THE US ARMY

PKSOI

Peacekeeping and Stability Operations Institute

Semi-Annual Lesson Report:

Protection of Civilians (POC) and

Civilian Harm Mitigation & Response (CHMR)

Volume I

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Introduction

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

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

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

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

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

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

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

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

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

[4] North Atlantic Treaty Organization, "Human security," July 18, 2022, https://www.nato.int/cps/en/natohq/topics_181779.htm#:~:text=The%20protection%20of%20civilians%20includes,mission%20and%20other%20mandated%20activity (accessed December 30, 2022).

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

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

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

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

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

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

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

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

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[5] US Department of Defense, *Civilian Harm Mitigation and Response Action Plan Fact Sheet*, Defense News, August 25, 2022, https://www.defense.gov/News/Releases/Release/Article/3140007/civilian-harm-mitigation-and-response-action-plan-fact-sheet/ (accessed December 30, 2022).
[6] Robert Mardini, "Briefing to UN Security Council Open Debate on Protection of Civilians," *International Committee of the Red Cross*, May 25, 2022, https://www.icrc.org/en/document/deliberate-attacks-on-civilians-causing-untold-suffering (accessed July 1, 2022).
[7] UNDPO, *The Protection of Civilians in United Nations Peacekeeping*.
[8] Ibid.

What Gets Protected? Physical Integrity. Bodily harm to persons takes many forms, from direct attack or indirectly through disease, starvation, and exposure. Bodily harm, or its converse, physical integrity, is, perhaps, the most considered and understood aspect of POC/CHMR. A population must physically survive to value the other protected interests—culture, property, services, e.g.—outlined in the NATO's 2018 Military Concept on the Protection of Civilians as well as the US DoD's 2022 Civilian Harm Mitigation and Response Action Plan. The two Lessons in this section address physical integrity in an exploration of political ideology as a causal factor in mass atrocities and a reflection on civilian population protection uncertainties in a nation at war.

A Challenge to the Ideological Roots Theory for Mass Atrocities (JLLIS ID#237056)

Observation

Jonathan Leader Maynard is a Lecturer in International Politics at King's College London, with focus on genocide, atrocity crimes and ideological dynamics of political violence. He challenges a prevalent theory which expounds that mass atrocities occur due to ideological roots. He notes:

> Many paradigmatic cases – the Holocaust, Stalin's Great Terror, Mao's Cultural Revolution – were perpetrated by avowedly ideological regimes with radical totalitarian goals. In consequence, early scholars of totalitarianism and genocide in the Cold War era often presumed that ideology was the foundation on which campaigns of genocide, war crimes, and crimes against humanity were built. For these scholars, fascist and communist ideologies were crucial because they encouraged seething hatreds of political enemies and radical utopian ambitions to remake society – both of which encouraged a resort to extreme violence.[9]

He acknowledges more recent scholarship undermines the ideology-centric perspective for mass atrocities. For contrast, he outlines the contemporary view of atrocities as "a brutal but comprehensible tool that states and armed groups use to achieve military victory and maintain political control," irrespective of political beliefs.[10] However, he asserts that both the views—the ideology-centric and the other—are inadequate explanations for mass atrocities because the basic understanding of the term, *ideology*, is incomplete.

Ideology, according to Maynard, is not "an elaborate, rigid, well-specified, and idealistic belief-system that shapes behaviour [sic]."[11] Instead, it is "generally loose bundles of concepts, narratives, values, and preferences that influence how people act in politics in tandem with other causal factors."[12] This updated understanding of ideology and its impact on mass atrocities is important to anticipation, prevention, and eventual response to the same.

Discussion

Maynard reminds the reader that the many people believe that mass atrocities are "a natural propensity to violence unleashed whenever war and disorder peel away the civilizing institutions of well-functioning societies," or the "dark side of man."[13] Yet both history and scientific study

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[9] Jonathan Leader Maynard, **"**Extremist Ideologies and the Roots of Mass Atrocities: Lessons for Ukraine," Just Security, October 14, 2022, https://www.justsecurity.org/83555/extremist-ideologies-and-the-roots-of-mass-atrocities/ (accessed October 16, 2022).
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.

dispute the point, with examples of mass atrocities as planned and coordinated events and programs with deliberate aims, if not ideological ones.

He points out two avenues of contemporary research that negate the ideology-centric perspective for mass atrocities: studies of "rank and file participants" and studies of political leaders' motivations and actions in mass atrocities. He notes that *rank and file participant* research uncover "a range of motives, including fairly unreflective obedience to authority figures, conformity to group behaviour [sic], and personal greed – all operating in a context where violence becomes routinized and habituated."[14] Ideology, in these cases, may be simply an excuse. According to Maynard, the research into political leaders' motivations and actions in mass atrocities illustrates two approaches, the "haphazard and erratic decision-making" and the "prosaic, self-interested…functions the violence often serves…in which careerism, plunder and self-interest were often as important as ideological belief."[15] He cites several examples:

> Why did Serbian and Croatian forces commit ethnic cleansing in the wars in Yugoslavia? Not out of ancient hatreds or longstanding racist plans to purify society, but as a strategy for securing territory and whipping up nationalist support for political leaders. Why did Islamist rebel groups commit atrocities against civilians in Algeria in the late 1990s? Not in a fanatical campaign of wanton destruction, but as a strategy for controlling civilian populations in areas where the rebels operated. Why have even liberal democracies killed civilians in large numbers by aerial bombardment in Germany, Japan, Korea and Vietnam? Not because of deep ideological goals, but as a wartime strategy to try and weaken the enemy and force them to surrender.[16]

Maynard cautions, however, to not reject ideology in its entirety when considering the roots of mass atrocities. He notes many examples where violent agents targeted others even when the violence may have damaged themselves, their political momentum and cause. He emphasizes:

> while only a minority of atrocity perpetrators are deeply ideologically committed, most are still influenced by ideology in important ways. The initiation and implementation of atrocities always depends on some sort of 'justificatory narrative' about the violence and the crisis context in which it occurs – and that narrative is rooted in the prevailing ideological orientation of the perpetrating regime or armed group…Such justificatory narratives also have subtler effects: reshaping prevailing social norms in ways that incentivize participation in violence even when individuals may not privately believe in the narrative.[17]

He also suggests the "justificatory narratives" themselves, which may be expressed in terms of ideology, are really about "*security* – with perpetrators justifying and organizing the violence around claims of crisis, war, self-defence [sic], soldierly duty, punishing criminals, and neutralizing threats."[18] (original emphasis) Further, he notes

> The threats perpetrators see themselves as responding to are often wholly imagined or wildly exaggerated. The actual effectiveness of the violence is often pathetically feeble compared to perpetrators' expectations. The conflation of horrific brutality with patriotic military duty is encouraged by perpetrators' distinctive ideological interpretations of war

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[14] Maynard, "Extremist Ideologies and the Roots of Mass Atrocities."
[15] Ibid.
[16] Ibid.
[17] Ibid.
[18] Ibid.

and the enemy. It is these *extreme ideological understandings of security*, rather than extreme ideological goals to transform society, that matter most in explaining the willingness of certain different regimes and groups to commit atrocities.[19] (original emphasis)

In the end, ideology apparently does matter as a basis for mass atrocities, but not as a rigid belief system. Instead, it is best understood as part of a cluster of rationales or as a cover for other reasons.

Recommendations

Maynard does not provide specific recommendations. Instead, he seems to urge the reader to delve more deeply in motivations and to recognize a multi-dimensional perspective of ideology. He uses the Russian military atrocities in Ukraine as a final case study, noting "Many analysts have long presented Russian President Vladimir Putin, and contemporary Russian politics, as unideological…but essentially "pragmatic.""[20] Yet the February invasion belies that assessment. As he puts it:

> Ideology does not explain everything here but, in interaction with strategic and political context, it is crucial. The image of Putin as blandly unideological misses both key continuities in his thinking about Russia as an embattled great power, and his slow ideological drift over the 2000s and 2010s as Russia's "conservative culture war" …Are Russian political and military leaders, and ordinary soldiers on the ground, all ideologically *committed* to these claims and doctrines? Surely not. But such ideas are at least partially endorsed by influential decision makers and wrapped into prevailing state institutions and discourses, while alternatives are silenced or delegitimised [sic] as pro-Western sell-outs.[21] (original emphasis)

Maynard concludes:

> Mass atrocities have complex and multiple causes. But, as in Ukraine, they consistently depend on some sort of justificatory narrative rooted in a regime's or group's prevailing ideological worldviews and institutions. Understanding and countering such narratives is vital if we are to better predict, interpret, and prevent the worst campaigns of war crimes, crimes against humanity, and genocide that continue to blight 21st Century world politics.[22]

Can the Victim Be Guilty? Amnesty International's Report on Ukraine (JLLIS ID#235976)

Observation

The Russian invasion into Ukraine and Ukraine's subsequent defense of itself against Russian armed aggression is a case study of the ambiguities in civilian population protection. At the end of February 2022, the Russian Federation invaded Ukraine in a continuation of hostilities that dates from its 2014 annexation of Crimea. Within the first week, the subsequent violence against

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[19] Maynard, "Extremist Ideologies and the Roots of Mass Atrocities."
[20] Ibid.
[21] Ibid.
[22] Ibid.

the Ukrainian civilian population compelled a displacement that was "already Europe's biggest refugee crisis since the Balkan wars of the 1990s" with estimates that it "could soon become the worst since World War II."[23]

The autonomous displacement, albeit in the face of life-or-death situations, was only part of the civilian harm the Russians levied—and continues to levy—against the Ukrainian population. Witnesses reported forced Ukraine population displacement into Russia, to include child abduction, within weeks of the invasion.[24] Observers also suspect international trafficking[25][26] as well as forced conscription in Russian armed forces.[27] Within the Ukraine borders, witnesses accuse Russian fighting forces of several egregious war crimes, from unprovoked desecration[28] to starvation and denial of essential services[29] to murder and rape.[30] The early July 2022 Russian missile attack on a Ukrainian shopping mall[31] and the late July prisoner-of-war deaths in Donetsk[32] are only a few recent notable examples.

With most international observers focused on Russian forces' atrocities, *Amnesty International*, a reputable human rights non-governmental organization, startled many with its report that Ukraine also disregards generally agreed upon international human rights and humanitarian tenets in its defense of its territory and population. As Agnès Callamard, *Amnesty International*'s Secretary General, said "We have documented a pattern of Ukrainian forces putting civilians at risk and

[23] Antonio Pita and Raúl Sánchez Costa, "Ukrainian exodus could be Europe's biggest refugee crisis since World War II," *El País*, March 3, 2022, https://english.elpais.com/international/2022-03-03/ukrainian-exodus-could-be-europes-biggest-refugee-crisis-since-world-war-ii.html (accessed August 10, 2022).

[24] Svitlana Chernykh and Francesca Lessa, "Why Russia may be taking Ukrainian children: The research on similar tactics in Spain and Latin America helps explain Putin's logic," *The Washington Post*, June 14, 2022, https://www.washingtonpost.com/politics/2022/06/14/ukraine-kidnaped-children-russia/ (accessed August 10, 2022). The authors note: "The kidnapping of minors is a violation of both the U.N. Genocide Convention and the U.N. Convention on the Rights of the Child. Yet recent research suggests such tactics have stark precedents. In the past, authoritarian regimes in Spain and in Argentina, among others, resorted to child kidnapping to target their opponents — just as these regimes entered their most lethal and repressive phases."

[25] Laura A. Dean, "How many Ukrainian refugees have been trafficked? We won't know for years," *The Washington Post*, July 22, 2022, https://www.washingtonpost.com/politics/2022/07/22/how-many-ukrainian-refugees-have-been-trafficked-we-wont-know-years/ (accessed August 10, 2022).

