

# Fort Leavenworth Ethics Symposium

## The Ethics of Humanitarian Military Operations and Intervention

### Symposium Report

Fort Leavenworth, Kansas  
19-21 April 2016

Edited by  
Kristy G. Russell and Jeffrey T. McKinney

Co-sponsored by

The US Army Command and General Staff College  
and  
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US Army Combined Arms Center  
Fort Leavenworth, Kansas

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Editor  
Michael L. Hogg

## Foreword

The US Army Command and General Staff College and the Command and General Staff College Foundation are pleased to present this report from the 2016 Fort Leavenworth Ethics Symposium, *The Ethics of Humanitarian Military Operations and Intervention*. This symposium contributed to the Army Chief of Staff's vision of developing leaders that exercise sound moral judgment in complex environments and situations.

The 2016 Ethics Symposium explored the ethical implications of committing the military in non-traditional roles. For the past several decades, a growing debate has emerged regarding the roles of the military and the commitment of forces. This debate is largely in response to the rising number of crises around the world. These events often present widespread, complex problems that require significant resources and expertise. Many have come to view the US military as the nation's solution to all conflict because it is an organization rich in talent and capabilities, able to project power worldwide to solve many wide-ranging challenges.

This compendium of articles document professional ideas and opinions on such diverse topics as the United States national interests, failed nation states, the role of committing forces to prevent genocide and mass atrocities, and many others. These articles are the result of the 2016 symposium hosted by the Command and General Staff College and the Command and General Staff College Foundation.



## Contents

Foreword .....	iii
Chapter 1	
Why Fight? An Essay on the Morality of Wars: When to Start Them, How to Fight Them, and When Not to	
by Michael Andregg .....	1
Chapter 2	
What is Life Worth in the United States Army Military Justice System?	
by MAJ Aimee M. Bateman, JD and O. Shawn Cupp .....	17
Chapter 3	
The Ethics of Humanitarian Intervention and the Just War Tradition: Rethinking the Implications of Neighbor-Love in the 21st Century	
by J. Daryl Charles, PhD .....	37
Chapter 4	
Moral Injury Among Perpetrators of Genocide	
by COL (R) David Cotter .....	53
Chapter 5	
Moral Authority to Change Governments?	
by O. Shawn Cupp and William L. Knight, Jr. ....	63
Chapter 6	
Responding to Sexual Violence in Conflict	
by Kathleen G. Dougherty .....	81
Chapter 7	
Taking a Stand: Unilateral Action by the United States in Mass Atrocity Response Operations	
by MAJ Shelley Farmer .....	87
Chapter 8	
A Metric for Military Ethics Instruction	
by Thomas J. Gibbons .....	97
Chapter 9	
Evaluation of Current Risk Assessment Models for Genocide and Mass Atrocity	
by Kathryn Gillum .....	107
Chapter 10	
Ethics Committee Model for Humanitarian Operations Planning	
by Philip W. Ginder .....	115

Chapter 11	
Do Humanitarian Interventions Generate Postwar Obligations?	
by Lt Col Michael Growden.....	121
Chapter 12	
Ethical Decision Making: Using the “Ethical Triangle”	
by Jack D. Kem, PhD .....	131
Chapter 13	
Understanding Genocidal Tendencies within Different Cultures	
by Brett Lancaster .....	145
Chapter 14	
Considerations for Planning Humanitarian Operations in Hybrid Warfare	
by Scott A. Porter .....	153
Chapter 15	
Ethical Implications of Humanitarian Operations in Megacities	
by Rhonda Quillin .....	161



# Chapter 1

## Why Fight?

### An Essay on the Morality of Wars: When to Start Them, How to Fight Them, and When Not to

By Michael Andregg

#### Introduction

The United Nations and the body of international law that preceded and empowers it concluded that starting aggressive war is the ultimate crime because embedded in that act are derivative crimes like murder, torture, abuse of captured combatants or civilians, and in the worst cases slavery and genocide.<sup>1</sup> The history of humankind has seen many worst cases, insofar as thousands of groups of peoples that once existed do not anymore.<sup>2</sup> Just war theory (JWT) is the most recognized and discussed root of such thinking, though it varies in versions and interpretation.<sup>3</sup>

The universally recognized legitimate reason for war is defense of the people or the state against attack by others. Since nation-states have written most of the modern rules, many are slanted toward the state and against rebellion. But war has been with us far longer than nation-states and corruption of governance is among the most important causes of the civil wars that predominate today.<sup>4</sup> We will also pay some attention to the neglected area of when to rebel, or at least when to disobey orders, because blind obedience can empower fascism, police-states, and the universal crimes of genocide, etc.

I remind American military audiences that our country was born in rebellion against unjust rule. Our “founding fathers” were all considered traitors by elites in Britain. Britain gave up being “great” when it decided to sacrifice ordinary people’s freedom in pursuit of wealth, power, and enslavement of non-British people. I remind non-Americans that this problem is universal. The sins of imperialism go back thousands of years before nation-states, and still exist today.

A short essay cannot be comprehensive. The moral dilemmas encountered by professionals in the military and intelligence sectors are profound and complex. “Ethics for spies” is especially difficult and “situation dependent.” If you think hard about this, we think you will agree that even spies are better (and better off) if they have some moral foundation, lest they become agents of evil like employees of police-state institutions as exemplified by the *Stasi* of East Germany, the Nazis before them, the KGB of Stalin, Romania’s old *Securităţii*, the security groups of North Korea, and the *mukhabarat* of some Islamic states who think that their mission in life is repressing dissent instead of protecting their peoples. When this condition prevails, such agents of evil crush their best and brightest citizens, parasitize the economy, and eventually cause the state to collapse as the men and women who were born to protect their peoples (a.k.a. warriors) pivot to help the rebellion instead of the corrupt government that often formerly employed them. Professionals are not mere employees of bureaucracies, so ethics for Soldiers, even for spies, is essential. Wise ones agree; what you think is up to you.

Governments sometimes worry when people like me write like this, but people like me are a dime a dozen. They worry more when people like you start to whisper taboo thoughts, which is why they spend so much effort controlling what military and intelligence professionals learn and telling them what to think. So expect a little subversion here, because I too have sworn to protect and defend the Constitution of the United States and I am not happy with what we see today. The Constitution is being ignored and abused by people obsessed with “terrorists” and power. Of course real terrorists exist, and demand attention, but we face bigger security problems. Survival of civilization itself is at risk to the confluence of weapons of mass destruction (WMD), with authoritarian leadership rising in countries where hundreds of millions of unemployed and very poorly educated teenage males are maturing into desperate circumstances today. That is a formula for many disasters. Civilization today is besieged by barbarians who don’t care about nuances of governance or law. And all the bombs on earth cannot destroy them if the bombs create more enemies than they kill. So the circumstances for military success are transforming as we discuss the threat environment.

A hyper-complex “developing global crisis” (DGC) is building on our horizon. We must spend a few paragraphs on that now because it will dominate our future, whatever you conclude about ethics of war. In this article a few paragraphs on “community policing” will follow a review of JWT because that body of thought and doctrine provides a model for both the military and intelligence professionals who face larger, darker problems with much heavier weapons than your average gang in the neighborhood.

## **The Developing Global Crisis: Main Dimensions and Causes**

The “developing global crisis” begins with population growth and resulting pressures on both the living system and on global economies that lead to derivative phenomena like failed states and endemic violence. Failed states become breeding grounds for terrorism and crime, but the crisis has many other dimensions, like perfection of propaganda combined with modern computer technologies, corruption of governance worldwide, climate change, and that confluence of WMDs with millions of teenaged men maturing in desperate circumstances. Against these forces of decay, good people work hard every day to protect the innocent, feed the hungry, and heal the earth. One ideal role of military and intelligence personnel with global vision is to protect the good from the forces of decay and death so the non-governmental organizations (NGOs) can do their work.

The DGC has been developing for a long time and it been studied by thousands of scientists over decades because it threatens human civilization, perhaps even the survival of our species.<sup>5</sup> It is very complicated and interdisciplinary. This makes it difficult to talk about even among professionals. Some of its causes are often taboo, which is especially problematic for people in bureaucracies, so this summary must be superficial and it will be blunt about a few sensitive subjects.

## **Population Growth, Population Pressure, and the “Population Bomb” (all different)**

Population growth is absolute numbers and rates, such as that the world currently has about 7.3 billion people increasing at about 1.1 percent per year to add about 80 million

per year. This would imply doubling in about 64 years if that rate was sustained. It will not be, because the living system of the earth cannot support so many people long term without vast changes. Death rates will likely rise instead. Nations will fall, for sure. The living system that supports us will rebel. Actually, it already is rebelling in forms like droughts in Syria and Iran that increase pressure. All of those effects have military consequences, but many differ from classical, interstate war.

Population pressure is more complicated because it depends on cultural, economic, technical, and military factors that influence how much pressure there is on stressed populations to move along opportunity gradients, often generating conflicts in destination nations. The “population bomb” is exploding all around you now, disguised by political and religious languages. The descent of Syria into bloody chaos is an excellent example if one has time to follow the causal links.<sup>6</sup> Simply put, four years of drought caused millions of unemployed youth and others from rural areas to move into Syrian cities where opportunities were already rare and monopolized by friends of the Assad regime. Mostly peaceful demonstrations against corruption were repressed ever more violently until civil war erupted. A country that had a population growth rate of 2.4 percent before these events saw that turn negative as over 450,000 people were killed and millions fled to neighboring countries like Jordan, Lebanon, and Turkey.<sup>7</sup> Those countries were also stressed, and emergent evils like the death cult called ISIS, ISIL, Daesh, or the “Islamic State” were born.

### **Global Warming (+desertification, extinctions, resource wars, mass migrations, etc.)**

Global warming is one result of that growth, as well as the consumption of fossil fuels combined with wholesale destruction of forests, and dead zones in oceans detailed in thousands of climate science reports.<sup>8</sup> Propaganda from legacy energy industries caused the term “climate change” to replace the more accurate term “global warming” as part of a campaign to frustrate practical responses to this problem. That worked for 30 years. The ability of organized money to prevent solutions to problems cannot be overestimated. Its ability to corrupt politicians is also legendary.

### **Jobs, Income, and Opportunity Inequality**

The need for jobs is obvious and everywhere, especially since about 80 million more people will join us each year, with all the normal needs and wants. Less obvious, but at least as important for social stability, is the quality of jobs available and the general distribution of wealth within and between nations. That has been getting less equal as technology and other factors known as “globalization” hits economies. Some inequality is natural and even essential. Too much kills.

### **Failed and Failing States Combined with Proliferation of WMDs and New Information Technologies**

When the balance between natural resources and consuming populations is lost, societies fail. When 90 percent of the wealth of a nation is controlled by 10 percent or less of the people, societies often fail. When states fail, people become poorer and more desperate

as governments no longer provide even basic safety. People spend scarce resources on weapons and violence increases. When arms to rebel against unjust and often immoral elites include WMDs, everything under heaven is at risk. The internet is transforming such dynamics profoundly today. In the past, the dispossessed could be ignored or exterminated. That is neither moral nor practical now.

**Corruption of Governance (more important than “terrorism,” which is a symptom, a tactic and a label for opponents, not a primary cause of the developing global crisis)**

Some degree of corruption of governance has always been with us and probably always will be because it arises spontaneously in groups. A certain amount may even be necessary for efficient economies, according to some theorists. Governments often label their enemies “terrorists” or “criminals,” even though many are often mere critics. Real terrorists are genuine pests and require serious attention, including killing sometimes, but do not be fooled about who the more powerful and dangerous are. Corrupt politicians do much more damage to civilizations today.

The DGC matters because most of its causes are not military and many of its symptoms cannot be solved by military methods alone, yet it has many security consequences. Our people and our nations must be protected against vast numbers of dispossessed, angry young men who emerge from the DGC because there will be demagogues eager to recruit them to genuine terrorist groups if no one else offers better options. Some demagogues will be non-state actors, others psychopathic leaders of pathocracies.<sup>9</sup> Both acquire power by co-opting anger and focusing that on neighbors. The confluence of all those angry young men with WMDs, computers, and demagogues are transforming the strategic threat picture as we read, write, analyze, and fight.

**The Essence of Just War Theory**

Libraries of commentary have been written about just war theory (JWT) and its main principles. They are deeply reflected in both national and international laws of war, so there is no need for a detailed review here. Our main thesis is that the bewildering threat picture today, described as a developing global crisis (DGC), presents novel implications when seen through the lens of just war theory. So a very brief review of that is called for now.

First, JWT is classically divided into two parts that can be expressed as questions. When is it just to initiate war (*jus ad bellum*)? How can wars be justly fought (*jus in bello*)? These are very important questions for those who support a military profession because they distinguish principled and disciplined professionals from mercenaries and terrorists, who may kill anyone for mere employers or even deliberately kill innocents to support ideological goals.

Despite those libraries of commentary, evidence is thin that political leaders actually contemplate fine points of philosophy before starting wars or authorizing tactics in wars. Immediate consequences for their nations seem to clearly predominate over theory, and crass calculations about the effect of the war on the politicians’ political future are so common there is a term for it (Simmel effect).<sup>10</sup> Bureaucracies also seldom consult philosophy,

but often discuss rules and financial implications for their institutions. Money should be irrelevant in strict JWT, but only innocents think that money and politics never matter to those who start and wage wars.

There are at least seven basic principles of JWT, but some scholars cite up to 11. There is no firm consensus even on the theory, much less on how to apply it to real-world cases. Even more revealing, some scholars conclude that almost no wars can be just, especially in the modern world with WMDs and non-state actors. Others conclude that every war their country is engaged in must be just, by definition. The nationality and even the personality of scholars, much less politicians, can strongly influence conclusions about JWT.

Those reservations noted, here are the most important principles of JWT to me. Rank is arbitrary because, in theory, every one of the at least seven conditions of JWT must apply for a war to be justly declared and fought.

1. There must be a JUST CAUSE, or reason for starting a war. The most obvious, and only universally recognized just cause, is to defend against external armed threats. Internal armed threats should be dealt with only by police forces except in severe circumstances.
2. War must be declared by a LEGITIMATE authority. Lengthy pieces have been written by attorneys, philosophers, and political scientists about the meanings of political legitimacy.
3. Response to external attack must be PROPORTIONAL to the evil caused by the attack. For example, it is very questionable whether North Korea was “justified” when they used cyber methods to injure the SONY corporation in 2014 when SONY created a movie that insulted their leader Kim Jong Un. If the US had responded to that attack by destroying Kim’s capitol Pyongyang with nuclear weapons, this would violate the “proportionality” principle of JWT. Instead we crippled their internet for several days.
4. Because nuclear weapons are extremely indiscriminate, that response would also be disallowed because nuclear weapons would kill every kid, cat, and rat over many square miles; all to stop the evil behavior of one bad leader and his team of cyber warriors. Thus conduct in war is subject to a test of DISCRIMINATION between the innocent and real threats to a nation’s security. Finer distinctions were very explicitly and carefully considered when creating the Geneva Conventions and the US Military Laws of War.<sup>11</sup>
5. LAST RESORT. Finally, resort to war is allowed in JWT only if all other avenues of conflict resolution have been tried and failed.

That is enough for here on principles of JWT. Others can explain esoterica, like the principles of double effect and right intention. Now for what these mean in the context of the current DGC.

## **When to Start Wars**

Since the only universally recognized legitimate reason to wage war is defense against attack by others, an idealistic answer to this question is “never.” In an ideal world the US

Army would only end wars, with victory over forces of evil that started them. In the very imperfect world we observe, many say the Army should be available to protect or even promote “national interests,” a perniciously plastic concept. Some idealists (like Canadian diplomat Lloyd Axworthy) even say that there is a larger “responsibility to protect” (R2P) innocents elsewhere from genocide or other major disasters caused by incompetent or immoral governments.

That is a very slippery slope. On one hand, it was awful to watch the Rwandan genocide unfold when many western nations could have stopped it. On the other hand, experience of the last generation has shown that even the greatest Army ever built is much better at breaking enemy governments than at rebuilding functional governance from the ashes and rubble of the broken. This result has been seen despite the best efforts of millions of service men and women to create effective institutions in Iraq and Afghanistan and to “win the hearts and minds” of populations to support them. It is also very likely that Paul Kigame was better at rebuilding Rwanda than any occupying army could be. So extreme caution should accompany “responsibility to protect” calls.

America lost in Vietnam because our high command did not recognize that the Vietnamese were actually the ones fighting for freedom (from foreign domination). Our high command thought that America had to be “fighting for freedom” because communism was so bad and repressive that no one would prefer that to domination by us. But they were wrong, and so we lost.

Colonel Phillip McCormack, a British ethicist and chaplain, observed at the Army Command and General Staff College Ethics Symposium of 2015 that there are really only two universal values that should orient military professionals in democracies. These are survival and liberty (or freedom). Never get on the wrong side of liberty, no matter what some politicians say, or you will likely lose, and in worst cases even our national survival may be put at risk.

According to US General Daniel Bolger we lost in Iraq and Afghanistan for similar reasons, although he also stresses the lack of significant planning for post-war rebuilding and the lack of 100 percent commitment at home for the very long and extremely expensive task of rebuilding destroyed states.<sup>12</sup> Those situations are still fluid but Iraq looks like it will never reintegrate and Afghanistan started out about a millennium behind Iraq in social and infrastructure development. We accomplished a lot of good in Afghanistan but the cultural shifts we encouraged were vast (like education of women), so how much will endure remains uncertain.

Finally, there are always some who will argue for the morality of preemptive wars. They ask, “Why wait?” if a declared enemy is building strength to attack. Such logic can be compelling, as when the Israelis launched their 1967 war against a host of gathering enemies. But if everyone launches wars against prospective enemies, what you will get is endless wars of each against all. In a world of WMDs that means a very short half-life for human civilization itself.

Such reservations noted, one still must ask how America (or any state) should deal with old and emerging death cults like the Lord’s Resistance Army of central Africa, Boko Haram of Nigeria, or “ISIS” (ISIL, Islamic State, or *Daesh*; the name hardly matters)? Others



ask whether any response to global problems without a strong military component is realistic. Many NGOs have found they cannot do their good works without security support lest they all be killed or captured for ransom and propaganda. History also shows that inaction when faced with growing, clear and present dangers presents great risks of its own. This is the prime dilemma that JWT addresses.

Integrating these elements of ethical thought and of the history of war during and before my lifetime leads to these practical conclusions.

1. Defense against unambiguous attacks is always allowed, as is counterattack.
2. Preemption should not be allowed except under the most extreme, compelling, and unambiguous circumstances, which almost never occur.
3. If a death cult or terrorist state becomes so powerful that it threatens everything under heaven, then the Security Council of the United Nations should be able to recognize that and authorize an appropriate and international military response. Thus responsibility is shared, costs are shared, and the world is protected from the fevered minds of people who see enemies everywhere. As George Kennan once noted, some people “need enemies.” Nations should not go to war just to meet those people’s psychological needs.
4. Aggressive war is the supreme international crime, just as it says in the UN Charter which the USA largely wrote and certainly ratified. So wars for wealth or mere “national interests” are not moral unless they are actually sanctioned by the UN Security Council, as well as by the US Congress if America is involved.

## **How to Fight Wars**

One thing the United States military does not need from me is advice on how to fight once engaged. It defeated the greatest evil in human history in World War II while simultaneously defeating Japan in the Pacific theater. Later it defeated a superpower armed with over 35,000 nuclear weapons during the long and frustrating Cold War, which included many hot encounters, using radically different methods and strategy. In 1991 America’s military defeated the fourth largest army on earth in just 100 hours of actual combat. The US military knows how to fight.

Today our Air Force can deliver lethal ordnance to any spot on earth and our Army and Navy Special Forces can send more discriminating and flexible teams almost anywhere, as they did when they killed Osama bin Laden who was holed up near an army headquarters in Pakistan 40 miles from their capital under protection of Pakistan’s ISI.<sup>13</sup>

The big problem is achieving meaningful, long-term victories in the context of the developing global crisis. Despite such awesome power, this is much harder than killing a particular enemy target or breaking third world governments when dictators become unbearable. So political context is critical and we are back to the vexing question of when to fight.

General Colin Powell thought hard about these issues and offered this advice, which is a good place to start. It is largely based on thinking by his former boss and Secretary of Defense Casper Weinberger, but all of our work is built on foundations created by many

others. The “Powell Doctrine” suggests that eight questions must *all* be answered before military action should be taken by the United States, so it is much like the seven main principles of just war theory. The questions are:

1. Is a vital national security interest threatened?
2. Do we have a clear, attainable objective?
3. Have the risks and costs been fully and frankly analyzed?
4. Have all other non-violent policy means been fully exhausted? (Note that this is parallel and quite consistent with the JWT principle of last resort).
5. Is there a plausible exit strategy to avoid endless entanglement?
6. Have the consequences of our action been fully considered?
7. Is the action supported by the American people?
8. Do we have genuine, broad international support?

Let us assume that danger threatens, that all these questions have positive answers, and all the other constraints of JWT and international law have been satisfied. How should we then fight?

My answer is ferociously, with overwhelming force if possible, but “all in” regardless, because the nation must be in genuine danger and it is our duty to respond whether victory is likely or not. When the children are in danger it is everyone’s responsibility to do what they can to help. The uniformed military are just the people who have chosen to prepare for this full-time. To fight without ferocity is to invite defeat, perhaps disaster. So clarity of purpose is essential.

Most of the caveats I have cited in this essay reflect the tragic truth that sometimes intelligence about danger is not correct. Often “all consequences” and “exit strategies” have not been thoroughly considered and forces of evil do exist on this earth who like to start wars for profit, to enable police-states, dictatorships, or theocracies, and for other very crass reasons that have nothing to do with the honorable virtues that should motivate military professionals.

Even when all the conditions of JWT, laws, and Powell Doctrines have been obtained and we fight the forces of evil ferociously, we still need to consider the reservations that those principles identify. We need to discriminate between truly evil dangers and the many innocents around them. We need to be proportional in response and we need to consider political context so that a better solution can eventually be found or created long-term. All wars have causes for each specific conflict. When the fighting is done, many of those causes will continue unless corrected. Unless you want perpetual war, considerable thought should be devoted to dealing with fundamental causes, otherwise use of big WMDs somewhere is almost inevitable. Once that Pandora’s Box has been opened again, all of civilization is at risk, even human survival itself. Therefore, it is mandatory that military professionals consider such issues.

## **When to Rebel**

Officers are taught from the day they walk in the door to obey orders from a hierarchy that peaks with a commander in chief, who is also the chief of state in the USA and many



other countries. So the idea of rebelling as a duty is virtually unheard of. However, it is my duty to remind people about the very rare circumstances when that applies. Let us consider some obvious cases first.

Germany's *Wehrmacht* had a great reputation in 1939 for operational efficiency and for honor among the officer's corps. As the psychopathic madman Adolf Hitler changed laws, created the SS, suppressed dissent, invaded neighbors (then non-neighbors like France and Russia), and started to murder millions of his own country's population, the truly honorable among Germany's officers faced a profound moral dilemma. Did their loyalty to the state and its madman leader, sworn by oath, overwhelm a duty to protect the people of Germany?

As students of history know, some very senior officers began formulating plans to depose, or even assassinate, Mr. Hitler as early as 1939, with the most famous attempt occurring on 20 July 1944. All failed for various reasons, and that last attempt resulted in the arrest of over 7,000 Germans and the execution of almost 5,000.<sup>14</sup> The point is that military professionals are not mere employees. Even though such circumstances are extremely rare, they do occur. Men or women who seek the honor of a military profession must contemplate and even study them.

On the other side of the world, the Japanese admiral who is credited with creating the successful plan to attack Pearl Harbor, Isoroku Yamamoto, is alleged to have said shortly after that, "I fear all we have done is to awaken a sleeping giant, and filled him with a terrible resolve."<sup>15</sup> The admiral obeyed his emperor and general staff to create an attack plan that mostly succeeded, short term. But if his reservations had been adopted, his country could have avoided being hit by two nuclear weapons that killed 200,000 mostly innocent people. Of course, many innocent Americans were also killed at Pearl Harbor and in the resulting war against Japan.

One could continue to list many other cases like the dictator Pol Pot of Cambodia who murdered around two million of his seven million people (a contender for world's highest percentage of slaughtered innocents) or Mao Zedong of China who managed a long killing process called the "cultural revolution" that resulted in deaths of 18-30 million, depending on who is counting. Estimates of such mass killings are always very approximate guesses. What matters is that the dictators ALWAYS depend on their uniformed military services to assist and often to play leading roles in a total violation of the rules of the commander of us ALL.<sup>16</sup>

A group of social science scholars, including many psychiatrists and clinical psychologists in Poland survived first the Nazi occupation, then the Soviets. They were very highly motivated to understand how such evils could occur and how otherwise decent men in uniform could be transformed into agents of evil, willing to kill their own citizens, neighbors, even family. Their result is called "Political Ponerology"<sup>17</sup> This is a difficult read, but worth it for scholars.

What should matter to military professionals is whether their duty stops with simply obeying commands by the state, or whether loyalty to their peoples should prevail under very severe circumstances. I say that protecting the people is a mission from God (however you discern that) and that this is a duty that cannot be erased by any law or any oath if you

want to preserve the dignity of a noble profession. Men who will kill anyone for an employer are sadly common and disgraceful, to put it bluntly, especially when they slaughter innocents for profit, as some do. The strategic challenge of our time is between civilization and barbarism.<sup>18</sup> How you decide this fundamental question has very large consequences for both civilization and for your soul.

## Community Policing

The differences between military combat and police who keep the peace and preserve order at home are profound. Do not be misled that I am ignoring those differences. Both soldiers and ideal police have a common moral mission, which is protecting the innocent against violence by others. Every profession has better (wiser) and worse practitioners. The best among police have been working on a concept called “community policing” since at least 1829. It expresses some very basic principles that everyone in the guardian professions should know.

Sir Robert Peel set out to reform the Metropolitan Police of London in 1829. A key part of that was creating a code called Peel’s principles that became a cornerstone of what is now called Scotland Yard.<sup>19</sup> All nine are useful, but I will focus here on just two, lightly paraphrased.

#7. The police at all times should maintain a relationship with the public that recognizes the historic tradition that the police are the public and the public are the police; uniformed police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the intent of community welfare.

#9. The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with them (A parallel for generals would be the absence of war.).<sup>20</sup>

Some modern management systems make a mess of this by insisting on “metrics” for success that ignore these deeper principles. For example, simply rewarding high arrest or incarceration rates can obscure the deeper reality that something else is fundamentally wrong if a society is plagued by chronic crime. A parallel example from the military side would be when General William Westmoreland kept declaring imminent victory in Vietnam because we were killing such huge numbers of Vietnamese and winning every major battle on the way to losing the war. A better metric for him would have been decreasing recruitment for his enemies because they were assured that America would leave and let them determine their own destiny. Here are some operational lessons I take away from community policing.

1. Never conclude that “the public” is your enemy. Violent individuals and groups may become enemies of peace and innocence anywhere but if the general public or simple critics of the regime of the day become your enemy, then you and it are doomed.
2. Never assume that we are actually fighting for “freedom” if substantial parts of our public disagree. That is like Powell’s seventh principle. Remember that politicians can be the masters of calling black “white.” It is a professional military officer’s duty to point out when they are wrong. If that means losing your commission or

your pension, so what? To a real professional money is not an excuse for betraying the mission of protecting innocence.

3. Even if engaged overseas in life and death combat with armed barbarians, never forget that every one of them has a mother, father, and often wives and children too. In their minds, *they* are fighting for God and freedom, not you. You are an agent of evil to them. Occupying armies are never loved in the long term. Do not forget that the hearts and minds of populations, even adversaries, are always relevant strategically.
4. Finally, never forget that the strategic challenge of our time is between civilization and barbarism. Professionals should remind politicians when they forget that, as some will.

While overwhelming force for a quick victory is almost always the ideal strategy, and an early exit to return to family and protecting actual home lands is the noble goal, one must always take the greatest care to protect the innocent in your area of operations. Of course perfection is not possible, but enemy media will always focus on deaths of innocents as they see them, not as you do. Even the crassest calculator must learn how to minimize these to avoid recruiting for enemies and sustain assistance from other countries. That is increasingly imperative for long term victory in our complex, modern world where active alliances are essential.

## **The Autoimmunity Metaphor**

The challenge of community policing can be expressed by a metaphor centered on autoimmune diseases. When a body is healthy it is protected from external diseases and internal cancers by an immune system that circulates by every cell, checking for foreign invaders (bacteria, viruses) and internal mutations called cancers that may grow beyond their proper bounds. These kill healthy cells and eventually the whole body if not suppressed by that healthy immune system. If the immune system fails to recognize the essential differences between its healthy cells and true disease organisms, it begins to attack healthy cells, resulting in diseases like multiple sclerosis (MS), Amyotrophic Lateral Sclerosis (ALS) or Huntington's chorea. In such cases the nervous system is slowly destroyed and the body eventually dies.

If the internal security services of a state begin to confuse dissent or free thinking with treason, those services begin to attack the sources of progress and reform. These are the people who first see what is wrong or weak in a society, and agitate for change. Even within security services free thinking can be repressed, which dumbs them down.

Likewise, if a person is attacked by an external enemy he or she must respond with maximum speed, strength, precision, technique, and fighting spirit. That is not possible if the body or mind are weakened by disease or internal conflicts. Martial artists master relevant skills by discipline and practice, which also increases speed and strength. Professional soldiers in any branch of service should be the philosophical and practical martial artists of their communities.

Thus, if a master is attacked by a foolish or evil other, his or her body springs into action and the fool is disabled, dismantled, or killed with extraordinary speed and tech-

nique. There is no hesitation, and no muscle pulls the wrong way because it is confused or weakened by autoimmune disease. The bones are strong, the eyes are clear, the mind is calm and focused, and one man (or woman) can defeat five ordinary fighters or twenty thugs.<sup>21</sup> The key is remembering mission, and that the mission begins with always protecting the innocent.

## **The Caterpillar Metaphor**

In these extraordinary times, the mission does not end with protecting innocence or even with preserving the state that funds and authorizes an army or intelligence organization. If civilization is to survive the struggle with barbarism, and the developing global crisis we mentioned briefly, transformational change is called for. This places new and extraordinary burdens on the people who were born to be guardians.

For those who do not know about metamorphosis of caterpillars, the essence is that caterpillars grow as fat as they can with energy and critical nutrients. They then “pupate,” creating a hard protective shell while the caterpillar’s innards turn into a kind of cellular soup and dramatically reorganize. After appropriate time, a beautiful and greatly changed butterfly or moth emerges, with new structures like wings, reproductive organs, and many other things depending on the species.

The point for military and intelligence professionals during this time of trials is that preserving the caterpillar from disease remains a real job for its immune system, but preserving the exact details of internal order definitely is not. On the contrary, if they do that, no butterflies can be. Apparent chaos yields an organism much better suited to survive the world it is about to enter.

Human civilization is being transformed today by vast forces, many working for good, some dedicated to evil outcomes of various kinds like the police-state. Some of those glacial forces are neither good nor evil intrinsically, just laws of nature such as: that nations and the world can have high birth rates with high death rates, or low birth rates with low death rates, but not high birth rates and low death rates long-term, because equilibrium with the earth’s carrying capacity for humans will be achieved one way or the other. This is an “iron law” of biology. Guardians with global vision will be able to see the path to long-term safety and security and help protect everyone through this challenging and risky process. Become one.

## **Virtue, Duty, and Essential Differences between a “Professional” and an “Employee”**

Some people think that the word “professional” just means they are being paid to do things. That is a very primitive definition. Others observe that any true profession must have a code of ethics specific to their trade and responsibilities. Some “intelligence professionals” (a.k.a. spies) have been trying to develop such a code for a generation but have failed for reasons, including the very difficult dilemmas that spies encounter in their work, and resistance by bureaucracies that frankly fear ethics.<sup>22</sup> Why America’s military has failed to develop a true professional ethic deeper than “obey orders and the law” or “do your job well” is a real mystery to me.<sup>23</sup>

So I will simply declare here what I believe distinguishes a military or intelligence professional from terrorists, thugs, mercenaries, political police, and other dark employees of police-states.

1. In my world, the professional man or woman of arms is distinguished by an intense commitment to protection of the innocent and the weak against the ruthless and the strong (imagine babies being threatened by terrorists). Whether these guardians are paid to act or not is quite irrelevant because protecting the innocent is a duty of all citizens, but some people make this their full time avocation and those are the best professionals.
2. Protecting a nation against external attack is a large case of that first principle. Millions of good men and women have agreed to make full time careers of this duty. Kudos to you, but do not confuse the two. Protecting innocent people and ideals of freedom and liberty come first, not second. People and principles are more important than states, which can and often do go bad. If governments become too corrupt or leaders become too unstable, they can become dangerous to both the people and the state that sustains them. This puts a big strain on professional guardians who are not mere employees of some bureaucracy.
3. Military professionals must be uncommonly courageous because they have committed to run towards danger, not away from it. This too has nothing to do with money, and everything to do with commitment to protecting the innocent and our communities.

Finally, I stress that all this resonates with something buried deeply in our souls that some call conscience. And conscience resonates with the commander of us all. This is why mercenary forces almost always lose to defenders of innocence and liberty in the long run.

These are my opinions on the topic of morality of war in the modern age of WMDs and developing global crises.<sup>24</sup> Best wishes with your own struggle with the difficult dilemmas that every professional officer must face in their time of service to higher goals.

## Notes

1. William Slomanson, *Fundamental Perspectives on International Law* (Boston: Wadsworth, 2011), 17; On specifics of United Nations views and policies see “Upholding International Law” at <http://www.un.org/en/sections/what-we-do/uphold-international-law/> (Accessed 2 May 2015).
2. Quincy Wright, *A Study of War* (Chicago: University of Chicago Press, 1942, 1965), 1234-1239; R. Ernest Dupuy and Trevor N. Dupuy, *The Encyclopedia of Military History from 3500 B.C. to the Present*, second revised edition (New York: Harper and Row, 1986), 1520-1524; Azar Gat, *War in Human Civilization* (London: Oxford University Press, 2006), 816-822; Robert Lifton and Eric Markusen, *The Genocidal Mentality* (New York: Basic Books, 1991), 340-346.
3. A classic source on Just War Theory is Michael Walzer’s, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, original 1976, latest edition (New York: Basic Books, 2006), 411-416.
4. Eric J. Hobsbawm, *Nations and Nationalism Since 1780: Programme, Myth, Reality* (London: Cambridge University Press, 1992), 35; Michael Andregg, *On the Causes of War* (St. Paul, MN: Ground Zero Minnesota, 1997, 1999, 2001), 84-94.
5. Michael Andregg, “Ethics of Nuclear Weapons and National Security Intelligence” (presented at their National Intelligence Academy, Bucharest, Romania, by Mihai Viteazul on 21 October 2013), published in *Romanian Intelligence Studies Review*, No.11, June 2014, 5-24.
6. Krzysztof Walczak, “The Developing Global Crisis,” Section 3 on Conflicts (St. Paul, MN: Bome Productions, 2015) a 32 minute educational video production accessible at: <https://www.youtube.com/watch?v=RLyMB3KGWck> (Accessed 22 October 2016).
7. At least eight million Syrians are “internally displaced” today and over five million Syrian refugees fled to Lebanon, Jordan, and Turkey, some of whom returned to help energize ISIS. About one million fled north into Europe during the summer and fall of 2015, sending similar pressures of destabilization into many other countries. Do not forget that refugees carry skills, dreams and positive things with them also; remember that such people built America. But too many, too fast for good assimilation, can also destroy a nation. Remember Genghis Khan and the Mongols too.
8. The Intergovernmental Panel on Climate Change Fifth Assessment Report, 2014, is an introduction to hundreds of other reports, because it is an 1140-page magnum opus compiled by the UN agencies WHO and UNEP. It can be purchased, or is accessible online at: <http://www.ipcc.ch/report/ar5/syr/> (Accessed 22 October 2016).
9. Andrew M. Lobaczewski, *Political Ponerology: A Science on the Nature of Evil Adjusted for Political Purposes* (Edmonton, Canada: Red Pill Press, 2008), 125, based on a Polish original titled Ponerologia Polityczna published in 1984, translated into English in 1985 by Alexandra Cheiuk-Celt and corrected by the original author in 1998. “Pathocracy” is a term they use to describe (on page 125) nation-states coopted by and often ultimately destroyed by psychopathic leaders.
10. The “Simmel effect” is named after Austrian Georg Simmel who wrote about “scapegoating” and other demagogic tactics. Georg Simmel, “The Sociology of Conflict,” *American Journal of Sociology*, IX (1904): 490-525, 672-689, 798-811, 1903-1904.
11. A good reference for US Military Laws of War is the 2010 *Law of War Deskbook* (243 pages) available at: [http://www.loc.gov/rr/frd/Military\\_Law/pdf/LOW-Deskbook-2010.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/LOW-Deskbook-2010.pdf) (Accessed 19 April 2016).
12. Dan Bolger, *Why We Lost: A General’s Inside Account of the Iraq and Afghanistan Wars* (New York: Eamon Dolan/Houghton Mifflin Harcourt, 2014), 10.
13. It should be noted that many parts of the intelligence world remain sceptics on many aspects of this story since zero actual evidence was publicly produced regarding the identity of



the people killed in Abbottabad that night, even though decisive evidence about Bin Laden would have been extremely easy to obtain and reveal. See Seymour Hersh, “The Killing of Osama bin Laden” in the *London Review of Books*, Vol. 37, No. 10, 21 May 2015, at <http://www.lrb.co.uk/v37/n10/seymour-m-hersh/the-killing-of-osama-bin-laden> (Accessed 19 April 2016). Hersh believes it was indeed Bin Laden, but that many other elements of the official story are quite false. This fact, combined with the very persuasive but largely fraudulent data presented to the world about Iraqi WMDs prior to the second Gulf War in 2003, means that no one with a brain believes what the American government says anymore just because we say it. Sceptics demand evidence for legitimate reasons. About one trillion dollars and one million lives were spent on this “mistake” and Iraq may never recover as an integrated nation. This lack of trust presents a huge long-term cost to American security because it has damaged our relationships with many allied nations, not least among their intelligence communities. Liaison relations matter a lot for military and intelligence affairs, especially in the current context.

The whole story of that episode of cooking the books on pre-war intelligence is far too complicated for a short essay like this. So it will be summarized by the head of Britain’s MI6 report to his Prime Minister on 23 July 2002. Sir Richard Dearlove reported then that US intelligence was “being fixed around the policy” which means it was being distorted and politicized to justify a war that US leaders had already decided to start regardless of evidence or Iraqi actions. Details can be found at the Downing Street Memo, <http://downingstreetmemo.com/> (Accessed 22 October 2016). It is sadly ironic that the messenger chosen to deliver this fraudulent information to the United Nations on 5 February 2003 was the same General Colin Powell whose wisdom I cite elsewhere in this paper and whose statue graces the grounds of the US Army’s Command and General Staff College. Powell calls that speech his darkest hour now. When a US Secretary of State and former Chairman of the Joint Chiefs of Staff with an exceptional reputation can be fooled by dark forces in the intelligence community and the White House on such a fundamental matter with such grave consequences for our troops whom he loves and for millions of people overseas, well, it should increase prudent caution among all the Generals on this earth.

14. Harold Kurtz, “July Plot” in *The Course of German History*, by A.J.P. Taylor (London: Cambridge University Press, 1974), 226.

15. Jeffrey Record, *Japan’s Decision for War in 1941: Some Enduring Lessons* (Carlisle Barracks, PA: Strategic Studies Institute, 2009). Accessed 19 April 2016, <http://www.strategicstudies-institute.army.mil/pubs/summary.cfm?q=905>.

16. Whether you have any religion or not is entirely up to you of course. But you deserve to know that I do because that matters for moral conclusions. In particular, the God I serve 1) does not want us to destroy the earth as some people claim, and 2) is not happy with how casually adults on earth kill each other’s children today over political arguments as we observe in so many ways during these difficult times.

17. Lobaczewski, *Political Ponerology*, 222-239.

18. Michael Andregg, “Intelligence Ethics: A Key to Much Bigger Issues” (presented at the US Army Command and General Staff College Ethics Symposium, Fort Leavenworth, KS, 22 April 2015).

19. Sir Robert Peel’s *Principles of Law Enforcement*, 1829, are itemized at: [https://www.durham.police.uk/About-Us/Documents/Peels\\_Principles\\_Of\\_Law\\_Enforcement.pdf](https://www.durham.police.uk/About-Us/Documents/Peels_Principles_Of_Law_Enforcement.pdf) (Accessed 19 April 2016). There are many other summaries and lesson plans available online.

20. In his incomparable *Art of War*, written sometime in the fifth century B.C.E., Sun Tzu wrote: Generally, in war the best policy is to take a state intact; to ruin it is inferior to this. To capture the enemy’s army is better than to destroy it; to take intact a battalion, a company or a five-man squad is better than to destroy them. For to win

one hundred victories in one hundred battles is not the acme of skill. To subdue the enemy without fighting is the acme of skill. 3:1-3.

“If not in the interests of the state, do not act. If you cannot succeed, do not use troops. If you are not in danger, do not fight. A sovereign cannot raise an army because he is enraged, nor can a general fight because he is resentful. For while an angered man may again be happy, and a resentful man again be pleased, a state that has perished cannot be restored, nor can the dead be brought back to life. Therefore, the enlightened ruler is prudent and the good general is warned against rash action. Thus the state is kept secure and the army preserved. 12:17-19.

Sun Tzu’s words have been republished for over 2500 years, long after the emperors he worked for were forgotten, because unlike most of his peers, Sun Tzu was wise as well as skilled. You can see above that he would encourage keeping the army strong and the state secure by preserving peace, more than by prevailing in constant wars.

21. Or so some teachers of martial arts say. More practically, masters all know that any 8-year-old with a gun can kill the most accomplished martial artist. Still training helps, and some schools are very concerned with the ethics of violence. An essay presented at an International Society for Comparative Study of Civilizations conference of 6 to 9 June 2012, goes a bit deeper on this topic, titled, “Clashes of Civilizations Gave Rise to Martial Arts, but Enlightened Martial Philosophies Reveal the Better Way,” unpublished, by M. Andregg.

