Thank you, COL Allen, for inviting me to participate in this conference and to talk about civilian harm mitigation.

My organization has worked over the past decade on these issues in various conflicts from Iraq and Afghanistan, to Somalia and Pakistan, and more recently in Syria. We worked with the US military initially in Iraq, and more closely in Afghanistan where I met COL Allen when he was legal advisor to COMISAF, and where we also worked with BG Rich Gross—now Legal Counsel to the Chairman of the Joint Chiefs of Staff. And more recently, it’s been a pleasure to work with COL Hudson and LTC Larchick on US operations in Iraq and Syria.

Navigating civilian-military relations can be challenging, but CIVIC’s work is made easier when we can have frank discussions about how to reduce civilian harm in complex military theaters and have receptivity to our recommendations. So thank you for your leadership and commitment on these issues.

The Laws of Armed Conflict (LOAC) impose legal obligations on parties to a conflict to reduce human suffering during war. Yet civilians still suffer. CIVIC works to encourage warring parties to adopt a set of tools, policies, and practices that go above and beyond what is legally required by LOAC, thus raising the level of protection afforded to civilians before, during, and after conflict. Where prevention fails we strongly believe that harm must be addressed through making of amends or other post harm assistance policies. We call this work “civilian harm mitigation.”

CIVIC works directly with warring parties, seeking change from the inside in both policy and practice. Our work takes us from villages and towns where we meet civilians impacted by the conflict, to meetings with commanders in theatre to assess challenges in military operations, to halls of power where we press for high level policies on protection and harm mitigation. Where necessary, we engage at NATO HQ on Afghanistan and Libya operations, or in Mogadishu or Addis Ababa with AMISOM on identifying ways to minimize human suffering during conflict.

We analyze all the information we gather and propose pragmatic solutions to adjust existing policies, training, tactics, or to adopt new approaches, such as tools that allow a force to better understand the impact of military operations and thus can better prevent and respond to harm.

Today, I would like to touch upon both the policy and best practices of this field and briefly discuss those in the context of counterterrorism operations, as well as Iraq and Syria.

The US is committed to minimizing civilian harm in the conflicts in which it engages; however, despite good intentions, commanders’ guidance, [and] technology, targeting can still result in operations that cause unintended civilian casualties. These casualties have far reaching implications for the mission, and, of course, are devastating to the families.
affected. US military leadership has learned over the past decade that minimizing and properly addressing civilian harm is a strategic imperative.

This mindset, however, was overlooked during the initial US interventions in Afghanistan and Iraq in 2001 and 2003, respectively. The US was unprepared to address incidental civilian harm and had no policies in place to track civilian casualties, systematically investigate incidental harm as a result of legitimate combat operations, analyze trends across each theater or time, or offer families suffering losses anything other than silence or denials. In both theaters, incidents of civilian harm were often followed with immediate “knee jerk” denials to the media, with claims of no civilians harmed followed by retractions several days later when evidence arose proving the US had indeed caused casualties.

Each incident of poorly managed civilian harm response chipped away at US credibility with the local population and, thus, progress toward a successful mission.

Eventually, policies did change in both Iraq and Afghanistan, and it took strong leadership by some of the people in this room, and some of the generals who you are familiar with, to make ground breaking tactical changes which reduced civilian harm, and to implement policies to help those who were caught in the crossfire.

One of the tools to help assess and respond to civilian harm accurately and timely, and to report possible incidents of civilian casualties, is a civilian casualty tracking and analysis cell that allows commanders and their staff to have the information they need to initiate further investigations into circumstances and events that occurred.

Such a tool accomplishes four things:

- it creates a mindset among troops in the field that observing the negative impact of their operations on the civilian population is taken seriously up the chain of command;
- it allows for an analysis of data over time, and allows commanders to adjust tactics in response to those trends and to identify tactical lessons for either in-mission or pre-deployment training;
- it gives commanders the information they need to appropriately respond to confirmed incidents of civilian harm, whether legal or not, including credible evidence to push back against false claims; and
- it gives forces the data they need on who was harmed and where, so that amends can be made.

I would like to give couple of examples of this in practice, and you maybe familiar with some of them.

In 2006, General Peter Chiarelli took command of MNC-I and began tracking incidents in which Iraqi drivers were perceived as a threat by soldiers at checkpoints or by convoys. Over 8 weeks, the records showed an average of 10 incidents a day which resulted in civilian death and injury. Although in 2005, the ROEs were adjusted to mandate graduated measures of force towards those exhibiting hostile intent, civilian casualties did not decline. These ROEs dictated who could be targeted but not how to identify such individuals, and implementation of the ROEs lacked uniformity.

As a fix, tactics, techniques, and procedures (TTP) used to distinguish actual threats from potential threats were updated during Gen. Chiarelli’s tenure. Warning signs in Arabic at checkpoints and on vehicles and portable material were improved. Laser pointers, sirens, and strobe lights were distributed and used to get the attention of drivers entering checkpoints or coming too close to convoys. Soldiers manning checkpoints were trained on “best practices” for identifying possible suicide bombers. In August 2007, the rules for convoys were changed. Mounted soldiers throughout Iraq were ordered to “assume all
civilian vehicles are friendly,” avoid firing warning shots at close vehicles, and abide by local traffic laws.

Civilian casualties in Iraq dropped dramatically at checkpoints as tactics were adjusted.

