Humanitarian action: A delicate balancing act

by Michael A. Meyer

Increasingly a number of non-governmental organisations (NGOs) appear to be demanding the right to provide humanitarian assistance and at the same time the right to denounce any violations of human rights.[1] Whereas these are fine and understandable aspirations, they do not coincide with accepted principles of relief law and practice. This short article will explore certain aspects of this subject, primarily in relation to the treaty law applicable to circumstances of armed conflict and in occupied territories (International Humanitarian Law).[2]

LACK OF DEFINITION

The treaties relevant to this study, namely the Geneva Conventions 1949 and the Additional Protocols of 1977, do not refer

[1] This issue was raised at the conference on Law and Humanitarian Ethics held in Paris in January 1987, reported in the March-April 1987 issue of the *International Review of the Red Cross*, No. 257, at pp. 226-229. It was also discussed in the review of Jean-Christophe Rufin's book *Le piège* (*The trap*), by Jean-Luc Blondel, also in the March-April 1987 issue of the *Review*, at pp. 233-235.

[2] Violations of human rights or IHL may be most likely to occur in such situations. Also IHL, more than any other body of law, may be said to contain most of the formal provisions accepted by the majority of States pertaining to humanitarian assistance of the kind offered by NGOs.

expressly to non-governmental organisations.[3] Red Cross and Red Crescent organisations are the only NGOs referred to by name in these agreements, not for the most part to limit activity by other NGOs but to illustrate by example what is meant by a particular category of organisation, such as an aid society or an impartial humanitarian body. Consequently it is necessary to examine the treaty provisions pertaining to humanitarian action and see whether NGOs might qualify thereunder.

LIMITED RIGHT TO PROVIDE HUMANITARIAN ASSISTANCE

Generally NGOs do not have an automatic right in law to provide humanitarian assistance.

In peacetime, or where International Humanitarian Law (IHL) is not applicable or is not applied, NGOs must ordinarily obtain the consent of the governing authority to their relief operations. This applies to the vast majority of natural disaster, famine, refugee and conflict situations. The Unitar Model Rules for Disaster, Relief Operations [4] and other relief instruments are based on this assumption of official authorisation.

In an armed conflict to which the Geneva Conventions apply, certain types of NGOs are given a limited right to provide humanitarian assistance. The First Geneva Convention of 1949 refers to "relief societies" who are permitted, "even in invaded or occupied areas, spontaneously to collect and care for wounded or sick of whatever nationality." They must respect and protect the wounded and sick "and in particular abstain from offering them violence." No one may be penalized for having helped the wounded and sick.[5]

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[3] One might observe that in any event, there is no entirely satisfactory definition of an NGO. For the purposes of this study, a non-governmental organisation is an organisation not established by a government or by an inter-governmental agreement. It is usually private in nature, composed of members who may be individuals or organisations, has specific objects, and may be national or international. See generally H.H-K. Rechenberg, "Non-Governmental Organizations" in *Encyclopedia of Public International Law*, Instalment 9 (Amsterdam: North Holland 1986), pp. 276 et seq.

[4] M. El Baradei, et al., *Model Rules for Disaster Relief Operations*, Policy and Efficacy Studies No. 8, United Nations Institute for Training and Research (Unitar), 1982. Also see the *Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations*, Twenty-first International Conference of the Red Cross, Istanbul, Resolution XXVI, September 1969. This Declaration reflects many of the accepted principles or relief law and practice.

[5] Art. 18, First Geneva Convention.

