Military Intelligence Ethical Dilemmas in Large Scale Combat Operations

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The War Crimes of Russia in Ukraine

Over the past year the world has observed the Ukraine War with a sense of growing apprehension. This is partially due to the aggressive way that Vladimir Putin's Russian forces have conducted operations. The nations of NATO (North Atlantic Treaty Organization) and other allied countries have been especially concerned about the war crimes that have been committed by the Russian Federation.

The atrocities committed by Russian troops have been well-documented. They include the bombing and shelling of civilian targets, including hospitals, schools, apartment buildings, critical infrastructure, and shopping centers.¹ The attacks on the Mariupol theater where children were sheltering and the Kramatorsk rail station where thousands of refugees were waiting for trains are especially noteworthy.² These events led America's Secretary of State, Antony Blinken, to declare that "war crimes had been committed by Putin's forces in Ukraine."³ Additionally, in March of this year the ICC (International Criminal Court) issued an arrest warrant for President Putin and Maria Llova-Belova, his commissioner of children's rights. These warrants were a response to the abduction of Ukrainian orphans. Dmytro Lubinets, Ukraine's human rights chief, estimates that over 12,000 Ukrainian children have been illegally

¹ Antony J. Blinken, "War Crimes by Russia's Forces in Ukraine," U.S. Department of State press statement (March 23, 2022). https://www.state.gov/war-crimes-by-russias-forces-in-ukraine/

² Ben Cardin, et al. "Russian War Crimes in Ukraine," *Commission on Security and Cooperation in Europe, U.S. Helsinki Commission* (May 4, 2022). https://www.csce.gov/international-impact/events/russian-war-crimes-ukraine

³ Blinken, "War Crimes by Russia's Forces in Ukraine."

deported across the border,⁴ turning children into spoils of war.⁵ It is evident that Russia's actions violate the *jus in bello* principles of discrimination and proportionality.

The Russian atrocities have also included claims of torture and inhumane detention conditions.⁶ As Ukrainian soldiers have retaken the towns of Bucha, Chernihiv, and Sumy they have discovered mass graves and civilian carnage, as well as heard reports of rape and torture.⁷ While the details of these horrific crimes remain unclear, there are indications that some of them are related to intelligence-gathering. Twenty torture centers have been uncovered in Kherson, a city that was liberated in November of last year. The Mobile Justice Team, a group of multinational lawyers and investigators, has said that more than 1,000 Ukrainians have provided first-hand accounts of electric shock and waterboarding being utilized by their Russian captors at these locations. Furthermore, the Mobile Justice Team has determined that these torture sights were directly controlled by Kremlin security agencies.⁸ In other words, they were not just random acts perpetrated by a few sadistic soldiers acting on their own, they were endorsed by the intelligence authorities in Moscow.

⁴ Raf Casert and Mike Corder, "International Court Issues War Crimes Warrant for Putin," *Associated Press* (March 17, 2023). https://www.msn.com/en-us/news/world/international-court-issues-war-crimes-warrant-for-putin/ar-AA18KXuj

⁵ Emma Bubola, "Using Adoptions, Russia Turns Ukrainian Children Into Spoils of War," *New York Times* (October 22, 2022). https://www.nytimes.com/2022/10/22/world/europe/ukraine-children-russia-adoptions.html#:~:text=Since%20Russia%E2%80%99s%20invasion%20of%20Ukraine%20began%20in%20Februa ry%2C,portrayed%20as%20abandoned%20children%20being%20rescued%20from%20war.

⁶ Casert and Corder, "International Court Issues War Crimes Warrant for Putin."

⁷ Ben Cardin, et al. "Russian War Crimes in Ukraine."

