Doing "Everything Possible" to Reduce Civilian Casualties in Military Operations

Larry Lewis

At the outset, I want to you know that my remarks do not necessarily represent the views of the U.S. Government, the State Department, or DoD. I am with CNA, a U.S. research organization that takes academia types and retrains them for operations research and solving military problems. My initial focus was accurate and effective employment of lethal fires, and I advised forces in Iraq in this area. I was subsequently asked to look at the issue of civilian casualties, and I led seven DOD studies on how to avoid civilian casualties in operations in Afghanistan. I recently spent almost two years at the State Department to apply my technical expertise to national security policy, before returning back to CNA. You will see that I focus my comments on Afghanistan as an exemplar, but the issue of civilian casualties is not just historical. You can point to Mosul, or Raqqa, or Yemen for example to see that this is a current and very relevant issue facing nations that use force in armed conflict.

Overall, I will talk about a few points:

- The U.S. experience in Afghanistan regarding civilian casualties, and how we got better over time;
- How the U.S. took on additional measures to better protect civilians, such as tactical patience and using tactical alternatives;
- How those best practices emerged from analyzing operational data, so that they were evidence-based;
- That this operational data also revealed how a number of common assumptions about civilian casualties were in fact incorrect. That shows us it is important to question and test our assumptions. These assumptions included:
  - Armed drones are more surgical than other forms of attack;
  - The basic mechanism of civilian casualties: that they typically occur as a side effect of attacking a valid military target;
  - Restrictions regarding the use of force cost soldiers their lives;
  - Measures to protect civilians keep us from succeeding against our enemies.
  - If you believe any of those four statements are correct, I have operational data from Afghanistan showing otherwise.
- The U.S. recently codified a number of its best practices in a national policy on civilian casualties. This policy can serve as a model to other like-minded nations.
- Collectively, this combination of practice and policy is a way to meet the U.S. stated commitment to do "everything possible" to avoid civilian casualties in military operations.

As I begin, I also want to be clear about something since I will be mentioning the law of war, including international humanitarian law, or IHL. I am not a lawyer, and my focus is not legal issues but rather operational and lessons learned measures that the United States has used to help better protect civilians in armed conflict. So with that said, let me begin.

IHL is the legal standard for the conduct of armed conflict, endorsed by the international community. It gives important protections to both combatants and civilians. The United States ensures that it fights

wars consistent with IHL. While we are obligated to comply with IHL from a legal perspective, this obligation comes completely willingly as a reflection of our principles and values.

It's important to have this minimum standard. It is both a legal standard and a signal that, according to the international community, the end does not justify every means. The principle of humanity governs how we use force, and there is a role for restraint.

IHL also sets expectations for our military forces. Those forces are trained on IHL. IHL shapes our Rules of Engagement, and by defining serious violations, protected entities, and important values, IHL also shapes our accountability.

Though IHL covers both the conduct of hostilities and detainee operations, I am going to focus my remarks on the conduct of hostilities. IHL, as I said before, is the legal standard. It is the baseline. We are not permitted to go below that bar in our use of force. However, IHL is not the only thing that governs the use of force. There is also policy. We can choose, as a nation, from a policy perspective, whether and how we want to take on additional requirements regarding the use of force. We self-impose additional considerations and restrictions besides the legal requirements of the law of armed conflict.

Why would we do such a thing? We can look back to our campaign in Afghanistan for an illustration. We were operating against an irregular enemy that didn't wear uniforms, hid amongst the people, and used human shields, endangering the local population. This makes discrimination particularly difficult. Though we were complying with IHL in our operations, we were still unintentionally killing civilians. These were accidents, but it was still happening, and at a rate that was becoming increasing alarming to our leadership. In 2009, General Petraeus, as CENTCOM commander, described how the issue of civilian casualties in Afghanistan had become "toxic" and was compromising the success of the entire campaign.

The top commanders in Afghanistan had begun issuing guidance specifically to reduce the risk to civilians early in the campaign, starting with General Barno in 2006. General McNeil introduced new guidance for the use of force, a Tactical Directive, in 2007. His successor, General McKiernan, introduced two more versions of the Tactical Directive in 2008. In these cases, we had a force complying with IHL, we had commanders actively trying to spare civilians… but we didn't see a reduction in civilian casualties.   We were able to identify the lack of progress because General McKiernan also introduced the best practice of having a tracking cell to record instances when civilians were killed by military force.

