

The man who retrieves the Taliban's dead

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[**Source** : SIEFF Kevin, "« The man who retrieves the Taliban's dead", » in Tthe Washington Post, 21 February 2012, available online at http://www.washingtonpost.com/world/asia_pacific/the-man-who-retrieves-the-talibans-dead/2012/02/17/gIQAXoL1PR_print.html]

[1] KANDAHAR, Afghanistan — Abdul Hakim gets the first calls just after the bombs explode and the firefights end, when all that is left are the remains of the dead.

[...]

[2] In the southern province that has borne more violence and death than any other since the war began, the Taliban knows Hakim as the man who can retrieve insurgents' bodies from American and Afghan authorities and return them to their families and comrades.

[3] In the past six years, he has done it 127 times, carrying letters of permission from both the Afghan government and the Taliban as he weaves through Kandahar in a beat-up yellow taxicab, with dead insurgents in the trunk. Black bags for those killed in firefights. Small wooden boxes for what's left of suicide bombers.

[4] "It doesn't matter who the dead are or who they belong to," Hakim said. "They deserve a proper Islamic

burial."

[5] The U.S. military follows a regimented procedure for retrieving and repatriating its war dead, one that is exacting in detail and rich with ceremony. In this most asymmetric of wars, the Taliban has constructed a parallel process, as shadowy and unpolished as it is effective.

[6] Taliban militants are known to fight ferociously to recover their fallen, and efforts to bury their own do not fade after insurgents leave the battlefield. When militants' bodies are recovered by foreign troops, a choreography unfolds: Several times a month, a NATO helicopter deposits insurgents' bodies at a mortuary next to Kandahar Airfield, where they are checked for unexploded bombs and placed in the same room as U.S. war dead. A flag-wrapped coffin for the Americans and a plywood box for the insurgents sit side by side.

[7] The International Committee of the Red Cross then takes the remains of the insurgents, along with a file of information about them — photographs, a description of how each was killed — to Mirwais Hospital in Kandahar city. In the morgue's register, they are identified by their job title, written simply as "Talib".

[8] The insurgents often share space in the Mirwais morgue with their victims, also transported by the ICRC. The grim toll emerges in the morgue's register: President Hamid Karzai's brother, the mayor of Kandahar and dozens of civilians, police officers and insurgents have been kept in the white refrigerated trailer, imported from Denmark, over the past seven months. A pile of clothes, stripped from the dead, lies nearby.

[...]

[9] About 150 bodies come through the Mirwais morgue each month.

[10] On the register, next to the names of the dead, family members have scrawled their signatures or, in the case of the illiterate, left blue thumbprints as a record of who took the remains for burial. But next to the names of Talib, the same man has signed dozens of times: Abdul Hakim.

[11] Hakim is known as a malik, a respected community representative whose autonomy from the government as well as the insurgency allows him to operate in both worlds, even as they attempt to destroy each other.

[12] "He's very important — he's one guy who can do it all. He is a completely neutral facilitator," said Julien Lerisson, the deputy head of the ICRC sub-delegation in Kandahar.

[...]

[13] Hakim came to his job by accident. In the late 1990s, he took a volunteer course with the Afghan Red Crescent Society, the ICRC's local counterpart. To the Taliban, Hakim's connection meant that he might

have access to the bodies of fighters recovered by foreign troops.

[14] In 2005, a Taliban commander contacted him for the first time about a body. After Hakim managed to retrieve it, the requests kept coming. On Taliban letterhead, he is given written permission to do the job.

[15] "I tell to all Mujahidin of this area, this person is cooperating with us on the issue of transferring our martyrs. If you have any problem with him, contact us," the letter reads. It is signed by Jabar Agha, identified as the Taliban's representative for Zhari district in Kandahar. It refers to Hakim as a taxi driver.

[16] When the fighters are finally placed in shallow graves marked by jagged stones, some of the families rail about their deceased kin's unnecessary death and poor choices. Others gather to celebrate the devotion of those they consider martyrs.

[...]

[17] Hakim receives the second round of phone calls — this time, from the ICRC — days or weeks after fits of violence. The organization draws on its vast network of Afghan elders to identify unclaimed bodies in the Mirwais morgue: men killed in such remote locations or uncertain conditions that Taliban commanders and family members don't come looking for them.

[18] Not all of the bodies are those of insurgents — about two-thirds are those of civilians and government security officials, mostly police officers.

[19] Hakim transports all of them: 107 government employees in the past three years and 28 civilians, in addition to the 127 insurgents. He gets a signed letter from local officials giving him permission to pick up each body; he stores copies in a black suitcase at home, so he can keep a precise count of the bodies he has transported.

[20] Last year, he picked up the remains of 14 suicide bombers on a single day, trucking them to families across Kandahar province. Once he carried five Afghan intelligence agents from a district largely controlled by the Taliban to their agency's headquarters. He has hauled the bodies of children and the elderly, he said, sometimes on the same day.

