ETHICAL DILEMMAS FOR SPECIAL FORCES
WORKSHOP
JUNE 11-12, 2003

Carr Center for Human Rights Policy
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JOHN F. KENNEDY
SCHOOL OF GOVERNMENT/SPECIAL WARFARE CENTER AND SCHOOL
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FORT BRAGG
FAYETTEVILLE, NORTH CAROLINA

JOHN F. KENNEDY
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Cover photos

Top
(Left): Major Roger Carstens, USA; Brigadier General Gary Harrell, USA; Dale Andrade
(Right): Sandra Mitchell; Colonel Michael Stout, USA

Bottom
(Left): Officers of the Special Warfare Center; Lora Lumpe
(Right): Reuben Brigety, II; Michael Ignatieff; Robert Gelbard; Jennifer Leaning; Roy Williams

Photos by Kelley Reese

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On June 11-12, 2003, the John F. Kennedy Special Warfare Center and School and the Carr Center for Human Rights policy at Harvard University’s John F. Kennedy School of Government co-hosted a two-day training workshop at the Special Operations Academic Facility at Fort Bragg in Fayetteville, North Carolina. The meeting constituted part of the Special Forces Detachment Officers Qualification Course’s instruction on Human Rights and Ethics and represented one in a series of meetings convened by the Carr Center’s Project on the Means of Intervention. The meeting was the result of an ongoing dialogue between the Carr Center and the Special Warfare Center on the topic of ethics and the use of force. The meeting involved approximately 100 participants, eighteen of whom were civilians from humanitarian/human rights groups and academic institutions. The following workshop report captures the essence of the discussion, without attribution of specific comments.

The John F. Kennedy Special Warfare Center and School was created to educate and train selected officers, noncommissioned officers, and civilians for the full spectrum of conflict and crisis in asymmetrical and ambiguous environments, conducting unilateral, coalition, combined, joint, interagency and multinational operations.

The Carr Center’s Project on the Means of Intervention, supported by the Carnegie Corporation of New York, explores humanitarian issues that arise in the context of using force. The Project brings active duty and retired officers from the United States military and other security specialists together with members of the human rights and humanitarian communities in a series of workshops to explore how human rights considerations are factored into, and affected by, military intervention. The Project’s previous six workshops focused on themes including targeting air power, collateral damage mitigation, ground operations, and military operations in Iraq. More information about the Project on the Means of Intervention can be found at www.ksg.harvard.edu/cchrp/ProjMeansInterv.shtml.
The training workshop represented a new dialogue for both groups and opened up new possibilities for ongoing collaboration. The meeting fulfilled a training requirement for the military participants and increased their exposure to non-military groups with whom they would interact in the future. Civilian participants sought to facilitate understanding about their diverse organizations and to increase their knowledge of military culture and operations. These goals were advanced in part in lectures and panel discussions, but several participants remarked how the most useful discussions occurred in more informal settings including small group breakout sessions, meals, and a reception.

Kelley Reese
Carr Center

Major Roger Carstens, USA
Special Warfare Center
ETHICAL DILEMMAS FOR SPECIAL FORCES

This report summarizes the discussion at the Ethical Dilemmas for Special Forces workshop, which was co-hosted by the Project on the Means of Intervention at Harvard’s Carr Center for Human Rights Policy and the John F. Kennedy Special Warfare Center and School. The meeting was held at the Special Operations Academic Facility at Fort Bragg in Fayetteville, North Carolina on June 11-12, 2003. The event brought together members of the nongovernmental organization (NGO) community and members of the Special Forces community. The meeting constituted part of the Special Forces Detachment Officers Qualification Course’s instruction on Human Rights and Ethics and represented one in a series of meetings convened by the Carr Center’s Project on the Means of Intervention.

As is the practice in the Project on the Means of Intervention, comments are not attributed to individuals in order to preserve the openness of the exchange. The meeting agenda and a list of participants are included in the appendix.
INTRODUCTION

This meeting sought to promote understanding of the nature and importance of human rights as an element of military operations and to advance the mutual understanding of the Army Special Operations Forces (SOF) and human rights communities. The goals of the meeting included increasing awareness by each community of the other group’s values, methods, mandates, operational style, and ethical dilemmas. This awareness emerged through joint explanation of questions and issues that both groups could engage.

Civilian participants sought to communicate the importance of humanitarian values, and understand how the military handles key human rights issues in combat and training missions. Such knowledge enhances the ability of external analysts to work with the military and analyze the military’s use of force using international humanitarian law (IHL) and other standards. The military community sought to better understand the motivations and operations of humanitarian groups and how these actors view and interact with the military. Military participants also strived to improve their grasp of the criteria that external analysts use to assess their actions, as well as think through specific legal and moral challenges they may face when deployed.

The first day of the meeting began with a number of presentations designed to frame the issues and parameters of debate. The presentations covered topics including the importance of human rights to the military, the roles and strengths of SOF, and the legal obligations facing U.S. troops. The introductory speakers were followed by a panel discussion on evaluating military operations and a small group breakout session on distinguishing combatants and noncombatants. The panel and small groups grappled with competing interpretations of standards and expectations for how military operations should be conducted in accordance with humanitarian principles. These sessions provided fodder for informal discussions at the reception and dinner which followed.
The second morning was comprised of a panel and small group discussions on working with local forces in combat and training settings. There was considerable discussion about the criteria that should be used to assess U.S. military responsibility for actions taken by foreign troops collaborating with U.S. forces, and at what point such association (by the military or humanitarian groups) becomes morally compromising or illegal. U.S. combat operations with anti-Taliban forces in Afghanistan in Operation Enduring Freedom (OEF) were explored at length to highlight the ethical dilemmas and areas of disagreement between the two communities.

The final panel and breakout groups were dedicated to issues faced by military and non-military groups working together in the field. Several points of contention were raised, including the status of the current civil-military relationship, sources of tension between the two communities, impediments to cooperation, and issues of transparency and information sharing.

This report strives to capture the main issues and points of debate introduced at the meeting. Some delivered remarks are included to help relate the range of topics addressed. Except where noted otherwise, comments are not attributed to individuals in order to preserve the openness of the exchange.
EVALUATING MILITARY OPERATIONS

DIFFERENCES IN OVERALL APPROACH

The differences of opinion put forth by participants in the meeting suggested that the military and civilian communities often use different methods to evaluate the use of military force, which can lead to very different conclusions about the humanitarian effects of war. One civilian participant characterized the differences in approach. Generally speaking, human rights groups—though often not pacifist organizations—are uncomfortable with the use of military force and are usually unfamiliar with military operations. She noted that human rights groups tend to take an absolutist approach to human rights questions and are principled, rather than utilitarian or consequentialist, in their thinking. She pointed out that they tend to use a legal framework to assess the effects of war and often have different interpretations of IHL or law of armed conflict (LOAC) than the military. By contrast, this participant stated, the military is more operationally focused and less frequently approaches use of force questions with an explicitly legal or moral framework. She said that the military more often views operations as comprised of tradeoffs, with few absolutes; civilian casualties are deemed to be the unfortunate price of war.

Another civilian participant posited that much of the recurring attention to human rights issues stems from a fundamental misunderstanding on the part of the public and human rights groups about the nature of guerrilla warfare, which by definition has no front lines and takes place amongst the civilian population. He said that the notion of counterinsurgency operations without uniformed opponents, in which civilians and political infrastructure can be legitimate targets, is hard for the American public to grasp, yet this is the reality in which the military—and SOF in particular—often operates. He urged NGOs to alleviate the impression that they are biased in their investigations and reporting towards opposition groups by giving equal attention to enemy and U.S. (or U.S.-affiliated troops’) human rights abuses. He suggested that the military should be more open to alternative ideas and viewpoints.

We are both trying to do the same thing. However, it’s one thing to talk about it here; it’s another to find that a subordinate has killed someone wrongly. You have to think about how you would handle that.

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DIFFERENCES IN TACTICAL-LEVEL ASSESSMENT

Participants discussed how acting within the rules of engagement (ROE), which detail the circumstances and limitations under which the military will use force for a given operation, often is a matter of interpretation, with considerable gray areas. A military participant pointed out that ROE always recognize the inherent right to self-defense, and that properly developed ROE are clear and tailored to the situation, vary from operation to operation, and sometimes change during the course of an operation. Yet he noted that regardless of the specificity and appropriateness of ROE, the actions and decisions of individual soldiers on the battlefield are often affected by lack of sleep, hunger, high stress, and confusion – and acting in a chaotic and ambiguous environment. As a result, he said decisions made with the best of intentions may often miss the mark, as demonstrated by soldier actions at vehicular checkpoints in Iraq.

A human rights participant discussed the checkpoints to illustrate the importance of military familiarity with local culture. His investigatory mission to Iraq in May 2003 found that misunderstanding about hand signals (i.e., the American “stop” gesture means “go” to some Iraqis) may have resulted in unnecessary civilian deaths. A military participant acknowledged that “Americans often do a poor job of incorporating other cultures’ perspectives into the answers that we look for in these situations.” He said that training helps SOF do a better job at this, but that improvements could be made.

A military participant mentioned another example of cultural sensitivity and interpretation of ROE, which raised considerable discussion among participants. After a minor car accident in Afghanistan involving U.S. forces, the troops drove away. They were followed and boxed in traffic by two cars of local inhabitants. The Afghan civilians got out of their cars and raised their weapons. The ROE for OEF allowed troops to shoot in this situation. But working with translators, SOF provided money to compensate for damage to the other car, as is Afghan custom. They avoided the use of force. He stressed that SOF have the training and skills to make the right decisions in such situations based on such factors as eye contact or the position of a weapon. The military participant used the case as an example of successfully defusing a potentially tragic situation by being aware of nuances and cultural differences.

The number of civilians killed will never be zero, but we don’t know that it couldn’t be less.
Another military participant, however, asserted that in this situation, the soldiers should have followed ROE and fired at the Afghans. He expressed concern at the notion that soldiers might risk their own lives if they did not have to in order to protect civilian lives. Another military official noted that at times “there is no right or wrong answer,” but SOF who are working in a local community have to live with the repercussions of their actions. In this particular incident, he said, killing innocent civilians would likely have made it much harder to continue to operate in the area.

Some non-military participants urged the military to increase its efforts to warn civilians of dangers during conflict. At least one civilian advocated the use of warning shots in order to protect civilians. A military participant argued against their use because the live ammunition can be harmful, and noted that warning shots are not used in law enforcement and were not in the ROE for Afghanistan or Iraq. A military attorney added that if troops are fired upon, no warning shot is needed to legally justify returning fire. Another civilian participant said that the United States should do a better job of warning civilians about impending air bombardments, but acknowledged the difficulty of doing this in places like Afghanistan. A military participant said considerable effort was made to distribute leaflets to that effect, both written and with illustrations. Another human rights participant suggested that the military should analyze the effectiveness of such leaflets in serving a warning function. The military participant said that the military tries to obtain this information, but that it is hard to do.

The debate over employing less-than-lethal weapons—and whether they ultimately reduce or increase civilian suffering—crossed community lines. Some military and non-military participants held that “non-lethal” weapons, such as rubber-coated bullets and crowd control agents, provide more humane options. For example, a human rights representative said that if it is not possible to physically separate combatants and noncombatants, ground commanders should be able to use incapacitating weapons. However, other attendees from both communities argued against using such weapons, since they can still be harmful or fatal, and, according to at least one military participant, are not very effective.

A human rights participant asserted that U.S. strategic interests would be served by understanding the effects of war on civilians, and how weapons, tactics, and doctrine can improve without compromising mission success. As an example, he said that studies have been done on how to minimize casualties from fratricide—and that the same should also be done systematically for civilian casualties. He emphasized that protecting civilians and the military are not
incompatible goals. Yet the relationship between the goals of protecting civilians and protecting U.S. troops was not self-evident for all participants. As one military participant asked, “where do we draw the line between our safety and that of civilians?”

**DIFFERENT INTERPRETATIONS OF STANDARDS AND EXPECTATIONS**

Various approaches can be taken to evaluate the use of military force, including codified legal standards, less precise moral and political standards, and public expectations that may exceed all of these. One non-military representative said that all parties to a conflict should be held to the same *standard*, but that the U.S. military should meet higher *expectations*. Discussions suggested that legal standards provided a common basis for the military and human rights communities to evaluate military operations, but that these standards are interpreted differently by each community.

A civilian participant suggested that many in the human rights community advocate raising the expectations of exercising military force to exceed legal requirements. A human rights participant concurred, and explained that “in interpreting the law, we recognize that there are tradeoffs, but we want to maximize the frontiers of protection.” He stated that human rights groups favor the application of criminal law enforcement rules over LOAC rules. He urged the United States to respect the spirit, not just the letter, of the law since they have overwhelming power; “there is room for the United States to be more magnanimous in its interpretation of the law; wherever it is possible, the United States should capture rather than kill.”

He said that he suspects that this is indeed the standard, and praised the opportunities given to Iraqi conscripts to surrender in OIF (more so than in Desert Storm) as an example of avoiding striking targets that would be considered *legal*, but not necessarily *right*. Yet he criticized what he saw as the influence of the military upon other senior-level policy decisions and described how they can alienate human rights groups from the military. In particular he noted that U.S. refusal to join the International Criminal Court frustrates human rights groups, and cautioned that certain practices, such as the detention of suspected terrorists in Guantanamo Bay, risk legitimizing other countries’ indefinite detention of prisoners and tarnishing the United States’ human rights record.

