

THE BROOKINGS INSTITUTION

SAUL/ZILKHA ROOM

U.S. SECURITY ASSISTANCE AND HUMAN RIGHTS

Washington, D.C.

Monday, December 12, 2016

**PARTICIPANTS:**

**Moderator:**

TED PICCONE  
Senior Fellow, Latin America Initiative  
The Brookings Institution

**Featured Speaker:**

TOM MALINOWSKI  
Assistant Secretary of State for Democracy,  
Human Rights, and Labor  
U.S. Department of State

**Respondent:**

DANIEL BYMAN  
Senior Fellow, Center for Middle East Policy  
The Brookings Institution

\* \* \* \* \*

ANDERSON COURT REPORTING  
706 Duke Street, Suite 100  
Alexandria, VA 22314  
Phone (703) 519-7180 Fax (703) 519-7190

## P R O C E E D I N G S

MR. PICCONE: Good morning, everyone. Welcome to Brookings. I'm Ted Piccone. I'm a Senior Fellow with the Project on International Order and Strategy here at the Foreign Policy Program.

We're here today to talk about the very complex issue of U.S. security assistance and human rights, and how the U.S. Government tries to reconcile these two important parts of the U.S. national security strategy, both conceptually but also operationally.

As many of you know, the U.S. spends over \$25 billion a year both training and equipping foreign military forces and law enforcement forces of more than 100 countries. So, it's a large enterprise, and inevitably raises a number of very complicated issues when it comes to our human rights concerns in a number of countries.

Today, you will hear a bit about the Leahy law, which now applies to both State and the Defense Department, and is a way in which the U.S. tries to vet units that it trains to make sure that we are not associated with human rights violations but also a way to leverage some kind of corrective behavior on the part of the host government. We will hear about that.

We will also hear more broadly about how our security assistance operations are working around the world, including in the Middle East, where counterterrorism, of course, is the focus, and we're working not just with military forces from host nations but with militias and rebel groups and local groups, which raises another set of very complex problems.

To address these issues today, we are going to hear featured remarks

ANDERSON COURT REPORTING  
706 Duke Street, Suite 100  
Alexandria, VA 22314  
Phone (703) 519-7180 Fax (703) 519-7190

from Tom Malinowski, who is the Assistant Secretary of State for Democracy, Human Rights, and Labor. He's been in that position for over 2.5 years, and prior to that, he was the Washington Director for Human Rights Watch.

You have their bios, I'm not going to review the whole list, but a very impressive record of public service, both at the National Security Council and the State Department, in the Clinton Administration, on the Hill for Senator Moynihan, and in the non-profit sector.

We will then engage Daniel Byman, who is a Senior Fellow here in the Center for Middle East Policy, and also a Professor at the Georgetown University Walsh School of Foreign Service in security studies.

Dan has also a remarkable record of service, in particular, on the National Commission on Terrorist Attacks in the United States, the 9/11 Commission, and subsequent efforts to understand and improve the way the United States handles intelligence and security policy.

We will engage in a panel discussion up here, and then we will engage you all in a Q&A. We look forward to the discussion, and I will turn the microphone over to Tom for some opening remarks.

MR. MALINOWSKI: Hello, everybody. Thank you so much, Ted, for asking me to come and talk to you guys today, and for the introduction. I'm very glad that somebody is taking care of international order and strategy. How's that going?

(Laughter) Yeah.

I also want to thank you for your help with another project that we have been engaged in, which is really very relevant to the subject of today's discussions. As some of you may know, the United States is currently the President of an organization

called the Community of Democracies. Yay! I like to think I'm the President of the Community of Democracies in my capacity as Assistant Secretary of DRL.

We have a project that Ted is actually spearheading with former Secretary of State, Madeleine Albright, that aims to look at how best to address security challenges in a Democratic way. Looking at countries like Tunisia and others that are struggling to get this balance right.

This is a really big topic. Usually, when it's written about, when it's spoken about, particularly in the large bureaucracy that I work in, it's addressed in somewhat abstract ways. I'd like to start with real world examples, the examples from which we actually drive those larger principles.

I will start with a place that I recently visited. Actually, one of the most interesting trips I have taken in this job. It was to the East Coast of Kenya, to the City of Mombasa. This is, as I'm sure you guys know, a part of East Africa where the al-Shabab terrorist group is active in recruiting young people to join its ranks and where it has carried out a number of terrible attacks.

In Somalia where al-Shabab is based, we, the United States, have supported African Union forces to protect civilians and to go after this group, and where necessary, to protect ourselves, we have taken direct action against it ourselves. We provide support to Kenyan security forces operating in Somalia for this purpose, and we help them to try to protect their own people at home.

I want to start with that because I don't want anything I say today to be construed as an argument that war is exclusively an exercise in winning over hearts and minds. We train and equip security forces, our own first and foremost, and those of our partners, to engage in their primary mission, which is the use of force.

Sometimes we talk about this in euphemistic terms. We talk about kinetic operations and so forth. What we are talking about is killing people. That is sadly in this world sometimes necessary. Some people who want to kill us are not going to be stopped unless we stop them.

The reason that we talk about the other side of the coin, not just those of us who work at the Human Rights Bureau at the State Department, but my colleagues who work at DOD and in our military commands around the world, is that we recognize, we have learned the hard way that very few of the threats that we have to use force against can be eliminated by force alone.

Nor do we want our armed forces or those of our partner nations around the world to have to fight the same battles again and again against enemies whose strategy is not to beat us on the battlefield, because they know they can't do that, it's to induce us to respond to their attacks in ways that reinforce their narrative and feed their recruitment.

So, that's what we were looking at in Mombasa and on many other trips that I've taken to similar places around the world. How are young Muslim men in a place like this recruited? Why do they join? How can they be discouraged from doing so, and if they do, how can they be induced to change their minds and come home?

