



Soldiers from multiple nations participate in the opening ceremony of Flintlock 16 in Thies, Senegal, on 8 February 2016. Flintlock, an annual African-led Special Operations Forces exercise that began in 2005, is focused on security, counterterrorism, and military humanitarian support to outlying areas. Photo by U.S. Army Specialist Zayid Ballesteros/ U.S. Army Africa

This monograph is a serious and well-researched investigation into crucial factors of contemporary warfare. Readers will learn lessons on the distinctions between the Law of Armed Conflict and criminal law, particularly on important issues like lethal force, escalation of force tactics, and security detention. Professor Paterson makes a strong argument that the stated policy of respect and promotion of human rights (HR)—that has long been a guiding principle of the U.S. military—does not translate into specific and mandatory directives at the tactical and operational levels. Indeed, he asserts that at those levels there is no formal attention to HR, only ad hoc efforts by operational units that don't receive guiding policy. This monograph will be essential reading for policymakers and those whose task is the development of granular precepts to guide implementation and execution of policy on the ground.

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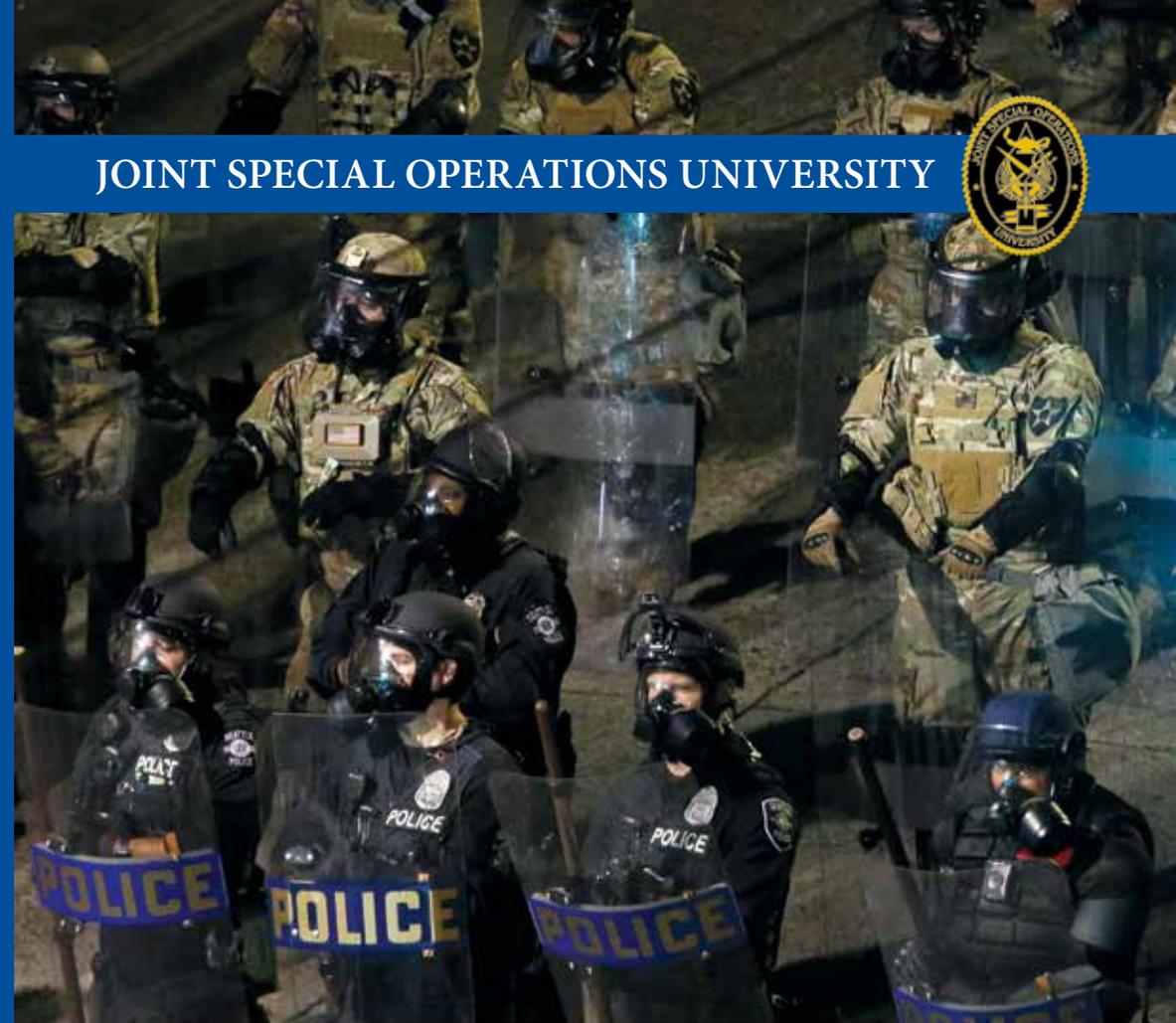


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JSOU Report 21-1

The Blurred Battlefield

Paterson



JOINT SPECIAL OPERATIONS UNIVERSITY



## ***The Blurred Battlefield: The Perplexing Conflation of Humanitarian and Criminal Law in Contemporary Conflicts***

Patrick Paterson

JSOU Report 21-1

## Joint Special Operations University and the Institute for SOF Strategic Studies (IS3)

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*Patrick Paterson*

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## ***Testimonials about Blurred Battlefield***

*As intense hostilities below the level of armed conflict increasingly take center stage around the world, it is dangerous and counterproductive for the United States to continue to base its security assistance to partners on the Laws of Armed Conflict. The Blurred Battlefield therefore could not be more crucial or timely. By providing guidance on criminal and human rights law, it will enable operators to strengthen alliances and enable partners to meet security threats in effective ways that enhance legitimacy in the eyes of the public. In doing so, it also will be invaluable in furthering the national security of the United States.*

– Professor Mitt Regan, Director, Center on Ethics and the Legal Profession Co-Director, Center on National Security and the Law Georgetown University Law Center

*Pat Paterson's The Blurred Battlefield is the culmination of years of exhaustive scholarship on the lawful use of force during military and police operations that will be the primary go-to reference for those of us who teach human rights and humanitarian law to service members and law enforcement officials.*

– Antonio Raimondo, Director of The Center for Human Rights and Democracy at Western Hemisphere Institute of Security Cooperation (WHINSEC)

*Effective training and cooperation with partner forces overseas requires an understanding of and ability to navigate the complex legal and operation challenges of today's conflicts. With a sophisticated discussion of these challenges, The Blurred Battlefield will be an essential resource for military and civilians alike.*

- Laurie Blank, Clinical Professor of Law, Director, Center for International and Comparative Law Director, International Humanitarian Law Clinic Emory Law School

*This excellent piece written by Professor Pat Paterson shows clear examples of how today's armed confrontations occur in the middle of the civilian population like never before in the history of human conflict. Armed forces involved in these missions must adjust their operational legal doctrine for this very complex battlefield where lethal force is not, nor can it be, the first option. This new battlefield and its human rights legal regulation do not allow criminals to be considered military objectives and collateral damage is almost always legally and operationally unacceptable.*

– Major General Juan Carlos Gomez Ramirez, Colombian Air Force (retired), Regional Director Mexico and Central America, the International Committee of the Red Cross. Former Director of Human Rights and International Humanitarian Law at the Ministry of Defense of Colombia

*I was lucky enough to get a draft copy of *The Blurred Battlefield* and have already used it to teach my graduate courses on human rights in armed conflict. How could I not? There are few other places to go to get such a succinct, thoughtful, and well-argued account of how human rights function – and do not – in modern warfare.*

- Sarah Holewinski, Randolph Senior Fellow at the U.S. Institute of Peace, Adjunct Professor at Georgetown University, and former Executive Director of Center for Civilians in Conflict (CIVIC).

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**On the cover.** Members of the United States National Guard and Seattle Police (front) wear gas masks and riot shields at a protest in Seattle, Washington, on 3 June 2020 following the death of George Floyd in Minneapolis. Photo by Reuters/Lindsey Wasson/Newscom.

**Back cover.** Soldiers from multiple nations participate in the opening ceremony for Flintlock 16 in Thies, Senegal, on 8 February 2016. Flintlock, an annual African-led Special Operations Forces exercise that began in 2005, is focused on security, counterterrorism, and military humanitarian support to outlying areas. Photo by U.S. Army Specialist Zayid Ballesteros/ U.S. Army Africa.

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## Foreword

The official United States position—under objective conditions of warfare—is that the Law of Armed Conflict (LOAC) displaces the application of International Human Rights Law (IHRL). However, it is a legal doctrine very different from the rest of the international community and nearly all the allies with which the U.S. operates. At the theoretical level, the U.S. posture reflects an overly sweeping application of the rule of *lex specialis derogat generalis*—a rule of construction meant to provide a basis for how to determine which law applies to which set of facts when contradiction between laws of equal hierarchy cannot be solved by way of the later-in-time rule. The LOAC certainly is *lex specialis* [a Latin phrase which means “law governing a specific subject matter”] in armed conflict, particularly in combat situations. But it can lead to confusing results in the extreme complexity of today’s participation of armed forces in situations that defy an easy characterization of armed conflict versus peacetime.

The prevailing notion in international law is that both International Humanitarian Law and IHRL are of coextensive application, meaning that one does not displace the other and that States and their armed forces remain bound to apply the rules of both in situations in which they are called upon to participate. In such a scenario, the *lex specialis* rule will determine, for example, that the LOAC decides whether loss of life is lawful in a combat situation, while in a non-combat scenario IHRL decides whether the use of force has been lawful or excessive.

Professor Paterson’s book provides a persuasive analysis of why the U.S. official position requires updating, not only from a theoretical or policy-oriented point of view but, more importantly, from the perspective of the operational and tactical level. Within countries that the U.S. assists militarily, the theory of displacement can have tragic consequences for civilians in situations that fall below the threshold of armed conflict.

This book is a serious and well-researched investigation into crucial factors of contemporary warfare. Thanks to Professor Paterson’s look at the problem from the operational and tactical level, readers learn many lessons on the distinctions between LOAC and criminal law particularly on important issues like lethal force, escalation of force tactics, and security detention.

Professor Paterson makes a strong argument that the stated policy of respect and promotion of human rights (HR)—that has long been a guiding principle of the U.S. military—does not translate into specific and mandatory directives at the tactical and operational levels. Indeed, his book asserts that at those levels there is no formal attention to HR, only ad hoc efforts by operational units that don't receive guiding policy. Certain geographic combatant commands, U.S. Southern Command being the more salient example in the 2000s, have made important strides in this field. This book will be essential reading for policy-makers and also for those whose task is the development of granular precepts to guide implementation and execution of policy on the ground.

Juan Mendez, Professor of Human Rights Law in Residence  
Washington College of Law, American University

## About the Author

Pat Paterson is a Professor of Practice at the William J. Perry Center for Hemispheric Defense Studies. A 1989 graduate of the U.S. Naval Academy in Annapolis, Maryland, he retired from the Navy as a commander in 2009. His last assignment was as the Political-Military Advisor on the Fourth Fleet staff in Mayport, FL. He is in the process of completing doctoral studies in conflict resolution where his research focuses on negotiations with military institutions during post-conflict transitions to democracy. He is the author of three books and numerous defense and security related articles in journals such as *The Journal of Military Ethics*, *Military Review*, *Armed Forces Journal*, *Proceedings Magazine*, *Joint Force Quarterly*, *Naval History*, *The Journal of International Affairs*, and *Security and Defense Studies Review*. He has appeared on BBC Radio. His principal areas of expertise include civil-military relations, human rights, rule of law, international humanitarian law, and U.S. and Latin American history.





# Acknowledgements

This research was funded by the Joint Special Operations University (JSOU). I am appreciative of the support of the entire JSOU team and, in particular, Will Irwin and Pete McCabe who were my editors through the entire two-year research and writing process. Lisa Sheldon, JSOU Press Editor, also deserves immense credit for supervising the formatting and layout of the lengthy monograph, a task complicated by the dozens of photos and graphs included in the report. Bill Dempsey, JSOU Liaison officer at United States Army Special Operations Command, and Justin Dyal, JSOU Liaison officer at Marine Forces Special Operations Command, were also very helpful setting up interviews with Army and Marine Corps Special Operations Forces (SOF) during visits to Fort Bragg and Camp Lejeune in May 2019. Additionally, the JSOU and Perry Center travel managers assisted me with trips to Camp Lejeune, Fort Bragg, Coronado, Mexico City, Bogota Colombia, and Rio de Janeiro Brazil to conduct research and interviews. Last, Army, Navy, and Marine SOF played an important part in this effort by sitting for interviews and sharing their perspectives and experiences on the complex nature of contemporary warfare.

In addition to the JSOU staff, I also consulted with a number of other organizations that follow these legal and operational matters closely. Personnel from the following institutions were gracious enough to speak to me about the topics: Centro Conjunto para Operaciones de Paz de Chile, Santiago, Chile; Centro de Estudios Superiores Navales, Mexico City; Centro Nacional de Entrenamiento in Tolemaida, Colombia; Defense Institute of International Legal Studies in Newport, Rhode Island; Escola de Comando e Estado-Maior do Exército in Brazil; Escola Superior de Guerra in Brazil; Government Accountability Office; International Committee of the Red Cross in Geneva, Switzerland; U.S. Marine Corps Special Operations Command in Camp Lejeune, NC; Marine Corps University in Quantico, VA; Miguel Agustin Pro Juarez Human Rights Center, Mexico City; Naval Special Warfare Command in Coronado, CA; Secretaría de la Defensa Nacional, Mexico City; U.S. Agency for International Development; the U.S. Department of State in Washington, D.C.; U.S. Southern Command in Miami, FL; U.S. Army Special Forces Command at Fort Bragg, Fayetteville, NC; U.S.

Embassy in Bogota, Colombia; U.S. Embassy in Mexico City, Mexico; and Western Hemisphere Institute of Security Cooperation in Fort Benning, GA. An estimated 75-80 individuals were interviewed for the project, more than half of whom were SOF with extensive field experience.

The monograph would not have been possible without the support of the leadership at the William J. Perry Center of Hemispheric Defense Studies at National Defense University, the center at which I have worked for more than ten years. Dr. Scott Tollefson, the Perry Center Academic Dean, understood the importance of the topic to Latin American militaries. He was enthusiastic from conception to completion of the project and advocated for me to carve time out of the busy Perry Center agenda to conduct the research.

Over the two years required for the project, a team of hard-working Perry Center research assistants contributed significantly to the content and tables. Ana Cardona, Francheska Salazar, Cecilia Hartge, and Itiel Warner worked on various aspects of the project including extensive research of the case studies. Ryan “Wit” Keating deserves particular credit for diving deep into a number of important analyses that were central to the monograph: Customs and Border Patrol reforms, developing graphs for a typology of human rights, and, by far the biggest task, poring through thousands of pages of reports on Joint Combined Exercise Training.

For a project of this size, second readers are always immensely useful to ensure the report is lucid, precise, and persuasive. I appreciate a number of colleagues who took time to read through drafts of the monograph and provided helpful suggestions on tone and content: Charles Blaha, Dr. Richard Downie, Walter Earle, Jack Rodgers, and Lieutenant General Fred Rudesheim USA (Ret.) each made important recommendations that strengthened the book and I am indebted to them for their time and effort. A number of renowned legal scholars also offered to read drafts of the report. Their assistance was vital to make sure I was not mischaracterizing important and nuanced legal issues. Laurie Blank of Emory Law, Mitt Regan of Georgetown Law, Sarah Holewinski, formerly of Center for Civilians in Conflict, and Tony Raimondo of Western Hemisphere Institute for Security Cooperation provided important suggestions on how to clarify the legal arguments and refine the legal details in a way that make the monograph more comprehensible and exact. A number of other second readers preferred not to be recognized by name but also deserve credit.

Last and most importantly, immense credit also goes to my wife Emily who remained supportive and enthusiastic of the project through countless evenings in the home office hunched over reports, articles, and a keyboard. She read and edited every page of the monograph and a number of early drafts. The book is much better as a result of her suggestions on content, tone, and grammar.

This monograph is dedicated to Parker and Bennett.



## Introduction. The Nature of Contemporary Warfare

The United States uses its armed forces almost exclusively overseas, normally as part of a coalition operation but also for a number of non-combat operations such as disaster relief and security assistance. In overseas operations where an armed conflict is occurring, use of force rules are governed by the Law of Armed Conflict (LOAC) as determined by the Geneva Conventions (GCs) and other LOAC treaties. However, the violence occurring in over 80 percent of countries in the world today (including many where U.S. Special Operations Forces (SOF) provide security assistance) are not caused by conventional state-on-state armed conflicts but rather from criminal or organized crime activity that are often as intense and violent as warfare. In these conditions, LOAC does not apply; there is no armed conflict per the legal definition of the term. These low intensity conflicts—the International Committee of the Red Cross (ICRC) calls them “other situations of violence”—are so violent that the militaries in many countries have been called to support domestic law enforcement efforts that are governed by criminal and human rights (HR) law. When U.S. SOF provide security assistance in these conflicts, they are operating in a grey area that simultaneously requires knowledge of war and law enforcement tactics for the use of force—a blurred battlefield.

This legal grey area leaves U.S. SOF vulnerable—both in combat and in training with partner nations (PNs). The U.S. military is well trained in the LOAC but has almost no formal training in criminal law enforcement or HR law. There is also very little guidance on criminal law or HR in Department of Defense (DOD) regulations or manuals. As a result, few in the armed forces understand the differences between LOAC, criminal and HR law, and how to operationalize HR for contemporary conflicts. This places U.S. military units in an operationally tenuous position; they may be tactically unprepared for conflicts which fall below conventional state-on-state disputes.

This dichotomy—U.S. forces following LOAC while PN forces follow criminal law and HR law—is particularly important for U.S. foreign assistance efforts, a \$50 billion annual program to train and equip U.S. military partners. The Secretary of Defense tasked SOF to lead these security



Figure 1. A U.S. SOF soldier trains a Panamanian policeman during a Joint Combined Exercise Training. U.S. military forces operate nearly exclusively with the LOAC whereas nearly all U.S. allies must use LOAC and criminal law enforcement tactics and rules of engagement (ROE). Photo by U.S. Army Staff Sergeant Osvaldo Equito

cooperation efforts. Hence, when U.S. forces conduct training with PN military forces, U.S. forces are working off one legal framework while PN forces are governed by another set of rules, ones that are much more restrictive with regard to the use of force. And, if U.S. personnel train PN forces on LOAC in lieu of more restrictive criminal law techniques, PN personnel might then use inappropriate tactics, ones that result in excessive use of force or HR violations that are contrary to U.S. objectives.

In this author's opinion, U.S. special forces should reexamine its doctrine in light of the changing nature of conflict, the increased prevalence of non-international armed conflicts (NIACs), and the need to be legally and doctrinally aligned with many of its allies and PNs. From the perspective of security cooperation programs, the requirement for an updated U.S. use of force doctrine is even more urgent because the U.S. is frequently providing training and equipment to partners who operate in the law enforcement paradigm, not the conduct of hostilities paradigm.

The monograph addresses three important issues: (1) the nature of contemporary warfare, (2) SOF participation in security cooperation efforts, and (3) rules on the use of force. The author provides a brief history of LOAC, criminal law, and HR law, highlights the differences between the fields of law, and examines U.S. use of force policies. Existing DOD policy on use of force rules is examined along with the potential benefits of expanded law enforcement training and the development of HR doctrine within the DOD.

The geographic focus of this book is on Latin America. From the perspective of security, the region is a study in contrasts. The region's militaries are trained in the LOAC, but have little use for it. There has not been a state-on-state conflict in the Western Hemisphere since the Cenepa War—a one-month long border skirmish between Peru and Ecuador in 1995. That is not to say the region would be described as safe or peaceful. Indeed, 46 of the 50 cities with the world's highest homicide rates are in Latin America and the Caribbean.<sup>1</sup> El Salvador, with a homicide rate of 97 per 100,000 people (2015 data), is the world's deadliest country, more so than Iraq, Afghanistan, or Syria.<sup>2</sup> In 2012, the murder rate in Honduras hit 90 per 100,000. Militaries in almost every single one of the nations in Latin America have been deployed internal to their countries to battle organized crime groups and drug trafficking organizations (DTOs).<sup>3</sup> With no legal doctrine to rely on, each country had to develop a hybrid set of rules on the use of force—a mix between the military firepower common under the GCs and the restrictive rules use by police in criminal law.

To highlight the complex problems caused by a lack of legal doctrine for internal violent conflicts, this manuscript draws upon four different case studies from Latin America. In Brazil, the military has been deployed into the *favelas*, or heavily-populated slums, of Rio de Janeiro to combat violent gangs and drug trafficking groups. Military operations in these urban environments—in DOD parlance, “military operations in urban terrain”—are particularly challenging. Operations are conducted in heavily-confined and populated neighborhoods that simultaneously require military firepower to combat heavily armed criminals and careful tactical discipline to protect civilians. The opponent, gangs like the First Capital Command group and Comando Vermelho, are violent and heavily-armed groups, but have not reached an organizational level that permits LOAC rules.

The second case study addresses the complexity faced by international peacekeepers. From 2004 to 2017, Chilean peacekeepers conducted difficult

military operations against armed gangs in Haiti as part of the United Nations Stabilization Mission in Haiti (MINUSTAH), per its French acronym. Chilean forces had to simultaneously provide humanitarian aid for Haitian citizens, create institutional development programs to improve government effectiveness, and conduct tactical operations against violent gangs. Operations took Chilean soldiers and Marines into fortified neighborhoods to arrest and extract gang leaders.

The third case study explores the decades-long internal armed conflict in Colombia. The Colombian armed forces fought a lengthy internal conflict against powerful and well-organized insurgent groups like the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). For many years, Colombia wrestled with how to employ its armed forces for internal security missions in an environment that required the full spectrum of military operations while at the same time operationalizing HR tactics by its soldiers in order to protect Colombian civilians. The Colombian military doctrine on use of force rules may be the best contemporary example of how to use both bodies of law—LOAC and domestic law enforcement tactics—effectively during complex military operations.

The final case study explores military efforts to battle heavily-armed drug cartels in Mexico. By 2006, DTOs in the country had become so powerful and violent that portions of the country had fallen under the control of the cartels. Mexican police units—the ones not already infiltrated by the cartels—were outgunned by these powerful organized crime groups and, in 2006, President Felipe Calderon called upon the Mexican Army and Marines to go on the offensive against the criminal syndicates. Unlike in Colombia, the Mexican military has been unable to develop a use of force doctrine that includes both LOAC and HR law. The consequences have been devastating.

The manuscript begins with a chapter that describes the changing nature of contemporary warfare. Chapter 2 provides a brief historical explanation of how LOAC, criminal law, and HR law evolved. Chapter 3 examines the tactical differences between LOAC and criminal law. Chapter 4 describes how LOAC and criminal law are applied. Chapter 5 looks at U.S. policy on the use of force. Chapter 6 examines the specific role SOF play in security cooperation programs with PNs specifically with regard to use of force training. Chapters 7–10 examine the four case studies from Latin America: Brazil, Chile, Colombia, and Mexico. The last chapter of the manuscript includes a series of recommendations and concluding observations.

## Chapter 1. The Law of Armed Conflict (LOAC) and Contemporary Warfare

Since the end of the Cold War, the international community of nations has made great progress in avoiding state-on-state conflicts. In fact, the start of the 21st century marks the most peaceful period of human existence in the history of mankind. This may strike many as an odd statement in light of the prolonged conflicts in Iraq, Afghanistan, Yemen, and Syria. However, while the current struggles in the Middle East are violent, these conflicts are nowhere near as bloody as the world wars and proxy conflicts during the 20th century that took tens of millions of lives.<sup>4</sup> Today, international armed conflicts (IAC) between nations are rare occurrences. With the exception of a handful of current disputes—tensions between Pakistan and India in the Kashmir region, Russia versus Ukraine, and Syria versus a handful of countries that are operating as a coalition—governments typically don't go to war against each other.<sup>5</sup> As General Rupert Smith wrote in his book, *The Utility of Force*, “war as a massive deciding event in a dispute in international affairs no longer exists.”<sup>6</sup>

Scholars attribute the trends in peace to a number of reasons. First, the end of the Cold War competition between the Soviet Union and the West marked the end of a number of proxy conflicts. The collapse of the Soviet regime in 1991 meant the end of Soviet-sponsorship of a number of authoritarian regimes. Likewise, the United States no longer had to support a number of allied nations fighting against communist expansion and instead began urging them to advance democratic practices and to respect international HR standards.<sup>7</sup> Second, international organizations like the World Court and the United Nations (UN) emerged, helping to mediate disputes before they become costly state-on-state conflicts. Less than 20 UN peacekeeping missions occurred during the 45-year long Cold War but in the decade that followed there were 35 peacekeeping operations. Since its inception, the UN has sponsored over 70 peacekeeping operations (most of them launched since 1991) to separate warring factions, reduce levels of violence, and to help implement peace agreements. Some ongoing disputes, like the long-simmering conflicts in Cyprus, the Golan Heights, and the



Figure 2. Global Trends in Armed Conflict, 1946-2019. Most conflicts often are no longer fought against states or even organized armed groups (OAG) in which the rules on the use of force are governed by the LOAC. More often, modern conflicts involve non-state actors like gangs, organized crime, and terrorists. Source: Center for Systemic Peace, <http://www.systemicpeace.org/CTfigures/CTfig03.htm>. Used with permission

India-Pakistan border tensions, have been kept under control by UN peace-keepers for decades.

The third reason for fewer armed conflicts is the broad acceptance of democracy as the preferred form of government. Under democratic political systems, bellicose leaders with a propensity for the use of force to advance national interests can be kept in line by a system of checks and balances. Inherent in a healthy democratic system are watchdog organizations like a free press and nongovernmental organizations (NGOs). These elements of civil society ensure that constituents have access to multiple forms of information, not just the preferred messaging of the central government or executive authority. Consequently, leaders who resort to force when other

economic or diplomatic options may exist often find themselves voted out of office during the next round of national elections. This dynamic is commonly referred to as the Democratic Peace Theory.<sup>8</sup>

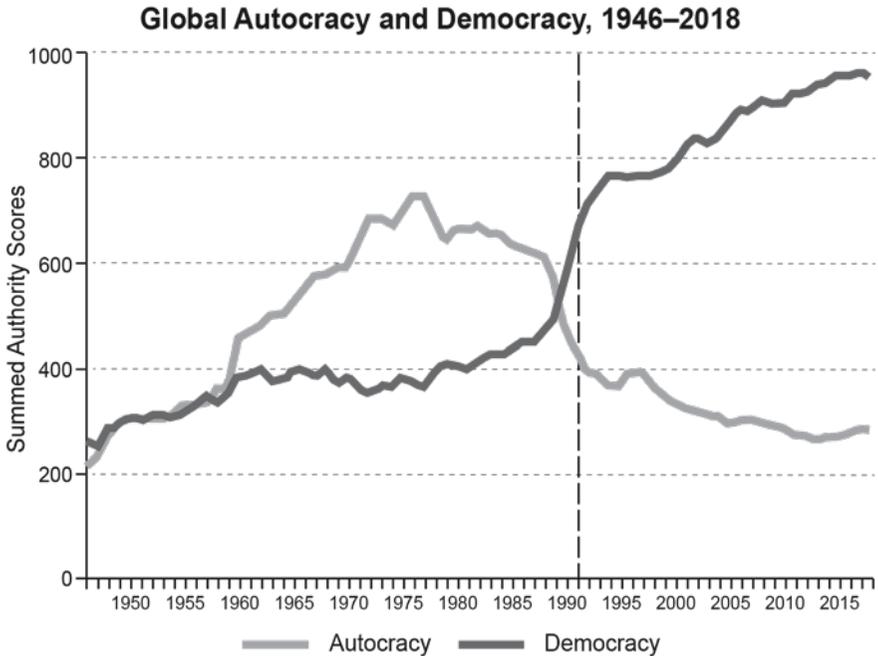


Figure 3. Global trends in governance from 1946–2018. The number of dictatorships or autocratic regimes took a severe downturn following the end of the Cold War as both the Soviet Union and the United States withdrew assistance for regimes that supported communist expansion or containment, respectively. After 1991, democracy became a widely-accepted international norm of governance, in part because the U.S. and other Western nations advocated for democratic governments and respect for international HR standards. Consequently, the number of democratic regimes (marked by the dark grey line) skyrocketed while the number of autocratic governments (the light grey line) dropped precipitously. Source: Center for Systemic Peace, Global Conflict Trends, <http://www.systemicpeace.org/CTfigures/CTfig14.htm>. Used with permission

Fourth, the trend of globalization of the world economies also contributes to the tendency in global peace. With the information and computer revolutions, nations are more interconnected and interdependent than ever before. Conflicts that disrupt economic markets are costly and have destabilizing

ripple effects around the globe. This generates an intense pressure from the international community to avoid or resolve disputes.<sup>9</sup>

Louis Kriesberg, Professor Emeritus at Syracuse University, also points toward the increased participation of women in politics as the reason for more peaceful solutions to conflicts and a reduction in the use of force. According to Kriesberg, the increased participation of women in politics has, in theory, made the trend toward peaceful resolution of disputes more likely.<sup>10</sup> The last reason for the trends in peace is the emergence of conflict resolution practices as a growing field of practice by diplomats and scholars.<sup>11</sup> Mediation, negotiation, and facilitation in the resolution of disagreements have helped governments with disputes resolve their issues through dialogue and peace accords that help the parties find common ground and mutually beneficial solutions to their problems.<sup>12</sup>

## **Changes in the Concept of Sovereignty**

Until recently, the sovereign power of states was one of the central precepts of international relations among governments, nearly a sacrosanct right. However, as a result of the international advances made with democracy and peace, sovereignty (the idea that governments had nearly unconditional authority over their citizens) is now widely accepted as entailing a dual responsibility. Externally, nations should respect the sovereignty of other states, and internally, nations should respect the dignity and fundamental rights of all persons within the state. Former UN Secretary General Kofi Annan captured the shift in sentiment that state sovereignty is not absolute during a historical speech in Geneva, Switzerland, in April 1999. “No government has the right to hide behind national sovereignty in order to violate the HR or fundamental freedoms of its people. We will not and we cannot accept a situation where people are brutalized behind national boundaries,” he said.<sup>13</sup> While exceptions exist (e.g., China, North Korea, Iran), authoritarian leaders realize they no longer have unconditional authority to repress the inherent rights of citizens in their countries and that abusive policies may generate diplomatic or economic consequences against their regime.

Nowadays, concepts like the “responsibility to protect” (only a concept, not a legally binding treaty) are widely accepted as an international obligation and, as in Libya in 2011, have spurred nations to action to prevent mass atrocities inside a sovereign state.<sup>14</sup> The idea of universal jurisdiction has

also become popular, leading to international bodies prosecuting political or military leaders who hide within state borders after having committed crimes against humanity or other gross violations of HR against their citizens.<sup>15</sup> Modern institutions, such as the UN, the International Criminal Court, and other special tribunals have demonstrated that there are limits to the decisions and policies of national leaders.<sup>16</sup> During the International Criminal Tribunal for the Former Yugoslavia, for example, judges expressed the limitations of governments to abuse their citizens. “It would be a travesty of law and a betrayal of the universal need for justice, should the concept of State sovereignty be allowed to be raised successfully against HR. Borders should not be considered as a shield against the reach of the law and as a protection for those who trample underfoot the most elementary rights of humanity,” the judges wrote.<sup>17</sup>

## **The Nature of Contemporary Conflicts**

All this good news about the general peace among nations is not to say that there are not serious security issues in many countries in the 21st century. The U.S. Department of State lists 61 foreign terrorist organizations (FTOs)—many of them radical Islamic groups operating in the Middle East and Africa—that have launched attacks against civilians in dozens of countries.<sup>18</sup> Additionally, organized crime groups in Mexico and the Northern Triangle nations of Central America (El Salvador, Honduras, and Guatemala) have made these nations the most violent countries in the world, more so than even the war-plagued Iraq, Afghanistan, and Yemen.<sup>19</sup> Bloody conflicts have ravaged many African countries including Rwanda, the Democratic Republic of the Congo (DROC), and Sudan.

These violent internal conflicts (low intensity conflict is a misnomer because the confrontations are often as violent as conventional war) represent a significant paradigm shift, one legal scholars and lawyers have struggled to understand. Modern conflicts remain very violent, but the legal guidelines developed for conflicts in the 20th century don’t provide adequate direction for 21st century confrontations. The regulations that govern the use of force on the battlefield have become so blurred that even the world’s leading scholars cannot agree on the rules. Military forces must navigate these treacherous conditions on their own. Civilians and non-combatants often bear the costs of the confusion. As one scholar described it, “a clear demarcation between

a state of peace and one of war no longer exists. Understanding the rules is half the battle.”<sup>20</sup>

In many ways, modern conflict is more like police work than encounters between military forces.<sup>21</sup> The opponent frequently consists of irregular forces that blend into the population rather than a conventional force that is easily distinguishable from civilians, wears identifying insignia, and openly carries arms. In many cases, the “enemy” is a well-armed criminal who uses violence to profit from his or her illicit activities. Frequently, individuals in the community may be participating in the criminal economy in order to make money (lookouts, informants, drug lab workers, and drivers, for example) but aren’t armed and shouldn’t be considered a direct threat toward security forces. At the same time, because of the proliferation of small arms in many countries, legitimate members of the community may be armed for self-protection or as part of a neighborhood watch organization or a local militia. In other words, an individual with a weapon should not automatically be considered a threat. In these cases, it is difficult to determine who is an armed criminal and who is a member of local law enforcement groups.



Figure 4. Philippine police control protesters outside the U.S. embassy in Manila in 2017. The level of violence has grown so high in many countries that the armed forces are required to support or replace the police. Photo by Newscom

Additionally, in contemporary low-intensity conflicts, the front lines of the battlefield are constantly shifting and often indistinguishable, blurring the lines between the combatants and non-combatants. For these reasons, contemporary security operations require a mix of law enforcement skills very different from conventional military training. Domestic law enforcement operations require a vast amount of discretion and diplomacy, and lethal force should be considered the recourse of last resort.<sup>22</sup>

Against violent criminal groups, many governments have few other options other than to deploy their own militaries to the streets to control the violence. However, using military forces in law enforcement operations is a dangerous solution, one fraught with complications. Soldiers are normally accustomed to using military firepower and heavy weaponry to annihilate the enemy.

As the former UN High Commissioner for Human Rights Navi Pillay put it:

I understand that in extraordinary circumstances difficult decisions have to be taken—like the use of the military in public order functions—while a State builds the capacity to protect its citizens according to the rule of law. But such exceptional measures must remain true to their nature—extraordinary, and limited in time. And they must be carried out under civilian control and within the boundaries set by human rights standards and principles.<sup>23</sup>

Before being assigned law enforcement duties, soldiers need extensive retraining to learn to fight an enemy that is mixed among the people, situations that require a large amount of discipline, discretion, and caution. Soldiers without the proper training or education may commit operational errors that jeopardize their legitimacy among the civilian population. For military forces unprepared for these types of operations and not equipped with nonlethal weapons, there are few options between shouting and shooting. A young soldier handed a rifle without training on escalation of force (EOF) tactics or de-escalation techniques may resort to lethal force too quickly when other effective nonlethal tactics are viable options. His or her weapon may also be inappropriate for the circumstances; a military rifle fires a higher-velocity round, has much more energy, and can cause much more harm to civilians than standard police arms. Hence, the deployment of the military in these instances carries serious risks for civilians in crime-affected

regions, and have negative repercussions for national, strategic, and operational interests of the military institutions and governments that they represent. As General H.R. McMaster wrote, “soldiers trained exclusively for conventional combat operations may be predisposed toward responding with all available firepower upon contact with the enemy. Such a reaction might result in the unnecessary loss of innocent life and run counter to the overall aim of operations.”<sup>24</sup> For these reasons, it is essential that SOF who provide tactical training to military forces in more than 100 countries around the world understand the evolving nature of conflict and the rules on the use of force in contemporary warfare.



Figure 5. Protestors attack Honduran soldiers in Tegucigalpa, Honduras, during the 2009 constitutional crisis. Honduran military leaders ordered their units to the streets to control violent protests but did not equip them with nonlethal weapons nor issue them live ammunition because of fear it would result in a massacre of civilians. Photo by Associated Press/Esteban Felix/used with permission

## Chapter 2. Fundamental Principles of LOAC, Human Rights (HR) Law, and Criminal Law

The changes to the inviolability of state sovereignty and the nature of warfare also require a need to update the rules that govern the use of force. Conventional state-on-state conflicts, like those of World War II, are primarily governed by the LOAC described in the Hague Conventions of 1907, the GCs of 1949, and the Additional Protocols of 1977. Although some laws existed before 1945, the vast majority of international treaties that govern the use of force or protect the rights of citizens of a country were developed as a result of the atrocities committed during World War II.<sup>25</sup> Abuses by the Nazi regime against German citizens and by Japanese soldiers in occupied territories in Asia spurred world leaders to launch a series of international HR treaties to protect citizens of a country from its own government. The post-war period saw a flood of international declarations and treaties to protect the fundamental HR of individuals and their property. This chapter provides a brief historical summary of how LOAC, HR, and criminal law evolved following World War II.

### The Law of Armed Conflict (LOAC)

The LOAC, also referred to as International Humanitarian Law (IHL), govern the actions of security forces and other participants during armed conflicts.<sup>26</sup> The laws were developed to limit excessive amounts of force during conflicts between states and against OAG, to protect the rights of non-combatants such as civilians, medics, and members of the press, and to protect civilian property. As one LOAC treaty puts it, the laws of war are intended to, “alleviate as much as possible the calamities of war.”<sup>27</sup> Many of the LOAC rules were developed by military representatives who had witnessed the horrors of war first-hand and wanted to limit the unnecessary suffering that commonly occurs during armed conflicts.<sup>28</sup> By reaching agreements on restrictions on certain types of weapons and their use during war, armies hoped that their opponents would follow suit, a form of reciprocity that would prevent the most horrific of offensive actions during fighting.

Since the end of the world wars, governments have agreed to a series of laws designed to regulate hostilities and suffering on the battlefield. In 1949, under the guidance of the (ICRC), the four GCs were developed. The GCs are well accepted by the international community; every country in the world (including the United States) has ratified the four principal GCs and adhere to their principles.<sup>29</sup> For example, the U.S. ratified the 1949 GCs in 1955 and has signed but not ratified Additional Protocols I and II. Under other LOAC treaties, many governments have agreed to no longer employ chemical or biological weapons, use cluster munitions or land mines that remain active indefinitely, use bullets that flatten or expand in the human body, use weapons or arms that cannot be detected by x-rays in the human body, use blinding laser weapons, fire on civilian populations to defeat their will to fight, “carpet bomb,” or use siege tactics to starve or deny medical supplies to trapped civilians.

Since the end of World War II, the number of state-on-state conflicts has steadily declined. However, at the same time conflicts between nations have decreased, societal warfare and internal disputes—those within the borders of a country—have increased. In 1977, following a series of international conferences sponsored by the ICRC and attended by some of the world’s leading humanitarian experts, two new international treaties on the use of force during armed conflict were introduced. Additional Protocol I added over 100 new articles to govern IACs, particularly to address new developments in modern warfare (such as the rights of guerrilla fighters) and to clarify existing humanitarian law statutes. As of early 2020, 174 countries have ratified and accepted Additional Protocol I. Simultaneously, Additional Protocol II was developed to clarify rules for armed conflict against armed non-state actors (e.g., guerrilla forces, insurgents, and rebel armies) within the borders of its country. These are referred to as NIAC. Additional Protocol II attempts to clarify the rules for fighting these armed groups, particularly with regard to participants in the conflict who may play temporary roles as armed participants. As of early 2020, more than 160 countries have ratified Additional Protocol II. Despite the concerted effort to develop detailed rules for internal conflicts, some critics contend that NIAC rules are still too ambiguous and do not provide sufficient details for governments to follow when armed groups fight against government forces.

Together, the GCs of 1949 and the Additional Protocols of 1977 are considered the principal references for modern armed conflicts.

The ICRC has a unique role as the internationally-recognized “guardian” of LOAC.<sup>30</sup> The organization plays a neutral and independent humanitarian role to assist victims of armed conflict and other situations of violence (i.e., disturbances internal to a country). Coupled with the Red Crescent Movement, the ICRC assists humanitarian efforts in nearly 100 countries and in dozens of conflicts around the world. In addition to monitoring conflicts, the ICRC plays a role in facilitating discussions on emerging issues in international humanitarian law such as the features of NIACs, what constitutes direct participation in hostilities (DPH), and the impact of new technology on the conduct of hostilities.<sup>31</sup>

The most well-known LOAC elements include the principles of military necessity, humanity, discrimination, and proportionality. The first principle, military necessity, permits combatants to use the amount of force necessary to ensure the defeat of the enemy as long as it is not forbidden by law. Humanity, the second LOAC principle, requires that conflict participants only use the amount of force necessary to achieve military objectives. In other words, tactics that cause unnecessary suffering beyond that required for legitimate military purposes are prohibited. This means that weapons that cause needless suffering—such as projectiles with glass, plastic, or poison—are forbidden. Discrimination (also referred to as distinction) is the most important principle. It requires that participants in a conflict only use force against combatants and military objectives. They must take precautions to ensure they do not intentionally target non-combatants or civilian property. Last, proportionality requires combatants to avoid excessive loss of civilian life or property in relation to the desired military objective. A commander must determine if the expected incidental injury resulting from an attack, including harm to civilians and damage to civilian objects, would be excessive in relation to the concrete and direct military advantage anticipated to be gained from the attack.<sup>32</sup>

It is imperative to recognize that LOAC permits the death of civilians if the principles mentioned above are taken into account during the targeting and decision-making process. In other words, civilian deaths may be justified through LOAC even if civilians are not the object of an attack—if the target is considered a lawful military objective, is militarily necessary, and if the civilian deaths are not excessive in relation to the military advantage achieved through the attack. As one legal scholar puts it, “as long as the rules of the game are observed, it is permissible to cause suffering, deprivation

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*In other words, civilian deaths may be justified through LOAC even if civilians are not the object of an attack—if the target is considered a lawful military objective, is militarily necessary, and if the civilian deaths are not excessive in relation to the military advantage achieved through the attack.*

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of freedom, and death.”<sup>33</sup> This represents an immense amount of responsibility for soldiers and commanders who can make life-or-death decisions for civilians on the battlefield.

There is a lot of subjectivity in the tactical assessment a commander can make with regard to the principles of warfare and the use of force. For example, targets are not supposed to be attacked unless they constitute a lawful military objective, one that

provides a “concrete and direct military advantage.”<sup>34</sup> But what is considered a measurable military advantage may vary between individuals. Likewise, the principle of proportionality is sometimes determined by how much suffering may result from the attack. Any pre-attack assessment should consider the number of nearby civilians, the explosive range of the weapon to be used, and the relative importance of the military target. Proportionality is also intended to avoid wanton destruction and unnecessary suffering, again a qualitative rather than quantitative assessment. For example, if a terrorist safe house is about to be bombed, how many nearby civilians may be put at risk of death or injury? None? Five? Twenty?

Grave breaches or violations of LOAC are considered war crimes and are defined as severe violations of IHL that occur as part of a largescale plan or policy. These atrocities often occur during conflicts as killing becomes commonplace and normalized, the enemy is dehumanized, and soldiers suffer from battlefield psychological trauma, or even from being recklessly aggressive with the use of military force.<sup>35</sup> There are dozens of types of war crimes including intentionally killing civilians or prisoners, torture, unnecessarily destroying civilian property, using human shields, rape, recruiting child soldiers, and violations of the principles of warfare listed in the previous paragraphs.<sup>36</sup> War crimes are different from crimes against humanity. The latter are grave breaches of HR law that can be committed during times of both peace and war. These will be examined in the next section.<sup>37</sup>

## International Armed Conflicts (IAC) and Non-International Armed Conflicts (NIAC)

One of the principal objectives of this manuscript is to explain the tactical and legal differences between International Armed Conflicts (IAC), NIAC, and internal disturbances. There are important differences between the use of force rules under each circumstance and it is critical that U.S. SOF understand these distinctions. The first category (IAC) is governed by LOAC and permits the use of military firepower, conditions that most professional militaries are frequently trained in and indoctrinated. Events that occur during an IAC are said to happen during the “conduct of hostilities” or the “hostilities paradigm” according to the term preferred by legal scholars.

As mentioned in the previous chapter, IACs are rare in the 21st century. According to the Geneva Academy of International Humanitarian Law and Human Rights, only a handful of countries are involved in state-on-state IACs.<sup>38</sup> However, OAG like terrorists, insurgents, paramilitaries, or mafias exist in some countries.<sup>39</sup> When these groups reach a certain threshold of organization and violence against the state, they are designated as “organized armed groups.”<sup>40</sup> These conflicts are not occurring between two countries, but are internal to a country. For that reason, they are referred to as “non-international armed conflicts” or NIACs. Like IACs, they are governed by LOAC rules (specifically common article 3 of the GCs and Additional Protocol II) and occur during the “conduct of hostilities” or the “hostilities paradigm.” However, because NIACs occur within the borders of a country, HR that are the responsibility of the national government also apply. For that reason—the simultaneous application of LOAC and HR law—it is very difficult to ascertain which rules for the use of force apply at the moment of the confrontation.

Criteria for the use of force in NIACs are contained in Article 3 of the GCs and the Additional Protocol II. In general, the NIAC threshold is reached if the situation meets two criteria: “a minimum level of intensity and duration” and when the armed group “is organized and has the capacity to engage in military operations.”<sup>41</sup> Additional Protocol II sets an even higher threshold to be declared an armed conflict. It requires that the armed group be under a responsible command and exercise such control over a territory as to enable them to carry out sustained and concerted military operations.<sup>42</sup>

Range of Conflict	<u>Type of Conflict</u>	<u>Governed by . . .</u>
War	<u>International Armed Conflict (IAC)</u> (state on state)	<u>International Humanitarian Law:</u> <ol style="list-style-type: none"> <li>1. Geneva Conventions, Article 2 (1949)</li> <li>2. Additional Protocol I (1977)</li> <li>3. International Human Rights Treaties</li> </ol>
International		
National		
	<u>Non-International Armed Conflict (NIAC)</u> (state vs organized armed groups)	<u>International Humanitarian Law:</u> <ol style="list-style-type: none"> <li>1. Geneva Conventions, Article 3 (1949)</li> <li>2. Additional Protocol II (1977)</li> <li>3. International Human Rights Treaties</li> </ol>
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Peace	<u>Internal Disturbances</u> (banditry, riots, skirmishes, organized crime activity, short-lived rebellions or insurgencies, indigenous protests)	<u>Human Rights Law:</u> <ol style="list-style-type: none"> <li>1. National Criminal Law</li> <li>2. International Human Rights Treaties</li> </ol>

Figure 6. Legal Guidance on the Use of Force.

From the international perspective, the use of force during armed conflicts is governed by the IHL such as the GCs and the Additional Protocols. Certain non-derogable HR protections—those that cannot be suspended for any reason—also exist during armed conflicts. For this reason, HR are considered to exist at all times, during peace or war. However, during internal disturbances (called “other situations of violence” by the ICRC), only criminal law and human rights law apply. Source: Author

Legal scholars may look at a number of factors to determine if the armed group meets the intensity and organization requirements: the existence of a command structure; disciplinary rules and mechanisms within the group; the existence of a headquarters; control of territory; the ability of the group to gain access to weapons, other military equipment, recruits, and military training; its ability to plan, coordinate, and carry out military operations, including troop movements and logistics; the ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as ceasefire or peace accords.<sup>43</sup>

Table 1. Criteria for Determining OAG Status. Source: Louise Arimatsu and Mohbuba Choudhury/Chatham House/The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya

Intensity Threshold	Organizational Threshold
<ul style="list-style-type: none"> <li>• the gravity of attacks and their frequency;</li> <li>• the territorial extent of the violence;</li> <li>• the collective character of hostilities;</li> <li>• the extent of response by government forces;</li> <li>• the type of weapons used by parties to the conflict;</li> <li>• the number of people displaced by the fighting.</li> </ul>	<ul style="list-style-type: none"> <li>• the use of internal regulations or disciplinary rules;</li> <li>• the nomination or presence of a spokesperson;</li> <li>• the issuing of orders, political statements and communiqués;</li> <li>• the establishment of headquarters;</li> <li>• the capacity to launch coordinated action between the armed units;</li> <li>• the ability to recruit new members;</li> <li>• the capacity to provide military training;</li> <li>• the creation of weapons distribution programs;</li> <li>• the use of uniforms and similar equipment;</li> <li>• participation in political negotiations.</li> </ul>

The U.S. war against the Islamic State, al-Qaeda, and a number of other terrorist groups, for example, are NIACs.<sup>44</sup> The U.S. and its coalition partners are not fighting against another state’s armed forces, but against OAGs. Many of the terrorist groups have command and control structure, have control of territory, and can carry out intense and sustained combat operations.<sup>45</sup> Consequently, the U.S. can attack these groups with military firepower in accordance with the article 3 of the GCs and Additional Protocol II.

The third category, internal disturbances, referred to as “other situations of violence” by the ICRC, has very restrictive rules on the use of military force and require tactics akin to those used by the police. Events that occur in these circumstances happen during the “law enforcement paradigm.” They are governed by HR law and domestic criminal law.

## When Do the Laws of Armed Conflict Apply?

LOAC rules only apply during an IAC (state on state) or during a NIAC (versus an OAG).<sup>46</sup> The definition of when an armed conflict occurs is very simple. An armed conflict exists when “a government resorts to armed force against another country or against an OAG, regardless of the reasons or the intensity of the confrontation.”<sup>47</sup> If no armed conflict exists, then by definition LOAC rules do not apply and the crisis falls into the category of internal disturbances that are governed by criminal law and HR law under the law enforcement paradigm.

During a NIAC, the lines quickly blur. State security forces may be combating OAGs with LOAC rules but, at the same time, civilians that require HR protections are often present. Because most members of an OAG are

*Because most members of an OAG are indistinguishable from civilians, soldiers and police have to be able to rapidly assess who they are confronting in order to use the right tactics.*

indistinguishable from civilians, soldiers and police have to be able to rapidly assess who they are confronting in order to use the right tactics. Marcus Luttrell, the “lone survivor” of the ill-fated Navy Special Warfare reconnaissance mission in 2005, wrote, “The truth is, in this kind of terrorist/insurgent warfare, no one can tell who’s a civilian and who’s not. Half the time, no one knows

who the goddamned enemy is, and by the time you find out, it might be too late to save your own life.”<sup>48</sup>

Operational circumstances on the battlefield can shift rapidly between the LOAC and the law enforcement paradigm. In March 2003, when U.S. and international coalition forces invaded Iraq, allied forces were fighting an IAC against Iraqi state forces like the Republican Guard. Major combat operations were declared completed by May of that year as the Iraqi Army surrendered or was defeated. But in 2004, the Iraqi insurgency broke out

and the warfare became a NIAC against irregular forces. Rules on the use of force shifted, something most U.S. soldiers were unaware of.<sup>49</sup>

To muddy the waters even further, it's possible for a number of IACs and NIACs to occur in a single country simultaneously. Take Syria, for example. In the years after the Syrian crisis erupted in 2011, the Syrian government had brief armed encounters with Turkey and Israel.<sup>50</sup> These were considered to be IACs with the Syrian government. At the same time, the government of Bashir Al-Assad was fighting against a number of OAGs such as the Free Syrian Army and the Syrian Democratic Forces. These confrontations constitute a NIAC because the opposition groups had reached the required threshold of organization and violence. OAGs could also be fighting against each other as was the case of the Islamic State and the Kurdish militias. And, since the Syrian armed forces were fighting within their own country, they also had responsibility, in accordance with international law, to protect the HR of their own citizens.<sup>51</sup>

Confused? You are not alone. Being able to decipher which legal circumstances exist and consequently which rules on the use of force can be applied is nearly impossible when all three conditions are occurring simultaneously. Even combat-experienced soldiers are challenged by the conditions on the blurred battlefields of modern conflicts. SOF soldiers and sailors interviewed for this monograph are reluctant to address the murky legal issues during training in other countries because it is so difficult to explain the rules between laws of war and law enforcement. And military lawyers and legal scholars have struggled to produce comprehensible guidelines on the use of force that can be applied in the rapidly changing environment.

As table 2 demonstrates, the majority of countries—83 percent by this author's calculation—have security challenges that fall below the threshold of an armed conflict into the third category of internal disturbances.<sup>52</sup> The conflicts in this third category involve low intensity confrontations such as banditry, skirmishes, social or political protests, short-lived insurrections, or episodic riots that occur within the country's borders. These disputes fall below that level of violence and organization common in armed conflicts and are managed by law enforcement rules, not the laws of war. Under these circumstances, LOAC does not apply as there is no armed conflict per the legal definition of the term. Instead, military forces conducting law enforcement are required to use police tactics, techniques, and procedures. Peter

Maurer, president of the ICRC, summed up the challenges of contemporary warfare recently when he said,

We must navigate between legal systems. We can't anymore focus exclusively on international humanitarian law, because we are not anymore exclusively in a clearly defined space of either internal or international armed conflict. We have to, therefore, also expand on international human rights law, criminal law, national legislation, or counterterrorism legislation amongst others.<sup>53</sup>

Table 2. Typology of Conflicts Worldwide. Source: Geneva Academy of International Humanitarian Law and Human Rights

Type	IAC	NIAC	Other Situations of Violence
<b>Description</b>	State on State conflict	State vs. OAG, a form of internal conflict	Internal disturbance that does not rise to the level of armed conflict
<b>Currently active?</b>	7 involving 11 countries plus coalition of 14 nations fighting vs. Syria	51 in 23 countries	Approximately 165 countries
<b>Percentage of all countries</b>	~ 5 percent of countries	~ 12 percent countries	~ 83 percent of countries

From the author's 20 years of experience working with PNs in Africa, Europe, and Latin America, few militaries understand the differences between these classifications or how to distinguish between them operationally. One senior U.S. military legal expert described PN legal training as "woefully inadequate."<sup>54</sup> Based on more than 70 interviews conducted for this monograph and the author's two decades of managing security cooperation programs with PN, most foreign military forces are unprepared for the new nature of contemporary warfare. This represents an important opportunity for U.S. SOF that often lead security cooperation efforts with U.S. partners. It is critical that U.S. SOF who frequently train and interact with PN militaries understand the legal and tactical differences between the three types of contemporary conflict. Since the majority of contemporary conflicts fall

into the law enforcement paradigm, it is prudent that U.S. SOF have some familiarity with those rules. And since nearly all of our PNs are operating internally to their country, they are required to apply HR standards in order to protect the citizens of that country. U.S. SOF working with these PNs should, therefore, be aware of the legal operating parameters of basic law enforcement and HR law.

## **Human Rights (HR) Law**

Like LOAC, international human rights law (IHRL) is a relatively new feature in international politics. Like LOAC, elements of HR existed far before 1945. But both fields of law sprang forth from the dust of WWII, prompted by decision makers who felt compelled to prevent a repetition of the atrocities committed during the war.<sup>55</sup> In 1945, the UN was established “to reaffirm faith in fundamental HR, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”<sup>56</sup> On 10 December 1948, the UN adopted the Universal Declaration of Human Rights (UDHR) which further developed the ideas of human rights through 30 articles on inherent individual rights such as the right to life, liberty, a fair trial, freedom of expression, and protection from slavery, torture, and arbitrary arrest. Human rights advocates developed a series of requirements for governments that provide protection for individuals against violations of their fundamental freedoms. They are based on the dignity and worth of each person regardless of their race, color, sex, religion, or political status.

Through the 1960s, 1970s, and 1980s, the international community created dozens of important HR treaties to compel governments to respect the individual rights of its citizens. The most well-known of these are the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). These two treaties, along with the UDHR, form the International Bill of Human Rights. The ICCPR and the ICESCR are nearly universally accepted by the community of nations<sup>57</sup> and form the basis for the national constitutions and criminal justice systems in more than 200 countries and territories. Dozens of other treaties address basic rights of individuals (e.g., right to food, education, land, and clean water, for example) and protection of vulnerable groups such as women, children, the disabled, indigenous peoples, minorities, refugees, immigrants, elderly people, and journalists.



Figure 7. The Diversity of HR. Modern day HR covers a broad range of important issues. This list of more than 40 HR topics is drawn from nearly 200 HR issues tracked by the United Nations Office of the High Commissioner for Human Rights (OHCHR). Based on the author’s experience, the HR marked in white font are the ones that U.S. SOF are most likely to encounter while conducting training with PNs. Source: Author

Many of these HR treaties also establish the baseline for civil and political rights that are fundamental to a developed democratic government. For example, citizens in a democratic state should have the right to freedom of expression, assembly, and to choose their own religion. Other HR treaties inform the criminal or justice systems that governments are required to follow in order to protect the rights of individuals. Still others include, but

are not limited to, protection from torture, prohibition of slavery and forced disappearances, rules about capital punishment, and the importance of an independent judiciary.

Human rights can be thought of in two ways: positive obligations and negative obligations. Positive obligations are ones that the state is required to provide for its citizens such as education, food security, and assistance during emergencies. In contrast, negative obligations refer to the government's commitment to protect the rights of individuals, normally by not doing something that is prohibited. Examples of negative obligations include arbitrary arrest, prolonged detention, and preventing suspects from receiving a fair trial and legal representation.<sup>58</sup>

Each country that ratifies an international HR treaty is also expected to develop the governmental institutional means of implementing, enforcing, and tracking the effectiveness of the policies. This requirement to institutionalize HR within the government can often significantly transform the government and the politics of the country.

It is important to remember that modern HR were developed to protect citizens from the abuses of their own government. As one scholar put it, it is about “protecting the governed from their governments.”<sup>59</sup> States can wield an immense amount of control over their constituents and those authorities can rapidly turn abusive. Professor R. J. Rummel estimated that during the 20th century, government forces killed over 200 million of their own citizens, a term he phrased “democide.”<sup>60</sup> For example, the state-induced famine in the Soviet Union from 1929–1933 resulted in an estimated six million deaths by starvation. The Nazi regime killed hundreds of thousands of German citizens during the Holocaust (as well as millions of others outside German borders). More than 15 million Chinese may have starved to death during the Great Chinese Famine of 1959–1961. The Cambodian government led by the Khmer Rouge murdered 1.5–2.0 million political opponents from 1975–1979.<sup>61</sup>

Because governments are responsible for ensuring HR to their citizens, only the state or its representatives can commit HR abuses.<sup>62</sup> This is an important aspect of HR law that many students do not understand.<sup>63</sup> If criminals or terrorists commit atrocities against civilians—torture, indiscriminate attacks, hostage taking, or even the depraved beheadings of captives by the Islamic State—aren't they committing HR violations? The answer is no. From a legal perspective, criminals or members of OAGs who commit crimes are not violating the HR of their victims; they are committing crimes that are

against the laws of their country or international criminal law. Human rights are designed to protect individuals from actions of their own government. Therefore, only duly-designated agents of the state—normally police officers and members of the military—can commit HR violations because they are representatives of a legitimate government who are obliged to follow the law.

Additionally, because a government is obliged to provide security for its citizens, HR violations can occur when security officials do not take action when they could have or should have. This is sometimes referred to as act of omission, in contrast to an HR violation that occurs because of an act of commission. Here is an example. Military forces with responsibility for security in a remote part of a country know paramilitary forces are moving toward a village in which the inhabitants of the village are allegedly supporting an insurgent group. If the military knows that violence may occur and atrocities against civilians are likely to happen, they are obligated to intervene against the paramilitaries to protect the villagers. The inhabitants of the village are citizens of the country and therefore considered to be under the protection of the government. If the military forces do not act to prevent the atrocities or crimes against the villagers, the soldiers could be considered complicit in the atrocities. Or if a police officer knows his partners are abusing detainees, he or she may be responsible for any HR violations that occur because of a failure to prevent or report it. There are countless other examples of cases in which security force officials can ignore abuses committed by others: assault of prisoners, opening fire on protesters, or arbitrary arrests, for example. The bottom line is that government agents are required to be proactive in the enforcement of HR protections by peers and subordinates.

Human rights law applies during all times—during conflict as well as during times of peace.<sup>64</sup> However, some HR can be temporarily suspended during emergencies. Nearly every government reserves the right to declare a state of exception following a national crisis such as a terrorist attack or a natural disaster. In some nations, this permits authorities to suspend civil and political liberties, cancel habeas corpus, deploy significant security forces, outlaw political organizations or gatherings, indefinitely detain suspects, limit free speech, try civilians in military courts, and declare curfews until order can be restored and the situation is under control. The length of the state of exception should only last that amount of time that is required by state forces to restore law and order. Normal political and civil liberties should be reinstated as soon as possible. That said, states of exception can

be easily manipulated by authoritarian governments. For example, President al-Assad and the Syrian government had a state of emergency in place for 48 years, an under-handed effort to suppress political opposition, detain protesters, and take authoritarian action against opponents. Likewise, President Hosni Mubarak in Egypt had a state of exception in place for more than 30 years.

Some HR can never be suspended: the right to life, the prohibition against slavery, torture, rape, hostage taking, human shields, kidnapping, racial discrimination, and deportation of minorities. These rights are considered non-derogable and are never permitted to be suspended or denied under any circumstances.<sup>65</sup>

When a norm has become widely accepted among nations (e.g., the prohibition against slavery), it is considered customary international law. Two criteria are generally used to determine if something has become customary. First, a practice that is regularly and consistently exercised over a period of time is accepted as customary law (state practice). Second, the belief that the practice is obligatory for governments (*opinio juris*).<sup>66</sup> Some legal experts would add a third element: that the practice is taken by a significant number of states and not rejected by a significant number of states. Governments, therefore, do not have to have ratified a treaty in order to abide by rules that have become customary. The GCs and many international HR treaties are now considered to be customary and therefore obligatory for all governments. No states, for example, shall practice slavery, torture, cruel, inhuman or degrading treatment or punishment, arbitrary arrest, or racial discrimination.

Gross violations of HR are crimes against humanity and include murder, enslavement, forcible transfer of a population, severe cases of imprisonment, torture, rape, sterilization, and enforced disappearances. They can occur anytime, during war or peace. To rise to the level of a crime against humanity, these crimes cannot be episodic, but rather must be committed as part of a widespread or systematic attack by a government, a group, or even an individual.<sup>67</sup>

Table 3. Principal Differences Between LOAC and HR Law. Source: Author

Issue	LOAC	HR Law
Applicability	Applies in international conflicts between nations or non-international internal conflicts against OAGs.	Applies in times of war or peace. Addresses the universal rights of citizens in their countries.
Participants*	Combatants, belligerents, insurgents, non-combatants, and civilians.	Fighters, criminals, and civilians.
Principal References	GCs I-IV (1949) and Additional Protocols (1977).	UDHR (1948), ICCPR, ICESCR.
Institutional oversight and management	ICRC.	UN, particularly the OHCHR.
Main issues	Rights of combatants, noncombatants, wounded, prisoners, etc. More recent treaties include the use of chemicals, mines, biological, and laser weapons.	Political and economic rights, rights of women, children and people with disabilities, slavery, forced labor, racism, torture, and enforced disappearances.
Principles regarding the use of force	Discrimination, humanity, necessity, proportionality, and precaution.	Legality, accountability, necessity, and proportionality.
Violations	Gross violations of LOAC are “war crimes.” “Crimes against humanity” and genocide can also occur during war.	Gross violations of HR are “crimes against humanity” and can occur during times of war or peace.

\*In NIAC, members of OAG are not considered combatants and do not have combatant privileges.

The UN has formed a system that permits periodic reviews of the compliance of the HR treaties that nations have ratified. On a rotating basis, every four years the OHCHR conducts an assessment—called the Universal Periodic Review—in which national governments present their efforts to implement the HR treaties they have ratified to a team of experts in Geneva,

Switzerland. The OHCHR is represented by a committee of experts who oversee compliance of the treaty. Additionally, the High Commissioner has a team of special envoys—rapporteurs—that he or she can deploy to the HR hotspots around the world to offer assistance to those in need.

Similar to the UN system, a number of regional courts also oversee the implementation of HR by nations. The European Court of Human Rights in Strasbourg, France is undoubtedly the most active and, since its establishment in 1959, has had a significant role in the implementation of HR among the 47 countries within its jurisdiction. Likewise, the Inter-American Commission of Human Rights in Washington, D.C. (established in 1949) and its sister institution the Inter-American Court of Human Rights in San Jose, Costa Rica oversee compliance of the 1959 Inter-American Convention on Human Rights. The African Court on Human and Peoples' Rights in Arusha, Tanzania was established in 2004 and is the most recent regional HR organization. Thirty African countries (out of 54) have ratified its charter and accepted its jurisdiction.

Why do HR violations occur? In this author's experience of teaching HR for more than 10 years and studying Latin American militaries for 25 years, HR violations occur for a number of reasons. These are the same reasons that LOAC violations may occur during an armed conflict. The most common reasons are a lack of adequate training and education. The rules on the use of force are inherently complex, particularly in the contemporary conditions in which the lines between civilians and fighters are easily blurred and security forces have to make life and death decision based upon imperfect information. Soldiers accustomed to using military weapons or those unfamiliar with rules on the use of force in the law enforcement paradigm can often unintentionally harm civilians. As the ICRC puts it, "it is unsound in law and potentially dangerous in practice to train and equip armed actors exclusively on the standards for the use force under LOAC when, in fact, they engage—even if infrequently—in law enforcement activities."<sup>68</sup>

The second reason HR violations occur is for a lack of leadership among senior officials who neglect to emphasize the importance of respect for HR to their subordinates. Soldiers and police know how to follow orders, but if there is a perceived ambivalence about HR among senior officers, the message may be interpreted by members of the security forces that HR are less urgent than other operational requirements such as engaging the enemy or unit force protection. Third, often times the mission is poorly defined or

inadequately articulated. For example, if the mission is to improve security in an area, the security forces could achieve that objective through offensive action against known enemy positions, removing popular support for the opponent, or providing enhanced security for civilians. The latter, of course, puts a focus on citizen security and adherence to HR precautions while the first strategy might involve heightened risk for civilians.

