

## Using humanitarian aid to ‘win hearts and minds’: a costly failure?

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### **Abstract**

*This article contends that the integration of humanitarian assistance in efforts to ‘win hearts and minds’ in counter-insurgencies has not been successful, and that the costs, both operational and legal, clearly outweigh any benefits. It demonstrates how such manipulation of humanitarian assistance runs counter to fundamental principles of international humanitarian law. In addition, a growing body of research suggests that the use of short-term aid and relief programmes as part of counter-insurgency has been ineffectual, and that, in places such as Afghanistan, it may even have undermined the overall military goal of defeating insurgents. With the United States and NATO military operations winding down in Afghanistan, it is time for the military and policy-makers reviewing ‘winning hearts and minds’ as a counter-insurgency strategy to draw the lessons*

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*and recognize the importance of a neutral and independent space for humanitarian aid.*



The concept of counter-insurgency (COIN) has been with us for decades, with many non-international armed conflicts in various regions of the world seeing conventional armed forces and governments being confronted by a variety of insurgents, each with their own distinct motivations.<sup>1</sup> This century’s conflicts in Afghanistan and Iraq have again brought counter-insurgency to the fore and have called for a rethink of strategies to defeat insurgents who differ substantially from those of the Cold War era. In the United Kingdom and the United States, counter-insurgency operations field manuals have been revamped and doctrine developed in a bid to outsmart new radical forms of insurgencies.<sup>2</sup> Counter-insurgency is again at the forefront of military planners’ and policy-makers’ interests. US President Lyndon B. Johnson’s statement on Vietnam that ‘the ultimate victory will depend upon the hearts and minds of the people who actually live out there. By helping to bring them hope and electricity you are also striking a very important blow for the cause of freedom throughout the world’,<sup>3</sup> was echoed in President Obama’s 2007 strategy for Afghanistan, ‘a campaign against extremism will not succeed with bullets or bombs alone’.<sup>4</sup>

As part of the rethink over the last few years, in particular in Afghanistan, there has been a greater emphasis on soft power and aspects of counter-insurgency that aim at increasing acceptance of the local population without force, to take support away from the insurgents.<sup>5</sup> Translated into operational terms, a successful counter-insurgency is said today to require less force and more so-called ‘consent-winning’ and ‘gratitude-seeking’ elements. According to the US Army Field Manual 3-24, success in counter-insurgency is gained by protecting the local

1 Counter-insurgency (COIN) was strongly associated with the Cold War counter-insurgency campaigns fought by the British in Malaya, Oman, and Aden, and the US in Vietnam. France, while not embracing the expression ‘counter-insurgency’, also has a rich experience in fighting insurgencies, notably in Algeria and Indochina.

2 Notably British Army Field Manual, Vol. 1, Part 10, Countering Insurgency, Army Code 71876, October 2009, (GB COIN), and the U.S. Army and Marine Corps Counterinsurgency Field Manual, U.S. Army Field Manual No. 3-24, *Counterinsurgency*, Marine Corps Warfighting Publication No. 3-33.5, December 2006 (hereafter FM 3-24).

3 Remarks by Lyndon B. Johnson at a Dinner Meeting of the Texas Electric Cooperatives, Inc., 4 May 1965, available at: <http://www.presidency.ucsb.edu/ws/index.php?pid=26942#axzz1uDRuoCji> (last visited December 2011).

4 Remarks by President Obama on a New Strategy for Afghanistan and Pakistan, 27 March 2009, available at: [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-on-a-New-Strategy-for-Afghanistan-and-Pakistan/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-a-New-Strategy-for-Afghanistan-and-Pakistan/) (last visited December 2011).

5 Counter-insurgency places much emphasis on the need for effective and timely intelligence-gathering as success criteria for any mission. The counter-insurgents must not only strive to understand the enemy, as in conventional warfare, but also gather a better knowledge of the local populations, their needs, concerns, and support rationale. See generally David Kilcullen, ‘Intelligence’, in Thomas Rid and Thomas Keane (eds), *Understanding Counterinsurgency: Doctrine, Operations, and Challenges*, Routledge, Oxford and New York, 2010, pp. 141–159.

population, not the COIN force, with some of the 'best weapons for counter-insurgents' being those that 'do not shoot'.<sup>6</sup> The military is no longer conceived exclusively as an instrument of force. In counter-insurgencies, soldiers and marines are now expected to take on a variety of tasks including providing short-term humanitarian assistance, and, in the medium to long term, helping to rebuild the country's infrastructure, from the construction of schools and hospitals to training local security and cementing good governance and the rule of law.

In war-torn contexts where insurgents thrive on the failures of the state authorities to bring security and economic development, any approach that promises to deliver sustainable peace and stability appears welcome. In the short term, the delivery of essential humanitarian assistance by the military to affected populations is also welcome, to the extent that it is provided impartially and is needs based. However, as witnessed in Afghanistan and Iraq, counter-insurgency planners have at times conceived of the delivery of aid and humanitarian assistance as being an intrinsic component of the overall military strategy to defeat the insurgents.

Such use of humanitarian aid for political and military gain in non-international armed conflicts has understandably given rise to much unease within the humanitarian community. This has been of particular concern in the conflict in Afghanistan, where US and NATO forces would often gear the provision of aid and relief to the aim of sapping the insurgency of local patronage. The International Committee of the Red Cross (ICRC) and others have publicly resisted counter-insurgency where it encroaches on the independence and impartiality of humanitarian assistance and actors. Indeed, it has been asserted that security of aid workers can be put at grave risk in complex non-international armed conflicts when the aid delivered by non-combatants is perceived to further the military aims of one of the parties to the conflict.<sup>7</sup> In addition to negative operational consequences, from a legal standpoint, international humanitarian law (IHL) places clear obligations on the belligerents with regard to the distribution of aid and relief: it must be given to those in need without any adverse distinction, and cannot be manipulated to serve military goals.<sup>8</sup>

Despite this push back by many humanitarian organizations, and the undermining of fundamental IHL principles, the delivery of aid and humanitarian assistance continued to be advocated by policy-makers as an essential tool for successful counter-insurgency. The establishment of such programmes as the Provincial Reconstruction Teams in Afghanistan and Iraq testified to this strategy. However, there is a growing body of research and literature suggesting that the provision of aid and development by the US military and NATO partners in these contexts has proved to be ineffective. It is being demonstrated that local populations

6 FM 3-24, above note 2, sections 1-149 and 1-153.

7 According to the ICRC Director of Operations: 'Over the past decade, deliberate attacks against humanitarian personnel have become commonplace. They are clearly illegal and unacceptable and must be condemned in the strongest terms. The rejection of humanitarians is, however, the by-product of policies that integrate humanitarian aid into political and military strategies', Opinion, in *Stars and Stripes*, 15 January 2011.

8 See below, in 'Does a "winning hearts and minds" strategy clash with IHL principles?'

respond more favourably to the restoration of security and good governance, and to those programmes that can substantively address social and economic concerns, especially if delivered by the national authorities.<sup>9</sup>

While many of the early indicators focus on the seeming failings of medium- to long-term development programmes, as this article discusses, there is also evidence to suggest that the ‘winning of hearts and minds’ through the delivery of short-term humanitarian assistance has likewise been ineffectual, with any benefits and gratitude from the local population found to be short-lived, often providing, at best, limited force protection gains. Moreover, recent studies indicate that a ‘hearts and minds’ approach focused on the delivery of aid and short-term assistance by the military has actually undermined the military strategy in parts of Afghanistan and can even be counter-productive to the overall military objective of defeating the insurgency.<sup>10</sup>

With the US and NATO military operations winding down in Afghanistan, military and policy-makers will in all likelihood be reviewing the lessons learned on the value, benefits, and shortcomings of counter-insurgency as a strategic model in future conflicts. With this in mind, this paper will argue, after explaining aspects of counter-insurgency, that fundamental IHL principles, the well-founded concerns of humanitarian organizations, and the early indicators of the ineffectiveness of counter-insurgency aid and relief programmes call, at the very least, for an important strategic rethink, before allowing the delivery of short-term aid and humanitarian assistance by the military to be part of a ‘hearts and minds’ strategy again.