The Second Geneva Convention of 1949 contains a similar provision, permitting vessels which have "of their own accord collected wounded, sick or shipwrecked persons [to] enjoy special protection and facilities to carry out such assistance."[6]

Additional Protocol I of 1977 extends the scope of this right of humanitarian action to include all wounded and sick, military and civilian, and to all shipwrecked.[7]

However the NGOs who act on their initiative are still subject to a certain measure of official control.[8] As already noted, they are required to respect the wounded and sick and as appropriate shipwrecked, regardless of nationality and by implication, to stick to their humanitarian mission. These relief societies will receive a certain protection for their humanitarian activities but their actions are likely to be more circumscribed than those of officially authorised aid societies (described below). In particular relief organisations without official authorisation are unable to use the distinctive emblem of the Red Cross or Red Crescent, the use of which is subject to regulation by the Geneva Conventions and their additional Protocols.[9] The absence of the emblem limits the immunities available to these organisations, which in turn may result in limiting their activities. Examples of NGOs which may act on their own initiative to provide humanitarian assistance to the wounded and sick are *Médecins sans Frontières* (MSF) *and Health Unlimited.*

The International Committee of the Red Cross (ICRC) has a right, under the relevant Geneva Conventions, to perform certain humanitarian functions in respect of prisoners of war and civil detainees and internees.[10] As explained later, the ICRC also has a

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[6] Art. 21, Second Geneva Convention.

[7] Art. 17, Protocol I. Protocol I also extends a certain general protection to all those engaged in medical activities, even if they are not assigned to medical purposes by a Party to the conflict (Art. 16). Yet unlike authorised medical personnel, civilian or military, medical personnel without an official authorisation from a Party to a conflict will not be respected and protected in all circumstances, and the Parties to a conflict are not required to help and facilitate their humanitarian functions (e.g. see Art. 15, Protocol I).

[8] J. S. Pictet (ed.), *Commentary* [to the First Geneva of Convention of 1949], ICRC, Geneva 1952, pp. 190-191.

[9] E.g. Art. 39, 42, 44, First Geneva Convention.

[10] E.g. Art. 126, Third Geneva Convention; Art. 143, Fourth Geneva Convention. But even these rights may be restricted "for reasons of imperative military necessity" albeit temporarily, and the appointment of ICRC delegates must be submitted for the approval of the authority concerned.

right to offer its humanitarian services to the Parties to a conflict.

Under the Geneva Conventions and the Additional Protocols, the Parties to a conflict are able to authorise certain NGOs to perform specific humanitarian functions under their control. When this occurs, these officially authorised NGOs obtain a recognized status and related privileges which enable them to provide humanitarian assistance in a particular situation and to particular categories of victims, often with the help of the authorities concerned. Such authorised NGOs include the voluntary aid societies which assist the medical services of the armed forces;[11] the officially recognised relief societies which provide hospital ships during armed conflict at sea;[12] relief societies which help prisoners of war;[13] relief societies which assist civilian detainees or internees,[14] and relief societies which serve the inhabitants in occupied territory.[15] Conditions for their operation vary: generally, control is tighter for those which act on or near the scene of battle, such as the voluntary aid societies and the officially recognised relief societies.[16] Normally, however, such organisations will retain their separate identity and civilian

[11] Art. 26, First Geneva Convention. These voluntary aid societies may also belong to a neutral country; in this case, they will have the previous consent of their own Govenment and the authorization of the Party to the conflict concerned (Art. 27, First Geneva Convention). Reference to "national voluntary aid societies" is made in Protocol I (Art. 8 (c) (ii)).

[12] Art. 24, Second Geneva Convention. These officially recognised relief societies may also belong to a neutral country; in this case, they will require the previous consent of their own governments and the authorization of the Party to the conflict concerned (Art. 25, Second Geneva Convention).

[13] Art. 125, Third Geneva Convention.

[14] Art. 142, Fourth Geneva Convention.

[15] Art. 63, Fourth Geneva Convention.

