

Canada, Afghanistan and Human Rights



A KAIROS Discussion Paper
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Canada, Afghanistan and Human Rights A KAIROS Paper for Discussion

Note: The following paper does not represent policy positions of KAIROS. Rather, it is offered as a discussion document for KAIROS members and local groups to use in their own deliberations about the ethical and human rights dimensions of the Canadian military role in Afghanistan.

December 2007

The first question of ethics is not ‘What should I do?’ but ‘What is going on?’

H. Richard Niebuhr, American theologian

The Canadian military has been in Afghanistan since October 2001, serving under various mandates. The war in Afghanistan has become a lightning rod for public debate, and will most likely become an election issue over the coming year, especially as the nature of the military role has shifted from “nation-building” to counter-insurgency involving direct combat.

The US led “war on terror” has been a focus of KAIROS human rights work since it was launched in response to the terrorist attacks in New York and Washington on September 11, 2001. While KAIROS does not have a formal policy position on the war on terror, it is clear from discussion papers, forums, and other engagements that there are deep concerns regarding human rights violations by numerous countries, using the war on terror as justification.

As Canada’s involvement in Afghanistan has changed and deepened, the KAIROS International Human Rights Program Committee (IHR PC) held several discussions on Afghanistan in the context of the need to uphold human rights and work for a just peace. Given our concerns around the concept of a “war on terror”, we were compelled to examine more closely the decision by the Canadian government to participate in this war.

In November 2006 the KAIROS board, acting on a recommendation from the IHR PC, asked staff to “explore human rights issues arising from Canadian involvement in Afghanistan, with a view to developing an appropriate KAIROS position.” The development of this discussion paper is part of that process.

1. Some Background

1.1 History of Canada’s involvement

More than six years after the shocking attacks of September 11, 2001, it is easy to forget the political whirlwinds that caught up many governments at the time. US President George Bush’s challenge – “You’re either with us or against us in the fight against terror” – exerted enormous pressure on allies such as Canada to demonstrate immediate allegiance to the post-September 11 objectives of the United States.

Only days after the attacks on New York and Washington, Canada authorized more than 100 Canadian Forces members serving on military exchange programs with the US to participate in an attack on Afghanistan. These soldiers joined other Canadian Forces already serving on four ships sent to the Persian Gulf in late 2001. Weeks later, then Prime Minister Jean Chrétien announced the addition of a battle group of Canadian forces to be sent to Kandahar for combat duty and airfield security as part of the US-led coalition in a military campaign against Osama bin Laden and the Taliban government. Called "Operation Enduring Freedom" (OEF), the US justified the war as a defensive action to protect its own citizens from further attacks such as occurred on September 11.

While there were debates at the UN Security Council, most US international partners, including Canada, agreed with the US position and the war was therefore accorded legitimacy under the UN's Charter.¹ With the establishment of ISAF immediately after the US invasion, NATO's part in the war effort had gained legitimacy.

In December, 2001, international and Afghan stakeholders signed the Bonn Agreement intended to re-create political stability in Afghanistan following the the invasion. Since no nationally-agreed-upon government had existed in Afghanistan since 1979, it was felt necessary to have a transition period before a permanent government was established.

In August 2002, Canada joined the UN-authorized International Security Assistance Force (ISAF) established to meet a requirement of the internationally brokered deal in Bonn, while maintaining some forces under US command in OEF. The Canadian ISAF contingent assisted in maintaining security in the capital, Kabul, and the region around it.

While the original commitment was to last only until October 2003, in February 2003 the Liberal government announced that Canada's military mission would be extended. Many analysts saw the announcement as a shrewd tactic to avoid Canadian participation in the pending US invasion of Iraq, which was launched the following month.

In 2005, Afghans held widely criticized parliamentary and provincial elections, lending the transitional government of Hamid Karzai a semblance of legitimacy.² In early 2006, 66 states, 15 international organizations and the newly elected government of Afghanistan adopted the Afghanistan Compact, a political agreement between the international community and the government of Afghanistan setting out priorities and plans for development in the following five years. Donor countries, including Canada, and international institutions promised to accompany this process, including donating a total of US \$10.5 billion.

In May 2006, the newly-elected minority Conservative government held a snap "advisory" vote in parliament to extend the Canadian military mission to February 2009. The vote narrowly passed with the help of 30 Official Opposition Liberal MPs (the Bloc Québécois and the NDP voted against it).

In the summer of 2006, the remainder of Canada's military forces in Afghanistan were transferred from the US-led OEF to the UN-mandated, NATO-implemented International Security Assistance Force (ISAF). While the change in mandate should have been accompanied by a careful review of strategy and objectives – the ISAF was to be an international protection force for the local population while the OEF was essentially a US retaliation mission – Canada's defence minister indicated that Canada's role would remain the same.

Meanwhile, Canadian troops were deployed to Kandahar in the southern part of Afghanistan and were drawn increasingly into counter-insurgency operations as clashes with Taliban forces grew more frequent and deadly. Afghan civilian casualties, some at the hands of Canadian troops, grew in number, as did the deaths of Canadian soldiers. Canadian led offensive operations were justified as necessary to protect local Afghan civilians, although this frequently resulted in wide scale displacement of Afghans and destruction of their properties and farms.

At the time of this paper, December 2007, there were over 2,500 Canadian military personnel in Afghanistan.

