

# Targeting Decisions Regarding Human Shields

Captain Daniel P. Schoenekase, U.S. Army National Guard

**T**HE USE OF human shields on the battlefield presents problems at all levels for U.S. military services. At the strategic level, the theater commander and his staff must make targeting decisions after considering political and strategic implications posed by the presence of human shields. This concern is not unique to major commands, however. Human shields on the battlefield could directly affect tactical units from battalion to platoon and present individual soldiers with specific targeting decisions.

## Definition and Classification

Human shields are noncombatants whose presence protects certain objects or areas from attack. The use of human shields is illegal under international humanitarian law. Considering the political ramifications of striking targets where human shields are present, it might be beneficial to specify the types of human shields employed.<sup>1</sup>

**Proximity human shields.** Proximity human shields, by their proximity to a legitimate military target, present such likelihood for collateral damage that a military planner would have to consider their presence before striking a target, as for an example, Iraqi air defenses located in an otherwise civilian neighborhood. Usually, proximity human shields have not been coerced to participate or have not volunteered to shield defenses. Sometimes, the enemy accomplishes countertargeting by bringing the potential object of the attack to areas where human shields are present.

**Involuntary human shields/hostages.** A second category of human shield is the involuntary use of civilians, noncombatants, or hostages to shield a legitimate military target, such as when Iraq threatened to use foreign journalists as human shields during Operation Desert Storm.<sup>2</sup> The International Committee of the Red Cross defines hostages as “persons

who find themselves, willingly or unwillingly, in the power of the enemy and who answer with their freedom or their life for compliance with the orders of the latter [the enemy] and for upholding the security of its armed forces.”<sup>3</sup>

**Voluntary human shields.** The recent coalition war with Iraq witnessed this unique category of human shields. Before the war, foreign peace activists traveled from many nations to Iraq to act as human shields. Estimates indicate there were from 100 to 250 people from as many as 32 countries.<sup>4</sup>

Some debate has arisen whether voluntary human shields have become a form of quasi-combatant by their active participation. Human Rights Watch called on both sides in the conflict to adhere to international humanitarian law and said, “Like workers in munitions factories, civilians acting as human shields, whether *voluntary* or not, contribute indirectly to the war capability of the state. Their actions do not pose a direct risk to opposing forces. Because they are not directly engaged in hostilities against an adversary, *they retain their civilian immunity from attack. They may not be targeted*” [emphasis added].<sup>5</sup>

Some scholars argue that voluntary human shields forfeit immunity. In calling for the protection of civilians during the Iraqi conflict, a group of law professors and attorneys wrote, “Death or injury to human shields, whether Iraqi or non-Iraqi, who voluntarily take up positions at the site of legitimate military objectives, does not constitute civilian collateral damage, because those voluntary human shields have assumed the risk of combat and, to that extent, have compromised their noncombatant immunity.”<sup>6</sup>

The debate is likely moot for a number of reasons. Iraq largely used voluntary human shields to immunize targets that were part of its infrastructure. The United States and its coalition partners had little

reason to destroy Iraq's infrastructure, even targets with obvious dual-use potential, because of the relatively certain outcome of the war and the subsequent responsibility to rebuild the infrastructure.<sup>7</sup>

Given the political risk involved in doing so, the United States is unlikely to apply the principles of targeting to preclude considering the presence of voluntary human shields. The news media attention given to peace activists, their lack of military importance, and U.S. policy makes this unlikely.<sup>8</sup>



During Operation Desert Shield, Saddam Hussein placed foreign "guests," unlucky enough to be in Iraq, at selected military and nuclear sites. They were released only when it became clear to him that their captivity might provoke, instead of prevent, Coalition action.