22. Jan Goldman, “Ethics Phobia and the US Intelligence Community: Just Say No,” *Intelligence Ethics: The Definitive Work of 2007* (St. Paul, MN: Center for the Study of Intelligence and Wisdom, 2007), 16-17.

23. The lack of a formal code of ethics for the US military was also a mystery to Thomas Gibbons of the US Naval War College, another presenter at the CGSC Ethics Symposium of 2015, who pointed this out to this author. Of course each service has “core values” (invariably a short list of universal virtues) and there is the magnum opus of laws called the *Uniform Code of Military Justice*. But codes of ethics are typically in between these short and long types of prose, and are often considered a requirement that distinguishes professions from trades, occupations and hobbies. Hence my considerable emphasis on the word profession in much of this essay on its fundamentals for soldiers. Between when this paper was written and when it was published, the US Military has apparently published a formal code of ethics but it is hard to access.

24. David Ignatius, “The US can’t fix it: James Clapper on America’s role in the Middle East,” *Washington Post*, 10 May 2016, A-18. This interview with America’s current Director of National Intelligence is noteworthy and welcome because it confirms and amplifies most of the major factors described as “The Developing Global Crisis” in this paper. Fully understood, this has vast implications for the US military because it shows why we could send endless troops and treasure to civil wars in that region, but still fail to create stability or build nations because the troops and treasure are mainly addressing symptoms instead of causes of the crises.



## Chapter 2

### What is Life Worth in the United States Army Military Justice System?

MAJ Aimee M. Bateman, JD and O. Shawn Cupp

#### Introduction

*Mr. Moore, you have pleaded guilty today to conspiracy to commit premeditated murder and three counts of premeditated murder. You and your coconspirators, Mr. Hope and your older brother, sat around for weeks before these murders and thought up various “scenarios.” These scenarios involved killing the family members of Latin King gang members?*

*Yes, Judge.*

*And, on three separate occasions you acted out these scenarios? You murdered three people in broad daylight and took pictures of their dead bodies, correct?*

*Yes, Judge.*

*Did any of them ever threaten you? Did you know who they were, by name, when you targeted them to be killed? Did you have any legal justification for killing any of the men you killed?*

*No, sir. None of that. They were all just innocent guys walking through their neighborhood. Maybe they weren't even Kings' family members. I don't know. I didn't really care.*

*So why did you kill them?*

*I don't know, sir. I mean, yeah, I know why. It doesn't make sense now but I know why. We were bored. We were angry. We were unemployed. Sometimes I was high, but not on the days I killed people. I didn't want to be shooting guns while stoned. I guess we figured why not? No one gave a shit about our lives, why should we give a shit about the lives of anyone else. I especially didn't care about their lives. The Kings are what brought this neighborhood down. I know they were the ones who killed my father 7 years ago. He didn't die in no “random car crash.” So, yeah, we sat around dreaming up ways to kill them, in broad daylight and watch them suffer, bleed, and die. I didn't care about any of those ‘spics.*

*But the three people you killed never threatened you, never posed a threat to you or your family, and were not even gang members, correct?*

*Yes, Judge.*

*OK. I want you to look at the picture marked exhibit A. Do you recognize that picture?*

*Yes, sir. I took that picture right after Hope and I killed him.*

*Let's talk about him. He was a 15-year-old boy.*

*Yes, sir. I mean, I didn't for sure know at the time, but we were pretty sure he was coming home from school. It was about three or four p.m., and we were waiting for him behind the dugout at the baseball field. It was a neighborhood cut-through from the school to the projects where the Kings lived.*

*How did you kill him?*

*Well, just like we had planned in our scenario. We said, "Hey, stop! Did you drop this?" so that he would come back a little closer to the wall so we could kill him easier. And he did. He turned around, walked toward us, and we both shot him, six times each. We both had six rounds in our guns. He immediately dropped to the ground and blood started pouring out of his head. And then I took that picture.*

[Mr. Moore goes on to describe to two other "scenario" murders he carried out, and also his deep remorse for the senseless killings. The prosecutor then makes an argument to the court for a life sentence for 22-year-old Mr. Moore based on the cold, calculating, racially-motivated, and deranged manner in which the crimes were committed. Finally, Mr. Moore's defense counsel makes his argument for an appropriate sentence.]

*Your Honor, you should sentence Mr. Moore to no more than 24 years in prison. He will be eligible for parole in seven years, when he is 29 years old. He has grown up in the roughest of eastside Chicago neighborhoods with no father, no employment opportunities, and desensitized to violence. His brother, whom he has agreed to testify against, encouraged and congratulated him when he committed these crimes. He deserves the mercy and leniency of this court.*

Does Mr. Moore stand a good chance of being successful in his plea for mercy? Not likely. Violent, callous, immoral individuals such as the fictional Mr. Moore are considered to be among our society's most dangerous members. In response to an actual targeting killing of a 9-year-old child by gang members in Chicago, Police Superintendent Gary McCarthy said:

*This is a different level. These are non-combatants now being assassinated. This is an innocent child, this is a 9-year-old child, targeted, lured to this spot and murdered. This is different.*

But what if the child was a 15-year-old Afghan boy? What if "Mr. Moore" was actually 22-year-old Specialist (SPC) Jeremy Morlock and "Mr. Hope" was Private First Class (PFC) Andrew Holmes, and the "older brother" was Staff Sergeant (SSG) Calvin Gibbs? Is it also different when non-combatants are murdered by Soldiers in a combat zone?

This paper seeks to examine the treatment of a very small subset of crimes, all committed in similar environments and in similar circumstances. The crime: murder; the convicted: US Army Soldiers; the location and circumstances: the combat theaters of Iraq and Afghanistan. The treatment of these crimes is examined through an objective lens, that of the military justice system and the actions of the Army Clemency and Parole Board.

## **Military Law: Uniform Code of Military Justice (UCMJ)**

The United States military justice system is unique in form and purpose. While most criminal justice systems exist to promote justice and ensure public safety, the stated and functional purpose of military criminal law is more expansive.<sup>2</sup> As stated in the preamble to the Manual for Courts-Martial:

The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.<sup>3</sup>

Since its inception in 1775, the military justice system has evolved from a “disciplinary tool of the commander into an elaborative judicial process.”<sup>4</sup> The current body of military law, the Uniform Code of Military Justice (UCMJ), has stood largely unchanged since its enactment in 1950.<sup>5</sup> When amended over the years, most major amendments to the UCMJ have sought to strengthen the legitimacy and robustness of the process. Such changes include the addition of the trial judiciary in 1968 and the ability for direct appeal to the Supreme Court in 1983.<sup>6</sup> Additionally, although the UCMJ is “uniform,” meaning it applies to all branches of the military, service secretaries also strengthened the legitimacy of the system through service-specific regulations. One significant example is the establishment of an independent trial defense organization by the Army in 1980.<sup>7</sup>

### **Army Clemency and Parole Board (ACPB)**

Another matter which Congress has left up to the “secretary concerned” is “a system of parole for offenders who are confined in military correctional facilities,” as well as provisions for clemency.<sup>8</sup> Pursuant to this authority the Secretary of the Army established the Army Clemency and Parole Board (ACPB).<sup>9</sup> As it is stated in the first paragraph of Army Regulation (AR) 13-150, titled “Army Clemency and Parole Board,” “There is no constitutional, statutory, or regulatory right or entitlement for an individual to be granted clemency or to be released on parole.”<sup>10</sup> However, every Soldier confined in a military facility will be considered for clemency or parole in accordance with the litany of prerequisite conditions that must first be met.<sup>11</sup>

If a Soldier meets this eligibility criteria and is subsequently considered for clemency or parole there are only two binding criteria for the ACPB: 1) “the ACPB will consider each case on its own merits,” and 2) “The Board shall refrain from developing conclusions as to guilt or innocence and shall accept the finding of Courts-Martial as approved or affirmed as final.”<sup>12</sup> As for non-binding criteria, AR 15-130 offers over two dozen factors that the board may consider but “the relevance and the weight to be accorded any factor is within the broad discretion of the ACPB.”<sup>13</sup> One overall consideration the board may consider is the “nature and circumstances of the offense to determine whether clemency or parole would depreciate the seriousness of the offense or promote disrespect for the law.”<sup>14</sup>

As such, historical clemency and parole approval rates are generally low. In fiscal year (FY) 2013, only 16 percent of cases considered for parole were approved (26 of 163) and two percent of cases considered for clemency were approved (13 of 671).<sup>15</sup> In FY 2014, the

approval rates were even lower, 12 percent for parole cases (20 of 171) and 1.2 percent for clemency cases (8 of 645).<sup>16</sup>

## **“Murder” Under the UCMJ**

Among the cases which come before the ACPB are cases of Soldiers convicted of murder. A Soldier who is convicted of murder is likely to receive a sentence which includes years or decades of confinement time. Therefore, these Soldiers are likely to petition the ACPB for clemency or parole multiple times during the pendency of their term of confinement.<sup>17</sup>

## **Crimes, In General, Under the UCMJ**

The UCMJ is a unique criminal code. In conformity with the unique purpose of military law stated above, there are acts criminalized by military law that have no counterpart in civilian penal codes. Such examples are “absence without leave,” “missing movement,” and “insubordinate conduct.”<sup>18</sup> Historically, military crimes *only* included crimes that were prejudicial to good order and discipline.<sup>19</sup> It was not until 1863 that crimes such as murder, assault, and rape could be prosecuted by the military without a connection to good order and discipline.<sup>20</sup>

Today nearly half of the crimes in the UCMJ are very similar, if not directly analogous, to crimes found in civilian penal codes, to include “larceny,” “rape,” “assaults,” and “murder.”<sup>21</sup>

## **Article 118, UCMJ: Murder**

Among these non-military-specific crimes, Article 118 (Murder) is unique. Murder is the only non-military crime under the UCMJ that, when convicted of either premeditated murder or felony murder, a service member must be sentenced to “imprisonment for life.”<sup>22</sup> If the murder was unpremeditated or committed through an “inherently dangerous act,” any term of confinement may be adjudged.<sup>23</sup>

However, there is a mechanism that allows for modification of what would appear to be a “mandatory” sentence. Under Article 36, UCMJ, congress has granted the president the authority to prescribe rules for “pretrial, trial, and post-trial procedure, which may not be contrary to or inconsistent with” the UCMJ.<sup>24</sup> One such rule is Rule for Courts-Martial (RCM) 705, “pretrial agreements.” A pretrial agreement may include a promise by the convening authority to “[t]ake specific action on the sentence adjudged by a court-martial.”<sup>25</sup>

In order to illustrate how a mandatory sentence of “imprisonment for life” may actually become a sentence of confinement for a few years, we will use the case of SPC Morlock and PFC Holmes referenced in the introduction.

## **United States v. SPC Jeremy Morlock**

Specialist Morlock was convicted, among other crimes, of three counts of premeditated murder.<sup>26</sup> In accordance with Article 118(1), UCMJ, SPC Morlock’s conviction required a sentence of “imprisonment for life.”<sup>27</sup> However, SPC Morlock entered into a pretrial agreement. The terms of the agreement included a promise from SPC Morlock that he would plead

guilty and testify against SSG Gibbs. In return, the convening authority promised to approve only twenty-four years of confinement.<sup>28</sup> Because SPC Morlock is serving his term of confinement in a military prison he is eligible to be considered for clemency and parole by the ACPB. SPC Morlock's case is among the 29 cases examined in the research set for this paper.

## **Research Problem**

The research problem centers on adjudication (sentencing) of US Army Soldiers being different based upon victims being foreigners versus Americans while deployed in OIF and OEF convicted of Article 118 (Murder) under the UCMJ from 2003 to 2014. Even while deployed, Soldiers are charged, tried, and convicted of serious criminal offenses. In this study, Article 118 (Murder) is the charge and only those convicted of this are included in this article.

## **Research Purpose**

The purpose of this research study is to determine whether a relationship exists between sentencing results of deployed US Army Soldiers convicted of Article 118 (Murder) and the status of their victims (either US citizens or foreigners). This research study attempts to discover and inform the US Military Justice system of differing sentencing outcomes based primarily upon the nationality of the victim involved.<sup>29</sup> A tentative definition of the phenomenon identified is the expression of feminist geopolitics.

## **Research Question(s)**

Does the nationality of a victim have any relationship to the confinement time served of deployed US Army Soldiers from 2003-2014 convicted of Article 118 (Murder) to OIF and OEF? Do deployed US Army Soldiers from 2003 to 2014 convicted of Article 118 (Murder) in OIF and OEF receive greater sentencing penalties if their victim was a US citizen? Do deployed US Army Soldiers from 2003 to 2014 convicted of Article 118 (Murder) to OIF and OEF receive lesser sentencing penalties if their victim was a foreigner?

## **Definitions of Key Terms**

The following are key terms used throughout this research study and provided for clarity and consistency of descriptions.

**Article 118 (Murder).** "Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he (1) has a premeditated design to kill; (2) intends to kill or inflict great bodily harm; (3) is engaged in an act that is inherently dangerous to another and evinces a wanton disregard of human life; or (4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery or aggravated arson; is guilty of murder and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct."<sup>30</sup>

**Operation IRAQI FREEDOM (OIF).** Operation IRAQI FREEDOM (OIF) was launched on 20 March 2003. The immediate goal, as stated by the Bush Administration, was to remove the regime, including destroying its ability to use weapons of mass de-

struction or to make them available to terrorists. The broad, long-term objective included helping Iraqis build “a new Iraq that is prosperous and free.”<sup>31</sup> In October 2002, congress authorized the president to use force against Iraq, to “defend the national security of the United States against the continuing threat posed by Iraq,” and to “enforce all relevant United Nations Security Council resolutions regarding Iraq.”<sup>32</sup> After violence began to decline in 2007, the United States gradually reduced its military presence in Iraq, formally completing its withdrawal in December 2011.<sup>33</sup>

**Operation ENDURING FREEDOM (OEF).** “The attacks of 11 September 2001, thrust the United States into a no-notice war against Osama bin Laden, his al Qaeda terrorist network, and transnational terrorism the board. The first round of this war was Operation ENDURING FREEDOM, an air-dominated offensive conducted by US Central Command (CENTCOM) against al Qaeda forces in Afghanistan and against the Taliban theocracy that provided them safe haven.”<sup>34</sup>

**Deployed US Army Soldier.** Any United States Soldier (Active, Reserve, or National Guard) serving overseas during a named operation and ordered there by a secretary of defense order. “It is important to note that each of the services also supports other missions not included in the Defense Manpower Data Center (DMDC) data as ‘deployed.’ The definition of ‘deployed’ in the DMDC database is limited to troops in the OIF and OEF areas of operation and those who have received hostile fire pay in connection with other aspects of OEF. Troops from each of the services serving in Korea, Kosovo, MFO Egypt, at sea, and in other theaters are not counted.”<sup>35</sup>

**The Law of War.** “Rests on four interrelated principles; military necessity, humanity, distinction, and proportionality. The latter two principles are central to the norm of noncombatant immunity.”<sup>36</sup> It is the result of several international agreements; the Hague Conventions of 1907, Geneva Conventions of 1949, and additional protocols to the Geneva Convention of 1977.<sup>37</sup>

**Just War Theory.** “It has developed probably the most comprehensive consideration of the ethics of war and peace. So, even though it was developed in the West it deserves universal attention. Is a coherent set of concepts and values which enables moral judgment in wartime. Traditionally it is split into two categories *jus ad bellum* (when it is just to start war) and *jus in bello* (how it is just to fight war after it begins).”<sup>38</sup> Furthermore, war has a beginning, middle, and end. “A complete just war theory—or comprehensive international law—we simply must discuss justice during the termination phase of war.”<sup>39</sup>

**Manual for Courts-Martial.** “Covers the operations of the entire system, from the initial steps to be taken before trial to the completion of the case. It deals fully with the various crimes and offenses, the evidence which can be used to prove them, and the sentences which can be imposed. It in effect declares much of the military law in advance, not for any specific case but for all cases which may arise in the future.”<sup>40</sup>

**Feminist Geopolitics.** The expression of political will or force upon indigenous peoples of a different nation or region in order to politicize the security, peace, and nature of the other people through violence and conflict. In other words, “feminist geopolitics attempts to develop a politics of security at multiple scales including that of the civilian body.”<sup>41</sup> “It



aims to bridge scholarship in feminist and political geography by creating a theoretical and political space in which geopolitics becomes a more gendered and racialized project, one that is epistemologically situated and embodied in its conception of security.”<sup>42</sup>

## Literature Review

This study only considers US Army Soldiers convicted of Article 118 (Murder) under the Uniform Code of Military Justice (UCMJ) who were deployed and committed their offense from 2003 to 2014.<sup>43</sup> The philosophical framework for this study is *jus in bello*, or just war principle engaging war. The sociological construct that connects the two is feminist geopolitics. In other words, are the deaths of Iraq and Afghan civilians valued differently than United States Soldiers? The intersection of these three fields of study form the literature that this research is based upon.

## Article 118 Murder and Sentencing

Throughout the history of warfare conducted by the United States of America, more and more scrutiny is placed upon military members. That scrutiny is good and required because it demands that we live the professional military ethic when conducting any operation in the name of the United States. “The armed forces must reflect the demands of morality if they are to be consistently useful to society—indeed, if they are not to be a danger to it.”<sup>44</sup> That morality should be evident in the military judicial system of the country conducting combat operations. Therefore, those who are tried and convicted of serious crimes such as Article 118 should be sentenced in a manner that reflects both the morality of the nation and the severity of the offense.

“Unlike the federal guidelines system and many state sentencing regimes, the UCMJ typically vests unfettered discretion with the sentencing authority.”<sup>45</sup> Sentencing under UCMJ can range from “no punishment” to the maximum punishment authorized for each offense. However, there are a few exceptions.<sup>46</sup> Conviction of Article 106, Spies, imposes a mandatory death penalty. Under Article 118 (Murder), mandatory minimum of life sentence with the possibility of parole for subsection (1) premeditated murder or subsection (4) felony murder.”<sup>47</sup>

## Jus in Bello

In the just war theory, *jus in bello* covers the actions during the engagement of hostilities. “Medieval writers made the difference a matter of prepositions, distinguishing *jus ad bellum*, the just of war, from *jus in bello*, justice in war.”<sup>48</sup> *Jus in bello* is about the observance of customary and rules of engagement within the conflict. For discussions regarding this research study, *jus ad bellum* or how we came to be in a war is not considered.

*Jus in bello* “can be broken down into two concepts, distinction and proportionality.”<sup>49</sup> Within the construct of *jus in bello*, distinguishing combatants from non-combatants is what directly relates to this study. “Distinction is the injunction to avoid injuring noncombatants.”<sup>50</sup> During combat operations some civilians could be injured in what is called collateral damage. When there are “civilians not participating in combat [they] are, morally, immune from attack.”<sup>51</sup>

“There are two kinds of killing in war, intended and unintended. Soldiers intend to, and may under the laws of war, kill those who pose a threat to them. Soldiers may not in-

tentionally kill innocents.”<sup>52</sup> Within this study all cases are those who not only committed murder, but were tried and convicted of Article 118, as described earlier. Why do civilians have such an impact on military operations?

According to US Army doctrine, protecting civilians above just the legal requirements is very important. “There are three other significant reasons to support the protection of civilians. First, counterinsurgency and stabilization experiences highlight that the population is often the center of gravity for military operations and the population’s support related to providing protection from perpetrators or, in some cases, from rival identity groups. Second, harming civilians undermines military efforts and becomes a divisive issue between multinational partners.”<sup>53</sup> The military force may not be responsible for civilian casualties that occur but there are always prevalent expectations that the force will prevent harm to civilians as an operating principle under *jus in bello*. “Finally, during most operations, Army units are concerned with civilian welfare while achieving the desired outcomes to a conflict or crisis.”<sup>54</sup> Therefore illegally killing civilians removes the ability of a unit to meet desired outcomes from a conflict.

## **Feminist Geopolitics**

“Feminist geography has undergone several transformations since its inception in the late 1970s and early 1980s.”<sup>55</sup> Over the years feminist geography shifted due to the limited amount of analysis within international relations. Feminist geography is political “in that it advocates change where social, economic, or political relations, including those of gender, are inequitable, violent, or exploitive.” “Feminist geopolitics attempts to develop a politics of security at multiple scales, including that of the (civilian) body.”<sup>56</sup>

“Since the ‘war against terrorism’ began, our images of men and women as warriors and victims have become more rigid. Prior to 11 September 2001, we in the United States were becoming accustomed to less militarized models of masculinity.”<sup>57</sup> Feminists assisted in understanding the meanings of development and security. “Feminist definitions of peace have generally included the reduction of all forms of violence, including structural violence and oppressive gender hierarchies.”<sup>58</sup> “US led international political and military interventions in Afghanistan (post 9/11) distinctly re-politicized gender politics and Taliban corporeal violence by way of linking the ‘savior’ of Afghan women to US military action.”<sup>59</sup>

“Moral uses of violence and essentialist dichotomies of masculinity and femininity are also identified as hallmarks of gender politics during war or political conflict.”<sup>60</sup> “Feminist geopolitics then includes embodied epistemologies and the security, or protection, of people.”<sup>61</sup> Therefore, feminist geopolitics includes the protecting of people. Hyndman argued in 2003 and 2004 that “lack of civilian death visibility contributes to a gendered geopolitics that values (masculinized) US lives over (feminized) Afghan ones.”<sup>62</sup> The expression of feminist geopolitics is probably based upon its connection with violence and international conflict. The sentencing of convicted US Army Soldiers within this study could be another expression of the phenomenon of feminist geopolitics. “The tragedies at both ends of this violence were very similar in terms of lives lost, but the patriotic values placed on them and their geopolitical value were highly disparate.”<sup>63</sup> Or, at first glance this seems to be the case.



The results of this study will inform the US military justice system on how it determines the sentence length for Soldiers who committed the same crime (Article 118, Murder) but against different types of individuals. The actions of discrimination under *jus in bello* can only be further educated through this study. Finally, the expression of feminist geopolitics upon the results of these seemingly divergent sentencing (in most cases) will demonstrate an area for further study.

## Sample

The sample used for this research study is purposive. It only includes those US Army deployed Soldiers from 2003 to 2014 convicted of Article 118 (Murder) as maintained by the US Army Court of Criminal Appeals (ACCA).<sup>64</sup> The sample includes 31 individuals, all convicted of a crime under Article 118 of the UCMJ while deployed. Therefore, all pre-trial differences, witness availability, and pre-trial motions are not considered because the sample is only of those convicted.

Of the initial data set of 31 adjudicated cases, one case was deleted due to one of the authors being in a supervisory role as chief of justice in Afghanistan who oversaw this case. This deletion was in order to preserve the sample without undue researcher bias. A second case was deleted because the murder was committed in Jordan, outside of the established definition of “deployed” for the purpose of this study. Therefore, the final sample size is 29 (n=29) for this study.

## Research Methodology

This study used a qualitative research methodology to examine the phenomenon of feminist geopolitics expressed through differences in sentencing of US Army Soldiers deployed and convicted of Article 118 (Murder) and the nationality of their victims. The research conforms to the *constructivism* worldview.<sup>78</sup> This philosophical worldview of the research study is based in understanding the social interactions of the individuals within the study. “Inquirers generate or inductively develop a pattern of meaning.”<sup>79</sup> The researchers seek to interpret what is found in this research study. As Guba and Lincoln stated, “constructivism is about understanding and becoming informed.”<sup>65</sup>

The research design is multiple case study. The research seeks to use case study based upon “the study of an issue explored through one or more cases within a bounded system.”<sup>66</sup> All variables for trial and witness availability are not considered since all US Soldiers were already convicted of Article 118 (Murder). “By identifying the context of the case, the researcher helps others who later read the case study report to draw conclusions about the extent to which its findings might be generalizable to other situations.”<sup>67</sup> The only item reviewed within this study is the confinement time served of those deployed US Army Soldiers convicted of Article 118 (Murder) and bounded by the time limits identified earlier.

Each subject of the 29 case sample (n=29) had two articles used with the NVivo descriptive analysis from appropriately vetted internet sources. These news articles are from conventional agencies and not personal blogs, activist sites, or opinion venues. They included the *Los Angeles Times*, *Washington Post*, *Daily Mail*, *USA Today*, *New York Times*, and National

Public Radio. These articles provide more than one lens through which to view the conviction and give the study multiple perspectives from which to analyze each subject and their case.

## **Rigor**

In both modes of research methodology, quantitative and qualitative, rigor is a standard that all investigators seek to instill in their studies. This research study uses three standards to reduce researcher bias and research error. These are triangulation, validity, and transferability. “Triangulation gets its name from the principle used in surveying land. By getting more than one different view on a subject, an accurate (or more accurate) view can be obtained. Samples and datasets, investigators, research methodologies, and theories are some of the examples of obtaining triangulation.”<sup>68</sup> The bottom line is “multiple sources of data are collected with the hope that they will all converge to support a particular theory.”<sup>69</sup>

Another standard of rigor is validity. Within validity in qualitative research we look at two aspects of the constant process. “Comparison check the consistency and accuracy of application of codes and differences and variations in the activities, experiences, and actions that have been coded.”<sup>70</sup> The researcher must constantly seek to review the data to check for any explanation and generalizations that you may wish to make. This primarily means looking for negative cases. “However, the discovery of negative cases or counter-evidence to a hunch in qualitative analysis does not mean its immediate rejection.”<sup>71</sup>

A third standard is also considered within this study. That standard of rigor is transferability. “Transferability may be thought of as parallel to external validity or generalizability.”<sup>72</sup> In other words, what we take from this study could be used to interpret or explain other similar situations. “The object of transferability judgments is to set out all the working hypotheses for this study and to provide an extensive and careful description of the time, the place, the context, the culture in which those hypotheses were found to be salient.”<sup>73</sup> We hope that the “provision of background data to establish context of [this] study and detailed description of [the] phenomenon in question will allow comparisons to be made.”<sup>74</sup>

In regards to this multiple case study, research design triangulation and validity of this research were accomplished in the following manner. Multiple vetted sources were used to ensure the accuracy of the information and qualitative phrases used to describe each case and subject. This included using Army Clemency and Parole Board (ACPB) information vetted with news reports of all cases and subjects within the study.

In regards to transferability, it is using this study to review historical examples of sentencing of Article 118 (Murder) service members. This could take the form of revisiting the cases contained within Son Thang or My Lai and analyzing those convicted of Article 118 (Murder). This analysis could also be used in other *jus in bello* cases involving US service members.

## **Descriptive Analysis from Computer Assisted Qualitative Data Analysis Software (CAQDAS)**

The articles covering the results of the trials were used to analyze the outcomes. NVivo 10.0 was used to conduct analysis of all cases included within the study. This computer assisted software package enabled the researchers to provide matching of variables in all cas-

es, describing the significant statements in all news reports pertaining to the cases. “Thus, the CAQDAS program, along with all types of analysis software (e.g., SPSS, SAS), do not analyze the data for the researcher. Rather, the researcher utilizes the computer program to assist in the analysis.”<sup>75</sup> Simple and key-context coding of the 29 cases in the sample (2 articles about each at the conclusion of subjects’ trials) and triangulation with the ACPB data revealed the following themes. These themes are supported by the qualitative research methods within this study and the descriptive terms used in each theme.

### **Theme 1: US Life Worth Life Without Parole**

Of the 29 cases, six Soldiers were convicted of Article 118 (Murder) under UCMJ and the victim was a US citizen. Four of those six cases received either life without parole or a death sentence from the trial court. The two other cases received less (33 years and 26 years with an eligible for parole status).

Case 1. “...nation’s highest military court has affirmed the conviction and death sentence for a University of California, Davis, graduate who admitted killing two fellow US Soldiers at the start of the Iraq War.”

Case 7. “...was sentenced to life in a military prison without parole for shooting and killing his infantry squad leader and another colleague after they criticized his poor performance.”

Case 28. “...guilty Tuesday of killing his two Army roommates in 2010 at a US base camp in Iraq, where prosecutors said he opened fire hours after complaining that the victims had let their room get too messy.”

Case 29. “...he pleaded guilty to unpremeditated murder, violating a general order against drinking in Iraq, communicating a threat, and reckless endangerment under a deal with prosecutors.”

### **Theme 2: Iraqi or Afghan Life Worth Less Than Life Without Parole**

When considering punishment and sentencing for conviction of Article 118 (Murder) of an Iraqi or Afghan, the only outlier is the case of SSG Robert Bales. When convicted he received a sentence of life without eligibility for parole. He was convicted of killing 16 Afghan citizens. In all other cases from the sample of 23 Iraqi or Afghan murder victims, the sentence from the trial court ranged from life with eligibility for parole, to 1 year. In final disposition, 12 Soldiers are paroled or served the entirety of their confinement time. The other 11 are still serving their confinement time and all but SSG Robert Bales are eligible for parole.

Case 14. “...was convicted today of murder in the execution-style slayings of four bound and blindfolded Iraqi detainees. He faces the possibility of life in prison without parole.”

Case 19. “A military jury in Germany has found a US army medic from Illinois guilty of murder in the execution-style shootings of four Iraqis. He now faces a possible life in prison and dishonorable discharge.”

Case 26. “A US Soldier has been jailed for 24 years for the murders of three Af-

ghan civilians after admitting ‘the plan was to kill people’ in a conspiracy with four fellow Soldiers. He agreed to plead guilty to three counts of murder, one count of conspiracy to commit assault and battery, and one count of illegal drug use in exchange for a maximum sentence of 24 years.”

### **Theme 3: Multiple US Victims Worth a Harsher Sentence**

Four of the six deployed Soldiers convicted of Article 118 (Murder) were sentenced to either death or life without parole. In all four cases the Soldiers killed multiple US victims ranging from two to five.

Case 1. “A military jury convicted an Army sergeant of premeditated murder and attempted murder on Thursday for killing two of his comrades and wounding 14 others in an attack on his own camp in Kuwait at the start of the Iraq war.”

Case 7. “An Army sergeant was found guilty on Wednesday of two counts of premeditated murder in the 2008 slayings of his squad leader and another US Soldier at a patrol base in Iraq, but he was spared the death penalty when the military jury didn’t return a unanimous verdict. He now faces a sentence of life in prison, either with or without the possibility of parole.”

Case 30. “A US army sergeant has been sentenced to life in prison without parole for the 2009 killings of five fellow service members at a combat stress clinic in Iraq.”

### **Theme 4: Multiple Foreign Victims of Murder Worth Life With Parole as Initial Sentence**

Of the 23 deployed Soldiers convicted of Article 118 (Murder), they killed foreign victims (either Iraqi or Afghan citizens). A total of 13 subjects were convicted of killing multiple foreign victims. Eight of the 13 received a life with eligibility for parole as an initial sentence from their trial court.

Case 4. “A Soldier was sentenced Thursday to 90 years in prison with the possibility of parole for conspiring to rape a 14-year-old Iraqi girl and kill her and her family.” He was “one of four Fort Campbell Soldiers accused in the March 12 rape and killings, who pleaded guilty Wednesday and agreed to testify against the others to avoid the death penalty.”

Case 13. “A US military court has convicted an army squad commander of leading a ‘kill team’ in Afghanistan that murdered unarmed civilians and collected body parts as war trophies. But he could be freed in less than 10 years after receiving a life sentence with the possibility of early parole for murder, assault, and conspiracy over the killings of three Afghans in separate incidents staged to look as if the victims were combatants.”

Case 34. “Convicted in court-martial of one count of premeditated murder and one count of unpremeditated murder in deaths of unarmed civilians during operations near Sadr City. Sentenced to life in prison and given a reduction in rank.”

## **Theme 5: Officers, NCOs, and Enlisted Soldiers Were not Sentenced Differently Based Upon Rank.**

Even based upon the small numbers of officers within the sample, a theme did emerge that officers, non-commissioned officers (NCOs), and enlisted Soldiers deployed and convicted of Article 118 (Murder) were not sentenced differently based upon their rank. There were only two officers within the sample, but based upon their conviction of Article 118 (Murder) they were within the time-frame as other NCOs and enlisted Soldiers with the same convictions.

Case 5: Officer. “was court-martialed and charged with premeditated murder. He was subsequently convicted of the lesser offense of unpremeditated murder and sentenced to twenty-five years in prison.”

Case 11: NCO. “...is serving seven years in military lockup for the killing and the mistreatment of an Iraqi teenager”

Case 13: NCO. “...could be freed in less than 10 years after receiving a life sentence with the possibility of early parole for murder, assault, and conspiracy over the killings of three Afghans in separate incidents staged to look as if the victims were combatants.”

Case 16: Enlisted Soldier. “The Soldier was sentenced to spend seven years in prison at Fort Leavenworth, Kansas, for killing an unarmed 15-year-old Afghan boy while on patrol in 2010.”

Case 20: Officer. “was convicted of two counts of murder and one count of attempted murder. The jury found him not guilty of making a false official statement. The commander of the 82nd Airborne Division has reduced the prison sentence but upheld the guilty verdict for a former lieutenant convicted of murder in the deaths of two Afghan men during a 2012 deployment.”

Case 31: Enlisted Soldier. “A Soldier convicted for his role in the rape and murder of an Iraqi teenager was sentenced to 110 years in prison, the longest of four Soldiers found guilty in the case. He was sentenced Saturday, has the possibility of parole after 10 years.”

## **Conclusions**

The themes identified point to a trend regarding disparate outcomes substantially based upon the nationality of the victims when controlling for other factors. With respect to this study, “the perceived lack of empathy for civilians (historically and presently) points to ambiguities about who the enemy is, rules of engagement, as well as the ongoing debate about the nature of military intervention in internal conflicts.”<sup>77</sup> It also presents an opportunity for the US military justice system to reflect upon the treatment of all convicted Soldiers with respect to their victims.

If this phenomenon displayed in a number of the identified themes is truly an expression of feminist geopolitics then “feminists have helped us rethink the meanings of development and security, [and] they can help us rethink the meaning of peace.”<sup>78</sup> Therefore, fu-

ture *jus in bello* conflict may be shaped by these themes. Nevertheless, feminist geopolitics will continue to influence our understanding of peace and security in the future.

Beyond violating the tenants of the Geneva Convention, the law of armed conflict, and the UCMJ, there are other pragmatic and policy impacts that result from the intentional killing of civilians. First, civilians require military protection during combat and stability operations. It is counterproductive to mission accomplishment and “results in a decline in support for military intervention forces.”<sup>79</sup>

“Intentionally killing non-combatants is considered an atrocity for which actors are morally responsible and legally culpable.”<sup>80</sup> When found guilty of Article 118 (Murder) under the UCMJ, all service members are subject to the same potential punishment and standardized treatment by the ACPB. However, this subset was treated differently in both regards. Between court-martial results and ACPB results the more pronounced disparity in treatment was by the ACPB. Thus far, nine Soldiers convicted of murdering Iraqi or Afghan non-combatants have been granted parole or both clemency and parole.

There is no conclusion that the results of the ACPB are not correct, but there is an extreme disparity between the sample subsets. Further research with both deployed and US based Soldiers convicted of the same crimes is warranted. Without access to private deliberative decisions of the ACPB there is no way to know what factors were considered, and thus resulted in a high rate of clemency and parole. However, of the six categories of criteria the ACPB may consider when examining a case for clemency or parole, the strength of these prisoner’s “parole plan” was likely very influential in the board’s decision. This conclusion is based on the overwhelmingly positive community support for these prisoners reflected in news reports and privately run websites. For example, in the case of PFC Holmes, who was SPC Morlock’s co-conspirator and released on parole in October 2015, he was greeted by dozens of friends and relatives when he arrived back home. His mother Dana stated they were “grateful to have him home and look forward to having this chapter of our lives closed.”<sup>81</sup>

## Recommendations

There are “three levels of collective moral responsibility for military atrocity.”<sup>82</sup> These include organizational (military), the state, and finally a political or public level of collective moral responsibility.<sup>83</sup> First, militaries are organizations and those organizations are made of Soldiers. “Officers and Soldiers not morally competent are not militarily competent.”<sup>84</sup> Therefore, training is required to ensure as much of the moral standards within the profession is exposed to members of the military and expressed in terms of *jus in bello* as possible. “Given the near certainty that some misconduct will occur regardless of steps to avoid it, the key to measuring organizational compliance is to consider the steps taken to minimize the number of these incidents, and when they occur to investigate them and punish offenders.”<sup>85</sup>

“Combatants are never to target noncombatants directly.”<sup>86</sup> “The requirement of discrimination and noncombatant immunity is the most important *jus in bello* rule.”<sup>87</sup> “Discrimination is the central concept in avoiding injuring noncombatants. Norms are ‘collec-

tive expectations for the proper behavior of actors with a given identity.”<sup>88</sup> The norm of noncombatant immunity continues to have its legal and ethical roots in “just war” theory. That norm of identifying the discrimination of noncombatants is required to be and continue to be central to the selection and training of military service members.

With regard to the disparate results in both court-martial cases and ACPB reviews, only time and further research will shed greater light on the implications of these disparities. Not only should new cases and ACPB decisions be examined, but continuing attention should be directed toward those granted parole or who have served short terms of confinement. Their future successful or unsuccessful reintegration into society after being convicted of murder may provide additional insight into why these cases have, thus far, been treated differently.



## Notes

1. *United States v. Morlock*, No. 20110230, 2014 CCA LEXIS 280 (A. Ct. Crim. App. 31 July 2014).

2. See, e.g., “About DOJ – Our Mission Statement,” *United States Department of Justice*, <https://www.justice.gov/about> (“To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.”) (Accessed 23 November 2016).

3. Manual for Courts-Martial, United States pt. 1, paragraph 3 (2012).

4. *The Background of the Uniform Code of Military Justice*, prepared at The Judge Advocate General’s School, US Army (1959), 1. Available at [https://www.loc.gov/rr/frd/Military\\_Law/pdf/background-UCMJ.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/background-UCMJ.pdf).

5. 10 USC. §§801-946 (1950).

6. “Military Justice Act of 1968,” Pub. L. No. 90-632, Oct. 24, 1968, 82 Stat. 1335; “Military Justice Act of 1983,” Pub. L. 98-209, Dec. 6, 1983, 97 Stat. 1393.

7. Lieutenant Colonel John R. Howell, “TDS: The Establishment of the US Army Trial Defense Service,” 100 Mil.L.Rev. 4, 6–7 (1983).

8. 10 USC § 952 (2012); 10 USC § 952; 10 USC § 953.

9. Department of the Army, *AR 15-130, Army Clemency and Parole Board* (Washington, DC: Headquarters, Department of the Army, 1998), 1-1.

10. *AR 15-130*. 1-1.

11. *AR 15-130*, 3-1.

12. *AR 15-130*, 3-2.a.; *AR 15-130*, 3-2.c.

13. *AR 15-130*, 3-2.a.

14. *AR 15-130*, 3-2.a. (1).

15. Steven Andraschko, *Army Review Boards Agency*, slide 35 (May 2015) (unpublished PowerPoint presentation) (on file with author).

16. Andraschko, slide 35.

17. If a Soldier is transferred to a Federal confinement facility, he will not be considered for parole by the ACPB. *AR 15-130*, 3-1.e. (9).

18. UCMJ, art. 86 (2012); UCMJ, art. 87 (2012); UCMJ, art. 91 (2012).

19. United States Army Judge Advocate General’s Corps, *The Army Lawyer: A History of the Judge Advocate General’s Corps, 1775-1975*, (Washington, DC: US Government Printing Office 1975), 62.

20. The JAG Corps, *The Army Lawyer*, 62.

21. UCMJ, art. 121 (2012); UCMJ, art. 120 (2012); UCMJ, art. 128 (2012); UCMJ, art. 118 (2012).

22. For a discussion regarding mandatory minimum punishment for military crimes such as “Spying” and “Desertion,” see David Jason Rankin Frakt, “When Mandatory Isn’t Required: Mandatory Sentences Under the UCMJ,” *University of Pittsburgh Legal Studies Research Paper No. 2012-23* (July 2012). Available at <http://dx.doi.org/10.2139/ssrn.2103943>.

23. UCMJ, art. 118 (2012).

24. UCMJ, art. 36(a) (2012).

25. *Manual for Courts-Martial*, United States, R.C.M. 705 (2012).



26. A convening authority is an individual authorized by law to convene a court, refer crimes to such a court, and then approve the results of the court-martial. See UCMJ, art. 22, 34, and 60, respectively; R.C.M. 705(b) (2) (E).

27. Other crimes included conspiracy to commit premeditated murder, conspiracy to commit assault consummated by a battery, wrongful use of hashish, and obstruction of justice. In a decision by the Army Court of Criminal Appeals, the two of the three counts of premeditated murder were affirmed, and the finding of guilty regarding the death of Gul Mudin was affirmed only as an attempt to commit premeditated murder.

28. UCMJ, art. 118 (2012).

29. Multiple new reports cite the confinement limit to be 24 years. See, e.g., William Yardly, "Soldier Gets 24 Years for Killing 3 Afghan Civilians," *New York Times*, 23 March 2011. However, the Army Court of Criminal appeals notes in its decision that the convening authority approved 22 years of confinement. Therefore, the convening authority may have reduced the sentence by two additional years when approving the sentence.