One of the really interesting things that I found in that visit is much of the really good and effective work answering those questions and actually doing something to advance our goals was being done by civil society groups and religious groups on the ground. That is who we are learning the most from, and by "we," again, I don't just mean the Human Rights Bureau at the State Department, but our military and the folks who are directly involved in our security assistance efforts.

Now, what we found in Mombasa, and again, I'm just using this as a stand-in for many other similar places, is there are a lot of factors that lead to this problem. Some of them are economic. Young men feel there is just no hope for them, they come of age, there's no job, there's no way to provide for a family, no way to get dignity, and then this organization shows up at their doorstep and offers them structure, offers them a sense of purpose.

The motivation also is fueled by a sense that in the past their community, the Muslim community, in Eastern Kenya, has been collectively punished when a terrorist attack happens, that the police in their neighborhoods are sometimes abusive and corrupt, not worthy of respect, and then these al-Shabab guys come to their doorstep and they say we can help you fight back. We can help you gain pride in that right. We can help you gain dignity in that fight.

Then when they go off and join, and some of them realize what a mistake they have made, in some cases they are afraid to come home and turn themselves in, even though this is something the Kenyan government has offered them through various amnesty programs, because they are afraid of what those security forces might do to them if they give up.

This leads to an obvious conclusion. Yes, we do have to fight where necessary, but just as important to be effective in that fight we have to build trust between security institutions and the communities they protect.

We have to avoid and we have to help our partners avoid the human rights abuses that undermine that trust, and we have to encourage them to work with rather than try to suppress the civil society groups that give people in these communities non-violent means of getting redress for their grievances and that can serve as a bridge

between the authorities and these people.

To go back to the Mombasa example, when we talked to organizations and people in the community who were working to try to bring young men home from al-Shabab, it was absolutely clear that these young men are much, much more likely to turn themselves in to say a council of religious elders in their community or even a human rights organization rooted in that community, to a group that can actually give them some assurance of protection and fair treatment than they are to walk into a police station or Army post to say I want to come home.

You know what? That should be fine, and from our point of view, that is fine, because the goal is to get them to come home off the battlefields so we don't have to keep killing them there.

So, the key principle in any effective strategy has got to be that, building trust. We apply that principle, we try to apply it in the way that we conduct our own military operations.

Many of you know President Obama recently issued an Executive Order to memorialize and build upon all the steps we have taken in this Administration and the last one in the wars in Afghanistan and Iraq to try to make sure that we are doing everything possible to avoid causing civilian casualties in our own operations, and when we do cause them, we take responsibility, and it's a principle we apply in our security assistance efforts.

Of course, there are a lot of other examples around the world that show why this is necessary. If you look at the biggest security challenge we face right now in Iraq and Syria with ISIL, it's absolutely clear where that comes from.

It came from a situation in which the governments and security forces of

these two countries lost the trust of their people to the point where in many Sinai communities in both countries, people started fearing their security forces at a certain point more than they feared these strange foreign men waving their black flags coming in under the pretense of liberating them from their oppression.

This is clearly a central problem that remains in Syria today. You all may have heard the news that the City of Palmira, which al-Assad's forces with a lot of Russian help took from ISIS a while back, apparently they fell again to ISIS. Why is that? Because al-Assad cares a hell of a lot more about fighting his own people in Aleppo and has diverted his forces there, leaving himself wide open to an enemy that he has cared a lot less about fighting.

It's true in countries where we are closely partnering with allies to meet these threats, in Nigeria, for example, in the fight against Boko Haram, the vast majority of the people of Nigeria want Boko Haram defeated. They want and need their government to protect them.

The potential there for an effective counterinsurgency that unites the people and the government against this common threat is absolutely there, but only if the military avoids human rights abuses and holds itself accountable when they happen, and that's what we are trying to promote through our assistance to Nigeria.

Another great model, I think, historically, has been Columbia. It's not a perfect model because we all know that when fighting the FARC, the left-wing rebels in Columbia with which the government just entered into a peace agreement, the Columbia armed forces did commit a number of very serious human rights abuses.

In the midst of that war, the government did begin to take steps to hold those security forces accountable. Hundreds of them were dismissed or prosecuted.



I think it is no accident that the government's increasing success in the fight against the FARC coincided with greater attention to accountability and human rights.

Many factors contributed to that improvement, but one of those factors was that the United States over the years conditioned in a lot of our assistance to the Cambodian -- to the Columbian -- a lot of "C" countries entering my mind these days -- Columbian military on their human rights performance.

One way in which we did it, and this gets back to where you started, is the Leahy law. The great thing about the Leahy law is that unlike past exercises in legislative conditionality on U.S. assistance, it does not say if country X commits human rights abuses, we cannot provide support to country X.

It says if a unit of a foreign security force has committed serious human rights abuses and not held the perpetrators accountable, then we cannot provide assistance to that unit. It's a scalpel.

It enables us as we did in Columbia to continue helping a country deal with a very serious security threat while at the same time allowing us to withhold assistance in a targeted way from those elements of that country's security forces where the problem has been concentrated.

Actually, Columbia is one of the first places where the U.S. Government really took the Leahy law seriously, back in a day when yes, the law was on the books, but we had not yet developed the systems and the tradition of consistently applying it across the world as we do today.

Over the last decade, we have professionalized our Leahy vetting process. We have created a system where every day around the world our embassies

are vetting units, vetting individual participants in our military training programs.

In fact, we are now vetting 180,000 units and individuals every single year, considering both DOD and State Department assistance. We have doubled down on what we call "Leahy outreach," explaining the Leahy law and the vetting process to our partners at DOD and our embassies worldwide.

Over the last year, our little Human Rights Bureau's leadership has visited every U.S. military combatant command, apart from UCOM, and many of our embassies and consulates overseas to address and resolve Leahy concerns as they come up.

We have also focused on teaching and modeling what we call "Leahy diplomacy." The whole point of the law is to prompt a discussion with our foreign partners on how we can help them develop institutions of accountability.