### Examples of Human Shields

Recently, human shields have been used for a variety of purposes. Iraq, the most notable violator of international prohibitions against using human shields, used human shields during the Iran-Iraq war in the 1980s, Operation Desert Storm in 1991, allied bombings in 1997, and Operation Iraqi Freedom.<sup>9</sup>

Bosnian Serbs used human shields strategically to countertarget NATO forces during Operation Allied Force and tactically against Muslim and Croat forces to immunize themselves from indirect and direct fire. The International Tribunal for the former Yugoslavia indicted Radovan Karadzic and Ratko Mladic for violations of international humanitarian law around and in Srebrenica in 1995. Zlatko Aleksovski was also convicted for using detainees as human shields and sentenced to 7 years in prison.<sup>10</sup>

Cambodia violated international humanitarian law, including the use of human shields, during the Vietnam war. Cambodian government forces used ethnic Vietnamese civilians as human shields as they advanced on Vietnamese positions.<sup>11</sup> U.S. forces are likely to encounter this tactical use of human shields in future low-intensity conflicts. Enemy forces that cannot match U.S. forces' firepower, mobility, and technology will rely on U.S. reluctance to engage civilians except when absolutely necessary.

Throughout the civil war in Sierra Leone during the 1990s, members of the Revolutionary United Front routinely abducted children and used them

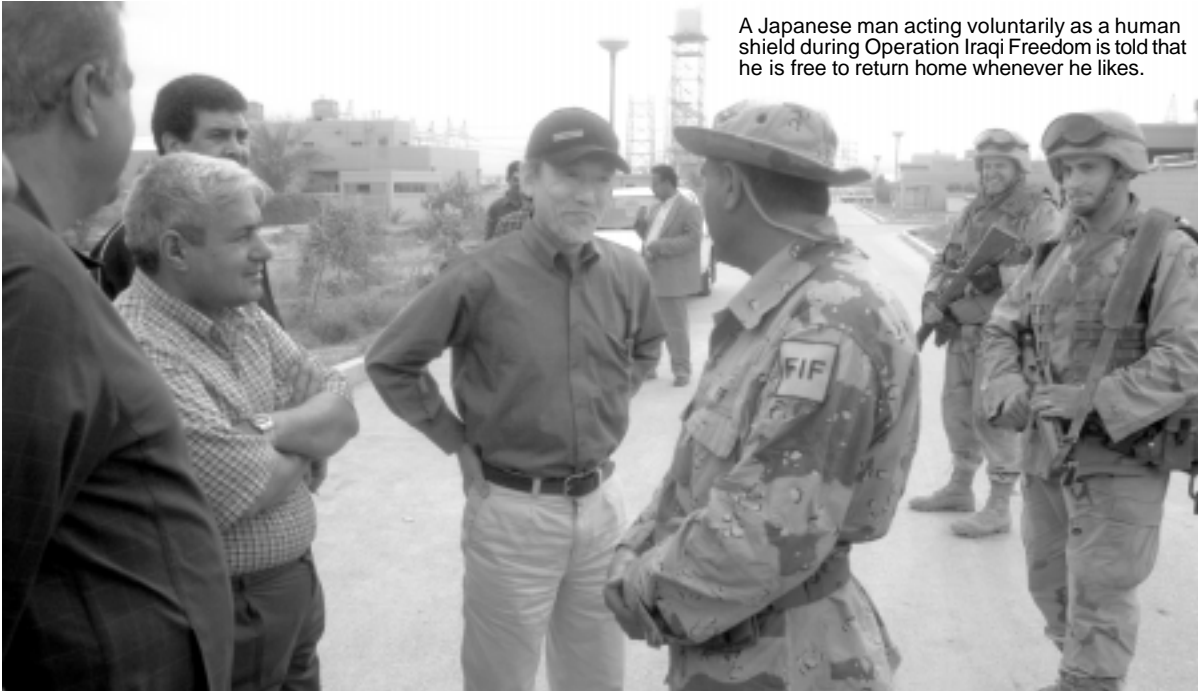
as human shields against government forces.<sup>12</sup> Israel charges that Palestinian militants routinely commingled with civilians to protect themselves from attack. When Palestinian gunmen positioned themselves among demonstrators and began firing on Israeli troops at Qana, Israel's response had tragic results.<sup>13</sup>

