HOME SWEET HOME Children stand in front of their homestead in a derelict building in the Abdul-Aziz district of the Somali capital, Mogadishu. *UN Photo*

BACK TO THE FUTURE

BY COLONEL (RETIRED) RUDOLPH C. BARNES, JR.

Human Rights and Legitimacy in the Training and Advisory Mission

The strategic dilemma of promoting democracy and human rights

Democracy and human rights have long been promoted as the ideals of U.S. foreign policy, with the rule of law being the glue that holds democracy and human rights together. But law can be a means of tyranny in the wrong hands, and democracy can produce a tyranny of the majority, as our founding fathers warned and as we are now witnessing in the Middle East and in North Africa. Human rights are what give legitimacy to democracy and the rule of law. Human rights protect the freedoms of minorities in a democracy, but they are meaningless without the rule of law.

The image of the U.S. as a champion of democracy, human rights and the rule of law was tarnished in the Middle East where, until recently, the U.S. supported authoritarian rulers. With the outbreak of democracy and the overthrow of autocratic rulers, the strategic dilemma of promoting human rights in Islamic cultures became apparent. The fundamental freedoms of religion and expression and the prohibition of discrimination based on sex or religion conflict with Islamic law, or *Shariah*, as well as with tribal practices that have become customary law.

The strategic dilemma is whether to promote democracy or human rights, since in emerging Islamist democracies the former can preclude the latter, and Islamist policies can also threaten U.S. national-security interests in the region, as seen in Mali. This creates both a strategic issue for U.S. policymakers and a tactical issue for SOF trainers and advisers whose mission success depends upon developing a relationship of trust and confidence with their indigenous counterparts. The requirement to report violations of human rights where they are not protected by local laws can create a mission impossible.

Back to the future in promoting human rights

In the summer of 2001 human-rights compliance was an operational priority for special-operations forces engaged in training and advisory missions.[1] But on 9/11, those priorities changed. With the invasions of Afghanistan and Iraq, the operational priority of human rights was subordinated to the more conventional priorities of combat operations. And even after conventional combat and stability missions were superseded by counterinsurgency operations,[2] SOF remained more focused on direct-action counterterrorism operations than on indirect training and advisory missions.

It was only after U.S. combat forces had been withdrawn from Iraq and were being drawn down in Afghanistan that President Obama signaled a major shift in U.S. operational strategy — from COIN operations conducted by conventional combat forces back to SOF training and advisory missions coupled with CT operations.[3] For SOF it was *back to the future* and a reorientation to pre-9/11 operational priorities; but experience during the intervening years will make a return to the human-rights priorities of 2001 problematic.

In doctrinal terms, the strategic shift from COIN to foreign internal defense may at first glance seem to be a distinction without a difference. But there is an important difference. While FID has the same political objective as COIN, which is to gain the public support necessary to win the battle for legitimacy against an insurgent threat, COIN operations in Iraq and Afghanistan have been carried out by large deployments of conventional forces whose primary mission is to provide security for the local population, while FID is conducted by a relatively few highly trained SOF operators whose mission is to train and advise indigenous forces to conduct the lethal operations that in COIN have been conducted directly by U.S. and NATO military forces.[4]

Legitimacy is about public perceptions of what is right and is what gives governments the moral authority to act. Military legitimacy is about *might being right*, and in COIN and FID the battle for legitimacy is won by the side that gains enough public support to govern. That makes legitimacy an operational imperative in COIN and FID.[5]

Experience in Iraq and Afghanistan has demonstrated that large deployments of conventional U.S. and NATO forces can undermine the public support needed for legitimacy and mission success in COIN. In such hostile cultural environments a relative few SOF are more effective than many more combat forces. In addition to maintaining a low profile, SOF are diplomat-warriors with the leadership, language and cultural skills needed to train and advise indigenous forces to carry out the lethal operations needed to defeat an insurgent threat.[6]

After more than 10 years of COIN, the increasing hostility of Afghans to the continued presence of U.S. and NATO forces may make it impossible to salvage legitimacy from a legacy of corrupt government and endemic religious hatred. The lesson of legitimacy learned in Iraq and Afghanistan — that fewer U.S. forces are better than more in hostile cultural environments — should be applied in other strategically important regions where Islam predominates but where the potential for public support has not yet been contaminated by large deployments of U.S. combat forces. In African Islamic cultures, SOF training and advisory missions have been successfully conducted without fanfare or negative publicity.[7]

The Middle East, Africa and Asia are strategically important regions where Islamic standards of legitimacy often prevail and conflict with those of the West. In such hostile cultural environments the quiet professionals of SOF can avoid incidents that undermine the public support needed for legitimacy and mission success.

