



“Troops in Contact”

Airstrikes and Civilian Deaths in Afghanistan

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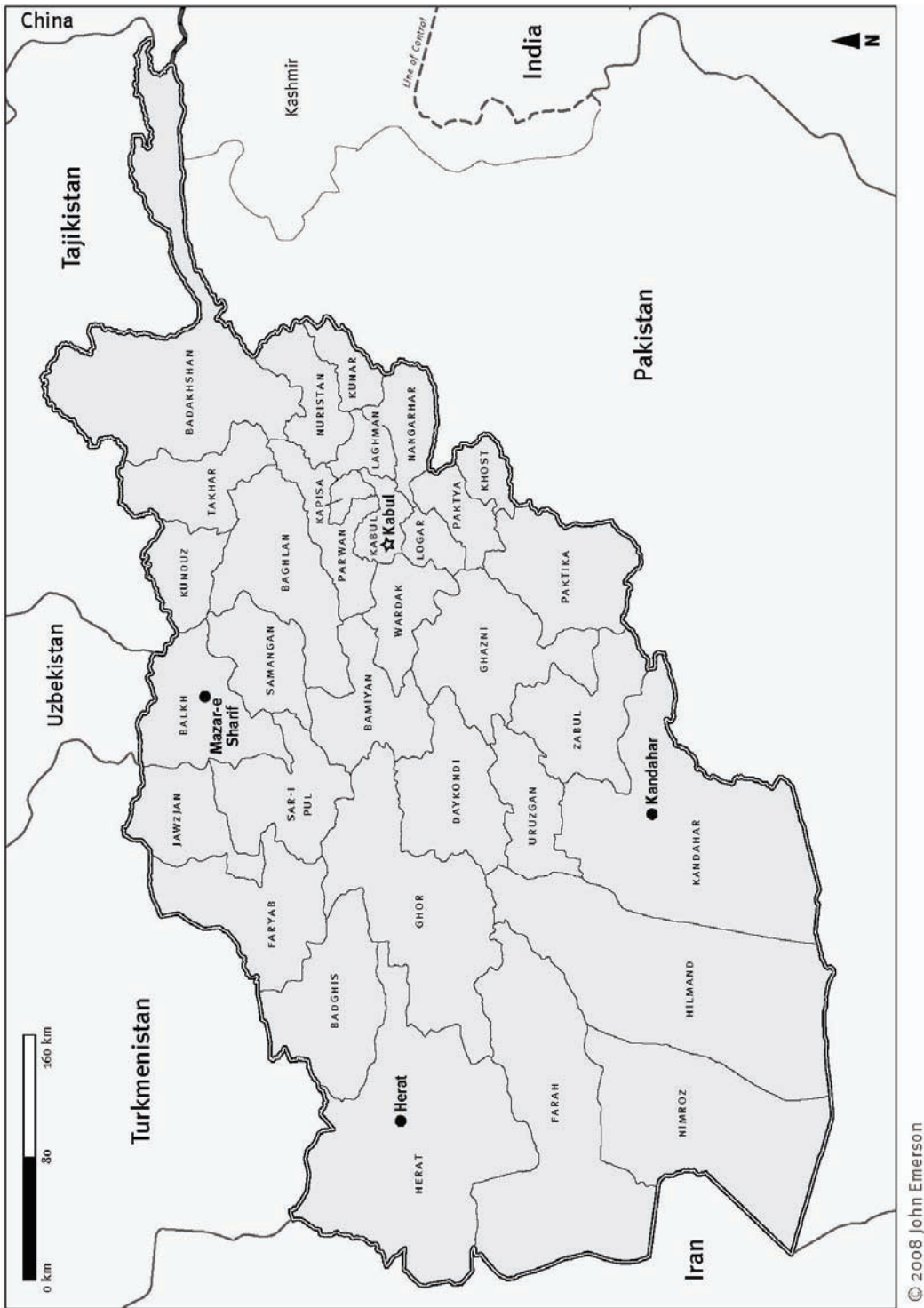


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Map of Afghanistan



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I. Summary

I am not happy with civilian casualties coming down; I want an end to civilian casualties... As much as one may argue it's difficult, I don't accept that argument... It seriously undermines our efforts to have an effective campaign against terrorism.

—President Hamid Karzai, April 26, 2008.

People hoped the US would come and release them from the violence of the Taliban but all the US does is attack us... The US only blames the Taliban, but the US has the technology. They should hit specific centers of the Taliban, not civilians.

—Afghan farmer speaking to Human Rights Watch, July 25, 2007.

In the past three years, the armed conflict in Afghanistan has intensified, with daily fighting between the Taliban and other anti-government insurgents against Afghan government forces and its international military supporters. The US, which operates in Afghanistan through its counter-insurgency forces in Operation Enduring Freedom (OEF) and as part of the NATO-led International Security Assistance Force (ISAF), has increasingly relied on airpower in counter-insurgency and counter-terrorism operations. The combination of light ground forces and overwhelming airpower has become the dominant doctrine of war for the US in Afghanistan. The result has been large numbers of civilian casualties, controversy over the continued use of airpower in Afghanistan, and intense criticism of US and NATO forces by Afghan political leaders and the general public.

As a result of OEF and ISAF airstrikes in 2006, 116 Afghan civilians were killed in 13 bombings. In 2007, Afghan civilian deaths were nearly three times higher: 321 Afghan civilians were killed in 22 bombings, while hundreds more were injured. In 2007, more Afghan civilians were killed by airstrikes than by US and NATO ground fire. In the first seven months of 2008, the latest period for which data is available, at least 119 Afghan civilians were killed in 12 airstrikes. (See charts on page 14.)

These figures do not include the airstrike on August 22, 2008 in the village of Azizabad, where many civilians were killed in airstrikes in support of an OEF operation. Although the total number of dead was disputed at the time of writing, the political fallout was significant. The Afghan government ordered its ministries of foreign affairs and defense to review the presence of foreign troops and regulate their presence with a status of forces agreement, negotiate a possible end to airstrikes on civilian targets, uncoordinated house searches, and illegal detention of Afghan civilians.

This followed a July 20 airstrike in which US forces killed nine Afghan National Police officers in Farah province. The US, in particular US Special Operations Forces operating under OEF, have been heavily criticized for lack of coordination and communication with Afghan forces, and the deaths of the police officers highlights continuing problems in this area. Also on July 6, 2008, an airstrike against a “target of opportunity” (thought to be an insurgent force) in Nangahar province killed 47 Afghan civilians taking part in a wedding. Burhanullah Shinwari, who headed an Afghan investigation into the incident, said, “The Afghan people cannot afford more civilian casualties. Therefore, we will demand that President Karzai talk with foreign forces to bring an end to such attacks.”

The harm caused by airstrikes is not limited to the immediate civilian casualties. Airstrikes have caused significant destruction of civilian property, and have also forced civilians to flee and vacate villages, adding to the internally displaced population of Afghanistan. In every case investigated by Human Rights Watch where airstrikes hit villages, many civilians left the village because of damage to their homes but also because of fear of further strikes. People from neighboring villages also sometimes fled in fear of future strikes on their villages. They have also had significant political impact, outraging public opinion in Afghanistan and undermining public confidence in both the Afghan government and its international backers.

Broadly speaking, airstrikes are used in two different circumstances: planned strikes against predetermined targets, and unplanned “opportunity” strikes in support of ground troops that have made contact with enemy forces (in military jargon, “Troops in Contact” or TIC). In our investigation, we found that civilian casualties rarely occur

during planned airstrikes on suspected Taliban targets (one in each of 2006 and 2007). High civilian loss of life during airstrikes has almost always occurred during the fluid, rapid-response strikes, often carried out in support of ground troops after they came under insurgent attack. Such unplanned strikes included situations where US special forces units—normally small numbers of lightly armed personnel—came under insurgent attack; in US/NATO attacks in pursuit of insurgent forces that had retreated to populated villages; and in air attacks where US “anticipatory self-defense” rules of engagement applied.

The majority of cases examined in this report involved OEF rather than NATO-led ISAF missions. Human Rights Watch believes that the higher number of cases involving civilian casualties during airstrikes can be attributed to OEF because OEF is most active in Afghanistan’s south and southeast, where the insurgency is strongest, because OEF is heavily reliant on operations led by special forces, and because OEF is governed by a different operational mandate and rules of engagement than ISAF.

The armed conflict in Afghanistan is governed by international humanitarian law (the laws of war). The applicable law on the conduct of hostilities can be found in Protocol I to the Geneva Conventions, which is largely accepted by the United States and NATO states as reflective of customary international law. The Taliban and other insurgent forces are also bound by the laws of war. The laws of war on the conduct of hostilities require warring parties to take all feasible precautions to minimize harm to civilians. They prohibit deliberate and indiscriminate attacks against civilians, and attacks in which the harm to civilians is disproportionate to the expected military gain.

The cases described here raise concerns as to whether the attacking forces acted in accordance with their obligation under the laws of war to exercise “constant care to spare the civilian population” and take “all feasible precautions” to minimize loss of civilian life. This obligation requires that combatants do everything feasible to verify that targets are “military objectives,” and not civilians; that the means and methods of warfare are chosen to minimize civilian loss; and that the expected civilian loss is not excessive in relation to the concrete and direct military advantage expected. Attacks that do not meet these requirements must be cancelled or suspended.

