

Who Causes Civilian Casualties?

By Amitai Etzioni

Here we go again, fighting with an arm tied behind our back. American officials say U.S. and allied warplanes “are not striking significant, and obvious, Islamic State group targets out of fear that the attacks will accidentally kill civilians,” according to *The New York Times*. This has included the group’s main headquarters in the Syrian city of Raqqa, and armed convoys of fighters in the recently conquered Iraqi city of Ramadi. Moreover, Pentagon statistics indicate that 75 percent of strike sorties in the fight against the Islamic State have returned to base without firing weapons.

U.S. officials argue that this restraint is necessary to avoid the mistakes of Iraq and Afghanistan, where high civilian casualties increased local hostility to U.S. forces. According to Iraqi officials, however, this restraint is a major reason why the Islamic State has been able to continue its territorial advances in the face of U.S. and allied air power. Islamic State fighters are well aware that we are doing our best to avoid civilian casualties and “appear to be taking advantage” by fighting “from within civilian populations to deter attacks,” according to the *Times*.

Previously, soldiers were constrained by a tactical directive set forth by Gen. Stanley A. McChrystal, then-International Security Assistance Force commander and commander of U.S. forces in Afghanistan. The directive set rules of engagement that aimed to reduce civilian casualties and preserve the goodwill of the local population. These rules included limits on the use of artillery fire and close-air support in residential areas, and bans on entering or firing at a mosque except in self-defense. The directive made clear that protecting Afghan civilians was the International Security Assistance Force’s top priority, and “gaining and maintaining that support must be our overriding operational imperative—and the ultimate objective of every action we take.”

Some people expected Gen. David H. Petraeus to loosen these restrictions when he succeeded McChrystal. Instead, Petraeus tightened them. He not only reinforced many of the previous rules, but also curbed small-arms fire

and expanded bans on airstrikes and artillery fire to buildings, tree-lined areas and hillsides where it would be difficult to distinguish civilians from combatants. His updated tactical directive called on the International Security Assistance Force to “redouble our efforts to reduce the loss of innocent civilian life to an absolute minimum. Every Afghan civilian death diminishes our cause. If we use excess force or operate contrary to our counterinsurgency principles, tactical victories may prove to be strategic setbacks.”

This policy did lead to a reduction in the number of civilian casualties in Afghanistan, but some critics of the policy linked the stricter rules of engagement to a spike in U.S. troop deaths. Others, however, attributed the spike to the increased U.S. troop presence with the 2010 surge.

the norm and the international law concerning responsibility for minimizing civilian casualties as well as the expectations based on them.

Changing Norms

When I discussed this issue with a Navy captain, a retired general and a DoD lawyer, they all were quick to agree that we are “self-limiting” and that “self-limiting behavior” puts our forces at a considerable disadvantage. However, they all held that given international norms and laws, the U.S. had no choice but to avoid hitting targets if they could end up causing civilian casualties—with some notable exceptions; for example, when the target is of high value. Implicitly, they assumed that the norms and laws are firmly ensconced and in effect, cannot be changed. They are correct up to a point; international law and norms

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Regardless of whether the rules of engagement were the primary cause for higher U.S. casualties, then-Sen. Joe Lieberman (I-Conn.) and others said they undermined U.S. troop morale. Moreover, by June 2010, civilian casualties increased compared with the same period in 2009 as increasing Taliban attacks on civilians offset the reduction in civilian casualties due to collateral damage. There were no signs the U.S. gained in public support.

The current international norm on civilian casualties basically leaves the U.S. and its allies with two options: either be greatly hampered in military efforts when terrorists and insurgents mix in with the civilian population, or alienate the local population as well as many at home by causing and being held responsible for civilian casualties. Such deaths also may violate international law that requires combatants to go out of their way to spare civilians, known as the rule of distinction.

When faced with such a dilemma, I hold that often, one should look for a third option. This case calls for changing

are sometimes difficult to change even compared to national policies, which themselves are often not easy to modify.