The success of the SOF training and advisory mission depends upon the military and diplomatic skills of SOF personnel and their compliance with local laws, moral standards and values. There is a double standard of legitimacy that complicates mission success: Standards in the U.S. often conflict with those in the operational area, and SOF must maintain public support both at home and in the area of operations. That can be a delicate balancing act; but SOF, like civilian diplomats, understand the importance of avoiding conflict with local legal, religious and cultural standards and they have the language capability to effectively communicate with their indigenous counterparts.

Laws are the clearest standards of legitimacy and human rights the most important standards of law, so that compliance with human rights is essential whenever public support is critical to mission success. But values, moral standards, laws and even human rights are pluralistic and vary according to differing cultures. What is considered legitimate conduct in the U.S. often conflicts with standards in the Middle East and Africa, where a combination of tribal traditions and the Islamic religion have shaped standards of legitimacy and law.[8]

Religion and secular traditions are primary sources of the standards of legitimacy, law and human rights; and because religious rules are considered sacred, they take precedence over secular standards. In Western nations like the U.S., the Judeo-Christian tradition has been shaped by the Enlightenment and capitalism to produce a culture reflecting the libertarian values of legitimacy and democracy that has fostered progress and modernity. In contrast to the libertarian values of legitimacy and law prevalent in the West, Eastern Islamic cultures have had little experience with democracy and capitalism; their values have been shaped more by tribal traditions and religious laws than by individual rights, liberty and capitalism.[9]

In Islamic cultures of the East, religion and the rule of law are inseparable. Islamic law has produced conflicting standards of legitimacy that help explain the negative public attitudes that have plagued U.S. COIN operations. The lower profile of SOF personnel, with their diplomatic skills and indirect advisory and training mission can minimize that conflict; but that advantage can be lost if direct-action counterterrorism operations produce collateral damage, as they have in Iraq, Afghanistan and Pakistan.

The elite commando-warriors who conduct direct-action CT missions — such as those on Seal Team 6 who killed Osama bin Laden — offer a stark contrast to those diplomat-warriors who must lead from behind in FID. Both are SOF personnel and represent the unique and irregular military capabilities that are critical to protecting U.S. security interests overseas, but their operational methodologies are dramatically different and require contrasting skill sets.

The commandos who conduct direct-action CT missions are pure warriors for whom mission success depends on lethal skills in striking clearly defined targets. The mission success of SOF diplomat-warriors who conduct FID depends upon indigenous forces that they train and advise to conduct lethal operations and maintain public support. While CT and FID are both considered special operations within the United States Special Operations Command, their means and methods can be in conflict. Issues of legitimacy that are critical to FID have little relevance to CT operations, but the collateral damage caused by CT operations can undermine the legitimacy required by FID.

Religion and the rule of law: Where East meets West

Many of the problems of legitimacy experienced by U.S. forces can be attributed to the conflict between tribal traditions, the religious standards of Shariah and the secular standards of Western law. Any SOF trainer or adviser serving in an Islamic culture can expect to encounter such conflicts, but in Afghanistan the future of the SOF training mission is in jeopardy. The increasing number of *green-on-blue killings* of U.S. trainers by Afghans caused SOF commanders to put a hold on the training of more than 20,000 Afghan forces that in order to evaluate security concerns.[10]

In the West, the rule of law is founded on the social contract theory and libertarian principles of the Enlightenment that were enshrined in The Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." The U.S. Constitution provides for a democratic government that protects those fundamental freedoms in the form of civil (human) rights; and U.S. religions have accommodated the libertarian norms of the Enlightenment and capitalism in the concept of free will (religious freedom) and the Puritan work ethic.

All U.S. military personnel take an oath to protect and defend the Constitution against all enemies, and that includes defending the right of civilians to exercise their freedoms of religion and expression, even to the point of burning the American flag or holy books. That is ironic, since the military is an authoritarian regime within a democratic society and requires that its members forfeit some of the very freedoms they risk their lives to defend for civilians.[11]

There is little democracy or individual freedom in the authoritarian regimes of the Islamic East where the law of Shariah is based on tribal traditions and the dictates of the *Quran*, the holy book of Islam, and where burning the *Quran* is a capital crime and can cause widespread rioting, as it did following the intentional burning of a *Quran* by a pastor in Florida in March 2011 and the accidental burning of *Qurans* by U.S. military personnel in Afghanistan in February 2012.