## **Counter-insurgency, humanitarian assistance, and ‘winning hearts and minds’**

### **Counter-insurgency explained**

Until the turn of the twenty-first century, discussions on counter-insurgency operations and doctrine were very much the preserve of military strategists and historians. Although there had been numerous conflicts driven through a counter-insurgency lens during the twentieth century, counter-insurgency was not within the public discourse to the same extent as it is today. The RAND Institute has listed eighty-nine insurgencies that have occurred between 1945 and the present day, in a variety of countries, from Greece to Namibia and Bangladesh.<sup>11</sup> Despite the

9 See below, in Section ‘Does humanitarian assistance win hearts and minds?’ of this article.

10 *Ibid.*

11 David C. Gompert and John Gordon IV *et al.*, *War by Other Means: Building Complete and Balanced Capabilities for Counterinsurgency*, RAND National Defense Research Institute, Santa Monica, CA, 2008, Appendix A, Table A.1 (hereafter RAND Report). The RAND National Defense Research Institute suggested four broad types of insurgency. Type I insurgencies, deemed ‘local’ and similar to the situation in Colombia, are self-contained in ‘cause, scope and effects’; they are seen as the most common type, making up the best part of 60% of insurgencies as of 2007. In Type II, called ‘local-international’, the insurgents receive external support such as money, arms, expertise, fighters and media coverage; according

numbers, except for the more specialized commentators and military, counter-insurgency was not cited so widely when speaking about these conflicts. Today, however, counter-insurgency as a term has crept into common parlance discussed by the media and the general public in many countries, and has notably been made accessible as a concept by US General David Petraeus<sup>12</sup> and Dr. David Kilcullen.<sup>13</sup>

Even the popular understanding of counter-insurgency highlights as one of its central tenets the attempt to delegitimize an insurgency by isolating it from its grassroots support. Fighting insurgents and overcoming their adversity is no longer just a question of inflicting the greatest death toll upon the enemy in the minimum time possible, an approach favoured by General Patton during World War II, but significantly about ‘winning hearts and minds’, and thus depriving the insurgent groups of the support of the local population. Conflict is less about the exclusive use of lethal force on the adversary, and more a blending of military, political, and economic means to defeat insurgents. As General Sir Rupert Smith from the UK explained:

In our new paradigm, which I call ‘war amongst the people’, you seek to change the intentions or capture the will of your opponent and the people amongst which you operate, to win the clash of wills and thereby win the trial of strength. The essential difference is that military force is no longer used to decide the political dispute, but rather to create a condition in which a strategic result is achieved. . . . In large measure, the strategic objective is to win the hearts and minds of the people. In other words this isn’t a supporting activity of your tactical battle. It is the purpose of what you are doing. So arriving afterwards to paint a school or deliver toothpaste isn’t helping if you’ve blown the school away in the first place.<sup>14</sup>

to the Institute nearly 35% of insurgencies have been Type II since the end of World War II. In Type III, a local insurgency receiving external support can become the platform for a wider regional or even global struggle; these have only formed 5% of insurgencies since World War II, but they are seen to be the fastest growing type of insurgency, especially in the Muslim world, and combine local political aims with global religious aims and means. The Institute sees Type III insurgencies, as the most relevant for the US today, not only as it counters ‘Islamic insurgencies’ but also for future insurgencies with similar traits. Finally, Type IV ‘global’ insurgencies – targeting the nation-state order itself – are few and far between.

- 12 At the time of writing, General Petraeus is head of the Central Intelligence Agency. He is seen as the chief architect of the present US counter-insurgency doctrine.
- 13 David Kilcullen’s *The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One*, Oxford University Press, Oxford, 2009, was listed as a *Washington Post* bestseller. For a discussion on counter-insurgency by Kilcullen, see ‘Interview with David Kilcullen’, in *International Review of the Red Cross*, Vol. 93, No. 883, September 2011, pp. 1–15. Counter-insurgency terminology is now even found in the popular British tabloid press: ‘It’s much easier getting shot at than gaining trust. . . we’re trying to correct 30 years of mayhem with words, not weapons’. Virginia Wheeler, ‘Sun joins “Mighty Munch” marines on hearts and minds mission’, in *The Sun*, available at: [http://www.thesun.co.uk/sol/homepage/news/campaigns/our\\_boys/3646913/Sun-joins-Marines-involved-in-the-most-advanced-counter-insurgency-strategy-in-HISTORY-in-Afghanistan.html](http://www.thesun.co.uk/sol/homepage/news/campaigns/our_boys/3646913/Sun-joins-Marines-involved-in-the-most-advanced-counter-insurgency-strategy-in-HISTORY-in-Afghanistan.html) (last visited December 2011). See also Chris Hughes, ‘Afghanistan: the battle for hearts and minds: beating the Taliban with a toy gun’, in *The Mirror*, available at: <http://www.mirror.co.uk/news/top-stories/2010/09/13/beatng-the-taliban-with-a-toy-gun-115875-22557453/> (last visited December 2011).
- 14 Interview with General Sir Rupert Smith, in *International Review of the Red Cross*, Vol. 88, No. 864, December 2006, pp. 719 and 724.

Modern-day thinking on counter-insurgency reflects this population-centric approach when dealing with new threats in complex non-international armed conflicts.<sup>15</sup> As the US Center for Army Lessons Learned describes,

the higher goal of military and civil action is to win over the population, while killing the insurgents is a supporting or shaping effort. In other words, hostile individuals do not create hostile populations, rather, hostile populations will continue to create hostile leaders until the source of the hostility is alleviated.<sup>16</sup>

Thus, while counter-insurgency is warfare, it is not merely military, but also political, as the outcome of the operation is deemed by the military themselves to depend in large part on the strength of the relationship between ‘the people, the government, and the military’.<sup>17</sup>

In terms of specific strategies to gain the support of the local population, counter-insurgency planners have often resorted to either a ‘carrot-and-stick’ approach or a ‘winning hearts and minds’ strategy. In the former, military force is used to punish, while assistance and financial aid are used to reward those who do not back the insurgents. ‘Winning hearts and minds’ can overlap with a ‘carrot-and-stick’ strategy, though the focus is much more on seeking to gain the local population’s allegiance and support, ideally without resorting to force.<sup>18</sup> ‘Winning hearts and minds’ is seen as a race for people’s trust and confidence and convincing people that a better life lies ahead.<sup>19</sup>

A third strategy, whether complementary to the first two or as a standalone strategy, and particularly useful in context of failed or failing states, aims to introduce rule of law, develop the capacity of the domestic justice mechanisms, and implant good governance. In theory, grievances will be addressed through this newly transformed system rather than by turning to the insurgency.<sup>20</sup>

From a humanitarian perspective, it is the first two strategies that have proved more problematic, especially where short-term aid programmes and humanitarian assistance have been used to gain the loyalty of the local population. Such loyalty, for the military, can be crucial for operational success. This is particularly relevant immediately after combat operations. Sometimes tellingly referred to as ‘exploitation’, it is premised on the injection of humanitarian and economic assistance and establishment of a secure environment to gain the support of the local population.<sup>21</sup>

15 GB COIN, above note 2, p. 1.1.

16 Center for Army Lessons Learned (CALL), *PRT Playbook: Tactics, Techniques, and Procedures*, Handbook No. 07-34, September 2007, p. 1, available at: <http://usacac.army.mil/cac2/call/docs/07-34/07-34.pdf> (last visited December 2011).

17 GB COIN, above note 2, p. 1.1.

18 See RAND Report, above note 11, pp. 90–91.

19 See Peter Mansoor, ‘Army’, in T. Rid and T. Keaney, above note 5, p. 82.

20 See RAND Report, above note 11, pp. 92–93.

21 See D. Kilcullen, *The Accidental Guerrilla*, above note 13, p. 69.

## The blending of humanitarians and military

The US Army Field Manual 3-24 notes that, in counter-insurgency, an integrated military and civilian approach is required: 'Political, social, and economic programs are usually more valuable than conventional military operations in addressing the root causes of conflict and undermining an insurgency'.<sup>22</sup> Meeting the 'local populace's fundamental needs' rides in tandem with military action. As such, according to FM 3-24, 'COIN actors' include not only traditional military personnel but also individuals from a variety of backgrounds, from politicians and diplomats to local leaders and humanitarian workers.<sup>23</sup>

FM 3-24 recognizes that civilian entities such as intergovernmental organizations (IOs) and non-governmental organizations (NGOs) bring required expertise to complement that of the military.<sup>24</sup> For the drafters of FM 3-24, the focus should not be on who provides the assistance, but rather on ensuring that the identified social, political, and economic programmes are effectively implemented. In the absence of adequate civilian capacity, 'military forces fill the gap'.<sup>25</sup>

For counter-insurgency planners, humanitarian groups are seen to play critical roles in implementing the counter-insurgency effort, even if they are outside the control of the military or civilian governing agencies.<sup>26</sup> One author goes as far as to suggest that, because the local population must be convinced that it is better to support the legitimate government rather than the insurgents, humanitarian assistance is an essential element of the 'counterinsurgency toolkit'.<sup>27</sup> This could obviously lead to humanitarian actors being misused as part of the overall military strategy. The US Field Manual recognizes the difficulties in establishing formal relationships with NGOs and local organizations because of their differing goals and fundamental independence. It goes on to appreciate that in some situations it would even be impractical as well as undesirable to have direct interaction with some organizations, and that at best only general, contextual information-sharing can be achieved.<sup>28</sup>

Although the Manual notes that many NGOs do not want to be seen as associating with the military, it emphasizes that commanders in the field must develop trust-based complementary relationships with such organizations.<sup>29</sup> Commanders are expected to gain basic awareness of NGOs and their activities, and to encourage them to participate in planning for the delivery of essential services to the local populations. Commanders, when meeting with NGOs, are to 'help them understand mutual interests in achieving local security, stability, and relief objectives'.<sup>30</sup> NGOs are seen 'to play important roles in resolving

22 FM 3-24, above note 2, section 2.2.

23 *Ibid.*, sections 2.3 and 2.4.

24 *Ibid.*, section 2.8.

