

SUBJECT: (U) Information Paper – Law of War Restrictions on Targeting Infrastructure

- (U) Under the law of war, civilian objects are protected from attack.
 - (U) U.S. State Dept. says this protection applies to nuclear and conventional conflicts.
 - (U) See Written Statement of the US to the ICJ, dtd 10 Jun 1994.

- (U) When protected objects are used to further military or hostile force objectives, they may lose protected status.
 - (U) Warnings or notice must given to adversary prior to striking a protected object whose status has changed
 - (U) Exceptions to notice requirements (1) for time sensitive targets; or (2) troops in contact with enemy from protected object
 - (U) See CJCSI 3160.01 Encl. C.

- (U) "Military objective" is a legal term: "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, under the circumstances ruling at the time, offers a definitive military advantage."
 - (U) See JP 3-60 App. A. Also see Additional Protocol I to the Geneva Conventions, Art. 52(2)

(b)(1) Sec 1.4(a) / (b)(5)-Attorney Work Product USSC

- (U) "Economic infrastructure" – composed of facilities whose only contribution to the military is the contribution of tax revenue – is normally thought of as civilian. As such, it is normally protected from attack.
 - (U) Targeting such objects is considered lawful when discussed in some DoD law of war desk books and handbooks, but is controversial – the legality of such strikes is challenged internationally by US and Allied law of war expert commentators.
 - (U) Nonetheless, if the US were to plan strikes against such targets, the following factors would need to be determined by intelligence prior to informed decisions from being made:
 - (U) Does the state own the facility and collect all revenue from it?
 - (U) What is the economic impact of the facility?
 - (U) What is the connection between the enemy's military operations and the economic target?
 - (U) What distinguishes it as a tax-generating entity from other civilian objects we are not targeting?
 - (U) What is the military advantage to striking the target?
 - (U) What is the expected damage to civilians and civilian objects (for the proportionality analysis)?

- (U) Analysis should not be based on speculation, but should be driven by intelligence.

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