

## **Bachelor LEVEL, JUR1730 International humanitarian law/Law of armed conflict**

**Exam test: Fall 2021**

**Course responsible: Professor Gentian Zyberi**

Respond to **both** questions below. The **first questions** should be answered in the form of an essay with a maximum of about **1,000 words** (*including footnotes, or in-text references*). The **second question** is a case scenario and you have **2,000 words maximum** (*including footnotes, or in-text references*) to answer it. **Do not exceed 3,000 words (including footnotes, or in-text references) for both questions.** Try to structure your essays with adequate headings and subheadings. Use relevant legal sources to substantiate your arguments, including treaty provisions, customary international humanitarian law, general principles of international humanitarian law, and case law. For purposes of these three questions, all relevant IHL treaties and the Statute of the International Criminal Court are applicable.

### **Question 1**

What measures taken by warring parties are most conducive to strengthening the principle of distinction between military objectives and civilians and civilian objects under contemporary international humanitarian law? Explain the international legal obligations incumbent upon parties to an armed conflict to comply with this fundamental principle of IHL.

### **Guidance for graders**

This is a question that requires general reflection and it is not possible to give a standard answer. There are several measures that are taken by States to give effect to this principle. *First*, the principle is firmly laid down in international treaties (Article 48, AP1) and is also a part of customary IHL (e.g. Rules 1 and 7, [ICRC CIHL Study](#)). *Second*, it is implemented at the domestic level through inclusion in all modern military manuals and instructions to armed forces. Military forces are trained to comply with this principle and the principle itself is operationalized in rules of engagement. The duty for combatants to distinguish themselves from civilians, at least when engaged in military operations, also contributes to a strengthening of the principle. There are also modern precision weapons which allow a more precise targeting, such as laser-guided missiles. *Third*, individual criminal responsibility is attached to failure to comply with this principle (e.g. ICCSt., IACs - Art. 8(2)(b)(i)-(iii) and (ix); NIACs - Art. 8(2)(e)(i)-(iv); and art. 25). Hence, States recognise that the distinction is practicable and just. Part of the State obligations and generally obligations on parties to an armed conflict which are conducive too and important for complying with the principle of distinction are those of precautions in attack, as laid down in Article 57 of AP1 and Rule 16 of the CIHL Rules.

Several factors place stress on compliance with this principle, such as, modern economic conditions during warfare, the desire to destroy all the war making potential of the enemy; the fact that civilians tend to participate in the war effort under the idea of 'national' war; the spread of civil wars and guerrilla warfare; the warfare of warlords and criminals in failed and semi-failed States; but also some modern war techniques, such as the choice to fly at quite

high altitudes in order to avoid being shot down, with the result of decreasing precision in bombings and hence increased civilian casualties. On the other hand, there is a desire to avoid civilian casualties and the resulting negative publicity. The duty of distinction is so important under IHL. Many further aspects could be added to those few proposed in the preceding lines.

## **Question 2**

Consider the following scenario. A coalition of States is engaged in an armed conflict with another State. A coalition aircraft taking off from a military base in a neighbouring country receives a mission to bomb and destroy a bridge carrying a railway. The reason is that the bridge serves to transport troops and ammunitions by train to the frontline. However, the bridge also serves for the passage of civilian trains. The pilot proceeds on his mission and targets the bridge. As it happens, a train is just coming out of the tunnel which precedes the bridge. The pilot had not established whether a train was in the tunnel. Thus, during his attack, he hits the train, which happens to be a civilian object and carrying civilians. Seeing that he did not destroy the bridge on the first bombing run, he returns on the spot and bombs that bridge for a second time. Because of the smoke caused by the first bombing run, the pilot accidentally hits the train for a second time. There are between 10 and 30 civilian casualties.

- How should we evaluate these events from the point of view of IHL? Is there a difference between the first and the second attack?

### **Guidance for graders**

From the facts of the case we can gather that this is an international armed conflict. Hence, the 1949 Geneva Conventions and their two 1977 APs apply. This case reveals a violation of the principle of precaution as enshrined in [Article 57 of Additional Protocol I](#) and reflected in customary IHL (see [Rule 16 CIHL Study](#)). First of all, the pilot should have, to the extent feasible, ascertained whether a train was passing through the tunnel.

If the air control was precarious, that verification could have been difficult. However, with the complete air superiority of his side, and also with good weather and visibility, confirming that a train was in the tunnel should not have been too difficult. Hence, such confirmation was required before launching the attack.

Further, there is a violation of Article 57(2)(b) which requires that an attack be suspended or cancelled if it becomes apparent that it causes incidental loss to civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. This clearly seems to be the case here.

There is a difference between the first and the second attack in the sense that while the pilot failed to take the necessary precautions in attack the first time (Article 57(2)(i)), the second attack should have been cancelled or suspended (Article 57(2)(b)). Hence, here we seem to have a violation of the principle of precautions in attack, as enshrined in Article 57 of AP1 and under customary IHL, as reflected in Rule 16 of the CIHL Study.