable.*<sup>9</sup>

Hostilities involving use of artilleries, mortars, air-delivery general purpose bombs, rockets and multiple launch rocket systems, among other explosive weapons, have taken a terrible toll on civilians, causing deaths, injury, disability and trauma.<sup>10</sup> As the use of explosives in armed conflicts stands unacceptable according to the International Committee of the Red Cross, their deployment in the asymmetric warfare is becoming common.<sup>11</sup>

The hostilities recorded in Syria, Gaza Strip, Iraq, Pakistan, Libya, and Ukraine,<sup>12</sup> military occupation of territories in the Middle East, in Israel, Yemen, and others, the use of explosives targeting civilian objects has caused violations of the International Humanitarian Law. The protection of the civilians and the civilian objects has been increasingly defied.

It is agreed that civilians are the main victims in the proliferation of the Non-International Armed Conflicts in the 21<sup>st</sup> Century.<sup>13</sup> They are killed, maimed, traumatized, disabled and their objects are destroyed. It worth repeating that this conduct of warfare is in contravention of the Fourth Geneva Convention, rules and practice of the International Humanitarian Law, and the customary international humanitarian law on rules and practice. Targeting of civilians is in violation of principles of the IHL, precaution, limitation and proportionality. The worst

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<sup>6</sup> 'Conduct of Hostilities', Topic, *International Committee of the Red Cross*, (9 December 2014), <https://www.icrc.org/en/war-and-law/conduct-hostilities>.

<sup>7</sup> 'Explosive Weapons in Populated Areas | OCHA.'

<sup>8</sup> 'ICRC Alarmed over Unacceptable Use of Explosive Weapons in Urban Areas', News release, *International Committee of the Red Cross*, (13 October 2014), <https://www.icrc.org/en/document/weapons>.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> 'Explosive Weapons in Populated Areas | OCHA.'

of all is the use of explosives that bring down big residential apartments meant for civilians. They damage water systems, sewerages, electrical supply and communication systems including personal property not sparing cultural properties.

Call for respect and to ensure respect for the IHL common Art. 1 of the Geneva Conventions is not taken into account by persons involved in the modern warfare<sup>14</sup>. There is no respect for the law as expected under *pacta sunt servanda*, also, reiterated in the Vienna Convention on Treaty Law<sup>15</sup>. Persons participating in hostilities have no regard for law. Some governments tend to lose control over their territories as they ought to under their international obligations. Hostilities are not declared and do not target military objectives as required by the *jus in bello* and traditional *jus ad bellum* in the customs of war by states.

The reports prepared and presented by the ICRC make it clear that there are serious challenges facing the international humanitarian law<sup>16</sup> and other relevant laws expected to safeguard human rights of the civilians during armed conflicts. The use of explosives in the densely populated areas has characterized the contemporary warfare by causing deaths, injuries and trauma.

*IHL prohibits in war most acts that would be called "terrorist" if committed in peacetime. In this context, IHL applies both to armed forces and to non-State armed groups. Acts of terrorism in other situations may be subject to other bodies of law, in particular domestic criminal law<sup>17</sup>.*

Act of terrorism still lacks proper legal interpretation both in the international and domestic laws in disregard to its violations of the law. Its effects on violations of the IHL and ICL, stand valid. Acts of terror occur anytime, anywhere, and even during time considered “peacetime”. It takes place usually in densely populated areas. Its main objectives are not yet clearly spelled out as it targets mainly the civilians and civilian populations and civilian objects.<sup>18</sup> Its commanders are not well constituted bodies as they do not fight for any

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<sup>14</sup> [CSL STYLE ERROR: reference with no printed form.].

<sup>15</sup> ‘Vienna Convention on the Law of Treaties’, *Wikipedia, the Free Encyclopedia*, 17 February 2015, [http://en.wikipedia.org/w/index.php?title=Vienna\\_Convention\\_on\\_the\\_Law\\_of\\_Treaties&oldid=647626219](http://en.wikipedia.org/w/index.php?title=Vienna_Convention_on_the_Law_of_Treaties&oldid=647626219).

<sup>16</sup> ‘International Humanitarian Law and the Challenges of Contemporary Armed Conflicts - ICRC Report - ICRC’, 00:00:00.0, <https://www.icrc.org/eng/resources/documents/report/31-international-conference-ihl-challenges-report-2011-10-31.htm>.

<sup>17</sup> *Ibid.*

<sup>18</sup> ‘Explosive Weapons in Populated Areas | OCHA.’

legitimate government. They tend not to feel bound by any law even though they operate within territorial spaces of sovereign States.

Two countervailing sets of norms have emerged. One is that which engages with Non State Armed Groups in armed conflicts in order to protect the security of civilian populations in need; and another one is that which prohibits engagements with enlisted “terrorist groups” in order to protect security<sup>19</sup>.

This kind of double approach is considering various rules belonging to each norm without creating absurdity of the law of war. As shall be widely and lucidly discussed, the questions raised about the protection of human rights during armed conflicts and reasoned under the principle of distinction under the IHL, the protection of civilians and combatants during the war of terrorism is difficult to arrive at.

This essay is seeking, therefore, to discuss the effectiveness of the laws in place and the need to amend the existing Geneva Law and Additional Protocols in order render such legal instruments more compatible and relevant to the unfolding situation facing the humanity.