25 *Ibid.*, section 2.5.

26 *Ibid.*, section 2.16.

27 See P. Mansoor, above note 19, p. 82.

28 FM 3-24, section 2.12.

29 *Ibid.*, section 2.29.

30 *Ibid.*, Table 5-4, 'Considerations for developing the essential services LLO [logical line of operations]'.

insurgencies’;<sup>31</sup> they are present in conflict zones before the arrival and after the departure of the military, and can support lasting stability.<sup>32</sup>

Thus, the recent and current US counter-insurgency doctrine presupposes a mix of tools to defeat the insurgents. The military will first attack, after which operations will be aimed at holding, controlling, and sustaining the targeted environment. Civilian agencies, including IOs and NGOs are to be brought into the equation after the initial hostilities, in a bid to win the support of the local community. Although the respective mandates of all actors are to be respected, it is clear that the military remains in the director’s seat. Disconcertingly for humanitarians, the military has often been ready to usurp aid and relief programmes during the initial phases of the operations to gain access to the local population.

## The ‘militarization’ of humanitarian aid

The counter-insurgency in Afghanistan has challenged fundamental principles underpinning the provision of humanitarian assistance in conflict situations. In Afghanistan, many commanders saw humanitarian organizations as essential components of the counter-insurgency equation. Major General Michael Tucker, Deputy Chief of Staff for Operations of the International Security Assistance Force (ISAF) and Deputy Commander for Operations for US Forces Afghanistan, was quoted as saying: ‘Obviously, humanitarian aid is a key factor in any population-centric operation. . . . They both work hand in hand. One sets the condition for the other. And it’s absolutely essential to progress in counterinsurgency operations.’<sup>33</sup> Referring to aid workers, the *New York Times* cited a US colonel as saying: ‘Those are the guys who are going to win it for us . . . That’s how we’re really going to defeat the root causes . . .’<sup>34</sup>

There is obviously a need for co-ordination and co-operation between the armed forces and humanitarian actors in conflict zones. Parties to an armed conflict may restrict access to certain areas for valid security reasons, as long as it is not to the overt detriment of the populations in need.<sup>35</sup> Humanitarian organizations will need to communicate with the military to ensure that it is safe for them to travel into

31 *Ibid.*, section 2.29. Listed as examples of NGOs are the ICRC, World Vision, Médecins sans Frontières, CARE, OXFAM, Save the Children, Mercy Corps, and Academy for Educational Development.

32 *Ibid.*

33 Kevin Baron, ‘Mixing fighting and food in Afghanistan’, in *Stars and Stripes*, 15 September 2009, available at: <http://www.stripes.com/news/mixing-fighting-and-food-in-afghanistan-1.94760> (last visited December 2011).

34 ‘Taliban raids widen in parts of Afghanistan’, in *New York Times*, 1 September 2003, available at: <http://www.nytimes.com/2003/09/01/world/taliban-raids-widen-in-parts-of-afghanistan.html?pagewanted=all&src=pm> (last visited December 2011).

35 For an overview of state obligations under IHL, see ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report prepared by the ICRC for the 31st International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 28 November–1 December 2011, Geneva, October 2011 (hereafter ICRC Challenges Report), pp. 23–26, available at: <http://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf> (last visited December 2011).

zones where there might be ongoing hostilities. The military may themselves be better placed to deliver much needed humanitarian assistance, especially in newly secured areas where aid agencies have yet to arrive. However, this co-operation should not be transformed into the control or co-opting of aid and humanitarian agencies by the parties to the armed conflict in a bid to advance military strategy. For many humanitarian organizations, any association – whether perceived or real – with military operations can create security risks for their personnel as well as for civilians.

As a matter of policy, for the Red Cross and Red Crescent Movement, the independence of humanitarian action should never be compromised: ‘Military force, policy and humanitarian action as an instrument for gaining peace is for the [Movement] not applicable. We strictly confine our focus towards our independent, humanitarian mission.’<sup>36</sup> Failure to adhere to this principle can jeopardize the impartiality and perception of impartiality of a humanitarian organization, thereby creating a security risk for workers and beneficiaries alike. The 2011 ICRC report on contemporary challenges to IHL noted that, where parties to an armed conflict perceive ‘humanitarian operations as instruments of military or political agendas’, access to the populations in need will be rendered more difficult, and the security of humanitarian workers will be ‘seriously jeopardized’.<sup>37</sup> The ICRC Director General likewise emphasized that ‘aid must be prioritized and allocated strictly on the basis of humanitarian needs, not on political, military or economic objectives’.<sup>38</sup>

Despite the many challenges posed by contemporary counter-insurgencies, where some of the parties to the conflict no longer see civilians as simple bystanders, and despite the pressures to ‘adapt’, the ICRC has consistently maintained its stance: ‘Old recipes for a new world? The ICRC thinks differently; it maintains a principled position in the face of challenge.’<sup>39</sup> For the ICRC, such a position is ‘the one that is most in accordance with its mandate and serves its humanitarian goals’, having taken into account the various views on the issue, presumably civilian and military.<sup>40</sup> Humanitarian action should not form part of military campaigns designed to win over hearts and minds, or be used as a ‘tool to promote or accompany armed changes of regime’.<sup>41</sup>

The ICRC is not alone in underscoring the risks of blending humanitarian assistance with military action. Médecins sans Frontières (MSF) cited as one of the main reasons for deterioration in independent humanitarian assistance the

36 Council of Delegates of the International Red Cross and Red Crescent Movement, Seoul, Republic of Korea, 16–18 November 2005, *Neutral and Independent Humanitarian Action*, Consolidated report of the Commissions, 18 November 2005, p. 3, available at: [http://www.icrc.org/eng/assets/files/other/cd2005\\_commissionsniha\\_consolreport\\_final\\_eng\\_22.11.pdf](http://www.icrc.org/eng/assets/files/other/cd2005_commissionsniha_consolreport_final_eng_22.11.pdf) (last visited December 2011).

37 ICRC Challenges Report, above note 35, p. 23.

38 Yves Daccord, ‘Protection of civilians: lessons from Libya and Ivory Coast’, editorial, 10 May 2011, available at: <http://www.icrc.org/eng/resources/documents/article/editorial/protection-civilians-article-2011-05-18.htm> (last visited December 2011).

39 Pierre Krähenbühl, ‘The ICRC’s approach to contemporary security challenges: a future for independent and neutral humanitarian action’, in *International Review of the Red Cross*, Vol. 86, No. 855, 2004, p. 510.

40 *Ibid.*, p. 513.

41 *Ibid.*, p. 512.

‘co-optation of the aid system’ by the international military coalition in Afghanistan. This co-optation made it difficult to distinguish between humanitarian aid efforts and military action.<sup>42</sup> In a very blunt assessment of counter-insurgency strategies in Afghanistan, MSF was very critical of organizations that had seemingly forsaken their neutrality to work alongside ISAF:

Peace and stability are no doubt noble objectives, but when aid organizations seek to transform a society by promoting the strategy of one of the belligerents in the midst of a war, they are no longer seen as impartial by all sides and subsequently lose the ability to access and provide assistance to all people in need. . . . Neutrality is often abandoned for a so-called ‘pragmatic’ approach by organizations hoping to participate in the integration of development and nation-building efforts.<sup>43</sup>

In April 2009, sixteen NGOs involved in humanitarian assistance in Afghanistan addressed a letter to NATO and the relevant heads of state, urging NATO troops clearly to distinguish military actions from humanitarian activities, as a means of protecting Afghan civilians and aid workers.<sup>44</sup> The NGOs (which included Action Contre la Faim (ACF), ActionAid, Care, Catholic Relief Services, Concern World Wide, Cordaid, the Danish Committee for Aid to Afghan Refugees (DACAAR), the International Rescue Committee, the Norwegian Refugee Council, Save the Children, War Child Holland, ZOA (Zuidoost-Azië)) underscored how important it was that

military forces should not use relief or development activities to attempt to win people’s hearts and minds for tactical, counter-insurgency or other military objectives, and that the military should refrain from relief activities when there are civilian actors capable of delivering assistance.<sup>45</sup>

As recently as August 2011, the International Crisis Group (ICG) reiterated this concern, concluding in its report on Afghanistan that the ‘militarization of aid is undermining humanitarian assistance’.<sup>46</sup>

The Provincial Reconstruction Teams (PRTs), combining civilian, diplomatic, military, and development agencies under military control in Afghanistan, were particularly criticized for jeopardizing the impartiality of humanitarian aid. Initially developed for Iraq, PRTs aim to stabilize and reconstruct the host nation

42 Michiel Hofman and Sophie Delaunay, ‘Afghanistan: a return to humanitarian action’, special report, Médecins sans Frontières, 11 March 2010, p. 2, available at: <http://www.doctorswithoutborders.org/publications/article.cfm?id=4311&cat=special-report> (last visited December 2011).

43 *Ibid.*, pp. 3 and 6.

