

The International Committee of the Red Cross in Afghanistan: reasserting the neutrality of humanitarian action

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Abstract

Neutrality as a guiding principle of humanitarian action was roundly rejected by most actors in Afghanistan's latest conflict. One party to the conflict commandeered assistance and aid organizations into a counter-insurgency campaign, and the other rejected Western aid organizations as agents of an imperialist West. The murder in 2003 of the International Committee of the Red Cross (ICRC) water engineer Ricardo Munguia, because of what he symbolized, cast doubt on whether the ICRC could be perceived as neutral in this highly polarized context. Rather than abandon a neutral stance, however, as so many aid organizations did, the ICRC persevered and, through some innovative and sometimes risky initiatives, managed to show both sides the benefits of having a neutral intermediary in conflict. Today, the ICRC continues to expand its reach to Afghans in dire need of humanitarian assistance.

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Shot in the thigh during NATO's Operation Moshtarak in Helmand Province in February this year, a young Afghan man arrived at the first-aid post of the International Committee of the Red Cross (ICRC) in Marjah. He was stabilized and sent by local taxi to the nearest hospital. Driving on roads riddled with improvised explosive devices (IEDs) – which were temporarily deactivated by insurgents at the ICRC's request – the taxi was stopped at a checkpoint at the entrance to the town. Time was lost as the taxi driver and security forces argued over sending the patient to the interrogation centre or hospital. An ICRC delegate called the checkpoint by mobile phone: 'We understand your security concerns, but please let the patient receive medical care. You can question him later'. The taxi was allowed to pass and the patient reached the hospital. Although not quite what the founder of the Red Cross Movement, Henry Dunant, had in mind 150 years ago when dressing wounds on the battlefield of Solferino, the ICRC's adaptation of his idea to the realities of war in Afghanistan would surely meet with his approval.

Such adaptation is the culmination of years of efforts by the ICRC to gain respect from all parties to the conflict for its role assisting victims, regardless of who they are and what side they are on. Behind this taxi ride to hospital lies a complex story of success and failure: success in persuading insurgents to disarm roadside bombs, if only temporarily, and government security forces to prioritize medical care over interrogation; but failure in having to engage local taxis to play a role that is first and foremost the responsibility of military forces and secondarily of the ICRC or Afghan Red Crescent Society. That an ICRC vehicle cannot drive along this road for fear of being attacked attests to the limits of acceptance by certain groups present in Afghanistan for what the ICRC does and what it represents.

This article explores some of these successes and failures: the challenges that have confronted the ICRC since the US invasion of Afghanistan in 2001, and how it has responded to them. The first part examines the dangers facing ICRC teams when trying to reach Afghans in need of assistance in conflict-affected parts of the country, largely due to the extreme polarization that has occurred around the 'war on terror'/'war on Islam' and the insurgency against the Western-backed government of Hamid Karzai. The second part considers the innovative ways in which the ICRC has sought to expand the humanitarian space in Afghanistan and the risks that these entailed. The final part looks to some of the future challenges that are likely to arise as international security forces scale down their presence and prepare to hand back the country to a government sullied by allegations of corruption and nepotism, a growing insurgency pushing up from the south, re-legitimized warlords in the north, and an impressive array of militias formed, funded, and equipped as part of the West's exit strategy from this quagmire.

Between two extremes: the instrumentalization and rejection of humanitarian aid

The deliberate killing of the ICRC water engineer Ricardo Munguia in March 2003, as he travelled from Kandahar to Tirin Kot, shocked the ICRC to its core. In addition to the personal tragedy felt by his family and colleagues, Ricardo's death shattered long-held assumptions that the ICRC's reputation for neutrality and effective work in Afghanistan over the past thirty years would protect its delegates from attack. Neither the man who ordered the killing nor the man who carried it out was a stranger to the ICRC's work: they each wore an ICRC prosthesis on one leg. Yet this did not stop them killing Ricardo as a symbol of the imperialist West which they considered was waging a war on Islam. Suddenly a silent pact, an unwritten rule concerning the relationship between knowing the ICRC and respecting it, was broken, and the organization had to question whether the perception of its neutrality could again be upheld in the new types of conflict being waged in Iraq, Afghanistan, and Somalia.

The instrumentalization of aid

It is tempting to blame the international military forces for Ricardo's death, joining the chorus of recriminations against the military for 'blurring the lines' between military and humanitarian personnel by using aid as part of its counter-insurgency strategy. International military forces have certainly engaged in unscrupulous activities during the war, such as wearing civilian clothing and driving white cars to disguise themselves as aid workers, dropping pamphlets over southern Afghanistan that told residents they were to give information on the Taliban and Al Qaeda if they wished to continue receiving 'humanitarian' aid, and generally using aid as a tool to 'win the hearts and minds' of the Afghan population. For many military personnel, the logic was simple: 'The more they help us find the bad guys, the more good stuff they'll get', explained a member of a Provincial Reconstruction Team as he delivered blankets to displaced Afghans in the south.¹ 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'. Legitimate aid organizations have also come under suspicion – on several occasions, when arrests, bombings, or poppy eradication occurred not long after ICRC staff had visited an area, the ICRC was accused of having passed information to Coalition forces. While there is nothing intrinsically wrong with the involvement of military forces in aid operations, this instrumentalization of aid has tarnished the image of 'humanitarian' assistance and turned it into a weapon of war.

