



CHAPTER 2

HUMANITARIAN SPACE IN UNCONVENTIONAL WARFARE

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He says this is war. There is no shame in war... Tell
him he's wrong. War does not negate decency. It
demands it, even more than in times of peace.¹

INTRODUCTION

The brutality of war requires some way of protecting civilians who are caught in the middle of armed conflicts. What has evolved over the past 50 years or so is comprehensive legal and operational frameworks which identify non-combatants and provide them protection and assistance. These frameworks were designed for *inter-State wars*, the majority of the wars that were fought over the past two hundred years until quite recently.

However, with the changing types of armed conflicts, which tend to be more unconventional in nature, whether they are insurgencies or civil wars, the rules and frameworks are unravelling. British Defence Secretary John Reid, speaking at the Royal United Services Institute in London in April 2006, said that there was need for changes in the rules of war in the face of what he called “a deliberate regression toward barbaric terrorism by our opponents.”² The implications of his comments were that mankind has somehow progressed in the conduct of warfare in that it was no longer barbaric and that the rules of war (presuming that he was referring to the Geneva Conventions) were no longer relevant. United States Vice President Dick Cheney, speaking to the 2007 West Point graduating class criticized the notion of applying the Geneva Conventions to individuals captured in the course of the war on terror.³ In light of TV programming, such as the show *24*, instructors at West Point are encountering difficulty in persuading US army cadets to abide by the Geneva Conventions in the war on terror, especially when their opponents do not abide by any such code or convention.⁴ Established armies may be increasingly unable or unwilling to abide by these frameworks and rules because the asymmetrical nature of combat in which they are involved requires different operational guidelines and strategies, especially when terror tactics are used and civilians are deliberately targeted.

Legal and operational frameworks and rules protect civilians and create humanitarian space within the field of combat so that assistance can be provided to non-combatants. In unconventional wars, not only are the rules of war not defined, but humanitarian space can be non-existent, and the targeting of civilians and so-called *terror tactics* are employed to gain strategic advantages.

This chapter explores humanitarian space in unconventional warfare. It begins by examining why there is a need to protect civilians and provide them assistance and how the frameworks to accomplish this have evolved over time. The

chapter then explores the changing nature of warfare and perceptions of humanitarian space, as well as the specific challenges that are affecting the creation of humanitarian space in unconventional wars.

TOTAL WAR

Immanuel Kant in *Perpetual Peace* called for a *universal republic* based on a *universal code* that would protect States from being “constantly menaced by war.”⁵ Unfortunately war has become a common reality and peace but an illusion. It seems that the numerous *wars to end all wars* and the threat of mutual destruction supposedly leading to peace are arguments to justify aggression. Many justifications for war and violence divert personal responsibility for social ills and failures onto someone else. Chris Hedges writes in *War is a Force That Gives Us Meaning*:

War makes the world understandable, a black and white tableau of them and us... And tragically war is sometimes the most powerful way in human society to achieve meaning.⁶

While there are many theories explaining war, from the psychological and anthropological to the political and economic, it is possible that the need to perpetuate war lies in the fact that it focuses the attention of a society and provides a simplified understanding of evil by demonizing the enemy.

Hedges uses the term *total war*. He writes: “Once war, and especially total war that marked both the ancient and modern way of battle, erupts, all is sacrificed. The myth of war is essential to justify the horrible sacrifices required in war, the destruction and death of innocents.”⁷ It would seem that the time when war was limited by geographical boundaries on an agreed-upon battlefield, and when rules and conventions restrained the killing to combatants and

devastation to the battlefield, usually away from built-up civilian areas, was an interlude in a history of total war.

Historically, warfare has involved the destruction, massacre and enslavement of defeated populations, as well as the protection of such contested populations to ensure an adequate taxation base upon which vanquishers could rely. Contemporary warfare from the 1900s onwards has not been any less ruthless. The most conservative toll of casualties for World War I is 15 million, for the Russian Civil War is 9 million, for World War II is 55 million, the Chinese Civil War (1945-49) is 2.5 million, the Korean War is 2.8 million, and the Vietnam War is 1.7 million.⁸ In just the last two decades the numbers continue to be staggering. In the 1990s, 2 million died in Afghanistan, 1.5 million in Sudan, 800,000 in Rwanda in ninety days, 500,000 in Angola, and at least 250,000 in Bosnia. The numbers and countries continue to increase. It has been estimated that the wars of the 20th Century have resulted in at least 62 million civilian deaths compared with 43 million military personnel killed.⁹ It would seem that contemporary warfare has not been any more civilized than the days of the barbarians, despite attempts to *civilise* this contentious activity through laws and conventions.