⁸ John Bacon and Jorge L. Ortiz, "Torture Chambers in Kherson Linked to Kremlin Money; Russia, China Block G-20 from Condemning War: Ukraine Updates," *USA Today* (March 2, 2023). https://www.usatoday.com/story/news/world/2023/03/02/ukraine-russia-war-live-updates-blinken-lavrov-meet-briefly/11381180002/

The events of the Ukraine War have given the United States' military and its partners a clear impetus to reflect on the implications for their future operations. With top officials in the DoD (Department of Defense) and the DoS (Department of State) predicting that America's next conflict will be LSCO (large-scale combat operations) it is natural to ask: how will American Soldiers fare in environments like Ukraine? Will they uphold the Army Values and the Geneva Conventions, or will the expediency of military necessity dominate their decisions? As has been observed in Ukraine, the need for actionable HUMINT (human intelligence) in conventional operations presents some particularly difficult choices and temptations. It is clear that due to the ethical dilemmas posed by future LSCO, the U.S. Army must preemptively develop and implement comprehensive measures to reduce the commission of war crimes, as well as mitigate the negative consequences that can result from conducting intelligence interrogations.

U.S. Intelligence Tensions in Recent History

Unfortunately, crossing ethical lines in order to gain actionable intelligence in order to protect one's comrades in arms is not limited to Eastern Europe or Russia. U.S. Soldiers have also wrestled with this issue. Despite the expansion of progressive ideals and philosophies, history has demonstrated that human nature remains the same; it is unchanging. Three vignettes from the recent GWOT (Global War on Terror) illustrate the tensions that all militaries face as they attempt to gather useful intelligence on their enemies.

The revolting abuses that occurred on Cell Block I at the Abu Ghraib prison in Iraq became public knowledge on April 28th, 2004. CBS broke the story on *60 Minutes II*, accompanied by graphic pictures found on two CDs owned by the night shift's NCO (non-commissioned officer), CPL (Corporal) Charles Graner, Jr. While the primary culprits in the

detainee abuse were MPs (military police), the GOs (general officers) that investigated Abu Ghraib also implicated intelligence personnel, saying that in their pursuit of actionable HUMINT they created an environment that was ripe for abuse at the Iraqi prison. For example, in his investigative report MG (Major General) George R. Fay concluded that "The CIA's detention and interrogation practices contributed to a loss of accountability and abuse at Abu Ghraib."⁹

These moral struggles are not limited to enlisted soldiers, either. The men of Dog Company, 1st BN (Battalion), 4th BCT (Brigade Combat Team), 101st ABN DIV (AASLT) (Airborne Division, Air Assault) on FOB (Forward Operating Base) Airborne in Afghanistan were trapped between the proverbial rock and a hard place by insider threats and indifferent leadership at the battalion and brigade levels.¹⁰ Over a six-month period CPT (captain) Roger Hill's infantry company was subjected to attacks that resulted in many of his men becoming WIA and KIA (wounded and killed in action). MI (military intelligence) learned that LN (local national) contractors, interpreters and FOB merchants, had direct ties to the Taliban. After discovering this, the company leaders were able to test and confirm that these men were feeding information about operations, movements, and troop strengths to the enemy.¹¹ These insider threats were taken into custody but the higher echelons refused to accept the prisoners, just as they had released a dozen other enemies that Dog Company had previously captured.¹² The ROE (rules of engagement) demanded that any detainees had to be released within 96 hours of capture

⁹ Anthony R. Jones and George R. Fay, AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade, August 23, 2004, 9, in *Torture and Truth: America, Abu Ghraib, and the War on Terror* (New York: NYRB, 2004), 445.

¹⁰ Lynn Vincent and Roger Hill, *Dog Company: A True Story of American Soldiers Abandoned by their High Command* (New York: Center Street, 2017), 199; 219-25; 235-36; 258-61; 277; 283; 351-53; 367; 374-75.

¹¹ Vincent and Hill, *Dog Company*, 7; 28-38, 41-42; 45; 50; 56-57; 61-63; 67-68; 122; 132; 141; 217.

¹² Vincent and Hill, *Dog Company*, 31-32; 34; 71-72; 133; 157-60; 164-65; 184-85; 204; 209; 396.

if they were not being charged with crimes, and the evidence against them could not be shared with the Afghan authorities since it was classified, so the Afghans would not hold them.¹³ It was a case of "Catch 22." CPT Hill needed a confession from the spies, as well as intelligence to prevent retaliatory attacks by Taliban fighters for identifying and detaining their agents.

