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# TARGETING

PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

BRIGADIER GENERAL RICH GROSS, US ARMY (RET.)

FORMER LEGAL COUNSEL TO THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF

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# TARGETING

ADAPTED FROM A BRIEFING BY  
THE INTERNATIONAL AND OPERATIONAL LAW DEPARTMENT  
THE JUDGE ADVOCATE GENERAL'S SCHOOL

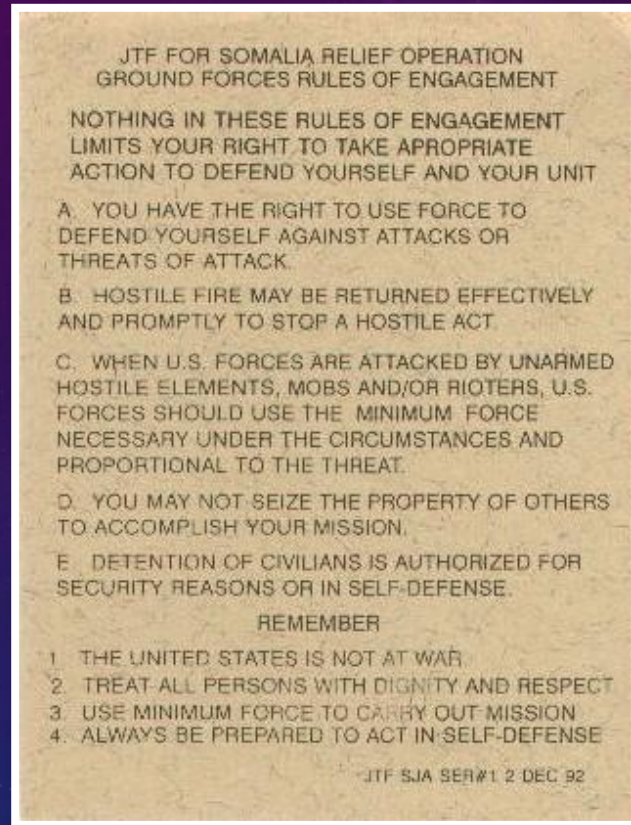




# PRELIMINARY MATTERS

- *Jus in Bello* vs. *Jus ad Bellum*
- Terms:
  - International Humanitarian Law (IHL)
  - Law of Armed Conflict (LOAC)
  - Law of War (LOW)
- Customary IHL vs. Treaty Law
- International Law vs. Domestic Law
- Law vs. Policy
- IHL vs. International Human Rights Law (IHRL)
- “Could we?” vs. “Should we?”

# ROE



- Don't confuse the Rules of Engagement (ROE) with International Humanitarian Law (IHL)
- IHL + domestic law + domestic policy + political factors + operational goals = ROE
- IHL is more permissive than ROE

# REFERENCES

- Hague Regulations (Hague IV), 1899 & 1907
- Geneva Conventions I-IV, 1949
- Additional Protocols I-III, 1977
- DoD Law of War Manual, 2015
- Allies' Manuals
- ICRC Customary Law Study
- Army Field Manual 27-10, 1956 (C1, 1976)
- Customary international law (CIL)
- Specific treaties (e.g., cultural property, certain conventional weapons)



# IHL PRINCIPLES

- Military Necessity
- Distinction
  - Combatant v. Civilian
  - Military Objective v. Civilian Object
- Proportionality
- Unnecessary Suffering / Humanity



# MILITARY NECESSITY

## U.S. DEFINITION

**“Military necessity may be defined as the principle that justifies the use of all measures needed to defeat the enemy as quickly and efficiently as possible that are not prohibited by the law of war.”**

**-DoD Law of War Manual § 2.2**



# MILITARY NECESSITY:

## THE *RENDULIC* RULE



**Finland/Norway 1944:  
Destructive Retreat**



Commander's liability based on information  
reasonably available at time of decision