A lack of confidence in the justice system is another source of HR violations. In many countries, suspects who are arrested often escape punishment because the justice systems are overtaxed or understaffed. Perpetrators may be released because of lack of institutional capacity to prosecute them (e.g., proper custody of evidence or legal technicalities) or because the system is corrupted by organized crime. Additionally, many penitentiaries in the developing world are often under the control of organized crime groups comprised of prison inmates. A suspect's time in jail can actually turn him into a hardened criminal with deeper ties to organized crime than when he began his prison sentence.<sup>69</sup> For these reasons, members of the security forces frustrated by the level of impunity or lack of accountability for suspected criminals may decide to apply a form of street justice or vigilantism rather than properly turn suspects over to authorities to be tried in a court of law.

The fifth reason for HR violations is because of a perceived need for vengeance when soldiers or police see their colleagues killed or injured by the opponent. Members of the security forces need an immense amount of discipline to not exact revenge on an enemy or criminal who may have been responsible for the death of one of their close friends or member of the unit. Sixth, there is a tendency to dehumanize the opponent in order to make their death or injury more justified or morally acceptable. Last, security operations are extremely physically and mentally difficult. When soldiers or police are exhausted and emotionally spent, they may make poor choices that they would have avoided during normal conditions.<sup>70</sup>

## **Criminal Law**

The third category of law to be examined in this chapter (after LOAC and HR law) is criminal law. In most countries, HR laws serve as the basis for the criminal or penal laws of the country.<sup>71</sup> For example, HR treaties such as the ICCPR contain many of the political and civil liberties that are associated with criminal proceedings. These may include the right to a fair trial,

presumption of innocence, due process, the right to vote, and the right to peaceful assembly. Actions conducted under criminal law guidelines are commonly referred to as the law enforcement paradigm.

Law enforcement officials are tasked with maintaining security and the public order. They do so through their authority to arrest suspected criminals, take them before a lawful official to determine their guilt or innocence, gather evidence, interview witnesses, conduct authorized searches of the person and his or her property and, if necessary, detain them for the length of their sentence. Perpetrators of crimes are held accountable for their actions through the justice system.

Persons accused of and detained for criminal acts have a broad series of rights. In accordance with the rules in most countries, they should be assumed to be innocent until their guilt is clearly determined by qualified justice officials. They must receive an explanation of what they are suspected or accused of doing, they must be read their rights including the right not to self-incriminate and the right to legal counsel, they must be given a chance to contact family or friends to let them know of their detention, and they cannot be confined for an extended period of time before having a judge hear their case. Once the evidence against them is reviewed, if reasonable doubt exists about their guilt, they should be freed.<sup>72</sup>



Figure 8. International peacekeepers from the UN conduct a crowd control exercise with Kosovo police in 2018. Source: Reuters/Hazir Reka/Newscom

Like LOAC, criminal law has its own fundamental principles on the use of force that must be taken into account during each incident and particularly while planning operations. The principles of criminal law are proportionality, legality, accountability, and necessity (often referred to as P-L-A-N). The first principle, proportionality, refers to the requirement that the offense and the action taken to correct it or prevent it should be commensurate. Consideration should be given to how the suspect's civil rights might be infringed upon. For example, arresting a suspect in front of the person's children or business colleagues might be disproportionately excessive if it can also be done in a more discrete manner. The second principle, legality, refers to the requirement that any criminal enforcement action must be supported by a law that has been approved by legal authorities and is publicly available. Accountability, the third principle, states that the law enforcement action must be conducted transparently so that it can be judged within the limits of the laws that authorize it. Evidence must be managed properly, the legal rights of the suspect respected, and rules of due process followed. The last principle, necessity, states that the action required (e.g., the use of force) must not exceed the amount essential to accomplish the objective; no more force than is needed should be used. For example, if a suspect can be persuaded to surrender peacefully, there is no need for force.<sup>73</sup>

## **Police Executive Research Forum (PERF)**

In the United States, a number of reforms to police tactics and techniques have recently been recommended by the PERF in Washington, D.C. The group convenes frequently to share best practices on police doctrine. From 2014 to 2016, for example, senior U.S. law enforcement officials from 75 major cities met in four major conferences to share their experiences and develop new police techniques. The representatives identified a number of police techniques that should be reformed, according to their experiences. The 21-foot rule, for example, had become problematic. The rule was conceived in 1983 in Salt Lake City Utah when a police instructor demonstrated that a suspect within 21 feet of an officer could assault the officer before he or she had time to draw a weapon and shoot. While it provided officers with a situational awareness in which force may be required—a “safety zone” of sorts—police officials around the United States also began to realize that the

1. The first priority should be the sanctity of human life.
2. The situation should be approached with the idea that no force should be necessary.
3. Lethal force should be the last resort, not the first resort. Exhaust all EOF techniques before resorting to lethal force.
4. Have nonlethal tools available.
5. Use crisis intervention strategies and training. Know mediation and negotiation techniques. Ask yourself, “What can I do to de-escalate the situation?”
6. Intervene if other colleagues use excessive or unnecessary force.
7. Don’t use force against others who are only a threat to themselves.
8. Don’t create excessive risk by antagonizing the situation or suspect.
9. Ask yourself, will other less injurious options also work?
10. Be cognizant of your implicit biases that may negatively skew your perception of the situation.

Figure 9. Ten Basic Police Techniques for Military Personnel Conducting Law Enforcement Operations. Source: Developed from Police Executive Research Forum (PERF) and author’s own perspectives.

rule had become more of a “kill zone” in which deadly force was authorized as soon as someone came within that distance.

Instead of having a specific distance in which to determine when to use force, the PERF conference participants recommended police should consider the totality of the situation. That is, police officers should think about what other factors may be at play before making a decision on the use of force. For example, does the subject appear to have a mental illness? Is he or she threatening anyone other than himself or herself? Is the suspect using a weapon in an offensive manner (aggressive or threatening) or a defense manner (protecting himself)? As former Washington D.C. Police Chief Cathy Lanier stated, “The question is not, ‘Can you use deadly force?’ but rather, ‘Did you absolutely have to use deadly force?’”<sup>74</sup> Based on those answers and

other factors, police officers should choose the appropriate response rather than use 21-feet as a rigid and inflexible guideline that triggers an automatic response, one that may end in, as police officers put it, a “lawful but awful” result.<sup>75</sup>

Common within the use of force doctrine of many of the 18,000 U.S. law enforcement agencies are also de-escalation techniques. Police officers are trained to use methodological techniques to lower the tensions and tempers during a crisis. Effectively administered mediation, persuasion, or negotiation techniques are often the most important tools available to a savvy and resourceful police officer. For example, officers are trained to talk to

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*Effectively administered mediation, persuasion, or negotiation techniques are often the most important tools available to a savvy and resourceful police officer.*

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the person in a calm voice—not take an aggressive body posture, show empathy for the individual, get the person to respond to open-ended questions, not issue orders or ultimatums, and build trust and rapport with the person in order to reduce the amount of dangerous emotions at play. Some officers

describe these techniques as “slowing the situation down” so it does not result in violence against the suspect.<sup>76</sup>

Additionally, police recruits had often been trained to “draw a line in the sand.” That is, rather than permit a situation to go on interminably, police believed they had to resolve the situation in a short amount of time. Police leadership at the PERF conferences suggested taking as much time as possible to resolve the situation peacefully and without resorting to force. Time is on the side of the police officers and using de-escalation and crisis intervention techniques gives the suspect time to cool down. It also gives the officers time to build a rapport with the person. If necessary, officers should move away from the individual rather than towards him or her.

## **Customs and Border Patrol (CBP) Use of Force Reforms**

In the United States, police departments are not the only agencies conducting reviews of their use of force doctrine and policy. Following a number of violent incidents on the U.S.-Mexico border, the U.S. CBP conducted an exhaustive review of its use of force guidelines for the thousands of border patrol officials who oversee security on the southern border.<sup>77</sup> The

CBP reforms enacted by Commissioner R. Gil Kerlikowske in 2014 were published in new guidelines called *The Use of Force Policy, Guidelines, and Procedures Handbook*.<sup>78</sup> It includes a number of transparency and accountability priorities as well as de-escalation techniques, officer presence and communication, and training in less-lethal devices. It prohibits warning shots because they are dangerous to bystanders, prohibits firing at individuals that are fleeing (unless he or she poses an immediate threat of bodily harm or death to others), and forbids CBP officers from firing at moving vehicles. The new guidelines also prohibit the use of deadly force against persons throwing rocks that are not capable of causing serious physical injury or death. “Frankly, we need to be better at admitting when we’re wrong or where we’ve made a mistake,” Kerlikowske said. As a result of the reforms, the number of uses of firearms dropped by two-thirds from 2013 to 2018.<sup>79</sup>

## International Criminal Tribunals

Just as the OHCHR under the UN oversees state compliance with HR treaties, the international community of nations has also developed organizations to prosecute alleged perpetrators of international crimes and oversee international criminal law compliance. Many authoritarian governments often abuse their authorities—think of modern day North Korea or Venezuela—under the pretext of state sovereignty and national security. Until the 1990s, citizens of some countries had little recourse on how to seek justice. The development of international criminal tribunals in the 1990s has significantly altered the international legal playing field. In 1993, for example, the UN ordered the establishment of the International Criminal Tribunal for the former Yugoslavia to investigate allegations of genocide, crimes against humanity, and war crimes committed by members of the conflict. Likewise, the following year, the UN established the International Criminal Tribunal for Rwanda to investigate crimes of genocide and crimes against humanity during the Rwanda civil war in 1994. Special tribunals were also established to investigate atrocities committed in Sierra Leone, Cambodia, and Lebanon.

The work of the temporary tribunals illuminated the need for a permanent criminal court that could hold abusive leaders accountable for their acts. In 1998, the International Criminal Court (ICC) was established via the Rome Statute, and began operating in 2002. The creation of the ICC marked a major milestone in investigating violations of international criminal law.

When activated, the ICC investigates individuals accused of genocide, crimes against humanity, war crimes, and crimes of aggression. Since it was formed, the court has prosecuted egregious criminal acts committed in numerous countries including Kenya, the DROC, Sudan, Georgia, Libya, Cote d'Ivoire, and others.<sup>80</sup>

## Chapter 3. Differences Between LOAC and Criminal Law

As mentioned in chapters 1 and 2, there are very few state-on-state conflicts in our modern world. Instead, most nations are dealing with internal problems such as organized crime, drug traffickers, or terrorism. According to the Geneva Academy of International Humanitarian Law and Human Rights, over 80 percent of countries are dealing with criminal factions or other violent organized groups.<sup>81</sup> Conflict internal to a state—violent drug cartels in Mexico, election violence in Kenya, dangerous gangs in El Salvador, or terrorists in France—do not rise to the level of an IAC but may involve the military because of the number, violence, and armament of the adversary.<sup>82</sup> Many countries may prefer that their armed forces use LOAC tactics to combat these violent groups with the military firepower that provides an immense advantage to their security forces. However, the legal parameters require them to fight within the law enforcement paradigm. Combining the two fields of law nearly simultaneously is dangerous and complicated. Governments in these countries have struggled to retrain their militaries and find a balance between military firepower and discretionary police tactics. As a number of senior LOAC scholars acknowledge, “there is increasing overlap of HR law and the law of armed conflict.”<sup>83</sup> In these cases, both LOAC and criminal law may apply simultaneously.

In Latin America and the Caribbean, for example, only one of the 35 countries in the region has a NIAC occurring within its borders.<sup>84</sup> The Colombian government security forces are combating violent criminal groups and the residual units of the FARC that refused to demobilize following the 2016 peace accord. Besides FARC, four other criminal forces in Colombia meet the criteria for an OAG. The activities of organized crime groups have made Latin America the most violent place in the world. Almost all of the countries in Central and South America have ordered their armed forces to the streets to combat crime. In El Salvador, for example, the police and soldiers conduct armed

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*The activities of organized crime groups have made Latin America the most violent place in the world.*

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patrols of urban areas under control of gangs such as the Mara Salvatrucha (a.k.a. MS-13). In Peru, the government declared a state of emergency and deployed the military to the Andean highlands where the Sendero Luminoso operates drug labs.<sup>85</sup> In Guatemala, the military was sent into the northern province of Petén after it fell under the control of organized crime groups.

### **What are the Differences on the Use of Force Between LOAC and Criminal Law?**

There are a number of similarities between LOAC and criminal law. A non-combatant's right to life is paramount in both cases. Civilians are expected to be protected, property damage should be minimized, torture or cruel treatment is prohibited, prisoners and detainees have certain rights, and medical aid must be rendered to victims immediately. Fundamentally, both fields of law protect the rights of human beings and their property.



Figure 10. While there are a number of similarities between LOAC and criminal law there are also a number of important differences between the two fields of law. In this photo, a U.S. Special Forces soldier demonstrates how to detain a suspect during Flintlock 2014, an annual exercise for African militaries. Source: Joe Penny/Reuters/Newscom

But, at the same time, there are also significant differences between LOAC and criminal law. LOAC rules are much more permissive with regard to the use of force. One scholar describes LOAC as a “predilection for violence.”<sup>86</sup> As the ICRC puts it, “the conduct of hostilities paradigm tolerates more incidental loss of life than the law enforcement paradigm.”<sup>87</sup> In contrast, under criminal law, use of force rules are much more restrictive. This chapter examines four interrelated differences between LOAC and criminal law: (1) targeting, (2) lethal force, (3) EOF requirements, and (4) detention. Those differences are the centerpiece of this monograph. Military forces (SOF specifically) that are ordered to conduct law enforcement operations in countries where the levels of violence are beyond the capacity of the police have to know the use of force limitations to avoid using excessive amounts of firepower and committing violations of citizens’ HR. In a sense, authorities need to figure out how to operationalize HR law for soldiers conducting law enforcement operations. Use of force errors occur frequently in many of the PNs with which U.S. SOF conduct training. Hence, even though the United States adheres to different rules on the use of force, U.S. SOF conducting training with PN forces should be acutely aware of the differences between LOAC and criminal law.

### **Targeting Under LOAC and Criminal Law**

The first significant difference between LOAC and criminal law is targeting. There are different sets of targeting rules under three distinct conditions: (1) an IAC, (2) a NIAC and (3) internal disturbances in which criminal law applies. The first two situations fall under the conduct of hostilities paradigm and the third falls under the law enforcement paradigm. In the first case, under LOAC in an IAC, combatants or members of armed groups can be targeted at any time or in any location. Once they are declared enemy combatants or hostile, they can be attacked while they are sleeping, in their barracks, or in transit. They do not have to be participating in hostilities to justify being attacked. The principles of proportionality and precaution must be considered during the targeting development process in order to minimize risk for non-combatants. Additionally, there is no obligation to try to capture the combatant although he or she may prove to be a valuable source of intelligence on enemy strengths, movements, and operations.<sup>88</sup> Once the opponent is injured to point of incapacitation or surrenders, he or

Table 4. Differences in LOAC and Criminal Law. Source: Author.

Differences	LOAC	Criminal and HR Law
Targeting	<p>Once an opponent is declared an enemy combatant, he or she can be targeted immediately no matter what the situation until considered "<i>hors de combat</i>." There is no requirement to capture or arrest.</p> <p>In a NIAC, the person must be DPH and/or have a "continuous combat function" (CCF) in order to target him/her. The U.S. does not subscribe to the legal practice of CCF; see chapter 4.</p>	<p>Only permitted if the person is posing a significant threat of death or serious injury.</p>
Lethal Force	<p>Lethal force can be used as a first resort. Permissible as soon as an individual is declared an "enemy combatant" or "hostile." There is no requirement to arrest or detain. The threat does not have to be imminent to justify lethal force. Collateral damage (to include civilian deaths) is permitted if measured with regard to military necessity and proportionality.</p>	<p>Lethal force should be considered the last resort. There must be "clear and imminent threat" to justify lethal force. Law enforcement officers are also required to attempt to detain the suspect before using lethal force (i.e., capture, not kill) and are obliged to give a clear warning of their intent to use lethal force with sufficient time for the warning to be observed before resorting to lethal force.</p>
EOF	<p>No requirement for EOF tactics.</p>	<p>Security officials should use EOF tactics and crisis intervention techniques before resorting to more aggressive techniques or weapons. EOF tactics include: presence of police officers, shouts, batons, tear gas grenades, rubber bullets, tasers, pepper spray, and water cannons, among others.</p>
Detention	<p>In accordance with the GCs captured or disabled enemy are entitled to certain protections and rights. They must be treated humanely, be given medical attention if required, and be held in safe and sanitary conditions, among other requirements. In conventional conflicts between states (IACs), prisoners of war can be held until the cessation of hostilities. Combatants in IAC have "combatant privileges" and can't be tried for lawful actions committed during the conflict. However, in NIACs, captured personnel have fewer privileges than those in IACs; there are no combatant privileges and detainees are more often prosecuted under national criminal law than they are international humanitarian law. They are not eligible for POW status but must still be treated humanely.</p>	<p>Detained suspects are entitled to certain civil and political rights: due process, to know their rights, the right to counsel or lawyer, right to a fair trial, and presumption of innocence, among others.</p> <p>They cannot be held arbitrarily or for an excessive amount of time without trial.</p>

she is considered “*hors de combat*” (out of combat, in French) and cannot be attacked.

Jumping straight to the third category, targeting under criminal law, force can consist of a number of different means including nonlethal weapons. The person must pose a “significant threat of death or serious injury” in order to justify being targeted. As will be examined in the section on EOF tactics, the minimum amount of force should be used before resorting to more aggressive tactics. That said, security officials can resort directly to lethal force if the circumstances warrant it.

Rules regarding targeting in the second category—a NIAC against OAGs—are where the lines begin blurring between LOAC and criminal law. Unlike conventional military forces, members of OAGs normally do not wear uniforms with distinguishing emblems or markings that make them easily identifiable. They may only be temporary participants in the fighting and return to their non-combat roles in society in the interim. Recall that combatants during an IAC can be attacked at any time or any place. However, under terms associated with NIACs, force can only be used against members of an OAG while they are taking a direct part in hostilities.<sup>89</sup> Once they stop—for example to return to their legitimate occupation—security forces are prohibited from attacking them. In other words, the individual cannot be targeted until he is caught in the act of participating in the armed conflict. This is referred to as direct participation in hostilities (DPH) and CCF. During an IAC, the person can be attacked based upon his status as a combatant. But under NIACs, the person can only be attacked based upon his behavior at that moment.<sup>90</sup>

These are scenarios that have vexed international legal scholars. The ICRC, an international organization that oversees development of LOAC rules, hosted a series of conferences between 2003 and 2008 to examine direct participation in hostilities.<sup>91</sup> After multiple meetings and lengthy discussions of the nature of contemporary warfare, the conference participants—40–50 international legal scholars, academics, military lawyers, government representatives, and others at each meeting—were unable to agree upon substantive use of force rules under these conditions. In fact, the conference debates reportedly became so disputed that some participants even refused to permit to have their names added to the roster of the conference participants lest it was perceived that they somehow endorsed the written proceedings from the conference. Consequently, the ICRC was only able to publish a report titled,

“Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law” which has similarly been criticized by many legal experts.<sup>92</sup>

## Lethal Force Under LOAC and Criminal Law

The second significant difference between LOAC and criminal law concerns the use of lethal force and is closely associated with targeting. Under LOAC rules, lethal force can be applied as soon as an individual is declared an enemy combatant or hostile. There is no requirement to provide warnings, use EOF tactics, nor attempt to arrest or detain the suspect, nor even offer the opponent a chance to surrender.<sup>93</sup> Additionally, under LOAC rules, the threat does not have to be imminent to justify lethal force. The enemy can be attacked as soon as he or she is sighted.

In contrast to LOAC, police officials are expected to conduct their operations with minimal force. In order for security officials to justifiably use lethal force, there needs to be a clear and imminent risk.<sup>94</sup> Police and soldiers are always permitted to use lethal force to protect themselves or others, but it should be the last resort, as it is in LOAC circumstances. If force is required,

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*Police and soldiers are always permitted to use lethal force to protect themselves or others, but it should be the last resort, as it is in LOAC circumstances.*

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officials are expected to use the minimum amount of force necessary to achieve their objectives. Most police units are equipped with nonlethal tools that allow a series of EOF techniques before the police resort to lethal force. Aside from the physical presence of the police and verbal warnings, police also may use batons, pepper spray, tasers, tear gas, rubber bullets, and water cannons. Personal

protective gear like helmets, bulletproof vests, and shields provide important defensive equipment that permit the officer to accept a modicum of risk and devote more time to resolving a situation before it escalates to a more dangerous crisis. One senior Judge Advocate General (JAG) interviewed for this research project emphasized that law enforcement tactics are mostly defensive as compared to LOAC tactics which are principally offensive.<sup>95</sup> Likewise, communication gear that permits a constructive dialogue between demonstrators or suspects, even if as simple as a bullhorn or loudspeaker system, are important. Warning shots are normally not included among

police tactics because of the danger it presents to other persons nearby that may be inadvertently hit by the fire.<sup>96</sup>

Deadly force is defined as that force which is intended to cause death or serious bodily injury. Lethal force is not limited to only firearms. It may also occur because of strikes to a person's head, neck, or throat, striking a person's head to the ground or against a hard object, or even using bean bag shots (normally a nonlethal technique) against a person's head or neck.<sup>97</sup> The suspect should be verbally warned that the law officer intends to use lethal force to provide the person a chance to surrender or change his or her conduct.

Additionally, under criminal law conditions, security forces must attempt to arrest suspects, instead of using lethal force. If the person poses an imminent risk to life or serious injury, lethal force can be used. But if the situation is not urgent and no imminent threat exists, nonlethal options must be tried first. This is logical and in keeping with the central tenets of the law enforcement paradigm to protect citizens, uses minimal force to accomplish the objective and respects the sanctity of life. As the ICRC puts it, "it would defy basic notions of humanity to kill an adversary or refrain from giving him or her an opportunity to surrender where there manifestly is no necessity for the use of lethal force."<sup>98</sup>

The international community has developed guidelines for police officers. For example, in 1979, the UN developed the Code of Conduct for Law Enforcement Officials and in 1990 published the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>99</sup> Among the many principles contained within both documents is that lethal force should be a last resort, torture or abusive treatment of detainees is prohibited, medical aid must be provided to individuals in police custody, and corruption among law enforcement officers will not be tolerated. In addition to these two references, in March 2014, the ICRC published a very comprehensive guide for police tactics called "To Serve and To Protect: Human Rights and Humanitarian Law for Police and Security Forces."

## **EOF Under LOAC and Criminal Law**

The third significant difference between LOAC and criminal law concerns EOF requirements. There are no EOF tactics required under LOAC although soldiers should, if given the opportunity, provide the enemy a chance to surrender in order to acquire intelligence on enemy intentions.

EOF requirements may be required in accordance with a country's or a unit's ROE but there is no LOAC rules that require it.

In contrast, under criminal law, security forces are required to give a warning and use a number of de-escalating tactics before resorting to lethal force.<sup>100</sup> Most police units that regularly manage protests or crowd control are equipped with a variety of nonlethal weapons such as batons, tear gas grenades, rubber bullets, tasers, pepper spray, and water cannons. As the situation dictates, these tools should be used in a graduated response from low to high intensity. The first tool at the police's disposal is their physical presence, often enough by itself to serve as a deterrent to wrongdoers. Second are verbal warnings. Third can be a heightened posture of readiness, for example, brandishing batons or taking a riot control position with other members of the security force. The fourth escalating tactic may be moving forward as a group toward the threat. Next would be nonlethal weapons such as tear gas, batons, water cannons, or pepper spray.<sup>101</sup> Following that, police might use more harmful but still nonlethal tools such as rubber bullets. The



Figure 11. A Nigerian soldier maintains crowd control with only a rocket-propelled grenade, an entirely inappropriate weapon for the circumstances. Source: Reuters/George Esiri/Newscom

last resort option is lethal force and, if necessary, it should be only employed with the principle of proportionality in mind. That is, it should only involve the least amount of force necessary to neutralize the threat and only be directed at the individual or individuals who pose a threat and with due regard to the safety of others who do not.

## **Detention under LOAC and Criminal Law**

The fourth significant difference between LOAC and criminal law regards detention. Under LOAC rules, a captured combatant becomes a prisoner of war and is entitled to certain privileges under the GCs.<sup>102</sup> They must be treated humanely, given medical attention if required, and held in safe and sanitary conditions. They can be held until the end of the conflict at which time there is traditionally an exchange of prisoners between the participants to the conflict. Once they are considered hors de combat, they should not be attacked. Other civilians of the enemy country (those of enemy nationality) who are not enemy combatants should not be detained unless they are suspected of directly participating in the conflict.

There is an important distinction between IACs and NIACs with respect to detention and arrest of suspects. In both IACs and NIACs, detainees are also expected to be treated humanely. In an IAC, captured combatants enjoy combatant privileges. That is, they cannot be held liable for their lawful actions during the conflict.<sup>103</sup> However, in a NIAC, members of the OAG don't have legal immunity for their actions. Once members of the OAG are captured, they become hors de combat and are afforded the same humane treatment as prisoners of war including medical treatment, food, water, and shelter in accordance with the GCs and Additional Protocol II. However, unlike combatants in an IAC who have immunity for their actions during the conflict, members of OAGs may be prosecuted under the criminal law statutes of the country.<sup>104</sup>

In contrast, under criminal law, suspects who are detained have a number of important civil and political liberties. These were described in chapter 2 but a short summary is worth repeating. Suspects must receive an explanation of what they are accused of doing. They must be read their rights including the right not to self-incriminate and the right to legal counsel. They must be given a chance to contact family or friends to let them know

of their situation and they cannot be detained for an extended period of time before having a judge hear their case.

## **Can LOAC and Criminal Law be Applied Simultaneously?**

The hybridization of modern conflicts represents a significant challenge for contemporary security forces. As this monograph has examined in detail, most states face security challenges that do not rise to the level of an armed conflict. The LOAC cannot be applied and the circumstances only allow criminal law and HR law to be employed.

The idea of parallel application of HR and LOAC rules (sometimes called convergence, duality, or harmonization) challenges the idea of *lex specialis*, that the laws of war automatically exclude the laws of peace.<sup>105</sup> The ICRC, for example, holds that HR law applies at all times. Human rights do not disappear during armed conflict (superseded by LOAC as the *lex specialis*) and the two fields of law exist in parallel once an armed conflict occurs.<sup>106</sup> In contemporary warfare that occur primarily inside the boundaries of a country and where the opponent is often indistinguishable from civilians and often intermixed among the population, separating the two fields is no longer a viable option. As General Kenneth Watkin, the top JAG for the Canadian Armed Forces, wrote in his 2016 book *Fighting on the Legal Boundaries*, “given the nature of contemporary operations, it is clear that State security forces do not necessarily have the luxury of operating in one ‘world’ or the other.”<sup>107</sup>

In a real-world armed conflict, can both LOAC and IHRL be applied simultaneously?<sup>108</sup> Yes, most countries now face OAGs internal to their country apply LOAC when combatting the OAG and HR law when dealing with their civilian population. The growing trend among legal scholars is that the application of the special law (*lex specialis*) does not mean that it supersedes the general law (HR). Rather, *lex specialis* provides specific guidance on the employment of military tactics and firepower against armed combatants while at the same time HR law provides important complementary guidance for dealing with civilians and non-combatants. Where LOAC guidance is insufficient, HR law may apply and supplement the LOAC.<sup>109</sup>

Within Latin America, Colombia presents the best example of how a government has successfully trained its security forces to understand, recognize, and apply both LOAC and criminal law in a dynamic security environment.

The Colombian armed forces (as in most Latin American countries) are deployed within their national territory where criminal law and HR law preside. LOAC rules are required for confrontations against militants while, at the same time, HR rules are required for the protection of the citizens of the country.<sup>110</sup> Colombia has developed operational manuals for its security forces that apply both HR and LOAC rules simultaneously. Colombian procedures, a model for other nations with the same security dilemmas, will be examined in detail in chapter 8.

The convergence of LOAC and IHRL application presents significant tactical challenges. While the simultaneous application of both fields of law may make sense on paper, its operationalization presents real obstacles.<sup>111</sup> Hence it is imperative for U.S. SOF working with PN forces to recognize two important aspects: first, be cognizant of the legal and operational situation in the PN where one is training; second, know the differences between LOAC and criminal law described in this report and other legal literature.



## Chapter 4. U.S. Government (USG) Policy on the LOAC and HR Law

The U.S. military uses its armed forces in a manner that is very different from most other countries. Instead of internal law enforcement operations, U.S. military forces normally are deployed overseas to participate in coalition operations such as those in Iraq, Afghanistan, and Kosovo. In these cases, use of force rules and ROE are determined by LOAC guidelines provided in the GCs, Additional Protocols of 1977, and a number of other treaties on international humanitarian law.

However, from the perspective of security cooperation with other countries, U.S. forces work in conditions in stark contrast to the legal doctrine in which they normally operate. Nearly every nation in Africa and Latin America that was examined for this study uses its military in an internal security role, one in which criminal law and HR law apply. In the vast majority of these countries—over 80 percent by the author’s calculation—no armed conflict exists and therefore the LOAC is not applicable to the situation. Criminal law enforcement rules apply. And those rules are developed in accordance with IHRL.

In the international community, the U.S. military takes a unique position on how it manages the rules on the use of

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*Nearly every nation in Africa and Latin America that was examined for this study uses its military in an internal security role, one in which criminal law and HR law apply.*

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force—one different from many European countries, the ICRC, the International Court of Justice, and most HR bodies.<sup>112</sup> The U.S. military, in accordance with the concept of *lex specialis*, considers that LOAC is sufficient to cover HR concerns during an armed conflict. However, most other countries disagree and believe that LOAC and HR laws must be applied simultaneously.<sup>113</sup> Among most developed nations, only Israel has a use of force policy that is most like that of the U.S.<sup>114</sup> In this author’s opinion, the U.S. should reexamine its doctrine in light of the changing nature of conflict, the increased prevalence of NIACs, and the need to be legally and doctrinally aligned with many of its allies and PNs. From the perspective of security cooperation programs, the requirement for an updated U.S. use of force doctrine

is even more urgent because the U.S. is frequently providing training and equipment to partners who operate in the law enforcement paradigm, not the conduct of hostilities paradigm.

During overseas operations as part of a coalition of nations, the U.S. seeks to maximize interoperability with other allies in order to ensure combat efficiency. However, if other nations have rules on the use of force that include a hybrid doctrine between LOAC and criminal law, U.S. military forces will be at a disadvantage without an associated doctrine. Almost two-thirds of all the countries in the world (124 as of June 2019), for example, participate in UN peacekeeping operations (PKO) that subscribe to the practice of minimal force and the use of force as a last resort more along the lines of police tactics rather than military tactics.<sup>115</sup> Respect for HR and adherence to international standards of HR is declared to be a top priority by the UN forces during peacekeeping operations.<sup>116</sup> If U.S. SOF aspire to be operationally compatible with its overseas partners, they need to understand what this HR doctrine entails and how it is operationalized.

In addition to the overseas deployments for coalition operations, the U.S. frequently deploys forces for a variety of other military missions including natural disaster responses and security cooperation efforts with PNs. Since 2001, an estimated 36 percent of U.S. deployments are for non-combat events such as humanitarian assistance and disaster response (HADR), non-combatant evacuation operations (NEO), or PKO.<sup>117</sup> Under these conditions, sometimes called Military Operations Other than War, there is no armed conflict and therefore, by definition, LOAC does not apply. Use of force rules should be applied under criminal and HR law.<sup>118</sup>

For example, the U.S. conducted HADR missions in the southeastern Philippines in December 2012 following Typhoon Bopha; in Ukraine in August 2013 to assist in the investigation of downed Malaysian airliner MH17; again in the Philippines in November 2013 following Typhoon Haiyan; in 2014 sent 3,000 troops to Senegal and Liberia in response to the Ebola crisis; in Haiti in October 2017 in the aftermath of Hurricane Matthew; in March 2017 to Peru in the wake of devastating floods; and to Dominica in September 2017 to evacuate American citizens after Hurricane Maria nearly completely destroyed the island.<sup>119</sup> None of these operations involved an armed conflict, but little guidance on police tactics or criminal law is provided to deploying U.S. forces.

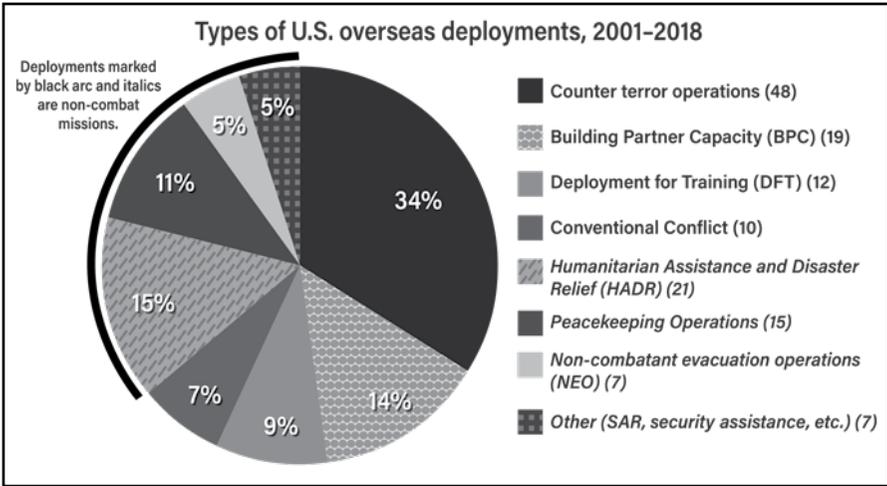


Figure 12. Types of U.S. overseas deployments, 2001–2018. Source: “Instances of Use of United States Armed Forces Abroad, 1798–2018,” *Congressional Research Service*, 28 December 2018. Graphic and information developed by William J. Perry Center Research Assistant Ana Cardona, 2019. Non-combat events in italics. Measured by deployment events (listed in parentheses), not number of DOD personnel.

Since 2001, the U.S. has also conducted NEOs to extract U.S. embassy personnel and their families from danger in Cote d’Ivoire in September 2002, in Liberia and Mauritania in June 2003, in Haiti in February 2004, in Lebanon in 2006, and in South Sudan in 2016.<sup>120</sup> In addition to HADR and NEO deployments, U.S. forces conducted a number of other non-combat missions such as anti-poacher assistance to the Tanzanian Wildlife Management Authority in May 2018, water well construction in Caribbean nations, airlift assistance to Burundi, and a search and rescue mission to Uruguay. Hundreds of U.S. forces also deployed for training (DFT) and building partnership capacity (BPC) to Poland, Latvia, Romania, Ukraine, and other Eastern European nations as part of Operation Atlantic Resolve, designed to reassure NATO allies in light of Russian interventions.<sup>121</sup>

Under these conditions, armed conflicts are not occurring. The rules on the use of force fall into criminal law as guided by HR law. U.S. forces should be trained on police tactics and discretionary use of force rules rather than the “firepower friendly” doctrine that applies during a conventional conflict. Sending U.S. forces into operations prepared for violent encounters when none exist can set dangerous expectations.

Any U.S. military unit can find itself conducting multiple different missions in a short period. The nature of contemporary warfare demands an immense amount of operational agility and flexibility. Former Marine Corps Commandant General Charles Krulak referred to this as the “three block war” in which a company of Marines, for example, may be required to fight against a conventional opponent on one city block, while simultaneously conducting humanitarian assistance on an adjacent block, and also participating in a peacekeeping mission on another.<sup>122</sup> The 1999 deployment of the 26th Marine Expeditionary Unit (MEU) is a good example of the diversity of missions for which U.S. units must be prepared. The 26th MEU deployed to the Balkans in April 1999, began with participation in the bombardment of Serbia, then quickly transitioned to the provision of supplies to refugee camps in Albania. In June, a large portion of the MEU went to Macedonia for a month as peacekeepers. In August, it redeployed to Turkey to provide humanitarian assistance following an earthquake.<sup>123</sup>



Figure 13. U.S. Marines with Special Purpose Marine Air-Ground Task Force-Crisis Response-Africa bound past flames from a Molotov cocktail to retrieve an injured mock rioter during a simulated exercise at the National Gendarmerie Tactical Training Center in France in January 2019. Photo by U.S. Marine Corps 2nd Lieutenant Taylor Cox

## U.S. Rules During NIAC

The U.S. follows rules during NIACs that are different from that of the ICRC and most other countries. In accordance with the concepts of DPH and CCF, members of an OAG can only be attacked if they are caught in the act of participating in the armed conflict. However, the concept of CCF is not part of U.S. military legal doctrine. The U.S. can target members of an OAG at any time, as they would during an IAC, a concept referred to as “membership or functional role analysis” in U.S. military doctrine. That is, members of an OAG continue being lawful targets because their membership or functional role in the group hasn’t been severed. Just because they are not participating in combat operations at that moment does not mean they have ceased being a threat. Like in an IAC, the person can be attacked based upon his status as a member of the OAG, not based upon his behavior at that moment (as it is under NIAC rules of the ICRC).<sup>124</sup>

## Posse Comitatus and Defense Support to Civil Authorities

Normally, the U.S. military is prohibited from operating within U.S. territory except for certain emergency conditions such as responses to natural disasters and insurgencies. This practice was carried to the American colonies by British rule during the 18th century. The law itself, the Posse Comitatus Act, was prompted by the Union Army’s occupation of the South following the Civil War. Under normal conditions, domestic law enforcement operations are left to the authority of local police authorities. In the event of a significant crisis such as a hurricane or terrorist incident in which the problem is beyond the capacity of the police or National Guard, the president can mobilize federal troops (the U.S. Army, for instance) to assist with the crisis.<sup>125</sup>

There are dozens of examples of U.S. military forces deployed internally to include the military assistance provided to the Los Angeles Riots of 1992; military assistance following Hurricane Andrew in 1992 when 24,000 military personnel (including eight Army Military Police companies) joined the relief and recover effort; the 1996 Olympics in Atlanta when almost 14,000 were activated to provide security; the recovery effort after Hurricane Katrina landed in New Orleans in 2005 supported by 18,000 active duty soldiers; the response to Super Storm Sandy in 2011, and the Southern Border crisis of 2018–2019.<sup>126</sup>

In New Orleans, the 82nd Airborne Brigade showed up in full battle dress with weapons, completely inappropriate considering the unit's task was to restore order in the city. As described previously, LOAC conditions are much more permissive with regard to the use of force than criminal law. In the words of one DOD advisor, "It is important to recognize that the LOAC allows a wide range of actions that would be illegal in the absence of an armed conflict."<sup>127</sup> Young U.S. Army soldiers patrolling the French Quarter of New Orleans only armed with a rifle and without any indoctrination or training on police EOF techniques or nonlethal tools may resort to inappropriate tactics because he or she has never been trained any other way.<sup>128</sup>

An incident in 1997 demonstrates the danger of sending U.S. military



Figure 14. A National Guard Soldier from the 29th Brigade Combat Team assisting the U.S. Border Patrol stands watch at the Mexico border. Photo by U.S. Army Sergeant Jim Greenhill

forces to operate in conditions that are better reserved for police or Border Patrol. An 18-year old American boy, armed with a .22-caliber rifle to protect his herd of goats from coyotes, was watching his livestock graze near Redland, Texas. Nearby were four U.S. Marines dressed in ghillie suits with blackened faces surveilling for drug smugglers attempting to cross the border. For a while, the boy wandered away from the Marines, probably following his goats as they grazed, something the Marines acknowledged by radio to their

command center. When he turned back toward their position and raised his rifle, the Marines fired at him and killed him. The Marines contended that the boy fired at them from over 200 meters away, but it is unlikely the boy even knew the heavily camouflaged Marines were nearby. In the subsequent investigation, it was revealed that the Marines had not received any training on civilian law enforcement, nor had been briefed by the Border Patrol that local Texans often carried arms while out hunting or patrolling their property. The Justice Department did not bring charges against the Marines and the DOD, but, in response to complaints from local Texans, the DOD discontinued the use of active duty soldiers in border patrols.<sup>129</sup>

In a recent example that carries eerily similar risks, the southern border crisis of 2019 included the deployment of nearly 5,000 U.S. soldiers to the U.S.-Mexico border to assist the U.S. CBP with security as thousands of Central Americans fled violence and poverty in their country and tried to obtain asylum in the United States. President Trump ordered military personnel to the border to help manage the flow of migrants. In a November 2018 memo issued by the White House, the president gave the military the authority for “use of force (including lethal force, where necessary), crowd control, temporary detention and cursory search.” He declared publicly that U.S. soldiers should fire upon immigrants who throw stones or surge toward the border.<sup>130</sup> In March 2019, he suggested to aides that immigrants should be shot in the legs in order to prevent them from crossing.<sup>131</sup> Senior officials told the president that such actions were illegal.

## Rules on the Use of Force for U.S. Overseas Operations

There are three interrelated ideas that explain the legal parameters in which the U.S. military operates: (1) complementarity, (2) *lex specialis*, and (3) extra-territoriality. The following paragraphs explain the background on the U.S. use of force policy, and where and how U.S. armed forces are deployed.

### Complementarity

The first legal concept that explains U.S. use of force rules is complementarity. This term refers to the redundancy of protections for civilians that exist in both the LOAC and HR law. U.S. legal scholars contend that LOAC provide adequate HR protection and subsequently there is no need to apply both. According to U.S. policy, “compliance with the law of armed conflict will ensure compliance with human rights law.”<sup>132</sup> To some degree, that is

accurate. There are several prohibitions that exist within both LOAC and HR law: torture, slavery, rape, right to life, and discrimination, for example. However, as pointed out in chapter 3, there are also significant differences between the two fields of law such as targeting, use of lethal force, EOF tactics, and detention operation that are much more restrictive under the law enforcement paradigm than the armed conflict paradigm. The ICRC has recently begun examining the interplay between LOAC and HR law.<sup>133</sup> In light of the blurred lines on the contemporary battlefield, it is a program of study that requires urgent attention.

### Characteristics of both the Law of Armed Conflict (LOAC) and Human Rights Law

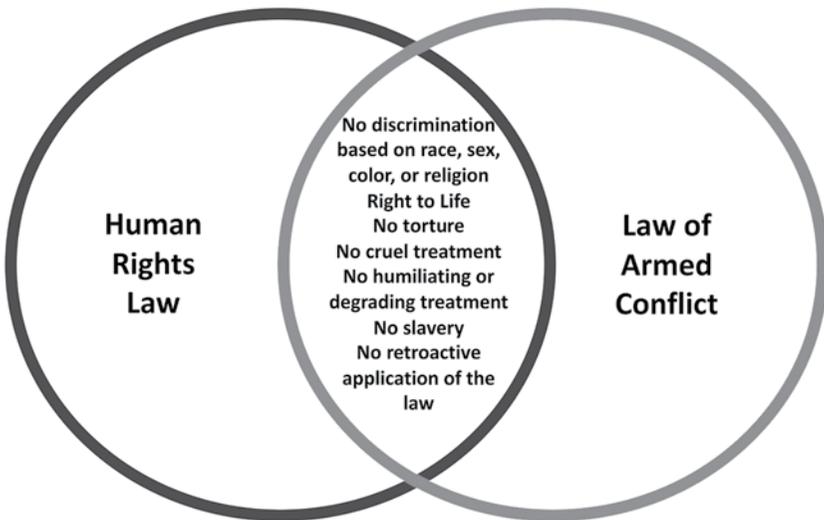


Figure 15. Common elements to both LOAC and HR Law. Source: Author

### ***Lex specialis***

The second legal concept to understand is *lex specialis*. It signifies “the more specific rule overrides the more general rule.”<sup>134</sup> The *Geneva Conventions and Additional Protocols* contain nearly 400 provisions for the protection of combatants, non-combatants, prisoners, and the wounded, among other subjects. Under this concept and closely related to extraterritoriality, the U.S.

considers that any foreign military operations outside of its own territory involve only LOAC, not HR law. In fact, DOD policy states that “all members of the DOD comply with the law of war during all armed conflicts, however such conflicts are characterized, and in all other military operations.”<sup>135</sup> As described by one scholar, “as the hostilities unfold, the laws of armed conflict will be triggered. Its protections and standards will complement, complete and in certain cases further clarify international human rights protections, guarantees and minimum standards.”<sup>136</sup>

The U.S. military operations against Islamic extremists in Iraq and Afghanistan are governed nearly exclusively by LOAC rules, not by HR law or criminal law.<sup>137</sup> According to U.S. government officials, the concerns that HR activists have about protection of civilians during conflict are adequately addressed in the *Geneva Conventions and Additional Protocols*. In other words, HR are superseded but adequately covered by the LOAC standards.

But recall that HR exist at all times, during conflict or peace, according to policy in most other countries. They cannot be derogated and, only in extreme instances, can they be temporarily suspended. Some HR—right to life, prohibition of slavery, torture, rape, etc.—can never be suspended.

Until recently, *lex specialis* has been a widely accepted legal practice. According to U.S. military doctrine, while there are some areas of overlap, the LOAC and HR law are separate and distinct bodies of law; one wholly replaces the other.<sup>138</sup> However, with the evolution of conflict, the idea that LOAC can provide sufficient and complementary protection for HR has come into question.<sup>139</sup> Under conditions on the blurred battlefields of contemporary warfare in which civilians and combatants mingle together in an indistinguishable manner, LOAC and HR laws can no longer be distinctly and effectively separated. This is particularly true when a nation’s own military force is mobilized for internal security operations.

U.S. use of force policy for its military is overdue for a number of important reforms that reflect the current operating environment.

Applying the laws of armed conflict during combat makes sense, but why would the same laws be applied, as DOD policy states, in “all other military

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*Under conditions on the blurred battlefields of contemporary warfare in which civilians and combatants mingle together in an indistinguishable manner, LOAC and HR laws can no longer be distinctly and effectively separated.*

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operations” if an armed conflict doesn’t exist?<sup>140</sup> Additionally, if armed soldiers are forbidden on the streets of the United States because such actions represent an undue threat to civil and political liberties (per the Posse Comitatus Act), why would similar behavior be considered acceptable in other countries?

Recent U.S. policy decisions on these issues indicate that changes are afoot. There have been a number of new legal precedents that contend that HR treaties continue to apply during armed conflicts involving U.S. Service members and that, consequently, both LOAC and HR considerations should be taken into account simultaneously by U.S. forces. During one of its most recent Periodic Reports to the UN, State Department lawyers acknowledged that HR law may supplement or even displace LOAC where the latter is inadequate to address the complex circumstances in many military operations.<sup>141</sup> In addition, the new *Commander’s Handbook on the Law of Land Warfare*, published jointly by the U.S. Army and Marine Corps in August 2019 to replace the outdated 1956 Law of Land Warfare Manual, acknowledges that HR continue to apply during armed conflict and that *lex specialis* may have limits in its applicability. The handbook states, “a situation of armed conflict does not automatically suspend nor does LOAC automatically displace the application of all international human rights obligations.”<sup>142</sup> These decisions mark a monumental shift in U.S. policy, one to which U.S. military lawyers and SOF should pay close attention.

### **Extraterritoriality**

Extraterritoriality refers to the idea that military forces operating in other countries have obligations under HR law in territory that they occupy and in which they have assumed de facto control of basic government functions. Remember, HR are the protections citizens of a country have against their own government. In that sense, according to U.S. policy, HR are the responsibility of the local government, not that of U.S. forces working overseas unless the U.S. has explicitly assumed responsibility for the civil and political rights of that country.<sup>143</sup>

The U.S. position on extraterritoriality differs from the UN and many other nations that have ratified the ICCPR. The U.S. contends that the ICCPR does not oblige it to provide civil and political guarantees to the citizens of the occupied nation because a state’s obligations under the ICCPR only extend to persons within its territory and subject to its jurisdiction.<sup>144</sup>

Range of Conflict	Type of Conflict	Governed by . . .
War	<u>International Armed Conflict (IAC)</u> (state on state)	<u>International Humanitarian Law:</u> 1. <i>Geneva Conventions, Article 2 (1949)</i> 2. <i>Additional Protocol I (1977)</i> 3. <i>International Human Rights Treaties</i>
	International	
Peace	<u>Non-International Armed Conflict (NIAC)</u> (state vs organized armed groups)	<u>International Humanitarian Law:</u> 1. <i>Geneva Conventions, Article 3 (1949)</i> 2. <i>Additional Protocol II (1977)</i> 3. <i>International Human Rights Treaties</i>
	<u>Internal Disturbances</u> (banditry, riots, skirmishes, organized crime activity, short-lived rebellions or insurgencies, indigenous protests)	<u>Human Rights Law:</u> 1. <i>National Criminal Law</i> 2. <i>International Human Rights Treaties</i>

Figure 16. The U.S. Perspective on Legal Guidance for the Use of Force.

The U.S. follows a use of force doctrine different from most other nations. In accordance with the legal concepts of *lex specialis* and extraterritoriality, HR law does not apply during armed conflicts, neither against another nation nor against OAGs within a country. This is in contrast to most other countries which believe that LOAC rules are not sufficient to cover HR concerns. As compared to the international perspective in which HR law continues to apply in times of war and peace, (see similar chart in chapter 2), the U.S. makes a clear distinction that HR apply only to host nation government forces operating internal to a country, not in overseas operations. Recently, U.S. policy has gradually begun to change. Source: Author.

If, for the sake of academic debate, LOAC does not provide sufficient protections of individuals' HR, then a military force operating in another country should be obliged to ensure its forces understand the distinctions between the laws of war and HR law. In many ways, this makes sense. As one scholar put it, HR laws cannot be dismissed so casually "so as to allow a State party to perpetrate violations of [HR] on the territory of another State, which it could not perpetrate on its own territory."<sup>145</sup>

However, similar to recent acknowledgements that *lex specialis* may be inadequate for contemporary conflicts (as examined in the previous section), the United States' perspective on extraterritoriality is beginning to change. In 2014, the U.S. acknowledged that the Convention on Torture—one of the principal HR treaties—continued to apply in times of armed conflict and could not be superseded by LOAC.<sup>146</sup>

The concept of extraterritoriality received immense attention from legal scholars and national decision makers. Debates about whether HR apply during peacekeeping operations in other countries, for example, have generated significant discussion.<sup>147</sup> The European Convention on Human Rights (ECHR), for example, has judged that some European States have "construed certain obligations as applicable to their military forces abroad during occupation."<sup>148</sup> Despite the fact that most contemporary conflicts are internal disputes within the borders of the state, the issue is still important because of the proliferation of coalition operations and international peacekeeping operations.

## **JAG Attempts to Navigate the Blurred Battlefield**

The DOD has very developed ROE that are applied during combat. There are standing ROE for all DOD forces as well as theater-specific ROE from each Geographic Combatant Commander (GCC).<sup>149</sup> LOAC rules are widely published. For example, the International and Operational Law Department of The Judge Advocate General's Legal Center and School in Charlottesville, Virginia, has updated the Operational Law Handbook every other year since the first edition was published in 1997. In 2015, the DOD produced the 1,200-page Law of War Manual that details legal aspects of combat including the principles of warfare, the rights of non-combatants, protected individuals, prisoners of war, naval warfare, and cyber warfare.<sup>150</sup> The Law of Land Warfare manual had not been updated since 1956 and as one senior Army

officer told the author, there was no urgency to do so because, in his opinion, the rules on the use of force hadn't changed much.<sup>151</sup> Other legal scholars acknowledge the armed forces have fallen behind legal doctrine for contemporary operations. One senior JAG officer admitted to the author that, "we've never been able to keep up with the legal issues."<sup>152</sup> In August 2019, the Army and Marines (finally) published a new version, *The Commander's Handbook on the Law of Land Warfare*.<sup>153</sup>

## U.S. Government Emphasis on HR

As the nature of conflict evolves toward confrontations in which LOAC does not apply, U.S. legal scholars have begun to realize that the laws which govern U.S. military rules also need to change. In contrast to the well-developed LOAC laws and practices, HR law through the government is a contrast in application and execution. Part of the impetus of the author to publish this report is to present the startling differences between U.S. HR emphasis on a strategic level—it is written into most of the foreign policy and national security documents to include GCC theater campaign plans—but gets little attention on the operational or tactical level. The next few sections focus on U.S. government policy on HR on the all three levels: strategic, operational, and tactical.

Despite the preponderance of emphasis on LOAC for U.S. military forces, HR remain a top priority of the U.S. government and a cornerstone of U.S. foreign policy. In the foreword of the 2015 National Security Strategy, the president wrote that, "American leadership is essential to a rules-based international order that promotes global security and prosperity as well as the dignity and human rights of all peoples." The strategy goes on to state, "defending democracy and human rights is related to every enduring national interest."<sup>154</sup>

The U.S. State Department made HR one of its five strategic goals. In the Department of State and U.S. Agency for International Development Strategic Plan 2014–2017, the State Department wrote: "We will work to strengthen and improve legal systems and weak government institutions in the region, expand access to justice, [and] promote greater respect for human rights. Adherence to our nation's values, in particular our steadfast support for democracy and human rights," the document contends, "greatly enhances our credibility, stature, and authority."<sup>155</sup>

The Trump Administration does not place the emphasis on HR that previous administrations did, focusing on security and trade efforts instead. In May 2019, Secretary of State Mike Pompeo said the Administration's policy was to engage with other governments, regardless of their [HR] record, if doing so will further U.S. interests.<sup>156</sup> The 2017 National Security Strategy describes a desire to "champion American values," such as religious freedom and the rule of law but did not mention HR as a national priority. It states, "we are not going to impose our values on others" and says that U.S. partnerships "are built on free will and shared interests"—notably excluding values such as support for individual HR. In June 2018, the U.S. withdrew from the UN Human Rights Council.<sup>157</sup>

Despite the shift in emphasis in the executive branch, the combatant command (COCOM)—the regional military headquarters that oversee U.S. security interests in each geographic part of the world—still recognize the need to adhere to international HR standards, particularly when related to security cooperation programs with PNs. For example, General Thomas Waldhauser, Commander of the U.S. Africa Command, stated before Congress on 7 February 2019, that the, "U.S. Africa Command assists African nations in building capable and professional militaries subordinate to elected civilian authority and respectful of human rights, the laws of armed conflict, and international humanitarian law."<sup>158</sup> General Joseph Votel, former commander of the U.S. Central Command, stated, "Our [U.S. Central Command's] building partner capacity efforts include enhanced interoperability, improved security for forward deployed forces and diplomatic sites, continued access and influence, and more professional regional militaries comprised of forces learning the importance of rule of law and compliance with human rights norms."<sup>159</sup> Likewise, the former commander of the United States Northern Command, Admiral William E. Gortney, stated, "A key aspect of our partnership with Mexico is supporting their military's efforts to build institutions that embody professionalism and respect human rights and the rule of law."<sup>160</sup>

## **The U.S. Southern Command (USSOUTHCOM) HR Program**

No COCOM has made advancing HR as important as the USSOUTHCOM in Miami, Florida—the only COCOM with a HR office. Until the 1990s, many of the Latin American militaries were considered unprofessional,

unaccountable forces that regularly committed HR abuses against citizens within their countries. The requirement to work with important PNs in the region, including some like Guatemala, Chile, Argentina, and El Salvador that had notorious histories of abuse, served as a catalyst for USSOUTHCOM to develop policies and programs on HR.<sup>161</sup> In 1996 and 1997, the commander of USSOUTHCOM sponsored two HR conferences in Miami. Both events were attended by nearly 200 representatives of the Latin American Ministers of Defense and Chiefs of Defense. During the second conference, the USSOUTHCOM commander agreed to provide long-term support for the development of robust, effective HR programs in PN militaries and to provide the means for those militaries to measure their own progress on respect for HR. This was the beginning of the Human Rights Initiative (HRI)—a cooperative effort to promote a culture of respect for HR and to improve performance on HR within Latin American militaries.<sup>162</sup>

Following the initial agreement in 1997 to establish the Human Rights Initiative, military officers from 34 of the 35 nations in the Western Hemisphere met during six hemispheric conferences from 1997–2002 to collaborate on the path forward. The result of these meetings was the Consensus Document, a written pact designed to prevent HR violations among security forces in the region and to create a zero tolerance policy for any violations that should occur.

The Consensus Document contained two overarching goals. First, to develop an institutional culture of respect for democratic values, HR, and LOAC within the military and security forces. Second, to develop a means by which to evaluate how effective the security forces have been in establishing that culture of respect. The participants in the six regional conferences from 1997–2002 agreed that the Consensus Document would contain specific objectives for HR in four main focus areas: (1) doctrine, (2) education and training, (3) internal control systems, and (4) cooperation with civilian authorities.

The first consensus point is that respect for HR must be embedded in the military and security force doctrine of each country. The second is that all members must receive adequate HR education and training provided by competent instructors, appropriate to their rank and adapted to their mission. The third is perhaps the most complex, requiring that military and security forces develop and maintain effective internal control systems. The

fourth and final consensus point is that military and security forces must cooperate with civilian authorities.

From 2004 until the present, eleven Latin American nations have committed their military or security forces to implement the HRI. These commitments have been reached through formal written accords (Memorandums of Cooperation) signed by the Ministers of Defense or, in the case of Costa Rica and Panama, by the Ministers of Public Security.

Each USSOUTHCOM commander—ten since 1997—has made the HRI one of his highest command priorities. In his 2010 book, *Partnership for the Americas*, Admiral James Stavridis, USSOUTHCOM Commander from 2006–2009, wrote, “The Human Rights Initiative ... is key to the Partnership for the Americas and essential to fulfilling our common mission.”<sup>163</sup> General John Kelly, USSOUTHCOM Commander from 2012–2016, testified before congress in March 2015 that, “During my time as Commander of U.S. Southern Command, every conversation I have—whether with a president, with a minister, with a chief of defense or his subordinates, with U.S. or regional media outlets, or HR representatives from Washington to Montevideo—begins and ends with a straightforward discussion on HR.”<sup>164</sup> The HRI, he continued, “helps partner nations strengthen governance and development, professionalize their militaries and security forces, and increase their ability to conduct peacekeeping, stability, and disaster relief operations.”<sup>165</sup> Admiral Kurt Tidd, USSOUTHCOM Commander from 2016–2018, designated HR as one of his four military imperatives.<sup>166</sup> The current USSOUTHCOM Commander (as of early 2020), Admiral Craig Faller, wrote in his new command strategy, “Partnership based on our shared values of democracy, sovereignty, HR, and rule of law are key to advancing security and stability in the Western Hemisphere.”<sup>167</sup>

In the 22 years since it was first conceived, the HRI has made remarkable progress. Under the sponsorship of the Human Rights Office, USSOUTHCOM has conducted scores of events with more than 8,000 participants. Many of these events include a supporting cast of subject matter experts on HR and the use of force to representatives from the Western Hemisphere Institute for Security Cooperation (WHINSEC), the William J. Perry Center for Hemispheric Defense Studies, and the Defense Institute of International Legal Studies. In 2019, Admiral Faller testified, “USSOUTHCOM’s Human Rights Initiative—which just celebrated its 20th anniversary—has conducted more than 200 HR engagements that have enhanced the ability of partner

nations to build professional forces that have legitimacy in the eyes of their populations.”<sup>168</sup>

## **Western Hemisphere Institute for Security Cooperation (WHINSEC)**

When it comes to assisting Latin American PN forces on HR and LOAC, the WHINSEC is perhaps as important as USSOUTHCOM’s Human Rights program. Located at Fort Benning, Georgia, WHINSEC provides courses for officers and enlisted personnel from countries in Latin America and the Caribbean. More than 24,000 military, law enforcement, and civilian students from 36 countries have graduated from WHINSEC courses. Each year, 1,200–1,900 personnel attend one of the 16 resident courses offered at the institute. The courses are validated and accredited by the U.S. Army Training and Doctrine Command. Likewise, the military faculty consist of PN personnel from throughout the hemisphere. Courses can be taught and translated into Spanish and English.

Heavy emphasis is placed on HR. Students learn about due process, the rule of law, the lawful use of force, detention rules, military professionalism, military ethics, and the importance of civilian control of the armed forces, among other academic subjects. WHINSEC students also learn about what democratic governments cannot do to their citizens—torture, extrajudicial execution, forced disappearance, and discrimination against vulnerable groups and persons to name a few. These are critical topics for government representatives and security forces that hail from a region that has some of the highest levels of corruption and violence in the world. When their training and education is complete, the students return to their country to serve as honorable members of the professional security forces of their government. No other institute in the DOD can deliver the training and education on HR that WHINSEC does and it should be a model that every COCOM aspires to establish.

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## Finding a Balance Between the Laws of War and HR in Afghanistan

This manuscript is primarily about how U.S. SOF conduct train-and-equip missions with allies in foreign countries. It is not exclusively about U.S. experiences on LOAC or HR, though some examination of those issues helps put into context U.S. policy and how SOF are trained to do their work. The next section provides a synopsis of the U.S. experience in Afghanistan. It is illustrative of the challenges of contemporary conflict, especially for armed forces combatting irregular opponents that easily blend into the civilian population. The U.S. military operations in Afghanistan were governed by LOAC. The opponents were OAGs such as the Taliban, al-Qaeda, and a number of radical extremist factions. As a NIAC, the Geneva Conventions and Additional Protocol II were the guiding references on the use of force. Human rights were also a serious consideration particularly from the perspective of the Afghan government that was trying to protect its citizens from both enemy and friendly attacks.

U.S. SOF faced a number of strategic and operational challenges in Afghanistan: urban warfare, tribal alliances, inadequately trained Afghan counterparts, illegal drug trafficking, terrorism, government corruption, and doctrinal counterinsurgency (COIN) issues. U.S. soldiers and Marines suffered major casualties from roadside bombs, Taliban snipers, and suicide attacks that sometimes infiltrated the depths of government bulwarks in Kabul and Kandahar. Coalition truck convoys were particularly vulnerable. Almost half of U.S. casualties in Afghanistan were caused by improvised explosive devices (IEDs) buried along the roads.<sup>169</sup> During the long war in Afghanistan, one of the biggest points of friction was how U.S. military leaders managed the delicate balance of avoiding civilian collateral damage while simultaneously maintaining adequate rules of force protection for U.S. military personnel.<sup>170</sup> It is a grave concern of nearly every country that orders its military to the streets to combat violent criminal organizations.

In both Iraq and Afghanistan, the United States faced a savage enemy. The militants did not wear uniforms, were mixed among the population, and could not easily be distinguished from innocent civilians. Lieutenant General John Hesterman, Commander of Combined Joint Task Force-Operation Inherent Resolve, acknowledged that difficulty when he described the operating environment as “the most complex area of battle that I’ve seen in 32 years.

[It's] never been more difficult to identify friend or foe as it is right now."<sup>171</sup> In addition, the insurgents showed little regard for the laws of armed conflict. Frequently, they used human shields, operated from mosques and schools, launched terrorist attacks on civilians, and tortured or killed their captives. In many instances, their strategy was designed to provoke an overreaction by U.S. forces that they calculated would result in an excessive or indiscriminate use of force against civilians, thereby alienating the population even further from government security forces.

Needless to say, military missions often put United States Service members in danger. The COIN strategy implemented in Afghanistan required U.S. soldiers and Marines to patrol the streets on foot, provide security on remote stretches of highway, set up outposts in places far from any immediate relief for the ground force, and to search for insurgent leaders in suspects' houses. Avoiding collateral damage was easier said than done. In these difficult conditions, soldiers had to assume additional risks to avoid harming Afghan civilians. When encounters with militants in urban areas took place, the soldiers often had to hesitate to confirm positive identification of their target before deciding what action was appropriate. That hesitancy often meant the difference between life and death.

At least some U.S. soldiers were indoctrinated to use a system of "5 S's" when they encountered a potential threat. First, soldiers should "shout" or use hand signals or air horns to get the attention of the threat. Second, they should "shock" with nonlethal tools such as dazzling lasers or spotlights. Third, "show" your weapon and make clear to the potential threat one's intent to use it. Fourth, conduct a "split second" observation and reevaluation of the danger the threat presents. Last, "shoot" to disable or eliminate the threat.<sup>172</sup>

Public perception regarding the protection of Afghan civilians also placed great pressure on U.S. political and military leaders. According to the results of one international survey, citizens of many Muslim countries perceived that the United States "did not go to great lengths" to avoid civilian casualties. This opinion was practically unanimous in Jordan (97 percent) and the Palestinian Authority (95 percent) and was widely shared in Morocco (91 percent), Turkey (88 percent), Indonesia (83 percent) and Pakistan (81 percent).<sup>173</sup>

Despite the challenging operating environment, top U.S. leaders acknowledged that the fastest route to victory was to avoid harming civilians, which would generate legitimacy and cooperation among the population. In turn, this would produce military intelligence for coalition forces, reduce insurgent

influence and support among the population, and provide an opportunity for struggling governmental institutions to get organized. In the short term, it was a zero-sum game: greater efforts to avoid collateral damage meant a greater risk to the U.S. military. But in the long run, U.S. officials realized that such efforts would shorten the war and save American lives.

