

Replies and Comments:

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Focus

“A black military beret on his head, Mohammed Saeed al-Sahaf has become the face and voice of Iraqi defiance.” CNN.Com, 08.04.03. Saeed is the information minister of Iraq. Similar photo of Saeed in beret and uniform: Sun-Sentinel.com. He has also often appeared on TV in military garb.

Tarik Aziz, Deputy Prime-Minister of Iraq, appears often in military garb but also in civilian clothes.

What must a civilian do to lose protected status? Art. 51.3, AP I, “[...] take direct part in hostilities.” ICRC Commentaries, para. 1944, “[...] direct participation means acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces.” In distinction, participation in the war effort is not a direct participation in hostilities.

**Iraqi Leadership, Baath Party Leadership:
Legitimate Targets?**

The US has announced that President Saddam Hussein, his sons, and Baath Party leaders are targets of the US forces. The British targeted Baath Party headquarters in Basra. Are these people and locations legitimate targets under the laws of war? Reciprocally, from the perspective of Iraq, who of the US leadership would be a legitimate target: President Bush, Secretary of Defense Rumsfeld, Secretary of State (Minister of Foreign Affairs) Powell, the leadership of the Republican and Democratic parties?

Additional Protocol I (AP I), Article 48 requires that targeting distinguish between civilian and combatant. Operations are to be directed against combatants and military objectives only. Although AP I does not bind the US and Iraq as conventional law, the principle of distinction is accepted as customary international law.

Are the persons set out above within the categories of GC III, Art 4 A? President Bush is by the constitution the Commander in Chief of the armed forces of the US. He clearly falls within this category. Though the Secretary of defense is not so clear, I put forward that he as well as the secretaries of the individual branches of the US armed forces are within this category because though civilians, they are at the top of the chain of command of the armed forces.

It may not be possible to compare the legal regimes of a state that functions under the rule of law with a single-party state like Iraq. However, I submit that as a person who gives orders to the military commanders, President Hussein is a legitimate target. The matter is made more complex by the appearance in military uniform of many members of the Iraqi government. Tarik Aziz, deputy prime minister, has appeared in military garb as has the information minister, Mohammed Saeed. Does this mean they are members of the military? It is argued that a person's appearing in military uniform means that he or she is a legitimate target.

What about the leadership of the Baath Party and the US Republican and Democratic political parties? They do not appear in military uniforms. In the US such persons are not part of the military or in the military chain of command. Under the US political system these party members make only decisions we term „political“ and thus would not be proper targets. I am not able to state the legal capacity of Baath Party leaders under Iraqi law. The general rule should be that they are civilians and thus not legitimate targets. However, if they are giving orders to the military forces, the presumption of civilian status can be rebutted, making them legitimate targets. The same would apply to their headquarters. The presumption must be that it is a civilian location and thus not a legitimate target. The presumption can be rebutted if there is reasonable proof that it has been used for military purposes.

Art 52.2, AP I states that to be a military objective the object must “[...] by [its] nature, location, purpose, or use make an effective contribution to military action and whose [...] destruction, capture or neutralization [...] offers a definite military advantage.”

These conclusions require factual determinations and a continuous reevaluation of their use. The beginning point for both persons and objects must be the presumption of civilian status and civilian use, to be refuted only with factual proof.

The principle of distinction is without question customary international law and so the inapplicability of the provisions of AP I does not limit the application of the principle. In conclusion, a person who appears at first to be a civilian may be a legitimate target if he or she holds a position in the military chain of command or participates in military operations. A person who wears a military uniform may be presumed to be a member of the armed forces and thus a legitimate target. The presumptions of civilian status of a person and civilian object can be rebutted with satisfactory evidence, rendering them legitimate targets. Persons performing solely political functions are not legitimate targets.

Responsibility

BOFAXEs are published by the Institute for International Law of Peace and Humanitarian Law of the Ruhr-University Bochum: IFHV, NA 02/33 Ruhr-Universität Bochum, 44780 Bochum. Tel: 0049234/3227366, Fax: 0049234/3214208.

BOFAXEs are supported by the German Red Cross. **The writer is solely responsible for the content.**