44 See International Rescue Committee, ‘Aid groups urge NATO to separate military and humanitarian activities to protect civilians in Afghanistan’, available at: <http://www.rescue.org/news/aid-groups-urge-nato-separate-military-and-humanitarian-activities-protect-civilians-afghanista-4463>, and the letter itself, available at: [http://www.nrc.no/arch/\\_img/9390968.pdf](http://www.nrc.no/arch/_img/9390968.pdf) (both last visited December 2011).

45 *Ibid.*

46 International Crisis Group, *Aid and Conflict in Afghanistan*, Asia Report No. 210, 4 August 2011, p. 21, executive summary and recommendations available at: <http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/210-aid-and-conflict-in-afghanistan.aspx> (last visited December 2011).

through capacity-building. As the conflict was deemed by the military to have evolved from a phase of combat operations to one marked by stability operations and sustainable development, the military considered that they would scale back their activities and that civilian components would start focusing on social, economic, humanitarian, and rule of law programmes. In Afghanistan, the twenty-six PRTs were all connected to ISAF. PRTs were to be the 'softer-side' of counter-insurgency, and according to some informed observers became 'America's primary tool for using large-scale reconstruction to improve security in Afghanistan'.<sup>47</sup>

Even if, conceptually, the PRTs were to distinguish military from civilian endeavours, from the outset they were primarily military organizations because they were led by the military. They were strategic outposts predominantly staffed by the military and delivering aid and relief as part of the counter-insurgency. The first PRT, established in 2002 in Gardez, was co-located with US Special Forces, with army civil affairs interacting with locals and tribal leaders and the 82nd Airborne Division providing security.<sup>48</sup> There were very few civilian personnel, for obvious security reasons. 'PRTs do not conduct development for development's sake':<sup>49</sup> in other words, their objective is counter-insurgency driven, aimed at 'turning Afghans away from the insurgency and thereby creating a stable environment in which the Afghan government can exert its authority'.<sup>50</sup>

Some initial reports on PRTs suggested that they should be renamed 'Provincial Security Teams', as they were much better suited 'to security-related tasks than to delivering development assistance'. They were found to excel at providing, notably, 'a security presence' and also disarmament, demobilization, and de-mining services.<sup>51</sup> However, a 2011 report of the Feinstein International Center found that PRTs were consistently perceived negatively in various Afghan provinces.<sup>52</sup> Allegations of corruption and bias were often levelled at the PRTs and their disbursement of development assistance.<sup>53</sup>

The ICRC cited PRTs as an example of parties to the conflict making humanitarian action one of their tools in the conduct of their military campaigns.<sup>54</sup> Even though humanitarian organizations were not expected to work directly with PRTs, the very nature of the PRT activities risked creating a perception that the

47 Carter Malkasian and Gerald Meyerle, *Provincial Reconstruction Teams: How Do We Know They Work?*, United States Army War College, Strategic Studies Institute, March 2009, p. 1, available at: <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubid=911> (last visited December 2011).

48 U.S. Center for Army Lessons Learned, *Afghanistan: Provincial Reconstruction Team – Observations, Insights, and Lessons*, Handbook, No. 11–16, February 2011, Introduction, available at: <http://usacac.army.mil/cac2/call/docs/11-16/11-16.pdf> (last visited December 2011).

49 C. Malkasian and G. Meyerle, above note 47, p. 6.

50 *Ibid.*

51 Robert M. Perito, *The U.S. Experience with Provincial Reconstruction Teams in Afghanistan*, Special Report 152, United States Institute for Peace, October 2005, available at: <http://www.usip.org/files/resources/sr152.pdf> (last visited December 2011).

52 Stuart Gordon, *Winning Hearts and Minds? Examining the Relationship between Aid and Security in Afghanistan's Helmand Province*, April 2011, Feinstein International Center, Tufts University, available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_589.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_589.pdf) (last visited December 2011).

53 *Ibid.*

54 P. Krähenbühl, above note 39, p. 508.

delivery by whichever agency or organization of any short-term aid and relief was part of US and NATO military strategy. Though efforts were made in 2008 by the Afghanistan Civil Military Working Group, involving the United Nations Assistance Mission for Afghanistan (UNAMA), ISAF, and Operation Enduring Freedom (OEF), to reiterate and recognize the difference between the roles of humanitarian actors and the military, this was arguably too little too late.<sup>55</sup>

Once a perception of loss of neutrality has been created, it is very difficult to undo, not only with respect to the organization seen to be ‘co-operating’ but also arguably for the humanitarian community as a whole. According to the Humanitarian Policy Group, ‘a few years ago Afghan locals made distinctions between organizations, for instance between agencies that were working with the coalition force’s Provincial Reconstruction Teams and agencies that were not’.<sup>56</sup> However, since then, this distinction has apparently made way to an environment where ‘all Western-based international humanitarian organizations are judged as partisan’ and being part of a ‘Western agenda’, except for the ICRC, which, according to the authors, ‘seems to have effectively staked out a special identity and neutral space for its work’.<sup>57</sup>

Despite efforts by NGOs to minimize any such negative perception, the 2008 agreement signed by 100 NGOs and NATO’s ISAF to clearly distinguish civilian activities from the military’s actions against insurgents, supposedly went unnoticed by the Taliban: ‘We have no idea about these guidelines and were never part of the process which produced them, . . . We only respect truly neutral and independent aid organizations which do not work at the behest of American and Western forces.’<sup>58</sup> In a recent article published in the *Review*, it was explained that the ICRC faced major challenges in demonstrating its continued independence from coalition forces. It added that, although ultimately the ICRC was able steadily to increase its activities and reach into various regions of Afghanistan, this was a time-consuming process during which civilians were arguably deprived of essential humanitarian assistance.<sup>59</sup>

Making matters more complex for humanitarian agencies is the overlap between counter-insurgency and counter-terrorism. Recent restrictions imposed by counter-terrorism legislation have the potential to constrain activities of humanitarian actors still further. Legislation aimed at criminalizing any form of material support to terrorism, broadly interpreted by the US Supreme Court, is putting the

55 The United Nations’ mandate of helping coalition forces and the Afghan government reconstruct and develop Afghanistan has also been cited as a reason for UN agencies not being seen as independent and impartial. See Antonio Donini, ‘Between a rock and a hard place: integration or independence of humanitarian action?’, in *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 141–157.

56 Abby Stoddard, Adele Harmer, and Victoria DiDomenico, *Providing Aid in Insecure Environments: 2009, Update: Trends in Violence Against Aid Workers and the Operational Response*, Humanitarian Policy Group, HPG Policy Brief 34, April 2009, p. 6, available at: <http://www.odi.org.uk/resources/docs/4243.pdf> (last visited December 2011).

57 *Ibid.*

58 K. Baron, above note 33.

59 Fiona Terry, ‘The International Committee of the Red Cross in Afghanistan: reasserting the neutrality of humanitarian action’, in *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 173–188.

control of aid delivery at the core of counter-terrorism strategies in Afghanistan and elsewhere.<sup>60</sup> A perverse effect of the tightening of the criteria and due diligence requirements imposed for funding is that those IOs and NGOs that are successful in obtaining funds run the risk of being perceived by insurgents as being extensions of the donor states' overall counter-insurgency strategy against them.<sup>61</sup>

While it is difficult to quantify this empirically, the loss of perception of neutrality can have serious security repercussions for humanitarian organizations. The ICRC has suggested a connection between certain attacks against the ICRC and the blending of humanitarian assistance and military action:

Over the past decade, deliberate attacks against humanitarian personnel have become commonplace. They are clearly illegal and unacceptable and must be condemned in the strongest terms. The rejection of humanitarians is, however, also the by-product of policies that integrate humanitarian aid into political and military strategies.<sup>62</sup>

Humanitarians are not the only ones targeted as a result of the aid being used to serve strategic goals; civilians also pay a high price. It has been suggested that insurgents have attacked villages that have accepted such aid, in retaliation for 'collaborating' with the enemy.<sup>63</sup> Even talking with US and NATO forces make local communities fearful of reprisals. During an exchange in the documentary *Armadillo* a local man explains to a Danish soldier that the soldiers 'come with all [their] weapons', then leave, while he and his village are 'staying here then the Taliban will come'. The local man explains that he cannot co-operate with the soldiers to provide information on Taliban in the area. The soldier notes that, 'If you do not co-operate we cannot secure the area and build you a school for your kids'. Still not persuaded the local man replies 'You have guns, they have guns, if I talk, they'll cut my throat'.<sup>64</sup>

All the above elements plead in favour of a clear distinction between humanitarian aid, on the one hand, and strategic objectives and military actions, notably as part of counter-insurgency operations, on the other, and of the separation of these two domains to preserve their specificities. As the Norwegian Refugee Council explained: 'Humanitarians also assist in "clear, hold and build" campaigns, as part of NATO's counter-insurgency strategy. Make no mistake: this is military,

60 Supreme Court of the United States, *Holder et al. v. Humanitarian Law Project et al.*, Decision of 21 June 2010, 561 U.S., 2010.

61 On this, see Sara Pantuliano *et al.*, *Counter-terrorism and Humanitarian Action: Tensions, Impact and Ways Forward*, Humanitarian Policy Group, HPG Policy Brief 43, October 2011, available at: <http://www.odi.org.uk/resources/docs/7347.pdf> (last visited December 2011).

