People on the outside just have no idea of what this war is all about or how it is fought. It’s a rough and brutal war. The Viet Cong has never heard of the Marquis of Queensbury or Geneva Conventions, and we can’t afford to lose just because we have heard of them.1

— American official in Saigon

Adversaries will typically be less constrained than the United States and its allies by international legal norms. The United States generally benefits from status quo stability and international order, whereas its adversaries are often interested in overturning that order; “[s]ince law is generally a conservative force, it is more likely to be observed by those more content with their lot.”2 Apart from possible differences in commitment to international norms and preservation of the international legal regime in general, some adversaries are likely to view the United States, with its vastly superior military technology, as a manipulator of the law of armed conflict for its own benefit.

Strategic setting is critical to this analysis: Almost any “small-scale contingency” for the United States is likely to be a major war for an

adversary. Conflict with the United States may implicate an adversary state’s or regime’s most vital interests and may strain its willingness to remain bound by international legal rules that at a given time may favor U.S. military dominance, much like the United States might be inclined to cast off legal duties if its own most vital interests were immediately threatened.

Just as the United States designs strategies around an adversary’s perceived “centers of gravity,” those adversaries can be expected to do likewise, and target what they see as the United States’ center of gravity: its “political will.” Political will, especially when perceived U.S. stakes are low or allied support is shaky, is often seen by adversaries as vulnerable to U.S. casualties and collateral damage. The greater commitment U.S. decisionmakers display to reducing risks to civilians, the more U.S. political will appears vulnerable to adversary tactics that put civilians in danger.3

Opportunities for exploiting constraints on U.S. operations expand in the urban environment. Knowing that U.S. planners and operators are obliged to verify their target objectives, adversaries can disperse dual-use sites, camouflage military assets, and otherwise hinder U.S. information-gathering. Knowing that U.S. planners and operators will avoid incidental civilian losses, adversaries can commingle military and civilian assets and persons. And knowing that U.S. planners and operators will avoid attacks likely to cause excessive civilian damage, adversaries can manipulate the media following attacks to portray exaggerated destruction.

In adopting these techniques, adversaries hope that the potential for U.S. casualties or political backlash resulting from anticipated collateral damage will deter U.S. intervention. In the event that the United States intervenes, these techniques aim to confront U.S. planners with a dilemma—refrain from attacking (or attack under extremely tight operational restrictions) certain targets, therefore risking degraded military effectiveness, or attack the targets effectively and risk collateral damage or perhaps higher levels of U.S. casualties.

PROPAGANDA AND THE ASYMMETRY OF CONSTRAINTS

An adversary’s ability to exploit constraints on U.S. operations depends on a number of factors including the adversary’s own bases of support, its strategy, and its propaganda capabilities. Autocratic, dictatorial regimes typically maintain tight control over the media. While manipulating the content of information flowing to its own population, these regimes can also influence the timing and, indirectly, the substance of information disseminated abroad by selectively permitting journalistic inspection, although this is not to deny that U.S. and allied governments may themselves try to “sanitize” coverage of operations. The North Vietnamese were both notoriously obstructive and invitingly supportive of Western television, depending on the situation. Sudan, for years having virtually blacked itself out of the international media, welcomed TV crews when the August 1998 cruise missile strike destroyed a pharmaceutical facility in Khartoum. Yugoslav President Slobodan Milosevic displayed a pattern of cracking down on independent media each time crises flared with the international community.\(^4\) During NATO’s Operation Allied Force, Milosevic shut down independent newspapers and radio stations inside Serbia, used state-run television to stoke nationalist reactions, electronically jammed some U.S. and NATO broadcasts intended for the Serbian populace, and prohibited the Western press from much of Kosovo (while granting it permission to film bombed sites, especially in major cities like Belgrade and Novi Sad).

Propaganda efforts of this kind have historically affected U.S. policy-making, especially when the United States lacked the ability to counter charges of indiscriminate targeting. During the Rolling Thunder campaign, the North Vietnamese government used U.S. air strikes as propaganda, often with great success in undercutting U.S. coercive pressure. North Vietnamese authorities repeatedly asserted that U.S. air attacks were directed at Red River Valley dikes, with allegedly devastating effects on the local civilian population. These efforts played on U.S. decisionmakers’ fears that such allegations would destroy public and foreign support; concern over this issue caused the Johnson administration to emphasize that the dikes were

off-limits to campaign planners. These targeting restrictions then gave the North Vietnamese freedom to place antiaircraft and other military assets at the sites, further countering the air campaign.\(^5\) The U.S. reaction to Saddam Hussein's attempt to capitalize on the Al Firdos bunker tragedy, described earlier, fit a similar pattern.