At the same time, Taliban and other insurgent forces continue to be responsible for more civilian casualties than US and NATO forces. In 2006, a minimum of 929 Afghan civilians were killed in fighting related to the armed conflict. Of those, at least 699 died during attacks by the various insurgent forces (including suicide bombings and other bombings targeting civilians). In 2007, a minimum of 1,633 Afghan civilians were killed in fighting related to the armed conflict. Of those, at least 950 died during attacks by the various insurgent forces. In the first seven months of 2008, a minimum of 540 Afghan civilians were killed in fighting related to the armed conflict. Of those, at least 367 died during attacks by the various insurgent forces.

In our April 2007 report, *The Human Cost: The Consequences of Insurgent Attacks in Afghanistan*, we documented unlawful indiscriminate attacks against civilians by Taliban and other insurgent forces in Afghanistan. While Taliban abuses are not the main focus here, this report documents how insurgent forces have contributed to the civilian toll from airstrikes by deploying their forces in populated villages, at times with the specific intent to shield their forces from counterattack, a serious violation of the laws of war. Human Rights Watch found several instances where Taliban forces purposefully used civilians as shields to deter US and NATO attacks.

Serious violations of the laws of war by one side, such as the use of human shields and indiscriminate attacks (including suicide bombings) against civilians by the Taliban, do not absolve the other side from its obligation to refrain from unlawful acts, including its obligation to take all feasible precautions to protect civilians. Time and again, the US has blamed civilian deaths on the tactics pursued by the insurgents. While this is certainly true in some cases, several of which are documented below, it is often only part of the story. Avoiding civilian deaths is not merely a matter of complying with international humanitarian law, which requires taking all feasible steps to minimize civilian casualties, but is also important in maintaining the support of the local population. Taking additional tactical measures to reduce civilian deaths may at times put combatants at greater risk—at least in the immediate situation. Over the course of an armed conflict, particularly against an insurgency, obtaining the support of the civilian population, which is determined by factors beyond simple adherence to the laws of war, is crucial.

The fact that civilians die or are injured in an airstrike does not necessarily mean the airstrike violated the laws of war, as long as the precautions required by the laws of war were taken and applied in good faith. Beyond the human tragedy, high civilian casualties—regardless of whether they were the result of lawful or unlawful conduct—should always be cause for concern by a military force, as the damage to an armed forces' reputation and good-will among the population can be considerable. This is particularly true in a country such as Afghanistan where loyalties are often malleable.

Beyond violations of international humanitarian law, the political cost of each bombing that goes awry is high. In one district, a senior British commander asked US Special Operations Forces to leave his district due to the mounting civilian casualties caused when the US repeatedly called in airstrikes to rescue small numbers of special forces during firefights with insurgent forces. Each civilian death for which US or NATO forces are perceived to be responsible increases hostility to the US and NATO forces, and may increase support for anti-government forces. The Afghan government has long realized this, and if the United States and NATO consider the strategic fight for popular support to be essential, then they need to recognize this as well. So long as the fighting in Afghanistan continues, reducing the loss of civilian life during airstrikes should remain a priority for US and NATO forces.

To respond to public concern and complaints from President Karzai, in July 2007, the US and NATO announced several changes in tactics. These changes included employing smaller munitions, delaying attacks where civilians might be harmed, and turning over house-to-house searches to the Afghan National Army. Review of available evidence suggests that the changes may have had some impact: as detailed below, there was a significant drop in civilian casualties due to airstrikes in the last half of 2007, even as the overall tonnage of bombs increased. Forty-nine civilians died in the final five months of 2007 after the changes were implemented, a much lower rate than earlier in the year. However, alarmingly, civilian deaths are once again climbing, with 119 civilians killed in airstrikes in the first seven months of 2008, as already noted above.

Continued civilian casualties show that unacceptable dangers to the civilian population from airstrikes remain, particularly as the number of airstrikes is rapidly increasing. While airstrikes typically drop in number during the winter due to decreased fighting, this was not the case during the winter of 2007-2008. December 2007 saw twice the number of airstrikes as July 2007. There has been a massive and unprecedented surge in the use of airpower in Afghanistan in 2008. In response to increased insurgent activity, twice as many tons of bombs were dropped in 2007 than in 2006. In 2008, the pace has increased: in the months of June and July alone the US dropped approximately as much as it did in all of 2006. Without improvements in planning, intelligence, targeting, and identifying civilian populations, the massive use of airpower in Afghanistan will continue to lead to unacceptably high civilian casualties.

Key Recommendations

Human Rights Watch urges the US and NATO to adopt measures that reduce civilian casualties from airstrikes. These include:

- Ensure air attacks comply with the obligation to take all feasible precautions to minimize harm to the civilian population.
- Adopt measures to reduce the likelihood of civilian casualties in “Troops in Contact” (TIC) situations. Airstrikes should not be carried out without an adequate collateral damage estimate (CDE); trained Joint Terminal Air Controllers (JTACs) should be involved in all TIC airstrikes; and there should be no strikes in densely populated areas unless the intelligence is highly reliable and the target has been visually identified.
- Carry out a thorough investigation of the collateral damage and battle damage assessment processes to determine how they can be improved to reduce civilian casualties, and implement appropriate changes.
- Use precision-guided low-collateral-damage munitions whenever possible, especially on military targets in populated areas.
- Adopt Rules of Engagement (ROE) that are consistent to ensure that differences in ROE do not result in unnecessary civilian casualties.
- Provide accurate information on civilian casualties in military operations. Accept responsibility for civilian deaths and injuries as soon as possible,

and refrain from denying responsibility for civilian loss until an after-battle investigation has been conducted.

- Create an officer-level position or office charged with monitoring, investigating, compensating, and publicly reporting on all incidents of civilian casualties that works directly with the Afghan government to ensure accurate accountability.
- Provide timely and adequate compensation to victims of airstrikes.

Human Rights Watch urges the Taliban and other anti-government forces to cease all tactics that place civilians at unnecessary risk, such as the use of civilians as shields and feigning civilian status to gain military advantage during attacks. Such forces should publicly reaffirm their commitment to abide by the laws of war, including prohibitions against targeting civilians, using indiscriminate and disproportionate attacks, and attacking with the primary intent to cause terror among civilians.

Methodology

This report is based on field-research in Afghanistan, interviews with US, NATO, and Afghan officials, and the creation of a detailed database of every reported airstrike in Afghanistan between November 2005 and July 2008. To quantify civilian deaths we have used various sources, including the Afghan NGO Security Office (ANSO), United Nations Assistance Mission in Afghanistan (UNAMA), the Afghan Independent Human Rights Commission, various media outlets, and hospitals where available. Our casualty numbers for 2008, however, rely primarily on ANSO and press reports as the other organizations in Afghanistan had not completed relevant investigations at the time this report was finalized, in part because most of the deaths were in June and July and security concerns have limited their ability to collect information.

Airstrike data—information on bombs dropped—is based on daily summaries published by US Central Command Air Forces.¹ The figures we use are conservative estimates based on the daily summaries, which are often vaguely worded. We therefore always take the minimum number for all aerial munitions employed. While

¹ The data covers only missions flown by fixed-wing aircraft.

our numbers are cautious, they nevertheless allow for trend analysis.² The actual number of bombs dropped is also likely higher than presented here because our numbers are based only on reported airstrikes and some airstrikes are likely missed in the reporting.

This research was conducted with two objectives: (1) to identify and investigate potential violations of international humanitarian law by the parties to the conflict, and (2) to identify patterns of combat by those parties that may have caused civilian casualties and suffering that could have been avoided if additional precautions had been taken. We have sought to understand how and why civilians were killed or injured with a view to lessening the impact of war on civilians in the future.

Human Rights Watch has conducted several battle damage assessment (BDA) missions in the past to investigate the conduct of war and civilian casualties, including in Yugoslavia in 1999, Afghanistan in 2002, Iraq in 2003, and Lebanon in 2006. While the military conducts such assessments to determine the military success of an operation, Human Rights Watch reviews the same incidents from a humanitarian law perspective.

² When Human Rights Watch showed our numbers to various US and NATO officers in Afghanistan directly involved in planning airstrikes we were told our numbers were the best they had seen outside of classified channels.

II. International Forces Operating in Afghanistan

Since October 2001, the United States has deployed forces in Afghanistan under the banner of Operation Enduring Freedom (OEF) in counter-terror and counter-insurgency operations against the Taliban, al-Qaeda, and other anti-government forces. The United States has approximately 19,000 forces operating independently of NATO command as part of OEF.³

OEF forces are based at Bagram Air Base north of Kabul and are deployed largely in eastern and southern areas along the Pakistani border. OEF operations are primarily staffed by paramilitary and intelligence forces of the Central Intelligence Agency, US military Special Operations Forces, and elements of the US Army's 82nd Airborne Division.

