

This article was downloaded by:[University of Oslo Library]
On: 18 October 2007
Access Details: [subscription number 783081096]
Publisher: Routledge
Informa Ltd Registered in England and Wales Registered Number: 1072954
Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Journal of Military Ethics

Publication details, including instructions for authors and subscription information:
<http://www.informaworld.com/smpp/title~content=t713690728>

'War in the Home': An Exposition of Protection Issues Pertaining to the Use of House Raids in Counterinsurgency Operations

Cecilia M. Bailliet^a

^a Institute for Public and International Law, University of Oslo, Norway

Online Publication Date: 01 January 2007

To cite this Article: Bailliet, Cecilia M. (2007) 'War in the Home: An Exposition of
Protection Issues Pertaining to the Use of House Raids in Counterinsurgency
Operations', Journal of Military Ethics, 6:3, 173 - 197

To link to this article: DOI: 10.1080/15027570701565755

URL: <http://dx.doi.org/10.1080/15027570701565755>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article maybe used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

‘War in the Home’: An Exposition of Protection Issues Pertaining to the Use of House Raids in Counterinsurgency Operations

CECILIA M. BAILLIET

Institute for Public and International Law, University of Oslo, Norway

ABSTRACT *House raids represent the genre of military acts which fall within the grey zone of war and peace – counterinsurgency, post-conflict operations, or phase IV operations (a.k.a. Operations Other Than War) – in which the Geneva Conventions and their Protocols may reveal protection gaps. This article reviews accounts of the execution of house raids contained in the military literature and compares them to the testimony of soldiers and observers recorded in the media. It assesses the relevant provisions of humanitarian law as pertaining to the necessity, distinction, and proportionality of actions. Further, it highlights the specific human rights and humanitarian standards addressing terror, arbitrary intrusion into the home, violations of honor, and humiliation. The conclusion emphasizes the importance of taking into account gender and cultural considerations to properly address the interests of family members – i.e., women, children, and the elderly – who are most affected by house raids.*

KEY WORDS: Children, counterinsurgency, honour, house raids, human rights, humiliation, women

Introduction

One of the most troubling characteristics of modern warfare is the fact that war, or armed conflict, is now conducted ‘amongst the people’ instead of on conventional battlefields. As noted by General Sir Rupert Smith (2005: 288, 401), there is confusion due to the dissonance between the tactics applied by soldiers and the actual context within urban, civilian towns. Indeed, in both Iraq and the occupied territories of Israel, military personnel live behind barricades and engage with people primarily within the context of military actions, in particular house raids seeking to locate hidden insurgents. The mandate of the U.S. Forces in Iraq is in part to conduct counterinsurgency operations, to isolate and neutralize former regime extremists and foreign terrorists, and to locate their weapons and money. The success of the counterinsurgency operation is contingent on attaining intelligence from the

Correspondence Address: Cecilia M. Bailliet, Institute for Public and International Law, University of Oslo, PO Box 6706, St. Olavs plass, 0130 Oslo, Norway. E-mail: cecilia.bailliet@jus.uio.no

local population to identify the enemy, and this in turn depends on whether the people feel safe from reprisal by the insurgent. According to one reporter, many Iraqis cite the pre-dawn raids as the ‘the single most offending practice’ of the U.S. occupation (Hendawi 2003). The intrusion into private homes and the disruption of family life during house raids raises many concerns, as ‘war amongst the people’ becomes even more intimately ‘war in the home.’ The basic principles of humanitarian law – necessity, the need to distinguish between combatants and civilians, and proportionality – are all subject to scrutiny upon exploring the issue of house raids as a strategy. This author suggests that counterinsurgency operations should abide by both the law of war and human rights. Hence, the analysis also highlights the relevant human rights/humanitarian standards applicable to house raids, i.e., protection from terror, arbitrary intrusion into the home, humiliation, and violation of honor.¹ This article supports the view that human rights duties extend to areas under the effective control of the state (including occupied territories that are under the authority and control of the occupying state) or in situations involving the protection of persons under the power or effective control of the state, irrespective of control of the territory.² The U.S. position is that the obligations contained within human rights treaties do not extend extra-territorially, although customary human rights standards are applicable.³ Nevertheless, as hostilities remain ongoing in Iraq, the applicability of human rights may be limited.

The central thesis is that the general rules of engagement (ROE) that are applied in house raids fail to adequately ensure the protection interests of the civilian populace subject to such operations. Further, problems are exacerbated by insufficient training of troops, faulty execution of house raids, imprecise or erroneous intelligence gathering, and overly broad targeting. The question is how to balance the imperative to locate insurgents hidden within civilian elements with the interest in respecting the protection standards and cultural or ethical mores applicable to the inhabitants of a home.

Necessity

In Iraq, the insurgency and inter-sectarian violence has escalated, resulting in increased pressures to locate and neutralize opposition. In 2006, the UN Secretary General reported:

Insurgent, militia and terrorist attacks, as well as gross violations of human rights, including killings, kidnappings and torture, continued unabated in many parts of the country. Many of the victims are women, children and minorities. Iraq today has become one of the most violent conflict areas in the world. According to the latest Government figures, the number of civilians killed has increased considerably and stands at an average of 100 people per day, while more than 14,000 were reportedly wounded per month. (para. 58)

The tactics of asymmetric warfare render identification of irregular combatants difficult. The ongoing hidden nature of the insurgency and concern for ‘revolving door participation,’ in which insurgents slip back and forth into

civilian life, revealed that full oversight over communities was lacking, in spite of census mechanisms. This results in reactive, broad cordon-and-search operations, sweep raids, or brigade raids as tactics to locate missing personnel, insurgents, or their weapons (Padden 2006). One American officer was cited as characterizing the raids as ‘distasteful but necessary’ (Granby 2004). House raids are intended to clear the neighborhood of insurgents and re-establish security, but the fact that the cordon-and-sweep operations are repeated *after* violent attacks leads one to question to what extent they are successful as preventive control mechanisms. The anger of the Iraqi people is being provoked by widespread and seemingly indiscriminate raids of their homes, routinely executed with force. Although from a military perspective, the level of force used in house raids may be characterized as ‘moderate,’ from the perspective of civilians, the fact that force is applied within the context of the home actually appears to magnify its impact.

Within human rights law, a necessity standard pertaining to intrusion into the home is provided by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

1. Everyone has the right to respect for his home.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

This wording combines recognition of the right with prohibition of the state from interference, except where necessary in a democratic society.⁴ This is interpreted as requiring identification of whether the interference responds to social need and is proportionate to a legal aim (which in turn requires examination of the nature of the interference and weighing it against the protected right). One seeks to balance the right of the individual and the public interest within a context that upholds the rule of law. Asbjørn Eide (1984: 164) has persuasively identified the idea of limitation necessary in a democratic society as the human rights law correlate of the humanitarian law concept of military necessity. It is obvious that the fight to prevent terrorism (security and safety/crime prevention interest) is a legitimate aim that permits the state broader discretion in interference with the right. However, the second paragraph of Article 8 requires house searches to be conducted on the basis of a decision by a legally authorized state authority for the purpose of securing evidence and respecting the principle of proportionality. Although there is tension regarding the legitimacy of the Multinational Forces (MNF) to order and conduct house raids, these tasks are being increasingly delegated to the Iraqi national forces. Hence, although one may recognize that the imperative to locate insurgents renders house raids a necessary tactic, there remains a need to assess the reasonableness or proportionality of such actions.

Reasonableness/Proportionality

McFate & Jackson (2006: 13–16) and Lynn (2005: 25) point out the importance of upholding the legitimacy of the military among the local populace by adhering to basic norms of reasonable and proportionate action.⁵ One of the key criticisms against the use of house raids as a counterinsurgency tactic is that they are accused of lacking utility, as they rarely yield either insurgents or weapons, and the majority of those arrested in such raids are subsequently released (Conetta 2005). Essentially, from a human rights perspective, the tactic is accused of being unreasonable, and from the perspective of humanitarian law it is often deemed disproportional. One estimate by a U.S. officer in 2003 suggested that 70% of house raids were fruitless.⁶ The International Committee of the Red Cross (ICRC) issued a report in 2004 on Iraq that described house raids as largely being conducted at night and consisting of breaking down doors, aggressively waking residents, yelling orders, pushing, kicking, striking with rifles, rounding up the family in a room, breaking possessions and property, and arresting members of the family by hooding them and leading them away in pajamas or underwear. In sum, house raids are characterized as being counter-productive as pertaining to the aims of improving intelligence collection, winning ‘the hearts and minds’ campaign, or lowering recruitment into the insurgency.

