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Focus

Washington Post
1 April 2003

“Dealing with the gruesome scene was a new experience for many of the US soldiers deployed here, and they debated how the tragedy could have been avoided. Several said they accepted the platoon leader’s explanation to Johnson on the military radio that he head, in fact, fired two warning shots, but that the driver failed to stop. And everybody was edgy, they realized, since four US soldiers were blown up by a suicide bomber Saturday at a checkpoint much like theirs, only 20 miles to the south.”

ABC News
1 April 2003

“A written statement from US Central Command says “initial reports indicate the soldiers responded in accordance with the rules of engagement to protect themselves” [...] In light of recent terrorist attacks by the Iraqi regime, the soldiers exercised considerable restraint to avoid the unnecessary loss of life.”

A checkpoint near Najaf: are their special rules regulating checkpoints in international armed conflicts?

On 31 March 2003 an unidentified vehicle drove towards a road blockade held by American soldiers. The vehicle showed no sign of slowing down and the soldiers grew increasingly alarmed that these could be Iraqi fighters. Some days earlier four US soldiers were blown up by a suicide bomber in similar circumstances. The soldiers fired at the car and, in fact, gunned down an entire family, some members of which were young children.

In international humanitarian law, there are no particular provision related to check-points or road-blockades which means that the general rules are applicable. First, one needs to examine whether this vehicle and its occupants can be considered as a military target. Clearly the occupants were all civilians. Yet one must not forget that the conformity of an act with the rules applicable in international armed conflicts must be gauged having regard to the circumstances prevailing at the time of the incident and not in the light of what is known after the operation. From the press reports it is not possible to ascertain how much the soldiers could see in the vehicle.

According to article 50(1) of Additional Protocol I, in case of doubt a person shall be considered as a civilian. In practice, it means that a combatant may open fire if he is convinced that they are enemy combatants or persons who are directly taking part in the hostilities though not allowed to do so. It can consequently be argued that the Americans, in the belief that the vehicle may be driven by enemy fighters, fired at a legitimate military target. The Americans by acting so have not violated the rules of international humanitarian law.

On the other hand the Additional Protocol I states that combatants need to take precautionary measures before launching an operation. This provision is regarded by many as of customary nature. Article 57(2) requests from combatants to cancel or suspend an operation if they realise that the objective targeted is of civilian nature. This however implies that first the Americans combatants would have realised that the vehicle was manned by civilians before it was violently stopped and second that they would have had the time to stop the firing. This can solely be established by a thorough examination of the incident.

In addition, article 57(2) enjoins combatants to give effective advance warning if they believe that civilians may be adversely affected by the effects of a military operation. There is no doubt that this article is applicable in the instance due to the lack of clarity as to the status of the persons inside the car. It is disputed whether the Americans had fired a warning shot before forcefully stopping the car. Again, there is a dire need for an investigation into the actual circumstances surrounding this tragic event.

Consequently, the decision of the US government to launch an investigation into the shooting is welcome. It is hoped that the US government will then either change its rules of engagement or offer better training to its armed forces manning such checkpoints.

Responsibility

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