



**Semi-Annual Lesson Report:**  
**Protection of Civilians (POC) and**  
**Civilian Harm Mitigation & Response (CHMR)**  
**Volume II**  
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## Introduction

The fighting in Ukraine, initiated a year ago by the Russian invasion, is a daily demonstration of any armed conflict's impact on resident or neighboring populations. Russia's war on Ukraine is certainly not the only ongoing armed conflict in the world at this time. However, its ubiquitous imagery promotes near real-time reflection of the nature of war—past, present, and future. That reflection includes a continuing review of the suitability of the laws, policies, and programs designed to protect civilians or, at the least, mitigate the harm to them.

Perhaps the first questions that occur in this reflection are the following: *What is protection?* and *what gets protected?* The closest answer to the first question may be found in the United Nations (UN) policy document, *The Protection of Civilians in United Nations Peacekeeping*. Focused on peacekeeping operations, as indicated in its title, it emphasizes “there is no UN-wide definition of ‘protection of civilians’” but “there is a common objective...to protect civilians from *risks and threats to their physical integrity*.”<sup>1</sup> [emphasis added.] While *physical integrity* is not further defined in this policy, by implication it suggests protection against bodily harm to a population. Such *physical integrity* harm may be from weapons, personal/sexual violence, disease, or exposure.

Similar *protection of civilians* and *harm mitigation* concepts extend to armed conflict and are codified in International Humanitarian Law/Law of Armed Conflict (IHL/LOAC).<sup>2</sup> Dr. Karolina MacLachlan, writing for the North Atlantic Treaty Organization (NATO) website in June 2022, also highlights civilian protection and summarizes thusly:

Protecting civilians is a key aspect of warfare and an ethical and strategic imperative in all types of conflict, from hybrid warfare to counterinsurgency and large-scale military operations where the adversary might be using tactics designed to cause civilian harm.<sup>3</sup>

*Physical integrity* is the aspect of protection that most observers contemplate when considering protection of civilians (POC) and/or civilian harm mitigation and response (CHMR) policies and measures. Yet *physical integrity*, while of obvious vital importance to a population, is only one of many POC/CHMR concerns. For instance, NATO's 2018 *Military Concept on the Protection of Civilians* has as an objective, “safeguard civilians from harm by belligerents,” but also highlights three others: “the culture, history, demographics,” “access...to basic needs and services,” and “a safe and secure environment through support to the local government and its institutions.”<sup>4</sup>

The United States (US) Department of Defense (DoD) *Civilian Harm Mitigation and Response Action Plan*, reiterates the enlargement of POC/CHMR beyond *physical integrity*. It acknowledges:

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<sup>1</sup> United Nations Department of Peace Operations, *The Protection of Civilians in United Nations Peacekeeping*, Ref. 2019.17, November 1, 2019, <https://peacekeeping.un.org/en/protection-of-civilians-mandate> (accessed December 30, 2022).

<sup>2</sup> Author's note: For this Lesson collection, IHL and LOAC are interchangeable as suggested by Professionals in Humanitarian Assistance and Protection, “International Humanitarian Law (IHL)/Law of Armed Conflict (LOAC),” <https://phap.org/PHAP/PHAP/Themese/IHL.aspx> (accessed February 3, 2023): “International humanitarian law (IHL) is also known as the law of armed conflict (LOAC) or the laws of war. IHL applies only in times of armed conflict ...designed to put limits on the way belligerents conduct warfare.”

<sup>3</sup> Karolina MacLachlan, “Protection of Civilians: a constant in the changing security environment,” North Atlantic Treaty Organization, June 17, 2022, <https://www.nato.int/docu/review/articles/2022/06/17/protection-of-civilians-a-constant-in-the-changing-security-environment/index.html> (accessed December 30, 2022).

<sup>4</sup> North Atlantic Treaty Organization, “Human security,” July 18, 2022, [https://www.nato.int/cps/en/natohq/topics\\_181779.htm#:~:text=The%20protection%20of%20civilians%20includes,mis,sion%20and%20other%20mandated%20activity](https://www.nato.int/cps/en/natohq/topics_181779.htm#:~:text=The%20protection%20of%20civilians%20includes,mis,sion%20and%20other%20mandated%20activity) (accessed December 30, 2022).

Hard-earned tactical and operational successes may ultimately end in strategic failure if care is not taken to protect the civilian environment as much as the situation allows — including the civilian population and the personnel, organizations, resources, infrastructure, essential services, and systems on which civilian life depends.<sup>5</sup>

While speaking at the *United Nations (UN) UN Security Council (UNSC) Open Debate on Protection of Civilians* in late May 2022, Robert Mardini, Director-General, International Committee of the Red Cross, introduced yet another aspect of the POC/CHMR discussion, enjoining states “to avoid and prevent the spread of mis- and disinformation...and mitigate its impact on affected people.”<sup>6</sup>

While this report (in two volumes) contains Lessons that address the *physical integrity* of a population, it also includes Lessons connected to many—but not all—the other articulated POC/CHMR concerns regarding the *what is protected?* question. The Lessons in Volume I are categorized as *cultural heritage and identity*; *infrastructure and property*; *information and technology*; and *services*.

Volume II of this Lesson collection address other questions: [\*Who is a civilian?\*](#) and [\*Who does the protecting and the mitigating?\*](#) Regarding civilian status, the UN policy document described above provides a simple answer that derives directly from IHL/LOAC: “everyone is to be considered a civilian.”<sup>7</sup> Or, more accurately:

everyone...except persons falling in one of the following categories: • members of the armed forces; • members of an organized armed group with continuous combat function; and • civilians directly participating in hostilities, for such time as they do so.<sup>8</sup>

However, the Russian war in Ukraine, among many other contemporary armed conflicts, challenges that simple definition of *civilian*. While theoreticians may assert that IHL/LOAC provides for every civilian status contingency, practitioners recognize that the reality of armed conflict—as demonstrated near-daily in Ukraine—complicates the matter.

This Lesson collection is not a comprehensive inventory of all topic areas included in the POC/CHMR discourse. Rather, it is intended to provide both overview and particular insights that may encourage further study. Consequently, the Lessons collected here encompass discussion points that both expand and narrow the discourse.

PKSOI’s Lessons Learned Analyst, Colonel Lorelei Coplen (US Army, Retired), authored or edited the Lessons in both volumes between June 2022 and February 2023, unless otherwise indicated. Each of these lessons are also found in the Joint Lessons Learned Information System (JLLIS) database, identified by the JLLIS number adjacent to each Lesson title. JLLIS access is at <https://www.jllis.mil> and requires a DoD Common Access Card (CAC) for registration.

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<sup>5</sup> US DoD, *Civilian Harm Mitigation and Response Action Plan Fact Sheet*, Defense News, August 25, 2022, <https://www.defense.gov/News/Releases/Release/Article/3140007/civilian-harm-mitigation-and-response-action-plan-fact-sheet/> (accessed December 30, 2022).

<sup>6</sup> Robert Mardini, “Briefing to UN Security Council Open Debate on Protection of Civilians,” *International Committee of the Red Cross*, May 25, 2022, <https://www.icrc.org/en/document/deliberate-attacks-on-civilians-causing-untold-suffering> (accessed July 1, 2022).

<sup>7</sup> United Nations Department of Peace Operations, *The Protection of Civilians in United Nations Peacekeeping*.

<sup>8</sup> Ibid.

**Who is a Civilian?** *Civilian status determination, or non-combatants as compared to combatants, is a complicated endeavor that requires an understanding of individual intent as well as action that is difficult to determine during armed conflict. Contemporary armed conflicts, with corresponding technical innovations and the often-temporal fluidity of an individual's status, further compounds the determination uncertainty. The two Lessons in this section describe further the challenges to civilian status in modern war as well as highlight an often-overlooked civilian category that needs special attention.*

## **Contemporary Challenges to Civilian Status Distinction in Armed Conflict (JLLIS ID# 239664)**

### **Observation**

Many observers of contemporary armed conflict ask: Does International Humanitarian Law (IHL)/Law of Armed Conflict (LOAC) “sufficiently reflect the realities of modern warfare?”<sup>9</sup> Developed in its current form during the post-World War II period—and updated since then on specific issues—IHL/LOAC assumes two facets of armed conflict which no longer appear inviolable: the *combatants* (i.e., those individuals engaged in hostile action) can be recognized (and are distinct from the civilian population); and the *physical space* (i.e., air, land, sea) for the hostilities can be defined.

The ongoing Russia-Ukraine war is certainly not the only contemporary armed conflict to challenge civilian status recognition. However, the pervasive use of social media and other digital technologies inside the hostile areas allows observers a “real-time” view of IHL/LOAC civilian status incongruities and status fluidity. The same media and technologies also lead to the question of how *cyber space*—with little to no physical place identified—fits into the current IHL/LOACs paradigm. The history of civilian protection in international law, as author Maha Spanu suggests:

is a story about individuals and groups needing to be recognised [sic] and protected from other individuals and groups; it is also a story about a supposed “responsibility to protect”, at different times and in different ways, those deemed vulnerable, or innocent. These are themes and tensions that are not so unfamiliar today, in the context of civilian protection.<sup>10</sup>

This Lesson does not provide definitive answers to the civilian status distinction conundrum. It instead provides a brief history of *civilian* as a term and concept in IHL/LOAC discourse as well as some overview of the contemporary issues of with civilian status.

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<sup>9</sup> Gary Corn, “The Fog of War, Civilian Resistance, and the Soft Underbelly of Unprivileged Belligerency,” *Lieber Institute for Law & Land Warfare*, March 10, 2022, <https://lieber.westpoint.edu/fog-of-war-civilian-resistance-unprivileged-belligerency/> (accessed August 9, 2022).

<sup>10</sup> Maja Spanu, “Civilian Protection: Some Thoughts on the Historical Origins of the Norm,” *European University Institute*, July 11, 2016, <https://iow.eui.eu/2016/07/11/civilian-protection-some-thoughts-on-the-historical-origins-of-the-norm/> (accessed December 23, 2022).

## Discussion

Historians of IHL/LOAC—otherwise known as *rules of war*—indicate it is based on a concept that “can be traced back to ancient civilizations and religions.”<sup>11</sup> Depending on the source, the codification of this tradition shares credit between Henri Dunant, the founder of the Red Cross, and Francis (Franz) Lieber, primary author of *General Orders No. 100: Instructions for the Government of the Armies of the United States in the Field*. Lieber drafted *General Orders No. 100* in 1863 at the direction of President Lincoln, and his instructions included the note, “military necessity is limited by the principle of humanity.”<sup>12</sup> In 1864, Durant was part of the first Geneva Convention, from which resulted a treaty with provisions for the care of sick and wounded from the battlefield.<sup>13</sup>

Over the next 85 years, diplomats debated and adopted additional amendments and treaties to address the treatment of combatants at sea and prisoners of war — not just combatants on battlefields. In 1949, after the horrors of World War II, diplomats gathered again in Geneva to adopt four treaties that reaffirmed and updated the previous treaties and expanded the rules to protect civilians. They're now collectively known as the Geneva Conventions of 1949 and contain the most important rules of war.<sup>14</sup>

The international community updated the Conventions in 1977 (Protocols I and II) and 2005 (Protocol III) to address changes in armed conflict as understood at those times. As example, “Protocol II was the first-ever international treaty devoted exclusively to situations of non-international armed conflicts” (i.e., civil wars).<sup>15</sup>

While protection of civilians in armed conflict remains one of the IHL/LOAC<sup>16</sup> tenets today, author Christiane Wilke notes “The law of armed conflict doesn’t directly define civilians. It defines combatants. Whoever is not a combatant is a *non-combatant*.”<sup>17</sup> [emphasis added] *Médecins Sans Frontières*, extracting from the Geneva Conventions, Article 3, compares the term *civilian*

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<sup>11</sup> Joanne Lu, “The ‘Rules of War’ Are Being Broken. What Exactly Are They?” *National Public Radio*, June 28, 2018, <https://www.npr.org/sections/goatsandsoda/2018/06/28/621112394/the-rules-of-war-are-being-broken-what-exactly-are-they> (accessed December 23, 2022).

