

‘Targeting State and Political Leadership in Armed Conflicts’

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Abstract

In targeting decisions related to the political leadership or infrastructure associated with the political leadership of the state it is first necessary to establish who or what is the intended target of an attack. Establishing whether the attack is directed at the people using the objects, or at the objects themselves is vital as the ensuing legal analysis of the status of the target will be different in the context of the people and the objects. This paper shows that, contrary to numerous assertions, one should not assume that individuals vested with the Commander-in-Chief functions can be uniformly regarded as lawful targets either based on their status or on their conduct constituting direct participation in hostilities. It is further argued that there is a relationship between a nature and the scope of the activities of state bodies, which may not only give rise to their direct participation in hostilities but also impact a legal assessment of the objects which such individuals use or intend to use in the furtherance of such functions.

1. Introduction

Whilst much research and debate in the law of armed conflict has, in recent years, concentrated on the issue of when and how people may be subject to lawful attack, far less consideration was given to the question of if, and if, is so, when objects associated with certain human activity can be regarded as lawful military objectives. It may partly be due to the fact that we have a well-established rule in the law of armed conflicts which stipulates that an occurrence of human activity described as ‘military use’ is likely to render used so physical objects as legitimate targets in the

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given circumstances.² Quintessential in such an assessment is an identification of the qualifying ‘use’ and the required temporal scope of such a use. In regards to most objects such an assessment will be rather straight- forward.

However, in relation to some objects such an assessment will prove to be far more challenging. These targets include places and infrastructure associated with the direction of the conduct of armed conflict including the control over armed forces by the civilian political leadership. The assessment of such objects raises some fundamental questions about the way in which they satisfy the criteria attached to the definition of military objectives and specifically its first element of ‘effective contribution to military action’ by ‘use’ or other criteria. Such objects may satisfy the definition of military objectives if they are used by combatants or by other individuals for military purposes. In case of the latter, the ‘activity’- centered analysis, evaluation of activity undertaken in given locations and buildings will determine the object’s satisfaction of the first element of the definition. The question becomes then relevant as to what are the boundaries of activity of civilian political leadership, which can be classed as having military purposes. Similarly, when the objects are used by the combatants for activities related to the conduct of hostilities, such targets are likely to be legitimate. There is also an argument that a use of objects by combatants irrespective of the specific military purposes would equally and in all circumstances render them lawful targets. The question arises, though, whether a similar association of buildings or places with a non-combatant politician on account of their war-fighting powers or functions may be considered sufficient to satisfy the requirements of the test.

Recent conflicts provide a plentitude of the examples in which targets, namely those associated with leadership exercising command and control over armed forces and other functions or powers vital to the conduct of military operations have been attacked.

² ‘In so far as objects are concerned, military objectives are limited to 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 neutralisation, in the circumstances ruling at the time, offers a definite military advantage.’ Art.52.2 API See further discussion of these events in AGNIESZKA JACHEC-NEALE, *THE CONCEPT OF MILITARY OBJECTIVES IN INTERNATIONAL LAW AND TARGETING PRACTICE*, (1st ed. Routledge 2015).

Facilities associated with Saddam Hussein and the Ba'ath Party in Iraq were frequently attacked both in 1991 and in 2003. In 1991 they included a variety of leadership-related national level facilities such as the Ministry of Justice, the Iraqi Central Bank and the Ministry of Industry, of Planning, of Information. In addition to these, in 2003 the Internal Security Agency, the Ba'ath Party headquarters, Presidential Secretariat, Presidential Bunker, Dora Farm, Baghdad Emergency Forces as well as offices and living quarters of Hussein's guards were engaged. During the 1999 NATO intervention in Kosovo Slobodan Milosevic's residence and the Serbian Socialist Party headquarters were subjected to direct and indirect attacks.³ In April 2013 United Nations (UN) forces have fired at the presidential palace, believed to be housing Cote D'Ivoire's president Laurent Gbagbo.⁴

Unprecedented interest in targeting leadership facilities could be, in part, explained by progressive developments in military doctrine in recent years. Enemy leadership and associated infrastructure has become regarded as one of the strategic and operational Centres of Gravity.⁵ This trend in military thinking has been transplanted into operational targeting with numerous targets being attacked during the past few conflicts, as mentioned above. Whilst the targeting and attacking of such objects progressively gain in number, the uncertainties regarding their qualification as military objectives remained.

This paper will address some of the issues pertinent in the consideration of persons and objects used or associated with state and political leadership as lawful targets. The paper will begin by examining the status of state authorities on various levels of authority, both in their individual capacity and as a part of collective bodies, in a light of their position within the Government and the functions allocated to them. Following from there consideration will be given to the determination of the status of the members of political parties from the perspective of the application of principle of distinction. This will complete first part of the text. The second part will focus on physical objects associated with the state and political party leaderships. Here it will

³ Ibidem.

⁴ *Ivory Coast: UN fire on Pro-Gbagbo Camp*, BBC, 21 April 2011

⁵ JACHEC-NEALE, *supra* n 1, see discussion in Chapters 7 and 9

be necessary to introduce the constituent requirements of the definition of military objectives first. This is due to the fact that while both persons and objects can be both deemed military objectives, the definition of military objective will only apply to objects such as infrastructure, buildings, places, equipment and so on. In this part consideration will be given to such objects from the perspective of their relationship to figures of authority in a broader sense of affiliation and in more concrete aspect of actual use by these individuals. This part will explore intricate aspects of the relationship between the position or functions of the persons in leadership positions and the determination of lawfulness of the targets associated with the individuals. This will, however, only be possible after looking at the parameters of the lawfulness of targeting persons in positions of leadership both in the Governmental structures and in the highest ranks of political parties.

2. Targeting leadership

In predominantly democratic political systems the executive, judiciary and legislative organs tend to be vested with various competencies of control over armed forces. Civil control over armed forces is usually seen as an attribute of stable democracy, but it is certainly not confined to such a system. There is no single model of such a setup and the degrees of control vary too. The ultimate constitutional arrangements defining an adopted approach will depend on the political system of the individual state as well as its historical and cultural context.

