

Iraq, Use of Force by United States Forces in Occupied Iraq

N.B. As per the disclaimer ^[1], 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.

[**Source:** Human Rights Watch, “Hearts and Minds: Post-war Civilian Deaths in Baghdad Caused by U.S. Forces”, 2003, footnotes omitted, online: <http://www.hrw.org> ^[2]
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I. SUMMARY

This report documents and analyzes civilian deaths caused by U.S. military forces in Baghdad since U.S. President George W. Bush declared an end to hostilities in Iraq on May

1, 2003. [...]

The U.S. military with responsibility for security in Baghdad is not deliberately targeting civilians. Neither is it doing enough to minimize harm to civilians as required by international law. Iraq is clearly a hostile environment for U.S. troops, with daily attacks by Iraqis or others opposed to the U.S. and coalition occupation. But such an environment does not absolve the military from its obligations to use force in a restrained, proportionate and discriminate manner, and only when strictly necessary. [...]

The individual cases of civilian deaths documented in this report reveal a pattern by U.S. forces of over-aggressive tactics, indiscriminate shooting in residential areas and a quick reliance on lethal force. In some cases, U.S. forces faced a real threat, which gave them the right to respond with force. But that response was sometimes disproportionate to the threat or inadequately targeted, thereby harming civilians or putting them at risk.

In Baghdad, civilian deaths can be categorized in three basic incident groups. First are deaths that occur during U.S. military raids on homes in search of arms or resistance fighters. The U.S. military says it has begun using less aggressive tactics, and is increasingly taking Iraqi police with them on raids. But Baghdad residents still complained of aggressive and reckless behavior, physical abuse, and theft by U.S. troops. When U.S. soldiers encountered armed resistance from families who thought they were acting in self-defense against thieves, they sometimes resorted to overwhelming force, killing family members, neighbors or passers-by.

Second are civilian deaths caused by U.S. soldiers who responded disproportionately and indiscriminately after they have come under attack at checkpoints or on the road. Human Rights Watch documented cases where, after an improvised explosive device detonated near a U.S. convoy, soldiers fired high caliber weapons in multiple directions, injuring and

killing civilians who were nearby.

Third are killings at checkpoints when Iraqi civilians failed to stop. U.S. checkpoints constantly shift throughout Baghdad, and are sometimes not well marked, although sign visibility is improving. A dearth of Arabic interpreters and poor understanding of Iraqi hand gestures cause confusion, with results that are sometimes fatal for civilians. [...]

In general, U.S. military police in Baghdad seem better suited for the post-conflict law enforcement tasks required by military occupation. More problematic were combat units [...], who have been called upon to provide services for which they are not adequately trained or attitudinally prepared. [...] Many of these soldiers fought their way into Iraq, and are now being asked to switch without proper preparation from warriors to police who control crowds, pursue thieves and root out insurgents. [...]

A central problem is the lack of accountability for U.S. soldiers and commanders in Iraq. According to CPA Regulation Number 17, Iraqi courts cannot prosecute coalition soldiers, so it is the responsibility of the participating coalition countries to investigate allegations of excessive force and unlawful killings, and to hold accountable soldiers and commanders found to have violated domestic military codes or international humanitarian law. The lack of timely and thorough investigations into many questionable incidents has created an atmosphere of impunity, in which many soldiers feel they can pull the trigger without coming under review. [...]

At the same time, some steps have been taken to reduce civilian deaths. Checkpoints are more clearly marked and some combat troops have received additional training for police tasks. [...]

The rules of engagement are not made public due to security concerns. But Iraqi civilians

have a right to know the guidelines for safe behavior. The coalition should mark all checkpoints clearly, for instance, and inform Iraqis through a public service campaign of how to approach checkpoints and how to behave during raids.

[...]

Checkpoint in al-Mansur [...]

On July 27, U.S. soldiers from Task Force 20, a special operations team searching for Saddam Hussain and other former ruling elite, conducted a raid on the home of Shaikh Abdul Karim al-Gubair in the upscale al-Mansur neighborhood. Soldiers set up checkpoints in the area while the operation took place [...].

According to the witness interviewed by Human Rights Watch, four or five U.S. Humvees blocked a small street near the al-Sa'ah Restaurant at 5:00 p.m. One vehicle was parked in the road and soldiers were diverting traffic. The soldiers left after five minutes, leaving no sign other than the vehicle that cars should not pass, but local shop owners were warning drivers to stay away. A man who worked in an optician's shop across the street, Ahmad Ibrahim al-Shaikh al-Jaburi, told Human Rights Watch what happened next:

A gray Chevrolet Malibu appeared from the other side of the alley, not from the main street. The Americans started waving for the car to stop, but it did not stop. One of the soldiers who was sitting on top of one of the Humvees turned his machine gun mounted on top of the Humvee and started shooting at the Chevrolet with the machine gun. There was more shooting, probably from one of the [other] soldiers. They hit the car from a distance of fifty meters. The front windshield of the car was full of bullet holes. As a result, the driver of the car lost control and the car stopped slowly after colliding with a Humvee. After the car stopped and the shooting ended, the driver got out of the car raising his hands, and seconds later he collapsed. The soldiers surrounded the car and

took out the other passenger and they began to drag him in the street. This was done by one soldier who was pulling him by his shoulder, his legs were being dragged. They put him on the pavement next to a house under construction which belonged to Fahd al-Shajra, the former minister of education.

