

Iraq, The Battle for Mosul

INTRODUCTORY TEXT: During the battle for Mosul, civilians were caught between Islamic State (IS) fighters, Iraqi armed forces and the international coalition supporting the latter. This case allows for a discussion of certain conduct of hostilities issues, including the use of civilians as human shields, proportionality in attack and the use of chemical weapons, among others.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Case prepared by Galina Wedel, student at the University of Geneva and the Humboldt University of Berlin, under the supervision of Professor Marco Sassòli and Ms. Yvette Issar, research assistant, both at the University of Geneva.

A. Iraq: Fears for safety of civilians caught in crossfire and used by IS as human shields

[Source: Amnesty International, "Iraq: Fears for safety of civilians caught in crossfire and used by IS as human shields", 27.10.2016, available at <https://www.amnesty.org/en/latest/news/2016/10/iraq-fears-for-safety-of...>]

[1] Military operations to retake Mosul and the surrounding areas from the armed group calling itself Islamic State (IS) are endangering civilians who are being caught in the crossfire or in some cases being used as human shields by IS fighters, said Amnesty International from northern Iraq.

[2] The organization's research team met with civilians displaced from their homes in villages north of Mosul in recent days who are now in Zelikan and Khazer camps, in areas controlled by the Kurdistan Regional Government (KRG), and conducted phone interviews with people still trapped under IS control, gathering fresh evidence pointing to civilian deaths and injuries during in recent days.

[3] “With more than a million people believed to be still trapped in Mosul and its outskirts, the risks to civilians are sky high. IS’s utter disregard for the safety of civilians and their apparently deliberate use of human shields is putting people trapped in areas of active conflict at even greater risk, as Iraqi forces advance,” said Lynn Maalouf, Amnesty International’s Deputy Director for Research at the Beirut Regional Office. “To avoid civilians getting caught up in a bloodbath, all parties to the conflict must take all feasible precautions to spare civilian lives.”

[4] By 26 October, more than 10,500 people had been displaced since the launch of coalition military operations to retake Mosul, while up to 1.5 million people are believed to remain trapped in Mosul and its outskirts.

IS use of human shields

[5] Some civilians who managed to flee the fighting or whose villages had been recaptured by government forces told Amnesty International that IS fighters had deliberately prevented them from fleeing areas of conflict. IS fighters had embedded themselves within the civilian population, taking up positions in residential areas and in some cases, forcing civilians to move to areas under their control.

[6] “Using civilians to shield yourself from attack is a war crime. But even in cases when IS fighters are holding civilians as human shields, this does not absolve Iraqi and coalition forces from the obligation to take their presence into account, take all feasible precautions to minimize harm to civilians, and avoid launching attacks that could cause disproportionate harm to civilians,” said Lynn Maalouf.

Civilians caught in the crossfire

[...]

[7] “All parties should avoid the use of unguided rockets, artillery, mortars and other explosive weapons with wide area effects in the vicinity of concentrations of civilians. Attacks that appear likely to be disproportionate or otherwise indiscriminate should be postponed or cancelled,” said Lynn Maalouf.

[8] Residents of Tab Zawa told Amnesty International that IS fighters used both vacant and occupied villagers’ homes and rooftops to carry out their attacks.

[...]

[9] In some cases, IS fighters forced civilians from villages south of Mosul to move to areas under their control as they retreated from Iraqi forces’ attacks. Local officials, activists and a resident of al-Qayyara district, who was able to speak to Amnesty International over the phone from an IS-controlled area, said that civilians were kept in schools, homes and other locations near IS fighters in Hamam Al-Alil after being forced to move from their homes further south.

Background

[10] Civilians who managed to flee to areas controlled by the KRG since the start of military operations to retake Mosul and who are now sheltering in the Zelikan and Khazer are not permitted to leave the camps, except for medical treatment in cases of acute emergency. Even in such cases, no relatives are allowed to accompany the patients, including children. Such restrictions, along with the prohibition of the use of mobile phones by recent arrivals, even apply to those who have undergone security screening to determine whether they have links to IS. Kurdish authorities justify these restrictions on security grounds. Amnesty International has called on the Kurdish authorities on numerous occasions to lift all arbitrary and discriminatory restrictions on the freedom of movement of internally displaced people.

B. New ISIS Tactic: Gather Mosul's Civilians, Then Lure an Airstrike

[Source: New York Times, "New ISIS Tactic: Gather Mosul's Civilians, Then Lure an Airstrike", 30.03.2017, available at <https://www.nytimes.com/2017/03/30/world/middleeast/mosul-iraq-isis-military.html>]

[1] [...] A United States military spokesman said Thursday that Islamic State fighters had been herding local Iraqi residents into buildings in western Mosul, calculating that rising civilian casualties would restrain the United States from using airstrikes to help retake that half of the city.

[2] "What you see now is not the use of civilians as human shields," said Col. Joseph E. Scrocca, a spokesman for the American-led task force that is battling the Islamic State, also known as ISIS or ISIL. "ISIS is smuggling civilians into buildings so we won't see them and trying to bait the coalition to attack."