*There is an expectation that the military is going to rise above the letter of the law.*
A human rights participant described his organization’s assessment of military operations as an evaluation of whether a war was fought lawfully, rather than whether the war itself was justified. His group investigates how decisions about weapons choice and targeting affect civilians—and whether other choices would have allowed mission success while improving civilian protection. One of their central questions, he noted, was how to make military force both operational and legal. This participant related the experience of studying the concepts of proportionality and discrimination in graduate school while serving as a military officer. He realized the uniquely direct application these concepts had for him and noted the difficulties of balancing competing constraints.

A military participant pointed out that a proportional attack is one that is not “excessive in relation to the concrete and direct military advantage anticipated.” While there may be universal agreement on this concept in theory, participants suggested that it can be interpreted in a variety of ways, with no clear “right” answer. A military participant explained that in the planning phase for military operations, the proportionality principle is used to assess the appropriateness of proposed targets. In the execution phase, he explained, the concept often serves as a rational calculus to ensure that troops apply force commensurate with the resistance they meet, therefore reducing the likelihood that targets will be overwhelmed. Civilian participants explained that humanitarian and human rights analysts also use the proportionality principle as a tool by which to measure the costs and benefits of a given attack. In this analysis, the costs (harm to civilians and civilian infrastructure) often are more quantifiable for the external analyst than the military advantage of attacking a given target.

Discussions suggested that one difference between military and non-military assessments of proportionality involves the definition and interpretation of “military advantage.” Non-military personnel hinted at their difficulty in understanding the military advantage of given targets or target sets, which complicates their assessment of the military’s adherence to the proportionality principle. A civilian participant described differences in interpretation. The military tends to interpret the proportionality principle not in the context of a single strike against a particular target but rather in relation to an overall campaign. By contrast, human rights analysts generally apply proportionality analysis to particular attacks.

Either you oppose violence altogether, or you advocate violence without rules. But if you accept that we operate in the middle ground, the rule of proportionality is valid; the challenge for everyone is how it plays out in specific instances.
Discussions also touched on the key IHL concept of discrimination between combatants and noncombatants. A human rights participant said that while intentionally attacking civilians is a ‘red line’ that must not be crossed, he admitted that the human rights community has internal debates about defining when it might be acceptable to attack civilians involved in hostilities. For example, if a civilian is driving an ammunition truck, human rights groups struggle to define the target: is it the civilian or the truck? He acknowledged that such discussions can be esoteric and sometimes not operationally relevant, since targeting one without the other is not realistic in many cases. Raising questions over whether a person is a legitimate target because of who he/she is or what function they perform, a military participant pointed out that civilians that take part in combat become legitimate targets but that combatants remain legitimate targets even when not in uniform or when they are not fighting (i.e. when they are asleep at home). Alternately, he noted, some uniformed individuals cannot be targeted, such as medics or chaplains in uniform (they are considered noncombatants if they are clearly identified—and killing them is a war crime, even if they carry side arms).

The issue of who has responsibility for civilians killed when placed near military targets arose in the meeting’s discussions, prompting one participant to ask whether avoiding a given target because the adversary has placed civilians there would only serve to reward the enemy for illegally using human shields. While the meeting did not resolve the differences in interpretation, discussion of the various approaches helped illustrate some of the sources of conflicting assessments of using force by military and civilian analysts.

CREDIBILITY

NGO credibility. A civilian participant stated that human rights groups may jeopardize their credibility with the military when evaluating military operations by focusing mainly on U.S. (or U.S.-affiliated) forces’ actions in their investigations and reporting. They should, he argued, give equal attention to an opponent or rebel group’s human rights record. He said that it is right to expect a higher standard of behavior from government troops. But appearing to accept objectionable enemy actions as a given and saying ‘there’s nothing we can do about it’ contributes to a perception that human rights groups consider opponents to hold the ‘moral high ground.’ In response, a human rights representative explained that more attention is usually given to U.S. or
U.S.-affiliated troops’ actions because there is more hope of influencing their behavior. He argued that when an enemy’s atrocities and policies are often obvious or stated—for example, the Iraqi government’s 2003 announcement that it was placing combatants in civilian clothes—there is usually a sense that more evidence should be provided to describe the government’s policies and approaches than that of the enemy.

The human rights representative explained that maintaining this difficult balance between criticizing the “good” and “bad” guys equally was also necessary to preserve human rights groups’ delicate engagements with the “bad guys.” He said that “we do want to apply the same standards to everyone, and we don’t side with the underdog.” But if human rights groups set impossibly high standards of behavior, he argued, rebel groups would not listen. Therefore he said that human rights groups try to maintain some degree of influence by striking a balance in their reporting. He recounted his organization’s denouncement of a nonstate actor’s use of inaccurate weapons that were harming civilians as well as military targets—even though these weapons were all that the group possessed. In this case, the criticism in effect implied that the group should improve their weapons’ accuracy. But it is unrealistic, he said, to tell state and nonstate actors that they cannot fight unless they have precision munitions. At this point, a military participant compared this balancing act of criticism and engagement to the dilemmas SOF face when working with local forces (discussed in more detail below). He said that absolutist positions often mean a halt in dialogue and the end of potential influence.

A human rights representative cautioned that human rights analysts must be accurate in their investigations and reporting and use the law in a reasonable and responsible way. He pointed out the disparity in ‘enforcement mechanisms’ between civilian groups and the military—if NGO reporting is based on false information, they can only be sued or lose credibility, unlike the military which can face criminal charges.

**Military credibility.** There was widespread agreement that the U.S. military would enhance its credibility by increasing openness about investigations and explaining bad news when necessary in order to “fill the information vacuum” as one participant described it. However, there seemed to be a disconnect between interpreting this need as a public relations problem or as a
‘real’ problem of transparency. There will always be a gap between classified, operational information that can never be made public for national security reasons at one end of the spectrum, and information that is promptly shared with the media at the other end. This gap represents information that is not usually shared, but in theory could be shared without adverse consequences. Finding ways to bridge this gap in order to tell good news stories and admit mistakes when necessary would increase transparency and enhance credibility with the non-military community and local civilians.

Discussions of the container deaths incident from Afghanistan (discussed in more detail below) sparked debate about DOD and NGO investigations of incidents of alleged atrocities during war. Indeed, one participant noted that since the military and human rights organizations rarely read each other’s final reports on alleged incidents (in many instances because government reports are classified), but rather press releases, “most of us view each other through the prism of the media.” He noted that another complicating factor was that the military does not always publish reports exonerating individuals or providing evidence that an incident did not occur. DOD’s communication about investigations may endanger its credibility by wrongly leading analysts to believe there is a cover up – in this case regarding DOD statements that it found no knowledge of the container deaths on the part of U.S. forces. Likewise, a human rights representative cautioned the military not to discredit all NGOs based on allegations by some that lack credibility.
I would like to address some of the issues about being a military officer and serving human rights values in the complex situations that you encounter in special operations work. I have noticed three features of special operations work: the teams are operating in very chaotic and uncertain operations, they exercise a great deal of discretion and display a great deal of initiative, and they are multi-tasking. So what rules apply when you have these characteristics? Obviously rules of engagement (ROE) and law of armed conflict (LOAC), but also basic human rights principles. But what role do human rights have to play? In comparison to ROE and LOAC, human rights seem less clear and less precise, but clearly human rights have something to do with regulating your encounters with enemy forces, soldiers, prisoners, and above all, with the civilians.

What is interesting about working in a chaotic environment as you do is that you are not working in a lawful environment. Often you are working in a failed or failing state in which there is no national law and little capability to enforce anything, especially human rights. So this raises the question—who is enforcing the rules in the chaos? You are. You are the enforcers. You are the people who have to make human rights observed. The second group of enforcers is the local commanders, the warlords, with whom you work—and very rarely do human rights figure into their set of constraints. A third group who enforces human rights is nongovernmental organizations (NGOs). While enforcing may not be exactly the right word, the presence of NGOs is a source of enforcement. Local warlords may or may not do things if NGOs or you are present. Another source of enforcement of these rules is the press. Your human rights behavior is very strongly affected by the presence of NGOs and the press. So you have enforcement roles, the press has enforcement roles, NGOs have enforcement roles, and local commanders have enforcement roles.

While “rules” do describe ROE and LOAC, do we really want to use the word “rules” for human rights? I want to draw a sharp contrast between rules and character. Albert Camus once wrote, “Rules are for people who have no character.” That is to say, that for people who have no moral substance and no moral compass you have to have all kinds of rules. People with character and moral judgment are rule compliant for reasons within. This is the difference between inner moral direction and outer moral constraint. Even people with character need rules, but what drives them to obey is character, and not the external constraint.

What strikes me about Special Operations is that SOF are an extreme example of following moral rules in a chaotic environment in which a heavy premium is placed on character. In this chaotic environment, things are happening so quickly, things are happening that aren’t in the rule book, things are happening that no amount of training can predict—so you have to come back to character. The key moral question therefore is not just, “What do I do now?” but the prior question, “Who am I?” It is character relating to identity.
So, who are you? You are officers in the U.S. Army. That’s one way in which your institution helps you – it answers the identity question for you. So the question of how to respond has to be shaped also by your identity as an American soldier. Character is terribly important, but it is not floating free. Character is structured by the institution and the country that you serve.

Human rights should not be thought of as a set of rules that are set down in international law. They are that. They are law. Law is important. The United States has ratified the International Convention on Civil and Political Rights. International human rights have been ratified by U.S. domestic law, so it is law. But at the most fundamental level, human rights are a series of principles to guide character - to help you ask the questions “Who am I?” “What principles are central to me, and to me as an American soldier?”

I place a tremendous amount of importance of human rights as ethics rather than law. Law is important, but if human rights is law, it is soft law, and out in Afghanistan there is no one to enforce. Those that do enforce it do so out of character-driven motives.

So what is human rights? Very simply, it’s a standard of human dignity. There are some simple don’ts and do’s: don’t torture, don’t abuse, don’t degrade, and do guarantee the minimum necessary for human survival: food, water, shelter, clothing. These very basic do’s and don’ts are designed to support your character.

But then it gets difficult—to whom do these principles apply, when do these principles apply, and are there any exceptions to the application of these principles. They apply no matter to whom. This is not obvious and it is difficult to accept that human rights apply to all human beings irrespective of behavior. In the United States, you can lose some of your civil rights when you commit certain felonies. The thing about human rights is that you cannot lose them, and this is almost the central meaning of human rights. This is a particularly painful and tough thing to accept, because it means that Osama Bin Laden has human rights. Human rights are irrevocable and not correlated to moral status or behavior. You cannot lose them. They apply no matter to whom.

They apply no matter what—even in chaos and in war. Essentially, LOAC are attempts to maintain basic standards of dignity in fear, chaos, and horror. So, they apply no matter whom and no matter what. Human rights do allow for derogation, or temporary suspension of human rights, in certain situations such as a national emergency. But there is always a set of nonderogable standards that you can never derogate from, no matter what. Among these nonderogable standards are torture, extrajudicial killing, and enforcement of penal servitude conditions. No matter what, no matter when, you cannot derogate from these.

No matter whom, no matter what, no matter when—that’s the hard core of human rights. You as combat officers are at the sharp end of all of this, because each of you can think of situations in which you think, “Are you serious?” That’s what we need to talk about—no matter what, no matter when, no matter to whom—that gets us to the core of the difficult issues.
Here’s another difficult issue. As U.S. military officers, you are clearly responsible for your own human rights behavior and that of your unit, but the real tough question is who else’s behavior are you responsible for. You are embedded with local forces, you are training state forces, and you are working with proxies. This problem, which seems central to Special Forces operations, I call the principal agent proxy problem. What moral behavior of the proxy is the principal agent responsible for? You train the Indonesian military. Are you then responsible for some of what they have done in Aceh? You train Salvadorans. Are you then responsible for what happens there? How long does your responsibility extend? Is your responsibility conditional on your physical presence? You’re in Afghanistan and the Northern Alliance does horrible things. Is your moral responsibility strictly determined by your physical presence?

I’m not here to lecture you. As my great professor Isaiah Berlin said, there are many moral situations that you cannot judge from the outside; it is indecent to judge from the outside when people are in situations of extreme moral jeopardy. I don’t teach like that, because I don’t feel morally honest in doing it. But I do know that one of the problems is principal agent proxy responsibilities. This isn’t a simple story. I want to hear stories about the principal agent proxy dilemma and I want to listen. I don’t want to preach, I don’t want to tell you what’s right and wrong. Moral decisions are very contextual – you have to know the facts and you have to be there. There’s no straight, simple answer to principal agent proxy. But it seems to me that you do have serious and unending moral responsibility for your proxies, and we have to define the gradients of responsibility through which that falls.

The other cluster of issues that I want to address is whether moral obligations to observe human rights persist when the other side breaks all the rules. The moral character of asymmetric war is now constantly raising this problem, because the laws of war are written with an assumption of reciprocity. But in asymmetric war, harming and torturing civilians and using them as human shields are standard operating procedures as a permanent feature of this kind of war.

This is not a place for moral perfection or lectures. These are very difficult issues. Consider the case of a civilian car speeding to a checkpoint. You shoot out the tires, you shoot out the engine, then you shoot through the windshield, and when you approach the vehicle you find dead women and children. This kind of stuff occurs precisely because the bad guys use civilians, disguise themselves as civilians, and hide amongst civilians. The rules are pretty clear here; your conduct does not depend on the conduct of the other side. Even when you do not have moral reciprocity, you still have to obey basic human rights rules. While there is tremendous temptation to do otherwise, if you do so it is not only moral hazard that you risk but it is also exactly what they want you to do.

