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**THE LEGALITY OF ATTACKING WAR-SUSTAINING ECONOMIC
OBJECTS**



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ABSTRACT

The purpose of this research is to discern whether the United States is correct that parties to armed conflict may legally attack a place or thing when that place or thing merely contributes economically to the enemy's ability to sustain the conflict. The conduct of the ongoing struggle against the Islamic State in Iraq and Syria has raised old questions concerning the proper interpretation of international law as to whether certain places and things may be classified as military objectives and thus attacked in times of war. The United States has argued that so-called "war-sustaining" economic objects are military objectives based solely upon the economic support they provide to the enemy's overall war effort. However, other states and international law scholars have argued that the U.S. position violates the letter and the spirit of the law, claiming that it would in practice eliminate any meaningful protection for civilian populations by exposing virtually every civilian economic activity to attack.

To determine whether the U.S. position is legally valid, this research used the problem/solution research methodology to analyze applicable treaty law and customary international law as demonstrated by the practice of states across more than a century of conflict. While a textual analysis of applicable treaty law reveals a preference by the drafters for a restrictive definition of the term "military objective" that would exclude war-sustaining economic objects, state practice shows a strong preference for an expansive definition in line with the U.S. position. While the U.S. position is therefore legally valid, the United States and other states should institute specific rules in their national military policies that ensure they exercise restraint in using force to achieve their objectives for the sake of mitigating the suffering of affected civilian populations.

Introduction

Warfare has been a staple of human existence for thousands of years.¹ Initially, warfare was largely unconstrained. Even in ancient Rome, where jurists laid the foundation of much of modern law², the great philosopher Marcus Tullius Cicero proclaimed, “in times of war, the law falls silent.”³ However, by the nineteenth century, military codes regulating the conduct of warfare by individual nation-states had coalesced into a body of international custom and practice governing the conduct of all states that participated in war.⁴ The subsequent codification of this custom and practice through multilateral international agreements created the modern-day Law of Armed Conflict, the purpose of which is to balance the desire of combatants to defeat their adversaries against humanity’s desire to mitigate the suffering caused by war.⁵

One of the Law of Armed Conflict’s fundamental principles is distinction. According to this principle, parties to an armed conflict must direct their attacks only against military objectives, not civilian objects.⁶ The apparent simplicity of this principle belies hidden complexities that still produce uncertainty over whether parties to armed conflict may legally classify particular objects as military objectives. One area of debate involves how to classify so-called “war-sustaining” economic objects. War-sustaining economic objects are those that indirectly support a party to armed conflict’s war effort, such as by producing commodities that generate income the party may dedicate to war-fighting or war-supporting activities, including acquiring or manufacturing weapons of war.⁷

The crux of this debate over war-sustaining economic objects rests on an interpretation of the law, championed by the United States, which holds that such objects are military objectives based solely upon their economic contribution to the enemy’s overall war effort.⁸ Many states, international organizations, and notable academics have argued that this interpretation of the law

runs contrary to the intent of the Law of Armed Conflict, and risks diluting the legal protections afforded to civilians and civilian objects to the point of insignificance.⁹ This debate has grown in salience since August 2014, when the United States and a number of other countries began targeting war-sustaining economic objects controlled by the Islamic State in Syria, such as oil refineries, oil wells, the oil distribution network, and financial institutions.¹⁰

Given that the outcome of this debate has the potential to directly impact the conduct of hostilities in the fight against the Islamic State, this research examined the following question: “Is the United States legally correct that an object may be a military objective based solely upon its economic contribution to the enemy’s overall war effort?” According to the research, the U.S. interpretation of the law is correct. While the U.S. interpretation may be contrary to how some view the letter and spirit of the law, it is supported by customary international law demonstrated through the practice of those states that have confronted the matter in actual combat.¹¹ However, while states may legally treat war-sustaining economic objects as military objectives, they should institute limiting principles in their national military policies to ensure that they exercise restraint when applying force against such objects in order to avoid eroding protections appropriately due to civilians.

This research utilized the problem/solution framework to resolve the above question concerning the validity of the U.S. interpretation of international law, drawing upon treaty documents and associated legislative history, historical case studies, military manuals, and learned commentary. As a prelude to an analysis of the issues, the research first presents the history of the distinction principle, particularly the legal definition of a military objective, from its origins to its modern formulation in international treaty law. This history also describes some of the challenges in interpreting the modern definition of military objective that have given rise

to the debate over war-sustaining economic objects. The research then describes and analyzes the legality of the U.S. interpretation of the law through a review of pertinent legal texts and customary international law. Finally, the research provides recommendations for new rules on the treatment of war-sustaining economic objects, including rules restricting attacks to those objects with special importance or a close causal connection to the enemy's war-sustaining efforts, designed to mitigate harm to civilians while still allowing states to destroy those objects that would reap them the greatest military advantage.

Background

Military Objectives in Pre-Twentieth Century Warfare

To comprehend the current state of the law and the ongoing debate over war-sustaining economic objects, one must understand the evolution of the idea that, in war, certain places and things should be subject to attack while others should be spared. As recognized by Cicero in his famous phrase, the conduct of ancient war occurred largely in the absence of legal protections for the civilian population.¹² However, eventually, guidelines began to emerge that sought to restrain warfare for the sake of humanity. Albeit malleable and inconsistently enforced, these guidelines served to set precedents upon which medieval bodies of law would rest, such as European codes of chivalry.¹³ Beginning in the 18th and into the 19th centuries, these medieval codes of chivalry developed into more formal codes of battlefield conduct for the armed forces of Europe and the Americas. These codes, which eventually gained a degree of standardization as militaries studied and adopted the battlefield principles applied by their friends and enemies, dictated to some extent those objects that parties to an armed conflict could and could not lawfully attack.¹⁴

The Emergence of the Distinction Principle

The national military codes of the 18th and 19th centuries, especially the American Lieber Code of 1863, heavily influenced the development of the 1899 and 1907 Hague Conventions Respecting the Laws and Customs of War on Land, the first multilateral international agreements regulating the means and methods of warfare. These treaties contained the first rules on objects of attack in international treaty law, including rules permitting attacks on military works, arms depots, and military workshops.¹⁵

However, the first significant attempt at a comprehensive legal treatment of what objects could be attacked in war did not occur until after World War I. In response to the introduction of the airplane as a new weapon of war in that conflict, delegates from the United Kingdom, United States, Japan, France, Italy, and the Netherlands formed a Commission of Jurists at The Hague in the Netherlands in 1922 to consider the application of the law of war to air warfare.¹⁶ The following year, the delegates produced the Rules Concerning the Control of Wireless Telegraphy in Time of War and Air Warfare (Rules of Air Warfare).¹⁷

In addressing the legality of attacks from the air, the Rules of Air Warfare stated that parties to armed conflict could only conduct air bombardment against military objectives. The rules defined the term “military objective” as encompassing objects the total or partial destruction of which “would constitute an obvious military advantage for the belligerent,”¹⁸ such as military forces; military works; military establishments or depots; plants manufacturing military arms, ammunition, and supplies; and military lines of communication and transport.¹⁹ The rules expressly forbade attacks designed to injure non-combatants, damage private property without military character, or terrorize civilians.²⁰

Despite the efforts of the Commission of Jurists, no state ratified the Rules of Air Warfare as binding treaty law. Some claim that states were uncomfortable with the document

because its definition of the term “military objective” did not explicitly include objects of great value to the enemy war effort that, if fully or partially destroyed, would reap an advantage to the attacker by depriving the defender of their use.²¹ Others claim that states objected to the fact that the rules failed to include objects not normally military in character that might become so based upon the facts and circumstances present at the time of the attack.²²

Whatever the case, further development in the law would not occur until after World War II. The destruction wrought upon civilians in that war was so great that the parties to the conflict came together in Geneva, Switzerland in 1949 to pass a convention concerned exclusively with protections for civilians, The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC IV).²³ Unfortunately, GC IV provided little guidance to states on how to distinguish between military objectives and civilian objects. In fact, GC IV used the term “military objective” only once, as part of a statement that civilian hospitals are to be separated from military objectives as much as possible.²⁴ Nowhere in GC IV did the drafters define the term.

The Modern Definition of a Military Objective

Notwithstanding the nominal amount of attention GC IV paid to clarifying the term “military objective”, by showing that international support existed for protecting civilian populations in war, GC IV encouraged further efforts to clarify and expand those protections. These efforts led to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Cultural Property Convention), which brought to international law a modest list of objects that could be deemed military objectives, including “aerodrome[s], broadcasting station[s], establishment[s] engaged upon work of national defense, port[s] or railway station[s] of relative importance or main line[s] of communication.”²⁵ However, as the

convention failed to provide more general guidance on what types of objects could be treated as military objectives, states continued to rely on limited rules provided by custom and in earlier instruments to guide their actions.²⁶

Efforts to expand the scope of civilian protections would not progress again until the Vietnam War, when the conduct of the war gave rise to perceptions that civilians and civilian objects remained the object of attack in many instances.²⁷ To address this problem, the Swiss government partnered with the International Committee of the Red Cross (ICRC) and convened a diplomatic conference in Geneva in 1974 to update and strengthen existing law. In 1977, this conference produced the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (AP I).²⁸

AP I, which came into force on 7 December 1978, contains the most widely accepted formulation of the distinction principle and the modern definition of the term “military objective.”²⁹ The distinction principle is expressed in Article 48, which states “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives, and accordingly shall direct their operations only against military objectives.”³⁰ Article 52 goes on to specifically define a military objective, stating “In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to *military action* and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a *definite military advantage*” (emphasis added).³¹

Although AP I by its own name was concerned strictly with international armed conflicts (those between two or more states), the consensus view is that the principles enshrined in

Articles 48 and 52 of AP I now apply in non-international armed conflicts (those between a state and non-state actor) as well through subsequent extensions of the law.³² Thus, no matter how the conflict is characterized, the definition of a military objective found in AP I will be the starting point of any analysis determining whether a particular place or thing is legitimately subject to attack.

Questions in Interpreting AP I

Although the language contained within AP I's definition of a military objective may at first appear quite simple, some who negotiated AP I commented that Article 52 "was insufficiently precise and that it would give rise to controversy."³³ Time and experience have proven this to be true. For example, debate continues over how to determine when the destruction, capture, or neutralization of an object offers a definite military advantage to an attacker. Importantly, a "definite advantage" is commonly defined as an advantage that is concrete and perceptible rather than hypothetical and speculative.³⁴ Given that, must an attack on a particular object reap a military advantage independent of attacks on other objects, or can the advantage arise once attacks on other objects in a related series have been executed successfully?³⁵ While the commentary to AP I stipulates that there must be a definite military advantage for every military object that is attacked, many states have issued public understandings that the military advantage discussed in AP I may arise from an attack considered as a whole, not only from isolated or particular parts.³⁶ Even so, does viewing the attack as a whole permit combatants to go so far as to claim a definite military advantage from attacks on objects that have no tactical or operational value on their own, but do possess value in the context of their overall war strategy?³⁷

Controversy also surrounds how to determine when an object makes an effective contribution to the military action of an adversary. First, must the relationship between an object's contribution and military action be direct to be effective, or may it also be indirect? Also, if the contribution the object makes to military action may be indirect as well as direct, how far removed from military action must the indirect contribution of the object be for that contribution to remain effective? For that matter, what does the term "military action" mean? Does it merely denote activities at the tactical or operational level of war conducted in support of ongoing military operations, or may it also include activities relating to the adversary's broader military strategy or war effort?³⁸

One context in which these points of controversy emerge is in how to treat war-sustaining economic objects, those places and things that, through the economic activity they produce, indirectly support and sustain the enemy's war-fighting capability.³⁹ The United States has claimed that Article 52 of API allows for attacks on economic objects associated with war-sustaining industries.⁴⁰ However, many experts, international organizations, and other states have claimed that Article 52 specifically protects such objects from attack.⁴¹ This difference of opinion has produced an ongoing debate over whether places and things should be accorded the status of military objectives based solely on their economic contributions to an entity's ability to sustain its participation in a conflict.

