



# Our Military Forces' Struggle Against Lawless, Media Savvy Terrorist Adversaries

A COMPARATIVE STUDY

2nd Edition

HIGH LEVEL MILITARY GROUP

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**HLMG**  
HIGH LEVEL MILITARY GROUP



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# FOREWORD

The essence of warfare has not changed since its earliest occurrence: it still is a contest of wills. Nonetheless, the way war is conducted has evolved dramatically on account of myriad factors, be they new technology and the rise of irregular combatants, developments on land, in the air and sea to the cyber domain, and from rocket and drone warfare to the impact of the Internet and social media. Today's battlefield has become truly multidimensional, densely populated, blurred in distinction between combatants and civilians, and exposed to the public 24/7 in real time. Tactical decisions have to be made in an environment more complex than ever before. Strategic decisions must take into consideration the realities on the battlefield as well as those around it, such as the sentiments on the airwaves, on Twitter and in international organisations.

Last year the Friends of Israel Initiative organised a group of professionally distinguished and respected high-profile military officers, the High level Military group (HLMG), to assess Operation Protective Edge conducted by the Israeli Defense Forces against Hamas in Gaza in 2014. The conclusions of the first HLMG report can be found on its web site (<http://www.high-level-military-group.org>).

In conducting that work, the HLMG members felt from the outset that no single military operation can be appropriately judged unless it is placed in the full context of current operations worldwide. The Law of Armed Conflict exists in principle, but an accurate professional and legal assessment requires an understanding of how these rules are effectively applied by other military forces defending liberal democracies in different parts of the globe.

The report at hand is the result of this conclusion by the group. FoII commissioned several experts to study specific military operations conducted by their respective nations to furnish the HLMG with a set of analyses that can help situate their broader conclusions in the first report in appropriate relative terms. The studies you are about to read are important in themselves since they illuminate trends and generic lessons that are applicable to modern conflicts today. But they are also relevant since their variety in time, location, types of forces and enemies, serve as the real-world context where military operations must be conceived and executed.

There will be a third and final report in this series, with the strategic lessons to be learnt from the HLMG and the experts who authored the case studies being presented here. Liberal democracies - the Western world - must adjust to public perceptions about warfare and the conditions modern conflicts impose on us. Hopes for the eradication of or conduct of a form of "humanised" war as set against the brutality shown by our enemies, offset by the ethical behavior of our troops in the face of the systematic abuse of any and all norms of war by our opponents are a challenge to our democracies. No doubt this second report is another contribution towards the goal of informing our publics about the true scale of the challenge and equipping our leaders with the analysis to make the case.



**Rafael L. Bardaji**

Director, Friends of Israel Initiative



# Abstract and Key Conclusions

## About This Study

The High Level Military Group (HLMG) aims to add a professional military and legal element to debates about warfare in the 21st Century. Its primary mandate is to explore the implications for democratic nations of warfare against enemies who have a total disregard for life and law, but who actively exploit our own nations' adherence to the rule of law for strategic and tactical gain. HLMG members formed the view that an accurate professional and legal assessment requires an understanding of how these rules are effectively applied by law-abiding military forces defending liberal democracies against such enemies in different parts of the globe, so as to be able to judge performance appropriately in context, informed by real-world practices and dilemmas.

A number of HLMG members nominated relevant experts who were tasked with furnishing a set of analyses to help situate these challenges in the context of contemporary experience across the globe. These studies are important in themselves since they illuminate trends and generic lessons, but they are of particular interest cumulatively as a comparative exercise. A specially commissioned methodology was applied to each case so as to ensure comparative analysis can be sufficiently rigorous.

The report is a preliminary approach, focusing on eight case studies that will be supplemented by additional cases already under consideration.

*The operations examined for publication in this initial study are:*

- » Operation Moshtarak, a joint offensive carried out by the International Security Assistance Force (ISAF), consisting of American and British forces, and Afghan National Security Forces (ANSF) against the Afghan Taliban in February 2010 in Helmand Province, Afghanistan.
- » The Second Lebanon War (2006 Israel-Lebanon Conflict), a conflict between the Israeli Defense Forces (IDF) and Hizballah paramilitary forces which began on 12 July 2006 and continued until a UN-brokered ceasefire went into effect on 14 August 2006.
- » Operation Al Fajr, a part of the larger American-led War in Iraq and consisted of a joint American, British and Iraqi offensive against Sunni and Shia insurgent forces in Fallujah, Iraq, from 7 November 2004 – 23 December 2004.
- » Operation Serval, a French offensive lasting from January – July 2013 and carried out against jihadist forces operating in Mali and the Sahel region of Africa.

- » Operation Barkhane, an ongoing French counterterrorism operation which began in August 2014 and is directed against jihadist forces across Mali and the Sahel region of Africa.
- » War Plan Espada de Honor I, a Colombian military offensive carried out between 2013 – 2014 and directed against the Revolutionary Military Forces of Colombia-People's Army (FARC EP) in the Cauca region of Colombia.
- » The Battle of Sadr City, Iraq, a part of the American-led second Gulf war in Iraq that includes Operation Striker Denial and Operation Gold Wall, both of which were carried out by American and Iraqi forces against Jaish al-Mahdi (JAM) insurgents between 26 March – 15 May 2008.
- » The United States drone campaign in Pakistan, which began in 2009 and remains an ongoing operation carried out by American forces and agencies against members of Al Qaida, the Tehrik-i-Taliban Pakistan (TTP) and the Haqqani Network, all of whom operate in the Federally Administered Tribal Areas (FATA) of Pakistan.

## Key Conclusions and Implications

*A set of unambiguous trends emerge from the studies. Principally, these are:*

- » The militaries of all of the democracies examined abide by the Law of Armed Conflict while all of the enemies in the conflicts reviewed abuse these rules purposefully for battlefield gains. This is particularly prominent in relation to making unlawful tactical and strategic gain through the abuse of civilians and the special protections they are afforded. In many cases the enemy sees civilian deaths as a tactical success. The result is that our militaries are confronted with an extraordinarily complex and challenging battlefield, which requires some of the most difficult fighting troops can be tasked with.
- » All the militaries under examination go to immense lengths to mitigate this dynamic and avoid civilian casualties while still completing their missions. Though some of the details and implementation are unique to each specific military culture, there is a clear pattern of measures such as Rules of Engagement, military directives, command and control involving the relevant military and civilian leadership and general ethos to each of the missions examined, which represent unprecedented efforts to fight guided by the moral values we hold dear against enemies whose brutality is often unbounded.
- » In many cases these measures employed to protect civilians go above the requirements of the Law of Armed Conflict and the militaries under examination pay a grave tactical price on the battlefield for them. Unquestionably, troops are exposed to greater danger, and indeed die, as a result of the care taken to fight according to our laws and values. There are concerns over the extent of these mitigating measures and the levels of risk they impose on our troops raised in several theatres examined.
- » In addition, all of the democracies' militaries had in place significant humanitarian efforts alongside their war effort during and following the conflicts examined as well as clear, accountable oversight of their forces, through military and civilian judicial systems that take effect where forces fail to adhere to the high professional standards expected and displayed in the case studies. Enemies across the board commit grave humanitarian violations and are unaccountable.
- » The studies consistently make plain the overwhelming impact of political and social narratives as reflected through the media, political and international institutions and indeed through the lens of strategic communications - more traditionally known as propaganda. Advances in communications technology have had a major impact on the fight against irregular and terrorist adversaries, who remain relatively weak militarily but often display an extraordinarily well developed ability to exploit communications technology and the media in order to influence the battle over political narratives to real strategic effect.
- » A serious linked concern emerges over these political and social narratives, in particular where enemy messages meet receptive amplifiers in our own civic arenas from outright fabrications amplified by social and mainstream media, to misguided or ill-informed political actors and institutions. This

includes misplaced narratives around the Law of Armed Conflict, broader human rights and indeed the unwarranted pursuit of our troops through legal and political means post-conflict. The men and women in uniform engaged in the type of warfare under examination are faced with increasing uncertainty over whether our nations will stand behind them as they seek to defend us in the extraordinarily difficult circumstances described in the case studies at hand.

- » It is clear that a greater level of sophistication is required in the analysis and strategic thought related to this type of warfare with better efforts necessary among our own home fronts to make clear the parameters and realities of these battles and the wider conflicts they are situated in. To have reached a point where our enemies fight as described herein, yet our soldiers are placed in ever greater dangers while having to worry ever more about their legitimate military actions, and our publics are unsure about the military, strategic, political and above all moral realities and justice of our actions, suggests a growing crisis of leadership in our democracies that we must urgently address in order to secure them for the 21st Century.





## INTRODUCTORY ESSAY

# **THE CHALLENGE FOR DEMOCRACIES' LAW ABIDING MILITARIES IN THE FIGHT AGAINST ADVERSARIES WITH NO REGARD FOR LIFE OR LAW**

## **1 Background**

### *1.1 About the High Level Military Group (HLMG)*

The High Level Military Group was formed in early 2015 with the aim of adding a professional military and legal element to debates about warfare in the 21st Century, which at times have been ill-informed and politicised, and which are of vital importance to our own armies and alliance partners.

The HLMG seeks to explore the implications for Western warfare of fighting enemies who have a total disregard for the law, including the Law of Armed Conflict (LOAC), but who actively exploit our own nations' adherence to the rule of law for their gain. A primary concern for HLMG members is the emergence of a new strategic threat in the form of Lawfare, the abuse of international norms and procedures and the judicialisation of international institutions to attain strategic goals that cannot be achieved by political and military means. This and related dynamics have become a common feature of the current conflicts our armies are tasked with winning, evolving into a new weapon in the hands of our enemies who seek to constrain and limit the ability of Western armies to pursue our national security interests.

## *1.2 Background and Parameters of this Study*

Given the stakes - life, death, security, power and prosperity - in warfare, and the evident security challenges democratic governments have been forced to confront at the dawn of the 21st Century, it is unsurprising that a large and growing body of thought has been devoted to the nature of war - and how to win it - in the current era. Principally, while scholars disagree on certain fundamentals and indeed on the extent of the changes in the nature of war and questions of security - and even on how to describe this new type of warfare and the irregular forces in it - certain tenets appear to hold. It is clear that war is changing and that the prevalence of conflicts containing conventional armies operating under a traditional structure engaged in combat governed by legal regimes, pitted against irregular forces, often deploying elements of an army structure alongside terrorist tactics and the active abuse of the legal regimes governing war for advantage, marks a major change in warfare today. This holds true despite a recognition that such conflicts have been a feature of the international scene since ancient times. However, what is undoubtedly new is the nature of the global media and its effect on the political narratives around warfare, which have become an extraordinarily potent factor in these conflicts today.

It is this last point, of potent and at times ill-informed political narratives, that the work of the HLMG seeks to address, by making a contribution on the basis of real-world political, legal and battlefield experience. The aim of this study is to provide a professional voice offering clarity on the conditions and constraints that the type of warfare our democracies' armies and security forces are now engaged in imposes on them. Academic debates about so-called fourth-generation warfare and the history of insurgency are important but at times fail to keep up with and reflect the impact on the ground on actual operations of this already substantial and growing challenge for our militaries. Valid arguments about continuity aside, we must also be facing a new reality when our troops go to war against some of the most brutal enemies we've seen since the Second World War, dropping leaflets on them to warn them they are coming.

The study at hand is a preliminary approach to be expanded upon with further case studies and commentary on other aspects of this challenge. It consists of eight case studies written by military and academic experts and is unique in that it has sought for the first time to create a methodological framework to comparatively examine cases where military and security operations fit the basic framework corresponding to the HLMG's primary concern - namely conflicts where one side is a traditional military force fighting under the rule of law and the other an irregular force employing hybrid methods including terrorism, with no regard for life or law (see Methodology section below). Though there are methodological challenges as well as restrictions in terms of availability of information in some of the cases, it nevertheless has been possible to produce a document that highlights clear comparative trends and enables observations that significantly illuminate the challenge that our armies and security forces face.

## *1.3 The Law of Armed Conflict (LOAC)*

The customary and treaty laws and principles applicable to the conduct of armed conflict in international law that make up the Law of Armed Conflict (LOAC) are a bedrock of democratic civilisation, deeply rooted in history and developed over centuries. This important body of law aims to mitigate the human cost and impact of warfare by setting forth a set of principled understandings for its conduct. At bottom, LOAC requires belligerents to desist from deploying any degree of force not necessary for military purposes, and mandates the conduct of hostilities with appropriate respect for innocent human life. More specifically, the *jus in bello* principles of LOAC regulate the application of military force, with proportionality and distinction being key pillars of military rules of engagement (ROE). The former requires an adversary to ensure that anticipated collateral damage in any lawful attack does not outweigh the military advantage expected from the action. The latter is the requirement that a belligerent in a conflict distinguish between civilians and combatants - both the enemy's and their own.

It is crucial to note here that the legality of any military action has to be measured on the full spectrum of contextual understanding existent at the time of decision making and cannot be judged retrospectively, on effect. It is thus not possible to discern whether specific actions or military campaigns were compliant with LOAC or not on the basis of television images of destruction or assertions made on the basis of an incomplete picture of the military context to an action. Nor can adherence to the principle of proportionality be determined by considering the relative casualty figures between belligerents in a conflict. A significant level of military and applicable legal expertise is required in order to accurately assess battlefield actions under these parameters - which are frequently discussed in ill-informed, misguided and at times flatly wrong terms in the public debates of our nations'.

## 2. Key Findings

### *2.1 Abuse of the Law of Armed Conflict for Strategic and Tactical Gain is Ubiquitous among our Enemies*

A significant feature of the challenge from the terrorist and guerrilla forces our militaries confront is their unlawful exploitation of the protections of LOAC for strategic and tactical gain. Throughout the case studies we see a pattern of blatant, wilful abuse of LOAC. Often forces do not just ignore the principle of distinction, but purposefully deploy among civilians, in many cases forcing them to stay and serve as human shields for their military activity. This has the double advantage to our enemies of affording them the protections imposed on our militaries by adherence to LOAC, and, where LOAC permits attack with the risk of proportional collateral damage, the encouragement and subsequent misrepresentation of civilian casualties for the purposes of propaganda against our forces' and countries' actions. These abuses pose one of the greatest challenges of this mode of warfare for our militaries - where there is no clarity about who the enemy is and the stakes for public opinion are immense, making mistakes potentially disastrous to a military campaign.

Grave examples abound. During Operation Moshtarak in Afghanistan, Taliban forces in civilian clothing would famously fire from compounds in which women and children were hiding, and then walk unarmed to another compound to resume fire, posing a serious challenge in determining legitimate military targets and distinguishing these from civilians. This remains a serious problem for the ongoing U.S. drone campaign against the Taliban in Pakistan's Federally Administered Tribal Areas (FATA) where local civilians have reported Taliban members demanding that residents provide shelter for their men and then force the civilians to remain among them in order to deter attacks, using them as human shields.

Similarly during Operation Al Fajr in Iraq, insurgents used civilian infrastructure for military purposes, both to afford their actions some protection from attack and to gain propaganda advantages by provoking attacks on protected buildings such as hospitals and places of worship. For example, of the 140 mosques in Fallujah, 66 were used as weapons stores, while three medical clinics were used by enemy forces to fire on Coalition forces. French forces fighting Al Qaeda in the Islamic Maghreb (AQIM) and other jihadists in the Sahel region equally found that their adversaries often hid weapons in schools and other public structures believing that these forces would not be willing to search or attack such locations due to the restrictions of LOAC. Like the Taliban in Afghanistan, AQIM fighters intentionally dressed like local citizens in order to blend in with the population, whom they intimidated into supporting their cause.

Al Qaeda additionally added the spectre in Africa of Western armies being faced with child soldiers, something the terrorist organisation shares with the FARC insurgents fighting against the Colombian Army, who had been recruiting children under the age of 15 for a fight that saw the utilisation of many of the hallmark tactics of this type of warfare, including the embedding among local communities and dressing in civilian clothes.

Equally, Hizballah in its 2006 conflict with Israel fired its rockets from among the civilian population in Lebanon whom it also abused to store weapons and ammunition - all the while firing at the civilian infrastructure of Israel. Hizballah today maintains a massive arsenal of rockets posing a serious threat to Israel, stored among Lebanese civilians. Furthermore, in its struggle against the drug cartels, the Mexican military has witnessed cartel members not only kidnapping, torturing and murdering individuals deemed threats but also seeking out civilians and civilian infrastructure when they encounter federal forces. Like other guerilla forces half a world away, these Mexican cartels ensnare innocent civilians in a conflict in order to dissuade military forces from using force.

### *2.2 Our Militaries Adhere to and Often Exceed the Stipulations of the Law of Armed Conflict at significant Strategic and Tactical Cost*

In every case studied for this report national militaries adhered to LOAC while their adversaries did not. Confronted with enemies whose tactics encourage civilian deaths, many of the military forces examined took additional measures to reduce the chances of civilian casualties, beyond the requirements of LOAC. In stark opposition to enemies whose entire strategy rests on grave violations of the laws governing warfare, the democratic nations' militaries under review not only sought to mitigate this, in some cases at significant cost to their effectiveness,

but have processes to ensure accountability against violations which are overseen in the last instance by the democratic judicial authorities of their respective nations.

It is important to fully appreciate the significance of this dynamic for our forces faced with the type of enemy and warfare under review here. The demands on endurance and serious psychological strains of the responsibility that the kind of combat involved in these mission places on soldiers are extreme. The nature of the fighting described in the case studies is extraordinarily difficult for democratic militaries' troops, requiring snap judgments in hugely complex situations, often under acute threat to their own lives.

Urban warfare against a force that actively encourages civilian deaths makes immense demands on troops that can only partially be mitigated by training and investment in intelligence. Often senior commanders would impose additional restrictions on their militaries, seeking to deny the enemy the propaganda coups of the results of lawful attacks and imposing further risk on their own troops as a result of being forced to fight the enemy while also protecting their innocent civilians.

For example, General McChrystal's tactical directive in place during Operation Moshtarak, which went beyond the ROEs in effect then, limited close air support, air-to-ground munitions and indirect fire near residential areas, prohibited ISAF forces from carrying out searches within an Afghan domicile without the presence and participation of indigenous troops; and outlawed attacking insurgents in any historical or religious sites, including mosques, unless ISAF forces were under direct attack and needed to take such action in self-defence. Similarly, French forces taking part in Operations Serval and Barkhane in Africa had limits as to the type of munitions that could be used imposed by their commanders, such as helicopter support only coming in the form of gunfire, and restrictions on when and where troops could engage the enemy in addition to special protocols for dealing with child soldiers. Israel too instigated a strict set of rules outlining how to engage enemy combatants without risking civilian casualties during its 2006 conflict with Hizballah, further setting up a special task force dedicated to its efforts of isolating civilians from the battle areas and its extensive protocol of precautions and early warnings.

Often these rules would lead to complaints over the increased danger they posed to democratic nations' troops. U.S. forces in Afghanistan complained that the additional directives governing the use of force during Operation Moshtarak often hindered their effectiveness even when acting in self-defence. Not only did the restrictive practices in place at times, such as only firing when fired upon, lead to additional Coalition casualties, but instances where ground troops were denied air support while pinned down under fire on account of pilots' concern over potentially severe disciplinary action if their actions lead to civilian casualties are testament to the strain these precautions put the military under. Similarly, during Operation Fajr troops also expressed frustration with the availability of air support and the approval requirements for targeting authorisations.

U.S. Marines in Fallujah, for example, reported that there were over 200 requests for airstrikes with fewer than twenty approved by commanders. Moreover, the approval process often contained numerous authorisations ranging from the commander of Coalition troops in Fallujah to more senior civilian and military leadership located far away from the battlefield. These requirements resulted in long delays for ground troops seeking air support, often endangering troops on the battlefield. In Israel criticism of the restrictive precautions and resultant dangers the Israel Defense Forces face is a constant feature of debate, and following the 2006 war with Hizballah, Israel's strategy was heavily criticised in internal debates as overly gradual if not outright hesitant, in part on account of the dangers Israel's leadership perceived to civilians on both sides on account of Hizballah tactics.

Further, a crucial factor in the regimes governing their actions were the advance warnings to the civilian population that many of the militaries under examination implemented. Not only do these violate one of the most fundamental tenets of winning wars - giving up the tactical initiative of choosing the time and place of an assault to cause the enemy maximum surprise and difficulty - but they also often exceed the requirements of LOAC. Conversely, where enemy forces do not hold the civilian population hostage as human shields, these tactics can save significant numbers of lives, even among those who under LOAC could be legitimately put at risk.

**"Human rights groups and NGOs give credence to narratives that are more reflective of our adversaries propaganda than the reality of our nations' military actions."**



**"The challenge here should not be underestimated. Blending crude unlawful military operations with advances in communications technology and activities designed to influence political narratives, our adversaries have come upon a potent formula that has often led to serious strategic setbacks for the militaries in the case studies examined here."**

for civilians and wounded enemy combatants and instigated a protocol whereby when civilian infrastructure was damaged, a local contractor and civil affairs personnel would begin reconstruction within 24-48 hours. During the German military's operations in Afghanistan from 2009-2013, troops were responsible both for aiding in the construction of infrastructure and for training Afghan civil officials who would one day take over social administrative institutions.

The Colombian military equally undertook significant humanitarian measures to aid the local population, fast tracking projects focused on basic sanitation and critical infrastructure such as roads and bridges. During the war with Hizballah, Israel set up a dedicated operations room to coordinate aid efforts as well as land and sea 'humanitarian corridors' to ensure the delivery of vital aid to Lebanese civilians affected by the hostilities, going as far as broadcasting over local Arabic radio stations the locations of Israeli hospitals that would provide free medical care to sick and wounded Lebanese civilians. French forces fighting AQIM also adhered to additional directives over their ROEs that called for the maintenance of structures vital to economic and social life and the provision of medical support to local residents in need.

Finally, every military examined for this study is accountable through an apparatus designed to ensure strict adherence to the law and investigate and where appropriate prosecute troops that fail to live up to the expected standards in the course of battle. The complex battlefield presented by the type of warfare under examination here can and does lead to mistakes, which can be actionable when negligent, such as in the case of the officers who faced severe disciplinary action following a mistake that killed a significant number of civilians when they mistook their convoy for an enemy movement during operation Moshtarak. Often senior commanders will be in charge of this accountability, such as in the case of Operation Fajr, where the Commander of Coalition Forces in Fallujah was personally responsible for investigating allegations and reporting to his superiors within an hour of them surfacing.

These real-time accountability measures are overseen by the military and civilian justice apparatuses of the respective democracies under examination, such as in the case of the Colombian Attorney General's office following War Plan Espada de Honor I against the FARC or Israel's Winograd Commission, so called after the name of the former Supreme Court judge at its head, appointed by the Israeli government to examine shortcomings in the conflict with Hizballah.

In the lead up to Operation Moshtarak American and British forces dropped leaflets that listed the known Taliban commanders in the area, urged fighters to flee or be killed and issued radio broadcasts to inform the public of their militaries while in the war against Hizballah, Israeli commanders assigned the IDF's Northern Command to the specific mission of warning the population of south Lebanon of impending military operations through various mediums, including leaflet drops, radio broadcasts and direct contact with local leaders. Similarly, leaflet drops and broadcast radio announcements advising residents to evacuate and indicating why certain groups and individuals were being targeted were identified by U.S. Commanders as one of the key successes of Operation Fajr where the Coalition's effort to encourage civilians to leave Fallujah prior to the start of combat dramatically reduced the danger to the Iraqi population.

Where civilians are affected by fighting aimed at irregular forces embedded among them, many of the case studies show the democratic nations' forces working to mitigate their suffering during and after these operations through humanitarian aid and reconstruction efforts. In Fallujah in the aftermath of Operation Fajr, Coalition forces provided treatment



### *2.3 The Challenge of Political and Social Narratives*

Though the arguments over the extent of change or continuity in warfare can seem remote and academic when considering the extremely dangerous, complex and challenging battlefield reality for democratic nations' troops described in this study, one factor is abundantly clear - the overwhelming impact of political and social narratives as reflected through the media, political and international institutions and indeed through the lens of strategic communications - more traditionally known as propaganda.

Advances in communications technology have had a major impact on the fight against irregular and terrorist adversaries, who remain relatively weak militarily but often display an extraordinarily well developed ability to exploit communications technology and the media in order to influence the battle over political narratives to real strategic effect. Groups such as Hizballah and Al Qaeda (and most prominently today Islamic State, though it is not part of this study) have shown a sophisticated understanding of the effect of their communication on the political and social debates of our nations and deploy this effectively.

The adversaries described in these studies often utilise a particularly gruesome and nefarious playbook that makes these battles so difficult, not least since for these adversaries military defeat can be turned into strategic victory. This strategy, as seen in Iraq, Afghanistan and Lebanon, is premised on actively encouraging civilian casualties. Fighters deliberately hide among civilians and fire from civilian areas. Thus they are able to exploit the protections afforded under LOAC for strategic gain. But their broader aim is to invite civilian casualties that can occur even where troops operate lawfully in such a context in order to then recycle these for propaganda efforts. Thus in Iraq, Afghanistan and Lebanon for example, adversaries invite legitimate fire on the civilian and protected sites from which they operate (thereby turning them into lawful military targets), and in turn accuse our nations' troops of war crimes and the deliberate targeting of civilians and holy sites.

This twisted inversion of reality is a hugely potent danger, widely recognised by military commanders and politicians. Yet the narratives promoted by our enemies are a serious problem not just through their own potency but also on account of political agendas - misguided in some cases, nefarious in others - that amplify the corrosive lies about the actions of democratic nations' militaries. As the case studies presented here show, these militaries for their part have gone to unprecedented lengths to limit civilian casualties, even when doing so directly endangers the men and women serving in their ranks. Yet lawful actions by professional military forces continue to be cast in an ill-informed derogatory light, denounced for the legitimate actions against lawless adversaries whose propaganda all too often finds a sympathetic audience in democratic nations.

The challenge here should not be underestimated. Blending crude unlawful military operations with advances in communications technology and activities designed to influence political narratives, our adversaries have come upon a potent formula that has often led to serious strategic setbacks for the militaries in the case studies examined here.

This is at times enabled by the regrettable reality that political actors in democratic nations and international institutions such as the United Nations, as well as human rights groups and NGOs give credence to narratives that are more reflective of our adversaries propaganda than the reality of our nations' military actions. Partially this is a reflection of a lack of expertise and sophistication in the analysis of events, given the significant military and legal understanding, as well as operational experience, required to fully assess the situations our troops find themselves in, as the case studies here make plain. But partly it is the failure to be fully cognisant of the grave dangers of the threats we face, and the remarkable sophistication of our adversaries who match heinous unlawful battlefield practices with serious media savvy and political sophistication.

**"The adversaries described in these studies often utilise a particularly gruesome and nefarious playbook that makes these battles so difficult, not least since for these adversaries military defeat can be turned into strategic victory."**

### 3. Implications

The case studies under examination in this paper make clear that our militaries are faced with a new threat, whatever the continuity in the realities of warfare today. Thus, the sophisticated political-influencing strategies of our adversaries mean that while they fight with no regard for the Law of Armed Conflict, abusing it for gain, our troops are hamstrung and placed in greater danger by strategies that seek to mitigate this threat and deny our enemies these strategic victories - that oftentimes these adversaries have been able to snatch even from the jaws of military defeat.

The problem of political narratives is a serious one in this context. Not only have we seen the effectiveness of enemy propaganda at play, but certain enablers in our own ranks have added to the problem. A prominent example relevant to the case studies at hand are the continued legal threats against British troops who fought in Iraq. Coming against the backdrop of the travesty that was the Al-Sweady inquiry - in which British troops spent a decade under a cloud of spurious allegations of abuses during active service in Iraq that were proven to be wholly unfounded and indeed fuelled in part by enemy propaganda - troops engaged in this type of warfare today are faced with increasing uncertainty over whether our nations will stand behind them as they seek to defend us in the extraordinarily difficult circumstances described in the case studies at hand. Nefarious narratives - from outright fabrications by enemies amplified by the media, to misguided or ill-informed political actors - are a problem that must be addressed in the first instance by better efforts among our own home fronts to make clear the parameters and realities of these battles and the wider conflicts they are situated in.

As the true extent of the challenge has become clearer, and the political and military leaders in democratic nations are faced with a long-term fight against the types of adversaries described in these case studies, some important principles emerge. It is clear that a greater level of sophistication is required in the analysis and strategic thought related to this type of warfare. To have reached a point where our enemies fight as described herein, yet our soldiers are placed in ever greater dangers while having to worry ever more about their legitimate military actions, and our publics are unsure about the military, strategic, political and above all moral realities and justice of our actions suggests a growing crisis of leadership in our democracies that we must urgently address in order to secure them for the 21st Century.

# A Note On Methodology

## *(1) Background*

The report at hand constitutes an exercise in seeking to better explore the implications of the decline of conventional warfare and rise of asymmetric conflicts, in particular as related to the implications of the growing involvement of civilians in active hostilities. It is intended to be a work of empirical, qualitative comparative research on which future work can build. As such, a sound methodology ensuring that all the cases in the evaluation set are examined and evaluated using the same criteria and under the same guidelines is essential. Building on the work of an extensive methodology developed for this project by Maj Gen (ret) Eiland, the Case Study authors were asked to adhere as closely as possible to the system devised to make comparative analysis sufficiently rigorous.

Naturally a significant number of obstacles remain in comparing different scenarios. But the methodology used - a brief excerpt from which follows below - has enabled the work to draw on a common structure and baseline for assessment that holds throughout each of the cases examined in this report.

To date, there is no single accepted comprehensive methodology that can be used to fully scrutinise the conduct of the military operations such as are under examination in this study. A sound methodology is necessary to ensure that all the cases in the evaluation set are being examined and evaluated using the same criteria and under the same guidelines. Developing a methodology also means coming up with a system that will integrate all the relevant parameters, converting data into measurable figures and analysing them in a way that will yield translatable results.

The methodology that was developed for this report was purposely designed to be versatile and generic enough to be used in other cases and projects.

## *Methodology*

Below is an extensive excerpt of key sections of the Methodology applied to the Case Studies, which can be found in full in Annex A.

## *Scope and Definitions*

The comparative research shall focus on the conduct of hostilities in the course of defined battles or clashes that rise to the level of armed conflicts. The relevant armed conflicts are those that take place between one or more states on one side, and one or more non-state actors on the other side. They must meet a certain level of intensity, continue for at least one week, and implicate civilian populated areas.

We elaborate on each of these conditions below.

## *Jus in Bello*

The study should focus on the conduct of the military and will bracket out the political justification for the beginning of hostilities. Accordingly, it shall focus on the *jus in bello* (also known as the Laws of Armed Conflict, the Laws of War, or International Humanitarian Law), taking into account relevant law and jurisprudence, and will bracket out any discussion or consideration of the *jus ad bellum*.

## *Armed conflicts*

The study should only examine clashes of an intensity that reaches the level of “armed conflicts.” Armed conflicts are subject to a distinct set of legal conventions, as articulated in a body of relevant treaties and customary international

law. They are to be distinguished from lower level clashes that are subject to policing rules under international human rights law and domestic criminal law.

### *State vs. Non-State Actors*

The study should be limited to conflicts between states and non-state actors. While non-state actors demonstrate a wide range of competence, capabilities, and organizational structures, they are more likely to share certain common features that are different from states' forces, again making comparisons across battlefields more applicable.

The selection of comparable cases will necessarily depend on the participating partners to this study and their ability to report relevant data. This will limit the study to liberal democracies fighting non-state actors.

### *Intensity*

For the study to be effective there should be a threshold of frequency of clashes and attacks. Conflicts should only be considered if:

There are armed attacks (such as shelling, rocket attacks, air strikes, or improvised explosive device detonations) approximately once every [two] days.

The armed attacks take place within a distinct geographic area.

The clashes continue for at least a week at this rate.<sup>1</sup>

Additionally, to ensure criminal and policing activities are not inappropriately captured, this study should only consider armed conflicts that involve the use of the state's military forces.

### *Timeframe*

The study should consider only conflicts that have taken place recently.

Given advances in war-fighting strategies and tactics, as well as improvements in weapons systems and healthcare capabilities, it is reasonable to limit the timeframe to more recent conflicts. Along these lines, when possible in selecting the final list of case studies, we recommend preferring and choosing more recent conflicts over older ones, even within this window.

### *Populated Areas*

Fighting strategies and considerations are highly dependent on local population density.<sup>2</sup> Therefore, to ensure fair comparisons, we recommend limiting the study to conflicts that take place in urban or other densely populated areas. This can be ascertained by applying the following U.S. Army definition for built-up area: "A concentration of structures, facilities, and people that forms the economic and cultural focus for the surrounding area. The four categories of built-up areas are large cities, towns and small cities, villages, and strip areas."<sup>3</sup>

## *(2) General Guidelines*

Armed conflicts, especially asymmetric conflicts with which the proposed study is concerned, comprise of many interactive and co-dependent dimensions, making it hard to isolate particular features and draw clear conclusions. To give a concrete example, a simple comparison that focuses on numbers of casualties has little instructive value

<sup>1</sup> These metrics are based roughly on a decision from the International Criminal Tribunal for Yugoslavia. See Fatmir Limaj, Judgment, *supra* note 7, ¶¶ 135–170, IT-03-66-T (Nov. 30, 2005) (concluding that a sufficiently intense armed conflict existed and noting that "periodic armed clashes occurred virtually continuously at intervals averaging three to seven days over a widespread and expanding geographic area," *id.* ¶ 168.).

<sup>2</sup> See, e.g., U.S. Marine Corps, *Military Operations on Urbanized Terrain* (1998).

<sup>3</sup> U.S. Army, FM 90-10-1, *An Infantryman's Guide to Combat in Built-Up Areas* (1993). See also the U.S. Marine Corps definition for *Military Operations on Urbanized Terrain* (MOUT): "All military actions planned and conducted on a topographical complex and its adjacent terrain where manmade construction is the dominant feature." *Supra* note 11.

without knowing more about the nature of the environment (populated or unpopulated), the intensity of hostilities (low or high), the duration of combat activities, the degree of threat to one's own forces or civilians, etc.

To allow for an objective and credible assessment – and then comparison – of various combat features across different combat environments, we devised a system that would offer a way to quantify certain parameters within an agreed upon matrix.

Our research and discussions led us to draw on the principles of an existing proven methodology from a different field: credit rating of sovereigns. Financial credit rating of sovereigns integrates quantitative and qualitative information (accounting for unique circumstances in each case) into measurable results.<sup>4</sup>

This rating system consists of hard objective numeric parameters, but also includes an evaluation of complex non-numeric data to ensure that the comparison is further fine-tuned and accurate than a mere statistic generalization of the outcome.

Any attempt to analyse a-symmetric armed conflicts has to take under consideration that our goal is to evaluate the military conduct as a system at whole unlike other bodies of investigation that look at single events. We do recognize that one or more events can influence the score of the overall system, and assume that those will be factored in the systemic parameters which will be examined.

In direct continuation of the previous point, we are interested both in the *de jure* (i.e. policy, orders) and *de facto* (actual execution on the ground) situations, and will draw conclusions from both.

Lastly, the basic assumption of this research is that all countries are subjected to the rules of international humanitarian law. However, we do not take the position of a court in determining wrong-doings of militaries but rather seek to identify and articulate the norms emanating from the conduct of militaries in similar, or close to similar, situations and the score a specific military gets in comparison to those norms.

### *(3) Evaluation Criteria*

The methodology consists of three levels of assessments with three types of variables:

#### *Main factors, Sub factors and Parameters.*

Each Main factor is divided into Sub factors and each Sub factor is evaluated based on a set of Parameters, as the following chart demonstrates:

#### **The four Main factors are:**

- 1. Circumstances** – variable conditions that have a significant effect on the way military conduct should be evaluated.
- 2. Enemy** – Analysis of the way the enemy (the non-state actor) has operated, taking into account its operational capabilities.
- 3. Military** – Analysis of the conduct of the military throughout the operation.
- 4. Outcome** – The effects and damage of the armed conflict in terms of human casualties and damage to property.

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<sup>4</sup> For reference: Government rating methodology and assumptions by S&P.

[http://img.en25.com/Web/StandardandPoors/CriteriaGovernmentsSovereignsSovereignGovernmentRatingMethodologyAndAssumptions\\_1365.pdf](http://img.en25.com/Web/StandardandPoors/CriteriaGovernmentsSovereignsSovereignGovernmentRatingMethodologyAndAssumptions_1365.pdf)



*Sub Factors:*

The Sub Factors that comprise each Main factor do not necessarily have the same degree of importance or influence over the Main factor and, therefore, in some cases will have different weights. The following shows the various Sub factors and their degree of importance.

The Circumstances Main factor is comprised of four Sub factors, one of which being the conflict duration. This Sub factor is not evaluated on its own, and is factored in the intensity and urgency Sub Factors. The other three Sub factors bear equal weight.

Main Factor	Sub Factor
<b>Circumstances</b>	<b>Duration</b> - period of time the conflict lasted
	<b>Intensity</b> - number of strikes and severity of conflict
	<b>Terrain</b> - size of area and density of population
	<b>Urgency</b> – risk level for military's side civilians

The Enemy Main factor is the combination of its capabilities and conduct. These two sub factors are equally important and, therefore, receive the same weight.

Main Factor	Sub Factor
<b>Enemy</b>	<b>Capabilities</b> - effectiveness of enemy's weapons and forces
	<b>Conduct</b> – enemy's abuse of power and civilians (on bothsides)

The Military four sub factors are equally important and therefore receive the same weight

Main Factor	Sub Factor
<b>Military</b>	<b>Procedures</b> – Military's rules of engagement, planning stage, commends intended to minimize civilian casualties and damage while carrying out the operational goals
	<b>Use of force</b> - use of weapons, target definitions, professionalism of forces and their effect on civilian population
	<b>Humanitarian</b> – Efforts made to isolate and assist the civilian population caught in the conflict
	<b>Investigation</b> - Self-examination procedures of the military

The Outcomes Main factor is determined by evaluating the Sub Factor of casualties and the Sub Factor of overall damage to civilians. The former outweighs the latter.

Main Factor	Sub Factor
Outcomes	Casualties – number of casualties dead and wounded
	Damage to property– damage to public, private and infrastructure property

A finer calibration of the Sub Factors will be made by examining a set of parameters as applied to each Sub Factor. A more detailed explanation about the Sub Factors and the complete list of parameters for each Sub Factor (total of 55 parameters) is presented in Annex A.

#### (4) Assessment

The assessment could be done in various forms. One excepted method is using numeric scores and weighing in the scores to reach an overall score.

Another method uses verbal evaluation that describes the parameters, sub factors and main factors in words until a general evaluation is generated.

A third method can mix the two and use numeric and verbal evaluations.

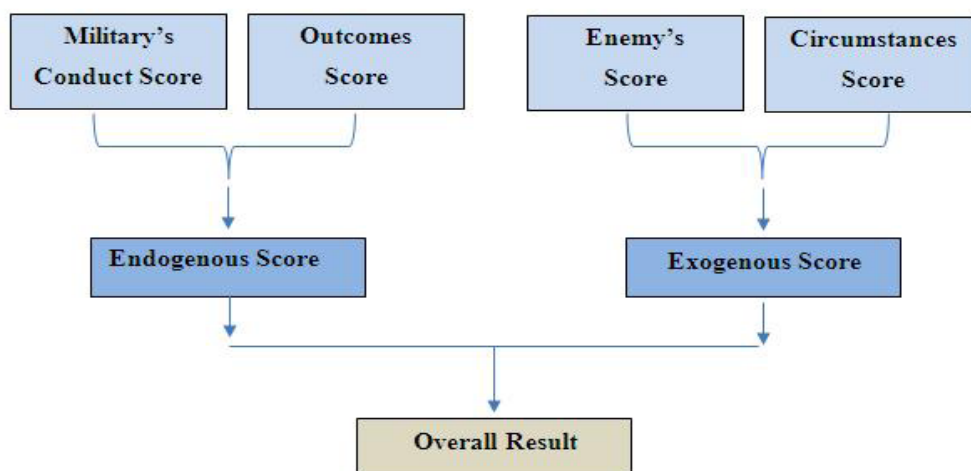
**No matter what method is used it is important to work on three different levels:**

**Assessing Level 1:** Parameters - Sub Factors:

**Assessing Level 2:** Sub-Factors – Main Factors;

**Assessing Level 3:** Main Factors – Overall score.

The final result for each case study should be calculated as a sum of the four Main factors' scores, as presented in the following illustration:



The Military's and Outcomes score should be added together and will determine the "endogenous" score, which reflects the total evaluation of factors the military can be held accountable for. This score should be weighed against

the Enemy's and Circumstances' scores combined -the "exogenous" score, which is considered to be the affecting factors outside the control of the military in the time of the operation.

### *(5) Final Comments*

The methodology provides a clear, structured process in which data can be analysed, evaluated and calculated so conclusions can be drawn as to the conduct of the military in the given circumstances. However, one must bear in mind that there is still significance to the evaluators and their expertise. As is in any process of analysis this too requires a certain degree of proficiency in military affairs.

Further, there is no substitute for direct access to data. Access that allows the evaluator to receive all necessary information, ask relevant questions and directly engage individuals who were part of the operation is essential.

Both the skills of the evaluator and his/her access to data are key to properly analysing complex events such as military operations.

# CASE STUDIES

## Case Study Author Biographies

**Colonel Richard Kemp CBE (ret.)** was Commander of British Forces in Afghanistan and has served in Iraq, the Balkans, South Asia and Northern Ireland. He has led the international terrorism team at the UK's Joint Intelligence Committee and served as chairman of the strategic intelligence group for COBRA, the UK national crisis management committee.

**Jasper Reid** is a British analyst specializing in politics, defense and international security.

**Major General Giora Eiland (ret.)** served as Head of the National Security Council of Israel, an office he held following a distinguished career in the Israel Defense Forces, including as Head of Planning Branch and Head of Operational Branch.

**Professor Gary Hogan** is a senior advisor at KPMG and a former Professor of Grand Strategy at the US National Defense University Industrial College of the Armed Forces. Gary's career in the Australian Army spanned more than 30 years.

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# Operation Moshtarak

## Helmand Province, Afghanistan

13 – 25 February 2010

**Colonel Richard Kemp CBE**  
with Andrew Ehrhardt

### Summary

Operation Moshtarak was joint ISAF and ANSF offensive carried out against the Taliban in February 2010 in southern Helmand Province, Afghanistan. The operation began on 13 February and involved nearly 15,000 coalition troops fighting against an estimated 400-plus Taliban insurgents. The coalition forces secured a swift victory and by 25 February had achieved their objective of consolidating control over the Nad Ali District and the town of Marjah. Approximately 100 Taliban insurgents were killed by ISAF and ANSF forces who, combined, suffered over 65 fatalities. During the twelve-day operation, there were 46 confirmed civilian casualties caused by ISAF and ANSF forces. The number of civilians killed as a result of Taliban actions remains unknown but various independent reports put this total number in the hundreds.

This study has examined the prior rules of engagement and subsequent conduct of both ISAF forces and Taliban insurgents during the first twelve days of Operation Moshtarak. Our findings conclude that ISAF forces adhered to unprecedented and highly restrictive rules of engagement which resulted in fewer civilian casualties but also made ISAF ground forces more vulnerable to enemy attacks. Furthermore, the study finds that Taliban insurgents operated with complete disregard for international laws governing the use of force in combat and were responsible for hundreds of civilian casualties which were never acknowledged or investigated.

### Overview

Operation Moshtarak was a NATO International Security Assistance Force (ISAF) and Afghan National Security Force (ANSF) offensive against the Taliban in Helmand Province, Afghanistan in February 2010. The operation took place in the Nad Ali district of Helmand and involved over 15,000 ISAF and Afghan forces. The combat phase of the operation began in the pre-dawn hours of 13 February and lasted until 25 February when the majority of Taliban insurgents were cleared from the Nad Ali district and the town of Marjah.<sup>1</sup>

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<sup>1</sup> The exact date in which the most significant period of combat ended is disputed as isolated and sporadic attacks continued for months after the operation

## *Historical Context*

By February 2010, the United States and some of its allies had been in Afghanistan almost eight and a half years. The lack of progress coupled with the steep rise in the number of civilian casualties had become a major source of tension between President Barack Obama's administration and the Afghan government under President Hamid Karzai.<sup>2</sup> There was a growing realization among legislators and policymakers in Washington that the overall strategy in Afghanistan was not achieving its intended aims. During discussions in 2009 over future NATO operations in Afghanistan, military commanders made it clear that the town of Marjah needed to be won in order to first gain control over Helmand Province and then Kandahar Province, the latter considered to be the logistical center and spiritual home of the Taliban insurgency.

## *Urgency*

For the western militaries involved, namely the United States and Great Britain, the Taliban did not pose a direct existential threat to their states. But the Taliban, when in control of Afghanistan from 1996 - 2001, had aided and abetted international jihadist groups whose intentions and actions included attacks against western nations, most notably 9/11.<sup>3</sup> The activities of groups such as Al Qaida posed a direct terrorist threat to Western nations, especially the United States and United Kingdom. Although Operation Moshtarak was not an operation carried out for the immediate self-preservation of the US or UK, it was urgent as it pertained to the success of the war in Afghanistan and the wider war on terrorism, as well as the survival of the Afghan National Government.

## *Intensity*

Although the largest military operation since the war began in 2001, Operation Moshtarak was of relatively short duration. British and Afghan forces in the north of the Nad Ali district faced little resistance, due to their shaping operations in the months preceding the offensive which forced many Taliban fighters to flee and allowed ISAF and ANSF forces to consolidate control over the area.

The U.S. Marines and Afghan forces charged with gaining control over the southern half of the district, including the town of Marjah, faced a formidable force of Taliban insurgents. Although the most intense period of the conflict lasted only a few days, several U.S. Marines reported that the insurgents who remained in Marjah were some of the most well-trained fighters they had encountered during the conflict in Afghanistan.<sup>4</sup> Because of the relative lack of Taliban resistance faced by British and Afghan forces in the northern half of the Nad Ali district, this study will focus mainly on the American and Afghan operations in the southern half of the district, primarily in the town of Marjah.

## *Terrain*

Helmand Province's largest town, Marjah, is in the southern half of the Nad Ali district, 380 miles southwest of Kabul and twenty-five miles southwest of the provincial capital, Lashkar Gah. For decades, Marjah has been a key area of Helmand Province for its rich soil and agricultural potential.<sup>5</sup> As the Taliban began to consolidate control over Afghanistan in the mid-1990s, Marjah became the center of the insurgency's Helmand operations.

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as ISAF and ANA forces began to implement their counterinsurgency strategy within the town. This report will mark the 25 of February as the end of initial combat operations. On this date, the governor of Helmand Province, Gulab Mangal, presided over a flag raising ceremony in which the Afghan flag was hoisted over the center of Marjah. Over 700 residents attended. See Shah, "As Fighting Eases, Afghans Plant Flag and Their Hopes in Marjah." *New York Times*. 26 February 2010.

2 In August 2009, shortly after McChrystal took over, there was a NATO airstrike that killed up to 142 people, 100 of whom were civilians. The German NATO commander was responding to the hijacking of two NATO fuel transports by the Taliban. The Taliban ended up abandoning these two trucks in a village after telling civilian residents to claim the fuel. The NATO commander authorized the strike that killed hundreds. See Gall, p. 176; For Karzai's anger towards civilian casualties, see Chandrasekaran, p. 139

3 Compared to the direct threat that Hamas attacks posed to Israeli society, the Taliban did not pose the same threat to the US and UK.

4 Dressler, "Taking and Holding Marjah," p. 5

5 Beginning in the 1950s, an extensive canal system had been developed by the U.S. Army Corps of Engineers nominally for irrigation purposes but also to counter Soviet influence within the country.

Figure 1: With permission from CSIS. In Dressler, "Operation Moshtarak: Taking and Holding Marjah," p. 197



### *Why did they fight?*

First, the operation was viewed as essential to the larger task of attacking the Taliban in their spiritual home and base of operations in Kandahar Province to the east. Second, Marjah and Nad Ali were symbols of Taliban strength in the region and ISAF forces sought to show their supremacy by attacking the insurgency at one of its strongest points. Third, the widespread cultivation of opium poppies in Helmand Province was seen as the single largest source of Taliban revenue; eradicating this cash crop was viewed as key to undermining the finances of the Taliban. Fourth, Marjah and the Nad Ali district, with its large and relatively dense population, offered a good opportunity for ISAF to launch its new 'population-centric' counterinsurgency model.<sup>6</sup>

### *Civilian Population*

The Nad Ali area—90 square miles—had a population in February 2010 estimated at 75,000. The population of Marjah and its surrounding villages was estimated to be under 50,000.<sup>7</sup> Although heavily populated compared to the rest of rural Afghanistan, Marjah can be more aptly described as a combination of several impoverished villages connected by dirt roads.<sup>8</sup> Most of the structures, compounds and homes in Marjah are without running water or electricity.<sup>9</sup>

The majority of the population of Helmand—and Marjah in particular—is comprised of ethnic Pashtuns. Since its founding, the Taliban consists primarily of individuals from the southern Pashtun population which also makes up a large proportion of Kandahar Province, the region immediately east of Helmand Province.<sup>10</sup>

The population was receptive to Taliban forces which protected and encouraged opium poppy production, a crop that yielded over twice the profit of wheat or corn harvests and brought some financial stability to local citizens.<sup>11</sup> Marjah was considered one of the most important narcotics centers in Helmand Province with upwards of 185 processing factories, each of which was paying the Taliban an estimated \$200,000 per month in taxes.<sup>12</sup> Mid-March was a time when roughly two-thirds of the Helmand poppy fields would be in bloom, which meant that ISAF and ANSF troops were moving in to disrupt their livelihood during the most prosperous season for local farmers and villagers.<sup>13</sup>

Not only did many of the ethnic Pashtuns in Helmand Province connect on an ideological level with the Taliban, but many viewed the Afghan national government as corrupt and ineffective. Two years before Operation Moshtarak, the Afghan National Police, under the direction of Police Chief Abdul Rahman Jan, had occupied the town of

<sup>6</sup> Cordesman, p. 196

<sup>7</sup> Dressler, "Preparing for the Battle of Marjah," p. 1

<sup>8</sup> Cordesman, p. 194

<sup>9</sup> Ibid, p. 194

<sup>10</sup> Ibid, p. 195

<sup>11</sup> West, p. 199

<sup>12</sup> Cordesman, p. 194, from Dressler, "Preparing for the Battle of Marjah," p. 1

<sup>13</sup> Ibid, p. 207

Marjah and were known for corrupt practices and brutal repression, including summary executions of alleged criminals.<sup>14</sup> In many cases, this led to the population of Marjah and its surrounding areas preferring the Taliban presence to that of the Afghan National Government.

Compared to the rest of Afghanistan, the residents of Helmand held greater antipathy towards ISAF forces. According to polling conducted by *ABC News* in early February 2010, only 36 percent of the Helmand population had a favorable view of American forces in their area, whereas this was 78 percent for the rest of Afghanistan. Only 27 percent of Helmand residents viewed the American and NATO forces as capable of providing adequate security in the area, compared with 49 percent of those polled in the rest of the country.<sup>15</sup> ISAF forces were attempting to clear an area where the majority of civilians did not approve of their presence.

## Afghan Taliban

### *Ideology and motivation*

The Taliban is an Islamist fundamentalist group that ruled Afghanistan from 1996 – 2001. The group is made up of primarily ethnic Pashtuns (the word ‘taliban’ is Pashto for ‘students’) and was first organized among the mujahideen fighting the Soviets during their occupation of Afghanistan (1979-1989).<sup>16</sup> After the withdrawal of Soviet forces in 1989, a power struggle began among the various mujahideen groups in Afghanistan. By September 1996, the Taliban had first consolidated control over Kandahar Province and then Kabul where President Burhanuddin Rabbani was overthrown. Rabbani, an ethnic Tajik, had been viewed as hostile towards the Pashtun majority who make up an estimated 42% of Afghanistan’s 32 million people.<sup>17</sup>

Once in control of Afghanistan, the Taliban implemented harsh laws based on the Pashtun’s pre-Islamic tribal codes as well as strict interpretations of Sharia law.<sup>18</sup> These practices drew human rights criticism from international bodies such as the United Nations, and the Taliban’s close relationship with Al Qaida triggered international sanctions from 1999. From its inception, the Taliban was primarily focused on domestic as opposed to international issues. But the Al Qaida attacks on 11 September 2001, directed from Afghanistan, directly implicated the Taliban who were harboring Al Qaida members, including their leader Osama Bin Laden, and refused to surrender them.

### *Objectives*

In terms of Operation Moshtarak, the primary goal of the Taliban in this conflict was to maintain control of the Nad Ali district and in particular, the town of Marjah which served as a logistical hub for their military, political and economic activities in Helmand Province.

### *Strategy to achieve these objectives*

Far from confronting ISAF directly, the Taliban were focused on the survival of their forces. In the eight-plus years that they had been fighting ISAF forces in Afghanistan, Taliban commanders and fighters constantly faced ISAF forces superior in numbers, weapons and training. The Taliban understood ISAF intentions to gain control of the Nad Ali district and the town of Marjah since the ISAF shaping operations began in summer 2009.<sup>19</sup> The Taliban recognized that they would never be able to overpower an ISAF force through conventional military means. Their strategy was to survive and outlast their enemies, to slow the advance of ISAF forces and to eventually return to the area once foreign troops had left.

<sup>14</sup> Cordesman, p. 195

<sup>15</sup> Ibid, p. 198; Langer, “The Challenges of Marjah,” *ABC News*, February 4, 2010

<sup>16</sup> Laub, “The Taliban in Afghanistan.” *CFR Backgrounder*

<sup>17</sup> World Population Review. “Afghanistan Population 2015.”

<sup>18</sup> Laub, “The Taliban in Afghanistan.” *CFR Backgrounder*

<sup>19</sup> These ‘shaping’ operations will be discussed in detail later in the report, but they involved ISAF and Afghan forces gaining control of the area around the Nad-Ali district and Marjah in the weeks and months before the launch of Operation Moshtarak.

Tactics included the withdrawal of many commanders and fighters before the fighting even began; extensive deployment of roadside bombs and IEDs to slow the advance and inflict casualties on ISAF and Afghan forces; and a program of harsh intimidation against residents of the district to influence their allegiance in the weeks and months after the offensive.

### *Rules of Engagement*

The Taliban leadership implemented a set of directives or 'code of conduct' specifying how fighters were to operate on the battlefield and within Afghan communities. The only evidence of this was a rules and regulations booklet dated May 2009 seized by US forces in July 2009.<sup>20</sup> Some of the rules of engagement permit actions in direct violation of International Humanitarian Law and the Geneva Conventions.<sup>21</sup> For example, in the section regarding prisoners of war, the rulebook reads: "If the Mujahidin take people hostage and they cannot take them to their place for any reason and the hostages are infidel fighters or they are government workers, then the Mujahidin have the right to kill them."<sup>22</sup>

The report on Afghan civilian protection in 2010 by the UN Assistance Mission in Afghanistan (UNAMA) confirms that the Taliban 'are bound by customary international humanitarian law, Common Article 3 of the 1949 Geneva Conventions and the Second Additional Protocol to the Geneva Conventions.' This report asserts that the Taliban 'have the same obligations as States to limit the risks that conflict imposes on civilians, to protect civilians not engaged in hostilities and to refrain from targeting and attacking civilians and civilian objects.'<sup>23</sup>

Additional reports by UNAMA in 2011 found that although the Taliban spoke of their desire to avoid civilian casualties, this did not translate into substantive improvements or investigations into alleged violations by Taliban commanders.<sup>24</sup> Pressure plated IEDs, for instance, continued to be used by the Taliban that, according to a UN report, disproportionately harmed civilians as opposed to ISAF forces.<sup>25</sup> In addition, Taliban insurgents engaged in systematic intimidation of the local population through threats, beatings and assassinations of residents thought to be complying with coalition forces.<sup>26</sup>

### *Relation to population*

As noted earlier in this study, the Taliban insurgency was comprised primarily of ethnic Pashtuns, which made up the majority of the residents in the Nad Ali district. Many were wary of the central government in Afghanistan and viewed the Taliban, with their strict laws and encouragement of opium cultivation, as a stabilizing and beneficial presence in the region.