THE WARRIORS' CODE AND THE RULES OF WAR

Because of the reality and the brutality of war, societies have tried to set limits on what a warrior can and cannot do. Shannon French in *The Warriors Code: Exploring Warrior Values Past and Present* (2003) writes "...the purpose of a code is to *restrain* warriors, for their own good as much as for the good of others. Therefore the essential element of a warrior's code is that it must set definite limits on what a warrior can and cannot do if they want to continue to be regarded as warriors, not murderers and cowards. For the warrior who

has such a code, certain actions remain unthinkable, even in the most dire of circumstance."¹⁰

While much has been written about warrior traditions such as those of the Greeks, Romans, Chinese warrior monks, and Japanese Samurai, what is now evident is that so-called pre-modern societies had elaborate rules of war of their own. Harry Turney-High, writing as early as 1949 (*Primitive Warfare*), found that in traditional societies warfare differed from its modern, predominantly western counterpart in motivation, strategy and tactics. There were no international legal rules that defined what one could or could not do. Often, prisoners and non-combatants would be subject to torture and a host of other brutal rituals. Yet, at the same time, prisoners could be treated with courtesy and care, and tribal warriors would go to great lengths to move those not involved in the combat to safer areas. Turney-High concluded that even traditional societies had rules of war but these were very different than those of western societies today. Many times these rules and rituals are misunderstood by the outsider. David Rattray, the storyteller of the Zulu war, tells about when "the young warriors disembowelled every British body, this was not gratuitous mutilation: they were helping the spirit escape."¹¹

In the past couple of decades as the nature of warfare has changed from that between States to civil wars inside of States, insurgencies and now the global war on terror, non-State combatants seem to have their own codes of war. Shultz and Dew in *Insurgents, Terrorists and Militia* referring to Somali clans and warlords write:

Actions were confined to irregular military operations. In pre-colonial times, a legitimate target would have been men of an opposing clan; perhaps camels, or other resources, would have been looted. Women and children were not deliberately targeted, although there may have been some casualties. Operations of excessive cruelty appear to have been eschewed for practical

reasons. Although war was a constant, Somali oral historians explain that: ‘Since no group liked to be on the receiving end of such excessive violence, they took great care not to be the first to perpetuate it. They had every reason to believe that the example they set in victory would be the one followed by their opponents in the event of their defeat.’¹²

In the modern era, with the Peace of Westphalia in 1648 establishing the system of sovereign States, what seemed to evolve was a desire for mechanisms that would govern the relationship between States. The assumption was that the State was the basic unit of international order. Hugo Grotius, the Dutch humanist, having lived through the Thirty Years’ War wrote *On the Laws of War and Peace* (1625), which is acknowledged as the foundational text of the law of nations. He believed that “the law should inform the State of the conditions that make war necessary and just; what the privileges and obligations are for victors, vanquished, and neutrals; when reprisals and punishment are called for; how prisoners are to be treated; and what formalities are to be followed in initiating and terminating war.”¹³ The first of the Geneva Conventions only systematized these ideas into a code of conduct for warring parties in 1864. This, along with the three other Geneva Conventions, the three Additional Protocols and the Hague Conventions of 1899 and 1907, amount to a contemporary Warrior’s Code. They begin to define the limits of aggression of combatants.

WARRIOR’S CODE TO PROTECT CIVILIANS

The Geneva Conventions clearly state that the responsibility of meeting the needs of civilians in the midst of armed conflict is that of the authorities and in the case of an occupation, that of the occupying power. If for some reason the authorities responsible are unable to provide the assistance needed by civilian populations, they must ensure the safe passage of relief supplies to the affected populations “even

if the assistance is destined for the civilian population of the adverse Party.¹⁴

The Geneva Conventions sought to define and limit the battlefield and identify *civilian space*,¹⁵ which is where civilian activities and services critical to the civilian population are permitted to continue uninterrupted. This is distinct from *humanitarian space*. Humanitarian space in the midst of conflict ensures protection of non-combatants. It allows for humanitarian aid to be provided and for access by non-combatants to assistance without threat from any of the combatants. The Geneva Conventions codify both civilian and humanitarian space.

