

Center for Strategic and International Studies

Online Event

“Improving Civilian Protection in Conflict”

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FEATURING:

Sarah Holewinski,

Washington Director, Human Rights Watch

Larry Lewis,

Director, Center for Autonomy and Artificial Intelligence, CAN

CSIS EXPERTS:

Jacob Kurtzer,

Director and Senior Fellow, Humanitarian Agenda, CSIS

*Transcript By
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Jacob Kurtzer:

Good afternoon. I'm Jay Kurtzer, Director and Senior Fellow of the Humanitarian Agenda at the Center for Strategic and International Studies. On behalf of CSIS, welcome and thank you for joining us today. I'd like to remind everyone that you can submit questions for panelists through the event registration page and that the event today will be posted online in its entirety about twenty-four hours after we finish.

Today's event is focused on improving civilian protection in armed conflict. We're at a unique moment. We're in the midst of a political transition with the Biden administration staffing up and establishing policies on incredibly important issues. We're also witnessing an increased public attention on the Authorization for the Use of Military Force, both as an effort by Congress to reassert its prerogatives and war powers, and also as part of a narrative shift in the United States about a shift from a counterterrorism-focused lens towards our foreign policy and national security, and one that sees competition with China and Russia as a paramount strategic objective.

We're also 20 years from the attacks of September 11th and thinking about the efforts and the ways that those counterterrorism operations have been carried out. Throughout the past two decades the United States has invested some time and effort towards minimizing civilian harm in military operations, but we still face significant challenges in improving civilian protection – from minimizing casualties to measuring the impact of our military operations to providing compensation for those casualties when they take place.

And so we're very grateful today to be joined by Sarah Holewinski and Larry Lewis to help us think through some of these questions with a focus on how we can improve this policy. Sarah Holewinski is the Washington director of Human Rights Watch and brings extensive experience leading global efforts to improve civilian protection. For nearly a decade she was the executive director of the Center for Civilians in Conflict, was recognized as one of the top 100 most influential people in armed violence reduction by Action on Armed Violence.

Larry Lewis, the vice – the director of the Center for Autonomy and Artificial Intelligence at the Center for Naval Analysis also has extensive experience in reducing civilian casualties, security assistance, counterterrorism, and identifying lessons learned from current operations. Larry has spent the last decade analyzing real world operations for DOD's Joint Lessons Learned Studies, was a lead analyst and author for the Joint Civilian Casualty Study, and author of "Lessons from a Decade of War" for the chairman of the Joint Chiefs of Staff.

Welcome to Sarah and Larry. We're grateful to have you here today. As we have discussed, today's event is one where you both approach this from an area of experience within government and from outside and are thinking about questions of policy and also as well from the analytic side of this

issue. You both looked closely at the evidence, and so you come today I think from a place of interest and experience. And today is an opportunity to reflect on your experience and help our colleagues in the viewing audience understand what you've seen, so we can all work together towards a better future.

So I'd like to start by saying – by putting a question to you, Sarah and Larry. What hasn't happened over the past two decades when we think about civilian protection and armed conflict, and why? So, Sarah, maybe we can start with you.

Sarah Holewinski: Oh, good, because I was going to cut Larry off if he started before me. (Laughs.) I really – I've been wanting to answer this question. And this is – if you've seen the Just Security piece that I put out, and then Larry followed with a great in-depth piece after that, this is a question that has been haunting me because, you know, Larry and I, we're on the outside. We're part of civil society. We were also a part of the U.S. government under Obama and under President Trump. And we've been working on these issues for such an extraordinarily long time – about 15 years now.

And so when I think about, you know, what have we accomplished, even just from a personal standpoint, I want to know that things have changed. And what is disappointing to me – I mean, I think Larry comes from a more hopeful standpoint, so hopefully he can lift everyone's spirits after I speak. But, you know, from my standpoint, if I think about when I got started in this work in 2005 what a civilian who experienced harm from the United States would have experienced, and would have experienced afterwards, and I think about that same thing now, I'm not entirely sure that a lot has changed.

I think, you know, their names would still not be – necessarily be listed anywhere for the U.S. government. They wouldn't receive compensation, most likely. The airstrike or munitions that hit them, you know, I think it is a slim chance that the procedures that were used have improved very much in the past 15 years. And, you know, there is still nobody within the Department of Defense that is specifically looking at civilian protection across the board and analyzing trends and looking at the data and making sure that lessons are learned and improving things.

So that is my incredibly bleak outlook on this issue. And yet, as I think Larry will tell you, it is so easy to fix. So, Larry, go ahead. Make everyone feel a little better.

Larry Lewis: Well, I don't know if I'll make people feel better because in some ways it's more depressing because I think in the last 20 years – I mean, this is a great time to reflect, right? Twenty years after 9/11. We've been working on, you know, lots of different challenges, including the civilian protection

challenge, for 20 years. And we can look back on what has gone well and what has not gone well.