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20 Crawford, p. 110, from Dexter Filkins, "'09 Deadliest Year for Afghans, U.N. Says," NYT, 14 January 2010, p. A6; for Taliban publication, see "Afghanistan Islamic Emirate Rules and Regulations for Mujahidin Pashto"

21 Clark, "Calling the Taliban to Account." *Foreign Policy Magazine*. 6 July 2011.

22 *Afghanistan Islamic Emirate Rules and Regulations for Mujahidin Pashto*, May 2009, Section 2.10

23 UNAMA and AIHRC report, p. 1

24 Ibid, p. 6

25 Ibid, p. 3

26 CSIS, p. 207



## *Conduct During Conflict*

By the start of Operation Moshtarak, it was estimated that nearly 1,000 Taliban insurgents remained in the area.<sup>27</sup> The insurgents were known to have stored a large amount of munitions in the town and were able to recruit and train their forces in the surrounding area. Taliban weaponry consisted of mostly small arms, mortars and shoulder-fired rockets. The insurgents' primary tactics included IEDs, ambushes, hit and run attacks and sniper attacks.<sup>28</sup>

The area in and around Marjah was heavily mined by Taliban insurgents which made for very slow movement by ISAF forces and limited the movement of people who wished to flee the fighting.<sup>29</sup> Given the extended preparation the Taliban were afforded by the shaping operations that took place in the run up to Operation Moshtarak, the large number of roadside bombs and mines became a major hindrance for ISAF and ANSF forces.<sup>30</sup> For example, in the first days of the operation, the U.S. Marines of Charlie Company's Second Platoon came across an estimated seventy bombs placed in a ten-foot high wall surrounding a compound near the center of Marjah.<sup>31</sup>

During the operation, the Taliban sought to blend in with the population, a common tactic among insurgents in Afghanistan intended to facilitate escape from the area of combat and to launch surprise attacks against ISAF troops.<sup>32</sup> There were instances of insurgents, under the guise of local farmers, taking up rifles and firing several rounds towards ISAF troops in the distance and then placing the gun down and walking out in the open, unarmed, to see if they had hit anyone.<sup>33</sup> There were also reported instances of insurgents firing weapons from one location, dropping them and running, unarmed, to another location and then picking up weapons to fire at ISAF forces.<sup>34</sup> This type of warfare exploited the blurred lines between the Taliban and local civilians. When hiding behind a mud brick wall and firing shots at ISAF troops, the man was an enemy combatant; but when laying down his weapon and taking up the appearance and actions of a local farmer in order to escape, assess his damage or scout future targets, he appeared to ISAF and ANSF forces to be a civilian and under International Humanitarian Law (IHL), legally immune from being engaged by ISAF forces.

To the ISAF forces, it appeared as if the Taliban had up to date knowledge of the ISAF rules of engagement.<sup>35</sup> Their tactics incorporated factors that made it increasingly difficult for ISAF troops to employ lethal force that would normally have been used in a combat situation.

For example, a Taliban insurgent would take up a firing position at the window of a house containing women, children and male non-combatants. The insurgent would fire at ISAF forces. In normal combat those forces might be expected to immediately return fire in self-defense and to destroy the enemy. However ISAF rules of engagement prohibited them from doing so unless they could establish visual contact with the attacker *and* confirm there were no civilians in close proximity.<sup>36</sup> Unless that was the case, ISAF forces were limited to taking cover while the enemy combatant fired on their position.

Both before and during the conflict, there was heavy intimidation of the local population by insurgents, including assassinations and beatings of those considered to be cooperating with US forces.<sup>37</sup>

There were also reports of Taliban insurgents using civilians as human shields throughout the Battle of Marjah.<sup>38</sup> On 18 February 2010, the *Associated Press* reported that Taliban fighters in Marjah were using civilians as human shields during fights with US and Afghan forces. This tactic, the *Associated Press* noted, was 'part of a Taliban effort

27 Harding, "Operation Moshtarak: first wave of offensive against Taliban stronghold begins." *The Telegraph*. 13 February 2010.

The number was actually closer to 400. See Dressler, "Taking and Holding Marjah," p. 5

28 King, Laura. "Marines in Marjah focus on sniper threat" *LA Times*. 19 February 2010

29 Cordesman, p. 206; Chandrasekaran, p. 135

30 Ibid, p. 206

31 Chandrasekaran, p. 135

32 Cordesman, p. 206

33 West, pp. 196-199

34 Wonke, *The Battle for Marjah*.

35 Dressler, "Taking and Holding Marjah," p. 5

36 West, pp. 205-206

37 UNAMA and AIHRC report, p. 46 and pp. 11-13

38 *BBC News*. Afghanistan Taliban 'using human shields' – general. 17 February 2010

to exploit strict NATO rules against endangering innocent lives to impede the allied advance through the town.<sup>39</sup> Commander of Afghan troops in Marjah, Brig. Gen. Mohiudin Ghori, stated that in some instances, women and children had been forced to stand on a roof or in windows of buildings from which Taliban fighters were firing on coalition troops.<sup>40</sup> “[The Taliban] are trying to get us to fire on them and kill the civilians.”<sup>41</sup>

According to interviews conducted by the Afghanistan Independent Human Rights Commission (AIHRC) and the United Nations Assistance Mission in Afghanistan (UNAMA), ‘The main reason why so many civilians were killed and injured in armed clashes was the Taliban’s routine use of civilians as human shields.’<sup>42</sup> In an account retold to UNAMA and AIHRC investigators, a Marjah resident explained: “The Taliban never use empty houses [to shoot from] because they think that ISAF will bombard them. They do not even allow people to leave their houses. They make people stay in the houses even though there is going to be a fight. When people complain that their family members may die, the Taliban say, ‘We will die and go to heaven’... The people can only flee when the Taliban leave the houses to join some engagement and are busy fighting.”<sup>43</sup>

## ISAF

### *Objectives, Strategy and Tactics*

As well as being the largest offensive since the start of the Afghanistan campaign in October 2001, Operation Moshtarak was the first major operation after President Obama’s announcement on 1 Dec. 2009 that the United States would be deploying an additional 30,000 troops to Afghanistan.<sup>44</sup> It was also the first major operation to incorporate General Stanley McChrystal’s ‘population-centric’ COIN strategy which was intended to ‘win over the hearts and minds’ of the Afghan population as opposed to focusing primarily on the defeat of the enemy.<sup>45</sup>

In a memo to the American Secretary of Defense, Robert Gates, in June 2009, Gen. McChrystal asserted the importance of avoiding civilian casualties, saying, “Our strategy cannot be focused on seizing terrain or destroying insurgent forces; our objective must be the population. In the struggle to gain the support of the people, every action we take must enable this effort... Preoccupied with protection of our own forces, we have operated in a manner that distances us—physically and psychologically—from the people we seek to protect. In addition we run the risk of strategic defeat by pursuing tactical wins that cause civilian casualties or unnecessary collateral damage. The insurgents cannot defeat us militarily; but we can defeat ourselves.”<sup>46</sup>

With a new strategic direction set, Operation Moshtarak was to be the new model for future operations in Afghanistan. The operation would incorporate two key pillars. First, the ANSF was to be responsible for a much more active and significant role in the combat operations in order to prepare Afghan forces for their eventual independent military responsibility.<sup>47</sup> Second, the overall strategy was no longer solely focused on defeating and driving out the enemy. Objectives included building up Afghan communities so that they might be able to function on their own, free from Taliban influence and control. McChrystal’s ‘government in a box’ approach was a plan to clear out the enemy; hold the territory; bring in an Afghan provincial governor, ministers, and a police force; and then eventually hand over the territory to the Afghan government and local population.<sup>48</sup>

39 *Associated Press*. “Embattled Taliban rely on human shields against allied forces.” 18 February 2010.

40 Dressler, “Taking and Holding Marjah,” p. 5; *BBC News*, “Afghanistan Taliban ‘using human shields’ – general,” 17 February 2010

41 *BBC News*. Afghanistan Taliban ‘using human shields’ – general. 17 February 2010

42 UNAMA and AIHRC report, p. 48

43 *Ibid*, p. 49

44 Cordesman, p. 194

45 General McChrystal became the Commander of US and ISAF forces in Afghanistan on 10 June 2009.

46 McChrystal, “Secretary of Defense Memorandum 26 June 2009,” pp. 1.1-1.2; Gall, p. 174

47 The word ‘Moshtarak’ is Dari for ‘together’ and was used to invoke the image of western and Afghan forces fighting side-by-side.

48 Farmer, “Marines have won Marjah battle and now fight for hearts and minds.” *The Telegraph*. 7 March 2010. The term ‘Government in a box’ referred to a plan to quickly install an Afghan government and police force once ISAF and ANSF forces had cleared out the Taliban from Marjah. See Filkins, “Afghan Offensive is new war model.” *New York Times*. 12 February 2010.

## *Rules of Engagement*

The current Standing Rules of Engagement (SROE) for US forces are published by the Chairman of the Joint Chiefs of Staff and approved by the Secretary of Defense.<sup>49</sup> The entirety of this document is classified as releasing specific details regarding the rules of engagement would benefit enemy forces. Rules of engagement are based on the Law of Armed Conflict, International Humanitarian Law and the Geneva Conventions.<sup>50</sup> According to the International Security Assistance Force spokesman during the operation, German Army Brig. Gen. Josef Blotz, these laws ‘describe the circumstances and limitations under which forces will begin or continue to engage in combat.’<sup>51</sup>

While the SROE remained unchanged from their most recent update in 2005, Gen. McChrystal implemented tactical directives and strategic guidance which further regulated ISAF use of force during Operation Moshtarak. McChrystal’s first tactical directive, issued in July 2009, was focused on limiting civilian casualties. This was to be achieved by limiting close air support (CAS), air-to-ground munitions and indirect fire near residential areas; forbidding ISAF forces from carrying out searches within an Afghan domicile without the presence and participation of ANSF troops; and the outlawing of any ISAF forces firing upon any historical or religious sites, including mosques, unless ISAF forces were under direct attack and needed to take such action in self-defense.<sup>52</sup> In addition to these basic guidelines, all searches of Afghan homes were to be conducted by Afghan forces and ISAF forces were not permitted to fire at Taliban insurgents if it meant that civilians might be injured in the crossfire.<sup>53</sup>

“We will not win based on the number of Taliban we kill, but instead on our ability to separate insurgents from the center of gravity—the people. That means we must respect and protect the population from coercion and violence—and operate in a manner which will win their support. This is different from conventional combat, and how we operate will determine the outcome more than traditional measures, like capture of terrain or attrition of enemy forces. We must avoid the trap of winning tactical victories—but suffering strategic defeats—by causing civilian casualties or excessive damage and thus alienating the people.”<sup>54</sup>

In August 2009, McChrystal also issued the ISAF Commander’s Counterinsurgency (COIN) Guidance which followed the same theme as his tactical directive in that it stressed the importance of not alienating the population while fighting the Taliban. McChrystal admitted that a conventional approach to fighting the insurgents would not be successful because of the simple fact that many of the insurgents hide themselves amongst the population, thus a more conventional approach would result in high civilian casualties.<sup>55</sup>

Here McChrystal again reiterated the importance of avoiding civilian casualties during operations against the Taliban. “Large scale operations to kill or capture militants carry a significant risk of causing civilian casualties and collateral damage. If civilians die in a firefight, it does not matter who shot them—we still failed to protect them from harm. Destroying a home or property jeopardizes the livelihood of an entire family—and creates more insurgents. We sow the seeds of our own demise.”<sup>56</sup>

## *Warnings to the Population*

In early February 2010, U.S. commanders acknowledged that the operation was soon to commence. American and British Special Forces dropped leaflets that listed the known Taliban commanders in the area, urged fighters to flee or be killed and issued radio broadcasts that warned the population of the impending operation.<sup>57</sup> This public notification helped convince non-ideological fighters—i.e. those more prone to deserting—to flee the area and also

49 See “Chairman of the Joint Chiefs of Staff, Instruction 3121.01B, Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces (June 13, 2005)

50 Reid, “ISAF, SCR Address Military ROE and Tactical Directives”

51 Ibid

52 Amore, pp. 60-61; NATO/ISAF Tactical Directive, 6 July 2009

53 Ibid, p. 61

54 NATO/ISAF Tactical Directive, 6 July 2009

55 Amore, p. 62

56 ISAF Commander’s Counterinsurgency Guidance, August 2009

57 Dressler, “Preparing for the Battle of Marjah,” p. 3; King, Laura. “Marines in Marjah focus on sniper threat” *LA Times*. 19 February 2010

allowed the civilian population to avoid the conflict beforehand.<sup>58</sup> According to a report by the Institute for the Study of War, only a few thousand residents of Marjah were able to evacuate prior to the operation.<sup>59</sup> Furthermore, the report found that Taliban insurgents forced many civilians to stay in the area in order to dissuade the coalition troops from using heavy aerial attacks and to better their chances of being able to blend in with the population.<sup>60</sup>

Afghan and ISAF forces under the command of Afghan Brig. Gen. Mahayoodin Ghoori and U.S. Brig. Gen. Nicholson met with nearly 350 elders from the main tribes around Lashkar Gah, the capital of Helmand province.<sup>61</sup> Brig. Gen. Mahayoodin and Brig. Gen. Nicholson instructed the elders to convince their fellow residents to avoid going out into the open once the operation commenced.<sup>62</sup> During these meetings, the elders had asked the ISAF generals for a delay to the start of the operation so that those wishing to leave could do so. This postponement request was approved by NATO commanders in Kabul. The elders made it clear from early on that their support of the operation depended on how the combat was carried out and how many civilians were killed or injured.

### *Conduct During Conflict*

The main combat phase of the operation commenced in the early morning hours of 13 February 2010 and ended with the Afghan flag being hoisted above the center of Marjah on 25 February. Total combat forces numbered approximately 15,000. This figure included 3,000 Marines, 4,400 Afghan troops, 1,000 British troops and hundreds of U.S. Army soldiers.<sup>63</sup> As noted above, British and Afghan forces conducting operations in the northern half of the Nad Ali district did not encounter significant resistance and incurred few casualties. In the southern half of the district, U.S. Marines and Afghan forces faced a considerable number of well-trained Taliban insurgents but were able to consolidate control over the town of Marjah by the 25<sup>th</sup> of February.

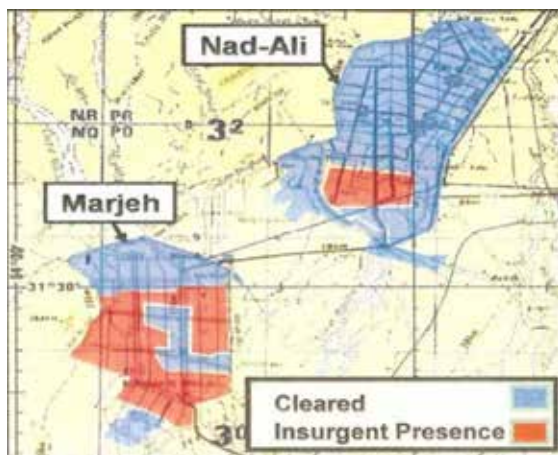


Figure 2: Marjah and Nad Ali on 15 February 201064

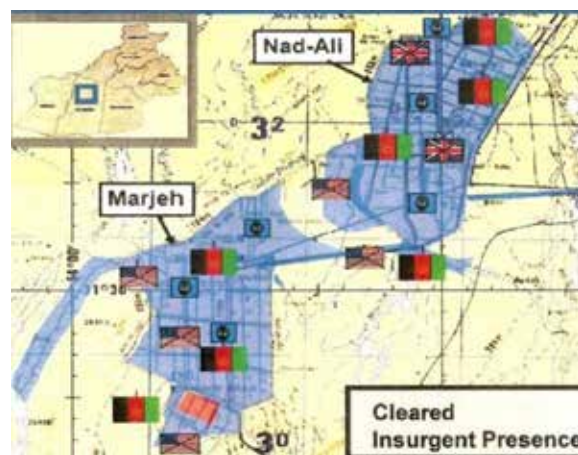


Figure 3: Marjah and Nad Ali on 28 February 201065

As a result of the directives issued by Gen. McChrystal, the use of airstrikes, night raids and indirect fire were

58 Dressler, "Preparing for the Battle of Marjah," p. 3

59 Between the 11th and 12th of February, approximately 2,700 people fled Marjah in advance of the pending operation. See Dressler, "Taking and Holding Marjah," p. 2; Cordesman, p. 200

60 Dressler, "Preparing for the Battle of Marjah," p. 3

61 Cordesman, p. 199

62 West, p. 196; Cordesman, p. 199

63 Quoted in Van Ess, pp. 8-9, directly from Dressler, "Taking and Holding Marjah," 1. Dressler cites Associated Foreign Press, "Afghan Police Deploy to Taliban Bastion," February 19, 2010; C.J. Chivers and Rod Nordland, "Errant Rocket Kills Civilians In Afghanistan," The New York Times, February 15, 2010. This figure of 15,000 includes troops in support roles.

64 With permission from CSIS. In Dressler, "Operation Moshtarak: Taking and Holding Marjah," p. 203. Source: U.S. Department of Defense

65 Ibid, p. 205.



limited as a result of Taliban insurgents fighting in and amongst compounds that housed women and children.<sup>66</sup> In effect, this concern for civilian casualties meant that Marines and ISAF forces could not fire on the enemy if they did not positively identify them as such and isolate them from civilians. An article in the *Washington Post* quoted an Afghan official who estimated that during the first two days of combat, over 140 airstrikes were requested by ISAF and ANSF ground troops, but only six to seven had been carried out.<sup>67</sup>

These constraints obviously made the ISAF and Afghan forces more vulnerable on the ground. As Marine Lance Cpl. Travis Anderson told the *Associated Press*, 'It's hard to fight a war like this...they're using our rules of engagement against us.'<sup>68</sup> An errant missile strike that killed twelve civilians (see below) further constrained an air support capability already hampered by new directives limiting airstrikes. After this missile strike, all air support requests put before the Marine Brigade had to be referred to Regional Command South some fifty miles from the Marjah area. The requests for an air strike followed a lengthy chain of command. For example, an ISAF soldier would communicate directly with a pilot as to the exact location of the enemy while his immediate commander in the field was on the radio with the regimental staff. The regimental staff was then relaying the request to the brigade staff who were inquiring with the staff at Regional Command South.<sup>69</sup> As airstrike requests were passed up the chain of command and vetted by different commanders, troops on the front line remained exposed to additional enemy fire as crucial air support was delayed and often ultimately denied.

Before the air support request even reached higher authorization levels, the pilot could (and often did) refuse to support the ground forces calling for assistance. This was a direct result of instructions to pilots to conform to the new focus on civilian casualties. As a result of the new directives, pilots themselves could be prosecuted if audio or video evidence was produced showing that their ordinance caused civilian casualties.<sup>70</sup> The new regulations created an environment in which those charged with providing and/or authorizing air support were fearful of carrying out or ordering any strike in which civilians may be at risk. The result was ground forces arguing with pilots and commanders as enemy troops continued firing on their position or simply scurried away to safety. In effect, every person within the chain of command now felt that any collateral damage would be their responsibility. As such, the safety of the troops responsible for engaging the enemy on the ground was compromised in order to avoid collateral damage.<sup>71</sup>

Although the ISAF and Afghan forces went to extreme lengths to ensure the safety of the Afghan population, civilian casualties did occur during Operation Moshtarak. In February 2010, while the operation was in its most violent stage, 46 civilians were killed as a result of airstrikes.<sup>72</sup> The first major incident involving civilian casualties came on the second day of the operation when an American surface-to-surface rocket strike mistakenly hit a compound in which civilians were located. Estimates ranged from 11-12 dead, including 5-6 children.<sup>73</sup> In the aftermath, McChrystal immediately suspended the weapons system, launched a formal investigation and issued an apology admitting that the strike landed 300m from its intended target. Meanwhile, British Gen Nick Carter stated that the missile struck its intended target, but that commanders didn't know that civilians were present.<sup>74</sup> This is just one example of the confusion and difficulty of analysing every missile strike in a combat situation. Despite the conflicting assessments, after this airstrike, the surface-to-surface missile system was suspended from use while a formal investigation was launched.

The second major incident was on 21 February 2010 when an airstrike killed 27 civilians, the worst such case of civilian deaths since September 2009.<sup>75</sup> This was not in Marjah or within the Nad Ali District, but some 150 miles

66 Cordesman, p. 206

67 Partlow, "NATO Rocket Misses Target, Kills 12 Afghan Civilians." *Washington Post*. 14 February 2010.

68 De Montesquiou, "Troops: Strict War Rules Slow Marjah Offensive."

69 West, p. 205

70 Ibid, pp. 205-206

71 Ibid, pp. 205-206; U.S. servicemen have openly spoke of the dangers caused by stricter rules of engagement. See Motlagh, "Petræus Toughens Afghan Rules of Engagement," *Time*, 6 August 2010

72 Important to note that not all of these were in Operation Moshtarak—this report includes one that was over hundred miles outside of Marjah but it involved US forces tracking down insurgents who had recently fled the Marjah offensive.

73 C.J. Chivers and Rod Nordland, "Errant Rocket Kills Civilians In Afghanistan," *New York Times*, February 15, 2010

74 *The Telegraph*. "Operation Moshtarak: missiles that killed civilians 'hit correct target.' 16 February 2010

75 *BBC News*. "NATO Airstrike Kills 27 Afghanistan Civilians." 22 February 2010; Nordland, "NATO Airstrike Kills Afghan Civilians." *New York Times*. 22 February 2010.

away. It is relevant here because the troops responsible for the airstrike were targeting insurgents who had fled the conflict in Marjah. The strike occurred in Khotal Chowzar, a mountain pass that connects Daykondi Province with Oruzgan Province in central Afghanistan, and was carried out by U.S. Special Forces helicopters. The aircraft mistakenly struck a vehicle convoy believed to be insurgents moving to engage ISAF and Afghan forces. Instead, the vehicles contained 42 civilians. An investigation into this incident found that drone surveillance provided incorrect intelligence to the helicopters that opened fire on the vehicles. As a result, four officers and two junior officers faced disciplinary action and Gen. McChrystal ordered “training on the targeting process, responsibilities, and engagement criteria at all levels in accordance with the Rules of Engagement and Tactical Directives.”<sup>76</sup>

The third major incident occurred during a firefight between U.S. Marines and Taliban insurgents in which Charlie Company of the 1<sup>st</sup> Battalion 6th Marines called for an airstrike on a compound that was occupied by 17 civilians. The missile killed 4 people (1 woman, 3 children) and wounded 11. The film *The Battle of Marjah* chronicles the aftermath of this event which included U.S. Marines meeting with family members who lost loved ones and first apologizing and then offering a ‘condolence payment’ of \$10,000.<sup>77</sup>

## Outcomes

### *Casualties*

Approximately 100 insurgents were killed by ISAF and ANSF forces during Operation Moshtarak.<sup>78</sup> Among ISAF forces, 45 Americans, upwards of 10 British and upwards of 10 Afghans were killed during the operation.<sup>79</sup> The civilian deaths caused by ISAF and Afghan forces during Operation Moshtarak was estimated to be 46.<sup>80</sup> The number of civilian deaths caused by Taliban insurgents during Operation Moshtarak is unknown, but there are detailed reports by UNAMA which tracked the number of civilian deaths in the first six months of 2010.

There was a decrease in the number of civilian casualties caused by ISAF and ANSF—also referred to as pro-government forces—after the implementation of Gen. McChrystal’s directives. According to an August 2010 report by UNAMA, civilian casualties caused by pro-government forces between January-June 2010 declined by 30 percent compared to the same period in 2009.<sup>81</sup> Furthermore, civilian casualties caused by pro-government airstrikes decreased by 64 percent.<sup>82</sup>

The decrease in the number of civilian casualties caused by pro-government forces did not lead to a decline in the overall number of civilian casualties. Just as pro-government forces were causing less civilian casualties, Taliban insurgents were causing more fatalities among civilians, leading to a 31 percent rise in the overall number of civilian casualties.<sup>83</sup> Over 75 percent of civilian casualties were now the direct result of Taliban actions, which included an increase in the use of IEDs, suicide attacks and assassinations.<sup>84</sup>

76 Quoted in Brunstetter, pp. 353-354, from McChrystal, U.S. Army, “Memorandum for Record, Subject: AR 15-6 Investigation, 21 February 2010.

77 Wonke, *The Battle for Marjah*

78 Dressler, “Taking and Holding Marjah,” p. 5

79 Cahn, “Months after Marjah offensive, success still elusive.” *Stars and Stripes*. 10 July 2010.

80 Dressler, “Taking and Holding Marjah,” pp. 7-8; King, “Displaced Afghans fret in a cold, cramped limbo;” *Los Angeles Times*, 24 February 2010

81 UNAMA, *Afghanistan mid-year report 2010*, p i

82 Ibid, p ii; Amore, p. 73; Because Operation Moshtarak was the largest combat operation carried out in Afghanistan during 2010, the UNAMA report tracking all casualties in Afghanistan in 2010 is relevant in analyzing the casualties caused by ISAF and Taliban forces during Operation Moshtarak.

83 Ibid

84 UNAMA, *Afghanistan mid-year report 2010*, p. vii; Amore, p. 74; Rogers and Chalabi. “Afghanistan Civilian Casualties.” *The Guardian*. 12 April 2013.



## *Situation Post-Conflict*

This report examined the first two stages (SHAPE and CLEAR) of what was a four-stage operation (SHAPE, CLEAR, HOLD, and BUILD). The latter stages involved the majority of the counterinsurgency strategy developed by Gen. David Petraeus and implemented in Afghanistan by Gen. Stanley McChrystal. Central to this was Gen. McChrystal's idea of 'government in a box' which put in place Afghan government officials and an Afghan police force. This process began shortly after ISAF and ANSF forces consolidated control over the town of Marjah and the Nad Ali district. Humanitarian projects aimed at improving and developing infrastructure and public works were undertaken. Cash compensations were paid to family members who lost relatives while businesses were encouraged—often through cash payments—to reopen their store fronts.<sup>85</sup>

The ISAF forces charged with implementing this new counterinsurgency strategy were often hindered by an inherent distrust of the national government among the local populace as well as innate fear among residents who believed the Taliban would punish them if they were to return to power.<sup>86</sup> Despite such statistics revealing the number of civilian casualties caused by the Taliban, local residents in Marjah and its surrounding areas did not view the Taliban as the problem. Many Afghans believed the Taliban would not be killing civilians if U.S. forces were not in the country, thus the blame was laid on the United States.<sup>87</sup> Overall, ISAF and Afghan forces were not welcomed by the majority of residents who viewed the outside troops as destabilizing and agents of a corrupt national government. One significant grievance was that the local economy was heavily dependent on the lucrative poppy trade which the ISAF forces sought to eradicate.

International Council on Security and Development (ICOS) report took surveys of the population that revealed such indignation at foreign troops in the region. One such poll conducted in March 2010 found that "68 percent of those interviewed believed the Taliban will return to Marjah after the Operation. Alarming, 67 percent did not support a strong NATO-ISAF presence in their province and 71 percent stated they wanted the NATO forces to leave."<sup>88</sup> Furthermore, a poll by the Asia Foundation in 2013 found that a third of the Afghan population, particularly from Pashtun dominated rural areas, expressed support for the Taliban.<sup>89</sup> The Taliban's ability to provide law and order, despite the severity of their laws, resonates with many rural citizens who believe the national government in Kabul to be plagued by corruption, too far removed from local concerns and acting as agents of Western powers.<sup>90</sup>

## *Conclusions*

The operation to clear and hold Marjah and the Nad Ali district was an overall success. The ISAF and ANSF forces who carried out the operation adhered to strict directives which went beyond the standing rules of engagement used by ISAF and ANSF forces during earlier operations in Afghanistan. These rules of engagement put ISAF and ANSF at extreme risk as airstrikes or other weaponry that would normally be authorized were declined because of increased pressure to avoid civilian casualties. ISAF forces also found that Taliban insurgents were benefitting from the stricter rules of engagement by traversing the battlefield or moving from compound to compound unarmed, thereby ensuring that they would be viewed as a civilian.

Even with these stringent directives handed down by Gen. McChrystal, civilian casualties still occurred as a result of wartime realities including weapon malfunction, soldier error and the Taliban's cruel conduct. It is important to note that while the overall number of civilian casualties increased, the number of civilian casualties caused by pro-government forces decreased significantly after Gen. McChrystal implemented his directives and guidance.

The increase in the overall number of civilian casualties was a direct result of Taliban insurgent conduct which included using civilians as human shields, staging suicide bombings and IED attacks which disregarded the presence of civilians, and assassinating civilians who would not comply with Taliban orders. It is clear that during Operation

<sup>85</sup> Van Ess, p. 25

<sup>86</sup> Ibid, p. 27

<sup>87</sup> West, p. 206; Nakamura, David. "Afghans blame civilian deaths on U.S. despite spike from insurgent violence." *Washington Post*. 14 August 2010.

<sup>88</sup> ICOS report, pp. 16-17

<sup>89</sup> Hopkins, p. 42

<sup>90</sup> Laub, "The Taliban in Afghanistan." *CFR Backgrounder*

Moshtarak, the Taliban did not seek to conform to International Humanitarian Law (IHL) or the Law of Armed Conflict (LOAC).

Although the number of civilian casualties caused by pro-government forces declined after Gen. McChrystal's directives were imposed, such strict rules of engagement also undermined the safety and capability of ISAF and ANSF forces. Many American and British commanders and troops felt that such regulations constrained their inherent right to self-defense, put themselves and their comrades in harm's way and slowed their advancement against Taliban insurgents.<sup>91</sup> Shortly after Gen. McChrystal was relieved of his command in June 2010, the new commander of ISAF forces in Afghanistan, Gen. Petraeus, issued his own tactical directive which, while still seeking to avoid civilian casualties, sought to place more emphasis on ISAF forces' right to self-defense during future conflicts.

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# 2006

## Israel – Lebanon Conflict

### Southern Lebanon

12 July – 14 August 2006

**Major Gen. (ret) Giora Eiland**

#### **Overview**

The Second Lebanon War was a conflict between the Israeli Defense Forces (IDF) and Hezbollah paramilitary forces which began on 12 July 2006 and continued until a UN-brokered ceasefire went into effect on 14 August 2006. The 34-day conflict took place in Lebanon and northern Israel and involved between 2,000 - 4,000 Hezbollah militants and nearly 10,000 Israeli soldiers. By the end of the conflict, a total of 164 Israelis were killed, including 119 soldiers and 45 civilians. On the Lebanese side there were 1,191 individuals killed. Of these, approximately 40 percent were considered Hezbollah militants.

#### **Background**

The First Lebanon War took place between 1982-1985 and began when the IDF invaded southern Lebanon in retaliation for continuous attacks across the northern Israeli border by militants from the Palestine Liberation Organization (PLO) and other anti-Israel organizations. The war ended with the IDF and its local ally, the South Lebanon Army (SLA), establishing a buffer zone which was designed to prevent continuous threats to Israeli cities and towns in northern Israel. Shortly after this conflict, the Shiite militant group Hezbollah formed and declared an armed struggle to end the Israeli occupation of Lebanese territory. In the years after Hezbollah's formation, the IDF remained in a state of armed conflict with the Shiite militant group in the area once designated as a buffer zone. In 2000, the IDF withdrew its forces from southern Lebanon. Upon the IDF's withdrawal, the UN and the government of Israel demarcated the international border between Israel and Lebanon.

Following the IDF's withdrawal, the SLA collapsed and Hezbollah consolidated control over southern Lebanon. Hezbollah, encouraged by the Israeli withdrawal, managed to increase its political power within Lebanon by

claiming, inter alia, that Israel was still holding on to territories allegedly belonging to Lebanon (S'hiba farms), as well as proclaiming that the fight against Israel was not over.<sup>1</sup> In the following years, Hezbollah enhanced its arsenal with long-range rockets and missiles and adopted a guerrilla warfare strategy, which included numerous attempts to abduct Israeli soldiers. Between 2000 and 2006, Hezbollah launched dozens of attacks which killed 17 Israelis, including six civilians. Despite these attacks, Israel's policy was one of 'containment,' with officials preferring to respond either 'locally' or not at all. This policy changed dramatically after the abduction event of 2006.

### *Abduction Event*

On 12 July 2006, Hezbollah militants launched an anti-tank missile attack on two armored Humvees patrolling the Israeli side of the border.<sup>2</sup> The ambush left three Israeli soldiers dead, and Hezbollah militants were able to abduct two Israeli soldiers. Shortly after the kidnapping, five more Israeli soldiers were killed in a failed rescue attempt.

### *Conflict Escalation*

Soon after the Hezbollah ambush, Israel retaliated, first by launching airstrikes against Hezbollah military targets in southern Lebanon and then by beginning a ground maneuver to thwart Hezbollah long-range rocket barrages on Israeli towns. At its peak, the conflict involved Israeli air and naval blockades, a ground operation, and airstrikes directed at Hezbollah targets and critical infrastructure. Throughout the conflict, Hezbollah fired thousands of rockets into Israeli towns and cities, covering an area inhabited by more than a million Israeli citizens.

### *Terrain*

The ground operations during the 2006 Lebanon conflict took place in what once was the buffer zone in southern Lebanon, a region adjacent to the Israeli border. The area covers approximately 1,000 square kilometers, comprising 10% of Lebanon's overall territory. The ground operation did not cover the entire buffer zone, reaching less than 50% by the time the conflict ended. The terrain is mountainous and contains deep creeks. Portions of the land are used for agricultural cultivations and made up of fields, groves and mountain-side stone terraces, some of which is covered with thick vegetation.

This sort of terrain can present significant challenges to a conventional military which might find it difficult to maneuver its large forces and heavy armored vehicles. The terrain can also serve as an effective cover for the enemy, which is able to conceal its positions and channel the military forces into ambushes and inferior strategic points.

The mountainous landscape and thick vegetation of southern Lebanese benefitted Hezbollah which was able to use guerrilla tactics and an extensive knowledge of the region to its advantage. In such an environment, it is usually expected that a military will use more firepower and heavier artillery to overcome the vulnerability of its maneuvering forces. On the other hand, the low density of population and the open, rural nature of the territories of southern Lebanon made it relatively easy for the military ground forces to minimize civilian casualties in those



<sup>1</sup> This was done despite the fact that the new border between Israel and Lebanon was recognized by the UN.

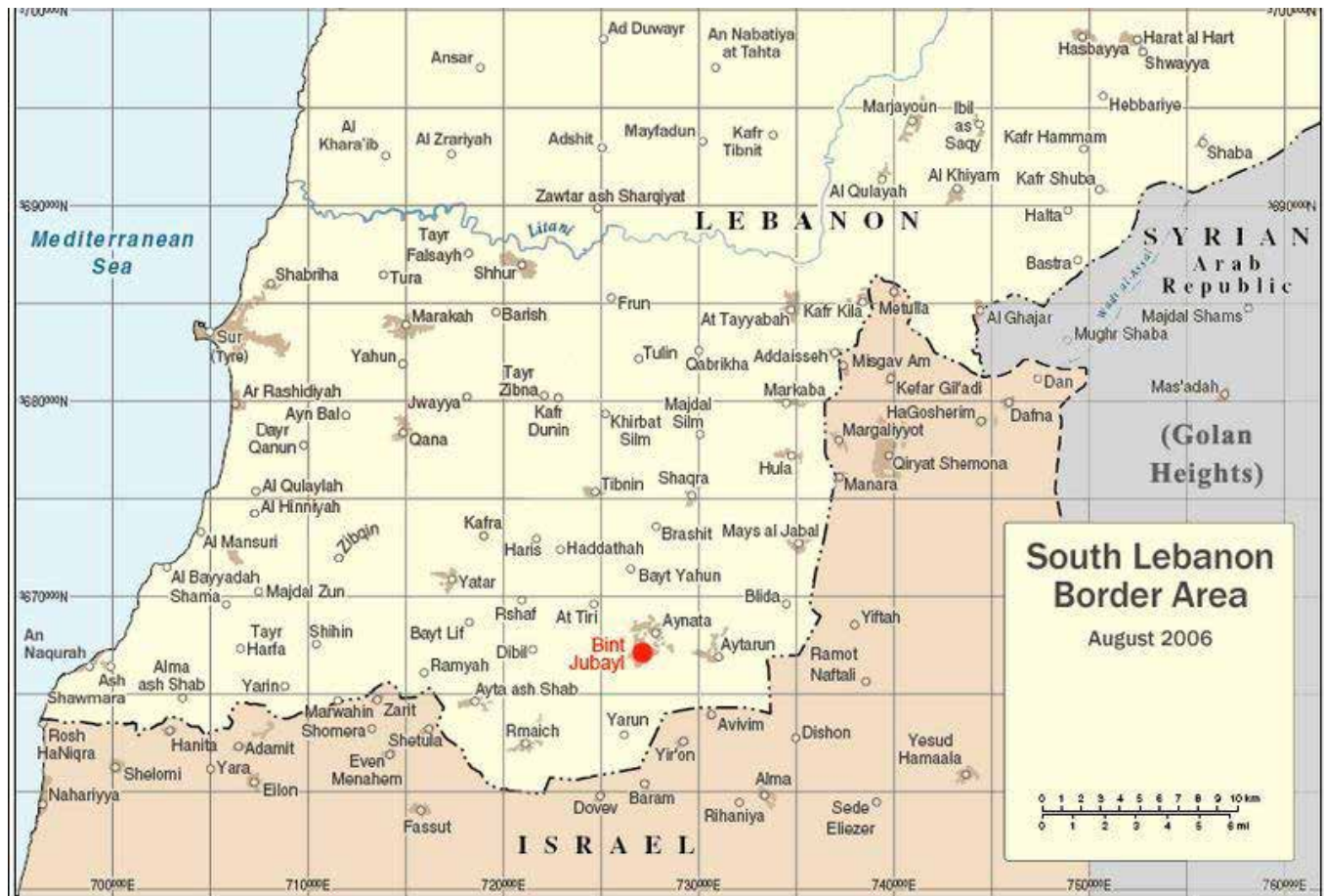
<sup>2</sup> During this ambush, Hezbollah militants fired rockets at Israeli border towns as a diversion



specific areas. This was not the case within the dense urban neighborhood of Dahieh in which uninvolved civilians were inevitably at high risk of being wounded during air strikes on enemy targets.<sup>3</sup>

## Population

Approximately 150,000 people inhabit the area which is concentrated into 67 villages and small towns. About half of the population is Shiite Muslims while the remaining half is made up of Sunni Muslims, Christians and Druze. The average density of population (DOP) of Lebanon is estimated at 800 persons per square mile (psm).<sup>4</sup>



*Intensity*

During the 34 day conflict, the Israeli Air Force conducted 11,897 sorties, which surpassed the number of combat missions during the 1973 October War (11,223) and almost doubled the number of missions during the 1982 First Lebanon War (6,052).<sup>5</sup> The Israeli Air Force delivered 13,916 bombs during these missions. Furthermore, over the course of the conflict, the Israeli Army fired 170,000 shells—more than twice the number fired in the 1973 October War—while the Israeli Navy fired 2,500 shells.<sup>6</sup>

<sup>3</sup> Dahieh, a Shiite suburb south of Beirut, also known as Beirut's stronghold of Hezbollah. Being in the same area, the Hezbollah auditorium, residential areas and television station, Al-Manar, were also targeted.

<sup>4</sup> In comparison, Israel's DOP is 900 psm, and Gaza's DOP is over 9000 psm.

5 Kober, Avi (2008). "The Israel Defense Forces in the Second Lebanon War: Why the Poor Performance?". *The Journal of Strategic Studies* 31 (1): p. 23

6 Kober p. 24; "The war in numbers". *Jane's Defence Weekly*. 23 August 2006.



Hezbollah claimed that it forces fired nearly 8,000 rockets into Israel during the 34-day conflict. Israeli military officials disputed this figure, however, stating that the number was 3,917.<sup>7</sup> According to separate estimates by the Israeli police, Hezbollah fired 4,228 rockets at a rate of more than 100 per day.<sup>8</sup>

The numbers mentioned above indicate that the overall intensity level of this conflict was fairly high. Israel has officially recognized the conflict as a war, not an operation. Hezbollah's secretary general, Hassan Nasrallah, has also stated that the conflict was a war saying in a TV interview, "If I had known on July 11 ... that the operation [to capture Israeli soldiers] would lead to such a war, would I do it? I say no, absolutely not."<sup>9</sup>

### *Urgency*

On the one hand, there was no urgent need to begin the campaign immediately after the abduction event. Hezbollah did not launch rockets against Israel and probably would not have done so if Israel did not launch large-scale air strikes that night. Indeed, one of the criticisms expressed towards the Israeli Government and IDF was the hasty manner in which the IDF initiated the response without sufficient preparations.

On the other hand, Hezbollah's continuous aggression against Israel eroded the deterrence completely. Moreover, due to the proximity of Hezbollah combatants to the border it was clear that many Israeli troops and Israeli civilians lived under immediate and unbearable risk. The decision to launch the operation on that specific day—after the abduction of two soldiers and the death of another 8—was, in the eyes of the Israeli government, a reasonable act of self-defense.

In assessing the urgency at the time of the operation itself, it is essential to examine the circumstances under which the military forces operated. For example, were military forces under fire or trying to stop enemy's fire from targeting civilians? From the very first days of the war, Israeli towns and cities were under constant attack by Hezbollah's rocket and missile barrages. At certain stages, the rate was as high as several hundred rockets per day. There was tremendous pressure on the IDF to take immediate actions to cease these attacks and to contain Hezbollah as much as possible. Overall, the IDF operation was under urgent circumstances.

### *Why are they fighting?*

In the run up to the 12 July ambush on Israeli military forces, Hezbollah had repeatedly threatened Israeli soldiers and civilians along the Lebanon-Israel border. These actions created tension and instability which Israel viewed as a growing threat to their military forces and civilian population. After the events of 12 July, in which eight Israeli soldiers were killed and two kidnapped, Israel launched an operation to rescue the kidnapped soldiers and perhaps more importantly, to deter future transgressions by Hezbollah militants.

## **Hezbollah**

### ***Capabilities***

Highly trained and well equipped with night vision abilities, modern anti-tank missiles and sophisticated communication capabilities, Hezbollah is one of the most powerful non-state actors in the world. The organization has been described as a militia trained as an army and equipped like a state. Hezbollah is a highly robust organization with a clear chain of command and the infrastructure to protect and maintain its high command. The group has special units for intelligence, antitank warfare, explosives, engineering, communications and rocket launching. The core fighters are aided by a larger circle of part-timers, who provide logistics and store weapons in houses and civilian buildings. Within Lebanon, the organization enjoys the support of the Shiite civilian majority in southern Lebanon and encounters little resistance from other religious groups within the country.

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7 "Civilians under attack", Human Rights Watch report, August 2007, p. 10

8 "Hizballah's Rocket Campaign Against Northern Israel: A Preliminary Report". Jerusalem Center for Public Affairs. 31 August 2006.

9 Alfano, "Nasrallah: 'If I had known...'" *Associated Press*. 27 August 2006. Online.

During the conflict, Hezbollah's corps consisted of between 2,000 to 4,000 combatants. The militants were well trained and were equipped with flak jackets, night-vision goggles, modern communications and a network of tunnels, storage rooms, barracks and I.E.D (booby traps) laid under the hilly landscape. Its vast arsenal of rockets, which numbered approximately 20,000 and ranged between 10 and 210 km, enabled Hezbollah to continually threaten the security of the Israeli population. Hezbollah also attacked Israeli naval vessels with the "Noor" (C-802) anti-ship missile. In addition to these surface-to-surface rockets, there were also reports of Hezbollah militants operating armed Iranian drones.<sup>10</sup>

One of the organization's more potent and successful tactics consisted of the use of anti-tank guided missiles (ATGM), which were equipped with some of the world's most advanced systems, such as the Russian made Metis and Kornet. Mastering ATGM weapons gave Hezbollah the ability to effectively strike and destroy not only tanks and armored vehicles, but also ground infantry forces taking cover inside buildings and structures. Due to its low profile, accuracy and quick operation, ATGM weapons allow militants to fire from distant positions (sometimes as far as 4-5 km) without being detected. The ATGM threat is deadly and powerful in such way that it leaves the military who is facing it no choice but to use massive fire power and artillery in order to maintain its own survival and carry out its missions.

Hezbollah's capabilities and strength were, for the most part, also the result of close and dedicated support by both Iran and Syria. Both countries provided Hezbollah with satellite communications and some of the world's best infantry weapons including modern, Russian-made antitank weapons (RPG-29, Kornet, Metis, and Concourse) and Semtex plastic explosives, as well as the training required to use these weapons effectively against Israeli armor.<sup>11</sup> The patronage of these two powerful states provided the organization with not only financial and military resources but also a sense of confidence and motivation for its operational initiatives.

## *Conduct*

While Hezbollah has many similarities to a regular military, its conduct reflects the behavior of a guerilla organization. Hezbollah did not operate under international laws governing warfare and the use of armed force and often intentionally implicated Lebanese and Israeli civilians in the conflict.

### *1. Involving its own civilians in the conflict*

According to a HRW report:

*"Hezbollah fired rockets from within populated areas, allowed its combatants to mix with the Lebanese civilian population, or stored weapons in populated civilian areas in ways that violated international humanitarian law, however...Hezbollah stored most of its rockets in bunkers and weapon storage facilities located in uninhabited fields and valleys, that in the vast majority of cases Hezbollah fighters left populated civilian areas as soon as the fighting started, and that Hezbollah fired the vast majority of its rockets from pre-prepared positions outside villages.*

*"Intentionally using civilians as 'human shield'"—that is, whether Hezbollah forces not only endangered civilians in violation of the duty to take all feasible precautions to spare civilians the hazards of armed conflict, but also deliberately deployed among civilians with the aim of protecting themselves from attack, we found a handful of instances but nothing to suggest a widespread practice."<sup>12</sup>*

### *2. Attacking Israeli civilians*

Despite Hezbollah's claims that its rockets were aimed primarily at military targets in Israel, the large number of rockets that hit civilian infrastructure indicates otherwise. During the 2006 conflict, Hezbollah repeatedly

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10 At least one of the Hizballah UAVs downed by the Israeli Air Force carried a 30-kg. bomb. This was the first recorded use of UAVs as land attack cruise missiles.

11 Erlanger, Steven; Oppel Jr, Richard A. "A Disciplined Hezbollah Surprises Israel With Its Training, Tactics and Weapons". The New York Times. 7 August 2006. Retrieved 25 November 2011.

12 "Why they died", Human Rights Watch report, September 2007, pp. 5-6

bombarded cities, towns and villages without any apparent effort to distinguish between civilian and military targets.<sup>13</sup> Hezbollah's rockets were lacking any guiding systems and therefore were incapable of being directed at specific targets. Many of these rockets hit densely populated areas of Israel.

Moreover, the IDF found "range cards" which were prepared in December 2005 and contained the precise coordinates of various locations within Israel as well as the formulas for aiming mortar shells and 122mm rockets toward these targets from locations in southern Lebanon. 56 of the 91 locations that appeared on the range card were civilian targets while only 27 were IDF military posts and bases.

The HRW report also elaborates on the ammunition that the Hezbollah's rockets carried:

*"...220mm rockets packed with thousands of 6mm steel spheres (sometimes referred to as ball bearings) that sprayed out upon impact with great force. These spheres are devastating anti-personnel weapons: while incapable of inflicting serious damage to hard military structures or matériel, they penetrate human flesh and organs within a wide radius of the rocket blast. Hezbollah also fired an undetermined number of cluster munition rockets loaded with submunitions (i.e., explosives) that, upon impact, dispersed 3mm steel spheres over a wide footprint".<sup>14</sup>*

Although there were instances of Hezbollah militants involving the Lebanese civilian population in the conflict, there was no evidence that this was a larger, deliberate strategy. In this respect, the group's conduct can be viewed as relatively moderate. There was, however, sufficient evidence to prove that Hezbollah militants launched rockets towards Israeli civilian infrastructure. Despite official declarations by Hezbollah leaders that the organization fights the IDF only, militants knowingly and deliberately aimed to hurt Israeli civilians and infrastructure and took no measures to distinguish between military and civilian targets.

## Israeli Defense Forces

### *Rules of Engagement*

The IDF's rules of engagement follow the basic common principles of distinction between combatants and civilians. While the first are considered legitimate targets, the latter are protected. Given the nature of the conflict that the IDF was facing, specific rules were developed to provide IDF troops with the means to achieve their military objective while taking all necessary measures to minimize civilian casualties. Some of these procedures include: additional senior authorization before the use of heavy fire in populated areas; delineated buffer zones; early warnings; non harming precautionary fire; and use of precise weapon systems.

From the first assignments and commands throughout the conflict, there were specific directives concerning the treatment of the civilian population in the course of the operation. The IDF applied several measures to separate the local citizens from enemy combatants, preventing unnecessary casualties and damage to those who were uninvolved.<sup>15</sup> A special task force headed by a Brigadier General was assigned and specifically dedicated to the efforts of isolating civilians from the battle areas, delivering the precautions and early warnings, and coordinating all humanitarian efforts. There were also measures applied to ensure that targets were approved by high-level commanding officers. Some of these measures were toughened following the Qana airstrike incident. For instance, there was an immediate cessation to attacks on bridges, roads and buildings, even those adjacent to rocket launch sites as well as a new directive stating that future targeted killings and attacks on storage facilities needed the approval of the Chief of Staff.

As a result of the effectiveness achieved by the IDF's prior warnings and efforts to evacuate the civilian population, there was very low contact between the IDF's ground forces and the local population. Even the most critical human rights reports blaming Israel for war crimes did not bring evidence for more than 4 separate incidents in which Lebanese civilians were allegedly killed by IDF ground forces.<sup>16</sup> The low number of these unfortunate exceptions

<sup>13</sup> "Civilians under attack", Human Rights Watch report, August 2007, p. 9

<sup>14</sup> Ibid, p.10

<sup>15</sup> As a part of our research, we received access to confidential directives and operational plans of the IDF's Northern Command. Our observations rely on those as well as open source materials.

<sup>16</sup> "Why they died", Human Rights Watch report, September 2007, pp. 236-237

indicates that there was no intention of targeting civilians in the course of the operation and precautions were taken to minimize damage. Despite some casualties, the overall results were not unreasonable.

### *Gradual Means*

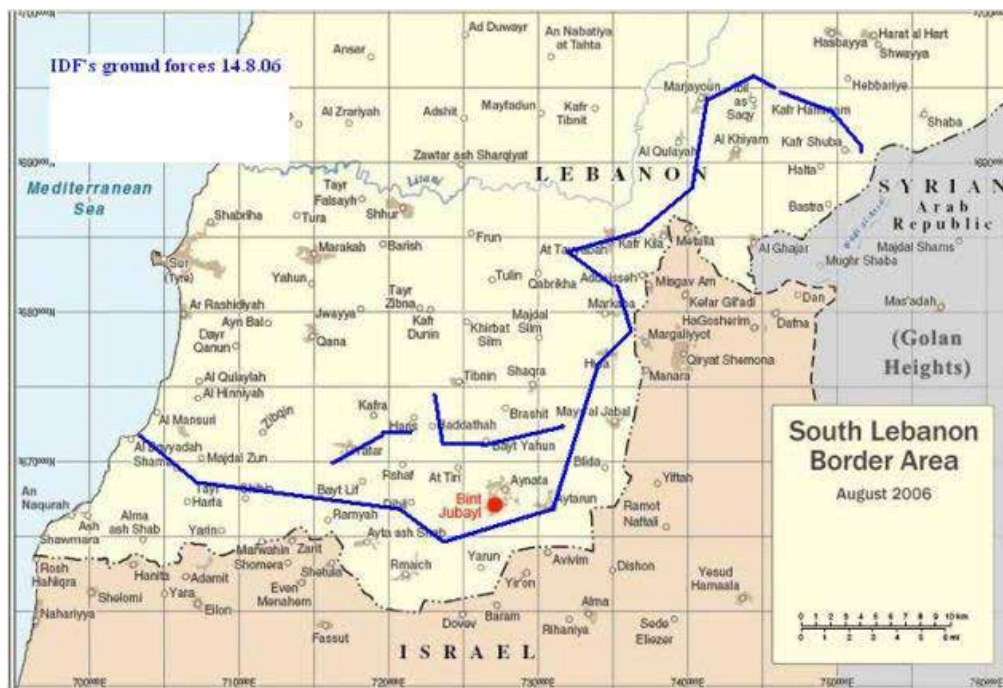
There is sufficient evidence and protocols to demonstrate the gradual manner in which the IDF expended its operation during the conflict. The first week of the operation was mostly limited to air and artillery strikes on Hezbollah's rocket stores. The intention expressed by the Chief of Staff was to complete the operation without a serious ground operation being undertaken. Up until 19 July, only limited ground operations took place with small forces around Israel's border.

From 19 July to 27 July, the ground operation was still very limited and only after 16 days of fighting, the IDF started mobilizing reserve units in preparation for a vast ground operation. Throughout the conflict, the IDF's ground forces were placed no more than 4-5 km from the Israeli border.

The vast ground operation was seriously discussed for the first time on 31 July and was approved on 9 Aug. This operation was planned to exert control as far as the Litani River, which marks the northern border of southern Lebanon. Even with these plans, the maneuver was never fully initiated.<sup>17</sup>

The entire Israeli strategy was, in many regards, criticized as too gradual, even hesitant. This was widely discussed within parliament, in deliberations of the Winograd National Inquiry Commission, as well as within the media. The IDF war protocols reflect the careful and moderate manner in which the Chief of Staff wished to conduct this conflict with minimum civilian casualties on both sides.

The following map shows the IDF's lines at the end of the conflict:



<sup>17</sup> Winograd report, Chapter 4

## *Use of force*

### *Choice of weapons*

Israel dropped 13,916 bombs during the conflict<sup>18</sup>. Of these, 7,732 were considered to be accurate (smart) munitions. Guided by GPS, Laser and Electro-Optic, these weapons are less likely to cause collateral damage. Although this ratio was ten times better than the First Lebanon War, the use of such accurate munitions come with a significant financial cost. The choice of weapons demonstrates the IDF's attempt to achieve its military objectives with as little collateral damage as possible.