To be sure, adversary efforts to profit by civilian casualties often fail and may even prove counterproductive if the American and international public views the adversary leadership as at fault. But even when adversary efforts to exploit collateral damage do not result in a tightening of self-imposed U.S. constraints, they publicly put U.S. policymakers on the defensive and may harden the resolve of adversaries who expect U.S. will to erode.

**THE DYNAMICS OF CONSTRAINTS AND ADVERSARY INCENTIVES TO BREACH**

An adversary that is capable of sustaining and manipulating civilian casualties and collateral damage will often have tremendous incentives to do so. Figure 2, a simple 2 x 2 payoff matrix, illustrates the strategic interaction of each side's moves and the incentives driving each side's choices. This representation oversimplifies each side's decision to a binary one, while in practice there are many intermediate levels of target discrimination and target segregation that the United States and its adversaries can choose. The game-theoretical device emphasizes that choices about legal compliance result at least in part from anticipated choices by the other side.

The pairs of numbers in each quadrant are representative payoffs to the United States and an enemy, based on the combined choices of each side.\(^6\) For instance, in the bottom-left quadrant, where the

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\(^6\) U.S. payoffs are based primarily on (1) adverse domestic/diplomatic effects of collateral damage and (2) the ability to hit military targets whose destruction contributes directly to U.S. operational goals. Enemy payoffs are based primarily on (1) international sympathy gained by victimization minus political costs associated
United States adopts relatively relaxed rules of engagement and targeting practices while the enemy segregates its civilian and military assets, the payoff scores are 3 and 3, respectively. When the United States chooses relaxed targeting and the enemy segregates its civilian and military assets, the U.S. payoff is fairly low because even the low level of likely collateral damage will carry a heavy political and diplomatic price, and the adversary’s payoff is also fairly low because its military targets are most vulnerable to destruction. Contrast this with the upper-left quadrant, where both parties are better off (this situation—with the United States adopting restrictive targeting and the enemy segregating targets—most closely approximates that demanded by the law of armed conflict). The United States can still strike most military targets it desires, with little political and diplomatic risk, although some targets will now probably be passed over because of restrictions.

The equilibrium result—the expected result if both sides behave rationally in this example—is the upper-right: the United States adopts restrictive rules of engagement and targeting practices while the enemy deliberately mingles its assets. Restrictive rules of engage-
ment is the United States' “dominant strategy”; regardless of what choice the enemy makes, the United States is always better off choosing restrictive rules of engagement. Likewise, mingling is the enemy's dominant strategy; the enemy is better off doing so regardless of U.S. targeting decisions. The results of this illustration are conjectural, but they are borne out empirically by cases discussed in the following section.

URBAN ENVIRONMENTS AND ADVERSARY EXPLOITATION OFASYMMETRICAL CONSTRAINTS

The characteristics of urban environments discussed in Chapter Two—population density, the proximity of civilian and military targets, shared civilian-military assets, and media focus—provide adversaries with ample opportunity to exploit asymmetrical constraints, and adversary efforts to exploit these asymmetries are likely to be more successful in concentrated urban environments. The potential for large civilian death or injury tolls, the ease of situating military assets near, or camouflaging them among, civilian ones, and the intense media scrutiny surrounding incidents of collateral damage facilitate adversary shielding tactics. Evidence from recent conflicts demonstrates the tendency of adversaries to employ these tactics, frequently with some success. In Somalia, for instance, U.S. and UN forces frequently encountered hostile militiamen firing from behind women and children. U.S. forces trying to aim at armed threats from the air found that militiamen took advantage of crowded streets to open fire and then disperse or blend into crowds of civilians.

Using civilian assets or persons to shield military targets is especially easy in urban environments, where civilian objects and persons provide many possible “shields” for military targets and dramatically

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7 This result holds true in this example whether one assumes that decisions are made based on either absolute gain or relative gain. Of course, some of the elements of the payoffs already have a relativity component to them.

