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AIR COMMAND AND STAFF COLLEGE

AIR UNIVERSITY

**WARDEN'S FIVE-RING SYSTEM THEORY: LEGITIMATE  
WARTIME MILITARY TARGETING OR AN INCREASED  
POTENTIAL TO VIOLATE THE LAW AND NORMS OF  
EXPECTED BEHAVIOR?**

by

Gary M. Jackson, Major, USAF

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Elective Instructor: Lieutenant Colonel Mark B. San Souci

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*Abstract*

With the publication of “Air Theory for the Twenty-first Century,” Colonel John Warden ushered in a new era of wartime targeting. No longer are warfighters limited, as in years past, to an ad hoc, haphazard system of selecting wartime targets. Rather, Warden presents the warfighter with a unique tool—the five-ring system theory—that dramatically improves the warfighter’s ability to systematically identify wartime targets.

However, for all of its acclaim, little has been written about Warden’s five-ring system theory. Even less has been written about the legal and moral implications of using Warden’s theory to identify wartime targets. In this report, I: (1) briefly examine Warden’s theory in light of prevailing law and norms of expected behavior; (2) find that Warden’s five-ring system theory sidesteps major issues; namely it fails to account for the legal and moral constraints of wartime targeting and, in doing so, increases the warfighter’s potential to run afoul of international law, domestic law, and norms of expected behavior; and (3) conclude, as a result, that such targeting should not be done without due consideration to the legal and moral issues surrounding the complex process of targeting.

## Part 1

### Introduction

*Less than two weeks after Iraq invaded Kuwait...the first U.S. Air Force war plan was prepared...Instant Thunder, as the initial plan was called, sought an airpower-only victory... As ground forces were added to the equation, the plans for the air campaign evolved... air power boxed in, demoralized, and pummeled Saddam Hussein's legions, making the 100-hour ground assault a walkover...Most of Desert Storm's enduring memories...remain of air battles, not skirmishes on the ground...airpower was the undisputed champion of the war.*

—William M. Arkin  
Washington Post Reporter

That airpower played a crucial role during Operation Desert Storm cannot be disputed. In fact, many, like the reporter quoted above, believe air power was *the linchpin* to success during Operation Desert Storm. It will be an age-old debate whether airpower alone could have won the war; however, such a debate is beyond the scope of this paper. Much of our success in Operation Desert Storm lies in the way General Norman Schwarzkopf, General Chuck Horner, Lieutenant General Buster Glosson, and countless others executed the war campaign plan--a plan based, in part, on Colonel John Warden's *Instant Thunder* plan.<sup>1</sup> The purpose of this paper is to briefly examine a portion of the air theory that formed the basis of *Instant Thunder*--Warden's five-ring system theory. Specifically, I will examine the legal and moral issues surrounding the use of Warden's five ring system theory and ultimately conclude his theory sidesteps major issues; namely it fails to account for the legal and moral constraints of wartime targeting and, in doing

so, increases the warfighter's potential to run afoul of international law, domestic law, and norms of expected behavior.

#### Notes

<sup>1</sup> Colonel Edward C. Mann III, *Thunder and Lightning: Desert Storm and the Airpower Debates* (Maxwell AFB.: Air University Press), 1995 *hereinafter Thunder and Lightning*, p.46 and Frontline Interview with General Norman Schwarzkopf found at [www2.pbs.org/wgbh/pages/frontline/gulf/oral/schwarzkopf](http://www2.pbs.org/wgbh/pages/frontline/gulf/oral/schwarzkopf).



## Part 2

### Warden's Five Ring System Theory

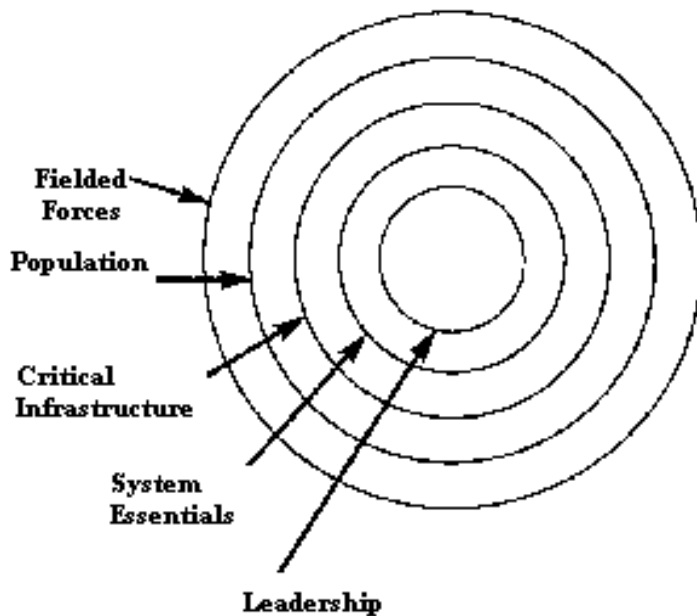
*Countries are inverted pyramids that rest precariously on their strategic innards--their leadership, communications, key production, infrastructure, and population. If a country is paralyzed strategically, it is defeated and cannot sustain its fielded forces though they be fully intact.*

