ACKNOWLEDGE, AMEND, ASSIST: Addressing Civilian Harm Caused by Armed Conflict and Armed Violence
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Cover illustration
A man carries a young girl who was injured in a reported barrel bomb attack by government forces on June 3, 2014 in the northern city of Aleppo, Syria. (BARAA AL-HALABI/AFP/Getty Images)

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The tracking of civilian harm by warring parties is an emerging best practice in conflict zones, such as Afghanistan and Somalia. Civilian harm encompasses loss of life, injury, and property damage. When properly implemented, civilian harm tracking has led to fewer civilian casualties. A warring party that prioritizes civilian well-being needs reliable data to assess the impact of its operations, to analyze and learn from the data, and to appropriately respond to civilian harm by both adjusting tactics and training and making amends to civilians harmed.11

The Definition and Process of Civilian Harm Tracking

Civilian harm tracking, analysis, and response is the internal process by which a military or peacekeeping operation gathers data on civilian harm caused by its operations and the use of its forces in future planning and operations. Such information can also be used to guide actions to properly respond to civilian harm.12 Data can come from a variety of internal sources, including field liaison reports, battle damage assessments, spot reports, troop movements, weapons discharge and targeting data, reporting chains among troops, and investigations of alleged incidents of civilian harm.13 It can also come from external sources, such as victims themselves, civil society, hospitals, and the media. Accurate and timely reporting, within the chain of command, of possible incidents of civilian harm is critical to ensure commanders and their staff have the information they need to investigate these events and the circumstances under which they occurred.

A civilian harm tracking analysis, and response “cell” requires specialized human resources, information management systems, and technological equipment. The tracking cell staff at headquarters analyzes information for trends and notes protection opportunities and challenges to be addressed by senior military officials in tactical directives or training.

The Purpose of Civilian Harm Tracking

Over time, tracking of civilian harm accomplishes four things:

1. Creates an awareness among troops/peacekeepers in the field that the impact of their operations on the civilian population is documented and taken seriously by command;
2. Reduces civilian harm by providing commanders and military planners with information and analysis aimed at adjusting tactics to minimize future harm;
3. Helps commanders appropriately respond to confirmed incidents of civilian harm with factual information and credible evidence to push back against false claims;
4. Enables forces to separate out cases that warrant legal investigation for possible violations and to make amends to civilians for cases of incidental harm through the use of detailed information about who was harmed and why.

While tracking is a process internal to a warring party, officials can also release data to report to political institutions such as NATO, the African Union, or the United Nations on mission progress, to respond publicly to any allegations of civilian harm, and eventually to recognize civilians who have suffered harm. These actions benefit the civilian population and the mission.

Why Track Civilian Harm?

There are ethical, strategic, and legal reasons why warring parties should track, analyze, and respond to civilian harm. Warring parties include multinational coalitions, host nation militaries, peacekeeping operations, individual state militaries, and even non-state armed groups. Ethically, many warring parties—such as countries contributing troops to the International Security Assistance Forces (ISAF) in Afghanistan and the African Union Mission in Somalia (AMISOM)—have publicly stated their concern for civilians caught in the crossfire. Establishing a tracking cell backs those words up with actions and allows warring parties to demonstrate they are assessing the impact of their operations and, when necessary, changing tactics to minimize harm—even if such harm meets key international humanitarian law (IHL) requirements including proportionality and military necessity.

Strategically, warring parties may find that mission success depends on their ability to minimize and mitigate harm to civilians from their operations. Their very success may in fact be measured, at least in part, on their ability to prevent incidental civilian harm and appropriately respond to those harmed. Establishment of a functioning cell and regular release of public information can go a long way toward showing the population that a military is actively working and has a plan in place to reduce and address civilian harm. An effective tracking, analysis, and response mechanism will not in itself “win” the conflict, but the lack of one may very well lose it, turning tactical successes into overall strategic failure.