*(See U.S. Understanding to CCW Amended Protocol II, DS p. 74)*

# DISTINCTION





# DISTINCTION...





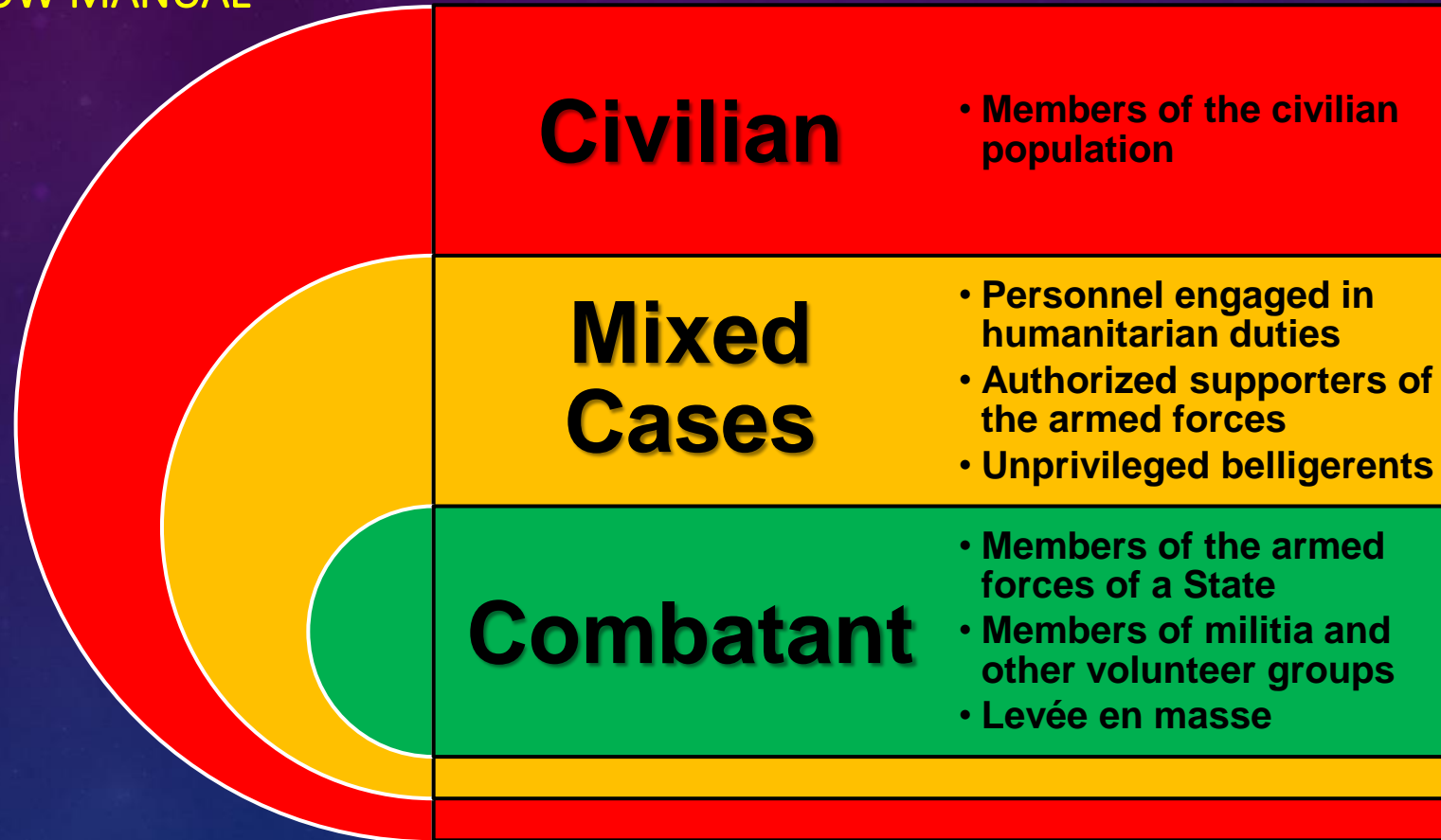
# DISTINCTION

**“Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”**

**-AP I, art 48**

# CATEGORIES OF PEOPLE

PER THE DOD LOW MANUAL



# PEOPLE WE CAN ATTACK BASED ON STATUS

DOD LOWM § 5.8.2



## Combatants:

- Members of the armed forces
- Other militias/volunteer corps
- Levée en masse



## Unprivileged Belligerents:

- Members of hostile, non-State armed groups

Leaders with operational command and control of the armed forces or non-State armed group

Lawfully participating in hostilities

ALWAYS subject to attack based on status... UNLESS hors de combat



# MILITARY EXCEPTIONS

- *Hors de combat*
  - POWs/Detainees
  - Wounded/Sick
  - Parachutists (*cf.* Paratroopers)
  - Shipwrecked
  - Surrender
- Medical Personnel
- Chaplains

# CONDUCT:

## CIVILIANS DIRECTLY PARTICIPATING IN HOSTILITIES (DPH)

**Civilians shall enjoy the protection afforded by this section/part, unless and for such time as they take a **direct part in hostilities**.**

-AP I, art. 51(3)

-AP II, art. 13(3)

# OBJECTS

## Military Objective:

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.

