

“This Is Not Your Father’s War” – Confronting the Moral Challenges of “Unconventional” War

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On Tuesday, November 4, 2008, Paula Loyd, assigned to U.S. Army team AF-4 Blue, was conducting interviews among the local population in the small village of Chehel Gazi in southern Afghanistan. According to witnesses, she approached a man carrying a fuel jug, and they began discussing the price of gasoline. Suddenly the man, Abdul Salam, doused her with the fuel in his jug and set her on fire. She suffered second- and third-degree burns over sixty percent of her body.¹ Tragically, Paula Loyd died of her injuries a few weeks later, in early January 2009.

Her teammate, Don Ayala, apprehended the assailant and forcibly took him into custody. When news of the severity of Loyd’s injuries reached Ayala approximately ten minutes later, he allegedly flew into a rage and executed Salam on the spot with a bullet to the brain. Ayala, in turn, was arrested and placed in detention at Bagram Air Base pending extradition to the United States, where in February 2009 he eventually pleaded guilty to manslaughter in the unlawful killing of a civilian noncombatant in custody.²

Paula Loyd was not an American soldier. She was a civilian social scientist, part of a relatively new project that the Army calls its “Human Terrain Systems” (HTS). She had been embedded with Army brigade combat teams in Afghanistan. She was to gather cultural intelligence, provide regional knowledge and orientation, and interpret the customs of indigenous peoples for U.S. commanders in order to mitigate conflict and minimize the kinds of misunderstandings that can lead to ill will,

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1. See Noah Schachtman, *Army Social Scientist Set Afire in Afghanistan*, WIRED, Nov. 6, 2008, available at <http://blog.wired.com/defense/2008/11/army-social-sci.html>; Pamela Constable, *A Terrain’s Tragic Shift: Researcher’s Death Intensifies Scrutiny of U.S. Cultural Program in Afghanistan*, WASH. POST, Feb. 18, 2009, at C1; Sarah Stockman, *Anthropologist’s War Death Reverberates*, BOSTON GLOBE, Feb. 12, 2009, available at http://www.boston.com/news/world/middleeast/articles/2009/02/12/anthropologists_war_death_reverberates/?page=1.

2. See Noah Schachtman, *“Human Terrain” Contractor Guilty of Manslaughter*, WIRED, Feb. 3, 2009, available at <http://blog.wired.com/defense/2009/02/human-terrain-c.html>; Stockman, *supra* note 1. On November 18, 2008, a criminal complaint of second-degree murder was filed against Ayala in the U.S. District Court for the Eastern District of Virginia by the U.S. Army Criminal Investigation Division under the Military Extraterritorial Jurisdiction Act (MEJA).

unwarranted violence, or inadvertent casualties.³ Her presence as a civilian alongside combat personnel in contested areas of armed conflict – driven by the military’s need for reliable cultural understanding and accurate regional knowledge as well as linguistic skills to complement their technical prowess in war-fighting – is all part of a revolution that has transformed, and will continue to transform, the nature of warfare in the twenty-first century. Accordingly, we might ask how adequately and thoroughly the member nations of NATO are presently equipping their officers and enlisted personnel, whether through professional military education or through general (liberal) education, to develop the requisite capacities to cope with this transformation and meet the novel requirements of what might aptly be described as “the postmodern battlefield.”⁴

Loyd was recruited in the United States and hired and trained for four months at a special facility at Fort Leavenworth, Kansas, and finally, deployed to a combat zone in Afghanistan by a private military contractor, BAE Systems, Inc. Headquartered in the United Kingdom, BAE Systems (formerly British Aerospace) is a large, multinational defense contractor with major offices in South Africa, Sweden, Saudi Arabia, Australia, and the United States. Until comparatively recently, it specialized in the sale and maintenance of sophisticated military hardware and armaments. The U.K. Serious Fraud Office has, for several years, been looking into suspected bribery payments by BAE Systems to members of the Saudi royal family in connection with a huge contract known as “al-Yamamah,” an enormous purchase of fighter aircraft (Tornados, Hawks, and, more recently, Eurofighter Typhoons). The Saudi family pressured the former Blair government to abandon the investigation without issuing findings.⁵

