

EDITORIAL

The year 2011 marks the tenth anniversary of the launching of 'Operation Enduring Freedom' (OEF), when the United States and its allies went to war with the Taliban. For Americans, this is one of the longest wars in the history of their country, but when the American forces started to bomb Afghanistan the population of that country had already been suffering the ravages of civil wars, foreign intervention, and oppressive regimes for over twenty years. The vast majority of Afghans are under 30¹ – a generation that has known only war, exodus, and an uncertain future.

In a country where there was very little public infrastructure at the end of the 1970s, the statistics reflect the consequences of thirty years of war. Afghanistan is the only country in the world where the life expectancy of women – less than 44 years – is lower than that of men. The infant mortality rate is more than 150 per 1000 live births.² The literacy rate of 15- to 24-year-old Afghans is 34%, with 50% for men and only 18% for women.³ The country is infested with landmines and unexploded ordnance. There is not a single town or village, not a single street, without an amputee – a man, a woman, or a child.

The International Committee of the Red Cross (ICRC) conducted a study in 2009 on the impact of conflict on civilians,⁴ and the results show the scale of the population's suffering: over half of the persons interviewed (53%) said that a member of their close family had been killed during the war, and 70% reported that their property had been lost or destroyed. One-third of the interviewees said that they had been injured, one-quarter said that they had been involved in the fighting, and one-fifth had been detained. The conflict has also led to mass population displacements, and a total of 83% of the persons interviewed had been forced to leave their homes at one time or another, often fleeing the country to seek refuge in Pakistan or Iran.

In 2010, civilian losses rose to the highest level since 2001.⁵ Civilians are liable to be killed or injured in attacks as the victims of depredations and reprisals of the various armed groups or as casualties hit in coalition air strikes or land offensives against the armed opposition forces. The conflict is still causing major population displacements. Uprooting is followed by a precarious existence, poverty in city outskirts or camps in Pakistan, and even greater vulnerability to climate extremes. Access to health care is seriously jeopardized, particularly in rural zones, where women die in childbirth and the wounded and ill succumb either because there are no local medical facilities or because they simply cannot get to an emergency centre given the insecurity that prevails.

The Afghan conflict poses several challenges: that of building up stability in a territory ravaged by three decades of conflicts, with a strong tribal identity, and where several external actors are involved; that of the adequacy of the law to deal with the current crisis; and that of humanitarian action conducted by actors with varying goals and methods who are all operating in the same context. The purpose of the two issues of the *Review* that have been devoted to Afghanistan is to promote a better understanding of this major conflict and to examine how to improve the fate of the Afghan population in practical terms. The first issue aims to promote a better understanding of the complexity of the historical, political, social, and human issues involved. The second explains several of the legal issues involved in the conflict and the challenges that are posed for humanitarian action in this extraordinarily complex situation.

Before becoming the first arena of confrontation in the ‘global war on terrorism’, Afghanistan was the scene of the last major battle of the cold war. The Soviet intervention from 1979 to 1989 in support of the communist government led to a war that was particularly cruel for the population and to an initial mass exodus. The ultimate Soviet withdrawal and the US-backed Mujahideen victory over the government were succeeded by an equally destructive civil war between factions, parties, and warlords. This war was brought to an end in the greater part of the country by the institution of an Islamic regime by the Taliban, from 1996 to 2001. Although the Taliban government brought security and issued a ban on opium production, its inexperience in dealing with the economy and the modern world in general, its vision of Islam that alienated a large section of Afghan society, its treatment of women, its persecution of the Hazara minority, and its destruction of the giant Buddhas in Bamiyan earned the virtually unanimous disapproval of the international community. More than anything else, however, it was the Taliban’s refusal to hand over Osama bin Laden to the United States after the terrorist attacks of 11 September 2001 and the fact that they allowed Al Qaeda to run training camps in the country that triggered the US attack on Afghanistan.