Civil control over armed forces can take the form of direct or indirect management, command and supervision by state organs. Direct control may involve distinctively 'military' in character decisions or functions related to or affecting the prosecution of armed conflicts. Examples of such competencies may include the decision about deployment and re-deployment of armed forces into theater, decisions about belligerent reprisals and targeting decisions requiring the highest level of authorization. Democratic control and political direction which are linked to the prosecution of hostilities during armed conflicts, can be undertaken by a President, Prime Minister, a whole Cabinet of Ministers or even whole Parliaments. Their position in the military-oriented political structure as well as how directly and effectively are they involved in making decisions about the prosecution of armed

conflicts may define the degree to which they might be regarded as legitimate targets during armed conflicts. In other words, the position of the function holder as well as the scope of the associated function are two key factors subject to this consideration.

In the determination of whether a leader can be seen as a lawful target rests on the application of the fundamental principle of distinction. In line with its precepts, distinction will always have to be made between military objectives and civilians or civilian objects.⁶ ‘Military objectives’ may include both human beings and physical objects recognized as lawful targets. In international armed conflicts, combatants and civilians directly participating in hostilities constitute two categories of persons who would be classed as military objectives. In other words the designation of these categories could be respectively status- and conduct-based. In non-international armed conflicts ‘combatancy’ does not arise but the members of either state’s armed forces or organized armed groups are too considered to be legitimate targets. In addition, a determination of the scope of the individual’s engagement in hostilities needs to be undertaken. The notion of ‘direct participation in hostilities’, inherently difficult to be interpreted and applied in the context of either type of armed conflicts, has received more attention and elaboration in recent years. In 2009, the ICRC has published the *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, which hugely assisted in clarifying several aspects of this notion.⁷ While the *Guidance* does not contain any specific findings in respect to state and political party leaders, it may prove nevertheless useful in shedding light on application of the notion of direct participation also to various figures of authority, whose position or function involves a certain level of engagement in the prosecution of armed conflict.

The following sub- sections of this paper will examine such positions or functions starting with two positions which constitute a formal part of the operational military command chain. First position is that of Commander-in-Chief (CiC) and the second

⁶Principle of distinction finds its relevant expression in Articles 48,50-52 of Additional Protocol I to 1949 Geneva Conventions.

⁷ NILS MELZER, INTERPRETATIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW (ICRC 2009)

one is the position of Minister of Defence (MOD), in some states also referred to as the Defence Secretary or Secretary of State for Defence.

2.1. Commanders-in-Chief

The Commander-in Chief is a nominated civilian head of armed forces. The person in this position is usually vested with exercising supreme command powers. The prevalent practice is to assume that Heads of the States are also holders of CiC functions but this can be misleading. In Germany, the Head of the State is the President but the CiC holder is the Federal Minister of Defence, when in peacetime and the Federal Chancellor when in a state of war.⁸

In some states, the position of CiC is purely ceremonial or figurative and the actual command over the armed forces is undertaken by someone else. It is very important to make a distinction between *de jure* and *de facto* holders of the CiC position. The position of *de jure* holder of the command authority who delegates this authority or exercises it on the advice of some other organ will be, in practice, purely nominal. In this situation, the other executive organs, *de facto* CiC exercise the supreme command competences. In a parliamentary democracy this could be the Prime Minister and/or the Cabinet led by the Prime Minister. In a presidential system this will be the President and in a semi-presidential democracy it could be either the President or the Prime Minister. It may well be that *de jure* CiC may appoint the CiC nominated by the President or Prime Minister to discharge the actual supreme command functions. UK's monarch, Queen Elizabeth II, for example, is the nominated CiC in the UK, Australia and Canada and is regarded as 'Head of the Armed Forces' and 'ultimate authority', to whom military personnel swear allegiance. However, a long-standing constitutional convention, under the exercise of the Royal Prerogative powers, has *de facto* bestowed on the Prime Minister, with a support of the Cabinet, an authority to make the key decisions on the use of the armed forces.⁹ In Australia, the same powers are *de jure* delegated to the Governor General as the Queen's representative, however,

⁸ AGNIESZKA JACHEC-NEALE, THE CONCEPT OF MILITARY OBJECTIVES IN INTERNATIONAL LAW AND TARGETING PRACTICE 60 (1st ed. Routledge 2015).

⁹ GAIL BARTLET & MICHAEL EVERETT, THE ROYAL PREROGATIVE 5, 9 (The House of Commons Library Briefing Paper No. 03861 17 August 2017)

in practice, CiC functions are executed by the Cabinet chaired by the Prime Minister. This implies *de facto* collective exercise of CiC functions, which is not an unusual arrangement. Sweden has a similar conventional arrangement, in which CiC functions are not undertaken by the Head of the State, namely a non-executive monarch, but by the Cabinet lead by the Prime Minister but then delegated to the highest-ranking military professional.¹⁰

In China, Article 93 of the Constitution of the People's Republic of China conferred the authority to direct Armed Forces onto the Central Military Commission. Separately to that the President, as Head of State, has been traditionally granted powers to issue orders of general mobilization or to proclaim a state of war.¹¹ Since 1993 the standard practice has been that the same person holds both positions but only recently it seems that the President fully has taken over the role and the associated powers of CiC.¹² This would indicate a shift to a similar setup to the one in the United States where the CiC, the President, is the supreme commander in the operational chain of command whilst the Secretary of Defense is second in command.¹³ Noteworthy, the Chairman of the Joint Chiefs of Staff *de jure* assist both the President and the Secretary of Defense in the exercise of their command functions but it is unclear how much of these are, in practice, *de facto* executed by the Chairman of the Joint Chiefs of Staff.

Scholarly sources in the Laws of Armed Conflicts (LOAC) field often indicate that CiCs are considered military objectives.¹⁴ One source even gives an example of the

¹⁰ The Constitution of the Kingdom of Sweden, The Instrument of Government (SFS nr: 1974:152), Article 5 in Chapter, Article 1 in Chapter 5 and Article 9 in Chapter 10; SWEDISH ARMED FORCES, STRUCTURE AND RESPONSIBILITY, available here: <http://www.forsvarsmakten.se/en/about/organisation/organisational-structure-and-responsibilities/>

¹¹ Constitution of the People's Republic of China (Full text after amendment on March 14, 2004), Articles 80 and 93, THE NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, available here: http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372968.htm

¹² Ankit Panda, *Xi Jinping Presides Over Massive PLA Parade as Commander-in-Chief*, THE DIPLOMAT (July 31, 2017), <https://thediplomat.com/2017/07/xi-jinping-presides-over-massive-pla-parade-as-commander-in-chief/>; John Sudworth, *China's Xi Jinping takes commander in chief military title*, BBC NEWS (Apr. 21, 2016), <http://www.bbc.co.uk/news/world-asia-china-36101140>

¹³ H.R.3622 - Goldwater-Nichols Department of Defense Reorganization Act of 1986, Public Law No: 99-433, 10 USC 111 note.

