

Human Terrain Teams: An Enabler for Judge Advocates and Paralegals

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*There can be no government without an army, no army without money, no money without prosperity, and no prosperity without justice and good administration.*²

—Abu Muhammad Abdullaah Ibn Qutaybah
Ad-Dinawaree

Introduction

The Army has introduced a new capability into its arsenal. Led by an Active or Reserve component officer, possibly even a retired military officer, the mission of this new team is to ensure the integration of human terrain analysis with the military decision-making process (MDMP).³ The team has at least two social scientists, one with a specialty in ethnographic and social science research and analysis, and the other with fluency in the indigenous language.⁴ Other team members are military human terrain analysts, trained in debriefings and data research, and military terrain researchers responsible for integrating the human terrain research plan with the intelligence collection plan.⁵ The tool is a Human Terrain Team (HTT).

The recent experience of special operations forces deployed to Iraq to conduct foreign internal defense (FID) suggests that navigating the socio-cultural landmines between the Iraqi security force apparatus and the Iraqi judiciary is time- and resource-intensive. For judge advocates engaged in operational law issues, successfully navigating the finer aspects of social science armed only with a law degree was probably more a function of luck than of deliberate planning. The support of HTTs and associated Operational Detachment Alphas (ODA) undoubtedly improved the odds of success of many

initiatives that would otherwise have been very low.⁶ The majority of deployed judge advocates and paralegals, however, will not have the support of ODAs to accomplish their legal support missions. Consequently, the Future Concepts Directorate (FCD) offers this practice note to identify and describe an additional enabler judge advocates and paralegals can leverage to accomplish their complex missions when deployed.

Background

This practice note is neither doctrine nor “rocket science”; rather, it was inspired by a presentation entitled “Judicial Practices and Rhetoric of Memory in Gaza Strip” by an anthropologist at an interdisciplinary conference in 2009.⁷ The presentation provided an in-depth, comparative analysis of the formal judicial system of the Palestinian Authority and the informal tribal judicial systems in Gaza.⁸ The speaker concluded that the informal judicial system was actually undermining the formal judicial system rather than complementing it.⁹ A detailed examination of the speaker’s analysis is beyond the scope of this note, but a brief description of the methodology used is necessary to place the work of HTTs in context.

The speaker initially established the historical context of the region by describing factors in Gaza, like migration, physical relocation, and social and political disruptions.¹⁰ Data collected across generational lines on topics concerning individual values and national identity, as well as data on case adjudications for similar types of

¹ The author wishes to thank the following individuals for their assistance during the preparation of this article: Lieutenant Colonel Chuck Poche, Lieutenant Colonel Jay McKee, Mr. Patrick O’Hare, and Major Joe Orenstein.

² This quotation is historically attributed to this ninth century Islamic scholar. See, e.g., Malik Qasim Mustafa, *The Responsibility to Protect a Fragile State: A Case Study of Post-Intervention Afghanistan*, available at http://www.issi.org.pk/journal/2008_files/no_1/article/a6.htm (last visited Apr. 21, 2010).

³ Briefing to the Brigade Judge Advocate Mission Primer, Human Terrain System Information Briefing (Dec. 16, 2009).

⁴ *Id.*

⁵ *Id.*

⁶ See Lieutenant Colonel Dan Tanabe and Major Joe Orenstein, *Integrating the Rule of Law with FID in Iraq*, SPECIAL WARFARE MAGAZINE, Nov.–Dec. 2009, at 7–11. Since 2003, ODAs deploy more frequently, on shorter deployments than conventional units, but usually return to the same deployed location with the same, enduring partnered FID force, creating a practical equivalent for that specific location to the academic expertise of a social scientist.

⁷ Christine Pirinoli, Université de Lausanne—Institute d’Anthropologie et Sociologie, Presentation at the Franklin College Intersections of Law and Culture Conference: Judicial Practices and Rhetoric of Memory in Gaza Strip (Oct. 4, 2009) [hereinafter Pirinoli Presentation]. Ms. Pirinoli has also published a book on the topic. See CHRISTINE PIRINOLI, *JEUX ET ENJEUX DE MÉMOIRE À GAZA* (2009); see also Le Comptoir des Presses d’Universités, *Jeux et enjeux de mémoire à Gaza*, [http://www/cd\[i\]/fr/livre/?GCOI=27000100250790](http://www/cd[i]/fr/livre/?GCOI=27000100250790) (last visited Apr. 23, 2010) (providing a description of Pirinoli’s book in French).

⁸ Pirinoli Presentation, *supra* note 7.