[16] For example, strict conditions are placed on those voluntary aid society personnel who have the same protected status under IHL as the permanent medical personnel of the armed forces. These conditions apply both to the voluntary aid society—due recognition and authorisation; notification; control; and to the personnel—same medical duties; exclusive engagement; subject to military law. Although municipal (national) law will ultimately govern the conditions under which voluntary aid society personnel lend their assistance to the medical services of the armed forces and their status, unless other provision is made, such personnel will retain their civilian status. Voluntary aid society personnel engaged in other duties will also have civilian status but without the privileges of those employed on the same duties as the permanent medical personnel of the armed forces, such as the right to use the protective emblem of the red cross or red crescent (First Geneva Convention, Art. 40) and upon capture, the right to the status of retained personnel rather than of prisoner of war (First Geneva Convention, Art. 28; also see Third Geneva Convention, Art. 33).

status.[17] National Red Cross and Red Crescent Societies are the most well-known examples of NGOs which may assume one or more of these authorised functions. In addition, for certain purposes, the Sovereign Order of Malta, the Order of St. John of Jerusalem and other groups, both secular and religious, may fit one of the categories of authorised NGOs mentioned.

Generally, authorised aid societies do not have an unlimited right to provide humanitarian assistance under the Geneva Conventions or Protocols: they are subject to regulation by the Party to the conflict to which they belong or by the Occupying Power or Detaining Power. But when authorised societies are able to act, they do so with the support of the relevant authorities and may be able to achieve much.

RIGHT TO OFFER HUMANITARIAN ASSISTANCE

It may be said that whereas normally NGOs do not have a right to provide humanitarian assistance, in principle impartial humanitarian bodies do have a right to offer it.

Under the Geneva Conventions and the Additional Protocols, an offer of relief, if made in good faith by an appropriate NGO, should not be regarded as interference in an armed conflict or as an unfriendly act. There is a presumption that such offers should be accepted, for example, where a Party to a conflict is unable to supply civilians in territory under its control with goods indispensable to their survival.[18] However, a relief action cannot be forced upon the receiving State or other Power concerned; as will be discussed later, it is subject to their consent. The preceding also applies to situations not covered by the Geneva Conventions, e.g. situations of natural disasters, internal disturbances, etc.

Perhaps the best established and recognised right to offer humanitarian assistance is the so-called right of initiative of the ICRC. Using this right of initiative to offer its humanitarian ser-

[17] For example, the property of voluntary aid societies used to help the sick and wounded of the armed forces is in a more advantageous position than the property belonging to the military medical services: it cannot be regarded as war booty or confiscated, and it is subject to only limited rights of requisition and seizure (First Geneva Convention, Art. 34). This illustrates that these societies retain their own personality and status as voluntary, private institutions, although they are closely connected with a Party to a conflict.

[18] E.g. with respect to occupied territory, Art. 59, Fourth Geneva Convention.

vices to a Government or other authority, the ICRC is able to operate in many situations where, for whatever reason, the formal applicability of the Geneva Conventions is denied or is in fact irrelevant. The ICRC's offer of humanitarian assistance is not seen as an unwarranted interference in the affairs of an authority. This right of initiative, which may now be considered part of customary international law,[19] was built on the ICRC's traditional principles of strict neutrality and impartiality and its reputation for integrity, confidentiality and discretion. By adhering to its principles and by maintaining a low public profile, the ICRC has achieved a great deal, striving at all times to act solely in the interest of those it exists to serve, namely, the victims of armed conflict or of internal tensions or disturbances. Exceptionally, when it is considered in the best interest of the victims, the ICRC will publicly denounce violations of IHL.[20] However, such public statements tend to be even-handed, for example referring to violations by both belligerents.[21] Further, even if public statements are issued with the best of intentions, there is doubt about their efficacy in stopping or preventing violations. Ultimately the ICRC, as well as NGOs, must rely on the agreement and action of the governing authorities concerned, including third parties who might bring influence to bear on the belligerents.[22]

CONDITIONS GOVERNING RELIEF ACTIONS

Legal instruments covering humanitarian action in a variety of circumstances, in peace and in war, show that to be acceptable, such actions must conform to certain criteria. The main requirements are explained briefly below.