Things started to change under General McChrystal in 2009. There were several reasons for this. First, he demanded that his troops find ways to reduce the risk of civilian casualties from their actions, and consider different tactics and approaches to their operations. And you started seeing several things happen. One was some creative problem-solving, some practices develop that just hadn't been done before, which I call "tactical alternatives." For example, instead of an airstrike, one unit would station a sniper at a particular vantage point. That way they could read the situation with the sniper scope, better differentiate combatants from civilians, and if needed, employ force in a way that had less risk of collateral damage. That's just one example of many.

Another thing was an emphasis on "tactical patience," where, if you can, you wait a bit longer before making the decision to engage and develop the situation further. If it is imperative that you use force

immediately, you do, but many times there are opportunities to show tactical patience. For example, an attack helicopter was monitoring a group of individuals who appeared to be emplacing an IED in a road which U.S. troops regularly used. The ground commander gave them clearance to engage the target. However, there was no immediacy, so the aircrew elected to move to another vantage point and look one more time before they engaged. From the new position, they could see that these were children playing in the road. In another example, a U.S. Marine was manning a checkpoint and a car was approaching and not heeding the signs and verbal warnings to stop. He fired a pen flare as a last effort before resorting to firing at the car to get it to stop, but the car didn't stop. He did a quick mental calculation and decided he had time to try the pen flare one more time without endangering his own safety. The conditions were dusty and hazy and visibility was poor, so maybe they hadn't seen the first one. He used another pen flare and the car stopped.

General McChrystal also started using the tracking of civilian casualties to his advantage. Previously that cell had been tracking external accusations of civilian casualties to be able to respond to them more effectively from a communications standpoint. But under McChrystal, that information was also used to learn and adapt. A Joint Staff team conducted a series of studies that supported him and his forces, and using that data, we were able to identify the causal factors that were often contributions to civilian casualties. And we found why the actions of Generals Barno, McNeal, and McKiernan weren't helping: they were trying, but their fixes didn't address the underlying factors that tended to contribute to civilian casualties.

So, when we started modifying guidance and tactics in an evidence-based way, using the tracking data, we started to see casualties drop. It wasn't immediate, it took time, and it wasn't total. But the numbers of civilian casualties decreased. Then we had to look at it again, to identify more opportunities to decrease civilian casualties. And then the numbers dropped again.

We learned a number of things through these studies that were not commonly understood, and could even be counter-intuitive. One regarded the basic mechanism by which civilian casualties occur. It was widely assumed that civilian casualties in military operations happen like this: an engagement is going to be against a valid military target, the weapon effects hit the valid military target, but there were unobserved civilians in the area and they were also harmed by the engagement. This 'collateral damage' mechanism was the focus for all of the efforts to reduce civilian casualties before General McChrystal. The only problem was, when we looked at the data, it turned out this was a false assumption: this mechanism only applied about half the time. The other half were cases of misidentification: we engaged who we thought was a valid military target but was actually not, resulting in harm to civilians. This was not just an academic finding: the actions necessary to prevent civilian casualties from this second mechanism from happening are fundamentally different than those needed to avoid the collateral damage mechanism.

Another counter-intuitive finding regarded armed remotely piloted vehicles, commonly known as drones. Drones, specifically Predator and Reaper, were used extensively in Afghanistan for a variety of missions. In addition to their value as an intelligence and surveillance collection platform, they were also an option for the use of lethal force. Around the 2010-11 timeframe there was much discussion about the "surgical" and even "humane" nature of these armed drones, with arguments that the capabilities of

these platforms went the farthest possible in minimizing civilian casualties. It turned out that the data we had from Afghanistan was valuable in examining that assertion. So, I looked at the rates of civilian casualties in engagements by armed drones versus manned platforms. And it turns out that the rate for drones was not lower as these assertions might lead you to expect. In fact, it was about ten times higher. This was another assumption that didn't stand up to the data. Now, there's nothing inherently nefarious about drones. The problem is that the people asserting the surgical nature of drones were talking about the capabilities of the platform, when what really matters is the operational process for the use of force. I was able to find vulnerabilities in that larger process that increased the risk of civilian casualties, despite the impressive capabilities of the platform itself.

Now, this effort resulted in a marked reduction in civilian casualties in Afghanistan resulting from U.S. operations. But not everyone was enthusiastic about this new approach, emphasizing tactial patience and tactical alternatives. Some people argued that by forces in Afghanistan doing this, by introducing what they termed "restrictive rules of engagement (ROE)," we were causing the death of U.S. troops by causing inaction in the face of an imminent threat where they could not defend themselves. This argument was seemingly strengthened by the Ganjgal incident in September 2009, where four Marines were killed when they were denied close air support.