Senior U.S. officials were also under intense pressure from the Afghan government to minimize collateral damages while conducting operations against terrorists and insurgents. In 2015, more than 10,000 Afghan civilians were killed or injured. Anti-government elements like the Taliban and Islamic State caused the majority of these deaths and injuries, although pro-government forces and coalition forces also contributed a large percentage.<sup>174</sup> The house-to-house searches and air strikes in particular often led to inadvertent injuries or deaths of Afghan civilians.<sup>175</sup> Afghan President Hamid Karzai was furious about the coalition's attacks on targets that resulted in dozens of injured civilians. In 2011, he called for an end to nighttime raids and ordered his own forces not to request U.S. airstrikes during operations. The decision was received with incredulity by U.S. SOF who conducted as many as 40 operations per night against suspected insurgents. Nonetheless,



Figure 17. The International Security Assistance Force (ISAF) had mixed success training the Afghan National Police. Source: Flickr/U.S. Central Command

the U.S. suspended nighttime raids for much of 2013 and then quietly started them again in 2015.<sup>176</sup>

U.S. leaders grappled with finding the delicate balance between force protection measures for U.S. military personnel and constraints on the use of force.<sup>177</sup> On one hand, the U.S. had a significant tactical advantage with air support and firepower that provided protection for U.S. ground forces that were frequently engaged in violent confrontations with insurgents. On the other hand, that same military firepower could generate civilian casualties and alienate the very civilians the U.S. forces were trying to protect. U.S. forces were operating in accordance with LOAC, but intense firefights in close proximity to concentrated population centers caused many civilian deaths.<sup>178</sup> According to one government report, 50 percent of the civilian casualties caused by coalition forces were caused by misidentification of civilians by military personnel who believed the individuals represented legitimate enemy personnel. The other 50 percent resulted from injuries and deaths sustained during engagements with enemy forces, in particular when artillery or air support was called in to support ground troops in contact.<sup>179</sup> “We were losing the moral high ground,” said Under Secretary of Defense for Policy Michelle Flournoy. Inadvertent or negligent U.S. attacks that resulted in Afghan civilian casualties, “started undermining support for or creating an intolerance of the international military presence,” she said.<sup>180</sup>

In addition to the temporary ban on night raids, senior U.S. military leaders placed restrictions on artillery strikes and aerial bombardments near civilian populations. U.S. forces in Afghanistan were prohibited from entering or conducting searches in the homes of Afghans without the participation of Afghan National Security Forces. Additionally, troops were forbidden from shooting at Taliban fighters if it risked causing civilian casualties. “Protecting the Afghan people is the mission,” General McChrystal wrote.<sup>181</sup> Admiral Mike Mullen, the Chairman of the Joint Chiefs of Staff (CJCS) from 1 October 2007 to 30 September 2011, encouraged U.S. forces to use discipline, discretion, and tactical patience while operating among Afghan civilians. “Each time an errant bomb or a bomb accurately aimed but against the wrong target kills or hurts civilians, we risk setting our strategy back months, if not years. Civilian casualty incidents ... hurt us more in the long run than any tactical success we may achieve against the enemy,” he said.<sup>182</sup>

General David McKiernan, ISAF Commander from 3 June 2008 to 15 June 2009, struggled with reducing civilian casualties in Afghanistan and, to ensure protection of U.S. forces, he reportedly preferred to rely on kinetic force rather than COIN tactics. His failure to protect Afghan civilians may have led to his sudden departure in 2009, the first American commander on a battlefield sacked since President Truman fired General Douglas MacArthur in 1951. For example, on 4 May 2009, 100–147 Afghan civilians were killed by U.S. airstrikes on reported Taliban positions near Granai (also known as Bala Buluk). McKiernan was relieved of his command just over a month later.<sup>183</sup>

Senior DOD officials recognized that LOAC violations and civilian casualties put the entire ISAF mission at risk.<sup>184</sup> During his initial assessment of the situation in Afghanistan, General Stanley McChrystal concluded that civilian casualties caused by coalition forces had, “severely damaged ISAF’s legitimacy in the eyes of the Afghan people.”<sup>185</sup> Under immense pressure to minimize collateral damage during nighttime raids, he called for a cultural shift among the troops, telling them changes to the ROE “require a cultural shift within our forces,”<sup>186</sup> and that “we must change the way we think, act, and operate.”<sup>187</sup> To minimize accidental civilian casualties, General McChrystal ordered his U.S. SOF to announce their intent to enter buildings where suspected insurgents were hiding.<sup>188</sup> U.S. SOF forces were required to “call out” before entering an Afghan residence so as to give the inhabitants a chance to surrender when the SOF members made a forced entry into the building. Some U.S. SOF found the rule frustrating. It removed the important element of surprise, gave the suspects time to arm themselves, and sometimes even created more opportunities for collateral victims. “When there were more rules, it became more difficult,” one operator said. General McChrystal’s successors, Generals David Petraeus and General John Allen, continued the “soft knock” tactic.<sup>189</sup>

General McChrystal acknowledged the heightened risk that his population-centric strategy would entail for U.S. forces. After taking over in June 2009, one of his first orders tasked commanders to use more discretion and restraint with the use of force. “I recognize that the carefully controlled and disciplined employment of force entails risks to our troops but excessive use of force resulting in an alienated population will produce far greater risks,” he said.<sup>190</sup>

Senior U.S. leaders were also working uphill against a military culture that encouraged the use of massive force against the opponent to ensure

victory. Instead, leaders like Mullen and General McChrystal were trying to instill new ideas of restraint, fire discipline, and the use of the minimal force necessary to achieve the military objective. The complexity of the COIN strategy introduced in 2007 required a graduate level understanding of military doctrine as opposed to the simple (but ultimately more detrimental) attrition strategy that had been used for the first six years of the conflict. In Iraq, for example, U.S. Service members that had been indoctrinated through most of their careers with the idea of using military firepower to overwhelm the opponent had difficulty in shifting tactics to a population-centric COIN strategy. According to Fred Kaplan, only about 20 percent of the U.S. unit commanders in Iraq understood and successfully implemented the COIN principles of protecting the civilian population. Another 60 percent of U.S. forces struggled with how to operationalize the COIN tactics and frequently resorted to conventional warfare tactics and attrition strategy. The final 20 percent consciously rejected the COIN tactics promoted by General Petraeus and continued to apply lethal force and military firepower to eliminate suspected insurgents, often at the expense of civilians.<sup>191</sup>

General McChrystal's successor, General David Petraeus, called upon U.S. soldiers to demonstrate "courageous restraint" and "disciplined use of force" to reduce civilian casualties. "Civilian casualties were threatening the entire relationship between [Afghan President] Karzai and the coalition ... and undermining the perception of the coalition's commitment [to] secure and serve the people," General Petraeus said.<sup>192</sup> "If you are killing civilians, then you are obviously not protecting them," he said.<sup>193</sup>

These policies generated a chorus of critics who asserted General McChrystal and General Petraeus were callous toward increased U.S. battlefield deaths.<sup>194</sup> Restrictions on the use of force imposed on Service members were perceived to be "handcuffing" U.S. soldiers and heightening the risks they took during firefights against Taliban militants. But Generals McChrystal and Petraeus understood that protection of civilians was necessary to achieve strategic objectives. By protecting the population from inadvertent uses of force, U.S. personnel would win the trust of Afghans and gain critical actionable intelligence against the Taliban, al-Qaeda, and other militants. In turn, this approach would permit U.S. forces to acquire strategic momentum and ultimately shorten the war. They believed that respect for HR was a force multiplier that might heighten risks for U.S. personnel in the short term but would save lives in the long term. General McChrystal put the importance

of HR in Afghanistan emphatically: “We’re going to lose this [expletive] war if we don’t stop killing civilians.”<sup>195</sup>

## **Civilian Casualty (CIVCAS) Avoidance Efforts**

Despite the controversy surrounding the restrictions on military force, the CIVCAS avoidance efforts by Generals McChrystal, Petraeus, and Allen seemed to work. According to a 2014 DOD report, the efforts resulted in an 83 percent reduction of civilian casualties by U.S. and pro-government forces in Afghanistan from 2008 to 2014.<sup>196</sup>

Since the end of major combat operations in Iraq in 2010 and Afghanistan in 2014, the U.S. military has continued to examine efforts to minimize the risk to civilians during conflicts. In 2012 the Army published “Techniques, Tactics, and Procedures on Civilian Casualty Mitigation” (ATTP 3-37.31). In 2013, the Joint Chiefs of Staff (JCS) published, “Reducing and Mitigating Civilian Casualties: Enduring Lessons,” a review of DOD efforts to reduce collateral damages during conflicts.<sup>197</sup> In 2015, the Department of the Army updated its guidance from 2012 and produced ATP 3-07.6, Protection of Civilians.<sup>198</sup> In 2016, the White House issued an executive order for U.S. forces to take additional measures to protect civilians in combat to include increased training, leveraging technology, and continued coordination with the ICRC, among others.<sup>199</sup> However, in March 2019, the Trump Administration revoked the requirement, cancelling additional measures that might mitigate civilian casualties.<sup>200</sup>

Additionally, in response to a number of air and artillery strikes in the U.S. Central Command and U.S. African Command regions (e.g., Al Hatra, Iraq in 2015; in Kunduz, Afghanistan in October 2015; and in Mosul, Iraq in March 2017), the Secretary of Defense ordered the CJCS to assemble an independent group of subject matter experts, to include retired senior military officers and academics, to investigate potential causes for increases in civilian casualties during U.S. combat operations from 2015 to 2017. In turn, on 28 November 2017, the CJCS directed the Institute for National Strategic Studies at National Defense University (NDU) to conduct a review of CIVCAS guidance to the forces, reporting procedures, and battle damage assessment processes, and a number of other associated issues.<sup>201</sup> Representatives from a variety of DOD organizations convened to examine the issues including personnel from the JCS, the DOD Office of General Counsel, the Office of

the Secretary of Defense for Special Operations and Low Intensity Conflict, the Center for Naval Analyses, and the Rand Corporation.

The group concluded, despite a widespread effort at all levels of the targeting process and in spite of clear guidance and oversight on the matter, that there had been an increase in the number of civilian casualties from January 2015 to December 2017. One of the principal causes of the increased number of civilian casualties seemed to lie with difficulties in positively identifying enemy combatants in the blurred battlefields in Iraq and Afghanistan. Determining which individuals constitute a hostile intent toward U.S. and

PN forces is very difficult because the militants do not wear clearly distinguishing uniforms, frequently operate among the civilian populace, and many Iraqi and Afghan civilians carry arms as part of village protection efforts. The NDU assessment coincided with other recent studies of CIVCAS reduction in Iraq and Afghanistan that also reported

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the difficulties U.S. Service members had to determine hostile intent.<sup>202</sup> A partially redacted executive summary of the NDU report was published on 17 April 2018, and released to the public reportedly to demonstrate the effort DOD put towards examining and avoiding civilian casualties.<sup>203</sup>

Finally, the 2017 National Defense Authorization Act (NDAA), the legislative document that provides requirements for the DOD as determined by the U.S. Congress, combined a number of security cooperation programs under one statute (section 333) that required U.S. military organizations to promote respect for HR, the LOAC, the rule of law, and adherence to civilian control of the military into its security cooperation efforts.<sup>204</sup> Since 2017, every NDAA has placed the same emphasis on building capacity for HR. However, in August 2019, the Government Accountability Office examined DOD compliance with section 333 requirements and found it in a state of dysfunction. DOD representatives did not have a firm understanding of which of its organizations provided HR training to PNs. Additionally, despite the congressional mandate, DOD does not have a system to track how it complies with the HR training requirement. In 2018, millions of dollars of funds for HR training went unobligated.<sup>205</sup>



## Chapter 5. U.S. SOF and Security Cooperation

The contents of the three previous chapters—the changing nature of contemporary warfare, the differences between LOAC, criminal, and HR law, and U.S. policy on the use of force—bring us to the central precept of this manuscript: how the U.S. SOF work with PNs as part of the security cooperation enterprise.<sup>206</sup> Of critical importance—as should be clear from the previous chapters—is how the U.S. rules on the use of force differ from that of its PNs and consequently how those differences may hinder SOF effectiveness during security cooperation opportunities. As the ICRC emphatically puts it, training PNs in LOAC rules when they are conducting law enforcement activities is “unsound and dangerous.”<sup>207</sup>

Security assistance and alliances have always been predominant components of U.S. foreign policy. The U.S. won its War of Independence against Britain with the assistance of France and Spain. During the two world wars, the U.S. provided critical assistance to allies fighting fascism in Japan and Germany before finally entering the war themselves. At the start of the Cold War, the U.S. launched the Marshall Plan to assist European countries to resist communist expansion. Since 1945, the U.S. has provided over \$1.1 trillion dollars in foreign aid to other countries.<sup>208</sup> For example, in 2017 (the last year for which complete data is publicly available), the U.S. spent \$49 billion in foreign aid funds to help other countries. Each year, about 75 percent of the assistance is economic and 25 percent military.<sup>209</sup>

The attacks of 9/11 demonstrated that threats in faraway lands can quickly reach U.S. shores in a globalized, interconnected world where intercontinental travel is a plane ticket and passport away. Terrorists from Saudi Arabia who were trained in Afghanistan were able to travel to the United States, intermingle among the U.S. population, and then launch attacks against symbols of U.S. military and economic might. In many ways, America’s first line of defense begins with effective security and stability in PNs.

The U.S. devotes an immense amount of time and resources to training partner security forces, particularly in Afghanistan, Iraq, and in African nations. According to data from the DOD and Special Inspector General for Iraq Reconstruction reports, U.S. and coalition forces trained and equipped

roughly 950,000 members of the Iraqi Security Forces. The United States spent \$815 billion on its combat operations of which approximately \$25 billion was allocated to the Iraqi Security Forces Fund.<sup>210</sup> In Afghanistan, the train-and-equip effort was even more expensive. Since 2002, the U.S. provided more than \$71.2 billion in assistance for Afghan security forces.<sup>211</sup> Additionally, since 2009 the U.S. has provided over \$1 billion to develop African peacekeeping capacity and strengthen African institutions.<sup>212</sup>

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## The Importance of Allies

Collaboration with partners and allies are themes emphasized repeatedly throughout the 2018 National Defense Strategy published by the Secretary of Defense and the 2015 National Military Strategy published by the CJCS.<sup>213</sup> In the National Military Strategy, for example, General Dunford wrote:

As we look to the future, the U.S. military and its allies and partners will continue to protect and promote shared interests. We will preserve our alliances, expand partnerships, maintain a global stabilizing presence, and conduct training, exercises, security cooperation activities, and military to military engagement. Such activities increase the capabilities and capacity of partners, thereby enhancing our collective ability to deter aggression and defeat extremists.<sup>214</sup>

Each of the military Services (Army, Navy, Air Force, and Marines) provides the personnel and equipment for security cooperation activities, but the Regional Combatant Commands execute the events with PN in their respective regions. For example, in testimony before the U.S. Senate in March 2019, Army Chief of Staff General Mark A. Milley (currently the CJCS) acknowledged the importance of building the military capacity of partners.

America's network of allies and partners is an unrivaled strategic advantage the Army is actively working to enhance. Every day, the Army works to strengthen alliances and build new partnerships through security cooperation and security assistance. The Army works with Combatant Commanders to ensure our security cooperation efforts support their priorities as we work to increase

interoperability and build partner capacity. Interoperability ensures we can train and fight alongside our allies and partners more effectively and efficiently so we are ready to face any threat together.<sup>215</sup>

In a world with Russia and China emerging as competitors for influence, most COCOMs also recognize the need to be the preferred partner with other nations. Both the U.S. Indo-Pacific and Southern Commands note the importance of being “the security partner of choice” in their theater campaign strategies.<sup>216</sup> General Thomas D. Waldhauser, the commander of U.S. Africa Command, testified before the Senate Armed Services Committee on 7 February 2019, that:

As a partner-based command, our security cooperation programs are designed to professionalize partner militaries and security forces through training and institution building, and their concepts are integrated into military-to-military engagements; training on human rights, rule of law, and prevention of gender-based violence; and exercises. The successful advancement of U.S. interests in Africa is best achieved with stable nations on the continent. Accountable governments, well-trained and disciplined militaries with a respect for the rule of law and human rights, and growing economies are the cornerstones to this stability.

## **Benefits of Foreign Assistance**

U.S. foreign assistance serves a number of purposes. First, it helps create sustainable governments and prosperous economies so that internal strife from social or fiscal problems do not grow into larger problems. As former Secretary of Defense Robert Gates put it, security cooperation efforts are meant to “prevent festering problems from turning into crises that require costly and controversial direct military intervention.”<sup>217</sup> Humanitarian relief following natural disasters is critically important to help struggling nations restore governance in the wake of a destabilizing calamity. The investment is relatively small when compared to the economic, political, and security benefits that come from the subsequent stability. Second, foreign aid may bolster the military capacity of PNs that may be coalition partners in future operations. Thirty-nine countries participated in the Multinational Force–Iraq coalition led by the United States following the 2003 invasion of Iraq.

During the Cold War, U.S. military assistance focused on anti-communist efforts. Since 2001, it has focused on counter-terror programs and, more recently, on BPC and defense institution building efforts.

Third, these efforts help other nations resist violent extremist organizations. In many ways, foreign assistance and specifically security cooperation programs are the first line of defense against radical groups that have an anti-American agenda. If foreign nations can handle their own domestic security issues, the U.S. can avoid getting involved in costly overseas military operations and stop threats before they reach the U.S. mainland. Fourth, interaction with PN militaries help promote U.S. values such as democracy, adherence to international HR standards, and military subordination to civilian authorities. Political theory posits that democratic governments are normally the least likely to use military force because of the system of checks and balances within the government, the ability to vote bellicose leaders out of office, and economic interdependence that discourages expensive conflicts between nations.<sup>218</sup> Fifth, security cooperation activities such as Joint Combined Exercise Training (JCET) benefit U.S. military personnel (especially SOF) because they help U.S. troops become familiar with host nation forces and territory. Lastly, since much of the economic and military assistance comes directly from U.S. business firms, the foreign aid also helps stimulate the U.S. economy. The U.S. benefits financially from arms sales and overseas training that generate revenue and jobs for Americans.<sup>219</sup>

What does the U.S. expect in return for these overseas investments? First, the U.S. seeks partners that will help combat transnational threats and be willing, effective partners in future coalition operations. For example, the ISAF in Afghanistan consisted of 39 countries in addition to the United States. The U.S. Central Command in Tampa, Florida, has representatives from nearly three dozen foreign militaries working in its headquarters. Second, the U.S. seeks to promote political stability and economic prosperity in other countries. In an interconnected global economy, a collapsed economy can have regional or international repercussions. Weak and failing states are particularly vulnerable. Recall that the 9/11 hijackers who attacked New York City and Washington, D.C. trained in Afghanistan—a nation that had no effective government control over much of its territory. Third, the U.S. also seeks professional and accountable military partners. Military professionalism consists of four components: (1) formal military education and vocational training, (2) military subordination to elected civilian officials,

(3) knowledge and practice of the LOAC and HR law, and (4) a clearly established program of professional military ethics.<sup>220</sup> In accordance with U.S. law, U.S. military forces are prohibited from assisting or working with military counterparts who abuse the HR of their citizens or that use their authorities in corrupt manners. Therefore, only countries with professional militaries are eligible to receive U.S. assistance, which is an incentive for foreign nations to ensure their security forces comport themselves in a forthright manner in accordance with LOAC and HR law.

Through its foreign assistance program, the U.S. also supports international and regional institutions. For example, the United States pays 22 percent of the UN budget and about 42 percent of the total budget for the Organization of American States (OAS).<sup>221</sup> Since World War II, with the exception of several years between 1989 and 2001 during which Japan ranked first among aid donors, the United States has led the developed countries in net disbursements of economic aid. In 2014, the most recent year for which data are available, the United States disbursed \$32.73 billion in overseas development assistance, or about 24 percent of the \$136.16 billion in total net disbursements that year.<sup>222</sup> The U.S. is also the largest financial contributor to UN PKO, contributing about 23 percent of the total peacekeeping budget.<sup>223</sup> The U.S. also provides nearly one-quarter of the ICRC budget. Providing training and support to international peacekeeping forces is also a top priority for the U.S. government.<sup>224</sup> In fact, many of the nations that receive U.S. SOF training also participate extensively in PKO.

U.S. contributions to democracy and HR often go unrecognized. Fortifying democratic institutions and HR standards have long been key foreign policy objectives. The U.S. has distributed more than \$2 billion dollars annually in foreign aid during the past 10 years to advance democratic standards and promote U.S. values such as a strong civil society and robust programs on HR and the rule of law.<sup>225</sup>

## **U.S. SOF and Security Assistance**

The U.S. Special Operations Command (USSOCOM) plays a unique role in security force assistance, particularly train and equip missions. For example, Owen West, the former Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict, told congress in February 2019 that, “reassuring allies and building and sustaining partnerships remain critical to

According to Executive Branch guidance, security cooperation has four principal objectives.

1. Help PNs address common security challenges: disrupt and defeat transnational threats; develop legitimate and effective security and justice sector institutions; contribute U.S. military operations; and maintain control of their territory.
2. Promote support for U.S. interests, including: access to airspace and military bases; improved interoperability and training opportunities; and cooperation on law enforcement, counterterrorism (CT), counter-narcotics, combating organized crime and arms trafficking, countering Weapons of Mass Destruction proliferation, and terrorism, intelligence, peacekeeping, and humanitarian efforts.
3. Promote universal values, such as good governance, transparent and accountable oversight of security forces, rule of law, transparency, accountability, delivery of fair and effective justice, and respect for HR.
4. Strengthen collective security and multinational organizations, including: building the capacity of troop- and police-contributing nations to UN peacekeeping missions.

Figure 18. Objectives of Security Cooperation and Building Partner Capacity. Source: The White House.

accomplishing our national security objectives.” He also said that U.S. SOF have an important role, “to build the capacity of our partners and allies and develop lasting relationships.”<sup>226</sup> That same month, General Raymond Thomas III, former USSOCOM Commander, said, “SOF coordinate within the USG and with international partners at all levels—from the tactical to the strategic.”<sup>227</sup>

U.S. security cooperation objectives align directly with the SOF foreign internal defense mission or BPC efforts, as part of a larger USG effort to establish a network of partners to combat violent extremist organizations that operate around the globe. U.S. allies in the Philippines, Colombia,

Afghanistan, Iraq, Syria, and Nigeria are under fire from radical extremist groups like Boko Haram, Abu Sayyaf, the Islamic State, and al-Qaeda. BPC raises the prospects that the U.S. will not have to intervene militarily to combat these groups.



Figure 19. Special Operations Core Activities. Source: Joint Publication 3-05, Special Operations.

Training PN forces is a mission normally assigned to SOF. USSOCOM Publication 1, for example, identifies security cooperation as a critical mission of U.S. SOF.<sup>228</sup> In addition, USSOCOM is designated the DOD proponent for Security Force Assistance, the train and equip feature of U.S. foreign policy that provides extensive assistance to PNs.<sup>229</sup> Most of U.S. SOF security cooperation training occurs during JCETs. The events are designed to provide familiarity for U.S. SOF in other countries. A secondary incidental benefit is the training the PN forces receive. According to SOF representatives

interviewed for this project, JCETs are conducted 50 percent of the time with PN SOF, 40 percent of the time with conventional forces, and 10 percent of the time with police units. The police training is often only with special police tactical units like hostage rescue teams. When it is provided, use of force tactics are those of the LOAC, not law enforcement tactics.<sup>230</sup>



Figure 20. U.S. Army SOF conduct a JCET with Panamanian police personnel in 2018. Photo by U.S. Army Staff Sergeant Osvaldo Equite

The types of JCET training differ from country to country based on the needs and missions of the PN forces. In total, from 2008–2018, U.S. SOF conducted 1,736 JCETs in 102 countries with more than 142,000 partner nations forces. Total cost of the events was more than \$600 million. In 2018 alone, U.S. SOF conducted 159 JCETs in 59 countries. The training events for that year included the participation of over 26,000 troops from PNs.<sup>231</sup>

Of the 102 countries where U.S. SOF conducted its JCETs from 2008–2018, only an estimated 25 percent of the PN forces were involved in an IAC or NIAC in which the nation's armed forces use military firepower governed by the *Geneva Conventions and Additional Protocols*. By the author's estimation, the other 75 percent of the PN forces are tasked to manage domestic disturbances. Those internal security operations, as has been repeated a

number of times in this manuscript, involve low intensity tactics and force more appropriate for police operations.<sup>232</sup>

Human rights and LOAC were only infrequently taught during the JCETs. According to USSOCOM representatives, there is no requirement to teach or train on HR or the LOAC tactics during JCETs. In some cases, it may be required by the country team in the U.S. embassy<sup>233</sup> or might be taught as part of the initiative of the SOF participating in the JCET but no USSOCOM or congressional requirements exist. An internal USSOCOM Directive that previously required HR training (USSOCOM Directive 350-28) has since expired and has not been republished.<sup>234</sup> USSOCOM representatives contended that their JCET personnel are “operators,” not legal advisors, and therefore not qualified to provide training on LOAC or law enforcement tactics. In their opinion, legal training is better left to JAG officers or legal advisors.<sup>235</sup>

First aid and Field Medical care
Close quarter battle or close quarter combat
Combat Marksmanship
Small Unit Tactics
Mission planning process
Long range Marksmanship/Sniper Ops
Demolitions
Urban Operations
Military Decision Making Process
Sensitive Site Exploitation (SSE)
Heavy Weapons Employment
Tactical Communications
Advanced Marksmanship
Counter Improvised Explosive Device (IED)
Fast Rope Insertion and Extraction
Marksmanship/Basic Marksmanship
Patrolling (dismounted and mounted)
Reconnaissance operations

Figure 21. Most Frequent Types of Training Conducted with PN Forces, 2018. Source: Report on Training of SOF for the Period Ending 30 September 2018

U.S. SOF are often the units chosen to conduct security cooperation training with PNs. However, because of the high demand for security cooperation and BPC, the DOD has recently assigned some activities to conventional U.S. military units. The U.S. Army, for example, has established Security Force Assistance Brigades (SFAB) to “train, advise, assist, enable, and accompany allied and PNs.” The first was established in October 2017. The 1st SFAB, stationed out of Fort Benning, Georgia, deployed to Afghanistan in February 2018 to help improve the military capacity of the Afghan National Army (ANA). The 2nd SFAB deployment, out of Fort Bragg, North Carolina, deployed to Afghanistan in spring 2019.<sup>236</sup>

## **Inherent Challenges Working with Unprofessional Partner Militaries**

During security cooperation interactions with PN forces, U.S. SOF frequently work with PNs that do not have professional military standards common to most developed nations.<sup>237</sup> Foreign military partners may not practice or be familiar with more advanced concepts regarding CIVCAS avoidance, protection of civilian property during conflicts, or subordination to elected civilian officials. At the same time, these allies are fighting in the same complex operations environment against non-state actors. Under the blurred lines of contemporary warfare, there is a greater likelihood that tactical errors can result in serious crimes against civilians. These problems can be severely exacerbated in countries with stratified political or economic systems that produce tensions between ethnic groups within the country. Under these circumstances, SOF training teams must navigate a fine line between developing the military capacity of PN forces and ensuring that the foreign units comply with international legal standards on the use of force.<sup>238</sup>

There are dozens of recent incidents in which military forces from important U.S. PNs have committed serious crimes against civilians. In one country, an important U.S. partner in combatting violent extremist groups in Africa, videos surfaced in 2019 of soldiers executing two women, one of whom carried an infant on her back. In another incident, soldiers assigned to secure a high-end shopping mall in the wake of a terrorist attack ended up looting merchandise from the stores. In a Latin American country where U.S. SOF work closely with host nation special forces, soldiers were accused of executing 12 suspected criminals after they were detained and disarmed. In



Figure 22. Chadian soldiers in the capital of N'Djamena, 2008. One U.S. senior JAG officer called PN training on LOAC and HR "woefully inadequate." Source: Le Parisien/Philippe De Poulpique/Newscom

an important African nation at the center of the fight against Islamic extremist groups, the armed forces have been accused of extrajudicial executions of as many as 1,200 persons. In one incident in 2015, soldiers killed nearly 350 protesters during a demonstration when they opened fire into the crowd with live ammunition. Thousands of others have died in the same country because of brutal conditions in government detention facilities. In the most important U.S. military partner in South America, the armed forces have been accused of the deaths of thousands of civilians who were killed and then passed off as insurgents. In another African PN, a U.S. trained Army officer led a military coup that overthrew the democratically-elected president. The resulting chaos eventually required a major military intervention by French military forces to restore order to the country.<sup>239</sup> Each of these incidents occurred in a country where U.S. SOF had recently conducted JCETs with PN forces.

## The *Bacha Bazi* Incident in Afghanistan

Perhaps the most notorious recent example of criminal activity among PN forces that has subsequently raised the level of attention on the difficult ethical decisions faced by U.S. SOF personnel is the *Bacha Bazi* case in Afghanistan. It also revealed glaring deficiencies on how U.S. SOF are educated on HR, the same topic on which GCC and national leaders place so much emphasis. While technically illegal, one of the customs in Afghan culture is for powerful local leaders to have “dancing boys” (called *Bacha Bazi* in Dari or literally “boy play”). The children are often forcibly coerced into sexual slavery and child prostitution—a crime against humanity in most situations. In 2011, while working with local forces, two U.S. SOF personnel confronted an Afghan militia commander who allegedly kept a 14-year old boy chained to a bed as a sex slave. The sergeant first class and his special forces captain told Army officials that they “felt that morally we could no longer stand by” and allow the Afghan local police “to commit atrocities.” When confronted, the militia leader reportedly laughed off the accusations at which point the two SOF soldiers assaulted him and physically threw him off the base. The SOF captain was relieved of his command and subsequently left the military. The sergeant first class was reassigned and, after a lengthy review, was eventually permitted to rejoin special forces units.<sup>240</sup>

During the subsequent investigation by the Special Inspector General for Afghanistan Reconstruction (SIGAR), interviews with other SOF personnel revealed that many had witnessed criminal activity by Afghan security forces but didn’t know how to respond or what mechanisms existed to report the gross violations of HR. For example, according to USG investigators, one U.S. military official saw an ANA soldier shoot a detainee in the leg. In another incident, ANA members repeatedly hit a detainee in the face with their weapons. In 2014 in the Logar province, seven Afghan National Army Special Operations Command (ANASOC) personnel beat a civilian to death. In yet another incident, two ANASOC soldiers sexually assaulted a girl in order to coerce information from her mother.<sup>241</sup> The two U.S. SOF involved with the incident with the militia commander reported that they had heard of a militia commander who raped a 14- or 15-year-old girl whom he had spotted working in the fields. Another commander absconded with

his men's wages and spent the money on dancing boys. Yet another commander murdered his 12-year-old daughter in a so-called honor killing for having kissed a boy.<sup>242</sup>

The SIGAR 2018 report about the incidents highlighted that the U.S. DOD "did not have guidance specifically requiring the reporting of HR violations until November 2011." Pre-deployment training for U.S. forces focused on LOAC and detainee abuse but did not include any guidance on HR violations or child sexual assault. As a result, some of the U.S. Service members who witnessed assaults by Afghan security forces said they did not receive training on how to address it and therefore did not report it to authorities.<sup>243</sup> DOD policy stated that "training on the law of armed conflict would include some training on respect for human rights;" that policy proved insufficient to cover the incidents U.S. SOF witnessed on the blurred battlefields of Afghanistan.

This incident raises an important question about U.S. security cooperation programs. In accordance with DOD regulations, U.S. SOF are obliged to report serious violations of HR and, if involved in a training exercise with foreign forces, withdraw from the training.<sup>244</sup> U.S. military personnel who witness and do not report violations of surrogate forces may be held legally liable for failing to comply with their duties.<sup>245</sup> But what if U.S. SOF don't know what constitutes a gross violation of human rights (GVHR) as was the case in the bacha bazi incident? According to dozens of interviews conducted for this report, neither USSOCOM headquarters in Tampa, Florida, nor the six Theater Special Operations Commands, nor any of the Army, Navy, Air Force, or Marine SOF commands provide this type of HR training to inform SOF personnel on what constitutes illegal and criminal behavior.<sup>246</sup> USSOCOM headquarters should mandate pre-deployment training for SOF personnel that covers the types of war crimes and crimes against humanity that occur all too frequently during times of conflict. These may include child sexual exploitation, rape, abuse of detainees, torture, extrajudicial execution, forced disappearance, excessive force, honor killings, kidnapping, human trafficking, forced labor, and slavery. In addition to training on basic HR, civil-military relations, and military professionalism, SOF forces need to know specifically what constitutes a war crime or a crime against humanity and how to respond to such incidents.



## Chapter 6. The Blurred Battlefield in Brazil: Military Operations in the Favelas of Rio de Janeiro

The next four chapters of the manuscript provide examples of governments that have been forced to order their armed forces to the streets to combat violent criminal organizations. Three of the four cases—Brazil, Colombia, and Mexico—are among the most dangerous countries in the world. In fact, together Mexico and Brazil account for 29 of the top 50 most dangerous cities in the world.<sup>247</sup> The fourth case, Chile, demonstrates the challenges UN peacekeepers have faced in more than 70 interventions since 1945 as they operate in the grey areas between armed conflict and law enforcement. In each of the four examples, the security problems have risen beyond the capacity of the police forces and, as a result, have required the use of the military to combat the threats. However, only one of these four cases—Colombia—rises to the level of an armed conflict that permits the use of LOAC tactics.<sup>248</sup> The other three countries are using their military in law enforcement roles that required military officials to retrain their soldiers on police tactics or develop a hybrid doctrine that includes both LOAC and HR rules.

These are the blurred battlefields of Latin America; fighting in densely populated urban terrain against heavily armed and violent criminal gangs. In places like Rio de Janeiro, Brazil; Port-au-Prince, Haiti; Buenaventura, Colombia; and Culiacan, Mexico, security forces are faced with extremely difficult operating conditions in which it is nearly impossible to distinguish between criminals and civilians. As a result, security forces require an immense amount of training and education to understand when they can use force, what kind of force is permitted, and what rights they are obliged to provide to detainees. Fire discipline is extremely important and soldiers deployed without this orientation are likely to make fatal errors.

### Recent History of Brazil

Brazil is the largest and most populated country in Latin America. It is a nation of vast geographic and demographic diversity,<sup>249</sup> and the only country

on the continent to border ten other nations. It has immense resources and geopolitical potential. It is the world's fifth largest nation by area, has the 9th largest economy (by gross domestic product, GDP), and is the fifth most populated country in the world with over 210 million people. Within South America, it accounts for nearly 50 percent of the land area and 50 percent of the population (203 million citizens). In the early 2000s, Brazil was grouped with Russia, India, China, and South Africa, (BRICS) and was identified as one of a handful of rising countries that would surge to the top of the economic food chain as a global power and able to wield its financial and political influence to advance national interests.<sup>250</sup> To demonstrate its arrival on the world stage, Brazil hosted the 2014 World Cup, the first Olympic Games ever hosted in South America, and campaigned for a permanent seat on the United Nations Security Council (UNSC).

However, economic and political troubles derailed Brazil's debut as a competitive world power. An economic recession in 2014, a widespread political corruption scandal, associated social protests, and a nationwide crime wave have cast doubt on Brazil's ability to be a destination for foreign investment and a global playmaker. The problems in Brazil stem from a combination of structural and socioeconomic problems that have gone unaddressed and have created a festering malignancy on the country's ability to live up to its potential. Brazil has high levels of inequality and income disparity.<sup>251</sup> This produces a cost of living burden on many of the poorest Brazilians who struggle to find means to sustain themselves. Millions have been lifted out of poverty in the past two decades, but many Brazilians resort to illicit activities—especially drug trafficking—for the income they need to survive.

Corruption is also a major problem in the country. The 2014 Car Wash scandal (*Lava Jato* in Portuguese) revealed billions of dollars of bribes among politicians and private companies, money that should have been devoted to social programs or economic stimulus practices that benefited the public. The ensuing investigation revealed that corruption is rampant throughout the government. Five former presidents, nearly one of every three presidential cabinet ministers, the heads of both houses of congress, two dozen senators, and 42 congressional deputies have been accused of corruption, money laundering, and fraud. President Michael Temer, who took over after Dilma Roussef was accused and impeached for corruption. The former governor of Rio de Janeiro state was sentenced to 14 years in prison for taking \$67 million



Figure 23. Brazil comprises nearly 50 percent of the territory of South America, accounts for half of the population of the continent, and has land borders with ten other countries. Photo by Shutterstock

in bribes. Even the lead prosecutor who leveled corruption charges against hundreds of officials now faces his own ethics scandal.<sup>252</sup>

Frustration with economy stagnation, political corruption, and the security crisis has risen considerably since 2014. Government spending has been slashed because of the lack of revenue leaving many security forces without funds to fuel vehicles or pay salaries. Not surprisingly, public opinion surveys revealed widespread contempt among Brazilians for politicians. A 2017 Latinobarometro poll found that only 13 percent of Brazilians had faith in democratic institutions. At one point, former President Temer’s public approval rating hit four percent. As an indication of the level of frustration and anger, many citizens in the country yearn for a military coup in order to oust corrupt politicians, reduce crime, and restore order.<sup>253</sup>

All these economic, political, and security problems have aligned to make Brazil's cities some of the most dangerous in the world. The country has just three percent of the world's population, but is the source of 14 percent of homicides across the globe. Gun battles between rival gangs break out in broad daylight as they compete for control of drug markets. In Brazil's prisons, riots have erupted as authorities try to crack down on gang activity within the penitentiaries, leaving hundreds of dead prisoners and prison guards, many of them brutally murdered. Retaliatory gang attacks have resulted in scores of dead police officers. As a result, the Brazilian Army has been deployed into the most dangerous favelas in Rio de Janeiro and Sao Paulo.<sup>254</sup>

Public frustration with runaway crime led to the 2018 election of a populist right-wing president who vowed to quell the violence. Jair Bolsonaro, a former Army captain and firebrand politician, campaigned on promises to reduce crime and corruption. He had earned a reputation in congress as a tough-talking and, at times, crude spokesperson for conservative political factions who prefer *mano dura* tactics over social or economic reforms.<sup>255</sup> Bolsonaro's vice president is Antonio Hamilton Mourao, a Brazilian Army general who retired from the military in 2018 to run for office.<sup>256</sup>

## Red Command and the First Capital Command

Brazil's two largest gangs are the Red Command (*Comando Vermelho* in Portuguese) and the First Capital Command (*Primeiro Comando Capital* [PCC]). Both groups originated in the hellish Brazilian prisons of the 1980s and 1990s when gang members created alliances for self-protection. Once released from prison, gang members continue to collaborate with colleagues who remain behind bars. The gangs initially trafficked in extortion, protection fees, prostitution, bank robberies, and petty crime, but later moved into arms and drug trafficking, particularly as trafficking routes through West Africa and Europe became more profitable. Money earned on the streets was funneled back into the prisons to help incarcerated gang members maintain their status, purchase drugs, bribe guards, and recruit new members to their ranks.

The two main groups had maintained a shaky truce for over almost two decades—a collaborative attempt at self-preservation inside Brazilian tough prisons rather than launching an internecine war among gangs. All that



Figure 24. Brazilian soldiers have been assigned domestic security responsibility in favelas—heavily populated and impoverished communities that present unique urban security challenges. Source: U.S. Southern Command

changed in 2016 when the alliance was called off as the two groups expanded their control of drug trafficking territory particularly in the north of the country.<sup>257</sup> The Red Command moved against PCC territory in Sao Paulo and likewise the PCC moved into areas of Rio de Janeiro traditionally controlled by the Red Command. Both groups also sought to establish alliances with other smaller gangs. A lot of the violence between gangs occurred in the penitentiaries; prison riots in Roraima, Rio Branco, Port Velho, Manaus, Natal, and other areas resulted in dozens of gang fights and hundreds of deaths between PCC and Red Command factions.<sup>258</sup>

In 2005, the Red Command was believed to control most of Rio de Janeiro's favelas.<sup>259</sup> However, as the truce disintegrated in 2016, the Red Command had to compete with PCC factions such as the *Amigos dos Amigos* and the Pure Third Command; the latter comprised of dissident factions of the Red Command who had previously broken away from the group. Under this pressure, the Red Command is presumed to have lost power within Brazil. However, they still have as many as 6,000 members in Rio de Janeiro.

The PCC, formerly from Sao Paulo, is now the largest and most powerful organized crime group in Brazil with a reported 30,000 members. They are estimated to have a presence in every one of Brazil's 27 states (to include the federal district) and have control over 90 percent of the prison population, an estimated 550,000 prisoners.<sup>260</sup> The PCC have also expanded into neighboring South American states of Bolivia and Paraguay.

Have the Red Command or the PCC reached the level of organization and protracted violence of OAG? If these two criteria are met, the conflict is considered a NIAC that permits the use of military firepower and tactics that are less restrictive than law enforcement rules. Brazil's armed forces would be permitted to use military firepower against gang members that are directly participating in hostilities, could use lethal force as an option of first resort, and wouldn't necessarily be required to use EOF tactics when confronting gang members.

This is not the situation in Brazil. Despite the heightened levels of violence and control of the favelas by gangs, neither the Red Command nor the PCC have crossed the threshold of an OAG. With regard to the level of organization, the Red Command consists of a series of loosely aligned groups rather than a hierarchical organization with a centralized leadership. There is no strict command-and-control system nor a ranking system among the gang leadership. Similarly, the PCC consists of a number of franchise groups that serve the interests of the PCC while not actually being directly subordinate to them. Allegiance to the groups by its members is frequently shifting as the gangs split into smaller factions or align with other criminal factions. Many of the gang leaders from both groups are imprisoned but are able to coordinate criminal activities via cell phones because Brazilian prisons are effectively under the control of criminals, not state authorities.

Likewise, neither group reaches the required level of violence of an OAG. This might seem counterintuitive in light of how dangerous everyday life has become in Brazilian cities. The country has seen a violent crime wave erupt since 2010, fueled by an influx of drugs being shipped to West African and European markets. According to the Brazilian Forum of Public Security (FBSP), the homicide rate in Brazil has increased every year since 2014. In 2017, nearly 64,000 Brazilians were murdered, 175 each day.<sup>261</sup> Fourteen of the most violent cities in the world are in Brazil, according to the Citizen's Council for Public Security and Penal Justice, a Mexican NGO that studies violence in cities.<sup>262</sup> The jump in violence coincides with the favela security

operations, the end of the truce between rival gangs, and the increased flow of drugs through Brazil. Gangs primarily use small arms or automatic weapons, but not heavier caliber weapons such as .50 caliber machine guns or rocket-propelled grenades. The fighting is episodic, not protracted or continuous. Favela citizens are not being displaced by the fighting, despite the danger it presents.<sup>263</sup> Because the OAG thresholds have not been crossed, Brazilian soldiers combating these groups are required to use law enforcement tactics, not LOAC tactics.

### **The Brutal Brazilian Prison System**

The origins of the Brazilian gangs offer insights into the austere conditions of the Brazilian penitentiary system. Brazil's prison system is the third largest in the world (after China and the United States) and its prisons are more often a source of criminal consolidation and recruitment rather than rehabilitation. Conditions inside Brazil's prisons are brutal; designed for 400,000 prisoners, the prison population now sits at almost 750,000, 187 percent over capacity.<sup>264</sup> Police and military forces often have to be called in to reestablish control when riots occur. The most infamous incident of Brazilian prison violence occurred in October 1992 when Brazilian police massacred 111 inmates during the Carandiru prison riot, one of the largest prisons in Latin America. Subsequently, prisoners began demanding better living conditions and protested against gang leaders being transferred to other prisons. Gang members launched a number of smaller riots, but none matched a massive rebellion in 2001 that was coordinated among 28 prisons holding 29,000 prisoners. The protest was timed to occur on a Sunday when prisoners are entitled to have visitors. Prisoners took 10,000 people hostage. In Carandiru prison alone, the PCC seized 5,000 hostages.<sup>265</sup>

In 2006, PCC leaders ordered another uprising in 51 prisons, as well as attacks against police stations in Sao Paulo. From 12 May to 20 May, nearly 500 people died (including 42 police officers) from prison rioting, arson attacks against buses, and by retaliatory attacks by police against suspected gang members. Almost 300 police stations and public buildings were attacked in just a nine day period.<sup>266</sup>

## The Favelas of Rio de Janeiro and Sao Paulo

Brazilian gangs traditionally operate in the favelas, the impoverished neighborhoods in Rio de Janeiro and Sao Paulo that rest on the steep hills throughout the city. According to government authorities, there are more than 700 favelas in Brazil although many of them consist of conglomerations of neighborhoods that are loosely connected. Houses, constructed of wood, mud bricks, or recycled materials, are packed tightly on top of or alongside others. In these areas, the government has little presence. Public services are limited. Streets are narrow and inclined. There is minimal vehicular traffic; most residents ascend and descend via stairs.



Figure 25. The Rocinha favela near Rio de Janeiro is one of Brazil's largest favelas, home to an estimated 100,000 people. It has also been the objective of a massive pacification effort by Brazilian security forces. Photo courtesy of The Intercept news service

The favelas are demographic representations of the income disparity that lies at the root of many of the Brazil's socioeconomic problems. In Rio de Janeiro, for example, the sprawling slums are directly adjacent to wealthier areas like Lagoa, Leblon, or the internationally famous beaches of Ipanema and Copacabana. Residents descend from the favelas each morning to try

to earn money in the informal sector, often as a sidewalk vendor or work in the service industry of the many hotels and restaurants that dot these swank neighborhoods. At day's end, after making a meager wage, they may embark public transportation for a long commute back to the favelas where security and utilities are commonly unavailable. Wealthier Brazilians, and even those from the middle class, look down on the favela dwellers. During one of the author's research trips to Brazil, one taxi driver gestured at a favela as he passed it and pinched his nose as if to avoid a noxious smell emanating from the slums.

Because of the lack of security and government services, the Brazilian favelas are often referred to as "ungoverned" or "under-governed" spaces. But this characterization does not tell the whole story. As Robert Muggah of the Igarape Institute describes it, it is more accurate to say that favelas are "alternately" governed because the gangs or militias serve as a form of surrogate authority, providing an informal system of authority and rule of law. In a country with little public confidence in political representatives and corrupt police officers, gangs are often perceived as the only "legitimate" authority in the favela. Although relatively "lawless" by most standard measures, gang leaders enforce prohibitions on certain crimes such as pedophilia and rape. Many of the children who live in these areas are orphaned or parentless. Their fathers may be in jail and their mothers may have to work long hours to earn a living. Consequently, children are raised by their grandmothers or other relatives. Many of the street children are employed by gangs for menial jobs such as lookouts and messengers. In turn, the children's relatives are paid by the gangs for the services the kids provide, thereby providing a small but important form of income for residents in the favelas. Gang leaders also fund public work projects and social programs, providing a form of economic stability and employment.

Security operations in these sprawling urban shantytowns are difficult. Armored vehicles and, in some cases even motorcycles, cannot navigate the steep, twisting alleyways so security forces normally have to enter on foot, making them vulnerable to armed criminals who may be surveilling entrances into the neighborhood. Local gangs know the pathways through the houses and can maneuver rapidly through the hidden corridors. Ammunition fired from military arms can pierce the flimsy walls of the resident's homes sometimes passing through multiple structures and raising the risk of unintentional civilian casualties. Because the favelas are perched on the

slopes of the mountains, criminals often enjoy the advantage of the elevation to attack security forces as they enter the area.

In light of the near-abandonment of the favelas by government forces, private militias have filled the security void. In many cases, they consist of former police officers or soldiers who serve as neighborhood watch groups to protect locals from gang members. An estimated two million of the 6.7 million residents in Rio de Janeiro now live in areas controlled by militias.<sup>267</sup>

This is a worrisome trend. As other Latin American countries have seen, militias and paramilitaries can often become part of the security problem when they start charging protection fees to locals (a slippery slope toward extortion) or are drawn into the drug market by the lucrative profits.<sup>268</sup> In Colombia, for example, the paramilitaries (also called self-defense forces) were initially employed by wealthy Colombian ranchers and landowners to protect their property from leftist guerrillas. Over time, the vigilante groups became the worst actors in the long insurgency in Colombia and committed more atrocities and massacres than either the guerrillas or the state security forces. The paramilitaries established strong ties with Colombian government officials who shared mutual security concerns. Those connections were difficult to sever, even after the group was declared a terrorist group and DTO by the U.S. Department of State.<sup>269</sup>

Today, militias that control the favelas are nearly indistinguishable from the drug trafficking gangs. One Brazilian government representative interviewed for this project called the militia a “mafia.” They extort money from local vendors in return for “protection.” They control most of the utilities into the favelas such as potable water, cooking gas, electricity, television, and garbage collection. Militias in some favelas in Rio de Janeiro are reported to have charged politicians a \$40,000 election tax for mayors to permit them to campaign in their areas.<sup>270</sup> Some citizens welcome the militias because they have driven violent drug gangs out of the areas, referring to them as a “lesser evil” when compared to the gangs.<sup>271</sup> But the militias use intimidation and violence to enforce their own agenda as well. In March 2018, city councilwoman Marielle Franco, an activist against militias and extrajudicial killings by police, was gunned down in Rio de Janeiro.<sup>272</sup> Born in the favelas and a university graduate despite having to raise a daughter as a single parent, she represented many of the disadvantaged residents of the poorest neighborhoods in the city. In March 2019, two former military policemen and members of the militia were arrested for her murder.<sup>273</sup>

## Brazilian Law Enforcement

Understanding the Brazilian police forces can be difficult because of the numerous organizations that exist under federal, state, and municipal organizations. Like most police units, the mandate for Brazilian police is twofold: provide law enforcement and maintain public order. At the national level, the Federal Police and the Federal Highway Police operate under the Ministry of Public Security. The first manages law enforcement issues such as international drug trafficking, terrorism, immigration, and border security. The second oversees security on the federal highways.

At the state level, there are two important police organizations, both of which fall under the supervision of the governor in each of Brazil's 27 states: the military police and the civil police. Because of their title, the military police are often confused with the armed forces. However, they are not part of the Brazilian military, but rather are given that name because it is a "militarized" institution based on principles of the armed forces (discipline, customs, and hierarchy, for example). If compared to U.S. law enforcement organizations, the military police would be the equivalent of the state police and city police that operate in most U.S. states. The military police conduct more operational tasks than the civil police who concentrate mostly on criminal investigations.<sup>274</sup>

Like many Latin American police organizations, Brazilian police are beleaguered by a number of structural and cultural problems. In general, they receive low salaries, are poorly equipped, and are often vulnerable to bribes and corruption by DTOs. During their off-duty hours, many serve in the militias that control favelas in order to supplement their income. According to more than one source, they follow a "shoot first, ask questions later," practice when entering the favelas.<sup>275</sup>

One unit among the military police deserves special attention: the Special Police Operations Battalion (BOPE), *Batalhão de Operações Policiais Especiais* in Portuguese.<sup>276</sup> Equivalent to U.S. Special Weapons and Tactics (SWAT) units, BOPE uses sophisticated weapons and militarized tactics for high risk police operations such as hostage rescue, counternarcotics, kidnapping, and bank robberies. Like SWAT teams in the United States, there are BOPE units assigned to most major cities in Brazil. BOPE are normally assigned to enter favelas during the initial phase of the pacification efforts

in order to detain violent gang leaders. Likewise, BOPE are often the first responders to prison riots.

### **Police Pacification Units (UPP)—*Unidade de Polícia Pacificadora* in Portuguese**

As part of its rise to the world stage as a BRICS nation, Brazil sought to showcase its abilities by hosting a number of significant public events to include the Pope's visit to Brazil in July 2013, the 2014 World Cup, and the 2016 Olympic Games. Each event drew tens of thousands of tourists or athletes to Brazil. Security was paramount particularly near the favelas where criminal activity could be planned and then conducted in adjacent tourist havens like Ipanema and Copacabana beaches or along the crowded corridor from the international airport.

To gain control over the favelas, the state government ordered Pacifying Police Units to enter the areas, restore order and control, and develop sustainable social-economic programs that would address many of the root causes of the problems such as unemployment, lack of public services, and poor education programs. UPP police officers received special training on community policing and HR. The pacification program was designed to serve as a counterweight for favela residents in place of the option of joining gangs. Gang membership, often the only alternative for many Brazilian marginalized youths, offers prestige, money, and a distorted form of self-respect.

Starting in 2008, the governor and security officials in the state of Rio de Janeiro (like Sao Paulo, there is a state and city that share the same name) launched the first UPP into the Santa Marta favela. The operations followed three steps that resemble the “clear, hold, and build” of modern COIN strategies. First, BOPE backed up by Brazilian Army or Marines, entered the favela to root out the drug traffickers and gang leaders. These frequently resulted in violent confrontations. Second, a stabilization phase occurred to solidify control and order of the area, often in the form of fortified strongholds and “hard points” within the favela that permitted surveillance and quick reaction teams to respond to resistance efforts. Third, a consolidation phase involved the entrance of UPPs that conducted confidence-building efforts mechanisms such as medical assistance, welfare programs, employment, and education opportunities.<sup>277</sup> This last phase often involved “proximity policing” in order to develop personal interactions with the residents in the hopes

that it would provide intelligence on criminal activity from favela residents. Since many favela inhabitants know the members of the criminal gangs or were themselves involved in criminal activity, it was often difficult to gain their assistance. Familial relations may exist among many favela residents. As a result, inhabitants retained a sense of solidarity for the gang members, many feared retribution, and still others didn't trust the police or military. Hence, pacification operations required strategic patience, emotional intelligence, and operational agility in order to know when to use soft or hard power.

Initially, the UPPs in Rio de Janeiro achieved noteworthy success. Homicides and crimes dropped by 65 percent between 2009 and 2014. Property values and licit economic activity increased. Older residents welcomed the security and stability that the police presence brought to neighborhoods, as compared to the often arbitrary street justice and patronage of the traffickers and gang leaders.

Over the course of the next few years, UPPs were established in more than three dozen favelas. The biggest operations were in Rocinha, Maré, and Complexo de Alemão—considered to be the largest of the favelas in Rio de Janeiro with over 60,000 residents in each one. In Complexo de Alemão, for example, 3,000 Brazilian Special Forces Police, Army soldiers, and Marines entered the favela in November 2010, supported by armored vehicles and helicopters. The initial operation encountered surprisingly light resistance. The security forces provided a government presence in the favela for more than 18 months before withdrawing and turning responsibility over to a UPP unit. In all, the government mobilized 85,000 police and soldiers to occupy the favelas, especially those near sites that would host the 2014 World Cup and the 2016 Olympics. The state had an ambitious goal of taking over 100 favelas before the two events. In total, more than 9,000 UPP officers were deployed between 2009 and 2015.<sup>278</sup>

Despite these initial successes by 2014, security conditions in UPP-controlled favelas started to deteriorate. As it turned out, providing security to the favelas was only one of a number of required solutions; social, economic, and cultural problems were also part of the root causes of violence and instability, but these issues were beyond the capability or mandate of the security forces. Government services that were supposed to provide social programs, education, and employment opportunities failed to deliver because government agencies were not adequately resourced to provide sustained assistance

to the impoverished areas. As a result of falling oil prices and a contracting economy, the state was too cash-strapped to fund many of its security forces or sustain the UPP development initiatives. For example, the state of Rio de Janeiro reduced its security budget by 32 percent in March of 2015.<sup>279</sup> According to some reports, there weren't enough funds to put gas in the tanks of police cars and, in some cases, to pay police and fireman salaries.

Additionally, according to Brazilian government officials interviewed for this research project, the level of violence was underestimated by authorities. Officials had no adequate response to stem the violence between rival gangs that were fighting for control of drug distribution centers in and among the favelas. When security forces initially moved into a favela, gang members often relocated to other areas while police and soldiers occupied it and then returned once the security forces departed. Subsequently, gangs have been able to resist the government pacification efforts in spite of the militarization of public security. Homicides and vehicle thefts have risen consistently every year from 2014–2018, with murders in Rio de Janeiro increasing by 30 percent since 2014. In these concentrated population zones, civilians were frequently caught in the crossfire of gun battles between police, adding to the public frustration and anger over the UPPs.<sup>280</sup>

The failure of the UPPs opened an opportunity for gangs to reestablish control in the favelas and by 2017, open warfare existed in a number of parts of Rio de Janeiro as gangs fought for control of drug markets in the city. For example, one of Rio's largest favela, Rocinha, was the site of a pitched battle between the Red Command and the Amigos dos Amigos in September 2017. The orders for the offensive came from gang leaders who were directing the action via cell phone from their prison cells. The two gangs battled back and forth for hours using hand grenades and light arms. Schools and shops were closed and a number of buses were burnt.<sup>281</sup> As a result, on 22 September, the Brazilian Defense Minister ordered nearly 1,000 soldiers into Rocinha to help stabilize the situation.

## **Tactics and Doctrine on the Use of Force by Brazil Armed Forces**

Brazil, like most Latin American nations, has had very few inter-state conflicts, the last being World War II. From the perspective of its roles in defense and homeland security, Brazil is no different from most Latin American

militaries that are assigned traditional missions such as defense of national territory, border security, and disaster relief following natural or man-made catastrophes.<sup>282</sup>

However, the use of the Brazilian armed forces for internal security, usually reserved for only emergency situations, has become normalized over time. When a public security crisis is beyond the capacity of the local security forces, the governor of the state can request assistance from federal troops from the president who then directs the minister of defense to provide forces. According to federal policy, deployments for these “non-war” operations that require the military but do not involve armed conflict should be episodic and of the shortest possible duration.<sup>283</sup> The authority for law enforcement operations is written into the 1988 constitution, article 142, which permits the use of armed forces to guarantee of law and order (GLO). According to Brazilian authorities interviewed for this project, the military conducts internal operations much more frequently than external operations.<sup>284</sup> Citizen security, pacification programs, law enforcement operations, and security for special events like the World Cup and Olympics are the most common type of internal security missions, but the Brazilian military has also been tasked for a number of other unconventional assignments including fighting forest fires in the Amazon, distributing warnings about the Zika virus and dengue fever, election security, and even providing animal vaccinations.

According to statistics maintained by the Ministry of Defense (MOD), the Brazilian armed forces have conducted 138 internal security operations since 1992. These events consist of five broad types of missions: (1) urban violence, (2) voting and election security, (3) support to military police operations, (4) security for mega events, and (5) others (to include indigenous protests and protection of critical national infrastructure). Of the 138 events conducted since 1992, approximately 17 percent have been for urban violence, 18 percent for voting and election security, 16 percent for support to military police operations, 28 percent for security for mega events, and 21 percent for other types of events.<sup>285</sup>

Two important references provide the authorities and doctrine for internal law enforcement operations for the Brazilian armed forces: the GLO Handbook of 2014 (*Garantia da Lei e da Ordem* in Portuguese) and the Pacification Operations Manual of 2015 (*Manual de Campanha Operações de Pacificação*). GLO operations, according to the handbook, may be necessary in a number of circumstances: protecting critical infrastructure or

Table 5. Types of Internal Security Missions of Brazilian Military, 1992–2019.  
 Source: Brazilian MOD, *History of GLO Operations, 1992–2019*

Category	Number and Percent of 138 Total Missions	Examples
Urban violence	23 (17%)	Prison inspections (2017); citizen security efforts in Rio de Janeiro (2017); multiple sessions of preserving public order.
Voting and election security	25 (18%)	Election security for national elections (every two years); voting security during disarmament referendum (2005).
Support to military police operations	22 (16%)	Multiple events in which the military provides support to Military Police conducting security operations including pacification operations.
Security for important conferences and events	39 (28%)	Military World Games (2011); World Cup (2014); MERCOSUR Conference (2015); Olympic Games (2016);
Others	29 (21%)	Security of hydroelectric plant at Tucuruí (1996); escort of 60-truck convoy with 1,000 tons of food for drought victims in northeast of country (1998); security during truckers' strike (1999); combat forest fires (2019); perimeter security during prison riots (2019).

government facilities; providing security at transportation hubs such as airports, seaports, or train stations; providing safe passage of citizens; election security; and search and seizure operations, particularly for illegal drugs or weapons. It also emphasizes the use of nonlethal weapons, gradual EOF tactics, and non-military arms that reduce the risk of inadvertent collateral damages. It requires soldiers to be familiar with negotiation tactics in order to de-escalate tensions with protesters or suspects.



Figure 26. Brazilian soldiers train for GLO operations.  
Source: U.S. Southern Command

According to government officials, there is regular coordination and training on tactics between Brazilian military police and military personnel. As one senior Brazilian Army officer put it, “the police look like the Army and the Army looks like the police.”<sup>286</sup> Security force personnel—both military and police—are normally equipped with nonlethal arms such as pepper spray, tear gas, and batons. Hence, a Brazilian military unit that encounters violent protesters has a range of options and EOF tools. According to Brazilian officials, during training soldiers are taught to empathize with civilians, especially those who may live in marginalized areas. “We are all Brazilians,” is a sentiment regularly expressed by soldiers.<sup>287</sup>

Brazilian military personnel conducting law and order operations receive training particularly on restrictions on the use of force and EOF tactics. The GLO Handbook, for example, requires security forces to consider reasonability, proportionality, and legality as principles of the use of force. The Defense White Book of 2012 also recognizes the blurred lines between conventional and contemporary conflicts. It states, “the growing participation of the Armed Forces in peacekeeping operations and in operations of law and order have demonstrated the need to improve the study of HR and the international law on armed conflicts in the various educational institutions of the Navy, Army and Air Force.”<sup>288</sup> As of 2012, HR training is mandatory for all military personnel and is particularly important for those conducting peacekeeping operations and law and order operations. By 2013, a program

of HR was required to be taught at all military undergraduate and graduate programs.

The 2015 Pacification Operations Manual also places similar emphasis on the restricted use of force in non-combat operations. The manual acknowledges the complexity of the operating environment, particularly the difficulty identifying threats. It mentions the inherent risks of military force in low intensity security operations and the associated risks of alienating the population the state is attempting to assist. The manual states: “Isolated slips of conduct or compliance with engagement rules can result in strategic failures.”<sup>289</sup> Principles of humanity, military necessity, proportionality, distinction, and legality should determine the rules on the use of force.

### **Brazil and United Nations (UN) Peacekeeping Organizations (PKO)**

Brazil has played a significant role in UN PKO. As of 2019, the country has participated in over 40 PKO missions with over 33,000 military officials, police officers, and civilians. UN-led operations by the country’s forces have been conducted in East Timor, the Congo, Eritrea and Ethiopia, Liberia, Cote d’Ivoire, Sudan, and the Central African Republic, among others. Of particular note, Brazil led the military component of the UN mission in Haiti (MINUSTAH) since it was established in 2004 until the mission ended in 2017. In 2005, the Brazilian Army created the Brazilian Center for Peacekeeping Operations in Rio de Janeiro. In 2010, it was reconfigured to be a joint center to permit peacekeeping training for members of all military Services and renamed the Sergio Vieira de Mello Brazilian Peacekeeping Operations Joint Center.

Through its experiences with peacekeeping operations, the Brazilian military had learned much about low-intensity conflicts—ones that require more restrictive law enforcement tactics rather than military firepower. For example, Brazilian forces had to conduct high-intensity operations in slums of Port-au-Prince against Haitian gang leaders. The urban conditions in Haiti were much like that of Brazilian favelas—closed and heavily-guarded communities that were effectively under the control of criminals, not the state.

The Brazilian military’s operations in Haiti and other UN PKO were transformative experiences for the armed forces, leading some scholars to refer to a “Brazilian Way”—the culturally-cognizant combination of

security and development programs in the austere conditions. The military was required to hone its conventional tactics to ones more suitable for police operations, combining military firepower with civic and social activities in gang-controlled places like Cite Soleil. The military had to employ snipers and establish hardened strong points within these contested areas while nearly simultaneously providing much-needed social services, the first designed to defeat violent Haitian gangs and the second designed to win favor and cooperation of residents of the zone.

One soldier described the Brazilian pacification effort as one attuned to needs of the situation:

The American says “we have to apprehend that person,” and he goes and apprehends regardless of the situation. But, the Brazilian will enter, will talk, will find a way and then will apprehend, yes. But he will apprehend in a softer way than the North American. And this made the UN give Brazil the position of the head of this mission.<sup>290</sup>

Following the establishment of a security presence in denied areas of Port-au-Prince, the Brazilian military launched a combination of COIN and community policing initiatives, efforts that were required to be sustained for extended periods. Brazilian soldiers moved through the Haitian slums on foot rather than armored vehicles making personal contact with residents. They used *futebol* (soccer) tournaments to socialize with the residents and, in some cases, eventually were able to gain enough trust with local residents to identify drug traffickers and gang leaders. The Brazilians also combined their security operations with quick impact projects and engineering projects such as installing solar-powered street lights in darkened areas of the slums, providing drinking water, mobile medical clinics, and reinforcing mudslide-prone areas on Haitian hillsides that had been stripped of vegetation. These benevolent “pacification encounters” followed the motto of the Brazilian Army: *braço forte, mão amiga*, which translates to “the strong arm and the giving hand.”<sup>291</sup>

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*They used futebol (soccer) tournaments to socialize with the residents and, in some cases, eventually were able to gain enough trust with local residents to identify drug traffickers and gang leaders.*

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## Recent Developments

The end of the 20-year truce between the Red Command and the PCC in 2016 resulted in a number of bloody prison riots that have left hundreds of prisoners dead and drew international attention to the Brazilian penitentiary system. In January 2017, 56 prisoners died in a riot in a prison in the state of Amazonas and five days later, another 33 died in Roraima. In 2019, more than 100 inmates died in riots in Brazilian prisons in May and July in battles between rival gang members. In the July incident, 57 prisoners died in the Altamira Prison in the state of Pará. Sixteen inmates were beheaded by rival gang members.<sup>292</sup>

In early 2018, the expansion of the drug trade through Brazil combined with the economic crisis brought the violence in the favelas to a crisis level. In February 2018, President Michael Temer ordered the Brazilian military to launch security operations in order to restore order and combat violent gangs. In total, eight of Brazil's 27 states requested military troop reinforcements during this surge in insecurity. In Rio de Janeiro, the president gave General Walter Braga Netto, chief of the Eastern Military Command, command over all police forces—the first time military forces had been given control over police forces since the end of the military government in 1985.<sup>293</sup> About 3,000 soldiers set up checkpoints around the city to search for weapons and arrest suspected gang members.

Within the prisons, the state's traditional reaction to gang violence was to segregate gangs in order to keep them from fighting. However, new hardline leaders of the Bolsonaro administration have cracked down on appeasing the imprisoned gang leaders. Just after President Bolsonaro assumed office on 1 January 2019, the new governor of the state of Ceara, Camilo Santana, vowed to end segregation in prisons. In response, prison gangs launched terror attacks throughout the state attacking schools and gas stations, bombing bridges and overpasses, and burning dozens of buses.<sup>294</sup>

In mid-February 2019, prison authorities transferred the leader of the PCC, Marcos Willians Herbas Camacho (alias is Marcola) and 21 other PCC leaders to high security prisons around the country, segregating the senior leadership of the gang in order to limit their ability to coordinate criminal activities from jail. The decision to transfer the gang leaders was made in part because of intercepted messages that the gang was going to attempt to break him out of prison using helicopters and hired foreign mercenaries.<sup>295</sup>

The new governor of the Rio de Janeiro state, Wilson Witzel, is a former Brazilian marine and hard-liner who prefers to use force in place of social programs or economic reforms. In July 2019, in the wake of military deployments throughout the city's favelas, Witzel likened drug gangs to terrorists and declared that it was better to "shoot armed gang members in the head." "A bandit with a rifle is a terrorist. How do you treat terrorists? With lethality," he said.<sup>296</sup>

In general, Brazilian military leaders prefer to remain focused on traditional defense missions, not internal security problems that are better suited for police and law enforcement units. The head of the Brazilian Army, General Eduardo Villas Bôas, warned that his forces will be vulnerable to corruption and politicization if they continue providing domestic law enforcement



Figure 27. U.S. Special Forces conduct a JCET with Brazilian counterparts. Source: U.S. Southern Command

operations. "There are concerns over contamination of the troops, and for this reason we want to avoid frequent use of the armed forces," Villas Bôas said, referring to a number of instances when low ranking troops have been caught colluding with drug gangs.<sup>297</sup>

Brazilian military authorities also understand the precarious legal predicament they face during law enforcement operations in concentrated population centers. In October 2017, the Brazilian congress approved a request by military leaders to provide them legal protection for domestic law enforcement operations. Killings of civilians by soldiers during these operations

would be investigated by military officials, not civilian courts. Human rights groups complained about the decision, contending that military tends to exonerate its own troops and can't be trusted to conduct an impartial and independent investigation.<sup>298</sup>

## Conclusion

Brazil is in the midst of an epidemic of violence. The current strategy is heavy-handed—mass incarceration, *mano dura* tactics, and preventive imprisonment. Like many Latin American countries, the crime wave is beyond the capacity of the police and, as a result, the military has been called in to provide law enforcement.