One might find it curious that a British company specializing primarily in the sales of weapons platforms, armaments, and aircraft, and under indictment for bribery and fraud in Saudi Arabia, is now hiring American scholars and training them to deploy with combat forces in Afghanistan and Iraq. This is yet another important feature of contemporary warfare. The reliance of modern military operations on private contractors, including private security firms such as DynCorp, Triple Canopy, and the former Blackwater Worldwide, Inc., has increased dramatically over the past decade. It is wholly impossible at present to deploy the military forces of any of our allied nations *for any purpose whatsoever* without the logistical and security support provided by such firms and their contract personnel. This is the sobering reality of post-modern military operations, the stark

3. See GEORGE R. LUCAS, JR., *ANTHROPOLOGISTS IN ARMS: THE ETHICS OF MILITARY ANTHROPOLOGY* (forthcoming 2009).

4. GEORGE R. LUCAS, JR., *Foreword to ETHICS EDUCATION FOR IRREGULAR WAR* (Paul Robinson, James Connelly & Don Carrick eds., 2009).

5. See Alexandra Wrage, *Anti-Corruption Efforts: The Price of the UK’s Capitulation on Corruption*, ETHICAL CORP., Feb. 6, 2007, at 48, available at <http://www.ethicalcorp.com/content.asp?ContentID=4877>.

significance of which most nations, governments, and their militaries have yet to fully confront.⁶

There are now over 900 private firms operating in Iraq alone, employing between 190,000 and 210,000 personnel, surpassing considerably the number of combat troops presently stationed there.⁷ The private firms’ functions encompass everything from preparing and serving food to maintaining barracks, showers, and latrines, providing troop transport and supply convoys, maintaining shipyards and motor pools, as well as (in some cases) providing security for diplomats, political officials, and embassy personnel. All the non-combat activities that used to fall to Sergeant Bilko, or Beetle Bailey and his comic-strip friends – as well as, in real life, to military police, shore patrols, and Marine guards – are now “outsourced” to civilian contractors, quite often “third-country nationals” hired on sub-contracts by the civilian firms who win competitive bids from their own governments to provide these services. A colleague, a mid-career officer in the U.S. Air Force, traveled to Baghdad in 2005 to assist in conducting an investigation of the Iraqi Police Force training program. He was assigned a personal bodyguard, a Gurkha from Nepal, armed with an AK-47. As the two chatted, the major discovered to his horror that his Nepalese friend had initially been hired to work as a dishwasher, but, upon arrival in Iraq, was handed a rifle and reassigned as a security guard without prior training or experience.

That is not an unusual story. Private firms initially responsible only for logistical support may be left on their own to provide security for their personnel, workplace, or the operations they supervise. They do what any private company would do, and “outsource” these additional tasks. The result is a patchwork quilt of contractors and subcontractors performing logistical and security operations with little in the way of internal controls, supervision, training, or accountability.⁸ These developments present an extraordinary challenge for maintaining effective integration, coordination, and command and control of the diverse forces and personnel in zones of

6. Many commentators, including General David Patraeus testifying in congressional hearings on the Iraq war, agree. See, e.g., Steven L. Schooner, *Why Contractor Fatalities Matter*, PARAMETERS, Autumn 2008, at 78, 79.

7. See generally P.W. SINGER, *CORPORATE WARRIORS: THE RISE OF THE PRIVATIZED MILITARY INDUSTRY* (2003). Schooner, *supra* note 6, puts the number at 190,000, while others cite as many as 265,000 as recently as March 2008. See Mark Cancian, *Contractors: The New Element of Military Force Structure*, PARAMETERS, Autumn 2008, at 61, 62; see also Moshe Schwartz, *Training the Military To Manage Contractors During Expeditionary Operations: Overview and Options for Congress*, CONG. RESEARCH SERV. REP. R40057 (2008), available at <http://www.fas.org/sgp/crs/natsec/R40057.pdf>. The differences arise both from uncertainty as to contractor census and record-keeping, and from whether the totals include employees of U.S. firms only, third-country nationals, local residents of the host country employed by contracting firms, armed private security contractors (a comparatively small portion of the overall total), or non-U.S. firms.