1.2 The role of the United States

It is true that the International Security Assistance Force (ISAF) is sanctioned by the UN under Chapter VII of the UN Charter, but it is not a UN mission per se. The US plays a predominant role in shaping the operations of ISAF. It has 23,000 troops in Afghanistan (15,000 under ISAF and 8,000 under its own command for Operation Enduring Freedom – essentially a Taliban/al-Qaeda hunting operation). This is more than four times the number from Britain, the next largest contributor with 5,200 troops.

The US government's publicly stated rationale for waging war in Afghanistan at the time of the October 2001 invasion was to capture (or kill) Osama bin Laden, remove the "illegitimate" Taliban regime from power (the government of Mullah Omar had, at the time, been officially recognized by only three countries: Saudi Arabia, the United Arab Emirates, and Pakistan), and install democracy. The Taliban were swiftly removed from Kabul but have maintained a stubborn resistance in the countryside. Osama bin Laden remains at large somewhere in the world, and genuine democracy is at best, elusive.³

Hamid Karzai was chosen by the US to head up the new regime. For years, from a base in Pakistan, he had collaborated with the CIA to channel aid and arms to the *mujahideen* to fight the Soviet occupation of Afghanistan. He had also worked as a consultant to US energy giant Unocal Corporation. Karzai's government is widely perceived as corrupt and ineffective, with the legislature in part composed of drug traffickers, warlords and others who have been cited for war crimes and murder.

Five years on, Afghans remain among the most impoverished of all people, with key indicators such as child mortality, malnutrition, and education showing little or no improvement. The stated American objectives to "make Afghanistan a model of development and democracy in the region" are mostly irrelevant to US interests there and serve largely to distract from its more vital strategic objectives.

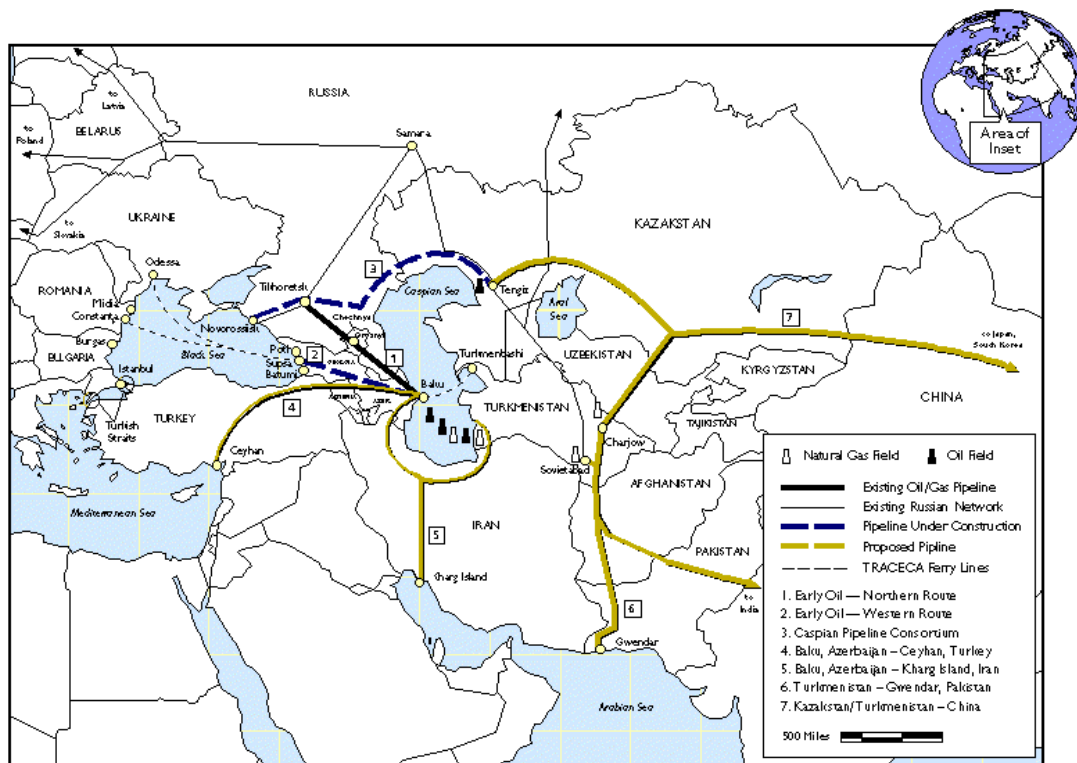
In US thinking, the Afghanistan war is scripted as part of the larger war on terror. But the war on terror itself is part of a post-Cold War new world order that has been the agenda of successive US administrations, and intensified by the George W. Bush government which includes many former energy company executives.

Key to understanding US foreign policy objectives in Afghanistan are the rich oil and gas reserves that lie north of its border. Following the collapse of the Soviet Union in the early 1990s, these energy deposits in the Caspian Sea states of Azerbaijan, Kazakhstan, Turkmenistan, and Uzbekistan attracted the acute interest of US energy companies and their political allies in the White House.

In 1998, current US Vice-President Richard Cheney, then Chief Executive Officer of oil services company Halliburton, said: "I cannot think of a time when we have had a region emerge as suddenly to become as strategically significant as the Caspian."⁴ The region may contain up to 200 billion barrels of oil and 10 trillion cubic meters of gas – enough to play a key role in diversifying US energy imports away from the increasingly unstable Middle East, and provide the growing economies of Asia with energy into the future.