There were allegations made against the IDF for using phosphorous munitions and cluster bombs. The use of munitions containing phosphorous is prohibited by an international treaty<sup>19</sup> because of their incendiary nature, which might lead to burning wounds and other negative effects on humans. White Phosphorus (WP) munitions were indeed used by the IDF during the conflict for illumination and obscurity purposes. However, at the time of the conflict, the use of WP munitions designed to illuminate and obscure the battlefield were excluded from this prohibition with their incendiary effect being described as incidental.<sup>20</sup>

The IDF was also criticized for using cluster bombs (CBU), which rely on the scattering of sub-munitions. Although the use of CBU is not banned by international law, such weapons receive criticism when used in highly populated areas because of their indiscriminate nature. In addition, the munitions have a high ratio of duds, which can cause civilian casualties long after the conflict has ended. According to the 2008 Human Rights Watch report, Israel fired 4.6 million sub munitions into dozens of towns and villages over the course of 962 separate strikes in southern Lebanon. As many as 1 million sub-munitions failed to explode on impact and instead lingered as land mines which killed or maimed almost 200 people after the conflict had concluded.

Israel has responded to these claims by arguing that:

- 1) *There was no violation of international law by using CBUs.*
- 2) *"The decision to use CBUs to neutralize the missile attacks was only made after other options had been examined and found to be less effective in ensuring maximal coverage of the missile-launching areas".*
- 3) *"In practice, the operational effectiveness of CBUs was clearly shown, resulting in a disruption of missile attacks against Israeli population centers".*
- 4) *"All CBU fire was directed at legitimate military objectives and, for humanitarian reasons, most of the CBU fire was directed at open areas, keeping a safe distance from built up areas. In those cases where CBU fire was directed at military objectives which were in the vicinity of built up areas, it was always toward particular locations from which missiles were being launched against Israel, and after significant measures were taken to warn civilians to leave the area. Moreover, following the cessation of active hostilities, Israel handed over to UNIFIL maps of the areas suspected of containing unexploded ordnance, including from CBUs, in order to facilitate the ordnance clearing process".<sup>21</sup>*

The Winograd Commission, Israel's official commission of inquiry into the events of military engagement, discussed the problematic use of CBUs and recommended that the IDF improve the strictness of its commands and policy regarding the use of such munitions.<sup>22</sup>

<sup>18</sup> Yitzhak Ben Israel, "The first Rocket war"

<sup>19</sup> Protocol III to the 1980 convention on certain conventional weapons, p. 10

<sup>20</sup> UNEP cannot confirm the use of unconventional weapons by IDF during the 2006 conflict. Only in 2009-2010, UN and other NGOs moved to ban this kind of munitions completely with no exceptions.

<sup>21</sup> "Why they died", Human Rights Watch report, September 2007, pp. 245-246

<sup>22</sup> Winograd report, Chapter 14.



## Target definition

The process by which the IDF defines its military targets clearly influences its ability to minimize damage to civilians during combat. According to Israeli officials,

*“The guiding principle adopted by the IDF was to target only infrastructure that was making a significant contribution to the operational capabilities of the Hezbollah terrorists. This meant that, for the most part, Israeli attacks were limited to the transportation infrastructure. Most of the other infrastructure (medical, cultural, railroad, tunnels, ports, banking, manufacturing, farming, tourism, sewage, financial, electricity, drainage, water and the like) was left almost completely untouched.”<sup>23</sup>*

While there is no doubt that a significant portion of Israeli targets were clearly military in nature, some allegations were made regarding the IDF's targeting of civilian facilities and infrastructure. Special attention was given to the Qana airstrike incident in this respect. Most Human Rights organizations claimed that Israel had no legitimate right to target this location because Hezbollah rockets were not fired from the area. In contrast, the IDF supplied photos of Hezbollah militants firing rockets from sites in Qana.



Regardless of the evidence present, it is misguided to draw conclusions based on one misfortunate and regrettable event during a wider conflict. Such accusations do not adequately reflect a military's policy or conduct throughout the conflict.

## Professionalism

The professionalism (or lack thereof) of military forces can be another cause for high number of casualties. The Israeli forces that took part in the 2006 conflict in southern Lebanon were well-trained, professional soldiers. It is important to note, however, that because of budget cuts, there was a decrease in the frequency of large unit (battalions, brigades and divisions) exercises in the years prior to the war. Although IDF forces gained operational experience through low intensity conflicts in the West Bank, many Israeli soldiers lacked training in large-scale conflicts in which forces have to maneuver and maintain coordination. As a result, there were some poor judgments and a lack of tactical understanding by some soldiers in large units during the 2006 conflict.<sup>24</sup>

While battalion commanders led their forces from the front line, some of the infantry brigade commanders stayed behind, choosing instead to watch their forces through plasma screens at the border. A number of these commanders were criticized for their actions after the conflict<sup>25</sup>

<sup>23</sup> “Why they died”, Human Rights Watch report, September 2007, pp. 242-244

<sup>24</sup> As a side note, professionalism also affects the number of ‘friendly fire’ incidents, which are obviously unintended. During the war there were only two incidents in which forces were hurt by other military forces. (One case featured an infantry soldier being run over by a tank, and the other featured shooting by mistake).

<sup>25</sup> In the 2014 Israel-Gaza conflict the lesson was learned and all infantry Brigade commanders were leading their forces in the



The Winograd Commission reported that there were no incidents in which soldiers executed illegal orders or acted in contrast to what they were ordered to do by their superiors. The commission also did not encounter any cases in which soldiers knowingly violated international law.<sup>26</sup>

For the most part, the IDF engaged in responsible use of force including the use of accurate munitions which targeted only infrastructure contributing to the enemy's capabilities. Furthermore, its forces were obedient and did not loot or knowingly violate the law of armed conflict (LOAC) with respect to captured combatants or innocent civilians.

Some specific issues, such as the use of cluster bombs and phosphorus, inexperience in combating this specific type of guerilla warfare, and the unfortunate incident of the Qana airstrike deserve special attention and examination. However, these instances do not affect the overall impression that the IDF's professionalism was lawful and contributed to a lower number of civilian casualties.

## *Humanitarian Considerations*

### *Precautions*

As detailed below, Israel provided early warning to civilians in southern Lebanon during the 2006 conflict. These measures reduced civilian casualties even at the cost of making the military operation less effective.

The IDF's Northern Command was assigned the specific mission of warning the population of southern Lebanon and advising them to move north before the start of the operation. Artillery batteries fired around the vicinity of south Lebanese villages, intending to isolate the area before ground attacks. Israel issued advance notice to the local residents through various mediums, including leaflet drops, radio broadcasts and contact with local leaders. The notices were intended to allow the civilians to distance themselves from areas in which Hezbollah was operating and from places in which its weaponry was being stored<sup>27</sup>. For example, in the second phase of the operation, the IDF distributed pamphlets from the air calling on the residents of Tsidon and the surrounding villages to evacuate immediately. In the third phase of the operation, when the IDF intended to take over portions of territory, Israeli troops delivered messages by broadcasting across local radio stations, instructing the local population on how to act in order to avoid being mistaken for a militant.

It is clear that Israel provided early warnings to civilians; however, human rights organizations have argued that these means were only partly effective, as a significant number of Lebanese citizens remained even after the warnings.<sup>28</sup> Despite these claims and the fact that some civilians stayed in the villages and towns of southern Lebanon after being warned, the vast majority of the population did abandon the fighting areas after the initial warnings and before the start of the operation. There is sufficient evidence to prove that the ratio of people who stayed in fighting zones was fairly low (less than 5%).

### *Humanitarian Treatment*

The IDF has firmly asserted that it had taken extensive measures to provide humanitarian treatment to Lebanese civilians:

*"....These efforts included steps taken to facilitate access of humanitarian assistance to civilians within Lebanon. An operations room was set up in northern Tel Aviv to coordinate international efforts to provide aid to Lebanon. This facility was headed by senior IDF staff and manned by representatives of the Israeli Foreign Ministry, the United Nations and the*

*International Committee of the Red Cross. At the same time Israel established a "humanitarian corridor" to enable shipments of aid to reach Lebanon despite the ongoing hostilities. A sea-route to Lebanon was established through the*

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front line and had much more presence.

26 Winograd report, Chapter 14, p. 483

27 "Why they died", Human Rights Watch report, September 2007, p. 242

28 Ibid, pp. 64-69

*port in Beirut, and a land route was designated from Beirut northward along the coast to the Syrian-Lebanese border. Throughout the hostilities, Israel coordinated humanitarian issues with the international community, even expanding the corridor to include other points of entry, and establishing a special 'humanitarian headquarters' to direct the coordination efforts. In addition, Israel made arrangements to permit the landing of aircraft at Beirut International Airport to unload humanitarian goods for residents of southern Lebanon.*

*Another issue of humanitarian concern was the evacuation of foreign nationals from Lebanon. From the very first day of the war, the IDF helped coordinate the evacuation of at least 70,000 foreign nationals from Lebanon. To the best of our knowledge, this effort was accomplished without any loss of life. A total of 213 passenger ships, 123 land convoys and 196 helicopters were allowed to dock in or travel through Lebanon to evacuate the expatriates and tourists. The convoys were able to travel on approved routes, which were coordinated with IDF forces.*

*Israeli hospitals also offered free medical care to any Lebanese person who was wounded in the war...This offer was broadcast via a hospital representative in Cyprus due to the fact that many Lebanese fled there, and was also broadcast on Arabic radio stations in the region.”<sup>29</sup>*

This study has found that the IDF made a sincere and effective effort to isolate the civilian population from battle zones. Warnings were given prior to attacks and the vast majority of the local population did evacuate, leaving relatively little friction between the IDF ground forces and the local civilians. In contrast to allegations against the IDF, these findings indicate that the precautions taken by the IDF were indeed effective and saved civilian lives. Furthermore, it is evident that the IDF did not neglect the humanitarian needs of the Lebanese civilians that stayed in areas of conflict. Throughout the operation, the IDF facilitated humanitarian corridors and maintained good coordination with international humanitarian NGOs.

## **Investigations**

For an investigation to take place, the Israeli Military Advocate General (MAG) must independently decide to investigate an allegation of misconduct and if necessary, to prosecute soldiers for violations of international law. The MAG decision is subjected to review by the Israeli Attorney General and the Israeli Supreme Court. The structure, process and effectiveness of the Israeli military judicial system has been extensively reviewed by the national inquiry commission chaired by former Supreme Court Justice Turkel<sup>30</sup>.

There were no significant investigations or indictments as a result of the 2006 war. The only issue that was carefully reviewed was the Qana incident, which became the subject of legal opinions but not of any criminal proceedings. Such proceedings—or lack thereof—could not attest to the seriousness of the authorities to investigate any wrong doings, as long as there is capability and willingness to do so. This study has found that the Israeli military forces not only have appropriate accountability structures in place but that there is also evident willingness of military and legal authorities to hold soldiers and commanders responsible when allegations of wartime violations are raised.

## **Outcomes**

### *Casualties*

Assessing the accurate number of combatants versus civilian casualties is especially difficult for this conflict as the Lebanese government does not differentiate between civilians and Hezbollah combatants. Instead, the government considers all combatants to be Lebanese civilians. Added to this ambiguity is the fact that many Hezbollah fighters do not wear military uniforms to distinguish themselves from the civilian population.<sup>31</sup> Overall, there were 1,191 Lebanese killed and 4,409 injured in the course of the 2006 conflict.<sup>32</sup> According to Hezbollah's declarations, 250

<sup>29</sup> Statement by the Government of Israel in response to the Human Rights Watch report. We should note that on this particular matter there were no claims from HRW or any other NGO suggesting otherwise.

<sup>30</sup> See the conclusions at <http://mfa.gov.il/ProtectiveEdge/Documents/IsraelInvestigations.pdf>.

<sup>31</sup> “Lebanon Sees More Than 1,000 War Deaths”, AP, December 2006. [http://news.usti.net/home/news/cn/?/world/mideast.misc/1/wed/bq/Alebanon-war-deaths.RYBR\\_GDS.html](http://news.usti.net/home/news/cn/?/world/mideast.misc/1/wed/bq/Alebanon-war-deaths.RYBR_GDS.html)

<sup>32</sup> “Report of the Commission of Inquiry on Lebanon to Human Rights Council resolution S-2/1”, General Assembly, November

of its combatants were killed during the conflict.<sup>33</sup> Some Israeli and IDF officials, however, have stated that 650 Hezbollah combatants were killed. On average, it is estimated that approximately 40% of the casualties were combatants.<sup>34</sup>

A total of 164 Israelis were killed during the conflict, including 119 soldiers and 45 civilians killed by indiscriminate rockets fired by Hezbollah. 2,118 Israelis were injured, among them 628 soldiers and 1,490 civilians.<sup>35</sup> Hospitals were reported to have treated 2,773 Israeli civilians for “shock and anxiety.”<sup>36</sup>

## *Damage to property*

### *Infrastructure*

The IDF limited itself by targeting only civilian infrastructure related to the transportation of Hezbollah men and equipment. The following infrastructure was reported as being damaged by Israel's bombardment: the Port of Beirut, the airport's five runways, the modern lighthouse of Beirut, 109 bridges and 137 roads.<sup>37</sup> While no water stations were destroyed in the conflict, a number of transformers, generators, reservoirs and pumps were damaged.<sup>38</sup>

### *Protected sites*

One of the claims against the IDF was that it deliberately attacked protected sites. According to some allegations, there were 30 recorded attacks by the IDF on UNIFIL and OGL positions during the conflict, resulting in 6 dead and 10 injured.<sup>39</sup> 78 health facilities (dispensaries, health centers and hospitals) were seriously affected, with 2 hospitals destroyed.<sup>40</sup> There were also allegations that numerous mosques and churches sheltering civilians had been damaged or destroyed for no legitimate reason.<sup>41</sup>

Israel has disputed these claims, insisting that some of these sites were targeted because Hezbollah was using them as headquarters, military installations and launching sites. In such circumstances, these protected sites lose their immunity and the IDF is allowed to retaliate under the Law of Armed Conflict. There is adequate evidence to show how Hezbollah exploited these protected sites to gain military advantages.<sup>42</sup>

### *Private property*

According to figures provided by the government of Lebanon, 30,000 homes and 30 civilian vehicles were destroyed or damaged.<sup>43</sup>

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2006, p. 3; “Report of the Commission of Inquiry on Lebanon to Human Rights Council resolution S-2/1”, General Assembly, November 2006, p. 26

33 “Why they died?”, Human Rights Watch report, September 2007, p. 79

34 Ben Israel Yitzhak, “The first rocket war”, p. 26

35 Winograd report, Chapter 9, p. 353.

36 “Civilians under attack”, Human Rights Watch report, August 2007, p. 4

37 “Report of the Commission of Inquiry on Lebanon to Human Rights Council resolution S-2/1”, General Assembly, November 2006, p. 37; “Report of the Commission of Inquiry on Lebanon to Human Rights Council resolution S-2/1”, General Assembly, November 2006, p. 26

38 Lebanon/ Israel – ICRC Bulletin No. 15 / 2006. <https://www.icrc.org/eng/resources/documents/news-release/2009-and-earlier/lebanon-news-250806.htm>

39 “Report of the Commission of Inquiry on Lebanon to Human Rights Council resolution S-2/1”, General Assembly, November 2006, p. 56

40 “Report of the Commission of Inquiry on Lebanon to Human Rights Council resolution S-2/1”, General Assembly, November 2006, p. 26

41 Ibid, p. 47

42 “Why they died”, Human Rights Watch report, pp. 46-52

43 Ibid, p. 26

### *Impact on civilian life and economy*

The 2006 war in Lebanon had a significant impact on the lives of civilians on both sides. On the Israeli side,

*“Hezbollah’s actions resulted in twenty-five to fifty percent of the Israeli population [in the north] fleeing their homes in cities such as Kiryat Shmona, Karmiel, and Nahariya. Thousands of those who remained spent days and nights confined to shelters or safe rooms in their homes.”*<sup>44</sup>

*“At least 6,000 houses or businesses in the north were destroyed or damaged during the fighting. Much of the region’s fruit harvest rotted on the trees because farm laborers spent the month in their shelters. More than a million people were displaced from the north and about a quarter of the region’s small businesses had to be saved from bankruptcy by emergency government support, according to Oded Feller, the president of the Chamber of Commerce for Haifa and the north. On top of that, 30,000 reservists left their jobs around the country when they were called up. Most importantly, tourism died completely in the northern beach resorts and around the Sea of Galilee and was badly hit in the rest of the country. Even if fighting does not break out again, there are likely to be ripple effects on tourism into next year at least.”*<sup>45</sup>

Furthermore, 70% of businesses closed in northern Israel (Federation of Israeli Chambers of Commerce.)<sup>46</sup> The Bank of Israel reported that the 2006 war cost the economy about 5% of GDP. The total cost of the war (includes military spending and lost GDP) was estimated to be NIS 23bn (\$4.8bn.)<sup>47</sup>

### *Aftermath*

The 2006 Israel-Hezbollah conflict ended on 14 August 2006, with a cease-fire going into effect after UN Security Council Resolution 1701 of 12 August. The resolution called for a full cessation of hostilities and the withdrawal of all Israeli forces from Lebanon, followed by the immediate deployment of Lebanese and UNIFIL soldiers throughout South Lebanon.

As for the long-term solution, the resolution called for the disarmament of all armed groups in Lebanon, including the Lebanese army and UNIFIL (implying Hezbollah). Other clauses included the unconditional release of the abducted Israeli soldiers and a call for all sides to respect the blue line and the territorial sovereignty of Lebanon.

The resolution put some heavy limitations on Hezbollah, which could no longer operate openly and build military strongholds close to the Israeli border. Nevertheless, Hezbollah remained adjacent to the Israeli border and active across southern Lebanon, usually under a civilian façade. Furthermore, the organization continued to rearm itself. Today it is estimated that the number of rockets Hezbollah possesses is three to four times greater than the number of rockets it had before the 2006 conflict. Hezbollah’s current arsenal is also significantly more powerful in terms of range, diversity and accuracy.

Moreover, Hezbollah has changed its tactics with regard to the protection of Lebanese residents. To date, the organization has moved its launching sites and fighting strongholds into populated areas, relying on the dilemmas it will cause the IDF should a future conflict arise. In other words, the organization realized that forcing the IDF to target Hezbollah operatives in civilian areas would undoubtedly raise questions about violations of international law.

On the Israeli side, there was widespread dissatisfaction and criticism by Israelis towards their own government soon after the operation ended. This was primarily due to the fact that the operation caused many casualties and ended without the return of the abducted soldiers. Furthermore, Hezbollah was not completely dismantled and still possessed a significant arsenal of rockets and missiles.

<sup>44</sup> “Civilians under attack”, Human Rights Watch report, August 2007, p. 14

<sup>45</sup> “Lebanon war cost Israel \$1.6bn”, the Guardian, August 2006. <http://www.theguardian.com/world/2006/aug/15/israelandthepalestinians.lebanon>

<sup>46</sup> [http://news.bbc.co.uk/2/hi/middle\\_east/5257128.stm](http://news.bbc.co.uk/2/hi/middle_east/5257128.stm)

<sup>47</sup> Israeli Ministry of Finance, Haaretz newspaper 13 August

As time passed, it became more apparent that Hezbollah suffered more damage than the organization was initially willing to admit. Hundreds of its combatants were killed and thousands more were injured. Most notable was the strategic and psychological effect. Hezbollah's leader, Nasrallah, admitted that if he had known that Hezbollah's abduction operation would have resulted in such an intense conflict and destruction, he would have refrained from initiating it in the first place.

Overall, the IDF, through this operation, regained its deterrence ability that had been slightly eroded in the years before the conflict. The destruction and devastation that was brought upon Lebanon during the conflict, along with the internal accusation against Hezbollah for dragging Lebanon into the conflict, caused Nasrallah to carefully rethink his aggressiveness towards Israel. Since the summer of 2006 and into the present-day, there is an unprecedented calm along Israel's northern border which has not been present since the 1970's. In this context, the price that both sides paid during the 33 days of conflict likely saved the lives of many civilians on both sides. While we cannot be certain that the relative tranquility in recent years is a direct result of the 2006 conflict or due to other geo-strategic changes in the region, we must always assess the results of an armed conflict based on the outcome it generated for the long run.

## Conclusions

The IDF went into the 2006 conflict hastily and not completely prepared. As a result, the military maneuvered itself into an ill-timed, ill-planned war that brought a wave of dissatisfaction within Israel.

As one of the world's most powerful non-state organizations, Hezbollah is highly skilled and equipped with advanced weapons and supported by both the local population and more importantly, the states of Iran and Syria. Unlike Israel, Hezbollah was well prepared for the conflict. On the one hand, they threatened Israel's territory with long range rockets; and on the other hand, they were able to successfully utilize the mountainous terrain of southern Lebanon to attack the IDF's armored and infantry forces with their deadly ATGMs.

Hezbollah did not risk its own civilians as a deliberate strategy, but there were numerous cases in which it operated from within populated areas and used protected sites for military purposes. Moreover, Hezbollah indiscriminately launched thousands of rockets into Israel which posed a deliberate and immediate threat to Israeli civilians.

Under these circumstances, the IDF had no choice but to use overwhelming force to ensure the survival of its forces and to prevent additional rocket attacks on the Israeli civilian population. Most of the shells and air munitions used by Israel were distinctive and accurate in nature. Although not technically violations of international law, a few weapons were considered problematic, namely cluster bombs and phosphorus.<sup>48</sup>

Nevertheless, the IDF went to tremendous lengths to minimize civilian casualties. This was done in part by appointing a special task force dedicated to the mission of providing humanitarian solutions to the local population that remained in the battle zone. Pamphlets and radio broadcasts were used to warn the population in advance while warning shots were fired around the villages before the attacks. Additionally, humanitarian corridors were opened and the coordination with humanitarian NGO's was kept throughout the war.

Overall, these methods proved to be effective and most of the villages were almost completely evacuated before the conflict, which resulted in relatively infrequent contact between IDF's ground forces and Lebanese civilians.

Despite allegations lodged by NGOs, there were no notable records of misconduct or disobedience by IDF soldiers or deliberate violations of international law. All allegations were brought to the appropriate IDF authorities, including the Judge Advocate General's corps and investigated accordingly. Even after such extensive legal oversight, no significant investigations or proceedings were initiated.

This study has found that the training, expertise and professionalism of the IDF soldiers could have been better. This was due in large part to the lack of training and equipment for such a conflict. It is important to note, however, that the lack of professionalism, as this study has singled out, did not significantly affect the IDF's conduct with regard to humanitarian considerations.

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<sup>48</sup> Since the 2006 conflict, Israel has not employed their use in combat.

*There were two events that deserve special attention:*

**1. Qana-** an unfortunate event that was unintentional, and at most can be considered a mistake that is not unlikely to happen given the circumstances (location, and intensity of the fire).

**2. Dahia district** –it can be argued whether this area was a legitimate military target, given the civilian nature of the neighborhood. The IDF has claimed that it included headquarters, munitions warehouses and launching sites heavily embedded within the civilian surroundings which turned them into a legitimate target.

However, Dahia can also be seen in retrospect as one of the tactics which were highly effective in influencing Hezbollah's reluctance to continue hostilities. The damage caused to the Hezbollah stronghold allowed Israel to reestablish its deterrence, avoiding additional fighting, damage and most importantly, lasted for a relatively long period of time. If we examine the proportionality of that action not only from the immediate tactical point of view but also from a strategic point of view, we can reach a conclusion that the massive attacks against the Dahia was a proportional act since the goal of long lasting calm was achieved.

Our bottom line is that upon considering the challenges the IDF faced, including the length of fighting, the high conflict intensity and Hezbollah's capabilities, the outcome, in terms of number of casualties and damage, is not beyond reasonable, and it certainly does not attest to any systemic excessive use of force that is indistinct or disproportionate.

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# Operation Al Fajr

## Fallujah, Iraq

### 7 November – 23 December 2004

**Professor Gary Hogan**

#### **Overview**

Operation Al Fajr (“New Dawn”) was a joint American, British and Iraqi conventional assault on Fallujah, a city in Al Anbar Province, Iraq. The assault took place in the midst of a counterinsurgency effort by the Coalition forces against Sunni and Shi’a militants across Iraq. Operation Al Fajr was launched on 7 November 2004 and ended in a Coalition victory with Iraqi Prime Minister Ayad Allawi inviting residents back to the city on 23 December 2004.<sup>1</sup>

During the Operation, there were over 680 U.S. casualties, including 82 killed; 60 Iraqi casualties, including six killed; and an estimated 2,175 enemy casualties. The number of civilian casualties that occurred during the conflict remains disputed but is believed to be low. Based on the fact that the majority of civilians had left Fallujah before the start of the operation, the presence of 91 reporters on the frontline as the battles took place, and the absence of credible figures for civilians killed, we are confident that there were few civilian deaths as a result of Operation Al Fajr.

#### **Historical Context**

Operation Al Fajr is also known as “Fallujah II”, as it followed upon Coalition operations in the city the previous April, which were halted due to international outrage over televised reporting of the assault. The city was then handed over to former Iraqi generals, who took responsibility for restoring order. When it became clear that the generals were unable to maintain stability, the decision was made to launch Operation Al Fajr.

A study by the Institute for Defense Analyses draws on extensive interviews with key Iraqis and concludes that “certain Coalition Provisional Authority policies – such as de-Ba’athification, the dissolution of the Armed Forces,

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<sup>1</sup> John Sattler & Daniel Wilson, *Operation Al Fajr*, (2005), *Marine Corps Association*, <http://www.mca-marines.org/gazette/operation-al-fajr>, at 18 August 2015, p3

and the failure to provide security – alienated the [Iraqi] people and helped set the conditions for the insurgency. These actions also enabled foreign fighters and criminals to prosper.”<sup>2</sup>

Added to this instability was the fact that Iraq underwent a number of significant changes throughout 2004. One study characterises the situation in 2004 as “chaotic, transitional and condition-setting.” First, major force rotations occurred from January through March as the Coalition contended with critical combat actions in the Sunni triangle and in the Shi’a community. Next, Coalition forces and the Iraqi Government underwent major reorganisations and leadership transitions throughout the summer. Finally, from October through December, the Coalition and Iraqi Interim Government (IIG) set out the conditions for elections which were to take place in January 2005.”<sup>3</sup>

### *Duration*

Operation Al Fajr was launched on 7 November 2004 and officially concluded when Iraqi Prime Minister Allawi declared victory and reopened the city to residents on 23 December 2004.<sup>4</sup>

### *Intensity*

The conflict was very intense, with the on-going operations described as ‘prolonged ferocity’ to capture the unrelenting nature of urban warfare against well-prepared adversaries.<sup>5</sup> The two months of combat have been described as some of the most intense fighting experienced by Coalition troops during the Iraq War. According to Bing West, “There were 540 air strikes and 14,000 artillery and mortar shells fired, as well as 2,500 tank main gun rounds. Eighteen thousand of Fallujah’s 39,000 buildings were damaged or destroyed.”<sup>6</sup>

### *Terrain*

Fallujah is a city in the Iraqi province of Al Anbar. The area is a dense urban environment and takes up roughly 25 square km.<sup>7</sup> The city is located on the Euphrates River, approximately 69 km west of the Iraqi capital Baghdad.

### *Population*

The population at the beginning of 2004 was estimated to be approximately 300,000 people.<sup>8</sup> That figure gives Fallujah a population density of 12,000 residents per square km at the beginning of 2004. Given the high population density present in Fallujah, commanders placed great importance on avoiding civilian casualties as plans were drawn up during the pre-assault shaping phase. Significant attention was placed on encouraging civilians to leave the city before the military operation commenced.

### *Urgency*

It is clear that enemy combatants had established Fallujah as the key planning and supply centre for terrorist operations throughout Iraq.<sup>9</sup> The threat to the civilian population, military forces and government of Iraq was severe. The intention was not only to kill and maim civilians across Iraq, but also to sow social discord, specifically sectarian tensions and conflict, and undermine the legitimacy of the Interim Iraqi Government.<sup>10</sup>

In order to reduce the number and severity of terrorist outrages, including the killing and maiming of civilians across Iraq, the capabilities marshaled in Fallujah by the enemy combatants had to be neutralised. Furthermore,

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2 Knarr and Castro, 12

3 Dr William Knarr and Major Robert Castro U.S.MC (with Dianne Fuller), *The Battle for Fallujah: ‘Al Fajr – the Myth-buster’*, Institute for Defense Analyses, Joint Advanced Warfighting Program, IDA Paper P-4455, September 2009, xi

4 Sattler, 3

5 Molan, 240

6 Bing West, *No True Glory: A Frontline Account of the Battle for Fallujah*, Random House, New York, 2005, 509

7 McWilliams, 3

8 Chang, 32

9 Ibid, 33; Molan, 172; Sattler, 1

10 Molan, 172

with Iraq's elections scheduled for early in 2005, it was essential that the ongoing terrorist threat—as well as the spectre of sectarian division and conflict that it encouraged—was addressed in a comprehensive and effective manner.<sup>11</sup> Although alternatives to a military operation against the enemy in Fallujah were considered, it was decided that Iraqi civilians could be protected and the Iraqi election could progress by eliminating the terrorists who were attacking Fallujah prior to Operation Al Fajr.<sup>12</sup> This could only be done by a concerted assault against the enemy combatants.<sup>13</sup>

### *Immediate Cause of Conflict*

The Coalition mission in Operation Al Fajr was to destroy anti-Iraqi forces in Fallujah in order to establish legitimate local control. The intent was to eliminate Fallujah as an insurgent sanctuary, to set conditions for local control of the city and to support wider efforts to secure approaches to Baghdad. Furthermore, the operation was conducted to support the January 2005 election and to further U.S. objectives and strategy in Iraq.<sup>14</sup>

## **Military Forces**

### *Capabilities*

The Coalition forces comprised approximately 13,000 troops, including 10,500 troops from the United States, 2,000 from Iraq and 850 from the United Kingdom. Coalition forces were supported by tanks, artillery and aircraft.<sup>15</sup>

### *Taking measures to minimise civilian casualties and damage*

The Coalition forces had the time and space to 'shape' the battle environment prior to launching Operation Al Fajr.<sup>16</sup> The Coalition leadership was determined to abide by international law and to minimise civilian casualties.<sup>17</sup> Rules of Engagement (ROE) were developed specifically to minimise the possibility of killing civilians, especially when targeting combatants in the middle of a city.<sup>18</sup> In addition to the standard ROE applicable to operations in Iraq, ROE that apply to 'handling the special conditions that apply to Fallujah' were given to the Corps as an order.<sup>19</sup>

Coalition forces also took a number of actions designed to reduce the potential for confrontation that could lead to civilian deaths. These included buying weapons from the population rather than conducting searches in homes which would disrupt life and risk civilian casualties, creating employment opportunities for civilians to counter the insurgents who offer money to the unemployed to plant roadside bombs, and using police rather than heavily armed soldiers to enforce the law.<sup>20</sup>

The imperative to minimise civilian casualties was accentuated by the Coalition's Fallujah experience earlier in 2004. It was clear that any civilian casualties would be exploited by the enemy's efficient public communications strategy. As Bing West observed of operations in Fallujah the previous April: "In three weeks of fighting, eighty-two buildings and two mosques had been bombed. The average number of air strikes per day was four. Massive civilian casualties, however, became the accepted storyline. The Coalition made no institutional effort to rebut each false

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<sup>11</sup> Sheridan, 118

<sup>12</sup> Molan, 172

<sup>13</sup> Sheridan, 118

<sup>14</sup> Knarr and Castro, 88

<sup>15</sup> Jim Molan, *Running the War in Iraq: An Australian General, 300,000 Troops, the Bloodiest Conflict of Our Time* (2008), 222

<sup>16</sup> Molan, 183

<sup>17</sup> Molan, 185

<sup>18</sup> Ibid

<sup>19</sup> Ibid, 200

<sup>20</sup> Ibid

report or to conduct systematic assessments. Given the imagery from the UAVs and from every air strike, records were certainly available to inform the press. In the absence of such data, however, Al Jazeera shaped the story.”<sup>21</sup>

### *Rules of Engagement*

The leadership of the Coalition forces understood the obligation to protect civilians and minimise the potential for civilian deaths in military operations targeting enemy combatants. Specifically, targeting and operational decisions were informed by reference to three principles:

- 1) 1. *‘Military Necessity’*: Is this act that I am about to commit necessary for military reasons?
- 2) 2. *‘Discrimination’*: Can I discriminate sufficiently between civilian and military targets?
- 3) 3. *‘Proportionality’*: Am I likely to cause destruction or suffering disproportionate to the expected military gain, even against legitimate targets?

In each case, these considerations were evaluated by a senior military and civilian team. In cases where an action was likely to lead to civilian deaths, the benefit of achieving the military objective was considered before concrete action was taken.<sup>22</sup>

ROE cards normally held by Coalition forces were also translated into Arabic and given to Iraqi forces. Prior to operating in Fallujah, instructions on both ROE and the Law of Land Warfare were provided to the Iraqi Security Force elements. According to one study, “This was a prime example of teaching the Iraqis the importance of the rule of law, which in turn supported Information Operations because it reduced collateral damage and provided more protection for non-combatants.”<sup>23</sup>

### *Command level required for authorisation of attack*

Coalition forces employed the highest level of supervision to ensure targeting complied with international law.<sup>24</sup> In addition to targeting decisions being made by the most senior officer in Iraq, there was significant oversight by the U.S. Secretary of Defense Donald Rumsfeld.<sup>25</sup> In providing advice to the senior military and civilian leadership, the targeting team was comprised of the head of targeting, an operational lawyer, and the commander of Coalition troops during Fallujah, Australian General Jim Molan.<sup>26</sup> The aim of avoiding civilian deaths was assisted by real-time imagery from unmanned drones that provided details on the presence of combatants and non-combatants.<sup>27</sup> While General Molan and his team recommended whether to proceed with a strike or not, the final authorization rested with U.S. General George Casey, commander of U.S. forces in Iraq.<sup>28</sup>

Author Bing West describes the level of risk aversion which dominated target engagement authorisation: “The [U.S.MC] division had more than two hundred targets confirmed by reliable sources, such as the Watchdogs [UAV]. But the military coalition at the Baghdad level, fearing adverse press coverage and collateral damage, approved strikes on fewer than twenty targets. Concerned about their own casualties, more than a few Marines were angered by the approval process.”<sup>29</sup>

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21 West, 285-286

22 Molan, 189-190

23 Knarr and Castro, 79

24 Molan, 185

25 Ibid, 191

26 Molan, 197

27 Ibid, 198

28 Molan, 203

29 West, 423

*Force protection v. civilian protection*

The desire to limit civilian casualties often put coalition troops in increased danger. According to General Molan, "We could have flattened the city in a night, and killed everyone there (and lost no marines) but that would have been wrong."<sup>30</sup> While force protection was a high priority, it was balanced by the commitment to minimise civilian deaths. For instance, although enemy forces used mortars at least 60 times during the initial assault, Coalition troops only responded to 47 of those attacks as a result of concerns for civilian protection.<sup>31</sup>

*Rules during special situations requiring immediate decisions*

Despite the best efforts by the Coalition leadership to develop robust ROEs that were specifically designed to minimise collateral damage when targeting combatants in the middle of a city, there was a recognition that the ROE could not cover every situation and decisions would have to be based on sound moral judgments.<sup>32</sup> These judgments were often informed by 'special intelligence', which provided high quality, reliable information. This intelligence allowed commanders to reach their decisions based on an accurate weighing of considerations which included the presence or absence of civilians.<sup>33</sup>

*Use of Force**Choice of weapon (accurate v statistic/lethal vs non-lethal)*

The Coalition leadership consistently claimed that minimising collateral damage was one of their highest priorities.<sup>34</sup> The goal of avoiding civilian casualties led Coalition troops to weigh military necessity against the number of civilians who might die. That consideration may include the harm that the target (i.e., a suicide bomber) might cause to civilians in Fallujah or elsewhere in Iraq.<sup>35</sup> In all cases, the decision had to have a defensible and accountable judgment. And the supporting intelligence had to be convincing.<sup>36</sup> Furthermore, if the target was in a residential area at night, additional options had to be considered, including delaying the strike until the following day when there might be a better chance of avoiding civilian casualties.<sup>37</sup>

The leadership of the Coalition forces had available to them an unprecedented array of weapons. Nonetheless, the leadership consistently chose weapons and capabilities that would achieve the military purpose while at the same time provide for the minimisation of civilian casualties.<sup>38</sup> Highly accurate weapons such as the Joint Direct Attack Munition (JDAM) 500lb bomb, which uses highly accurate satellite navigation systems to hit within a few metres of the target, were most commonly used.<sup>39</sup> Weapons such as the JDAM were used instead of larger bombs, which, although more effective militarily, may have led to more civilian casualties.<sup>40</sup>

Furthermore, there was a reliance on Special Forces troops, both to attack high value targets and to provide intelligence to assist in target authorization.<sup>41</sup> One analyst attributes Marines' use of technological superiority

30 Greg Sheridan, *The Partnership: The Inside Story of the U.S.-Australian Alliance under Bush and Howard*, (2006), pp 118-119

31 Molan, 236

32 Molan, 185

33 Ibid, 203

34 Ibid, 200

35 Ibid, 201

36 Ibid

37 Ibid

38 Ibid, 191

39 Molan, 191

40 Ibid, 192

41 Molan, 192



in innovative ways, combining “snipers, forward air controllers and precision weaponry to create a degree of discrimination in urban combat never before seen.”<sup>42</sup>

Alternatives to bombs were also widely used. For example, the diverse cannons on AC-130 aircraft allowed pilots to use weaponry with smaller blast radii than bombs and thus decrease collateral damage.<sup>43</sup> The accuracy and utility of the AC-130 was emphasised by the leadership of the coalition forces who often preferred its capabilities to that of more traditional bomber aircraft.<sup>44</sup>

In relation to heavy armour, it was also decided that the use of the M1A1 tank's 120mm main gun with high-explosive anti-tank rounds was best for military operations on urbanised terrain (MOUT). These munitions minimised collateral damage by restricting damage to a single room, as opposed to the 12.7mm machine gun which often penetrated many walls with its armour piercing rounds.<sup>45</sup>

### *Target definition (distinction between legitimate and illegitimate targets)*

An important technological development that assisted in the Coalition's effective target definition was the deployment of unmanned aerial vehicles (UAVs) which consistently provided highly accurate targeting information.<sup>46</sup> Despite this technology, there were still difficult judgments to make when determining whether a target was legitimate or illegitimate. For example, of the 140 mosques in Fallujah, 66 were discovered to have been fortified and used to store weapons while others were used as vantage points for enemy combatants to fire on Coalition forces.<sup>47</sup>

### *Use of force when civilians on the military side are attacked*

Coalition forces came under significant pressure to act decisively when enemy combatants killed civilians inside Fallujah and across Iraq. These included the recorded beheadings of three British contractors, Eugene Armstrong, Jack Hensley, and Kenneth Bigley; and one Japanese contractor, Shosei Koda.<sup>48</sup> Despite this brutality, the Coalition leadership was determined not to hastily rush into military operations, such as the one undertaken in Fallujah the previous April.

### *Warnings to the Population*

A key success in the shaping of the battle environment in Fallujah was the effectiveness of Coalition efforts to encourage civilians to leave Fallujah in advance of the launch of Operation Al Fajr. While estimates of civilians departing from Fallujah before the military operation vary between 50 and 90 percent, it is clear that a majority of the civilian population had departed prior to the conflict.<sup>49</sup> Some estimates have indicated that only 500 civilians were in Fallujah at the time of Operation Al Fajr.<sup>50</sup>

The Coalition forces sought to reduce support for the insurgency and separate the insurgents from the residents of Fallujah through a comprehensive campaign that included radio broadcasts and dropping leaflets on the city. To defeat al-Qaeda's claims that the Coalition's precision attacks against high-value targets killed innocent non-combatants, additional communications explained to the public who the attacks were targeting and why. The communications also informed Fallujah's residents that the insurgents' presence and activities kept locals from

<sup>42</sup> Anderson, COL Gary W. (U.S.MC Ret), ‘Fallujah and the Future of Urban Operations’, *Marine Corps Gazette*, Vol 88, No 11, November 2004, 54

<sup>43</sup> Tao-Hung Chang, ‘The Battle of Fallujah: Lessons Learned on Military Operations on Urbanized Terrain (MOUT) in the 21<sup>st</sup> Century, (2007), *Institute for Defense Analyses, Vol 6, Issue 1, Fall 2007*, 35

<sup>44</sup> Molan, 236

<sup>45</sup> Chang, 35

<sup>46</sup> Ibid, 35

<sup>47</sup> Sheridan, 118

<sup>48</sup> Timothy McWilliams & Nicholas Schlosser, ‘U.S. Marines in Battle: Fallujah, November – December 2004’, (2014), 4

<sup>49</sup> Molan, 226

<sup>50</sup> Chang, 34

receiving humanitarian aid, halted the restoration of essential services and stalled investment that would revitalize the city.

By October 2004, the communications included “more pointed” leaflets, broadcasts from aircraft and other warnings in the media.<sup>51</sup> The Coalition also staged nightly attacks against the enemy leadership, contributing to the effort promoting the departure of civilians.<sup>52</sup> Furthermore, the Coalition promised millions of dollars in development assistance to the city once it had been cleared of enemy combatants.<sup>53</sup>

### *Humanitarian Treatment*

The Coalition leadership was determined to provide humanitarian assistance to the people of Fallujah, in part so they would recognise the benefit of the Coalition's presence, and contrast it positively with the experience of living with the enemy combatants.<sup>54</sup> Indeed, humanitarian assistance was one of General Molan's 42 pre-conditions for launching Operation Al Fajr.<sup>55</sup> Concerning medical treatment, the Coalition forces provided significant treatment for civilians and wounded enemy combatants in Fallujah, including the establishment of a civilian medical evacuation system independent from the military's own.<sup>56</sup> Furthermore, in the aftermath of the conflict, the Coalition established a number of humanitarian relief sites which provided assistance to 87,620 residents of Fallujah.<sup>57</sup>

When collateral damage did occur, Coalition forces had developed a response of “reconstruction and reimbursement” of damages. This became a key pillar of Coalition Information Operations. Within 24-48 hours of a school or other civilian installation being damaged, a local contractor and civil affairs personnel would begin reconstruction even as fighting continued nearby. According to one study, “...developing, funding and executing reconstruction projects on the heels of combat operations was critical to success.”<sup>58</sup> In total, the Coalition allocated at least \$100 million for reconstruction in Fallujah.<sup>59</sup> In considering the type of assistance most necessary and useful to the residents of Fallujah, the Coalition created a civil affairs program that engaged representatives from Fallujah, known as the Fallujah Liaison Team.<sup>60</sup>

### *Professionalism*

The Coalition forces were highly professional and disciplined.<sup>61</sup> Throughout the Iraqi campaign, Coalition troops had demonstrated that acts by the U.S. military against international law were isolated, and when they did occur, they were condemned and investigated by the U.S. military.<sup>62</sup> General Molan later described the U.S. Army as the most competent military force in the world, which abides by international law during conflict and makes few mistakes.<sup>63</sup> According to the General, the “morality of the U.S. force is as high as you could get.”<sup>64</sup>

An example of the Coalition's professional conduct and the measures taken to observe the Geneva Conventions was evident in their policy on the clearance of mosques. “The Geneva Convention protects culturally sensitive areas unless they are being used for military purposes, whereupon they lose their protected status. In most cases, despite

<sup>51</sup> Molan, 204

<sup>52</sup> Ibid, 205

<sup>53</sup> Ibid, 206

<sup>54</sup> Sheridan, 200

<sup>55</sup> Ibid, 219

<sup>56</sup> Molan, 220

<sup>57</sup> Sattler, 3

<sup>58</sup> Knarr and Castro, above, 40

<sup>59</sup> Ibid, 220

<sup>60</sup> McWilliams, 11

<sup>61</sup> Matthews, Matt, ‘Operation Al Fajr: A Study in Army and Marine Corps Joint Operations’ (2007) *Combat Studies Institute Press*, 41

<sup>62</sup> Sheridan, 127

<sup>63</sup> Ibid, 121

<sup>64</sup> Ibid, 120

the fact that a mosque lost its protected status under the Geneva Convention, the Coalition opted for Iraqis to clear the site so the insurgents would be unable to exploit it for their information campaign.”<sup>65</sup>

The level of military professionalism also extended to the treatment of dead enemy combatants. Coalition forces set up a mortuary east of Fallujah and Muslim clerics were brought in to ensure that the bodies were prepared and buried in accordance with Islamic rites.<sup>66</sup> Following the fighting in Fallujah, Humanitarian Assistance Sites were established throughout the city and provided food, water and clothing to the returning residents [and]...every head of household was immediately paid \$200 for damages.”<sup>67</sup>

### *Investigations into alleged violations*

The Coalition leadership anticipated allegations against Coalition forces, and so took measures to minimise the potential for allegations arising and to respond promptly to allegations when they did arise. General Molan was personally responsible for investigating allegations and reporting to General Casey within an hour of an alleged violation.<sup>68</sup> During these classified briefings, General Molan described to General Casey the outcomes and issues arising from the attack.<sup>69</sup> Predator video footage, with its ability to record real-time information, proved to be important in proving or disproving allegations.<sup>70</sup> Furthermore, the Head of Targeting at Corps Headquarters, led a “large team of information specialists to follow the assault troops into the city and immediately document transgressions of international law, including by the enemy.”<sup>71</sup>

There were a number of investigations, including three into reports of Coalition troops firing on medical clinics. The investigations found that three of the buildings were used by insurgents to fire at coalition troops while the fourth had not been used as a clinic for several years.<sup>72</sup>

Coalition forces also travelled with 91 embedded reporters representing 60 media organisations. These reporters were allowed to report on anything that did not risk the mission.<sup>73</sup> The presence of the reporters ensured that violations of international law would have been reported, as was the case in relation to accusations of unlawful killing of injured Iraqis in a mosque. In reviewing the effectiveness of the embedded reporters, General Conway estimated that 95 percent of reporting by embedded reporters was accurate.<sup>74</sup>

One accusation stemming from video footage made by an embedded reporter alleged that a U.S. Marine shot four wounded enemy combatants on 13 November. The allegation was investigated by the Naval Criminal Investigative Service which found that the Marine had acted in self-defence. The NCIS investigation found that feigning death was a tactic employed by enemy combatants who subsequently fired on coalition troops.<sup>75</sup> During the investigation, prosecutors considered “multiple witness accounts, close review of video showing the incident captured by an embedded reporter and detailed ballistics and forensic evidence.”<sup>76</sup>

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65 Knarr and Castro, 68

66 Ibid, 71

67 Knarr and Castro, 73

68 Ibid, 228

69 Molan, 204

70 Ibid, 229

71 Ibid

72 Ibid, 239

73 Chang, above n 22, 34

74 Chang, 36

75 McIntyre, Jamie, ‘Marine Cleared in Videotaped Shooting’, (2005), CNN, <http://edition.cnn.com/2005/U.S./05/05/falluja.marine/index.html?eref=sitesearch>, at 19 August 2015

76 Ibid

## Enemy forces

### *Enemy Objectives*

The enemy's ideology was to return Iraq to a Sunni Caliphate similar to that of the 14<sup>th</sup> Century. That involved killing Shi'a in the belief they were apostates, defeating the Iraqi government and killing and defeating Coalition forces.<sup>77</sup>

### *Rules of Engagement (de jure and de facto)*

The enemy did not have formal ROEs. Its rules of engagement focused on attacking the Coalition forces and inflicting maximum destruction. These de facto ROEs did not take into account the safety of civilians.

### *Capabilities*

At the start of Operation Al Fajr, there were approximately 3,000 enemy combatants in Fallujah.<sup>78</sup> The enemy had been fortifying the city and had established 306 well-constructed defensive positions.<sup>79</sup> In terms of communication capabilities, the enemy had radios across all units and called in mortar fire with cell phones.<sup>80</sup>

As Bing West observes: "In April, Fallujah was defended by about five hundred hard core and a thousand part-timers. Seven months later the estimate had doubled to a thousand hard core and two thousand part-timers, although how many had fled in late October was unknown. Eager to show they were ready to repel the Marines, the insurgents welcomed Arab reporters. From press stories and numerous agent reports, a composite picture of the insurgents emerged. They were clustered in groups of four to twenty, each with a leader and a spiritual commissar. Their daily training consisted of weapons handling, studying the Koran, and watching videos of suicide bombers and attacks on Coalition forces. With months to prepare, they had dug trench lines, rigged daisy chains of explosives along alleyways, hauled buses and trucks as barriers across the main streets, and planned fallback positions."<sup>81</sup>

### *Relationship to the Civilian Population*

The enemy combatants had declining support among the civilian population due to the imposition of harsh sharia law—including torture and abuse of civilians—and the presence of foreign fighters.<sup>82</sup> The enemy was not interested in protecting civilians. Indeed, its interest lay in the propaganda value of the Coalition wounding or killing civilians. Thus, it was left to Coalition forces to protect the civilians in Fallujah.<sup>83</sup>

### *Conduct During Conflict*

The enemy combatants in Fallujah represented a threat to civilians, particularly Westerners they had taken hostage and were executing, and Iraqi civilians throughout Iraq who were victims of the improvised explosive devices (IEDs) produced in bomb factories in Fallujah. There were 19 IED factories in Fallujah.<sup>84</sup> The presence of foreign fighters and torture chambers evidenced the hard-core nature of the on-going threat to civilians, both in Fallujah and throughout Iraq.<sup>85</sup> Indeed, the enemy leadership had turned Fallujah into supply centre for terrorist and suicide bomber attacks in Iraq.<sup>86</sup>

<sup>77</sup> Sheridan, 119

<sup>78</sup> Sattler, 1

<sup>79</sup> Molan, 211; Sattler, 1

<sup>80</sup> Molan, 212

<sup>81</sup> West, 411-412

<sup>82</sup> Ibid, 205; Sheridan, 118

<sup>83</sup> Molan, 169

<sup>84</sup> Sheridan, 118

<sup>85</sup> Sattler, 1

<sup>86</sup> Chang, 33

Aside from the threat to civilians, enemy combatants also posed a significant threat to Coalition forces. Their forces were well prepared, well drilled and had physically shaped the battle environment through building fortifications, killing zones and denying areas such as rooftops to the Coalition troops.<sup>87</sup> The enemy combatants had also developed sophisticated killing zones. These included imaginative IED ambushes and efforts to lure Coalition troops into killing zones by deliberately placing some enemy combatants in full view.<sup>88</sup>

By utilizing these tactics, the enemy was able to draw Coalition forces into close combat. A pattern emerged whereby insurgents would first engage the Coalition forces with rifle fire or IEDs and later direct sniper fire at commanders and radio operators. If during this exchange an armoured vehicle was called in by Coalition forces, it was usually met by a barrage of RPG fire.<sup>89</sup>

In the pre-Operation Al Fajr phase, the enemy leadership used to meet in populated areas in order to lessen the chance of attack by Coalition forces. However, during Operation Al Fajr, while the presence of civilians continued to impede Coalition actions, there were so few that the opportunity for the enemy to hide among civilians was greatly reduced.<sup>90</sup> In regards to warning the civilian population beforehand, there is no evidence to suggest that the enemy took any precautions whatsoever to prevent civilian casualties.

### *Use of Force*

The choice of weapons by the enemy was influenced by its preference to engage the Coalition forces in close combat. This involved small arms, IEDs and RPGs.<sup>91</sup> Indeed the fighting was, at times, so close that it involved knives and bayonets.<sup>92</sup> The enemy also used weaponry such as mortars and complex IED ambushes.<sup>93</sup> Investigations after the Operation concluded 653 IEDs had been detonated or found in Fallujah, along with 229 weapons caches.<sup>94</sup>

### *Use of civilian infrastructure for military purposes*

The enemy consciously used civilian infrastructure such as schools, mosques and hospitals for military purposes, both to afford their actions some protection from attack and to gain propaganda advantages by provoking attacks on protected buildings such as hospitals and places of worship. For example, of the 140 mosques in Fallujah, 66 were used as weapons stores while three medical clinics were used by enemy combatants to fire on Coalition forces.<sup>95</sup> One of the key characteristics of the battle was the enemy's decision to bring the battle inside the city rather than fight at its edges, where Coalition long-range weapons would have been more effective. As a result, the battle took place in the heart of the city, delivering more damage to civilian infrastructure.<sup>96</sup>

In his award-winning analysis of Operation Al Fajr, author Gary Anderson comments on the inherent challenges this presents as follows: "...situations where fighters hide in protected sites, such as mosques and among civilians [and]...where civilians are used as willing or unwilling shields, remain problematic. We knew the situation would arise but we still lack the tools to effectively deal with it. The enemy used situations where we were forced to fire into areas with civilians and fighters intermixed, as well as damage to mosques, to their own propaganda advantage... The use of mosques, schools and other 'protected' sites to fight from, as well as the use of women and children as shields, has been anticipated since Somalia and Grozny, but the systematic use of the propaganda value of having Americans firing at mosques was broadcast to the world, particularly the Arab world, much more quickly than ever

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87 Ibid, 33

88 Molan, 234

89 Ibid, 233

90 Chang, 34

91 Molan, 233

92 Ibid, 234

93 Ibid, 235

94 Ibid, 244

95 Sheridan, 118; Molan, 239

96 Ibid, 215



before. To some extent, the Islamic media's version of embedded journalists was something of a backhanded tribute to the first phase of Operation Iraqi Freedom."<sup>97</sup>

According to Anderson's study, enemy tactics extended beyond the use of protected areas only as static places of refuge. Fighters' rapid reaction forces in Fallujah were transported around the urban battlefield by means of school buses and ambulances.<sup>98</sup> As noted above, the enemy had turned Fallujah into the supply and operations centre for terrorist and suicide bomb attacks across Iraq.<sup>99</sup>

## Outcomes

The two-month conflict ended in late December 2004 with a decisive Coalition victory. The Insurgency had been driven out and Coalition troops had regained control of the area. On 23 December, Iraqi Prime Minister Ayad Allawi announced the success of the operation and invited residents back to the city. In their work entitled *The Battle for Fallujah*, Dr. William Knarr and Major Robert Castro conclude that "the mission was accomplished" and that "Al Fajr was an unequivocal military victory."<sup>100</sup>

## Casualties

Reports of civilian casualties during Operation Al Fajr vary. An official account indicates that as of 10 December 2004, one civilian had been killed and 66 wounded.<sup>101</sup> Another report developed by Democracy Now claimed 800 civilians had been killed.<sup>102</sup> However, the report cites 'independent journalist', Dahr Jamail, who quotes an unnamed Red Cross official as estimating 800 civilians dead. In our extensive research for this study, we have not found another source to support the figure provided by Democracy Now, even after searching Red Cross databases. Moreover, we have found no reports of the Red Cross operating in Fallujah at the time of Operation Fajr.

Additional evidence also suggests the figure of 800 civilians killed is not credible. As previously noted, as few as 500 civilians might have been present in Fallujah at the start of Operation Al Fajr.<sup>103</sup> Furthermore, Coalition forces conducted the operation with 91 embedded reporters, who represented 60 media organisations.<sup>104</sup> As we have seen from the investigations that took place after allegations of misconduct by Coalition troops, the killing of hundreds of civilians would have created an international controversy.