Legally, civilian harm tracking by a warring party also allows it to illustrate through data the measures the conflict party is undertaking to adhere to—and in some cases go above and beyond—international humanitarian law. IHL requires warring parties to ensure proportionality, which in some situations has been caused to civilians and civilian objects cannot be excessive in relation to the expected military gain. Also, combat operations must not be directed specifically at civilians or civil objects. Warring parties must take “all feasible precautions” to minimize incidental harm to civilians and civilian objects. While tracking civilian harm is not a formal IHL requirement, warring parties who abide by an ethos of civilian protection can implement this tool to further reduce even incidental harm. For instance, a tracking cell allows the conflict party to compare post-operation data with pre-operation estimates; the comparison may reveal that targeting assumptions were correct, or in cases where the assumptions were incorrect, that intelligence gathering and targeting decisions should be modified in the future.

Civilian Harm Tracking in Practice

There is growing recognition among states and the United Nations of the importance of civilian harm tracking and analysis. The 2013 UN Secretary-General’s Report on the Protection of Civilians in Armed Conflict recommended that:

In recognition of the proven utility of civilian casualty tracking as a means of informing military strategy to reduce harm to civilians, parties to conflict, including in the context of multinational peacekeeping operations and United Nations peacekeeping missions involved in offensive operations, should establish and implement such mechanisms.14

Afghanistan

In the early years of the war in Afghanistan, the US Department of Defense did not keep track of civilian casualties and the numbers were publicly referred to as “minimal.” Reports of civilian harm by the United States were often denied in the media, only to be admitted days later as evidence arose. Lack of acknowledgment of and inability to address civilian harm left the United States and its allies with a massive credibility deficit, both locally within Afghanistan and, eventually, at the international level.

Recognizing the importance of addressing the problem of civilian harm, in 2008 General David McKiernan, then head of the International Security Assistance Forces in Afghanistan, established the first-ever Civilian Casualty Tracking Cell (CCTC).15 The aim of this cell was to document and analyze information in order to inform commanders of the impact of their and the insurgents’ operations on the civilian population. Though under-staffed and underfunded, the creation of this cell...

11 “Making amends” is the emerging practice of warring parties providing recognition and assistance to civilians they harm within the lawful parameters of their combat operations. The practice of making amends to civilians suffering combat losses is a gesture of respect to victims. Amends take a variety of forms, but must be culturally appropriate. They can include public apologies, monetary payments, livelihood assistance programs, and other offerings in accordance with victims’ needs and preferences. For more information, see chapter on Making Amends in this publication.

12 Civilian casualty tracking, by contrast, describes efforts by states and civil society to record deaths from armed violence in a systematic and continuous manner, in cases where the assumptions were incorrect, that targeting assumptions were correct, or in cases where the assumptions were incorrect, that intelligence gathering and targeting decisions should be modified in the future.

13 Afghanistan


15 Throughout history, militaries have often “counted” the deaths of their adversaries in order to measure progress toward mission success or infor...
showed that ISAF recognized the importance of tracking civilian harm in a systematic way.

In July 2011, ISAF created the Civilian Casualty Mitigation Team (CCMT) to oversee the CCTC and to analyze data gathered, identify civilian casualty trends, and advise the ISAF commander on ways to reduce civilian harm. This tracking mechanism was one of the first steps ISAF took to identify incidents of civilian harm, and it gathered important data that was analyzed, raising red flags about harmful trends. Information and analysis from the CCMT allowed commanders to make adjustments and issue tactical directives, resulting in a documented decrease in civilian casualties and in ways to better address harm caused.

The creation of these mechanisms also resulted in the first efforts to hold civil-military working groups in which civil society and ISAF could compare data and analysis. The working groups allowed civil society and military actors to have a constructive dialogue about casualties and other forms of civilian harm.