The problem is that these reserves have no value for oil companies unless they can be transported to markets. The shortest route to the key markets in Asia lies through either Iran or Afghanistan/Pakistan. Labelled a member of the "axis of evil", Iran is a non-starter – the US has imposed trade sanctions with the regime. That leaves the route through Afghanistan and Pakistan, already eyed as early as 1995 by Unocal, a major US energy corporation.

When the Taliban came to power in September 1996, Unocal executives were eager to do business even going so far as to entertain top Taliban officials in Houston. The extremist and despotic policies of the Taliban seemed of little concern to US government officials, exemplified in the words of one US diplomat: "The Taliban will probably develop like the Saudis did. There will be Aramco pipelines, an emir, no parliament and lots of Sharia law. We can live with that."⁵



Oil and Natural Gas Export Infrastructure in Central Asia and the Caucasus

Sources: U.S. Department of State.

When countries are strategically significant from a commercial and resource point of view, it is important to US interests to have in place governments that provide a stable operating environment for corporations on terms that provide for maximum profits. For

several years, despite atrocious human rights violations, the Taliban received at least a passing grade from successive US administrations.

Even in the months before 9-11, the US was actively negotiating with the Taliban on the conditions for construction of the coveted pipeline. According to some observers, the US was prepared to give political recognition to the Taliban in return for acceptance of US terms.

The influence of Unocal was likely a factor in the US consideration of recognizing the Taliban regime. In 1998, a top Unocal official told a US Congressional hearing: "From the outset, we have made it clear that construction of the pipeline we have proposed across Afghanistan could not begin until a recognized government is in place that has the confidence of governments, lenders, and our company."⁶

The events of September 11 made it impossible for the US to continue on this political track. The Taliban were reportedly harbouring the principal architect of the September 11 attacks (Osama bin Laden) and US officials and corporate leaders could no longer negotiate with them. Once Taliban officials denied the request (made by Pakistan on behalf of the US) to hand over bin Laden, the die was cast: the Taliban needed to go, and the US was already prepared with a plan.⁷

But the war has not unfolded as planned. Afghanistan remains an inherently dangerous and unstable place to do business, and construction on the pipeline has not begun. The current military operations are attempting to change that but without success thus far. In the light of Afghanistan's history of fierce resistance to foreign occupiers, a protracted war for years to come seems likely.

On the other hand, with recent developments elsewhere in the region such as Azerbaijan and Iraq, NATO's ISAF interest in Afghanistan may be ebbing politically, economically, *and* militarily as the sad history of Afghanistan begins to repeat itself.

1.3 Why is Canada there?

The headline on a Canadian government website devoted to Canada's role in Afghanistan reads: "Protecting Canadians, Rebuilding Afghanistan."⁸ It goes on to say: "Canada is in Afghanistan at the request of the democratically-elected government of Afghanistan as part of a UN-sanctioned mission to help build a stable, democratic and self-sufficient society." These statements raise several questions: is Canada in Afghanistan for the security of Canadians? Or, to help Afghans?

The Canadian role in Afghanistan must be understood against the backdrop of the original US invasion that was part of the wider war on terrorism, however. In October 2001, Prime Minister Chrétien proclaimed that Canada would offer "unqualified support" for the US war. Military operations were initiated largely with US military objectives in mind. Those objectives ultimately determine the role of junior partners such as Canada, even if the Canadian government is unable, or unwilling, to admit to such a role, or has its own unrelated objectives.

Canada's close military and economic alignment with – and reliance on – the US dictates that when our southern neighbour requests support from its allies, Canada feels considerable pressure to respond.

Domestic political considerations, of course, play a role in the type of response that can be proffered. In the highly charged atmosphere after September 11, sending Canadian troops to Afghanistan was politically possible. However, when the US made the same request for a “coalition of the willing” in March 2003 when it invaded Iraq, Canadian public opinion—which included many church voices—was overwhelmingly opposed and Prime Minister Chrétien was obliged to decline participation.

Whether or not Canada is in Afghanistan at the behest of the US, it has been argued that Canada could still play a positive role for the Afghan people by providing security, protecting vulnerable populations, and promoting peace and development in the country. The suffering of the Afghan people over much of the last century at the hands of various oppressive regimes has been intolerable. The country has consistently ranked near the bottom of the UN’s Human Development Index. In the modern age, it is argued, development cannot take place without security and Canada can play a role in making the country secure for development. Having aided in removing the Taliban regime, the argument goes, we have a moral obligation to the Afghan people to ensure peace, democracy, and security into the future.

The premise of this justification for war, however, is problematic both in principle and in practice. Foreign interventions have rarely brought peace to other countries and Afghanistan is probably the most egregious example of how such undertakings have consistently made matters worse, whether at the hands of the Soviets, the Americans or others. At its best, the goal of the international intervention in Afghanistan should be the protection of vulnerable people by aiding security efforts, and to assist in creating the conditions in which Afghans can choose their own government. Unfortunately, there is such a deep distrust of outside “help” embedded in the Afghan consciousness that any foreign military intervention, regardless of intentions, appears doomed to fail.

In practice, while the Canadian government has emphasized the reconstruction and humanitarian aspects of the military mission, over time the mission has morphed into one where most resources are directed to combat operations. The Canadian Council for International Cooperation estimates the ratio of military resources to development resources at four to one. Every passing month sees a deeper entrenchment and commitment to a military solution to the conflict. Just as Canada had continued to abandon its historic commitment to diplomacy and/or development for dealing with unstable places like Afghanistan, the decision to send Leopard tanks to Afghanistan in late 2006 illustrates the deepening spiral of Canadian military involvement.⁹

While most recently Canada has turned some of its resources toward training local police forces in the South, the results of Canadian military operations until today have been typical of counter-insurgency warfare against Taliban guerrillas. In September 2006, Canadian troops in Kandahar launched “Operation Medusa”, a massive assault against Taliban fighters. While initially declared highly successful by commanders in the field in purging the region of Taliban, it was not long before the insurgents regrouped and fighting resumed.

