



Protecting Humanity in War: Recommendations for Congressional Action

Because our enemy is unscrupulous, some argue for a relaxation of ethical and moral standards and the use of force with less discrimination because the ends—the defeat of the enemy—justifies the means employed. To think this way would be a grave mistake. The war in which we are engaged demands that we retain the moral high ground despite the depravity of our enemies.

- Lt. Gen. H.R. McMaster, [2010 Speech at U.S. Naval War College](#)

Overview

The scale and severity of human suffering in armed conflicts worldwide continues to grow at an alarming pace. These conflicts have driven more than 60 million people from their homes, the greatest population displacement since World War II. Civilian deaths from explosive weapons have [increased by 92 percent since 2011](#), with 2016 being the most dangerous year for civilians, according to some monitors.

Urban battles in the Middle East have been especially devastating. Relentless bombardments left Aleppo in Syria in ruins, with most of the power grid destroyed. The campaign to oust the Islamic State from Mosul in Iraq killed at least [5,800 civilians in west Mosul](#) alone and forced at least [900,000 people to flee](#) the area. In Yemen the parties to the conflict have relentlessly attacked civilian infrastructure, including hospitals and water supply facilities, helping to create the conditions for a cholera epidemic that has [killed at least 2,000 people](#) and affected more than 500,000 others.

Much of the harm civilians experience in conflict is indiscriminate, foreseeable, and preventable. This is precisely what [international humanitarian law, also known as the law of armed conflict](#), is for: to limit the effects of armed conflict on people. By limiting the permissible means and methods of warfare, international humanitarian law protects civilians, the wounded and sick, people detained during conflict, and combatants.

The U.S. military has taken significant steps to ensure its own operations do not cause excessive harm to civilians. There is still much work to be done, however, and Congressional action is particularly urgent considering the reports of recent increases in civilian casualties in the Middle East resulting from U.S. and U.S.-led coalition air strikes in 2017.

The size, influence, and military power of the United States means that how the U.S. behaves has an overwhelming influence on the behavior of other states and other conflict parties. Reducing the human cost of armed conflict demands a comprehensive series of measures, shifting the prevention of harm to civilians from the tactical margins to the strategic center of U.S. policy. This means that the U.S. must systematize its existing good practice while calling on others to respond in kind. U.S. policies and practices are particularly critical given the extent of U.S. security cooperation with state and non-state actors across the world. The U.S. can and should set an example and call on others to follow its lead.

The recommendations listed below identify the type of legislative action by the U.S. Congress that would achieve positive outcomes to better protect civilians in situations of armed conflict. They include the following priority areas for action by the U.S. Congress:

1. [Increase U.S. military transparency for civilian casualties](#),
2. [Enhance civilian harm mitigation in U.S. military operations](#),
3. [Improve the conduct of partner forces and private security companies](#), and
4. [Condition arms sales on compliance with international humanitarian law](#).

These recommendations reflect the views and input of a group of humanitarian NGOs convened by InterAction including: Center for Civilians in Conflict, International Rescue Committee, Norwegian Refugee Council, Oxfam, and Refugees International. Steve Feldstein, InterAction consultant, led the consultations and drafting of the recommendations. This process additionally benefited from the valuable input of other subject matter experts.

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Priority Policy Recommendations Summary Legislative Concept: October 2017

1. Increase U.S. military transparency for civilian casualties

To enhance transparency regarding civilian casualties from U.S. or U.S.-led coalition operations, this concept would mandate monthly publicly releasable estimates of civilian casualties caused by U.S. operations and by U.S.-led coalition partners; it authorizes the release of an annual report that provides information about U.S. military strikes and combatant and non-combatant deaths that resulted from operations; it calls for an assessment of civilian casualty trends resulting from U.S. operations; it mandates disclosure of any changes to the December 16, 2016 [Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force](#); and it authorizes resources to bolster the capacity of the military to investigate allegations of civilian harm.

Legislative Concept

1. *Report on Strikes Undertaken by the U.S. Government Against Hostile Targets:*
 - *The Office of the Under Secretary of Defense for Policy shall compile and release from each Combatant Command monthly estimates of civilian casualties caused by U.S. operations and civilian casualties caused by U.S.-led coalition operations.*
 - *The Director of National Intelligence or such other official as the President may designate, shall:*
 - *Obtain from relevant agencies:*
 - *Information about the number of strikes undertaken; and*
 - *Assessments of combatant and non-combatant deaths resulting from strikes from U.S. operations and U.S.-led coalition operations.*
 - *Publicly release an unclassified report of such information on an annual basis, which shall:*
 - *Include general sources of information and methodology used to conduct these assessments; and*
 - *Address the general reasons for discrepancies between post-strike assessments from the U.S. Government and credible reporting from nongovernmental organizations regarding non-combatant deaths resulting from strikes.*
 - *Review relevant and credible post-strike all-source reporting, including such information from nongovernmental sources, to ensure that this reporting is available to and considered by relevant agencies in their assessment.*
2. *Report on Civilian Casualty Trends:* *The Office of the Under Secretary of Defense for Policy shall coordinate with relevant agencies to provide to the appropriate congressional committees an annual report detailing:*
 - *U.S. Government assessments of civilian casualty trends as a result of U.S. operations and U.S.-led coalition operations; and*
 - *Recommendations for institutional improvements to mitigate harm to civilians.*
3. *Disclosure of changes to the [Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations](#).* *The President shall publicly disclose any changes or modifications to the Report subsequent to its release on December 16, 2016.*
4. *Authorization of appropriations for enhanced investigation capacity.*