30. John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, Third Edition, (New York: Sage Publications, 2009), 42.

31. Manual for Courts-Martial, United States pt. 4, para. 43 (2012).

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## Chapter 3

### The Ethics of Humanitarian Intervention and the Just War Tradition: Rethinking the Implications of Neighbor-Love in the 21st Century

J. Daryl Charles, PhD

*No authority on earth can withdraw from “social charity” and “social justice” their intrinsic and justifiable tendencies to rescue from dereliction and oppression all whom it is possible to rescue... This justification can never be withdrawn; it can only be limited, supplanted, or put in abeyance.*

— Paul Ramsey<sup>1</sup>

#### Introduction

In the aftermath of the Rwandan tragedy, just war historian James Turner Johnson rightly observed that, with the end of the Cold War, policy-makers were ill-prepared to deal with geopolitical crises that have arisen since, not to mention the fact that it exposed an utter lack of moral discourse regarding international affairs.<sup>2</sup> Adding insult to injury, those who might have viewed Cold War tensions as the fruit of defects in the international order, and thus envisioned a post-Cold War increase in the United Nations’ prestige, surely have had their hopes dashed. The truth of one Burmese human rights activist is patent: “There are no countries in the world which have gained liberation through the help of the United Nations.”<sup>3</sup>

The question before us: how might those in relatively free nations who are responsible for political and military policy propose to deal with the scale of humanitarian need in our day that is massive and frequently the result of unstable regimes?<sup>4</sup> Specifically, what moral and political resources might inform our response to what has been called “complex humanitarian emergencies” — situations that fall short of formal war *per se* but which require some measure of military force?<sup>5</sup>

My paper attempts to address this question by marshalling the frequently misunderstood — when not neglected — resources of the just war tradition — resources that are permanent, pertinent, and applicable to the humanitarian dilemma. Herewith, I am assuming that moral “neutrality” in life is impossible and thus untenable. Most mainstream debates about foreign policy and humanitarian intervention proceed from questionable — and contestable — modern assumptions about state sovereignty, human rights, and cultural relativism that, alas, are anything but “neutral.” I wish to argue that the just war idea, because of its moral framework, is the *only* legitimate means of attempting to think responsibly about the dilemma of humanitarian intervention.<sup>6</sup>

Writing on the ethics of intervention two generations ago, ethicist Paul Ramsey set forth the argument that military intervention for the sake of justice and charity remains both a right and a duty.<sup>7</sup> In Ramsey’s view, the failure of relatively free nations to intervene in humanitarian emergencies would be “tragically to fail to undertake responsibilities that... are not likely to be accomplished by other political actors.”<sup>8</sup> Responding to the common objection that intervention can be unjust and illicit, Ramsey acknowledged both possi-

bilities—unjust as well as just causes. But the mere *possibility* of unjust causes, Ramsey insisted, does not release political actors — and the “extended hands” of the military—from their moral responsibility. Not intervening can also be unjust (think Rwanda); hence, one’s obligations are the fruit of charity toward one’s neighbor.<sup>9</sup>

The viewpoint assumed in this paper is that humanitarian intervention is justified in *some*, not all, cases. The reason for this is that the purpose of government is to protect and secure basic human rights of all persons by virtue of human personhood, worth, and dignity. Those regimes which violate these basic rights in the end forfeit their own right to be protected by international law. State sovereignty is not an intrinsic value, as is human personhood. Sovereignty must serve human ends.<sup>10</sup> In respecting those basic human rights, we are hence obligated to assist and rescue others at reasonable cost to ourselves, and, where possible, assist in the social-political reconstruction of those victims’ lives. We do unto others as we wish that they do unto us.

### **Humanitarian Concern and Making Moral Judgments: Challenges in Contemporary Humanitarian Thinking**

To intervene or not intervene? This should always be a difficult question. Few have expressed this hesitation more potently than Michael Walzer in his essay “The Politics of Rescue.”<sup>11</sup> The need for extreme caution in such matters, of course, is uncontroversial. The problem, however, is that many governments and politicians prefer the “easy” solution to the humanitarian dilemma: *not* getting involved, given the “costs” to their political standing at home, which will be affected by the public’s perception of costs to their own soldiers.<sup>12</sup>

The diversity of “humanitarian” operations in our day spans a mind-boggling array of scenarios that are both civilian and military in nature, with the two *always intertwined*. This diversity has caused one analyst to speak of “the fog of peacekeeping” to describe the imprecision and ambiguity of guidelines surrounding the humanitarian task.<sup>13</sup> Given the veritable explosion of new states since the Cold War era as well as the collapse, fragmentation, or disintegration of the same, “chaos has replaced tyranny,” in the words of one analyst, as the new challenge to human rights in the 21st century.<sup>14</sup>

Although the presumption against intervention must remain very strong, it must be said that non-intervention is not an absolute moral rule; it is a pragmatic policy.<sup>15</sup> While there is no higher moral law that *requires* non-intervention, the same cannot be said of intervention. While no higher moral principle requires that we *always and everywhere* intervene, there *is* a higher moral principle requiring that, in *extraordinary and tragic* situations, we have a duty to intervene (think Rwanda). Hugo Grotius, father of international law, anchors this obligation in the natural law. He writes that those in political authority have a right to defend not only against injuries done to their own subjects but those injuries that *are excessive and do not directly affect them*.<sup>16</sup> In fact, Grotius insists, it is “much more honorable” to avenge other people’s injuries than our own.<sup>17</sup>

My intention, however, is not to attempt a “how to” guide to humanitarian intervention. It is, rather, to highlight the moral wisdom of the just war tradition as it applies to this challenge, to which we shall now turn.

## Moral-Philosophical Assumptions That Inform “Neighbor-Love” and the Just War Idea

All human action is subject to moral evaluation, and it needs emphasizing in our day—a day of post-consensus, post-everything nihilism — that such evaluation is *not* arbitrary. No one is a pure moral relativist, for as soon as someone begins to use the language of “should” and “should not,” he exposes his real nature, believing indeed that there *are* moral reference points. In point of fact, all people will draw the line between “acceptable” and “unacceptable:” the difference, of course, is *where* people decide to draw the moral line. But make no mistake: all people *do* draw the line; *all* people use the language of “should” and “should not.”

Because society — *any* society — collapses without common standards (insofar as morality mirrors a community’s values and priorities), moral diversity cannot be “total,” even when there exists moral-cultural particularity. The very notion of “justice” is sufficient to illustrate. Very few people believe that justice is different for Kansans, Cambodians, Canadians, and Kazakhstanis.<sup>18</sup> Where justice *does* seem different, we call this a “travesty” or “mis-carriage” of justice. In this way, then, we arrive at the realization of universal human rights.

Our understanding of human nature, which undergirds any conception of “human rights,” is critically important — an understanding that is rooted in a moral realism.<sup>19</sup> This moral realism lies at the heart of just war thinking. By virtue of their common humanity, human beings have moral duties — duties that are intuited through reason and understood to be universal and immutable. These duties, moreover, are not limited to family, ethnicity, or politics; they extend to our “neighbor,” which is to say, *whoever stands in need*. Such duties, then, are “pre-political,” anchored in an awareness of a higher law, the natural law, from which any form of civil or positive law must derive.<sup>20</sup> What is moral transcends the legal. Only in this way are we able to posit any sort of grounding for “universal human rights.” If that were not so, then “Nuremburg was nothing but victors’ vengeance dressed up in a fiction of ‘justice,’” in the words of one just war theorist.<sup>21</sup>

Just war thinking, then, allows us to conceptualize the assistance of a “neighbor” in need, through its morally justified application of limited force. This is because of its fundamental moral-philosophical commitment to desire the highest, the best, for fellow human beings.

### Just War Moral Reasoning: A Closer Look

#### *The Logic and Unity of Just War Moral Criteria*

The just war concept, as I’ve suggested, is not just about war; it is a way of thinking about broader political life. For this reason, it has been described as an “ethic of responsibility.”<sup>22</sup> After all, as Martin Luther famously quipped, “if the lion and lamb are expected to lie down together in the present life, then the lamb will need constant replacing.”

This just war “ethic of responsibility” concretizes human duties toward those who stand in dire need, seeking to restore a justly-ordered peace. Hence, the ethic is not some “dirty hands” conception of armed force that utilizes some “lesser evil” to achieve some good or remove some greater evil. It is rather a necessary, though limited, means by which



to bring about a *good* result, based on a *good* intention, just as criminal justice is designed to achieve a *good* result—an ordered peace in which people can flourish — in domestic life.<sup>23</sup> The just war ethic is rooted in civic virtue.<sup>24</sup>

At the most basic level, the tradition presupposes certain moral truths that not infrequently are ignored or forgotten by contemporary theorists, strategists, and political pundits. What are its underlying assumptions?

- That human nature is such that both individual persons and governments can do intolerable things to human beings (things that must not be humanly tolerated), thereby rejecting as immoral the naiveté and unwillingness of pacifist and utopian thinking to intervene; and because injustice and evil can be politically and legally entrenched, the moral act is *never only* strictly legal or contractual.<sup>25</sup>
- That both natural and religious or theological sanctions inform the tradition, through which human beings can reason toward a normative understanding of human nature and human moral obligation (hence the significance of the natural law).
- That a moral distinction between relative guilt and innocence *can* be discerned, in spite of unbridled nationalism, political complexities, and non-state actors.
- That “war” and “peace” are not two discontinuous and distinct realms, each with its own set of rules.<sup>26</sup>
- That “peace” does not merely mean the absence of hostilities; rather, authentic peace must be justly ordered, since the mafia, pirates, dictators, and terrorists maintain an orbit of “peace” in which they operate.<sup>27</sup>
- That coercive force is both permissible and limitable, thereby avoiding the two extreme positions of pacifism and political realism, resisting both cynical relativism and despairing withdrawal.<sup>28</sup>
- That both conventional and non-conventional military operations will be necessary in the affairs of nations.
- That a hierarchy of moral values must guide military and humanitarian intervention—not a mere utilitarian estimate of material damage, but the realization of human suffering and death caused by coercive operations.
- And that a moral continuity exists between ends and means, between *jus ad bellum* and *jus in bello*, based on the justness of a cause for intervening and the right intention that governs both ends and means; thus, even if the cause of interventionary action is justified by legitimate political authority, the means or execution of that intervention can be unjust.<sup>29</sup>

According to just war reasoning, intervention must always be commensurate with the degree of human suffering where it is occurring and oriented toward a greater good, based on the self-evident truths of the natural law accessible to all, the first of which is to do good and avoid doing evil.<sup>30</sup> These “self-evident truths” are implicit in the so-called “Golden Rule” ethic by both Plato and Jesus, which places upon us both positive and negative moral obligations. Positively, we are to do to others as we would want others to do to us; nega-

tively, we must not do — or *permit to be done* — to others what *we ourselves* would not want done to us. The implications here for humanitarian action are clear (think Rwanda). Quite properly the just war idea has been called a “citizenship model” for international justice, because it insists that “no unbridgeable conceptual and political divide be opened up between domestic and international politics.”<sup>31</sup>

What needs emphasis in just war thinking is the coherence, as well as the formal unity, existing among the various criteria. All conditions need to be met as they interlock with and illuminate one another. So, for example, among the primary *ad bellum* criteria, just cause is *necessary, but not sufficient*, to intervention; it needs the confirming or “verifying” light of right intention, which can unmask imperial pretensions or wrongful designs.<sup>32</sup> Moreover, ends and means, aims and execution, must be interlocking and proportionate to the victims’ suffering.<sup>33</sup> Morally calibrated means have the effect of “verifying” the justness or appropriateness of an interventionary cause.<sup>34</sup>

Regardless of our disagreements about the specifics of interventionary activity, moral wisdom does not call us to be indifferent toward the suffering of others in the face of atrocity.<sup>35</sup>

This leads us to a recognition of an important moral-philosophical underpinning in the just war tradition: the symbiosis of justice and charity, which creates a continuity between ends and means and elucidates the very essence of right intention.

### *The Conjoining of Justice and Charity in Just War Reasoning*

Even when “humanitarian intervention” finds little support in modern international law, an older tradition, anchored in just war thinking, justifies force not only to correct wrongs, but to protect the innocent. It is this “tradition” that best grounds — and “relocates” — humanitarian intervention, and at the heart of this “tradition” is the conjoining of justice and charity.<sup>36</sup>

To divorce justice and charity is to do irreparable damage to the character of both virtues as well as to alter the very moral foundation upon which just-war thinking rests. Both justice and charity are non-fluid in character. As quintessential *human* virtues, they are deemed universally binding, and therefore “owed” all people. As already noted, evidence of this universality is the transcultural “golden rule” ethic surfacing in the teaching of both Plato and Jesus. In the Christian moral tradition, this ethic, wherein justice and charity embrace, gives embodiment to the natural law and finds powerful expression in the parable of the “good Samaritan.”

Charity, as Augustine conceives of it, must motivate all that we do, including the application of coercive force. Not the external act but our internal motivation determines the morality of our deeds.<sup>37</sup> As a social force, this “rightly ordered love” is foremost concerned with what is good — good for the perpetrator of criminal acts, good for victims of criminal acts, good for society which is watching, and good for future and potential offenders.<sup>38</sup>

To read Thomas Aquinas’ treatment of both charity and justice in the *Summa Theologica* is instructive. Therein, he examines the nature of charity, its moral dimensions, and its consequences. Charity, according to Aquinas, must be developed *through habit* and thus is “a principle of action.”<sup>39</sup> Moreover, what is noteworthy is the fact that *war* is contextualized in the middle of Aquinas’ discussion of charity.<sup>40</sup> In Thomistic thought, charity and

justice meet and guide us in applying coercive force. Because “justice directs a man in his relations with others,” justice and love meld in Thomistic thought.<sup>41</sup>

Two innovative, early-modern thinkers in the just war tradition who saw the symbiosis of justice and charity applying in distinctly “humanitarian” situations of their day were Francisco de Vitoria and Francisco Suárez. Their context — Spanish “New World” discovery — is important, for it placed them at odds with conventional thinking of the day. In particular, Vitoria’s task was to challenge Spanish imperial pretensions and the unjust treatment of Native Americans. “The barbarians are all our neighbors,” he wrote, “and therefore anyone, especially princes, may defend them from...tyranny and oppression.”<sup>42</sup> Spanish intervention could *not* mean *conquest*, based on the natural law and the natives’ innocence, even when their customs might seem strange. Recall Vitoria’s context: he advances just war reasoning on behalf of *those outside his cultural world*, that is, those who technically were not his “neighbors.”

Like Vitoria before him, Suárez taught at a leading university of his day. Trained both as a lawyer and a theologian, he addressed the subject of war as did Augustine and Aquinas—as a duty of charity. This element, coupled with the belief that moral principles based on the natural law must guide the use of coercive force, formed the main argument of his treatise *On the Three Theological Virtues, Faith, Hope, and Charity*.<sup>43</sup> Following Aquinas, Suárez argued that not merely natural justice, but also the norm of charity, constitutes the proper motivation for war and coercive force.<sup>44</sup>

Two Christian thinkers closer to our time share this commitment to prevent love and justice from being disengaged, though in differing ways. Reinhold Niebuhr, as clouds were forming on the European horizon in the 1930s, grew impatient with standard Protestant ethics of his day. In the end, Niebuhr rejected the divorce of love and justice (even when his theological reasoning must be viewed as deficient).<sup>45</sup> This divorce, he believed, is tragic: thereby we end up abetting *injustice*.<sup>46</sup> Hence, with sarcasm he lampoons Protestants’ WW2-era naïveté: “if Britain had only been fortunate enough to have produced 30 percent instead of two percent conscientious objectors to military service, [then] Hitler’s heart would have been softened and he would not have dared attack Poland.”<sup>47</sup>

A generation closer to us, the noted Princeton ethicist and just war theorist Paul Ramsey cautioned that we simply “cannot remain aloof...toward the neighbor.”<sup>48</sup> Love, Ramsey insisted, originates in justice.<sup>49</sup>

Neighbor-love is the primary feature of Ramsey’s understanding of intervention because it is cognizant of the dignity and worth of others. For this reason Ramsey could speak of a “preferential ethics of protection” that has the innocent neighbor or third party in view.<sup>50</sup> “[N]o authority on earth,” he writes, can withdraw from charity or justice their inclination to “rescue from dereliction and oppression all whom it is possible to rescue.”<sup>51</sup> To his great credit, Ramsey’s theological orientation always had responsible policy in view.<sup>52</sup>

Just war thinkers, then, from Augustine to Ramsey and beyond, illustrate why, particularly in *our* day, charity will need to be redefined once more.

## Right Intention as “Verification” of Justness

Thus far I have argued that the symbiosis of justice and charity lies at the heart of just war reasoning. Specifically, it underpins right intention. Without right intention, there can be no continuity between ends and means, and hence, no justification for intervention.<sup>53</sup> Without right intention, the link between one’s action and one’s justification for the action can be — and often is — severed, which means that “just cause” might be serving as a pretext for other ulterior motives. In the just war ethic, the criterion which explicitly directs the use of force in the task of building or restoring peace is right intention.<sup>54</sup>

Intention in humanitarian emergency as well as in war is both forward- and backward-looking.<sup>55</sup> It is forward-looking in the sense that our stated aims should be evidenced through our actions, and it is backward-looking in the reverse sense: actions will confirm or conflict with the originally stated aims. Formally, we may argue that right intention consists of two components: (1) avoiding wrong intention, which harms and does not assist, and (2) facilitating a justly-ordered peace.<sup>56</sup> Right intention is helpfully illuminated by the character of its opposite, wrong intention, which would include imperialism, unbridled state nationalism, vengeance, blood-thirst, lust for domination, or territorial expansion.<sup>56</sup> This anatomy demonstrates that just war reasoning is not extrinsic to, or removed from, civic life; rather, it is an extension of community, responsible government, and our most basic values.

In the end, we might reasonably argue that right intention — strategically — is *the most important* of all the just war criteria, inasmuch as without an appropriate moral disposition, without the ability to ask a myriad of *why* questions about *motive*, the other criteria can become distorted or inoperable.<sup>57</sup> And it is right intention that will guide — via *public acts* — the restraining *in bello* principles of discrimination and proportionality.<sup>58</sup>

## Concluding Reflections: The Costs and Character of Non-Intervention

Intervention is sometimes necessary to prevent the ideals of justice from disappearing into mere talk and discussion. Assuming that all moral conditions for intervention have been met, charity and human decency compel us to conclude that we have not only a right but a responsibility to intervene where atrocity is afoot. And *who* should do the rescuing? Our answer must be: those states that are (a) best placed and (b) able to assist. While agreement on specifics of those options may elude us, *that* human beings are morally obligated to intervene and come to the aid of victims of gross injustice, where possible, should be beyond controversy.<sup>59</sup>

A word of caution: current unpopularity among the American public and American policy-makers regarding humanitarian intervention *may or may not* represent moral principle. While no nation on earth *can or should* “police the world,” and while no outcomes are guaranteed, a general attitude of moral detachment *may* in fact serve as a smokescreen for our inability to make moral judgments and engage social-political evil head-on.

### *The Morality of National Interest: Responding to Charges of Inconsistency*

But what about humanitarian interventions where we have no national interests? This is a legitimate question. While acknowledging our responsibilities at home, these do not

preclude responsibilities abroad. They simply remind us that there are finite limits on the responsibilities that we owe others. And these responsibilities abroad, of course, will vary according to the situation.<sup>60</sup>

“National interest” as it concerns security issues, however, is not merely “selfish”; it is inevitably tied to the security of *other* nations. Granted, it is *not* unreasonable to ask, *Why should we be bearing the burden of military intervention in remote parts of the world?* And it is *not* unreasonable to ask, *Why should our soldiers in particular bear that burden?* But national interest, in the end, need not vitiate the motivation to assist other nations where the need is dire. Should we be accused of hypocrisy or a double standard regarding intervention, as is inevitable, it is “better to be inconsistently responsible than consistently irresponsible.”<sup>61</sup>

### *Second Thoughts on “Last Resort”*

A final source of frequent misunderstanding invites our consideration. If we insist on viewing “last resort” as the *mathematical last* in a serial line of possible actions or strategies, there will *always* be one more alternative to try. In our day, intervention is more likely to be late than pre-mature. Hence, we must qualify possibilities constituting “last resort” with the word “reasonable,” and for two reasons. First, all people who oppose coercive force in principle will *never* acknowledge that diplomatic maneuvering is ever exhausted. Second, last resort might be immoral — and destructive — when and where it stalls and becomes too late to defend the suffering innocent. Quite properly, Michael Walzer has written: “Taken literally... ‘last resort’ would make war [indeed, any forceful intervention] morally impossible. For we can never reach *lastness*, or we can never know that we have reached it. There is always something else to do: another diplomatic note, another...resolution, another meeting...”<sup>62</sup>

Delay for the sake of delay, however, is not the intent of last resort in classical just war thinking. For if there is some great evil that must be prevented or stopped, we are not morally permitted to wait on every possibility (think Rwanda). Delay at some point becomes immoral, inhumane and complicit with the crime or crimes needing interdiction — a *critically important* consideration as it applies to the question of “humanitarian intervention.” (After all, economic sanctions will not deter terrorists or tyrants.) For this reason, “last resort” is anchored in, and subordinated to, just cause, not *vice versa*.<sup>63</sup>

### *Human Solidarity and Neighbor-Love*

In an important address in 1997 at the US Holocaust Museum, South African Justice Richard Goldstone, who had previously been chief prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, had this to say:

The one thing that I have learned in my travels to the former Yugoslavia and in Rwanda and in my own country is that where there have been egregious human rights violations that have been unaccounted for, where there has been no justice, where the victims have not received any acknowledgement, where they have been forgotten, where there’s been a national amnesia, the effect is a cancer in the society. It is the reason that explains, in my respectful opinion, spirals of violence in the former Yugoslavia for centuries and in Rwanda for decades.<sup>64</sup>

Goldstone's remarks, fresh on the heels of unprecedented genocidal violence, serve to remind us that Paul Ramsey was right. *No authority on earth* can withdraw from "social charity" and "social justice" their intrinsic and justifiable tendency to rescue from dereliction and oppression all whom it is possible to rescue. That justification can never be withdrawn; it can only be limited, supplanted, or suspended temporarily.

It has been said that people will not cherish their own freedom if they are unwilling to intervene on behalf of others in need. Ancient proverbial wisdom beckons people of principle, irrespective of their location in life, to act on behalf of the traumatized. Such a call bears repeating, especially in a post-consensus cultural climate and at a moment when nations suffer from "humanitarian fatigue:"

*If you faint in the day of adversity,  
How small is your strength.  
Rescue those who are being led away toward death,  
Hold back those stumbling toward the slaughter.  
If you say, "But we knew nothing about this,"  
Does not He who weighs the heart consider it?  
Does not He who guards your life not know it?  
And will He not repay each person  
According to what that person has done?<sup>65</sup>*



## Notes

1. Paul Ramsey, *The Just War: Force and Political Responsibility* (New York: Scribner, 1968), 35-6.

2. James Turner Johnson, "Humanitarian Intervention, Christian Ethical Reasoning, and the Just War Idea," in Luis E. Lugo, ed., *Sovereignty at the Crossroads? Morality and International Politics in the Post-Cold War Era* (Lanham: Rowman & Littlefield, 1996), 127.

3. Ludu Sein Win, veteran Burmese (and Rangoon-based) journalist, cited in *Irrawaddy*, April 2008, p. 5 (the *Irrawaddy* online website has since been removed).

4. This instability might be characteristic of new states, failed states, or those states on the verge of collapse.

5. We may define humanitarian intervention as "the proportionate international use or threat of military force, undertaken in principle by a liberal government or alliance, aiming at ending tyranny or anarchy, welcomed by the victims, and consistent with the doctrine of double effect" (Fernando R. Tesón, "The Liberal Case for Humanitarian Intervention," in J.L. Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* [Cambridge, UK: Cambridge University Press, 2003], 94). Characteristic of "complex humanitarian emergencies" are several factors: they are crises that are (1) multi-dimensional (involving a wide array of disasters such as war, widespread violence and human rights violations, famine and disease, widespread suffering, social-political disorder, mass displacements of people-groups, etc., resulting in massive death rates), (2) man-made (and thus not "natural disasters"), and (3) essentially political and politicizing. See Jeni Klugman, *Social and Economic Policies to Prevent Complex Humanitarian Emergencies: Lessons from Experience* (New York: United Nations University World Institute for Development of Economics Research, 1999), 1-2; Indeed, the sheer number and intensity of geopolitical horrors since the Cold War – from Bosnia and Kosovo, Rwanda, Sudan, Sierra Leone, and Liberia to East Timor, Iraq, Syria and the Central African Republic – force us to reconsider the *necessity* of military force in "humanitarian intervention." The tragic lesson of genocide in Rwanda and ethnic cleansing in the Balkans is that large-scale violations of human rights may be *impossible* to prevent or punish *without* military intervention. And where the problems are internal, that is, where they are rooted in particular social structures, a particular political culture, a collapsed infrastructure, or a mindset that gives rise to ethnic hatred, resentment and violence, the conundrum of humanitarian intervention requires us to ponder the costs of nation-building. I shall argue in this paper that states in faraway places do indeed have an obligation to intervene, where they have the wherewithal and when the costs are not unreasonable. Politically, I assume that stable states in particular have this obligation, given that they have a stake in global security. From a moral standpoint, I assume stewardship based on the principle that to whom much is given, much will be required.

6. Elsewhere I have argued similarly in "The Ethics of Humanitarian Intervention," in Jonathan Chaplin and Robert Joustra, eds., *God and Global Order: The Power of Religion in American Foreign Policy* (Waco, TX: Baylor University Press, 2010), 145-69.

7. Michael Walzer, "The Politics of Rescue," in *Arguing about War* (New Haven, CT and London: Yale University Press, 2004), 67-81.

8. Ramsey, *The Just War*, 23.

9. In his writings on social ethics, war and force, Ramsey shares the Augustinian conviction that charity must motivate all that we do, inclusive of restraining social-political evil. On charity as a governing motive of going to war or intervention, see as well Hugo Grotius, *The Rights of War and Peace*, translated by F.W. Kelsey, (Indianapolis, IN: Bobbs-Merrill, 1962), 2.1.9; 2.17.9;



2.25.3, 9; 3.1.4; 3.2.6; and 3.13.4. Multiple times in this work Grotius refers to the “rules of charity” as they relate to – and support – formal justice.

10. Fernando Tesón, “The Liberal Case for Humanitarian Intervention,” 93-129.

11. Walzer, *Arguing about War*, 67-81.

12. Walzer, *Arguing about War*, 67.

13. Daniel S. Bloch, “The Fog of UN Peacekeeping: Ethical Issues regarding the Use of Force to Protect Civilians in UN Operations,” *Journal of Military Ethics* 5, no. 3 (2006): 201-13. In his 1992 report *An Agenda for Peace*, then UN Secretary-General Boutros Boutros-Ghali identified four different kinds of “peace” intervention: pre-crisis deployment, peace-making (ending a conflict), peace-keeping (securing and maintaining peace), and peace-building (from truce to permanence); much of this corresponds with what Samuel Huntington has described as the “third wave” of democracy in the 1990s. See Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991); Michael Ignatieff, “State Failure and Nation-Building,” in J.L. Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge, UK: Cambridge University Press, 2003), 299.

14. Walzer, *Arguing about War*, 69.

15. *The Rights of War and Peace* 2.20.40, emphasis added.

16. *The Rights of War and Peace* 2.20.40, emphasis added. Elsewhere, in addressing the question of whether we have a just cause to intervene in order to relieve the suffering of people who are being oppressed by a ruler, Grotius answers that this “right of human society” may not be excluded, where the injustice is “visible” and the prince “disturbs and molests” his own country (2.25.8).

17. That a common morality and a culturally specific morality co-exist needs no major philosophical justification. What needs emphasis is that the common – i.e., the over-arching – defines how that community relates to the outside world.

18. In his important book *A Conflict of Visions: Ideological Origins of Political Struggles* (New York: Basic Books, 2002), Thomas Sowell contrasts two competing visions of human nature in our world today – what he calls the “constrained” and “unconstrained” visions. The difference between the two understandings cannot be over-stated. Sowell’s great service is to point out the ethical, social, and political consequences of the latter while arguing for a more modest and, ultimately, realistic or “constrained” understanding of human nature.

19. Hugo Grotius observes that the natural law “remains still in Force where there are no Courts of Justice” (*The Rights of War and Peace* II.20.8, art. 5). I am here using the version edited by Richard Tuck (Indianapolis, IN: Liberty Fund, 2005).

20. Nigel Biggar, *In Defence of War* (Oxford and New York: Oxford University Press, 2013), 214. Although the political development of “human rights” is more recent, our cultural tradition’s understanding of human respect – and hence basic “rights” – has deep roots, anchored in the Judeo-Christian emphasis of human dignity and intrinsic worth and issuing from the conviction of human beings being fashioned in the “image of God.” This “natural-law” understanding of human nature, wherein human beings are understood to be morally “free” agents (and hence morally responsible), has been coupled with the Judeo-Christian belief in a transcendent moral order, has contributed to a social-cultural environment in which the very notion of human “rights” and human flourishing has been bred. Since 1948, major international declarations have borrowed and assumed these essential truths, even when such declarations have been clothed in secular language. The problem with cultural relativism, for those who would deny or question the notion of a fundamental human “nature” and inherent human “rights,” is that if cultural relativism and moral pluralism are true, then nations could never pass judgments – indeed, *any* judgments – on “crimes against humanity.” If, however, there is such a thing as “universal human rights,” then preventing

genocide, mass murder, ethnic cleansing, and the like must be a part of our foreign policy. And although historically such abuses have been due to dictatorial regimes, the reality is that in our day these atrocities more often than not occur in failed or collapsing states. This burden, in 2001, led the International Commission on Intervention and State Sovereignty (ICISS) to argue for a “re-conceiving” of the notion of sovereignty in its report “The Responsibility to Protect,” which was endorsed with strong support again at the 2005 United Nations World Summit. Whether “R2P” has been effectual is, of course, another matter.

21. Jean Bethke Elshtain, “Just War and an Ethics of Responsibility,” in Eric Patterson, ed., *Ethics Beyond War’s End* (Washington, D.C.: Georgetown University Press, 2012), 123. This, of course, places just war thinking at odds with pacifism, which rejects the essence and significance of political activity *qua* politics. Because it ignores questions of power, pacifism can offer little in terms of authentic peace-building in a fallen world, despite its claims.

22. Grotius insists that the laws governing the ethics of war and peace are anchored in the same principles of justice that hold together all domains of civil society (*The Rights of War and Peace*, prol. no. 24; cf. also 2.1.9-11). In the same vein, Augustine writes that it is good – and charitable – to resist, prevent, or subdue a wrongdoer; we do him a service by expressing a “benevolent harshness” (*Epistle* 138 [“To Marcellinus”]).

23. Jean Bethke Elshtain, “Epilogue: Continuing Implications of the Just War Tradition,” in *Just War Theory: Readings in Social and Political Theory* (New York: New York University Press, 1992).

24. This in no way is to deny the moral logic that requires military interventions to receive international support.

25. See esp. John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Sheed, 1968), 12-13.

26. As Augustine famously quipped, “Without justice, what are kingdoms but great robber bands?” (*City of God* 4.4). That is to say, the legitimacy of a state rests on justice. Here I am relying on the translation found in E.L. Fortin and D. Kries, eds., *Augustine: Political Writings* (Cambridge and Indianapolis, IN: Hackett, 1994), 30.

27. While this “mediating” has always been lodged at the heart of just war reasoning, it is succinctly stated by Grotius in the Prolegomena (no. 30) of *The Rights of War and Peace*.

28. Thomas Aquinas (*Summa Theologica* [hereafter *S.T.*] II-II Q. 40, a. 1) writes that “it is necessary that those waging war should have a rightful intention, so that they intend the advancement of good, or the avoidance of evil... For it may happen that the war is declared by the legitimate authority, and for a just cause, and yet be rendered illicit through a vile intention.” Here I am utilizing the translation found in Gregory M. Reichberg, Henrik Syse, and Endre Begby, eds., *The Ethics of War: Classic and Contemporary Readings* (Oxford and Malden, UK: Blackwell, 2006), 177.

29. Aquinas, *Summa Theologica*, Q.40, a. 1.

30. Joseph Boyle, “Traditional Just War Theory and Humanitarian Theory,” in Terry Nardin and Melissa S. Williams, *Humanitarian Intervention* (New York: New York University Press, 2006), 66.

31. Here I follow those just war theorists who distinguish between “primary” and “secondary” just war criteria. The primary *ad bellum* considerations, following Aquinas (*S.T.* II-II Q. 40) are just cause, legitimate authority, and right intention; *in bello* criteria are chiefly twofold: considerations of discrimination and proportionality. The designation “secondary” does not suggest that these moral considerations are insignificant; it is only to emphasize that they are prudential considerations and owing their moral character to the primary criteria. Thus, we do not begin moral deliberation with “last resort;” “last resort” is only meaningful as it mirrors our deliberations over

the justness of a cause. Proportionality, in just war moral reasoning, is not foremost the reckoning of *more versus less force* used but rather a calculation of *harm versus good* done.

32. Paul Ramsey, *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* (Durham, NC: Duke University Press, 1961), 8. In the words of Grotius, the means employed in pursuit of any object “must, in a great degree, derive the complexion of their moral character from the nature of the end” (*The Rights of War and Peace* 3.1.2).

33. Hereon see Taylor B. Seybolt, “The Myth of Neutrality,” *Peace Review* 8 (1996): 521-27; Richard Betts, “The Delusion of Impartial Intervention,” *Foreign Affairs* 73, no. 6 (1994): 2-33; and Thomas G. Weiss, “Principles, Politics, and Humanitarian Action,” *Ethics & International Affairs* 13 (1999): 10-21.

34. Terry Nardin, “The Moral Basis of Humanitarian Intervention,” *Ethics & International Affairs* 16, no. 1 (2002): 57-8.

35. Augustine, *The City of God*, 14.9.

36. All that was created is “good,” for Augustine; however, when our loves are not rightly ordered, the ultimate good is violated (*City of God* 15.22).

37. Aquinas, *Summa Theologica*, II-II Q. 23-46, 58; cf. also *Commentary on Nicomachean Ethics*, Lectures IV-VI.

38. Aquinas, *Summa Theologica*, II-II Q. 40.

39. Because “justice directs a man in his relations with others” (ibid. II-II Q. 58, a. 9, r. 3), justice and love meld in Thomistic thought.

40. Francisco de Vitoria, “On the American Indians,” reproduced in Anthony Pagden and Jeremy Lawrance, eds., *Vitoria: Political Writings* (Cambridge Texts in the History of Political Thought; Cambridge, UK: Cambridge University Press, 1992), 288.

41. This was published posthumously in 1621.

42. Cf. in this regard Aristotle, *Politics* 1333b-1334a. Suárez rejects the Aristotelian assumption of a natural moral “elite” within society who through their superior knowledge intuit justice over injustice and right over wrong.

43. Here I refer to his now famous words, the “impossible possibility,” to describe Jesus’ love ethic. See Reinhold Niebuhr, *Christianity and Power Politics* (New York: Scribner’s, 1940), 3. In *An Interpretation of Christian Ethics* (Cleveland, OH and New York: Meridian, 1956 [repr.]), 134, Niebuhr writes, “The ideal possibility is really an impossibility.” What Niebuhr called “Christian idealism” creates an illusion; what is needed, rather, is a “Christian realism” (D. B. Robertson, ed., *Love and Justice: Selections from the Shorter Writings of Reinhold Niebuhr* [Philadelphia: Westminster, 1992], 41-43). A useful corrective to Niebuhr’s deficient theology is offered by Paul Ramsey in “Love and Law,” in Charles W. Kegley and Robert W. Bretall, eds., *Reinhold Niebuhr: His Religious, Social and Political Thought* (New York: Macmillan, 1961), 79-123, and more recently, in David D. Corey and J. Daryl Charles, *The Just War Tradition: An Introduction* (Wilmington, IN: ISI Books, 2012), 207-26.

44. David D. Corey and J. Daryl Charles, *The Just War Tradition: An Introduction* (Wilmington, IN: ISI Books, 2012), 136.

45. Niebuhr, *Christianity and Power Politics*, 6.

46. Paul Ramsey, *Basic Christian Ethics* (New York: Scribner’s, 1950), 345-46.

47. Ramsey, *Basic Christian Ethics*, 367.

48. Ramsey, *Basic Christian Ethics*, 166-71. In this vein, Ramsey takes Jesus’ teaching on “turning the other cheek” in the Sermon on the Mount and extrapolates, noting that Jesus does not say, *If someone strikes your neighbor on the right cheek, turn to his aggressor the other as well* (170-71).

49. Ramsey, *The Just War*, 35-36.

50. Despite the volume's sensitivity to the divorce – theoretically and practically – of justice and charity, Nicholas Wolterstorff's *Justice in Love* (Grand Rapids, MI and Cambridge, UK: Eerdmans, 2011) is remarkable for its inattention to the work of Ramsey. An additional fundamental weakness of Wolterstorff's volume is its deficient understanding of the relationship between punishment and forgiveness and its rejection of retributive justice and restitution, which Wolterstorff fails to distinguish from revenge. I have evaluated Wolterstorff's book at length in the review essay "Toward Restoring a Good Marriage: Reflections on the Contemporary Divorce of Love and Justice and Its Cultural Implications," *Journal of Church & State* 55, no. 2 (Spring 2013): 367-83.

51. Here I depart from Walzer's otherwise insightful exposition of just war reasoning in *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th ed. (New York: Basic Books, 2006), 21, 228-32, 251-5. Walzer believes that *ad bellum* and *in bello* criteria are independent, even existing in a tension or possible opposition, in the end tempting him in the case of "supreme emergencies" to set aside moral principle. Paul Christopher follows Walzer in this regard, asserting that "questions of *jus ad bellum* are not relevant to *jus in bello* proscriptions." See Helen Frowe, *The Ethics of War and Peace* (Upper Saddle River, NC: Prentice Hall, 1999), 91.

52. This function has been described with exceeding clarity by H. David Baer, *Recovering Christian Realism: Just War Theory as a Political Ethic* (Lanham, MD: Lexington Books, 2015), esp. chapter four ("The Criterion of Just Intention").

53. Darrell Cole, "War and Intention," *Journal of Military Ethics* 10, vol. 3 (2011): 188.

54. This is the *tranquillitas ordinis* described by Augustine in *City of God* 19.13.

55. Augustine, Roland J. Teske, and Boniface Ramsey, *Contra Faustum Manichaeum* (Hyde Park, NY: New City Press, 2007), 37. To these I would even add the spread of democracy, insofar as not every state or sovereignty in the world is necessarily suited to democratic form of governance as the West has known and practiced it.

56. Thus Anthony J. Coates, "Is the Independent Application of *Jus in Bello* the Way to Limit War?" in David Rodin and Henry Shue, eds., *Just and Unjust Warriors: The Moral and Legal Status of Soldiers* (Oxford and New York: Oxford University Press), 191.

57. These "why" questions entail — but are by no means limited to — the following: What is the threshold for violating a state's "sacred borders"? By what authority do agencies, actors, or collations intervene? What are the motives of intervening actors? What do charity and good will require? How long do potential intervening actors wait before intervening? What measures are needed for a "successful" intervention? What goal represents a "better peace"? To what extent are the host governing authorities responsible/accountable for victims of injustice and suffering? What level or degree of force is needed to protect victims and supply aid? How long will retaining or peacekeeping force be needed to restore order? What is the "common good" as it applies to a broken, failing, or oppressive state? What response and actions are proportionate to the country's need? How are innocents/citizens properly protected during the interventionary process? And what will be needed for long-term healing?

58. At its core, right intention in just war thinking distinguishes between revenge and retribution. If a categorical moral distinction cannot be made — and preserved — between the criminal act and the retributive act (a moral qualification that distinguishes not only right from wrongful intention but legitimate from illegitimate political authority), then it follows that a culture, society, or community cannot be considered "civil" and just. At its base, the moral outrage that expresses itself through retributive justice is first and foremost rooted in moral principle and not hatred, prejudice or uncontrolled passion. For this reason Augustine can speak of retribution in terms of "benevolent harshness." Conceptually, revenge and retribution are worlds apart. Whereas revenge (i.e., vengeance or retaliation) strikes out at real or perceived injury, retribution speaks to an objective wrong. Because of its retaliatory mode, revenge will target both the offending party

and those perceived to be akin. Retribution, by contrast, is targeted yet impersonal and impartial, thereby distinguishing itself from “vigilante justice.” It is for this reason that “Lady Justice” is depicted as blindfolded. Moreover, whereas revenge is wild, insatiable, and not subject to limitations or moral constraints, retribution acknowledges both upper and lower limits as well as the moral repugnance of both draconian punishment for petty crimes and light punishment for heinous crimes. Vengeance, by its very nature, has a thirst for injury, delighting in bringing further evil upon the offending party. The avenger will not only kill but rape, torture, plunder, and burn what is left, deriving satisfaction from the victim’s direct or indirect suffering. Augustine condemns this “lust for revenge” (*City of God* 4.6 and 14.28), a propensity prompting C.S. Lewis – who served as a soldier in World War I – to observe: “We may kill if necessary, but we may never hate and enjoy hating. We may punish if necessary, but we must not enjoy it. In other words, something inside us, the feeling of resentment, the feeling that wants to get one’s own back, must be simply killed... It is hard work, but the attempt is not impossible” (*Mere Christianity* [repr.; New York: Simon & Schuster, 1996], 109). The impulse toward retribution, it needs emphasizing, is not some lower or primitive instinct, even when many social scientists and social psychologists in our day hold this view. It is rather to dignify fellow human beings by treating them as responsible moral agents. Civilized human beings will not tolerate murder and mayhem at any level; the uncivilized will. Correlatively, civilized humanity will exercise moral restraint in responding to moral evil – a commitment that is rooted in neighbor-love and an awareness of the dignity of all human beings. The particular character of this response is chiefly twofold in its expression during interventionary action: it is both discriminating and proportionate in its application of coercive force.

59. Among those “first-order” priorities that inform the ultimate justification for intervening are the following: (1) embodied justice as it affects the people who stand in need, (2) creating order out of chaos in social-political terms, (3) seeking the common good of those in need, and (4) seeking the international common good as it is affected by the crisis (Ramsey, *The Just War*, 28-33).

60. These realities are argued with great clarity in James Turner Johnson, “Moral Responsibility after Conflict,” in *Ethics beyond War’s End*, Eric Patterson, ed. (Washington, D.C.: Georgetown University Press, 2012), 17-33.

61. Biggar, *In Defence of War*, 233.

62. Walzer, *Arguing about War*, 88.

63. Again, this suggests the need for prioritizing “primary” and “secondary” criteria. See Aquinas, *Summa Theologica*, Q.40, a. 1.

64. The transcript of this address appeared in the *Washington Post*, 2 February 1997, on page C4. In this speech, Goldstone recommended doing four things for the sake of those who have suffered: (1) exposing the truth of specific guilt and avoiding general guilt; (2) recording the truth of moral atrocity for the historical record in order to counter attempts by the guilty to avoid guilt; (3) publicly acknowledging the loss of the victims, who, as terrified people, need justice; and (4) applying the deterrent of criminal justice, since human nature tends to be deterred from criminal behavior by the fear of punishment.

