TARGETING

PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

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PRELIMINARY MATTERS

• Jus in Bello vs. Jus ad Bellum
• Terms:
  • International Humanitarian Law (IHL)
  • Law of Armed Conflict (LOAC)
  • Law of War (LOW)
• Customary IHL vs. Treaty Law
• International Law vs. Domestic Law
• Law vs. Policy
• IHL vs. International Human Rights Law (IHRL)
• “Could we?” vs. “Should we?”
• Don’t confuse the Rules of Engagement (ROE) with International Humanitarian Law (IHL)

• IHL + domestic law + domestic policy + political factors + operational goals = ROE

• IHL is more permissive than ROE
REFERENCES

- Hague Regulations (Hague IV), 1899 & 1907
- Geneva Conventions I-IV, 1949
- Additional Protocols I-III, 1977
- Allies’ Manuals
- ICRC Customary Law Study
- Army Field Manual 27-10, 1956 (C1, 1976)
- Customary international law (CIL)
- Specific treaties (e.g., cultural property, certain conventional weapons)
IHL PRINCIPLES

• Military Necessity
• Distinction
  • Combatant v. Civilian
  • Military Objective v. Civilian Object
• Proportionality
• Unnecessary Suffering / Humanity
“Military necessity may be defined as the principle that justifies the use of all measures needed to defeat the enemy as quickly and efficiently as possible that are not prohibited by the law of war.”

-DoD Law of War Manual § 2.2
MILITARY NECESSITY:
THE RENDULIC RULE

Commander’s liability based on information reasonably available at time of decision
(See U.S. Understanding to CCW Amended Protocol II, DS p. 74)

Finland/Norway 1944: Destructive Retreat
DISTINCTION
DISTINCTION...
“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.”

-AP I, art 48
CATEGORIES OF PEOPLE PER THE DOD LOW MANUAL

- **Civilian**: Members of the civilian population
- **Mixed Cases**: Personnel engaged in humanitarian duties, Authorized supporters of the armed forces, Unprivileged belligerents
- **Combatant**: Members of the armed forces of a State, Members of militia and other volunteer groups, Levée en masse
PEOPLE WE CAN ATTACK BASED ON STATUS

DOD LOWM § 5.8.2

**Combatants:**
- Members of the armed forces
- Other militias/volunteer corps
- Levée en masse

**Unprivileged Belligerents:**
- Members of hostile, non-State armed groups

Leaders with operational command and control of the armed forces or non-State armed group

Lawfully participating in hostilities

**ALWAYS subject to attack based on status... UNLESS hors de combat**
MILITARY EXCEPTIONS

• *Hors de combat*
  • POWs/Detainees
  • Wounded/Sick
  • Parachutists (*cf.* Paratroopers)
  • Shipwrecked
  • Surrender
• Medical Personnel
• Chaplains
CONDUCT:
CIVILIANS DIRECTLY PARTICIPATING IN HOSTILITIES (DPH)

Civilians shall enjoy the protection afforded by this section/part, unless and for such time as they take a direct part in hostilities.

-AP I, art. 51(3)
-AP II, art. 13(3)
Military Objective:

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.

-AP I, art. 52(2)
MILITARY OBJECTIVE:
NATURE
MILITARY OBJECTIVE:
LOCATION
MILITARY OBJECTIVE:
PURPOSE
MILITARY OBJECTIVE

USE
INDISCRIMINATE ATTACKS PROHIBITED

• Three types of indiscriminate attacks:
  • Not directed at specific military objectives
  • Employ method or means of combat that cannot be directed at specific military objective
  • Employ method or means of combat the effects of which cannot be limited
PRECAUTIONS IN THE ATTACK

• If civilians present, a warning is required before bombardment, unless it is an assault (surprise attack)
• Warning and opportunity to comply required for compromised medical facility (unless receiving fire)
• Effective advance warning shall be given of attacks which may affect civilian population, unless circumstances do not permit
PROPORTIONALITY
An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

- AP I, Article 51(5)(b)
PROPORTIONALITY

Is this *excessive* in relation to *that*?