[3] An episode this week in which Islamic State fighters forced civilians inside a building, killing one who resisted, was observed by American surveillance aircraft. Islamic State fighters then positioned themselves inside the same structure to fire on Iraqi forces, according to an account provided in a briefing for Pentagon reporters by Colonel Scrocca.

[4] No video of the episode was released on Thursday, but he said the video would soon be made public.

[5] The furor over the March 17 American airstrike that led to the collapse of a building in western Mosul, killing scores if not hundreds of Iraqi civilians, as well as Defense Department allegations that Islamic State fighters deliberately placed the civilians in harm's way, have caused a change in American tactics. "It has caused some adjustments to our procedures," Colonel Scrocca said, though he declined to say what specific changes had been made.

[6] What has not changed is the generals' decision to give greater authority to American officers on the battlefield to call in airstrikes. That decision was taken after Lt. Gen. Stephen J. Townsend, the commander of the task force that is battling the Islamic State, was told by subordinates that it was taking too long to

conduct airstrikes when Syrian fighters were battling to take the town of Manbij in the northern part of the country and Iraqi fighters were first starting to take Mosul. The new procedures also will apply to the efforts to retake Raqqa, Syria, the Islamic State's capital.

[...]

[7] The stepped-up pace for carrying out airstrikes has been welcomed by Iraqi forces, which have suffered enormous casualties in the Mosul operation. In the first 37 days of the Iraqi offensive to take western Mosul, 284 Iraqi troops were killed and more than 1,600 were wounded. During the 100 days that it took Iraqi forces to take the eastern part of the city, 490 Iraqi troops were killed and more than 3,000 were wounded.

[8] The number of Islamic State fighters who have been killed is not known with certainty. But Colonel Scrocca said there were about 2,000 fighters in western Mosul before the recent Iraqi offensive, and that the number of militant fighters was now less than half that size.

[9] General Votel described the decision to let "on-scene commanders" call in airstrikes as a return to the standard doctrine of the United States for conducting urban warfare. He said the new procedures did not weaken protections for civilians.

[10] "We do expect on-scene commanders to use their field-expedient means to make assessments about civilians, and if they can't satisfy themselves that they are not there, then they bring it up to a higher level and they don't strike," he said. Any decision to strike mosques, schools or hospitals where militants may be hiding will continue to require higher-level review.

[11] Still, the sheer volume of American firepower that is being applied in Mosul underscores the risk for the hundreds of thousands of civilians who are believed to be trapped in the areas controlled by the Islamic State in western Mosul. Defense Department officials said the United States-led coalition had carried out attacks with 700 bombs and rockets and another 400 strikes with satellite-guided Himars missiles over the last week in Mosul.

[12] The United States has begun a formal investigation into the March 17 strike and other air attacks in that neighborhood where civilians were injured or killed. American officials have acknowledged that an American airstrike played a role in the March 17 attack. But they have raised the possibility that explosives planted by the Islamic State fighters in the building led to much of the destruction.

[13] Iraq's Counterterrorism Service has reported two episodes in which it said the Islamic State forced civilians into buildings that were rigged with explosives. [...]

C. Human Rights Watch: ISIS Accused of Unleashing Chemical Weapons in Mosul

[Source: Human Rights Watch, "ISIS Accused of Unleashing Chemical Weapons in Mosul", 6.03.2017,

[1] The Islamic State (also known as ISIS) has been accused of carrying out a chemical attack in Mosul last week, which, if confirmed, would appear to be the first time it has used this tactic during its battle with Iraqi government forces to retake control of the city.

[2] The International Committee of the Red Cross (ICRC) said in a statement that about twelve people, including women and children, were being treated for possible exposure to chemical weapons in a hospital in Erbil. While the ICRC stressed tests had not yet proved conclusive, it found the symptoms of the hospitalized patients suggested that they had been exposed to mustard agent. Iraqi authorities have said that ISIS was behind the attack.

[3] The use of chemicals as a weapon is a war crime. It is also a serious threat to both civilians and combatants, particularly in a city as densely populated as Mosul.

[4] Yet this latest reported chemical attack would not be ISIS's first in Iraq. After Iraqi troops retook the town of Qayyarah, 60 kilometers south of Mosul last year, ISIS launched at least three chemical attacks in September and October.

[5] The attacks caused painful burns to at least seven people that were consistent with exposure to a mustard agent also known as a "vesicant," or blister agent, a chemical weapons expert told Human Rights Watch. In two other cases in March 2016, first responders told Human Rights Watch they witnessed at least two other chemical attacks targeting the Kurdistan Regional Government's Peshmerga military forces in Taza Khurmatu, a town 100 kilometers south of Erbil. The perpetrators of those attacks have not been confirmed but witnesses believed them to be ISIS.

[6] Despite reports of US-led coalition airstrikes targeting ISIS' chemical weapons production facilities in Iraq, this new attack serves as a troubling reminder that ISIS still has chemical warfare capabilities – even as it loses ground in western Mosul.

[7] In light of these attacks, both Iraqi authorities and other states and organizations assisting in humanitarian protection should urgently deploy defensive measures to safeguard civilians, including stockpiling masks and other protective equipment that can be rapidly distributed to civilians.

