

# Iraq

## Respecting International Humanitarian Law

### BACKGROUND INFORMATION

Much of the example of past practice focuses on US or UK armed forces. This should not be taken to imply that the actions of Iraqi forces cause less concern – on the contrary. The greater attention to US and UK forces reflects the fact that both have shown, as far as AI is aware, more willingness to respect IHL commitments and to engage in discussing their legal position.

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#### Introduction

AI seeks assurances from all parties that they will do their utmost to comply with their obligations under international human rights and humanitarian law. The need for these assurances is based on their past conduct in conflict and their interpretations of relevant law which sometimes fall short of what AI is demanding.

International humanitarian law is the body of rules and principles which seek to protect those who are not participating in the hostilities, including civilians but also combatants who are wounded or captured. It limits the means and methods of conducting military operations. Its central purpose is to limit, to the extent feasible, human suffering in times of armed conflict. The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the principal instruments of international humanitarian law. Iraq and the US are parties to the 1949 Geneva Conventions, but neither is a party to the Protocol I relating to the Protection of Victims of International Armed Conflicts (Protocol I – adopted in 1977. The United Kingdom and Australia are parties to Protocol I.) However, the fundamental provisions of Protocol I, including the rules cited below (unless otherwise noted) are considered part of customary international law and are therefore binding on *all* states.

If a party to the conflict fails to fulfil their obligations under international humanitarian law, AI will call on other High Contracting Parties (neutral, allied or enemy) of the Geneva Conventions to take action to “ensure respect” for international humanitarian law (in accordance with common Article 1 of the Conventions.)

## **Basic demands**

All parties to the conflict must issue clear instructions to their forces:

- prohibiting any direct attacks against civilians or civilian objects, (including in reprisal);
- prohibiting attacks which do not attempt to distinguish between military targets and civilians or civilian objects (indiscriminate attacks);
- prohibiting attacks which, although aimed at a legitimate military target, have a disproportionate impact on civilians or civilian objects;
- prohibiting attacks using inherently indiscriminate weapons;
- to treat humanely all prisoners, the wounded and those seeking to surrender – prisoners must never be killed or held as hostages, and to respect the rules relating to prisoners of war;
- to take all other necessary measures to protect the civilian population from the dangers arising from military operations, including not locating military objectives among civilian concentrations;
- to refrain from recruiting and deploying child soldiers
- to punish all breaches of the laws of war and to ensure those responsible are brought to justice.<sup>1</sup>

They should also make clear to any of their allied or proxy forces that they expect them to follow the same rules.

### **1. No direct attacks on civilians**

One of the cornerstones of international humanitarian law is the principle that all possible measures must be taken to distinguish between civilian persons and objects, and combatants and military objectives. Article 48 of Protocol I sets out the "basic rule" regarding the protection of civilians (often referred to as the principle of distinction):

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<sup>1</sup> These concerns, along with others, are set out in *People come first - AI's 10-point appeal to all parties involved in all military action in Iraq* AI Index: MDE 14/022/2003, issued on 18 March 2003.

"In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the 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."

No states (and very few armed political groups) admit to deliberately targeting civilians. (For attacks on civilians in reprisal see below). Direct attacks on civilians are often justified by denying that the victims are actually civilians. Civilian immunity is also undermined by the manner in which definitions of military objectives/civilian objects are interpreted by attacking forces (see below).

In practice, of course, civilians are targeted.

In March 1988 an estimated 5,000 people were deliberately killed and thousands wounded as a result of chemical weapon attacks by Iraqi forces on the Iraqi-Kurdish town of Halabja, Sulaimanya province, launched after Kurdish opposition forces had allegedly entered the town. Most of the victims were civilians, many of them women and children.<sup>2</sup> Further, hundreds of civilians were killed in northern and southern Iraq by government forces in the wake of the March 1991 uprising.<sup>3</sup>

## 2. Reprisal attacks prohibited

Protocol I expressly prohibits all direct attacks on civilians, including attacks carried out in reprisal. Article 51 (6) of Protocol I states: "Attacks against the civilian population or civilians by way of reprisals are prohibited." Protocol I also prohibits attacks by way of reprisal against

- civilian objects (Article 52(1))
- cultural objects and places of worship (Article 53(c))
- objects indispensable to the survival of the civilian population (Article 54 (4))
- the natural environment (Article 55 (2))
- works and installations containing dangerous forces (Article 56(4))

In addition to protecting civilians and civilian objects against reprisals, Protocol I also prohibits reprisals against other non-combatants, including the wounded, sick and shipwrecked, medical facilities and personnel. And Geneva Convention III of August 12, 1949 stipulates that "measures of reprisal against prisoners of war are prohibited."