According to two U.S. military officers who addressed the issue of house raids in practice, there is actually a ‘higher threshold of certainty in deciding when to act’ in phase IV operations (post-conflict), and there is a need to take ‘immediate civil action to maintain the local community’s trust and confidence’ when conducting raids (Caraccilo & Rohling 2004: 13).⁷ They conducted raids based on human intelligence, corroborated by single or multiple sources and checked by intelligence officers for determination of the validity of accusations and charges against a suspect. Threat assessments and imagery were elaborated in the event of a conclusion to conduct a raid. This provided, among other things, identification of entry and exit points for the soldiers. Other sources criticize the U.S. Army for relying on technological intelligence rather than human intelligence or cultural intelligence (Tomes 2004: 19). Caraccilo & Rohling (2004: 13–14) describe the rules of engagement for their battalion as follows:

The 2-503’s guidance was: ‘with single-source information or a low-threat target, knock on the door. With multiple-source information or a high-threat target, kick in the door.’ This was not a hard-and-fast rule. The nature of the target determined how much force to use. For example, if intelligence reports described the target as a Saddam Fedayeen (Saddam’s ‘Men of Sacrifice’) terrorist, the battalion would be prepared to kick in the door whether the information was corroborated or not. If the target was a propagandist who simply painted anti-coalition graffiti on walls and public property, the battalion usually decided to ‘go soft’ on the target from the outset. In either case, after any action, 2-503rd soldiers followed up within 12 hours to repair any damaged property, talk with the target’s neighbors, explain the unit’s reasons for conducting the raid, and perform other civic actions to maintain a good rapport with the community.

They give examples of two different house raids. One was based on a single source in which the platoon knocked on the door and searched the home while the platoon leader drank tea with the man of the house. The platoon leader asked the man to have the target turn himself in, which he did the next day. The second involved a multiple-source target. The platoon used explosives to enter the property, cleared the home in minutes, and located small arms and rocket-propelled grenades as well as arresting three male suspects. They noted that: 'The rules of engagement and accompanying guidance that the battalion established during targeting meetings gave subordinate commanders tactical flexibility but also curbed young infantrymen's innate desires to kick in every door, every time. As one might expect, Kirkuk residents would tend to react more favorably to a knock on their front door than to the detonation of C4 explosives' (Caraccilo & Rohling 2004: 15). What is clear is that the commanders must rely on their judgment beyond what is established in the rules, and the officers must exhibit common sense about the effect of forced entry on the civilian population. The conclusion is that commanders 'should use the methodical targeting process to define problems and project combat power (both traditional and non-traditional) to develop effective ROE and tactics, techniques and procedures in a post-conflict environment.' The officers signal the need for a more nuanced reflection of the impact of house raids from a cultural perspective or a human rights perspective as requiring additional considerations, beyond single-versus multiple-source corroboration, to justify the use of force. Furthermore, given the danger of informants seeking to rid themselves of their own enemies by 'reporting' them to the occupying forces, even multiple sources cannot always be considered reliable.

Yet the negative effect of intrusions into the home is not remedied by simple repair of damaged property or assurances to neighbors that residents are in fact not involved with the insurgency. Good rapport would be better attained if soldiers tried not to damage property and treated inhabitants with respect throughout the process.

The article raises questions about how infantrymen are trained, as one may question why the desire 'to kick in every door, every time' is described as 'innate.' Assuming that not all infantrymen are brutal from birth, perhaps the key lies in the basic training or pre-deployment training of the soldiers. As a minimum, it should be geared toward rendering their performance in phase IV operations more in keeping with the desired objectives of securing peace and 'winning the hearts and minds of the domestic population' in order to isolate the insurgent (Aylwin-Foster 2005: 4). As it appears now, the raids unfortunately may be more likely to promote alignment with the insurgency, instead of frustrating insurgency recruitment.⁸ Indeed, the U.S. Army Counterinsurgency Academy Textbook expresses precisely that point: 'On the surface, a raid that captures a known insurgent or terrorist may seem like a sure victory for the coalition. The potential second- and third-order effects, however, can turn it into a long-term defeat if our actions humiliate the family, needlessly destroy property, or alienate the local population from our goals.'⁹ The commanders effectively are admitting their knowledge of the

high risk to soldiers by resorting to excessive-force house raids, and thereby point to the design of the ROE as a means of reducing such risk. In the event other commanders have less foresight, this would raise the possibility of their being held accountable for reckless negligence.

Brigadier Nigel Aylwin-Foster, of the British Army, suggests that more attention should be paid by U.S. military to the consequences of adopting a tactic involving excessive force in counterinsurgency operations (2005: 4).¹⁰ He claims that observers of the U.S. Army consider it to be too inclined to view offensive operations and destruction (kill or capture) of insurgents as the appropriate counterinsurgency strategy, and that it is too insensitive to the cultural nuances of the situation (2005: 5). Aylwin-Foster (2005: 5) cites the example of an Iraqi senior official who had his house raided twice by the U.S. Army, but is cautious in assigning accountability for mistakes:

On one occasion the troops displayed exemplary awareness of cultural sensitivities, such as appropriate treatment of women in the household. On the other, the aggressive behaviour of troops from a battalion newly arrived in theatre led to his formal complaint, with consequent apology from a U.S. General Officer. Obviously the latter occasion was simply a mistake and betrayed, if anything, a lack of training: it was hardly likely to have been indicative of command intent. Nonetheless, another U.S. General did assert that it was unreasonable and impractical to expect front-line soldiers, given their training and pre-eminent warfighting role, to develop the levels of subtlety or master the wider range of skills predicated by the hearts and minds campaign. He implied that their employment must perforce be restricted to combat tasks, leaving post conflict engagement with the populace largely to other organizations, such as the Army's reservist dominated CIMIC units, and NGOs.

The claim that lack of training has nothing to do with command intent is not entirely without debate. Henrik Syse and Helene Ingierd (2006: 16) assert that 'command responsibility is both forward- and backward-looking. It includes a) the duty to prevent criminal and immoral acts, and b) the duty to hold one's own soldiers accountable (and to some extent allied soldiers in multinational operations). Whereas the first duty calls for attention before crimes take place, and reminds us of the duties of commanders with regard to the proper training of subordinates, the issuing of clear orders, etc., the second is preceded by offences that already have occurred.' Hence, it may be argued that commanders should ensure proper training of their troops as pertaining to conduct during house raids, precisely because a failure to do so may result in an environment of increased risk of or lack of sanction for overaggressive tactics.¹¹

A dilemma may arise from the narrow identification of relevant standards for such actions. There is a tendency within the military literature to emphasize a base minimum of respect for the rights to life and property. Colonel Greer (2005: 18) described the duty of care in counterinsurgency operations as principally focused on such norms: 'COIN [counterinsurgency] operations must do more than simply kill or capture opponents. To win the COIN fight, counterinsurgency must be turned from supporting the insurgents to supporting the legitimate government and its forces. Killing and wounding innocent civilians and destroying homes and businesses can

have adverse strategic consequences that far outweigh any temporary tactical gains.’

He further described a counterinsurgency operation in which the Iraqi Special Police sought to show the people that they could conduct an operation without harming innocent people or destroying homes:

Through discreet, deliberate, precise targeting, by conducting operations at night; by focusing on detention, not killing; and by treating detainees humanely and rapidly releasing detainees who were innocent, the Iraqi Special Police set the example for operating in a manner designed to win hearts and minds without creating new opponents. That no civilians were killed or injured and no local buildings were destroyed proves the Iraqi Special Police understood the strategic, not just the tactical, effect of military operations. (Greer 2005: 18)

The problem with this assessment, as with the earlier description by U.S. officers of house raids, is that it measures success in terms of minimizing death or physical injury as well as destruction of property. It does not consider the psychological, emotional, and moral injury resulting from raids that are likely to render perception of the actions as being excessive and arbitrary by the local populace, thereby de-legitimizing the actions. Indeed, Robert R. Tomes (2004: 20) cites large-scale sweeps as being historically ineffective and sets forth: ‘In Iraq it is clearly difficult to weed out insurgents while protecting the Coalition’s ability to win the trust of the Iraqi people and downplay its image as an occupying force. Whenever the commoner feels threatened or afraid, the guerrilla has the upper hand. Protecting basic liberties must be balanced with weeding out subversive elements and threats to stability.’

