

ICRC neutrality and neutrality in humanitarian assistance

by Denise Plattner

1. Introduction

The terms “*neutral*” and “*humanitarian*” crop up frequently in the vocabulary of international relations, thus demonstrating the credence placed in the attributes of neutrality and everything to which the word “*humanitarian*” can apply.

Paradoxically, however, neither neutrality nor humanitarian action is immune from criticism.

Non-governmental organizations of French origin, such as *Médecins sans frontières* (MSF), sometimes see an incompatibility between neutrality and justice.¹ Other experts consider neutrality from the standpoint of efficiency in relation to such objectives as those assigned to United Nations forces.² In the case of humanitarian matters, it is humanitarianism itself and all things humanitarian that have been called into question.³

For its part, the International Committee of the Red Cross (ICRC) certainly does not raise its working principles to the status of absolute values. As it is the first to admit, humanitarian action cannot put a stop to armed conflicts and so is limited in its objectives.⁴ While the ICRC

(Original French).

¹ See notes 33 and 34 below.

² See notes 46-48 below.

³ See R. Brauman, “Contre l’humanitarisme”, *Esprit*, December 1991, pp. 77-85, p. 79.

⁴ See address by Cornelio Sommaruga, President of the ICRC, to the International Conference for the Protection of War Victims, *International Review of the Red Cross (IRRC)*, No. 296, September-October 1993, pp. 365-368.

notionally holds humanitarian action to be in opposition to political action, it does recognize the merits of both and there is no question of its rejecting the latter entirely in favour of the former.

We may therefore assert that whatever is not neutral is not bad *per se* but may have other qualities based on different criteria of validity. In so doing we posit that neutrality exists, and therefore feel duty bound to define it with the utmost objectivity.

The ICRC sees three aspects to neutrality. First, it is an attribute whose outlines must be delimited because the institution is described as a neutral body. Second, it is one of the Fundamental Principles of the International Red Cross and Red Crescent Movement. We shall allude to the content of that principle and consider how it relates to the ICRC's own neutrality. Lastly, neutrality has often been mentioned in connection with humanitarian assistance over the past few years, so we shall examine the various elements of the debate before attempting to formulate a definition of neutral humanitarian assistance.

2. ICRC neutrality

A. The ICRC as a neutral body

The Geneva Conventions of 1949 and Additional Protocol I of 1977 describe the ICRC as an impartial humanitarian body or organization, the relevant provisions generally using the expression "*an impartial humanitarian body, such as the International Committee of the Red Cross*".⁵ The Statutes of the International Red Cross and Red Crescent Movement themselves refer to the ICRC as a "*neutral institution*" and as a "*specifically neutral and independent*" institution and intermediary.⁶

The ICRC is thus described as a humanitarian, neutral, impartial and independent body (or organization) in texts adopted by States alone, such

⁵ See Article 3 common to the four Geneva Conventions of 1949, Articles 9/9/9/10 of the four Conventions and Article 5, para. 3, of Additional Protocol I.

⁶ See Article 5, paras. 2(d) and 3, of the Statutes. It should be borne in mind that the Movement's Statutes are adopted by the International Conference of the Red Cross and Red Crescent, which brings together, in principle every four years, the ICRC, the National Red Cross and Red Crescent Societies, the Federation of those Societies and the States party to the 1949 Conventions. For the text of the Statutes, see the *Handbook of the International Red Cross and Red Crescent Movement*, published by the ICRC and the Federation, 13th edition, Geneva, 1994, pp. 417-432.

as the instruments of international humanitarian law, and in those, such as the Statutes of the Movement, which have been adopted by States and by the components of the Movement itself (National Red Cross and Red Crescent Societies, International Federation of Red Cross and Red Crescent Societies and the ICRC).

It would appear at first sight that these attributes are interrelated. In the case of neutrality in particular, that of the ICRC can in our view be understood only on the basis of the first status of neutrality derived from international law, i.e., that of a neutral State.

When neutrality began to gain currency in international texts at the end of the nineteenth century, it meant the legal status of a State which had decided not to become involved in a war between two or more other States.⁷ Neutrality was therefore understood as a status comprising all the rights and duties accruing to or incumbent upon a neutral State. The changes that have since come about in the international order have had the effect of making neutral-State status exceptional and extremely difficult to understand.⁸

First, the prohibition on resorting to force, introduced after the First World War, added a basis other than neutrality to the duty not to participate in hostilities. The subsequent introduction of a system of collective security under the United Nations Charter raised the question of reconciling that system with the rights and duties implied by neutral status. At the same time it led to the emergence of a multitude of *de facto* intermediate positions between neutrality and belligerence, positions to which international law attaches no specific rights or duties.⁹ Neutrality is therefore becoming, if it has not already become, an optional attitude which third-party States reserve the right to adopt according to circumstance and regardless of the formal definition of conflicts.¹⁰ Lastly, the Cold War,

⁷ J. Monnier, "Développement du droit international humanitaire et droit de la neutralité", *Quatre études du droit international humanitaire*, Henry Dunant Institute, Geneva, 1985, pp. 5-16, p. 5.