⁹ *Id.*

¹⁰ *Id.*

cases in both the formal and informal judicial systems, was then analyzed within this historical context. Analysis of the data revealed that the tribal values associated with the informal judicial system, which was expected to have complemented the formal judicial system, had changed significantly and had become politicized over time.¹¹ In effect, the informal judicial system had become a façade to circumvent the formal judicial system.¹² The norms and values associated with tribal social construct of the pre-1948 Gaza generation were strikingly different from those of the post-1948 Gaza generation.¹³ Polling data and the case adjudication analysis showed that the pre-1948 norms and values that were assumed to have persisted in the informal judicial system had since been replaced by politicized norms and values after 1948.¹⁴ The faulty assumption regarding the tribal informal judicial system allowed the legitimization of a means to circumvent the formal judicial system and, today, undermines the public trust in the formal judicial system and, ultimately, the Palestinian Authority.¹⁵

This interesting narrative suggests that an anthropological approach could be useful in legal support mission sets because U.S. forces often attempt to work “by, with, and through” the native system. Human Terrain Teams can provide this anthropological expertise. The Human Terrain System (HTS), the program that oversees the effort to apply socio-cultural knowledge to military operations, was established in 2006, and its first HTT was deployed to Afghanistan in 2007.¹⁶ A review of various Lessons Learned (LL) and After Action Reports (AAR) collected by the Center for Law and Military Operations (CLAMO) and submitted in 2009 revealed that only one AAR mentioned an HTT (only cited because members of the HTT had expressed concern over changes to criminal jurisdiction with the implementation of the U.S.-Iraq Security Agreement in January 2009).¹⁷ The silence concerning HTTs in the AARs may reflect a knowledge gap between HTTs and BCT judge advocates and paralegals.¹⁸ The Future Concepts Directorate hopes

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Human Terrain System, *available at* <http://humanterrainsystem.army.mil/default.htm> (follow “HTS Overview” hyperlink; then follows “HTS Timeline” hyperlink) (last visited Mar. 30, 2010).

¹⁷ E-mail from Lieutenant Colonel Poche, Dir., Ctr. for Law and Military Operations, to Lieutenant Colonel Tanabe, Deputy Dir., Future Concepts (Oct. 28, 2009, 09:10 EST) (on file with author).

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Brigade and regimental combat teams currently deployed to Iraq and Afghanistan often lack the operationally relevant socio-cultural knowledge and expert staff necessary to optimize their

this practice note will motivate judge advocates and paralegals to take advantage of the many capabilities of the HTT.

What Is and Is Not an HTT?

In a broad sense, HTTs are a fundamental component to “anthropologizing the military.”¹⁹ Human Terrain Teams “are composed of military personnel, linguists, area studies specialists, and civilian social scientists”²⁰ that are “recruited and trained as a team for a specific region, then embedded with their supported unit,” normally a brigade combat team (BCT).²¹ Once embedded, the BCT commander “determines the extent of the HTT’s interaction and relationships with the rest of the BCT staff and subordinate units.”²² The HTT can organize into smaller teams to support subordinate units based on mission requirements.²³

A few words of caution on what they are not. Human Terrain Teams are not covert or clandestine intelligence enablers and do not conduct human intelligence operations or close target reconnaissance.²⁴ They are also not civil affairs or civil military operations enablers and do not conduct infrastructure project management.²⁵ Lastly, HTTs are not mobile cultural training teams like the enablers at the Defense Language Institute, so they do

military decision-making process. . . . While processes and organizations exist to assist commanders in visualizing friendly and enemy forces, no similar system exists for providing understanding of the local civilian population. This deficiency is felt most by the battalions, companies, platoons, and squads that are closest to the local population in their daily tactical actions.

Human Terrain System, *available at* <http://humanterrainsystem.army.mil/overview.html> (last visited Mar. 31, 2010; Sec’y of Def. Robert M. Gates, Landon Lecture Address at Kansas State University (Nov. 26, 2007) (transcript available at <http://www.defenselink.mil/speeches/speech.aspx?speechid=1199>).

¹⁹ Secretary of Defense Robert M. Gates, Landon Lecture Address at Kansas State University (Nov. 26, 2007) (transcript available at <http://www.defenselink.mil/speeches/speech.aspx?speechid=1199>).

²⁰ Human Terrain System, *available at* <http://humanterrainsystem.army.mil/default.htm> (follow “HTS Overview” hyperlink; then follow “HTSComponents” hyperlink) (last visited Mar. 31, 2010).

²¹ *Id.*

²² *Id.*

²³ Afghan Commander AAR 30 (Currahee ed. 2009), *available at* <http://cc.army.mil> [hereinafter Afghan Commander AAR].