Chechen rebels used ethnic Russian civilians as human shields during the brutal war in Chechnya. Also, civil war in Colombia between the National Liberation Army and paramilitary forces support-

ing the Colombian government has raged for a number of years. Voluntary human shields from the London-based Peace Brigade were used to protect government personnel under the threat of death from the rebels.<sup>14</sup>

Some uses of human shields are not as instantly recognizable as the examples in Iraq or Kosovo. A classic example of the passive use of proximity human shields is the bloody Rwandan genocide in 1994, when refugees fled the civil war to Zaire. Remnants of the defeated extremist government and militia staged attacks into Rwanda from the camps and then sought refuge there using refugees as shields from counterattacks.<sup>15</sup>

In 1993, the United States attempted to apprehend warlord Mohamed Farrah Aidid in Somalia in order to restore order to the country. During a raid on a meeting of Habr Gidr leaders, elements of the 75th Ranger Regiment and Operational Detachment Delta were forced to withdraw to the U.S. compound at the Mogadishu airport. Somali gunmen interspersed among the crowd engaged U.S. forces, stepping out of large crowds of civilians, then retreating into the crowd, using the civilians as human shields. The gunmen also used hospitals and other civilian buildings as places from which to direct fire at U.S. forces. This engagement underscores the unique challenges of military operations on urban terrain with an enemy that disregards international humanitarian law or uses tactics to mitigate U.S. superiority.<sup>16</sup>



A Japanese man acting voluntarily as a human shield during Operation Iraqi Freedom is told that he is free to return home whenever he likes.

## Applicable International Humanitarian Law

Various provisions of treaties and protocols under international humanitarian law prohibit the use of human shields by a party to a conflict. Article 3 of Geneva Convention III, relative to the Treatment of Prisoners of War, makes the taking of hostages illegal.<sup>17</sup> Article 23 specifically states that a prisoner of war is not to be used “to render certain points or areas immune from military operations.”<sup>18</sup> Article 28 of Geneva Convention IV, relative to the Protection of Civilian Persons in Time of War, makes the practice of employing human shields illegal as a matter of international humanitarian law, stating that “the presence of a protected person may not be used to render certain points or areas immune from military operations.”<sup>19</sup>

Additional Protocol I to the Geneva Conventions, Article 51(7)—Protection of the Civilian Population, which contains the key rule regarding human shields, states, “The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favor or impede military operations. The parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military objectives.”<sup>20</sup> This provision applies to passive and ac-

tive human shields whether they are considered proximity, involuntary, or voluntary human shields. Article 51 notably does not excuse considering the presence of human shields during the targeting process.<sup>21</sup>

Article 52(2), General Protection of Civilian Objects, states that attacks shall be limited strictly to military objectives and defines military objectives as “those 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, in the circumstances ruling at the time, offers a definite military advantage.”<sup>22</sup> Article 52(1) says, “Civilian objects are all objects which are not military objectives as defined in paragraph 2.”<sup>23</sup>

Article 58, Precautions Against the Effects of Attacks, creates a duty against the passive creation of proximity human shields: “Parties to a conflict, to the extent feasible, shall remove the civilian population and material under their control from the vicinity of military objectives, avoid locating military objectives within or proximate to densely populated areas, and take other necessary precautions to safeguard the civilian population and civilian objects under their control against the dangers of military operations.”<sup>24</sup>