<sup>12</sup> Jenny Gesley, “The ‘Lieber Code’ – the First Modern Codification of the Laws of War,” *The Library of Congress* (blog), April 24, 2018, [https://blogs.loc.gov/law/2018/04/the-lieber-code-the-first-modern-codification-of-the-laws-of-war/#:~:text=Laws%20of%20War-,The%20E2%80%9CLieber%20Code%E2%80%9D%20E2%80%93%20the%20First%20Modern%20Codification,of%20the%20Laws%20of%20War&text=On%20April%2024%2C%201863%2C%20U.S.,author%20Francis%20\(Franz\)%20Lieber](https://blogs.loc.gov/law/2018/04/the-lieber-code-the-first-modern-codification-of-the-laws-of-war/#:~:text=Laws%20of%20War-,The%20E2%80%9CLieber%20Code%E2%80%9D%20E2%80%93%20the%20First%20Modern%20Codification,of%20the%20Laws%20of%20War&text=On%20April%2024%2C%201863%2C%20U.S.,author%20Francis%20(Franz)%20Lieber) (accessed December 27, 2022).

<sup>13</sup> Lu, “The ‘Rules of War’ Are Being Broken. What Exactly Are They?”

<sup>14</sup> Ibid.

<sup>15</sup> International Committee of the Red Cross, “The Geneva Conventions of 1949 and their Additional Protocols,” October 29, 2010, <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> (accessed February 3, 2023).

<sup>16</sup> Author notes: There is often confusion between IHL/LOAC and international Human Rights Laws. The ICRC outlines: “IHL aims to protect persons who are not or are no longer taking direct part in hostilities.... Human rights law, developed primarily for peacetime, applies to all persons within the jurisdiction of a State. Unlike IHL, it does not distinguish between combatants and civilians or provide for categories of ‘protected person’.... IHL and human rights law share common substantive rules... but they also contain very different provisions... Furthermore, there are areas that are governed by both IHL and human rights law, but in different – and sometimes contradictory – ways.” See: International Committee of the Red Cross, “What is the difference between IHL and human rights law?” January 22, 2015, <https://www.icrc.org/en/document/what-difference-between-ihl-and-human-rights-law> (accessed February 2, 2023).

<sup>17</sup> Christiane Wilke, “Civilians, Combatants, and Histories of International Law,” *Critical Legal Thinking* (CTL), July 28, 2014, <https://criticallegalthinking.com/2014/07/28/civilians-combatants-histories-international-law/> (accessed February 1, 2023).

to combatants with the note “The civilian population is made up of individual civilians, in other words, individuals who do not belong to any of the various categories of combatants.”<sup>18</sup> Therefore, civilians are non-combatants—unless, or until, they assume a combatant status or participate in activities that make them combatants. As Wilke asserts, civilian assumption of combatant status could be expected in some circumstances:

The civilian is tied to imaginaries of good, virtuous wars.... those to be protected are expected to be passive, innocent, and submissive. The civilian is a caricature of the helpless woman or child who does not take part in politics. This ideal civilian doesn't exist in war zones. Where people live under military occupation figuring as liberation, they engage in political action against foreign rule instead of patiently waiting for deliverance.<sup>19</sup>

Confounding the distinctions between *combatants* and *non-combatants* (civilians) can be the status fluidity between combatant categories. The Russia-Ukraine war provides daily demonstrations of this challenge. In July 2022, five months post-Russian invasion, *The Washington Post* observed:

The initial invasion inspired thousands of Ukrainian civilian volunteers — ordinary civilians mostly without military experience — to join Ukraine's military-organized “Territorial Defense Forces” and defend the Ukrainian homeland from invasion.... Foreign volunteers have also augmented fighting forces, many with combat experience from Iraq, Afghanistan and Syria as part of Ukraine's International Legion of Territorial Defense. And there are signs that Ukrainian civilians, working in the capacity of resistance fighters, have stepped up attacks on Russian targets in eastern Ukraine.<sup>20</sup>

In addition, while Ukraine has a history of conscription<sup>21</sup> and is now actively recruiting, “enforcement and record-keeping have been haphazard” for many reasons, to include Russian attacks on buildings which housed the records.<sup>22</sup> Obviously, inadequacy of formal organizational structure further complicates *combatant v civilian* status determination.

Gary Corn, writing for *The Lieber Institute at West Point*, cautioned about civilian engagement in Ukraine's defense. He stated: “civilians directly participating in hostilities may be targeted,” yet he also noted IHL “is notoriously silent on both the substantive and temporal meaning of this

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<sup>18</sup> Médecins Sans Frontières, “The Practical Guide to Humanitarian Law,” <https://guide-humanitarian-law.org/content/article/3/civilians/> (accessed January 27, 2023).

<sup>19</sup> Wilke, “Civilians, Combatants, and Histories of International Law.”

<sup>20</sup> Andrew Bell and Katherine Kramer, “Thousands of nontraditional fighters have joined the Ukraine war: That puts civilians at risk, research shows,” *The Washington Post*, July 27, 2022, <https://www.washingtonpost.com/politics/2022/07/27/ukraine-russia-combatants-civilians-atrocities/> (accessed November 5, 2022). For more on foreign fighters in Ukraine, see: Tanya Mehra and Abigail Thorley, “Foreign Fighters, Foreign Volunteers and Mercenaries in the Ukrainian Armed Conflict,” *International Centre for Counter-Terrorism (ICCT)*, July 11, 2022, <https://icct.nl/publication/foreign-fighters-volunteers-mercenaries-in-ukraine/> (accessed December 23, 2022). For more on post-war internal security challenges from paramilitarization, see: Dale Pankhurst, “A Serious Threat or a Strategic Success? The Pros and Cons of Paramilitarising a Civilian Population in Ukraine,” *Small Wars Journal*, February 27, 2022, <https://smallwarsjournal.com/jrnl/art/serious-threat-or-strategic-success-pros-and-cons-paramilitarising-civilian-population> (accessed on December 23, 2022).

<sup>21</sup> *The Economist*, “The strange role of conscription in Ukraine's war,” March 26, 2022, <https://www.economist.com/europe/the-strange-role-of-conscription-in-ukraines-war/21808446> (accessed August 11, 2022).

<sup>22</sup> Jane Arraf and Oleksandr Chubko, “As Ukraine Signs Up Soldiers, Questions Arise About How It Chooses,” *The New York Times*, July 25, 2022, <https://www.nytimes.com/2022/07/25/world/middleeast/ukraine-soldiers-recruitment-draft.html> (accessed December 23, 2022).

exception.”<sup>23</sup> In other words, it is unclear how much direct part in hostilities (DPH) must occur or how long such engagement takes to discard non-combatant status. As example, he suggests the Russian invasion of Ukraine “resurrected a near-dormant aspect of LOAC—the concept of the *levée en masse*,” that is citizens of “...non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading force.”<sup>24</sup> In this situation, he argues, the citizens may be considered combatants with related privileges (that is, Convention protections for legitimate combatants). Yet, “the element of spontaneity presents a challenge in the present circumstances (as) Russia and Ukraine have been engaged in an ongoing armed conflict since 2014.”<sup>25</sup> Therefore, one could argue that Ukrainian citizens attacks on Russian forces do not meet the threshold of privileged combatants.

The use of social media and other digital technologies compounds the distinction challenges between combatant and non-combatant (civilian). Steven Feldstein, writing for *War on the Rocks*, describes the relationship between a digital battlefield and the concept of direct participation in hostilities (DPH). He notes “technological innovation has helped Ukraine to offset Russia’s conventional military advantage, particularly by increasing the participation of ordinary citizens,” yet “as these citizens have become uniquely involved in digital warfighting, the lines between civilian and military actors have blurred.”<sup>26</sup>

Michael Schmitt, also writing for *Lieber Institute at West Point*, used Ukraine’s ePPO app as a case study for *civilian v combatant* status determination. Designed for use on individual phones, the app promoted civilian tracking of Russian drones and missiles and notification to the Ukrainian military forces. His original paper concluded “ePPO users sometimes qualify as direct participants in hostilities” when they use the app and consequently could lose protections accorded to civilians in IHL/LOAC.<sup>27</sup> By implication, other app uses may also be construed as DPH with the same loss of legal protections. Within a few days, he returned with caveats, suggesting no loss of legal protections if merely “using an app to warn civilians of an impending attack; and crowdsourcing for intelligence reasons when the ‘crowd’ is unsuspecting of the underlying purpose.”<sup>28</sup> In both cases, intent of the app user—for deliberate targeting, generalized protection, or as an unwilling participant—determines whether the user adopts a combatant status.

Elliot Winter broadens the digital technology impacts on civilian status determination to encompass cyber warfare within the paradigms of IHL/LOAC. He notes that Ukrainian citizens (combatants and otherwise) and non-Ukrainians launched cyber-attacks on Russian and Russian infrastructure from both internal and external to Ukrainian borders. He identifies “general attribution problem of trying to establish the origin of cyber-attacks, as it is difficult to ascertain which individual(s) actually launched them and whether they were inhabitants of the attacked country.” Referring to an IHL/LOAC tenet for combatants to openly carry arms, he asks “How does one ‘carry’ or ‘display’ cyber capabilities in such a way as to advertise one’s

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<sup>23</sup> Corn, “The Fog of War, Civilian Resistance, and the Soft Underbelly of Unprivileged Belligerency.” For more on DPH, see: Nils Melzer, *Interpretive guidance on the notion of Direct participation in hostilities under international humanitarian law* (Geneva, Switzerland: International Committee of the Red Cross, 2020), 58, <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0990.pdf> (accessed December 23, 2023).

<sup>24</sup> Corn, “The Fog of War, Civilian Resistance, and the Soft Underbelly of Unprivileged Belligerency.”

<sup>25</sup> Corn, “The Fog of War, Civilian Resistance, and the Soft Underbelly of Unprivileged Belligerency.”

<sup>26</sup> Steven Feldstein, “Disentangling the Digital Battlefield: How the Internet Has Changed War,” *War on the Rocks*, December 7, 2022, <https://warontherocks.com/2022/12/disentangling-the-digital-battlefield-how-the-internet-has-changed-war/> (accessed December 23, 2022).

<sup>27</sup> Michael N. Schmitt, “Ukraine Symposium – Using Cellphones to Gather and Transmit Military Information, a Postscript,” *Lieber Institute for Law & Land Warfare*, November 4, 2022, <https://lieber.westpoint.edu/civilians-using-cellphones-gather-transmit-military-information-postscript/> (accessed December 23, 2022).

<sup>28</sup> Ibid.

combativeness to an enemy online?” Lastly, “when people can fight from their homes, or even from overseas locations, in a disconnected and largely invisible manner,” how do they learn about IHL/LOAC?<sup>29</sup>

## Recommendations

The fluidity of civilian status change—from combatant to non-combatant and back again—further challenges the already problematic determination of proper protections in the IHL/LOAC tenets. Individuals may not understand how their actions or inactions risks their own protection as well as that of the community that they seek to protect or to (legitimately) target. Status fluidity is also not confined to physical space or place in time, which is particularly apparent in cyber-engagement and attacks. Further, the nature of status fluidity also implies an informal organizational structure, which suggests negligible education and training in IHL/LOAC norms and/or disregard of them.

This concern of status fluidity applies to both foreign and domestic persons engaged in the armed conflict in an informal manner. As Tanya Mehra and Abigail Thorley, of the *International Centre for Counter-Terrorism (ICCT)*, share:

where foreign fighters are present this leads to more sexual violence, and that when foreign fighters are not structurally and culturally embedded are more prone to resort to violence against the local population, leading to higher civilian casualties.<sup>30</sup>

The *Washington Post* article also highlights:

The presence of nontraditional combatants can make already dangerous modern battlefields more perilous for civilians. Armed groups, mercenaries, foreign fighters and other combatants who lack strong enforcement structures or intensive training in norms of civilian protection can create far greater risks for civilians. If countries wish to reduce these risks, our research suggests the importance of strengthening command enforcement structures and civilian protection training...<sup>31</sup>

It is imperative that the international community must update the Conventions to address contemporary armed conflict in two areas: civilian status incongruities and status fluidity, and how *cyber space*—with little to no physical place identified—fits into the IHL/LOACs paradigm.