1 Kim Sengupta, 'Aid workers feel the fatal chill of new Cold War', in *The Independent*, London, 10 May 2004. The Provincial Reconstruction Teams (PRTs) use a combination of civilian and military resources.

The rejection of aid

But the killing of Ricardo was not a case of ‘blurred lines’ and mistaken identity. There was no confusion in the mind of the Taliban commander Mullah Dadullah that he was ordering the execution of a civilian humanitarian worker, not of a soldier, military contractor, or spy.² Ricardo’s killing represented a deeper, more insidious threat that no amount of independence from the military could surmount, namely outright rejection of supposedly universal humanitarian norms and of respect for those who espouse them. The ICRC had managed, with difficulty, to negotiate minimum acceptable conditions for it to work throughout Afghanistan during the Taliban period (1996–2001) and had not been a target of attack. But the ‘war on terror’ played a crucial role in radicalizing a whole generation of Muslims who might not otherwise have been attracted to extreme strands of Islamic thought. The invasion of Iraq; abuse of Muslims in detention facilities in Afghanistan, Iraq, Cuba, and elsewhere; the enduring plight of Palestinians; air strikes that kill and maim civilians; and local grievances at the behaviour of Afghan government and Coalition troops have provided fodder to the Islamists and provoked a groundswell of opposition to the Western world.

This radicalization has, in turn, transformed the image of mainstream aid organizations – deeply embedded culturally, politically, and financially in the Western sphere – from that of benign infidels to agents of Western imperialism, spreading values that are contrary to those of conservative strains of Islam. While clashes over issues such as discrimination against women and ethnic and religious minorities are unavoidable, though not new, Western aid organizations share responsibility for this more recent perception swing against them, for the vast majority abandoned neutrality as a guiding principle of their humanitarian action and directed their aid in accordance with the political and military objectives of the ‘legitimate’ side. In the euphoric period following the ousting of the Taliban regime, they uncritically accepted the ‘post-conflict’ and ‘stabilization’ discourses that designated an end to the need for humanitarian assistance, and hence the principles that guided them. The overwhelming majority embraced a role in ‘post-conflict’ reconstruction and development efforts, and joined the political project to extend the government’s legitimacy throughout the country. A neutral approach was deemed ‘impossible’, ‘old fashioned’, and even morally contestable in these new conflicts, and the integrated political–military–‘humanitarian’ approach to state-building was embraced as the way of the future.³ The ICRC’s efforts to

2 Although it has never been confirmed, it is widely believed to have been Mullah Dadullah on the other end of the satellite phone who ordered Ricardo’s execution. Dadullah was a particularly brutal frontline commander under the Taliban and a member of the leadership council formed after the fall of the Taliban regime, who was based in Quetta and conducted operations in the south. He was killed by NATO forces in May 2007.

3 See, e.g., Peter J. Hoffman and Thomas G. Weiss, *Sword & Salve: Confronting New Wars and Humanitarian Crises*, Rowman & Littlefield, Lanham, MD and Oxford, 2006, p. 99; Paul O’Brien, ‘Politicized humanitarianism: a response to Nicolas de Torrente’, in *Harvard Human Rights Journal*, Vol. 17, 2004, pp. 31–39.

contradict the dominant discourse and highlight the continued need for genuine humanitarian assistance were not appreciated. Indeed, as late in the day as April 2008, the ICRC President, Jakob Kellenberger, was admonished by senior officials of the UN Assistance Mission in Afghanistan (UNAMA) for sounding 'too negative' in a public statement, issued during a trip to Kabul, that expressed concern at the humanitarian situation and the intensification of the conflict.⁴

Nine years on, however, many organizations have removed their rose-tinted glasses to find that the government and the international peace-building process they so eagerly supported are floundering amid rampant corruption, a culture of impunity at all levels, increasing repression, civilian casualties, rising criminality, and an overall loss of legitimacy that is feeding support to the Taliban and other opposition groups. Growing insecurity has led to the scaling back or withdrawal of aid agencies, first from the south and east, and now even from the north and west of Afghanistan, putting a stop to many of the activities these agencies gave up their independence to carry out. Just when humanitarian needs are greatest, aid organizations have the least capacity to respond to them: the paediatric ward of Kandahar hospital is receiving a steady stream of malnourished children from rural areas in the south, yet aid organizations are unable to reach them. Almost all foreign staff of the UN, for instance, pulled out of Kandahar and the whole southern region in April 2010.