And I think one thing we can really be pleased about is the potential that we've seen. Because we've had these moments in the last 20 years that have shown just incredible insights into how we can better protect civilians. We've had operational experiences that have shown this can be – this is true, OK? So – and it's not just about international law. It's also about policy and about military practice, and how when they're combined together in the right way and you frame the problem in the right way we can do really amazing things.

But the sad thing to me is this is – this is a lesson that we haven't learned. And it just slips through our fingers. And so what we – what we end up happening is you have these moments that are really promising, but then we kind of slip back into not doing what we could.

Jacob Kurtzer:

So maybe I could ask you – and just staying with you, Larry – what are some of those promising moments? And I think you both were a part of that. So what were – what were some of the – I don't think high points is the right word here – but what were the promising moments in terms of mitigation or analysis that we can look at and, like you say, learn the lessons from that moment and try to take forward? And if you can also speak to then what caused the regression from those moments of improved policy and practice?

Larry Lewis:

Sure. So I'll try to be brief because I could talk for hours just on the best practices that were developed. But I think overall there have been a few kind of aha moments. The first is that protecting civilians is not just about the law. So, you know, we need lawyers at the table because international humanitarian law or the law of armed conflict – I mean, that's the floor. That's the foundation. But there is so much more that can also be done. And there are very, you know, practical elements – both the policy and practice, you know, the involvement of guidance, the importance of how we plan an operation, and then the assessment piece.

So that is kind of – that has been a lesson that we've learned over the last 20 years. But I think the U.S. has seen this, right? And the international community hasn't quite grasped it yet. So if you look at the – you know, the annual U.N. reports on protection of civilians, it largely still focuses on IHO compliance. You look at other countries – and you can kind of talk about, you know, the U.S. as an example for leadership – opportunity for leadership. You know, a lot of these partners are still looking through the legal lens.

But one of the biggest lessons, I think, is that there are so many more things you can do besides compliance. And the problem has been this has been driven – this problem has been driven operationally. And so there's

pressure on operational forces to solve it as they're doing an operation. And in some cases, they've done tremendous jobs – I mean, really exemplary jobs. The problem is that those lessons indicated have not fed back into the institution the way that they should. And so you get kind of a short-term, you know, memory loss – (laughs) – and then we kind of start all over again

Sarah Holewinski: Yeah, Jake, I'll just feed into that. I mean, one of the big frustrations is that the lessons that we learn aren't institutionalized. So they seem to sort of come and then they go, and it's not something that is consistently prioritized within the U.S. military apparatus or within the U.S. government. So, you know, we have a government now that is basically designed around counterterrorism. Everything within the U.S. government is designed around counterterrorism. And yet civilian protection, the things that we have learned through counterterrorism operations, have not been embedded within that system.

So, you know, Larry and I were in Afghanistan a long time ago – 10 years ago, and then for years thereafter. And that's a really good example that we are always talking about. In that General McChrystal saw that there was a problem with civilian casualties, the headlines were everywhere, the Afghan people were very upset. You know, President Karzai was saying: We're going to kick the U.S. out unless you stop causing civilian casualties. And all of that pressure created new standard operating procedures, a tactical directive that said you are not going to fire unless you are being fired upon.

And basically, I mean, civilian casualties went down dramatically. And we've seen that every time a commander puts his or her focus on civilian casualties. But that does nothing to change the institution of the U.S. military. It does nothing to change the planning for the next conflict that we're going to get into. And so what you get next time is, you know, fingers crossed, that that next commander is going to look at civilian casualties or have enough of a problem that they will then need to improve operations.

And so what we're saying is: Let's fix this. Let's fix this once and for all. There are operational things we can do. There are tactical things that you can know about and then implement. And in terms of strategy, you know, if you're looking at an operational plan to go into China, or Korea, or wherever in the future, make sure you have incorporated everything that we've learned.

Jacob Kurtzer: Thanks. You know, in a – in a previous professional iteration I spent a lot of time listening to and learning from JAGs and other folks. And there was a constant refrain of: The U.S. military is one of the best learning institutions. And so what you're saying doesn't really jive with that because you're saying there were moments of learning – of lessons learned and lessons

applied, and then they faded away. And that's disheartening, especially given the subject matter.

And so, Sarah, you touched on something in your first comment which I want to come back to about someone in charge – you know, an individual tasked with civilian protection. Thinking about the U.S. government, you know, who should that be and where should they sit, and why? Is this someone in DOD or is this someone who has to sit outside of it? You know, what are – what are some ways we can think about that position for maximum impact in achieving the outcomes we want?

