“Precision” Strikes, Civilian Casualties, and Human Rights Violations in the Fight Against ISIS

Introduction

When an explosion in western Mosul killed over a hundred civilians last summer, Iraqi security officials were quick to emphasize that the Islamic State was solely responsible. According to Joint Operations Command spokesperson Yahya Rasool, ISIS had trapped civilians inside a building, then rigged it with explosives and driven a bomb-laden truck through a wall, apparently to give the impression that the anti-ISIS coalition was indiscriminately targeting civilians.¹ The story quickly fell apart. Witnesses attested to seeing and hearing a bomb dropped from above, and no one seemed to have seen the vehicle that the Coalition argued had set off the blast. Within days, the U.S. admitted that it had conducted an airstrike nearby, but insisted it was unrelated. Finally, facing mounting international pressure from Human Rights Watch and other NGOs on the ground in Mosul, they admitted they had hit the building in order to take out two militants on the top floor. The U.S. continues to maintain that the building had been rigged by ISIS, and that the final death toll was 105, despite witness reports that place the total well over 200.²

Last month, the New York Times released a report demonstrating that this attack was part of a broader pattern: the United States had killed civilians in Mosul at a rate 31 times higher than previously disclosed, and systematically concealed this data while failing to take basic

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precautions to limit future deaths. This data, compiled by investigative journalists Anand Gopal and Azmat Khan, along with a range of other reports on the U.S.-led coalition’s air war in Iraq and Syria, provides strong evidence that the U.S. has violated international human rights laws regarding a military’s duty to limit civilian casualties in warzones. This paper will examine the history and development of that duty as a human rights issue, briefly touching on the passing of the 4th Geneva Convention, as well as instructive case studies in the Vietnam War and Israel’s 2014 siege of Gaza, before turning to the evidence of violations committed by the U.S.-led coalition in Iraq and Syria since 2014. I will argue that while ISIS’s unprecedented barbarity made high rates of civilian casualties inevitable, the evidence is clear that the United States’ penchant for overwhelming force and the Iraqi military’s desire to limit troop casualties led to systematic human rights abuses. I will conclude by examining the reparations mechanisms that are at the U.S.’s disposal to compensate for its shortcomings, looking briefly at the history of condolence payments in wartime and the development of reparations to survivors as an increasingly prevalent and necessary human rights norm.

**Historical Context: Geneva Conventions, Vietnam, and the 2014 Gaza War**

The foundation of our modern conception of the rights of civilians in wartime began in 1949, with the passage of the 4th Geneva Convention. While the first three conventions centered on the rights of soldiers as combatants and prisoners of war, the fourth convention focused specifically on civilians. It articulated a range of abuses to which they could not be subjected, and the responsibilities of military actors to respect the value of civilian lives and property. Those rights, however, were relatively limited: while the Convention outlawed collective

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punishment, torture, and other military tactics to control and leverage civilian populations, it took little interest in addressing the sorts of indiscriminate targeting that often lead to massive civilian casualties in warfare. In fact, the convention explicitly states that “The presence of a protected person may not be used to render certain points or areas immune from military operations” and that “the Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents,” with “protected persons” defined as any civilians within a state that had ratified the Convention. Taken together, these articles ensure that a military force has the right to operate in areas with a civilian presence and place the focus of the obligation to protect those civilians firmly in the hands of the side defending that territory, thus limiting an aggressor’s culpability for casualties inflicted in attempting to take control of an area.

In the aftermath of the Allies’ indiscriminate bombing campaigns in Germany and Japan, the architects of the Geneva Conventions clearly had little interest in waiving their right to conduct similar campaigns in the future. So while the Convention took an important step in cementing the idea that civilians were entitled to certain fundamental rights during wartime, it stopped short of taking action to limit the military strategies that were often the cause of large-scale civilian casualties and destruction of civilian property.

After the United States’ destructive and widely-publicized air campaigns in Vietnam, however, the international community’s understanding of the rights of civilians began to expand. The U.S.’s extensive use of napalm, Agent Orange, and conventional weapons on civilian targets had a devastating effect on populations in North and South Vietnam, killing tens of thousands of civilians and leading to severe and long-lasting health problems for survivors.  