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[19] See generally, Y. Sandoz, "Le droit d'initiative du Comité international de la Croix-Rouge", *German Yearbook of International Law* (1979), pp. 352-373. See, also, *Statutes of the International Red Cross and Red Crescent Movement* 1986, Arts. 5 (2) (d) and 5 (3); ICRC Statutes, 1973, as revised, Arts. 4 (1) (d) and 4 (2).

[20] ICRC, "Action by the International Committee of the Red Cross in the Event of Breaches of International Humanitarian Law", *International Review of the Red Cross*, No. 221, March-April 1981, pp. 76-83.

[21] See, for example, Y. Sandoz, "Appel du C.I.C.R. dans le cadre du conflit entre l'Irak et l'Iran", *Annuaire Français de Droit International* (1983), pp. 161-173.

[22] Common Article 1 to the Geneva Conventions 1949 and Article 1 (1) of Protocol I 1977.

Existence of a real need

The existence of a genuine need is a requirement for any relief action. This deters unwelcome or unnecessary interference in a country's internal affairs. Such a need arises, for example, when the civilian population is inadequately provided with certain supplies, such as food and medicine. This matter was at issue in the controversial air drop of relief goods and earlier attempted relief action by sea, by India, to help the Tamil community in the Jaffna peninsula in Sri Lanka in June 1987.[23]

Humanitarian

A relief action must be humanitarian in nature. The ICRC Commentary to Common Article 9/9/9/10 of the Geneva Conventions defines "humanitarian" as "concerned with the condition of man, considered solely as a human being without regard to the value which he represents as a military, political, professional or other unit." [24] A humanitarian activity is "concerned with human beings as such, and must not be affected by any political or military consideration." [25]

Impartial

A relief action must also be impartial. This term seems to relate mainly to the distribution of assistance, based as far as possible on actual need, rather than "by prejudice or by considerations regarding the person of those to whom he gives or refuses assistance."[26] In the context of a relief action during a conflict situation, impartial may mean not designed to give undue advantage to one side, although relief given to only one side does not necessarily mean that the action is partial: much will depend upon the circumstances. The requirement of impartiality applies both to the admission of a relief action and to its conduct.[27]

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[23] Even after agreeing to the sending of relief supplies, the Sri Lankan Government insisted that the aid was not needed, accepting it "purely in the interests of good-neighbourly relations". *The Guardian*, London, June 26, 1987, p. 10.

[24] J. S. Pictet (ed.), *op. cit.*, p. 108.

[25] *Ibid.*, p. 109.

[26] *Ibid.*

[27] M. Bothe et al., *New Rules for Victims of Armed Conflicts*, Martinus Nijhoff Publishers, The Hague/Boston/London, 1982, p. 435 [commentary on Art. 70 of Additional Protocol I of 1977].

No adverse distinction

The prohibition of adverse distinctions applies primarily to the conduct of a relief action. It means that discrimination between recipients cannot be based on criteria such as nationality, race, religion, social status, political or other opinion. However, priority can be given to persons on grounds of medical urgency or of vulnerability, such as children and expectant and nursing mothers.[28]

The difficulties encountered by the ICRC and the United Nations Children's Fund (Unicef) in launching their joint operation in Kampuchea in the autumn of 1979 involved matters of impartiality and adverse distinction, and perhaps also of humanity: both organisations—one NGO, the other an inter-governmental organisation (IGO)—are required by their principles to provide assistance to the victims of any side in a conflict.[29]

The need for official authorisation

As has been noted previously, both in law and in operational practice, the ability of NGOs to provide humanitarian assistance depends largely upon the consent of the governing authority, such as the government of the territory or region in which the action is to occur. In IHL terms, such an authority might be called a Party to a conflict, a Detaining Power or an Occupying Power; and reference to "each High Contracting Party concerned" might include an adverse Party, a transit State, a blockading Power, the assisting State or the receiving State.[30] When treaty law such as the Geneva Conventions or the Additional Protocols applies, it will be a factor in determining the ability of NGOs to undertake humanitarian action, for example, in setting out the conditions for such action. However, most, if not all, of the relevant provisions enable the authority concerned, such as a Party to a conflict, to refuse or to suspend humanitarian actions by organisations or their representatives. This is most certainly *not* to say that under this treaty law High Contracting Parties are entirely free to refuse or suspend humanitarian assistance: presumptions exist which limit such free-

[28] See commentary on Art. 12 of the First Geneva Convention, J. S. Pictet (ed.), *op. cit.*, pp. 137-138.