¹⁴ YORAM DINSTEIN, THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT 107 (2d ed. Cambridge University Press 2010).

1993 killing of then Sri Lankan President Ranasinghe Premadasa which is said to have been compliant with the principle of distinction given both *de jure* position and *de facto* exercise of CiC functions by the President.¹⁵ The question arises whether such an attack would have been lawful on account of the President's legal status as a combatant due to the CiC position being a part of the operational military chain of command. For the CiC to be regarded as a combatant in international armed conflict, the CiC would have to be, at the very least, a member of the armed forces within the responsible command structure.¹⁶ In some sources members of armed forces are defined as those who are 'actually serving' in such forces.¹⁷ The ICRC *Guidance* suggests referring to the domestic law arrangements in regards to armed forces membership expressed via a 'formal integration into permanent units distinguishable by uniforms, insignia and equipment'.¹⁸ The US Department of Defense recent LOAC Manual stipulates that whilst the CiC is not a member of the armed forces, it is still targetable if he or she is responsible for operational command.¹⁹ This is indicative of the US taking a second approach, in which the function rather than combatant status associated with the position of CiC is more relevant.²⁰ This could be contrasted with clearly uniformed pictures of China's President Xi Jinping wearing military uniform and insignia indicating that China's CiC is likely to actually be considered a member of the armed forces and thus a combatant in the event of international armed conflict.

It has to be noted that if, as per the ICRC *Guidance* recommendation, it is up to each and individual state to define whether the CiC is a member of the armed forces then it may be the case that state practice should not be assumed to be uniform in this sphere.

¹⁵ SANDESH SIVAKUMARAN, *THE LAW OF NON-INTERNATIONAL ARMED CONFLICT* 366 (1st ed. Oxford University Press 2012).

¹⁶ Article 43 Additional Protocol I in relation to Art. 4A of 1949 GENEVA CONVENTION III; DINSTEIN, *SUPRA* N 14, 33

¹⁷ *IBIDEM*.

¹⁸ NILS MELZER, *THE INTERPRETATIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW* 25 (ICRC 2009).[hereinafter *THE GUIDANCE*]

¹⁹ U.S.DEPARTMENT OF DEFENSE, *LAW OF WAR MANUAL* ¶ 5.7.4 (2015, updated 2016) [hereinafter *DOD MANUAL*]

²⁰ US interprets notion of DPH broader than it is reflected in ICRC *Guidance*. US DOD LOAC Manual outlines in general terms that DPH includes acts that 'effectively or substantially' contribute to an adversary's ability to conduct or sustain combat operations'. This way defined DPH will encompass a wide spectrum of CiC functions. *DOD MANUAL* ¶ 5.7.4 and ¶ 5.8.3.1

Furthermore, it may be vitally important too for the state that wishes to launch an attack on the enemy's individual to actually know what the adversary's domestic regulation is in this context. As a combatant he or she can be targeted anytime and anywhere.²¹ It is not clear whether in the situation where a nominated CiC is *de jure* viewed as member as member of the armed forces and thus combatant, then *de facto* CiC executive/s should be also be afforded the same status.

If, on the contrary, the CiC holder is deemed civilian not incorporated into the armed forces under domestic law, then their involvement in the decisions related to the prosecution of armed conflict will have to be scrutinized under the requirement of 'direct participation in hostilities'.²² In this context, exercising effective or actual operational command over armed forces seems to fully satisfy the definition of the concept provided in the commentary to the Article 43 commentary whereby such participation involves 'acts of war, which by their nature or purpose are likely to cause actual harm to the enemy armed forces'.²³ Depending on the activity at stake, it seems plausible that such operational command can, in theory, satisfy more detailed elements of the concept of direct participation in hostilities (DPH) espoused in the ICRC *Guidance* including the threshold of harm and belligerent nexus. Admittedly, there may a problem with satisfying the 'direct causation' requirement, which the ICRC *Guidance* interprets very literally and by and large links it with the actual involvement in the combat.²⁴ It further states that a distinction has to be made between acts merely facilitating the 'creation of capacity to cause harm' in general and this means indirect participation such certain logistical support or working in the a munitions factory will not result in a loss of civilian protection.²⁵ One could say that some CiC decisions may be considered to fall into such defined indirect participation, such as the deployment of armed forces into a theatre of operations and some other

²¹ DINSTEIN, SUPRA N 14, 34

²² DOD MANUAL ¶ 5.7.4

²³ Y. SANDOZ, C.SWINIARSKI & B. ZIMMERMANN(EDS), COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVAN CONVENTIONS OF 12 AUGUST 1949, par. 1679 (ICRC 1987)

²⁴ THE GUIDANCE 48-55

²⁵ THE GUIDANCE 53. This finding has been criticized by W. Boothby indicating that some acts can be viewed as indirect participation but in practice the same acts can lead directly to harmful acts for example training or equipping members of armed forces may constitute an integral part of the harmful act. WILLIAM H. BOOTHBY, THE LAW OF TARGETING 157-58(1st ed. Oxford University Press 2012).

decisions may be closer to more direct causation such as issuing direct order to attack leadership of the enemy armed forces.²⁶ What is clear is that CiC functions are quite unlikely to involve literate combat engagement on the battlefield. Two consequences follow from there. First, there could be CiC holders that cannot be regarded as *prima facie* lawful targets and only as protected civilian because their domestic law does not recognize them as members of the armed forces and that their *de facto* scope of authority under CiC competencies cannot, in substantive terms, satisfy the ‘direct causation’ element of DPH.²⁷ Secondly, where the scope of the CiC is not limited only to functions broadly related to the war effort and capacity-creation, then a determination of the CiC under DPH has to be undertaken on a case-by case analysis, which will also have a temporal limitation of such a CiC being targetable only ‘for such time’ as they engage in the acts constituting DPH. Consequently, a narrow interpretation of the ‘direct causation’ and the scope of the acts falling within DPH notion, as proposed in the ICRC *Guidance*, may lead to a conclusion that some holders of CiC functions may not be lawfully targetable based solely on the strength of these functions. Contrary to numerous assertions in LOAC sources, one should not assume that individuals vested with the CiC functions can be uniformly regarded as lawful targets either based on their status or on their conduct constituting DPH.