On the 27th of August of 2008 CPT Hill, with the assistance of a few Soldiers, performed a mock execution of the LN detainees. CPT Hill brought a couple of the spies outside of the FOB coffee shop where the captives were being interrogated and fired two rounds into the ground in order to cause those inside the shop to think that their fellow accomplices had been executed. The tactic worked, with the spies confessing what they had done and revealing vital information about their operation to the Soldiers.¹⁴

Nor are these tensions limited to company-grade officers. A similar incident occurred in Iraq in August of 2003. An artillery BC (battalion commander) with 4th ID (infantry division), LTC (lieutenant colonel) Allen West, received intelligence that, with the assistance of an Iraqi policeman, his PSD (personal security detachment) was going to be ambushed in an attempt to assassinate him. LTC West did not put much stock in this information until his PSD was attacked when he happened to not be travelling with them. ¹⁵

After this attack, on August 20th, he had his Soldiers take the suspected policeman, Yahya Jhrodri Hamoody, into custody. The Soldiers brought him back to their base in Taji. When Hamoodi would not cooperate the Soldiers and interpreter punched and kicked him in the shins a

¹³ Vincent and Hill, *Dog Company*, 249; 287.

¹⁴ Vincent and Hill, *Dog Company*, 249-52.

¹⁵ Deborah Sontag, "The Struggle for Iraq: Interrogations; How Colonel Risked his Career by Menacing Detainee and Lost," *The New York Times*, May 27, 2004. https://wwwnytimes.com/2004/05/27/world/struggle-for-iraq-interrogations-colonel-risked-his-career-menacing-detainee.html.

few times.¹⁶ Since this was not effective in forcing him to reveal the details of the assassination plot, LTC West had the detainee thrown on the ground and he fired his M9 pistol into a clearing barrel, making Hamoodi think that he was about to be executed.¹⁷ LTC West asserted that from the information extracted from Hamoodi one potential attacker was apprehended and potential ambush sites were identified and avoided, although this was contested at his hearing.¹⁸ There were no further attacks on the battalion until after he was relieved of command on October 4th.¹⁹

CPT Hill and LTC West clearly knew that they were violating the law; as a matter-offact, West reported himself to the BDE CDR (brigade commander) after the incident.²⁰ These officers knew that the UCMJ (Uniform Code of Military Justice) forbids mock executions. However, they believed that the circumstances necessitated breaking the law.

The point is that there were Soldiers, NCOs, and officers in the GWOT that thought that they had to cross legal and ethical lines in order to effectively protect themselves and accomplish their missions in COIN (counterinsurgency) AOs (areas of operation). Conventional warfare will likely result in increased exposure to these ethical dilemmas, since in LSCO the scale of the war is larger, the stakes are higher, the operational tempo is increased, and maneuvers must be rapid and decisive. This begs the question: if ethical boundaries were crossed in COIN environments, what should military planners expect to occur in LSCO? Also, given the nature of mass communication media today, how will war crimes committed by U.S. troops affect the OE

¹⁶ Sontag, "The Struggle for Iraq."

¹⁷ "U.S. Officer Fined for Harsh Interrogation Tactics," *CNN.com International*, December 13, 2003. https://edition.cnn.com/2003/US/12/12/sprj.nirq.west.ruling/.

¹⁸ Sontag, "The Struggle for Iraq".

¹⁹ "U.S. Officer Fined for Harsh Interrogation Tactics".

²⁰ "U.S. Officer Fined for Harsh Interrogation Tactics."

(operational environment)? The detainee abuse at Abu Ghraib certainly had a strategic impact on the GWOT, with CPL Graner's pictures being used as effective recruiting tools by terrorist organizations.

Particular Ethical Issues in U.S. Intelligence Operations

Besides the temptation to take ethical "shortcuts" and abuse detainees in order to elicit vital information, MI personnel face other moral and psychological issues as they collect intelligence. Derek Roeloffsma, an editor of the Association of Former (U.S.) Intelligence Officers' newsletter, explained the moral dilemma in these words: "There is a tragic conflict between the principles by which we wish to live together, 'with truth and justice for all,' and the duty and conscience of those who bear responsibility for protecting the lives of others."²¹ These competing moral principles often force government leaders, intelligence agents, and military SMs (service members) into difficult situations.