Sarah Holewinski: Yeah. I've thought about this a little bit. And I think, you know, there are a lot of different ways to do this. And in the past, there is an office within the Pentagon who has the remit for thinking about civilian protection. But they're not at a high enough level to actually change the whole institution. I went into the Joint Staff and was a senior advisor to the chairman of the Joint Staff on human rights and civilian protection. Once I left, the Joint Staff still doesn't have anyone that is focused on that, and who is reporting to the highest levels.

Congress required that there be a senior position that was focused on civilian casualties as part of his or her portfolio. The problem is it has always been given to somebody who doesn't actually have a background in civilian protection. And, you know, Larry can tell you that looking at – having focused on this issue as a scientist for the past decade, you need to understand the nitty-gritty of what this looks like on the ground. You need to understand what, you know, rates and risk and data and analysis can do. You need to understand how the U.S. military actually operates and what tactical directives and standard operating procedures can do.

So the point being: We need somebody senior within the Pentagon. both on the OSD side – that's Office of Secretary of Defense – and on the Joint Staff side, who knows what they're talking about and who has some expertise in this issue. And then, you know, I think basically we advocate with them, they go out and see what's happening, they understand how to get into the planning process. That's what we need. And the problem is, the Pentagon right now is thinking about how to reduce the number of assistant secretaries for defense. So, you know, is this issue going to get prioritized? I suspect not.

Jacob Kurtzer: Larry, do you want to add anything?

Larry Lewis: Yes, please. So two things. First of all, you know, your previous belief that the U.S. is a strong learning institution – I'd refer you to Theo Farrell. He's done extensive work on military learning and adaptation and innovation. And one thing he notes, both about the U.K. and the U.S., is that they are very strong adapting institutions in war, right? And you look at the history of U.S. operations over the last hundred years you see that, right? We're

really good at adapting things on the fly to succeed. There's a flipside to that, right? Because we're so good at that, it actually can undermine the institutional learning piece because it's, like, it doesn't really matter because when it counts, we'll be able to figure it out. So I think what we're saying is not contradictory to kind of looking at history.

On Sarah's point, I mean, I definitely agree. We need leadership, and we need informed leadership. So you know, I've seen over and over, you know, people that think they understand this. And I, you know, kind of want to quote Luke Skywalker from "The Last Jedi," you know, every word you said is wrong, in a more polite way. But there are many misunderstandings about civilian harm. People think that they understand it, but they often don't. We even saw – you know, so in Afghanistan General McNeill, he cared about civilian harm. But he misunderstood how it happened. And so the guidance that he put in place didn't fix the problem. And then General McKiernan, he cared about civilian harm but, again, he didn't understand it.

And so you have to combine both the will, the intent to fix things with the knowledge and the expertise, and what the problem actually is. And that's what worries me about the new administration. You know, the new administration, I think there's a lot of willingness to address these problems. But willingness is not sufficient. We've – you know, Sarah's paper talks about a number of different problems in civilian protection over the years. Many of those originated in the Obama administration. President Obama cared about this issue deeply, right? Like, look at counterterrorism. You know, there was a really strong policy on counterterrorism operations. The fact is, though, they didn't follow that with assessments to see if it actually worked. And so it's not enough to be the good guys. You know, we also have to do the work and make sure we're solving the right problems.

Jacob Kurtzer:

Larry, you mentioned Luke Skywalker. And this has stuck with me for so long, but there's a scene in the movie "Clerks" where these two New Jersey clerks have a really meaningful argument about the contractors on the Death Star and was it appropriate for them to blow it up because they were innocent bystanders. And I raise it because this issue, I think, for many people is either a question of military tactics or for lawyers to discuss. But that movie kind of indicated to me that actually people think about these questions in various different forms. And it's actually relevant in a lot of different ways. So thank you for bringing Luke into the conversation.

Now, we have a question. I read it as somewhat skeptical, but the questions suggests, you know, should the United States government be providing lawyers for civilians in combat zones? And, Larry, you've written and you've written and you've done the analysis on civilian harm. And so – and I think we have that capacity within our government to do these kinds of investigations. So can you talk me through a little bit how these investigations have happened, should happen, and what happens when

there is an investigation? And as one last auxiliary question for you and Sarah, what is the role for nongovernmental organizations in this official responsibility of the U.S. government, as a matter of law?

Larry Lewis:

So it's complicated. And even over the last 10 years we've seen a lot of change in the – in the – you can talk about investigations, but we're actually talking about different processes. So there's investigations – command directed investigations. Those were used in Afghanistan and elsewhere both for learning but also for accountability. Those are really intensive things to do. And so, you know, McChrystal and others, they said we're going to do a command-directed investigation for every civilian casualty allegation. You know, it's a really useful thing for learning, but it is really time intensive. And it also has some connotations of presumption of guilt that are not necessarily helpful.