However, in order to understand the situation one has to stand back and look at the whole picture, which is why we asked Professor William Maley to present the geographical and historical context of the conflict. The Afghan fighters have already proved that technological superiority is not enough to defeat them. Successive ‘conquerors’ have been haunted by the spectre of the routs of the past,

- 1 World Food Programme, ‘WFP food security atlas for Afghanistan’, available at: <http://foodsecurityatlas.org/afg/country/socioeconomic-profile/introduction> (last visited 14 April 2011).
- 2 UNData, ‘Afghanistan’, available at: <http://data.un.org/CountryProfile.aspx> (last visited 14 April 2011).
- 3 UNICEF, ‘Afghanistan’, available at: http://www.unicef.org/infobycountry/afghanistan_statistics.html (last visited 14 April 2011).
- 4 International Committee of the Red Cross, *ICRC Survey on the Impact of Armed Conflict on Civilians: Views from Afghanistan*, 09-02-2010 Report, available at <http://www.icrc.org/eng/resources/documents/report/views-from-field-report-afghanistan-230609.htm> (last visited 6 May 2011).
- 5 See statistics published by the United Nations Assistance Mission in Afghanistan, in *Afghanistan: Annual Report 2010: Protection of Civilians in Armed Conflict*, available at: <http://unama.unmissions.org/Portals/UNAMA/human%20rights/March%20PoC%20Annual%20Report%20Final.pdf> (last visited 6 May 2011).

ever since the United Kingdom's bloody defeats in the nineteenth century. Ken Guest refers to this eventful history but also to his own experience as war correspondent during the war with the Soviet Union in order to explain the connection between religion and armed conflict by analysing the Afghan mentality. And Imtiaz Gul, who is Executive Director of the Islamabad-based Centre for Research and Security Studies, describes the transnational Islamic networks whose very existence is at the core of international intervention.

After the fall of the Taliban, a new Afghanistan was outlined at the international meeting in Bonn in December 2001. Norah Niland, who was Chief Human Rights Officer of the United Nations Assistance Mission in Afghanistan (UNAMA) from 2008 to 2010, argues that by allowing impunity for political and military leaders, in order to sustain the Bonn Agreement, ran counter to the need for justice expressed by Afghans and thus prejudiced stability.

The international community then set to rebuilding the Afghan state, and undeniable progress was made. The International Legal Foundation's work to develop the right to defence in Afghan courts, which is presented by Jennifer Smith, Natalie Rea, and Shabeer Ahmad Kamawal, is an example of improvement in practical terms. But can the international community really create a 'nation-state' in a context where authority structures are so traditional and so decentralized? Lucy Morgan Edwards, who was Political Adviser to the EU Special Representative in Kabul from 2004 to 2005, analyses the limitations of this undertaking.

The war rhetoric was thus followed – perhaps a little too soon – by discourse on reconstruction and development, which ignored the gradual resurgence of the armed opposition. Few international actors recognized this nameless conflict, while the focus of attention moved to Iraq. The first painful reminder for humanitarian actors that the armed opposition was not only still in existence but had also become radicalized was the murder of Ricardo Munguia, a delegate of the ICRC, in 2003. Years of presence in the country and work in co-operation with the Afghans seemed to have been written off. Was there still a place for neutral and impartial humanitarian action?

The reconstruction and development discourse prevailed until 2008. It was not until then that the Afghan government opened negotiations with the Taliban, who until that time had been classed as terrorists who were not to be associated with. This showed that, after several years of denial, the government was now admitting that the strength of the armed opposition in the field was very real. This reluctance to call a spade a spade was shared by other governments, such as Germany, which until 2010 insisted on referring to a 'warlike situation'.

