
Do Less Harm

Protecting and Compensating Civilians in War

Sarah Holewinski

Everyone knows that civilians suffer in war. Even in lawfully conducted conflicts waged for legitimate causes, they lose lives, limbs, and loved ones. What fewer understand is that there are no laws that oblige warring parties to help the civilians they've harmed, as long as the action that caused the harm is considered legal. A fighter jet can strike a weapons cache next to a home, a guard can shoot a suspicious biker at a checkpoint, and a convoy can speed through a playground, but so long as in each instance the armed forces follow the Geneva Conventions' rules of discrimination and proportionality, they never have to explain, apologize, or pay for those losses.

Aside from being ethically bankrupt, indifference toward the plight of civilians has practical drawbacks: for survivors of war, nothing can generate more hatred toward a foreign government than never having their grief acknowledged. Responding is not simply an act of compassion; it is an act of strategic self-interest.

The United States learned that lesson the hard way in Afghanistan and Iraq. For years, Afghans and Iraqis whose family members were killed or maimed

took to the streets to protest what they saw as the Americans' callous indifference to civilian casualties. After the U.S. military finally came to understand that survivors' anger undermined the mission, it started tracking the damage it caused and responding directly to affected families. It managed to create a new culture geared toward understanding and addressing the civilian costs of its combat operations.

The question now is whether this shift will survive as the wars in Afghanistan and Iraq come to an end and Washington increasingly fights terrorism through drone strikes and special operations raids. After the Vietnam War, policymakers quickly forgot the lessons they had learned about the importance of winning over local populations. In order to avoid having to painfully relearn the lessons of the importance of recognizing civilian harm in its next war, the United States needs to turn its recent ad hoc progress into a permanent and formal policy followed not only by its own military but also by those of its partners.

The need is especially pressing since some other countries have developed an alternative concept of what is morally right and necessary to win a war, justifying indiscriminate killing in order to stamp out insurgencies. Left unchecked, this lethal view could undermine the historic strides the United States has made in mitigating civilian harm.

MAKING AMENDS

The United States has long taken precautions to avoid harming civilians in armed conflict. During the Civil War, President Abraham Lincoln issued a rule book for Union forces in battle—the famous Lieber Code—which stated

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that “the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.” The country entered World War I in part over attacks on civilians, and in 1955, it acceded to the Fourth Geneva Convention, which protects noncombatants. Today, Pentagon lawyers routinely sit next to war planners and assess the legality of battlefield actions.

Nonetheless, in modern warfare, the need to protect civilians is in constant tension with the desire to destroy the enemy. Getting that balance right has been a rocky process, with one mistake after another jolting U.S. policymakers into improving the way the military deals with civilian harm. In 1991, during the Gulf War, American jets bombed a bunker full of civilians in Baghdad. Colin Powell, then chairman of the Joint Chiefs of Staff, worried that further collateral damage would rob the United States of its moral high ground, and so he minimized the use of air strikes. In 1999, in the midst of NATO’s campaign in Yugoslavia, the U.S. Air Force unintentionally bombed the Chinese embassy in Belgrade, having relied on outdated maps of civilian infrastructure—a mistake the Pentagon vowed never to make again.

Despite these wake-up calls, Pentagon planners for the wars following 9/11 did not take civilian casualties seriously. Speaking with reporters in 2001 about the war in Afghanistan, Marc Grossman, a top State Department official, said, “When the military aspect of the struggle is over, it will be clear that the number of civilian casualties is very, very low.” But over 11 years later, thousands of civilians have been killed or injured by U.S. and NATO forces there. In Iraq, hundreds died during the three-week-

long “shock and awe” phase of combat operations alone. In the years that followed, according to conservative estimates, over 100,000 civilians died.

The Pentagon’s complacency about civilian harm was reflected in its initial decision not to compensate Afghans and Iraqis who suffered injuries, lost family members, or sustained property damage. Cold as it may sound, money is important to war victims. It can help replace destroyed property, restore lost income, and pay for medical care or burial. Above all, it lets civilians know that the United States recognizes their loss. The military justified its decision by arguing that compensation for civilian harm was culturally inappropriate, even though both Afghanistan and Iraq have extensive traditions of remunerating victims of injury. The policy was especially surprising because the U.S. military had paid harmed civilians in conflicts stretching back to the Vietnam War and the Korean War. Such payments became so commonplace in Vietnam that in 1970, civilians rioted outside a U.S. military base there when there were administrative delays in processing their claims.