—Colonel John Warden  
*Air Theory for the Twenty-First Century*

The historical underpinnings of Warden's five-ring theory can essentially be traced to Carl von Clausewitz's *magnum opus* on war--*On War*. In *On War*, von Clausewitz notes that to effectively defeat an enemy a state should direct all of its energies against those points upon which everything for the enemy depends--center(s) of gravity or the "hub of all power and movement."<sup>2</sup> Warden took this principle a step further and developed a concept designed to guide wartime target selection.<sup>3</sup> He views the enemy as a system organized in the concentric rings--each ring representing an enemy's center of gravity that if properly attacked would make war prohibitively expensive for the enemy or eliminate the enemy's ability, temporarily or permanently, to wage war.<sup>4</sup>

Descending in order of importance from the innermost to the outer most ring is: (1) a *leadership ring* that controls the system or state, i.e., the state's leaders; (2) a *system essential ring* that provides or represents key production that is critical for state survival, i.e., oil,

electricity, food and money; (3) an *infrastructure ring* that “ties the entire system together,” i.e., transportation; (4) a *population ring* composed of the state’s civilian population; and (5) a *fielded forces ring* or fighting mechanism ring that defends the state from attack.<sup>5</sup> Warden believes the object of war is to “induce the enemy to do [one’s] bidding”<sup>6</sup>; one can more effectively and efficiently accomplish this objective by rapid, simultaneous attacks on the enemy’s inner ring--leadership.<sup>7</sup> Only if one is unable to attack an enemy’s leadership does Warden recommend attacking, in ascending order of importance, the latter rings.<sup>8</sup>



**Figure 1. Warden’s Five-Ring System Theory Diagram**

On an ancillary note, some question whether Warden’s five-ring system theory presents a *model* for wartime targeting. Professor Lewis Ware presents a compelling argument that

Warden's theory fails to present a *model* because it fails to describe the relationship between the constituent parts of the enemy system and, most importantly, fails to empirically demonstrate the causal relationship between targeting within the "five-ring" system and degradation of the enemy's system.<sup>9</sup> Still others contend Ware's inquiry—on the sufficiency of Warden's five-ring system theory to present a *model* for wartime targeting—is irrelevant. Colonel Richard Szafranski, in a counterpoint piece to Ware's observations on Warden's five-ring system theory, presents a compelling argument that Warden's theory has utility despite its *perceived* failure to present, with *Aristolelian precision*, a *model* for wartime targeting.<sup>10</sup> He goes on to opine that using Warden's *model, non-model, or template* to accomplish wartime targeting produces little harm and that whatever harm such use produces is *unreal* and "resides in the intellectual ether and not in the world of action and history."<sup>11</sup>

Whether Warden's five-ring system theory presents a *classical, precise model* for wartime targeting is a debate best left for the academicians. However, Warden's five-ring system theory, however one chooses to classify it, has merit. It not only provides, as Ware acknowledges, a better understanding of the contribution that airpower has made and continues to make to warfighting, it also provides, as Szafranski notes, the warfighter with a valuable tool for wartime targeting. Notwithstanding these realizations, one does take exception to Szafranski's opinion that no *real harm* can ever come from using Warden's five-ring system theory. Quite simply, blind adherence to Warden's five-ring system theory, as it will be shown, increases the potential that warfighters will run afoul of international law, domestic law, and norms of expected behavior. Against this backdrop, we will now examine the legal and moral issues surrounding the wartime targeting of an enemy's leadership ring.

## Notes

<sup>2</sup> Carl von Clausewitz, *On War*, trans. And ed. Michael Howard and Peter Paret (N.J.: Princeton University Press, 1984), pp. 595-96.

<sup>3</sup> Colonel John A. Warden III, "Air Theory for the Twenty-First Century," in *Challenge and Response: Anticipating U.S. Military Security Concerns*, ed. Karl P. Magyar (Maxwell AFB, Ala.: Air University Press, August 1994) 311-32 *hereinafter Warden* at page 326.

<sup>4</sup> *Ibid*, pp. 314, 319.

<sup>5</sup> *Ibid*, pp. 318-19.

<sup>6</sup> *Ibid*, p.318.

<sup>7</sup> *Ibid*.

<sup>8</sup> *Ibid*, p. 317.

<sup>9</sup> Lewis Ware, "Some Observations on the Enemy as a System," *Airpower Journal* 9, no. 4 (Winter 1995): 87-93.

<sup>10</sup> Colonel Richard Szafranski, "The Problems with Bees and Bombs," *Airpower Journal* 9, no. 4 (Winter 1995): 94-98.

<sup>11</sup> *Ibid*.

