

Conduct of The Persian Gulf War: Final Report to Congress

PURSUANT TO TITLE V OF THE PERSIAN GULF CONFLICT
SUPPLEMENTAL AUTHORIZATION AND PERSONNEL BENEFITS ACT OF 1991
(April 1992)

<<http://www.ndu.edu/library/epubs/cpgw.pdf>>

THE CONDUCT OF THE PERSIAN GULF WAR

Saddam Hussein's invasion of Kuwait on August 2, 1990, unleashed an extraordinary series of events that culminated seven months later in the victory of American and Coalition forces over the Iraqi army and the liberation of Kuwait. Pursuant to Title V, Public Law 102-25, this report discusses the conduct of hostilities in the Persian Gulf theater of operations. It builds on the Department's Interim Report of July 1991. A proper understanding of the conduct of these military operations the extraordinary achievements and the needed improvements is an important and continuing task of the Department of Defense as we look to the future.

The Persian Gulf War was the first major conflict following the end of the Cold War. The victory was a triumph of Coalition strategy, of international cooperation, of technology, and of people. It reflected leadership, patience, and courage at the highest levels and in the field. Under adverse and hazardous conditions far from home, our airmen, soldiers, sailors, and marines once again played the leading role in reversing a dangerous threat to a critical region of the world and to our national interests. Their skill and sacrifice lie at the heart of this important triumph over aggression in the early post-Cold War era.

...

ROLE OF LEGAL ADVISERS

The Office of General Counsel of the Department of Defense (DOD) ... provided advice to the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense for Policy, other senior advisers to the Secretary and to the various components of the Defense legal community on all matters relating to Operations Desert Shield and Desert Storm, including the law of war. For example, the Secretary of Defense tasked the General Counsel to review and opine on such diverse issues as ... DOD targeting policies; the rules of engagement; the rules pertinent to maritime interception operations; issues relating to the treatment of prisoners of war; sensitive intelligence and special access matters; and similar matters of the highest priority to the Secretary and DOD. In addition, military judge advocates and civilian attorneys with international law expertise provided advice on the law of war and other legal issues at every level of command in all phases of Operations Desert Shield and Desert Storm. Particular attention was given to the review of target lists to ensure the consistency of targets selected for attack with United States law of war obligations.

...

TARGETING, COLLATERAL DAMAGE AND CIVILIAN CASUALTIES

The law of war with respect to targeting, collateral damage and collateral civilian casualties is derived from the principle of discrimination; that is, the necessity for distinguishing between combatants, who may be attacked, and noncombatants, against whom an intentional attack may not be directed, and between legitimate military targets and civilian objects. Although this is a major part of the foundation on which the law of war is built, it is one of the least codified portions of that law.

As a general principle, the law of war prohibits the intentional destruction of civilian objects not imperatively required by military necessity and the direct, intentional attack of civilians not taking part in hostilities. The United States takes these proscriptions into account in developing and acquiring weapons systems, and in using them in combat. Central Command (CENTCOM) forces adhered to these fundamental law of war proscriptions in conducting military operations during Operation Desert Storm through discriminating target selection and careful matching of available forces and weapons systems to selected targets and Iraqi defenses, without regard to Iraqi violations of its law of war obligations toward the civilian population and civilian objects.

Several treaty provisions specifically address the responsibility to minimize collateral damage to civilian objects and injury to civilians. Article 23(g) of the Annex to Hague IV prohibits destruction not “imperatively demanded by the necessities of war,” while Article 27 of that same annex offers protection from intentional attack to “buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.” Similar language is contained in Article 5 of Hague IX, while the conditions for protection of cultural property in the 1954 Hague Cultural Property Convention were set forth in the preceding discussion on the treatment of civilians in occupied territory. In summary, cultural and civilian objects are protected from direct, intentional attack unless they are used for military purposes, such as shielding military objects from attack.

While the prohibition contained in Article 23(g) generally refers to intentional destruction or injury, it also precludes collateral damage of civilian objects or injury to noncombatant civilians that is clearly disproportionate to the military advantage gained in the attack of military objectives, as discussed below. As previously indicated, Hague IV was found to be part of customary international law in the course of war crimes trials following World War II, and continues to be so regarded.

An uncodified but similar provision is the principle of proportionality. It prohibits military action in which the negative effects (such as collateral civilian casualties) clearly outweigh the military gain. This balancing may be done on a target-by-target basis, as frequently was the case during Operation Desert Storm, but also may be weighed in overall terms against campaign objectives. CENTCOM conducted its campaign with a focus on minimizing collateral civilian casualties and damage to civilian objects. Some targets were specifically avoided because the value of destruction of each target was outweighed by the potential risk to nearby civilians or, as in the case of certain archaeological and religious sites, to civilian objects.