²⁴ Human Terrain System, <http://humanterrainsystem.army.mil/default.htm> (last visited Mar. 31, 2010).

²⁵ *Id.*

not “provide schoolhouse pre-deployment cultural training.”²⁶

Instead, HTTs provide social science advice “on economic development, political systems, tribal structures,” conduct research on relevant topics requested by the brigade commander and staff, and can reach back to the socio-cultural human terrain mapping database.²⁷ Recently, an HTT was able to provide a company commander with tribal mapping and market flow information for the specific area of operation, which gave the commander a valuable overview of the interrelationship between different tribes.²⁸ Human Terrain Teams, as part of the HTS, also have direct links to the Department of State (DoS) via the HTT liaison officer embedded in the DoS Humanitarian Information Unit.²⁹ With forethought, creativity, and good staff work, judge advocates can tap into the tremendous resources provided by the HTTs.

Why Use an HTT?

Training and Doctrine Command (TRADOC) recently published *Operational Environment 2009–2025*, which seeks to identify and describe trends to the operational environment (OE).³⁰ Although some identified trends are new, most are largely restatements of a reality with which judge advocates and paralegals are all too familiar. For example, *Operational Environment 2009–2025*, identifies “cultural standoff” as a trend in current and future operations. Cultural standoff involves the use of asymmetric tactics by an adversary in order to alienate the local population by creating the perception that U.S. forces have violated cultural norms.³¹ “Culture and ideology may be the center of gravity in future conflict.”³² This suggests that “human terrain” and “cultures, civilizations, and associated ideologies” may be of equal, if not greater, importance to mission accomplishment than physical terrain.³³

The Australian Army’s *Army’s Future Land Operating Concept* has similarly identified the importance of cultural sensitivity.³⁴ In a chapter on “Indigenous Capacity Building,” the study notes the significance of cultural sensitivity and describes how cultural awareness can help identify indigenous leaders and traditional structures that may help serve local populations.³⁵ At the other end of the spectrum, closer to lethal effects, the study discusses the concept of “Discrimination Threshold.”³⁶ This concept relies heavily on human terrain to culturally define the boundary between acceptable and undesirable outcomes when pursuing targets.³⁷

The *Army Capstone Concept*³⁸ (ACC) broadly describes the capabilities the U.S. Army will need to overcome the threats and adversaries envisioned in *Operational Environment*. The ACC proposes a methodology that strives for operational adaptability and that seeks to “develop the situation through action.”³⁹ To accomplish this, operators must have enough familiarity of their OE to set conditions, shape conditions if necessary, and then assess conditions for further adaptation. While executing these tasks, adversaries may continue to employ “cultural standoff,” causing judge advocates to reach deep into their operational law kit bag to help commanders disrupt an adversary’s decision-making cycle and overwhelm its operational tempo.

Human Terrain Teams provide the command with the perfect tool to leverage social and anthropological knowledge of the OE, especially when the local population is the center of gravity. Just as commanders and other members of the battlestaff generally defer legal issues to judge advocates as the legal subject matter experts (SME), cultural issues should be deferred to HTTs as the relevant SME. When employed, HTTs can help defend against cultural standoff tactics, counter misleading and malicious cultural information, and turn cultural standoff practices against an adversary, isolating it from the population. Human Terrain Teams can also assist a unit to keep targeting below the “Discrimination Threshold” when conducting lethal and non-lethal operations against targets.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Afghan Commander AAR, *supra* note 24.

²⁹ Humanitarian Information Unit, <http://hiu.state.gov> (last visited Mar. 31, 2010).

³⁰ TRAINING AND DOCTRINE COMMAND, OPERATIONAL ENVIRONMENT 2009–2025, at 11 (Aug. 2009) (version 6) [hereinafter TRADOC OE].

³¹ *Id.* at 8.

³² *Id.* at 19.

³³ *Id.*

³⁴ HEAD MODERNISATION AND STRATEGIC PLANNING—ARMY, AUSTRALIAN ARMY HEADQUARTERS, ARMY’S FUTURE LAND OPERATING CONCEPT (Sept. 2009).

³⁵ *Id.* at 54.

³⁶ *Id.* at 8.

³⁷ *Id.* at 19–20.

³⁸ U.S. ARMY TRAINING AND DOCTRINE COMMAND, PAM. 525-3-0, THE ARMY CAPSTONE CONCEPT (21 Dec. 2009).

³⁹ *Id.* at 8.

