



~~Attorney Work Product - USSTRATCOM Staff Judge Advocate~~

Targeting

Legal Perspective

Lt Col

(b)(6) USSC

Chief, Operations Law

Office of Staff Judge Advocate

United States Strategic Command



This briefing is classified: UNCLASSIFIED



Existing Targeting Authorities

- **Joint Publication 3-60, Joint Targeting**
- **CJCS 3370.01, Target Development Standards**
- **International law considerations directly affect all phases of the joint targeting cycle**
- **Target planners must understand and be able to apply the basic principles of international law as they relate to targeting**



UNCLASSIFIED

Overview

- Brief Overview of the Targeting Methodology
- Discuss “No Strike” entities

UNCLASSIFIED

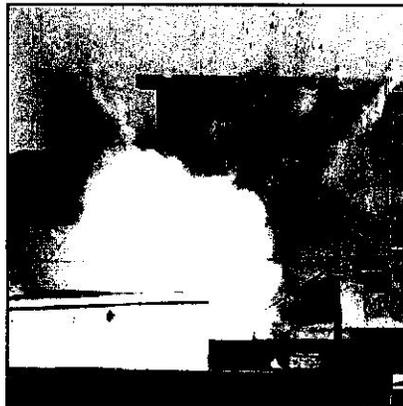
Slide # 3

3



Legal Requirements

- **Military attacks** will only be directed at **Military Objectives** – “objects which by their nature, location, purpose, or use make an effective contribution to the military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”
- Civilian populations and civilian/protected objects may not intentionally be target.





Continued

- Belligerents must distinguish combatants from civilians, military objects from civilian objects.
- Challenge of Dual Use systems:
 - An object used for both civilian and military purposes
 - Civilian object and a military objective cannot co-exist; an object is either one or the other.” Civilian objects can lose their LOW protections.
 - If there is doubt as to the military purpose (*an object making an effective contribution to military action*), then default is to treat as a civilian object.
- Commander must balance military necessity and civilian loss or damage.
 - The anticipated loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained



UNCLASSIFIED

No Strikes Entities

CJCS 3160.01A

UNCLASSIFIED

Slide # 6



No Strike Entities

- No Strike entities (NSEs) are those designated by the appropriate authority upon which ***kinetic or non-kinetic operations are prohibited*** to avoid violating international law, conventions, agreements, or damaging relations with coalition partners and indigenous populations. (*They have protected status.*)
- NSEs are categorized based on their sensitivity: CAT I (most sensitive) and CAT II (less sensitive).
- No Strike facilities are represented by MIDB functional category codes (CATCODEs) for the purpose of intelligence production, target development, and standardized description of each functional category.



Continued

- Generally are not lawful targets under normal circumstances; **however**, *if used to advance military or hostile force objectives, NSEs lose their protected status and may be subject to attack.*
- No Strike categories may be modified by the Secretary of Defense or President as the military or political situation dictates.
- Changes to these categories will be reflected in operation-specific ROE and/or via strategic/operational command guidance.



UNCLASSIFIED

Continued

- NSL approval is a Geographic Combatant Commander responsibility, and the procedures governing NSL approval are a command function.
- Once the NSL is created, CCMDs must verify entities on the NSL are not on the JTL or RTL and vice versa.

UNCLASSIFIED

Slide # 9



UNCLASSIFIED

Continued

- Restricted targets are different from NSEs.
- Restricted targets are valid military objectives while NSEs are not.
- The RTL must be separate and distinct from the NSL.

UNCLASSIFIED

Slide # 10



Economic Targets



UNCLASSIFIED

Continued

- Generally civilian and protected from attack

Exception:

- Permissible to strike if a nexus exists between the civilian object and the adversary's military operations;
- There is a definitive military advantage to be gained

UNCLASSIFIED

Slide # 12



UNCLASSIFIED

Continued

- The military advantage to be gained must out-weigh the anticipated collateral consequences.
- The “military advantaged to be gained” is different from “coercive value”.