The term humanitarian space is not a legal term. It (*‘espace humanitaire’*) was coined by the former President of MSF Rony Brauman in the 1990s who described it as “a space of freedom which we are free to evaluate needs, free to monitor the distribution and the use of goods, and free to have a dialogue with the people.”¹⁶ While the term is not in the United Nations Office for the Coordination of Humanitarian Assistance (UNOCHA) *Glossary of Humanitarian Terms*, it is referenced under *humanitarian operating environment*: “[a] key element for humanitarian agencies and organisations when they deploy, consists of establishing and maintaining a conducive humanitarian operating environment, sometimes referred to as *humanitarian space*.”¹⁷

According to the *Glossary of Humanitarian Terms*, the humanitarian operating environment (i.e., humanitarian space) was to be governed by specific humanitarian principles:

Humanitarian Principles: As per UN General Assembly Resolution 46/182 (19 December 1991), humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality. Adherence to these principles reflects a measure of accountability of the humanitarian community.

- **Humanity:** Human suffering must be addressed wherever it is found, with particular attention to the most vulnerable in the population, such as children, women and the elderly. The dignity and rights of all victims must be respected and protected.
- **Neutrality:** Humanitarian assistance must be provided without engaging in hostilities or taking sides in controversies of a political, religious or ideological nature.
- **Impartiality:** Humanitarian assistance must be provided without discriminating as to ethnic origin, gender, nationality, political opinions, race or religion. Relief of the suffering must be guided solely by needs and priority must be given to the most urgent cases of distress.¹⁸

While humanitarian space is defined and the principles guiding action within it were identified, as to who operated in the humanitarian space has been heatedly debated. The ICRC has been mandated by the Geneva Conventions to be the primary actor in humanitarian space, but the Geneva Conventions also allow for the military to be involved, primarily in the case of it being an occupying power. The UN humanitarian agencies, along with their partner NGOs, are now protected by Security Council resolutions, which empower them to operate in the humanitarian space. Because of the multiplicity of actors occupying this space, each one with different mandates and agendas, it is critical that roles of the different actors be identified.

The most problematic interface within humanitarian space between the various actors has been between the militaries and the civilian agencies in a conflict context. The case made by the civilian agencies is that a military involved in combat, while also conducting humanitarian operations in the same context, puts at risk both the civilians caught in the conflict and civilian agencies providing assistance. Any humanitarian assistance provided by the military is seen as psychological warfare by the opposing combatants.

In 1995 the first of the three UNOCHA *Guidelines on the Use of Military and Civil Defence Assets* (MCDA) in support of humanitarian operations generally was released followed in 2001 by their draft *Guidelines* for the use of military and civilian assets to specifically support UN humanitarian activities in complex emergencies; and the release of *Guidelines on the Use of Military or Armed Escorts for Humanitarian Convoys*. The first in-depth analysis of this interface was by the Organisation for Economic Co-Operation and Development (OECD) in 1998 on the comparative advantages and disadvantages of using the military versus civilian agencies for humanitarian responses. Since 2001, there have been other guidelines that augment these initiatives.

Most governments also have similar guidelines, procedures and protocols. For example, the Canadian Government has the *Guidelines on Humanitarian Action and Civil-Military Cooperation* and the *Civil-Military Cooperation Tactics, Techniques and Procedures* handbook.

All of the large international NGOs have policies and guidelines defining how they should relate to the various militaries in both natural disasters and conflict contexts.

While these guidelines and protocols try to define the interface between the civilian and military actors, the harder questions are whether, in conflict-related emergencies, the military can abide by humanitarian principles and whether simply by providing humanitarian assistance, the civilian population and the humanitarian agencies are then put at greater risk. The arguments as to why the military should or should not be used as the first option to provide humanitarian aid and assistance are well documented.¹⁹

THE NATURE OF CONFLICT AND PERCEPTIONS OF HUMANITARIAN SPACE

The conflict environment is the context in which humanitarian space can exist. Further, humanitarian space is defined by the nature of conflict. From the end of the Cold War until the start of the global War on Terror, western militaries have developed new competencies. While their primary role was still that of combat, as early as the mid-1950s they had developed considerable expertise in peacekeeping missions, mostly through the UN. Occasionally various militaries were used in humanitarian operations, usually in natural disasters. In 1997, the North Atlantic Treaty Organisation (NATO) issued Civilian-Military Cooperation (CIMIC) Force Proposals (FP) requesting all NATO nations to establish CIMIC capabilities that include military assistance in humanitarian emergencies and civil emergency planning, among other capabilities.