A separate question arises in the context of the collective exercise of CiC authority. If one was to assume for a moment that the CiC was considered as a member of armed forces, would this mean that all members of the Cabinet, vested with CiC authority, would be too considered combatants in the contexts of international armed conflicts and as members of the armed forces, targetable also in non-international armed conflicts? Or would it suffice that they are members of the Cabinet, an organ as a whole and thus in the position suggesting a collective sharing of the same powers? In United Kingdom, for example, the Cabinet is a collective decision-making body comprising the Prime Minister and over twenty cabinet Ministers. Cabinet Ministers

²⁶ Similarly DOD MANUAL¶ 5.7.4.

²⁷ One way of addressing the ‘membership in armed forces’ problem might be through an adaption of a ‘functional membership’ approach applied by US in the context of organized armed groups.(DOD MANUAL¶ 5.7.3.2) Accordingly, in situations where CiC position is incorporated into operational military chain of command but not regarded as a formal member of armed forces then CiC authority holder could be considered to a functional member based on the CiC functions relating to conduct of hostilities.

are mostly heads of departments, known as Secretaries of States, each with a specific portfolio. All Secretaries of State jointly hold the same office and unlike the Cabinet, as a whole are, are vested with legal powers. All members are bound to support Cabinet decisions even if they were not present.²⁸ This concerns decisions about belligerent reprisals, which do link directly to the conduct of hostilities.²⁹

In the situation where the domestic law does not recognize or does not stipulate at all whether the CiC is a member of armed forces, then each member of the Cabinet will be subject to scrutiny for DPH. The question remains whether a member of the Cabinet who is not present at the Cabinet meeting that is involved in acts that may be interpreted to satisfy DPH such as the vetting of a high-value but high-risk enemy target, could still be regarded as DPH. Clearly these members who are present at the meeting and involved in the act in question can be regarded as military objectives but only for such time as they are involved in this act. The non-present members of the Cabinet should not be seen as lawful targets as whilst they may be members of a collective body, they cannot be considered to DPH at that time. In practical terms, this means also that once the Cabinet moves to discussion of other matters of the day the present Ministers are no longer considered DPH and thus regain their civilian protection.

2.2. Ministers of Defence / Defense Secretaries

The Ministry of Defence is the Government department and highest level of military headquarters controlled by a Minister of Defence or equivalent. Minister of Defence acts as both a political and administrative organ, dealing with administrative, financial and personnel affairs of armed forces and normally directs defence planning and operational strategy. As part of these competencies Minister of Defence may issue direct orders to armed forces, including possibly orders regarding the conduct of hostilities. Typically the head of a Ministry of Defense will be a civil, political figure

²⁸ OONAGH GAY&THOMAS POWELL, THE COLLECTIVE REONSIBILITY OF THE MINISTERS- AN OUTLINE OF ISSUES, Briefing Paper 04/02, 11-12 (House of Commons Library 2004)

²⁹ UNITED KINGDOM MINISTRY OF DEFENCE, THE JOINT SERVICE MANUAL OF THE LAW OF ARMED CONFLICT, Joint Service Publication 383, (2004) ¶16.19.2 [hereinafter UK MANUAL]

but invariably the post can also be held by a military professional. Dawoud Rajha, Syrian Defense Minister, killed in July 2012 during the early stages of the Syrian internal armed conflict, was a former chief of staff of the Syrian Arab Army and the land forces of the Syrian military prior to the appointment in 2011.³⁰

Following a logic of analysis of the legal position of the CiC, it is reasonable to observe that unless Ministers with a Defence portfolio can be considered as members of the armed forces and a part of the operational military chain of command with authority to make specific decisions that are directly affecting combat operations, then the lawfulness of targeting them will be limited to ad hoc, limited in time occasion when they find themselves involved in acts that satisfy the conditions of DPH as described in the ICRC *Guidance*. The US may arrive to a different conclusion given its take on the notion of DPH. Accordingly, as clearly contributing to operational combat, the US Secretary of State of Defense would be targetable. Such a determination will become inherently much more difficult in a state that do not define clearly the position of Ministers of Defense in the military chain of command. Ascertaining the position of other cabinet Ministers may too be complicated especially in the context of non-international armed conflicts.

2.3. *Members of the Government*

Other Ministers in the Government, such as the Ministers of Interior, the Ministers of Justice or those responsible for Intelligence would normally be presumed to be civilians, unless under the domestic law they would be integrated into armed forces.³¹ During a conflict in Darfur, the police was fighting alongside the armed forces and thus the Darfur Commission questioned civilian status of the police.³² They may lose this protection when and for such time as they directly participate in the hostilities. Whilst this holds true in armed conflicts both of international and non-international

³⁰ OLGA KHAZAN & BENJAMIN GOTTLIEB, *Who were Dawoud Rajha and Asef Shawkat?*, The WASHINGTON POST, 18 July 2012, https://www.washingtonpost.com/blogs/blogpost/post/who-were-dawoud-rajha-and-asef-shawkat/2012/07/18/gJQAkGVVtW_blog.html?utm_term=.73d4026e1904

³¹ See also a discussion above related to the collective exercise of the CiC functions.

³² REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY ON DARFUR TO THE SECRETARY GENERAL, S/2005/60, 1 FEB. 2005, ¶422

character, during internal conflict the organized groups not always perceive such Ministers as civilians and respect their civilian immunity. Throughout the conflict Revolutionary Armed Forces of Colombia (FARC) claimed that under the Colombian Constitution both police and armed forces are defined as Security Forces under the control of Ministry of Defence.³³ Similarly, both the National Democratic Front in Philippines and the Kosovo Liberation Army viewed the state's police units as constituting security forces and thus possibly lawful targets.³⁴ However, this is not a view, which can be supported in the context of legal analysis. Unless police forces or intelligence agencies are integrated into the armed forces of the state they remain civilians. Individual members of the police or intelligence agencies can be targetable if and for such time they DPH. The same applies to other ministers, such a Minister of Interior or Minister of Intelligence.