The driver of that car was Muhanad ‘Imad Ghazal Ibrahim al-Ruba‘i, seventeen years old. He told Human Rights Watch that he was driving with his younger brother Zaid, fourteen, and their cousin Fahd Ahmad, sixteen, to pick up food rations. U.S. soldiers were blocking the road with bricks and told him to turn around, so he took another street to the main road which seemed open. He asked some young Iraqi men if the road was clear and they said it was, as long as Muhanad drove slowly and stopped when ordered. He told Human Rights Watch what happened next:

We started driving slowly towards the Americans preparing to stop, abiding by what the young men had informed us to do. But the soldiers were hidden on both sides of the street – we could not see them. We could see two Humvees a long way from us. One was parked on the pavement and the other was nearer to us but the road was not blocked. While we were driving slowly, and as we were approaching the Humvee nearer to us, there was an intensive shooting at our car from all sides and directions. When the shooting started I lowered my head so I lost control of the car. The car continued to move very slowly until it collided with a Humvee and stopped.[...]

According to Muhanad al-Ruba‘i, he and his cousin Fahd were dragged from the car and forced to sit on the pavement. He was given some bandages, he said, but also beaten every time he tried to ask about his brother Zaid. After approximately thirty minutes, he said, two U.S. soldiers in civilian clothes with beards, machine guns and pistols in their belts arrived in a pick-up truck. Muhanad and Fahd were put in the back together with a uniformed soldier.

At this point, Muhanad said, a Toyota Corona turned onto the alley from the main street. The two soldiers in civilian clothes got out of the truck and, together with the soldier in the back, opened fire on the car. Muhanad told Human Rights Watch:

They were all shooting at the Toyota; the shooting lasted for three to five minutes. When shooting stopped the two American civilians with other soldiers went to the car and took the two passengers out of the car, they only took out the wounded and they left the driver inside the car because he was dead.

The witness from the optician's shop, Ahmad al-Jaburi, confirmed this account. He told Human Rights Watch:

I saw a Toyota Corona driving from a side street on the right side of the alley. The side street was open, there were no soldiers there or even a checkpoint. As soon as the car reached the intersection where the side street connects to the alley, there was intensive shooting at the car which led to the death of all the passengers. I think there were either three or four passengers. I saw an old woman with gray hair opening the door of the car. She started walking towards the soldiers for a few meters and then she collapsed. She was covered with blood.

Soldiers brought the elderly woman and another injured person from the car to the pick-up truck, and put them in the back with Muhanad and Fahd. The driver of the Corona was dead and stayed in the car. Muhanad recalled:

They brought the two wounded to the pick-up. One was an old woman with gray hair and another was a young man. When they brought the lady she started asking about her sons and she was screaming in pain. There was blood all over her body, her body was full of blood. She begged them for some water but one of the soldiers started hitting her

in the stomach and she kept quiet. After that a soldier came and sat with us in the back of the pick-up. [...]

As for [two others from the Corona], however, the family had no information until September 28, two months and one day after the incident. “On that day, Americans came to our house and asked us to come to the airport to receive their corpses,” she said.

In addition to these deaths, the witness al-Jaburi said he saw soldiers shoot at a third car, a Toyota Landcruiser that had driven down the alley and parked. One person in the car was wounded in the stomach, he said, and Iraqis took this person to the hospital. From all the shooting, two parked cars also caught fire and were destroyed, one of them belonging to a worker in al-Jaburi’s shop. They received \$4,500 in compensation from the U.S. Army. Negotiations for compensation were conducted with Lt. Col. Richard Bowyer from the 1st Armored Division, who apologized for the incident.

The U.S. military issued a press statement on July 29 that acknowledged two deaths in one car. “The forces fired on the vehicle when it did not slow down at the checkpoint and started to run the barriers, appearing to be hostile,” the statement said. “Coalition forces were not involved in any other incident in the area.” On the day of the incident, a military spokesman, Staff Sgt. J.J. Johnson, told the press “there are rules of engagement when somebody approaches a checkpoint The soldiers have a right to defend themselves.”

The U.S. military maintains the secrecy of its rules of engagement for security reasons. But soldiers and commanders should not hide behind the secrecy of its rules to tolerate the beating of detainees and the denial of medical care to the wounded.