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<sup>2</sup> Amnesty International Report 1989, AI Index: POL10/02/89.

<sup>3</sup> Amnesty International, *Iraq: Human rights violations since the uprising*, AI Index: MDE14/05/91.

It is contested whether the absolute prohibition on reprisals against civilians is customary law. Some states that have ratified Protocol I, including the UK, have entered reservations specifically on this point, allowing that they may attack civilians in reprisal for prohibited attacks by the other party.

The UK's reservation says: "The obligations of Articles 51 and 55 are accepted on the basis that any adverse party against which the United Kingdom might be engaged will itself scrupulously observe those obligations. If an adverse party makes serious and deliberate attacks, in violation of Article 51 or Article 52 against the civilian population or civilians or against civilian objects, or, in violation of Articles 53, 54 and 55, on objects or items protected by those Articles, the United Kingdom will regard itself as entitled to take measures otherwise prohibited by the Articles in question to the extent that it considers such measures necessary for the sole purpose of compelling the adverse party to cease committing violations under those Articles, but only after formal warning to the adverse party requiring cessation of the violations has been disregarded and then only after a decision taken at the highest level of government. Any measures thus taken by the United Kingdom will not be disproportionate to the violations giving rise there to and will not involve any action prohibited by the Geneva Conventions of 1949 nor will such measures be continued after the violations have ceased. The United Kingdom will notify the Protecting Powers of any such formal warning given to an adverse party, and if that warning has been disregarded, of any measures taken as a result."

During the 1991 Gulf War, Iraq launched ballistic missiles at civilian objects in Israel and Saudi Arabia in retaliation for air strikes by the US and its allies in Iraq. These attacks resulted in the deaths of civilians.

Some official Iraqi statements justified the missile attacks as reprisals for violations of the laws of war by the US and its allies. However, reprisals-- in the legal sense of the term -- cannot be launched against a state that is not a party to the conflict (Israel). And other Iraqi statements suggested that, in fact, the purpose of the attacks was to spread terror among the civilian population, which is prohibited by Article 51 (2).

The US has refused to rule out reprisals, including through the use of nuclear weapons. US officials have stated that any attack by Iraq using chemical or biological weapons could be met by US reprisal with nuclear weapons. This warning reportedly was also issued during the 1991 Gulf War.

### **3. Targeting – military versus civilian objects**

According to Protocol I, Article 52 (1): “Civilian objects are all objects which are not military objectives.” Article 52 (2) defines military objectives as

“those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”

Objects that do not meet these criteria are civilian objects. In cases where it is unclear whether a target is used for military purposes, “it shall be presumed not to be so used” (Article 52(3)).

The US accepts that the Protocol I definition of military objective reflects customary law. However, it takes a broader view than many states, including most of its NATO allies, of what constitutes “effective contribution to military action” and “definite military advantage.”

For example, one official US military manual states:

“Military advantage may involve a variety of considerations, including the security of the attacking force. ... Economic targets of the enemy that indirectly but effectively support and sustain the enemy’s war-fighting capability may also be attacked.”<sup>4</sup>

This overbroad interpretation has the potential of depriving civilians of the greater protection offered by the definition in the Protocol.

The official US Air Force doctrine suggests that the morale of the civilian population may, in itself, legitimately be targeted since weakening of the will to fight would offer a military advantage.

“War is a clash of opposing wills.... While physical factors are crucial in war, the national will and the leadership’s will are also critical components of war. The will to prosecute or the will to resist can be decisive elements.... Strategic attack objectives often include producing effects to demoralize the enemy’s leadership, military forces, and population, thus affecting the adversary’s capability to continue the conflict.”<sup>5</sup>

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<sup>4</sup> See Annotated Supplement to the Commander’s Handbook on the Law of Naval Operations, 8.1.1. It also provides the following definition of military objectives: “those objects which by their nature, location, purpose or use effectively contribute to the enemy’s war-fighting or *war-sustaining capability* and whose total or partial destruction, capture or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of the attack.” Emphasis added.

