

**UNDERSTANDING COLLATERAL DAMAGE
WORKSHOP**

JUNE 4 – 5, 2002
WASHINGTON, DC

PROJECT ON THE MEANS OF INTERVENTION
CARR CENTER FOR HUMAN RIGHTS POLICY

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PREFACE

The Carr Center for Human Rights Policy hosted a workshop on collateral damage in Washington D.C. on June 4 & 5, 2002. This was the fourth in a series of discussions held under the auspices of the Project on the Means of Intervention, which is described on page 45.

The premise underlying this workshop, and indeed the entire project, is that the military and human rights communities share a common interest in minimizing civilian suffering during wartime. Yet virtually every actor views the issue through a different lens, confronts fundamental substantive disagreements with those in other organizations, and possesses limited understanding of others' assumptions and actions with regard to affecting or evaluating collateral damage.

During a prior workshop, military participants coined the phrase "collateral damage management (or mitigation)" — CDM — to refer to a proposed process by which the U.S. armed forces would more comprehensively and systematically seek to minimize unintended harm to civilians. This meeting aimed to help identify the opportunities and challenges in improving CDM.

The workshop agenda is provided in Appendix I. The meeting began with a case study: a leading human rights organization presented a preliminary report on its investigation of collateral damage during Operation Enduring Freedom in Afghanistan. Participants then turned to a conceptual discussion of how to evaluate collateral damage; they explored legal standards and public expectations that help determine whether a problem exists or a mistake has been made. Lack of agreement regarding standards surfaced throughout subsequent discussions on how different organizations investigate possible standards violations and how the U.S. military learns from its mistakes.

Participants also considered the limitations of the battle damage assessment and collateral damage modeling processes and their implications for conducting effects-based operations and for CDM. Finally, the group discussed the advantages and challenges of the military becoming

more open in communicating its strategies and operations and undertaking efforts to assess civilian casualties during conflicts.

One of the most surprising aspects of the project's broader ongoing conversation is its ability to remain fresh and challenging despite the significant topical overlap and substantive duplication among the workshops. This is due in part to the novelty of the exercise. The workshop series embodies both a substantive and personal learning process, and the topics and insights are seemingly enriched through each encounter. It has been a pleasure to witness this transforming discourse.

The Project on the Means of Intervention is funded by the Carnegie Corporation of New York. The effort has been shaped from its inception by Camilla Catenza, who flawlessly organized the June workshop. She and Ingrid Tamm also provided valuable help by note taking and editing. As always, the project remains indebted to the workshop participants, listed in Appendix II. Whether veterans or new to the process, their expertise and convictions combine to create something far larger than the sum of its parts. My thanks to all.

Sarah Sewall

Program Director, National Security and Human Rights

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UNDERSTANDING COLLATERAL DAMAGE

This report summarizes a workshop on collateral damage held in Washington, D.C. on June 4 & 5, 2002. The meeting brought together representatives from the military and human rights communities, and included a mix of American and international participants. The meeting was the fourth in a series, held under the auspices of the Project on the Means of Intervention at the Carr Center for Human Rights Policy.

As is the practice in the Project on the Means of Intervention, comments are not attributed to individuals in order to preserve the openness of the exchange. The meeting agenda and list of participants are included in the appendix.

ACCOUNTING FOR CIVILIAN DEATHS

In evaluating modern war, human rights groups, the press, and the public often look to the number of dead and wounded civilians as a meaningful metric. Civilian casualty figures sometimes are used to assess the morality, effectiveness, or legitimacy of military intervention. Participants agreed that it is important to understand how and why military operations cause civilian suffering. One analyst argued that assessing civilian casualties is an essential element of ensuring that Western publics assume informed responsibility for their government's use of military power. However, participants often disagreed about the viability and relative priority of obtaining this information, as well as the validity of using a civilian body count to assess military operations.

WHO OWNS THE PROBLEM?

Participants discussed the inherent difficulty of assessing the effects of force upon civilians in near real time. In recent conflicts, civilian casualty numbers often have been inflated by the opposing force, ignored by the intervening military power, and imperfectly reported by the media and human rights organizations.

The U.S. military rarely provides collateral damage figures during conflicts, and often is reluctant to comment on allegations of collateral damage for lack of comprehensive and accurate information. Representatives of the U.S. military suggested that it would be virtually impossible to provide accurate assessments of civilian casualties in insecure areas. Moreover, some participants argued, official U.S. estimates would carry little weight internationally. One individual pointed out that accounting for civilian deaths is not a top priority for the U.S. military. There also are concerns that devoting resources toward that end while combat is underway could undermine more pressing operational objectives. Other participants disputed this conclusion, suggesting that accurately assessing collateral damage was sufficiently important to overall mission success, and that additional effort would be merited even during conflict.

"[Accounting for civilian casualties] is not mission essential."

In the absence of real-time information from official or even reliable unofficial sources, the issue of civilian casualties, by incident or in the aggregate, is defined by local authorities. Allegations are picked up in press reports. This information can then circle back, uncorroborated, in subsequent press reports as authoritative numbers or in independent analyses that glean data from those same initial press reports. One reporter described this cycle in the context of Operation Enduring Freedom in Afghanistan. As a result of this process, international and domestic public impressions of the extent of civilian death resulting from Operation Enduring Freedom may be highly distorted. Complicating the accuracy problem is the fact that nongovernmental organizations (NGOs) and public figures often are called upon to comment directly after an apparent military mishap, placing them in an awkward position of responding to partial, incomplete, or inaccurate information. The pressure to join the news cycle is directly at odds with NGO desires to be thorough and comprehensive in their analyses.

Members of the press noted the difficulty they face in attempting to report the facts on the ground accurately. They noted the initial difficulties in obtaining editorial support to investigate collateral damage given the costs and risks involved, and the relative lack of interest in the question at home (at least early in Operation Enduring Freedom). They also noted the painstaking challenge of reconstructing in detail even one incident of collateral damage given the problems in determining ground truth at relevant sites shortly after military activity.

Human rights groups, which pride themselves on being independent, apolitical actors, tend to launch their investigations long after the damage is done, and they face a commensurate methodological challenge in their work. Those who have conducted such investigations explained the various methods by which reconstruction of an incident could be made, in their view, with reasonable confidence. They noted the difficulty of working without official support or significant information about the operation. One person noted that the demining community in Afghanistan was extremely knowledgeable about the location of air strikes, helping recreate a more accurate record of ordnance impact than that publicly available from the U.S. Department of Defense (DOD). They also acknowledged the considerable political pressures that can arise in the context of reporting on civilian casualties in wartime. NGO reporting, it was noted, could be influenced by the views of donors, constituents, or by staff or institutional positions. While these

pressures differed significantly from those affecting DOD, they underscore the difficulty of neutrally addressing the issue of civilian casualties.

Human rights representatives argued that their work was essential because governments refuse to take the responsibility for assessing civilian casualties upon themselves, but that limited resources force them to choose carefully which conflicts to investigate. One organization suggested that it often would forgo investigations in cases that already were receiving attention from other independent analysts. Many felt it critically important that collateral damage be studied by Western militaries as well as international organizations and independent NGOs, and they also requested that the military be more forthcoming with its information (e.g. strike databases), even after a campaign is over, in order to facilitate NGO analysis. There was spirited discussion, but no agreement, on the possibilities for collaboration or coordination between the NGOs and the military.

THE BODY COUNT METRIC

Many participants, particularly from the military community, felt that focusing on civilian deaths as the measure of assessing a military operation is a fundamentally flawed approach. The U.S. military's aversion to focusing on a "body count" is rooted in its experience in Vietnam, where the measure of enemy dead bore no relationship to mission success. While observers understandably look for a metric by which to assess the use of force, many argued that it is not accurate to measure failure by the number of civilians killed. Others felt that it would be misguided to suggest that a given number of civilian casualties would be acceptable or unacceptable without considering the broader purposes of the use of force. Many expressed great frustration at the perceived narrow focus of the press and human rights groups upon civilian deaths.

"If we're going to worship at the altar of collateral damage and civilian casualties, then we have to ask whether we should be in all of these wars."

A major point stressed by military participants was the importance of considering strategy rather than simply tactics when evaluating the morality, legality, or effectiveness of a military effort. Strategic choices, such as the decision to use air power exclusively or to rely upon proxy forces or to disperse rather than destroy an enemy, may have far greater implications for civilians on the ground than tactical decisions to use Cluster Bomb Units (CBUs) or bomb an office building.

Participants discussed the potentially perverse effects of a short-term focus on avoiding civilian casualties. Examples surfaced throughout the workshop. One analyst suggested that the failure to eliminate Serbian air defenses (for fear of collateral damage in urban areas) prolonged the war and resulted in the adoption of tactics that increased overall civilian deaths in Operation Allied Force. Another participant pointed out that a non-lethal option for crowd control - tear gas - is not permissible under NATO rules of engagement or by the Chemical Weapons Convention if used in the context of armed conflict. Finally, the desire to avoid destroying infrastructure in Afghanistan may have facilitated the escape of terrorist leaders, according to a participant.

“The right question is not ‘how many civilians died?’ but ‘how many lives have been saved?’”