## EPILOGUE

### **ASYMMETRIC WARFARE**

Asymmetric Warfare is defined as war between belligerents whose relative military capability differs significantly, or whose strategy or tactics differ<sup>20</sup>. In the traditional understanding of the law of war, war was declared between belligerents who were fighting for the State or Government. The fighters were official military personnel (regular and irregular armed forces) in uniform, armed and authorised to carry out warfare. The battle field was well defined and isolated from residential and populated areas. In this case war was not take place in urban areas or inhabited zones but in remote camps, most probably, in the mountains.

Fighters, known as combatants within the meaning of the existing Geneva Law, has right to fight, right to kill, and possibility also to be attacked and killed during declared warfare. The

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<sup>19</sup> Dustin A. Lewis Naz K. Modirzadeh, ‘Humanitarian Engagement under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape’, *International Review of the Red Cross*, 00:00:00.0, <https://www.icrc.org/eng/resources/documents/article/review-2011/irrc-883-modirzadeh-lewis-bruderlein.htm>.

<sup>20</sup> ‘Asymmetric Warfare’, *Wikipedia, the Free Encyclopedia*, 16 February 2015, [http://en.wikipedia.org/w/index.php?title=Asymmetric\\_warfare&oldid=647385274](http://en.wikipedia.org/w/index.php?title=Asymmetric_warfare&oldid=647385274).

high contracting parties (States or Governments) would agree on when to begin the war, and where to do it. In such regulated and orderly warfare, the application of law is tenable. The belligerents would deploy conventional weapons and the war would aim exclusively at military objectives other than civilians and civilian objects.

Such is no longer the case in the contemporary asymmetric warfare. Officially recruited military are to face a reality that is not used to them. Fighting against terrorism, insurgents and criminals is new in that the two entities are not congruent. Military officials are trained to fight, to subdue the enemy, kill, and destroy the targets by all means or to be destroyed. They are the combatants within the meaning of the IHL. On the contrary, terrorists are not government employees, they do not fight for a State or government. Their style of fighting includes even suicide bombing and other lethal methods that have not been accepted by the international community. They attack anytime, anywhere, and even during peacetime. They are not in uniform and their coming into existence is private and autonomous from the government forces. Their objectives and targets are totally different from those of the combatants. They are not defined as combatants within the meaning of the International Humanitarian Law.

Terrorists, insurgents and such criminals do not necessarily carry arms in open as stipulated in the *jus in bello*. Fighters do not wear distinctive uniforms. They attack mainly the civilians and civilian populations and destroy civilian objects. They deploy weapons that are not proportional to those of the police force and they are not just mere ordinary criminals. They operate from residential areas or populated sectors in towns making it very insecure for civilians. They kill in-discriminatively, targeting any person, children, women, disabled and men. Their commanders are hard to distinguish and to be held responsible since they are not well constituted bodies and the governments can hardly make proper trace of their existence.

The question of command responsibility is also taken into consideration. In the unfolding warfare, the commander has little time to make decisions and give appropriate orders.

### **SUICIDE BOMBERS**

In the asymmetric warfare the attackers can deploy explosives used in suicide bombing “Kamikaze” and target over populated zones in urban areas<sup>21</sup>. Militant groups can use civilian

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<sup>21</sup> Seumas Milne and Ewen MacAskill, ‘Al-Qaida Planning Kamikaze Attacks on Ships in Mediterranean, Cables Claim’, *The Guardian*, accessed 26 February 2015, <http://www.theguardian.com/world/2015/feb/25/al-qaida-planning-kamikaze-attacks-ships-mediterranean-russian-cables>.

aviation as has been witnessed in 11/9 2001 in the United States of America and the war in Afghanistan are the best known asymmetric wars after the Second World War. In this reality fighters have disparate military capabilities and strategies<sup>22</sup>. Such fighters are individuals accepting suicide in order to cause atrocities to humankind.

This is a totally new reality that has evolved and increased after the Cold-War in 1989. States that have experienced it namely, the United States of America and Israel, have developed counter measures to protect their civilian populations from the effect of the asymmetric war. Other States are yet to find how to deal with it such as Nigeria, Cameroon, Chad, Somalia, Libya, Kenya, Syria, Yemen, Egypt and EU States.

## EXPLOSIVES IN CONTEMPORARY WARFARE

Rather than deploying conventional arms to kill, the insurgents, and terrorists attack using explosive devices some of which are powerful enough to bring down big buildings causing human atrocities. Use of such explosives and their production now form the basis of world high level debates at diplomatic conferences at the auspices of the International Committee of the Red Cross (ICRC).

### ***EXPLOSIVE MATERIAL***

Explosive material is a reactive substance that contains a great amount of potential energy that can produce an explosion and if released suddenly can cause serious humanitarian damages and loss of lives.

There are different types of explosives using chemical energy. There are high explosives and low explosives. However, explosives can be simply manufactured. Some are home-made making their accessibility too easy and hard for governments to control. Some do not require complicated skills and know-how.

The so called terrorist fighters acquire explosive substances and assemble their weapons in residential areas. The explosives are packed in small transferrable portions to ease the work. Attackers who use them can simply carry them to the target area and trigger off the explosion especially in the suicide cases. In other cases, explosives are contained in shells, mortars, and hand grenades that can as well be carried by any single individual. It is launched by the force

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<sup>22</sup> 1776 Main Street Santa Monica and California 90401-3208, 'Asymmetric Warfare | RAND', accessed 23 February 2015, <http://www.rand.org/topics/asymmetric-warfare.html>.

of hand to a crowded area where it explodes causing serious deaths and devastating destructions.