2. Human Rights and Humanitarian Relief

2.1 Defending Human Rights in Afghanistan?

In the light of the Taliban's human rights record, reports linking bin Laden to the shocking September 11 attacks, and the Taliban's refusal to give him up, there was little public or media outcry against a military attack on Afghanistan.

Several commentators have argued that the US exaggerated reports of the human rights situation under the Taliban in order to justify its invasion.¹⁰ The truth is that the US did not need to. The plight of prisoners, women, and children, along with the forced displacement of civilian populations, was serious enough that Afghanistan under the Taliban was already a major human rights catastrophe. By the time the Taliban were overthrown, Afghans made up the largest single refugee population in the world, roughly 4.5 million people. According to reports from the UN, about 25% of the population inside the country was on the verge of starvation in the final year of Taliban rule.¹¹ Nonetheless, this situation has not significantly improved post-invasion.

Human rights organizations, including Amnesty International and Human Rights Watch, had been urging for years that something be done to address the deteriorating human rights and humanitarian situation in Afghanistan both before and during the period of Taliban rule. Neither of these organizations advocated military intervention, but they called on the UN to play a greater role in addressing a worsening situation, the type of solution that Canada has traditionally endorsed.¹²

2.2a Attacks on Civilians – NATO Forces

In general, the war since 2001 has had a serious impact on civilians. As in any war, all parties – Taliban, other insurgents, and the coalition forces – are responsible for civilian suffering. Statistics are difficult to verify (there are precise numbers of our own dead, but little effort is put into ascertaining statistics for Afghans), but the often-cited research on civilian deaths by Professor Marc Herold from the University of New Hampshire put the figure of civilian deaths in late 2006 in a range from 4,541 to 5,308, out of a total – including military and insurgents – of between 18,000 to 19,000 deaths, according to Project Ploughshares.¹³ According to other reports, this number does not include those who die subsequently from their injuries or in refugee camps. These "indirect" deaths have been estimated from 8,000 to 20,000.¹⁴

Militant attacks, including suicide bombings, killed another 346 civilians in 2007 to the end of October, while international troops caused 337 deaths, the Associated Press has reported.¹⁵ Added to Professor Herold's numbers, approximately 5200 to 6000 civilians have been killed in the war so far. While these numbers pale in comparison to Iraq where civilian casualties are at least 10 times the number in Afghanistan, human rights groups and aid agencies, including Oxfam, Save the Children, and CARE International, continue to lay a large part of the blame for civilian deaths in Afghanistan on US and coalition forces, contending indiscriminate use of force is causing intolerable levels of dead innocents.¹⁶

During Operation Medusa, a major Canadian-led offensive in September 2006, for example, while there was little effort made to report on the plight of Afghan civilians during operations, several respected sources did, in fact, confirm civilian casualties. In the first days of Medusa, provincial council member Haji Agha Lalai, who heads the National Reconciliation Commission in Kandahar, stated that 21 civilians had died in one NATO bombing raid. Subsequent UN reports list "dozens of civilians" killed during NATO air strikes. In one UN report, a local resident from Zangawat village, a village bombed

during the NATO air strikes, claimed that 62 members of his village had been killed and buried, while another 12 were injured during the air strikes.¹⁷

For the most part, civilian casualties and displacement as a result of most NATO actions have been ignored in the major Canadian media. The reason for this may be military censorship. Quoting the president of the Afghanistan Independent Journalists Association, the UN's humanitarian news agency, IRIN, reports: "Journalists have [on several occasions] not been allowed by international peacekeeping forces in southern provinces to report freely on civilian casualties and displacements during their military operations."¹⁸

2.2b Attacks on Civilians – Militia Groups

According to human rights groups, attacks by the various militia groups against civilians have dramatically increased over the last 2 years. According to a 2007 Human Rights Watch report, since early 2006 Taliban, Hezb-e Islami, and other armed groups in Afghanistan have carried out an increasing number of armed attacks that either target civilians or are launched without regard for the impact on civilian life. These insurgent attacks have caused terrible harm to the Afghan civilian population. Many civilians have been specifically targeted by the insurgents, including aid workers, doctors, day laborers, mechanics, students, clerics, and civilian government employees such as teachers and engineers.¹⁹

In early January 2007, a US military intelligence officer told *The New York Times* that the use of roadside bombs more than doubled to 1,677 in 2006 from 783 in 2005. "The number of what the military calls 'direct attacks,'" the officer said, "meaning attacks by insurgents using small arms, grenades and other weapons, increased to 4,542 last year from 1,558 in 2005."²⁰

Most distressing, perhaps, is a November 2007 report from the Senlis Council, an international think tank with field offices in Afghanistan, which claims that the Taliban is resurgent, having extended its presence through more than half of Afghan territory.²¹ Senlis findings indicate that 54 per cent of Afghanistan's landmass hosts a permanent Taliban presence, primarily in southern Afghanistan, and is subject to frequent hostile activity by the insurgency.