The ICRC gave considerable thought to means of working in such a polarized context. It stopped activities in contested areas of the south immediately after Ricardo's death, but continued to visit suspected Taliban and other fighters held by international and Afghan authorities in detention facilities around the country, advocating humane treatment for them in accordance with international law. However, it refused to subscribe to the growing discourse citing attacks on the ICRC in Afghanistan and Iraq as proof that a neutral approach was no longer possible, and sought instead to understand better what was at play. Through a variety of innovative approaches, discussed further below, it began to demonstrate to all sides the benefits of having a neutral intermediary in the midst of conflict. It took three years to restore sufficient mutual confidence with the Taliban to enable the ICRC to venture out of Kandahar again and begin to address the humanitarian needs of the victims of the insurgency and counter-insurgency campaigns. A further four years on, the ICRC continues to expand its operations in Afghanistan as other aid organizations reduce or are forced to terminate theirs.

As shown in the introduction, however, a certain acceptance of the ICRC's work by the conflict's main protagonists has not automatically led to guarantees of safety for teams moving around in rural areas of the south and east. As early as September 2003, the ICRC received a letter from the Taliban saying: 'We can differentiate between organizations that are sympathetic to Afghans and those that are puppets of the Americans',⁵ and the movement has released international staff

4 Internal ICRC document, 29 April 2008.

5 Internal confidential document.

of both the ICRC and ACF (Action Contre la Faim) captured on various occasions, with apologies sent to both organizations. But there are several other factors that impede safe access to many areas and necessitate alternative methods of delivering supplies and services, such as the use of local taxis to evacuate the wounded.

Foreign fighters

The first and least understood of the dangers lying in wait are the foreign fighters: the Pakistani, Arab, and Uzbek jihadists who have come to Afghanistan to rid its soil of the foreign ‘crusaders’. Their true number is controversial; a higher number is cited to emphasize the global threat posed by an unstable Afghanistan, and a lower one to give the contrary impression. Areas near the Pakistan border are thought to have higher percentages of foreigners than elsewhere – one Taliban cleric suggested that 40% of fighters in the Garmser region of Helmand Province in March 2008 were foreigners, while a British officer’s estimate for the whole of Helmand Province in October 2007 was 25–33%.⁶ Foreign fighters pose a greater risk to aid organizations than Afghan insurgents, since they have no constituency in Afghanistan, whether family, tribe, or clan, to answer to or care for. Their sole purpose is to fight NATO and government forces and those who collaborate with them. The Taliban, by contrast, see a growing interest in easing the hardships faced by populations whose support they have or want. Earlier this year in Faryab Province, for example, armed opposition groups presented themselves at clinics to announce that they were in charge of an area and encouraged the clinics to continue, rather than destroying them or threatening staff as in the past. The Taliban have, moreover, always sought some international legitimacy, especially coveting the Afghan seat at the United Nations, whereas the jihadist movements seek neither local nor international approbation, striving instead to destabilize and shock. There is consequently little basis on which aid organizations can appeal to foreign fighters to persuade them not to attack. Even contact with them has remained elusive, just as it was when they were present in training camps in Afghanistan during the Taliban times, before Al Qaeda became a household name.

Unreliable security guarantees

Second, although the Taliban clearly have a leadership structure and *shura* (council) of senior insurgents living mostly in Pakistan,⁷ it is unclear who at the lower levels falls under the *shura*’s command and hence the extent to which it can be relied upon to give security guarantees. The opacity of the hierarchical chain makes it difficult even to know from whom ‘guarantees’ should be sought. Furthermore, fighters on the ground might have a complex overlay of allegiances to

6 See Tom Coghlan, ‘The Taliban in Helmand: an oral history’, in Antonio Giustozzi, *Decoding the New Taliban: Insights from the Afghan Field*, Columbia University Press, New York, 2009, p. 133.

7 Graeme Smith, ‘What Kandahar’s Taliban say’, in A. Giustozzi, above note 6, p. 193.

family, clan, village, tribe, and business interests that will influence individual behaviour. As one Taliban explained,

the ICRC is well appreciated by high-ranking Taliban in Quetta and Afghanistan but the problem is with commanders in the field ... there is a Taliban commander every 100 metres [along the road], many of whom don't like each other. It is the problem of our culture. If one likes the ICRC the other will not and will make problems ... there is no central control.⁸

The problem of security 'guarantees' was exemplified in May 2007 when, at the Taliban's repeated request, the ICRC agreed to visit a hospital in Lashkar Gah that the Italian non-governmental organization (NGO), Emergency, had quit a few months earlier after problems with the government. The Kandahar office received security assurances for the assessment from the same Taliban authorities who had allowed the ICRC to collect two French hostages released by their captors in Maiwand district just a few weeks earlier. That operation then marked the first time that the ICRC had travelled outside Kandahar by road since Ricardo's murder, raising optimism that the Lashkar Gah assessment trip might be the beginning of a broader programme to provide medical services to conflict-affected areas in the south. However, on reaching the spot where the hostage releases had taken place, the assessment team came under fire and bullets pierced the two cars. Miraculously, no-one was hurt, but confidence in the Taliban's ability to communicate with, and control, its fighters was shattered. Any thoughts at that time of taking on the hospital or moving around more widely in the field evaporated.