Given the high risk of violence and the limits of intelligence in house-raid operations, it appears that soldiers are more likely to adopt strategies that will minimize injury to their personnel, and may assume that a house is being used by insurgents. This increases the risk of surprise tactics, such as by unannounced entrances, including the use of explosives. It has been noted that the use of explosives in Iraq is problematic, due to the architecture of Iraqi homes.¹² Iraqi homes tend not to have a hallway behind the front door. The door often leads directly into the main room in which civilians may be sleeping; hence, the use of explosives may result in civilian casualties. One platoon leader trained his men to give the residents of the house a five-minute warning to come out peacefully, rather than blowing out the front door and risking killing civilians or being attacked.¹³ Nevertheless, they claimed to lose the element of surprise necessary to catch a suspect in such procedures. Hence, house raids may not always include a five-minute warning if the leader fears that the safety of the soldiers is at risk. In comparison, in response to the Israeli Supreme Court’s ruling that the Army should desist from using civilians as human shields in house raids, the Army has resorted to using bulldozers to knock houses down in order to locate targets without exposing their soldiers to danger, thereby increasing the risk to the inhabitants within (Watzman 2006).¹⁴ Further complications arise in situations in which military commanders seek to ensure security for their forces and hence may issue an

order for a raid of several houses if arms are found in one house; hence, the search may run the risk of violating norms of reasonableness or proportionality in terms of scope.

The fact that the raids are conducted primarily at night presents a particular issue for proportionality analysis. One may draw comparison to cases involving counterinsurgency operations (although not necessarily within combat arenas). In *Rojas Garcia v. Colombia*, HRC, Comm. No. 687/1996, CCPR/C/71/D/687/1996 (May 16, 2001), the U.N. Human Rights Committee held that there was a violation of Article 17, in spite of a legal basis for the nighttime search, due to the arbitrary manner in which the search was conducted. Armed forces forcibly entered the home through the roof at 2a.m. They conducted a search of all the rooms, terrifying and verbally abusing the family, including children. One shot was fired. Although the state later admitted error as pertaining to the proper address for the raid, no reparation was provided. Mr. Rojas Garcia's sister suffered severe nervous trauma, indirectly resulting in her death, his mother and children were unable to recuperate from the shock, and his family was blamed for the murder of an ex-mayor. The Committee concluded that the raid was not *reasonable* given the circumstances and was not in accordance with the provisions, aims, and objectives of the Covenant. However, it did not deem it necessary to decide whether the raid was an attack on the family's honor or reputation.

The European Court of Human Rights in *Camenzind v. Switzerland*, judgment ECHR (Dec. 16, 1997) held that a search could *not* be conducted at night except in *important* cases or where there is *imminent danger*. Searches are to be carried out if it is likely that a suspect is there, or objects or valuables liable to seizure or evidence of the commission of an offence are found there.

In *Murray v. The United Kingdom*, ECHR judgment (Oct. 28, 1994), the European Court of Human Rights held that there was no violation of the right to private and family life and home where there was genuine, reasonable suspicion that the person was linked to the commission of a terrorist crime, and that there existed sufficient grounds for the entry and search of the home in order to conduct the arrest. The aim of preventing IRA terrorist crime against the state's citizens and institutions was cited as legitimate, the search of the home deemed necessary for such an aim, and the means of search proportional. The Court cited the House of Lords' recognition that the placement of all the occupants of the home in one room 'was sensible, reasonable and designed to bring about the arrest with the minimum of danger and distress to all concerned' (both the occupants of the house and the soldiers) under a situation of 'extreme tension.' The Court cites Lord Griffiths of the House of Lords as noting that:

When arrests are made on suspicion of involvement with the IRA it would be to close one's eyes to the obvious not to appreciate the risk that the arrest may be forcibly resisted. The drill the Army follow is to enter the house and search every room for occupants. The occupants are all directed to assemble in one room. . . . It is however a proper exercise of the power of search for the purpose of effecting the arrest to search every room for other occupants of the house in case there may be those there who are disposed to resist the arrest. The search cannot be limited solely to looking for the person to be arrested and

must also embrace a search whose object is to secure that the arrest should be peaceable. I also regard it as an entirely reasonable precaution that all the occupants of the house should be asked to assemble in one room. As Corporal D. explained in evidence, this procedure is followed because the soldiers may be distracted by other occupants in the house, rushing from one room to another, perhaps in a state of alarm, perhaps for the purpose of raising the alarm and to resist the arrest. In such circumstances a tragic shooting accident might all too easily happen with the young, and often relatively inexperienced armed soldiers operating under conditions of extreme tension.¹⁵

These were cited as ‘legitimate considerations’; hence, the means for the entry and search of the home were not considered disproportional. Hence, there was no violation of Article 8.

Description of the situation in Iraq and Palestine as one of similar ‘extreme tension’ is appropriate; hence, from the European Court of Human Rights’ perspective, the round up of families in one room may be acceptable. However, what is left open is: first, whether the conduct of the raids at night is *reasonable* and *necessary* (indeed the U.S. Army would argue that the insurgency escalation reveals a situation of imminent danger, rendering the night raid necessary); second, whether the selection of the houses is sufficiently founded on probable evidence; and third, whether it is *overly broad in span* or *arbitrary in nature and application*. There appears to be a lack of clarity regarding the *scope and manner* in which raids are conducted. Further, the night raids appear to augment the level of distress of those within the home, i.e., women and children. Although the European Court of Human Rights has held that special police checks need not be foreseeable to individuals, obviously because it would defeat the purpose of intelligence, it should be clear as to the circumstances and conditions in which the police are empowered to interfere with the right to private life so as to prevent arbitrary interference.¹⁶

Guidelines should be elaborated to address the categories of people whose homes are being searched, the circumstances for such a search, and the procedure to be followed (timing and duration of raid, level of use of force, scope of search, etc.). Moreover, there should be the requirement of a supervision procedure to guarantee legitimate aim and diminish arbitrary execution of house raids.¹⁷ It may be suggested that raids for the purpose of conducting a census should be conducted during the day, rather than at night, by lightly armored personnel, including women. Night raids should be limited to those cases in which risk assessment reveals a high threat of imminent lethal attack and intelligence supports the precise targeting of specific locations, i.e., the exact address of a house, rather than a general area.

Distinction and Scope of Targeting

An additional critique launched against the U.S. military in Iraq is that it is biased against the domestic population; this appears to be related to problems in adequately targeting individuals. In 2004, a British officer noted the need to amend their approach: ‘They need to stop viewing every Iraqi, every Arab as the enemy and attempt to win the hearts and minds of the people’ (Rayment 2004). Nevertheless, the state of chaotic violence marked by

improvised explosive devices (IEDs) and suicide bombings breeds distrust and despair among soldiers and civilians alike. One Iraqi local subjected to a house raid refused to assist the MNF troops in locating insurgents due to fear of reprisal by the insurgency. He described the concern of the U.S. officer who addressed him as noting: 'We do not know where to look. All we want to do is help, but we do not know who to target' (Poole 2006). The U.S. Counter-insurgency Manual (Dec. 2006: 5–105) admits that 'it may be difficult to identify targets when a COIN campaign begins.' Hence, the response to increases in insurgent violence is 'clear' tactics that seek to isolate insurgents by blocking exits and conducting house searches to flush out insurgents. The hope is that reconnaissance, information from locals, and other intelligence will assist targeting for house raids. But when locals will not cooperate and intelligence is faulty, targeting is a formidable task. Because targets range from individual persons to groups of people living in areas under the control of insurgency operations, the scope varies from targeting a single home with a special unit to sending brigades to raid hundreds of homes in an entire city or town. The problem is that clear tactics are unable to prevent the return of insurgents unless the army has a sustainable presence in the areas, a scenario which is not currently present. Many civilians indicated that they remained under coercion or intimidation to hide insurgents, assist them, or simply not reveal their whereabouts. 'Shielding' situations arise in both voluntary and involuntary variants; it is difficult to determine with certainty which persons support the insurgency and which do not.