8. See generally STEVE FAINARU, *BIG BOY RULES: AMERICA’S MERCENARIES FIGHTING IN IRAQ* (2008).

combat, not to mention contract acquisition, accountability, and oversight of these private entities themselves.⁹

The depth of the acquisition and accountability dilemma, in turn, was suggested in a recent monograph on strategic military leadership by the recently retired Dean of the U.S. Army War College, Col. Jeffrey D. McCausland.¹⁰ The number of private contracts and contractors, he reports, more than doubled over the six-year period from 2000 to 2006, while the number of federal officials responsible for acquisition and oversight has remained the same or has been reduced.¹¹ An audit of these practices by the Special Inspector General for Iraq in 2007 revealed that two federal contracting officers were overseeing over 700 personnel and contracts for the U.S. State Department in excess of one billion dollars.¹² Not surprisingly, more recent U.S. Government Accountability Office audit reports consistently report tens of billions of dollars misspent or unaccounted for, while former members of the Iraqi Commission on Public Integrity report similar accounts of bribery and corruption totaling in excess of \$13 billion in U.S. funds.¹³

Once again we might be led to inquire how adequately, in their programs of professional military education based primarily on the requirements of conventional warfare, our military personnel are prepared to collaborate effectively with private military contractors, let alone to understand the ethical challenges that their presence, and the military's increasing reliance on them, represents. Have we effectively and forcefully enabled personnel from the military and government side of these contract negotiations to provide sufficient business and managerial acumen to ensure that private contractors comply with contractual terms and with the ethical and professional standards of conduct in war zones, or otherwise to handle the enormous managerial burden that this privatization presents?

At the time of this writing, the answers to these questions, in the United States at least, are "poorly," and "not nearly enough." My own informal survey of U.S. institutions during the fall of 2008 revealed that there was no

9. Military personnel returning from the theatre report with disgust that Kuwait City or the Green Zone in Baghdad often resemble the infamous "bar scene" from "Star Wars," with all sorts of belligerent, terrifying-looking individuals wandering around in strange costumes, sporting shaved heads, tattoos, and body-piercings, while armed to the teeth with contraband weapons. See George R. Lucas, Jr., *Pirates and PMCs: Ethical Challenges to Military and Foreign Policy in the New Presidential Administration*, INT'L J. APPLIED ETHICS (forthcoming 2009). This particular characterization was offered by former Navy SEAL and author Dick Couch (U.S. Naval Academy Class of 1967). See DICK COUCH, *THE MERCENARY OPTION* (2003).

10. See JEFFREY D. MCCAUSLAND, *DEVELOPING STRATEGIC LEADERS FOR THE 21ST CENTURY* 21-23 (2008).

11. See *id.* at 22.

12. *Id.* at 22-23.

13. See U.S. HOUSE OF REPRESENTATIVES OVERSIGHT COMMITTEE REPORT ON IRAQ (2008), available at <http://oversight.house.gov/documents/20081003181709.pdf>; Dara Hedgpeth, *\$13 Billion in Iraq Aid Wasted or Stolen, Ex-Investigator Says*, WASH. POST, Sept. 23, 2008, at A19 (describing the report from Salam Adhoob, former chief inspector of the Iraqi Commission on Public Integrity).

formal discussion of this topic, or readings assigned, at the Naval War College or Post Graduate School, nor at Air University, nor at any of the five undergraduate federal service academies. The National War College has offered an occasional elective course taken mostly by military supply and acquisitions officers, while the Army War College assigns a single reading¹⁴ that surveys the topic only up through the Balkan conflicts.¹⁵

For the four members of SEAL Team 10, inserted in the Hindu Kush mountains of Afghanistan’s Kunar province on the night of June 27, 2005, however, the problem was not this puzzling abundance of private contractors and security firms in the battle space, nor the enormous challenges of waste, fraud, corruption, or other abuses that they potentially represent. Instead, the problem these four individuals faced was a decided absence of reinforcements or backup support of any kind in a remote and inaccessible region far from their operation headquarters. Code-named “Operation Redwing,” the mission of these Special Forces personnel was to reconnoiter and get “eyes on” Ahmad Shah, a close associate of Osama bin Laden, whose attacks had been taking a heavy toll on U.S. Marines operating in eastern Afghanistan.¹⁶ After setting up their observation post on a mountainside overlooking a village near the Pakistani border in which this key Taliban leader was believed to be encamped with a small army, the four-man team was approached at midday by two Afghan men and a 14-year-old boy who were herding their flock of goats. The SEALs debated whether to kill the three civilians to protect their cover, try to hold them prisoner, or simply turn them loose and abandon the mission. After arguing among themselves, the four SEALs decided to let the Afghans go and attempt to reposition.