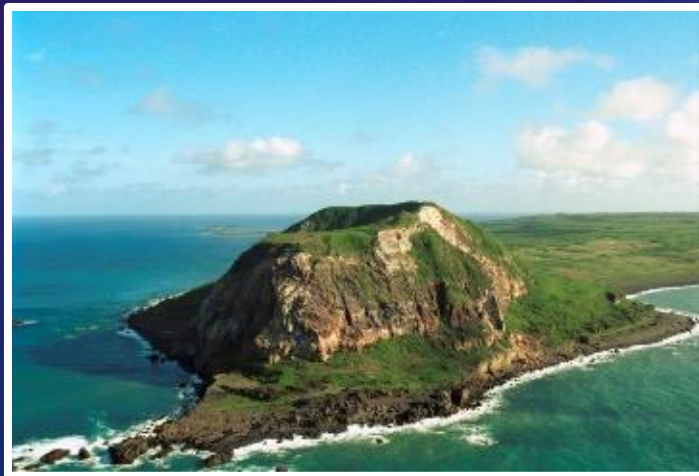
-AP I, art. 52(2)



# MILITARY OBJECTIVE: NATURE

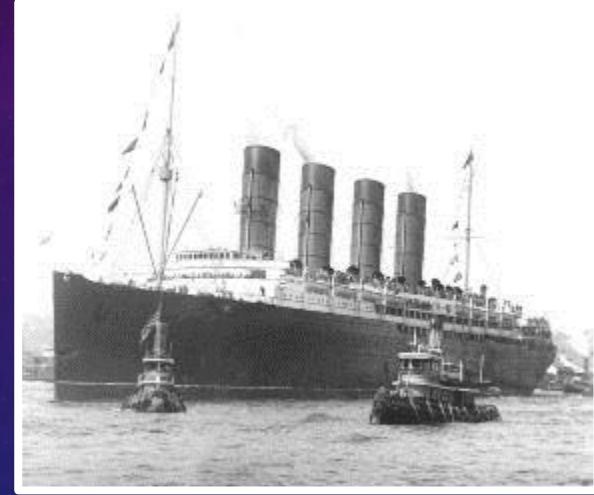


# MILITARY OBJECTIVE: LOCATION





# MILITARY OBJECTIVE: PURPOSE





# MILITARY OBJECTIVE USE



# INDISCRIMINATE ATTACKS PROHIBITED

- Three types of indiscriminate attacks:
  - Not directed at specific military objectives
  - Employ method or means of combat that cannot be directed at specific military objective
  - Employ method or means of combat the effects of which cannot be limited

# PRECAUTIONS IN THE ATTACK

- If civilians present, a warning is required before bombardment, unless it is an assault (surprise attack)
- Warning and opportunity to comply required for compromised medical facility (unless receiving fire)
- Effective advance warning shall be given of attacks which may affect civilian population, unless circumstances do not permit