The Government may create collective organs dedicated to specific matters. One such departmental committee in the UK is the Defence Council.³⁵ The Defence Council was established in 1964 under the Defence (Transfer of Functions) Act 1964 and was vested with functions of previously existing bodies including the Admiralty, the War Office, the Air Ministry, the Ministry of Aviation.³⁶ It comprises both political executives and military professionals under the lead of the Secretary of State for Defence.³⁷ Under Royal prerogative powers and through 'Letters Patent', the Queen and the Parliament via Acts of Parliament empowered the Council to command over the armed forces. Defence Council powers are delegated further down to three service boards though it is clear that decisions to commit the armed forces to operations, allocation of resources and setting out strategic limits on using force rest with the Cabinet.³⁸ Determination of the status of the members of such Council must be always be undertaken on an individual basis. Military members of the Council will

³³ SANDESH SIVAKUMARAN, *THE LAW OF NON-INTERNATIONAL ARMED CONFLICT* 357, 368 (1st ed. Oxford University Press 2012).

³⁴ *Ibidem*, also in DOD MANUAL ¶ 5.7.4.

³⁵ Noteworthy, Defence Council is not the same as National Security Council, which Cabinet's level collective committee a forum for discussion of matters of national security. The latter is largely concerned with defence strategy, intelligence coordination and other matters related to national security.

³⁶ *The London Gazette*, No. 43277. 20 March 1964. 2545.

³⁷ Ministry of Defence, *HOW DEFENCE WORKS*, 1 Dec. 2015, ¶ 22, 29-30 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/484941/20151208HowDefenceWorksV4_2.pdf

³⁸ *Ibidem*, ¶ 72

satisfy the requirement of combatancy in international armed conflicts and equally be military objectives in non-international armed conflicts in both situations based on their membership in the armed forces. Political members of such Council will remain civilians who can be only targeted if the acts they are involved in acts that meet the criteria for DPH, particularly the previously mentioned element of ‘direct causation’ and only for such time as they DPH. In practice some of their acts, specifically related to the conduct of operations, are more likely to fit this criterion due to the very nature of the vested powers. Having said that one must not forget all the potential caveats arising in relation to an interpretation of a scope of DPH and the exercising of powers by collective Governmental bodies.

2.4. Political Party leaders

Last consideration in the context of state leadership must be made in relation to political party leaders. So far the discussion of the various competencies related to the exercise of executive authority shown that there may be instances in which civilians in charge of command over the armed forces or oversight of the conduct of hostilities might be deemed lawful targets depending on the state’s constitutional setup, clarity of domestic legislation and/or individual circumstances. This is very much different from exercising political party functions and ascertaining one’s legal status based on these functions. In general the members of political parties must be classed as civilians, though some of these members may indeed be linked to potential military wings of these parties. In relation to the latter, there may some situations in which it would be possible to regard such an individual’s acts in the context to the relationship to organized armed groups constituting military wings of the political parties as acts of direct participation in hostilities.

In single political party systems ascertaining such a relationship may be immensely difficult. During the military operations against Iraq in 1990-91 and 2003, for instance, an issue of the status of members of the Iraqi Ba’ath party became pertinent. Greenwood argued that the combination of the highly military nature of the Iraqi government, and the close integration of the Ba’ath party in government structures,

meant it was justifiable to see them as military objectives.³⁹ While they may be lawful targets it would not necessarily be based on their combatant status applicable to the whole party as whole but rather on an individual conduct-based assessment in light of the DPH criteria. Reportedly, captured Ba'ath party members were not seen as combatants and were not granted POW status.⁴⁰

More recently, during the 2008-09 Israeli offensive in Gaza, the association of the Palestinian governing authorities with the Hamas party was raised in the context of targeting. It was argued that the Palestinian Ministry of Interior, for example, oversaw the Hamas-controlled governmental forces in Gaza.⁴¹ Others have contested this position.⁴² In practice untangling such relationships, especially in internal armed conflicts, is likely to be very difficult. What is clear is that designating all members of political parties as military objectives based on their general affiliation to political party is wrong. Membership in political party does not equate to a membership of in organized armed groups but these two may sometimes overlap. Determination of the individual members' combat-related activity ought to be undertaken on a case-by-case basis, whether it involves membership in an organized armed group, for those who do subscribe to this concept: continuous combat function and/or DPH activity in *sensu stricto*.

Given this level of uncertainty around the factual circumstances of the relationship and possibly legal qualification of persons in this area, a caution is advised in the future analysis. It may be that a presumption of civilian status from Article 50 (1) of Additional Protocol I should be applied more frequently in cases involving individual members of political parties, especially in armed conflicts where delineation of the political and militant party activities may be difficult.

³⁹ C. Greenwood 'Customary International Law and the First Geneva Protocol of 1977 in the Gulf Conflict' in P. Rowe, ed., *The Gulf War 1990-1991 in International and English Law*, Routledge, London 1993, at 63

⁴⁰ GIULIO BARTOLINI, *Air Operations against Iraq (1991 and 2003)* IN NATALINO RONZITTI & GABRIELA VENTURINI (Eds), *CURRENT ISSUES IN INTERNATIONAL HUMANITARIAN LAW OF AIR WARFARE* 241 (Eleven International Publishing 2005)

⁴¹ Laurie R. Blank, *The Application of IHL in the Goldstone Report: Critical Commentary*, 12 *YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW*, 359 (2009). This position, however, has been challenged for an absence of supporting evidence.

⁴² Z. Yihdego, *Gaza Mission: Implications for International Humanitarian Law and UN Fact-Finding*, 13 *MELBOURNE JOURNAL OF INTERNATIONAL LAW* 24 (2012)

3. Targeting infrastructure associated with leadership

Determination of the lawfulness of objects associated with state and political party leadership is governed by a different legal standard than one applied to persons. The relevant standard applied in the context of objects involves the application of a definition of military objectives, which will be introduced next.

3.1. Requirements of the Definition of Military Objectives

The definition of military objectives is found in Article 52.2 of Additional Protocol I. It consists of two main elements namely: 1.) an *effective contribution to military action*; and 2.) an *offer of definite military advantage*.⁴³ The first element relates to the characteristics of the object, which describe its contribution to military action. Such contribution can be achieved through four criteria: *nature, location, use* and *purpose*. Three out of four of the criteria, namely *location, use* and *purpose*, are contextual, which means their satisfaction will depend on the circumstances. The fourth criterion, *nature*, refers to an inherent characteristic of the object, which will always be the same.⁴⁴ Effective contribution to military action denotes the object's role in connection to military action.

