



Legal Issues with Fires in COE Populated Areas

By General Burwell B. Bell III, Major General Guy M. Bourn,
Colonel Patrick Lisowski, JA, and Lieutenant Colonel Gary A. Agron

On the morning of 28 January 2002, the 3d Armored Cavalry Regiment (ACR) executed a combat mission as assigned by III Corps during its Battle Command Training Program (BCTP) Warfighter exercise. As the regiment approached the city of “Tongduchon,” it received a high volume of fires resulting in personnel and equipment casualties from enemy artillery located at multiple points inside the city.

The corps G5/civil affairs officer had listed the city on the protected target list (PTL). The corps fire support element (FSE) had established a corps restricted fire area (RFA) around the city before hostilities began; therefore, any fires

into the city required coordination with the corps FSE.

In self-defense, the 3d ACR and its reinforcing FA brigade fired counterfire missions into the city. Enemy news media reported civilian casualties and property damage and alleged Law of War violations.

In response, the III Corps Commanding General appointed an *AR 15-6, Procedures for Investigating Officers and Board of Officers* investigation into the matter. Findings from the investigation concluded that the regimental commander properly conducted a review of the fires and did not violate the Law of Land Warfare. The regimental commander articulated a legitimate military

purpose for every target. He directed the use of observed fires and selected discriminating munitions to minimize collateral damage. Finally, the commander made a proportionality assessment by weighing the distinct military advantage to be gained against likely collateral damage to ensure he would not cause unnecessary suffering or appear to have conducted indiscriminate attacks. The commander, supported by his FSE and staff judge advocate (SJA), was not in violation of the Law of War.

III Corps has established tactics, techniques and procedures (TTPs) to address the challenges in targeting enemy forces using cities and towns as sanctuary. This article describes the legal is-

sues and a method to conduct proper targeting analysis before firing missions into populated areas.

The New Enemy. The corps faced a new paradigm in its Warfighter with the enemy in the contemporary operational environment (COE). The fire support target set was the same: mortar, cannon, rocket and missile systems, command and control (C²) nodes, radars and logistical support sites. However, the destruction or defeat of this enemy was much more challenging.

The new enemy operated on a lethal, nonlinear battlefield. He used an integrated fires command (IFC), much like the corp's deep operations coordination cell (DOCC), to command and control all lethal fires. His artillery systems had longer ranges. This opposing force (OPFOR) used smaller formations than in the past dispersed on the battlefield, usually batteries rather than battalions. He was difficult to defeat employing conventional counterfire as he used shoot-and-scoot tactics; thus, engaging these fleeting targets was challenging.

The enemy was keyed to the fact that the United States is averse to unrestricted collateral damage; therefore, he used the populated urban and complex environments for protection and as sanctuaries. The OPFOR exploited civilians as a protective shield by "hugging" their lethal, long-range artillery systems next to churches, schools and homes. He knew that by arguing Law of War allegations, coupled with detrimental media coverage, US commanders would be more hesitant to authorize the use of indirect or aerial fires in populated areas.

A Solution. III Corps Artillery, the corps FSE and the corps SJA, along with their divisional counterparts, conducted a Fire Support Seminar in November 2001 to prepare for the 2002 III Corps Warfighter exercise. The FSE and SJA addressed the legal issue of the friendly force's targeting a COE OPFOR in populated areas while ensuring friendly fires are prompt, responsive, effective and don't violate the rules of engagement (ROE). Areas addressed included ROE, target identification, the authority to approve shooting and the process to authorize firing units to shoot. The seminar resulted in two products: TTP for applying the Law of Land Warfare to targeting and a populated area targeting record.

The goal was for commanders to be able to justify fires against targets shielded by populated areas. The III Corps Artillery Commanding General wanted to ensure that decisions to fire into populated areas were the result of a deliberate decision-making process. The populated area targeting record documented the decision-making for each fire mission and came in handy when commanders were questioned about not only decisions to fire, but also decisions not to fire a particular mission.