Thus the political instinct to avoid civilian casualties in the short term may result not only in unwise military strategies, but also greater civilian suffering. Military representatives strongly urged greater education of political leaders regarding the tradeoffs inherent in decisions about the use of force.

Human rights representatives expressed an understanding of the military requirement to balance mission success, force protection and collateral damage minimization. However, they voiced frustration regarding their inability to understand how such decisions are made and their resulting uncertainty about whether preventing civilian deaths receives sufficient emphasis. They asked how the U.S. could claim that Operation Enduring Freedom has caused the fewest civilian casualties of any war or claim that everything possible is being done to minimize collateral damage when the American military does not systematically measure its efforts or

effects with regard to preventing civilian deaths. Military participants argued that concern about civilian casualties already significantly constrains the use of force and not always with the most positive results.

One participant contended that that there is no inherent tension between humanitarian consideration and military effectiveness, given adequate knowledge and effort with regard to military strategies and capabilities.

OPERATION ENDURING FREEDOM

Participants discussed Operation Enduring Freedom (OEF) in Afghanistan in great detail, considering the apparent effects of strategy and tactics upon civilians in the area of conflict and the reciprocal obligations of both the military and nongovernmental organizations to prevent collateral damage.

COMPETING MILITARY EFFORTS

Participants discussed OEF strategy, considering whether rapidly winning the battle for Kabul using airpower may have actually undermined the U.S.'s ability to achieve more important objectives in the war against terrorism. Participants asked whether the U.S. desire to avoid committing ground forces and the effectiveness of U.S. airpower in precipitating Kabul's rapid fall to the Northern Alliance led to the escape of significant numbers of Al Qaeda members.

“[Competing] objectives and secrecy evade evaluations, distort strategy, constrain targeting, and impede integrated reporting and analysis of lessons learned.”

A similar set of questions was raised with regard to the intelligence community's role in the conflict. The CIA directed many military assets that were critical for the military effort and also conducted its own operations independently of the U.S. military. It was suggested that this

covert, independent role posed problems for military effectiveness at both the tactical and strategic levels. One observer argued that airpower could not fulfill its potential when constrained by a parallel effort of which it was insufficiently aware. It was also suggested that the intelligence community's failure to effectively neutralize targets for which it had claimed responsibility further undermined U.S. military strategy. Parallel covert operations raise questions about accountability and oversight as well. They complicate the learning process for the military services because restrictions upon data make it more difficult to create a comprehensive historical record.

SIGNIFICANCE OF THE TARGET REVIEW PROCESS

The vast majority of U.S. air strikes during OEF were conducted against “emerging” targets — targets that do not exist on a map, cannot accurately be predicted, and require an immediate military response. One participant's analysis confirmed airpower's relative accuracy and discrimination against preplanned targets, but suggested that attacks against emerging targets caused greater levels of collateral damage.

Collateral damage appears to have been minimized effectively during air strikes conducted under the existing U.S. planning and review processes for fixed targets. These review processes were discussed in some detail at the workshop, and have been described in a previous workshop report (March Conference Report, www.ksg.harvard.edu/cchrp/WkshpMar02.shtml). Even in urban areas that offer significantly increased risks of civilian casualties, the precision of U.S. weapons, coupled with careful planning, allowed airpower to be applied with minimal effects upon civilians.

This appeared to be less true in the context of strikes against unanticipated targets, according to this participant's research. In many cases, forward air controllers (FACs) on the ground - often Special Forces personnel - directed air strikes against emerging targets. The FACs were, in the view of a military participant, important to help satisfy restrictive rules of engagement (ROE) regarding target identification. No one suggested that FACs undermined mission effectiveness, and most public analysis has stressed their critical contribution in

harnessing airpower in Afghanistan. Yet at least one analyst suggested that the relative lack of experience and information of ground forces, who are often young reservists, may have influenced them to view a village as getting in the way of a strike rather than as a reason not to conduct a strike. This difference in perspective, it was suggested, was demonstrated by several cases in which pilots declined to attack approved targets.

NGO RESPONSIBILITIES FOR COLLATERAL DAMAGE MANAGEMENT

While much of the workshop discussion focused upon how the military could minimize collateral damage, several participants noted that NGOs and international organizations (IOs) seemed to lack a commensurate sensitivity to their own obligations in this regard. Particularly in the context of harm to NGO/IO facilities and employees, several suggested that these groups expect too much of the U.S. armed forces without assuming responsibility for their own actions.

Some 270 NGOs were operating in Afghanistan during OEF. In their search for adequate infrastructure, some chose to use military facilities or buildings collocated with military installations. Among the several major incidents where NGO buildings were destroyed, many occurred where facilities were commingled. According to one participant, the four UN deminers killed on October 9, 2001 were physically inside an Afghan military communications facility. In addition to possibly reconsidering the location of their operations, NGOs and IOs have an obligation to provide proper marking and communicate with military forces to ensure that the location of their facilities, personnel, and activities are protected to the maximum extent possible.

ALTERNATIVE WEAPONS

Weapons effectiveness is no longer the issue it was during the Gulf War, it was observed. In OEF, the weapons generally worked well. To compensate for occasional problems with laser guiding, the British Royal Air Force already has equipped, and the U.S. is planning to equip, weapons with backup GPS guidance that will land ordnance within thirteen meters of its intended target. Other similar backup systems can be developed. Also, according to a participant,

the detritus of war (e.g. jettisoned fuel tanks) is becoming a larger problem than weapons malfunctions.

The development of alternative weapons choices could further minimize collateral damage. According to a participant's recent research, approximately sixty civilian deaths in Afghanistan after Kabul's fall were caused by unexploded cluster bomb units (CBUs), even though deminers worked very rapidly and effectively. While participants did not engage in lengthy debate about the military value of the CBU, one person suggested that its effects could be minimized by more broadly defining an "urban area" in which their use would be restricted, developing unitary explosives for antipersonnel purposes, or improving the submunitions to reduce the amount of unexploded ordnance.

STANDARDS FOR EVALUATING THE USE OF FORCE

While the security community criticized the press and human rights organizations for relying upon the number of estimated civilian casualties as a means of assessing the use of force, there was little agreement upon an alternative basis for evaluation. Human rights organizations traditionally have relied upon the law as the primary means of evaluating the use of force. The number of civilian casualties has served as a data point relevant to understanding whether international humanitarian law (IHL) is being upheld. Yet as this series of workshops continually underscores, there often is a large, and in some important respects, widening, gap between the views of the human rights community and the U.S. military on the practical meaning of international humanitarian law.

"Unless we agree on what is a military objective, we can't agree on proportionality."

Many representatives of human rights groups expressed a fundamental unease with their ability to interpret or define certain military concepts articulated in international humanitarian law (IHL). (While the report uses the term IHL, it is intended to be synonymous with the term the "law of armed conflict.") For example, some feel ill equipped to define "military advantage," a concept with central relevance to many other aspects of IHL. Military

representatives argued that the commander was best positioned to make such judgments and that civilians, particularly those unfamiliar with military operations, could not reach informed conclusions. This creates a conundrum for non-military observers seeking to understand whether legal standards are being upheld.

In addition to definitional confusion, there remains fundamental substantive disagreement regarding other aspects of the law. For example, there was debate regarding the legitimacy of targeting for psychological effect. As one person noted, “otherwise lawful targeting which secures a coercive dividend is legally unobjectionable.” Yet there were clearly underlying questions about lawful targeting, particularly regarding dual-use targets and whether they can be considered military objectives. These topics have been discussed at length in prior workshops. One workshop participant suggested that even in the context of disagreements regarding Additional Protocol I, the distance between the U.S. position (which is not a party to that Protocol) and signatory allied nations was less than it appeared, as demonstrated by a 1986 NATO working group outlining a shared understanding of customary collateral damage restrictions.

Nonetheless, disagreements between the U.S. military, NGOs and many European allies have continued to surface—if not grow—in the context of issues such as the targeting of civilian objects and the concept of military advantage. It is unlikely that the International Committee of the Red Cross customary law study due out next year will resolve the apparent divergence between much European and human rights thinking and U.S. military opinion.

In other cases, it is not a manner of interpreting a military concept but rather a straightforward disagreement regarding the process by which a judgment should be reached. For example, human rights groups tend to consider the IHL requirement regarding the proportionality of military force to require that each attack yield military advantage commensurate to the potential civilian suffering. Military officers respond that such evaluations cannot be made on a narrow *quid pro quo* basis, but that each attack’s potential value must be considered in the context of the overarching campaign.

It was noted that the U.S. already had inserted clarifying language into many IHL provisions in the course of negotiating the International Criminal Court (ICC) statute. These clarifications had the net result of both detailing and restricting some IHL provisions. A participant pointed out that his NATO member government was satisfied that the ICC statute provided a reliable and acceptable standard to which to hold his nation's military.

However, another participant argued that the requirement to assess intentions or contextualize an event in order to judge a military action demonstrates that the law is open to interpretation, and, as such, should remain in the realm of tort, not criminality. He suggested that this poses a fundamental problem with an International Criminal Court. A different individual countered that the threshold for ICC involvement is so high that areas in which reasonable disagreement might occur should never fall under the Court's purview.

Human rights groups would like to see a public, transparent U.S. interpretation of existing IHL (not "more synonyms") such that they themselves could apply it with confidence. However, it is evident that no amount of clarification of legal standards will provide a blueprint for evaluating military operations.