The DoD requires interrogators to use non-coercive rapport-based approaches in order to gather intelligence,²² especially after the abuses at Abu Ghraib. This strategy entails that the interrogators "open themselves up" and become emotionally vulnerable with the enemy. MI Warrant Officers assert that this can create a cognitive-emotional dissonance that is difficult for Soldiers to psychologically reconcile.²³

²¹ D. K. Roeloffsma, "The Editor: Torture, an Ugly, Perennial Question," *Association of Former Intelligence Officers Weekly Intelligence Notes* WIN #41-04 (May 3, 2004), 1-5. http://www.afio.com/sectionswins/index 2004.html.

²² Department of the Army, Headquarters, *FM 2-22.3: Human Collector Intelligence Operations* (Washington, D.C.: Department of the Army, September 6, 2006), 8-9 – 8-16.

²³ Eric Mayo, CW4, USA (MI WOAC HUMINT Track Manager) and David Clark, CW4, USA (MI WOAC Coarse Manager), Bravo Company, 304th Intelligence Battalion, 111th Military Intelligence Brigade, interview by author, Fort Huachuca, AZ, February 14, 2023.

This dissonance can be termed "principled sociopathy." Interrogators often experience a distinct dichotomy between the satisfaction that they derive from conversing with the enemy and the grief that they feel knowing that these people are responsible for killing American Soldiers. Undercover police officers experience similar struggles in their profession. Undertrained, inexperienced, and immature interrogators often lack adequate coping mechanisms to handle these stressors. The MI Warrant Officers say that this can lead to a sense of desperation, placing the intelligence collectors at a higher risk of breaking moral and ethical standards.²⁴

Recommended Actions to Mitigate War Crimes in LSCO

Knowing that LSCO will present significant ethical challenges, especially for the IC (intelligence community), Army leaders have a responsibility to mitigate these risks. While Army doctrine asserts that "character is essential to leadership,"²⁵ in reality, ethics training is often given short shrift in PME (professional military education).²⁶ Over a decade ago, Don Snider accurately stated, "The current scope of moral corrosion from the past decade of war shows that our services have taken too long a *laissez faire* approach to the development of moral character in our warriors."²⁷ This assessment is borne out by the CAC's (Combined Arms Center) recent decision to move all the Army Centers of Excellence from in-class instruction to a

²⁴ Mayo and Clark, interview by author.

²⁵ Department of the Army, Headquarters, *DA PAM 165-19: Moral Leadership* (Washington, D.C.: Department of the Army, September 27, 2020), 1-4, b.

²⁶ Thomas J. Statler, Commander, Chaplain, USN (Command Chaplain in the Joint Forces Staff College, National Defense University), "A Profession of Arms: Conflicting Views and the Lack of Virtue Ethics in Professional Military Education," In *A Persistent Fire: The Strategic Ethical Impact of World War I on the Global Profession of Arms* (Washington: NDU Press, 2020), 130.

²⁷ Don Snider, "The Moral Corrosion Within Our Military Professions," (lecture at the Strategic Studies Institute, U.S. Army War College, November 27, 2012). https://ssi.armywarcollege.edu/index.cfm/articles/The-Moral-Corossion-within-Our-Military-Professions/2012/11/27.

distance-learning platform. For example, this past summer the MICCC's (Military Intelligence Captains' Career Course) ten hours of ethics and character PoI (program of instruction) was reduced to zero hours. This change curtails officers' opportunities for discussion, introspection, and self-reflection. It also flies in the face of what has been occurring within Army leadership: approximately 80 percent of commanders are relieved for character issues, rather than competence issues.²⁸ Furthermore, over the past decade AMED (Army Medical) and the Chaplain Corps have verified that these ethical dilemmas have been fertile soil for Soldiers to struggle with moral and spiritual injury. This negatively impacts readiness, with these Soldiers having a high propensity for suicide, substance abuse, and social problems,²⁹ which may lead to being chaptered out of the Army, choosing not to reenlist, or the resigning of commissions.