In 2009, a new phase in the conflict began with the dispatch of 30,000 additional troops (bringing the number of OEF and International Security Assistance Force (ISAF) troops up to 140,000), the intensification of the fighting, and a new stabilization strategy. The progressive withdrawal of troops should start this year. For the states involved in Afghanistan, it is a race against time to ensure a certain degree of stability in the country and, in particular, to prevent it from becoming once again a source of international instability. No one wants to see history repeat itself.

The history of so-called asymmetrical conflicts, where conventional forces are pitted against guerrillas, only too often reveals a spiral of violence, the brunt of which is borne by the civilian populations. In addition to the direct attacks on wounded or captive civilians, a major risk is that the distinction between civilians and combatants becomes blurred owing to the insurgents' tactic of mingling with the population. The status of the detainees held in Bagram or Guantanamo in the context of this conflict has given rise to intense legal controversies. What is more, new weapons – such as drones that are piloted at a distance of thousands of miles – have appeared on the battle field, while improvised explosives devices (IEDs) triggered by mobile phones are used to ambush convoys.

Between the recurrence of asymmetrical conflicts and technological advancement, is international humanitarian law still appropriate to present-day conflicts?

Let us reiterate first of all that armed opposition groups are bound by law. This is provided both in the Geneva Conventions and in Additional Protocols I and II. Annyssa Bellal, Gilles Giacca, and Stuart Casey-Maslen review the applicable law, arguing that human rights also apply to the Taliban; in their view, the problem lies in the implementation of the law, since it is difficult to establish dialogue with these groups. If they are to be engaged in a dialogue to encourage better respect for the law it is in fact essential to understand their conception of war and of the rules that restrict it, even though these may differ from or even run counter to international law. The Taliban have themselves defined their own line of conduct, the *Layha for the Mujahideen*, and they use their own military manual. The *Layha* explains the mentality of this group, and the Pakistani Islam expert Muhammad Munir analyses it with regard to Islamic law. Sadia Tabassum, who lectures in law in Islamabad, also takes this law as a basis for explaining the special status of the rebels in the Muslim world. Far from being outmoded, international humanitarian law is of crucial relevance to international and Afghan public opinion when it comes to assessing the action of the international forces and the Afghan government. Respect for the law is one of the major criteria of their legitimacy and, ultimately, of their success or failure.

The civilian losses resulting from the coalition attacks are a highly sensitive issue in relations between the Afghan government and the international forces. As soon as President Obama was elected, President Karzaï called upon him to limit the coalition's attacks strictly to clearly identified military targets. Recently he requested the NATO forces simply to put an end to operations causing civilian casualties. In 2009, the commander-in-chief of the international forces obtained additional reinforcements in order to conduct large-scale offensives while limiting air attacks and night raids so as to avoid as far as possible the human losses that inflame Afghan opinion and swell the ranks of the opposition.

The American strategy advocates minimizing these attacks, sometimes at the risk of exposing ground troops to a greater extent, by refraining from aerial bombing, which frequently causes civilian losses, undermining the efforts to win the co-operation of the population. But it is not solely a question of tactics: the political and operational choice of limiting civilian casualties in order to guard

against the enmity of the population is also in keeping with the law. The obligation to make a distinction between combatants and civilians, the proportionality between the military advantages expected and civilian losses, and the taking of precautions during the attack are cardinal principles of international humanitarian law and *as such* must be respected. In their article on the impact of the conflict on the rules of the conduct of hostilities, Robin Geiss and Michael Siegrist show that, far from having been overtaken by developments in the Afghan context, international humanitarian law is more relevant than ever.

Afghanistan poses major problems for humanitarian actors in terms of policy and, in particular, in terms of neutrality. The members of the coalition have presented the Taliban and their allies as the new enemies of mankind, with whom any dialogue, even on humanitarian issues, can only be regarded as collusion. The radicalization of Islamist groups has resulted in outright rejection on the part of foreign aid organizations, whatever their good intentions.

