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Lost In Transition: As U.S. Transfers Power In Afghanistan, Accountability For Civilian Casualties Is Unresolved

By Joshua Hersh

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KABUL - In May, after an errant NATO airstrike on a remote village in eastern Afghanistan killed a family of eight civilians in their home, the top American commander found himself in the uncomfortable position of being called into the office of President Hamid Karzai.

The issue of civilian casualties continues to be a major impediment to the mission of the U.S.-led coalition, known as the International Security Assistance Force (ISAF), which has directed security and combat operations in Afghanistan since 2001. After all, the success of the war is largely contingent on the support of Afghans: killing civilians outrages the population, and Karzai is known to take any civilian casualties, even incidental ones, to heart. When Gen. John R. Allen arrived at the presidential palace that day, he was surprised to find that Karzai had invited a phalanx of reporters to await him.

Faced with the prospect of having to evade difficult questions about a military operation gone catastrophically wrong, Allen and ISAF chose the opposite tack: they apologized profusely and took full responsibility, promising a thorough investigation. “I remain committed to eliminating civilian casualties,” Allen told the president when they met, according to a statement that was later released by the ISAF press office. “It is my highest priority.”

That same month, an Afghan journalist went to a press conference at ISAF headquarters intending to ask a question about night raids, another piece of the Western military mission that is a regular source of both controversy and civilian casualties. In a night raid -- the military prefers to call them “night operations” -- a team of commandos swoop in to capture or kill suspected insurgents while they sleep in their homes. ISAF officials consider the missions a critical component of their counterinsurgency strategy, but they also come at a cost: over the past two years, almost 150 civilians have been killed by pro-government forces in the course of such operations, according to the United Nations.

But when Saboor Hashimi, a Kabul-based reporter for the non-profit Internews Network, asked his question, he was told that under a new policy, ISAF would no longer answer general questions about the raids.

"They said I have to ask the Afghans," Hashimi told The Huffington Post, as he walked out of the headquarters that day.

As the U.S. prepares to conclude its combat operations in Afghanistan and turn over control of military operations to the Afghans, the divergent experiences are instructive of a new trend in the ongoing transition of power -- one that is deeply worrisome to humanitarian organizations in the country.

Unlike airstrikes, night raids are no longer formally under the auspices of the Western coalition. In April, as part of the U.S. military's ongoing transfer of power to the Afghans, authority for approving the missions was transitioned to the Afghan Ministry of Defense.

As a result, a spokesman for ISAF confirmed, unless the question specifically refers to actions by their forces, ISAF will no longer discuss the raids with the media.

"ISAF has been trying for a long time to figure out how to avoid the blame-game on civilian casualties," said Erica Gaston, an Afghanistan analyst with the congressionally funded think-tank U.S. Institute of Peace, who has written extensively on night raids and how the U.S. military manages civilian casualties. "Their latest innovation is to Afghanize the problem, by claiming Afghan authorization for missions that result in civilian casualties in the hope of provoking far less outcry. To be fair, they are transitioning gradually to Afghan control of many missions, but some of what is going on is just strategic communications."

The night raid scenario is particularly troubling because while American accountability for the raids may be ending, American participation in them hasn't. U.S. commandos continue to be closely involved with many of the operations, and U.S. intelligence usually dictates which homes are targeted. As Wired noted shortly after the deal over night-raid authority was inked, American commandos can even conduct a night raid first, and seek the Afghan military's permission later. The transition of public accountability seems to have gotten ahead of the transition itself.

Approaching the U.S. withdrawal of most combat troops by the end of 2014, humanitarian advocates fear that "transition," for all its inevitability, may also be providing cover for Western

officials to sidestep their own responsibilities -- accountability, transparency -- for their least popular operations, many of which are likely to continue for years to come.

"I don't take too kindly the suggestions from ISAF that 'It's not our responsibility anymore,'" said Daniel Tyler, a civilian protection specialist with the Norwegian Refugee Council in Kabul. "I think at the moment it's more their responsibility than ever. They genuinely have a very limited timeframe in which an enormous amount needs to be achieved."

'NOT WHERE WE ARE YET'

One place where responsibility for civilian casualties seems to be evaporating is perhaps the place where it is needed most. Two years ago, Western military officials set up a five-person unit within ISAF known as the civilian casualty mitigation team. Using computer databases and a fine-toothed study of civilian casualty incidents, the unit was designed help analyze what actions are prone to cause such events, and help avoid them. The team would also reach out to NGOs and members of Afghan civil society, in order to hear their suggestions on how to better manage relations with the people, and to help spread the results of their investigations.

Many human rights groups credit the efforts of the unit with helping to bring civilian casualty rates to a new low this year.

A key part of ISAF's mission at this point is to help train the Afghan National Security Forces, and prepare the Ministries of Defense and Interior -- the army and the police -- to handle security in the country on their own. So far so good: Afghan security forces have taken over the land where 75 percent of the population lives.