So, you know, over time we've sort of – we've kind of been saying, you know, we need something else to use this to both assess, you know, the credibility of a potential incident, but also to learn. I think we've kind of moved in that direction in the first piece, the assessment piece, but not the second. So now we have something called CCARs, Civilian Casualty Assessment Report. And they are focused entirely on this question of, OK, did they happen or not? They're definitely not perfect. And I could go on and on about the problems that they have. But they're also – that leaves another piece, which is they're not sufficient for learning, right? They're really only laser-focused on this assessment question. So we have an assessment gap.

The second part of your question is, what is the role of NGOs? There is a common assumption, I think, within the military that when the military causes civilian harm they know it. But that's not what the data says. So you know, having done, you know, assessments for DOD – like, in Iraq and Syria we found that 58 percent of civilian harm that was ultimately acknowledged by the U.S. government didn't come from a U.S. military report. It came from an NGO or someone else coming forward with potential information that turned out to be true. So there is definitely a role, even in that kind of response piece, for NGOs. And we can also talk in depth about kind of the front piece as well.

Sarah Holewinski:

Which I think is what the U.S. military needs to recognize, is that, you know, NGOs are not force multipliers, as Colin Powell once said. Rather, they are sources of information when and if they want to be – which, of course, has to be respected. But one thing that the U.S. military has not really taken on board as much as it should, is that it needs to be going out and getting that sort of third-party information. It can be looking at social media. It can be talking with journalists. It can be doing witness interviews itself. But if it cannot for some reason, then there are NGOs that are talking with these victims. And the military should be getting that information.

Jacob Kurtzer: So we have a couple questions here again that I want to try to combine into one. And they're both thinking about other actors. And in the counterterrorism environment, there's this – you know, the by, with and through. We have a lot of partners that the United States has either trained, equipped, or worked – or, fought side-by-side with. And so, you know, one of the questions, I think, is how – you know, what the responsibility is and how we – how much we should be doing, or aren't doing, with respect to partner operations?

And a second question is – and, Larry, in your piece you talked about – and multiple times, I think, you mentioned that the United States, even with all its flaws, remains one of the best militaries in the world in terms of these issues. But how do we see these questions at NATO or with NATO allies being addressed? And is there anything we should be learning – so, you know, so we have the partner side. What should we do with that? And we have the can we learn from peers question? What are NATO allies doing or, you know, in European or other countries that seem to have integrated some of these questions into their doctrine and practice?

Sarah Holewinski: So I'll take – I'll take a piece of the partner side, which is that, you know, President Biden came in and said: Human rights is going to be central to our foreign policy. And for the most part, he has lived up to that so far. You know, we're a couple months in. But we're seeing quite a lot of that, including calling out both allies and adversaries on human rights abuses. Well, that has to translate to our partners in these military efforts too. And at one point in the counterterrorism fight against ISIS there were something like 73 counterterrorism partners. That is huge.

And that partnership includes – it includes training, it includes weapons, so equipping. It includes assisting. Sometimes it includes, you know, basically fighting shoulder-to-shoulder, as they would say, against terrorist groups. So all of that means that not only does the U.S. need to be really responsible in who it gives those training and equipping and assisting benefits to, but it also has to show through its own example how to do these – how to do these things.

And by "these things," I mean having a proper collateral damage estimate. Which often they do. It means having battle damage assessments that include civilian harm. It means conducting investigations in the way that Larry is saying. It means planning for your operation in a way that includes the civilian population on every single page of that planning document. So all of these things are – is the U.S. leading by example, which is exactly what President Biden said the United States should be doing.

Larry Lewis: So how do we do that in practice, right? How do we lead by example? And I think, you know, for two components. One is sort of the responsible arms sales and security cooperation thing. So I think there's a lot of attention on

we need more conditionality. And, you know, I agree, right? More conditionality. Civilian harm, human rights. But I think we can also flip this around and say, look, this should not just be a condition. This should be a goal. This is something that we can actually try to improve and not just say, oh, they went below the threshold and so we're going to stop it, right? But we can actually work with our partners to try to make them better at these things.

And we had a few cases where – you know, this is actually something – it's not easy, but it's something we can do. But if we don't make it a goal, then we're not even going to try. And then coalition partners are really struggling with this, right? So this is another opportunity for U.S. leadership. Even though – (laughs) – even though, you know, we're definitely – you know, we have troubled learning, right? But the lessons are there. So, you know, I just published another paper on New Zealand yesterday. So that's one example, on a case where New Zealand is really struggling, right?

And they tried their – they tried their best, but they just didn't know what they didn't know. And so what they ended up doing is sub-optimal. The Netherlands, they had – you know, they are struggling right now. They're wrestling, I should say. Wrestling with what to do after the incident in Mosul. The French just had their wedding strike, right? And what did they do? They deny it. And, you know, I don't know the facts, right?