[21] Across the country, men like Hakim assist civilians and Taliban commanders, even slipping into Pakistan to return the bodies of insurgents. Their efforts have had a pronounced effect in recent times: The number of unclaimed bodies in Afghanistan decreased by 50 percent last year, according to the ICRC.

[...]

[22] Hakim makes the third round of calls himself, dialing villagers and Taliban commanders across

Kandahar, after he has seen the bodies in Mirwais. "Are you looking for a short man with a black beard, around 21?" he asked his contacts recently. "Do you know of any suicide bombers who died in Zhari district late last month?" he asked others.

[23] If they say yes, Hakim gets an undisclosed sum of money from the ICRC for his expenses and a little profit. Then he drives off in his rented taxicab to meet weeping families or hardened insurgents.

[...]

[24] Then there are the calls Hakim hopes not to make — the ones to local mullahs, after his efforts to find the deceased's families end in failure. When there are no relatives to bury the dead, Hakim often makes the arrangements himself.

[25] The mullahs come to a plot of land owned by Hakim, now a graveyard for the unclaimed.

[26] They say a prayer, then chant "God is great" four times, lifting their hands to their ears.

[27] He helps bathe the body, dresses it in a white cloth, called a kafan, and helps place it in the ground.

[28] Hakim knows where each body is buried. He takes photos of the corpses with his cellphone camera, so if a family comes to Kandahar months or years later, he will be able to connect the right body to the right grave. The ICRC keeps a more official file of photos of unclaimed bodies, along with information about where each has been buried in the organization's graveyard in Kandahar.

[29] A few times a year, ICRC employees go through the file at the request of families searching for a relative. Sometimes bodies are exhumed. Sometimes belated funerals are held.

[...]

Discussion

I. Applicable law

1. Relying on your knowledge of the situation in Afghanistan, what was the nature of the conflict in Afghanistan in 2012 at the time the article was written? Was IHL applicable to the conflict between the United States and the Taliban? Between the Afghan government and the Taliban? Was Protocol II applicable? (GC I-IV, Common Art. 3; P II, Art. 1)

II. The Dead

(Paras [4]-[10], [16]-[18], [21], [24] and [27]-[29])

1. What obligations does IHL impose on belligerents regarding treatment of the deceased? What are the specific obligations concerning the following aspects of treatment, and to whom are they addressed? Does it matter for these obligations whether the dead were civilians or fighters? Whether they committed war crimes? (CIHL, Rules 112-116; P II, Art. 8; GC I, Arts 15(1), 16-18; GC II, Arts 18(1), 19-20; GC III, Art. 120; GC IV, Arts 129 and 130; P I, Arts 17(2), 32-34)
 - a. Identification of dead bodies?
 - b. Reporting deaths?
 - c. Repatriation of bodies?
 - d. Burials? Does the religion of the deceased have to be taken into account when organizing a burial? Should anything else be taken into account?
2. What happens to deceased bodies that cannot be identified? To bodies that remain unclaimed?
3. (Paras [4]-[6]) Does IHL require a party to treat its enemy's dead in the same way as it treats its own dead? Does IHL require separating the dead bodies from opposing parties? Are there any differences in treatment that might not violate IHL? Do the relevant obligations differ depending on whether the situation is a NIAC or an IAC? Please evaluate, under IHL, the difference in treatment accorded to dead American soldiers and Taliban fighters.
4. (Paras [3], [6], [11]-[15], [19]-[22], [24], [27] and [28]) Under IHL, can everyone carry out the types of activities undertaken by Abdul Hakim? Do these not fall within the role of the ICRC?
5. (Paras [17], [23] and [29]) Is the ICRC obliged to participate in these activities? Is its participation optional? Subsidiary to belligerent authorities?
6. (Paras [11]-[15]) Is Abdul Hakim bound by IHL? Could he choose to pursue his activities only regarding one party to the conflict (e.g. the Taliban)? Legally speaking, does he require the written permission from the Taliban to carry out his activities? Is the Taliban legally required to provide him or any other similar actor with such permission and access? On what do you base your answer to the last question? (CIHL, Rules 112-116; P II, Art. 8; GC I, Art. 18; P I, Arts 17(2))

III. Emblems

8. (Paras [11]-[13] and [23]) Does Abdul Hakim benefit from any special protection under IHL as a result of his activities? Does he have special rights or prerogatives? May Mr. Abdul Hakim use the emblem? Does the fact that Mr. Abdul Hakim is paid by the ICRC change your answer? The fact that he received training as a Red Crescent Volunteer? Does the nature of the conflict (international or non-international) influence the answer to any of the above questions? (CIHL Rule 25, 27, 30 and 59; P II, Art. 12; GC I, Arts 39-44; P I, Arts 8 and 18(4))

[See also Israel, Evacuation of Bodies in Jenin]