However, the thesis that "restrictive ROE" leads to increased U.S. troop fatalities due to compromised self-defense is unsupported by the facts. Looking at data on troop deaths, there was a rise in improvised explosive devices (IEDs) throughout the conflict, but starting in 2009, non-IED deaths actually started to drop. And even more compelling, since the introduction of additional tactics and guidance designed to reduce risk to civilians in 2009, there's no evidence of a single U.S. personnel being killed among all of ISAF because they were exercising those additional tactics and guidance. Even for the incident commonly cited as evidence, the deaths of four Marines, the official investigation found that their deaths were not related to protecting civilians. Their deaths were tragic, but the reason they were denied close air support was a procedural error in the tactical operations center, not the exercising of tactical patience. Now, all this is not to say that there is no risk involved with exercising tactical patience and pursuing tactical alternatives with the end of protecting civilians. But what we saw in Afghanistan is that such risk can be managed through good guidance and training, reducing risk to civilians while minimizing any increase in risk to the military professionals who use force.

Others have asked whether reducing civilian casualties lead to reduced effectiveness against threats. I was able to look at this issue as well. I looked at SOF missions in Afghanistan over time, and starting in 2009, the rate of civilian casualties went down over time. Importantly, mission effectiveness went up over that same time, defined by the percent of time we were able to successfully target the intended individual. So, civilian casualties went down as mission effectiveness went up, contrary to what some believe would happen. But this is really not so surprising, because when we try to better protect civilians, the things we fix are often inefficiencies in targeting. To say it plainly, engaging the wrong target both can harm civilians but also keeps you from engaging the right target. Improving targeting can better protect civilians while also improving effectiveness.

Improved effectiveness is not the only reason we work so hard to protect civilians in armed conflict. It is also consistent with our values and principles to protect civilians. That is reason enough. But there is

another reason to do this – it is smart strategy. We have seen how groups like Al Qaeda and ISIS use US civilian casualties as a recruiting tool and rallying cry. We also see how civilian casualties in conflict can harm the conduct of a campaign, by degrading the support of the host nation population, reducing freedom of action from limitations imposed by the host nation government, and causing friction among coalition partners.

Recognizing all of this, last year the U.S. released Executive Order 13732 on civilian casualties. The U.S. goes to extraordinary lengths to avoid non-combatant casualties in our operations, and the E.O. creates a national policy to reflect this practice and the steps we take to meet it, which the U.S. regards as more protective than the requirements of the law of armed conflict. When we developed the policy, we believed it could be a model for other nations. I am glad to discuss that policy and the importance of the different elements with the U.K.

So, we can learn several things from U.S. experiences in Afghanistan. First, though IHL is the baseline… we can also make the policy decision to take additional measures to better protect civilians.

Second, protecting civilians is not the same as complying with IHL. Certainly complying with IHL is essential and doing so reduces the risk to civilians. But if there's an incident when civilians are harmed, that doesn't necessarily mean it's an IHL violation. That nuance is often missed by the press and advocacy groups reporting on civilian casualties.

Third, it is important to question and test our assumptions. That sounds obvious until you think about multiple commanding Generals who put out guidance that didn't reduce civilian casualties as intended. Our experience shows that, in addition to training on IHL, there are specific technical things we can do to help our forces – and partner forces – to reduce the risks to civilians. We have started calling this technical area "civilian harm mitigation." It is complementary to IHL training.

And fourth, for protecting civilians, there may not be as much of a tradeoff in terms of the risk to friendly forces and infringing on the right to self-defense as some may think. At least that is true for the kinds of operations we looked at in Afghanistan. We also found that when we put measures in place to reduce civilian casualties, it had both strategic and tactical benefits. And that's important: as we make policy decisions, we need to understand the actual benefits and costs associated with that policy.

The United States works to protect civilians in its use of force, consistent with its legal obligations, values, and interests. We work very hard to see that IHL is upheld in the full scope of our military activities. But from a policy perspective, the U.S. has also taken additional measures and established a new national policy, and a new discipline, civilian harm mitigation, to pursue technical measures that better protect civilians. We've had many U.S. leaders that have stressed our commitment to do "everything possible" to avoid civilian casualties. By combining IHL compliance with the policy decision to pursue civilian harm mitigation, we collectively meet that commitment.