Given that a wide varied of chemicals can explode or detonate, it makes it possible for the attackers to acquire the technology, know-how and raw materials. The accessibility of such substances to ill-intentioned users is another challenge that requires contemplation if the world is to be safe. Some substances are cheap whereas porous borders and weak States also make the business in certain explosive materials possible. Some governments are engaged in black market deals to trade in certain explosive materials with terrorist groups. Studies reveal that business and multinational operations are one of the key causes of the spread of explosives in wrong hands.

An explosive weapon uses high explosive to blast from a point of detonation without killing the user. Improvised Explosive Devices (IEDs) and explosive ordnances are often referred to as bomb. The use of such explosive devices and ordnances are the prerogative of the military and in various criminal laws, possessive such high explosives are prohibited by law.

Proliferation of such explosive weapons is found in what is known as light weapons and small arms. They are in terms of hand grenades, missiles and anti-rocket systems just to name a few.

Some types of explosives have been prohibited by international treaties even before the United Nations. In 1868, the St. Petersburg Declaration prohibited the use of certain explosive rifle projectiles. This brought about the ban on exploding bullets. In 1997, the Ottawa Treaty banned the use of landmines (Mine Ban Treaty) and in 2008, Convention on Cluster Munitions prohibiting types of explosive weapons, anti-personnel land mines and cluster munitions meant for states parties to the treaties<sup>23</sup>.

However, in armed conflicts the use of explosives is regulated by the international humanitarian law. The use of explosives during hostilities in all methods of warfare is limited and regulated by the law. The concern of the use of such explosives in over populated areas has been noted also by the United Nations as well as the ICRC. Use of explosives causes

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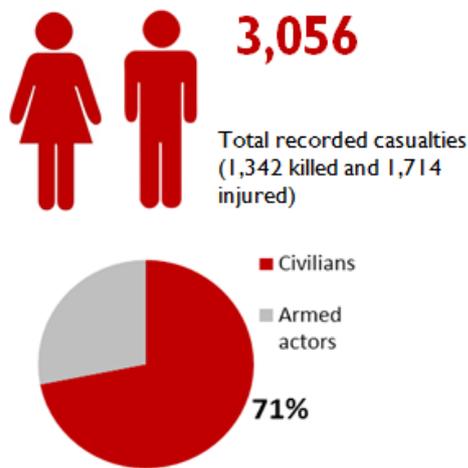
<sup>23</sup> 'Where Global Solutions Are Shaped for You | About UNOG', accessed 26 February 2015, [http://www.unog.ch/80256EDD006AC19C/\(httpHomepages\)/A0E7320F5D56F5B080256F0400403B62?OpenDocument](http://www.unog.ch/80256EDD006AC19C/(httpHomepages)/A0E7320F5D56F5B080256F0400403B62?OpenDocument).

deplorable humanitarian situations and deaths to several civilians in different parts of the world both during wartime and peacetime<sup>24</sup>.

### ***PROLIFERATION OF EXPLOSIVE VIOLENCE***

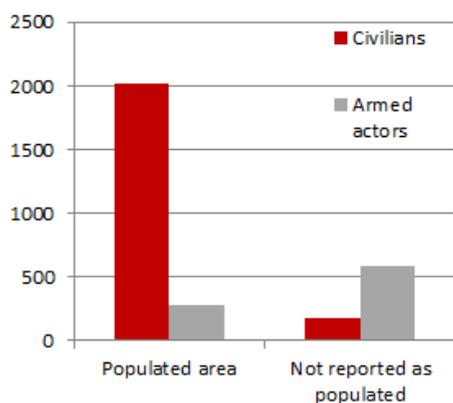
Case by case study of armed conflicts around the world reveals that hostilities are involving the use of explosives in fight on land, in air and in water. Such explosive devices cause casualties most of whom are civilians. The question is based on the failure to respect the IHL and bring armed conflicts to order.

The rate in which explosive violence is occurring is alarming<sup>25</sup>. Syria has been the leading but a number of cases are being recorded every day<sup>26</sup>.



Country	Civilians <sup>1</sup>	Armed actors	Incidents
<b>Syria</b>	505	66	27
<b>Ukraine</b>	356	108	27
<b>Iraq</b>	326	173	30
<b>Pakistan</b>	236	248	36
<b>Nigeria</b>	201	10	8

#### **Populated areas<sup>2</sup>**



#### **Weapon types**



### *Indiscriminate killing of civilians through explosives<sup>27</sup>*

<sup>24</sup> 'Action on Armed Violence', AOAV, accessed 23 February 2015, <https://aoav.org.uk/>.

<sup>25</sup> 'Explosive Violence.'

<sup>26</sup> Ibid.

Use of explosives as weapons in hostilities is limited to military objectives by the customary international law. But even this is restricted since explosives kill indiscriminately and do not spare civilians and civilian objects. They cause grave breach of the Fourth Geneva Convention relative to the protection of civilian persons in time of war.

High Contracting Parties in the Non International Armed Conflicts involve some fighters who are not government officials therefore, difficult to subject to the normative principles of the rules of the law of war. Insurgents and terrorists do not follow military manual or the international law of war. They are not a state entity and are not under any obligation to observe the customs and rules of the law of war.

#### WEAK SOVEREIGNTY OF STATES (NON FUNCTIONAL STATES)

Violence, hostilities and combat take place in territorial space of sovereign states. Whether it is a fight on land, in the air or in water, the armed conflicts take place within well-defined State territories putting questions to the effectiveness of States in protecting civilians within their territories as required by the United Nations Charter.

Use of explosive devices to destroy humanity within States raises many questions than answers concerning the sovereignty of such states. Do those states have legitimate governments that can protect the human rights of the civilian populations during war and in peacetime?

