

The War in Iraq and International Humanitarian Law Frequently Asked Questions (FAQ) Last Updated April 7, 2003

The war in Iraq has raised a number of important issues of international humanitarian law (IHL), also known as the laws of war. IHL consists of the rules during armed conflict that seek to protect civilians and captured or incapacitated combatants, and restrict the methods and means of warfare. The following Frequently Asked Questions (FAQ) address some of the legal issues brought to public attention by official government statements and media reports. The FAQ do not attempt to assess the validity of any factual assertions made; instead they provide a legal analysis on the basis of assumed facts. This set of FAQ is not exhaustive and will be added to as necessary.

The responses below are based on IHL as derived from international treaties and customary international law (practices broadly accepted as legally binding). The main sources of treaty law are the four Geneva Conventions of 1949 (to which all warring states are party) and the Hague Convention of 1907 respecting the Laws and Customs of War on Land. Customary IHL is drawn from state practice, decisions of international tribunals, scholarly works, and international treaties to which the United States and Iraq are not party (particularly Protocols I and II of 1977 to the Geneva Conventions), many provisions of which are accepted as reflecting customary international law.

At its core, international humanitarian law seeks to limit the harm to people and property during wartime. Human Rights Watch urges all parties to the conflict in Iraq to abide scrupulously by its obligations under IHL. We note as well that the failure of one side to abide by the law does not relieve the other of its legal commitments. All those responsible for serious violations of IHL should be fairly and impartially prosecuted.

Terrorism and IHL

Question: Was the March 29 suicide bomb attack on a U.S. military checkpoint in Iraq an act of terrorism?

International law does not provide a clear definition of terrorism, but under IHL, the suicide attack by an Iraqi noncommissioned officer reportedly posing as a taxi driver would be considered perfidy rather than terrorism.

The Fourth Geneva Convention prohibits “all measures ... of terrorism” against civilians (G4, art. 33). Protocol I prohibits “[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population” (art. 51). According to the ICRC Commentary, while acts of violence related to war almost always cause some degree of terror against the civilian population and sometimes the armed forces, this provision is instead intended to prohibit acts of violence the primary purpose of which is to spread terror among the civilian population. Threats of terror are also prohibited. Any attack aimed at civilians is a grave breach of the Geneva Conventions (PI, art. 85).

A perfidious attack is one launched by combatants who have led opposing forces to believe that the attackers are really noncombatants. Acts of perfidy include pretending to be a civilian (who cannot be attacked) or feigning surrender (surrendering soldiers also cannot be attacked) so that opposing forces will let down their guard at the moment of attack.

Security in Occupied Areas

Question: What are the duties of coalition forces to provide security in areas they occupy?

An occupying power has a duty to restore and ensure public order and safety in the territory under its authority. Under customary international law, this duty begins once a stable regime of occupation has been established, but under the 1949 Geneva Conventions, the duty attaches as soon as the occupying force is in contact with the civilians of that territory, that is, at the soonest possible moment (this principle is reflected in U.S. military regulations) (G4, art. 6).

Military commanders on the spot must prevent and where necessary suppress serious violations involving the local population under their control or subject to their authority. Ensuring local security includes protecting people from reprisals and revenge attacks, such as against minority groups or local officials. Commanders are responsible for restoring and ensuring public order and safety as far as possible, and shall take all appropriate measures within their power to do this (ICRC Commentary to Protocol I, art. 87). In Iraq, coalition forces may have to be deployed to secure public order as they advance through Iraq, until the time local personnel can be mobilized and adequately trained for such responsibilities.

Humanitarian Assistance

News Item: “The European Commission raised concerns on March 31 over the distribution of aid by British soldiers, and suggested that troops should instead create "humanitarian corridors" to help relief workers do their job in Iraq.”

Question: What are the obligations of Iraq and the coalition forces to provide humanitarian assistance during the armed conflict?

Parties to an armed conflict are responsible for the well-being and health of the population under their control, and to facilitate assistance by neutral relief agencies.

A force occupying territory has a duty to supply the population with food and medicine “to the fullest extent of the means available to it” (G4, art. 55). If any part of the population of an occupied territory is inadequately supplied, the occupying power shall facilitate relief by humanitarian agencies (G4, art. 59). However, the provision of assistance by humanitarian agencies does not relieve the occupying force of its responsibilities to meet the needs of the population.

All sides must facilitate rapid and unimpeded assistance to civilians by impartial humanitarian agencies. A party must allow the “free passage” of food, medicine, and other essential supplies to civilians under control of adversary forces. The party allowing passage must be satisfied that the shipment will not be diverted from its assigned destination, that control can be maintained over the shipment, and that the shipment will not provide a definite advantage to the enemy’s armed forces (G4, art. 23; P1, art. 69). Parties may make the necessary technical arrangements to ensure that the above conditions are met. They must respect and protect relief personnel (P1, art. 71).