Attacks on Islamic State Oil and Financial Institutions

This ongoing debate over the legal status of war-sustaining economic objects has grown in salience over the past two years, ever since the United States and other countries began conducting military operations in Syria against the group known as the Islamic State.⁴² In the first week of attacks against Islamic State targets, Rear Admiral John Kirby, the Pentagon press

secretary, announced that United States and coalition aircraft had struck 12 Islamic State-controlled modular oil refineries in eastern Syria.⁴³ Per Admiral Kirby, the coalition struck these objects because they were economic assets that supported Islamic State operations by producing oil either exchanged directly for weapons or sold through illegal smuggling to generate funds the Islamic State used to pay for its personnel and materiel.⁴⁴ Given that oil generates nearly 40 percent of Islamic State revenue, coalition attacks on the oil refineries were thus intended specifically to impact the Islamic State's ability to financially sustain its involvement in the conflict.⁴⁵

When, after a year, attacks on mobile oil refineries and other objects such as oil collection points had apparently done little to impact the flow of oil, the coalition expanded its attacks to include other aspects of the Islamic State's oil infrastructure, to include larger oil refineries, fuel oil separators, pumping stations, and oil tanker trucks.⁴⁶ Again, the stated aim of these attacks was to degrade the Islamic State's ability to use oil as a medium of exchange, and consequently to impact its ability to finance its operations.⁴⁷ For similar reasons, the coalition began targeting Islamic State finances directly by attacking its Bayt al Mal, or "general treasury," in Iraq.⁴⁸ Between January and March of 2016, the coalition destroyed at least six Islamic State money storage and distribution facilities, including several ISIS-controlled banks, the Mosul branch of the Iraqi Central Bank among them.⁴⁹ These operations resulted in the destruction of at least a billion dollars of bulk cash held by the group, further impacting the Islamic State's ability to financially sustain itself.⁵⁰

The debate over the legal status of war-sustaining economic objects has tremendous relevance for these ongoing operations against the Islamic State, as well as for other conflicts in which the United States may find itself in the future. If, as many claim, a place or thing may not

be classified as a military objective merely because it contributes in some way to the enemy's economic ability to sustain the conflict, then it may not be targeted unless the attacker uncovers a more concrete connection between the economic activity generated by the place or thing and military activity.⁵¹ For example, in the case of facilities producing or holding oil, evidence would be needed that the oil produced or held by that facility is destined for use as fuel or lubricants for military equipment, or is to be used to supply power to industries making military equipment.⁵² This could prove problematic, however, because while it can be relatively easy to support the claim that oil production infrastructure generally contributes to an enemy's ability to sustain the conflict, it can be much more difficult to trace the specific uses or intended purposes to which oil produced by that infrastructure is or will be put.

Ultimately, if an attacker cannot draw a concrete connection between a facility and military action, then the facility is properly considered a civilian object and may not be attacked.⁵³ Thus, it is imperative that uncertainty over the legal status of war-sustaining economic objects be resolved in order to provide clarity to those currently operating in the field on which places and things they may and may not attack.

The U.S. Position on War-Sustaining Economic Objects

Tracing the U.S. Position in Law and Policy

The first step in resolving uncertainty over the legal status of war-sustaining economic objects is to understand the differences of opinion that exist regarding how to legally distinguish military objectives from civilian objects. As previously stated, the United States has adopted the position that war-sustaining economic objects are military objectives. Evidence of U.S. adherence to this position can be traced back to the first edition of the U.S. Navy *Commander's*

Handbook on the Law of Naval Operations (Handbook), published in 1987.⁵⁴ In discussing which objects could be considered military objectives, the authors of the *Handbook* took language from the definition found in Article 52 of AP I, then modified it using language of their own invention. The result was an assertion that military objectives are “objects which by their nature, location, purpose, or use, effectively contribute to the enemy’s war-fighting or war-sustaining capability.”⁵⁵

In the years following, this unique definition of military objective proliferated in U.S. law and policy documents. Aside from subsequent editions of the *Handbook*, which have maintained the same language as in the first edition, Congress defined military objectives within the Military Commissions Act of 2006 as objects “which, by their nature, location, purpose, or use, effectively contribute to the opposing force’s war-fighting or war-sustaining capability”⁵⁶ Also, in 2013, the revised edition of Joint Publication 3-60, *Joint Targeting*, in its chapter on legal considerations, provided, “A decision as to classification of an object as a military objective and allocation of resources for its attack is dependent upon its value to an enemy state’s war-supporting or war-sustaining effort.”⁵⁷ Furthermore, in 2014, the update of Air Force Doctrine Annex 3-60, *Targeting*, defined military objectives as “those used to support or sustain the adversary’s war fighting capability.”⁵⁸

The 2015 Department of Defense Law of War Manual

The most recent and definitive policy document to express the U.S. position is the 2015 *Department of Defense Law of War Manual (Manual)*. Strangely enough, unlike its predecessors, the *Manual* defines a military objective as “any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military

advantage.”⁵⁹ This passage recites verbatim the definition of military objective from Article 52 of AP I. Thus, at first glance, the U.S. definition of military objective as expressed in the *Manual* seems to be identical to that of AP I. However, a deeper examination reveals that the *Manual’s* posture is consistent with the more controversial ideas contained in earlier expressions of U.S. policy. The strongest piece of evidence for this is a passage in the *Manual* that states in determining whether an object makes an effective contribution to military action, it is sufficient that the object makes an effective contribution to the “war-fighting or war-sustaining capability of an opposing force.”⁶⁰

What one can take away from this and other language in the *Manual* is that the United States has and continues to interpret expansively the essential terms and concepts contained within Article 52 of AP I. Under the U.S. view, “military action” in particular is construed to have a “broad meaning, . . . understood to mean the general prosecution of the war.”⁶¹ With that understanding, it is not necessary in the U.S. view that an object “provide immediate tactical or operational gains or that the object make an effective contribution to a specific military operation.”⁶² Also, in determining what connection between the object and military action is necessary for that object’s contribution to be effective, the U.S. view is that the contribution that the object makes to military action “need not be ‘direct’ or ‘proximate,’”⁶³ meaning that the object may make an indirect, even remote contribution to military action and still be legitimately classified as a military objective.

Additional language in the *Manual* allows one to conclude that, in determining whether a definite military advantage would arise from the total or partial destruction, capture, or neutralization of an object, the concept of a “definite military advantage” also should be interpreted broadly. Under the U.S. view, military advantage may be construed as “the advantage

anticipated from an attack when considered as a whole, and not only from its isolated or particular parts.”⁶⁴ Furthermore, military advantage is not “restricted to immediate tactical gains, but may be assessed in the full context of the war strategy,”⁶⁵ allowing for strategic objects to be attacked without the need for a tactical or operational nexus.

Criticism of the U.S. Position

Many in the international community have criticized the U.S. position on military objectives as expressed in the *Manual*. Critics principally take issue with how the United States has chosen to expansively interpret the terms “effective contribution to military action” and “definite military advantage” found in AP I.

Critics argue in opposition to the United States that the term “military action” should be construed narrowly to include only “the conduct of one or more military operations by armed forces in the prosecution of hostilities in a specific armed conflict,”⁶⁶ occurring at the tactical and/or operational levels of war. Critics would specifically exclude from military action those activities necessary for the administration of the enemy’s overall war effort at the strategic level.⁶⁷ In conjunction with this argument, critics say an object’s contribution to military action can only be effective if the object’s connection to military action is direct, like a factory producing weapons or fuel destined for military use.⁶⁸ If the object has merely an indirect connection to military action, like a factory producing goods that when sold adds funding to the enemy’s war chest, its contributions to military action are inherently remote, and thus cannot be effective.⁶⁹

Critics also argue that the term “definite military advantage” should be interpreted narrowly. While critics agree that the military advantage arising from an object’s destruction may arise from the “attack as a whole”, their view is that an attack must be a finite event, rather

than the execution of an entire war.⁷⁰ Further, critics believe a military advantage should be interpreted as that arising from an attack on the tactical and operational military capacity of the enemy, rather than on other objects whose destruction would produce no tactical or operational gains, but would nonetheless further the attacker's goals in the context of its overall war strategy.⁷¹ Finally, critics believe that the concept of a definite military advantage excludes any remote or indirect advantage, including the possibility that an attack on a particular object might be able to end the war through the diminution in economic capacity that it would bring about.⁷²

The rationale critics most commonly cite for their opposition to the U.S. position is that allowing for attacks on objects whose connection to military action is indirect, and whose total or partial destruction would not produce an advantage calculable at the tactical or operational level of war, would dangerously dilute wartime protections for civilian populations that took decades to build and strengthen.⁷³ In the eyes of the critics, to allow those engaged in a conflict to classify such objects as military objectives would be to open up nearly every civilian wartime activity to being considered as indirectly sustaining the war effort. Critics believe this would allow any object providing a psychological, commercial, or financial benefit to the enemy to be classified as a military objective, and would put the world on a slippery slope back to the kind of unconstrained total war seen in World War II.⁷⁴ In essence, as critics believe the U.S. position would essentially strip Article 52 of AP I of any restraining power, and return the civilian population to a virtually unprotected state, they claim the U.S. position cannot be a legitimate interpretation of the letter or the spirit of the law.

Analyzing the Legality of the U.S. Position

Equipped with a better understanding of how the United States interprets AP I, as well as the criticism that opponents of that interpretation have levied against it, one may now examine

whether the U.S. interpretation is legally valid. To do so will require exploration and analysis of not only the text of AP I itself, but also customary international law as demonstrated by the practice of states in treating certain places and things as military objectives.

Textual Analysis of AP I

The first step in evaluating the validity of the U.S. interpretation of Article 52 of AP I is to analyze Article 52 in light of the rules of statutory construction applicable to it. Generally, scholars, practitioners, and policymakers interpret international agreements such as AP I using rules of construction contained within another international agreement, the Vienna Convention on the Law of Treaties (Vienna Convention).⁷⁵ Importantly, although the United States has not ratified the Vienna Convention, the U.S. State Department has stated that the convention's provisions are generally among those customarily accepted in governing the process of treaty formation and interpretation, and that the United States will follow those rules when applicable.⁷⁶

Ordinary meaning. The starting point of the Vienna Convention's interpretive framework is Article 31 of the convention, which states, "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."⁷⁷ Unfortunately, uncovering the ordinary meaning of the key disputed terms in Article 52 of AP I is challenging, because neither the term "military action" nor the term "military advantage" are specifically defined within AP I, nor is a common dictionary definition of these terms available.