State sovereignty that was well defined after the Westphalia Peace of 1648 has been diminishing with the systematic codification and progressive development of the international law since 1948, almost three Centuries after the 30 years of war in Europe. The epitome of weak States as opposed to strong States has been caused by human rights as expressed in both the international and universal jurisdictions. States and governments find themselves within stronger international governance which weakens some of their functions.

States party to the United Nations and signatories to the international human rights and humanitarian conventions are subjected to some degree of universalism. Such universalism demonstrated in the nature of human rights and humanitarian law entails that such States compromise some of their powers by admitting the principles of international law. For instance, a State is not expected to enact criminal laws that would be against general

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<sup>27</sup> Ibid.

principles of customary international law such as *jus cogens* (pre-emptive norms) and *pacta sunt servanda*.

Those who are involved in terrorist activities are also considered part and parcel of humanity, *vis-à-vis* their natural human rights are also to be protected by domestic laws, though not saved from criminal prosecution by concerned states. State parties to the Geneva Conventions and Additional Protocols are expected to observe the rules and norms of the law while drafting their national laws.

Yet at the same time, the rights given to the United Nations Security Council under Chapter VII to maintain international peace and security seems not to be holding anymore. Right to recourse to the use of force is restricted by the United Nations Charter to the Security Council. Fine, this provision has tamed International Armed Conflicts and to prevent the world from precipitating into the “Third World War”. However, the magna carta or the United Nations Charter of 1945 falls short of spelled rules to deal with the proliferation of use of explosives over populated areas.

The United Nations Security Council Resolutions fall short of expected measures both in the time of war and peace. For instance, the use of explosives in inhabited urban areas has not been tamed by UN Resolutions. Call for truce and call to sovereign States to respect their obligations in the international law have not born any concrete fruit in dealing with violence directed to civilians.

Paradoxically veto States that are expected to give direction to other states such as Russia and the United States of America are not innocent when it comes to the modern Non International Armed Conflicts. Both former superpowers have their fair share in the use of explosives deal. Relevant regional and trans-regional organizations have had their share in contributing to the current hostilities in disregard to the impact such conflicts have on civilians and civilian populations. Worse still, the entire international community has been reluctant to move with speed and tame some of the world worst scenarios such as Gaza Strip, Palestine, Israel, Iraq, Syria, Afghanistan, Pakistan, Libya and Ukraine.

The impact of explosive violence includes also mental health of the survivors. This comes with series of humanitarian problems and trauma of the affected persons.

*Major disasters, such as war, have a significant impact on mental health and psycho-social well-being. Events like physical assault, serious bodily harm, experiencing or*

*witnessing horrific injury, carnage or fatalities, or hearing about violence to or sudden death of someone close can lead to psychological trauma justifiably one would rightly argue that international legal system has failed as it is to deal with international anarchy or state of lawlessness. Powerful States buy time while some are just reluctant to participate in such fights.*<sup>28</sup>

### **New Regional Trends**

New regionalism trend is more focused on economic well-being of the member states and less on regional situation of armed conflicts that affect it. At the same time, too much has been expected from the International Humanitarian Law more than the state interventions.

Regions and States have relaxed so much in offering humanitarian support to the affected situations. One of the reasons is that too much has been expected from the International Criminal Court (the ICC) without considering the need for states' cooperation. In this relaxed state of international affairs, international criminals, culprits and ill-intentioned individuals take advantage of the weakness in the international judicial regime to commit heinous crimes across board.

International Humanitarian Law is designed in a manner that its effectiveness relies on the good will of the High Contracting Parties. General sentiment from international conferences has been that there should be frequent meeting of the High Contracting Parties to consider general problems facing the application of the Conventions and Additional Protocols. However, even such proposals meet challenges on various material issues as the asymmetric warfare fail to have clear identity of the High Contracting Parties in question. There are terrorists everywhere and from almost all races and nationalities. There are men and women as well as Europeans, Americans, Asians, Arabs, Africans among others.

As any other international law instrument, the IHL can do too little if States parties to Geneva law are not willing to implement it fully. The ICRC cannot achieve more mileage in humanizing the war if sovereign States lack sufficient political will power to intervene in outlawing the use of explosives in densely populated areas. Likewise, the ICC cannot deliver its mandate fully if the entire international community is not willing to support its course as it ought to.

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<sup>28</sup> '1308.pdf', accessed 4 February 2015, <http://www.ejil.org/pdfs/6/1/1308.pdf>.

## ***REVOLUTIONARY ARAB SPRING***

The taking up of arms by civilians and ordinary non state officials to fight legitimate governments in the Arab region has created a new precedent in the law of war. Civilians taking up arms defying law and order within their states, have been witnessed in Syria, Libya, Pakistan, Tunisia, Yemen, Iraq, and Afghanistan rendering security very risky. The new conduct of hostilities is not in good faith and has some strong elements of international mischief.

## **TERRORISM AND JIHADISM**

War of terrorism has no proper definition in the international law despite the fact that it causes atrocities. The activities of terrorists, which are also geographically dispersed, are not, as a rule, imputable to a specific state under the international rules on the duties of the state at the outbreak of hostilities. Terrorists are transnational networks capable of attacking anywhere, anytime and anyhow. Terrorist attacks have targeted exclusively civilian populations<sup>29</sup>. The fighters have deployed explosive weapons in such fights.

Terrorists take advantage of the weakness of the state sovereignties and lack of adequate legal framework both domestically and internationally. Usually terrorists demand their freedom to carry out their criminal activities within state territories. Their objectives are not very clear. Their tactics keep on changing leaving researchers with confusion. However, their style of attacking is meant to terrorize states and governments.