The whole purpose of asymmetric war is to delegitimize the other side. The purpose is to pull you down off the moral pedestal that every U.S. military officer goes into battle having as his chief asset. The chief purpose is to knock you off that pedestal, and that’s exactly why you have to stay on it. There’s a battle of ethical standards, so don’t take ethical standards as constraints on
effective war fighting. Understand that in asymmetric warfare, preserving the moral high ground is the crucial force multiplier. It is the crucial source of your legitimacy and effectiveness, especially in Special Forces operations in which you are vastly outnumbered and lack many other force multipliers. You have to have the high moral ground; otherwise you are going to lose everything.

Why respect human rights at all? What motives do you have to live by this code—to always bear the moral responsibility for the actions of your proxy, to never stoop to the level of your enemy, to not beat, torture, or degrade, and to always guarantee the minimum necessary for survival? Some of the motives are obvious. But the motivation is essentially derived from your moral identity as American citizens, servants of the U.S. Constitution. Don’t think of human rights as something that floats out there, authored by some Europeans. Human rights is the in the spine and the DNA of the country that you serve. Rights are a great American invention; don’t think of them as foreign, think of them as native, anchored in the Constitution that you serve. Another motivation is that you have to be able to look at yourself in the mirror and ask “Who am I?” “Who has the person become?” The final reason is that ethical restraint is not a constraint but a multiplier. Understand that moral restraint is the crucial source of legitimacy in hostile and chaotic environments. Force is crucial, but balancing force with moral authority is the essence of what you are doing. Getting the balance between force and moral authority is crucial, and doing this right means you can look yourself in the mirror and say, “I am a human rights professional.”
WORKING WITH LOCAL FORCES

Participants grappled with a number of human rights issues surrounding U.S. military collaboration with foreign forces in combat operations and training missions. One participant cautioned that there is a danger of wanting to “make too much of a good thing” by relying too heavily on SOF, and urged policy makers to think carefully about their employment. He said they should not seek to quickly increase the numbers of SOF in order to employ them in missions in which they lack a comparative advantage because that can dilute the quality of SOF and produce adverse consequences. He also urged that greater care be devoted to decisions about training foreign forces because human rights violations committed by local forces will reflect poorly on SOF. He said that U.S. decision makers needed to pay more attention to the overall policy environment, timing, and especially the host government’s standards for its military forces.

A human rights participant noted that regardless of larger strategic issues, association with forces committing abuses risks sullying the United States’ reputation by (indirectly) contributing to the suffering of civilians. She explained that human rights groups are very sensitive to the symbolic nature of military training engagements, which can imply U.S. government or public support for the policies and practices of a host nation’s government and/or military. Thus, even if U.S. military training of foreign forces does not support alleged human rights violations (HRVs), and if U.S. troops are not involved, she urged the military to be aware of the larger political context in which the training is assessed by outside analysts.

Participants recognized that training or assistance raised issues of responsibility for actions by those forces. Congressional legislation reflects concerns about training already known human rights abusers and some human rights organizations have argued that the United States should not train forces that might violate human rights in the future.

Since local forces rarely, if ever, exhibit the level of concern for the legal and moral standards under which U.S. forces operate, it is a challenge for SOF to influence and monitor their adherence to the law, according to participants. Military

Guidelines for SOF to help stop abuses by foreign forces:*

- Use moral arguments
- Threaten to report the act
- Ask your superior to clarify orders
- State your personal disagreement
- Ask others to help intervene

* Source: Special Forces training materials
participants reported that SOF often have limited leverage over foreign troops in terms of reporting, preemption, and punishment, as well as limited resources and information to monitor those forces’ actions. Moreover, pressing too hard on foreign forces to comply with IHL can jeopardize the bilateral relationship and the mission.

There appeared to be uncertainty regarding U.S. responsibility for actions taken by foreign troops that have received U.S. training or fight with the support of U.S. forces. Participants discussed possible considerations in assessing such responsibility. These included:

• Timing—Is the U.S. responsible for foreign forces during or after direct U.S. engagement? If responsibility continues, for how long?
• Foreign human rights abuser—Is the rank of the foreign human rights abuser relevant to the degree of U.S. responsibility? Is the extent of his interaction with U.S. forces important?
• Reaction of foreign chain of command—If the foreign government or rebel group disciplines the offender(s), does this affect U.S. responsibility? What if the offender goes unpunished?
• Reaction of U.S. chain of command—Was the incident promptly and properly reported up the U.S. chain of command? What, if any, action was taken? Does the response reflect U.S. views towards its responsibility?
• Intelligence/informational awareness—Does the degree (or absence) of advance U.S. knowledge of an atrocity affect U.S. responsibility?

**Supporting Foreign Forces in Combat**

The SOF relationship with local military forces in OEF in Afghanistan highlighted critical issues about responsibility for foreign forces. SOF troops entered Northern Afghanistan soon after the terrorist attacks of September 11, 2001 and organized and led a variety of anti-Taliban forces. One of the most notorious and powerful warlords with whom SOF worked was General Abdur Rashid Dostum. In November 2001, forces under his control allegedly caused hundreds of Taliban troops to die by transporting them to Sheberghan prison in sealed cargo containers; they were allegedly buried in a mass grave. At the time, Dostum’s troops were participating in combined operations with SOF, yet there were varying reports about whether U.S. forces were present during the transfer of the prisoners to the container trucks.
A SOF participant asserted that the atrocity did not occur under the supervision of or with the (prior or post facto) knowledge of U.S. forces. He acknowledged that there was insufficient time available to undertake standard human rights training for proxies and that Northern Alliance troops had very little experience or training on the proper handling of prisoners. However, he noted that most of the SOF present in Northern Afghanistan—roughly 30—had supervised the Northern Alliance’s preparations for transporting the prisoners. According to his information, the prisoners were loaded at the time of their capture onto flatbed trucks, rather than container trucks. He stated that U.S. forces did everything possible within their capabilities at the time to ensure that such an atrocity did not take place.

The SOF participant explained that, given the small number of SOF distributed over all of Northern Afghanistan, and the unexpectedly rapid speed of the Northern Alliance’s advance, it was impossible to know everything that was going on. The participant acknowledged that the United States was aware of the negative reputations of the Afghan warlords—Dostum in particular. He noted that SOF had warned Dostum that they expected him to behave lawfully. He remarked that SOF cautioned Dostum that killing prisoners was unacceptable and had specifically warned that the United States would withdraw support if he did not uphold the law, but that U.S. forces recognized that the anti-Taliban forces themselves lived in substandard conditions and would find it difficult to properly care for prisoners.

**Human Rights Group Response to Alleged Atrocity**

Physicians for Human Rights’ (PHR) attempted to convince the U.S. government to investigate the mass grave site without bringing it to the media’s attention.

- January-February 2002: PHR hears reports of mass graves during investigation of Sheberghan prison; secretly investigates site with forensic experts from office of the UN High Commissioner for Human Rights (UNHCHR).
- February-April 2002: PHR writes letters to DOD, State Department, UN Security Council, Afghan President Karzai informing them of mass grave, calling for site protection and investigation. No response received.
- May 2002: PHR/UNHCHR report concludes that the victims buried in the mass grave died of suffocation; their time of their death coincides with alleged incident.
- August 2002: *Newsweek* article* prompts pledges from DOD, State Department, and Karzai to investigate; the Joint Chiefs announces they are satisfied that no U.S. forces were involved.

A human rights representative remarked that prisoners could have been transferred to container trucks after they were out of sight of the U.S. military. She said her organization had no direct information placing U.S. forces at the scene of transfer—and had not at this time placed direct blame on U.S. forces for the killings. She explained the process that her organization uses to investigate such circumstances—the main focus is to secure sites for full investigations (see box entitled “Human Rights Group Response to Alleged Atrocity”).

Some non-military participants asserted that U.S. oversight obligations should be greater when dealing with known human rights abusers, and that additional provisions should have been made at the planning stage of the prisoner transfer to ensure greater U.S. presence, for example, at prisoner loading and unloading points. Some human rights participants suggested greater interaction between their organizations and the military at the predeployment stage to enhance preparation and awareness of human rights issues likely to emerge in order to help prevent future atrocities. A military participant acknowledged that given the speed with which combat deployments take place—and the changing nature of the battlefield that SOF encounters after linking up with proxy forces—preparations may need to be more comprehensive.

**TRAINING FOREIGN FORCES**

Discussions revealed divergent perspectives on the human rights implications of training foreign militaries. Some participants suggested that from the military’s point of view, engagement with foreign forces may be desirable to exert influence and bolster language skills and cultural knowledge. Civilians also saw benefits. As one participant said, “the U.S. should stay engaged with foreign militaries even if their human rights records are not perfect—it’s the only way we can make any progress.” While human rights groups would likely agree that engagement through training can provide positive leverage, another said they worry about the effects of training in countries without strong democracies. They fear that trainees ultimately will abuse human rights and suppress political opposition. They asked whether the empirical data supports the notion that U.S. training increases overall military professionalism in the host country.
A human rights representative explained that much of the public (and human rights groups’) perception of and attention to the training issue was shaped by the controversy surrounding the Western Hemisphere Institute for Security Cooperation (WHINSEC) (formerly the School of the Americas) and atrocities committed by individuals and units from Latin American militaries that had received U.S. training there. The training controversy continues, according to this participant, with the expansion of engagement with foreign militaries in the last decade. She said that human rights groups advocate increased transparency and oversight of these programs.

While participants generally agreed upon the importance of avoiding support to and training of human rights abusers, concerns about the vetting process1 were raised. Human rights participants saw the vetting requirement as a positive development that decreases the likelihood of U.S. involvement with atrocities, and as an area where human rights groups can assist by providing information about human rights abusers. However, some military participants felt that this process may be given too much precedence over larger strategic considerations and expressed two main objections to the process—first, that it can be used as a tool of the opposition (false claims can lead to delays or exclusions that harm the host government), and second, that the military should not be held accountable since they do not do the vetting. A military participant intimated that he was uncomfortable with the situation in which, although the military has little or no input into the vetting process, SOF are the ones that will be perceived to be responsible if foreign units commit abuses. Another military participant noted that it is impossible to predict what actions individuals might take in the future, and compared holding troops responsible far into the future to holding drivers’ education teachers responsible for car wrecks by their students ten years later.

**Reporting Requirements**

A civilian participant expressed surprise after learning that the U.S. military is legally required to report HRVs committed by foreign forces. A military participant responded that “if human rights groups don’t know about that requirement, we are doing something wrong.”

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1 An amendment to the 1996 Foreign Operations and Defense Appropriations Act, known as the ‘Leahy Law,’ sets forth a reviewing process for foreign units seeking U.S. military training. The Department of State’s Office of International Security Operations must certify that the foreign troops have not committed human rights abuses. To make this determination, the Security Assistance Officer from the U.S. embassy in the host country reviews the lists of proposed trainees before the arrival of Special Forces.
human rights participant said that human rights groups seek a deeper understanding of the HRV reporting process. She reported that there is a perception among some in the human rights community that, despite legal obligations, there is a climate within the United States military that discourages filing such reports—and that U.S. troops may remove themselves from situations where they are likely to observe violations. Another human rights participant stated that there is a gap in U.S. military doctrine since it does not encourage doing more than reporting violations. She suggested that the military should be responsible for preventing atrocities or investigating atrocities allegedly committed by proxy forces. At least one military participant agreed.

Sometimes the U.S. military is required to investigate possible war crimes (e.g. in Kosovo). This led some participants to question whether such responsibilities should more often or always be made a part of the mission at the most senior policy levels. A military participant explained that after notifying their chain of command, some SOF choose also to notify a human rights organization (often the International Committee of the Red Cross). In response to students’ concerns that taking this step may be disloyal, or akin to “airing dirty laundry,” the military participant assured them that this was appropriate, as long as the chain of command is informed of the incident first. He said a case from Operation Restore Democracy in Haiti showed “what not to do”: a captain attempted to improve the human rights situation outside the chain of command, and disobeyed a direct order. The military participant noted that one benefit of good civil-military relations on the ground is that this synergy can produce greater efficiency in responding to HRVs.

**ENFORCEMENT MECHANISMS**

Participants recognized that continued engagement with the U.S. military can be a positive influence on local forces. Military and civilian participants remarked that the threat to withdraw support if local forces commit violations can be an effective method of influencing behavior. Yet, given the strategic significance of some SOF engagement with foreign troops, withdrawal is often not considered a viable option—and is nearly always decided at the senior civilian and military levels. Thus SOF influence is often limited. SOF can threaten to expose abusers, but at least one
military participant warned that this leaves them personally vulnerable to retribution. Alternately, they can try to address abuses within the foreign military’s ranks, but there is seldom a clear process or precedent for doing so.

One military participant made the case that SOF must approach human rights from a practical military perspective in order to effectively influence the behavior of foreign militaries they are training. Rather than provide formal, standardized human rights training, this participant advocated leading by example and making a logical case for the advantages of good moral behavior. He urged emphasizing the necessity for government forces to earn the trust of the local population—so that they will provide information necessary for a successful counterinsurgency or counterterrorist campaign.

Participants suggested that the military and non-military communities face analogous dilemmas over whether to stay engaged with local/armed groups or to withdraw. For NGOs, the main recourse is withdrawal, which in effect harms the local population they are assisting. One participant described his NGO’s decision to end operations in a refugee camp in Zaire because they felt morally compromised by not being able to stop the massacres taking place there. This participant admitted that before this experience, he had always been “too concerned with survival to worry about human rights.” While continued engagement may appear to legitimize the abuses, U.S. military or NGO presence may exert a positive influence on actions and serve as an oversight mechanism. Disengagement provides moral and legal separation from abuses, yet there is the danger that leaving simply gives the abuser carte blanche to continue violations unchecked.