On the enemy side, there were 2175 casualties as of 23 November 2004. The final number of insurgents killed was over 3000, which was tallied by the number of bodies recovered.<sup>105</sup>

As of 10 December 2004, there were 72 Coalition troops killed and 648 wounded. This number included 293 who were only slightly wounded and were able to return to duty.<sup>106</sup> By the end of the operation, the U.S. troops suffered 82 killed and over 600 wounded while Iraqi forces suffered six dead and 55 wounded.<sup>107</sup>

<sup>97</sup> Anderson, COL G.W. (USMC, Ret), 'Fallujah and the Future of Urban Operations', in *Marine Corps Gazette*, Vol 88, No 11, November 2004, 53

<sup>98</sup> Ibid, 54

<sup>99</sup> Chang, 33

<sup>100</sup> Knarr and Castro, 88

<sup>101</sup> Molan, 241

<sup>102</sup> Amy Goodman, 'Red Cross Estimates 800 Iraqi Civilians Killed in Fallujah', (2004), *Democracy Now! Independent Global News*, [http://www.democracynow.org/2004/11/17/red\\_cross\\_estimates\\_800\\_iraqi\\_civilians](http://www.democracynow.org/2004/11/17/red_cross_estimates_800_iraqi_civilians) at 19 August 2015

<sup>103</sup> Chang, 34

<sup>104</sup> Ibid, 34

<sup>105</sup> Molan, 240

<sup>106</sup> Ibid, 241

<sup>107</sup> McWilliams, 66

### *Damage to property and infrastructure*

At the beginning of Operation Al Fajr, Fallujah had an estimated 17,432 public and private structures. Post-conflict assessments indicate that between 10 and 25 percent of these structures were destroyed or severely damaged.<sup>108</sup> In terms of cost, post-conflict surveys conducted by the Interim Iraqi Government estimated the total damage to be U.S. \$493 million.<sup>109</sup>

In line with the overall figure of damaged buildings, it is estimated that around 10 percent of protected sites were destroyed or damaged during the operation. It is important to reiterate that mosques and medical clinics had been used by enemy combatants for military purposes, thereby removing their protected status.

### *Overall economic impact*

Prior to Operation Al Fajr, Fallujah had a population of approximately 300,000 people.<sup>110</sup> As noted above, most of the civilians departed the city before Operation Al Fajr commenced.<sup>111</sup> In the post-conflict period, specifically between December 2004 and March 2005, 90,000 residents had returned to Fallujah. By August 2005, that number had increased to 180,000 residents.<sup>112</sup>

Although reliable estimates of economic impact are not available, it is obvious that normal economic activity in the city of Fallujah was severely disrupted during the conflict. With the return of residents post-conflict and the reconstruction funds provided by Coalition forces, economic activity slowly began to resume in the area.

### *Assessment*

Overall, Coalition forces displayed professionalism and adhered to international laws governing the use of force during conflict. The author of this study found the professionalism of the military forces to be exceptional and substantiated simply by the presence of embedded media. While there were instances of questionable conduct, these were rare, widely reported and appropriately investigated. Nonetheless, the aim is to be beyond reproach on these important matters.

The greatest cost to the Coalition for its determination to minimise collateral damage was the casualties it sustained. As stated earlier, it would have been possible to eliminate the enemy combatants without subjecting Coalition troops to danger. Nonetheless, the priority the Coalition leadership afforded abiding by international law and minimising collateral damage meant that the dangerous and painstaking job of clearing the city house by house had to be undertaken. As a result, by 10 December 2004, Coalition casualties included 72 dead and 648 wounded.<sup>113</sup>

On the other hand, insurgents acted unprofessionally and ignored international laws of warfare. One of the key aims of the insurgents was to promote sectarian violence through committing violent attacks against the Shi'a (although it is probable that they also attacked Sunnis) to provoke a violent response. With that objective, which is completely counter to Western notions of the rule of law, it is not surprising that 'lawlessness' characterises much of their actions. Accordingly, it is not just the 'lawless' actions, but the systemic threat that they represented, that made it vital to develop an effective counter.

The insurgents' actions reflect their different world view and limited capabilities. In addition to deploying overwhelming military force against an adversary with limited capabilities, the Coalition needed to properly understand the insurgent's world view in order to counter their appeal to other Sunnis. In this context, the lesson from Fallujah may be that a military victory, or even a succession of military victories, in the same location against

108 Molan, 243; Jim Miklaszewski, 'Still Locked Down, Fallujah Slow to Rebuild', (2005), [http://www.nbcnews.com/id/7503610/#.Vde\\_GOkVhLM](http://www.nbcnews.com/id/7503610/#.Vde_GOkVhLM), at 20 August 2015

109 Molan, above n 2, 248

110 Chang, 32

111 Ibid, 34

112 Molan, 254

113 Molan, 241

largely the same adversary, does not deliver ultimate victory, or victory in the strategic sense. This challenge may be a recurring challenge in future conflicts.

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# Operation Serval

Sahel Region, Africa

11 January – 30 July 2013

**Dr. Bruno Tertrais**

## **Background**

### *Duration and Intensity*

The operation lasted seven months (early January to 30 July 2013). Initial operations (Serval-1, January-March 2013) included three distinct phases. First was the containment phase, which lasted from 11 January to 25 January. Next, two battalion-sized forces led the northward conquest of the Niger Crescent from 25 January to 1 February. As the deployment of Serval forces was finalized, operations deep into Malian territory could begin. These operations included the “rush to Timbuktu” (4 to 9 February); the takeover of Gao and the reduction of Movement for Oneness and Jihad in West Africa (MOJWA)-held wadis (10 to 24 February); and most importantly, the long and difficult “cleanup” of the valleys held by Al Qaida in the Islamic Maghreb (AQIM) in the high desert (19 February to 2 April), a period which also saw residual fighting around Timbuktu (22 to 31 March). This 3-month high-intensity operation was followed by stabilization and transition phases (Serval-2 and Serval-3).

### *Terrain and Population*

The territory of Mali covers approximately 1,240,200 km/sq. Initial operations took place in the central part of Mali (Niger Basin), in particular along the Niger river, where major urban centers are located including Mopti (115,000) and the nearby town of Sévaré (40,000). Subsequent operations took place in Northern Mali, a mineral desert the size of France (about 1000 x 1000 square kilometers). Key cities include Gao (88,000) and Timbuktu (55,000), which together represent about 95% of the population of Northern Mali. Heavy fighting took place in two mountainous regions of the high desert of the North, the Adrar Tirgharghar (and the Ametattai valley) and the Adrar des Ifhogas. While most of the combat operations have taken place in desert areas, several significant ones it has also happened in low-to-moderate density urban environments such as villages and towns.

The Malian population was overwhelmingly supportive of the French operation. In the North, citizens had been subjugated by jihadist groups which imposed harsh rule over their communities. Only a few individuals supported these groups, mostly for material reasons such as financial gain.

Serval was conducted in extreme conditions in terms of weather and distances. French units were often driven to take liberties with established patterns of doctrine. Area control was stretched to the limits.<sup>1</sup> A battalion of 500 could be stretched on a distance of 500 kilometers (normally the distance covered by the deployment of a 5,000-strong brigade).

### *Urgency*

The operation took place in light of the growing terrorist threat in the Sahel region, which affected French core interests directly. Abductions and various attacks carried out by insurgents and terrorists in the region threatened French nationals as well as the political and economic stability of the region which included a number of French business operations. Operation Serval was launched in January 2013 when preparations for a southward offensive of jihadist forces were detected. Given the increasing number of jihadist forces operating in North and Central Africa, the operation was viewed as necessary to prevent the Malian state from collapsing and falling under the control of various insurgent and terrorist groups.

### *Historical Context*

Mali had been plagued for several years by a weakening of the state, the development of cross-Saharan trafficking, and the growth of radical Islam, encouraged by Pakistani imams. The civil war in Libya led to the creation of the National Movement for the Liberation of Azawad (NMLA) by returning veteran Tuareg fighters, which sought the secession of Northern Mali. Separately, the presence of jihadist groups became stronger in the region. This included AQIM, the MOJWA, a Gao-based Black African offshoot of AQIM created in 2011 (refusing subordination to Algeria-based groups), as well as Ansar Dine (AD), a breakaway salafist Tuareg movement created in 2012 which was joined by many NMLA fighters. During the Spring, which saw the complete crumbling of the State authority, a NMLA-AD alliance groups conquered Northern Mali; soon after, AD and MOJWA ejected the NMLA, leading to the creation of a jihadist breakaway State.

In France, contingency planning for a major operation in Mali had begun months before, with the expectation that it would be in support of a pan-African intervention. Significant intelligence had been acquired by the French services, which was on the ground already, reportedly eliminating several tens of terrorists in the previous months. The permanent presence of French forces in a nearby country as well as the existence in France of a quick Army reaction force primarily designed for urgent African operations also contributed to the ability of Paris to react immediately.

### *Immediate Causes of the Conflict*

On 6 January 2013, French intelligence detected the preparations of an offensive towards the South by 1,200 AD fighters and numerous (up to 200 according to some sources) vehicles assembled near Konna in Central Mali. During the next three days, there was evidence of coordination between AD and demonstrators in the capital Bamako. AD took Konna on January 10. The Malian armed forces were overwhelmed and fled. Paris believed that the jihadists were about to take Mopti and Sévaré, leading to the complete collapse of the Malian State.

On January 11, President François Hollande gave the order to intervene. Specifically, special forces from the 250-strong contingent stationed in Burkina Faso were to take back the city of Konna, which was the last stronghold before Bamako. Simultaneously, Mirage aircraft prepositioned in Chad were ordered to strike jihadist convoys.

The decision to embark on a ground offensive appeared quickly and was taken the next day. Four battle groups or “joint tactical groups” as the French Army call them (Groupements Tactiques Inter-Armes, GTIA) of about 700

<sup>1</sup> Olivier Hanne & Guillaume Larabi, *Jihâd au Sahel. Menaces, opération Barkhane, coopération régionale*, Paris, Bernard Giovanelli Editeur, 2015, 136, 140.



men each were deployed: GTIA-1 arrived on January 16, GTIA-4 on January 26, GTIA-3 on February 5, and GTIA-2 on February 7.

## Enemy Forces

### *Pre-conflict*

The exact size of the adversary's forces at the onset of Serval was between 1,200 and 1,800. An official Joint Staff document estimated the number of jihadists in Mali to 1,170 at the beginning of the operation.<sup>2</sup> Other official sources put the total to closer to 1,400-1,800.<sup>3</sup> Some sources mentioned as many as 3,000 fighters – possibly including individuals not based in Mali. The militants usually operated in katibas of several tens, occasionally several hundred, fighters.<sup>4</sup>

Armed groups in Mali included the MOJWA, AD, AQIM and the MLNA. The MOJWA were located mostly in Central Mali (Gao region), which managed to maintain the support of some local communities and “merge” with them. According to the Joint Staff, the MOJWA conducted upwards of 450 suicide operations in Timbuktu, Gao and Kidal. AD operatives numbered approximately 400 and were largely scattered after initial operations began. AQIM was positioned mostly in the North and numbered approximately 320 individuals. Of the various opposition groups, AQIM was considered the fiercest adversary, characterized by its excellent organization and training and accurate snipers. Also involved in the resistance were members of the MNLA, a Tuareg movement considered by the French as being “neither friend nor foe.”

### *Conduct During Conflict*

These groups used three different modes of fighting: position warfare, classic rezzou, and harassment by suicide attacks (a novelty in Sub-Saharan Africa) and snipers. A significant part of their weaponry came from Malian armed forces.<sup>5</sup> The AK-47 was a weapon of choice. A few ground-to-air Libyan missiles were later found by the French, but the jihadists were unable to use them. In the AQIM stronghold of the Amettetaï valley, 22 tons of munitions were found by French forces.

During the conflict, there was no systematic use of IED or human shield tactics by the jihadist militants. There were, however, reports of weapons caches were being uncovered in schools.<sup>6</sup> Generally speaking, the adversary operated far out of the bounds of international law. According to General Bernard Barrera, “they used child soldiers, they booby-trapped their dead, sent us kamikazes, mistreated the populations – operating very far from our combat codes, from our code of honor.”<sup>7</sup>

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2 Jean-Christophe Notin, *La guerre de la France au Mali*, Paris, Tallandier, 2014, 148.

3 Notin 2014 : 371, 563.

4 Jean Guisnel, « ‘Nous nous sommes parfois trouvés tout près de la catastrophe’, Interview du général Bernard Barrera », *lepoint.fr*, 20 June 2015.

5 *Rebel Forces in Northern Mali : Documented Weapons, Ammunition and Related Material, April 2012-March 2013*, Conflict Armament Research / Small Arms Survey, April 2013.

6 « Mali troops search Gao for militants after attack », *BBC News*, 12 February 2013.

7 Guisnel 2015.

## Military Forces

### *Pre-conflict*

The goals fixed by Hollande were to “stop the enemy”, “help the Malian government to re-conquer its country,” and “destroy the terrorists.”<sup>8</sup> Alternatively, they could be made prisoners “if possible.”<sup>9</sup> In addition, it was widely believed that the search for the seven hostages detained by AQIM and the MOJWA were part of the mission. The enemy was later defined as “Jihadists Armed Groups” although forces on the ground reportedly used the word “terrorists” when they saw the first suicide bombings in urban areas.<sup>10</sup>

Specific secondary objectives were added by the government: the destruction of terrorist rear bases infrastructures, the protection of French expatriates, and the rapid deployment of both a new African stabilization mission (the MISMA) and the EU training program for Malian forces.<sup>11</sup>

High value targets and hostages were by far the first intelligence priority (80%), ground operations a distant second (20%).<sup>12</sup>

### *During Conflict*

#### *Organization and order of battle*

Classically, the operation was directed at the strategic level by the Chief of Defense Staff and his Deputy for Operations, from the Joint Operations Center in Paris. At the operational level, a joint force headquarters manned by 80 personnel was installed in Dakar (Senegal) on 24 January. It was supplemented with a forward command post manned by 25 personnel in Bamako (Mali). It coordinated the French ground and air operations with those of the special forces, and liaised with African supporting forces (up to 6,000 Malian and other UN-mandated forces, including up to 2,300 Chadians directly participating in the operation), thus constituting an informal coalition. There was also a small detachment of French liaison units (Détachement de Liaison et d'Assistance, SLA) which were embedded with African forces.

At the tactical level, the Army elements (Serval brigade) were commanded from Bamako, with an additional contingency command post in Gao; the Air Force operations were conducted from N'Djamena (Chad), while overall operational control of all air assets was maintained in Mont-Verdun, France. The chain of command was kept short. At times, there were no more than four echelons between the President and the men on the ground.<sup>13</sup>

At the peak of the engagement (mid-February 2013), Serval included 6,500 French personnel. This total included 5,168 Army (3,500 on the ground in Mali), 950 Air Force, and 370 Navy personnel.<sup>14</sup> The Serval brigade included six battalion-sized units: the four GTIA, a helicopter battalion, and a logistical battalion. Equipment included the following: 252 armored infantry vehicles, 183 light armored vehicles, 34 other armored vehicles, 173 logistical vehicles, 22 fuel tanks, 354 trucks, 262 light vehicles, 12 artillery pieces (including 4 Caesar 155 mm cannons and 8 MO120 120 mm mortars), 8 engineering vehicles, and 17 helicopters (6 Gazelle, 6 Puma, 4 Tigre, 1 Pilatus).<sup>15</sup>

Air assets involved included 14 fighters (6 Rafale, 6 Mirage 2000D, and 2 Mirage F1), 9 surveillance aircraft (up to 6 Atlantique-2 and 3 Harfang MALE drones), as well as 5 refueling aircraft. The Rafale were armed with A2SM missiles and GBU-12 laser-guided bombs. The Mirage-2000D were armed with GBU-49 bombs, supplemented with Mk-82 Airburst. The latter was bought in because the French Air Force believed that this very efficient but

<sup>8</sup> Admiral Edouard Guillaud quoted in Notin 2014 : 175.

<sup>9</sup> François Hollande quoted in Notin 2014 : 178.

<sup>10</sup> Guisnel 2015.

<sup>11</sup> Christophe Guilloteau et Philippe Nauche, *Rapport d'information déposé en application de l'article 145 du Règlement par la Commission de la défense nationale et des forces armées en conclusion des travaux d'une mission d'information sur l'opération Serval au Mali et présenté par MM. Christophe Guilloteau et Philippe Nauche*, n° 1288, Assemblée nationale, 18 July 2013.

<sup>12</sup> Notin 2014 : 498.

<sup>13</sup> Ibid: 124.

<sup>14</sup> Guilloteau 2013.

<sup>15</sup> Ibid

very powerful weapon, which the French would not use in Afghanistan because of the risk of high collateral damage, could be used in the desert areas against large numbers of militants such as those traveling in convoys.<sup>16</sup>

Special forces (Task Force Sabre) numbered 250 at the onset (with 20 helicopters) and up to 500 at the peak of combat operations. They liaised with the Serval brigade and the Dakar operational command but also reported directly to the Paris strategic command. Apart from intelligence, their missions included the neutralization of high value targets and the search for hostages, although the latter responsibility was not publically stated. To that effect, they benefitted both from the DGSE (external security) and DRM (military) intelligence – the former having perhaps a more “strategic” and the latter a more “tactical” role.<sup>17</sup>

Non-African contributions included allied assistance to transport and in-flight refueling, as well as some limited combat contributions (Belgium included two Agusta helicopters in the Serval brigade).

### *French Military Culture*

Since 2007, the French Defense Code explicitly protects French soldiers from any criminal lawsuit as long as the use of force respects international law and is “necessary to accomplish the mission.”<sup>18</sup> Soldiers, however, remain unprotected (and thus liable to trial) in case an order is “obviously illegal or contrary to applicable international law.” Legal advisers (LEGAD) have been inserted in French command structures since 1999. They operate at each level of the operation: strategic, operational, and tactical.<sup>19</sup> At least one is assigned to the local force commander. They refine ROE at the level of the force. They are sometimes consulted in real time.

A specific French tradition since the early 1980s is to add “rules of behavior” to rules of engagement. Such rules are exclusively the purview of the military and do not need to be approved by the political authorities. They concern mostly contacts with the population. Inherited from the colonial tradition, French operational culture includes “being close to and at ease with [local] populations”.<sup>20</sup> One Serval officer claims, “we always respect local installations which are fundamental for the social and economic life of inhabitants”.<sup>21</sup> This includes taking the time to meet key local figures and authorities, going to the market to shop for food, fixing or repairing infrastructures or markets (such as the one in Gao), or providing medical support.

French forces also believe in “leveraging local knowledge, or “mixing in with the population and understanding the entire context in which one is operating.”<sup>22</sup> This includes inserting small human intelligence (HUMINT) detachments within the population, “to identify the presence of weapons and munitions caches, high value targets, IED makers...”<sup>23</sup> This allows them to count on Malian Tuaregs, with whom French forces and intelligence have had a longstanding cooperation. “The Tuareg contingents involved in French operations were small, but they played important roles as guides, scouts, and interpreters...their involvement may have helped secure for France local buy-in and popular support.”<sup>24</sup>

French forces claim to be “obsessed with legitimacy”, a recurring theme in military schools and training.<sup>25</sup> They pride themselves in being masters at calibrating (*maîtriser*) the use of force.<sup>26</sup> The Serval force commander describes how they behaved after the first casualty: “Our units react to the losses without the cowardly reaction of disproportionate violence.”<sup>27</sup> In theaters such as Afghanistan or Africa, they tend to beware of any binary opposition

<sup>16</sup> Ibid

<sup>17</sup> Jean-Dominique Merchet, « Renseignement : partie de ping-pong entre la DGSE et la DRM », *L'Opinion*, 20 September 2015.

<sup>18</sup> République française, *Code de la défense* (French Defense Code), Article L. 4123-12, Alinéa 2.

<sup>19</sup> Nicolas Hervieu, « Entretien avec Claire Landais, Directrice des affaires juridiques du Ministère de la Défense », *La Revue des droits de l'homme*, July 2015.

<sup>20</sup> Général de Saint-Quentin in Hanne & Larabi 2015 : 132.

<sup>21</sup> Frédéric Gout, *Libérez Tombouctou! Journal de guerre au Mali*, Paris, Tallandier, 2015, 201.

<sup>22</sup> Michael Shurkin, *France's War in Mali : Lessons for an Expeditionary Army*, RAND Corporation, 2014, 41.

<sup>23</sup> Chef d'escadrons Gay, « ‘Cette difficulté de voir juste...’ de Tora à Gao », *Cahiers du CESAT*, n° 39, March 2015, 67.

<sup>24</sup> Shurkin 2013: 20.

<sup>25</sup> Interview with a MoD official, Paris, July 2015.

<sup>26</sup> Isabelle Lasserre & Thierry Oberlé, *Notre guerre secrète au Mali. Les nouvelles menaces contre la France*, Paris, Fayard, 2013, 55. In Afghanistan, French RoE were said to be more restrictive than American ones.

<sup>27</sup> Général Barrera, *Opération Serval. Notes de guerre, Mali 2013*, Paris, Seuil, 2015, 158.

between “friends” and “foes” among local populations, for instance. They always insist, in coalition operations, on having a separate “presumed hostile” category. This turned out to be helpful during Serval, which included, according to the theater commander, “friends, allies, neutrals, hostiles.”<sup>28</sup>

When air strikes are guided by ground controllers, those on the ground generally have the final say on whether or not to strike. They also propose the type of munitions that should be used, based on projected damage.

It is worth noting that when it comes to committing national forces in combat, the French are less constrained compared to other nations because of the absence of real parliamentary control over foreign military operations. Furthermore, the case of the Foreign Legion is unique as these forces are technically a branch of the French Army, yet their numbers are comprised of entirely foreign nationals.

### *Legal Framework*

Technically, Serval was an operation of collective self-defense: the Malian president a hastily written call for military support from France. According to some lawyers, this was a fragile legal foundation.<sup>29</sup> A Status of Forces Agreement (SoFA) was signed on 8 March bolstered the legal status of the operation, including by referring to UNSC resolutions 2056, 2071 and 2085.<sup>30</sup> Inter alia, the SoFA authorized French forces to circulate freely in and over Mali, to take any necessary measures to ensure their protection and that of French nationals. It also committed Mali to respect international humanitarian law when dealing with prisoners transferred to its custody by French forces, and to avoid any cruel, inhuman or degrading treatment, including the death penalty.

As the operation entered its stabilization phase, the UN Security Council consolidated the legal basis of the operation. UNSC resolution 2100 “welcomed the swift action by the French forces, at the request of the transitional authorities, to stop the offensive of terrorist, extremist and armed groups...”; and authorized French forces “to use all necessary means...to intervene in support of elements of MINUSMA when under imminent and serious threat upon request of the Secretary-General.”<sup>31</sup> In July, a UN/France agreement gave France a large freedom of action to those French forces which are part of MISMA.<sup>32</sup>

Lawyers in the Ministry of Defence defined it as a high-intensity Non-International Armed Conflict, for which applicable rules were Article III of the Geneva Conventions, and First and Second Additional Protocols. Four legal advisers (LEGAD) were deployed: one at the operational command level and three at the force level (ground, air, SOF).<sup>33</sup>

### *Rules of Engagement*

Since the 1990s, French rules of engagement have followed NATO and EU patterns. The basic categories of ROE are the same, to facilitate combined operations.<sup>34</sup> The use of force is permitted either defensively in circumstances of self-defense, or offensively in specified circumstances. Mission-specific ROE are defined at the strategic level by the Joint Staff Legal Division (EMA/JUOPS).

ROE were strict to protect civilians (including journalist and hostages) and friendly forces (Mali, Chad). A government spokesperson said: “ROE were very strict to protect civilian populations ».<sup>35</sup> The force commander testified : “We

28 Grégoire de Saint-Quentin, « Premières leçons opératives de l'opération Serval », *Défense nationale*, octobre 2013, 31.

29 Dan E. Stigall, “The French Military Intervention in Mali, Counter-Terrorism, and the Law of Armed Conflict”, *Military Law Review*, vol. 223, issue 1.

30 République française, *Décret n° 2013-364 du 29 avril 2013 portant publication de l'accord sous forme d'échange de lettres entre le Gouvernement de la République française et le Gouvernement du Mali déterminant le statut de la force 'Serval', signées à Bamako le 7 mars 2013 et à Koulouba le 8 mars 2013*.

31 United Nations Security Council, *S/RES/2100*, 25 April 2013.

32 Christina Mackenzie, « France Brings Military to Bear in Mali », *Aviation Week & Space Technology*, 9 September 2013.

33 Claire Landais, « L'expérience du conflit du Mali », *36<sup>ème</sup> Table ronde sur les sujets actuels du droit international humanitaire*, San Remo, 5-7 September 2013.

34 RoE series 10 to 43 are the same as NATO's as defined in MC362/1. RoE series 50 to 59 are placeholders for French-specific RoE.

35 @FranceDiplomatie, 25 January 2013.

must remain exemplary in our behavior, in the treatment of prisoners and wounded, and we will be... We know that nothing will be forgiven to us... My LEGAD does not sleep much. Together, we study the rules for opening fire, the specific directives for each case, which were conceived and drafted by Paris. She converts them into procedures designed to meet the expectations of the GTIA, which need to know the exact conduct vis-à-vis prisoners and child soldiers. The tactical orders will always be drafted bearing in mind their conformity to the law."<sup>36</sup>

A complication was that terrorists often dressed like locals and used the same pick-up trucks as the Malians. At one point the force commander, General Bernard Barrera, asked a Tuareg for guidance on how to "differentiate locals from terrorists."<sup>37</sup> Malian Army pick-ups did not have radios, so a system of visual communication was designed to avoid fratricide shooting.<sup>38</sup> The latter risk was described by the force commander as a constant source of "anguish."<sup>39</sup> Liaison teams were established to coordinate tactical operations and avoid friendly fire.<sup>40</sup>

In the high North, the presence of child soldiers led the force to take extra precautions during operations in early March. Loudspeakers were often used to induce combatants to surrender.<sup>41</sup> When a blanket authorization to fire was given, units were asked, whenever possible, to first gauge the age of combatants.<sup>42</sup>

ROE, in particular for combat in urban areas, were said to be in conformity with those generally used by NATO.<sup>43</sup> Collateral Damage Estimates (CDE) use the same five-level scale as allies.

ROE applicable to the Serval Brigade (defined in two sets, 11 and 19 January) were said to be "comprehensive." They were adjusted during the operation, upon request from the forces to the LEGAD, giving the latter a greater freedom of action. However, the overarching principle remained the use of "minimal" force.<sup>44</sup>

Specific RoE included the following:

- » Absent self-defense, the use of lethal force was authorized only to target "individuals directly participating in operations or belonging to organized armed groups."<sup>45</sup> Regarding the first type of circumstances, "ostensibly hostile acts or intentions" was said to be the overriding principle. At the onset, only the airborne battalion could attack elements belonging to armed groups without hostile acts or intentions.
- » As a general rule, the authorization to open fire was subordinated to certainty of facing "an armed threat" through Positive Identification (PID). For aircraft, this meant either visually or by two different electronic means. As one Serval officer explained, "We prefer to deliberately let possible jihadists escape if we are not sure that they represent a threat."<sup>46</sup> Uncertainties—often caused by malfunctions of equipment to high temperatures and dust—were resolved by using two modes of identification (ground and air).
- » The Target Engagement Authority (TEA) depends on the type of target and CDE. Absent self-defense circumstances, the Serval force commander (COMFOR) was the principal authority allowed to authorize fire. Exceptions in both directions existed (see below).
- » It was requested that the choice of munitions was of particular attention. There were restrictions on the use of certain munitions. Helicopter support was provided preferably through the use of guns, as opposed to missiles. Eryx and Hot missiles could not be fired in urban areas without explicit authorization from the command. On 10 February, 10-15 terrorists were barricaded in the Gao police station. The force commander sent two armed columns, one to help the Malians destroy the resistance and protect journalists, the other to protect the hotel and evacuate those journalists who wanted to. A helicopter

<sup>36</sup> Barrera 2015 : 168.

<sup>37</sup> Ibid: 276.

<sup>38</sup> Notin 2014 : 413.

<sup>39</sup> Barrera 2015 : 296.

<sup>40</sup> Ibid: 219.

<sup>41</sup> Barrera 2015 : 216.

<sup>42</sup> Notin 2014 : 474.

<sup>43</sup> Interview with a MoD official, September 2015.

<sup>44</sup> Ibid

<sup>45</sup> Landais quoted in Hervieu 2015.

<sup>46</sup> Gout 2015 : 168.



armed with Hot missiles was available to destroy the police station but the force commander judged that using it in an urban area was too great a risk for civilians. Instead, he resorted to 30 mm shells.<sup>47</sup> On February 21 in Gao, the force engaged in urban combat against 20-30 MOJWA militants hiding in houses. A Gazelle helicopter asked for authorization to use a Hot missile. After asking the force to take shelter, the COMFOR gave the go-ahead to the airborne unit's liaison officer.<sup>48</sup>

- » Fighter-bombers were to avoid shooting where there was a risk of collateral damage.<sup>49</sup> On January 11 in Konna, a Mirage used a delayed-fuse bomb to minimize collateral damage.<sup>50</sup> On January 17 in Diabaly, a Mirage descended to shoot with its cannon—as opposed to dropping a bomb—to avoid collateral damage.<sup>51</sup>
- » The Air Force requested from artillery forces that they called for the establishment of a Restricted Operations Zone to avoid fratricide incidents. An estimated 300 were called for and none were refused.<sup>52</sup>
- » The suspected presence of hostages could warrant the “sanctuarization” of a sector.
- » High-value targets such as the main jihadist chiefs could not be targeted without authorization from the strategic level for fear that French hostages may be present.
- » As in Afghanistan, captured persons were not to be “war prisoners”, but “persons deprived of liberty due to hostilities” and were to be transferred as soon as possible to Malian authorities, which were committed to uphold international humanitarian law. Moreover, when children were involved, French forces oversaw their transfer to UNICEF.<sup>53</sup>

As a result, on several occasions, strikes were refused or aborted:

- » On January 16 in Konna, a Mirage aborted its bombing run due to the imbrications of French and jihadist forces.<sup>54</sup>
- » On 26 January, a Mirage refused to drop its bombs in Gao, as a result of civilians being present.<sup>55</sup>
- » On 9 February in Kaoussa, a Mirage declined to strike three suspect vehicles in an inhabited area because the pilot was not sure the individuals were aggressors as the presence of arms had not been confirmed. Instead, three helicopters flushed out the passengers and ascertained the presence of weapons. Once this was confirmed, the two vehicles which were armed were destroyed after the COMFOR's authorization.<sup>56</sup>

There were exceptions:

- » In non-urban areas (desert in the high North), ROE could be less strict. In the Adrar des Ifoghas, the whole brigade was, for a specific duration, given a blanket authorization to attack any element belonging to armed groups.<sup>57</sup> On 25 February in the Ametettaï valley (high North), the commanders of the two GTIA received an exceptional authorization: a complete delegation of authorization to fire by any means from the COMFOR.<sup>58</sup> As the latter put it, “the absence of population and thus of risk of collateral damage, and the need to destroy a mobile enemy, led me to take this decision.”<sup>59</sup>

<sup>47</sup> Barrera 2015 : 141.

<sup>48</sup> Ibid: 164-167 ; Notin 2014 : 432-434 ; Gout 2015 : 170-171.

<sup>49</sup> Notin 2014 : 398.

<sup>50</sup> Ibid: 1999.

<sup>51</sup> Ibid: 250.

<sup>52</sup> Notin 2014 : 456.

<sup>53</sup> Ibid: 475; Landais 2013.

<sup>54</sup> Ibid: 248.

<sup>55</sup> Ibid: 311.

<sup>56</sup> Ibid: 411; Gout 2015 : 148-150.

<sup>57</sup> Interview with a MoD official, September 2015.

<sup>58</sup> Notin 2014 : 455.

<sup>59</sup> Barrera 2015 : 189.

- » In a specific region of central Mali (the Léré-Diabaly-Sévaré-Kona quadrangle, which includes several hundred square kilometers), the absence of Malian forces warranted a blanket authorization by President Hollande to engage identified enemy vehicles.<sup>60</sup>
- » Minimal use of force to search property was allowed only north of the 18<sup>th</sup> Parallel (where Malian forces were not present), and the use of weapons outside of individual firearms had to be authorized by the COMFOR. The geographical scope of this ROE was extended in November 2013.

Serval ROE allowed military forces to “attack any individual or groups belonging to the opposition force” which either ostensibly had a hostile intention or committed or directly contributed to a hostile act towards the French or allied forces.<sup>61</sup> The Serval Force was authorized to “attack any target of military interest designated by the OPCOM.”

Examples of Serval ROE allowing for the “minimal use of force” included the following:

- » Force potentially hostile vehicles or individuals to divert
- » Capture any individual identified as a threat to French forces
- » Capture and seize vehicles and materials when they are a threat to French or allied forces or when such action is justified by the needs of the mission
- » Prevent any obstacle to conduct of the mission
- » Defend any member of the French or allied forces against any act threatening his life or potentially causing grave harm to his body
- » Prevent the capture or destruction of French or allied assets
- » Defend against intrusions
- » Free captured French or allied forces
- » Prevent crimes or major offenses being conducted or about to be conducted
- » Penetrate any property to seize weapons and materials (see above).

No complaints were reported regarding the Serval ROE. They have been qualified as “robust” and “clear-cut.”<sup>62</sup> Moreover, there were no reports of the strict nature of ROE ever putting French or Malian soldiers at risk.

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<sup>60</sup> Notin 2014 : 178.

<sup>61</sup> This section draws on interviews with MoD officials, September 2015.

<sup>62</sup> Interviews with French MoD officials, September 2015.

## *Outcomes*

In all, Serval included 53 operations: 6 at the brigade level, 10 at the GTIA level, 30 at the sub-GTIA level, and 7 emergency small scale operations. 58,000 munitions were fired by French ground forces, including several dozens of anti-tank missiles.<sup>63</sup> 280 bombs and missiles (95% precision guided munitions) were dropped, including 204 GBU12, 36 GBU 49, 22 AASM missiles, and 17 Mk82 Airburst (the only « non-precision » munitions). The Air Force conducted 7,500 sorties.

## *Casualties*

The exact number of jihadists killed is unknown but is estimated to be between 600 and 700. This includes 399 confirmed kills by the Serval brigade. Some military sources refer to “one-third” of jihadist fighters having been killed. This also included 10 jihadist leaders.<sup>64</sup> A major success was the killing of Ahmed el Tilemsi, the founder of MOJWA. Up to 600 insurgents were arrested or surrendered while several hundred fled or remained hidden.

During the conflict, 10 French soldiers were killed and about 200 wounded. 27 Chadian soldiers were killed in combat operations in the high north.

There was no recorded loss of civilian life by French forces, but a number of civilians were killed as a result of action taken by Malian forces. There were only minimum casualties from friendly fire. One incident occurred in late February when two Malian soldiers were wounded during an air raid in Timbuktu.

## *Assessment*

Overall, French forces were well-prepared for Operation Serval. Their knowledge of the region and populace, intelligence assessments and contingency planning all contributed to the success of the operation. The experience of Afghanistan was also said to be a factor, particularly for SOF and conventional forces coordination as well as air and ground coordination. This allowed French forces to enter the theatre very quickly although such action meant the use of a small force and the acceptance of significant risks.

Operation Serval was an exceptional operation in many respects but one that France is unlikely to repeat any time soon. Some structural factors will remain including the ability of the executive branch to make quick strategic decisions without legislative control; the permanent presence in Africa and a small force on very high alert for operations in Africa; the “deep memories” of colonization which have left an imprint in military culture and knowledge; and the “daring” military spirit that characterizes French expeditionary forces. Other factors are more contingent:

- » In-depth advance contingency planning, including 80 sets of targets identified as early as 2012<sup>65</sup>
- » The nurturing of local allies such as the Tuaregs
- » The support of the population
- » Excellent intelligence involving situations with hostages.
- » Excellent pre-existing personal ties between the main military commanders (generals Brethous, de Saint-Quentin, and Barrera)
- » Full support of the political authorities without constant interference.

Given the risks taken by French forces during Serval, the low casualty count was a pleasant surprise. It is not known how the French public would have reacted to operations if they had led to the deaths of several tens of soldiers in just a few days, for instance.

<sup>63</sup> Guilloteau 2013.

<sup>64</sup> Notin 2014 : 564.

<sup>65</sup> Interview with a MoD official, September 2015.

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# Operation Barkhane

Sahel Region, Africa

1 August 2014 – Present-day

**Dr. Bruno Tertrais**

## Overview

Operation Barkhane followed both Operation Serval and the Epervier permanent presence in Chad since 1986. The French military's main focus is counterterrorism operations against violent extremists in the Sahel region. Operation Barkhane began on 1 August 2014 and is ongoing. The conflict is a low-intensity, long-duration, large-scale operation punctuated by short, localized combat phases. The operation is expected to last several years.

## *Terrain and Population*

One of Operation Barkhane's distinguishing characteristics is the large size of the theater of operations.<sup>1</sup> The area covers Mali (1,240,200 km<sup>2</sup>), Mauritania (1,030,700 km<sup>2</sup>), Burkina Faso (274,200 km<sup>2</sup>), Niger (1,267,000 km<sup>2</sup>), and Chad (1,284,000 km<sup>2</sup>). The size of the territory covered is as large as Europe and about eight times the size of France. The Sahel region is frequently described by the French military as an 'ocean' and Barkhane as being analogous to a 'maritime' operation. The area also corresponds to what was formerly called 'French Western Africa', and the French armed forces have operated this area since the end of the 19<sup>th</sup> century.

Most offensive operations take place in Northern Mali and Northern Niger. They focus on the border passes of Tazertaït (Mali/Niger), Adrar Bous (Niger/Algeria), Salvador (Algeria/Niger/Libya), Anai (Algeria/Libya), Toumo (Niger/Libya) and Korizo (Niger/Chad). These border passes are the main routes of the Saharan trafficking flows, which include the northward route of drugs and migrants (from Morocco and the Gulf of Guinea to Libya) and the southward route of weapons and gasoline (from Libya to sub-Saharan countries, notably Nigeria). This is also the area where most of the jihadist leaders not neutralized by Operation Serval are presumably located (Northern Mali, Southern Algeria and Northern Niger).<sup>2</sup>

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<sup>1</sup> The theatre of operations is the largest that French forces have dealt with in over 60 years.

<sup>2</sup> Jeromine Santo-Gammaire, « Opération française au Sahel : 'Barkhane va durer plusieurs années », *francetvinfo.com*, 18 July 2014.



Operation Barkhane is conducted in extreme conditions in terms of weather and distances. French units are often driven to take liberties with established patterns of doctrine. Area control has been stretched to the limits.<sup>3</sup> One armored tactical group de facto 'covers' as much as 2 million km<sup>2</sup> as opposed to a more normal area of responsibility between 1,000 and 2,000 km<sup>2</sup>.

### *Urgency*

The operation takes place in light of the continued terrorist threat in the Sahel region, which affects French core interests directly. Abductions and various attacks carried out by insurgents and terrorists in region directly threaten French nationals. Added to these threats are the dangers such groups pose to the political and economic stability of the region which includes a number of French business operations.

## **Enemy Forces**

Distinguishing between friends and foes was a major issue for French forces during Operation Serval and this difficulty has only increased during Barkhane. As a result of the relative stabilization of Mali and the broadening of the theater of operations, it has become increasingly difficult to distinguish between the local populations, some armed groups not considered as adversaries (the Tuareg rebellion), traffickers and bandits, and the enemies themselves.

This is especially true since armed groups tend to dress and behave as the locals. As the commander of Operation Barkhane, General Jean-Pierre Palasset, describes, "It's a real headache...From the point of view of discrimination, we find ourselves in front of a 'terrorist armed group' only when they shoot at us."<sup>4</sup> The jihadists drive the same pick-up trucks, wear the same outfits and brandish the same weapons as traffickers and other bandits.<sup>5</sup> This has only become more troubling as many jihadists have sought to hide amongst the population in the post-Serval environment.

Compounding the problem are shifts in allegiances and positions of some movements. For instance, the Coordination of the Azawad movements, a Tuareg umbrella organization which includes the National Movement for the Liberation of Azawad (NMLA), signed the Mali reconciliation agreement in June 2015; however, some of its members have defected in protest of the accord. The enemy is now formally qualified as "Armed Terrorist Groups" as opposed to "Jihadist Terrorist Groups" because the term "jihadist" was a problem for some of the partner governments during Operation Serval.

The nature of the adversary has also changed. The current situation can be described in a metaphor that has been used by the French military: "When you shoot into a flake of mercury, droplets disperse fast." There are no more enemy 'strongholds' such as those in Northern Mali. In fact, the enemy's strategy is designed to avoid the creation of such strongholds. The adversary has become more mobile, often moving in small-scale katibas of 5-10 men.

All the jihadist groups fought by French forces are remnants of organizations disrupted and scattered by Operation Serval. They are overwhelmingly made up of Sahelian individuals originating from the northern parts of G5 countries, as well as from Algeria and Libya. Al-Qaeda in the Islamic Maghreb (AQIM) and Ansar Dine (AD) remain the primary adversaries but Al-Murabitoun has conducted major attacks since the Summer of 2014, including the Bamako hostage-taking of November 2015. This group is an Algerian-led merger of the Movement for Oneness and Jihad in West Africa (MOJWA) and other small groups and led by Mokhtar Belmokhtar and has pledged allegiance to AQIM. These groups have also reportedly become more engaged in trafficking.<sup>6</sup>

The number of active jihadist fighters is very difficult to ascertain due to their dispersal and mobility which includes fighters moving outside the G5 countries and into Algeria and Libya. At the outset of Serval in January 2013, enemy forces were estimated to be between 1,000 and 3,000. When Barkhane began, one source estimated that AD

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3 Olivier Hanne & Guillaume Larabi, *Jihâd au Sahel. Menaces, opération Barkhane, coopération régionale*, Paris, Bernard Giovanngeli Editeur, 2015, 136, 140.

4 Rédaction de France-Infos, « Barkhane, l'opération antiterroriste française au Sahel », *franceinfos.com*, 15 September 2014.

5 Frédéric Powelton, « Nord-Mali : les difficultés de Barkhane à remplir sa mission », *Sahel Intelligence*, 12 June 2015.

6 Jean-Dominique Merchet, « Le chef de l'opération Barkhane plaide pour une opération en Libye », *L'Opinion*, 6 July 2015.

and AQIM fighters in Mali included 800 and 700 men, respectively.<sup>7</sup> Smaller groups such as Al-Murabitoun still number between 150 and 300 men.

## Military Forces

### *Pre-conflict*

The aims of the French military forces are twofold: to help African forces secure the area and to avoid the reconstitution or creation of terrorist sanctuaries. More specifically, the French armed forces are intending to rid the Sahel-Saharan region of armed terrorist groups by applying constant pressure on insurgents and operatives already within the region and destroying jihadist—in particular, AQIM—convoys coming from Libya. In this pursuit, French forces also plan to assist local national forces as well as the multinational Mission des Nations Unies in Mali (MINUSMA) in Mali, assistance which has been described as the “life insurance” of the MINUSMA.

Operation Barkhane involves over 3,000 French military personnel along with soldiers from other partner nations. The operation is planned to last at a minimum of three to four years or until 2017-2018.

Under French leadership, MINUSMA currently (September 2015) includes 9,100 soldiers and 1,050 policemen, as well as civilian personnel. French liaison units (Détachement de Liaison et d'Appui Opérationnel, DLAO of about 30 personnel) are embedded with African forces.

Operation Barkhane's joint force command is located in N'Djamena, Chad, and includes three ‘permanent support points’ for ground forces in N'Djamena (GTIA East: 600 men), Gao in Mali (GTIA West: more than 1,000 men, as well as an airborne detachment), and Niamey (300 men, intelligence assets and logistical base). Additionally, there are three ‘maritime support points’ in Dakar, Abidjan, and Douala and two ‘air support points’ in Niamey and N'Djamena, along with an air command post in Mont-Verdun, France.

Operation Barkhane includes deployments at ‘temporary forward bases’ which are comprised of between 200 and 1,000 men at any given time. Five temporary forward bases existed in the summer of 2015 and were located near the Northern borders. They included Tessalit, Mali, where about 800 fought against some 150 jihadists; Kidal, Mali; Abéché, Chad; Faya, Chad; and Madama, Niger. Other implantations have included Atar, Mauritania, and Ouagadougou, Burkina Faso. Temporary forward bases can become permanent support points, or vice-versa, depending on operational needs.

The Barkhane order of battle includes up to 20 helicopters, 200 armored vehicles, 200 logistical vehicles, up to 2 refueling aircraft, up to 7 transport aircraft, 8 fighter-bombers (4 Rafale et 4 Mirage-2000), and 4 Harfang and Reaper drones. The Reaper drones, available since the end of operation Serval, have made it easier to treat high-value targets (HVT). The timely intelligence they provide allows French forces to quickly dispatch small teams of airborne commandos to attack HVTs.

As was the case in Serval, special forces have the lead for neutralizing HVT, and thus far have played a more important role than in Serval. To that effect, they benefit both from the DGSE (external security) and DRM (military) intelligence, with the former having perhaps a more strategic and the latter a more tactical role.<sup>8</sup> They are fully integrated in the operation but may report to a separate chain of command. One such group of special forces is Task Force Sabre which comprises about 200 men and is primarily based in Burkina Faso but stationed throughout the theater of operations.

<sup>7</sup> Mélanie Matarese, « Le chef des Touaregs islamistes est de retour », *Le Figaro*, 8 August 2014.

<sup>8</sup> Jean-Dominique Merchet, « Renseignement : partie de ping-pong entre la DGSE et la DRM », *L'Opinion*, 20 September 2015.

## *Conduct During Conflict*

### *French military culture*<sup>9</sup>

Since 2007, the French Defense Code explicitly protects French soldiers from any criminal lawsuit as long as the use of force respects international law and is “necessary to accomplish the mission.”<sup>10</sup> Soldiers, however, remain unprotected (and thus liable to trial) in case an order is “obviously illegal or contrary to applicable international law.” Legal advisers (LEGAD) have been inserted in French command structures since 1999. They operate at each level of the operation: strategic, operational, and tactical.<sup>11</sup> At least one is assigned to the local force commander. They refine the rules of engagement (ROE) at the level of the force. They are sometimes consulted in real time.

A specific French tradition since the early 1980s is to add ‘rules of behavior’ to rules of engagement. Such rules are exclusively the purview of the military and do not need to be approved by the political authorities. They mostly concern contacts with the population. Inherited from the colonial tradition, French operational culture includes “being close to and at ease with [local] populations.”<sup>12</sup> This includes taking the time to meet key local figures and authorities, going to the market to shop for food, fixing or repairing infrastructures or markets, or providing medical support.

French forces also believe in “leveraging local knowledge, or “mixing in with the population and understanding the entire context in which one is operating.”<sup>13</sup> This includes inserting small human intelligence (HUMINT) detachments within the population, “to identify the presence of weapons and munitions caches, high value targets, IED makers...”<sup>14</sup> This allows them to count on Malian Tuaregs, with whom French forces and intelligence have had a longstanding cooperation. “The Tuareg contingents involved in French operations were small, but they played important roles as guides, scouts, and interpreters...their involvement may have helped secure for France local buy-in and popular support.”<sup>15</sup>

French forces claim to be “obsessed with legitimacy”, a recurring theme in military schools and training.<sup>16</sup> They pride themselves in being masters at calibrating (*maîtriser*) the use of force.<sup>17</sup> In theaters such as Afghanistan or Africa, they tend to beware of any binary opposition between ‘friends’ and ‘foes’ among local populations, for instance. They always insist, in coalition operations, on having a separate ‘presumed hostile’ category.

When air strikes are guided by ground controllers, those on the ground generally have the final say on whether or not to strike. They also propose the type of munitions that should be used, based on projected damage.

It is worth noting that when it comes to committing national forces in combat, the French are less constrained compared to other nations because of the absence of real parliamentary control over foreign military operations. Furthermore, the case of the Foreign Legion is unique as these forces are technically a branch of the French Army, yet their numbers are comprised of entirely foreign nationals.

### *Legal Framework*

Politically, Barkhane is mandated by the “G5 Sahel”, an ad hoc organization of five Sahel countries created on 16 February 2014 which includes Mauritania, Mali, Niger, Chad, and Burkina Faso. The French military presence in

9 Author’s note : this section is identical to the « French military culture » section of the SERVAL chapter.

10 République française, *Code de la défense* (French Defense Code), Article L. 4123-12, Alinéa 2.

11 Nicolas Hervieu, « Entretien avec Claire Landais, Directrice des affaires juridiques du Ministère de la Défense », *La Revue des droits de l’homme*, July 2015.

12 Général de Saint-Quentin in Olivier Hanne & Guillaume Larabi, *Jihâd au Sahel. Menaces, opération Barkhane, coopération régionale*, Paris, Bernard Giovanelli Editeur, 2015, p. 132.

13 Michael Shurkin, *France’s War in Mali : Lessons for an Expeditionary Army*, RAND Corporation, 2014, 41.

14 Chef d’escadrons Gay, « ‘Cette difficulté de voir juste...’ de Tora à Gao », *Cahiers du CESAT*, n° 39, March 2015, 67.

15 Shurkin 2014 : 20.

16 Interview with a MoD official, Paris, July 2015.

17 Isabelle Lasserre & Thierry Oberlé, *Notre guerre secrète au Mali. Les nouvelles menaces contre la France*, Paris, Fayard, 2013, 55.

Mali is now regulated by a new bilateral defense treaty signed on 16 July 2014, which has given it a long-term legal basis.<sup>18</sup>

### *Rules of Engagement*

Since the 1990s, French rules of engagement have followed NATO and EU patterns. The basic categories of ROE are the same, to facilitate combined operations.<sup>19</sup> The use of force is permitted either defensively in circumstances of self-defense, or offensively in specified circumstances. Mission-specific ROE are defined at the strategic level by the Joint Staff Legal Division (EMA/JUOPS).

The ROE for Barkhane are different from one theater country to another for two reasons. First, only Mali qualifies from the legal point of view as a country in a situation of “armed conflict”, where the use of lethal force is authorized for the defense of individuals not only against illegal acts but also against armed groups when military necessities demand it. In the other countries, only circumstances requiring self-defense allow for the use of lethal force.<sup>20</sup> Second, country-specific ROE reflect bilateral agreements. As on French Barkhane officer has stated, “Some [participating countries] have asked for a more aggressive engagement, giving us more freedom of action. And others restrict a bit more the conditions for using force.”<sup>21</sup> As a French MoD legal expert puts it, “there is not one, but five distinct legal frameworks for BARKHANE”.<sup>22</sup>

The “right of hot pursuit”, which was mutually agreed to by Mali and Mauritania in 2012, has been applied to the whole G5.<sup>23</sup> The legal foundation for this is the so-called ‘spillover’ doctrine. This is useful—even necessary—not only for air operations but also for ground operations due to the ‘porosity’ of national borders in the Sahel region, which makes it easy for enemy forces to move between countries. As a result, French forces are authorized to use lethal force outside Mali (Mauritania, Niger, Chad) absent self-defense circumstances if the targeted groups or individual participate in the conflict, if there is a clear “operational continuum” and if the neighboring country has given its consent. This includes logistical flows and rear bases as well as, presumably, an armed group fleeing Malian territory. Overall, the Barkhane forces operate under rather unique legal conditions.<sup>24</sup> There are also legal advisers (LEGAD) at the force commander level in N’Djamena, which also hosts GTIA East and in Gao (GTIA West). As the last French hostage in the Sahel was freed in December 2014, the French have been able to act with more freedom.

Regarding the use of force and treatment of prisoners, French ROE are considered to be the same as for the preceding operation Serval (see separate chapter for details). Outside self-defense, the use of force is strictly limited and specific precautions are required to avoid collateral damage and friendly fire. Special Operations Forces operating in the high desert are allowed to operate under less restrictive ROE.

## **Outcomes**

### *Military Factors*

As of November 2015, more than 500 operations had been conducted since the beginning of Barkhane in August 2014, thus averaging more than one per day.<sup>25</sup> This number does not include special forces operations but does include 8 major “combined cross-border operations” involving several hundred soldiers of multiple countries.<sup>26</sup> One major operation involving 1,000 soldiers was conducted in Northern Mali and Northern Niger in November 2015. This operation was designed to “dry the swamp” and limit the ability of terrorist groups to conduct operations from

<sup>18</sup> A Status of Forces Agreement had been signed in April 2013, but it was limited to the SERVAL operation.

<sup>19</sup> RoE series 10 to 43 are the same as NATO’s as defined in MC362/1. RoE series 50 to 59 are placeholders for French-specific RoE.

<sup>20</sup> Hervieu 2015.

<sup>21</sup> Rédaction de France-Infos, « Barkhane, l’opération antiterroriste française au Sahel », *franceinfos.com*, 15 September 2014.

<sup>22</sup> « Opération BARKHANE : enjeux et contraintes juridiques de la lutte contre les groupes armés terroristes », *Courrier juridique de la défense*, October 2014.

<sup>23</sup> Hanne & Larabi 2015 : 143.

<sup>24</sup> Hervieu 2015.

<sup>25</sup> Etat-major des armées, *Barkhane : un an d’opérations*, 10 July 2015.

<sup>26</sup> Jean Guisnel, « Les guerres secrètes de la France », *Le Point*, 6 August 2015.

these areas. A deadly hostage taking conducted by Al-Murabitun at a Bamako hotel in late November 2015 showed that the group still has the ability to operate in Mali.

Several civil-military actions have been conducted in support of the local population. For instance, in late August 2015, French and Malian forces brought food and medical supplies to isolated villages in the Gao region.<sup>27</sup> In addition, a Dutch hostage was freed by French forces in April 2015.

### *Casualties*

There have been significant military gains achieved by French forces in the Sahel; yet given that Operation Barkhane is an ongoing conflict, the final outcome is still uncertain. Moreover, there are differing reports as to the exact number of insurgents killed. In an interview given in July 2015, the Deputy-Chief of Staff of the French Army said that French and allied forces had neutralized 70 terrorists (mostly from AQIM), and that 60 had been detained. He further stated that several hundred tons of arms and munitions had also been destroyed.<sup>28</sup>

A public Joint Staff document published just a few days afterwards gave different figures which listed 60 insurgents killed and 65 captured as well as 20 tons of seized munitions, including 2,000 shells, 680 grenades and rockets, 25 mines and IEDs, 210 IED triggers, and 30 mortars.<sup>29</sup> A veteran journalist published similar figures in a major inquiry published in August. This report listed 128 casualties, including 66 killed and 62 captured and transferred.<sup>30</sup> Another assessment by the French Defense Minister in December 2014 mentioned '200 neutralized jihadists'.<sup>31</sup>

French intelligence sources claim that Al-Murabitoun has now been significantly degraded. The French force commander claimed in July 2015 that most of the leaders of local terrorist networks had now been killed.<sup>32</sup> A list of more than 15 high-level leaders had reportedly been compiled in 2014, and as of September 2015, reports state that more than 15 have been killed since the beginning of Mali operations in 2013.<sup>33</sup> According to the force commander, the insurgents are "no longer able to conduct large-scale, coordinated actions" and have a "reduced lethality."

Three French soldiers have been killed in action during Operation Barkhane while MINUSMA forces have suffered at least 35 casualties in two years of combat. There have been no known civilian casualties thus far.

### *Assessment*

In sum, the French have managed to contain the terrorist offensive in the Sahel, reduce the threat to some extent, and contribute to the stability of the countries in the region. The threat, however, remains high. In the fall of 2015, a French intelligence report mentioned the "strong resilience" of jihadists who are "regaining the initiative", a prescient analysis in light of the Bamako attack in November.<sup>34</sup> The French consider that absent a massive international stabilization effort in Libya, the risks will remain very high. Other regional threats include Boko Haram in neighboring Nigeria, a group which has ties to the various jihadist groups operating in the Sahel. The prevalence of jihadist activity in Africa means that Barkhane is likely to continue, one way or another, beyond its planned termination of 2017 or 2018. Its continuation will, however, remain vulnerable to changes in the political situation of participating countries.