<sup>5</sup> Air Force Doctrine Document 1: Air Force Basic Doctrine, AFDD-1 (1997)

The USAF Intelligence Targeting Guide, while acknowledging the language of Article 52(2), defines military objectives as including, *but not limited to*, those objects so defined in the Protocol, concluding. “The key factor is whether the object contributes to the enemy’s war fighting or war sustaining capability.”<sup>6</sup> As put by one US Air Force lawyer who is an advocate of this doctrine:

“Unlike Article 52 (2), this guidance allows for the possibility that a target may not provide an immediate military advantage per se, but may still contribute to the enemy’s ability to fight.”<sup>7</sup>

The danger this doctrine poses to civilians was evident during Operation Allied Force, when the US and NATO bombed the headquarters of Serbian radio and television (RTS) on the grounds that RTS was a propaganda organ and that propaganda is direct support for military action. AI believes that justifying an attack on a civilian facility on such grounds stretches the meaning of “effective contribution to military action” and “definite military advantage” beyond the acceptable bounds of interpretation. Disrupting government propaganda may help to undermine the morale of the population and the armed forces, but attacks carried out solely to undermine civilian morale are not legitimate. It is difficult to envisage how disrupting transmissions of RTS for three hours -- at the cost of the lives of 16 civilians -- provided any military advantage to NATO.<sup>8</sup>

During the air campaign in Afghanistan, the US attacked a radio station controlled by the Taliban. Secretary of Defence Donald Rumsfeld explained that media controlled by the Taliban were a propaganda vehicles for the Taliban leadership...Our decision was that the radio station and the television station in fact were vehicles for the Taliban leadership and for al Qaeda to manage their affairs and that therefore they were certainly appropriate targets.<sup>9</sup>

Attacks that have undermined civilian immunity have not been confined to media. During the air campaign against the FRY, NATO launched attacks on targets owned by FRY President Slobodan Milosevic’s and/or close associates, including cigarette factories, which also stretched the meaning of military objective and needlessly endangered the lives of civilians.

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<sup>6</sup> Air Force Pamphlet 14-210, USAF Intelligence Targeting Guide (1 Feb 1998).

<sup>7</sup> Tearing Down the Façade: A Critical Look at the Current Law on Targeting the Will of the Enemy and Air Force Doctrine”, Air Force Law Review, Volume 51 (2001)

<sup>8</sup> For more on this and other NATO attacks see Amnesty International, *NATO/FRY: "Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force* EUR 70/18/00

<sup>9</sup> US DoD News Transcript, Secretary Rumsfeld Interview with Al Jazeera, 16 October 2001 ([http://www.defenselink.mil/news/Oct2001/t10172001\\_t1016sd.html](http://www.defenselink.mil/news/Oct2001/t10172001_t1016sd.html))

During the 1991 Gulf War, the US targeted some objects primarily for their symbolic value, including the empty Ba'ath Party headquarters and buildings housing ministries not directly related to the war. Similarly, NATO bombed the ruling Socialist Party headquarters in Belgrade in 1999. It is not clear what military advantage could be anticipated by such attacks.

Also, during the 1991 Gulf War, the US targeted Iraq's electrical system with devastating consequences for the health care system, clean water and sewage. It has been argued that this was not an effective way of neutralizing Iraq's autonomously powered command and control centres. Rather it may have been intended to demoralize the population and get people to rebel against the government. Such attacks also raise serious questions about their adherence to the principle of proportionality (see below) and the prohibition on attacks against objects indispensable to the survival of the civilian population (Article 54(2)).

The Iraqis have shown little concern in past conflicts to distinguish between military and civilian objectives, most notoriously perhaps in their missile attacks on Iranian cities during the 1980-88 Iran/Iraq war, and on Israeli cities in the 1991 Gulf War. The Iraqis also shelled civilian targets in the south and north during the Shi'a and Kurdish uprisings in 1991 in the wake of the Gulf War.

#### **4. No indiscriminate or disproportionate attacks**

Article 51(4) of Protocol 1 prohibits indiscriminate attacks, including:

“those which employ a method or means of combat which cannot be directed at a specific military objective” and “those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol”.

Consequently, in each case, indiscriminate attacks “are of a nature to strike military objectives and civilians or civilian objects without distinction.”

Article 51(5) defines a further type of indiscriminate attack:

“an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

Disproportionate attacks, as well as indiscriminate attacks generally, occur when armed forces disregard the principle of distinction and attack a military target without regard to the likely consequences for civilians. They might use weapons which are not capable of hitting a military target with precision -- either by their nature or as a

result of the circumstances in which they are employed. Or their tactics or method of attack might show a disregard for civilian lives.

