

## **The position of Poland regarding guiding questions to the second state consultation on protecting civilian infrastructure**

Poland constantly and consistently emphasizes the importance and exceptional role of international humanitarian law (IHL) which represents a common and widely shared understanding amongst nations as to the rules and principles that govern the conduct of parties to an armed conflict. The 1949 Geneva Conventions and many of the provisions contained in the 1977 Additional Protocols are today recognized as customary international humanitarian law. In this regard it is worthwhile to mention that executive duties of States Parties of the Geneva Conventions extend not only to respecting Geneva Conventions but also to ensuring their respect, as clearly states common article 1 of the Geneva Conventions.

According to the provisions of IHL civilians, civilian infrastructure, including critical infrastructure and goods necessary for the survival of the civilian population are subject to absolute and unlimited protection and attacks against them are forbidden.

According to art. 52 of AP I civilian objects shall not be the object of attack or of reprisals and attacks shall be limited strictly to military objectives; in case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used. That definition is general but the aim of the AP I, which is the protection of the civilian population makes it clear that it is necessary to take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects. The principles of proportionality and precautions remain always relevant, not only with regard to the incidental harm directly caused to civilians and other civilian objects, but also in terms of the consequences of impairing the civilian use or functionality of the civilian object itself, including the indirect civilian harm that results from such impairment.

As regards the specific questions regarding the characteristics of civilian infrastructure and the essential services they provide, the Polish position is as follows:

1. *What targeting and verification procedures does your state have in place to ensure that the infrastructure, or parts thereof, that is being considered for attack is not a civilian object and not subject to specific protections?*

Polish Armed Forces has adopted doctrinal document 'Targeting in Joint Operations' – DD 3.9.(B)<sup>1</sup>, which is analogue to the 'NATO Allied Joint Doctrine for Joint Targeting' – AJP-3.9 (Edition B). The Polish 'Targeting in Joint Operations' – DD 3.9.(B) provides guidance to command personnel on strategic, operational and tactical level in the scope of prioritising and selection of military targets. The doctrine stresses the importance of conducting the targeting process in a manner which ensures compliance with the applicable legal framework, especially with the International Humanitarian Law principles of humanity, military necessity, distinction, proportionality and precaution. One of the main principles of the document is ensuring that throughout the targeting process any risk of civilian casualties or collateral damage is proportionate compared with the expected military advantage to be gained. A legal assessment prior to any targeting action has to take place according to the document.

- 1.1. *Are those procedures applied differently with respect to infrastructure amounting to "objects normally dedicated to civilian purposes" pursuant to Article 52(3) of Additional Protocol I?*
- 1.2. *Are those procedures applied differently with respect to "dual-use infrastructure" i.e. infrastructure used for both civilian and military purposes?*

The thorough analysis of the potential target, including analysis of legal constraints is done in the multi-phase joint targeting cycles. Circumstances mentioned in Article 52(3) of Additional Protocol I to the Geneva Conventions are essential elements of each analysis as the proper assessment have to be made as to the nature of the given object and its factual use. Therefore in case of objects that in normal state of proceedings would be considered as used for civilian purposes like schools, places of worship, houses or other living quarters, these characteristics are being analysed in the framework of one targeting process. Abovementioned objects' characteristics influence the targeting process as its special status under the law must be taken into consideration, what is reflected in Polish targeting procedures as well as in NATO ones. The same remarks apply respectively to the dual-use infrastructure objects in case of which, if classified as a valid military targets, special diligence shall be applied before lawful military engagement in order to meet the demands of the principle of proportionality. Worth to mention is that the special status of the object can also move higher the level of authority demanded to greenlight engagement.

2. *When infrastructure, or parts thereof, has become a military objective, what can be done to anticipate:*
  - 2.1. *the effects on other parts of that infrastructure*
  - 2.2. *the expected civilian harm from the attack if other infrastructure that the civilian population is relying on is already damaged, destroyed or no longer functioning*
  - 2.3. *the short- and long-term direct and indirect effects on other infrastructure that rely upon the targeted infrastructure, and ultimately on the civilian population, including if the targeted infrastructure is dual use?*

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<sup>1</sup> Title in Polish: „Targeting w siłach połączonych” DD-3.9(B).