A recurring theme in discussions of working with local forces in both combat and training capacities was defining the “tipping point”—the point at which abuse requires a decision to withdraw. Participants struggled to define the point at which foreign forces or military actors’ human rights abuses outweigh the strategic (or humanitarian) benefits of partnership, or become too morally compromising to continue aiding the local population if this requires tacit approval.
My comments will focus on the essence of the professional obligations that we all share, albeit from differing perspectives depending on our training and operational experience. The nature of the problem that we have assembled to address is the rule of law in chaotic, lawless environments. Solving that problem is at the heart of our calling as American military professionals. I want to highlight the legal principles that are the cornerstone of mission accomplishment for a wide range of special operations missions. The challenge lies in the art of taking the principle of the rule of law beyond our own force structure and implementing it in an environment where the law itself has often been a vehicle for repression. Despite their own obligations to comply with the “law of war during all armed conflicts, however such conflicts are characterized,” American soldiers are often confronted with circumstances in which the enemy forces disregard applicable legal principles.

I will highlight some of the operational issues with a particular focus on the relevant legal framework because we are seeing a recurring range of issues and operational problems that go back to Somalia, Haiti, Bosnia, Kosovo, Afghanistan, and now Operation Iraqi Freedom. It is important to address the reality that the issues that special operators faced in El Salvador almost two decades ago, just to take one example, are the same issues that deployed American will face down the road.

It is also important to appreciate the depth of the training and intellectual rigor that is inherent in being a quiet professional, and I look forward to clarifying any misperceptions that my comments may expose. For the NGO community, I want to be crystal clear that everything we do in the U.S. military, especially in the Special Forces, has a heavy legal backbone. Lawyers are intimately involved in almost every aspect of operational issues. At the same time, you should fully appreciate that the real decisions and the real success of an operation depend upon the actions of soldiers on the ground.

Special operators face some legally intensive decisions and some highly nuanced application of legal principles in settings where they must rely on their judgment and initiative, and ultimately on each other. That’s where missions get accomplished. My role is a support role; my role as a JAG is to teach, to explain, and to clarify when there are questions of law. Though my legal comrades and I will help them divine the fault line between legal obligations and policy options, it is the role of soldiers and commanders to implement and execute.

The NGOs should also be clear that legal involvement in human rights issues within the military is not just an afterthought. My intent here is to respectfully address the gap that I have experienced in perceptions and expectations between the NGO community and the military. There

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2 The opinions, and conclusions of this paper are solely those of the author. They do not necessarily reflect the views of the Judge Advocate General, the United States Army, the United States Department of State, or any other federal entity.
is an old saying that “Human rights is not a foreign policy, it’s an aspect of a foreign policy,” and I would say the same thing about special operations, “Special operations is not a foreign policy, it is an aspect of foreign policy.” It is our collective challenge to take human rights considerations in the larger operational domain and apply them in practice rather than rhetoric; the converse is also true in the sense that human rights norms are almost always operating in the background to color foreign policy and operational options.

Literally and figuratively in the other camp, there is sometimes a tendency in the military to say, “We’re mission focused, we’re doing our job, and these extraterrestrial beings from NGOs are bringing foreign, extraterrestrial ideas to us.” I’m here today to declare that approach is wrong. Not only is it wrong operationally, it’s just not the way they work. These communities really do share a common source of values. As a result, when discussions shift to candidly examine the competing priorities on the ground and the substance of the applicable law, there is more common ground than some might suspect. This is not to say that it is always an easy relationship. There has been a hint of that cultural gap in the discussions here already. For those officers who have deployed, I’m pretty confident that you would agree that the operational relationship between the military and NGO communities can sometimes present very difficult operational challenges for both.

Both NGOs and the military community have to work through the bumps in the road because at the end of the day we all serve the same set of values. The truth in my experience is that neither the military nor the NGOs can completely succeed without the other. And by the way, it is always worth remembering that courageous NGO representatives frequently preceded the military into the area of operations, and they will often remain long after the military has returned home after accomplishing the military mission.

Nevertheless, the soldiers who are present should not be under the illusion that the human rights NGOs own the field of human rights law. This is a body of law that springs from the wellspring of our Constitution, which is in the very spine of military professionalism. These are American values. It is the very essence of what it means to be an American military professional—protecting and promoting the rule of law and observing the law of armed conflict at all times in all circumstances. Special operators become living demonstrations of American values—Ambassadors for Freedom—the moment they depart from American soil. That is the unstated role in which American forces are cast upon deployment to Somalia, Afghanistan, Iraq, or any one of a hundred other nations. The values described and protected in the human rights regime are fundamentally American values captured in human rights documents. So it’s not as though a bunch of lawyers in pinstriped suits sat around and created a large body of law to constrain and tie down the American military.

What I want to do in the remainder of my time is put a sharp legal focus on what the shades of gray are and how to think about properly analyzing some of those issues. I am going to give a little background on human rights and a little bit of law of armed conflict because awareness of the legal rule allows the practitioner to be poised at the appropriate departure point to properly
analyze certain conduct. The ethical issues we will discuss in small groups are the gray issues, but if discussion starts with the gray issues and abandons the rock-hard core of the law then discussions swirl with no clear direction. I want to present that rock-hard core to provide the proper jumping off point for thoughtful and informed analysis.

Human rights and international humanitarian law, which is the term generally preferred by the NGO community to refer to the law of armed conflict, are very different bodies of law. Even the casual observer recognizes that they have different origins, and different specific rules. But the actual implications of the differences are seldom confronted head-on. I want to help illustrate those distinctions because even though the two legal disciplines share huge similarities that feed upon each other, there is also a fundamental, philosophical disconnect. While we cannot resolve the basic philosophical gap between the law of armed conflict and human rights law, in my view it is an important framework because it has real implications on the ground.

Here’s how I view the connection between these bodies of law. Human rights developed primarily as a body of law to address the relations between a government and its citizens. This is a core body of inalienable human rights that belong to people by the virtue of their humanity. From its inception, the entire body of human rights law developed as a limiting, constraining body of law which gives import to the rights of the people and thereby elevates those rights to a level that checks the power of the sovereign national government. As Eleanor Roosevelt said in the wake of World War II, “We are talking about the rights of people. We fought the whole of the last war about that.”

Each of you present, along with every human on the planet, shares this body of rights no matter what; they belong to you because you are a living human being, that’s the end of the story. As a result of the body of human rights norms, no government can legitimately deprive persons within its borders of their basic rights without addressing the dimension of applicable international law, or at a minimum exposing itself to international censure. All persons have these rights, subject to some derogation in extremely limited circumstances. But even then, there are some core rights that are nonderogable, because they are so important, so fundamental. Think of it as the rock in the snowball. Those nonderogable human rights—the rights to be free from torture, extrajudicial killings, and the right to life—are the rocks in the snowball. To put it another way, the only way that governments can permissibly undermine basic human rights is under circumstances when the legal regime gives them express permission to do so and when they operate with due regard for the residual constraints imposed by the body of human rights norms.

Now, turn it around to see the contrast. The law of armed conflict setting is fundamentally a permissive environment, whereas the human rights law regime is fundamentally restrictive. When military forces are operating under the law of armed conflict, the whole nature of the body of law is permissive. In other words, soldiers and commanders may do any number of things that would never be legally permissible in time of peace when the law of armed conflict did not apply. For example, they may kill people, can destroy governmental and private property, and may break things; in fact governments pin medals on people for risking their own lives to achieve precisely
those results. Professional soldiers know that it is their duty to achieve such ends and that it is perfectly lawful to apply violent methods to accomplish the mission in the permissive environs of the law of armed conflict.

The twist is to accept the reality that the latitude afforded under the law of armed conflict is not absolute and be very clear that there are limits to personal discretion to accomplish the military mission. This is a very old principle ingrained into the fabric of the law of war. For example, the 1899 Hague Conventions stated that “[t]he right of belligerents to adopt means of injuring the enemy is not unlimited.” Looking past the awkward sentence construction, this precept stands for the principle that the law of armed conflict defines the outer limit which marks the frontier between lawful military professionalism and lawless thuggery.

Soldiers and commanders who violate the law of armed conflict are said in shorthand to have committed war crimes. From the philosophical rather than legal perspective, they have abdicated the accepted standards that define what it means to be a member of the profession of arms. Beyond this outer bound of law of armed conflict, the absolute imperative of law is that soldiers and commanders are not free to commit proscribed acts, and to do so would be a violation of the norms of professional military practice. That’s the important distinction between human rights law and the law of armed conflict.

That is why the fields of human rights law and the law of armed conflict represent photographic negatives of each other. The range of conduct ordinarily prohibited by human rights norms and the rules of civilized societies across the globe is reversed by the permissive regime governed by the laws of armed conflict. In pursuit of the military mission, the law of armed conflict is full of such qualifiers as “subject to military necessity” and “when circumstances permit.” However, the latitude of soldiers and commanders is always restricted by the outer limits defined by the prohibitions and limitations of the law of armed conflict.

Lest this seem overly simplistic, I want to caution that many commentators, journalists, and even some academics will paint the law of armed conflict and human rights law in broad strokes which have the potential to undermine your mission on the ground because they fail to appreciate the relationship between these two bodies of law. Regardless of the actual language of the relevant treaties, they will argue that if military forces do not accept the constraints of human rights law at all times and all places, they are abandoning meaningful restraints imposed by international law. This is a false dichotomy which has the potential to impugn military professionalism and undermine the military mission.

Just to take one easy example, if somebody is tortured during an armed conflict, is that a war crime? Of course. Is it a human rights violation? Of course. But which body of law is being applied to protect that basic freedom? In a conflict setting, it is the law of armed conflict. In other words, the law permits soldiers wide latitude to accomplish the military mission, but restricts any legal authority to engage in anything resembling torture. The protected classes of people and prohibited actions are defined by the law of armed conflict, and violations would accordingly be punished as war crimes.
Commentators would almost certainly shriek if a soldier simply stood before a microphone and said something to the effect of “my forces are not governed by human rights norms,” because the hearers would presume that statement to mean that the norms of professional conduct had been cast aside. However, the essential point here is that the fundamental human norm against torture is being protected, to roughly the same extent that it would be protected during peacetime, but it’s being protected through the vehicle of law of armed conflict.

Dwell for a moment on another critical example of the principle I have described. The fundamental right of life is a bedrock principle of both the law of armed conflict and human rights law. Is it a war crime to murder someone? Of course. But how do you define murder in the law of armed conflict setting? You define it with reference to the requirements and limitations of the law of armed conflict itself. Within the field of human rights law, it is never permissible to take human life. Thus, while the entire range of conduct set out by the law of armed conflict is permissible, conduct that is proscribed by the law of armed conflict is an impermissible taking of life: murder. Soldiers will never encounter a road sign that says “now you are protecting a human right,” but it’s the exact same core norm that’s being protected. It’s just being protected by a different body of law. Though it is absolutely correct as a precise statement of the detailed legal regime, that’s why I think it’s deceptive for people to say, “The law of armed conflict applies therefore human rights law does not.” To summarize, the law of armed conflict is the primary source of applicable law, which is not to say human rights norms go away; but the actions of military forces in conflicts are governed by a different body of law.

In an operational setting, there will frequently be classes of people who are both governed by and protected by the law of armed conflict as well as human rights norms. The corpus of human rights law developed to govern relations between governments and their citizens. That is why the treaties create binding legal rules between the national government that accepted the treaty in question and “all individuals within its territory and subject to its jurisdiction.” The relevant inquiry for deployed special operators is to determine who is responsible for protecting, promoting, enhancing and preserving the human rights of the civilian population—which is a very different question than what are the operational, legal obligations inherent in the mission. To be very pointed about it, deployed forces need to understand how human rights norms relate to the specified and implied tasks that are contained in the mission statement.

To help clarify these issues, I want to describe an abbreviated historical background. As most of you know, World War II was the impetus for the development of the United Nations Charter. The purpose of the UN Charter was to erect a legal framework capable of preventing World War III, but another key goal of the framers who met in San Francisco was to erect for the first time an international legal system based on human rights norms. The Charter framework specifically aspires to build mechanisms within the community of nations to recognize, to protect, and to work together to strengthen the core norms that have been accepted as vitally important. That’s what the UN Charter did for the first time in human history. Nation states accepted an international order designed to impose a legal obligation to protect and preserve these core human rights norms. The field of human rights law developed as a logical progression from the formation of the United Nations and the text of the UN Charter.
I want you to recall Eleanor Roosevelt, a pretty powerful woman. Look at the role that she played in the formation of the law in the context of the nations gathered for negotiations at the United Nations. Now, ask yourself, is this human rights law being imposed on the U.S. by some alien people who want to take away our sovereignty or is this an example of the U.S. using human rights law to shape the world in the American image? I would submit it’s the latter, very pointedly.

The Universal Declaration of Human Rights that Mrs. Roosevelt spearheaded is explicitly couched as an aspirational model, but it spawned a sophisticated, intricate body of binding international treaty law and jurisprudence. You may shrug and think to yourself, “International law, so what, big deal.” In the context of special operations missions, the international obligations filter down to U.S. domestic law, which in turn translates into binding legal orders and operational constraints that must be applied on the ground.

For example, American forces have the obligation at all times under all circumstances to document and report “a possible, suspected, or alleged violation of the law of war.” That is a binding legal obligation all the time, and in fact there may be circumstances in which the applicable international law requires special operators to intervene and stop war crimes committed in their presence or under their command.