The fragmentation of opposition forces has only worsened since then, partly owing to the success of the International Security Assistance Force (ISAF) in assassinating mid-level Taliban commanders in night-time raids. New commanders have emerged who are often even less acquainted with the ICRC than the old ones, and some say more radical.⁹ The increased use of IEDs along the roads also significantly elevates the risk of travelling along them – the ICRC sticks to a tight schedule that it notifies to all relevant contacts when it drives anywhere, especially the 30 km route from Kandahar to the airport to pick up and drop off staff and supplies. During the hour-long drive it is better not to dwell on the organizational and technical competence of the bomb planters and the communication channels between them and those who order the IEDs to be activated and deactivated.

Criminality

The third threat is from criminal elements: narco-traffickers, would-be warlords, kidnappers, or local mafias who have a stake in the presence of international aid organizations in, or their absence from, a town or region. Opium producers might deter an international presence in certain areas by creating an 'incident', while

8 Interview in Kandahar, 25 November 2008.

9 G. Smith, above note 7, p. 194.

others might decide to rob an aid agency of its vehicle or communication equipment, or kidnap staff for ransom. Offering free medical or other services can undermine the interests of certain businesses in a town, giving an additional motive and potential source for a security problem. In a large number of cases, the perpetrator and rationale are never fully known, even for the most serious crimes, such as the murder of five staff of Médecins Sans Frontières (MSF) in Badghis Province in 2004. The Taliban claimed responsibility for those deaths although the evidence points to local government commanders and the motive remains unclear.¹⁰ Incidents involving private security companies are often no clearer, yet sometimes involve blatant violations of international humanitarian law (IHL), such as threatening and shooting at staff of a hospital in Wardak Province in July 2009, injuring several Afghans. In another, more recent, obscure event, two ICRC vehicles overtaking a stationary convoy on the road from Kabul to Ghazni drove into a fire-fight between a private security company and an unknown adversary, despite assurances from the armed opposition five minutes earlier that the road was safe. An investigation was unable to reveal whether the adversary was the Taliban, another armed opposition group, a rival security company/militia, or an attack staged by the company itself to justify its exorbitant fees.¹¹

This state of insecurity imposes enormous constraints on the ability of the ICRC and other aid organizations to even know what is really happening in many areas of Afghanistan, let alone provide assistance to those who need it. The ICRC is still able to travel and work with expatriate staff throughout most areas in the north, despite the rapidly deteriorating security situation that is forcing many aid agencies to leave. But in the south access is more difficult. Information on the plight of Afghans living there must be gained from secondary sources, including patients arriving at ICRC-supported medical facilities such as hospitals and prosthesis-fitting centres, Afghan staff of the ICRC health posts, families of detainees for whom the ICRC facilitates prison visits and the exchange of family news, and Afghan Red Crescent volunteers, who play a vital role assisting local communities. However, the ICRC's ability to respond to requests for assistance there is limited. To do so it must act by 'remote control', often through Afghan Red Crescent volunteers, conferring considerable responsibility on local contacts and employees who are acceptable to all and thus hopefully immune to attack.

10 MSF in Afghanistan, *MSF leaves country following staff killings and threats*, December 2004, available at: <http://www.doctorswithoutborders.org/news/country.cfm?id=2269> (last visited 2 December 2010).

11 One Afghan commander who is subcontracted under the US government's \$2.16 billion contract for support to the US supply chain in Afghanistan, for instance, charges a protection fee of \$1,500 per truck between Kabul and Kandahar. He guards around 3,500 trucks per month, generating a monthly revenue of some \$5.2 million. See the June 2010 report by the Majority Staff of the US Subcommittee on National Security and Foreign Affairs, John F. Tierney (Chair), *Warlord, Inc: Extortion and Corruption Along the US Supply Chain in Afghanistan*, Committee on Oversight and Government Reform, US House of Representatives, June 2010, p. 18.