[26] Ashish Kumar Sen, "Russia's War Has Created a Human Trafficking Crisis, Says U.N. Envoy," *United States Institute for Peace*, June 7, 2022, https://www.usip.org/publications/2022/06/russias-war-has-created-human-trafficking-crisis-says-un-envoy (accessed August 9, 2022).

[27] *The Economist*, "Russia is forcing Ukrainian conscripts into battle," August 11, 2022, https://www.economist.com/europe/2022/08/11/russia-is-forcing-ukrainian-conscripts-into-battle (accessed August 11, 2022).

[28] Carlotta Gall, "'Such Bad Guys Will Come': How One Russian Brigade Terrorized Bucha," *The New York Times,* May 22, 2022, https://www.nytimes.com/2022/05/22/world/europe/ukraine-bucha-war-crimes-russia.html?action=click&module=RelatedLinks&pgtype=Article (accessed August 9, 2022).

[29] Tom Dannenbaum, "Legal Frameworks for Assessing the Use of Starvation in Ukraine," *Just Security*, April 22, 2022, https://www.justsecurity.org/81209/legal-frameworks-for-assessing-the-use-of-starvation-in-ukraine/ (accessed August 11, 2022).

[30] United Nations, "Sexual Violence 'Most Hidden Crime' Being Committed against Ukrainians, Civil Society Representative Tells Security Council," *UN Press*, June 6, 2022, https://press.un.org/en/2022/sc14926.doc.htm (accessed August 10, 2022).

[31] Emily Feng, "Over 20 people were killed in Russia's missile attack on a crowded Ukrainian mall," *National Public Radio (NPR)*, July 7, 2022, https://www.npr.org/2022/07/12/1110241513/russia-ukraine-civilian-casualties-kremenchuk-mall (accessed August 10, 2022).

[32] Max Hunder and Pavel Polityuk, "Russia, Ukraine trade blame for dozens of deaths in Donetsk prison destruction," *Reuters*, July 29, 2022, https://www.reuters.com/world/europe/ukraine-bombs-russian-forces-drive-retake-south-2022-07-28/ (accessed August 10, 2022).

violating the laws of war when they operate in populated areas" and "being in a defensive position does not exempt the Ukrainian military from respecting international humanitarian law."[33] [34]

Criticism of the report followed its release and fell into various themes. One researcher said succinctly, "the expectations expressed in the Amnesty report, such as the notion that Ukrainian troops should defend civilians from Russian attack without stationing themselves nearby, are nothing short of absurd."[35] Other observers provided more nuanced critiques of *Amnesty International*'s findings, parsing through the international laws, treaties, and accords that frame armed conflict and its predictable effect to civilians in harm's way. These observers emphasize, "the rules on soldiers carrying out their duties from civilian areas are murky."[36] This is due in part to subtleties within the existing legal constructions on warfare and human rights that often depend on situational context and intent of the armed parties, be they designated soldiers or civilians.

Discussion

According to *The New York Times*, the most significant of *Amnesty International*'s charges against Ukraine are that "Ukrainian forces have put civilians in harm's way by establishing bases and operating weapons systems in populated residential areas, including in schools and hospitals."[37] Are these allegations valid? The short answer is: Maybe. The longer answer is more complicated because the respective applied laws are more intricate. As Michael N. Schmitt, the G. Norman Lieber Distinguished Scholar at the United States Military Academy at West Point, asserts:

> Amnesty International's allegation of unlawful conduct by Ukraine is unconvincing. IHL [international humanitarian law] is a nuanced body of law because it must carefully balance two sometimes competing interests – military necessity and humanitarian considerations. Even if the facts in the report are accurate, and there is no reason to believe they are not, it lacks the detail necessary to support the charge.[38]

While he expresses uncertainty about *Amnesty International*'s actual charges against Ukraine due to dearth of detail, he rejects other denunciations of the organization's August 4th report. He calls "simply unfair" any accusations of organizational bias against Ukraine given the work the organization has done to date to record Russian atrocities during the invasion.[39] He further rejects

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[33] Amnesty International, "Ukraine: Ukrainian fighting tactics endanger civilians," August 4, 2022, https://www.amnesty.org/en/latest/news/2022/08/ukraine-ukrainian-fighting-tactics-endanger-civilians/ (accessed August 8, 2022).

[34] Author's note: Another human rights organization, Human Rights Watch (HRW), made similar claims about two weeks prior to the *Amnesty International* report. However, HRW challenged both parties to the conflict—Russia and Ukraine—to reduce the threats to civilians in urban areas. See: Human Rights Watch, "Russian, Ukrainian Bases Endangering Civilians: Basing Forces in Populated Areas Creates Unnecessary Risk," July 21, 2022, https://www.hrw.org/news/2022/07/21/russian-ukrainian-bases-endangering-civilians (accessed August 8, 2022).

[35] Lillian Posner, "Flawed Amnesty report risks enabling more Russian war crimes in Ukraine," *Atlantic Council*, August 9, 2022, https://www.atlanticcouncil.org/blogs/ukrainealert/flawed-amnesty-report-risks-enabling-more-russian-war-crimes-in-ukraine/ (accessed August 10, 2022).

[36] Valerie Hopkins and Thomas Gibbons-Neff, "Amnesty International Assessment That Ukraine 'Put Civilians in Harm's Way' Stirs Outrage," *The New York Times,* August 7, 2022, https://www.nytimes.com/2022/08/07/world/europe/amnesty-international-ukraine-russia-war-crimes.html (accessed August 8, 2022).

[37] Hopkins and Gibbons-Neff, "Amnesty International Assessment…Stirs Outrage."

[38] Michael N. Schmitt, "Ukraine Symposium – Amnesty International's Allegations of Ukrainian IHL Violations," *Lieber Institute for Law & Land Warfare*, August 8, 2022, https://lieber.westpoint.edu/amnesty-allegations-ukrainian-ihl-violations/ (accessed August 10, 2022).

[39] Ibid.

any criticism that asserts Russian actions in clear violation of international law should give Ukraine allowances in its own military actions. He declares:

> The law governing the resort to force by States (*jus ad bellum*) and IHL are separate bodies of law. By the principle of equal application, IHL applies to all parties to an armed conflict, *even if one side has violated the prohibition on using force (Russia) and the other is acting in self-defense (Ukraine)*. The same principle holds that IHL violations by one side (Russia) do not justify those of its opponents (Ukraine). The sole basis for such a claim is the fading customary right of reprisal, which allows a party to violate IHL in narrow circumstances to compel an opponent to cease its own unlawful conduct.[40] [emphasis added]

A more justifiable criticism of *Amnesty International*'s August 4th report may be its potential use as a vehicle for Russian propaganda. The head of the organization's Ukraine offices, Oksana Pokalchuk, resigned within hours of the report's release, claiming "although unwillingly, the organization created material that sounds like support for Russian narratives," and "seeking to protect civilians, the study has instead become a tool of Russian propaganda."[41] While there is evidence of Russian use of the report as propaganda, other analysts suggest a different perspective. They acknowledge "the difficulty of discussing possible Ukrainian atrocities when it is the clear underdog defending its territory."[42] As example, NPR interviewed the report's author, Donatella Rovera, who stated "the level of self-censorship on this issue has been pretty extraordinary" which may be due to "how Ukrainian public sentiment has coalesced against any criticism of the Ukrainian military."[43]

However, according to many observers, the most legitimate criticism of the report is that it misstated the facts and interpreted the legal frameworks incorrectly—or, at least, incompletely. Schmitt, of the Leiber Institute, points out:

> Ukraine's government has labored mightily to protect its civilian population, as in President Zelensky's call for evacuation of the Donbas and his government's efforts in negotiating humanitarian corridors.[44]

He adds, "Moreover, Ukrainian forces sometimes need to operate within population centers to defend effectively against Russian attacks."[45] As reported by *The New York Times*, Marc Garlasco, a UN war crimes investigator specializing in civilian harm mitigation, agrees. Indicating the *Amnesty International* report "got the law wrong," he writes:

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[40] Schmitt, "Ukraine Symposium."

[41] Posner, "Flawed Amnesty report…" The author notes that prior to the August 4th report, the Russian Federation and its supporters did not hesitate to claim that Russian attacks on Ukraine civilian infrastructure were of military necessity. Since August 4th, the *Amnesty International* report is a trending news story on the Russian news aggregator, Yandex, "suggesting that the Russian authorities are deliberately spreading the story to discredit Ukraine and justify violence towards the civilian population."

[42] Hopkins and Gibbons-Neff, "Amnesty International Assessment…Stirs Outrage."

[43] Julian Hayda, "Amnesty International's report criticizing Ukraine is dividing the rights group," *National Public Radio (NPR)*, August 5, 2022, https://www.npr.org/2022/08/05/1115767497/amnesty-international-ukraine-military-civilians-war-crimes (accessed August 8, 2022). The author also notes: "…despite Pokalchuk's efforts to shut down the report, a Ukrainian website notorious for leaking the personal information of Ukraine's alleged 'enemies' listed her as a 'participant in acts of humanitarian aggression in Ukraine' and 'guilty of denying Ukraine's right to defend itself.'" One of the website's founders is a high-ranking official in Ukraine's foreign ministry who manages relationships with foreign journalists.

[44] Schmitt, "Ukraine Symposium."

[45] Ibid.

Ukraine can place forces in areas they are defending — especially in urban warfare…There is no requirement to stand shoulder to shoulder in a field — this isn't the 19th century. Ukraine still has an OBLIGATION to protect civilians — but they are taking steps to do so, like helping civilians relocate.[46] [original emphasis]

Despite the imprecision of the *Amnesty International* report, Schmitt suggests the organization may have considered three distinct categories of Ukraine's IHL violations: the use of *human shields*, the lack of *passive precautions* to protect the civilian population against attacks, and *protected places misuse*.[47] While he shares the many references in a variety of IHL documents[48] that prohibit *human shielding*, he acknowledges:

> *Mere presence of civilians near military operations or personnel does not constitute unlawful shielding*. Instead, there must be an intention to use their presence to benefit those forces.[49] [emphasis added]

Schmitt outlines the *passive precautions* he suspects *Amnesty International* expects of Ukraine forces to protect civilians in the context of IHL, but asserts "there is no absolute prohibition on being in the vicinity of civilians and civilian objects or any absolute duty to remove them."[50] He notes passive precautions may be infeasible for several military operational reasons, but also because many civilians "can't or won't flee some of the towns along the front," assuming there is a front line determined.[51]

Regarding allegations of *misuse of protected places* such as schools and hospitals, Schmitt notes that "there is no *per se* prohibition of using schools for military purposes in IHL," as the *Amnesty International* report acknowledges, as long as the use does not place nearby civilians at greater risk.[52] He also notes the "mere presence of military personnel in or near medical facilities (aside from those guarding the facility or being treated) is not unlawful."[53] It is the military forces intent when occupying or operating near protected spaces that determines the permissions or violations of IHL. With no further information from *Amnesty International* about their findings, Schmitt, among others, concludes the report may not be substantiated. Which does not say the allegations are untrue.