Most Muslims consider the *Quran* to be the immutable word of God, just as fundamentalist Christians and Jews believe their holy books are the inerrant and infallible word of God, and in most Muslim nations Shariah produces a rigid and inflexible code of laws. While some progressive Islamists have embraced libertarian forms of democracy, others have argued that God is the only legislator and have promoted an emasculated form of democracy.[12]

Indonesia and Turkey are notable exceptions as Muslim democracies with secular rules of law. Saudi Arabia and Iran are Islamist nations that have rigid and comprehensive rules of law derived from Shariah that are interpreted and enforced by religious authorities. Indications are that emerging democracies in Tunisia, Libya and Egypt may join Saudi Arabia and Iran and embrace Shariah as a divine standard for their rules of law, as have Pakistan, Iraq and Afghanistan.

Shariah is considered to be God's immutable law and often functions like a constitution in Western jurisprudence; and like Western constitutions, Shariah comes in different forms. Most of the differences in Shariah can be attributed to traditional tribal practices that are not included in the *Quran* but that over time have been given divine sanction in Shariah. These tribal practices include female circumcision, honor killings and other barbaric practices that brutalize women and discriminate against non-Muslims.

Not only are there different forms of Shariah, but there are differences among Islamic scholars on the nature of Shariah: Whether it is a divine set of principles upon which laws should be based or an immutable code of laws to be enforced. There are also differences among Islamic scholars on how Shariah defines reason, free will, justice, democracy and human rights.[13] But in some Muslim nations such as Pakistan, Iran and Saudi Arabia, blasphemy and apostasy are capital crimes, and Islamic law condones discriminatory practices against women and non-Muslims. Such laws are clearly in conflict with fundamental human rights.[14]

Eastern and Western concepts of human rights differ, and when Shariah provides a comprehensive and rigidly authoritarian rule of law it precludes libertarian standards of human rights.[15] This is evident in the Preamble to the 1990 Cairo Declaration of Human Rights that asserts a unique Islamic view of human rights that are "…an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them as they are divine commands, which are contained in the Revealed Books of Allah…." The freedoms of religion and expression are fundamental human rights under the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966. While Muslim nations are parties to both the Declaration and Covenant, the Cairo Declaration of Human Rights reveals a different understanding of the freedoms of religion and expression.[16]

> "SOF trainers/advisers must be diplomat-warriors who can bridge the formidable gap between civlian diplomacy and military operations."

The legal pluralism resulting from conflicting Eastern and Western concepts of law and human rights makes compliance requirements for SOF trainers and advisers in Islamic cultures problematic. It was difficult enough in 2001 when human rights were an established operational priority and Shariah was not a complicating factor; but today Shariah is a factor, so that human rights compliance is an even more daunting challenge for SOF.

Human rights as an operational priority for SOF trainers and advisers

Human rights have long represented the highest standards of legitimacy and law for SOF trainers and advisers.[17] To maintain that priority Congress has placed certain restrictions on foreign-training missions to ensure compliance with human rights,[18] and the Department of Defense has issued policy directives through its chain of command that require any violation of human rights be reported, and also require special training in human rights for U.S. military trainers and advisers both in the schoolhouse and at the operational level whenever military advisers and trainers are deployed.[19]

The following background is provided for U.S. Special Operations Command Human Rights Policy:

One goal of U.S. national-security strategy is to champion aspirations for human dignity. Coupled with our effort to promote regional

stability through democratic reform and our belief that all people are born with certain inalienable rights, our nation has focused efforts to protect the rights of all people throughout the world. The Department of State, with support of the Department of Defense, plays a key role in achieving the foreign-policy goal of promoting human rights abroad. DOD accomplishes this goal by shaping the international security environment and influencing those nations and militaries that can affect or assist the U.S. … By their nature as warrior-diplomats and global scouts, SOF must incorporate and fully support these regional programs and plans [of the geographic combatant commands].[20]

And the following are USSOCOM Policies and Procedures:

Human-rights awareness, concepts, reporting requirements and themes will be an integral part of SOF training with foreign forces. SOF will be prepared to teach and demonstrate by word and deed that the protection of human rights is imperative for military success in any environment, from garrison operations to conduct of war.[21]

R-E-S-P-E-C-T SOF trainers/advisers must comply with U.S. laws and human-rights compliance standards while respecting conflicting standards of legitimacy in other cultures. *U.S. Army photo*

This command policy is a reminder that SOF trainers/advisers must be diplomat-warriors who can bridge the formidable gap between civilian diplomacy and military operations. When it comes to training military forces in emerging democracies overseas, SOF must not only provide effective military training but also promote democracy and human rights and exemplify the role of the military in a democratic society.