# PROPORTIONALITY

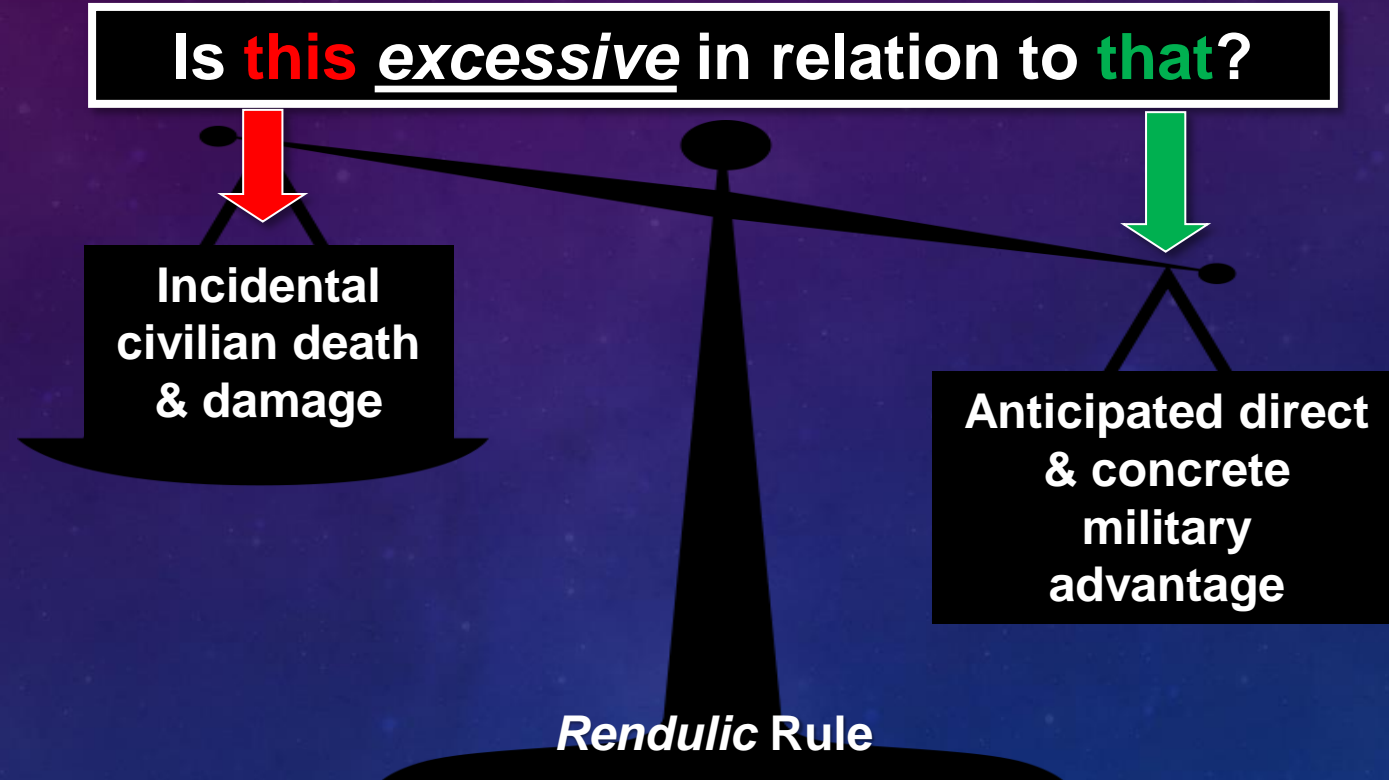


# PROPORTIONALITY

**An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.**

- AP I, Article 51(5)(b)

# PROPORTIONALITY



Excessive: exceeding a normal, usual, reasonable, or proper limit.



# UNNECESSARY SUFFERING

## AKA SUPERFLUOUS INJURY



# UNNECESSARY SUFFERING / HUMANITY

1899 Hague II, art 23(e): [I]t is especially prohibited...[t]o employ arms, projectiles, or material of a nature to cause **superfluous injury**...

1907 Hague IV, art 23(e): [I]t is especially prohibited...[t]o employ arms, projectiles, or material **calculated** to cause **unnecessary suffering**....



# SUPERFLUOUS INJURY

## DOD POSITION



“Weapons that may cause great injury or suffering or inevitable death **are not prohibited**, if the weapon’s effects that cause such injury are **necessary** to enable users to accomplish their military missions.”

LoWM § 6.6.3



# REAL WORLD SCENARIOS



## US Warplanes Destroy 116 ISIS Fuel Trucks in Syria

By [LUIS MARTINEZ](#) · Nov 16, 2015, 8:52 AM ET

[Share with Facebook](#)

[Share with Twitter](#)

Today's strikes targeted for the first time a gathering area for the hundreds of fuel trucks used to transport ISIS oil. Until now, the coalition had refrained from targeting the fuel trucks in an effort to minimize civilian casualties.

"One strike destroyed 116 ISIL fuel trucks" near Abu Kamal, which is located near Dayr al Zawr, according to the coalition's daily airstrike summary released. [The Pentagon](#) believes that area of eastern Syria is where the heart of ISIS' oil operation is located and generates as much as two-thirds of its oil revenue.

In an effort to minimize potential civilian casualties, two F-15 fighter jets dropped leaflets an hour prior to the airstrike , warning drivers to leave the almost-300 vehicles gathered in the target area.



operations were planned before the Paris terror attacks.