The normative notion that civilians (or “cities”) ought to be spared is age-old. The rule of distinction and many of the details were developed over many decades, and gained particular support after World War II in reaction to Nazi Germany’s indiscriminate bombing and deliberate targeting of civilians during the blitz in London and elsewhere, as well as the U.S. bombings of Tokyo, Hiroshima and Nagasaki and the Allied bombing of Dresden. These changes were codified through a series of agreements throughout history, including the St. Petersburg Declaration, the Convention on Certain Conventional Weapons and the Statue of the International Criminal Court.

How international norms and laws are modified is not a science, but it’s not a mystery either. These changes usually start with what might be called a brief: An individual or group of people makes the case for the new position. It was diplomat and historian George F. Kennan’s 1947 article in *Foreign Affairs* that

constituted the brief for shifting from a policy of awkward collaboration with the USSR during World War II to containment. Political activist Jody Williams, as a founder of the International Campaign to Ban Landmines and author of *After the Guns Fall Silent: The Enduring Legacy of Landmines*, similarly provided the brief for the 1997 Mine Ban Treaty.

Particularly telling are the changes that took place in what may well be the strongest international norm, that which embodied the principle that no nation should use its armed forces to interfere in another's internal affairs. This norm, the very essence of sovereignty, was strongly endorsed and enforced for more than 300 years. Following the Rwandan genocide and massacre at Srebrenica during the 1990s, a new international consensus formed on the need to prevent states from committing atrocities against their own populations. In 2001, Canada's International Commission on Intervention and State Sovereignty put forward the idea of a Responsibility to Protect, redefining state sovereignty as a responsibility and asserting that the international community could use military intervention "in grave circumstances," including crimes against humanity. The measure was ultimately unanimously endorsed by heads of state at a related summit as well as by the U.N. General Assembly.

Public debate, whether on radio and TV call-in shows or at national and international meetings, can lead to new shared normative understandings that can then be enshrined in law. The past can help us raise the question of whether we are going to continue to have to fight people who put a pilot into a cage, set him on fire and distribute the tape; who behead civilians and sell captured girls as sex slaves; in part because we are self-limiting our reaction, or work to change the norm. True, such changes take time, but there are reasons to believe that as in previous religious wars, we are in this for the long haul.

The New Brief

The essence of the new brief is that terrorists and insurgents are to be expected to abide by the same rule of distinction that military forces are; any violation will be recognized as the main cause of the civilian casualties that follow.

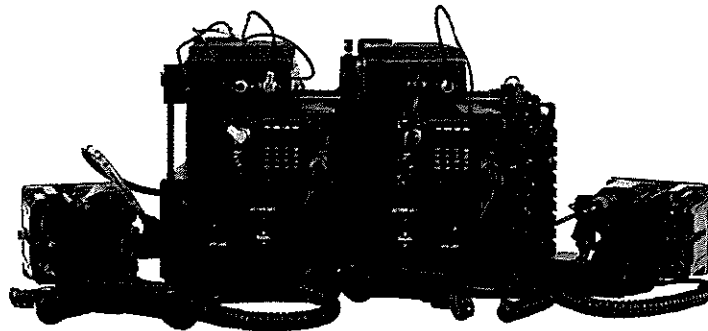
The rule of distinction asserts that to respect and protect civilians, the parties in conflict "shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives." It is considered one of the most important principles of international humanitarian law and has been repeatedly affirmed by international law treaties, most prominently additional protocols to the Geneva Conventions. The U.S. has signed—though not ratified—Additional Protocol I, which up-

holds the principle of distinction as customary international law and includes it in military manuals. Furthermore, the U.N. Security Council, of which the U.S. is a permanent and veto-holding member, has repeatedly condemned attacks on civilians. There is no logical, legal or moral reason to exempt any combatant from this rule.

U.S. lawyers should spell out the case for applying the rule of distinction to all combatants. Then, the signatories of previous Geneva Conventions should be called on to endorse this new international norm and make it part of revised

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international law. True, not all state actors are likely to endorse it, but such an opposition did not stop us and others from changing other norms and laws.

There is no guarantee that we will gain consensus, but there is nothing to be lost by trying. Indeed, we could help intensify the normative dialogue and move toward extending the rule application to all combatants if every time civilians are hit—despite our best efforts to minimize such losses—we spell out why these casualties took place; for example, showing that our adversaries launched attacks from private homes or utilized civilian vehicles. Instead of apologizing, as we so often do in such circumstances, we should put the blame where it belongs.