## 5. Precautions in attack

Under Protocol I, "In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects." (Article 57). Where it is unclear whether a target is used for military purposes, "it shall be presumed not to be so used" (Article 52(3)). Precautionary measures include verifying that targets are not civilian objects, and giving advance warning of attacks that might affect civilians "unless circumstances do not permit". Attacks should be suspended where it is apparent that they are causing a disproportionate impact on civilians.<sup>10</sup>

The NATO attacks in Kosovo which resulted in the highest number of civilian casualties (the attacks on displaced ethnic Albanians near Djakovica on 14 April 1999, and in Koriša on 13 May 1999, whose combined death toll exceeded 120) occurred when its forces failed to take necessary precautions to minimise civilian casualties. Pilots were barred from descending below 15,000 feet to assist in visually identifying targets of opportunity, thereby needlessly endangering civilians. In other attacks, including the 12 April 1999 bombing of Grdelica railroad bridge, which killed 12 civilians, and the missile attack on Varvarin bridge on 30 May 1999, which killed 11 civilians, NATO forces failed to suspend their attack after it was evident that they had struck civilians.<sup>11</sup>

During both Operation Allied Force and Desert Storm, NATO and allied forces attacked bridges used by civilians in daytime, resulting in the deaths of dozens of civilians. No satisfactory official explanation has been offered as to why it was not

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<sup>10</sup> Article 57 (2) specifies precautionary measures required:

"With respect to attacks, the following precautions shall be taken:

(a) those who plan or decide upon an attack shall:

(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;

(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."

<sup>11</sup> Amnesty International, *NATO/FRY: "Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force* EUR 70/18/00.

feasible to take necessary precautions including choosing more appropriate times to attack and why no effective advance warning was given. NATO officials told Amnesty International that as a general policy they chose not to issue warnings – for fear that this might endanger the crew of attacking aircraft. Given all the other measures taken in order to avoid NATO casualties (including high-altitude bombing), one might question whether sparing civilians was given sufficient weight in the decision not to give warnings. Nor does the consideration of pilot safety explain why there was no warning to civilians when cruise missiles were used in attacks.

Iraq gave no effective warning to civilians in Israel or Saudi Arabia of missile attacks. Nor did it issue warnings during missile attacks on Iranian cities during the Iran-Iraq war.

## **6. Intelligence and the principle of distinction**

Accurate intelligence is crucial minimizing civilian casualties, especially when fighting a war using high altitude bombing and long-range weapons. Faulty or out-of-date intelligence has led to needless deaths of civilians during NATO bombing in Yugoslavia and US attacks in Afghanistan.

A B-2 aircraft attacked the Chinese Embassy in Belgrade in the early hours of Saturday, 8 May 1999 killing three and wounding more than 20 people. NATO said it was a mistake and expressed deep regret. The intended target had not been the Chinese Embassy, but the Federal Directorate for Supply and Procurement in Belgrade. Although the location of the Chinese Embassy had been targeted, NATO had erroneously believed this to be the site of the Federal Directorate. Faulty intelligence had led it to bomb a civilian target by mistake.

While not all errors incur legal responsibility under international humanitarian law, all indications are that the very basic information needed to prevent this mistake was publicly and widely available at the time. It would appear that NATO failed to take the necessary precautions required by Article 57(2) of Protocol I.

There are other cases where faulty intelligence has led to needless civilian deaths, including in the air attack on the al-Amiriya shelter in Baghdad in 1991 which killed more than 300 civilians.

## **7. “Human Shields”**

Protocol I prohibits the use of tactics such as using “human shields” to prevent an attack on military targets. Article 51 (7) states: “The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military

objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.” However, the Protocol also makes it clear that even if one side is shielding itself behind civilians, such a violation of international law “...shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians.”

Furthermore, Article 50(3) of Protocol I states that: “The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.”

Following the invasion of Kuwait and until December 1990, Iraq held hundreds of foreign hostages to dissuade their governments from participating in an attack against Iraq. Some were held at likely military targets as human shields. They were released prior to the start of military action. There is reason to fear that the Iraqi authorities may repeat this practice and may also, particularly if there is fighting in urban areas, use Iraqi civilians as “shields” by locating military forces and weaponry in close proximity.

## **8. No use of indiscriminate weapons**

Article 51 (4) Protocol I prohibits indiscriminate attacks, including “those which employ a method or means of combat *which cannot be directed at a specific military objective*” and “those which employ a method or means of combat *the effects of which cannot be limited as required by this Protocol*” (emphasis added). Consequently, in each case, the attacks “are of a nature to strike military objectives and civilians or civilian objects without distinction.”