The United States is not a signatory to Additional Protocol I and, thus, not bound by it, but the United States has accepted many of its provisions as customary international law and, therefore, adheres to

its norms.<sup>25</sup> In 1987, U.S. State Department Deputy Legal Advisor Michael J. Matheson enumerated many of the principles in Additional Protocol I that the U.S. considers customary international law, including Articles 51 and 52.<sup>26</sup> The 1998 Rome Statute of the International Criminal Court (ICC) has the jurisdiction to prosecute war crimes, including “utilizing the presence of a civilian or other protected person to render certain points, areas, or military forces immune from military objectives.”<sup>27</sup>

### **Targeting Principles**

Given the modern nature of war and the transition of most societies to an industrialized economy with urban centers as their focal point, it seems likely that legitimate military targets will be located near civilians or civilian objects simply out of efficiency or because of urban growth. The Geneva Conventions and Additional Protocol I still mandate a duty on a party to a conflict to remove civilians from such an area, but that might not be practical in all situations. Regardless, U.S. war planners confronted with the enemy’s use of involuntary or voluntary proximate human shields, remain under a duty to apply basic targeting principles to ensure the minimal loss of civilian life.<sup>28</sup>

Targets protected by human shields might still be attacked subject to the attacking party’s obligations under international law to minimize collateral damage. Collateral damage usually occurs when attacks targeting military objectives cause civilian casualties and damage to civilian objects. It often occurs when military targets are located in urban areas.<sup>29</sup>

**Principle of military necessity.** Any attack must be justified by military necessity, which means attacks should be limited to legitimate military targets such as armed forces and civilian combatants; positions or installations occupied by armed forces, as well as objectives that are directly contested in battle; and military installations such as barracks, war ministries, munitions or fuel dumps, storage yards for vehicles, airfields, rocket launch ramps, and naval bases. Legitimate but not purely military targets are commonly referred to as dual-use targets and include infrastructure, communications, and military-industrial, military research, and energy production facilities.<sup>30</sup>

A more succinct definition of targeting is the use of “measures of regulated force not forbidden by international law which are indispensable for securing the prompt submission of the enemy, with the least possible expenditures of economic resources.”<sup>31</sup> Failure to adhere to this principle could

have serious consequences. The Rome Statute for the ICC lists “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” as a grave breach.<sup>32</sup>

**Principle of discrimination (distinction).** Commanders must distinguish civilians and civilian objects from combatants and military objects under the principle of discrimination. Civilians enjoy immunity insofar as they “enjoy general protection against dangers arising from military operations” and “shall not be the object of attack.”<sup>33</sup> The principle of discrimination is codified in Additional Protocol I, Articles 51(4-5) and 57(2)(a)(i), which prohibit indiscriminate attacks.<sup>34</sup> Attacks must be directed at specific military objectives and cannot “employ a method or means of combat which cannot be directed at a specific military objective.”<sup>35</sup> Examples of indiscriminate attacks are carpet bombing and Iraqi Scud launches during Operation Desert Storm.

**Principle of humanity.** This principle, applicable to all targets, simply means parties are forbidden from employing arms, projectiles, or materiel calculated to cause unnecessary suffering. It most closely ties in with the principle of necessity in that it extends to unnecessary destruction of property.<sup>36</sup>

**Principle of proportionality.** The U.S. Army’s definition of the principle of proportionality states that the “anticipated loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained.”<sup>37</sup> This definition is clearly based on Additional Protocol I, Article 51(5)(b), which states that when collateral damage is expected or unavoidable, it must be proportionate to the military advantages of striking the target.<sup>38</sup>

### **Targeting Decisionmaking**

When a commander is presented with the decision to strike a target that is being illegally protected by human shields, the principles of targeting and international humanitarian law mandate a “balancing test.” The commander must evaluate—

- The mission.
- Time available.
- Military advantage or purpose for destroying the target.
- Intelligence available.
- Assets available to attack the target.
- The political ramifications of striking the target.
- All likely collateral damage, including the human shields likely to be killed in the attack.