Additionally, the SJA placed a judge advocate in all the crucial tactical operations centers (TOCs) within the fire-cycle. The availability of judge advocates helped communicate to commanders that they have the ability to fire missions previously thought to be "illegal."

TTP for Applying the Law of Land Warfare to Targeting. In attacking the

COE OPFOR in populated areas, commanders conducted a quick assessment before delivering indirect or aerial fires. The four areas assessed were the articulation of the military objectives, minimization of collateral damage, analysis of proportionality and judging the "reasonableness" of the commander's actions. See Figure 1.

Articulating Military Objectives. Commanders must first articulate a legitimate military purpose for every target in a populated or protected area. According to the Law of War, Article 52(2) of Protocol I, "Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to 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."

Examples of "by their nature" military objectives are combatants, artillery weapon systems, ammunition and fuel depots. Examples of "location" include bridges, key road intersections and airfields. Examples of "purpose" are civilian buses or trucks used to move enemy troops or equipment and factories producing materials to support the war (ball bearings, electronics, etc.). Finally, examples of qualifying military "use" include a school used as artillery headquarters, a hotel billeting troops or a residence used to hide military supplies.

During the Warfighter, the COE OPFOR used the town of Tongduchon for sanctuary and fired against the approaching 3d ACR. The combatants, artillery weapon systems and ammunition placed among civilian buildings were legal military objectives. Any artillery located next to a church, a soccer field or among houses was an appropriate military target. Finally, the use of civilian buildings to house and headquarter the artillery units was sufficient cause to target and attack those buildings.

Minimizing Collateral Damage, Unnecessary Suffering, Incidental Damage or Indiscriminate Attacks. Collateral damage is defined as "unavoidable and unplanned damage to civilian persons and property incurred while legitimately attacking a military objective." (Quote is from the *Operational Law Handbook*, Page 9, published by the International and Operational Law Department of The Judge Advocate School, 2003, Department of the Army.)



The OPFOR exploited civilians as a protective shield by "hugging" their lethal, long-range artillery systems next to churches, schools and homes.

Incurring collateral damage is not a violation of international law. No Law of War treaty defines this concept. The Hague Convention states, "It is especially forbidden to employ arms, projectiles or material calculated to cause unnecessary suffering." Indiscriminate attacks that cause incidental injury to civilian life or incidental damage to civilian property "excessive in relation to the concrete and direct military advantage anticipated" are prohibited by the Geneva Conventions.

The 3d ACR engaged artillery targets in the city based on the fires it was receiving. The Q-37 Firefinder radar detected the fires originating from many locations within the city. Counterfire was directed against the Q-37 acquisitions only. Artillery was not fired in other locations of the city, thus limiting collateral damage and unnecessary deaths.

Proportionality Assessment. The anticipated loss of civilian 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. Commanders must weigh the military objective against the collateral damage potential before attacking targets in built-up areas. To assess proportionality, the commander considers the type of delivery system and the type and number of munitions to be employed.

At first, the 3d ACR unnecessarily restricted its response to the enemy fires by not returning fire. The staff did not want to incur any collateral damage. As the regiment approached the town, maneuver units received artillery fires that did not affect its advance.

Later that night, the regiment received fatal artillery fires that slowed the unit's tempo. Self-defense justified a response to the attacks. The standard fire order for counterfire against artillery targets is 36 multiple-launch rocket system (MLRS) rockets. However, the acquisitions came from inside the city of Tongduchun. The commander, with advice from his fire support officer (FSO) and SJA, reduced the number of rockets to 24 to limit the collateral damage. Close air support (CAS) from available F-16 aircraft was considered; however, the FSO determined the munitions on-board the aircraft would have caused greater collateral damage than the MLRS rockets.

