

III Targeting Satellites and Satellite Architecture

III 1. Military Objective

The first process in legally using a weapon is that of targeting. The initial legal consideration in the targeting process is the determination of what is a legitimate military objective. This process is the application of the principle of distinction. The use of force in military operations can only be directed towards legitimate military objectives. Space assets are not an exception to this important principle. Legitimate military objectives are defined as objects which by *“their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”*⁸⁵

It is important to note that the text imposes two cumulative conditions for the existence of a legitimate military target.

Firstly, the object must by its *nature, location, purpose or use make an effective contribution to military action*, and

Secondly, its *total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage*.

Once these two conditions are united, the object may be attacked. However a complete parsing and deconstruction of the text is required to fully grasp the amplitude of the norm.

III 1.1 Nature

The word “nature” includes all objects that are used directly by armed forces⁸⁶. Thus military satellites (command and control, GPS, intelligence, etc), including their architecture, are legitimate military objectives and may be attacked. Consequently States must avoid placing military ground stations near densely populated areas⁸⁷. Similarly, military satellites should not be placed near civilian satellites or in an orbit that would be considered to be “near” the International Space Station (ISS).

III 1.2 Location

The word “location” offers an interesting interpretive challenge when confronted with the paradigms of space assets. The accepted and standard interpretation of the word has two dimensions. Firstly, the word refers to objects which are not by nature military, but which in virtue of their location contribute to military action. Examples of these are bridges or other such constructions⁸⁸. A tall construction offering a view of the opposing belligerent forces can easily be conceived as being a legitimate military objective. Seen in this light, a civilian remote sensing satellite or a civilian telecommunication satellite and their respective architecture may arguably be considered as legitimate targets. Secondly, the word “location” can also be interpreted as referring to an area that may be attacked. In this sense the use of the area may legitimately be denied to the enemy. An example of this is a mountaintop or a ridge from which an enemy could observe an opposing force. It is at this point where the textual interpretation of applying the concept of “location” to space increases in difficulty. In attempting to apply this norm to the space paradigm the question is whether space itself or an orbit can be interpreted as being a “location”. If the answer is “yes” then space or orbits may then be the objects of attack in order to deny the ultimate “high ground” to an enemy belligerent force. The word “location” is defined within the Oxford dictionary as either a particular place or position and even includes the action or process of locating⁸⁹. Thus, it is logical to deduct that a specific orbital coordinates within the geostationary orbit, can be attacked in order to deny its use by belligerent forces for command and control, or telecommunications satellites. Considering that the word can also be construed as encompassing “the action or process of locating” transfer orbits which are used to place satellites in specific orbital coordinates may, according to

⁸⁵ AP I Art 52.2 *in fine*.

⁸⁶ Claude Pilloud et. al., ed., *Commentary on the Additional Protocols of June 8 1977 to the Geneva Conventions of 12 August 1949* (Norwell, MA, M.Nijhoff Publishers, 1987) para. 2020 (hereinafter referred to as « Commentary »).

⁸⁷ AP I art. 58(b) *supra* note 11.

⁸⁸ Commentary, *supra* note 86, Para. 2021.

⁸⁹ Concise Oxford Dictionary, tenth edition, p.833.