65. Proverbs 24:10-12.



## Chapter 4

### Moral Injury Among Perpetrators of Genocide

COL (R) David Cotter

*For a people to kill another large group of people, the ethical and emotional constraints that normally inhibit them from adopting such a radical measure must be lifted.<sup>1</sup>*

—Daniel Goldhagen

One of the very few constants in our widely diverse world is an operating system of social, moral, and ethical values. Every society has a set of norms that guide and enforce the behavior of its members and those norms tend to be unique in detail within each society. However, principal and nearly universal among those is the value accorded to human life. In some societies life is sacred, in others less so, but still of considerable worth. Beyond individual societies, the international community has categorized killing in general, and murder in particular, as criminal.<sup>2</sup> In the context of national-level violence, usually as either civil or international war, value systems can be offset by the extreme exigencies of the moment. In no case is that more apparent than in instances of genocide and in the attendant genocidal crimes. No other circumstance can compromise so utterly civilizing values.

Genocide is, in and of itself, an international crime. Moreover, the constituent crimes beyond murder, including enslavement, persecution, sexual violence, and inhumane acts, have all become war crimes under NATO, US, and other international military law mainly because acts of genocide tend to occur during periods of armed conflict.<sup>3</sup> In spite of these legal strictures, soldiers, militias, government functionaries, and ordinary people become swept up in genocidal crimes and become involved as perpetrators. The commission of these horrific acts violate not only the Law of Land War, but in most cases the acts are also an assault on long-held moral-ethical values. The acts committed during a genocide constitute a betrayal of those values which produces an attendant emotional and psychological harm to the perpetrator that can have effects of long duration and of considerable consequence. Perpetrators of genocide experience significant moral damage as a result of the perceived betrayal of their moral code.<sup>4</sup> This phenomenon can be described as:

Moral injury is a construct that describes extreme and unprecedented life experience including the harmful aftermath of exposure to such events. Events are considered morally injurious if they transgress deeply held moral beliefs and expectations. Thus, the key precondition for moral injury is an act of transgression, which shatters moral and ethical expectations that are rooted in religious or spiritual beliefs, or culture-based, organizational, and group-based rules about fairness, the value of life, and so forth.<sup>5</sup>

Moral injury and emotional damage are not the exclusive domains of the perpetrator. Victims, too, can suffer serious and sometimes incurable damage to their psychological health. Consider the case of the *Judenrat* in Vilna in 1943. A fledgling resistance had emerged in the ghetto and it had become increasingly more effective. The Nazi response



was to threaten, through the *Judenrat*, that all in the ghetto would be murdered if the leader of the resistance fighters, Yitzhak Witneberg, and his followers were not handed over. After much debate, Witneberg and the resistance fighters were compromised to the Nazis and summarily executed.<sup>6</sup> Several members of the *Judenrat* were wracked with terrible guilt.<sup>7</sup> Certainly they felt remorse, but took comfort in the fact that some number had hope of survival. Efforts at survival notwithstanding, the *Judenrat* suffered moral injury as a result of their betrayal of the resistance fighters.

A different type of emotional stress attended the men of several ghettos in Poland that utilized the ability of young women to blend into the Polish community and thus serve as messengers and couriers between the ghettos. These young women, the *Kashariyot*, performed their duties at terrible risk of discovery, for they surely would have been a target of special treatment by the *Gestapo* if caught. Their heroism must have fed a level of impotence among the men of the ghetto because the lethal risk was carried solely by the women of the community.<sup>8</sup> Finally, and most tellingly, in the case of genocidal sexual violence, victims suffer indelible emotional scars, and so too do some bystanders. This is made more complex because people can have multiple roles in a genocide, being at various times victim, bystander, or perpetrator. Rwanda provides an example of this. Immediately following the slaughter of Tutsis by the Hutu, Tutsi vengeance was visited upon the Hutu, turning former victims into perpetrators or bystanders, or in some cases both.<sup>9</sup> Thus, despite the limits imposed on the definition above, victims can suffer terrible moral injury with emotional and psychological effects as a direct consequence of genocidal crime. But moral injury in the context presented here is more about the injury inflicted on the self by the person who acts purely as a perpetrator without crossing or confusing roles. These perpetrators visit moral injury upon themselves when they willfully betray their moral foundations, and this is an entirely different type of psychological damage.

In a discussion of moral injury in perpetrators the definition assumes even further nuance because just as there are sins of omission and sins of commission, so too can moral injury vary depending upon motivation and intent. In the case of perpetrators the injury is not the same as that of the victim or bystander. Neither is it the same injury to the psyche suffered by the commission of an unintentional error. In the case of the single role perpetrator of genocide, the injury is a result of a conscious and premeditated violation of the law and of their moral code. It is a double betrayal.

Perpetrators must come to terms with their crimes and they do so in many different ways and for many different reasons. The only bridge to psychological well-being is a genuine examination of one's actions through the lens of remorse. The therapeutic properties of remorse enable the slow process of reinterpretation that will, in turn, lead to repair of the moral damage caused by the acts.<sup>10</sup> But not every perpetrator feels remorse for their actions and of those that do, some express remorse only dubiously.

Whatever the motivation at the time of the crime, many *genocidaires* and war criminals suffer severe emotional strain as a result of the shame, guilt, and anger that follow a moral-ethical betrayal. An illuminating example is that of Private Steven Green, a member of the first battalion of the 502d Infantry Regiment assigned to Yusifiyah, Iraq, the so-called

“Sunni Triangle.” PVT Green was the ringleader and main participant in a murder-rape in Iraq in 2005. Wracked by guilt and remorse, he took his own life while imprisoned.<sup>11</sup> In PVT Green’s case, his remorse became malignant and tortured. As indicated by evidence he left behind, his extreme reaction was a clear result of his unrequited guilt.

The key to repair of moral injury is genuine remorse. Remorse inflicts upon us a conundrum because the biggest hurdle in a consideration of perpetrator remorse is establishing the credibility and veracity of the expressed sentiment. PVT Green’s remorse is patent. He was clearly unable to reconcile his actions with his soul, but how do we see into the hearts of other perpetrators? We can look at the case of SS *Standartenfuhrer* Jochen Peiper, the Nazi SS Panzer commander who led the troops that committed several massacres of combatants and non-combatants across Eastern Europe, Italy, and Belgium. Peiper was an enthusiastic and efficient executor of Nazi will in conquered lands. During the Battle of the Bulge in December 1944, every man, woman, and child, both combatant and non-combatant, in the path of his armored juggernaut was slaughtered.<sup>12</sup> The infamous Malmedy Massacre occurred under his command. His ruthlessness never wavered because his state of mind was clear. He harbored not one iota of remorse because he believed he did no wrong. His moral-ethical system had been thoroughly corrupted by the Nazi mind management machine. He made his case clear long after the fact when, in 1958 he stated emphatically that, “I was a Nazi and I remain one today.”<sup>13</sup>

### **Confessional remorse**

Other perpetrators have expressed remorse in ways that seem more like mechanisms for mercy or escape rather than as an effort to achieve emotional or psychological healing. Psychologists have referred to this reaction as an “exonerating strategy.”<sup>14</sup> Exemplary of this group is Rudolph Hoess, the commandant of Auschwitz from 1940-1943. Hoess provides us with an excellent example of the evil of genocide, as a cruel and sadistic mass murderer personally responsible for as many as two million genocide deaths, although that estimate varies wildly between a low (?) of one million to as many as 3.5 million.<sup>15</sup> Hoess’ confessional autobiography, “My Soul,” doesn’t quite ring as genuine. He spends a good bit of the work attempting to transfer the blame for his actions to others, almost as if he saw himself as a victim. Hoess described his actions as commandant as a period of ethical turmoil: “For a long time I wrestled with this dilemma, the choice between my inner convictions on the one hand and my oath of loyalty to the SS and my vow of fidelity to the Führer on the other.”<sup>16</sup> Unfortunately for more than two million people, the ethical dilemma did nothing to slow or halt the mass murders. Hoess’s response is a dodge, or what Leigh Payne calls a vital lie.<sup>17</sup> “Justifications, excuses, euphemisms, vital lies and victimhood permeate most remorseful confessions and erode their sincerity.”<sup>18</sup> That is certainly the case with Rudolph Hoess. We are left with no tangible evidence that he was truly remorseful and must either conclude that he was impervious to moral injury or was able to withstand the stresses in a vain effort to gain exoneration.

The case of Oswald Pohl provides us with a more intriguing result, leaving us less sure of whether or not he experienced moral injury. Pohl had been a very senior Nazi official, equivalent to a senior general, charged with oversight of many concentration camps. The

“extermination through labor” policy and the authorization to perform hideous medical experiments are attributed to Pohl.<sup>19</sup> Pohl’s case gained some renown because of his very public repentance with a concomitant conversion to Catholicism. In his record of that journey, *Credo: Mein Weg zu Gott* (*Credo: My Path to God*), Pohl commits to God but never admits to any specific wrong. He offers nebulous confessions, but as with so many in post-war Germany, avoids any explicit admission of crime. As Jaspers points out, this is common in the period in which Germans avoided any personal responsibility, but accepted partial national guilt for which they cannot be held personally accountable.<sup>20</sup> In the final analysis, Pohl’s *Credo* lacks credibility because he avoids a direct confrontation with the evil he authored; he is too circumspect as he tries to distance himself from the actions of his past. He does not undergo any semblance of purgative crucible. His search for absolution may have found an audience in heaven, but those of us who are earth-bound remain unconvinced that he suffered any moral injury.

### **Genuine remorse**

There are, to be sure, remorseful perpetrators who seek to do more than escape. There are many who work to help victims recover, and in doing so repair their own damaged ethical base. Their credibility is clear as they enable us to see their moral injury and to see their attempts at repair. One of the most credible statements of guilt and remorse was rendered to the United Nations International Criminal Tribunal for Yugoslavia in the wake of events in and around Srebrenica in which as many as eight thousand civilians were slaughtered. As a brigade commander involved in operations in the vicinity of Srebrenica, Dragan Obrenović ordered the execution of over a thousand civilians, including wounded Bosnian soldiers taken from a hospital. Following a plea of guilty, Obrenović did not ask for clemency, but rather spoke from the dock of his remorse:

I am here before Your Honours because I wish to express my remorse. I have thought for a long time, and I’m always followed by the same thought – guilt. I find it very hard to say this truth. I am to blame for everything I did at that time. I am also to blame for what I did not do, for not trying to protect those prisoners. I ask myself again and again, what could I have done that I didn’t do? Thousands of innocent victims perished. Graves remain behind, refugees, destruction and misfortune and misery. There is misfortune on all sides that stays behind as a warning that this should never happen again. My testimony and admission of guilt will also remove blame from my nation because it is individual guilt, the guilt of a man named Dragan Obrenović. I stand by this. I am responsible for this. The guilt for which I feel remorse and for which I apologise to the victims and to their shadows. I will be happy if this contributed to reconciliation in Bosnia, if neighbours can again shake hands, if our children can again play games together, and if they have the right to a chance. I will be happy if my testimony helps the families of victims, if I can spare them having to testify again and thus relive the horrors and the pain during their testimony. It is my wish that my testimony should help prevent this ever happening again, not just in Bosnia, but anywhere in the world. It is too late for

me now, but for the children living in Bosnia now, it's not too late and I hope that this will be a good warning to them.<sup>21</sup>

Obrenović's guilt is clear, but so is his remorse. This type of credible heart-felt remorse transcends the Oscar-worthy drama of Hoess and Pohl because unlike those two, his case was already decided. His effort was not an attempt to avoid punishment because he had already been sentenced and was going to prison for a long time.

Another example of a perpetrator overcoming a credibility problem is that of Kimani Peter Mogoai, a foot soldier in the ANC army during the mass atrocities associated with apartheid in South Africa. Kimani begins by talking about his moral injury: "I have taken this opportunity to speak the truth and to express my torturing regrets about the wasted years and my shame about a mean and petty past. I regard myself today as a disgrace. It is with my deepest remorse that I ask for forgiveness."<sup>22</sup> Beyond his word, Kimani did not mask his responsibility with an inability to remember or any other avoidance mechanism.

Between the extremes of Jochen Peiper and Kimani Mogoai is the case of Kurt Gerstein, the so-called "conscience stricken" SS Officer. Gerstein's circumstances are painfully ambiguous and contradictory, conditions that bred doubt in spite of his demonstrated genuine remorse. Gerstein served in the Hygiene Institute of the SS. In that capacity he was witness to, and in some cases party to, genocidal crimes especially involving medical experiments. He was later a key cog in the killing machine by being a trusted courier for Zyklon-B, the chemical agent used to poison many of the inmates in the extermination camps.

Gerstein joined the SS even though he had a long pre-war history of anti-Nazi sentiment. He maintained that his sentiment never changed and he kept detailed records of his deeds and passed them to numerous sympathetic parties during the war; including the Papal Nuncio in Berlin, Father Cesare Orengigo, and Swedish diplomat Baron Von Otter. In spite of his claims, the post-war courts saw his membership in the SS and his participation in concentration camp activities as too incriminating to ignore and he was imprisoned where he wrote "The Gerstein Report" as a final testimony. He then hung himself. Gerstein's remorse was ultimately recognized as genuine and he was pardoned in 1965 through the combined efforts of his wife and Baron von Otter.<sup>23</sup>

## **Reconciliation**

Reconciliation is the final and most important step in the moral injury repair process. It is also the most difficult to achieve. Dragan Obrenović states clearly his desire for reconciliation. "I will be happy if this contributed to reconciliation in Bosnia, if neighbours can again shake hands, if our children can again play games together, and if they have the right to a chance."<sup>24</sup> Repair of moral injury demands reconciliation with self, and if at all possible with victims. Frequently, however, the motivations for reconciliation can seem self-serving, as in the case of John from the "As We Forgive" series.<sup>25</sup> John was a perpetrator in the early part of the Rwandan genocide and was a willing party to much atrocity. Later he was consumed by one particular murder in which he had beaten a man to death. Wracked with guilt, he sought reconciliation as a means to heal his damaged psyche. Urged

by counselors in prison to reach out to the daughter of the man he had murdered, John was at first reticent, but so strong was his desire for moral comfort that he finally relented and engaged Chantal, the victim's daughter. He met with Chantal and the meeting was amicable but inconclusive because Chantal could not forgive John. John's clear aim throughout is to become unburdened, but he never seemed to care about Chantal, her feelings, or her emotional injury that resulted from his action. John's desire for forgiveness is selfish, yet it did work to repair his moral injury.<sup>26</sup>

Severi was from a like pool of perpetrators in the Rwandan genocide. He was plagued by guilt for the murders of a village neighbor, a woman, and her four children during the genocide. Wallowing helplessly in his guilt and desperately seeking what he termed "deliverance," Severi returned to his village after release from prison and reached out to Rosaria, the sister of the woman he had murdered. He visited Rosaria often, begging her repeatedly for forgiveness. Rosaria was slow to warm to Severi, but over time the roots of reconciliation took hold and Rosaria actually offered Severi a job working her land. Over time, Severi convinced a local construction company to build a new home for Rosaria to replace the one that was burned down during the genocide.<sup>27</sup> In Severi's case, what may have been a self-centered search for release from guilt evolved into true reconciliation, and by extension a more thorough repair of his moral injury.

### **Reconciliation as prophylaxis for mass atrocity**

One of the operating themes in current genocide research is that ordinary people can do extraordinarily evil things in the grasp of a genocidal frenzy. Christopher Browning's *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* and Daniel Goldhagen's *Hitler's Willing Executioners* are the hallmarks of this genre. Both try to understand why people from a Western, Christian, and enlightenment tradition in Europe abandoned their moral-ethical foundations and became complicit in the nightmare that Adolph Hitler unleashed on the world. It is clear from this study that all but the most hardened perpetrators suffer moral injury. Interestingly, the perpetrators that are offered counseling in prison seem to be the most amenable to confronting their crimes honestly and begin the journey from admission to remorse to reconciliation, thus repairing moral injuries they have suffered. It is further curious that only in the case of the more recent mass atrocity events, specifically Bosnia and Rwanda, that post-sentencing counseling was provided in an effort to urge the accused to confront their crimes. The first benefit of this is that the victims receive some recognition of guilt and accountability, which is key to their journey of emotional healing. The secondary effect has been the emotional healing that has ensued among the perpetrators. In the Bosnian and Rwandan cases we can see real progress toward reconciliation. Dragan Obrenović indicates an ardent desire to accept responsibility for his crimes, suffer the sentence of the court, and to begin the process of reconciliation.<sup>28</sup> Similarly, John and Severi from Rwanda met with counselors in prison who urged them both to engage with their victims and other survivors.<sup>29</sup> In both of their cases, credible statements of remorse were followed by outreach to victims in an effort to reconcile. Severi's actions seem more authentic, but as described in the *As We Forgive* documentary, both he and John have become contributing members of their societies again, and crucially, advocates against genocide. The

Bosnian and Rwandan cases are indicative of a therapeutic pattern and it behooves us to pursue this line of thought if prevention is our goal.

The comparison to Europe is sobering. Cast in a cloud of shame and guilt, the many bystanders in post-World War II Europe, particularly in occupied France, Poland, and especially Germany have engaged in a multi-generational denial of responsibility. Whether the recent increase in anti-Semitism in Europe is related to this is beyond the scope of this discussion, but it seems fair to at least consider that the failure to complete a full accounting of Holocaust responsibility, to include opportunities to repair the moral injury of much of the population, may be a contributing factor.

Moral injury can be terminal, as evidenced by the case of Private Green, but it does not have to be. If all perpetrators were considered victims of moral injury and treated accordingly in their adjudication and confinement, we could sow the seeds for a lasting anti-genocidal ethos that can be leveraged for preventative purposes in the future. It is too attractive a possibility to ignore.

## **Afterword**

In 1922, the German Foreign Minister, Walter Rathenau was assassinated by Ernst Werner Techow, an anti-Semitic extremist. Rathenau was almost certainly killed because he was a Jew. Before his trial, Techow's mother received a note from the murdered Rathenau's mother: "In grief unspeakable, I give you my hand. Say to your son that, in the name of the spirit of the one he has murdered, I forgive, even as God may forgive, if before an earthly judge your son makes a full and frank confession of his guilt and before a heavenly judge repents."<sup>30</sup> Techow did confess, and in so doing he reconciled. He did go to prison only to be released five years later for good behavior. Techow's case is interesting not for the admission, remorse, and reconciliation. It is interesting because in 1940, when France surrendered to the Nazi war machine and the roundup of French Jews began, Techow went to Marseilles and engineered the escape to Spain of over 700 Jews. Shortly before he went to Marseilles he wrote: "Just as Frau Rathenau conquered herself when she wrote that letter of pardon, I have tried to master myself. I only wished I could get an opportunity to right the wrong I have done."<sup>31</sup> Remorse and reconciliation are powerful forces, not just in the repair of moral injury, but in forging new consciences in the repaired people.



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## Chapter 5

### Moral Authority to Change Governments?

O. Shawn Cupp and William L. Knight, Jr.

#### Introduction

Since before Westphalia in 1648, nations sought to define themselves under what would eventually be international law and standards of conduct as nation-states. One principle within the Treaty of Westphalia agreements ending the Thirty Years' War is that each state (no matter how large or small) is equal under international law. "Without an Emperor or Pope as final arbiter, the newly emerging nation-states were forced to look elsewhere for conflict resolution. International law emerged to fill this vacuum with its own set of rules to govern the relations between these developing states and rules by which to settle disputes."<sup>1</sup>

Another principle is that other states may not interfere with a country's internal domestic affairs. Nevertheless, as we now continue toward completing the first quarter of the 21st century with a world population estimated to reach nine billion by 2030, under what circumstances could or should these two principles (equality and non-interference) be set aside? Under what conditions could or should other nation-states interfere with the internal domestic situation of a nation state?

Within the beginning of this century, two internal conflicts of nation-states included citizens rising up against their governments. The same civil movement — called the Arab Spring — caused the social upheaval in both of these nation-states. This movement began in 2011 in the nation state of Tunisia and moved eastward to Egypt and even into Saudi Arabia. Within the actions of this movement, two nations were the subject of external intervention, but those interventions by other nation-states took radically different forms. In both cases the question on internal conflict and international humanitarian law were central to the actions of outside nation-states.

"The Arab Spring or Arab Awakening is a watershed event in the broader Middle East and North Africa with immense ramifications for the people and governments of the region, as well as the rest of the world."<sup>2</sup> The global community provided a new way to solve these types of problems resulting from the Arab Spring in 1945. The victors of World War II — China, USSR, France, United Kingdom, and the United States — all ratified the United Nations Charter creating the Security Council and establishing themselves as permanent members of that council. During the proceeding months and years after the Arab Spring, the United Nations Security Council was used with varying degrees of success to ameliorate the situations created by nation-states who contributed to this movement.

The world's nations saw great devastation during World War II and the attempts to thwart this extensive aggression in many cases were not adequate. "This demonstrated to world powers the need for a collective body of the international community to maintain peace and security. The result was the creation of the United Nations and drafting of the UN charter."<sup>3</sup> Theoretically, nation-states do not have the authority to initiate hostilities under the UN construct. Nonetheless, the framework currently in place is used to enable the Security Council,

who “would control the use of force in international law.”<sup>74</sup> Furthermore, under Article 51 all nations have some right to self-defense without the intervention of the UN Security Council. This potential intervention is based on an understanding that this “self-defense right” is fraught with many different viewpoints of the charter. However, based upon the constructs of international humanitarian law (IHL) and responsibility to protect (R2P), nations can intervene to stop a government from committing atrocities against their citizenry.

## **Research Problem**

The future of 21st century conflict will include humanitarian decisions at the international level that will invoke moral authority as justification for regime change of recognized and established nation state governments. International humanitarian law (IHL) has matured to the point where it could be invoked to intervene when a nation state is committing genocide and atrocities against its citizenry. This study will explore the implementation of regime change under both the R2P and IHL frameworks.

## **Research Purpose**

The research purpose for this study is to identify factors that will help in maintaining IHL in the future with respect to regime change. The influence of the United Nations Security Council, with voting of permanent members on sanctions and military actions, is also considered with respect to international actions on nation state regime change.

## **Research Question(s)**

The primary research question is — what factors attributable to the future of international humanitarian law are used as justification for regime change of a recognized and established nation state government? Do these factors make up a moral obligation under IHL for nation-states to force regime change?

## **Definition of Key Terms**

### *Lex Specialis*

The relationship between two bodies of rules. Specifically, for this study, the rules surrounding human rights versus the rules concerning international humanitarian law. “There are certain situations in which the law may deal with both the general and the specific. Overall, some believe that the relationship between the two bodies of law is vertical. This means the general is at the bottom and is the default position. The special is a subdivision of the general and is above it.”<sup>75</sup>

### *International Humanitarian Law (IHL)*

“Traditionally, international law is divided into two major areas of law, the law of peace and the law of war. The laws of war (*jus in bello*) are often called Law of Armed Conflict or International Humanitarian Law. IHL covers the conduct of operations and what protection combatants and non-combatants enjoy under certain circumstances.”<sup>76</sup>

### *Human rights law*

The Universal Declaration of Human Rights adopted by member states of the United Nation in 1948 stated “the highest aspiration of the common people, and the foun-

dation of freedom, justice and peace. Social progress and better standards of life in larger freedom, including the prevention of barbarous acts which have outraged the conscience of mankind, and, broadly speaking, individual and collective well-being, are considered to depend upon the promotion of universal respect for and observance of human rights.”<sup>7</sup>

#### *Non-international armed conflict*

It is sometimes difficult to determine that a situation within a state constitutes an armed conflict. There are metrics proposed to measure this concept. “First, at what point does the law deem that the violence has crossed that threshold? Second, how are the facts to be accurately determined? Third, of what relevance, if any is the state’s refusal to accept that what is occurring is an armed conflict?”<sup>8</sup>

#### *Operation Odyssey Dawn and Operation Unified Protector*

“Demanding an immediate ceasefire in Libya, including an end to the current attacks against civilians, which was said might constitute crimes against humanity, the Security Council imposed a ban on all flights in the country’s airspace — a no-fly zone — and tightened sanctions on the Qadhafi regime. The UN Security Council adopted resolution 1973 (2011) by a vote of 10 to 0. Brazil, China, Germany, India, and the Russian Federation abstained from voting therefore the resolution passed. This resolution resulted in two multinational military operations. The first generally became known as Operation Odyssey Dawn (OOD) and was launched by a coalition of states on a day after Resolution 1973 was adopted.”<sup>9</sup>

#### *Operation Unified Protector*

About a week after OOD began, a second multinational operation was launched that superseded OOD; the NATO-led force Operation United Protector (OUP).<sup>10</sup> This second operation continued the air and maritime no-movement zones in the Resolution 1973 under the military banner of NATO. Some unique US capabilities continued to be utilized; however, NATO was not the overall commander and force provider for this operation.

#### *Responsibility to Protect (R2P)*

R2P is a concept that requires nation-states to provide protection to civilians experiencing a humanitarian crisis. In the case of Libya “President Obama stated that the decision to intervene under this concept aligned with 2010 National Security Strategy. ‘The US will work both multilaterally and bilaterally to mobilize diplomatic, humanitarian, financial, and in certain instances military to prevent and respond to genocidal and mass atrocities.’”<sup>11</sup>

### **Research Methodology**

This study used a qualitative research methodology to examine the impact of using IHL in the two case studies examined (Libya and Syria). The research conforms to the constructivism worldview.<sup>12</sup> This philosophical worldview of the research study is based on understanding the social interactions of the nation-states in determining the proper use of IHL in solving internal conflict within a member state of the UN. “Inquirers generate or inductively develop a pattern of meaning.”<sup>13</sup> The researchers seek to interpret what is found in this research study. As Guba and Lincoln stated, “constructivism is about understanding

and becoming informed.”<sup>14</sup> This research study seeks to understand the relationship of the US actions in addressing the internal conflicts of member nations.

The research design is multiple case study. The research seeks to use case study based upon “the study of an issue explored through one or more cases within a bounded system.”<sup>15</sup> A number of variables exist within each of these two case studies. The researchers attempt to analyze the cases against the actions taken against their governments under the umbrella of IHL and several other factors that influence the outcomes of those actions. “By identifying the context of the case, the researcher helps others who later read the case study report to draw conclusions about the extent to which its findings might be generalizable to other situations.”<sup>16</sup>

The sample size of this study is two (N=2): Libya and Syria. While this is not ideal in terms of case study research, “small-N qualitative research is most often at the forefront of theoretical development. Large-N research can be sensitized to the diversity and potential heterogeneity of the cases included in an analysis, large-N research may play a more important part in the advancement of social science theory.”<sup>17</sup> Therefore, this study seeks to only view implementation of theoretical framework and not the total advance of understanding the social science theory of international intervention.

“Descriptive inference remains an important, if undervalued, trope within social sciences. Descriptive case study asserts that the case understanding is like or unlike other similar cases. A descriptive inference does not make any assertions about causal relationships.”<sup>18</sup> This research study fits within this framework and seeks to answer: What? How? Why?

## **Case Study 1: Libya**

### *Operation Unified Protector-Libya*

As was pointed out in an article in 2015, “The events of (US-led) Operation ODYSSEY DAWN (OOD) and, more specifically for this paper, subsequent NATO-led Operation UNIFIED PROTECTOR (OUP) provides a glimpse into 21st century military operations that include maintaining a coalition, using multiple combatant commands, and quickly build-up forces. It is important to review previous military operations in order to learn and to prepare for opportunities and challenges in the future.”<sup>19</sup> The following will provide a synopsis of the events leading up to the conflict in Libya that started with unrest and protests in Tunisia in December 2010, actions of the United Nations Security Council, and intervention using NATO military forces.<sup>20</sup>

This paper will provide background on this situation in Libya (that actually also had spread across Egypt, Algeria, Morocco, and Sudan), indicators to intervene in early 2011 based on the “threat of widely anticipated massacres in northeastern Libya by the regime of Colonel Muammar Gaddafi,” the justification to intervene that resulted in the UN issuing Security Council Resolution (SCR) 1973, and conclusions concerning the legitimacy of UN sanctions and supporting NATO operations.<sup>21</sup>

## **Background**

In 2011, following a number of events within Libya that included Muammer al-Qaddafi repressing antigovernment protests, killing large numbers of civilians, rebels in Mis-

rata fighting against government forces, and the continued siege of the city of Benghazi, requests were made for the UN to take action.<sup>22</sup> Besides the rapidly escalating revolt in Benghazi, this destabilization resulted in a number of civilians fleeing Libya that further weakened the social structures within the state. Since the beginning of the crisis on 16 February 2011, over 803,000 people fled Libya, out of a population of just 6.1 million.<sup>23</sup> Why were all these citizens fleeing?

The UN Security Council condemned the actions of the Qaddafi government and on 22 February 2011 released a press statement that “condemned the use of force against civilians, expressed deep regret at the deaths of hundreds of civilians, called on Libya to meet its responsibility to protect civilians and respect international humanitarian law.”<sup>24</sup> In a briefing to the Security Council, the secretary-general announced that more than one thousand people were killed in violence throughout Libya on 25 February 2011.<sup>25</sup>

The following day, the UN Security Council passed a resolution, “USR 1970 under Chapter VII calling for an immediate end to the violence in Libya.”<sup>26</sup> USR 1970 also requested assets to be frozen, referral of the situation to the International Crimes Commission (ICC), and called for UN member states to assist in humanitarian assistance.<sup>27</sup> This is only the second time that the Security Council had referred a situation to the ICC; the other was in Darfur.<sup>28</sup> This action had little or no effect on the conditions within Libya. Attacks continued against civilians and the “disproportionate use of force by government forces continued.”<sup>29</sup> “Italy and Germany agreed to provide logistic support for a noncombatant evacuation operation (NEO) or humanitarian assistance (HA), but would not support kinetic operations unless enforced by UN.”<sup>30</sup> What did the United Nations and the international community use as indicators of human rights violations?

### *Indicators*

The United Nations was not the only international organization or agency tracking the situation in Libya during this time. The Cable News Network (CNN) reported in August 2011 that “international powers have accused Qaddafi’s regime of committing human rights violations and killing civilians. Libyan officials have repeatedly accused NATO of killing civilians in airstrikes.”<sup>31</sup> As part of this online article, CNN developed a timeline based on 43 “key points and events” (from 14 February through 24 August 2011) they had reported concerning the conflict. Five of these “key points/events” reported by CNN are posted below to show the escalation of attacks on the populace:

February 18-Libyan state television shows images of men chanting pro-Qaddafi slogans, waving flags and singing around the Libyan leader’s limousine as it creeps through Tripoli. In Benghazi, human rights groups and protesters claim they are under attack by pro-government security forces. Among the tens of thousands of protesters who took to the streets, at least 20 people are killed and 200 are wounded according to medical sources.

February 26-The United Nations Security Council imposes sanctions against Libya, including an arms embargo, asset freeze, and travel bans for Qaddafi and his associates. It also refers Qaddafi to the International Criminal Court for alleged crimes against humanity. The opposition movement announces that it has picked a leader, former Justice Minister Mustafa Abdul Jalil.



March 19-French, British, and American military forces begin the first phase of Operation Odyssey Dawn, aimed at enforcing the no-fly zone. More than 110 Tomahawk missiles fired from American and British ships and submarines hit about 20 Libyan air and missile defense targets, US Vice Adm. William Gortney says at a Pentagon briefing. The operation is meant, “to deny the Libyan regime from using force against its own people,” Gortney says.

June 14-South African President Jacob Zuma lashes out at NATO, arguing that the organization is misusing the United Nations resolution meant to protect civilians “for regime change, political assassinations, and foreign military occupation.”

August 21-In an audio-only address on state television, Qaddafi calls on Libyans to rally to the defense of Tripoli, as rebels capture two of his sons. The International Criminal Court says it plans to negotiate the transfer of Saif al-Islam Qaddafi, who is wanted for crimes against humanity, along with his father. Rebels declare Sunday “Day 1,” saying “Qaddafi is already finished,” while NATO says, the regime is “crumbling.” Government spokesman Musa Ibrahim says some 1,300 people are killed and about 5,000 wounded in 12 hours of fighting.<sup>32</sup>

In June 2011, the Physicians for Human Rights (PHR) sent an investigative team to the coastal city of Misrata (Libya) shortly after rebel forces liberated it. This report on Misrata not only details the lives of ordinary citizens during a two-month siege, it also sheds light on Qaddafi’s systematic assault. In-depth interviews with 54 residents provide evidence of war crimes and crimes against humanity that includes murder, torture, rape, forced internment, and disappearance.<sup>33</sup> The PHR organization also has put together a very extensive listing of events titled “Libya Conflict Timeline: Appendix A from Witness to War Crimes: Evidence from Misrata, Libya.”<sup>34</sup> This organization listed 36 “key points and events” that took place from 15 February through 22 August 2011. Five of these well documented, “key points and events” reported by PHR are posted below to show the escalation of attacks on the populace:

March 1-United Nations General Assembly unanimously suspends Libya from Human Rights Council after an estimated 1,000 protestors had been killed by Qaddafi.

April 23-Save the Children reports that children are being subjected to sexual assault by Qaddafi forces in Libya. The agency, along with other human rights groups, conducts a 13-day investigation into the accusations.

May 6-Amnesty International claims that Qaddafi forces committed war crimes in the city of Misrata by indiscriminately using cluster bombs, snipers, and artillery in heavily populated civilian areas.

June 18-NATO claims that Qaddafi forces are using mosques and other civilian (facilities and/or large groups of) in order to hide military targets. Rebels in Misrata claim to possess documents that exhibit war crimes on the part of Qaddafi.

August 10-The International Committee of the Red Cross (ICRC) issues a report condemning medical neutrality violations in armed conflicts, citing Libya as a prominent example of such violations.<sup>35</sup>

There were numerous indicators of human rights violations and suffering within the civilian populace reported during this Libyan conflict. Examples include disproportionate use of force by pro-government forces, a thousand protestors killed during — in many cases — what started out as peaceful demonstrations, five thousand wounded in 12-hours of fighting between rebel and pro-government forces, and children being subjected to sexual assault.

In addition, the reactions by many international organizations are indicators of suspected human rights violations. Examples include the UN calling on Libya to meet its responsibility to protect civilians and respect international humanitarian law, the ICC focusing on Qaddafi and his sons for crimes against humanity, and the ICRC condemning medical neutrality violations in armed conflicts.

So what is the international communities' responsibility to intervene in these situations in Libya as briefly described earlier in this paper? "Although states have recently agreed that there is a universal responsibility to undertake humanitarian intervention to protect populations from egregious violations of human rights, it is unclear who exactly in the international community should intervene. One option favored by many, is that intervention should be undertaken by those interveners whose action would be legal according to current international law. This cited article considers this option by assessing the moral importance of an intervenor's legal status."<sup>36</sup> So what did the United Nations, with the support of many members within the international community, use as justification for their intervention?

### *Justification*

In December 2001, the International Commission on Intervention and State Sovereignty (ICISS) released the Responsibility to Protect (R2P) concept. At the time, and based on previous experiences with earlier humanitarian crises (i.e., NATO operations in Kosovo), this ICISS report encouraged countries to develop a "compromise" when it came to intervention being acceptable to prevent or stop genocide or mass atrocities. This was executable by the UN Security Council "authorizing military intervention as a last resort in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international law which sovereign Governments have proved powerless or unwilling to prevent."<sup>37</sup> This R2P concept, soon to become a "norm," was one of the key factors supporting Security Council actions towards the Libyan government.

Operation Odyssey Dawn began on 19 March 2011 under the provisions of USRs 1970 and 1973. It authorized supporting and participating states to take necessary actions that included:

- Protecting Libyan civilians from violent actions of the Qaddafi government regime
- Enforcing an arms embargo
- Freezing bank assets of Libyan authorities
- Imposing a no-fly zone<sup>38</sup>

USR 1970 was a non-punitive document calling for an end to the violence of the Libyan government against its civilian populace. It urged Libyan authorities to respect human rights, permit the safe passage of humanitarian supplies to this region, and lift restrictions that were focused on the world media. This resolution also initiated the arms embargo and implemented sanctions on Muammar Qaddafi and other key regime leaders. USR 1973 was a follow-on resolution that shifted the focus of organizations from humanitarian assistance and other non-kinetic actions, to a military intervention by using “all necessary measures”—primarily executed through an air campaign since it prohibited the use of ground forces.<sup>39</sup> Therefore, what conclusions can be drawn from this information in regards to the international community conducting ‘humanitarian intervention’ operations?

## Conclusions

Based on a paper published through the Strategic Studies Institute at the US Army War College, legal reviews of USR 1973 concluded the OUP forces did not seek to topple Colonel Qaddafi’s regime. The UN did not express as a “single, united body” that they were exercising their moral authority in so many words. They did state that this resolution was passed to specifically provide the legitimacy — through the internationally recognized UN Security Council — for actions to protect civilians in an internal conflict. This was also viewed by the UN members to conform to the R2P norm that was endorsed by the UN in 2004.<sup>40</sup>

After NATO forces took over the lead of OUP, a humanitarian assistance operation, the language within this UN (i.e., a non-military body) resolution had to be translated into actions approved for international, military forces. What indicators would be used by NATO forces to show the international community that their actions were effective in protecting the civilian populace in Libya? Based on their mission objectives, these indicators were proposed:

All attacks and threats of attack against civilians and civilian-populated areas have ended; and the (Qaddafi) regime has verifiably withdrawn to bases all military forces, including snipers, mercenaries, and other paramilitary forces, including from all populated areas they have forcibly entered, occupied, or besieged throughout all of Libya; and the regime has permitted immediate, full, safe, and unhindered humanitarian access to all the people in Libya in need of assistance.<sup>41</sup>

Even with many indicators of a major humanitarian crisis, the legitimacy of the NATO-led operations based on “R2P norm” and the international communities support, the USR did not recognize a legitimate “moral authority” to depose Qaddafi. The UN Security Council reduced the possibility of this option by holding the position that their forces were not there to initiate regime change.

In parallel to these sanctioned operations, there was a great deal of political pressure to remove Qaddafi from his position of leadership. This pressure was primarily coming from “The Contact Group,” a merger of twenty-one countries and representatives from the UN, NATO, and several other regional-international organizations.<sup>42</sup>

In the end, the Qaddafi regime was toppled and Libya declared its liberation on 23 October 2011. The NATO-led operation probably saved many civilian lives through its intervention. Moreover, while many countries and organizations expressed their outrage with conditions within Libya, it was probably not the international communities “moral authority” that deposed Qaddafi’s regime.

## **Case Study 2-Syria**

### *Background*

The complex political nature of Syria is rooted in religion, history, and regional alliances. Therefore, when the Arab Spring movement manifested itself in this nation the results were vastly different from other nation-states in the region. This difference expressed unlike the more peaceful protests of Tunisia and Egypt and more like the predominately-violent Libya. “The Arab Spring of Arab Awakening is a watershed event in the broader Middle East and North Africa region with immense ramifications for the people and government of the region, as well as the rest of the world.”<sup>43</sup> There were many causes for the events occurring in Syria. Public unrest “was not an issue of democracy or human rights as much as it was deteriorating socioeconomic conditions, including rising unemployment and drops in social welfare were all direct results.”<sup>44</sup>

Syria is similar to Libya in a number of ways. It is acceptable to state that “non-international armed conflict” occurred in both Libya and Syria. However, in Syria the conflict splintered to other groups. The Syrian government was bolstered by outside nation-states, both in terms of vetoing UN Security Council resolutions and providing military assistance to address these internal conflicts.

### *Indicators*

In March 2011, Syrian security forces began to clash with protestors. Later, President Assad announced a number of conciliatory measures, including the release of dozens of political prisoners and dismissing a 48-year-old state of emergency.<sup>45</sup> There are at least four different draft US resolutions developed on Syria for humanitarian reasons that the internal conflict required outside intervention.

These began with the UN Security Council resolution, “in October 2011, Russia and China vetoed a sanctions resolution drafted by Europe condemning Syria.”<sup>46</sup> The S/2011/612 draft resolution noted the following, “recalling the Syrian Government’s primary responsibility to protect its population and the secretary-general’s call for the Syrian government to allow unhindered and sustained access for humanitarian aid and humanitarian organizations.”<sup>47</sup>

In February of 2012, “Russia and China vetoed a UN Security Council resolution backing an Arab-West peace plan that called for Syrian President Bashar al-Assad to step down. The other 13 UN Security Council members voted in favor of the resolution.”<sup>48</sup>

On 1 March, Russia and China both voted against a draft resolution of the UN Human Rights Council condemning crimes in Syria.<sup>49</sup> China and Russia continued to block all efforts by the US to intervene in Syria. However, they did endorse a non-binding peace plan drafted by UN envoy Kofi Annan. This was after an earlier, more stringent draft of

the plan was modified.<sup>50</sup> The UN Security Council draft S/2012/77 included the following language: “condemns the continued widespread and gross violations of human rights and fundamental freedoms by the Syrian authorities. Demands that the Syrian government immediately put an end to all human rights violations and attacks against those exercising their rights to freedom of expression, peaceful assembly and association, and protect its population.”<sup>51</sup>

On 19 July 2012, China and Russia vetoed a British-sponsored UN Security Council resolution that would have punished the Syrian government with economic sanctions for failing to carry out a plan agreed to in March. Eleven Security Council members, including the other three permanent members — Britain, France, and the United States — voted for the resolution.<sup>52</sup> Throughout the summer of 2012, Free Syria forces continue to target government targets and seize the city of Aleppo. Fires engulfed Aleppo later in the fall and destroyed much of the city.

Later in November of 2012, the National Coalition for Syrian Revolutionary and Opposition formed in Qatar. These groups excluded Islamic militias. The Arab League stops short of fully recognizing this opposition group.<sup>53</sup> In December 2012 a number of other nation-states acknowledged the National Coalition as the legitimate representative of Syrian people.<sup>54</sup> These nations include the US, UK, France, Turkey, and Gulf States. By this time, millions of citizens were displaced in Syria with many seeking refuge in camps located in Jordan, Turkey, and Lebanon.

