"Humanitarian ambition" *

by Frédéric Maurice†

A few hours before leaving for Sarajevo last May, Frédéric Maurice let us have the final pages of an article for the Review. *He wanted to mull over his text and polish it, but fate decided otherwise, since he lost his life in tragic circumstances on 19 May 1992, on the outskirts of Sarajevo.*

As a tribute to our late friend, we are publishing the text as it stands, an off-the-cuff personal reflection on the present-day problems of humanitarian assistance.

Our feelings in doing so are all the stronger in that the article is a good reflection of Frédéric's personality, intelligence, generosity and personal commitment, and of his gift of analysis served by an incisive style with a slight bite to it.

Nor is that all: the article well reflects the state of mind of the ICRC's delegate "operators" (a word he was fond of) who, not content with showing steadfast commitment to the humanitarian cause and to the duties inherent in their mission, strive to draw from their field experience arguments to combat the deviation of humanitarian assistance and constantly improve aid to victims. For the truth is that, even if it is sometimes checked by misgivings, "humanitarian ambition" feeds above all on hope.

Frédéric Maurice gave considerable thought to his work. Looking beyond the problems of humanitarian assistance and the case for and against the "right to intervene", he is inviting us to reflect on a new philosophy of humanitarianism.

The Review

* Title by the editor

A "right to intervene" has been proposed.[1] Is it a public relations exercise aimed at Western consumers? A fresh slant on humanitarian action? At the very least, its proponents and the ideas they put forward have the merit of having induced a host of people to think about international solidarity.

As early as 1988 the International Committee of the Red Cross (ICRC) expressed reservations about a draft resolution on humanitarian assistance, submitted to it by Dr. Bernard Kouchner, the then French Secretary of State for Humanitarian Action. In essence, the ICRC feared that the highly ambitious wording might revive old resentments in many States all the more sensitive about their prerogatives because they were destabilized by conflict or affected by population displacements or famine.

The lesson of four years' experience of arduous negotiations during the latest revision of international humanitarian law (IHL) from 1974-1977 was that no serious regulatory headway could be expected in the present circumstances. In particular, the development of rules defining the conditions governing the right of civilian populations to assistance in times of armed conflict and the procedure to be followed had proved extremely laborious and it seemed hard to go beyond the compromises already reached. There was a very real risk that resubmitting the same issues to States in a different forum might result in a setback, a regression in law which would inevitably mar the recent and still fragile progress made in the Protocols additional to the Geneva Conventions.

Yet beyond the technical proposals concerning the right to assistance, the draft resolution stemmed from a pronounced desire to renew the spirit, inspiration and implementation of humanitarian action; in short, to rethink the entire approach. The sole purpose of the media campaign that revolved around the concept of the "right of intervention" was to show that humanitarianism had yet to be invented, that a new generation of field workers had been born, that a modern body of law was taking shape and that United Nations General Assembly Resolutions 43/131 and 45/100 marked the first innovative steps towards it.[2]

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[1] See the articles published in the *Review* on humanitarian assistance and on the question of the *"droit d'ingérence humanitaire"* and the right to assistance, *IRRC*, No. 288, July-August 1992, pp. 225-274.

[2] Humanitarian assistance to victims of natural disasters and similar emergency situations, Resolutions 43/131 of 8 December 1990 and 45/100 of 14 December 1990.

As these ideas were being developed, the ICRC — admittedly less in the limelight — was taking on unprecedented commitments in the field (a fourfold increase between 1987 and 1991) with the political, diplomatic and financial backing of a growing number of States in north and south alike. In France itself, official spokesmen reflecting the position of certain non-governmental organizations leapt to the defence of the achievements of IHL and of the humanitarian strategies which express them.

Humanitarian ambition

The initial discussion centred on the definition of humanitarian action as such. It is probably essential that revulsion for massacres and the ravages of utter deprivation should motivate individual humanitarian commitment, yet humanitarian action in time of war remains a thankless task, one which is congenitally incomplete and always humiliating to those who undertake it. The famine in Biafra, the killing fields of Cambodia and the destitution of the peoples of Tigray all exemplify the permanent failure which haunts those who try to humanize war and attenuate its effects. Developing a humanitarian methodology and project is difficult because of the closeness, within a narrow space, of overweening ambition, crushing historical and individual experience, and political constraints which lie outside the sphere of influence of humanitarian endeavour. The possibility of action over a longer period hinges on a proper management of these dialectics. Mysticism, paranoia and the temptation to assume power have always been the aberrations and canker of humanitarianism.

