

Afghanistan, Drug Dealers as Legitimate Targets

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: Battling Afghan Drug Dealers: NATO High Command Issues Illegitimate Order to Kill, by Susanne Koelbl, Spiegel Online, 28 January 2009, available at <http://www.spiegel.de/international/world/0,1518,604183,00.html>]

[...]

BATTLING AFGHAN DRUG DEALERS

NATO High Commander Issues Illegitimate Order to Kill

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The approach to combatting the drug mafia in Afghanistan has spurred an open rift inside NATO. According to information obtained by SPIEGEL, top NATO commander John Craddock wants the alliance to kill opium dealers, without proof of connection to the insurgency. NATO commanders, however, do not want to follow the order.

A dispute has emerged among NATO High Command in Afghanistan regarding the conditions under which alliance troops can use deadly violence against those identified as insurgents. In a classified document, which SPIEGEL has obtained, NATO's top commander, US General John Craddock, has issued a "guidance" providing NATO troops with the authority "to attack directly drug producers and facilities throughout Afghanistan."

According to the document, deadly force is to be used even in those cases where there is no proof that

suspects are actively engaged in the armed resistance against the Afghanistan government or against Western troops. It is “no longer necessary to produce intelligence or other evidence that each particular drug trafficker or narcotics facility in Afghanistan meets the criteria of being a military objective,” Craddock writes.

The NATO commander has long been frustrated by the reluctance of some NATO member states – particularly Germany – to take aggressive action against those involved in the drug trade. Craddock rationalizes his directive by writing that the alliance “has decided that (drug traffickers and narcotics facilities) are inextricably linked to the Opposing Military Forces, and thus may be attacked.” In the document, Craddock writes that the directive is the result of an October 2008 meeting of NATO defense ministers in which it was agreed that NATO soldiers in Afghanistan may attack opium traffickers.

The directive was sent on Jan. 5 to Egon Ramms, the German leader at NATO Command in Brunssum, Netherlands, which is currently in charge of the NATO ISAF mission, as well as David McKiernan, the commander of the ISAF peacekeeping force in Afghanistan. Neither want to follow it. Both consider the order to be illegitimate and believe it violates both ISAF rules of engagement and international law, the “Law of Armed Conflict.”

A classified letter issued by McKiernan’s Kabul office in response claims that Craddock is trying to create a “new category” in the rules of engagement for dealing with opposing forces that would “seriously undermine the commitment ISAF has made to the Afghan people and the international community ... to restrain our use of force and avoid civilian casualties to the greatest degree predictable.”

A value equivalent to 50 percent of Afghanistan’s gross national product is generated through the production and trade of opium and the heroin that is derived from it. Of those earnings, at least \$100 million flows each year to the Taliban and its allies, which is used to purchase weapons and pay fighters. That, at least, is the estimate given by Antonio Maria Costas, head of the UN’s Office on Drugs and Crime.

But the chain of people profiting from the drug trade goes a lot further – reaching day laborers in the fields, drug laboratory workers and going all the way up to police stations, provincial governments and high-level government circles that include some with close proximity to President Hamid Karzai. If Craddock’s order were to go into effect, it would lead to the addition of thousands of Afghans to the description of so-called “legitimate military targets” and could also land them on so-called targeting lists.

[...]

German NATO General Ramms made it perfectly clear in his answer to General Craddock that he was not prepared to deviate from the current rules of engagement for attacks, which reportedly deeply angered Craddock. The US general, who is considered a loyal Bush man and fears that he could be replaced by the new US president, has already made his intention known internally that he would like to relieve any

commander who doesn't want to follow his instructions to go after the drug mafia of his duties. Back in December, Central Command in Florida, which is responsible for the US Armed Forces deployment in Afghanistan, yet again watered-down provisions in the rules of engagement for the Afghanistan deployment pertaining to the protection of civilians. According to the new rules, US forces can now bomb drug labs if they have previous analysis that the operation would not kill "more than 10 civilians."

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Discussion

1. What was the nature of the armed conflict in Afghanistan in 2009? What branch of law was applicable? Who were the parties to the armed conflict? Can Afghan drug dealers be considered as belonging to a party to the conflict?
2. What is a military objective? Is it lawful to attack a facility without first checking whether it is a military objective? Can a narcotics facility be considered as making an effective contribution to military action? If its profits are partly or exclusively used by the Taliban, an armed group fighting the government and the outside forces supporting it? Would a positive answer to that question automatically turn all a country's narcotics facilities into military objectives? Is your answer affected by the fact that drug dealing is unlawful under Afghan law and under international law? (P I, Art. 52(2) and (3); CIHL, Rule 8)
3.
 - a. Who may be directly targeted in a non-international armed conflict? Under what circumstances can a drug dealer be directly targeted? Can someone be directly targeted "even in those cases where there is no proof that [he is] actively engaged in [hostilities]"? Is your answer affected by the fact that drug dealing is unlawful under Afghan law and under international law?
 - b. Can drug dealing amount to direct participation in hostilities? Does it become direct participation in hostilities when some of the proceeds are used to finance a party to the conflict? Do you think that, in the present situation, all drug producers and dealers are directly participating in the hostilities? Would your answer have been different had the financial benefit of the opium trade gone entirely to the Taliban?
4. Is it lawful to declare that any attack on a military objective that would kill less than 10 civilians is lawful? Is it lawful if the declaration is limited to a certain category of military objectives, such as drug laboratories? How do you calculate proportionality? (P I, Art. 51(5)(b); CIHL, Rule 14)