Perhaps the Russian invasion in Ukraine's most complicating factor in the protection of civilians' concept is embodied in these questions: Who qualifies as a civilian? Who is a combatant? Individual or group *status* in armed conflict situations, like *intent* of the armed parties, is one of the key factors in determining the applicability of the IHL or Law of Armed Conflict (LOAC) prohibitions and protections. The current situation in Ukraine challenges too many established clear distinctions between civilians and combatants to outline in this lesson. However, one example may be the Ukrainian population's apparently ubiquitous use of personal technology to

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[46] Hopkins and Gibbons-Neff, "Amnesty International Assessment…Stirs Outrage."
[47] Schmitt, "Ukraine Symposium."
[48] Author's note: For the legal-minded, Schmitt provides specific references for specific laws and regulations. See original article for more information.
[49] Schmitt, "Ukraine Symposium."
[50] Ibid. The author describes *active precautions* as measures used by the *attacker* to minimize civilian harm. In contrast, he describes *passive precautions* as *defender* measures to protect the civilian population.
[51] Hayda, "Amnesty International's report criticizing Ukraine is dividing the rights group."
[52] Schmitt, "Ukraine Symposium."
[53] Ibid.

assist their fighting forces. Describing a government-designed application to share enemy (in this case, Russian) sightings, one observer notes:

> Naturally, the Ukrainian people want to defend their country and aid their army in whatever ways they can. But certain uses of digital technology pose fundamental challenges to the traditional distinction between civilians and combatants in modern times. [But] [t]echnically speaking, as soon as a user in a war zone picks up a smartphone to assist the army, both the technology and the individual could be considered sensors, or nodes, in the practice known as ISR—intelligence, surveillance, and reconnaissance. Inviting citizens to become a potential element in a military system, as the e-Enemy feature does, might blur the lines between civilian and combatant activity…. But users voluntarily forfeiting civilian status via the use of a smartphone app could potentially make matters even more complicated, especially if and when a person in question is captured.[54]

While this observer exhorts the international community to "provide clarity on this issue," he also reminds practitioners, "In the meantime, the Geneva Conventions mandate that if it's unclear what a person's status is, they should be treated as a civilian. Let's hope all sides will respect that."[55]

Recommendations

While the existing international laws, treaties, and accords that frame armed conflict and define civilian protections within it are still relevant, modern armed conflict as seen in Ukraine today suggests a review and revision is necessary.

> The time is ripe for States to resolve these disputes to better protect those who suffer most from the ravages of war. Clarifying the personal and geographic scope of GC IV [Fourth Geneva Convention] protections and the internment standard to better protect civilians is a laudable and eminently attainable step toward ensuring humanity in war.[56]

Yet, until the international community resolves the "significant ambiguities and interpretive squabbles"[57] of the GC IV's protections, Donatella Rovera, the author of *Amnesty International*'s August 4th report, reminds all parties "that the credibility of Ukrainian's moral high ground requires a total adherence to international law — even if it puts its military at a tactical disadvantage."[58]

What Gets Protected? Cultural Identity. *NATO's 2018 Military Concept on the Protection of Civilians has as a protection objective, "the culture, history, demographics" of a country.[59] Under a broader concept of Human Security, the organization notes, "the destruction of cultural symbols can have significant political dimensions and become a tactic used to weaken affected communities" and must, therefore, be protected.[60] The US Army's Peacekeeping and Stability Operations Institute (PKSOI) Paper, published in 2021, also*

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[54] Lukasz Olejnikideas, "Smartphones Blur the Line Between Civilian and Combatant," *Wired,* June 6, 2022, https://www.wired.com/story/smartphones-ukraine-civilian-combatant/ (accessed August 11, 2022).

[55] Ibid.

[56] Jelena Pejic, "The Other Side of Civilian Protection: the 1949 Fourth Geneva Convention," *Lieber Institute for Law & Land Warfare*, March 7, 2022, https://lieber.westpoint.edu/other-side-civilian-protection-fourth-geneva-convention/ (accessed August 10, 2022).

[57] Ibid.

[58] Hayda, "Amnesty International's report criticizing Ukraine is dividing the rights group."

[59] North Atlantic Treaty Organization, "Human security."

[60] Ibid.

notes, "Preserving and restoring cultural property is an important means to achieve social cohesion and reconciliation" in a post-conflict environment.[61] Culture, however, is more than geographic and physical sites. The UN Educational, Scientific and Cultural Organization (UNESCO) calls these additional aspects of culture as Intangible Cultural Heritage, "i.e. traditional knowledge, arts and skills."[62] UNESCO further notes its "importance lies not in the cultural manifestation itself, but in the wealth of knowledge and skills that are transmitted through it from one generation to another."[63] [emphasis added] In other words, cultural identity. The Lesson in this section, however, does not focus on the cultural identities of belligerent nation-state parties. Instead, it reflects on cultural identity influences to promote or discredit international support for countries in crises.

Cultural Identity Influences on International Support for a Population in Danger
(JLLIS ID#238470)

Observation

Within days of the Russian invasion into Ukraine in February 2022, many observers suggested the armed conflict was different and/or more significant than previous or concurrent armed conflict throughout the world. Others pointed out, "Every war is an affront to humanity, no matter where it unfolds," and it was "nonsensical" to suggest the Russian invasion was unique or that "being invaded and conquered by the neighbors has become almost inconceivable."[64] Yet, while the war in Ukraine may not be unique among the other contemporary conflict, there are significant differences to consider. Among these differences appears to be the attention of the rest of the world as seen in media and in international support of the Ukrainian population in danger. Khaled Beydoun, writing in *The Washington Post* in early March 2022, noted:

> Similar struggles have been unfolding for decades in Palestine, Yemen, Kashmir and other regions. Different theaters, indeed, with distinct dynamics. Yet, the resistance and brutal toll of external military intervention have rendered dramatically different treatments from Western governments — and radically contrary coverage from media outlets.[65]

Two months later, Eva Połońska-Kimunguyi echoed that observation, pointing out **"**Other wars have been covered largely with a veil of silence…. The lives of the Somalis, Eritreans, Palestinians or Yemenis are seen as less newsworthy, their plight as undeserving of the audience's attention.**"**[66]

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[61] Sarah Petrin, "Human Security in U.S. Military Operations: A Primer for DOD," *Peacekeeping and Stability Operations Institute (PKSOI) Papers*, June 2021, https://pksoi.armywarcollege.edu/index.php/human-security-in-u-s-military-operations-a-primer-for-dod/ (accessed December 20, 2022).

[62] United Nations Educational, Scientific and Cultural Organization (UNESCO), "Intangible Cultural Heritage: UNESCO inscribes 47 elements," *United Nations*, December 2, 2022, https://www.unesco.org/en/articles/intangible-cultural-heritage-unesco-inscribes-47-elements (accessed December 30, 2022). The website notes "In 2003, it created a dedicated instrument: the Convention for the Safeguarding of the Intangible Cultural Heritage, ratified by 180 States, which has already allowed for the inscription of more than 600 elements throughout the world."

[63] United Nations Educational, Scientific and Cultural Organization (UNESCO), "Intangible Cultural Heritage," *United Nations*, https://www.unesco.org/en/articles/new-inscriptions-unesco-intangible-cultural-heritage-2022#:~:text=Intangible%20Cultural%20Heritage%20means%20helping,New%20inscriptions%202022 (access December 31, 2022).

[64] Yusaf H. Akbar and Maciej Kisilowski, "Of race and war: What the crisis in Ukraine tells us about ourselves," *Politico*, March 5, 2022, https://www.politico.eu/article/what-the-crisis-in-ukraine-tells-us-about-ourselves-race-war/ (accessed January 2, 2023).

[65] Khaled A. Beydoun, "The world of inconsistencies between Ukraine, the Middle East and beyond," *The Washington Post*, March 7, 2022, https://www.washingtonpost.com/opinions/2022/03/07/ukraine-palestinians-kashmir-yemen/ (accessed August 11, 2022).

66 Eva Połońska-Kimunguyi**, "**War, Resistance and Refuge: Racism and double standards in western media coverage of Ukraine," *London School of Economics and Political Science*, May 10, 2022,

As these authors state outright, the perspectives of other nations—European, "Western," or otherwise—about the conflict and the parties involved affects their support for Ukraine against Russia (or a parallel ambivalence). But why? Why do nations—and their own peoples—manifest such differences in support between Ukraine and, say, Yemen? Or any other nation or region suffering armed conflict? Anders Hardig suggests *cultural identity*[67] influences support for Ukraine or the corresponding lack of support for other nations and peoples in conflict. This identity includes both the supporting nations' view of themselves as well as their views of Ukraine's identity as compared to other countries in violence.[68]

Discussion

Many observers assert that *geopolitics* determines international support—or lack of it—for Ukraine in its current conflict with Russia. *Geopolitics* as a term of many definitions, but at its most basic it reflects "a study of the influence of such factors as geography, economics, and demography on the politics and especially the foreign policy of a state."[69] There is certainly evidence of the geopolitical nature of both support for Ukraine in comparison to other concurrent armed conflict in other regions, as well as the ambivalent-to-hostile lack of support. The most obvious geopolitical factor to explain support or disinterest is the literal geographical proximity to the conflict. As Anders Hardig notes:

> Russian aggression is of particular concern to European Union states. Indeed, neutral countries like Sweden have long considered Russia the main military threat, suspecting the Soviet Union and then the Russian Federation for submarine incursions into its territorial waters.[70]

In contrast to Europe, the nations of other continents may not fear Russian attacks because they are a respectful distance away. Or they are focused on the conflicts internal to themselves or in their immediate regions.

Another geopolitical factor may be the cross-border military incursion of one internationally recognized independent country (Russia) into other recognized independent country (Ukraine). A nation-state attack on another internationally recognized nation-state may appear straightforward to many viewers, without the complexities that characterize other ongoing conflicts. In contrast, many people may consider Yemen, one of many contemporary examples of extended and horrific

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https://blogs.lse.ac.uk/medialse/2022/05/10/war-resistance-and-refuge-racism-and-double-standards-in-western-media-coverage-of-ukraine/ (accessed January 3, 2023).

[67] Oxford Reference defines *cultural identity* as "The definition of groups or individuals (by themselves or others) in terms of cultural or subcultural categories (including ethnicity, nationality, language, religion, and gender)." See: Oxford Reference, "Cultural identity," https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095652855;jsessionid=5F755E62BBDE6290E1F7EDB31DD0381B (accessed January 4, 2023).

[68] Anders Hardig, "How Cultural Identity Shapes Support for Ukraine and Armed Resistance against Russia," *American University School of International Service*, March 2, 2022, https://www.american.edu/sis/news/20220322-how-cultural-identity-shapes-support-for-ukraine-and-armed-resistance-against-russia.cfm (accessed December 30, 2022).

[69] Merriam-Webster.com Dictionary, "geopolitics," https://www.merriam-webster.com/dictionary/geopolitics (accessed January 9, 2023).

[70] Hardig, "How Cultural Identity Shapes Support for Ukraine and Armed Resistance against Russia."

population suffering, as essentially an internal national struggle, albeit now also a proxy war of external actors.[71]

Some nations' reluctance to express full support of Ukraine against Russia are also geopolitical in nature. Colonialism history[72], contemporary power imbalances, conflict fatigue, and genuine incapacity to absorb the economic distress that would follow sanctions against Russia[73] and "hedging their bets among the major powers"[74] all contribute to the silence from many other nations outside of Europe. Further, the decades-long Russian engagement in many external-to-Europe nations has its own effects. This ongoing engagement may include, but not limited to, shared communist ideology, disinformation campaigns, and arms sales and other military support to governments.[75] Lastly, for many nations outside of Europe, "the war in Ukraine highlights Western double standards" when compared to actions of "Western" nations' invasions of recent decades other sovereign nations.[76] It is this last factor—the *double standard*—that alludes to *cultural identity* as a strong determinant for support—or non-support—of Ukraine in the current conflict with Russia.