The first element of the definition is connected to the second, *definite military advantage* offered by *destruction, capture or neutralization* of the object. This connection occurs in a way, which not only appears to require both elements at the same time, but also, and more importantly, guarantees that the first element will always have to be fulfilled.⁴⁵ This is an important feature of this relationship, with far-reaching practical consequences. Whilst there are objects, which can easily satisfy the second element of the definition without satisfying the first, one would struggle to find an object that satisfies the first element but fails to fulfill the second.⁴⁶

⁴³ For extensive discussion of the definition of military objectives see JACHEC-NEALE, *supra* n 1.

⁴⁴ JACHEC-NEALE, *supra* n 1, Chapter 3, sect 3.1

⁴⁵ *Ibidem*, Chapter 5, section 5.1.

⁴⁶ JACHEC-NEALE, *supra* n 1, 145

The first criterion from the four specified in the first element of the definition is *nature*. The *nature* criterion concerns an intrinsic character of the object, which makes effective contribution to military action. What is it about the object that makes its contribution uniquely military in character? To satisfy this requirement, the object needs to possess exclusively military features or qualities, which distinguish it from other objects. Such qualities – which relate to its intended application, its functions must be connected to the conduct of military operations.⁴⁷

In reality target's nature cannot change, as it is its inherent feature. However, in some circumstances legal effects flowing from the *nature* criterion may be suspended, especially when an object ceases to operate in the way that it is required by its nature and serves an exclusively civilian purpose.⁴⁸ Consequently, the *nature* criterion can no longer be a determining factor for an assessment of the first element of the definition, and other criteria will have to be considered.

The most relevant criterion to this consideration is *use*. *Use* criterion in the definition of military objectives denominates the current or present function of an object, whether inside or outside its normal or habitual use and practice which can be habitual and repeated or random and perhaps even accidental.⁴⁹ Unlawful use or abuse of the object will also be relevant in this determination. In principle, however, the required use will occur outside or in addition to the normal civilian function of the object. The law does not specify its volume, intensity or particular kind, with the exception that by such use the target should effectively contribute to the military action.

Military use is normally understood to mean that it has to serve military purposes for object to satisfy the first element of the test. It is often assumed that use of the object

⁴⁷ Some may be tempted to infer that if the object is identified as contributing by its *nature* then it does not have or need a specific nexus to hostilities. Every object needs to have a specific nexus to military operations to satisfy the first element of the definition. In the case of weapons or ammunition supplies, the nexus to hostilities is clear as it is their very *nature* through which such a nexus is established. JACHEC-NEALE, *supra* n 1, 46-51

⁴⁸ A change in nature can occur only when the object is so fundamentally and radically transformed that it no longer retains the character by which it previously contributed to military action. In other words, the object would have to cease to exist in its current nature, and be resurrected as something else.

⁴⁹ JACHEC-NEALE, *supra* n 1, 66-74

undertaken by a combatant would render this object a military objective. It is important to stress that even use by a combatant must make an effective contribution to military action.⁵⁰ This may be the case when a computer infrastructure is used for purposes unrelated or indirectly related to a conduct of hostilities.⁵¹

The second relevant criterion, albeit less prominent than use in this context, is *purpose*. *Purpose* criterion commonly refers to intended future use of the object although its other meaning, that of the reason of the object's existence or creation, might be relevant in certain circumstances.⁵² In essence the requirement is that the attacker obtains an information suggesting that an object, which may or may not have been designed for military purpose, but currently not used as such, is rather likely to be used for military purposes in the near future. Sometimes this may be inferred from the past practice, which must show a frequent and consistent pattern and not ad hoc or occasional activity. Unlike with the *use* criterion, such use will not have to occur for the object to satisfy the first element of the definition. Like the *use* criterion, however, the purpose requirement must entail a pertinent activity, albeit a prospect, which is related to conduct of hostilities.

In the context of the assessment of the objects during the targeting process in armed conflict, it is vital to remember that such an assessment will be undertaken *ex ante* of the attack, in *circumstances ruling at the time*.⁵³ This means it will be done based on the information available to the attacker prior to the attack, often during the planning stage, and not in hindsight. Whilst this information might be verified shortly before the actual engagement it cannot be expected to include information that came to light after the object got engaged.⁵⁴

⁵⁰ As noted in the recent *Tallinn Manual on The International Law Applicable to Cyber Warfare* use of computers, for example, by armed forces for non-military activity may not necessarily be regarded as satisfying the definition. M.N. SCHMITT (Ed.), TALLINN MANUAL ON INTERNATIONAL LAW APPLICABLE TO CYBER WARFARE, 133 (Cambridge University Press 2013) .

⁵¹ Even if the computers were used to access civilian email software, a transfer of 'militarily useful information' through such software would render such infrastructure legitimate targets .Ibidem.

⁵² JACHEC-NEALE, *supra* n 1, 75-80

⁵³ JACHEC-NEALE, *supra* n 1, 136-144

⁵⁴ See Art.57.2 (a)(i) Additional Protocol I requirement regarding verification of military objectives before the attack.

Having outlined the legal requirements let us explore whether infrastructure associated with state organs, individuals or political leaders, whose work is vital to the prosecution of armed conflict and who may exercise supreme command over armed forces, could be regarded as satisfying the requirements of the definition of military objectives. There is a caveat to be made before further analysis ensues. When considering objects associated with the direction of the conduct of armed conflict and control over armed forces in a post- attack analysis, it is not always clear if, and to what extent, buildings, facilities or other physical objects linked to the political leadership are in fact targeted for their own contribution. It may be that such buildings and places are damaged as a result of an attack on the people in them and therefore essentially subject to an assessment of the collateral damage.

There are two fundamental ways in which infrastructure associated with the leadership can be analyzed in the context of military objectives. First, some of these objects may satisfy the *nature* condition of the first element of the definition. This will exclusively be applied to Ministries of Defence (MoD) on account of their own military/ defence-related functions. Second, any other facilities related to leadership may comply with the *use of the purpose* criterion. Beyond these two situations, the question remains whether any such targets can be lawful targets based on general affiliation to persons whose position or functions relate to the conduct of hostilities. All three will be discussed in turn, starting with an evaluation of status of Ministries of Defence.