With no framework or funds from Washington to respond to civilian losses, some military officers pressed their superiors to allow informal payments; in Iraq, they used money confiscated from Saddam Hussein’s palaces. It took until September 2003 for the U.S. government to authorize a proper funding stream—two years after the invasion of Afghanistan and six months after the invasion of Iraq. The new policy worked. Many of the Afghans and Iraqis interviewed about their losses by Center for Civilians in Conflict (of which I am executive director) said that

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the compensation left them feeling more dignified and less angry at the United States. One Afghan man whose brother-in-law was unintentionally killed by coalition forces in 2007 reported that his resentment subsided after the family received assistance. “We thought this shows that they care, that they didn’t do it intentionally,” he said.

Even as the U.S. military began offering compensation in Afghanistan, however, it still often refused to admit causing civilian casualties when it engaged in attacks. The knee-jerk denials inflamed the population, and Afghan President Hamid Karzai threatened to end his partnership with the United States. Adding to the public relations problem, every time the U.S. military denied killing civilians or failed to respond altogether, the Taliban rushed into the breach. They took to the airwaves with their own narrative of every event so convincingly that in late 2009, locals in Kandahar City still falsely blamed an explosion that had been caused years earlier by a Taliban bomb on a U.S. air strike.

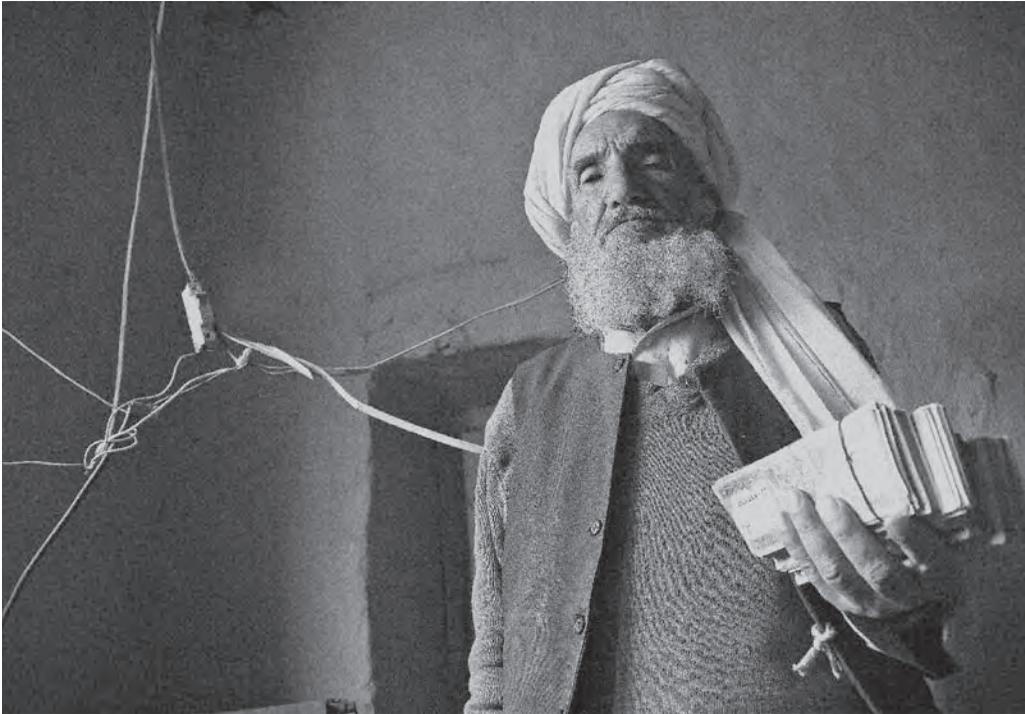
U.S. commanders finally adopted a new policy in 2008 of being “first with the truth”—vowing to respond immediately to an event with information and a promise to investigate. They took other steps, too. That same year, after two U.S. bombardments each killed 30 Afghan civilians, General David McKiernan, then the U.S. commander of international forces in Afghanistan, restricted air strikes to cases in which there was no other way to protect coalition forces. He also created a civilian casualties tracking cell, a group of officers tasked with tabulating civilian harm and analyzing it for trends.

When General Stanley McChrystal replaced McKiernan in 2009, he pledged to get the civilian casualty count down to zero—an impossible goal but one that conveyed his commitment. He also began holding meetings with Afghan civil-society groups to discuss what his forces were trying to do and why. McChrystal’s policies were not just public relations ploys; they saved lives. Even as the battle against the Taliban heated up, civilian casualties caused by U.S. air strikes dropped—by 50 percent within a year after McChrystal took command—and with no discernable cost to the mission’s effectiveness.

By the time ground operations in Iraq had ended and the United States announced its plans to leave Afghanistan, the U.S. military’s treatment of civilians exceeded the requirements of international law. American soldiers, along with many of their allied counterparts, were investigating civilian casualties, tracking their own operations, and compensating victims. These practices are not perfect, even today, but they represent marked improvements in the conduct of war.