Protocol I, Article 52 prohibits the attack of civilian objects that are not military objectives (defined as 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 offers a definite military advantage). Section (3) sets forth that 'in case of doubt a house shall be presumed not to be used to make an effective contribution to military action.' The U.S. position is that the rule of presumption is not customary and is contrary to the traditional law of war because it shifts the burden of determining the precise use of an object from the defender to the attacker, i.e., from the party controlling that object to the party lacking such control. It is noted that this ignores the realities of war by demanding a degree of certainty on the part of the attacker that seldom exists in combat (Henckaerts & Doswald-Beck 2005: 36). Further, the U.S. Department of Defense argued in its *Report on the Conduct of the Persian Gulf War* that such rule undermines the duty of the defender to separate civilians and civilian objects from military objectives (ibid.). Israel claims to observe the rule only when the commander has significant doubt, not a slight possibility of mistake (ibid).¹⁸ The ICRC recommends that verification be made prior to attack to ensure that they are indeed military objectives (ibid.: 24).¹⁹

An important point is that search-and-clear operations may be considered alternatives to open-fire lethal attacks. Search, arrest, and neutralization actions are often highlighted as less damaging quasi-police alternatives in keeping with law enforcement duties, guaranteeing security related to occupation under the IV Geneva Convention. Hence, intrusion into the

home may be considered a mode of abiding by the principle of inflicting 'least harm.' Yet when the situation is defined as one of occupation or counterinsurgency, the raid itself may be considered a high-level intervention (as the method of combat is no longer solely lethal, but rather diversified among lethal and non-lethal actions), requiring lesser alternatives or the identification of a range of degrees of intervention permitted in raids appropriate to the context at hand. The very nature of insurgency often results in the use of civilians and their homes as shields, rendering civilians subject to raids under the principle of double effect – the military legitimately searches for insurgents, but the unavoidable effect is intrusion into the home of civilians, with its corresponding infringements on human rights.

This becomes complicated due to the fact that civilians are subject to duress and fear tactics by insurgents to ensure non-cooperation with counterinsurgency forces. In turn, the inability of civilians to assist the counterinsurgency effort renders them exposed to house raids. Unfortunately, a house raid appears to be viewed as the lesser evil, given the alternative of assassination by the insurgents themselves. The results of raids vary widely between successful location of insurgents, weapons, or money and fruitless interventions that breed resentment among civilians who may be more inclined to support the insurgency after experiencing a house raid. The U.S. COIN Manual (Dec. 2006: 5–59) suggests that clearing operations serve in part to deliver the message that if civilians actively support the insurgency, they prolong combat operations. Hence, one might suggest that this results in a cyclic phenomenon of searching for insurgents that actually prompts the escalation of insurgence, which in turn results in renewed searches for insurgents. Of special significance, the Inter American Commission on Human Rights stated that indirect participants do not merit targeting as combatants just because they may sympathize with the insurgency or fail to prevent its attacks on the armed forces.²⁰

House Raids as Terror

An Iraqi observer characterized house raids as 'terrorizing the Iraqi people' (Mite 2003). The exposure of civilians to acts of terror, humiliation, and violation of honor is prohibited under international humanitarian law. Although the primary purpose of house raids is to locate insurgents and/or their weapons, the *indirect* purpose may be to intimidate residents to cooperate with the counterinsurgency effort, and the net *effect* may well amount to a certain degree of terror, irrespective of purpose due to the method of the raid. Indeed, victims, observers and soldiers use the word terror to describe house raids. Nevertheless, Article 51 (2) of Protocol I of the Geneva Conventions requires a clear-intent standard: 'The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence *the primary purpose* of which is to spread *terror* among the civilian population are prohibited.'

The problem is that, because the standard excludes recklessness or negligence, it is not possible to identify housing raids as manifestly illegal

due to its effect of terror. Indeed, the conclusion points to the contrary (Cassese 2003: 161). Further, apart from the lack of identification of house raids as pursuing a primary purpose of terrorizing the populace, house raids may not fall under the substantive identification of an act of terror. The legal definition of acts which spread terror among the civilian population includes indiscriminate and widespread shelling, the regular bombardment of cities, assault, rape, abuse and torture of women and children, mass killing, deliberate and indiscriminate firing on civilian targets, unlawful firing on civilian gatherings, and a protracted campaign of shelling and sniping upon civilian areas (Henckaerts & Doswald-Beck 2005: 11).²¹ Consequently, the threshold within humanitarian law is high, as it refers to acts that are already prohibited under other provisions. As discussed in the ICRC Commentary on the Additional Protocols:

There can be no doubt that acts of violence related to a state of war almost always give rise to some degree of terror among the population and sometimes also among the armed forces. It also happens that attacks on armed forces are purposely conducted brutally in order to intimidate the enemy soldiers and persuade them to surrender. This is not the sort of terror envisaged here. This provision is intended to prohibit acts of violence the primary purpose of which is to spread terror among the civilian population without offering substantial military advantage. It is also interesting to note that threats of such acts are also prohibited. (Sandoz et al. 1987: 618)

Thus, although the Iraqis may identify house raids as acts of terror, they do not fall within the traditional understanding of this term under the Protocol. They may be viewed as coercive tactics, but accountability would then require linkage to other protective standards within the Geneva Conventions and Protocols, the customary principles of humanity (given that the security of the person and his/her property during a raid is sacrificed for the security of the state), or possibly the prohibition of causing unnecessary suffering (measuring the emotional and psychological impact of a raid).²² Yet even though the primary violation may prove non-corporeal, these elements are also incorporated within the provisions relating to humiliation and honor.

Humiliation and Honor as Affected by Arbitrary Intrusion into the Home

Another characteristic of house raids raised by both victims of raids and soldiers is that they serve as weapons of humiliation.²³ The Geneva Convention IV, Article 3 calls for humane treatment in all circumstances of noncombatants, and prohibits ‘outrages upon human dignity, in particular humiliating and degrading treatment.’²⁴ Humiliation is a state of disgrace in which one loses one’s sense of self-respect. The infliction of humiliation may be considered an act of severe psychological violence that injures the person via his or her enforced subjugation, which damages his or her pride, honor, or dignity (Rosenberg 2003). Universal understanding reflects the perception of an illegitimate debasement, devaluation, and/or dehumanization (Schapiro 2004).²⁵ In addition, there are individual or cultural variations that relate to the context in which the treatment occurs. The Elements of Crimes for the

International Criminal Court sets forth that the cultural background, including nationality and religion, or the person should be taken into account when assessing humiliating treatment (Henckaerts & Doswald-Beck 2005: 319). In the context of war, humiliation must be severe to amount to an outrage upon human dignity, but there is no purpose requirement. The Rome Statute establishing the International Criminal Court, Article 30, sets forth that the *mens rea* requirement includes both *intent* in relation to conduct and consequence and *knowledge* (awareness) of the existence of a circumstance, or that a consequence will occur in the ordinary course of events. Given that Article 8 (xxi) on committing outrages upon personal dignity, in particular humiliating and degrading treatment, does not indicate a specific intent standard, it remains open to either intent, knowledge, or both as *mens rea*. Although one may argue that soldiers do not intend to humiliate women by conducting house raids, this may be countered by suggesting that the commanders acted recklessly or with negligence. This would be due to their awareness or knowledge that such humiliation would likely ensue both with respect to Article 3 of Geneva IV and as pertaining to the cultural assessment that such conduct is inappropriate due to the Islamic concept of honor. Such a conclusion would be grounded in the context of night raids and/or assessment of their conscious failure to take sufficient precautions to prevent such humiliation.²⁶ The International Criminal Tribunal for the Former Yugoslavia Appeals Chamber in *Prosecutor v. Kunarac, Kovac, and Vukovic* issued a finding of guilty for outrages upon personal dignity given Kovac's intentional commission or participation in an act or omission which would generally be considered to cause serious humiliation, degradation, or otherwise be a serious attack on human dignity and he *knew* that the act or omission could have that *effect*.²⁷

U.S. forces claim to respect cultural norms in order to avoid humiliating civilians, an example being the practice of *not* cuff-linking women during house raids or of using female personnel to search women's belongings or person (where possible).²⁸ Battaglia (2004: 47) noted the U.S. First Calvary Division's intention to adopt a 'cordon and knock' policy for searching homes, which would allow a three-minute delay to enable women to cover themselves. Nevertheless, the Women's Rights Association (WRA) of Iraq has registered more than 240 cases of women who claim to have suffered 'humiliation' by the army and police during raids on their homes since July 2005.²⁹

Within human rights law, the Cairo Declaration on Human Rights in Islam contains two guarantees against humiliation, the first, actually linking such action to situations of occupation, and the second to situations of restriction of freedom:

Article 11

- a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High.
- b) Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and

self-determination. It is the duty of all States and peoples to support the struggle of colonized peoples for the liquidation of all forms of colonialism and occupation, and all States and peoples have the right to preserve their independent identity and exercise control over their wealth and natural resources.