The International Security Assistance Force (ISAF) was established by the United Nations on December 20, 2001. It came under NATO control on August 11, 2003. NATO operates a counter-insurgency mission in support of the Afghan government under UN Security Council Resolution 1386 and subsequent renewals and expansions.⁴ The NATO mission deploys forces from 26 NATO and 14 non-NATO contributing nations.⁵ As of June, 2008, ISAF had over 50,000 NATO troops in Afghanistan, plus approximately 2,000 troops from non-NATO contributing nations. The United States troop contributions to NATO are separate from those of Operation Enduring Freedom. NATO forces are headquartered in Kabul and deployed throughout the country, with the largest concentrations in the south. Its primary stated goal is to provide security for the Afghan government and the civilian population and to defend against insurgent operations.

³ Tom Shanker, "Gates Pushing Plan for Afghan Army," *The New York Times*, August 8, 2008.

⁴ United Nations Security Council Resolutions 1413, 1444, 1510, 1563, 1623, 1659, and 1707, <http://daccessdds.un.org/doc/UNDOC/GEN/No1708/55/PDF/No170855.pdf?OpenElement> (accessed July 1, 2008).

⁵ "NATO, ISAF Troop Contributing Nations," April 1, 2008, <http://www.nato.int/isaf/structure/nations/index.html> (accessed July 1, 2008).

Airpower in Afghanistan is primarily provided by strike aircraft of the United States, with British, French, and Dutch aircraft participating in a small minority of reported airstrikes. US aircraft participate in strikes for both OEF and NATO, while the non-US aircrafts operate only under NATO. Airstrikes are primarily performed by US aircraft; for example, according to records provided by Central Command Airforces (CENTAF), there were 87 US airstrikes and only 7 UK and 3 French airstrikes in December 2007.⁶

International Security Assistance Force Contributing Nations
June 10, 2008

Total, 52,700 Troops

 United States	23,550	 Lithuania	200
 United Kingdom	8,530	 Portugal	165
 Germany	3,370	 New Zealand	160
 Canada	2,500	 Greece	150
 Italy	2,350	 FYR Macedonia	140
 Netherlands	1,770	 Albania	140
 France	1,670	 Estonia	120
 Poland	1,140	 Jordan	90
 Australia	1,100	 Latvia	75
 Spain	800	 Slovenia	70
 Turkey	760	 Slovakia	70
 Denmark	690	 Finland	65
 Norway	580	 Azerbaijan	45
 Romania	570	 Iceland	10
 Bulgaria	420	 Luxemburg	9
 Belgium	375	 Ireland	7
 Czech Republic	370	 Ukraine	3
 Sweden	250	 Singapore	2
 Croatia	210	 Austria	2
 Hungary	205	 Georgia	1

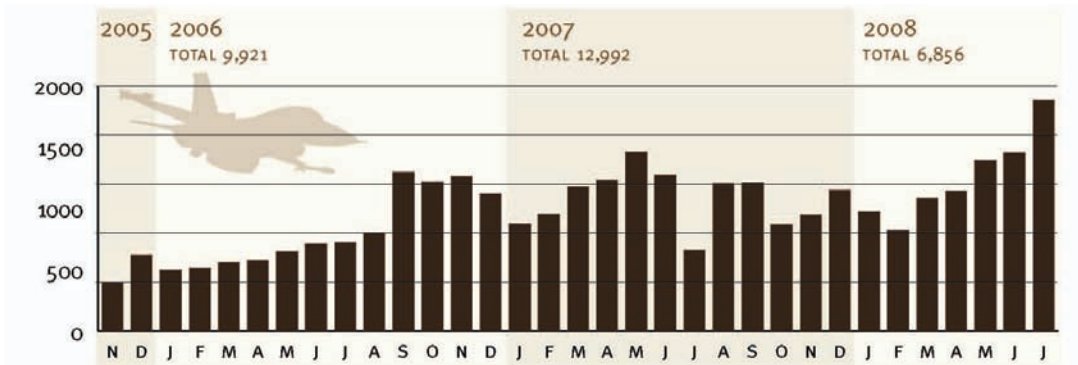
Source: International Security Assistance Force homepage updated with information on numbers of Troops in Afghanistan from the NATO Media Operations Center.

⁶ Email communication of Airpower Summary from U.S. Air Forces Central Public Affairs Combined Air and Space Operations Center, Southwest Asia, to Human Rights Watch.

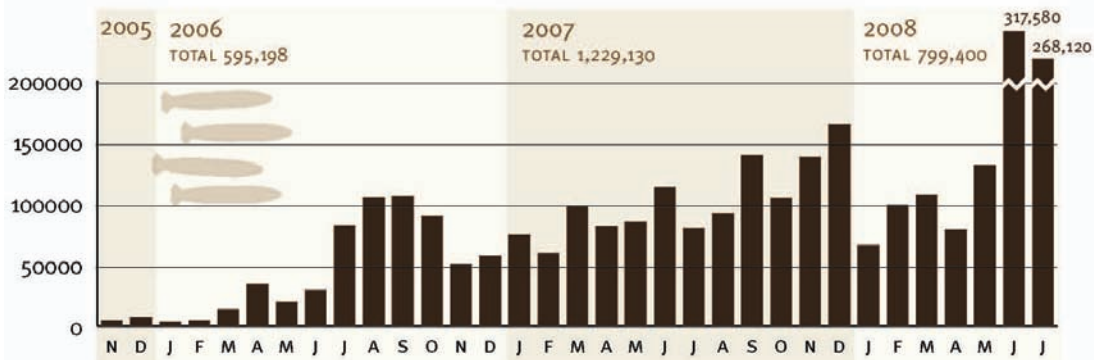
III. US and NATO Bombing and Civilian Deaths

The US and NATO are using airstrikes in an “economy of force” battle against insurgents. Instead of having a large ground footprint, they use a relatively small number of ground forces supplemented with airpower. The airpower manifests itself in a graduated scale of force, ranging from flyovers, intended to have a deterrent effect, to direct air attacks with canon rounds or bombs. Human Rights Watch defines an airstrike as the use of aerial munitions, and not simply as the number of close air support missions flown.

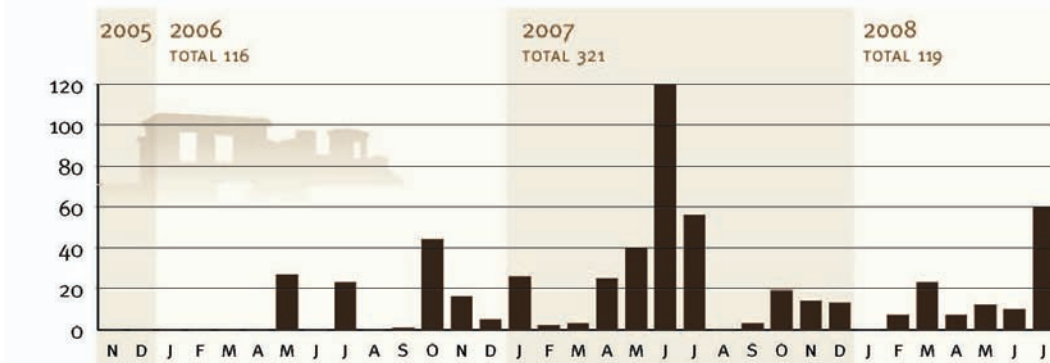
Human Rights Watch has tracked each reported airstrike from late 2005 to July 2008 to gauge trends. As can be seen from the chart below, airstrikes were low in number from late 2005 when the data first became available through June 2006. However, in July 2006 there was a sudden spike in airstrikes corresponding with a NATO offensive called “Operation Mountain Thrust,” against Taliban forces in the southern part of the country, the traditional heartland of the mostly Pashtun Taliban movement. This was followed by a decrease in airstrikes during the winter of 2006-2007, corresponding with a lull in fighting as Taliban forces took refuge during the harsh Afghan winter and operating conditions became difficult because of the snow pack. The spring thaw brought an increase in airstrikes and a corresponding increase in civilian casualties. The winter of 2007-2008 broke past trends. Airstrikes increased even as the ground fighting lulled. 2008 has continued the upward trend, with June seeing an astronomical increase, more than doubling the prior highest monthly total for bombs dropped.



Close Air Support Flights in Afghanistan, 2006-2008



Pounds of Bombs Deployed in Afghanistan, 2006-2008



Civilian Deaths in Afghanistan from US Airstrikes, 2006-2008

In 2006, a minimum of 929 Afghan civilians were killed in fighting related to the armed conflict. Of those, at least 699 died during Taliban attacks (including suicide bombings and other bombings targeting civilians) and at least 230 died during NATO

or US attacks. Of the latter, 116 were killed by NATO and US airstrikes, and at least 114 were killed by NATO or US ground fire.⁷

In 2007, a minimum of 1,633 Afghan civilians were killed in fighting related to the armed conflict. Of those, at least 950 died during attacks by the various insurgent forces, including the Taliban and al-Qaeda. At least 434 civilians died during US or NATO attacks in 2007—321 killed by airstrikes, and 113 by US or NATO ground fire. Another 57 civilians were killed in crossfire, and 192 died under unclear circumstances.⁸

Thus, while attacks by the Taliban and other insurgent groups continue to account for the majority of civilian casualties, civilian deaths from US and NATO airstrikes nearly tripled from 2006 to 2007 (from 116 to 321).⁹

Despite the high numbers for 2007 as a whole, there was a sharp decrease in civilian casualties from airstrikes in the second half of 2007. That is, 49 civilians were killed during airstrikes in the latter half of 2007, representing just 16 percent of the total civilians killed during US and NATO air operations in that year. During the same period in 2006, 66 civilians were killed in airstrikes, which was well over half the total number of civilians killed during air operations that year.