While there was clarity on how a military can be used in natural disasters, what remained unclear to the militaries was whether soldiers involved in combat should also be providing humanitarian assistance. Did soldiers have a role within the humanitarian space? The military began to see their role in a theatre of operations as far more complex and varied than traditional combat activities. The concept of a military being involved in three different roles in a single theatre of operations was first developed in 1997. The term *three block war* was used to illustrate what western militaries were beginning to do, though it was never formalized as a strategy or a tactic. However, the roots of it can be found as a reaction to the chaos of the Somalia conflict starting in 1991. It is important to understand the context of that conflict. There was considerable confusion on the ground, made worse by an evolving military objective. It was asymmetrical warfare in a failed State with an insurgency, which made it difficult to identify enemy combatants. The international community, specifically a superpower, was confronting non-State actors as the primary enemy combatants. Islamic extremists were involved in the training and arming of some of

the insurgent groups. It was a complex humanitarian crisis – the original cause for the humanitarian intervention.²⁰ It was a precursor of the type of conflict that was to come. It would also change what humanitarian space looked like.

The Somalia conflict was the start of a new era of reframing armed conflict and the ways the international community intervenes in such arenas. During the Cold War, there were some inter-State conflicts and numerous proxy wars that the superpowers fought. In the post-Cold War era, as the definitions and polarities changed, a range of military operations erupted. There were new insurgencies within places such as East Timor and Kosovo. There were long-standing insurgencies in Sri Lanka and Colombia. There were proxy wars in Sierra Leone and Eastern Congo (the DRC). There were implosions and fragmentation of nation States, such as in the Balkans and Rwanda where militias deliberately targeted civilian populations. In most of these cases, while civilian space was not respected as witnessed by the horrific massacres and mutilations, humanitarian space and the humanitarian actors who provided assistance were mostly respected and not targeted.

With Chechnya the landscape began to shift. The confrontation was between radical extremist elements and a superpower. The opposing combatants represented very different societies, value systems and religions. It was no longer just a struggle for territory and political freedom; it also had to do with social, cultural and religious freedom.

The implication was that any party on the field of combat represented one side or the other. The lines were clearly drawn. There was no neutrality and impartiality. Hansen and Seely, writing in 1996, stated “[t]he Chechnya conflict exemplifies warfare conducted without humanitarian pretensions. Serious and repeated violations of humanitarian law and of the rules of war have characterized the behaviour of both Russian and separatist forces.”²¹ Even the aid agencies were suspect and accused of being spies. The

Red Cross, the UN and MSF were targeted, among many others. In Chechnya, the operations of the ICRC and the IFRCs national affiliates at some points were almost non-existent because humanitarian space did not exist.

Humanitarian space – circumscribed from the beginning – has been eroding at an alarming pace since the onset of hostilities. Aid agencies have been plagued increasingly by serious security problems. Insecurity and bureaucratic obstructionism have prompted most agencies to withdraw from Chechnya, either quitting Russia altogether or retreating to the neighbouring regions of Ingushetia, North Ossetia, and Dagestan.²²

Insurgencies and asymmetrical warfare are nothing new. What is new is that some of the insurgencies are no longer local. Rather than being limited to a single nation with *staging areas* in neighbouring countries, these insurgencies have morphed into transnational operations and are often linked with terror cells around the world. The impact of globalization has made it a *global civil war*.²³ Warfare is no longer limited to controlling geography, resources and populations, but is now based on allegiance to one's ethnic, religious or tribal group, rather than allegiance to a State. It is now about cultural and religious domination and freedom, depending on one's perspective. It is a throwback to a more primitive form of identity and society. Using the present legal frameworks, primarily the Geneva Conventions, it has become difficult to define the battlefield, identify the combatants and ensure protection for non-combatants.