The aforementioned disagreements regarding standards or expectations come directly into play when allegations of military mistakes or violations of IHL surface during armed conflicts. The best intentioned military efforts to explain or learn from mistakes may founder not for lack of good intentions on the part of the armed forces, but rather because of fundamentally divergent perceptions of acceptable and unacceptable actions rooted in differing interpretations of law. Addressing these differences, or at least recognizing their salience to the questions of learning more about and further minimizing collateral damage, remains an essential challenge for both the human rights and security communities. It also suggests that the human rights community may be more effective in finding grounds other than legal argument for urging continued operational, doctrinal, technological or other changes to promote collateral damage management (CDM).

*"There is a difference between the West and the rest,
and there is a difference between collateral damage and mass killing."*

Both human rights and military participants acknowledged the difference between the law and public expectations or political concerns about collateral damage. While military representatives acknowledged political concerns, they rejected applying a higher or different *legal* standard for Western militaries. Some human rights representatives sought a means to “bridge the gap” between these standards.

There was broad agreement that political concerns about preventing collateral damage shape the conduct of military operations most significantly. Some military representatives expressed concern that collateral damage sensitivity sometimes seems paramount, relegating mission accomplishment to a secondary objective. The human rights community, in contrast, feared that force protection is the paramount concern in Western military operations, at the cost of civilian suffering.

Whether the issue was determining proportionality, the use of precision guided munitions (PGMs), or aggregate civilian suffering, military representatives expressed concern that a double standard exists. The U.S. armed forces may act completely in accordance with IHL, but critics demand that they perform to a higher standard. The implication of this concern is that human rights groups should not confuse legal and political standards.

But members of human rights organizations noted the value of public pressure in affecting types of restrictions that politicians feel compelled to impose on their national use of military power. One participant suggested that NGO efforts to insist upon “pure” means, regardless of the moral legitimacy of the cause, might confront a harsh political reality in the war against terrorism. The public, she argued, believes that the justice of a cause directly affects the means that can be applied, and this may result in the overlooking of actions that might have been deplored in the context of a humanitarian intervention. Another human rights representative suggested that the net effect of existing law is to require a nation to “do its best,” and that it was to this single standard that U.S. operations should be held.

Other participants spoke of the importance of highlighting the obligations of defending forces. Human rights groups and the press tend to focus criticism on the actions of intervening

Western powers while ignoring the legal responsibilities of the defender with regard to collocation, clear identification of forces and facilities, etc. This further fuels the standards discrepancies and complicates the process of evaluating responsibility for civilian deaths.

Many in the human rights community and press shared their difficulties regarding how they could reach sound, independent judgments regarding military operations given the limited amount of information available to them. They noted the small numbers of NGOs dealing with IHL and NGO experts in military affairs. Military participants pointed out that the NGO community could bring former military experts into its fold to assist them in the process of understanding and evaluating military power. Human rights groups suggested that greater openness on the part of Western militaries would help improve understanding of their actions.

Several participants suggested that far more lives could be saved if NGOs devoted their efforts to inspiring less capable forces or irregular armed groups to uphold principles of international humanitarian law. The real problem, they stated, lies not in the margin of improvement in the application of Western military power, but rather the often purposeful or ignorant massive violations committed by many forces currently involved in conflicts.

METHODS OF EVALUATING FORCE

Evaluating the use of force requires knowledge of the intentions of the attacker, the results of an attack, actions of a defender, and an understanding of the larger purposes of the operation. With regard to U.S. military intentions, the U.S. armed forces have developed tools to predict collateral damage from air strikes against fixed targets, but such a capability does not exist for emerging targets. In terms of battle damage assessment (BDA), the armed forces have long struggled to improve their ability to analyze the results of strikes and assess military effectiveness more generally. Both processes have significant implications for civilian suffering, and improving them is important for CDM.

*“The tools and models have improved,
but they are pernicious and they need a reality test.”*

Participants from the armed forces cautioned human rights groups against judging an attack as a mistake simply by virtue of the number of civilian casualties. As one military lawyer put it, “I’ve approved targets that could have caused some 3,000 civilian casualties, and I’ve raised questions about targets predicted to risk fewer than 20 civilian lives. The issue is the importance of the target.” However, these same individuals noted that the existence of predictive models tends to push political leaders to focus on the casualty number in the target folder, rather than the tough job of weighing the potential risks against possible benefits.

Several people pointed out that the models lack accuracy in part because they are not tested against actual battlefield data (because it is not collected systematically). One observer argued that the process is conservative in that it tends to overestimate potential damage. Since the Gulf War, however, the models have changed when and how civilian leaders become involved in the target approval process, fueling concerns about micromanagement. This observation seems to mirror the point that human rights representatives made about political and public expectations supplanting legal standards in judging warfare.

BDA has long been a notorious challenge. Participants noted the perennial difficulty of understanding the effects of a given strike. This has become more problematic given the increasing precision of modern weapons causing negligible damage that is visible from space. Yet the information vitally affects decisions about restriking a target.

Improving BDA lacks priority status within the DOD budget process. “The acquisition and operations communities are not on the same wavelength,” one participant said, “and we simply haven’t made the necessary investment.” Another participant echoed this, stating that the military tends to invest in platforms and pipes; it funds systems, not analysis. Some 90% of data related to attacks does not even get assessed, according to one military representative. A related challenge is the tendency for a theatre commander to rely upon satellite imagery at the expense of video, tactical and human intelligence.

Participants suggested the need to strengthen signals and human intelligence and expand tactical assets (perhaps using the Predator unmanned aerial vehicle as a BDA platform), and to boost intelligence, surveillance and reconnaissance management, integration and speed.

“We in the military are good at measuring inputs,” said one participant, “but not at assessing effects.” The challenge of accurate BDA is particularly acute in the context of modern Western campaigns that no longer seek traditional objectives such as the annihilation of enemy forces or capture of an enemy capital. Put simply, much of what American forces do today is seek to change enemy behavior through a more indirect or economical use of force. Such efforts, whether called coercion or effects-based operations, often rely upon assumptions and predictions about the effects of military actions. Rather than effects-based BDA, the process tends to result in bean counting.

Poor BDA makes it even more difficult to calibrate strategies and tactics because of the lack of reliable data about the effects of a strike or campaign. It is also worth noting that the absence of empirical information about how force can coerce or how an intended effect can be achieved poses important questions about how commanders or political leadership can craft effective strategies or weigh potential military objectives against predicted collateral damage.

LEARNING FROM MISTAKES

“If we thought that every bomb dropped would cause casualties, and prayed that it doesn’t, then we’d all feel more comfortable with ourselves.”

INVESTIGATIONS

Participants from the human rights community raised many questions about how to distinguish between negligence and a reasonable mistake when collateral damage does occur. A member of the armed forces suggested that the public needs a greater margin of appreciation for mistakes, and that political leaders should assume some responsibility in this regard. Some

human rights representatives argued that the military's implicit obligation to learn from its mistakes includes adjusting to changing moral or popular expectations, not just legal changes. They cited increasing concerns about the effects of environmental damage or CBU's as examples of changing standards to which the military should conform.

Both the U.S. military and the International Committee of the Red Cross (ICRC) conduct their investigations largely in secret. For the U.S., identifying and fixing problems is the paramount concern. Internal openness is considered essential for rapidly and accurately evaluating problems; the investigative process is classified in order to promote this openness. The ICRC seeks to change behavior of governments and armed groups by changing their internal incentives, and the ICRC does not want to jeopardize its neutral status or ability to engender trust by publicly releasing its findings. In both cases, these institutions believe that secrecy best serves their larger aims of promoting internal learning from mistakes.

The press and other human rights groups adopt a different approach. They question the value of secrecy and argue that greater openness would promote a broader process of education and better ensure that lessons actually were learned. At the same time, participants acknowledged examples in which political concerns had posed obstacles in their investigations.

Any international organization confronts entrenched national member interests. Governments may act both on the ground and at headquarters to block discovery of the truth, and institutional political imperatives may make a quick public accounting highly risky and controversial. Despite the nominal impartiality of international organizations, an international body comprised of nation states faces certain obstacles in seeking to conduct investigations.

Human rights organizations can face different sources of pressure. The interests of members and financial supporters of human rights groups may be at odds with a nuanced assessment of a given incident. As one participant explained, the idea that a military strike can result in civilian deaths but not constitute a legal violation "doesn't resonate particularly well with our constituents."

Several people noted that governments do not want their military actions to be investigated. The Geneva Convention Additional Protocol I established an investigative body to evaluate potential legal violations, but it has never been activated. The ICC appears to represent a departure from governmental reluctance to allow scrutiny of the use of force. However, as one foreign military representative noted, the ICC is designed only to deal with the most egregious international crimes, not the errant bomb, and therefore is not perceived as relevant to military actions by most Western nations.

Even so, representatives of the U.S. armed forces expressed great concern at outsiders second-guessing their actions. In retrospect, it is very easy to raise questions about decisions made in split seconds under life threatening circumstances, they said. Distinguishing between bad luck and error is necessarily a judgment call in their view. In addition, others pointed out, a criminalized framework for evaluating aspects of compliance with international humanitarian law may well make governments even less willing to provide public information, investigate internally, or admit mistakes.