## Part 3

### 1<sup>st</sup> Ring Analysis: Wartime Targeting Leadership

*The obvious place to induce strategic system paralysis is at the leadership, or brain, level.*

—Colonel John Warden  
*Air Theory for the Twenty-First Century*

*If push comes to shove, the cutting edge would be in downtown Baghdad. This wouldn't be a Vietnam-style operation, nibbling around the edges. The way to hurt at home is not somewhere in the woods somewhere. We're looking for the centers of gravity where airpower could make a difference early on. Hussein ought to be the focus of our efforts.*

—General Michael Dugan  
*The General's War*

*The allied bombing campaign is not targeting any individual.*

—President George Bush

General Dugan was summarily dismissed shortly after his above-mentioned quote. It is unknown whether he was fired for speaking the **truth** or for uttering that which was impolitic and beyond the pale. Subsequent interviews by General Norman Schwarzkopf, Commander-in-Chief of Central Command during the Gulf War, and General Charles Horner, the Joint Forces Air Component Commander (JFACC) during the Gulf War, muddy the waters. For example, General Schwarzkopf provided the following in response to a question by Frontline on whether the United States was targeting Saddam Hussein during the Gulf War:

Well, the objective regarding Saddam Hussein was that he was in fact a center of gravity...So therefore what we wanted to do was sever his ability to...communicate with his forces. *And if that meant killing him, so be it.* I mean, you certainly want to go after the center of gravity and therefore we bombed the command bunker...*But the objective was not to kill Saddam Hussein*, as much as it was to completely sever his ability to communicate with his forces.” (Emphasis Added).<sup>12</sup>

General Horner, in responding to a similar question from Frontline, was equally vague when he provided the following:

I don't think any of us would have lost any sleep if Saddam Hussein had been killed in this war. As a matter of policy we were not trying to assassinate him but we dropped bombs on every place that he should have been at work. Now that's...you know, we're getting kind of fancy with words but in reality that's the truth of the matter. (Emphasis Added).<sup>13</sup>

However, General Dugan's firing, assertions of others notwithstanding, raises an issue on the legitimacy of targeting an enemy state's leadership during wartime. Warden recommends that the warfighter initially target the enemy's leadership.<sup>14</sup> By targeting leadership Warden means the targeting not only command and control facilities or the leaders' ability to communicate with subordinates, he also means targeting the *person* of the respective leaders.<sup>15</sup> Warden's comments that “[t]he most critical ring is the command ring...be it a civilian at the seat of the government or a military commander...” and that “capturing or killing the state's leader has frequently been decisive” highlights his belief that it is proper to target the *person* of the respective leader.<sup>16</sup>

During war, a state's leadership can essentially be divided into two broad categories--*military leaders* and *civilian leaders*. Civilian leaders, used here to mean heads of state, foreign ministers, defense ministers, and other high ranking state officials, can be further subdivided into two categories--those involved in prosecuting the war and those whose state is at war but who have somehow managed not to become involved, directly or indirectly, in the prosecution of the

war. While it is doubtful there will be many civilian leaders in the latter category, perhaps the U.S. Secretary of Education and members of the U.S. Supreme Court are examples of civilian leaders who fall into this category, a leader's involvement in the war effort determines his or her immunity from wartime attack and thus, the legitimacy of the attack. The easiest situation to determine is that of targeting the foreign military leader.

### **A. Wartime Targeting of Military Leaders**

Military leaders, like the troops they command, are by definition combatants. They are sanctioned by their respective governments to engage in hostilities, have a *fixed distinctive emblem* or uniform recognized at a distance, carry their arms openly, and meet the other qualifications to be recognized as belligerents or combatants under the 1907 Hague Convention IV and the 1977 Geneva Protocol I.<sup>17</sup> As an aside, the United States ratified the 1907 Hague Convention IV on 27 November 1909 and signed, with reservations, the 1977 Geneva Protocol I on 12 December 1977. While the United States has failed to ratify Protocol I, it does accept portions of it as customary international law, i.e. the portions pertaining to the protection of the civilian population, and accordingly requires its citizens to abide by those portions. Thus, military leaders, as combatants, have historically been and can continue to be legally targeted during wartime. Two famous examples of the wartime targeting of enemy military leaders were the British attempt to kill or capture Field Marshal Erwin Rommel and our attempt to kill Admiral Isonoku Yamamoto during World War II; such attempts have generally been viewed as legal.<sup>18</sup> Moreover, since military leaders are, by definition, engaged in hostilities, their targeting can be morally justified by their status. As one ethicist noted, "The prospect of being killed [during wartime] is internally connected with the act of soldiering"<sup>19</sup> and military leaders, by

their status, assume the risk that they may be killed during wartime. However, the case is not as clear with the wartime targeting of civilian leaders.