[29] ICRC, *Kampuchea*, Geneva (October 1981), p. 13 and also see p. 6.

[30] E.g. see Art. 70, Protocol I.

dom.[31] However, ultimately the choice is theirs and ordinarily they have the power to enforce their will.

Certain provisions of the Fourth Geneva Convention help to illustrate this requirement of consent by a Party to a conflict to humanitarian activities of any nature. Under Article 30 of the Fourth Convention, relief organisations appear to be entitled to do anything to further the humane treatment of protected civilian persons provided for in Article 27, including representations to the governing authority and other forms of protection activities. However, the authorities can limit such activities for "military or security considerations" [32] The ICRC is in a somewhat better position than other humanitarian organisations.[33] However, to quote from the ICRC Commentary on the Fourth Convention, all relief "organizations, whether national or international, must... strictly avoid, in their humanitarian activities, any action hostile to the Power in whose territory they are working or to the Occupying Power. These principles... govern all forms of relief organized in connection with the Geneva Convention." [34]

This obligation on relief organisations to adhere strictly to their humanitarian activities is enforceable through Article 142 of the Fourth Convention, which entitles the Detaining Power to limit the number of relief organisations operating in its territory.[35]

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[31] For example, starvation of civilians as a method of warfare or combat is prohibited (Art. 54, Protocol I and Art. 14, Protocol II respectively). Also, for other parts of a provision to make sense, discretion cannot be unfettered (e.g. see Art. 70 (1), Protocol I), and a treaty must be interpreted in good faith (Vienna Convention on the Law of Treaties, 1969, Art. 31 (1)). Referring to Art. 18 of Protocol II on relief societies and actions in internal armed conflicts, the United States State Department reported: "This important provision... reflects compromise with those delegations [at the Diplomatic Conference] which were unwilling to accept an unconditional obligation to permit and facilitate relief shipments. For its part, the United States would expect that the requirement of consent by the party concerned would not be implemented in an arbitrary manner, and that essential relief shipments would only be restricted or denied for the most compelling and legitimate reasons" (Message from the President Transmitting Protocol II to the Senate, January 29, 1987, 26 I.L.M., 1987, 561 at 567).

[32] See also Art. 5, Fourth Geneva Convention, which denies the rights of the Convention to, *inter alia*, an individual protected person "definitely suspected of or engaged in activities hostile to the security of the State". Nevertheless such persons are to be treated humanely and retain a right to a fair and regular trial.

[33] See, e.g., Arts. 30 and 143, Fourth Geneva Convention, which authorize the ICRC to visit protected persons.

[34] J. S. Pictet (ed.), *Commentary* [to the Fourth Geneva Convention 1949], ICRC, Geneva, 1958, p. 218.

[35] *Ibid.*

It may be said that in most cases under the Geneva Conventions and the Additional Protocols, relief organisations are only able to operate if they have some form of governmental authorisation, abstain from political or military activity, and maintain impartiality in their humanitarian work.[36] "Efficacy" may also be a criterion, [37] and a relief organisation can only be effective if it has the continuing authorisation of the governing authority.