Most agreed that virtually any investigation is a work in progress given the inherent challenges of determining intent, actions and effects. Human rights representatives recognized that their work is often inadequate, but argued that just getting something “out there” is valuable. Even a flawed report may prompt the responsible authorities to undertake their own investigations or lead to changes through political pressure.

Despite the inherent difficulties of the investigative process, many in the NGO community felt that their work is improving all the time, and more information appears to be reaching the public than was the case in past conflicts. Moreover, IHL language increasingly is recognized as essential to the work of UNHCR and other UN bodies. As the understanding of IHL increases, it was argued, so will the relevance of the law and the desire to see it upheld.

LESSONS LEARNED

“If there is a geometry of civilian deaths, we don’t do a very good job of understanding it.”

It was pointed out that more civilians died on a per capita basis in Operation Allied Force in Yugoslavia than died during Operation Desert Storm in Iraq despite improvements in technology and concerted efforts to avoid collateral damage. But the military has little empirical data that might help explain this counterintuitive result.

Several participants questioned the validity of the U.S. armed forces lessons learned process both generally and specifically as it pertains to collateral damage. Despite many overlapping processes and the dedication of significant resources, the lessons learned process is highly uneven in quality and responsiveness. Many in the security community noted that organizations tend to study what they have done well, or to select lessons learned through the lens of ongoing political battles or interservice rivalries. As one individual put it, in order to learn, you have to be willing to admit you’ve done something wrong, which does not come easily in these institutions. And some lessons are easier to learn than others: “We are good at learning on the tactical level,” said one military participant, “but not at the strategic-political level.”

“Lessons learned” implies that past errors are unlikely to be repeated. It was suggested that the process be re-titled lessons “identified” rather than lessons learned. Particularly with regard to preventing civilian casualties, some argued that the U.S. military has great difficulty learning from its mistakes. One observer recalled that during Operation Desert Storm, the daytime bombing of a bridge resulted in civilian deaths and led to restrictions that no bridges be attacked during daylight, on the weekends or on holidays. A decade later, the USAF bombed a bridge during daylight in Kosovo with similar effects, leading to the imposition of even more highly restrictive guidance: no bridges could be hit, period. The net result was dysfunctional, it was argued, and could have been prevented had the earlier lesson truly been learned.

Many military participants agreed that it is important to better understand the causes of collateral damage in order to correct strategies and tactics. The evolution of Air Force analytic

efforts indicates a change in the service's approach to evaluating collateral damage. It was pointed out that the Air Force's lessons learned analysis of the Gulf War (GWAPS survey) virtually ignored the topic of civilian casualties. One participant summarized learning about civilian deaths from the Gulf War as "we tried really hard to avoid collateral damage, we concluded that they didn't play fair, and we really didn't look any closer [at our own actions]."

In its report on the air war over Serbia, the Air Force at least incorporated information from a human rights group's collateral damage analysis. The Air Force lessons learned process currently examining Operation Enduring Freedom will include its own analysis of issues related to civilian casualties.

Several participants suggested that a wider learning process is needed, one that includes NGOs, allies, and political leaders, and covers more aspects of a given intervention. One expert suggested the creation of multidisciplinary, standing "lessons identified" teams, comprised of a network of cells, even international and multi-agency as appropriate, to provide ongoing support and to collect data for future analyses. He stressed the importance of managing the learning process in order that lesson identified become lessons learned. One participant noted that learning in informal settings or through unofficial gatherings tends to be the most productive, even within military circles, because it avoids locking participants into institutional positions or burdening them with organizational baggage.

OPENNESS AND INFORMATION

"In reality there are three wars: the war the military actually fights, the war the human rights groups would like it to fight, and the war that politicians claim is being fought."

War is alien to most Western publics. Representatives of the media described the challenges of trying to translate war to Western societies that lack a conception of war (other than peace operations or limited engagements), possess a poor understanding of history, and no longer have conscription or universal military service. There also is global resentment of the U.S. role in the world, and one participant contended that it is impossible to overstate the hostility even of educated Europeans. Many argued that accurate and comprehensive information is

therefore essential in the battle for foreign opinion, in addition to building domestic support. Members of the press stated that they need all the help they can get in helping an uninformed public understand military operations.

It was argued that the armed forces currently provide little information or even misleading information to the press, making it difficult for the press to educate the public. One participant cited Operation Allied Force, where airpower actually held out little hope of halting Serb aggression against Kosovar Albanians. Yet alliance public statements, including those from the NATO press office, proclaimed this as an objective of Allied Force, leaving a “a bad taste in the mouth.” While no one suggested that the military had purposeful lied, one person described DOD’s policies as exercising an “economy of truth.” It was suggested that spokespersons be involved in the targeting process, but the counterargument was offered that such integration risked undermining a spokesperson’s effectiveness.

“The information battlefield needs to be better prepared.”

There was a broad consensus among human rights and press representatives that governments, particularly political leaders, need to devote more time and attention to accurately describing political/military goals and setting public expectations at the outset of military intervention. Unless a strategy is plainly stated, it was argued, the legitimacy or necessity of an individual strike may well be misunderstood.

The difficulty of proving good intentions after the fact is not fully appreciated by Western militaries. Assuming your intentions will be accepted at face value “is the essence of thinking of ourselves as the good guys,” one participant said.

Part of preparing the battlefield, it was argued, includes getting out the story of the U.S. armed forces’ efforts to prevent collateral damage. One military representative asked how many air forces would wait to bomb a target late at night in order to minimize the possibility that flying glass shards would harm people, who would be tucked under the covers in their beds rather than

standing unprotected during the day -- even though the building with people was only in the vicinity of the target itself.

While some questioned whether editors would ever seek a story about the care exercised by the U.S. military, many believed that the story would make a difference in shaping public, particularly foreign, attitudes towards the West's conduct of military operations. Similarly, some argued that officially accounting for civilian deaths could have a similarly advantageous effect. One reporter noted that the U.S. all but ceded the public debate about deaths in Enduring Freedom to an academic who simply compiled estimates from foreign news reports. The inherently suspect analysis flowing from such a methodology nonetheless shaped international opinion about the war, the U.S. military and U.S. foreign policy. The costs of not engaging publicly on the issue of civilian deaths may be higher than appreciated at the political and strategic level.

"We shouldn't risk a misstatement to win an unwinnable war."

A member of the armed forces suggested that the war on terrorism might create an even more restrictive operational security requirement in the foreseeable future. Several participants questioned whether human rights groups or public opinion could ever be satisfied. They also noted the extreme difficulty of countering disinformation given the speed at which allegations can be made and the amount of work it takes to disprove them. The Coalition Information Center in OEF, created for this purpose, still could not work fast enough to make a difference. Fundamentally, there is a tension between good information and the time required to obtain it. One mistaken assertion is so costly to the military that it is reluctant to risk such a misstatement in response to press queries. The military, it was argued, has faith that over time the press and public will come to regard certain claims and sources as suspect.

THE POLITICIANS

Finally, the roles and responsibilities of political leaders surfaced repeatedly throughout the two days' discussions. Whether the issue was the costs of imposing constraints on force, the importance of strategy decisions in affecting civilian deaths, or the need to adjust public expectations about collateral damage, participants viewed the role of political leaders as an essential part of CDM. There appeared to be broad agreement that educating political leadership of Western nations about tradeoffs between strategy and tactics, causes of civilian deaths and other elements under discussion at the workshop would be a central requirement for ensuring the more responsible exercise of the use of force.

"It's easy to talk targets; it's tough to talk about strategy."

Military participants expressed frustration about the way airpower in particular had come to be viewed by civilian leadership. As they pointed out, many observers have developed an intuitive understanding of airpower. They recognize that airpower allows a nation to project lethal effects over extended ranges without projecting its vulnerabilities in the same ratio. However, politicians seem to expect airpower to succeed even in the absence of clearly defined objectives. Moreover, participants argued, political leaders act as though they can significantly constrain that power without altering its effectiveness.

"We need political leaders confident enough to provide thoughtful guidelines, walls to prevent catastrophic mistakes and a system that tolerates mistakes."

Sensitivity to collateral damage contributes to the political impetus that constrains military operations through strategy, ROE, and centralized execution. Military participants expressed concern about civilian micromanagement of air operations, in particular the extent of target vetting at the highest levels. One warned, "We are almost back to where we said we would

never be again after Vietnam.” Another participant saw little reason to expect this trend to change, absent another “disaster” that might reverse its direction.

Many military representatives expressed interest in further minimizing collateral damage because ensuring the safety of both one’s own forces and the civilian population are essential for conducting sustained military operations. Yet these individuals took issue with the centralized execution of military operations that they saw politicians as exerting in part to avoid harming civilians.

The difficulty of involving politicians in a reciprocal learning process was obvious, but participants expressed hope that there would be a way to incorporate political representatives into the project dialogue or educate them through other measures on these critical questions.