attention to these abuses, including the Pulitzer Prize-winning photo of nine year old Kim Phuc fleeing a napalm attack, shocked the international community and drove Geneva Convention signatories towards a broader understanding of civilian rights during wartime.\(^6\) By 1977, the more expansive Protocol I had been ratified as an addition to the Geneva Conventions, explicitly laying out the obligations of a military power to limit civilian casualties – all civilians, not merely protected ones – in its operations. The new protocol stated that military powers had an obligation to “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,” and outlawed any attacks which “may be expected to cause incidental loss of civilian life… which would be excessive in relation to the concrete and direct military advantage anticipated.”\(^7\) The wording is vague – What qualifies as “excessive” loss of civilian life? What precautions are “feasible”? – but nonetheless it establishes the idea that, at least in the abstract, certain strategies of indiscriminate attack are unlawful, regardless of their military efficacy. While the language leaves considerable room for interpretation, the standard of “concrete and direct military advantage” provides a useful a rubric to evaluate what constitutes a legally acceptable loss of civilian life in a military operation: covering large swaths of the jungle in napalm and deadly pesticides, for instance, would almost certainly be illegal if the perpetrators could not identify a specific military target. Furthermore, the requirement that a military choose weaponry with a mind to limiting civilian casualties is significant: if a military knew that hundreds of civilians were inside a building, for example, it would be extremely questionable to use an airstrike when


\(^7\) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). Articles 51, 57. 8 June 1977
ground forces were available that could have more precisely targeted the militants without resorting to explosives that would risk collateral damage.

Since the Protocol’s ratification, military powers have gone to greater lengths to emphasize their purported commitment to limiting civilian casualties, though their claims have not always matched with reality. For example, In Israel’s 2014 siege of the Gaza Strip, the Israeli Defense Forces (IDF) were quick to emphasize the wide range of precautions they took to limit civilian casualties: leaflet drops, radio broadcasts, and the establishment of safe routes all served as mechanisms by which Israel put itself “at the forefront of applying international law in real-life situations,” in the words of one IDF lawyer responsible for authorizing military strikes in Gaza. Perhaps most importantly, the IDF relied heavily on “precision strikes” that can purportedly hit targets without damaging nearby structures or even other rooms within a building. To quote one IDF drone operator, “In Gaza, we use bombs that are extremely precise, and strike only Hamas targets.” Furthermore, he adds, “For every mistake that we make, we perform in-depth inquiries to make sure that it won’t happen again.” But despite all these bureaucratic protocols, the 2014 Gaza conflict still had a catastrophically high civilian casualty rate: at least two thirds of deaths were Palestinian civilians. A UN investigation into civilian casualties found that “precision strikes” were a misnomer at best, and that “Much of the destruction… could be blamed on Israel’s use of weaponry with a wide kill and injury radius” in dense population centers. The investigation also noted that weaponry was chosen deliberately to protect Israeli forces at the expense of civilians: “In her summation of the report, Justice McGowan Davis observed that when the safety of an Israeli soldier is at stake, ‘all the rules seem

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Moreover, “in-depth inquiries” into civilian casualty incidents were largely nonexistent: for one widely-publicized airstrike that left four children dead with no apparent Hamas targets in the area, the IDF failed to interview any international journalists or Palestinian eyewitnesses that were present at the bombing.11 While the IDF clearly had protocols in place to go through the motions of adhering to international law, their implementation was lacking.

Human Rights Abuses by the U.S.-led Air Campaign in Iraq

The contrast between the IDF’s insistence on its commitments to human rights norms, and the reality of its willingness to use “methods and means of attack” that endanger civilians, provides contemporary context and a useful parallel for the human rights violations that are alleged in the U.S.’s air campaign against the Islamic State. The New York Times report published in November alleges a similar set of human rights issues, first and foremost that the American military overemphasized its ability to hit ISIS targets with surgical precision while failing to investigate credible claims of civilian casualties. According to Major Shane Huff, a spokesman for the Central Command responsible for organizing the U.S.’s air campaign, the “U.S. and coalition forces work very hard to be precise in airstrikes” and “are conducting one of the most precise air campaigns in military history.”12 The language, though less emphatic, closely mirrors the IDF drone operator’s claims to hit “only Hamas targets.” Like the IDF, the claims did not always hold up to scrutiny.