Akbar and Kisilowski of *Politico* minimizes *geopolitics* as rationale for international support. They contend Ukraine's geographic location does not explain European support for Ukraine because "even in Europe, we have recently witnessed large, bloody wars that killed thousands," referring to Chechnya and the Balkans.[77] They further assert "arguments depicting the Russian invasion as unprecedented due to [Ukraine's]…uniquely developed "pro-Western" nature… is also flawed," noting:

> even before the war, Ukraine was a middle-income developing economy. Its 2020 per capita GDP, adjusted for purchasing power, was lower than that of Botswana or South Africa. Ukraine's democracy was, likewise, more fragile than that of many African or South American nations. Since the 2014 revolution, the country has experienced only one peaceful transfer of power.[78]

Instead, they proclaim, "our very understanding of the war in Ukraine…and the urgent nature of the policy response to it, also *have deeply racialized underpinnings*."[79] [emphasis added]

Hardig suggests that a foundation of cultural identity in the Ukraine-Russia conflict revolves around the question of European identity. He notes "the extent throughout Europe to which Ukraine is framed as a distinctly 'European' country, whereas Russia remains the threatening 'other'" despite the fact that "not long ago, European identity decidedly excluded Central and

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[71] Kali Robinson, "Yemen's Tragedy: War, Stalemate, and Suffering," *Council on Foreign Relations (CFR),* October 21, 2022, https://www.cfr.org/backgrounder/yemen-crisis (accessed January 9 ,2023).

[72] Nanjala Nyabola, "Africa's Ukraine Dilemma: Why the Continent Is Caught Between Russia and the West," *Council on Foreign Relations (CFR), Foreign Affairs,* September 5, 2022, https://www.foreignaffairs.com/africa/africa-ukraine-dilemma-between-russia-west (accessed January 9, 2023).

[73] Aidan Cross, "Latin American Perspectives on the War in Ukraine," *Oxford Political Review* (OPR), November 22, 2022, https://oxfordpoliticalreview.com/2022/11/22/latin-american-perspectives-on-the-war-in-ukraine/ (accessed January 3, 2023), and Maha Yahya, "The Arab World and the Ukraine conflict: The quest for nonalignment," *Atlantic Council*, July 12, 2022, https://www.atlanticcouncil.org/uncategorized/the-arab-world-and-the-ukraine-conflict-the-quest-for-nonalignment/ (accessed January 9, 2023).

[74] Yahya, "The Arab World and the Ukraine conflict: The quest for nonalignment."

[75] Nyabola, "Africa's Ukraine Dilemma: Why the Continent Is Caught Between Russia and the West."

[76] Yahya, "The Arab World and the Ukraine conflict: The quest for nonalignment."

[77] Akbar and Kisilowski, "Of race and war: What the crisis in Ukraine tells us about ourselves."

[78] Ibid.

[79] Ibid.

Eastern European states."[80] While he acknowledges the Russian invasion of Ukraine itself contributed to the recent expansion of European identity to Central and Eastern European countries, the concept "is firmly rooted in old European stereotypes of civilized Europe and the barbaric hinterlands."[81] He states:

> With its latest invasion of a European country, Russia continues to be seen as barbaric while at the same time Ukraine is swiftly being embraced as part of the civilized European community, valiantly defending its independence on the frontlines against Russia, once again.[82]

He further asserts:

> The Ukrainian government is well aware of the importance of this perception and makes sure to emphasize that the invasion is taking place on European soil.…On March 8, Olena Zelenska, Ukraine's First Lady, wrote an impassioned plea to the European states on President Zelenskyy's official website. "This is a war in Europe, close to the EU borders," Zelenska wrote. "Ukraine is stopping the force that may aggressively enter your cities tomorrow under the pretext of saving civilians."[83]

However, the *European versus other* perspective does not fully explain the cultural identity influences for support for Ukraine. Rashawn Ray, writing for *Brookings Institute*, cautions:

> "European" has become a code word for white and a justification of the primary reason that people should care about the conflict, displacement, and killing. Bloody conflicts in Syria, Somalia, and other places have not received the wide-reaching international media coverage—or urgent international government action—that the invasion of Ukraine has inspired.[84]

Połońska-Kimunguyi agrees. She notes:

> The distinct character of the coverage of the war in Ukraine suggests that whether the war is covered or not, whether civilian fighters are seen as heroes or suspects, whether refugees are deemed worthy or not, largely depends on the racial background of its subjects. *Racism remains a dominant organising [sic] force of the global politics of war*.[85] [Emphasis added]

The disparate treatment of refugees from Ukraine by other peoples in the initial days and weeks following the Russian invasion illustrates the racial component of cultural identity's influence for support or non-support. Numerous news stories shared the challenges non-whites faced when fleeing Ukraine, even when in the company of white friends.

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[80] Hardig, "How Cultural Identity Shapes Support for Ukraine and Armed Resistance against Russia."
[81] Ibid.
[82] Ibid.
[83] Ibid.
[84] Rashawn Ray, "The Russian invasion of Ukraine shows racism has no boundaries," *Brookings Institute*, March 3, 2022, https://www.brookings.edu/blog/how-we-rise/2022/03/03/the-russian-invasion-of-ukraine-shows-racism-has-no-boundaries/ (accessed January 3, 2023).
[85] Połońska-Kimunguyi, "War, Resistance and Refuge: Racism and double standards in western media coverage of Ukraine."

Videos show Black people being pushed off trains and Black drivers being reprimanded and stalled…as they try to flee. There are even reports of animals being allowed on trains before Africans… [A student] stated that trying to leave Ukraine is like "Squid Games" with Ukrainians and Europeans at the top of the hierarchy, people from India and the Middle East in the middle, and Africans at the bottom.[86]

In addition, when many non-white peoples reached the border, they were detained in closed facilities for weeks at a time with no means of communication with family waiting to hear from them. This was done despite the European Union (EU) directive on 4 March 2022 which eased border-crossing requirements for Ukrainian refugees.[87]

The generous acceptance of white Ukrainian refugees as compared to other persons of color is yet another example of the racial component of cultural identity. Akbar and Kisilowski highlights:

In 2015, a million refugees from the war-torn Middle East were harassed in countries like Hungary, Denmark and Britain, their numbers deemed "unsustainable." …Europe has opened the door to a similar number of Ukrainian refugees in just one week.[88]

Połońska-Kimunguyi further notes "the discursive exercise of turning refugees into threat is missing from narratives about Ukraine**."** The Bulgarian Prime Minister Kiril Petkov provided one example among many of the problematic—if not outright racist—language used to distinguish Ukrainian refugees from other (non-European) refugees. He indicated:

These [Ukrainians] are not the refugees we are used to…These are our relatives, family. These are Europeans, intelligent, educated people…This is not the usual refugee wave of people with an unclear past. None of the European countries is worried about them.[89]

Beydoun, writing for *The Washington Post*, summarizes this cultural identity bias in perception and the related international support for populations in danger. He states:

The public's ideal of *freedom fighter* and *terrorist* is intensely racial, which enables the seeing of lay Ukrainians taking arms and throwing molotov cocktails as heroes and Muslims engaged in the very same acts, in pursuit of the same self-determination, as extremists…[90] [original emphasis]

Recommendations

H.A. Hellyer, in *The Washington Post* in February 2022, acknowledges that:

It's true that states often intervene to protect their own interests. For all the talk of "values," it's usually cold pragmatism that informs decisions. But it is also true that our "interests" are informed, tremendously, by our values. When our values stipulate that there is a

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[86] Ray, "The Russian invasion of Ukraine shows racism has no boundaries."

[87] May Bulman and Nadine White, "Non-white refugees fleeing Ukraine detained in EU immigration facilities," *The Independent*, March 23, 2022, https://www.independent.co.uk/news/world/europe/ukraine-refugees-detention-international-students-b2041310.html (accessed December 30, 2022).

[88] Połońska-Kimunguyi, "War, Resistance and Refuge: Racism and double standards in western media coverage of Ukraine."

[89] Ibid.

[90] Beydoun, "The world of inconsistencies between Ukraine, the Middle East and beyond."

civilizational ladder, where a population is on one end of it and everyone else is far below, then we lose the moral high ground.[91]

Therefore, perhaps the most important recommendation to consider is to seek awareness of implicit bias that may be foundational in one's own cultural identity. Then, once understood and recognized, to ensure one's implicit bias is not the sole or prominent determinant in either policy or practice. As Hellyer continues:

> Beyond the moral and ethical imperatives, there are geopolitical ones — by engaging with suffering in this myopic way, we embolden other Putins. They realize that the checks against them will be mostly weak and ineffectual, as long as the so-called civilized world is left alone.[92]

However, as implicit biases "operate largely under the radar of conscious awareness," such understanding may be difficult to find.[93]

The *Politico* authors also appreciate the geopolitics of cultural identity awareness and understanding, noting:

> Our solution is not to care less about Ukraine — rather we should be more attentive to security threats and war in other parts of the world. Indeed, one of the most powerful rebukes of Russian imperialism during last week's U.N. Security Council session came from Dr. Martin Kimani, Kenya's permanent representative to the U.N., who compared the plight of Ukrainians with the struggles of other post-colonial nations…And only if we similarly broaden our consideration to include the peace and security of all nations can we count on broad support and cooperation in times of crisis.[94]

Or, as Hellyer concludes, "Solidarity with the brave people of Ukraine has reminded us all what is possible when empathy is really felt, but it will be bittersweet if our solidarity is really just skin-deep."[95]

What Gets Protected? Infrastructure and Property. *The US DoD's 2022 Civilian Harm Mitigation and Response Action Plan acknowledges the "care" required "to protect the civilian environment as much as the situation allow."* [96] *In its list of several parts of the civilian environment is infrastructure. Infrastructure at its most basic refers to "physical systems," such as buildings, roads or pipes. However, it also "involves the production of public goods or production processes" such as transportation networks or government*

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[91] H.A. Hellyer, "Coverage of Ukraine has exposed long-standing racist biases in Western media," *The Washington Post*, February 28, 2022,
https://www.washingtonpost.com/opinions/2022/02/28/ukraine-coverage-media-racist-biases/ (accessed December 20, 2022).

[92] Hellyer, "Coverage of Ukraine has exposed long-standing racist biases in Western media."

[93] Anne C. Kroon, Toni G. L. A. van der Meer, Thomas Pronk, "Does Information about Bias Attenuate Selective Exposure? The Effects of Implicit Bias Feedback on the Selection of Outgroup-Rich News," *Human Communication Research*, Volume 48, Issue 2, April 2022, Pages 346–373, https://doi.org/10.1093/hcr/hqac004 (accessed January 9, 2023).

[94] Akbar and Kisilowski, "Of race and war: What the crisis in Ukraine tells us about ourselves."

[95] Hellyer, "Coverage of Ukraine has exposed long-standing racist biases in Western media."

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

procedures.[97] The two Lessons in this section consider Russian targeting of Ukraine's infrastructure as a deliberate strategy to harm civilians and the necessary reconstruction of processes to re-home refugees in a post-conflict environment using Ukraine as a case study.

Civilian Harm as a Deliberate Military Strategy or Tactic—Russia and Ukraine Infrastructure Targeting (JLLIS ID# 238397)

Observation

In early December 2022, Human Rights Watch (HRW) observed "Russian forces' widespread and repeated targeting of Ukraine's energy infrastructure appears primarily designed to instill terror among the population in violation of the laws of war," referring to the "Numerous missile and drone attacks in October and November have deprived millions of civilians of at least temporary access to electricity, water, heat, and related vital services ahead of the cold winter months." For HRW, these actions—among others—suggest Russia deliberately uses civilian harm as a military tactic and war strategy in Ukraine.[98]

Discussion

The ongoing Russian war in Ukraine provides many examples of Russian-sourced civilian harm in Ukraine—inadvertent often, but also as a deliberate tactic. Deliberate civilian harm has many methods, from use as human shields[99], through murder, torture[100] and rape[101], and including kidnapping[102], disappearances[103], and forced relocations. Russia is accused of cultural destruction in Ukraine as well with over 339 sites nationwide verified as damaged thus far.[104] Therefore, it is believable that Russia may intend deliberate civilian harm in its infrastructure targeting. However, is it a war crime?