CONCLUSION

The discussion about collateral damage highlighted several unresolved issues that will continue to demand attention from those concerned with the U.S. use of force. One issue is the recurring debate about the legal, political, and moral standards that should be applied to the means of intervention. The definition of standards bears directly upon the concept of “mistake” or “crime”, the need and nature of an investigation, the assignment of responsibility for upholding standards, and the effectiveness of efforts to ensure that standards are upheld. It appears critically important that observers and operators distinguish clearly among the different types of standards applied to military operations, seek to bridge the chasms between the U.S. and foreign governments and between militaries and NGOs on interpretations of legal standards; and think clearly about the future direction of, and possible limitations on, efforts to raise standards.

Another important outstanding set of issues concerns assessing collateral damage during operations — not simply who bears this responsibility, but how the analysis is conducted and used. Military institutions, and specifically the U.S. military, have been reluctant to accept this as a mission essential task, in effect ceding the field to human rights organizations and individuals with varying degrees of expertise. Given the potential strategic implications of

collateral damage incidents, the armed forces appear to have an interest in gaining greater understanding of the causes of collateral damage. Yet they historically have failed to collect the necessary data. The human rights community, with a few exceptions, claims the right to criticize military operations without assuming a commensurate obligation to acquire military expertise. Both communities have opportunities to increase their understanding of collateral damage during military intervention.

Finally, the workshop suggested the need for greater understanding, particularly among political leaders, of the possibilities and limitations of the use of force. The recent American practice of relying predominantly upon airpower to achieve military objectives, but simultaneously constraining its use, creates significant tensions from a military perspective. Strategic decisions about military intervention may have enormous bearing on civilian suffering. But this reality is often overlooked as political leaders focus on targeting or weapons choice in an attempt to minimize collateral damage. Government leaders need to become better educated about military power and collateral damage in order to be able to provide sound guidance for military operations.

Appendix 1 – Workshop Agenda

UNDERSTANDING COLLATERAL DAMAGE WORKSHOP AGENDA

Tuesday, June 4

Welcome and Introductions: 9:00 - 9:15
Michael Ignatieff and **Sarah Sewall**, Carr Center

Assessing Collateral Damage in Afghanistan: A Report from the Field 9:15 - 11:45

Presenter: **William Arkin**, SAIS

Respondents: Col. **Fred Wieners** (Enduring Look Task Force); **Michael Ignatieff**, Carr Center;
Karl Mueller (RAND); **John Donnelly** (*Boston Globe*)

Lunch 11:45 - 1:00

Collateral Damage: Standards in Operations and the Law 1:00 - 3:00

Who or what defines the standards? What is proportional damage? How does it influence U.S. military planning? How is/might the standard change (technology, red adapts and exploits, public scrutiny, war on terrorism)?

Panel: **Victor Rostow**; **Dinah PoKempner** (Human Rights Watch); Capt. **William Boothby** (United Kingdom); Lt. Col. **Tony Montgomery** (SOCOM); **Ken Anderson** (American University) Moderator: **Dana Priest** (*Washington Post*)

Investigations of Military Incidents 3:15 - 5:15

What prompts an investigation? How is it carried out? What constitutes an avoidable error and what is bad luck? When and why are specific operational changes made? When and why is a “case closed”? What roles do or should the press and human rights groups play?

Panel: **Claudio Cordone**, (Amnesty International); Lt. Col. **Tony Montgomery** (SOCOM); Maj. Gen. **Frank Van Kappen** (retired) (Netherlands); **Daniel Helle**, (ICRC) Moderator: **Roy Gutman** (*Newsweek*)

Reception/Dinner 6:00/7:00 – 9:30

Speaker: Gen. Charles A. Horner, (Ret) USAF
Brookings Institution, Zilkha Lounge, 1775 Massachusetts Ave., NW

Appendix 1 – Workshop Agenda

UNDERSTANDING COLLATERAL DAMAGE WORKSHOP AGENDA

Wednesday, June 5

Battle Damage Assessment and Collateral Damage Modeling 8: 30 – 10:45

BDA as part of combat assessment. Humanitarian Implications. How BDA occurs now. Limitations of process. Relationship to collateral damage modeling for target selection. How can capabilities be improved? Would it be possible to develop shared methodologies with human rights groups?

Panel: Maj. Gen. **John Casciano** (Ret) (SAIC); **Patrick Ball** (AAAS); Col. **Gary Crowder** (ACC); **Pat Pentland** (SAIC) Moderator: **Phillip Meilinger** (SAIC)

The Military Learning Process: 11:00 – 1:15

How do the US armed forces learn from operational experience? What questions don't get asked? How are systemic improvements (training, doctrine, ROE, TTP) implemented? What would the perfect learning process look like? What are barriers to these changes?

Panel: **Williamson Murray**, (IDA); **Thomas Keaney** (SAIS); **Robert Johnston** (SAIC); **Adam Siegel** (Northrup Grumman) Moderator: Gen. **Charles Horner** (Ret)

Working Lunch 12:15 – 1:15

Balancing Openness and Operational Security 1:30 - 3:45

What are DOD's obligations to track and to share information about operations and potential collateral damage? How do political and security concerns overlap? What are the implications for democratic and legal accountability?

Panel: **Carla Robbins** (*Wall Street Journal*); **Jonathan Marcus** (BBC); Rear Admiral **Steve Pietropaoli** (Navy Public Affairs); **Lucinda Fleeson** (*American Journalism Review*)
Moderator: **Kenneth Bacon** (Refugees International)

Wrap Up 3:45 - 4:00

Appendix 2 – Participant Biographies

UNDERSTANDING COLLATERAL DAMAGE

Kenneth Anderson

Kenneth Anderson is Professor of Law at American University's Washington College of Law, specializing in international human rights and humanitarian law. He served previously as Director of Human Rights Watch's Arms Division and on the General Counsel of the Open Society Institute-Soros Foundation. Currently he serves on the board of advisors for Human Rights Watch's Arms Division and the Landmines Project of the Open Society Institute. He served as legal editor of *Crimes of War*.

Matt Anderson

Matt Anderson is the senior collateral damage analyst on Task Force Enduring Look, which examines lessons learned from operations NOBLE EAGLE and ENDURING FREEDOM.

William M. Arkin

William M. Arkin is a Senior Fellow at the School of Advanced International Studies at John Hopkins University and Senior Military Adviser to Human Rights Watch. He is a correspondent and columnist for *The Washington Post* and *The Los Angeles Times* and is a military analyst for NBC. He is also an Adjunct Professor at the U.S. Air Force's School of Advanced Airpower Studies. Arkin has investigated the effects of warfare on civilian populations and pioneered the methods of post-war bomb damage assessments and environmental assessments, starting with the Gulf War in 1991. He has written extensively on targeting, weapons technology, and civilian casualties in warfare.

Kenneth H. Bacon

Kenneth H. Bacon is the President and CEO of Refugees International. In the Clinton Administration, he served as the Assistant Secretary of Defense for Public Affairs and as the Pentagon spokesman. Previously, . Bacon spent 25 years at *The Wall Street Journal* as a reporter, editor and columnist.

Appendix 2 – Participant Biographies

Patrick Ball

Patrick Ball is Deputy Director of the Science and Human Rights Program at the American Association for the Advancement of Science. Since 1991, he has designed information management systems and conducted quantitative analysis for large-scale human rights data projects for truth commissions, non-governmental organizations, tribunals and United Nations missions in El Salvador, Ethiopia, Guatemala, Haiti, South Africa, and Kosovo.

Capt. William Boothby

Capt. William Boothby works as Assistant Director, Legal at the UK Joint Doctrine and Concepts Centre, Shrivenham, and as Group Captain of Legal London. He is also Group Captain in the Royal Air Force Legal Branch where he has been an officer since 1981. He has served in the UK, Germany, Cyprus, Hong Kong, and Croatia. His areas of legal focus include international law, weapons law, CCW issues, future law, and evolving doctrine and concepts.

Reuben E. Brigety, II

Reuben E. Brigety, II is a researcher in the Arms Division of Human Rights Watch. His research areas include civilian protection in warfare and the use and development of inhumane weapons. A former U.S. naval officer, Brigety is a 1995 Distinguished Graduate from the U.S. Naval Academy, and he holds graduate degrees in international relations from Cambridge University, England. He has recently returned from a month-long mission to Afghanistan for HRW to assess reports of civilian casualties in Operation ENDURING FREEDOM.

Holly Burkhalter

Holly Burkhalter is the Advocacy Director of Physicians for Human Rights and formerly coordinated the U.S. Campaign to Ban Landmines. Previously, Burkhalter served as the Advocacy Director of Human Rights Watch in Washington, DC and as a staff member of the House Foreign Affairs Subcommittee on Human Rights and International Organizations. She is a member of the Council on Foreign Relations and a board member of the U.S. Institute for Peace.

Appendix 2 – Participant Biographies

Maj. Gen. John Casciano, (Ret) USAF

Maj. Gen. John P. Casciano, (Ret) USAF, is Senior Vice President and Group Manager for the Secure Business Solutions Group, Science Applications International Corporation (SAIC). Prior to joining SAIC in April 2001, he was Senior Vice President, Enterprise Security Strategic Business Unit, for Litton-TASC. Maj. Gen. Casciano was formerly the US Air Force's Senior Intelligence Official and the proponent for intelligence, surveillance, reconnaissance, and information warfare.