3.2. Functions of the Buildings: Ministry of Defence

Where the buildings themselves are targeted, this may be because of their sole functions on account of the activity undertaken in them or association with people whose functions are relevant to the conduct of war. One specific building that is often considered to satisfy the definition of military objectives on account of its functions such as the supreme command and control centre is an MoD. MoD, being a place where the most senior military leadership performs the highest defence functions, is viewed as an object satisfying the *nature* criterion in the definition on account of its

functions as an institution.⁵⁵

If an MoD is viewed as a military objective because of its nature, would this also hold true if an MoD has departments dealing exclusively with civilian functions? One source gives the example of the Swiss Federal Department of Defence, Civil Protection and Sports, whose civil protection and sports sections are dedicated exclusively to civilian purposes.⁵⁶ The setup of the Swiss Department is unusual in that it combines governmental departments dealing with strictly civilian issues with other ones dealing with military functions.

MoDs normally act as both political and administrative organs, dealing with the administrative, financial and personnel affairs of the armed forces. They have the highest central defence command (General Staff), responsible for commanding troops.⁵⁷ This means that, unlike facilities associated exclusively with the Defence sector of this Department, the Swiss Federal Department of Defence, Civil Protection and Sports, as a whole cannot be regarded as military in nature, though such infrastructure is likely to satisfy the use criterion (dual use).⁵⁸

If an MoD is generally regarded as of a military in nature, then a question arises regarding infrastructure associated with other state executive organs and other political figures, whose work is vital to the prosecution of armed conflict and who may exercise the supreme command over armed forces. The infrastructure of other governmental departments, whether central or local, which competencies are not linked to functions of military character, such as the Ministry of Interior or

⁵⁵ In 1956, the ICRC Draft Rules had already listed 'War Ministries' such as a Ministry of Navy, Army, Air Force, National Defence or Supplies, and other 'organs for the direction and administration of military operations' as possible military objectives. Par. 1 Sec.3 of the annex to *Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War*,. Also in The recently-published Air and Missile Warfare Manual asserted in Rule 22(a) that Ministries of Defence were objects which would effectively contribute to military action by their nature, at all times and in all circumstances. Rule 22(a) Rule 22 (a), MANUAL On INTERNATIONAL LAW APPLICABLE TO AIR AND MISSILE WARFARE ,Program on Humanitarian Policy and Conflict Research, Harvard University, 15 May 2009. [hereinafter: AMW MANUAL]

⁵⁶ AMW Manual, supra n 6, Commentary to Rule 22 (a), par.2.

⁵⁷ Article 58 (b) Additional Protocol I may be a relevant consideration that Swiss government may take into account in the future.

⁵⁸ Objects performing both military and civilian functions could not be considered legitimate targets due to their nature, instead such objects will be judged according to their *use or purpose*.

Intelligence agencies, cannot be regarded as military objectives under the *nature* criterion.⁵⁹ During an armed conflict, they may be used for military purposes, even exclusively so, but their nature is not what will guide a legal analysis of their status. This will be explored next.

3.3. *Use/Purpose: Objects used or intended to be used by CiCs, Defence Secretaries, other members of the Government or members of political parties*

Most commonly, when infrastructure is targeted because of an association with human activity it is because it used in a manner that effectively contributes to military action. This includes, for example, a house used as an ammunition store. Similarly a hotel providing accommodation for combatants is seen as being used or likely to be used in the future for purposes closely related to military action and thus considered a lawful target. As such, it is the object's qualities that enable the activity, which serves military purposes and consequently contributes to the military action. While the object's contribution is linked to what people do and/or are likely to do in the future, if the *purpose* criterion is concerned, its basis is the capacity or ability to facilitate the human activity. Importantly, the nature of the human activity in itself must have a belligerent nexus.

It is worth noting that, *in principle*, it does not matter who undertakes the activity so long the activity itself serves the military purposes. After all, it is irrelevant who brings and leaves the ammunition at the house; it is the fact that the ammunition is being stored at the house is what makes the house a military objective. In the hotel's example, it is the facilities' function to provide a place to stay for a member of the armed forces that is viewed as serving military purposes. Consequently a hotel can be targeted even if the combatant is not present at the premises at that time, given that her or his belongings are at the premises or the booking has been made – all also constituting indicators also of the *purpose* criterion. Similarly, if the hotel is used or is intended to be used in the future by a directly participating in hostilities civilian who

⁵⁹ A. P. V. ROGERS, LAW ON THE BATTLEFIELD 123 (3d ed. Manchester University Press 2012). *a contrario* to DINSTEIN, *supra* n 14, 97.

is a member of an organized armed group and possibly, to those who subscribe to the notion, also understood to hold a *continuous combat function*, then the hotel can be viewed as satisfying the *use* or *purpose* criteria. The object could be seen as satisfying the first element of the definition because it facilitates or enables combat activity of the said individual and in this way it contributes effectively to military action at the circumstances given at the time. The decision whether to attack such an object would depend on all the remaining elements of the definition, and other provisions regulating how the attack should be undertaken as long as the membership and/ or the combat function continues.

On the other hand, in a situation where the hotel is used by directly participating in hostilities civilian *sensu stricto*, one would have to ensure that the activity that the person is engaging in a relation to the object is indeed serving military purposes and only for so long as that the person is engaged in the said activity. Merely staying at the hotel by does not necessarily implies an undertaking of an action harmful to the enemy. However, staying at a hotel en route to a planned operation or for a meeting facilitating a planning of harmful action would mean that the object is contributing to the military operation and thus satisfying the *use* criterion. In this situation an object has to be used in such way at the time of attack. This does not necessarily mean a person has to be present physically at the premises though by and large the nature of the harmful activity serving military purposes will involve or even necessitate physical presence. One can imagine a different situation where a facility or any of its elements is being used remotely to undertake harmful acts for example in the context of a data centre being used for a cyber operation.

The *purpose* condition can also be fulfilled depending on the nature of information available to the attacker at the time of attack. However, an attacker would have to ensure, as a part of the verification of the military objective prior to the actual attack, that a person continues to be engaged in the harmful activity which constitutes a factual basis for meeting the *purpose* criterion in the definition of military objectives.