Foreign militants are joining up with a reconstituted Taliban, just as they once were lured to Afghanistan by Osama bin Laden and al-Qaeda. "Foreign fighters from, amongst others, Pakistan, Uzbekistan, Chechnya and China are once again using Afghanistan as a battleground for their interpretation of global jihad," says the Senlis Council's latest report. In sanctuaries just over the border in Pakistan, the militants have developed "quite openly" a terrorist infrastructure that includes recruiters, safe houses and suicide bombers who prepare to infiltrate Afghanistan. Actions to deal with the Taliban by the Pakistani government have been non-existent or ineffectual, according to the International Crisis Group, an international research and advocacy group based in Brussels.²²

The Taliban is no longer a tribal threat, according to Senlis, but a full-blown insurgency aimed at US, NATO and other allied troops, as well as the government of Hamid Karzai, portrayed in Taliban propaganda as an illegitimate puppet of Western powers. The ISAF and OEF missions are invaluable recruiting tools for the insurgents, in other words. In a

worst-case scenario for the future, Senlis envisions “a wholesale import of terrorist tactics and methodologies from Iraq. Seemingly inexhaustible supplies of martyrs permeate the country, indiscriminately attacking public spaces, military forces and the institutions of state.”²³

2.3 Violence against Women

One rationale consistently stated for the Canadian military's presence in Afghanistan has been the defense of women's rights. The Taliban were infamously brutal in their treatment of women and girls, summarily executing women for adultery and keeping girls out of school. By ousting the regime and defending the new government, say Canadian officials, ISAF is fulfilling a commitment to improving the lives of women and girls in Afghanistan.²⁴ Like much about Canada's involvement with ISAF, however, the truth about women's rights is more complicated.

It does seem true that some women, particularly in Kabul, enjoy greater freedom to appear in public, dress the way they want, engage in the political and social life of the country and have many of their rights protected. The four years since the end of the Taliban regime have seen considerable change in the legal and institutional framework regarding the rights of women. The new Constitution enshrines the principle of equal rights for both men and women, obliges Afghanistan to respect international human rights, and reserves a quota in the legislature for women. Since April 2003, women have played a role in the Constitutional Loya Jirga, Afghanistan's parliament. Afghanistan has ratified the Convention on the Elimination of All Forms of Discrimination against Women without reservations. A Ministry of Women's Affairs has been created and there are now shelters in the country that offer refuge for women and girls attempting to escape abusive environments.

Despite these significant developments, the situation of millions of women outside the capital remains precarious and severe violence against them pervasive. Although there is a lack of data on progress toward the implementation of many of the institutional changes listed above and the practical protection of women's rights, anecdotal evidence as well as documentation of cases in hospitals around the country suggest that gender-based violence remains widespread and that girls and women remain at risk in the home and on the street, both within the context of tradition and of discriminatory laws including the administration of justice.

A woman in a rural province had no education, healthcare, or employment before the Taliban came to power. She then had those things legally denied to her once the Taliban seized power. After the fall of the Taliban, she still has no education, healthcare, or employment, even though she has legal rights. For all practical purposes, her life is no different before or during the Taliban.

According to the most recent report by the UN's Special Rapporteur on violence against women, four factors underlie women's vulnerability and the perpetuation of gender-based violence throughout much of the country: the traditional patriarchal gender order; the erosion of protective social mechanisms; the lack of the rule of law; and poverty and insecurity in the country.²⁵ Few, if any, of these factors will be addressed through military action. Most, it seems, require education, economic development, and attention to local mechanisms of justice.

Violence against women is tolerated, and perpetrators enjoy impunity because the institutions in the country are generally dysfunctional and moreover biased against women. From the legal and educational points of view, this failure to protect women is grounded in the predominance of so-called “informal” justice over the formal justice in many parts of the country.

In some regions of the country, local military commanders either dominate the jirgas or entirely substitute them as decision makers, according to the Special Rapporteur. In these areas, women enjoy no protection at all from violence. On the contrary, numerous reports attest to the helplessness of families and traditional power holders vis-à-vis the unbridled violence against women practiced by commanders and their men, in the form of forced marriages, kidnappings and rape. Furthermore, cases of rape, abduction and forced marriage by powerful commanders – some allied to ISAF forces - are not rare.

While it is difficult to get hard numbers on progress in the protection and promotion of women's rights, one can look at international pledges toward those areas that Afghan civil society, the Special Rapporteur, and the human rights community believe will make a difference - education, healthcare, and the local administration of justice – to gauge the international community's commitment to women.

Donors, for example, have not been unusually generous when it comes to schools, to say nothing of local courts. Since the fall of the Taliban, the United States Agency for International Development has devoted only 5 percent of its Afghanistan budget to education, compared with 30 percent for roads and 14 percent for electricity.²⁶ Canada, for its part, has recently announced another eight million dollars for the Education Quality Improvement Project (EQUIP) initiative, bringing its total to \$60 million for education in Afghanistan.²⁷ While this assistance is necessary and laudable, it is a small amount of the overall \$1.2 billion Canada has committed to governance, security and development in total for the country.

Western nations could truly support Afghan women's rights by moving beyond showy, high-profile projects, and instead funding easily accessible education, healthcare, local justice, and jobs for women throughout Afghanistan.

2.4 “Humanitarian Assistance”

NGOs have long opposed the delivery of development aid by the military. The Canadian Afghanistan mission is a prime example of the perils of this approach. Aid organizations in Afghanistan report that they have been linked to the military operations and are, therefore, more vulnerable to attacks.