Somalia

In 2011 in response to several high profile cases of alleged civilian casualties, the African Union Mission in Somalia contracted a retired British general who in turn contacted the Center for Civilians in Conflict to consult with AMISOM on an indirect fire policy aimed at restricting the use of such fire in order to reduce civilian harm. The indirect fire policy (AMISOM 2011) recommended that AMISOM:

- Create a civilian casualty (CIVCAS) tracking cell, which collates all information from Operations, Intelligence, [Public Affairs], legal staff, Force Fire Directive Center and contingents to brief the Force Commander on the incidents. This cell will investigate all incidents to enable accurate attribution of responsibility and AMISOM’s follow up. . . . The cell will also contribute to the [After Action Reviews] and lessons learnt process.10

The UN Security Council also recognized the importance of civilian casualty tracking in two subsequent resolutions. In extending its authorization for the AMISOM mission, the Security Council endorsed the tracking cell. Its 2013 resolution:

Recalls AMISOM’s commitment to establish a Civilian Casualty Tracking, Analysis, and Response Cell (CCTARC), underlines the importance of its establishment, requests AMISOM to report on the progress made in establishing the CCTARC, and partners further to support the establishment of a CCTARC.17

Over the course of 2012 and early 2013, AMISOM mapped out existing information systems and created an implementation plan for their CCTARC. At this writing, the CCTARC is being staffed up and should be operational in early 2015.

Conclusion

With any military mission—and especially those claiming civilian protection as their mandate—success can hinge on the ability and effort of the warring party to minimize civilian harm and respond to the harm that is caused. Expectations of protection among the civilian population are often high. A warring party must understand where, when, and how its operations have harmed civilians both to learn lessons that can prevent future harm to civilians and to address properly the harm that does occur.

For More Information


Making amends refers to the emerging practice of warring parties to recognize and provide assistance to civilians harmed within the scope of lawful combat operations. At its core, the practice of making amends to civilians who have suffered loss, injury, or other harm during armed conflict is a gesture of respect to victims and may help ameliorate their suffering. Amends can take a variety of forms, but must be culturally appropriate. They can include explanations, apologies, monetary payments, livelihood assistance programs, and other offerings in accordance with victims’ needs and preferences.

International humanitarian law and other legal frameworks have key rules in place to protect civilians in wartime, such as the requirement of proportionality of the use of force and the need to take all feasible precautions to minimize civilian harm. Warring parties are obliged to abide by these rules and conduct hostilities accordingly. Violation of these rules can result in a range of accountability measures, including international and national criminal prosecutions and reparations to victims. If use of lethal force was lawful, however, and there has been no identified violation of international humanitarian law, warring parties are under no legal obligation to help or even recognize the civilians who have suffered harm as a result of their operations.

Such civilian harm leaves victims themselves to recover from injuries and pick up the pieces of lost lives, property, and livelihoods. As a result, a family killed in the course of a proportionate attack on a legitimate military target may never wound in a sudden skirmish between opposing forces, or a farmer killed by a ricocheting bullet are all considered “collateral damage.” There is currently no obligation for the party responsible for the harm to help these civilians. This leaves civilians with no acknowledgment of their losses, no apology or explanation for what happened, and no assistance to cope with the loss.

Making amends fills a void in warring parties’ responsibilities and is a way to recognize and address the civilian suffering that results from their operations.

Basis for Making Amends

The principle of humanity in international humanitarian law is the foundational underpinning of making amends. The Martens Clause, which first appeared in the 1899 Hague Peace Convention and has been reiterated in many international humanitarian law instruments since, exemplifies how important humanity is to the laws of war.18 It states that, along with custom, “principles of humanity” and the “dictates of the public conscience” serve as sources of law in the absence of other international agreements.19 With no formal obligation for warring parties to recognize or help civilians considered “collateral damage” under international law, making amends promotes humanity by offering recognition and some degree of dignity to civilians suffering losses.

The principle of making amends also has roots in cultural traditions. For Pashtuns in Afghanistan under local customary law (Pashtunwali), the family of someone accidentally killed is entitled to compensation to ensure the honor of the victim. In Somalia, informal clan laws (xeer) require payment of “blood money” (diya) for civilian suffering. The Ugandan rite called mato oput restores community relations after intentional or accidental deaths. The clan of the person responsible must pay “blood money,” and a Council of Elders arranges for a reconciliation ceremony where animals are sacrificed as a reminder of a life lost. The rite “embodies the principle

10 AMISOM, Indirect Fire Policy, 2011 (on file with authors).
that society and the perpetrator contribute to the extent possible to the emotional restoration and repair of the physical and material well-being of the victim.29

For warring parties that abide by an ethos of civilian protection while conducting combat operations, there are many reasons to make amends for the harm that they cause. First, making amends recognizes inherent human dignity. The act is a logical extension of civilian protection mores and could be called a moral imperative. Second, making amends entails addressing the loss and frustration of the local population. It can therefore be valuable as a measure for fostering trust and goodwill among the people. Finally, making amends can be a pragmatic step to further healing, stability, and reconciliation and thus constitute an effective peacebuilding measure.

