



Get the U.S. Military Out of the Counterterrorism and Nation-Building Business

Charli Carpenter | Friday, March 26, 2021

Have know-nothing civilian bureaucrats, lily-livered humanitarian do-gooders and misguided academics tied the military's hands with increasingly restrictive norms that don't correspond to the laws of war, let alone the rigors of battle and requirements of victory? That's the premise of a new article in *Military Review* by Army Lt. Gen. Charles Pede and Col. Peter Hayden (<https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/March-April-2021/Pede-The-18th-Gap/>). Pede and Hayden write derisively of the three-decades-old shift in U.S. military doctrine toward enhanced civilian protection, exemplified by the population-centric counterinsurgency approach to the wars in Afghanistan and Iraq. This is a danger, they argue, since troops trained in restraint and respect for civilian life would be tactically, bureaucratically and morally hobbled if faced with a massed formation of Russian, Chinese or Iranian tanks.



U.S. soldiers patrol on the outskirts of Spin Boldak, near the border with Pakistan, about 63 miles southeast of Kandahar, Afghanistan, Aug. 9, 2009 (AP photo by Emilio Morenatti).

For all this argument's numerous flaws, it contains one underappreciated insight. The U.S. military has been asked to take on tasks to which it is ill-suited, affecting mission readiness for its primary role: winning wars. The solution, however, is not to water down the laws of war as they pertain to counterterrorism operations or to diminish the role of civilian agencies in peace building. Instead, the U.S. military should get out of the counterterrorism and nation-building business and stick to the battlefield where it belongs.

Pede and Hayden make some valid points, even if their conclusions miss the mark. It is true that the laws of armed conflict are more permissive than most civilians believe and most humanitarians wish. But NGOs and academics are the first to acknowledge that. Advocating for stronger rules is not the same as pretending they already exist.

It is also true that NGOs, lawyers, scholars and activists are actively involved, alongside militaries, in promoting, augmenting and implementing the laws of war. But that has been the case ever since the very first Geneva Convention codified, at the behest of 19th-century Swiss activists, the right of civilian medical workers to rescue wounded soldiers from battle without being shot by warring parties—the origin of today's Red Cross.

And yes, it is true that the laws of war are evolving today as much through soft law, advisory opinions, jurisprudence and policy initiatives as through changes in the letter of multilateral treaties. But that's how the laws of war are *designed*. Geneva and Hague rules are not merely words on paper, but a living, breathing set of norms meant to evolve within limits and change with the times, as new technologies emerge and global temperaments shift.

Where Pede and Hayden are most right, however, is when they point out that neither militaries nor the system of rules designed to regulate their behavior in war were really designed for the kind of operations into which the U.S. military has been thrust for the past two decades: counterterrorism and nation building. But the solution is not to disparage or undo the humanitarian achievements of the NGO sector, but rather to move the U.S. military out of both counterterrorism as well as stability and support operations. This means acknowledging that those operations require adherence not to the law of war at all, but to human rights law.

The law of war, as the authors note, is a more permissive framework meant to apply only in genuine situations of armed conflict, and not to peace building or counterterror operations. But the strained relationship between military readiness and international law is not the result of the norm entrepreneurship of humanitarians, but rather of the misguided marrying of military power to law enforcement and peace-building operations. What former President Barack Obama once called "overseas contingency operations" do require different mindsets, strategies and legal regimes than do operations on conventional battlefields. And it is equally true that this is not what troops are trained for, nor what they do best.

This has arguably led to the worst of both worlds. On the one hand, it has required an expansion of war law restrictions, causing officers like Pede and Hayden to chafe over fears of defeat on "Battlefield Next." On the other hand, this trend has also diluted human rights law, which is the branch of international law that ought to apply in law enforcement or nation-building situations. And worst of all, it has muddled the important distinction between the two branches of the law and their respective scopes of application, contributing to failures of political imagination and foreclosed policy options.

The military as an institution is not equipped to orchestrate the building of nations or effectively police transnational crime, nor should it be entrusted with these tasks.

