

Liberal Party Defense Statement - Nova Kakhovka Dam, Ukraine

The breaching of the Nova Kakhovka dam in Ukraine serves as a reminder of the disastrous consequences that can unfold when parties to an armed conflict do not adhere to international humanitarian law. I am of the view that Russia has undoubtedly breached international law – the *ius ad bellum* - by waging war. It has acted in contravention of Article 2(4) of the UN Charter, which effectively serves as a prohibition on waging war; though in practical terms, the prohibition could only ever be aspirational. However, once armed conflict has started it is regulated by international humanitarian law – the *ius in bello*. War is not a free for all, where parties have unfettered discretion or when the ends justify the means. All members of the UN accept this basic principle. Civilian objects are generally protected from attack, and some are given special consideration. The targeting of dams is specifically prohibited.

Article 56 of the 1977 Additional Protocol I to the Geneva Conventions provides that dams shall not be made the object of attack if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. A dam loses its protection if it is being used for purposes other than its normal function and in regular, significant, and direct support of military operations and if such attack is the only feasible way to terminate such support. Of course, it is not the dam *per se* that international law seeks to protect; it is the civilian population which is the primary focus of protection. Humanitarian law seeks to protect humans.

Russia denies responsibility for the breaching of the Nova Kakhovka Dam and blames Ukraine. Ukraine denies responsibility and blames Russia. A growing international consensus appears to support the Ukrainian position. The possibility of rogue non state actors also exists, but I will not speculate. The lack of accountability shows that the perpetrator knows that they have committed a serious wrong. That only adds to the cowardice, which is a worrying and increasing feature of international armed conflict.

We must condemn atrocities in warfare, but we must also avoid any hint of hypocrisy if we are to maintain our credibility. The RAF famously breached the dam at the Möhne Reservoir in 1943. 617 Squadron became exalted (largely for the incredible bravery of its crews) and I am proud to have been made an honorary member of it. I accept that the Article 56 prohibition did not exist in its current form at the time, but I suggest that the general principle it upholds already formed part of international law. I was awarded honorary membership of 617 Squadron for my role in briefing its crews on international humanitarian law. That is not an irony. It is a sign of how the UK has evolved and how it takes its obligations seriously. That is to be welcomed, but we must be careful not to be seen to celebrate that which we may also condemn simply because it happened several years ago and was against an evil foe. The *ius in bello* does not discriminate on who is right or wrong.

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