Amends are beginning to be recognized at the United Nations. The 2010 and 2012 UN Reports of the Secretary-General on the Protection of Civilians in Armed Conflict describe the making of amends as an emerging norm and “welcomed the practice.”30 The 2010 report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Philip Alston called on the international community to pay attention to the emerging practice of making amends and to study its significance.31

Reparations versus Amends

In contrast to amends, reparations are a legal remedy to which victims are entitled for violations of international human rights, humanitarian, and criminal law.32 Amends for incidental harm are not legally mandated for warring parties. The practice therefore comes from a policy decision rather than a legal obligation.

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Amends and reparations do share similarities, however. Both concepts are rooted in principles of human dignity and humanity, which are universal to all victims regardless of how they have been harmed in armed conflict. Furthermore, both amends and reparations can and should take a variety of forms, each of which should be sufficiently victim-centric. Reparations can take the form of financial redress such as compensation, as well non-financial redress such as rehabilitation, satisfaction, and guarantees of non-repetition. Similarly, in practice, warring parties’ amends have ranged from monetary payments and in-kind assistance to apologies to victims.

It is important to note that accepting amends does not disqualify victims from subsequently pursuing any applicable legal claims against a warring party for alleged violations of domestic or international law. Conversely, the provision of amends by a warring party is not prima facie evidence of legal liability for a violation.

Who Should Make Amends, and How?

As discussed above, making amends is rooted in the recognition of human dignity, and warring parties, out of a sense of ethical obligation, should provide some assistance to victims for incidental harm. In order to do so, warring parties, including non-state armed groups, should have policies and processes in place to respond to all civilian including loss of life, injuries, and property damage. Warring parties should also make their policies and processes for making amends known to local governments, civil society, and civilians in theaters so civilians know where to go and what to do if they have been harmed.

Since the nature of civilian harm varies from conflict to conflict, and expectations of recognition and assistance differ from culture to culture, amends in practice must be both tailored to specific cases and culturally appropriate. In some cultures, monetary payments not accompanied by an apology, or vice versa, may be insulting.

The US military was the first among coalition partners to make “condolence payments” in Iraq and Afghanistan for civilians harmed during combat operations.33 Other troop-contributing countries within the International Security Assistance Force (ISAF) in Afghanistan also made monetary payments, provided medical assistance, and engaged in rebuilding efforts for civilians incidentally harmed during their combat operations. The African Union Mission in Somalia (AMISOM) has provided monetary payments for incidental harm caused by its actions in Somalia.

Separately, conflict-specific non-monetary schemes created and funded by the US government have also assisted victims of harm. The Afghan Civilian Assistance Program was established to assist Afghan civilians who “have suffered losses as a result of US military operations against insurgents and the Taliban” in the country.34 It has offered assistance such as education and training, medical care, livestock provision, and infrastructure development. The program has been funded through appropriations from legislation that does not specifically address the legality of the US military attacks, but instead states that “funds shall be used for humanitarian and reconstruction assistance for the Afghan people including health and education programs, housing, to improve living conditions of women, infrastructure, and assistance for victims of war and displaced persons.”35 In Iraq, the Marla Ruzicka Iraqi War Victims Fund similarly has provided help to affected communities and families for rehabilitation and livelihood assistance programs.36 In Pakistan, the Conflict Victims Assistance Project, funded by the US government, helps the Pakistani government to deliver medical, psychological, and livelihood assistance to conflict-affected families in Khyber Pakhtunkhwa and since 2013 the Federally Administered Tribal Areas (FATA).37

Challenges

Changing the behavior of warring parties globally has its challenges. Identifying the real scope of the problem is a key challenge. The need for amends is clear in any given conflict, but difficult to measure with precision. How many civilians have been harmed in combat operations, and how many never received the amends they deserved? Indices of civilian suffering are subtle, and not all types of harm can be statistically recorded.39 The same challenges hold true for civilians who have already received amends: Were the amends enough, and by what measure? Do the recipients qualify for more? As with compensation payments for reparations, if amends are made for incidental harm, how is the loss valued? What is the appropriate methodology for answering these questions?