The current security effort is not working; 70 percent of all prisoners make their way back to jail within five years.<sup>299</sup> As the Igarape Institute suggests, long term security solutions should receive priority funding and emphasis to include improving welfare programs for excluded youth, education reforms, and a sustained government presence in the favelas. Firearm possession and trafficking needs to be curtailed to take the guns out of the hands of the criminals. The penitentiary system needs to be modernized to include vocational training, education for inmates, and more lenient sentencing guidelines for first time offenders and juveniles.

The Brazilian military, well-indoctrinated on law of armed forces (LOAC) tactics for wartime, has developed a hybrid doctrine on police and military tactics; much of it was developed through difficult lessons learned during numerous UN peacekeeping operations in which the armed forces have participated. It is also a doctrine that has been developed through years of internal law and order operations conducted by the Brazilian military, one that reflects the nature of contemporary conflicts. These are the blurred battlefields within Brazil and much can be learned by other nations from the mistakes and success achieved in Brazil's favelas.

## Chapter 7. The Blurred Battlefield in Haiti: Chilean Armed Forces in United Nations Stabilization Mission in Haiti (MINUSTAH)

### Introduction

Haiti has been a long-suffering Western Hemisphere nation, beleaguered by corruption, poverty, illiteracy, government dysfunction, and violence. It has had more peacekeeping efforts than any other Western Hemisphere nation. Dozens of countries have sent soldiers and police to Haiti as part of the lengthy international conflict resolution effort in the country. Chile, in particular, has provided thousands of personnel to the UN effort to restore order and prosperity in the country.

This chapter examines Chile's role in the MINUSTAH (in French, *Mission des Nations Unies pour la Stabilisation en Haïti*) from 2004 to 2017. It begins with a brief description of Haiti's history and why international peacekeeping missions were required in the country. The author describes Chile's motivation to participate in UN operations and how the country's armed forces are trained and prepared for the mission, particularly on rules for the use of force in UN operations. The chapter concludes with a description of the challenges Haiti still faces and recent developments that may eventually lead to another intervention by international forces.

Special attention is paid to the security operations that Chilean soldiers conducted in Port-au-Prince and Gonaïves to detain gang leaders who had effectively seized control of portions of the cities. Chilean forces, as well as other nations' peacekeepers, were required to conduct armed interventions in heavily populated areas that required a tricky balance of force protection efforts, as well as precautions for civilians. These operations fell below the threshold of an armed conflict and required Chilean peacekeepers to use immense discretion and restraint while maintaining control and order in crowded urban environments.

## Brief History of Haiti

After the United States, Haiti was the second nation in the Western Hemisphere to cast off the yoke of its European colonial masters. In 1791, shortly after the French Revolution began, French settlers and Haitians (many of them former slaves) rebelled against the colonial rulers on the island and later repelled reinforcements sent from France. It wasn't until 1803 that Haiti achieved independence. Tens of thousands of Europeans and hundreds of thousands of Haitians died during the bloody struggle for independence on the Caribbean island—a turbulent beginning to the country's violent history.

Haiti's modern history—and the beginning of a period of insecurity and instability that remains to this day—began with the Duvalier dynasty in 1957. In September 1957, Dr. Francois Duvalier was elected president. A physician by trade, he was known as “Papa Doc.” In 1964, he declared himself president for life. Protests that rose up against the proclamation were violently suppressed and hundreds of Haitians were killed in public executions. Papa Doc used a private army of thugs and death squads called the *Tontons Macoutes* to terrorize his opponents. Many educated elites fled the country during this period and corruption became widespread. A sadistic and tyrannical leader, Duvalier ruled until his death in office in 1971. Power passed to his son, Jean-Claude Duvalier, known as “Baby Doc.” Jean-Claude was not as violent or oppressive as his father, but corruption continued to worsen during his 17 years in office. In 1985, widespread protests against his rule started in Gonaives and then spread across the country. The next year, in February 1986, Baby Doc fled the country and sought exile in France.<sup>300</sup>

Chaos reigned in the country as new elections were scheduled and then cancelled amidst widespread violence. Finally, in December 1990, after four-and-a-half years of disorder and political instability, Catholic Priest Jean-Bertrand Aristide was elected president in what was considered the first free elections in the country's history. His term as the executive authority did not last long. Just seven months after assuming the presidency in February 1991, Aristide was overthrown in a military coup on 29 September 1991, in part sponsored by Haitian elites who worried about Aristide's ambitious populist reform agenda. Aristide barely escaped with his life, having been arrested and taken to Army headquarters. Only the intervention of French, U.S., and Venezuelan diplomats succeeded in freeing him and permitting him to seek exile in France.<sup>301</sup>



Figure 28. Haiti occupies the western half of Hispaniola, comprised of Haiti and the Dominican Republic. With a population of almost one million, the capital of Port-au-Prince is the largest and most populated city in the country. Almost one of every four Haitians lives in or around the capital. Photo by Newscom

### The Military Junta Controls Haiti

The next four years were some of the bloodiest in the long, violent history of Haiti. The country was ruled by a military junta led primarily by Army General Raoul Cédras. The junta cracked down on many of Aristide’s followers, mostly rural-based and poor Haitians. Mass arrests, torture, rape, and murder were common. An estimated quarter million citizens fled the political violence and economic hardship in the two months that followed the political coup. Many escaped by sea making an arduous journey north toward the United States, hoping to apply for political asylum. The U.S. Coast Guard and Navy rescued thousands and temporarily housed them at Guantanamo Naval Station in Cuba, erecting massive tent camps to house the refugees.<sup>302</sup>

International diplomatic pressure backed by the threat of force increased the stakes for the Haitian military junta. The international community supported the return of Aristide to Haiti and the restoration of a democratic government. On 3 July 1993, General Cédras and Aristide signed the UN-sponsored Governors Island Accord. The military junta agreed to accept amnesty in Panama and Jean-Bertrand Aristide would be able to return to Haiti and assume the presidency. However, Cédras nearly immediately started backpedaling and refused to abide by the agreement. The visit of the USS HARLAN COUNTY to Port-au-Prince harbor on 12 October 1993, carrying the initial installment of UN peacekeepers was greeted by mobs of angry Haitians mobilized by the junta. The ship wisely withdrew off shore rather than cause violence.<sup>303</sup> Two days later, the Haitian Justice Minister Guy Malary and his bodyguards were ambushed and murdered. Malary had been the government spokesperson responsible for implementing the Governors Island Accord.

A year passed while negotiations continued until finally in July 1994, U.S. Secretary of State Madeline Albright requested the UNSCR to resolve the crisis in Haiti. In accordance with UN Charter Chapter VII (a military intervention) and UN Security Council Resolution 940, MNFs were authorized “all means necessary to restore democracy in Haiti.”<sup>304</sup> When the Haitian military still did not budge, the U.S. readied an invasion force of 25,000 soldiers to forcibly remove the military leaders and restore Aristide to the Presidency. A last minute diplomatic effort on 17 September 1994, by former President Jimmy Carter, General Colin Powell, and Senator Sam Nunn convinced Raoul Cédras to leave the country and accept amnesty in Panama.<sup>305</sup> Two days later, on 19 September, the MNF—led by U.S. troops and accompanied by 2,000 non-U.S. personnel from 27 countries—entered Haiti. About a month later, on 15 October, Aristide made a triumphant return to Haiti.<sup>306</sup>

## UN Peacekeeping Operations in Haiti

The 1994 MNF that swept into Haiti with the departure of the military junta and the return of President Aristide was tasked to remain in the country until March 1995. The international forces found Haiti in desperate conditions. The Duvaliers and military rulers with little interest in developing robust functioning government institutions had run the country for a combined 28 years. Corruption and repressive rule had been the norm for

decades. Haiti had little practical familiarity with democracy and candidates for government positions were selected more on their familial connections than on their campaign pledges. Unemployment on the island nation reached nearly 70 percent by the time the MNF forces showed. Only half of city residents and less than three percent of Haitians living in the countryside had electricity. Environmental degradation and poor farming practices forced the country to import about 34 percent of its food.<sup>307</sup>

In March 1995, at the end of the MNF mandate, the UN authorized another PKO force to restore order in Haiti. The United Nations Mission in Haiti (UNMIH) was tasked with maintaining security and establishing law and order until Haitian government institutions could be reformed. UNMIH was led by U.S. Army Major General Joseph Kinzer, had 6,000 personnel, and was expected to remain for one year until March 1996. Reforms and reconciliation efforts in Haiti proved much harder than originally anticipated and UNMIH was extended until July of that year when it was relieved by a smaller UN force, the United Nations Support Mission in Haiti (UNSMIH). That 1300-person force (300 of whom were police) remained in Haiti for one year until July 1997 when an even smaller UN force relieved it. The UN Transition Mission in Haiti (UNTMIH) consisted of only 300 personnel of which 250 were soldiers and 50 were police. In November 1997, the UN Security Council approved yet another peacekeeping force, this one the UN Civilian Police Mission in Haiti (MIPONUH). Like previous UN missions, it was extended a number of times. MIPONUH lasted until 30 November 1999.

The UN missions that operated in Haiti from 1995 to 2000 shared common goals: modernize and professionalize the Haitian armed forces; establish a HNP force; establish a secure and stable environment; assist Haitian authorities in conducting free and fair elections; and promote institution-building, national reconciliation and economic rehabilitation in Haiti, to name a few.<sup>308</sup>

Despite the heavy international footprint in the country, security conditions in 1998 and 1999 continued to deteriorate. There were frequent reports of violence, robbery, and civil unrest. A number of arson incidents were attributed to infighting among Haiti's political factions.

Establishing a professional HNP force was particularly difficult. The police suffered from poor discipline, absenteeism, uniform violations, and lack of motivation. Many received firearms for the first time and tended to resort to lethal force too quickly. The police also frequently beat detainees

Table 6. Sequence of UN and MNFs in Haiti.

<b>Peacekeeping Force</b>	<b>Date Started</b>	<b>UN Security Council Resolution (UNSCR)</b>
MNF	19 September 1994	UN Security Council Resolution 940 (31 July 1994)
UNMIH – chapter VII mission	31 March 1995 to 30 June 1996	UNSCR 867 (26 Sept 1993)
UNSMIH	01 July 1996 to 31 July 1997	UNSCR 1063 (28 June 1996)
UNTMIH	31 July 1997 to November 1997	UNSCR 1123 (30 July 1997)
MIPONUH	November 1997 to November 1999, later extended until 15 March 2000	UNSCR 1141 (28 November 1997)
MICAH, the Civilian Support Mission in Haiti	16 March 2000 to 06 Feb 2001	UNSCR 1277 and UN General Assembly resolution A/54/193
Multinational Force Haiti (MIFH) – chapter VII mission	29 February 2004	UNSCR 1529 (2004)
MINUSTAH – chapter VII mission	30 April 2004 to 12 April 2017	UNSCR 1542 (2004). MIFH transferred control to MINUSTAH on 01 June 2004.
UN Mission for Justice Support in Haiti (MINUJUSTH)	13 April 2017	UNSCR 2350

and each incident served to further antagonize the Haitian public. Nearly 700 police officers were dismissed from their jobs between 1995 and 1999.<sup>309</sup>

To make matters worse, the political system in the country continued to be barely functional. Aristide’s term as president ended in February 1996 and his political ally René Préval won the election. However, Aristide remained a political power broker and soon after departing office, he broke from his old political allies to form a new political party, the Fanmi Lavalas. Aristide’s followers maintained a majority in both houses of parliament making, causing significant difficulties for President Préval. In 1999, Préval dissolved the parliament and ruled by decree. Aristide ran for president again in the 2000 election, won, and took office in February 2001. Soon after, violence

between political factions erupted in many Haitian cities. Renegade forces (often former Haitian military personnel) seized control of Gonaives and other northern cities and soon began to move toward the capital. Aristide responded to the violence with his own gangs, called *chimères*.

By this point, even optimists at the UN were beginning to wonder about the future of the Caribbean nation. UN Secretary Kofi Annan, visibly frustrated over the profound political and economic problems in the country, recommended against renewing the mandate of the Civilian Support Mission in Haiti (MICAH). MICAH's mission in Haiti ended on 6 February 2001. President Aristide resumed the presidency the next day.<sup>310</sup>

In 2001, the UN pulled its peacekeepers out of the country. At nearly the same time, the United States decertified Haiti for failing to act to prevent drug trafficking within the country. Haiti had become a major transshipment point for narcotics passing from Colombia to the mainland United States.<sup>311</sup>

### **Government Collapse and the Arrival of the MINUSTAH**

From 2001 to 2004, Haiti continued to spiral into lawlessness. The political competition had almost become an internal civil war as Aristide's factions fought against paramilitary force led by Guy Phillippe, Louis Chamblain, and others. Government attempts to retake control of Gonaives and other northern cities resulted in the deaths of dozens of police officers and civilians. On 18 February 2004, the U.S. embassy evacuated all non-essential personnel and ordered a fleet anti-terrorism security team of 50 soldiers to Haiti to help protect the embassy.<sup>312</sup>

On 29 February, Aristide abandoned the presidency and fled the country for the second time. The same day, the UN Security Council passed resolution 1529 that established a Multinational Interim Force (MIF) to Haiti to restore law and order and prepare the country for a larger stabilization force. Peacekeeping forces started arriving the same day. U.S. Marine Brigadier General Ronald Coleman was the commander and had a French colonel as deputy commander. The MIF included about 3700 troops including French, Chilean, and Canadian soldiers. MIF forces managed to restore a semblance of order by stopping rampant violence, re-opening ports and airports, and getting humanitarian aid flowing again.<sup>313</sup> The MIF's mission lasted 90 days until 1 June 2004 at which point the MINUSTAH peacekeepers arrived and took over responsibility for law and order in the country.

MINUSTAH was the largest UN PKO mission in Haiti; 44 countries contributed almost 9,000 soldiers and police to the operation, about 80 percent of them soldiers and 20 percent police. Latin American countries such as Argentina, Brazil, Chile, and Uruguay provided the largest peacekeeping contingents although Jordan, Nepal, and Sri Lanka also ordered nearly 1,000 soldiers and police from each country to the Caribbean nation.<sup>314</sup>

Despite the MIF's initial success, restoring order and a functioning government in Haiti would not be a simple nor quick task. MINUSTAH forces were tasked with a number of important missions: deliver humanitarian aid; establish a secure and stable environment; restore public order and the rule of law; disarm, demobilize, and reintegrate (DDR) factions in the conflict; reform and professionalize the Haitian National Police (HNP), protect HR; and assist in the organization and monitoring of elections.<sup>315</sup>

## **Use of Force Rules for UN Peacekeepers**

UN peacekeepers follow guidance provided by the UN Department of Peacekeeping Operations (DPKO), headquartered in New York City. With respect to use of force rules, three principal documents provide the details each participating nation must understand: (1) the UN Peacekeeping Operations Principles and Guidelines, (2) the core pre-deployment training materials (CPTM), and (3) the ROE developed for the specific mission.

The use of force in UN peacekeeping operations is very restricted. Force is always permitted in self-defense or in keeping with the mandate of the mission, but peacekeeping operations are focused on de-escalation of the violence, not the military defeat of one of the parties to the conflict. As written in the principles and guidelines, "a UN peacekeeping operation should only use force as a measure of last resort, when other methods of persuasion have been exhausted."<sup>316</sup> Uses of force that are deemed excessive or disproportionate may jeopardize the legitimacy or perceived impartiality of the peacekeepers, thereby placing the entire operation at risk.

The UN Peacekeeping Operations Principles and Guidelines places significant emphasis on HR law. One of the core functions of peacekeeping operation is to "strengthen the State's ability to provide security with full respect for the rule of law and HR."<sup>317</sup> Because UN peacekeepers frequently operate in post-conflict environments in which LOAC does not apply, they must adhere to international HR standards, should be able to recognize what

constitutes a HR violation, and should know how to respond appropriately if they witness a HR violation.<sup>318</sup>

The CPTM provide extensive detail on what level of force is considered appropriate. Within the training guidance, the UN distinguishes between ROE for military forces and the Directive on the Use of Force for police forces. Additionally, because some countries have severe restrictions on the use of force (e.g., police that don't carry arms or military without detention authority), each country may choose to further restrict its forces from using the UN ROE. Governments can provide additional ROE restrictions for their forces, but they cannot permit less restrictive rules. Every participating government has the responsibility of clearly distinguishing the rules for their forces and then communicating that to

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*Every participating government has the responsibility of clearly distinguishing the rules for their forces and then communicating that to UN authorities.*

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UN authorities. UN authorities then have to determine how and where to use that country's soldiers and police in light of the operating authorities the forces are permitted to use.

In Haiti, MINUSTAH peacekeepers were provided detailed ROE that provided specific guidance on when and how force could be used in Haiti.<sup>319</sup> It was issued to the UN Force Commander by the UN DPKO in New York City and then the force commander distributed it among his forces. Per UN requirements, all the military and police units under the command of the Force Commander were required to receive training on the ROE before the unit was considered operational.

The ROE directed peacekeepers to comply with three principal tasks: establish a secure and stable environment; assist and support the Haitian political process; and protect HR of the Haitians. The first task, establishing a secure and stable environment, included advising the HNP, conducting DDR operations for former gang members, and promoting the rule of law. The second task, supporting the political process, included fostering principles of good governance, supporting the transition to a new government, and providing assistance and security for elections. The last task, protecting HR, meant peacekeepers should provide protection for vulnerable groups such as women, children, refugees, and internally displaced persons, and to ensure perpetrators of HR violations were held accountable.<sup>320</sup> Recall that HR violations occur at the hands of government representatives so UN personnel

were required to monitor the professionalism and ethical behavior of Haitian police forces as well as that of other UN personnel.

UN military peacekeepers normally supported HNP but, in their absence, were permitted to arrest suspects. Suspects detained by military personnel were required to be turned over to police authorities as soon as possible. However, according to Chilean authorities, arrests by UN military personnel rarely happened because most security operations were led by HNP and supported by UN formed police units (FPUs).<sup>321</sup> In other words, the HNP were the designated lead for most operations, but were closely backed up by UN personnel serving as professional mentors.

UN personnel were required to use a graduated EOF to dissuade Haitian protesters from becoming violent. The physical presence of security forces and verbal warnings were the first deterrents for potential troublemakers. Peacekeepers could also use unarmed force such as batons or physical force if protesters were not dissuaded by the verbal warnings. Security forces could also charge their weapons (lock and load) as a visible and audible warning that they might resort to lethal force if tensions continued to rise. UN peacekeepers, in accordance with the ROE, were also permitted to fire warning shots if no other deterrent had the desired effect, but warning shots had to be fired in a safe direction to avoid collateral damage. Deadly force to apprehend escaping suspects was not permitted. Finally, if all other tactics had failed and security forces felt physically threatened by Haitian protesters, UN peacekeepers were permitted to use lethal force, but only after they had issued verbal warnings that they were about to do so. Peacekeepers were trained to shout in French, “United Nations, halt or I will fire!” before firing.

According to Chilean authorities, Haitian protesters were familiar with UN EOF procedures and, knew exactly what tactics were permitted under the circumstances. As a result, the protesters knew they could challenge most peacekeepers to a certain degree and that the security forces were required to follow rules for a graduated level of force before resorting to live fire. For example, Haitians knew that “locking and loading” a weapon (i.e., chambering a round) was a deterrent technique of the security forces, but did not necessarily mean the UN personnel would immediately fire. Consequently, the “locking and loading” gesture by peacekeepers was often perceived as a false threat by Haitians and, as a result, served little deterrent effect.<sup>322</sup>

According to Chilean peacekeepers interviewed for this project, one of the most difficult ROE challenges peacekeepers faced was determining hostile

intent during disturbances and confrontations. A hostile act was relatively easy to identify. It occurred when an armed person was using force that could cause death, serious bodily injury, or destruction of protected property. However, hostile intent was much more difficult to determine because it was the threat of force, rather than the physical act itself. According to the ROE provided for MINUSTAH peacekeepers, UN forces should consider three factors when trying to determine hostile intent: (1) the capacity of the person to do harm, (2) the evidence or information that could indicate the likelihood of an attack, and (3) historical precedents within the area of operations.<sup>323</sup> Protests in Haiti were frequent and could be triggered by any number of public complaints; election corruption, food shortages, previous incidents of excessive force by security forces, or lack of electricity were causes of many of the public protests that occurred from 2004–2007, according to UN records. Demonstrations could quickly turn violent and Haitians commonly were armed with clubs, stones, machetes, or small arms. Chilean peacekeepers who were intimately familiar with UN ROE still had to make snap decisions about the level of the threat from protesters or gang members.

### **Anti-Gang Operations**

Among the most difficult tasks the MINUSTAH forces faced was retaking control of the neighborhoods of Port-au-Prince that had fallen under the control of drug gangs. The gangs used the sprawling slums of corrugated tin-roofed shacks and narrow alleyways to run criminal operations including weapons trafficking, prostitution, and kidnapping. The slums were fortified and well-guarded. Some were located adjacent to the main port, petroleum facility, and industrial area; gangs threatened employees moving to and from these locations. Haitian police rarely entered these areas. Gangs would often times kidnap pedestrians or motorists off the main roads outside the slums and then whisk the victim back into the neighborhood and demand a ransom. Victims were often brutally treated. In Cité Soleil, for example, a teenage girl was kidnapped and murdered in December 2004. When her body was recovered, her eyes had been gouged out. In another incident, a father driving his daughter to school was shot to death and his young daughter kidnapped. The same month, a school bus of children was seized. Parents started keeping their kids out of school for fear for their safety.<sup>324</sup>

In January 2005, just five months after most peacekeepers arrived in earnest, the anti-gang operations began in earnest. Hundreds of UN peacekeepers entered Cité Soleil on 25 January to confront a gang that had occupied a school as their headquarters. After a fierce firefight with gang members, peacekeepers managed to seize control of the area and drive the gang members back. UN forces established a fortified outpost inside the slum in order to maintain a permanent security presence in the neighborhood.



Figure 29. U.S. Special Forces train with Chilean counterparts.  
Source: U.S. Southern Command

HNP were no match for the heavily armed gangs. Hence, UN forces who did not have arrest or detention authority had to escort the Haitian police during these anti-gang operations.<sup>325</sup> Among the dozens of contributing countries, some UN forces provided police special forces units<sup>326</sup> and FPUs to directly assist the Haitian police. These UN police made important contributions to the still-maturing Haitian police including crowd control, crime scene preservation, evidence collection, and high value target apprehensions. Jordan, for example, had a 40-person SWAT team that was heavily employed against during anti-gang operations.<sup>327</sup>

Security operations in these confined neighborhoods were very dangerous for the inhabitants. Most slums consisted of only haphazardly constructed

plywood or cardboard shanties. Some only were protected from the elements by tarps or sheets. None of these provided any protection from the military weapons used by peacekeepers and gang members. Hence, UN forces frequently found themselves in a dilemma. They had to use military firepower against heavily armed gangs to protect their own forces, but at the same time recognized the danger it presented to residents. Hundreds of Haitian civilians were injured or killed in the crossfire of these anti-gang confrontations. Many were killed by stray bullets but others reported family members were burned alive when shanties caught fire or were crushed by UN vehicles.<sup>328</sup>

Gang members in Cité Soleil continued to present significant security problems. UN patrols and checkpoints had to be abandoned during hours of darkness because of fear for the lives of the peacekeepers. On 11 November 2006, two Jordanian peacekeepers were ambushed and killed not far from the UN compound in the middle of the slums. In December of that year, the UN mounted another large security effort in Cité Soleil to arrest a drug trafficker named Belony. The drug lord had a heavily fortified compound protected by concrete walls, ditches, and tank traps. In the early morning hours of 22 December 2006, UN forces moved into the area led by Chinese police units, Jordanian SWAT teams, and Haitian Special Forces units. They were backed up by the Brazilian military battalion. The Chinese armored personnel carriers made it to within about 60 meters of Belony's compound before they were unable to advance further because of the narrow alleyways and obstacles surrounding the trafficker's fortified hideout. Faced with these impediments, the UN forces had to withdraw. On 28 December, UN forces attempted to arrest him again. This time, Bolivian Army Special Forces units fired four rocket-propelled grenades into Belony's compound, but the gang leader escaped.<sup>329</sup>

## Chile's History of UN Peacekeeping

Chile has a long history of participation in UN peacekeeping operations. For example, in the 1940s Chilean troops participated in the United Nations Observation Mission in India and Pakistan and, in the 1960s, in the United Nations Truce Supervision Organization (UNTSO) in the Middle East. Since the UN began peacekeeping operations, Chile has committed its forces to almost two dozen peacekeeping operations including Cambodia, Nicaragua, Guatemala, Ecuador-Peru, and Iraq.

In 1999, the Chilean government officially recognized the importance of UN peacekeeping operations and passed Supreme Decree No. 68 to authorize an expanded role of the Chilean armed forces in such operations. The following year, Chile sent Army helicopters to East Timor (UNMISSET) to assist in the UN mission there and sent an Army officer to serve as a staff officer in the UN mission in Kosovo. In 2002, Chile opened the Joint Center for Chilean Peacekeeping Operations or *Centro Conjunto para Operaciones de Paz de Chil* to train military, police, and civilian personnel for UN peacekeeping missions. In 2003, the Chilean military sent additional personnel to serve in Cyprus and the Democratic Republic of Congo.

For Chile, as with other nations, the country felt an obligation to contribute to international stability by sending its forces as peacekeepers to hot spots around the world. This was particularly true for crises in the Western Hemisphere such as Haiti. “We feel the obligation and the duty as part of the international community to collaborate in this process. The government is absolutely convinced that our presence in Haiti is completely necessary and timely and is one more commitment by Chile to peace, democracy, and human rights,” said Chilean foreign affairs minister Maria Soledad Alvear. The head of the Chilean navy, Admiral Miguel Vergara said, “For Chile, it is important to promote peace, security, and order in the international community.”<sup>330</sup>

In addition to military and police personnel, Chile was also assigned senior UN executive positions. For example, from 2004–2006, Juan Gabriel Valdés was MINUSTAH’s Special Representative and Head of Mission in Haiti. Mariano Fernandez Amunategui filled that role again from 2011–2013.

## Chile’s Role in MINUSTAH

MINUSTAH represented Chile’s largest contribution to UN peacekeeping operations in the history of the country.<sup>331</sup> At the UN headquarters in New York City, Security Council Resolution (UNSCR) 1542 authorizing the MINUSTAH mission was passed on 30 April 2004. Chilean President Ricardo Lagos received the request for troops the next day and on March 2nd the Chilean congress approved it.

In addition to 330 soldiers that were rapidly deployed as part of the MIF, Chile also maintained between 400 and 600 peacekeepers in the country for the duration of the MINUSTAH mission from 2004 to 2017. Chilean forces

were separated into two groups: a battalion of ground troops in Cap Haïtien and a helicopter unit of two aircraft in Port-au-Prince. In Santiago, Chile, logistics and operational support for Chilean force in Haiti were managed by the Chilean Chief of Defense and his National Defense Staff (*Estado Mayor de Defensa Nacional*). A special *Estado Mayor Conjunto* (or joint staff) staffed by members of each of the military Services was established under the direction of the assistant defense chief of staff.

The Chilean battalion's mission was to maintain security and order in the area it was assigned. More specifically, the Chilean forces conducted patrols, set up check points, provided security during social and cultural events, and conducted humanitarian assistance projects including distributing water and food to orphanages. The Chilean forces also provided vocational training to restaurant workers, bakers, and tourist guides.<sup>332</sup>

Gangs in the north of the country were generally not as serious of an issue as they were in areas around the capital, but political unrest was a major concern. The dysfunction of the central government resulted in frequent protests and Chilean soldiers were required to maintain the peace during those disturbances. During the 13 years of MINUSTAH, a number of Chileans were struck by stray bullets but the only death among the thousands of soldiers and police who served in Haiti occurred during one of these protests. On 13 April 2015, violent demonstrations broke out over the lack of electricity in the small town of Ouanaminthe near the border with the Dominican Republic. Protesters, armed with machetes, stones, and clubs looted a number of trucks. While maintaining control of protesters, Sergeant Rodrigo Andrés Sanhueza Soto was shot in the face at point blank range. His assailant disappeared into the mob of demonstrators.

## Complications for MINUSTAH

Natural and man-made disasters created immense setbacks for development projects in the country. Violent demonstrations over the cost of living and a severe food crisis affected the country in early 2008. At least six people and one UN peacekeeper were killed in the rioting. On 11 April 2018, the Haitian Senate forced Prime Minister Jacques Edouard Alexis to resign following a vote of no confidence. During the 2008 hurricane season, Haiti was hit by four consecutive hurricanes. In October 2009, a plane carrying eleven Jordanian and Uruguayan peacekeepers crashed in heavily mountainous terrain

during a reconnaissance mission, killing everyone onboard. In light of the severe problems and slow pace of reforms, on 13 October 2009, the UN Security Council agreed to extend the MINUSTAH mandate until October 2010.

The UN force was also plagued by self-inflicted internal problems. On 7 January 2006, the MINUSTAH Force Commander from Brazil committed suicide for reasons that may never be completely understood. In 2007, peacekeepers of Sri Lanka were accused of running a child sex ring by offering food to homeless children in return for sexual favors; 114 of the soldiers were forced to leave the country and were repatriated to Sri Lanka. None stood trial. In 2011, Uruguay soldiers were accused of gang raping a young Haitian boy and filming it on a cell phone.

By far, the biggest setback for the peacekeeping mission and for the country itself was the 2010 earthquake. On 12 January, a devastating 7.0 magnitude earthquake with its epicenter just 16 miles west of the capital hit Haiti. The quake lasted 45 seconds and caused extensive damage. The National Palace was destroyed and 17 of 19 government agencies damaged so badly they ceased to function. An estimated 230,000 Haitians and 102 UN peacekeepers were killed. The MINUSTAH headquarters at Christopher Hotel collapsed. Buried under the rubble were the UN head of the mission, the deputy head of the mission, and the UN international police commander. Schools and hospitals were flattened. The country's main prison in Port-au-Prince was also destroyed, permitting 4,000 criminals to escape.

The earthquake destroyed 250,000 homes and 30,000 commercial buildings. This in turn created a huge number of internally displaced persons (IDP), almost 1.5 million people by UN estimates. Homeless camps sprung up all over the capital. By April 2010, three months after the earthquake, the number of IDP camps had risen to 1,371. According to the U.S. embassy, most had no electricity, no lighting, no running water, and no private bathing areas. Most family shelters were constructed of rickety wooden structures covered by tarps or sheets. The camps became a source of crime as militias and gangs would roam through the camps at night preying on the vulnerable.<sup>333</sup>

A week later, on 19 January 2010, the UN Security Council increased the personnel for MINUSTAH by 1,500 additional police and 2,000 additional military personnel. On 4 June 2010, the Council expressed concern in resolution 1927 because of the earthquake and authorized the deployment of 680 additional officers for the police component of MINUSTAH. Because of the

extent of the problems, the mandate for MINSTAH was extended every year from 2011 until 2016.<sup>334</sup>



Figure 30. The 12 January 2010 earthquake collapsed the second floor of the National Presidential Palace. Source: UNDP Global; [creativecommons.org/licenses/by/4.0/](https://creativecommons.org/licenses/by/4.0/)

In the wake of the earthquake, a cholera epidemic broke out in Haiti in October 2010. Haiti had not had a case of cholera in over a century so it was suspected the disease was carried to the country by peacekeepers from other countries. Lacking a sewage system, undeveloped areas of the country likely carried the disease—present in human feces—through rivers regularly used for drinking and bathing. Over 10,000 people died as a result of the outbreak, adding to the widespread suffering that existed following the earthquake.<sup>335</sup>

## Haiti After the Earthquake

Political and developmental problems continued to plague Haiti after 2010. Elections for the legislative and executive branches were held in March 2011 and President Michel Martelly was sworn in on 14 May 2011—the first time in the country’s history that power was passed from one democratically-elected president to another. However, the political stability was short-lived. On 24 February 2012, Prime Minister Garry Conille resigned over political issues with parliament. Subsequent elections were postponed over political

gridlock, electoral intimidation, and natural disasters such as Hurricane Matthew in 2016.

Haiti remained in political disarray for four years. New presidential elections were held in October 2015, but the legitimacy of the results were questioned following widespread allegations of corruption and vote tampering. New elections were rescheduled but not conducted until November 2016 when businessman Jovanel Moise was elected as the new Haitian president. Voter turnout was low; only 21 percent of eligible voters came out for the election. Moise selected Jack Guy Lafontant to be his prime minister. A decision to raise fuel prices in July 2018 (in a country in which 60 percent of citizens live below the poverty line) resulted in widespread rioting and Lafontant resigned his post soon afterwards. Moise was also implicated in a \$2 billion corruption scandal in which money provided by Venezuela to fix the country's dilapidated road system and provide subsidized oil to Haiti was siphoned off by politicians. In light of calls for his resignation, Moise disappeared from public view and was rarely seen throughout most of 2019. As of the start of 2020, public confidence is low in the Haitian government.<sup>336</sup>

## Conclusion

On 31 August 2016, Chilean President Michelle Bachelet announced that the Chilean military contingent would complete their MINUSTAH operations in April 2017. On 27 March 2017, President Bachelet visited Chilean forces in Haiti to commend them for their work. The following month during a formal ceremony, the Chilean delegation closed its peacekeeping facilities in Cap-Haïtien. In June of that year, the Chilean delegation conducted a similar ceremony for its unit in Port-au-Prince.<sup>337</sup> The police contingent remained in the country.

The UN peacekeeping mission in Haiti, MINUSTAH, originally scheduled to conclude in 2010, was finally completed on 16 October 2018. It was succeeded by another UN mission, the MINUJUSTH. However, this peacekeeping operation has no military component, only FPU tasked to strengthen rule of law institutions, continue the development of the HNP, and engage in HR monitoring.

MINUSTAH represents the type of modern security dilemma that scores of countries confront when their forces participate in UN peacekeeping operations. In these situations, there is normally not a cohesive OAG, but

rather violent criminal gangs that must be disarmed and detained. Gang members in Cité Soleil and Port-au-Prince were indistinguishable from other inhabitants in the area, forcing security forces to use immense degrees of fire discipline to avoid harming civilians. These were high-intensity and risky operations for the UN peacekeepers—a blurred battlefield in which military soldiers were required to abide by law enforcement rules promulgated by the UN Department of Peacekeeping Operations for extremely challenging urban operations.



## Chapter 8. The Blurred Battlefield in Colombia: The Evolution of the LOAC and HR Doctrine and Policy of the Colombian Armed Forces

### Introduction

The Colombian military is often cited as a model for HR and the use of force during conflict. Former U.S. Secretary of Defense Robert Gates described the Colombia armed forces as “a unique source of experience and expertise” for other countries. The former USSOUTHCOM Commander, Marine Corps General John Kelly, called Colombia “a beacon of hope and stability with one of the most highly professionalized militaries in the region.” National security writer Max Boot wrote about the “Colombian miracle” when he described Colombia’s turnaround from the verge of defeat to the cusp of victory.<sup>338</sup>

Starting around 2008, the Colombian military transformed itself into a professional fighting force that was able to roll back the military advances of the powerful Revolutionary Armed Forces of Colombia (FARC) and other criminal groups. The Colombian armed forces used a combination of military technology, security assistance from the United States and other partners, use of force reforms, war taxes, and the tireless leadership of Presidents Uribe and Santos to turn the conflict in their favor.

An important part of the reforms in Colombia was the adaptation of a new use of force doctrine and HR practices that garnered broad public support for the Colombian military and bestowed a sense of legitimacy on the central government. The Colombian military implemented a force-wide training and education program on HR that linked protection of civilians to legitimacy of the government. One scholar opined that Colombian had undergone a “cultural transformation and professionalization.”<sup>339</sup> According to the Colombian Armed Forces head of HR, “the Ministry of Defense expected to make human rights and IHL a part of the institutional culture of the Colombian Security Forces.”<sup>340</sup>

It has not always been this way. Prior to 2006, the track record of the Colombian military had been a major concern of the USG and international organizations. Up until then, the Colombian Army (COLAR) was perceived to frequently use indiscriminate and excessive force in operations against insurgents. One report referred to the COLAR as an “army of terror.”<sup>341</sup> Declassified U.S. embassy cables and U.S. State Department Human Rights reports described frequent tacit collusion with paramilitary forces in joint operations against the FARC and other guerrilla groups.<sup>342</sup> Amnesty International called for a complete cut off of aid to the country. The Washington Office on Latin America (WOLA) wrote that using Colombia as a model for other countries to emulate is “superficial and dangerous.” Scandals such as the “false positives” case put thousands of soldiers on trial for murder and tarnished the reputation of the armed forces.

The transformation of the Colombian armed forces from an unaccountable organization into a militarily effective and professional force presents an important case study for understanding how an institution embraces and implements change. Initially, the military leadership resisted or were unable to launch reforms to correct doctrinal deficiencies but eventually both internal and external forces exerted significant pressure on the Colombian military. This follows suit with numerous other Latin American militaries that are reluctant to adopt tactics that would restrain their use of firepower and heighten risk for soldiers. The Colombian military, like others in Latin America, failed to recognize the importance of legitimacy and popular support.

The Colombia example raises a number of important research questions. What spurred the turnaround in the LOAC and HR policies of the Colombian Armed Forces? Was it self-induced or forced upon the military by other factions of the Colombian government? Or by outside groups like the UN, the United States, USSOUTHCOM, or international NGOs? What effect did the El Salado, Santo Domingo, and Mapiripán massacres have on the Colombian military policy? And perhaps the most important question: How did the Colombian military learn to operate on the blurred battlefields in the country? That is, how do Colombian soldiers and police officers determine when to use LOAC or HR tactics rules that often requires simultaneous fighting against OAG and criminal gangs?

This chapter will provide a comprehensive review of the Colombian armed forces’ actions with respect to LOAC and on HR. Much has been

written about the operational transformation of the Colombian military from 1999 to the present.<sup>343</sup> The objective of this chapter is to identify the evolution of the LOAC and HR policies and practices of the Colombian Armed Forces from 1990 to 2019. Using a chronological analysis of the military's policy and doctrine, the author examines the achievements, as well as shortcomings of the use of force programs. The evidence includes interviews with members of the armed forces, the government, Colombian NGOs, international institutions (e.g., the ICRC and the UN), and academic scholars who have followed the situation in Colombia for years. The analysis will be valuable for other Latin American countries that are combating organized crime and irregular forces in difficult operating conditions.

For many reasons, Colombia's doctrine on the use of force may be the most developed and effective doctrines in the world on fighting violent organized crime groups like the FARC and ELN. The Colombian military teaches their soldiers and officers how to operate as police when not in confrontational situations with OAGs. At the same time, the Colombian National Police (CNP), also under the operational control of the military, are trained in LOAC rules. Both groups—soldiers and police—are indoctrinated in LOAC and law enforcement rules. As importantly, they are trained to recognize when to apply one and not the other. The doctrinal success of the Colombian military is a model for other Latin American countries to emulate and an important lesson for U.S. SOF on how to think about a hybrid approach to foreign assistance activities. Getting to this level of proficiency has not been a clean path and violent errors were made along the way, but the Colombian military has become an exporter of military proficiency and professionalism for its regional partners.

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## The Colombian Military

To combat large irregular armies like the FARC and the ELN, the Colombian military needed urgent help. According to a U.S. assessment in the 1990s, the Colombian military lacked a long-term strategy and effective leadership; suffered from poor morale; had inadequate equipment, logistics, and



Figure 31. Colombia has the geopolitical benefit of being the only South American country with both Pacific and Atlantic coasts. Photo by Newscom

training; and was operationally hindered by a lack of airlift or fast reaction forces. A U.S. DOD report assessed that the Colombian military was “inept, ill-trained and poorly equipped.”<sup>344</sup> Myles Frechette, the U.S. ambassador to Colombia from 1994 to 1997, said, “The Colombian military is basically a barracks military, not one that is organized to go after guerrillas. They have

some brave and capable people, but they are strictly a reaction force, and not a very mobile one at that.”<sup>345</sup>

The COLAR also was alleged to have frequently committed atrocities against Colombian civilians or suspected insurgents. A 1994 assessment by the Central Intelligence Agency (CIA) stated that, “the military has a long history of assassinating left-wing civilians in guerrilla areas, cooperating with narcotics-related paramilitary groups in attacks against guerrilla sympathizers, and killing captured combatants.”<sup>346</sup> David Passage, the U.S. Ambassador to El Salvador from 1984 to 1986, gave a tougher assessment of the Colombian military by saying, “Professional critiques of the Colombian Army’s performance begin with examples of incompetence and corruption at virtually every level of leadership, and go all the way down to ignorance and fear among ill-trained, inadequately-equipped, and poorly-led conscripts at the bottom.”<sup>347</sup> There were also credible allegations that Colombian military officials were involved with drug trafficking. U.S. concerns with corruption in the government and HR abuses by the Colombian security forces led to a complete cut off of military aid in 1996 and 1997.<sup>348</sup>

In the late 1990s, U.S. policymakers grew increasingly alarmed about not only paramilitary violence in Colombia, but also about the security and stability of one of the United States’ closest allies in the region. The government risked collapsing to a communist force that was funded by immense amounts of illegal narcotics revenue that would destabilize other neighboring Latin American countries and create havoc throughout the Western Hemisphere.<sup>349</sup> Intercepted plans of the FARC indicated they were preparing for their final offensive. They were sending three columns of insurgents into Cundinamarca—the department that included the capital of Bogota—to consolidate territory before making a final push to seize control of Bogota.<sup>350</sup> Policymakers in Washington warned that the Colombian government was at risk of collapse. In March 1998, U.S. Ambassador Charles Gillespie cabled Washington that the Colombian Armed Forces were unable to stem the downward spiral of violence gripping the country. Shortly afterwards, a U.S. Defense Intelligence Agency report speculated that the guerrilla forces would overthrow Bogota and seize control of the country within five years if the guerrilla’s rate of operations continued without effective opposition.<sup>351</sup>

## U.S. Policy Toward Colombia

During the Cold War, policymakers in Washington, D.C. often looked past Latin American government problems with democracy and HR in order to bolster allies supporting Washington's strategy on communist containment. The military governments in El Salvador, Guatemala, Argentina, and Chile received millions of dollars of military assistance to strengthen their security institutions often in spite of poor records on HR and democratic practices. By 1991, the Cold War was over and U.S. decision makers changed tack; Washington began to encourage allies to launch HR reforms and strengthen democratic institutions. Countries in the region that had nearly unconditionally received assistance began to find strings attached to foreign aid. The U.S. assistance would now be conditional on the professionalism and accountability of the public security forces.

In the early 1990s, U.S. assistance to Colombia was restricted to counter narcotics operations. Limited aid was provided for anti-guerrilla efforts. Congressional fears about getting caught up in another intractable COIN conflict like the Vietnam War led policymakers to limit aid to only counter narcotics efforts rather than fighting against communist guerrillas like the FARC. But even that assistance began to worry U.S. lawmakers as they received reports about the poor HR record of the Colombian security forces. In 1993, the U.S. Congress decided to direct nearly all of its aid to the CNP in lieu of assistance to the military.<sup>352</sup> The police were considered more professional and "cleaner" than their Army counterparts.<sup>353</sup>

As additional reports of atrocities committed by the Colombian military poured into Washington, the U.S. Congress established a more aggressive policy to force compliance with international HR and humanitarian law standards. Senator Patrick Leahy (D-VT) introduced legislation that prohibited U.S. forces from providing assistance to foreign military units if they committed HR violations. The Leahy Law, as it became known, was an amendment to the 1997 Foreign Operations Appropriations Act. Congress approved the bill and extended it to nearly all DOD funded training programs.<sup>354</sup> In 2013, the legislation was further expanded to other types of DOD assistance including equipment, support services, grants, loans, and exercises.<sup>355</sup>

The Leahy Law prohibits training or equipping any foreign security force units that are credibly believed to have committed a GVHR.<sup>356</sup> The legislation

is considered by many as an important element of U.S. foreign policy because it compels PNPs to improve the professionalism of their security forces by punishing those who commit crimes against citizens. It encourages foreign governments to bring to justice members of their security forces when they commit crimes, and prevents the U.S. from being associated with security partners that commit crimes against civilians in their country. Advocates of the law contend that it makes partner forces more professional and accountable because, as a result of the requirement, partner forces are encouraged to adopt better practices in HR tactics and doctrine. Senator Leahy describes the law as punitive for security forces that abuse the rights of civilians, but also declares it as an incentive “to build professional, disciplined, transparent, and accountable security forces who are sustainable and effective partners of the United States.”<sup>357</sup>

In 1996 and 1997, U.S. concerns with HR abuses and government corruption led to the unprecedented decertification of Colombia’s cooperation with U.S. anti-narcotics efforts and the revocation of President Samper’s visa.<sup>358</sup> Colombia was cut off of almost all U.S. aid. This decision had enormous diplomatic consequences. It occurred at a time when Colombia was reeling from insurgent victories and seemed to be on the verge of governmental collapse at the hands of the guerrillas. The HR abuses of the Colombian military were so widespread that U.S. officials had difficulty identifying any military units eligible to receive U.S. assistance. The COLAR attempted to create new units that would lead counternarcotic efforts with U.S. military assistance, but even this proved difficult; of the six units first vetted under the Leahy Law requirements, four were rejected because of human right problems.<sup>359</sup>

The aid cut-off was a controversial decision, both within U.S. and Colombia. To critics of the decision, it appeared the United States had offered to aid one of its most important Latin American partners during a time of desperate need but then had attached difficult conditions to the aid by requiring them to immediately professionalize their forces in the middle of a complex conflict. Congressional conservatives in the United States accused State Department representatives of being complicit in the deaths of Colombian security force personnel who had not been able to receive the military equipment they needed to combat the insurgents. Proponents of the aid conditionality contended that the U.S. public would not support assistance to HR violators accused of murder and forced disappearances.<sup>360</sup> Colombian military officials had issues with the Leahy requirement that only required

“credible allegations” of HR violations which, in their opinion, was not an adequate legal standard of substantial evidence by which to judge alleged perpetrators under the Colombian constitution.<sup>361</sup>

A number of Colombian military officers expressed frustration at what they perceived as a double standard on HR that they faced while combating the insurgents. The FARC and ELN were accused of war crimes and crimes against humanity including terrorism, kidnapping of civilians, murder of hostages, indiscriminate bombing of civilian targets, forced displacement, and child soldiering. The FARC kidnapped thousands of hostages and received millions of dollars of ransom money each year. Some hostages were kept chained to trees for years in jungle hideouts. Many victims were killed by their captors or died during their difficult jungle captivity. Others were executed by the FARC as security forces attempted to rescue them.

Among the insurgents, there was seemingly little regard for civilian casualties and the groups often launched indiscriminate attacks against civilians. Perhaps the deadliest of these incidents was the gas cylinder attack against a church in Bojayá on 2 May 2002. Hundreds of residents, mostly women and children, took refuge in a church near the center of town to escape fighting between guerrillas and paramilitaries. During fighting in the early morning of 2 May, paramilitaries had established defensive positions around the church. At approximately 10:45 in the morning, the guerrillas launched gas cylinder mortars (propane tanks filled with explosives, called *rampas* in Spanish) toward the church. The bombs pierced the roof and exploded on the altar killing 119 people and injuring 98 others. Many of the victims were children.<sup>362</sup>

FARC leaders showed few (until recently) gestures of remorse or an acknowledgement of responsibility for actions during the conflict. FARC representative Luis Alberto Alban said, “We know there have been civilian victims, but our goal was never to cause damage to that person. We do not understand that person as our victim. He is a victim of the war.”<sup>363</sup>

In light of the self-proclaimed impunity by their opponents, many Colombian Service members wondered why they were being held to a different standard than their opponents. To many Colombians officials, it was not clearly understood that, as representatives of a legitimate government, they were obliged to follow the LOAC or HR laws of their government.

In this complex environment in which the enemy was not always clearly identifiable, some Colombian soldiers grew apprehensive about using force

lest they be accused of HR violations. Soldiers complained of a *guerra juridica* (legal war), in which the FARC and HR NGOs could make allegations of HR violations against security forces in order to have the accused soldiers or police removed from the field while investigations were conducted. Accused officials complained they felt like they didn't have any recourse in these cases, as if they were guilty until proven innocent.

In Bogota, U.S. officials pushed their Colombian counterparts to reform their HR doctrine. In August 1997, the United States levied an additional requirement on Colombia: semi-annual updates on the status of ongoing investigations into HR violations by Colombian military personnel. U.S. Ambassador Myles Frechette (1994–1997) told Colombian Minister of Defense Guillermo Alberto Gonzalez Mosquera that future assistance was dependent on these reports and improved HR performance by the military. Gonzalez's predecessor as Minister of Defense, Juan Carlos Esguerra, had not been cooperative on the issue. "He did not push the military. We hope you will push the military," Frechette told Gonzalez soon after he was nominated to the position in 1997. "Strong NGO interest in human rights matters" and Leahy Law vetting requirements drove U.S. policy on the issue.<sup>364</sup> The civilian minister, however, was facing his own internal struggles with senior Colombian military officers. "Lay off the human rights issues," he requested. He needed the cooperation of the generals and the "disproportionate" amount of attention on HR was straining his relations with the military.<sup>365</sup>

U.S. policies faced stiff resistance from senior Colombian military officers. For example, General Harold Bedoya, commander of the Colombian Armed Forces, was a frequent critic of U.S. policy. He complained "that every State Department report was slanted against the Colombian military." In July 1997, less than two weeks after Bedoya's complaint, President Samper replaced him with Brigadier General Manuel Jose Bonett who was more amenable to the HR reforms and to opening peace talks with the guerrillas.<sup>366</sup>

Declassified diplomatic cables from the U.S. Embassy reveal much about the tense negotiations. The ambassador was "nervous" about working with the military, "primarily because of pervasive corruption."<sup>367</sup> Frechette's suspicions turned out to be valid. In 1997, Minister of Defense Guillermo Alberto Gonzalez resigned when it was revealed that he had funded his 1989 congressional campaign with contributions from known drug traffickers.<sup>368</sup>

## Self-Defense Forces and Paramilitaries

Colombian military collusion with paramilitary units was a major concern among U.S. and European officials and international organizations like the UN. Colombia covers an immense area and is geographically defined by high cordilleras (extensive chain of mountains or mountain ranges), vast jungles, and remote, isolated areas. The Army did not have adequate forces nor the airlift capacity to combat guerrillas in many parts of the country and instead relied upon the paramilitaries as a surrogate security force. But paramilitary strategy was often directed at villagers they perceived were supportive of the guerrillas. And paramilitary tactics involved gruesome attacks with machetes, hatchets, and chainsaws against suspected sympathizers—an effort to terrorize those they saw responsible for the logistical and intelligence networks of the opponent.<sup>369</sup>

One incident in particular is notorious for how the Colombian military and the paramilitaries operationally collaborated against leftist guerrillas: the Mapiripán massacre on 15 July 1997. Mapiripán was a small community located deep inside FARC-controlled territory in the department of Guaviare in the Amazon lowlands. The COLAR controlled the airfield and manned checkpoints on roads in the area. On 12 July, paramilitary forces flew into the area on two planes, landed at the Army-controlled airfield, and proceeded toward the town, reportedly passing COLAR checkpoints along the way. The vigilantes then rounded up and murdered as many as 26 suspected FARC sympathizers in the town, slaughtering them with machetes and chainsaws. According to declassified U.S. embassy cables, the paramilitary operation was coordinated in advance with the local Army unit.<sup>370</sup> Brigadier General Jaime Uscategui, Commander of a COLAR Brigade responsible for security in the area, was later found guilty by omission (failure to act). Initially sentenced in 1999 by the Colombian military to 40 months in prison, his sentence was revisited by Colombian courts in November 2009 and he was subsequently sentenced to 40 years in jail for failing to prevent the massacre.<sup>371</sup> The conviction and imprisonment of General Uscategui marked the most senior Colombian military officer convicted for crimes in the conflict.

The Mapiripán incident generated intense scrutiny of Colombian government collusion with paramilitary forces. The July 1997 incident helped galvanize public opinion against the paramilitaries, and drew attention to Colombian security forces believed to have enabled this and other killings.

The event, combined with strong U.S. and international pressure, led Colombian President Samper to publicly condemn the activities of illegal paramilitary groups and declare the massacres “an aggression against the Colombian state.”<sup>372</sup>

Despite the pressures from U.S. officials and others in the international community, the Colombian government did little to sever relations with the paramilitaries. The Samper administration, one embassy report concludes, has promised to rein in paramilitaries, but so far “has not matched its words with deeds.”<sup>373</sup> Large scale guerrilla victories in 1997 and 1998 gave the Colombian armed forces little choice. In a series of reports, the U.S. CIA station chief in Bogota reported that Army losses to the guerrilla forces will “continue to tempt some officers to pursue all avenues possible to strike back at the guerrillas” and predicted that “informational links and instances of active coordination between military and paramilitaries are likely to continue.”<sup>374</sup>

From a tactical and operational perspective, the sadistic paramilitaries were perhaps the most brutally effective instrument in the government arsenal against the insurgents. Colombian insurgents feared them and guerrilla activity was severely curtailed by threats from paramilitary forces. However, from a strategic perspective, the military ties to these violent groups jeopardized government legitimacy and foreign aid from Colombian allies. In 2001, the U.S. State Department declared the paramilitaries a foreign terrorist organization (FTO). In mid-2003, the group was declared a major drug-trafficking organization by the USG.

The 2006 *parapolitics* scandal revealed how deeply embedded the paramilitaries had become within the Colombian government. Despite the fact that the paramilitaries had been outlawed by the government, Colombian military and political leaders continued to collude with them. In November 2006, the Colombian supreme court ordered the arrest of three congressman on charges of maintaining ties to the terrorists. The Minister of Foreign Relations, Maria Consuelo Araujo, resigned the following year because of her alleged ties to paramilitary groups. Shortly after that, the head of the Colombian domestic intelligence agency, Jorge Noguera, was arrested on similar charges. He was eventually sentenced to 25 years in prison. Later that month, six more congressmen were arrested. Allegations of paramilitary support reached all the way to President Alvaro Uribe. By 2012, 139 members of congress were under investigation. By the time the dust settled from the

scandal, five governors and 32 lawmakers had been arrested and convicted of collusion with paramilitaries.<sup>375</sup>

Cleaning up the Colombian military of HR abusers would not be a quick task. Attacks on civilians perceived to be supporting the guerrillas were so commonplace that nearly every military unit in the Colombian armed forces had some record of HR violation. By March 1998—more than half a year after

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Colombia's written promise to improve its operations and purge its ranks of HR violators—U.S. embassy personnel were still having difficulty finding any Colombian military units with “clean” HR records to be eligible to receive U.S. military assistance.<sup>376</sup> One senior U.S. foreign service officer reported back to Washington that, “Colombian military

and police forces need to fundamentally change the way they deal with their civilian population. They need to definitively end the HR abuses which have marred their interaction with the civilian populace, remove the violators from military and civilian ranks, and prosecute in civilian courts those who should be charged with civil crimes and abuses.<sup>377</sup>

The aid restrictions on the Colombian armed forces came at a vulnerable time. In 2000, newly-elected President Andres Pastrana, embarrassed by Colombian military defeats at Las Delicias in 1996 and El Billar in 1998, ordered the military on an offensive against FARC strongholds in the south of the country. Joint Task Force South led the Army's operations in Putumayo and other FARC strongholds near the Ecuadorean border. But two of the units involved in the operation—the COLAR 7th Brigade and 2nd Mobile Brigade—were implicated in the Mapiripán massacre in July 1997.<sup>378</sup>

President Andres Pastrana attempted to get control of the paramilitaries in the country. In February 2000, he announced the creation of the Coordination Center for the Fight against Self-Defense Group—a government organization tasked to organize government efforts against paramilitaries. He also cracked down on alleged support of paramilitaries within the Colombian military. For example, in July 2000, the Office of the Procurator General indicted four senior COLAR officers for failing to prevent the killing of 18 villagers at Puerto Alvira, Meta, in May 1998.<sup>379</sup> In October 2000, the Minister of Defense dismissed 388 officers and noncommissioned officers

for HR abuses, corruption, and other reasons, in an effort to improve the military's performance.<sup>380</sup>

## Plan Colombia

Back in Washington, the State Department came to a monumental decision to assist its most important Latin American ally. As told from the perspective of career State Department diplomat Thomas Pickering, there was little doubt about support for Colombia. Ambassador Pickering was tasked by President Clinton's National Security Advisor Sandy Berger in the summer of 1999 to spearhead a National Security Council effort to come to the rescue of Colombia. However, serious concerns persisted.<sup>381</sup> To many U.S. policymakers, there were serious concerns that Colombian elites were not adequately invested to the degree required to protect their country from insurgent aggressions. After President Samper's checkered history with cartels, were Colombian leaders willing to invest in their own future as much as U.S. officials were? For skeptical U.S. politicians, any assistance plan had to contain a strategic plan, viable objectives and detailed goals, timelines, and funding commitments.

The specter of Vietnam loomed large over the planning. Just 17 years earlier, the U.S. had extracted itself from the longest war in its history, another nation building effort in a country with a rural insurgency and one that cost the lives of nearly 60,000 Americans. In many ways, Colombia appeared like a mirror image of Vietnam—a corrupt central government with little political will to fight communist insurgents and a poorly developed, under-equipped military that required a massive security assistance injection. For those reasons and to prevent an inevitable mission creep, congress put a personnel limit of 160 persons on the initial number of DOD forces that were permitted in the country at any one time. Later that number was increased to 400 military personnel and 400 contractors and still later the limit was relaxed to 800 military personnel and 600 contractors.<sup>382</sup>

President Pastrana's proposal included a promise that Colombia would invest \$4 billion of its own funds in the security effort. Another \$3.5 billion was requested from external donors, mainly the United States and European allies. In Washington in 2000, the U.S. Congress authorized \$1.3 billion. By 2005, the assistance package had reached a total of \$4.5 billion, making

Colombian the third biggest recipient of U.S. foreign assistance after Israel and Egypt.<sup>383</sup>

The basic elements of the U.S. assistance package were focused on a handful of issues: intensified counternarcotics efforts, ending the threats to Colombian democracy posed by narcotics trafficking and insurgency, efforts by the Colombian government to strengthen its democratic institutions, promotion of respect for HR and the rule of law, socioeconomic development, and addressing immediate humanitarian needs.<sup>384</sup>

## **The Colombian Military Goes on the Offensive**

With the surge of equipment and troops from the Plan Colombia arms buildup, the Colombian military started to see progress on building its military capacity. The U.S. assistance was focused primarily on improving Colombia's intelligence technology, airlift, and special operations capacities. Eventually, precision-guided munitions acquired from the United States were another essential tool to target FARC leaders. U.S. SOF played a particularly important role in the security cooperation program. The 7th Special Forces Group (SFG) out of Eglin Air Force Base in the Florida panhandle led the efforts to improve the military skills of their Colombian counterparts. In April 1999, just as Plan Colombia was being initiated in political circles in Washington and among military planners in USSOUTHCOM in Miami, 65 members of the 7th SFG arrived in Colombia to train the first of three 800-person counternarcotics battalions. The first battalion became fully operational at the end of that year and two more were online by December 2000 and May 2001.<sup>385</sup>

Improving the airlift capacity of the COLAR was critical in order to take the fight to the FARC in their jungle and mountain hideouts. By 2001, U.S.-purchased aircraft that would provide a critical airlift ability for Colombian units began arriving in Colombia. One of the first air packages delivered to the Colombians consisted of 15 Twin Hueys, 13 UH-60 Black Hawks, and 25 Huey IIs.

The initial Colombian military offensive focused on recovering lost national territory especially around the major Colombian cities. Operation Libertad I and II in 1999 drove the guerrillas out of Cundinamarca, the department around the capital of Bogota. A similar operation forced the FARC to retreat from the Antioquia department, home to Medellin. Once the

main cities and highways connecting them were secure, the military would take the attack against known insurgent strongholds deep in the Colombian jungles.

Table 7. Colombian Military Strategy in the Uribe and Santos Years.

1999	Plan Colombia: Plan for Peace, Prosperity, and the Strengthening of the State
2001	Democratic Security Policy
2003	Plan <i>Patriota</i>
2006	Justice and Peace Law
2009	National Consolidation Plan ( <i>Plan Nacional de Consolidación</i> )
2012	Sword of Honor ( <i>Espada de Honor</i> )

However, the FARC were not going to retreat without a fight. In February 2003, the guerrillas bombed the El Nogal nightclub in Bogota, killing 36 people and wounding more the 200. The attack had perhaps the opposite effect the guerrillas expected. Because many of the casualties were members of upscale Colombian society, it galvanized resolve by Colombian elites to fight the FARC according to President Uribe's war plan. It also provided broad acceptance for the "war tax" that Uribe demanded of wealthy Colombians in order to fund the costly military operations.

By 2008, the Colombian military was really beginning to score hits on senior leadership of the FARC. On 1 March 2008, in a cross-border raid into Ecuadorian territory, the Colombian military killed Raul Reyes, a member of the FARC Secretariat. That same year, two additional members of the Secretariat were eliminated; Manuel Marulanda died of a heart attack and Ivan Rios was killed by a bodyguard. In September 2010, the Colombian Air Force bombed the camp of Jorge Briceno Suarez, a.k.a., Mono Jojoy, another member of the Secretariat and the primary military commander of the FARC. And in November 2011, the military was able to kill Alfonso Cano, the FARC General Secretary in a major blow against the guerrilla group's leadership.

The attack against Mono Jojoy demonstrated the advantages the Colombian military had acquired through purchases of U.S. military technology. Jojoy's camp was initially bombed with precision guided munitions launched from seven miles away and an altitude of 22,000 feet. He never heard the attack coming. Additionally, Colombian intelligence had managed

to covertly insert a GPS tracker in Jojoy's boot so the military knew his exact location in the jungle. More than 30 fixed wing aircraft and nearly 30 helicopters proceeded to bomb the location after the initial strike, eventually dropping more than three tons of munitions on the site.<sup>386</sup>

## Major Incidents that Spurred Doctrinal Change on the Colombian Military

Throughout the 52-year history of the Colombian conflict, there are a number of infamous incidents whose names alone evoke images of the violence and suffering that tens of thousands of Colombians experienced during the conflict: La Rochela, Mapiripán, El Salado, Bojayá, El Nogal, and Soacha. Many of these incidents reflect the difficult balance between building military capacity and ensuring professional conduct of the Colombian security forces. They provoked intense international attention and forced the Colombian armed forces to closely examine their doctrine on use of force. In this section, two incidents—the 1998 Santo Domingo incident and the 2008 *falsos positivos* scandal—are described. Emphasis is placed on what reforms the two events had on legal doctrine in the Colombian military.

### Santo Domingo, 13 December 1998

The Colombian Air Force attack on the village of Santo Domingo in December 1998 resulted in a significant shift in doctrine and policy. When the dust settled from the attack, it would send shock waves through the Colombian military hierarchy and trigger a doctrinal change that would take the armed forces and Minister of Defense down a path toward a new philosophy on the use of force.<sup>387</sup>

Santo Domingo is a sleepy hamlet in a remote province of Arauca in northeast Colombia. It is more of a cluster of shanties near an important crossroads than an organized town. On 12 December 1998, a Cessna light plane landed on the dirt highway outside of the town. Like most aircraft activity in the area, the plane was suspected of delivering cash and weapons to the FARC insurgents in the area, profits from the drug trafficking operations. Soldiers from the 36th Counter-Guerrilla Battalion with security responsibility in the area attempted to intercept the plane but were driven back by weapons fire from insurgents. The two groups exchanged fire throughout most of the evening and into the next morning. After a brief lull in the early morning hours, combat commenced again around sunrise.

Joining the battle that morning was also a Colombian Air Force Huey helicopter gunship. The aircraft was armed with machine guns and a cluster bomb. The bomb was a U.S.-made cluster munition that contained 20 bomblets that were dispersed when the weapon was deployed. Also flying overhead that morning was a spotter plane operated by a U.S. contractor company AirScan. The plane had been contracted by Occidental Petroleum, an international company, to patrol its oil pipelines in the region. Since Colombian pipelines were considered national strategic assets and part of the critical infrastructure of the country, the COLAR was tasked to provide security along the pipeline. That morning, the U.S. AirScan pilots were relaying verbal reports to the Colombian helicopter pilots about the positions of insurgents located around Santo Domingo. It was also filming the event and transmitting the images back to the Occidental Petroleum station where the Army and Air Force had set up a command post about 10 miles away.

Residents of Santo Domingo were familiar with the exchanges between the insurgents and military soldiers. Santo Domingo was an important crossroads deep in FARC-controlled territory. The COLAR had been battling for control of the region for some time. To ensure they were not mistakenly targeted, the townspeople had taken to leaving their house lights on and to wearing white shirts so they could be identified from the uniformed combatants during daytime.

What happened next has been disputed vigorously in military and civilian courts for most of the 20 years since the tragic incident occurred. At 10:02 AM, the Colombian Air Force pilots claimed they fired the cluster bomb at a wooded area on the outskirts of town where the FARC had established a fighting position. However, eyewitnesses in the village said the pilots dropped the bomb directly in the middle of the town. Seventeen villagers, including six children, died from the explosion. Twenty-seven others, including ten children, were injured. As other villagers fled the scene, the COLAR helicopter opened fire on them with a machine gun. The Colombian pilot was overheard claiming on the AirScan video that they were FARC insurgents who had switched clothes in order to escape among the population.