Over and above these political or ideological stances, however, there are several objective factors that have blurred the image of the humanitarian actors in the field. The international forces have themselves distributed aid or launched development projects in order to win the favour of the people. Humanitarian action has thus become simply a means to an end in the arsenal at the disposal of military commanders. Yet, in their tribal and ethnic diversity, the only common cause that the Afghans seem to be able to find is to reject the 'invaders'. Can one then hope to win 'their hearts and minds', to quote the expression used in counter-insurgency operations, if the aid is delivered by foreigners bearing weapons?

What is more, during the years following the fall of the Taliban and the establishment of the new institutions, the aid and development organizations aligned themselves with the stabilization and reconstruction discourse in keeping with the strategic objectives of the government and the international forces. Antonio Donini, who was Director of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) in Afghanistan from 1999 to 2001, analyses the risks posed by the integration of humanitarian actors into politico-military objectives.

Armed groups are now proliferating, some with criminal motives. These multifarious groups, which are unpredictable and often rival factions, restrict the possibilities of access to the population and pose a constant threat to the staff of the few organizations operating in the field. A village or valley may be accessible one day, but there is nothing to guarantee that it will be open the next. An agreement negotiated with one group by no means guarantees that a rival, or simply a different, group will abide by it.

In response to this insecurity, the use of armed escorts and private security companies and the bunkering of the organizations and NGOs has made the latter look like the instruments of political and military objectives. Worse still, they can also be seen as instrumental in a plan to Westernize Afghan society. The risk is great that these various actors, who claim to be humanitarian but who in actual fact are not always neutral, or impartial, and are rarely independent, will all be lumped together under a common denominator.

In 2011, the ICRC operations in Afghanistan are the organization's most extensive action in the field. After assisting Afghan refugees and wounded Afghans in Pakistan for six years, the ICRC opened a delegation in Kabul in 1987, which still has employees who have been there since then and who have managed to maintain action to assist victims by adapting to the changing realities of thirty years of crisis. Alberto Cairo, for example, who has been in charge of the ICRC's orthopaedic programme in Afghanistan since 1992, reviews his years in Afghanistan with a personal selection of photos from the ICRC archives.

Afghanistan is an extreme test for the ICRC, but the organization is resisting current trends among aid organizations to shelter behind fortified walls and use armed escort to travel. By applying strict neutrality in its humanitarian work, the ICRC is able to maintain dialogue on respect for international humanitarian law with all parties to the conflict. Although the situation is volatile and obtaining access to victims remains a daily challenge, the ICRC's action in Afghanistan demonstrates how relevant this principle is in times of conflict. Fiona Terry, a specialist in humanitarian action and research, had exceptional access to the ICRC's work in the field and its archives, and shares the results of her research into the practice of neutrality in Afghanistan.

The *Review* also wanted to give Afghans the opportunity to voice their opinions. Three women who are committed to the future of their country – Fatima Gailani, President of the Afghan Red Crescent, Dr Sima Samar, Chairperson of the Afghanistan Independent Human Rights Commission, and Taiba Rahim, President of the Nai Qala Association – recount their courageous action, working with Red Crescent volunteers in Afghanistan, working with refugees in Pakistan, or working from abroad to try to influence political actors and mobilize aid for local projects. Avenues for Afghan solutions emerge from their accounts – education, justice and the rule of law, voluntary service, and recognition of the role of women in reconstruction.

In opting to focus these two issues on Afghanistan, the *Review* hopes to participate in policymakers' reflection on the future, learning from the Afghans, who say, 'You cannot wash blood with blood' – a saying that has been little heeded in the last thirty years.

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Editor-in-Chief*

N.B. This topical edition of the *Review*, focusing on Afghanistan, was the initiative of Dr. Toni Pfanner, who was Editor-in-Chief from 2001 to 2010. On the occasion of Dr. Pfanner's departure, the *Review* wishes to underline the decisive contribution that he made towards modernizing our journal and to thank him for the tremendous work that he undertook during his tenure.