تحذير الضربات الجوية قادمة  
سيتم تدمير شاحنات النفط  
أبتعد عن شاحنات النفط حالا  
لا تحازف بحياتك

GET OUT OF YOUR TRUCKS NOW AND RUN AWAY FROM THEM

Warning. Airstrikes are coming, oil trucks will be destroyed. Get away from your oil trucks immediately. Do not risk your life."





# AL FIRDOS BUNKER, IRAQ

PRE STRIKE

FEBRUARY 1991

POST STRIKE

MOSQUE

MOSQUE

SCHOOLS

SCHOOLS

SCHOOLS

SCHOOLS

CAMOUFLAGED BUNKER

DESTROYED BUNKER

SR349335





# THE PERSIAN GULF WAR

## Iraqi Says 288 Bodies Removed From Bombed Structure

Two Days After Civilians Were Killed,  
Character of Building Still Uncertain

By Barton Gellman  
Washington Post Staff Writer

More than 48 hours after U.S. bombs killed scores, perhaps hundreds, of Iraqi civilians in outer Baghdad, the Pentagon provided no further evidence yesterday on the character of the building in which they died.

The central controversy between the U.S. and Iraqi governments—whether the structure was an active command and control bunker or an air raid shelter for civilians—remained unsettled by any information open to independent review.

The available evidence, as presented in official and unofficial U.S. accounts and in television footage broadcast from Baghdad, remained consistent with each side's assertions about the capabilities and purposes of the facility.

Moreover, there was nothing in the Pentagon's account to rule out the possibility that the building may have served both functions at once.

Although no evidence emerged to suggest that U.S. planners knew of the presence of civilians at the time they ordered the bombing, neither were facts disclosed to support Pentagon senior operations officer Lt. Gen. Thomas Kelly's belief that the Iraqi government cynically placed civilians there in danger, against

the rules of war set out in the Geneva conventions.

In particular, officials provided no further details on two critical questions they agreed to elaborate on after Wednesday's official briefing. First, what evidence did they have that the facility not only was capable of transmitting, but did transmit, military communications? Second, even if the facility functioned as a communications and command center, did they know whether and when it had ceased to function as an air raid shelter?

U.S. officials acknowledged within hours of the bombing that their target had been built as a bomb shelter in the early days of the Iran-Iraq war, but Navy Capt. David Harrington, director of current intelligence for the Joint Chiefs of Staff, said it was "converted to a military command and control facility." Other officials said a Scandinavian contractor made the necessary modifications in 1980.

Command and control does not describe a particular kind of facility, but rather in the term of art for any headquarters capable of receiving information from the field and conveying orders. It may refer to anything from a desk with a telephone to an elaborate complex equipped with maps, computers and communications networks.

See TABLETS, A22, Col. 6



Jordanian girl marks wall of the U.S. Embassy in Amman with hand dipped in red paint. Scores of women hurled shoes and insults. Story on Page A22.

More Dead Reported Under Rubble;  
Officials, Mourners Condemn U.S.

By Nora Houtany  
Washington Post Foreign Service

AMMAN, Jordan, Feb. 14—Iraqis buried their dead in anger and grief today as rescue teams worked into the second night to remove bodies of men, women and children from a still-smoldering, bombed-out structure that they were using as a shelter but which the United States says was primarily a military command center.

Iraqi Information Minister Latif Nassir Jassim accused President Bush of being a "war criminal" and told foreign journalists in Baghdad that the bombing attack early Wednesday would "live in the memory of the Iraqi people and strengthen their resolve," while the official Iraqi media warned the U.S. allies of "devastating surprises."

As rescue workers awaited a third day of digging through rubble of the structure, varying figures were given for the death toll.

Faqi Balor, director of the government mortuary in Baghdad, told reporters that 288 bodies, 81 of them children, had been removed by dusk today. The Information Ministry said at least 400 people were killed.

British Broadcasting Corp. correspondent Alan Little said the chief of a 60-man rescue team told him 92 bodies were recovered Wed-

nesday and 200 today. Reporters at the scene counted more than 40 corpses, many decapitated or missing limbs, being extricated during one 90-minute period today, the Associated Press said.

A military communiqué this afternoon said only 64 bodies had been identified, and officials said they feared that many would never be identified, either because they were so badly mutilated or charred or because entire families had been killed.