Similarly, whenever special operators deploy on a Security Assistance mission, the legal duty to document and report violations arises from human rights norms, but is couched for doctrinal purposes in the language of the law of armed conflict. Deployed team members have the legal duty to report human rights violations to the country team immediately, which does not imply a corresponding duty to prevent human rights violations. That depends on mission driven rules of engagement—specific tactical decisions that vary from mission to mission. The NGOs should know that binding international law for military forces is to recognize, document, and report human rights violations. This means that every time before teams deploy they will receive a human rights briefing. Upon arrival in country, they will often receive additional information from the embassy about specific individuals and issues. And it’s always their legal obligation as an inherent aspect of the mission to document and report known or suspected human rights issues.

At the same time, numerous UN organs and NGOs may often be operating in the area of operations. Many of them are doing exactly the same thing - documenting and reporting these human rights violations. Often, the first people that special operators will encounter upon deployment are these UN and NGO workers that are out doing exactly the same thing on the human rights front. To that degree, special operators and NGOs share a common objective and operational priority. The difference is that the legal responsibility for the deployed team members to document and report human rights violations is phrased in terms of violation of Common Article 3, not in human rights language.

Again, think of the rock in the snowball. Common Article 3 is a snippet from the Geneva Conventions that captured the rock in the snowball, i.e. those nonderogable human rights. But what’s the net effect of packaging the legal obligations not in the phraseology of human rights
lingo, but rather in law of armed conflict provisions? I would submit that the effect is meaningless and a long debate over the proper terminology will detract from meaningful efforts to actually document the violations. The bottom line is that American military forces must protect, preserve, and enhance human rights and do their utmost to comply with applicable legal obligations—to document those things, to disengage, to never knowingly participate.

Another important function that the human rights framework serves, similar to that of the law of armed conflict, is that it provides a common operational framework anywhere in world. When we were working with and training Bangladeshi soldiers before going into Haiti, I was very concerned about how we were going to train them about the interface between the law of armed conflict and applicable human rights norms. I asked the Bangladeshi battalion commander, “How are we going to capture these sophisticated law of armed conflict provisions and human rights principles so that your soldiers have working knowledge of them when they are working on the ground with our special operations forces?” He shrugged and said, “No problem, use WordPerfect.” And we did. We translated it and taught them their operational obligations under the applicable rules of engagement and this same body of law.

The benefit of this is that this is international law. Special operators deployed alongside the forces of other nations have the advantage of a common legal dialect and a set of principles that are recognized around the world, even in settings where compliance is less than desirable. In legalistic terms, we can walk in and speak their language. The obligations of international law extend to the deepest, darkest hinterland of any country in the world. Special operators who encounter these difficult, nuanced positions and are not able to precisely speak the legal language should not worry. U.S. doctrine is very clear that legal support is available when special operators call for help. That’s the job of the Judge Advocate General’s Corps, that’s how we support the force.

In thinking about the connections between these disciplines, members of the profession of arms should realize that the law of armed conflict generally provides the primary source of the rules. To reiterate, American forces must comply with all of the law of armed conflict all of the time, but the tricky part in human rights terms is the additional obligation to comply with the principles and spirit of the law of armed conflict during all other operations. What this really means is that deployed forces must respect and recognize those core nonderogable human rights at all the times under all circumstances, even in circumstances where they are unsure about the precise application of specific provisions of the laws regulating the conduct of hostilities. And that’s pretty clear, concrete guidance.

At the deployment level, the clear legal obligation is to do your best in those difficult circumstances to spot the issue and raise the problem, where there is a problem. And do your best to document any known or suspected violations. The key is that United States forces have the responsibility to collect the evidence of what really happened, which in turn may mean interviewing witnesses and gathering available evidence because they are on the ground during
that fleeting time window in which evidence can be gathered. Failure to seize that opportunity to
document who did what to whom, when, by name, date, and location can make it very difficult to
do so months later. We did this very well in Kosovo working with the NGOs.

I want to describe a couple of examples of how the provisions of the law of armed conflict
overlap with human rights provisions in protecting core human rights. One of the core legal
obligations under the law of armed conflict is the duty to distinguish at all times between
combatants and noncombatants. This is a pretty simple premise, but what right is really being
protected there? It’s the core right to life, because by assuming a combatant status the enemy has
willingly degraded and undermined what would otherwise be a nonderogable human right to life.
The law of armed conflict operates to preserve the core right to life of noncombatants while
permitting the accomplishment of the military mission by permitting the killing of combatants.

Military professionals must always direct action only against combatants. The key word is
directing, because the war crime is defined as the act of “intentionally” directing activity at
noncombatants. No responsible commander would purposefully direct violence against innocent
noncombatants. Aside from being a war crime, such activities would be a senseless squandering
of both ammunition and moral authority.

As an extension of this principle, there is a specific legal rule that special operations
forces cannot wear the uniform of the enemy or civilian attire while conducting combat activities.
This is not to say that there may not be occasions when deployed forces can wear the uniform of
an enemy or a civilian, because there are lawful reasons for wearing such clothes. The war crime
lies in the act of wearing such clothing while participating in combat. This legal rule is again
 premised on the foundation of the basic human right to life. From the enemy’s perspective, there
are people who have that nonderogable right to life, and by wearing civilian clothes or the
uniform of the enemy and participating in combat, military forces are potentially endangering
these peoples’ right to life by blurring the line between protected noncombatants and persons who
may be lawfully targeted.

The recurring practice of human shields raises exactly the exact same issue. There is some
debate about human shields revolving around the question of which party is actually violating the
rights of those civilians? In human rights terms, the government cannot force its own population
to designated areas. At the same time, the act of positioning civilians in the vicinity of a military
target is a war crime on the part of the domestic government officials. So there’s a school of
thought that says when lawyers and commanders go through our proportionality analysis in
targeting we should think through the ethical implications and propriety of allowing the enemy to
gain the military advantage through unlawful means. The pointed question in legal circles is
whether those innocent civilians, who still retain the human right to life, are relevant for the
proportionality analysis that is an essential component of the targeting decision governed by law
of armed conflict norms.
The net effect could be to reward the enemy for illegal behavior and impede the accomplishment of the military mission by imposing human rights considerations into the targeting process where they would otherwise be absent. This, in turn, endangers the human rights of other innocent noncombatants by encouraging the enemy to repeat the pattern so long as it provides military advantage. It’s an ethical issue worthy of discussion. Such issues are raised frequently during targeting discussions, but similar issues are encountered on the ground in a variety of different forms. The point is that the human rights values are being protected and served through the vehicle of applicable norms articulated in the laws of armed conflict. Hence, the proper measure for analyzing these issues is the wellspring of law of armed conflict, and an artificial effort to inject human rights considerations into the law of armed conflict has the potential to degrade those norms past the point of recognition.

If you will permit me to make one last example. The underlying principle of a military objective is that professional military forces must always direct military activities against things that are making effective contributions to the enemy action. This is a basic premise of the law of war because to go beyond that is to violate the law of war, but it is also would endanger those core human rights norms. You see, the same values are being protected through an alternative mechanism. It is often obvious from a distance what the ethically and legally advisable thing to do is. The challenge in the heat of battle under the influence of the stress and smoke is that the decision maker will face many situations where it’s not obvious, and yet a rapid decision must be reached on the ground to prevent further casualties. In making those determinations, the law of armed conflict is extremely clear that the commander (or soldier) on the ground gets the benefit of the doubt in assessing and validating the proportionality analysis. The law of war does not expose military forces to personal criminal responsibility based on Monday morning quarterbacking with the benefit of more perfect information than you possess at the time. Members of the profession of arms have the obligation to make the best decision at the time under the relevant circumstances in compliance with the law of armed conflict. To go beyond that core rule is not only to commit a war crime, but also to endanger the core human rights norm.

Killing people who have the lawful right to be protected from violence or damaging property which is protected are properly termed war crimes; but while those rules are found in the law of armed conflict, they are built on the human rights foundation. Take for example, military equipment near a mosque in Afghanistan. Though it may be a perfectly legal target, at the end of the day the target may not be attacked. Even though we can construct a legal argument, based on logic and the law, the commander always has the discretion to conclude that the right thing to do - the ethical thing to do, and the best operational option - is to let that one pass. But the driver in the decision is not “what I feel like doing at that moment.” The decision-making driver has to be “how can I accomplish the mission in a way that still preserves, enhances, and promotes these values to the greatest degree possible,” because that is my legal obligation. And that’s my legal obligation irrespective of what the enemy does - that’s the law.
For the purposes of deployment, United States forces will often capture the outlines of these principles in binding rules of engagement that are issued as binding orders of superior commanders. However, make no mistake about the fact that the law of armed conflict provides the proper analytical framework for addressing these difficult decisions, which is a very different issue than merely training and complying with the rules of engagement. The legal obligation is always to train and apply the clear mandates of the law of armed conflict.

I want to close by describing three developing trends. The first trend is in regards to the specific rule of engagement provision directed at protecting host country nationals. The norm in human rights law is that the party responsible for protecting the human rights of the population, as a human rights matter, is the host government. The problem arises when there is no government, when there is anarchy and chaos. It will generally not be the mission of a Special Operations detachment to become the government—the mission will generally not include the affirmative duty to deploy, establish a government, establish schools, and run a full-blown civil infrastructure. The corollary to that is that special operators will seldom assume the whole-hearted legal obligation to protect, preserve, and promote the human rights of that civilian population; on the other hand, deployed forces must always comply with the relevant law of armed norms which serve those same values.

The challenge, of course, arises when forces and persons in the environment are undermining those norms. It’s a difficult issue and something U.S. forces have repeatedly faced. Kosovo raised these issues to a large extent. It also provided a really good example of what the U.S. military and NGOs can do working together to document violations. It was a real whole-hearted effort which yielded tremendous cooperation between the NGO community, the State Department, and the deployed military to document the breadth of both war crimes and human rights violations. Kosovo was not an example of antagonistic, hostile relations; we worked together. In fact, we in the State Department developed a questionnaire that went into a consolidated database so that all the military, NGOs, IGOs in the theater were all working with the same set of data using the same database and same questionnaire. It is a really good example of coordination and cooperation.

The other thing that Kosovo taught us—and this is the second trend—is the oversight of human rights bodies over the compliance of law of armed conflict obligations. You might think that this is a different body of law and at a simplistic level you might say that human rights bodies are not experts in the law of armed conflict, and so it is not their business. There are technical legal arguments why human rights bodies do not possess the legal authority to adjudicate law of armed conflict matters. Beyond that, the trend blurs the real responsibility for human rights compliance and enforcement. Remember that the core human rights norms apply between the government and its nationals. That’s why the human rights treaties impose obligations between governments and persons in their territory and subject to their jurisdiction. It’s a conjunctive.

The recurring pattern found in the European human rights bodies, as well as the Inter-American Commission on Human Rights and other regional human rights bodies, is to stretch the treaty-based human rights obligations into extraterritorial baggage that follows military forces
(who after all are representatives of the government that deployed them) wherever they go and whatever the mission. That would make human rights law cast a broad shadow that follows deployed forces everywhere. The possible net effect of this development would be to erode the flexibility and legal latitude that the law of armed conflict intentionally provides for military forces to accomplish the mission.

This was the case of the RTS station in Belgrade, and lawyers still debate the legality of the target as a matter of targeting law. Broadcasting and television stations whose total or partial destruction affords a military advantage have long been considered lawful military targets by both the International Committee of the Red Cross and the provisions of applicable targeting law. In the interest of full disclosure, I was one of the lawyers who was asked to evaluate that target, so I come down on the side of saying absolutely it is a lawful target.

For our purposes, the issue is responsibility for the deaths of the sixteen civilians who were killed. Is there a human rights dimension to their deaths because they were unlawfully deprived of their right to life? If you package it in human rights terms, who is responsible? The European Court of Human Rights looked into this case and ultimately did not take it, but only because of a technical and legal point. The judges did not take the case because of technical jurisdictional ground, but notably they did not ground their opinion on the basis that they as a human rights body did not feel qualified to assess this target under the law of war.

They simply denied it on jurisdictional grounds, and under different circumstances there is no doubt in my mind that they would have gone down the road of fully assessing the case trying to use law of armed conflict. But you see what’s going on? The law of armed conflict, which is the relevant body of law, is being conformed and pushed back into the human rights realm. The interesting postscript about this case, which some might not have heard, is what happened to the station manager of this RTS station. Remember the default legal principle that the host nation government is always responsible for those nonderogable human rights. The station manager was ultimately prosecuted in Belgrade district court, convicted, and sentenced to 10 years for the murder of those 16 people because he knew the strike was going to come and he essentially locked them in on orders from the Belgrade government. Ergo, he violated their human rights, committed the domestic crime of murder, and was convicted for it by the appropriate domestic authorities. That is the way the system is supposed to work, and in this case ultimately did work. I highlight this because there are regional human rights bodies out there that may also be in a position to assess the decisions made by members of the profession of arms who are making those decisions based on the norms found in the law of armed conflict.

And lastly, the final trend, which is of a technical nature, has to do with the application of the law of armed conflict. This modern trend is a dramatic and visible one. This is not something sneaking in quietly, this is a big deal in legal circles. The trend is to extend the application of the core body of the law of war. The norms applicable to conflict have always been applicable in international armed conflict. In international armed conflict, it is really straightforward that the
old fashioned term “law of war” applies. The non-international armed conflict setting presents much more difficult, much grayer, challenges because there is a domestic government and human rights norms remain fully in place between that government and the people.