Coalition forces took several steps to minimize the risk of injury to noncombatants. To the degree possible and consistent with allowable risk to aircraft and aircrews, aircraft and munitions were selected so that attacks on targets within populated areas would provide the greatest possible accuracy and the least risk to civilian objects

and the civilian population. Where required, attacking aircraft were accompanied by support mission aircraft to minimize attacking aircraft aircrew distraction from their assigned mission. Aircrews attacking targets in populated areas were directed not to expend their munitions if they lacked positive identification of their targets. When this occurred, aircrews dropped their bombs on alternate targets or returned to base with their weapons.

One reason for the maneuver plan adopted for the ground campaign was that it avoided populated areas, where Coalition and Iraqi civilian casualties and damage to civilian objects necessarily would have been high. This was a factor in deciding against an amphibious assault into Kuwait City.

The principle of proportionality acknowledges the unfortunate inevitability of collateral civilian casualties and collateral damage to civilian objects when noncombatants and civilian objects are mingled with combatants and targets, even with reasonable efforts by the parties to a conflict to minimize collateral injury and damage. This proved to be the case in the air campaign. Despite conducting the most discriminate air campaign in history, including extraordinary measures by Coalition aircrews to minimize collateral civilian casualties, the Coalition could not avoid causing some collateral damage and injury.

There are several reasons for this. One is the fact that in any modern society, many objects intended for civilian use also may be used for military purposes. A bridge or highway vital to daily commuter and business traffic can be equally crucial to military traffic, or support for a nation's war effort. Railroads, airports, seaports, and the interstate highway system in the United States have been funded by the Congress in part because of US national security concerns, for example; each proved invaluable to the movement of US military units to various ports for deployment to Southwest Asia (SWA) for Operations Desert Shield and Desert Storm. Destruction of a bridge, airport, or port facility, or interdiction of a highway can be equally important in impeding an enemy's war effort.

The same is true with regard to major utilities; for example, microwave towers for everyday, peacetime civilian communications can constitute a vital part of a military command and control (C2) system, while electric power grids can be used simultaneously for military and civilian purposes. Some Iraqi military installations had separate electrical generators; others did not. Industries essential to the manufacturing of CW, BW and conventional weapons depended on the national electric power grid.

Experience in its 1980–1988 war with Iran caused the Government of Iraq to develop a substantial and comprehensive degree of redundancy in its normal, civilian utilities as back-up for its national defense. Much of this redundancy, by necessity, was in urban areas. Attack of these targets necessarily placed the civilian population at risk, unless civilians were evacuated from the surrounding area. Iraqi authorities elected not to move civilians away from objects they knew were legitimate military targets, thereby placing those civilians at risk of injury incidental to Coalition attacks against these targets, notwithstanding efforts by the Coalition to minimize risk to innocent civilians.

When objects are used concurrently for civilian and military purposes, they are liable to attack if there is a military advantage to be gained in their attack. (“Military advantage” is not restricted to tactical gains, but is linked to the full context of a war

strategy, in this instance, the execution of the Coalition war plan for liberation of Kuwait.)

...

The Coalition targeted specific military objects in populated areas, which the law of war permits; at no time were civilian areas as such attacked. Coalition forces also chose not to attack many military targets in populated areas or in or adjacent to cultural (archaeological) sites, even though attack of those military targets is authorized by the law of war. The attack of legitimate Iraqi military targets, notwithstanding the fact it resulted in collateral injury to civilians and damage to civilian objects, was consistent with minimizing collateral damage and injury is a responsibility shared by attacker and defender.

...

The presence of civilians will not render a target immune from attack; legitimate targets may be attacked wherever located (outside neutral territory and waters). An attacker must exercise reasonable precautions to minimize incidental or collateral injury to the civilian population or damage to civilian objects, consistent with mission accomplishment and allowable risk to the attacking forces. The defending party must exercise reasonable precautions to separate the civilian population and civilian objects from military objectives, and avoid placing military objectives in the midst of the civilian population. As previously indicated, a defender is expressly prohibited from using the civilian population or civilian objects (including cultural property) to shield legitimate targets from attack.

An attacker operating in the fog of war may make decisions that will lead to innocent civilians' deaths. The death of civilians always is regrettable, but inevitable when a defender fails to honor his own law of war obligations or callously disregards them, as was the case with Saddam Hussein. ... Leaders and commanders necessarily have to make decisions on the basis of their assessment of the information reasonably available to them at the time, rather than what is determined in hindsight.

...