

Session One

Identifying military objectives in cities

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How can my home, school or church ever be a military objective?

Loss of protection by use, purpose or location

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Introduction

It is a common and widely accepted proposition that towns, cities and other built-up residential areas pose a significant operational challenge when conducting hostilities. This is particularly true in the context of targeting, and specifically in relation to the identification of lawful targets. This paper considers some selected issues which modern warfare has brought to the forefront of the international debate. It consists of two parts. The first will look at the features of the urban landscape which are specifically relevant to combat operations. The second will provide a more comprehensive discussion of specific challenges in targeting overground and subterranean infrastructure.

1. Urban landscape

Urban terrain is a complex and dynamic domain of military operations. Its dynamic nature means it is a perpetually evolving system, in a constant state of motion. This also means that events happen far more quickly in a limited physical space in urban warfare than in other types of landscape. Higher temporal density occurs where there is a higher volume of activities occurring in one time unit.

Its complexity relates to its dominant features - such as a high density of population in a geographically limited space, and a plethora of mostly man-made structures which tends to obscure visibility and conceal movement. Some structures further mask other structures. In such terrain, communications may be impaired. All these features, of course, can be seen both as hindrances or advantages. The presence of civilians presents additional challenges, and so does night-time combat.

Urban combat operations may occur in different areas of the same city. Alternatively, they may occur in the same area - in the same block of flats, for example, even separate actions on three different floors at the same time. Military forces may be required to adapt their operations within a limited time and space, perhaps engaging in combat in one area while assisting sheltering civilians next door. The first armed conflict in Chechnya, for example, featured three-level ambushes in Grozny in which units of Chechen fighters carried out separate operations in the same structure. One unit would be engaged

in the basement, a second unit on the first floor, while the third was securing the rooftop of the building, each unit being involved in a different task. Fighters in Grozny would engage in hostilities lasting a whole day while being separated by walls, ceilings and floors, without any visual contact at any point.

2. Challenges in the application of law to urban targeting

Any military operations in such a complex physical environment are difficult. This is particularly relevant to military targeting. Targeting is a military function by which targets are identified, selected and prioritized, and the best methods and means to pursue them are devised in pursuance of military goals. Identification and acquisition of targets is information-dependent in any circumstances. The ability to obtain and communicate such information is, however, often reduced in urban warfare. This may have implications for any decision on whether to engage in an attack against a particular object, when such a prospective attack is deemed lawful. The following comments will focus on a discussion of the issues relating to overground and underground infrastructures.

a. Overground infrastructure

In the context of an overground urban landscape, the identification of lawful targets in or around high-rise buildings and multi-storey blocks of flats appears to pose particular challenges. If one flat in a block is identified as the intended target, then - given that there is enough information to determine that the flat satisfies the definition of military objectives (Article 52(2) of the 1977 Additional Protocol I to the 1949 Geneva Conventions) – the commander may consider it to be a lawful target in the circumstances ruling at the time. The question arises whether the entire block containing the intended target can be considered a military objective. Given the nature of such structures, in which individual flats cannot be physically separated from the whole structure, it is quite likely that the entire block would be considered a lawful target. It is possible to ascertain that the use of the specific flat within a block of flats that satisfies the first prong of the definition is likely to give rise to determination that the entire structure is used to make an effective contribution to military action. As far as the principle of distinction is concerned, such a target may be deemed lawful, if its destruction or neutralization offers a required military advantage and thus permitting the commander to consider initiating an attack subject to other legal considerations such as proportionality, the use of appropriate weapons and precautions in attack.

Where there is insufficient information to pinpoint the exact location of the target within the structure, but there is enough information for the commander to be sure that the structure is, at least in part, used to make an effective contribution to military action, then it is possible that the whole structure will be determined to be a military objective. A multi-storey building on its own, which is partially used for military purposes, remains a “specific” military objective within the meaning of Article 51(4)(a) of Additional Protocol I. It is likely that problems will arise in respect of how such an object can be

attacked, where the use of some weapons and the risk of excessive collateral damage will clearly be of concern.

