



SPECIAL OPERATIONS /
LOW INTENSITY CONFLICT

**ASSISTANT SECRETARY OF DEFENSE
2500 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2500**

SEP 10 2018

Ms. Daphne Eviatar
Director, Security with Human Rights
Amnesty International USA
5 Penn Plaza, 16th Floor
New York, NY 10001

Dear Ms. Eviatar,

Thank you for your letter of May 1, 2018, which seeks information about seven Coalition strikes in Raqqa, Syria, during the summer and fall of 2017. This letter responds to your request for information and provides additional information, included in the attachment.

U.S. forces comply with the law of war during all armed conflicts, including in the current conflict against the Islamic State of Iraq and Syria (ISIS). The Department of Defense (DoD) recognizes that protecting civilians from unnecessary suffering is one of the main purposes of the law of war. For DoD, protecting civilians is also a moral imperative, one reflecting American values.

The Coalition reviews all reports of civilian casualties, regardless of the source of the report. In assessing reports, the Coalition reviews all available information from a variety of sources, including video surveillance and intelligence information, as well as news reports and reports of non-governmental organizations, such as Amnesty International. Existing assessments are updated if new information becomes available.

With respect to your letter of May 1, 2018, Combined Joint Task Force – Operation INHERENT RESOLVE (CJTF-OIR) has conducted a review of all reasonably available information related to the strikes listed in your letter, including information in Amnesty International’s report titled “‘War of Annihilation’: Devastating Toll on Civilians, Raqqa – Syria.” CJTF-OIR’s review concluded that it is more likely than not that 77 of the unintended civilians casualties described in Amnesty International’s report regrettably were a result of Coalition strikes, as identified below. We, however, reject the assertion in Amnesty International’s report that attacks conducted by U.S. forces or the Coalition “could be either direct attacks against civilians or civilian objects or indiscriminate attacks.”

- CJTF-OIR concluded that on June 28, 2017, a strike on a reported ISIS headquarters and fighting positions near a residential area caused eight civilians to be unintentionally killed.



- CJTF-OIR concluded that on July 18, 2017, a strike on reported ISIS fighting positions near a residential area caused one civilian to be unintentionally injured and 11 civilians to be unintentionally killed.
- CJTF-OIR assessed that on August 20, 2017, a strike on a reported ISIS position near a residential area caused nine civilians to be unintentionally killed.
- CJTF-OIR assessed that on August 20, 2017, a strike on a reported ISIS position near a residential area caused 33 civilians to be unintentionally killed.
- CJTF-OIR assessed that on October 12, 2017, a strike on reported ISIS positions near a residential area caused 16 civilians to be unintentionally killed.

With regard to your specific questions about these strikes, the intended targets of the strikes are described above. All the intended targets were lawful military objectives.

During 2017, all operations against ISIS in Raqqa were conducted consistent with Executive Order 13732, *United States Policy on Pre- and Post-Strike Measures To Address Civilian Casualties in U.S. Operations Involving the Use of Force*, dated July 1, 2016. Specific practices related to protecting civilians are also described in DoD's *Annual Report on Civilian Casualties in Connection With United States Military Operations* for 2017 that was submitted to Congress pursuant to Section 1057 of the National Defense Authorization Act for Fiscal Year 2018.

One challenge faced by the Defeat-ISIS Coalition while supporting partners to liberate Raqqa was that ISIS controlled much of the terrain and deliberately used civilians to shield its activities, including killing many civilians when they tried to escape ISIS-controlled areas. While planning and executing of military operations in support of partner forces, the Coalition accounted for ISIS's abhorrent conduct and routinely applied certain heightened policy standards that are more protective of civilians than is required under the law. Nonetheless, even if all parties comply with their obligations under the law of war, and even if parties apply heightened policy standards to mitigate risk to civilians (neither of which has been the case with ISIS), the unfortunate truth is that civilians may still suffer harm during armed conflict.