Since nothing indicates that the on-going use of violence today has connection with religion, some fighters pose as jihadists fighting those who do not share their creed. They target members of other religions as an excuse but not the causality of the atrocities.

Cases of use of explosives have targeted civilians presumed to be members of other creeds. Jihadists are in Syria, Iraq, Egypt, Libya, Jordan, and spreading out very fast. The Islamic State (ISIL) is emerging as a typical new jihadism. The same format has been adopted by other terrorist groups such as Boko Haram in Nigeria and the neighbourhood and Al-Shabaab and the neighbourhood.

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<sup>29</sup> 'Contemporary Challenges for IHL', Topic, *International Committee of the Red Cross*, (8 September 2014), <https://www.icrc.org/en/war-and-law/contemporary-challenges-for-ihl>.

Terrorism and Jihadism are kinds of armed conflicts with no border but with clear scope, to terrorize non Islamic believers. They have no clear link with religious leaderships and tend to use the religion to achieve their goals<sup>30</sup>.

Jihadism is a new twist in the law of war today. It has no proper interpretation in the international law and the IHL is not concerned with it. It can be interpreted under the Convention Against Genocide and State criminal laws but too little are said about jihadism within the international law.

Transnational terrorism does not fit within the meaning of international armed conflicts neither can it be interpreted properly within the non-international armed conflict in the meaning of the Geneva law<sup>31</sup>. There are arguments and counterarguments on the legal definition of a terrorist. Some suggest that a terrorist can be “enemy combatant” but even this usage has not attracted a lot of attention.

The meaning of the term “war” is also complicated in the case of transnational terrorism and conduct of hostilities<sup>32</sup>. Whether to call it war on terrorism, war of terrorism or fight against terrorism, remains yet unclear. Terrorism has created a new phenomenon in the history of the law of war since September 11, 2001.

The war in Afghanistan was fully covered by the IHL since government entities were involved. Yet still one needs to establish whether such conflict is intense and lasts for a longer period of time in order to relate it to the meaning of the non-international armed conflict or not. ICRC has carefully engaged legal analysis of the transnational networks and terrorist violence.

## USE OF ARMED DRONES BY TERRORISTS

If not checked, the use of new technology especially the drone can get out of control. Development of drones and selling them to private buyers may complicate matters with the war on terror. Terrorists shall acquire drones and use the air space to launch their targeted attacks on individuals.

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> ‘Conduct of Hostilities.’

There is still problem in the definition of crimes of terrorism in the times of armed conflicts.<sup>33</sup> Still there several assumptions when it comes to determining the legal status of those who participate in armed conflicts.

"Ensuring use of remotely piloted aircraft or armed drones in counterterrorism and military operations in accordance with international law, including international human rights and humanitarian law"<sup>34</sup>

The 27<sup>th</sup> Session of the Human Rights Council has expressed concern about the use of armed drones and ruled that it must be in line with the international law. Despite the fact that the International Committee of the Red Cross is following closely the use of technology in the conflicts and respect of the law, still we cannot dispute that such technology may get into the hands of terrorists.<sup>35</sup>

It is apparently clear that there is no any provision in the legal instruments of the IHL that prohibits the use of armed drones. The rules of the IHL are categorical in the principles of distinction, proportionality and precautions<sup>36</sup>, but have nothing prohibiting or regulating the use or ownership of the drones or any robot in armed conflicts.<sup>37</sup> As much as we are aware that machines can cause humanitarian disasters and can as well violate the laws and customs of war, it is still early to analysis legal instruments to regulate the situation in question.

As questions remain in the grey area of law<sup>38</sup> concerning the use of the drones, it is apparent that IHL is not applicable in the question of drones.<sup>39</sup> The remotely piloted drones are machines that are commanded remotely by their operators that may also cause collateral damages to civilians and their objects. However, usually they operate in non-belligerent

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<sup>33</sup> Antonio Coco, 'The Mark of Cain The Crime of Terrorism in Times of Armed Conflict as Interpreted by the Court of Appeal of England and Wales in R v. Mohammed Gul', *Journal of International Criminal Justice* 11, no. 2 (2013): 425–40.

<sup>34</sup> 'Ensuring the Use of Drones in Accordance with International Law', Statement, *International Committee of the Red Cross*, (22 September 2014), <https://www.icrc.org/en/document/ensuring-use-remotely-piloted-aircraft-or-armed-drones-counterterrorism-and-military>.

<sup>35</sup> Ibid.

<sup>36</sup> 'The Use of Armed Drones Must Comply with Laws - ICRC', 00:00:00.0, <https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>.

<sup>37</sup> 'Ensuring the Use of Drones in Accordance with International Law.'

<sup>38</sup> 'The Use of Armed Drones Must Comply with Laws - ICRC.'

<sup>39</sup> 'Ensuring the Use of Drones in Accordance with International Law.'

states. They participate indirectly in the warfare. Their prosecution under the law remains at the discretion of individual states.<sup>40</sup>

## WAYFORWARD

### ***DIPLOMATIC NEGOTIATIONS***

The era of the United Nations has embraced in wholesale the use of diplomatic conferences in order to engage with states, multinationals, trans-national corporation and NGOs in order to restore law and order in the international community especially in the international criminal justice. Such negotiations cherish dialogue, debates, co-operation, interventions, research and persuasive mechanism to convince states and governments to endorse treaties.

Diplomatic conferences have worked effectively in creating treaties. But, it is apparently clear that terrorist groups and jihadists have no organizational structure to make diplomacy work. Diplomacy is only meant for states and governments but has no meaning when it concerns the modern typology of warfare.

