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The next battle

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Demands for justice for the victims of atrocities under the cover of battle in Afghanistan the latest theatre for war crimes - are likely to go unanswered, writes Peter Kammerer

HORRIFIC WITNESS accounts of barbaric killings are emerging from the battlefields of Afghanistan, but calls for action are falling on deaf ears.

International law experts believe that although atrocities have doubtless been committed, the chances of a war crimes tribunal are slim. Human rights groups are hopeful, but also do not see much chance of justice being done.

The Geneva Conventions, drawn up by Western powers in 1949 in the wake of World War II, clearly outline a code of conduct for participants in conflicts. Drawing on lessons learned in the 1939-45 war, they dictate in detail what should happen when prisoners are taken and how they should be treated. But the reality is that in the heat of combat, anything can happen - and does. This line is used frequently, often by commanders but sometimes the leaders of nations, to explain allegations of human rights abuses.

In the case of the civil war between the forces of the so-far victorious, US-backed, Northern Alliance and the on-the-run, ousted, Taleban, this maxim holds truer than in other conflicts. Two decades of unrest and hatred have produced an anything-goes climate in which torture and massacres are commonplace. Human rights groups have long been pointing out the atrocities. But it was not until the September 11 attacks in New York and Washington and the resulting war on alleged Afghan-based terrorist Osama bin Laden, his al-Qaeda network and their protectors the Taleban that the West paid serious attention.

Robert Goldman, a professor at the Washington College of Law at the American University and a specialist in the laws of armed conflict, has no doubt that both the Taleban and the Northern Alliance have committed major human rights violations.

'Afghanistan has suffered 20 years of war and the Taleban and Northern Alliance are not exactly steeped in the niceties of the Geneva Conventions,' Professor Goldman said yesterday. 'Their warfare has been characterised by barbarity - there's no other word for it. They are both guilty.'

There have been numerous reported cases of violations since the US bombing raids on Afghanistan began on October 6. An alliance commander near the northern city of Kunduz is said to have executed 150 Taleban fighters and there have been reports of the abduction of women by the Taleban when they retreated from Kabul.

The London-based human rights group Amnesty International was last week the loudest voice alerting the world to the brutality of the conflict, calling for an inquiry into what it believed was a massacre of 459 Taleban prisoners of war - many of them foreigners - at Qala-e-Jangi Fortress, 10km west of the city of Mazar-i-Sharif. A spokesman for the US-led anti-terror alliance, Kenton Keith, denied the claim at a press conference in the Pakistan capital, Islamabad, on Wednesday.

'This was not a massacre; it was a pitched battle,' he said. 'To try to make it appear as a massacre does not accord with the facts.'

Forces of the US-backed Northern Alliance retook the 17th century fortress on Wednesday morning after a three-day battle with the Taleban prisoners, whom they said had revolted after seizing weapons from guards. The men had refused to surrender and had died fighting, officials said.

Amnesty said an 'urgent inquiry should look into what triggered this violent incident, including any shortcomings in the holding and processing of the prisoners, and into the proportionality of the response by United Front [Northern Alliance], US and UK forces'.

British Foreign Secretary Jack Straw ruled out an inquiry into the deaths.

'The situation there was absolutely terrible, everybody accepts that, that there was this slaughter of prisoners,' he said. 'But this is not some easy Western circumstance. This was in the middle of a terrible situation where law and order had broken down.'

But Sidney Jones, Asian director of the New York-based Human Rights Watch, says an impartial group such as the United Nations should be responsible for carrying out the inquiry.

'If you wanted to have an investigation that had more credibility internationally because it wasn't a party to the conflict then I think you've got to turn either to the UN - although it's not clear if they're immediately equipped to do such an investigation - or to private groups,' Ms Jones said. 'I think if an independent group like Amnesty could interview all of those responsible it would be good.'

A war crimes tribunal in the style of that for Rwanda or the former Yugoslavia might seem a long way off, but Hong Kong University criminal law specialist Dr Lyal Sunga believes there may be grounds.

'One would need to look at whether there are questions of proportionality in the use of force, whether both sides took sufficient precautions to distinguish between civilians and combatants and thirdly - in cases where there have been civilians or civilian targets bombed - one has to check whether it was intentional or negligence,' he said.

Dr Sunga says a tribunal could be set up simply if there has been a grave breach of the Geneva Conventions. 'Grave breaches are things like murdering a prisoner of war, torture or hostage-taking,' he said.

But Ms Jones and Professor Goldman say the chances of a tribunal seem minimal.

'Usually in war crimes you have the faces of starving children and sympathetic victims that tend to move world opinion, particularly in the West, where these sorts of tribunals are established,' Professor Goldman said. 'But in this conflict, all Western forces are essentially allied against the Taleban, so I would be sceptical.'

Professor Goldman does not believe the US has violated any of the rules of war with its bombing campaign of Afghan targets. But on the ground, the situation is quite different.

'Technically, there are probably major violations that are being committed by all the various Afghan factions,' he said. 'In everything I've read this is what seems to be taking place. People surrender and disappear, mutilated bodies are found - somebody is doing something they're not supposed to do.'

Professor Goldman believes the US and Britain have an obligation to intervene if violations take place - and especially so in the case of what he calls their client, the Northern Alliance.

'The great problem here is if you have people who are not respectful of what they suspect to be Western civilised notions of how wars should be fought - they have their own custom and usage,' he said.

Professor Goldman says although the Afghan war's lines are blurred by it being two conflicts running simultaneously - an international battle against the Taleban coupled with the civil war between the Taleban and the Northern Alliance - the rules of the rights of the combatants as stipulated by the Geneva Conventions still apply.

'What is clear is that you can't target civilians,' he said. 'You always have to use due proportion in attacking military objectives to avoid or minimise collateral damage. Under no circumstance can you harm, much less kill, the injured, the wounded, the surrendered.'

Ms Jones agrees the rules on taking prisoners are clear.

'If they indicated intent to surrender or if they're captured there's an absolute prohibition on attacking them or executing them,' she said.

'It's not just a question of telling the Northern Alliance that they ought to treat prisoners humanely. There's a greater responsibility to ensure they do.'

Ms Jones believes it is up to journalists and non-government groups to create the impetus for an investigation of abuses and perhaps this would force the setting up of a tribunal.

'One good thing is that there are more journalists covering this war than in most other conflicts, so there is hope that violations will be exposed and future ones prevented,' she said.

Peter Kammerer is the Post's Foreign Editor

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