## Civilian Partners’ Protection: What Does Right Look Like? (JLLIS ID# 239639)

### Observation

The US engagement in contemporary peacekeeping and stability operations is predominately in a partnered approach. Partners are often multinational, but the differences are often beyond

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<sup>29</sup> Elliot Winter, “Cyber Warfare and Levées en Masse in International Humanitarian Law: New Wine into Old Wineskins,” *Jurist*, July 22, 2022, <https://www.jurist.org/features/2022/07/22/cyber-warfare-and-levees-en-masse-in-international-humanitarian-law-new-wine-into-old-wineskins/> (accessed November 2, 2022).

<sup>30</sup> Tanya Mehra and Abigail Thorley, “Foreign Fighters, Foreign Volunteers and Mercenaries in the Ukrainian Armed Conflict,” *International Centre for Counter-Terrorism (ICCT)*, July 11, 2022, <https://icct.nl/publication/foreign-fighters-volunteers-mercenaries-in-ukraine/> (accessed December 23, 2022).

<sup>31</sup> Bell and Kramer, “Thousands of nontraditional fighters have joined the Ukraine war: That puts civilians at risk, research shows.”

nation-of-origin. Partners also include various categories of *civilians*, ranging from both government, non-government, and private entities, and comprising both local hires and international contracts. While all these civilian categories may contribute to the mission, the security measures for their protection vary widely.

The security protocols disparity unintentionally reflects a discriminatory and minimalist approach to the safety of the missions' civilians. This, in turn, creates unnecessary resentment as well as endangers mission members. As an example, expatriate civilians are usually "high profile" and consequently have a higher level of protection both in their housing arrangements and private security services during operations.<sup>32</sup> However, in a countering violent extremism (CVE) mission environment, local civilian staff become high profile by association yet do not receive a commiserate level of protection.

Instead, mission and program leaders should harmonize the differing criteria and standards for the various Partners and their employees' security levels in peacekeeping and stability operations environments. Such efforts have practical outcomes as well as in keeping with ethical behavior. Unfortunately, the reality is that Implementing Partners (IPs), a mix of Non-Government Organizations (NGOs) and for-profits entities competing for cost-effective contracts, tend to disregard the ethical considerations of security standards.

## Discussion

The US Secretary of Defense issued a memorandum on January 27, 2022, that directs the creation of a Civilian Harm Mitigation Action Plan (CHMR-AP). It states that the CHMR-AP plan "is relevant to both kinetic and non-kinetic activity."<sup>33</sup> Thus, civilian Implementing Partners serving alongside the military in high threat security environments such as peacekeeping and stability operations also need their own civilian harm mitigation practices.

Those civilian harm mitigation measures must also prevent Partners' expectations that their local staff must take personal risks to keep their jobs. Unfortunately, expatriate civilian staff have, at times, a near *colonial approach*<sup>34</sup> to local employees working on a program. As an example, during the Arab Spring of 2011, US Agency for International Development (USAID) Yemen Monitoring and Evaluation Program (YMEP) contract had three Yemeni drivers on staff. In May of that year, the US State Department decided the deteriorating security situation necessitated an emergency evacuation of expatriate staff. The next day, at the direction of the office leadership, all of YMEP's local staff remained at home except the three drivers. Even as the office building was under fire, the YMEP Chief of Party (COP) insisted the drivers convey the small expatriate

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<sup>32</sup> Author's note: For this Lesson's purpose, *expatriate* civilians are the foreigners employed on donor programs, and *local* civilians refers to both host-country nationals (HCNs) and immigrants fleeing unstable neighboring countries, such as Syrians in Turkey.

<sup>33</sup> US Secretary of Defense, "Improving Civilian Harm Mitigation and Response" (official memorandum, Washington, DC: DoD, January 27, 2022), <https://media.defense.gov/2022/Jan/27/2002928875/-1/-1/1/DEPARTMENT%20OF%20DEFENSE%20RELEASES%20MEMORANDUM%20ON%20IMPROVING%20CIVILIAN%20HARM%20MITIGATION%20AND%20RESPONSE.PDF> (accessed January 15, 2023).

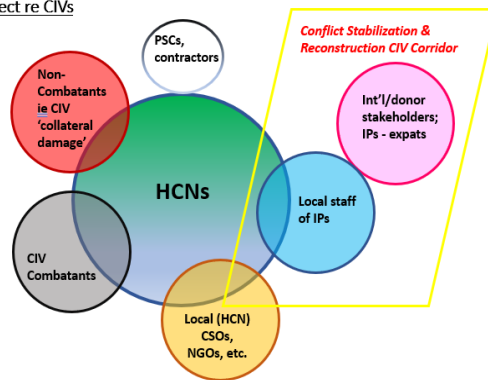
<sup>34</sup> Editor's note: According to the Legal Information Institute, Cornell Law School, "Colonialism is the act of power and domination of one nation...over another..." (See <https://www.law.cornell.edu/wex/colonialism>). A *colonial approach* implies a management style that assumes power, domination, or superiority over employees of ethnicities different from the managers. (See Hèla Yousfi, "International Management, Should We Abandon the Myth of Cultural Hybridity? A Re-examination of the Contribution of Postcolonial and Decolonial Approaches," *M@n@gement* Vol. 24, no. 1 (2021): 80-89, <https://www.proquest.com/docview/2530524239?pq-origsite=gscholar&fromopenview=true> (accessed February 2, 2023).

staff to the airport. In this case, a US Special Operations convoy arrived to secure the expatriate staff with no additional risk to the drivers. However, the original expectation for the drivers to remain available to the expatriate staff at their own personal risk reflects how Partners sometimes treat local civilians as if their lives are of lesser value.

Another example of the delicate relationship between expatriates and local civilian staff followed “the Kandahar massacre” of March 11, 2012. A US Army Special Operations Staff Sergeant left his base and broke into three homes, killing four women, four men, and eight children. After the incident, the Director of Monitoring and Evaluation for USAID’s Initiative to Improve Afghan Civil Society (I-PACS II) program, held a meeting to discuss the incident with her local national team. The comments shared by the local team confirmed to her the divisive nature of the environment and the costs to team morale when such tragedies occur. While the Kandahar massacre was an extreme incident, it emphasized to her the importance of patience and flexibility in her staff management. She especially noted the risks the local national employees took to get to work and their responsibilities to their families’ protection—concerns that expatriate staff in hardship posts do not have.

A third example of special consideration to local national employees’ security was in USAID’s Building the Legitimacy of Local Councils (BLLC) in Syria program. Operating from Turkey, a

Intersection & Disconnect re CIVs



Partner employed non-HCNs at-risk civilians—Syrian refugees working on USAID contracts. Many of the Syrians had participated in the protests against the Assad regime and risked imprisonment or even execution upon their return to Syria. The Turkish government required a work permit for the non-HCNs, but their work permit process was slow, leaving the individuals at near-constant threat of deportation. Even with a work permit in hand, the loss of employment would

send a Syrian national back to Syria despite their personal risk. This meant that USAID program leaders had to make special considerations when managing local staff, whether they were office colleagues or support staff, to keep them safe.

## Recommendations

A more ethical and equitable approach to security protocols among civilian program staff will improve programs productivity. While the expectation is that Partners will comply with the humanitarian aspects of its missions, in practice there are shortcomings. Yet implementation of the following recommendations will produce practical results in addition to simply “doing the right thing.”

- Incorporate into Partner program budgets the funds to provide security for local staff, to include but not limited to, transportation suitable for the environment.
- Provide training and mentoring rather than replacement when a local staff member struggles to deliver as expected.
- Hold stakeholders (USAID; donors) responsible for making IPs accountable for security standards that they themselves have for their own employees. Part of the monitoring and

evaluation of Partner performance should include meeting security requirements that are attached to the level of risk to which various civilians are exposed.

- Hold periodic meetings specifically to discuss local (HCN) staff's concerns about their security, and air grievances if there are any.
- Establish connectivity between US civilian IPs and the US military's Civilian Environment Teams, Civilian Harm Assessment Cells (CHACs) and CHMR Working Groups proposed in the August 25, 2022, CHMR-AP that resulted from the January 27, 2022, memorandum.<sup>35</sup>

Attention to the security of local staff increases worker retention (both expatriate and HCN) and promotes higher morale. By acknowledging the challenges that local staff face compared to their expatriate civilian supervisors, it increases the safety of the program's work environment overall, by preventing the occurrence of mounting disenchantment amongst the local staff.

Prioritizing the moral imperative of civilian harm mitigation will increase host-country respect for mission presence and intentions which in turn facilitates the program's relationship with host country officials and other local Partners. Diplomacy comes in many forms. It makes cooperation and program implementation easier and more effective when the host country is more open to the international presence.

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***Who does the Protecting and the Mitigating?*** Implementation of effective POC/CHMR measures may begin with policy but must be executed by organizations, structures and people. The Lessons in this section also begin with policy—the US Strategy to Anticipate, Prevent, and Respond to Atrocities. This section then considers other US policies and programs in relationship to POC/CHMR concepts; in this instance, those related to arms controls and sales. Another Lesson outlines the POC/CHMR effect of partners and allies in US military operations. Finally, the last two Lessons of this section discuss US military organizational structure improvements to better address POC/CHMR concerns, specifically in military civil affairs and medical teams in Joint operations.

### **Implementation of the United States' Strategy to Anticipate, Prevent, and Respond to Atrocities (JLLIS ID# 237027)**

#### **Observation**

The July 2022 *United States' Strategy to Anticipate, Prevent, and Respond to Atrocities* (hereafter, *Atrocity Strategy*) reemphasizes “preventing mass atrocities and genocide is a core

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<sup>35</sup> US DoD, *Civilian Harm Mitigation and Response Action Plan (CHMR-AP)* (Washington, DC: DoD, August 25, 2022), <https://media.defense.gov/2022/Aug/25/2003064740/-1/-1/1/CIVILIAN-HARM-MITIGATION-AND-RESPONSE-ACTION-PLAN.PDF> (accessed January 23, 2023).

national security interest and a core moral responsibility of the United States.”<sup>36</sup> However, its implementation across US government entities, in particular within the US DoD and the US military, remains unclear. Yet, the US military is already engaged in programs of foreign assistance, as well as defense support and security cooperation, and can therefore strengthen the US’ anticipation and prevention efforts. Further, it should be prepared to be the forcing response entity when required.

## Discussion

Despite a history of response to horrific mass atrocities, until July 2022 the US did not have a written strategy designed to both prevent and respond to the same in the future. The *Atrocity Strategy* is based on the Obama Administration’s Executive Order 13729, *A Comprehensive Approach to Atrocity Prevention and Response*, May 18, 2016, which was the first step to provision of national-level resources, to include time and thought, to this topic.<sup>37</sup> In turn, the US Congress’ *The Elie Wiesel Genocide and Atrocities Prevention Act of 2018* levied training and reporting requirements on the US government’s Executive branch, specifically the Department of State and USAID, but nothing similar for the DoD.<sup>38</sup> Instead, it emphasizes “Nothing in this Act shall be construed as authorizing the use of military force.”<sup>39</sup>

The 2022 *Atrocity Strategy* furthers the application of national-level resources to this topic with its identified goals for the US:

Goal 1: *Atrocity Prevention, Response, and Recovery* – Pursue Early Action and Locally Driven Solutions in Priority Countries.

Goal 2: *Partnerships* – Promote International Cooperation, Civil Society Engagement, and Strategic Public Messaging.

Goal 3: *Management* – Enable an Effective, Integrated US Government Prevention Architecture.<sup>40</sup>

Each Goal indicates a handful of priority actions, but there are no specific implementation techniques and measures.