Claudio Cordone

Claudio Cordone is Director of the Research and Mandate Program at the International Secretariat of Amnesty International (AI) in London. From 1997-1998, he served as Chief of the Human Rights Office of the U.N. Mission in Bosnia and Herzegovina, taking charge of conducting human rights investigations as part of the UN program of police reform. Most recently he coordinated AI's policy with regard to the Israeli/Palestinian conflict, the aftermath of the September 11th attacks and the conflict in Afghanistan. He co-authored "NATO on Trial" with Avner Gidron.

Conrad C. Crane

Conrad C. Crane is Research Professor of Military Strategy at the U.S. Army War College's Strategic Studies Institute (SSI). Dr. Crane served for 26 years in the military and concluded his career as Professor of History at the U.S. Military Academy. He has published articles on military issues in such journals as *The Journal of Strategic Studies*, *The Journal of Military History*, *The Historian*, and *Aerospace Historian*, as well as in a number of collections and reference books. His most recent SSI studies include: *Alternative National Military Strategies*, published in December, 2000, and *Landpower and Crises: Army Roles and Missions in Smaller-Scale Contingencies During the 1990s*, published in January, 2001.

Col. Gary Crowder, USAF

Col. Gary Crowder is Chief of Strategy in the Concepts and Doctrine Division of the US Air Force. He has been involved in planning or executing Operations ALLIED FORCE and ENDURING FREEDOM and served as the lead Air Force planner on Operation DESERT FOX with overall responsibility for both target selection and manner of attack. Crowder served as Deputy Director of Operations in the Combined Air Operations Center in Vicenza for the planning and execution of ALLIED FORCE and authored the commander's Special Instructions on rules of engagement.

Appendix 2 – Participant Biographies

Edward Cummings

Edward Cummings is the Assistant Legal Adviser for Non-Proliferation in the Office of the Legal Adviser of the Department of State and a career member of the Senior Executive Service. He joined the State Department in 1979 after serving in the Office of the Judge Advocate General of the U.S. Army at the Pentagon. He is currently the Head of the U.S. Delegation to the Conventional Weapons Review Conference and has participated in many humanitarian law negotiations since 1977. He served previously as the Counselor for Legal Affairs at the U.S. Mission in Geneva (1995-2000) and as the Assistant Legal Adviser for Politico-Military Affairs (1987-1995).

W. Harvey Dalton

William Harvey Dalton serves as the Associate Deputy General Counsel (Intelligence) in the Office of General Counsel in the Department of Defense. He received his LLB from the University of North Carolina - Chapel Hill in 1965 and his LLM from the University of Miami in Ocean Law in 1973. He is a retired officer and has specialized in international and operational law throughout his 30-year Navy career.

Bonnie Docherty

Bonnie Docherty is the Schell Fellow in the Arms Division of Human Rights Watch. She recently completed a bomb damage assessment mission to Afghanistan as part of a three-person Human Rights Watch team. She received her J.D. from Harvard Law School in 2001 and her A.B. from Harvard University in 1994. Before law school, she worked as a journalist for three years.

John Donnelly

John Donnelly covers foreign affairs for *The Boston Globe*, based in the newspaper's Washington bureau. He has traveled four times to Afghanistan, three of the trips since November 2001, and has written extensively about civilian casualties during the fighting. For the *Globe*, a major focus of his work has been in global health issues. Prior to working at the *Globe*, he was Middle East correspondent for the *Miami Herald*.

Appendix 2 – Participant Biographies

Col. Tom Ehrhard, USAF

Tom Ehrhard is an active duty colonel in the United States Air Force. He's currently the Professor of Strategy and Policy at the Air Force's School of Advanced Airpower Studies where he teaches courses on contemporary defense policy and military technology and innovation. He recently served as the Strategy Division chief in the Air Operations Center at Prince Sultan Air Base, Saudi Arabia during the first several months of Operation Enduring Freedom in Afghanistan. Prior to that, he worked in the Pentagon and in various headquarters and unit assignments as a space and missile operator. He earned his Ph.D. in International Relations from The Johns Hopkins University.

William Fenrick

William Fenrick is the Senior Legal Adviser in the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia since 1994. He is also the Senior International Lawyer and Law of War Adviser to the Prosecutor. Fenrick was the main author of the June 2000 NATO Bombing Study. From 1992-1994, Fenrick was a member of the Commission of Experts appointed by the UN Secretary General to examine allegations of war crimes in the former Yugoslavia. Fenrick is a former Canadian Military Lawyer who served as Director of Law for International Law and Operations and Training.

Lucinda Fleeson

Lucinda Fleeson is a contributing writer to the *American Journalism Review* and former reporter for *The Philadelphia Inquirer*. She recently wrote about media coverage of civilian casualties in Afghanistan, as well as the Wen Ho Lee case. She is the Curator for the Hubert H. Humphrey Fellowship Program, which brings international journalists to the College of Journalism at the University of Maryland.

Lt. Gen. Robert G. Gard, Jr. (Ret.) USA

Lt. Gen. Robert G. Gard, Jr. is a military advisor to the Vietnam Veterans of America Foundation and Chief Operating Officer of Sage Solutions. He is also a consultant on education and international security matters. In the past, he served as President, Monterey Institute of International Studies and as Director, Bologna Center, School of Advanced International Studies at Johns Hopkins University. He is the author of *The New World Order* (1999), as well as articles in journals including *Foreign Affairs*, *Adelphi Papers*, *Rutgers Camden Law Journal*, *Naval War College Review*, and *Perspectives in Defense Management*. He is also a regular contributor to *The Washington Post* and *The Los Angeles Times*.

Appendix 2 – Participant Biographies

John Georgiou

John Georgiou is an analyst on Task Force Enduring Look, which examines lessons learned from operations NOBLE EAGLE and ENDURING FREEDOM.

Avner Gidron

Avner Gidron is Senior Policy Adviser at the Research and Mandate Program of Amnesty International. He previously served as a consultant for Human Rights Watch and as Research Director of the Committee to Protect Journalists. Recently, he has been working on Amnesty International’s policy on the armed conflict in Afghanistan and the status of prisoners held by the US in Guantanamo Bay. He authored Amnesty International’s report “Collateral Damage” and co-authored “NATO on Trial” with Claudio Cordone.

Michelle Greene

Michelle Greene is the Executive Director of the Carr Center for Human Rights Policy. Prior to joining the Center, Greene was a consultant to Harvard University. She previously served in the government, as a Special Assistant United States Attorney for the U.S. Attorney's Office for the District of Columbia and as a Senior Policy Advisor at the U.S. Department of the Treasury from 1998-2001. Before joining the Clinton Administration, she worked as a management consultant with McKinsey & Co., Inc. in New York City and as a corporate attorney with a law firm in Washington, D.C.

Roy Gutman

Roy Gutman is a *Newsweek* Defense Correspondent in the Washington Bureau, and was previously a Foreign Correspondent for *Newsday's*. He is a Pulitzer Prize winner for international journalism, author of *A Witness to Genocide*, and founder of The War Crimes Project. He also edited the unique journalists’ handbook, *The Crimes of War*.

Appendix 2 – Participant Biographies

Col. Carol Hattrup, USAF

Col. Carol Hattrup is the Chief of International and Operations Law for the U.S. Air Force at the Pentagon. She served as Deputy Legal Counsel to the Chairman of the Joint Chiefs of Staff from 1991 to 1993; as a Staff Judge Advocate to a Fighter Wing Commander in South Korea in 1994; and as a Staff Judge Advocate to the Air Force Composite Wing Commander in Saudi Arabia in November 1996 following the Khobar Towers Bombing and deployment of US forces to Prince Sultan Air Base. Most recently, she served as Chief of International and Operations Law for the Air Force's Pacific Command, based in Hawaii (1997-2000), and as an Appellate Judge on the Air Force Court of Criminal Appeals in 2001.

Lt. Col. Peter L. Hays, USAF

Lt. Col. Peter Hays is the Executive Editor of *Joint Forces Quarterly*, the professional journal of the Chairman of the Joint Chiefs of Staff. From 1998 to 2002, he served as Professor of Comparative Military Studies at the School of Advanced Airpower Studies (SAAS) at Maxwell AFB, Alabama, teaching Strategic Airpower and National Security, Air Mobility, Military Innovation, Space and Information Power, and Defense Policy and Future Security. He is a contributing coeditor of three books: *American Defense Policy* (Johns Hopkins, 1997); *Countering the Spacepower for a New Millennium* (McGraw-Hill, 1998); and *Spacepower for a New Millennium* (McGraw-Hill, 2000).

Daniel Helle

Daniel Helle is a Legal Adviser for the International Committee of the Red Cross at its headquarters in Geneva. He also serves as the Deputy Head and Legal Advisor of the IRC's delegation to the United Nations in New York. Previously, Helle served as Associate Expert at the UN Center for Human Rights and the Office of the High Commissioner and as Legal Adviser for the Norwegian Institute for Human Rights in Oslo.

Gen. Charles A. Horner, USAF (Ret)

Gen. Charles A. Horner retired from the United States Air Force while serving as the Commander in Chief of the North American Aerospace Defense Command and the United States Space Command, and Commander of Air Force Space Command. During his career he led tactical fighter wings, air divisions, and the Air Defense Weapons Center prior to being assigned to command at Unified Space Command/NORAD. Gen. Horner was also commander of United States Central Command Air Forces. During Operations DESERT SHIELD and DESERT STORM, he was in command of all U.S. and allied air assets.