United States of America could not negotiate with Al-Qaeda. Negotiating with terrorist groups is an option that States and governments dismiss. Rather, governments usually engage military approach to deal with terrorists. Such approach is not in line with the rules of human rights law since it is arbitrary, hence, extrajudicial. Terrorists and suspects are not given fair trial and there is no regard to due process principle.

Governments are reluctant to consider any negotiation with terrorists for this may imply their failure to deal with crimes within their territories. Furthermore, if terrorists are not any authority, and they are individuals, governments consider them to be treated as any other bandit or criminals with violence under penal laws and procedures. However, even such governments are obligated to respect principles of human rights and to respect their obligations to the international law.

### ***IMPROVING COMPLIANCE WITH IHL***

It is outstanding that many states, despite ratification of the IHL, still fall short of complying with its rules, customs and norms. Lots of violence still takes place within sovereign states.

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<sup>40</sup> Ibid.

There is lack of political will and practical ability of states and armed groups engaged in armed conflicts to abide by their legal obligations.

It is evident that legal tools and organs at the disposal of sovereign states are not sufficient to ensure full control over the use of explosives. Existing mechanisms require more adaptability in order to fit within the modern world order.

### ***REGULATING THE USE OF EXPLOSIVES***

To some extent, the IHL can only succeed to persuade states and governments through diplomatic conferences to endorse further prohibitions to the use of explosives. But this shall only involve states, governments and international organizations in negotiations. It will hardly win the hearts and minds of terrorists and those who are bent to commit such crimes against humanity, crimes of war and crimes of aggression.

The UN Conventions on Conventional Weapons have elaborated so much on the limits and use of explosives in 1982. This has not saved the world from experiencing the massive use of explosives in densely populated zones. Casualties caused by the deployment of explosives keeps on rising day by day despite appeals from the United Nations and other international institutions.

Possibility of gauging fighters in dialogue is very remote since this might not yield expected results.

### ***NATION-STATE OPTION***

The international community denounced allowing nation states to wield too much power after the worst experience of the atrocities caused by the WWII since the Westphalia peace pact in 1648. Reversing this to empower sovereignty of the states, will be tantamount to promoting more international crimes and fanning the international lawlessness. It will not be advisable for the world to go back to where it was during the holocausts and crimes of war caused by excessive state powers.

It is cogently argued that the international law can efficiently deal with the use of explosives through restrictive laws. However, this can only happen when there is strong political will in the international community to do so. The veto powers of the UN Security Council must swallow their pride and admit the challenges facing the modern kind of armed conflicts.

The end of the Cold-War opens the world to another state of anarchy. The only superpower has been the United States of America but for how long shall USA allow its expenditure on military efforts to make the world more peaceful? It is apparent that USA may not enjoy dominating the world for more decades to come and predictably, the United Nations may become the next superpower.

With remarkable amount of reserve, the United Nations may not have all the muscles to deal with the international crimes. It has no territory of its own and it has no government of its own. It has no legislative organ and no functions as the state.

There is no gain said that UN can easily become the superpower to tame the world from precipitating into another world war. Its efficacy in dealing with use of weapons, such as explosives, requires political good will of member states and their governments. The possibility to enforce war treaties equally requires the good will, cooperation and working relationships of state members.

#### INCOMPATIBILITY OF THE GENEVA CONVENTIONS OF 12 AUGUST 1949

The Fourth Geneva Convention<sup>41</sup> was designed to suit the International Armed Conflicts (IACs) involving states as High Contracting Parties. In this case, there is more possibility of respecting<sup>42</sup> and ensuring respect for the law in order to protect civilian population. In IACs the respect of rules and practices of war is tenable since Contracting Parties are held accountable for their actions.

In Non-International Armed Conflicts (NIACs) it is problematic to consider proper identity of the High Contracting Parties involved in hostilities<sup>43</sup>. NIACs now outweigh the IACs as most of the armed conflicts occur in disregard to the customs of international humanitarian law. Neither do such conflicts respect rules and principles of the jus in bello. The war is not declared and battle field is not designated. Sometimes such hostilities occur sporadically and shortly.

The Fourth Geneva Convention and Additional Protocol of 1977 were designed to fit with International Armed Conflicts in which status of the Parties to the conflict is clear and possibility of prosecuting suspects of war crimes is high.

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<sup>41</sup> [CSL STYLE ERROR: reference with no printed form.].

<sup>42</sup> Ibid.

<sup>43</sup> 'Conduct of Hostilities.'

Additional Protocol II of the Geneva Conventions relating to the protection of victims of Non-International Armed Conflicts.

*Art. 4(1) All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.*

ICRC is alarmed by the excessive use of explosives in densely populated areas causing casualties among civilians and destroying civilian objects<sup>44</sup>. Explosives do not respect anybody and kill indiscriminately. Buildings collapsing on persons causing unnecessary sufferings, deaths, mutilations and destroying means of survival<sup>45</sup>, is a grave breach of the above section of the Additional Protocol II.

### ***THE NATURE OF THE IHL***

The international humanitarian law is less of a normative rule but more of a moral rule. In essence, the IHL is concerned with humanization of armed conflicts, reducing sufferings of persons affected by hostilities<sup>46</sup>. It appeals more to the conscience of man but has less normative characteristics.

Given the nature of IHL it is necessary to discuss whether morality works effectively to restrain persons involved in hostilities from using such weapons as explosives against masses of persons most of whom are civilians? Examining this brings us to ethics and morality of the law of the war.