Military leadership must reverse this trend of deemphasizing ethics education in PME. Rather, character development should be one of our primary focuses for Soldiers of all ranks: junior enlisted, NCOs, the warrant officer cohort, and commissioned officers.³⁰ Officers receive ethics instruction at all levels of PME, but it is neglected in enlisted SMs curriculum. This has been an unfortunate side-effect of the U.S. military's reaction to the My Lai massacre in 1968; after this incident became public the focus for ethics instruction shifted from enlisted personnel to officers, which has resulted in the current dearth of ethical instruction for enlisted Soldiers.³¹ The strategic impact that a few enlisted personnel at Abu Ghraib had on the GWOT

²⁸ Sean Wead, Chaplain (COL), USA (Combined Arms Center Command Chaplain), personal communication, Fort Huachuca, AZ, November 29, 2022.

²⁹ Ross F. Nelson, Aviator (COL) USA (Commandant, US Army Warrant Officer Career College, Fort Rucker, AL), "The War Inside: The Unfamiliar Concept of Moral Injury," (paper presented at the Air War College, Air University, Maxwell AFB, AL, 27 February 2019), 8-9; 13.

³⁰ Statler, "A Profession of Arms," 130.

³¹ Wead, personal communication.

demonstrates that this neglect is a mistake; Army leadership needs to proactively make ethical training a top priority for all Soldiers, including the various AIT (advanced individual training) and NCO academies.

The question that naturally arises from this is: what should the nature of this ethics curriculum be? Army doctrine promotes three ethical systems: deontology, utilitarianism, and teleology.³² The Army's primary ethical lens is Immanuel Kan's deontology; Soldiers are taught that it is their duty to follow the U.S. Constitution, ARs (army regulations), and the lawful orders of the officers appointed over them. While it is evident that deontological and utilitarian ethics have value, teleological ethics should form the foundation for the Army's ethics training. Dietrich Bonhoeffer, the German theologian who founded the Confessing Church and was executed by Adolph Hitler, rightly pointed out that ethical dilemmas essentially boil down to personal judgement calls, because rules do not and cannot cover every possible situation. In other words, when it comes to difficult moral choices, character is the definitive force.³³ Deontological and utilitarian ethics do not address character issues; however, teleology, or virtue ethics, does.³⁴ Possessing a virtuous character and modeling the behavior of heroic, inspiring examples is a more powerful motivator than deontology or utilitarianism. While the other two ethical systems can be useful perspectives, deontology is essentially the minimum requirements of the law, and utilitarianism is a mathematical cost-benefit analysis. The fact that virtue ethics is the preeminent system was demonstrated by the judgements of the International Military Tribunals at

³⁴ Statler, "A Profession of Arms," 129.

³² DA, HQ, *DA PAM 165-19: Moral Leadership*, Appendix C, C-2 – C-4; Department of the Army, Headquarters, *ADRP 6-22: Army Leadership* (Washington, D.C.: Department of the Army, September 10, 2012), 3-38.

³³ Statler, "A Profession of Arms," 156.

Nuremburg and Tokyo. At these trials the Allied powers declared that basic human rights supersede immoral commands; virtue ethics trump laws and orders.

The Army Chaplain Corps should lead the way forward, creating venues and opportunities to teach virtue ethics to Soldiers of all levels. Chaplains are naturally expected to be the SMEs (subject-matter experts) in ethics and morals; many have had graduate-level classes in the subject. Furthermore, these responsibilities are enshrined in Army regulations and doctrine. AR 165-1 states that, "Chaplains conduct the religious programs and activities for the command and provide professional advice, counsel, and instruction on religious, moral, and ethical issues."³⁵ DA PAM (Department of the Army Pamphlet) 165-19 clearly states that the Chief of Chaplains is charged with the responsibility of teaching "moral leadership for the entire Army,"³⁶ providing "training at Army schools on topics to include ethics, moral leadership, spiritual fitness and Soldier and Family readiness."³⁷ It elaborates, stating, "Chaplains at all echelons must seek to make appropriate MLT (Moral Leadership Training) resources available that are meaningful, engaging to use, and accessible when needed."³⁸

Unfortunately, the Chaplain Corps has not made ethics instruction a priority, often focusing on other areas to the exclusion of ethics training. At the Chaplain Captains Career Course they receive very minimal instruction in how to implement ethics training in their units, and a few majors are selected to attend ACS (advanced civilian schooling) in order to become

³⁵ Department of the Army, Headquarters, *AR 165-1: Army Chaplain Corps Activities* (Washington, D.C.: Department of the Army, June 23, 2015), 3-2, b.