LOST LESSONS

Now, however, the U.S. military risks forfeiting these hard-fought gains. There is no official in the Pentagon specifically responsible for monitoring civilian harm or figuring out ways to respond to it. Commanders have been compensating civilian victims on an ad hoc basis for over eight years, but no standing policy supports them on the ground, leaving commanders in the next conflict to reinvent the wheel. In February 2011, Center for Civilians in Conflict helped the U.S. military draft a handbook on mitigating civilian harm, but it is the



Blood money: an Afghan man displaying cash offered as compensation for the death of two of his sons, in Paktia Province, March 2010

only piece of doctrine of its type and it focuses entirely on Afghanistan, not future conflicts. Likewise, although some troops heading to Afghanistan now receive practical training on what to do after civilians are harmed, the program has not become part of the curriculum for those deploying elsewhere.

The lack of a coherent institutional policy also means that the U.S. military is not passing on the lessons it has learned to the foreign militaries it fights with. This failure constitutes not only an ethical lapse but also a strategic setback: when other countries' forces unnecessarily enrage civilians, Washington often shoulders the blame. Within a year of the U.S. military's 2003 decision to offer compensation to Afghan civilians, Australia, Canada, and other U.S. allies followed suit. But since NATO never set

a binding compensation policy, each country's military had its own program with its own levels of payment for deaths and injuries. Some had no policy at all. Since Afghans tended to view all international forces as American, their discontent often focused squarely on the United States.

During NATO's 2011 mission in Libya, the coalition's lack of common policies or institutionalized memory once again caused problems. Although U.S. and allied commanders carefully planned their air campaign to avoid harming civilians, they never bothered to track civilian casualties or conduct investigations. If they had, they would have confirmed what the UN and other independent investigators found: that NATO air strikes killed several dozen civilians, a relatively low number for an air campaign.

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Instead, NATO's refusal to acknowledge any collateral damage hurt its credibility. Its failure to track casualties opened it up to unfounded accusations from China, Russia, and South Africa—all of which came to oppose the intervention—that many more civilians had died as a result of the campaign.

In Afghanistan, the U.S. military is now handing over security to Afghan forces and will be counting on them to maintain stability without harming the population. But the Afghan National Army still has no systems for tracking and responding to civilian casualties—the very tools international forces learned were so essential. U.S. and allied officials have pressed Kabul to create such programs, but it is hard to imagine Karzai's government heeding their advice unless tangible resources back it up. For 2013, the U.S. budget contains \$2.3 billion to support Afghanistan's military. Washington should make at least some of that money conditional on the Afghan government's progress on mitigating civilian harm.

Nor is the United States passing on its lessons to the other militaries it trains. The U.S. military regularly works with Colombian forces to help them fight FARC (Revolutionary Armed Forces of Colombia) rebels. Although it teaches them the battlefield requirements of international law, it does not cover responses to civilian harm. The Pentagon also runs training programs for Burundian and Ugandan troops headed to fight the al Shabab insurgency in Somalia; again, mitigating harm to civilians is not part of the curriculum. In the Philippines, commanders fighting terrorist groups such as Abu Sayyaf instilled a mindset that civilian harm is unacceptable, but

they did so with little help from the U.S. troops training them. For moral and practical reasons, the U.S. military has long sought to raise the standards of conduct for allied militaries around the world; there is no reason to exclude training on dealing with civilian harm.

CIVILIANS IN THE AGE OF COUNTERTERRORISM

U.S. allies are unlikely to follow the U.S. military's new playbook if leaders in Washington disregard it themselves. But that is exactly what they appear to be doing as the government relies more than ever on special operations raids and unmanned drone attacks to fight terrorism. These tools make it possible to fight overseas with few boots on the ground. Yet they come with new risks. Although U.S. Special Forces have composed no more than one-tenth of the U.S. military in Afghanistan, from 2007 to mid-2009, they were responsible for roughly half of U.S.-caused civilian casualties.

Drones may be equally problematic. Although President Barack Obama's top counterterrorism adviser, John Brennan, has said that they give the military "the ability, with laser-like focus, to eliminate the cancerous tumor called an al-Qaida terrorist while limiting damage to the tissue around it," drone strikes do often end up traumatizing the surrounding tissue. In Pakistan, Somalia, and Yemen, locals live with U.S. drones buzzing overhead, not knowing when or where a strike will occur. After the U.S. government conducts a strike, it cannot assess the full extent of local anger and never tries to remedy it. Since there are no conventional U.S. soldiers in many of the places patrolled by American drones, it is nearly impossible for Washington