CHALLENGES TO HUMANITARIAN SPACE

War and battlefields are no longer geographically defined. As Lt. Gen. Dan Halutz of the Israeli Defence Forces once explained, "victory is not a matter of seizing territory... It is a matter of consciousness... [that] the concept of land

battles is 'anachronistic.'"²⁴ Battles over the centuries have evolved from rampaging armies with scorched earth policies, to clearly designated battlefields where rival armies inflicted horrific injuries on their enemies. Battlefields were usually away from civilian areas or in places from where the civilians had fled. The horrors of World War I were of soldiers being massacred in static trench warfare, while those of World War II were of built-up civilian areas being targeted in air campaigns. Arthur Harris, who was head of the British bomber command during World War II, believed that "success... would come mostly through influencing the psychology of the enemy."²⁵ There have been only a handful of wars since World War II where the conflict was confined to specific geographic areas away from populated areas that could be designated as battlefields. Increasingly, wars are being fought over large regions that include heavily populated urban areas such as towns and cities. It is now almost impossible to distinguish between a battlefield and civilian space. With no clear understanding of where a battlefield is, it is increasingly difficult to create and define humanitarian space for the opposing armies.

In this changing landscape, there are now significant challenges to creating and maintaining humanitarian space. The Geneva Conventions and the Additional Protocols represent the values of the international community of nation States over the past hundred years or so. They, along with the United Nations Charter, the Hague Conventions and the explorations of the customary rules of war at the Nuremberg War Trials, codify the rules of war. The problem is that they represent only the values of the community of nation States or the *High Contracting Parties* as the Geneva Convention refers to them. In other words, only State actors are party to the Geneva Conventions.

The Geneva Conventions were the first truly inclusive warrior code that has been universally accepted by the community of nation States. In reaction to this example of globalization, there are an increasing number of voices who

see the conventions as representing western values. They think that these values are not universal and are culturally particularistic. In the post-Cold War era, many conflicts were fought over resources, and the militias and insurgent groups involved did not abide by any set of principles that governed their behaviour. In the global war on terror the Islamic extremists derive their *rules of war* from the Koran and the Hadith. However, within the Muslim community there are deep disagreements over interpretation of these texts and traditions. The more moderate elements within Islam allow for contextual analysis of the religious texts from which principles may be derived for present-day applications. There are initiatives now that are looking at the overlap between the values represented by both the Geneva Conventions and the Koran and the Hadith. Unfortunately, the more conservative and radical elements within Islam allow only for a literal interpretation and view the Geneva Conventions as representing foreign western liberal values.

If in contemporary armed conflicts there are no agreements on the rules of war or defined areas of operations in which battles can be fought, how then can humanitarian space be defined? It is the combatants who determine humanitarian space. When combatants were primarily nation States, an agreed framework like the Geneva Conventions determined what the humanitarian space looked like. In today's conflicts there is no common understanding of humanitarian space, or even the need for humanitarian space. In an intriguing book, *What Terrorists Want: Understanding the Enemy, Containing the Threat*, Louise Richardson writes: "Terrorists see the world in Manichean, black-and-white terms."²⁶ She goes on to suggest that a lot of people are called *terrorists* by their enemies, in a process of *othering*. That does not mean that they all are terrorists. According to Richardson, terrorism's true definition is "deliberately and violently targeting civilians for political purposes."²⁷ Yet the very nature of asymmetrical warfare is that the weaker, non-State party in an armed conflict may resort to any means to gain a tactical advantage, which may include targeting civilians. At the

same time, with no clear understanding anymore on where the battlefield is, State Parties in conflicts continue to deliberately target civilian infrastructure, as in Kosovo and in both Iraq wars, using the argument that the infrastructure is also vital to military forces in its pursuit of military objectives. The resulting civilian casualties are referred to as *collateral damage*. The conclusion drawn from this is that if there is no agreement on civilian and humanitarian space, then the principles of impartiality and neutrality as defined by humanitarian principles are no longer commonly accepted values.