According to the U.S. military’s own records, their airstrikes are phenomenally effective at avoiding civilian casualties: only one in every 157 strikes killed a civilian in the war on ISIS,

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despite the fact that the air campaign was frequently operating in densely populated, urban areas. Such a success rate is apparently the product of a careful, painstaking adherence to human rights law. The Times reports that Central Command’s targeting process is “staggeringly complex — the wall-to-wall monitors, the soup of acronyms, the army of lawyers — but… was designed to answer two basic questions about each proposed strike: Is the proposed target actually ISIS? And will attacking this ISIS target harm civilians in the vicinity?” The reporters further note that after every strike, an internal review process is conducted to evaluate if civilians were harmed. If they were, the coalition makes “refinements” to avoid future civilian casualties. The process again bears striking similarities to the IDF’s, with a range of bureaucratic protocols in place to limit risk and account for shortcomings, all to ensure that civilian deaths are not “excessive relative to the expected military advantage gained,” in the words of Central Command’s Deputy Legal Advisor Matthew King, who echoed the human rights laws established by Protocol I in his articulation of how targets are selected in Iraq and Syria.

But as in the case of the Israeli invasion of the Gaza Strip, the American claims of respect for human rights law seemed much less credible when subjected to scrutiny. Following an investigation of 103 airstrike sites, the Times reporters concluded that one in five airstrikes killed at least one civilian, rather than one in 157. “It is at such a distance from official claims,” wrote the authors, “that, in terms of civilian deaths, this may be the least transparent war in recent American history.” 13 The U.S. coalition had admitted to civilian casualties in only 89 of its 14,000 strikes across Iraq and Syria. Extrapolating from this report, a more plausible number would be between four and five thousand strikes with civilian casualties. This report is the largest-scale investigation of this issue, but it tracks with coverage from human rights NGOs and

13 Gopal and Khan.
reporters on the ground in these areas. Human Rights Watch, for instance, warned last summer that Coalition forces “took inadequate precautions to avoid civilian casualties,” and documented seven instances of attacks that killed a total of at least 44 civilians in western Mosul, none of which were reported by the U.S. military.\(^\text{14}\)

Perhaps even more concerning is the reality that human rights workers and international reporters have been largely limited to the area in and around Mosul due to the region’s relative security and close proximity to the more stable Kurdistan region of Iraq. The Coalition’s war extends to far more remote areas, however, where there is strong reason to suspect the strikes have been even more indiscriminate. The head of one provincial council in a town in Iraq’s more-isolated Anbar province repeatedly released statements last summer alleging that U.S. airstrikes were indiscriminately hitting houses of families with no ties to ISIS, and killing civilians in the process. In August, he finally resorted to pleading with the U.S. to cease the strikes entirely, preferring a longer period of ISIS rule to the U.S.’s violence.\(^\text{15}\) Notably, these pleas were published in Arabic in a local Iraqi news source, and were not picked up by Western media. Western journalists, including Gopal and Khan, are limited in their ability to travel due to security concerns resulting from their high profile. Reports that use journalists and sources spread across a wider swath of former ISIS territory provide strong evidence that the NGOs and journalists operating in Mosul are only scratching the surface of broader human rights violations in the U.S.-led air campaign against ISIS. If the Coalition is not investigating claims in large metropolises just a few hours drive from their own bases, there is little reason to suspect they are doing a better job in more remote and unstable areas.


\(^{15}\) Al Sumaria News. “Council of Ana calls for a stop to the airstrikes on the houses and residents of the city” [Translated], 19 August 2017.
That said, many journalists and NGO workers that allege human rights violations often gloss over an important truth: the rate of civilian casualties in the war on ISIS was almost certainly doomed to be catastrophically high from the outset, both because of ISIS’s tactics on the battlefield and the Iraqi military’s inability to retake territory without heavy air support, neither of which constitute human rights violations by the United States. During the fight for Mosul’s Old City last summer the UN High Commissioner for Refugees (UNHCR) warned that there were as many as 100,000 civilians trapped in the district for use as human shields, in closely packed, poorly-maintained buildings that were likely to collapse at the slightest provocation.\(^{16}\) While this information – which was known to the U.S. before they began dropping bombs in the Old City – points heavily to the need for extreme caution and restraint on the use of explosives, the situation is more complicated than it first appears. Temperatures in June in Mosul routinely reached 120 degrees Fahrenheit, and civilians were packed together in locked basements where they had no access to food, medical attention, or even water.\(^{17}\) As a result, the U.S.-led coalition was left with the challenge of weighing the responsibility to limit civilian casualties against the knowledge that inaction would also cost lives. As Major General Joe Martin, commanding general of the ground forces fighting ISIS, put it, “The best way to protect civilians is to defeat ISIS.”\(^{18}\) With heatstroke and hunger killing trapped civilians every day, there was a compelling, if controversial, case to be made for the use of overwhelming force. Human rights laws under the Geneva Conventions place emphasis on the violations that occur from action, but this was a clear case where inaction had the potential to be at least as deadly. In fact, an unfortunate side effect of the Coalition’s efforts to adhere to the Geneva Conventions is


\(^{17}\) Otten, Cathy. “As Mosul battle rages, trapped residents face terror and hunger.” United Nations High Commissioner for Refugees, 27 June 2017.