27 Anonymous, « Barkhane : Français et Maliens conduisent des actions civilo-militaires conjointes », ECPAD, 31 August 2015.

28 Général Didier Castres, « Nous faisons face à des crises mondialisées », Interview in *Les Echos*, 13 July 2015.

29 Etat-major des armées 2015.

30 Guisnel 2015.

31 Jean-Yves Le Drian, Speech to the Dakar Forum, 15 December 2014; this estimate combined the end of Serval and the first six months of Barkhane

32 Merchet 2015-2.

33 Jean-Dominique Merchet, « Sahel : les ennemis publics que la France veut abattre », *L'Opinion*, 30 December 2014 ; Rémi Carayol, « Barkhane, conçue pour durer », *Jeune Afrique*, 22 September 2015.

34 Revault d'Allonnes, 164



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# War Plan Espada de Honor I

## Cauca Region, Colombia

### 2012 – 2013

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#### **Overview**

The purpose of this document is to examine the use of military force within the framework of International Humanitarian Law (IHL) in urban environments and to facilitate compared analysis with other non-international armed conflicts.<sup>1</sup> During 2012 and 2013, the Military Forces (FFMM) of Colombia executed the War Plan Espada de Honor I, a portion of which was carried out in the Cauca region. The object of study was temporarily limited to 2012 and 2013 and the Cauca department was territorially selected – the central and northern areas – due to its characteristics.

The analysis focuses on the jurisdiction assigned to the Apolo Task Force (Fuerza de Tarea Apolo, or FUTAP), assigned to the Third Division of the National Army. Regarding the Revolutionary Military Forces of Colombia-People's Army (FARC EP), the structure operating in this area is the Joint Commando of the West – the Western Block. For methodological reasons, this document excluded the National Liberation Army (ELN) and the BACRIM criminal gangs committing crimes in that part of the country.

#### *Origins and Development of the Conflict in Colombia*

The FARC EP's foundational myth was born with Operation Marquetalia, an attack carried out in 1964 by Colombia's military forces; however its existence goes back to 1949, the year when the Colombian communist party adopted a policy of "armed self-defense." In the past 30 years, the armed conflict with the FARC had two phases: The first was to build an armed offensive unit, which started in 1982 and culminated in late 1998; and the second was a phase of decline that began in 2002 featuring a return to guerrilla warfare and terrorism.

The armed conflict has lasted due to several factors, among them the existence of vast territories where the presence of State institutions is lacking or non-existent. In addition, complex geography provides territories in which illegal armed groups expand and have shelter and sanctuaries. These territories are also a source of funding, mainly from

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<sup>1</sup> This study is based on sources and information collected in the period between 2012 and 2014 for academic, scholastic, and journalistic activities.

the criminal mining and from cultivating, processing and trafficking drugs. Furthermore, the extensive, porous borders and the complicity of some governments in the region have also led to a prolonged conflict.

### *Terrain*

Cauca is located in southwestern Colombia by the Pacific Ocean. Its geostrategic position is key since it allows access to the country's south and center regions. It borders the Valle del Cauca Department to the north, Nariño, Putumayo and Caquetá to the south; and Tolima and Huila to the east. The FARC emerged precisely in the triangle that the last three departments form. Nariño, Putumayo and Caquetá are enclaves with strong FARC armed structures and large swaths of coca crops as well as mobility corridors for trafficking, illegal trade of arms and explosives.

The geography of Cauca comprises all thermal floors, from snow to land on the Pacific Ocean coast. The department is located in the Colombian Massif and has a mountain range with altitudes ranging between 2,600 and 4,700 meters above sea level. It is a water reserve making up the major rivers of the country.

In 2012, Cauca was the department with the fourth largest amount of illicit crops in the country – coca, to be more precise. In addition, its location serves as a mobility corridor for cocaine trafficking abroad. El Tambo is among the ten municipalities with the largest cultivated area: 2,522 hectares in 2014.

### *Population*

One characteristic of Cauca is its multiethnic character. There are blacks, whites, mestizos, and a significant concentration of indigenous communities associated with a long history of land conflicts. The indigenous people claim the “ancestral lands” and the lands of the former reserves (resguardos) and expand the existing eighty-four. They have their own political and legal organization; some communities are highly politicized and have high mobilization capabilities. According to the Regional Indigenous Council of Cauca (CRIC), out of the 29,308 square kilometers of the department, the “area of indigenous territory” is 5,312 square kilometers belonging to eight ethnic groups<sup>4</sup> established in 26 of the 39 municipalities.

According to the National Administrative Department of Statistics (DANE), Cauca's population is estimated at 1,379,169. 21.03% is indigenous; 21.64% is made out of black, mulatto and Afro-Colombian; and of the population without a specific ethnicity is 54.88% and other 2.5%.

The “Indigenous territories” are concentrated mainly in the north and the eastern center of Cauca, in which the FARC-EP has a strong presence. In some municipalities, such as Toribio, 94% of the population is indigenous.<sup>2</sup>

### *Intensity*

For this period, data on the guerrillas' actions reflect a new offensive of the organization, after an initial decline during the period 2002-2008, and the organization's adaptation to the State's strategy.<sup>3</sup> The group placed greater importance on terrorist attacks. There were 486 attacks in 2008, 571 in 2011, 894 in 2012, and 890 in 2013. During this time, terrorist attacks against infrastructure alone almost tripled. In 2010, there were 116 attacks reported, 279 in 2012, and 405 in 2013. These attacks were against civilian infrastructure, e.g. blowing up pipelines, toppling of pylons, blowing up bridges and roads. The ELN executed some of those attacks; nonetheless, the FARC bears most of the responsibility.

<sup>2</sup> The municipalities located in northern Cauca are: Buenos Aires, Caloto, Corinto, Guachene, Miranda Padilla, Puerto Tejada, Santander de Quilichao, Suarez and Villarica. The eastern center of Cauca includes the municipalities of Cajibío, El Tambo, Morales, La Sierra, Rosas, Paez and Jambaló.

<sup>3</sup> Ministry of National Defense. “Logros de la Política de Seguridad y Defensa para la Prosperidad”, July 2015. In: [www.mindefensa.gov.co](http://www.mindefensa.gov.co) *Diversos y comunes: Elementos constitutivos del conflicto entre comunidades indígenas, campesinas y afrocolombianas en el departamento del Cauca*. Análisis Político Magazine. Vol 22. No. 656 January - April. Bogotá. 2009.

The activity of the guerrillas has increased since 2008. In that year, official data recorded fifty-two hostile actions, which include attacks on villages, aircraft, and facilities, harassment, ambushes, armed contact, raids in populated areas, and illegal roadblocks. There were 167 recorded hostile actions in 2012 and 157 in 2013.

In 2012, 1,140 individuals left the ELN and FARC with another 1,350 leaving in 2014, a figure much lower for the years 2008 (3,461), 2009 (2,638) and 2010 (2,446). There is indeed an increase in the captures: 473 in 2012 and 4,302 in 2013; however, we must point out that less than 15% of the captured do prison time. Members of the FARC and ELN killed in military operations reached 439 in 2012 and 341 in 2013.<sup>4</sup>

Data from Colombia's Ministry of Defense record a continuous drive against the FARC and ELN, but also show their high level of organization and hostility. The ability of both groups to keep in business and replicate is patently clear. Despite the high number of demobilized, captured, and killed forces in combat, the FARC might have approximately 7,000 members in 2014.<sup>5</sup>

The use of anti-personnel mines and improvised explosive devices produced 510 victims in 2012 and 373 in 2013.<sup>6</sup> These commonly-used weapons by the FARC and ELN are prohibited by international humanitarian law.

The intensity of the conflict can be seen in the pummeling effect on the armed forces and the national police during those years. In 2012, 377 are killed in acts of service, mostly related to the armed conflict; 361 died in 2013. In both years, there is a reduction compared to 2009, 2010, and 2011 when 468 were killed, 487 and 484 respectively. Nonetheless, the number of injured forces does increase dramatically: 2,468 in 2012 and 2,609 in 2013.<sup>7</sup>

On the northern and eastern center of Cauca, the intensity of the armed conflict is summarized in the following table based on information from SalaHumanitaria.co of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA).

## FARC-EP

### *Ideology*

As mentioned above, the FARC was formally constituted in the 1960s with the goal of "seizing power" to establish a new revolutionary order. It was constituted as the armed wing of the Colombian Communist Party. Its operation is governed since its Sixth National Conference by the Statute, the regulations of the Disciplinary Regime, and the internal rules of command. Other documents are also the Statute of the Bolivarian Militias, the Handbook of Mass Organization, and the Statute of the Clandestine Colombian Communist Party.

The FARC describes itself as "a political-military movement that develops its ideological, political, organizational, propagandistic, and armed guerrilla actions in accordance with the tactic of combining all forms of mass warfare for achieving the power for the people."<sup>8</sup> The FARC has armed and clandestine structures that operate within the law to achieve the implementation of the group's Strategic Plan.

4 Ministry of National Defense. "Logros de la Política de Seguridad y Defensa para la Prosperidad", July 2015. In: [www.mindefensa.gov.co](http://www.mindefensa.gov.co) *Diversos y comunes: Elementos constitutivos del conflicto entre comunidades indígenas, campesinas y afrocolombianas en el departamento del Cauca*. Análisis Político Magazine. Vol 22. No. 656 January - April. Bogotá. 2009.

5 According to sources from the National Police, the FARC has just under 7,000 members.

6 Office for Comprehensive Action against Anti-Personnel Mines. "'Anti-personnel mine' is any mine designed to explode due to the presence, proximity, or contact of a person and that, in case of exploding, it will have the potential to incapacitate, injure and/or kill one or more persons. Mines designed to explode due to the presence, proximity, or contact of a vehicle, not of a person, are not considered anti-personnel mines since they are equipped with anti-handling devices." Furthermore, "It is a hand-made device, designed with the intent of inflicting death or bodily harm by using the power of a detonation. According to their tactical objective, Improvised Explosive Devices (IEDs) can be produced with different types of material, initiators, sizes, and containers. Commercial, military, and artisan explosives, or components of any type of ammunition are used for their manufacturing. They typically consist of an explosive charge, a detonator, and an initiation system, but they can be designed in chemical combination, toxic, biological toxins, radioactive materials and/or elements generating shrapnel."

7 Op. Cit. Ministry of Defense.

8 Statutes of the FARC-EP. Article 1

The organization has declared itself Marxist-Leninist; and since its founding, has proposed a revolutionary program supplemented by various documents adopted at the National Conferences of Guerrilleros. The group states that it vindicates Simón Bolívar's "revolutionary thinking" and declares itself as anti-imperialist and a supporter of both Latin American unity and "La Patria Grande" (The Big Motherland). In the same vein, the group claims to fight for "equality and the welfare of the people." In the last two decades, the FARC has ideologically coincided with the so-called "Twenty-first Century Socialism" and the Bolivarian revolution instituted in Venezuela. Under this mantle, it sought to project itself as a powerful continental organization a decade earlier, before its military decline began.<sup>9</sup>

### *Paramilitary Structure*

The FARC is governed as a vertical-pyramidal organization. Its basic unit is the squad, made up of 12 individuals. Two squads constitute a guerrilla in addition to its commanders (26 members). Two guerrillas constitute a company (54 people), while two or more companies form a column (110 men or women). More than one column may constitute a front which are coordinated via the block of fronts. A block must have at least five fronts. When the conditions do not allow for the formation of a block, the fronts unify and coordinate their activities through a joint command.

The organization is subject to the "principle of collective leadership" through chartered bodies of management and control headed by the Central High Command as well as chartered lower-rank bodies.

The Bolivarian Militias are a military organization created and existing in the areas of influence of the FARC fronts and are under the rule of the fronts' high commands. In the asymmetric conflict, militias have a leading role, especially after the change in operational mode that the group took on since 2008. The emphasis on guerrilla warfare, after being close to imposing a war on movements, gave more relevance to the use of explosives, snipers, and militias.

A militia integrates to a group of five to ten individuals. Ten militia members constitute a squad; three squads constitute a rhombus of squads; four squads constitute a platoon. Four platoons constitute a company and four companies constitute a battalion. Each of these structures has a first and a second in command as well as commands of political-military leadership. The commands are appointed by the High Commands of the Fronts and "ultimately approved by the Central High Command." Additionally, the FARC has a Secretariat with seven members who are part of the High Command, which has fifteen more main members and three substitutes.

According to information provided by official sources, by the end of 2013 and beginning of 2014, the FARC structure was as follows:

<b>Structure</b>	<b>Number</b>
Block of Fronts	6
Central Command	1
Mobile Block	1
Fronts	66
Urban Fronts	3
Mobile Columns	14
Mobile Companies	16
Commisions	06

<sup>9</sup> During 2002 and 2008, the FARC worked hard to create a region-wide organization. They founded the Bolivarian Continental Coordinator that afterwards became the Continental Bolivarian Movement.



Grouped in seven blocks and one Central Command:

Block	Number of members
Caribe	356
Magdalena Medio	418
Northwestern	833
Oriental	3164
South	1105
West	923
Central Command	139
<b>Total</b>	<b>6938</b>
	(Just members. It does not include militias)

In the Cauca department, the FARC exhibited the following structures by December 2011 and before the launching of War Plan Espada de Honor I, according to law-enforcement sources:

Structure	Number of guerrilleros	Number of militia men
Front 6 – Hernando González Acosta	121	182
Front 8 – José Gonzalo Franco	26	78
Front 60 – Jaime Pardo Leal	109	53
Municipalities: Timbiquí, Argelia, Balboa, and El Bordo		
Gabriel Galvis Mobile Column	94	92
Municipalities: Pradera and Florida en Valle and bordering with the Cauca Department.		
Jacobo Arenas Mobile Column	133	123
Political Company – Ambrosio González.	33	1
Miranda Municipality, Corinto.		
Antonio Nariño Company	25	3
Municipalities of Timbiquí, Argelia and Guapí		
Simón Rodríguez Company	15	
Municipality of El Bordo		
<b>Total</b>	<b>556</b>	<b>532</b>
Total: 1088 members		

The militias are trained to carry out terrorist attacks, install landmines, prepare and detonate car bombs, undertake intelligence activities, become involved in attacks against military units and execute the so-called “Plan Pistola.”<sup>10</sup> They are camouflaged among the civilian population, over which they also exert control through intimidation or political means. The militias are the support structures of the guerrillas and source of new members.

They militias are subordinate to the National and Local Militia Plan to operate, which, in turn, must be in accordance to the FARC’s Strategic Plan. The militias not only use violence, but they are linked to forms of mass

<sup>10</sup> Under the name “Plan Pistola,” the plan is linked to the order issued by the FARC to murder soldiers and police officers in any situation when they become targets of opportunity. In general, it implies non-combat situations, even when the personnel is out of service.

organization. They are present in different types of social mobilization. The Statute of the Militia, adopted in 1989, states that its “discipline...is fierce,” for which it incorporates a disciplinary regime and specifies “crimes that warrant disciplinary action.”<sup>11</sup>

In addition, there is the Clandestine Colombian Communist Party – PC3. It is a covert organization that constitutes an integral part of the FARC, made up of people coming from different social levels and influence. In areas where this group operates, its sphere of action includes the infiltration of organizations and social and popular movements in order to guide them in favor of the armed group’s objectives, always using a combination of all operational forms that guide the actions by the FARC. The PC3 is part of the armed apparatus and operates through cells.

### *Strategy and Tactics for 2012 and 2013*

The Strategic Plan is the main element that unites all the structures of the FARC’s armed and non-armed war. All activities carried out by the organization must be within that framework and they indeed do as part of the plan, going from strictly-military actions until what the group calls “Border Policy.” This includes recruitment, relationships with the civilian population, funding, links to other illegal armed groups, the clandestine relationship with governments in the region and international relations. Everything must revolve towards achieving the implementation of the Strategic Plan. Thus, fronts, columns, and companies obey when conducting territorial order plans since the objectives seek the progressive crystallization of goals necessary to achieve the Strategic Plan’s overall objective of seizing power.

The FARC put its mind to crush the Democratic Security Policy that for eight years (2002-2009) had placed the organization under political isolation and military pressure, with a strategy of dialogue and negotiations with the State in order to “seize power.”<sup>12</sup>

It became obvious that the group’s military action rose significantly from the start of secret talks with the government in 2011. While the State viewed the peace process as an opportunity to dissolve the FARC as a violent apparatus, the FARC took it as a phase of its revolutionary process, which is why it simultaneously engaged in a strong campaign of terrorist attacks and murders of soldiers and police. In its calculation, the violent actions were necessary to advance the process and reduce the capacity of government maneuvering.

Accordingly, the organization set out to obtain air-to-ground missiles, multiply its militias and the Clandestine Communist Party of Colombia PC3, consolidate relations with the ELN, and strengthen the combination of fighting strategies through closer international alliances.<sup>13</sup> A war of wear and tear, based on a strategic defense and tactical offensive, was launched. The group tried to protect itself and deny success to the Colombian Military Forces by seeking refuge in rear areas, achieving greater mobility and dispersing.

The FARC’s behavior during this period sought to preserve itself and destroy the enemy. At the tactical level, it sought to neutralize the military asymmetry using the elements of surprise, vulnerability and selectivity in the use of force. It was ordered to return to guerrilla warfare; to move in very small groups; to intensify the use of landmines, snipers, and harassment; to avoid direct combat and instead execute commando actions; to strengthen the militia; and to infiltrate and choose targets with the highest impact on public opinion.

<sup>11</sup> FARC-EP, “*Statutes of the Bolivarian Militias*”

<sup>12</sup> The Strategic Plan states that the achievement of the political objective should be sought through armed struggle or a “negotiated solution to the armed conflict.”

<sup>13</sup> The guidelines of the strategy were approved in January 2007 at the Ninth FARC-EP Conference.

### *Attacking From Inside the Civilian Population*

The need to become invisible, to preserve the guerrilla structures, and to hit more effectively without being hit gave greater importance to the FARC militias. The group's adaptation to military asymmetry gave prevalence to militias and their work among the masses in the execution of a non-armed war. It was arranged that, in some cases, the guerrilleros would not wear the group's uniform and dress instead in civilian clothes. It was also arranged as *modus operandi* to develop attacks against security forces from places protected by international humanitarian law, such as schools and populated areas.

The militants operated among the civilian population and carried small weapons or military equipment when executing an attack. In this regard, it was understood in Colombia that the fight against the militias also fell to the police, not just the Army, since it required intelligence activities and the involvement of the courts of justice.<sup>14</sup>

The risk when militants fight against the Army is that, despite being FARC members, since they are in civilian clothes and carry small weapons, it is possible to say that these are people who have no direct involvement in armed conflict; therefore, any confrontation when an individual from that group is legitimately eliminated by State agents could be presented as either an extrajudicial execution or a murder of a protected person.

### *Relationship to Population*

In the north and eastern center of Cauca, armed conflict arises in the midst of populated areas. Within the typical conception of insurgent war, the FARC seek to win the hearts and minds of the people and become their saviors; that is why they have different mechanisms of political influence in community and indigenous organizations. The degree of overlap in political speeches facilitates the FARC's use of these communities as part of the combination of guerrilla warfare and social mobilization. However, some Indian officials have publicly rejected the guerrillas on several occasions.

The national government faces constant strikes and indigenous mobilizations and is rejected for breach of commitments, especially regarding land issues and the presence of the police in urban areas or the Army in villages of the area. While no one can say that there is an alignment with the insurgents, at least not the majority of the population, it is clear that there is no receptivity for the State.

### *Non-violent tactics to influence the civilian population*

The impossibility to return to the level of organization and military hostility attained fifteen years ago made the organization devise or copy non-violent mechanisms for military purposes. It was intended to neutralize the asymmetry of the conflict by moving the confrontation to an area where the Military Forces could not use its weapon capacity under IHL.

That is why there was an emphasis in creating, infiltrating, and coercing social organizations, popular movements, and indigenous peoples; social unrest in specific territories; manipulation, promotion, and infiltration in strikes, demonstrations, and blockades; the consolidation of social control means on the territory; clandestine alliances with various political factions and criminal groups; and the start of talks with the national government.<sup>15</sup>

In order to preserve the fronts, columns, and guerrilla companies, the FARC opted for blending among the population, making its armed structures invisible, reducing the relevance of airpower and hindering military operations by relying on the limits to the use of force set by international humanitarian law, particularly the principle of distinction, as well as in non-armed warfare. Parallel to that, there was a political and legal strategy to break the fighting will of the State as well as to affect the centers of political decision and actions of the Military Forces.

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<sup>14</sup> The Military Forces in Colombia have no judicial jurisdiction.

<sup>15</sup> This is nothing more than the application of the FARC's internal rules seeking through the "work of the masses" to link civilians to "any fighting organization, be it the unions, community councils, the Bolivarian Militias, the nuclei of Solidarity, the Guerrilla, etc. The group gives "special attention" to "popular leaders...to bring them to our side." FARC EP, "Beligerancia" In *Resistencia*. Published in Colombia within the framework of the peace process with the government of Andrés Pastrana 1998 – 2002, p. 9

The aforementioned guidelines were executed with discipline in the region that is our area of the study. In Cauca, it is typical for the FARC to move in guerrilla structures, but also through militia networks. Given the geography and population, the group found the ideal lab to design methods of non-violent action to neutralize the military asymmetry and could be effective to “liberate” the area of the presence of the police and Colombia’s Military Forces.

Territorial control through non-armed means, able to survive even if there was permanent military or police presence, became a priority. In irregular warfare, the FARC moved from direct confrontation to a new battlefield for which the State was not prepared.

### *Rules of Engagement*

In armed action, the FARC does not follow in any way the principles of IHL. On the contrary, the insurgents execute all actions that they deem necessary to attack government forces or civilians. There are no formal rules governing the FARC’s use of force in the confrontation with the Military and Police Forces of Colombia. The group says that it has not “specifically signed for everything related to international humanitarian law,” but that “its rules... are adjusted to it.”<sup>16</sup>

The following behaviors qualifying as “offenses” and subject to sanctions within the group: “The murder of men or women of the civilian population,” “rape,” “robbing civilians,” “any activity...tending to lower the FARC-EP’s prestige before the people,” “any activity aimed to prevent the faithful in the population to practice their religion,” and “sleep overnight in homes of the civilian population.”<sup>17</sup>

The FARC publicly defends the use of weapons prohibited by IHL such as landmines, IEDs, and tatucos (missiles) – hand-made, short- and medium-range bombs. The group is also openly against humanitarian norms. The FARC publicly ordered the killing of civilians abducted by the group, and it continues to justify its policy of abducting and recruiting children under 15 years of age, acts considered to be both crimes against humanity and war crimes.<sup>18</sup>

The FARC considers international humanitarian law to be “conceived and designed for conflicts among nations and, despite additional protocols...does not always provide the right balance.” In another aspect, the organization argues that “the rule on the use of non-conventional weapons is a regulation for war against nations that cannot cover popular movements such as ours,” thereby attempting to justify the group’s asymmetrical tactics.<sup>19</sup>

Nonetheless, the group says that its internal rules do establish “criteria matching basic principles of humanitarian law, such as the distinction between combatants and non-combatants, and the immunity of the civilian population.” In that vein, the FARC issued a document in the 1990s warning the civilian population to “prevent military and police headquarters becoming placed near your homes, or in public gathering places,” “to refrain from boarding military vehicles of any kind,” and “to refrain from entering any military garrisons,” among others.<sup>20</sup>

### *Conduct During the Conflict*

The FARC applied the “diluted siege” to seize the initiative and take advantage of its strong presence in troop numbers and territorial extension in the north and center of Cauca. In a diluted siege, a group carries out a series of actions permanently, continuously, or sequentially at different points in the same geographical area during a given time. Tactics may involve terrorist actions, coups de main, infrastructure attacks, skirmishes, and attacks on opportunity targets.

16 FARC EP, “Beligerancia.” In *Resistencia*. Published in Colombia within the framework of the peace process with the government of Andrés Pastrana 1998 – 2002, p. 2

17 FARC-EP, “Reglamento de Régimen Disciplinario”, Article 3

18 Multiple pronouncements by FARC-EP announced in the previous decade that in case of rescue missions, the armed structures holding kidnapped civilians or members of the security forces had the order to kill them. That order was carried out in several cases, thus murdering unprotected, defenseless people.

19 “It will always be possible to build negotiating scenarios with the government.” Interview with Alfonso Cano.

20 Op. Cit. FARC-EP, “Beligerancia”, In *Resistencia*.

Military asymmetry was confronted by the group, particularly in the Cauca department, by resorting methods of warfare which violated international humanitarian law. During the periods 2012 and 2013, the group used anti-personnel mines and IEDs banned by international standards and the results affected both civilians and members of the security forces.

The records show the serious effects of the FARC's use of IEDs:

Use of anti-personnel mines forbidden by IHL

<b>National Total: 884 persons affected</b>				
<b>Year</b>	<b>Civilian</b>		<b>Security Forces</b>	
	<b>Injured</b>	<b>Dead</b>	<b>Injured</b>	<b>Dead</b>
2012	179	43	253	35
2013	145	20	189	20
<b>TOTAL</b>	<b>324</b>	<b>63</b>	<b>442</b>	<b>55</b>

<b>Total in Cauca: 51 persons affected</b>				
<b>Year</b>	<b>Civilian</b>		<b>Security Forces</b>	
	<b>Injured</b>	<b>Dead</b>	<b>Injured</b>	<b>Dead</b>
2012	22	5	2	3
2013	11	1	6	1
<b>TOTAL</b>	<b>33</b>	<b>6</b>	<b>8</b>	<b>4</b>

In Cauca, in 2012 and 2013, as part of 471 military operations, a total of 3,483 and 651 mines and devices, respectively, were found and destroyed.

In addition, by 2012, the organization had developed the ability to manufacture launching pads for its artisan missiles, tatucos, shot at mid-range and in many cases from civilian infrastructure without precision mechanisms or control over the end target. Such weapons caused damage to civilian property due to high inaccuracy. For example, in Miranda, the media reported that on April 5, 2013, the guerrillas launched tatucos against homes in a "small town located 20 minutes from the county seat and one of the devices hit a family's home in the area." One man was killed and five others injured, including three children aged 4, 7, and 10 years old.

Similarly, it was reported that the Sixth Front acquired and used air-to-ground SAM 7 missiles in Toribio, Cauca, against Black Hawk helicopters equipped with weapons belonging to the National Army.<sup>21</sup>

The group also carried out car bomb attacks against police stations in order to remove them from the area. In December 2013, the FARC detonated a car bomb in Inza. The attack left nine people dead, including five soldiers, one police officer and more than forty wounded among civilians and police officers. The explosion affected more than thirty civilian homes and was launched in a populated area against a police station.

At the beginning of 2013, the FARC detonated a car bomb in Caloto, killing one soldier and one civilian. In October 2013, the same method was used to attack a bridge in Santander de Quilichao. Nine people were injured, including four children, most of whom were at home. In total, ten houses were affected.<sup>22</sup> In April 2012, a similar car bomb attack took place in the town of Morales, while in February of that year, the FARC detonated a car bomb in the town of Villa Rica, killing five civilians, among them a child and the commander of the police station.

<sup>21</sup> See *Noticias Caracol*

<sup>22</sup> "Carro bomba en Cauca deja 9 heridos", *El Tiempo*. 15 October 2013

Furthermore, the FARC formed special-forces teams known as *Pisa suave* (step softly). The name stems from an attack technique originally used during the Vietnam War and which uses the element of surprise combined with highly trained personnel capable of performing coups de main and destroying a military platoon within 6 minutes. These attacks included the killing of soldiers who were just injured.

According to the combination of all forms of fighting and the conditions imposed by the asymmetry of the conflict, the FARC implemented new forms of non-armed war. Amid the serious security crisis in Cauca (2012), the Commander of the Military Forces, General Alejandro Navas, said: "We do not doubt that this is the FARC's war of the masses, using indigenous and peasant population as shields."<sup>23</sup> The commander was referring to the biggest news regarding the FARC's adaptation process: the development of non-armed action techniques for military purposes.

Leveraged with political influence and a matching narrative with peasant and indigenous communities in the area of study, the FARC managed to neutralize the State's military superiority and temporarily succeeded in expelling some military units from the area by mobilizing groups of citizens armed only with canes and sticks.

In July 2012, the Nasa Indians, led by the "Indigenous Guard," expelled about 100 members of the Army from an area located in the municipality of Toribio and tore down the improvised and rustic military base.<sup>24</sup> That action was preceded by reports of "occupation" of indigenous territories by the 28 Mobile Brigade of the Apolo Task Force in the municipality of Miranda and a "humanitarian convoy" demanding the dismantling of the military base.

To block the execution of the military campaign and the police presence in the area, the FARC used infiltration of indigenous communities and social movements, established alliances with specific factions and exploited its discourse similarity with that of the indigenous movement.

Furthermore, in the studied period, it was all too common that, in populated centers located in rural areas, the FARC would attack helicopters or troops from homes and use human shields, or hide behind assets protected by IHL. These guerrilleros knew that the police force would not bomb or strafe while they were behind protected assets. In such cases, the helicopters would often prefer to leave the area and avoid further legal problems in order to ensure compliance with IHL.

The FARC in the area would warn civilians about imminent attacks against police stations located inside urban areas of the municipalities. It did so with the intention of generating pressure to evict the police, rather than with the intention of warning about the consequences of the indiscriminate attacks carried out with car bombs.

All actions were executed by FARC structures in the area, in compliance with the instructions received from the Secretariat of the Central High Command and Western Joint Command. Regarding the weaponry, the guerrillas selected it without taking into consideration IHL. This flouting of humanitarian rules also led the FARC to apply coercion and intimidation techniques against the population, use civilians as human shields, and attack civilian infrastructure.

The FARC skillfully articulated a narrative with which they justified their violent actions in the region in order to influence national and international opinion. For example, after the detonation of car bombs in 2012, the FARC claimed that the national government was to blame for "endangering civilians" by placing police stations in urban areas. This narrative was further used to diminish the State's legitimacy first by creating equivalency between security forces and the FARC and then by demanding the departure of security forces from the region, so that state soldiers might be replaced with "Indigenous Guards."

The chain of command within the group remained on high alert during 2012 and 2013, if one takes into account the different periods in which the FARC decreed "unilateral ceasefires" and resets. Two "ceasefires" took place during the development of War Plan Espada de Honor I 12-2013. The FARC offered the ceasefires and kept them.

<sup>23</sup> Guarín, "A Repensar la Guerra", in *Semana Magazine*, 24 July 2012

<sup>24</sup> Right after security forces regained control of the hill in Vereda Berlín, an area where members of the National Army had been previously expelled.



The security forces kept its presence throughout the country and continued with the development of military operations.

The first unilateral ceasefire took place between November 20, 2012, and January 20, 2013, a time during which, according to Fundación Paz y Reconciliación, there were “41 armed actions involving FARC structures and state security forces. Out of those 41 armed actions, 7 were in violation of the unilateral truce.” Out of the 41 actions, 11 took place in Cauca. The Foundation concluded that the FARC respected the ceasefire about 85% of the time.<sup>25</sup>

The second “ceasefire” took place between December 15, 2013, and January 15, 2014, a time during which a total of twenty armed conflicts involving security forces and the FARC occurred. Out of the 20, 4 were in violation of the truce and 12 were offensive actions by security forces (or defensive in the case of the FARC). In 3 cases, it was not clear if they were FARC offensives or defensives. The remaining conflict was the result of a FARC mine field activated by the military but previously installed by the FARC before the announcement of the truce. Thus, the ceasefire was respected about 95% of the time.

Regarding the investigations for IHL violations by the organization, it’s clearly emphasized that many such behaviors are actually permanent policies and practices of the organization and they are not covered by the regulations of the Disciplinary Regime that typifies offenses deserving investigation and punishment within the group.

## **The Colombian Military**

### *Structure*

The composition of Colombian armed forces in 2012 and 2013 is as follows: 456,973 people made up the security forces in 2012, including 288,194 in the military forces and 168,779 in the National Police corps. In 2013, there were a total of 461,092 people, including 285,842 in the military forces and 175,250 in the National Police corps.<sup>26</sup>

By October 2012, the Army had 238,718 people, made up of 185,806 soldiers, 9,514 officers, 33,530 non commissioned officers (NCOs), and the rest students and civilians. By October 2013, the total was 237,567 members, made up of 9,477 officers, 33,703 NCOs and 184,278 soldiers.

The Colombian Air Force had 14,401 members in October 2012, including 2,343 officers, 3,422 NCOs, 4,896 soldiers, and the rest students and civilians. In 2013, the Air Force had 2,499 officers, 3,603 NCOs and 4,134 soldiers.

In October 2012, the Navy had 34,761 members, including 2,411 officers, 8,693 NCOs and 20,397 soldiers and the rest students and civilians. By October 2013, the Navy had 33,913 members, of which 2,449 were officers, 8,704 were NCOs and 19,654 were soldiers.

In October 2012, the National Police had 168,779 members including 6,232 officers and 542 NCOs. By October 2013, the police force included 6,679 officers and 433 NCOs. The remaining members were executive officers, assistants, students and civilians.

### *War Plan Espada de Honor I*

During the second half of 2011, the War Plan Espada de Honor I was jointly designed by the Military Forces, the National Police and the Ministry of Defense. This plan was implemented between January 2012 and December 2013. It was crafted in order to adapt to the changes experienced by irregular warfare and to break the FARC’s fighting will.

According to interviews, the operational objective in the center and north of Cauca—the jurisdiction of the Army’s Third Division—was to occupy and neutralize the strategic corridor between the western and central mountain

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<sup>25</sup> Fundación Paz y Reconciliación

<sup>26</sup> Fundación Paz y Reconciliación

ranges in the north of Cauca, thus neutralizing at least 50% of the structures in the mobile columns of Jacobo Arenas, Gabriel Galvis, Miller Perdomo, the Sixth Front, and Frente Urbano Manuel Cepeda Vargas.

From the start of the War Plan Espada de Honor I, the joint and coordinated work went through the Apolo Task Force whose jurisdiction extended to the north of the department and to the south of Cauca Valley and sought to “dismantle the rival system and drive the terrorist structures away from the civilian population in order to achieve the consolidation of the areas affected by the FARC’s actions.”<sup>27</sup>

The Task Force consisted of mobile units 14, 17, 28, 29 and 37, as well as the Colonel José María Vezga High Mountain Battalion. Also involved were more than 5,000 members of the police corps with jurisdiction in Caloto, Corinto, Toribio, Suarez, Buenos Aires, Miranda, Prairie, Jambaló Inzá, Caldono, Tambo, and Morales.

### *Legal Framework for the Use of Military Force*

The Constitution authorized the use of legitimate force by security forces. Article II established the authorities’ duty to protect and to establish warranties. As part of that mandate, the Military Forces had authorization for the use of force in the country. The Constitutional Court has recognized that “the use of force is required...against those who have no intention of respecting the rights of individuals and are not willing to meet the regulatory mandate. Only the State’s armed forces are legitimized to such use of force since the social structure has deposited in them the monopoly on the use of weapons and, therefore, the task of defending the rights through its use.”<sup>28</sup>

Furthermore this authorization also includes Article 93 which has been called “constitutionality block.”<sup>29</sup> It automatically incorporates the rules on use of force found in the International Law of Human Rights and in International Humanitarian Law. In connection with the IHL’s automatic incorporation in the Colombian legal system, the Constitutional Court has stated in Decision C-225 of 1995 that, “...all armed State and non-State actors are then forced to respect these norms enshrining those minimal principles of humanity that cannot be voided, even in the worst situations of armed conflict...” While the incorporation of IHL is automatic in Colombia, it is necessary for its application to verify objective criteria prior to its implementation, as the ICRC has pointed out on many occasions and as international jurisprudence observes.<sup>30</sup>

### *Conduct of Operations in Hostile Contexts: Legal Standards and Applicable Doctrine*

As noted above, the authorization of War Plan Espada de Honor I is based in the Constitution. Based on the stated constitutional mandate and in order to ensure that members of the Military Forces, and where relevant the National Police, had clear guidelines for the use of force as described in the first part of this study, the Ministry of National Defense issued the Comprehensive Policy on Human Rights and IHL in 2008.

Subsequently, the General Command of the Military Forces issued the Operational Law Manual for the Military Forces 3-41 Public in December 2009.<sup>31</sup> The manual is a normative tool both for military commanders at all levels and for legal operators involved in the planning, implementation and evaluation of military operations.

All rules applicable to the use of force are summarized and compiled in this manual, which makes it an important tool for military commanders and all individuals involved in the planning, implementation and evaluation of

<sup>27</sup> The Apolo Task Force was created on December 23, 2011.

<sup>28</sup> Constitutional Court Decision SU-1184 of 2001. Eduardo Montealegre Lynett, M.P.

<sup>29</sup> “International treaties and conventions ratified by Congress that recognize human rights and prohibit their restriction in states of emergency prevail in the domestic order. The rights and duties enshrined in this Charter shall be interpreted in accordance with international human rights treaties ratified by Colombia. The Colombian State may recognize the jurisdiction of the International Criminal Court under the terms provided in the Rome Statute adopted on July 17, 1998 by the United Nations Plenipotentiary Conference and consequently ratify the treaty in accordance with the procedure established in this Constitution. The admission of a different treatment on substantive matters by the Rome Statute regarding the guarantees contained in the Constitution shall take effect exclusively within the scope of the matters that it governs.”

<sup>30</sup> ICRC Working Paper 42, 29 June 1999. See also *Prosecutor v. Boskoski and Tarculovski* (Trial Judgment), IT-04-82-T, International Criminal Tribunal for the former Yugoslavia (ICTY), July 10, 2008.

<sup>31</sup> By Regulation No. 019 of April 20, 2015, the General Command of the Military Forces approved the updating of the “MANUAL OF OPERATIONAL LAW FOR MILITARY OPERATIONS”. We want to make clear that this case study was made based on

military operations. It is also a very useful tool for judicial and disciplinary authorities who have to evaluate the results of military operations.

We would like to emphasize that the position of Operational Counselor was created in the Military Forces due to this manual. By creating this position, young lawyers have been incorporated into the Military Forces as second lieutenants and have been trained in operational issues in order to become direct advisors to military commanders.

For the implementation of the War Plan Espada de Honor I, the National Army issued Directive 181 of 2012, which provided instructions to ensure proper comprehensive legal advice to grant commanders at all levels of command the support necessary to make decisions on operational issues. The total number of military legal coordinators and operational legal counselors in 2012 was 12 and 120, respectively.<sup>32</sup>

The Operational Law Manual for the Military Forces 3-41 Public indicates that the consolidation of the territory and the significant progress made on security require the regulated use of military forces, noting that this is one of the objectives of this manual. In compliance with the objective of controlling the use of military force, the manual includes two directives issued by the Ministry of National Defense: the Reserved Permanent Directive 17 of 2009 and the Reserved Permanent Directive 22 of July 15, 2009, which was replaced by Directive 32 of October 16, 2009.

Through these directives, two sets of rules of engagement for military forces were defined and were applicable to the conduct of operations in an environment of hostilities and for the maintenance of security conditions. These rules regulated the conduct of hostilities in the Cauca theatre during the period that this study examines.

For the purposes of this study, the rules of engagement for conducting operations in a scenario of hostilities<sup>33</sup> requires that the operation planning identifies the following:

- 1) *A military target that meets the principles of limitation, distinction, and proportionality;*
- 2) *That the neutralization of the target be necessary and represents a direct, concrete, and foreseen military advantage;*
- 3) *That, according to intelligence and operational information available to the commander, he/she considers that his/her intention when planning and developing the operation under the rules of engagement is to use military force as a first option.*

Note that one of the rules of engagement established for the conduct of military operations under hostilities directs that when circumstances permit, demobilizations and captures should be favored over deaths in combat. It is important to highlight that the issuance of this rule comes before the issuance of the directives in the rules of engagement listed above. This rule was already defined in Directive 300-28 of 2007 by the General Command of the Military Forces, which issued instructions regarding the applicable criteria for measuring results within the Military Forces.

The system for the application of the Rules of Engagement in Colombia means that decisions are taken at different levels of command. In the case of the implementation of War Plan Espada de Honor I, in the department of Cauca, commanders plan military operations taking into consideration the type of operations authorized by the hierarchical supervisor. In this regard, the rules of engagement derived from the type of operation that the military

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the existing norms at the time of execution of War Plan *Espada de Honor I*. The current manual used for this analysis is the *Manual for the Military Forces 3-41 Public*, First Ed. December 2009.

<sup>32</sup> Dirección de Asesoría Jurídica del Ejército Nacional. See also Management Report 2012. Command of the National Army.

<sup>33</sup> Ministry of National Defense. Directive 32 of 2009. "Rules of Engagement for Ground Combat: (1) You can make use of force against a legitimate military objective or licit target, as long as it is framed in an operations order and it is identified as a legitimate military objective or licit target when making use of weapons. (2) When circumstances permit, demobilizations and captures should be favored over deaths in combat. (3) Make use of the weapons in a targeted, not indiscriminate, manner to minimize damage against assets and protected persons. (4) You can always make use of weapons in legitimate self-defense when your life, or that of others, is in danger.

commander selected according to the nature of the threat and they do not correspond in any case to the territory where they were carried out.<sup>34</sup>

For example, in July 2012, violent Nasa Indians used blunt objects to assault FUTAP troops who were in Berlin Hill protecting the communications infrastructure in the area. The action by the indigenous Nasa Community forced 100 soldiers to withdraw from Berlin Hill. Although FUTAP members were allowed to use force in legitimate self-defense, they refrained from using offensive military force in order to avoid a situation in which force was used disproportionately. The soldiers were attacked physically and psychologically; some of them were dragged without exercising any kind of military force within their right to legitimate self-defense. This event illustrates how the rules of engagement were applied and is evidence that it is possible for the subordinate commander in the field to restrict the use of force when implementing a military operation.

### *The Military Decision-Making Process under War Plan Espada de Honor I in the Cauca Department*<sup>35</sup>

In Colombia, the military commander is in charge of the military decision-making process and the conduct of operations. The decision-making process integrates the responsibilities and knowledge of all members of the High Command. The Chief of Staff of the military unit, who serves as deputy commander, organizes and coordinates the work of the commander's advisory team made up of the High Command (Estado Mayor) for the Division and the Brigade and the Senior Staff (Plana mayor) for the Battalion.

During the military decision-making process, the High Command of the military unit researches and verifies the possible courses of action both for the troops and for the enemy forces. The High Command makes a comprehensive analysis of the enemy and the possible alliances that the enemy can develop with other insurgent, criminal or interest groups. The High Command also analyzes the operational environment and the geographical conditions of the places where it intends to launch a military operation within the framework of hostilities and capabilities of the forces in relation to the enemy's.

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<sup>34</sup> General Command of the Military Forces, *Manual of Operational Law 3-41 Public*, December 2009

<sup>35</sup> Given that the text of the manual "High Command Organization and Operations" is confidential and protected by Colombian law, this study will cover general aspects of military decision-making process with no level for classified document in order to safeguard its confidentiality.

The military decision-making process, according to Colombia's military doctrine, involves the following steps:

MILITARY DECISION-MAKING PROCESS (MDMP)	
1. Receipt of Mission	<p>When an order from the next higher Command is received to develop an operation.</p> <p>Once the mission is received, the military decision-making process starts and the High Command is called to start with the corresponding tasks of planning and analysis.</p> <p>The mission must be accepted and respected at all times and it must meet the duties detailed in Article 87 of Additional Protocol I to the Geneva Conventions.<sup>1</sup></p>
2. Mission Analysis	Mission analysis includes the evaluation of the operational situation in light of supporting documents such as maps, manuals, summaries of standing orders and findings of the High Command
3. Course of Action (COA) Development	<p>The objective of this step in the military decision-making process is that; based on criteria of appearance, feasibility, acceptability, differentiation, and integrity; operational options—unpredictable to the enemy—can be planned and created.</p> <p>COAs developed in this manner should answer the questions: What?, When?, Where?, How?, and Why?</p>
4. COA Analysis	This step is to identify the best way to accomplish the mission. This analysis includes evaluating COAs in terms of how to increase combat power against the enemy, while protecting one's own troops and minimizing collateral damage.
5. COA Comparison	<p>In this step each member of the High Command, according to roles and responsibilities, assesses each of the proposed COAs and present the outputs of this analysis to the rest of the team.</p> <p>This step seeks to identify the most successful COA for the security forces, while identifying the enemy's most likely COA. With this step, one seeks to minimize the risk to the troops as well as the accomplishment of the mission.</p>
6. COA Approval	After evaluating the presentations of all COAs, the military commander determines which COA provides greater advantages for the accomplishment of the mission. In case the commander decides that no COA presents the needed advantage to accomplish the mission, the commander can order the start of the entire process again.
7. Orders Production	After the COA is approved, the order of operations is issued. It will contain precise instructions about the military objective to be neutralized and the use of the force authorized for the operation. Also, the order of operations will include the rules of engagement applicable to the case in particular.

It is important to highlight that, in planning all military operations, the principle of distinction, precaution in the attack, proportionality and military necessity is constantly analyzed by each member of the High Command. In every case, there are supporting entities for the commander, such as the Battlefield Intelligence Team (PICC), which identifies all aspects of the enemy, terrain and civilian population to ensure that the use of military force is appropriate, proportionate and in accordance with the rules of IHL and Human Rights.

It is important to highlight that the armed forces only use weapons authorized by international treaties and ones that do not cause unnecessary suffering or damage. Weapons are selected according to different evaluations that the High Command provides about the purpose and conditions of the operation and the degree of precision and combat power required to accomplish the mission. The beta bombing operations are launched by the Colombian

Air Force (FAC) and use precision weapons in order to destroy enemy targets without widespread collateral damage or disproportionate use of force.

#### National Territorial Consolidation Policy and Interventions of the Military Forces with Comprehensive Action Activities (Humanitarian Efforts)

Within the framework of War Plan Espada de Honor I, it is important to analyze the intervention by the Ministry of National Defense and the Military Forces on what is known as non-kinetic or humanitarian efforts. It is an initiative different from the military effort and seeks to guarantee some basic level of living conditions and state presence. This is done to deter the presence of illegal armed groups, who take advantage of the absence of institutional power to establish territorial control in urban and rural areas.

In Colombia, the National Territorial Consolidation Policy for 2012 and 2013 contemplated intervention with projects in 58 municipalities. Under this policy, the Ministry of National Defense made an investment of 206 billion pesos between 2012 and 2014. The projects implemented with these resources are macro-infrastructure projects and fast-track projects such as bridges, local roads, sports centers and basic sanitation projects, among others.<sup>36</sup>

Some examples of projects included the improvement of 2 km - Vía Vereda Santa Rosa, Caloto which cost \$355,087,397 and benefitted an estimated 1,000 people; a sports center in Cauca costing \$365,925,452; and art projects throughout Cauca costing \$385 million and benefiting an estimated 6,000 people.<sup>37</sup>

During 2012, the National Army held 210 “Workshops for Development Support” throughout the country. An estimated 170,530 people benefited from an investment of \$6,474,130,406. The implementation sought to improve the population’s quality of life with health services and recreation in the community.<sup>38</sup> In 2013, 382 workshops were conducted, benefiting a total of 324,373 people. The investment of \$ 14,374,782,261 managed to improve the quality of life for the most vulnerable portions of the population, many of whom were settled in strategic areas for the enemy. Out of the 382 workshops organized during 2013, 53 were carried out in Cauca.<sup>39</sup>

It is important to note that military doctrine has included Comprehensive Action in the evaluations that the military commander must take into account when launching an operation. The criteria of Comprehensive Action have been very useful in Cauca, where due to the variety of ethnic groups, it is necessary to have a particular approach and special relationships with the communities to ensure the success of operations. For this purpose during the implementation of the War Plan, there was a liaison officer with indigenous communities and this officer served as an interlocutor between the National Army and indigenous populations.

Finally, it is important to highlight the presence of international organizations. The International Committee of the Red Cross (ICRC) performed field observations in compliance with IHL rules for domestic armed conflict.<sup>40</sup> Also, the Office of the United Nations High Commissioner for Human Rights monitored the human rights situation in Colombia and established strategic lines of cooperation.<sup>41</sup>

<sup>36</sup> Ministry of National Defense. Figures and Facts of the General Security Strategy. August 2010 - December 2013

<sup>37</sup> Ibid, p. 70

<sup>38</sup> Command of the National Army, Planning Directorate, Management Report 2012, National Army.

<sup>39</sup> Command of the National Army, Head of Planning and Transformation, Management Report 2012, National Army

<sup>40</sup> The ICRC is present in Colombia due to the 1980 Headquarters Agreement between the Government of Colombia and the ICRC, approved by the Congress with Law 42 of 1981, and then developed with a memorandum of understanding signed between the Government of Colombia and the ICRC on 16 February 1996.

<sup>41</sup> “Agreement for the establishment in Colombia of the Office of the United Nations High Commissioner for Human Rights” dated 29 November 1996. The work of this Office in Colombia has been ongoing since the signing of that agreement.



## Outcomes

### Operating Results of War Plan Espada de Honor I – Cauca Department

The results are as follows:

<b>FARC</b>	<b>Demobilizations</b>	<b>Captures</b>	<b>Fatalities</b>	<b>Total</b>	<b>Affected</b>
Front 6	25	123	13	161	53%
Front 8	12	16	8	36	35%
Front 60	8	10	0	18	11%
Jacobo Arenas Mobile Column	60	80	30	170	66%
Miller Perdomo Mobile Column	3	10	1	14	19%
Gabriel Galvis Mobile Column	6	50	10	66	35%
Antonio Nariño Political Company	1	0	2	3	11%
Ambrosio Gonzales Political Company	1	0	0	1	3%
<b>Total</b>	<b>116</b>	<b>289</b>	<b>64</b>	<b>469</b>	

The FARC had 1,088 members at the end of 2012. The campaign in 2014 reduced the group to about 779, a decrease of about 300 members, or 30%.

Below is the number of security forces killed and wounded in Cauca, according to the database of the Military Conflict in Colombia by the Conflict Analysis Resource Center (CERAC):

<b>Year</b>	<b>Army</b>		<b>Police</b>	
	Injured	Dead	Injured	Dead
2012	13	12	18	9
2013	1	13	12	2
<b>Total</b>	<b>14</b>	<b>25</b>	<b>30</b>	<b>11</b>

Total: 80 dead or injured members of the security forces<sup>42</sup>

### *Research by results in the framework of the military operations of War Plan Espada de Honor I*

When fatalities occur during a military operation, it is mandatory that Colombian authorities initiate a criminal investigation to verify the circumstances in which individuals died. The authorities responsible for initiating investigations of fatalities during military operations and police procedures are under the Military Criminal Justice system. Under Article 221 of the Colombian Constitution, the acts committed by members of the Military Forces on active duty (subjective criterion) and in relation to the same service (objective criterion) are investigated and tried under the specialized jurisdiction of the Military Criminal Justice according to the provisions of the Military Criminal Code.

In the event of casualties during a military operation, there is always a disciplinary investigation done in principle by the commander of the military unit as the competent disciplinary authority. If, during the course of the investigation, the Attorney General's Office considers it should exercise preferential power, the investigation will become the Attorney General's responsibility.

<sup>42</sup> Database of the armed conflict in Colombia of the Conflict Analysis Resource Center

Notwithstanding the criminal and disciplinary investigations, it is important to note that military doctrine commands that operations always be evaluated once launched. The military commander, along with the High Command, is required to undertake an operational evaluation of each tactical mission in order to identify the best operational practices and as well as adjustments that should be made in the planning and conduct of future operations.

### *Investigations*

According to information provided by the National Army, the complaints reported in 2012 to the Third Division—the military unit with jurisdiction in the Cauca department—numbered a total of twelve, including eight Human Rights complaints and four IHL complaints.

Regarding the number of criminal investigations against Army personnel conducted by the Attorney General's Office, the Army reported the following numbers:

	<b>2012</b>	<b>2013</b>
INQUIRIES	723	656
DEPOSITIONS	181	234
IMPRISONED PERSONNEL	338	181
CROSS EXAMINATIONS	114	196
TRIAL	21	14

Source: DIASC - National Army

However, the consolidated national figures relating to disciplinary investigations conducted by the Attorney General's Office against Army personnel are as follows:

	<b>2012</b>	<b>2013</b>
LEGAL PROCEEDINGS	1333	1049
FREE VERSION	79	14

Source: DIASC - National Army

## The Use of Military Force in accordance to the IHL Framework in Operational Contexts in the Cauca Department

According to the provisions on enemy behavior and legal standards, military doctrine applicable to the planning, execution, and evaluation of operations as well as the operational practice of the military forces, the following are parameters for the use of force within the IHL framework in urban contexts:

- 1) *Under the principle of precaution and distinction, no military operations will be launched in populated areas in accordance to the IHL framework.*
- 2) *In the military decision-making process, the protection of civilians prevails. The Military Forces apply maneuvers of military control in urban areas and underpin the State's judicial practice. In these cases, the Army develops roles and missions within the "third ring of security."<sup>43</sup>*
- 3) *In cases when FARC members shoot from assets protected by IHL, such as homes, although the Military would be enabled to neutralize the attack, lethal force is not used as the first choice.*
- 4) *In cases of helicopter attacks from civilian assets, the option is to withdraw from the area.*
- 5) *In cases of an encounter with ground troops when the attack comes from a civilian place, it will be repelled as exercise of the right to legitimate self-defense, using force in a strictly necessary way to safeguard the life and integrity of the troops and the civilian population.*
- 6) *Faced with doubts on the quality of a military objective, or the direct involvement of a person in the hostilities, one is to presume it is a civilian and refrain from using military force as a first option, its use is restricted to legitimate self-defense.*
- 7) *Even in major operations against a high-value target, if the FARC leader is in an asset protected in principle by IHL, even in non-populated areas and in spite of being able to apply the principle of necessity and military advantage to launch beta bombing operations by the Colombian Air Force (FAC) against the target, these operation will not be launched. This decision aims at avoiding the legal risks of an investigation by regular courts.*
- 8) *Under the course of military operations within the IHL framework, when circumstances permit, demobilization or capture are preferred over the death in combat of a FARC member.*
- 9) *Considering that the FARC members blend into the civilian population, confronting the militias is considered the primary responsibility of the National Police and the Law. The Military Forces act in this case as the "third ring of security," in support of legal action and via area operations of military control.*
- 10) *It is clear that the Military Forces in Colombia have limited the use of force far beyond humanitarian norms as a result of the perception people have about high legal risks involved in military operations that can be disputed.*

Finally, it is important to note that the restrictions on the use of force that the Military Forces of Colombia have adopted go far beyond those imposed by IHL and are related to the FARC's modus operandi. The insurgency sporadically performs offensive actions from populated areas and civilian assets with high mobility, including changing the points from which its attacks are launched and carrying them out on short notice. With respect to the use of tatucos, the FARC tactics in some cases are to camouflage and use the population as shields. Therefore, the military forces have not used air power under the IHL framework.

<sup>43</sup> Military Forces of Colombia. National Army. "REGULATIONS OF OPERATIONS AND MANEUVERES OF ILLEGAL COMBAT" 3-10-1. Classified. Second Ed. 2010. The third "ring of security" means that military force is providing perimeter security in order to ensure the performance of other civil authorities and the National Police itself. This measure takes place in support for the execution of other state authorities' functions.