I've used Leahy diplomacy many times all over the world. A good recent example, I was in Sri Lanka in 2009, where the armed forces of that country under what was then a much more authoritarian government, finished off a domestic insurgency, the Tamil Tigers, in a terrible kind of final orgy of bloodletting, in which thousands and thousands of civilians were killed, many people taken prisoner, executed.

Our relationship with Sri Lanka was estranged for a number of years as a result of this because we joined international calls for accountability. We now have a very different government, democratically elected government in Sri Lanka, that is committed to democracy and human rights, and that has worked with us at the United Nations to make joint commitments to hold perpetrators of human rights abuses on both sides of that conflict accountable.

So, we want to help Sri Lanka. We want to provide all kinds of

assistance. We want to rebuild a full and complete and unfettered relationship between our military and the Sri Lankan military.

At the same time, we have to insist that these past cases of human rights abuses are addressed, and the Leahy law gives us a great way to do that because it does allow us over time to restart assistance and cooperation with the military while again focusing on those units and individuals that were most problematic.

The fact that it is a law enables me, as I did a few weeks ago, to sit down with the heads of the Sri Lankan Navy, Air Force, and Army, to say here's what you have to do, and if you support your civilian government's commitments to start a legal process to investigate these allegations and to hold people accountable, here's what we are going to be able to do to help you, and that's not just me speaking about our policy preferences, it is the law in the United States.

They understand and respect that this is something we have to do. We can't get around it. That actually helps us a great deal.

We have used that stick, but we have also given our partners an off ramp. One of the objectives of the law is to encourage something that we call "remediation," and we now have a formal policy for the remediation of units that had previously been denied assistance under the Leahy law, a policy that we have agreed to after a lot of careful work with the Department of Defense.

It's basically a roadmap that will show a foreign military force, if this unit is having trouble receiving U.S. training, here are the specific steps that it can take in order to in effect get off of that black list.

We launched this policy last year. We now have a number of cases where units have gone through the policy and been restored into the light, as one might

say.

A good example where we have used this effectively is in Afghanistan. Four cases in the last year. Because the Afghan government credibly investigated, prosecuted and punished individual members of its security force units responsible for human rights abuses, we are now able to work again with those remediated units.

During his first visit as President to Washington in 2015, the Afghan President, Ashraf Ghani, publicly and privately vowed to combat abuses by his security forces and to hold perpetrators accountable. Last year, the Afghan Ministry of Interior established a special commission to track, evaluate, and finalize action on these kinds of cases. The Afghan MOI and the Defense Ministry are finalizing plans for a new agency, the Afghan Human Rights Ombudsman, and so on.

These are all very concrete results of a partnership between the United States and a foreign security partner in which we have used these provisions in U.S. law to try to incentivize reforms and steps that are very much in its own interest and the right thing to do.

There are other laws that enable us to do this kind of thing. Another one is the Child Soldier Prevention Act, which as the name suggests, focuses on the very particular scourge of armed forces around the world recruiting children to serve in their armed forces.

The Child Soldier Prevention Act requires the State Department to identify countries that have governmental armed forces or governmental supported armed groups that recruit and use child soldiers. We have used this list to call attention to countries of concern, and in some cases, to sanction them by withholding some or all of our military assistance.

A good example here is Chad, a country that has long been of concern for the use of kids in conflict. Under the law, we listed Chad as a country of concern in 2010.

In 2011, it signed a joint action plan with the U.N. outlining the steps it needed to take to end this practice, and in 2014, it fulfilled the action plan, and we found that children were no longer involved in the Chadian National Army, and we have tried to replicate that progress in a number of other places around the world.

So, that is some of what we have done. Looking forward, and I'm doing a lot of looking backward and forward in my last 40 some days as Assistant Secretary in this job, one thought that I have had in looking at these issues is that our security assistance efforts around the world can serve two distinct purposes, which are both legitimate, but sometimes find themselves in conflict.

In some cases, we are deliberately aiding a foreign security force to actually do something, to achieve a particular security objective, helping to fight an insurgency, for example. Helping to protect its border or defeat a terrorist group.

In other cases, security assistance is provided more with the aim of solidifying relationships with a partner/government. Now, you might think that we pay less attention to human rights in the first of those two situations where we are helping partner forces that are engaged in conflict. In fact, for all the reasons I mentioned, the opposite is the case.

We have an even greater stake in holding foreign security forces accountable and in providing equipment and training that is actually suited for the task when we are working with partner forces that are actually trying to do something, because we want them to be operationally effective.

Human rights requirements are not just the right thing to do in those situations, they are actually one of our insurance policies to ensure effectiveness.

I have noticed, and you guys who have followed the debates around the Leahy law know, there has at times been friction with some in the Defense Department who perhaps understandably see the Leahy law as an obstacle to doing some of the things they want to do.

What really surprised and heartened me when I took this job is that in the places where our military is actually engaged in helping a foreign security partner fight a war, the Leahy law actually tends to be more popular than in places where the primary orientation of our security assistance missions is building relationships, because the warfighters know human rights abuses kill the mission, they want the mission to succeed. The Leahy law gives them a tool, a very fine tool, to achieve our goals.

In fact, I think particularly looking at the Middle East, you will see that we have been gradually shifting the way we provide security assistance to a number of partners as the aim of our security relationship with them shifts somewhat from the relationship building mold to achieve a security objective mold.

For example, in Egypt, we have been moving away from what is called "cash flow financing," the kind of long term guarantee that Egypt has tried to maintain of the provision of all kinds of weapons that may or may not be relevant to the security challenges that country faces, shifting from that to a focus on training and equipment that is actually useful to doing the things Egypt needs to do, border security and fighting terrorism in Sinai.

On top of that, we had not been able to make the necessary human rights certifications needed to unlock the final 15 percent of the military aid that Congress

has provided to Egypt.

In Yemen, where we have a lot of concern about civilian casualties caused by the Saudi led coalition, we have been reviewing all of our support to that coalition to ensure that we will not be complicit in the kinds of strikes that cause civilian casualties.