Another example of a commander conducting a proportionality assessment during the III Corps Warfighter occurred

when the 1st Brigade, 1st Cavalry Division, received anti-tank (AT) fires from an enemy section barricaded in a school in the town of "Chongchung." The brigade commander had MLRS, cannon, mortar and CAS fires available to destroy the AT section. With help from his FSO and SJA, he assessed that CAS and MLRS fires against one AT section in a

heavily populated area was disproportionate and had the potential for excessive collateral damage and civilian suffering. He directed the use of smoke to obscure the targeting vision of the AT section and suppress its attacks and, later, destroyed it by direct fires.

Also during the Warfighter, the 49th Armored Division received artillery

<p>I. Military Necessity—What are we shooting at and why?</p> <p>1. DTG of Mission: _____</p> <p>2. Location—Grid Coordinates: _____</p> <p>3. Enemy Target (WMD, Chem, IFC, Scud, Arty, Armor, C², Log)</p> <p>a. Type and Unit: _____</p> <p>b. Importance to Mission: _____</p> <p>4. Target Intel:</p> <p>a. How Observed: UAV, FIST, SOF, Other: _____</p> <p>b. Unobserved: Q-36, Q-37, ELINT, Other: _____</p> <p>c. Last Known DTG of Observation or Detection: _____</p> <p>5. Other Concerns as Applicable:</p> <p>a. US Casualties—Number: _____ Location: _____</p> <p>b. Receiving Enemy Fire—Unit: _____ Location: _____</p> <p>II. Collateral Damage—Who or what is there now?</p> <p>6. City: _____ Original Population: _____</p> <p>7. Estimated Population Now in Target Area (if Known): _____</p> <p>8. Cultural, Economic or Other Significance and Effects: _____</p> <p>III. Munitions Selection—Mitigate Civilian Casualties</p> <p>9. Available Delivery Systems within Range: 155, MLRS, ATACMS, AH-64, CAS, Other: _____</p> <p>10. Munitions: DPICM, PGM, Other: _____</p> <p>IV. Commander's Authorization to Fire—Proportionality Analysis</p> <p>11. Legal Advisor's Rank and Name: _____</p> <p>12. Civil Affairs/G5 Advisor: _____</p> <p>13. <i>Is the anticipated loss of life and damage to civilian property acceptable in relation to the military advantage expected to be gained? Yes/No</i></p> <p>14. Commander or Representative's Rank, Name and Position: _____</p> <p>15. Optional Comments: _____</p> <p>16. DTG of Decision: _____</p> <p>17. <i>Target Number:</i> _____</p> <p>Note: Commanders are responsible for assessing proportionality before authorizing indirect fire into a populated area or protected place (NFA, RFA or PTL). Refer to ROE; seek legal advice and copy SJA, G5 and FSE.</p> <p>Copies provided to Commander, FSE, SJA, G5 and PAO.</p>																							
<p>Legend:</p> <table> <tr> <td>ATACMS = Army Tactical Missile System</td> <td>MLRS = Multiple-Launch Rocket System</td> </tr> <tr> <td>CAS = Close Air Support</td> <td>NFA = No-Fire Area</td> </tr> <tr> <td>C² = Command and Control</td> <td>PAO = Public Affairs Officer</td> </tr> <tr> <td>DPICM = Dual-Purpose Improved Conventional Munitions</td> <td>PGM = Precision-Guided Munitions</td> </tr> <tr> <td>DTG = Date Time Group</td> <td>PTL = Protected Target List</td> </tr> <tr> <td>ELINT = Electronic Intelligence</td> <td>ROE = Rules of Engagement</td> </tr> <tr> <td>FIST = Fire Support Team</td> <td>RFA = Restricted-Fire Area</td> </tr> <tr> <td>FSE = Fire Support Element</td> <td>SJA = Staff Judge Advocate</td> </tr> <tr> <td>G5 = Civil Affairs</td> <td>SOF = Special Operations Forces</td> </tr> <tr> <td>IFC = Integrated Fires Command</td> <td>UAV = Unmanned Aerial Vehicle</td> </tr> <tr> <td></td> <td>WMD = Weapons of Mass Destruction</td> </tr> </table>		ATACMS = Army Tactical Missile System	MLRS = Multiple-Launch Rocket System	CAS = Close Air Support	NFA = No-Fire Area	C ² = Command and Control	PAO = Public Affairs Officer	DPICM = Dual-Purpose Improved Conventional Munitions	PGM = Precision-Guided Munitions	DTG = Date Time Group	PTL = Protected Target List	ELINT = Electronic Intelligence	ROE = Rules of Engagement	FIST = Fire Support Team	RFA = Restricted-Fire Area	FSE = Fire Support Element	SJA = Staff Judge Advocate	G5 = Civil Affairs	SOF = Special Operations Forces	IFC = Integrated Fires Command	UAV = Unmanned Aerial Vehicle		WMD = Weapons of Mass Destruction
ATACMS = Army Tactical Missile System	MLRS = Multiple-Launch Rocket System																						
CAS = Close Air Support	NFA = No-Fire Area																						
C ² = Command and Control	PAO = Public Affairs Officer																						
DPICM = Dual-Purpose Improved Conventional Munitions	PGM = Precision-Guided Munitions																						
DTG = Date Time Group	PTL = Protected Target List																						
ELINT = Electronic Intelligence	ROE = Rules of Engagement																						
FIST = Fire Support Team	RFA = Restricted-Fire Area																						
FSE = Fire Support Element	SJA = Staff Judge Advocate																						
G5 = Civil Affairs	SOF = Special Operations Forces																						
IFC = Integrated Fires Command	UAV = Unmanned Aerial Vehicle																						
	WMD = Weapons of Mass Destruction																						