Moreover, there is a marked confusion of the terms and meanings of militias, insurgents, and terrorists. It is critical to distinguish between these three categories, as the way in which the Geneva Conventions are applied is contingent on a clear understanding of the conventions. While there is no agreed definition of what each of these terms mean, they can be understood by their common application of violence against civilian populations as a war strategy. Shannon French has a very helpful paradigm to try and categorize different *terror groups*. On one axis she has the nature of the goals of the terror groups. These would range from the temporal, where there are aspirations for independence and a homeland, to transformational, where the goal is to transform society to a new set of values and ethics. On the other axis, she defines the relationship that the group has to the community. This would range from *close* where the group represents the hopes and aspiration of the community, to *isolated* where it is not accepted by the community.²⁸ One element that French does not refer to is whether the insurgent group has a State sponsor or not.

Using this paradigm it is possible to create a humanitarian space in the midst of a conflict with insurgent groups or in a civil war. Insurgent groups that are close to the community have temporal goals and have State sponsors with whom to negotiate. Groups that have no State sponsor are isolated and have transformational goals that would be

classified as terror group in their purest sense and would be very difficult to negotiate with. The type of insurgency and insurgents would determine how humanitarian space is negotiated and created. Some successful examples of this are Operation Lifeline Sudan (OLS) in southern Sudan and the days of relative peace during the Lebanese civil war in which the UN negotiated an opportunity for the vaccination of children. Mary B. Anderson documents many more examples in her book, *Do No Harm*.²⁹

Unfortunately, much of the conflict and the global war on terror is being fought by insurgent groups that are ideological and are seeking the transformation of society, often along radical religious lines. As a result, a common understanding of humanitarian space does not exist and there are no mechanisms to create it or negotiate it.

Further, private militaries have conflated the issue of humanitarian space in unconventional warfare. Mercenaries have always been a reality of warfare; however, the scale, role, and activities of private military and security companies (PMSCs) are rapidly increasing and evolving. In the Iraq conflict, there are 48,000 PMSC employees contracted from 181 companies³⁰ in traditional security roles, but also as logisticians, drivers, coordinators, and project managers, providing the services of direct combat, intelligence services, training, security in conflict zones, consulting and planning, maintenance and technical assistance, operational and logistical support, and post-conflict reconstruction. Historically, PMSCs have been involved in direct combat operations as in Sierra Leone and in indirect combat as in Liberia and Colombia.

In a conflict zone such as in Iraq the distinction between combat and combat support breaks down. There is no perceptible difference between regular soldiers and the private contractor protecting convoys or materials. Even providing security for an oil company, aid agency or media outlet in such an environment necessitates being

armed and ready to shoot, often under circumstances where combatants and civilians are difficult to separate.³¹

There is a growing concern about the actions of PMSCs and whether they can be held accountable to a host nation as well as to the international community. In Iraq for example, all PMSC employees and non-Iraqi military personnel are immune from persecution in Iraq under Coalition Provisional Authority (CPA) Order 17 for acts performed within the terms of their contracts. Persecution in the home country in which the PMSCs are headquartered is equally problematic. There are legislation and international regulations that address mercenaries. In the UK, the Foreign Enlistment Act of 1870 prohibits the recruitment of mercenaries. There is no legislation covering PMSCs. There are three treaties in international law addressing mercenaries. These include the 1977 Organization of African Unity Convention for the Elimination of Mercenaries in Africa, the 1977 Protocol I Additional to the Geneva Conventions and the 1989 UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which came into force in 2001. Enrique Ballesteros, the UN Special Rapporteur on Mercenaries, proposed broadening the definition of mercenary in order to incorporate PMSCs into the 1989 UN Convention but found no consensus. None of the five permanent members of the Security Council have ratified the 1989 Convention. There have been additional efforts in South Africa, with the Regulation of Foreign Military Assistance (FMA) Bill, and in the USA, with the Arms Export Control Act of 1968.

Despite these conclusions, the reality on the ground, especially in Iraq, is that disregard for human rights and abuses by some employees of PMSCs have gone unpunished. Of note is that there exists no standardized or required training for employees of PMSCs on the legal frameworks governing the work that they do in places like Iraq.