As night fell, reporters at the scene said stretchers were still being brought out from the building, carrying bodies wrapped in blankets, some of them unrecognizable. The heat inside the reinforced structure was intense as volunteers dug out victims from under mangled bunk beds and twisted structural steel, Little said. He quoted the chief rescue worker as saying the operation might take days to complete.

Funeral processions weaved through the streets of Baghdad, behind trucks laden with coffins, as thousands of mourners wept or directed their passions against the United States. Men fired automatic weapons into the air, a tradition at funerals. Little described the mood as "swinging from grief to fury and back again."

See BAGHDAD, A22, Col. 1

**MILITARY AIRCRAFT DISPERSED DURING OPERATION DESERT STORM  
TO HISTORICAL SITE NEAR TALLIL, IRAQ**

**Ur Ziggurat, 4000 years old**





# LONE SURVIVOR



- Seals don't shoot the goat herder
- Result: 19 Americans killed (three of four SEAL team members and sixteen other service members)

# THE U.S. TARGETING PROCESS

The background is a deep blue gradient with a subtle pattern of white and light blue dots, resembling a starry night sky. Overlaid on this are several faint, white geometric elements: concentric circles of varying radii, some with dashed lines, and curved arrows indicating a clockwise direction. In the upper right corner, there is a more complex circular graphic with concentric rings and numerical markings (100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210) along its outer edge, suggesting a radar or targeting interface.



# TARGETING WORKING GROUP





|   |                                  |                              |     |
|---|----------------------------------|------------------------------|-----|
| TARGET: KHORASAN GROUP C2 AND WEAPONS CACHE |                                  | UNCLASSIFIED – EXERCISE ONLY | ADI |
| NUMBER: AB 1944                             | AREA OF OPERATIONS: IDLIB, SYRIA |                              |     |
| NOMINATED BY: JSOTF                         | GRID: NM 19440606                |                              |     |
| DTG: 6 NOV 2015                             | TASK: DESTROY                    |                              |     |



|               |             |
|---------------|-------------|
| STATUS:       |             |
| J-2 Vet:      | <div></div> |
| J-3 Validate: | <div></div> |
| Fires:        | <div></div> |
| CDE:          | <div></div> |
| Legal:        | <div></div> |
| CDR:          | <div></div> |

**TARGET SUMMARY:** KG leadership have been using structure as high-level leadership meeting site. Site also is used for production and storage of explosive materials. KG leaders meet and Abu Sayf, an Iraqi national, leads several IED, electronics, and explosives experts in training and production of high-powered IEDs.

Target Category: KG C2 / Weapons Cache

Intelligence: HUMINT and IMINT assess with confidence that KG uses structure as high-level C2 facility explosive-making and storage facility.

Pattern of Life: Over last week all people (5 individuals most nights) entering and exiting structure are assessed to be connected to attacks or weapons cache. Civilians infrequently transit road 10 m east of structure during the night.

Collateral Concerns: Road east of structure. Collateral structures 100m north and south of target.

CDE Estimate: CDE 5 LOW, PGM, MK-82, DELAY, CE: 10/0/25

Detain: Foreign country makes detention by US forces impossible.

|                              |                      |
|------------------------------|----------------------|
| UNCLASSIFIED – EXERCISE ONLY | SOURCE: HUMINT/IMINT |
|------------------------------|----------------------|

|   |                                  |   |                      |
|---|----------------------------------|---|----------------------|
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| <div>STATUS:</div> <div>J-2 Vet: <input checked="" type="checkbox"/></div> <div>J-3 Validate: <input checked="" type="checkbox"/></div> <div>Fires: <input checked="" type="checkbox"/></div> <div>CDE: <input checked="" type="checkbox"/></div> <div>Legal: <input type="checkbox"/></div> <div>CDR: <input type="checkbox"/></div> |                                  | <div>TARGET SUMMARY: KG leadership have been using structure as high-level leadership meeting site. Site also is used for production and storage of explosive materials. KG leaders meet and Abu Sayf, an Iraqi national, leads several IED, electronics, and explosives experts in training and production of high-powered IEDs.</div> |                      |
|   |                                  | UNCLASSIFIED – EXERCISE ONLY  | SOURCE: HUMINT/IMINT |







# APPLICATION TIME

“YOU BE THE JUDGE”







# HOMework



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