Humanitarian organizations work to provide aid to victims. Their only protection as humanitarian actors is the clarity of their image, reflecting the transparency and neutrality of their intentions. Coalition forces have seriously tarnished this image in Afghanistan by creating a deadly confusion between humanitarian organizations and the military.

A 2004 report by Doctors Without Borders describes the problem: “In Afghanistan, the first aspect of this confusion was caused by camouflaging psychological warfare and intelligence operations as humanitarian action. Clear-cut examples include the coalition's ‘humanitarian’ food drops during the first aerial strikes in 2001, its deployment of special

forces in civilian dress who claim to be on a 'humanitarian mission', and threatening to suspend humanitarian aid to populations in southern Afghanistan if they refuse to provide information about the Taliban and Al- Qaeda."²⁸

After five of their workers were killed, Doctors Without Borders was forced to pull out of Afghanistan arguing that, "the confusion between occupation forces and humanitarian organizations undoubtedly has encouraged acts of violence against aid agencies."²⁹ While most other humanitarian organizations have chosen to remain in Afghanistan, the Canadian government's approach may be undermining the legitimate delivery of aid.

2.5 Geneva Conventions and the Treatment of Prisoners

At the beginning of Canada's involvement in the war, captured fighters were turned over by Canadian forces to the US military who imprisoned many at Guantanamo Bay, Cuba. In December 2005, Canada signed a detainee transfer agreement with the new Afghan government to hand detainees over to Afghan forces. The agreement was widely criticized for its non-adherence to the standards of the Geneva Conventions for the treatment of prisoners, particularly Common Article 3 which, among other prohibitions, forbids cruel treatment, degrading treatment, torture and, "executions without previous judgement pronounced by a regularly constituted court."

Like their partners in the US, however, Canadian defence officials argue that the Geneva Conventions do not apply to enemy fighters captured and detained in Afghanistan. US generals insist that "enemy combatants" are not entitled to Geneva rights and can, therefore, be subject to arbitrary military justice. Canada's Lieutenant-General Michel Gauthier, once the highest commanding officer of the Canadian forces in Afghanistan, has argued that since the Conventions "apply in an armed conflict between states, and what's happening in Afghanistan is not an armed conflict between states... there is no basis for making a determination of individuals being prisoners of war."³⁰ This position has also been defended by Canada's last two ministers of Defence, Gordon O'Connor and Peter MacKay.

According to a legal opinion written by Professor Michael Byers, professor of international law and politics at the University of British Columbia, "Common Article 3, which is found in all four of the 1949 Geneva Conventions, applies to non-international (i.e., internal) conflicts of precisely the kind that now exists in Afghanistan. ... Common Article 3 protects 'persons taking no active part in the hostilities, including members of armed forces who have laid down their arms, and therefore any detainees captured by Canada.'³¹ The opinion concludes: "The absolute, territorially-unlimited and time unlimited character of Common Article 3 imposes obligations on Canada that would be violated if a detainee transferred to Afghanistan was tortured or otherwise mistreated in the custody of either Afghanistan or a third country."

The murky network of Afghan jails – where some prisoners disappear, others are released after payment of bribes and only a few seem to be charged and tried – has been harshly criticized by the United Nations as well. The most recent assessment by the High Commissioner for Human Rights, Louise Arbour, said there were "reports of prolonged detention without trial, extortion, torture, and systematic due process violations."³² Furthermore, even detainees in Canadian custody are suspected of having been abused. Criminal investigations and an official board of inquiry has been launched to probe the abuse allegations.

The Minister of National Defence repeatedly assured Canadians that the International Committee of the Red Cross (ICRC) was monitoring transferred prisoners. However, this claim was contradicted by ICRC officials in a report in March 2007.³³ Canada's Military Police Complaints Commission is investigating allegations that, on 18 occasions, troops handed over prisoners knowing they would be abused. The Canadian government has also asked the Afghan government to look into allegations of abuse.

In May 2007, the government announced a new arrangement for handing over detainees – an addition to the original 2005 transfer agreement. It makes provisions for Canadian government personnel to have “full and unrestricted access” to detainees handed over to Afghan officials by Canadian soldiers. Amnesty International's Canadian Executive Director, Alex Neve, remains concerned about the situation, insisting, “You don't prevent torture in a country where it is rampant and systematic, as it is in Afghanistan, by sending in monitors on an occasional basis.”³⁴

In February 2007, Amnesty International and the BC Civil Liberties Association (BCCLA) filed an application in Canadian court for a judicial review of Canada's treatment of detainees. They presented widely available reports that concluded that Afghan police resort to abuse and torture. The US State Department also concluded that torture is endemic in Afghanistan throughout the prison system.³⁵ The case was suspended by the Federal Court judge when lawyers for the government filed an affidavit that informed the court about the new prisoner transfer agreement. Upon seeing further evidence, however, the judge has decided that the case has “merit” and to allow it to proceed.

At the time of writing, Amnesty International and the BCCLA were considering submitting an injunction to immediately halt Canadian transfers of prisoners to the Afghans.