It may be, but it depends on many factors. Stephanie van den Berg, writing for *Reuters*, captures much of the debate in her December 16, 2022, article, "Explainer-When are attacks on civilian

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[97] Investopedia, "Infrastructure," https://www.investopedia.com/terms/i/infrastructure.asp (accessed February 8, 2023).

[98] Human Rights Watch, *Ukraine: Russian Attacks on Energy Grid Threaten Civilians*, December 6, 2022, https://www.hrw.org/news/2022/12/06/ukraine-russian-attacks-energy-grid-threaten-civilians (accessed December 10, 2022).

[99] Michael N. Schmitt, "Ukraine Symposium – Weaponizing Civilians: Human Shields In Ukraine," *The Lieber Institute for Law & Warfare at West Point*, April 11, 2022, https://lieber.westpoint.edu/weaponizing-civilians-human-shields-ukraine (accessed December 12, 2022).

[100] Lori Hinnant, Evgeniy Makoletka, and Vasilisa Stepanenko, "10 torture sites in 1 town: Russia sowed pain, fear in Izium," *Associated Press*, October 2, 2022, https://apnews.com/article/russia-ukraine-business-treatment-of-prisoners-government-and-politics-aec9afe8d6631795ae9f9478a4ede4cc (accessed December 29, 2022).

[101] Philip Wang, Tim Lister, Josh Pennington and Heather Chen, "Russia using rape as 'military strategy' in Ukraine: UN envoy," *CNN*, October 15, 2022, https://www.cnn.com/2022/10/15/europe/russia-ukraine-rape-sexual-violence-military-intl-hnk/index.html (accessed December 20, 2022).

[102] Camdyn Bruce, "Ukrainian official rips Russia for 'kidnapping' more than 13,000 children," *The Hill*, December 14, 2022, https://thehill.com/policy/international/3775681-ukrainian-official-rips-russia-for-kidnapping-more-than-13000-children/ (accessed December 20, 2022).

[103] Erika Kinetz and Solomiia Hera, "The Hunted: These are the Ukrainians Russia wanted to find," *Associated Press*, December 21, 2022, https://apnews.com/article/russia-ukraine-politics-europe-54727087e5c11eb2d484da8e45bead4e (accessed December 29, 2022).

[104] Jason Farago**,** Sarah Kerr**,** Ainara Tiefenthäler and Haley Willis, "A Culture in the Crosshairs," *The New York Times*, December 19, 2022, https://www.nytimes.com/interactive/2022/12/19/arts/design/ukraine-cultural-heritage-war-impacts.html?action=click&pgtype=Article&state=default&module=styln-russia-ukraine&variant=show&region=BELOW_MAIN_CONTENT&block=storyline_flex_guide_recirc (accessed December 29, 2022).

infrastructure war crimes?"[105] She reminds the reader of the Geneva Convention and other international protocols that distinguish between "civilian objects and military objectives" while recognizing some infrastructure, such as energy and transportation, may be of *dual use*, i.e., valuable for both civilian and military usage.[106] She shares Michael Schmitt's observation that "power infrastructure has long been considered a valid military objective as long as it supports an enemy army's activities, even if the system also supports the civilian population."[107]

However, identification of the infrastructure targets as military objectives is only one part of the determination of war crime potential. Another part to consider is the proportionality of the attacks, or "whether the damage and loss incurred by civilians in such attacks are excessive compared to the concrete and direct military advantage."[108] Or, when the magnitude of the attacks can be perceived as "acts or threats of violence the primary purpose of which is to spread terror among the civilian population," as suggested by Nigel Povoas, the lead prosecutor for a team of international experts assisting Kyiv war crimes investigators.[109]

Most observers acknowledge, as HRW did in early December 2022, that they are "not in a position to assess any concrete and direct military advantage that Russia might have anticipated in conducting the attacks on Ukraine's electricity and heat-generating grids, nor of any actual military gains made because of these attacks."[110] In other words, the infrastructure attacks may be of "military necessity" to Russia within the confines of international protocols. However, avoidance of a war crimes designation requires more than a legitimate military objective and a proportional attack. Even legitimate military targets are prohibited from attack "if the attack may be expected to cause excessive civilian casualties, damage to civilian objects, or a combination, in relation to any concrete and direct military advantage anticipated."[111] As the HRW report notes:

> the civilian harm was foreseeable, as is the increasing severity of that harm with the cumulative impact of each strike wave, including on the ability of civilians to remain in Ukraine and survive the winter…and intentionally launching a disproportionate attack in the knowledge that civilian casualties and damage would be clearly excessive constitutes a war crime.[112]

Also contributing to a potential war crimes designation for the Russian infrastructure attacks in Ukraine is the brazen language used by Russian leadership. According to one report:

> Russian politicians, lawmakers, and other commentators on Russian state media widely applauded the prospect of Ukrainian civilians being left without heat and water in winter.

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[105] Stephanie van den Berg, "Explainer-When are attacks on civilian infrastructure war crimes?" *Reuters*, December 16, 2022, https://www.reuters.com/article/ukraine-crisis-warcrimes-explainer-idAFKBN2T00SI (accessed December 20, 2022).

[106] Ibid.

[107] Ibid. In a separate article, Michael Schmitt of the Lieber Institute for Law & Warfare at West Point provides several examples of US or NATO targeting of energy infrastructure in armed conflict while also acknowledging the decision criteria used to mitigate effects on civilian populations. See Michael N. Schmitt, "Ukraine Symposium – Attacking Power Infrastructure Under International Humanitarian Law," Lieber Institute for Law & Warfare at West Point, October 20, 2022,
https://lieber.westpoint.edu/attacking-power-infrastructure-under-international-humanitarian-law/ (accessed December 13, 2022).

[108] Ibid.

[109] Ibid.

[110] Human Rights Watch, *Ukraine: Russian Attacks on Energy Grid Threaten Civilians.*

[111] Ibid.

[112] Ibid.

One member of parliament stated that ordinary people should "rot and freeze", another said the strikes were necessary to destroy the Ukrainian state's capacity to survive.[113]

Perhaps Michael Schmitt of *The Leiber Institute* summarizes the debate about potential Russian war crimes in infrastructure targeting best, noting "Without knowing more facts, [Russian] compliance… [in international law of war protocols] …is difficult to assess. *But an attempt to avoid civilian harm has not characterized Russian operations.*"[114] [emphasis added.]

Recommendations

There are no specific recommendations for this observation and discussion except to collect and document war crime evidence for later use in justice tribunals. From all observations thus far, it appears that neither Russian political or military leadership anticipate any accusations or judgement in international courts. John Yoon, for The New York Times, notes "there is also evidence that Russian forces took a similar approach [targeting civilians] during past conflicts in Chechnya, Georgia and Syria… in which it bombed heavily populated areas indiscriminately and used civilian casualties as leverage."[115] Yet, no Russian citizen was tried for any war crime. Yoon further notes:

> World leaders have vowed to hold Russia responsible for war crimes in Ukraine, including attacks on civilians. An international conference in The Hague has begun coordinating an approach to the broad accusations of war crimes in Ukraine. But that could take many years, as investigators face a high burden of proof and denials from the Kremlin.[116]

It may indeed be years to see justice served for Russian war crimes in Ukraine. After all, the world still has trials for war crimes from the various Balkan conflicts of several decades ago. Yet this Ukraine conflict appears to have amassed considerable evidence already in ways and means not readily available in earlier armed conflicts. One example is *The New York Times* investigation into the Bucha, Ukraine, massacre which concludes "the perpetrators of the massacre along Yablunska Street were Russian paratroopers from the 234th Air Assault Regiment led by Lt. Col. Artyom Gorodilov."[117]

In *The New York Times* article, Matthew Gillett, a senior lecturer at the University of Essex who previously worked at international criminal courts, remarks "This kind of digital evidence is a sea change, especially compared to past investigations such as in the former Yugoslavia."[118]

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[113] Human Rights Watch, *Ukraine: Russian Attacks on Energy Grid Threaten Civilians.*
[114] Michael Schmitt, "Ukraine Symposium – Attacking Power Infrastructure Under International Humanitarian Law."
[115] John Yoon, "Russian forces targeted civilians in previous conflicts," *The New York Times*, October 11, 2022, https://www.nytimes.com/2022/10/11/world/europe/russia-civilian-targets.html (accessed December 12, 2022).
[116] Ibid.
[117] Yousur Al-Hlou, Masha Froliak, Dmitriy Khavin, Christoph Koettl, Haley Willis, Alexander Cardia, Natalie Reneau and Malachy Browne, "Caught on Camera, Traced by Phone: The Russian Military Unit That Killed Dozens in Bucha," *The New York Times*, December 22, 2022 (updated December 23, 2022), https://www.nytimes.com/2022/12/22/video/russia-ukraine-bucha-massacre-takeaways.html (accessed December 27, 2022).
[118] Ibid.

Property Reconstruction and Restitution:
A Fundamental Stabilization Issue with Ukraine as Case Study (JLLIS ID# 239637)

Observation

With over 14 million people now displaced from their housing, land, and property (HLP) in Ukraine[119] there is considerable concern about the reconstruction and restitution process. This is particularly significant in Ukraine given that destruction of HLP appears a purposeful effort on the part of Russian forces.

The Ukrainian Prime Minister emphasized the importance of reconstruction and restitution planning before the war is over. As early as July 2022, Ukraine and Western countries began discussion about frozen Russian assets use as part of this effort.[120] With such early planning, Ukraine may become a model for rapid and transparent post-war reconstruction. As a case study, Ukraine provides an overview of some of the challenges and opportunities of a forward-focused robust HLP mass claims process for restitution and compensation.[121]

Discussion

Large-scale population dislocation from housing, land, and property (HLP) due to armed conflict leads to:

> 1) the creation of population-wide grievances that can influence the course of a war and post-war stability;
> 2) trafficking in HLP to fund belligerent activities;
> 3) negative impacts on economic recovery;
> 4) distrust in institutions and governance; and
> 5) the creation of alternative ethnic, tribal, religious, or sect-based approaches to reclaiming and securing HLP for specific constituencies at the expense of others.[122]

As well, the larger-scale connections between HLP and territorial claims are robust. However, if managed well, HLP restitution and compensation processes can lay the groundwork for durable peace, effective governance, and the investment and productive international relations needed for successful recovery of population stability.[123]

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[119] Edith Lederer, "Russian invasion displaced 14 million Ukrainians, according to U.N. report," *PBS News Hour*, November 2, 2022, https://www.pbs.org/newshour/world/russian-invasion-displaced-14-million-ukrainians-according-to-u-n-report (accessed January 23, 2023).

[120] "Denys Shmyhal: The main source of Ukraine's recovery should be the confiscated assets of Russia," *State sites of Ukraine*, July 4, 2022, https://www.kmu.gov.ua/en/news/denys-shmyhal-osnovnym-dzherelom-vidnovlennia-ukrainy-povynni-staty-konfiskovani-aktyvy-rosii (accessed January 23, 2023).

[121] Yuliya Panfil, Jon Unruh, and Michael Cholod, "How to Get Displaced Ukrainians Back Into Their Homes Quickly," *Slate*, October 4, 2022, https://slate.com/technology/2022/10/ukraine-war-counteroffensive-displaced-people-homes.html (accessed January 23, 2023).