³⁶ DA. HQ, DA PAM 165-19: Moral Leadership, 3-1, a;

³⁷ DA. HQ, *DA PAM 165-19: Moral Leadership*, 3-1, a2.

³⁸ DA. HQ, DA PAM 165-19: Moral Leadership, 4-7, a.

Army ethicists. However, AR 165-1 and DA PAM 165-19 state that chaplains at all echelons are to teach ethics. Therefore, CHBOLC (Chaplain Basic Officer Leadership Course) at Fort Jackson should include curriculum that teaches entry-level chaplains how to incorporate ethics training into their units, equipping them to perform this vital function mandated by Army doctrine.

Some object, saying that ethics training will not prevent American Soldiers from committing war crimes. While it is true that ethics courses will not eliminate all ethical violations, this is a fallacious opinion based on assumptions, rather than measurable, quantifiable research. It is also contrary to how the Army operates; the Army trains its personnel for all other behaviors, so why should ethics be excluded? The Army conducts training in marksmanship, tactics, communications, emergency medical care, vehicle maintenance, intelligence gathering, readiness, healthy relationships, SHARP (Sexual Harassment/Assault Response Prevention) cultural awareness, EO (Equal Opportunity), and much more. Again, it would be naïve to assume that training will completely end all war crimes in LSCO, but it can prevent some of them.

From a moral perspective, there are three types of SMs: the character disordered, the character coherent, and the character ambivalent.³⁹ Ethics training will not make much of an impact on Soldiers who are character disordered. They engage in evil acts like theft, rape, and murder out of selfish motivations. An example of people in this category is the four Soldiers of 1st PLT (Platoon), Bravo Company, 1st BN, 2nd BCT, 101st ABN DIV (AASLT), who raped a 14-year-old Iraqi girl and murdered her and her entire family in 2005.⁴⁰ It is extremely doubtful that any ethics training would have prevented the four men from committing this brutal crime.

³⁹ These three categories of students are what the author has observed from nearly three decades of ministry and over a decade of experience teaching MLT and ethics in the Army. The nomenclature is a creation of the author.

⁴⁰ See Jim Frederick, *Black Hearts: One Platoon's Descent into Madness in Iraqi's Triangle of Death* (New York: Harmony Books, 2010).

The second category, character coherent, generally exhibit good conduct. This group consists of Soldiers who are concerned about doing what is right; they desire to have moral character, often due to their religious and philosophical values. Ethics training can help reinforce the Army Values with these Soldiers, as well as assist them in clarifying and articulating their thinking through discussions and self-reflection, developing them into effective leaders.

The third category, the character ambivalent, often have not given much thought to morality. Many of these SMs are raised in homes and environments where ethical behavior was not modeled, praised, or rewarded. This is the group that dynamic ethics training can have the greatest impact on. Discussion and intentional opportunities for introspection will help these Soldiers consider ethical matters, perhaps for the first time. If they internalize virtue ethics and the Army Values they will be less likely to commit war crimes during military operations. Virtue can be taught.

Conclusion

The Ukraine War highlights the ethical dilemmas posed by future LSCO. Ethical boundaries were definitely crossed in the GWOT COIN environments, and the stresses and temptations will only be exacerbated in conventional warfare. Those in the IC are especially at risk, due to the cognitive-emotional dissonance and psychological trauma that interrogators often experience. Army leadership, with the Chaplain Corps taking the lead, must comprehensively and proactively mitigate these risks by emphasizing in-class instruction on virtue ethics in PME at all levels.

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