Human Terrain Teams can also safeguard against an overreliance by U.S. forces on misplaced notions of cultural savvy. As a British military report observed, “[a] little knowledge can be dangerous, masking important nuances and subtleties Frequent reference to subject matter experts may be necessary.”⁴⁰ For instance, current reporting from Afghanistan, as with the Palestinian judicial system study mentioned earlier, has exposed possible false assumptions that may be guiding current operations. In particular, the emerging orientation towards tribal engagement has raised warnings from the HTS. Social scientists familiar with Afghanistan caution that aligning a new strategy with tribal affiliations “is deceptive” because even though tribal “groups were once tightly-knit . . . decades of war with the Soviets and with the Taliban has changed all that.”⁴¹ Units must sometimes pause to assess their assumptions, particularly when a truth in one region or tribe may be false in another.

How an HTT Might Be Employed

After the evening commander’s update brief, the battle captain hands you a FRAGO. It tasks your BCT to develop a plan to integrate the informal tribal court system in your province with the formal court system. The battle captain says he wanted to give you a heads up because he is fairly certain the S-3 will “pin the rose” on you and expect you to brief the commander on the BCT’s plan to accomplish the specified task.

You begin to consider all the possible implied tasks and you recall numerous reports identifying the lack of communication between informal court leaders and formal court judges in the province, which is similar to the communication problem you witnessed on your last deployment between police and investigative judges. You wonder at the lack of communication and your figurative light bulb flickers as you work towards a viable course of action. As you begin to conceptualize how to set conditions for a planning meeting, the data you pull from your legal database, information left by your predecessors, show an interesting picture. Neither the tribal judges nor the formal judges have ever been extensively targeted by insurgents, so fear has not been a factor. Even more troubling, the tribal judges and formal judges appear to reside close to one another, so logistics has not been a factor. Perhaps something else has prevented these groups from communicating.

⁴⁰ THE DEVELOPMENT, CONCEPTS, AND DOCTRINE CENTRE, MINISTRY OF DEFENSE (U.K.), JOINT DOCTRINE NOTE 1-09, THE SIGNIFICANCE OF CULTURE TO THE MILITARY, at I-7 (Jan. 2009).

⁴¹ Noah Shachtman, *Army Researchers Warn Against Tribal War in Afghanistan*, DANGER ROOM, Nov. 30, 2009, <http://www.wired.com/dangerroom/2009/11/army-researchers-warn-against-tribal-war-in-afghanistan/#more-19988>.

While dwelling on this thought, you run into Ms. Preston, one of the anthropologists on the BCT HTT. You make small talk and ask Ms. Preston how her trip to conduct focused polling turned out earlier in the day. She tells you the polling went well and the HTT was able to determine that future CERP⁴² projects given “in the name of the mosque” would be acceptable to the tribal elders because such “gifts” are considered “gifts to God” and would not put the village at risk from the insurgents. Her response triggers a synaptic event, and you quickly tell her about your recent tasking and your plan for a meeting. After a pause, Ms. Preston suggests something along tribal lines might be causing tension between the two sets of judges.

You exchange your best regards and then immediately visit the BCT commander. You tell him that in order to accomplish the tasking, you need the assistance of the HTT. After the commander blesses off on your request, you set the wheels in motion.

As you reach out to the HTT, you also work with the brigade S-2 to see if the operational management team that runs the BCT’s human intelligence teams has any background information on the host nation individuals involved. You take the unclassified information provided to you by your S-2 and give it to the HTT, which analyzes the information along with the tribal mapping. Based on the team’s initial analysis, the HTT establishes focus areas for local population polling, to be conducted in the near future, to assess and backstop the team’s initial thesis.

Over the next week, the HTT travels to towns, where tribal judges and formal judges either reside or work, and conducts focused polling. After analyzing the local polling data, the HTT reveals that key members of the informal and formal court systems belong to tribes currently engaged in tribal mediation over a lucrative patch of land, currently being used to canalize water to multiple towns. Armed with this information, you begin to conceptualize how you might leverage this information to set the conditions for your mission’s success. Maybe you can meet separately with each group and offer them the BCT’s assistance with the land and water dispute in exchange for discussions between the two groups. Alternatively, you could bring the two groups together with the tribal mediators and, in the presence of all the stakeholders, offer them the BCT’s assistance with their dispute if they agree to discuss the court system issues. It dawns on you that one course of action may be more culturally acceptable than the other, so you find Ms. Preston and seek out more HHT expertise.

⁴² Commander’s Emergency Response Program.

Although the preceding scenario was just a hypothetical example, it demonstrates how HTTs can enable success or help avoid disaster when executing an operational law mission. An anthropological approach to MDMP and operational planning, using the expertise of HTTs, can help units overcome the tendency towards egocentric thinking and help prepare the Army for conflicts in the OEs of tomorrow.