Figure 1: Populated Area Targeting Record—Military Necessity, Collateral Damage, Mitigation of Civilian Casualties and Proportionality Assessment

fires. Q-37 acquisitions classified the fires as long-range artillery originating from the city of "Suwon." The division could not use MLRS to fire against the artillery because it was out of range. The target was also inside a corps RFA. After analysis using the automated deep operations coordination system (ADOCS) software, the corps deputy fire support coordinator (DFSCoord) and the corps air liaison officer (ALO) assessed the targets were inside a large park in an RFA.

The DFSCoord, ALO, SJA and G5 then approached the deputy commanding general (DCG) in the III Corps tactical operations center (CTAC) and requested authorization to attack the artillery in the city using CAS. The attack was of military necessity (self-defense in response to lethal fires), minimized collateral damage (the park and surrounding area was not heavily populated) and was proportional by employing CAS with joint direct attack munitions (JDAM).

The DCG approved the mission. To further reduce collateral damage, he directed the CAS sortie use two JDAMs per pass versus an entire load of six bombs per pass. The SJA and G5 recorded the mission on the populated area targeting record.

This battle drill took less than two minutes and was in time to direct and destroy the artillery battery in the city of Suwon.

Judging the "Reasonableness" of a Commander's Action. Commanders have many factors to consider when applying the Law of Land Warfare to targeting. (See Figure 2.)

From these criteria, the FSE and SJA developed the populated area targeting record. Commanders do not literally answer each question before engaging the enemy; rather, each quickly assesses the situation using the record as a foundation. As each target is attacked, the FSE, along with an SJA representative, fills out the worksheet. These records then are filed so they can be used to respond to allegations or investigations initiated due to the event.

Commanders are solely responsible for decisions to fire into populated areas. General officers or their designated representatives approve indirect fires into populated areas. In III Corps the general officers delegated authority to brigade and regimental commanders with access to judge advocates, but no lower.