\(^{18}\) Chappell.
that it likely encouraged the Islamic State to commit human rights violations. After all, ISIS had no inherent tactical advantage from trapping civilians in its territory. The advantage stemmed from the knowledge that the United States and its allies would be forced to limit their aerial bombardment if civilians were present, as a result of their signing or ratifying the 4th Convention and the 1st Protocol. Protocol I even acknowledges the perverse incentives it creates: in the same article that outlaws indiscriminate attacks, the protocol adds that “The Parties to the conflict shall not direct the movement of the civilian population… in order to attempt to shield military objectives from attacks.”¹⁹ By barring indiscriminate attacks, the Protocol acknowledged they were creating an incentive to use civilians to protect strategic locations, and as a result took steps to prevent that action as well. But in a war against a group not known for its adherence to human rights laws, the Protocol likely incentivized the use of human shields.

Compounding the issue was the fact that swift action to save lives was impossible without air support: the Iraqi ground forces had repeatedly proven unable to retake territory without U.S. airstrikes, leaving the U.S. with the unenviable choice of risking civilian casualties via bombardment, or sitting idly by as those same civilians died in ISIS’s hands. In fact, following the catastrophic al-Jadida bombing mentioned at the outset of this essay, the United States drastically reduced its air campaign in Mosul while it evaluated what had gone wrong.²⁰ The Iraqi advance slowed accordingly. With Iraq’s elite Counter Terrorism Force (CTF) suffering a devastating 40% casualty rate in the fight for Mosul, there were simply not enough troops to continue the advance without air support.²¹ The U.S. military’s civilian casualty rate against ISIS was disturbingly high, but that fact on its own is insufficient to demonstrating

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¹⁹ Protocol I
²⁰ Chappell.
human rights violations. For that to be true, the U.S. military must have conducted attacks where it either did not take “all feasible precautions” to limit the loss of life, or where the risk of civilian casualties was greater than the likely military advantage gained from the strike. In western Mosul, the case is less than compelling. Given the demonstrated inability of Iraqi troops to retake ISIS territory without U.S. air support, the U.S. was forced to choose between continuing its air campaign and ceding the territory to ISIS indefinitely. Given these stakes, the commanders that oversaw the campaign have a sound argument that the military necessity of retaking the territory justifies their actions and exonerates them under current international humanitarian law.

There are, however, more clear-cut examples of human rights violations by the U.S. military than the ones alleged in the western Mosul. Gopal and Khan write of their investigation that “in about half of the strikes that killed civilians, we could find no discernible ISIS target nearby.” In one case, the U.S. military apparently bombed a civilian home, twice, based on a faulty rumor that a single mortar may have been nearby. In another, they struck an electrical station, killing at least 18 civilians, without any apparent ISIS target in the vicinity. Tellingly, the military did not include this second attack in their strike log, and denied that there was evidence that these casualties had occurred, despite an abundance of YouTube videos showing women and children being dragged from the rubble. While the Central Command emphasizes that they conduct internal reviews when they may have killed civilians, that defense falls apart if they feign unawareness of strikes where there is overwhelming evidence of civilian casualties. As Gopal and Khan put it, “Such intelligence failures suggest that not all civilian casualties are unavoidable tragedies; some deaths could be prevented if the coalition recognizes its past failures and changes its operating assumptions accordingly.” Failing to do so, however, essentially
guarantees that past mistakes will not be learned from even as the public continues to be fed the myth of “precision strikes” conducted with the utmost care. Like the IDF’s review process during its siege of Gaza, the Coalition protocols often seemed designed more to shield itself from blame than to prevent any actual civilian casualties.

The aforementioned strikes provide clear evidence that the United States has violated Protocol I of the Geneva Convention. The U.S.’s decision to eschew internal review in cases where its strikes had clearly led to civilian casualties points strongly towards a failure to take “all feasible precautions” to minimize civilian casualties – if it knew its intelligence was faulty, it was more than feasible to critically evaluate sources and adopt more rigorous standards for evaluating the presence of civilians in a strike zone. “Precision strikes” may go exactly where they are supposed to, but that only prevents civilian casualties if they are informed by accurate and reliable intelligence sources. Furthermore, the “direct military advantage” that one could plausibly anticipate in many of these strikes was vastly out of proportion to the danger to civilian life: Conducting two strikes on a single mortar shell in a densely populated urban area is an unreasonable level of force even if the U.S. military did not have a reason to doubt their source’s veracity.