The Red Cross has opted once and for all to try to help and protect the victims of conflict, and no more than that. It deliberately leaves to others the task of building the "world government" and "everlasting peace". Yet though prosaic and circumscribed, that ambition is nonetheless immense; deadlines are always urgent and the rules of the game severe. Judge for yourself:

1. The real danger in the post-Cold War era lies in the proliferation of internal conflicts which kill hundreds of thousands of civilians, displace millions of others, cause unimaginable infrastructural and environmental damage and shatter the frames of political, cultural and economic reference and systems of recourse. No continent is now safe from these new-style disasters: they can knock on any door and there is nothing exotic about them. Their victims are simply added to all those of last year's barely extinguished and in reality still smouldering

conflicts, in the Americas, the Middle East, Afghanistan, the Indian subcontinent and South-East Asia.

The euphoria surrounding the fall of the Berlin wall is far behind us. Whole areas of the world are now prey to bloodshed and devastation on a scale hitherto unseen since the World Wars. Humanitarian romanticism seems quite derisory in the face of such a tide of suffering. Plausible action to tackle and heal this suffering everywhere will call for collective decisions and the carefully concerted mobilization of the means, techniques and resources of all the agencies concerned.

2. The need to "federate" efforts and projects and to institute authorized and recognized quality controls over the services provided is dictated not only by the volume of requirements but also by political parameters and the structure of the looming conflicts. The world is experiencing its third complete organizational upheaval this century. First, the principles upheld by Woodrow Wilson after the First World War did not preserve peace but they outlawed war so effectively as to hamper the development of humanitarian law. Humanitarian workers were thus very poorly equipped to protect civilians, who meanwhile had become the main victims of the wars in Abyssinia and Spain, of the Sino-Japanese war and, of course, of the Second World War.

The ideological divide during the Cold War that followed the Second World War subsequently barred the way to humanitarian action in many theatres of conflict, thus confounding repeated efforts to put the law into practical effect.

While it is hard to discern the exact contours of the era now beginning, we at least know that the international order will have many centres of power, be marked by economic gulfs and intolerable disparities in levels of development between north and south, and wracked by nationalist fevers, ethnic strife and cultural and religious antagonism.

It will be no easy matter adapting humanitarian strategy to fit these new facts: maintaining strict independence from the competing centres of power now emerging, safeguarding the acceptability and legitimacy of international aid in the face of hard-line ideologies and upholding the interests of those in need of assistance, firmly establishing and developing relations of mutual trust with a multitude of factions in vast areas of conflict, and surviving the dangerous shoals and quicksands of war. Individualism and resounding media statements will count for little in this undertaking. All that will count will be real courage, determination and the professionalism required to intervene in

theatres of operation which, as in Somalia and Liberia, are fading from the spheres of interest and solidarity of our world.

3. At the same time, humanitarian endeavour is gaining in legitimacy; the principle that States must answer for the oppression and massacres of which they are guilty, and the notion that the victims of internal strife must receive the same treatment as those of international wars, are thus gaining ground and are accepted in law. The imperatives of humanitarianism are impressing themselves on present-day political culture both as universal values and as the basis for binding collective responsibility and interest. Massacres, famine, war crimes and environmental disasters now explicitly entail collective responsibility at both the political and the humanitarian levels.

Legal expression of these developments is nothing new. As early as 1876 during the Herzegovina uprising, Gustave Moynier, the then President of the ICRC, asserted that the Geneva Convention was applicable in cases of civil war; the Convention was likened to "a kind of humanitarian profession of faith, a moral code which cannot be compulsory in certain cases and optional in others".[3] And six years later the obligations of States were specified in the following terms: "Even if States are confronted with rebels, barbarians or perjurers, their duty is to treat them as humanely as would the most irreproachable observers of the Convention".[4]

Then again, under Article 1 of the Geneva Conventions of 1949 States gave their pledge not only to respect but also to ensure respect for humanitarian law in all circumstances. In January 1985, the ICRC launched its "Appeal for a Humanitarian Mobilization", pointing out in particular that "any government which, while not itself involved in a conflict, is in a position to exert a deterrent influence on a government violating the laws of war, but refrains from doing so, shares the responsibility for the breaches committed".[5] It is worth noting that, in spite of the Appeal's innovative nature, the publicity given to it and the reactions from all sides, none of the 160 States approached questioned the principle of co-responsibility.

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[3] Gustave Moynier, *Study on the Geneva Convention*, 1876, quoted by Pierre Boissier, *History of the International Committee of the Red Cross*. Vol. I, *From Solferino to Tsushima*, Henry Dunant Institute and International Committee of the Red Cross, Geneva, 1985, p. 300.

[4] Gustave Moynier, *The Red Cross: its Past and its Future*, 1882, quoted by Boissier, *ibid.* p. 300.

