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The protection of critical infrastructure under international law during armed conflict

Abstract

The aim of this dissertation is to reconstruct the concept of critical infrastructure within the framework of international humanitarian law, whilst also establishing its contemporary meaning, in order to develop a standard for the protection of critical infrastructure during armed conflict. Critical infrastructure, as a structure comprising connected devices, facilities and systems (including intangible assets), affects the security of the state and the population by impacting three main categories: shelter, supply and security. Each of these categories encompasses specific sectors to which international humanitarian law grants protection to a greater or lesser extent.

Achieving this objective first required establishing the lexical context of the term ‘critical infrastructure’ in both Polish and English. Correctly determining the meaning also required referring to legal and juridical language. The concept in legal language was established based on domestic laws of selected countries: the Republic of Poland, the United States, the People’s Republic of China and the Russian Federation. Conversely, the concept as a legal term was defined by positions of selected international organisations. These include the United Nations, the North Atlantic Treaty Organisation, the Organisation for Security and Cooperation in Europe, and the Organisation for Economic Co-operation and Development. The concept of critical infrastructure was also analysed in doctrine and in case law of Polish courts and international tribunals. Specifically, it was examined by the Court of Justice of the European Union and the International Criminal Tribunal for the former Yugoslavia.

Establishing a standard for the protection of critical infrastructure during armed conflict also required consideration of standards for protecting such infrastructure against hybrid and terrorist threats. Although international humanitarian law does not, in principle, cover these threats, hybrid and terrorist activities nowadays often constitute the initial stage of the development of an armed conflict. Thus, establishing a standard for protecting critical infrastructure against these threats has enabled the identification of potential directions for developing critical infrastructure protection during armed conflict.

To reconstruct the term critical infrastructure in international humanitarian law, it was necessary to define the meaning of military objective and civilian objects, and then to relate

these meanings to the sectoral protection provided for in international humanitarian law, covering medical facilities, objects indispensable to the survival of the civilian population, works and installations containing dangerous forces, and the natural environment. Defining the term ‘critical infrastructure’ during armed conflict as dispersed systems and facilities made it possible to specify the obligations of the parties to the conflict aimed at limiting or completely eliminating threats to such infrastructure. This also formed the basis for determining the consequences of failing to comply with these obligations, both in terms of the direct impact on the facilities themselves and the civilian population, and in terms of the indirect implications regarding the responsibility of the state and individuals for attacks on critical infrastructure facilities.

The research carried out allowed for the reconstruction of the concept of critical infrastructure in international humanitarian law and the establishment of the standard of protection provided to these facilities during armed conflict. Furthermore, the analysis served as a basis for determining the standard of protection that should be afforded to critical infrastructure facilities during armed conflict.