To anticipate the effects on other parts of an infrastructure when one part becomes a military objective, a risk assessment procedure might be developed to understand the interconnectedness of the system. Special precautions might be also applied to mitigate damage, and plan for the immediate aftermath of an attack. This involves identifying how the targeted part contributes to the whole system, analyzing the potential for cascading failures, and considering the effects on civilian populations.

To anticipate the expected civilian harm from the attack as well as the short- and long-term direct and indirect effects on other infrastructure that rely upon the targeted infrastructure, and ultimately on the civilian population, as mentioned in the question above, these issues shall be addressed in a targeting procedure and damage estimation methodologies.

3. *What measures can be taken to avoid or at least minimize the effects enumerated in question 2, and ensure that they are not excessive in relation to the concrete and direct military advantage anticipated?*

To avoid or minimize the effects enumerated in question the country can undertake following steps:

- strengthen infrastructure resilience, by broadening the existing systems in a way that if one part is damaged, others can compensate and the system can continue to operate;
- separate military and civilian uses of infrastructure: if parts of an infrastructure are used for both civilian and military purposes, clearly separate them by marking them or using other means to avoid making the civilian parts legitimate military objectives;
- develop contingency plans for possible consequences of an attack;
- include the principle of proportionality in targeting procedure and damage estimation methodologies;
- issue warnings to the civilians about the possibility of the attack and isolating and securing the targeted area by removing civilians and civilian objects from the immediate vicinity of any infrastructure that has become a military objective;
- ensure that specialists, like lawyers, collateral damage estimation specialists, intelligence officers, engineers and other are part of the targeting process.

4. *Does, or could, your state use “no-strike” or “restricted targeting” lists? What should determine whether an object is included on such a list?*

In accordance with the Polish doctrine ‘Targeting in Joint Operations’ – DD 3.9.(B) Polish Armed Forces use ‘no-strike lists’ and ‘restricted target lists’. Protection under the International Humanitarian Law or for political reasons are among the possible causes for including the objects on the no-strike list. Restricted target lists include objects that due to operational considerations possible engagements against such objects are restricted. Possible restrictions might concern time, a manner of potential attack or complete ban on an attack due to political, operational or environmental security.

Restrictions might also include resolutions as to what authority is allowed to lift restrictions.

5. *What do you see as the value in requiring higher-level command approval for targeting certain infrastructure and objects? What determines whether a target requires such approval?*

It is accepted that the higher the authority, the more thoughtful the decision taken is. Higher authorities shall have a better understanding of the political and strategic context and can exercise a more well-informed judgment. Higher-level approval ensures that the decision made align with the overall commander's objectives and priorities. Especially given that higher authority has access to more sources of information. Among the factors that determine higher-level command approval for targeting are collateral damage estimation, sensitivity of the target due to political reasons or special protection status of the target under the law.

6. *What expertise in addition to legal advisers, such as that of engineers or other specialists, contribute to ensuring that targeting decisions respect the relevant IHL principles and rules, including at the planning stage?*

Military engineers, intelligence and operation officers provide a valuable input into the targeting process. Other advisors can also be included in the targeting process according to the needs.

7. *What mechanisms or procedures, if any, does your state have in place to document the planning and decision-making process relating to: - target selection and verification - excessiveness of the foreseeable direct and indirect harm to civilians and civilian objects in relation to the concrete and direct military advantage anticipated - precautions taken to avoid or at least minimize such harm? 3. What lessons learned have, or could, be gleaned from comparing such documentation with post-strike impact assessments to determine the adequacy of targeting processes and precautionary measures?*

Detailed procedures documenting the planning and decision-making processes in the targeting process are included in the doctrinal document 'Targeting in Joint Operations' – DD 3.9.(B)<sup>2</sup>, which is analogue to the 'NATO Allied Joint Doctrine for Joint Targeting' – AJP-3.9 (Edition B). Important part of the targeting cycle in accordance with the abovementioned documents is a target development phase during which valid targets are identified and possible actions against them are being considered.

Effective target development is based on target system analysis and human network analysis along with consultation between targeteers and legal advisors in order to ensure the selection of lawful targets. In further phase of the targeting cycle recommendations are given to the commanders about the most appropriate lawful actions that could be taken to create the desired effects. The last phase of the targeting

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<sup>2</sup> Title in Polish: „Targeting w siłach połączonych” DD-3.9(B).

cycle process is an assessment phase during which the effects of the actions taken are evaluated in a very wide spectrum, including undesired effects like excessive collateral damage.