Article 20

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity... Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

Pursuant to Islamic custom, entry into the home carries with it implications as pertaining to the honor of the inhabitants within. Within Islam, the principle of the sanctity of the home is inviolable. Allah commanded people not to enter homes without permission: ‘O ye who believe! Enter not houses other than your own without first announcing your presence and invoking peace upon the folk thereof. That is better for you, that ye may be heedful. And if ye find no one therein, still enter not until permission hath been given. And if it be said unto you: Go away again, then go away, for it is purer for you. Allah knoweth what ye do’ (Koran, 24: 27–28 in Pickthall 1930: 360). Visitors are to be announced in order to give women time to change.³⁰ The Cairo Declaration on Human Rights in Islam, Article 18, draws a further link between the concept of honor and home, and unlawful and arbitrary intrusion into the home (including the cultural perspective, calling for permission by the inhabitants):

- a. Everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property.
- b. Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.
- c. A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

This standard echoes Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which provides:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such attacks.³¹

This upholds the inviolability of the home, its primary characteristics being that of shelter and safety against outside elements (both natural and human), as well as being the center of intimate life and private, autonomous

experience. As pointed out by Manfred Nowak (1993: 302): ‘The various meanings associated with the word “home” convey a feeling of familiarity, shelter and security. In this manner, the home symbolizes a place of refuge where one can develop and enjoy domestic peace, harmony and warmth without fear of disturbance.’ There is no proviso for restriction in the interest of public order; rather, interference with the home shall not be *arbitrary* or *unlawful*. According to General Comment 16 on Article 17, the Committee defines lawful interference as requiring a basis of law in compliance with the provisions, aims, and objectives of the Covenant. Arbitrary interference addresses situations in which, even if the raid is provided for by law, it should be *reasonable* and in accordance with the aims, provisions, and objectives of the Covenant. Nowak (1993: 292) provides the following characterization: arbitrary ‘contains elements of injustice (discriminatory basis, illegitimate purpose, violation of principle of human dignity, illegitimacy on basis of Covenant as a whole), unpredictability (in the sense of the rule of law) and unreasonableness (proportionality).’

The Constitution of Iraq, Article 17 contains a similar guarantee:

1. Every individual shall have the right to personal privacy, so long as it does not contradict the rights of others and public morals.
2. The sanctity of the home is inviolable and homes may not be entered, searched, or put in danger, except by a judicial decision, and in accordance with the law.³²

As described by Nowak (1993: 306), *honor* reflects one’s subjective opinion of one’s self/self-esteem. Hence interference affects one’s dignity, integrity, and privacy. It often forms an attack upon the moral character of the person, and may be the result of degrading face-to-face treatment (without public witness). Attacks on honor shall not be unlawful, and hence this indicates a criterion of intense interference *intentionally* directed at affecting the honor of the person. Herein lies a problem, in that house raids do not necessarily intend to dishonor the inhabitants, and hence would fall outside of the scope of Article 17 (2). McFate & Jackson (2005: 19) conclude that although cultural training programs note that Iraqis value honor, the soldiers were not properly trained as to how to confer it, on whom and when, resulting in complications for operations.

This author argues that one could call for interpretation of the violation of honor by relating back to the Geneva Convention standard, which does not contain a set intent standard. The Geneva Convention IV, Article 27 states that protected persons are entitled in all circumstances to respect for their persons, honor, family rights manners, and customs. They shall at all times be humanely treated and be protected especially against all acts of violence or threats thereof, and against insults and public curiosity.³³

Thus, one could argue that the focus be placed on the fact that the *effect* of nighttime house raids is indeed interference with honor and that the commanders were aware of this consequence of the night raid but chose to disregard or fail to prevent such action, demonstrating reckless or negligent

disregard by the armed forces to protect inhabitants from damage to honor by nighttime raid, resulting in the exposure of women in bed clothes, linking families to insurgencies, etc.

The Convention on the Rights of the Child contains guarantees that prohibit arbitrary interference with a child's home and honor, and also calls upon states to protect children in armed conflict and respect their rights under humanitarian law:

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
- ...
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Accounts of house raids include descriptions of subjection of children to indirect and direct violence in the form of shock at being woken in the middle of the night and being taken outside, witnessing of family members being separated from them and taken away for detention, fear due to explosions related to forced entry and search of the home by soldiers, and, in the worst cases, use of tear gas or lethal weapons upon family members or themselves (Shai & Matan 2006). Raids carry a high risk of causing serious trauma to children given their reliance on the family and home for security and stability. A raid shatters this image, as parents and elders are exposed as being unable to protect themselves, other family members, or the home itself containing the children's possessions (such as beloved toys, bed, books, clothing, etc.), which may be damaged as a result of the search. Further, the longer the men of the family are detained, the longer the period of isolation for the women and children who are dependent on them for material, physical, and psychological security. The raids may symbolize a destruction of the home that extends beyond the time of the raid itself. The children may suffer from post-traumatic stress and may be more likely to act out aggressively or undergo serious anxiety. This impact may last throughout a lifetime. This was made evident to me by the emotional reaction of one of my colleagues upon visiting the Oscarsborg fort in Norway. He was reminded of the arrival of German troops at his home in 1940, when he was only three years old, and the ensuing arrest and detention of his father. The frustration of many victims of raids is precisely the ensuing trauma suffered by children and women at the manner of entry of the U.S. or Iraqi forces, the consequences of which are not

remedied by apology, repair of damaged property, release of detainees, or provision of financial compensation.

In addition, psychological trauma may be experienced by the soldiers themselves upon participation in such raids. A study addressing the combat experiences reported by U.S. troops after deployment in Iraq or Afghanistan revealed that Army soldiers and Marines engage in activities that may result in stress-related mental health problems or post-traumatic stress (Lineberry et al. 2006). Aside from exposure to direct attack, the soldiers reported the searching of homes as common incidences. The statistics indicate that the house raids appear to be systematic:

Experience	Army		
	Afg.	Iraq	Marines
Clearing or searching homes or buildings	57%	80%	86%

The reaction by some soldiers to their participation in such interventions has prompted questioning of not only the methods used in the conflict, but also the legitimacy of the military action itself. Lt. Col. Todd Wood, commander of a battalion in Iraq, provides a succinct assessment of the cyclic aspect of conducting house raids as a counterinsurgency tactic:

In the States, if the police burst into your house, kicking down doors and swearing at you, you would call your lawyer and file a lawsuit. Here there are no lawyers. Their resources are limited, so they plant improvised explosive devices instead. . . . These raids can do more harm than good, if we don't select the targets and if the soldiers don't treat the people in the area with respect. This is a very tough environment for soldiers who may not have the maturity or experience to understand the complexity of the consequences of these raids.³⁴

It is clear that the criticisms raised by soldiers reveal their reflections on the need for occupying forces to design standards for actions that will take into consideration a broader scope of interests than the minimum guarantees of the rights to life and property. The irony of house raids as a strategy is revealed by the description of Task Force Baghdad's measure of winning the campaign as whether the 'the local populace revealed insurgent and terrorist cells and, accordingly, denied sanctuary' (Chiarelli & Michaelis 2005: 8). Therefore, the notion of sanctuary is *dual*, that of the private space of the family and that of cover for the enemy, and these notions are irreconcilable. In the search for the latter, the counterinsurgency action violates the sanctity and honor of the former. Counterinsurgency operations that violate basic concepts of justice and morality de-legitimize the military action and increase the risk of failure.³⁵

Conclusion

Problems related to the execution of house raids weaken the legitimacy of counterinsurgency operations. In the summer of 2006, the Iraqi government

criticized the U.S. military for engaging in house raids in Shia neighborhoods, and the searches were halted (Poole 2006). This mirrored the call by Afghanistan President Hamid Karzai in 2005 for coalition forces to cease from entering homes without government authorization (Cooney 2005). Indeed, the U.S. forces developed specific measures for house raids, including the use of legitimate Afghan police if possible, the use of Afghan local leaders to knock on doors, raiding only in daytime, treating women appropriately, not humiliating the men of the house, and maintaining respect toward all. Units were expected to meet all of the measures or show why they should not based on unacceptable risks or the potential compromise of a high-value person. Hence, standard operating guidelines should be developed to address house raids in phase IV operations that will streamline the use of house raids to specific, targeted locations based on solid intelligence, using properly trained personnel. Identification of relevant human rights, including the standards pertaining to honor, humiliation, and arbitrary interference with the home should be weighed as considerable factors to take into consideration when determining the value of conducting a raid. Specifically, cultural, age, and gender considerations when conducting such actions should be assessed fully and specifically in relation to each house. The implementation of such standards is necessary not only to protect civilians, but also to protect the interest of soldiers who seek to conduct operations in accordance with international law and morality, as well as to maintain the rightfulness of the broader counterinsurgency operation.