3. The Churches and Afghanistan

Among individual members of KAIROS, Development and Peace has a detailed position on Afghanistan (October 2006). It calls for a refocusing of the Canadian military mandate away from combat, eventually to be replaced by a UN controlled military force, and for all foreign military troops to be removed once security has been restored. It also emphasizes a greater role for Muslim countries both in the composition of a military force and in contributing financially to “a new people-centred national reconstruction and development policy”.³⁶

The Canadian Religious Conference sent a letter to Prime Minister Stephen Harper in December 2006 which sets out concerns similar to those of Development and Peace.³⁷ The Christian Reformed Church in Canada wrote to the Prime Minister in February 2007 expressing concern about an overemphasis on military security in Afghanistan and insufficient attention to development and diplomacy. The letter called for a broader public debate about the nature and balance of Canada's mission in Afghanistan.³⁸

The churches have also expressed concern about the war on terror and the war in Afghanistan through the Canadian Council of Churches and Project Ploughshares, KAIROS' ecumenical partners.

The Canadian Council of Churches began its advocacy work as early as September 2001 with a letter to Prime Minister Chrétien. It raised questions about accountability, due process, the protection of innocent civilians, the need for “an unambiguous commitment to cooperative interdependence”, and the ethical and legal limitations on the use of force in responding to the attacks of 9/11.³⁹ After the decision to deploy Canadian soldiers to Afghanistan, a second letter raised concerns that focused on participation in the US war on terror, operating under US command, and the treatment of detainees.⁴⁰

A third CCC letter, signed by a number of church leaders, was sent to the Prime Minister in August 2007. Building on earlier letters, the most recent letter calls for “discussions with Taliban insurgents willing to participate in peaceful negotiations”, and urges Canada to devote more of its efforts towards diplomacy. It notes the deficiencies in the Karzai government; it calls for “a significant shift in Canada’s ...financial resources toward long-term human development”. The letter states that “Canada has an obligation not to abandon the people of Afghanistan” but goes on to say that “we believe that the Canadian Forces should focus on enhancing protection of vulnerable Afghans rather than on aggressive engagement with insurgents in areas where the population is suspicious or alienated from the central government”.⁴¹

Project Ploughshares has had an ongoing engagement with the issues through a series of briefings papers⁴² and interventions with government, including the November 8, 2006 presentation on the situation in Afghanistan to the House of Commons Standing Committee on Foreign Affairs and International Development and a October 27, 2007 meeting with the Manley Panel.⁴³ A briefing, by Ernie Regehr, senior policy advisor for Project Ploughshares, calls for “a much clearer and more forthright Canadian perspective on the effectiveness and status of the mission,” a “clear accounting of the objective and impact” of the shift from Operation Enduring Freedom to the International Security Assistance Force, and a “new political/security dialogue” in Afghanistan.⁴⁴

Among the carefully nuanced positions enunciated by Project Ploughshares over the years since 2001 are these:

1. While it was unwise to become involved in the Afghanistan war in the first place, now that Canada has helped to depose the Taliban regime, it has an obligation to the Afghan people to prevent history from repeating itself by allowing either the Taliban or another despotic regime to return to power.
2. There is a need for a thorough re-evaluation of Canada’s role and objectives in Afghanistan. There can be no resolution to the situation in Afghanistan which ignores the requirement for a process of political negotiation.
3. The future stability of Afghanistan lies not with a counter-insurgency war, but with a resolution of the genuine social, economic and political grievances of Afghans, including many who are referred to in an undifferentiated way as “the Taliban” and who are not represented in the current government.
4. Canada should dramatically refocus its resources in Afghanistan away from military counter-insurgency operations and towards expanding zones of stability through more effective policing on the one hand for the protection of civilians, and addressing of social, economic and political grievances of all parties in Afghanistan on the other.

4. Conclusion

The Canadian Council of Churches and Project Ploughshares are both calling for a significant re-mandating of Canada's mission in Afghanistan, emphasizing activities such as training the Afghan police and military forces, and more attention on development issues and political negotiations between the Karzai government and the insurgents. Would Canada need a heavily armed military contingent to accomplish these goals, however? Canada provides significant policing/protection expertise to many countries emerging from conflict that does not require a heavily armed Canadian military presence. Indeed, does the very presence of combat units make inevitable the kind of violence and human rights violations that have marked the past year of Canadian engagement in Afghanistan?

The work by Project Ploughshares helps to clarify the practical dilemmas involving the protection of civilians and promoting development in Afghanistan. Also important to our understanding of the conflict, however, is the geo-political framework which influences the US military objectives there.

If, as this paper suggests, those objectives relate at least in part to the commercial and energy interests of the US, then the Canadian role may need to be understood quite differently. The fact that both OEF and ISAF bear the heavy imprint of the US government and military suggests that even if Canada's role is focussed on "good governance" and "stability", we need to ask some questions about how this role relates to the US objectives over and above both the Canadian public's interests and Afghan ones.