The Colombian military disputed the fact that the helicopter dropped its munitions on the civilians. The explosion and deaths resulted from a truck bomb in the center of the town that was detonated simultaneously by the FARC rebels, they insisted—an effort to make it look like the Colombian security forces were to blame.

Nearly six months later, on 20 May 1999, the Colombian military decided not to charge anyone involved in the incident. A year after that in May 2000, the Colombian Attorney General (AGO) decided that there was sufficient evidence to look into the incident. In October of that year, the AGO charged the two pilots “with launching an explosive device while being aware of the bomb’s dangerousness, constituting a gross violation of international law and a wanton disregard for human life.”<sup>388</sup>

The case bounced back and forth in courts and through the appeal process for a number of years. In September 2007, the 12th Criminal Court of the Bogotá Circuit upheld the conviction. Two years later, in September 2009, the 12th Criminal Court found the airmen guilty of seventeen acts of manslaughter and eighteen counts of bodily harm with wanton disregard for human life. The court sentenced the two pilots to 380 months in prison and the flight technician to 72 months imprisonment.

Throughout the process, the Colombian military continued to challenge that they or their soldiers were responsible. In 2011, the case finally made its way to the Inter-American Commission on Human Rights (IACHR) in Washington, D.C. The commission found that the government of Colombia was responsible for various violations. When Colombia challenged elements of that decision, the case was passed to the Inter-American Court of Human Rights in Costa Rica. In November 2012, the court concluded that the State of Colombia was responsible for launching the cluster bomb on the village of Santo Domingo and for firing on the civilians fleeing the area. Specifically, the court found that the military was guilty of failing to distinguish between civilians and combatants, violating the principle of proportionality, and disregarding precautions in its attack. Whereas other branches of the Colombian government agreed with the court’s decisions, the armed forces and the MOD did not.

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*In June 2006, the Colombian Air Force ordered its legal advisors to ensure commanders of its operational units include fundamental principles of LOAC in all operational orders.*

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The tragedy of Santo Domingo prompted the Colombian Air Force to conduct a major review of its tactics and operations. In June 2006, the Colombian Air Force ordered its legal advisors to ensure commanders of its operational units include fundamental principles of LOAC in all

operational orders. The Air Force also directed its advisors to recommend

cancelling operations if calculations of collateral damage were disproportionate to the military advantage to be gained.

### **False Positives and the Case of Soacha, September 2008**

The second incident that had significant impact on Colombian military doctrine on the use of force was the Soacha Massacre of 2008. In response to pressures from senior officials to show combat successes against FARC and ELN guerillas, Colombian civilians were executed and then reported as guerillas killed in combat. This became known as the scandal of false positives or *falsos positivos* in Spanish. In many cases, the crime scene was altered to make it appear that the civilians were indeed guerrillas. The victims were dressed in the attire of the insurgents, weapons were placed near the bodies, and the area altered to make it look as if combat had occurred. These killings were sometimes carried out jointly with paramilitaries. According to the UN and the ICC, these murders reportedly began in the 1980s and continued to as recently as 2010 when the enterprise was exposed. The highest rate of murders occurred between 2002 and 2008.<sup>389</sup> The UN OHCHR indicated that as many as 3,000 Colombians may have been victims of extrajudicial executions. One study reportedly concluded that between 2002 and 2006, extrajudicial killings attributed to members of the security forces took place in 27 of the nation's 32 departments.<sup>390</sup>

Following visits to Colombia to investigate the incidents, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, explained the causes of the crimes:

As security in Colombia began to improve from 2002, and as guerillas retreated from populated areas, some military units found it more difficult to engage in combat. In such areas, some units were motivated to falsify combat kills. In other areas, the guerrillas were perceived by soldiers to be particularly dangerous and soldiers were reluctant to engage them in combat. It was "easier" to murder civilians. In still other areas, there are links between the military and drug traffickers and other organized criminal groups. Local military units do not want to engage in combat with the illegal groups with which they are cooperating, so killing civilians falsely alleged to be part of these groups make military units appear to be taking action.<sup>391</sup>

Although suspicions of COLAR extrajudicial killings had been reported by the UN and NGOs as early as 2004, the Soacha incident in 2008 exposed how widespread the problem had become. Members of the COLAR's 15th Mobile Brigade were responsible for the incident. In his investigation, the Colombian inspector general concluded that numerous members of the unit collaborated in the crime. Some lured the victims to the murder site. Others carried out the murder. Once the victims were killed, other members of the unit removed the victims' identity papers and dressed them in insurgent uniforms and placed weapons by their bodies. Additional members filed the paperwork of the incident as a legitimate combat action.<sup>392</sup>

Senior Colombian military officials deny that the false positives problem was a systematic effort across the armed forces. Rather, individual soldiers seeking rewards like time off, pay bonuses, or promotion took justice into their own hands. Individual unit commanders may have overzealously misinterpreted instructions from senior COLAR officials and sought to bolster their operational reputations by producing combat results. UN Special Rapporteur Philip Alston explained the false positives scandal as,

Unlawful killings by the military are the result of a set of complex factors, which have both motivated individuals to commit killings, and fostered an environment in which such killings have been able to occur with general impunity. [He had seen] "no evidence to suggest that these killings were committed as part of an official policy or that they were ordered by senior Government officials. [But] the sheer number of cases, their geographic spread, and the diversity of military units implicated, indicate that these killings were carried out in a more or less systematic fashion by significant elements within the military."<sup>393</sup>

As of May 2016, the Office of the Attorney General's Human Rights Unit was investigating 1,669 cases of false positives, in which the number of victims could reach 2,896. Of these cases, a large number are attributable to commissioned officers. The attorney general has gathered information on 52 convictions rendered in regard to alleged false positives incidents with prison sentences between 24 months and 51 years. The convictions were against 1 colonel, 3 lieutenant colonels, 8 majors, 16 captains and 24 lieutenants.

While prosecutions still have to run their course, the problem of widespread extrajudicial executions may be behind the Colombian military. In

March 2011, the UN OHCHR stated in its annual report that a “drastic reduction in the number of persons presented as killed in combat while under the custody of the Army, known as ‘false positives,’ was consolidated.”<sup>394</sup>

## HR Reforms of the Colombian MOD

After years of pressure from the United States, the UN, and NGOs, in 2006 the Colombian military launched a concerted and wide-ranging initiative to reform and modernize its HR and IHL programs. That year marked a remarkable change to Colombian military doctrine. The Colombian military began a series of significant reforms to incorporate HR and standards of international law into its operations.

A number of triggering events since the mid-1990s had generated continuous pressure on the Colombian government to get control of their HR problems within the military and to launch doctrinal reforms that would professionalize their forces: the decertification for drug and corruption causes in 1997, the restrictions on aid prompted by the Leahy Law in 1997, military collusion with paramilitary forces at Mapiripán in 1997, the Santo Domingo incident in 1998, the atrocities committed by paramilitaries from 2000–2003, and the massive injection of military aid from the United States from Plan Colombia that started in 2000 but was conditioned on ethical behavior by the armed forces.

Human rights offices had existed in the Colombian armed forces prior to 2006, but the offices and the subject received little operational priority because of other competing demands. For example, in 1994 the MOD established a Human Rights Office within the ministry as well as within the armed forces.<sup>395</sup> In 1998, satellite offices of HR and LOAC were organized in most major commands.<sup>396</sup> The offices implemented the guidance on HR and LOAC passed down from the Presidential Program on Human Rights and International Humanitarian Law, through the MOD, the General Command of the Armed Forces and the Department of Police, respectively.<sup>397</sup> In 1994, the Colombian government also invited the UN to open a HR branch in Colombia. On 2 April 1996, the High Commissioner of the United Nations for Human Rights accepted the offer from Bogota to open an office in the country.<sup>398</sup>

In 2006, the MOD signed an agreement with the Office of the High Commissioner for Human Rights in Colombia to conduct an independent study



Figure 32. Colombian armed forces patrol against OAGs in 2019.  
Source: U.S. Southern Command

of the HR and LOAC training program of the Colombian military.<sup>399</sup> The study had a number of objectives: (1) determine the degree of implementation and effectiveness of the Colombian HR and IHL program; (2) assess the perceptions of the public security forces of HR and IHL efforts; and (3) examine the quality of the Colombian armed forces training and education program on HR and IHL.<sup>400</sup>

Three international experts in HR and LOAC matters conducted the study.<sup>401</sup> The three visited HR offices of the presidency, the minister of defense, and the armed forces. They also visited various military training units and schools of the military and police; met with commanders, instructors, heads of HR units, and interviewed officers, non-commissioned officers and enlisted personnel—many randomly chosen by them during the visits. For comprehensive surveys of attitudes toward HR and LOAC by Colombian security forces, they reviewed a survey by the Colombian National Statistics Department<sup>402</sup> to determine how well the members of the security forces comprehended LOAC and HR rules. They also examined various operational manuals including the Action Plan for the Integration of Human Rights and International Humanitarian Law doctrine.<sup>403</sup>

The investigators concluded that Colombian security forces received wide dissemination of international HR and LOAC. Training and dissemination of HR and LOAC reached all members of the security forces via courses and activities. The security forces were improving academic material on

LOAC and HR across all military educational, training, and instructional institutions. In addition, the investigators concluded that there was significant political will to comply with international LOAC and HR treaties and conventions.<sup>404</sup>

According to surveys conducted by the National Statistics Department, most security force members appreciated the importance of distinguishing and protecting the population that is not participating directly in hostilities. Most military commanders and the security forces in general were concerned with eradicating errors caused by inappropriate application of force. However, the survey revealed that about a quarter of the security forces had not sufficiently assimilated LOAC rules into their operational procedures.<sup>405</sup>

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*Most military commanders and the security forces in general were concerned with eradicating errors caused by inappropriate application of force.*

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Perhaps because of this—limitations associated with classroom training—the Colombian military also incorporated scenario-based training into their training curriculum. These situations are based on actual experiences of Colombian soldiers during operations within the country and are designed to test the practical decision-making of young officers and soldiers in real-world conditions. Most scenario-training has been developed at the National Training Center (*Centro Nacional de Entrenamiento* or CENAE) in Tolemaida, about three hours south of the capital. The CENAE leadership have built a series of *pistas de entrenamiento* or training tracks, to mimic operational conditions young officers will likely encounter.

As part of the author's research into the use of force doctrine of the Colombian military, he visited the Colombian base at Tolemaida to observe the *pistas*. The Colombian hosts explained how the *pistas* were set up, what lessons were associated with each one, and what actions the instructors looked for from the officer-in-charge, a young COLAR lieutenant. The young officer was in charge of a squad of seven other soldiers, one of which was a medic.

The *pistas* involved a series of scenarios that the COLAR encounters frequently: a rural village inhabited by individuals resentful and suspicious of the central government; another village in which the soldiers find evidence of narcotics trafficking and have to detain a suspect—an event that antagonizes the other inhabitants. In that situation, soldiers have to decide whether to



Figure 33. The author visits CENAE in Tolemaida, Colombia, in September 2019. Members of the COLAR manage the *pistas de entrenamiento* scenario training for COLAR soldiers. Other soldiers role-play as villagers, traffickers, insurgents, and indigenous natives. Source: Author

pursue or shoot at a fleeing suspect. Other *pistas* involved a drug lab with minors present; an insurgent compound in which the soldiers take small arms fire and then have to determine the appropriate sequence of medical triage for injured insurgents and soldiers; another village that has culturally-significant structures such as archaeologically ruins; and an indigenous settlement that has quasi-territorial autonomy from the Colombian government.

The scenario participants (actors) are other COLAR soldiers who had been briefed on their specific role-playing duties. These soldiers role-played as villagers, traffickers, insurgents, and indigenous natives in the seven scenarios they experienced. Before the scenario began, the actors were given injections (scenario disclosures) to use at specific moments of the situation. In addition, the lieutenant's soldiers were also directed to take certain actions to test the young officer's decision-making, leadership, and ethical choices. For example, one of his soldiers stole valuables off of a dead insurgent. In another, one of his soldiers encouraged the physical abuse of detainees. Another loitered too long in the company of a female villager rather than maintaining his vigilance.

At the end of each scenario, there was a "hot wash" discussion of what occurred and whether it was the correct response. Both the student actors as well as Army squad members were given a chance to reflect on what had occurred and share their perspectives. Where appropriate, the instructors

explained the correct action that was (or should have been) taken, clarified questions from the soldiers, and recited the official policy on each circumstance (e.g., respecting the quasi-autonomy of indigenous groups within Colombian national territory).

With regard to the expert visit from the Office of the High Commissioner for Human Rights, the minister of defense accepted nearly all the recommendations of the panel of experts and promised to implement them immediately. In 2007, the ministry produced the Comprehensive Human Rights Policy that combined existing legal HR and LOAC concepts with the recommendations made by the experts contracted by the UN in 2006. Directive 300-38, also introduced in 2007, emphasized captures over kills as the objective for military operations, partly an effort to reduce the temptation to use disproportionate amounts of force. The directive also established polygraphs to certify a soldier’s HR history. It became mandatory for promotion to the rank of lieutenant colonel and above.<sup>406</sup>

Table 8. Chronological Development of Use of Force Manuals and Directives of the Colombian Armed Forces.

2007	<i>Directiva Permanente</i> (ROE for the armed forces to comply with LOAC and HR law)
2007	Ministry of National Defense, Comprehensive Human Rights and IHL Policy
2007	Disposición 012 – ROE for the Armed Forces ( <i>Reglas de Enfrentamiento para las Fuerzas Armadas</i> )
2008	Integrated Policy of Human Rights and IHL ( <i>Política Integral de Derechos Humanos y Derecho Internacional Humanitaria</i> [DIH]).
2009	Armed Forces Operational Law Manual ( <i>Manual de Derecho Operacional Fuerzas Militares</i> ) 3-41, issued 7 December 2009.
2013	Pérez, Alma. <i>Estrategia Nacional Para La Garantía de los Derechos Humanos 2014–2034</i> . Colombia: Programa Presidencial de Derechos Humanos y DIH, 2013.
2015	Operational Law Manual for the Armed Forces ( <i>Manual de Derecho Operacional para las Fuerzas Militares</i> ) Second edition (FFMM 3-41)
2017	Land Operations Rights ( <i>Derecho Operacional Terrestre</i> , MFE 6-27)
2017	Minister of National Defense, Integrated Policy of Human Rights and International Humanitarian Law, 2017-2020 ( <i>Política Integral de Derechos Humanos y Derecho Internacional Humanitario</i> ).
2019	ROE ( <i>Reglas de Enfrentamiento</i> ) pocket card (for LOAC and Human Rights conditions) (Disposición 002)

Additionally, the Minister's Directive 25 (2008) created a system for receiving citizen complaints of HR violations that included HR complaint offices in each military unit and a national toll free number for lodging complaints. It established a system that ensured the complaints are recognized by civilian judicial authorities and that the inspector general was informed so that proper administrative and disciplinary measures could be taken.<sup>407</sup>

In 2008, the MOD published two additional important documents: The Comprehensive Human Rights and International Humanitarian Law Policies of the Ministry of Defense, and then in 2009, the Operational Law Handbook for the Armed Forces.<sup>408</sup> The Operational Law Handbook in particular was an extremely important document. Publicly announced on 7 December 2009 by Commanding General of the Armed Forces General Fredy Padilla de León,<sup>409</sup> it was directed at military commanders at all levels, operational legal advisors and legal practitioners, regular and military law enforcement and defense lawyers. Its purpose was twofold. First, to provide the tools necessary to help members of the Armed Forces ensure the legality of operations. And second, provide operational doctrine for the conduct of military operations in accordance with national and international standards.<sup>410</sup>

The MOD's response to the extrajudicial executions at Soacha and elsewhere in Colombia was to promulgate new directives to ensure the protection of civilians and vulnerable populations. The minister called the scandal a "nightmare" and, on 23 September 2008, organized a commission to examine what had occurred and to recommend appropriate administrative and operational measures. The decision to prosecute the soldiers involved was extremely unpopular, he said, but such decisions "ultimately helped restore legitimacy to the armed forces and contributed to increasing their credibility among the Colombian people."<sup>411</sup>

On 20 November 2008, the commanding general of the armed forces issued Directive 208 which consisted of 15 directives that included new initiatives on instruction, doctrine, intelligence, operations, administrative control and discipline, planning, command responsibility, cooperation with judicial authorities and response to complaints from the public.<sup>412</sup>

To implement some of the 15 directives, the minister of defense established partnerships with academic institutions, civil society and international organizations. With the Pontifical Xavierian University, for example, the ministry's representatives worked to design a single teaching model on HR and the LOAC and, in addition, created instructor guidelines in the

process. The minister of defense also worked closely with the ICRC and the UN High Commissioner for Human Rights office in Bogota to implement the 15 directives. The ICRC, for example, developed workshops with security officials to examine lessons learned from past HR violations.<sup>413</sup>

In 2011, the Colombian military produced two additional documents that contained guidelines for military personnel. On 25 May 2011, the general command of the military forces published Permanent Directive No. 019 of the National Police and on 25 August 2011 published Permanent Directive No. 070. These two instructions implemented a number of measures taken to combat impunity to include (1) measures of support for judicial authorities; (2) measures of strengthening discipline and control within the armed forces; and, (3) evaluation measures for policy formulation on prevention and guarantees of the right to a defense and due process.

### **What Compelled the Colombian Military to Reform its Use of Force Policy?**

This is a critical question that may help guide policymakers in other countries that are dealing with similar circumstances. To some degree, every Latin American military combating violent criminal organizations faces similar challenges associated with the blurred battlefields in the region. In Colombia, there was no single catalyst that prompted the concerted and wide-ranging reforms launched in 2006, rather, it was a combination of factors that resulted in the reforms.

First and most importantly, foreign political pressure (particularly from the United States and European Union) leveled immense pressure on the Colombian government and threatened to cut off aid because of HR violations. The United States had decertified Colombia for aid in 1996 and the passage of the Leahy Law in 1997 placed additional conditions on foreign assistance. The United States only provided a fraction of the total expenditures from Plan Colombia (an estimated 7–10 percent) but the equipment, technology, and training provided by the United States was essential to improving the military capacity of the Colombian armed forces. Without it, Colombia would not have been able to transform its forces to the degree it eventually did. Similarly, the European Union, UN, and OAS also brought intense pressure to compel the Colombian government to professionalize its military forces.<sup>414</sup>

Second, the Colombian military also realized there were other non-combat missions (called *factores de estabilidad*, translated means “stability factors”) of the Colombian military that did not involve armed conflict and that required a different doctrine on the use of force.<sup>415</sup> The missions of the Colombian armed forces, traditionally focused on defense tasks such as protection of sovereign territory and the borders, were more frequently drawn toward disaster relief, internal security, and citizen security.<sup>416</sup> In these conditions, no armed conflict existed and subsequently it was inappropriate to apply aggressive combat tactics to these situations.

Third, non-state organizations from the international community and from civil society also had influential roles to play as unofficial advisors to the Colombian military. In particular, the ICRC had an important advisory role in Colombia. Their recommendations, private and internal to the armed forces, persuaded Colombian military leaders that reforms were possible and necessary. ICRC representatives who were experts on use of force reforms provided important guidance on how to develop and implement the changes. In contrast, HR NGOs such as Human Rights Watch, Amnesty International, and the WOLA provided extensive in-depth reporting on the professional shortcomings of the Colombian military. These complaints generated a lot of bad press for the Colombian security forces. Both the U.S. Department of State and the UN have close collaborative efforts with HR NGOs and use NGO reports to generate their annual country reports on HR and for its universal periodic review process, respectively. The negative attention compelled the Colombian military to launch reforms.

Fourth, credit for the internal reforms should also go to progressive military officers within the ranks of the Colombian military. As the armed forces upgraded their capacities in the early 2000s, there was an impetus to match the weapons and technology improvements with doctrinal changes. At least part of the motivation for these progressively-minded military leaders was to avoid repetition of the errors and atrocities previously committed by Colombian soldiers. But, not all of their motivation was strictly benevolent; the number of Colombian officers thrown in jail was also undoubtedly an incentive for reforms. Regardless, the officers recognized that their troops had to know the process of decision-making during confrontations and understand the differences in the use of force against OAGs like the FARC and ELN and against suspected criminals. Emphasis was placed on constitutional authorities of the military, the obligation to protect HR of Colombian citizens, and

the norms and values of the armed forces. The new doctrine was codified in manuals and military school curriculums. The debate reportedly generated heated discussions between two factions within the military: senior officers who wanted to rely on traditional military firepower and tactics against insurgents and those who wanted to focus on building public legitimacy and providing protection of the population as the principal mission of the Colombian military.

Last, according to Colombian military personnel interviewed for this project, U.S. military advisors (specifically SOUTHCOM and U.S. Special Forces personnel) shared their own experiences and doctrines during training sessions with Colombian counterparts. U.S. soldiers reportedly interspersed tactical training with rules on the use of force in order to elevate awareness of basic principles of warfare such as proportionality, humanity, moderation, and distinction. Senior U.S. officers conveyed their own experiences to Colombian senior officials during official visits. Particular emphasis was placed on the importance of winning popular support and legitimacy as the center of gravity.

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*U.S. soldiers reportedly interspersed tactical training with rules on the use of force in order to elevate awareness of basic principles of warfare such as proportionality, humanity, moderation, and distinction.*

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According to Colombian officials, lessons from the U.S. experience in Vietnam were frequently cited by U.S. personnel.

### **Use of Force Doctrine in Colombia: Navigating the Blurred Lines Between LOAC and HR Law**

By 2006, the Colombian military forces had recognized the importance of respect for HR as a tactical and strategic imperative. But operationalizing HR—that is, putting the rules into an operational context that could be understood and implemented by young soldiers—was entirely another challenge. The government struggled with how to distinguish between ROE for armed conflict conditions and with law enforcement techniques more suitable for working with Colombian civilians. Insurgents from the FARC, ELN, and paramilitary groups wore uniforms, armbands, and their trademark black boots making them easy to distinguish from non-combatants. But as the Colombian military offensive rolled back the rebel advances in the

early 2000s, the militants frequently shed their uniforms and began wearing only civilian clothes, making the distinction between the insurgents and the civilians nearly impossible.

In the late 1990s, nearly 80 percent of the Colombian military consisted of conscripts. Young men were required to complete 18–24 months of obligatory military service in accordance with national law. Obligatory military service remains a national requirement to this day. Conscripts who have limited education (often those who do not complete a secondary high school-equivalent program) are normally assigned garrison duties for 12–18 months that involve menial labor at a military base near their homes. This group is referred to as peasant soldiers (*soldados campesinos* in Spanish). Many of these recruits receive only about \$50 per month in salary. Conscripts who completed a high school-equivalent are called regular soldiers (*soldados regulares*), serve 12 months of duty, and are often given specialty assignments. The remainder of soldiers (about 20 percent of the force in the late 1990s) were normally volunteers who may choose to pursue a career in the armed forces.<sup>417</sup>

From a military use of force perspective, this is significant because it means that young Colombian soldiers with a limited education are being asked to conduct dangerous operations in a complex operating environment. They have to understand the ROE and differences between the conduct of hostilities paradigm and the law of enforcement paradigm.

Colombia military officials realized it was very difficult to train their young soldiers to switch back and forth between LOAC and law enforcement rules. Using LOAC rules during routine patrols might result in inappropriate uses of force. But limiting the soldiers to law enforcement rules during encounters with the FARC and other armed groups heightened the risks for the soldiers. A hybrid doctrine that included both sets of rules was required.

The Colombian military believes that HR laws apply during conflicts. In other words, the government doesn't believe that *lex specialis* is sufficient to provide adequate protections for civilians. In 2008, the Vice Minister of Defense Sergio Jaramillo said, "We regard IHL as *lex specialis* to human right law in those situations where, mainly because of the level and organization of violence, you have to conduct offensive military operations. However, we have also said that we fully recognize that HR obligations remain in force."<sup>418</sup> Human rights protections exist at all times and are not suspended or superseded during armed conflict. Therefore, the Colombian military was obliged to apply LOAC and HR simultaneously. This is in contrast to the U.S. system



Figure 34. Colombian Police Special Forces, called Junglas, are nearly indistinguishable from their military counterparts. Both groups are trained in the LOAC and criminal law. Source: U.S. Southern Command

that treats LOAC as a transcendent legal doctrine. When compared to the United States, the Colombian military works almost exclusively internal to its own country. As a result, the Colombian military had to train its forces to use either LOAC or HR rules based on the situation or circumstances, not the geographic location.

The Colombian military believed two types of armed encounters with opponents were possible. First, when soldiers were operating in an area where encounters with armed groups was likely, they were permitted to use LOAC ROE during confrontations with these violent groups. Soldiers could use full military force, did not have to use EOF procedures, and did not have to give their opponents a chance to surrender. However, when soldiers were operating in an area in which hostilities with armed groups was unlikely and encounters were more likely with innocent civilians or criminals, they were required to follow peacetime law enforcement rules. Lethal force was permitted, but only after the soldiers attempted to use other nonlethal means and the range of options available through EOF procedures.<sup>419</sup>

In the 2009 operational manual,<sup>420</sup> the Colombian military introduced the concept of red and blue ROE cards to represent situations of armed conflicts and law enforcement, respectively. The pocket cards were meant to inform soldiers which rules—LOAC or law enforcement—were permitted based on the circumstances. Red cards—for hostilities against OAGs—permitted the soldier to fire against a legitimate military objective. The directed fire could not be indiscriminate; it had to be aimed at a specific target in a manner that

would not place civilians in undue risk. But that also meant that Colombian soldiers could fire on a leader of one of the OAGs if the person was positively identified without giving warning to the individual. For example, Colombian Special Forces surveilling a FARC camp could target the inhabitants of the camp with sniper rifles. Demobilizing or capturing the opponent was desirable but not required if it placed the soldiers in jeopardy. Use of deadly force was always permitted if the soldier's or other soldier's lives were at risk.

The blue card—for security operations that did not rise to the level of an encounter with armed groups—listed ROE law enforcement operations: lethal force was expected to be the last option, soldiers had to identify themselves and give verbal warnings to the opponent, and the amount of force had to be proportional to the threat. As with LOAC rules, deadly force was always permitted to protect soldiers from immediate danger.<sup>421</sup>

To explain these rules to the soldiers, military lawyers were assigned to almost every operational unit. The legal advisor (called *asesor jurídico operacional*) assisted the unit in the operational planning to include advising the soldiers on what ROE they were expected to operate. If encounters occurred, the military lawyers conducted an informal investigation to determine if the proper ROE were followed.

According to Colombian authorities, the red and blue ROE card system was difficult to implement. The blurred battlefields in Colombia were not conducive to a simple distinction between OAGs that permitted LOAC rules and criminal groups that required law enforcement tactics. On the streets and in the jungles of Colombia, members of the two groups were virtu-

ally indistinguishable. Additionally, Colombian officials realized, HR and LOAC rules existed simultaneously. It was not appropriate to treat one as present and the other as suspended. Soldiers had to

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*The blurred battlefields in Colombia were not conducive to a simple distinction between OAGs that permitted LOAC rules and criminal groups that required law enforcement tactics.*

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be able to reflexively recognize the circumstances based on the information available to them at the moment and then decide the appropriate form of response. The red and blue ROE card system was discontinued by 2012.

## OAGs in Colombia

The contemporary issue that still bedevils the Colombian military and police forces is how to confront the organized gangs and remnants of the FARC. The local colloquialism for criminal gangs is criminal bands (*bandas criminales* or BACRIM). As in other Latin American countries, drug trafficking is a lucrative opportunity for criminal elements in the country. For the better part of four decades, coca cultivation in Bolivia, Peru, and Colombia has been shipped to Colombian drug labs, processed into cocaine, and then transported to North American, European, and Asian markets. It is an immensely profitable enterprise, generating billions of dollars per year. In recent years, as Colombia has reduced aerial eradication of coca fields, the amount of coca has increased by 300 to 400 percent.

The contemporary opponents for Colombian security forces are heavily armed gangs that traffic in narcotics and arms. In a number of cases, these BACRIM have crossed the threshold to OAGs. They have sustained campaigns of violence and have reached a level of an organization that permits a military response by the government. Recall that, from a tactical and legal perspective, OAGs are those that have crossed a certain threshold of organization and violence. These criteria are established by the *Geneva Conventions and Additional Protocols*. If a criminal group has reached those levels, the government can respond with military firepower.

The Colombian government must distinguish between a number of groups in order to determine what legal and military authorities they can bring to bear. The first type, an OAG (*grupo armado organizado*), has met the organizational and level of violence criteria per the definition provided in the *Geneva Conventions and Additional Protocols*. Military force and LOAC rules are permitted against these groups. The second type, armed criminal group (*grupo armado criminal* or GAC), have not crossed the threshold of an OAG, but conduct serious crimes such kidnapping and extortion. The third group, delinquency groups (*grupo organizado delincuencia* or GDO) are those involved with drug trafficking and lower level crimes.<sup>422</sup> Law enforcement rules as determined by HR standards are appropriate against the latter two groups.

In Colombia, there are currently five OAGs: (1) residual members of the FARC who have not demobilized, (2) ELN, and three criminal gangs, the (3) *Los Pelusos*, (4) *Caparrapos*, and (5) *Clan de Golfo*. These are the only OAGs

that exist in all of Latin America and therefore the only instances in which military firepower can be used in accordance with LOAC rules. In theory and in accordance with legal doctrine, all other militaries should be using criminal law and HR tactics.<sup>423</sup>

The FARC reached the peak of its power in the early 2000s. It was one of the largest rebel armies to ever take up arms against a government with an estimated 16,500 men and women in arms that moved around the countryside in large troop formations. In the early 2000s, they were estimated to control nearly half of the Colombian territory, primarily in rural areas of the Colombian jungle and cordillera. They had territorial control of 42,000 square kilometers near San Vicente del Caguán, offered to them as a gesture of reconciliation by President Pastrana. They carried their assault rifles openly, wore uniforms and distinguishing insignia, established its own “humanitarian law statutes” that resembled IHL, and held periodic summits for its leadership. Violations of the group’s *directivas* were reviewed by FARC leadership much like the codes of military justice in many developed armed forces. Perpetrators found guilty could be punished with fines, demotions in rank, or, in the most extreme cases, death. The group had a semi-rigid command and control hierarchy with members organized into regional Fronts and Blocs, all of whom answered to a Secretariat of the FARC high command. It also had spokespersons who represented its interests in the international community. Many of these characteristics indicate that the group met the criteria of an OAG.

Following the November 2016 peace accord with the Colombian government, the FARC declared it was no longer an armed group in June 2017 and turned its weapons over to UN armistice observers. However, an estimated 2,500 FARC dissidents have refused to abide by the peace accords and continue to conduct illegal economic activities such as drug trafficking and extortion. Others have abandoned the 2016 peace accords, claiming that the government has “betrayed” its part of the armistice. Some have formed small criminal groups, made alliances with the ELN, or joined existing BACRIM groups. According to government assessments, they retain the ability to strike government security forces as they resist coca eradication efforts and protect trafficking corridors.

The ELN is a U.S. Department of State designated FTO and has been considered the smaller of the two main groups in Colombia (after the FARC). At its peak in the mid-1990s, the group had an estimated 5,000 fighters. As of

early 2020, the group is estimated to have 1,500–3,000 members. They agreed to a truce in 2018 with the Colombian government but the truce was broken when the ELN exploded a car bomb at the General Santander National Police Academy in Bogota in January 2019. The attack killed 21 people and injured 68 others. It was the deadliest terrorist attack on the Colombian capital since the 2003 El Noyal club bombing.

The three other OAGs—*Los Pelusos*, *Caparrapos*, and *Clan de Golfo*—stand out from other criminal factions in Colombia in their number of fighters, armament, and control of drug trafficking territory. *Los Pelusos* is a splinter faction of the Popular Liberation Army (*Ejército Popular de Liberación*) that disbanded in 1991. It retains only a small number of fighters but controls a powerful criminal enterprise in the Catatumbo region of Norte de Santander department along the Colombia and Venezuelan border.

The *Caparrapos* are another dangerous criminal group in northern Colombia. They operate extensively in the Antioquia and Cordoba departments that border the Caribbean coast and provide easy access to narcotics shipping lanes that move along the Central American littorals. Members of the group were originally part of the Colombian Self-Defense Forces (*Autodefensas Unidas de Colombia*) organized by Vicente and Fidel Castaño to protect wealthy Colombian landowners from guerrilla attacks.

The *Clan de Golfo* is the third powerful criminal gang that has the organizational capacity and level of sustained violence to qualify as an OAG. The group is also known as *Los Urabeños* because they operated along the highly prized Gulf of Urabá at the junction of Panama and Colombia (they are referred to as the *Clan de Golfo* by government forces). The geography in that region is heavy jungle with remote stretches of beaches and shoreline, ideal for shipping drugs north toward Central America and Mexico. The leadership of the *Clan de Golfo* was decimated by Operations Agamemnon I and II in 2015 and 2017 but it remains in control of the very lucrative territory in the north of the Antioquia department. According to Insight Crime, it has “criminalized” Urabá by employing most of the townspeople and even indigenous tribes in the area in its illicit trafficking efforts making infiltration by security forces very difficult.<sup>424</sup>

To complicate the security situation in Colombia even further, the loyalties and alliances between these groups are constantly shifting, making intelligence collection and targeting very difficult. The *Caparrapos*, for example, aligned with *Clan de Golfo*, the same group that they used to fight against

when serving as paramilitaries. However, they broke ranks with *Clan de Golfo* in 2017 as the two groups competed for trafficking areas around Medellín that had been abandoned by the demobilized FARC.

Colombia ratified Additional Protocol II in 1995 and soon after President Samper admitted that Colombian security forces were bound by LOAC rules to combat illegal armed groups in the country. Despite that, the Colombian government (like most countries) is normally reluctant to admit they have a serious internal security problem with organized gangs because it reflects poorly on the ability of the government to maintain law and order within its borders. Additionally, admitting a criminal faction has enough of a level of organization and firepower to meet the requirements of an OAG also bestows a sense of legitimacy for the group. For these reasons, the Colombian government does not prefer to use the term armed conflict. Rather, they refer to the fight against OAGs as armed confrontations or hostilities. Samper's successor, President Pastrana, was reluctant to admit Colombia was in the midst of an armed conflict. President Uribe (2002–2010) famously refused to admit that the FARC and other groups were OAGs because he believed it gave them a form of political legitimacy on the group and tacitly acknowledged political problems within the country. Uribe preferred to call them terrorists and common criminals. However, in 2007, the MOD passed *Directiva Permanente* number 10 that stated Additional Protocol II and Common Article 3 were applicable in the Colombian conflict, thereby tacitly acknowledging that the country was in the midst of an armed conflict against OAGs. Uribe's successor, President Juan Manuel Santos (2010–2018), recognized the FARC as an OAG and publicly acknowledged that the security forces would use LOAC tactics to combat them.<sup>425</sup>

The Colombian National Security Council, with input from other intelligence and military organizations, makes a determination which of the many gangs and drug trafficking groups within the country fit the criteria of an OAG. The ICRC, as a trusted advisory body, also provides recommendations and analysis to Colombian authorities.

## **Conclusion: The Modern Colombian Military**

Until about 2006, the COLAR was widely perceived to use indiscriminate and excessive force in operations against insurgents.<sup>426</sup> Declassified U.S. embassy cables and U.S. State Department Human Rights reports reported

frequent tacit collusion with paramilitary forces in joint operations against the FARC and other guerrilla groups.<sup>427</sup> NGOs like Human Rights Watch and Amnesty International published detailed reports alleging that elements within the Colombian military and police collaborated with illegal paramilitary groups.

Even President Juan Manuel Santos admitted that the military has made mistakes. On July 23, 2013 at the Constitutional Court, Santos admitted the government “has been responsible ... for serious HR violations and breaches of international humanitarian law.”<sup>428</sup> The Center for Historical Memory, in its 2013 report on the conflict, reported that the military is responsible for approximately 10 percent of the homicides and massacres in the conflict.<sup>429</sup> There are an estimated 5,000 military officers and soldiers under criminal investigation and about 1,000 of them have already been convicted of serious crimes that resulted in jail sentences of 20–50 years in prison, according to one Colombian senior officer. As he puts it, “Colombian military officers really know the legal cost of not knowing which paradigm they’re involved with at the time (hostilities or law enforcement).”<sup>430</sup>

However, beginning in 2006, the Colombian military began a massive effort to reorient and professionalize its military forces, particularly with regard to the use of force rules. Colombia (not unlike most of its South American neighbors) uses its armed forces internally to combat violent gangs and organized crime groups. It is fighting groups like the ELN and the *Caparrapos* with military firepower while at the same time attempting to protect the inherent rights of Colombian citizens.

Today, the Colombian armed forces enjoy some of the highest public approval ratings of any military institution in the world. Perpetrators were forced out of the armed forces. Civilian casualties decreased significantly and public support and confidence of the Colombian armed forces increased to historical levels. Since 2008, complaints against security force personnel have seen a sharp decrease. Juan Carlos Pinzon, the Colombian minister of defense from 2011 to 2015, said HR “represented the minimum baseline of legitimacy” of the Colombian armed forces.<sup>431</sup> The office of the president has a HR office that oversees policy and compliance across the government. The military has established mandatory LOAC and HR training for all Service members, from cadets to generals. It has constructed schoolhouses with robust curriculums on the use of force rules. The MOD established an office led by a 2-star general to oversee LOAC and HR policy and compliance. In

addition, each Service has a stand-alone office to guide the implementation of LOAC and HR issues within the branch.

Implementing the hybrid doctrine has not been without its difficulties. In May 2019, the head of the COLAR received an immense amount of criticism when he ordered his forces to get more aggressive in order to kill criminals and militants, even at the cost of higher civilian casualties. The alleged incident occurred in January 2019 when COLAR Commander Major General Nicacio Martinez met with 50 senior Army commanders near Bogota and ordered them to “double their numbers” of kills, captures, and surrenders, according to the *New York Times* reporting.<sup>432</sup> The orders also instructed commanders to “not demand perfection” when conducting operations but to “accept risk of civilian casualties by 60–70 per cent exactitude.” For many Colombians, the announcement hearkened to the *falsos positivos* scandal of ten years earlier. Unnecessary civilian casualties are not something any professional commander condones but being aggressive against a violent enemy is the objective of every military in the world. The dilemma faced in Colombia, as well as many Latin American nations under similar security predicaments, is how to use the right amount of force to defeat a well-armed violent opponent while simultaneously protecting the civilian population they are sworn to defend. The public outcry from the January 2019 incident refused to subside and in December of that year COLAR Commander Martinez was forced to resign.<sup>433</sup>

Distinguishing between members of the OAGs and civilians has not been easy and tactical errors continue to occur on the Colombian blurred battlefields. In August 2019, Colombian Air Force jets bombed the camp of a dissident FARC leader in Caquetá, one who had refused to adhere to the 2016 peace accords and demobilization orders. The government declared the operation a success, stating that “14 criminals had been killed in a combat operation.” However, it was later learned that eight children were among those killed. Moreover, Colombian military units were reportedly warned by civil society groups that the FARC dissidents were forcibly recruiting children to work in their camps. Still under pressure from the May 2019 allegations that the COLAR encouraged excessive force, Colombian Minister of Defense Guillermo Botero resigned his position, an embarrassing setback for military professionalism in the country.

Despite these setbacks, even U.S. observers are astonished at the success the Colombian government has had in professionalizing its forces. One senior

Pentagon official said, the vastly improved professionalism and capability of the Colombian armed forces and police had led to “impressive gains in extending legitimate state authority to more areas of the country, reducing levels of violence and HR abuses, countering the influence of the insurgents and paramilitaries, and promoting the rule of law.”<sup>434</sup> The improved professionalism of the Colombia military has earned its forces accolades outside the hemisphere also. In May 2018, Colombia joined NATO as a “global partner,” making it the only Latin American nation in the alliance. This designation puts Colombia in a league with other important non-NATO countries such as Australia, Japan, South Korea, and New Zealand.

The operational conditions in Colombia are an example of the challenges of the hybridization of modern warfare. After some serious implementation challenges and a long road of recognition on what was required, Colombia has managed to produce a hybrid doctrine that uses LOAC tactics against OAGs like the ELN and *Los Pelusos* but at the same time has operationalized HR tactics when dealing with civilians and criminals who are not part of OAGs. However, it is a long and arduous process, requiring 20 years of orientation and education to change the culture and philosophy of a massive organization like the Colombian armed forces.

Perhaps the best measure of effectiveness of the Colombian armed forces comes from what they have not done. On 17 July 2012, in Toribio, Colombia, a small community in the southwest of the country, indigenous protesters from the Nasa Tribe who sought to “demilitarize” the area from both government security forces and leftist insurgents confronted a COLAR unit assigned to guard a hillside communications station. Armed with only clubs, the protesters surrounded the station and demanded the Colombian soldiers leave the area. The Army soldier in charge of the installation, an NCO, facing a decision to fire on the protesters in order to protect the installation, ordered his men not to use force to repel the protesters. Photographers captured the moment as the protesters physically carried the struggling soldiers from the installation. The event made front-page headlines in Colombia and throughout Latin America.<sup>435</sup> Public support for the Colombian soldiers was widespread once the photos went public. The NCO was decorated by COLAR officials for showing restraint and avoiding a potential massacre.



## Chapter 9. The Blurred Battlefield in Mexico: The Armed Forces Confront Violent Drug Cartels

### Introduction

Since 2006, the Mexican armed forces have been fighting a violent campaign against drug trafficking cartels whom security experts agree are “the hemisphere’s largest, most sophisticated and violent organized criminal groups.”<sup>436</sup> The cartels are also considered to be the greatest crime threat to the United States, according to the annual U.S. Drug Enforcement Administration’s 2019 National Drug Threat Assessment.<sup>437</sup> The internal conflict in Mexico has resulted in 250,000 deaths and an estimated 60,000 disappeared citizens in the country.<sup>438</sup> Almost 340,000 Mexicans are internally displaced from their homes because of the fighting.<sup>439</sup> The violence is beyond the capacity of the Mexican police and, as a result, the Army and Marines have been deployed throughout the country to combat traffickers and organized crime groups. Despite intensive efforts by the Mexican military, the levels of homicide have increased nearly every single year since 2006; 2019 was the most violent year in Mexico since the military went on the offensive.<sup>440</sup>

This chapter of the manuscript examines how the Mexican government has navigated the blurred battlefield and legal grey areas of contemporary warfare against violent criminal factions within its country. The case study of Mexico may be the most severe example of the security threats that many countries face, particularly those in countries that are along the route of drug trafficking organizations (DTOs) that receive immense profits from their illicit activities. Despite the high levels of sustained bloodshed that have

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ravaged the country since 2006, none of the Mexican organized crime groups have been formally declared an OAG. Like its South American counterparts,

the Mexican military has struggled to develop a hybrid doctrine on the use of force—one that Mexican soldiers and Marines can employ when combatting violent criminals that operate among Mexican communities. As a result, the Mexican security forces are under immense pressure from internal watchdog organizations as well as international organizations to improve their training and doctrine on the use of force in these difficult operating conditions. The new Mexican National Guard, established in 2019, may be an important example of the types of hybrid responses to security challenges to which many countries may turn.

### **Economic and Demographic Indicators in Mexico**

Mexico is a country with enormous economic potential. It boasts the world's 15th largest economy with \$1.27 trillion in GDP, second highest in Latin America behind only Brazil. World class companies and banks operate throughout the country and the nation is home to eleven billionaires. It is also the world's 14th largest country by area. However, it also has a high level of inequality. Nearly 46 percent of the 129 million Mexicans live below the poverty line. Mexico is closely linked with its northern neighbor; over 37 million U.S. residents are of Mexican-American ancestry, a total of about 11 percent of the population in the United States. In addition, an estimated one million American citizens have settled in Mexico because of the affordable cost of living, comfortable climate, and the warm hospitality of Mexicans. In fact, according to one study of favorite overseas destinations for Americans, Mexico is ranked the third favorite stop for American expats.<sup>441</sup> Economically, it is the United States' third largest trading partner. From Mexico's perspective, it is heavily dependent on the United States; it exports 80 percent of all its goods to the United States, twenty-five times more than it does with its second largest trading partner, Canada.<sup>442</sup> The two countries share the most active border in the world. According to the U.S. CBP, nearly 500,000 vehicles cross the 1,954-mile U.S.-Mexican border each day.<sup>443</sup>

### **Brief History of Organized Crime in Mexico**

Mexico has had a long history of confrontations with DTOs. In the 1980s, Miguel Angel Felix Gallardo was considered the “godfather” of Mexican drug cartels. A former federal judicial police officer, Gallardo consolidated control over drug trafficking routes that moved Colombian cocaine and



Figure 35. Mexico is the world’s 14th largest nation by size and shares a nearly 2,000-mile long border with the United States. Photo by Shutterstock

marijuana through Mexico and into the United States. Mexican military and police officials were bribed to not interfere with his illegal activities. However, in 1985, he ran afoul of authorities when he had U.S. Drug Enforcement Agent Enrique “Kiki” Camarena brutally tortured and murdered for exposing some of his operations. On 8 April 1989, Gallardo was arrested and sentenced to a 37-year jail sentence. His drug trafficking empire, centered out of Guadalajara, was delegated to a number of his subordinates who were each assigned control over geographic *plazas*, or sectors, within the country. This fracturing of Gallardo’s Guadalajara drug trafficking business marked the birth of the Mexican cartels of Tijuana, Ciudad Juarez, Sonora, Sinaloa, and Tamaulipas, among others.

Much of Gallardo’s and other traffickers’ success was enabled by the tacit involvement of government officials who accepted bribes to ignore the drugs being shipped through the country. The Institutional Revolutionary Party (*Partido Revolucionario Institucional* in Spanish or (PRI) ruled Mexico for seven decades from 1930–2000 and is widely reported to have colluded with

organized crime groups. According to one scholar, the system was characterized by a “live and let live” working relationship between Mexican authorities and drug lords” through the 1990s.<sup>444</sup> In the 1990s, economic difficulties and political in-fighting started to erode public popularity for PRI leaders and, in the 2000 elections, the party lost its control of the Mexican Presidency. President Vicente Fox from the National Action Party (*Partido Acción Nacional* or PAN) was the first non-PRI president of Mexico in eight decades. As PRI officials left office, so did the Mexican government’s tolerance for organized crime.

The drug cartels that emerged from Gallardo’s arrest soon started competing among themselves for control of the trafficking routes. For example, the Sinaloa and the Zetas emerged as two rival factions controlling respectively the Pacific and Gulf of Mexico corridors through Mexico. Violence soon escalated, often only among cartel fighters. However, the absence of fire discipline—cartel hitmen frequently fired indiscriminately by spraying rounds at their opponents with little regard for innocent bystanders—meant that scores of Mexican civilians died in these *tiroteos* (shootouts).

Drug trafficking is the principal source of revenue for organized crime in Mexico.<sup>445</sup> While it is difficult to calculate the amount of profits in an illegal and clandestine industry, U.S. experts estimate that the drug industry from

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the Andean nations, to Central America and Mexico, to the markets in North America and Europe is worth between \$30 and \$60 billion. The cartels traffic primarily in cocaine, marijuana, methamphetamines, opioids, and heroin and large amounts of profits go into the pockets of Mexican criminals.<sup>446</sup> The Mexican cartels are estimated to earn from \$2.9 billion to \$6.2 billion for cocaine, \$324 million to \$736 million for heroin, \$3.9 billion to \$14.3 billion for marijuana, and \$794 million to \$1.9 billion for methamphetamine,

according to the National Drug Intelligence Center. This is an irresistible amount of money for a country in which 46 percent of the population lives below the poverty line.

Cartels also conduct extortion, kidnapping, pirated movies and music, prostitution, and kidnappings to fund their operations.<sup>447</sup> One of the latest criminal trends is fuel theft from petroleum company pipelines. Normally under cover of darkness, fuel thieves (called *huachicoleros* in Spanish) drill into pipelines and siphon off truckloads of fuel which is then sold on the black market. By 2018, the government was reporting over 40 pipeline intrusions per day, a crime spree that was costing oil companies losses of \$1.5 billion in stolen fuel and repair costs.<sup>448</sup>

## Mexican Military and Counter-drug Operations

The Mexican military has been periodically involved in drug eradication efforts, but never to the degree that it has since President Vicente Fox started taking action against criminal factions in 2000. He had the former president's brother, Raul Salinas, arrested on murder charges, threw his own drug czar General Rebollo in jail for colluding with drug traffickers, and ordered hundreds of soldiers into hot spots to quell the violence. However, Fox's military mobilization was nothing to that of President Felipe Calderon's 2006 offensive.

In 2006, shortly after assuming the presidency, President Felipe Calderon declared DTOs a national security threat and ordered the military to go on the offensive against the groups.<sup>449</sup> Over the course of the next three years, thousands of troops deployed to various parts of the country to root out traffickers and criminals and restore order to areas that had seen waves of violence. The first deployment of 6,700 troops was ordered to Michoacán in December 2006. The following month, thousands more were ordered to Baja California, Guerrero, Sinaloa, and Chihuahua. By 2008, nearly 50,000 Mexican soldiers and Marines had been deployed internally against violent DTOs. Critics contend this has led to a militarization of domestic law enforcement—a dangerous mission that the Mexican Army and Marines are not trained or indoctrinated to conduct. In total, the Mexican Army deployed about 23 percent of its forces around the country in counter-organized crime efforts.<sup>450</sup>

President Calderon's strategy was focused on arresting the leaders of the major cartels. If the *capos* were removed, the theory went, the cartels would collapse and the disorganized and leaderless remnants would be rounded up and imprisoned.

Ciudad Juarez on the border opposite El Paso, Texas, is an example of the type of law enforcement operation launched by the Mexican military. In 2007, murder rates in the city skyrocketed as cartels competed for control of the city and its lucrative drug market. On 27 March 2008, the government announced Joint Operation Chihuahua to restore order and security. In the first phase of the operation, 2,026 members of the armed forces were deployed along with 425 agents from the federal police and the federal Attorney General's Office. The military took control of the police stations in the city and began regular patrols through the streets, setting up checkpoints and vehicle searches at heavily trafficked intersections, conducting searches in bars and nightclubs, and launching operations against known cartel leaders. In June 2008, an additional 1,400 military troops were added to the 2,000 already present. In March 2009, 5,332 more soldiers were deployed to the city.<sup>451</sup>

At the same time, the government invested extensively in social and development programs designed to entice young Mexicans away from organized crime. For example, the government pledged \$270 million to improve schools, renovate hospitals, offer student breakfasts, establish a youth orchestra, provide anti-violence training, and open drug treatment centers. After two years, the situation in Ciudad Juarez stabilized and the government announced in April 2010 that security responsibilities were being turned over to 5,000 federal police. Most of the Mexican military was withdrawn from the city.<sup>452</sup>

Cartels throughout the country fought back against the government offensive, ambushing and killing five soldiers in Michoacán, kidnapping and murdering 10 others in Monterrey. In March 2008 in Oaxaca, they kidnapped and then decapitated a military intelligence officer.<sup>453</sup> In 2008, Édgar Eusebio Millán Gómez, commissioner of the federal police, was gunned down in his house in Mexico City.<sup>454</sup> In December 2009, after hundreds of Mexican Marines cornered *capo* Arturo Beltrán Leyva in a luxurious apartment in Cuernavaca just 50 miles south of Mexico City, the drug lord and his bodyguards put up a fierce fight with automatic rifles and hand grenades before eventually being killed. However, the kingpin's followers decided to exact their own kind of revenge. After a Mexican Marine who was killed in the assault was laid to rest at his funeral service, gunmen showed up at the house of his family and murdered his grieving mother, brother, sister, and

aunt.<sup>455</sup> In all, from 2006 to 2019, nearly 400 soldiers and Marines, as well as more than 4,000 Mexican police officers have died in the violence.

Sadly, Calderon's kingpin strategy had unforeseen consequences. Rather than disabling the cartels by taking out their leaders, the cartels fragmented, and violence surged as potential successors to the lucrative drug trade fought to take over cartel operations and areas of control. Other cartels also saw the dismantling of their opponents as an opportunity to seize control of more drug corridors and *plazas*. In 2007, as cartel gunmen fought it out in places like Ciudad Juarez and Michoacán, the homicide rate in the country rose. Combined with aggressive military operations, the levels of violence increased every year during Calderon's *sexenio* (six-year term of office).<sup>456</sup>

The cartels proved to have a nearly unlimited number of foot soldiers, in part because of Mexico's levels of poverty, the willingness of fired police officers to join cartel ranks, high rates of desertion by military personnel who also turn to criminal activities, as well as the extensive population of disenfranchised youth. Euphemistically referred to as *ni-nis* because they have neither education nor employment (*ni educación, ni empleo*, in Spanish), there are hundreds of thousands of Mexican youth between the ages of 15–20 who have not graduated from high school and have minimal future prospects in the formal economy sector. Two of every five kids in Mexico do not go to school.<sup>457</sup> As a result, many of these Mexican youth will turn to organized crime for the income or perceived prestige.

In early 2011, during his last year as president, Calderon subtly shifted strategy to a “destruction” strategy rather than a “decapitation” strategy. Nearly 34,000 Mexicans had died in his first four years as president. Rather than focusing nearly exclusively on the eliminating the leaders of the cartels, the Mexican military now attempted to dismantle the entire operational structure of the crime groups.

### **Peña Nieto Strategy**

In July 2011, President Enrique Peña Nieto was elected to succeed Calderon. In light of the increasing levels of violence during the previous six years, the new president ran on a campaign of violence reduction and respect for HR rather than cartel decapitation. He promised to address the underlying issues of the violence to include police reform, improving the efficiency of government institutions, and combatting corruption.<sup>458</sup> Of note, President Peña Nieto hired the former head of the CNP, General Oscar Naranjo Trujillo,

to serve as his security advisor. Trujillo was widely credited for improving professionalism of the CNP under similar circumstances as that of Mexico.

According to Peña Nieto's National Security Strategy 2014–2018, the Mexican armed forces made four specific contributions to internal security: (1) operations to reduce violence, (2) eradication of narcotics and drugs, (3) interception of the trafficking of arms, drugs, and humans, and (4) protection of national security assets and critical infrastructure.<sup>459</sup>

In order to take the military off the street, Peña Nieto also promised to establish a hybrid force of Gendarmerie, essentially militarized police who had the armament and doctrine to confront well-armed cartels. Peña Nieto's vision was to build a professional 40,000-person militarized police force (the *Gendarmería Nacional*) under the auspices of the federal police. According to the Milenio newspaper, the requirements for acceptance into the force were high; only four percent of the applicants were accepted for training due to justifiably high standards. Those that did make the cut were eligible for salaries 40 percent greater than normal federal police incomes.<sup>460</sup>

Political obstacles to creating the force proved to be a far greater challenge than originally expected and by 2016 the *Gendarmerie Nacional* had faded from the security landscape.

## Mexican Military Strategy

In Mexico, the responsibility of the armed forces is divided into 12 military regions, each encompassing two-thirds of the 32 Mexican states. Within those regions, there are 44 smaller military zones. The Mexican Army is the largest of the Services with nearly 200,000 soldiers and, along with the Air Force, falls under the authority of the Secretary of National Defense (*Secretario de la Defensa Nacional* or SEDENA). The Mexican Navy is under the operational authority of the Secretary of the Navy (*Secretario de la Marina* or SEMAR). Unlike most Latin American countries in which the armed forces are under the supervision of a civilian MOD, the Mexican system has two military MOD-equivalents with the SEDENA and SEMAR. Both *Secretarios* are active-duty 3-star officers who have cabinet-level rank and directly advise the president on military matters.<sup>461</sup> The head of the Mexican Air Force is a 3-star general who reports directly to SEDENA. The head of the Mexican Marines is a two-star admiral who reports to SEMAR.<sup>462</sup>

- Defend the integrity, independence, and sovereignty of the nation.
- Guarantee internal security and social order.
- Assist the civilian population in case of public needs.
- Carry out civic actions and social works that contribute to national development.
- In case of natural disasters, provide assistance to restore order, provide humanitarian assistance to Mexican citizens and their property, and conduct reconstruction of the affected areas.

Figure 36. Missions of the Mexican Armed Forces. Source: Mexican Constitution and Organic Law of the Mexican Army and Air Force (2012).

As is the case with the majority of Latin American militaries, the Mexican armed forces are primarily tasked to defend the nation's sovereign territory from outside intervention and respond in the event of natural disasters. However, the 1917 Constitution places relatively severe restrictions upon the military and its ability to participate in roles that most other Latin American militaries have embraced. For example, the military is forbidden to participate in international military exercises<sup>463</sup> and does not send its forces to conduct peacekeeping operations on behalf of the UN, opportunities that most Latin American countries see as chances to improve military professionalism, receive UN funding for military operational enhancement, and interact with other professional militaries while simultaneously contributing to international conflict resolution efforts. Mexico does not face any external enemies and for that reason, much of the Mexican military focus is on internal security missions, almost completely opposite that of the national defense strategy of U.S. military forces.

According to Mexican officials interviewed for this monograph, soldiers receive training on the use of force and understand the distinctions between LOAC and domestic law enforcement. Mexican officials from new recruits to general officers are trained on concepts like respect for HR, the gradual EOF and the principles of the humanity, distinction, moderation, and necessity. In addition, they are trained on both

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soldier and police tactics, with special emphasis on decision-making that allows the individual to rapidly assess the situation and determine which tactics are most appropriate for the circumstances.<sup>464</sup>

However, most soldiers are not normally issued nonlethal weapons. As a result, they may have limited options to use EOFs tactics if they suddenly find themselves in a situation that rises to the level of lethal force, but at the same time the soldier has to use some level of physical force to protect himself or others. Mexican soldiers do not normally have an opportunity to train using scenarios—like the *pistas de entrenamiento* in Colombia or the mock towns at the U.S. National Training Center—to test their responses in realistic, real-world simulations.

In light of those limitations, the Mexican military has missed a number of opportunities to modernize its forces and, most importantly, expose its very capable officer corps to doctrine and tactics that reflect the complexity of contemporary security operations. Consequently, the Mexican military is only semi-modernized when compared to other Latin American counterparts like Colombia, Brazil, and Chile. U.S. diplomats, in candid cables from the embassy in Mexico City, expressed grave reservations about the capacity of the Mexican military to take on massive internal security operations. One report called the Mexican Army “slow, clumsy, and no match for sophisticated narco-traffickers.” Another described the Army as “bureaucratic, parochial, outdated, and unfit to combat DTOs.”<sup>465</sup> As a result, the Mexican military’s involvement in internal security operations normally reserved for police units, not surprisingly, has received an immense number of complaints for excessive use of force, torture of detainees, and extrajudicial executions.

The military has not only had to launch operations against violent cartels, but also has had to absorb a number of other missions that the police can no longer be trusted to carry out. Since 2006, the Mexican armed forces have been assigned as prison guards, customs officials, air and seaport security, protecting migrant groups, and even election ballot duties.<sup>466</sup> The military has had little training in these unconventional missions and relies upon its resourcefulness and tenacity as an organization to figure it out. Additionally, because many of the police units have been co-opted by drug cartels, senior military officials—not police officials—have been assigned as state and municipal security chiefs. For example, of the 12 governors elected in 2010, seven selected a senior military officer as a more trustworthy and less

corruptible security chief than a police counterpart. By 2012, more than 35 senior officers were filling these positions across Mexico.<sup>467</sup>

## Mexican Police

In many cases, Mexico's police are part of the problem of the rampant insecurity in the country. There are three levels of police forces in Mexico: municipal, state, and federal. In total, there are about 1,800 police departments in the country<sup>468</sup> and about 85 percent of all Mexican police work in municipal or state jobs, areas that are often under the pressure and intimidation tactics of cartels. The average wage of a municipal police officer is about \$420 per month although some are paid as little as \$120 monthly. State police officers make a bit more, about \$500 per month.<sup>469</sup> In light of such meager wages, lucrative bribes offered by cartel leaders are an almost irresistible temptation. As a result, more than 14,000 municipal police (of about 134,000 in the country) failed vetting exams designed to determine if they were involved in illegal activities. Another 17,000 Mexican state police also failed.<sup>470</sup>

Subsequently, widespread evidence exists that the Mexican police are colluding with criminal cartels. Government officials have been forced to conduct extensive police purges to rid the police forces of corrupt officials. For example, in 1996, the Mexican attorney general's office fired over 700 officers from the Federal Judicial Police forces because of alleged connections to DTOs. In Tijuana in 2009 the new military police chief fired 660 police officials that evidence indicated were working for the cartels. Chihuahua, one of the Mexican state's hardest hit by violence in the early stages of the Calderon offensive, saw an estimated 1,800 policemen, almost 50 percent of the police force, either fired or arrested.<sup>471</sup> In 2012, the Mexican Army arrested 106 policemen in Monterrey who were working as lookouts and collaborators for cartels.<sup>472</sup>

The Mexican military also has had frequent confrontations with crooked cops who doubled as enforcers for drug cartels. In April 2008, for example, police and soldiers exchanged gunfire in Ciudad Juarez after a police car tried to flee from a checkpoint. Later that same month in Monterrey police tried to prevent the arrest of a local trafficker by Mexican soldiers. Ten police were injured in the ensuing firefight. In August 2008 in Monterrey, police again tried to come to the rescue of local cartel leader who was being arrested by the Army. One police officer was shot and three others arrested.<sup>473</sup>

For these reasons, there is little public confidence in the Mexican police.<sup>474</sup> As a result, it is likely that some crimes go unreported for fear that police may extort payments from victims or spur revenge attacks when police alert the criminals that civilians are contacting authorities. One report estimated that authorities are only contacted for 15 percent of crimes mainly because of the lack of public confidence in the police and justice system.<sup>475</sup> In one egregious example that generated international attention, police detained 43 students from the Ayotzinapa Rural Teachers College in Iguala, Mexico, during a protest in September 2014. The students were turned over to a local cartel, Guerreros Unidos, who murdered the 43 students, burnt and then disposed of their bodies in a river. Forty-four police officers including the police chief were arrested. The mass murder of the students was the biggest scandal in the six year term of President Peña Nieto.

### **An Armed Conflict for Soldiers or a Criminal Matter for the Police?**

The violent groups in Mexico use horrific and grisly acts of terror to intimidate opponents. Mutilated bodies are hung from bridges, dismembered corpses are discovered on remote stretches of highway, the heads of decapitated victims are rolled onto the dance floors of nightclub, and warnings are carved into the cadavers of victims. Hundreds of mass graves have been found around the country and, according to official records, some 60,000 Mexicans are unaccounted for.<sup>476</sup> Gunmen have murdered scores of politicians who were in office or running for office including 114 candidates or politicians killed in the election season that ran from September 2017 to June 2018. In most cases, these were political candidates who had vowed to fight against cartels and organized crime and were murdered because they posed a threat to the cartel profits or freedom of action.<sup>477</sup>

Despite the extreme levels of violence, the Mexican government does not recognize the violent cartels as OAG that permit the use of military firepower and LOAC tactics. Instead, groups like the Sinaloa cartel, the Zetas, and the Cartel Jalisco-New Generation are considered common criminals that should be prosecuted by the police and through civil law enforcement measures.<sup>478</sup>

Most legal experts agree, the conflict has not risen to the level of an armed conflict per the definition of the term. Of the two criteria for an OAG, a threshold of violence and a level of organization, it seems clear to most

observers that the measure of sustained violence in Mexico has reached an unacceptable level and that the criteria for a threshold of violence has been surpassed.

However, the debate regarding the level of organization of the cartels is more complicated. Cartels and traffickers do not normally have sustained control of territory. There are vicious and frequent fights over territory between cartels to control the trafficking corridors but once one gang establishes control, the fighting ebbs and criminals blend back into the populace.

In addition, cartels are generally not cohesive or heavily centralized criminal groups. Rather, they consist of loosely organized, semiautonomous networks of operatives that conduct a vast array of tasks such as security, logistics, financiers, lookouts, informants, bookkeepers, and *sicarios* (hit men or assassins). Additionally, the main cartels depend upon a vast network of smaller traffickers and local criminals who help move the illicit product through their territory and are compensated by the main criminal faction. The entire organization is decentralized with authority resting with the chief but responsibilities delegated to dozens of other factions that operate under informal agreements.<sup>479</sup>

For security force personnel, this blurs the lines between who is a legitimate target and who is a civilian. The criminal enterprise in Mexico is a wide-ranging operation that involves dozens of factions that are nearly indistinguishable from common citizens. According to one security expert, for example, 80 percent of the population in the state of Guerrero is involved with the criminal economy.<sup>480</sup> If true, it is nearly impossible to distinguish the blurred lines separating criminals from citizens. This is particularly important for the frequent interaction that Mexican soldiers have with the civilian population as they conduct roadblocks and inspections, direct routine patrols, and intermingle with the urban populations in Mexican cities and towns.

In one famous case in December 2010, the Governor of Tamaulipas, the border state that lies on the Gulf of Mexico immediately below Texas, told federal authorities that he had lost control of his territory and Tamaulipas was “ungovernable.”<sup>481</sup> Cartels had murdered or co-opted so many police that they effectively had complete autonomy and uninhibited freedom of maneuver throughout the territory.

These discussions about the level of violence and organization of the cartels is an active, ongoing debate even as the security situation in Mexico

continues to worsen. If conditions continue to deteriorate further, the Mexican government may conclude that different ROE are warranted. For example, one recent study by the Geneva Academy for International Humanitarian Law contends that the New Generation Jalisco Cartel (*Cartel Jalisco Nueva Generación* in Spanish) meets both the OAG criteria and therefore permits the Mexican armed forces to respond with military firepower.<sup>482</sup> The group broke away from the Sinaloa cartel in 2012 and expanded its operations through a number of southern Mexican states. In 2015, it ambushed a Mexican police patrol outside Guadalajara killing 12 officers. In May of that year, it shot down a Mexican Army helicopter with a rocket propelled grenade launcher. It has had lengthy firefights against Mexican Army units on a number of occasions, some of which have lasted hours.