[5] "ICRC Appeal for a Humanitarian Mobilization", in *IRRC*, No. 244, January-February 1985, pp. 30-34, *ad* 33."

Such legal developments — and naturally the operational practice which gives them tangible expression — were therefore favourable, having been prepared and advocated for many years, practically since the creation of the Red Cross and throughout the successive codifications of the Geneva Conventions. The field of human rights has developed in much the same way, and the idea that States guilty of massive human rights violations are answerable to the international community is now firmly established.

The same cannot be said of the issue of peaceful or military intervention by third States, nor more generally of the means and decision-making mechanisms available to them for imposing observance of the law. Let us purposely leave open the question of the legitimacy of "intervention on humanitarian grounds", for it is a legal and political issue beyond the competence of a private humanitarian operator. Moreover, we all know its limits and pitfalls: subjection of humanitarian action to the vagaries of the law of the strongest, questioning of the principle of the sovereign equality of States, the unpredictable nature and inequality of treatment from one conflict to another, rejection by the States of the south and political exploitation of the whole gamut of humanitarian feeling.

In short, both the Holy Alliance and the Brezhnev doctrine amounted to a series of interventional rights asserted by the strongest, not that that rules out the idea that Tanzania's intervention in Uganda and Viet Nam's in Cambodia were to some extent justifiable by the martyrdom suffered by those two countries. However, whatever the intention behind them, those interventions were political acts, armed interventions which led to military occupation in the technical sense of the term.

One of the chief problems for humanitarian agencies will therefore be to preserve the clear distinction between the political responsibilities incumbent on States under IHL or human rights law, and those which come under the heading of neutral and impartial humanitarian action carried out by independent bodies in accordance with the principles laid down in the Geneva Conventions and recalled by the International Court of Justice in its ruling on the Case of Military and Paramilitary Activities In and Against Nicaragua. Recent initiatives taken in the field by the upholders of the right to intervene are undermining the credibility of operators present and active in many theatres. The official line, which fluctuates between an advocacy of intervention and an endorsement of the primacy of state sovereignty affirmed in Resolution 43/131, clearly expresses the confusion.

If there were no autonomy or freedom of action bestowed by neutrality, no action could be taken before a cease-fire came into effect and steps were taken to restore order or keep the peace; in other words it would have to be renounced at the very time — which could last for years — when the fighting is in its most deadly phase, when international forces are paralysed and when apolitical agencies, tolerated by the belligerents on account of their neutrality and the strictly humanitarian nature of their work, are the victims' last possible recourse.

Humanitarian action

Does Resolution 43/131 enshrine a new and official recognition of a right to humanitarian assistance, a right that is no longer subject to the political and territorial control of States? Will the community of emergency relief agencies be better served than in the past by the adoption of that resolution?

1. The legal background

We cannot but be astonished by the gulf between the intentions displayed and the wording of Resolution 43/131, which is certainly a stringent reminder of the principle of the sovereignty and territorial integrity of States and of "their primary role in the organization, coordination and implementation of humanitarian assistance within their respective territories". Moreover, the official stances taken by States when the draft resolution was submitted to the General Assembly left no doubt as to the interpretation they intended to place on it and the margin of manoeuvre being left to the non-governmental organizations.

It can be said without hesitation that the text of Resolution 43/131 falls short of the provisions of the Geneva Conventions and the Additional Protocols on the right to assistance. Whatever may have been suggested, those provisions are specific, binding on States and based on a scrupulous analysis of the various conflict situations that generate material needs (blockades, military occupations, internal and international conflicts, etc.).

Admittedly, the entire construction is still formally subject to the consent of States; but States have no discretionary right to deny assistance to civilian populations when offered by a neutral and impartial body. The legal hurdle is therefore a relative one in that States assume precise and imperative obligations in that respect.

Moreover, it is worth adding that the lawmakers who handed down the Protocols were careful to stipulate that offers of relief "shall not be regarded as interference in the armed conflict or as unfriendly acts".[6] That principle is an important one because it confirms the legitimacy and legality of humanitarian initiative in all circumstances, even where it runs counter to reasons of state.

It is consequently somewhat specious to make out that the difficulties encountered in the field result from an inadequacy of the available texts. In almost all cases the crux of the matter is in fact the difficulty experienced by States in respecting their commitments when in situations of conflict.

It is thus clear that the best way to tackle these political problems is again bound up with the ability of the humanitarian community to present a unified front based on precise and unequivocal legal references. The main effect of the multiplicity of texts, the formal value and content of which vary considerably, is therefore to sow confusion over the obligations contracted by States and lead to more frequent deviation from them.