Applying a common-sense definition of the term "military action" seems to indicate that it denotes positive activity or conduct undertaken by a nation in managing its military affairs. Similarly, the term "military advantage" seems to denote a benefit that contributes to the success

of the attacker's military operations. However, even such common-sense definitions leaves unresolved questions of what specific acts are encompassed within the concept of military activity, as well as what type of connection an object must have to military action before its contribution can be characterized as effective. Further, such definitions also leave unresolved the question of whether the military advantage gained from attacking an object must accrue at the tactical or operational levels of war, or whether it need only occur at the strategic.

Object and purpose. However, as Article 31 of the Vienna Convention provides, looking to the object and purpose of the treaty can in some situations help in uncovering the proper interpretation of ambiguous terms. Here, statements concerning the object and purpose of AP I can be found within the principal commentary to the treaty, written by members of the International Committee of the Red Cross (ICRC) who observed and participated in the treaty's negotiations. The commentary provides that the purpose sought in bringing AP I into being was to codify and further develop legal limitations on the suffering caused in war, particularly to those deemed to be the "victims of armed conflicts," including civilians.⁷⁸

Taken by itself, this indicia of AP I's object and purpose would seem to support a restrictive interpretation of Article 52, as in allowing fewer places and things to be classified as military objectives, a restrictive interpretation would ostensibly limit the suffering in war caused directly by adversary attacks. However, if the limitation of suffering was the only object and purpose of the treaty, then Article 52 need only to have said that all objects with civilian aspects are to be spared from attack. That Article 52 as written recognizes that civilian objects can become military objectives through their location, purpose, or use shows that an equally important object and purpose of the treaty is to enable military operations necessary to bring about the end of a conflict as quickly as possible.⁷⁹ Given these two somewhat conflicting aims

of AP I, looking to its object and purpose provides no meaningful clarification of the ordinary meaning of the terms “military action” or “military advantage” contained in Article 52.

Supplementary means of interpretation. In situations where looking to the ordinary meaning of the terms at issue does not produce a conclusive outcome, the Vienna Convention permits recourse to supplementary means of interpretation, including the “preparatory work of the treaty and the circumstances of its conclusion.”⁸⁰ In uncovering such information about AP I, the commentary again proves useful. It first implies that the lack of a commonly accepted definition of the term “military objective” in World War II and subsequent conflicts led to undue harm to civilian populations. Thus, in forming the treaty, “a restrictive definition [of military objective] was necessary if the essential distinction between combatants and civilians and between civilian objects and military objectives was to be maintained.”⁸¹

Next, the commentary implies that those who negotiated AP I intended for the term “military action” to be narrower than the term “military effort” and equivalent to the term “military operation.”⁸² Importantly, the commentary defines military effort as “all military activities connected with the conduct of a war,”⁸³ and military operation as “movements, maneuvers, and actions of any sort, carried out by the armed forces with a view to combat.”⁸⁴ By equating military action with military operation, the commentary thus seems to be saying that the correct approach is to interpret military action restrictively, meaning that an object can only be a military objective if it effectively contributes to actions taken at the tactical and operational levels of war. Similarly, the commentary expresses the opinion that the term “military advantage” can only refer to “ground gained and in annihilating or weakening the enemy armed forces,”⁸⁵ thus favoring a restrictive interpretation of the term that would only allow an object to

be classified as a military objective if its damage or destruction would produce a tactical or operational-level benefit for the attacker.

Customary International Law Analysis

In light of this insight into the background and history of AP I, one might conclude that the U.S. interpretation of the law is clearly erroneous. However, it would be premature to do so, because the international legal system recognizes that the way in which states conduct themselves on the world stage is often just as important as treaty text in determining what the law is. When the behavior of states in interacting with each other on a particular matter ripens into a general and consistent practice followed from a sense of legal obligation, that practice is said to have become customary international law, accorded the same status as law arising from an international agreement.⁸⁶

While reliance on custom is often most valuable in determining what the law is when there is no international agreement in place, it can also be used to discern how to properly interpret an existing agreement.⁸⁷ This is because while such agreements purport to govern the actions of states, they must, due to the lack of a supranational governing authority, largely rely upon those states to implement and enforce them. Thus, the way in which states behave while claiming agreement with a treaty's provisions can and does shed light upon how certain treaty terms and precepts should be understood, notwithstanding how those that oversaw the drafting and negotiation process wanted them to be understood. That is why the Vienna Convention specifically includes "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation" as an acceptable mechanism for interpreting an international agreement.⁸⁸

Statements in national military manuals. One indicator of whether a particular interpretation of the law has risen to the level of customary international law is the extent to which states have made public statements expressing their consent to that interpretation.⁸⁹ For Law of Armed Conflict principles, public statements indicating consent to a particular interpretation of the law are most often found in national military manuals, such as the *Department of Defense Law of War Manual* previously discussed.⁹⁰ However, in this case, a review of thirty-five national military manuals that draw from Article 52 of AP I in defining military objectives reveals that only two, including that of the United States, define military objectives to include war-sustaining economic objects. On the other hand, only two include language that expressly favors a restrictive interpretation of that definition. The remainder of the manuals merely re-state Article 52's definition verbatim.⁹¹

Given this result, it appears generally that states have chosen not to use national military manuals as the vehicle for expressing how they believe Article 52 should be interpreted. While this makes it more difficult to discern what they believe their legal obligations under Article 52 to be, fortunately it is not fatal to the analysis here. While military manuals can be a useful indicator of what interpretation of the law is customary, they are not the only, nor even necessarily the best indicator. In fact, as several prominent international law scholars have noted, an evaluation of military manuals simply "cannot be a replacement for a meaningful assessment of operational state practice in connection with actual military operations."⁹² Of particular value is the practice of those states that have had a greater amount of experience in armed conflict, and thus have had the opportunity to develop a military doctrine based on actual experience.⁹³

Pre-modern state practice. One of the earliest examples of state practice relevant to the issue of classifying war-sustaining economic objects arose during the American Civil War. In

this conflict, the U.S. government actively captured and destroyed Confederate cotton in order to deprive the Confederacy of its use. This was principally due to the fact that the Confederacy used cotton as a source of funds to acquire weapons and other war-fighting materiel, thereby sustaining the Confederacy and its ability to carry on the war.⁹⁴ Importantly, the U.S. practice of capturing or destroying this cotton came under scrutiny after the war by a joint American-British Claims Commission set up to adjudicate claims filed by citizens of both countries whose property was damaged or destroyed during the conflict. The Commission ultimately held that the capture and destruction of Confederate cotton was permissible under international law,⁹⁵ in that

[The Confederacy] made cotton the basis of their public credit by a policy which aimed to deal largely in it on government account, to purchase it even before it was grown, and hypothecate it as security for the payment of loans, with the proceeds of which they did, to a large extent, supply themselves with arms and munitions of war, and with a fleet of armed vessels to infest the ocean and destroy American commerce . . . In short, cotton was a special and formidable foundation of the rebel military power. It was more important than arms or ships of war, for it supplied these and all else beside . . . The necessities and purposes of war, therefore, required its capture at every opportunity more imperatively than the capture of munitions and implements of war . . .⁹⁶

Thus, at least as of the latter part of the 19th century, there appeared to be international recognition of a party to armed conflict's ability to target war-sustaining economic objects in order to reap military advantages.

Twentieth century state practice. With the twentieth century came the emergence of new means, methods, and theories of warfare that in their application created more examples of state practice on the treatment of war-sustaining economic objects. In World War I, the adaptation of the airplane into a weapon of war led to the development of strategic bombardment theory, which posited that the economic base of the enemy's war effort should be targeted "because [its] destruction would undermine the enemy nation's willingness and capability to

wage war at all.”⁹⁷ Although France and Germany merely flirted with attacks designed to “paralyze all the time [the enemy’s] economical life and their war industries,”⁹⁸ Britain and the United States made these attacks an important component of their approach to air warfare. To that end, both countries conducted raids on Germany’s “root industries,” and, at war’s end, had completed planning for a large-scale strategic campaign aimed squarely at Germany’s industrial economy.⁹⁹

By the time World War II started twenty years later, strategic bombardment had become even more important to the conduct of warfare. Thus, when the Allies conducted their Combined Bomber Offensive against Nazi Germany between 1943 and 1945, the Allies placed objects such as aircraft production facilities, transportation networks, oil facilities, and other war-sustaining industries high on their list of targeting priorities.¹⁰⁰ The stated objective in attacking such objects, in addition to weakening Nazi Germany’s military forces, was the progressive destruction of the German industrial and economic system, in order to impair Germany’s ability to support its overall war production effort.¹⁰¹ The Allies particularly sought to deprive Germany of oil, given that oil fueled both the country’s war machines and all its major industries, and thus was crucial to its ability to sustain the conflict.¹⁰² Although Allied military leaders planned many missions with this aim in mind, worthy of particular emphasis is Operation Tidal Wave, in which 178 American bombers attacked refineries located within the Ploesti oil fields of Romania for the express purpose of depriving Germany of one-third of its war-sustaining oil supply.¹⁰³

The application of strategic bombardment in conflicts after World War II sheds additional light on state practice with respect to the treatment of war-sustaining economic objects. During the Korean War, the multinational force acting under the auspices of the United Nations attacked several hydroelectric dams along the Yalu River in North Korea. Although these attacks were

intended to damage North Korean military communication and transportation infrastructure, they were also designed to damage the North Korean rice crops that depended upon the dams for irrigation.¹⁰⁴ This was seen as an important objective, given that the rice was used by North Korea as a principal means of purchasing weapons and other materiel that fueled its war-fighting effort, just as cotton performed a similar role for the Confederacy during the Civil War.¹⁰⁵ In Vietnam, Operation Rolling Thunder specifically aimed to weaken North Vietnam's will to resist through the destruction of petroleum, oil, and lubricant (POL) storage areas; electrical power stations; and other industry in Hanoi and Haiphong.¹⁰⁶ One of the main purposes in attacking these facilities, in particular POL, was to reduce the Democratic Republic of Vietnam's capability to keep its transportation infrastructure operational, thereby damaging its economy and, by extension, its overall ability to sustain its war effort.¹⁰⁷

Although the twentieth century hosted a number of other conflicts, most contributed little in the way of state practice relevant to the treatment of war-sustaining economic objects.¹⁰⁸ A notable exception can be found in Operation Allied Force, the North Atlantic Treaty Organization's (NATO's) 1999 intervention in the war in Kosovo. What makes Operation Allied Force of particular importance is that it occurred after AP I entered into force, and involved the participation of many states that had ratified it by that time, including 14 of the 16 (in 1999) members of NATO.¹⁰⁹ Thus, per the Vienna Convention, state practice in this conflict should be examined very closely in order to detect evidence of international agreement as to the interpretation of AP I.