62 Pierre Krähenbühl, 'The militarization of aid and its perils', 22 February 2011, available at: <http://www.icrc.org/eng/resources/documents/article/editorial/humanitarians-danger-article-2011-02-01.htm> (last visited December 2011).

63 See Fiona Terry, above note 59, p. 175, 'Civilians have paid the highest price for this instrumentalization of aid: in retaliation for "collaborating" with the enemy, insurgents have attacked villages that have accepted such aid; and villages thought to be harbouring insurgents have been bombed or raided by NATO forces on the basis of intelligence collected while doling out the "good stuff".'

64 From the documentary *Armadillo*, following Danish ISAF troops deployed in Helmand Province, Afghanistan, in 2009.

not humanitarian action.’<sup>65</sup> Subjecting the humanitarian needs of a population to a strategy designed to defeat an opponent or enemy is, in the view of the ICRC Director of Operations, ‘incompatible with the fundamental principles that govern the ICRC operations’.<sup>66</sup>

## Does a ‘winning hearts and minds’ strategy clash with IHL principles?

International humanitarian law, notably the 1949 Geneva Conventions and their Additional Protocols of 1977, seeks to find equipoise between military necessity and humanitarian considerations. In a sense, IHL is a strict code of conduct for the warring factions, endorsed by states, with violations thereof requiring repression. It is also the one of the most important safeguards for persons not taking any part in the hostilities. It recognizes that they are outside of the fight, as such. The respect of IHL by the parties to the conflict allows for a perceptible semblance of humanity to remain in the midst of violent hostilities. Aid and humanitarian assistance enable the civilian population to survive the hardships of the conflict and, to the extent possible, to maintain dignity throughout.

In accordance with IHL, humanitarian assistance is to be given without adverse discrimination and in an impartial manner, to all of those in need, irrespective of any allegiance that they may have to either of the parties. As the International Court of Justice explained in the *Nicaragua* case:

An essential feature of truly humanitarian aid is that it is given ‘without discrimination’ of any kind. In the view of the Court, if the provision of ‘humanitarian assistance’ is to escape condemnation as an intervention in the internal affairs of Nicaragua, not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely ‘to prevent and alleviate human suffering’ and ‘to protect life and health and to ensure respect for the human being’; it must also, and above all, be given without discrimination to all in need in Nicaragua, not merely to the *contras* and their dependents.<sup>67</sup>

The armed forces are not specifically prohibited from aiding civilians. On the contrary, the presumption is that the parties to the conflict are primarily responsible for ensuring that humanitarian assistance reaches those in need. Where they are unable or unwilling to deliver the aid themselves, they are to allow aid and relief to be delivered by impartial humanitarian organizations, to reach those in need.<sup>68</sup> This

65 2010 ECHO Annual Partners conference, ECHO Conference Panel Intervention, Elisabeth Rasmusson, Secretary General of Norwegian Refugee Council, available at: [http://ec.europa.eu/echo/files/partners/humanitarian\\_aid/conferences/2010/Roundtable/NRC.pdf](http://ec.europa.eu/echo/files/partners/humanitarian_aid/conferences/2010/Roundtable/NRC.pdf) (last visited December 2011).

66 P. Krähenbühl, above note 39, p. 513.

67 International Court of Justice, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment of 27 June 1986, para. 243.

68 See Geneva Conventions I–III, Art. 9; Geneva Convention IV (GC IV), Arts. 10 and 59; Additional Protocol I (AP I), Art. 70; Additional Protocol II, Art. 18; ICRC Challenges Report, above note 35, p. 23.

is a corollary of the obligation of the parties to do their utmost to protect civilians from the effects of the hostilities.

While the Geneva Conventions and their Additional Protocols do not address all of the specifics of how the parties should ensure that aid reaches the civilian population, they do provide a general framework and some description of appropriate relief goods, and they underscore certain minimum actions that must be taken by the parties. The parties to the conflict can establish hospital and safety zones and localities, as well as neutralized zones where wounded soldiers and civilians can be sheltered from attack.<sup>69</sup> No military activities are to be carried out in these areas. Free passage of medical and hospital stores destined for civilians of another state, as well as objects for religious worship, is to be granted by a party to a conflict, even if the other state is the adversary.<sup>70</sup> There are a number of provisions relating to the delivery of relief in occupied and non-occupied territories, and on the importance of family contacts and reunification.<sup>71</sup>

In the context of non-international armed conflicts, where counter-insurgency prevails, there are far fewer provisions. Nonetheless Common Article 3 to the Geneva Conventions does speak of the delivery of aid and relief, and Article 18 of Additional Protocol II underscores that, where the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, parties to the conflict are to allow for relief supplies ‘which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction’.

This demonstrates the central place devoted by IHL to the provision of impartial humanitarian assistance. If the armed forces themselves cannot provide the aid, humanitarian organizations are to be allowed to do so, without adverse discrimination. In other words, the beneficiaries of aid and relief are those who are in need and who are suffering because of the conflict, not those who might be strategically important in overcoming insurgents. To allow the latter criterion to be a determinant in how aid is distributed runs afoul of the purpose of IHL.

It is therefore understood that humanitarian organizations must not be ‘affected by any political or military consideration’. They must be concerned with the ‘condition of man’, as human beings, ‘regardless of his value as a military political, professional or other unit’.<sup>72</sup> Moreover, the actions of humanitarian organizations and aid societies must be impartial and may not themselves compromise military operations, for instance by using their privileged position to collect or transmit political or military information.<sup>73</sup>

69 GC IV, Arts. 14 and 15.

70 GC IV, Art. 23.

71 See generally GC IV, Arts. 59–62; AP I, Arts. 68–71.

72 Jean S. Pictet (ed.), *The Geneva Conventions of 12 August 1949: Commentary, (IV) Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, ICRC, Geneva, 1958, (hereafter *Commentary on GC IV*), Art. 10, pp. 96–97.

73 Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987 (hereafter *Commentary on AP I*), Article 81, paras. 3337–3338.

For the Red Cross and Red Crescent Movement, the need to maintain such neutrality and impartiality is particularly important in the context of a non-international armed conflict, which is fertile ground for counter-insurgency operations. On the one hand, there is the risk that the state on whose territory the conflict is occurring may feel that humanitarian organizations are encroaching in internal affairs. On the other, because states exert some *de facto* control over how and where aid is distributed, insurgents and the local populations might perceive humanitarian organizations as mere extensions of the states’ policy, as a tool of the invading forces.

Common Article 3 to the four Geneva Conventions specifically addresses the former concern by stipulating that any impartial humanitarian organization, such as the ICRC, can offer its services to deliver aid and assistance to those in need. This provision was expressly added to move away from the perception of an ‘offer of charitable services . . . as . . . an inadmissible attempt to interfere in the internal affairs of the State’ on whose territory the conflict was occurring.<sup>74</sup> The insertion of this clause gave legal footing to the offers of services by the ICRC and NGOs. It also sought to iterate that the provision of humanitarian aid is to be impartial and not driven by the politics of the conflict, aimed only at alleviating suffering.<sup>75</sup>

Through public statements and the elaboration of a code of conduct, humanitarian organizations have sought to minimize the risk of being perceived as part of the military toolkit. Thus the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief adopted in 1996 calls upon NGOs and other humanitarian actors to maintain high standards of independence, and to comply with IHL in times of armed conflict.<sup>76</sup> It recalls the obligation of members of the international community to provide humanitarian assistance ‘wherever it is needed’.<sup>77</sup>

In accordance with IHL, the giving of aid is not – and should not be viewed as – a ‘partisan or political act’, and it is to be calculated on the basis of ‘need alone’.<sup>78</sup> Humanitarian organizations are expected not to act as instruments of government foreign policy: the signatories to the Code of Conduct are to formulate their own independent policies, and to act in a strictly humanitarian manner and not ‘as instruments of foreign policy of donor governments’.<sup>79</sup> Coupled with pushback from the humanitarian community, and legitimate concerns about the risk of militarizing aid, there are already many reasons to advocate a rethink of how counter-insurgency and ‘hearts and minds’ are executed. It is clear: delivery of short-term humanitarian assistance must remain needs-based, and be provided

74 *Commentary on GC IV*, above note 72, Common Article 3, p. 41.

75 *Ibid.*

76 The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, available at: <http://www.ifrc.org/en/publications-and-reports/code-of-conduct/> (last visited December 2011).

77 *Ibid.*, para. 1.

78 *Ibid.*, paras. 1 and 2.

79 *Ibid.*, para. 4.

without adverse discrimination and not as part of military strategy. Yet this proposition might face some resistance from policy-makers and military strategists who believe that the use of aid to 'win hearts and minds' is indispensable if counter-insurgency is to work in Afghanistan and elsewhere. Reconsideration of this approach might be warranted, however, as early indicators seem to suggest that, in practice, 'winning hearts and minds' has not worked as a strategy in Iraq and Afghanistan.