IHL on Urban Combat and Besieged Areas

Urban Combat

Question: What obligations do armies have to protect civilians during fighting in urban areas?

Urban warfare significantly increases the risks to the civilian population. In the conduct of military operations, armed forces must take constant care to spare the civilian population, civilians and civilian objects. IHL places obligations on both defending and attacking forces.

Defending forces must to the maximum extent feasible avoid locating military objectives within or near densely populated areas; seek to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives; and take other necessary precautions to protect civilians against the dangers resulting from military operations (P1, art. 58).

The presence of civilians may not be used to render certain points or areas immune from military operations (G4, art. 28).

Attacking forces must do everything feasible to verify that the objectives to be attacked are military objectives, and not civilians or civilian objects (see Q&A on Military Attacks on Government Buildings). They must also take all feasible precautions in the means and methods of attack so as to avoid, or at least minimize, incidental loss of civilian life and property. And they must withhold launching any attack that may be expected to cause excessive civilian loss in comparison to the concrete and direct military advantage anticipated. Effective advance warning shall be given of attacks that may affect the civilian population, unless circumstances do not permit (P1, art. 57).

All sides must allow civilians to escape from battle zones and permit independent humanitarian agencies access to the civilian population. (See Q&A on Humanitarian Assistance.)

Besieged and Encircled Areas

Question: What rules of IHL apply to “besieged” or “encircled” areas?

In besieged or encircled areas, the 1949 Geneva Conventions call on both sides to seek agreements to allow for the departure of the wounded and sick, and civilians especially at risk, such as children, pregnant women and the elderly (Geneva IV, art. 17). The ICRC Commentary strongly urges that evacuations be arranged whenever it is in the interest of the civilian population and the military situation makes it possible. Medical staffers and supplies should be permitted into the besieged area.

During sieges and attacks all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand (Hague Convention, art. 27).

IHL prohibits the deliberate starvation of civilians as a way to annihilate or weaken the population. Armed forces may not deliberately cause the population to suffer hunger, particularly by depriving it of its sources of food or supplies. More generally, armed forces are prohibited from attacking or destroying “objects indispensable to the survival of the civilian population,” such as food, crops,

livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them to the civilian population or to the enemy force. This prohibition does not apply to foodstores and the like used solely by the enemy's armed forces or to directly support military action, unless the result is to subject the civilian population to starvation or force its movement. (A state defending its national territory against invasion may destroy its own food, etc. when required by imperative military necessity) (Protocol I, art. 54).

In the event the besieged or surrounded locale is captured, the occupying force has an obligation to maintain security, prevent reprisals, and provide food and medicine to the population (see Q&A on Security in Occupied and on Humanitarian Assistance).

Targeting Military Leaders

Question: Does IHL prohibit airstrikes or other attacks aimed at Saddam Hussein or other military leaders?

IHL allows the targeting of commanders—even top commanders—in the course of armed conflict, provided that such attacks otherwise comply with the laws that protect civilians (for example, the attacks cannot be indiscriminate or cause disproportionate civilian casualties). Such attacks are permitted even if they are the "first shot" of the war.

Since 1976, successive U.S. presidents have endorsed an executive order banning political assassinations. This order followed revelations of earlier U.S. assassinations and assassination attempts of various world leaders. Consistent with the rules outlined above, IHL would not preclude interpreting this order not to prohibit targeting opposing commanders in an armed conflict.

Destruction of Oil Wells

Question: Is it a violation of IHL for a state to destroy its own oil wells?

Destroying oil wells might violate the rule that warring states must protect the natural environment. Article 55 of Protocol I states: "Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population." The United States has previously argued that Article 55 is too broad and ambiguous for effective use in military operations, and might be inconsistent with other general principles, such as the rule of proportionality in attack.

Definition of Prisoners of War

Question: Who is entitled to prisoner of war status?

The Third Geneva Convention of 1949 states that prisoners of war (POWs) are combatants in an international armed conflict who have fallen into the hands of the enemy. Persons entitled to POW status include: members of the armed forces, members of militia or similar forces who meet certain conditions spelled out in the Third Geneva Convention, persons accompanying the armed forces

without belonging to them, civilians taking up arms "en masse," and others. Captured journalists connected to the adversaries armed forces are also entitled to the protections of POW status. POWs cannot be prosecuted for the mere fact of having participated in the armed conflict. They may, however, be prosecuted for war crimes. Absent prosecution, POWs must be released and repatriated at the end of "active hostilities."

Treatment of Prisoners of War

Question: How must a Detaining Power treat prisoners of war?