At the beginning of Operation Allied Force, NATO's political leaders, acting within the framework of the North Atlantic Council, limited target sets to purely military personnel and materiel.¹¹⁰ However, once it became clear that this approach would not bring Yugoslavian

President Slobodan Milosevic to stop his aggressive activities in Kosovo, to include his campaign of ethnic cleansing against Kosovar Albanians, NATO political leaders agreed to expand the range of permissible targets to include economic objects.¹¹¹ NATO political and military officials designed subsequent strikes on objects such as highway and railroad bridges; oil refineries and stored POL stocks; industrial facilities; electrical power generation plants and transmission towers; and TV/radio stations and relay facilities specifically to affect the Yugoslavian economic capacity to sustain the war effort.¹¹² The resultant loss of power, employment, and industrial and agricultural production made it nearly impossible for the country to physically or psychologically continue its aggressive tendencies, ultimately proving instrumental to President Milosevic's decision to surrender.¹¹³

Twenty-first century state practice. More recent conflicts also provide useful examples of state practice relevant to the treatment of war-sustaining economic objects. One conflict that provides a particularly enlightening example is the Ethiopian-Eritrean War, fought from May 1998 to June 2000. In May 2000, shortly before the war's end, two Ethiopian jet aircraft bombed a power plant in the vicinity of the Eritrean port city of Massawa.¹¹⁴ Following the war, the Eritrean government sought restitution for the plant's destruction by filing a claim with the Eritrea-Ethiopia Claims Commission, an international body established in The Hague to arbitrate claims for loss or damage arising out of violations of international law.¹¹⁵

At the commission, the Eritreans claimed that the power plant was not a military objective, given that the Eritrean military installations in the area had their own means of power generation, and that Eritrean manufacturing companies supported by the plant did not produce significant military equipment.¹¹⁶ In the end, the commission decided that the power plant was in fact a military objective. The commission based its decision on a two-pronged rationale. First,

the power plant made an effective contribution to military action because “electric power stations are generally recognized to be of sufficient importance to a State’s capacity to meet its wartime needs of communication, transport and industry so as usually to qualify as military objectives during armed conflicts.”¹¹⁷ Second, the plant’s destruction offered a definite military advantage because “the infliction of economic losses from attacks against military objectives is a lawful means of achieving a definite military advantage.”¹¹⁸

This example from a conflict early in the twenty-first century has been supplemented recently by examples from the ongoing conflict against the Islamic State. Although attacks against Islamic State oil facilities and financial institutions by members of the U.S.-led coalition have already been described in this research, what has yet to be explained is the degree to which the international community has supported the practice of attacking those objects. What is telling in this regard is that as of August 2016, there were 26 nations providing military support to the fight against the Islamic State with full knowledge of the actions being taken to disrupt Islamic State financing through the destruction of oil and financial institutions.¹¹⁹ Nine of those nations, including the United States, United Kingdom, Turkey, the Netherlands, Jordan, France, Denmark, Bahrain, and Australia, have themselves actively conducted airstrikes against targets in both Iraq and Syria.¹²⁰ This includes participating in operations against the oil facilities previously described.¹²¹

Further, there is evidence that international institutions outside the bounds of the coalition also support the practice of degrading Islamic State financing through attacks on these types of objects. For example, on 17 December 2015, the United Nations Security Council adopted a resolution expressing grave concern over the fact that the Islamic State was able to secure financing through illicit trade in natural resources such as oil.¹²² In this resolution, the Security

Council recognized the need for measures to prevent and suppress such avenues for terrorist financing, and demanded that its members take such action consistent with the Law of Armed Conflict.¹²³ Although this Security Council resolution did not provide express authorization for attacks on specific targets, it did signify that those states with a seat on the UN Security Council, including some such as Russia and China whose views on the law are not always aligned with those of the United States, support the idea that economic sources can be legitimately eliminated through military means in order to bring the enemy's war-sustaining activities, and the conflict itself, to an end.

The Legality of the U.S. Position

In the end, while a textual analysis of AP I may reveal a preference by the drafters of that treaty for a restrictive interpretation of what constitutes a military objective under Article 52, a review of relevant state practice seems to reveal a preference for an expansive interpretation of that article. As seen by the above examples, when the realities of armed conflict have forced states to directly confront the question of how to classify war-sustaining economic objects, they have consistently chosen to treat those objects as military objectives.

Although state practice in conflicts since AP I entered into force provide the strongest support for this proposition, state practice in conflicts fought prior to AP I still retain persuasive authority. In fact, states have shown continued reliance on state practice in older conflicts in guiding their behavior in the present. For example, some military manuals, including the 2015 *Manual*, still make reference to the U.S. practice of destroying or capturing Confederate cotton during the Civil War as support for the proposition that war-sustaining economic objects can be military objectives.¹²⁴ Furthermore, when planners developed the operation to deprive the Islamic State of financing through the destruction of its oil resources, they relied upon what is

known about the World War II campaign against Nazi oil, going so far as to name the effort “Operation Tidal Wave II” in honor of the 1943 attacks on oil refineries in Ploesti, Romania.¹²⁵

Of additional significance is the fact that when the legality of specific attacks on war-sustaining economic objects has been called into question, international bodies established for the express purpose of resolving disputes over alleged violations of international law have held such attacks to be legal. Of preeminent interest in this regard are the formal decisions of the Claims Commissions formed following the Civil War and the Ethiopian-Eritrean War. Also of interest in this vein are informal statements from the International Criminal Tribunal for the Former Yugoslavia (ICTY), a United Nations court of law established to try war crimes arising out of the wars in the Balkans during the 1990s.¹²⁶ As part of its work, the ICTY established a committee to examine whether the ICTY prosecutor should formally investigate whether NATO conducted its bombing campaign during Operation Allied Force illegally by attacking civilian objects. The committee ultimately recommended against a formal investigation, expressing that “as a general statement, in the particular incidents reviewed by the committee, it is the view of the committee that NATO was attempting to attack objects it perceived to be legitimate military objectives.”¹²⁷

As a whole, state practice from conflicts preceding and following the passage of AP I, and the decisions of international bodies that passed judgment upon that practice, provide particularly strong support to the proposition that “nations have, do, and will attack not only an enemy’s war-fighting capability, but also his capacity to sustain the conflict.”¹²⁸ Given the depth and breadth of support for this proposition, and the deference due to state practice in determining the proper interpretation of an applicable treaty principle, the conclusion that logically follows is

that the U.S. interpretation of Article 52 of AP I is valid as a matter of customary international law.

Thus, in line with the views of several international law scholars, “a civilian object may become a military objective and thereby lose its immunity from deliberate attack through use which is only indirectly related to combat action, but which nevertheless provides an effective contribution to the military phase of a Party’s overall war effort.”¹²⁹ Furthermore, an object may be a military objective if its total or partial destruction would result in a benefit to the attacker in the context of their entire war strategy, even should a tactical or operational nexus be lacking. This includes objects whose sole contribution to military action is economic in nature.

Analyzing Policy on War-Sustaining Economic Objects

The Need for Limiting Principles in National Policy

While this research has answered affirmatively the question of whether parties to armed conflict may lawfully treat objects as military objectives in general based solely on their economic contributions to an enemy’s overall war effort, this answer itself raises the question of what specific types of war-sustaining economic objects parties to armed conflict may treat as military objectives, and under what circumstances. Aside from prohibiting attacks against objects indispensable for survival, such as “food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works,”¹³⁰ the law provides little guidance. In this case, some might say that states are and should be always free to treat as military objectives the full range of war-sustaining economic objects present on the battlefield. However, taking this approach presents serious concerns.

Specifically, as critics have noted, if parties to armed conflict are legally able to treat any object that finances the enemy's war effort as a military objective, if no further limitations are imposed on their actions, they may logically choose to exercise that ability to the fullest extent possible under the law. The effect of this would be to leave very little in the way of civilian economic activity protected from harm. Aside from those objects, mentioned above, that are indispensable for survival, all aspects of the enemy's mineral, agricultural, industrial, and financial economy would conceivably be vulnerable to attack. Specific objects such as cotton and tobacco farms, iron and copper mines, microchip and toy factories, and even stock exchanges and banks would presumably always be at risk because some of their revenue ended up in the hands of a government that potentially dedicated it to sustaining its war effort.

Others may argue that these concerns are unwarranted, as states must limit their attacks pursuant to the Law of Armed Conflict principle of Proportionality and basic considerations of human decency. However, this argument is not persuasive. First, while the principle of Proportionality does require that parties to armed conflict launch an attack only when the military advantage anticipated is not outweighed by the incidental harm expected, only incidental harm against civilians or civilian objects need be considered.¹³¹ If an object is designated as a military objective, it may be legally attacked without hesitation so long as doing so does not pose a risk of harm to other objects that are unequivocally civilian. Thus, while attacks against some economic objects may be prevented by virtue of the presence of civilians in or around it, this limitation is situational, not systematic, and thus does not alleviate the concerns outlined above.

Second, while one might hope that parties to armed conflict will choose as a matter of humanity to narrow the field of war-sustaining economic objects they choose to attack, history has shown that perceptions as to what attacks are prohibited by human decency can change,

particularly once perceptions arise that a type of attack is necessary for a party to achieve its operational objectives. As a case in point, following the negotiation of the 1923 Rules of Air Warfare, the United Kingdom, Italy, Japan, and Germany either explicitly or implicitly claimed to support the restrictive definition of military objective found in the rules for the sake of humanity.¹³² However, once World War II began, these same states adopted a very expansive concept of what constituted a military objective that led to attacks on a variety of places and things supporting the enemy's ability to wage war, including its civilian population.¹³³ In the European theater, such objects even came to include "the progressive destruction and dislocation of the German . . . industrial and economic system, and the undermining of the morale of the German people."¹³⁴

What this means is that current legal and ethical restraints on the behavior of parties to armed conflict are insufficient to address the realistic concerns outlined above. Therefore, states should supplement the principle of customary international law permitting attacks against war-sustaining economic objects with national policies delineating what specific war-sustaining economic objects may be attacked and when. The United States in particular, as a leader in the realms of international affairs, military action, and the rule of law, should set the example for others to follow. To aid in this effort, this research recommends three specific rules that the United States and others should consider incorporating into their national military policy frameworks.

Limiting Attacks to 'Indispensable and Principal' Objects

First, the United States and others should implement a rule that would limit attacks against war-sustaining economic objects to those of a type or class that constitute an "indispensable and principal source for directly maintaining military action."¹³⁵ Under this rule,

if credible intelligence exists showing that a particular industry makes a crucial contribution to the enemy's ability to sustain itself financially in the conflict, then that industry could be targeted to deal a serious blow to the enemy's ability to financially keep itself in the fight. On the other hand, if intelligence shows that an enemy's economy is structured such a way that no particular industry makes a crucial contribution to its war chest, then attacks on its industries would not be allowed, absent some more direct connection to military action.

The intended effect of this rule would be to bolster protections for civilian economic activity while still giving parties to armed conflict the ability to attack those objects that make the most effective of economic contributions to the enemy's military action, and thus produce the greatest military advantage when damaged or destroyed. However, given the inherent ambiguity of the term "indispensable and principal," to ensure that the rule has its intended effect, states should adopt formal standards for determining when an industry has attained indispensable and principal status. While such standards may allow parties to armed conflict to base their determinations in part on a qualitative study of the value of the industry to the enemy, they should also include a quantitative component, based upon an evaluation of a diversity of economic indicators tailored to the unique aspects of the enemy's economy, such as employment rate, production capacity, and revenue generated. In addition to strengthening the overall analysis against arbitrary and capricious decision-making due to its more objective nature, this quantitative component should also ensure that the overall analysis is flexible enough to take into account the unique circumstances of the conflict.¹³⁶

Limiting Attacks to Objects Causally Connected to Military Action

Alternatively, the United States and others should implement a rule that would limit attacks against war-sustaining economic objects to those whose economic contributions can be

“confidently traced through a strong causal connection to the enemy’s military action.”¹³⁷ Recall that the definition of military objective in Article 52 of AP I provides that an object may be a military objective only if its damage or destruction offers a definite military advantage. By promulgating a rule requiring a strong causal connection between an economic object and military action, states would effectively stake out a policy position that a “definite” military advantage will not arise from attacking an economic object unless that object generates revenue that can be traced directly from the economic object to the enemy’s coffers, and which are known to flow out from the enemy’s coffers for a military purpose. If it is unclear whether the revenue from an object is to be used for purchasing weapons or for providing social services, then the military advantage gained from the object would be speculative or indeterminate, rather than definite, and therefore the object could not be treated as a military objective.