Appendix 2 – Participant Biographies

Michael Ignatieff

Michael Ignatieff is Director of the Carr Center for Human Rights Policy and Carr Professor of Human Rights Practice at Harvard University. He has researched ethnic war in Serbia, Croatia, Bosnia, Rwanda, and Afghanistan. Ignatieff's recent work combines eyewitness accounts of modern war with an historian's insight into human conflict. He is the author of *Virtual War: Kosovo and Beyond* (Metropolitan Books, 2000).

Robert M. Johnston

Robert M. Johnston is a Program Manager and Senior Analyst in the Decision Support Systems Division within the Space and Defense Group of the Science Applications International Corporation. Currently, Johnston is the Program Manager of Task Force Enduring Look, for Air Force-wide data collection and reporting on the air campaign against terrorism and on efforts to provide humanitarian relief to the Afghani people. Previously, Johnston served in the U.S. Air Force as Director of the Airpower Research Institute and as a Chief of Staff to the Pacific Air Forces.

Thomas A. Keaney

Thomas A. Keaney is the Executive Director of the Foreign Policy Institute and Senior Adjunct Professor of Strategic Studies at SAIS. Previously, he was Professor of Military Strategy at National War College, Washington DC, and Director of its core courses on Military Thought and Strategy. From 1991 to 1992 he was a researcher and author with the Gulf War Air Power Survey, where he co-authored two reports: *The Summary Report* and *The Effects and Effectiveness of Air Power* (both published by the U.S. Government Printing Office in 1993). His most recent publications include: *Revolution in Warfare? Air Power in the Persian Gulf*, 1995 (with Eliot A. Cohen), *US Allies in a Changing World*, 2000 and *Armed Forces in the Middle East: Politics and Strategy*, 2002 (ed. with Barry Rubin).

Richard King

Richard King is a Senior Manager at Whitney, Bradley & Brown, a Vienna, Virginia-based consulting firm. A former Air Force officer, he has experience in fighter operations, air campaign planning, and munitions effects. He was a member of the Secretary of Defense's Conduct of the Gulf War Report team and The Gulf War Air Power Survey (GWAPS). King is the author of "The Case for Strategic Attack."

Appendix 2 – Participant Biographies

Jonathan Marcus

Jonathan Marcus became the BBC World Service's Defence Correspondent on the eve of the Gulf War. He has reported on international security issues for the BBC from the Gulf, from elsewhere in the Middle East, and from Bosnia, Kosovo, Eastern and Central Europe and the United States. He also serves as the World Service's in-house commentator on U.S. affairs. He has written widely on European politics and security issues for such publications as: *The Washington Quarterly*; *International Affairs*; and *The World Today*. He contributed a chapter on "Fighting an Unending War" to the BBC's recently published *The Day That Shook The World*, an analysis of the significance and aftermath of the events of September 11th.

Phillip S. Meilinger

Phillip S. Meilinger is a retired Air Force officer and Deputy Director of the AEROSPACENTER at Science Applications International Corporation. During his thirty-year military career he served as a pilot, staff officer and educator. He flew C-130 and HC130 aircraft in Europe and the Pacific, was a staff officer in the Pentagon during the Persian Gulf War, and taught at the Air Force Academy's School of Advanced Airpower Studies and the Naval War College. He has a Ph.D. in military history from the University of Michigan, and has written extensively on military affairs. Col. Meilinger's publications include four books and over 40 articles; his latest work is *Airwar: Essays on Its Theory and Practice*, which is due out in Spring of 2002.

Lt. Col. Tony Montgomery, USAF

Lt. Col. Montgomery is the Deputy Staff Judge Advocate for United States Special Operations Command. Previous positions include Deputy Legal Advisor for United States European Command, Chief of Operational and International Law of Air Combat Command, and Staff Judge Advocate to the Joint Task Force in Southwest Asia for Operation Southern Watch. His experiences include providing legal support (Rules of Engagement, targeting, fiscal law, Law of War) for Operations SOUTHERN WATCH, DESERT STRIKE, NORTHERN WATCH (1998-2001), and ALLIED FORCE (2000). He has been a guest lecturer on Rules of Engagement, Targeting, Operational Fiscal Law and Laws of War at the NATO School, Army Judge Advocate School, and Navy War College.

Appendix 2 – Participant Biographies

Karl Mueller

Karl Mueller is a political scientist and defense policy analyst at RAND in Arlington, Virginia. From 1994 to 2001, he taught international relations and airpower strategy at the School of Advanced Airpower Studies (SAAS), the USAF's graduate school for future strategists. He has written and lectured on a wide variety of national security topics, including the coercive use of military force, economic sanctions, nuclear strategy, the role of air power in future conflict, and moral considerations in U.S. foreign policy. He is currently working on projects dealing with space weaponization, counter-terrorism strategies, and the security policies of small and middle powers.

Williamson Murray

Williamson Murray is a senior fellow at the Institute for Defense Analyses in Arlington, VA. After service in the US Air Force he taught at Ohio State University. In 1998-99 he was the Harold K. Johnson Professor of Military History at the Army War College. His most recent book, with Allan R. Millett, is *A War to Be Won, Fighting the Second World War* (Belknap Press of Harvard University Press, 2000).

Maj. Gen. William Nash, USA (Ret)

Maj. Gen. William Nash is Director of the Center for Preventative Action and Senior Fellow at the Council on Foreign Relations. He formerly commanded Task Force Eagle in Bosnia, a multinational division supporting the Dayton Peace Accords, and served as a UN administrator in Mitrovica, Kosovo.

Pat Allen Pentland

Pat Allen Pentland is Senior National Security Analyst and Associate Director of the Aerospace Center with the Strategies Group of Science Applications International Corporation (SAIC). He is currently a study member of Task Force Enduring Look (TFEL), which is the Air Force's official effort to document and capture the story and lessons learned from Operation ENDURING FREEDOM. Dr. Pentland is the lead analyst for the Afghanistan phase of operations. Dr. Pentland previously served as the Study Group Coordinator for the U.S. Commission on National Security/21st Century USCNS/21. Prior to becoming a civilian analyst, Dr. Pentland served for 21 years in the USAF, retiring as a Colonel. His career included participating in Operations DESERT STORM, PROVIDE COMFORT, and SOUTHERN WATCH.

Appendix 2 – Participant Biographies

Rear Admiral Stephen R. Pietropaoli, USN

Rear Admiral Stephen Pietropaoli has been the Navy's Chief of Information since August 2000, and formerly served as special assistant for public affairs to the Chairman of the Joint Chiefs of Staff. A specialist in Navy public affairs since 1984, Rear Admiral Pietropaoli has served multiple tours in the Atlantic and Mediterranean Seas, spent three years on the Navy's national news desk in the Pentagon, and taught at the Naval Reserve Officer Training Corps at the University of Pennsylvania.

Dinah PoKempner

Dinah PoKempner is General Counsel for Human Rights Watch. She supervises advocacy on all matters of international law and policy for Human Rights Watch, including establishing international legal tribunals, setting international standards, drafting legislation, and legal reform initiatives in various countries. She has conducted field research on human rights in Cambodia, Hong Kong, Vietnam, China, and the former Yugoslavia.

Samantha Power

Samantha Power is a lecturer of Public Policy and the outgoing executive director of the Carr Center for Human Rights Policy. She is the author of "A Problem from Hell": America and the Age of Genocide (Basic Books, 2002), a history of U.S. responses to genocide in the twentieth century. From 1993-1996, Power covered the wars in the former Yugoslavia as a reporter for the *US News & World Report* and *The Economist*. In 1996 she worked for the International Crisis Group (ICG) as a political analyst.

Dana Priest

Dana Priest is a Journalist for *The Washington Post*, where she has worked for 14 years on a variety of beats, including a position as Assistant Foreign Editor. Since 1995, she has written about the U.S. military, first as the *Post's* Pentagon correspondent and now as an investigative reporter. Priest has written extensively about the nation's four regional commanders-in-chief, the Army's peacekeeping missions in Bosnia and Kosovo, women in the military, and the Defense Department's programs to rebuild the militaries of Central Europe. She was a guest scholar at the US Institute of Peace and a recent recipient of the MacArthur Foundation Research and Writing Grant. She is currently working on a book about the military's expanding influence over American foreign policy and its implications for civil-military relations.

Appendix 2 – Participant Biographies

Stephen Rickard

Stephen Rickard is the Director of the Nuremberg Legacy Project, which works to promote U.S. support for international justice. He has been Washington Director for Amnesty International USA and Director of the RFK Center for Human Rights. He has served as Senior Advisor for South Asian Affairs in the State Department, as Senior Foreign Policy Advisor to Senator Daniel Patrick Moynihan and as a Senior Professional Staff Member on the Senate Foreign Relations Committee.

Carla Robbins

Carla Robbins edits and writes about national security and diplomacy for *The Wall Street Journal*. Robbins has been at the *Journal* since 1993 and before that worked in Washington and Central America and covered the Gulf Crisis from Saudi Arabia for *US News & World Report*. Robbins is a graduate of Wellesley College, has a Ph.D. in political science from UC Berkeley and was a Nieman Fellow at Harvard. She is a co-winner of an Overseas Press Club Award and was a member of two Pulitzer prize-winning teams at the *Journal*.