A little later, however, nearly 100 Taliban fighters materialized, coming across the same ridge over which the goatherds themselves had fled. The SEAL team fought for several hours, killing an estimated thirty-five of the enemy, but eventually they were overwhelmed. Their commanding officer, U.S. Navy Lt. Michael Murphy, was shot and killed as he called for backup. Two of the three enlisted members of the team were also killed in the relentless gunfire. Petty Officer Marcus Luttrell, the lone survivor, was badly wounded and escaped by jumping down steep cliffs, falling hundreds

14. See Deborah Avant, *Privatizing Military Training: A Challenge to U.S. Army Professionalism*, in *THE FUTURE OF THE ARMY PROFESSION* 179, 179-197 (Don M. Snider & Gayle L. Watkins eds., 2002).

15. Enabling military educators to attempt a more systematic, rigorous, and comprehensive educational coverage and approach to this important development was the theme of the McCain Conference of Service Academies and War Colleges at the U.S. Naval Academy (Apr. 23-24, 2009). Meanwhile, in response to the enormous problem of contract acquisitions and oversight, the Graduate School of Business and Public Policy at the Naval Postgraduate School has increased enrollment in its Executive MBA program to attract additional U.S. Department of Defense civilian as well as military personnel to specialize in defense acquisitions and contract oversight.

16. See MARCUS LUTTRELL, *LONE SURVIVOR: THE EYEWITNESS ACCOUNT OF OPERATION REDWING AND THE LOST HEROES OF SEAL TEAM 10* (2007).

of feet at a time. He was found and rescued by local Pashtun tribesmen, who, for several days, extended him extraordinary hospitality, medical care, and protection. When finally located and rescued by Army Rangers, Luttrell learned that Lt. Murphy's original call for assistance had resulted in an even greater tragedy. An MH-47 Chinook immediately set out in response with seven Army Rangers and seven Navy SEALs aboard, all of whom had volunteered to rescue their comrades. Sadly, a Taliban rocket-propelled grenade hit the rescue helicopter as it was landing, killing the two pilots and all fourteen Special Forces volunteers on board, the worst single incident of battlefield fatalities sustained in the Afghan conflict to date.¹⁷

As we reflect on the lessons to be drawn from this terrible incident, we ask if Lt. Murphy did the right thing when he reminded his comrades (as Petty Officer Luttrell reports he did) of the status of noncombatants under the Geneva Conventions, and of the vital importance to the ultimate success of the allied struggle against terrorism of maintaining stringent adherence to those provisions? For my part, I believe "Murph" Murphy *did* act correctly and courageously in this instance, and he fully deserved the Medal of Honor he was subsequently and posthumously awarded. Unquestionably, however, he and his comrades paid a terrible price for this principled decision.¹⁸ It should come as no surprise, then, to recognize that this incident is the topic of intense debate. Petty Officer Luttrell believes that he and Murphy were mistaken in enforcing rules protecting noncombatants in this situation and blames himself for this decision and for their deaths. Many agree.¹⁹

These stories are typical of the situations encountered, and the moral conundrums faced, by today's military personnel when deployed by their governments to undertake internationally sanctioned missions in the far corners of the world, fighting wholly unconventional wars to interdict terrorists, halt humanitarian atrocities, or restore stability, peace, and the rule of law in failed states. It is important that such issues be confronted

17. See generally Laura Blumenfeld, *The Sole Survivor; A Navy Seal, Injured and Alone, Was Saved by Afghans' Embrace and Comrades' Valor*, WASH. POST, June 11, 2007, at A1; Ann Scott Tyson, *Medal of Honor Is Awarded Posthumously to Navy Seal; Highest Award Given for Heroism in Afghanistan*, WASH. POST, Oct. 23, 2007, at A4; Gidget Fuentes, *First Navy MoH Since Vietnam To Go to SEAL*, NAVY TIMES, June 11, 2007, available at http://www.navytimes.com/news/2007/10/navy_seal_moh_071011w/.

18. See George R. Lucas, Jr., *Inconvenient Truths—Moral Challenges to Combat Leadership in the New Millennium*, 20th Annual Joseph A. Reich, Sr. Memorial Lecture, U.S. Air Force Academy (Nov. 7, 2007), available at <http://www.usna.edu/ethics/Publications/Inconvenient%20Truths%20for%20USAF%20Academy.pdf>.