It is clear that the promotion of human rights is essential to political and military legitimacy, which has been a long-standing operational imperative for SOF.[22] It is also clear that SOF trainers/advisers have a legal obligation to report any violations of fundamental human rights. What is not clear is a definitive list of those fundamental human rights that must be reported if violated.[23]

The plurality of human-rights standards and the lack of clarity of fundamental human rights complicate issues of legitimacy in peacetime training and advisory missions; further complicating matters are different legal standards for human rights in peacetime and wartime. It has long been assumed that the law of war preempts human-rights law through doctrine, but one senior military lawyer has argued that "…human rights are now the prism through which all military operations are viewed and judged" and "…the continued development of human-rights law has arguably eclipsed that of the law of war."[24]

It is clear that genocide, murder, extra-judicial executions, torture, mutilation, slavery or the slave trade, including trafficking women or children for prostitution, prolonged arbitrary detention, kidnapping or taking hostages are all violations of fundamental human rights and must be reported. But real questions arise as to what constitutes "outrages upon personal dignity,","…cruel, inhuman or degrading treatment or punishment" and "other flagrant denial of…liberty, or the security of a person." Would condoning honor killings and the abusive treatment of women and non-Muslims and trials and executions for blasphemy and apostasy be considered gross violations of human rights?

Questionable acts must be considered in the context of national policy promoting democracy and human rights and take into account the primacy of legitimacy as well as the practical realities of accomplishing the training and advisory mission. The burden of defining what to report as violations of human rights falls upon SOF commanders, who need specialized staff support in Islamic cultures to provide guidance to their trainers, advisers and operators in order to negotiate hazardous human terrain and comply with human-rights requirements.

Defining human rights and negotiating the human terrain

Human-rights compliance is part of operational-law support and normally the exclusive province of military lawyers, but because religion has a dominant role in defining human rights in Islamic

PROTEST Student demonstrators in apartheid South Africa are whipped by a policemen wielding a "sjambok" in South Africa. The success of SOF missions depends upon the diplomatic skills of SOF personnel and their compliance with local laws, moral standards and values in the areas in which they operate. *UN photo*

cultures chaplains should be considered operational assets who can work with local Muslim religious leaders and assist military lawyers in providing operational-law support to the SOF trainer and adviser.

An increasing emphasis on rules of engagement in the 1980s gave military lawyers an operational-support role; setting a precedent for chaplains to become operational assets when religion shapes the human terrain and defines the rule of law.[25] But unlike the specificity of rules of engagement, the complexity and ambiguity of human rights in Islamic cultures requires specialized training for those required to report violations. Training in Shariah and human rights could be provided at the International and Operational Law Department of The Judge Advocate General's School in Charlottesville, Va., and at the Center for World Religions at the Chaplains' School at Fort Jackson, S.C.

It is axiomatic that U.S. forces must respect local values and laws to maintain their legitimacy,[26] but when Shariah and tribal laws conflict with U.S. standards of fundamental human rights it creates a strategic and tactical dilemma. If SOF trainers and advisers are sent into Islamist regimes where religion defines the law, then military lawyers, chaplains and Civil Affairs personnel must work together and in dialogue with their Muslim counterparts to define those moral standards and laws — especially human rights — that define legitimacy.

A distinguished group of Muslim scholars has given Jews and Christians *a common word* of love for God and neighbor to find consensus on issues of religion, legitimacy and law.[27] Whenever that common word of love is the primary guide for interpreting Shariah, there will be few conflicts in standards of legitimacy and law, and fundamental human rights will be respected. But it is yet to be seen whether love of neighbor — to include neighbors of other faiths[28] — will be the norm or the exception in Islamist cultures in the future.

Conclusion

Before 9/11, the human-rights policy for SOF and other U.S. military forces was defined without reference to conflicting standards of law and human rights in Islamic cultures. Experience in Iraq and Afghanistan has since provided important lessons in legitimacy. If it's *back to the future* for SOF, then training and advisory missions conducted in Islamist cultures must consider the hazards of the human terrain and require an increased emphasis on the interwoven issues of religion, legitimacy and law.