Carving out some humanitarian space

Aid activities conducted from a distance are far from ideal. Few people are comfortable asking others to do what they themselves would not, and questions arise over the end-use of the aid when agencies are unable to monitor its distribution and impact. It is not just a question of trust in individuals and their ethics, but also in their ability to withstand local pressures that are unlikely to be experienced to the same extent by expatriate staff. The ICRC's system of evacuation, pre-hospital care, referral, and transport to hospital for war-wounded patients in six provinces (Helmand, Farah, Kandahar, Uruzgan, Zabul, and Ghazni) is run in this way, from a series of health posts positioned along main roads and through a network of taxi drivers trained in first aid and paid by the ICRC to drive the wounded to hospital. The names of the taxi drivers and their vehicle registration numbers are communicated to all parties to the conflict, and they carry ID cards and a letter stating that they are working on behalf of the ICRC when transporting the wounded to hospital. Although the project is far from perfect, it does offer a lifeline to the casualties of war, combatants and civilians alike, who might otherwise suffer and die on the spot. In many ways, this initiative takes the ICRC 'back to basics' – back to Henry Dunant's idea of saving the wounded on the battlefield regardless of the side on which they fought. But there is nothing basic about the challenges that the ICRC had to overcome to get even this far.

Resuming assistance to both sides

The first major challenge after Ricardo's death was to open dialogue with the re-emergent armed opposition to find out why the ICRC had been targeted, and to re-establish on both sides the ICRC's credentials as an effective, purely humanitarian, organization. The ICRC has long recognized that words and promises are not enough to promote acceptance within a community; that the organization has to have something concrete to offer. But how to resolve this Catch-22 situation in which security guarantees depend upon the effectiveness of operations, yet the possibility to operate depends upon security guarantees? The ICRC had to identify activities within its mandate that met a real need, could be safely carried out, and would open up avenues through which relationships could form. In Pakistan, the ICRC increased its family tracing services, the delivery of Red Cross messages between detainees and their relatives, orthopaedic services for amputees, and medical assistance to victims of clashes in Waziristan, which helped to raise the organization's profile. Slowly but surely the number of visitors to the ICRC's offices in Peshawar and Quetta grew and the ICRC was able to explain its role, neutrality, and ways of working to a broad audience.

An opportunity to restart assistance in opposition-controlled areas of Afghanistan came in early 2006. The relative of a detainee whom the ICRC visited at Bagram Air Base approached the ICRC to ask for medical supplies for wounded people in Helmand Province. Intensified fighting in the south had increased

medical needs among the civilian and combatant population at a time when government health services had withdrawn to safer areas, prompting the ICRC to experiment with giving limited medical supplies to a few medically trained persons living in opposition-held areas. As counter-insurgency operations were stepped up and casualties mounted, the number of requests to the Kandahar office rose and the demands became increasingly ambitious, including an ambulance service, first-aid posts, and even a possible field hospital. The ICRC preferred to keep the support to a modest scale, given that the possibilities for monitoring the use of supplies were extremely limited and co-ordination among the various contacts was almost impossible, since for security reasons no-one wanted their identity to be made known to anyone else.

This programme involved considerable risk. The ICRC could potentially be accused of having passed on intelligence if an opposition contact was arrested after leaving the office, or invite revenge from any contact whose involvement was terminated for not using the supplies as agreed: the ICRC office in Kandahar was an easy target. Fortunately, six of the longer-term contacts supported the ICRC's efforts to better control the aid and formed a health *shura* to facilitate and streamline the ICRC's contacts with the opposition, appointing four provincial health officers to receive supplies. In early 2007, the ICRC began first-aid training courses for persons aligned with, or living in areas controlled by, opposition groups – as it does in conflict zones around the world. This not only gave the ICRC greater exposure among these groups, but enabled it to convey messages about the need to respect IHL and distinguish between military and civilian targets. The health *shura*, at the ICRC's request, also played a vital role in obtaining security guarantees for Ministry of Health polio vaccination teams to travel in insecure areas. This initiative marked the first flicker of government recognition that the ICRC was in contact with the armed opposition, with President Karzai himself authorizing his Health Ministry to request the delegation's help in contacting the insurgents with regard to the vaccination campaign.

Managing perceptions of neutrality

This recognition – albeit behind closed doors – was an important step in overcoming the second major challenge for the ICRC, namely managing perceptions of its neutral role in assisting victims on all sides of the conflict. 'Terrorists are not entitled to be treated as combatants' was a common refrain in Afghanistan at that time, echoing the decision of the Bush Administration to deny the applicability of the Geneva Conventions to 'enemy combatants'. Viewed as 'terrorists', opposition forces were deemed to have few rights, if any, and the ICRC's attempts to assert them were therefore construed as siding with the enemy. 'We know you support the Taliban' were the opening words of a Western plain-clothed official to an ICRC team entering a field detention site near Kandahar for the first time in July 2008, before subjecting the team to an over-zealous search. Respect for the ICRC's traditionally neutral role was also denied by the civilian hierarchy: 'You cannot be neutral between a legitimate side and a reprehensible side', a senior UN

representative told me in Kabul.¹² He was more concerned about the legitimacy that might be bestowed on the Taliban through contact with the ICRC than with the need to expand the humanitarian space for the sake of the conflict's victims, wherever they happened to be. Even after the organization had played a vital role in several hostage release operations, including those of the twenty-three Korean missionaries captured in 2007 and of many international and Afghan aid workers, the 'international community' in Kabul was loath to admit the usefulness of a neutral intermediary in the conflict.