An additional issue that further problematizes humanitarian space is the training of western militaries. Lt. Col. Dave Grossman, in *On Killing* (1996), refers to Ardant du Picq (*Battle Studies*, 1946), Brig. Gen. S.L.A. Marshall (*Men Against Fire*, 1978), John Keegan (*Face of Battle*, 1976) and Richard Holmes (*Acts of War: Behavior of Men in Battle*, 1985) and their observation of a non-participatory trend by soldiers in warfare. Their extensive research shows that until the Vietnam War there seemed to be a resistance in human nature to killing their fellow humans in the field of combat. Marshall's detailed study of firing rates in WWII shows that approximately 15-20% actually fired to kill, if they fired at all.³² This changed dramatically during the Vietnam War where the firing rate was 95%.³³ The change came about with the realization that human beings have a natural resistance to killing others. In order to increase the effectiveness of soldiers, militaries are changing the training of their soldiers to desensitize them to killing.

An unintended consequence of this desensitization is now seen in the attitude of US soldiers in Iraq. According to a Pentagon survey released in May 2007, only 47% of soldiers and 38% of marines (less than half) felt that non-combatants should be treated with dignity and respect, as required by the Geneva Conventions. Ten percent admitted to unnecessarily damaging or destroying property and 4% of the soldiers and 7% of the Marines admitted to hitting or kicking non-combatants when it was not necessary. Interestingly, although the majority of the troops admitted that they had been trained on how to behave towards non-combatants, almost a third said that their own unit officer had not made it clear that maltreatment was not acceptable.³⁴

For complex environments such as those in Iraq, Afghanistan and Somalia, the training of military forces on their obligation to protect civilians and the need to create humanitarian space is inadequate and often confusing. In a context where the insurgents easily blend into the civilian population, a desensitisation to killing and a focus on a higher firing rate

obscures any objectivity. There is little understanding of the need to protect civilians and much less to provide them assistance. The ability to create humanitarian space in such a context has become extremely difficult.

CONCLUSIONS AND IMPLICATIONS

Unconventional warfare is now the norm rather than the exception; yet the mechanisms, rules and conventions that exist to protect civilians and create space so that humanitarian aid can be provided are all geared for more traditional inter-State conflicts. It is becoming increasingly clear that the relevance of established rules of war, such as the Geneva Conventions, are being questioned in the new types of conflict emerging in Iraq, Somalia, Chechnya and Afghanistan. With few guidelines in this uncharted territory, *total war* with its brutal involvement of civilians is a horrifying reality.

There are a number of implications of this phenomenon. There is a growing trend of international NGOs becoming more and more risk averse. Stoddard's, Harmer's and Haver's *Providing Aid in Insecure Environments: Trends in Policy and Operations* studied major acts of violence committed against aid workers since 1997. Violence against aid workers nearly doubled every year, the increase growing steeper in the second half of the 1990s. National staff of agencies represent 79% of the victims and their risk relative to international staff is increasing in most violent contexts.³⁵ The study also found that new protective measures are being adopted by humanitarian agencies in certain highly volatile contexts. These include agencies maintaining very low profiles or even "clandestine modes of programming." Reports from the Canadian Provincial Reconstruction Teams (PRTs) in southern Afghanistan indicate that humanitarian agencies are becoming more risk averse and are pulling out from high-risk environments.³⁶

The second implication is that, with enhanced security procedures and a greater aversion to risk and the reduction in numbers of civilian humanitarian agencies involved in humanitarian space, this space is being increasingly filled by the military and private contractors who have little or no understanding of humanitarian principles or the Geneva Conventions.³⁷

While the ideal would be to try and have more robust means of protecting civilians while establishing and enforcing humanitarian space, the reality is that neither the capacity nor the will exists within the international community.

The International Criminal Court (ICC) and the various war crimes tribunals are legal attempts to enforce the rules of war and the Geneva Conventions. While there have been some successes, their failings are numerous. They mainly try and hold senior leadership accountable. Procedurally, they are extremely slow. They have not served as a deterrent to other warlords, heads of militias or insurgents. The issue of significant collateral damage among civilians by established armies is not addressed. While the ICC and the tribunals are a starting point, much more needs to be done.

There needs to be a more thorough training on the Geneva Conventions for military personnel deploying into combat zones. While ethics and morality in combat are addressed for officers during their training, all indications suggest that for soldiers this training is mostly an after-thought, rather than an integral part of their training, as witnessed by the significant abuses in Iraq and the attitudes of the Coalition soldiers in Iraq. It has to be more than just knowing what the Geneva Conventions are, but a deeper understanding of their application for the protection of civilians caught in conflict areas. With *total war* becoming more of a reality, it is critical that soldiers (not just officers) in conventional armies be able to distinguish between combatants and non-combatants and also understand the need for the creation of humanitarian space which would allow for protection

of civilians and humanitarian agencies and allow for assistance to be provided to the civilians.