1. Identification of the Target
2. Location of the Target
3. Potential for Allies or US to Suffer Casualties as a Result of the Target
4. Military Objective Gained
5. Prior Knowledge of Potential Collateral Damage—Protected Persons or Protected Places Near the Target
6. Whether the Enemy is Misusing a Protected Place (School, Hospital, Church, etc.)
7. Accuracy of the Information (Human Intelligence Verifies a Sensor)
8. Delivery Systems Available
9. Munitions Employed
10. An Objective Assessment of the Commander's Actions—Whether or Not They Were "Reasonable"
11. Results of the Engagement

Figure 2: Law of Land Warfare Factors to Consider in Targeting

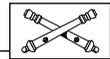
The COE OPFOR knows that media coverage resulting from firing into populated areas can destroy public support for US efforts and alienate our allies. During the Gulf War, intelligence analysts submitted the Al Firdus Bunker as a target. The bunker was camouflaged, surrounded by wire and guarded by sentries. Unknown to targeting planners, Iraqi civilians used the bunker to sleep in at night. The bunker was bombed at night and 300 innocent civilians died. Based on the information known at the time, the commander's decision to attack the bunker was not a Law of War violation, but it was an adverse media event and the US deeply regretted the incident.

The Iraqi government tried to use the media to erode public and coalition support, presenting the US as inhumane and willfully killing women and children in the bunker. But ensuing investigations justified the targeting process—based on what the commander knew at the time, the bunker target met the requirements for military necessity and the attack minimized collateral damage and was proportional.

When the enemy improperly uses protected places (hospitals, schools, churches, etc.) to hide or shelter their forces and fire against friendly forces, the enemy is violating the Law of War; those places lose their protected status. Consequently, more collateral damage should be expected when enemy ground forces and weapons systems are inter-

mingled in populated areas, particularly when US ground units return fire in self-defense.

Unfortunately, due to the fog of war that surrounds the contemporary battlefield, even with current technological advances, it is impossible to prevent all collateral damage or noncombatant casualties. Commanders who conduct proper targeting analysis before firing missions into populated areas can reduce the risk of collateral damage and civilian casualties and be prepared to respond to adverse media reports as well as Law of War allegations.



General Burwell B. Bell III, until recently, was the Commanding General of the IIIrd Armored Corps and Fort Hood, Texas. He took command of US Army Europe (USAREUR) in December 2002. His previous assignments include serving as Assistant Division Commander for the 1st Infantry Division (Mechanized), Germany; Chief of Staff of USAREUR and Seventh Army, also in Germany; and Chief of Staff of the USAREUR Forward Headquarters in Hungary during Operation Joint Endeavor.

Major General Guy M. Bourn commanded the IIIrd Armored Corps Artillery, Fort Sill, Oklahoma, until August 2002. He currently serves as Chief of the Office of Military Cooperation at the American Embassy in Cairo, Egypt. Previously, he was a Special Assistant to the Chairman of the Joint Chiefs of Staff at the Pentagon. He commanded the 17th Field Artillery Brigade, IIIrd Armored Corps Artillery, and served as Chief of Staff of Fort Sill.

Colonel Patrick Lisowski, Judge Advocate General's Corps (JA), is the Staff Judge Advocate (SJA) for the IIIrd Armored Corps at Fort Hood. Prior to that he was the SJA for the 1st Cavalry Division, also at Fort Hood. His other assignments include serving as SJA for the Air and Missile Defense Center at Fort Bliss, Texas. He also has served as an operational law attorney, trial counsel, defense counsel and litigation attorney for the Army. He is a graduate of the University of Pennsylvania Law School.

Lieutenant Colonel Gary A. Agron was the III Corps Deputy Fire Support Coordinator at Fort Hood until August 2002. Currently, he is an Army War College Senior Fellow at the University of Texas in Austin. Previously, he commanded 1st Battalion, 12th Field Artillery; C Battery, 1st Battalion, 36th Field Artillery; and Headquarters and Headquarters Battery, all in the 17th Field Artillery Brigade at Fort Sill.