□ Any alternative courses of action (COAs).<sup>39</sup>

The standard of care a commander must employ is a reasonable one, and he will be judged by what is known at the time of the attack, not what is known in hindsight, and two questions will be asked regarding a commander's decision to attack. Did the commander reasonably gather information to determine



A pair of 5-mm anti-aircraft guns atop a civilian apartment building in Baghdad, 1991.

whether the target was a military objective and that the incidental damage would not be disproportionate, and did the commander act reasonably based on available information?<sup>40</sup>

The commander and his staff assess and give a numerical value to individual criteria based on their relative significance. The end result is an empirical analysis to assist in the final decision whether or not to attack the target. The higher the overall score, the more confident a commander could be in his decision to attack the target. The model accounts for the principle of necessity in the mission and alternative COA categories. The principle of proportionality is analyzed by the collateral damage estimate and target composition categories compared with the mission. The target composition evaluation would also ensure that the commander and his staff take the principle of discrimination into account. The principle of humanity would be considered through discussion and assignment of assets available. Political considerations are weighted by the international and national support for the war with the assumption that the higher the level of support for a war, the higher the level of tolerance for collateral damage.

This model might be useful to commanders at brigade and higher levels because the assets available to them allow for destruction on a larger scale and, concomitantly, greater effect on international humanitarian law because their decisions lead to systematic practices.<sup>41</sup> The decisions regarding human shields at these levels differ little from other targeting decisions except for possible media exposure before the attack.

For units at battalion and lower levels, however, engagements involving enemy use of human shields are more likely to involve single-event situations that resemble those in Somalia in 1993. The most important principle for the individual soldier is the right to self-defense. Commanders will issue rules of engagement that will vary depending on the strategic and tactical situation, but the right to self-defense remains a constant. Self-defense, the central theme of the standing rules of engagement (SROE)

that the Joint Chiefs of Staff produced in 2000, is addressed to all levels, from national self-defense to individual self-defense.<sup>42</sup>

The SROE lists two elements of self-defense: necessity and proportionality. Necessity exists when a hostile act occurs or when a force or terrorists exhibit hostile intent. Proportionality is force used to counter a hostile act, and demonstrated hostile intent must be reasonable in intensity, duration, and magnitude to the perceived or demonstrated threat based on all facts known to the commander at the time. Should soldiers encounter a situation as in Somalia where enemy forces were shooting from civilian areas or using civilians as human shields, they must apply the same principles of international humanitarian law and attempt to minimize collateral damage.

We must inculcate the principles of targeting into soldiers in a similar manner as other skills. Soldiers can be trained to deal with human-shield tactics through advanced marksmanship training that emphasizes target detection, acquisition, discrimination, and engagement.

The presence of human shields on the battlefield is a manageable targeting situation for a com-

mander; however, it is unique and challenging because of the media attention they receive and the political visibility involved. The illegal use of human shields will not cease because forces with little resources have little incentive to comply with international humanitarian law. Although there is some de-

bate on the quasi-combatant status of human shields, the requirement to minimize collateral damage to protect civilians has not changed. Perhaps the remedy for the use of human shields lies with the International Criminal Court, which has the power to indict and prosecute violators of international law. **MR**