Victor A.D. Rostow

Victor Rostow is a lawyer and scrivener in the Washington arena. He served in the Departments of Justice and Defense from 1982 to 1994. He was involved in negotiating the Conventional Forces in Europe Treaty, the Chemical Weapons Treaty, the Open Skies Treaty and in developing US policy on biological weapons. Between 1985 and 1988 he negotiated with German and British legal colleagues a written statement of common principles concerning the protection of noncombatants in international armed conflicts.

Sarah Sewall

Ms. Sarah Sewall is Adjunct Lecturer in Public Policy and Program Director at the Carr Center for Human Rights Policy at Harvard University. She served as Deputy Assistant Secretary of Defense for Peacekeeping and Humanitarian Assistance during the Clinton Administration and was Senior Foreign Policy Advisor to Senate Majority Leader George J. Mitchell.

Appendix 2 – Participant Biographies

Adam Siegel

Adam Siegel is a Senior Analyst in the Northrop Grumman Analysis Center, where he focuses on issues of naval and operations other than war issues. He joined Northrop Grumman after 15 years at the Center for Naval Analyses where his principal foci were on naval force involvement in contingency operations, and the relationships between policy issues and tactical realities. As a civilian analyst, he deployed with U.S. and allied forces in Operations Desert Storm/Shield, Uphold Democracy (Haiti), Joint Endeavor (Bosnia), and Allied Force/Allied Harbor (Kosovo 1999). He is widely published in European and U.S. journals, with many recent pieces focusing on issues of civil-military cooperation.

Ingrid Tamm

Ingrid Tamm is a program officer at the Carr Center for Human Rights Policy. She was previously a research assistant at Carr Center and the Carr Foundation. Tamm received her B.A. in History from the University of Chicago in 1994 and was a Fellow in the Department of History at Emory University from 1995-1997. She is the author of the Carr Center/World Peace Foundation report, "Diamonds in Peace and War: Severing the Conflict-Diamond Connection" (2002).

Maj. Gen. Franklin E. van Kappen (Ret.)

Major General van Kappen is policy adviser for a variety of national and international institutions. He also lectures internationally as an expert on security issues. While serving as Major-General in the Royal Netherlands Marine Corp, van Kappen also served as the Military Adviser to the Secretary General of the U.N. and as Director, Planning Division in the Department of Peacekeeping Operations at U.N. headquarters in New York, where he managed several peacekeeping operations. He is author of the *UN Report on Israel's Bombing of the United Nations Compound at Qana, Lebanon* (1996).

Col. Frederick L. Wieners, USAF

Colonel Frederick Wieners is the Deputy Director of Task Force Enduring Look, a CSAF initiative to "support the warfighter, tell the Air Force story and recognize lessons learned during and at the conclusion of operations NOBLE EAGLE and ENDURING FREEDOM." Col. Wieners has served as an instructor pilot in three different combat aircraft, as a staff officer in the Office of the Secretary of Defense and on the Joint Staff in the Pentagon, as a Professor of Military Strategy and Operations at the National War College, and as the deputy director of the DOD National Security Studies.



PROJECT ON THE MEANS OF INTERVENTION

SARAH SEWALL
PROGRAM DIRECTOR

The Project on the Means of Intervention, directed by Sarah Sewall, aims to advance our understanding of humanitarian challenges that arise in the context of using military force. The project is supported by the Carnegie Corporation of New York. This effort brings active and retired officers from the United States military and other security specialists together with members of the human rights and humanitarian communities in a series of workshops to explore how human rights considerations are factored into, and affected by, military intervention.

The way that military force is used receives far less attention in policy circles than does the question of when states should intervene militarily. Yet the means of military intervention have dramatic implications for the security of civilians in the target country, the security of intervening forces, and the effectiveness of the intervention itself.

To explore these issues, the Project is bringing together practitioners and experts, largely from the military and human rights communities, for a yearlong series of workshops. Some participants view military interventions as concerned with force protection and mission accomplishment at the expense of protecting vulnerable civilians in the target country. Others see humanitarian constraints, whether legal or political in nature, as unduly complicating the use of force and compromising its effectiveness. By bringing these perspectives together, the project hopes to illuminate a range of topics while exposing participants to competing views. A central question for this project is the degree to which moral and pragmatic interests may overlap in applying force consistent with humanitarian principles.

In 2001, a small group from the military and human rights communities gathered in Cambridge, MA to discuss concepts and project design. Later that year, a workshop was held in Washington, D.C. to survey humanitarian issues connected with the use of air power. In March 2002, the project held another workshop in Washington to discuss humanitarian concerns in the military targeting process. Conference reports and working papers are available from the Carr Center and on the Project's web page at www.ksg.harvard.edu/cchrp/PrjInterv.shtml

Through written products and a concluding conference, the project will capture substantive analysis and recommendations and bring them to a wider audience. The project aims to illuminate and dissect a set of issues that have become increasingly important during the last decade. It intends to foster more critical and nuanced thinking among participants, their associated institutions, and between the military and human rights communities both in the policy process and ultimately on the ground. Ultimately, the project aims to affect the way nations intervene militarily, making the use of military power more consistent with humanitarian principles.



THE CARR CENTER FOR HUMAN RIGHTS POLICY

MICHAEL IGNATIEFF
DIRECTOR

MICHELLE GREENE
EXECUTIVE DIRECTOR

The mission of the Carr Center, like the Kennedy School, is to train future leaders for careers in public service and to apply first-class research to the solution of public policy problems. Our research, teaching and writing are guided by a commitment to make human rights principles central to the formulation of good public policy in the United States and throughout the world.

Since its founding in 1999 through a gift from Kennedy School alumnus Greg Carr, the Center has developed a unique focus of expertise on the most dangerous and intractable human rights challenges of the new century, including genocide, mass atrocity, state failure and the ethics and politics of military intervention.

In approaching such challenges, we seek to lead public policy debate, to train human rights leaders and to partner with human rights organizations to help them respond to current and future challenges. We also recognize that the solutions to such problems must involve not only human rights actors, but governments, corporations, the military and others not traditionally conceived of as part of “human rights” efforts. Thus, we seek to expand the reach and relevance of human rights considerations to all who influence their outcomes.

The Center uses its *convening power* to create a safe space for human rights organizations and other policy actors to engage in constructive self-criticism and to forge new partnerships.

The Center uses its *research capacity* to evaluate the human rights policies of the United States and other governments and to analyze the dilemmas that need to be resolved when human rights principles are brought to bear on major public policy choices.

The Center uses its *teaching capacity* to inspire future leaders to make respect for human rights principles a central commitment of democratic leadership.

PROGRAMS

AMERICAN EXCEPTIONALISM

This colloquium series explores the unique nature of American rights culture and America's longstanding habit of exempting itself from international human rights obligations and international legal frameworks. Leading scholars from a variety of fields explore the origins and impact of "American Exceptionalism" in areas ranging from freedom of speech to economic and social rights. The series has produced a vibrant intellectual exchange among many of America's leading scholars in preparation for an edited volume on the causes and consequences of this exceptionalism, edited by Michael Ignatieff.

NATIONAL SECURITY AND HUMAN RIGHTS

With the support of the Carnegie Corporation of New York, the Carr Center's National Security and Human Rights Program has launched a project on military strategies for humanitarian intervention. This unprecedented initiative, led by Program Director Sarah Sewall, brings U.S. military officers and other security experts together with leaders in the human rights and humanitarian communities in a series of workshops exploring *how* humanitarian considerations are affected by, and factored into, military operations.

RESPONSES TO GENOCIDE AND MASS ATROCITIES

Publication of Samantha Power's groundbreaking book, "*A Problem from Hell*": *America and the Age of Genocide* (Basic Books, 2002), marked the culmination of the Carr Center's extensive

research project on U.S. policy responses to genocide in the 20th century. The Carr Center continues to explore legal, political, and military responses to mass atrocity through the program, and has hosted numerous speakers at the Kennedy School to analyze national and international mechanisms geared to curb atrocity.

NONGOVERNMENTAL ORGANIZATION (NGO) EFFECTIVENESS

The Carr Center's research into human rights nongovernmental organization effectiveness has led to facilitative efforts in conferences on topics from the role of human rights NGOs in reporting on the war in Kosovo to how human rights NGOs can increase their advocacy around the global AIDS crisis. Research has also led to critical analyses of human rights NGO work in publications by Carr Center faculty and staff.

THE SOCIAL PSYCHOLOGY OF CONFLICT ESCALATION

This program examines the application of social psychology of conflict to human rights policy. Led by Carr Center faculty affiliate Professor Keith Allred and sponsored by the Carr Foundation, the program's project on resolving the Nez Perce/local government conflict in Idaho applies conflict resolution research to a dispute between a tribal government and surrounding city and county governments.

COMPREHENSIVE SECURITY AND SUSTAINABLE DEVELOPMENT

This initiative, led by Professor Sanjeev Khagram, produces cutting-edge research, teaching, and practitioner engagement on the shift from a globalization model focused narrowly on national security and economic growth to one designed to achieve comprehensive security and sustainable development.

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