Despite the US *Atrocity Strategy* language that states “preventing mass atrocities and genocide is a *core national security interest*”<sup>41</sup> (emphasis added), the October 2022 *National Security Strategy* (NSS), published only a few months following the July 2022 US *Atrocity Strategy*, only includes one reference each to *atrocities* and *genocide*: “...we will rally the world to hold Russia accountable for the *atrocities* they have unleashed across Ukraine”<sup>42</sup> and notes the US “will hold

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<sup>36</sup> US Department of State, Bureau of Conflict and Stabilization Operations, *U.S. Strategy to Anticipate, Prevent, and Respond to Atrocities*, July 5, 2022, 3, <https://www.state.gov/2022-united-states-strategy-to-anticipate-prevent-and-respond-to-atrocities/> (accessed October 10, 2022).

<sup>37</sup> Barak Obama. Executive Order. “A Comprehensive Approach to Atrocity Prevention and Response, Executive order 13729 of May 18, 2016.” *Federal Register* 81, no. 2016-12307 (May 25, 2016): 32611-32615. <https://www.federalregister.gov/documents/2016/05/23/2016-12307/a-comprehensive-approach-to-atrocity-prevention-and-response> (accessed October 11, 2022).

<sup>38</sup> Congress.gov. “All Info - S.1158 - 115th Congress (2017-2018): Elie Wiesel Genocide and Atrocities Prevention Act of 2018.” January 14, 2019. <http://www.congress.gov/> (accessed October 11, 2022).

<sup>39</sup> Ibid.

<sup>40</sup> US Department of State, *U.S. Strategy to Anticipate, Prevent, and Respond to Atrocities*.

<sup>41</sup> Ibid.

<sup>42</sup> White House, *National Security Strategy of the United States of America* (Washington, DC: White House, 2020), 26, <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf> (accessed October 27, 2022). The NSS refers to *peace* in 29 places but includes *peacekeeping/building* only five times. The phrases or words *human rights* and *humanitarian* are mentioned 18 and

Beijing accountable for abuses – *genocide* and crimes against humanity in Xinjiang...” (emphasis added).<sup>43</sup> There is no mention of either *atrocities* or *genocide* in the *National Defense Strategy* (NDS) released on October 27, 2022.<sup>44</sup> This is despite the inclusion of *atrocities*- or *genocide*-related language as early as President George W. Bush’s 2006 NSS and distributed about US strategy and US defense documents and doctrine throughout the 2000s and the 2010s. More, it is far from the 2015 NSS that devoted a full paragraph to *Prevent Mass Atrocities* “using all our instruments of national power.”<sup>45</sup>

The dearth of *atrocities*- and *genocide*-related language in the US’ 2022 NSS and NDS negates the US *Atrocities Strategy* assertion of prevention and response as a “core national security interest.”<sup>46</sup> As strategy informs resource availability, the language absence in those two documents may also limit the defense and security communities’ ability—and interest—in policies and programs to address atrocity anticipation, prevent, or response.

Whether the language absence in contemporary national strategies is intentional or an oversight, Alison Atkins suggests the US military doctrinal inclusion of atrocity response in the early years of this century was at most “half-hearted” anyway.<sup>47</sup> The author notes that Joint doctrine (circa 2016) categorizes atrocity response solely within *peace operations*, and the US Army doctrine (at the time of the article’s publication) followed suit.<sup>48</sup> While reflecting on this limited categorization, the author does not immediately suggest deliberate negligence on the part of defense doctrine writers. Instead, Atkins suggests the categorization of atrocity response within *peace* and/or *stability* operations may have been simple convenience due to the doctrine publication schedule. They do note, however, “the DoD may be unwilling to accept a role in preventing atrocity crimes during kinetic operations” as such attention may prove a distraction.<sup>49</sup>

Given the demands levied against the US military in the current *Great Powers* competitive environment, it may be too much to expect US Defense Department awareness and training to the additional tasks necessary in mass atrocity response and it’s like. However, David Wigmore,

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15 times, respectively. The words *stability* or *stabilization* garners over 30 mentions, not including discussion of *instability*.

<sup>43</sup> White House, *National Security Strategy of the United States of America*, 24.

<sup>44</sup> DoD, *The 2022 National Defense Strategy of the United States of America* (Washington, DC: DoD, 2022), <https://www.defense.gov/National-Defense-Strategy/> (accessed October 28, 2022). The NDS mentions *peace* seven times, usually in conjunction with *peace and stability*. It does not refer to *peacekeeping/building*. It makes only one reference to *stabilization activities* and that is as part of increasing global *instability* due to *climate change*. It mentions the word *humanitarian* only twice and makes no mention of *human rights*.

<sup>45</sup> White House, *National Security Strategy of the United States of America* (Washington, DC: White House, 2015), 22, <https://nssarchive.us/national-security-strategy-2015/> (accessed October 28, 2022).

<sup>46</sup> US Department of State, *U.S. Strategy to Anticipate, Prevent, and Respond to Atrocities*.

<sup>47</sup> Alison F. Atkins, “Atrocity Prevention and Response During Armed Conflict: Closing the Capability Gap,” *Army Press Online Journal* 16-2, January 22, 2016, 8, <https://www.armyupress.army.mil/Journals/Military-Review/Online-Exclusive/2016-Online-Exclusive-Articles/Atrocity-Prevention/> (accessed October 28, 2022). The author also observes that most—if not all—of the mass atrocity doctrine of this period was derived from the US Army Peacekeeping and Stability Operations Institute’s (OKSOI) 2012 *MAPRO: Mass Atrocity Prevention and Response Options*, found at <https://pksoi.armywarcollege.edu/index.php/mapro-mass-atrocity-prevention-and-response-options/>. The MAPRO handbook was based on the 2010 collaboration between the Carr Center for Human Rights Policy at the Harvard Kennedy School and PKSOI, titled *MARO: Mass Atrocity Response Operations*, found at [https://pksoi.armywarcollege.edu/wp-content/uploads/2020/07/MARO\\_Handbook.pdf](https://pksoi.armywarcollege.edu/wp-content/uploads/2020/07/MARO_Handbook.pdf).

<sup>48</sup> Ibid. Author’s note: As of this writing, mass atrocity response doctrine can be found at: Department of the Army, *Stability*, ADP 3-07 (Washington, DC: Department of the Army, 2019), 3-10, [https://armypubs.army.mil/epubs/DR\\_pubs/DR\\_a/pdf/web/ARN18011\\_ADAP%203-07%20FINAL%20WEB.pdf](https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN18011_ADAP%203-07%20FINAL%20WEB.pdf) (accessed October 28, 2022).

<sup>49</sup> Ibid. Author’s note: The August 2022 DoD’s *CHMR-AP*, asserts “The protection of civilians is a strategy priority as well as a moral imperative.” It does not refer to atrocities or genocide specifically. See: US DoD, *Civilian Harm Mitigation and Response Action Plan (CHMR-AP)*.

a Visiting Faculty Member at the National Counterterrorism Center, and an Instructor at the National Defense University, points out that to remain competitive globally, the US military must meet China where China engages. Which is, increasingly, in the “greater humanitarian intervention role”<sup>50</sup>—a role that the US held nearly exclusively in previous decades and generations but has left gaps for China to exploit today. Wigmore refers to another author’s observation:

David Shambaugh suggests ... (the) U.S. military might deter China, but China competes with the United States on other fronts, leveraging its perceived or actual comparative advantages. ... either the United States address this or risk strategic diminishment, perhaps without a shot being fired. Not every atrocity may be prevented, but increased U.S. focus on atrocity prevention could keep its “moral suasion” reservoir filled in a period of Great Power competition where attracting partners based on shared interests—including beyond the purely economic—remains a U.S. comparative advantage.<sup>51</sup>

Both Atkins in 2016 and Wigmore in 2020 advocated for atrocity prevention and response education and training for military professionals. Further, they both assert this education must encompass all phases of conflict, not merely Phase 0 or Phase 4. As Atkins reminds the reader

Even in the absence of such clear strategic guidance, empirical data shows a strong correlation between armed conflict and mass atrocities, making it probable that the operational force will encounter a mass atrocity scenario. When 85 percent of civilian mass killings occur during some phase of armed conflict, the military commander must plan for MAPRO and POC [protection of civilian] missions.<sup>52</sup>

Recent events in Ukraine, Tigray<sup>53</sup>, and South Sudan<sup>54</sup> support that assertion.

## Recommendations

An August 2022 panel discussion at the *United States Institute of Peace* (USIP) explored this topic and identified five generalized implementation categories, summarized, and paraphrased below.<sup>55</sup> While they appear specific to US State Department or USAID personnel—at a macro-level—the concerns and recommendations could apply to any senior US government official, including those from the Defense Department.

1. Embrace a culture of prevention throughout the diplomatic corps. The panelists acknowledged that US diplomats “frequently prioritize building relationships with host governments, often at the expense of pressing for policies that would protect communities

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<sup>50</sup> David Wigmore, “Expanding Atrocity Prevention Education for Rising U.S. National Security Leaders,” *Joint Forces Quarterly* 97, March 2020, 51, <https://ndupress.ndu.edu/Media/News/News-Article-View/Article/2106505/expanding-atrocity-prevention-education-for-rising-us-national-security-leaders/> (accessed October 11, 2022).

<sup>51</sup> David Wigmore, “Expanding Atrocity Prevention Education for Rising U.S. National Security Leaders.”

<sup>52</sup> Atkins, “Closing the Capability Gap,” 11.

<sup>53</sup> Editorial Board. “One of the world’s deadliest conflicts is reaching a tipping point.” *The Washington Post*, October 25, 2022, <https://www.washingtonpost.com/opinions/2022/10/25/tigray-ethiopia-conflict-peace-talks/> (accessed October 28, 2022).

<sup>54</sup> Naomi Kikoler and Sarah McIntosh, “Averting Future Mass Atrocities in South Sudan as Peace Terms Stall,” *Just Security*, October 6, 2022, <https://www.justsecurity.org/83401/averting-future-mass-atrocities-in-south-sudan-as-peace-terms-stall/> (accessed October 10, 2022).

<sup>55</sup> Lauren Baillie and Andrea Gittleman, “Five Ways to Make the U.S. Atrocity Prevention Strategy Work,” *The United States Institute of Peace*, August 2, 2022, <https://www.usip.org/publications/2022/08/five-ways-make-us-atrocity-prevention-strategy-work> (accessed October 10, 2022).

at risk of mass atrocities.” While some training for diplomats is available, it appears “limited to human rights officers or to particular missions.” Instead, it should be available and required of all foreign service officers and ambassadors.<sup>56</sup>

2. Center vulnerable communities in risk assessments and response strategies. The panel noted “Mass atrocities are not spontaneous occurrences — they are the culmination of processes of marginalization and discrimination against vulnerable communities that create an enabling environment for mass violence.” Therefore, it is important to engage the vulnerable and marginalized “as close partners who have first-hand knowledge that is essential for successful U.S. prevention efforts.”<sup>57</sup>
3. Pursue justice and accountability while mass atrocities are ongoing. “Justice and accountability processes recognize the suffering of victims and the commitment of international and domestic actors to providing them with a remedy.” Justice and accountability efforts contribute to stability as well. Too often, however, they are delayed until the contributing event is over. Instead, these processes should begin simultaneous to the ongoing incidents, such as in Ukraine today.<sup>58</sup>
4. Ensure that international responses are calibrated to need. To many, “Ukraine stands out” as an example of use of sanctions and other assistance. Other mass atrocities “warrant similar levels of concern and coordinated international response,” but do not get them. Therefore, “policymakers should affirmatively examine whether the identity of the groups at risk may be driving the intensity of the response.”<sup>59</sup>
5. Encourage like-minded actors to strengthen atrocity prevention efforts. “Sharing best practices among a community of like-minded actors — including encouraging them to adopt similar strategies — may promote more coordinated, effective atrocity prevention.”<sup>60</sup>

Whether implementing recommendations at the macro- or micro-level, Wigmore proclaims

Atrocities happen in the proverbial shadows or in plain sight, in slow motion or fast, noisily or quietly, but not without warning signs. Not all are overtly violent. ...Continued and increased engagement in atrocity prevention, bolstered by capacity-growing education, would make deposits into a strategic credibility account the United States can draw on later.... If the education prevents harm to a single population, it will be worth the effort.<sup>61</sup>

## **The Civilian Protection and Arms Control Nexus (JLLIS ID# 238208)**

### **Observation**

The relationship between the protection of a civilian population in armed conflict areas and weapons availability appears obvious and straightforward. Obvious, because without weapons used to target a population or merely used in a population’s vicinity<sup>62</sup>, civilians would be at reduced risk of harm. Straightforward, because it seems that when one removes weapons from a conflict environment or prohibits their presence, then naturally civilian harm reduction follows.

