

The US response to the attacks against its troops in Iraq: Collective punishment or justified measures?

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Focus

Article 33 GC IV

"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

[...]

Reprisals against protected persons and their property are prohibited."

After a series of deadly attacks against American troops in Iraq and notably the attack on 7 November 2003 on a Black Hawk helicopter that led to the death of six soldiers near the town of Tikrit, on 9 November 2003 the US unleashed an unprecedented attack on the city (Operation Ivy Cyclone). Tikrit, birthplace of deposed Iraqi dictator Saddam Hussein, is part of the Sunni Triangle, an area north and west of Baghdad where the US soldiers have been met with hostility.

The official reason provided by the US government was that it wished "to permanently disrupt [the] capability [of former regime leaders, criminals and other subversive groups [...] operating in the areas of Tikrit, Baquba, Kirkuk and Balad] to plan attacks against coalition targets". Many Iraqis suspected of being involved in the attacks were arrested. A second wave of military operations was carried out by the American forces on 16 November 2003 (Ivy Cyclone II). Similar operations also took place in Baghdad. If the aim was to ensure that Iraqi fighters stop carrying out attacks, then one expects the American forces, for example, to target communication means or confiscate weapons. Having regard to the information currently available, it does not appear that these types of operations took place.

Some, therefore, argue that these operations aimed at demonstrating to the Iraqi population the might of the US armed forces and punishing entire cities for the acts committed by a group of locals involved in attacks against US personnel. In the words of Brig. Gen. Dempsey, commander of the Baghdad operation, the operations aimed "to communicate to the enemy that the cost of actions against [the US] is high."

Article 33 of the Fourth Geneva Convention, that is applicable to the instant case since it was ratified by both the US and Iraq, strictly prohibits any type of collective punishment. The attack on cities where the majority of the inhabitants is protected persons may constitute a violation of article 33 if it can be demonstrated that the attacks were of indiscriminate nature and intended to induce fear in the local population. Since the real reasons leading to the decision to carry out such attacks cannot be clearly identified, one can only deduce them from the manner in which the operations were conducted. The use of highly sophisticated equipment, including F16-jets, attack helicopters and AC-130 Spectre gun ships tends to demonstrate that the Americans were using unrestrained force. Further, the timing of the American operations may be revealing inasmuch as it may prove that the operations were decided in reprisal to the series of deadly attacks perpetrated on American personnel.

Furthermore, Article 75(2) of Additional Protocol I lists collective punishment amongst the acts which "are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents". Although neither the US nor Iraq ratified Additional Protocol I, they are bound by the terms of article 75 since it is considered to reflect fundamental guarantees of customary nature.

All in all, depending on, for example, the accuracy of the targeting or the precautions taken by the American forces before launching military operations, one may consider the recent attacks as measures amounting to collective punishment.

Another issue relating to collective punishment is the demolition of houses by the American forces. In fact, part of the operations consisted in the destruction of the homes of suspected fighters, in the evacuation of women and children, and then in the leveling of their houses with heavy weaponry. This, inevitably, questions the legality of these actions under article 33 GCIV that also bans reprisals against protected persons and their property. Protected persons are those living in territory which is under military occupation, as is the case with Iraq. Therefore, reprisals against them are expressly prohibited in humanitarian law. To assess whether the Geneva Conventions were violated, Amnesty International asked US Secretary of Defence Rumsfeld to clarify "whether [the US government] has officially permitted house demolitions as a form of collective punishment or deterrence". In fact, Article 53 of the Geneva Conventions prohibits wanton destruction, limiting destruction of private property to cases where the destruction is absolutely necessary. This means that the US government needs to prove that it acted on justifiable grounds. The mere presumption that fighters may be hiding in these places is not enough. Nonetheless, the fact that the US was in possession of information proving that fighters were using these places to launch their attacks and not only as hide-outs may provide the US with justifiable grounds for its actions, provided there is sufficient corroborating evidence.

Responsibility

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