[122] Jon Unruh and R.C. Williams, "Land: A foundation for peacebuilding," in *Land and post-conflict peacebuilding*, ed. J. Unrun and R.C. Willians, (London: Earthscan, 2013), https://www.taylorfrancis.com/chapters/edit/10.4324/9781849775793-8/land-foundation-peacebuilding-jon-unruh-rhodri-williams (accessed February 1, 2023); Jon Unruh, "Housing, Land, and Property Rights as War-Financing Stability Commodities: A Typology with Lessons from Darfur, Colombia and Syria," *Stability: International Journal of Security & Development* 10(1): 1 (2022), 1-19, http://doi.org/10.5334/sta.811 (accessed February 2, 2023).

[123] Jon Unruh and R.C. Williams, "Land: A foundation for peacebuilding."; Pablo Kalmanovitz, "Compensation and Land Restitution in Transitions from War to Peace," in *Rationality, Democracy and Justice: The Legacy of Jon Elster*, ed. Claudio Lopez-Guerra and Julia Maskivker (Cambridge, UK: Cambridge University Press, 2015), 191-219 https://www.academia.edu/11513323/Compensation_and_Land_Restitution_in_Transitions_from_War_to_Peace_in_

The return of war-dislocated populations to their HLP is always a daunting process, particularly when their properties are damaged or destroyed and they need compensation for reconstruction or housing alternatives. War returnees often cannot prove they are the rightful occupants because records are missing, destroyed, inaccurate, no longer valid, or never existed. In Ukraine, its fraught transition from the Soviet property model to private property makes this especially complicated. Prior to the Russian invasion, Ukraine's property registry was only 40 percent complete. This means more than half of the population is unlikely to have formal records of their property rights.

For Ukrainian residents that fled, their property may be occupied or claimed by others. This appears as a reality in eastern Ukraine since Putin staged annexations of occupied Ukrainian territories, and Russian allied militias use abandoned HLP as forms of payment to its personnel.[124] In other countries and conflicts, such a scenario has meant that mass dislocations lasted decades and even generations. In the meantime, HLP can change hands several times and become legally held by others, including political elites or opposed ethnic, sectarian, or religious groups. Meanwhile, the grievances of displaced families build, sometimes erupting into political or insurgent movements.

And yet, despite the large-scale population dislocation it faces, Ukraine has the potential to transform the difficult postwar return process. With an advanced digital infrastructure supporting a digitally sophistication population, significant smartphone penetration, and a government willing to innovate, Ukraine may become the first postwar country in which millions of displaced citizens can return quickly and be compensated promptly and fairly for HLP damaged or destroyed in the war.

First, Ukraine must modify the compensation law currently in review. The current legal proposal suggests HLP compensation decisions be made one-by-one as it would in a stable setting. This process would take generations to complete. It also proposes specific documentary evidence of ownership—i.e., property records—to qualify for compensation. But with more than half the country lacking formal property documentation, large numbers of legitimate claims risk rejection by such a requirement which will lead to significant grievances. In contrast, other war-affected restitution cases allow for alternative forms of evidence for HLP claims such as electricity and water bills, called *non-party evidence*.[125] Non-party evidence is created constantly, just by virtue of living in the digital age. In digitally advanced Ukraine, these records are readily available.

Second, while proof of HLP ownership is important, so is the submission of it. Again, technology can help. Ukrainians need a digital platform that allows them to file HLP compensation claims without requiring them to create an account that could be used to target them if their smartphone or computer fell into the wrong hands, especially as Russian forces are known to confiscate these from civilians. Ukraine's Ministry of Digital Transformation took a critical step to reconfigure its

Claudio_Lopez_Guerra_and_Julia_Maskivker_eds_Rationality_Democracy_and_Justice_The_Legacy_of_Jon_Elster_2015 (accessed February 2, 2023); and Agnes Hurwitz, Kaysie Studdard, and Rhodri Williams, *Housing, Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming*, (New York, NY: International Peace Institute, 2005), https://www.ipinst.org/2005/10/housing-land-property-and-conflict-management-identifying-policy-options-for-rule-of-law-programming (accessed February 2, 2023).

[124] Kseniya Kirillova, "Visitors from Russia pushing out Donbas locals and taking over housing," *Radio Liberty*, January 1, 2018, https://euromaidanpress.com/2018/01/27/visitors-from-russia-pushing-out-donbas-locals-and-taking-over-housing/ (accessed February 2, 2023).

[125] Lesson author's note: *Non-party evidence* is that held by a party different from the claimant, but which corroborates the claim.

Diia digital services platform to allow citizens to submit property damage claims, and already more than 240,000 have done so. But *Diia* needs to take in a much wider range of evidence of property ownership, rental and other forms of occupancy, and be encrypted so that claimants remain anonymous and untraceable to those outside the claims process.

Finally, Ukraine needs a way to pay for what will be very large amounts of HLP compensation, reconstruction, building alternative HLP, and the needed scale-up in capacity to conduct the restitution/compensation process—ideally using money from seized Russian assets.

Recommendations

There is significant interest within a large portion of the international community and the government of Ukraine to begin now on the preparations for large-scale HLP restitution and compensation processes for the millions of displaced families. A November 2022 vote at the UN General Assembly called upon willing states to begin reconstruction preparations now. The enormity of the increasing reconstruction cost, currently estimated at USD 1.3 trillion, suggests the international community will have an interest in the repurposing of Russian assets for reconstruction. This is particularly true given the expected reluctance of Western nation taxpayers to pay for Ukraine's reconstitution when there is a perception that the aggressor state should, and in this case can, do so.[126] As an example, Canada recently passed a law allowing for the repurposing of frozen Russian assets for Ukraine's reconstruction, with the United States (US) and other countries pursuing similar legislation.[127]

The relevant international community should work with the government of Ukraine to engage in a set of known best practices for the HLP mass claims process, with particular focus on the following:

- Continue to work together to begin planning now for what will be a very large-scale return process to damaged and destroyed HLP.
- As done in a number of other countries post-conflict, large numbers of similar claims can be grouped into categories where a single legal decision is rendered for entire category, instead of deciding restitution and compensation cases one-by-one in a court setting.
- Allow claimants to use other forms of evidence to prove where they lived—also an international best practice. The UN's 'Pinheiro Principles' encourage countries to accept a wide range of evidence regarding property ownership after a war.[128]
- Leverage civil-military cooperation to manage the return and restitution/compensation process. This can include humanitarian assistance during large-scale returns, assistance in implementation of HLP restitution/compensation decisions and remedies, training, security in areas where population returns take place, and operating the overall process at-scale.

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[126] Anja Karadeglija, "Canada could set global precedent in attempt to redistribute oligarch's millions," *The National Post,* December 29, 2022, https://nationalpost.com/news/politics/canada-redistribute-oligarchs-millions (accessed January 23, 2023).

[127] Redress, *Sanction. Confiscate. Compensate. Briefing: Comparative Laws for Confiscating and Repurposing Russian Oligarch Assets*, (London, UK: Redress, 2022), https://redress.org/news/briefing-paper-on-comparative-laws-for-confiscating-and-repurposing-russian-oligarch-assets/ (accessed February 2, 2023).

[128] The Centre on Housing Rights and Evictions (COHRE), *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Person*, https://2001-2009.state.gov/documents/organization/99774.pdf (accessed January 23, 2023).

- Use Western governments and intelligence efforts to discover the 'ultimate beneficial owner' (UBO) of assets usable for repurposing and the reconstruction effort in Ukraine.[129]

Neglect of HLP restitution and compensation for Ukraine's displaced population carries risks for stability, while creating space for opportunist political actors (internal or external to Ukraine) to take advantage of population-wide grievances. At the same time Ukraine's technological sophistication and a willing government; and Russia's frozen assets in the West offer real opportunity to establish a much-improved HLP restitution and compensation process.

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What Gets Protected? Information and Technology. *While speaking at the UN Security Council (UNSC) Open Debate on Protection of Civilians in late May 2022, Robert Mardini, Director-General, International Committee of the Red Cross, enjoined States "to avoid and prevent the spread of mis- and disinformation…and mitigate its impact on affected people."[130] Closely related to the information category of POC/CHMR is the discussion of technology. As seen in the two Lessons in this section, technical and informational innovations prove to have both risks and benefits to the civilian protection paradigm.*

(Dis)(Mis) and (Mal) Information Operations and International Humanitarian Law (IHL) (JLLIS ID# 235231)

Observation

In late May 2022, Robert Mardini, Director-General, International Committee of the Red Cross, spoke to the *UN Security Council (UNSC) Open Debate on Protection of Civilians*. In his remarks, he asked the UNSC to address three aspects of the *Protection of Civilians* (POC) concept. Two of the three are generally well-understood by the policy and practitioner community engaged in the Protection discourse of the past several decades: "To make the protection of civilians a strategic priority…in populated areas, which includes avoiding the use of heavy explosive weapons," and "to ensure accountability for victims without compromising the neutral and humanitarian space…".[131]

The third aspect, "to avoid and prevent the spread of mis- and disinformation…and mitigate its impact on affected people,"[132] is not as well understood nor as codified in the *Protection of*

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[129] Lesson author's note: Ascertaining the UBO of an asset or transaction involving those who wish to remain hidden, is an ongoing priority for those concerned with financial crimes, financing terrorism, or illegally hiding financial assets or transactions.

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

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

[132] Ibid.

Civilians concept, policy, or practice. While there are several reasons for this lack, they can be summarized in three points:

- Democracies—and their people—are generally skeptical of any actual or implied information constraints as such limits stand in opposition with other valued freedoms, such as *expression* or *privacy*.[133]
- Most military professionals comprehend the notion of *information operations*, part of *information warfare*, as a prelude to (in long- and short-terms) or in concert with armed conflict. In contrast, the general population does not share that comprehension. Therefore, the population—to include many military professionals—are vulnerable to information manipulation.
- Even those professionals with an understanding of information as a "condition-setter" or useful weapon in conflict may disagree on the placement of *information operations* within the international legal frameworks for war and/or humanitarian efforts. This overarching disagreement—up to and including at an international level—challenges efforts to address the issue in pre-, post-, and conflict areas.

These observations and concerns should prompt the US military and its partners to advocate for proper positioning of information operations in international legal frameworks. As Mardini states in his address to the UNSC:

> We are seeing first-hand in our operations how this phenomenon [mis-, dis-information] reduces the ability of affected people to make well-informed decisions that impact their safety and dignity. It dangerously distorts information vital to human needs - such as access to safety, shelter and healthcare.[134]

Or, as an undated paper on the *UN's Peacekeeping* website summarizes:

> Technology-supported misinformation, disinformation campaigns, media manipulation, sabotage and propaganda will make it more difficult to deescalate tensions, adding the POC risks. Deceptive methods of warfare, psychological and media warfare already appear in the defence [sic] strategies of powerful states, and in the modus operandi of non-state armed groups, including extremist groups. They have the potential to undermine the capacities and reach of protection actors, by aggravating the crisis of confidence among and between communities, state actors, and UN peacekeepers. Technology may also divert and obfuscate responsibility and accountability for violations of international law, especially in the context of hybrid warfare or where autonomous weapon systems are being used – and involved in violations of IHL [international humanitarian law].[135]

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[133] "Freedom of expression in times of conflict," Council of Europe, https://www.coe.int/en/web/freedom-expression/freedom-of-expression-in-times-of-conflict (accessed July 14, 2022). Also, see: Kate Jones, *Online Disinformation and Political Discourse: Applying a Human Rights Framework* (London, United Kingdom: Chatham House) November 6, 2019, https://www.chathamhouse.org/2019/11/online-disinformation-and-political-discourse-applying-human-rights-framework?6PBCQ%2CNUSSBN%2CQR1IA%2C= (accessed July 2, 2022).