In more general terms, humanitarian actions must not violate a State's sovereignty, independence or territorial integrity. The Indian Red Cross official involved with the shipment of relief supplies for Tamils on the Jaffna peninsula recognised this when he said he would not go ahead with the mission without the co-operation of the Sri Lankan authorities.[38]

Adherence to governing agreements

For NGOs to have the consent and assistance of the authorities concerned for their humanitarian work, they must also act in accordance with any governing agreements. These may consist of treaties, such as the Geneva Conventions and Protocol I,[39] and/or an agreement between the NGO and the governing authority.[40] This latter document may limit the permissible activities of the NGO or its personnel to certain specified tasks.

In addition there might be some specific authorisation for the participation of individual relief personnel (as opposed to approval of the general relief action) granted by the State where the personnel will carry out their duties, and this second document may also, in setting forth the terms of their mission, circumscribe their behaviour. The NGO itself may also have an agreement with its personnel, along the same lines.[41] One usual condition for partici-

[36] See, e.g., Art. 26, First Geneva Convention, on voluntary aid societies and Art. 63, Fourth Geneva Convention, on relief societies in occupied territory.

[37] See, e.g., Art. 61, Fourth Geneva Convention on the distribution of relief consignments.

[38] In fact this may have been quite a courageous act on the part of the Indian Red Cross, an illustration perhaps of the Red Cross Principle of Independence, *The Guardian*, June 3, 1987, p. 6.

[39] See Art. 81 (4), Protocol I.

[40] The ICRC status agreements are an example.

[41] As an illustration, the League of Red Cross and Red Crescent Societies usually concludes agreements with its field personnel, setting out the terms of their mission. If sent by a National Red Cross or Red Crescent Society, these personnel may also have signed a somewhat similar agreement with them.

pation in relief actions is that personnel must respect the law of the country where they are and in particular the security requirements of that country. Thus relief personnel should not jeopardize the general relief action, that is, the authorized work of their organisation, and they should not violate their own terms of mission.

The preceding points are affirmed in the provision in Additional Protocol I of 1977 concerning relief personnel. Article 71 thereof is an important innovation because it gives relief personnel a recognised status under IHL and provided they fulfil certain conditions, protection both from attack and from interference with their work. Such personnel must have the specific approval of the authority of the territory in which they operate. Under no circumstances may relief personnel exceed the terms of their mission, in particular the security requirements of the Party in whose territory they are working, and failure to observe this condition may lead to termination of their work. These requirements help to illustrate that protected status under IHL is the result of governmental authorisation and control.

DENOUNCING VIOLATIONS OF HUMAN RIGHTS

Does an NGO or its personnel violate the conditions of their humanitarian action if they denounce violations of human rights? It is of course possible to construct an argument saying that such denunciations can be humanitarian in nature and purpose, perhaps even of a supra-national character, and that therefore they do not contravene the conditions of the relief action or terms of mission.

On the other hand, denunciations of human rights are usually viewed by the authority condemned as a political act, regardless of the motivation of the denouncer. Such actions may also be construed as a threat to the security of the authority and more than likely, as going beyond the authorized work of the NGO or its personnel. A relief worker will normally have no recognized standing in law, national or international, to act in this way, thereby adding to his or her vulnerability. The position may be even worse if the NGO and its personnel are alien, both in nationality and in general background, for example, socio-economic and racial.

The NGO and its workers may be doubly resented, and perhaps feared, for interfering in an "internal" or "non-humanitarian" matter. Foreigners are not necessarily welcome in a country, espe-

cially during times of armed conflict, and they may be a source of suspicion and as relief personnel, they may also be an affront to national pride.

As an example, referring again to the relief operation in Sri Lanka, it is reported that the presence of Indian aid personnel in the Jaffna peninsula is a growing irritant to Sri Lanka. The Sri Lankan Prime Minister has talked of the Indian "Trojan horse" and said that "many in the country are asking whether India is trying to achieve by subtle means what she could not do by force." [42]

Thus regardless of the impetus behind a denunciation of a violation of human rights, and of moral, philosophical or even some legal arguments in its support, the fact remains that in the field such action is likely to be viewed by the authority concerned as incompatible with the conditions upon which the NGO is permitted to provide humanitarian assistance. The NGO may then have its work in the country terminated.