**NOTES**

1. Kenneth Anderson, William C. Bradford, Lee A. Casey, Samuel Estreicher, Douglas Kmiec, Jerome Marcus, Madeline Morris, Jeremy A. Rabkin, David Rieff, David B. Rivkin, Jr., Abraham D. Sofaer, Don Wallace, Jr., Paul Williams, and Edwin D. Williamson, "A Public Call for International Attention to Legal Obligations of Defending Forces as Well as Attacking Forces to Protect Civilians in Armed Conflict," *Crimes of War Project, The War in Iraq*, on-line at <www.crimesofwar.org/special/Iraq/news\_iraq3.html>, accessed 19 March 2003. The authors classify human shields as involuntary and voluntary. I have broken these two categories into further subcategories. See also Matthew Lippman, "Aerial Attack on Civilians and the Humanitarian Law of War: Technology and Terror from World War I to Afghanistan," *California Western International Law Journal* 33 (2002): 1, 36; Additional Protocol I, Geneva Conventions, 12 August 1949, relating to the Protection of Victims of International Armed Conflicts, art. 51(7), 8 June 1977; Adam Roberts and Richard Guelff, eds., *Documents on the Laws of War*, 3d ed. (New York: Oxford University Press, 2001), 449; U.S. Department of Defense (DOD), *Briefing on Human Shields in Iraq*, on-line at <www.defenselink.mil/news/feb2003/t02262003\_t0226humanasst.html>, accessed 26 February 2003.
2. See MAJ Ariane L. DeSaussure, "The Role of the Law of Armed Conflict During the Persian Gulf War: An Overview," *Air Force Law Review* 37 (1994): 41, 52-53. Iraq released the hostages under intense international pressure before hostilities began.
3. Sean Maguire, "Hostages," *Crimes of War Project*, on-line at <www.crimesofwar.org/thebook/hostages.html>, accessed 19 April 2003.
4. See Scott Peterson, "Human shields" in tug-of-war," *The Christian Science Monitor*, on-line at <www.csmonitor.com/2003/0317/p01s04-woiq.html>, accessed 17 March 2003.
5. Human Rights Watch, Background, "International Humanitarian Law Issues in a Potential War in Iraq," on-line at <www.hrw.org/background/arms/iraq0202003.htm>, accessed 20 February 2003.
6. Anderson and others; Peterson. Some volunteer human shields left Iraq before the war began because they were being located near purely military targets. See *Crimes of War Project*, "In America's Sights: Targeting Decisions in a War With Iraq," on-line at <www.crimesofwar.org/print/onnews/iraq-print.html>, accessed 6 March 2003.
7. Anderson.
8. See Lippman, "Aerial Attacks on Civilians," 45; James S. Robbins, "War Crimes: The Case of Iraq," *Fletcher Forum on World Affairs* 18 (1994): 45, 49-50; Peterson; LT Robert A. Bailey, "Why Do States Violate the Law of War? A Comparison of Iraqi Violations in Two Gulf Wars," *Syracuse Journal of International Law and Commerce* 27 (Winter 2000): 103, 122; Maguire. When Serb forces used captured UN peacekeepers as human shields in 1995, the UN declared that these persons were hostages. The International Committee of the Red Cross (ICRC) disagreed with this assessment. Because the UN had ordered air strikes and become involved in the Bosnian conflict, the ICRC saw the hostages as prisoners of war. By either categorization, their use violated international humanitarian law. Unfortunately, the Serb tactic worked because NATO avoided targets shielded by UN peacekeeper hostages.
9. Tania Voon, "Pointing the Finger: Civilian Casualties of NATO Bombing in the Kosovo Conflict," *American University International Law Review* 16 (2001): 1,083, 1,110-1,111. Voon addresses allegations of possible NATO war crimes in the bombing of a Korisa Village on 14 May 1999 that killed approximately 87 civilians who might have been present at a legitimate military objective; Florence Hartmann, "Bosnia," *Crimes of War Project*, on-line at <www.crimesofwar.org/thebook/bosnia.html>, accessed 19 April 2003; Mohamed S. Elewa, "Genocide at the Safe Area of Srebrenica: A Search for a New Strategy for Protecting Civilians in Contemporary Armed Conflict," *Michigan State University-Detroit College of Law, Journal of International Law* 10 (Fall 2001): 429-31; Lippman, "Humanitarian Law: The Uncertain Contours of Command Responsibility," *Tulsa Journal of Comparative & International Law* 9 (Fall 2001): 75-76.
10. Sydney Schanberg, "Cambodia," *Crimes of War Project*, on-line at <www.crimesofwar.org/thebook/cambodia.html>, accessed 14 April 2003.
11. Ismene Zarifis, "Sierra Leone's Search for Justice and Accountability of Child Soldiers," *Humanitarian Rights* 9, no. 3 (Spring 2002): 18, 19. Although the Revolutionary United Front is arguably composed of unprivileged combatants, [forbidding] the use of human shields is considered to be customary international law, and there are clear violations of Common Article 3, Geneva Conventions III, relative to the Treatment of Prisoners of War, 12 August 1949, on-line at <www.unhcr.ch/html/menu3/b/91.htm>, accessed 8 July 2004. Sierra Leone became a signatory to Additional Protocol II, Geneva Conventions, 1949, on 8 June 1977.
12. See also W. Michael Reisman, "The Lessons of Qana," *Yale Journal of International Law* 22 (1997): 381, 382; Mark Dennis, "Arab-Israeli Conflict and the Laws of War," *Crimes of War Project*, on-line at <www.crimesofwar.org/expert/arabisrael-print.html>, accessed 14 April 2003. There are charges that Israel employed snipers in an attempt to discriminate between military and civilian targets, but there have been many civilian deaths as a result of this practice.
13. See Barry Renfrew, "Chechnya," *Crimes of War Project*, on-line at <www.crimesofwar.org/thebook/chechnya.html>, accessed 19 April 2003; Teun Voeten, "Barrancabermeja: Murder Capital of the World," *Crimes of War Project*, on-line at <www.crimesofwar.org/columbia-mag/teun-print.html>, accessed August 2001. It was hoped that the presence of foreigners would limit attacks on Colombian government off-