But I'll tell you, I've seen – I've seen a number of wedding party strikes and other strikes where the U.S. military has misidentified noncombatants as what they believe to be lawful targets. And then they go through this predictable pattern of denying things without really looking objectively, right? That it's hard to cross that cognitive bias that they tend to have. And then NATO has a POC policy which everyone says is great. But I think – I already see three strikes against their policy.

First is, OK, how about acknowledging the civilian harm from Libya 10 years ago? You know, that would – you know, and then – and then Afghanistan. So there's a NATO – there's one NATO operation going on, and that's in Afghanistan, Resolute Support. Civilian harm rates have been going through the roof in the last few years. How does that jive with the NATO POC policy? And then, of course, you know, NATO POC policy is predicated on what the partners are going to do. And you know, we look at the French, we look at – again, I guess Netherlands are – they're a partner, right? But so I think there's a lot of room for leadership here that the world is waiting for.

Sarah Holewinski: And, Jake, I'm sure you have a question on the tip of your tongue. I just want to say really briefly, for those who have not followed this issue really closely, we are talking about very practical solutions. So what Larry was just talking about, don't knee-jerk deny that you have caused civilian harm.

Make sure that your public affairs office does not put out a statement that says we absolutely did not cause this, because you know that in a week you're going to have go back and say, well, there was some mitigating circumstances. Just don't do it. Just have a guideline that says: We are going to acknowledge that this strike happened and we're going to look into it.

Make sure that you are collecting as much data as possible and tracking it over time. It's remarkable to me – and this – I don't want our U.S. military friends to get – to get defensive about this. What we are saying is that you have learned a lot of lessons. We were part of this institution. We are frustrated with ourselves for this not getting done. But look at data over time and see if the rates are going up or down and see if you can correlate with what was happening in the operation, and if you can – if you can fix some of that.

So those are the types of things that we're talking about, where you could actually just make a list of, you know, boom, boom, boom, boom, boom. Here are particular solutions to these problems. And if you were to institutionalize these, then in the next operation you wouldn't see the same problems. And that's why we think that this is easy and why we are frustrated that it's not been fixed.

Jacob Kurtzer: Thanks. The passion and experience comes through.

I want – I want to ask – I want to turn shortly to thinking about the future in terms of the way that military planners and analysts think that we're headed. But there are a couple questions – so I want to just come back to this, either the role of NGOs and how they sit next to it. And there's another set of questions here about, you know, are there – are there tech solutions? Are there things that we can – are there tools available now that might not have been available in the past? Or is this really a policy question, and tech is a tool, but it requires – it requires the motivation and commitment to use it?

Larry Lewis: Can I take that one, Sarah? OK. So I'd say – one thing we've been working on over a period of time is there is no one solution, right? So it's not – it's not just we need a new policy and that'll solve it. Or there's not a new technology thing we need. What we need is a comprehensive solution. So there's really so much that can be done, you know, not just like at this tactical moment of engagement, but from the very beginning – you know, as we develop our mandate, as develop the capabilities we need, all the way to how we plan, and the tools, and the information that we have available to do that, and then tactical execution, and then we don't stop there, right? So then we have to figure out what actually happened versus what we think happened, and then there's kind of this learning process. And then that should be a learning loop. So we're doing this over and over and getting better and better over time.

Sarah Holewinski: Do you want us to – so you didn't – do you want to address the tech solutions? Are there – I mean, you're the AI guy.

Larry Lewis: OK, yeah, yeah. So, yes. Bottom line, yes, there is a lot that we can do. The U.S. has developed a lot of capabilities that are – that are useful. I will say, they are useful for this regard, but also they're not necessarily geared specifically for civilian protection. They are geared to help mission effectiveness and help, you know, enable execution of mission that otherwise we couldn't. So there's still a lot of room in things that could potentially strengthen civilian protection that we just haven't tapped into. And, you know, Sarah mentioned, you know, one of those things is AI and autonomous systems. And there's a lot of fear about those. But we're also looking at ways that we can kind of turn it around and actually use advanced, emerging technology to better protect civilians.

Sarah Holewinski: Yeah, and that's a really interesting sort of horizon issue that I would love civil society to get involved in, because we are so used to pushing back against things. And there are really scary prospects for AI that certainly we need to push back against. But I think, to Larry's point, you know, they can be used for good. And how can we think about flipping the frame so that we're actually using AI and other technologies to protect civilians.