So, just a couple of examples. There are many others in that vein.

I will end by touching on something that you also mentioned at the start, and that is the vastness and complexity of this apparatus that has grown and evolved over the years in the U.S. Government to provide security assistance to our partners.

You mentioned that in the past few years, security assistance has averaged around \$23 billion or so a year. Since 9/11, I think it is over \$250 billion that we have provided in one form or another to support foreign security forces.

Much of this funding was provided through one year of special authorities, which has made planning and coordinated approaches very, very difficult. We are up to, I'm told, well over 100 distinct congressional authorities through which this work must be done.

And quite honestly, we don't always have a clear, well organized picture even within the U.S. Government of what is being spent where or whether it is effective, because we track these distinct authorities and funds rather than countries and strategies as a whole.

If you look at that increasingly complex landscape, what makes it tougher is that the jump in funding has happened primarily on the DOD side, with the State Department expected to provide oversight and foreign policy guidance without a lot of additional resources or expertise.

Since 9/11, DOD has seen an increase in funding at 111 percent. That is not the case when it comes to the State Department.

Congress has just passed a defense authorization bill, about the only bill that ever consistently passes the Congress these days, which includes some reforms that potentially address some of the DOD specific concerns in this area, combines a number of the DOD authorities into a single streamlined authority, requires a congressional budget justification for the first time ever on DOD security assistance, requires DOD to start doing more serious monitoring and evaluation.

Of course, as we have mentioned, the Leahy law already applies to all of that. So, a more coherent structure for doing it will make it easier for us to ensure that what we all agree must be done in terms of marrying our human rights and security objectives can in fact be done.

So, I hope that it will be done. I have no idea what the future is going to bring in all these areas. If you ask me, I'm not going to bring out my crystal ball, but I am very proud of what we have been able to do as incomplete as I would acknowledge it is in the Obama Administration, and I'm particularly proud of the work that the very small bureau that I lead and the really wonderful team that we have built in my bureau focusing on security and human rights has been able to do to move us forward on all these issues.

So, again, thank you. I'm looking forward to all of your questions.

(Applause)

MR. PICCONE: Thank you, Tom. Those were really comprehensive and inspiring remarks, and I think your last comment taking note of the context in which we are meeting and discussing this is important because we are looking at a transition that raises a number of questions for folks.



So, I think making it clear where we are, how far we have come in the last several years, and not just under the Obama Administration. My first position in executive government was at the Pentagon in an Office for Democracy and Human Rights, which lasted one year. We haven't seen it since.

There has been this kind of funny evolution of measures and policies and now laws and they have tried to really wrestle with this problem because I think your point about the effectiveness of our assistance is critical and what is driving a lot of the combining and coherence, growing convergence of the different issues here.

I'm going to ask Dan Byman to reflect a little bit, particularly from a security point of view. Dan recently published a paper on the L'Affaire Blog, that is also available on our web site, on the effectiveness in particular of our counterterrorism training in the Middle East. Dan, over to you.

MR. BYMAN: Thank you, and thank you all for coming out this morning. My remarks based on my own work, are going to describe some of the problems the United States has had in implementing training programs, especially with regard to counterterrorism.

The important caveat being that I believe very strongly in these programs, and I also believe very strongly in attempts to integrate human rights into them.

Probably half the work I've done at Brookings ends up with a call for more of these programs, expanding funding, more senior effort to them. My criticism is meant for ways for us to think about them in terms of their limits, but also to recognize that they are vital.

Very briefly, why do I think they are vital? I would say a couple of things.

In general, from a counterterrorism point of view, ending or reducing wars is vital. People talk about drivers of terrorism, and one thing they often miss is that wars themselves are drivers of terrorism, that having open spaces where militant groups can arm, train, organize, build many armies, is exceptionally dangerous, and the more you can shrink that space or eliminate it altogether is vital, and that's done not by American troops usually, but by troops from the country, from the region, from the area.

This is cheaper, but beyond that, it's much more effective. We're in the teach a man to fish sort of model, where if the United States leaves, it often doesn't do any good in the long term.

This is particularly complex from a training point of view, especially as you get into issues that involve non-state actors as well. Let me lay out some of the reasons I feel it's hard, and what I'll stress is that American influence or the influence of outside actors is usually exceptionally limited, so often we will have programs, we will have guarantees, we will have objectives, but we have to recognize that our influence is likely to be limited, and to me, that's not bad, right?

If you say we're going to do a policy that's much cheaper and more effective than putting American boots on the ground directly, but our influence will be limited, I'll say fine. I'll take it. I often think expectations are a bit too high.

Let's begin. When you are working with security forces, especially when you're working to train and control security forces, you're often working with the least Democratic part of an un-Democratic country. You are working with the state org's that are in charge of repression, so in Egypt, you are helping the group that disrupts legitimate Democratic dissent, as well as fight the Islamic state affiliate in Sinai. You can try to maneuver it to help one side but not the other, but it is very hard at a local level to be able

to differentiate.

This is something that is a constant problem, which is our programs in the end are not controlled by us. The locals involved have huge influence over who gets what. It is almost I would say unrealistic of us to expect too much control just because we're not going to be the ones ultimately doing this.

Also, when you have these powerful civil wars in particular but in general, powerful dynamics in the country, whatever is gained in training can easily be overwhelmed. Anyone who has been to an H.R. training event offsite, you go, you absorb the material, you nod, you check the boxes, and then you often go back to your job and do what you are doing already, right? The training is ancillary to your day-to-day.

Magnify that by about a thousand, when you get to civil wars where there are life and death matters for those involved. In particular, the training can't replace or really change local politics in a dramatic way.

In Iraq, you had an incredibly expensive security force trained by the United States by many years, very impressive people involved, so it's not a question of competence, it's not a question of resources. We saw that force melt away in Mosul in 2014 when it was faced by a force that was numerically inferior, that was inferior in terms of equipment, inferior in terms of training, but not inferior in terms of its morale and cohesion.