- Incidental civilian death & damage
- Anticipated direct & concrete military advantage

*Rendulic Rule*

*Excessive:* exceeding a normal, usual, reasonable, or proper limit.
UNNECESSARY SUFFERING
AKA SUPERFLUOUS INJURY
UNNECESSARY SUFFERING / HUMANITY

1899 Hague II, art 23(e): [I]t is especially prohibited...[t]o employ arms, projectiles, or material of a nature to cause superfluous injury...

1907 Hague IV, art 23(e): [I]t is especially prohibited...[t]o employ arms, projectiles, or material calculated to cause unnecessary suffering....
“Weapons that may cause great injury or suffering or inevitable death are not prohibited, if the weapon’s effects that cause such injury are necessary to enable users to accomplish their military missions.”

LoWM § 6.6.3
Today's strikes targeted for the first time a gathering area for the hundreds of fuel trucks used to transport ISIS oil. Until now, the coalition had refrained from targeting the fuel trucks in an effort to minimize civilian casualties.

"One strike destroyed 116 ISIL fuel trucks" near Abu Kamal, which is located near Dayr al Zawr, according to the coalition's daily airstrike summary released. The Pentagon believes that area of eastern Syria is where the heart of ISIS' oil operation is located and generates as much as two-thirds of its oil revenue.

In an effort to minimize potential civilian casualties, two F-15 fighter jets dropped leaflets an hour prior to the airstrike, warning drivers to leave the almost-300 vehicles gathered in the target area.
Warning. Airstrikes are coming, oil trucks will be destroyed. Get away from your oil trucks immediately. Do not risk your life.”
Iraqi Says 288 Bodies Removed From Bombed Structure

Two Days After Civilians Were Killed, Character of Building Still Uncertain

By Burton COHAN
Washington Post Staff Writer

More than 48 hours after U.S. bombs killed scores, perhaps hundreds, of Iraqi civilians in a city of Saddam, the Pentagon provided no further details on two critical questions: the number of casualties and the location of the building in which they died.

An Associated Press story said that two U.S. officials acknowledged the bombing occurred in a civilian area of the city of Basra.

The death toll has been pegged as high as 1,000, though no official estimate has been made.

The Pentagon said it was investigating the incident.

The bombing was said to have occurred in the early hours of the morning.

U.S. officials confirmed that the attack was carried out by aircraft from Kuwait.

Command and control do not operate through a particular kind of facility, but rather as a network of satellite communications.

The use of such facilities has been a controversial issue since the Persian Gulf War.

The Associated Press reported that the building was a military command center.

More Dead Reported Under Rubble; Officials, Mourners Condemn U.S.

By Nora ROSENSTARY
Washington Post Foreign Service

AMMAN, Jordan, Feb. 14—Iraqi leaders today announced that 288 bodies had been removed from the bombed structure.

The move was said to be in response to an international outcry.

The building was said to have been a military command center.

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Ur Ziggurat, 4000 years old
LONE SURVIVOR

- Seals don’t shoot the goat herder
- Result: 19 Americans killed (three of four SEAL team members and sixteen other service members)
THE U.S. TARGETING PROCESS
TARGETING WORKING GROUP
TARGET: KHORASAN GROUP C2 AND WEAPONS CACHE

NUMBER: AB 1944
AREA OF OPERATIONS: IDLIB, SYRIA

NOMINATED BY: JSOTF
GRID: NM 19440606

DTG: 6 NOV 2015
TASK: DESTROY

TARGET INFORMATION

Target Category: KG C2 / Weapons Cache

Intelligence: HUMINT and IMINT assess with confidence that KG uses structure as high-level C2 facility explosive-making and storage facility.

Pattern of Life: Over last week all people (5 individuals most nights) entering and exiting structure are assessed to be connected to attacks or weapons cache. Civilians infrequently transit road 10 m east of structure during the night.

Collateral Concerns: Road east of structure. Collateral structures 100m north and south of target.

CDE Estimate: CDE 5 LOW, PGM, MK-82, DELAY, CE: 10/0/25

Detain: Foreign country makes detention by US forces impossible.

TARGET SUMMARY: KG leadership have been using structure as high-level leadership meeting site. Site also is used for production and storage of explosive materials. KG leaders meet and Abu Sayf, an Iraqi national, leads several IED, electronics, and explosives experts in training and production of high-powered IEDs.

SOURCE: HUMINT/IMINT
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APPLICATION TIME

“YOU BE THE JUDGE”
HOMEWORK
TARGETING

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