Throughout 2013, Islamists began to rise and coalesce into still another force fighting government and other factions within Syria. Government and allied Lebanese Hezbollah forces recaptured Qusair—a strategically important town between Homs and the Lebanese border.<sup>55</sup> By November, the UN weapons inspectors concluded that chemical weapons were used. However, who conducted this chemical attack was not explicitly reported.

In the beginning of 2014, the UN-brokered peace talks in Geneva failed, largely because Syrian authorities refused to discuss a transitional government.<sup>56</sup> By the middle of 2014, the Islamic State (IS) declared a new nation-state in the territory near Aleppo—all the way to eastern Iraq province of Diyala. By September of 2014, five nations, including the United States and Saudi Arabia, launched air strikes against the IS.<sup>57</sup> Throughout the first half of 2015 IS made gains against Turkey and Kurd forces to the North and East. IS took over the ancient city of Palmyra in central Syria, raising concerns that they might destroy historic artifacts and irreplaceable architectural structures including a pre-Muslim World Heritage site.<sup>58</sup>

By the end of 2015, Assad asked for Russia to assist in fighting IS. In September 2015, Russia launched attacks against IS targets. However, many Syrian opposition forces and Western powers concluded that many of the Russian targets were not IS, but Syrian anti-Assad forces.<sup>59</sup>

By December, “Britain joins US-led bombing raids against the IS in the wake of Paris suicide bombing attacks. The Syrian Army allows rebels to evacuate remaining area of Homs, returning Syria’s third-largest city to government control after four years.”<sup>60</sup>

A US-Russian partial ceasefire was brokered between government and major rebel forces that came into effect in February 2016. This is after major gains were made by pro-govern-

ment forces striving to capture Aleppo. The IS was not included in ceasefire agreement.<sup>61</sup> Attacks continue from Western powers against IS targets within Syria and Iraq.

### *Justification*

Within international humanitarian law (IHL), the requirement occurs to intervene into Syria. “Proponents of action in Syria are again arguing that there exists a right to intervene within the territory of another state (with that state’s consent and without [Security Council] authorization) in order to prevent certain large scale atrocities or deprivations.”<sup>62</sup> The nature of IHL is such that throughout the years since World War II, actions and inaction by the UN Security Council demonstrated that, at least in most cases, some form of IHL is within actions of intervention.

Russia and China, both permanent members of the UN Security Council, “maintain a rather consistent position against UN resolutions allowing foreign intervention in the business of sovereign nations.”<sup>63</sup> With respect to Libya, “it appears Russia and China felt confident no veto was necessary as regime change was not a specified goal of UNSC 1973.”<sup>64</sup> This is one major difference in obtaining the approval of Russia and China to vote or abstain from voting for a UNSC resolution against Syria and President Assad.

The security situation in Syria began to deteriorate after the Arab Spring and continues to this day. Justification to intervene — as moral authority inside the IHL framework — was evident once Assad began fighting internal forces, using chemical weapons, and committing other atrocities. As many as 60,000 citizens were killed by November 2012 according to the UN Office of the High Commission for Human Rights.<sup>65</sup>

### **Conclusions**

Syria as a case study of international intervention is unique for a number of reasons. The UN Security Council could not pass military options based upon China and Russia vetoes. However, that is not unique. The official government of Syria is battling a number of internal forces; during this time of instability IS came into being. This is unique to this case, IS taking advantage of the security situation in both Syria and Iraq to control portions of both nation-states. Aside from Syrian governmental forces, IS factions, and Russian assistance, there were also Free Syrian forces, Al Qaeda affiliates, and other Western powers all fighting within the Syrian borders. There is another other unique aspect of this case. The influence of Turkey, Kurd forces, Hamas, and Hezbollah are also involved with the Syrian crisis. All of these forces, nation-states, and groups made intervention into Syria a very unique situation when considering implementing IHL.

With the current implementation of international humanitarian law, the UN Security Council is the authority under which IHL is exercised. “Yet the simple and often frustrating truth is that the Security Council veto system purposefully allows for a permanent member to unilaterally block international action even if it may mean a state commits mass atrocity crimes against their own citizens.”<sup>66</sup> Syria is different from Libya due to this premise being exercised by both the Russian Federation and China, numerous times resulting in blocking military action and economic sanctions by the UN Security Council. In the case of China, their “experience concerning Libya in 2011 had a direct impact on its actions regarding Syria.”<sup>67</sup> “Beijing’s perception of gaining nothing while losing



everything in Libya, after abstaining on USR 1973, significantly contributed to its decision to veto the Syria resolution.”<sup>68</sup>

## Analysis of Case Studies

The two cases in this study are Libya and Syria. Specifically addressed in this study is how these nation-states were treated by the UN Security Council after the Arab Spring pushed for regime change. Were these actions expressions of IHL or R2P? Did the actions continue with violence against the nation state citizenry? Do IHL and R2P provide the moral authority for regime change in future conflicts?

## UN Actions (USR) Mandate

First, the question of an international mandate, usually in the form of a UN Security Coun-

Factors Used for Analysis	Case Study 1: Libya	Case Study 2: Syria
UN Actions (UNSCR) Mandate	+	-
Expression of International Human Law (IHL)	-	+
Expression of Responsibility to Protect (R2P)	+	-
Violence against citizenry by the government	+	+
End of internal violence	-	-

Table 1. Analysis of Case Study Factors (created by author)

Note: + Positive outcome of this factor in relation to the case study evaluated

– Negative outcome of this factor in relation to the case study evaluated

No outcome marking means there is no positive or negative outcome observed with this factor in relation to the evaluated cases.

cil Resolution, is how situations are engaged in order to end internal violence of a nation state. “Resolution 1973, adopted on 17 March 2011 by a 10-0 vote (China, Russia, Brazil, India, and Germany abstained), and authorized the use of all necessary measures to protect civilians and civilian-populated areas.”<sup>69</sup> In this case, Russia and China — the two permanent members — decided not to engage with their votes in the Libya situation. This allowed the US-led coalition to implement USR 1973 and enforce it with military assets. In the case of Syria, UN Security Council action was blocked primarily by Russia and China. Part of that came because of what happened in Libya with regime change, and part of that were the economic and political ties that Russia and China fostered with President Assad’s government. In the case of Libya, this factor was a positive in taking action and a negative based upon the lack of support for UN Security Council actions against Syria. The question in the future may be whether a situation becomes so brutal, with multiple atrocities being committed, that nation-states act without a USR mandate.

### *International Humanitarian Law (IHL)*

Under international humanitarian law, “an occupying power has the responsibility to protect not just citizens and residents on its own territory, but all people living under



its occupation.”<sup>70</sup> Within the Libyan case study, IHL was not used. However, in the case of Syria IHL was implied, based on many members supporting a variety of UN Security Council actions (less Russia and China). Unfortunately the UN Security Council was not able to pass any resolutions to enforce this principle based upon the vetoes from China and Russia.

### *Responsibility to Protect (R2P)*

Based upon previous failures of Rwanda and Srebrenica, the international community began discussing the principle that “state sovereignty could not act as an absolute shield from military intervention when mass atrocities were taking place.”<sup>71</sup> A compromise was struck in 2005 with the World Summit Outcome Document. The UN Security Council later expressed the principles of this document in Resolution 1674. “Humanitarian intervention unlike R2P, thus allows for a unilateral use of military force based solely upon the moral imperative to stop an ongoing crisis.”<sup>72</sup> In the case of Libya, President Obama and the United States used R2P as the legal premise for action to obligate states to intervene. However, there was no mention of regime change. Therefore, within the confines of the situation in Libya, R2P was invoked and used. In that respect, R2P was a positive for intervening in Libya. While in Syria, R2P was not used and may not have necessarily assisted in obtaining a more peaceful status today due to the complexity and fluidity of the internal situation. Therefore, the concept of R2P—by its “non-use”—is a negative factor in the case of Syria.

“Libya proved to be almost a textbook illustration justifying R2P principles, but its implementation also demonstrated the need to (build, publish, and agree upon) legitimacy criteria to guide decisions on authorizing and overseeing international military intervention. Although successful, the Libyan operation proved particularly controversial among the emerging powers, and the price of exceeding the mandate there has been paid by Syrians.”<sup>73</sup>

However, the use of R2P in some theorists’ consideration is not valid. Ramesh Thakur stated, “Interventions cannot become the pretext for imposing external political preferences (also known as regime change).”<sup>74</sup>

### *Violence against citizenry by the government*

In both cases the government in power, Qaddafi and Assad, both implemented systematic violence against their citizens. In both cases, this violence was recognized by the international community. In addition, in both cases the violence did provide the catalyst for action in both Libya and Syria. Unfortunately, as a factor, violence against citizenry did cause the entire international community to act on behalf of the citizens in both cases. In fact, in the case of Libya, it may be argued that getting rid of the Qaddafi government caused the national security situation to become even less safe and more fractured than when it was in power.

### *End of internal violence*

In both Libya and Syria, violence against the citizens did not end. In the case of Libya, the violence of the opposition forces degraded and now even the IS has camps within

Libya. Therefore, when IHL or R2P are implemented in the future, the end state of such actions should be taken into consideration. The security situation in Libya in terms of internal violence is much worse than at the end of Quaddafi's rule. In the case of Syria, the end of internal violence did not take place. In fact, the security environment provided an opportunity for the IS to form and impose still another force in both Syria and Iraq that must be dealt with by the international community.

## Findings

China gained much from its veto of Syrian UN Security Council resolutions. "China's veto saved Moscow from international isolation — the joint veto was a powerful demonstration of Sino-Russian diplomatic cooperation — a favor that Russia now has to return."<sup>75</sup> This provides a quid pro quo situation with Russia to China. This also may provide either opportunities or challenges in the future concerning seeking a joint position from Russia and China in international politics, or possible intervention in crisis situations like Libya and Syria in the future.

In the most recent stages of the Syria conflict, "Russia's and China's apparent willingness recently to distance themselves from President al-Assad may signal a transformation in the international community, garnering the support necessary to convince al-Assad to leave office peacefully."<sup>76</sup> This may or may not play out in future conflicts but should be a positive sign that other permanent UN Security Council members can sway Russia and China in supporting end states that do not leave despots and tyrants in power.

## Conclusions

The future of global politics will continue to become more complex, and conflicts may be reduced to oppression with a limited ability to obtain basic needs like food and water for the populace. The UNSC is an imperfect instrument to enforce international humanitarian law, but the UN is the best organization to coordinate and implement this action for now. However, future conflicts may force the global community to reevaluate the *lex specialis* between the application of human rights law and international humanitarian law (IHL). "It is not clear whether this full expression *lex specialis derogate legi generali* means that the special prevails over the general, or whether it means that the former actually displaces the latter."<sup>77</sup> A human rights body in the future will have to address these issues "in order to determine whether IHL is or is not applicable."<sup>78</sup>

"China and Russia remain resolutely opposed to any resolution that would set off a chain of events leading to a '1973-type authorization' for outside military operations in Syria."<sup>79</sup> They simply used the system in place, the UN Security Council, to impose their will on the way international humanitarian law is expressed in Syria. In particular, "China's experience concerning Libya in 2011 had a direct impact on its actions regarding Syria this time around."<sup>80</sup>

Another factor that led to China's actions in Syria is that, "the Chinese leadership has no doubt resisted foreign interventions in the internal affairs of sovereign nations—especially when led by the United States and the West in general—out of a concern that such intervention is often motivated by a desire for regime change."<sup>81</sup> So not only did China learn from its abstaining experience in the Libya UNSC resolution vote, but it continued to express its national opinion that regime change as an outcome of intervention is not something they

need to support. This is particularly true in other nations like the Democratic Republic of Congo and Sudan, where internal actions were perceived as civil war. In these instances, China believes that the UN should not intervene in these internal conflicts.<sup>82</sup>

“Libya was the first international intervention inspired by the doctrine of R2P.”<sup>83</sup> That does not mean that it will be the last. However, as international conflicts become more complex the moral authority to intervene and conduct regime change will also become more complex. While governments will continue to oppress their citizens, the reactions by those governments will also continue to determine whether international intervention is warranted or required. In the future should moral authority be used in either IHL or R2P the end state of the nation-state should also be considered if regime change takes place.<sup>84</sup>

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## **Chapter 6**

### **Responding to Sexual Violence in Conflict**

Kathleen G. Dougherty

#### **Introduction**

Whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it. Throughout history's conflicts, the violation of what we now consider to be inalienable rights has been an inevitable byproduct for one, if not more, groups. Far too often these conflicts reach the level of mass atrocity. Though armed conflicts between states has plummeted since the 1950s, the number of civil wars has increased since 2010. A country in any form of conflict is considered a fragile state and is an overall threat to international security. While the United States State Department has been adamant in being a leader in the prevention of mass atrocity, a strong focus needs to be given to post-conflict societies. After a society has seen a conflict, the stabilization of the nation is still at risk. One area in which there needs to be a specialized focus is in regards to areas of conflict in which sexual violence was used as a method of destruction. In order to fully understand how and why this focus needs to be of higher importance, case studies from Bosnia-Herzegovina, Rwanda, Guatemala, and Iraq will be addressed. These cases provide examples of the difficulties national and international respondents face while addressing this violence. These examples will then be followed by recommendations from leading scholars in the field.

#### **Bosnia-Herzegovina**

Before the fall of the former Yugoslavia, Roman Catholics primarily from Croatia (Croats), Orthodox Christians primarily from Serbia, and Muslims primarily from Bosnia (Bosniaks) lived peacefully together. After a series of successions, countries began to declare their independence. In Slobodan Milosevic's rise to power in Serbia in 1991, the fight for a "greater Serbia" began and his quest for acquiring Bosnia-Herzegovina under his rule set the scene for conflict. As Serbs began killing Bosniaks, women were quickly left vulnerable and targeted for victimization via sexual violence. Rapes began immediately after clashes broke out between Serbs and Muslims in April 1992 and were used as a means of ethnic cleansing. Although ethnic cleansing holds no legal weight for which to try perpetrators in a court of law, in 2001, the International Criminal Tribunal for Yugoslavia (ICTY) held a landmark trial in which three individuals were convicted of war crimes solely from sexual violence. This conviction set a precedent for international consequences for sexual violence, yet only three individuals out of numerous perpetrators were sentenced. After the conflict ended in 1995 sexual violence continued. With increased international forces on the ground in an unstable Bosnia-Herzegovina, a market for sexual services was created and there was an increase in prostitution and trafficking of women, adding to a growing number of both victims and perpetrators of this violence.

#### **Rwanda**

Years before the shooting down of Rwandan President Juvenal Habyarimana's plane, the match that ignited the 1994 Rwandan genocide, Hutu propaganda inspired hatred towards



Tutsi women by portraying them as more beautiful, but less dignified and faithful, than Hutu women. As the genocide unfolded, the targeted hatred of Tutsi women manifested itself in widespread sexual violence. Sexual violence in Rwanda took many forms; rape, gang-rape, sexual slavery, forced incest, deliberate HIV transmission, forced impregnation, and genital mutilation. The deliberate transmission of HIV/AIDS through unprotected sex allowed for the victimization of a population to continue even today as the disease still takes lives. The International Criminal Tribunal for Rwanda (ICTR) concluded that the acts of rape, sexual violence, and mistreatment constituted serious bodily or mental harm and therefore they constituted as genocide. Rwanda was so torn apart by genocide that the rebuilding of the country left many stones unturned. The arrest and imprisonment of those who committed crimes during the genocide led to extreme overpopulation in the prisons. There were scarcely the means to count and identify the prison population, much less to enforce international standards of due process. With international standards of due process not applicable to a high number of individual cases, the ICTR mainly focused on the architects of the conflict while the Rwandan National Court took on most cases of sexual violence.

One of the ICTR's landmark cases involve Jean Paul Akayesu. Akayesu was charged on 2 September 1998 with several counts of genocide. Two of these charges included accounts of rape being used as an ethnic cleansing tool to prevent births within the targeted group. This was the first time rape had been prosecuted as a form of genocide. With the number of sexual violence cases being so high, many cases were not able to be heard. In addition, many survivors of this type of violence were likely to not be forthcoming with their victimization due to the psychological trauma that occurs when one is the target of such violence. The traditional standards of Rwandan justice, the Gacaca Court system, was also not often a method of justice for victims of sexual violence, as their case would be made public. Through Gacaca, the prison population was reduced, and sexual violence cases were seldom heard, as survivors were not given necessary mental, physical, or emotional attention and care.

## **Guatemala**

After gaining independence from Spain in 1821, Guatemala went through a 139 year cycle of alternating civilian and military governments. In 1960, as many countries in Central and South America experienced revolution, Guatemala saw a rise in activism demanding rights for the indigenous Mayan population which prompted a 36 year civil war between Mayan forces and the Guatemalan military. The time period from 1978 to 1985 has become known as *La Violencia*. In 1996, the United Nations brokered peace accords between the warring parties. Years later, The Commission for Historical Clarification (CEH), a state sponsored truth commission, investigated the crimes committed during these years. The report found that acts of sexual violence were an integral part of the [government's] counter-insurgency strategy. There have also been reports of systematic sexual violence against men, in some cases involving animals or bottles, and physical blows or electrical current applied to genitals. CEH gave light to these and many other crimes committed during *La Violencia*, yet it held no legal weight. Names of perpetrators and victims were not published so few individuals were tried. A rise in violence against women occurred afterwards, as many women were left widowed by the course of conflict, and a 2003 report

by the Center for Reproductive Rights stated that 49 percent of Guatemalan women are the victims of domestic violence. Today in Guatemala, 30 years after the conflict, legal justice is being brought to those who committed crimes. The president, Jose Efraim Rios Montt, was charged with genocide, crimes against humanity, and war crimes by the country itself. Likewise, Soldiers under Montt were charged with sexual slavery.

## **Iraq**

The 1979 rise of Saddam Hussein to the presidency in Iraq quickly turned into a regime of human rights abuses. However, the evidence of sexual violence in Iraq presents not only examples of sexual violence used as a form of oppression and torture internally, but also sexual violence used against Iraqi citizens by international troops. Hussein's campaign against his political opponents was documented as using various forms of sexual violence, including rape as a form of torturing men and women in custody. Sexual violence was used to intimidate and extract information and forced confessions that Hussein used to keep his position of power secure. March 2003 saw the beginning of United States-led military operations aimed at removing the Iraqi regime. Human rights agencies focused on Iraq as cases of sexual violence increased with the heightened military forces. Formal investigations indicate that acts of sexual violence against male and female detainees, including juveniles, in jails run by US, coalition, or Iraqi forces, as well as by militias, were widespread. Although Iraq regained its sovereignty in June of 2004, the Monitoring of Human Rights in Iraq Network sent a report in August of 2005 to the United Nations Secretary General Kofi Annan asking for an international investigation of the occupying forces human rights abuses. In November of 2005, the network sent a second report to Annan pleading for assistance. In the report it is stated that 2,000 women were raped by the occupation troops, especially the American, British, Italian, Polish, and Spanish forces. As international forces sent in with the task to depose a violent regime, unnecessary harm was committed against a population of civilians that were meant to be protected.

## **Conclusion**

Each of these cases demonstrates the extreme difficulty that comes with the rebuilding of a society that has seen sexual violence in the context of conflict. Bosnia-Herzegovina sought justice and stability from the international community and ICTY. Rwanda attempted international practices, and when those did not meet the expectations of what the country needed they turned to culturally traditional forms of justice. Iraq, hoping for international aid from an oppressive regime, fell victim to sexual violence from aiding forces. Guatemala looked for justice in honesty, which resulted in the publishing of a truth commission. This gave push to Guatemala seeking justice on its own country's terms and courts. By examining the similarities in the crimes themselves and comparing the responses of internal and external forces, hope can be had that guiding principles can be found to transition post-conflict, fragile states to ones of stable peace.

## **Recommendations**

Conflicts are ever-changing and no two conflicts are ever identical. Acknowledging that there cannot be a singular way to respond to instances of sexual violence is of utmost

importance. One of the biggest mistakes intervening countries can make is imposing foreign practices onto those countries. When torn apart by any sort of conflict, a country has lost its sense of self. Introducing foreign concepts to these fragile states can often hinder more than advance the rebuilding period. Care needs to be given and patience is required. The Quadrennial Diplomacy and Development Review notes that the United States will continue working with the [Department of Defense] and other agencies to promote effective security sector governance. We [the United States] will place special emphasis on accountability and human rights within security sectors, including preventing and responding to gender-based violence. Houses can be restored, economies can be pieced back together, and bones can mend; however a country devastated by sexual violence cannot advance until those who survived are given their opportunity to heal. While healing may take time on an individual basis, the Geneva Centre for the Democratic Control of Armed Forces has published ten recommendations (see appendix A). If international security sectors were to incorporate these recommendations into their intervention policies, the transitional state's likelihood of continuing to be deemed fragile would decrease.

## **Appendix A**

### *Geneva Centre for the Democratic Control of Armed Forces: Recommendations for the security sector*

Security sector institutions should cooperate and coordinate with other sectors that provide essential services to survivors of sexual violence in conflict. These include agencies providing medical care and psychological counselling, protection and shelter, socio-economic support and legal advice. Security sector actors should also coordinate and collaborate with each other in their efforts to prevent and respond to sexual violence.

Security sector institutions should adopt a gender-sensitive approach at all stages of response to sexual violence in conflict: in planning, implementation, monitoring and evaluation. This approach should take into consideration the particular needs of adult male survivors of sexual violence.

Gender training for all security sector personnel is necessary in order to develop a gender-sensitive capacity within security services. This should include training to address the particular needs of victims of sexual violence.

The full and equal participation of women in the security sector should be promoted, to ensure that security services are able to effectively identify and respond to the needs of all members of the community. Measures to increase the proportion of women should include gender-sensitive recruitment and retention strategies, and be accompanied by the development of an organisational culture that promotes gender equality within security services.

Security sector institutions should develop operational protocols and procedures for assisting and supporting victims of sexual violence. These should include, for example, protocols for interviewing victims and investigating sexual violence crimes, for documenting sexual violence, and for referrals to health, social and legal services.

In providing services to survivors of sexual violence during conflict, security sector institutions should determine whether special measures are needed for particular groups, such as children, former combatants, and male survivors of sexual violence.

Access to justice, including reparations, should be ensured for victims of sexual violence.

Security sector institutions should develop and prioritise operational strategies to prevent sexual violence in armed conflict.

Strict codes of conduct prohibiting sexual abuse and exploitation by security sector personnel, including armed forces, police, peacekeepers and DDR staff, must be formulated, implemented with proper training, and enforced. This is essential to prevent sexual violence, to fight impunity and thus ensure accountability.

Security sector institutions should seek and support the participation of civil society and affected communities, including women and girls, in responding to sexual violence. Civil society organizations may advise or provide training to security actors, undertake awareness-raising in affected communities, or provide essential services to victims.

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## **Chapter 7**

### **Taking a Stand:**

#### **Unilateral Action by the United States in Mass Atrocity Response Operations**

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Every American president in office since President Nixon has faced difficult decisions related to the prevention and cessation of mass atrocities.<sup>1</sup> Critics assert that the United States consistently refuses to take risks to suppress mass atrocities.<sup>2</sup> They say that the United States is slow to conclude that a mass atrocity is occurring or is inevitable.<sup>3</sup> Americans assume that civilians who do not involve themselves as combatants in civil wars will be left alone.<sup>4</sup> They trust in diplomacy that urges ceasefires and donates humanitarian aid instead of intervening with their military.<sup>5</sup> Americans misunderstand the nature of the violence in other states and determine that military intervention would be futile or could do more harm than good by jeopardizing civilian lives or national security interests.<sup>6</sup> Thus, the United States can purport to oppose mass atrocities while simultaneously opposing American involvement.<sup>7</sup>

The United States is not alone in this respect. Bordering states and European powers are risk-averse in these situations as well.<sup>8</sup> However, the difference between the inaction of the United States and that of other countries is that the United States' government and military are uniquely qualified to intervene in mass atrocities if another nation-state will not or cannot protect its people. The United States has demonstrated a willingness to intervene in the internal affairs of other states with the support of an international alliance.<sup>9</sup> What if international concurrence was not offered? Would the United States proceed anyway? Although some argue that unilateral military intervention in mass atrocity situations is counter to international norms, intervention is consistent with the ethical belief of the American people that the basic human rights of all people are inviolable.<sup>10</sup> From this belief rises a responsibility to defend others from mass atrocities.<sup>11</sup> Therefore, it is ethically correct for the United States to intervene in mass atrocity situations, even if the United States' government and its military must do so alone.

This paper argues that it is appropriate for the United States' military to prevent and respond to mass atrocities unilaterally, when necessary, for the following reasons. First, there is support for this kind of military intervention in international law. Second, the United States military is both able and well-prepared to conduct operations in response to mass atrocity situations. Finally, in these situations, military intervention is ethically the right thing to do.

#### **Support for Military Intervention under International Law**

International law may permit the United States to react to a mass atrocity with unilateral military intervention. International opinions are quickly changing regarding the sovereign rights of states. As these norms evolve, states may take expansive views and interpret new humanitarian intervention doctrine liberally to legitimize military intervention.

On 9 December 1948, the United Nations (UN) General Assembly approved the Genocide Convention.<sup>12</sup> However, mass atrocities committed in Bosnia-Herzegovina and Rwanda during the 1990s spotlighted the need to draft implementation policy under which the

UN could react to these situations.<sup>13</sup> As a result, the UN General Assembly adopted the Responsibility to Protect (R2P) doctrine in 2005.<sup>14</sup> Under the R2P, nation-states accept the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.<sup>15</sup> They also agree that the international community has a responsibility to take “timely and decisive” action to protect populations from mass atrocities if a state is unable or unwilling to do so.<sup>16</sup>

The R2P is significant in its effect on customary international law. Traditionally, the principle of non-intervention in international law would preclude intervention in conflicts internal to a state.<sup>17</sup> However, by agreeing to the R2P, the UN concluded that the responsibility to prevent mass atrocities may be superior to the obligation to respect another state’s sovereignty.<sup>18</sup> Consequently, during a humanitarian crisis a state could no longer rely on a claim of sovereignty to prohibit other states from interfering in its internal affairs.<sup>19</sup> Rogue governments and their armies would no longer have any right to inflict deadly harm upon their own people.<sup>20</sup> Arguably, if a state’s conduct causes widespread harm to its citizens, that state would forfeit any legitimate claim of sovereignty under international law.<sup>21</sup>

Although the R2P provides a new legal basis for military intervention in mass atrocity situations, in practice intervention is hindered by the same system that developed it. The R2P adopted by the UN clearly required authorization by the UN Security Council before members could intervene to prevent or stop a mass atrocity within the borders of another state.<sup>22</sup> This grant of authorization is not guaranteed, so concurrence of the Security Council is required for humanitarian intervention in even the most imminent of situations.<sup>23</sup> Unfortunately, the Security Council’s veto system can create situations that could preclude such concurrence and allow a mass atrocity situation to begin or persist.<sup>24</sup> The United States has faced such resistance from the UN in determining that a mass atrocity is occurring or has just occurred.<sup>25</sup> For example, on 9 September 2004, United States Secretary of State Colin Powell delivered a formal finding to Congress that the government of Sudan and the *Janjaweed* committed genocide in Darfur.<sup>26</sup> Powell’s declaration triggered a UN investigation but no action in 2004, even though Powell warned that genocide was ongoing.<sup>27</sup> The United States identified a mass atrocity but was left waiting in vain for international support to intervene.<sup>28</sup> Although the UN acknowledged this determination of genocide, concurrence to take action against the mass atrocity was not forthcoming.

To resolve some mass atrocities, only the military intervention of an outside power can produce a peace.<sup>29</sup> At its inception, the R2P minimized the importance of military intervention.<sup>30</sup> However, recent bombings of Libya, Syria, and Iraq reveal more international acceptance of preventive military intervention.<sup>31</sup> Some argue that because of these recent endeavors, the R2P has fully evolved into a doctrine that legitimizes and enables military intervention in mass atrocities despite the legal concerns of sovereignty.<sup>32</sup> Others argue that R2P is now even more expansive. They assert that there may be occasions when UN investigations and formal inquiries would only delay suffering.<sup>33</sup> In these cases, they maintain that while the R2P contemplates a mandate from the UN for military intervention, it does not necessarily rule out the possibility of unilateral military intervention as long as the primary purpose is to prevent or stop a mass atrocity.<sup>34</sup> This expansive view of the R2P would support a decision of the United States to act unilaterally instead of waiting for results of



investigations and UN concurrence while innocent people are dying *en masse*.<sup>35</sup> According to this argument, if the United States determines that military intervention is necessary, it would be legally permissible to act unilaterally.

### **The United States Military is Ready and Able**

Although unilateral military intervention may be legal under international law, the law does not automatically provide the United States with the capability to act. Military intervention of mass atrocities requires national policy, operational doctrine, interagency collaboration, and a willingness to commit armed forces. Over the last decade, the United States has developed these capabilities.

Forty years after the UN approved the Genocide Convention, President Reagan signed the legislation to ratify that international agreement on 5 November 1988.<sup>36</sup> Decades later, the United States still had taken very few steps toward deterrence of mass atrocities.<sup>37</sup> The United States lacked a comprehensive national policy or an interagency plan for preventing and responding to threats of mass atrocities.<sup>38</sup> Although senior leaders had publicly denounced the Holocaust with the rallying cry of “never again,” and supported Holocaust commemoration and education, little action occurred.<sup>39</sup> Some argue that during these years the United States could have used its tremendous capacity and vast resources to prevent mass atrocities without undermining its national security.<sup>40</sup> American decisions to act might have had a greater impact on the lives of innocent victims than those of any other major power, but the United States did practically nothing to prepare itself to respond to mass atrocities.<sup>41</sup>

Preparation to prevent and react to mass atrocities is imperative because evidence shows sophisticated planning and organization by the perpetrators of mass atrocities.<sup>42</sup> During the UN trial of Serbian General Radislav Krstic, American prosecutor Mark Harmon detailed for the International Criminal Tribunal the steps necessary to conduct the Srebrenica mass killings: issuing orders to units to direct the movement, killing, and burial of victims; assembling vehicles to transport victims to detention centers near execution sites; obtaining fuel for these buses and trucks; securing detention facilities to hold victims before killing them; acquiring large numbers of blindfolds and ligatures; organizing killing squads; requisitioning and transporting heavy equipment to dig large mass graves; burying the thousands of victims at diverse locations; and disseminating propaganda from the Serb military and government to counter any claims that atrocities had occurred.<sup>43</sup> These complex operations of organizing manpower, vehicles, ammunition, and remote locations are common to most large-scale mass atrocities.<sup>44</sup> Even mass atrocities with comparatively fewer resources available require operational planning. Evidence presented during the Rwanda trials demonstrated how lists of names of Tutsi victims were systematically prepared and distributed “down the chain of command, from the state level to the regional level, to the prefectures, to the communes, and then to the individual hamlets or cellules.”<sup>45</sup> The evidence in these cases shows that even what might be considered failed states can be successful in planning and committing complicated mass atrocity operations.<sup>46</sup> The designs of these mass atrocities are similar to other military operations in their use of principles of mission command, logistics, and

information operations. Therefore, advanced planning by the United States is essential for an effective response.

Despite complex operational planning by perpetrators of mass atrocities, the United States would likely still have the advantage in a military intervention. Nine out of ten conflicts since 1945 have been civil wars and combatants are generally armed with somewhat simple weapons.<sup>47</sup> These civil wars can be brutal and result in high numbers of civilian casualties.<sup>48</sup> The actual numbers of combatants may be very few, however. Inquiries following mass atrocities in Rwanda, Bosnia, Kosovo, Liberia, Sierra Leone, Somalia, and elsewhere revealed that large-scale civilian killings were often the work of small groups of professional criminals.<sup>49</sup> These studies found that less than ten percent of any of these states' populations actually committed the mass atrocities.<sup>50</sup> Finally, criminal trials of perpetrators and planners of mass atrocities demonstrate that those responsible were so identifiable that they probably could have been stopped.<sup>51</sup> Because perpetrators are frequently small in number and poorly armed, a well-planned and timely military intervention by the United States might deter or end a mass atrocity relatively easily.

Not all mass atrocities occur during armed conflicts and civil wars, or remain confined to the limits of one state's borders.<sup>52</sup> To address these situations, as well as all of the scenarios envisioned by the R2P, President Obama in 2011 directed a study on mass atrocities and the creation of an Interagency Atrocities Prevention Board.<sup>53</sup> The presidential directive reads as follows:

In the face of a potential mass atrocity, our options are never limited to either sending in the military or standing by and doing nothing. The actions that can be taken are many: they range from economic to diplomatic interventions, and from noncombat military actions to outright intervention. But ensuring that the full range of options is available requires a level of governmental organization that matches the methodical organization characteristic of mass killings.<sup>54</sup>

In 2012, President Obama directed the Department of Defense to prepare and equip the military to prevent and respond to mass atrocities.<sup>55</sup> He directed the development of joint doctrine and tasked geographic combatant commanders to prioritize mass atrocity prevention and response in their training exercises so that mass atrocity prevention missions could be planned and conducted in emergency situations.<sup>56</sup> Finally, President Obama addressed the need for a mass atrocity prevention and response policy framework in his National Security Strategy (NSS) in February 2015.<sup>57</sup> This inclusion in the NSS is important for three reasons. First, it concludes that mass atrocities committed in other countries are a threat to the national security of the United States.<sup>58</sup> Second, it affirms American support of the R2P.<sup>59</sup> Thirdly, it commits the national powers of the United States to the prevention and response of mass atrocities.<sup>60</sup> After almost seven decades, the United States is finally positioned to direct its resources to prevent and respond to mass atrocities.

Joint Publication (JP) 3-07.3 and Army Techniques Publication (ATP) 3-07.6 were drafted in response to the presidential directives and the NSS.<sup>61</sup> These joint and Army doctrines provide the framework for Mass Atrocity Response Operations (MARO) as part of Peace Operations.<sup>62</sup> Interagency action initiates a MARO.<sup>63</sup> The President's Atrocities Pre-

vention Board addresses identification of the perpetrators, the causes of the violence, and the degree of risk to assume in response.<sup>64</sup> Based on the board's findings, the Department of State must determine whether the violence amounts to a mass atrocity and whether it recommends United States intervention.<sup>65</sup> If the President orders the military to respond, a MARO may be the primary mission or may be part of any military operation that includes the potential for mass atrocities.<sup>66</sup> The JP 3-07.03 and ATP 3-07.6 deliver the guidance necessary for American forces to conduct these military operations.

By demonstrating that it has both the will and the ability to conduct MARO, the United States establishes the credibility required to deter future mass atrocities.<sup>67</sup> Today, the United States' military is prepared to conduct MARO with an off-the-shelf plan and the government has demonstrated a willingness to commit one of its most valued national resources — its military — to respond to mass atrocities.

### **Military Intervention is the Right Thing to Do**

Although the United States might find support for unilateral military intervention in international law and the United States military is well-situated to conduct military interventions to prevent or stop mass atrocities, the question is whether it is the right thing to do. The answer lies in the American virtue ethic.

Winston Churchill believed that to maintain its superiority the West must continue “to be right.”<sup>71</sup> However, what is “right” in one country may not be “right” in another. The link between a mass atrocity in another state and the national security of the United States may be tenuous at best. In some instances it will be difficult to convince the American public that a military intervention conducted unilaterally by the United States in response to a mass atrocity is the right thing to do. To justify the action, an appeal based on American values may be most persuasive.<sup>68</sup>

The values of humanity, respect for diversity, and individual rights have long served as pillars of American ethics.<sup>69</sup> These were the values for which our founding fathers fought and died.<sup>74</sup> Even today, these values are recognized as innately American.<sup>70</sup> They also provide the basis for the virtue ethic practiced by United States' military professionals, guiding all decisions and actions.<sup>71</sup> This virtue ethic is based on the shared identity of all Americans and is demonstrated by how military members act, what they do, who they are, and what they want to become.<sup>72</sup> As professional Soldiers of character, military professionals strive to serve honorably, to obey and enforce the law, and to prevent or correct illegal, unethical, or immoral actions.<sup>73</sup> Competent military professionals seek to consistently make the right choices and find moral solutions to difficult problems, and in this way endeavor to earn the trust of the American public and the world.<sup>74</sup> Virtue ethics based on American values support military intervention of mass atrocities as the right thing to do because “[t]he mass killing of innocent civilians is an affront to our common humanity.”<sup>75</sup>

Some might argue that the United States has no duty to intervene on behalf of the citizens of another country. They assert that it is not worth risking the lives of American Soldiers when other countries will not commit their people or resources. This ethic is a form of consequentialism called egoism, which is an understanding that the only moral obligation

to help others exists if such help is important to one's own interests.<sup>76</sup> Likewise, a state can exercise collective egoism if it believes that the pursuit of its collective self-interest is its only moral obligation.<sup>77</sup> This was the prevailing ethical view of the United States' government until President Obama justified a new values-based direction in his NSS in 2015. Previously, the United States did not consider its national interests endangered by the effects of mass atrocities committed in other corners of the world and senior leaders did not deem them worthy of military intervention.<sup>78</sup> They branded those who argued for action on moral grounds "emotional."<sup>79</sup> The recalcitrant governments of Burma, Sudan, Zimbabwe, and other states operated knowing that, although they might be criticized for mass atrocities within their borders, they would not be stopped.<sup>80</sup> The current administration determined that this values system based on consequentialist, collective egoism did nothing to advance the interests of the United States. If anything, it diminished the world's perception of the United States as a superpower and contradicted the values on which this country was formed. The evolution of an ethic of self-interested egoism to a virtue-based ethic is more in line with recognized American values.<sup>81</sup>

A change in policy of unilateral military intervention will not be without ethical challenges for the United States. Abroad, military commanders might find that MARO can create moral dilemmas for the force.<sup>82</sup> By working to stop one perpetrator's mass atrocity, the military might inadvertently assist another belligerent's aims.<sup>83</sup> A MARO could affect the political dynamics within a state and generate unintended second-and third-order effects, such as those faced during the international interventions in Bosnia and Kosovo.<sup>84</sup> Also, because mass atrocity situations can intensify very quickly, military commanders might be challenged when working with coalition partners who are slow to identify or respond effectively to mass atrocities.<sup>85</sup> At home, the American public may have limited awareness about the development of a mass atrocity situation in another country. Senior leaders may interpret a lack of public outrage as indifference.<sup>86</sup> This perception of indifference to the suffering of other people could lead to a lack of popular support for military intervention as a political agenda.<sup>87</sup> Military members might then perceive this as a lack of support for their service and sacrifices. Despite these ethical challenges, military commanders and senior leaders must know that the future of the American way of life depends on their willingness to conduct MARO in uncertain circumstances.<sup>88</sup>

Military operations in response to mass atrocities will require personal courage on the part of all Americans. There may be extreme circumstances that warrant the use of military force, and losses may be inevitable.<sup>89</sup> However, "there are times of severe moral duty where any nation that has the requisite military force should step up and prevent the slaughter."<sup>90</sup> The United States could revert to an ethic of collective egoism, ignore mass atrocities in foreign lands, and claim that we owe no duty to intervene. But the United States, and all of human civilization, is experiencing a moral revolution.<sup>91</sup> To many Americans this is a remarkable time.<sup>92</sup>

## Conclusion

Hesitation and regret characterize the history of military intervention against mass atrocities.<sup>93</sup> However, history does not govern the future. Referring to Rwanda, UN Chief

Ban Ki-Moon stated, “We could have done much more. We should have done much more.”<sup>94</sup> Moving forward, the United States should exert sufficient influence on the international community to change the world’s response to mass atrocities. There arguably is support in international law for unilateral military intervention by the United States to prevent and respond to mass atrocities. The United States has the resources and military doctrine to conduct effective MARO. Finally, the conduct of MARO is consistent with American virtue-based ethics. If other states cannot be convinced to act militarily to a mass atrocity the United States has the ability to go it alone.

In the future, will Americans have the moral fortitude to take the necessary measures to deter or stop mass atrocities, up to and including unilateral military intervention? Only time will tell. The United States will have to make some difficult ethical choices. International law, American security policy, and a virtue-based ethic will support the right decisions.

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## **Chapter 8**

### **A Metric for Military Ethics Instruction**

Thomas J. Gibbons

#### **Introduction**

Recent ethical failures, especially among senior military leaders, have focused attention on how the US military addresses ethics and professionalism in both training and education. There has been a renewed emphasis on ethics education and training in all of the professional military education (PME) institutions over the past few years.

Throughout the Department of Defense there have been many initiatives implemented to highlight professional military ethics and the military as a profession. Secretary of Defense (SECDEF) Hagel created a new position on his staff, the Senior Advisor for Military Professionalism (SAMP) and appointed RADM Margaret “Peg” Klein to the position.<sup>1</sup> The latest version of the Officer Professional Military Education Policy (OPMEP), which provides guidelines for officer PME, was released in May 2015 and includes specific joint learning areas on ethics, leadership, and the profession of arms. As a result, many of the professional military education (PME) institutions have revamped their curricula. The resources devoted to military ethics have also increased significantly, making ethics a growth industry in PME institutions.

However, the metrics used by PME institutions to assess the effectiveness of ethics training and education are often flawed or inconsistent. Robinson, Lee, and Carrack (2008) concluded, “we likewise have no solid data comparing the different techniques used in different systems to confirm which are the more effective. Inevitably, our conclusions are somewhat impressionistic and anecdotal.”<sup>2</sup> They went on to explain, “Moreover, even if ethics training and development appear on the surface to be relatively successful, there is considerable room for improvement.”<sup>3</sup> There has been little, if any, research done to confirm the effectiveness of military ethics instruction.

As ethics instruction continues to develop, PME institutions must develop valid metrics and implement systems to assess the quality and performance of this instruction. This paper will discuss the assessment process, some difficulties with the current process used to assess ethics instruction, findings from the 2015 GAO Report on ethics, assessment instruments from other disciplines, and make recommendations to help PME institutions better determine the effectiveness of their ethics instruction.

#### **Assessment Fundamentals**

Assessment is a continuous process designed to improve student learning. Walvoord (2010) identified three fundamental steps in any assessment model. They are:

1. Goals and outcomes — What is the end result of the assessment?
2. Information — What information or data will indicate how students are achieving the desired outcomes and goals?
3. Action — What action should be taken and what can be done with the information collected to improve student learning?<sup>4</sup>

Each of these steps is critical to making the overall process work. Often the outcomes are identified and information is collected to track the outcomes but there is no action taken. In other words, the assessment process is not completed because nothing is done to improve student learning. Additionally, the information collected and metrics used should provide an accurate picture of the goals or outcomes.