It can be difficult for the SOF trainer/adviser to comply with U.S. laws and human-rights compliance standards while respecting conflicting standards of legitimacy in Islamist cultures, especially if those standards condone honor killings, brutality to women, discriminate against non-Muslims and deny the freedoms of religion and expression. To maintain military legitimacy while promoting democracy and human rights in Islamist cultures, respect for prevalent religions, laws and values must be an operational priority, and USSOCOM should utilize its legal, religious and CA personnel to help SOF trainers and advisers understand and mitigate conflicting standards of legitimacy and law —especially those that relate to human rights.

It is a daunting challenge for SOF trainers and advisers to tolerate conflicting standards of legitimacy in Islamic cultures, and there are limits to that tolerance. Violations of fundamental human rights should never be tolerated in the name of military expediency, but it is not always clear just what those fundamental rights are. For those trainers and advisers who work directly with indigenous counterparts in Islamic cultures there should be clear guidance as to what human rights are fundamental — for instance, whether they include religious freedom and expression and equal treatment of women and non-Muslims under Islamic law. Otherwise, military legitimacy could become a casualty of military expediency. ***SW***

comment here

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Notes

1. Rudy Barnes, "Human Rights and Legitimacy in the Foreign Training Mission," *Special Warfare*, Spring 2001, p 2.

2. General Petraeus was a principle author of the *Counterinsurgency Manual*, which describes legitimacy as the main objective in COIN in paras 1-113 through 1-136, and there is special emphasis on the rule of law in chapter 7 and Appendix D. *Counterinsurgency*, FM 3-24 and MCWP 3-33.5, December 2006, Headquarters, Department of the Army. On the distinction between COIN and FID, see note 4, *infra*.

3. Thom Shanker and Eric Schmitt, "U.S. Plans Shift to Elite Units as It Winds Down in Afghanistan," *The New York Times*, February 4, 2012.

4. Jeff Hasler, "Defining War," Special Warfare, Mar/Apr 2007, p 23; also Mulbury, "ARSOF, General Purpose Forces and FID," *Special Warfare*, Jan/Feb 2008.

5. On the importance of legitimacy in COIN, see note 2, supra. The concept of military legitimacy and its relationship to public support is defined and explained in Barnes, "Military Legitimacy: Might and Right in the New Millennium," Frank Cass, 1996, in chapters 2 and 3 (hereinafter cited as "Military Legitimacy"); see also Barnes, "Military Legitimacy in OOTW: Civilians as Mission Priorities, *Special Warfare*, Fall 1999.

6. *Counterinsurgency* (*supra* at note 2) for reference to diplomat-warriors at para 2-36 (p 2-8), and leadership requirements in chapter 7; see also "Military Legitimacy" (*supra* at note 5) at pp 105-117; and Barnes, "Civil Affairs: Diplomat-Warriors in Contemporary Conflict," *Special Warfare*, Winter 1991, p 4.

7. Violent public demonstrations and the killing of US advisers following the accidental burning of Qurans on February 21, 2012 at Bagram Air Base in Afghanistan raised doubts as to whether adequate security could be provided for US advisers and trainers against the increasing hostility of those Afghans being trained.

8. Barnes, "Religion and the Rule of Law: Shariah, Democracy and the Rule of Law," *2011 Military Legitimacy Review*, www.militarylegitimacyreview.com.

9. "Religion and the Rule of Law," *supra* at note 8, p 7.

10. Graham Bowley and Richard A. Oppel, Jr., "U.S. Halting Program to Train Afghan Recruits," *New York Times*, September 2, 2012; see also note 7, *supra*.

11. On the oath of office and the paradox of the military as an authoritarian regime in a democratic society, see "Military Legitimacy," supra note 5 at pp 105-107, 118-126.

12. "Religion and the Rule of Law," *supra* at note 8, at pp 15-21: Let the Scholars Speak.

13. *Idem*.

14. Abdullahi Ahmed An Na'im in "Religion and the Rule of Law," *supra* at note 8, p 18.

15. Mark R. Amstutz has summarized the differences between Western and Eastern concepts of human rights in the International Covenant on Civil and Political Rights favored by the West and the International Covenant on Economic, Social and Cultural Rights favored by the East, illustrating the pluralism of human rights well before the Cairo Declaration of 1990 (see note 16 *infra*). Amstutz notes "The limited consensus on human rights doctrines, coupled with the ever-expanding list of rights, has had a deleterious effect on the moral foundations and priority of international human rights claims." And he asserts: "The idea of human rights is subversive because it establishes norms that if not fulfilled by a state can undermine its international legitimacy." Amstutz, *International Ethics: Concepts, Theories and Cases in Global Politics*, Third Edition, Rowman & Littlefield Publishers, Inc., 2008, pp 95-102).