One possible response

Naturally an NGO and its personnel will be loath to stand by and watch violations of basic human rights without acting, regardless of the terms of the relief mission. An approach may be made to the responsible authority, but even if done privately and diplomatically, such action may not be welcomed or heeded. Moreover the NGO or its representative must be careful not to make the situation worse: by protesting about action taken against a single individual, other people or the entire relief operation may be placed at risk. Tacit consent, silence in the face of atrocity, is not advocated. What is suggested is that any response must be considered and perhaps be left to other types of organisations. As an illustration it might be better for an NGO or its personnel to record a violation,[43] pass the information to other bodies whose purpose it is to deal with human rights abuses, such as Amnesty International or the ICRC, and let

[42] *The Guardian*, July 4, 1987, p. 6.

[43] But even taking of records must be done in ways unlikely to endanger the aid operation. In the relief action in Sri Lanka, the English language press in Colombo, which is said to be influenced by the government, has accused Indian Red Cross personnel of compiling dossiers on alleged disappearances and excesses by government forces. These charges have been denied by the Indian High Commission, *The Guardian*, July 2, 1987, p. 10.

them deal with the authorities about the matter, leaving the NGO or its personnel to attend to essential strictly humanitarian tasks, such as medical care and distribution of food.

If the NGO fears that through its public silence, it will become a party to violations of human rights or IHL, or if it is unable to operate according to its principles, then of course the NGO must consider whether in the circumstances it is necessary to halt its operations and even to withdraw from the country. At that point the NGO may decide it has more to gain than to lose by denouncing violations of human rights or IHL.

Practical suggestions

There are a number of ways in which NGOs might confront this dilemma. Some are as follows.

It seems rather futile, and possibly even detrimental, for NGOs to assert unconditional rights to act when in fact, either such rights are not recognised by law or when in practice, their action can be constrained by the authorities concerned, regardless of the merit of any legal or moral arguments in support of their position. Once the perhaps grim reality of the situation is faced, NGOs may take steps to find ways to achieve their aims within the existing legal and political structure. For example, through better understanding of IHL, NGOs may decide to seek official recognition as voluntary aid societies or other authorised relief bodies under the Geneva Conventions or Protocols. This may help to enhance their operations and own protection.

For an NGO to recognise its limits is also important to its reputation, and the reputation of an NGO can be crucial to its ability to provide humanitarian assistance and to raise difficulties, such as allegations of human rights abuses, with the authorities. To be able to provide humanitarian assistance, a relationship of trust or confidence must be established between the NGO and the authority concerned. NGOs must demonstrate their adherence to the conditions of relief actions, in particular they must scrupulously avoid involvement in political affairs. NGOs must be sensitive to the fears of the authorities, and seek to engage, at least in the first instance, in constructive, confidential dialogue or other appropriate action rather than in public denunciation. They should emulate the policy of the ICRC, that is, consider the interests of those they set out to assist as primordial. An illustration of the importance of the

reputation of an NGO is the fact that in situations of tension or conflict around the world—for example, in the United Kingdom, South Africa and Colombia—the red cross emblem will have a protective value for members of National Societies, enabling them to help each side, regardless of the formal legal position. This also shows that the principles of an organisation, and its demonstrated willingness to abide by them, may often matter more than the strict legal position.[44]

On a more concrete level, NGOs might establish Guidelines for Action or a Code of Practice which covers the situation of violations of human rights or of humanitarian law. These might be individual to each NGO or agreed among a number of NGOs. The ICRC's own guidelines for action in the event of breaches of IHL [45] might serve as a model for such documents. NGOs will need to consider their own specific competences and limits, and set priorities, defining when and how to report particular alleged violations. Action, and the basis for action, may vary according to the situation.

Channels and modes of communication for reporting alleged violations between NGOs, or with others concerned, such as the media, neutral governments and the government of the NGO, may need to be developed or strengthened.