So, the force melted away, and sectarianism, bad governance, corruption, all these things meant that the military force that had been trained up didn't actually want to fight.

Often you have intense local rivalries that make it exceptionally difficult to have a coherent force, where factions within the government and especially when you're

dealing with non-state actors, factions within the groups themselves will be fighting each other.

In many of these countries, you will have weak national identities, so being Iraqi, being Syrian, these are things that are not false, right, there certainly is a real identity called being an Iraqi, but there are many other identities that are vying for political salience that enable divisions within groups.

All this is part of a lack of legitimate government, that in many countries in the world the government is not accepted as legitimate by a significant amount of the people, right? That could be due to sectarian or ethnic divisions, it could be due to corruption, it could be due to it being a dictatorial government. There are a lot of reasons governments lack legitimacy.

When you're asking people to fight on behalf of a government they do not see as legitimate, things change dramatically. It's a much more transactional relationship, and it's one that is much more vulnerable to short term disruption.

The thing to remember when we are talking about fighting insurgencies is that this is almost likely in every single case. There is a reason a country has insurgency. There is a reason a country has a civil war. That is often because the government is bad, either incompetent or it is hostile by much of the people, and these are the things that produce insurgencies and civil wars, so not surprisingly, these dynamics are present when the United States comes in and tries to train them.

If the United States wants to train up the Canadian military, I think that's going to go very well. If the United States wants to train up a military where an insurgency is raging, it has to recognize there are reasons for the insurgency in the first place.

As a result of all these problems, many governments in the world politicize their militaries, often the officer corps, especially the senior officer corps is chosen primarily due to political loyalty. In some cases, being competent can be a negative.

If you think about your average dictator, the rag tag insurgency on the fringe of the country, that's a problem, field generals in the capital who control armed forces, that's a real problem. That's much more of a threat to their power and their ability to influence and control their own country.

It is smart for them to put in place senior officials who are exceptionally loyal, and that might be due to family ties. One thing you very much want to do is make sure that different parts of the military are not talking to each other.

If we had a military officer up here, what he or she would say is that one of the keys to effective military operations is unity of command, that you have a unity of effort. One of the keys of being an effective dictator is disunity, right, that you want to divide your own people to make sure no one can overthrow you.

This has tremendous consequences that I'm happy to talk about for overall military competence. One thing you want to do, you also want to use corruption. Corruption is a tool regimes use. They use it to buy off key supporters and they use it to implicate them. What you want your senior generals to know is that if you are overthrown, they will be hung from the lamppost as well. You want to use corruption to reward them, but also to make sure that they are brought into your regime.

All these forces that are not inherent but are likely in many of the countries the United States is working with make effective training in the long term far more difficult.

As a result, you often have multiple militaries in a country, some of which are handpicked, and in countries with civil wars, you are likely to see multiple militaries as well, often involving pro-regime militias that are often as formable or more formable than the regime forces themselves.

One thing the United States often does is it works with non-state forces, so the United States is doing this in Iraq right now. It is doing it in Syria right now. It is doing this in Libya right now. It's doing this in Yemen right now. It's doing this in Somalia right now. It's doing this in Afghanistan right now. A long list, I'm probably missing some.

This is something that I think is actually worth doing, but what you are doing is you are further weakening national identity, right? You are giving arms organization and military experience to parts of the country that do not accept the legitimacy inherently of the national government.

So, often national governments would rather have an insurgency than a militia that's more effective that ostensibly swears loyalty to the government but is quite independent in reality.

This is the terrain that U.S. programs have to navigate. I want to go back and simply end on my last point, which is I believe strongly in these programs, because I believe if you can make marginal progress, that is tremendously beneficial, a huge cost saving overall for the United States. It is something that is better for the country in general. It is something I'd recommend in many circumstances, and in fact, I would say for almost every intervention the United States does, a training program has to go with it.

One of my criticisms of the Libya intervention was the United States did not do a massive training program as part and parcel, right? It was something that was kind of started and abandoned very quickly.

This has to be part of our foreign policy, and as was alluded to, it has to be something that is better integrated across the U.S. Government. There are so many parts of U.S. democracy that owns part of this program, and this is not done in an integrated way.

I have a lot of criticisms about it, but that's because I think it is so important. I'll end with that kind of plea for more attention to this at the most senior levels.

MR. PICCONE: Great. Thank you, Dan. That was a really compelling discussion of how complex the operating environments are. I think you put your finger in particular on one of the biggest challenges, which is the local governance operating environment in which we are working in.

Tom, I'd like you to comment on what Dan had to say, but also kind of other measures that other parts of the U.S. Government are doing to address civil military relations in many of these countries, which are so fraught, and helping civilians assert some kind of Democratic control, whether that is through parliamentary structures, oversight, through greater transparency and budgeting, all the kind of good governance tools that we have, and that various parts of both the U.S. Government and non-governmental organizations are engaged in.

MR. MALINOWSKI: You want all of that? (Laughter)

MR. PICCONE: Give me a sense of how that's going.

MR. MALINOWSKI: Great. So, look, there are a lot of examples of countries where we have programs in foreign assistance and diplomacy that aims at strengthening civilian oversight of foreign security forces.

I'll give you one example where this is a particularly important issue to us

and where we have applied a fairly simple rule to advance the goal, and that is Burma, which is a very fragile, but I think still somewhat hopeful example of a transition from military government to Democratic government that the United States has been promoting for over 20 years.

We now have not full civilian control of the military there, we do have an elected civilian government that is legitimate, and a still very powerful military that was running the country absolutely as recently as five or six years ago, which has under the constitution of the country left over from military rule a considerable degree of autonomy.

Aung San Suu Kyi, the leader of Burma, does not have control over the Burmese military, not legally, not budgetary.

The military veterans very much want to build a relationship with the United States. Why? Because we are the coolest military in the world. We have the coolest toys. We fight better than anyone else does.