16. Articles 18, 19 and 20 of the Universal Declaration of Human Rights (1948) provide for the freedom of religion and free expression; and Articles 18, 19 and 20 of the International Covenant of Civil and Political Rights (a 1966 treaty signed by the US in 1977 and ratified in 1992) make those rights the law of the land. The Cairo Declaration on Human Rights in Islam of 1990 has no provisions comparable to Articles 18, 19 and 20 of the Universal Declaration of Human Rights or the International Covenant of Civil and Political Rights, but following a Preamble that asserts the primacy of Shariah in defining human rights, the following relate to the freedoms of religion and expression: Article 18 provides in part: *Everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property....* Article 22 provides: *(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shariah. (b) Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shariah. (c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith. (d) It is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination.* Article 24 provides specifically what the Preamble implies: *All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shariah.* Article 25 provides: *The Islamic Shariah is the only source of reference for the explanation or clarification to any of the articles of this Declaration.*

17. LTC Jeffrey F. Addicott, "Special Forces and the Promotion of Human Rights," *Special Warfare*, December 1996), p 30.

18. *Department of Defense Instruction Number 5111.19*, July 26, 2011, Enclosure 2, para 1c., which assigns to the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict and Interdependent Capabilities the responsibility to ensure compliance with the current "Leahy" human rights provisions of section 8058 of Public Law 112-10, and section 2378d of title 22, United States Code (also known as section 620J of the Foreign Assistance Act of 1961, as amended.

19. *Ibid* Enclosure 2, at para 8g, which requires Geographic Combatant Commanders to verify that human rights vetting requirements and human rights training requirements have been met.

20. *USSOCOM Directive 350-28cc*, Training, Human Rights Policy, 11 May 2005, Section I, para 3a.

21. *Ibid* at Section II, para 4d.

22. Barnes, "Military Legitimacy in OOTW: Civilians as Mission Priorities," *Special Warfare*, Fall 1999, p 32.

23. If a specific human right falls within the category of customary international law it is a "fundamental" human right binding on U.S. forces during all overseas operations. Unfortunately **there is no definitive "source list" of those human rights considered by the U.S. to fall within this category of fundamental human rights.** The source list for fundamental human rights includes, but is not limited to, thetUniversal Declaration of Human Rights, Common Article III of the Geneva Conventions, and the Restatement (Third) of the Foreign Relations Law of the U.S. and authoritative pronouncements of U.S. policy by ranking government officials. According to the Restatement (Third) the U.S. accepts the position that certain fundamental human rights fall within the category of customary international law and a state violates such law, when, as a matter of policy, it "practices, encourages, or condones" a violation of such rights. Examples of such rights are "...cruel, inhuman or degrading treatment or punishment,and consistent patterns of gross violations of internationally recognized human rights."

24. See Bill, "Human Rights: Time for Greater Judge Advocate Understanding," The Army Lawyer, June 2010, at pp 60, 62.

25. On Shariah and human terrain, see Timothy K. Bedsole, "Religion: The Missing Dimension in Mission Planning," *Special Warfare*, November-December 2006, p 8. On religion as a strategic operational priority, see Raymond Bingham, "Bridging the Religious Divide," Parameters, Autumn, 2006, p 6.

26. See David Gordon, "Cultural Context, Religion and Shariah in Relation to Military Rule of Law Operations," 2011 Military Legitimacy Review, www.militarylegitimacyreview.com at p 59; see also note 8, *supra*.

27. That common word is *the greatest commandment* taught by Jesus to love God and neighbor (See Mark 12:28-33; Matthew 22:34-40; and Luke 10:25-37). It is two commandments taken from the Hebrew Bible (See Deuteronomy 6:4, 5, Leviticus 19:18). For more information on a common word see www.acommonword.com.

28. Luke's version of *the greatest commandment* reports Jesus answering the critical question, "And who is my neighbor?" Jesus responded with the story of *the good Samaritan* in which he told of a Jew stopping to help and care for a wounded Samaritan. (Luke 10:29-37) Jesus was a Jew, and the story is especially relevant today since in the time of Jesus the Jews thought of Samaritans much as Jews and Christians today think of Muslims. If the story were told to Jews or Christians today it would be the story of *the good Muslim*, or for Muslims it would be the story of *the good Jew* (or the good Christian). In short, in *the greatest commandment* Jesus taught that to love God we must love those of other faiths, even those we detest.