The intended effect of this rule would be to protect from attack the more mundane types of private economic objects that merely help to generate economic growth or expand the tax base, while still allowing states the ability to attack those economic objects that contribute in a measurable way to the enemy’s war-sustaining effort. However, states should be careful to not prejudge whether a particular object would be military or civilian under this rule, as an object’s status is likely to change dependent upon the unique circumstances of the conflict. For example, if analysis shows that the enemy controls the process of growing and processing tobacco, and either trades tobacco for weapons or sells it and uses the proceeds to buy weapons, then the activities of the tobacco fields and other aspects of the tobacco industry would have a clear causal connection to military action, and could thus be legitimately classified as military objectives. It would be a different story if analysis shows that the tobacco industry merely contributes by generating tax revenue for the government that ends up in a general fund used by

the government to support its many functions, both military and civilian. In this case, absent evidence of an intent to use tobacco money for military purposes, the fact that the funds may potentially be put to a military use would be insufficient to establish a strong causal connection between the tobacco industry and military action, and thus tobacco industry objects could not be military objectives.

Relaxing Limitations When Attacking ‘Malevolent’ Enemies

Regardless of whether the United States and others adopt one or both of the recommendations above, should they choose to impose policy limits of any kind on attacks against war-sustaining economic objects, they should also implement a rule that relaxes those limitations when the enemy has proven itself to be “malevolent” in nature. While there are valid policy reasons to limit attacks in many conflicts, in situations where the enemy has shown abject disregard for the law or for basic human rights, such as that which was seen in Germany under the Nazis, Yugoslavia under Slobodan Milosevic, and in Syria under the Islamic State, the principal paradigm should be to “hold at risk the very way of life that sustains their depredations, and . . . threaten to destroy the world as they know it if they persist,”¹³⁸ even if it means that certain policy restrictions put in place for the protection of the civilian population must fall away.

Some might argue that a rule of this type would be inappropriate, given that even in a fight against an evil regime, the fight is with the leaders of that regime, not its people. The counterpoint to that argument is that in conflicts against evil regimes, civilians share moral responsibility for the actions of their leaders. This is because no evil leader can remain in power without the support of his or her people.¹³⁹ When civilians willingly provide active or passive support to a regime, they are responsible for keeping that regime in power and for perpetuating that regime’s evil acts, and are thus also to a degree responsible for those acts.¹⁴⁰ Thus, given that

the civilian population cannot and should not be viewed as entirely blameless, concerns regarding harm to civilians that may restrain attacks in other types of conflicts diminish, leaving no reason why states should not be free to exercise their full rights under the law.

However, it is one of the realities of war that parties to armed conflict often demonize their enemies, ascribing evil motives to them regardless of the objective reality. Thus, states should incorporate into this rule a number of restrictions on its use in order to ensure that the rule does not become a dangerous doctrine allowing states to expand their attacks against civilians without a legitimate basis. One such restriction should be that an enemy may only be treated as “malevolent” when it has committed acts that have been decreed illegal by international consensus, specifically genocide; crimes against humanity (such as the knowing widespread or systematic enslavement, deportation, torture, rape, or apartheid of the civilian population); and war crimes (such as the intentional systematic targeting of civilians or killing of the wounded, sick, and prisoners of war).¹⁴¹

Another restriction should be that states may not unilaterally decide that a state has committed one of these crimes. Rather, they must submit a complaint to an internationally recognized criminal tribunal led by disinterested parties and establish their enemy’s guilt by legal and competent evidence. The preferred avenue would be to have the case heard by the International Criminal Court, which was established expressly to decide cases of genocide, crimes against humanity, and war crimes.¹⁴² However, alternatively, states could request that the case be referred to an ad hoc international criminal tribunal established specifically for the conflict under the auspices of the United Nations, much like the International Criminal Tribunal for the Former Yugoslavia. However, to avoid the appearance of impropriety, states could not

submit the case to one of their own domestic courts or to a commission of jurists from other countries that does not have the sanction of the United Nations.

Also, even once the international criminal tribunal has adjudged an enemy guilty of an applicable criminal act, those seeking to apply force against the enemy's war-sustaining economic objects must, before launching any attack, provide clear warnings to the enemy. These warnings must describe what crimes the international criminal tribunal found the enemy guilty of, and instruct the enemy on what it needs to do to prevent attacks against its war-sustaining economic objects, to include ceasing its illegal activities.¹⁴³ Then, the enemy must be allowed an amount of time reasonable under the circumstances to cease their illegal activity and allow disinterested international observers into the country to verify that the illegal activity has in fact ceased. If the enemy fails to cease its illegal activity or refuses to accept international observers within the allotted time, other parties to the armed conflict would have the option of launching attacks against the full range of the enemy's war-sustaining economic objects, including banks; financial institutions; "factories, plants, stores, and shops . . . [along with] their associated logistics systems," in order to degrade the enemy's capacity to carry on its illegal acts.¹⁴⁴

However, in executing these attacks, parties to armed conflict must abide by other restrictions. First, any use of force against war-sustaining economic objects must be proportional, in the sense that they must bear a reasonable relationship to the egregiousness of the conduct sought to be prevented, and should never rise above that level absolutely necessary to make the illegal activity stop.¹⁴⁵ Further, parties to armed conflict must seek to to mitigate civilian casualties through various means, such as designating civilian safe areas and evacuation routes in the zone where war-sustaining economic objects are being targeted.¹⁴⁶ Along those same lines, parties to armed conflict must refrain from attacking civilians directly. Despite their moral

culpability, most civilians will not be taking direct part in hostilities, and thus remain protected under Article 51 of AP I.¹⁴⁷ Given that fact, parties to armed conflict must also ensure through a rigorous application of the Law of Armed Conflict principle of Proportionality that attacks against war-sustaining economic objects are halted if the expected incidental harm to civilians themselves would be excessive in relation to the concrete and direct military advantage anticipated.¹⁴⁸

Ultimately, while states have the legal right to treat war-sustaining economic objects as legitimate military objectives in armed conflict, the need to ensure that civilian populations are sufficiently protected in time of war requires that this right be limited in many circumstances. Given the shortage of limiting principles in the law, states must devise and install such principles in their national military policies, providing guidance to their forces on what war-sustaining economic objects their governments believe should be attacked and under what circumstances. The rules recommended above provide several viable limiting principles that ensure an appropriate level of protection for civilians while maintaining a state's ability to attack those war-sustaining economic objects providing the greatest military advantage. The hope is that by implementing these or similar rules into their national policies, and by encouraging others to do the same, states will drive further development in the law in line with these policies, thereby giving guidance on the appropriate treatment of war-sustaining economic objects even greater permanence within the international community.

Conclusion

For many years, states and international organizations have worked to define what places and things may be lawfully attacked in time of war. Although the definition of military objective

found in Article 52 of AP I did much to clarify which objects are protected and which are vulnerable to attack, it gave rise to controversy over how to treat objects that solely contribute economically to the enemy's ability to sustain its overall war effort. While the United States has argued that Article 52 allows for attacks on these war-sustaining economic objects, others have argued that this position is patently illegal. Ultimately, while a textual analysis of Article 52 of AP I reveals that those who drafted it likely believed it should be interpreted narrowly to exclude war-sustaining economic objects, an analysis of relevant state practice shows that states have treated war-sustaining economic objects as military objectives for over a century, and continue to do so in current conflicts. Thus, as a matter of customary international law, states may classify an object as a military objective solely because of the economic contribution it makes to the enemy's war-sustaining effort.

That being said, the mere fact that states may lawfully treat war-sustaining economic objects as military objectives does not mean that they always should do so. The risk exists that civilian protections could be eroded to the vanishing point should states be free to exercise their full legal rights in all circumstances. Thus, states should impose policy limitations on the range of war-sustaining economic objects that parties to armed conflict may attack. Specifically, states should require that parties to armed conflict may only attack a war-sustaining economic object if it is of a type or class that is "indispensable and principal" to the enemy's war-sustaining capability. Alternatively, states should require that parties to armed conflict may only attack a war-sustaining economic object if its attributes or activities are causally connected to the actions it takes to keep itself in the fight. However, no matter what policy limitations states decide to impose, they should also impose a rule allowing for the relaxation of such limitations when parties to armed conflict are fighting against "malevolent" enemies, given that objects belonging

to civilians who support evil regimes have a diminished right to protection given the moral responsibility their owners share for the atrocities committed by their leaders. In combination, these rules would ensure situation-appropriate protections for civilians while allowing parties to armed conflict the freedom to attack those war-sustaining economic objects that would produce the greatest military advantage when damaged or destroyed.

While some may wonder why states would use national policy to limit themselves above and beyond what the law requires, the truth is that states routinely use national policy for this purpose. In addition to the law, policy is shaped by other factors, such as political or operational concerns. Thus, it would be perfectly valid for a state to use national policy to address concerns over how an unlimited application of the law would adversely affect civilian populations in war. That being said, it is true that states have historically sought to avoid restrictions on what objects they can attack in war. This can be seen in their rejection of the 1923 Rules of Air Warfare, and their practice in interpreting Article 52 of AP I expansively. However, any resistance to the rules above should be overcome by the fact that instituting them would have little impact on the conduct of military operations as they are being fought today.

As a case in point, attacks on Islamic State oil in Syria would be entirely proper under the above rules. First, given the established importance of oil to the Islamic State's ability to financially keep itself in the fight, including the fact that oil sales make up nearly 40 percent of Islamic State revenue, the oil industry would most likely be deemed "indispensable and principal" to the Islamic State's military action. Also, as intelligence shows that the Islamic State either exchanges oil directly for weapons or sells it to generate funds it uses to buy weapons, the oil industry would also most likely be said to have a strong causal connection with the Islamic State's military action. Even if one assumes that the oil industry would fail to meet either of

these tests, attacks on oil industry objects would still be permissible if the Islamic State could be adjudged “malevolent” in nature, which would likely be possible given the wealth of information available pertaining to the Islamic State’s wanton murder of civilians and maltreatment of prisoners. Thus, concerns that policy limitations like those above would unreasonably handicap states in modern conflicts are unwarranted.

Instituting policy limitations should also provide certain benefits. First, states who make it publicly known that they will limit attacks on war-sustaining economic objects may encourage reciprocal behavior from those they are in conflict with, thereby further enhancing protection for civilian populations. Also, for the United States specifically, adopting policy limitations will help reconcile it with its critics. In an era of global, decentralized threats and fiscal austerity, the United States needs outside support to maintain its national security. By showing that it is voluntarily limiting the range of war-sustaining economic objects it may attack, the United States will allay the concerns of those states and international organizations that have decried the U.S. position on the law as seriously endangering civilian populations in war.