But at the key Afghan ministries, the one piece of the civilian casualty puzzle that has demonstrated results is still absent: there is no mechanism like ISAF's mitigation team.

"The Afghans are far from ready to assume control for civilian casualty monitoring in the way that the humanitarian and human rights community would like them to be," said Tyler, the civilian protection specialist, echoing the view of several experts interviewed for this article.

ISAF officials say they are aware of this shortcoming, but when humanitarian groups have brought it up, they have received another version of the answer given to the journalist asking about night raids: it's out of our hands.

"A lot of the language at those meetings has been ISAF holding hands up, saying, 'There's no reason for coming to us, you need to be dialoguing with the Afghans on this,'" said one aid worker who participated in the sessions and asked to remain anonymous to discuss private conversations. Two other participants in the meeting corroborated this account.

The aid worker added that NGOs tried to communicate with Afghan authorities, but without the intervention of ISAF found it virtually impossible. "It wasn't until extremely recently, and at the urging of all of us, that we were even able to identify some counterpart to dialogue with on the ANSF side," the aid worker said.

In an interview, Col. Anthony Choi, the newly appointed director of ISAF's civilian casualty mitigation team, acknowledged that the Afghan government's capacity for monitoring and mitigating civilian casualties "is not where we are yet," but suggested that the problem was one that ISAF could do little about.

"Progress has been made, and hopefully the government of Afghanistan will keep this going forward," Choi said.

This mindset is not good enough, said Trevor Keck, a Kabul-based researcher with the civilian protection organization CIVIC.

“We're often told [the welfare of civilians] is the responsibility of the Afghans,” Keck said. “Yes, Afghan security forces are ultimately responsible for their own conduct, but the conduct of Afghan forces during this withdrawal period will reflect upon NATO's mission -- for better or worse."

He added, "During this withdrawal, international forces have a duty to make sure the forces they're funding, training and equipping are protecting, not harming, the Afghan people.”

THE FOG OF TRANSITION

Gen. Allen has described transition as the “linchpin” of America’s military strategy in Afghanistan, and needless to say, senior ISAF officials don’t view it in quite the same way as the aid workers do.

"It's not a relinquishing of responsibility by ISAF, it is a growing acceptance of responsibility by Afghans, which if you like is simply a reality of transition," said Australian Brigadier Roger Noble, the deputy chief of staff for operations at ISAF, in an interview in Kabul. "What is transition anyway? Transition is the acceptance of responsibility by the Afghans, and with that acceptance comes responsibility for when things go wrong."

One final complication, however, is that transition occurs gradually, no matter what the paperwork says. In the fog of transition, the already hard task of determining who is responsible when an incident occurs -- a civilian caught in a crossfire, a child shot during a night raid -- has become even harder.

Until this year, all of the military missions in which something could go wrong were at least nominally under one command. Even then, accounting for misdeeds could prove discouragingly tough. In its annual reports on civilian casualties, for instance, the UN Assistance Mission in Afghanistan (UNAMA) repeatedly warns that they "may be under-reporting night search operations involving civilian casualties" because so many of the missions are classified, and because of the wide variety of nationalities involved.

Now, however, an operation could fall under any of several permutations of command, ever evolving, and determining culpability has become something of a philosophical exercise. A vehicle in a military convoy that strikes a young girl could be an American vehicle in a part of

the country that is formally Afghan-led, or it could be an Afghan vehicle travelling in an ISAF convoy, or it could an all-Afghan convoy on a mission guided by American intelligence. Who's to say where the blame ought to fall?

Col. Choi told HuffPost that in any of these scenarios, ISAF would conduct a preliminary investigation to determine if ISAF personnel might have been involved. But he and other officials were hard to pin down on the definition of "involved."

"Our position is if it's an incident we caused, then we are responsible for it," Choi said, finally settling on an answer.

In practice, however, a lot can fall through the cracks. When HuffPost asked Maj. Gen. Afzal Aman, the chief of staff for operations at the Afghan Ministry of Defense who bears responsibility for civilian casualties that occur during Afghan-led operations, he replied definitively: "The government of Afghanistan is responsible for this." But he also said -- as did human rights monitors and ISAF officials -- that in those situations it will often be the Americans who end up paying the monetary compensation packages to the families of the victims.

One United Nations official in Kabul who spoke on the condition of anonymity told HuffPost that assigning responsibility for misdeeds has become downright contortionist: In a night raid, American forces might be involved in the planning and operation of the mission, but if they do not actually enter the home in which a civilian is later injured, they might consider themselves alleviated from any fault. "Their part ends at the threshold of the home," the official said.

Mohammad Shafiq Noori, an investigator with the Afghanistan Independent Human Rights Commission, says that as long as there are Western troops in the country conducting missions that the public associates with foreign militaries -- and as long as the mission still relies on the public's support -- it shouldn't make any difference who is in charge of the operation on paper.

"Always they say it was the Americans, always they say it was the international military force, no matter who did the operation," Noori said. "It is still the responsibility of the U.S. and the international community to ensure that the Afghan security forces are using their training the right way."