Regarding your question about "reparations" related to the strikes, DoD generally does not provide "reparations" or "compensation" to civilians who are incidentally injured or to the families of civilians who are incidentally killed during U.S. military operations. As explained in the attachment, civilian casualties are not necessarily violations of the law of war for which compensation could be required. Rather, as appropriate and consistent with mission objectives and applicable law, DoD acknowledges responsibility for such civilian casualties and offers condolences, including *ex gratia* payments that may be made as part of the Department's expression of sympathy when culturally appropriate. The practical ability of U.S. officials to make such *ex gratia* payments or other expressions of condolences is limited given the current operational environment in Syria and the limited U.S. military presence on the ground. Unlike counterinsurgency operations in Iraq before 2011 and in Afghanistan a few years ago, U.S. forces do not currently have widespread, day-to-day interaction with the local population in Syria, including those for whom an expression of sympathy or condolences might in other circumstances be appropriate and consistent with mission objectives.

Protecting civilians is a fundamental part of U.S. and Coalition objectives in defeating ISIS. In particular, the military mission is to defeat a terrorist group that has committed atrocities and has caused horrific human suffering. Millions of civilians have been liberated from ISIS oppression and defeating ISIS permanently will remove a grave threat to civilians in Iraq and Syria, as well as civilians in the United States and in the countries of our allies and other partners.

Sincerely,

A handwritten signature in black ink, appearing to read "Owen West". The signature is fluid and cursive, with the first letter "O" being particularly large and stylized.

Owen West

Issues Related to Amnesty International's Report

Although DoD and Amnesty International may at times disagree about the facts concerning an alleged incident or even the applicable law, DoD respects the work of Amnesty International and other similar NGOs. Amnesty International's report reflects a sincere effort to address a very important issue, dangerous work in a war zone, and a humanitarian concern for innocent civilians that is one of the main purposes of the law of war.

Turning to an overarching issue related to Amnesty International's report, we would note that Amnesty International researchers may have erred in relying too much on the International Committee of the Red Cross's (ICRC) study on Customary International Humanitarian Law.¹ Although the United States respects the ICRC's humanitarian efforts, the United States has made clear its view that "the United States is not in a position to accept without further analysis the Study's conclusions that particular rules related to the laws and customs of war in fact reflect customary international law."² Flaws in the ICRC's methodology, such as not receiving reports of State practice directly from States, mean that one must be very cautious before relying on the ICRC's study.³ Additionally, the ICRC's study is not "authoritative" under international law in the sense of giving binding interpretations of law. We recommend that Amnesty International and others consider directly State practice and State views on the law of war because the law of war is created and applied by States.

With regard to specific issues, we would like to explain our disagreement with your conclusions that the "cases [in the report] provide prima facie evidence that several Coalition attacks which killed and injured civilians violated international humanitarian law." "Prima facie evidence" of a fact is generally considered to be that evidence which "in judgment of law, is sufficient to establish the fact; and, if not rebutted, remains sufficient for the purpose."⁴ We believe that information in the Amnesty Report is not sufficient to assert credibly that Coalition attacks violated international humanitarian law.

¹ See Amnesty International Report, p. 61 and footnote 142 (asserting that "most of the rules on the conduct of hostilities of IHL, including all those cited in this report, apply in both international and non-international armed conflict and are binding on all parties, state and non-state forces" and citing the ICRC CIHL Study as an "authoritative list of these rules").

² John B. Bellinger, III, Legal Adviser, Department of State, & William J. Haynes II, General Counsel, Department of Defense, Letter to Dr. Jacob Kellenberger, President, International Committee of the Red Cross, Regarding Customary International Humanitarian Law Study, Nov. 3, 2006, *reprinted in* 46 International Legal Materials 514 (2007).

³ See, e.g., Comments from the United States on the International Law Commission's Draft Conclusions on Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties as Adopted by the Commission in 2016 on First Reading, available at: http://legal.un.org/docs/?path=../ilc/sessions/70/pdfs/english/sasp_usa.pdf&lang=E (noting a mistake in the ILC's draft commentary based on its consideration of the ICRC's CIHL Study's characterization of U.S. practice rather than directly reviewing U.S. practice).

