

International Human Rights and the Fort Leavenworth Campus

by Michael Mihalka
Adjunct Professor, International Relations
Fort Leavenworth, Kansas, campus

Teaching international relations at the Fort Leavenworth campus brings special and important responsibilities. The notion of international human rights is not an abstract or academic notion. Most of my students have had to address fundamental issues regarding human rights in their tours right before coming to Leavenworth. And many often will be called upon to give advice on the military aspects of humanitarian intervention and the appropriateness of the use of deadly force in their future careers.

Almost all of my students have spent time in Afghanistan and Iraq and many will return there after they graduate. One of my students at U.S. Army Command and General Staff College was even a chaplain at Abu Ghraib. For them the immediate issues are often the treatment of individuals in the contested areas. In an insurgency it is often difficult to distinguish between a combatant and non-combatant. How to treat, for example, those who tacitly support the insurgency?

Even tacit support for an insurgency can lead an individual to be defined as a military objective and thus a legitimate target. Article 48 of the Additional Protocol 1 of the Geneva Convention, 1977 states, “the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” A military objective is defined in Article 52 as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at

the time, offers a definite military advantage.” This definition would seem to include large segments of the population in an insurgency. However, under the convention an individual is assumed to be a civilian until proven otherwise. Importantly, Article 50 states, “In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.”

Article 50 is often overlooked in many discussions but more importantly in practice. There are repeated reports of air attacks on civilian targets in Afghanistan. The Taleban, of course, is violating international law and using civilians to cover military operations. Moreover, they understand that by drawing air strikes with resultant civilian casualties they succeed in painting the Americans as aggressors.

However, the use of airpower may suggest an operational failure. NATO and the Americans often have too few forces on the ground and need to compensate with airpower. At the moment of the fighting, the choice between saving the troops and the prospects of civilian casualties is clear—save the troops. But how did the troops find themselves in that situation in the first place? A senior commander had made an operational decision to deploy troops that eventually necessitated the use of airpower. When this happens once or twice, one can chalk it up to the vicissitudes of warfare. When this happens repeatedly, the senior commander should rethink his operational approach.

What is interesting about these several examples is that to be effective in counterinsurgency, it makes sense to err on the side of caution. Excessive use of force alienates the population and fuels the insurgency. Respect for human rights, that is, presuming targets are civilian unless proven otherwise, actually makes good military sense. Moreover, and this is moving up the chain of command, operationally there are

some tough choices to be made as well—why put troops in harm’s way when they can be saved only through the use of airpower and the attendant likelihood of civilian casualties?

Thus, the judgment of our students matters a great deal and we at Webster have a responsibility to hone that judgment through our coursework. International law and ethics should play a larger role in the curriculum so that our students can make the right decisions rapidly under difficult circumstances. Moreover, as they rise in rank they will find themselves making operational choices that will put those troops in difficult circumstances. A judicious understanding of the consequences of those operational choices for civilian casualties can emerge from better understanding of the humanitarian law.

But there are also other, some might say larger, issues regarding international law and humanitarian intervention. Many argue that the intervention against Serbia over Kosovo was illegal because it was not authorized by UN Security Council Resolution. But didn’t Europe and the United States have a moral responsibility to prevent the oppression of Kosovar Albanians? Yet much worse violence has occurred in Darfur. The US government, but not European governments, has characterized the situation there as genocide.

The United Nations, at the behest in part of the International Crisis Group, has developed the notion of the responsibility to protect, “the principle that sovereign states, and the international community as a whole, have a responsibility to protect civilians from mass atrocity crimes.”¹ This idea emerged from discussions within the International Commission on Intervention and State Sovereignty in 2001 and endorsed by the United

¹ International Crisis Group, The Responsibility to Protect, March 2008.
<http://www.crisisgroup.org/home/index.cfm?id=4521> accessed 8/4/08.

Nations High-Level Panel on Threats, Challenges and Change in 2004 and the Secretary-general in 2005. Heads of states at the UN World Summit in 2005 accepted the concept in principle.

The problem, of course, is who can act and how quickly? Only the United States has the capability to act worldwide and no other state seems to be developing such a capability to meet its “responsibility to protect.” Moreover, in rather clear-cut cases such as Darfur, the international community has resisted intervention or not properly resourced the intervention that has occurred.

Responsibility to protect is naïve in expecting that an international consensus to act can form before the events take place that warrant action. The U.S. government claimed that the genocide in Rwanda took place before it could act to halt the killings. But even if the U.S. wanted to act, the wheels of the Security Council grind exceedingly slowly when competing state interests intervene, such as in Darfur or even in Rwanda.

Thus, our students at Fort Leavenworth are faced with real issues of human rights at all levels. In the immediate future, they may have to decide directly about the use of deadly force. In the near future, as they advance in their careers, they will be making operational decisions about the deployment of forces and the use of airpower. And finally, they will have to advise on the military practicalities of intervening “to protect.”

In sum, the study of international human rights at Fort Leavenworth must prepare our students not only for the immediate responsibilities for next assignment but also for the strategic and operational decisions that they will make as they advance in their careers.