19. Moral philosophers have likened this case to Jeff McMahan's much-discussed example of the "innocent aggressor," who poses a lethal threat to one's life, even if accidentally or unintentionally. See JEFF MCMAHAN, *THE ETHICS OF KILLING: PROBLEMS AT THE MARGINS OF LIFE* (2002). I object to this analogy on the ground that, unlike the lethal aggressor, the shepherds themselves were unarmed, and posed no direct or imminent threat. It is not clear, in any case, that the SEAL team's having been "stepped on" (that is, discovered by potentially hostile locals) itself warrants an automatic death sentence for the unfortunate locals. But these remarks only suggest how intricate and inflammatory the analysis of such instances often becomes.

and discussed. As in the case of Lt. Murphy and his comrades, ungrounded and untested raw intuition can differ substantially and provide little in the way of reliable guidance to individuals facing stark choices in the heat of conflict.

The common thread that runs through all of these otherwise distinctive vignettes is that these situations do not fit the definition of conventional war in which “the three objectives” (according to Clausewitz) are said to be the destruction of the enemy’s armed forces, the occupation of his country, and the suppression of his will to fight.²⁰ That customary definition works reasonably well for the eighteenth and nineteenth-century imperial wars that Michael Walzer frequently analyzes in his classic study, *Just and Unjust Wars*.²¹ It safely encompasses World War II and the first Persian Gulf War, involving pitched battles between the properly identified armies and navies of warring enemy nation-states vying for territory, resources, or political supremacy. But it hardly fits Rwanda. The nations we might now find ourselves “invading” (and this includes Iraq) are not held to be “our enemies” in any conventional sense. The purpose of military maneuvers in our age is not conquest and occupation, but law enforcement and protection of the local populace, often from the threat posed by their fellow citizens or their own government.²² The armed opponents, whether a local, genocidal militia as in Rwanda, a lawless, murderous paramilitary ethnic army, as in Bosnia or Kosovo, or shadowy, non-state actors in the hills of Tora Bora, do not constitute an opposing “army” in the conventional understanding of that term.

If we are part of the Belgian army contingent of U.N. forces sent to Rwanda in 1994 under the command of Canadian Gen. Romeo Dallaire, it is not clear we can grant the marauding Hutus the status of “morally equivalent combatants” that Walzer, for example, cites as an essential feature of the “war convention.” And, in any case, what is a young officer like Capt. Luc Lemaire to do when ordered by his chain of command to withdraw his contingent of 90 Belgian soldiers from the Don Bosco school compound to assist in the evacuation of Europeans at the Kigali Airport, knowing that, if he obeys, the 2,000 terrified locals under his protection in that compound will literally be hacked to death?

How is a small and seriously undermanned Dutch battalion to respond, when sent to defend the vulnerable citizens of Srebrenica from attack by rogue ethnic militias, but denied adequate air cover and reinforcements in an unwieldy and inefficient U.N. bureaucratic chain of command? Are they to fight almost certainly to the death in a land that is not their own, to

20. See CARL VON CLAUSEWITZ, *ON WAR* 90 (Michael Howard & Peter Paret trans., Princeton Univ. Press 1976) (1832).

21. MICHAEL WALZER, *JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS* (1977).

22. George R. Lucas, Jr., *From Jus ad bellum to Jus ad pacem: Rethinking Just War Criteria for the Use of Military Force for Humanitarian Ends*, in *ETHICS AND FOREIGN INTERVENTION* 72 (Deen K. Chatterjee & Don E. Scheid eds., 2003).

protect strangers with whom they have no immediate personal or political connection, in a conflict in which they and their nation have absolutely no concrete political interests? Or should they acquiesce and withdraw in the face of threats from the advancing ethnic forces, as “Dutchbat” eventually did, leaving the Muslim inhabitants of Srebrenica to their unfortunate fate?²³

These are not enviable positions in which to place relatively junior military officers, but they are not atypical of the situations into which we are increasingly sending such officers, as well as the enlisted personnel under their command. Once again we might ask, how well have we prepared them for these responsibilities? Just as important, how adequately have we examined and reformed our organizational structures and our traditional concepts of military command and control so as to enable, rather than inhibit, the kind of autonomous exercise of judgment, prudence, courage, compassion, and commitment to the principles of professional military responsibility that such agonizing situations as this are likely to evoke in those young officers?²⁴ This goal is especially problematic when partners in the military coalition do not uniformly share the same understanding of, or commitment to, fundamental moral and legal norms. Indeed, the challenge of evolving a common understanding of professional ethics and military leadership sufficient to guide international coalition forces in such exercises – what Professor Henri Hude at the French Military Academy (Saint-Cyr) terms “ethical inter-operability”²⁵ – is perhaps the most serious ethical challenge NATO member-nations face today. Have we scholars, military educators, political analysts, diplomats, and most important, senior military and government leaders of NATO member nations done our job of preparation effectively, so that, when the time comes, those same young officers and enlisted personnel can do theirs?