This is not to say that meeting critics halfway on this one issue will instantaneously evaporate all differences of opinion on matters of international law, given that there are at least as many opinions on what the law should be as there are states in the world. However, there are lessons that can be learned from this study that should help in understanding how to approach and seek resolution on related issues in the future.

First, states will generally resist binding themselves to a controversial Law of Armed Conflict legal principal by means of an international agreement, given that acceding to a treaty means ceding a certain degree of operational flexibility in armed conflict. Second, once states agree to a legal principle within the context of an international agreement, they will by default

seek to interpret that principle expansively in order to maximize the options available to them in defeating the enemy in the shortest period of time with the least amount of effort. Third, when states seek guidance on how to interpret a treaty, they will look principally to how others in the international community have applied that treaty in practice, rather than to the text of the treaty or the circumstances of its passage. Fourth, and most important, in order to influence the development of the law, one must first influence state behavior through national policy. States that publicly impose policy limitations on their actions in armed conflict convey to the entire world how they will behave in applicable situations, and thus will be expected to conform their behavior to that policy. Once a sufficient number of states emulate these policy limitations and shape their behavior accordingly, over time, what was once only binding as a matter of policy will become binding as a matter of customary international law.

With these precepts in mind, one can ultimately shape the international legal regime. While the process of shaping the law can be long and arduous, it can be accomplished if states and those who seek to influence them are willing to put in the time and effort to do so. What is most important is that in making this effort, those who desire to shape the law should do so in a way that makes the world a better place. While it may be tempting to place one's own narrow interests first in delineating the obligations of states in the international arena, those interests should at times be subjugated to the interests of others who will be impacted by developments in the law, particularly those with little power or influence to wield. Thus, just as it will be important for the international community to refine the definition of military objective in a way that ensures appropriate protections for civilians, so it will be important for that community to consider those most innocent when seeking to provide states with the tools they need to otherwise effectively prosecute an armed conflict.

NOTES

¹ Richard A. Gabriel and Karen S. Metz, *A Short History of War: The Evolution of Warfare and Weapons* (Carlisle, PA: Strategic Studies Institute, 1992), 5-7.

² Franz Wieacker, "The Importance of Roman Law for Western Civilization and Western Legal Thought," *Boston College International and Comparative Law Review* 4., no. 2 (1981): 257-281, 257-258.

³ LTC Ryan Dowdy et al., *Law of Armed Conflict Deskbook* (Charlottesville, VA: The United States Army Judge Advocate General's Legal Center and School, 2015), 7, 11.

⁴ Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, UK: Cambridge University Press, 2010), 7.

⁵ Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* (Cambridge, UK: Cambridge University Press, 2010), 4-5.

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 U.N.T.S. 4, 25.

⁷ Michael N. Schmitt, "Deconstructing Direct Participation in Hostilities: The Constitutive Elements," *International Law and Politics* 42, no. 3 (Spring 2010): 697-739, 718.

⁸ Department of Defense, *Department of Defense Law of War Manual* (Washington, DC: Office of General Counsel of the Department of Defense, 2015), 210.

⁹ Yoram Dinstein, "Legitimate Military Objectives Under the Current Jus in Bello," in *International Law Studies - Volume 78: Legal and Ethical Lessons of NATO's Kosovo Campaign*, ed. Andru E. Wall (Newport, RI: Naval War College, 2012), 46.

¹⁰ Keith Johnson, "U.S. Strikes ISIS Oil Installations," *Foreign Policy*, 24 September 2014, <http://foreignpolicy.com/2014/09/24/u-s-strikes-isis-oil-installations/>; Michael R. Gordon and Eric Schmitt, "U.S. Steps Up Its Attacks on ISIS-Controlled Oil Fields in Syria," *New York Times*, 12 November 2015, <http://www.nytimes.com/2015/11/13/us/politics/us-steps-up-its-attacks-on-isis-controlled-oil-fields-in-syria.html>; Barbara Starr, "First on CNN: U.S. Bombs 'Millions' in ISIS Currency Holdings," *CNN*, 13 January 2016, <http://www.cnn.com/2016/01/11/politics/us-bombs-millions-isis-currency-supply/>.

¹¹ Unlike municipal law, such as U.S. domestic law, which only treats governmental instruments such as constitutions, statutes, and case law as sources of law, international law recognizes that custom and commentary of learned scholars also carry weight in determining what the law is. Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (New York, NY: Routledge, 1997), 39, 51, 66.

¹² Solis, *Law of Armed Conflict*, 4.

¹³ Georg Schwarzenberger, *International Law: As Applied by International Courts and Tribunals* (London: Stevens & Sons, 1968), 15-16.

¹⁴ Solis, *Law of Armed Conflict*, 7.

¹⁵ W. Hays Parks, "Air War and the Law of War," *Air Force Law Review* 32 (1990): 1-225, 18.

¹⁶ Alexandra Boivin, "The Legal Regime Applicable to Targeting Military Objectives in the Context of Contemporary Warfare," Research Paper no. 2 (Geneva, Switzerland: University Centre for International Humanitarian Law, 2006), 8.

¹⁷ F.E. Quindry, "Aerial Bombardment of Civilian and Military Objectives," *Journal of Air Law and Commerce* 2 (1931): 474-509, 486-487.

¹⁸ Dietrich Schindler and Jiri Toman, eds. *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions, and other Documents* (Dordrecht, Netherlands: Martinus Nijhoff Publishers, 1981), 142.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Parks, "Air War and the Law of War," 31-33.

²² Ibid.

²³ Oscar M. Uhler et al., *Commentary on the Geneva Conventions of 12 August 1949*, vol. 4, *Geneva Convention Relative to the Protection of Civilians in Time of War* (Geneva, Switzerland: International Committee of the Red Cross, 1958), 3-6.

²⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287, 298-306.

²⁵ Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 U.N.T.S. 216, 246.

²⁶ Agnieszka Jachec-Neale, *The Concept of Military Objectives in International Law and Targeting Practice* (New York, NY: Routledge, 2015), 29-30.

²⁷ Ibid.

²⁸ Claud Pilloud et al., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva, Switzerland: International Committee of the Red Cross, 1987), xxix-xxxv.

²⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 4; Dinstein, “Legitimate Military Objectives,” 140.

³⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 4, 25.

³¹ *Ibid.*, 27.

³² Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, vol. 1, *Rules* (Geneva, Switzerland: International Committee of the Red Cross, 2005), 30-31.

³³ Pilloud et al., *Commentary on the Additional Protocols*, 638.

³⁴ Michael Bothe, Karl Josef Partsch, and Waldemar A. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949* (The Hague, Netherlands: Martinus Nijhoff Publishers, 1982), 326.

³⁵ Boivin, “Targeting Military Objectives,” 21-23.

³⁶ Pilloud et al., *Commentary on the Additional Protocols*, 637.

³⁷ Department of Defense, *Department of Defense Law of War Manual*, 212.

³⁸ Jachec-Neale, *Concept of Military Objectives*, 83, 91.

³⁹ A.R. Thomas and J.C. Duncan, eds., *International Law Studies*, vol. 73, *Annotated Supplement to the Commander’s Handbook on the Law of Naval Operations* (Newport, RI: US Naval War College, 1999), 402.

⁴⁰ Department of Defense, *Department of Defense Law of War Manual*, 215.

⁴¹ Michael N. Schmitt, ed., *The Tallinn Manual on the International Law Applicable to Cyber Warfare* (Cambridge, UK: Cambridge University Press, 2013), 131; Program on Humanitarian Policy and Conflict Research, *HPCR Manual on International Law Applicable to Air and Missile Warfare* (Cambridge, UK: Cambridge University Press, 2013), 110.

⁴² Heather Saul, “Syria Air Strikes: US Launches Attack on Isis as Jihadist Group Warns of Retribution,” *Independent*, 23 September 2014, <http://www.independent.co.uk/news/world/live/syria-air-strikes-us-launches-attack-on-isis-live-9750101.html>.

⁴³ Department of Defense, “Press Briefing by Pentagon Press Secretary Navy Rear Adm John Kirby,” *U.S. Department of Defense*, 25 September 2014, <http://www.defense.gov/News/News-Transcripts/Transcript-View/Article/606932>.

⁴⁴ Ibid.

⁴⁵ Keith Crane, *The Role of Oil in ISIL Finances* (Santa Monica, CA: RAND Corporation, 2015), 3.

⁴⁶ Gordon and Schmitt, “U.S. Steps Up Its Attacks.”

⁴⁷ Ibid.

⁴⁸ Patrick Johnston, “Islamic State’s Money Problems,” *USA Today*, 4 March 2016, <http://www.usatoday.com/story/opinion/2016/03/04/islamic-state-airstrikes-oil-prices-taxation-extortion-finances-syria-iraq-column/81207344/>.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Kenneth Watkin, “Targeting ‘Islamic State’ Oil Facilities,” *International Law Studies* 90 (2014): 499-513, 504.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Jachec-Neale, *Concept of Military Objectives*, 100.

⁵⁵ Ibid.

⁵⁶ Military Commissions Act, *US Code*, vol. 10, sec. 950v (2006).

⁵⁷ Joint Publication (JP) 3-60, *Joint Targeting*, 31 January 2013, A-3.

⁵⁸ Curtis E. LeMay Center for Doctrine Development and Education, “LOAC Targeting Restrictions,” in *Annex 3-60, Targeting*, 10 January 2014, 2, <https://doctrine.af.mil/download.jsp?filename=3-60-D34-Target-Tgt-Rstct.pdf>.

⁵⁹ Department of Defense, *Department of Defense Law of War Manual*, 206.

⁶⁰ Ibid., 210.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid., 212.

⁶⁵ Ibid.

⁶⁶ Jachec-Neale, *Concept of Military Objectives*, 88.

⁶⁷ Ibid.

⁶⁸ University Centre for International Law, *Expert Meeting “Targeting Military Objectives”* (Geneva, Switzerland: Swiss Federal Department of Foreign Affairs, 2005), 24.

⁶⁹ Ibid.

⁷⁰ Dinstein, *Conduct of Hostilities*, 95.

⁷¹ Boivin, “Targeting Military Objectives,” 22-23.

⁷² Jachec-Neale, *Concept of Military Objectives*, 126.

⁷³ William H. Boothby, *The Law of Targeting* (Oxford, UK: Oxford University Press, 2012), 106.

⁷⁴ Dinstein, “Legitimate Military Objectives,” 145-146

⁷⁵ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 332.

⁷⁶ Diane Marie Amann, ed., *Benchbook on International Law* (Washington, DC: American Society of International Law, 2014), IV.A-3 - IV.A-5.

⁷⁷ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 332, 340.

⁷⁸ Pilloud et al., *Commentary on the Additional Protocols*, 27-29.

⁷⁹ Ibid., 683.

⁸⁰ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 332, 340.

⁸¹ Pilloud et al., *Commentary on the Additional Protocols*, 631.

⁸² Ibid., 672.

⁸³ Ibid., 648.

⁸⁴ Ibid., 670.

⁸⁵ Ibid., 685.

⁸⁶ Christopher Greenwood, *Sources of International Law: An Introduction* (New York, NY: United Nations Office of Legal Affairs, 2008), 1-2.