**Potential Remedies: Condolence Payments and Reparations**

Perhaps the most disturbing detail of Gopal and Khan’s reporting, however, is the revelation that the United States has not disbursed a single condolence payment in Iraq or Syria since 2014. “It’s not that anyone is against it,” explained a Central Command officer. “It just hasn’t been done, so it’s almost an aspirational requirement.” When the U.S.’s actions unintentionally destroy civilian homes and kill noncombatants, survivors are often left to foot
crippling bills: medical care for wounded family members, funeral costs, and the burden of rebuilding leveled homes can all climb into the hundreds of thousands of dollars. One survivor interviewed by Khan and Gopal demonstrated that a U.S. airstrike had cost him over $500,000 in damaged property and medical bills, in addition to the loss of four family members. When the U.S. finally offered the survivor $15,000, he walked away, offended by the apparent cheapness of Iraqi lives. “This is an insult to me. No, I will not accept it. I’m sorry,” the Times reports him as saying before he walked out of the room.

The U.S. military has always maintained that condolence payments are a courtesy, not an obligation. No national or international law compels restitution for civilians killed in combat, and even when the U.S. has historically provided payments, they have been as a show of respect rather than an effort to repay the full damages caused. This practice dates back to the Korean War, when the U.S. began paying out nominal sums of money or gifts towards Koreans who lost civilian family members to the war. The procedure has always been implemented haphazardly, however, through an opaque system that is designed to reflect regional “cultural sensitivities” but in reality serves to place a needlessly opaque value on human life. During the U.S. invasion of Iraq in 2003, the U.S. paid one Baghdadi family $5,000 for the unnecessary loss of 13 family members, and in another case $2,500 for the killing of a single civilian. The lack of uniformity stems from a U.S. policy of empowering local commanders on the ground to determine the proper payments for individual civilian casualties, but the end result is that the value of a human life fluctuates without much discernible logic. And, of course, whether or not such policies get

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instituted at all is up to the whims of individual commanders: nobody involved in the war on ISIS saw it as a priority, so a system was never instituted.

Human rights laws may not explicitly dictate a responsibility to provide reparations, but there is a growing precedent in the international community to do so regardless. In “Responsibility to Pay,” Jonathan Tracy writes that an “an emerging norm requiring compensation or reparation exists if the harm results from a war crime or crime against humanity.”\(^{24}\) The United Nations Office of the High Commissioner stated this norm more explicitly in a General Assembly resolution, saying that victims of gross violations of human rights law have a right to “Adequate, effective and prompt reparation for harm suffered.”\(^{25}\) As previously discussed, there is compelling reason to believe the United States committed war crimes in Iraq and Syria, and that it should act accordingly. Whether those crimes rise to the level of “gross violations of human rights law” is an area where there is considerable room for debate. It is, however, necessary that that debate takes place. Rather than systematically concealing its record of preventable civilian casualties, the United States should acknowledge its shortcomings and examine them critically, and provide reparations where human rights norms dictate it has a responsibility to do so. The U.S. should not merely pay victims because it perceives a tactical advantage in portraying itself as sympathetic to survivors, as it has done in the past.\(^{26}\) Instead, it should do so as a recognition of its obligation to victims of its own human rights violations, and it should create the institutions necessary to do so reliably and effectively.

\(^{24}\) Ibid.


\(^{26}\) Idrees.
Conclusion

When the United States made the choice to wade back into Iraq’s military conflicts in 2014, it was left with few good options. Faced with an enemy that had little respect for human rights laws, even the most law-abiding military force would almost certainly have been responsible for a devastating level of civilian casualties. Nonetheless, it is true that the U.S. was assuredly not the most law-abiding force in this context: it had numerous opportunities to reduce the level of harm caused to civilians caught in ISIS’s path, and failed to do so. Instead, it continued to rely on dubious evidence to bomb likely civilian targets, leading to an unnecessarily high rate of preventable civilian casualties. By declining to take feasible precautions to limit civilian deaths, and by choosing overwhelming force in contexts where the military gains were likely to be minimal, the United States placed itself in clear violation of human rights laws. As a result, its best course forward at this time is to acknowledge its faults and work towards meaningful reparations towards the victims of its unnecessarily brutal air campaign. Victims deserve compensation not because of the United States’ generous spirit, but because the human rights of their family members were violated.
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