The OPMEP provides general guidance and policies for joint education from the CJCS and the joint staff. “Outcome of the joint learning process is a descriptive process to be undertaken by each JPME accredited college or school.”<sup>5</sup> Each PME institution independently develops their own outcomes and internally manages the assessment process to track those outcomes.

## **Ethics Training and Education Assessment**

There are several factors that make it difficult to assess ethics training and education. As Wolfendale (2008) expressed, “the different methods used to teach ethics revealed an unresolved tension between the twin aims of simply getting military personnel to behave correctly, and trying to also make them more sophisticated moral thinkers and people of good moral character.”<sup>6</sup> Are the PME institutions trying to make their students more ethical or to improve their ethical reasoning skills? This tension makes it difficult to assess the learning outcomes.

Currently most PME institutions administer student surveys to solicit feedback about the ethics courses, faculty, and instructional materials used. Some also receive comments about the ethics instruction from recent graduates on their alumni surveys. One faculty member admitted that these surveys do not actually measure students’ level of ethical knowledge. Additionally, most schools conduct after-action reviews or “hot washes” with faculty moderators to solicit their feedback. Much of this information is anecdotal and subjective. Administrators and course directors subsequently review the information and take necessary actions to complete the assessment process.

However, when students or graduates self-report data on ethical learning outcomes there are potential validity problems. Ethics for many of us, especially military professionals, can be personal and some may perceive themselves as better than they really are. This is human nature. Participants may exaggerate responses or be embarrassed to report ethical failings which may lead to social desirability bias. Gall, Gall, and Borg (2003) define social desirability as “the tendency to present oneself in a favorable light.”<sup>7</sup> Data collected on surveys where participants self-report is subject to this bias and may not be accurate.

Wong and Gerrass (2015) released a report titled “Lying to Ourselves: Dishonesty in the Army Profession.” This study found that Army officers, after repeated exposure to the overwhelming demands and the associated need to put their honor on the line to verify compliance, have become ethically numb.”<sup>8</sup> The tendency to stretch the truth may bleed into the PME institutions. A quantitative metric may be more appropriate and easier to measure.

## **Government Accounting Office Report**

The Government Accounting Office (GAO) released report GAO-15-711 on military ethics in September 2015 titled, “Military Personnel: Additional Steps Are Needed to

Strengthen DOD's Oversight of Ethics and Professionalism Issues." The report highlighted the DOD's failure to establish value-based ethics programs or "programs that focus on upholding a set of ethical principles in order to achieve high standards of conduct."<sup>9</sup> In the past, much of the DOD ethics has been compliance-based, where strict enforcement of the rules and regulations is important. The report also emphasized that "DOD is unable to determine whether its ethics and professionalism initiatives are achieving their intended effect because it has not yet developed metrics to measure the department's progress in addressing ethics and professionalism issues."<sup>10</sup> The GAO concluded that metrics are essential to measure the impact of military ethics instruction.

The Senior Advisor for Military Professionalism (SAMP) leads the DoD effort concerning ethics and military professionalism. "The purpose of the SAMP office is to coordinate and ensure the integration of the department's ongoing efforts to improve professionalism, and to make recommendations to senior DoD Leadership that complement and enhance such efforts."<sup>11</sup> SAMP initially considered using misconduct as a metric to assess ethics and professionalism. However, the nuances related to each different reporting body would make this task almost prohibitive. Besides the difficulties associated with reporting, using misconduct as a metric for ethics training/education effectiveness is unreasonable. There are quantitative instruments and associated metrics currently available to assess moral judgment and reasoning in an academic environment.

### **The Defining Issues Test and Moral Judgment Interview**

The assessment of ethics education and training has been a difficult problem for many professions. Turner (2010) suggested "one of the main problems in studying the effects of professional ethics education is that measures have lagged behind the expansion of the moral development theory and conceptions of ethics education."<sup>12</sup> Over the past several years, however, instruments have been introduced and tested that actually measure moral reasoning and judgment. These include both Kohlberg's Moral Judgment Interview (MJI) and Rest's Defining Issues Test (DIT).

Lawrence Kohlberg is the patriarch of moral development theory and laid the groundwork for those that followed. Baily (2010) pointed out "Lawrence Kohlberg's cognitive-developmental theory of ethical judgment has been the reigning paradigm in ethics-related research for the past half century."<sup>13</sup> Kohlberg's cognitive-moral development theory instituted six stages and three levels of moral development through which individuals progress. Kohlberg focused on why individuals made the decisions they did. The lowest level is pre-conventional where self-interest is the primary motivator. The next level is the conventional level where law and order and obeying the rules are primary motivators. This is the level where most adults are. At the highest level (post-conventional), general moral principles are primary motivators. At this level, individuals use their moral principles to make decisions. Few individuals consistently function at the post-conventional level.<sup>14</sup>

Kohlberg and his associates developed the MJI to measure an individual's level of moral development. The MJI consists of participants reading a series of three ethical dilemmas and then being interviewed to determine their capacity for moral reasoning. Participants are scored based upon the content of moral reasoning in their responses.<sup>15</sup> However,

there are some difficulties with the MJJ. As Elm and Weber (1994) confirmed, “Coding of the subject’s responses has been problematic for Kohlberg and his associates over the years.”<sup>16</sup> Additionally, subjects need to actually “formulate a moral response” to the question, which may be difficult for some based upon their language skills. Furthermore, the MJJ is time intensive because it involves face-to-face oral interviews conducted by highly trained facilitators and researchers.

James Rest developed the DIT as an alternative to the MJJ.<sup>17</sup> “The DIT is the most extensively validated and most widely used measure of moral judgment.”<sup>18</sup> The DIT is based upon the stages of Kohlberg’s moral development model. Subjects read six different ethical dilemmas and then answer a series of multiple-choice questions using paper and pencil. Subjects then rank their responses based upon how each would influence their decision-making. Each subject receives a “P-score” based upon the percentage of upper-level reasoning used in their decision making.<sup>19</sup> The DIT is also more direct because it allows subjects to select from a list of responses rather than formulate a response to an interviewee’s open-ended question. Scoring for the DIT is quick and objective. Rest updated the DIT in 1998 and released the Defining Issues Test-2 (DIT-20), which is shorter with more current ethical dilemmas. Baily (2011) observed that “the Defining Issues Test of ethical judgment is a widely accepted instrument with a long track record: about 500 researchers use the DIT every year and have done so at a steady pace for the last 15 years.”<sup>20</sup> Bebeau (2002) noted that the DIT has been used successfully in academic environments by many professions including business, medicine, law, nursing, and dentistry.

Based upon research conducted at the University of Minnesota with his colleagues, Rest (1983) also introduced the Four Component Model (FCM) of Morality. According to the FCM, the four components that must be developed to function morally include moral sensitivity, moral reasoning, moral motivation, and moral character. Rest postulated that all four components should be developed for an individual to reach moral maturity. They should have the sensitivity to recognize moral issues, judgment to make the ethical choices, motivation to take action based upon the choice, and character to stand by the decisions made.<sup>21</sup>

Both the MJJ and the DIT are useful instruments to provide valuable information on subjects’ moral reasoning. As Elm and Weber (1994) concluded “A critical advantage of both the MJJ and the DIT is one that is not shared with numerous methodologies used in business ethics research, that is, well-established reliability and construct validity of the instruments.”<sup>22</sup> However, as Turner (2008) emphasized, “current measures of moral judgment development (e.g., Defining Issues Test (DIT), Moral Judgment Interview (MJJ)) measure general moral reasoning and do not target reasoning specific to a profession.”<sup>23</sup> Each profession is different so it may be advantageous to have instruments designed with that particular profession in mind.

### **Army Leader Ethical Reasoning Test (ALERT)**

As Woodward (2007) cautioned, “Bebeau and Thoma also concluded that each discipline (profession) should work toward the development of profession-specific assessments directed at more accurately measuring ethical development.”<sup>24</sup> The Dental Ethical Reason-

ing and Judgment Test (DERJT) introduced by Bebeau (2002) for the dental profession is a prime example. Turner (2008) capitalized on this idea and developed an instrument to measure moral reasoning in the Army profession for USMA cadets at West Point. He wrote:

Following the view that profession-specific measure of ethical reasoning and judgment provide more useful information, this study describes the development and testing of the Army Leader Ethical Reasoning Test (ALERT), which targets the Army profession and measures the moral reasoning and judgment of USMA cadets at the intermediate concepts level.<sup>25</sup>

Turner developed five military-specific vignettes that addressed ethical decision-making. He solicited feedback about them from military and education professionals to verify their content validity. Next he tested the scenarios with both USMA and ROTC cadets at different stages in their cadet careers. Based on the pilot study, he modified the scenarios and had another group of military professionals assess each scenario and design a scoring system. Turner subsequently administered both ALERT and DIT-2 to USMA and ROTC cadets. There was a positive correlation between the results of ALERT and DIT-2. Overall, Turner's findings support the validity and reliability of ALERT to measure moral reasoning and judgment. An instrument similar to ALERT, modified to accommodate students attending PME institutions, could be used to provide feedback and metrics to the institutions on their ethics curricula. This instrument may also be valuable to provide information to students concerning their moral reasoning skills.

## Counterarguments

Moral reasoning, however, is only one component of Rest's Four Component Model. Rest and his colleagues determined that all four components (moral sensitivity, moral reasoning, moral motivation, and moral character) should be developed to reach moral maturity.<sup>26</sup> Instruments like the MJI, DIT or DIT-2, and ALERT only provide feedback on an individual's moral reasoning skills. As Turner (2008) concluded, "it is unwise to assume that post-conventional moral reasoning ensures moral behavior."<sup>27</sup> Likewise, Stromberg, Wakin, and Callahan (1982) postulated that "there is no empirical data establishing that the person who masters the objectives set forth for the teaching of ethics will, in fact, act in a morally responsible way in his profession."<sup>28</sup> In other words, exceptional moral reasoning skills do not necessarily guarantee moral behavior. The DIT provides a quantitative measure of moral reasoning skills. However, there are many other factors that actually influence moral behavior.

The DIT or any other instrument that provides a measure of moral reasoning skills is not the "Holy Grail" to influence moral behavior. It simply provides a quantitative measure of one's post-conventional moral reasoning. As my colleague, Martin Cook (2013) related, "situational factors play a large and perhaps decisive role in shaping behavior."<sup>29</sup> Arthur Caplan (1980) summarizes it best, "he (Rest) notes that the DIT is intended solely as a measure of moral judgment, not of moral worth, or of likely moral conduct."<sup>30</sup>

Another concern is that the curricula for PME institutions normally only encompasses one academic year. The pre- and post-tests for subjects in the DIT and ALERT studies



were done over a period of academic years. For example, ALERT subjects from both the freshman and senior class were evaluated. Other studies were also conducted over a period of years. Attempting to do a longitudinal study with a pre- and post-test during the course of only one academic year may not be sufficient time to elicit growth in moral reasoning skills. However, when conducted at the end of the academic year the results may be useful to both graduates and curricula developers.

## Recommendations

The instruments discussed have been validated and provide useful information about students' moral reasoning skills. Moreover, they have been used by professional schools at a number of institutions over the years to provide valuable feedback and data about their ethics curricula.

The author makes the following recommendations for PME institutions:

**Use the DIT-2 on a limited basis to supplement the existing survey instruments used to collect information on the ethics curricula.** Administer the DIT-2 to a select group of students on a limited basis at the outset of the academic year and then again just prior to graduation to determine if there was a change in moral reasoning skills.

**Develop an ALERT-like instrument for use with intermediate and senior-level military students.** The instrument would consist of military-related ethical dilemmas and unique scoring specifically based on the profession of arms. Tailored for the military professional, this instrument would provide useful data especially for military leaders.

**Offer the DIT-2 to interested students, faculty, and staff to provide an indication of their moral reasoning skills based upon Rest's model.** This information may be useful to military professionals interested in leader development. As Hartwell (2004) observed, "Moral reasoning is conceived as a cognitive process on a continuum along which individuals progress when they are goaded by the realization that their present moral reasoning is inadequate to provide them with rational and acceptable moral decisions."<sup>31</sup>

## Conclusion

Ethics and professionalism are "hot button" topics in the military today. Considerable resources have been devoted to increasing the scope of ethics education and training in all of the PME institutions. Yet the instruments currently used to assess ethics education and training are subject to social desirability bias and do not provide valid metrics. Some professions use the DIT or DIT-2 to assess moral reasoning skills in their ethics curricula. "For educators wanting to develop an assessment programme to accompany a curriculum in professional ethics, the DIT is certainly a starting point."<sup>32</sup> The DIT or DIT-2 could provide a valid measure of students' moral reasoning skills. Developing a military-specific instrument like ALERT would provide an even more accurate assessment of students' moral reasoning skills. Used in conjunction with the current qualitative assessments, these instru-



ments could provide curriculum developers and administrators with better information to improve student learning. As ethics instruction continues to develop, the US military PME institutions must develop valid metrics and put systems into place to measure the quality and performance of this instruction.

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## Chapter 9

### Evaluation of Current Risk Assessment Models for Genocide and Mass Atrocity

Kathryn Gillum

#### Introduction

Genocide and other atrocity crimes (war crimes and crimes against humanity) are not only a curse to those directly involved, but a burden on all of humanity. What many people do not realize is that these crimes occur before even a drop of blood is spilled; this can be recognized if one knows how to identify the different risk factors associated with these crimes. The international community not only has the moral obligation to intervene in atrocities, but also the duty to help protect victims under the United Nation's (UN) 2005 Responsibility to Protect (R2P).<sup>1</sup> By recognizing atrocity in its early stages, it gives the international community greater capability and more response time to protect civilians. R2P and pre-emptive action could also reduce the risk of financial, national stability, and diplomatic losses, along with protecting human life associated with atrocity. Therefore, it is in the international community's best interest to act in accordance with R2P.<sup>2</sup> If the United States (US) and other world leaders act in more preventative ways, they would be able to uphold international norms of protection and ensure that other nations do their part in protecting innocent lives. To be able to act preemptively with atrocity, the first step is for violence to be identified as an atrocity.

Identifying genocide and atrocities before they occur can be difficult, but is a necessity in today's unstable world. There are models to help identify atrocity crimes, called risk assessments, which evaluate a collection of risk factors. Risk factors are identified situations that have been part of the causation of atrocities in the past, and if a state exhibits these factors it can mean that it is at a higher risk of atrocity. Though these models vary in approach and factors, most of the risk factors can be grouped into three basic categories: political, economic, social instabilities, and inequalities. Political risk factors typically involve instabilities in governance, militarization, legislation, and national history. Economic risk factors include a decline of a nation's gross national product, widening income inequality, or crumbling infrastructures. Examples of social factors include aspects of increased hate speech, or propaganda, and active discriminations such as othering, or purposeful alienation.

This paper is an analysis of four influential atrocity and genocide risk assessments. The models in this paper were specifically selected to provide examples of how diverse authoring institutions, such as non-governmental organizations (NGOs), scholars, and government bodies, outline risk assessments. Each analysis provides an overview which evaluates the model's strengths and weaknesses, and addresses the distinctions and commonalities among the models. Understanding and implementing these risk assessment models can help preemptively identify, and prevent, genocide and atrocity crimes. For a summarization and outline of the four assessments please refer to appendix A (*Summarization of Risk Assessments Models*). The four risk assessment models examined in this analysis are the Fund for Peace's 2014 *Conflict Assessment System Tool* (CAST), Dr. Barbara Harff's 2005 *Assessing Risks of Genocide and Politicide*, the European Commission's 2008 *Conflict Prevention*, and the United Nation's 2014 *Framework of Analysis for Atrocity Crimes*.<sup>3</sup>

## **Fund for Peace's Conflict Assessment System Tool (CAST, 2014)**

The Fund for Peace (FFP) is an educational and research based non-profit NGO out of Washington, D.C. that is working towards the prevention of violence.<sup>4</sup> In 2014, it published the *Conflict Assessment Framework Manual* containing a risk assessment model called the *Conflict Assessment System Tool*, or CAST. CAST is composed of twelve risk factors which are used to measure whether or not a state may experience atrocity.<sup>5</sup> These twelve factors are broken down into three main sub-categories, "social indicators," "economic indicators," and "political/military indicators," as shown in appendix A.

Social indicators in CAST include aspects such as refugee populations, which today is a huge global issue, especially in Syria with the 4.6 million Syrians who have been forced into a refugee population and 6.6 million that have become internally displaced persons, or IDPs, since 2011.<sup>6</sup> Other risks also include certain community demographics, and a history of discriminatory tensions.<sup>7</sup> In this case, economic risks are not just purely a national economic decline or inequality, or even perceived inequality. Instead they can also refer to inequalities in education and hiring practices among different groups. These inequalities further divide groups as they become separated, not just economically, but societally as well. The FFP's political risk factors deal with aspects of the status of the regime in power, along with the nations military, and parts of the state's past.

One aspect that makes CAST unique is that it has a quantitative severity scale of how in danger an event is to becoming an atrocity. These scales give ten examples of events that a state might endure ranked by severity from ten to zero, ten being events that put states at the highest risk and zero being event that put states at the lowest risk. This assessment is also effective, as jargon is kept to a minimum and allows for quick comparatives. Furthermore, CAST was not written with any one body in mind to recognize and fix atrocities in question. This unbiased approach allows for use by many varying groups. Negative points of CAST are that it is lengthy and some risk factors are hard to pinpoint. Also, while CAST is strong on political risks, it lacks depth in social and economic risk factors.

## **Barbara Harff's *Assessing Risks of Genocide and Politicide* (2005)**

In 2005, Barbara Harff, an advisor for the Genocide Prevention Advisory Network, updated her 2003 risk assessment in a piece titled *Assessing Risks of Genocide and Politicide*.<sup>8</sup> This assessment, originally published in *Peace and Conflict 2005: A Global Survey of Armed Conflicts, Self-Determination Movements, and Democracy*, has since become an excellent tool in genocide and politicide identification and prevention and is continuously updated. According to Harff, this model, when used correctly, can be up to 76 to 90 percent accurate and is the only model with an accuracy percentage. Harff's work has seven risk factors for genocide and politicide (defined as politically based violence and killing).

The majority of Harff's risk factors are politically focused, with a strong emphasis on history. Her first risk is if the state has experienced a genocide or politicide since 1945; if the country has, than it is more likely to experience another, as the state may have become more conditioned to outbreaks of violence. The next risk is political upheaval, which is if a country has experienced a regime change within the past fifteen years. This is considered

dangerous as the government may not yet be fully established, accepted, or stable. According to Harff, the most at risk regime is an autocracy, where there is a single person or party in control of the government, which does not allow opposition. The ethnic character of the rulers is another risk and presents itself when a population is not properly represented in their government. The shared ideology of the ruling elite is also a hazard. If rulers have a belief system that enables them to justify elimination, persecution, or discrimination of a people it puts the entire nation at higher risk for atrocity. This is currently happening with ISIS, who rules as a theocracy with the religious justification for the elimination of outsiders through the duty of *jihad*. Harff also outlines a few, but not many, social and economic discriminatory risk factors.

Harff's model is beneficial for many reasons, including the fact that she keeps her work as a living document, adding current data to better her analysis. She also notes that while no person or analysis can accurately predict when violence will begin, being able to recognize the risks and precursors of genocide/politicide is beneficial in enacting preventative measures to stop the violence. More unique elements that she provides are examples of historical genocides and politicides where she shows exactly how the risk factors she suggests played into them. A drawback of this model is that economic and social risks are largely untouched.

### **The European Commission's *Conflict Prevention* (2008)**

In 2008, K. Ahlfors and M. Van wrote the risk assessment model *Conflict prevention*, for the European Commission (EC).<sup>9</sup> The purpose of this assessment was to categorize and define when and how the European Union (EU) should get involved when faced with atrocity. While the report's main focus is on prevention, it also addresses post-conflict peace building. This model outlines eight risk factors of atrocity crimes, which each have concrete examples, or indicators, of how the risk can manifest in real-time, along with examples on how to combat them.

The EC assessment has three political risk factors, which highlight a state's illegitimacy, judiciary weaknesses, and geopolitical climate as risks. Economic risks are factors such as a non-diversified economy and economic inequities which are a threat, as they can exacerbate social tensions. Examples of social factors that the EC gives are group tensions, human rights abuses, and biased civil media outlets.

Overall, the EC assessment focuses on prevention of atrocities and rebuilding through the local community, not just with those in power. This is important, as it suggests people be allowed power over their own lives. Also, it is a well-balanced evaluation between political, economic, and social factors. However, it is targeted for use by the EU and it may not be completely suitable for broader non-parliamentary global utilization, as in some cases it pushes European ideology.

### **The United Nation's Framework of Analysis for Atrocity Crimes (2014)**

In 2014, the UN Office of the Special Advisors on the Prevention of Genocide and the Responsibility to Protect published the *Framework of Analysis for Atrocity Crimes*.<sup>10</sup> This assessment model notes that while all risks in it are equally important, they may be subject to change over time and severity, depending on the situation. It stresses the consequence



of not only being able to act preemptively, but also addresses the historic importance of it. As revealed in appendix A, the UN has eight common risk factors for all atrocity crimes, then it has two specialized risks for each of the three individual crimes, providing a total of fourteen risks, with many risk examples or indicators.

The eight common risks share many different elements of the state, such as regime stability and stressor factors. They also have factors of violence, such as the ability to commit atrocity. Along with motivations and triggering events, they can bring about, or justify, atrocity crimes. However, the last six specialized risks focus on the individual and legal aspects of the three crimes. These include factors of victimization, the intent of violent actions, and how attacks are perpetrated.

The UN's framework is an internationally recognized risk assignment model and has a lot to offer. It is helpful as it is easy to read and offers legal definitions for all atrocity crimes, along with individual risk factors for each crime so one can be better prepared to properly recognize the risks at hand. Also, the last few common risk factors for atrocity, motivations, and triggering events are important, as no other risk assessment in this study addresses those issues. This is crucial as most atrocity crimes start with a triggering event, such as an act of terror or an election, and all violence starts with some form of motivation or intention. Another helpful aspect of this model is that the risks, and their corresponding indicators, act as real-time examples, making them easily recognizable in current atrocities. However, it may seem confusing as the risks the UN offers are difficult to fit into the three sub-categories of political, economic, or social risks but the indicators that they offer for the risks can be. One downfall of this tool is that crimes against humanity and war crimes do not have as in depth risks as genocide or the other eight common risk factors.

## **Common Factors and Comparisons**

While each of these four models have unique aspects that can make them better or worse in certain situations, they all offer significant insight to atrocity. It is also important to understand the common themes and similarities of the four assessments, instead of assessing the individual models by themselves. The most prevalent risk factors should be what is examined in an unstable state. Out of all the analyzed risk assessments, there are only a few common risk factors between them, which can be thought of as "universal risks." This means that if a nation has one or more of those universal risk factors then they may be more at risk than if it has experienced a less common risk. There are three common risks shared in each assessment: a history of abuse, economic inequality, and social discrimination against specific groups. Though those are not the only prominent commonalities, these are the only ones found across all four models (for more shared risks please refer to Figure 1: Compared Risk Factors for Assessment Models).

The first common political risk factor is if there is a history of atrocity crimes or human rights abuses. This is a risk because if a nation has experienced human rights abuses which were uninterrupted by the international community, they are at risk of repeating actions in the future. Noninvolvement can justify a state's previous crimes and states can further commit crimes because they believe that they have impunity for atrocity. It also gives perpetrators a sense of security because if the international community did nothing to stop

perpetrators last time, why would they stop them in the future. Also, in many previously unstable nations the entire culture is conditioned into a state of violence. This conditioning may have been a reason that many German Jews did not leave when Hitler took power, as the Jewish population has been persecuted since before the birth of Christ. This is important as the conditioning of violence on the victims and perpetrators allows for a false sense of security for victims and implied impunity for perpetrators, causing cycles of violence.

The next shared risk is economic inequalities along group lines. This is a risk because it causes othering, between the “haves” and the “have -nots.” Economic inequalities play a role not only in the financial stability of a group, but in their social stability as well. Typically, those who have money have better access to health care, necessities, and protection than those who do not. Also, economic inequalities can cause social segregation with different material items, jobs, and educations, furthering group divisions.

Perhaps one of the most important common social risks of atrocity is discrimination against specific groups. This particular risk is dangerous because it legitimizes othering. Social discrimination starts off with a dislike of one group, which then escalates into persecution of the group through laws and human rights abuses. The social othering and discrimination is the original factor that separates individuals from a once united community. Without a hated group in a society there would not be societal support of violence. Therefore, without the supportive climate potentially less atrocity crimes would be committed. Discrimination, like economic inequality, creates a hierarchy, but instead of it being based on who is rich and not, it is broken down into who lives and who dies.

## Conclusion

These models offer systematic qualitative analysis tools to help proactively identify, assess, and address risk factors—typically social, political, and/or economic instabilities or inequalities which can germinate in a nation and escalate into potential atrocity. While many important atrocity assessment models exist, this comparative analysis has only examined four models. These assessments offer an excellent spectrum of atrocity recognition and preventive measures for citizens, NGOs, and world leaders to use to proactively address the probability of the commitment of atrocity crimes globally. While all genocide risk assessment models are important and have their own unique strengths and weaknesses, some can be more useful than others for certain applications. For example, if a person was looking for a risk assessment emphasizing possible solutions to genocidal risks, then the European Commission’s *Conflict Prevention* model would be best, as it offers excellent risks, indicators, and proactive possible solutions. However, I do not think that a single model is best overall, but rather a collection of assessments can be suitable as all outline unique risks and aspects in their reports.

As a hegemon and leader in the international community, the US, along with the other powers such as China, Russia, the UK, and France has the responsibility to recognize and act to prevent atrocities, which today are escalating around the world. Even with the UN’s ongoing limitations it can be used as one of the world’s only global collectives that can discuss threats to peace. Our best hope for global security and stability likely depends on the collective and collaborative efforts of our leading world powers to identify and end atrocity crimes, through genocide and mass atrocity risk assessments.

Risk Model	Past crimes/abuses	Economic inequalities	Patterns of discrimination	Use of media	Lack of civilian controlled security services	Corruption	Regime change	Fractionalization of elites	Lack of state legitimacy
CAST	X	X	X	X	X	X	X	X	X
Harff	X	X	X				X	X	
EC	X	X	X	X	X	X	X	X	X
UN	X	X	X	X	X	X			

Figure 1. Compared Risk Factors for Assessment Models  
(X implies the model shares this risk)  
Source: Kathryn Gillum 2016

## Appendix A: Summarization of Risk Assessments Models

	<i>FFP's Conflict Assessment System Tool</i> (CAST, 2014)	<i>Dr. Barbara Harff's Assessing Risks of Genocide and Politicide</i> (2005)	<i>European Commission's Conflict Prevention</i> (2008)	<i>UN's Framework of Analysis for Atrocity Crime</i> (2014)
<b>Model Overview &amp; Approach</b>	A research tool & prevention mechanism to qualitatively & quantitatively assess 12 genocidal risk factors or indicators.	Structural living model of genocide and politicide with seven main risks, and many examples of when and how they were used.	Outline used for conflict prevention and peace building initiatives with eight risk factors.	Prevention tool with fourteen risks with multiple indicators for each risk, broken down into risks of genocide, crimes against humanity, and war crimes.
<b>Champions and Affiliates</b>	NGO established in 1957 with many political & business ties	Genocide Prevention Advisory Network; Background with US Task Force & Naval Academy	European Union	Special Advisors on the Prevention of Genocide, UN
<b>Primary Risk Factors</b>	<b>Social:</b> Demographic Pressures; Refugees & IDPs; Group Grievance; Human Flight & Brain Drain <b>Economic:</b> Uneven Economic Development; Economic Decline; <b>Political:</b> State Legitimacy; Public Services; Human Rights & the Rule of Law; Security Apparatus; Factionalized Elites; External Intervention	<b>Social:</b> little <b>Economic:</b> Trade openness <b>Political:</b> Prior genocides and politicides; Political upheaval; Ethnic character of ruling elite; Ideological character of the ruling elite; Regime type <b>All:</b> Severe political and economic discrimination between minorities (applies to all three)	<b>Social:</b> Tensions Between Communities Without Resolution; Violations of Fundamental Rights in the State; Weak Civil Society or Media <b>Economic:</b> Poor Economic Management; Socio-Economical Regional Inequalities <b>Political:</b> Legitimacy deficit; Restrictions to the Rule of Law; Geopolitical Instabilities	<b>Social:</b> Capacity to commit crimes; Tensions or patterns of discrimination; Enabling circumstances <b>Economic:</b> little <b>Political:</b> Past violation of human rights; Weak state structure; No mitigating factors <b>All:</b> Instability; Motivations; Triggering factor (communal factors only)
<b>Key Strengths</b>	Quick quantitative assessment Strong comparative analysis, Non-biased approach, lots of examples and explanations applicable to most NGOs Lengthy report Somewhat convoluted risk indicators Proactive response	Ties risks to histories atrocities, "Living model" built (2003) with continuous updates (2015), Short concise, easy to understand, Focuses on political analysis Lacks depth. Little on social and economic risk, No indicators of risk	Offers many possible solutions to the risks, Focuses on community rebuilding, Many examples of indicators to the risks Limited to European intervention Less Universal	In-depth risks indicators, Clearly defines and give risk all atrocity crimes, Addresses UN's own faults, Trigger factors Risks can not easily dovetail into; social, economic, or political segments, Crimes against Humanity and war crimes poorly addressed
<b>Chief Weaknesses</b>	Only model with quantifiable results by using a severity rating scale (10-most; 1-least) in each of 12 risk indicators.	Harff updates her assessment, so it is current, also it shows concrete examples from history and how her risks are used. Only model with % accuracy ratings.	This pro-active model is unique as it offers multiple possible solutions for each risk they offer.	Breaks down atrocity crimes and gives communal and separate risks for each crime. Only model stressing Trigger factors.

Source: Kathryn Gillum's, "Evaluation of the Current Risk Assessment Models for Genocide and Mass Atrocity"

## Notes

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## Chapter 10

### Ethics Committee Model for Humanitarian Operations Planning

Philip W. Ginder

#### Introduction

Most hospitals and healthcare organizations have established ethics committees as means of dealing with issues involving medical, ethical, and legal conflicts or uncertainties. The Joint Commission, the accreditation body for the vast majority of hospitals and other ambulatory health care settings in the United States, requires that healthcare organizations have a defined process for addressing ethical concerns.<sup>1</sup> An ethics consult, typically presented by a member of the medical staff, is considered by a standing or *ad hoc* ethics committee and thoroughly examined using an established ethics framework. The committee is not a decision-making body, but renders a recommendation based on ethical considerations.<sup>2</sup>

Many hospital ethics committees use the principles of biomedical ethics as a framework to guide their recommendations to the medical staff and hospital leadership as situations arise.<sup>3</sup> These principles of beneficence, nonmaleficence, respect for autonomy, and justice apply to an infinitely broad number of situations and help steer these groups in making ethics recommendations in difficult and often uncharted situations. Frequently, these quandaries are a matter of life and death, or have significant social or legal implications. For example, committees are often confronted with questions dealing with competence of patients, refusal of healthcare providers to perform procedures that violate their moral principles, or end of life decisions involving great expenditure of resources for futile or ineffective treatments.

Similarly, a humanitarian assistance and disaster relief (HA/DR) operations planning team will encounter ethical scenarios for which there is limited or no precedence. The UN Office for the Coordination of Humanitarian Affairs (OCHA) has identified similar humanitarian principles of humanity, neutrality, impartiality, and operational independence to guide country-teams executing HA/DR missions; however, although OCHA monitors and reviews humanitarian relief efforts during operations, there appears to be no process to consider these principles before a humanitarian mission is undertaken.<sup>4</sup> These principles guide HA/DR planning and actions only to a limited degree. While most of the HA/DR activities in the recent past have met the “humanity” goal of reducing suffering, the intent of these responses was also to project soft power, to build relationships, or to take advantage of opportunistic access to closed or restricted countries. Additionally, some may have been ill-advised in their expense to the American taxpayer and lack of effectiveness. The UN principles, while noble in their intent, are limited in addressing the principle of justice as well as the pragmatic political motives of HA/DR activities, and do not address the main question for a donor nation: do we contribute and to what extent? What and when should other nations contribute? Although not a perfect fit, applying a framework similar to the principles of biomedical ethics to the initial HA/DR decision-making process could prove to be a valuable resource when planning missions, as well as ensuring our nation is embarking on these endeavors for reasons that benefit all parties without overstepping sovereign nation boundaries.



## Principles of Biomedical Ethics

### *Beneficence*

Beauchamp and Childers define beneficence in relation to benevolence:

The term beneficence connotes mercy, kindness and charity. Forms of beneficence also typically include altruism, love, and humanity...it includes all forms of action intended to benefit other persons. Beneficence refers to an action done to benefit others; benevolence refers to the character trait or virtue of being disposed to act for the benefit of others; the principle of beneficence refers of a moral obligation to act for the benefit of others. Many acts of beneficence are not obligatory, but the principle of beneficence, in our usage, establishes an obligation to help others further their important and legitimate interests.<sup>5</sup>

Beneficence mostly correlates with the UN humanitarian principle of humanity and is probably one of the easiest to reconcile between the two. OCHA describes humanity with this statement: “Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings.”<sup>6</sup> Beneficence and humanity are the ethical cornerstones of any HA/DR operation and have been displayed in recent HA/ DR missions such as Operation Tomadachi (2011, Great Tohoku Earthquake and Tsunami, Japan), and Operation Damayan (2014, Typhoon Ruby, Philippines). The primary ethical considerations revolve around the obligations of beneficence—preventing harm, removing harm, and promoting good.<sup>7</sup> An ethics body considering HA/DR missions might focus on identifying the absence of beneficence overall or in any component of the operation.

### *Nonmaleficence*

Beauchamp and Childers describe the maxim “First do no harm” as the heart of the principle of nonmaleficence.<sup>8</sup> Additionally, they identify the obligation of nonmaleficence as, “one ought not to inflict evil or harm.” Recent humanitarian efforts highlight several instances of unintentional harm, or at least inconvenience to the host nation being assisted. The Sumatra earthquakes in 2009 prompted an international relief response that included the US Department of Defense and the deployment of an Air Force Humanitarian Assistance Rapid Response Team (HARRT).<sup>9</sup> Although the team deployed successfully and delivered needed health services, its departure was difficult for local hospitals, as the HARRT left without notice to these organization causing disruption to the delivery of care in the affected area.<sup>10</sup> Another example of this can be found in Operation Sea Angel, a HA/DR response to Cyclone Marian in Bangladesh in 1991. Although many facets of the operation were successful, the coastline forestation efforts led to an increased incidence of malaria.<sup>11</sup> Using an ethical framework might allow a multidisciplinary team looking at HA/DR plans to identify similar concerns during the planning process.

### *Respect for Autonomy*

Autonomy is one of the principles that, in many ways, can be applied to countries as well as individuals.

Personal autonomy is, at a minimum, self-rule that is free from both controlling interference by others and from limitations, such as inadequate understanding



that prevent meaningful choice. The autonomous individual acts freely in accordance with a self-chosen plan, analogous to the way an independent government manages its territories and sets policies.<sup>12</sup>

The corresponding OCHA humanitarian principles are independence and neutrality.

**Independence:** Humanitarian action must be autonomous from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.

**Neutrality:** Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature.<sup>13</sup>

As the world's leading superpower, the United States is sometimes seen by other nations as being pushy, and even viewed as being meddling and coercive with its policies. Still, we provide billions of dollars in aid to other nations each year, even those with a strong anti-American sentiment in their population and governments. The American public largely supports our humanitarian aid policy—81 percent in 2008 favored providing relief to reduce poverty and severe hunger.<sup>14</sup> Even so, conditions can exist where providing assistance is not clear cut from an ethics standpoint. For example, what is the obligation of the American people to provide aid which is likely being diverted to wealthy and connected landowners, such as in the Pakistan floods of 2010 or the suspected diversion of aid to the Myanmar military during the cyclone relief operations in 2008?<sup>15</sup> Many recipient nations do not want us to partner with them in HA/DR operations, they simply want to utilize the US as a giant food bank or to provide an air bridge with our military airlift capabilities. Is our objective to have some benevolent leverage over recipient nations following assistance to facilitate other political partnering (running contrary to the UN humanitarian principle of independence)? These questions of autonomy (independence) should play an important part in any ethics recommendation.

## Justice

In the principles of biomedical ethics, a single definition of justice is elusive, but ethical concerns regarding this principle often revolve around the argument of healthcare as a right, and the limitations of that right, as well as the distribution of scarce healthcare resources.<sup>16</sup> Although the UN principle has a principle of impartiality, it fails to address the problem of limited resources and prioritization, "Humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class or political opinions."<sup>17</sup> At what point does a need become "urgent distress" and who declares this state? When do the needs of the recipient country override domestic concerns of US citizens? A Pew Research article in 2012 showed that the Pakistani public opinion of the US actually decreased shortly after the 2011 flood relief operations, with 7 out of 10 Pakistanis considering the US to be an enemy while only 10 percent considered Americans to be a trusted ally.<sup>18</sup> One could argue from a justice standpoint that the funds used for relief to flood victims in Pakistan (around 550 million dollars) could have been much better used for domestic purposes, or even to other foreign recipients. Although there was clearly a

need to relieve suffering, other nations providing the bulk of the support, perhaps a regional ally, may have been a better ethical solution. Based on the justice principle, an ethics body might determine that providing this aid was not fair to the US taxpayer as a marginal, and perhaps even counterproductive, relationship building tool.

### **Ethics Committee for HA/DR Missions**

The ethics committee provides a resource available to leaders and staff in the healthcare setting, often convening after an ethics consult is submitted that poses an ethical dilemma or grey area. The committee strives for a multidisciplinary approach: members usually include a member of the executive leadership, physicians, nurses, allied health providers, administrators, and patient and chaplain representatives. Some members might be *ad hoc*, particularly those consults involving new technology, dilemmas involving different religious denominations, or specific to a particular medical specialty. The standing committee members must maintain training, experience, and education in the area of biomedical ethics. The ethics committee meets, considers the consult from all these different perspectives, and provides a recommendation to the individual requesting the consult.

Ethics committees are not decision-making bodies, but serve to make recommendations and thoroughly examine the subject in the ethics consult. Could a similar team be developed at the federal level to help resolve ethical questions regarding the execution of HA/ DR missions? The establishment of a standing committee with education, training, and experience in the ethics of HA/DR support to advise our national leaders before, or at the beginning stages of operations, could thwart potential ethical traps before they become international blemishes or quagmires. The team could be fully multidisciplinary: operations, logistics, security, medical, cultural, religious, and political expertise on a standing basis, as well as supplemental experts in emerging technology, specific regions, religions, and other SMEs as needed. The team could also include a representative of the host nation, as well as a member representing the interest of the US taxpayer such as a legislator.

### **The Consult**

If a group formed to deliberate and make recommendations on the ethical implications of HA/DR, a framework would need to be determined to consider the HA/DR plan template for the meeting and the resulting report could be useful in both providing uniform recommendations to decision making leaders, as well as providing a record of the ethical considerations that were deliberately considered prior to launching HA/DR response. Additionally, guidance for expanding or decreasing the size of the response could be developed during this period. Based on the principles vetted by the council, recommendations could be made during these periods as well.

### **Conclusion**

Humanity and generosity are two traits the US strives to present to the rest of the world. Steps taken to consider ethical concerns with HA/DR plans could provide leaders with the background to avoid potential pitfalls and landmines, and help further our own interests while remaining in alignment with humanitarian principles. Just as a multidisciplinary, framework driven hospital ethics committee helps healthcare professionals make the sound ethical de-

cisions, a HR/DR planning-focused ethics body using an ethical framework would provide leaders valuable recommendations when embarking on humanitarian efforts.

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## Chapter 11

### Do Humanitarian Interventions Generate Postwar Obligations?

Lt Col Michael Growden

#### Introduction

Suppose a state militarily intervenes in another state for the humanitarian purpose of stopping massive human rights violations such as genocide. At intervention's end does the intervening state incur any specific post-conflict obligations? Several just war theorists answer "yes" to this question. According to Michael Walzer, states that militarily intervene in other states for humanitarian purposes incur post-conflict obligations to rebuild the troubled state.<sup>1</sup> Even though the intervening state incurs great expense and risks the lives of its troops to halt egregious human rights violations, its reward is simply the obligation to do even more. As Walzer puts it, "The forces that intervened did well, but they are not finished," adding "the work of the virtuous is never finished."<sup>2</sup>

In a similar vein, Minako Smart and Shunzo Majima argue that intervening states must compensate any civilians whom the intervening forces have collaterally harmed, even though the harm was the unintended consequence of trying to prevent atrocities.<sup>3</sup> According to Smart and Majima, failing to compensate the harmed civilians would impose an unfair cost on them.

We can refer to the general position advocated by Walzer, Smart, and Majima as the "strict liability approach" to post-intervention obligation. In short, their claim is that states that voluntarily choose to intervene in the affairs of other states for humanitarian purposes *necessarily* incur post-conflict obligations.

In this paper, I will argue against the strict liability approach to post-intervention obligation. Instead, my claim is that states that voluntarily choose to engage in the supererogatory act of humanitarian intervention do not necessarily incur post-conflict obligations to rebuild, reconstruct, or pay restitution. I will, however, argue that intervening states *sometimes* incur an obligation to compensate collaterally harmed civilians.

Before proceeding I should note several assumptions that will be made throughout the paper. To begin, I will evaluate the topic through the lens of a reductivist account of war, meaning that the moral principles governing war reduce to the same principles governing individual defense. Accordingly, I will sometimes appeal to domestic defense scenarios to help illuminate how we should think about the relations between parties during larger conflicts.

Second, I will assume the intervening state is conducting a justified humanitarian intervention to halt serious rights violations and that the persecuted parties (i.e., the intended beneficiaries) welcome the intervention.