But Jake, you know, to your point about future conflicts, we – our community has been thinking about this for a long time. Once we get into some sort of near-peer conflict or, I don't even know what we're calling it now, great competition with China. Let's say that we're – let's say that we've got a war between two major powers, the U.S. and China. You know, one thing that – Larry, you can tell me if I'm getting this right – but I loved this image of – so, three columns. You've got civilian protection. You've got – so these are basically three priorities for commanders. Civilian protection, force protection – so you don't want your guys and gals getting killed. And then mission effectiveness. Do actually do want to accomplish the mission.

And the way I think that so many people see those three things are in tension. They are, well, if you do civilian protection then force protection's going to down, and my mission effectiveness might be. It's actually that all three are connected. And if you improve operational effectiveness across the board, then you are protecting your forces. You are protecting civilians. And you are accomplishing your mission. So, Larry, did I get that right?

Larry Lewis: Yeah. I think that's – it's a really important point, right? Because – and I actually saw one of the comments was, are we going to address, you know, the risk to civilians, because ROE can endanger U.S. forces. That is something I hear a lot. I've actually done data analysis on it. And that belief actually doesn't hold up. So, you know, for example, there was one case in late 2009 where four Marines were killed. And they were denied air

support. And people said, look, this is McChrystal's restrictive ROE. You know, basically leading to the death of U.S. Marines – it was four Marines.

And that's what everyone remembers. But they did an investigation and that's actually not what happened at all. It had nothing to do with ROE. It had to do with an officer in the Tactical Operations Center basically saying: No, we're not going to send air support here we're going to send it there, because that's what our plan says. And this is a higher priority mission. And so he basically screwed up. But it had nothing to do with ROE.

And that's because in McChrystal's work and in all the stuff that we've done, we've always said, you know, we'll do the best to protect civilians, but nothing removes the inherent right of self-defense. And so that's how you kind of square that, right? All the things we're talking about doing, and there is so much that can be done, but that's not supposed to infringe upon the right of self-defense. So that's one piece of this.

A second piece that we've seen operationally is that when you – when you kill civilians it's often because there's a problem in your targeting process, right? So what we found operationally – and we actually have data and we have graphs and stuff to show it – is that when you – when you kill – when you kill fewer civilians you can actually improve mission effectiveness.

So you – so we actually have data – and I was working with special forces, where they have the best data. And we saw this. We saw, you know, less soldiers killed. We saw, you know, less civilians killed. And we saw the operational success rate going up. So this is a false dilemma or a false trilemma.

Sarah Holewinski: And so what I want to see is, you know, if you think about all of the different conflicts that the U.S. could get involved in in the future, and you consider that there are probably military planners who have been working on those for a long time. And if you think about, like, there's a shelf in the Pentagon with these binders that say: OPLAN, Operational Plan for China, Operational Plan for Russia. I want the Pentagon to go in, take those down, dust them off, and figure out how to get all of these lessons and the civilian population into every page of those operational plans. That's what I think needs to happen.

Jacob Kurtzer: So let me – let me take us to this question, because I do think it's in some ways the elephant of the public conversation. And three friends have now put it into our chat box. You know – (inaudible) – talks about there's the narrative that the peer-to-peer conflict should not be civilian centered. There's a comment from, you know, Mark Relasco (ph) about does the POC lessons that we've learned over 20 years change at a peer level fight, an Article 5 fight?

And then Marla Keenan has asked, you know, we talk about the importance of lawyers and the importance of people pushing – you know, pushing the policy internally within DOD and within government. But we also have this recently published article that essentially argued that the precision targeting warfare employed for the past 20 years wouldn't suffice in future peer-to-peer conflicts, and in some ways dismissive of humanitarian efforts to reduce civilian casualties, arguing that it would undermine our legal maneuvering.

And so how do you – how do you tackle those questions about – you know, you're talking about pulling it off the shelf and making it work. But you know, this is on everyone's minds – or, on a lot of people's minds. So how do you think about this shift in thinking that that's where we're headed, and carrying in some of the lessons that have been learned – maybe not as much as they should have been – to ensure those future conflicts still have this civilian protection emphasis, you know, as they get carried out, or hopefully not?

Larry Lewis: Sarah, do you mind if I start?

Sarah Holewinski: Go.

Larry Lewis: OK. So two things. I'm going to flip the order. So, first of all, you know, U.S. military lawyers have done incredible things over the last 20 years. I mean, you've kind of seen this evolution of thinking and really thinking deeply about some of the protection challenges. I've had, you know, the pleasure to work with many of them over the years, just – and really just really great. I also think we've been a little unfair to our lawyers because the lawyers are supposed to be advising. And oftentimes we will put them in a position where they're actually forced to make policy decision, right? Or de facto policy decisions, because there's no clear leadership.

And so that is something that we should change. And this goes back to, you know, in the new administration we need clear leadership that our incredibly insightful lawyers can support and inform. But let's not put them in a bad position where they're – you know, we advocate these policy decisions to lawyers, which they're not really supposed to be. So that's the first thing.