Recap:

In order to validate an economic target, at minimum, intelligence must exist to support a nexus between the target and the adversary’s military operations. Additionally, a subjective assessment must conclude that the resulting military advantage gained by severing said nexus out-weighs any anticipated collateral consequences.

UNCLASSIFIED

Slide # 13



Nuclear Targeting



Continued

- Nuclear weapons are lawful weapons.
- Neither international customary law nor treaty law contain a per se prohibition on the use of nuclear weapons as such.
- The United States has long shared the view that the law of war governs the use of nuclear weapons, just as it governs the use of conventional weapons.

Items to Remember



- **Lawful Target**
- **Permissible Under ROE**
- **Approval level**
- **Intelligence to support**
 - Has the case been made?
 - This goes to military necessity and proportionality
- **Proper List (JTL, RTL, NSL)**
- **Conditions for moving target from one list to another**



UNCLASSIFIED

Questions?

UNCLASSIFIED

Slide # 17



Targeting

Backup Slides



Law of War Overview



Law of War

- LOW Legal Bases: Hague Regulations, Geneva Conventions, Treaty Law & International Customary law
- International law considerations directly affect all phases of the joint targeting process
- Target planners must understand and be able to apply the basic principles of international law as they relate to targeting
- The Law of War rests upon the fundamental principles of military necessity, distinction, proportionality and unnecessary suffering, all of which apply to targeting decisions.



LOW – Why Comply?

- **Adherence promotes:**

- A discipline , more effective fighting force
- Support for U.S. operations both at home and abroad
- Early end to hostilities
- Reciprocal adherence to LOW by enemy

- **It is the Law:**

- Violations can create an international incident
- War crimes are serious charges
- War crimes embarrass the US and limit policy options



Why Are We Concerned With LOW?

- Premise of US national security strategy: promote global and regional security and stability in pursuit of peace
- Regulates the use of force and prohibits unlawful conduct
- Armed conflicts, in modern times, are becoming more complex (i.e., civilians, terrorism)
- Directs combat power - target selection
- Legitimacy and moral obligations



LOW – Four Key Principles

- Military necessity
- Proportionality
- Unnecessary suffering
- Distinction



Principle of Military Necessity

- “Measures not forbidden by international law which are indispensable for securing the complete submission of the enemy as soon as possible”
- Justifies the use of force required to accomplish a lawful mission
- **Military attacks** will only be directed at **Military Objectives** – “objects which by their nature, location, purpose, or use make an effective contribution to the military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”



Principle of Distinction

- Belligerents must distinguish combatants from civilians, military objects from civilian objects. Also called Discrimination.
- Prohibits “indiscriminate attacks.”
- Challenge of Dual Use systems:
 - An object used for both civilian and military purposes
 - “As a matter of law, status as a civilian object and a military objective cannot co-exist; an object is either one or the other.” Civilian objects can lose their LOW protections.
 - If there is doubt as to the military purpose (an object making an effective contribution to military action), then default is to treat as a civilian object.



Principle of Proportionality

- The anticipated loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained.
- Commander must balance military necessity and civilian loss or damage.
- Collateral damage is unavoidable at times, but cannot be out of proportion to the military advantage gained. Collateral damage can include indirect effects.
- Just because a target is a lawful military objective, an attack may not meet the proportionality principle.