Ultimate responsibility for the well being of POWs lies with the Detaining Power-that is, the central authorities-and not simply the individual military units that have captured the POWs. The Third Geneva Convention regulates in considerable detail the rights and duties of POWs. Among those rights and duties most relevant to the war in Iraq, all of which are effective from the moment of capture, are the following:

- POWs should not be exposed to danger while awaiting evacuation from a fighting zone, nor sent to or detained in a location where they may be exposed to fire from the combat zone.
- POWs must be humanely treated at all times; it is a war crime to willfully kill POWs, ill treat or torture them, willfully cause great suffering (including moral suffering inflicted for reasons such as punishment, revenge, or pure sadism) or serious injury to body or health, or deprive them of the rights of fair trial.
- Reprisals against POWs are strictly forbidden; POWs cannot be punished for acts they have not committed or be subjected to collective punishment.
- The honor of POWs must be protected; particularly, they must not be subject to insults or violence or made a public curiosity whether by enemy forces or civilians. They must not be paraded or interrogated in front of the media, and their images should not be used for political purposes (see *Filming of Prisoners of War*).
- If questioned, POWs are obliged only to give their name and rank, date of birth, and military serial number or equivalent information. No torture or other form of coercion may be inflicted on POWs to obtain from them any type of information. POWs may not be punished for failing to provide other than this narrowly prescribed information.
- Women POWs must be treated with due regard for their gender and be given at least the same rights and protections as men. Children who are POWs are entitled to special treatment.
- POWs must be interned in premises affording basic hygiene. The Detaining Power has an obligation to provide food, clothing, and shelter to POWs. Wounded or ill POWs should be provided with the same medical care that is given to the members of the armed forces of the Detaining Power.

- Among the rights afforded to POWs are to: practice their religion, exchange communications with their families, receive a copy of the Geneva Conventions, and appoint a representative among themselves to deal with the detaining authorities.
- POWs also have duties derived from the laws of war, the regulations of the Detaining Power, and military discipline. POWs are subject to the laws and orders of the enemy armed forces; they can be tried and punished for the same infractions and with the sanctions as members of the detaining military. If they commit a non-military crime, they are subject to the laws and courts of the Detaining Power.
- If a POW tries to escape and is recaptured, the POW is liable only to disciplinary confinement; however, the POW may be punished for any violence used in the escape attempt.

Filming of Prisoners of War

Question: Can POWs be shown on television?

It is a violation of the Geneva Conventions to deliberately expose prisoners of war (POWs) to the media. A detaining authority in wartime has a clear obligation not to parade POWs, or allow them to be exposed to public viewing. Article 13 of the Third Geneva Convention states: "Prisoners of war must at all times be humanely treated.... Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited."

The prohibition is not a blanket ban on any image whatsoever of a POW; for example, it would not extend to incidental filming of POWs, when journalists are documenting broader military operations.

Fake Surrenders (Perfidy and Ruses)

Question: Is it permissible for a soldier to feign surrender and then fire at the enemy?

International law prohibits attacking, killing, injuring, capturing or deceiving the enemy by resorting to what is called perfidy. A perfidious attack is one launched by combatants who have led opposing forces to believe that the attackers are really noncombatants. Acts of perfidy include pretending to be a civilian (who cannot be attacked) or feigning surrender (surrendering soldiers also cannot be attacked) so that opposing forces will let down their guard at the moment of attack. Other examples include feigning protective status by the misuse of emblems of the United Nations or the Red Cross and Red Crescent.

Perfidy poses particular dangers because it blurs the distinction between enemy soldiers, who are a valid target, and civilians and other noncombatants, who are not. Soldiers fearful of perfidious attacks are more likely to fire upon civilians and surrendering soldiers, however unlawfully.

Attacks carried out by openly armed belligerents in civilian clothes, with no attempt to feign civilian status, do not constitute perfidy. Suicidal attacks by undisguised military forces, exemplified by Japanese kamikaze attacks during World War II, are not a violation of the laws of war.

Perfidy is distinguished from ruses of war, such as mock operations, misinformation, surprises, ambushes, or the use of camouflage or decoy. Ruses are permissible acts of warfare intended to trick the enemy; they do not violate international law to the extent that they do not depend on taking advantage of an enemy's willingness to abide by the law protecting noncombatants.

Civilian Casualties

Question: Is IHL violated whenever civilian casualties result from an attack?

Civilian casualties do not necessarily mean that IHL has been violated. It is a violation of IHL for an armed force to directly target civilians or carry out attacks that do not discriminate between civilians and soldiers, or which cause civilian casualties disproportionate to the military advantage gained. However, civilian deaths for other reasons, such technical failure or human error, are not IHL violations.

States have a duty to take all feasible steps, including choosing the type of attack, that will minimize injury to civilians. For instance, because precision-guided munitions can significantly enhance the ability of an attacker to discriminate between military targets and civilians, a party to the conflict that has precision weapons at its disposal should favor their use over "dumb" bombs when planning an attack on a given military target located near a populated area. Other precautions may lessen civilian damage, such as choosing a time of attack when fewer civilians will be in the vicinity, or providing effective warnings. These measures must be used in combination, if feasible, to produce the least harm to civilians consistent with achieving a military objective.