## Mexican Military Accomplishments and Setbacks

Impunity for suspected members of organized crime groups continues to be a major problem in Mexico. According to the Global Impunity Index, Mexico is the worst nation in the Western Hemisphere and the second worst in the entire world for holding criminals accountable.<sup>483</sup> According to government surveys, an estimated 98 percent of the crimes in the country do not result in a conviction.<sup>484</sup> Most drug trafficking arrests are not punished and the accused are released because of insufficient evidence (often after a long period of pre-trial detention, called *arraigo*). Politicians and judges alike are often under intense pressure or physical threat to adhere to crime boss' wishes.<sup>485</sup> The Mexican penitentiary system consists of 439 federal, state, and municipal prisons, and perhaps in all but the nine high-security federal prisons, many of the others are under control of organized crime groups. Guards are often on cartel payrolls and inmates enjoy luxuries such as conjugal visits, cell phones, and a ready supply of drugs. In one instance, an armed gang broke into a jail in Zacatecas in north-central Mexico in May 2009. Approximately 30 heavily armed gunmen wearing uniforms from the Federal Investigations Agency (*Agencia Federal de Investigación* or AFI in Spanish, the equivalent of the Federal Bureau of Investigation in the U.S.) entered the jail and freed 53 prisoners, some of who were convicted drug traffickers and felons.<sup>486</sup>

Joaquín “El Chapo” Guzmán is another example of the frailty of the Mexican justice system. El Chapo inherited the Sinaloa Cartel once Miguel Angel Felix Gallardo was arrested in 1989. He was arrested in 1993 but,

assisted by prison guards, escaped from prison in 2001 by hiding in a laundry cart. Soon after, he reestablished himself as the head of the powerful Sinaloa cartel, perhaps the largest to ever operate in Mexico. According to *Forbes* magazine, he amassed an estimated one billion dollars in wealth from drug trafficking.<sup>487</sup> He was recaptured in February 2014 and sent to the Altiplano Maximum Security Prison. However, a year later in July 2015, he escaped again, this time through a shaft dug under his cell that led to a tunnel. The tunnel, equipped with a rail-mounted motorcycle, was dug nearly a mile underground to a nearby construction site. As in 2001, he was assisted by prison guards who had accepted bribes to assist his escape. El Chapo was captured again in January 2016, but this time extradited to the United States where he stood trial for a variety of criminal charges. On 17 July 2019, he was sentenced to life in prison for his crimes.<sup>488</sup>

### Street Justice

Knowing that the justice system is not equipped to process so many criminals undoubtedly leaves Mexican soldiers and Marines in a terrible predicament. If they detain cartel members, the suspects often are released from jail because the cartels pay off or threaten judges and lawyers. If that happens, the cartel leaders can also exact revenge on the soldiers and their families. A simpler—though illegal—solution is to eliminate the cartel members during the moment of capture by killing them and claiming the death occurred during a gunfight.<sup>489</sup> One retired Mexican Army general turned police chief admitted to news reporters that he preferred to take justice into his own hands. “On patrol, when I capture a Zeta or Chapo, I kill him. Why interrogate him? Here we beat the hell out of a bad actor. I have no confidence in the federal police because they do not kill [suspects], only arrest them. The Army and Navy kill them,” he said.<sup>490</sup> In another incident, an active duty Mexican Army officer expressed the same sentiment and impatience with the broken Mexican justice system. On 19 March 2009, a Mexican Army lieutenant colonel opened fire on a vehicle carrying two civilians, one of whom died. When the survivor tried to escape, the colonel asked why a lieutenant had failed to shoot him, saying, “[Expletive] mothers! Why are you bringing him in alive? Take him over there and kill him.” The lieutenant promptly did exactly that. The colonel was later tried and imprisoned for murder.<sup>491</sup>

Based on operational statistics, it appears as if Mexican security forces are growing more frustrated with the impunity enjoyed by violent criminals

and, as a result, may be resorting to deadly force more frequently. During the past 14 years, the Mexican Marines have had 400 battles with suspected criminals. The contrasts in casualties during the first and second periods show an alarming trend. Of the 94 cartel leaders seized from 2006–2012, only nine of them were killed. The other 85 were captured and put on trial.<sup>492</sup> However, during President Peña Nieto’s sexenio (the six-year term in office), this trend took a drastic shift. In confrontations with civilians between 2012 and 2019, 445 civilian were killed and only 19 people were injured.<sup>493</sup>

In one of the most egregious examples of street justice, Mexican soldiers executed a number of detainees following a gunfight in Tlatlaya, Mexico, on 30 June 2014. Initially, the Army claimed 22 suspected members of an organized crime group died after a confrontation with security forces. But upon further investigation, some of the victims (as many as 15 of the 22, according to the National Human Rights Commission) had been executed at close range. Three of the victims survived the attack and reported what had occurred to civilian officials. Subsequently and under intense international pressure, the Mexican Army arrested seven soldiers and an officer and launched an investigation into the incident as well as the general in charge of the 102nd Battalion, the military unit involved in the murder and attempted cover-up. The U.S. embassy in Mexico City later announced that “the entire military zone and 10,000 personnel was ineligible for U.S. security cooperation assistance.”<sup>494</sup> The Mexican secretary of defense, trying to manage the fallout from the incident, agreed to “accept the recommendation of the National Human Rights Commission” and agreed, “if any military personnel have engaged in illegal conduct ... they will be punished in accordance with the law.”<sup>495</sup>

Although, as it turns out, that did not happen. Seven soldiers were charged with crimes from the incident. However, six of the seven alleged perpetrators were acquitted of any crimes by a military tribunal. The seventh was sentenced to just one year in prison for disobedience. Ironically, the Tlatlaya case—a case of murder in a country where such acts by violent criminals occur far too often—is an ugly example of an extrajudicial execution allegedly perpetrated by the security forces.<sup>496</sup>

While there is no manual or doctrine that advocates or condones this reprehensible practice of street justice, it is a common occurrence in war zones. There are documented cases of street justice occurring in the Philippines, Colombia, and even among U.S. soldiers in Iraq. Atrocities committed by

violent criminals do not justify reciprocal actions by security forces. Military and police officials must remember that they are representatives of a legitimate government and bound by the laws of the nation. The rules on the use of force in the blurred conditions of contemporary warfare are significantly complex, but military officers who take the law into their own hands should not try to justify their actions by citing a corrupt or ineffective justice system. It can quickly lead to a slippery slope of vigilante justice in which professional military forces descend to the moral equivalence of street criminals or gangsters. In the case of the Mexican Army colonel who ordered subordinates to execute the captured civilians, the secretary of national defense issued a public statement:

The Defense Ministry assures society in general that it will in no form tolerate actions contrary to the military laws and regulations, and when one of its members fails to conform to the Law, his behavior will be investigated ... and he will be punished according to the strict application of the law without regard to his rank, assignment, or commission without impunity nor opaqueness.<sup>497</sup>

## Torture

Mexican security officials have been accused of serious abuses of detainees and suspects. Most of the torture incidents that occur in Mexico happen during the initial detention of the suspects. Mexico uses *arraigo*, a legal practice in which alleged perpetrators of a crime can be held for up to 40 days without being charged. In some cases, the detention can be extended to 80 days. Torture—beatings, electric shocks, submersion in water, and temporary asphyxiation—are given to detainees during this period to force a confession.

In 2015, the UN accused Mexican security forces of systematically using torture to extract testimony from suspects. During a visit to Mexico from 21 April to 2 May 2014, UN Special Rapporteur on Torture Juan Mendez described the use of torture in Mexico as “systematic and endemic.” He qualified his remarks by emphasizing that torture is not condoned by high-ranking government officials, but rather one that frequently used by security force officials.<sup>498</sup> The Mexican government representative in Geneva disputed the report, claiming it “does not reflect the huge efforts in my country to consolidate respect for human rights.”<sup>499</sup>

## U.S. Security Cooperation and the Merida Initiative

For a long time, U.S.-Mexican relations have been delicate and fraught with suspicion. The Mexican-American War of 1846–1848 that resulted in the loss of more than half of Mexican national territory was in part caused by expansionistic sentiment of the United States as it sought additional territory across the continent. The two-year long conflict finally concluded with U.S. forces landing at Veracruz along the Gulf Coast and marching west (along nearly the same route as Hernan Cortes 320 years earlier) toward Mexico City. As U.S. forces fought their way into the city, military cadets—youngsters between 13 and 18 years of age—staged a last-ditch defense of Chapultepec Castle, at the time the location of the military academy. As the U.S. forces closed in, six of the young men chose to throw themselves from the castle ramparts rather than be dishonored by surrendering to the northern invaders. Today, the *niños héroes* of Chapultepec are honored by a massive monument with six marble columns at the base of the castle. The author mentions this not only to share an important event in Mexican history and an example of military honor and sacrifice, but also because the monument represents national resistance to U.S. aggression against Mexican sovereignty—a sentiment that is still 172 years later deeply entrenched with Mexican military officials. The issue may be trivialized or dismissed by American observers as an incident that occurred long ago but in Mexico it is an important part of the culture and history that still resonates with Mexicans today.<sup>500</sup>

Aside from these historical tensions, the two nations share a strong bond on a number of fronts: economic, social, and cultural. Like two siblings, the relationship is complicated and nuanced. The two economies are interdependent. Billions of dollars of trade flow back and forth across the border. In 1994, when the Mexican peso collapsed, President Bill Clinton offered a huge \$50 billion economic bailout to his southern neighbor rather than allow the Mexican economy to suffer, something that would have undoubtedly caused the U.S. economy to also falter. At the time, Mexico was the United States' second largest trade partner. The Mexican government paid the loan back in just six years, ahead of the schedule to which both countries had agreed. Families from both nationalities have ties to relatives who live in the other country and, in the U.S., Mexican-Americans (legal residents of the United States) make up nearly 50 percent of all the Latinos in the country. Remittances—earnings from Mexicans living abroad that are sent home to

families in Mexico—is the biggest source of foreign exchange for the country, more so than oil exports. Likewise, Mexico remains the most popular travel destination for Americans, more so than any other country in the world.<sup>501</sup>

There is also a darker side of the commerce that flows back and forth between the two countries. An estimated 95 percent of the illegal drugs that enter the United States comes through the U.S.-Mexico border. The U.S. is the biggest market in the world for these illegal substances and the drug trafficking would not occur if Americans didn't have an insatiable appetite for cocaine, marijuana, and opioids. At the same time, the U.S. exports arms and weapons back into Mexico, many of them purchased with drug money by cartels that are then used in violent attacks against Mexican soldiers, police, and civilians.<sup>502</sup> One recent report estimated that 70 percent of the weapons confiscated by Mexican security forces originated in the United States.<sup>503</sup> In that sense, the United States bears significant responsibility for the violence and bloodshed that has ravaged its southern neighbor. Within the past few years, officials from both governments have begun to frequently refer to a “shared responsibility” to combat the threats that U.S. and Mexico face together. Prior to 2007, Mexico did not receive a lot of U.S. for-

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*An estimated 95 percent of the illegal drugs that enter the United States comes through the U.S.-Mexico border.*

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foreign assistance or security cooperation funds, in part because of sovereign pride and fear of U.S. meddling in internal Mexican issues.<sup>504</sup> However, soon after President Calderon ordered the military to launch a crackdown against organized crime groups in 2006, the United States agreed to assemble a special assistance package to help combat DTOs that were a mutual threat to both nations, part of the sentiment of shared responsibility between the two countries. In 2007, at a bilateral security conference in the town of Merida on the Yucatan Peninsula, U.S. and Mexican authorities agreed to an assistance package that would help improve security in the country. The U.S. aid package was focused on three principal efforts: (1) counternarcotics, border security and counterterrorism; (2) public security and law enforcement; and (3) institution building and the rule of law.<sup>505</sup> The program, called the Merida Initiative, was launched in 2008 and included \$1.6 billion for combatting drug trafficking and crime. As part of its military package, Mexico received nearly \$600 million in aircraft and helicopters to include thirteen Bell helicopters, eight Black Hawk helicopters, four transport aircraft, and

a variety of drug detection and intelligence collection equipment. Like Plan Colombia, the U.S. assistance package was only a small percentage of what the host nation paid for its own security efforts; Mexico spent nearly \$100 billion on its security and public safety from 2006 to 2017. In 2011, the Obama Administration extended the Merida Initiative with another security assistance package focused on four pillars: (1) defeating organized crime groups, (2) institutionalizing the rule of law while protecting HR, (3) constructing a 21st century border, and (4) constructing strong and resilient communities. By this point, the United States had grown so concerned about weak institutions that enabled impunity and HR abuses by Mexican security forces that funding for pillar #2 exceeded all other programs.<sup>506</sup>

Today, the United States provides an immense amount of military training and education to its Mexican counterparts. According to the Foreign Military Training Report, a lengthy compilation of all U.S.-provided training and education provided to every country in the world, the U.S. trains thousands of Mexican security and government officials every year. In 2016, for example, the United States funded training or education for over 5,600 Mexican officials at a cost of \$32.9 million. The assistance covers a wide range of activities from aircraft maintenance training to attendance at the Naval War College in Newport, Rhode Island, to HR training in Washington, D.C. Some of the training occurs in Mexico but most of it involves funding Mexican students to travel to school programs within the United States.<sup>507</sup>

### **Security Cooperation Challenges**

U.S. officials—including U.S. SOF—have to be cautious about who they trust and collaborate with in Mexico. The amount of drug money available in the country can seduce even the most professional military officials. For example, Heriberto Lazcano Lazcano, the head of the fearsome Zetas cartel, was once a member of the Mexican Army Special Forces Airmobile Group (*Grupo Aeromóvil de Fuerzas Especiales*). He received training from the U.S. Army and the Israeli Defense Forces. In 1999, he and almost three dozen of his special forces colleagues defected from the Army to serve as the enforcement branch of the Gulf Cartel. The Zetas also recruited Guatemalan Special Forces, the *Kaibiles*, to do their enforcement work.

Senior civilian leaders within the government have also been arrested for colluding with cartels. In 2008, Noé Ramírez Mandujano, the government's top official assigned to reduce organized crime, was arrested for taking

\$450,000 of bribes to alert cartel leaders of operations against them.<sup>508</sup> In December 2019, the head of the Secretary of Public Security of México from 2006 to 2012, Genaro García Luna, was arrested for taking bribes from the Sinaloa Cartel. His position as the head of the Public Security Agency put him in charge of all Federal Police. That would be the rough equivalent of having the head of the U.S. Federal Bureau of Investigation (FBI) arrested on drug charges.

There are also examples of senior Mexican military officials who have succumbed to temptation by the vast amount of wealth offered to them by cartel members. Perhaps the most infamous of these is the case of General Jesús Gutiérrez Rebollo, the head of Mexico's elite National Institute for Combating Drugs. In 1997, he was arrested for taking bribes from Amado Carrillo Fuentes, head of the Juarez Cartel, and was sentenced to 31 years in jail.<sup>509</sup> In January 2009, Mexican drug czar Mariano Francisco Herran from 1997 to 2000 was charged with colluding with cartels. General Tomas Angeles Dauahare, assistant defense secretary from 2006 to 2008, was arrested in May 2012 and also charged with colluding with the Beltran Leyva cartel. In 2012, five other Mexican Army officers—three of whom were Army generals—were arrested and charged with colluding with the Beltran Leyva cartel.<sup>510</sup> In February 2012, a month into retirement, Brigadier General Juan Manuel Barragan Espinosa was arrested for allegedly providing information to the Sinaloa Cartel while on active duty.<sup>511</sup> That same year, General Manuel de Jesús Moreno Aviña was arrested for drug trafficking and the murder of a number of civilians while he was a commander of an Army unit in Chihuahua. In one instance, Moreno was accused of torturing to death a victim in the military installation and then burning his body and disposing of it in a creek. In 2016, he was convicted and sentenced to 52 years in prison.<sup>512</sup>

The USG has become so concerned about military brutality and corruption that in 2010 it withheld security cooperation funds until Mexico corrected its problems. The USG did not want to be perceived as contributing to the HR problems and attached conditions to the restoration of 15 percent of its security assistance. These include investigations by civilian authorities of HR abuses conducted by the Mexican military and police and the prohibition of using information in court that is acquired through torture.<sup>513</sup> In 2015, in the wake of the June 2014 Tlatlaya and September 2014 Ayotzinapa massacres, the USG again withheld millions of dollars of security assistance funding.<sup>514</sup> Human rights NGOs cheered the decision and called it unprecedented. “They

[the USG] basically decided we cannot honestly or in good faith say there's been enough progress made in Mexico. It shows how concerned the U.S. is about the HR situation in the country," said one HR group.<sup>515</sup>

## **Mexican Military Reforms**

The violent encounters with heavily-armed criminals have left thousands of Mexican civilians dead or wounded. The situation has also drawn intense criticism from numerous international and regional rights groups concerned about the HR crisis in Mexico.<sup>516</sup> Most organizations recognize the sacrifices and risks the security forces in Mexico take during the violent encounters with cartels but, at the same time, believe the Mexican military has not done enough to prepare its forces for domestic law enforcement operations.<sup>517</sup> In addition, the Mexican military has a relatively high level of institutional autonomy. As a result, there is not an adequate system of transparency or accountability to permit effective oversight by civilian authorities nor members of civil society.

In light of the dynamics of contemporary warfare, the Mexican military has undergone a series of sweeping reforms to professionalize its forces and to bring it into alignment with globally-accepted principles of military conduct. For example, in 2008, SEDENA established a General Director for Human Rights. In 2018, it developed a Training Center for Human Rights and Gender Equality. Thousands of soldiers have received training on HR since 2008. The ICRC also assists with LOAC and HR training. In many ways, it is not unlike the institutional learning process other countries such as Colombia have gone through. Dr. Raúl Benítez, an expert on the Mexican military at Mexico's National Autonomous University and formerly of the Woodrow Wilson Center for International Scholars in Washington, D.C., contends that international and political pressure is forcing the Mexican Army to change. "They can't keep resisting," he said. "There is a recognition within the Army that the erosion of its political and moral authority is putting its honorability and role in question."<sup>518</sup>

Like many armed forces around the world, the Mexican military prefers to investigate its own forces. Civilian judges, military officers contend, often do not understand the rules on the use of force or the doctrines employed by soldiers. However, in November 2009, the Inter-American Court of Human Rights ruled that military personnel accused of assaults against civilians

Human Rights Manual for Mexican Navy personnel (*Manual De Derechos Humanos Para El Personal De La Armada De México*), 2004, [https://www.gob.mx/cms/uploads/attachment/file/200282/MANUAL\\_DE\\_DERECHOS\\_HUMANOS\\_DE\\_LA\\_ARMADA\\_DE\\_MEXICO.pdf](https://www.gob.mx/cms/uploads/attachment/file/200282/MANUAL_DE_DERECHOS_HUMANOS_DE_LA_ARMADA_DE_MEXICO.pdf).

International Humanitarian Law Manual for the Mexican Army and Air Force (*Manual de Derecho Internacional Humanitario para el Ejército y la Fuerza Área Mexicanos*), Ministry of National Defence, June 2009, [http://www.sedena.gob.mx/pdf/der\\_hums/bibliografia/2\\_M.D.I.H\\_EYF.A.M.pdf](http://www.sedena.gob.mx/pdf/der_hums/bibliografia/2_M.D.I.H_EYF.A.M.pdf).

Pocket Card for International Humanitarian Law (*Cartilla de Derecho Internacional Humanitario*), Ministry of National Defense, 2009, [http://www.sedena.gob.mx/pdf/der\\_hums/bibliografia/12\\_CDIH.pdf](http://www.sedena.gob.mx/pdf/der_hums/bibliografia/12_CDIH.pdf).

Use of Force Manual, Common Application of the Three Armed Forces (*Manual del Uso de la Fuerza de Aplicación Común a las tres Fuerzas Armadas*), 2014, [www.sedena.gob.mx/pdf/.../USO\\_FUERZA\\_UNIFICADO.pdf](http://www.sedena.gob.mx/pdf/.../USO_FUERZA_UNIFICADO.pdf).

National Plan of Peace and Security, 2018–2024 (*Plan Nacional de Paz y Seguridad, 2018–2024*), 15 Nov 2018, [https://lopezobrador.org.mx/wp-content/uploads/2018/11/Plan-Nacional-de-Paz-y-Seguridad\\_.pdf](https://lopezobrador.org.mx/wp-content/uploads/2018/11/Plan-Nacional-de-Paz-y-Seguridad_.pdf).

National Law about the Use of Force (*Ley Nacional sobre el Uso de la Fuerza*), 27 May 2019, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LNUF\\_270519.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LNUF_270519.pdf).

Figure 37. References for Mexican Security Strategy and Rules on the Use of Force.

should not be tried in military courts but rather in civilian courts. Many civilian officials feared that the military courts would dismiss or offer lenient sentences in order to protect their own soldiers accused of HR violations.<sup>519</sup> In response, President Calderon proposed a number of reforms to the military jurisdiction system. Grave HR violations committed by military personnel such as enforced disappearance, rape, and torture, he suggested, would be turned over to the civilian authorities but other HR violations would continue to be managed by military courts. Civil society groups rejected the President's recommendations because they believed the military could downgrade the charges against soldiers to ensure they remained in the military

justice system.<sup>520</sup> On 6 July 2011, the Mexican Supreme Court supported the Inter-American Court's decision and prohibited the use of military courts in cases involving HR violations of civilians. In 2014, as part of the Military Justice Law reform, the Mexican military agreed to modify its code of justice to permit trials for military personnel in civilian courts. Crimes committed by military personnel on other military personnel will still be tried in military courts.<sup>521</sup>

Even the Mexican military is wary of the challenging operational environment of fighting criminals with military firepower. In March 2016, Mexican Defense Minister General Salvador Cienfuegos expressed his frustration with the law enforcement mission assigned to the armed forces:

Another challenge is simply the way we operate. We are tasked to deal with an issue but we are soldiers, prepared for war. Yet we are tasked to face criminals who are not precisely combatants and that difference in training in the Army ... has caused us to have serious problems. Another problem that we had, which I consider a mistake, was to face the criminals in daylight hours when people are on the streets and that caused a lot of innocent people to be hurt. Today, we practically do not have "collateral victims," because we take great care to not harm innocent people when we have encounters with criminals.<sup>522</sup>

In December 2016, Mexican Defense Minister Salvador Cienfuegos reiterated the reluctance he and other senior Mexican military officials felt over the use of the military in law enforcement missions "We [the military] didn't ask to be here. We don't like it. We didn't study how to chase criminals. We are doing things that don't correspond to our training because there's no one else to do them. At the same time, federal prosecutors that are not very happy [because] the military are not trained investigators, and they go and trample evidence and crime scenes inadvertently."<sup>523</sup> Around the same time, a visibly frustrated General Cienfuegos ordered all Army soldiers to abandon their assignments and return to their barracks. The war against Mexican cartels, he contended, should be fought by the police, not soldiers.<sup>524</sup>

Partly in response to the wishes of General Cienfuegos and other senior Mexican military officials, in 2017 the Mexican congress proposed an Internal Security Law (*Ley de Seguridad Interior*) that would give broad authority to the Mexican military to conduct law enforcement operations. The armed

forces had already been conducting these operations but recall that Article 129 of the Mexican Constitution restricts the use of the military in internal law enforcement activities. Public security within the borders of the country is supposed to be a police function under the supervision of civil authorities. So, effectively the Mexican military was operating without a legal mandate since 2006. To many outsiders, the Internal Security Law seemed like a foregone conclusion to institutionalize an action that was already taking place. However, critics of the law in the UN, the OAS and the IACHR complained that it would provide broad legal authority for the Mexican military including criminal investigative powers, no system of effective civilian oversight, and no exit strategy by passing the role of domestic security back to the police.<sup>525</sup> For example, the IACHR recommended Mexico “develop a concrete plan for the gradual withdrawal of the Armed Forces from public security tasks and for the recovery of such tasks by the civilian police force.”<sup>526</sup>

On 30 November 2017, Mexico’s lower house of congress, the Chamber of Deputies, passed the Internal Security Law and forwarded it to the senate. The senate approved it on December 15 and forwarded it to President Enrique Peña Nieto for approval, which he did. On 22 December, the Interior Security Law went into effect.<sup>527</sup> On 15 November 2018, 11 months after the law went into effect, the Mexican Supreme Court rejected the law calling it unconstitutional and saying that the government should not normalize the use of the armed forces in domestic law enforcement.<sup>528</sup>

## President Lopez Obrador and the National Guard

Mexico’s new president, Andres Manuel Lopez Obrador (from the National Regeneration Movement or *Movimiento Regeneración Nacional* in Spanish), won the 1 July 2018, election with a promise to address the root causes of the violence in Mexico, namely poverty, corruption, and impunity. On 15 November 2018, Lopez Obrador unveiled his new National Plan for Peace and Security.<sup>529</sup> His plan was based on eight pillars, among which were establishing a National Guard force, eradicating corruption, and promoting respect for HR. When he took office on 1 December 2018, he promised to focus on economic development and strengthening the values of Mexican youth. “You can’t confront violence with violence,” he said. “You have to deal with the root causes of the violence.”<sup>530</sup> The day after he took office, he spoke to senior military officers at a base in the capital. He told the generals in attendance

that he would continue to rely upon them to fight the violence that plagues the country. “We’ve opted for this plan because we can trust the armed forces,” he said.<sup>531</sup> “Governments have spent 20 years trying to train the federal police, and it has not been possible, they are corrupt,” the president explained as he justified the creation of the new paramilitary force.<sup>532</sup>

In February 2019, the Mexican Congress approved the creation of a 61,000-person National Guard.<sup>533</sup> The new quasi-military security force will consist of 18,000 federal police officers, 35,000 military police and 8,000 naval police and will be overseen by the civilian Ministry of Security and Citizen Protection.<sup>534</sup> The commander of the National Guard is a retired Mexican Army general but reports to a civilian boss. In April 2019, President Lopez Obrador announced Mexican Army Brigadier General Luis Rodriguez Bucio would be the first commander of the force.<sup>535</sup> The force is expected to grow to 150,000 by the end of 2019 though official estimates range from 70,000 to 360,000. Within five years, National Guard units will replace the conventional military forces currently deployed throughout the country, permitting the Army and navy to return to its traditional roles.

Skeptics believe the new National Guard force is simply a continuation of the militarization of domestic law enforcement that Lopez Obrador’s predecessors, Presidents Calderon and Peña Nieto, attempted without success.<sup>536</sup> One security specialist in Mexico City, when asked if the National Guard would help bring crime and violence under control, said, “Of course not. It’s the same people doing the exact same stuff.”<sup>537</sup>

Although the first class of new guardsmen were not scheduled to graduate until the end of June, security demands prompted Mexican officials to deploy them early. In mid-June 2019, nearly 12,000 members of the National Guard were deployed to the Guatemala-Mexico border to help curb illegal migration from countries in the Central American Northern Triangle. Another 15,000 National Guard were deployed to the U.S.-Mexico border. The head of the Mexican National Commission of Human Rights, Luis Raúl González Pérez, worried that the new National Guard didn’t have adequate HR training. “Many of the migrants they will encounter will be families with children. There is no knowledge about human rights and restraint of force in these types of events,” he said.<sup>538</sup> On 1 July 2019, 2,700 members of the National Guard were deployed to the capital in Mexico City because of rising crime rates in homicides, kidnappings, and robberies.<sup>539</sup>

## Conclusion

Mexican soldiers and Marines have made great sacrifices to rid their country of the scourge of organized crime and drug trafficking. The Mexican armed forces succeeded in capturing or killing dozens of the most dangerous cartel leaders in the country.<sup>540</sup> At the same time, the military has launched an effort to train and educate its soldiers and Marines in order to navigate the blurred lines between the LOAC and criminal law in these difficult conditions.

Despite the Herculean efforts of the Mexican military, much work remains to be done. Few substantive improvements in crime statistics have been seen. The kingpin strategy has diffused the threat from a handful of cartels to a vast but loosely aligned network of criminal elements. The number of homicides has risen nearly every year since the military was ordered to the streets in 2006. In 2018, there were more than 33,500 murders, an increase by 23 percent over 2017. The following year, 2019, was even worse.<sup>541</sup>

In 2015, the IACHR, visited Mexico at the invitation of the government. In the report of its visit from 28 September to 2 October 2015, the IACHR summarized the security situation as follows:

Despite the change in administration in December 2012, in practice there have been no substantial changes with regard to security policies and the violence levels. In this context, of particular concern are the reports of disappearances, extrajudicial executions and torture, as well as the situation of insecurity for women, children, migrants, human rights defenders, and journalists, who are victims of murder, disappearance, kidnapping, torture, harassment, and threats.<sup>542</sup>

Despite the heavy-handed approach of the Mexican military, the public still sees the presence of the armed forces on the streets as necessary. In public opinion surveys about government organizations, a strong majority of Mexicans (79 percent) see the military as having a positive influence on the country, making it the best-regarded institution tested. The media are a close second, with 76 percent. However, almost two-thirds believe that HR organizations (65 percent) have a good influence on how things are going in Mexico and over 75 percent of those surveyed support HR NGOs holding the government accountable on HR issues.<sup>543</sup> The police are at the bottom of the list at 44 percent positive.<sup>544</sup>

For Mexican armed forces, this may not be a good indication of their level of popularity. What appears to be a vote of confidence for the military may actually represent the level of the desperation of Mexican citizens to live in a safe and secure country. Surveys have shown that people are even willing to accept authoritarian rule and to abandon democratic values such as civil and political liberties in return for safety. In Central America, for example, more than half of the persons surveyed believe a military coup would be justified because of the high levels of violence and corruption. And this comes from countries that suffered severe repression at the hands of military governments in the 1970s and 1980s.<sup>545</sup>

In sum, a strange tension exists in Mexican society. Mexican citizens want the military on the street to combat the epidemic of crime and violence that has plagued the country. At the same time, the military doesn't want the scrutiny of HR organizations that demand soldiers and Marines use proper use of force techniques. Simultaneously, HR activists want accountability for violations committed by the armed forces.

Meanwhile, the war storms on and the cartels seem to be winning. A number of recent incidents support this somber assessment. In October 2019, security officials arrested the son of Joaquin "El Chapo" Guzmán, the now-imprisoned former head of the Sinaloa Cartel in Culiacan. The cartel members responded with a dramatic show of force, shooting up neighborhoods, threatening soldiers' families in their housing complexes, kidnapping military personnel, and hijacking buses until the government released the suspect. President Lopez Obrador justified the decision by declaring that saving the lives of civilians who were at risk in the dangerous crossfire was the most important thing.<sup>546</sup>

Less than a week later, another tragic accident occurred in the northern part of the country. A group of Mormons who lived on an extensive ranch complex about 70 miles south of the U.S.-Mexico border in the Mexican state of Sonora were mistaken for a rival drug gang and murdered by cartel members. Nine people were killed including 3 women and 6 children, 2 of whom were 8 months old.<sup>547</sup> All the victims held dual Mexican-American citizenship and, in a macabre sense of the term, seem to represent the "shared responsibility" that both Mexico and the United States have in the violence raging in the country.

## Conclusion and Recommendations

This monograph examines how U.S. SOF train PN forces as part of the security cooperation enterprise, particularly with regard to the rules on the use of force in contemporary conflicts. The characteristics of conflict have changed substantially since the end of the Cold War. There are few ongoing state-on-state conflicts. Rather, most governments are dealing with violent non-state actors such as gangs, drug cartels, and terrorists. However, these security problems do not qualify as armed conflicts and instead fall into a legal category that is governed by domestic law enforcement and international HR law, not the GCs or other LOAC treaties. Despite that, many countries have to use their military forces because the levels of violence and crime are beyond the capacity of the police forces. Soldiers deployed for these missions need an extensive reorientation to understand the differences between military and police tactics. The first is relatively permissive with regard to force while the second is very restrictive. Furthermore, identifying the opponent in these circumstances is extremely difficult. There is virtually no visible distinction between a violent criminal and a civilian member of the community. Hence, soldiers have to pause to determine the right course of action and to avoid causing harm to civilians, heightening the risk they assume at the same time. This is the blurred battlefield of contemporary conflict—a perplexing and bedeviling predicament that even the most gifted legal scholars have been unable to figure out. U.S. SOF have to understand these complex legal and operational conditions in order to effectively train U.S. PN forces.

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*This is the blurred battlefield of contemporary conflict—a perplexing and bedeviling predicament that even the most gifted legal scholars have been unable to figure out.*

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### Developing a USSOCOM Law Enforcement and HR Doctrine

There are a number of compelling reasons for developing a USSOCOM law enforcement and HR doctrine. First, conflict paradigms have changed. Contemporary conflicts consist of a hybridization of both armed conflict and police law enforcement. Elements of LOAC and HR law apply simultaneously. U.S. PN are more likely to be combatting OAGs or internal security scenarios

that don't cross the threshold into LOAC conditions. Even scholars who are concerned about adding confusion through more use of force regulations admit that the need to address both LOAC and HR law during contemporary conflicts is "too powerful to reverse."<sup>548</sup> They are right. USSOCOM must update its doctrine on the use of force to reflect the contemporary operational conditions. Additionally, the U.S. military shouldn't resist this positive trend but rather should embrace it by further developing the peacetime ROE and training for its forces participating in non-combat operations.

Second, the U.S. is trying to establish a network of partners to respond to complex 21st century challenges and reduce the need for U.S. forces' involvement. The strategy has grown in urgency as the U.S. and its partners address a dispersed terrorist threat from the Islamic State in Iraq and Syria (ISIS) and al-Qaeda factions. In the global war on terror, U.S. allies in the Philippines, Yemen, Libya, Afghanistan, Iraq, Syria, and Nigeria are under fire from radical extremist groups. U.S. SOF have a unique opportunity to help professionalize these PN forces during JCETs and other security cooperation events that are conducted in nearly 100 other countries each year. What do we want out of our PN forces? The same that we expect of U.S. Special Operations Forces: professional, capable, and accountable experts in the application of violence. LOAC, law enforcement, and HR training should be conducted as frequently as weapons, communications, and first aid training. U.S. SOF don't have to be aware of HR issues that address political or civil liberties or the right to education or health care. But they should be familiar with those HR that concern security and defense matters such as torture, forced disappearances, detainee rights, and a number of others. Many SOF individuals are developing lesson plans and programs of study on these topics because they recognize the urgency of the training. USSOCOM headquarters should take the lead to produce and distribute these products for the sake of accuracy and consistency of content.

Third, U.S. SOF are forbidden by law to provide assistance to foreign military units or individuals accused of gross HR violations.<sup>549</sup> According to State Department officials, there are hundreds of potential partners including military, police, and CT units from dozens of countries that are blocked from U.S. aid because of gross violations of HR.<sup>550</sup> Each tainted unit is one less security partner that can assist U.S. forces in its extensive network of allies. In many of these cases, the reason the violations occur is simply because the units have never received adequate training or education on HR. As a



Figure 38. COLAR soldiers provide highway security outside Bogota in 2010. Unlike the U.S., most other countries including Colombia, use their militaries for domestic security operations, blurring the lines between soldiers and police officers. Source: John Vizcaino/Reuters/Newscom

result, the U.S. may lose an ally in a strategically critical area. This may put U.S. military Service members in danger by requiring U.S. involvement in costly and dangerous overseas operations.<sup>551</sup>

Respect for HR are critical to win strategic, operational, and tactical advantages over opponents in contemporary warfare. Human rights violations alienate civilian populations from military forces. Errors committed by forces the U.S. trains and works with will jeopardize the functional legitimacy of the host nation forces with its own population. The military forces may risk losing critical intelligence provided by cooperative civilians if they are perceived to be illegitimate forces operating outside LOAC and HR standards. And if the host nation forces lose legitimacy in the eyes of the people and consequently become militarily ineffective, U.S. forces may lose a potentially important military partner.

Fourth, U.S. SOF have a moral obligation to ensure the training they provide to foreign forces is in keeping with U.S. values on democracy, HR, and civil-military relations. Rules for the use of lethal force and the rights of

detainees, for example, are very different under LOAC and HR law. Specifically, military operations in “other situations of violence” require different ROE and guidelines for the use of force. It is a particularly urgent issue for U.S. SOF as they work with PN forces that are deployed in support of law enforcement operations. Providing military training on lethal force tactics, for example, should be accompanied by a description of the legal and moral constraints of using such tactics. Training on the proper application of force will maximize the chances that our partner forces will not commit gross violations of HR.

The effort to professionalize PN forces often is difficult. Foreign military units without professional training or a well-developed military doctrine—especially junior or conscripted forces—are unlikely to have the depth of training on contemporary warfare matters including the use of force and principles of LOAC such as distinction, humanity, necessity, and proportionality. As a result, these forces may be more apt to use excessive force, to treat noncombatants as enemies, and to abuse detainees, all of which are HR violations that could jeopardize continued collaboration with U.S. forces. Training and equipping these forces without providing accompanying education on HR invites the improper use of force. It would be like giving car keys to a youngster without training him or her on the rules of the road or the safety aspects of operating a vehicle. Accidents are sure to happen.

Fifth, a USSOCOM hybrid force doctrine will permit U.S. SOF to understand and apply the requirements that IHRL places on PN military forces. This will permit a more constructive interaction with partners when training, planning, and coordinating military coalition operations. To do this, U.S. SOF must be trained so they can identify HR transgressions.<sup>552</sup>

## **The Challenges of Developing a USSOCOM Hybrid Doctrine on the Use of Force**

The author is fully aware that developing a hybrid doctrine on the use of force that includes both LOAC and criminal law is a big challenge for U.S. SOF.<sup>553</sup> It requires the development of a new doctrine, the distribution of training and education material to SOF schoolhouses, and a cultural shift to reorient U.S. SOF in each of the military Services. The rules are confusing and there are myriad competing demands of training, education, and



Figure 39. U.S. experiences with HR. Members of the U.S. military need more training and education on HR to support the numerous non-combat missions they frequently fulfill. Humanitarian crises are particularly difficult to manage from a perspective of HR because during national emergencies or martial law, civil and political rights may be suspended until order is restored. In this photo, a U.S. Army officer supervises the distribution of emergency supplies to survivors of the 2010 earthquake that killed 230,000 people in Haiti. Photo by Department of Defense/Fred W. Baker

rehearsal.<sup>554</sup> One wrote, for example, that “it is likely to produce confusion rather than clarity.”<sup>555</sup>

Admittedly, a manual that addresses both LOAC and criminal law may cloud the already complex legal guidelines for ROE and the LOAC. Some scholars are skeptical it can be done. Another scholar wrote, “in an era of an already complex and often confused battle space, there can be little tolerance for adding complexity and confusion to the rules that war-fighters must apply in the execution of their missions. Instead, clarity is essential to aid them in navigating this complexity.”<sup>556</sup>

It may appear to some that advocating for more restraint by security forces in the face of such violent non-state organizations is illogical or naïve.

Many might prefer a tougher, “gloves off” strategy. But the truth is that professional security forces that adhere to HR and the rule of law standards while also conducting effective operations against organized crime groups is exactly what is required to lift the government out of its dilemma.

Some U.S. authorities interviewed for this project were worried that incorporating criminal and HR law into the ROE would take away the “fighting spirit” of U.S. SOF. In other words, U.S. forces would become less aggressive during combat operations. In many ways, this is exactly what is required; more moderation and restraint during low-intensity law enforcement operations than the less restrictive firepower used in conventional military operations. John Nagl, COIN expert and author of *Learning to Eat Soup with a Knife*, testified before congress that “the capacity and capability to train advise and assist, to build foreign militaries, is going to be the critical contribution of the United States Army to the security of the nation for the next 50 years ... not direct combat.”<sup>557</sup>

Other skeptics contend that the adaptation of HR and criminal law is an attempt at “lawfare” to restrict the use of force authorities by soldiers and make them hesitant to use firepower lest they be held legally accountable for their actions after the fact.<sup>558</sup> Still other legal scholars continue to believe that LOAC rules are sufficient to protect the HR of the people in communities along the battlefield. As this report has hopefully made clear, the use of LOAC rules in lieu of criminal or HR law place the members of the communities in greater danger from errant fire or from overzealous soldiers who don’t have adequate training on the use of force.

Still others doubted whether SOF should try to promote a Western-version of HR among the many diverse indigenous groups with which U.S. SOF frequently operate. The cultures and values of these irregular forces are often not aligned with those of a developed society with established rule of law practices. This concern reflects a debate about the “cultural relativity” of HR or whether some civil and political rights should be considered universal regardless of the societal values of non-Western communities.

All these worries are legitimate—the complexity of modern warfare, diminishing the warrior spirit of soldiers, legal constraints that make soldiers hesitant to fire, cultural relativity—but there is simply no alternative. U.S. SOF cannot simply declare that LOAC rules apply in an environment or operation where there is no armed conflict. It is an invitation to commit serious errors with the use of force. As one scholar describes it, LOAC rules

on the use of force permit “lawful killing, collateral damage, the indefinite detention of individuals (until the end of hostilities), and the massive lawful destruction of property.”<sup>559</sup> Even some of the country’s leading JAGs admit that a hybrid doctrines are an operational necessity. “There is today no question that human rights law comes to complement humanitarian law in situation of armed conflict,” wrote Gary D. Solis, retired director of the Law of War program at the U.S. Military Academy at West Point.<sup>560</sup> Or as the former head of the Canadian JAG wrote,

Contemporary commanders are being required to apply both the conduct of hostilities and human rights normative framework. This makes the adoption of exclusionary approaches toward the application of HR law and IHL appear badly out of touch with existing security challenges and fundamentally inadequate to deal with existing operational challenges. Indeed, if legal advisors are not as intimately knowledgeable about human rights law as they are about the law governing the conduct of hostilities, it is difficult to see how they can properly advise their client commanders.<sup>561</sup>

The DOD recognizes this changing nature of conflict also. In the 2020 NDAA, DOD requires its commands to increase oversight of HR and authorizes a new initiative to assist foreign partners with developing the institutional capacity to comply with LOAC and HR. The chances of fighting a conventional Army in a pitched IAC are unlikely. Until then, U.S. SOF will continue to support international partners who are engaged in violent combat conditions against gangs, cartels, and organized crime groups that do not rise to the level of a conventional conflict.↑



## Acronyms

<b>AFI</b>	Federal Investigations Agency or <i>Agencia Federal de Investigación</i>
<b>ANA</b>	Afghan National Army
<b>ANASOC</b>	Afghan National Army Special Operations Command
<b>BACRIM</b>	criminal bands (groups) or <i>bandas criminales</i>
<b>BOPE</b>	Special Police Operations Battalion or <i>Batalhão de Operações Policiais Especiais</i> in Portuguese
<b>BPC</b>	building partnership capacity
<b>BRICS</b>	Brazil, Russia, India, China, and South Africa
<b>CBP</b>	Customs and Border Patrol
<b>CCF</b>	continuous combat function
<b>CENAE</b>	National Training Center or <i>Centro Nacional de Entrenamiento</i> , Tolemaida, Colombia
<b>CIA</b>	Central Intelligence Agency
<b>CIVCAS</b>	civilian casualty
<b>CJCS</b>	Chairman of the Joint Chiefs of Staff
<b>CNP</b>	Colombian National Police
<b>COCOM</b>	combatant command
<b>COIN</b>	counterinsurgency
<b>COLAR</b>	Colombian Army
<b>CPTM</b>	core pre-deployment training materials
<b>CT</b>	counterterrorism
<b>DOD</b>	Department of Defense

<b>DPH</b>	direct participation in hostilities
<b>DPKO</b>	Department of Peacekeeping Operations
<b>DROC</b>	Democratic Republic of the Congo
<b>DTO</b>	drug trafficking organization
<b>ELN</b>	National Liberation Army or <i>Ejercito de Liberación Nacional</i>
<b>EOF</b>	escalation of force
<b>FARC</b>	Revolutionary Armed Forces of Colombia or <i>Fuerzas Armadas de la Republica de Colombia</i>
<b>FPU</b>	formed police unit
<b>FTO</b>	foreign terrorist organization
<b>GC</b>	Geneva Convention
<b>GCC</b>	Geographic Combatant Commander
<b>GDP</b>	gross domestic product
<b>GLO</b>	guarantee of law and order
<b>GVHR</b>	gross violation of human rights
<b>HADR</b>	humanitarian assistance and disaster response
<b>HNP</b>	Haitian National Police
<b>HR</b>	human rights
<b>HRI</b>	Human Rights Initiative
<b>IAC</b>	international armed conflict
<b>IACHR</b>	Inter-American Commission on Human Rights
<b>ICC</b>	International Criminal Court
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights

<b>ICRC</b>	International Committee of the Red Cross
<b>IDP</b>	internally displaced persons
<b>IED</b>	improvised explosive devices
<b>IHL</b>	International Humanitarian Law
<b>IHRL</b>	International Human Rights Law
<b>ISAF</b>	International Security Assistance Force
<b>JAG</b>	Judge Advocate General
<b>JCET</b>	Joint Combined Exercise Training
<b>JCS</b>	Joint Chiefs of Staff
<b>JSOU</b>	Joint Special Operations University
<b>LOAC</b>	Law of Armed Conflict
<b>MEU</b>	Marine Expeditionary Unit
<b>MIF</b>	Multinational Interim Force
<b>MIFH</b>	Multinational Force Haiti
<b>MINUJUSTH</b>	UN Mission for Justice Support in Haiti
<b>MINUSTAH</b>	United Nations Stabilization Mission in Haiti
<b>MIPONUH</b>	UN Civilian Police Mission in Haiti
<b>MNF</b>	multinational force
<b>MOD</b>	ministry of defense
<b>NDA</b>	National Defense Authorization Act
<b>NDU</b>	National Defense University
<b>NEO</b>	non-combatant evacuation operations
<b>NGO</b>	nongovernment organization
<b>NIAC</b>	non-international armed conflicts

<b>OAS</b>	Organization of American States
<b>OAG</b>	organized armed group
<b>OGC</b>	Office of General Counsel
<b>OHCHR</b>	Office of the High Commissioner of Human Rights
<b>PCC</b>	First Capital Command or <i>Primeiro Comando Capital, Brazil</i>
<b>PERF</b>	Police Executive Research Forum
<b>PKO</b>	peacekeeping operations
<b>PN</b>	partner nation
<b>PRI</b>	Institutional Revolutionary Party or <i>Partido Revolucionario Institucional, Mexico</i>
<b>ROE</b>	rules of engagement
<b>SEDENA</b>	National Defense Secretary or <i>Secretaría de la Defensa Nacional, Mexico</i>
<b>SEMAR</b>	Secretary of the Navy or <i>Secretario de la Marina, Mexico</i>
<b>SFAB</b>	Security Force Assistance Brigades
<b>SFG</b>	Special Forces Group
<b>SIGAR</b>	Special Inspector General for Afghanistan Reconstruction
<b>SOF</b>	Special Operations Forces
<b>SWAT</b>	Special Weapons and Tactics
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNMIH</b>	United Nations Mission in Haiti
<b>UNSCR</b>	United Nations Security Council Resolution
<b>UNSMIH</b>	United Nations Support Mission in Haiti

<b>USSOCOM</b>	U.S. Special Operations Command
<b>UNTHIH</b>	UN Transition Mission in Haiti
<b>UPP</b>	Pacifying Police Units or <i>Unidade de Polícia Pacificadora</i> , Brazil
<b>USG</b>	U.S. Government
<b>USSOUTHCOM</b>	U.S. Southern Command
<b>WHINSEC</b>	Western Hemisphere Institute of Security Cooperation
<b>WOLA</b>	Washington Office on Latin America



## Endnotes

1. Christopher Woody, “These were the 50 most violent cities in the world in 2018,” *Business Insider*, 12 May 2019; David Luhnnow, “Latin America is the Murder Capital of the World,” *Wall Street Journal*, 20 September 2018. See Consejo Ciudadana para la Seguridad Publica y la Justicia Penal, “Metodología del ranking (2018) de las 50 ciudades más violentas del mundo,” Mexico City, 12 March 2019, <http://seguridadjusticiaypaz.org.mx/files/Metodologia.pdf>; *The Economist*, “Revisiting the world’s most violent cities,” 30 March 2016.
2. Nathaniel Parish Flannery, “Is Mexico Really the World’s Most Dangerous War Zone?” *Forbes*, 10 May 2017; United States Agency for International Development (USAID), “Crime and Violence Prevention Field Guide,” 2016, 3.
3. Support for internal law enforcement occurs in a variety of ways among Mexico, Central American, and South American countries. Like the U.S., nearly every Latin American country permits its military forces to deploy during internal security crises such as natural disasters. However, the violence from organized crime groups is so severe that most countries have kept their armed forces on the streets almost indefinitely. Some support police operations, operate jointly with the police, or have effectively replaced the police. Argentina and Chile, considered the last two countries in the region that restricted the use of their armed forces for internal security operations unless there are exceptional circumstances, recently announced the deployments of their militaries to the northern borders of both countries to assist police with controlling drug trafficking.
4. For those who find it difficult to believe that the world is less violent now than it was 40–50 years ago, consider the bloodiest conflicts of the 20th century. Aside from the two world wars that claimed the lives of tens of millions of people, violence in Cambodia, Vietnam, Bangladesh, Nigeria, the Congo, Afghanistan, and Sudan each took more than a million lives. State-induced famines or political purges in China and Russia also claimed tens of millions of lives though they may not methodologically fit in the category of armed conflict. In contrast, of the conflicts since the turn of the century, only the Syrian civil war has seen more than 500,000 deaths. Other violent recent confrontations in places like Yemen, Mexico, Afghanistan, the Congo, and Iraq, while extremely bloody, don’t come close to the number of deaths of the late 20th century. That said, since the turn of the century, an estimated 2.5 million people have been murdered in Latin America even though the region hasn’t seen an armed conflict between nations since 1995. See David Luhnnow, “Latin America is the Murder Capital of the World,” *Wall Street Journal*, 20 September 2018. For academic analysis of these issues, see Bethany Lacina, Nils Peter Gleditsch, and Bruce Russett, “The Declining Risk of Death in Battle,” *International Studies Quarterly* 50 (2006): 673–680; Meredith Reid Sarkees, Frank Waymon, and J. David Singer, “Inter-state, Intra-State, and Extra-State Wars: A Comprehensive Look at Their Distribution over Time, 1816–1997,” *International Studies Quarterly* 47 (2003): 49–70. By far, the author’s

favorite account of the relative peace of the 21st century is Harvard Professor Steve Pinker's 2012 book, *The Better Angels of Our Nature: Why Violence Has Declined* (New York: Penguin Books, 2012). See also Joshua Goldstein, *Winning the War on War: The Decline of Armed Conflict Worldwide* (London, England: Penguin Books, 2011).

5. The Geneva Academy of International Humanitarian Law and Human Rights maintains a database called the Rule of Law in Armed Conflict in which they list all the IACs, military occupations, and NIACs currently taking place in the world. They also produce the annual "War Report" that describes their justifications for determining the status of each conflict. See <http://www.rulac.org/>. See Annysa Bellal, "The War Report: Armed Conflicts in 2018," *The Geneva Academy of International Humanitarian Law and Human Rights*, Geneva, Switzerland, 32.
6. Rupert Smith, *The Utility of Force* (New York: Vintage Books, 2005), 3.
7. For example, see Pat Paterson, *Training Surrogate Forces in International Humanitarian Law: Lessons from Peru, Colombia, El Salvador, and Iraq* (Tampa, FL: JSOU Press, 2016), 70, [http://jsou.libguides.com/ld.php?content\\_id=24774060](http://jsou.libguides.com/ld.php?content_id=24774060).
8. Bruce Russett, Christopher Layne, David E. Spiro, and Michael W. Doyle, "The Democratic Peace," *International Security* 19, no. 4 (1995): 164–184; Charles W. Kegley Jr. and Margaret G. Hermann, "Military intervention and the democratic peace," *International Interactions*, 21:1, 1–21; Michael Doyle, "Three Pillars of the Liberal Peace," *American Political Science Review*, Volume 99, Issue 3, August 2005: 463–466.
9. Kevin H. O'Rourke and Jeffrey G. Williamson (1 April 2002), "When Did Globalisation Begin?" *European Review of Economic History*, 6 (1): 23–50; Paul James and Manfred B. Steger, (2014); "A Genealogy of Globalization: The Career of a Concept," *Globalizations*, 11 (4): 417–34; Martin Wolf, *Why Globalization Works* (New London: Yale University Press, 2004).
10. Louis Kriesberg, "Long Peace or Long War: A Conflict Resolution Perspective," *Negotiating Journal*, 2007: 97–116.
11. Jacob Bercovitch, Victor Kremenyuk, and I. William Zartman, "The Nature of Conflict and Conflict Resolution," in Jacob Bercovitch, Victor Kremenyuk, and I. William Zartman (Eds), *The Sage Handbook of Conflict Resolution* (2009).
12. For classics of negotiation theory and practice, see R.J. Lewicki, D. M. Saunders, J. W. Minton, and B. Barry, *Essentials of Negotiation* 5th Edition (New York, NY: McGraw-Hill/Irwin, 2007); William Ury, *Getting Past No: Negotiating Your Way from Confrontation to Cooperation* (New York: Bantam, 1993); J. W. Breslin and J. Z. Rubin, *Negotiation Theory and Practice* (London: Cambridge, MA, 1991); William Ury, Roger Fisher and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving in*, Revised 2nd edition (New York: Houghton Mifflin, April, 1992); Terrence Hopmann, *The Negotiation Process and the Resolution of International Conflicts: Studies in International Relations* (Columbia: University of South Carolina Press, 1998). For classics of mediation theory and practice, see Robert A. Baruch Bush and Joseph Folger, *The Promise of Mediation: The*

*Transformative Approach to Conflict*, 2nd ed. (San Francisco: Jossey-Bass Publishers, 2004); Jay Folberg and Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts* (San Francisco: Jossey Bass, 1984); Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, Second Edition (San Francisco: Jossey Bass, 1996); William Ury, *The Third Side: Why We Fight and How We Can Stop* (New York: Bantam, 2000). For classics of facilitation theory and practice, see S. Schuman (Ed.), *The IAF Handbook of Group Facilitation: Best Practices from the Leading Organization in Facilitation* (San Francisco, Jossey-Bass: 2005); R. M. Schwarz, *The Skilled Facilitator* (San Francisco, Jossey-Bass: 2002).

13. UN Press Release, “Secretary-General calls for renewed commitment in new century to protect rights of man, woman, child—regardless of ethnic, national belonging.” Remarks delivered during Secretary-General Kofi Annan’s address to the Commission on Human Rights, Geneva Switzerland, 7 April 1999.
14. In the lead up to the Libyan crisis, the UN Security Council authorized military action to prevent “the gross and systematic violation of human rights” by Libyan government forces and called upon Qadafi’s government to “recall the Libyan authorities’ responsibility to protect its population.” See UN Security Council Press Statement on Libya, (SC/10180-AFR/2120), 22 February 2011. See also “The Responsibility to Protect,” Report of the International Commission on Intervention and State Sovereignty, December 2001. Additionally, in 2005, the UN General Assembly affirmed the commitment of its members of the “responsibility to protect” populations from “genocide, war crimes, ethnic cleansing and crimes against humanity.” See sections 138–140 in UN General Assembly Resolution A/60/1 (2005). The author appreciates Professor Mitt Regan of Georgetown Law School for pointing out this important reference.
15. Chilean General Augusto Pinochet’s detention in England in 1999 is an oft-cited example of universal jurisdiction. Former President Omar al-Bashir of Sudan, wanted by the ICC for crimes against humanity and war crimes, is a more recent example.
16. Special international criminal tribunals have been conducted following the conflicts Yugoslavia, Rwanda, Cambodia, and Lebanon.
17. Prosecutor v. Tadic, case no. IT-94-1-AR72, Appeal on Jurisdiction (2 October 1993, reprinted in 35 I.L.M. 32 (1996), 32).
18. In 2017, the Department of State listed 61 Foreign Terrorist Organizations. U.S. Department of State, “Foreign Terrorist Organization,” Congressional Research Service, 15 January 2019.
19. United Nations Office of Drug and Crime (UNODC), “Global Study on Homicide,” 2019, 10; Amanda Erickson, “Latin America is the World’s Most Violent Region: A New Report Investigates Why,” *Washington Post*, 25 April 2018; Robert Muggah and Katherine Aguirre Tobón, “Citizen Security in Latin America: Facts and Figures,” *Igarapé Institute*, Strategic Paper 33, April 2018; Christopher Woody,

- “400 Murders a Day: 10 Reasons Why Latin America is the World’s Most Violent Place,” *Business Insider*, 10 September 2019.
20. Susan L. Torley, “Keeping the Peace: Do the Laws of War Apply?” *73 Texas Law Review*, 1994: 139, 155.
  21. British General Rupert Smith is one of a number of contemporary officers to use the phrases “the new normal” and “war amongst the people” to describe the challenges of fighting an irregular enemy that operates amidst civilian population zones. See Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (London: Penguin Books, 2006), 16–17.
  22. See Paterson, *Training Surrogate Forces*.
  23. This remark was made in regard to Mexico’s deployment of the armed forces to fight violent criminal elements. See “UN Human Rights Chief Voices Concern Over High Level of Violence in Mexico,” *UN News Center*, 9 July 2011.
  24. Brigadier General H. R. McMaster, “Moral, Ethical, and Psychological Preparation of Soldiers and Units for Combat,” *Naval War College Review*, 2010: 14–15.
  25. One of the first laws addressing the use of force on the battlefield was developed by German-American legal scholar Franz Lieber at the request of President Abraham Lincoln during the U.S. Civil War. The rules became known as the Lieber Code. For other efforts to codify LOAC rules before the 1949 Geneva Conventions, consider the 1868 St. Petersburg Declaration and the 1899 and 1907 Hague Peace Conferences. Customary international law (discussed in chapter 2) also compels nations to adhere to certain laws of war. For a thorough if not exhaustive list of LOAC and human rights treaties, see “Exploring Humanitarian Law: A Legal Manual for EHL Teachers,” by the International Committee of the Red Cross (ICRC), January 2009: 10–12. See also, United Nations, “Human Rights: A Basic Handbook for UN Staff,” 2004: 91–96.
  26. The terms LOAC and IHL are synonymous and interchangeable.
  27. St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 grammes of weight,” 11 December 1868. As reported in Yoram Dinstein “Concluding Remarks: LOAC and the Attempts to Abuse or Subvert It,” *International Law Studies*, vol. 87, 2011.
  28. Two of the best textbooks on LOAC found by the author and used extensively in preparation of this manuscript are Laurie R. Blank and Gregory Noone, *International Law and Armed Conflict: Fundamental Principles and Contemporary Challenges in the Law of War* (New York: Wolters Kluwer Law and Business, 2013); Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010). For an excellent and very detailed account of the legal issues associated with contemporary conflicts, including the blurred lines between the laws of war and domestic law enforcement, see Kenneth Watkin, *Fighting at the Legal Boundaries: Controlling the Use of Force in Contemporary Conflict* (New York: Oxford University Press, 2016).

29. The U.S. ratified the 1949 Geneva Conventions in 1955. There are dozens of other LOAC treaties. See International Committee of the Red Cross (ICRC) database for a list of countries and ratification dates of the major LOAC countries: <https://ihl-databases.icrc.org/ihl>. The U.S. has signed but not ratified Additional Protocols I and II. For reasons why the U.S. has been reluctant to ratify the Additional Protocols I and II, see Michael N. Schmitt and Leslie C. Green, "The 1977 Protocol I and The United States," *Saint Louis University Law Journal* 469, 1993; Ronald Reagan, "Letter of Transmittal," *The American Journal of International Law*, Vol. 81, No. 4, Oct. 1987: 910–912; G. B. Roberts "The New Rules for Waging War: The Case against Ratification of Additional Protocol I," *Virginia Journal of International Law*, 26(1), 1985: 109–170; D.S. Abraham, "The Rationale for the United States Decision," *American Journal for International Law*, 1988: 784–787. See also the explanation in Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010): 120–136.
30. The ICRC is mandated by States that are participants to the 1949 Geneva Conventions and 1977 Additional Protocols to act as promoter and "guardian" of IHL.
31. IFRC consists of the International Red Cross and Red Crescent Movement along with the network of National Societies of 190 countries and the International Federation of the Red Cross. The Red Crescent, rather than the Red Cross, is used in many Islamic countries.
32. The author thanks Professor Laurie Blank for a number of important clarifications to these principles. This summary is drawn from the 2015 U.S. Operational Law Handbook, produced by the U.S. Judge Advocate General's Legal Center in Charlottesville, Virginia. See also United Nations, "International Legal Protection of Human Rights in Armed Conflict," 2011, 65. See also The International Committee of the Red Cross (ICRC), "The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms," November 2013, 8–9. The new "Commander's Handbook on the Law of Land Warfare" (Army Field Manual (FM) 6-27/Marine Corps Tactical Publication (MCTP) 11-10C), published in August 2019, also includes "honor" as one of the five customary LOAC principles (1-6).
33. Theodor Meron, "The Humanization of Humanitarian Law," *The American Journal of International Law*, 94 (2000): 239–240. Also cited in Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 25.
34. Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 258–264.
35. See Brigadier General H. R. McMaster, "Moral, Ethical, and Psychological Preparation of Soldiers and Units for Combat," *Naval War College Review* (2010); Christopher Barnes, "Moral Disengagements: When Will Good Soldiers Do Bad Things?" *Military Review* (2010), 46–51; Robert Rielly, "The Inclination for War Crimes," *Military Review* (2010): 52–58.

36. All four Geneva Conventions from 1949 and Additional Protocol I of 1977 identify war crimes (using the technical term “grave breaches” of the laws of war). See Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010): 93–100, for a helpful description of the definitions and history of grave breaches of the laws of war. The new *Commander’s Handbook on the Law of Land Warfare* (Army Field Manual (FM) 6-27/Marine Corps Tactical Publication (MCTP) 11-10C), published in August 2019, devotes an entire chapter (#8) to a discussion of war crimes. That said, the Rome Statute (article 8) of the ICC may have the best contemporary definition and description of war crimes and crimes against humanity.
37. Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 93–98.
38. The author appreciates the assistance of Perry Center research assistant Francheska Salazar in the development of this information. Annysa Bellal, “The War Report: Armed Conflicts in 2018,” *The Geneva Academy of International Humanitarian Law and Human Rights* (2019): 32.
39. The United States declared transnational organized crime a national and international security problem in its Strategy to combat Transnational Organized Crime on 25 July 2011, <https://obamawhitehouse.archives.gov/administration/eop/nsc/transnational-crime>.
40. Most governments are unwilling to recognize these criteria of an armed group because they don’t want to give the organization any sort of legitimacy. See Jann Kleffner, “The Applicability of International Humanitarian Law to Organized Armed Groups,” *ICRC Review*, vol 93, no. 882 (June 2011), fn 1. For an elaboration of the required degree of organization, see The International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Boškoski and Tarčulovski*, Case No. ICTY-IT-04-82-T, Judgment (Trial Chamber), 10 June 2008, paras. 194–205.
41. Common article 3 refers to “armed conflict not of an international character.” See Common Article 3 of the Geneva Conventions. See also Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 152; Laurie R. Blank and Gregory Noone, *International Law and Armed Conflict: Fundamental Principles and Contemporary Challenges in the Law of War* (New York: Wolters Kluwer Law and Business, 2013), 102.
42. How is the Term “Armed Conflict” Defined in International Humanitarian Law? *International Committee of the Red Cross (ICRC) Opinion Paper* (March 2008): 1.
43. Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 205–207.
44. See Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010): 99; Modirzadeh, Naz, “Folk International Law: 9/11 Lawyering and the Transformation of the Law of Armed Conflict to Human Rights Policy and Human Rights Law to War Governance” *Harvard National Security Journal* 5 (2014): 261.

45. In *Hamdan v. Rumsfeld*, the U.S. Supreme Court determined that the “war on terror” was a non-international armed conflict. See John Murphy, “Mission Impossible? International Law and the Changing Character of War,” *International Law Studies*, vol 87 (2011): 18; Modirzadeh, Naz, “Folk International Law: 9/11 Lawyering and the Transformation of the Law of Armed Conflict to Human Rights Policy and Human Rights Law to War Governance” *Harvard National Security Journal* 5 (2014): 261.
46. See the helpful ICRC report, “How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law?” March 2008; “The Manual on the Law of Non-International Armed Conflict with Commentary,” *International Institute of Humanitarian Law*, San Remo, Italy, September 2006.
47. “How is the Term “Armed Conflict” Defined in International Humanitarian Law?” *International Committee of the Red Cross (ICRC) Opinion Paper* (March 2008): 1.
48. In this example, Luttrell’s team was conducting operations in Afghanistan, not Iraq, but the point should be clear nonetheless. See Marcus Luttrell with Patrick Robinson, *Lone Survivor* (New York: Little Brown, 2007): 168–170.
49. The legal parameters for the use of force between an IAC (the situation in Iraq from the conflict’s initiation on 19 March 2003 until major combat operations were declared completed in May of that year) and the NIAC that followed immediately afterwards were not that different, but the use of force policies of the Multi-National Forces–Iraq shifted significantly, especially in 2006 with the introduction of the COIN doctrine developed by Generals Petraeus and Mattis. For a thorough account of the ROE confusion, see Fred Kaplan, *The Insurgents* (New York: Simon and Schuster, 2013) or Thomas Ricks’ *Fiasco: The American Military Adventure In Iraq* (New York: Penguin Books; 2006).
50. Israel launched an airstrike against anti-aircraft weapons outside of Damascus in January 2013. Turkey seized territory in northern Syria and has actively supported opposition forces in the conflict.
51. While rare, some NIACs can also be transnational in nature, as was the confrontation between Kurdish militias operating in northern Syria and the Islamic State. See International Committee of the Red Cross, “Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law” 2008; Louise Arimatsu and Mohbuba Choudhury, “The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya,” *Chatham House* (March 2014): 4.
52. The United Nations considers that there are 193 countries in the world. If only 17 percent have an IAC or a NIAC, the other 83 percent fall below that category. To be perfectly transparent about the methodology, the author acknowledges that many countries are small and may not have any significant serious crime problems.
53. Remarks of Peter Maurer, “Rules of War—A Thing of the Past?,” *Center for Strategic and International Studies (CSIS)*, Washington, D.C., 10 May 2019.