Special operators will confront this legal development in any foreign internal defense (FID) mission during a non-international armed conflict setting. The major development is that the body of norms previously applicable to international conflicts is being pushed down the spectrum of conflict into those non-international settings; civil wars as they might be called. The reason this warrants your attention is that it complicates the legal issues you face on the ground. The legal waters are now murkier because there is increasing doubt about what specific rule applies at a given point in time to a given tactical decision. What body of law applies? What’s the precise legal norm? In international armed conflict it is pretty easy - here’s the law, has the actor complied with that body of law or not? The further down the spectrum that the law of armed conflict norms are applied, the stronger the argument is that both bodies of laws apply. In fact, neither one has automatic precedence over the other; they apply equally in some situations.

In that setting, the crystal clear legal answer is much more difficult to arrive at, although not impossible. I would submit to you that the ethical dilemmas that arise in this context present debatable problems where the law is not so crystal clear and the textbook answer is not so easy that I can put on a 3X5 card and hand it to the decision maker in two minutes. This is a trend that special operators should watch for and learn about, because this is a major development that will affect the standards that are used in hindsight to judge their conduct and decisions.

That’s why it’s important to know the legal trends, talk to lawyers, and get good solid legal advice in order to understand what the rules are and what the debate is really about. My commitment is to assist the process of informing and educating our forces not only about the most legally advisable options, but also about the standards by which other people, NGOs sometimes, will hold them accountable in the inevitable process of comment, criticism, and critique that accompanies any modern military operation. That is why this conference is so important.
CIVIL-MILITARY RELATIONS

The Project on the Means of Intervention has found that military relations with human rights and humanitarian NGOs in the field have been a considerable problem during recent operations. The Special Warfare Center tries to prepare its students for working with a wide variety of actors in peace and conflict settings. Effectively handling the civil-military relationship will likely be an important challenge for these soldiers.

Participants disagreed about whether tensions between the military and NGOs in the field could be attributed to misunderstandings, insufficient lines of communication, or a shortage of personnel and assets—or whether more fundamental barriers exist. Civilian participants described various issues they saw as impediments to their organizations’ cooperation with the military—including a sense that the military is trying to control their activities—and the military expressed confusion about why NGOs seem so reluctant to interact. Both communities saw the value of discussion to better prepare for meeting in the field.

The lack of knowledge about the other community displayed by meeting participants stemmed in part from a lack of previous experience or interactions (or negative prior experiences). This lack of information is aggravated at least in part for the military by non-military groups’ frequent concerns about engaging directly with the military, and for humanitarian and human rights groups by the secret nature of military operations and culture.

Participants also described tension stemming from differences in mission and motivation between the two communities. They discussed how these differences play out in problems of trust and information sharing.

Types of Nongovernmental Organizations (NGOs)*

- **Humanitarian/Relief:** provide humanitarian assistance to those in need in areas affected by conflict or natural disasters (e.g. CARE, International Rescue Committee, Center for Humanitarian Cooperation, International Committee of the Red Cross)
- **Human Rights:** perform advocacy, disclosure, research, investigation, policy functions (e.g. Human Rights Watch, Amnesty International, Physicians for Human Rights)
- **NGO Networks:** address common concerns of NGOs (e.g. InterAction)

* This is a list of NGOs represented at the meeting. For a more complete listing, see www.reliefweb.org
MISSION AND MOTIVATION

Some military participants contended that NGOs and the military have the same mission—described by one participant as “teach and train so we can leave.” In this view, only their institutional approaches are different. Yet a humanitarian representative declared that, “we are not all in it together” and that it is essential for the military and NGO communities to understand and respect each other’s distinct roles and mandates. She explained that NGOs’ principles of impartiality and independence are not only necessary for mission effectiveness but also for survival. Humanitarian participants repeatedly emphasized that the only security they have is their reputation as independent from any military or political group. One civilian participant noted that humanitarian groups are generally more concerned about how the local population perceives them than the military’s opinion of them. He gave an example of a situation in which his good relations with the community saved his life after a local resident warned him of a planned attack on a café he frequented.

Humanitarian representatives expressed concern that the military did not fully appreciate their need for impartiality and independence, as evidenced by a military participant’s confusion over “when we can work together and when we can’t.” A humanitarian participant described an open letter to the Defense Department which stressed the concept of NGO impartiality. The letter, signed by several humanitarian organizations operating in Iraq, said these groups would refuse to accept U.S. Government (USG) funds for operations in Iraq if their independence was compromised by DOD oversight of their operational activities. For some participants, there appeared to be an inherent contradiction in accepting USG funds while refusing to abide by USG rules or conditions. One participant complained of a sense of entitlement displayed by some NGOs. He disagreed that it would be possible to be completely impartial while operating in Iraq or Afghanistan.

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Some humanitarian representatives also suggested that the military was not sensitive enough to the political context of civil-military interactions. One humanitarian participant noted differences in the political and legal environments in Afghanistan and Iraq and explained how these factors affected humanitarian groups’ relations with the military. She said that since OEF is under Afghan government authority and has UN backing, NGOs enjoy a degree of impartiality and independence which facilitates their ability to work with the military. The very different context of the U.S. occupation of Iraq, she noted, jeopardizes NGO independence and impartiality, and thus their capacity for cooperation.

One source of tension occurs when the military, as part of a “hearts and mind” campaign, provides humanitarian aid that may duplicate the work of non-military groups that aim to provide more long-term, sustainable aid. A humanitarian representative noted that, while there may be an overlap in roles between the military and humanitarian groups (especially providing relief), each community maintains separate mandates. Their respective institutions are not ultimately in Iraq for the same reasons, one participant said. NGOs are there to provide humanitarian assistance to those who need it, regardless of their political or religious beliefs; the military is there to remove the regime and search for weapons of mass destruction.

**Security and Information Sharing**

These differences in missions and motivations affect the level of trust displayed by the two communities and their willingness and ability to share information. Both the military and NGOs benefit from and need to share information with each other to some extent, but neither community is willing or able to fully share, for different reasons. A military participant asserted that transparency is the “bedrock of trust” when building relationships with non-military organizations and urged SOF to be prepared to take part in “transparent operations” to do so. Yet the military is constrained in the information it can share due to operational security concerns. Similarly, NGOs are reluctant to share any information that might be regarded by the local community as intelligence. A non-military participant explained that NGOs are often willing to share information about personal security and shared spaces such as roads and airstrips, but are often reluctant to provide information on topics such as the formations of rebel groups.
Illustrating how differently actions can be viewed by each community, the issue of SOF attire during OEF arose as a flashpoint of disagreement between military and civilian participants. At the heart of the issue was the security of both communities, which both military and non-military participants said depends in large part on the support (or at least the tacit acceptance) of the local population. A military participant defined the uniform worn by SOF during combat operations in both Afghanistan and Iraq as “nonstandard,” and explained that SOF wore civilian attire, tribal mufti, and long hair in order to blend in with proxy forces and indigenous peoples. The military participant said that while weapons were always noticeable and small uniform items visible at close range, the general appearance from a distance resembled that of local warriors. The purpose of such attire, he explained, was to avoid standing out, since U.S. SOF were priority targets for assassination by enemy forces. He noted that nonstandard attire was directed to be worn until the threat environment was deemed non-hostile by the military, and that the use of nonstandard uniforms decreased as combat operations wound down.

Civilian participants suggested that this practice—particularly by soldiers performing humanitarian relief functions—created confusion, as members of the SOF community might be seen as NGOs. Participants expressed suspicion that SOF were using this confusion to its military advantage. Civilian participants felt that by blurring the lines between the two communities in the eyes of the local population, U.S. forces were endangering the NGOs’ impartiality and thus their staffers’ personal safety.

Discussions suggested that understanding the perspectives, missions, and motivations of each community helps illuminate the underlying reasons behind some coordination difficulties in the field. Yet progress towards mutual understanding appeared unlikely to resolve the tensions arising between these groups in all situations.
**Lieutenant Colonel John Fenzel, III, USA:**

**The Human Dimension of Human Rights**

The human dimension of human rights is hard to understand. It’s fleeting in any discussion, it’s hard to relate to, and it’s different for everyone. Not everyone is going to understand it in the same context in which you understand it. Not everyone is going to get it, period, because they may not have been in environments where human rights are an issue.

There is a natural tension between human rights and war, but there is also an intrinsic imperative for all of us to pay attention to it, to understand it and to operate within those parameters. Human rights is about refugees, noncombatants, disease, prisoners and how to treat them, cultures where human life is secondary, mass graves in places like Srebrenica and Kirkuk, rape camps, genocide where families and entire cultures are wiped out, and children who are locked in basement because their parents are afraid they’ll get killed. It is about human dignity and doing the right thing even when you’re being opposed by your own people, in some cases, because it’s not convenient, or there’s no operational imperative for it, or ‘it’s not our mission.’ But human rights are everybody’s mission. If people around you don’t understand it, it’s your job to make them understand it.

The Robin Sage training exercise exposes officers and NCOs to dilemmas they will face in their deployments. Although the scenarios seem unlikely, they can happen. For example, when I went though the exercise as a captain, I had to talk a rebel commander out of executing a prisoner. Ten months later in Kuwait, I had to talk a Kuwaiti lieutenant colonel out of executing an Iraqi prisoner by telling him we have to treat the prisoners with dignity, that the prisoner might provide valuable information, and that if he kills him, the SOF will have to leave. And the Kuwaiti officer backed down. These are all things you will have to deal with.

For the SOF community, it is very real. Human rights is not an academic issue. You have to deal with it because you are the people there who can make a difference, you don’t walk away from it, you don’t ignore it, you engage. A Jewish chaplain once told me that in war, you face two enemies. The easy one is the enemy, but the hard one is the one within—because it can bring out the worst in people. But it can also bring out the best in people.

Jeff Sawyer, an NCO who was a junior engineer under my command in Operation Desert Storm, found kids throwing rocks at a minefield in Kuwait City near an orphanage, trying to detonate the mines. He reported the minefield; the mine center said, “We’ll get to it. Just cordon it off.” In the months that followed, Jeff volunteered his time in the orphanages to keep the children away from the mines.

When the mineworkers arrived three months later, they found that the mines had been defused. Beside Jeff Sawyer’s bunk I found the pins. He had gone on his own time, at night, to demine the entire field alone. When asked why he had done it, he replied, “It’s for the kids.” I didn’t
CONCLUSION

The discussion increased awareness in the military and human rights communities of the other group’s values, missions, operational styles, and ethical considerations. The meeting raised questions and highlighted human rights challenges both communities will face. Fundamental differences were highlighted over roles and mandates. Overall, the military appeared to be less interested in a discussion of how they make difficult decisions in the field—they repeatedly mentioned that they would know the right thing to do. Instead, they seemed to want to understand the needs and motivations of NGOs as individuals and institutions so that they could work with them more effectively. The human rights participants, on the other hand, seemed to want the military to act differently in certain situations—for example, to interpret the law differently, pay more attention to human rights in specific situations, or assume extra-legal obligations, investigations, and accountability. Humanitarian groups also wanted the military to respect their independence and stay out of their line of work and instead focus on security.

Several of the discussions suggested that some NGO concerns about SOF stem at least in part from strategic decisions—such as whether to train foreign militaries or to wear nonstandard uniform—in which only the most senior military leaders have input. These issues were “above the pay grade” of the participants. Nonetheless, discussions helped educate the civilian participants about differences between policy and execution, and helped SOF better understand their role as implementers in a larger—and often highly controversial—policy debate.

The open and respectful nature of the interactions produced small steps towards greater understanding of the other community. Despite considerable differences of opinion and interpretation, participants were better able to appreciate each others’ perspectives on their roles and mission. Participants widely agreed on the utility of such interactions in advance of on-the-ground contact in a more chaotic and possibly less collegial environment. Several participants remarked on the importance of informal conversation during breaks and meals and suggested that more time should be provided for such interactions.
A military official expressed confidence that the meeting had served a critical and important purpose in the training and “transformation” of the Special Forces students. He said that interacting with the NGO representatives exposed the students to a new way of thinking and made them more adaptive and able to operate in an ambiguous environment. They would be better equipped to find common ground with different people and to anticipate the challenges they would face in the field.

A Special Forces instructor stated that from a special operations perspective, the discussions between NGO and Special Forces leaders with recent field experiences offered a glimpse into the difficulty of ethical decision-making in an environment that is often chaotic and ambiguous. He believed that these exchanges challenged Special Forces officer candidates to recognize the importance and ever-present nature of the human rights dimension in their strategic landscape. Another instructor mentioned that the discussions brought home the importance of individual character and values-based training. He concluded that the baseline lessons for these new special operators were that human rights considerations are integral to military decision-making and that ethical decisions have policy and strategy implications.

The lessons derived from the two days of discussion were immediately applicable. Shortly after the conference, fifty of the officers participated in the Robin Sage Unconventional Warfare Exercise. During this 35-day culminating event, they faced numerous human rights and ethical dilemmas as a part of scripted training scenarios that play out against the backdrop of an insurgency. Upon completion of Robin Sage, these newly-certified Special Forces officers were only months away from possible deployments where human rights considerations would be experienced first-hand.

