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The Irish Times

October 7, 2004

Ray Murphy

## **Strong, credible evidence of war crime**

On Tuesday Channel 4 News showed film from the cockpit of a US F-16 fighter that showed it targeting and bombing a large group of unidentified people on the ground in Falluja. It was a rare opportunity to see first hand the conduct of hostilities by US forces. But this disturbing video also provides prima-facie evidence of the commission of a war crime.

The concept of a war crime is broad and encompasses many different acts committed during conflict. They may be defined as grave or serious violations of the rules or principles of international humanitarian law or the laws of war.

Despite the claims by President Bush that combat operations in Iraq are over, the situation has deteriorated, and there has actually been an increase in the level of hostilities. This has important legal implications - to prove a war crime has been committed, it must first be demonstrated that it occurred during armed conflict.

The US military has confirmed that the film is genuine. The whole incident took place in a 32-second time-frame and occurred last April during an offensive similar to that taking place at present to seize the town and defeat the insurgents.

In the footage the F-16 pilot spots a crowd of people running on the street. It is difficult to ascertain the exact number, but it is estimated to have been about 30. The pilot tells his controller on the ground that he sees numerous individuals and he asks if he will "take them out". Immediately he is told to do so.

No attempt is made to verify the nature of the target. Are they armed fighters or innocent civilians running from danger, or possibly both?

What is telling from a combat perspective is that the people are seen running as a crowd. Fighters do not bunch together when they move about, one of the first items taught during basic military training and a lesson learned fast in urban warfare.

The pilot locks the bomb guidance on to the crowd and then there is the impact with the accompanying explosion. The pilot's instant response is "Aw dude".

The two most basic principles of international humanitarian law are "distinction" and "proportionality". Parties must at all times distinguish between civilians' specially protected status under the 1949 Geneva Conventions, and combatants. And while the use of force is lawful it must be proportionate. Tanks, artillery and air power are blunt instruments of force, unsuitable for urban warfare where civilians are present.

It is important not to indulge in trial by media. None of what has been reported actually proves that the US is responsible for a war crime, but it is strong and credible evidence of one. At a minimum, the incident merits investigation. Reports from Iraq point to the fact that it is not an isolated event.

The Geneva Conventions oblige states to provide effective penal sanctions for persons committing, or ordering to be committed, grave violations of the conventions. In fact, in such cases all states are required to assume power to prosecute and punish the perpetrators. Unfortunately, neither Iraq nor the US has ratified the Rome Statute of the International Criminal Court. If neither state takes any action, then the matter remains outside the jurisdiction of this court.

The single greatest weakness in the laws governing the conduct of armed conflict is the reluctance of states involved to prosecute and punish those responsible for war crimes. In recent years the UN has established international tribunals and the International Criminal Court is now up and running.

The release of this film footage may explain, at least in part, why the US is so opposed to allowing its military to be subject to any form of international criminal jurisdiction.

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