54. Phone interview with author, 23 August 2019.
55. Theodor Meron wrote, “The atrocities of WWII gave birth to the human rights movement, to the insistence of individual criminal responsibility, to the judgement of the Nuremberg Tribunal, and to the promulgation of the Universal Declaration of Human Rights.” See Theodor Meron, *The Humanization of Humanitarian Law* (Boston: Martinus Nijhoff, 2006), 6.
56. Preamble, United Nations Charter; Louise Arimatsu and Mohbuba Choudhury, “The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya,” *Chatham House*, March 2014.
57. As of August 2019, 173 countries ratified ICCPR and 170 countries have ratified the ICESCR. The United States ratified the ICCPR on 08 June 1992 but has not ratified the ICESCR.
58. Francis J. Hampson, “Direct Participation in Hostilities and the interoperability of the Law of Armed Conflict and Human Rights Law,” *International Law Studies* 87 (2011): 189.
59. Theodor Meron, “The Humanization of Humanitarian Law,” *The American Journal of International Law* 94 (2000): 240.
60. R. J. Rummel, *Death by Government: Genocide and Mass Murder in the Twentieth Century* (New Jersey: Transaction Publishers, 1994); R. J. Rummel, *Statistics of Democide*. Center on National Security and Law, University of Virginia, 1997.
61. Michael Clodfelter, *Warfare and Armed Conflicts—A Statistical Reference to Casualty and Other Figures, 1500–2000*. 2nd ed. (New York: McFarland Publishing, 2002), 20.
62. The ICRC defines a human rights violation as, “when an agent of the State or a person acting in an official capacity fails in his or her duty to respect, to protect and to ensure human rights as well as the duty not to discriminate.” See International Committee of the Red Cross, *To Serve and To Protect: Human Rights and Humanitarian Law for Police and Security Forces* (Geneva: ICRC Press, March 2014), 349.
63. See, for example, Moyar, Pagan, and Griego, *Persistent Engagement in Colombia*, 32–33.
64. United Nations, *International Legal Protection of Human Rights in Armed Conflict* (New York: United Nations Press, 2011), 35.
65. See Non-Derogable Rights and Freedoms under Article 4(2) of the International Covenant on Civil and Political Rights. See also Article 29(2) of the Universal Declaration of Human Rights (UDHR) and articles 27(1) and 27(2) of the American Convention on Human Rights. The author thanks Dr. Tony Raimondo of WHINSEC for pointing out these references.
66. Jean-Marie, “Study on Customary International Humanitarian Law: A contribution to the understanding and respect for the rule of law in armed conflict,” *International Review of the Red Cross*, Volume 87, No. 857 (March 2005): 175–212.

67. See article 7 of the Rome Statute of the ICC. See also International Committee of the Red Cross, *To Serve and To Protect: Human Rights and Humanitarian Law for Police and Security Forces* (Geneva: ICRC Press, March 2014), 360. Some scholars think of war crimes as “retail” crimes (i.e., one off crimes) and crimes against humanity as “wholesale” crimes (i.e., widespread or systematic—the result of policy or coordination). The author thanks Professor Laurie Blank, clinical professor of law and the director of the International Humanitarian Law Clinic at Emory University School of Law, for this description.
68. Cordula Droege and David Tuck, “Fighting Together and International Humanitarian Law: Setting the Legal Framework,” *The International Committee of the Red Cross (ICRC)*, 12 October 2017.
69. Christopher Barnes, “Moral Disengagements: When Will Good Soldiers Do Bad Things?” *Military Review* (2010): 46–51; Robert Rielly, “The Inclination for War Crimes,” *Military Review* (2010): 52–58; W. R. Peers, *The My Lai Inquiry* (New York and London: W. W. Norton and Company, 1979), 3. See also “Explaining Support for Vigilante Justice in Mexico,” Latin American Public Opinion Poll (LAPOP, [www.vanderbilt.edu/lapop/](http://www.vanderbilt.edu/lapop/)), 2010.
70. Brigadier General H. R. McMaster, “Moral, Ethical, and Psychological Preparation of Soldiers and Units for Combat,” *Naval War College Review* (2010): 14–15; Christopher Barnes, “Moral Disengagements: When Will Good Soldiers Do Bad Things?” *Military Review* (2010): 46–51; Robert Rielly, “The Inclination for War Crimes,” *Military Review* (2010), 52–58.
71. United Nations, *International Legal Protection of Human Rights in Armed Conflict* (New York: United Nations, 2011), 62.
72. The rules on what rights detainees should be advised of differ from country to country. The description in this paragraph are drawn from a number of international reference guides to include: International Committee of the Red Cross (ICRC), *To Serve and To Protect: Human Rights and Humanitarian Law for Police and Security Forces* (March 2014). See chapter 3, Law Enforcement Organization, Concepts, and Governing Principles, pages 136–137.
73. Portions of this summary on the rights of detainees are drawn from the International Committee of the Red Cross (ICRC), *To Serve and To Protect: Human Rights and Humanitarian Law for Police and Security Forces* (March 2014); *The United Nations Code of Conduct for Law Enforcement Officials* (1979); and *The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990).
74. Police Executive Research Forum, *Guiding Principles on Use of Force* (2016), 16.
75. Police Executive Research Forum, *Guiding Principles on Use of Force* (2016), 32.
76. Material drawn from a number of sources including Police Executive Research Forum, “*Guiding Principles on Use of Force*” (2016), the Seattle Police Department Manual, and a number of other U.S. police manuals on the use of force.
77. One incident in particular that spurred the reforms was the death of 15-year old Sergio Hernandez Guereca who was shot by a CBP officer in 2010. The officer

claimed he was in fear for his life though cellphone video that was uncovered after the incident showed that the boy was about 75 feet away. In another incident in 2012, CBP officers on a boat in the Rio Grande River shot and killed 36-year old Guillermo Arevalo near Nuevo Laredo. Video footage shows the CBP boat was on the U.S. side of the river while Arevalo was standing on the Mexican banks of the river about 80 yards away.

78. See U.S. Customs and Border Protection, *The Use of Force Policy, Guidelines, and Procedures Handbook*, (Washington, D.C.: U.S. Customs and Border Protection, May 2014).
79. The author is grateful to Perry Center research assistant Ryan Keating for this summary. See the new guidelines on the U.S. Customs and Border Protection, *The Use of Force Policy*. See also Steve Inskeep, “Border Agency Chief Opens Up about Deadly Force Cases,” *National Public Radio*, 28 July 2014; and Paul Koscak, “Law Enforcement on a Constitutional Scale,” *Frontline*, U.S. Customs and Border Protection 9, 1 (2017).
80. The U.S. has a long and convoluted history of support for the ICC. Under President Bill Clinton, the U.S. signed the Rome Statute (an indication of support for the organization and intent to ratify it within the U.S. Senate) but under his successor, President George Bush, the U.S. “unsigned” the Rome Statute. In general, conservative political groups oppose the ICC because they believe it may be used to punish U.S. Service members. See Susannah George, “International Criminal Court approves investigation of possible war crimes in Afghanistan involving U.S. troops,” *Washington Post*, 5 March 2020. For an overview of the international criminal tribunals, see Harold Hongju Koh, “International Criminal Justice 5.0,” in a speech given at the Vera Institute of Justice in New York City in November 2012. Also addressed in the new *Commander’s Handbook on the Law of Land Warfare* (Army Field Manual (FM) 6-27/Marine Corps Tactical Publication (MCTP) 11-10C), August 2019, 8–11.
81. Annysa Bellal, “The War Report: Armed Conflicts in 2018,” The Geneva Academy of International Humanitarian Law and Human Rights, Geneva, Switzerland, 32. See also <http://www.rulac.org/>, accessed 10 December 2019, Center for Systemic Peace, University of Maryland, <http://www.systemicpeace.org/warlist/warlist.htm>, accessed 10 December 2019.
82. ICRC refers to these internal disturbances as “other situations of violence.” This raises another legal dilemma for State and Defense lawyers. The U.S. military is prohibited from conducting law enforcement operations. Yet the militaries in many PNs with whom the U.S. cooperates are conducting exactly these types of operations.
83. *The Manual on the Law of Non-International Armed Conflict with Commentary*, International Institute of Humanitarian Law (San Remo, Italy, September 2006), 15.
84. All five are located in Colombia. The groups, how the government decides they are OAGs, and the military’s responses are covered in detail in chapter 9.

85. Victor Gonzales Jauregui, “Dimensiones de la Participación de las fuerzas armadas en los nuevos contextos de violencia y criminalidad en América Latina: Roles de las fuerzas armadas en el Perú,” *Contextualizaciones Latina Americanas*, año 10, número 19 (julio-diciembre 2018).
86. Modirzadeh, Naz, “Folk International Law: 9/11 Lawyering and the Transformation of the Law of Armed Conflict to Human Rights Policy and Human Rights Law to War Governance,” *Harvard National Security Journal* 5 (2014): 236.
87. ICRC, *The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms* (November 2013), 2.
88. Among international legal scholars, there is a significant debate over the capture or kill question. See for example, Ryan Goodman, “The Power to Kill or Capture Enemy Combatants,” *The European Journal of International Law* Vol. 24 no. 3 (2013): 819–853; Michael Schmitt, “Wound, Capture, or Kill: A Reply to Ryan Goodman’s ‘The Power to Kill or Capture Enemy Combatants,’” *European Journal of International Law*, Vol 24, no. 3 (August 2013): 855–861. See also The International Committee of the Red Cross (ICRC), *The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms* (Geneva: ICRC Press, 2013), 16.
89. DPH is nominally defined as having three requirements: (1) the act must be likely to cause death, injury, or destruction or adversely affect the military capacity of the enemy, (2) there must be a direct cause-effect relation between the act and the resulting potential harm, and (3) must be specifically directed against the opponent in the armed conflict. See “Exploring Humanitarian Law—A Legal Manual for EHL Teachers,” by the International Committee of the Red Cross (ICRC) (January 2009), 18.
90. There are important differences between DPH and CCF. The first are civilians who can be targeted only while they are engaged in DPH—i.e., on the basis of their conduct. The second are not civilians, but are non-state combatants who can be targeted at any time—i.e., on the basis of their status. In other words, an individual who has a CCF is continuously DPH but who conduct armed actions in an episodic manner. When conducting armed action, the person loses their status as a civilian. The U.S. does not adhere to the CCF rule but instead considers the person as a legitimate target because he or she may fill a combat role at any time. See the 2015 DOD Law of War Manual, section 5.7.1. Section 5.8 also provides important rules for “Civilians Taking a Direct Part in Hostilities.” The author appreciates the clarification of Professor Mitt Regan of Georgetown Law who provided these important clarifications. DPH has been a source of serious contention and controversy among international scholars for a number of years. For more on DPH, see Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva: ICRC Press, 2009); Modirzadeh, Naz, “Folk International Law: 9/11 Lawyering and the Transformation of the Law of Armed Conflict to Human Rights Policy and Human Rights Law to War Governance,” *Harvard National Security Journal* 5 (2014): 269.

91. The ICRC hosted conferences, each titled “Expert Meeting on the Notion of Direct Participation in Hostilities,” in The Hague in 2003 and 2004, and in Geneva in 2005, 2006, and 2008), all available for download at <https://www.icrc.org/en/doc/resources/documents/article/other/direct-participation-article-020709.htm>
92. Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva: ICRC, 2009).
93. Ryan Goodman, “The Power to Kill or Capture Enemy Combatants,” *The European Journal of International Law* Vol. 24 no. 3 (2013): 819–853; Michael Schmitt, “Wound, Capture, or Kill: A Reply to Ryan Goodman’s ‘The Power to Kill or Capture Enemy Combatants,’” *The European Journal of International Law*, Vol 24, no. 3 (August 2013) 855–861.
94. The International Committee of the Red Cross (ICRC), *The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms* (November 2013), 12.
95. Phone interview with retired Marine Corps JAG at Defense Institute of International Legal Studies in Newport, Rhode Island, 23 August 2019.
96. See DOD directive 5210.56, Arming and the Use of Force, 18 November 2016, section 3.4(b), 15, which states, “Warning shots are prohibited in the United States ... and are also prohibited outside the United States.” Only U.S. personnel with special training and under specific circumstances are permitted to fire warning shots. This may not be the case in other countries in which warning shots are considered a viable technique among EOF tactics. The United Nations, for example, permits warning shots during most peacekeeping operations.
97. See Seattle Police Manual, Use of Force Policy, section 8.000.
98. The International Committee of the Red Cross (ICRC), *The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms* (November 2013), 17.
99. See the webpage of the United Nations Office of the High Commissioner for Human Rights, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>, accessed 14 August 2019. For the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, see <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>, accessed 14 August 2019.
100. The requirement to warn the suspect of the intent to use force should be done with adequate time for the warning to be observed, unless the situation has already escalated to the degree that it would be clearly inappropriate or pointless to do so.” United Nations, *International Legal Protection of Human Rights in Armed Conflict* (New York: United Nations, 2011), 67.
101. An additional difference between LOAC and criminal rules concerns the use of tear gas. Most militaries will not use tear gas during armed conflict because it is banned by the 1993 Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, article I (5) which states “Each State Party undertakes not to use riot control agents

as a method of warfare.” At the same time, tear gas is a common tactic for riot control by most police units. See the International Committee of the Red Cross (ICRC), *The Use of Force*, 48, footnote 118.

102. Unlike those arrested by alleged crimes, captured combatants do not have to be charged with a crime. They are detained so they can be removed from the battlefield. The third Geneva Convention (1949) specifically addresses treatment of prisoners of war. See also Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 224.
103. The Chief Prosecutor at the Nuremberg Trials, Brigadier General Telford Taylor, wrote, “War consists largely of acts that would be criminal if performed in times of peace. Such conduct is not regarded as criminal if it takes place in the course of war because the state lays a blanket of immunity over the warriors. But the area of immunity is not unlimited and its boundaries are marked by the laws of war.” Telford Taylor, *Nuremberg and Vietnam: An American Tragedy* (Chicago: Quadrangle Books, 1970), 19. Also cited in Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 42.
104. Jens David Ohlin, “When do Combatant Immunity apply?” *Opinion Juris* (1 August 2014); Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 99.
105. The author thanks Nicole Hogg, Legal advisor and Head of Department, Regional Delegation for the United States and Canada, International Committee of the Red Cross (ICRC), for these clarifications. See International Committee of the Red Cross (ICRC), *Expert Meeting: The Use of Force in Armed Conflicts Interplay Between The Conduct Of Hostilities And Law Enforcement Paradigms* (November 2013); Michael J. Dennis, “Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation,” *The American Journal of International Law* Vol. 99, No. 1 (January 2005): 119–141.
106. The author appreciates (again) the insights of Nicole Hogg.
107. Kenneth Watkin, *Fighting on the Legal Boundaries* (New York: Oxford University Press, 2016), 156.
108. This hybridization of conflicts has received a lot of scholarly and legal scrutiny. Many experts agree that LOAC and human rights law can occur simultaneously. See, for example, Michael Dennis, “Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation,” *The American Journal of International Law* Vol. 99, No. 1 (January 2005): 119–141; Noam Lubell, “Challenges in Applying Human Rights Law to Armed Conflict,” *International Review of the Red Cross*, 87/860 (December 2005): 737–754; Kenneth Watkin, “Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict,” *The American Journal of International Law*, Vol. 98, No. 1 (January 2004): 1–34.

109. Kenneth Watkin, *Fighting on the Legal Boundaries* (New York: Oxford University Press, 2016), 150.
110. Two important legal decisions are often cited to support the idea that LOAC and IHRL can be applied simultaneously: the 2004 Wall Advisory Opinion of the International Court of Justice (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004 136, para 106) and International Court of Justice 1996 Advisory Opinion on the Threat or Use of Nuclear Weapons (*Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, 226, para 25).
111. The International Committee of the Red Cross (ICRC), *The Use of Force in Armed Conflicts: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms* (November 2013), 26.
112. Israel is one country that treats LOAC and human rights law as separate and distinct during armed conflicts. Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 24.
113. Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 24; Kenneth Watkin, *Fighting on the Legal Boundaries* (New York: Oxford University Press, 2016), 121.
114. Kenneth Watkin, *Fighting on the Legal Boundaries* (New York: Oxford University Press, 2016), 124, 149–150.
115. See “Summary of Contributions to UN Peacekeeping by Country, Mission and Post: Police, UN Military Experts on Mission, Staff Officers and Troops,” 31 December 2018. Also see “Principles of Peacekeeping,” on the UN PKO webpage: <https://peacekeeping.un.org/en/principles-of-peacekeeping>, accessed 1 August 2019.
116. The Preamble of the United Nations Charter (signed 26 June 1945) states that one of the purposes of the UN is to, “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.” Additionally, the Principles and Guidelines of United Nations Peacekeeping Operations (published in 2008), emphasizes human rights as one of the top priorities of UN peacekeeping forces: “United Nations peacekeeping personnel—whether military, police or civilian—should act in accordance with international human rights law and understand how the implementation of their tasks intersects with human rights. They must be able to recognize human rights violations or abuse, and be prepared to respond appropriately within the limits of their mandate and their competence.”
117. Joint Chiefs of Staff, *Joint Operations*, Joint Publication 3-0 (Washington, D.C.: Joint Chiefs of Staff, 2017) identifies three major categories of military operations: (1) major operations and campaigns, (2) crisis response and limited contingency operations, and (3) military engagement, security cooperation, and deterrence. The publication (page V-2) also identifies 16 other types of operations. The

author is indebted to William J. Perry Center Research Assistant Ana Cardona for collecting and assembling this information. Approximately 58 percent of U.S. deployments (measured by number of events, not number of personnel) involve counterterror (CT) operations or conventional conflicts such as those in Iraq, Afghanistan, Syria, Kosovo, and Bosnia-Herzegovina. For example, at its peak in 2005, the U.S. had about 160,000 troops in Iraq; 99,000 in Afghanistan in 2011 of which 83,000 worked under the ISAF; 5,500 in Kosovo in 2001 working under the KFOR, and 3,800 in 2001 in Bosnia-Herzegovina working for the Stabilization Force. Since 2001, U.S. forces—especially Special Operations Units—have conducted counterterror operations in Iraq, Afghanistan, Syria, Yemen, the Philippines, and Niger, among others. All information on U.S. military deployments drawn from “Instances of Use of United States Armed Forces Abroad, 1798–2018,” *Congressional Research Service*, 28 December 2018.

118. The U.S. Army defines operations other than war (OOTW) as “military activities during peacetime and conflict that do not necessarily involve armed clashes between two organized forces.” U.S. Department of Army, *Operations 2-0*, Field Manual 100-5 (Washington, D.C.: Department of the Army, June 1993). The term MOOTW was discontinued by Joint Publication 3-0, *Joint Operations* (17 September 2006).
119. Between 1990 and 2000, the U.S. military responded to 61 HADR events. See the helpful list in Frank Schubert, *Other than War* (Washington, D.C.: Joint History Office, Office of the Chairman of the Joint Chiefs of Staff, 2013), 31–32.
120. See the list of 18 NEOs conducted during the 1990s in Frank Schubert, *Other than War* (Washington, D.C.: Joint History Office, Office of the Chairman of the Joint Chiefs of Staff, 2013), 33–34.
121. Frank Schubert, *Other than War*.
122. General Charles Krulak conceived of the idea of a “3-block war” while serving as Commandant of the U.S. Marine Corps from 1995–1999. It was based on his observations in Somalia and other operations. Krulak considered the future battlefield to be urban and asymmetrical setting with rapidly changing conditions and difficulty in distinguishing between combatants and non-combatants. See Charles Krulak, “The Strategic Corporal: Leadership in the Three Block War,” *Marines Magazine* (January 1999). Also see Walter Dorn and Michael Varey, “The Rise and Demise of the ‘Three Block War,’” *Canadian Military Journal*, Vol. 10, no 1 (2009): 38–45.
123. General Peter Chiarelli, U.S. Army, referred to the multi-task requirements of the modern soldier as “full spectrum operations” in which soldiers had to be able to conduct defensive, offensive, and stability operations simultaneously. In these situations, soldiers may be required to conduct combat operations, train foreign forces, provide essential services, contribute to good governance, and promote economic pluralism all at the same time. Each task involves a dynamic environment with varying degrees of risk and mental agility to identify force requirements. See Peter W. Chiarelli and Patrick R. Michaelis, “Winning the Peace: The Requirement for Full-Spectrum Operations,” *Military Review* (July-August

- 2005): 4–17. With respect to the 26th MEU deployment, see Ann A. Ferrante, “Chronology of the United States Marine Corps–1999,” typescript (Washington, D.C.: U.S. Marine Corps Historical Center). Also reported in Frank Schubert, *Other than War* (Washington, D.C.: Joint History Office, Office of the Chairman of the Joint Chiefs of Staff, 2013), 46.
124. The U.S. does not adhere to the CCF rule but instead considers the person as a legitimate target because he or she may fill a combat role at any time. See the 2015 DOD Law of War Manual, section 5.7.1. Section 5.8 also provides important rules for “Civilians Taking a Direct Part in Hostilities.” The author thanks Dr. Tony Raimondo, Director of the Center for Human Rights and Democracy at the Western Hemisphere Institute of Security Cooperation (WHINSEC) at Fort Benning, Georgia for clarification on U.S. NIAC policy.
  125. See Congressional Research Service, “The Posse Comitatus Act and Related Matters” (Washington, D.C.: CRS, 6 November 2018): 21.
  126. The Kent State Massacre of May 1970 is a graphic example of what can happen when soldiers (in this case Ohioan National Guard) were called up on to quell a student protest on the campus of Kent State University. The Guardsmen contended they thought they were fired upon and shot at student protesters, killing four and wounding nine. The Guardsmen had no other non-lethal means of controlling the protests and responded with the only tool they had at their disposal when they perceived they were in danger. The incident served as a catalyst for a massive anti-war movement by the U.S. public that placed immense pressure on the government to extract itself from the Vietnam War and at the same time contributed to widespread public disapproval of U.S. military personnel.
  127. Professor Rosa Brooks’ testimony to the Senate Armed Services Committee, “The Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force,” 16 May 2013.
  128. Steve Bowman, Lawrence Kapp, and Amy Belasco, “Hurricane Katrina: DOD Disaster Response,” *Congressional Research Service*, 2005; James Wombwell, “Army Support during the Hurricane Katrina Disaster,” *U.S. Army Combined Arms Center*, 2009.
  129. Samantha Schmidt, “How the Tragic Killing of an American Teenager Halted the Military Border Presence in 1997,” *Washington Post*, 6 April 2018; Roberto Suro, “Report: U.S. ‘Failures’ Led to Border Death,” *Washington Post*, 13 November 1998.
  130. James Laporta, “Donald Trump Signs Authorization for Border Troops Using Lethal Force as Migrant Caravan Approaches, Document Reveals,” *Newsweek*, 21 November 2018. Also reported in “Recent Migration to the United States from Central America: Frequently Asked Questions,” Congressional Research Service (29 January 2019), 15; Tara Copp, “‘I didn’t say shoot.’ Trump says Migrants would be arrested, not shot, if they throw rocks,” *Military Times*, 2 November 2018.
  131. Michael D. Shear and Julie Hirschfeld Davis, “Shoot Migrants’ Legs, Build Alligator Moat: Behind Trump’s Ideas for Border,” *New York Times*, 1 October 2019.

132. One retired JAG at Defense Institute of International Legal Studies in Newport, Rhode Island, remarked to the author that there are no significant differences between LOAC and law enforcement tactics. Phone interview, 23 August 2019. For an explanation of the complementarity policy in official DOD manuals, see Department of the Navy, “The Commander’s Handbook on the Law of Naval Operations,” Naval Warfare Publication (NWP) 1-14M, August 2017, 5–8. See also “The Commander’s Handbook on the Law of Land Warfare” (Army Field Manual (FM) 6-27/Marine Corps Tactical Publication (MCTP) 11-10C), 1–26.
133. International Committee of the Red Cross (ICRC), *Expert Meeting: The Use of Force in Armed Conflicts Interplay between the Conduct of Hostilities and Law Enforcement Paradigms*, November 2013. See also remarks of Peter Maurer, “Rules of War—A Thing of the Past?” *Center for Strategic and International Studies (CSIS)*, Washington, D.C., 10 May 2019.
134. *Lex specialis* signifies that whenever two or more norms deal with the same subject matter, priority should be given to the norm that is more specific. In other words, “the rule that is more specifically directed towards the action receives priority because it takes better account of the particular features of the context in which the law is to be applied, thus creating a more equitable result and better reflecting the intent of the authorities that have made the law.” See Para 1.3.2.1 of 2015 Law of War Manual, 9.
135. See Department of Defense, *DOD Law of War Program*, DOD Directive 2311.01E (Washington, D.C.: Department of Defense, May 2006). See also U.S. Department of State, Observations of the United States of America on the Human Rights Committee’s Draft General Comment 35: Article 9, 10 June 2014, paragraph 20. See also footnote 13, 9 and paragraph 17.2.1.3 (1018) of 2015 Law of War Manual.
136. United Nations, *International Legal Protection of Human Rights in Armed Conflict* (New York: United Nations, 2011), 35.
137. This is commonly referred to as the concept of “extraterritoriality.” Recent rulings by the European Convention on Human Rights (ECHR), for example, have judged that some European States have “construed certain obligations under as applicable to their military forces abroad during occupation.” See U.S. Law of War Manual, 2015, para 1.6.3.2, 24; Michael J. Dennis, “Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation,” *The American Journal of International Law*, Vol. 99, No. 1 (January 2005): 133; Noam Lubell, “Challenges in Applying Human Rights Law to Armed Conflict,” *International Review of the Red Cross*, 87/860, (December 2005), 740.
138. A phrase from the 2018 JAG Operational Law Handbook, section V.A.1, 51.
139. During the International Court of Justice 1996 advisory opinion on the “Legality of the Threat or Use of Nuclear Weapons,” the Court declared that “the protection of the International Covenant of Civil and Political Rights does not cease in times of war.”
140. Department of Defense, *DOD Law of War Program*.

141. The 2018 JAG Operational Law Handbook states that, “where LOAC is silent or its guidance inadequate, specific provisions of applicable human rights law may supplement or possibly even displace ... the LOAC in a particular situation.” See chapter 3, section V.A.3, 52.
142. See page 1–26, para 1-119. To be clear, this is not a change to DOD policy regarding *lex specialis*, but it does represent an important acknowledgement that human rights continue to apply in situations of armed conflict.
143. There is extensive literature on legal rules for military forces acting as occupation forces. It is beyond the scope of this article to address those conditions but interested readers are directed to the following source for more information: Laurie R. Blank and Gregory Noone, *International Law and Armed Conflict: Fundamental Principles and Contemporary Challenges in the Law of War* (New York: Wolters Kluwer Law and Business, 2013), chapter 6, The Law of Belligerent Occupation.
144. See 2018 JAG Operational Law Manual, 2018, chapter 3, section II.D, 48–50.
145. Dietrich Schindler, “Human Rights and Humanitarian Law: Interrelationships of the Laws,” *American University Law Review* 31 (1982): 935, 941–42; Michael J. Dennis, “Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation,” *The American Journal of International Law*, Vol. 99, No. 1 (January 2005): 119–120.
146. Kenneth Watkin, *Fighting on the Legal Boundaries* (New York: Oxford University Press, 2016), 149–150.
147. See, for example, Thomas Buergenthal, “To Respect and to Ensure: State Obligations and Permissible Derogations,” in Louis Henkin (editor), *The International Bill of Human Rights* (1981), 74; Dominic McGoldrick, “Extraterritorial Application of the International Covenant on Civil and Political Rights,” in Fons Coomans and Menno T. Kamminga (editors), *Extraterritorial Application of Human Rights Treaties* (2004), 41, 48; Theodor Meron, “Extraterritoriality of Human Rights Treaties,” *American Journal of International Law* (AJIL) 89, (1995): 78, 79; Martin Scheinin, “Extraterritorial Effect of the International Covenant on Civil and Political Rights,” in Fons Coomans & Menno T. Kamminga (editors), *Extraterritorial Application of Human Rights Treaties* (2004), 73; Hugh King, “The Extraterritorial Human Rights Obligations of States,” *Human Rights Law Review*, Volume 9, Issue 4 (2009): 521–556; Marko Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford: Oxford University Press, 14 July 2011); Wells Bennett, “The Extraterritorial Effect of Human Rights: the ECHR’s Al-Skeini Decision,” Lawfare Blog, 12 July 2011, <https://www.lawfareblog.com/extraterritorial-effect-human-rights-echrs-al-skeini-decision>, last accessed 1 August 2019.
148. See U.S. Law of War Manual, 2015, para 1.6.3.2, 24; Michael J. Dennis, “Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation,” *The American Journal of International Law*, Vol. 99, No. 1 (January 2005): 133; Noam Lubell, “Challenges in Applying Human Rights Law

- to Armed Conflict,” *International Review of the Red Cross*, 87/860 (December 2005): 740.
149. See CJCS Instruction 3121.01b, Standing Rules of Engagement (SROE)/Standing Rules for the Use of Force (SRUF) for U.S. Forces, 13 June 2005.
  150. Available for download at <http://archive.defense.gov/pubs/law-of-war-manual-june-2015.pdf>.
  151. Conversation with author at JSOU in May 2015.
  152. Senior JAG official’s conversation with author in Washington in July 2015.
  153. On 7 August 2019, the Army and the Marine Corps published the new, “The Commander’s Handbook on the Law of Land Warfare” (Army Field Manual (FM) 6-27/Marine Corps Tactical Publication (MCTP) 11-10C) to replace the outdated 1956 Law of Land Warfare Manual.
  154. White House, *National Security Strategy* (Washington, D.C.: White House, 2015), foreword, 19.
  155. United States Department of State and United States Agency for International Development Strategic Plan FY 2014–2017, 17 and 18. Additionally, the U.S. Foreign Assistance Act of 1961 (section 502B, 22 USC 2304) states that the United States will promote and encourage increased respect for human rights and international freedoms throughout the world” and that a “principal goal of U.S. foreign policy shall be to promote the increased observance of internationally recognized human rights by all countries.” Since 1977, the State Department has produced the annual series of country reports on human rights. The reports focus primarily on civil and political liberties in 194 countries across the globe. The reports were made public in 1999 and placed on the State Department homepage, <http://www.state.gov/j/drl/rls/hrrpt/>.
  156. “Global Human Rights: The Department of State’s Country Reports on Human Rights Practices,” *Congressional Research Service* (CRS) In Focus, 20 May 2019.
  157. Carol Morello, “U.S. withdraws from U.N. Human Rights Council over perceived bias against Israel,” *Washington Post*, 19 June 2018; Gardiner Harris, “Trump Administration Withdraws U.S. From U.N. Human Rights Council,” *New York Times*, 19 June 2018.
  158. General Thomas D. Waldhauser, Commander of U. S. African Command, written testimony before the Senate Armed Services Committee (7 February 2019): 3.
  159. General Joseph Votel, Commander of the U.S. Central Command, written testimony to Congress, 9 March 2017.
  160. Testimony to the 114th Congress Senate Armed Services Committee, 12 March 2015.
  161. James Stavridis, *Partnership for the Americas* (Washington, D.C.: National Defense University Press, 2010), 113.
  162. Leana Bresnahan, “A Critical Juncture for Security and Human Rights,” *Prism* 5(4), National Defense University, 2015.

163. James Stavridis, *Partnership for the Americas* (Washington, D.C.: National Defense University Press, 2010), 132.
164. General John Kelly, USSOUTHCOM Commander, written testimony before congress in March 2015, 23. See also, "An Interview with General John Kelly," *Prism* 5(4), National Defense University, 2015.
165. General John Kelly, USSOUTHCOM Commander, written testimony before Congress in March 2015, 18.
166. Posture Statement of Admiral Kurt W. Tidd Commander, United States Southern Command before the 115th Congress Senate Armed Services Committee (15 February 2018), 19.
167. U.S. Southern Command Strategy, "Enduring Promise for the Americas," 8 May 2019, 4.
168. Admiral Craig S. Faller, Commander, U.S. Southern Command, testimony before the Senate Armed Services Committee, 7 February 2019.
169. Craig Whitlock, "Number of U.S. casualties from roadside bombs in Afghanistan skyrocketed from 2009 to 2010," *Washington Post*, 26 January 2011; "More Attacks, Mounting Casualties," *Washington Post*, 30 Sept 2007; Rick Atkinson, "There was a two-year learning curve ... and a lot of people died in those two years." *Washington Post*, 01 October 2007. See also Iraq Index from Brookings Institution, 21 December 2007; Thomas L. Day and, Jonathan S. Landay, "U.S. intelligence: 'Time is running out' in Afghanistan," *McClatchy* Washington Bureau, 28 December 2009; Tom Vanden, "Afghan insurgents match surge with more IEDs," *USA Today*, 10 January 2011.
170. Portions of this section drawn from: Pat Paterson, "U.S. Tactical Challenges in Iraq and Afghanistan: Finding the Proper Balance between Force Protection and Collateral Damages." *Cuadernos de Difusión*, Centro de Estudios Estratégicos de la Academia de Guerra de Chile, December 2017.
171. Andrew Tilghman, "Commander Defends ISIS Air War's Effectiveness," *Military Times*, 5 June 2015. Also reported in Kolenda, "The Strategic Costs of Civilian Harm," 54.
172. The 5S doctrine is contained in the Operational Law Handbook 2015 and in the Center for Army Lessons Learned (CALL), "Escalation of Force Handbook: Tactics, Techniques, and Procedures" (July 2007): 41.
173. Pew Global Attitudes Survey, link: <http://www.pewglobal.org/2003/06/03/chapter-1-post-war-opinions/>. Also see Kahl, Colin H, "How We Fight," *Foreign Affairs* 85, 6 (November/December 2006): 83.
174. According to Christopher Kolenda, there was a 51 percent increase in the number of pro-government caused civilian casualties between 2013 and 2014. During the first half of 2015, civilian casualties from Afghanistan Air Force (AAF) airstrikes, increased almost eightfold. See Kolenda, "The Strategic Costs of Civilian Harm," 43.

175. Richard Opiel and Taimoor Shah, "Afghan and NATO Differ on Civilian Deaths," *Associated Press*, 26 July 2010. Pakistan President Asif Ali Zardari also criticized ISAF tactics in Afghanistan, claiming that coalition forces had "lost the battle to wins hearts and minds." See Burns, John F., "Afghan War is Being Lost, Pakistan President says," *New York Times*, 4 August 2010.
176. Mandy Clark and Fazul Rahim, "Karzai Boldly Bans Night Raids, Home Searches," *CBS News*, 16 November 2011; Alissa J. Rubin, "Karzai to Ban Afghan Forces from Requesting Foreign Airstrikes," *New York Times*, 17 February 2013. For an NGO perspective on the night operations, see Open Society Foundations, "The Cost of Kill/Capture: Impact of the Night Raid Surge on Afghan Civilians," (19 September 2011).
177. Thom Shanker, "Joint Chiefs Chairman Readjusts Principles on the Use of Force," *Washington Post*, 3 March 2010. Under this new strategy, the U.S. took numerous other precautions to avoid causing collateral damages. Colin Kahl, in his excellent article "In the Crossfire or the Crosshairs?" lists many of the ways that the U.S. sought to avoid collateral damages during the war in Iraq. For example, intelligence planners identified 12,700 "no strike" targets that were protected from attacks. This included schools, hospitals, water treatment facilities, electrical facilities, and other forms of infrastructure. The list, designed to comply with international humanitarian law that prohibits attacks on such targets, was developed with the assistance of international human rights non-government organizations and updated occasionally by military lawyers. The U.S. military also tried to use precision guided munitions whenever possible. Unguided munitions with a large explosive payload were too risky for use in urban population concentrations. Precision guided munitions with smaller explosive perimeters helped reduce the potential for collateral damage. According to one source, 97 percent of the munitions used in Iraq in 2007–2010 were PGMs as compared to 68 percent in 2003. See Colin Kahl, "In the Crossfire or the Crosshairs?" *International Security* vol. 32, no. 1 (Summer 2007).
178. On 4 March 2007, a suicide bomber in a van struck a Marine Corps Special Operations convoy near Jalabad, Afghanistan. In the ensuing confusion, the Marines fired indiscriminately on people along several miles of a crowded roadway as they fled from the scene. Nineteen civilians died and another 50 were wounded. The U.S. Army brigade commander in charge of the group told the families of 69 civilians who were killed or wounded that he is "deeply, deeply ashamed" about the incident and called it a "terrible, terrible mistake." Surviving family members were paid \$2,000 each in solatia payments to compensate them for their losses. Josh White, "69 Afghans' Families Get a U.S. Apology," *Washington Post*, 9 May 2007.
179. Kolenda, "The Strategic Costs of Civilian Harm," 17, 19.
180. Kolenda, "The Strategic Costs of Civilian Harm," 15.
181. Karl Gotthardt, "New Rules of Engagement to NATO forces by General McChrystal," *Now Public*, 2 July 2009. As reported in Christopher D. Amore, "Rules of Engagement: Balancing the (Inherent) Right and Obligation of Self-Defense with

- the Prevention of Civilian Casualties,” *National Security Law Journal*, George Mason University (2013): 60.
182. Landon Lecture Series Remarks. Admiral Mike Mullen, chairman of the Joint Chiefs of Staff, Kansas State University, Manhattan, Kansas, 3 March 2010.
  183. General David McKiernan was ISAF Commander from 3 June 2008 to 15 June 2009. For the reasons for his relief from command, see Fred Kaplan, *The Insurgents* (New York: Simon and Schuster, 2013), 302–303 and 325–326; Robert Gates, *Duty*, New York: Random House, 88; Simon Tisdall, “The Curious Sacking of General McKiernan,” *The Guardian*, 12 May 2009; Eric Schmitt and Thom Shanker, “U.S. Report Finds Errors in Afghan Airstrikes,” *The New York Times*, 2 June 2009, A1.
  184. Richard Opiel and Rod Nordland, “New Rules Stress G.I.’s limits in Afghan Fighting,” *New York Times*, 4 August 2010.
  185. General McChrystal’s initial assessment of the situation in Afghanistan, August 2009, 2–10.
  186. McChrystal’s Tactical Directive 1-2. Reported in “Tackling Tough Calls: Lessons from Recent Conflicts on Hostile Intent and Civilian Protection,” *Harvard Law School International Human Rights Clinic* (2016): 23.
  187. See McChrystal’s Frank Talk on Afghanistan, CBS 60 Minutes interview, 24 September 2009. Also reported in Fred Kaplan, *The Insurgents* (New York: Simon and Schuster, 2013), 325–326.
  188. General Stanley McChrystal, Tactical Directive, NATO/ISAF, 6 July 2009. General McChrystal was ISAF Commander from 15 June 2009 to 23 June 2010.
  189. See COMISAF Night Operations Tactical Directive, 1 December 2011. See also Mark Mazzetti, “SEAL Team 6: A Secret History of Quiet Killings and Blurred Lines,” *New York Times*, 6 June 2015.
  190. U.S. military operations in Afghanistan and Iraq are governed by LOAC, not human rights law. The author uses these examples and anecdotes to demonstrate the human rights challenges associated with such operations. See ISAF Commander Counterinsurgency Guidance, [http://www.nato.int/isaf/docu/official\\_texts/counterinsurgency\\_guidance.pdf](http://www.nato.int/isaf/docu/official_texts/counterinsurgency_guidance.pdf).
  191. Fred Kaplan, *The Insurgents* (New York: Simon and Schuster, 2013), 167–168; Anna Mulrine, “Pentagon had Red Flags about Command Climate in ‘Kill Team’ Stryker Brigade,” *Christian Science Monitor*, 28 October 2010.
  192. General David Petraeus, Tactical Directive, NATO/ISAF, 4 August 2010; Kolenda, “The Strategic Costs of Civilian Harm,” 7, 36.
  193. Kolenda, “The Strategic Costs of Civilian Harm,” 26.
  194. See, for example, Rowan Scarborough, “Shades of Vietnam: Spike in U.S. troop deaths tied to stricter rules of engagement,” *Washington Times*, 5 December 2013; C. J. Chivers, “General Faces Unease Among His Own Troops,” *New York Times*, 22 June 2010; Thomas Harding, “Courageous Restraint’ Putting Troops Lives at Risk,” *The Telegraph*, 6 July 2010; John Hayward, “Impossible Rules of

- Engagement: Zero Civilian Casualties” in ISIS Battle,” *Breitbart*, 25 June 2015; Christopher D. Amore, “Rules of Engagement: Balancing the (Inherent) Right and Obligation of Self-Defense with the Prevention of Civilian Casualties,” *National Security Law Journal*, George Mason University, 2013. Also reported in CKolenda, “The Strategic Costs of Civilian Harm;” Charles J. Dunlap, “Could Airstrikes Save Lives in Afghanistan?” *Washington Post*, 22 October 2010.
195. Afghanistan is not the first time this debate about U.S. force protection and protecting civilians has come up. See, for example, Colonel W. Hays Park article in the U.S. Naval Institute *Proceedings*, “Deadly Force is Authorized,” vol. 127(1), January 2001. In it, he argues that restrictive ROE like that required by McChrystal and Petraeus unnecessarily endangers U.S. personnel and “provides more protection for a hostile foreign citizen than the Constitution provides U.S. citizens” (35). For a rebuttal from an active duty U.S. Army JAG, see Lt. Col. Mark Martins’ response, “Deadly Force is Authorized, but also Trained,” *The Army Lawyer*, September/October 2001.
  196. Joint and Coalition Operational Analysis, *Reducing and Mitigating Civilian Casualties: Enduring Lessons* (April 2013), 10. See also Kolenda, “The Strategic Costs of Civilian Harm,” 4; “Tackling Tough Calls: Lessons from Recent Conflicts on Hostile Intent and Civilian Protection,” *Harvard Law School International Human Rights Clinic* (2016), 9.
  197. JCS, “Reducing and Mitigating Civilian Casualties: Enduring Lessons,” Joint and Coalition Operational Analysis (JCOA), 12 April 2013.
  198. Army Techniques Publication (ATP) 3-07.6, *Protection of Civilians*, replaced Army Tactics, Techniques, and Procedures (ATTP) 3-37.31, *Civilian Casualty Mitigation*, dated 18 July 2012.
  199. White House, “Executive Order—United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force,” 1 July 2016.
  200. White House, “Executive Order on Revocation of Reporting Requirement,” 6 March 2019. See also, Charlie Savage, “Trump Revokes Obama-Era Rule on Disclosing Civilian Casualties from U.S. Airstrikes Outside War Zones,” *New York Times*, 6 March 2019.
  201. Missy Ryan, “After bloody insurgent wars, Pentagon launches effort to prevent civilian deaths,” *Washington Post*, 4 February 2019; Richard Hall, “This is how the US-led coalition investigates itself when accused of killing civilians,” *Public Radio International*, 1 February 2016.
  202. See, for example, “Tackling Tough Calls: Lessons from Recent Conflicts on Hostile Intent and Civilian Protection,” *Harvard Law School International Human Rights Clinic* (2016), 9; and the Joint and Coalition Operational Analysis (JCOA), “Reducing and Mitigating Civilian Casualties: Enduring Lessons” (April 2013), 10. The Harvard study reported that “several veterans of Afghanistan and Iraq who deployed from 2003 to 2011 said they had received little or no training specifically on hostile intent” (4). The 2013 JCOA report discovered that “misidentification

- where civilians are mistakenly believed to be the enemy are an engaged because of that belief was the primary cause of civilian casualties in Afghanistan,” (10).
203. See Executive Summary, CIVCAS Review (redacted version), 17 April 2018.
  204. Prior to the 2017 NDAA, a similar requirement existed for global “train and equip” (section 2282) to “include elements to promote observance of and respect for human rights and fundamental freedoms and respect for legitimate civilian authority.” In addition, section 321 of the 2018 NDAA requires that training with friendly foreign countries should “include elements that promote observance of and respect for human rights and fundamental freedoms, and respect for legitimate civilian authority within the foreign country concerned.” The Office of the Secretary of Defense for Stability and Humanitarian Affairs (SHA) is the designated OSD office to oversee human rights training through security cooperation programs as well as restrictions on PNs via the Leahy Law.
  205. See U.S. Government Accountability Office (GAO), *Security Assistance: U.S. Agencies Should Improve Oversight of Human Rights Training for Foreign Security Forces*, GAO-19-554 (Washington, D.C.: Government Accountability Office, August 2019), 16.
  206. Security assistance, security cooperation, and BPC are frequently used interchangeably to describe the security and defense programs provided as part of the larger foreign aid enterprise. However, there are subtle but important differences between the terms. Security cooperation is a broad set of DOD activities to encourage and enable international partners to work with the United States for mutually beneficial objectives. It includes activities with a wide range of security forces to include the military, police, border patrol, and ministerial officials in foreign countries that oversee security programs. In contrast, security assistance refers specifically to foreign assistance provided under Title 22 authority of the State Department. Within the DOD, most security cooperation and security assistance programs are overseen by the Defense Security Cooperation Agency (DSCA), one of the 19 defense agencies of the DOD. Source: Joint Chiefs of Staff, *Security Cooperation*, Joint Publication 3-20, (Washington, D.C.: Joint Chiefs of Staff, May 2017). See also Bolko J. Skorupski and Nina M. Serafino, “DOD Security Cooperation: An Overview of Authorities and Issues,” *Congressional Research Service*, 23 August 2016, 2. BPC is defined as “a broad set of missions, programs, activities, and authorities intended to improve the ability of other nations to achieve those security-oriented goals they share with the United States.” See the helpful reports on each topic provided in the following references: McInnis and Lucas, What Is “Building Partner Capacity?” Issues for Congress, *Congressional Research Service*, 18 December 2015;
  207. Cordula Droege and David Tuck, “Fighting Together and International Humanitarian Law: Setting the Legal Framework,” *The International Committee of the Red Cross (ICRC)*, 12 October 2017.
  208. Foreign policy programs revolved around three broad principles: defense, diplomacy, and development (often referred to as the “3 Ds”). See U.S. Agency for International Development (USAID), “U.S. Overseas Loans and Grants:

- Obligations and Loan Authorizations, July 1, 1945–September 30, 2015,” 12. Commonly referred to as “The Greenbook,” the report is prepared annually by USAID as required by the Foreign Assistance Act of 1961 (P.L. 87-195), Section 634, as amended. See also, Curt Tarnoff and Marian L. Lawson, “Foreign Aid: An Introduction to U.S. Programs and Policy,” *Congressional Research Service*, 17 June 2016.
209. There are five broad categories of aid: peace and security; investing in people; governing justly and democratically; economic growth; and humanitarian assistance. Curt Tarnoff and Marian L. Lawson, “Foreign Aid: An Introduction to U.S. Programs and Policy,” *Congressional Research Service*, 17 June 2016; U.S. Agency for International Development (USAID), “Foreign Aid Explorer: The Official Record of U.S. Foreign Aid,” 2017, <https://explorer.usaid.gov/data.html>; “The U.S. Foreign Aid Budget, Visualized,” *Washington Post*, 18 October 2016.
  210. Figures compiled by the Congressional Research Service (CRS) using Department of Defense, United States Central Command, and State Department sources. See, Amy Belasco, “The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11,” *Congressional Research Service*, 8 December 2014, 69; Kathleen McInnis and Nathan Lucas, What Is “Building Partner Capacity?” Issues for Congress, *Congressional Research Service* (18 December 2015): 24.
  211. SIGAR, “Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assaults by Afghan Security Forces,” 18 January 2018, 1.
  212. The White House, Fact Sheet; U.S. Support for Peacekeeping in Africa, 6 August 2014. See also: U.S. Department of State, Global Peace Operations Initiative Overview; U.S. Department of State, Global Peace Operations Initiative Factsheet.
  213. Chairman of the Joint Chiefs of Staff, *The National Military Strategy of the United States of America 2015: The United States Military’s Contribution to National Security*, June 2015, 9.
  214. Chairman of the Joint Chiefs of Staff, *The National Military Strategy of the United States of America 2015: The United States Military’s Contribution to National Security*, June 2015, 9.
  215. General Mark A. Milley, U.S. Army Chief of Staff, in testimony before the Senate Armed Services Committee (SASC), 26 March 2019.
  216. The hundreds of security cooperation activities conducted by U.S. DOD units are captured in an annual report to Congress that provides details on what PNs units were trained, where the training occurred, what topics were covered, and how much it cost. See Foreign Military Training Joint Report to Congress.
  217. Robert Gates, “A Balanced Strategy: Reprogramming the Pentagon for a New Age,” *Foreign Affairs*, January/February 2009.
  218. Sebastian Rosato, “The Flawed Logic of Democratic Peace Theory,” *American Political Science Review* 97, no. 4 (2003): 585–602; Christopher Layne, “Kant or Cant: The Myth of the Democratic Peace,” *International Security* 19, no. 2 (1994): 5–49.

219. Foreign Assistance Act of 1961, P.L. 87-195), §101(a), also reported in Marian Leonardo Lawson, “Does Foreign Aid Work? Efforts to Evaluate U.S. Foreign Assistance,” *Congressional Research Service*, 23 June 2016, 2.
220. Patrick Paterson, “Measuring Military Professionalism in Partner Nations: Guidance for Security Assistance Officials,” *Journal of Military Ethics*, 18:2 (2019): 145–163.
221. An amount equivalent to \$58.5 million in FY2015 budget. Peter J. Meyer, “Organization of American States: Background and Issues for Congress,” *Congressional Research Service*, 22 August 2016, 5.
222. Curt Tarnoff and Marian L. Lawson, “Foreign Aid: An Introduction to U.S. Programs and Policy,” *Congressional Research Service* (17 June 2016): 20.
223. United Nations General Assembly, “Scale of assessments for the apportionment of the expenses of the United Nations,” (Resolution 70/245), 8 February 2016. Assessments are based on a variety of factors including the estimates of gross national income. China is the second highest contributor paying about 8 percent annually. See also, General Accounting Office, *United Nations: Costs of Peacekeeping Is Likely to Exceed Current Estimates* (Washington, D.C., General Accounting Office, August 2000.)
224. The United States is the largest financial contributor to the United Nations system, providing 22 percent of the U.N. regular budget and 28.43 percent of U.N. peacekeeping budgets. In FY 2017, it contributed more than \$8.5 billion to U.N. programs. See *U.S. Funding to the United Nations System: Overview and Selected Policy Issues*, CRS Report No. R45206 (Washington, D.C., Congressional Research Service, 2018); Marjorie Ann Browne, *United Nations Peacekeeping: Issues for Congress*, CRC Reort No. RL33700 (Washington, D.C.: Congressional Research Service, 11 February 2011). During remarks at a White House luncheon in January 2018 with representatives of the UN Security Council, President Trump said, “the United Nations Security Council, in particular, is very important to us. The power and the respect that it has all over the world is very, very excellent.” Source: The White House, “Remarks by President Trump at Lunch with Members of the United Nations Security Council,” 29 January 2018.
225. Marian L. Lawson and Susan B. Epstein, “Democracy Promotion: An Objective of U.S. Foreign Assistance,” *Congressional Research Service* (31 May 2017): 1.
226. Testimony before the Senate Committee on Armed Services Congress, 14 February 2019, 3–4.
227. Statement of General Raymond A. Thomas, III, U.S. Army Commander United States Special Operations Command before the House Armed Services Committee Subcommittee on Emerging Threats and Capabilities, Washington, D.C., 15 February 2018.
228. Specifically, it states that U.S. SOF will train, advise, and assist partner-nation institutions in order to build their capacity, which in turn will reduce U.S. visibility, risk, and cost. It emphasizes “the need for persistence, patience, and

- continuity of effort” in capacity building. See United States Special Operations Command Publication 1, “Doctrine for Special Operations,” 5 August 2011.
229. U.S. SOF: Background and Issues for Congress, *Congressional Research Service*, 28 March 2019, 3.
  230. Remember, JCETs are designed to benefit U.S. SOF first and PN forces second. Interview with senior U.S. SOF official, Fort Bragg, North Carolina, 6 May 2019.
  231. Data collected from JCET conducted from 2008–2018. Author’s examination of all JCET activity from 2008–2018 comes from the annual, “Report on Training of Special Operations Forces, for the Period Ending September 30, (year).” Information assembled by William J. Perry Center research assistant Ryan Keating.
  232. Data collected from JCET conducted from 2008–2018. Author’s examination of all JCET activity from 2008–2018 comes from the annual, “Report on Training of Special Operations Forces, for the Period Ending September 30, (year).” Information assembled by William J. Perry Center research assistant Ryan Keating.
  233. Embassy requirements for future JCETS are normally discussed during a pre-deployment site survey (PDSS) conducted by the JCET leader. The Department of State’s published priorities and interests in each country can be found in the Integrated Country Strategy (ICS), formerly called Mission Performance Plan (MPP). Link on DOS webpage, <https://www.state.gov/f/strategies/ics/index.htm#wha>.
  234. USSOCOM Directive 350-28, Human Rights Policy (dated 11 May 2005). In the Policy and Procedures section, “SOF units and personnel will develop tailored human rights themes to be incorporated into scheduled training plans for host nation personnel, preferably with ‘hands-on’ application.”
  235. Email correspondence with USSOCOM representative (13 October 2019), SOCPAC representative (7 October 2019), and phone interview with JAG (retired USMC) at Defense Institute of International Legal Studies in Newport, Rhode Island (23 August 2019).
  236. General Mark A. Milley, U.S. Army Chief of Staff, in testimony before the Senate Armed Services Committee (SASC), 26 March 2019. See Andrew Feickert, “Army Security Force Assistance Brigades (SFABs),” *Congressional Research Service (CRS) In Focus*, 24 October 2018; Sydney Freedberg, Jr., “Army Mulls Train & Advise Brigades: Gen. Milley,” *Defense One*, 14 Dec 2015; “Instances of Use of United States Armed Forces Abroad, 1798–2018,” *Congressional Research Service* (28 December 2018): 39–41.
  237. For an operational definition of military professionalism, see Pat Paterson, “Measuring Military Professionalism in Partner Nations: Guidance for Security Assistance Officials,” *Journal of Military Ethics*, fall 2019.
  238. United States Special Operations Command (USSOCOM) headquarters in Tampa, Florida has singled out security assistance missions as ones in which U.S. SOF may be particularly vulnerable to their own problems of misconduct and unethical behavior. On 23 January 2020, USSOCOM released the findings of its own Comprehensive Review that examined a series of embarrassing incidents

by SOF personnel that had attracted attention of Congressional lawmakers in Washington, D.C. and had threatened to undermine public confidence in U.S. SOF. The report noted, “While conducting Foreign Internal Defense (FID) to Build Partner Capacity (BPC) in support of GCC Commanders, the force exhibits—at times—high risk behavior which has contributed to some of the recent incidents of misconduct and unethical behavior.”

239. These incidents occurred in Cameroon, Kenya, Mexico, Nigeria, Colombia, and Mali. To be clear, there is no indication that the PN units that committed these atrocities were units the U.S. SOF had trained. Dionne Searcey, Eric Schmitt and Thomas Gibbons-Neff, “U.S. Reduces Military Aid to Cameroon Over Human Rights Abuses,” *New York Times*, 7 February 2019; Danielle Paquette, “Trump ends trade benefits for Cameroon over ‘persistent human rights violations,’” *Washington Post*, 1 November 2019; Siobhán O’Grady, “U.S. cuts some military assistance to Cameroon, citing allegations of human rights violations,” *Washington Post*, 7 February 2019; Mike Pflanz, “Kenyan army admits that soldiers looted Westgate mall during siege,” *The Telegraph*, 29 October 2013; Robyn Dixon, “Video shows Kenyan soldiers looting besieged mall,” *Los Angeles Times*, 3 October 2013; Joshua Partlow, “Before carnage, Mexican Army was told: ‘Take out’ criminals,” *Washington Post*, 2 July 2015; Adam Nossiter, “Abuses by Nigeria’s Military Found to Be Rampant in War Against Boko Haram,” *New York Times*, 3 June 2015; U.S. Department of State, “Country Report on Human Rights: Nigeria,” 2014; Dionne Searcey and Emmanuel Akinwotu, “Nigerian Army uses Trump’s Words to Justify Fatal Shooting of Rock-Throwing Protesters,” *New York Times*, 2 November 2018; Joe Parkin Daniels, “Colombian army killed thousands more civilians than reported, study claims,” *The Guardian*, 05 August 2018; “Colombian army commander resigns,” *BBC News*, 4 November 2008; Philip Sherwell, “Colombian president replaces military chiefs days after scathing report into extra-judicial killings,” *The Telegraph*, 7 July 2015; Craig Whitlock, “Leader of Mali military coup trained in U.S.,” *Washington Post*, 24 March 2012; Lydia Polgreen, “Mali Army, Riding U.S. Hopes, Is Proving No Match for Militants,” *New York Times*, 24 January 2013.
240. Joseph Goldstein, “U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies,” *New York Times*, 20 September 2015; Christine Hauser, “Green Beret Who Hit Afghan Child Rapist Should Be Reinstated, Lawmakers Say,” *New York Times*, 3 March 2016; Christine Hauser, “Green Beret Who Beat Up Afghan Officer for Raping Boy Can Stay in Army,” *New York Times*, 29 April 2016.
241. SIGAR, “Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assaults by Afghan Security Forces,” (18 January 2018): 13–14.
242. Joseph Goldstein, “U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies,” *New York Times*, 20 September 2015.
243. SIGAR, “Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assaults by Afghan Security Forces,” 18 January 2018, 8, 9, and 19.

244. Department of Defense, *DOD Law of War Program* requires all military and U.S. civilian employees and contractors to report LOAC violations. Also mentioned in *The Commander's Handbook on the Law of Land Warfare* (Army Field Manual (FM) 6-27/Marine Corps Tactical Publication (MCTP) 11-10C), August 2019, 8-4.
245. Department of Defense, *DOD Law of War Program*. See also: Chairman of the Joint Chiefs of Staff, CJCS Instruction 5810.01D, "Implementation of the DOD Law of War Program," 30 April 2010.
246. According to USSOCOM authorities, a written USSOCOM directive that provides guidance on human rights and mandates training with foreign partners has expired and there are no plans to republish it. See USSOCOM Directive 350-28, Human Rights Policy (11 May 2005).
247. Forty-two of the 50 most violent cities in the world are in Latin America. Tijuana, Mexico tops the group with 138 homicides for every 100,000 inhabitants. Mexico has 15 cities and Brazil has 14 cities on the list. Source: Consejo Ciudadana para la Seguridad Publica y la Justicia Penal, "Metodología del ranking (2018) de las 50 ciudades más violentas del mundo," Mexico City, 12 March 2019, <http://seguridadjusticiaypaz.org.mx/files/Metodologia.pdf>, last accessed, 11 February 2020. See also Christopher Woody, "These were the 50 most violent cities in the world in 2018," *Business Insider*, 12 May 2019.
248. From the author's experience, other than Colombia, most other Latin American nations currently struggle with developing a hybrid doctrine that operationalizes human rights laws for military forces conducting law enforcement operations. Peru may be an exception. The Peruvian military has proposed and the Peruvian Congress has approved legislation (Legislative Decree 1095, passed in July 2010) that permits the Peruvian armed forces to use LOAC tactics against "hostile groups" such as Sendero Luminoso, a U.S. Department of State foreign terrorist organization that was very active in the 1990s and still remains active in remote parts of the country. The author is indebted to retired Peruvian Navy Captain Victor Gonzales Jauregui and retired Peruvian Army Colonel Luis Antonio Rocca for this information. For more details, see CN Jauregui's article, "Dimensiones de la Participación de las fuerzas armadas en los nuevos contextos de violencia y criminalidad en América Latina: Roles de las fuerzas armadas en el Perú," *Contextualizaciones Latina Americanas*, ano 10, numero 19, julio-diciembre 2018.
249. In contrast to other Latin American nations that were settled by the Spanish, Brazil was colonized by Portugal. For that reason, the official language of Brazil is Portuguese, not Spanish. As a result of the slave trade in the 17th and 18th centuries, Brazil is home to the largest population of African descendants of any country in the world outside Africa.
250. The original four BRIC states (Brazil, Russia, India, and China) expanded to BRICS when South Africa was included in 2010.

251. David Biller, "Brazil's income inequality hits highest since at least 2012," *Associated Press*, 16 October 2019.
252. Marina Lopes, "Brazil's political class is in crisis as over 100 are investigated for corruption," *Washington Post*, 12 April 2017; Terrence McCoy, "He's the 'hero' judge who oversaw Brazil's vast Car Wash corruption probe. Now he's facing his own scandal," *Washington Post*, 7 June 2019.
253. Tom Wheeldon, "The military is back in Brazilian politics," *Agence France-Presse (AFP)*, 10 September 2018; Peter Prengaman and Marcelo Silva, "Many Brazilians look to military amid anger at politicians," *Associated Press*, 22 June 2018; E. Zechmeister, "Should We Be Alarmed That One-in-Four US Citizens Believes a Military Take-Over Can Be Justifiable?" *Latin American Public Opinion Project* (9 January 2018); see also José Miguel Cruz, 2008, "The Impact of Violent Crime on the Political Culture of Latin America: The Special Case of Central America," in Mitchell A. Seligson, ed., *Challenges to Democracy in Latin America and the Caribbean: Evidence from the Americas Barometer 2006–07*, Nashville: Vanderbilt University, 222.
254. Anna Jean Kaiser, "'It's Complete Chaos:' Brazilian State Overwhelmed by Rash of Gang Violence," *The Guardian*, 9 January 2019.
255. Among his many inflammatory statements, Bolsonaro has spoken affectionately of the military regime that ruled Brazil from 1964–1985 but lamented that it did not kill enough people, praised military dictators Alfred Stroessner of Paraguay and Augusto Pinochet of Chile, dedicated his impeachment vote of former President Dilma Roussef to a Brazilian Army colonel who was convicted of torture, and claimed he would launch another military coup if elected in order to shut down Congress. See James Brooke, "Conversations/Jair Bolsonaro; A Soldier Turned Politician Wants to Give Brazil Back to Army Rule," *New York Times*, 25 July 1993; E. Londoño, and M. Andreoni, "Brazil Wanted Change. Even Before Taking Office, Jair Bolsonaro Delivered," *New York Times*, 1 January 2019; M. Simões, "Brazil's Polarizing New President, Jair Bolsonaro, in His Own Words," *New York Times*, 28 October 2018; Matt Sandy, "Jair Bolsonaro Loves Trump, Hates Gay People and Admires Autocrats. He Could Be Brazil's Next President," *Time*, 23 August 2018.
256. Tom Wheeldon, "The Military is Back in Brazilian Politics," *Agence France-Presse (AFP)*, 10 September 2018; Peter Prengaman and Marcelo Silva, "Many Brazilians Look to Military Amid Anger at Politicians," *Associated Press*, 22 June 2018. E. Zechmeister, "Should We Be Alarmed That One-in-Four US Citizens Believes a Military Take-Over Can Be Justifiable?" *Latin American Public Opinion Project*, 9 January 2018.
257. Mike LaSusa, "Brazil Gang War Sparks Prison Violence, Could Spill Onto Streets," *Insight Crime*, 26 October 2016.
258. Marcos Alan Ferreira, "Brazilian Criminal Organizations as Transnational Violent Non-State Actors: A Case Study of the Primeiro Comando de Capital (PCC)," *Trends in Organized Crime* 22, vol. 2 (June 2019): 160.

259. Insight Crime, “Red Command,” 18 May 2018.
260. Leonardo Coutinho, “O Cartel,” *Veja* (5 October 2016); Insight Crime, “First Capital Command,” 9 July 2018.
261. See “Anuario Brasileiro de Seguranca Publica, 2018,” Forum Brasileiro de Seguranca Publica, Rio de Janeiro, August 2018, <http://www.forumseguranca.org.br/>.
262. See Consejo Ciudadana para la Seguridad Publica y la Justicia Penal, “Metodología del ranking (2018) de las 50 ciudades más violentas del mundo,” Mexico City, 12 March 2019, <http://seguridadjusticiaypaz.org.mx/files/Metodologia.pdf>.
263. Liliana Muscarella, “Brazil: High Level of Armed Gang Violence but not a Non-International Armed Conflict,” in Annyssa Bellal, “The War Report: Armed Conflicts in 2018,” *The Geneva Academy of International Humanitarian Law and Human Rights*, Geneva, Switzerland (2018): 73.
264. Sacha Darke, “Inmate Governance in Brazilian Prisons,” *The Howard Journal of Criminal Justice* vol. 52, Issue 3, (July 2013): 272–284.
265. Leonardo Coutinho, “The Evolution of the Most Lethal Criminal Organization in Brazil—the PCC,” *Prism* 8, no. 1, (March 2019): 58–59.
266. Marcos Alan Ferreira, “Brazilian Criminal Organizations as transnational violent non-state actors: A case study of the Primeiro Comando de Capital (PCC),” *Trends in Organized Crime* 22, vol 2 (June 2019): 153; Leonardo Coutinho, “The Evolution of the Most Lethal Criminal Organization in Brazil – the PCC,” *Prism* 8, no. 1 (March 2019): 58–59.
267. Dandara Tinoco, Ana Paula Pellegrino, Renata Giannini, and Robert Muggah, “Rio de Janeiro’s militia on the rise (again),” *Open Democracy*, 22 May 2018.
268. Jonathan Wheatley, “Rio de Janeiro’s Militias: a parallel power in Bolsonaro’s Brazil,” *Financial Times*, 25 March 2019.
269. For example, see Paterson, *Training Surrogate Forces*.
270. Luis Fernando Alonso, “Criminal Violence Overshadows Brazil Municipal Elections,” *Insight Crime*, 3 October 2016.
271. Dandara Tinoco, Ana Paula Pellegrino, Renata Giannini, and Robert Muggah, “Rio de Janeiro’s Militia on the Rise (Again),” *Open Democracy*, 22 May 2018.
272. During the 1990s, as many as one of every three homicides in Sao Paulo and Rio de Janeiro were committed by police. Kristin Hoeschler and Per Norheim-Martinsen, “Urban Violence and the Militarization of Security: Brazilian “peacekeeping” in Rio de Janeiro and Port-au-Prince,” *Small Wars and Insurgencies* 25, no. 5-6, 2014; Vanessa Barbara, “The Men Who Terrorize Rio,” *New York Times*, 22 May 2018; Dom Phillips, “Lesser Evil’: how Brazil’s militias wield terror to seize power from gangs,” *The Guardian*, 12 July 2018.
273. Dom Phillips, “Brazil: two ex-police officers arrested over murder of Marielle Franco,” *The Guardian*, 12 March 2019.
274. Vanessa Barbara, “Pity Brazil’s Military Police,” *New York Times*, 20 February 2014.