We need to move beyond simplistic labels. Terms like the *Global War on Terror* (GWOT) and *unlawful enemy combatant* do little for understanding the complexities of the conflicts in Iraq, Afghanistan, Chechnya and Somalia, among other places. There has to be better analysis of insurgents and militias in a conflict by conventional militaries in order to understand how to negotiate humanitarian space. Such analysis has to be proactively used by both State actors and humanitarian agencies to try and negotiate humanitarian space. Besides Shannon French's framework for analyzing various terror groups, there are almost no analytical tools for militaries and humanitarian agencies to use in order to understand unconventional combatant groups to negotiate humanitarian space. The development of such tools is critical for the protection of civilians and the provision of humanitarian assistance.

Advocating for and trying to enforce rules of war such as the Geneva Conventions and other instruments are having limited success in allowing humanitarian agencies to operate according to humanitarian principles. Disengaging from humanitarian operations because of high risk is not a good option. Innovative ways have to be found to create and maintain humanitarian space. Some existing tools such as Mary Anderson's *Local Capacities for Peace* (LCP) framework can be adapted to identify connectors between hostile communities in order to create humanitarian space. There is a need to collect best practices on negotiating humanitarian space that already exists. Humanitarian agencies and CIMIC officers in conventional militaries need to be trained on how to negotiate humanitarian space.

There is no clear process by which to create and maintain humanitarian space in unconventional warfare compared to traditional warfare as codified in the Geneva Conventions. Understanding that unconventional warfare occurrences

are on the increase, it is possible to conclude that humanitarian space may no longer exist in such environments. Acknowledging this allows stakeholders to create innovative solutions to continue upholding humanitarian principles, and to affect change within beneficiary populations and the context in which they live.

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NOTES

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- 10 Shannon E. French, *The Code of the Warrior: Exploring Warrior Values Past and Present* (New York: Rowman and Littlefield Publishers Inc., 2003), 231.
- 11 *The Economist*, "Obituary: David Rattray," February 10th 2007: 91.
- 12 Richard H. Shultz and Andrea J. Dew, *Insurgents, Terrorists and Militia: The Warriors of Contemporary Combat* (New York: Columbia University Press, 2006), 95-96.
- 13 *Ibid.*, 5.
- 14 United Nations, *Geneva Convention* (Geneva, August 12 1949), A 70.
- 15 A term used by Christopher P.M. Waters in the first chapter of this book.
- 16 Johanna Grombach Wagner, *An IHL/ICRC perspective on 'humanitarian space'*, <http://www.odihpn.org/report.asp?ID=2765> (accessed August 14, 2007).
- 17 United Nations Office for the Co-Ordination of Humanitarian Assistance, *Glossary of Humanitarian Terms: In Relation to the Protection of Civilians in Armed Conflict*. New York: United Nations, OCHA, 2003.14.

18 *Ibid.*, 14-15.

19 Two ODI publications, "A Bridge Too Far: Aid Agencies and the Military in Humanitarian Responses" and "Resetting the Rules of Engagement: Trends and Issues in Military-Humanitarian Relations" articulate these in great detail.

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22 *Ibid.*, x.

23 This term was used by a participant at the *Three Block Wars and Humanitarianism* event (Consultation, Ottawa Canada, September 2006).

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25 *Ibid.*, 20.

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31 *Ibid.*, 8.

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33 *Ibid.*, xv.

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35 Abby Stoddard, Adele Harmer and Katherine Haver, "Providing Aid in Insecure Environments: Trends in Policy and Operations," Overseas Development Institute, London, HPG Report 2, (September 2006), 1.

36 Sgt. Ted Howard, conversation with author, March 2007. Sgt. Ted Howard is a Canadian CIMIC officer who returned from the Afghanistan in 2006.

37 Note that some militaries, such as the Canadian Forces and others, are taught the general legal frameworks informing their profession, such as the Geneva Conventions. For a detailed account of the argument behind the second implication described in this paragraph, please refer to the chapter in this book by Schweiss and Rowe.