Finally, I will assume that the intervening state was neither morally nor causally responsible for the emergency situation to which the intervening state responded, and also that there exists no special relationship between the intervening state and the state intervened against.

The paper will proceed as follows. I will begin by presenting and evaluating the strict liability views put forward by Walzer, Smart, and Majima. Next, I will show why the strict liability approach is mistaken. I will finish by presenting the normative grounds for why intervening states might sometimes incur post-conflict obligations to compensate collaterally harmed civilians.

### **Walzer's Strict Liability Approach**

Walzer's position on post-intervention obligation begins with the broad claim that one can make a moral mess of a humanitarian intervention if one fails "to help the people you have rescued rebuild their lives."<sup>4</sup> But in what way, one might wonder, are interveners required to rebuild the lives of the people they have saved? According to Walzer, at conflict's end the intervening state is obligated to "provide law and order, food and shelter, schools and jobs."<sup>5</sup> And once these necessary "provisions" are provided, Walzer further claims "the state responsible for the invasion and the rescue will also be responsible for the political and social reconstruction of the invaded country."<sup>6</sup>

Needless to say, Walzer envisions an extensive array of post-conflict obligations falling to the intervening state. But on what grounds does a state that voluntarily puts its troops in harm's way to help others incur such extensive obligations? In answering this question, Walzer begins simply by noting that "doing the right thing brings with it the obligation to do many more right things," adding that "there is no escaping the dire consequences of good behavior."<sup>7</sup> As far as explanations go, these observations do little toward grounding the intervening state's supposed obligations because they explain nothing about the moral connection between intervention and obligation.

Elsewhere, however, Walzer gives a slightly more principled explanation, "Once we have acted in ways that have significant negative consequences for other people (even if there are also positive consequences), we cannot just walk away."<sup>8</sup> The problem with this proposal is the principle is obviously much too vague. People routinely act in ways that negatively affect other people without generating obligations toward the negatively affected parties.

In short, I think Walzer has failed to provide compelling grounds for why intervening states that voluntarily stop human rights violations should be strictly liable for rebuilding the victims' lives. Moreover, I think Walzer's position faces two additional problems.

First, notice that Walzer's claim goes against what we generally think in analogous domestic situations. Imagine, for example, a scenario in which an aggressor unjustly attacks a parent and child. Suppose the aggressor kills the parent, and then a bystander successfully intervenes to protect the child, all the while risking significant harm to himself. Few people would think the bystander is now obligated to rebuild the child's life, perhaps by adopting and raising him, putting the child through college, etc. Instead, most of us likely think the bystander did enough by intervening and that any further obligations to care for the child's welfare should shift to the community writ large. So too, one might think, intervening states have done enough by incurring the expense of intervention and exposing their troops to harm's way. If additional aid is needed, such as

providing schools and jobs, or engaging in political and social rehabilitation, such obligations should shift to the international community writ large. The intervening state, in other words, has already done more than its fair share.

The second problem with Walzer's proposed strict liability approach is that it would only deter well-intentioned states from intervening if they know they will incur the crushing long-term obligations for which Walzer advocates. In other words, Walzer's position provides a strong disincentive against helping people in need. To highlight this point, return to the domestic analogy. How many bystanders would intervene to protect an innocent child knowing that by intervening they'd have to adopt and raise the child? Instead we should encourage bystanders to intervene to protect the innocent by minimizing their expected obligations at conflict's end.

### **Smart and Majima's Strict Liability Approach**

The position Smart and Majima put forward differs from Walzer's in two ways. First, whereas Walzer argues that an intervening state incurs obligations toward the targeted state as a whole, Smart and Majima argue that an intervening state incurs an obligation to personally compensate collaterally harmed individuals. At no point do they claim that an intervening state owes the target political community anything. Second, unlike Walzer's brief assertions, Smart and Majima offer a nuanced argument for their position.

According to Smart and Majima, states that militarily intervene in other states for humanitarian purposes incur a special moral obligation to repair the collateral harm they cause to civilians in the targeted state.<sup>9</sup> The required reparative obligation might take the form of an acknowledgement or an apology, as well as monetary compensation.<sup>10</sup>

Smart and Majima offer two normative groundings for their position, which they refer to as "restorative" and "corrective" justice. It is not clear what role each form of justice plays. Seemingly, each would be sufficient to ground the post-conflict obligations they envision, with the conjunction of the two apparently over-determining the case.

Restorative justice, they argue, is the requirement that agents restore the human relationships in post-conflict societies. Because the imperiled civilians came to rely upon the intervening forces to protect their welfare, restorative justice requires the humanitarian forces to restore their relationship with the victims whom they have collaterally harmed.<sup>11</sup> According to Smart and Majima, the intervening troops have "betrayed" the expectations of the imperiled civilians who thought they would be protected by the military rather than harmed.<sup>12</sup>

In reply, it is worth noting that Smart and Majima might be right to claim that the intervening state owes an acknowledgment, and perhaps even an apology, to the civilians collaterally harmed during the military operation. Even when an agent intends to benefit another, perhaps they should somehow acknowledge when things do not turn out well for the intended beneficiaries. The problem concerning claims about compensation, however, are more problematic, given that the intended beneficiaries likely would have consented to the risk of being collaterally harmed. We will return to this issue later.

In addition to restorative justice, Smart and Majima also argue that corrective justice grounds the intervening state's reparative obligations. The aim of corrective justice is to



correct for the consequences of risky activity to ensure that any eventuating harms are not unfairly imposed on innocent others.<sup>13</sup> Applying the corrective justice concept to the case of humanitarian intervention, the claim is that intervening forces should not unilaterally impose risks upon the innocent civilians in the targeted state. Should those risks eventuate in harms to innocent people, then as a matter of corrective justice the intervening state should compensate the civilians accordingly.

According to Smart and Majima, strict liability is the right approach in these situations because of the asymmetric relation between the intervening troops and their intended beneficiaries. After all, they point out, the intervening state voluntarily chose to employ military force in a way that posed a threat to innocent civilians, while the latter posed no threat to the intervening forces.<sup>14</sup> Smart and Majima liken this situation to the relation between motorists and pedestrians. By voluntarily driving down the street, motorists impose an asymmetric threat of harm to pedestrians in a way that the pedestrians do not toward the motorists. So long as the pedestrians exercise due care, the authors claim that motorists should be strictly liable for any ensuing harms they cause to pedestrians. Smart and Majima then extend this analogical reasoning:

To the extent that the injurers (intervening forces) are more likely to contribute to the possibility of accident than the victims (civilians), and it is impractical and undesirable to restrict the daily activity of the civilians, simple application of this model to the context of civilian casualties suggests that strict liability should be adopted.<sup>15</sup>

By this line of reasoning, the intervening state's reparatory obligation follows from the risks and subsequent harms that the intervening forces impose on the hapless civilians. Although the civilians can do little to avoid the threat of harm, "they have to pay the full cost in most cases of civilian casualties caused by legitimate attacks."<sup>16</sup> Smart and Majima conclude, as a matter of fairness the intervening state should be obligated to compensate the collaterally harmed civilians, even if the intended beneficiary population as a whole has benefited from the intervention.<sup>17</sup>

In response to Smart's and Majima's corrective justice argument for strict liability, one might begin by pointing out that the motorist analogy seems particularly inapt and misleading. The motorist presumably drives their car to benefit themselves, all the while imposing an asymmetric risk on nearby pedestrians. But this typical relation between motorists and pedestrians is fundamentally different in kind from the relation between intervening troops and imperiled civilians in the humanitarian intervention situation. In the latter case, the intervening forces act not in their own interests, *but instead act in the interests of the civilians who need protecting*. In other words, the intervening forces impose a risk on the imperiled citizens for the latter's own good, and presumably in their best interests.

The problem with Smart and Majima's corrective justice argument is that it fails to distinguish among the types of civilians who are collaterally harmed during the intervention and, importantly, the different justifications that intervening troops have for causing harm. This last point leads us to the broader argument against the strict liability approach to post-intervention obligation for which Walzer, Smart, and Majima advocate.

## Why the Strict Liability Approach is Mistaken

The problem with holding intervening states strictly liable either for rebuilding the lives of those saved or for requiring compensation for those harmed during intervention is that this approach fails to consider why the intervening troops imposed harm. Instead, in order to determine whether an intervening state incurs post-intervention obligations, one must consider whether the intervening troops were justified in inflicting the harm they did.

As Jeff McMahan argues, there are three basic forms of justification for harming others: presumed consent justification, liability justification, and lesser evil justification.<sup>18</sup> In a humanitarian situation, intervening forces will almost always harm in accordance with the first two types of justification, and sometimes with the last.

In the case of consent justification, the claim is that if an imperiled party consents to the risk of being harmed, then an intervening agent who harms that party while trying to aid her does not wrong the harmed party—thus incurring no reparatory obligation towards them. Of course, in most cases of other-defense, the intervening agent will rarely be able to receive consent from the imperiled party. Instead, as McMahan explains, “the presumption is that the potential victim would welcome defensive assistance and thus that if self-defense is permissible, so is third-party defense.”<sup>19</sup> So for example, if an aggressor is unjustly attacking victim, a bystander who intervenes and subsequently incidentally harms the victim while trying to defend them does not wrong the victim because presumably they would have consented to the risk, even if they don’t expressly do so. Accordingly, even though the intervening bystander harms the victim, they do not incur a reparatory obligation toward them given their presumed consent.

The principle of presumed consent applies to all cases of other-defense, whether involving a single individual in a domestic case or a large number of people in a humanitarian scenario such as genocide. The one caveat, however, is that in order to be justified in presuming consent on the victims’ behalf, the risk the intervening agents pose to the victims must be less than the risk posed by the aggressors toward the victims. As Gerhard Overland explains, “If the to-be-liberated civilians have reason to accept a particular risk of being harmed and/or being killed in order to be liberated from their oppressive regime, intervention not exceeding that risk would not wrong them.”<sup>20</sup> According to Overland, the risks of intervention still serve the victims’ interests “when the alternative is an even more precarious status quo.”<sup>21</sup>

To highlight this point with an historical example, it is reasonable to believe that in Rwanda in 1994 the Tutsis would have consented to the risks of intervention rather than be left to the machetes of the Hutu, had any state decided to intervene on the Tutsis’ behalf. Supposing that some forces had intervened and incidentally killed or harmed some Tutsis in the process, the intervening state would not incur any reparative obligations toward the harmed civilians given the Tutsis’ presumed consent to those risks.

We can also look to the Rwandan genocide example to understand the liability justification for harming. According to the liability justification for harming, agents (through their actions) can forfeit their right to not be harmed. In doing so, agents make themselves liable to

be harmed, which means that harming them does not wrong them.<sup>22</sup> So the claim here would be that the Hutus, through their unjust aggression of the Tutsi population, made themselves liable to be harmed in order to protect the innocent Tutsis who did nothing to make themselves liable to be harmed by the Hutu. Accordingly, if a state had chosen to intervene in Rwanda and in the process harmed Hutu aggressors, the intervening forces would not have wronged the Hutu and thus, would not have incurred any reparatory obligations toward them (assuming the interveners used necessary and proportionate force).

So against the strict liability approach, simply causing harm is not sufficient to generate obligations toward the harmed parties if one harmed them with justification. Holding intervening states strictly liable for the harm their troops cause fails to appreciate that the intervening forces had a presumed consent justification for collaterally harming the intended beneficiary civilians and a liability justification for intentionally harming the aggressing forces in the targeted state. Accordingly, an intervening state would not incur reparatory obligations toward either of the two parties. There remains, however, a group of people who might be collaterally harmed with neither a liability nor a consent justification, and these harmed parties potentially might be owed some kind of compensation by the intervening state.

### **The Normative Grounds for Potential Post-Intervention Obligations**

Thus far, I have argued that military forces intervening in another state for humanitarian purposes likely have justification for much of the harm they cause, whether the harm is intentionally against the aggressing forces or collaterally against the intended beneficiaries of the intervention.

Yet depending on the perilous situation, there might be people in the targeted state who are neither aggressors nor intended beneficiaries. For lack of a better term, we can call these people “bystanders.” Bystanders would include any parties who (for whatever reason) are not under any threat and who have done nothing to make themselves liable to be harmed. One could imagine, for example, foreigners of a different ethnicity who in the midst of a racial genocide could live with minimal risk. If harmed by intervening forces, such persons would suffer wrongful harm, that is to say, harm to which they neither consented nor were liable to.

Nevertheless, if we suppose that the intervening troops are considered justified in their intervention, then by McMahan’s taxonomy the intervening forces must have a lesser evil justification for collaterally harming the bystanders. So even though the bystanders have done nothing to forfeit their right not to be harmed, a lesser evil justification permits the intervening forces to infringe the rights of the bystanders if doing so is necessary to avert the greater catastrophe that would result from non-intervention. As McMahan explains:

Most of us concede that it can be permissible to infringe a person’s rights, even intentionally, if that is necessary to avert a significantly greater harm. The person’s rights are, we say, “overridden,” though the infringement leaves a residual obligation to compensate the person later, if possible.<sup>23</sup>

The important point here is that even though the intervening state is all things considered justified in harming some bystanders, those bystanders nevertheless must be compensated for the wrongful harm they suffer.

Now returning for a moment to Smart and Majima's corrective justice argument, I think the mistake they made was to treat the intended beneficiaries as bystanders, thus concluding that collaterally harmed intended beneficiaries suffered wrongful harm. As previously argued, I claim that intervening forces do not inflict wrongful harm on the collaterally harmed intended beneficiaries because the latter presumably would have consented to that risk.

Bystanders, on the other hand, have no reason to consent to the risk posed by the intervention if they are genuinely under no threat themselves (though one might question whether this is really possible in the midst of something like genocide). So if the intervening forces have neither a consent justification nor a liability justification for harming the bystanders, then any harm to the bystanders, even if justified as a lesser evil, should generate a reparatory obligation to compensate for the harm. But should the intervening state necessarily be the party obligated to pay such restitution?

### **Shifted Responsibility for Compensating Collateral Harms**

Unfortunately for intervening forces attempting to halt egregious rights violations, often-times they will only be able to do so if they collaterally harm some innocent people. As previously argued, the intervening forces may nevertheless be permitted to act, though in doing so the collaterally harmed innocent parties will suffer wrongful harm for which they are due compensation. Given that the intervening forces causally inflicted the harm, one might conclude that the intervening forces should compensate the bystanders.

Yet such a conclusion would be too quick. Although the bystanders are due compensation, perhaps the reparatory obligation should fall to other parties instead. On this point we can appeal to what Francis Kamm refers to as "shifted responsibility." According to Kamm, "shifted responsibility occurs when A may permissibly transfer its moral responsibility for negative effects of its acts to B."<sup>24</sup> For example, suppose an aggressor attacks victim with lethal force. An intervening agent, acting in defense of victim, shoots aggressor. Unfortunately, the bullet passes through aggressor's torso and ricochets, striking a bystander in the leg. In this case, the bystander suffers a wrongful harm for which she should be compensated. Although the intervening agent caused bystander's harm, most would agree that the responsibility, and thus also the compensatory obligation, should shift to the aggressor. After all, the aggressor's culpable action is what triggered the need for the defensive harm in the first place.

Similarly, it is reasonable to think that in the humanitarian situation, the obligation to compensate the collaterally harmed bystanders should shift to the aggressing forces whose actions necessitated the intervention in the first place.

But suppose the aggressor forces were unable to compensate the harmed bystanders. Should the intervening state now be on the hook for restitution? Perhaps not. Consider a variant on the domestic case just discussed. Suppose the aggressor was destitute and died from the gunshot wound. In other words, the harmed bystander cannot be compensated by the culpable party. In this situation, if bystander is going to be compensated, then their claim falls to either the original victim or the intervening agent. In this case, it seems that the original victim should

compensate the bystander, rather than the intervening agent. After all, the rescuer only inflicted the harm for the sake of protecting victim's life. Presumably, the victim would have consented to compensating the collaterally harmed parties on the intervener's behalf.

Likewise, it is reasonable to think that if the aggressing parties in the humanitarian intervention scenario are unable to be forced to compensate any harmed bystanders, then the compensatory obligation should shift to the victims on whose behalf the intervening troops employed defensive force. Only in those situations in which neither the aggressing forces nor the intended beneficiaries are able to pay should the compensatory obligation fall to the intervening state. Yet even in this scenario the intervening state's obligation should be greatly mitigated given that its use of force was to protect innocent life.

## **Conclusion**

In this paper, I have argued that the strict liability approach to post-intervention obligation is mistaken. Against Walzer, I have argued that intervening states do not incur long-term obligations to rebuild the lives of the people the rescuers have saved. If such obligations exist at all, they should fall to the broader international community rather than to the state that has already voluntarily incurred great expense and risk in stopping the atrocity.

Against Smart and Majima, I have argued that intervening forces are not strictly liable to compensate collaterally harmed parties because the former have a liability justification for intentionally harming the aggressors and a presumed consent justification for incidentally harming some intended beneficiaries. Instead, the only normative ground for post-intervention compensatory obligations results from collaterally harming bystanders. Even in these latter cases, my claim is that the compensatory obligation should first shift to the aggressing parties, and then to the intended beneficiaries when necessary. Only in cases where both of those two parties are unable to compensate the bystanders should the obligation fall to the intervening state, and even then the obligation should be mitigated given the compelling good for which the rescuers acted.

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## Chapter 12

### Ethical Decision Making: Using the “Ethical Triangle”

Jack D. Kem, PhD

*Doing the right thing is good. Doing the right thing for the right reason and with the right goal is better.*

—ADRP 6-22, *Army Leadership*

#### Background

In May 1968 Soldiers of Charlie Company, 11th Infantry Brigade of the Americal Division entered the village of My Lai in Vietnam and within three hours over 500 civilians had been massacred. This horrible memory of the United States Army at war resurfaced in 2004 as the case of the Abu Ghraib prison in Iraq exposed atrocities that were an embarrassment for the military. The war in Iraq also had a number of high-profile cases related to ethical behavior, such as the courts-martial for six reservists who had “scrounged” vehicles to deliver supplies to troops in the field and the scene of a marine reacting to a perceived threat and subsequently killing an unarmed Iraqi prisoner in a mosque in Fallujah. In recent years, misconduct of senior officers has also received notoriety and embarrassment to the military.

In all of these cases, the public has had widely different opinions of how to treat the military involved in the incidents. For Lieutenant Calley and those involved in My Lai, many in the public viewed the actions of Charlie Company as understandable because of the nature of the war in 1968: everyone seemed to be the enemy, and the “search and destroy” missions of that time were based upon intelligence that indicated the enemy was using hamlets such as My Lai for refuge. As a result, the punishment for all of those involved in My Lai was very light or nonexistent. Lieutenant Calley was the only one convicted, but he only served three days in prison and was pardoned by President Nixon after serving three and a half years on “house arrest.”<sup>1</sup> For the cases in Iraq, the public reaction was mixed, from widespread support for the Marine in Fallujah and the reservists who “scrounged” vehicles, to disgust at the Abu Ghraib cases and calls for courts-martial for senior officials.

Admittedly, these highly publicized cases involve only a small portion of the military, but they have had an impact on the culture and climate of the military. These ethical issues indicate a need for a closer look at the ethical reasoning and decision making processes of the military. This article will briefly discuss the current doctrinal approach for ethical reasoning in the Army, followed by an alternative approach for ethical decision-making.

#### The Army’s Current Approach to Ethical Reasoning

The United States Army prides itself on being a “value-based” institution with the admonition in its doctrine to “do what is right.” In the Army’s leadership manual it states that “leaders draw from deep-rooted values and professional competence to demonstrate resolve to do what is right at the right time for the right reason.”<sup>2</sup> The manual continues by stating the “leaders of integrity do the right thing because their character permits nothing less. To instill

the Army values in others, leaders must demonstrate them.”<sup>3</sup> The leadership manual continues with the list of “values” that define character for Soldiers using the acronym *LDRSHIP*: loyalty, duty, respect, selfless service, honor, integrity, and personal courage.<sup>4</sup>

The Army’s current leadership manual contains a relatively short section on the subject of ethical reasoning. The description of ethical reasoning includes the following:

To be an ethical leader requires more than knowing the Army values. Leaders must be able to apply them to find moral solutions to diverse problems. Ethical reasoning must occur during the operations process. Leaders consider ethics in planning, preparing, executing, and assessing operations.<sup>5</sup>

Ethical choices may be between right and wrong, shades of gray, or two rights. Some problems center on an issue requiring special consideration of what is most ethical. Leaders use multiple perspectives to think about ethical concerns, applying the following perspectives to determine the most ethical choice. One perspective comes from the view that desirable virtues such as courage, justice, and benevolence define ethical outcomes. A second perspective comes from the set of agreed-upon values or rules, such as the Army values or Constitutional rights. A third perspective bases the consequences of the decision on whatever produces the greatest good for the greatest number as most favorable.<sup>6</sup>

Army leaders are expected to do the right things for the right reasons. It is why followers count on their leaders to be more than just technically and tactically proficient. They rely on them to make ethical decisions. Determining what is right and ethical can be difficult.<sup>7</sup>

The Army’s leadership manual continues by highlighting the complicated nature of ethical reasoning and issues a warning against adopting a formulaic approach to ethical dilemmas. The last paragraph of the ethical reasoning section states:

Ethical reasoning is complex in practice. If time allows in particularly ill-defined situations, using concepts from the Army Design Methodology (see ADRP 5-0) can help to frame the right problem and consider ethical implications in detail. Resolving ethical problems requires critical thinking based on the Army values. No formula will work every time. By embracing the Army values to govern personal actions, developing an understanding of regulations and orders, learning from experiences, and applying ethical reasoning, leaders will be better prepared to face tough decisions.<sup>8</sup>

Unfortunately, these passages from the Army’s leadership manual do not provide a lot of guidance on how to address ethical issues, other than to embrace the Army values. Although I agree that all Soldiers should embody the Army values, the term itself is problematic. These traits of loyalty, duty, respect, selfless service, honor, integrity, and personal courage are more properly thought of as *virtues*. None of the Army values are more important than the others; all Soldiers are expected to embody all of these traits as part of their character. Values, however, indicate a relative worth or importance — we value a quarter more than a dime; a quarter has more “value” than the dime. In fact, the Army’s leadership manual describes the virtues-based approach as an ethical perspective that “comes from the view that desirable

virtues such as courage, justice, and benevolence define ethical outcomes.”<sup>9</sup> We will discuss more about virtues and the “virtues-based approach to ethics” later.

## **Defining the Ethical Dilemma**

The Army’s leadership manual also states that “Ethical choices may be between right and wrong, shades of gray, or two rights.”<sup>10</sup> Let’s look at this in detail.

When an ethical choice is between right and wrong, deciding what to do is more of an issue of moral courage to do what is right. If the choice is this clear, it should not pose a problem for leaders of character. Dr. Donald “Ducky” Mallard (David McCallum) in the CBS television series NCIS stated that “The ethical man knows he shouldn’t cheat on his wife, whereas the moral man actually wouldn’t.” As this clearly shows, ethics is the study of what is right and wrong, morality is concerned with the issue of “what should be.”<sup>11</sup>

Determining what is the ethical or moral thing to do when the choices are between shades of gray or between two rights is much more difficult. This is the case of ethical dilemmas — when virtues come into conflict with each other or when you have to make a choice that either upholds one “right virtue” or another “right virtue.” Ethical dilemmas essentially consist of competing virtues that we consider important but which we cannot simultaneously honor.<sup>12</sup>

To bring clarity to an ethical dilemma, it is useful to define the problem — the ethical dilemma—in terms of a “right versus right” conflict. There are four common “right versus right” dilemmas that can be used to define the problem — truth versus loyalty, individual versus community, short term versus long term, and justice versus mercy.<sup>13</sup> Defining ethical dilemmas in these terms is difficult at first, but this process helps to define the problem and set up the testing of the problem against ethical standards. To define a problem in terms of “right versus wrong” either defines a problem that isn’t an ethical dilemma—or, worse yet, pre-defines the solution to the problem since one virtue or value is stated in a positive way while the other virtue or value is stated in a negative way.

The Army’s leadership manual states that “leaders will be better prepared to face tough decisions” by “embracing the Army values to govern personal actions, developing an understanding of regulations and orders, learning from experiences, and applying ethical reasoning.”<sup>14</sup> Knowing the Army values, understanding the rules, and drawing from experience should not give a predetermined answer to an ethical dilemma. Before developing possible courses of action, “defining the problem” in terms of the ethical dilemma (right versus right) should be done first. After defining the ethical dilemma, an analysis of potential “courses of action” or action choices should then be made. Based upon an analysis of an ethical dilemma, there will normally be two obvious courses of action; to do something or to not do something. Keeping these two options in mind — while being open to a possible, unthought-of alternative “third choices” (such as “win-win” possibilities or no decision at all), should help set the stage for testing the actions that appear to be obvious.

## **Three Alternative Bases for Ethics**

Once an actor has defined the problem in terms of “right versus right” and identified the obvious courses of action, these courses of action should be tested against three completely

different criteria for ethical decision making. They are: rules or principles-based approach; utilitarian or consequences-based approach; and virtues-based approach. These are the three basic schools of thought for ethics — the “ethical triangle” — which are worthy of further study for clarification.

**The Ethical Triangle:** The ethical triangle considers these three different approaches to ethical reasoning. As the Army’s leadership manual states, “Leaders use multiple perspectives to think about ethical concerns, applying the following perspectives to determine the most ethical choice.” One perspective comes from the view that desirable virtues such as courage, justice, and benevolence define ethical outcomes. A second perspective comes from the set of agreed-upon values or rules, such as the Army values or Constitutional rights. A third perspective bases the consequences of the decision on whatever produces the greatest good for the greatest number as most favorable.<sup>15</sup> The ethical triangle considers these three different perspectives.

There are a number of questions that could be asked about these three perspectives. Which of the ethical philosophies are the most useful — rules or principles-based ethics, utilitarian or consequences-based ethics, or virtues-based ethics? Which one of the philosophies is the best fit for human behavior? All three appear to have some merit; all three can be used for decision-making as “distinct filters that reveal different aspects of a situation requiring an ethical choice.”<sup>16</sup> To only consider one of the different theoretical bases runs the risk of being one-sided in analysis. Whether principles, consequences, or virtues provide the true reasons for ethical decision-making, all three of the theories and their lineage are useful for gaining insight into the complexity of ethical decision making.

#### Four Common “Right versus Right” Ethical Dilemmas

- Truth versus Loyalty
- Individual versus Community
- Short-term versus Long-term
- Justice versus Mercy

Figure 1. Common Ethical Dilemmas

**Principles-based ethics:** Principles-, or rule-based ethics, has one primary philosopher that rings out as the strongest voice — Immanuel Kant. Principle-based ethics is defined in many ways, but one general definition is that one should not act according to the consequences of an action, but instead according to agreed-upon or settled values and principles.<sup>17</sup> Kant states that “the moral worth of an action does not lie in the effect in which is expected from it or in any principle of action which has to borrow its motive from this expected effect.”<sup>18</sup> From this emphasis on moral worth—regardless of the consequences of actions—Kant derives one categorical imperative, “Act as if the maxim of your action was to become a universal law of nature.”<sup>19</sup> Morality is found in following rules that are absolute with no exceptions, come what may—and by following this imperative, society and individuals will be better off.<sup>20</sup> Man knows, in Kant’s view, what is right and moral, and merely has to choose to do what is right—just as he would have others do in the same situation.

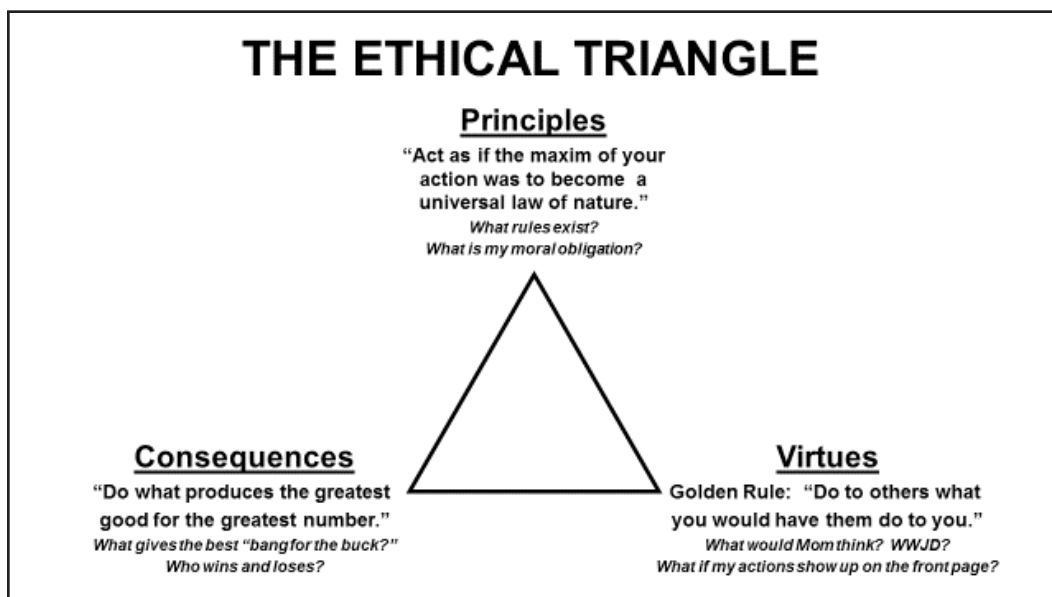


Figure 2. The “Ethical Traingle”

Thomas Hobbes’ social contract theory did not go as far as Kant in his philosophy of following rules without exception, but is generally accepted as a principles or rules-based approach. Hobbes’ view was that people have a common knowledge of natural laws—of the principles that all should understand. His writings described the theory that there is a “natural law” in which man’s nature is determined by the sum of all his experiences and abilities, yet as a result of these experiences there is a common understanding of what is right and wrong. Hobbes defines natural law, or a law of nature, as “a precept or general rule, found out by reason, by which a man is forbidden to do what is destructive of his life or takes away of preserving the same.”<sup>21</sup> Because of this common understanding, written laws and agreements in society should be based upon a rational self-interest to benefit all for a peaceful society. Knowing these common laws, coupled with mutual trust in others, provides an incentive for all to cooperate in a consistent, principled manner.

When looking at ethical dilemmas through the “lens” of principles-based ethics, consideration must be made for the rules that exist — or should exist. The consequences of actions are not considered — but the principles related to the actions one makes in response to the ethical dilemma. Kant’s categorical imperative, “Act as if the maxim of your action was to become a universal law of nature,” should help to focus the decisions made using this approach. The key questions to ask when considering the principles-based approach would be “what rules exist” and “what are my moral obligations?”

**Consequences-based ethics:** The second general basis for ethics is consequences-based ethics, or utilitarianism, which is closely aligned with the philosopher John Stuart Mill. Ethical decisions determined under this basis are made on the likely consequences or results of the actions. “Decisions are judged by their consequences depending on the results to be maximized — security, happiness, pleasure, dignity, and the like.”<sup>22</sup> The utility

of an action, or how that action produces happiness, is “the ultimate appeal on all ethical questions” that is “grounded on the permanent interests of man” according to Mill.<sup>23</sup>

Both Georg W.F. Hegel and David Hume are considered utilitarians. Hume is considered to be an ethical subjectivist, which holds that right and wrong are relative to the attitudes of each individual — morality is a matter of sentiment rather than fact.<sup>24</sup> Hegel emphasized the consequences of actions as a part of the actions themselves.<sup>25</sup> He stated the principle “judge an act by its consequences, and make them the standard of what is right and good,” which, according to Hegel, provides the basis for law.

By the theft of a bread a property is no doubt injured. Still, if the act was the means of prolonging life, it would be wrong to consider it as ordinary theft. If the man whose life is in danger were not allowed to preserve himself, he would be without rights; and since his life is refused him, his whole freedom is denied to him also... Hence only the need of the immediate present can justify a wrong act. Yet the act is justified, because the agent, abstaining from it, would commit the highest wrong, namely, the total negation of his realized freedom.<sup>26</sup>

Friedrich Nietzsche may also be considered a utilitarian, but a flawed utilitarian — a hedonistic, selfish utilitarian. Nietzsche provides perhaps the most disturbing theory of ethics—not only because of its implications for society, but because of its apparent appeal to many. Nietzsche did not believe that there is a universal definition of a “good man,” but instead each man should be different with different traits.<sup>27</sup> Nietzsche defines “good” not in terms of a person’s relationship with others, but rather in terms of the person’s relationship to himself. He writes that ethical philosophers look for good in the wrong place: “the judgment ‘good’ does not originate with those to whom the good has been done. Rather it was the ‘good’ themselves, that is to say the noble, mighty, highly placed, and high-minded who decreed themselves and their actions to be good.”<sup>28</sup>

When looking at ethical dilemmas through the “lens” of consequences-based ethics, or utilitarianism, consideration must be made for who wins and who loses—the consequences of actions are the prime considerations. John Stuart Mill should help to focus the decisions made using this approach: “Do what produces the greatest good for the greatest number.” Key questions to ask when considering the consequences-based ethics or utilitarianism would be “what gives the biggest bang for the buck” and “who wins and loses?”

**Virtues-based ethics:** Plato and Aristotle provided the first ethics theory — virtue, or in today’s political language, “character matters.” The focus in virtue ethics is not on “what one should do” but rather “what kind of person should one be?” Good character, or virtues, is central to virtue theory.<sup>29</sup> According to Plato, men must be given the right instruction on what is good: “given the right instruction, it must grow to the full flower of excellence; but if a plant is sown and reared in the wrong soil, it will develop every contrary defect.”<sup>30</sup> Morality and virtue are skills learned from others — not theoretical knowledge, but knowledge put into practice.<sup>31</sup>

Aristotle emphasized virtue as desirable for society so that all may become good citizens and law-abiding people. This human goodness is not goodness of body, but of the soul. Aristotle describes virtues in two categories: intellectual and moral. For example,

136



wisdom and understanding are considered intellectual virtues, while liberality and temperance are moral virtues. All of these virtues are gained through knowledge and application of the virtues—by exercising and actually doing virtuous acts.<sup>32</sup>

Virtues-based ethics differs from principles-based and consequences-based ethics in several basic ways. First, virtue-based ethics is based upon learning from others rather than by the individual coming to the realization of what is ethical; this process is learned from others. Second, in applying principles-based and consequences-based ethics, there is a right answer and a wrong answer. For example, in Kantian principles-based ethics, your actions are guided by what is or should be the law for everyone; in consequences-based ethics, your actions are guided by what gives the greatest benefit to the greatest number.

In virtues-based ethics, it is not that easy — there is a middle ground known as the *golden mean*. Virtues, by their very nature, have to be applied in a judicious manner. For example, it is necessary to have confidence, but one can have an excess of confidence (rashness) or a defect of confidence (cowardice); the *golden mean* of confidence is courage. One can have an excess of shame (bashfulness), a defect of shame (shamelessness), and a *golden mean* of modesty.<sup>33</sup> Learning how to have the *golden mean* of a particular attribute is a lifetime endeavor, learned from others and experience.

When looking at ethical dilemmas through the “lens” of virtues-based ethics, consideration must be made for what a virtuous person would do. The Golden Rule can be used to focus the decisions made using this approach: “Do to others what you would have them do to you.” Key questions to ask when considering virtues-based ethics would be “what would my mom think?” or “what if my actions showed up on the front page of the newspaper?” For some, the question could be the popular question among some Christians of “what would Jesus do?”

## Using the Ethical Triangle for Ethical Decision Making

Now that we have discussed how to define an ethical dilemma in terms of right versus right, have considered potential courses of action or action choices, and have understood the different ethical perspectives that are used in the ethical triangle, it is time to put it all together in a model for ethical decision making. The steps in this approach are:

1. Identify the problem (ethical dilemma) in terms of right vs. right
2. Determine alternative courses of action or action choices
3. Examine courses of action against the “ethical triangle”
  - a. Principles-based ethics
  - b. Consequences-based ethics
  - c. Virtues-based ethics
4. Consider additional alternative courses of action (such as ‘win-win’ possibilities or no decision)
5. Choose the course of action or action choice
6. Implement the course of action



**The first step** is to identify the problem, the ethical dilemma, in terms of “right versus right.” Again, this is necessary to provide clarity to the dilemma while ensuring that a pre-determined decision is not made. The four dilemmas listed cover just about every ethical dilemma—and some ethical situations may include one or more of the dilemmas. Stating the problem in this format will help to test the actions that should be taken.

**The second step**, as mentioned earlier, is to determine the possible actions. There will probably be two obvious responses — to do or not do some action. Of course, this is not the dilemma — these courses of actions are responses to the dilemma. It is important during this step to realize and even hope for a possible alternative third response to the dilemma.

**The third step** is to examine the two most apparent alternative courses of action through the “lens” of the three ethical systems. The most methodical means to do that is to first look through principles-based ethics, then consequences-based ethics, and finally through virtues-based ethics. Generally, the principles will be relatively easy, while the consequences will not be as easy — particularly when you look at all of the potential second- and third-order effects of actions. Because virtues-based ethics uses discretion to determine the “golden mean,” it can serve as the integrating approach to ethics.

**The fourth step** is to step back and see if a “third” response, or an alternative course of action has presented itself (such as “win-win” possibilities or no decision at all). Going through the process may indicate that there is another answer rather than the two courses of action initially determined. This will not always be true, but it’s best to step back and see if there is another alternative.

**The fifth step** is that a choice has to be made. That choice should be made based upon an analysis using all three of the ethical systems—but, in the end, the choice is also made in the context of the organizational climate and culture, as well as the professional values of the organization.

**The final step** is implementation. By this time, the choice should be well thought out. The judgments that military leaders at all ranks make on a daily basis—especially in combat—imply a necessary level of discretion in determining the “right thing to do” in ethical decision making.<sup>34</sup> Military leaders are more than implementers of policy, but are also charged with “support for the realization of democratic principles” and commitment to obeying the law.<sup>35</sup> This is particularly true when decisions need to be made quickly and involve lives—and when there is no “top cover” guaranteed for the decisions made. Due to the nature of warfare today, the high level of discretion for ethical choices will be made by leaders at all levels (officers and non-commissioned officers) of military leadership. Putting ethical decisions into action requires moral character.

## **Heinz and the Druggist**

Let me provide an example to work through the ethical decision making model. This scenario is a common scenario that is used in many tests for moral development.<sup>36</sup>

A woman was near death from a unique kind of cancer. There is a drug that might save her. The drug costs 4,000 dollars per dosage. The sick woman’s husband, Heinz, went to everyone he knew to borrow the money and tried

every legal means, but he could only get together about 2,000 dollars. He asked the doctor scientist who discovered the drug for a discount or let him pay later. But the doctor scientist refused.

Should Heinz break into the laboratory to steal the drug for his wife?

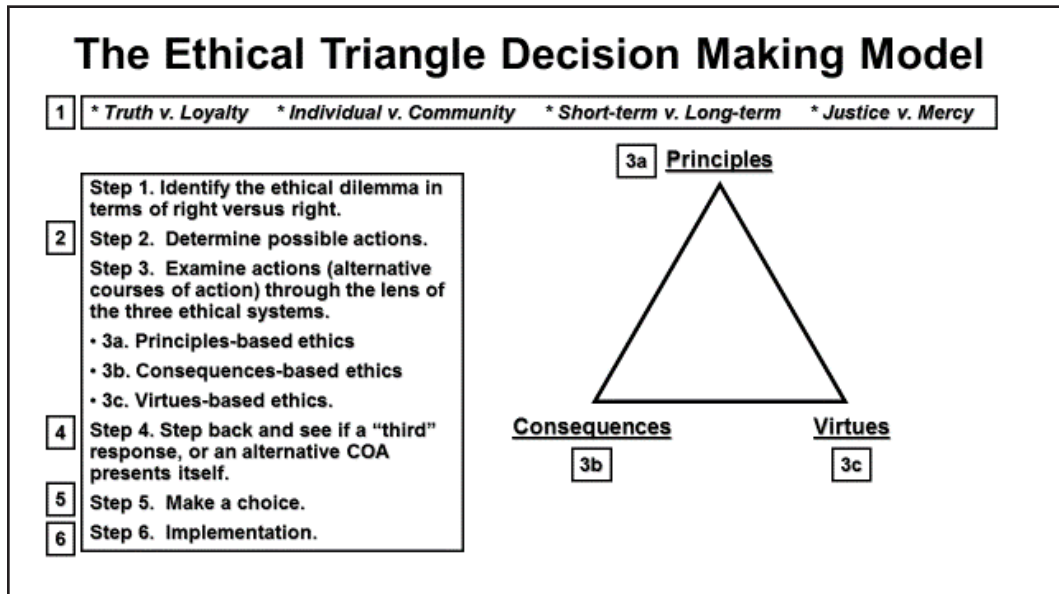


Figure 3. The “Ethical Triangle” Ethical Decision Making Model with Steps

The first step in the “ethical triangle EDMM” is to identify the problem, the ethical dilemma, in terms of right versus right. One possible answer would be the issue of individual versus community. Heinz has an obligation to do what he can for his wife (individual), but he also has an obligation to uphold community laws. Another possible answer would be long term versus short term. Heinz wants to save his wife as a short term immediate answer, but he should also be concerned that the price of the drug does not go up (because of theft) so that others will be saved in the long term.

For the second step, Heinz has determined a number of possible courses of action, such as trying to borrow the money and asking for discounts. He has only two obvious answers at this point—break into the laboratory or not break into the laboratory and watch his wife die. At this point, he does not see any other alternatives.

The third step is to examine his courses of action against the different “lenses” of the ethical triangle. He follows these in order: principles-based ethics, consequences-based ethics, and virtues-based ethics.

The principles-based answer is relatively easy. The law says that he should not break in; and even if the law didn’t say that, he would have a moral obligation to respect the property of the scientist. He would expect others to respect his right to property as well. He has an obligation to do what he can for his wife, but he considers the fact that as a moral

actor, he is not the one killing his wife, nor is it the druggist—it is the cancer. If he broke into the laboratory, he would be the actor. From a principles-based response, he concludes the answer is to not break into the laboratory.