14. See also W. Michael Reisman, "The Lessons of Qana," *Yale Journal of International Law* 22 (1997): 381, 382; Mark Dennis, "Arab-Israeli Conflict and the Laws of War," *Crimes of War Project*, on-line at <www.crimesofwar.org/expert/arabisrael-print.html>, accessed 14 April 2003. There are charges that Israel employed snipers in an attempt to discriminate between military and civilian targets, but there have been many civilian deaths as a result of this practice.
15. See Robert Block, "Shields," *Crimes of War Project*, on-line at <www.crimesofwar.org/thebook/shields.html>, accessed 14 April 2003. NATO's decision to not strike legitimate military targets where UN hostages were present required a different type of targeting analysis than was used for analyzing possible U.S. attacks against targets in Iraq that were being protected by voluntary human shields.
16. See Mark Bowden, *Blackhawk Down* (New York: Penguin Books 2000), 85, 106.
17. See Geneva Convention III, art. 3; Roberts and Guelff, 245.
18. Geneva Convention III, art. 23, para. 1; Roberts, 254.
19. Geneva Convention IV, relative to the Protection of Civilian Persons in Time of War, 12 August 1949; Roberts and Guelff, 312.
20. Geneva Conventions, Additional Protocol I, art. 51(7), "Protection of the Civilian Population."
21. Additional Protocol I, art. 51(8); Roberts and Guelff, 449.
22. Additional Protocol I, art. 52(2); Roberts and Guelff, 450.
23. Additional Protocol I, art. 52(1); Roberts and Guelff, 449.
24. Additional Protocol I, art. 58(a-c); Roberts and Guelff, 453.
25. See Lippman, "Aerial Attacks on Civilians," 45.
26. Michael J. Matheson, remarks on the U.S. Position on the Relation of Customary International Law to the 1977 Additional Protocols to the 1949 Geneva Conventions, Human Rights Watch, The Sixth Annual American Red Cross-Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law and the 1977 Additional Protocols to the 1949 Geneva Conventions, *The American University Journal of International Law and Policy* 2, no. 2 (Fall 1987): 419-27.
27. Rome Statute of the International Criminal Court, art. 8(2)(b)(xxiii), 17 July 1998; Roberts and Guelff, 678.
28. See W. Hays Parks, "Responding to Rogue Regimes: From Smart Bombs to Smart Sanctions," *New England Law Review* 36 (Summer 2002): 755, 761; Additional Protocol I, art. 58(a); Roberts, 453. See also Krista Nelson, *Iraq: Questions Regarding the Laws of War*, Center for Defense Information, on-line at <www.cdi.org/iraq/laws/owar-pr.cfm>, accessed 18 March 2003.
29. See Human Rights Watch. See also Anderson. At least one case from U.S. law held a bank negligent when a bank employee fired shots at bank robbers and struck a human shield. Horst Fischer, "Collateral Damage," *Crimes of War Project*, on-line at <www.crimesofwar.org/thebook/collateral-damage.html>, accessed 19 April 2003.
30. See Gaby Rado, "Legitimate Military Targets," *Crimes of War Project*, on-line at <www.crimesofwar.org/thebook/legit-military-target.html>, accessed 19 April 2003.