[134] Mardini, "Briefing to UN Security Council."

[135] Namie Di Razza and Ralph Mamiya, "The Future of the Protection of Civilians in UN Peacekeeping Operations," United Nations Peacekeeping, https://peacekeeping.un.org/en/future-of-protection-of-civilians-un-peacekeeping-operations (accessed July 1, 2022).

Discussion

Perhaps the most important issue to resolve among international parties is the placement of *information operations*—and its many varieties—into a legal framework. It is not as easy as it may seem. Information use by adversaries or competitors to, yes, inform, influence, dissuade, or panic a population or group of people is not unique to armed conflict nor is it unique to the technology innovations of the most recent decades. Therefore, *information operations* and it's like are described in many ways by many agencies, such as *influence operations* or even as a part of *cyber operations* or *digital warfare*. The US Department of Defense defines *information operations* as:

> The integrated employment, during military operations, of information-related capabilities in concert with other lines of operation to influence, disrupt, corrupt, or usurp the decision-making of adversaries and potential adversaries while protecting our own.[136]

This definition limits *information operations* to a time and place of *military operations* only. Even if an observer expands the concept of military operations to include an infinite period before, during, and after employment of military forces, it still limits the connection to "things done with and to *information* due to a military necessity."[137] [original emphasis] Therefore, given a connection to military necessity, information operations and it's like may appropriately fall into the plethora of international law that frames (armed) warfare.

Yet not all conflict is armed—or it does not start as armed. Increasingly, observers and practitioners use terms such as *hybrid*[138] or *gray [grey] zone*[139] to describe a variety of activities designed to promote a perspective or cause—or defend against one—short of, adjacent to, or within armed conflict. Mis-, dis-, and malinformation (MDM) is a frequent contributor to hybrid or gray zone activities and the Cybersecurity and Infrastructure Security Agency of the US Department of Homeland Security defines mis-, dis-, and malinformation (MDM) as "information activities." It further notes:

> • Misinformation is false, but not created or shared with the intention of causing harm.
> • Disinformation is deliberately created to mislead, harm, or manipulate a person, social group, organization, or country.
> • Malinformation is based on fact, but used out of context to mislead, harm, or manipulate.[140]

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[136] Joint Chiefs of Staff, *Information Operations*, JP 3-13 (Washington, DC: Joint Chiefs of Staff, 2014), GL-3, https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3_13.pdf (accessed June 29, 2022).
[137] Phrasing original to the Lesson author.
[138] The origin of the descriptor, *hybrid warfare* and/or *hybrid threats*, is often attributed to Frank Hoffman, *Conflict in the 21st Century: The Rise of Hybrid Wars* (Arlington, Virginia: Potomac Institute for Policy Studies, 2007) https://potomacinstitute.org/reports/19-reports/1163-conflict-in-the-21st-century-the-rise-of-hybrid-wars.
[139] There are many definitions of "grey zone" conflicts. Consider this one*: "[Gray zones]* involve some aggression or use of force, but in many ways their defining characteristic is ambiguity — about the ultimate objectives, the participants, whether international treaties and norms have been violated, and the role that military forces should play in response." David Barno and Nora Bensahel, "Fighting and Winning in the' Gray Zone'," *War on the Rocks*, May 19, 2015, https://warontherocks.com/2015/05/fighting-and-winning-in-the-gray-zone/#:~:text=The%20best%20special%20operations%20forces%20in%20the%20world,to%20fight%20and%20win%20in%20the%20gray%20zone (accessed July 3, 2022). Also see: Michael J. Mazzar, *Mastering the Grey Zone: Understanding the Changing Era of Conflict* (US Army War College Press, 2015), https://press.armywarcollege.edu/monographs/428 (accessed July 3, 2022).
[140] See: CISA's "Mis-, Dis-, and Malinformation Planning and Incident Response Guide for Election Officials," found at https://www.cisa.gov/sites/default/files/publications/mdm-incident-response-guide_508.pdf (accessed July 15, 2022).

The definitions obviously rely on the intended effect on the population target by the information creator or sharer. Consequently, while misinformation can also cause harm, it is disinformation and malinformation activities of most concern in the *Protection of Civilians* sphere. Eian Katz's paper for the International Review of the Red Cross (IRRC), titled "Liar's War," suggests this harm comes in three ways, *exposure to foreseeable acts of violence*, *distortion of information concerning vital human needs*, and *mental suffering*.[141]

Despite the potential harm to civilians, Katz reminds the reader that disinformation (and, perhaps, malinformation) is often considered "an allowable 'ruse of war' (provided that it complies with other applicable rules) in international law."[142] However, as he argues, "this permissive attitude is the product of a bygone era in which deceptive practices could be safely supposed to yield tactical or political gains without significantly impacting the condition of non-combatants."[143] In contrast, contemporary conflicts find the disinformation campaign explicitly targets civilian populations. As Katz asserts:

> While this [target of civilians] does not automatically render… [the disinformation activity] illegal, it highlights a glaring descriptive deficiency in the traditional IHL conception…. [and] certain forms of disinformation propagated during armed conflict may in fact be in breach of international law.[144]

Katz explains further:

> Among the most fundamental rules in IHL is that civilians "shall not be the object of attack". Were disinformation deemed an "attack", therefore, civilians and civilian objects would be legally shielded from foreseeable and non-incidental injuries, deaths, destruction or damage caused by it. The conflict parties would likewise be barred from employing disinformation indiscriminately, without a specific military objective in mind.[145]

To introduce additional complexity in this topic, Katz notes that the military may not conduct the disinformation operations. If agents other than government-sponsored militaries engage in deliberate dis- or malinformation for the intention of civilian harm, do the IHL civilian protections in warfare even apply?[146]

Recommendations

While some authors assert "there is no question that cyber operations during armed conflicts, or cyber warfare, are regulated by IHL – just as is any weapon, means or methods used by a

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[141] Eian Katz, "Liar's war: Protecting civilians from disinformation during armed conflict," *International Review of the Red Cross* 102, no. 914 (December 2021): 660-1, https://international-review.icrc.org/articles/protecting-civilians-from-disinformation-during-armed-conflict-914 (accessed July 3, 2022).
[142] Eian Katz, "Liar's war," 665.
[143] Ibid.
[144] Ibid.
[145] Eian Katz, "Liar's war," 669-70. Another IRRC article explores the word *attack* further, asking "which cyber operations amount to an 'attack' as defined in IHL and [does] civilian data enjoys similar protection to 'civilian objects'." See: Laurent Gisel, Tilman Rodenhäuser, and Knut Dörmann, "Twenty Years on: International Humanitarian Law and the Protection of Civilians against the Effects of Cyber Operations during Armed Conflicts," *International Review of the Red Cross* 102, no. 913 (2020): 287–334. https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/abs/twenty-years-on-international-humanitarian-law-and-the-protection-of-civilians-against-the-effects-of-cyber-operations-during-armed-conflicts/BE68981904487F07B9919836B78B6DAD.
[146] Katz, "Liar's War," 678.

belligerent in a conflict, whether new or old,"[147] others suggest "while there are a number of rules that apply, they fail to address the specificities of the malicious use of information in armed conflict."[148] These varying viewpoints reinforce the need to focus "on potential non-physical, systemic adversarial effects of military information operations that so far fall through the cracks of IHL."[149] Towards this end, as a potential model, Katz shares the June 2021 release of the *Oxford Statement on International Law Protections in Cyberspace*, which provides ten general principles and addresses many of the "gaps" in international law.[150]

Meanwhile, while waiting for the international law to resolve the information operations dichotomies, Mardini reminds States and other conflict parties "to ensure that their own activities and information campaigns are not part of the problem – to make sure they put the protection of civilians at the center and that they do not compromise or endanger humanitarian space."[151]

Technology and the Protection of Civilians (JLLIS ID# 238207)

Observation

There is much discussion over the use of Artificial Intelligence (AI) and other technologies in warfare and its effect on civilian protection. As technological innovations allow weapons to become more lethal, some observers highlight the potential for bias and lack of fairness while others express concern that "military applications of AI could be inherently indiscriminate, unable to differentiate between valid military targets and civilians."[152] A third category of observers suggest these same innovations allow for greater targeting precision, thereby enhancing civilian protections. Yet the discourse over technology's value towards civilian protection focuses on only

> one half of the two-fold responsibilities for civilian protection found in International Humanitarian Law—the negative responsibility that militaries should not direct attacks on civilians. The *affirmative responsibility* for militaries to take all feasible precautions to protect civilians from harm has been relatively neglected. With regard to AI and autonomy, states should not only be asking how they can meet their negative responsibilities of making sure that AI applications are not indiscriminate in warfare. They should also be asking: How can we use AI to protect civilians from harm? And how can AI be used to lessen the infliction of suffering, injury, and destruction of war?[153] [emphasis added]

Discussion

In 2019, a group of students at the School of International and Public Affairs (SIPA) at Columbia University published their Capstone project, *Defining a Brave New Field: Technology and the Protection of Civilians in Conflict.* They identified three categories where technology, such as AI,

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[147] Gisel, et al, "Twenty Years on."

[148] Robin Geiss and Henning Lahmann, "Protecting the Global Information Space in Times of Armed Conflict, *Geneva Academy* (February 12, 2021), https://www.geneva-academy.ch/news/detail/452-three-papers-map-contentious-issues-related-to-the-application-of-international-law-to-military-cyber-operations (accessed June 30, 2022).

[149] Ibid.

[150] Author's note, see: https://elac.web.ox.ac.uk/the-oxford-statement-on-the-regulation-of-information-operations-and-activities#/.

[151] Mardini, "Briefing to UN Security Council."

[152] Larry Lewis and Andrew Ilachinski, *Leveraging AI to Mitigate Civilian Harm*, CNA Occasional Paper, February 3, 2022, https://www.cna.org/reports/2022/02/leveraging-ai-to-mitigate-civilian-harm (accessed November 10, 2022).

[153] Ibid.

supports civilian protection: *Improved security*, *access to humanitarian aid*, and *accountability*.[154] While acknowledging that "technology in and of itself cannot end war," they described "data collection tools, early warning systems, and crisis mapping" as means for civilians to have threat awareness and arrange for *security*.[155] In the category of *humanitarian aid*, the authors note that the hazards and blocks to humanitarian access resulted in technological innovation, such as the use of drones for delivery or telemedicine. They identified three sub-functional uses of technology for the *accountability* category: *collection of evidence*; *verification of evidence*; and *increasing access to justice*.[156] In their findings, a mobile phone with appropriate applications and a social media account may be all that is necessary to preserve evidence of atrocities.

At the same time, the authors presented major "cross-cutting issues…found to affect all three areas of security, humanitarian assistance and accountability."[157] The first is *connectivity*, especially in conflict areas with little or vulnerable internet infrastructure. The second is the *misuse of tools* that may put civilians at greater risk rather than protect them. As example, the record of atrocities by civilians that does not protect their anonymity. The third issue is *intersectional access*. An example of this issue is the provision of technology among a population that is not digitally literate.[158] Other crosscutting issues included: ethical and legal considerations; tensions with humanitarian principles; sustainability questions; the effects of displacing traditional means of assistance; the importance of community buy-in; the need for organizational support; and applicability and replicability concerns.[159]

The ethical and legal considerations may refer to civilians jeopardizing their status in international humanitarian law (IHL) or the law of armed conflict (LOAC) when found with technology to protect themselves. As one observer notes

> certain uses of digital technology pose fundamental challenges to the traditional distinction between civilians and combatants in modern times. [But] …as soon as a user in a war zone picks up a smartphone to assist the army, both the technology and the individual could be considered sensors, or nodes, in the practice known as ISR— intelligence, surveillance, and reconnaissance. Inviting citizens to become a potential element in a military system, as the e-Enemy feature does, might blur the lines between civilian and combatant activity…. But users voluntarily forfeiting civilian status via the use of a smartphone app could potentially make matters even more complicated, especially if and when a person in question is captured.[160]

Recommendations

In summary, while contemporary military technology may mitigate civilian harm, such as precision-guided munitions, it cannot address scenarios where civilians are misidentified as a military target. A CNA Occasional Paper suggests the military should develop applications that can:

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[154] Adam Robitaille, Ai Nakashio, Caitlyn Passaretti, Christopher Franklin, Mark Filipovic, and Woong Seong, *Defining a Brave New Field: Technology and the Protection of Civilians in Conflict,* School of International and Public Affairs (SIPA) at Columbia University, 2019, https://docslib.org/doc/6141738/defining-a-brave-new-field (accessed November 15, 2022).