The drop-off in the rate of civilian casualties caused by airstrikes in the second half of 2007 may be due to a number of factors. One prime reason is that, for military operational reasons, airstrikes shifted to Taliban targets in sparsely populated mountainous areas where civilians were less likely to be present. Another possible reason is that NATO implemented changes in its bombing policies in late summer

⁷ Human Rights Watch does not have figures for civilians killed by the Afghan National Army.

⁸ Afghanistan is an active war zone and it is difficult to track civilian deaths due to security considerations. However, that is not the only challenge to reporting on civilian deaths. Afghanistan is a nation where civilians are often armed and join the fighting when their homes are threatened by raids, whether by insurgents or NATO and US forces. It is also complicated because insurgents do not wear uniforms or other insignia, dressing in the same clothes as civilians. When a male corpse is found with a weapon, the person is often counted as having been a member of the insurgents, but whether that person was a Taliban fighter or a farmer who was defending his home is often impossible to discern. Human Rights Watch cross-references data from the Afghan NGO Security Office (ANSO), the United Nations, the Afghan Independent Human Rights Organization, the media, and other organizations where available in order to come up with an estimate of civilian casualties. We err on the side of caution and believe our estimates to be conservative ones.

⁹ Human Rights Watch, *Civilian Casualties in Afghanistan Database 2006-2008*, unpublished record, August 2008.

2007. After a review of airstrikes requested by General Dan McNeill, the former commander of ISAF, the US and NATO scaled back their use of air attacks in “Troops in Contact” (TIC) situations. According to US planners, they were directed not to resort to immediate airstrikes when faced with a TIC. They claim they now employ other options, such as withdrawal when possible. However, the changes implemented do not appear to have made a systematic difference as large numbers of civilians continue to die in airstrikes.

So far in 2008 there has been a return of high civilian deaths from airstrikes. This year at least 173 Afghan civilians have been killed in NATO and US operations. Of these, 119 died during US airstrikes, and 54 from fighting on the ground.

Human Rights Watch analyzed information on several specific airstrikes in which a large number of civilians died. The difficulty in obtaining detailed information concerning civilians present as well as the actions of insurgents makes analysis under the laws of war difficult. Nonetheless, the cases do provide insight into why civilians lost their lives, and thus the basis for avoiding such deaths in future operations. As noted above, a common thread was that the airstrikes were not planned missions, but occurred in fluid situations where intelligence was limited and the fog of war was high. These situations often occurred when small Special Operations Forces teams were in contact with much larger groups of insurgent forces, and when US or NATO forces were in pursuit of insurgent forces.

Nijrab District in Kapisa Province

On March 4, 2007, nine civilians—five women, three children, and an elderly man—were killed when their mud house in Kapisa province, just north of Kabul, was hit by two 2,000 pound bombs dropped by US aircraft.¹⁰ A survivor of the airstrike, Mujib, age 7, told a journalist, “I saw my mom, my sisters, and my brother and my grandfather were dead. And our house was destroyed.”¹¹ US forces said they were targeting two insurgents seen entering the house after they had fired a rocket at a US military outpost.

¹⁰ Carlotta Gall & Abdul Waheed Wafa, “US Strike Kills 9 Family Members, Afghans Say,” *The New York Times*, March 6, 2007.

¹¹ *60 Minutes* interview with President Hamid Karzai, “Bombing Afghanistan,” broadcast October 28, 2007, <http://www.cbsnews.com/stories/2007/10/25/60minutes/main3411230.shtml>.

According to press accounts and a US military press release, around 9 p.m. on March 4, a local Taliban leader and others fired a rocket at a military outpost near Nijrab, missing it and causing no casualties. The US military reported that US pilots spotted “two men with AK-47 rifles leaving the scene of the rocket attack and entering a compound” in the village. US forces from the outpost responded with an hour-long mortar barrage. This culminated in a strike by a US Air Force aircraft dropping two GBU-31 bombs on the main house of a five-building compound, said to include the home of a Taliban leader.

The US announced that it had killed the two Taliban fighters who had been targeted. But a provincial Afghan official suggested the two men were injured and escaped, and journalists at the scene reported no evidence of the two among the nine victims. The Afghan government reportedly sent a delegation to investigate the incident, and both NATO and the US forces said they were investigating.¹²

Military spokesperson Major William Mitchell told the media: “The terrorists attacked a fire base and then retreated at a place where, unknown to us, there were also civilians.” No US ground forces were in contact with Taliban fighters on the ground, but US forces conceded their troops had been at the village the day before, said a relative of the family, “The Americans came here the day before they bombed, they searched the whole house and saw women and children in the house.”¹³

The available information about the attack—in particular evidence suggesting that US forces knew the house was inhabited by civilians and that only two lightly armed fighters may have been present—raises serious concerns that the airstrikes violated the international humanitarian law prohibition against disproportionate attacks. The absence of hard evidence that Taliban fighters were even at the house at the time of

¹² See Carlotta Gall & Abdul Waheed Wafa, “US Strike Kills 9 Family Members, Afghans Say,” *The New York Times*, March 6, 2007; “Nine civilians ‘killed by US strike,’” Agence-France Presse, March 5, 2007; “Karzai slams Afghan deaths after raid,” Reuters, March 6, 2007; “US airstrike in Kabul kills nine members of same family,” *The Guardian*, March 6, 2007; “US says bombing killed 12 in Afghanistan,” Agence-France Presse, March 6, 2007; Griff White, “9 Afghan Civilians Reported Killed in U.S. Airstrike,” *The Washington Post*, March 6, 2007; “Troops Capture Terrorists in Afghanistan; Rocket Misses Coalition Base,” American Forces Press Service, March 6, 2007.

¹³ *60 Minutes* “Bombing Afghanistan,” broadcast October 28, 2007, <http://www.cbsnews.com/stories/2007/10/25/60minutes/main3411230.shtml>.

the attack raises the possibility that it was unlawfully targeted merely because it was known to be the home of a local Taliban leader.¹⁴

The civilian deaths caused by the Kapisa air attack fueled anti-government demonstrations in Kabul that originally had been organized to protest another serious incident the day before. On March 3, 2007, in Kapisa, after a suicide bomber attacked a US convoy, Marine Special Operations Forces fired repeatedly on fleeing civilians, killing at least ten.¹⁵

Shindand District in Herat Province

On April 29, 2007, at least 25 Afghan civilians were killed during OEF airstrikes in support of US Special Operations Forces operating in the Zerkoh Valley in Herat province. An investigation by the Afghan government also found that two battles over a three-day period resulted in the destruction of numerous homes.¹⁶

Afghan government officials said that they counted 42 civilians dead from the bomb attacks. They said that they found no evidence of Taliban forces in the area and that local residents were adamant there were no Taliban forces there at the time. However, a small insurgent group with ties to the Taliban in Helmand was known to be operating in the Zerkoh valley.¹⁷ A provincial government spokesperson blamed civilian losses on “a lack of coordination between international forces and our forces.”¹⁸

The civilian deaths led to demonstrations against the Afghan government. In media interviews at the time, residents expressed their anger:

¹⁴ Ibid.

¹⁵ Ibid; Carlotta Gall and Abdul Waheed Wafa, “Afghans Say U.S. Bombing Killed 42 Civilians,” *The New York Times*, May 3, 2008.

¹⁶ Ibid.

¹⁷ See “Afghanistan: Attacks threaten girls schools in Shindand,” IRIN: UN Office for the Coordination of Humanitarian Affairs, July 14, 2008; Waliullah Rahmani, “Farah Province: The New Focus of the Taliban Insurgency,” *The Jamestown Terrorism Monitor*: Volume 5, Issue 23, December 10, 2007.

¹⁸ Ibid.

The bombardments were going on day and night... They didn't care if it was women, children or old men.¹⁹

Following the attack, President Karzai complained about the lack of coordination between US and Afghan forces that he believed led to the civilian deaths. Karzai said, “Unfortunately that cooperation and coordination, as we tried it, has not given us the results that we want, so we are not happy about that and we can no longer accept the civilian casualties the way they are occurring.”²⁰

According to media reports, Coalition forces initially stated that 87 Taliban fighters had been killed during the 14-hour-long battle and said there were no reports of civilian casualties. Later it announced it would conduct an investigation.²¹

In May 2007, Brigadier General Perry Wiggins, deputy operations director of the Joint Staff, reported on the legal findings into the incident and stated that US ground forces were “continuously engaged by intense enemy fire after entering an area of known Taliban activity.” Conceding that no accounting was done of civilian casualties, Wiggins defended the actions of the commander on the scene. “All targets were positively identified as hostile, [and] were under observation at the time of the engagement,” he said. “The on scene commander used appropriate level of force to respond to the continuous enemy threat and protect his unit.”²²

Sangin District in Helmand Province

At least 21 Afghan civilians were killed in OEF airstrikes in Sangin district, Helmand province, on the night of May 8, 2007. Twenty-one bodies were presented for

¹⁹ Mohammad Zarif Achakzai, whose family was among those who fled, “Afghans’ anger over US bombing,” BBC World Service Radio and BBC online, May 31, 2007, http://news.bbc.co.uk/2/hi/south_asia/6705607.stm (accessed August 21, 2008).