The determination of an entire compound containing several independent structures as one military objective, based on unspecified information about their individual use, would be similarly questionable. As mentioned, Article 51(4)(a) of Additional Protocol I requires that the attack is directed at the “specific” military objective. It would be open to debate whether a whole compound could be seen as a “specific” military objective, if the information available indicated that only some individual buildings within such a compound were used for military purposes. Should there be sufficient information about which structures were indeed used towards military ends, then they become intended targets – subject to legal considerations. In the case where such specific information is missing, doubt arises as to the actual use of each structure within the compound. Where there is such doubt, the requirement in Article 52(3) of Additional Protocol I to treat the object as being presumed not to be used for military purposes might be relevant. It is worth observing that this does not necessarily mean that there is a doubt that the compound is not used for military purposes. This, however, becomes irrelevant because treating all individual buildings within a compound as a single military objective would likely be regarded as an indiscriminate attack under Article 51(5)(a) of Additional Protocol I.

When considering attacks against high-rise or complex structures in urban operations, the information and intelligence obtained about the intended target will play a crucial role in establishing the *prima facie* lawfulness of the attacks as far as the principle of distinction is concerned. The intended target has to be identifiable as *specific, separated* and *distinct* from other potential targets. A single flat in a block cannot exist on its own. It is a part of one bigger object, unlike clearly detached buildings located within one compound. Accordingly, a block of flats can be regarded as a single military objective, whilst the compound as a whole would fail such a determination.

b. Subterranean infrastructure

Underground structures which are exploited during urban combat operations include a variety of objects such as subways and cellars, and tunnels for sewage and other utilities. I shall reflect here on the use of tunnels for military purposes. The use of tunnels is not new; one may recall the often overlooked practice of fighting in multi-level tunnels during the First World War. In recent years, underground passages have been extensively used in conflicts in Libya, Gaza, Syria and Iraq. In 2014, Islamic fighters claimed they had mined a half-mile tunnel under the Wadi Deif base, used by the Syrian army. Underground passages are used to facilitate the transport of weapons and other war materiel, to hide and move fighters, as venues for launching clandestine incursions, as escape routes, and to transport captured enemy soldiers. Fighters may utilize existing structures, or construct new tunnels. The majority of such structures, akin to overground lines of communication, would be considered as dual use - serving both civilian and military purposes. Example of such infrastructure could be some of the tunnels linking Gaza to Egypt territory. Caution is advised though in regards to commercial tunnels created by private consortia in Gaza and used entirely for civilian purposes- such

objects would unlikely satisfy the requirements of definition of military objectives. In certain circumstances, a concrete tunnel, constructed and used solely and in any circumstances for military purposes, would satisfy the “nature” condition of the first prong of the definition of military objective. Hamas-constructed tunnels leading to Israel’ territory could be regarded as examples of such objects. Their targeting would nevertheless require ensuring the remainder of targeting rules is complied with in satisfactory manner.

There are two aspects of tunnel warfare which deserve comment. First, one may ask whether factories producing materials used to construct such structures could be considered to be military objectives. The answer will depend on the type of material. If the question concerns a specific type of concrete support (such as arches or semi-arches), specially produced by the cement plant in question, then it is possible that the plant could be considered to be effectively contributing to military action through the production of very specific structures which enable the construction of the tunnels. One may make a comparison with ball-bearing factories. If the cement plant produced only ready-mixed cement, which could be used in the construction of any tunnels and houses, then the necessary connection between military action and the factory’s production would be hard to find.

Another issue concerns any buildings located over the tunnel. These include the buildings concealing exits and entrances. Whether or not such structures can be considered integral parts of the tunnel is a matter of debate. In my view, the buildings merely shield a tunnel’s exits and entrances, without becoming part of the tunnel. It is possible, though, that such concealment can be viewed as effectively contributing to military action through the “location” criterion, as well as “use” or “purpose”. Their destruction, resulting in damage to the tunnel, or even just exposing the entrance or exit, could be seen as yielding definite military advantage. However, it has been argued that the permanent destruction of the houses above tunnels may be unjustified. This may be resolved by using means and methods which make the tunnels unusable without causing extensive surface damage. Examples include filling up tunnel exits with cement, or using ground-penetrating radar to trace the tunnels.

Conclusions

In conclusion, the right amount of the right kind of information will be an underlying factor in determining whether an object effectively contributes to military action. If such information is not available, causing doubt to arise, then there will be a consequent presumption of civilian character in respect of certain objects normally regarded as civilian, such as residential houses. The loss of protection of civilian status will be contextual and temporary, which - in urban warfare - means a faster and much more intense tempo of changes in circumstances, significantly affecting the legal assessment of targets.