The ICRC Commentary to the Protocols mentions “long-range missiles which cannot be aimed exactly at the objective” as examples of weapons which cannot be directed at specific targets and refers to bacteriological weapons and to the poisoning of sources of drinking water as obvious cases of weapons which “by their very nature have an indiscriminate effect.”

Indiscriminate effects can derive from factors such as the design of the weapon, the intention and professionalism of those using it, and the circumstances in operation at the time of the attack (weather, visibility, reliability of intelligence, etc.). An indiscriminate weapon can therefore be defined as a weapon deemed to have indiscriminate effects either because of inherent characteristics or because of the way it tends to be used, or both. Where evidence shows that a weapon has a high potential for indiscriminate effects, for whatever reason or combination of reasons,

then banning the weapon might be the most effective way to prevent such indiscriminate effects.

For example, Iraq's use of SCUD missiles in long-range attacks during the 1991 Gulf War violated the prohibition on indiscriminate attack, even when they appear to have been directed at legitimate targets, such as military bases. This is due to the inherent inaccuracy of this weapon at long distances.

### **Anti-personnel landmines**

AI opposes the use, manufacture stockpiling and transfer of anti-personnel landmines.

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction ('Ottawa Mine Ban Treaty') has been signed by 122 countries. It came into force on 1 March 1999. Neither the USA nor Iraq is a party to the treaty. The UK and Australia have ratified the treaty.

Iraq has used anti-personnel landmines in Kuwait in 1990/91, during the Iran-Iraq war, and in internal conflict, especially in northern Iraq.

The US military used anti-personnel landmines in the 1991 Gulf War, but not since that conflict. The Pentagon has stated that "it retains the right to use landmines." And according to the International Campaign to Ban Landmines the US has deployed about 90,000 landmines to the region already for possible use in Iraq.

### **Cluster Weapons**

AI calls for a moratorium on the use of cluster weapons. These bombs present a high risk of violating the prohibition of indiscriminate attack, because of the wide area covered by the numerous bomblets released. At least 5% of them do not explode upon impact. These 'duds' become similar to anti-personnel mines because they continue to pose a threat to people, including civilians, who come into contact with them.

In the Gulf War of 1991 the US and its allies used over 60,000 cluster bombs. According to Human Rights Watch (HRW), by February 1993, duds had killed 1600 Iraqi civilians and injured a further 2500. In Yugoslavia, NATO dropped about 1765 cluster bombs. HRW estimates that between 90 and 150 civilians were killed by cluster bomb strikes.

AI believes that in the 7 May 1999 bombing in Niš, NATO failed to take necessary precautions by dropping cluster bombs in the vicinity of civilian concentrations, thereby violating the prohibition on indiscriminate attack. The cluster bomb missed its intended target (an airfield), and fell instead on a marketplace and hospital. As a result, 14 people were killed and about 30 were injured. In the year following the end of the bombing, unexploded cluster bomblets killed about 50 civilians.

According to HRW, US forces dropped about 1200 cluster bombs in Afghanistan between October 2001 and March 2002. Some attacks investigated by HRW suggest that the US has not learned the lessons from the Niš bombing. For example, on 22 October 2001 a cluster bomb was dropped on Qala Shater, near Herat. More than 10 civilians were killed when the bomb landed in a residential area. The intended target was probably a military facility less than a mile away. According to HRW, at least 29 civilians have been killed in Afghanistan by unexploded bomblets.

### **Depleted Uranium Weapons**

AI also calls on governments to consider refraining from the transfer and use of depleted uranium (DU) weapons. There is much controversy over their long-term effects. Some studies suggest that DU dust, which remains in the vicinity of targets struck by DU weapons, poses a significant health risk if inhaled or ingested. AI calls for a moratorium on their use pending authoritative conclusions on their long-term effects on human health and the environment.

### **Nuclear Weapons**

In the context of an international armed conflict between the US and its allies and Iraq, AI calls on all parties to refrain from using nuclear weapons as any such use would violate fundamental rules of international humanitarian law.

Iraq is not believed to possess nuclear weapons (though it has in the past made efforts to develop them, and is alleged to continue to do so). The US, of course, does have nuclear weapons and has threatened that it may retaliate with these weapons in the event of the use of chemical/biological weapons by Iraq. The UK too has nuclear weapons. Israel is believed to possess a nuclear arsenal and the means of delivery to reach Iraq. And there are fears that if Iraq were to launch a chemical/biological strike against Israel which inflicted heavy casualties, Israel might retaliate with nuclear weapons.