²⁰ Ibid.

²¹ “Over 2,000 NATO, Afghan Forces Begin Operation to Drive Taliban From Opium-Producing Stronghold,” Fox News Channel, April 30, 2007, <http://www.foxnews.com/story/0,2933,269152,00.html> (accessed August 21, 2008).

²² “‘Appropriate’ force used in civilian death incident: US,” Agence-France Presse, May 16, 2007.

examination, most of which were women and children.²³ Residents disputed the reported number and claimed upwards of 80 dead.

The following day, the US Army Special Operations Command issued a news release that made no mention whatsoever of civilian casualties:

Members of 1st Kandak, 1st Brigade, 209th Afghan National Army Corps combat advised by U.S. Special Forces were engaged with small-arms, mortar, and rocket propelled grenade fire from an unknown number of Taliban fighters 25 kilometers (15.5 miles) northeast of the Sangin District Center in Helmand Province on May 8.

The combined force returned fire at Taliban fighters near the village of Lwar Malazi, and then pursued retreating fighters. During the pursuit, the friendly force continued to receive enemy small-arms, RPG, and mortar fire from the western side of the Helmand River. The ANA and Coalition force maintained contact with the enemy as Taliban fighters took cover in compounds or continued firing on Coalition forces. Coalition close air support aircraft destroyed three enemy command and control compounds including an enemy underground tunnel network located along the upper Sangin River Valley.

During the 16-hour battle, ANA and Coalition forces fought through three separate enemy ambush sites while dozens of Taliban fighters from Kajaki and Lashkar Gha reinforced enemy positions. Over 200 Taliban fighters massed on the combined ANA and Coalition forces throughout the engagement.²⁴

General Dan McNeil, commander of NATO forces at the time, told the media that the airstrikes were called in after US special forces were ambushed by what he called “a

²³ Ibid.

²⁴ “Coalition and ANA Soldiers Attacked by Taliban in Sangin,” US Federal News Service, May 9, 2007.

far superior force.” He said, “It does appear there were civilian casualties—exactly what caused them, we’re working our way through all that.”²⁵

Abdul Nasir, a resident of the bombed village, told *The New York Times*: “It was around 4 p.m. when the foreign vehicles came through on the main road. The Taliban shot at them and they turned back. Then airplanes came and bombed the village at 10 p.m.” He said that Taliban forces were in the village during the day, but not at the time of the air raid.²⁶

According to the villagers, the high loss of civilian life led to violence between the Taliban and local villagers. One villager told *The New York Times* that villagers had pursued the Taliban commander who led the ambush, Wali Mahmud, to the village of Heratian and had killed him. Another villager said he had heard that when Taliban fighters came to a village near Sarwan Qala with the aim of attacking international forces, a group of tribal elders asked them not to attack out of concern that the village would be bombed; after an argument, the leader of the tribal elders killed the Taliban commander and two of his bodyguards.²⁷

Two months after the raid, a man named Mohammadullah told a journalist that the airstrikes had killed 20 people in his village after Taliban fighters had come through. He said the bombing had killed six members of his family, including his children’s grandmother, and wounded five. He believed the village was bombed in mistake because at the time insurgents were fighting US forces well below the village. Villagers were so angered by the bombing that many men from the village reportedly left to join the insurgents. Support for the international forces “depends on the behavior of ISAF,” he said. “If they treat the civilians well, they will win.”²⁸

Another villager expressed similar sentiments, though he confused the NATO forces that normally operated in his area with the US forces actually involved in the

²⁵ Carlotta Gall, “Afghans Say Civilian Tolls in Strikes is Much Higher than Reported,” *The New York Times*, May 11, 2007.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Carlotta Gall, “Civilian Casualties in Afghanistan Divide Allies Britons say U.S. Raids Impair Mission,” *The New York Times*, August 10, 2007.

bombings. “Why do NATO lie to us?” a 25-year-old named Agah Lalai told a journalist from a hospital bed in Kandahar. “They say they can differentiate between the Taliban and civilians, but they destroyed my family, my home, my life. I have nothing left. NATO cannot rule us like this. So long as there is just one 40-day-old boy remaining alive Afghans will fight against the people who do this to us.” Lalai said that his grandfather, grandmother, wife, father, three brothers, and four sisters had died in the bombing. The youngest victim was 8, the oldest 80. He said that only his mother and his two sons, aged 5 and 3, survived, though both boys were wounded.²⁹

According to the Pajhwok Afghan News agency, a US military commander made apologies to the families of 19 Afghan civilians killed and 50 wounded and offered payments of about US\$2000 for each death. Coalition forces also reported that they would conduct a joint investigation into the incident.³⁰

Greshk District in Helmand Province

On June 22, 2007, NATO airstrikes killed at least 25 Afghan civilians, including women and children, in an attack on insurgents in two residential compounds in Gereshk district, Helmand province. The provincial police chief reported that these deaths included nine women, three babies, and the mullah of a local mosque. He said about 20 insurgents died in the attack. The insurgents had reportedly fled to the compounds after an attack on a police station in the area.³¹

President Karzai immediately criticized the attacks, saying it is “difficult to accept or understand.”³² According to the Associated Press, Karzai said the incident in Gereshk was an example of NATO troops using disproportionate force and exposed a “serious lack of coordination with the Afghan government.”³³

²⁹ Anthony Loyd, “Afghans Blame NATO, the Invited Peacekeeper, for Civilian Deaths,” *Kandahar Factbox*, May 24, 2007.

³⁰ “10 Taliban Killed in Raid; Coalition Admits to Civilian Deaths,” *Pajhwok Afghan News*, March 11, 2007.

³¹ “NATO air strike kills 25 Afghan civilians,” *Agence France Presse*, June 22, 2006.

³² Amir Shah, “25 Civilians Killed in Afghanistan Violence,” *Associated Press*, June 22, 2007; “NATO accuses Taliban of using children in suicide missions,” *The Guardian Unlimited*, June 23, 2007.

³³ Rahim Faiez, “Karzai blasts NATO for civilian deaths,” *Associated Press*, June 23, 2007.

Responsibility for the high civilian losses in this case may rest with the Taliban, NATO forces, or both. But NATO spokespersons were quick to disclaim any responsibility or placed the blame entirely on the Taliban before an investigation was even conducted. A British military spokesperson for ISAF, Lieutenant Colonel Charlie Mayo, said: “If civilians had been identified in the area, the air strike would not have gone ahead.”³⁴

“We are concerned about reports that some civilians may have lost their lives during this attack. However, it must be noted that it was the insurgents who initiated this attack,” said NATO spokesperson LTC Mike Smith, who blamed the deaths entirely on the insurgent forces. “The risk to civilians was probably deliberate. It is this irresponsible action that may have led to casualties.”³⁵

NATO Secretary General Jaap de Hoop Sheffer said, “We continually have to look at our procedures and that is what’s happening. We continually have to look at rules of engagement.”³⁶ Human Rights Watch contacted ISAF in Kabul to determine if a review of procedures had been completed and was told:

In the summer of 2007, NATO-ISAF reviewed its tactics, techniques and procedures. We committed ourselves to undertake rigorous and constant investigations of incidents involving possible civilian casualties. In particular, the Commander of ISAF mandated that the greatest possible use be made of precision systems and that, when taking fire from an Afghan house, on-scene commanders satisfy themselves that every effort had been made to confirm that the Afghan facility did not shelter innocent civilians. In addition, SACEUR mandated that enhanced and timely After Action Reviews identify lessons learned and that there be a strong system of reporting from investigations when deemed necessary.³⁷

³⁴ “NATO accuses Taliban of using children in suicide missions,” *The Guardian Unlimited*, June 23, 2007.

³⁵ Ibid.

³⁶ “NATO boss says Afghan Deaths Unfortunate,” Reuters, June 22, 2007.

³⁷ E-mail communication from NATO Media Operations Center to Human Rights Watch, May 6, 2008.

Greshk District in Helmand Province

In US airstrikes on June 27-28, 2007, one week after the airstrikes above, residents of the town of Haderabad in Gereshk district claimed that from 45 to 65 civilians and about 105 insurgents were killed.³⁸ An investigation by the Afghan government concluded that 45 civilians had been killed, though NATO disputed this and stated that about 12 civilians were killed.³⁹

The airstrikes occurred after Taliban forces ambushed a combined US-Afghan army force in Haderabad and destroyed two US military vehicles with mines. A firefight ensued and US-Afghan forces called in airstrikes in response to heavy small arms and mortar fire. Coalition spokesperson Major Chris Belcher stated the airstrikes targeted Taliban firing positions in the village.⁴⁰ According to a NATO spokesperson, “Remains of some people who apparently were civilians were found among insurgent fighters who were killed in firing positions in a trench line.”⁴¹

The New York Times contacted residents of the area about the bombings. Haji Zahir, a tribal elder who said he had spoken to residents from the bombed villages said, “People tried to escape from the area with their cars, trucks and tractors, and the coalition airplanes bombed them because they thought they were the enemy fleeing. They told me that they had buried 170 bodies so far.”⁴²

Hajji Assadullah, another tribal elder, said that 35 villagers who were fleeing in a tractor-trailer had been hit by an airstrike, “There were only two survivors, an old man and his son, and the son was seriously injured, and I saw them with my own eyes.”⁴³

³⁸ Noor Khan, “Airstrikes Kill 62 Taliban, 45 Civilians,” Associated Press Online, July 1, 2007; “Afghan Elders say 45 Civilians Killed in Airstrikes,” Agence France-Presse, July 1, 2007.