2. Dealing with emergencies

One of the major restrictions to traditional humanitarian action is said to be its self-imposed ban on crossing the frontiers of States which refuse it permission to operate. This has become a familiar refrain since the Biafra affair, in which the ICRC, while remaining operational at all times, temporarily had to suspend its relief consignments. The conclusion drawn is thus obvious: emergencies and the need for speedy access to victims call for the freeing of humanitarian action from political red-tape and obstruction; and if the result cannot be achieved by legal or diplomatic means, there is nothing against recourse to clandestine measures.

Unfortunately, examples of this kind are in plentiful supply: whatever the legal position, experience clearly shows that there can be no rapid and efficient action in the field without the explicit consent of the States concerned and the armed forces on the spot. If such support is withheld, large-scale operations carried out with modern means, usually destined for hundreds of thousands of victims and required over months if not years, are simply inconceivable.

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[6] Protocol I, Article 70.

Negotiations with the States concerned, in which the humanitarian aspect cannot be overlooked, must be an ongoing process: the legal and fiscal facilities which the ICRC enjoyed during most of the famine in Ethiopia were negotiated as early as 1982. Facilities for intervening from Baghdad into the Shiite south of Iraq, and across the lines into Kurdistan, were for the most part granted to the ICRC thanks to contacts established and permanently maintained since 1980. In the same way, the agreements giving access to prisoners and guaranteeing certain facilities for the ICRC's work in Yugoslavia were signed and became operational three years before the crisis came to a head in Slovenia in July 1991. So it is diplomatic groundwork, and not the romanticism purveyed by the media, which opens the door to immediate emergency action.

And beyond relief?

The thinking on humanitarian action is often clouded by the more spectacular and immediately perceptible aspect of the suffering and needs of the victims. Hence the exclusive cult of relief supplies and emergency medical aid. Humanitarian work is thus reduced to a logistic and technical problem.

As we have seen, Resolution 43/131 is the expression of such logic: it is designed to address "natural disasters and similar emergencies" and is polarized around access to victims; it also deals exclusively with assistance. In our view, that approach obscures the real and often priority needs of victims and confines action solely to treating the symptoms.

War anywhere is first and foremost an institutional disaster, the breakdown of legal systems, a circumstance in which rights are secured by force. Everyone who has experienced war, particularly the wars of our times, knows that unleashed violence means the obliteration of standards of behaviour and legal systems. Humanitarian action in a war situation is therefore above all a legal approach which precedes and accompanies the actual provision of relief. Protecting victims means giving them a status, goods and the infrastructure indispensable for survival, and setting up monitoring bodies. In other words the idea is to persuade belligerents to accept an exceptional legal order — the law of war or humanitarian law — specially tailored to such situations. That is precisely why humanitarian action is inconceivable without close and permanent dialogue with the parties to the conflict.

Secondly, war implies a weakening of sovereignty, a questioning of territorial integrity and a hardening of policy extending to all aspects of civilian life. Whether it be a matter of freeing prisoners of the propaganda war, negotiating exchanges or repatriations at the end of the conflict, conferring neutral status on a front-line hospital or feeding or evacuating civilians, the first thing is always to take the field of humanitarian action out of its political context. The law is not enough to enable agreements to be reached in the field; the humanitarian negotiator's main asset is to be credited with trustworthy intentions, a neutral and strictly impartial role and the ability to act as a neutral intermediary between the belligerents.

Lastly, war is not only the instant when law breaks down and power is called into question; above all, it is the ensuing maelstrom of violence and the sum total of incalculable and ever-increasing suffering.

It is precisely to cope coherently with the multiple aggressions of war that the ICRC has sought to develop an operational approach which incorporates all the specialized services and action to be undertaken in order to respond to all victims and all the wounds inflicted on humankind in time of war.

It is in that respect that law, diplomacy and field work constitute an interdependent whole. For no assistance can be extended to the civilian population for long without the independence and neutrality which guarantee the impartiality of the aid being offered to the populations of the belligerents. The right to medical or material assistance counts for nothing if there are no rules on the conduct of hostilities to outlaw famine and the destruction of civilian property as methods of warfare. Work in prisoner-of-war camps has generally had a decisive effect on the conduct of the armed forces, particularly towards civilians. The search for missing persons, family reunification and the exchanging of messages between people separated or isolated by war also have their effects long after the cessation of active hostilities, when the time comes to solve the myriad problems of restoring peace.

The ICRC has formed the conviction that those approaches must be combined in a consistent whole if humanitarian action in wartime is to be not only effective but above all feasible and credible in the eyes of the belligerents.

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