2. Enhance civilian harm mitigation in U.S. military operations

The U.S. military's ability to propagate effective civilian harm mitigation measures in U.S. and U.S.-led coalition operations is at risk due to the limited number of civilian experts supporting civilian protection efforts in OSD and combatant commands. The concepts below direct the Secretaries of Defense and State to submit a report detailing staffing patterns to adequately support the protection of civilians and rule of law, as well as address issues of partner conduct.

Legislative concept on civilian staffing

The Committee directs the Secretaries of Defense and State, in coordination with other relevant agencies, to submit to the appropriate congressional committees, within 180 days of enactment, a manpower analysis of projected staffing for the following functions as they pertain to military operations and building partnership capacity: protection of civilians, including adherence to international humanitarian law and U.S. practices; rule of law, including targeting, investigations, and accountability; and partner conduct.

Legislative Concept on an assessment report on civilian harm related to anti-ISIS coalition operations

The Committee notes that there has been a dramatic increase in civilian casualties and damage to civilian infrastructure in Syria and Iraq as a result of coalition airstrikes, and therefore directs the Secretary of Defense to submit to the appropriate congressional committees, within 180 days of enactment, an interim assessment of all anti-ISIS coalition operations and within 365 days of enactment a final assessment that will provide an in-depth analysis of civilian harm trends and factors; describe changes to Tactics, Techniques, and Procedures which may result in increased civilian casualties; provide recommendations about how to improve civilian harm mitigation procedures; and determine appropriate measures to improve interoperability and reduce civilian harm among coalition partners. Such an assessment should include recommendations for ensuring that the military conducts after-action civilian casualty reviews for all strikes and adapts lessons learned from these reviews into future operations.

- **Independent Expert-Led Study Option:** *The Committee further directs the Secretary of Defense to commission an independent expert-led study that will assess risk factors related to civilian casualties in all anti-ISIS coalition activities and develop risk mitigation plans for the U.S. military and coalition partners, including undertaking classified and unclassified analyses of civilian casualties both in areas of active hostilities and outside; undertaking an in-depth analysis of civilian harm trends and factors; and providing recommendations for integrating lessons in the development of tactics and procedures in current operations and in military education for U.S. and foreign officers.*
- **GAO Option:** *The Committee further directs the Comptroller General of the Government Accountability Office to submit to the appropriate congressional committees a review of civilian casualties and harm resulting from anti-ISIS coalition operations, including undertaking classified and unclassified analyses of civilian casualties both in areas of active hostilities and outside; undertaking an in-depth analysis of civilian harm trends and factors; and providing recommendations for integrating lessons in the development of tactics and procedures in current operations and in military education for U.S. and foreign military officers.*

Legislative Concept on incorporating red teams

The Committee is concerned that modifications to Tactics, Techniques, and Procedures which provide greater targeting discretion to on-the-ground operators has led to loosened targeting standards and a significant uptick in collateral damage and civilian casualties. The Committee therefore encourages the Combined Air Operations Center to establish independent "red teams," composed of analysts outside of the target development process, to consider the underlying intelligence and operational outcome of strikes. The Committee directs the Secretary of Defense to submit to the appropriate congressional committees within 180 days of enactment a report detailing the feasibility of incorporating red teams in the target development and implementation process for ongoing operations.

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3. Improve the conduct of partner forces and private security companies

These concepts require the Department of Defense and State Department to create a strategy for professionalizing partner forces, putting civilian protection at the forefront. It also calls for an independent review of partner force civilian harm mitigation efforts, and authorizes specific resources to enhance the ability of DIILS and IMET to implement institution-building programs and recruit appropriate staff. A second concept would also strengthen monitoring and oversight for the role of private security companies (PSCs) through their membership in the [International Code of Conduct for Private Security Providers' Association \(ICoCA\)](#).