It is questionable to what extent can the law appeal to the conscience of individuals who are hostile and ready to cause atrocities? Convincing fighters who are not fighting within the law to obey the law is hard. In the same manner, the use of explosives in densely populated areas by insurgents and terrorists may not require only the normative approach but also engagements with concerned leaders.

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<sup>44</sup> 'ICRC Alarmed over Unacceptable Use of Explosive Weapons in Urban Areas', News release, *International Committee of the Red Cross*, (13 October 2014), <https://www.icrc.org/en/document/weapons>.

<sup>45</sup> Ibid.

<sup>46</sup> 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts - ICRC Report - ICRC.'

Certainly, IHL fits smartly with the natural law theory – the law of reason in agreement with nature. But how far this could translate into positive laws require more effort to convince governments otherwise.

Domestic criminal laws are not sufficient in themselves neither is the IHL adequate to repress the use of explosives in hostilities without wider engagement of potential parties in dialogue.

## REVISING THE LAW

It is praiseworthy to say that ICRC managed to render the use of anti-personnel land mines, in the famous Ottawa Treaty, illegal. Since then signatory states have outlawed the use of the land-mines both in wartime and peacetime. Same determination from the ICRC will certainly stamp out the deployment of the use of explosives in the densely populated zones through inclusive diplomatic conferences engaging wider range of participants.

The United Nations Convention on Conventional Weapons (CCW) may need thorough review and necessary amendments<sup>47</sup>. The convention prohibits and restricts the use of certain weapons that are considered to cause unjustified and unnecessary sufferings to combatants or to affect civilians unnecessarily<sup>48</sup>.

## THEATRE OF WAR

However, law prohibiting the use of land mine and that prohibiting the deployment of explosive devices in the densely populated areas appear to be incongruent. The latter is more complicated than the former. Land-mines or anti-personnel mines are deployed by belligerent groups involving government military and insurgents. Landmines were widely used in wars of liberation in Africa by combatants and in internal wars in Angola and Mozambique.

The aim of landmines was not mainly to target the civilians but the adversaries. The explosives were not planted in buildings but in the fields making the collateral damages high since landmines and explosive remnants of war are hardly detectable to users of lands. On the contrary, explosives used in densely populated areas majorly target civilians and fighters who turn residential buildings into the theatre of war.

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<sup>47</sup> 'Where Global Solutions Are Shaped for You | Disarmament | The Convention on Certain Conventional Weapons', accessed 26 February 2015, [http://www.unog.ch/80256EE600585943/\(httpPages\)/4F0DEF093B4860B4C1257180004B1B30?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/4F0DEF093B4860B4C1257180004B1B30?OpenDocument).

<sup>48</sup> Ibid.

Due to the already discussed typology of the contemporary asymmetric warfare an abolition of the use of explosives targeting civilians may not only require the consensus of sovereign states but also the conscience of civilians who directly participate in hostilities and fall into the power of the enemy. There is absence of combatant status affecting treatment and protection of persons who have directly participated in hostilities.

Cases in which explosives are deployed in densely populated areas by civilians directly participating in hostilities demonstrate drastic turn of events in the nature of the law of war. They do not concern the states involved but they occur in situations where states and their governments are incapable of holding their users accountable for crimes. It is such failure of the state capacity to control its national borders, scrutinize its citizens and bring law and order creating avenues for violations of the IHL.

Challenges facing the massive violations of the international humanitarian law, rules and practices of law, has a lot to do with the failure of state organs to effectively maintain law and order within their jurisdictional borders.

The Convention on Conventional Weapons (CCW) of 1980 has not done much to deal with the contemporary theatre of war and the trade in arms. Even though the convention prohibits and restricts the use of certain weapons, the use of such weapons in densely populated areas is not yet well contemplated.

### ***DISARMING NON STATE USERS***

The current theatre of war and the proliferation of non-international armed conflicts renders disarmament strategy of the United Nations untenable<sup>49</sup>. Fighters are individuals or groups that do not identify themselves with concerned states or governments. They are independent groups whose operations are not focused in one location. Yet they use lethal weapons some of which are prohibited and outlawed.

Disarmament is practical in a situation which governments are involved and very unpractical in cases of terrorists and jihadists. The enforcement of disarmament rule is within the

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<sup>49</sup> Susan Kurtas, 'Research Guides: UN Documentation: Disarmament: General Assembly & Disarmament', research starter, accessed 26 February 2015, <http://research.un.org/en/docs/disarmament/ga>.

prerogatives of the states. Non state fighters find themselves out of the loop whenever the issue of disarmament is considered and more research is still required on this<sup>50</sup>.

The UN approach to consider engaging civil society members in the effort to disarm militant non state groups is likely to add some value. However, it relies on the political good will of states and remarkable expenditure to carry out the disarmament operations and more humanitarian assistance.

Considering the question of Arms Trade Treaty (ATT) that is still under diplomatic debates, the control of certain weapons is becoming difficult to restrict. It is understandable that non state fighters acquire such arms through unregulated trade in arms. It is also true that states are not doing enough to restrict such trade in arms within their borders despite the commitment to file their annual reports to the United Nations<sup>51</sup>.

## RESPONSIBILITY OF THE STATE FOR INTERNATIONALLY WRONGFUL ACTS

Holding states criminally accountable for their actions and inactions during non-international armed conflicts has been rejected by states making the situation of compliance with the Geneva Conventions still more complicated. According to the state responsibility, it is the duty of the state and its government to prosecute criminal actions of her citizens and aliens and guarantee protection to civilians<sup>52</sup>.