In fact, we have not done well at all. In the spring of 1996, I came to the U.S. Naval Academy from Georgetown University to help establish a new core program in military ethics. At the Academy I found midshipmen and their military and civilian instructors still discussing the challenges and demands of conventional war. If they studied anything on military ethics, they were reading Walzer, surely a good place to start. But despite years of humanitarian military operations at that time in Somalia, Bosnia, and Haiti, alongside the notable failures of such operations in Rwanda, these non-conventional uses of military force were simply not discussed.

23. See the case studies of Rwanda and Srebrenica, respectively, in GEORGE R. LUCAS, JR. & W.R. RUBEL, *CASE STUDIES IN ETHICS AND THE MILITARY PROFESSION* (3d ed. 2009). The topic of individual obedience and dissent in unconventional war is a controversial and much discussed issue at present. Note that, in the first instance, the Belgian officers obeyed their orders, although they and critics think that they should have disobeyed, while in the second case, the Dutch forces disobeyed their orders and were subsequently court-martialed for that disobedience.

24. See George R. Lucas, Jr., *The Role of the “International Community” in the Just War Tradition: Confronting the Challenges of Humanitarian Intervention and Preemptive War*, 2 J. MIL. ETHICS 119 (2003).

25. See HENRI HUDE, *L’ÉTHIQUE DES DÉCIDEURS* (2004).

A survey of practices in the other federal military academies and war colleges in the United States revealed much the same, with very few exceptions. Over a decade later, after numerous terrorist attacks in several of our member nations and two “wars against terror” waged in Afghanistan and Iraq, a thorough analysis of ethics and military education at academies and senior military educational institutions around the world, carried out by the “Military Ethics Education Network,” a European consortium of NATO nation military educators, revealed that little had changed.²⁶

Meanwhile, in the decades of disillusionment that followed the Vietnam War, scholars and teachers in civilian universities in the United States (with the exception of Michael Walzer himself) had almost entirely abandoned the discussion of war, or the conduct of war, as a topic in ethics, and had neglected the military profession in order to pursue more timely and publicly visible controversies in “professional ethics” arising in medicine, business, and law. It took the tragedy of September 11, 2001, and the subsequent invasion of Iraq to reawaken that interest.²⁷ Once again, in the aftermath of that tragedy and those ensuing wars, the scholarly and academic communities were galvanized into recognizing their ongoing responsibilities to participate in civic discourse and to educate a generation of citizens (including soldiers) who would, as a result, be found sufficiently competent and capable to shoulder their own civic and professional responsibilities.

Not only have we not done a good job of educating present and future military personnel about the challenges of irregular and unconventional war, we have resisted doing so. Such wars do not employ the conventional strategy and tactics with which we are familiar, nor do they employ the exotic, expensive high-tech weapons systems that our military and industrial leaders favor. Sophisticated and expensive aircraft like the F-18 “Super Hornet,” let alone the new Air Force F-22 “Raptor” or the F-35

26. See *ETHICS EDUCATION IN THE MILITARY* (Paul Robinson, Nigel de Lee & Don Carrick eds., 2008). I regret deeply that my own institution was unable to participate in this initial deliberation of the Military Ethics Education Network (based in the Institute of Applied Ethics at the University of Hull, U.K.), because the findings of their study indicated that professional ethics and moral theory, both widely taught, should be accompanied by casuistry and the analysis of military case studies. Our current program, while far from ideal, brings senior practitioners into the classroom with civilian subject matter experts, and the focus is on the case studies emerging in the most recent theatres of conflict (at the time, Somalia, Haiti, Bosnia, and the first Gulf War; and now, of course, Iraq and Afghanistan, as well as Kosovo). I myself see no reason why ethics and the military profession ought to differ in this respect from the way ethics and the professions are generally taught: that is, in close dialogue with senior practitioners, and in exploring the application of moral principles to case studies drawn from professional practice.