National and international legal instruments might be adopted in order to define the status of NGOs and their workers and if possible the action each may take if they witness violations of human rights or IHL. These might make clear that a confidential report by the NGO to the authority concerned about alleged abuses is not to be considered a political act, or beyond the terms of their humanitarian mission. The same principle, possibly together with agreed procedures for reporting violations, might be included in any agreement between the NGO and the authority of the territory in which it seeks to operate. It is appreciated that such an agreement may not be possible in every instance.

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[44] There may be developing customary law to the effect that the red cross or red crescent emblems will have a protective value if displayed by authorised persons or units in circumstances of internal conflict, at least in those situations covered by Common Article 3 to the Geneva Conventions even if these situations are below the threshold of application of Protocol II. More controversially, but not without foundation, this postulated customary rule might also be said to apply to internal disturbances and tensions to which international human rights instruments are applicable but to which Common Article 3 does not apply.

[45] See footnote 20 *supra*.

Existing documents, such as the 1982 Unitar Model Rules,[46] the 1980 International Law Association model relief agreement and the 1984 Draft Convention on expediting the delivery of emergency assistance, could be used as a basis for any new instruments on particular issues. Declarations or resolutions of international and regional organisations, and by the International Conference of the Red Cross and Red Crescent, might also prove helpful. A National Charter for Volunteers is another potentially useful idea.

Training of NGO personnel, both in the relevant substantive law or other regulations governing their mission, and in procedures, such as how and when to record and to communicate violations, also seems important. Indeed such training seems vital in order to ensure respect for the various rules and practices in the field. Red Cross and Red Crescent organisations, including National Societies, might have a role in helping to provide such instruction, as part of their dissemination activity.

A DELICATE BALANCING ACT

Action by NGOs in the face of violations of human rights or IHL may, in the end, come down to the specific atrocity or potential atrocity. From legal and operational viewpoints it is likely that under current rules and practices, it will be unacceptable for NGOs or their personnel to make a public denunciation and then to be allowed to continue their humanitarian mission. However, there are occasions when the provision of soup may be less important than bringing the attention of the media to violations of human rights. If after every relevant consideration affecting the relief operation has been evaluated, a genuine crisis of conscience occurs, and there is no other alternative, a protest may be made. But this should be done in full knowledge of the likely consequences of such action, to the NGO, to any other humanitarian organisation working in the same location, to NGO personnel in the field and most of all, to the people the NGO is attempting to assist. Action by NGOs when confronted by violations of human rights or IHL should, ideally, be pre-planned and well-considered, taking into account all the possible ramifications, long-term and short-term.

Any generally accepted rules on humanitarian assistance will reflect a balance between humanitarian and sovereign interests.

[46] See footnote 4 *supra*.

IHL including its provisions on relief actions, has proved successful over the years because it reflects a largely acceptable balance between humanitarian interests and the realities of combat or occupation. An NGO cannot have the privileges of authorised aid societies without also having the restrictions. A compromise is required. Special protected status for aid personnel and facilitation of their work by the authorities necessitates a measure of official authorisation and control. The relief societies of most liberation movements or dissident groups are subject to such restrictions imposed by the related political or military authority, including the "Palestinian Red Crescent", the "Khmer Red Cross", the "Sahraoui Red Crescent", the "Moro Red Crescent", the "Relief Society of Tigre" and the "Eritrean Red Cross-Red Crescent Society". The doctors and nurses from NGOs, such as Aide Médicale Internationale and Médecins du Monde, which seldom request or obtain official permission for their work, may become targets for regimes that are openly hostile to their missions of mercy. To date it seems that the balance achieved in the Geneva Conventions and the Additional Protocols is the best that can be agreed. This may not be ideal from a purely humanitarian viewpoint but given the realities of situations when relief is required, especially perhaps during an armed conflict, it may be the only way at this time to attain any humanitarian objectives.

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