- 1 Resolutions 1378 (November 14, 2001), 1383 (December 6, 2001), and 1386 (December 20, 2001), supported “international efforts to root out terrorism” in Afghanistan in “keeping with the Charter of the United Nations.” These resolutions were all either adopted unanimously or without a vote by the 15-member Council, i.e., by consensus.
- 2 See, FPIF, “Giving Democracy a Bad Name”.
- 3 According to Foreign Policy in Focus (FPIF), the US has undertaken to create new “democracies” in Afghanistan and Iraq, but these endeavours give democracy a bad name. “Both countries are still beset by grinding poverty, insurgencies, and entrenched militia forces that make the exercise of democracy either impractical or dangerous. Both countries have high numbers of foreign troops occupying their land and terrorizing the population while hunting ‘terrorists.’ And both countries’ governments answer to their respective US ambassador on most issues.” See, “Giving Democracy a Bad Name: Afghanistan’s Parliamentary Elections,” *Foreign Policy in Focus*, September 16, 2005.
- 4 “America’s Pipe Dream: The war against terrorism is also a struggle for oil and regional control,” George Monbiot, *The Guardian*, October 23, 2001.
- 5 Ibid.
- 6 John J. Maresca, vice-president of international relations, Unocal Corporation, during a hearing before the Subcommittee on Asia and the Pacific of the Committee on International Relations, February 12, 1998.
- 7 According to reports, including one by the BBC, India and Iran were prepared to join the US and Russia in destabilizing and toppling the Taliban government prior to the attacks of September 11. See, for example, “US ‘planned attack on Taliban’,” *BBC News*, September 18, 2001.
- 8 See <http://geo.international.gc.ca/cip-pic/afghanistan/menu-en.aspx>
- 9 According to government forecasts published for 2006-7, National Defense accounts for 8.7% of federal program spending, CIDA 1.64%, and Foreign Affairs 1.62%. For 2007-8, defence spending was scheduled to increase another 12.16% while both CIDA and DFAIT would decline by 0.10% and 8.73% respectively. Joe Clark, “Let’s use both sides of the Canadian coin,” *The Globe and Mail*, November 16, 2007.
- 10 “Bring the Troops Home Now: Why a military mission will not bring peace to Afghanistan,” Canadian Peace Alliance, February 16, 2007.
- 11 “Grave food crisis in Afghanistan could deepen if current situation deteriorates,” Food and Agriculture Organization of the United Nations, September 20, 2001.
- 12 See, for example, “Afghanistan: Action Needed to Prevent more Killings,” Human Rights Watch, February 2, 2001, which states: “The UN in general, and governments concerned with the humanitarian situation inside Afghanistan, need to take every possible measure now to try to get observers and investigators on the ground.”
- 13 Project Ploughshares, “Armed Conflict Report,” February 2007.
- 14 “62,006 – the number killed in the ‘war on terror,’” *The Independent*, November 29, 2007.
- 15 “Afghan civilian casualties reach ‘alarming’ levels,” *Bloomberg.com*, November 20, 2007.
- 16 “Civilian death toll draws fire,” *The Toronto Star*, June 20, 2007.
- 17 “Afghanistan: Scores of civilians killed in air strikes, say officials and elders,” *IRIN*, October 26, 2006.
- 18 “Afghanistan: No safety for journalists,” *IRIN*, Sept 19, 2006.
- 19 “The Human Cost: The Consequence of Insurgent Attacks in Afghanistan,” Human Rights Watch, April 2007.
- 20 David Cloud, “US Says Attacks Are Surging in Afghanistan,” *New York Times*, January 16, 2007.
- 21 “Stumbling into Chaos: Afghanistan on the Brink,” The Senlis Council, November 2007.
- 22 “Countering Afghanistan’s Insurgency: No Quick Fixes,” International Crisis Group, November 2, 2006.
- 23 “Stumbling into Chaos,” The Senlis Council.
- 24 The Department of National Defence claims, for example, that “Because of our efforts, the Afghan people now vote, women and girls have rights and children are going to school.” See “Backgrounder: Canadian Forces Operations in Afghanistan,” August 2007, at http://www.dnd.ca/site/Newsroom/view_news_e.asp?id=1703
- 25 “Integration of the human rights of women and a gender perspective: violence against women,” Report of the Special Rapporteur on violence against women, its causes and consequences, 15 February 2006.
- 26 “As war enters classrooms, fear grips Afghans,” *The New York Times*, July 10, 2007.
- 27 “Canada’s New Government increases its commitment to enhancing girls’ education in Afghanistan,” Government of Canada News Release, October 15 2007.
- 28 “Military humanitarianism: A deadly confusion,” Médecins Sans Frontières, December 16, 2004.
- 29 Ibid.
- 30 “Troops told Geneva rules don’t apply to Taliban,” *The Globe and Mail*, May 31, 2006.
- 31 Michael Byers, “Legal Opinion on the December 18, 2005 Arrangement for the Transfer of Detainees between the Canadian Forces and the Ministry of Defence of the Islamic Republic of Afghanistan,” April 7, 2006.
- 32 “What Ottawa doesn’t want you to know,” *The Globe and Mail*, April 25, 2007.
- 33 “O’Connor apologizes for misleading the House on Afghan detainees,” *The Globe and Mail*, March 19, 2007.
- 34 See <http://www.cbc.ca/canada/story/2007/05/03/detainees-court.html>
- 35 “Prisons rife with torture, U.S. rights report asserts,” *The Globe and Mail*, March 8, 2007.

- 36 See <http://www.devp.org/devpme/eng/pressroom/2006/comm2006-10-23-eng.html>
- 37 See <http://www.crc-canada.org/main.cfm?nID=375&nssid=5¤t=5&nsid=30>
- 38 See <http://www.crcna.org/news.cfm?newsid=63>
- 39 See <http://www.ccc-cce.ca/english/justice/sept11.htm>
- 40 See <http://www.ccc-cce.ca/english/justice/afghanistan.htm>
- 41 See <http://ploughshares.ca/libraries/Statements/AfghanChurchLettermediareleaseEN.pdf>
- 42 See for example, "Afghanistan: From good intentions to sustainable solutions", August 2006 at <http://www.ploughshares.ca/libraries/Briefings/brf065.pdf>
- 43 See <http://www.ploughshares.ca/libraries/Reduce/SCFAIDPres08Nov06.pdf>
- 44 See www.ploughshares.ca/libraries/Reduce/SCFAIDPres08Nov06.pdf