³⁹ Ibid.

⁴⁰ Barry Bearak and Taimoor Shah, “More Afghan Civilians Killed in Airstrikes,” *The New York Times*, July 1, 2007.

⁴¹ “Afghan Elders say 45 Civilians Killed in Airstrikes,” Agence France-Presse, July 1, 2007.

⁴² Barry Bearak and Taimoor Shah, “More Afghan Civilians Killed in Airstrikes,” *The New York Times*, July 1, 2007.

⁴³ Ibid.

Deh Bala District in Nangahar Province

On the morning of July 6, 2008, a wedding party was hit by an OEF airstrike as it traveled to a wedding near the village of Kacu in Deh Bala district in Nangahar province.⁴⁴

The US military swiftly denied civilian casualties, blaming them instead on militant propaganda. On the day of the attack, Haji Amishah Gul, the chief government official in Deh Bala, said the wedding party was attacked on its way to the groom's house. "They stopped in a narrow location for rest. The plane came and bombed the area. There were between 80 to 90 people altogether. We have carried six of the injured to this hospital, and more might be coming. The exact number of casualties is not clear."⁴⁵ However, the US spokesperson, 1st Lieutenant Perry, said, "Whenever we do an airstrike the first thing they're going to cry is 'Airstrike killed civilians' when the missile actually struck militant extremists we were targeting in the first place. At this time we don't believe we've harmed anyone except for the combatants."⁴⁶

An investigation ordered by President Karzai and led by members of the Afghan senate soon found the death toll to be 47 members of a wedding party, which was also confirmed by human rights officials. Karzai visited the small village on July 17, where he met relatives of the victims, highlighting the problem of civilian casualties in the war in Afghanistan.⁴⁷

⁴⁴ Amir Shah, "47 Afghan Civilians Killed by US Bombs, Group Says," Associated Press, July 11, 2008.

⁴⁵ Ibid.; Amir Shah and Jason Straziuso, "Afghan Officials: US Missiles Killed 27 Civilians," Associated Press, July 6, 2008.

⁴⁶ Amir Shah and Jason Straziuso, "Afghan Officials: US Missiles Killed 27 Civilians," Associated Press, July 6, 2008.

⁴⁷ "Afghan leader visits site where US-led strike hit wedding," Agence France-Presse, July 17, 2008.

IV. Taliban Shielding and Airstrikes

This chapter examines cases of alleged “shielding” by Taliban forces. In several instances, Human Rights Watch obtained eyewitness testimonies confirming that such shielding was occurring.

International humanitarian law does not prohibit military forces from deploying or fighting in residential areas, but they are required to take all feasible steps to minimize harm to civilians. Belligerents are prohibited from using civilians to shield military targets from attack. “Shielding” refers to intentionally using the presence of civilians to render areas or forces immune from military attack.⁴⁸ For instance, taking over a family’s home and not permitting the family to leave for safety so as to deter the enemy from attacking is using “human shields.”

The prohibition on shielding is distinct from the requirement that warring parties take “constant care” to protect civilians during the conduct of military operations by, among other things, taking all feasible precautions to avoid locating military forces in densely populated areas.⁴⁹ Likewise, shielding by a defending force does not permit the attacker to ignore the civilian presence; constant care must be taken to minimize harm to civilians and attacks may be neither indiscriminate nor cause disproportionate civilian loss.

Arghandab District in Kandahar Province

In the summer of 2007, four civilians were killed by US airstrikes and tank fire during a firefight with Taliban insurgents in a small village in Arghandab, in Kandahar province.⁵⁰

⁴⁸ Human Rights Watch, *Lebanon – Why They Died: Civilian Casualties in Lebanon during the 2006 War*, vol. 19, no. 5(E), September 2007, http://hrw.org/reports/2007/lebanon0907/6.htm#_ftn52#_ftn52.

⁴⁹ *Ibid.*

⁵⁰ Human Rights Watch interview with an Afghan villager (name withheld), July 29, 2007. The farmer was illiterate and was unsure of the date.

According to local residents, five days before the fighting, Taliban forces occupied the village. They forced villagers to provide food and shelter, and would not permit them to leave. Taliban fighters spent the next three days preparing firing positions in homes and trenches around houses, and forced villagers to remain indoors. Villagers pleaded to be allowed to leave. A farmer told Human Rights Watch, “We told them that we are Muslims and that their presence in my house would kill us. They didn’t listen to us and now my two sons and my two brothers are dead.”⁵¹

On the fourth day a small US mechanized force entered the village and was attacked by Taliban insurgents firing from homes. After a protracted gun battle, the US forces called in tactical airstrikes. The farmer told Human Rights Watch:

The Taliban came to my house and shot at the Americans from my house. The Americans believed that my house was a Taliban house. The Americans then dropped bombs near to my house because of the Taliban and two of my brothers were killed. The Taliban kept firing from my house and then an American tank fired again, killing my sons. The Taliban ran away leaving my family dead and my house destroyed.⁵²

Chora District in Uruzgan Province

On June 16, 2007, Taliban forces attacked and occupied several villages in Chora district, Uruzgan province. NATO and Afghan forces responded in a fierce battle that lasted until June 19, 2007. Numerous civilians reportedly died in the fighting.

Villagers told Human Rights Watch that when the Taliban entered the villages they told the villagers they had to join in their fight against Afghan government forces or they would be killed. In the village of Sarab the Taliban reportedly executed approximately 30 civilians both for not joining in the fight and as a message to the local population. At least 12 civilians fled the village and fought with Afghan and NATO forces against the Taliban during the ensuing battle. One eyewitness told

⁵¹ Ibid.

⁵² Ibid.

Human Rights Watch that his mother-in-law's hands were first cut off and she was then set on fire. His brother-in-law and brother were also killed, and other villagers were also set on fire. His son was taken by the Taliban, tortured, and set on fire, but was able to escape and survived. The Taliban forced villagers to house and feed them, and would not allow them to leave the homes for fear of allowing NATO forces to learn of the specific locations of Taliban fighters. The eyewitness said that during the battle the Taliban forced people to remain in their homes. NATO aircraft bombed the homes from which the Taliban were firing, causing the deaths of at least 15 civilians in his village. He estimated that at least 30 civilians were killed in the battle.⁵³

The battle spread and a resident of the nearby village of Qala-e-Ragh said his village was attacked by the Taliban on June 16. The Taliban shelled the village, but the villagers put up armed resistance until learning from Afghan forces that NATO was going to counterattack with airstrikes, at which point they took shelter. One hour later, NATO aircraft bombed the village. Taliban forces, apparently realizing that the villagers must have received advance warning of the air attack, beheaded two villagers and shot another one. On June 19, Afghan forces told the residents they could return to their village but the Taliban resumed their attack later that same day, and NATO bombings killed another three civilians and injured five.

A resident of another village in Chora district told Human Rights Watch that during the same battle his village was caught in the crossfire between the Taliban and NATO forces on June 19. Taliban fighters came to his village and told the residents they had to join in the fight against government and NATO forces or they would be killed. The Taliban deployed in the homes but would not allow villagers to leave. The resident believed the Taliban wanted to have NATO attacks kill civilians so the village elders would turn away from NATO and support the Taliban. He said bombs fell on civilian homes between 11 p.m. and 1 a.m. on June 17, without NATO giving warning so they could leave. He said that 13 members of his family were killed in the bombing and he was the sole survivor.⁵⁴

⁵³ Human Rights Watch telephone interview with a witness to the battle in Chora District, August 2007.

⁵⁴ Human Rights Watch interview with survivor (name withheld), Kabul, July 25, 2007.

Zhare District in Kandahar Province

On June 10, 2007, US airstrikes on Zhare District in Kandahar Province resulted in at least eight civilian deaths.

Villagers told Human Rights Watch that in the days before the attack numerous Taliban insurgents arrived in the village. They forced the villagers to shelter their fighters and feed them. When US ground forces were in the vicinity, Taliban fighters fired at them from occupied civilian homes. The US forces responded with airstrikes, destroying several homes and killing both Taliban fighters and villagers.

One farmer told Human Rights Watch:

The Taliban came to my village and forced us to stay close to them. The Taliban then came into my house and forced me and my family to stay with them. They then started firing their weapons at the Americans. The Americans then bombed my village. People in my village were getting killed because the Taliban would not let us leave.⁵⁵

Once the Taliban withdrew, the villagers fled their homes to the surrounding countryside for fear of being caught in further airstrikes. The same farmer told Human Rights Watch: “We fled after the Taliban left my house because we knew the Americans would bomb my house. They did. My house was completely destroyed because of the Taliban.” The farmer’s father, mother, and sons were all killed in the attack.