[8] They should also inform civilians on what to do in case they find themselves in an area under chemical weapons attack, and restrict access to contaminated areas.

Discussion

I. Classification of the Conflict and Applicable Law

1. (*Documents A, paras [1]-[5] and B, paras [1]-[2], [7], [11]- [12]; Document C, paras [1], [6]*)

a. Based on the information above, how would you classify the situation in Iraq? (GC I-IV, Arts 2 and 3; P I,

Art. 1; P II, Art. 1)

b. Who are the parties to the conflict?

c. Is IS bound by IHL? The coalition forces? The Kurdish forces? Are there any differences in the way IHL applies to each? Why?

II. Conduct of Hostilities

2. (*Document A, para. 8*) Is it lawful to use occupied or vacant village houses to launch attacks? Which IHL restrictions apply? (CIHL, Rules 22-24 and 97; P I, Arts 51(7) and 58)

3. (*Document B, paras [1]-[3]*) It is alleged that IS fighters forced civilians into buildings from which those fighters continued to conduct hostilities. Do such buildings constitute military objectives? How do you define the notion of a military objective? Does the simple fact that a building contains civilians prevent it from becoming a military objective? Would you describe the civilians in such cases as hostages or human shields? Does the number of civilians held in such buildings have an impact on whether they constitute military objectives? Would targeting such a building constitute a violation of IHL or even a war crime? (CIHL, Rules 8, 10, 14-15, 96-97; P I, Arts 51(5)(b), 51(7), 52(2), 52(3), 57 and 85)

4. (*Document A, paras [5], [6] and [9]; Document B, paras [1]-[5]*)

a. What is the difference between the use of civilians as human shields described in Document A, and the IS practice referred to in Document B? Why does Col. Scrocca insist they are not the same phenomenon? Is the practice described in Document B prohibited by IHL? Does it amount to a use of human shields? Is knowledge of the presence of civilians before coalition forces launch an individual attack decisive for the classification of the IS practice as use of human shields? Is the intention of IS fighters in carrying out both practices relevant to determining whether, legally, the practices amount to the same thing?

b. IS has been accused of using civilians as human shields and of luring the coalition to attack buildings where they have gathered large numbers of civilians, unbeknownst to the coalition. Would a coalition strike be assessed the same way in each of the two circumstances? (CIHL, Rule 97; P I Art. 51(5) (b); P I, Art. 51(7))

c. How does your response to the above question change assuming civilians were voluntarily protecting IS forces? (CIHL, Rule 6; P I, Art. 51 (3); P I Art. 51(5) (b); P I, Arts 51(7))

d. Must the proportionality assessment be based on the actual or the expected result of the attack? (CIHL, Rule 14; P I, Arts 51(5)(b))

5. (*Document B, paras [5]-[11]*) The US' tactics allow "on-scene commanders" to call in airstrikes. What are the advantages and disadvantages for the protection of the civilian population of this tactic? What alternatives exist?

6. (*Document B, para. 10*) It is said that "[a]ny decision to strike mosques, schools or hospitals where militants may be hiding will continue to require higher-level review". Why do you suppose such targets would require special review? Can the objects listed constitute military objects? Do those objects enjoy special protection? Does the simple presence of armed combatants, fighters, weapons or hostilities in or around such facilities mean that they lose protection from attack? (CIHL, Rules 9, 28 and 38, P II, Arts 11 and 16; P I, Arts 51, 52, 53 and 85)

7. (*Document A, paras [3]-[4], [6]-[7]; Document B, para. [11]*) Are attacks on densely populated urban areas prohibited by IHL? Does IHL require that weapons with "wide area effects" not be used in densely populated areas? How do you support your answer?

8. (*Document A, para. [10]*) What is the difference between IHL and IHRL concerning the right to security and freedom of movement? Does IHL foresee the right of civilians to move about without restriction? Of internally

displaced persons more specifically? Are the restrictions installed by Kurdish authorities contrary to IHL? IHRL? Do you think security considerations may justify such restrictions? (CIHL, Rules 131-133)

9. (*Document C*)

- a. (*Paras [7]-[8]*) To what extent can IHL be said to oblige a State, third States and humanitarian organizations to take precautionary measures to protect civilians against chemical attacks?
- b. Which precautionary measures could have been taken against the effects of chemical attacks?
- c. Is the prohibition of the use of chemical weapons absolute? Or are there exceptions to this rule? (1993 Chemical Weapons Convention, Preamble, Art. I)
- d. How can states ensure the non-use of chemical weapons in conflicts? Which possibilities are open to them? Judicially, Legislatively, Diplomatically?
- e. Different to States, non-State armed groups cannot ratify international humanitarian law treaties. How can non-state actors be prevented from using chemical weapons?
- f. Who can be held accountable for the use of chemical weapons? States? Entities like ISIS? Individual ISIS fighters?

III. Implementation and Enforcement of IHL

10. Must a party to the conflict conduct an enquiry every time its armed forces have killed civilians under IHL? Must the result be made public? What legitimate reasons could there be for not making the result public?