We provide the greatest respectability to say if you're a senior officer in a country like Burma going to a three-week training course in the United States, or even better, a joint exercise with the U.S. military, is about the coolest thing you can do, especially if you're trying to regain a sense of respect for your country and your military around the world.

What we have said to the Burmese military is that in principle, we're open to all kinds of potential relationships with you in the future, but there are two conditions. Number one, you have to quit the human rights abuses that are still going on in some of the periphery of that country, and accept civilian control of the military, and two, if you want anything from us, don't ask us. Ask your civilian leadership. If they ask us, then we will listen.



Every single contact, engagement, even at the relatively limited level that we have right now with the Burmese, as a matter of policy is conducted through the civilian government because the thing that we want to train the military to do before we train them to do anything else is to respect civilian authority.

You will probably offer up a number of examples of countries where our policy is a bit more muddled, and that's true, because the one thing we will never be in American foreign policy is consistent, and I've always preferred inconsistency to the only form of perfect consistency that is possible in this world, and that is to consistently be unprincipled.

I think this is an interesting model that perhaps we can apply more broadly, particularly in situations that are as clear cut as Burma in its transition from dictatorship to democracy.

MR. PICCONE: Can you say a little bit about the point that Dan made about how we're working in so many countries with local forces, and does that go through the same kind of Leahy vetting? How do we screen for those issues?

MR. MALINOWSKI: So, in some cases, it is legally subject to Leahy vetting. There are situations in which there is not a legal requirement for a variety of reasons to do Leahy vetting, but we do it as a matter of policy anyway.

A good example of that would be the Syrian armed opposition. Again, this comes back to the point I was making, that the more we find ourselves in a situation where the purpose of security assistance is helping people fight effectively, the more as a matter of policy, setting aside the law, we are focused on both DOD and State making sure that we are not enabling, encouraging, and powering armed groups to commit human rights abuses, because we know from experience that undermines the mission.

Whether it is legally required or not, generally speaking, as a matter of policy, we do some degree of vetting to make sure that to the extent we are able, we are not providing assistance to the worse actors.

MR. PICCONE: I want to shift slightly the focus of this discussion and talk about not only the actual instruments that we have as part of our security assistance to kind of influence these militaries, limited influence, but still, we have some tools, but also to think about how the U.S. can lead by example in the way it addresses human rights problems of our own military actions.

That has been a very important theme, of course, in the last many years, and this last Executive Order that President Obama just issued and the 60-page guide book that was released are in part designed to show that story.

Can you say a little bit about how we are addressing our own challenges and leading by example?

MR. MALINOWSKI: Sure. As I mentioned in my talk, this goes back before the Obama Administration. It goes back to our experience in Iraq beginning in 2003, our experience in Afghanistan in that decade, and to the lessons that our military commanders learned in conducting particularly the counterinsurgency operations in those countries.

You saw leaders like General McChrystal and General Petraeus increasingly focused on the idea that civilian protection is not just a moral and legal obligation. It's not something that we have to balance against achieving the objectives of a military mission. It actually is the military mission.

In a situation where you are fighting an insurgency or a terrorist group, the way to win is to convince the civilian population that you, the security force, are on

their side. You are protecting them against this armed enemy, and if you can do that, then you will get better intelligence from local communities, better cooperation, and you will see recruitment and support for the armed group you are fighting diminish.

So, over time our military developed rules and procedures. Some of this was very ad hoc. A lot of it was not guided from Washington. What we have been trying to do in the Obama Administration is to build on that work but also to try to make sure that the lessons we have learned are embodied in a formal policy that will hopefully outlast us, that will not have to be reinvented every single time we enter into a new military challenge somewhere else.

So, first and foremost, the Executive Order does that. They're not new policies. It lays out practices that we have adopted over the years. Some of them relate to avoidance of civilian harm, so what kinds of weapons do you use, what time of day do you conduct the strike, how do you ensure that the intelligence that you are using is solid enough in order to conduct the strike with as little risk to civilians as possible.

Some of them relate to what we do in those instances where we find that we have or there are allegations that we have caused, despite all those precautions, civilian casualties, and the basic principle there is taking responsibility.

If somebody makes an allegation, we don't reflexibly deny it, we investigate it. If we find that we have in fact harmed civilians, even if there was no violation of the wars of law, no human rights abuse, technically, we still acknowledge that we had done so. We try to make amends in a culturally appropriate way, and so on.

The Executive Order also says that we are to incorporate these lessons, experiences, and practices in our engagements with foreign security partners. We do that, but probably not yet as much as we should, and that is something that we will be

working -- our office in DRL will be working with DOD to try to ensure that we do more consistently.

MR. PICCONE: Dan, do you want to jump in on anything?

MR. BYMAN: I will go off on a -- I'll say tangent

-- but a point that I think the Secretary did not legitimately address but is a concern of mine, which is there are certain procedures that we use that are codified in law. There are certain ones that are interpretations of law, but are debated, and then there are certain things that we do as a matter of policy.

With a new Administration that has expressed rhetoric, somewhat contemptuous of human rights, and also the idea of I'll say getting tough on terrorism in the vaguest sense of that, that has a potential for a lot of what we are doing right now to change dramatically.

The guidance that Ted mentioned that the Obama Administration put out on the use of force legitimately, I think, should be seen as a political document. If it had been done two years earlier, it would have actually constrained the Obama Administration. To put it out at the end of your own Administration and say this is what should constrain people can only be seen as self-serving.

This is very frustrating for those of us who have wanted such a document out earlier, and so a lot of what we have done as a matter of practice for years now, to me, is very much up in the air.

I hope people will think both in terms of best practices but also in terms of best practices that accord with American values, but I worry that a lot of what has been done in a positive way may be rolled back or disregarded as the new Administration comes in.

MR. PICCONE: It ties together this whole question of what's effective at the end of the day, and Tom mentioned at the opening some work that we are doing here in the context of the Community of Democracies to really look at Democratic strategies to address my own extremism, thinking about other means other than use of force that can be very effective in dealing with some very serious security threats.