27. The need to recover and reacquaint the scholarly community with these recent challenges to conventional just war thinking was the theme of a summer institute for college and university faculty in the United States, sponsored by the National Endowment for the Humanities during the summer of 2004. Reflections by some of the participants can be found in *RETHINKING THE JUST WAR TRADITION* (Michael W. Brough, John W. Lango & Harry van der Linden eds., 2007).

“Lightning” (the so-called Joint Strike Fighter), are not really designed for optimal use in Afghanistan, much less in Rwanda or Darfur.²⁸ Likewise, the culture of the “single seat fighter” that dominates our Air Force defense acquisition decisions in the United States is no longer relevant to these new challenges. Yet in the United States and in European NATO nations, we sustain an industrial base that is economically dependent on producing such weapons, and military cultures that persistently favor them, despite their near total irrelevance to the kinds of military operations we shall most likely be asked to undertake in future coalition exercises.

It is in this sense that the “wars” we are asking my own and others’ military “students” to prepare to fight now, and for the foreseeable future, are “*not* their fathers’ wars.” Indeed, these conflicts are not really “war” at all. They are unconventional, asymmetric conflicts, with shadowy, illusive, and ill-defined enemies and morally ambiguous objectives that are more akin to ongoing domestic attempts to combat organized crime or stop gang warfare or identify and arrest drug dealers and human traffickers than they are to armies defending their nations against enemy states in conventional war. Professor Paul Robinson of the University of Ottawa, himself a former officer in the British and Canadian armies, noted that we have developed a number of military euphemisms to catalogue these kinds of conflicts: stability operations, “irregular war,” counterinsurgency warfare, “fourth generation” warfare, humanitarian interventions, the “three-block” war, and other assorted “military operations other than war.” Yet whatever we decide to call them, and however we see fit to classify and subcategorize them, it is these sorts of conflicts, rather than conventional war, that the United States and the member nations of NATO shall all hereafter be required to conduct, fund, or support.

For my part, ever since these kinds of conflicts came to dominate the political landscape in the immediate aftermath of the Cold War, I have insisted in my own teaching and writings that these new military operations are better classified as “constabulary actions,” fraught with a kind of legal and moral ambiguity that is not helpfully sorted out or clarified by the conventional rules of war or by the provisions of the classical Just War Tradition on any of its manifold modes of discourse.²⁹ Instead, they require their own distinct modes of analysis, and the issuing of clarifying guidance not unlike the kind of guidance provided in conventional warfare by the two traditional aspects of the just war tradition, *jus ad bellum* and *jus in bello*.³⁰ These guidelines originally suggested when we might be permitted or even

28. Approximately one month following the original delivery of this address, U.S. Secretary of Defense Robert Gates ordered a halt to further production of the F-22. See N.Y. DAILY NEWS, Apr. 6, 2009, available at http://www.nydailynews.com/news/politics/2009/04/06/2009-04-06_defense_secretary_robert_gates_proposes_.html. Finally, on Tuesday, July 21, 2009, Congress voted to terminate the F-22 program entirely.

29. See George R. Lucas, Jr., *The Reluctant Interventionist*, in GEORGE R. LUCAS, JR. & ANTHONY C. ZINNI, PERSPECTIVES ON HUMANITARIAN MILITARY INTERVENTION (2001).

30. George R. Lucas, Jr., *The Role of the International Community in the Just War Tradition: Confronting the Challenges of Humanitarian Intervention and Preemptive War*, 2 J. MIL. ETHICS 119 (2003); see also Lucas, *supra* note 22.

obligated to become involved in such operations (I termed these “*jus ad pacem*”), as well as how our coalition forces would be required to conduct themselves during those operations (by analogy, *jus in pace*). These foreshadowed, in much greater detail, the commendable deliberations of Ambassador Gareth Evans’ and the International Crisis Group’s *The Responsibility To Protect*.³¹

In part, for reasons cited above, not all military leaders and personnel are happy with these kinds of military operations. The publication by the U.S. Army of new field manuals on “Counterinsurgency” (2006),³² and on “Peacekeeping and Stability Operations” (2008),³³ was greeted with dismay in many quarters, as though the authors of these works were advocating a new role for military force other than conventional war-fighting. Instead, the more challenging fact to confront and acknowledge is that, whether we like it or not, the final conventional war as we know it played out in the sands of Kuwait and Iraq in 1991. For our lifetimes, and for the foreseeable future, “unconventional war” is the only kind of war militaries will likely be asked to conduct.³⁴ It is important to comprehend this fact, to adjust