## **B. Wartime Targeting of Civilian Leaders**

It becomes much more difficult to determine the legality and morality of the wartime targeting of civilian leaders. Such difficulty primarily arises because one cannot examine the issue of wartime targeting of civilian leaders without first examining the concept of assassination. The term *assassination* is imprecise at best. However, regardless of how one chooses to define the term, assassination has long been denounced as illegal under international law.<sup>20</sup> It has been variously defined as “the slaying of an individual belonging to a hostile army or a subject of a hostile government without trial by any captor,”<sup>21</sup> “the act of killing with treacherous violence...usually [a] prominent person...either for hire or from fanatic adherence to a cause,”<sup>22</sup> “the killing a person in public life for a political motive and without legal process,”<sup>23</sup> “the deliberate, extralegal killing of an individual for political purposes,”<sup>24</sup> and “the intentional killing of an internationally protected person.”<sup>25</sup> However, for purposes of this paper, I will slightly modify the latter definition and define assassination as *the intentional killing of an internationally or domestically protected person*. With this definition of assassination in mind, it becomes readily apparent that the legality of the wartime targeting of civilian leaders hinges on whether the civilian leaders are protected, internationally or domestically, from wartime attack.

### **1. Potential International Legal Sources of Protection**

Three potential sources of international protection for civilian leaders during wartime readily come to mind--the 1949 Geneva Convention IV, the 1977 Geneva Protocol I, and the Convention



on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents.

**a. The 1949 Geneva Convention IV (Geneva IV)**

Geneva IV, which the United States ratified on 2 August 1955, prohibits, among other things, the killing and summary execution of persons taking no active part in the hostilities.<sup>26</sup> It thus protects, from wartime attack, those civilian leaders who are not involved in the prosecution of the war; their killings, since they are protected internationally, could appropriately be viewed as assassinations. Moreover, not only would it be illegal to kill such leaders, it would also be morally reprehensible. Civilian leaders not involved in prosecuting the war are, in the truest sense of the phrase, “innocent of any wrongdoing with respect to the war” and the killing of the “innocent” has generally been viewed as immoral.<sup>27</sup> Those not involved in prosecuting the war are *innocent* or *harmless* in that they have not engaged in any wartime activity that would warrant their attack. Moreover, in defining the term *innocent*, and thus determining the morality of wartime targeting, I ignored *jus ad bellum* considerations because those participating in hostilities, regardless of the *justness* of their cause, can never be *innocent* or *harmless* in the truest sense of the word.

However, Geneva IV does not appear to prohibit the killing of civilian leaders involved in prosecuting the war. One comes to this conclusion because Geneva IV protects, from wartime attack, only those individuals “taking no active part in the hostilities.”<sup>28</sup> While there is no brightline test on the amount of active participation in hostilities required to make civilian leaders eligible for wartime attack,<sup>29</sup> a fair argument could be made that *any* active participation in hostilities by the civilian leaders is sufficient to turn the leaders into *quasi-combatants* eligible for wartime attack.<sup>30</sup> In short, the wartime killing of civilian leaders involved in prosecuting the

war would not be a violation of Geneva IV and would not, consequently, fall under the rubric of assassination. Moreover, since such leaders are involved in prosecuting the war and are thus not “innocent,” as previously defined, their killings would be morally permissible.

**b. The 1977 Geneva Protocol I (Protocol I)**

Protocol I states, in part, “The civilian population as such, as well as individual civilians, shall not be the object of attack...Civilians shall enjoy the protection [from wartime attack] ... *unless* and for such time as *they take a direct part in hostilities.*”<sup>31</sup> (Emphasis Added). Thus, like Geneva IV, Protocol I protects, from wartime attack, civilian leaders who are not involved in prosecuting the war. The wartime killing of these internationally protected leaders would be assassinations, as previously defined, and morally reprehensible acts. However, the wartime killing of civilian leaders involved in prosecuting the war, i.e. those taking a direct part in hostilities, would arguably be legally and morally permissible because those directly engaging in hostilities forfeit their legal protection under Protocol I and moral protection under the international norms of expected behavior.

**c. The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (New York Convention)**

Under the New York Convention, a treaty ratified by the United States on 26 October 1976, it is a violation of international and domestic law for an individual to intentionally “murder, kidnap, or attack the person or liberty of an internationally protected person; violent[ly] attack the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty; threat[en] to commit any such attack; or attempt to commit any such attack...”<sup>32</sup> Under the New York Convention, an *internationally protected person* includes, among others, “a Head of State, including any member of a collegial

body performing the function of a Head of State under the constitution of the State concerned, a Head of government or a Minister of Foreign Affairs, *whenever any such person is in a foreign state*, as well as members of his family who accompany him.”<sup>33</sup> (Emphasis Added).

The New York Convention was drafted to protect a certain class of civilian leaders--Heads of State, members of a collegial body performing the function of a Head of State, Heads of government and Ministers of Foreign Affairs--from attack while they are visiting a foreign state. Moreover, the visiting dignitaries enjoy freedom from attack regardless of the purpose of their visit to the signatory state.<sup>34</sup> While it is highly unlikely a belligerent head of state would visit the United States, it is not outside the realm of possibility, given the location of the United Nation’s headquarters, that a belligerent foreign minister--one involved in prosecuting a war against the United States or its allies--would visit the United States. Under such circumstance, the New York Convention would legally bar an attack, wartime or peacetime, on the visiting foreign leader. Such an attack, however, given the civilian leader’s complicity in the war effort, would not, under the previously espoused definition of morality, be barred under the international norms of expected behavior.