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## *(Footnotes)*

50. 1            See Additional Protocol I to the Geneva Conventions, Art 87, Duty of Commanders

# The Battle of Sadr City

Sadr City, Iraq

26 March - 15 May 2008

**Colonel Vincent Alcazar, USAF, ret.**

## Historical context

As a consequence of the surge of U.S. combat forces in 2007, Multi-National Forces Iraq (MNF-I) and Multi-National Corps-Iraq (MNC-I) began consolidating stability and security gains in Iraq's north and west. However, Iraq's south and the city of Baghdad remained contested due to a destabilizing mixture of Al Qua'ida in Iraq (AQI) and the paramilitary forces of the Sadrist Trend. A cornerstone of the 2007 U.S. surge campaign plan, the stabilization of Baghdad remained unattained by Multi-National Division Baghdad (MND-B) forces. The power vacuum caused by the Coalition invasion of March 2003 gave Sh'ia paramilitaries the opportunity to establish extra-legal control of Sadr City and two adjacent neighborhoods, Habbabiyah and Ishbiliyah.

In early 2008, the Jaish al-Mahdi (JAM) led by cleric Moqtada al-Sadr bitterly broke with the government of Iraq led by then Prime Minister Nouri al-Maliki. The break made power sharing in Iraq's parliament and an eventual political reconciliation highly unlikely. Thus, the stage was now set for JAM and other Sh'ia militia to begin confronting Coalition and government forces in Baghdad and across southern Iraq.

Soon after the political break between JAM and the government, JAM forces escalated the frequency of their long-range mortar and 107mm rocket attacks against the International Zone (IZ) in central Baghdad. The objective of those rocket attacks was to broaden the internal security problem for the government and bring about a general tactical collapse of Iraqi military and police forces.<sup>1</sup> In a bid to quell rapid JAM expansion, counter JAM consolidation in southern Iraq, and establish enduring government control over Basra—a city contested by JAM and several Sh'ia militias—Maliki ordered Iraqi armed forces to enter Basra to drive out entrenched Sh'ia militias.<sup>2</sup>

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<sup>1</sup> Johnson interview (2015)

<sup>2</sup> Institute For The Study of War, p. 8



## *Duration*

On 25 March 2008, President Nouri al-Maliki directed that U.S. and Iraqi forces undertake a mission to cease JAM's IZ rocket and mortar attacks. From that direction emerged the authorization to use force in a short-term campaign. The 2008 battle of Sadr City lasted for 51 days and unfolded in two parts: Operation Striker Denial began on 26 March and ended on 14 April; Operation Gold Wall commenced on 15 April and terminated 15 May.

## *Intensity*

This operation was an intense conflict given the dense urban environment in which Coalition and Iraqi troops were fighting. As Striker Denial initially unfolded, JAM forces used common insurgent weapons and paramilitary tactics including IEDs of complex design that incorporated Iranian warhead explosive technology.<sup>3</sup> During Operation Gold Wall in particular, Coalition and Iraqi troops were engaged in intense firefights as they continued to construct a wall.<sup>4</sup> Eventually, as the Route Gold t-wall grew in length, JAM opposition to U.S. forces dwindled.<sup>5</sup>

## *Terrain*

Established by the Iraqi government in the late 1950s, Sadr City—or Saddam City as it was called up until the 2003 U.S. invasion—served as a settlement for poor Sh'ia laborers working in Baghdad. Sadr City occupies approximately 35km<sup>2</sup> and has a population of approximately 1,112,000. Given the population density, Sadr City represented a massive undertaking using only U.S. and Iraqi forces on hand. The battle of Sadr City unfolded in a dense, complex urban environment made up of closely aligned structures and narrow alleys and roads, most of which U.S. tactical vehicles could not access. Excluding Fallujah, the terrain of Sadr City and its layout made it the most challenging urban warfare scenario for U.S. and Iraqi forces during the 8-year U.S. occupation.

## *Civilian Population*

According to Iraq's Coalition Provisional Authority, the three Sadr City area neighborhoods were made up of approximately 2.4 million people.<sup>6</sup> Sadr City was home to Baghdad's largest Sh'ia community and was comprised of millions of noncombatants of varying backgrounds and sympathies who had little to no active role in the JAM militias but in whose presence JAM operated. Mapping that human terrain constituted an incomplete task in 2008.<sup>7</sup>

The notion of insurgents, armed bands, militias, and paramilitary personnel intermixed among a nation's noncombatants in urban settings are distinctions partly of kinds and degrees of populous participation along with local distinctions of arming. With specific regard to insurgents, it is generally more difficult to identify combatants in situations where personal involvement may be sporadic, occasional, episodic, etc. Fighting versus JAM personnel within Sadr City was rife with these considerations and complications.<sup>8</sup>

## *Urgency*

By early 2008, JAM's mortar and rocket fire on the IZ did not disable the regime so much as it negatively impacted Nouri al-Maliki's perceived ability to govern and detracted from his prestige.<sup>9</sup> It is likely that one or both of those factors caused al-Maliki to direct a decisive military confrontation of JAM in Basra and Baghdad. For Prime Minister Maliki, a failure to confront JAM was to accept a state of war that could eventually oust him from power. Leaders such as Prime Minister Nouri al-Maliki and others understood that left unaddressed, the rocket raids

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<sup>3</sup> RAND 2013: 58-66)

<sup>4</sup> "How Technology Won Sadr City Battle." *CBS News*. 9 October 2008

<sup>5</sup> Eventually, JAM paramilitary bands—initially 50+ men in size, decreased to small armed groups of 4-5 militiamen that used less aggressive tactics with much less destructive effect.

<sup>6</sup> RAND, p. xi

<sup>7</sup> Johnson interview (2015)

<sup>8</sup> The road from the time of the U.S. invasion to spring 2008 was a journey littered with numerous incidents and confrontations—many armed or occasions where shots were traded, that all had the aggregate effect of radicalizing JAM forces and compressing them into loosely organized paramilitary forces within Iraq central and southern provinces and cities.

<sup>9</sup> Johnson interview (2015)

would eventually erode his perceived power and actual ability to mount effective future operations to defeat the growing military and political influence of Sadrist militia forces throughout Iraq.

### *The Road To The Battle*

As the Coalition weakened AQI across Iraq and the *sahwa* (Sunni awakening) improved stability throughout Anbar Province, MNC-I stepped into an opportunity to attain the objectives of the Baghdad Security Plan (BSP): confront Sadrist and Sunni insurgents in Baghdad; establish measures designed to prevent mass casualty attacks; and improve the ability of Iraqi forces to establish and maintain civil order.<sup>10</sup> As Iraqi forces launched Operation Knight's Charge in Basra, the JAM forces unleashed rocket and mortar fire from their rocket launch sites within Ishbiliyah and Habbabiyah in Baghdad.<sup>11</sup>

## **Military Forces**

### *Pre-conflict*

For U.S. planners and Iraqi military senior leaders, the matter of confronting JAM in its Sadr City stronghold was necessary to attain the objectives of the BSP. On the other hand, the Maliki regime needed to immediately address the matters of JAM's daily rocket and mortar attacks as well as its rapidly ramped up aggression in Baghdad and elsewhere. To deal with JAM, MNF-I had six U.S. brigade combat teams and two Iraqi Army divisions within Baghdad. However, this combat force was insufficient to conduct a large-scale clear and hold operation throughout Sadr City and simultaneously maintain security elsewhere in Baghdad.<sup>12</sup>

Pragmatism scoped the fight's goals and objectives for the offensive into the Sadr City. For this campaign, MNC-I received no additional forces and its campaign plan could not be open-ended as U.S. surge forces were poised to begin their post-surge withdrawals from Iraq. Next, while U.S. counter-insurgency (COIN) doctrine in Iraq was responsible for improved force preparation while balancing other competing priorities, the MNF-I strategy to overcome JAM in Sadr City would resemble but not replicate MNF-I COIN operations elsewhere in Iraq.<sup>13</sup>

At a high level, the differences between the COIN fight across Iraq and MNF-I/MNC-I planning for Sadr City were bounded by three ideas:<sup>14</sup> First, the principal driver of the U.S. and Iraqi Sadr City offensive was to remove JAM's rocket and long-range mortar-fire sanctuaries in the Habbabiyah and Ishbiliyah sections of the Sadr City complex. Second, the U.S. rules of engagement (ROE) would remain unchanged from their existence that predated the 2008

<sup>10</sup> RAND, p. 8

<sup>11</sup> A young Iraqi Army with little major operation planning and chronically deficient logistics conceived the controversial campaign, Operation Knight's Charge. The Iraqi Ministry of Defense concealed much of its planning and movement of forces from central to southern Iraq. PM Maliki informed MNF-I leaders of Operation Knight's Charge after Iraqi forces left their lines of departure toward objectives within Basra. The operation did not go well for Iraqi forces whereupon PM Maliki flew to Basra to oversee it in person. However, when he ventured too close to the fighting he was nearly taken captive by JAM forces. The rapid intervention of U.S. airpower and other capabilities reversed the momentum of the fighting and put the Maliki regime on the winning side.

<sup>12</sup> RAND, p. 26

<sup>13</sup> The axiom, "lose legitimacy, lose the war," informed operation planning and execution of *Striker Denial* and *Gold Wall*. While MND-B forces needed to solve the military problem, it was not clear at the outset how that would be done using only capture/kill, IED mitigation, and constabulary movement control in/out of Sadr City. In hindsight, the placement of the t-wall barrier along Route Gold became the Coalition effort that broke JAM's resistance and compelled them to cease their organized resistance to Coalition authority.

<sup>14</sup> MNF-I COIN tactics were informed by a major 2007 rewrite of U.S. Army FM 3-24 and a substantial body of accumulated operating experience in countering AQI and militant Iraqis with Fedayeen sympathies. For example, the MNF-I COIN Academy was one solution in a larger strategy to fully prepare incoming U.S. forces to conduct their stability and security missions, acquaint them with Iraqi culture, and expose them to alternatives to lethal force application all in a calculated effort to protect the center of gravity in Iraqi society, its people. Other authoritative sources on ROE include but are not limited to, DODD 2311.01, Department of Defense Law of War Program, dated 9 May 2005. Although the U.S. DoD released that version of that document just after *Striker Denial* and shortly before the conclusion of *Gold Wall*, the DoD's program on the law of warfare was already in place.

battle of Sadr City.<sup>15</sup> Interestingly, what did change was a new mission driven climate of flexible reinterpretation and versatile application when approval was delegated to lower echelons of the chain of command.<sup>16</sup> Third, the Iraqi Army was not yet prepared to conduct high intensity warfare of the sort envisioned in advance of the start of Operation Striker Denial. Additionally, with regard to their law enforcement role, Iraqi police forces were deemed unreliable.<sup>17</sup>

MNF-I senior leaders drew the statement of the military problem around the elimination of JAM's capacity to continue rocket and mortar fires upon the IZ. While JAM militiamen were responsible for elevated violence throughout Baghdad, the looming Sadr City battle had to address JAM rocket and mortar capacity. Therefore, the mission concept was built on the acknowledgement that classic MNF-I counterinsurgency tactics would not be utilized throughout the wider Sadr City area as MNF-I and the regime lacked the forces to fully clear and hold the 35km<sup>2</sup> area and its thousands of structures.

### *Rules of Engagement*

From the outset, U.S. and Iraqi leaders knew that overcoming Sadrist forces in their Baghdad strongholds could not be accomplished by using the same concept of operations U.S. forces employed in the late 2004 campaign to clear Fallujah of AQI militants. In that fight—the last of three confrontations throughout 2004—U.S. authorities compelled civilian noncombatants to depart Fallujah or be caught up in the armed confrontation that would follow between U.S. and militant forces. At its conclusion, the campaign to rid Fallujah of entrenched AQI forces caused extensive damage to homes, businesses, and infrastructure. In early 2008, neither MNF-I leadership nor the Maliki regime leaders believed a Fallujah-like approach would succeed in ending JAM mortar and rocket attacks.

Since the 2003 invasion of Iraq, U.S. ROE evolved to control and shape the application of lethal force, particularly in urban settings.<sup>18</sup> None of these ROE were cancelled during the 2008 Sadr City campaign. Rather than continuing their practice of reserving engagement approval at the senior MNF-I/MNC-I level, commanders in Striker Denial and Gold Wall delegated force application approval to the BCT commander (Colonel) level. Like all operations in Iraq, the ROE and delegation of authority drove preplanned targeting selection and framed conduct of aerial and ground force application. The ROE ensured that for the entirety of Striker Denial and Gold Wall, no free-fire zones existed within the Sadr City AO. A good example of the bedrock that 2008 Sadr City Battle ROE were built upon is the 2005 ROE used across MNF-I/MNC-I. Of note is point 2., sub-bullet d., “Do not target or strike hospitals, mosques, churches, shrines, schools, museums, national monuments, and other historical and cultural sites, civilian populated areas or buildings UNLESS [source emphasis] necessary for self-defense.”

Consistent with ROE after the 2003 invasion, U.S. and Iraqi forces did not employ phosphorus weapons, cluster munitions, or use mining munitions. To ensure ROE compliance, U.S. Judge Advocate General (JAG) attorneys continued to use established processes and procedures to review preplanned and immediate target strike requests when such review was appropriate. In matters of imminent threat and situations of self-defense, the JAG Corps found that U.S. forces acted consistent with the ROE.<sup>19</sup> Furthermore, the MNF-I/MNC-I JAG Corps reviewed the

15 The concept of ROE is not consistent across all militaries but its use is more widespread than any time in the modern era. An invaluable resource for background on the inception of ROE and Standing Rules of Engagement (SROE) is contained in the U.S. Army Judge Advocate General's public homepage in a document titled, “The Operational Law Handbook,” dated 2011. The handbook addresses U.S. ROE across all warfighting domains and is used as the baseline legal point of entry for follow-on ROE discussions above the unclassified level. In 2008, a version of this same handbook existed and was available for use by MNF-I/MNC-I forces.

16 RAND, p.53. From the U.S. Army JAG Corps Operational Law 2008 and current (2011) version(s): U.S. ROE are not just distillations of customary and treaty law. America's political objectives and military mission limitations as established by senior commanders at key echelons drive the creation of operation specific ROE.

17 Ibid, p. 95

18 The unclassified version of the 2005 card is reproduced in the 2008 U.S. Army Operational Law Handbook. See U.S. Army 2008, p. 103

19 CJCSI, p. 98. The Standing Rules of Engagement (SROE), revised in 2005 and promulgated by the Chairman of The Joint Chiefs—the SROE in place for the Battle of Sadr City, emphasized that U.S. commanders and personnel always retain the right to defend their respective units or person, “...in response to a hostile act or demonstrated hostile act.”

legality of combat actions when doing so was appropriate or asked to do so by U.S. senior commanders and Iraqi officials.

It could be said of U.S. SOP in Iraq and Sadr City that the use of force was focused against insurgent personnel and not their operating infrastructure except where destroying a given building exposed U.S. and Iraqi forces to the least risk.<sup>20</sup> In contrast, within Sadr City, JAM complicated U.S. targeting by not operating from declared or clearly identifiable military facilities. Instead JAM violated LOAC principles by fighting from homes, businesses, mosques, and other facilities with no recognizable military or governmental function.<sup>21</sup>

### *Warnings to Population*

Owing to the nature of the insurgency and U.S. tactical norms at that time, standard operating procedure (SOP) was to assault a site with an element of surprise. As such, U.S. forces were under no LOAC constraint, JAG Corps restriction, or self-imposed requirement to compromise that surprise by warning site occupants or nearby noncombatants that a U.S. raid was about to occur.<sup>22</sup> In the specific case of counter insurgency war in Iraq, the issuance of any such warning could allow insurgents the opportunity to escape.

### *Professionalism*

Senior U.S. leader oversight of Striker Denial and Gold Wall remained at MNC-I headquarters, Al Faw Palace, Camp Victory; MNF-I Headquarters, Baghdad; and MND-B Headquarters, Baghdad. Tactical planning and execution rested with 3-4BCT headquarters located in eastern Baghdad. From their tactical headquarters, the 3-4BCT's command element conducted planning, approved fires requests, and coordinated mission activities. Inasmuch as the BCT commander reserved use of force approval for planned attacks and raids, U.S. personnel on the ground made use of force decisions based on their legal right to self-defense when engaged or threatened by JAM personnel within the BCT battlespace.<sup>23</sup> It is important to note that there were no reported incidents of U.S. military personnel conducting looting or using lethal force outside the provisions of the ROE. All U.S. forces personnel were required to be educated on and highly proficient in the interpretation and application of force consistent with the ROE. Additionally, each member of U.S. forces in the field had on his person a copy of the MNC-I ROE card. Given the experience levels of 3-4BCT personnel and their well developed tactics, techniques, and procedures (TTPs) there were no recorded incidents of operational mistakes, e.g., wrong target attacked or incidents of friendly fire.

### *Conduct During Conflict*

The battle of Sadr City was comprised of two discrete, consecutive operations. The first operation, Operation Striker Denial began on 26 March 2008 and lasted until 14 April when the main thrust of MNF-I effort changed. Building on the gains of the first operation, Operation Gold Wall began on 15 April and continued until its termination on 15 May.

The lead U.S. force element in both operations was the Third Brigade Combat Team (BCT) of the U.S. 4th Infantry Division (ID). On the Iraqi side, the 42nd and 44th IDs were the principal Iraq Army (IA) entities available for stability and security operations throughout Baghdad. There remained a question as to how many Iraq National Police (INP) were available for duty during the battle, as U.S. intelligence estimated that some substantial but

<sup>20</sup> This stands in contrast to the Israeli Defense Forces (IDF) use of their “*knock on the roof*” SOP during *Operation Protective Edge* in 2014. *Protective Edge* made infrastructure destruction a key campaign outcome versus killing or capturing specific insurgent personnel or known Hamas operative. In contrast, during America’s 8-year Iraqi occupation, capture/kill of insurgents—not the buildings they occupied—was the needed key outcome of counter-insurgency missions.

<sup>21</sup> What did occur but cannot be quantified is the destruction caused by JAM’s mortars and rocket upon innocent noncombatants as well as collateral damage when JAM’s fires—unguided as they all were, fell short, were errantly aimed, or poorly conducted. Such incidents are corroborated in David Johnson’s RAND monograph, “*The 2008 Battle of Sadr City*,”

<sup>22</sup> It should be emphasized that since 2008 the militaries of other nations have taken a different course with regard to warning noncombatants as to the imminence of a raid or attack. Each nation must define the purposes of its ROE and its specific terms and conditions. However similar or different than U.S. ROE in Iraq, any other nation’s ROE must be viewed through the lens of its time and its specific policies, other restraints, and local force application constraints.

<sup>23</sup> RAND, p. 53

unquantifiable number of Federal, provincial, and local police officers in eastern Baghdad were undeclared Sadrist loyalists with close ties to JAM.

During the first week of Striker Denial—the opening phase of the 2008 battle, U.S. forces moved into the periphery of the Ishbiliyah and Habbabiyah neighborhoods of Sadr City. In response, JAM forces conducted widespread counter-attacks. However, Striker Denial's scheme of maneuver called for U.S. forces to operate in the lead with Iraqi forces in supporting positions to push only far enough east within Sadr City as to seize the urban terrain used to launch JAM's long-range mortars and rockets. However, there were a handful of deep Sadr City raids conducted by select U.S. Army units to challenge and diminish JAM's capacity to resist.

Overhead intelligence, surveillance and reconnaissance (ISR) and compiled intelligence identified and tracked some of the movements of key Sadrist leaders and built a basic picture of JAM forces' operations within Sadr City. Consistent with MNF-I's top priority of the neutralization of JAM's rocket launch teams, that capability was aggressively analyzed by MNF-I. Additionally, use of U.S. Special Operations Forces personnel, precision weapons strikes, and restrained use of direct fire weapons gave MND-B forces the methods to effectively oppose JAM militiamen yet mitigate the likelihood and risks of collateral damage and civilian casualties. Moreover, the U.S. 3-4BCT had unusual, round-the-clock access to U.S. Air Force and U.S. Army overhead ISR platforms as well as Army attack aviation helicopter air weapons teams, and on occasion on-order close air support to counter JAM personnel concealed within civil structures.<sup>24</sup>

U.S. forces took up their initial positions of Striker Denial along a main thoroughfare that ran along Sadr City's southwest flank, Al Quds Street—operationally named "Route Gold" by U.S. forces. Route Gold served as a general reference for the forward limit of troop deployment though no such limit existed for U.S. air operations and artillery fires. The selection of Route Gold was to establish a working limit and soft boundary to decrease potential U.S. casualties, limit collateral damage, and cap civilian casualties that could all be incurred within the tight confines of Sadr City's streets. However, none of these considerations prevented JAM attacks on Iraqi and U.S. forces assembled and dug in along Route Gold.<sup>25</sup>

The relatedness of both operations was a function of redevelopment as each effort unfolded: Striker Denial attacked the sanctuaries that contained JAM rocket and mortar firing positions within the Sadr City; Gold Wall emplaced a 4.6 kilometer t-wall barrier along Al Quds Street at a distance that put the IZ beyond JAM's 107mm rocket and long-range mortar ranges.

Throughout both operations, U.S. forces leveraged RPAs and Special Forces capabilities to target JAM leaders hiding within Sadr City and interdict JAM rocket firing teams. The 3-4BCT benefitted from approximately 120 AGM-114 (Hellfire) guided missiles [from both Air Force RPAs and Army AH-64s], six long-range Army guided missiles, and eight guided weapons (JDAMs) dropped by U.S. Air Force fighter aircraft. At the conclusion of Gold Wall, U.S. and Iraqi forces began a longer-term stability mission on the Baghdad side of the t-wall barrier to revive the local economy, repair damaged buildings, and promote an environment intolerant of JAM return.<sup>26</sup>

## *Investigation*

During the 8-year occupation of Iraq, when ROE violation allegations were substantiated and charges appropriate, the MNF-I and MNC-I chains of command aggressively prosecuted U.S. personnel. The processes to discover alleged ROE violations exist within every U.S. military organization.<sup>27</sup> That being said, the conduct of American

<sup>24</sup> RAND, p. xviii

<sup>25</sup> Ibid, p. 47

<sup>26</sup> With regard to decreasing JAM's rocket attacks upon the IZ, stabilization efforts succeeded because the t-wall established an urban terrain space defensible by MND-B's resources. The reality was that JAM could operate beyond the t-wall at will; however, their 107mm rocket systems were not usable against the IZ. Perhaps sensing the futility of their resistance and the high cost in personnel, JAM ceased their rocket attacks in May 2008. Their other paramilitary and insurgent activities also dwindled.

<sup>27</sup> The civilian oversight component of the U.S. military remains in the Office of the Secretary of Defense including its legal team with its direct linkage to the U.S. department of Justice and the executive branch of the U.S. government. Since a function of ROE is to assist military units in their application of force as they transition of out peace into war, the JAG Corps, ROE, SROE, etc. are not adhoc creations in expeditionary warfighting environments. These mechanisms, rules, and processes exist in daily,



or Iraqi forces during the Battle of Sadr City did not bring about allegations of LOAC violations as it pertained to operations associated with the battle. The 3-4 BCT and all other Coalition units operated with these internal monitoring, reporting, and documentation processes. Accordingly, U.S. Air Force units used their standard combat post mission debriefs and imagery assessment processes to ensure compliance with the LOAC. As previously mentioned, the JAG Corps investigated charges of ROE violations and allegations of related criminal behavior and if appropriate, commanders preferred charges utilizing specifications contained within the U.S. military's Uniform Code of Military Justice (UCMJ).

## Enemy Forces

### *Ideology*

JAM's political ideology was essentially built on the cult of personality surrounding Moqtada al-Sadr, the successor son to his father Grand Ayatollah Mohammad Sadeq al-Sadr, himself a prominent Iraqi Sh'ia cleric. Aside from the Shi'ite theology associated with the Mahdi, al-Sadr sought to establish a kind of Sh'ia paramilitary and political power that the Saddam Hussein regime oppressed. As Sadr's newly organized entity spread across eastern Baghdad in early 2004, it clashed with the forward limits of U.S. forces deployed in Baghdad.<sup>28</sup> As part of the growing influence of the Sadrist Trend both in Baghdad and throughout southern Iraq, paramilitary Sh'ia militias—most notably JAM—thwarted Iraqi and U.S. military and police forces that attempted to establish effective regime control in the Sh'ia neighborhoods of northeast Baghdad.

### *Capabilities*

U.S. intelligence estimates put the number of JAM militiamen operating in Sadr City between 2000 and 4000.<sup>29</sup> Tactically, JAM militiamen were equipped with small arms and automatic weapons commonly available throughout Iraq. On occasion, U.S. forces encountered JAM snipers with advanced long-range rifles. Although JAM personnel did not operate with night vision equipment, it is conceivable that JAM snipers used rudimentary commercial starlight scope technology. JAM also leveraged longer-range mortars and rockets supplied by Iranian sources and employed sophisticated roadside improvised explosive device (IED) designs responsible for deaths and injuries to U.S. and Iraqi military personnel as well as noncombatants throughout Sadr City.

JAM's weapon of choice was indiscriminately fired mortars and rockets. JAM's intended effect of repetitive rocket launches into the IZ was to sow doubt in the minds of domestic audiences that Iraqi forces could not protect the seat of government and by extension, the Iraqi populace from the predation of the entity conducting the attacks or any other actor. As such, the chronic threat of rocket attack within the IZ established the notion that not only was the fledgling Iraqi government weak but through the lens of Iraqi culture and Arab concepts of strength, also illegitimate. Sensing the imminence of these effects, JAM leadership increased their ground insurgent activities and stepped up rocket raids to hasten a decisive phase in the struggle for ascendance in Iraqi society.

The 107mm rocket, approximately four feet in length is capable of a maximum range of 8 kilometers, or 4.9 miles. At this range, JAM rocket teams could operate west of Route Gold and fire upon the IZ at maximum flight range of the rocket. With a warhead of 8.4 kilograms/18.5 pounds, the lethal blast radius of the rocket could be up to 40 meters/130 feet. JAM fired their 107mm rockets from field fabricated steel tube racks elevated but not expressly aimed at a given building or site. The 107mm rocket was available to JAM from Russian, Chinese, or Iranian

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non-deployed life where they are just as relevant as in conflict and it is that relevance that allows the concept of ROE to work so well in the post-Vietnam American military.

28 Thus, the Jaish al-Mahdi (JAM) [Mahdi Army] came into being in the form that fought against regime and U.S. forces. U.S. forces clashed repeatedly with JAM militiamen in numerous Iraqi cities with large Sh'ia communities such as Kut, Karbala, Najaf, and Basra. JAM's *raison d'être* was the political empowerment of Iraq's Sh'ia majority according to al-Sadr's political platform for Sh'ia determination and activism. Looking back over decades, Iraq's Sh'ia were not allowed to politically organize and become a voting block with access to substantive power.

29 RAND, p. 100



sources. It is alleged that JAM used the 122mm “Grad” rocket. The Grad has a range of up to 20 kilometers and a warhead twice the size of the 107mm rocket.

### *Rules of Engagement*

It is unknown if JAM incorporated guidelines of restrained use of force into their brand of warfare; however, it is clear that JAM operated entirely outside of customary and treaty principles governing the conduct of war.

### *Conduct During Conflict*

Although not classified as a state or a signatory to any Geneva or Hague conventions on the conduct of war, JAM needed to comply with basic LOAC principles if it hoped to garner public support and build lasting political legitimacy. However, JAM's use of indiscriminate rocket and mortar fire violated at least two LOAC principles, perhaps more. First, JAM fire compromised the notion in LOAC of “military necessity,” an idea that holds that combatants use the least force required to obtain military purposes. Next, JAM violated the LOAC principle of “distinction” for a chronic failure to distinguish between the objectives of its use of force, civilians, and civil sites. JAM's failure in this regard was further underscored by their continuous use of unguided weapons that produced destructive and lethal effects wherever they landed in the large urban areas of Baghdad, inside and outside of the IZ.

During the battle, JAM forces did not use innocent civilians as human shields or engage in suicide bombing operations. They did, however, take refuge in the places where civilians lived. On occasion, JAM personnel exploited mosques and some Iraqi medical facilities within the Sadr City area to stage men, equipment, and weapons. In general, U.S. and Iraqi general-purpose forces refrained from attacking Sadr City mosques and facilities used as medical services sites.<sup>30</sup>

JAM resorted to the use of IEDs that harmed U.S. military and innocent Iraqis to include use of unguided rocket fire, mortars, and automatic weapons in ways that endangered civilians not involved on either side.<sup>31</sup> Furthermore, the criminal involvement of JAM militiamen in abductions, torture, and murder of innocent Sadr City Iraqis whom JAM accused of collaborating with the Maliki regime or U.S. military forces further put JAM beyond the pale of not only LOAC, but all civil law.<sup>32</sup> Since 2003, Coalition ISR data built a patchwork picture of the patterns of JAM forces' behavior in Sadr City.<sup>33</sup> In particular, the forms of JAM violence against U.S. and Iraqi forces southwest of Sadr City revealed a complicated pattern of JAM operations within a dense but permissive Sadr City environment.

The rhythm of JAM large-group insurgent activity was its daily group rallies deeper within Sadr City. At the conclusion of the rallies, JAM groups drove non-military vehicles to dismount positions along the southwest and northwest edges of Sadr City. At these locations, JAM personnel dressed in civilian clothes moved to skirmish positions versus nearby U.S. and Iraq Army personnel. After a predetermined period of battle time, JAM personnel returned to their vehicles for the brief car ride back to their Sadr City rally points. This cycle of insurgent operations occurred over years and in time grew to include the integration of increasing mortar and rocket fire.

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30 This consistent with the MNC-I ROE card of 2005 and other applicable unclassified and classified guidance promulgated by MNF-I and MNC-I.

31 RAND, p. 102. Author's note: It is worthy of note that JAM did not attempt to impute to itself the status of a state. Because JAM thought of itself as a loosely organized movement, it did not conduct an international information operation of suasion. Accordingly, U.S. and Iraqi forces proceeded in accordance with self-imposed rules that restrained their use of force in a one-sided way whereby JAM was not interested in reciprocal observance of LOAC and self-imposed restraints.

32 Ibid, p. 93

33 MNF-I recognition of Sh'ia militia activities in the Sadr City dated back to the spring of 2004 when JAM stepped into Iraqi national politics as a leader among the Sh'ia block of Iraqi society. Since 2004, ongoing U.S. surveillance and reconnaissance sought to build a more informed intelligence picture of JAM including other Sh'ia militias on the ground in Sadr City and elsewhere in Baghdad. The appearance of explosive force projectile (EFP) warheads in IEDs—a distinctive Iranian warhead technology accelerated MNF-I's intelligence gathering and related interdiction efforts to thwart the organizing efforts of the Sh'ia militias that included JAM, Asa'ab al-Haq, and Kit'aab al-Hizbollah. These same entities persist to this day within Iraqi society and are visibly involved in today's fight against the Islamic State in Iraq.

## Outcomes

### *Casualties*

By the end of Operations Striker Denial and Gold Wall, six U.S. soldiers had died. On the enemy side, JAM lost an estimated 700 fighters during the conflict. Moreover, during the fighting, most of JAM's senior and junior leadership had fled Sadr City for Iran or Syria.<sup>34</sup>

An intractable challenge that existed for the entirety of the period Coalition forces operated within Iraq would once again complicate attempts to quantify casualties. Accurate civilian casualties figures were not forthcoming from any source with a comprehensive, accurate look across the Sh'ia population of Sadr City; however, that does not mean that there was no source for casualty figures. Johnson, in his monograph, "The 2008 Battle of Sadr City," cites casualty data published by the British medical journal, *Lancet*. Johnson writes:

*The battle's human consequences were significant. According to the British medical journal The Lancet, municipal officials in Baghdad estimated that the fighting killed 925 people and wounded 2,605, an estimate which does not distinguish combatants from noncombatants.*<sup>35</sup>

An accurate count of internally displaced persons (IDP)—local populace displaced from their primary location of living—is also not known. Like casualty figures, the ability to accurately quantify IDPs during the 2008 battle or elsewhere within Iraq today still remains beyond the reach of the government.<sup>36</sup>

### *Damage To Property*

Damage and destruction to civilian property was not quantified in the aftermath of the battle. While overhead imagery and practical structural damage assessment methods exist, it is not known if any comprehensive building/structure damage study was ever undertaken within the Sadr City area. This challenge was most acute within Sadr City owing to its high density of structures and populace, arguably the highest of any other area of the greater Baghdad region. Lastly, basic security problems on the ground in Sadr City made accurate post-battle assessment of individual structures problematic. In the end, using overhead imagery derived from any source is only an informed guess as the true limitation to use—the degree of "damage" to a structure. Larger questions concerning infrastructure damage are somewhat easier to visualize in the environment but nevertheless challenging to quantify.<sup>37</sup>

While the Sadr City economy suffered disruption and dislocation during the battle, the economy had been exploited and constrained by JAM while they blamed its post-conflict decline on government malfeasance. This narrative remained a central element to JAM's propagandist agenda and its methods.<sup>38</sup> In an attempt to resuscitate the Sadr City economy and sever JAM's local grip in the aftermath of the battle, U.S. forces dispensed grants up to \$2,000 dollars to Iraqi business owners to assist them in their recovery.<sup>39</sup>

<sup>34</sup> For these casualty numbers, see Johnson, p. 13; also Gordon and Rubin, "Operation in Sadr City is an Iraqi Success, So Far", *New York Times*, 21 May 2008

<sup>35</sup> RAND, p. 98. Author's note: *Lancet's* casualty estimates are not without some controversy. At other times during the course of the 8-year U.S. occupation of Iraq, *Lancet* figures concerning the number of aggregate civilian deaths proved controversial concerning its data gathering methodologies. Those arguments will not be reprised here. Suffice to say, the problem of accurate casualty count is a quest for data that while not unknowable cannot be known with the limited range of sources which existed.

<sup>36</sup> The causes of that difficulty predominate throughout all sectors and locations of Iraqi society. Within Iraq this general opacity will likely persist for some time.

<sup>37</sup> While a precise census of structures damaged was not undertaken, it is plausible that MNF-I/MNC-I leaders did not see a justified requirement to so. According to MNC-I's 2005 ROE card, bullet 2., sub-bullet e.: "Do not target or strike Iraqi infrastructure (public works, commercial communication facilities, dams), lines of communication (roads, highways, tunnels, bridges, railways) and economic objects (commercial storage facilities, pipelines) UNLESS (source emphasis) necessary for self-defense or if ordered by your commander. If you must fire on these objects, fire to disable and disrupt rather than destroy."

<sup>38</sup> RAND, p. 89

<sup>39</sup> Ibid, p. 90

## Closing Thoughts

The battle of Sadr City is a compelling example of the challenges of fighting in urban environments throughout the varied locations of the 21<sup>st</sup> century world, with all of the advantages and handicaps of this era. As a battle, Sadr City gets at an underappreciated truth in war: a nation can attempt to directly wrestle against the strategy presented by its enemy on its terms or that nation can conceive and impose another strategy, not indirect, but enabled by its optimally tuned tactical action.

In the final analysis, MNF-I forces avoided the trap of confronting JAM's strategy through an over-reliance on area brute force enabled by withering firepower and multi-domain maneuver. None of those advantages would have delivered a win like the one produced in the aftermath of the Sadr City battle. Though not apparent at the beginning of the fight, JAM's operational approach did not have to fail, but it did. Unfortunately, there is no authoritative explanation for JAM's inability to drive off U.S. and Iraqi forces when it seemed that a well-executed insurgency campaign could do so by exploiting the depth of Sadr City in ways the U.S. could not thwart.<sup>40</sup>

While every problem contains clues to the seeds of its solution, not every enemy will offer up hints to the defeat of its campaign strategy. Furthermore, because intelligence is always imperfect as to the enemy's actual motivations and intentions, clashing forces must rely on the accepted truths of warfare regarding mass, surprise, maneuver, etc. At bottom, those are maxims, not substitutes for brilliance of strategic creativity. Inasmuch as strategic creativity is perhaps the secret sauce of warfighting asymmetric advantage, too little of it combined with an abundance of tactical brilliance does not allow any military to remain blind to or ignorant of at least two other considerations. First, unless the enemy concedes defeat without conditions, a cessation of armed hostilities means the war may continue by other means. In these scenarios, every day the enemy lives becomes new fabric woven to better clothe his "victory narrative". Second, information in war has an often-underestimated life span and unappreciated mass that can outlast the blast effects of the most exquisite precision rounds.

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8. U.S. Army, Operational Law Handbook, The Judge Advocate General's Legal Center & School, Charlottesville, Virginia, International and Operational Law Department, 2008.

<sup>40</sup> Johnson interview (2015). Johnson emphasizes that to avoid over-complicating the victory in Sadr City it is important to concede that because an enemy ceases active confrontation in one locale does not imply that the enemy is defeated there or elsewhere. It would seem that JAM lost its political legitimacy and a key source of its combat power for at least two reasons: first, it ran short of people willing to take up arms; second, JAM's fighters could not be replaced as fast as they were depleted. Most telling, it was not precision, RPAs, or armor that upended JAM's vision: it was wisely deployed concrete in the form of low-tech t-walls.

# United States Drone Campaign in Pakistan

FATA, Pakistan

2009 – 2015

**Colonel Richard Kemp CBE**  
with Jasper Reid

## Overview

This study will focus on the drone campaign in Pakistan from 2009, the year in which President Obama began his first term and increased the use of drone strikes, through September 2015, the most recent month for which drone strike data is available. While American military drones operated by the United States Air Force have conducted drone strikes within Pakistan, the majority of strikes have been under the command and direction of the U.S. Central Intelligence Agency (CIA). Since 2009, over 330 drone strikes have targeted members of Al Qaida, the Tehrik-i-Taliban Pakistan (TTP) and the Haqqani Network in the Pakistani provinces of North and South Waziristan. Due to the covert nature of the operations and the difficulty of confirming casualties, the United States government does not release official statistics on the drone campaign in Pakistan. According to estimates by the New America Foundation, the Long War Journal and the Bureau of Investigative Journalism, drone strikes since 2009 have killed between 1,800 and 2,200 militants and between 100 and 250 civilians. Overall, the drone campaign in Pakistan has been successful in eliminating leaders and disrupting the activities of Al Qaida, the TTP and the Haqqani Network.

## *Historical Context*

The United States launched its war against Al Qaida and the Taliban in Afghanistan in October 2001 in response to the 9/11 terrorist attacks. As a result of American military superiority and success in Afghanistan, many Al Qaida leaders and operatives as well as Taliban insurgents fled into Pakistan, a country with whom the United States was not at war. Many of these Al Qaida and Taliban members found refuge in North and South Waziristan, a region long occupied by jihadists since the days of mujahideen resistance against the Soviet Union in the 1980s.

As many Al Qaida and Taliban militants made their way into Pakistan, American officials sought to continue their strategy of attacking Al Qaida leaders and operatives in order to remove the threat they posed to American interests through terrorism. Because American and Pakistani officials sought to keep American ground forces out of Pakistan, the most effective and efficient option available was the use of armed drones. The first of these strikes was carried out in 2004 under George W. Bush's administration.<sup>1</sup> Under President Bush, between 46 and 68 strikes were carried out which killed between 230 and 500 militants and between 90 and 170 civilians.<sup>2</sup>

### *Urgency and Intensity*

The United States views the targeting of Al Qaida operatives and Taliban insurgents as very urgent. These groups are responsible for planning and conducting terrorist attacks against the United States and its allies and the next attack is viewed as imminent. Given this outlook, the United States seeks to bring the fight to Afghanistan, Pakistan, Yemen, Somalia and other nations where Al Qaida and their associates are operating. This is undertaken in order to eliminate leaders and members who might have planned or are in the process of planning attacks against the United States or against its interests and allies overseas.

Drone attacks have been conducted sporadically depending on current intelligence, the movements and actions of enemy combatants and the probability of killing an enemy without causing civilian casualties. For example, it was estimated that the United States carried out over 120 drone strikes in 2010; while in first nine months of 2015 there have only been 11.<sup>3</sup> The number of annual drone strikes has decreased since 2010 due to other factors including the elimination of many high-level Al Qaida, TTP and Haqqani Network leaders as well as domestic and international political pressure to limit strikes.<sup>4</sup>

### *Terrain*

CIA drone strikes in Pakistan have taken place almost entirely within the Federally Administered Tribal Areas (FATA) which are located in the northwest of Pakistan, along the border with Afghanistan. The region spans over 27,000 square kilometers and is divided into seven districts or 'agencies' including Bajaur, Mohmand, Khyber, Orakzai, Kurram as well as North and South Waziristan, the two agencies where the majority of U.S. drone strikes have occurred. Each of the seven agencies has its own tribal, religious and socioeconomic characteristics that make it distinct.<sup>5</sup> The FATA is remote, mountainous and difficult to traverse as transportation infrastructure is underdeveloped. Historically, the region has been dominated by local Pashtun tribes and remained semi-autonomous from the central government in Islamabad. As a result of its de facto autonomy, the FATA has been described as the 'lawless frontier' and a 'melting pot for jihadists from all over the world' due to the lack of government authority and the number of militant groups who train and reside in the area.<sup>6</sup>

### *Why are they fighting?*

The United States drone war in Pakistan serves two purposes: first, to weaken Al Qaida who have made North and South Waziristan a base of operations; and second, to weaken the Taliban and the Haqqani Network who have fled into Pakistan from Afghanistan, especially after the U.S. troop surge in Afghanistan in December 2009.

### *Civilian Population*

The FATA region has a population of over three million people and is made up primarily of ethnic Pashtuns who are subdivided into various tribes and clans.<sup>7</sup> These Pashtuns are part of a larger population defined by an adherence to the tribal code of Pashtunwali and are often referred to as Afghans or Pathans. In the 18<sup>th</sup> century, the

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1 The drone campaign has spanned two American presidents and four presidential terms.

2 Roggio, Bill. "Charting the data for US airstrikes in Pakistan, 2004-2015." *The Long War Journal*; "Drone Wars Pakistan: Analysis." *New America Foundation's Drone Database*

3 Ibid

4 Dilanian, Ken. "CIA drone strike program targeting Pakistan winds down." *PBS Newshour*

5 Nawaz, Shuja. "FATA--A Most Dangerous Place." *CSIS*, p. 13

6 Johnston, pp. 4-5; Zissis and Bajoria, "Pakistan's Tribal Areas," *Council on Foreign Relations*

7 Ibid, p. 4



Afghan-Pashtuns organized a state that encompassed modern-day Afghanistan and the Pashtun lands of northwest Pakistan.<sup>8</sup> During the British colonial period, the Pashtuns often resisted British control which had, by that time, created the FATA out of Pashtun territory.

Since Pakistan's independence in 1947, the FATA has been within Pakistani territory, yet the Pakistani government has remained outside of the area, preferring to avoid the politics of this complex tribal region.<sup>9</sup> As a result, the area has experienced far less socioeconomic development compared with the rest of Pakistan.<sup>10</sup> The Pashtuns of the FATA also adhere to a more conservative branch of Islam compared to the other largest Pakistani ethnic groups such as Sindhis and Punjabis. During the Soviet invasion of Afghanistan in the 1980s, the FATA served as a sanctuary for mujahideen fighters fleeing Soviet troops and looking to regroup before waging counterattacks.

The United States does not enjoy widespread support in the FATA region or throughout Pakistan. According to a poll conducted amongst residents in the FATA region by journalists Peter Bergen and Patrick Doherty, nearly nine out of 10 people oppose drone strikes in the region. Furthermore, almost six in 10 believe that suicide attacks are justified if carried out against the U.S. military in Afghanistan.<sup>11</sup> It is worth noting that residents interviewed also expressed their opposition to Al Qaida, TTP and Haqqani militants in the region, but they preferred that these militants be countered by Pakistani troops as opposed to foreign forces.<sup>12</sup> Negative views of the United States are also reported throughout the rest of Pakistan. According to a Pew Research Center poll conducted in 2012, over 74 percent of Pakistani citizens considered the United States to be their enemy.<sup>13</sup> A Gallop Poll conducted in 2009 found that 67 percent of Pakistanis opposed drone strikes with 9 percent reporting a favorable view and 24 percent neutral.<sup>14</sup>

## Al Qaida, Tehrik-i-Taliban Pakistan and the Haqqani Network

American drone strikes in the FATA region of Pakistan have primarily targeted three groups: Al Qaida, Tehrik-i-Taliban Pakistan (TTP) and the Haqqani Network.<sup>15</sup> These groups all share a common jihadist ideology and explicit anti-Americanism, both of which have led them to conspire with each other in the past. As Commander of United States Central Command from October 2008 to June 2010, U.S. General David Petraeus described the relationship between the organizations in the FATA saying, "There is clearly a symbiotic relationship between all of these different organizations...And it's very difficult to parse and to try to distinguish between them. They support each other, they coordinate with each other, sometimes they compete with each other, [and] sometimes they even fight each other. But at the end of the day, there is quite a relationship between them."<sup>16</sup>

### *Ideology, Motivation and Objectives*

Al Qaida is a Sunni Islamist international terrorist organization founded by Osama Bin Laden in 1988.<sup>17</sup> It originally grew out of an organization set up by bin Laden and Abdullah Azzam, a Palestinian religious scholar, which financed, recruited and trained thousands of mujahideen who resisted the Soviet invasion of Afghanistan during the 1980s.<sup>18</sup> By the time Soviet forces were withdrawn from Afghanistan, bin Laden broke with Azzam and

<sup>8</sup> Williams, p. 11

<sup>9</sup> Schorzman and Nazish, "A Long History of Rebellion in the Mountains of Pakistan," *The New York Times*, 30 June 2014; Williams, p. 12

<sup>10</sup> Nawaz, Shuja. "FATA--A Most Dangerous Place." *CSIS*, p. 13

<sup>11</sup> Bergen and Doherty, "U.S. led drone war is self-defeating," *CNN News*. 20 September 2010

<sup>12</sup> Fewer than 10 percent supported Al Qaida while fewer than 20 percent supported the TTP. See Bergen and Doherty, "U.S. led drone war is self-defeating," *CNN News*. 20 September 2010

<sup>13</sup> "Pakistani Public Opinion Ever More Critical of U.S.," *Pew Research Center*, 27 June 2012; Byman, "Why Drones Work: The Case for Washington's Weapon of Choice," *Foreign Affairs*, July/August 2013; Coll, "The Unblinking Stare," *The New Yorker*, 24 November 2014

<sup>14</sup> Williams, p. 115

<sup>15</sup> Johnston, p. 6

<sup>16</sup> Bruno, "Shared Goals for Pakistan's Militants." Interview with Gen. David Petraeus. *Council on Foreign Relations*. 6 May 2010

<sup>17</sup> Al Qaida is Arabic for "the Base."

<sup>18</sup> Bajoria and Bruno, al-Qaeda CFR Backgrounder



founded Al Qaida which was intent on waging jihad in order to drive out western influence from Muslim lands and to set up governments that would adhere to a fundamentalist Salafi interpretation of Islam.<sup>19</sup>

Al Qaida was based in Afghanistan from the mid-1990s thru 2001 when they were targeted by United States and coalition forces in the aftermath of the September 11<sup>th</sup> attacks. As a result of the American invasion and subsequent occupation of Afghanistan, many of Al Qaida's leadership and members sought refuge in the FATA where fellow jihadist groups were located. Al Qaida members in Pakistan now number approximately 150-300 and are comprised of jihadists from across the world.<sup>20</sup> In their pursuit of waging war against the West, Al Qaida has also trained a large number of Taliban insurgents, particularly in the use of suicide bombings, which have become popular tactics for Taliban insurgents both in Afghanistan and Pakistan.<sup>21</sup>

American drone strikes also target members of the Tehrik-i-Taliban Pakistan (TTP), also known as the Pakistani Taliban, which was established in 2007 and brought together over 40 Islamist militant leaders from across the FATA.<sup>22</sup> The TTP is predominantly Pashtun and is focused on overthrowing the Pakistani government and establishing an Islamic emirate in the mold of the Taliban government that ruled Afghanistan from 1996-2001. The TTP is not an affiliate of Al Qaida but has worked closely with the global jihadist organization to overthrow the Pakistani government, hold Pakistani territory and resist American influence in the FATA region and within Afghanistan.<sup>23</sup> As of April 2014, the TTP numbers approximately 25,000 men and is located almost entirely in North Waziristan as the result of an ongoing Pakistani army offensive which involves over 150,000 troops.<sup>24</sup>

The third group that American drone strikes target in Pakistan is the Haqqani Network which shares an ideology and also cooperates with both Al Qaida and the TTP. The founder of the Haqqani Network, Jalaluddin Haqqani, was a former commander of mujahideen troops in Afghanistan during the 1980s where he was at one time an asset of the CIA.<sup>25</sup> Once the Taliban took control of Afghanistan in 1996, Haqqani allied his organization to the Taliban and held a leadership position in that organization throughout the late 1990s.<sup>26</sup> Although technically a branch of the Afghan Taliban, the group remains autonomous and has been responsible for the founding and operation of a number of madrassas—Islamic religious schools that often preach extremist views—and training camps in North and South Waziristan. After the U.S. invasion of Afghanistan in 2001, Haqqani allowed militant groups fighting NATO forces to operate out of his base in the FATA. Since 2001, the organization has been led by Jalaluddin Haqqani's son, Siraj Haqqani, who is considered more extreme than his father.<sup>27</sup> The organization remains committed to housing Al Qaida operatives and working with the Taliban in Afghanistan and Pakistan to help resist American and NATO presence in Afghanistan and the FATA region. One of the overarching goals of the organization is to establish an Islamic caliphate in Afghanistan and Pakistan which would be ruled under strict Islamic law.<sup>28</sup>

### *Strategy to achieve these objectives*

The primary strategy of Al Qaida, the TTP and the Haqqani Network has been to seek refuge within the FATA region, which remains devoid of American and Pakistani ground troops, in order to sustain their organizations. In doing so, Al Qaida leadership in the area remains capable of communicating with their operatives across the world in order to plan attacks against western targets; while the TTP and Haqqani Network remain capable of planning terrorist attacks across Afghanistan and Pakistan as well as cross-border raids into Afghanistan to attack NATO and Afghan forces. A key difference in the strategy between the three groups is that Al Qaida's aims tend to be global whereas the TTP and Haqqani Network often focus more on conducting attacks in Afghanistan and Pakistan. This

<sup>19</sup> Ibid

<sup>20</sup> Johnston, p. 6

<sup>21</sup> Bajoria and Bruno, al-Qaeda CFR Backgrounder

<sup>22</sup> Johnston, p. 6

<sup>23</sup> Laub, "Pakistan's New Generation of Terrorists" *CFR Backgrounder*; Johnston, p. 7 cites documents seized in the Abbottabad raid that showed AQ was sending help to TTP

<sup>24</sup> Bennett-Jones, "Pakistan army eyes Taliban talks with unease," *BBC News*, 25 April 2014

<sup>25</sup> "Afghan Militant Leader Jalaluddin Haqqani 'Has Died,'" *BBC News*, 31 July 2015; Dressler, ISW report on Haqqani

<sup>26</sup> Johnston, p. 7; "Afghan Militant Leader Jalaluddin Haqqani 'Has Died.'" *BBC News*. 31 July 2015

<sup>27</sup> Dressler, ISW report, p. 10

<sup>28</sup> "Haqqani Network," *Counter-Extremism Project*

targeting strategy, however, is not exclusive as TTP and Haqqani militants have also trained jihadists intent on waging terrorist attacks in western countries.

Tactics used by all three groups include suicide bombings, improvised explosive devices (IEDs), landmines, rocket and small arms attacks, grenade attacks, assassinations, kidnapping and hostage-taking, hijackings as well as online and print propaganda.<sup>29</sup> Furthermore, Al Qaida leader Ayman al-Zawahri has called for Muslim men in the western world to carry out individual attacks, also known as lone-wolf attacks, in which central Al Qaida operatives are not involved in the planning, funding and development of weapons or bombs.<sup>30</sup> These attacks are particularly difficult to prevent as individuals may not be known to western intelligence agencies prior to carrying out their attacks and there is limited opportunity to penetrate such operations due to their simplicity and little need to communicate.

### *Rules of Engagement*

Al Qaida, the TTP and the Haqqani Network do not adhere to any international laws regulating the use of force in a combat situation. Al Qaida has been labeled a terrorist organization by the United Nations, European Union, United States, United Kingdom, France, Canada, Australia, New Zealand, and India among others.<sup>31</sup> The TTP has been listed as a terrorist organization by the United States and United Kingdom since 2010 and 2011, respectively.<sup>32</sup> The Haqqani Network has been deemed a terrorist organization by United States and United Nations since 2012.<sup>33</sup>

### *Relation to Population*

As noted above, Al Qaida, the TTP and the Haqqani Network do not receive widespread support from the population in the FATA region. Nevertheless, these groups are viewed as preferable to American drone strikes which have alienated a large majority of FATA residents and the Pakistani public. Al Qaida, the TTP and the Haqqani Network all engage in systematic intimidation of the public which results in residents of the FATA region supporting the presence and activities of the militants out of fear. Moreover, the number of civilian casualties is often inflated by militants and Pakistani media outlets wishing to alter the public opinion of American drone strikes.<sup>34</sup> This results in a population believing that the United States is intentionally targeting civilians.

### *Conduct during conflict*

The CIA drone campaign in Pakistan is by no means a conventional military campaign. This is due to the fact that the enemy is not a conventional adversary. Since 1992, Al Qaida and its affiliates have been responsible for innumerable attacks which have killed tens of thousands of innocent civilians. The organization's most notable attacks include: the 11 September 2001 attacks on the World Trade Center and Pentagon which killed almost 3,000 civilians; the August 1998 bombings of the American embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, which killed over 200 people; the October 2000 bombing of the USS Cole, killing 17 American servicemen; the November 2003 bombings in Istanbul which killed over 55 civilians; the October 2005 Bali bombings which killed over 20 civilians; and the January 2015 attack on the offices of the French satirical newspaper Charlie Hebdo in Paris which killed 12 civilians.