Military Attacks on Government Buildings

Question: May government buildings may be lawfully attacked?

A government building is a legitimate military target if by its "nature, location, purpose, or use makes an effective contribution to military action" and its "total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage" (Protocol I, article 52).

Military objectives include:

- Nature: All buildings normally used by the armed forces such as barracks, staff headquarters, and communications centers.
- Location: Bridges or other constructions that are not inherently military in nature, but have military importance, for example, because they provide enemy forces a means of arriving at, leaving from, or supplying the battlefield.
- Purpose or Use: "Purpose" refers to the intended future use of a building while "use" refers to the present function of a building. For example, a building might be used to lodge military

personnel or serve as a field headquarters. However, if there are doubts about the current use of immediate purpose of a building, it must be presumed to be civilian.

The destruction of a particular target must offer a "definite military advantage" in the circumstances existing at the time. It is not legitimate to launch an attack that offers only potential or indeterminate advantages.

Government buildings that meet the above criteria can be objects of attack. Government buildings that do not meet these criteria are considered civilian objects and cannot be attacked.

Attacks on Broadcast Stations

Question: Are civilian radio and TV stations legitimate targets?

Military attacks on civilian TV or radio stations are prohibited if they are designed primarily to undermine civilian morale or to psychologically harass the civilian population. Although stopping enemy propaganda may serve to demoralize the Iraqi population and to undermine the government's political support, neither purpose offers the "concrete and direct" military advantage necessary under international law to make civilian broadcast facilities a legitimate military target (see Protocol I, article 57).

The fact that U.S. prisoners of war were displayed on Iraqi television does not make the station a legitimate target. Although such use of the media is a violation of the Geneva Conventions (see Prisoners of War, Filming of), it does not offer the concrete and direct advantage to the Iraqi military that would permit destruction of the transmitting facility.

Civilian TV and radio stations are legitimate targets only if they meet the criteria for a legitimate military objective, that is, if they are used in a way that makes an "effective contribution to military action" and their destruction in the circumstances ruling at the time offers "a definite military advantage." Civilian stations could become military targets if, for example, they are used to broadcast military communications or if they are otherwise used concretely to advance a military campaign. Should stations become military objectives, the principle of proportionality in attack must be respected. This means that planners and military commanders should verify at all times that the risks involved to the civilian population in undertaking any such attack do not outweigh the perceived military benefit. Special precautions should be taken in relation to buildings located in urban areas. Advance warning of an attack must be given whenever possible.

Cluster Bombs

Question: Are cluster bombs prohibited under IHL?

Cluster munitions are weapons, delivered from the air or ground, that disperse dozens and often hundreds of submunitions (often called "grenades" in surface-delivered weapons and "bomblets" in air-delivered weapons) over a large area, thereby increasing the radius of destructive effect over a target.

There is no specific international prohibition of the use of cluster bombs (unlike, for example, blinding lasers or chemical weapons). However, customary IHL prohibits attacks that strike military

targets and civilians without distinction. Because the "bomblets" released by cluster bombs have a wide dispersal pattern, they cannot be targeted precisely. As a result, they are prone to being indiscriminate when used in or near populated areas. In addition, cluster bomblets have a high initial failure rate-five percent or more-which results in numerous explosive "duds" scattered about the landscape, which pose similar risks to civilians as antipersonnel landmines.

Human Rights Watch believes cluster bombs should not be used in a conflict with Iraq because of their high dud rate. At the very least, they should never be used in or near populated areas.

Civilian Uprisings

Question: In the event of an armed uprising against Iraqi forces, does IHL apply?

Fighting solely between Iraqi civilians and Iraqi armed forces would at least be covered by Article 3 common to the four Geneva Conventions of 1949, which governs internal armed conflicts. Article 3 provides, among other things, that persons who have surrendered or have become incapacitated must be protected against execution, torture, and other cruel treatment, and against outrages upon their personal dignity, in particular humiliating and degrading treatment. The taking of hostages is prohibited. The wounded and sick must be cared for; and the International Committee of the Red Cross should be given access to those detained.

Human Rights Watch believes that customary humanitarian law (as reflected by many provisions of Protocol II) also requires that in a local uprising against an armed force, civilians not taking part in the hostilities must not be subject to direct or indiscriminate attack, acts intended to spread terror, or starvation as a method of combat, among other things.

Should U.S. coalition forces become directly involved in the fighting between Iraqi forces and any uprising, the Geneva Conventions would apply in full. And should U.S. or coalition forces occupy the area where an uprising is occurring, they would become responsible for providing security (including preventing reprisal executions) and ensuring that the civilian population has access to food and medical care.