⁵⁵ Human Rights Watch interview with Afghan farmer (name withheld), Kabul, July 29, 2007.

V. Airstrikes: Policies for their Use, Problems in Implementation

Whether civilian casualties result from aerial bombing in Afghanistan seems to depend more than anything else on whether the airstrike was planned or was an unplanned strike in rapid response to an evolving military situation on the ground. When aerial bombing is planned, mostly against suspected Taliban targets, US and NATO forces in Afghanistan have had a very good record of minimizing harm to civilians. In 2008, no planned airstrikes appear to have resulted in civilian casualties. In 2007, it appears that only one planned airstrike resulted in civilian casualties.⁵⁶ In 2006, at least one attack resulting in civilian deaths may have been a planned attack.⁵⁷

Planned attacks allow the US and NATO to use civilian risk mitigation procedures, including formal risk estimates to model and minimize civilian casualties. This includes a “pattern of life analysis,” which looks for civilians in the area for hours or days before an attack using “eyes on the target” ranging from ground observers to technical reconnaissance. According to NATO Judge Advocate General (JAG) staff, the US and NATO also require positive visual identification of the target during a planned strike, allowing the pilot to look for civilians and call off an attack based on those observations. Planned strikes also allow the US and NATO to develop a target over time, thereby using far more detailed intelligence to understand who is and is not in the target area.⁵⁸

US and NATO forces have been far more likely to cause civilian casualties in unplanned situations, normally when ground troops call in airstrikes as tactical support when under attack from insurgent forces, or to target insurgent forces on the move. The vast majority of known civilian deaths and injuries from airstrikes in

⁵⁶ On June 18, 2007, seven Afghan civilians were killed in a planned strike on a madrassa (Islamic school) in Paktika province aimed at insurgents. Because this mission does not show up in the daily summaries provided by the US Air Force, military sources cast doubt on this having been an airstrike, with some suggesting it was a rocket attack using the Guided Multiple Launch Rocket System.

⁵⁷ On December 8, 2006, four civilians were killed in an airstrike during operation “Western Hammer.” The bombing of the house they occupied may have been a planned strike, but it is unclear.

⁵⁸ Human Rights Watch interviews with NATO JAG staff, Kabul, July 23, 2007.

Afghanistan come in these situations. Often these situations involve “Troops in Contact” (TIC). A TIC is an unplanned engagement occurring when US or NATO ground forces unexpectedly come into contact with insurgent forces. According to US and UK operational planners, in such situations, the US or NATO forces are usually instructed to withdraw from the area without any airstrikes being carried out due to concerns for civilian casualties; airstrikes are most often carried out when withdrawal is not an option, as when troops are ambushed and find their retreat blocked.⁵⁹ A number of the cases described here, however, suggest that airstrikes sometimes are used in other circumstances, as when forces are pursuing insurgents and are uncertain about the extent of civilian presence in the area. But even in TIC situations US and NATO forces sometimes have gone beyond close air support for troops in danger. A number of battles (such as Chora, described above) began as TICs but lasted for several hours or days, with airstrikes used to support small troop numbers on the ground resulting in civilian deaths. This suggests that the US is not taking all feasible precautions during prolonged battles, including using adequate forces to minimize civilian harm, employing low-collateral damage bombs, and positively identifying the locations of combatants and civilians.

While US planned airstrikes require both positive identification of the target and a “pattern of life” assessment to determine if civilians are in the area, TICs use far fewer checks to determine if there is a civilian presence. The tactical collateral damage assessment performed by the Joint Terminal Attack Controller (JTAC), a service member qualified in directing airstrikes on the ground is one of the only checks done, and, of necessity, such assessments often are made under the stress of hostile fire.

A senior US military lawyer told Human Rights Watch, “We will never engage [with airstrikes] when we know civilians are in a compound. Problems happen when we don’t know.”⁶⁰ According to Colonel David Diner, a US Judge Advocate General, US planes have dropped bombs when they did not know for certain who was in a compound. So long as a valid military target is identified, such attacks are not unlawful on their face, but they raise concerns about whether “all feasible

⁵⁹ Ibid.

⁶⁰ Ibid.

precautions” have been taken to minimize civilian loss, as required by the laws of war.⁶¹

An important factor contributing to civilian casualties is the US dependence on Special Operations Forces, as highlighted by the Sangin airstrikes, discussed above, that resulted in at least 21 civilian deaths. Because such forces typically operate in small groups and are relatively lightly armed when conducting counter-insurgency missions, they often require rapid support in the form of airstrikes when confronted with superior numbers of insurgent fighters. Several NATO officials told Human Rights Watch of their grave concerns with the lack of coordination between NATO and US Special Operations Forces on counter-insurgency missions. NATO forces have complained that OEF operations in their regions are not communicated to them, but civilian casualties from airstrikes called in by OEF forces are left for them to address.

Another problem may be the differing missions and Rules Of Engagement (ROE) between US and NATO forces. When on offensive operations, both NATO and US forces use the same ROE. However, when on the defensive they use different ROEs, the US rules allowing for use of force—including airstrikes—in a broader range of situations.⁶² Offensive operations are defined here as planned engagements while defensive operations range from TICs to responding to perceived threats.

NATO and the US both require “hostile intent” for aerial munitions to be employed to defend their forces. NATO defines “hostile intent” as “manifest and overwhelming force.” The US ROE defines hostile intent as “the threat of the imminent use of force,”⁶³ a much lower threshold than NATO for employing airstrikes, permitting anticipatory self-defense. According to a senior US general in Afghanistan: “For the United States, ‘hostile intent’ is the use of imminent force. One difference is the US says imminent does not have to mean instantaneous. US troops have a different standard [than NATO].”⁶⁴

⁶¹ Ibid.

⁶² Briefing from a US Army general who asked for anonymity, Bagram Air Force Base, July 30, 2007.

⁶³ Ibid.

⁶⁴ Ibid.

This subjective definition significantly lowers the bar for US forces to call in airstrikes (or other forms of support, such as ground-based ordinance), allowing US forces, even those under NATO control, to use airstrikes in circumstances in which their NATO allies cannot. In Afghanistan, a nation where the civilian population is often armed, and where insurgents do not wear any defining uniform or insignia that would differentiate them from civilians, the expansive ROE is likely to lead to mistaken attacks against civilians.

This ROE “conflict” creates an imbalance in response options that is of concern to some NATO officials, who believe the US relies too much on airstrikes. One ambassador interviewed in Kabul told HRW, “Some Afghans think the US is worse than the Russians [who occupied Afghanistan from 1979 until 1989]. The problem is in the TIC they call in air support in a hurry, and special forces go too far on the ground and call in airstrikes too often. There is a cultural problem with the US – they are cowboys.”⁶⁵ In addition to the operational confusion this may cause forces on the ground, it also creates the impression that US forces are less concerned about protecting civilians than their NATO counterparts.

A top-ranking US commander, speaking to Human Rights Watch on condition of anonymity because he was not authorized to speak to the organization, defended the US use of the more elastic definition of hostile intent: “You want to give the commander on the ground flexibility within the laws of armed conflict.” He was not concerned with the separate US and NATO ROEs, saying, “The ISAF [NATO] definition has no teeth as all countries have their own standards.”⁶⁶

It is unsurprising that civilian casualties are higher in TIC situations. These ground actions between insurgent and US or NATO forces often only occur in the first place because of inadequate intelligence about the presence of insurgents. This may come about because of poor communication with local residents or because of attempts by the insurgents to draw coalition forces into an unanticipated ambush, since the element of surprise is always a prominent tactic of insurgent movements. These

⁶⁵ Human Rights Watch interview with an ambassador (name and country withheld), Kabul, July 22, 2007.

⁶⁶ Ibid.; Briefing from a US Army general (name withheld), Bagram Air Force Base, July 30, 2007.

intelligence problems become exacerbated when airstrikes are called in to help extricate US or NATO forces or target insurgents on the run.

NATO lawyers involved in airstrikes told Human Rights Watch that in some TIC situations in which airstrikes have been called in, US and NATO forces did not know who was in the area they were bombing. Civilian casualties increase when forces on the ground do not have a clear picture of the location and number of combatants and civilians in an area. Such gaps in knowledge, when combined with fear and the “fog of war” at times mean that forces resort to airstrikes when options less likely to cause civilian loss are available. In winning the tactical battle quickly on the ground with bombs, US and NATO forces risk losing the strategic battle for the support of the population, essential in counter-insurgency operations.

In July 2007, following public outrage and President Karzai’s criticisms, NATO announced that it would change its tactics to reduce civilian casualties. The changes included using smaller munitions in bombs, suspending attacks when civilians might be harmed, and letting the Afghan National Army conduct house-to-house searches. NATO’s Secretary General Jaap de Hoop Schaeffer said NATO “was working with weapons load on aircraft to reduce collateral damage.”⁶⁷

⁶⁷ Mark Tran, “NATO changes tactics to avoid Afghan civilian deaths,” *The Guardian Unlimited*, July 30, 2007.