The MNF's new *Core Warrior Values Training Package* (2006) seeks to address these concerns. It gives the example of a search of a home in which the male head of the household requests not to be cuff linked in front of his family. The soldiers are instructed to cuff him out of sight of the family, if security permits such action, as 'humiliating him will serve no legitimate military purpose.' In addition, they are advised to treat everyone with dignity and respect (in particular women), and show a duty of care toward children. The concepts of family, religion, honor (especially that of women), and protection from shame within the family are highlighted as important cultural values of the Iraqi people. Thus, current ethical training seeks to address the key concerns that actually arise in house raids.

Nevertheless, the U.S. COIN Manual highlights the importance of focusing on the needs and security interest of the population, as well as the isolation of and denial of sanctuary to insurgents, as successful practice. This points to a contradiction, as the people expect security in their homes, but efforts to deny sanctuary to insurgents often result in intrusion into the home by counterinsurgency units. The military imperative of locating the insurgency is essential to establish conditions for transition to the rule of law, upon which every individual's enjoyment of human rights is contingent. Herein lies the dilemma: if there is a significant upscale in violence and the location of the insurgency is unknown, then the use of house raids may be necessary. Yet the raids provoke resentment, and this hampers collection of viable intelligence needed to locate the insurgency. The question is whether there is an alternative approach.

At present, a U.S. Defense Department opinion poll recently revealed that 75% of Sunni Muslims in Iraq support the insurgency against the coalition, and a State Department poll concluded that the majority of Iraqis feel that they would be safer if the MNF forces left.³⁶ An additional concern is that civil society may have less trust of national police than multinational forces conducting searches. This would be the case if the former were considered to be corrupt, biased against a particular ethnic/religious/social group, or more prone to arbitrary or excessive actions during searches. Indeed, complaints against Iraqi forces include accusations of excessive use of force, corruption, and infiltration by insurgent militia groups.³⁷ Furthermore, although Iraqi units are increasingly conducting the actual clearing and searching of homes, the securing of the exits of the vicinity is conducted by MNF forces, thereby establishing a link in terms of ultimate moral (and potential legal) accountability for the raids in the eyes of the Iraqis.

To the extent searches may be conducted during the day or early evening, this would be preferable to the pre-dawn surprises that should be limited to only the most high-risk lethal targets. Rather than large-scale raids, local intelligence gathering by human operators (rather than technologically based intelligence) should transform raids into selective operations, which identify precisely which neighborhood, house, and street will yield insurgents (Shultz & Godson 2006). One possible concern this author would raise is that people may feel unfairly targeted if the search operations do not involve other houses in the neighborhood. In other words, if several houses are searched, there may be less suspicion among neighbors that the family was involved with the insurgency or less concern by pro-insurgent groups that the family surrendered information to the counterinsurgency units. The key element is perception by the people that the searches of homes are conducted in a fair, non-discriminatory manner, based on appropriate authorization and aim, following a procedure that defines the scope and manner of execution and level of force, and ensures the respect of the inhabitants (taking into account age, gender, and social position in the family). Understandably, if civil society fears the insurgency, tolerance for the search of homes may be higher, but this is also contingent on the measured execution of the search. The use of extended house raids is likely to continue in the near future, continuing the cycle of search for insurgents, polarization from civil society, rise in recruitment to the insurgency, and a continuous lack of sufficient intelligence needed to defeat the insurgency.³⁸ Greater attention should be paid to the human rights and ethical dimensions of counterinsurgency strategies, particularly as pertaining to house raids, in order to fulfill what the U.S. COIN Manual (Dec. 2006: 1–131) describes as the ‘cornerstone of any COIN effort,’ namely ‘establishing security for the civilian populace.’

Acknowledgements

The author is greatly indebted to the editors of the journal for their wise critique and commentary, in conjunction with their kind patience and

understanding. Warm thanks are also given to two anonymous readers for their balanced response to the presentation of human rights perspectives in military affairs.

Notes

- ¹ According to the U.S. Operational Law Handbook (Grimes, Rawcliffe & Smith 2006: 66): 'As a matter of U.S. policy (CJCSI 5801.01), U.S. forces will comply with the law of war during the conduct of all military operations and related activities in armed conflict, however such conflicts are characterized, and unless otherwise directed by competent authorities, will apply law of war principles during all operations that are characterized as Military Operations Other Than War.'
- ² For a discussion on the challenges in applying human rights in situations of armed conflict, see Lubell (2005).
- ³ U.S. Operational Law Handbook (Grimes, Rawcliffe & Smith 2006: 50): 'The United States interprets human rights treaties to apply to persons living in the territory of the United States, and not to any person with whom agents of our government deal in the international community.' See also p. 47: 'If a specific human right falls within the category of customary international law, it should be considered a "fundamental" human right. As such, it is binding on U.S. forces during all overseas operations. Customary international law is considered part of U.S. law, and fundamental human rights law operates to regulate how State actors (in this case the U.S. armed forces) treat all humans. If a "human right" is considered to have risen to the status of customary international law, then it is likely considered binding on U.S. state actors wherever such actors deal with human beings.'
- ⁴ Since the U.S. is not a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, one may refer to the American Declaration of the Rights and Duties of Man, Article IX, which addresses intrusion into the home: 'Every person has the right to the inviolability of his home.' Article XXVIII sets forth a limitation standard which implies a necessity standard: 'The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.' The Inter-American Commission on Human Rights held that the Declaration acquired binding force upon the U.S. with the adoption of the revised OAS Charter. See Case No. 2141 (United States) Res. 23/81, OAS/Ser. L/V/II.52, Doc. 48., Mar. 6, 1981. Nonetheless, the U.S. position is that the American Declaration is not a treaty, was not drafted with the intent to create legal obligations, and is not binding on the United States.
- ⁵ It is suggested that when a government acts like an enemy of the people, the latter refuses to provide intelligence to the former. Some accounts indicate irregular execution of house raids as reactive acts of frustration on account of faulty intelligence, revenge, or even as a means of combating boredom (Riley 2005, Goodman 2005, Arnove 2005). Indeed, this brings up images from Vietnam of soldiers raiding villages after undergoing heavy combat losses, among which the My Lai massacre remains the most nefarious example. The Geneva Convention, Article 33 also prohibits reprisal against the person and his property as well as pillage. Protocol I, Section 6 prohibits attacks on civilians by way of reprisals.
- ⁶ Captain Hazelton, quoted by Adam Davidson, 'Are Baghdad's local mercenaries attacking more for the money than the ideology?' *Market Place (National Public Radio)*, November 21, 2003. Audio available at URL: http://marketplace.publicradio.org/shows/2003/11/21_mpp.html, cited by Conetta (2005).
- ⁷ The officers set forth that the key difference in targeting during conflict as opposed to post-conflict operations is that the former focuses on the delay, disruption, destruction, or defeat of enemy forces, whereas the latter seeks to *strengthen local capabilities*.
- ⁸ See 'The State of Things: Talking Points from CPT Iraq,' December 14, 2004, available at URL: <http://www.cpt.org/iraq/CurrentSituationReport.htm>.
- ⁹ Cited in Ricks (2006: 418).
- ¹⁰ '[The] counterinsurgency force must have two skills that are not required in conventional warfighting: first, it must be able to see issues and actions from the perspective of the domestic populations; second, it must understand the relative value of force and how easily excessive force, even when apparently justified, can undermine popular support. Likewise, whilst stabilisation and reconstruction operations imply a more benign environment, nonetheless it is critical that the actions of the military should not serve to alienate the local population. The alternative doctrinal approach concentrates on attrition,

through the destruction of the insurgent, and thus sees the population as at best a distraction to this primary aim, and in extremis a target for repression.'

- ¹¹ Indeed, Professor William Hays Parks (2001) emphasizes the importance of adequate training as a means of improving the likelihood of respect for the laws of war:

Armies execute operations as they have trained. If a government sends a unit inadequately trained in the law of war to a peace operation, or on a humanitarian intervention mission, or into combat, the likelihood that the unit will violate the law of war increases. The United States Army learned this the hard way in Vietnam as a result of the My Lai massacre on March 16, 1968. Canada, with some of the most experienced peacekeeping forces in the world, suffered the same experience exactly a quarter century later when, on March 16, 1993, personnel in one Canadian unit tortured and murdered a Somali civilian in their hands. As was the case in the My Lai incident, lack of adequate law of war training was identified as a factor in this crime. This does not change application of the law of war, but it does reflect the likelihood of respect for it.