## Does humanitarian assistance 'win hearts and minds'?

As described above, counter-insurgency promoters in Afghanistan reasoned that hearts and minds would be won by blending civilian and military, and by allowing short-term humanitarian assistance to be part of military operations: this implicitly rejects the notion of a true neutral independent humanitarian space in conflicts.<sup>80</sup> If there was at least some evidence that in Afghanistan and Iraq the militarization of aid decreased violence, that access to those in need was facilitated, and that ultimately the civilian population endured less suffering and inhumanity, then it might have to be conceded in part that co-optation of humanitarian assistance by the military is not necessarily all bad news, notwithstanding the pushback from the humanitarian community and the obvious undercutting of certain fundamental IHL principles. The groundswell argument would be that new warfare and new enemies require different approaches from those contemplated after World War II.

However, to date, findings produced by recent research seem to be pointing the other way: the 'winning of hearts and minds' through the provision of short-term aid and relief has not, in fact, been a wholesale success in countering insurgents nor demonstrably beneficial to the civilian population.

## Militarization of aid is not 'winning hearts and minds'

The main focus of counter-insurgency is to modify the environment in such a way as to deprive the insurgents of the support of the local population. A crucial component for success is ensuring that any negative perceptions on the part of the local government are undone. To do so requires creating the necessary conditions in terms of security, development, rule of law, and good governance. For US and NATO forces engaged in Afghanistan, the aim ultimately should be to bring stability and security to communities, thereby undermining insurgents. Their actions should not simply be about legitimizing their role and presence in a foreign land.<sup>81</sup> Operationally, the litmus test is therefore whether the provision by the

80 Humanitarian space is understood to be the space needed for relief and humanitarian agencies to be able to operate effectively in conflict situations. However, there is no commonly agreed definition of the term.

81 See, for instance, views attributed to British General Sir Gerald Templar in the 'Report on Wilton Park Conference 1022: winning "hearts and minds" in Afghanistan: assessing the effectiveness of development aid in COIN operations', 11–14 March 2010, p. 6, available at: <http://www.eisf.eu/resources/library/1004WPCReport.pdf> (last visited December 2011).

military of aid and assistance, whether in the short, medium, or long term, has succeeded in contributing to this objective.

Admittedly, it may be both empirically difficult and possibly premature to draw any concrete conclusions from the ‘long war’ in Afghanistan. However, there is a small but growing body of research tending to suggest that, writ large, development initiatives and improvement of economic situations have partially improved the security situation and increased support for the local government, thereby seemingly vindicating a counter-insurgency ‘hearts and minds’ approach. But any success has been tempered, both in terms of effectiveness and duration, especially if delivered by the international forces.

One study on the economics of counter-insurgency in Iraq hints at a correlation between increased spending on aid and development programmes and a decrease in violence. It also notes that this may have coincided with the 2007 surge in US troop strength.<sup>82</sup> Another study on Afghanistan concluded that there was an obvious link between improved economic situations and attitude towards the Afghan government.<sup>83</sup> However, the authors found that this did not observably translate into improvements in security. Interestingly, programmes that were seen to have a significant positive effect on both the ‘perception of economic wellbeing’ and ‘attitudes of the civilian population toward the central and local government’, and NGOs, were those provided by the Afghan government and not by the international forces.<sup>84</sup> Such findings are not too dissimilar to the suggestion of T. E. Lawrence, nearly a century ago, that it is better to leave the local authorities to take charge:

Do not try to do too much with your own hands. Better the Arabs do it tolerably than that you do it perfectly. It is their war, and you are to help them, not to win it for them. Actually, also, under the very odd conditions of Arabia, your practical work will not be as good as, perhaps, you think it is.<sup>85</sup>

Despite the moderate successes of medium- to long-term aid and development programmes, in reviewing the limited research available, there is little, if any, evidence that short-term humanitarian assistance initiatives, when implemented by the international forces, have benefitted the overall counter-insurgency strategy, especially in Afghanistan. This is despite coalition policy-makers and the military having identified the winning of hearts and minds as a lynchpin of counter-insurgency operations in Afghanistan, and the immense efforts since 2008 to turn the local population away from the insurgency. A number of factors have been advanced for these apparent failings: the coalition strategy focused on acceptance of ISAF forces rather than on generating support for the government; the

82 Elin Berman, Jacob N. Shapiro, and Joseph H. Felder, ‘Can hearts and minds be bought? The economics of counterinsurgency in Iraq’, in *Journal of Political Economy*, Vol. 119, No. 4, August 2011, pp. 766–819.

83 Andrew Beath, Fotini Christia, and Ruben Enikolopov, ‘Winning hearts and minds? Evidence from a field experiment in Afghanistan’, MIT Political Science Working Paper No. 2011-14, pp. 2–3, 20, available at: [http://www.humansecuritygateway.com/documents/MIT\\_WinningHeartsandMinds.pdf](http://www.humansecuritygateway.com/documents/MIT_WinningHeartsandMinds.pdf) (last visited December 2011).

84 *Ibid.*, pp. 11 and 20.

85 T. E. Lawrence, ‘The 27 articles of T.E. Lawrence’, in *Arab Bulletin*, 20 August 1917, available at: [http://www.lib.byu.edu/index.php/The\\_27\\_Articles\\_of\\_T.E.\\_Lawrence](http://www.lib.byu.edu/index.php/The_27_Articles_of_T.E._Lawrence) (last visited December 2011).

use of force by the military cannot be reconciled with winning hearts and minds; trying to win hearts and minds can actually breed contempt and insecurity.

Although exact figures are difficult to find, millions of US dollars have been spent on short-term, quick-impact, consent-winning initiatives in Afghanistan to undermine the insurgency.<sup>86</sup> Of course, the provision of humanitarian assistance by the military through such projects as part of a counter-insurgency strategy, in many cases well intentioned, can provide some short-term benefits *in situ* for the military and engender the gratitude of the beneficiary population. Indeed, a 2012 report issued by the Feinstein International Center examining the relationship between aid and security in five provinces in Afghanistan noted that it had been reported by military officials that, 'in some areas, military-administered aid projects may have had short-term security benefits, at least in the limited sense of force protection'.<sup>87</sup> On the subject of force protection benefits, a civilian-military co-operation (CIMIC) officer was quoted as saying: 'in the short-term, this avoids people throwing rocks at patrols, so that NGOs can operate, and in turn help with long-term security'.<sup>88</sup> The same study noted that, in two other provinces, the military felt that such projects saved lives because the local community was more willing to provide information on improvised explosive devices (IEDs), and the military gained better access to villages.<sup>89</sup>

However, while military-administered aid projects might help at a tactical level by allowing the international forces some interaction with the local community, to gather 'atmospherics and intelligence', they have little long-term overall strategic effect.<sup>90</sup> As Kilcullen explained with blunt rationale: 'In a counterinsurgency, the gratitude effect will last until the sun goes down and the insurgents show up and say, "You're on our side, aren't you? Otherwise, we're going to kill you"'.<sup>91</sup>

Moreover, other early research has shown that in counter-insurgency operations, such as in Afghanistan and Iraq, short-term incentives and concessions do not necessarily go hand in hand with a long-term transformation strategy aimed at putting in place sustainable and durable judicial mechanisms and good governance.<sup>92</sup> This is particular true for powers such the United States and NATO fighting on foreign soil. Not only do they have to overcome negative perceptions as invading forces, but they must also strive to strengthen good domestic governance. In contexts such as Afghanistan, the RAND Institute concludes that provision of

86 According to the Feinstein Center nearly 2.64 billion US dollars were channelled through the Commanders Emergency Response Program for the Provincial Reconstruction Teams alone. See Paul Fishstein and Andrew Wilder, *Winning Hearts and Minds? Examining the Relationship between Aid and Security in Afghanistan's Helmand Province*, January 2012, Feinstein International Center, Tufts University, p. 6, available at: <http://sites.tufts.edu/feinstein/files/2012/01/WinningHearts-Final.pdf>.

87 *Ibid.*, p. 54.

88 *Ibid.*

89 *Ibid.*

90 'Report on Wilton Park Conference 1022', above note 81, p. 2.

91 Quoted in George Packer, 'Knowing the enemy: can social scientists redefine the "war on terror"?', in *New Yorker Magazine*, 18 December 2006, available at: [http://www.newyorker.com/archive/2006/12/18/061218fa\\_fact2?currentPage=all](http://www.newyorker.com/archive/2006/12/18/061218fa_fact2?currentPage=all) (last visited December 2011).