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<sup>56</sup> Baillie and Gittleman, “Five Ways to Make the U.S. Atrocity Prevention Strategy Work.”

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Wigmore, “Expanding Atrocity Prevention Education for Rising U.S. National Security Leaders,” 53.

<sup>62</sup> Author’s note: Particularly, but not exclusively, arms and weapons with wide ranges and effects.

However, while the relationship may indeed be obvious, it is not a straightforward one. Both the removal process—often as part of a disarmament, demobilization and reintegration (DDR) program—and the prohibition process are complex actions with multiple intentional as well as unintentional effects on the conflict. While many state, regional, and international entities advocate for and implement DDR programs, the United Nations' (UN) is, perhaps, the most well-known.<sup>63</sup> Regardless of facilitating agency, DDR by definition is a reactive device. As the UN notes, most programs “support the implementation of...(DDR) programmes [sic] in countries *emerging from conflict*.”<sup>64</sup> (emphasis added).

A more proactive approach may be the prohibition or limitations of weapons for conflicting parties, usually through an arms control agreement or a law or policy on the part of the weapons' state of origin. In other words, arms access restriction at the front end of conflict. Yet, again, such action is not straightforward and may create effects beyond the intentions. However, as several authors, analysts, and researchers have asserted, the US and its Defense Department should consider Human Rights Due Diligence (HRDD) as “A Defense Industry Business Necessity” for a variety of moral as well as self-interested reasons. These include, but may not be limited to, mitigation not just of civilian harm, but of regulatory, financial, legal, and—more obliquely—reputational risks.<sup>65</sup>

## Discussion

The concerns of the civilian protection/harm mitigation and arms control nexus are not new, nor are the US Congress and the Executive Branch of the US government oblivious to them. While the US government had laws, regulations, and policies in place to manage the import and export of weapons in some manner for a century or more, its most codified programs date from the 1960s and 1970s.<sup>66</sup> However, reviews from recent decades reveal reporting and accountability discrepancies and conundrums.

As example, in November 2021, Brookings hosted *Session 17 of the Congressional Study Group* with the topic of *Arms Sales Policies, Human Rights, and Reform*. Their report, published in October 2022, indicates the panelists met to “discuss U.S. arms sales policies and their intersection with human rights and related concerns.”<sup>67</sup> The introduction notes:

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<sup>63</sup> Author's note: From the United Nations (UN) Disarmament, Demobilization and Reintegration (UNDDR) Resource Centre [sic] website: “Since the late 1980s, the United Nations (UN) has increasingly been called upon to support the implementation of disarmament, demobilization and reintegration (DDR) programmes [sic] in countries emerging from conflict. In a peacekeeping context, this trend has been part of a move towards complex operations that seek to deal with a wide variety of issues ranging from security to human rights, rule of law, elections and economic governance, rather than traditional peacekeeping where two warring parties were separated by a ceasefire line patrolled by blue-helmeted soldiers. The changed nature of peacekeeping and post-conflict recovery strategies requires close coordination among UN departments, agencies, funds and programmes [sic].” See United Nations, *Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)*, Inter-Agency Working Group on DDR (IAWG), <https://www.unddr.org/the-iddrs/level-1/> (accessed October 7, 2022).

<sup>64</sup> Ibid.

<sup>65</sup> Eian Katz, “Human Rights Due Diligence: A Defense Industry Business Necessity,” *Just Security*, September 12, 2022, <https://www.justsecurity.org/83028/human-rights-due-diligence-a-necessity/> (accessed October 13, 2022). Eian Katz is a former Legal Advisor at the American Bar Association Center for Human Rights.

<sup>66</sup> Milton Leitenberg, *Disarmament and Arms Control Since 1945*, CrossCurrents, Vol. 27, No. 2 (Summer 1977), pp. 130-139, University of North Carolina Press, <https://www.jstor.org/stable/24458313> (accessed November 30, 2022).

<sup>67</sup> Brookings, *Arms Sales Policies, Human Rights, and Reform*, Session 17 of the Congressional Study Group, October 5, 2022, <https://www.brookings.edu/research/arms-sales-policies-human-rights-and-reform/> (accessed November 15, 2022).

Few areas of U.S. foreign policy have proven more contentious in recent years than U.S. arms sales to foreign governments. Recent arms sales to countries such as Egypt and Saudi Arabia have proved particularly controversial, leading to clashes both between Congress and the Executive Branch and within Congress itself over the shape of U.S. policy in these regards.<sup>68</sup>

Among the panel's findings was the inadequacies of the reporting requirements the US government levies against itself and the underutilization of existing accountability measures. In another recent example, the US' Government Accountability Office (GAO) published a report in June 2022 which notes:

According to the U.N., the conflict in Yemen is one of the world's worst humanitarian crises. The U.S. has long-standing security relationships with Saudi Arabia and the UAE—2 primary actors in the conflict—and has sold them weapons. There have been reports of extensive civilian harm in Yemen. *However, DOD has not reported and State could not provide evidence that it investigated incidents of potential unauthorized use of equipment transferred to Saudi Arabia or UAE...*<sup>69</sup> [emphasis added]

GAO's recommendations were summarized thus: "State and DOD could use specific guidance for determining whether this equipment was used for unauthorized purposes."<sup>70</sup>

One of the most frequently mentioned rationales for US arms exports is the perceived strategic influence in a country or region. Certainly, it is the most cited when observers question US arms sales to Saudi Arabia—a party to the humanitarian crisis in Yemen that also controls much of the global oil market.<sup>71</sup> Yet some recent studies indicate influence derived from arms sales may have limited effects. A 2022 factsheet, *U.S. Security Partnership and the Protection of Civilians in Nigeria*, illustrates this point.<sup>72</sup> The factsheet provides a significant amount of data to note the amount of money, arms, and training the US provided Nigeria in recent years. The main point, thusly:

Although U.S. trainings have included a focus on international law compliance and appropriate weapons use to mitigate harm, there are continued reports of civilian harm caused by the NAF, including civilian casualties, enforced disappearances, sexual and gender-based violence, forced displacement, and obstacles on humanitarian access.<sup>73</sup>

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<sup>68</sup> Brookings, *Arms Sales Policies, Human Rights, and Reform*.

<sup>69</sup> Government Accountability Office, *Yemen: State and DOD Need Better Information on Civilian Impacts of U.S. Military Support to Saudi Arabia and the United Arab Emirates*, GAO-22-105988, June 15, 2022, <https://www.gao.gov/products/gao-22-105988> (accessed November 14, 2022).

<sup>70</sup> Ibid.

<sup>71</sup> Catie Edmondson, "Lawmakers Press Biden to Track U.S. Aid Tied to Civilian Harm in Yemen," *The New York Times*, September 7, 2022, <https://www.nytimes.com/2022/09/07/us/politics/biden-aid-yemen-saudi-arabia.html> (accessed November 7, 2022).

<sup>72</sup> InterAction, *U.S. Security Partnership and the Protection of Civilians in Nigeria*, June 2022, <https://www.interaction.org/blog/u-s-security-partnership-and-the-protection-of-civilians-in-nigeria/> (accessed November 11, 2022).

<sup>73</sup> Ibid.

Further

Despite reports of civilian casualties from Nigerian Armed Forces (NAF) airstrikes and other concerns, the flow of U.S. weapons into Nigeria has not slowed. In fact, 2020 saw the largest influx of direct commercial sales to the country in the last twenty years.<sup>74</sup>

The factsheet suggests that the training may be insufficient in some manner or another, but also implies that Nigeria, or the NAF, do not see a linkage between arms sales and the US' expectations of civilian harm mitigation derived from the training. Or, as the factsheet articulates, "It is also unclear whether the U.S. monitors implementation with a view to ensuring NAF operations promote the protection of civilians—and informing security cooperation decisions accordingly."<sup>75</sup>

In other countries and regions, such strategic influence that still exists may wane over time and situation. In an example of waning influence, another study reviewed the US influence in Southeast Asia given the arms sales to four nations from three other countries: the US, China, and Russia. As the author asserts, "most countries in the region avoid taking sides" while "diversifying their suppliers to avoid creating arms dependencies that could limit their future options."<sup>76</sup>

Meanwhile, the US Defense Department frequently asserts that it meets the legal requirements of arms sales to partner nations and often beyond such limits. In December 2020, for example, the then Defense Security Cooperation Agency (DSCA) Director, Heidi H. Grant, notes:

We're consistently working with our allies and partners to facilitate the employment and military capabilities consistent with our values. We have been particularly focused on minimizing civilian harm resulting from their operations including expanding training, ensuring the provision of targeting capabilities to partners, and providing additional advisory support, with a specific emphasis on mitigation of civilian harm.<sup>77</sup>

However, this approach, the combination of arms sales with training, may also increase the US and its personnel's own risks. As one of the *Session 17 of the Congressional Study Group* panelists points out:

the United States typically sells arms via a "total package" approach, whereby the United States sells training, maintenance, and sustainment, as well as the weapons systems themselves. This means U.S. personnel could become active participants in customers' wars, often making customers' law of armed conflict violations its own—a prospect on display in Saudi Arabia's recent atrocities in Yemen.<sup>78</sup>

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<sup>74</sup> InterAction, *U.S. Security Partnership and the Protection of Civilians in Nigeria*.

<sup>75</sup> Ibid.

<sup>76</sup> Gavril Torrijos, "Arms and Influence in Southeast Asia: The Link between Arms Procurement and Strategic Relations," *Center for Strategic and International Studies*, September 22, 2022, <https://www.csis.org/blogs/new-perspectives-asia/arms-and-influence-southeast-asia> (accessed November 20, 2022).

<sup>77</sup> David Vergun, "Officials Describe How Arms Sales Benefit the U.S., Partners," *DoD News*, December 4, 2020, <https://www.defense.gov/News/News-Stories/Article/Article/2435951/officials-describe-how-arms-sales-benefit-the-us-partners/> (accessed November 16, 2022). Ms. Grant left DSCA in November 2021 to work with Boeing, a defense contract agency. See <https://www.dsca.mil/news-media/news-archive/dsca-director-announces-transition-federal-service>.

<sup>78</sup> Brookings, *Session 17 of the Congressional Study Group*.

Finally, but by no means conclusively, is the ubiquitous wariness on the part of some policymakers or influencers for the defense industry's own pressure on the arms export policies and process. As one author states clearly

Washington needs to take steps to ensure that the financial interests of a handful of weapons contractors do not drive critical U.S. arms export policy decisions. Of the \$101 billion in major arms offers since the Biden administration took office, over 58 percent involved weapons systems produced by four companies: Lockheed Martin, Boeing, Raytheon, and General Dynamics. The concentrated lobbying power of these companies — including a “revolving door” from the Pentagon’s arms sales agency and the leveraging of weapons export-related jobs into political influence — has been brought to bear in efforts to expand U.S. weapons exports to as many foreign clients as possible, often by helping to exaggerate threats.<sup>79</sup>

In summary, while there may be national interests that encourage inadequate oversight of arms exports and subsequent civilian harm risks, they likely fulfil short term rather than long term interests. Further, US accountability promotion for its own arms sales—or no promotion of accountability—also has international effects. As Civilians in Conflict points out

The United States has consistently been the world’s leading exporter of arms. From 2016 to 2020, the United States exported more arms than the next three countries combined, with many of these exports going to parties to armed conflict. In 2020 alone, government-authorized arms reached \$175 billion. U.S. laws and policies regarding arms transfers, therefore, carry global implications for human rights, armed conflict, and the protection of civilians.<sup>80</sup>

## Recommendations

As indicated above, the GAO offered four recommendations to the US government for improving humanitarian accountability for arms sales. They could be summarized as follow up and report as directed.<sup>81</sup> (While the report focused on Yemen, the same may apply to other US arms exports.) Hartung, of the Quincy Institute, suggests other “policy measures,” notes:

Decisions on what weapons to sell — and whether the sales truly defend vital U.S. national interests or might actually undermine core interests — call for a level of careful consideration and close scrutiny that is not currently in evidence.<sup>82</sup>

Consequently, he advocates (paraphrased here):

- Restrict the revolving door between government and industry.