- ¹² 'Army Units in Iraq Modify What They Learned in MOUT Training,' *Stars and Stripes*, August 8, 2003, available at URL: <http://www.estripes.com/article.asp?section=104&article=16261&archive=true>

- ¹³ *Ibid.*

- ¹⁴ Watzman served as an Israeli Infantry reservist in the West Bank. He recalls, 'we usually have a Palestinian to help us. He was called "the pointer" because his job was to enter the house with us and identify the man we were after. He was a collaborator – a Palestinian serving the Israeli cause. Most of my friends hated going on these raids. We'd surround the house and break in after midnight, waking everyone inside. Women would scream, children cry. As often as not, the man we were after had been tipped off and fled. If he was there, it was worse, because he'd be armed and dangerous. The pointer made some of us feel safer. It seemed logical that the terrorist would hold his fire if he saw that he might hit a Palestinian.' He describes how the pointer eventually became the human shield in house raids.

- ¹⁵ In *Murray v. Ministry of Defense* (1988) Weekly Law Reports 692, pp. 699H–701A, cited in para. 33 of the ECHR Grand Chamber judgement, App. no. 14310/88.

- ¹⁶ *Malone v. The United Kingdom* 8691/79 [1984] ECHR judgment (August 2, 1984), *Leander v. Sweden*, ECHR judgment (March 26, 1987), and *Rotaru v. Romania*, ECHR judgment (May 4, 2000).

- ¹⁷ In the event of erroneous intelligence, the U.S. Army offers compensation and repair of property. Thus, it may be deemed that such actions are carried out in keeping with base-minimum international legal standards (right to life and property), which unfortunately do not sufficiently address the scope of harm in house raids. The U.S. has declared immunity for its soldiers for civil and criminal liabilities, which raises a host of questions pertaining to the legitimacy of the system. Further, delays receiving compensations present additional problems.

- ¹⁸ Further, France and the U.K. assert that their commanders have a duty to protect the safety of troops under their command, or to preserve their military situation, and that it *cannot* be overridden by presumption that a person is a civilian and not a combatant in cases of doubt.

- ¹⁹ The ICRC calls for 'careful assessment of conditions and restraints' concerning attack of a civilian when in doubt.

- ²⁰ Inter American Commission on Human Rights, Third Report on Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1 (February 26, 1999), cited in Henckaerts & Doswald-Beck (2005: 22). Direct participation means act of war, which by nature or purpose is likely to cause actual harm to personnel.

- ²¹ Henckaerts & Doswald-Beck cite *Dukic* Case, ICTY, *Karadzic* and *Mladic* Case, and *Galic* Case.

- ²² One may refer to the Martens Clauses in Protocol II, Preamble, para. 5: 'In cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of public conscience,' and Protocol I, Art. 1(2): 'In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.' See Coupland (2001: 981).

- ²³ Adnan al-Dulaimi characterized the raids on his house as 'an act of humiliation,' quoted by Associated Press, 'US Troops Raid Top Iraq Sunni Homes,' *Al Jazeera*, Sept. 29, 2005, available at:

<http://english.aljazeera.net/NR/exeres/0F62CE03-2387-4571-8CA6-92239781925C.htm>. See also Reed (2004).

²⁴ Sample U.S. ROE cards from peacekeeping missions include reference to the duties as pertaining to upholding the dignity of persons:

1. Treat all persons with dignity and respect.
2. Use of force must be proportionate to the level of perceived threat.
3. If possible, warnings should be provided prior to the use of force.
4. Treat everyone, including civilians and detained hostile forces/belligerents, humanely.
5. Respect private property. Do not steal. Do not take 'war trophies.'
6. You may not intentionally attack civilians or property that is exclusively civilian or religious in character, except if the property is being used for military purpose and engagement is authorized by your commander.

See: <https://jagcnet.army.mil/JAGCNETInternet/Homepages/AC/CLAMO-Public.ns>

²⁵ See: <http://www.humiliationstudies.org/whoarewe/humiliationdefinition.php>

²⁶ For a progressive discussion of *mens rea* elements for establishing responsibility under international criminal law, see May (2006).

²⁷ *Prosecutor v. Dragoljub Kumarac, Radomir Kovac, and Zoran Vukovic*, International Criminal Tribunal for the former Yugoslavia, Case No. IT-96-23-1 (June 12, 2002), paragraph 161, cited by Erikksen (2004).

²⁸ In comparison, James Johnson, of the Office of the Prosecutions of the Special Court for Sierra Leone, described repercussions due to the release of photographs of Charles Taylor in handcuffs. This was viewed as humiliating treatment, even by his enemies in Sierra Leone. Statements made at the seminar 'Testing the Boundaries of International Humanitarian Law,' British Institute of International and Comparative Law, June 1–2, 2006.

²⁹ 'Activists Call on Army, Police to Respect Women's Rights,' *Report IRIN*, February 8, 2006, available at <http://electroniciraq.net/news/2266.shtml>

³⁰ Indeed, the risk of negative consequences from violation of religious mores is well known within counterinsurgency theory. Joes (2004: 157) sets forth that 'Outraging sexual or religious mores . . . will nearly always increase recruits for the guerrillas and hence increase casualties among government troops.' He cites the U.S. Marine Corps, Small Wars Manual, p. 1–31d (U.S. Government Printing Office 1940): 'Members of the United States forces should avoid any attitude that tends to indicate criticism or lack of respect for the religious beliefs and practices observed by the native inhabitants.'

³¹ See also Article 12 of the Universal Declaration of Human Rights: 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.' See also *Chappell v. The United Kingdom*, European Court of Human Rights judgment of March 25, 1987.

³² Translation by United Nations Office for Constitutional Support, October 2005, available at <http://www.washingtonpost.com>

³³ The U.S. Soldier's Manual instructs soldiers to respect a country's people, honour, family rights, and customs.

³⁴ Cited by Badken (2005). He noted that financial compensation for damaged property did not compensate the emotional distress suffered as a result of the trauma of the raid.

³⁵ Canada's Code of Conduct sets forth that respecting civilian property differentiates the disciplined professional force from the band of marauders. Failure to respect the rule can lead to the civilian population turning against the army, jeopardizing the mission, and prolonging the conflict. Indeed, one news report noted that signs in a Sunni neighbourhood read 'No more house raids' and 'Join the Jihad' (Wagner et al. 2004; see also Spinner 2005).

³⁶ Figure attained from Simpson (2006). State Department statistics cited in *The Washington Post*, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/26/AR2006092601721.html>

³⁷ 'British Launch Iraq Police Purge,' *BBC News*, Sept. 21, 2006, available at http://news.bbc.co.uk/2/hi/uk_news/5384294.stm. Hence, the U.S. COIN Manual (December 2006: 6:97) calls for a strict code of conduct as well as a proper salary to police to inhibit corruption and other abuses.

³⁸ In Palestine, militants state that they launch attacks on Israel precisely in response to raids by Israelis. See Johnston (2006).

References

(All Internet sources accessed and verified to be available as of March 2007)