275. Jason Freeman, "Raising the Flag over Rio de Janeiro's Favelas: Citizenship and Social Control in the Olympic City," *Journal of Latin America Geography* 13(1) (2014): 12.
276. For a Hollywood-ized depiction of the BOPES, see the movies *City of God* (2002), *Elite Squad* (2007), or *City of Men* (2007).
277. Commonly referred to as civic and social activities (ACISO). See Kristin Hoeschler and Per Norheim-Martinsen, "Urban Violence and the Militarization of Security: Brazilian "peacekeeping" in Rio de Janeiro and Port-au-Prince," *Small Wars and Insurgencies* 25, no. 5-6 (2014): 964.
278. Robert Muggah, Ilona Szabó de Carvalho, Nathalie Alvarado, Lina Marmolejo and Ruddy Wang, "Making Cities Safer: Citizen Security Innovations from Latin America," Igarapé Institute, Strategic Paper no. 20 (June 2016): 11.
279. Lloyd Belton, "Olympic Security Situation in Brazil Causing Concern," *Insight Crime*, 29 June 2016.
280. Michael Lohmuller, "Amid Rising Violence Rio Continues to Implement Pacification Program," *Insight Crime*, 13 April 2015; Charles Orta and Leonardo Goi, "Brazil's UPP Struggles as Criminal Titans Continue Fight," *Insight Crime*, 5 May 2017; C.H. Gardiner, "A Month In, Brazil Military Deployment in Rio Shows Potential and Risk," *Insight Crime*, 15 March 2018.
281. Parker Asmann, "'Classic Rio Gangster Battle' Leaves Brazil Favela in State of Siege," *Insight Crime*, 26 September 2017; Anthony Faiola and Anna Jean Kaiser, "A Once-Trendy Rio Slum is Now 'At War,'" *Washington Post*, 5 January 2018.
282. Military missions are identified in Brazil's National Defense Strategies (*Estratégia Nacional de Defesa*). Versions have been published in 1996, 1998, 2005, 2008, and 2012. In addition, a National Defense Policy (Política Nacional de Defesa) and a Defense White Book (Livro Branco de Defesa Nacional) were published in 2012, the latter of which is a detailed 275-page description of the roles and missions of the military Services. For a recent summary of Brazilian defense strategy and civil-military relations, see Thomas Bruneau and Scott D. Tollefson, "Civil-Military Relations in Brazil: A Reassessment," *Journal of Politics in Latin America*, 6, 2 (2014): 107-138.
283. *Guarantee of Law and Order Handbook* (2014), 17 and annex A, 35.
284. Interview by author with Brazilian officials, Rio de Janeiro, 12 December 2019.
285. Brazilian Ministry of Defense, "History of GLO Operations, 1992-2019," <https://www.defesa.gov.br/exercicios-e-operacoes/garantia-da-lei-e-da-ordem>, accessed 15 December 2019.
286. Interview by author with Brazilian officials, Rio de Janeiro, 11 December 2019.
287. Interviews with Brazilian officials in Rio de Janeiro, 12 December 2019.
288. Brazilian Minister of Defense, "Defense White Book" (*Livro Branco de Defesa Nacional*) (2012): 183.
289. Brazilian Ministry of Defense, "The Pacification Operations Manual (EB20-MC-10.217) (2015): 3-7.

290. Frank Muller and Andrea Steinke, "Criminalizing Encounters: MINUSTAH as a Laboratory for armed humanitarian pacification," *Global Crime* 19, nos. 3-3 (2018): 237.
291. Charles T. Call and Adriana Erthal Abdenur, "A 'Brazilian Way'? Brazil's approach to peacebuilding," 2017, 13; Frank Muller and Andrea Steinke, "Criminalizing Encounters: MINUSTAH as a Laboratory for armed humanitarian pacification," *Global Crime* 19, nos. 3-3 (2018): 229.
292. Tatiana Arias and Ivana Kottasová, "Prison Riot in Brazil Leaves 16 Inmates Decapitated and Dozens More Killed," *CNN International*, 30 July 2019.
293. Dom Phillips, "Brazilian Army to Take Control of Security in Rio as Violence Rises," *The Guardian*, 16 February 2018.
294. Benjamin Lessing, "There is massive outbreak of terrorism by Brazil's prison gangs. This is what explains it." *Washington Post*, 28 January 2019; Jo Griffin, "Climate of panic: Bombings in Brazil reveal power of gangs," *The Guardian*, 15 January 2019.
295. Parker Asmann, "'Classic Rio Gangster Battle' Leaves Brazil Favela in State of Siege," *Insight Crime*, 26 September 2017.
296. Dom Phillips, "Brazilians blame Rio governor's shoot-to-kill policy for death of girl," *The Guardian*, 21 September 2019.
297. Angelika Albaladejo, "Domestic Military Deployments Could Lead to Corruption, Politicization: Brazil Army Chief," *Insight Crime*, 15 January 2018.
298. Human Rights Watch, "Brazil: Army Stonewalls on Rio Killings; State Prosecutors Unable to Interview Soldiers," 23 February 2018. See also Inter-American Court of Human Rights Case of the Rochela Massacre v. Colombia Judgment of May 11, 2007; Manuel Stalin Bolaños Quiñones v. Ecuador, Case 10.580, Report No. 10/95, Inter-American Court of Human Rights, Report N 10/95, Case 10.580, Ecuador, 12 September 1995.
299. Robert Muggah, "Brazil Spends Billions on Public Security. Why is Violence Getting Worse?" *Americas Quarterly*, 12 June 2018.
300. Mark Danner, "A Reporter at Large: Beyond the Mountains," part I, *New Yorker*, 4 December 1989. Also reported in Karin von Hippel, *Democracy by Force* (London: Cambridge Press, 2000), 97.
301. Aristide also survived an attempted coup just one month into his term when the former Minister of the Interior, Roger Lafontant, attempted to seize power. John Fishel and Andres Saenz, *Capacity Building for Peace Keeping: The Case of Haiti* (Washington, D.C.: NDU Press, 2007).
302. Open Society Institute Special Report, *A Proposal to Establish a Temporary Refugee Scheme in the Caribbean Region for Refugee and Migration Emergencies* (December 1995): 3.
303. John Fishel and Andres Saenz, *Capacity Building for Peace Keeping: The Case of Haiti* (Washington, D.C.: NDU Press, 2007), 12.
304. UN Security Council Resolution 940, 31 July 1994.

305. Raoul Cedras is perhaps the most well-known of the military junta but Haitian National Police Chief Michael Francois and Army Chief of Staff Phillipe Biamby were also members of the ruling trio. Cedras and Biamby went into exile in Panama. Francois went to the Dominican Republic.
306. One of Aristide's decisions during his first term in office was to disband the Haitian military (ordered on 6 December 1995), the source of so many problems in the country from 1991 to 1994.
307. Karin von Hippel, *Democracy by Force* (London: Cambridge Press, 2000), 114.
308. Most information drawn from the United Nations Peacekeeping webpage, <https://peacekeeping.un.org/en>, accessed 21 December 2019.
309. John Fishel and Andres Saenz, *Capacity Building for Peace Keeping: The Case of Haiti* (Washington, D.C.: NDU Press, 2007), 24 and 26.
310. Fishel and Saenz, *Capacity Building for Peace Keeping*, 27.
311. Joseph Napoli, "The United States Role," in Fishel and Saenz, *Capacity Building for Peace Keeping*, 38.
312. Napoli, "The United States Role.
313. Fishel and Saenz, *Capacity Building for Peace Keeping*, 41–42.
314. Red de Seguridad y Defensa de América Latina (RESDAL), "Misiones de Paz y Cooperación en América Latina," *Atlas Comparativa de la Defensa en América Latina* (2007): 305–311.
315. United Nations Security Council Resolution (UNSCR) 1542, 30 April 2004.
316. United Nations Department of Peacekeeping Operations, *United Nations Peacekeeping Operations Principles and Guidelines* (New York: United Nations, 2008), 35.
317. United Nations Department of Peacekeeping Operations, *United Nations Peacekeeping Operations Principles and Guidelines* (New York: United Nations, 2008), 23.
318. With respect to the LOAC, UN forces are guided by the Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law of 6 August 1999 (ST/SGB/1999/13). It sets out the fundamental principles and rules of international humanitarian law (IHL, synonymous with LOAC) that may be applicable to UN peacekeepers.
319. MINUSTAH authorities originally issued ROE for peacekeepers on 28 May 2004 and then reissued them in February 2008. See Department of Peacekeeping Operations (Military Division), "Rules of Engagement (ROE) for the Military Component of the United Nations Stabilization Mission in Haiti (MINUSTAH)," February 2008.
320. MINUSTAH ROE (February 2008), Annex A, A1.
321. Interviews with Chilean officials at Joint Center for Chilean Peacekeeping Operations CECOPAC, Santiago Chile, 4 September 2019.
322. Some of the nearly four dozen countries that contributed peacekeepers to MINUSTAH were much more aggressive toward Haitian protesters. Haitians knew which countries' personnel were more likely to resort directly to lethal force without an

escalation of tactics and therefore did not antagonize those forces to the degree they did other country's forces who abided by EOF practices. The Nepalese, for example, were reportedly very aggressive peacekeepers. Information acquired through interviews with Chilean officials at CECOPAC, Santiago Chile, 4 September 2019.

323. MINUSTAH ROE (February 2008), Annex B, 2.
324. Marc Lacey, "U.N. Troops Fight Haiti Gangs One Street at a Time," *New York Times*, 10 February 2007.
325. According to UN authorities, the order of response to security incidents was: (1) HNP (often with international police support), (2) formed police units (FPU), and (3) the military forces. See Concept of Operations for MINUSTAH Military Component (option 4.5), section 8.5 on 6.
326. Frequently called Special Weapons and Tactics teams (SWAT).
327. Michael Dzedzic and Robert Perito, "Haiti—Confronting the Gangs of Port-au-Prince," U.S. Institute of Peace (USIP) (September 2008): 10.
328. Dzedzic and Perito, "Haiti—Confronting the Gangs of Port-au-Prince, 5.
329. Dzedzic and Perito, "Haiti—Confronting the Gangs of Port-au-Prince, 4.
330. Both quotes come from Enzo de Nocera Garcia and Ricardo Benavente Cresta, "Chile: Responding to a Regional Crisis," 66 and 68 in Fishel and Saenz, *Capacity Building for Peace Keeping*, 27.
331. *Mision des Nations Unies pour la stabilisation en Haiti*, in its French title.
332. Juan Pablo Sepulveda, "MINUSTAH: Its Creation and Evolution Process," *Red de Seguridad y Defensa de América Latina* (RESDAL) (2012): 101.
333. Diplomatic cable from US Embassy Port-au-Prince, 102237Z April 2010. Also see Juan Pablo Sepulveda, "MINUSTAH: Its Creation and Evolution Process," *Red de Seguridad y Defensa de America Latina* (RESDAL) (2012), 98.
334. The UN Security Council report regularly reviewed progress in the country and determined the UN forces should be extended for one year. This occurred every year between 2011 and 2016. See UN Security Council Reports, <https://www.securitycouncilreport.org/>, accessed 21 December 2019.
335. The United Nations was criticized for not acknowledging the cholera problem or UN peacekeeper responsibility for it quickly enough. On 1 December 2016, UN Secretary General Ban Ki-moon apologized to the Haitian people for its role in the cholera outbreak. See Randal C. Archibold and Somini Sengupta, "U.N. Struggles to Stem Haiti Cholera Epidemic," *New York Times*, 19 April 2014; Somini Sengupta, "U.N. Apologizes for Role in Haiti's 2010 Cholera Outbreak," *New York Times*, 1 December 2016.
336. Azam Ahmed, "Haiti Gripped by Violent Protests Amid Calls for President's ouster," *New York Times*, 28 September 2019; Amelie Baron, "Haiti in Crisis: Who's Who and What's at Stake," *AFP*, 8 October 2019; Jacob Kushner, "Haiti and the Failed promise of U.S. Aid," *The Guardian*, 11 October 2019; Amy Wilentz, "Haiti is in the Streets," *The Nation*, 24 October 2019.

337. In total, over 12,200 Chilean military personnel and 146 *Carabineros* participated in MINUSTAH operations. Information provided to author by Ministry of Defense officials, 4 September 2019.
338. Max Boot and Richard Bennet, “The Colombian Miracle: How Alvaro Uribe with Smart US Support Turned the Tide against Drug Lords and Marxist Guerrillas,” *Weekly Standard* 15, no. 13 (2009).
339. Juan Carlos Gomez, “Human Rights and Legitimacy of the Military and Police Force,” (unpublished manuscript), henceforth Carlos Gomez), 1.
340. Interview with Colombian military officials in Bogota, Colombia, 2016.
341. Peter Santina, “Army of Terror,” *Harvard International Review*, Winter 98/99, Vol 21(1). For more on U.S. concerns for Colombian human rights records, see Robert D. Ramsey III, *From El Billar to Operations Fenix and Jaque: The Colombian Security Force Experience, 1998–2008* (Fort Leavenworth, Kansas: Combat Studies Institute Press, 2009).
342. See, among numerous declassified U.S. Embassy Colombia cables, “Military Assistance to Colombian Army’s 7th and 12th Brigades, and 2nd ‘Brim,’” 26 August 1998. Declassified in accordance with Freedom of Information Act (FOIA) by National Security Archives, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB69/part3.html>.
343. See, for example: in Juan Carlos Pinzon, Preface, *A Great Perhaps? Colombia: Conflict and Convergence* (London: C. Hurst and Company, 2016); Moyar, Pagan, and Griego, *Persistent Engagement in Colombia*, 32–33; Robert D. Ramsey III, *From El Billar to Operations Fenix and Jaque: The Colombian Security Force Experience, 1998–2008* (Fort Leavenworth, Kansas: Combat Studies Institute Press, 2009). David Spencer, *Colombia’s Road to Recovery: Security and Governance 1982–2010* (Washington, D.C.: Center for Hemispheric Defense Studies, 2011), 50–51.
344. Doug Farah, “Colombian Rebels Seen Winning War,” *Washington Post*, 10 April 1998, A17.
345. Larry Rohter, “Armed Forces in Colombia Hoping to Get Fighting Fit,” *New York Times*, 5 December 1999.
346. Directorate of Intelligence, Intelligence Memorandum, Office of Africa and Latin America, “Colombian Counterinsurgency: Steps in the Right Direction,” 26 January 1994. Obtained by the National Security Archive, George Washington University. Also reported in Winifred Tate, *Drugs, Thugs, and Diplomats: U. S. Policymaking in Colombia* (Palo Alto: Stanford University Press, 2015), 44.
347. David Passage, “The United States and Colombia: Untying the Gordian Knot,” *Strategic Studies Institute* (2000), 13.
348. Robert D. Ramsey III, *From El Billar to Operations Fenix and Jaque: The Colombian Security Force Experience, 1998–2008* (Fort Leavenworth, Kansas: Combat Studies Institute Press, 2009), 21–23.

349. Drug profits for the FARC amounted to an estimated \$3.5 billion annually or about 45 percent of the group's illicit revenues. Reported in Davis, Kilcullen, Mills, and Spencer, *A Great Perhaps? Colombia: Conflict and Convergence*, xxiv.
350. Pinzon, Preface, xxiv.
351. National Security Archive, "War in Colombia; Guerrillas, Drugs, and Human Rights in US-Colombia Policy, 1988-2002," George Washington University, 3 May 2002; DOD News Briefing, Tuesday, 14 April 1998, Office of the Assistant Secretary of Defense for Public Affairs, Mr. Kenneth H. Bacon, ASD (PA).
352. Robert D. Ramsey III, *From El Billar to Operations Fenix and Jaque: The Colombian Security Force Experience, 1998-2008* (Fort Leavenworth, Kansas: Combat Studies Institute Press, 2009), 47-48.
353. "War in Colombia, Guerrillas, Drugs and Human Rights in U.S. Colombia Policy, 1988-2002," National Security Archive Electronic Briefing Book No. 69. Also see Pierre Thomas and Ann Devroy, "U.S. Faults Colombia's Drug Effort; Administration Revokes Eligibility for Most Aid," *The Washington Post*, 2 March 1996.
354. See William C. Story, Jr., Joint Combined Exchange Training (JCET) and Human Rights: Background and Issues for Congress, 26 January 1999, *Congressional Research Service* (RL30034), pages 11-14, 41. Also see Paterson, *Training Surrogate Forces*. The Leahy Law legislation can be found in section 620M of the Foreign Assistance Act (FAA) of 1961 and in the Arms Export Control Act (AECA).
355. DOD defines training of foreign personnel as "instruction of foreign security forces that may result in the improvement of their capabilities." Cited on page 4 of Nina Serafino, et al., "Leahy Law" Human Rights Provisions and Security Assistance: Issue Overview," See *Congressional Research Service* (RL43361), 29 January 2014.
356. By definition, GVHR includes torture; cruel, inhuman, or degrading treatment or punishment; prolonged detention without charges and trial; the disappearance of persons by the abduction and clandestine detention of those persons; flagrant denial of the right to life, liberty, or the security of person; extrajudicial killings; and politically motivated rape.
357. Before receiving training, the U.S. government agency that is sponsoring the training requests that the U.S. embassy vet candidates for the event. As part of the vetting process, U.S. embassy personnel in the country collect information from news sources, host nation forces, and civil society to determine if there is credible evidence of violations. The embassy must evaluate any negative reports to determine if the information is credible. Civilians are generally not vetted. However, nearly all members of the country's military and police forces, to include prison guards, armed game wardens, coast guard, border patrol, and customs officials, are subject to vetting. Once the information collection process is completed, embassy personnel determine whether to approve, reject, suspend, or seek additional information. The information is managed through a computer software program called International Vetting and Security Tracking system.

Each year, the U.S. State Department vets about 160,000 training candidates. On average, only about one percent of all vetted individuals are denied assistance. Investigations into about nine percent of other training candidates are suspended until more information can be collected or because of other alleged criminal activities such as corruption and money laundering. This might amount to denying military assistance to individuals or units in dozens of countries. In 2011, for example, 1,766 individuals and units from 46 countries, out of a total of nearly 200,000 cases, were denied assistance because of alleged human rights violations. Hundreds of other units and individuals are not submitted because U.S. Embassy personnel know they have committed human rights violations and will not pass vetting. Colombia and Mexico are the two countries with the most vetted candidates each year. See, for example, Eric Schmitt, "Military says Law Barring U.S. Aid to Rights Violators Hurts Training Mission," *New York Times*, 20 June 2013. Senator Leahy's remarks come from USIP Press release, "Human Rights Violations: U.S. Foreign Aid for Accountability and Prevention," 29 March 2015.

358. According to the U.S. Drug Enforcement Agency, Samper had accepted payoffs for his Presidential campaign from the Cali Cartel. See Winifred Tate, *Drugs, Thugs, and Diplomats: U. S. Policymaking in Colombia* (Palo Alto: Stanford University Press, 2015), 70. Samper's first Minister of Defense, Fernando Botero, was also accused of accepting money from the Cali Cartel. In 1996, he was convicted of the charges and spent three years in jail from 1996 to 1998. In 2002, he was convicted of additional charges associated with receiving drug money and was convicted. But before his sentencing, he fled to Mexico where he currently lives, unable to be extradited because of the country's policies.
359. See "War in Colombia, Guerrillas, Drugs and Human Rights." 58–60, 62–63 and 67.
360. Republican Speaker of the House Dennis Hastert (R-IL) was one of the most vocal opponents to the Leahy Law and accountability for human rights violations by Colombian military officials. During Congressional delegation visits to Bogota, he told Colombian military officers to bypass the Clinton Administration officials in the State Department and U.S. Embassy and to deal directly with his office in the Congress. He wanted to remove human rights conditions on U.S. aid that, in his words, provided aid to leftist organizations in other countries. Hastert later had the infamy of being the highest level government official ever jailed on felony charges when he was convicted on felony financial crimes and child molestation charges. See "International Drug Control Policy: Colombia," Hearing Before the Subcommittee on National Security, International Affairs and Criminal Justice, Committee on Government Reform and Oversight, House of Representatives, 105th Congress. First Session, 9 July 1997; Diplomatic cable from U.S. Embassy Bogota, "CODEL [Congressional Delegation] Hastert's May 24–27 Visit to Colombia," 28 May 1997. Reported in Winifred Tate, *Drugs, Thugs, and Diplomats: U. S. Policymaking in Colombia* (Palo Alto: Stanford University Press, 2015), 44 and 72.

361. Winifred Tate, *Drugs, Thugs, and Diplomats: U. S. Policymaking in Colombia* (Palo Alto: Stanford University Press, 2015), 72.
362. United Nations High Commissioner for Human Rights, “Informe de la Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre su Misión de Observación en el Medio Atrato.” 20 May 20, 2002, <http://www.hchr.org.co/documentoseinformes/informes/tematicos/bojaya.pdf>, last accessed 2 December 2019.
363. Isaac Risco, “FARC Ready to Overcome ‘Major Hurdles’ in Colombian Talks, *Deutsche Presse-Agentur* (DPA), 15 September 2012.
364. “War in Colombia, Guerrillas, Drugs and Human Rights in U.S. Colombia Policy, 1988–2002,” National Security Archive Electronic Briefing Book No. 69.
365. Diplomatic Cable, “Ambassador’s June 13 Conversation with Minister of Defense Echeverri,” State Department Embassy Cable 05740, 16 June 1997. Reported in Winifred Tate, *Drugs, Thugs, and Diplomats: U. S. Policymaking in Colombia* (Palo Alto: Stanford University Press, 2015), 71.
366. See “War in Colombia, Guerrillas, Drugs and Human Rights;” See also U.S. Embassy Diplomatic Cable 006705, “EUM talks with Defmin at Dead End,” 14 July 1997; Winifred Tate, *Drugs, Thugs, and Diplomats : U. S. Policymaking in Colombia* (Palo Alto: Stanford University Press, 2015), 73.
367. “War in Colombia, Guerrillas, Drugs and Human Rights,” volume III, document #51.
368. “Colombia’s Defense Chief Quits in Drug Scandal,” *New York Times*, 17 March 1997.
369. See “War in Colombia, Guerrillas, Drugs and Human Rights,” documents 53, 61, and 64.
370. According to the diplomatic cable, planning for the event was conducted with “full coordination” from the Colombian Army, including “travel, logistics, intelligence and security.” See Michael Evans, “Mapiripán Massacre: Paras told U.S. Operation ‘well-coordinated in advance’ with Colombian Army,” National Security Archives, George Washington University, 12 July 2012.
371. *Semana*, “General Condenado,” 19-25 February 2001; Angel Rabasa and Peter Chalk, *Colombian Labyrinth: The Synergy of Drugs and Insurgency and Its Implications for Regional Stability* (Los Angeles: Rand Corporation, 2001), 58.
372. See description of Document 61 in “War in Colombia, Guerrillas, Drugs and Human Rights.”
373. Based on numerous press reports, Colombian military officials only rarely participated in direct hostilities against civilians. Instead, they provided tacit support (transportation, logistical support, intelligence) to paramilitary forces that served as proxy units for the COLAR .
374. “War in Colombia, Guerrillas, Drugs and Human Rights.”
375. Juan Forero, “Colombian Government Shaken by Lawmakers’ Paramilitary Ties,” *Washington Post*, 18 November 2006.

376. See description of Document 63 in “War in Colombia, Guerrillas, Drugs and Human Rights.”
377. David Passage, “The United States and Colombia: Untying the Gordian Knot,” *Strategic Studies Institute* (2000), 21.
378. “War in Colombia, Guerrillas, Drugs and Human Rights.”
379. “Cargos contra 4 generales por masacre de Puerto Alvira,” *El Tiempo*, 28 July 2000; Angel Rabasa and Peter Chalk, *Colombian Labyrinth: The Synergy of Drugs and Insurgency and Its Implications for Regional Stability* (Los Angeles: Rand Corporation, 2001), 58.
380. The officers and NCOs were dismissed pursuant to a decree signed by President Pastrana allowing the Minister of Defense to dismiss officers deemed unfit for duty; they were not charged with specific abuses.
381. See Thomas Pickering, “Anatomy of Plan Colombia,” *The American Interest*, Volume 5, Number 2, November 1, 2009.
382. Robert D. Ramsey III, *From El Billar to Operations Fenix and Jaque: The Colombian Security Force Experience, 1998–2008* (Fort Leavenworth, Kansas: Combat Studies Institute Press, 2009), 53 and 110. See also Moyar, Pagan, and Griego, *Persistent Engagement in Colombia*, 16, 26.
383. Connie Veillette, “Plan Colombia: A Progress Report,” *Congressional Research Service*, 9 May 2005. A common misperception is that the U.S. had funded nearly all of the Colombian security improvements when in fact U.S. assistance amounted to only about seven percent of the total amount of security reforms in the country.
384. Thomas Pickering, “Anatomy of Plan Colombia,” *The American Interest*, Volume 5, Number 2, 1 November 2009.
385. Moyar, Pagan, and Griego, *Persistent Engagement in Colombia*, 18–19.
386. Dickie Davis, “Building the Tools for Military Success,” in Juan Carlos Pinzon, Preface, *A Great Perhaps? Colombia: Conflict and Convergence* (London: C. Hurst and Company, 2016), xxx.
387. Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 259, 54 (30 November 2012). T. Christian Miller, “A Colombian Town Caught in a Cross-Fire; The bombing of Santo Domingo shows how messy U.S. involvement in the Latin American drug war can be,” *Los Angeles Times*, 17 March 2002.
388. Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 259, 54 (30 November 2012).
389. According to the ICC and the Center of Public Investigation and Education, a Colombian NGO, there are 951 recorded incidents of false positives involving 1,741 victims, committed between October 1988 and June 2011. The incidents registered indicate that they occurred with greatest frequency between 2002 and 2008, with at least 709 such incidents reported. The regions most affected

during that period were Antioquia (198 incidents); Meta (62 incidents); Huila (48 incidents) and Norte de Santander (40 incidents). See the Center of Public Investigation and Education's report "Deuda con la Humanidad 2: 23 Años de Falsos Positivos (1988–2011)." Also see ICC, Situation in Colombia Interim Report, November 2012, 29.

390. False positive incidents occurred in most of the political departments throughout Colombia including Antioquia, Chocó, Norte de Santander, Sierra Nevada de Santa Marta, Huila, Meta, Cesar, Caqueta, Tolima, Arauca, La Guajira, Cauca, Valle, Cordoba, Putumayo, Casanare, Sucre, Bolivar, Nariño, Santander, Caldas, Magdalena, Bogota, Quindio and Cundinamarca. See ICC, Situation in Colombia Interim Report, November 2012, 34.
391. "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston," Addendum, Mission to Colombia, U.N. Doc. A/HRC/14/24/Add.2, 31 March 2010 (hereinafter "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston"), Appendix B, 32.
392. ICC, Situation in Colombia Interim Report, November 2012, 34.
393. ICC, Situation in Colombia Interim Report, November 2012, 32
394. ICC, Situation in Colombia Interim Report, November 2012, 57.
395. The Colombian armed forces are organized into eight divisions that report directly to the General Command of the Colombian armed forces. Each division is assigned to several departments of the country. Acting under each division are two to six brigades. Each brigade consists of up to nine battalions and tactical units. Furthermore, mobile brigades are created within divisions on an ad hoc basis for special operations. From ICC, Situation in Colombia Interim Report, 12 November 2012, 29.
396. Información Ministerio de Defensa Nacional, Dirección de DDHH, informe anual al señor Ministro, Diciembre 2007.
397. Gomez, unpublished manuscript, 14.
398. The concept was approved by the General Assembly of the United Nations in its resolution 48/141 of 20 December 1993.
399. Annual reports of the "El Alto Comisionado de Derechos Humanos en Colombia" can be found here: <https://www.hchr.org.co/index.php/informes-y-documentos/informes-anales>.
400. Gomez, unpublished manuscript, 7.
401. The international experts who advanced the study were: Bruno Doppler (Switzerland), Javier Guisandez (Spain) and Hugo Lorenzo (Uruguay).
402. Departamento Administrativo Nacional de Estadística.
403. Document generated by the Coordinación de DDHH del Ministerio de Defensa Nacional that contains the goals and plans to carry out in the field of human rights and IHL in 2006.
404. Gomez, unpublished manuscript, 7.

405. Gomez, unpublished manuscript, 7.
406. Mirko Daniel Fernandez, Human Rights Accountability in the Colombian Military Armed Forces (2012), <http://issat.dcaf.ch/Learn/Resource-Library/Case-Studies/Human-Rights-Accountability-in-the-Colombian-Military-Armed-Forces>.
407. Fernandez, Human Rights Accountability
408. ICC, Situation in Colombia Interim Report, November 2012, 33.
409. Promulgated as provision number 056, the Manual de Derecho Operacional Fuerzas Militares 3–41.
410. Gomez, unpublished manuscript, 19.
411. Pinzon, Preface, xxx.
412. Gomez, unpublished manuscript, 18.
413. Fernandez, Human Rights Accountability.
414. Every annual report of the High Commissioner for Human Rights in Colombia is available at: <https://www.hchr.org.co/index.php/informes-y-documentos/informes-anauales>.
415. A force-wide review of military doctrine is currently (as of early 2020) underway. Called *Plan Damasco*, it consists of three phases: 2015–2018, 2018–2022, and 2022–2030. Information received from Colombian military officers during interviews conducted in September 2019.
416. These insights provided by Colombian military officers and ICRC representatives during interviews conducted in September 2019.
417. Though technically illegal, wealthier Colombians can opt to buy their military cards (*libreta militar*). Possession of a military card might be considered the equivalent of having a social security number in the United States. Without it, one cannot buy property, open bank accounts, or enter into contracts, among many other economic and social requirements.
418. Toni Pfanner, Nils Melzer, and Kathleen Gibson, “Interview with Sergio Jaramillo Caro,” *International Review of the Red Cross*, 11 December 2008, Volume 90 Number 872 (December 2008): 828.
419. Colombian authorities refer to these two types of encounters as hostile operations (*operaciones en escenarios de hostilidades*) and security operations (*operaciones para el mantenimiento de la seguridad*). See Constantin von der Groeben, “The Conflict in Colombia and the Relationship between Humanitarian Law and Human Rights Law in Practice: Analysis of the New Operational Law of the Colombian Armed Forces,” *Journal of Conflict & Security Law*, vol. 16, no. 1 (Spring 2011): 150.
420. Manual de Derecho Operacional Fuerzas Militares 3–41, issued 7 December 2009.
421. Constantin von der Groeben, “The Conflict in Colombia and the Relationship between Humanitarian Law and Human Rights Law in Practice: Analysis of the New Operational Law of the Colombian Armed Forces,” *Journal of Conflict & Security Law*, vol. 16, no. 1 (Spring 2011): 151.

422. Information received from Colombian military lawyers in September 2019. Translation from Spanish to English does not permit a proper distinction between *grupo armado criminal* and *grupo organizado delincuencia*. Both translate to English as armed criminal groups or organized criminal groups. For U.S. readers, the first group could be thought of a criminal gang that commits violent felonies, the kind that would fall under the jurisdiction of the Federal Bureau of Investigation (FBI) in the U.S. The second would be a level below that, perhaps under the jurisdiction of state or city police authorities.
423. Republica de Colombia, Ministerio de Defensa Nacional, Directiva Permanente no 0015, 22 April 2016. See also, Ana Balcazar Moreno, Ximena Mercedes Galvez Lima, Julie Lambin, Lina Rodriguez, “The War Report 2017: Gang Violence In Colombia, Mexico And El Salvador,” Geneva Academy of International Humanitarian Law and Human Rights (December 2017): 3.
424. Insight Crime, *Urabeños*, 14 March 2018.
425. Felicity Szesnat and Annie Bird, “Colombia,” in Elizabeth Wilmschurst, *International Law and the Classification of Conflicts* (London: Oxford University Press, 2012), 214–215; Constantin von der Groeben, “The Conflict in Colombia and the Relationship between Humanitarian Law and Human Rights Law in Practice: Analysis of the New Operational Law of the Colombian Armed Forces,” *Journal of Conflict & Security Law*, Vol. 16, No. 1 (Spring 2011): 147.
426. Peter Santina, “Army of Terror,” *Harvard International Review*, Winter 98/99, vol. 21(1). For more on U.S. concerns for Colombian human rights records, see Robert D. Ramsey III, *From El Billar to Operations Fenix and Jaque: The Colombian Security Force Experience, 1998–2008* (Fort Leavenworth, Kansas: Combat Studies Institute Press, 2009).
427. See, among numerous declassified U.S. Embassy Colombia cables, “Military Assistance to Colombian Army’s 7th and 12th Brigades, and 2nd ‘Brim,’” 26 August 1998. Declassified in accordance with Freedom of Information Act (FOIA) by National Security Archives, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB69/part3.html>.
428. Fox News, “Colombia admits rights violations in battle with leftists,” 23 July 2013, <http://www.foxnews.com/world/2013/07/25/colombia-admits-rights-violations-in-battle-with-leftists.html>
429. Centro de Memoria Histórica, “Basta Ya!: Colombia: Memorias de Guerra y Dignidad,” 2013, <http://www.centrodememoriahistorica.gov.co/micrositios/informeGeneral/estadisticas.html>
430. Juan Carlos Gomez Ramirez, “Case Study: Law Enforcement by Military Personnel,” in Franco Angeli (editor), *Weapons and the International Rule of Law* (San Remo, Italy: International Institute of Humanitarian Law, 2018), 112.
431. Pinzon, Preface, xxxiv.
432. Nicholas Casey, “Colombia Army’s New Kill Orders Send Chills Down Ranks,” *New York Times*, 18 May 2019.

433. See Casey, "Colombia Army's New Kill Orders;" Nicholas Casey, "Colombia's Army Changes Pledge to Carry Out Killings," *New York Times*, 21 May 2019; Nicholas Casey, "Colombia Will Review Military Orders amid Human Rights Fears," *New York Times*, 24 May 2019; "Colombian Defense Minister Avoids Congressional Censure," *EFE New Service*, 13 June 2019.
434. Peter DeShazo et al., "Countering Threats to Security and Stability in a Failing State," *Center for Strategic and International Studies* (September 2009), 58.
435. See The Guardian, "Nasa Indians Clash with Soldiers in the Colombia—in pictures," <http://www.theguardian.com/world/gallery/2012/jul/19/colombia-nasa-indians>.
436. Ana Balcazar Moreno, Ximena Mercedes Galvez Lima, Julie Lambin, and Lina Rodriguez, "The War Report 2017: Gang Violence in Colombia, Mexico And El Salvador," Geneva Academy of International Humanitarian Law and Human Rights (December 2017): 6; Mexico Profile, Insight Crime, Link: <https://www.insightcrime.org/mexico-organized-crime-news/>, last accessed 29 July 2019.
437. "Mexico: Organized Crime and Drug Trafficking Organizations," *Congressional Research Service*, 19 December 2019, summary.
438. See the *Registro Nacional de Datos de Personas Extraviadas o Desaparecidas*, RNPED (in English, the National Registry of Disappeared or Missing Person).
439. As of August 2019. See Internal Displacement Monitoring Center (IDMC), 'Mexico,' <http://www.internal-displacement.org/countries/mexico/>, last accessed 30 July 2019.
440. "México registra 31.688 asesinatos de enero a noviembre del 2019," *EFE New Service*, 21 December 2019; Mary Beth Sheridan, "More than 60,000 Mexicans have disappeared amid drug war, officials say," *Washington Post*, 6 January 2020; Anthony Harrup, "Mexico's Murder Rate Hits Highest Level in Decades," *Wall Street Journal*, 30 July 2018.
441. Phillip von Plato and Malte Zeeck, "Expat Insider 2017: Looking at the World through Expat Eyes," *InterNations*, 2017.
442. Economic, social, and political references drawn from a number of sources to include: "Mexico: Background and U.S. Relations," *Congressional Research Service*, 2 May 2019; The Central Intelligence Agency, *The World Factbook*; U.S.-Mexico Economic Relations: Trends, Issues, and Implications, *Congressional Research Service*, 26 March 2019.
443. U.S. Bureau of Transportation Statistics, *North American Border Crossing/Entry Data*.
444. Francisco E. González, "Mexico's Drug Wars Get Brutal," *Current History*, February 2009. In 1990, Peruvian writer and Presidential candidate Mario Vargas Llosa famously called the government under the PRI "the perfect dictatorship" (*la dictadura perfecta*) because of the political party's elaborate self-enrichment schemes while at the same time not drawing undue attention to its corrupt activities. See Vargas Llosa, "México es la Dictadura Perfecta," *El Pais*, 1 September 1990.

445. United States Agency for International Development (USAID), "Crime and Violence Prevention Field Guide" (2016), 4.
446. Ioan Grillo, *El Narco: Inside Mexico's Criminal Insurgency* (New York: Bloomsbury Publishing, 2011), 19, 126–147.
447. Fuel theft is a new development among organized crime groups. Referred to as "huachicoleros," the practices consists of making an improvised tap into gas or oil pipelines and siphoning off the fuel. The Mexican government estimates that it loses \$1 billion in revenue each year from the illegal activity and it is widely believed the fuel industry workers are aware of and collude with the thieves in exchange for payoffs. Evan Ellis, "The Evolution of Security Challenges in Mexico," *The Global Americans*, 2 March 2018.
448. Noe Cruz Serrano, "Fuel theft increased by 52.6 percent in Mexico," *El Universal*, 5 July 2018.
449. Ley de Seguridad Nacional, article 3, Diario Oficial de la Federación, 31 de enero, 2005.
450. Reproduction of Table 1.3, 29 in Robert A. Donnelly and David A. Shirk, eds., "Introduction," *Police and Public Security in Mexico* (Trans-Border Institute, Ca: University Readers, 2009).
451. Vanda Felbab-Brown, "Calderon's Caldron," *Brookings Institute*, September 2011; Maureen Meyer, "Abused and Afraid in Ciudad Juarez," *Washington Office on Latin America* (WOLA) (September 2010), 10.
452. Maureen Meyer, "Abused and Afraid in Ciudad Juarez," *Washington Office on Latin America* (WOLA) (September 2010), 11.
453. Ioan Grillo, "Confessions of a Mexican Narco-Foot Soldier," *Time Magazine*, 26 December 2008.
454. James McKinley, "Gunmen Kill Chief of Mexico's Police," *The New York Times*, 9 May 2008; Manuel Roig-Franzia, "Mexico's Police Chief Is Killed In Brazen Attack by Gunmen," *Washington Post*, 9 May 2008.
455. Ioan Grillo, *El Narco: Inside Mexico's Criminal Insurgency* (New York: Bloomsbury Publishing, 2011), 19, 126–127.
456. President Calderon's security policies raised the ire of victims' rights groups. In November 2011, Calderon was accused of crimes against humanity by Mexican human rights lawyers. The case was referred to the ICC. Mexican government officials denied that the security policy involved any sort of international crime. "Mexico, as never before, has implemented, in a systematic and growing way, a public policy to strengthen the rule of law and promote and respect human rights," they said. See Sara Webb and Manuel Rueda, "Mexican group asks ICC to probe president, officials," *Reuter News*, 25 November 2011. See also Patrick Corcoran, "Mexico has 80 Drug Cartels: Attorney General," *Insight Crime*, 20 December 2012; Arturo Ramírez Verdugo and Reyes Ruiz González, "Security Strategies Experiences of the Mexican States of Chihuahua and Nuevo León," 2016, *Hoover Institute*, 3–4; G. Robles, G. Calderón, and B. Magaloni, "The

- Economic Consequences of Drug Trafficking Violence in Mexico,” *Poverty and Governance Series Working Paper*, Stanford University, 2013; W. Neuman, “As Drug Kingpins Fall in Mexico, Cartels Fracture and Violence Surges,” *The New York Times*, 12 August 2015.
457. Wendy Cunningham, et al., “Youth at Risk in Latin America and the Caribbean: Understanding the Causes, Realizing the Potential,” Washington, D.C.: World Bank (2008), 142.
458. Presidencia de México, “Discurso íntegro del Presidente Peña Nieto a la Nación,” 1 December 2012. See also Randal Archibold and Damien Cave, “Mexico Election Signals new Tack in the Drug War,” *New York Times*, 11 June 2012.
459. Programa para la Seguridad Nacional, 2014–2018, 59.
460. Arturo Ramírez Verdugo and Reyes Ruiz González, “Security Strategies Experiences of the Mexican States of Chihuahua and Nuevo León,” Hoover Institute (2016): 6.
461. For an excellent assessment of the Mexican military from 2006–2011, see Inigo Guevara Moyano, “Adapting, Transforming, and Modernizing Under Fire: The Mexican Military 2006–11,” *Strategy Studies Institute* (September 2011).
462. Raúl Benítez Manaut and Sergio Aguayo Quezada, Editors, *Atlas de la Seguridad y la Defensa de México 2016* (Ciudad de México: Instituto Belisario Domínguez del Senado de la República, 2017).
463. The Mexican Constitution, article 129, prohibits the use of the military from conducting any functions other than those directly related to military affairs. However, contrarians point toward article 89, section VI of the Mexican constitution which permits the President to use the armed forces for national security. See also Craig Deare, *A Tale of Two Eagles: The U.S.-Mexico Bilateral Defense Relationship Post Cold War* (Lanham, MD: Rowman and Littlefield, 2017), 95.
464. Interviews with SEDENA and SEMAR officials, 11–12 February 2020, Mexico City.
465. Both quotes drawn from Craig Deare, *A Tale of Two Eagles: The U.S.-Mexico Bilateral Defense Relationship Post Cold War* (Lanham, MD: Rowman and Littlefield, 2017), 306.
466. George Grayson, “The Impact of President Felipe Calderon's War on Drugs on the Armed Forces: The Prospects for Mexico's ‘Militaryization’ and Bilateral Relations,” *Strategic Studies Institute* (SSI) (2013), Figure 1, pages iii.
467. See the helpful table in Grayson (2013), figure 3, pages 17–21.
468. Arturo Ramírez Verdugo and Reyes Ruiz González, “Security Strategies Experiences of the Mexican States of Chihuahua and Nuevo León,” Hoover Institute (2016), 28.
469. Juan Montes, “As Violence Soars, Mexico's New Leader to take charge of Security,” *Wall Street Journal*, 24 July 2018.

470. See Clare Ribando Seelke and Kristin Finklea, "U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond," *Congressional Research Service* (29 June 2017): 16.
471. Arturo Ramírez Verdugo and Reyes Ruiz González, "Security Strategies Experiences of the Mexican States of Chihuahua and Nuevo León," Hoover Institute (2016): 24.
472. "Caen en NL 106 policías por narco," *Reforma*, 22 January 2012. George Grayson, "The Impact of President Felipe Calderon's War on Drugs on the Armed Forces: The Prospects for Mexico's ' Militarization ' and Bilateral Relations," *Strategic Studies Institute* (SSI) (2013), 24.
473. "Reportan balacera entre policías y militares en Nuevo León," *El Informador*, 31 August 2009; "Enfrentamiento entre militares y policías en Monterrey deja seis heridos," *Chihuahua al Instante*, 13 April 2008; "Militares balean a policías de Ciudad Juárez," *La Jornada*, 8 April 2008. Also reported in George Grayson, "The Impact of President Felipe Calderon's War on Drugs on the Armed Forces: The Prospects for Mexico's ' Militarization ' and Bilateral Relations," *Strategic Studies Institute* (SSI) (2013), 24. 29.
474. Sadly, Mexico is not the only country in the hemisphere with severe problems among the police. A 2010 Americas Barometer survey revealed that more than 60 percent of respondents in Argentina, Bolivia, Guatemala, and Venezuela believed local police forces were involved in crime. See José Miguel Cruz, "Police Misconduct and Democracy in Latin America," *Americas Barometer Insights*, No. 33, Nashville: Vanderbilt University (2010), 2.
475. Arturo Ramírez Verdugo and Reyes Ruiz González, "Security Strategies Experiences of the Mexican States of Chihuahua and Nuevo León," Hoover Institute (2016), 33.
476. See the Registro Nacional de Datos de Personas Extraviadas o Desaparecidas (RNPED).
477. June Beittel, "Mexico: Organized Crime and Drug Trafficking Organizations," *Congressional Research Service*, 3 July 2018, 2; Natasha Turak, "More than 100 politicians have been murdered in Mexico ahead of Sunday's election," *CNBC*, 26 June 2018; "Mexican Mayor Is Killed a Day After Taking Office," *Associated Press*, 2 January 2016.
478. Interestingly, a number of Mexican authorities interviewed for this project in July 2019 and again in February 2020 cited the same justification for not declaring Mexican DTOs as organized armed groups: the fact that those criminal groups did not have a political ideology that threatened the central government. In accordance with the criteria for determining if a group crosses the threshold of an OAG, political ideology is NOT one of the factors. It appears that this is a common misperception among Mexican officials but the author was unable to pinpoint the source of the information that has led so many Mexican authorities to believe this.

479. Gabriela Calderón, Gustavo Robles, Alberto Díaz-Cayeros, Beatriz Magaloni, “The Beheading of Criminal Organizations and the Dynamics of Violence in Mexico,” *Journal of Conflict Resolution*, Vol 59(8) (2015): 1460.
480. Evan Ellis, “The Evolution of Security Challenges in Mexico,” *The Global Americans*, 2 March 2018.
481. See the stark summary of security conditions in Tamaulipas in Gary Hale, “A ‘Failed State’ in Mexico: Tamaulipas Declares itself Ungovernable,” James A. Baker III Institute for Public Policy, Rice University, 26 July 2011. By June 2011, the Mexican Army had deployed thousands of troops into the state to restore order.
482. Geneva Academy of International Humanitarian Law and Human Rights, “International Humanitarian Law applies to the Armed Confrontation between Mexico and the Jalisco Cartel New Generation” (February 2019).
483. In the Global Impunity Index 2015, it ranked in the 58th position out of 59 countries subject to analysis. See Global Impunity Index (GII), published by Fundación Universidad de las Américas Puebla, 11. In the opinion of Mexican citizens, corrupt political leaders is one of their biggest concerns, on par with crime and violence; 84 percent of those surveyed believe corruption is the most pressing challenge facing the country. See Margaret Vice and Hanyu Chwe, “Mexican Views of the U.S. Turn Sharply Negative,” *Pew Research Center*, 14 September 2017.
484. See the “Results of the National Survey on Victimization and Perception of Public Security (ENVIPE) 2015,” September 30, 2015. According to the Primary Results, “it is estimated that in 2014 10.7 percent of crimes were reported, and 67.5 percent of those lead to the opening of a formal investigation by the Public Prosecutor. Of the total number of crimes, a formal investigation was opened in 7.2 percent of cases. This leads to 92.8 percent of crimes resulting in either NO report or NO opening of a formal investigation.” The crime with the highest rate of “figure,” at 99 percent is extortion. Available in Spanish at: [http://www.inegi.org.mx/est/contenidos/proyectos/-encuestas/hogares/regulares/envipe/envipe2015/doc/envipe2015\\_presentacion\\_nacional.pdf](http://www.inegi.org.mx/est/contenidos/proyectos/-encuestas/hogares/regulares/envipe/envipe2015/doc/envipe2015_presentacion_nacional.pdf).
485. Shaila Rosagel, “Los 8 ex gobernadores acusados de corrupción sumaron deuda por 186,535 mdp,” *Sin Embargo*, November 20, 2016; Nación321, “Mario Villanueva y otros 6 exgobernadores vinculados con el narcotráfico,” 19 January 2017.
486. Tracy Wilkinson, “Mexico sees inside job in prison break,” *Los Angeles Times*, 18 May 2009.
487. At his trial in 2018, authorities estimated he had earned \$14 billion in two and a half decades of drug trafficking. See Ioan Grillo, El Chapo puts the Drug War on Trial,” *New York Times*, 15 November 2018; Doris Gómora, “The Sinaloa Cartel Has a Global Empire,” *El Universal*, 20 January 2016.
488. Ed Villiamy, “El Chapo: Trial of Mexican cartel boss begins in New York,” *The Guardian*, 13 November 2018; Alan Feuer, “El Chapo Trial: How a Cartel Prince Left the Drug Trade,” *New York Times*, 4 January 2019; Alan Feuer, “El Chapo has

- yet to Reveal Mexico's Dark Secrets of Narco-Corruption," *New York Times*, 30 November 2018; Alan Feuer, "El Chapo's Narco Spoils: A Beach House, A Zoo, and a Fleet of Cash-filled Jets," *New York Times*, 29 November 2018; Christy Thornton, "El Chapo and the Narco-Spectical," NACLA, 27 November 2018; Alan Feuer, "El Chapo Jury Hears about Bribes to Mexico's Public Security Secretary," 20 November 2018; Ioan Grillo, "El Chapo Puts the Drug War on Trial," *New York Times*, 15 November 2018.
489. Azam Ahmed and Eric Schmitt, "Mexican Military Runs up Body Count in Drug War," *New York Times*, 26 May 2016.
490. Sanjuana Martínez, "Si agarro a un zeta lo mato; ¿para qué interrogarlo?: jefe policiaco," *La Jornada*, 13 March 2010.
491. Víctor Fuentes and Benito Jiménez, "Va military a Corte por ejecución," *Reforma*, 9 February 2012. Reported George Grayson, "The Impact of President Felipe Calderon's War on Drugs on the Armed Forces: The Prospects for Mexico's 'Militarization' and Bilateral Relations," *Strategic Studies Institute* (SSI) (2013), Figure 1, 47.
492. George Grayson, "The Impact of President Felipe Calderon's War on Drugs on the Armed Forces: The Prospects for Mexico's 'Militarization' and Bilateral Relations," *Strategic Studies Institute* (SSI) (2013), Figure 1, 4–14.
493. Camilo Carranza, "Killings by Mexican Marines Underscore Lack of Oversight," *Insight Crime*, 27 March 2019; Arturo Angel, "Con Peña aumentó la letalidad en operativos de la Marina: por cada herido hubo 20 muertos," *Animal Politico*, 11 March 2019; Azam Ahmed and Eric Schmitt, "Mexican Military Runs up Body Count in Drug War," *New York Times*, 26 May 2016.
494. National Security Archive, "US: Mexico Mass Graves Raise "Alarming Questions" about Government "Complicity" in September 2014 Cartel Killings" (document 13), 12 May 2015; Tracy Wilkinson, "Mexico Agrees to Investigate Mass Killing by Army," *Los Angeles Times*, 21 September 2014.
495. As of 2012, SEDENA admitted that 344 of its members were on trial for murder, forced disappearances, and a number of other serious offenses. See, for example, "Mexican Army Accepts Rights Criticisms in Slayings," *Associated Press*, 6 November 2014; Mark Stevenson, "Mexican Rights Agency asks Army to avoid Ambiguous Orders," *Associated Press*, 7 July 2015; George Grayson, "The Impact of President Felipe Calderon's War on Drugs on the Armed Forces: The Prospects for Mexico's 'Militarization' and Bilateral Relations," *Strategic Studies Institute* (SSI) (2013), 49 and figure 10 on page 50–51.
496. Maureen Meyer, "Mexico's Proposed National Guard Would Solidify the Militarization of Public Security," Washington Office on Latin America (WOLA), 10 January 2019.
497. George Grayson, "The Impact of President Felipe Calderon's War on Drugs on the Armed Forces: The Prospects for Mexico's 'Militarization' and Bilateral Relations," *Strategic Studies Institute* (SSI) (2013), 47.

498. United Nations Human Rights Council, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez.” United Nations, 29 December 2014. See also, Jo Tuckman, “UN: Torture in Mexico occurs with ‘impunity’ at hands of security forces,” *The Guardian*, 9 March 2015.
499. Jo Tuckman, “UN: Torture in Mexico Occurs With ‘Impunity’ at the Hands of Security Forces,” *The Guardian*, 9 March 2015.
500. This kind of lingering resentment by Mexicans toward the United States has real and tangible effects on security cooperation. U.S. SOF, for example, are not permitted to bring their own weapons into Mexico when conducting training with their counterparts. Law enforcement collaboration with Mexicans is also frequently curtailed and Mexican political officials are often reluctant to be perceived to be too cooperative with their U.S. counterparts. The Trump Administration’s aggressive rhetoric has not helped improve U.S.-Mexico relations and, as of the 2019, the United States was considered a greater danger to Mexico than China or Russia. John Gramlich and Kat Devlin, “More people around the world see U.S. power and influence as a ‘major threat’ to their country,” *Pew Research Group*, 14 Feb 2019; Laura Silver, “U.S. is seen as a top ally in many countries—but others view it as a threat,” *Pew Research Group*, 5 December 2019. For an exhaustive recent account of U.S.-Mexican relations, read Dr. Craig Deare’s *Tale of Two Eagles: The US-Mexico Bilateral Defense Relationship Post Cold War* (Lanham, MD: Rowman and Littlefield, 2017). Dr. Deare is a former U.S. Army Foreign Area Officer (FAO) and Professor of the William J. Perry Center for Hemispheric Defense Studies at NDU.
501. Congressional Research Service, *Mexico: Background and U.S. Relations*, CRS Report No. R42917 (Washington, D.C.: Congressional Research Service, May 2019), 14.
502. “American-Made .50-Caliber Rifles Help Fuel Mexican Cartel Violence,” *The Trace*, 29 October 2019; Dennis Wagner, “Made in America. Dead in Mexico. The massacre of a family this week highlights ‘grave problem’ of gun smuggling,” *USA Today*, 8 November 2019; Chelsea Parsons and Eugenio Weigend Vargas, “Beyond Our Borders How Weak U.S. Gun Laws Contribute to Violent Crime Abroad,” *Center for American Progress*, 2 February 2018.
503. Government Accountability Office (GAO), *Firearms Trafficking: U.S. Efforts to Combat Firearms Trafficking to Mexico Have Improved, But Some Collaboration Challenges Remain*, GAO 16-223 (Washington, D.C.: Government Accountability Office, January 2016); Topher McDougal, et al., “The Way of the Gun: Estimating Firearms Traffic across the U.S. Border,” *Igarape Institute and University of San Diego*, March 2013; David Kuhn and Robert Bunker, “Just Where do Mexican Cartel Weapons come from?,” *Small Wars & Insurgencies*, vol. 22, no. 5 (December 2011): 807–834.
504. In FY 2007, Mexico received about \$38 million in anti-drug assistance. The following year, as part of the Merida Initiative, that amount increased to more than \$263 million, a 600 percent increase. See Clare Ribando Seelke and Kristin

- Finklea, "U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond," *Congressional Research Service* (29 June 2017), table 1 on 11.
505. See Clare Ribando Seelke and Kristin Finklea, "U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond," *Congressional Research Service* (29 June 2017): 9.
506. Mexico: Evolution of the Mérida Initiative, 2007–2020," *Congressional Research Service In Focus* (28 June 2019); See Clare Ribando Seelke and Kristin Finklea, "U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond," *Congressional Research Service* (29 June 2017): 9.
507. The FMTR reports can be read online on the State Department homepage: <https://www.state.gov/foreign-military-training-and-dod-engagement-activities-of-interest/>, reports from before 2016 are in the State Dept. archives, <https://2009-2017.state.gov/t/pm/rls/rpt/fmtrpt/index.htm>.
508. Ken Ellingwood, "Mexico traffickers bribed former anti-drug chief, officials say," *Los Angeles Times*, 22 November 2008.
509. Tim Golden, "U.S. Officials say Mexican Military Aids Drug Traffic," *New York Times*, 26 March 1998.
510. Randal Archibold, "Adding to the Unease of a Drug War Alliance," *New York Times*, 30 May 2012.
511. "Former Mexican Drug Czar Arrested on Corruption Charges," *CNN*, 26 January 2009; Olga R. Rodriguez, "Prosecutors Drop Charges Against Mexican Generals," *Associated Press*, 4 July 2013; "Arraigando a General por Narco," *Reforma*, 5 February 2012.
512. Randal C. Archibold, "Mexican General is Charged in Killings and Abuses," *New York Times*, 1 February 2012; Alan Hernandez, "Mexican General Who Led the 'Death Platoon' Will Go to Prison for Torture and Murder," *Vice News*, 29 April 2016.
513. The 1961 Foreign Assistance Act (FAA) permits the Secretary of State to withhold security assistance funds if he or she has "credible evidence" that security forces have committed "gross violations of human rights." In accordance with the 2007 Merida Initiative agreement, 15 percent of the \$1.3 billion of assistance was tied to human rights conditions in the country. On two previous instances, on 13 August 2009 and again on 2 September 2010, the State Department did not withhold funding because it believed the Mexican government was making an earnest effort to comply with human rights standards. See Washington Office on Latin America (WOLA) et al., "Joint Letter to Secretary of State Hillary Clinton: Human Rights Concerns to Inform the U.S. Department of State's Mérida Initiative Reporting on Mexico," 27 May 2010; Maureen Meyer, "Abused and Afraid in Ciudad Juarez," Washington Office on Latin America (WOLA), September 2010, 5. See also See Clare Ribando Seelke and Kristin Finklea, "U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond," *Congressional Research Service* (29 June 2017): 9.

514. See Clare Ribando Seelke and Kristin Finklea, "U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond," *Congressional Research Service* (29 June 2017): 28.
515. The U.S. aid is withheld until the Secretary of State confirms that Mexico is taking adequate action in four human rights areas: (1) improving transparency and accountability of federal police forces; (2) establishing regular consultations among Mexican government authorities, Mexican human rights organizations, and other relevant Mexican civil society organizations; (3) ensuring that civilian prosecutors and judicial authorities are investigating and prosecuting members of the federal police and military forces that have been alleged to have committed violations of human rights, and the federal police and military forces are fully cooperating with the investigations; and (4) enforcing the prohibition on the use of testimony obtained through torture or other ill treatment. See Jonathan Partlow, "U.S. blocks some anti-drug funds for Mexico over human rights concerns," *Washington Post*, 18 October 2015; Elizabeth Malkin and Azam Ahmed, "U.S. Withholds \$5 Million in Antidrug Aid to Mexico as Human Rights Rebuke," *New York Times*, 19 October 2015.
516. See for example, IACHR, Situation of Human Rights in Mexico, OEA/Ser.L/V/II. doc 44/15, 31 December 2015; Human Rights Commission, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on his Mission to Mexico, UN doc A/HRC/28/68/Add.3, 29 December 2014.
517. President Calderon has even been accused of war crimes for allegedly authorizing an indiscriminate campaign of force against Mexican citizens and his case referred the ICC. See "Activists Accuse Mexican President of War Crimes in Drug Crackdown," *The Guardian*, 26 November 2011.
518. Alan Hernandez, "Mexican General Who Led the 'Death Platoon' Will Go to Prison for Torture and Murder," *Vice News*, 29 April 2016.
519. In 2011, Human Rights Watch (HRW) reports that of 3,671 investigations opened in the military court system between 2007 and 2011, only 29 resulted in convictions of soldiers. See Human Rights Watch, "Neither Rights, Nor Security: Killings, Torture and Disappearances in Mexico's 'War on Drugs'" (2011).
520. Laura Carlsen, Mexico's False Dilemma: Human Rights or Security, *Northwestern Journal of International Human Rights*, vol 146 (2012): 148.
521. "Mexico ends Military Jurisdiction for Crimes against Civilians," *EFE*, 14 June 2014.
522. "General Cienfuegos: 'El Ejército debe salir de las calles; fue un error entrar en esa Guerra,'" *Sin Embargo*, 16 Mar 2010. Translation from Spanish by author.
523. Christopher Woody, "After a decade fighting the cartels, Mexico may be looking for a way to get its military off the front line," *Business Insider*, 13 February 2017. Also reported in Celina Realuyo, The Evolving Role of the Security Forces to Counter Transnational Organized Crime in the Americas," *William J. Perry Center Regional Insight*, Edition No. 2 (March 2018.)

524. “Mexico’s Militarization of Public Security is a Big Mistake: UN,” *TeleSUR*, 14 December 2016.
525. Elizabeth Malkin, “Mexico Strengthens Military’s Role in Drug War, Outraging Critics,” *New York Times*, 15 December 2017; “International Human Rights Bodies, Civil Society Groups Share Concerns on Mexico’s Internal Security Law,” Washington Office on Latin America (WOLA), 13 December 2017.
526. Center for Justice and International Law, “Inter-American Commission on Human Rights holds important hearing on implications of Mexico’s new Internal Security Law,” 20 March 2018.
527. According to the Mexican Constitution, “No military authority may, in time of peace, perform any functions other than those that are directly connected with military affairs.” See article 129 of nacional Constitution (Constitución Política de los Estados Unidos Mexicanos, 5 de Febrero de 1917).
528. “Mexico Supreme Court overturns security law,” *El Universal*, 16 November 2018; “Mexico’s High Court tosses law on policing by military,” *Associated Press*, 15 November 2018.
529. The full “*Plan Nacional de Paz y Seguridad*” can be found on the President’s webpage: [https://lopezobrador.org.mx/wp-content/uploads/2018/11/Plan-Nacional-de-Paz-y-Seguridad\\_.pdf](https://lopezobrador.org.mx/wp-content/uploads/2018/11/Plan-Nacional-de-Paz-y-Seguridad_.pdf)
530. “Mexico President-elect will continue to lean on the military,” *Associated Press*, 14 November 2018.
531. David Alire Garcia, “Mexico’s New President takes aim at Violence during first day in office,” *Reuters*, 02 December 2018.
532. Elizabeth Melimopoulous, “Mexico’s National Guard: What, Who, and When.” *Al Jazeera*, 30 June 2019.
533. Kirk Semple and Paulina Villegas, “Mexico Approves 60,000-Strong National Guard. Critics Call It More of the Same,” *New York Times*, 28 February 2019.
534. Secretaria de Seguridad y Protección Ciudadana (SSPC), in Spanish.
535. “Mexico names army general to lead new National Guard,” *Associated Press*, 11 April 2019.
536. Alejandro Hope, “Cinco tesis sobre la Guardia Nacional,” *El Universal*, 1 July 2019.
537. Semple and Villegas, “Mexico Approves 60,000-Strong National Guard.
538. Kirk Semple, “Mexico’s National Guard, a ‘Work in Progress,’ Deployed to Curb Migration,” *New York Times*, 14 June 2019.
539. Paulina Villegas and Elisabeth Malkin, “Mexico’s National Guard, Created to Fight Crime, Is Deployed to Capital,” *New York Times*, 1 July 2019.
540. “Mexico: Organized Crime and Drug Trafficking Organizations,” *Congressional Research Service* (20 December 2019): 6.
541. Mary Beth Sheridan, “Mexico’s homicide count in 2019 among its highest,” *Washington Post*, 20 January 2020; Bradford Betz, “Mexico’s homicide rate hits new record high in 2019,” *Fox News*, 21 January 2020; “Record number of people

- murdered in Mexico this year,” *AFP*, 21 April 2019; see also, Anthony Harrup, “Mexico’s Murder Rate Hits Highest Level in Decades,” *Wall Street Journal*, 30 July 2018.
542. IACHR, “Situation of Human Rights in Mexico” (31 December 2015): 11.
543. Richard Wike and Caldwell Bishop, “Public Attitudes Toward Human Rights Organizations: The Case of India, Indonesia, Kenya and Mexico,” *Pew Research Center*, 3 October 2017.
544. Margaret Vice and Hanyu Chwe, “Mexican Views of the U.S. Turn Sharply Negative,” *Pew Research Center*, 14 September 2017, 4.
545. Zechmeister, E. “Should We Be Alarmed That One-in-Four U.S. Citizens Believes a Military Take-Over Can Be Justifiable?” *Latin American Public Opinion Project*, 09 January 2018. See also José Miguel Cruz, “The impact of violent crime on the political culture of Latin America: The special case of Central America,” in Mitchell A. Seligson, ed., *Challenges to Democracy in Latin America and the Caribbean: Evidence from the Americas Barometer 2006–07* (Nashville: Vanderbilt University, 2008), 222.
546. The son, Ovidio Guzmán López, was the subject of an extradition request by the U.S. officials who sought to arrest him and send him to the U.S. on trafficking charges. Ray Sanchez, “Mexican soldiers ordered son of ‘El Chapo’ to call cartel to stop attacks on them, video shows,” *CNN*, 31 October 2019; Ioan Grillo, “How the Sinaloa Cartel bested the Mexican Army,” *Time*, 18 October 2019.
547. Christopher Sherman, “U.S. Victims in Mexico Attack from Mormon Offshoot Community Web,” *Washington Post*, 5 November 2019; Anthony Harrup Córdoba and José de, “Nine U.S. Citizens Killed in Highway Attack in Northern Mexico,” *Wall Street Journal*, 5 November 2019.
548. Geoffrey Corn, “Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conflict,” *Journal of International Humanitarian Legal Studies*, 2009.
549. U.S. Secretary of Defense, Memorandum: Implementation of Section 8057, DOD Appropriations Act 2014 (“The DoD Leahy Law”), 18 August 2014.
550. Author’s communications with Department of State officials, 30 September 2016.
551. One of the four principal goals of U.S. security assistance programs is to “promote universal values such as good governance, transparent and accountable oversight of security forces, rule of law, transparency, accountability, delivery of fair and effective justice, and respect for human rights.” White House, Fact Sheet: “U.S. Security Sector Assistance Policy,” 5 April 2013, <https://www.whitehouse.gov/the-press-office/2013/04/05/fact-sheet-us-security-sector-assistance-policy>. Recent DOD Defense Institution Building (DIB) initiatives also emphasize the importance of human right: “Promote principles vital to the establishment of defense institutions that are effective, accountable, transparent, and responsive to national political systems, especially regarding good governance, oversight of security forces, respect for human rights, and the rule of law.” See DOD Directive 5205.82 (27 January 2016), 3.

552. The author thanks Dr. Tony Raimondo, head of the Human Rights Department at the Western Hemisphere Institute for Security Cooperation, for these insights.
553. If the U.S. government's effort to produce the 2015 Law of War Manual (an initiative that took almost 20 years to complete) is any indication, the task is better left to the ICRC or UN.
554. This observation made by representative of Government Accountability Office (GAO) during phone interview on 10 October 2019.
555. Michael J. Dennis, "Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation," *The American Journal of International Law* Vol. 99, No. 1 (January 2005): 141.
556. Geoffrey Corn, "Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conflict," *Journal of International Humanitarian Legal Studies*, 2009.
557. Sydney Freedberg, Jr., "Army Mulls Train & Advise Brigades: Gen. Milley," *Defense One*, 14 December 2015.
558. Dinstein, Yoram, "Concluding Remarks: LOAC and the Attempts to Abuse or Subvert It," *International Law Studies*, vol. 87 (2011): 484.
559. Naz Modirzadeh, "Folk International Law: 9/11 Lawyering and the Transformation of the Law of Armed Conflict to Human Rights Policy and Human Rights Law to War Governance," *Harvard National Security Journal* 5 (2014): 239.
560. Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge, England: Cambridge University Press, 2010), 22. See also Cordula Droege, "Elective Affinities? Human Rights and Humanitarian Law," *International Review of the Red Cross* 871 (September 2008): 501.
561. Kenneth Watkin, *Fighting at the Legal Boundaries: Controlling the Use of Force in Contemporary Conflict* (New York: Oxford University Press, 2016), 156.