VI. Legal Standards

The parties to the armed conflict in Afghanistan are bound by international humanitarian law (the laws of war). These include the forces of the Afghan government, NATO, the US and other coalition members, and the Taliban and other insurgent groups.

International humanitarian law imposes upon warring parties legal obligations to reduce unnecessary suffering and to protect civilians and other non-combatants. It is applicable to all situations of armed conflict, without regard to whether the conflict itself is legal or illegal under international law, and whether those fighting are regular armies or non-state armed groups. Individuals who commit serious violations of international humanitarian law with criminal intent can be prosecuted for war crimes before national or international courts.

Under International humanitarian law, because the conflict in Afghanistan is between states and non-state armed groups, it is considered a non-international armed conflict. The First Additional Protocol of 1977 to the Geneva Conventions (Protocol I),⁶⁸ which provides the most detailed and current codification of the conduct of hostilities during international armed conflicts, is thus not directly applicable to the fighting in Afghanistan. Nevertheless, many provisions of Protocol I have been recognized by states, including the United States, to be reflective of customary international law.⁶⁹ Thus the legal analysis applied in this report cites Protocol I as an important codification of customary law rather than as a treaty obligation. Customary humanitarian law as it relates to the fundamental principles concerning the conduct of hostilities is now recognized as largely the same whether it is applied to an international or a non-international armed conflict.⁷⁰

⁶⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, 1125 U.N.T.S. 3, entered into force December 7, 1978.

⁶⁹ See, for example, Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, (Cambridge: Cambridge University Press, 2004) pp. 10-11.

⁷⁰ One important difference relates to reprisals, which are permitted in very limited circumstances during international armed conflicts but not in non-international armed conflicts.

The principle of distinction is the keystone of the law regulating conduct of hostilities. It requires parties to a conflict to distinguish at all times between combatants and civilians. Operations may only be directed against military objectives, and civilians and civilian objects may not be deliberately attacked.⁷¹

Military objectives are members of the armed forces, other persons taking a direct part in hostilities for the duration of their participation, and “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”⁷²

International humanitarian law also prohibits indiscriminate attacks. These are attacks of a nature to strike military objectives and civilians or civilian objects without distinction.⁷³ Examples of indiscriminate attacks are those that are not directed at a specific military objective or that use means that cannot be directed at a specific military objective.⁷⁴

Also prohibited are attacks that violate the principle of proportionality because they are expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects that would be excessive compared to the concrete and direct military advantage anticipated from the attack.⁷⁵

In the conduct of military operations, constant care must be taken to spare the civilian population and civilian objects from the effects of hostilities. Parties to a conflict are therefore required to take precautionary measures with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians, and damage to civilian objects. These precautions include:

- Doing everything feasible to verify that the objects to be attacked are military objectives and not civilians or civilian objects or subject to special protection.

⁷¹ Protocol I, art. 48.

⁷² *Ibid.*, arts. 51(3), 52.

⁷³ *Ibid.*, art. 51(4).

⁷⁴ *Ibid.*, art. 51(4)(a,b).

⁷⁵ *Ibid.*, art. 51(5)(b).

- Taking all feasible precautions in the choice of means and methods of warfare.
- When circumstances permit, giving effective advance warning of attacks which may affect the civilian population.
- When a choice is possible between several military objectives for obtaining the same military advantage, carrying out the attack that may be expected to cause the least danger to civilian lives and civilian objects.⁷⁶

International humanitarian law does not prohibit fighting in urban or residential areas, although the presence of civilians places greater obligations on warring parties to take steps to minimize harm to civilians. These include:

- Avoiding locating military objectives within or near densely populated areas.
- Endeavoring to remove the civilian population from the vicinity of military objectives.⁷⁷

As noted at the start of the chapter above on Taliban “shielding,” international humanitarian law prohibits belligerents from using civilians to shield military objectives or military operations from attack. “Shielding” refers to intentionally using the presence of civilians to render certain points, areas, or military forces immune from military attack.⁷⁸ Taking over a family’s house and not permitting the family to leave for safety so as to deter the enemy from attacking is a simple example of using “human shields.” The prohibition on shielding is distinct from the requirement that all warring parties take “constant care” to protect civilians during the conduct of military operations.⁷⁹

⁷⁶ Ibid., art. 51.

⁷⁷ Ibid., arts. 57, 58.

⁷⁸ Protocol I, art. 57(7).

⁷⁹ Protocol I, Arts. 57, 58.

VII. Recommendations

To the United States and NATO:

- Institute immediate and transparent investigations when civilians are killed in airstrikes and publicly report the results when investigations are complete.
- Create an officer-level position or office charged with monitoring, investigating, and publicly reporting on all incidents of civilian casualties that works directly with the Afghan government to ensure accurate accountability.
- Provide accurate information on civilian casualties in military operations. Accept responsibility for civilian deaths and injuries as soon as possible, while refraining from denying responsibility for civilian loss until an after-battle investigation can be conducted.
- Take responsibility for civilian casualties when that is warranted and take appropriate disciplinary or criminal action against those responsible.
- Create an independent group of experts in partnership with the Afghan government to investigate civilian deaths in combat operations.
- Ensure air attacks comply with the legal obligation to take all feasible precautions to minimize harm to the civilian population.
- Set up liaison officers to clarify chains of command to improve communications between different forces such as between Operation Enduring Freedom (OEF) and NATO special operations personnel and with Afghan National Army and Afghan police forces.
- Increase the size of the current liaison office between NATO and US Special Operations Forces.
- Provide timely and adequate compensation to victims of airstrikes. Create a unitary system that includes both OEF and NATO forces. Consider a system administered by UNAMA (United Nations Assistance Mission to Afghanistan) and monitored by the AIHRC (Afghanistan Independent Human Rights Commission). Any such effort should maintain its own funding stream from

contributing states so that it does not compete with development or other projects and no casualty falls through the cracks.⁸⁰

To the United States:

- Adopt measures to reduce the likelihood of civilian casualties in “Troops in Contact” (TIC) situations. Airstrikes should not be carried out without an adequate Collateral Damage Estimate (CDE); trained Joint Terminal Air Controllers (JTACs) should be involved in all TIC airstrikes; and there should be no strikes in densely populated areas unless the intelligence is highly reliable, the target has been visually identified.
- Thoroughly investigate the collateral damage and battle damage assessment processes to determine how they can be improved to reduce civilian casualties, and implement appropriate changes.
- Use precision-guided low-collateral-damage munitions whenever possible, especially on targets in populated areas.
- Adopt ROE with NATO that are consistent to ensure that differences in ROE do not result in unnecessary civilian casualties.
- Ensure JTAC training regarding civilian casualties and field Collateral Damage Estimates are adequate.
- Ensure all strike aircraft have low-collateral-damage bombs available at all times to minimize the potential for collateral damage.
- Work with NATO to develop a uniform post-incident humanitarian assistance fund.

⁸⁰ Two such compensation programs already exist and barring an ISAF-wide claims system, they should be robustly supported by NATO member states. At the end of 2006, the Netherlands helped create the Post-Operations Humanitarian Relief Fund (POHRF) to provide emergency relief following ISAF military operations that affect civilians. It is managed by COM ISAF and supported through voluntary country contributions. As of March 2008, Australia (€315,375), Bulgaria (€35,000), the Czech Republic (€178,221), Estonia (€124,895), Lithuania (€28,962), Netherlands (€300,000), Iceland (€100,000), Finland (€100,000), and the United States (US\$2 million) had contributed. The funds can be requested by commanders immediately before or after an operation, but they must be linked to losses caused by an ISAF operation. The United States created the Afghan Civilian Assistance Program (ACAP), a humanitarian aid program that provides long-term livelihood assistance for families who have suffered losses due to international troop activities, including indirect losses from, for example, a suicide bomb targeting international troops. Since 2003, the US Congress has donated US\$34 million, including a US\$10 million appropriation in December 2007. Both of these programs would be much more effective if they enjoyed broader support. Seventeen NATO members have thus far not donated to POHRF and only the United States supports ACAP.

To the government of Afghanistan:

- Create a governmental body to investigate civilian casualties in cooperation with an independent group of experts with the capacity to perform these investigations in accordance with international norms.
- Provide Afghan liaison personnel between NATO/US forces on the ground and their Afghan sources to minimize confusion.

To the Taliban, al-Qaeda, and other opposition armed groups:

- Cease using civilians as shields.
- Take all feasible precautions to protect civilians from the effects of attack, including avoiding placing military objectives within or near densely populated areas.
- Stop feigning civilian status during attacks. Members of the Taliban and other insurgent groups should not pretend to be civilians to gain military advantage while carrying out attacks. Feigning civilian status puts civilians at heightened risk of attack during hostilities. Anti-government forces who seek to carry out attacks on military targets can use “ruses of war,” including camouflage, decoys, mock operations, and misinformation, but they must not present themselves as civilians.
- Affirm commitments to follow international humanitarian law. Anti-government forces should publicly affirm their commitment to follow established rules of the laws of war, including prohibitions against targeting civilians, using indiscriminate and disproportionate attacks, attacking with the primary intent to cause terror among civilians, and feigning civilian status to gain a military advantage.

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