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**INTERNATIONAL HUMANITARIAN LAW AND TARGETING:
AN AUSTRALIAN APPROACH**

Working Paper prepared by the Australian Delegation

1. Introduction

1. There have been discussions at this year's expert group meetings on what principles of existing international humanitarian law could be relevant in dealing with the explosive remnants of war (ERW) issue.

2. However, there has been very little discussion of what current practices military forces use to implement the law of armed conflict (LOAC) in targeting decisions. This paper sets out the of the LOAC factors relevant to targeting and how the Australian Defence Force (ADF) applies these factors. The aim of this paper is to increase understanding of the practical application of these issues by the ADF.

2. LOAC Factors Relevant to the Targeting Process

3. In the ADF, targeting is not just the practical application of the maxim, maximum force begets maximum destruction. Targeting is a refined military planning process which complements and enhances combat operations rather than acting as a combat inhibitor. The starting point is the legal principles contained in Additional Protocol 1 to the Geneva Conventions of 1949 (GP1). The following points are some of the most important factors which the ADF takes into account when making decisions about attacking military targets.

- **Military Necessity:** The most basic LOAC factor is military necessity, because it provides the legal justification for attacks on legitimate military targets.¹ Military necessity means that a belligerent is justified in applying compulsion and force . . . to that extent necessary for the realisation of the purpose of the war, that is the complete submission of the enemy at the earliest possible moment with the least possible expenditure of men , resources and money², using methods and means of warfare that are not forbidden at international law.

¹ Hampson, F., Military Necessity, as contained in Gutman, R. and Rieff, D., Crimes of War: What the Public Should Know, W.W. Norton and Company, London, 1999, at page 251.

² Rogers, A.P.V., Law on the Battlefield, Manchester University Press, Manchester, 1996 at page 5.

- **Military Objectives:** Against this background only what are termed military objectives or military targets can be attacked. They are limited to those objects that by their nature, location, purpose or use make an effective contribution to [enemy] military action.³ Australia clarified the interpretation of the term “military objectives” in a declaration to GPI at the time of our ratification. Essentially the declaration states that incidental or collateral damage is not a determinant when establishing whether an object constitutes a military objective, (but of course it would be relevant to the means and methods of warfare used to attack a target).
- **Distinction:** In working out the difference between military targets and civilian objects, the definition of civilian is relevant. Broadly speaking, “a civilian object is anything which is not a military objective.”⁴ More specifically “individual civilians, the civilian population and civilian objects shall not be made the object of attack.”⁵
- **Proportionality:** Military forces planning an attack shall “refrain from deciding to launch any 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.”⁶
- **Military Advantage:** This factor requires that the damage caused by attacking a military objective should have a direct bearing to that military objective. Not only has the object, by virtue of its nature, location, purpose or use, to make an effective contribution to enemy military action, but the total or partial destruction, capture or neutralisation [of the object] in the circumstances ruling at the time [must offer] a definite military advantage.⁷ Australia’s declaration clarifies that the military advantage is the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of that attack. Also, the security of attacking forces is a relevant consideration here.
- **Available Information:** For Australia, GPI is qualified further by another declaration to the effect that it is only reasonable when assessing and planning a military attack, for a military commander to consider information, from all sources available to him at the relevant time that a targeting decision is made.
- **Other Factors:** There are some other relevant factors according to GPI that need to be taken into account. These relate to the protection of the natural environment⁸ and protection of cultural objects⁹.

³ GPI Article 52(2), International Committee of the Red Cross, “Protocols Additional to the Geneva Conventions of 12 August 1949,” International Committee of the Red Cross, Geneva, 1977 at page 37.

⁴ GPI Article 52(1) *ibid* at page 37.

⁵ GPI Article 52(1) *ibid* at page 37.

⁶ GPI Article 57(2)(a)(iii) *ibid* at page 41.

⁷ GPI Article 52(2) *ibid* at page 37.

⁸ GPI Article 55(1) *ibid* at page 39.

⁹ GPI Article 53 *ibid* at page 37.

3. Military Planning Process Influences

4. The principles of LOAC, when read in conjunction with Australia's declarations, give the framework for Australian targeting decision making. The next section of this paper looks at the practical application of the LOAC within the military planning process for Australia.