- Arnove, A. (2005) Iraq Under U.S. Occupation: 'It Was Never As Bad as This', *ZMAG*, November 16, available at <http://www.zmag.org/content/showarticle.cfm?SectionID=15&ItemID=9130>; Internet.
- Aylwin-Foster, N. (2005) Changing the Army for Counterinsurgency Operations, *Military Review*, Nov.–Dec., pp. 2–15.
- Badken, A. (2005) Balancing Act, *The San Francisco Chronicle*, October 13, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/10/13/MNG39F7MNI1.DTL>; Internet.
- Battaglia, P. (2004) The Manwaring Paradigm and the Iraqi Insurgency, *Low Intensity Conflict & Law Enforcement*, 12(2), pp. 37–51.
- Caraccilo, D. J. & Rohling, A. (2004) Targeting in Post Conflict Operations in Iraq, *Military Review*, Jan.–Feb., pp. 11–19.
- Cassese, A. (2003) *International Criminal Law* (Oxford: Oxford University Press).
- Chiarelli, P. W. & Michaelis, P. R. (2005) Winning the Peace: The Requirement for Full-Spectrum Operations, *Military Review*, July–Aug., pp. 4–17.
- Conetta, C. (2005) Vicious Circle: The Dynamics of Occupation and Resistance in Iraq, Project on Defense Alternatives, Monograph #10, available at <http://www.comw.org/pda/0505rm10.html#2.3.1>; Internet.
- Cooney, D. (2005) Karzai Calls for an End to Major Foreign Military Operations in Afghanistan, *SignOnSanDiego.com*, September 20, available at <http://www.signonsandiego.com/news/world/20050920-1501-afghanistan.html>.
- Coupland, R. (2001) Humanity: What is it and How Does it Influence International Law?, *International Review of the Red Cross*, 83(844), pp. 969–989.
- Eide, A. (1984) The Laws of War and Human Rights – Differences and Convergences, in: C. Swinarski (Ed) *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, pp. 675–697 (Geneva: Comité International de la Croix-Rouge).
- Erikksen, S. (2004) Humiliating and Degrading Treatment under International Humanitarian Law: Criminal Accountability, State Responsibility, and Cultural Considerations, *Air Force Law Review*, 55, pp. 269–311.
- Goodman, A. (2005) Three U.S. Soldiers Refusing to Fight Speak Out Against the Iraq War, *Democracy Now!* March 15, available at: <http://www.democracynow.org/article.pl?sid=05/03/15/1454208&mode=thread&tid=25>; Internet.
- Granby, B. (2004) Anatomy of a Night Raid on Balad, Iraq, *Counterpunch*, February 22, available at <http://www.notinourname.net/war/raid-22feb04.htm>; Internet.
- Greer, J. K. (2005) Operation Knockout: COIN in Iraq, *Military Review*, Nov.–Dec., pp. 16–19.
- Grimes, D. I., Rawcliffe, J. & Smith, J. (Eds) (2006) U.S. Operational Law Handbook, JA 422 (International & Operational Law Department, Judge Advocate General Legal Center), available at http://www.au.af.mil/au/awc/awcgate/law/oplaw_hdbk.pdf; Internet.
- Hays Parks, W. (2001) Rules of Conduct during Operations Other Than War: The Law of War Does Apply?, *American Diplomacy*, available at http://www.unc.edu/depts/diplomat/archives_roll/2001_0709/hum_intervention/hum_08_parks.html; Internet.
- Henckaerts, J. M. & Doswald-Beck, L. (2005) *Customary International Humanitarian Law, Volume I. Rules* (Cambridge: ICRC).
- Hendawi, H. (2003) US Raids Offend Iraqi Sensibilities, *Common Dreams News Center*, July 7, available at <http://www.commondreams.org/headlines03/0707-04.htm>; Internet.
- International Committee of the Red Cross (2004) Report on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions during Arrest, Internment and Interrogation in Iraq, February.
- Joes, A. J. (2004) *Resisting Rebellion: The History and Politics of Counterinsurgency* (Kentucky: University Press of Kentucky).
- Johnston, A. (2006) Relentless Raids Leave Gaza Reeling, *BBC News*, September 26, available at http://news.bbc.co.uk/2/hi/middle_east/5381560.stm; Internet.
- Lineberry, T. W., Bostwick, J. M. & Rundell, J. R. (2006) U.S. Troops Returning Home: Are You Prepared? *Current Psychiatry*, 5(1), pp. 13–22.

- Lubell, N. (2005) Challenges in Applying Human Rights Law to Armed Conflict, *International Review of the Red Cross*, 87(860), pp. 737–754.
- Lynn, J. A. (2005) Patterns of Insurgency and Counterinsurgency, *Military Review*, July–Aug., pp. 22–27.
- May, L. (2006) Prosecuting Military Leaders for War Crimes. Paper presented at the seminar *Legal and Moral Responsibility in War*, University of Oslo, Norway, March 13–14.
- McFate, M. & Jackson, A. V. (2005) An Organizational Solution for DOD's Cultural Knowledge Needs, *Military Review*, July–Aug., pp. 18–21.
- McFate, M. & Jackson, A. V. (2006) The Object Beyond the War: Counterinsurgency and the Four Tools of Political Competition, *Military Review*, Jan.–Feb., pp. 13–26.
- Mite, V. (2003) Iraq: U.S. Troops Accused of Being Heavy-Handed in Their Search for Terrorists, *Global Security*, available at <http://www.globalsecurity.org/military/library/news/2003/10/mil-031028-rferl-162815.htm>; Internet.
- Multinational Forces in Iraq (2006) *Core Warrior Values Training Package* (on file with the author).
- Nowak, M. (1993) *UN Covenant on Civil and Political Rights, CCPR Commentary* (Kehl/Strasbourg/Arlington: N. Engel).
- Padden, B. (2006) Violence in Iraq at Highest Level since Invasion, *Voice of America*, August 17, available at <http://www.globalsecurity.org/military/library/news/2006/08/mil-060817-voa08.htm>; Internet.
- Pickthall, M. (1930) *The Meaning of the Glorious Koran: An Explanatory Translation* (New York: A. Knopf).
- Poole, O. (2006) Take Back Baghdad! US Soldiers Pour on to Streets to Stop Slaughter, *The Daily Telegraph*, August 17, p. 16.
- Rayment, S. (2004) US Tactics Condemned by Senior British Officers, *The Telegraph*, April 11, available at: <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2004/04/11/wtact11.xml&sSheet=/news/2004/04/11/ixnewstop.html>; Internet.
- Reed, J. (2004) Israeli Rebels with a Cause, *CBC News*, March 22, available at http://www.cbc.ca/news/viewpoint/vp_reed/20040322.html; Internet.
- Ricks, T. E. (2006) *Fiasco: The American Military Adventure in Iraq* (London: Allen Lane).
- Riley, J. (2005) Fugitive GI speaks to WSWW on Iraq War, *World Socialist Web Site*, November 15, available at <http://www.wsws.org/articles/2005/nov2005/sold-n15.shtml>; Internet.
- Rosenberg, S. (2003) Humiliation (1), in: G. Burgess & H. Burgess (Eds) *Beyond Intractability*. Conflict Research Consortium, University of Colorado, July, available at <http://www.beyondintractability.org/essay/Humiliation/>; Internet.
- Sandoz, Y., Swinarski, C. & Zimmerman, B. (1987) *Commentary on the Additional Protocols of 1977 to the Geneva Conventions of 1949* (Geneva: ICRC).
- Schapiro, D. L. (2004) The Nature of Humiliation. Paper prepared for the *Humiliation and Violent Conflict* conference at Colombia University, 2004.
- Shai, E. & Matan (2006) Occupation Forces Continue Raids on Budrus Village, *International Solidarity Movement*, May 28, available at <http://www.palsolidarity.org/main/2006/05/28/occupation-forces-continue-raids-on-budrus-village-2/>; Internet.
- Shultz, R. H. Jr. & Godson, R. (2006) Intelligence Dominance, *The Weekly Standard*, July 31, 011(43), available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/012/474cffnb.asp>; Internet.
- Simpson, J. (2006) Iraq Engulfed by Tide of Violence, *BBC News*, September 22, available at <http://news.bbc.co.uk/2/hi/americas/5371394.stm>; Internet.
- Smith, R. (2005) *The Utility of Force: The Art of War in the Modern World* (London: Allen Lane).
- Spinner, J. (2005) In One Night, Iraqi Turns from Friend to Foe, *The Washington Post*, January 23, available at <http://www.washingtonpost.com/ac2/wp-dyn/A29400-2005Jan22?language=printer>; Internet.
- Syse, H. & Ingierd, H. (2006) What Constitutes a Legitimate Authority? Paper presented at the *Seminar on Legal and Moral Responsibility in War*, March 13–14, Institute for Public and International Law, University of Oslo.
- Tomes, R. S. (2004) Relearning Counterinsurgency Warfare, *Parameters*, XXXIV(1), pp. 16–28.
- UN Secretary-General (2006) Report Pursuant to Para. 30 of Resolution 1546 (2004), September 1, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/484/95/PDF/N0648495.pdf?OpenElement>; Internet.
- U.S. Army & Marine Corps (2006) Counterinsurgency Field Manual 3-24/MCWP 3-33.5, December 15, available at <http://usacac.army.mil/CAC/Repository/Materials/COIN-FM3-24.pdf>; Internet.

Wagner, M., Kaplow, L., Carollo, R. & McCall, K. (2004) Detainees File Claims over Abuses, Confiscated Funds, *Dayton Daily News*, October 25, available at <http://www.daytondailynews.com/project/content/project/iraq/daily/1025detainees.html>; Internet.

Watzman, H. (2006) Human Shields or Bulldozers? Or neither? *The Herald Tribune*, June 22, p. 8.

Biography

Cecilia M. Bailliet, Dr. jur., is Associate Professor at the Institute for Public and International Law, University of Oslo, Norway. Her research and publications address the cross-fields of International Public Law, Refugee Law, Human Rights, and International Humanitarian Law.