Discussions reportedly generated improved Special Warfare Center instruction in the area of human rights and ethical decision-making. The conference is likely to be an annual event, and other institutions and branches have expressed interest in conducting similar meetings. The meeting fostered institutional linkages and individual relationships with the intent of bypassing perceived barriers and better understanding of fundamental differences. While all agreed that there was room for progress, the general consensus that the meeting was a successful first step.
APPENDIX 1 – WORKSHOP AGENDA

WEDNESDAY, JUNE 11

Opening Remarks

Major General William Boykin, USA, JFK Special Warfare Center and School
Sarah Sewall, Carr Center for Human Rights Policy, JFK School of Government

Why Human Rights Matter:  Michael Ignatieff, Carr Center

SOF Roles and Strengths:  Ambassador Robert Gelbard

Legal Obligations and Training of SOF:  Lieutenant Colonel Michael Newton, USA, U.S. Military Academy at West Point

Panel Discussion—Operations

Brigadier General Gary Harrell, USA, Commander, Special Operations Command, Central Command
Dale Andrade, U.S. Army Center of Military History
Reuben Brigety, Human Rights Watch
Claudio Cordone, Amnesty International
Moderator:  Major Roger Carstens, USA, JFK Special Warfare Center and School

2:30 – 3:00  Break

3:00 – 4:30  Breakout Sessions

6:00 – 7:20  Reception

7:30  Dinner
APPENDIX 1 – WORKSHOP AGENDA

THURSDAY, JUNE 12

8:30 – 10:00  Panel Discussion—Working with Local Forces

Lieutenant Colonel John Fenzel, III, USA, Commander, 1st Battalion, 1st Special Warfare Training Group (Airborne)
Major Fred Krawchuk, USA, JFK Special Warfare Center and School
Lora Lumpe, Independent Consultant and member, Amnesty International USA Working Group on Military, Security and Police
Susannah Sirkin, Physicians for Human Rights
Moderator: Major Mark Mitchell, USA, Operations Officer, Special Operations Command, Central Command

10:00 – 10:30  Break

10:30 – 12:00  Breakout Sessions

12:00 – 1:00  Lunch

1:00 – 2:30  Panel Discussion—Civil-Military Coordination

Lieutenant Colonel Curtis D. Boyd, USA, Commander, 3rd Battalion, 1st Special Warfare Training Group (Airborne)
Colonel Michael Stout, USA, JFK Special Warfare Center and School
Roy Williams, Center for Humanitarian Cooperation
Paolo Tripodi, U.S. Naval Academy
Moderator: Sandra Mitchell, International Rescue Committee

3:00 – 4:30  Breakout Sessions

4:30  Closing Remarks

Colonel Michael Stout, USA, JFK Special Warfare Center and School
Appendix II – Discussion Scenarios

**Discussion Session One—Distinguishing combatants and military assets**

**Collocation of military and civilian assets**
Scenario A: Afghan ‘wedding party’ bombing (June 30, 2002)

What are the tradeoffs in risks and advantages to an operation that could result in civilian harm?

How should a mission’s worth be assessed, based on the expected military advantage and likely or possible civilian harm? (Ex. striking antiaircraft sites located in Afghan villages to protect air assets—is there a way to avoid the range of their guns? Is it essential to destroy this particular site?)

How much flexibility and independence do SOF field commanders have in making these assessments?

**Distinguishing combatants and noncombatants**
Scenario B: Iraq checkpoint incident (March 31, 2003)

To what extent do training exercises prepare troops for the split-second decisions that are required from troops on the ground to identify noncombatants?

- Are enemy tactics (e.g. use of human shields, wearing civilian clothes) explored often enough (and realistically enough) in training scenarios to be useful in theater?
- What changes in training or ROE (if any) could improve SOF readiness to deal with these issues?
- To what extent do human rights issues/training impede or reinforce preparation for and execution of the mission? Are there instances in which respect for human rights contributes to military effectiveness?

To what extent does a U.S. military presence on the ground improve the ability to distinguish between combatants and noncombatants?

In what situations might a U.S. ground presence result in greater risk to civilians?
Discussion Session Two—Local Forces

Training/Vetting
Scenario: The Indonesian military killed 270 civilians in Dili, East Timor in 1991 and approximately 1000 in East Timor following the 1999 referendum supporting independence. During the 1990s, Indonesia received training under the Joint Combined Exchange Training (JCET) program despite Congressional action to cut off training after the 1991 incident.

The Leahy amendment to the 1996 Foreign Operations and Defense Appropriations Act stipulates that foreign recipients of U.S. military training must be ‘vetted’ to eliminate human rights violators from receiving U.S. assistance. To what extent do these vetting requirements impede or delay the training mission?

How reliable is the information obtained in country on alleged human rights violators? To what extent may false accusations play a part in the human rights vetting process?

To what extent are human rights issues a part of foreign military training? Given the danger of appearing paternalistic, how is this information imparted (classroom, training exercises, by example)?

Combat
Scenario: Hundreds of Taliban troops died in sealed cargo containers during their transport to Sheberghan prison by Northern Alliance forces under the control of General Dostum. At the time, General Dostum’s troops were participating in combined operations with SOF, yet there were reportedly no U.S. forces present at any time during the convoy incident.

How much of what local forces are doing is ‘knowable’ to SOF on the ground? To what extent are SOF required (or allowed) to investigate alleged human rights violations?

- What if SOF receive credible intelligence about a likely future violation by partner forces?

Are reporting requirements for human rights abuses sufficiently defined? Universally understood? Open to interpretation?

Why is civil-military coordination so hard?

What mistakes are the most common? The most harmful?

Was the civil-military experience in OEF a precedent or aberration?
  • Mixed military mandate of combat and relief
  • Pre-conflict planning involving military and NGOs
  • How might the benefits of increased communications and efficiency weigh against the potential risks of jeopardizing NGO impartiality?

What were the most contentious issues between the military and NGO communities on the ground in Afghanistan?
  • Uniforms/jeopardized neutrality of NGOs
  • Information sharing
  • Motivations for providing humanitarian assistance

Is there a common understanding of what the lessons from Afghanistan were?
  • Resourcing/staffing
  • Planning—timing, depth/intensity, actors involved
  • Efficiency
  • Security (short and long term)
  • Credibility (with local population, other actors on the ground)
  • Local knowledge (language, culture)

Have ‘lessons learned’ regarding civil-military relations in Afghanistan been effectively applied in Iraq?
APPENDIX III – PARTICIPANT BIOGRAPHIES

Dale Andrade
Mr. Andrade is Senior Historian, U.S. Army Center of Military History. He is a specialist in counterinsurgency and low intensity warfare, and for the past 10 years he has concentrated on studying the Vietnam War. He is the author of three books about Vietnam and is currently writing the last volume in the Army’s Vietnam combat operations series, covering 1969-1973.

Shawn Bar dwell
Mr. Bardwell is a Senior Program Associate with the American Council for Voluntary International Action (InterAction), where he works to enhance member organization capacity to address conflict, chemical, biological, and radiological threats in relief operations, and promote a better understanding within the military of how and why NGOs operate the way they do. Previously, he worked in Kosovo and the Republic of Ingushetia for the International Rescue Committee and in Puerto Rico and the Dominican Republic for the United Methodist Committee on Relief. Prior to his NGO employment, Mr. Bardwell served in the United States Peace Corps for nearly six years in Swaziland and Zambia. He holds a Master’s degree in public administration.

Lieutenant Colonel Curtis D. Boyd, USA
Lieutenant Colonel Boyd is Commander, 3rd Battalion, 1st Special Warfare Training Group (Airborne). He was commissioned from the ROTC in 1984 with infantry assignments in Germany and Fort Bragg followed by assignments as a Psychological Operations Officer in the 4th PSYOP Group and elsewhere within special operations. His operational experiences range in intensity from tactical military operations to national strategic-level coordination and integration. He holds a BA from Norwich University and is a graduate of the Special Operations and Low Intensity Conflict Curriculum at the Naval Postgraduate School.

Major General William G. Boykin, USA
General Boykin assumed command of the JFK Special Warfare Center and School in March 2000. Previously, he served as Commanding General, U.S. Army Special Forces Command (Airborne). Throughout his career, General Boykin has held a variety of assignments on the Joint Staff, Army Staff, Joint Special Operations Command, and CIA Headquarters. General Boykin is a graduate of the Infantry Officer Basic and Advanced Course, Armed Forces Staff College, and U.S. Army War College. He earned a Master's degree in Public Administration from Shippensburg University.

Reuben E. Brigety, II
Dr. Brigety is a researcher with the Arms Division of Human Rights Watch (HRW) in Washington, DC and an adjunct professor of international relations at George Mason University. His main research areas include human rights issues associated with weapons use and civilian protections
in armed conflict. In March 2002, he served on an HRW field mission investigating civilian deaths caused by the U.S. air war in Afghanistan. He is a Distinguished Graduate of the U.S. Naval Academy.

**Major Roger Carstens, USA**

Major Carstens commands the Special Forces Company responsible for training all Army officers entering Special Forces. A former Army Ranger, he participated in a combat parachute assault during the invasion of Panama and commanded a Special Forces Company on the Kosovo/Albanian Border during Operation Allied Force. A frequent contributor on Fox News and a featured guest on C-SPAN's Washington Journal, he has been published in the *Washington Times*, the *Christian Science Monitor*, the *National Review Online*, the Naval Institute's Proceedings, and is a co-author of a study on non-traditional threats to global security to be published by the Woodrow Wilson International Center for Scholars. A graduate of the U.S. Military Academy, Major Carstens holds a Master’s Degree in National Security and Strategic Studies from the Naval War College.

**Claudio Cordone**

Mr. Cordone is Senior Director for International Law and Organizations at Amnesty International's International Secretariat. Prior to his current position, he worked for Amnesty International as director of its main policy unit and as a researcher on the Middle East. In 1997-1998 he took a leave of absence from Amnesty to set up the Human Rights Office of the UN Mission in Bosnia and Herzegovina, in charge of conducting human rights investigations as part of the UN program of police reform.

**Lieutenant Colonel William Council, USA (Ret.)**

Lieutenant Colonel Council currently serves as the Dean of Development at Richmond Community College and Executive Director of the Richmond Community College Foundation in Hamlet, North Carolina. Since his retirement, he has participated as a consultant in Special Operations futures exploration as author of operational concept papers; futures wargames designer, facilitator, participant, and analyst; and curriculum and training analyst. His service encompassed Infantry assignments with the 82nd Airborne Division and 193rd Infantry Brigade (Separate) as well as charter membership in the Special Forces Branch. He served as an advisor in El Salvador and commander of the 3rd Battalion, 7th Special Forces Group (Airborne) and was the primary author of the 1992 version of Field Manual 100-25, Doctrine for Army Special Operations Forces.

**Lieutenant Colonel John Fenzel, III, USA**

Lieutenant Colonel Fenzel is Commander, 1st Battalion, 1st Special Warfare Training Group (Airborne). Before his current position, he served as the Staff Director for the Office of Homeland Security for Governor Tom Ridge. Colonel Fenzel has served as the Operations Officer for 10th Special Forces Group, directing operations in Kosovo and Europe. He has commanded three Special Forces companies in 5th and 10th Special Forces Groups, leading the first Army company deployments to Pakistan and the Baltic States. In Bosnia, he commanded the Special Operations
Command and Control Elements in the U.S. and British sectors, working closely with the United Nations to secure the indictments and convictions of those responsible for war crimes in Srebrenica. He commanded Operational Detachment Alpha 582 during Operations Desert Shield and Desert Storm.

**Robert Gelbard**

Ambassador Gelbard is currently an international consultant engaged in a diverse range of projects and geographic areas with several multinational companies. Mr. Gelbard previously served as United States Ambassador to Indonesia, 1999-2001; Special Representative of the President and Secretary of State for the Balkans, 1997-1999; and Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, 1993-1997. Additional assignments include Principal Deputy Assistant Secretary of State for Inter-American Affairs, 1991-1993; United States Ambassador to the Republic of Bolivia, 1988-1991; Deputy Assistant Secretary of State for South America, 1985-1988; and Director, Office of Southern African Affairs, 1984-1985. He holds an AB from Colby College and an MPA from Harvard University.

**Christophe Girod**

Mr. Girod is Director of the Washington Office of the International Committee of the Red Cross (ICRC). He previously served as Deputy Director, Resources at ICRC Headquarters in Geneva; Project Director, “People on War;” Deputy Delegate General for Western and Central Europe and the Balkans, ICRC Detention Division; and Head, ICRC Delegation, Kuwait (1991). He is the author of *Tempete sur le Desert*, which examines ICRC involvement during the Gulf War. Mr. Girod holds a degree from the Graduate Institute of International Studies in Geneva.

**Brigadier General Gary Harrell, USA**

Brigadier General Harrell is the Commanding General of the Special Operations Command, Central Command. Prior to his current assignment, he served as the Assistant Division Commander of the 10th Mountain division in Afghanistan. General Harrell served as the Director of the Joint Security Directorate of U.S. Central Command, where he formed the CENTCOM Joint Inter-Agency Task Force. He commanded the 1st Operational Detachment Delta from July 1998 to July 2000. In Somalia, he commanded the C Squadron of the 1st Operational Detachment Delta. He has served as the Army Special Operations action officer in the Joint Special Operations Command, participating in Desert Shield and Desert Storm.

**Michael Ignatieff**

Dr. Ignatieff is Director of the Carr Center of Human Rights Policy and Carr Professor of Human Rights Practice at Harvard University. He has researched ethnic war in Serbia, Croatia, Bosnia, Rwanda, and Afghanistan. His academic publications include: *The Warrior’s Honor: Ethnic War and the Modern Conscience; Virtual War: Kosovo and Beyond; The Rights Revolution; and Human Rights as Politics and Idolatry.*
**Major Fred Krawchuk, USA**
Major Krawchuk has served in variety of Special Operations assignments in the United States, Latin America, and Europe. A published author on leadership and a grant recipient for work on counter-terrorism, Fred served as an Olmsted Scholar in Spain and is currently a Term Member with the Council on Foreign Relations. Major Krawchuk is a General MacArthur Leadership Award winner and holds a B.S. from the U.S. Military Academy at West Point, an MPA from Harvard, and an MBA from IESE.