[155] Ibid.

[156] Ibid.

[157] Ibid.

[158] Robitaille, et al, *Defining a Brave New Field: Technology and the Protection of Civilians in Conflict*

[159] Ibid.

[160] Lukasz Olejnikideas, "Smartphones Blur the Line Between Civilian and Combatant," *Wired,* June 6, 2022, https://www.wired.com/story/smartphones-ukraine-civilian-combatant/ (accessed August 11, 2022).

• Alert to the presence of transient civilians by using object identification to automatically monitor for additional individuals around the target area and send an alert if they are detected. This application would bring these individuals to the attention of operating forces that may otherwise fixate on the target and miss transient civilian presence.

• Detect a change from collateral damage estimate by finding differences between imagery used to determine the collateral damage estimate and more recent imagery taken in support of an engagement. This application can help identify little details that operating forces might not recognize but that could be cues of unanticipated civilian presence, such as additional vehicles near a building.

• Alert to a potential miscorrelation by helping to identify that a miscorrelation has taken place. For example, applications could recognize that a vehicle being tracked is not the same one that was being tracked previously, showing that a swap has occurred between a threat vehicle and a civilian vehicle.

• Recognize protected symbols by using AI/ML methods to identify accepted symbols for designating protected objects (e.g., red cross or red crescent) and alerting the operator or the chain of command accordingly. The presence of protected symbols does not mean that the location is, in fact, protected from attack: the location may have lost its protection, or an unscrupulous party may be using the symbol to deter attacks, in violation of international law. But this capability would provide a safety net in cases where the protected symbol is present but was missed by operating forces.[161]

Whether military-use AI improves civilian harm mitigation measures or makes matters more dangerous, the imperative remains to maintain "human judgment and responsibility in engagement decisions."[162]

What Gets Protected: Services. As referred to in the both the NATO's 2018 Military Concept on the Protection of Civilians as well as the US DoD's 2022 Civilian Harm Mitigation and Response Action Plan, services include a number of public functions, such as education or justice. The Lesson below focuses on one service—medical care, with emphasis on pediatric expertise—as an example of civilian harm mitigation and response.

Pediatric Casualties: The Norm, not the Exception, in Contemporary Armed Conflict (JLLIS ID#239665)

Observation

The US DoD doctrinal planning and its logistical resources are not adequately aligned to meet the need of pediatric casualties encountered on a battlefield. This observation comes as the verified number of children killed or maimed in conflict has risen dramatically over the last 15 years with more than third due to explosive weapons.[163] As an example, since the start of the Russia-Ukraine War just over a year ago, at least 1,150 children were injured with 408 deaths.[164]

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[161] Lewis and Ilachinski, *Leveraging AI to Mitigate Civilian Harm.*
[162] Ibid.
[163] United Nations. (2022) *Responsibility to protect: prioritizing children and young people – Report of the Secretary-General.* https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/361/67/PDF/N2236167.pdf?OpenElement (accessed December 21, 2022).
[164] Office of the High Commissioner for Human Rights. (2022) *Ukraine: Civilian casualty update 14 November 2022.* https://www.ohchr.org/en/news/2022/11/ukraine-civilian-casualty-update-14-november-2022#_ftn1 (accessed December 29, 2022).

The UN Secretary-General's 2022 Report on *The Responsibility to Protect: Prioritizing Children and Young People* addresses the special needs of children in conflict settings, indicating:

> Children and young people are being killed and injured in attacks directed at civilians and civilian infrastructure. Even where civilians are not intentionally targeted, the urban character of today's armed conflicts and the use of explosive weapons in populated areas renders children and young people highly vulnerable to being seriously injured or killed in indiscriminate attacks. Globally, more than 100,000 children have been killed or maimed since 2005 by parties to armed conflicts.[165]

Discussion

In January 2022, DoD released a memorandum on improving civilian harm mitigation and response (CHMR), stating:

> The protection of civilians is fundamentally consistent with the effective, efficient, and decisive use of force in pursuit of U.S. national interests, and our efforts to mitigate and respond to civilian harm are a direct reflection of U.S. values. It is a strategic and a moral imperative…We will revisit the ways in which we assess incidents that may have resulted in civilian harm, acknowledge the harm to civilians that resulted from such incidents, and incorporate lessons learned into the planning and execution of future combat operations and into our tactics, techniques, and procedures.[166]

This requirement reflects not only actions taken directly by US forces but is also framed in the broader context of armed conflict. The UN verified 145 attacks against schools, hospitals, and protected personnel in 2019 alone.[167] Armed groups were responsible for 113 attacks (primarily Taliban forces in Afghanistan); government and pro-government forces contributed to 26 attacks, and five attacks were attributed to both.[168] Pediatric combat casualties comprised a significant proportion of medical care provided by deployed US Forces in both Operations Enduring and Iraqi Freedoms (OEF and OIF) with pediatric mortality at deployed military medical treatment facilities ranging from 5.8% at the start of OIF/OEF to 8.4% later in the conflicts, despite improved mortality of adult casualties.[169] Pediatric casualties from the bombing at Hamid Karzai International Airport during Operation Allied Rescue (OAR) were a significant challenge for medical assets in Afghanistan and through the medical evacuation system extending through Landstuhl Regional Medical Center in Germany to Walter Reed National Military Medical Center in Maryland.

The injury patterns to children injured in war are unique and explosive weapons pose special risks to them. Their shorter stature increases their risk for penetrating head injuries, polytrauma

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[165] United Nations, *Responsibility to protect: prioritizing children and young people – Report of the Secretary-General,* May 26, 2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/361/67/PDF/N2236167.pdf?OpenElement (accessed February 8, 2023).

[166] U.S. Department of Defense, *Department of Defense Releases Memorandum on improving civilian harm mitigation and response,* January 27, 2022, https://www.defense.gov/News/Releases/Release/Article/2914764/department-of-defense-releases-memorandum-on-improving-civilian-harm-mitigation/ (accessed December 23, 2022).

[167] United Nations, *Children and armed conflict – Report of the Secretary-General,* June 9, 2020, https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/15-June-2020_Secretary-General_Report_on_CAAC_Eng.pdf (accessed December 21, 2022).

[168] United Nations, *Children and armed conflict – Report of the Secretary-General.*

[169] Matthew Borgman, Renée I. Matos, Lorne H. Blackbourne, and Philip C. Spinella, "Ten years of military pediatric care in Afghanistan and Iraq," *Journal of Trauma and Acute Care Surgery* 73(6)(December 2012):S509-S513, https://doi.org/10.1097/TA.0b013e318275477c (accessed February 8, 2023).

involving the head/chest, and large surface area burns.[170] Data from US medical facilities in OIF and OEF show, in addition, that children have higher illness severity.[8] The complex injuries that result from explosive weapons have contributed to a significantly higher mortality in this population than any other combat casualty.[171] This increase in mortality persists despite comparable illness severity with adult civilian and coalition soldiers and far exceeds civilian pediatric trauma mortality data.[172]

Reasons for increased mortality are multifactorial. In addition to the unique injury patterns found in pediatric combat casualties, pediatric trauma guidelines are limited. Most providers caring for pediatric casualties are not specifically pediatric-trained, pre-deployment pediatric training is not a universal requirement, and pediatric equipment remains an optional addition left up to the discretion of the command. Consequently, pediatric equipment is often not available at lower echelons of care where children are more likely to present and often need procedures or blood products enroute from the point of injury.[173]

Recommendations

In his 2022 memorandum, the US Secretary of Defense directed reviewing and implementing tactical protocols to prevent civilian casualties and also provided several directives.[174] While *prevention* is the primary goal, there must be a correlating focus on pediatric combat casualty care improvement since the annual number of pediatric casualties continues to rise.

In response to the growing recognition of the need for pediatric-focused casualty care, the US Army Medical Command added a pediatric trauma curriculum to the Joint Forces Combat Trauma Management Course (2007), pediatric critical care telemedicine services for expanded access to pediatric and neonatal intensivists, and pediatric-focused medical sets were fielded. Currently, an update to the Borden Institute's Pediatric Surgery and Medicine for Hostile Environments textbook is ongoing, along with development of a DoD pediatric trauma clinical practice guideline and inclusion of a pediatric template in the Operational Medicine's pre-hospital electronic health record. Yet there remains more to do. Recommendations include:

- Develop and implement comprehensive pediatric casualty care curriculum and refresher training designed for military medical providers of various skill levels and specialties.
- Develop and field pediatric trauma manikins and related materials for hands-on training on poly-trauma injury patterns.
- Prioritize and fund research by the Joint Trauma System, Uniformed Services University, and other stakeholders to delineate between primary injury, complications, and physiologic causes of death in pediatric casualties, review practice patterns related to the

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[170] John Milwood Hargrave, Phillip Pearce, Emily Rose Mayhew, Anthony Bull, and Sebastian Taylor, "Blast injuries in children: a mixed-methods narrative review," *BMJ Paediatrics Open* 3, no. 1 (2019). https://doi.org/10.1136/bmjpo-2019-000452 (accessed February 8, 2023).
[171] Borgman, Matos, Blackbourne, and Spinella, "Ten years of military pediatric care in Afghanistan and Iraq."
[172] Jamie Oliver, Jacob Avraham, Spiros Frangos, Sandra Tomita, and Charles DiMaggio, "The Epidemiology of Inpatient Pediatric Trauma in United States Hospitals 2000 to 2011," *Journal of Pediatric Surgery* 53, no. 4 (April 2018): 758-764. https://www.jpedsurg.org/article/S0022-3468(17)30255-5/fulltext (accessed February 9, 2023).
[173] Ryan J. Keneally, Cynthia H. Shields, Albert Hsu, Howard I. Prior, and Kevin M. Creamer, "Pediatric Thoracic Trauma in Iraq and Afghanistan," *Military Medicine*, 183, no. 11-12 (November-December 2018): 596–602. https://doi.org/10.1093/milmed/usy044 (accessed February 8, 2023).
[174] U.S. Department of Defense, *Department of Defense Releases Memorandum on improving civilian harm mitigation and response.*

diagnosis, initial treatment, and definitive management of pediatric injuries, determine adherence to best practice guidelines.

- Further integrate and employ pediatric casualty care knowledge, skills, and abilities (KSA) into the Clinical Readiness Program across relevant medical and nursing specialties.
- Review and/or develop and implement pediatric-sized equipment and medication kits at all echelons of care.
- Review and/or develop doctrine to ensure access to pediatric resources as part of training and well as update organizational manning doctrine in order to assess the need for Military Pediatricians based on operational requirements.

Without improvements to pediatric educational resources, pediatric-sized equipment, universal pediatric trauma training, and learning from prior incidents that have caused civilian harm, children will continue to die at alarming rates with mortality far exceeding adult casualties.

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