31. Desaussure, 46, citing U.S. Air Force Pamphlet 110-31, *International Law: The Conduct of Armed Conflict and Air Operations* (Washington, DC: Department of the Air Force, 1976).
32. See Victoria Brittain, "Property: Wanton Destruction," *Crimes of War Project*, on-line at <www.crimesofwar.org/thebook/property-wanton.html>, accessed 17 April 2003; Rome Statute, art. 8, "War Crimes," (2)(iv), on-line at <www.un.org/law/icc/statute/romefra.htm>, accessed 8 July 2004.
33. See Heike Spieker, "Civilian Immunity," *Crimes of War Project*, on-line at <www.crimesofwar.org/thebook/civilian-immunity.html>, accessed 14 April. See also Protocol I, arts. 51-52.
34. Additional Protocol I, art. 51(4)(a) (b); Roberts and Guelff, 448-49.
35. *Ibid.* See also Roy Gutman and Daoud Kuttub, "Indiscriminate Attack," *Crimes of War Project*, on-line at <www.crimesofwar.org/thebook/indiscriminate-attack.html>, accessed 19 April 2003.
36. See COL Tia Johnson in LCDR William O'Brien, *Operational Law Handbook 9* (Charlottesville, VA: International and Operational Law Department, The Judge Advocate General's Legal Center and School, 2003).
37. U.S. Army Field Manual (FM) 27-10, *The Law of Land Warfare* (Washington, DC: GPO, 1956), para. 41, change 1.
38. Protocol I, art. 51(5)(b); Roberts and Guelff, 449.
39. See FM 101-5-1, *Operational Terms and Graphics* (Washington, DC: GPO, 1997), 1-152. The Army's definition of targeting is "the process of selecting targets and matching the appropriate response to them, taking account of operational requirements and capabilities. The analysis of enemy situations relative to the commander's mission, objectives, and capabilities at the commander's disposal, to identify and nominate specific vulnerabilities that, if exploited, will accomplish the commander's purpose through delaying, disrupting, disabling, or destroying enemy forces or resources critical to the enemy."
40. See Peterson, 9, 10.
41. Targeting analysis might occur in some type of formulaic style, but at the battalion level it is usually done with a sole emphasis on the tactical decision rather than consideration of any strategic implications.
42. See Johnson. The actual document is Chairman of the Joint Chiefs of Staff Instruction 3121.01A, *Standing Rules of Engagement (SROE) for U.S. Forces* (portions of this document are classified SECRET) (Washington, DC: GPO, 15 January 2000).

*Captain Daniel P. Schoenkase, U.S. Army National Guard, is the Commander, Company D, 2d Battalion, 130th Infantry, Illinois Army National Guard. He received a B.S. from Truman State University and a J.D. from Saint Louis University School of Law. He has served in various active-duty infantry assignments with the 1st Battalion, 27th Infantry, 25th Infantry Division, including Rifle Platoon Leader, Rifle Company Executive Officer, Headquarters and Headquarters Company Executive Officer, Battalion Maintenance Officer, and Battalion Logistics Officer.*