**Lora Lumpe**

**Sean McFate**
Mr. McFate graduated from Brown University in 1992, after which he served as a Platoon Leader and Executive Officer in 1st Brigade, 82nd Airborne Division, followed by a tour in Germany. In 2000, he left the Army as a Captain with an Honorable Discharge. Among other activities, Mr. McFate is a volunteer member of Amnesty International’s Military, Security and Police Transfers Working Group in Washington, DC. In the fall, he will be a student at Harvard University's Kennedy School of Government.

**Major Mark E. Mitchell, USA**
Major Mitchell is currently assigned as a plans officer with the Special Operations Command, Central Command at MacDill Air Force Base in Florida. He has served as a detachment commander, company commander and operations officer in 5th Special Forces Group, including service in Afghanistan during Operation Enduring Freedom. Major Mitchell served with the 24th Infantry Division (Mechanized) during Operations Desert Shield and Desert Storm. He holds degrees from Marquette University and the Naval Postgraduate School.

**Sandra Mitchell**
Ms. Mitchell is the vice president for government relations and advocacy at the International Rescue Committee (IRC) and previously served as the IRC mission director in Kosovo/Macedonia. She recently returned from eight years in the Balkans working on human rights, transitional justice, rule of law, and humanitarian issues.
Lieutenant Colonel Michael Newton, USA
Lieutenant Colonel Newton is an Assistant Professor in the Department of Law at the U.S. Military Academy at West Point. He previously served as the Senior Advisor to the United States Ambassador-at-Large for War Crimes Issues. Previous positions include U.S. representative, U.N. Planning Mission for the Sierra Leone Special Court; Special Advisor, Office of War Crimes Issues; and Faculty Member, International and Operational Law faculty, Judge Advocate General’s School, Charlottesville, Virginia. Colonel Newton graduated from West Point and holds a JD and LLM from the University of Virginia.

Kelley Reese
Ms. Reese is a Research/Program Assistant at the Carr Center, where she works on the Project on the Means of Intervention. Prior to joining the Carr Center, she worked as a Research Associate at the Institute for Foreign Policy Analysis. There, she engaged in various research and writing projects related to U.S. foreign and defense policy, foreign defense markets, and homeland security. Previously, Ms. Reese worked as an Intelligence Analyst at the Central Intelligence Agency. She holds a BA in International Studies/Political Science from the University of North Carolina-Chapel Hill and an MA in National Security Studies from Georgetown University.

Kalev I. Sepp
Dr. Sepp is a consultant for the RAND Corporation. He previously served as a U.S. Army Special Forces officer, and earned his Combat Infantryman's Badge as a brigade adviser in the Salvadoran Civil War. Dr. Sepp recently co-wrote an official study of Army special operations in Afghanistan. He holds a Ph.D. in American Diplomatic History from Harvard University.

Sarah Sewall
Ms. Sewall is Program Director at the Carr Center for Human Rights Policy at Harvard University, where she runs the Project on the Means of Intervention. She served as Deputy Assistant Secretary of Defense for Peacekeeping and Humanitarian Assistance during the Clinton Administration and as Senior Foreign Policy Advisor to Senate Majority Leader George J. Mitchell. She has worked at a variety of security institutes and written on multilateralism, military operations, and international law.

Susannah Sirkin
Ms. Sirkin has been Deputy Director of Physicians for Human Rights (PHR) since joining in 1987. Ms. Sirkin has organized medical human rights investigations to dozens of countries, including PHR's exhumations of mass graves in the former Yugoslavia and Rwanda for the International Criminal Tribunals. She has authored and edited numerous reports and articles on the medical consequences of human rights violations, physical evidence of human rights abuses, and physician complicity in violations. Ms. Sirkin graduated from Mount Holyoke College and received her Master of Education degree at Boston University.
Colonel Michael E. Stout, USA
Colonel Stout is currently the Deputy Commandant for Reserve Affairs, JFK Special Warfare Center and School. Prior to his current assignment, Colonel Stout was the Deputy Commander, Combined Joint Civil Military Operations Task Force (CJCMOTF) in Kabul, Afghanistan. As the Deputy component commander, he had operational responsibility for all Civil Affairs, Civil-Military Operations and commanded the Provincial Reconstruction Teams (PRT). He previously served at the U.S. Army War College/U.S. Army Peacekeeping Institute as faculty and staff.

Paulo Tripodi
Dr. Tripodi is an Ethics Fellow at the Center for the Study of Professional Military Ethics at the U.S. Naval Academy and Assistant Professor in Defense Studies at the Catholic University of Chile, Institute of Political Science in Santiago, Chile. He has been a senior lecturer at Nottingham Trent University; a resident fellow at the Italian National Agency for New Technology, Energy & the Environment; Cultore di Materia of History and Institutions in African and Asian countries, at the University of Padua’s Faculty of Political Science; and served as a First Lieutenant with the Carabinieri, Italian Military Policy, in Rome.

Howard Roy Williams
Mr. Williams is President and Chief Executive Officer of the Center for Humanitarian Cooperation. Previously, he served as Director, Office of Foreign Disaster Assistance, Bureau for Humanitarian Response, U.S. Agency for International Development (USAID), where he oversaw disaster preparedness and relief and rehabilitation programs throughout the world. Before joining government service, he served as Director of Overseas Operations and Vice President for Overseas Policy and Planning for the International Rescue Committee (IRC). At the IRC, he established overseas programs worldwide and led efforts that resulted in the conceptualization, creation, and staffing of the Emergency Preparedness Unit.
PROJECT ON THE MEANS OF INTERVENTION

SARAH SEWALL
PROGRAM DIRECTOR

Through the Project on the Means of Intervention, the Carr Center for Human Rights Policy aims to advance our understanding of humanitarian challenges that arise in the context of using military force. The effort, which is supported by the Carnegie Corporation of New York, brings active duty and retired officers from the United States military and other security specialists together with members of the human rights and humanitarian communities in a series of workshops to explore how human rights considerations are factored into, and affected by, military intervention.

The way that military force is used receives far less attention in policy circles than does the question of when states should intervene militarily. Yet the means of military intervention have dramatic implications for the security of civilians in the target country, the security of intervening forces, and the effectiveness of the intervention itself.

Some Project participants view military interventions as concerned with force protection and mission accomplishment at the expense of protecting vulnerable civilians in the target country. Others see humanitarian constraints, whether legal or political in nature, as unduly complicating the use of force and compromising its effectiveness. By bringing these perspectives together, the project hopes to illuminate a range of topics while exposing participants to competing views. A central question for this project is the degree to which moral and pragmatic interests may overlap in applying force consistent with humanitarian principles.
The first phase of the workshop series included six meetings from 2001-2003 and incorporated discussions on general topics such as air power, targeting, collateral damage, ground operations, and civil-military coordination as well as specific U.S. military engagements including Operation Enduring Freedom and prospective operations in Iraq. The second phase of the Project will delve deeper into the issues surrounding the humanitarian effects of war and assess the lessons learned of the conflict and post-conflict stages of Operation Iraqi Freedom.

The project aims to illuminate a set of issues that have become increasingly important during the last decade. It intends to foster more critical and nuanced thinking among participants and their associated institutions, and to promote understanding between the military and human rights communities both in the policy process and ultimately on the ground. Ultimately, the project aims to affect the way nations intervene militarily, making the use of military power more consistent with humanitarian principles.
The mission of the Carr Center, like the Kennedy School, is to train future leaders for careers in public service and to apply first-class research to the solution of public policy problems. Our research, teaching and writing are guided by a commitment to make human rights principles central to the formulation of good public policy in the United States and throughout the world.

Since its founding in 1999 through a gift from Kennedy School alumnus Greg Carr, the Center has developed a unique focus of expertise on the most dangerous and intractable human rights challenges of the new century, including genocide, mass atrocity, state failure and the ethics and politics of military intervention.

In approaching such challenges, we seek to lead public policy debate, to train human rights leaders and to partner with human rights organizations to help them respond to current and future challenges. We also recognize that the solutions to such problems must involve not only human rights actors, but governments, corporations, the military and others not traditionally conceived of as part of “human rights” efforts. Thus, we seek to expand the reach and relevance of human rights considerations to all who influence their outcomes.

The Center uses its convening power to create a safe space for human rights organizations and other policy actors to engage in constructive self-criticism and to forge new partnerships.

The Center uses its research capacity to evaluate the human rights policies of the United States and other governments and to analyze the dilemmas that need to be resolved when human rights principles are brought to bear on major public policy choices.
The Center uses its teaching capacity to inspire future leaders to make respect for human rights principles a central commitment of democratic leadership.

PROGRAMS

AMERICAN EXCEPTIONALISM
This colloquium series explores the unique nature of American rights culture and America’s longstanding habit of exempting itself from international human rights obligations and international legal frameworks. Leading scholars from a variety of fields explore the origins and impact of “American Exceptionalism” in areas ranging from freedom of speech to economic and social rights. The series has produced a vibrant intellectual exchange among many of America’s leading scholars in preparation for an edited volume on the causes and consequences of this exceptionalism, edited by Michael Ignatieff.

NATIONAL SECURITY AND HUMAN RIGHTS
This unprecedented initiative, led by Sarah Sewall, brings U.S. military officers and other security experts together with members of the human rights and humanitarian communities in a series of workshops to discuss how humanitarian considerations are affected by, and factored into, military operations. The program fosters dialogue and promotes critical thinking among participants and their associated institutions. Publications and public conferences bring substantive analysis from this program to a wider audience.

RESPONSES TO GENOCIDE AND MASS ATROCITIES
Publication of Samantha Power’s groundbreaking book, “A Problem from Hell”: America and the Age of Genocide (Basic Books, 2002), marked the culmination of the Carr Center’s extensive research project on U.S. policy responses to genocide in the 20th century. The Carr Center continues to explore legal, political, and military responses to mass atrocity through the program, and has hosted numerous speakers at the Kennedy School to analyze national and international mechanisms geared to curb atrocity.

NONGOVERNMENTAL ORGANIZATION (NGO) EFFECTIVENESS
The Carr Center’s research into human rights nongovernmental organization effectiveness has led to facilitative efforts in conferences on topics from the role of human rights NGOs in
reporting on the war in Kosovo to how human rights NGOs can increase their advocacy around the global AIDS crisis. Research has also led to critical analyses of human rights NGO work in publications by Carr Center faculty and staff.

THE SOCIAL PSYCHOLOGY OF CONFLICT ESCALATION
This program examines the application of social psychology of conflict to human rights policy. Led by Carr Center faculty affiliate Professor Keith Allred and sponsored by the Carr Foundation, the program’s project on resolving the Nez Perce/local government conflict in Idaho applies conflict resolution research to a dispute between a tribal government and surrounding city and county governments.

COMPREHENSIVE SECURITY AND SUSTAINABLE DEVELOPMENT
This initiative, led by Professor Sanjeev Khagram, produces cutting-edge research, teaching, and practitioner engagement on the shift from a globalization model focused narrowly on national security and economic growth to one designed to achieve comprehensive security and sustainable development.
The U. S. Army John F. Kennedy Special Warfare Center and School - the Army’s special operations university - is responsible for special operations training, leader development, doctrine and personnel proponency for Special Forces, Civil Affairs and Psychological Operations.

The Center and School’s Training Group conducts the complete spectrum of special operations training. The Group’s 1st Battalion conducts the four of the six phases of training in the Special Forces Training Pipeline: Phase 1 is the three-week Special Forces Assessment and Selection course, Phase 2 is Small Unit Tactics training and Phase 4 is the culmination exercise that includes “Robin Sage”. Phase 6 is the Survival, Escape, Resistance and Evasion course. The 2nd Battalion teaches advanced special operations skills like military free fall; the combat diver’s course; and the advanced special operations course. The 3rd Battalion is the home of all civil affairs, psychological operations. Additionally, the 3rd Battalion teaches an extensive regional studies program and all Special Forces Warrant Officer courses. The battalion also conducts Phase 5 of the Special Forces Training Pipeline—language training. The 4th Battalion conducts Phase 3 of the SOF Training Pipeline including the Weapons, Engineer, Communications and Medical Sergeant’s courses and the Officer Qualification course.

The Joint Special Operations Medical Training Center is responsible for all U.S. Military Special Operations Forces’ combat medical training including Army Rangers and Special Forces to Air Force Para-rescuemen and Combat Controllers to Navy SEALs.

The Noncommissioned Officer Academy prepares enlisted soldiers for leadership positions in all Army Special Operations Forces including Special Forces, Civil Affairs and Psychological Operations. Soldiers receive training in leadership skills, military studies, resource management, effective communication, operations and intelligence, unconventional warfare, operational planning, psychological operations and advanced military occupational skills.
The Center and School’s Directorate of Training and Doctrine develops all special operations doctrine and works with the field and the Training Group to develop all courses and training programs.

The Proponency Office has the responsibility for managing the careers of all Special Forces, Civil Affairs and Psychological Operations soldiers from the time they enter one of the career fields until they leave.

The International Military Student Office is responsible for oversight of international students that attend any one of many courses offered by the Center and School.

The Army Special Operations Battle Lab working in conjunction with Army and other Service Battle Labs, conduct warfighting experiments using simulation, digitized command and control systems, and real world deployments to develop future operational capabilities and support for Special Operations Force unit efforts to achieve full spectrum dominance.

The Security Assistance Training Management Office is charged with coordinating the deployment of Security assistant teams to support friendly nations and meet regional challenges to our own and Allied interests aboard.
ETHICAL DILEMMAS FOR SPECIAL FORCES
WORKSHOP
JUNE 11-12, 2003

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