⁴ Kelly v. Jackson, 31 U.S. 622, 632 (1832) (Story, J.).

International humanitarian law, also known as the law of war, “has been developed with special consideration of the circumstances of war and the challenges inherent in its regulation by law.”⁵ Thus, the law of war can be quite different from other bodies of international law and domestic law. For example, in contrast to normal peacetime contexts, it is an unfortunate reality of war that civilians often are incidentally killed. The law of war recognizes this fact and, although civilians may not be targeted and efforts must be made to reduce civilian casualties, such casualties do not necessarily reflect a violation of the law of war. Thus, evidence of civilian casualties resulting from a strike by a State’s forces is not necessarily evidence of violations of the law of war by that State.

Drawing an inference that evidence of civilian casualties from a strike by State forces is evidence of a violation of the law of war is especially inapt when considered in the context of Coalition operations to liberate Raqqa from ISIS. ISIS, for example, controlled much of the terrain and deliberately sought to use civilians to obscure and shield its activities, including killing many civilians when they tried to escape ISIS-controlled areas. Amnesty International’s Report acknowledges these facts.⁶ On the other hand, the Coalition has made very clear its intentions to comply with the law of war and to minimize civilian casualties and even routinely applied certain heightened policy standards that are more protective of civilians than is required under the law.

Moreover, the law of war standards that apply to targeting decisions are assessed based on the information available to the decision-maker at the time and not on the basis of information that subsequently comes to light.⁷ Amnesty International’s report is largely a collection of information regarding the actual effects of various strikes, such as the accounts of individual residents of Raqqa who witnessed their effects. Such information, which came to light after the fact and which reveals the perceptions of outside observers rather than the deliberations of decision-makers, therefore, would not be probative of whether U.S. or Coalition forces committed a violation of the law of war.

In addition to distinguishing between evidence of civilian casualties and evidence of violations of the law of war, we also believe it is important to point out that Amnesty International’s information does not furnish a “prima facie” case in the sense of creating a burden on the United States to respond. On the contrary, there is not a basis to conclude that U.S. forces committed violations of international humanitarian law. Moreover, the customary and treaty law of war applicable to the United States do not create obligations for the United States to disclose publicly the facts that support its conclusion that applicable law of war requirements have been complied with. For example, the military advantage expected to be gained from a particular strike might depend on sensitive information, such as the war strategy,

⁵ DoD Law of War Manual § 1.3.2.1 (June 2015, Updated December 2016).

⁶ See, e.g., Amnesty International Report, p. 7 (“IS snipers ... were trying to keep civilians in areas under IS control to serve as human shields.”); p.14 (“Urban combat in residential areas presents inherent challenges. These challenges were exacerbated in Raqqa by IS’s determination to operate amongst the civilian population and to use civilians as human shields.”); and p. 42 (“IS fighters also redoubled efforts to force civilians from other areas into Harat al-Badu in order to use them as human shields.”).

⁷ See DoD Law of War Manual § 5.3.2 and the sources cited in footnotes 66-68 (June 2015, Updated December 2016).

plans for other attacks, and intelligence assessments of how disabling a target would affect the adversary's capability to continue operations.⁸ Similarly, whether it were feasible to use certain types of munitions in an operation could depend on sensitive information, such as the supplies of various munitions and the other operational requirements for such munitions.⁹ Thus, although the United States seeks to be as transparent as possible, it would be impractical and anomalous for the United States and other States to assume general obligations to disclose, in response to the presentation of certain information regarding civilian casualties, contrary evidence explaining why such incidents did not constitute violations of the law of war.

We provide these comments in a spirit of dialogue and with the hope that Amnesty International will consider them in updating its report and in its future efforts.

⁸ See DoD Law of War Manual § 5.12.21 (June 2015, Updated December 2016).

⁹ See DoD Law of War Manual § 5.11.6; § 5.2.3.2 (June 2015, Updated December 2016).