Principle of Unnecessary Suffering

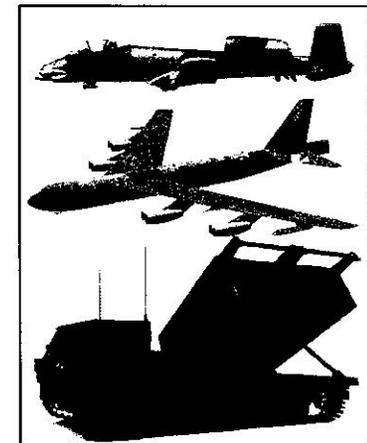
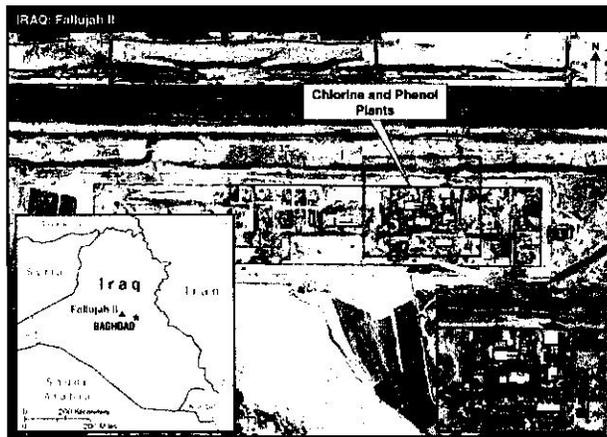
- Military forces should avoid inflicting gratuitous violence on the enemy.
- Military arms (capabilities) should not cause per se suffering, must meet treaty obligations, and must not be used in a manner so as to cause unnecessary suffering.



UNCLASSIFIED

Application to Targeting

- **Is the proposed object a lawful target?**
- **Is it necessary to destroy the target?**
- **What is the appropriate weapon to use?**
- **Will the attack cause disproportionate collateral damage?**



UNCLASSIFIED



Additional Considerations

- **Need to know more than the Laws of War**
- **Critical to understand the below and their application to the targeting process:**
 - Rules of Engagement
 - All targeting decisions must be made in light of the applicable ROE.
 - Targeting Guidance



Target Validation

- **Target Validation** is an operations and legal function.
 - It ensures all vetted targets meet the objectives and criteria outlined in the commander's guidance.
 - Ensures compliance with ROE and LOW.
- A candidate target does not become a "target" until it is validated by the designated validation authority.



Target Validation

JTL vs. RTL

- If a candidate target is assessed as a valid military target and there are no target restrictions, it is removed from the CTL and placed on the joint target list JTL of the appropriate plan.
- If the target validation authority decides there needs to be restrictions placed on the engagement of a valid target, that target will be removed from the CTL and annotated with specifics of the restriction in a Strike Restriction (RSTR) remark in MIDB and placed on a restricted target list (RTL).



Target Validation

JTL vs. RTL

- The nature of the restriction placed upon a target can range from a nuanced limitation on the *when or how a target can be serviced*, to specific prohibition on engaging the target due to *operational, political, and or collateral damage concerns*.
- Regardless, these restrictions do not change the fact that targets on the TRL are valid military targets.



Target Validation

- Combatant command staff, components, subordinates, and task forces select targets from the JTL and/or RTL, and compile target nomination lists (TNL) to nominate targets for engagement.
- TNLs are normally reviewed, combined and prioritized at Joint Targeting Coordination Board (JTCB) to form the Joint Integrated Prioritized Target List (JIPTL).
 - Commands with target validation authority are authorized to build and maintain a JIPTL.

No Strike Entities



- The LOW requires all military personnel to take reasonable precautions to ensure that only military objectives are targeted and to avoid targeting (i.e. attacking) civilian or noncombatant persons or objects.
- NSEs can be both traditional and non-traditional in nature, and consist of objects which are functionally characterized as civilian and/or noncombatant and therefore are protected from attack.
- NSEs are placed on a “No Strike” list (NSL).

No Strike Entities



- NSE's may include but are not limited to *medical, educational, diplomatic, cultural, religious, and historical sites, or other objects* that **do not** by their very nature, location, purpose, or use, effectively contribute to the enemy's war-fighting or war-sustaining capability.
- These entities generally are not lawful targets under normal circumstances; **however**, *if used to advance military or hostile force objectives, NSEs lose their protected status and may be subject to attack.*
- NSEs that lose their status should be removed from the NSL.