The consequences-based response is much more difficult. Heinz has a lot of unknowns in this area. First of all, he does not know if the drug will cure his wife; he only knows that it “might” save her. He also does not know if he will be caught or not; if he is caught, he does not know if the jury would give him mercy because of his motivation, or if they would “throw the book” at him. After he thinks about it a bit, he realizes that even if he is not caught, he would be the prime suspect, especially if his wife is cured “miraculously.” The police would know that he was the one who stole the drug. He does not know if the price of the drug would go up for others with similar cancers, nor does he know how many lives that would actually mean. The more Heinz thinks about it, the greater the number of potential consequences he has to consider. Heinz loves his wife dearly, though, so he concludes that her life is worth saving in spite of the consequences.

Finally, Heinz looks at the virtues based approach. Being a regular church-goer, he asks himself the question, “what would Jesus do?” Heinz rejects that quickly. Jesus might possibly heal his wife on the spot and would not bother with a drug, he muses to himself. He also realizes that in this case he cannot answer this question firmly without a lot of speculation. What would his father do in the same situation? He respected his father, and his father always seemed to do the right thing. It would be tough telling his father that he broke into a laboratory, but perhaps his father would understand. If Heinz was caught, how would he feel if his picture was on the front page of the paper? What would other people he respects do in these circumstances?

Heinz does not have a “magic answer” that comes to him, but regardless of the answer he comes up with, he has thought it through. He understands the rules, has weighed the consequences, and has considered what a virtuous person would do in these circumstances.

## **Major Smith and the Car Bomb**

Let me provide another example to work through the ethical decision making model. This scenario is a fictional example but one that resonates closely to the reality for military leaders because of the context of the time dimension in a combat situation and the potential consequences of the ethical choice to be chosen:

You are Major Smith, the new operations officer for the 1st Infantry Brigade, just having joined the unit in the last week. Things have not been going well for the brigade in the last month, with a number of Soldiers having been killed—including your predecessor, a good friend—by improvised explosive devices (IEDs) set by local insurgents. The brigade is deployed throughout a major city, patrolling the streets. As the senior man on duty, you get a call from one of the company commanders, who reports he just caught an insurgent leader. The company commander says the insurgent leader is bragging that a car bomb has been set to go off in the next 30 minutes and said “there’s nothing you can do about it.” The company

commander says he is prepared to do some “serious persuasion” to find out where the bomb is. “All of the interrogators are gone, and I know the new directives say they have to do all interrogations by the book—but time is running out. I know how to make a man squeal, so I can get the information. These attacks have to come to an end. Request guidance, sir.” What should Major Smith do?

Major Smith has as a truth-versus-loyalty dilemma. The truth is that the new directives are very specific about the conduct of interrogations, and he has an obligation to follow those rules—rules that were established for good reasons. But he also has an obligation of loyalty to the soldiers in his command who are at risk right now, as well as the civilians in the city who are also at risk. If he gets the information about the location of the bomb in the next ten minutes, he can probably avert a disaster; if he waits to do things the right way, more people will die. He can either tell the company commander to stop or he can tell the company commander to do what it takes.

From a principles-based approach, the answer is easy. The rules state that only interrogators can do the interrogation, and it is obvious that if the company commander does an interrogation he is not going to use legal means. From a consequences-based approach, it is complicated. The best thing that could happen if the interrogation is authorized is that one insurgent gets hurt and a lot of lives are saved, but that is only if the information is correct and the timing is right to get everyone out of the area of the bomb. Careers could be in jeopardy based on the interrogation and the conscious decision to violate the rules. Major Smith has an aversion to the term “careerism” but he would still like to see the next promotion—and he certainly does not want to be testifying before Congress in the near future. A report of torture of the insurgent could hit the press within the hour and only play in the hands of the insurgents who want to embarrass the United States military. From a pure consequences-based approach, he feels that he should authorize the interrogation. The math says one tortured insurgent versus the lives of many, although he realizes that it is a short-term approach to the problem. From a virtues-based approach, he is heard commanders and senior officers in the past take both approaches—the approach always upholding the “rule of law” and honor, while others have taken the road of “Soldiers first, mission always.” The conflict goes even further: his dad would probably understand if they did what it took, but his mother would be horrified at the prospect of her son taking actions tantamount to authorizing torture. Either way, at least some of the results of his actions right now will probably be in the paper tomorrow. What headline will it be?

## **Conclusion**

Following the “ethical triangle” ethical decision-making model is not an automatic process. It requires understanding and practice before it is mastered. Nonetheless, it is designed to provide a methodology for coming to an answer to an ethical dilemma that is well-thought out and supportable. The “ethical triangle” ethical decision-making model does provide a better model than the simplistic Army model that merely states that the decision should be made based on the course of action that “best represents Army values.” Applying the model to a variety of ethical dilemmas and testing the model against those

dilemmas (such as My Lai and Abu Ghraib) helps to master the necessary “ethical fitness” for application in the real world.

Every time you make a serious moral judgment, you become that judgment; every time you issue a command, you not only tell your subordinates what to do but what to be. That is why, in the horrible circumstances in which you or your Soldiers might find yourselves in the months ahead in a world seemingly gone morally mad, I trust in you because of the moral compass which is yours from your education, your experience, your expertise. You do on the basis of your information; you are on the basis of your formation. Ethics, in the final analysis, is caught, not taught.<sup>37</sup>

## Notes

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## Chapter 13

### Understanding Genocidal Tendencies within Different Cultures

Brett Lancaster

The majority of people on earth are not considered evil, but all are capable of committing evil acts. However, killing another person, typically seen as a natural crime, can be justified in many different ways. For example, self-defense and capital punishment involve killing someone, but it is justified. Justification is achieved through one's cultural perception of a certain situation. Manipulation of one's cultural beliefs can lead them to believe violence is the logical and right thing to do. In the eyes of a culturally manipulated perpetrator, they are not killing the innocent, but instead solving a problem. Killing is not an immediate, normalized solution for most cultures, yet it happens often in cases of extreme violence. When a society is struggling, some cultural norms and values can be manipulated to perpetuate new extremist beliefs. Through this manipulation different cultures have used diverse avenues to achieve acts of genocide. The goal of this paper is to highlight certain cultural beliefs that helped justify genocide in the past and current beliefs that may bring about conditions for future genocides.

Individuals have free will, which makes it nearly impossible to know for sure what someone will do at any time. Though exact predictions are hard to evaluate, one can hypothesize what someone is capable of when the individual's culture is analyzed. The Merriam-Webster Dictionary defines culture as "the set of shared attitudes, values, goals, and practices that characterizes an institution or organization."<sup>1</sup> One study by Hokkaido University documented the choice of some objects in comparison to the person's culture and society. They found that a person's culture creates incentives from a cultural perspective, which can guide an individual's behaviors.<sup>2</sup> As a person's culture has influence on their choices, it can give validity to the predictions of the behavior of an entire group. Though the predictions of action will never be precise or exactly correct, it is an important step to help prevent future atrocity crimes such as genocide from being committed.

Culture is a factor that shapes and defines a society. It can be broken down in many different ways, from "Western Civilization Culture," to a specific neighborhood's culture. Within each of these levels of culture there are two sub-sections: foundational and institutional behaviors. Foundational behaviors are the core values of a society that are taught from a young age which create and hold a person's moral values. Ideas of right and wrong, a sense of justice, and other opinions would be considered foundational culture. A leading group or person in governance forms the institutional behaviors. These behaviors serve the purpose to strengthen the group's existence and their views to create rules and order. An example of this would be mala prohibita laws, like the criminalization of prostitution. Institutional behaviors are often intertwined with foundational behaviors, which legitimizes institutional logic. When cultural ideals are broken down this way, one can see how and why a society acts certain ways.

One must look at different cultures objectively in order to step into their shoes to get a better understanding of their actions, without ethnocentrism. There is no ultimate and supreme "right and wrong" between all situations and cultures around the world. Therefore,

no absolute judgment can be placed on the society's views of their concept of right and wrong. Only understanding why people believe the way they do will help create a better sense on how mass atrocities are justified in the eyes of the perpetrating society. It is important to remember that just because one culture has certain cultural tendencies does not guarantee or even allude to violent behavior.

## **Nazi Germany**

The Holocaust is likely the first thing that comes to mind when discussing genocide. The Nazi party started as the National Socialist Workers Party around 1919 and soon after transformed into the Nazi Party. Hitler and the Nazi party pursued an aggressive foreign policy without armed conflict until they attacked Poland. France and Britain declared war on 3 September 1939 as a result of the invasion. The Nazis perpetrated the deaths of up to six million Jews, along with millions of other undesirable groups such as the Roma-Sinti (Gypsies), homosexuals, and political opponents. Victims suffered in different ways, but gassing victims in death camps such as Auschwitz was the preferred method of death by the Nazis. The Holocaust ended with the defeat of the Nazis in Berlin in 1945. The perpetrators started as ordinary people whose views were distorted by the Nazi regime.<sup>3</sup>

The Nazis were able to push their violent intentions into the hearts of average people by abusing Germany's foundational culture of obedience and discipline. The end of the First World War had desensitized the German people to violence and the country struggled economically after the war, mainly from the conditions dictated by the Treaty of Versailles. In order to rebuild, certain liberties and choices of German citizens such as wages, strikes, freedom of the press, and freedom of assembly were narrowed. To go against the country and its means towards progress was met with severe penalties.<sup>4</sup> In Germany today, discipline is still seen with the importance of "keeping the trains on time" and formality still prevalent. It is easy to see how a society that values strict order can be manipulated into violence. Many of the defendants of the Nuremberg trials claimed that they were not responsible because they were just following orders. This defense was discounted when the International Military Tribunal (IMT) stated that Hitler and Nazi Party chieftains were not exclusively responsible for the wars and crimes of the Third Reich.<sup>5</sup>

## **The Islamic State in Iraq and Syria (ISIS)**

ISIS is one of the greatest threats facing the United States and the rest of the modern world today. The group started as one of many rebel groups in the Syrian Civil War that began in 2011. They followed al-Qaeda's ideology, and over time merged with similar groups. Their leader Abu Bakr al-Baghdadi's extensions of groups angered al-Qaeda, thus led ISIS to break away from the organization and become their own independent entity. ISIS has gained power and influence by robbing banks and taking over areas in both Iraq and Syria, including their now proclaimed capital Raqqa.<sup>6</sup> One goal ISIS proclaims is to create a Caliphate. The Caliphate is an Islamic state that follows Sharia Law under Sunni ideology. ISIS recently started attacking countries outside the Middle East. Cases include the attacks in Paris, Brussels, and San Bernardino, which shows ISIS is a worldwide terror group that seeks to destroy all who do not share their way of life.

Devout Muslims dominate the Middle East, and the Koran and all other teachings of Islam guides their way of life and code of ethics. Just like every other major religion, the teachings in their chosen word of God was written long ago and violence and wrath was used to explain and justify certain actions in order to defend the religion. ISIS, along with other extremists, use these violent teachings in order to justify their violence. One major teaching in the Koran that is used to manipulate people into violence is *jihad*. *Jihad*, normally a term associated with the internal struggle to be a good Muslim, is used to justify a new holy war and the establishment of the Caliphate. Videos released by ISIS claim that fighting for ISIS is the will of Allah, and any true Muslim is obligated to fight for the cause.<sup>7</sup> To be clear, any implication that all Muslims are terrorists or are violent is not the intention in this section. The words of the Koran are being manipulated, as have the words of Hebrew Scriptures and the Christian Bible in the past, in order to shift beliefs towards hate and violence. Faith in distorted Islam is the largest motivator for justification of violence and cannot be ignored.

Manipulation of foundational culture does not happen incidentally; it is a series of deliberate actions carried out by members of the perpetrating ideology. Once violent ideologies gain enough strength, they create a new sense of institutional culture. Nazi Germany and ISIS achieved strength in a similar way: propaganda. These groups spread their message and mass reeducation through media. When one ideology controls the media they can begin to manipulate average people's beliefs on certain subjects by publishing hate within multiple types of media and societal outlets, such as posters, film, speeches, and control over published works. Propaganda is an important element in many other instances of mass atrocities and genocide, if not all of them. ISIS and Nazi Germany are under examination here because of their importance and similar use of modern media.

The Nazis placed great importance on propaganda, even creating a specific ministry for it. Next to Hitler, one of the most recognizable names of the Nazi regime was the Minister of Propaganda, Joseph Goebbels. Goebbels and the Ministry of Propaganda regulated and controlled all radio, press, and film services, deliberately making sure it was uniform to Nazi ideology and distributed to even the smallest communities. Posters and news articles were widely distributed across Germany and Axis controlled areas. Most of these messages were designed to promote hatred of the Jews and the importance and superiority of the Aryan race.<sup>8</sup> Multiple risk assessments call this discrimination a risk factor of genocide, including the UN's *Framework of Analysis for Atrocity Crime*.

Today, the reach of ISIS's hateful propaganda extends across the entire planet, mostly due to the Internet. Popular social media outlets such as Facebook have been used to spread ISIS's message, along with other outlets that show videos of the group's power and successes. These videos vary in content, ranging from preaching justification to executions of captured enemies. Interviews with ISIS members have shown that within the controlled areas they educate children at an early age in their interpretation of Islam that promotes the health and future of the established Caliphate. Through this propaganda they use emotion to justify and defend their faith, because in their eyes they are under attack from the rest of the world and Allah wants them to fight.<sup>9</sup> These messages of honor and a better way of life help motivate individuals to potentially become future perpetrators.

One can look back through history to see what caused events to happen. The popular phrase, “history repeats itself” is true. The similar use of propaganda to promote hate is evidence of this. In both the Nazi regime and ISIS, an extremist group has gained power, and if they wish to hold on to it they require a large number of people to share and support the same views and actions. Both the Nazis and ISIS used modern and far-reaching sources of media to spread their messages and propaganda. This method is extremely effective and is the only way for people outside their immediate control to support them. Mass propaganda with the spread of violent ideologies has the opportunity to justify genocide and other mass atrocities, in many people’s cultural perception.

## **Cambodia**

Cambodia suffered a mass atrocity in the immediate wake of the Vietnam War. The Khmer Rouge was a communist group that forced their views onto the people and caused the atrocity of the 1970s. Pol Pot, the leader of the Khmer Rouge, gained strength in the poor countryside of Cambodia by preaching hate towards the more educated population within the cities with the intentions to keep the Khmer population pure. Some victims were reeducated in labor camps, while others were accused of being spies and were tortured or killed in the infamous S-21 prison. Estimated death tolls state that over two million were killed during Pol Pot’s reign. Many died from hunger, while others died from executions and torture. The Khmer Rouge lost power in 1978 when Cambodia was invaded by Vietnam, ending their reign of terror.<sup>10</sup>

Violence was not a new experience for the people of Cambodia. The foundational culture of Cambodians reveals they have a cultural history of conditioning towards grudges and revenge. If a Cambodian feels dishonored or has suffered in some way, they are likely to respond with *karsângsoek*, a disproportionate revenge. Rather than an eye for an eye, *karsângsoek* is a head for an eye. There is great desire to repay all deeds, regardless if they are good or bad and this moral obligation is partially responsible for the majority of violence in Cambodia. Alexander Hinton explains how rooted grudges are in Cambodian society when he shows the ties into Khmer, the Cambodian language. “The word *singsoek* literally means, “to pay back (*sang*) the enemy (*soek*).” A Cambodian bearing malice is often said to be “tied or linked (*ching*) to an enemy by anger or a grudge (*ching komhoeng, chang kumnum*).”<sup>11</sup>

## **Burundi**

Burundi has been in the news lately and there is much concern within the international community about where the current conflict, which some consider genocidal, is heading. Anger, violence, and frustrations have risen recently due to President Pierre Nkurunziza staying in office for a third term. Currently conflicts are between civilians and federal security forces, but there is worry that the anger has been shifting to ethnic lines. Burundi has a history of violence between ethnicities (Hutu and Tutsi), with perpetrators on both sides. Massacres of Hutu in 1972 and 1993 killings of Tutsi are fresh in the memory of Burundians and may be used as justification for further violence.

The Hutu and Tutsi divisions have existed for over two-thousand years but turned ethnic when European powers took control of the country. Originally, the divisions were economic

and were determined by the amount of cattle someone owned. When European powers entered Burundi to colonize they began to make the divisions more permanent. Later the Belgians introduced ID cards in the 1930s that both legitimized and finalized the divisions. The Tutsis were historically in charge, yet were the minority of Burundi. Ethnic splits, along with unequal power structures, angered the majority Hutu to violence and the Tutsi responded with proclaimed self-defense to survive.<sup>12</sup> In the recent conflict there have been reports on the ground about violence being targeted around ethnic lines, using the violence from the 1974 genocide as justification, believing that it was payback for the past atrocity.<sup>13</sup>

Governments and laws are a shadow of the beliefs and workings of the society that is under it. Changes within the governmental system can cause a change of beliefs within that society. These changes are not always smooth, nor are they honest. The citizens care deeply for their government and react to changes with passion. Even within the US, in the 2016 election year, almost everyone had an opinion on each candidate and can share strong beliefs on why they follow one particular person or party. Such deep political roots within society are why change of power is an institutional cultural aspect. Politics, as a branch of culture, are considered to be risk factors by some risk assessments, such as Dr. Barbara Harff's article, "Risks of New Onsets of Genocide and Politicide in 2013," through listed risks of regime changes and certain regime types.<sup>14</sup> Cambodia faced an extreme political change right before the genocide and Burundi is currently in the middle of a change, or lack of change to be more precise, creating cultural struggles of legitimacy between the regime and their citizens.

Support for the Khmer Rouge started in the countryside with the poor, less educated citizens who believed they were mistreated. Along with the difficult day-to-day lifestyle, the Vietnamese and US bombing of the Ho Chi Min Trail added to the suffering of the rural Cambodians. The Khmer Rouge used the ideas of revenge and aimed it towards the people who lived in the city. After the initial violence, as the Khmer Rouge took over the cities and evacuated people into labor camps, forced reeducation and conformity into new norms was often taught through violence. New education created a greater importance of the state rather than the family, previously the most important group to a person.<sup>14</sup> The quick change of proposed institutional values of the Khmer Rouge resulted in defiance that would only be met with death.

No change in government can be as devastating as a quick change of institutional values. President Pierre Nkurunziza's decision to run for a third term has angered the public to the point of violence. Protests have ended in death, journalists are being targeted and beaten for opposing the government, and the public is not happy with it. After a failed coup led by Tutsi military leaders, security forces have been aggressively responding to any criticism of the government. One example of this was on 11 December 2015 in the capital, Bujumbura, when security forces killed 79 people, most of whom were Tutsi. Witnesses to these events report that some of the victims were children that were executed with a shot to the top of the head. It is estimated that since the early 1990s, around 300,000 people have been killed in Burundi and this number is expected to rise.<sup>15</sup>

It is extremely important to study and compare genocides in order to learn how to prevent them in the future. In order to understand genocide, one must be able to understand

the people and the perpetrators behind it. Ordinary people can be manipulated to believe anything, including the belief that killing is a good thing. Foundational beliefs and cultural behaviors can be distorted and new institutional beliefs can be implemented in order to achieve this. The traits themselves are not what make a person commit evil acts; these traits do not make anyone a killer or ethically bad, if looked at through a cultural perspective. The previous cultural traits are just examples some of foundational and institutional beliefs of the past and present that are used to shift perceptions. When someone's core cultural values and beliefs are used to justify behaviors, those behaviors then seem to be validated through morality.

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## Chapter 14

### Considerations for Planning Humanitarian Operations in Hybrid Warfare

Scott A. Porter

Andrew F. Krepinevich, president of the Center for Strategic and Budgetary Assessments, stated in his 18 February 2016 article in the Wall Street Journal, that “the Army’s biggest problem is its declining ability to wage the kind of protracted irregular wars that America’s enemies increasingly prefer to fight.”<sup>1</sup> Even *Army Doctrine Publication (ADP) 3-0, Unified Land Operations* (2011) states the most likely security threats that Army forces will encounter will be within an irregular warfare environment that includes hybrid forces; a mix of regular, irregular, criminal, and terrorist forces in various combinations, usually seeking to fight a protracted war in populated areas.<sup>2</sup>

Therefore, it is apparent that the United States military must be capable of operating within an irregular war against hybrid forces, including the support of large-scale humanitarian operations to relieve suffering and prevent more refugee crises. This is important for three reasons: mass migrations of populations and their potential impact on national security, the ethical considerations in the planning of humanitarian operations, and the necessity for the government and military to be proactive in complex emergencies.

#### Migration as a Weapon

Syria stands out as a current example of hybrid warfare (HW).<sup>3</sup> The war caused over half of the prewar population to displace with over five million Syrians fleeing their country.<sup>4</sup> The magnitude of the Syrian mass exodus has strained the ability of those countries that care for them, and has brought significant security concerns for Europe and the United States to light.<sup>5</sup>

Because of a multiplicity of hostile forces in HW, a chaotic environment ensues whereby the innocents suffer the most. Any war zone is a dangerous environment to civilians, but in HW the side that controls populations and holds decisive terrain, often large cities, has a significant advantage.<sup>6</sup> Occupying hostile forces often intentionally deny food, shelter, and medical aid to the population. Even worse, as in the Syria example, hostile forces, more often than not, possess an unsympathetic attitude toward the local population by committing atrocities or sadistically forcing a political or ideological agenda upon them. They intentionally terrify the population, causing wide-spread displacement within the area, and eventually contribute to massive refugee movements out of the entire region.<sup>7</sup>

Conventional forces can also add to the chaos. General Philip Breedlove, Commander of the US European Command and Supreme Allied Commander for NATO, asserted in 2016 that the Russian and Syrian forces are using migration as a weapon in Syria.<sup>8</sup> These large population movements are deliberately planned to mask the movement of criminals, terrorists, and foreign fighters. Just as importantly, they cause other countries to react to massive migrant populations. The result is a humanitarian crisis like we have seen coming out of Syria. Dozens of countries, mostly in Europe, are desperately trying to establish policies, procedures, and make-shift programs to house, feed, and care for millions of refugees. As a result, these massive movements of people have created national security concerns throughout much of the world, including in the US.

## Ethical Considerations

There is also an ethical dimension to the plight of refugees, and there exist strong differences of opinion about refugee movements. The New York-based advocacy group *Human Rights Watch*, in reference to the Syrian refugee crisis, stated “Forcing people to remain in a war zone, where they risk death and injury, is no solution to the challenge of protecting Syrians fleeing their country.”<sup>9</sup> On 9 February 2016, the UN High Commissioner for Refugees cited international law, in that countries should admit “all civilians who are fleeing danger and seeking international protection.”<sup>10</sup> To complicate the problem, protecting the fleeing Syrians may help the hostile forces that made them flee. Turkish Prime Minister Ahmet Davutoglu recently told reporters that “with every refugee that we accept, in a way, we would be contributing to this ethnic cleansing aim. If this is a strategy to change the demography in Syria, then we all have to be vigilant against it.”<sup>11</sup>

These aforementioned points bring to light the crux of humanitarian aid in hybrid war, the need to align strategic objectives and execute actions that provide the best outcome or consequences for the pre-determined end state. Consequentialism, the most common form of ethics in the contemporary Western world, focuses on the end state. Within consequentialism are two basic forms, egoism and utilitarianism. Egoism concerns achieving self-interests as being the most favored outcome.<sup>12</sup>

The utilitarian approach considers the best course of action as the one that promotes the best consequences for the most people.<sup>13</sup> From the US strategic planning perspective, these two basic forms of consequentialism must be considered in determining the end state for a given situation. It is from this end state that the operational plan, and then tactical plans, are designed to achieve specific objectives. Although many would question the uprightness of the egoism form, the reality is that many, if not most, nations intentionally place self-interests as the basis for their foreign interventions.<sup>14</sup> As the current lone superpower in the world, the US often has a focus on a utilitarian-based approach while also using a cost-benefit analysis to inform decision-making. Stated plainly, any intervention into a foreign country should be with the aim of improving regional stability. Specifically, within large scale humanitarian efforts, what is the best course of action that achieves the best consequences for the most people of the affected populations?

## Whole-of-Society Solutions

From a US policy perspective, Lt. Gen. Benjamin Freakley, US Army (Ret.) and Maj. Gen. Margaret Woodward, USAF (Ret.) identify the need for a more effective organization that inspires whole-of-society solutions to situations like Syria, or any hybrid war. They state that the US is overly dependent on their military to solve problems. They propose that “The nation needs a quarterback to organize the remaining muscle of a four trillion dollar government, an army of nonprofit organizations, the brainpower of universities, the engine of private sector, and networks of state and local governments that are now untapped or underutilized in crises.”<sup>15</sup>

Freakley and Woodward recommend revising the 1947 National Security Act to create a newly empowered National Security Council (NSC) with more authority, and one that

includes whole-of-society solutions. Simply put, the NSC would create the strategy and also bring multiple entities together to prevent crises or to respond quickly and effectively once a crisis appears. After the conflict, their recommendation includes an approach like the Marshall Plan to enable a country to recover and rebuild. Experts from inside and outside of the government must be included, along with governments and experts from allied countries. The plan would need to be comprehensive and include the political, diplomatic, informational, economic, military and societal efforts. This new policy would align somewhat with current joint doctrine, Joint Publication (JP) 3-08, whereby the whole-of-government approach is discussed. The goal of this new NSC is first to keep a constant focus on US security goals and then develop a strategic vision for success.<sup>16</sup>

## Operational Approaches

If the new NSC, as described by Freakley and Woodward does come about, they may have an ability to make more timely decisions. This would affect how quickly the US Military must prepare for deployment into HW. There would be an immediate requirement to develop operational approaches to set the conditions for the whole-of-society solution. Major Rick Johnson, in a monograph published in *Joint Special Operations University (JSOU) Report 13-4*, states there are three imperatives for operational art in HW. It is important to note that these imperatives explain the characteristics of an operational approach, not a holistic approach such as the whole-of-society concept.<sup>17</sup>

The first is that the approach must cognitively disrupt the hybrid threat's logic in the forms of warfare employed, rather than just using physical means. The synchronization of combined tactical actions must achieve enough of a disruptive effect on the enemy that an opportunity exists to exploit the situation with a continuation of operations. Examples include the concept of *Operational Shock* to attack the coherent unity of the hybrid threat *as a system*, such as targeting the interconnections in the enemy's system.<sup>18</sup> In the whole-of-society concept, along with doctrine contained in JP 3-0, experts from not only the military, but scientists and even scholars from think tanks and academia could be significantly helpful for the disruptive effect on the enemy.<sup>19</sup>

The second imperative, based upon doctrinal underpinnings in JP 3-08, *Interorganizational Coordination During Joint Operations*, is to produce a fusion of actions within the combined efforts of military and non-military organizations. Again, the whole-of-society concept would benefit, this time by enabling this fusion of military and non-military organizations to occur. It is critical that the total approach fuse tactical successes to the strategic objectives within the same context which gave birth to the hybrid threat forces. Therefore, it is imperative that military forces possess a situational understanding of the area of operations and link tactical actions to the operational objectives. For example, multiple missions and tasks will be required to support the combined humanitarian effort. Military commanders and their staffs must "fuse" with non-military organizations and understand the "big picture" of how they fit into the overall plan.<sup>20</sup>

The third imperative is understanding that HW is a relationally complex, and at times, chaotic situation. In HW, military commanders must probe for information and use emergent

practices to gain and maintain the initiative over hostile forces.<sup>21</sup> Especially for Army commanders, the exercise of mission command is paramount, as prescriptive or uniform measures are too rigid and binding. Most information on the enemy and environment may come from the “bottom up,” so the use of disciplined initiative empowers leaders to discover unexpected opportunities and threats.<sup>22</sup>

## **US Military Proactive Approaches to Humanitarian Operations in Hybrid Warfare**

With faster deployment timelines and more integrative requirements to be part of a whole-of-society approach, the US military must have an expeditionary mindset and capabilities unequaled in previous conflicts. JP 3-29, *Foreign Humanitarian Assistance*, 3 January 2014, discusses “Complex Emergencies.”<sup>23</sup> The United Nations (UN) defines a “complex emergency” as “a humanitarian crisis in a country, region, or society where there is a total or considerable breakdown of authority resulting from internal or external conflict and which requires and international response that goes beyond the mandate or capacity of any single agency and/or the ongoing UN country program.”<sup>24</sup> JP 3-29 uses the UN’s definition “complex emergency” in describing actions that might be necessary in HW for all the military services, but only in general tasks and terms. The requirement to integrate into a whole-of-society approach during HW means significantly more pre-planning and coordination in order to respond effectively and efficiently.<sup>25</sup>

During HW, multiple players and numerous belligerent groups are operating within the area of operations, including those embedded within the population, even at times using them as human shields. Conducting humanitarian operations in a hybrid war often occurs within a chaotic and dangerous environment. To actively pursue operations to relieve widespread suffering and end atrocities, a robust and capable multi-national military force must provide a safe environment for the overall plan to be successful.

If the US military commits to undertake a substantial humanitarian intervention, it must be part of a broader multi-national campaign to first eliminate the threat. This would require the new NSC and the whole-of-society approach to collaborate and fuse with our multi-national partners for the intended outcomes. This would also involve the US military to do the same amongst partner militaries for operational and tactical operations. Although this collaboration would add to the complexity of planning and execution, the fusion would significantly enhance the overall capabilities and political support of the force.<sup>26</sup>

The military approach must be integrative and multi-dimensional within the overall plan. Neither a singular approach using airstrikes, nor a one-time desperate attempt to push or parachute limited relief supplies into an area, will suffice. Even if successful, the relief ends up being short term and possibly counterproductive, enabling the belligerents to pilfer the supplies and sell them on the black market. Over the last several months we have seen unsuccessful humanitarian attempts like this in Syria, such as the February 2016 Munich Security Conference to temporarily halt the fighting in Syria to get relief supplies to starving communities. In hybrid war, political negotiations to stop the fighting seem improbable at best. Much more likely is for the belligerents to use the negotiations to buy time to make their own gains without threat of foreign intervention. For example, at the same time as the

Munich Security Conference, tens of thousands of Syrians were driven from their homeland by Syrian government and terrorist forces.<sup>27</sup>

## **Conclusion**

Migration as a weapon in HW produces massive humanitarian crises. Syria is the most notable example during current times. In planning for humanitarian relief, ethical considerations must be included to determine the best strategy and course of action. Because of the complexity and requirement for faster responses with HW, whole-of-society approaches or something like it are necessary to provide operational approaches that disrupt the hybrid threat's logic rather than just using physical means, such as airstrikes. Even so, the US military's ground role in Joint Humanitarian Operations remains basically the same but will necessitate tighter timelines and more requirements to coordinate and collaborate with other militaries and more government and non-government organizations. Considering that the US military will most likely conduct humanitarian operations within HW scenarios, gaining and maintaining situational understanding is crucial to mission success. This will require a reliance on the philosophy and principles of mission command in order to provide a secure environment for a whole-of-society approach to the problems of the future.

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## **Chapter 15**

### **Ethical Implications of Humanitarian Operations in Megacities**

Rhonda Quillin

#### **Introduction**

What do megacities, defined by the United Nations as urban areas with populations over 10 million, and the shifting human environment mean for our national interests and military forces during humanitarian operations? Long term strategy is needed in relationship to megacities to support individual humanitarian efforts.

Presently, more than half of the world's population live in cities and the shift to urban areas continues to grow.<sup>1</sup> In 1970, there were two megacities in the world.<sup>2</sup> Currently, there are 27 and by 2025 it is anticipated there will be 37 megacities worldwide.<sup>3</sup>

By 2025, some of these cities will have the needed resources and systems to provide for their populations, however most of the new megacities will be in the developing world. These areas have large numbers of poor, and limited resources and infrastructure to support them.

These types of massive, sprawling urban areas may be unable to provide adequately for the population and may be chaotic and dangerous. When effective government agencies are lacking, this may lead to unprecedented competition and often conflict for food, water, and other necessary resources.<sup>4</sup>

The impact of natural disasters, infectious diseases, and the emergence of criminal and radical groups presents challenges that will have to be addressed. The role of the military, to provide force when needed, to protect our national interests and afford security for humanitarian efforts has often occurred in open rural environments. The trend to megacities indicates that military operations will occur more frequently in urbanized, highly crowded areas, against those who will be utilizing asymmetric or irregular methods.<sup>5</sup>

How adequate is the US military in anticipating future force requirements in immensely populated areas? The ethical challenges of megacity warfare may show that the nature of war and conflict remains the same but the character of war and conflict is subject to change, permitting the US military to adapt to provide security in the dense, compressed environment of a megacity.

Will the uncertainty of the complex environment of a megacity affect future US decisions to support humanitarian operations in megacities? The incidence of megacities are predicted to occur with increasing frequency in the future, the US Army must have the resources and future force structure to be robust enough to operate in these dense, chaotic environments to protect our national interests.

#### **Definition and Location**

More than half of the population of the world presently live in cities and the shift from rural villages to urban areas continues to grow. Megacities are defined by the United Nations as cities with over ten million inhabitants. Currently there are 27 megacities and by 2025 it is anticipated there will be 37 of these huge sprawling urban areas worldwide.

All of the projected megacities will be littoral cities, and while some of these will have the needed resources and systems to provide for their populations, most of the newly emerging megacities will be in the developing world and much less stable. It is anticipated that they will have large numbers of poor, limited resources, and insufficient infrastructure to support them.

These projections of massive, sprawling urban areas in developing countries indicate they may be unable to provide adequately for their population and result in chaotic and dangerous environments. When effective government agencies are lacking or incompetent, this may lead to a level of unprecedented competition and conflict for the basics of food, water, and other important resources.

The impact of natural disasters, infectious diseases, and predatory criminal and radical groups presents challenges that will have to be addressed. The role of the US military to provide force when needed, to afford security for humanitarian efforts, and protect our national interests has often occurred in open rural environments and rarely in the dense, complex terrain of a megacity. This type of warfare may be the preferred approach of future opponents in the attempt to disrupt and possibly negate overwhelming American military strengths.

Urban fighting has always been one of the most destructive forms of warfare. Historically it does not happen too often, perhaps because both sides realize the potential results of casualties and damage.<sup>6</sup> Will the uncertainty of the complex environment of a megacity affect future US decisions to support humanitarian operations in megacities?

## **Occurrence of Megacities**

Today there are 27 urban areas that can be defined as megacities. The largest city presently in the world is Tokyo, Japan, with 37.8 million residents. However, Jakarta, Indonesia, is growing markedly and may soon surpass Tokyo. Both cities are huge and sprawling, but the difference between the two is that Tokyo-Yokohama contains the world's largest urban agglomeration economy and residents are supported by strong infrastructure and economics. Jakarta, however, is poverty-stricken and most of the regional government's problems relate to lack of resources.

Today, six of the ten largest national populations are located in Asia and contain approximately just over 60 percent of the world's population. Within it, China and India possess the largest populations. India continues to be burdened with extremely high rates of abject poverty, communicable diseases, and over 50 percent of the population is under 25 years old. Shanghai, China, while not the largest metropolitan area in the world, claims the title of the largest city proper. Of the countries containing the largest urban areas in the world, Japan has a better level of social welfare with high living standards, despite being very populous.

Two examples of countries with most projected growth are Afghanistan and Nigeria. Afghanistan's population in 2015 was around 36,442,000 and in 2030 the projected size will be 47,361,000. Nigeria in 2015 numbered 206,830,000, the projected 2030 populace will be 293,965,000. The US Army has been deployed in both countries and has experienced military operations in large cities in both countries.

Rank	City	Country	Population
1	Tokyo-Yokohama	Japan	37843000
2	Jakarta	Indonesia	30539000
3	Delhi	India	24998000
4	Manila	Philippines	24123000
5	Seoul	South Korea	23480000
6	Shanghai	China	23416000
7	Karachi	Pakistan	22123000
8	Beijing	China	21009000
9	New York City	United States	20630000
10	Guangzhou	China	20597000
11	Sao Paulo	Brazil	20365000
12	Mexico City	Mexico	20063000
13	Mumbai	India	17712000
14	Osaka-Kobe-Kyoto	Japan	17444000
15	Moscow	Russia	16170000

Figure 1. Largest Cities in the World 2016<sup>7</sup>

By 2030 there will be 37 cities in the world that will be two to four times larger than Baghdad is now. Many of the largest and fastest growing cities will be extremes of wealth and poverty. Consider Lagos, Nigeria, with a present population of 21 million people. It is one of the world's faster-growing cities and more than half of its population lives in abject poverty. This type of poverty is extreme, without personal means or government programs and no social agencies.<sup>8</sup> If the country experiences a major natural disaster, epidemic illness, or social unrest the likelihood of needing foreign assistance is great. This may include the US military in the role of support and protection to non-governmental organizations (NGOs), intergovernmental organizations (IGOs), transportation assistance, and providing medical care and expertise.<sup>9</sup>

### Challenges – Ethical Impacts

*If you don't understand the cultures you are involved in; who makes decisions, in these societies; how their infrastructure is designed; the uniqueness in their values and in their taboos—you aren't going to be successful.*

—George C. Wilson

Since 1999, as designated by the National Defense Reform Act of 1986, the national security policy of the US has changed. There is an interventionist policy that sees the US as the keeper of the world order, peace, health, stability, and a host of other conditions whose relationship to US national security interests is obscure or nonexistent.<sup>10</sup>

The challenges and ethical implications of sprawling urban mass on supporting and defending humanitarian operations during threat, disease, or disasters is addressed in US Army doctrine. JP 3-06 defines the Joint Intelligence Preparation of the Operational Environment (JIPOE) in urban areas and sums up the details that an urban OE entails. These include (1) complex physical terrain, (2) concentrated infrastructure, and (3) dense population-while the primary focus needs to be on the city's inhabitants. It is important to know the citizens through an initial population analysis.<sup>11</sup>

Megacity and 21st century warfare will continue as it has throughout the past 2000 years, meaning political concerns will determine the conduct of war. So the political atmosphere in which the US military fights will remain critical. Contrary to the claims of some theorists, technology alone will not eliminate the fear, confusion, ambiguity, fog, and friction of battle. Firepower and maneuver will continue to be the critical element in outcomes; neither one by itself wins wars and battles. The presence of illegal transnational organizations (TNOs) and terrorists, whose standards and practices differ, cannot affect our willingness to commit to humanitarian support. When our plans are determined by our adversaries, the only absolute is that we will not win.<sup>12</sup>

Some of the concerns of support in the “black hole” dense environment of a megacity is that our values and norms, such as our restrictive rules of engagement (ROE), may be used to our disadvantage. Even in the uncertainty of urban warfare the social considerations are unchanged regarding the civilian populace; to minimize civilian interference with military operations, minimize mission impact on the population, and observe the necessary legal, moral, and humanitarian obligations toward civilians.<sup>13</sup>

The human dimension is the essence of the urban environment—understanding local cultural, political, social, economic and religious factors is crucial to success. Critical issues within these large urban environments have been identified as:

1. Dangerous and chaotic environment
2. Unreliable electronic abilities
3. Most of the earth's population in those areas
4. Littoral positioning will mean it may be prone to suffering natural disasters

Conversely, some of the positive points may include:

1. Available infrastructure
2. Sophisticated communication platforms
3. Supportive citizens

## **Missions in Megacities**

In a megacity urban setting, a black hole environment with a dense, compressed atmosphere, choices become faster, more intense, and have farther-reaching results and consequences. Also, behaviors will be compressed and “spill” across more actions, affecting more people and situations.

A megacity environment will subvert the need for “more time” or “more space” or a “safe area,” and even communications may not be completely manageable because of “dead” areas or blocking of electronics by others.

Megacity warfare, protection, and support will utilize latest technology and technical support, and the latest communication systems on the latest devices, but this is not what wins battles.<sup>14</sup> The US has battled in the desert, jungles, and cities; so the nature of war will continue but the characteristics of tempo and the importance of technology, technical ingenuity, and above all, leadership will be key.

Over the last 20 years developing nations have added 3 million new people each week, which is similar to adding the city of Seattle to the planet daily.<sup>15</sup> Looking ahead further, by 2050 the trend will have accelerated and even though there will have been massive shifts in wealth and aging, urbanization may still be the key event in human history. Of 100 births at that time, 57 will be Asian and 22 will be African. How many megacities will both areas contain by then?

### **Preparing for Megacity Mission Support**

We must expect a change in venues of military support because we have had a change in opponents. The future world will be different so each city's newest opponent could be any of an array of adversaries; poverty, terrorism, or catastrophe.

The future population growth will be unevenly distributed and concentrated in third world countries (TWC) and many TWCs will become gigantic. Many will have unsustainable cities, with chaotic, violent slums, just as they are now but on an exponentially larger scale. An example is that Lagos in Nigeria is projected to have a populace of 16 million by 2025.

Conflicts may be moving away from rural areas to megacities, where technology enables otherwise innocuous groups to establish networks of influence that affects governments' abilities to retain power and defend the population. The future battlefield may be megacities where the role of the US will be to provide force, when needed, to protect our national interests, afford security for humanitarian groups, or force requirements in immensely populated areas.

The engagement in a megacity will be in a dense and compressed atmosphere (black hole) where the latest technology and support, communications systems, transportation, and fire power is not what will win the battle. The nature of battle will continue but the characteristic of tempo and the importance of leadership will increase.

The US rules of engagement (ROE) will be challenged in megacities where the cultures vary and the adversary is aware that America's center of gravity is a dead or wounded American. However, our culture and ROEs are not dependent on conditions, the environment, or character of war and our ethics and behavior does not change depending on our adversaries or conditions in megacity environments.

The potential problems of extremism, lack of a national sense of identity, rampant poverty, no plan forward, and unmitigated violence may inhabit the dense, compressed environment of megacities. Will these issues and conditions associated with the megacity environment affect our commitment in humanitarian operations in developing nations?

### **Conclusion: Long Term Strategy Not Short Term Responses**

What do the perceived problems encountered in megacities mean for our forces? US Army values and norms such as using restrictive rules of engagement may be used against troops in



the megacity by future adversaries, in essence, using our culture and norms against us. The sheer numbers of troops required may also be the problem. With current downsizing plans, will the remaining force structure be robust enough to even operate on a scale necessary in the megacity environment? A long term strategy is needed to successfully engage in megacity warfare. This includes planning for force structure, training in black hole environments, and knowing the human dimension: culture, political, social, economic, and religious factors in the world.

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