How does this apply in the context of targeting infrastructure associated with the state and political party leadership? Can a hotel where the Commander-in-Chief stays be regarded as equally contributing to military action? The answer to this may depend on

whether, and to what extent, the individual's functions related to military action are undertaken during his stay in the hotel. Such object's contribution would be linked to who the people are and what their functions are.

There is no doubt that if the persons vested with CiC functions are deemed to hold combatant status due to their integration into the armed forces, then objects used or intended to be used by them are likely to satisfy the *use* and *purpose* criteria. If they are not combatants, but who are involved in taking decisions related to the prosecution of hostilities or otherwise exercise command over armed forces, then the use or purpose of the object would be determined in relation to the nature of the activity they engage in. Prime Minister, who during a stay in countryside a retreat, connects remotely with the Cabinet in order to issue an authorization to attack a target clearly engages in activity which constitutes as direct participation in hostilities. At the same time, he or she uses an Internet network established at the retreat facility to connect with other members of the Government in order to make this decision or ever to oversee the actual attack undertaken at the same time on the battlefield. Clearly at that point the building itself becomes targetable in these circumstances. Furthermore, a golf course facility, which is frequently used by a President to undertake activity related to the prosecution of hostilities, provided that activity is directly linked to the combat operations whether as a part of military operational command or not, can also be regarded to satisfy *purpose* criterion if the information available in the circumstances given at the time also suggests that there is an intention to use such a place for that activity in the specified future. This will be clearly be applicable to any individual, be it a Prime Minister, a member of the Cabinet, a Secretary of State for Defense or a member of a political party, who uses or intends to use an object in the furtherance of an activity that constitutes an underlying basis for their direct participation in hostilities. At the point when they desist from this activity, the object cannot be considered to continue to be used or is intended to be used to facilitate such activity.

Taking a step further, can the Minister of Defence's private residence be considered as satisfying the requirements of the definition? The answer will be in the affirmative only in respect to the specific nature of the actual activity undertaken or intended to be undertaken in such a residence. Can a political party headquarters qualify in this

respect too? Yes, so long and for so long as individual members of the party, or in fact anyone else undertaking activity in use of such a building, engages in an act harmful or likely to be harmful to the adversary and that this use of the building specifically enables, assists or facilitates a continuation or accomplishment of the act in question.

The question further arises as to whether assets of any state organs or political entities can be targeted based on their more general association with said organs and entities? This question will be explored in the subsequent section.

3.4. General affiliation of the objects

Buildings or places which appear generally linked to other political structures of the state, but which do not seem to be used in relation to exercise any functions related to the conduct of hostilities will unlikely satisfy even the first element of the definition of military objectives. This could be a political party's facilities, or local government buildings or a private residence of the Prime Minister or Minister of Justice, who are clearly not using or intending to use such places to further actions harmful to the enemy and directly linked to the conduct of hostilities during an armed conflict.

Destroying the place where the members of the Government or political party normally meet, or work, does not meet the requirements of the definition. Unless there could be shown to be some other military nexus, either through the individuals' directly related activities or separately based on the *location* criterion then such facilities, on account of their association with the state political system, cannot be deemed valid military objectives. It may be that a clear distinction might not be made between the state and party functions of political leadership in states in which the political system is closely incorporated into governmental structures. This, however, would be of lesser importance, as the specific character of actions of the individual members of the organs or party will be subject to the consideration.

Conclusions

In targeting decisions related to the political leadership or infrastructure associated with the political leadership of the state it is first necessary to establish who or what is

the intended target of an attack. Establishing whether the attack is directed at the people using the buildings, or at the buildings themselves is vital as the ensuing legal analysis of the status of the target will be different in the context of the people and the objects.⁶⁰ The assessment of objects associated with the political leadership does depend on an assessment of the circumstances which determine their contribution to military action, as well as the advantage resulting from their destruction, capture or neutralisation as required by second part of the definition of military objectives.

It is conceivable that the destruction, capture or neutralisation of facilities that facilitate the work of the political organs who take decisions regarding the prosecution of military operations would offer a definite military advantage. Ministry of Defence is considered a lawful target on account of the command and control functions of the Ministry as an institution. It is viewed as an object satisfying the *nature* criterion in the definition as due to its intrinsic military character. MoD effectively contributes to military action because its functions are intrinsically linked to the conduct of military activities. There is no doubt that an attack on a Ministry of Defence would offer definite military advantage. The same cannot be said in the case of a building occupied by the Commander-in-Chief who, has delegated his supreme command authority to other state organs or who does not use the facility to engage in activity constituting a basis for their direct participation in hostilities. The destruction of the buildings where a *de jure* and *de facto* Commander-in-Chief, recognised as a combatant whose decisions are directly related to the conduct of hostilities, is likely to bring substantial military benefits whilst satisfying the first element of the definition. There may be other civilians in the state political structure who exercise other functions which may directly impact on the conduct of military operations. In so far and so long as they use or intend to use the objects in furtherance of these functions, such objects can be considered lawful targets on account of their contribution to military action and offer of definite military advantage. It is clear that such buildings cannot be legitimately characterized as satisfying *nature* condition except for a

⁶⁰ This is not altogether clear, as states tend not to share publicly any detailed explanations when they engage such targets. For example, in 2003, Coalition forces started their operations in Iraq with an attack aimed at Saddam Hussein, who was believed to have been visiting the al-Dora farm on the outskirts of Baghdad. This clearly indicated that the object of the attack was a human one. It is entirely possible that the facilities in the farm might have separately been of military significance.

Ministry of Defence but because of their specific use, they may satisfy the *use* or *purpose* requirements of the definition, in addition to the *location* criterion. The basis of their contribution to military action will inevitably be linked to the character of the activity of the person. Therefore two key factors inevitably need to be taken into account when considering the status of such targets, namely the character and scope of the individual's activity that gives rise to an object's contribution to military action and whether there is any time limitation that may affect the existence and duration of such activity. Specifically, the application of the test will depend very much on the assessment of the activity of those exercising of the official functions contributing to the prosecution of military operations and that general affiliation of the objects to a political structure does not suffice.

As the use or intended future use of an object depends on the factual circumstances which are often fluid and subject to rapid change, so the status of the specific target can also be potentially variable. One must recognise that in respect of Ministries of Defence, due to the characteristics of the *nature* condition, such change will enable the application of the other contextual criteria found in the first part of the definition of military objectives.