

Afghanistan, Goatherd Saved from Attack

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: “Wandering Afghan goatherd holds up lethal attack on Taleban roadside bombers”, Michael Evans, Times Online, 5 May 2009, available at <http://www.timesonline.co.uk/tol/news/world/asia/article6222494.ece>]

Wandering Afghan goatherd holds up lethal attack on Taleban roadside bombers

Four Taleban insurgents appeared at one end of a bridge on Route Cowboys and began to dig a hole for a roadside bomb. Buzzing above them at a height of 9,000ft was a Hermes unmanned aerial vehicle, relaying pictures of the scene to British commanders.

Soon, two Belgian Air Force F16s had flown in and were ready to pulverise the Taleban fighters. Just as they were about to swoop in for the kill there was a shout over the radio: “Stop, hold fire – there’s a boy with goats approaching.”

Sure enough, a young Afghan goatherd with a few goats around him was walking towards the bridge. The world seemed to freeze. The F16 pilots remained on alert. The Taleban continued burying their explosives, and with growing frustration British officers watched – in operations rooms within sight of the bridge, in battlegroup headquarters at Forward Operating Base Delhi farther north, and in Camp Bastion, the main base in central Helmand – the goatherd's slow progress.

[...] The nearest base is Patrol Base Hassan Abad, [...] and the bridge is Bridge Three.

If the insurgents registered the presence of the F16s it did nothing to stop them – two of them continued

working while a third began to walk backwards holding a wire and disappeared from view. The fourth, apparently the leader, had left on a motorcycle.

Finally the goatherd was safely clear of the area and the jets were given the order to attack. Rather than dropping a 500lb bomb that would have damaged the bridge, one of the jets came roaring in and strafed the area with 30mm cannon where the two Taleban had nearly finished burying their improvised explosive device (IED). They both died.

The insurgent with the wire had climbed on to a motorbike and the Hermes drone followed him as he drove south, taking photographs that told the F16 pilots where he was heading. The man went into a compound to change his clothes and then drove off again to a rendezvous spot known to be a Taleban command centre. He was allowed to escape.

At 4.30am the next day, 100 soldiers set off from Hassan Abad base towards Bridge Three. They were accompanied by two US Marine bomb-disposal specialists. [...]

Progress is painstaking. Overnight it is possible that the Taleban have planted more IEDs. Every patrol “multiple” has a soldier with a metal detector sweeping the ground in front of him as the rest of us follow, knowing that the Taleban are watching from the poppy and wheat fields as the dim light turns to dawn. Hermes 450, with that reassuring and familiar buzzing engine, watches our progress.

[...]

We reach Bridge Three without being shot at. The journey – two miles as the crow flies – has taken nearly five hours, partly because a compound suspected of being used by the Taleban has had to be searched. [...] Soldiers spread out to control the ground and make sure there is no one concealed within sight of the bridge who might be able to detonate a bomb.

Lieutenant Ed Hattersley, 25, [...] approaches the area of the suspected IED, lies full stretch on the ground and starts to dig away gently with his knife, scooping away the dry earth with a paintbrush. All the rest of the group can do is wait.

The young lieutenant finds enough evidence to confirm the presence of an IED, and the two experts from the US Marine Corps move in. They uncover four mortar shells filled with explosives and linked – known as a “daisy-chain” device.

With no protection other than normal body armour and helmets, they pick up the bombs and carry them away from Bridge Three. They pack their own explosives around the bombs, draw back a distance, and give the signal: “Sixty seconds, heads down”... fingers to ears, helmeted heads tucked into chests.

The bomb is destroyed and we return to camp. The IED was planted at about 5pm the previous day; it is now 11.30am the day after, and 100 men are exhausted from the strains of a seven-hour mission.

That was only one IED – and there are scores more.

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Discussion

1.
 - a. Did the soldiers have an obligation under IHL to save the goatherd's life? If they had not waited for the goatherd to walk away from the targeted area, would the attack have been lawful under IHL? (P I, Art. 51(5)(b); CIHL, Rule 14)
 - b. How do you calculate proportionality? Would the loss of the goatherd's life have been "excessive in relation to the concrete and direct military advantage anticipated"? What was the "concrete and direct military advantage anticipated" in the present case? When calculating proportionality, would the fact that a delayed air attack could have been expected to allow the leader of those laying the bomb to escape be taken into account? The fact that 100 soldiers would need to be sent on a bomb-disposal mission the next day? (P I, Art. 51(5)(b); CIHL, Rule 14)
 - c. Would it have been excessive to risk destroying the bridge by dropping a 500-lb bomb? Even if such a bomb would also have destroyed the IED?
2. Assuming that, first, launching an attack against those laying the bomb while the goatherd was in the area, and second, using a bomb that might have destroyed the bridge were not excessive compared with the direct military advantage anticipated by both measures, could IHL nevertheless require that neither measure be taken?
3. Is it realistic to expect armed forces always to react in this way?

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