The TTP have targeted both security forces and civilians in an attempt to overthrow the Pakistani government and oust western forces. The one-time leader of the TTP, Baitullah Mehsud of South Waziristan, played a key role in the assassination of former Pakistani Prime Minister Benazir Bhutto in December 2007.<sup>35</sup> The TTP claimed responsibility for the September 2008 bombing of Islamabad's Marriott Hotel which killed over sixty people as well as the June 2009 bombing of Peshawar's Pearl Continental Hotel which killed seventeen people.<sup>36</sup> The TTP have also claimed responsibility—along with Al Qaida—for the December 2009 suicide bombing in Camp Chapman,

29 "Al Qaeda." *Mapping Militant Organizations Project*, Stanford University

30 "Al Qaeda chief Ayman al-Zawahri urges lone wolf attacks in the West in new audio recording", *Reuters*, 13 September 2015

31 "Al-Qaeda", *Counter-Extremism Project*, pp. 21-22

32 "Foreign Terrorist Organizations," *U.S. Department of State*, last updated in 2015; "Proscribed Terrorist Organizations," *U.K. Home Office*, last updated 2015

33 "Haqqani Network," *Counter-Extremism Project*

34 "AP's analysis of casualties from U.S. drone strikes in Pakistan: the backstory," *Associated Press*, 28 February 2012

35 Laub, "Pakistan's New Generation of Terrorists," *CFR Backgrounder*, 18 November 2013

36 Ibid

Afghanistan, which killed seven CIA officers as well as the failed plot in May 2010 to detonate a car bomb in Times Square.<sup>37</sup> The most brazen attack carried out by the TTP occurred in December 2014 when seven gunmen stormed the Army Public School and executed 151 people, including over 130 children.<sup>38</sup>

Outside of their terrorist attacks, the TTP also engage in intimidation of the local populace throughout North and South Waziristan. In order to remain undetected, TTP insurgents often move from compound to compound, demanding that local residents provide shelter in their traditional guesthouse, or hujra. According to Saleem Safi, a civilian in the FATA region, if these Taliban insurgents “come to my hujra and asks for shelter, you have no choice.” “Now a potential drone target is living in a guest room or a guesthouse on your compound, one wall away from your own house and family.”<sup>39</sup> According to another Waziristan resident, should a drone strike occur, the TTP immediately accuse local residents of spying for the United States while the Pakistani government criticizes families for having taken in TTP militants.<sup>40</sup>

Attacks orchestrated by the Haqqani network include: a July 2014 truck bomb detonated in a crowded market in eastern Afghanistan which killed 72; a June 2011 attack on the International Hotel in Kabul which killed 11 Afghan civilians and two policemen; a September 2011 attack on the American embassy in Kabul which killed 16 Afghan civilians, including six children; a July 2008 car bombing at the Indian embassy in Kabul which killed 54; an April 2008 assassination attempt on Afghan President Hamid Karzai; and a September 2007 suicide bombing which killed 31 Afghan Army recruits.<sup>41</sup> Because of their active resistance against ISAF and Afghan forces, the Haqqani Network has suffered significant losses, with their estimated number of militants going from 10,000 in 2011 down to 2,000 in 2012.<sup>42</sup>

## United States Forces

### *Objectives, Strategies and Tactics*

The United States operation is one of search and destroy. The conflict is non-traditional in that combat is not waged on a predetermined or designated battlefield. Instead, Al Qaida and TTP members hide out in a vast and rugged landscape, seeking to outlast American forces. Deploying traditional American military forces into the FATA region would likely result in a prolonged, ineffective operation in which militants who know the area well and receive support from the local population would have the upper hand. Moreover, the Pakistani government, military and population have expressed their opposition to the presence of American ground forces within Pakistani territory, making the possibility of a conventional American ground operation even more unlikely. Given this reality, the use of armed drones to seek out and destroy Al Qaida and TTP operatives—individuals the American government views as imminent threats to the security of the United States because of their willingness and capacity to wage terrorist attacks—has been the preferred strategy of the United States government.

According to John Brennan, then Obama’s chief counterterrorism advisor, The United States’ counterterrorism strategy aims to destroy Al Qaida from ‘Afghanistan, Pakistan, Yemen, Africa and other states.’<sup>43</sup> In a 2012 speech, John Brennan argued that the purpose of drone strikes was ‘to mitigate an actual ongoing threat, to stop plots, prevent future attacks, and to save American lives.’<sup>44</sup> He also defended the strategy of drone warfare arguing that “by targeting an individual terrorist or a small number of terrorists with ordnance that can be adapted to avoid harming others in the immediate vicinity, it is hard to imagine a tool that can better minimize the risk to civilians than remotely piloted aircraft.”<sup>45</sup>

<sup>37</sup> Mazetti and Walsh, NYT, 2013

<sup>38</sup> “Pakistan sentences convicts to die over Peshawar attack”, *Aljazeera*, 13 August 2015

<sup>39</sup> Coll, “The Unblinking Stare,” *The New Yorker*, 24 November 2014

<sup>40</sup> Ibid

<sup>41</sup> “Haqqani Network,” *Counter-Extremism Project*

<sup>42</sup> Ibid

<sup>43</sup> Quoted in Zenko, p. 9, from John O. Brennan, This Week with George Stephanopolous, ABC, April 29, 2012

<sup>44</sup> Quoted in Aslam, p. 84, from Brennan 2012

<sup>45</sup> “John Brennan Delivers Speech on Drone Ethics.” *NPR*. 1 May 2012; Ackerman, *The Guardian*, 25 April 2015; This speech by Brennan was the first time the Obama administration publically acknowledged that the United States engages in targeted killings, although the program had been going on for years. See Zenko, p. 8

## *Drone Technology*

While the earliest unmanned aerial vehicles (UAVs) appeared during the Vietnam War, it was not until 1994 that the modern Predator drone was introduced into the American military.<sup>46</sup> The aircraft were used for surveillance purposes throughout the 1990s, most notably in the Balkans where UAVs helped American manned aircraft deliver missile strikes onto targets.<sup>47</sup> In February 2001, a Predator drone successfully test fired an AGM-114 Hellfire, a hundred pound antiarmor missile.<sup>48</sup> Thereafter, the Predator became an aircraft capable of attack as well as reconnaissance.

Perhaps the most important aspect of an armed drone is the accuracy of the munitions it carries. Although advanced precision-guided missiles were developed throughout the Cold War, it was not until the 1991 Gulf War and Operation Desert Storm that these weapons were used on a large scale.<sup>49</sup> Because of their high probability of striking an intended target, precision weapons became an integral facet of future American military strategy and a necessary technological requirement for capable international militaries.

It was not until after the September 11<sup>th</sup> attacks that the United States began arming drones with laser-guided missiles.<sup>50</sup> The first lethal drone strike occurred in Yemen in November 2002 and targeted Qaed Senyan al-Harhi, the Al Qaida leader responsible for carrying out the attack on the USS Cole in October 2000.<sup>51</sup> In 2001, the number of U.S. drones stood at 167. By 2012, that number had increased to more than 7,500 and estimated flight hours over Iraq and Afghanistan reached over 16,000.<sup>52</sup>

Aside from its ability to pinpoint strikes, the most important characteristic of an armed drone is that it allows operators to gather information, analyze that information in real time and deliver a weapons payload if needed. This unique ability significantly reduces the amount of time needed to find, identify and attack targets on the ground. In the past, conventional, more time-consuming processes meant that enemy combatants were often able to escape even after being identified on the ground.

The primary drone aircraft are the Predator and the Reaper. The \$20 million MQ-1 Predator is over 8 meters in length and has a wingspan of almost 17 meters. It can fly up to an altitude of 7,620 meters and has a range of 770 miles. Its armament consists of two laser-guided AGM-114 Hellfire missiles.<sup>53</sup> The \$53.5 million MQ-9 Reaper, which made its first appearance in October 2007, stretches 11 meters and has a wingspan of 20 meters. It can fly up to an altitude of 15,240 meters and has a range of 1,150 miles. Its payload includes a combination of AGM-114 Hellfire missiles, GBU-12 Paveway II and GBU-38 JDAMs, each of which can be delivered to its target faster than the speed of sound.<sup>54</sup> Both drone models are equipped with numerous high-resolution cameras, and advanced radar systems. Armed Predator and Reaper drones can stay airborne for over fourteen hours while more traditional, manned aircraft such as the F-16 fighter jet and A-10 ground attack aircraft can only remain airborne for up to four hours before needing to refuel.<sup>55</sup>

Although current American weapons technology is more accurate and advanced than any other world power, the United States continues to develop more sophisticated missile systems in order to reduce the chances of collateral damage. As early as April 2010, an article published in the Washington Post spoke of the rapidly advancing weapons technology being designed by government contractors and adopted by the CIA. One such missile, the Small Smart weapon, also known as the Scorpion, is 0.5 meters long, weighs 15 kilograms and has a diameter approximately the size of a coffee cup.<sup>56</sup> The missile's four guidance systems also allow operators to set their target on a specific

<sup>46</sup> Williams, pp. 19-20

<sup>47</sup> Brunstetter, p. 340; Barrinha, pp. 19-20

<sup>48</sup> Williams, pp. 23-24

<sup>49</sup> Barrinha, p. 19

<sup>50</sup> Brunstetter, p. 340

<sup>51</sup> Ibid, p. 340

<sup>52</sup> Zenko, p. 3

<sup>53</sup> Williams, p. 239

<sup>54</sup> Ibid, p. 240; Persons on the ground have reported hearing the buzz of a drone overhead but never hearing an incoming missile.

<sup>55</sup> Zenko, p. 6; With advanced midair refueling technology, drones are also capable of operating for days at a time. See Brunstetter, p. 337

<sup>56</sup> Warrick and Finn, April 2010

individual as opposed to a more general area. Such advancements in weapons technology have had a dramatic effect on the estimated collateral damage radius of an airstrike. During the Vietnam War, the average of this radius was 400 feet while today the average radius is approximately 40 feet.<sup>57</sup>

### *Rules of Engagement*

In the aftermath of September 11<sup>th</sup>, the Bush administration implemented a policy of targeted killings in which high-level Al Qaida leaders were singled out.<sup>58</sup> This policy was a part of a larger 'war on terrorism' in which the United States declared itself at war with Al Qaida and its affiliates, thus targeted strikes were viewed as combatting enemy forces as opposed to assassinations which remain illegal under International Humanitarian Law. The Obama administration has steered away from the Bush administration's label of a 'War on Terror,' but a closer examination into the policies of the current administration reveals that officials justify the use of drone attacks by arguing that the United States remains 'in a state of war.'<sup>59</sup>

While critics argue that drone strikes violate the IHL prohibition against targeted assassinations, American officials note that the United States has been at war with Al Qaida since 11 September 2001, thus the targeting of confirmed or suspected Al Qaida members is well within the inherent right of self-defence as established by Article 51 of the UN Charter. In recent years, the interpretation of this article has come to justify the transnational use of force against terrorist organizations, particularly those residing in states which are incapable or unwilling to provide effective counterterrorism measures.<sup>60</sup> Since 2002, the Pakistani government and military have sought to combat the various organizations in the FATA but these ineffective operations have failed to achieve a decisive victory.<sup>61</sup> One reason for the army's futility in the region is the morale among its troops. Pashtuns make up the largest ethnic group within the Pakistani military and many of these troops feel that they are fighting against not only their own countrymen but also members of their own ethnic tribe.<sup>62</sup>

The CIA and its covert operations remain highly classified. As a result, the agency's records on the number of strikes, number of casualties and the rules of engagement have never been released to the public.<sup>63</sup> Because of foreign and domestic pressure to acknowledge various aspects of the program, the CIA and the United States government began in 2012 to discuss very broad parameters as to how drone strikes are carried out. A document released in May 2013 entitled "U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities" serves as the best source of the CIA's rules of engagement when targeting combatants in Pakistan. The document lists a set of preconditions which must first be reached in order for lethal force to be used against an enemy combatant:

*"First, there must be a legal basis for using lethal force, whether it is against a senior operational leader of a terrorist organization or the forces that organization is using or intends to use to conduct terrorist attacks.*

*Second, the United States will use lethal force only against a target that poses a continuing, imminent threat to U.S. persons. It is simply not the case that all terrorists pose a continuing, imminent threat to U.S. persons; if a terrorist does not pose such a threat, the United States will not use lethal force.*

*Third, the following criteria must be met before lethal action may be taken: 1) Near certainty that the terrorist target is present; 2) Near certainty that non-combatants will not be injured or killed; 3) An assessment that capture is not feasible at the time of the operation; 4) An assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons; and 5) An assessment that no other reasonable alternatives exist to effectively address the threat to U.S. persons.*

<sup>57</sup> Williams, p. 110, he gets from Emerson, Steve. "In Defense of Drones: The ACLU Tries to Take Away an Effective and Humane Tool in the US Arsenal." *New York Post*. 16 October 2010

<sup>58</sup> Barrinha, p. 21

<sup>59</sup> Aslam, p. 83; Eric Holder used this very term in March 2012

<sup>60</sup> Ruettershoff, 134; States arguing that the United States is violating its sovereignty invoke Article 2 (4) of the UN Charter.

<sup>61</sup> Ibid, p. 138; Khattak, Daud, "Evaluating Pakistan's Offensives in Swat and FATA," *CTC Sentinel*, October 2011

<sup>62</sup> Zissis and Bajoria, "Pakistan's Tribal Areas," *Council on Foreign Relations*

<sup>63</sup> Brunstetter, p. 354



*Finally, whenever the United States uses force in foreign territories, international legal principles, including respect for sovereignty and the law of armed conflict, impose important constraints on the ability of the United States to act unilaterally – and on the way in which the United States can use force. The United States respects national sovereignty and international law.”<sup>64</sup>*

### *Warnings to the Population*

Because of the covert nature of this operation, the CIA does not engage in warnings to the population. Doing so would likely expose CIA operations as Al Qaida, TTP and Haqqani militants are imbedded within the local population. Advance warnings would undoubtedly be picked up by enemy combatants and these individuals would take the necessary steps to flee before an impending attack.

### *Relationship with Pakistani Government*

Pakistani President Ali Asaf al Zardari, elected in September 2008, was representative of the inconsistency with which senior Pakistani officials in the government and military viewed the drone campaign.<sup>65</sup> In private, Zardari was supportive of the American targeting, even stating, “Kill the [Taliban] seniors. Collateral damage worries you Americans. It does not worry me.”<sup>66</sup> In another statement to reporters in January 2010, Zardari asserted, “There are no differences between Pakistan and the US over an issue, including drone attacks.”<sup>67</sup> In public statements, however, Zardari was less supportive of the American actions in Pakistan, likely because of his desire to secure votes among a Pakistani public increasingly angered by the presence of US drones. After a November 2008 attack in which nine Al Qaida fighters were killed along with three civilians, Zardari argued that American drone strikes were ‘counter-productive and violated Pakistan’s sovereignty.’<sup>68</sup>

Yousuf Raza Gillani, the Pakistani Prime Minister from March 2008 to June 2012, also engaged in a public-private duality that frustrated American officials. In statements reportedly made to American officials in August 2008 and exposed by Wikileaks, Gillani stated, “I don’t care if they do it as long as they get the right people. We’ll protest in the National Assembly and then ignore it.”<sup>69</sup>

Added to the inconsistency and mixed messages emanating from Pakistani government and military officials, a March 2011 article published in Dawn, Pakistan’s oldest English-language newspaper, quoted Maj-Gen Ghayur Mehmood who said in a briefing in Waziristan that “Myths and rumors about predator strikes and the casualty figures are many, but it’s a reality that...there are few civilian casualties in such precision strikes, but a majority of those eliminated are terrorists, including foreign terrorist elements.”<sup>70</sup>

There have also been reports and confirmations of various Pakistani news outlets falsely reporting the number of civilian casualties in order to drive opposition to the drone strikes.<sup>71</sup> These reports fuel anger among some Pakistanis who believe that the United States is intentionally massacring Pakistani civilians. Such widespread public outrage then influences Pakistani government officials who, while privately supporting drone strikes in North and South Waziristan, must appear to be representing the population’s grievances against the United States government.

64 “U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities.” *White House*. 23 May 2013. Online.

65 His wife, Benazir Bhutto, was assassinated by the Taliban in 2007 while running for the presidency. Williams, pp. 81-83

66 Williams, p. 81, from Woodward, Obama’s Wars, p. 26

67 Quoted in Williams, p. 81, from Hilaly, Daily times article, “Good Riddance” 21 Jan 2010

68 Quoted in Williams, p. 81, from “US Drone Strike Kills 12 in Pakistan.” *Times*. 14 November 2008

69 Quoted in Williams, p. 82, can find quote in “WikiLeaks: Gilani open to drone strikes on ‘right people’” *The Express Tribune*. 1 December 2010

70 Williams, pp. 114-115; Sherzai, *Dawn*

71 Ibid, pp. 116-120



## *Conduct During Conflict*

### *Authorization*

Authorization for the drone campaign in Pakistan originated in the Bush administration, specifically after the Al Qaida attacks on 11 September 2001. On 17 September 2001, President Bush signed a counterterrorism Memorandum of Notification (M.O.N.) which became the legal foundation for the CIA's drone operations in Pakistan.<sup>72</sup> A M.O.N. is a requirement of any covert action programme the CIA wishes to undertake and is developed in accordance with a specific task the president has handed down. The legality of covert action was codified in the National Security Act of 1947 which allows the president to direct such action so long as it does not violate U.S. law and is considered essential to protect the nation.<sup>73</sup> Contained within the CIA's counterterrorism M.O.N. signed on 17 September 2001 was a key provision that authorized targeted strikes on Al Qaida operatives and their allies.<sup>74</sup> Given that this provision was broad in scope, the CIA director at the time, George Tenet, set out internal directives which sought to avoid civilian casualties 'to the maximum extent possible.'<sup>75</sup> The Bush administration's 2002 National Security Strategy, published only months after the M.O.N., further outlined the administration's strategy by emphasizing the importance of taking preemptive action on attacks viewed as imminent.<sup>76</sup>

Also in the days immediately after 11 September, the Authorization for Use of Military Force (AUMF) was drafted by the White House and passed by the US Congress on 18 September 2001. The text of the AUMF reads: The President of the United States is authorized "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons."<sup>77</sup>

Although specific protocols for targeting individuals remain highly classified, various journalists have interviewed current and former CIA and Obama administration officials who have shed some light on what appears to be strict guidelines for identifying and attacking targets. According to one CIA official interviewed by the New York Times, "There is a rigorous protocol for identifying militants, using video from the Predators, intercepted cell phone calls and tips from Pakistani intelligence, often originating with militants' resentful neighbors."<sup>78</sup> According to Brian Glyn Williams, a leading expert on the American drone campaign in Pakistan, given the amount of anger among Pakistanis caused by civilian casualties, the CIA since 2008 has taken extreme measures to ensure that civilians are not needlessly killed during missile strikes. Individual targets are identified and vetted by the CIA's Covert Action Review Group who then passes target recommendations onto the CIA director or deputy director, the only men allowed to authorize strikes within the agency.<sup>79</sup> Williams points to additional reports which have stated that in order for a strike to be authorized, two independent sources of intelligence—i.e. a signals intelligence intercept or a human intelligence resource—must be present along with a CIA lawyer who is required to sign off on each strike.<sup>80</sup>

The construction of a target list is undertaken at the highest levels of government, often involving over 100 government officials who recommend and analyse the backgrounds and activities of numerous individuals considered to be threats to the security of the United States. The list of potential targets is assessed and finalized and then given to the White House where the President is required to sign off on all targets.<sup>81</sup> Shortly after Obama entered office, one of the President's first directives was to demand that his personal approval was required for any drone strike in Pakistan that might involve civilian casualties.<sup>82</sup> This directive was handed down after reports in 2008 estimated the

<sup>72</sup> Coll, "The Unblinking Stare," *The New Yorker*, 24 November 2014

<sup>73</sup> "A Look Back...The National Security Act of 1947", CIA Historical Document, 30 April 2013; Coll, "The Unblinking Stare," *The New Yorker*, 24 November 2014

<sup>74</sup> Coll, "The Unblinking Stare," *The New Yorker*, 24 November 2014

<sup>75</sup> Ibid

<sup>76</sup> Aslam, p. 84; NSS 2002

<sup>77</sup> 107th Congress, Authorization for Use of Military Force, September 18, 2001

<sup>78</sup> Quoted in Williams, p. 101, from Shane, "CIA to expand use of drones in Pakistan"—use this and not Williams

<sup>79</sup> Capaccio and Bliss; Williams, p. 101; this contrasts with what I have written about potential targets going thru the White House

<sup>80</sup> Williams, p. 102

<sup>81</sup> This is certainly the case in Yemen and Somalia but Barrinha says that Obama personally authorizes only a third of the Pakistan drone strikes) (all of this paragraph is Barrinha, p. 24; see Klaidman, 2012

<sup>82</sup> Bergen and Rowland, CNN article

civilian casualty rate to be as high as 50 percent.<sup>83</sup> As the President makes the final decision on which individuals should be targeted, a team of White House legal counsels and administration officials further vet the list of potential targets. Throughout the process, the overarching goal is to ensure the safety of Americans while not disregarding the values that the United States stands for and encourages across the world.<sup>84</sup>

Additionally, drone operators and commanders use software to examine the expected blast radius and damage from a proposed strike. Should a strike be launched, operators also observe the aftermath of the strike, including signs of survivors as well as the identification of the dead.<sup>85</sup> An August 2011 report by New York Times reporter Scott Shane even relayed an instance of a drone operator being able to correct his mistake once a missile had been launched. “After the drone operator fired a missile at militants in a car and a noncombatant suddenly appeared nearby, the operator was able to divert the missile harmlessly into open territory, hitting the car minutes later when the civilian was gone.”<sup>86</sup>

Down to the more immediate levels of authorization, drones allow commanders to have increased oversight over a missile strike. Drone surveillance and loitering capabilities allow operators and commanders to view the same live video footage. The fact that many drones are piloted remotely from secure bases outside the zone of conflict means that commanders are often able to coordinate in person with the drone operators.<sup>87</sup>

### *External Oversight*

Since 2009, there has been increased Congressional oversight on the CIA's drone program in Pakistan. Members of the Senate Intelligence Committee meet at CIA headquarters in Langley, Virginia, once a month to view footage of drone strikes and examine intelligence reports used to track down and identify potential targets.<sup>88</sup> Committee Vice Chairman Dianne Feinstein has stated, the committee “holds regular briefings and hearings on these operations—reviewing the strikes, examining their effectiveness as a counterterrorism tool, verifying the care taken to avoid deaths to non-combatants and understanding the intelligence collection and analysis that underpins these operations.”<sup>89</sup>

## **Outcomes**

The CIA drone program in Pakistan has been successful in eliminating core individuals in Al Qaida's leadership structure.<sup>90</sup> As a result, the organization's central branch in the FATA region has been weakened and degraded.<sup>91</sup> Al Qaida has been successful, however, in exporting its ideology to countries such as Yemen, Somalia, Egypt, Libya, Nigeria, Syria and Iraq where local militant groups engage in conflicts or launch terrorist attacks under the banner of Al Qaeda. A recent example of this is the January 2015 attacks on the French satirical newspaper Charlie Hebdo by individuals identifying themselves as having been affiliated with Al Qaida in the Arabian Peninsula (AQAP). So while the drone strikes in Pakistan have been highly effective in targeting Al Qaida leadership and numerous operatives, the ideology still remains a potent and attractive force to those wishing to wage indiscriminate violence against civilians both within the Middle East and throughout the western world.

The CIA's drone program has also been successful in disrupting the operations of the TTP and Haqqani Network within North and South Waziristan. The founder of the TTP, Baitullah Mehsud, was killed in an American drone strike in August 2009.<sup>92</sup> Over four years later in November 2013, his successor, Hakimullah Mehsud, was also killed in a CIA drone strike.<sup>93</sup> These drone strikes have not only eliminated the TTP's most senior leadership, but they have also caused internal divisions as members compete for new leadership positions and align themselves with

<sup>83</sup> Ibid

<sup>84</sup> Barrinha, p. 24; see Klaidman—this is who Barrinha cites

<sup>85</sup> Shane, CIA is Disputed on Civilian Death Toll in Drone Strikes

<sup>86</sup> Ibid

<sup>87</sup> Brunstetter, p. 349; Singer, *Wired for War*, p. 349—check out Singer because I got this from Brunstetter

<sup>88</sup> Bergen and Rowland, CNN article; Dilanian, “Congress Zooms in on Drone Killings”

<sup>89</sup> Press release from Feinstein's office, 13 February 2013

<sup>90</sup> Brennan, “U.S. Intelligence in a Transforming World,” *Council on Foreign Relations*, 13 March 2015

<sup>91</sup> McManus, “Are we winning the drone war?” *Los Angeles Times*, 24 April 2015

<sup>92</sup> Johnston, p. 7, he cites Abbas 2014

<sup>93</sup> Craig, “Drone kills Taliban chief Hakimullah Mehsud; Pakistan accuses U.S. of derailing peace talks,” *Washington Post*, 2 November 2013

other jihadist movements such as ISIS. In October 2014, The Guardian reported splits within the TTP as a result of some members pledging allegiance to ISIS in Syria and Iraq.<sup>94</sup> The United States efforts to weaken groups within North and South Waziristan has also been aided by an offensive, Operation Zarb-e-Azb, launched by the Pakistani Army in June 2014. According to one estimate, over 2,700 militants have been killed during the operation which has significantly degraded the TTP and Haqqani Network's hold on North Waziristan.<sup>95</sup>

### *Casualties*

The number of Pakistani civilian casualties that have occurred as a result of American drone strikes is extremely difficult for independent sources to confirm. The strikes often take place in remote regions of Pakistan that remain under the control of various militant groups who prohibit access to outsiders.<sup>96</sup> Al Qaida, TTP and Haqqani members have been known to cordon off the area and even remove the bodies of militants in order to inflate the civilian casualty numbers.<sup>97</sup> Often the only independent sources allowed to visit these scenes are ones willing to report favorably for the militants. The result is media reports that drastically inflate the number of civilians killed which alters the global perception and opinion of the American drone programme. A study carried out by the Associated Press in February 2012 found that drone strikes were 'killing far fewer civilians than many in the country are led to believe by right-wing politicians, clerics and militants themselves.'<sup>98</sup>

One example of the difficulty present in determining civilian casualties after a drone strike is as follows. There was a strike in March 2011 that caused considerable outrage among the Pakistani public and government. It is discussed here because it represents an example of how difficult it is to get accurate figures on the number of civilians and combatants killed. These numbers have become political tools which certain disaffected groups seek to inflate in order to further a political aim. The event in March 2011 involved a drone strike on a jirga, a meeting held amongst tribal leaders to settle a dispute, in Datta Khel, North Waziristan.<sup>99</sup> The attack killed forty-five people, mainly tribesmen but also a few TTP insurgents. The Pakistani Army chief denounced the strike publically saying, "It is highly regrettable that a jirga of peaceful citizens, including elders of the area, was carelessly and callously targeted with complete disregard to human life."<sup>100</sup> American officials, on the other hand, argued that the majority of those killed were militants and TTP insurgents.<sup>101</sup> The absence of reliable and unbiased reports of these drone attacks in remote regions makes it difficult to develop an objective assessment of a given drone strike.<sup>102</sup> It is advantageous for militants in the FATA region to inflate civilian casualty numbers in order to alter public opinion both within and also outside of Pakistan. Furthermore, the Pakistani government, while often expressing support for American drone strikes in private, object to American drone strikes publically in order to capitalize on popular resentment towards drone strikes.

In order to develop an accurate assessment of civilian casualties as a result of drone strikes in Pakistan, this study will provide civilian and militant fatality numbers through September 2015 from three independent reports conducted by the New America Foundation, the Long War Journal and the Bureau of Investigative Journalism.

94 Boone, "Isis ascent in Syria and Iraq weakening Pakistani Taliban," *The Guardian*, 22 October 2014

95 "A Year on, 2,763 militants killed in Operation Zarb-e-Azb: ISPR," *The Express Tribune*, 13 June 2015. Zarb-e-Azb translates to 'strike of the Prophet's sword.'

96 Williams, p. 7; Mazzetti, Mark and Declan Walsh. "Pakistan Says U.S. Drone Strike Killed Taliban Leader."

97 Byman, "Why Drones Work: The Case for Washington's Weapon of Choice," *Foreign Affairs*, July/August 2013

98 "AP's analysis of casualties from U.S. drone strikes in Pakistan: the backstory," *Associated Press*, 28 February 2012

99 Dilanian, "Congress Zooms in on Drone Killings"

100 Ibid

101 Ibid

102 Shane, NYT, "C.I.A. Is Disputed on Civilian Toll in Drone Strikes" 11 August 2011

## *Overall numbers of strikes and fatalities, 2009 - Sept. 2015*

### *Estimated Strikes*

*New America Foundation = 333*

*Long War Journal = 343*

*Bureau of Investigative Journalism = 372*

### *Estimated Total Fatalities*

*New America Foundation = 2,396*

*Long War Journal = 2,414*

*Bureau of Investigative Journalism = 2,085*

### *Estimated Civilian Fatalities*

*New America Foundation = 148*

*Long War Journal = 107*

*Bureau of Investigative Journalism = 256*

### *Estimated Militant Fatalities*

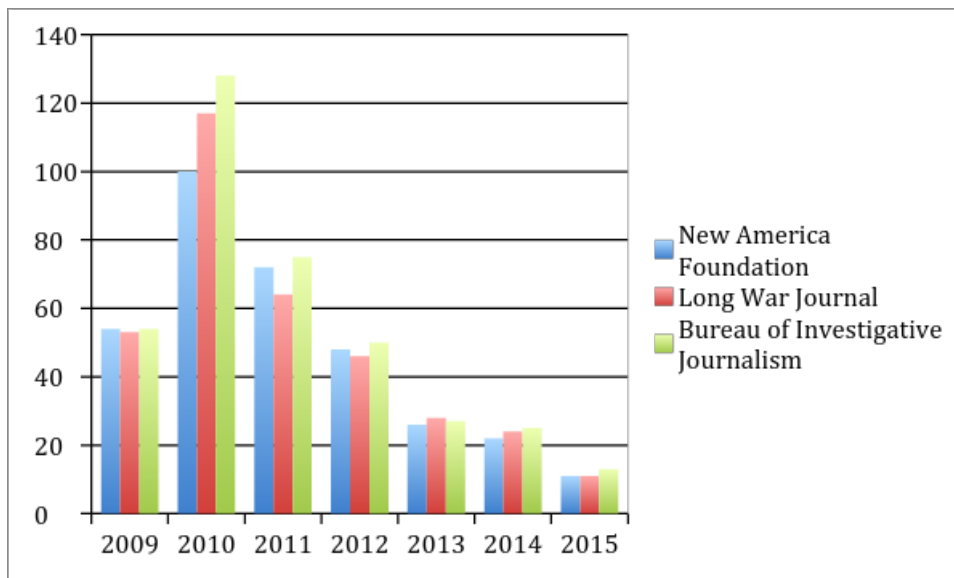
*New America Foundation = 2,248*

*Long War Journal = 2,307*

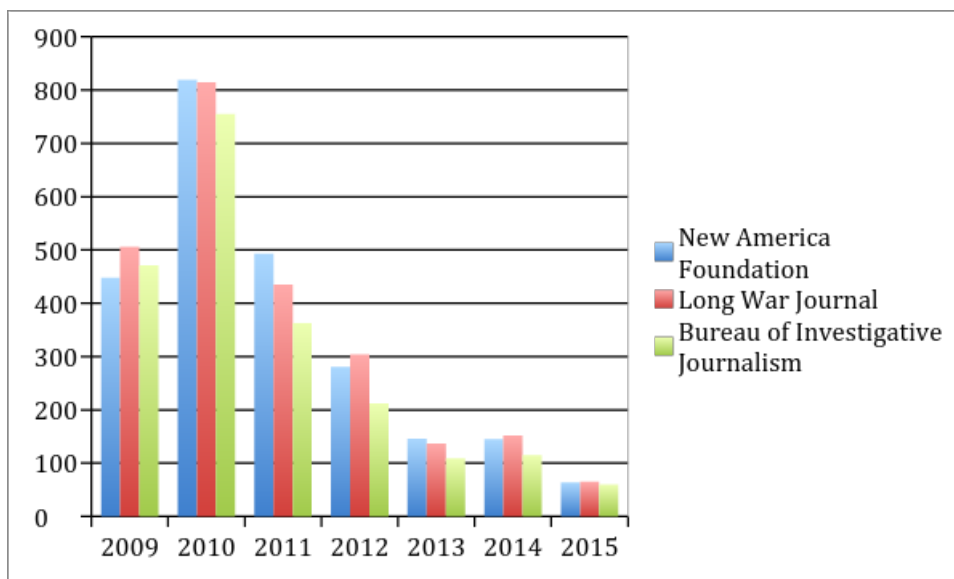
*Bureau of Investigative Journalism = 1,829*

## Yearly Breakdown

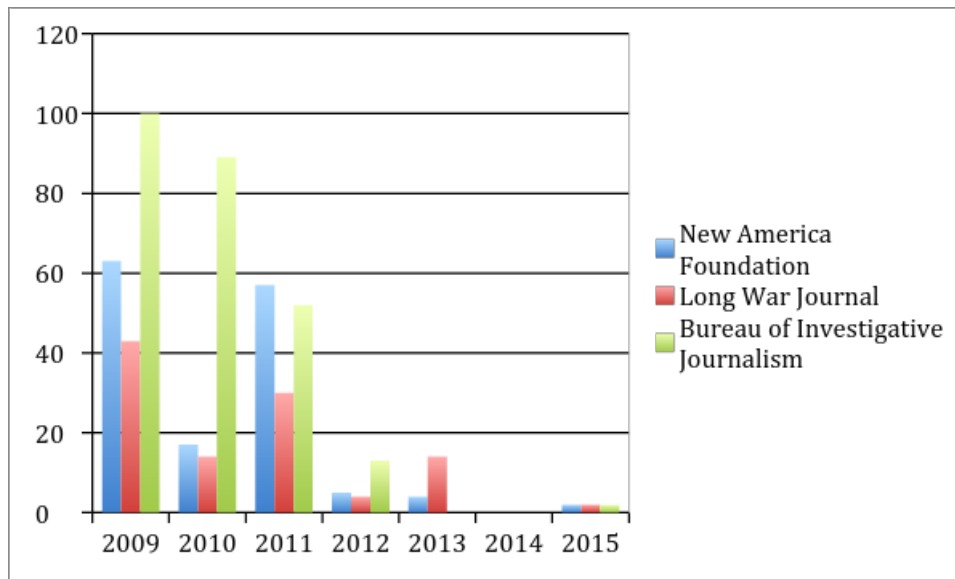
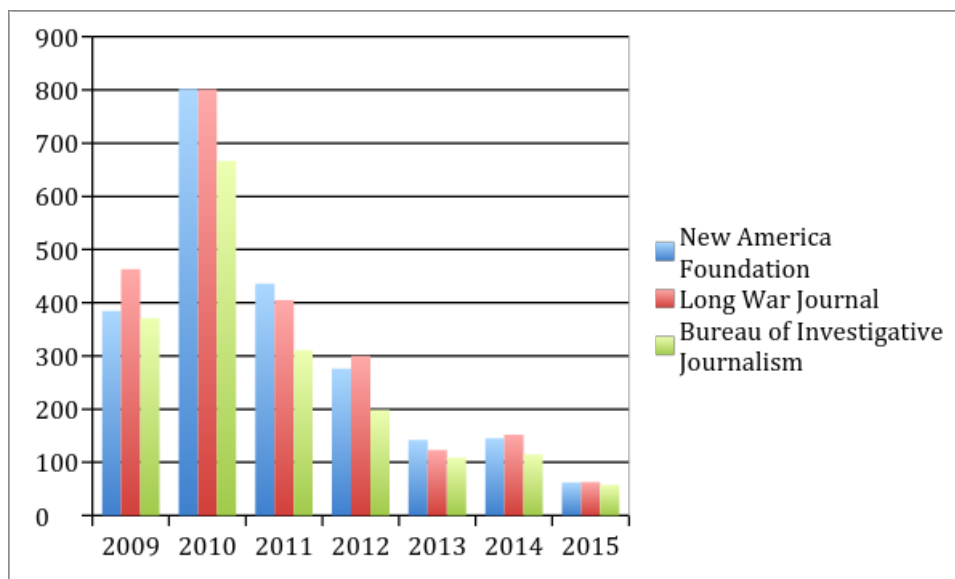
*Number of Strikes, 2009 - Sept. 2015<sup>103</sup>*



*Total Killed, 2009 - Sept. 2015*



<sup>103</sup> Roggio, Bill. "Charting the data for US airstrikes in Pakistan, 2004-2015." *The Long War Journal*; "Drone Wars Pakistan: Analysis." *New America Foundation's Drone Database*; Zenko, p. 13; "CIA drone strikes in Pakistan, 2004 to present," *The Bureau of Investigative Journalism*

*Number of Civilians Killed, 2009 - Sept. 2015**Number of Militants Killed, 2009 - Sept. 2015*

The variation between reports is representative of the difficulty present in determining the total number of casualties after drone strikes in remote locations within the FATA. This data shows that since President Obama inherited the drone program and then increased its frequency—including in 2010 which saw the highest number of drone strikes—the total number of civilians killed and the percentage of civilians killed has seen a gradual decrease. This reduction is due to a number of factors, including the tactic of targeting individuals in vehicles as opposed to in residential compounds; technological advancements in surveillance capability and weapon accuracy; political pressures both at home and abroad as well as the successful elimination of Al Qaida, TTP and Haqqani leaders.

Given the secrecy surrounding the program, the Obama administration has not publically acknowledged when civilians are killed in a drone strike.<sup>104</sup> April 2015 marked the first time the Obama administration announced to the public an instance in which civilians were killed. The civilians were two western hostages—an American named Warren Weinstein and an Italian identified as Giovanni Lo Porto—being held by Al Qaida operatives in a remote safe house along the Afghanistan-Pakistan border.<sup>105</sup> On 23 April 2015, President Obama acknowledged

<sup>104</sup> Shane, "Drones Reveal Uncomfortable Truth"

<sup>105</sup> Lewis, Ackerman and Boone, Guardian article, April 2015



these civilian casualties, apologized to the families and promised to launch a full investigation as well as to provide compensation to the families.<sup>106</sup>

### *Situation today*

The CIA drone campaign in Pakistan is an ongoing operation. According to the New America Foundation, the Long War Journal and the Bureau of Investigative Journalism, there have been at least 11 CIA drone strikes in 2015. Overall, there has been a decrease in the number of drone strikes and the number of civilians killed as a result of drone strikes. Most importantly, the strategy has succeeded in decimating Al Qaida's core leadership in the region and has also weakened both the TTP and the Haqqani Network. Despite these gains, Al Qaida leaders, operatives and affiliates across the world remain a dangerous threat to American and western interests. Moreover, the TTP and Haqqani Network, although significantly weakened by CIA drone strikes and a Pakistani Army offensive, remain popular amongst civilian populations in the FATA and thereby capable of drawing new recruits into their organizations. In sum, the threat has been degraded but not destroyed.

## **Conclusions**

As the evolution of modern warfare has moved from traditional national militaries towards non-state actors concealing themselves within civilian populations, two pillars of IHL—proportionality and discrimination—have become the most important parameters guiding militaries who adhere to IHL. While proportionality seeks to balance the damage inflicted with the anticipated military gains achieved, discrimination attempts to distinguish between combatants and noncombatants in order to avoid unnecessary casualties to the latter.<sup>107</sup> Because of their surveillance capabilities and improvements in missile technology, drones are often more capable of satisfying the principles of discrimination and proportionality.<sup>108</sup>

Despite advanced technology which allows for better proportionality and discrimination, drones, like all military technology that has preceded them, remain imperfect. From time to time, drones will be subject to mechanical and technological malfunctions as well as human error. Given their imperfections, drones still remain one of the most discriminate weapons available to the American military and CIA. With its surveillance, loitering and precision weapons capability, drones allow operators to wait for the most opportune moment in which to strike, thereby eliminating a target while limiting civilian casualties.

The non-state actors such as Al Qaida, the TTP and the Haqqani Network who have relocated to the remote and mountainous regions of Pakistan continue to train for and plan indiscriminate attacks against the United States and its allies overseas. Given the rugged terrain of the FATA and the tactical decision of the enemy to hide amongst the civilian population, the CIA drone campaign allows the U.S. government to continue targeting and disrupting these groups' activities in a manner that significantly limits collateral damage.

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<sup>106</sup> Ibid

<sup>107</sup> Brunstetter, p. 347

<sup>108</sup> Ibid, p. 339

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# **German Contribution to the International Security Assistance Force**

Afghanistan

2009 - 2013

**Ulrich Schlie**

## **Overview**

At the beginning of Germany's military mission in Afghanistan in October 2001, there were no governing institutions worthy of being called such, and the infrastructure of Afghanistan was, to a large extent, destroyed. The Afghans were weary after 25 years of nearly uninterrupted fighting; but they were also – as indicated by the German experience in northern Afghanistan – significantly more receptive to international stabilizing forces as they continue to be. It is against this backdrop that the decision by German military and political leadership was taken to set about building up Afghan security forces; and in 2005, to withdraw significant parts of German security forces from Kabul and deploy them in northern Afghanistan instead. In the northern region, Germany adopted responsibility for Masar-e-Sharif through Regional Command North and undertook measurable support operations in the realms of leadership and command support, air transport, medical services, and logistics, as well as reconnaissance for the contingent deployed there.

One of the unique properties of the developments in Afghanistan is that the line between opposing military forces (OMF) activity and organized criminality is fluid. Set against this backdrop, the events in Ghormach District, Afghanistan, since March 2007 are of overriding importance. The threats in this district as well as the neighboring Murghab district were significant, and gave rise to repeated security-related incidents. The Pashtun Murghab and Gormach Districts were at the time more or less completely under Taliban influence. The OMF groups agitating there were not firmly entrenched, but were considered to pose significant danger with regard to a potential incursion

into Faryab Province, the center of the Afghan drug trade. In Bagdhis Province as well as the border region with Faryab, numerous OMF groups operated, benefited by the difficult economic situation in the region.

In the fall of 2007, the German-led Regional Command North, through the temporally—and spatially—limited ISAF Operation Harekate Yolo II, attempted to slow the worsening of the security situation in Faryab and Badghis Provinces. Since these efforts (Operation Harekate Yolo II and the ensuing Operation Karez) made no noteworthy impact on OMF forces, COMISAF directed on 23 February 2008 that Germany be given “full command and control” of Ghormach District in Badghis Province, which is to say that responsibility for and administration of security and logistical affairs of Faryab provincial authority would be transferred and with it the German sector of RC North would be de facto expanded.

### *Urgency*

The security situation in Kunduz Province, also in the German sector, had significantly worsened in the spring of 2009. Even in the two years prior, there had been a marked uptick in insurgent activities, and from 2009-2011, the Bundeswehr would come under various forms of attack and be compelled to defend itself more than 15 times per month. Generally speaking, air support was requested during these attacks. The elections held on 20 August 2009 led to a further rise in insurgent activity.

### *Intensity*

By May 2009, the German soldiers of PRT Kunduz were engaged in firefights almost daily. The number and intensity of lengthy skirmishes rose steadily. With the escalating situation and evolving tactics, the armament of the German ISAF forces grew apace. Between 24th and 30th of August 2009 alone, ISAF registered 390 security incidents, among them 252 exchanges of fire and combat situations, 86 bomb attacks, 49 instances of indirect fire and three miscellaneous attacks. While 227 of these incidents occurred in RC South and another 140 in RC East, only 15 occurred in RC West, only 6 in RC North, and only two in RC Capital.

## **Afghan Taliban**

### *Ideology and motivation*

The Taliban is an Islamist fundamentalist group that ruled Afghanistan from 1996 – 2001. The group is made up of primarily ethnic Pashtuns (the word ‘taliban’ is Pashto for ‘students’) and was first organized among the mujahideen fighting the Soviets during their occupation of Afghanistan (1979-1989).<sup>1</sup> After the withdrawal of Soviet forces in 1989, a power struggle began among the various mujahideen groups in Afghanistan. By September 1996, the Taliban had first consolidated control over Kandahar Province and then Kabul where President Burhanuddin Rabbani was overthrown.

Once in control of Afghanistan, the Taliban implemented harsh laws based on the Pashtun’s pre-Islamic tribal codes as well as strict interpretations of Sharia law.<sup>2</sup> These practices drew human rights criticism from international bodies such as the United Nations, and the Taliban’s close relationship with Al Qaida triggered international sanctions from 1999. From its inception, the Taliban was primarily focused on domestic as opposed to international issues. But the Al Qaida attacks on 11 September 2001, directed from Afghanistan, directly implicated the Taliban who were harboring Al Qaida members, including their leader Osama Bin Laden, and refused to surrender them.

The core of this resistance faced by German forces consisted of Afghan Taliban led by Mullah Omar, who operated chiefly in Helmand, Kandahar, and Uruzgan Provinces, as well as the Haqqani Network, which operated out of its headquarters in North Waziristan.

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1 Laub, “The Taliban in Afghanistan.” *CFR Background*

2 Laub, “The Taliban in Afghanistan.” *CFR Background*

## *Objectives*

The primary aims of the Taliban in this conflict were to resist ISAF and Afghan forces and eventually overthrow the democratically elected Afghan central government for a second time. If the German areas of responsibility in Northern Afghanistan were initially relatively calm, this would slowly change, particularly after insurgent forces expanded their area of influence into the northern regions of Afghanistan in 2006. This expansion particularly threatened Kunduz Province, which had constituted one of the three main centers of the country during the Taliban regime and it became apparent that the insurgents' goal of bringing ever-increasing portions of the province under their control would have to be assessed as achievable. Among the other unique aspects of this offensive, foreign fighters from Al-Qaeda and other foreign organizations, among whose ranks German and Turkish jihadists stood, had begun to enter the fray on the side of the insurgents.

## *Strategy*

Far from confronting ISAF directly, the Taliban were focused on the survival of their forces. In the eight-plus years that they had been fighting ISAF forces in Afghanistan, Taliban commanders and fighters constantly faced ISAF forces superior in numbers, weapons and training.

## *Rules of Engagement*

The Taliban leadership implemented a set of directives or 'code of conduct' specifying how fighters were to operate on the battlefield and within Afghan communities. The only evidence of this was a rules and regulations booklet dated May 2009 seized by US forces in July 2009.<sup>3</sup> Some of the rules of engagement permit actions in direct violation of International Humanitarian Law and the Geneva Conventions.<sup>4</sup> The report on Afghan civilian protection in 2010 by the UN Assistance Mission in Afghanistan (UNAMA) confirms that the Taliban 'are bound by customary international humanitarian law, Common Article 3 of the 1949 Geneva Conventions and the Second Additional Protocol to the Geneva Conventions.'

Additional reports by UNAMA in 2011 found that although the Taliban spoke of their desire to avoid civilian casualties, this did not translate into substantive improvements or investigations into alleged violations by Taliban commanders.<sup>5</sup> Pressure plated IEDs, for instance, continued to be used by the Taliban that, according to a UN report, disproportionately harmed civilians as opposed to ISAF forces.<sup>6</sup> In addition, Taliban insurgents engaged in systematic intimidation of the local population through threats, beatings and assassinations of residents thought to be complying with coalition forces.

## *Conduct During Conflict*

As a rule, insurgents opened fire first, attacking with suicide bombings, IEDs, or ambushes with handheld anti-tank and unguided missiles, with more and more complex attacks coming as time went on. The attacks were, as a rule, initiated by insurgents, who used their knowledge of terrain and the element of surprise to achieve tactical momentum. The marksmanship of OMF combatants was overwhelmingly poor, but the insurgents did also possess some well-trained marksmen.

<sup>3</sup> Crawford, p. 110, from Dexter Filkins, "'09 Deadliest Year for Afghans, U.N. Says," NYT, 14 January 2010, p. A6; for Taliban publication, see "Afghanistan Islamic Emirate Rules and Regulations for Mujahidin Pashto"

<sup>4</sup> Clark, "Calling the Taliban to Account." *Foreign Policy Magazine*. 6 July 2011.

<sup>5</sup> Ibid, p. 6

<sup>6</sup> Ibid, p. 3



## German Military

### *Objectives, Strategy and Tactics*

The objectives for ISAF deployment of German forces were clearly outlined in the mandate made by the Bundestag: supporting the Afghan government in the preservation of security, cooperating with the ISAF leadership in Afghanistan, securing of the work environment of personnel, ensuring that the efforts of the United Nations, its member states, and international aid organizations are administered in the designated areas for the completion of the transition of power process and continued support for stabilization, self-defense, and, when necessary, evacuation. Additionally, ISAF forces provided support for security sector reform, including disarmament of illegal militias, and contributed to civil-military cooperation.

German participation in the international stabilization mission consisted of the following military capabilities: leadership and leadership support, stabilization, security, protection and, if necessary, evacuation, reconnaissance and surveillance, operational support including transport and transshipment, medical assistance, Medevac, and civil-military cooperation including both humanitarian aid and support duties. Moreover, forces were deployed in the command staffs and headquarters, including as command support staff.

The stated goal of the mission was a full pacification of the country, a durably stable and democratic Afghanistan and – relatedly – self-reliant security. In short: the goal of putting Afghans in a position to take their security into their own hands could only be approximately reached within the operational timespan.

### *Capabilities*

By 2009-2010, the units in combat had at their disposal: G36 as primary weapon, G22 and G82 sniper rifles, G3 assault rifles, MG3 (some mounted) and MG 4 machine guns, anti-tank rockets, grenade machine guns, MILAN and TOW guided anti-tank rockets, Marder IFVs, PzH 2000 armored howitzers, mortars, G28 precision rifles (as of 2012), Tiger support helicopters (as of 2013), as well as close air support through Regional Command North, when requested.

### *Government Oversight*

Since 2005, the participation of German armed forces in armed military operations is regulated by a law stipulating that the objective, area of operations, duration, cost, legal basis, and maximum number of soldiers to be deployed as well as their capabilities must be determined before deployment is authorized.<sup>7</sup> The constitutive approval of the German Bundestag to armed overseas missions can only be rescheduled in exceptional cases. A simple parliamentary majority is sufficient to provide this approval. Additionally, the Bundestag possesses a right to information, and its members are entitled to information about ongoing engagements from the federal government. The Bundestag also possesses a right of inquiry and can revoke its approval for an engagement at any time.

The decisive factor in the comprehensive involvement of the Bundeswehr in combat operations, the adoption of active tactics on the engagement level, and the use of military force by and through the German ISAF operational contingent was the legally binding determination by the German federal government that the ISAF plan of operations, the Rules of Engagement attached to it, the documents that built upon said rules like the Standing Operating Procedures and Tactical Directives were in full agreement with international law. The international legal room for maneuver afforded by this determination could then be used to its fullest extent in carrying out joint operations through the ISAF. The participation of German forces in the NATO targeting process was therefore unimpeded, as it followed from the relevant ISAF-ROE and was considerate of both relevant national as well as NATO command and directive contexts.

### *Rules of Engagement*

The COMISAF decision to prioritize protection of noncombatant civilians during field operations, which it articulated in the Tactical Directive of 6 July 2009, the Tactical Driving Guidance of 10 August 2009, the Counter

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<sup>7</sup> Parliamentary Participation Act (2005).

Insurgency Training Guidance of November 2009 and the Night Raids Technical Directive of 17 February 2010, was unreservedly supported by Germany. It has been Germany's view from the very beginning that without support for the Afghan population, the ISAF-mission was unachievable on a political, strategic, and military level.

The 6 July 2009 Tactical Directive's specifications for Battlefield Damage Assessment, cooperation with Afghan security forces, operations in civilian environments, minimization of civilian casualties, the prohibition of close air support and indirect fire in occupied areas, as well as procedure for response to security incidents was greeted warmly by Germany. The specifications in the Counterinsurgency Training Guidance on escalation of force, use of close air support, intercultural competency, and on the practice of partnering and civilian-military cooperation completely corresponded to the German view as it had been expressed by German military leaders in ISAF staff meetings. It was as a consequence of this stance that the reference card on the use of military force carried by each German soldier was modified in order to fully encompass the ISAF regulations.<sup>8</sup> The reference card, on which are written regulations by the Federal Ministry of Defense for German soldiers in the field, concerned itself chiefly on the tactical/military level, and spelled out the rules binding the use of force in the ISAF OPLAN and its ROEs for German soldiers. The alignment of the reference card to ISAF regulations allowed German soldiers to exercise the full spectrum of military force in the context of their general objective.

Other than what the German Afghanistan mandate calls "limitation," (Einschränkung) – restriction of the area of operations, deployment of German Recce-Tornado aircraft for reconnaissance purposes only, except in cases of self-defense or emergency rescue, only providing supporting efforts in counter-narcotic efforts – Germany has not declared any additional restrictions with regard to the OPLAN and has made no further alterations to its ROE, particularly concerning Rules of Engagement 421-429, which even permit offensive action against OMF targets.

### *Outreach to the Population*

In the German area of operations, with the perspective that long term stabilization of Afghanistan is only achievable through the civil sector, the decision was quickly made to prioritize protection of the Afghan population, training the Afghan security forces, and the securing of civil reconstruction through education, economic growth and employment opportunities, and the construction of reliable political and military administrative institutions. Operational Mentoring and Liaison Teams were established for the buildup of the Afghan National Army (ANA). These teams had the significant task of supporting ANA units in training and in the field through the establishment of training facilities as well as training for Afghan officers in Germany.

On the strategic level, Germany set about unifying the early experiences of then uncoordinated parallel military and civilian stabilization missions. It is therefore chiefly thanks to the initiative of German Defense Minister Jung during the 2007 NATO Defense Ministers' meeting in Noordwijk that the NATO summit in Bucharest in the spring of 2008 adopted an Afghanistan strategy that clearly articulated the comprehensive approach where civil and military elements are highly interrelated.<sup>9</sup>

### *Conduct During Conflict*

Prior to 2009, the German response to enemy attack was chiefly concerned with self-preservation – that is, to pin the enemy down and disengage. After 2009, the focus was instead shifted to the goals of regaining the initiative, engaging and neutralizing the enemy, and achieving fire superiority. At closer ranges, it often became necessary to resort to fully-automatic fire to repel enemy attacks – often several times per engagement – in lieu of the standard double tap. These skirmishes could last from minutes to multiple days, the ranges varying from 800 meters to only

<sup>8</sup> Taschenkarte 2009.

<sup>9</sup> The initiative led by Minister Jung led to an agreement at the informal meeting of NATO defense ministers in Noordwijk on the 24<sup>th</sup> and 25<sup>th</sup> of October, 2007 which articulated an "international comprehensive politico-military approach" in which the later strategic realignment of the Treaty Organization toward its "comprehensive approach" finds its origins. See also the April 3, 2008 document "ISAF's Strategic Vision. Declaration by the Heads of State and Government of the Nations contributing to the UN-mandated NATO-led International Security Assistance Force (ISAF) in Afghanistan," which was signed by the aforementioned heads of government and state at the NATO summit in Bucharest.

5, with many exchanges of fire occurring at ranges upwards of 200 meters. For operations outside of their camps, soldiers had to constantly remain calm and vigilant in the event of IED attacks or rocket fire.

The following examples may help illustrate the engagements in which German soldiers found themselves:

- » On 29 April 2009, a German infantry unit northwest of Kunduz was ambushed, and in the ensuing engagement, a German soldier was killed in action in Afghanistan for the first time. That same day, five other German soldiers were severely wounded in a suicide attack on a convoy.
- » On 15 June 2009, German forces came under fire, requested, and received close air support.
- » On 4 June 2009, several platoons of Quick Reaction Force III were involved in an engagement west of Kunduz along the main street to the northwest of the police station in Chahar Darah. A suicide bomber near the town of Basoz attacked a scouting force who succeeded, after coming under enemy fire, in breaking out of the ambush, adopting new positions, and from these new positions held off the reinforcing insurgent forces. Control over Chahar Darah had been contested between ISAF forces and insurgents for several weeks. The German regional commanding officer was able to prevent the destruction of the scouting force by freeing up reinforcements, holding the positions taken by the scouting force, and defeating reinforcing enemy forces. With characteristic ruthlessness and brutality, the Taliban forced civilians out of their homes to allow their engaged forces to withdraw, after heavy casualties, into house-to-house fighting.
- » On 15 June 2009, German forces came under attack and then requested and deployed air support.
- » On 2 April 2010, multiple German soldiers were killed in an hour-long firefight and subsequent IED attack in the heaviest fighting in which German soldiers have been involved since the end of the Second World War. The thick forest and network of canals in and around the hotspot of Chahar Darreh proved to be useful for Taliban ambushes.
- » In the combat operations of 6 October 2010, two German soldiers were wounded and one Marder IFV was rendered temporarily immobile in an attack by irregular forces armed with small arms.
- » In a suicide attack on German forces on 7 October 2010 in Bahglan Province, one of the seven German soldiers present was wounded. It was not until close air support in the form of a 500-pound bomb and two Hellfire missiles arrived that the ensuing OMF attack could be repulsed. In the process, two civilians were killed by collateral damage.