So, there are a lot of good practices and lessons being learned as we speak out there that we hope to kind of collect and put together and put before Democratic governments. The U.S. is in the presidency, so I think it will be an important opportunity next summer when we come together to look at that.

Why don't we open the floor to questions? If you could just identify yourself. The floor is open. We have someone with a mike. I see a hand in the middle.

MS. OHLBAUM: Hi. I'm Diana Ohlbaum, an independent consultant. Thank you for a really fascinating presentation, I really appreciated what you all had to say.

Most of the discussion has been about training of forces. I understand the Leahy law has been interpreted to apply only to training and not to equipment. I would be really interested in what's in place or what could be put in place to prevent the sales and transfer of military equipment to units of militaries that have been engaged in human rights violations.

MR. PICCONE: Thank you. Are there other questions?

QUESTIONER: Due Process of Law Foundation. So, there has been a lot of talk about how the Leahy law applies in situations of counterterrorism, in situations of military operations. I wanted to ask you to expand a little bit on situations that are not counterterrorism, that are more governments that are combatting organized crime, gang

violence. I am thinking of Mexico and the Northern Triangle of Central America. How does that change how you are thinking about these issues? Thanks.

MR. PICCONE: Those are both meaty questions. Tom, do you want to go ahead?

MR. MALINOWSKI: Sure. On the first question, we interpret the Leahy law to apply to equipment as well as to training. We have procedures in place to try to make sure in particular countries that we are doing that. It is more complicated in some cases. I think Dan alluded to this.

When you're training a unit, we know what unit we are training. We are doing it. Often that entails bringing five officers from a particular country to a training course in the United States. Again, we know who they are. We can easily decide you are or are not eligible based on the Leahy law.

Imagine if we are selling a large shipment of ammunition to a foreign country's security force, very hard, if we're talking bullets, very hard to control exactly which units in that foreign security force are going to obtain those bullets or to do the kind of post-sale check-ups that will determine that the principles of the Leahy law have been respected in a perfect way, if you see what I mean.

Easier with an F-16, something very big, discrete, there are less of them. We ought to be able to know that the second air wing of Fredonia's Air Force is receiving the F-16, but with certain forms of equipment, it is more challenging, and that's a challenge that our Security and Human Rights Office working with the Pentagon has been working to try to meet.

In terms of governments' security forces fighting organized crime, actually the principle is exactly the same, Leahy law applies in exactly the same way to

what the Mexican military is doing domestically as it would apply to the Afghan military in fighting the Taliban, if there is credible evidence that a unit has committed human rights abuses, then they cannot receive assistance.

We have had some interesting cases in other Latin American countries. In fact, one interesting case in Jamaica where we did remediation on a unit. Am I right about that? No, it was in St. Lucia. Two remediation's. Okay. In Guyana. That's right.

There have been a number of Leahy cases, and I think in some of the ones I mentioned, there have been Leahy cases that involved abuses strictly in the context of fighting organized crime, and in a couple of them, we have been able to achieve the Leahy Nirvana of remediation, because then you know you have made a difference.

MR. PICCONE: Other questions? Yes?

MR. STROBEL: Thanks. Warren Strobel with Reuters. I wondered if you could talk a little bit about the Philippines, where there has been widespread extrajudicial killings. If I'm correct, the U.S. Government or at least the Congress banned some sale of assault weapons to the Philippines National Police. Is anything else under review? How do you balance human rights there against the Philippines role in countering China's activities in the South China Sea?

Thanks.

MR. PICCONE: I saw another hand.

QUESTIONER: I wanted to touch on the issue of human rights according to whom, and Daniel did touch upon this, but talking about the idea of a state that doesn't necessarily reflect the interest of the broader population or certain segments of the population, you know.

I think of some countries that abuse certain religious minorities with impunity, or even in the case of Mexico, where let's say indigenous communities have long been abused with impunity, and I just wonder how the State Department and the internal foreign policy apparatus goes about thinking about how they restack their priorities to reflect those realities on the ground. Thank you.

MR. PICCONE: One more.

MS. LUMPY: Hi, Laura Lumpy, Open Society Foundations. Tom, I wondered if you could talk about the Global Magnitsky Act that was included in the National Defense Authorization Act, and how that fits into this set of tools that the State Department and the U.S. Government have to respond to human rights violations by security forces.

MR. PICCONE: If we could take one more.

MS. WIDDERSHEIM: Nicole Widdersheim with the Human Rights Team in USAID. I wanted to hear from the whole panel -- I'm a little more familiar with what the limitations are inside USAID and the U.S. Government right now -- on something that I've encountered doing work in the field, particularly in this case, in Cote d'Ivoire, where the military wants support for military courts, military justice, military investigations.

They come to USAID and even our Defense Attaché was coming to USAID saying can we help with some justice training, justice mechanisms inside the newly reorganized Cote d'Ivoire military after the civil war there. That was something that USAID obviously couldn't do.

I'm wondering on the other side of all of this what others are looking at for the human rights training and some of the stuff Tom alluded to in his remarks, how



important it is when folks want to leave a bad situation and they're not going to go to the local law enforcement officials, but they're going to go to other programs and other entities, so the kind of softer side of this.

MR. PICCONE: You know, the first part of the last question recalls for me a conversation I had with a democracy promotion organization in town just last week, and they were talking about wanting to do some training of security forces in Mexico, but felt they couldn't because it was with units that had not been vetted.

Now, I assume there would be an answer to that, which is the remediation answer, the law allows us to work with units towards remediation. Maybe that was an anomaly, but to what extent is the prohibition on units filtered across anyone receiving U.S. Government assistance, is that part of the approach as well.

Anyway, a bunch of questions. Philippines. How do you define "human rights" in specific contexts, Global Magnitsky, et cetera.

MR. MALINOWSKI: Well, I can do all those, give me 10 more. Philippines. The Leahy law absolutely applies, it applies everywhere. We have used it. It has had an effect. There are certainly parts of the Philippine Police that have, I would say, credible allegations of involvement in human rights abuses against them, even preceding the Duterte administration.