## **2. A Potential Domestic Legal Source of Protection**

Executive Order 12333 states, in part, “no person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.”<sup>35</sup> While the drafters failed to define the term *assassination*, such a failure does not prevent one assessing the executive order’s applicability to wartime targeting. At first read, it would appear Executive Order 12333 affords every foreign, civilian leader protection from U.S. attack. However, a closer reading of the executive order and its historical underpinnings, leads one to the conclusion that

the executive order does not prohibit the wartime targeting of belligerent, civilian leaders. Two points lead to this conclusion.

First, Executive Order 12333 applies *only* to those involved in U.S. intelligence operations. Not only does the title of the executive order, “United States Intelligence Activities,” provide support for this notion, but the stated purpose of the executive order adds ample support for this notion as well. The stated purpose of the executive order is solely to “enhance human and technical collection techniques...the acquisition of significant foreign intelligence...[and]...the detection and countering of international terrorist activities and espionage...”<sup>36</sup>; the executive order says nothing about wartime targeting. Moreover, history shows the executive order was promulgated in response to congressional concerns over the Central Intelligence Agency’s involvement in several covert assassination operations and was not promulgated out of a concern for wartime targeting.<sup>37</sup> A final point that leads one to conclude that Executive Order 12333 applies only to U.S. intelligence operations, can be found by examining the Department of Defense Directives that implement Executive Order 12333. Department of Defense Directive 5240.1, “DoD Intelligence Activities” and Department of Defense Directive 5240.1-R, “Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons” are the only Department of Defense Directives that implement Executive Order 12333. However, these directives, as their titles and purpose statements indicate, govern Department of Defense intelligence activities only.<sup>38</sup> In short, Executive Order 12333’s title, stated purpose, and history and the titles and stated purposes of the Department of Defense implementing directives all show that the drafters of Executive Order 12333 intended to govern *only* the conduct of those involved in U.S. intelligence operations. Executive Order 12333 simply does not apply to the majority of warfighters.

Second, *assuming arguendo* that the drafters intended to subject all warfighters, including those involved in U.S. intelligence operations, to the prohibitions of Executive Order 12333, Executive Order 12333 under most circumstances, still would not bar the wartime targeting of belligerent, civilian leaders. This is because only under the rarest of circumstances would belligerent, civilian leaders be afforded protected status, the violation of which would rise to the level of assassination. The first such situation involves the wartime targeting of belligerent, civilian leaders who are afforded protection under the New York Convention. Amazingly, belligerent, civilian leaders visiting signatory states of the New York Convention are protected from attack while in the signatory state; the targeting and killing of such leaders by citizens or residents of the signatory state or at the behest or with the complicity of the signatory state could appropriately be viewed as assassinations. While it is improbable a belligerent, civilian leader would visit the United States, given the location of the United Nation's headquarters, such a visit is not wholly unimaginable. The second situation involves the wartime targeting of belligerent, civilian leaders by an individual or individuals involved in U.S. intelligence operations.<sup>39</sup> Executive Order 12333 specifically prohibits the targeting and killing of civilian leaders, including belligerent civilian leaders, by those involved in U.S. intelligence operations; such killings could appropriately be viewed as assassinations. Under all other circumstances, the belligerent, civilian leaders would lack the protected status necessary to transform their targeting into assassinations, as the term was previously defined. In short, all other targeting would be legally permissible under Executive Order 12333.

Contrary to Warden's first ring, we have seen that it is not legally permissible to target every belligerent leader. While we may appropriately engage in the wartime targeting of belligerent military leaders, we must use caution in targeting belligerent civilian leaders. Only those leaders

directly involved in hostilities or prosecuting the war effort against the United States or its allies may legally be attacked **and then** only if they are not in the United States and are not attacked by those involved in U.S. intelligence operations. Morally, however, we may attack those who are involved in hostilities against the United States or its allies. What about the legality and morality of targeting in Warden's second ring?

### Notes

<sup>12</sup> Schwarzkopf's Frontline interview at [www2.pbs.org/wgbh/pages/frontline/gulf/oral/schwarzkopf](http://www2.pbs.org/wgbh/pages/frontline/gulf/oral/schwarzkopf).

<sup>13</sup> Horner's Frontline interview at [www2.pbs.org/wgbh/pages/frontline/gulf/oral/horner](http://www2.pbs.org/wgbh/pages/frontline/gulf/oral/horner).

<sup>14</sup> *Warden*, p. 322.

<sup>15</sup> Colonel John A. Warden III, "The Enemy As a System," *Airpower Journal* 9, no. 1 (Spring 1995) *hereinafter Enemy*, p. 49.

<sup>16</sup> *Ibid.*

<sup>17</sup> Documents on the Laws of War, eds. Norm Roberts and Richard Gueltt (Oxford: Clarendon Press, 1982) *hereinafter Laws of War*, 1907 Hague Convention IV, Article 1 and the 1977 Geneva Protocol I, Articles 43 and 44, *Laws of War*, pp. 48, 411 respectively.

<sup>18</sup> *Comment*, Assassination in Wartime, 30 *Mil. L. Rev.* (1965), *hereinafter Comment*, at 102.