31. See INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT (2001), available at <http://www.iciss.ca/pdf/Commission-Report.pdf>; Gareth Evans & Mohamed Sahnoun, *The Responsibility To Protect*, 81 FOREIGN AFF. 99 (2002); George R. Lucas, Jr., *Jus in Bello for Non-Conventional Wars*, manuscript prepared for The International Studies Association 49th Annual Convention, Bridging Multiple Divides (Mar. 26, 2008) (unpublished manuscript), available at http://www.allacademic.com/meta/p253594_index.html. This is far too complex a matter to analyze in detail here, but these resolutions represent the work of a dissident group of U.N. diplomats formed in the aftermath of the Rwandan genocide, and in support of the unsuccessful bid of its leader, Australian diplomat Gareth Evans, for the post of U.N. Secretary General. Unfortunately, their deliberations show no evidence of consultation either with the scholars who have devoted considerable thought to criteria for humanitarian military intervention in particular, or with the military personnel who carry it out.

32. U.S. ARMY, FM 3-24: COUNTERINSURGENCY (2006).

33. U.S. ARMY, FM 3-07: PEACEKEEPING AND STABILITY OPERATIONS (2008).

34. Of course, this may overstate the case. It is quite possible that conventional wars will also be fought in the future. The extent to which my thesis concerning the relative preponderance of “unconventional” conflict as the foreseeable norm can be verified, however, is the difficulties and controversy that the topic has generated in planning and budgeting for future conflict, as in the forthcoming U.S. *Quadrennial Defense Review* (QDR). U.S. Secretary of Defense Robert Gates, for example, has been extremely adamant of late in forcing military strategists and budget officials to come to terms with the likelihood of such conflicts. See R. Jeffrey Smith & Ellen Nakashima, *Gates Planning Major Changes in Programs, Defense Budget*, WASH. POST, Apr. 4, 2009, at A1; Greg Jaffe, *Short ‘06 Lebanon War Stokes Pentagon Debate: Leaders Divided on Whether To Focus on Conventional or Irregular Combat*, WASH. POST, Apr. 6, 2009, at A1. Current thinking seems to favor replacing the earlier “1-4-2-1” formula, in which the U.S. military was prepared to participate in up to four regional conflicts while fighting two conventional wars (and winning one decisively), with a focus on ongoing involvement in coalition stability operations and irregular warfare designed to fight crime and deter terrorists while retaining the ability to fight and decisively win one conventional conflict. If so, this would represent a sea change in strategic military thinking away from a primary emphasis on conventional war, and more toward what I have long characterized as “constabulary” operations aimed at

conventional expectations, reshape our thinking about weapons and defense acquisitions, and otherwise orient future professional military education and training toward this urgent contemporary challenge.

This larger task itself might be understood as a new moral requirement of “just war” doctrine: what we might term *jus ante bellum*, the moral responsibility for preparing present and future warriors in advance of any conflict for the moral challenges and ethical responsibilities incumbent upon them in combat.³⁵ Whatever we choose to call it, however, I believe this ethical challenge to be the most significant moral responsibility we face today – deciding how we should educate the men and women whom we will charge to keep peace, protect the human rights of vulnerable peoples throughout the world, and defend the rule of law in our global society. If we have the temerity to ask them to risk their lives to undertake *that* for us, we should be willing to do a much better job of *this* for them.

law enforcement.

35. See ROGER WERTHEIMER, *EMPOWERING OUR MILITARY CONSCIENCE: TRANSFORMING JUST WAR THEORY AND MILITARY ETHICS EDUCATION* (forthcoming 2010). A new book series on “Defense Ethics,” based in the United Kingdom under the editorship of Paul Robinson, James Connelly, and Don Carrick will, in turn, subsume a series on military ethics that I have edited for the past several years for the State University of New York Press, under the title *Ethics and the Military Profession*. The theme of *jus ante bellum* was implicit in those earlier entries and is now made explicit. See, e.g., MARTIN L. COOK, *THE MORAL WARRIOR* (2004); TIMOTHY L. CHALLANS, *AWAKENING WARRIOR: REVOLUTION IN THE ETHICS OF WARFARE* (2007); *RETHINKING THE JUST WAR TRADITION*, *supra* note 27.