We saw this in Afghanistan as well, where in 2007 and 2008, several airstrikes in Shindand and Azizabad in Herat province killed many civilians. The numbers were disputed by ISAF with what NGOs and journalists were saying. But it was clear that ISAF did not have a full picture of what happened. So in 2008, a civilian casualty tracking cell was set up, data was analyzed both internally by ISAF and externally through an independent assessment on identifying root causes of harm, and a series of Tactical Directives were issued with the objective of reducing civilian harm. The tracking cell became embedded in a CCMT framework in 2011, which allowed for other assessments of harm mitigation from ISAF operations, and helped Afghan forces on Counter IED issues. New SOPs were issued about handling CIVCAS incidents that required reporting incidents up the chain within hours, and providing a full storyboard on who, what, where, and how investigations should be conducted (SOP 307).

The results speak for themselves, as US and ISAF caused civilian casualty rates started dropping, as even noted in the annual UNAMA POC reports. Only by tracking, analyzing, and recognizing how much, and why civilian harm was being caused, could you assess how commanders could turn the tide. Changes were then made to tactics, trainings, and procedures, which were implemented down the chain of command to save lives and benefit the mission.

The practice of making amends also became a visible part of US conduct in Iraq and Afghanistan. Commanders learned that turning a blind eye to harm, even when incidental, negatively impacted their mission, the safety of their own soldiers, and restricted their operational freedom if the local population becomes angry enough to turn on US forces.

Our research in Iraq, Pakistan, and Afghanistan showed that when families receive nothing for their suffering, not even so much as an explanation, they often harbor significant grievances against the United States. Some senior military leaders have said that civilian casualties is a very effective recruiting tool for anti-government forces.

To deal with this, we advocate that a “consequence management” plan for operations, including how amends can be made, should be in place to ensure the process is operational when soldiers arrive in theater, and forces should be trained to recognize their own role in responding to civilian harm before deployment. After years of research and engagement with both civilians and US military, CIVIC developed a consequence management cycle as a commander’s course of action when he or his staff becomes aware of a civilian casualty incident. The six steps include: prepare, respond and report, assess, share findings, make amends, and communicate with local media and broader community. This process was eventually used in ISAF pre-deployment training.

But theatre specific fixes are not enough. Harnessing the hard lessons identified over the past decade requires translating them into standing policies for all operations and into military doctrine across all US forces. Currently, there are two specific doctrine pieces I am aware of which touch specifically on civilian casualty tracking, investigations, and consequence management. The 2012 US Army’s ATTP on CIVCAS Mitigation as well as the 2012 Center for Army Lessons Learned Afghanistan Civilian Casualty Prevention Handbook used by ISAF. CIVIC staff contributed to both of these documents. These concepts are also being included in the revamping of the stability operations doctrine. These policies however, should be included in US joint military doctrine including for covert and CT operations.

Now I want to switch gears a little bit from talking about large-scale operations to smaller scale, covert or counterterrorism operations. Since 2009, CIVIC has advocated that covert
or CT operations also be subject to similar harm mitigation measures in pre- and post-strike assessments, investigations, vetting of intelligence sources, training of drone operators on civilian protection, as well as the need to acknowledge and provide post harm assistance to those harmed.

Excluding covert or CT operations from meaningful harm mitigation policies undermines the mission, allows for a false narrative about harm to take hold, and leaves civilians harmed by such operations vulnerable to outreach by opposing forces.

In our view, it is always best to have policies on harm mitigation in place before harm occurs as it allows a warring party strategic and tactical advantage to counter false allegations, quickly identify which tactics and types of operations are causing harm and need to be remedied either through training or new ROEs or TTPs, and to make culturally appropriate amends for incidental harm.

Now let’s talk specifically about operations in Iraq and Syria. We have seen how some of these mitigation measures in targeting are governing US and coalition airstrikes in Iraq and Syria, and are pleased that efforts are being made for a coalition wide civilian casualty standard operating procedure to be agreed upon which would cover other aspects such as a civilian casualty mitigation team, investigations, and consequence management. It is important to emphasize the strategic win from being proactive on these issues by having policies in place before, rather than being defensive and playing catch up when harm occurs, in order to better manage the negative fall out that can occur after allegations of civilian harm.

Civilian harm mitigation should not stop only with US and coalition forces. These concepts must also be firmly embedded in any security force assistance the US and partners provide to other armed forces or to train and equip armed non-state actors.

Trainings on how to avoid civilian harm through responsible use of force, tactical patience, and how to respond to alleged harm is as important as trainings on marksmanship, unit defense, and maneuver. It may well be that teaching LOAC through a scenario of what a positive identification determination is can be a useful way of teaching the principle of distinction for Syrian armed groups, but so is showing how to take precautions when conducting an ambush to reduce harm and how to handle allegations of harm. Similarly, walking through how clearing operations should be conducted in Iraq in order to reduce civilian harm after ISIS has been degraded with air strikes in a specific town is important as it’s both strategic to reduce support for the enemy and ethical to show the humane side of the ground forces taking control of that area. I was in Iraq earlier this month and this is a growing issue and should be handled sooner, as part of the coalition trainings, rather than later.

If the US shifts focus toward helping soldiers understand how to appropriately use force to save lives, the US gives its partners a much better chance of making the correct choice when faced with these decisions in the fog of war, and therefore a better chance of winning the ‘strategic game’.

Civilian harm mitigation is an emerging practice in warfare that, when applied properly, does make a measurable difference in the lives of people living in conflict areas as we saw in Afghanistan, Iraq, or in Somalia when AMISOM implemented a civilian protection policy to curb the parameters on use of indirect fire in populated areas.

The United States military has applied civilian harm mitigation policies and seen the results, and it can play a unique role to entrench these policies in all its operations, as well as within its security force assistance to partner nations and or trainings of armed non-state actors.
When warring parties recognize the imperative to prevent civilian harm, protect civilians in the battlefield, and make amends for the harm they cause the landscape of warfare can change—for civilians, but also for the forces involved.