Legislative Concept on Partner Forces

1. *Requirement for a Strategy on Partner Force Professionalization.*
 - *The Secretaries of Defense and State shall submit to the appropriate congressional committees a strategy for improving the capacity and professionalization of partner forces.*
 - *Elements. The strategy shall include, inter alia, the following elements:*
 - *A description of steps to ensure partner forces place civilian harm mitigation and civilian protection principles as core components, including:*
 - *Building partner capacity to collect, track, and analyze civilian casualty data;*
 - *Supporting enhanced investigatory and accountability standards in partner forces to ensure IHL compliance and strong human rights and civilian protection standards;*
 - *Ensuring that tactical train and equip programs are always accompanied by institution-building that enhances civilian protection priorities; and*
 - *Supporting increased transparency, such as building data collection capacity to enable consistent tracking of civilian harm and conflict-related deaths;*
 - *A description of how improving the professionalization of partner forces supports the objectives of the Defeat ISIS Campaign, including key indicators, benchmarks, and conditions to measure partner performance.*
2. *Independent Review. The Secretaries of Defense and State shall commission an independent review that will:*
 - *Analyze and assess risk factors related to civilian casualties resulting from partner force operations;*
 - *Provide recommendations about corrective steps and reforms to enhance civilian protection.*
3. *Enhancing training to support IHL and human rights compliance by partner forces.*
 - *Assessment. The Secretary of Defense in coordination with the Secretary of State shall assess the impact of training programs operated by Defense Institute of International Legal Studies (DIILS).*
 - *Funding. The Secretary shall make funds available to improve the institutional capacity of partner forces with regard to IHL compliance and respect for human rights, incorporating practice measures to mitigate harm to civilians, including support to the DIILS, the Defense Institutional Reform Initiative (DIRI), and the International Military Education and Training (IMET) programs.*

Legislative concept on ensuring respect for human rights and compliance with international codes of conduct by Private Security Companies

Considering the use of private security companies (PSCs) in ongoing conflicts, it is essential to reinforce compliance by PSCs with human rights and international humanitarian law as set out in internationally-agreed codes of conduct. The Committee directs the Secretary of Defense to require that contracted PSCs be Members of the [International Code of Conduct for Private Security Providers' Association \(ICoCA\)](#) and subject to regular oversight and monitoring. Additionally, the Committee directs the Secretary of Defense to submit a report detailing: 1) measures to ensure vetting of PSC personnel and subcontracted PSCs; 2) training provided PSCs and subcontracted PSCs to ensure compliance with the International Code of Conduct; 3) actions and remedial trainings undertaken in response to reports of abuses or other wrongdoing; 4) incidents of abuses against civilians and other protected persons by PSCs and subcontracted PSCs under U.S. military funding or control in the past three years and disciplinary measures taken as a result; and 5) recommendations for how to improve training and guidance in order to advance respect for human rights and compliance with the International Code of Conduct.

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4. Condition arms sales on compliance with international humanitarian law

Currently, no specific legislative provisions exist that condition arms sales on compliance with IHL or respect for human rights. Section 502B in the [Foreign Assistance Act](#) (FAA) comes the closest to proscribing security assistance to countries that commit gross violations of human rights, but it has rarely, if ever, been invoked. Similarly, the [Leahy Law](#), which applies to training and assistance, does not specifically cover arms transfers. The legislative concept would condition the sale, license or export of defense articles or defense services to foreign security services on compliance with IHL and respect for human rights. Defense articles and defense services include weapons systems, equipment, supplies, training, defense services, logistical support, and small-scale military construction found on the [U.S. Munitions List](#). Section 502B also applies to former USML items transferred to Commerce Department control, i.e. Series 600 items on the [Commerce Control List](#).

Legislative Concept

1. *No funds may be used for the proposed sale, license or export of defense articles or defense services or 600 series items to the regular or irregular security forces of any country that is the subject of credible reports of gross human rights violations or serious violations of international humanitarian law until the Secretary of State in consultation with the Secretary of Defense:*
 - *Submits a certification to the relevant congressional committees affirming that the country has not engaged in a consistent pattern of gross human rights violations (as defined in Section 502B of the [FAA](#)), violated end use agreements under the [Arms Export Control Act \(AECA\)](#), or engaged in serious violations of international humanitarian law;*
 - *Publicly certifies that for the proposed sale, license or export of defense articles or defense services, recipients are, inter alia:*
 - *Not committing serious violations of IHL or human rights, and/or taking all feasible measures to prevent violations of IHL or human rights or cause them to cease;*
 - *Disseminating IHL principles, particularly to the armed forces and other arms bearers, and have integrated IHL principles into military doctrine, manuals and instructions; and*
 - *Establishing legal, judicial and administrative accountability measures to prevent serious violations of IHL and human rights.*
2. *The Secretary of State in consultation with the Secretary of Defense shall also:*
 - *Conduct periodic reviews once arms transfers have commenced; and*
 - *Enhance end-use monitoring by providing an assessment report about whether the defense articles and services provided under the relevant authority have contributed to serious violations of IHL or human rights, or caused extensive civilian harm;*
3. *The sales, licensing or export of defense articles and defense services will be suspended if:*
 - *The Secretary of State has credible information that the recipient has committed or is committing serious violations of the law of armed conflict; or*
 - *The recipient violates the end-use agreement, or fails to provide appropriate information about adherence to the end-use agreement.*
4. *The President may waive the prohibition in subsection (1) if the President:*
 - *Determines that such waiver is essential to the national security interests of the United States; and*
 - *Submits a report to the appropriate congressional committees detailing:*
 - *National security interests that justify providing such a waiver;*
 - *Risks of civilian harm that may occur because of such waiver;*
 - *Specific strategies and programs to accompany the waiver to mitigate the risk of civilian harm due to the provision of such defense articles or services; and*
 - *That the recipient is taking effective steps to bring the responsible members of the security forces to justice and taking other appropriate corrective measures to redress serious IHL and human rights violations.*