8 Mark Bowden, *Black Hawk Down* (New York: Atlantic Monthly Press, 1999), describes numerous examples. In one incident (p. 46), U.S. forces encountered “[a] Somali with a gun lying prone on the street between two kneeling women. The shooter had the barrel of his weapon between the women’s legs, and there were four children actually sitting on him. He was completely shielded in noncombatants, taking full cynical advantage of the Americans’ decency.”
increase the risk or possible scope of collateral damage in any attack from the air. As alluded to above, North Vietnamese forces routinely capitalized on U.S. public declarations restricting attacks in densely populated areas by storing military supplies in such places. During the Gulf War and subsequent U.S. air operations against Iraq, the Iraqi government refused to evacuate civilians known to be situated close to key targets in Baghdad and other cities. According to the Defense Department’s postwar account, “[p]ronouncements that Coalition air forces would not attack populated areas increased Iraqi movement of military objects into populated areas in Iraq and Kuwait to shield them from attack.”

The potential to exploit vertical proximity of civilians and military objectives in urban environments can be seen in Palestine Liberation Organization (PLO) practices during the 1982 Israeli incursion into Lebanon. Contravening its legal obligations to segregate the civilian population from military objectives, PLO forces in towns and cities reportedly placed artillery and antiaircraft weapons on top of hospitals and religious buildings, in an effort to negate the technological superiority of the Israeli Defense Forces and Israeli Air Force. Upon retreating to Beirut, some PLO units allegedly positioned themselves and their military equipment in lower floors of high-rise apartment buildings and forced civilian tenants to remain in upper floors. Civilian injury tolls were substantial, although Israeli forces’ strict rules of engagement often resulted in successful shielding of some legitimate PLO military targets.

The tendency of some adversaries to shield military assets by placing their own civilians at risk and to exploit propaganda effects of collateral damage parallels in some respects a tendency to funnel limited resources to military functions and then exploit international reaction to civilian deprivations. Mueller and Mueller note that Iraqi

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civilians have been vulnerable to extended economic sanctions both because the Gulf War air campaign destroyed key infrastructure and “because the country’s political leadership sometimes seems more interested in maximizing the nation’s suffering for propaganda purposes than relieving it.”\textsuperscript{12} Especially during conflict, adversary regimes are likely to power and feed the military first. Putting aside the legitimacy or illegitimacy of such wartime decisions, one must keep in mind that in attacking infrastructure like electrical systems, the amount of suffering a local population must bear depends on adversary actions as well as U.S. actions. During Operation Allied Force, NATO leaders sought not only to portray Yugoslavia’s electric power plants and networks as military targets but also to portray the adverse civilian effects of destroying such targets (including widespread charges that hospitals were experiencing blackouts) as the result of the Milosevic regime’s resource allocation decisions.\textsuperscript{13} Even if U.S. forces are able in the future to regulate the extent of damage they inflict on infrastructure as well as the reverberating effects of infrastructure degradation, they may have little control over how the civilian population will be affected and how those effects will be perceived by the international public.

Adversaries sometimes take advantage of the special protected status granted certain types of structures, such as medical or cultural buildings. During Operation Just Cause, members of the PDF used Santo Tomás Hospital for sniper activity in attempting to repel U.S. forces.\textsuperscript{14} During the Gulf War, a cache of Iraqi Silkworm surface-to-surface missiles was discovered inside a school in a densely populated Kuwait City area,\textsuperscript{15} and Iraq positioned two fighter aircraft adjacent to the ancient temple of Ur during the Gulf War.\textsuperscript{16}


\textsuperscript{13} On one occasion, NATO spokesman Jamie Shea explained: “We realize the inconvenience that may be caused to the Yugoslav people, but it is up to Milosevic to decide how he wants to use his remaining energy resources: on his tanks or on his people.” Quoted in Michael R. Gordon, “NATO Air Attacks on Power Plants Pass a Threshold,” \textit{New York Times}, May 4, 1999, p. A1.


\textsuperscript{16} Ibid., p. 615.
Operation Allied Force, the Yugoslav armed forces reportedly used churches, schools, and hospitals to shield troops and equipment against NATO air strikes, knowing that NATO forces operated under tight rules of engagement and that, even if Serbian practices justified attacks on these targets, NATO planners were eager to comply with international legal norms and avoid potential political fallout from destruction of these sites.  