By virtue of failing to have a treaty holding states accountable for their action or inaction in international criminal offences is one of the key contributions to the situation of lawlessness. It is the causality of more lawlessness that must be properly addressed.

In 1980, the International Law Commission had provisionally adopted Draft articles on state responsibility for internationally wrongful acts. At its session in 2001, the commission completed its work and adopted the titles and texts of the draft articles in second reading. (Report of the Commission 53<sup>rd</sup> session Doc. A/56/10).

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<sup>50</sup> UNOG Library, 'Research Guides. Disarmament: Global Issues. Home.', accessed 26 February 2015, <http://libraryresources.unog.ch/disarmament/global>.

<sup>51</sup> 'Where Global Solutions Are Shaped for You | About UNOG.'

<sup>52</sup> 'International Law Commission', *Wikipedia, the Free Encyclopedia*, 23 August 2014, [http://en.wikipedia.org/w/index.php?title=International\\_Law\\_Commission&oldid=622411344](http://en.wikipedia.org/w/index.php?title=International_Law_Commission&oldid=622411344).

Article 1 states that every internationally wrongful act of a state entails the international responsibility of that state. Art. 2, There is an internationally wrongful act of a state when conduct consisting of an action or omission: a) is attributable to the state under international law; and b) constitutes a breach of an international obligation of the state.

Art. 23 of the Draft is on *force majeure*, meaning the occurrence of an irresistible force or of an unforeseen event, beyond the control of the state, making it materially impossible in the circumstances to perform the obligation.

It is presumed, under the Draft, that each sovereign state should ensure that the international law is enforced within its territories. (See the Annex to General Assembly Resolution dated 12 November 2001).

However, the act of insurgencies and movements which are not part of the state is not considered responsibility of state for internationally wrongful acts under Art. 10 unless the state acknowledges and adopts such wrongful acts as its own under Art. 11. The sense of these provisions exonerate the state or governments from assuming criminal responsibility in the use of explosives in densely populated areas by none state or government officials (insurgents, terrorists, or rebels).

The presumption of innocence till proven guilty is also applicable. Under the state responsibility of the internationally wrongful acts takes into account also the presumption of innocence till proven guilty.

However, the annex has not been fully endorsed by the UN General Assembly as binding, therefore, no sovereign state can stand criminal charges for actions and omissions under the state responsibility conception.

## **OBLIGATION OF IHL IN ATTACKS OF DENSLY POPULATED AREAS**

There are rules dealing with unnecessary sufferings and protection of civilians during war-time. Regular and irregular military forces fighting for a government are considered as who can legitimately be attacked. Armed forces conduct hostilities on behalf of party to an armed conflict. Regular armed forces are defined by states by legislations. They have to wear uniform. Civilians accompanying armed forces remain civilians unless they change their status.

Civilians are not members of the armed forces and it is prohibited to attack neither civilians nor civilian populations. It is debateable still who is participating in the hostilities and who is not. The military wing must be treated as the regular wing of the armed forces of the state.

The notion of the participation in the hostilities by civilians occurs when there is direct participation of the civilians.

Members of organised armed groups must also be subjected to the rules of international humanitarian rules and practice. States and non-State actors must respect the rules of the IHL. It all depends on a case by case basis and the intelligence at the moment. The intelligence is crucial when it comes to the precautions of attack.

Every attack must have limitation. Under the rule of proportionality one can proceed with the attack only if he does not cause any collateral damages. Military objectives can be attacked. The military must undergo two prong test. Who is to be attacked? The situation may change. First- military objectives are limited to such effective contribution to military action. Nature and function. There must be close link between the action and the military objective. The intrinsic character of the object. Location, purpose and present use are also considered in the first prong test. The notion of purpose- intended future use. There is limitation of the link of military action. An object may be used for military purpose. The notion of military action- war fighting capability of a party is the military action. Second prong- definite military action. Elements that are discrete and at the military advantage. There is a broader concept of an attack. Military advantage is not concerned with the entire war.

The analysis is also situational. The situation may change in the cause of hostilities.

Densely populated area is a challenge when it comes to precaution. The assessment must be made in every case. The question of dual use object – civilian objects and activities. In the event of an attack then the precautions must be taken.

The principle of proportionality - Once you proceed with an attack in the military objective you must not cause collateral damage to civilians or civilian objects. You must weigh things that are not comparable. There must be balancing act against the notion of excessiveness. There are limitations required by law.

Choice of means and methods of war in densely populated areas. There is use of explosive power weapons that may cause indiscriminate effect in the densely populated area. Highly

explosive air drops is regulated by the ICRC rules. There are precaution to avoid the use of such weapons that would cause unnecessary sufferings to the civilians and combatants.

Constant care must be taken to prevent civilians from the effects of war. It is a must to minimize civilian casualties. Advance warning must be issued if circumstances permit. One should look at it from the civilian populations that understand and receive the warning. It must be in a language they understand.

There are other precaution measures to be taken into account by combatants. Precautions are subject to feasibility. They must be practicable. Proper balancing must be done into to act within the law.

## CONCLUSIVE REMARKS

Many types of explosive weapons exist, and many are in use by national military forces and armed groups. These include aircraft bombs, artillery shells, missile and rocket warheads, mortar bombs and improvised explosive devices (IEDs). Some are launched from the air, others from the ground.<sup>53</sup> After this analysis of the situation of armed conflicts and evaluating some of the critical challenges, I can conclude by saying that the existing law of war and the developing international criminal law still require some amendments, adjustments and contextualised jurisprudence.

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