92 RAND Report, above note 11, p. 94.

assistance by the US might have short-term benefits for the safety of US forces, but that it ‘does very little to boost popular allegiance to the host nation. Indeed, when the host-nation government is performing poorly in comparison, U.S. assistance may actually discredit the indigenous government.’<sup>93</sup>

As an example of problematic areas, a 2011 report by the Feinstein International Center cited Quick Impact Projects (QIPs) used by UK forces and the PRT in Helmand Province in 2008. QIPs were integrated into the ‘Consent Winning Approach’ whereby assistance projects were ‘assumed capable of “buying” Afghan loyalty’.<sup>94</sup> Projects included hospitality, goodwill payments, and small-scale, rapidly implemented construction. The report found that these projects failed because they were in part ‘underpinned by unrealistic optimistic expectations’.<sup>95</sup> A combination of incoherence by the PRT, lack of local ownership of the projects, and corruption of local officers meant that the intended objective of consent generation was not met and at times even undermined any positive effects that QIPs could have.<sup>96</sup>

In its follow-up 2012 report that considered aid and security and ‘hearts and minds’ in five Afghan provinces, the Feinstein International Center made comparable findings about corruption and inequitable distribution of aid. The report noted that the local communities also felt that large-scale, visible, infrastructure projects were preferable to small-scale projects that did nothing for the development of Afghanistan. The larger projects had the potential to create jobs and boost the local economy, thereby strengthening security.<sup>97</sup> Similarly, in its report on aid and conflict in Afghanistan, the ICG felt that any chance of success and long-term stability required institution-building and improving ‘jobs, human security, justice and governance’. For the ICG, the tying of aid to counter-insurgency objectives had ‘skewed how aid is perceived and the conditions under which it is delivered’.<sup>98</sup>

### ‘Winning hearts and minds’ in Afghanistan: more harm than good?

For some commentators, including a US Army colonel, ‘winning hearts and minds provides the wrong focus’ for US counter-insurgency efforts in Afghanistan: if the ‘goal is to leave Afghanistan’, the US forces need only ‘maintain good relations with the people’ and create for the local population a sense of ‘hope’ in the future and ‘faith’ in the ability of the Afghan authorities. It is for the Afghan authorities to win hearts and minds.<sup>99</sup>

93 *Ibid.*, p. 92.

94 S. Gordon, above note 52, p. 42.

95 *Ibid.*

96 *Ibid.*, pp. 42–43.

97 P. Fishstein and A. Wilder, above note 86, pp. 42–51.

98 International Crisis Group, above note 46, VI Conclusion.

99 Colonel John M. Spitzer, ‘Counterinsurgency in Afghanistan: lessons learned by a brigade combat team’, in *Military Review*, January–February 2011, pp. 73–74, available at: [http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview\\_20110228\\_art012.pdf](http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20110228_art012.pdf) (last visited December 2011).

Despite this criticism, counter-insurgency strategists may feel that any positive feedback and co-operation from the local population, however slight and meagre, is better than nothing. And if there is some benefit to be gained, they might add, the military should persevere with 'humanitarian', consent-winning programmes. This could, however, come at a cost. If the focus of counter-insurgency is to create support for the local government and a secure and economically viable environment, should one persist with militarized short-term humanitarian assistance programmes that do not match up with these overall objectives?

Another question that military planners need to ask is whether soldiers can ever in practice win the hearts and minds of an unfriendly and less than receptive local population. One of the appendices in the US Army's 'Tactics in Counterinsurgency' itself highlights this tension in the role of the military in winning hearts and minds as part of counter-insurgency:

Once you have settled into your sector, your key task is to build trusted networks. This is the true meaning of the phrase hearts and minds, which comprises two separate components. Hearts means persuading people their best interests are served by your success; minds means convincing them that you can protect them, and that resisting you is pointless. *Note that neither concept has anything to do with whether people like you.*<sup>100</sup>

Equally, the documentary *Restrepo* in many ways encapsulates the challenge of winning the hearts and minds of a local population in a particular hostile environment, the Korengal valley in Afghanistan. With active hostilities still ongoing, and force still needed to overcome insurgents, can soldiers be expected to implement a 'winning hearts and minds' strategy effectively?<sup>101</sup> In the documentary, one of the officers explains, following a weekly *shura*, how the attempts of US forces to gain the confidence of the local population are hamstrung in the face of civilians casualties caused by their own kinetic actions. Elsewhere in the film, a radio conversation between two soldiers reveals a glimpse into their feelings about 'hearts and minds'. As one soldier mentions the strategy, the other replies: 'Yeah, we'll take their hearts and we'll take their minds.'<sup>102</sup>

More poignantly, elsewhere in the film, another soldier explains that the 'hearts and minds thing is not working'. Noting that, as infantrymen, they are not well trained to implement 'hearts and minds', he adds:

This whole going there and act like a friend thing doesn't work . . . especially when you've the Afghani we've caught putting the roadside bomb, the IED, just spitting at us and calling us infidels and stuff. . . . Hearts and minds is out of the

100 U.S. Department of the Army, 'Tactics in Counterinsurgency', FM 3-24.2, April 2009, Appendix C: 'Twenty-eight articles: fundamentals of company-level counterinsurgency', p. C-4, point 13, emphasis added.

101 Sebastian Junger and Tim Hetherington (dir.), *Restrepo*. See <http://restreptomovie.com/> (last visited December 2011).

102 *Ibid.*

window when you see the guy shooting at you and he puts his wife and kids . . . knowing well that we won’t shoot back . . . or the guy that comes, shakes our hands, takes the ten bags of rice we give him for his family and the school supplies and the coats, immediately walks up the mountain and shoots an RPG at us, walks back down and smiles the next morning when he’s walking his goats. F\*\*k his heart, f\*\*k his mind.<sup>103</sup>

The film highlights that neither the local population nor the military seem to be convinced that a ‘hearts and minds’ strategy can work. For the local population, it remains a question of trust and not quite understanding how the US forces can feed with one arm yet kill with the other. For the soldier, there is obvious frustration and some cynicism about their dual role in the counter-insurgency.

Besides the practical challenges, what should be more worrisome for those who firmly believe that winning of hearts and minds can work are recent indicators that the provision of aid in general as part of a counter-insurgency strategy may actually be driving insecurity and have a destabilizing influence. Pointers in the 2012 Feinstein report suggested that aid projects might be causing ‘tensions and conflicts’ because they were ‘perceived to reinforce inequalities and create winners and losers’.<sup>104</sup> The report noted that, while some regions might be incentivized to make an area secure to attract aid projects, others might actually be creating problems to prevent monitoring of existing projects. Of greater concern for counter-insurgency operators should be the comments of respondents in the report that a good strategy for attracting aid projects ‘would be to create a little noise to suggest that insurgents were operating in the area and that a little “hearts and minds” activity was needed’.<sup>105</sup> International aid officers were also quoted as claiming that some communities were using the ‘mantra of “bring us development”’ as a threat.<sup>106</sup> While the relevant parts of the report did not distinguish between short-term consent-winning projects and medium- and long-term development programmes, these findings should nonetheless be heeded where aid is being used by the military and policy-makers to gain the gratitude and acceptance of local communities.

Whereas the findings derived from the initial research are by no means exhaustive and will certainly merit further complement as coalition forces disengage from Afghanistan, there seems to be little observable evidence to conclude that short-term aid and humanitarian assistance projects driven by the US and its allies have made a significant contribution to stability in Afghanistan. Instead, there is a growing body of work indicating that aid and development projects as part of a counter-insurgency strategy are seen as ineffectual, and might even be counter-productive to the overall strategy.

Notwithstanding, counter-insurgency operators might argue that in the absence of further empirical data, the short-term security and intelligence benefits to

103 *Ibid.*, and specific clip of Specialist Kyle Steiner on ‘hearts and minds’, available at: <http://www.youtube.com/watch?v=ik9dVd5IutM> (last visited December 2011).

104 P. Fishstein and A. Wilder, above note 86, p. 61.

105 *Ibid.*, p. 64.

106 *Ibid.*

the troops on the ground still outweigh the lack of overall stabilizing contributions, and that, as such, the co-opting of humanitarian aid is still viable as part of their overall counter-insurgency strategy. Maintaining this approach would certainly perpetuate the tensions with the humanitarian community, as well as give rise to continued conflict with the fundamental principles of international humanitarian law. Is it really worth it, and should there not be a serious re-evaluation of the costs and benefits of militarizing aid in counter-insurgency as the military and policy-makers develop doctrine and strategy for future conflicts?

## A future for counter-insurgency?

Predicting conflict trends is beyond the scope of this article, though it would seem that counter-insurgency-driven conflicts in the Afghanistan mould are likely to diminish over the next few decades. Indeed, strategic thinking of the US and other major military powers tends to suggest that conventional all-out wars are on the wane and that, in their place, expeditionary wars among local populations, with some counter-insurgency operations, are likely to prevail in the foreseeable future.<sup>107</sup>

The US Department of Defense predicts a 'complex and uncertain security landscape in which the pace of change continues to accelerate'.<sup>108</sup> This will be accompanied by 'the rise of new powers, the growing influence of non-state actors, the spread of weapons of mass destruction and other destructive enabling technologies, and a series of enduring and emerging trends' creating major challenges to future international orders.<sup>109</sup> Similarly, the UK government, in its 2010 National Security Review, painted a complex future landscape:

State-on-state conflict will not disappear, but its character is already changing. Asymmetric tactics such as economic, cyber and proxy actions instead of direct military confrontation will play an increasing part, as both state and non-state adversaries seek an edge over those who overmatch them in conventional military capability.<sup>110</sup>

107 See Thomas Rid and Thomas Keane, 'Counterinsurgency in context', in T. Rid and T. Keane, above note 5, pp. 255–260.

108 US Department of Defense, *Quadrennial Defense Review Report*, February 2010, p. 5, available at: <http://www.defense.gov/qdr/> (last visited December 2011).