Various branches of the Afghan government, on the other hand, saw tangible benefits in the ICRC's engagement with the armed opposition from an early stage. As mentioned above, for several years the ICRC has obtained safe passage for polio vaccination teams on behalf of the Ministry of Public Health and the World Health Organization, and in August 2009 the ICRC negotiated a ceasefire between the armed opposition and US forces to allow government and ICRC medical personnel to safely treat and evacuate cholera victims from Shawalikot district in Kandahar Province. Contact with the Taliban has also made it possible to retrieve the mortal remains of police and government security officials from combat zones and of Taliban fighters from the hospital morgue, so as to return them to their families for proper burial in accordance with Islamic customs. The confidence developed by these activities led to a breakthrough in late 2009, when the ICRC was granted permission to visit persons captured and detained by the armed opposition for the first time and to bring news of their whereabouts to their families.

The local authorities in Kandahar have been well aware of the medical assistance given to people living in opposition-controlled zones from the outset, and grudgingly accept it. 'I don't interfere' said the head of the National Directorate for Security (NDS). Although commenting that he was personally against saving the lives of his opponents, he admitted that this engagement had its benefits: 'The ICRC has brought back the bodies of my men from a battle zone for proper burial. If they could bring out some live ones it would be even better'.¹³ The ICRC's first-aid training for the police force – whose men bear the brunt of field casualties among Afghan security forces, yet have no auxiliary medical service for evacuation or health care – has also helped all rank and file to realize that such training conducted on both sides does not amount to interference in the conflict. It teaches basic procedures that help stabilize a patient and keep him or her alive; their impact on the war is negligible, but they have an important humanitarian impact in reducing the suffering of injured civilians, police, and insurgents alike. It has also increased understanding by both sides that the ICRC's role to protect the life and dignity of people caught up in war does not prevent a patient from being arrested and prosecuted for crimes committed. The arrest can take place, but the

12 Interview with Deputy Special Representative of the Secretary-General (SRSG) for Afghanistan, UNAMA compound, Kabul, 18 November 2008.

13 Interview with Abdul Qayum, NDS Director, Kandahar, 24 November 2008.

armed forces have an obligation to facilitate timely medical care for that patient's injuries.

The perception of the ICRC as 'aiding the enemy' has lessened considerably within the international military over the last two years, owing in part to the change in the US administration, but mostly in recognition of the military strategy's failure to curb support for the insurgency and of the need to change tack. The suggestion in late 2008 by top Coalition officials, including the US Chairman of the Joint Chiefs of Staff, Admiral Mike Mullan, and Britain's Ambassador to Afghanistan, Sir Sherard Cowper-Coles, that a negotiated settlement might be the best way forward signalled the first cracks in the taboo on any mention of opening dialogue with 'the enemy'.¹⁴ Over the ensuing months, co-operation with the ICRC improved considerably, and ISAF commanders became more amenable to receiving, discussing, and investigating issues raised by the ICRC that related to their troops' conduct of hostilities. Some important changes occurred, including a new tactical directive on air strikes to reduce civilian casualties and new directives on entry to and use of force in medical facilities, following several incidents in which troops threatened and intimidated health staff thought to be treating insurgents. Health staff and structures have seen far fewer incidents since these directives were issued by the former ISAF Commander, General McChrystal, in October 2009.

There has also been a marked shift in acceptance of the ICRC's medical assistance to wounded insurgents: when Canadian troops found medical material marked with the ICRC logo in an arms cache in southern Afghanistan in October 2008, they assumed it had been stolen, and were shocked to learn (from the ICRC itself) that it had been given to the Taliban.¹⁵ Conversely, when another journalist a few months ago 'exposed' the ICRC's first-aid training for the Taliban,¹⁶ it aroused indignation among segments of the public but hardly raised an eyebrow among military personnel. Gauging the reaction to the story among Marines in a forward operating base in Helmand Province, a Fox News reporter seemed perplexed that those he spoke to were not surprised or incensed by the ICRC's actions.¹⁷ Instead, they explained that they too treat wounded Taliban, even evacuating them in medevac helicopters, in accordance with their obligations under the Geneva Conventions.

14 Julian Borger, 'Our man in Kabul says US strategy is failing', in *The Guardian*, 2 October 2008.

15 See Tom Blackwell, 'A big morale booster: Canadian, Afghan troops uncover arms, medical supplies in farmer's field', in *National Post*, 11 October 2008, and his subsequent article, 'We don't pick sides in war, Red Cross says: agency equips Taliban with first-aid supplies', in *National Post*, 14 October 2008.

16 Jon Boone from the *Guardian* read about this activity in a public ICRC newsletter yet called it a *Guardian* 'exclusive' and neglected to mention that such training has been going on for years. Jon Boone, 'Red Cross gives first aid lessons to Taliban', in *The Guardian*, 25 May 2010.