### **Chemical and Biological Weapons**

The use of chemical and biological weapons in armed conflict is prohibited by international law. They are inherently indiscriminate weapons, incapable of being used in a manner that does not violate the principle of distinction between civilians and combatants -- a customary rule of international humanitarian law. Even if they could be targeted solely against combatants attacks with biological or chemical weapons are still prohibited because they cause superfluous injury and unnecessary suffering to combatants, and thus violate a customary rule of international humanitarian law.

The development, production and stockpiling of microbial or other biological agents for hostile purposes is prohibited by the Biological Weapons Convention (1972). The Chemical Weapons Convention (1992) prohibits the development, production, stockpiling and use of chemical weapons and requires the destruction of both chemical weapons production facilities and the weapons themselves. The USA, UK and Australia are parties to both these conventions. Iraq is a party to the Biological Weapons Convention.

AI calls for full respect of the prohibitions in international law of chemical and biological weapons. Such weapons should not be used, and any stockpiles should also be destroyed.

Iraq has used chemical weapons in international and internal armed conflict. During the war with Iran, Iraq was the first to use chemical weapons, including mustard gas and nerve gas, against Iranian troops. Iraq has also used chemical weapons against Iraqi Kurds, most infamously during the 1988 attack on the town of Halabja, which killed more than 5000 people, mostly civilians.

## **9. Child Soldiers**

Amnesty International opposes the participation of children in hostilities and their recruitment, voluntary or compulsory, whether on the part of governments or of armed groups. Amnesty International considers that both deployment and recruitment jeopardize the physical and mental integrity of persons below the age of 18 (who are children under international law).

The Optional Protocol to the Convention on the Rights of the Child requires states parties to “take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.” The protocol prohibits states from compulsory recruitment of under18s.

The UK is a party to the Convention on the Rights of the Child and has signed the Optional Protocol on the involvement of children in armed conflict. The UK recruits under 18s to its armed forces. AI wrote to the UK MoD in September 2001 urging that they take all necessary measures to ensure that all persons below the age of 18 be immediately withdrawn from units which are likely to be deployed in the event of a military operation against Iraq, and to make a public commitment not to deploy any child into armed conflict situations in Iraq or elsewhere. Responding to AI's letter, the army (which recruits most of the under 18s in the UK forces) has written to AI and committed not to deploy under 18s in hostile environments. There has been no such commitment from the Air Force or Navy. But media reports indicate that the Navy has been implementing the Army guidelines.

The US has recently ratified the Optional Protocol on the involvement of children in armed conflict and the Pentagon has now agreed to take "all feasible measures" to ensure that under 18s do not directly participate in hostilities. Seventeen year old US soldiers participated in the 1991 Gulf War and in armed conflict in Bosnia and Somalia (according to HRW). Media reports state that the US armed forces have deployed under 18s in the theatre of operations, but that they seem to have been assigned support duties and will not directly participate in hostilities.

Iraq is not a party to the Optional Protocol to the CRC. The ruling Ba'ath Party began military training among children as young as 12 in the late 1970s. Units of this paramilitary Youth Vanguard were deployed in the mid-1980s in the war against Iran. Since 1995, boys aged between 8 and 15 have been forced to undergo military training. The training takes place during the summer vacation for 45 days when the temperature is extremely high. Children are taken to special military camps, such as the al-Rashid Camp which belongs to the Republican Guards. During the 45 days these children are not allowed to see their families. Some analysts fear that Iraq may use child soldiers to fight against a US military attack, especially in urban areas.

## **10. Prisoners of War**

The Geneva Convention (III) relative to the Treatment of Prisoners of War (POWs) defines who is eligible for POW status <sup>12</sup> and gives detailed provisions on the

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<sup>12</sup> According to Article 4 of GCIII, Prisoners of War include "persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: [

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

treatment that should be afforded to POWs. Article 5 requires that : “Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.”

In previous conflicts the US has broadly complied with their international obligations towards those captured in combat. The conflict in Afghanistan, however, gives rise to concern as the US refused to consider as POWs any prisoners captured in the fighting. Further, many hundreds of these prisoners remain detained at Guantanamo Bay. The US has refused to recognize these detainees as prisoners of war; nor has it allowed their status to be determined by a "competent tribunal". At the same time, it has refused to afford them the protections to which detainees are entitled under international human rights law, such as those set out under the relevant provisions of the ICCPR, and under international humanitarian law, specifically Article 75 of Protocol I Additional to the Geneva Conventions, which the USA has recognized reflects customary international law.<sup>13</sup>

US practice vis-à-vis many hundreds of soldiers detained in Afghanistan also gives rise to concern about the US commitment to respect the rules relating to the trial, transfer, eventual release and repatriation of POWs.