109 *Ibid.*

110 UK Government, *Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review*, October 2010, p. 16, available at: [http://www.direct.gov.uk/prod\\_consum\\_dg/groups/dg\\_digitalassets/@dg/@en/documents/digitalasset/dg\\_191634.pdf](http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_191634.pdf) (last visited December 2011). The UK is also looking to prevention and civilian action rather than military intervention in future conflicts and zones of instability: 'to help bring enduring stability to such countries, we [the UK] will increase significantly our support to conflict prevention and poverty reduction. We will deliver this support through an integrated approach that brings together our diplomatic, development, defence and intelligence resources' (*ibid.*, p. 44).

In its 2011 report on contemporary challenges to IHL, the ICRC likewise noted the predominance of non-international armed conflicts, marked by a blurring between ideological and non-ideological confrontations and longer duration.<sup>111</sup>

Regarding the specific issues of counter-insurgency and counter-terrorism, the US does not see them as ‘transitory or anomalous phenomen[a] in the security landscape’.<sup>112</sup> Instead the Department of Defense speaks of an ‘indefinite future’ where ‘violent extremist groups, with or without state sponsorship, will continue to foment instability and challenge U.S. and allied interests’.<sup>113</sup> However the Department falls short of embracing counter-insurgency to deal with these threats. A reluctance to do so expressly is understandable, if, as Kilcullen predicts, the fight against ‘Al Qaeda’ will be a protracted, multigenerational conflict, possibly lasting between 50 and 100 years, with peaks and troughs in the level of violence during this period.<sup>114</sup>

It would appear, therefore, that the road ahead is not to be paved with counter-insurgencies implicating a large military presence on the ground, as witnessed in Afghanistan and Iraq. This position finds particular support given the apparent temporal indefiniteness of conflicts against radicalized insurgents, and the recent limited success of counter-insurgency. According to the RAND Institute, ‘there is no empirical basis for expecting successful COIN in conjunction with large-scale foreign military intervention. If anything, there is a negative correlation between large-scale foreign military intervention and successful COIN’.<sup>115</sup> It adds that ‘at best, large-scale foreign military involvement is generally unproductive; at worst, it is counterproductive’ in counter-insurgency contexts.<sup>116</sup> Kilcullen argues that, in the future, large-scale, unilateral military interventions in the Islamic world should be avoided.<sup>117</sup>

As such, and based on lessons learned from counter-insurgency in Iraq and Afghanistan, but also on the counter-insurgency experiences of the US, UK, and France elsewhere, it is slowly being recognized that more ‘civilian’ and less military involvement is going to be required to counter insurgents, especially in situations where a local insurgency is receiving external support. There is therefore also a growing consensus that the role of the armed forces should be primarily reserved for their traditional coercive functions. Moreover, budget cuts are likely to affect the US and UK military, requiring streamlining and retrenching of defence capabilities. Jeh Johnson, General Counsel for the US Department of Defense, confirmed this structural change and the realities of economic constraints:

we [the US] have in these times of fiscal austerity, embarked upon a plan to transform the military to a more agile, flexible, rapidly deployable and

111 ICRC Challenges Report, above note 35, pp. 5–6.

112 US Department of Defense, above note 108, p. 20.

113 *Ibid.*

114 D. Kilcullen, *The Accidental Guerilla*, above note 13, p. 284.

115 RAND Report, above note 11, p. 243.

116 *Ibid.*, p. 244.

117 D. Kilcullen, *The Accidental Guerilla*, above note 13, p. 269.

technologically advanced force, that involves reducing the size of the active duty Army and Marine Corps, and the defense budget by \$487 billion over 10 years.<sup>118</sup>

Operationally, the military will consequently have to be more selective in nature, preferring 'direct action against high-value targets in remote or populated areas; clandestine operations; precision strike' over indefinite 'hearts and minds' operations.<sup>119</sup>

In the stead of large military interventions, Kilcullen suggests less intrusive and more indirect interventions built on partnerships with local authorities, security services, and civil society leaders as the better *modus operandi*. In his view, preference should be given to civilian agencies over military forces, and to local nationals over international forces.<sup>120</sup> The RAND Institute makes similar recommendations, calling for the developing of complete and balanced capabilities for counter-insurgency, with an increased deployment of civilian agencies and a focus on local security capacity-building.<sup>121</sup> With the military drawdown in future counter-insurgencies, it has been recommended that the focus of on-the-ground civilian agencies should be on building the capacity of the local government, making it inclusive and responsive to address substantively the needs of the people.<sup>122</sup>

For the US and the UK in particular, a greater focus will be on prevention, by addressing the socio-economic causes of instability to lessen any risk of conflict erupting. Where the military is called upon to act, the vision for future military interventions in third countries seems then to be one of rapid incursions in hostile zones, with greater reliance on local forces and on unmanned automated vehicles, such as drones. Counter-insurgency-driven operations involving the military will continue, though in all likelihood in a modified and much more limited manner. The military will be called upon to revert to its traditional role of neutralizing the 'enemy' through the use of force, and be relieved of the 'hearts and minds' role that they were bequeathed in Afghanistan and Iraq.

If this model proves to be the way forward, there will hopefully be less manipulation of the delivery of humanitarian aid to achieve military objectives. In

118 Dean's Lecture at Yale Law School, 'National security law, lawyers and lawyering in the Obama Administration', by Jeh Charles Johnson, General Counsel of the Department of Defense, 22 February 2012, available at: <http://www.cfr.org/national-security-and-defense/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448> (last visited December 2011).

119 RAND Report, above note 11, p. xviii.

120 D. Kilcullen, *The Accidental Guerilla*, above note 13, p. 283. He also underscores that any military assistance should be aimed at dealing with poor governance, lack of development, and institutional corruption, all of which provide leverage for insurgents. Only through 'full-spectrum' co-operation with aid agencies, charities, educators, and departments of foreign affairs and states can this be achieved (*ibid.*, p. 289).

121 RAND Report, above note 11, pp. 83–84, 351–353. Note that comparable approaches have been proposed by some authors for the Somali conflict. Constructive disengagement and earned engagement are just two theories being advanced, each premised on civilian rather than military, and local over international, solutions. See Bronwyn Bruton and J. Peter Pham, 'How to end the stalemate in Somalia', in *Foreign Affairs*, 30 September 2011, available at: <http://www.foreignaffairs.com/articles/68315/bronwyn-bruton-and-j-peter-pham/how-to-end-the-stalemate-in-somalia> (last visited December 2011).

122 *Ibid.*, pp. 363–365.

turn, all being well, this will allow for neutral independent humanitarian space to be maintained, with the distribution of aid and relief being determined on the basis of needs and not as an integral part of military strategy.

## Conclusion

If counter-insurgency is here to stay, in whatever shape or form, then, as US and coalition forces wind down their operations in Afghanistan, it will be interesting to see what lessons can be learned from the experiences of blending humanitarian and military activities as part of counter-insurgency operations. Research and practice has shown that counter-insurgency operations are continuously expected to adapt to best meet the challenges posed by insurgents. It also appears that a strategy built on ‘winning hearts and minds’, with humanitarian assistance being part of the toolkit, does not necessarily benefit the overall military goal. At best it may gain the short-term gratitude of the local community, which is quickly dissipated; at worst it could be strategically counter-productive.

From a humanitarian perspective, it is hoped that planners of future counter-insurgency military engagements will be fully mindful of the risks associated with using humanitarian assistance as part of the overall military strategy to win over hearts and minds. The serious concerns voiced by humanitarian agencies should be heeded from both a legal and a practical viewpoint. The blending of aid work with military goals can put at risk humanitarian actors, who, in the eyes of insurgents are seen to be in cahoots with the ‘invading’ foreign military powers. If humanitarian actors are unable to function effectively in regions desperate for relief, the suffering of civilians in need of aid will be accentuated, in turn potentially fuelling more instability. As the ICRC Director of Operations explained:

Given the stakes, I believe it is essential that political and military decision makers seriously confront the far reaching consequences of making humanitarian aid an integral part of counter-insurgency operations. Humanitarian organizations for their part must debate the consequences of their choices in a more self-critical and honest fashion and genuinely decide how they wish to operate. Failure to do so will continue to weaken the security of humanitarian workers and, more significantly, further isolate and endanger the victims of armed conflict.<sup>123</sup>

Without a separation of humanitarian assistance from military strategy in complex conflict situations, humanitarian organizations will continue to run the risk of being perceived by insurgents and even the local population as not being impartial and neutral, and serving the cause of the counter-insurgents. Although in Afghanistan many humanitarian organizations have been able to regain credibility and carve out a much-needed humanitarian space, it has been a time-consuming and obstacle-ridden process. As the experiences have shown, once the negative perception is

123 P. Krähenbühl, above note 62.

created it is very difficult to undo, often to the detriment of the population in need of aid.

For policy-makers and military strategists, the challenge will be to incorporate these lessons as they develop effective counter-insurgency operations strategies for future conflicts. For a variety of reason, it is clear that the co-opting of humanitarian assistance to win over hearts and minds is fraught with controversy and risks, and very possibly ineffectual as a counter-insurgency strategy.