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<sup>79</sup> William D. Hartung, *Promoting Stability or Fueling Conflict? The Impact of U.S. Arms Sales on National and Global Security*, Quincy Paper No. 9, October 20, 2022, <https://quincyinst.org/report/promoting-stability-or-fueling-conflict-the-impact-of-u-s-arms-sales-on-national-and-global-security/> (accessed November 11, 2022). The Quincy Institute for Responsible Statecraft is a New York City-based “think tank” with focus on “a fundamental rethinking of U.S. foreign policy assumptions.” See <https://quincyinst.org/about/>.

<sup>80</sup> Civilians in Conflict, *Human Rights, Civilian Harm, and Arms Sales: A Primer on U.S. Law and Policy*, February 15, 2022, <https://civiliansinconflict.org/arms-sales-law-and-policy-primer/> (November 16, 2022). See also CIVIC & PAX, *The Civilian Protection Podcast, #7: Made in the USA: Arms Sales & Civilian Harm*, October 7, 2022, <https://share.transistor.fm/s/f40c1a49> (accessed November 10, 2022).

<sup>81</sup> GAO, *Yemen: State and DoD Need Better Information on Civilian Impacts of U.S. Military Support to Saudi Arabia and the United Arab Emirates*.

<sup>82</sup> Hartung, *Promoting Stability or Fueling Conflict?*

- Make it possible for Congress to block dangerous weapons sales...as specified in the National Security Powers Act.
- Conduct better risk assessments. The Pentagon and State Department should determine whether particular sales are liable to fuel conflict — in essence, an Arms Race Impact Statement.
- Provide greater transparency so Congress and the public know what sales are being made, when arms are being delivered, and how U.S. arms are being used.<sup>83</sup>

The organization, *Civilians in Conflict*, suggest a narrower recommendation: use Section 502B.<sup>84</sup> The authors highlight:

U.S. law prohibits security assistance, including arms sales, to any country the government of which engages in a consistent pattern of gross violations of human rights. But the provision in question — Section 502B of the Foreign Assistance Act — has rarely been invoked in recent decades despite continued assistance to governments implicated in human rights abuses and likely violations of international humanitarian law...Section 502B created a little-known process for Congress to enforce the prohibition, allowing the legislature to request a targeted report about human rights conditions in a particular country and then pass a joint resolution of disapproval continuing, restricting, or terminating security assistance.<sup>85</sup>

Katz encourages defense companies—regardless of headquarters locations—to “take a cue from other industries — from tech to retail to food and beverage...to root out conflict minerals, child labor, slavery, and human trafficking.”<sup>86</sup> He notes:

Defense companies face increasing legal and business risks from the human rights impacts of their products and services. Rather than relying on regulators to protect it from these risks, the defense industry is well-positioned to confront them on its own...(and) an HRDD plan should cover four stages: risk assessment, prevention and mitigation, end-use monitoring, and investigation and remediation.<sup>87</sup>

Finally, Figueiredo and Lilly assert the UN must include “a more targeted and innovative application of conventional arms control tools and measures” which “could prove vital for ensuring the effectiveness and sustainability of its protection work.”<sup>88</sup>

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<sup>83</sup> Hartung, *Promoting Stability or Fueling Conflict?*

<sup>84</sup> Civilians in Conflict, *How U.S. Congress Can Use Section 502B*, May 6, 2022, <https://civiliansinconflict.org/how-u-s-congress-can-use-section-502b/> (accessed November 1, 2022).

<sup>85</sup> Ibid.

<sup>86</sup> Katz, *Human Rights Due Diligence: A Defense Industry Business Necessity*.

<sup>87</sup> Ibid.

<sup>88</sup> Barbara Morais Figueiredo and Damian Lilly, *How Can Conventional Arms Control Strengthen UN Peace Operations' Efforts to Protect Civilians?* United Nations Institute for Disarmament Research, June 1, 2022, <https://www.unidir.org/commentary/how-can-conventional-arms-control-strengthen-un-peace-operations-efforts-protect> (accessed November 14, 2022).

## Preventing Civilian Harm in Partnered Military Operations (JLLIS ID# 235957)

### Observation

In June 2022, Trevor Keck, Head of Policy for the Washington Delegation of the *International Committee of the Red Cross* (ICRC), noted the civilian harm mitigation policy discussions to date focuses on direct US military-caused action. He suggests:

This is critical, but incomplete, particularly as the U.S. military is less directly involved in current conflicts than it has been in the [past] two decades...and as the Biden administration's defense strategy points to *a heavy reliance on partners for future contingencies*.<sup>89</sup> [emphasis added]

Deloitte suggests the reliance on military partners will only increase in the near future:

Today's defense challenges, from near-peer warfare to defending a rules-based international order and gray zone threats, exist at a scale and scope that no military can meet alone. No nation has enough precision-guided munitions to sustain a protracted peer engagement by itself; at the other end of the spectrum, no military can by itself address the flood of mis- and disinformation permeating social media platforms. Success against today's national defense and security challenges requires militaries to operate outside themselves, to be interoperable with other nations, other government agencies, and even commercial industries in new ways.<sup>90</sup>

Among the many challenges multinational or partnered military operations face is reconciliation of their national or organizational legal and cultural norms. In many cases there is international law or precedent to guide the coalition norm-setting and compliance. In some cases, there is not—or what guidance exists may be misunderstood or open to individual interpretation. Policies and practices to mitigate civilian harm in military operations may be one area that requires careful assessment by all partners.

In the 2022 publication, *Preventing Civilian Harm in Partnered Military Operations*, the ICRC notes “Integrating humanitarian considerations and the LOAC [law of armed conflict] into military planning and decision-making is the mark of effective, professional command and staff processes.”<sup>91</sup> Towards that ideal—military professionalism regardless of nation of origin—the ICRC provides a *Commander's Handbook*

for military commanders and staffs tasked with supporting either another country's armed forces or a non-state armed group within the framework of partnered military operations

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<sup>89</sup> Trevor Keck, “Don't Forget Your Friends: Risks and Opportunities in Security Partnerships,” *Just Security*, June 9, 2022, <https://www.justsecurity.org/81822/dont-forget-your-friends-risks-and-opportunities-in-security-partnerships/> (accessed August 9, 2022).

<sup>90</sup> Roger Hill, Darren Hawco, Adam Routh, Joe Mariani, and Akash Keyal, “Sum of its parts: Military interoperability and the future of warfare,” *Deloitte*, September 10, 2021, <https://www2.deloitte.com/us/en/insights/industry/public-sector/future-of-warfare.html> (accessed August 9, 2022).

<sup>91</sup> International Committee of the Red Cross, *Preventing Civilian Harm in Partnered Military Operations: A Commanders Handbook*, February 17, 2022, <https://www.icrc.org/en/publication/4554-preventing-civilian-harm-partnered-military-operations-commanders-handbook> (accessed August 3, 2022), 4.

(PMOs)...for reducing the adverse humanitarian impact of PMOs on civilian populations...*not based on any specific national doctrine*.<sup>92</sup> [emphasis added]

## Discussion

Trevor Keck notes military “partnerships have always been a feature of armed conflict” but the number of partnered military operations, or PMOs, has more than doubled in 15 years.<sup>93</sup> He contributes the increase to both the proliferation of “private military and security companies and non-state armed groups” as well as the entrance of more nations into existing conflicts.<sup>94</sup>

According to the ICRC, “a PMO is a deliberate arrangement between partners to achieve a specific military aim in a conflict.” The report acknowledges that “partners can be other state forces or non-state armed groups.”<sup>95</sup> The report suggests six types of PMOs: *Training Partnerships*<sup>96</sup>; *Force Generation Partnerships*<sup>97</sup>; *Kinetic Support Partnerships*<sup>98</sup>; *Partnered Detention*<sup>99</sup>; *Intelligence Support Partnerships*<sup>100</sup>; and *Logistical Support Partnerships*.<sup>101</sup>

Regardless of PMO type, Keck identifies four key lessons for PMO leaders and staff to consider:

- *The most attractive feature of partnered warfare is also the biggest risk.* He points out that states find partnered warfare attractive because it reduces troops deployments from the supporting state. Local forces do the fighting, albeit often with supporting state equipment or logistical support. Consequently, the supporting state’s assistance is hardware focused, with little to no priority on civilian protections. In some cases, the state has no interest in influencing the partner’s approach to civilian protections; in other cases, it may simply not have the capacity to influence. In still other situations, “training, mentoring or other tools cannot substitute for a lack of will to comply with IHL [international humanitarian law]” so “supporting states should cancel or suspend security assistance if there is a clear risk that supplied arms could be used to commit or facilitate a serious violation of IHL or human rights.”<sup>102</sup>
- *Don’t neglect detainees.* He notes that many states ignore detention concerns because they want “to avoid detention altogether to avoid long-term resource commitments and legal exposure” or “potential responsibility should the partner torture or mistreat detainees.”<sup>103</sup> However, Keck argues that this deliberate ignorance manifests in battlefield abuses and other violations of combatants, thereby setting conditions that allow for IHL noncompliance anyway. Instead, he suggests “supporting states ... engage with their

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<sup>92</sup> Ibid. The Introduction further notes the publication “is part of an expanding series of ICRC products aimed at helping commanders and staffs limit the negative humanitarian consequences of war...[to] include *Decision-Making Process in Military Combat Operations*, *Decision-Making in Military Security Operations* and *Reducing Civilian Harm in Urban Warfare: A Commander’s Handbook*.”

<sup>93</sup> Keck, “Don’t Forget Your Friends.” He also states: “This trend has translated into a significant increase in non-international armed conflicts, from fewer than 30 in 2001 to more than 70 by 2016.”

<sup>94</sup> Ibid.

<sup>95</sup> International Committee of the Red Cross, *Preventing Civilian Harm in Partnered Military Operations*, 19.

<sup>96</sup> Ibid., 20.

<sup>97</sup> Ibid., 22.

<sup>98</sup> Ibid., 24.

<sup>99</sup> Ibid., 27.

<sup>100</sup> Ibid., 30.

<sup>101</sup> Ibid., 32.

<sup>102</sup> Keck, “Don’t Forget Your Friends.”