<sup>19</sup> Richard Norman, *Ethics, Killing, and War*, (Cambridge: University Press, 1995) *hereinafter Ethics*, p.177.

<sup>20</sup> Note, The Legality of Assassination as an Aspect of Foreign Policy, 27 *Virginia Journal of Int'l Law* 655-97 (1987), *hereinafter Note*, at pp. 662-63 and *Comment*, p.101.

<sup>21</sup> Edward S. Farrow, *A Dictionary of Military Terms* (New York: Thomas Y. Crowell Company, 1918).

<sup>22</sup> Murray Clark Havens, Carl Leiden, and Karl M. Schmitt, *Assassination and Terrorism: Their Modern Dimensions* (Manhaca, Texas: Sterling Swift Publishing Company, 1975) *hereinafter Assassination*, p. 2 *citing* Webster's Third New International Dictionary.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Note*, p. 655, n. 1.

<sup>26</sup> Geneva IV, Part I, Article 3, *Laws of War*, p. 273.

<sup>27</sup> Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (HarperCollins Publishers, 1977) p. 146 and *Ethics*, p. 83.

<sup>28</sup> Geneva IV, Part I, Article 3, *Laws of War*, p. 273.

<sup>29</sup> W. Hays Parks, *Memorandum of Law: Executive Order 12333 and Assassination*, The Army Lawyer, December 1989, *hereinafter Memo*, p. 6.

<sup>30</sup> *Ibid.*

<sup>31</sup> Protocol I, Part IV, Section, Chapter II, Article 51(2) and 51(3), *Laws of War*, p. 415.

## Notes

<sup>32</sup> The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Dec. 14, 1973, 28 U.S.T.S 1975, T.I.A.S. No. 8532, 1035 U.N.T.S. 167, *hereinafter New York Convention*, Article 2(1). The United States ratified this treaty on 26 October 1976.

<sup>33</sup> *New York Convention*, Article 1(a).

<sup>34</sup> Louis M. Bloomfield and Gerald F. Fitzgerald, *Crimes Against Internationally Protected Persons: Prevention and Punishment*, (New York: Praeger Publishers, 1975) *hereinafter Crimes*, page 64.

<sup>35</sup> Executive Order 12333, 3 C.F.R. 200 (1982), *reprinted in* 50 U.S.C. app. § 401 (1982), *hereinafter Executive Order*, at § 2.11.

<sup>36</sup> *Executive Order*, paragraph 2.2.

<sup>37</sup> *Note*, pp. 683-685.

<sup>38</sup> Department of Defense Directive 5240.1, paragraph 1 and Department of Defense Directive 5240.1-R, forward and procedure 1, paragraph A.

<sup>39</sup> *Executive Order*.

## Part 4

### 2<sup>nd</sup> Ring Analysis: Targeting System Essentials

If one is unable to successfully target the enemy's leadership, Warden next advocates targeting the enemy's system essentials. By system essentials, Warden refers to those attributes that are often necessary for the state to wage war. As Warden notes, key examples of system essentials include a state's power supply, i.e., electricity, oil, food, and financial resources.<sup>40</sup> While the destruction of these objects may deprive the enemy state of its ability to wage war, such destruction often threatens the survival of the enemy's civilian population. It is this latter point that causes the greatest legal and moral concerns when targeting system essentials.

The legality of targeting an enemy's system essentials hinges on the degree to which: (1) the object contributes to the enemy's military action; (2) the object's destruction, capture, or neutralization offers us a definite military advantage, *and*; (3) if the object is the enemy's food supply, the degree to which the food supply is indispensable to the survival of the enemy, civilian population. Protocol I reminds us that we may lawfully attack only those objects "which by their nature, location, purpose or use *make an effective contribution to military action and whose ... destruction, capture or neutralization ... offers a definite military advantage.*"<sup>41</sup> (Emphasis Added). Protocol I further reminds us that "it is prohibited to attack, destroy, remove or render useless *objects indispensable to the survival of the civilian population*, such as foodstuffs ... [and] drinking water installations ... [if] *actions against these objects ... may be expected to*



leave the civilian population with such *inadequate food or water* as to *cause its starvation or force its movement.*”<sup>42</sup> (Emphasis Added).

The net effect of these provisions is that they establish a test that helps one determine the legality of targeting not only system essentials but the legality of targeting third-ring objectives—critical, infrastructures—as well. As a result of Protocol I, we may legally target only those system essentials that effectively contribute to the enemy’s military action, whose targeting confers a definite military advantage *and*, with respect to system essentials that are *food stuffs*, targeting that is not expected to lead to the starvation of the enemy civilian population or force its movement. Targeting that fails to comply with the first two prongs, or in the case of foodstuffs all three prongs, will be violative of Protocol I and thus unlawful.

Finally, to the extent that such targeting adversely affects those not engaged in the prosecution of war, i.e., those previously defined as *innocent*, such targeting could arguably be immoral.

#### Notes

<sup>40</sup> *Warden*, p. 315, Table 1.