## Outcomes

The process of reconstructing Afghanistan was able to make substantial advances thanks to German support. Because of German support efforts in northern Afghanistan, emergency response services were carried out, economic and social infrastructure was restored, and the capabilities of government and nongovernmental institutions were reinforced on a significant scale.

Among the key insights that the Afghanistan experience has provided the German armed forces is the recognition of the limited timespan that intervening states have at their disposal to achieve even minimal levels of stability in the objective country. To this end, military strength in the early phases of stabilization efforts is an indispensable prerequisite.

With regard to the construction of Afghan security forces, the German Bundeswehr and its partners can point to marked successes: the security forces have – despite enduring deficits in various areas – grown to a total force of 350,000 and have, as the federal government's Progress Reports on Afghanistan repeatedly emphasize, “become, to a large extent, an independent and capable actor.”<sup>10</sup>

The construction of functional and reliable local security forces represents – as the Afghanistan mission has demonstrated – the first step on the path of (re-)establishment of durable state institutions. Trust-building measures and clear communication with the Afghan public are necessary conditions for success. Stabilization missions can then only be mastered when conceived as full-state enterprises in which the individual contributions of each department are determined by the specific and concrete requirements of their respective missions and the full spectrum of the international community is utilized.<sup>11</sup> The significant challenge to this approach is finding the correct relationship between military and non-military means of pursuing this objective.

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# The Mexican Military and the Operation to Capture Ignacio "Nacho" Coronel Villarreal

29 July 2010

**Minister Francisco Javier Soberano Miranda**  
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## Background

The Mexican Army has been the main tool of the Mexican state against drug trafficking since the 1950s. Under President Adolfo Ruiz Cortines, the Army began carrying out missions in the state of Sinaloa where the municipal police corps had comparatively low operational capacity and reactive ability due to their deficient teaching, training and low firepower.<sup>1</sup>

It was in the 1980s when the economic and organizational capabilities, territorial range and overall firepower of drug cartels increased considerably that a larger utilization of the Army was needed in eradication, confiscation, destruction and counterdrug efforts. As the problem continued and even expanded in the 1990s, it became necessary to include the Mexican Navy (SEMAR) in the fight against the drug trade, not only in territorial waters but also in large inland areas of the country.

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<sup>1</sup> Borjón Nieto José Nieto 2008: 23-24; *La Jornada*. March 28, 2010. Printed version, pp. 5; Islas, Laura Unión Jalisco, November 27, 2015. Digital version.



In the late 1990s, the high involvement of federal forces in the fight against drug cartels proved politically difficult to sustain due to human rights issues. As a result, the Federal Preventive Police (PFP) was established in 1998 as the civil arm of the federal government against organized crime. However, recruiting and training the necessary number of PFP officers took a significant period of time. It was not until 2006 that the institution was decisively propelled to become what it is today: a police corps with more than 41,000 officers with broad capabilities in logistics, deployment and firepower.<sup>2</sup>

The attacks against the Twin Towers in New York in September 2001 had a significant effect on the drug trafficking map in Mexico, due to increased vigilance on the southern border of the United States and the priority of the drug trade on the bilateral agenda between Mexico and the United States. Many drug shipments from South America that had usually passed into the U.S. began to remain in the hands of cartels on the Mexican side of the border. Selling these drugs in Mexico was the only way around this supply problem, and each year the sale of drugs to local citizens transformed Mexico from a country of transit to a country of growing consumption. This sparked a turf war for drug markets among Mexican cartels which resulted in clashes between rival gangs as well as violence against federal forces and the Mexican public. Other manifestations of the new situation included the intensification of drug retail sales, higher penetration of the municipal police and the heightened participation of women in organized crime activities.

The Mexican states bordering the United States were the first to feel the change: Baja California with the Tijuana cartel, Chihuahua with the Juarez cartel, Tamaulipas and Coahuila with the Cartel del Golfo and Los Zetas, etc. From 2006 on, it became clear that Mexico's southern states such as Michoacan, Guerrero and Veracruz were heavily contaminated by the expansion of drug trafficking; the overflow of violence; and the ability of the cartels—such as La Familia Michoacana, Los Caballeros Templarios, Los Zetas and El Pacífico—to control large extensions of territory and to subjugate local populations and authorities to the designs and interests of the drug lords.

The key consequences of territorial control by cartels are the infiltration of municipal police corps, voluntary or forced cooptation of mayors, extortion, protection rackets to companies and the performance of government functions such as intelligence data collection and public safety services via their armed groups. Added to these negative effects is perhaps the most shocking statistic: the infighting among cartels increased homicides to more than 121,000. From 2006 to 2012, there was one person killed nearly every 30 minutes (INEGI).<sup>3</sup> These alarming numbers and the consolidation of large areas of the country by the cartels led to the campaign against organized crime by federal forces.

The immediate strategy followed by the government of President Felipe Calderón Hinojosa from 2006 to 2012 was to reduce the organizational capacity, firepower and economic strength of the cartels by imprisoning their leaders, increasing seizures of drugs and weapons, and extraditing those who were requested by foreign governments, mainly the United States.

## Mexican Cartels

### *Ideology, Motivation and Objectives*

Criminal organizations in Mexico do not espouse any political, religious, ethnic or racial ideology; however, their origins or roots can be traced back to isolated areas with high rates of poverty and marginalization, where people have limited opportunities to carve out a decent future for their families. The drug cartels are organizations mainly pursuing a purely economic objective. The only organization which initially sought some kind of indoctrination for its members was La Familia Michoacana. The cartel's teachings were to promote unity and communication among its members and to expand these principles all aspects, especially the criminal, since they thought that ethical and

2 Public statement by Monte Alejandro Rubido García, Head of the National Security Commission, at the end of 14<sup>th</sup> MexSec Forum, Cancun, Quintana Roo, November 12, 2014. *Excelsior*. Digital version.

3 INEGI, Press Release 276/15, July 20, 2015. Information contained in Bulletin N° 288. July 30, 2013. News Desk, *Más de 121 mil muertos, el saldo de la narcoguerra de Calderón*. INEGI, *Revista Proceso*, July 30, 2013. Digital version.

moral principles were part of organized crime. The case of La Familia Michoacana is the exception rather than the rule.

Criminal groups do not seek direct confrontation with federal armed forces since their organization, training and military capabilities are fewer than those of the Army and the Navy of Mexico. The main drug traffic organizations seek to maximize their economic goals and gain control of production territories, routes and points of access to drug markets.

The Cartel del Pacífico or the Cartel de Sinaloa, under the leadership of Joaquín El “Chapo” Guzmán Loera, has characteristically avoided direct confrontation with federal forces, concentrating mainly on the flow of drugs into the United States, Europe and Asia. The cartel’s operation is more businesslike, unlike other violent organizations such as Los Zetas and the Cartel del Golfo, which have diversified their activities to include kidnapping, extortion and protection rackets. The Cartel del Pacífico has the closest resemblance to the structure of a transnational corporation.

### *Relation to Population*

The Cartel del Pacífico has managed to find grassroots support among the population within their regions of origin or in their areas of greatest influence, for example, the municipalities of Navolato and Badiraguato in Sinaloa or the Golden Triangle region—on the border of the states of Sinaloa, Durango, and Chihuahua—where the cartel helps provide healthcare, street paving and other related activities. Additionally, the cartel is one of the few sources of employment and economic development in the area, a fact which allows it to gain the support of large swaths of the population. The level of penetration among residents of large urban centers is non-existent; however, in small towns with populations under 50,000 inhabitants and rural areas near major population centers, the cartel obtains the cooperation of the population through coercion and intimidation.

The populations of Mexico’s remote areas are less receptive to the presence of federal forces for the aforementioned reasons; however, it is not the same in places with populations over 50,000 inhabitants who are under the influence of organized crime.<sup>4</sup> These citizens are tired of suffering the consequences of insecurity and helplessness due to the absence of an authority that can protect them and one that they can trust, given the likelihood that some local and state police are cooperating with organized crime. Nonetheless, in the case of Tamaulipas, criminal groups control larger populations. For example, the cartel’s presence in Nuevo Laredo, a city with more than 375,000 inhabitants, has been widespread and permanent in the state, so the organization has achieved some public support.

The lack of trust in local authorities is one reason why, when the Army or the Navy arrives to these towns, the citizens feel that these forces bring relief to their plight. Something similar happens when these citizens experience crime—they do not report it to local authorities. They resort instead to calling federal government telephone services or report such crimes directly to the Army or the Navy. This explains why in some states, the crime rate reported by state governments regarding offenses such as kidnapping or extortion is zero, whereas federal reports of similar crimes are much higher because as a result of the population’s desire to report these incidents to federal forces as opposed to state authorities.

### *Strategy*

Criminal organizations have set up highly efficient intelligence networks through so-called Halcones (Hawks), dedicated to collecting information and monitoring targets in areas of interest for cartels. They have also infiltrated municipal and state police corps while at the same time updating their own intelligence systems with routine and instant information.

Political protection networks have also become a resource to achieve their criminal objectives. In some states such as Michoacan and Guerrero, these networks have been directly involved in the outcome of municipal and state elections. The Cartel del Pacífico is the organization taking this approach with lower violence rates. Most recently, during the pursuit of “Chapo” Guzmán by Mexico’s Navy, Ricardo Ochoa Beltrán—mayor of Tamazula, Durango, (2013-2016) and Chapo’s brother in law—intensified his protests against the Navy’s actions in the Golden Triangle during the recapture operation. A similar case involves Lucero Guadalupe Sánchez López, a state congresswoman

<sup>4</sup> Estimates based on personal experience.

for Sinaloa, who, without any previous political experience, was elected to the legislative office because of her alleged love affair with the leader of the Cartel del Pacífico. The Mexican drug cartels have also penetrated the structures of local government and public safety institutions in their regions of influence in order to control territory and trafficking routes, in addition to gaining protection against federal operations.

The cartel's schemes of recruitment, training and operation are based primarily on family ties and trusted individuals at higher levels within the organization. In addition to these familial bonds, coercion and threats ensure discipline and loyalty to the organization at its lower levels. Organized crime does not have formal training, skill-building and indoctrination schemes. That is, they do not have operating manuals, written procedures or professional coaches in physical, psychological or operational training. However, training camps have been discovered in the states of Tamaulipas and Nuevo Leon, among others. Such organization and training are common with all the known cartels in Mexico, except in the Cartel del Golfo, which in its heyday, recruited and formed an armed wing called Los Zetas to protect its leaders and later to confront and eliminate its enemies.<sup>5</sup>

### *Conduct and Capabilities*

According to research conducted by the Bureau for Alcohol, Tobacco, Firearms and Explosives (ATF), the weapons most often used by Mexican crime organizations are typically imported from the United States.<sup>6</sup> Over 70 percent came from the U.S. from 1 January 2009 to 31 December 2014: More than 52 percent were manufactured in the U.S.; and of the rest, 70 percent were imported from third countries into the U.S. while almost 30 percent have no clear origin. In 2014, nearly 46 percent of the weapons smuggled into Mexico were automatic pistols and 31 percent were assault rifles. Such imports have given Mexican cartels strong firepower, allowing them to greatly exceed municipal forces, deal successfully with state police and put up a strong fight against federal forces when such confrontation becomes inevitable.

The members of these organizations lack physical, psychological, and operational training, which poses risks for civilians. When cartel members confront armed forces or rival gangs, many fire their assault weapons without control, causing casualties among the civilian population and within their own ranks. It is worth noting that many cartel members, particularly those involved in combat with police or military forces, are addicted to drugs, making their behavior more erratic and their concern for civilian more absent. When cartel members deem it necessary, they use civilians as a means of physical protection or mix with the population to elude Army or Navy attacks. In the same vein, they use public infrastructure and private facilities for shelter during attacks by federal forces and resort to vehicle and private property theft in areas under their control.

The Cartel del Pacífico avoids confrontation with the Army and Navy, as aforementioned; however, the cartel does not exhibit the same behavior when it comes to protecting its territory and interests because it then resorts to direct and ruthless confrontation with its enemies by catching, torturing, murdering and butchering them in order to intimidate, punish affronts and collect outstanding debts.

The logistics required to hold control of the territories in which they operate requires that they move in caravans of ten trucks with up to forty gunmen armed with assault rifles, machine guns and handguns. The use of caravans is limited to rural areas and small towns where they have strong presence. Their behavior changes slightly in cities and metropolitan areas, where they seek to go unnoticed in luxury vehicles and with a reduced number of escorts, confident in their networks of police and political protection.

According to figures from the Secretariat of National Defense of Mexico (SEDENA), between January 2005 and December 2014, the Mexican Army seized 13,000 grenades and 147,041 weapons in the past 10 years, averaging forty pieces daily.<sup>7</sup> The amount of cartridges seized would have been enough for each weapon to fire 105 shots. SEDENA also revealed that the firepower of organized crime has increased considerably, as the proportion of assault rifles and handguns has grown from 47 percent in 2006 to 67 percent in 2014. Typically, the weapons used

<sup>5</sup> Early on, *Los Zetas* were deserters from the Mexican Army Special Forces and Guatemala's former *Kaibiles*.

<sup>6</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, DOJ, *Mexico Report*, USA, May 2015

<sup>7</sup> Angel, Arturo: "With the arsenal seized to the drug lords in 10 years, one could arm the Federal Police and the Navy." *Animal Político*, April 15, 2015. Digital version.

by the Cartel del Pacífico include: AR-15, AK-47, MI-16, .50-caliber Barrett rifles, 9 mm. pistols, .38-caliber guns and fragmentation grenades.

Until the day of his death on July 29, 2010, Ignacio “Nacho” Coronel was the right hand of El “Chapo” Guzmán, leader of the Sinaloa Cartel since the 1990s and the main drug lord in Mexico. This cartel kept its presence steadily in 20 states of the Mexican Republic from 2006 to 2012 when the most intense struggle against drug trafficking in the country took place.

## Mexican Military<sup>8</sup>

### *Objectives, Strategy and Tactics*

The Mexican military's mission is to organize, manage and prepare the Mexican Army and Air Force so that these forces are able to uphold the integrity, independence and sovereignty of the nation. The military's objectives are in accordance with the Organic Law of the Mexican Army and Air Force:

Article 1. The Mexican Army and Air Force are permanent armed forces and have the following general missions:

- 1) *Defend the integrity, independence, and sovereignty of the nation;*
- 2) *Ensure homeland security;*
- 3) *Assist the civilian population in case of public needs;*
- 4) *Carry out civic and social works aimed at the progress of the country; and*
- 5) *In case of disaster, provide help to keep public order, offer assistance to people and their property, and reconstruct the affected areas.*

The main strategy of the Mexican Army and Air Force is to ensure the state's presence at all times throughout the national territory, even in the most inaccessible places such as mountains, deserts and national forests. They do so through strategic and tactical deployment with highly educated, qualified and trained personnel with a strong vocation of service to the country.

The increased momentum in the fight against drug trafficking since 2007 has forced the federal government to improve the working conditions of the troops, including an increase of nearly 120 percent in salaries and social benefits for soldiers and their families.<sup>9</sup> Education benefits include housing loans, scholarships for their children and lifetime scholarships for the families of those killed in combat. There was also improvement in equipment, training and exchange of information and intelligence, mainly with the United States. In this regard, the U.S. launched the Mérida Initiative, through which the U.S. Congress has appropriated more than \$2.3 billion dollars to Mexico. Approximately \$1.4 billion<sup>10</sup> has been delivered in equipment and training, thus addressing the four pillars of the program: to affect the operational capacity of organized crime, to institutionalize the ability to further the rule of law, create the structure of a twenty-first-century border and to build strong and resilient communities.

The Manual on the Use of Force Applicable to All Three Armed Forces sets the operating framework and the rules of engagement for Mexico's Army, Air Force and Navy.<sup>11</sup> The operation to arrest Nacho Coronel is an example of how the Army strictly adheres to the Manual before, during and after a particular mission. The Manual establishes the rules of engagement, ensures the protection of civilians and escalates the use of force according to the attacks of enemy forces. This Manual does not recognize the existence of non-state groups in the country, although the Cartel del Pacífico's characteristics and circumstances could match such a description. Nonetheless, the Manual only lists drug trafficking organizations as organized crime groups.

Chapter One of the Manual defines the concepts and principles on the use of force and establishes resistance levels for the use of force. Chapter Two refers to the circumstances in which the use of force is appropriate as well

<sup>8</sup> Retrieved from: <http://www.gob.mx/sedena/que-hacemos>. February 03, 2016.

<sup>9</sup> Calderon, Felipe. *Government Report N° 6*, pp. 82. Retrieved from website. February 3, 2016.

<sup>10</sup> The Mérida Initiative. Retrieved from website. February 3, 2016.

<sup>11</sup> *Manual on the Use of Force Applicable to All Three Armed Forces*. Retrieved from website. February 3, 2016.

as the weapons and mechanisms to be used. Chapter Three defines the measures to reduce possible damage to third parties (in this case civilians). Chapter Four introduces identification protocols and methods of deterrence and persuasion. Chapter Five describes the liabilities for the misuse of force. The Manual ends with an annex that includes national and international legal frameworks for the legitimate use of force.

The first chapter contains detailed requirements to establish the lawful use of force by federal forces. They are as follows: there must be an attack; it must be real, current, and imminent; there must be a real need for defense and the defender should not provoke the offensive. As for the principles of the use of force, the Manual recommends the application of opportunity, proportionality, rationality and legality. Resistance levels are classified as non-aggressive, aggressive and severely aggressive. It calls for the application of four levels of the use of force: deterrence, persuasion, non-lethal force and lethal force.

The second chapter lists the circumstances necessary for the use of force: in support of civil authorities, to counter resistance, to prevent crimes, to protect against aggression to legal assets, in self-defense and to control a person in the act of committing a crime. Depending on the circumstances, blunt instruments, firearms and other improvised weapons can be used.

The third chapter lists the measures that federal forces use to reduce damage to third parties: Training for enlisted personnel, designated activities for their unit commanders, as well as general aspects, such as measures to be taken before, during and after an attack. The fourth chapter establishes that for identification purposes, all personnel must wear uniforms, hold identification and carry weapons according to rank. Equipment and vehicles must also display proper labeling and be color-coded. When acting in support of civil authorities, military personnel must make sure that they are correctly identified.

Among the recommended measures for deterrence are: patrols, establishment of checkpoints, permanent operations, security task forces or outposts, etc. The methods of persuasion include informing the people present about the reason for the presence of military personnel, compelling them to cease aggression, warning them about the use of force and intensively using recording material. All of this is done out of respect for and adherence to human rights.

The fifth chapter defines the responsibilities incurred by the enlisted personnel, the obligations of commanding officers and the duties of all staff. It concludes with an annex listing, among others, the national and international legal frameworks and the Constitution of the United Mexican States, the Organic Law of Mexico's Navy, the Organic Law of Mexico's Army and Air Force and United Nations Resolution 34/169.

## *Capabilities*

The Mexican Army and Air Force have more than 212,000 troops for their daily operations.<sup>12</sup> Their most frequently-used weapons in their struggle against drug trafficking are mainly MP5 submachine guns (9 mm caliber), M4 carbines (5.56 mm caliber), M16 rifles (5.56 mm caliber) with M203 PI grenade launcher attachments, HK P7 M13 guns (9 mm caliber), .308 Remington rifles, Mossberg 12-gauge pump-action shotguns, MINIMI light machine gun (5.56 mm caliber), 40 mm MGL multiple grenade launchers, .50-caliber Barrett rifles with telescopic sight, FX-05 assault rifles (5.56 mm caliber), G3 automatic rifles with retractable stock (7.62 mm caliber), Blindicide rocket launchers and MK19 machine guns (40 mm caliber).

## *Conduct During Operation*

Nacho Coronel's death occurred during an operation of the Mexican Army in Zapopan, Jalisco, a municipality in Guadalajara's metropolitan area with a population of over 4.4 million and the capital of one of Mexico's most developed states.<sup>13</sup> It happened specifically at Paseo de los Parques 3435, Colinas de San Javier, an upper class residential area founded nearly fifty years ago and home to some 700 families.<sup>14</sup>

This capo characteristically operated in a low-profile manner and would only be accompanied by his deputy, Irán Francisco Quiñones Gastelum, who was his most trusted person. According to the structure of the Cartel

12 Calderon, Felipe. *Government Report N° 6*, pp. 82. Retrieved from website. February 3, 2016.

13 Retrieved from: <http://www.jalisco.gob.mx/es/jalisco/guadalajara>. February 7, 2016.

14 News Desk. *Así vivía Nacho Coronel. Revista Proceso*. Retrieved from <http://www.proceso.com.mx/102572/asi-vivia-nacho-coronel>. January 20, 2016



del Pacífico, the states under his command were Jalisco, Colima and Nayarit; and he answered for much of the methamphetamine trade towards the United States.

The operation to capture Nacho Coronel was carried out by 150 soldiers, two helicopters and several military armored personnel carriers. The operation was authorized by the General Staff of the National Defense, which is a part of the Secretariat of National Defense, specifically in Section III – Operations. For this type of operation, air support by two helicopters—or similar aircraft—is authorized by the Secretary of Defense. An officer with the rank of colonel was in command of this operation at all times. More specifically, he was there in person at all times and was commanding through national security RF communications.

The colonel in command of the operation has the responsibility of giving all the precise and categorical instructions to the forces on the field, choosing all the weaponry and level of response, setting the tactics and possible courses of action, and maintaining and overseeing the discipline and performance of the forces.

This operation was conducted following the Manual aforementioned. It was carried out without giving notice to local authorities (city and state) in order to prevent information leaks. Enough forces were mobilized to cordon off an area of five streets surrounding the target. Soldiers restricted access to vehicles and pedestrians in order to protect the civilian population and avoid collateral damage. Air support was mobilized to help the ground forces, and the elements around the safe house were secured based on intelligence gained prior to the operation.

Once surrounded and taken by surprise, the three occupants of the safe house attempted to escape by breaking a window and running to the garden of the house. The capo's deputy and the physiotherapist surrendered without resistance in the courtyard of the house; however, Nacho Coronel returned to the house to confront the military forces, killing one and wounding another. It was not until the forces saw his genuine and imminent aggression that they responded with lethal and proportional force in self-defense, as the Manual instructs. They killed Nacho Coronel with a Mossberg 12-gauge pump-action shotgun, which is officially listed among the Army's weapons. In the aftermath of the assault, they followed the steps to preserve the scene, monitored the chain of custody and informed the Attorney General's Office to coordinate further investigation. To defend himself, Nacho Coronel used a 5.56-caliber M16 assault rifle to kill a soldier and wound another. In the area of operations, soldiers also found a Colt .38 gun, an AR-15 rifle, seven other rifles and eight pistols, along with fifty magazines for rifles and several cartridges.

### *Investigations*

In the absence of any suspected illegal actions on the part of the Mexican soldiers during the operation, there were no military investigations launched in the immediate aftermath of the operation. In the end, the follow-up investigation and legal proceedings of the case were left in the hands of Mexico's Attorney General for submission of evidence and conclusions.



## Outcomes

The fight against drug trafficking in Mexico is not limited to an environment of war, primarily because it is not a war in itself. Moreover, due to the purely economic nature of the Cartel del Pacífico, Mexican security forces are actually facing a criminal organization that considers the struggle against other cartels and federal forces as part of the operating cost to keep its business running. As a result, it does not seek a formal cessation of hostilities, a ceasefire or the intervention of international organizations.

The operation against Nacho Coronel in Zapopan, Jalisco, was carried out according to Mexico's civil and military standards and was successful in neutralizing one of the most powerful drug lords in the world. The application of the use of force according to the Manual avoided civilian casualties and managed the capture of the individuals who surrendered to the authorities. The speedy result also avoided inflicting major damage to public and private infrastructure in the area as well as repercussions in the medium and long term. Thus the short and long-term objectives of the armed forces were met with the neutralization of an important drug trafficking leader in the country. As one can see, the Manual sets the operating framework of action for federal forces in their daily operations, allowing them to fulfill their military missions—especially in the fight against drug trafficking and organized crime groups—while strictly adhering to Mexico's rule of law and international law.

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## ANNEX A

# **Methodology for Examining Military Norms and Conduct During Armed Conflicts in Populated Areas**

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## Introduction

Since the end of WWII, the world has witnessed the decline of total conventional wars between states and the rise of various types of asymmetric conflicts between states and non-state actors.

There are many implications to this transition, but among the more significant is the growing involvement of civilians in active hostilities. As civilians become more involved, directly or indirectly, in combat operations, new and enhanced challenges emerge as to how to balance military necessity with humanitarian concerns.

I have been approached by the FOII with the request to join an effort of drafting a report that examines several armed conflicts around the world, including Israel's most recent operation in Gaza (Operation 'Protective Edge'). The evaluation is intended to focus on how humanitarian considerations are taken into account by different militaries in various combat theaters.

As far as I know, to date, no such empirical or qualitative comparative research has ever been done. As a result, no generally accepted research methodology is readily available.

A sound methodology is necessary to ensure that all the cases in the evaluation set are being examined and evaluated using the same criteria and under the same guidelines. Otherwise, we would be comparing 'apples to oranges'. Developing a methodology also means coming up with a system that will integrate all the relevant parameters, converting data into measurable figures and analyzing them in a way that will yield translatable results.

This, I believe, will help in creating a liable report that will be viewed as such by a broad audience.

I have undertaken the task of developing and offering a methodology with the assistance of a multi-disciplinary team of experts, hand-picked by me.

The methodology we have developed is intended specifically for the FOII project; however it is versatile and generic enough to be used in other cases and projects.

### *Scope and Definitions*

The comparative research shall focus on the conduct of hostilities in the course of defined battles or clashes that rise to the level of armed conflicts. The relevant armed conflicts are those that take place between one or more states on one side, and one or more non-state actors on the other side. They must meet a certain level of intensity, continue for at least one week, and implicate civilian populated areas. For relevance's sake, we limit examined cases to armed conflicts that began after January 1, 2000.

We elaborate on each of these conditions below.

### *Jus in Bello*

The study should focus on the conduct of the military and will bracket out the political justification for the beginning of hostilities. Accordingly, it shall focus on the *jus in bello* (also known as the Laws of Armed Conflict, the Laws of War, or International Humanitarian Law), taking into account relevant law and jurisprudence, and will bracket out any discussion or consideration of the *jus ad bellum*.

### *Armed conflicts*

The study should only examine clashes of an **intensity that reaches the level of "armed conflicts."** Armed conflicts are subject to a distinct set of legal conventions, as articulated in a body of relevant treaties and customary international law. They are to be distinguished from lower level clashes that are subject to policing rules under international human rights law and domestic criminal law.

In principle, armed conflicts are classified in two types: international armed conflicts (IAC) and non-international armed conflicts (NIAC). The traditional IACs are those between two or more states, which this study excludes (and see subheading 3 below). Still, there may be cases in which the state fighting a non-state actor outside its territory

or within an occupied territory will define the conflict as an IAC.<sup>1</sup> Subject to subheading c below, these types of conflict are part of this study. International law does not offer a clear test for the existence of an IAC in terms of the requisite level of hostilities; for purposes of this study, we follow the analogous international legal test for NIACs.

NIACs were initially defined as conflicts between a state and one or more armed groups, or between two or more armed groups within a single state's territory.<sup>2</sup> However, as cross-border and transnational violence has become more common, some consensus has begun to emerge that the rules applicable in a NIAC are still applicable when State A is fighting a non-state actor on State B's territory.<sup>3</sup>

International law offers a definition of armed conflicts in the context of NIACs, as a way of distinguishing NIACs from "banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law."<sup>4</sup> Broadly speaking, to be considered a NIAC, 1) a non-state actor must achieve a certain degree of organization, and 2) the conflict must reach a minimum level of intensity.<sup>5</sup> Each of these threshold requirements is further discussed and refined below, in subheadings c and d below.

It is likely that researchers will encounter overlapping incidences of violence. This may be the case in situations where there are multiple non-state actors involved, perhaps with different motives and goals. It may also be the case that not all of the non-state actors are sufficiently organized to meet the requirements for an armed conflict (e.g., rioters, gangs, mobs). In those situations, researchers should make every effort to separate out incidents that are not part of the armed conflict selected for evaluation and not include data points (whether they relate to casualties, destruction of property, or any other metrics) unless they relate to the relevant conflict in the study. However, once a group has been determined to be engaged in an armed conflict, even minor clashes or incidents involving that group and relating to the conflict could be included in the study.

### *State vs. Non-State Actors*

**The study should be limited to conflicts between states and non-state actors.** First, as noted above, conflicts between states are governed by a different set of rules, and it will yield more useful results to compare forces fighting under similar legal guidelines and restrictions.<sup>6</sup> Second, while non-state actors demonstrate a wide range of competence, capabilities, and organizational structures, they are more likely to share certain common features that are different from states' forces, again making comparisons across battlefields more applicable.

The selection of comparable cases will necessarily depend on the participating partners to this study and their ability to report relevant data. This will limit the study to liberal democracies fighting non-state actors.

To qualify as non-state actors, groups must demonstrate a certain level of organization. Following relevant international law jurisprudence and scholarship, this study should select only groups with an organized command structure, including a reasonably defined chain of command. A group must also demonstrate a minimum level of operational capability, including some ability to plan, coordinate, and carry out military operations, as well as an ability to stop fighting and carry out agreements such as cease fires or peace accords. Operational capability also includes a certain logistical capability, including the ability to supply members with weapons and ammunition, and possibly also the ability to provide food, vehicle support/transportation, health care supplies, uniforms, or other equipment. Finally, other indicia of a sufficiently organized group include the existence of disciplinary rules and regulations, some mechanism or system for enforcing the disciplinary rules, and a headquarters, though none of these are strictly required.<sup>7</sup>

Finally, we recommend considering only non-state actors who control some portion of the territory in which they operate. Territorial control is a strong indicator of a relatively well-organized group. Moreover, non-state actors interested in maintaining control of a territory will fight differently, and have different organizational priorities, than

<sup>1</sup> See, e.g., HCJ 769/02 *The Public Committee against Torture in Israel vs. The Government of Israel*, para. 18-21 [December 11 2005].

<sup>2</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Common Article 3, 12 August 1949, 75 U.N.T.S. 287.

<sup>3</sup> International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, October 2011.

<sup>4</sup> See ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Decision on Defense Motion for Interlocutory Appeal on Jurisdiction (Oct. 2, 1995).

<sup>5</sup> *Tadić*, *Id.*

<sup>6</sup> Notably, for example, there is no authorized combatant status in a NIAC, and thus the rules governing prisoners of war do not apply. This distinction reflects a reluctance on the part of states and the international community to recognize the legitimacy of armed resistance from non-state actors.

<sup>7</sup> See ICTY, *The Prosecutor v. Fatmir Limaj*, Judgment, ¶¶ 94–134, IT-03-66-T (Nov. 30, 2005).

groups simply interested in harassing a government power. It is also likely that these groups will have a different relationship with the population in the area. Though this is not necessarily a requirement for a non-international armed conflict,<sup>8</sup> we recommend including it nonetheless.

### *Intensity*

We recommend using intensity metric based primarily on frequency of clashes and attacks. **Conflicts should only be considered if:**

- 1) *There are armed attacks (such as shelling, rocket attacks, air strikes, or improvised explosive device detonations) approximately once every [two] days.*
- 2) *The armed attacks **take place within a distinct geographic area.***
- 3) *The clashes continue **for at least a week at this rate.***<sup>9</sup>

Additionally, to ensure criminal and policing activities are not inappropriately captured, this study should only consider armed conflicts that involve the use of the state's military forces.

Note that these conditions lead the study to focus on more bounded engagements/operations/clashes/battles within armed conflicts rather than on the general armed conflict.

International law generally includes a number of other factors in the consideration of intensity, such as number of casualties (military and civilian), extent of destruction, and number of civilians displaced.<sup>10</sup> However, we recommend omitting these factors because they are precisely the results that the study seeks to measure. For example, in attempting to compare Israel's rates of inflicting civilian casualties with those of other forces, selecting for conflicts with comparable numbers of civilian casualties would *a-priori* skew the results.

### *Timeframe*

**We recommend considering only conflicts that have taken places since January 1, 2000.**

Given advances in war-fighting strategies and tactics, as well as improvements in weapons systems and healthcare capabilities, it is reasonable to limit the timeframe to more recent conflicts. Along these lines, when possible in selecting the final list of case studies, we recommend preferring and choosing more recent conflicts over older ones, even within this window.

### *Populated Areas*

Fighting strategies and considerations are highly dependent on local population density.<sup>11</sup> Therefore, to ensure fair comparisons, we recommend **limiting the study to conflicts that take place in urban or other densely populated areas.** Given the difficulty in developing or finding a pre-existing metric that will be useful across geographies, we recommend basing the categorization of populated areas primarily on whether the state military considered themselves to be conducting operations in urban terrain (or other comparable labels as used by the relevant military, such as "built-up areas"). This can be ascertained by applying the following U.S. Army definition for built-up area: "A concentration of structures, facilities, and people that forms the economic and cultural focus for the surrounding area. The four categories of built-up areas are large cities, towns and small cities, villages, and strip areas."<sup>12</sup>

<sup>8</sup> Territorial control is not a requirement for Common Article 3 of the Geneva Conventions to apply, but it is a requirement under Additional Protocol II.

<sup>9</sup> These metrics are based roughly on a decision from the International Criminal Tribunal for Yugoslavia. See FatmirLimaj, Judgment, *supra* note 7, ¶¶ 135–170, IT-03-66-T (Nov. 30, 2005) (concluding that a sufficiently intense armed conflict existed and noting that "periodic armed clashes occurred virtually continuously at intervals averaging three to seven days over a widespread and expanding geographic area," *id.* ¶ 168.).

<sup>10</sup> See, e.g., ICTY, The Prosecutor v. FatmirLimaj, Judgment, ¶¶ 135–170, IT-03-66-T (Nov. 30, 2005); Radin, *supra* note 4.

<sup>11</sup> See, e.g., U.S. MARINE CORPS, *MILITARY OPERATIONS ON URBANIZED TERRAIN* (1998).

<sup>12</sup> U.S. Army, FM 90-10-1, *An Infantryman's Guide to Combat in Built-Up Areas* (1993). See also the U.S. Marine Corps definition for Military Operations on Urbanized Terrain (MOUT): "All military actions planned and conducted on a topographical complex and its adjacent terrain where manmade construction is the dominant feature." *Supra* note 11.



## *General Guidelines*

Armed conflicts, especially asymmetric conflicts with which the proposed study is concerned, comprise of many interactive and co-dependent dimensions, making it hard to isolate particular features and draw clear conclusions. To give a concrete example, a simple comparison that focuses on numbers of casualties has little instructive value without knowing more about the nature of the environment (populated or unpopulated), the intensity of hostilities (low or high), the duration of combat activities, the degree of threat to one's own forces or civilians, etc.

To allow for an objective and credible assessment – and then comparison – of various combat features across different combat environments, we devised a system that would offer a way to quantify certain parameters within an agreed upon matrix. The quantifiable parameters can then be used for an “apples to apples” comparison.

Our research and discussions led us to draw on the principles of an existing proven methodology from a different field: credit rating of sovereigns. Financial credit rating of sovereigns integrates quantitative and qualitative information (accounting for unique circumstances in each case) into measurable results.<sup>13</sup>

This rating system consists of hard objective numeric parameters, but also includes an evaluation of complex non-numeric data to ensure that the comparison is further fine-tuned and accurate than a mere statistic generalization of the outcome.

Any attempt to analyze a-symmetric armed conflicts has to take under consideration that our goal is to evaluate the military conduct as a system at whole unlike other bodies of investigation that look at single events. We do recognize that one or more events can influence the score of the overall system, and assume that those will be factored in the systemic parameters which will be examined.

In direct continuation to the previous point, we are interested both in the de jure (i.e. policy, orders) and de facto (actual execution on the ground) situations, and will draw conclusions from both.

Lastly, the basic assumption of this research is that all countries are subjected to the rules of international humanitarian law. However, we do not take the position of a court in determining wrong-doings of militaries but rather seek to identify and articulate the norms emanating from the conduct of militaries in similar, or close to similar, situations and the score a specific military gets in comparison to those norms.

## *Evaluation Criteria*

The proposed methodology consists of three levels of assessments with three types of variables:

**Main factors, Sub factors and Parameters.**

Each Main factor is divided into Sub factors and each Sub factor is evaluated based on a set of Parameters, as the following chart demonstrates:

**The four Main factors are:**

- 1) **Circumstances** -variable conditions that have a significant effect on the way military conduct should be evaluated.
- 2) **Enemy**- Analysis of the way the enemy (the non-state actor) has operated, taking into account its operational capabilities.
- 3) **Military** – Analysis of the conduct of the military throughout the operation.
- 4) **Outcome** – The effects and damage of the armed conflict in terms of human casualties and damage to property.

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<sup>13</sup> For reference: Government rating methodology and assumptions by S&P.

[http://img.cn25.com/Web/StandardandPoors/CriteriaGovernmentsSovereignsSovereignGovernmentRatingMethodologyAndAssumptions\\_1365.pdf](http://img.cn25.com/Web/StandardandPoors/CriteriaGovernmentsSovereignsSovereignGovernmentRatingMethodologyAndAssumptions_1365.pdf)

*Sub Factors:*

The Sub Factors that comprise each Main factor do not necessarily have the same degree of importance or influence over the Main factor and, therefore, in some cases will have different weights. The following shows the various Sub factors and their degree of importance.

The Circumstances Main factor is comprised of four Sub factors, one of which being the conflict duration. This Sub factor is not evaluated on its own, and is factored in the intensity and urgency Sub Factors. The other three Sub factors bear equal weight.

Main Factor	Sub Factor
<b>Circumstances</b>	<b>Duration-</b> period of time the conflict lasted
	<b>Intensity-</b> number of strikes and severity of conflict
	<b>Terrain-</b> size of area and density of population
	<b>Urgency –</b> risk level for military's side civilians

The Enemy Main factor is the combination of its capabilities and conduct. These two sub factors are equally important and, therefore, receive the same weight.

Main Factor	Sub Factor
<b>Enemy</b>	<b>Capabilities-</b> effectiveness of enemy's weapons and forces
	<b>Conduct –</b> enemy's abuse of power and civilians (on both sides)

The Military four sub factors are equally important and therefore receive the same weight.

Main Factor	Sub Factor
<b>Military</b>	<b>Procedures -</b> Military's rules of engagement, planning stage, commands intended to minimize civilian casualties and damage while carrying out the operational goals
	<b>Use of force -</b> use of weapons, target definitions, professionalism of forces and their effect on civilian population
	<b>Humanitarian -</b> Efforts made to isolate and assist the civilian population caught in the conflict
	<b>Investigation -</b> Self-examination procedures of the military

The Outcomes Main factor is determined by evaluating the Sub Factor of casualties and the Sub Factor of overall damage to civilians. The former outweighs the latter.

Main Factor	Sub Factor
<b>Outcomes</b>	<b>Casualties</b> – number of casualties dead and wounded
	<b>Damage to property</b> – damage to public, private and infrastructure property

A finer calibration of the Sub Factors will be made by examining a set of parameters as applied to each Sub Factor. A more detailed explanation about the Sub Factors and the complete list of parameters for each Sub Factor is presented in the next chapter.

## List of Parameters

### *Circumstances*

Assessing the circumstances of the situation requires considering the terrain, the duration of the conflict, its intensity, and the urgency with which the military has to operate. All of these circumstances impact the military's conduct and the overall effects.

### *Duration*

The longer the conflict lasts, the more casualties and damage should be expected.

<b>Duration</b>	Period of time the conflict lasted
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### *Intensity*

The more intense the conflict is in terms of number of attacks and their severity (on both sides), the more casualties and damage should be expected.

<b>Intensity</b>	Intensity of attacks from both sides (# and potential severity)
	# attacks over time

### *Terrain*

The size of the terrain and the density of the population in it are key parameters that affect the outcomes of casualties and damage. The terrain also determines the type of force being used and the constraints under which the military has to operate.

<b>Terrain</b>	Size
	density of population
	# civilian casualties vs. density of population and size of area

### *Urgency*

While all conflicts emanate from some urgency to operate, some more than others can be considered to be required by some special urgency. This is, for instance, the case where the military-side's civilians are under direct fire before and during the operation, necessitating immediate measures to eliminate the threat.

<b>Urgency</b>	Military side civilians under fire during course of action. (How sever and immediate was the threat to Military side civilians)
	Necessity of initiating the operation (considering the context of the event that triggered the operation).

### *Enemy*

The enemy's capabilities and conduct are a significant factor in the ability to evaluate the Military's conduct in the given circumstances. As the threat from the enemy grows, the measures and firepower needed to be deployed against it increase.

#### *Enemy's Capabilities*

<b>Capability</b>	Size of combatant force  quantity & quality of weapons/ resources
	Support from enemy-side population
	Threat to civilians on the Military side
	Threat to Military forces
	Ability of enemy to protect its civilians against Military force
	Resilience (including ability to maintain the chain of command during ongoing operations)

An evaluation of the enemy's capabilities to inflict damage on the other side is an important exogenous factor. When evaluating the enemy's capabilities, the military's ability to prevent those threats should not be taken into account, so as to prevent double counting.

#### *Enemy's Conduct*

The enemy's conduct is basically assessed with the same parameters as the Military's conduct with special emphasis on its willingness, or lack thereof, to act in accordance with acceptable international norms.

<b>Conduct</b>	Enemy's ideology and overall objectives
	Rules of engagement (de jure + de facto)
	Enemy's force protection vs. enemy-side civilians protection
	Using enemy-side civilians as "human shield"
	Use of force (choice of weapon, definition of targets)
	Use of precautions to prevent civilian casualties
	Use of civilian infrastructure(such as schools, mosques, hospitals) for military purposes
	Deliberate attacks against Military side civilian targets
	Rule of law/Investigations

## Military

To get a true picture of a military's conduct in a specific operation, one must examine the military's capabilities and operations against the given circumstances. In low intensity conflicts, where fighting usually takes place within populated areas, we need to consider the measures taken by the military to minimize civilian casualties and damage, both de jure (i.e. as reflected in the rules of engagement) and de facto (in the actual conduct of the forces). It is also important to look at the process by which the military follows the rule of law and carries out investigations where needed.

### *Procedures*

When considering the outcomes of an operation, one must take into account the measures employed to minimize civilian casualties and damage. While doing so it is essential to look at the preliminary and planning stages such as rules of engagement in various situations, the overall strategy and tactics and the extent in which preventing civilian casualties and collateral damage was taken into account.

<b>Rules of engagement (de jure + de facto)</b>	Level of strictness
	Command level required for authorization of attack
	Force protection vs. civilian protection
	Rules during special situations requiring immediate decisions
<b>Proportionality</b>	To what extent the risk to Enemy's civilian population was taken into account when the military goals and missions were determined.
	Minimizing collateral damage
<b>Allocation of resources</b>	Costs of measures designed to minimize collateral damage
<b>Gradualness</b>	To what extent there was an attempt to achieve the military goals using limited force at first

## Use of force

The second important sub-factor would be the actual use of force in the choice of weapons, the target definition preventing casualties among the un-involved, and also by looking at the professionalism of the fighting forces on all levels (from Chief of Staff to the last soldier), presence of commanders onsite as well as soldiers' discipline. Among other things, professionalism is important to avoid unintended harmful outcomes.

<b>Use of force</b>	Choice of weapon (accurate vs. statistic/lethal vs. non-lethal)
	Target definition (distinction between legitimate and illegitimate targets)
	Use of force when civilians on the military side are attacked
<b>Professionalism of forces</b>	Presence of commanders onsite
	Overall soldiers' discipline
	Professionalism on all levels (units/ranks)

## Humanitarian

These sub-factor measures beyond the strictly combat aspects of minimizing collateral damage but the active efforts made to assist the local population and preventing it from being harmed.

It includes the precautions that were used (in terms of both means and effectiveness). Humanitarian assistance and collaboration with international organizations on humanitarian issues are also a factor that attests to the military's desire to minimize harm.

<b>Precautions</b>	Means
	Effectiveness of early warnings to civilians on the Enemy side prior to attacks and strikes
	The actual effectiveness of the precautions used
<b>Humanitarian treatment</b>	Providing medical assistance to civilians on the Enemy side
	Willingness to accept cease fire/humanitarian relief offered by third parties
<b>International organization</b>	Willingness to work with international organizations to minimize civilian suffering

## Investigation into alleged violations

International norms require militaries to carry out investigations into alleged violations of international law. When examining the Military's conduct one should take into account the policy of conducting investigations as well as the number of actual investigations carried out and resulting legal proceedings. Civilian oversight and other mechanisms to ensure the rule of law are also a parameter that needs to be weighed.

<b>Applying rule of law/Investigations</b>	# internal debriefs
	# investigations
	# resulting legal proceeding
	Civilian (political and legal) oversight of military activities.
<b>Complaints – investigation - indictments</b>	# of incidents subject to complaints vs. # of investigations vs. # of legal proceedings

## Outcomes

**The outcomes of the conflict can be divided into two groups:**

- 1) *The number of casualties (dead or injured, combatants and civilians)*
- 2) *The extent of damage to property and infrastructure.*

These two Sub Factors apply to both sides (Military side and Enemy side), however it's important to note that casualties and damage on military-side civilians are not only affected by the enemy's efforts, but also by the protection measures taken by the military-side. In other words, the differences in outcome between the Enemy side and the Military side don't reflect only the conduct and capabilities but also the protective measures.



## *Casualties*

Casualties are an integral outcome of any military operation. Therefore, the mere number of casualties is not enough data to allow the full evaluation of the conduct of a military in any specific circumstances. When considering the number of casualties in a specific operation, it is important to take into account the **ratio** between the number of civilian and combatant casualties on both sides.

The following parameters are to be taken into account while considering the number of casualties:

<b>Civilian casualties on the Enemy side</b>	# dead/wounded
<b>Civilian casualties on the Military side</b>	# dead/wounded
<b>Enemy combatant casualties</b>	# dead/wounded
<b>Military's combatant casualties</b>	# dead/wounded
<b>Ratio of Military side civilian casualties to Enemy side civilian casualties</b>	
<b>Ratio of Enemy combatants casualties to Enemy side civilian casualties</b>	

## *Damage to property and infrastructure of both sides*

Although generally less important than human casualties, damage to property and infrastructure is part of the outcomes of an operation and therefore needs to be examined. While concrete damage to infrastructure, protected sites and private property should be measured, it is also advisable to take into account the macro-economic damage, which can be measured by the scale of disruption to normal life, the economic setback and the number of civilians impacted by the operation.

<b>Infrastructure</b>	Water; electricity; ports; energy; roads
<b>Protected sites</b>	UN; hospitals; places of worship; schools
<b>Private property</b>	Houses; belongings
<b>Overall economic impact</b>	# Civilians impacted by the operation
	Damage to the economy
	Scale of disruption to normal life

## Assessment

The assessment should be done on three different levels.

### *Assessing Level 1: Parameters - Sub Factors:*

The qualitative assessment of the Parameters that each Sub Factor is comprised of is left in the hands of the expert performing the evaluation.

The assessment of each group of Parameters will eventually yield a numeric score for **each Sub Factor**, ranging from 1 (very poor) to 6 (very good).

The rating direction of the Sub Factors (and subsequently the Main Factors) should be consistent with the notion that the **higher the score** is the **more favorable** result it yields **for the military**.

Examples:

- 1) *If the military operated too aggressively it will be reflected in a lower score for the 'military' factor.*
- 2) *If there were many casualties among the local civilians then the 'Outcomes' factor will be given a lower score.*
- 3) *If the enemy was especially strong and/or made illegal use of civilians, then the 'Enemy' factor will be given a higher score (i.e. a more favorable result for the military examined).*
- 4) *If the area was densely populated (with the assumption being that in that case, some civilian casualties were inevitable), this will contribute to a higher score of the 'Circumstances' factor.*

### *Assessing Level 2: Sub-Factors – Main Factors*

The overall score of the **Main Factor** is determined by the weighted average of the Sub Factor scores that comprise it. This way, the overall Main Factor score will too range from 1 (very poor) to 6 (very high).

The Sub factor **weights** were given according to their relative level of importance (as explained in page 14) and presented in the following table:

*Sub factors Weights Table*

Main Factor	Sub factor	Weight
<b>Circumstances</b>	Duration	
	Intensity	1/3
	Terrain	1/3
	Urgency	1/3
<b>Enemy</b>	Capabilities	0.5
	Conduct	0.5
<b>Military</b>	Procedures	0.25
	Use of force	0.25
	Humanitarian	0.25
	Investigation	0.25
<b>Outcome</b>	Casualties	0.7
	Damage to property	0.3

*Example*

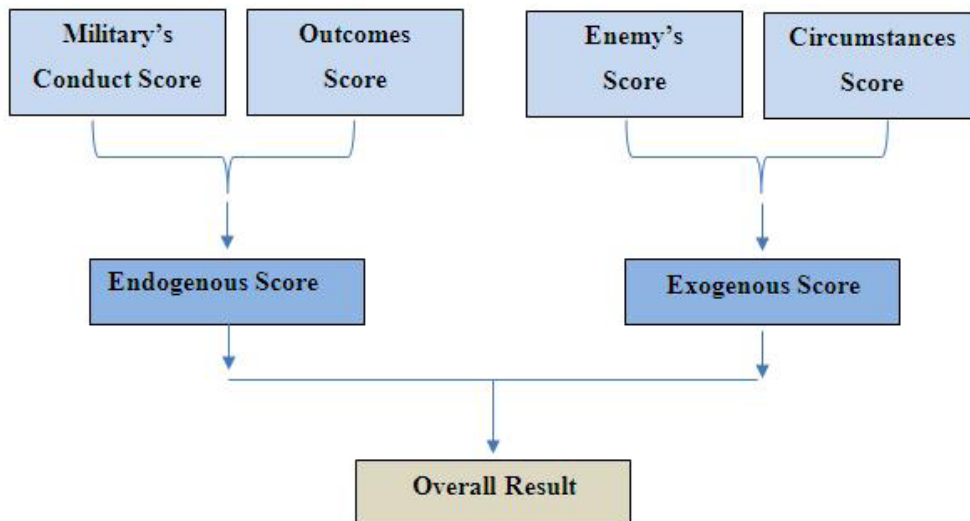
If these Sub Factors receive the following scores:

- » **Casualties: 3**
- » **Damage to property: 5**

Then the overall Outcome Factor Score would be:  $(0.7*3)+(0.3*5)= 3.6$

*Assessing Level 3: Main Factors – Overall score*

The final result for each case study will be calculated as a sum of the four Main factors' scores, as presented in the following illustration:



The Military's and Outcomes score will be added together and will determine the "endogenous" score, which reflects the total evaluation of factors the military can be held accountable for. This score will be weighed against the Enemy's and Circumstances' scores combined -the "exogenous" score, which is considered to be the affecting factors outside the control of the military in the time of the operation.

Finally, these two interim scores, the "endogenous" score (ranging from 2-12) and the "exogenous" score (ranging from 2-12) are then weighted together, to determine the final outcome of the evaluation, as described in the following table. (A – High, B- Average Plus, C- Average Minus, D- Low).

*Overall Result from the Combination of the Interim and Circumstances Scores:*

	Exogenous Score					
Endogenous Score		2-3	4-5	6-7	8-9	10-12
	10-12	B	A	A	A	A
	8-9	B	B	B	A	A
	6-7	C	C	C/B	B	B
	4-5	D	D	C	C	C
	2-3	D	D	D	D	C

**Final Comments**

- 1) *The proposed methodology provides a clear, structured process in which data can be analyzed, evaluated and calculated so conclusions can be drawn as to the conduct of the military in the given circumstances. However, one must bear in mind that there is still significance to the evaluators and their expertise.*
- 2) *Given the scope of this work and the timeframe for its completion there are several issues which the team has not dealt with and that may require additional consideration:*
  - » **Data collection**, including what is considered reliable data, how is it collected and by whom.
  - » **The inner process of analysis** that the team of experts adopts, including issues such as working in a joint team or individually, sequence of work and method of decision-making.
  - » **The case studies** that will be examined (keeping in mind the scope of research we outlined).
- 3) *The appropriate presentation of the final conclusions.*

We understand the need to keep the right balance between accurate, systematic, objective and generic results on the one hand, while maintaining political correctness, avoiding “direct competition” on the other hand.

We don't exclude the option of using the numeric assessment (presented in Chapter 6) as an internal tool only, while publishing the final conclusions in a non-comparative way, showing how the Israeli military performed in relation to the accepted norm.

## **Methodology Authors**

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Blum is considered one of the world's leading scholars of the laws of war and conflict management. A chaired professor at Harvard Law School, she is also the faculty director of the Harvard Program on International Law and Armed Conflict. She has published extensively on topics related to the regulation of war and the conduct of hostilities. In 2012-2013, she served as an expert advisor to the Turkel Inquiry Commission on Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law. Prior to her academic career, Blum served as a Senior Legal Advisor in the International Law Department, Military Advocate General's Corps, Israel Defense Forces, and as a Strategy Advisor to Israel's National Security Advisor.

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Between 1987 and 2013 Asherov served in numerous Infantry operational command positions of the IDF (Mainly 'Givati' brigade), including company commander, battalion commander, deputy brigade commander, and regional brigade commander for the northern Gaza area. He also served as Commander of the Israeli NTC. These positions included duties of training, preparation, planning, and active operational engagement.

### **Roy Keidar**

Keidar holds an MPA from Harvard University and an LLB and LLM from the Hebrew University in Jerusalem. He has extensive background in law and policy. He has served in various positions for the Israeli government including as the legal advisor of the Israeli National Security Council, an officer in the International Law Department of the IDF, and the first legal advisor to the Gaza combat division. For the last four years, Roy assumed the position of CEO of the Reut Institute, one of Israel's leading strategy and policy groups dealing with various policy issues. During his tenure in the government, Roy was appointed to serve on four different inquiry commissions dealing with issues related to national security, including those chaired by Lieutenant general Amnon Lipkin shahak, General Eiland and Mr. Joseph Chechanover.

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Cohen holds a B.A in accounting and economics, an M.A in economics and a professional certificate in strategic management from Harvard University. Cohen specializes in project finance and regulatory economics. She currently works for Ascola Economic and Financial Consulting. Prior to joining Ascola, Cohen worked for Giza Singer Even (an affiliate of Duff & Phelps). In her military service, Cohen served as an officer in the Financial Advisor to the IDF Chief of Staff Unit.





## About the HLMG

The High Level Military Group (HLMG) consists of military leaders and officials from NATO and other democratic countries exploring the challenges of 21 Century warfare.

The High Level Military Group was formed in early 2015 with a mandate to address the implications for Western warfare of fighting enemies who disregard the Law of Armed Conflict (LOAC) but exploit our own nations' adherence to LOAC for their gain.

Its work will cover an initial assessment of the 2014 Gaza Conflict, a comparative study examining the conduct of operations by democratic militaries against non-state enemies who do not abide by LOAC, and a final report setting out the challenges and policy prescriptions for the current era of warfare.

HLMG members have a wealth of experience at the very highest operational and policy levels as regards the conduct of warfare and its attendant policies.

Our purpose is to add a professional military and legal element to debates about warfare in the 21st Century, which at times have been ill-informed and politicised, and which are of vital importance to our own armies and alliance partners.



# HLMG

HIGH LEVEL MILITARY GROUP

**OUR MILITARY FORCES'  
STRUGGLE AGAINST  
LAWLESS, MEDIA  
SAVVY TERRORIST  
ADVERSARIES**

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