<sup>103</sup> Ibid.

partners early to ensure they conduct humane and lawful detention and provide assistance where necessary.”<sup>104</sup>

- *Know your partner and establish trust.* Keck advocates partnership coherence “starts with a proper assessment of partner willingness to comply with IHL, capabilities to do so, and leadership to ensure security forces conduct operations responsibly.”<sup>105</sup>
- *Reconsider conventional narratives about the “supporting” and “supported actors.” This is, perhaps, the most important of the key lessons Keck identifies:*

Conventional wisdom suggests that supported actors are more likely to harm civilians than if U.S., NATO, or other western forces lead combat operations. The truth is far more complex. While many western forces bring precision weapons and advanced training, local forces can bring important linguistic and cultural awareness that is often critical to avoiding civilian harm. We have also seen instances where a host government placed a greater premium on limiting the human toll during a military campaign or certain operation, for instance, than the external supporting state. This does not mean local partners are inherently better at preventing civilian harm. Rather, it’s important to recognize the strengths and weaknesses that each actor brings to a partnership. *Civilians will be protected best when partners work to minimize weaknesses and leverage the strengths of each actor.*<sup>106</sup> [emphasis added]

A 2018 Center for Strategic and International Studies (CSIS) report, *The Protection of Civilians in U.S. Partnered Operations*, suggest military operational civilian harm risk mitigation occurs in three stages: *Assess and plan*; *Execute*; and a *Transition* stage.<sup>107</sup> Within the first two stages—*assess and plan*; and *execute*—are questions and consideration which reflect similar lessons as Keck shares above. Of interest, the *transition* stage refers to the post-conflict environment and includes a *learning* component:

- Where possible, the lessons-learned process should involve both partners. Combining experiences and providing joint lessons gives a more complete picture (the process may need to be tailored to the relationship to accommodate each partner’s culture and learning traditions).
- The partner’s learning processes should also include a civilian perspective where possible. Communities can identify the humanitarian consequences of the PMO.<sup>108</sup>

## Recommendations

The 2018 CSIS report provides recommendations *For Policy Makers*, *For Humanitarian and Human Rights Organizations*, *For the US Military*, and *Regional Recommendations*. For the US military recommendations, the authors assert:

Military personnel are well placed to assess the policy doctrine, tactics, techniques, procedures, and even the administrative features of a partner military that lend themselves

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<sup>104</sup> Keck, “Don’t Forget Your Friends.”

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Melissa Dalton, Jenny McAvoy, Daniel Mahanty, Hijab Shah, Kelsey Hampton, and Julie Synder, “The Protection of Civilians in U.S. Partnered Operations,” *Center for Strategic and International Studies*, October 2018, [https://civiliansinconflict.org/wp-content/uploads/2018/10/USProgram\\_PartneredOperations.pdf](https://civiliansinconflict.org/wp-content/uploads/2018/10/USProgram_PartneredOperations.pdf) (accessed June 9, 2022).

<sup>108</sup> Ibid., 51.

to effectively mitigating civilian harm. *U.S. military officials also have unique credibility in appealing to cross-cultural values of honor and discipline and the role of the military in defending civilian populations.* International law provides a framework for basic standards of conduct and has been supplemented by U.S. military doctrine on the protection of civilians, which in turn provides the basis for training and operations.<sup>109</sup> [emphasis added]

But Keck reminds US policymakers and practitioners that:

improving U.S. policies to prevent and respond to civilian harm it directly causes is important. But any policy on civilian protection that lacks a robust plan for working with partners would be incomplete. Whether for current conflicts or future fights, the United States relies heavily on security partnerships. New frameworks, tools, and capabilities are needed to support partners on civilian harm mitigation, and compliance with IHL more broadly.<sup>110</sup>

While he highlights Defense Department and US government efforts underway<sup>111</sup> he comments

but more could still be done to prioritize IHL compliance in U.S. security partnerships. Developing a comprehensive plan that integrates the above lessons learned is a good place to start.<sup>112</sup>

### **Reinforce Instead of Replicate: Military Civil Affairs Already Conducts CHMR (JLLIS ID# 239640)**

#### **Observation**

On August 25, 2022, DoD released the CHMR-AP which declares that protecting civilians is “not only a moral imperative, it is also critical to achieving long-term success on the battlefield.”<sup>113</sup> To that end, the CHMR-AP details several investments needed to establish a CHMR framework.<sup>114</sup> Yet, there is already an extant force whose doctrine and mission profiles meet the CHMR intent, US Army Civil Affairs (CA). Therefore, instead of establishing a new entity or operational framework to implement this action plan, a better way forward for Army and DoD leaders is to reinforce the existing CA structure.

With strategic investments in institutional capacity, force structure, and material solutions, CA forces can better accomplish their mission to understand and leverage civilian environments and populations, and by extension, fulfill the moral and strategic imperative of mitigation and response to the harm inflicted on civilian populations by armed conflict.

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<sup>109</sup> Melissa Dalton, et al, “The Protection of Civilians in U.S. Partnered Operations,” 21.

<sup>110</sup> Keck, “Don’t Forget Your Friends.”

<sup>111</sup> US DoD, “Department of Defense Releases Memorandum on Improving Civilian Harm Mitigation and Response,” January 27, 2022, <https://www.defense.gov/News/Releases/Release/Article/2914764/departments-of-defense-releases-memorandum-on-improving-civilian-harm-mitigation/> (accessed June 9, 2022).

<sup>112</sup> Keck, “Don’t Forget Your Friends.”

<sup>113</sup> US DoD, *Civilian Harm Mitigation and Response Action Plan Fact Sheet (CHMR-AP)*.

<sup>114</sup> Ibid.

## Discussion

US Army doctrine describes four core competencies as essential to the conduct of CA missions: Civil Knowledge Integration (CKI), Civil-Military Integration (CMI), Civil Network Development & Engagement (CNDE), and Transitional Governance (TG).<sup>115</sup> Successful incorporation of these competencies into CA operations, both unilateral and in support of combat units, increases awareness of civil considerations and opportunities to partner with civilian entities, to achieve military objectives and reach tactical-level political resolutions that serve as the foundation for strategic success. These competencies fit with the CHMR-AP's vision of a Joint Force that wins in all domains while also mitigating (CKI and CMI) and responding (CNDE, TG) to incidents of civilian harm as described below:

*Civil Knowledge Integration (CKI) – Mitigate Harm by Increasing Awareness.* Objective 4 of the CHMR-AP calls for improving “knowledge of the civilian environment...throughout the joint targeting process” and recommends establishing “Civilian Environment Teams...to assist commanders in understanding the effects of friendly and adversary actions on the civilian environment.”<sup>116</sup> A cursory review of Joint and Army doctrine show that CA forces are already entrusted to carry out this duty. Joint Publication 3-60 *Joint Targeting* specifies that the J-9 staffing section, usually a civil affairs element, identifies “civil considerations specific to targeting and advises on the protection of civilians and protected sites.”<sup>117</sup> CA's own doctrinal publication, Field Manual 3-57, labels these activities as Civil Knowledge Integration (CKI) with the purpose to provide “accurate and timely civil knowledge” through two avenues: 1) tactical elements address commanders' information gaps by interacting with local populations, assessing key infrastructure, and data mining to discover relevant and actionable data or 2) staff elements incorporate information related to civilian considerations into the operational planning cycle.<sup>118</sup> Both of these actions inform commanders about civilian considerations in their areas of operation to mitigate civilian harm.

*Civil-Military Integration (CMI) – Mitigate and Respond to Harm by Incorporating Civilians into Military Planning.* The CHMR-AP emphasizes the importance of incorporating clear civilian-related objectives into overall mission objectives and accounting for operations' impact on the civilian environment.<sup>119</sup> CA doctrine already fulfills this requirement through the Civil Military Integration (CMI) core competency. Through CMI activities, CA forces incorporate civilians' “interests, functions, capabilities, and vulnerabilities... into military plans and operations to enable unity of effort.”<sup>120</sup> In the aftermath of the 2008 Siege of Sadr City, CA soldiers put this concept into action, facilitating cooperation between Iraqi army commanders and local authorities to deliver humanitarian assistance to thousands of residents and establishing a mediation process for damage to civilian property.<sup>121</sup>

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<sup>115</sup> Department of the Army, *Civil Affairs Operations*, FM 3-57 (Washington, DC: Department of the Army, 2021), 2-15, [https://armypubs.army.mil/epubs/DR\\_pubs/DR\\_a/ARN33094-FM\\_3-57-000-WEB-1.pdf](https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN33094-FM_3-57-000-WEB-1.pdf) (accessed January 30, 2023).

<sup>116</sup> DoD, *CHMR-AP*.

<sup>117</sup> Joint Chiefs of Staff, *Joint Targeting*, JP 3-60 (Washington, DC: Joint Chiefs of Staff, 2018), III-11, [https://jdeis.js.mil/jdeis/new\\_pubs/jp3\\_60.pdf](https://jdeis.js.mil/jdeis/new_pubs/jp3_60.pdf) (CAC access required).

<sup>118</sup> Department of the Army, *Civil Affairs Operations*, FM 3-57, 2-15.

<sup>119</sup> DoD, *CHMR-AP*, 9.

<sup>120</sup> Department of the Army, *Civil Affairs Operations*, FM 3-57, 2-20.

<sup>121</sup> April Campbell, “Iraqis take lead in Sadr City aid effort,” last modified May 14, 2008, <https://www.centcom.mil/MEDIA/NEWS-ARTICLES/News-Article-View/Article/883575/iraqis-take-lead-in-sadr-city-aid-effort/> (accessed January 30, 2023).

CMI can also be proactively incorporated to mitigate the chances of harm being inflicted on civilians in the first place. This is crucial in low-intensity irregular conflicts where battle lines are not clearcut and adversaries hide amongst the civilian population. The US State Department's Bureau of Conflict and Stabilization Operations determined that one of the biggest drivers of insurgencies in Sub-Saharan Africa was the abuses and human rights violations committed by African armed forces, some of which have received, or continue to receive, US security assistance.<sup>122</sup> US military personnel assisting these forces did not condone or abet these abuses, but most security assistance focuses on improving lethality, which can be turned against civilians if a state's civil-military relations are dysfunctional. Integrating CA forces, and their CMI capability, into security assistance efforts should be the first step to ensure improved relations between our partner forces and civilian populations they are supposed to protect.

*Transitional Governance (TG) – Respond to Harm by Providing Stop-gap Governance Support.* Objective 3 of the CHMR-AP emphasizes the importance of providing “for the protection and restoration of the civilian environment to the extent practicable,” recommending actions such as medical care and repairs to property and infrastructure.<sup>123</sup> Once again, US Army doctrine already holds CA forces responsible for this duty through the Transitional Governance (TG) competency in two manners: supporting civil authorities' operations or acting as a transitional authority until a civil administration can be re-established.<sup>124</sup> In these ways, CA forces can take advantage of the time and space won by maneuver forces to stabilize vulnerable areas and provide military and civilian leaders with increased opportunities to influence and cooperate with affected populations.<sup>125</sup>

The CHMR-AP puts the onus on US military forces to mitigate and respond to instances of civilian harm. Certainly, in past operations more deliberate targeting and judicious use of kinetic effects on the part of US forces could have prevented unnecessary harm to civilians. However, it is also important to note that some adversaries have no qualms about purposefully harming civilians to fulfill their objectives. In a current example, Russian forces employ long-range fires to destroy Ukrainian civil infrastructure, in territory they claim is Russian, to divert the Ukrainian government's resources.<sup>126</sup> Improvement and reinforcement of CA planners' and action elements' TG capability is a more cost-effective way to protect and restore shattered regions, rather than establishment of a new entity to fulfill CHMR-AP objectives.

*Civil Network Development & Engagement (CNDE) – Build & Empower Civilian Networks to Respond.* Contrary to some military leaders' assertions at the height of the Iraq and Afghanistan wars, the US cannot provide war-torn countries with a “government-in-a-box” and expect civil stability and peace to follow.<sup>127</sup> Government institutions can claim authority over a population, and even deliver services, but if they are not rooted in the socio-economic context of the community they will never achieve their political aims, namely popular support and stability. This is where civil society come in; comprised of individuals and groups tied by varied relationships and interactions, these networks shape the economic structures, social organization, cultural and

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<sup>122</sup> Sara Jacobs, “A New U.S. Approach in Africa: Good Governance, Not Guns,” *Foreign Policy*, December 12, 2022, <https://foreignpolicy.com/2022/12/12/us-counterterrorism-strategy-africa-security-assistance-governance-extremism/> (accessed January 30, 2023).

<sup>123</sup> DoD, *CHMR-AP*, 9.

<sup>124</sup> Department of the Army, *Civil Affairs Operations*, FM 3-57, 2-4.

<sup>125</sup> *Ibid.*

<sup>126</sup> Mick Ryan, “Russia's New Theory of Victory,” *Foreign Affairs*, December 14, 2022, <https://www.foreignaffairs.com/ukraine/russias-new-theory-victory> (accessed January 30, 2023).