Second of all, I hear this a lot. You know, OK, we have these COIN lessons, but what about, you know, great-power competition and major war? So from my perspective, I actually started this journey looking at major war, right, looking at kind of major combat operations back in exercises and evaluations. Looking at fratricide, looking at combat ID. And that's where my work started. And these problems that we're talking about are there for anything – for all these different operations. They go across the board, because ultimately the U.S. is not as good as it thinks it is with combat

identification. And it really matters, right? This is the mission effectiveness view.

I think, you know, you can argue that maybe the strategic, you know, environment is going to be different. I think that's fair. But ultimately, if the U.S. wants to be as effective as it can, it's got to figure out these issues, you know, regardless of if it's urban operations or, you know, air defense in an austere environment, there's still going to be these problems, right? So it behooves it to take these things seriously regardless of the environment. And civilian casualties provides a kind of a window for learning that it can be more effective, regardless of how many civilians there are. So I think it's really to the U.S.'s advantage to say: This is a universal problem that we're going to take seriously in any kind of environment.

Sarah Holewinski: Yeah. The way that I hear how Larry talks about this, civilian casualties are actually a canary in a coal mine. I mean, what it tells you is that there is something – if you've got a bunch of civilian casualties it actually tells you that there is something not quite right about your operational effectiveness.

And so I think the question is not does every – you know, does civilian protection get thrown out the window when it comes to certain types of conflict. But rather, if you believe that civilian protection helps mission effectiveness, which helps, you know, force protection – if all three of those things are combined into one thing, that is how the U.S. military fights, then it doesn't matter what kind of conflict you go into. All of these things are mutually beneficial.

And we shouldn't forget that the U.S. still needs legitimacy to win, not just firepower. And in the age of social media, 24/7 Twitter, you are not going to get away with causing all of those civilian casualties. You're just not. And you need the credibility and legitimacy in order to, you know, actually say mission accomplished.

Larry Lewis: You know, just one more quick comment, on that latter point. I remember in 2003 it wasn't a civilian casualty event, it was a fratricide event which, you know, also is a concern to the U.S. military, and actually is really a similar problem with targeting. But that happened. And so there was a big, high-profile fratricide event. It basically froze the operational chain of command for over 12 hours. Just a major disruption of the operation. You could see today, you know, one civilian casualty incident within a major war could have significant disruption that, you know, we like to think, OK, it wouldn't. But we've seen over and over in U.S. campaigns that that's – you know, the political dimension is really important too.

Jacob Kurtzer: So we are unfortunately running a little bit short on time, but I also know everyone spends their days on Zoom now. So we try to – we try to stay within our 45 minutes to an hour. But I want to – I want to put to you both two final questions. And I'll ask them one at a time. So, Sarah, you talked

about legitimacy. And we've had a couple of questions – you know, our colleague Barrett Alexander asked about, you know, the malign actors out there.

We're focused on the U.S., but you look at Syria and the Russians' deliberate targeting of health care facilities. You look at the use of Russian mercenaries. You look at some of the ways that proxies from, you know, countries that consider the United States an adversary carry out their actions. And how are we supposed to – you know, how are we supposed to combat that kind of behavior? You know, there is this sense of, well, we fight by the rules and they don't. So one is, you know, the battlefield has evolved pretty negatively in contexts like Syria, and Yemen, and elsewhere. And so you know, I wanted – just if you could just touch on that as a challenge we face.

And then the last is, you mentioned briefly early on the language in the National Defense Authorization Act. There were some – there were some nice pieces end of 2019 that, you know, Dan wrote about, you know, the designation of this person, the allocation of funding for payments. So the question we have is: Where does Congress fit in, and what's the role for Congress to play either in oversight or legislating, or creating authorities? So, you know, one is how do we deal with the fact that our adversaries don't seem to care at all? And the second question is, thinking ahead, what role should Congress play, could Congress play, in improving civilian protection in the U.S. engagements? So over to you.

Sarah Holewinski: Yeah. Anyone interested in what role Congress should play should – I would commend them to Dan Mahanty's pieces in Just Security and elsewhere from CIVIC, Center for Civilians in Conflict, which does remarkable work on all of these issues.

You know, to my mind, actually, the battlefield hasn't changed all that much. I mean, I – yeah, there's new machinery. There's new weapons. There's modernization. But it's the same – you know, it's the same as thousands of years ago when actually, you know, you can't – it is not just brute force that wins. And especially in today's world, with now – not how the battlefield has changed but with how technology brings us all together, with social media, with all these other things. I would like somebody to prove to me that actually killing more civilians makes you more effective on the battlefield. I just don't think that that is true.