<sup>41</sup> Protocol I, Part IV, Section I, Chapter 3, Article 52(2), *Laws of War*, p. 417.

<sup>42</sup> Protocol I, Part IV, Section I, Chapter 3, Article 54, *Laws of War*, p. 417.

## Part 5

### 3<sup>rd</sup> Ring Analysis: Targeting Critical Infrastructure

The legal and moral considerations of targeting an enemy's critical infrastructure parallel, in part, those considered when determining the legality and morality of targeting an enemy's system essentials. By *critical infrastructure*, Warden refers to those attributes that "tie the system," in our case the enemy state, together and help it operate as a single organism or entity.<sup>43</sup> Roads, airfields, and factories, as Warden notes, all fall within the penumbra of "critical infrastructure."<sup>44</sup>

The legality of targeting the enemy's critical infrastructure hinges on the degree to which the infrastructure effectively contributes to the enemy's military action *and* the degree to which its destruction, capture or neutralization confers a military advantage. If the *targeted infrastructure* does not effectively contribute to the enemy's military action *and* if its destruction, capture or neutralization does not confer a military advantage, it is not a lawful target. Conversely, if the targeting of the infrastructure meets both prongs of the aforementioned test, it can legally be targeted.

Finally, the morality of targeting enemy infrastructures mirrors that of the morality of targeting system essentials. Namely, if the targeting of the infrastructure adversely affects the *innocent*, such targeting would arguably be immoral. Conversely, if such targeting does not affect the *innocent*, or has a minimal effect on the *innocent*, it would arguably be moral.

## Notes

<sup>43</sup> *Warden* p. 315, Table 1 and p. 319.

<sup>44</sup> *Ibid.*

## Part 6

### 4<sup>th</sup> Ring Analysis: Targeting Civilian Populations

*Moral objections aside, it is difficult to attack the population directly...let us reiterate, that we hold direct attacks on civilians to be morally reprehensible.*

—Colonel John Warden  
*The Enemy as a System*

Warden does not advocate a direct attack on the enemy's civilian population; he believes such attacks are difficult and morally reprehensible.<sup>45</sup> Rather, Warden advocates indirect attacks on the enemy's civilian population.<sup>46</sup> Thus, we leave for another paper, the legality and morality of directly attacking an enemy's civilian population. As Warden notes, an indirect attack on an enemy's civilian population includes all those "actions [short of direct, physical attack] that can be taken to induce [the] enemy civilian population to offer some degree of resistance to its government."<sup>47</sup> Presumably, such attacks could include not only psychological operations (PSYOPS) designed to influence the collective minds of the civilian population but could also include the bombardment of civilian facilities in an effort to make life difficult for the civilian population. Thus, Warden's definition of *indirect attack* is sufficiently broad and vague enough to encompass virtually any action, save direct attack, done to influence the enemy's civilian population.

However, even an indirect attack on an enemy's civilian population *may* run afoul of international law and moral norms. Of particular concern is the targeting of those civilian

populations and civilians who take no direct part in hostilities. Protocol I specifically prohibits making such civilian populations and civilians the object of attack.<sup>48</sup> Moreover, it prohibits “all acts or threats of violence primarily designed to terrorize civilian populations.”<sup>49</sup> Thus the legality of indirect attacks on enemy, civilian populations, however fashioned, will depend on the primary purpose of the attacks. If the indirect attacks are acts or threats of violence primarily designed to make objects of attack out of or terrorize civilian populations and civilians not involved in hostilities, the international community will most likely view the attacks as illegal. Conversely, if the indirect attacks are not primarily designed to make objects of attack out of or terrorize the *innocent*, the attacks will likely pass muster under international law.

Finally, the morality of indirectly attacking the enemy’s civilian population hinges on the degree to which the civilian population is involved in hostilities. If the civilian population is involved in hostilities, such as during total war, it would be morally acceptable to attack them, indirectly or directly. Conversely, if the enemy’s civilian population is not involved in hostilities, it would be morally reprehensible, as Warden opines, to attack them.

#### Notes

<sup>45</sup> *Enemy*, pp. 50-51.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> Protocol I, Part IV, Section I, Chapter 2, Article 51(2)(3) and Part V, Section II, Article 85(3)(a), *Laws of War*, pp. 415, 437.

<sup>49</sup> *Ibid.*

## Part 7

### 5<sup>th</sup> Ring Analysis: Targeting Fielded Forces

Only if one cannot effectively target the four inner rings does Warden advocate targeting the fifth ring--the enemy's fielded forces.<sup>50</sup> Unlike von Clausewitz, Warden views the enemy's fielded forces as a *means to an end* that can, under most circumstances, be bypassed rather than *the end* to be engaged.<sup>51</sup> He does however recognize that situations may exist where one has little choice but to engage the enemy's fielded forces.<sup>52</sup>

With limited exception, there appears to be little legal and moral impediments to targeting an enemy's fielded force. The only impediment pertains to *hors de combat*. *Hors de combat* are those enemy forces, including military leaders, who are: (1) under our control or authority; (2) have clearly expressed an intention to surrender, *or* have been rendered unconscious or otherwise incapacitated and are thus incapable of defending themselves *and* abstain from hostile acts and escape attempts.<sup>53</sup> Put simply, Protocol I prohibits attacks on *hors de combat*; this would appear to be the only legal impediment to attacking the enemy's fielded force.