5. The first way that the ADF ensures that military decisions take the LOAC into account is to create a LOAC profile. In the ADF, the legal officer to the military commander will prepare an objective target area analysis or what is commonly referred to as a LOAC profile. The LOAC profile contains an assessment of the target area of military objectives, identified population centres (such as size, nature of built up areas and surrounding countryside), civilian surroundings of the military objectives, existence and nature of important civilian cultural objects (such as schools, memorials, libraries etc), civil defence buildings (such as fire, ambulance, hospitals and police), and works and installations containing dangerous forces and dangerous substances (such as dams, dykes, nuclear generating stations and fuel storage/distribution facilities and petrol stations containing flammable substances).

6. Rules of Engagement (ROE) is the second way Australia ensures that LOAC principles are incorporated in the targeting decision making process. ROE are "directions to operational and tactical commands which delineate the circumstances and limitations under which armed force may be applied by the ADF to achieve military objectives in furtherance of government policy."¹⁰ Government policy will include consideration of any relevant political and diplomatic influences operating at the strategic level of command. In other words, ROE are the parameters for the use of force. It is in the guidance section of the ROE that significant LOAC issues are referred to.

7. After the development of ROE, what is termed the military commander's engagement and retaliation policy is developed. This policy development incorporates an assessment of weapon employment criteria and target analysis. This policy lists the priority targets, target type and available weapon systems whilst considering ROE restrictions/prohibitions and any incidental or collateral damage considerations.

8. Factors considered in conjunction with weapon employment criteria and target analysis are the type of desired effect (such as neutralisation, suppression, surprise or destruction), terrain type and topography, the type of target (such as infantry, armour, logistic or infrastructure), degree of vulnerability (such as dug-in, overhead protection or armoured). Other factors are the target size (such as either area or point), target shape (such as circular, linear or rectangular), secondary effects (such as incendiary, screen or contamination), weather & meteorology, moving or stationary target, civilian/environmental factors (such as population centres, infrastructure, religious/cultural sites, crops, herds and forests and available weapon systems).

9. Some aspects of the rule of proportionality are relevant to engagement and retaliation policy development.¹¹ Clearly it is not reasonable for a military

¹⁰ Australian Defence Force Publication 3 Rules of Engagement Chapter 1 para 1.

¹¹ Sandoz, Yves et al (Eds), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Martinus Nijhoff Publishers, Geneva, 1987, at page 684, para 2212.

commander to take account of factors over which he has no control¹² such as the “frictional” factors in accuracy caused by enemy action.¹³ It is probably undecided whether the rule of proportionality involves an assessment of the risk and effect of weapons malfunctioning or of human error.

10. Finally, Australia provides warnings to civilians under certain circumstances. If the tactical circumstances prevailing at the time permits warnings to be given regarding an impending military attack, such warnings are given.

11. Practical application and knowledge of LOAC in the military planning process is aided by the fact that military personnel, both soldiers and officers, are inculcated continually with LOAC training from the commencement of service in the ADF. LOAC training is structured in four distinct stages. They are at recruit and officer training establishments, in units that have the potential to deploy on military operations, in courses for command and for legal officers.

12. The dynamic interrelationship between LOAC and the military planning process is enhanced by two further factors. First, ROE are distilled for the specific tasks which the soldiers have to perform by the drafting of what are called orders for opening fire (OFOF). These OFOF specifically set out the manner in which soldiers will use force in accordance with LOAC. Second, ROE training vignettes or scenarios are developed. These scenarios are acted out before soldiers deploying on exercise or on operations. They illustrate examples of the application of LOAC on the practical use of force by them relevant to their military mission.

4. Conclusion

13. The interaction between LOAC and the military planning process outlined in this paper shows how Australia determines whether an object, located in an armed conflict, is a legal military target and by what means and methods it will be attacked by our own forces. This process takes place for each target identified to be attacked by the ADF in operations at the strategic and operational levels of command. This information is then passed to the tactical level for implementation, bearing in mind that receipt of real time intelligence at the tactical level may result in aborting, cancelling or suspending a specific attack on a military target.

14. There is no doubt that the standard of care exercised regarding targeting by the Australian Defence Force is far greater than is required by LOAC. In dealing with the issue of explosive remnants of war, a proper understanding of the interaction between military operations and existing LOAC is necessary for informed consideration of how to deal with this issue.

¹² Hampson, F., “Means and Methods of Warfare” as contained in Rowe, P. (Ed) The Gulf War 1990-91 in International and English Law, Sweet and Maxwell, London, 1993, at pp 92-93.

¹³ Hays Parks comments that friction is caused in target acquisition by air defences, deception means such as by camouflage and obscurants, commingling of military objectives and civilian objects, lack of provision of air raid precautions such as shelters and evacuation of civilians.