17 See <http://video.foxnews.com/v/4214695/red-cross-teaching-taliban-first-aid/> (last visited 23 December 2010).

Promoting respect for the Geneva Conventions

It is in trying to get the Taliban and other opposition groups to fight in accordance with these Conventions that the ICRC finds its greatest challenge. Suicide bombings in public places and the rampant use of IEDs that make no distinction between military and civilian targets are clear violations of IHL. The ICRC has voiced objections to these tactics in letters to and discussions with both the Taliban leadership and the Haqqani network, providing details of specific incidents and including the number of civilian casualties. But the impact of these approaches is difficult to assess. The Taliban has been receptive on paper by adding more IHL provisions to its 2009 Code of Conduct¹⁸ for its fighters than were present in the 2006 version, which also reflect its strategic decision to try to win local support. Article 59 states:

The mujahideen have the duty to behave well with people, and should try to win the normal Muslim's heart and mind. Good behaviour of one mujahid can represent the whole Islamic Emirate effectively. All fellow country people will welcome such mujahid, and be ready to assist and collaborate with him.

Similarly, Article 46 instructs the Taliban to avoid civilian casualties:

The provincial and district authorities, group leaders and all other mujahideen should take maximum measures to avoid civilian deaths and injuries, as well as the loss of their vehicles and other properties. In case of carelessness, each one will be held responsible according to their acts and position, and will be punished depending on the nature of their misconduct.

There is even a statement in Article 41(C) on planning suicide attacks, albeit with no concrete suggestions to back up the recommendation: 'In martyrdom attacks, much more care should be taken to prevent the deaths and injuries of civilians'.

But for all these instructions, attacks that harm and kill civilians and target medical staff and facilities continue to occur on a regular basis. The lack of improvements in this domain prompted the ICRC publicly to denounce the planting of IEDs by the armed opposition during Operation Moshtarak in Helmand Province in early 2010, emphasizing the impediments they cause to the free movement of the sick, wounded, and health staff.¹⁹ Public denunciations are never appreciated by the party condemned and risk upsetting important interlocutors, with consequences for the organization's ability to operate. But for the ICRC it was important to show that the legitimacy accorded to the Taliban movement through its contact with the ICRC comes with some strings attached, including the necessity to have progress on the most important issues raised. Just as the Taliban do not accept words without action, so the ICRC's dialogue aims to

18 Islamic Emirate Afghanistan, *Code of Conduct of the Mujahideen*, Quetta, May 2009.

19 'Afghanistan: mines prevent resumption of normal life in Marjah', ICRC News Release 10/34, 5 March 2010.

reap results. After all, the need to rescue victims only comes once attempts to prevent victims from being generated in the first place have failed.

Conclusion

The Afghan context has given rise to some of the toughest challenges ever faced by the ICRC, not so much from the instrumentalization of aid by donor governments – which is unfortunately nothing new – but in the rejection by both sides of a neutral stance in the ‘war on terror’/‘war on Islam’. The deliberate targeting of perceived symbols of the West raised questions whether neutrality was still an appropriate means to gain access to people in need, but, through a slow process of confidence-building and transparent dialogue with all parties, the ICRC has sought to reassert values that were rejected by both the Western and anti-Western camps. For many years the ICRC found itself out on a limb, alone among aid organizations in defending the rights of those violating IHL to continue to receive the protection and assistance it accords. In an otherwise excellent article, even the international legal expert Kenneth Anderson argues that any attempts to reach agreement with the Taliban or Al Qaeda would be ‘profoundly wrong’, claiming that ‘a private peace between aid agencies and terrorists or groups that systematically violate the laws of war is morally wrong, legally indefensible, and politically ill-advised’.²⁰

But, as the ICRC’s head of delegation, Reto Stocker, said to the Canadian journalist who found evidence of the ‘private peace’ the ICRC had indeed negotiated with the Taliban, ‘if we had given in to the language of good guys and bad guys, we would have had to leave Afghanistan in the 1980s’.²¹ The Afghanistan case has shown that, contrary to Anderson’s claim, it is the *refusal* to engage with these groups that is politically ill-advised if hoping to save the lives of conflict victims without becoming a target oneself. Although there is a long road ahead before the ICRC can travel freely in all conflict-affected areas of Afghanistan, the discreet perseverance in opening avenues for humanitarian dialogue, delivering humanitarian assistance, and influencing behaviour has slowly paid off as the ICRC continues to extend its reach. And this ‘peace’ is no longer so private, for the ICRC is using its privileged dialogue with the Taliban and others to expand the humanitarian space available to include other aid organizations, assisting MSF, for instance, in its return to Afghanistan in 2009, as well as several other NGOs seeking to work on both sides.

