Armed Conflict and Terrorism: Identification of Military Objectives

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In the last 10-12 years, much discussion in the policy and academic communities has been dedicated to the challenges of fighting enemies who purposely hide among civilians. Problems of identifying the enemy and how to treat him if captured have been debated, while military objectives have been defined.

Building on these definitions from different perspectives, I would like to, firstly, examine some of the challenges of identifying objects as either military or civilian in the course of conflicts with non-state groups in densely populated areas. Secondly, I would like to bring the challenges posed by the conduct of terrorist groups to light, analyze how the law could deal with these groups, and how the international community should utilize the law to deal with the challenges presented.

And indeed, one of the most fundamental principles of the law governing armed conflict is the principle of distinction. The prohibition on attacking civilian objects is carried out by the distinction between civilian and military objects. The problem of distinction, however, is rooted in the fact that nowadays hospitals, mosques, churches, schools, and the like are used for military purposes without any communication. The idea is obviously to obfuscate and make it difficult for the other side to figure out what is going on and identify the targets marked. These objects are naturally located in close proximity to civilian populations, which adds to the complication. We can examine the purpose of targeting objects through the military doctrine, which then helps to delve into the legal perspective by analyzing the way we understand the law.

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In the US, targeting is generally defined as "the process of applying combat power to achieve desired objectives within the overall operational plan by destroying, disabling, degrading, or harassing enemy capabilities." One has to, therefore, be able to identify what the objective is in going after a particular target – whether it is to minimize the enemy's ability or make it impossible for him to use something or access supplies, which would affect his ability to fight.

The definition of a military objective has two components. A military objective is something that makes an effective contribution to military actions because of its nature, location, use, or purpose. And its total or partial destruction, capture, or neutralization offers a definite military advantage. When in doubt, one has to presume that the object targeted is civilian. But world media influences how we think about the types of objects that state forces are targeting in the course of conflicts with non-state actors by describing them in vague and unclear ways. For example, in its efforts to combat the PKK, Turkey targeted obvious military targets, such as anti-aircraft defenses, but also vaguer targets, described as rebel positions or facilities harboring the PKK, which later in that same news story were also described as villages. In Mali, the French were said to target the oblique Islamic targets, which I assume were not mosques but what were they? In Sri Lanka's 20-plus year conflict, the LTTE had a naval base in the north of the country that was described as a terrorist stronghold and a rebel-held town, and while the naval base is a defined place, a terrorist stronghold is not. We therefore must be more specific and flesh out the legal definition.

To just briefly look at some of the definition's components, any object directly used by armed forces is inherently military and can easily be listed: weapons, equipment, staff headquarters, fortifications, depots, communications centers, and so on. The ICRC created a list in 1956 of things like broadcast facilities, which could be used for communications purposes, industries for the manufacture of armaments, and other supplies of a military nature that are essential to the conduct of war, like engineering factories, chemical factories, war ministries, and the like.

The idea of military nature, however, is difficult to define specifically when referring to the types of conflicts that involve non-state groups in densely populated areas. These groups are not states and do not necessarily have a governing apparatus. One of the major questions that is regularly

debated in regards to non-state groups and does not necessarily have a clear answer is how to distinguish or assess the relationship between the armed force components and the group's political or social service components. Naturally, the answer to this question is partially dependent on the perspective of the person asking it. It may be a bit broad to assume that everything connected with the enemy's group automatically qualifies as a military target.

Another serious matter is that of legitimacy concerns and the civilians that would be affected by the action. When, for example, infrastructures like transportation or communications networks are targeted to prevent the other side from fighting well, what would the consequences be for civilians, not just in terms of the actual damage made to the local population, but also in terms of winning the civilians' hearts and minds and understanding how they view the action. Legitimacy is very important to consider, especially when the fighting takes place against a group that is located in another state. What would be the operational impact on the civilians who are not initially involved in the fighting, or perhaps do not even remotely support the other group, but just happen to live in the same place where the group has decided to launch its operations?

The law must do a better job of enforcing the obligation to protect civilians in the course of armed conflicts with regard to questions about the types of objects that are used in military operations in densely populated areas. As seen in the media and in this conference, there are a lot of questions about the use of civilian objects like buildings and structures for military purposes. This is, of course, the opposite side of questioning what objects are inherently military and understanding the definition of military objectives.

Another component of the definition of military objective is that it is something that is used for military purposes. When enemy forces, for example, occupy a school and use it as their headquarters or as a place to launch attacks from even though it is inherently civilian, it becomes military and can be targeted. But the occupation of a civilian object in itself and its transformation into a military object is a violation of international law, which prohibits the use of protected objects such as hospitals and cultural or religious properties for military purposes. And yet, this occupation happens all the time and there is insufficient condemnation of this practice, perhaps because there are so many other violations of

international law, so many atrocities going on in conflicts around the world that seem significantly more grave, like those in Syria or Darfur, or the statistics of 10,000 rapes per day in the Congo. So when one uses a hospital as headquarters, it seems much less important to condemn. However, the failure to condemn this action results in the continuation of this practice, which endangers the civilian population. There are patients in that hospital, wounded fighters from both sides, who deserve the protection of international law. Sometimes it isn't a hospital or a mosque, but another type of civilian object like a residential building, a school, or a nursing home. When these objects are used by one side for military purposes, the entire civilian population is in greater danger because it is much harder to carry out the fundamental obligation of protecting civilians during the course of armed conflict.

I would argue then that the failure to condemn the use of civilian objects as military objects sufficiently facilitates that behavior and incentivizes those who do to continue to do so. On a tactical level, using civilian objects as military ones is done to prevent the other side from fulfilling its mission and having to make a very difficult choice of either to refrain from attacking the target that is posing a threat, or to attack the target and place civilians in great danger. The broader strategic effect of this is to cause a great deal of civilian casualties, which are then used to accuse the other side of war crimes and diminish the support given to its war effort. When the United States entered Afghanistan, the number of civilian casualties caused by air strikes on legitimate targets was certainly greater than the American forces expected or desired. This method was used as an attempt to diminish American support and political will to carry out the conflict, as it was argued that US forces were committing war crimes. Another example is that of Israel, where every day questions of international legitimacy are raised. Militants, non-state groups, and terrorist groups manipulate civilians for their own military purposes, and are, to a certain extent, successful at creating an effect.

There is a provision of international law that prohibits locating military objectives in densely populated areas. International law also prohibits using civilians to protect military objectives. And yet, this practice is rarely mentioned in international reports or commissions of inquiry, and the failure to condemn it has a great effect on enabling it to continue. From the operational perspective of the forces fighting against those using civilian

objects as military ones this is obviously extremely problematic, and it certainly affects the law itself. We need to make sure that all aspects of the law are being enforced as effectively as possible, even if they seem to be less dramatic or attention-grabbing than the genocide in Darfur or Rwanda. These smaller atrocities have consequences both operationally and in terms of the human consequences of war.