<sup>127</sup> Sue Fleming, “Afghan government-in-a-box is tough sell,” *Reuters*, February 23, 2010, <https://www.reuters.com/article/us-afghanistan-government-box-analysis/afghan-government-in-a-box-is-tough-sell-idUSTRE61M10G20100223> (accessed January 30, 2023).

political traditions that governments negotiate while carrying out their functions.<sup>128</sup> During and after conflict, US forces need civil society elements in tandem with local authorities to restore civilian environments and set conditions for social stability. CA forces can assist this line of effort through the Civil Network Development and Engagement (CNDE) core competency.

CA forces identify, establish relationships with, and employ civilian networks if future contingencies require civil-military cooperation. While this may seem similar to the CMI competency described before, CNDE also charges CA forces to develop civil society networks, if there is a vacuum in civil society that can be exploited by malign actors.<sup>129</sup>

## Recommendations

The CHMR-AP lists many actions and intermediate goals that will require considerable manpower, resources, institutional bandwidth, and most importantly, time to achieve. DoD could reduce these start-up requirements and shorten the timeline if it leverages the existing US Army CA regiment as the nucleus to build upon as many of the CHMR-AP required actions already exist—or can easily be developed—inside that entity.

For example, the CHMR-AP directs DoD and other interagency stakeholders to develop a data repository platform compatible with all existing repositories used by military and non-military entities that would be involved in civilian harm mitigation and response.<sup>130</sup> A platform already exists among some US Army CA units—the CKI-Team Awareness Kit; but more investment is necessary to make it accessible and intuitive to use by interagency and non-governmental stakeholders.<sup>131</sup> If DoD wants CHMR capabilities exercised in US military, bilateral, and multinational exercises, it should mandate the inclusion of CA forces into every exercise so that commanders become familiar and proficient at the employment of their skillset to the same degree they are expected to employ the other warfighting functions. Conducting CKI and training exercises at this scale will require the current CA force structure to expand considerably. The current active-duty force of six battalions would have to grow to a five-brigade structure, with one brigade per combatant command, to adequately support the civil information requirements needed for successful CHMR in future armed conflicts.<sup>132</sup> Beyond the CHMR-AP, a more robust and employed CA regiment would be a force multiplier in competition and conflict contexts, fulfilling not only CHMR-AP objectives but also DoD's strategy of continuous campaigning for military advantage and integrated deterrence.<sup>133</sup>

Finally, the DoD or US Army must allocate increased funding to CA institutional training to provide CA soldiers with the necessary skills to understand civilian environments beyond a superficial level. The CHMR-AP proposes establishing Civilian Environment Teams of civil engineering, urban systems, and infrastructure experts at operational commands and directs the establishment

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<sup>128</sup> Charles Kojo VanDyck, "Concept and Definition of Civil Society Sustainability," *Center for Strategic and International Studies*, June 30, 2017, <https://www.csis.org/analysis/concept-and-definition-civil-society-sustainability> (accessed January 30, 2023).

<sup>129</sup> Department of the Army, *Civil Affairs Operations*, FM 3-57, 2-14 – 2-15.

<sup>130</sup> DoD, *CHMR-AP*, 31.

<sup>131</sup> "Civil Knowledge Integration – Team Awareness Kit," Irregular Warfare Technical Support Directorate, accessed January 13, 2023, [https://www.ctfso.gov/Projects/I2C/Civil\\_Knowledge\\_Integration\\_Team\\_Awareness\\_Kit.html](https://www.ctfso.gov/Projects/I2C/Civil_Knowledge_Integration_Team_Awareness_Kit.html) (accessed January 30, 2023).

<sup>132</sup> Juan Quiroz, "The Oblique Approach to Irregular Warfare: Civil Affairs as the Main Effort in Strategic Competition," *Small Wars Journal*, January 03, 2023, <https://smallwarsjournal.com/jrnl/art/oblique-approach-irregular-warfare-civil-affairs-main-effort-strategic-competition> (accessed January 30, 2023).

<sup>133</sup> DoD, *The 2022 National Defense Strategy of the United States of America*.

of a Center of Excellence to institutionalize best CHMR practices.<sup>134</sup> A CA Center of Excellence (CA COE) can achieve both goals. Again, the nucleus already exists in the US Special Warfare Center and School (SWCS). SWSC already prepares US and foreign military personnel for assignments as CA and CIMIC operators. It could expand training to other US military personnel to familiarize them with CA operations, and by extension CHMR, as well as collaborate with educational institutions to create specialty courses.

The DoD is right to recognize the impact of military operations on civilians and seek to mitigate and respond to those impacts. It is not only the moral thing to do, but it is also pragmatic. Military power may “win” the peace, but it is up to civilian populations and authorities to maintain the peace after military forces depart. If military leaders are careless or oblivious to their effects on the civilian environment, at best they will leave a shaky foundation for policymakers’ political resolutions. At worst, they plant the seeds for a return to conflict. DoD leaders would do well to apply the pragmatism that inspired the CHMR-AP towards the question of whether it is better to reinforce an organization that is currently fulfilling the CHMR mission or unnecessarily replicating it.

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## **The Humanitarian Emergencies Response Pediatric Medical Team (JLLIS ID# 239666)**

### **Observation**

As the year-long Ukrainian crisis shows, refugees and displaced persons are often multigenerational families. Consequently, three medical specialties—obstetrics and gynecology, geriatrics, and pediatrics—are often needed during a Foreign Humanitarian Assistance (FHA) operation but are typically not included in a Joint Task Force (JTF) deployment.<sup>135</sup> Further, given the United Nations Refugee Agency (UNHCR) estimates over half of the 27.1 million refugees worldwide are children less than 18 years of age,<sup>136</sup> it is no surprise to find a significant number of children among displaced populations.

Therefore, military, and civilian leaders of peacekeeping and stabilization operations must recognize the contributions of Military Pediatricians to ultimate mission success, especially in humanitarian emergencies, and include such specialties in their mission planning and resourcing.

### **Discussion**

The US military delivers and provides resources for medical care for humanitarian emergencies as part of the US DoD response. Examples from this century include Operation Unified Response (OUR) in 2010 after the Haiti earthquake and Operation United Assistance (OUA) in 2014 for the West Africa Ebola outbreak. Most recently in 2021 for Operation Allies Refuge/Operation Allies Welcome (OAR/OAW), the US military provided medical care and immigration clearance for over

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<sup>134</sup> DoD, *CHMR-AP*, 6 & 12.

<sup>135</sup> Joint Chiefs of Staff, *Foreign Humanitarian Assistance*, JP 3-29 (Washington, DC: Joint Chiefs of Staff, 2019) [https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3\\_29.pdf](https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3_29.pdf) (accessed January 3, 2023).

<sup>136</sup> United Nations High Commissioner for Refugees (UNHCR), “Figures at a Glance, 2022,” <https://www.unhcr.org/en-us/figures-at-a-glance.html> (accessed January 3, 2023).

79,000 Afghan evacuees upon arrival to the US, of which one-third (28,766 persons) were minors.<sup>137</sup>

Military Pediatricians bring a unique skill set to humanitarian assistance (HA) and disaster response (DR) missions (HA/DR). They not only have the specialty training to care directly for children but also have education and training in public and population health. This includes public health interventions such as immunizations, infection control measures, and antibiotic stewardship. Military Pediatricians also take the Military Medical Humanitarian Assistance Course (MMHAC) as part of their required military residency training which focuses on the care of those most vulnerable in the wake of humanitarian disasters.<sup>138</sup> In addition to in-depth medical guidance, the MMHAC provides a framework for addressing ethical concerns that arise during humanitarian missions. Most military physicians (non-pediatricians) do not receive formal training on these topics in other courses or settings.

OAR/OAW challenges highlighted the importance of this medical, public health, and logistical expertise. Military Pediatricians at Ramstein Air Base identified the need for measles vaccination and vitamin A supplementation, which can reduce the transmission and severity of measles infection. The Afghan travelers were at risk for a measles outbreak given the crowded conditions, unknown vaccination status, and mixed baseline health of the population. Unfortunately, the pediatricians' initial warnings were not heeded by command, and a measles outbreak did occur in six separate US locations. This resulted in a temporary halt of evacuation flights.<sup>139</sup> Once the outbreak began, however, Military Pediatricians were able to quickly recognize and treat those affected and advise command on strategies to mitigate the spread of the outbreak with vaccination and vitamin A supplementation.

The assigned Military Pediatricians were also best positioned to address challenges due to OAR/OAW's changing mission. The primary purpose for most of the overseas sites receiving the Afghan travelers was to simply process, medically stabilize, and move the population onward. However, after infection grounded outbound flights, travelers remained in place for weeks or months at a time instead of mere days as originally anticipated. Therefore, additional medical, ethical, and logistical concerns arose with respect to children with complex and chronic medical conditions such as asthma, congenital heart disease, epilepsy, or feeding-tube dependence. Military Pediatricians conducted the triage to determine immediate needs and which could be deferred. Further, they provided patient advocacy to engage with leadership, pharmacy, and local host nation medical systems to obtain supplies and medications not initially available. In contrast, adult medicine physicians and nurses felt unprepared to care for these more complex pediatric patients. If the Military Pediatricians had been involved in planning, they may have anticipated these specialized needs.

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<sup>137</sup> US Department of Homeland Security, Office of the Inspector General, "DHS Encounter Obstacles to Screen, Vet, and Inspect All Evacuees during the Recent Afghanistan Crisis, OIG-22-64" (REDACTED), September 6, 2022, <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-64-Sep22-Redacted.pdf> (accessed January 3, 2023).

<sup>138</sup> Uniformed Services University, The Military Medical Humanitarian Assistance Course (MMHAC), 2022, <https://medschool.usuhs.edu/ped/education/mmhac> (accessed January 4, 2023)

<sup>139</sup> Nina B. Masters, et al, "Public Health Actions to Control Measles Among Afghan Evacuees During Operation Allies Welcome - United States, September-November 2021," *MMWR*. (April 29, 2022) vol. 71(17) 592-596. <https://www.cdc.gov/mmwr/volumes/71/wr/mm7117a2.htm> (accessed January 4, 2023).

## Recommendations

Pediatrics expertise exists within the military with over 900 active-duty pediatricians who routinely provide acute care, chronic, and preventative care for children of all ages. Military Pediatricians have experience in public health and preventive medicine services to include but not limited to expertise on administration and management of vaccination programs, which are critical public health tools to prevent outbreaks. They are trained to recognize and manage the medical conditions that most commonly affect displaced populations and those most likely to be at risk of death - namely children under the age of five years. To improve DoD's medical response to future humanitarian emergencies:

- Involve Military Pediatricians early in operational planning and ongoing execution for the military's medical response to humanitarian emergencies.
- Incorporate Military Pediatricians into the operational planning doctrine and manning documents for units deployed in support of humanitarian emergencies as well as in Noncombatant Evacuation Operations, or NEOs.
- Provide pediatric-sized equipment and medications in humanitarian emergencies at all echelons of care. At this time, it is principally oriented to Role 3 organizations<sup>140</sup> which are unlikely to be the first employed in an emergency.<sup>141</sup>
- Finally, make MMHAC a readiness requirement, at a minimum, for flight surgeons, battalion surgeons, general medical officers, and all primary care providers, including physician assistants and nurse practitioners, as these occupational specialties are most likely to be called upon to provide care to children—and families and public health—during a humanitarian emergency.

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<sup>140</sup> Editor's note: Role 3 is a theater hospital, which is able to provide treatment for all types of patients. See: Ryan M. Knight, Charles H. Moore, Montane B. Silverman, "Time to Update Army Medical Doctrine," *Military Medicine*, Volume 185, Issue 9-10, September-October 2020, e1343–e1346, <https://doi.org/10.1093/milmed/usaa059> (accessed February 6, 2023).

<sup>141</sup> Joint Chiefs of Staff, *Foreign Humanitarian Assistance*, JP 3-29.

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