

Minister,

As per your request, below is a summary of the briefing detailing our legal arguments regarding the justification for our attack in Zone Alpha. It discusses the legal framework, the considerations which are required as a matter of law for planning and executing attacks and our assessment as to how these criteria are satisfied.

1. Legal Framework

The situation in which we are in is one of IAC, given the cross border nature of the dispute and its scale and intensity (ICTY Tadic). As a result, the applicable law is governed by the 4 GC and AP1, as well as customary rules of IHL. All Articles from GC and AP to which we refer in this document represent Customary IHL. On first instances and where applicable, we refer to the ICRC CIHL Study.

2. Considerations of targeting and attack

As a matter of law, militaries are expected to undertake several precautions in planning and executing attacks. Besides determining an actual military necessity for the attack, militaries are required to distinguish between military and civilian targets, and are prohibited from deliberately targeting civilian persons or objects (Art. 48 to AP1, ICRC Study Rule 1), and weigh the expected damage to civilian persons and objects in proportion to the expected military benefits from the attack (Art 51(5)(b) to AP1, ICRC study Rule 14). As a result, there is a duty upon militaries to take adequate and feasible precautions in attack to minimize foreseeable civilian casualties based on information available to the commanders at the time of the attack (Art. 57(1) to AP1, ICRC Study Rule 15). We now proceed to apply these rules to the cases at hand.

3. Application

Distinction: Both trucks were hijacked by Narlian SF inside a military zone, and served military purposes. Even if they were of civilian nature before the raid, they were taken over by military personnel and thus changed their function to serve as military transports – and are therefore military objectives under Art. 52(2) to AP1. As both the attacks were directed against the trucks and not the surrounding civilians, the principle of distinction is satisfied.

Necessity: As previously stated, the attack of the two targets provided a distinct military advantage.

Proportionality: The order to strike Truck 1 on the lake bank considered all relevant information at the time (a high probability the fuel in the truck would be transferred to Narlian forces as per OAF statements), and as such the presence of civilians was factored in and precautions taken. As such, it would appear the presence of civilians during the strike does not trigger the duty to abort set in Art. 57(2)(b) to AP1, and was therefore legitimate. As per Truck 2, similar information regarding intent to use the truck as a suicide bomb underlines the exigent circumstances. Considering the fact that only two missiles were fired in an attempt to minimize secondary explosions it seems that sufficient precautions in planning and executing the attack were taken.

Col. Green (Ret.), Esquire.

Minister Smith,

As per your request, the IHL Unit research team has prepared a document detailing the violations of IHL by the military forces of Opostan. It is annexed below. One can only hope that documented evidence against these atrocities can assist us in the public opinion and diplomatic fronts of the war.

Mr. Black, Head of the IHL Unit

Annex: IHL Unit Report

It is the intent of this report to outline apparent violations of IHL and to recommend to the MFA legal strategies to adopt accordingly. The focus of this report is on the attacks on the Khelmar river bank (event 1) and village (event 2), outside the occupied territory Opostan-designated “Zone Alpha”.

The report is written under the assumption that the current situation between the states amounts to IAC, and as such the applicable provisions of law to the conflict are found in the applicable articles of the GC, AP1 (direct effect if we are signatories) and Customary IHL, which includes all the AP1 provisions we reference below.

Event 1 analysis

After the successful capture by Narlian SF of two fuel-transporting tankers, they were driven out of the Opostan-occupied territory, where one of them became stuck in the mud. After reviewing the facts, we have come to the conclusion that the OAF attack on this tanker constitutes a violation of IHL, specifically, a breach of the proportionality duties imposed on attackers by AP1 Art. 57(2)(a) and 57(2)(b).

With regards to Art 57(2)(a), the OFA spokesperson’s press conference indicates clearly that Opostan had knowledge of civilians that intended to gather around the tanker before ordering a strike. It would seem that the military benefit accrued from preventing the distribution of fuel cannot justify the willful causing of death to civilians from a proportionality standpoint. Similar responsibility lies with the pilot of

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the OFA bomber as outlined by Art. 57(2)(b), imposing a duty to suspend – or even cancel – the attack if collateral damage is evidently disproportionate to the military advantage gained. It must have been manifestly evident to the pilot that a large congregation of civilians around a loaded fuel tanker would be harmed by the attack, causing damage far greater than the expected benefit of neutralizing a single supply truck in a large scale conflict.

Event 2 Analysis

The second tanker was taken to the village of Khelmar, and parked outside a civilian residence. OFA bombers struck the village, claiming 35 lives in what appears to constitute a violation of AP1 Art 57(2)(a).

One of the duties imposed by Art 57(2)(a) is to take all feasible measures to verify the target of the attack is not a civilian object or person. It is apparent that no such measures were taken by the OFA in deciding to carry out a deliberate strike against a civilian dwelling, carried out without sufficient information to the contrary. Such practice was condemned even when carried out by NATO in Yugoslavia, and led to a revision of ROE by Allied AF commanders.