The use of civilian structures, including those with special cultural significance, to shield military targets stems not only from a willingness by some adversaries to breach international norms but also from asymmetries in the costs each side associates with the demolition of those structures. The potential effectiveness of adversary shielding techniques largely depends on context. U.S. and Republic of Korea (ROK) forces attempting to dislodge invading North Korean forces from Seoul would likely be far less willing to demolish civilian property than if they were attempting to capture Pyongyang. Even in the former case, the United States and ROK would probably do so if required, though; the willingness to cause (and in this case sustain) civilian destruction is partly a product of military necessity. In MOOTW, such as efforts to maintain order or separate local combatants, strategic demands on planners may place much higher costs on destroying civilian property if doing so would inflame local popular resentment. In each of these cases, the potential efficacy of shielding depends on the relative costs of civilian damage that each side must internalize as well as their relative commitments to international legal obligations.

As pointed out earlier, human shield tactics may backfire, particularly if viewed locally or abroad as barbaric. But some adversaries seem willing to bear that risk in the face of otherwise overwhelming U.S. military might.

**THE PROBLEM OF IRREGULAR FORCES**

The problems of conducting urban air operations under tight legal and political constraints are particularly acute when confronted with...
irregular enemy forces. Adherence to the principles of target discrimination becomes extremely difficult when there are few, if any, physical markings to distinguish combatants from noncombatants. Moreover, some irregular military organizations may have little or no incentive to adhere to international norms, and are therefore even more likely to capitalize on self-imposed U.S. constraints. Testifying to the extent to which adversaries will go, some PDF units were trained before Operation Just Cause to disperse, dispose of their uniforms in favor of civilian clothes, and return to Panama City to repel any U.S. intervention or invasion.

Blurred distinctions between combatants and noncombatants complicate target discrimination and facilitate "human shield" tactics like those described earlier. In Somalia and southern Lebanon, for example, the UN and Israel, respectively, faced enemy personnel virtually indistinguishable from the heavily armed civilian populace. This fact alone complicates targeting, especially from the air. It also allows enemy forces to blend into civilian crowds, taking advantage of attacking forces' restrictive rules of engagement or compelling those forces to risk hitting civilians.

18 “Irregular” forces here refer to guerrilla and militia units and other enemy forces lacking official uniforms and other insignia used to differentiate combatants from noncombatants.

19 It is in part because of the difficulties of applying traditional international legal principles to guerrilla and irregular force contexts that international treaty law sometimes contains different provisions for internal, as opposed to international, armed conflicts. This issue, and the partial erosion of these distinctions in light of contemporary notions of customary international law, is discussed in a decision of the International Criminal Tribunal for the Former Yugoslavia case of Prosecutor v. Tadic (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, October 2, 1995, paras. 96-127, available at http://www.un.org/icty/tadic/appeal/decision-e/510002.htm). Almost any U.S. operation will involve application of international armed conflict law; this report does not discuss legal issues specific to internal conflicts.

20 The law of armed conflict attempts to regulate these practices, although with little success in balancing the exigencies of counterguerrilla operations with civilian protection. Article 44(3) of Protocol I, for example, states that:

In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:

1) during each military engagement, and
Calculating proportionate military responses is especially vexing against irregular forces because the blurred distinction between armed foes and civilian bystanders confuses determinations of threats. During a September 1993 ambush of UN forces by Somali militiamen using women and children as shields, U.S. Cobra helicopters shot into the crowd. Italy and other coalition members protested vehemently that the U.S. response was excessive, to which Major David Stockwell, the UN military spokesman, replied: “In an ambush there are no sidelines for spectators.”

The Somalia case also illustrates that non-state military organizations often have tremendous ability to manipulate domestic and international public opinion even when they lack monopoly control over civil infrastructure. Aideed garnered support both within and outside Somalia by exploiting civilian casualties resulting from engagements with UN forces (many of these casualties attributable in part to Aideed’s deliberate use of civilian crowds to shield his militia personnel), despite the fact that Somalia lacked high-technology communications systems for disseminating propaganda.

CONCLUSION

U.S. forces generally operate under much tighter legal and political constraints than do U.S. adversaries. Adversaries, knowing this, are likely to exploit the asymmetry. By breaching their legal obligations to segregate military and civilian assets and persons, adversaries can deter U.S. operations or compel U.S. planners to choose between military effectiveness and the risk of collateral damage. USAF planners contemplating future operations and thinking about the technological advances discussed in the next chapter must view these issues through the eyes of possible adversaries—because adversaries can be expected to do likewise.