The US interpretation of the definition of POWs as applied to the war in Afghanistan has reversed its former practice regarding respecting the rights of POWs regardless of the nature of the government they were fighting for. Given the influence of the US, its behaviour could encourage other states involved in armed conflict to ignore their obligations regarding captured combatants.

With regard to treatment of POWs, Article 13 of Geneva III states that “prisoners of war must at all times be treated humanely.” And according to Article 14, “Prisoners of war are entitled in all circumstances to respect for their persons and their honour.” No prisoner of war may at any time be sent to or detained in an area where he may be

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(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power...

<sup>13</sup> For more information on AI’s position on the status and treatment of these prisoners see *Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantanamo Bay*, 15 April 2002 (April Memorandum, AI Index: AMR 51/053/2002) and *USA Beyond the Law Update to Amnesty International's April Memorandum to the US Government on the rights of detainees held in US custody in Guantanamo Bay and other locations* AMR 51/184/2002

exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.[III, 22,23]

AI is also concerned about the conditions of detention for prisoners held by the US in Guantanamo Bay and in Afghanistan. The prisoners in Guantanamo reportedly are confined for virtually 24 hours a day to small, solitary cells with no more than 30 minutes exercise a week, taken alone and in shackles. The lack of exercise directly contravenes the UN Standard Minimum Rules for the Treatment of Prisoners which require that all prisoners should receive a minimum of one hour a day of outdoor exercise. The conditions inside the cells are reportedly made worse by stifling heat. Although it has been reported that detainees can communicate with one another to some extent through the mesh at the front of the cells, any interaction with guards is allegedly discouraged and detainees are frequently moved to prevent them from establishing contacts. Some prisoners have reportedly been kept in enclosed isolation cells.

The above conditions, particularly when imposed long-term or indefinitely, can cause significant physical and mental health problems and may amount to cruel, inhuman or degrading treatment in violation of international treaties to which the US is a state party. The detainees' very limited contact with the outside world, together with lack of any information as to when they might be released, is liable to exacerbate any suffering inherent in the conditions of confinement. A number of detainees are reported to have attempted suicide in recent months.

Several released detainees have said they were interrogated repeatedly, for hours, while in shackles during their detention. Amnesty International expressed its deep concern about the continuing interrogations of detainees, without their having access to lawyers and with a view to possible prosecution. The organization remains concerned about this issue, especially as trials by military commissions, which may have the power to admit hearsay evidence and coerced testimony, remain a possibility. Amnesty International is further concerned by allegations that detainees have been subjected to sleep deprivation and have been woken up during the night to be taken for questioning.

AI would strongly oppose failure by the US or its allies to honour its obligations as regards the status and treatment of members of the Iraqi armed forces captured during the conflict. AI will insist on full adherence to applicable international human rights and humanitarian law to anyone detained by US and allied forces.

Iraq failed to repatriate thousands of POWs after the conflict with Iran, which ended in 1988. As of early 2002 hundreds of POWs on both sides were still being repatriated. In March 2003 Iraq and Iran reportedly agreed to release more POWs. Amnesty International does not know whether this agreement has been implemented.

Kuwait alleges that Iraq is still holding hundreds of Kuwaiti POWs and abducted civilians.

### **11. Accountability for actions of allies/proxies**

Under certain circumstances states may incur responsibility for serious violations of international humanitarian law which were not directly committed by their own armed forces.

Such responsibility can arise when violations are committed by members of proxy forces or militias operating under the control of a party to the conflict. Accountability may also arise when a state aids an allied state in the commission of a serious violation of IHL.<sup>14</sup>

Unless a state has ordered proxy forces to commit a violation (in which case it is clearly responsible for the violation), the relevant question is the degree of control of the state over the conduct of the proxy forces when they are carrying out violations (which contravene the directions of the state).

During the fighting in Afghanistan, there have been allegations about US permitting serious violations of IHL by Afghan fighters in the Northern Alliance. It has been alleged that several hundred Taleban fighters who were taken prisoner in Kunduz in November 2001 by the Northern Alliance troops under the command of General Abdul Rashid Dostum suffocated to death after being transported in sealed metal containers. A mass grave near Dasht-e Leili in northern Afghanistan was discovered in January 2002. The grave contains the remains of up to 1000 Taleban soldiers, according to the UN.