⁸⁷ Timothy Meyer, "How Different are Treaties and Modern Customary International Law? A Response to Verdier and Voeten," *AJIL Unbound*, accessed 25 November 2016, <https://www.asil.org/blogs/how-different-are-treaties-and-modern-customary-international-law-response-verdier-and-voeten>.

⁸⁸ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 332, 340.

⁸⁹ Clive Parry, *The Sources and Evidences of International Law* (Manchester, UK: University of Manchester, 1955), 2.

⁹⁰ Joan Policastri and Sergio D. Stone, *International Humanitarian Law Electronic Resource Guide* (Washington, DC: American Society of International Law, 2013), 33.

⁹¹ International Committee of the Red Cross, "Practice Relating to Rule 8. Definition of Military Objectives," *Customary IHL*, accessed 30 October 2016, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule8.

⁹² John B. Bellinger, III and William J. Haynes II, "A U.S. Government Response to the International Committee of the Red Cross Study *Customary International Humanitarian Law*," *International Review of the Red Cross* 89, no. 866 (June 2007): 443-471, 445.

⁹³ Ibid., 446.

⁹⁴ Thomas and Duncan, eds., *Annotated Supplement*, 403.

⁹⁵ Robert S. Hale, Esq., *Report Before the Commission on Claims of Citizens of the United States Against Great Britain, and of Subjects of her Britannic Majesty Against the United States, Under the Twelfth Article of the Treaty of 8th May, 1871, Between the United States and Great Britain* (Washington, DC: Government Printing Office, 1871), 56-58.

⁹⁶ Ibid., 235-236.

⁹⁷ Richard J. Overy, "Strategic Bombing Before 1939: Doctrine, Planning, and Operations," in *Case Studies in Strategic Bombardment*, ed. R. Cargill Hall (Washington, DC: Government Printing Office, 1998), 11.

⁹⁸ Ibid., 17.

⁹⁹ Ibid., 20, 24.

¹⁰⁰ W.A. Jacobs, "The British Strategic Air Offensive Against Germany in WWII," in *Case Studies in Strategic Bombardment*, ed. R. Cargill Hall (Washington, DC: Government Printing Office, 1998), 145-146.

¹⁰¹ Ibid., 135, 137.

¹⁰² Ibid., 148-150.

¹⁰³ Dr. Roger Miller, "Operation Tidal Wave, the Low-Level Bombing of the Ploesti Oil Refineries, 1 August 1943," Air Force Historical Support Division, 17 September 2014, <http://www.afhso.af.mil/topics/factsheets/factsheet.asp?id=17993>.

¹⁰⁴ Parks, "Air War and the Law of War," 206-209.

¹⁰⁵ Ibid., 208.

¹⁰⁶ Col Dennis M. Drew, "Rolling Thunder 1965: Anatomy of a Failure," Air War College, accessed 3 December 2016, <http://www.au.af.mil/au/awc/awcgate/readings/drew2.htm>.

¹⁰⁷ Ibid.

¹⁰⁸ W. Hays Parks, "Asymmetries and the Identification of Legitimate Military Objectives," in *International Law Facing New Challenges*, eds. Wolff Heintschel von Heinegg and Volker Epping (Berlin, Germany: Springer-Verlag, 2007), 85.

¹⁰⁹ John E. Peters et al., *European Contributions to Operation Allied Force: Implications for Transatlantic Cooperation* (Santa Monica, CA: RAND Corporation, 2001), 19.

¹¹⁰ Benjamin S. Lambeth, *NATO's Air War for Kosovo: A Strategic and Operational Assessment* (Santa Monica, CA: RAND Corporation, 2001), 13-16.

¹¹¹ Ibid., 38-41.

¹¹² Stephen T. Hosmer, *The Conflict Over Kosovo: Why Milosevic Decided to Settle When He Did* (Santa Monica, CA: RAND Corporation, 2001), 53-57.

¹¹³ Ibid., 68-71.

¹¹⁴ Eritrea-Ethiopia Claims Commission, *Partial Award: Western Front, Aerial Bombardment and Related Claims, Eritrea Claims 1, 3, 5, 9-13, 14, 21, 25, and 26 Between the State of Eritrea and the Federal Democratic Republic of Ethiopia* (The Hague, Netherlands: Eritrea-Ethiopia Claims Commission, 2005), 32.

¹¹⁵ The Hague Justice Portal, “Eritrea-Ethiopia Claims Commission,” Learning and Education, accessed 26 November 2016, <http://www.haguejusticeportal.net/index.php?id=6161>.

¹¹⁶ Eritrea-Ethiopia Claims Commission, *Partial Award*, 34.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*, 35.

¹¹⁹ Kathleen J. McInnis, *Coalition Contributions to Countering the Islamic State* (Washington, DC: Congressional Research Service, 2016), 8-11.

¹²⁰ *Ibid.*

¹²¹ Josh Noble and John Murray Brown, “UK’s First Air Strikes on Syria Target Islamic State Oilfields,” *Financial Times*, 3 December 2005, <https://www.ft.com/content/735eb4c8-998f-11e5-9228-87e603d47bdc>; David A. Graham, “What is France Doing in Syria?,” *Atlantic*, 15 November 2015, <http://www.theatlantic.com/international/archive/2015/11/france-syria-iraq-isis/416013/>.

¹²² U.N. Security Council, Resolution 2253, 17 December 2015, 3.

¹²³ *Ibid.*, 4.

¹²⁴ Department of Defense, *Department of Defense Law of War Manual*, 264.

¹²⁵ Matthew M. Reed, “Tidal Wave II: Understanding the Pentagon’s New Strategy to Cripple ISIS Oil,” *Fuse*, 23 November 2015, <http://energyfuse.org/tidal-wave-ii-understanding-the-pentagons-strategy-to-cripple-isis-oil-operations/>.

¹²⁶ United Nations, “About the ICTY,” United Nations International Criminal Tribunal for the Former Yugoslavia, accessed 27 November 2016, <http://www.icty.org/en/about>.

¹²⁷ International Criminal Tribunal for the Former Yugoslavia, *Formal Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia* (The Hague, Netherlands: International Criminal Tribunal for the Former Yugoslavia, [2000]), 21.

¹²⁸ Parks, “Identification of Legitimate Military Objectives,” 100.

¹²⁹ Bothe, Partsch, and Solf, *New Rules for Victims of Armed Conflicts*, 324.

¹³⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 4, 27.

¹³¹ *Ibid.*, 26.

¹³² During the interwar period, the UK, Italy, Japan, and Germany either incorporated the definition of a military objective expressed by the 1923 Hague Rules into their national military regulations, or made pronouncements of support for a restrictive definition in international fora. Some even influenced the League of Nations to issue a non-binding resolution to its members in 1938 proclaiming (1) that direct attacks against civilians were unlawful; (2) that all attacks must be limited to legitimate, identifiable military objectives; and (3) that care must be taken in attacking military objectives to avoid harming civilians in the vicinity. Jachec-Neale, *Concept of Military Objectives*, 23-25.

¹³³ Jacobs, "British Strategic Air Offensive," 118-119.

¹³⁴ Jachec-Neale, *Concept of Military Objectives*, 25-26; Stephen L. McFarland and Wesley Phillips Newton, "The American Strategic Air Offensive Against Germany in World War II," in *Case Studies in Strategic Bombardment*, ed. R. Cargill Hall (Washington, DC: Government Printing Office, 1998), 190.

¹³⁵ Ryan Goodman, "Targeting 'War-Sustaining' Objects in Non-International Armed Conflict," (working paper, Public Law & Legal Theory Research Paper Series, New York University School of Law, New York City, 2016).

¹³⁶ Joy Frechtling Westat, *The 2002 User Friendly Handbook for Project Evaluation* (Washington, DC: The National Science Foundation, 2002), 44.

¹³⁷ Goodman, "Targeting 'War-Sustaining' Objects," 17.

¹³⁸ Col. Charles J. Dunlap, Jr., "The End of Innocence: Rethinking Noncombatancy in the Post-Kosovo Era," *Strategic Review* 28, no. 3 (Summer 2000): 9-17, 14.

¹³⁹ *Ibid.*, 10.

¹⁴⁰ *Ibid.*

¹⁴¹ Rome Statute of the International Criminal Court, 17 July 1998, 2187 U.N.T.S. 3, 93; International Committee of the Red Cross, "Grave Breaches Specified in the 1949 Geneva Conventions and in Additional Protocol I of 1977," International Committee of the Red Cross, accessed 3 December 2016, <https://www.icrc.org/eng/resources/documents/misc/57jp2a.htm>.

¹⁴² International Criminal Court, "About the International Criminal Court," The International Criminal Court, accessed 12 December 2016, <https://www.icc-cpi.int/about>.

¹⁴³ Dunlap, "End of Innocence," 15.

¹⁴⁴ *Ibid.*, 14.

¹⁴⁵ *Ibid.*, 15.

¹⁴⁶ Ibid.

¹⁴⁷ Article 51(2) of AP I states “The civilian population as such, as well as individual citizens, shall not be the object of attack.” Article 51(3) states “Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.” Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 4, 26.

¹⁴⁸ Ibid.



BIBLIOGRAPHY

- Amann, Diane Marie, ed. *Benchbook on International Law*. Washington, DC: American Society of International Law, 2014.
- Bellinger, John B., III, and William J. Haynes II. "A U.S. Government Response to the International Committee of the Red Cross Study *Customary International Humanitarian Law*." *International Review of the Red Cross* 89, no. 866 (June 2007): 443-471.
- Boivin, Alexandra. "The Legal Regime Applicable to Targeting Military Objectives in the Context of Contemporary Warfare." Research Paper no. 2. Geneva, Switzerland: University Centre for International Humanitarian Law, 2006.
- Boothby, William H. *The Law of Targeting*. Oxford, UK: Oxford University Press, 2012.
- Bothe, Michael, Karl Josef Partsch, and Waldemar A. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*. The Hague, Netherlands: Martinus Nijhoff Publishers, 1982.
- Convention for the Protection of Cultural Property in the Event of Armed Conflict. 14 May 1954. 249 U.N.T.S. 216.
- Crane, Keith. *The Role of Oil in ISIL Finances*. Santa Monica, CA: RAND Corporation, 2015.
- Curtis E. LeMay Center for Doctrine Development and Education. "LOAC Targeting Restrictions." In *Annex 3-60, Targeting*, 10 January 2014, 2.
<https://doctrine.af.mil/download.jsp?filename=3-60-D34-Target-Tgt-Rstct.pdf>.
- Department of Defense. *Department of Defense Law of War Manual*. Washington, DC: Office of General Counsel of the Department of Defense, 2015.
- . "Press Briefing by Pentagon Press Secretary Navy Rear Adm John Kirby." *U.S. Department of Defense*, 25 September 2014. <http://www.defense.gov/News/News-Transcripts/Transcript-View/Article/606932>.
- Dinstein, Yoram. *The Conduct of Hostilities Under the Law of International Armed Conflict*. Cambridge, UK: Cambridge University Press, 2010.
- . "Legitimate Military Objectives Under the Current Jus in Bello." In *International Law Studies - Volume 78: Legal and Ethical Lessons of NATO's Kosovo Campaign*, edited by Andru E. Wall. Newport, RI: Naval War College, 2012.
- Dowdy, LTC Ryan, LTC John Cherry, LTC Josh Berry, LTC Thomas Bogar, LTC Bradford Clark, MAJ Jeffrey Blank, Maj Jason DeSon, et al. *Law of Armed Conflict Deskbook*. Charlottesville, VA: The United States Army Judge Advocate General's Legal Center and School, 2015.