Another challenge is: what is an appropriate response to the harm? It is logical that as a dignifying gesture, amends should be tailored to the needs and wishes of civilian victims given their specific culture and traditions. It may also be that a civilian suffering loss may not want to receive a certain form of amends or any at all from the injury. In Afghanistan, some civilians harmed felt insulted with just monetary payments and wanted, instead, a trial in a courtroom, even if the harm they suffered was not unlawful under the laws of war and their legal claim carried no weight.40 Relatedly, how does one expect a warring party to recognize and assist a civilian population perceived to be a subset of the enemy?

Conclusion

There is no consensus among warring parties about what constitutes amends, and addressing civilian harm in this way is still the exception rather than the rule in warfare. The examples of amends made and amends called for clearly show a specific set of practices begin- ning to emerge. The question of amends made will reveal their utility, adaptability, and moral power bolstering the call for future warring parties to follow suit. Each example also clarifies the content of the norm, exposing best or worst practices.

Essentially, making amends ensures that civilian victims, whether individuals, families, or entire communities, have their dignity and humanity acknowledged through apologies, compensation, community aid, or in-kind assistance. One instance of making amends can change the destiny of a single family; the impact of all warring


32 2010 and 2012 UN Reports of the Secretary-General on the Protection of Civilians in Armed Conflict.

33 US Army Regulation 2-20, para. 10, authorizes use of solatia payments as an expression of sympathy towards civilian victims or family for harm suffered, if culturally appropriate.


38 While capturing all incidences is challenging, civilian harm tracking by warring parties can facilitate the collection of such data. For more information, see chapter on Civilian Harm Tracking in this publication.

39 Based on research by the Center for Civilians in Conflict in Afghanistan and in other theaters, it is useful, where feasible, to have the warring party meet in person or through a trusted intermediary with the victim to express sympathy and some for the losses and to explain the consequences of the incidental harm although it may not completely change a victim’s perspective on judicial accountability.
parties making amends could change the outcome of war for civilians on a large scale. No amount or kind of amends by a warring party can wholly restore the lives of the victims of the conflict, but for civilians caught in the crossfire it is a chance for some kind of remedy.

For More Information


Over the past two decades, there has been a growing movement to address the needs of civilians harmed in armed conflict and armed violence. Those who work in the field share the aim of alleviating human suffering, and their achievements show that this moral imperative has become a legal and policy priority. Differences among their approaches are evident, however.

*Acknowledge, Amend, Assist* examines five methods used to mitigate the harm to civilian victims: casualty recording, civilian harm tracking, making amends, transitional justice, and victim assistance. The publication strives to increase understanding of the strategies, their commonalities and differences, and the difficulties they face individually and collectively.

The approaches share many overarching principles as well as the goal of helping victims. They generally define “victim” broadly, envision a wide range of support, encourage victim participation in the process, and aim to address victims’ needs. They recognize that even if one party bears primary responsibility for providing assistance, in practice there will be multiple players involved.

The approaches also diverge on several counts. They target either lawful or unlawful harm, assign responsibility for providing assistance to different parties, call for various forms of recognition and aid, and have distinct underpinnings. The role of law in addressing the needs of victims is another subject open to debate.

This publication originated in a two-day summit held at Harvard Law School in October 2013. The summit provided an opportunity for experts to explore the challenges of meeting victims’ needs and to learn about where their work might coincide and/or conflict. This complementary publication seeks to present the issues to a wider audience. It constitutes a first step in forging an ongoing dialogue about how better to address civilian harm.