The US has worked closely with General Dostum and the Northern Alliance forces allegedly responsible. US troops were present at the surrender of the Taleban at Kunduz. And, according to *Newsweek* magazine, US soldiers were monitoring activity at Sheberghan Prison when the cargo trucks carrying the Taleban prisoners arrived. The US has denied that it had pre-existing knowledge of how the prisoners

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<sup>14</sup> For example, according to Article 8 of the International Law Commission's Draft articles on Responsibilities of States for Internationally Wrongful Acts: "The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct." And according to Article 16: "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State."

would be transported. But even if the US troops were not directly involved in the conduct that resulted in the deaths of the POWs, the fact that no serious investigation has been initiated by the US military despite the serious and credible allegations that have been made, appears to contravene the US's obligations under the Geneva Conventions.

## **12. No impunity**

There are several possible mechanisms for investigating and suppressing violations of international humanitarian law that may be committed during the course of a military conflict between the US (and its allies, if any) and Iraq:

- Each party to the conflict must bring to justice any of their nationals suspected of being responsible for serious violations of international humanitarian law during military operations. If investigations into possible violations lead to prosecution of suspected perpetrators, AI calls for proceedings to be conducted in accordance with international standards for fair trial and without the possibility of the death penalty. States whose forces have committed violations must ensure that victims receive adequate redress, including compensation, through a mechanism set up for this purpose.
- Other states should exercise their obligations to conduct criminal investigations of anyone suspected of grave breaches of international humanitarian law during the conflict. If there is sufficient admissible evidence and the suspect is within their jurisdiction, such states should prosecute or extradite the suspect to another state willing and able to hold a fair trial without the possibility of the death penalty. In addition to being obliged to exercise universal jurisdiction for grave breaches of the 1949 Geneva Conventions and Protocol I, states are permitted to exercise universal jurisdiction for other serious violations of international humanitarian law. If, following an investigation, there is sufficient admissible evidence and the suspect is within their jurisdiction, states should prosecute, in a fair trial, or extradite the suspect to another state willing and able to hold a fair trial.
- All parties to the conflict should commit themselves to seek the services of the International Humanitarian Fact-Finding Commission (IHFFC), established under Article 90 of Protocol I, to investigate incidents where serious violations of the Geneva Conventions and the Protocol are alleged to have taken place. Scrutiny by the IHFFC will be essential to ensure that in any dispute over specific incidents the facts are independently and authoritatively established and appropriate follow-up action recommended. In order to avail themselves of the services of the Commission, states should ratify Protocol I and make a declaration under Article 90(2)(a) which provides

that states parties to the Protocol "may at the time of signing, ratifying or acceding to the Protocol, or at any other subsequent time, declare that they recognize *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the Commission to enquire into allegations by such other Party, as authorized by this Article." The UK and Australia recognize the Commission's competence. States which have not ratified Protocol I, such as Iraq and the US, may nevertheless declare their readiness to use the Commission, as provided for under Article 90(2)(d) which states that "In other situations, the Commission shall institute an enquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned". The IHFFC is composed of "fifteen members of high moral standing and acknowledged impartiality", including legal and military experts, judges and medical doctors drawn from all regions of the world. The Swiss Government, in its capacity as the depository of the Geneva Conventions and Protocols, acts as the secretariat for the Commission. To date 64 states have recognized its competence, but none has sought the services of the IHFFC. The Commission decided at a meeting in July 1992 to add the word "humanitarian" to the name of the Commission as foreseen in Art. 90 in order to emphasize its functions in the field of international humanitarian law.

- If an ad hoc international tribunal were established to bring to justice those suspected of committing serious violations of international law in Iraq, its jurisdiction should include violations by all parties to the conflict -- including any violations by the US and its allies. Such a tribunal should investigate all credible allegations of violations, with a view to bringing suspected perpetrators to justice in proceedings that meet international standards on fair trial.
- Neither Iraq nor the US has ratified the Rome Statute of the International Criminal Court. The situation in Iraq would not come under ICC jurisdiction unless it was specifically referred to the court by the UN Security Council, in accordance with Article 13 (b) of the Rome Statute. States involved in a conflict in Iraq who have not yet ratified the Rome Statute, including Iraq and the US, could recognize the Court's jurisdiction by making a declaration under Article 12 (3) of the Rome Statute. The UK and Australia have ratified the Rome Statute and their nationals are subject to ICC jurisdiction.