- Drew, Col Dennis M. "Rolling Thunder 1965: Anatomy of a Failure." Air War College. Accessed 3 December 2016. <http://www.au.af.mil/au/awc/awcgate/readings/drew2.htm>.
- Dunlap, Col Charles J., Jr. "The End of Innocence: Rethinking Noncombatancy in the Post-Kosovo Era." *Strategic Review* 28, no. 3 (Summer 2000): 9-17.
- Eritrea-Ethiopia Claims Commission. *Partial Award: Western Front, Aerial Bombardment and Related Claims, Eritrea Claims 1, 3, 5, 9-13, 14, 21, 25, and 26 Between the State of Eritrea and the Federal Democratic Republic of Ethiopia*. The Hague, Netherlands: Eritrea-Ethiopia Claims Commission, 2005.
- Gabriel, Richard, and Karen S. Metz. *A Short History of War: The Evolution of Warfare and Weapons*. Carlisle, PA: Strategic Studies Institute, 1992.
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War. 12 August 1949. 75 U.N.T.S. 287.
- Goodman, Ryan. "Targeting 'War-Sustaining' Objects in Non-International Armed Conflict." Working paper, Public Law & Legal Theory Research Paper Series, New York University School of Law, New York City, 2016.
- Gordon, Michael R., and Eric Schmitt, "U.S. Steps Up Its Attacks on ISIS-Controlled Oil Fields in Syria." *The New York Times*, 12 November 2015, <http://www.nytimes.com/2015/11/13/us/politics/us-steps-up-its-attacks-on-isis-controlled-oil-fields-in-syria.html>.
- Graham, David A. "What is France Doing in Syria?" *The Atlantic*, 15 November 2015. <http://www.theatlantic.com/international/archive/2015/11/france-syria-iraq-isis/416013/>.
- Greenwood, Christopher. *Sources of International Law: An Introduction*. New York, NY: United Nations Office of Legal Affairs, 2008.
- Hale, Robert S., Esq. *Report Before the Commission on Claims of Citizens of the United States Against Great Britain, and of Subjects of her Britannic Majesty Against the United States, Under the Twelfth Article of the Treaty of 8th May, 1871, Between the United States and Great Britain*. Washington, DC: Government Printing Office, 1871.
- Henckaerts, Jean-Marie, and Louise Doswald-Beck. *Customary International Humanitarian Law*, Vol. 1, *Rules*. Geneva, Switzerland: International Committee of the Red Cross, 2005.
- Hosmer, Stephen T. *The Conflict Over Kosovo: Why Milosevic Decided to Settle When He Did*. Santa Monica, CA: RAND Corporation, 2001.
- International Committee of the Red Cross. "Grave Breaches Specified in the 1949 Geneva Conventions and in Additional Protocol I of 1977." International Committee of the Red

Cross. Accessed 3 December 2016.
<https://www.icrc.org/eng/resources/documents/misc/57jp2a.htm>.

———. “Practice Relating to Rule 8. Definition of Military Objectives.” Customary IHL. Accessed 30 October 2016. https://ihldatabases.icrc.org/customaryihl/eng/docs/v2_rul_rule8.

International Criminal Court. “About the International Criminal Court.” The International Criminal Court. Accessed 12 December 2016. <https://www.icc-cpi.int/about>.

International Criminal Tribunal for the Former Yugoslavia. *Formal Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*. The Hague, Netherlands: International Criminal Tribunal for the Former Yugoslavia, [2000].

Jachec-Neale, Agnieszka. *The Concept of Military Objectives in International Law and Targeting Practice*. New York, NY: Routledge, 2015.

Jacobs, W.A. “The British Strategic Air Offensive Against Germany in WWII.” In *Case Studies in Strategic Bombardment*, edited by R. Cargill Hall. Washington, DC: Government Printing Office, 1998.

Johnson, Keith. “U.S. Strikes ISIS Oil Installations.” *Foreign Policy*, 24 September 2014. <http://foreignpolicy.com/2014/09/24/u-s-strikes-isis-oil-installations/>.

Johnston, Patrick. “Islamic State’s Money Problems.” *USA Today*, 4 March 2016. <http://www.usatoday.com/story/opinion/2016/03/04/islamic-state-airstrikes-oil-prices-taxation-extortion-finances-syria-iraq-column/81207344/>.

Joint Publication (JP) 3-60. *Joint Targeting*. 31 January 2013.

Lambeth, Benjamin S. *NATO’s Air War for Kosovo: A Strategic and Operational Assessment*. Santa Monica, CA: RAND Corporation, 2001.

Malanczuk, Peter. *Akehurst’s Modern Introduction to International Law*. New York, NY: Routledge, 1997.

McFarland, Stephen L., and Wesley Phillips Newton. “The American Strategic Air Offensive Against Germany in World War II.” In *Case Studies in Strategic Bombardment*, edited by R. Cargill Hall. Washington, DC: Government Printing Office, 1998.

McInnis, Kathleen J. *Coalition Contributions to Countering the Islamic State*. Washington, DC: Congressional Research Service, 2016.

Meyer, Timothy. “How Different are Treaties and Modern Customary International Law? A Response to Verdier and Voeten.” *AJIL Unbound*. Accessed 25 November 2016.

<https://www.asil.org/blogs/how-different-are-treaties-and-modern-customary-international-law-response-verdier-and-voeten>.

Military Commissions Act. *US Code*. Vol. 10, sec. 950v (2006).

Miller, Dr. Roger. "Operation Tidal Wave, the Low-Level Bombing of the Ploesti Oil Refineries, 1 August 1943." Air Force Historical Support Division, 17 September 2014. <http://www.afhso.af.mil/topics/factsheets/factsheet.asp?id=17993>.

Noble, Josh, and John Murray Brown, "UK's First Air Strikes on Syria Target Islamic State Oilfields." *Financial Times*, 3 December 2005. <https://www.ft.com/content/735eb4c8-998f-11e5-9228-87e603d47bdc>.

Overy, Richard J. "Strategic Bombing Before 1939: Doctrine, Planning, and Operations." In *Case Studies in Strategic Bombardment*, edited by R. Cargill Hall. Washington, DC: Government Printing Office, 1998.

Parks, W. Hays. "Air War and the Law of War." *Air Force Law Review* 32 (1990): 1-225.

———. "Asymmetries and the Identification of Legitimate Military Objectives." In *International Law Facing New Challenges*, edited by Wolff Heintschel von Heinegg, and Volker Epping. Berlin, Germany: Springer-Verlag, 2007.

Parry, Clive. *The Sources and Evidences of International Law*. Manchester, UK: University of Manchester, 1955.

Peters, John E., Stuart Johnson, Nora Bensahel, Timothy Liston, and Traci Williams. *European Contributions to Operation Allied Force: Implications for Transatlantic Cooperation*. Santa Monica, CA: RAND Corporation, 2001.

Pilloud, Claud, Jean De Preux, Yves Sandoz, Bruno Zimmerman, Philippe Eberlin, Hans-Peter Gasser, Claude F. Wenger, and Sylvie-S. Junod. *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*. Geneva, Switzerland: International Committee of the Red Cross, 1987.

Policastri, Joan, and Sergio D. Stone. *International Humanitarian Law Electronic Resource Guide*. Washington, DC: American Society of International Law, 2013.

Program on Humanitarian Policy and Conflict Research. *HPCR Manual on International Law Applicable to Air and Missile Warfare*. Cambridge, UK: Cambridge University Press, 2013.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts. June 8, 1977. 1125 U.N.T.S. 4.

Quindry, F.E. "Aerial Bombardment of Civilian and Military Objectives." *Journal of Air Law and Commerce* 2 (1931): 474-509.

Reed, Matthew M. "Tidal Wave II: Understanding the Pentagon's New Strategy to Cripple ISIS Oil." *The Fuse*, 23 November 2015. <http://energyfuse.org/tidal-wave-ii-understanding-the-pentagons-strategy-to-cripple-isis-oil-operations/>.

Rome Statute of the International Criminal Court. 17 July 1998. 2187 U.N.T.S. 3.

Saul, Heather. "Syria Air Strikes: US Launches Attack on Isis as Jihadist Group Warns of Retribution," *Independent*, 23 September 2014, <http://www.independent.co.uk/news/world/live/syria-air-strikes-us-launches-attack-on-isis-live-9750101.html>.

Schindler, Dietrich, and Jiri Toman, eds. *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions, and other Documents*. Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1981.

Schmitt, Michael N. "Deconstructing Direct Participation in Hostilities: The Constitutive Elements." *International Law and Politics* 42, no. 3 Spring 2010: 697-739.

———, ed. *The Tallinn Manual on the International Law Applicable to Cyber Warfare*. Cambridge, UK: Cambridge University Press, 2013.

Schwarzenberger, Georg. *International Law: As Applied by International Courts and Tribunals*. London: Stevens & Sons, 1968.

Solis, Gary D. *The Law of Armed Conflict: International Humanitarian Law in War*. Cambridge, UK: Cambridge University Press, 2010.

Starr, Barbara. "First on CNN: U.S. Bombs 'Millions' in ISIS Currency Holdings." *CNN.com*, 13 January 2016. <http://www.cnn.com/2016/01/11/politics/us-bombs-millions-isis-currency-supply/>.

The Hague Justice Portal. "Eritrea-Ethiopia Claims Commission." Learning and Education. Accessed 26 November 2016. <http://www.haguejusticeportal.net/index.php?id=6161>.

Thomas, A.R., and J.C. Duncan, eds. *International Law Studies*. Vol. 78, *Annotated Supplement to the Commander's Handbook on the Law of Naval Operations*. Newport, RI: US Naval War College, 1999.

Uhler, Oscar M, Henri Coursier, Claude Pilloud, Rene-Jean Wilhelm, Frederic Siordet, Roger Boppe, and Jean-Pierre Schoenholzer. *Commentary on the Geneva Conventions of 12 August 1949*. Vol. 4, *Geneva Convention Relative to the Protection of Civilians in Time of War*. Geneva, Switzerland: International Committee of the Red Cross, 1958.

U.N. Security Council. Resolution 2253, 17 December 2015.

United Nations. "About the ICTY." United Nations International Criminal Tribunal for the Former Yugoslavia. Accessed 27 November 2016. <http://www.icty.org/en/about>.

University Centre for International Law. *Expert Meeting "Targeting Military Objectives."* Geneva, Switzerland: Swiss Federal Department of Foreign Affairs, 2005.

Vienna Convention on the Law of Treaties. 23 May 1969. 1155 U.N.T.S. 332.

Watkin, Kenneth. "Targeting 'Islamic State' Oil Facilities." *International Law Studies* 90 (2014): 499-513.

Westat, Joy Frechtling. *The 2002 User Friendly Handbook for Project Evaluation*. Washington, DC: The National Science Foundation, 2002.

Wieacker, Franz. "The Importance of Roman Law for Western Civilization and Western Legal Thought." *Boston College International and Comparative Law Review* 4., no 2 (1981): 257-281.