Over the past two decades, Afghanistan has been the scene of several attempts, whether labelled a ‘strategic framework’, ‘coherence agenda’, or ‘integrated mission’, to subsume humanitarian action into a broader political process aimed at achieving an internationally acceptable peace. Now, more than ever before, the

20 Kenneth Anderson, ‘Humanitarian inviolability in crisis: the meaning of impartiality and neutrality for U.N. and NGO agencies following the 2003–2004 Afghanistan and Iraq conflicts’, in *Harvard Journal of Human Rights*, Vol. 17, 2004, p. 63.

21 In T. Blackwell, ‘We don’t pick sides’, above note 15.

negative results of such strategies are clear. They show that humanitarian action must remain independent and strive for as neutral an image as possible if it is to reach those in need on all sides of a conflict. It is impossible to predict the future course of any war – although Afghan history should have at least cautioned against over-confidence in the ability of an outside force to quell the multiple divisions within the country and among its neighbours. By supporting one side, however legitimate it might have seemed, aid agencies tarnished their image in the eyes of opposing forces, and not only compromised their chances to help civilians in contested areas but also faced increasing difficulties even in ‘secure’ areas.

The onus is now on humanitarian aid organizations to try to position themselves differently: to open dialogue with the opposition and distance themselves from the excesses of all parties to the conflict. It is not the first time that aid organizations find themselves aligned with a side whose ideology or methods they no longer admire. The celebrated mujahideen ‘warriors’ who defeated the Soviet invaders became ‘warlords’ once they turned their guns on each other in the post-Soviet carve-up of the country, to the general dismay of the NGOs that had viewed the picture in black and white. Remaining neutral in conflict is not a moral position but simply the most effective basis found to date on which to negotiate access to people in need of humanitarian assistance, wherever they are. Expatriate jihadists, with no common basis on which to be approached, pose the biggest challenge to humanitarian action, but it is only by finding ways to engage with and influence the ideologues and leaders that progress can begin to be made.

Unfortunately, the fragmentation of armed groups and the rise of new ‘village defence committees’ and other ‘militias’ are multiplying the number of players with which the ICRC and other aid agencies must contend. There is a general fear that, once ISAF forces pull out of Afghanistan, the country will revert to civil war, predominantly along tribal and ethnic lines. If past experience is anything to go by, the next chapter in Afghanistan’s tragic history might be even more bloody than the present: it is sobering to remember that former allies in the fight against the Soviet-backed Najibullah regime wreaked more destruction on Kabul after the fall of the communist government than the city had suffered during the entire Soviet period.²² If government security forces, Taliban and other opposition groups, current and former warlords, local militias, and even private security companies turn their guns on one another to gain power and resources in a post-NATO Afghanistan, the already dire plight of the Afghan population will worsen and require ever larger pledges of humanitarian aid to ease their suffering.

Before we enter the next phase of Afghanistan’s history, aid organizations and donor governments would be wise to reflect long and hard upon the errors in assumptions and judgements that have led to the present state of affairs. As both the US government and the Taliban recognize, providing goods and services to populations in need of them can do much to ‘win the hearts and minds’ of local people and create environments conducive to peace and reconciliation. But if aid is

22 See William Maley, *The Afghanistan Wars*, Palgrave Macmillan, Basingstoke, 2009, pp. 168–172.

provided as part of a political or military strategy, it is treated as such, and the policy backfires when villages are ‘punished’ for having received it or aid agencies are attacked as agents of the enemy’s agenda. It is useful to hear how aid agencies are perceived today. On asking an anti-government tribal leader – whom he first met in the mountains of Afghanistan in 1987 – whether the ICRC could travel safely in the area under his control, a senior ICRC delegate received the following reply:

Today, like 20 years ago, a government and its international allies are trying to impose a model of society, with all the modernization, reconstruction, development and Western values that go with it. Today, like 20 years ago, I disagree and we all shed blood. Today, like 20 years ago, you come here to try and make sure prisoners are well treated, wounded taken care of, our families not bombed, or starved, or humiliated. We respect that. Now, be warned: just as we do not expect you to support our religious, social, political views and actions, so we expect you not to support – in any way – our enemies’. Know when so-called humanitarian action becomes a sword, or a poison – and stop there.²³

Today, the Afghan population at large would have difficulty in articulating what ‘humanitarian’ action is about. Many would say it is a tool to help win the war. Others would say it is the vector through which to establish a new model of society compatible with Western values. Most would denounce it as a cover for spending millions of dollars to buy the loyalty of former warlords, line the pockets of families of politicians, and meet the burn rate of donor budgets on poor-quality projects, and, most of all, as an easy way to obtain money that was pledged to Afghanistan but that ultimately ends up in foreign bank accounts of individuals and contractors of donor nations. Some, hopefully, would still say that it is about helping those who are hurt by war, whoever they are, and nothing else. But that view can only be promoted if humanitarian action is and remains neutral and independent of all extraneous influences.

23 Jacques de Maio, personal correspondence, October 2010.