And I think, you know, Larry has written a lot about legitimacy and credibility. The United States gets that because it follows the rules. And so I don't think that – this argument feels a little bit like gaslighting. It's a little bit like, you know, diverting attention to something that is actually not relevant and that is not provable with data. I just don't think that those forces are actually winning. Larry–

Larry Lewis:

OK. So actually, I have a little bit of a different view on that. I do feel like right now, you know, Russia has done some terrible, terrible things in Syria, but not just in Syria. And they get away with it. And that's – you know, that's not good for a lot of different reasons. So I think, you know, we talked today about how the U.S. can do better. And I was going to say, sometimes, you know, I've gotten criticized by – you know, why are you – why are you so critical, right? And I've found this quote from an author Tim Keller. And he says, "Love without truth is sentimentality; it supports and affirms us but keeps us in denial about our flaws." And I think that's what Sarah and I are about today, right? We are – we care about the U.S., but we see denial about our laws as being something that is – that is just not good for us in the long term.

So first of all, I think there is strategic value in us being as good as we can, both effective in the mission effectiveness, right, but also at the same kind, you know, kind of doing all three of the things that we talked about. You know, being effective in the mission, protecting civilians, and protecting our forces. And those things are not contradictory to each other. But we can also, I think, do a much better job in rubbing in the face the atrocities and, you know, illegal actions that both Russia and nonstate armed groups are doing. Because, honestly, they're kind of taking advantage of this asymmetry in international law.

And I think we should – we should be upfront about – you know, there was a question about EWIPA and, you know, urban warfare, and so forth. And I think the U.S. can have leadership in doing that, but I think we also need to highlight that, you know, some of the – some of the risk is because these other groups are doing things that endanger civilians and there's little cost. So we can do things to increase the cost to them. And I think that's another way to helping to protect civilians. But it also highlights the gulf between, you know, the U.S. and what the U.S. can do, and what these other groups can do. So I'll stop there.

Jacob Kurtzer:

So thanks. Thanks for both of that. I mean, we can leave the question of Congress to, like, google Dan Mahanty, and he has the answers. But maybe if you want, just a last word. You know, I really am – I'm very grateful for your time and for the work that you put in today. And so before we wrap up, I just want to give you a chance, if there's anything we didn't cover that you think would be useful for the audience. And then we'll say goodbye and pick this up again in the future.

Sarah Holewinski:

Oh my goodness. There's so – we could talk for days about this. Yeah, I mean, I see some of the questions in the question and answer are the ones that we've been getting for a long time. And I feel like they're still – you know, we still grapple with these things. Some of them are not easy, especially when it comes to future conflict. I would really love to actually be in touch with the people who are asking questions so that we can actually engage on these – on the questions that we didn't get to.

I would just say, you know, I think all of us are really – we feel like we're on the same team insofar as we all want to improve civilian protections. So many of the U.S. military service members that I worked with also want to improve civilian protection. You know, we are not at odds here. It's rather a question of figuring out what the solutions are and how we can actually get them to stick. And I think that's what – I think that's why we're all here.

Larry Lewis: Yeah. I agree. And, you know – and, I mean, it would be easy to kind of say there is low lying fruit, right? Like, for example, I mean, just so many, right? We could go for an hour just on, hey, you know, for the – for the annual Civilian Casualty Reports, could we add numbers of children, right? Because that would help in a number of ways in just understanding how to provide medical care and so forth. So that's, like, a tiny little thing that's already in the U.S. databases but is not in the report, right? And you know, there's an NDAA amendment on medical care in conflict, you know, which is – which is a really deep and important issue. And that's, like, low-lying fruit that we just haven't made as much progress on.

So, I mean, I could go on and on about all these little things that are possible. But I think ultimately we're hoping that, you know, we can have kind of the overall leadership say, hey, you know, we're going to actually do some bold things. We're going to actually take leadership and help learn the lessons that we keep on seeing over and over. We're going to help our allies that are also struggling with this. And we're going to look at our relationships with our partners and make it a goal for them to be better, and not just have a low bar that, you know, we turn things off if they get sufficiently bad, that we can't deal with it anymore.

And then that helps us with this contrast, because we talk about great-power competition and, you know, this competition of values. How better to make clear this competition of values than by us doing the best we can and then, you know, highlighting the awful things that are still being done?

Jacob Kurtzer: Well, I think that's a really wonderful place for us to finish today. So on behalf of our audience, on behalf of myself and the Humanitarian Agenda, thank you, Sarah, Holewinski and Larry Lewis, for joining us today, for sharing your thoughts, for your work up to this point. And I would encourage all the people viewing to, you know, stay engaged with CSIS on this issue, and with Sarah at Human Rights Watch, and Larry at CNA. And we will continue to work on this important topic. I wish you all a good afternoon. And thank you again for joining us.

(END)