Where that happens, we apply the Leahy law. The Leahy law does not apply to commercial sales of ammunition, something that you also mentioned, but we can and often do in a variety of countries around the world as a matter of policy decide that we will not provide bullets to people who are using bullets to kill civilians.

You asked if it has affected our cooperation with the Philippines on issues like the South China Sea, and I would say no for a number of reasons. Number

one, we have a very strong mutual interest with the Philippines in protecting freedom of navigation and international law. That common interest, I don't think has changed, despite the various changes that the Philippines has seen politically in the last year.

Our cooperation with the Philippines Armed Forces has not been affected by these allegations because the allegations do not at this point involve any members or units of the Philippines Armed Forces. It is important that remain the case.

The question on indigenous communities in Mexico, you touched on a number of general issues there, but again I would say that it really doesn't matter what the context is when it comes to our legal obligations.

Obviously, policy is affected by context and context can be complicated, but as far as our legal obligations go, it doesn't matter who the perpetrator is or who the victim is. If there is credible evidence of gross human rights abuses, there are certain things that we cannot do, and there are certain things that we have to do.

It's an evidence driven process, which doesn't mean that we always do what a particular victim community might expect us to do, because the evidence isn't always up to the level of detail or standards that we might need.

Something else that my Bureau does is we work with a lot of local human rights groups around the world, and we provide a very different sort of training to them, and that is how do you document human rights abuses, how do you bring these facts to our attention in a way that would trigger the application of one of these laws.

Global Magnitsky. We have for a number of years on occasion as a country applied targeted financial sanctions as a tool for holding accountable people who do bad things, whether they are engaged in proliferation of weapons of mass destruction or financing of terrorism or human rights abuses in many cases.

The success that we have had in Burma that I mentioned, I think, came about in part because of the use of this tool against officials in that government who were guilty of human rights abuses. We have used it in many, many other places.

Today, I believe we will be announcing some sanctions on officials in a major African country. I won't get ahead of the announcement. We believe they were involved in threats to human rights and democracy in that country.

But for right now under the law, for the United States to sanction an individual for human rights abuses in a particular country, we have to -- the President of the United States has to issue an Executive Order that declares "a state of national emergency" between the United States and that country as a whole, which to most countries, when they actually read the language of this Executive Order, which is mandated by law, reads almost like a declaration of war against that country.

So, if the President wants to sanction one person in Burma for mass killing or rape or anything else, non-proliferation, what have you, he has to declare that a state of national emergency exists between the United States and Burma, which is a very weird thing to say, at a time when we have an increasingly close relationship with that country.

Recently, actually, last year, we imposed sanctions very well deserved on some officials of the Maduro government in Venezuela for human rights reasons, corruption reasons, and all the bad and nasty things that are happening in Venezuela.

In order to do it, the President had to issue this Executive Order, and Maduro waived this language in the end and said look, the Americans are declaring war on us, they're calling us a threat to global peace and security, all this stuff. All we wanted to do was to hold accountable some individuals, but we have to do that under the law.

What the Global Magnitsky language does is it gives the President of the United States global human rights sanctions' authority. It doesn't force him to do anything. In the future, if the President wants to sanction an individual for gross human rights abuses, he will not have to in effect declare war on the country to do it. So, that's what that is all about.

A question, I'm not sure it was about Cote d'Ivoire, but you used it as an example. I think one of the -- I'll make a broad point here, which is one of the biggest human rights challenges that we face, one of the biggest rule of law challenges that we face around the world is access to justice.

You heard me talking about accountability, the key to the Leahy law is you have to hold people accountable if they abuse human rights, but if you don't have honest, well- functioning institutions of accountability in a country, that can be very difficult to do.

There is also the other problem that if you are a security force leader in that country and you're fighting terrorism, and you don't have honest, efficient, independent courts in your country that will be willing and able to prosecute the terrorists who you capture lawfully, you are going to be tempted to kill them, extrajudicially, because you are not going to trust your justice system to do its job if you capture them lawfully.

One of the biggest and I would say still unmet challenges that we face in a lot of the countries that we have been talking about is to help the development of and protection of these independent institutions of justice.

We do have in Africa something that we call the Security and Governance Initiative, which does not cover every country in the continent, but does

cover a few, including Kenya, including Tunisia, a couple of others I am forgetting right now, where leadership has demonstrated a commitment to these principles, at least in principle, and which aims to channel security assistance more towards these institution building areas.

In Kenya, in particular, we have offered the government greater assistance to develop courts and prosecutors that can function, again, honestly, and effectively, in dealing with these terrorism and national security issues, so there is no excuse whatsoever for the security forces to go around the system.

You had one last question, which was?

MR. PICCONE: Actually, we are almost out of time. That was a very good set of answers. Maybe I'll ask Dan, do you have any final remarks?

MR. BYMAN: No, nothing that I would add. I would just simply say that so much of what we have done in the last 8 or even last 16 years is really in play, I think, in a very dramatic way and will be in the next 4 years and perhaps longer.

A lot of what we have gotten used to, for better or for worse, to me, we have to really start to look at what can be preserved and how much is going to change.

MR. PICCONE: My final word is one of the threads of this conversation is the realism behind it. What is effective in addressing security threats that we face around the world, and how human rights and civilian control of the military and these fundamental principles are not just American values, but are actually key instruments for getting to better security outcomes.

I think that is a key lesson that we have learned over the years, and we don't want to have to relearn in the coming years, so I think that's a point that we hope to come back to over the coming years, and that is this democracy and security dialogue

that we are working on with the State Department, that hopes to address as well.

I really appreciate the way this has played out, and want to thank both Dan and Tom for a very enriched conversation. Thank you. (Applause)

\* \* \* \* \*

CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carleton J. Anderson, III

(Signature and Seal on File)

Notary Public in and for the Commonwealth of Virginia

Commission No. 351998

Expires: November 30, 2020