Determining the morality of attacking *hors de combat* is much more difficult. Such individuals are not *innocent* in the truest sense of the word; they will likely have engaged in hostilities. However, to the extent that they lack the ability to engage in future hostilities *and* have disavowed any notion of engaging in hostilities, they can arguably be viewed as *innocent* so as to make their attack morally reprehensible.

## Notes

<sup>50</sup> *Enemy*, p. 51

<sup>51</sup> *Enemy*, p. 51-52 and Edward C. Mann III, *Thunder and Lightning: Desert Storm and the Airpower Debates* (Maxwell AFB, Ala.: Air University Press, 1995) hereinafter *Thunder and Lightning*, pp. 98-99.

<sup>52</sup> *Enemy*, p. 53.

<sup>53</sup> Geneva IV, Part III, Section I, Article 41, *Laws of War*, p. 410.

## Part 8

### Conclusion

In the final analysis, Warden's five-ring system theory is an excellent tool for identifying enemy centers of gravity (COGs). However, despite the utility of Warden's theory, one should be mindful that there are moral and legal impediments that affect targeting in the rings. We have seen that the morality of targeting within the five rings hinges on the degree to which the targeting affects the *innocent*. If the targeting affects the *innocent*, previously defined as those not directly involved in hostilities, the targeting could arguably be viewed as immoral. If the targeting does not affect *the innocent*, it could arguably be viewed as moral. The legality of targeting within in the five rings follows a similar logic.

With respect to targeting leadership, Executive Order 12333 prohibits, as assassination, the targeting of civilian leaders or heads of state not involved in the prosecution of war. Moreover, while we can arguably target those civilian leaders involved in hostilities with the United States, i.e., Milosevic during the war in Kosovo, Executive Order 12333 and the New York Convention effectively limit our actions. Executive Order 12333 prohibits anyone involved in the U.S. intelligence community from engaging in such attacks. Finally, the New York Convention prohibits any U.S. citizen from targeting a visiting head of state, even if the head of state is involved in hostilities with the United States.



With respect to the legality of targeting system essentials, we have seen that the legality of the targeting hinges on the nature of the system essential. If the system essential is food, a system essential Warden highlights<sup>54</sup>, we can lawfully target it only if: (1) the targeted food effectively contributes to the enemy's military action, (2) the destruction, capture or neutralization of the food would confer a definite military advantage, **and** (3) the targeting is **not** expected to lead to the starvation of the enemy's civilian population or cause it to move. Failure to meet all three prongs would render the targeting illegal under Protocol I. Finally, if the system essential is an essential other than food, i.e., electricity or oil, we can lawfully target it only if we comply with the first two prongs.

The legality of targeting in the third ring--critical infrastructure--likewise hinges on the degree to which the infrastructure effectively contributes to the enemy's military action **and** the degree to which its destruction, capture or neutralization would confer a military advantage. If the targeting of the critical infrastructure complies with both prongs, it is legal; if it does not, it would be violative of Protocol I and thus illegal.

With respect to the legality of indirect attacks on the enemy's civilian population, the legality hinges on whether the targeting is designed primarily to terrorize those portions of the enemy's civilian population or civilians not directly involved in hostilities. If the targeting is primarily designed to terrorize **the innocent**, it would be violative of Protocol I and thus illegal. If the targeting is not primarily designed for such purposes, it would arguably be legal.

Finally, we have seen that the legality of targeting in the fifth ring hinges on the status of the enemy's fielded force. Protocol I prohibits targeting those portions of the enemy's fielded forces that are **hors de combat**; such targeting would thus be illegal. On a final note, it was not my intention to disparage the five-ring system model or its author. They have contributed immensely

to my understanding of targeting and the employment of airpower. Rather, my intentions were to highlight some of the legal and moral issues surrounding wartime targeting and to emphasize that such determinations *should not* be made in a vacuum. Put simply, Warden, by failing to give due consideration to the legal and moral issues surrounding wartime targeting and by failing to highlight the importance of such consideration, unwittingly increases the likelihood that warfighters, especially those who blindly adhere to his theory, will violate international law, domestic law, and norms of expected behavior. One need only look at former U.S. Attorney General Ramsey Clark's scathing indictment of U.S. military activities during the Gulf War<sup>55</sup> to realize that wartime targeting is fraught with potential problems. Undoubtedly Warden did not intend to complicate matters; however, intentions notwithstanding, staff judge advocates abound stand ready to help commanders navigate the legal and moral quagmire of wartime targeting.

### Notes

<sup>54</sup> *Enemy*, p. 44, Table 1.

<sup>55</sup> Ramsey Clark, *The Fire This Time: U.S. War Crimes in the Gulf War*, (Thunder's Mouth Press, 1992).

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