It should be noted that by limiting our forces when the other side violates the rule of distinction, we may not spare the lives of civilians but instead, prolong the conflict and resulting casualties. After Iraqi forces withdrew from Ramadi and the Islamic State took the city in May, the terrorist group reportedly killed hundreds of people within a few days. This came after U.S. forces failed to attack Islamic State convoys gathering outside the city despite having what was described as significant intelligence about the pending offensive.

Defenders of the self-limiting policy argue that civilian casualties alienate the local population and serve as a recruiting argument for our adversaries. Note, however, that this is taking place in a context in which we implicitly—if not explicitly—accept responsibility for these casualties, even sometimes paying compensation to surviving family members. If and when it becomes accepted that the main onus for these casualties is on the non-state actors violating the rule of distinction, the popular anger would be aimed where it ought to be, at those who violate the most basic rule of armed conflict—terrorists and insurgents. □

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Reflecting on Strategic Results Of Operation Desert Storm

By Lt. Col. John Curtis, U.S. Army retired

The decision to leave Saddam Hussein in power in Iraq with his Republican Guard more or less intact is an aspect of Operation Desert Storm that has always intrigued me. Over the years, I have come to see it in a more favorable light than have many of my military acquaintances. (My Neanderthal views on foreign policy and strategy may be the cause.)

Retired Maj. Gen. Robert H. Scales' perceptive and very persuasive *ARMY* magazine article, "Winners and Losers from First Gulf War" (August), got me thinking about this again. He made important observations about the war's strategic outcome. For example, the phenomenal success of U.S. "shock and awe" bombing persuaded American planners thereafter to expect more from air power than it since has proven capable of delivering, to our considerable frustration since 9/11.

In the wake of the collapse of the USSR and end of the Cold War, this opinion was reinforced by our belief that our robust conventional forces no longer served our strategic needs or deserved Cold War priority funding—an opinion that ultimately resulted in sequestration and which events in Ukraine finally are calling into question.

As intimated above, I believe that leaving Saddam in power with his Republican Guard functional was a good strategic decision, although I am painfully aware it was the opposite of America's habitual treatment of our adversaries. Beginning with World War I, the U.S. has been content to watch or abet the destruction or mauling of major powers across the globe, only to wonder why those who remained suddenly seemed so much more dangerous.

By not working to prevent World War I—that is, by not continuing America's active involvement in European affairs after President Theodore Roosevelt's administration—the U.S. failed to avoid eventual participation and finally entered only after Britain and France, the allies we would count on to sustain the post-war settlement, were so badly demoralized and damaged that they proved woe-

fully inadequate to the task. We compounded this failure by refusing to assist them in sustaining the interwar balance of power in Europe.

Instead, America focused on the Pacific, where the U.S. never had shown reluctance to participate in regional diplomacy. We faced a deteriorating situation in Asia because the gutting of the European great powers had caused all of them to withdraw from their exposed positions in eastern Asia, particularly China, leaving America alone to oppose expansionist Japan.

Our disposition to give priority of attention and resources to Asia led us again to shun involvement in Europe, where Britain and France proved inadequate to resist the rise of Germany, Italy and the USSR. Once again, the U.S. was not able to avoid being drawn into war, and then set out to destroy our enemies rather than merely cut them down to size. Having conducted, from before World War I, our perennially shortsighted policy of resisting involvement in Europe until conditions were at their most perilous, we felt compelled to provide the USSR with gargantuan resources, to draw away Nazi Germany forces defending *Festung Europa* against our invasion. This also enabled the U.S. to devote what was required to push back Japan in the Pacific.

In the end, we participated in the destruction of Germany, Italy and Japan, and then wondered why the USSR and China suddenly seemed so dangerous. In short, we conducted World Wars I and II such that we then immediately faced this Eurasian peril utterly alone, having either watched or abetted the destruction of all of the remaining great powers. Our reward for this half-century of strategic bumbling would be to expend enormous resources; engage in two more inconclusive, frustrating and very costly wars—Korea and Vietnam; and wage a Cold War over the next 40 years, to contain the USSR and China.

My point, as I return to discuss the strategic outcome of Desert Storm, is