A Bomb and Shooting on Haifa Street

On July 3, around 9:15 a.m., a group of school children was walking home on Baghdad’s

central Haifa Street. Six children around the age of twelve stopped in front of one of their friend's apartments, building 74, when a large explosion nearby threw them to the ground. According to family members, two of the children died and seven were wounded. [...]

According to the U.S. military, the explosion was from an RPG fired at a convoy of three military vehicles from a car on the street. "An innocent Iraqi citizen sitting on a street corner was also killed by the blast, according to reports we are hearing," Major Scott Patton told the press.

The military did not comment on its response, which witnesses said involved heavy and indiscriminate shooting that killed the driver of the attacking car and wounded civilians in the area. One witness named Majid Sa'di told the press that he saw the car of the alleged attacker riddled with bullets and he thought the driver was dead.

Human Rights Watch found another witness to the incident, a man coincidentally driving down Haifa Street, who was seriously wounded by a gunshot to the leg. [...] Haidar Hussain Karim al-Fitlawi said he was driving his blue Volkswagen Passat down Haifa Street towards the gas station when the explosion took place. Suddenly, he said, he came under fire from U.S. troops. He told Human Rights Watch:

They hit my car with more than ten bullets. Five of them hit the fuel tank but luckily it did not catch fire. I got out of the car and I was lying on the ground. I could just feel my leg bent over my shoulder. I lay there bleeding for ten minutes. People stopped a small bus and put the injured in there. I remember a little child in there. They took us all to al-Karama Hospital.

According to al-Fitlawi, no U.S. soldiers were hurt in the attack, although it is doubtful he would have had a good look given the shooting. "The Americans were very scared," he

said. “That is why they were shooting at everyone and everything.”

[...]

On August 17, U.S. soldiers shot and killed Reuters cameraman Mazen Dana, aged forty-three, outside Abu Ghraib prison on the outskirts of Baghdad. Mazen was the twelfth journalist killed since the war began, and the second Reuters journalist to die. Reuters said Dana and his sound engineer had asked soldiers for permission to film. After the killing, the U.S. military issued an apology and said soldiers thought his camera was an RPG. A military spokesman expressed condolences at the time but said troops would not fire a warning shot if they felt threatened. “I can’t give you details on the rules of engagement, but the enemy is not in formations, they are not wearing uniforms,” Col. Guy Shields told the press asking about the incident. “During war time, firing a warning shot is not a necessity. There is not time for a warning shot if there is potential for an ambush.”

Discussion

1. Is Iraq an occupied territory within the meaning of IHL? (At least until 30 June 2004)? Even if the United States (according to it) acted in accordance with Security Council resolutions? Even if the United States acted in self-defence? Even after the adoption of Security Council resolution 1483 (2003) [See Iraq, Occupation and Peacebuilding [Part A.] ^[3]], if that resolution is interpreted as legitimizing the presence of Coalition forces in Iraq? (GC IV, Art. 2 ^[4]; P I, Preamble, para. 5 ^[5])
2.
 - a. When did the IHL of military occupation begin to apply in Iraq? From the moment when the first American soldier set foot on Iraqi territory? From the moment when the first village was in fact under American control? As soon as major military operations were completed, which, according to the President of the United States, was on 1 May 2003? (HR, Art. 42; GC IV ^[6], Art. 2 ^[7])
 - b. In your response to question a., do you distinguish between the obligation to treat protected persons humanely (GC IV ^[6], Art. 27 ^[8]), the obligation to ensure

public order and safety (HR, Art. 43) and the obligation to ensure hygiene and public health (GC IV ^[6], Art. 56 ^[9])? If so, how do you justify such distinctions?

3. Was the behaviour of American troops at the “al-Mansur” checkpoint and after the explosion of a bomb in Haifa Street in conformity with IHL? Do you apply the rules on the conduct of hostilities or those on military occupation to those actions? What measures should have been taken in order to avoid such occurrences? (GC IV, Arts 27 ^[10] and 32 ^[11]; P I, Arts 48 ^[12], 50(1) ^[13], 51(2) ^[14] and (3) ^[14], 57(2)(a)(i) ^[15] and (b) ^[15])
4. In which circumstances did the American troops have the right to shoot a person in July and August 2003 in Baghdad? Were such shootings governed by IHL or by international human rights law? (GC IV, Arts 27 ^[10] and 32 ^[11]; P I, Arts 48 ^[12], 50(1) ^[13], 51(2) ^[14] and (3) ^[14], 57(2)(a)(i) ^[15] and (b) ^[15])
5. Did the shooting of the *Reuters* cameraman on 17 August 2003 violate IHL? (P I, Art. 57(2)(a)(i) ^[15])

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[12]

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[13]

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[14]

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[15]

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