Consider the U.S. invasion of Afghanistan in 2001. Carried out with the blessing of the international community and in alignment with the United Nations Charter, it led to a quick and decisive tactical, strategic and moral victory. But rather than quit while ahead, the U.S. then stayed for an extended bout of nation building, resulting in an enduring quagmire, with the promise of a power vacuum upon the inevitable withdrawal of American forces. Worse still, during the so-called nation-building stage, the U.S. military continued to treat Afghanistan

and the surrounding region as a hot battlefield, operating in a war law mindset rather than a human rights law mindset. The U.S. continues to speak of “civilian casualties” instead of “innocent bystanders,” of “enemy combatants” rather than “accused insurrectionists,” and of “peace talks” rather than “disarmament, demobilization and reintegration.”

The death toll from continued U.S. armed violence continually exacerbated the situation, yet for the U.S. to withdraw abruptly would likely leave civilians even more at risk from a renewed civil war. It is the same no-win scenario America has continuously faced when it has melded wartime victories into nation-building projects.

Now, imagine a counterfactual: The U.S. enters Afghanistan briefly in 2001 to topple the Taliban, applying the law of war as best it can during a conflict as brief and relatively bloodless as that in Kosovo or Libya. It then turns the rebuilding of Afghanistan over—as happened in Kosovo but *not* in Libya—to a U.N.-authorized peace enforcement mission combining civilian and military police with civil society experts from Muslim-majority countries, with a robust mandate to protect civilians.

As Page Fortna (<https://press.princeton.edu/books/paperback/9780691136714/does-peacekeeping-work>) and Lise Howard (<https://www.cambridge.org/core/books/power-in-peacekeeping/0C99FAABFC3C92297836A478EFEAFDDA>) have shown, such missions have a far better track record of success in peace building than what the U.S. military calls “stability and support operations.” This is because they are structured around principles, norms and rules of engagement designed to win the peace, rather than win wars. With burden-sharing across many nations, U.N. missions also have staying power, avoiding the no-win scenario of remaining forever or leaving a power vacuum, as NATO mistakenly did in Libya and former President Donald Trump set the stage to do in Afghanistan. Most importantly, U.N. missions are incubators for training post-conflict nations in human rights law and democracy—the ingredients of stable peace.

If nation building might be better left to other actors than the U.S. military, what about counterterrorism? As Kenneth Roth argued (<https://www.foreignaffairs.com/articles/2004-01-01/law-war-war-terror#:~:text=By%20Kenneth%20Roth&text=Bush%20has%20suggested%20that%20his,or%20run%2C%20or%20plan.%22>) early in the war on terror, what the U.S. calls counterterrorism is much better thought of as an effort to apprehend and punish transnational criminals than as a form of all-out war, and thus best handled not by militaries but through the tools of international law enforcement: extradition, arrest, trial, detention and ultimately punishment or rehabilitation. This would be not only consistent with human rights law but also far more effective and ethical than the arguably illegal campaigns of extrajudicial execution (<https://www.hrw.org/news/2011/12/19/q-us-targeted-killings-and-international-law>) the U.S. has been instead carrying out with drones.

Instead of drones aiming to kill, imagine special forces commando raids to arrest terror suspects in much the way the FBI arrests and tries mass shooters in the U.S. Such suspects would then be turned over to Interpol, or a neutral third country for detention and trial, or be tried in U.S. criminal court. Those found innocent would be released. Those found guilty would be rehabilitated in prison—a process that Saudi Arabia, for all its flaws, has been particularly good at (<https://www.bbc.com/news/world-middle-east-40061550>).

The distinctions between civilian and combatant, between battlefield and home front and between unlawful combatant and POW rightly become irrelevant within such an architecture. This was the world before 9/11; before then-President George W. Bush declared “war” on a band of criminals; before Congress authorized the use of force without due process against anyone, anywhere suspected by the U.S. to be a threat; and before the U.S. military was erroneously tasked with transnational law enforcement, nation building and operational support in the world’s various civil wars.

To be sure, where useful, members of the U.S. military might be deployed under U.N. auspices to support peacekeeping missions. U.S. special forces could become a useful adjunct for Interpol and/or any country willing to try alleged terrorists under universal jurisdiction. But the military as an institution is not equipped to orchestrate the building of nations or effectively police transnational crime, nor should it be entrusted with these tasks. The attitude underpinning Pede and Hayden’s article is itself an example of why.

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