⁸ D. Schindler, "Transformation in the law of neutrality since 1945", *Humanitarian Law of Armed Conflict - Challenges Ahead*, A. J. M. Delissen and G. J. Tanja eds., Martinus Nijhoff Publishers, Dordrecht, 1991, pp. 367-386, p. 370.

⁹ *Ibid.*, p. 371 *et seq.*; see also by the same author "Aspects contemporains de la neutralité", *Académie de droit international, Recueil des Cours*, 1967, II, Tome 121, pp. 221-321, p. 272. The intermediate positions in question have been enshrined in international humanitarian law in that Article 4 B, para. 2, of the Third Geneva Convention of 1949 refers to "neutral or non-belligerent Powers" (our emphasis) and Article 9, para. 2(a), of Additional Protocol I to "a neutral or other State which is not a Party to that conflict" (our emphasis).

¹⁰ J. Monnier, *op. cit.* (note 7), p. 8.

ideological confrontations and all non-belligerent forms of antagonism between States have led to a conception whereby neutrality, especially permanent neutrality, entails duties already inherent in peacetime, the idea being to enable the neutral State to avoid being drawn into a conflict between other States.¹¹

The foregoing considerations demonstrate that neutrality does not simply mean non-participation in hostilities, for if that were the case there would be no need to distinguish between neutral and non-belligerent States. Indeed, non-participation in hostilities is the hallmark of both positions. The difference lies in the reason for non-participation: a neutral State plays no part in them because it is precluded from doing so by virtue of its status; and a non-belligerent State because it has so decided. In most cases that choice corresponds to the obligation not to resort to force in international relations.

In other words, while neutrality implies non-participation in hostilities, the reverse is not necessarily true. The position of a neutral State is therefore characterized by duties other than non-participation in hostilities.

Professor Torrelli summarizes those duties by describing neutrality as the position of a State which intends, at all times or on occasion, to stand apart from a conflict, adding that it is based on the two essential principles of abstention and impartiality.¹² According to Professor Schindler, the duties of neutral States may be broken down into the three duties of abstention, prevention and impartiality.¹³

For a neutral State, the duty of abstention implies an obligation not to provide military assistance to the belligerents. The duty of prevention obliges the neutral State to prevent the belligerents from using its territory for bellicose purposes or committing from its national territory acts that are contrary to the law of neutrality. Lastly, the duty of impartiality obliges the neutral State to apply equally to both sides those rules which it has set itself in regard to its relations with the belligerents.¹⁴

¹¹ D. Schindler, *op. cit.* (note 9), pp. 307 *et seq.*; see C. Dominicé, "La neutralité et l'assistance humanitaire", *Annales de droit international médical*, No. 35, 1991, pp. 118-126, p. 118, and J. Monnier, *op. cit.* (note 7), p. 9.

¹² M. Torrelli, "La neutralité en question", *Revue Générale de Droit International Public*, Tome 96/1992/1, pp. 5-43, p. 7.

¹³ D. Schindler, *op. cit.* (note 8), p. 379.

¹⁴ *Ibid.*, p. 380.

Neutral status therefore implies duties “not to do” (or “not to allow to do”). When it comes to action (“doing”), this must be done in such a way as to respect the duty of impartiality. Since that duty certainly does not exist in the case of non-belligerent States, it may be regarded as most characteristic of those embracing neutrality.¹⁵ Returning to the essence of neutrality and allowing it a scope which encompasses its possible implications in peacetime, neutrality may therefore be understood as a duty to abstain from any act which, in a conflict situation, might be interpreted as furthering the interests of one party to the conflict or jeopardizing those of the other.¹⁶

In describing the ICRC in turn as an impartial body and as a neutral institution, States have endowed it with the component parts of neutral-State status. There are probably several reasons for this. Any status is both rewarding and restrictive. States certainly have an interest in ensuring that a body operating in countries at war respects the duties of neutrality, and they would never have assigned the ICRC the powers it enjoys without guarantees for their own military and political security. Moreover, by observing the principles of abstention and impartiality from the outset, of its own free will and at all times, the ICRC has won the confidence of States and has been assigned under international rules tasks that were initially based on less solid legal grounds.¹⁷

The ICRC can be described as a neutral body because it is in the unique position of being both non-governmental and endowed with legal personality under international law. The fact that the ICRC is made up of physical persons and not of States guarantees that its decisions do not arise from a will to give favourable or unfavourable treatment to the parties to a conflict with whom it has to deal. The single-nationality composition of the Committee, which, pursuant to Article 5, para. 1, of the Statutes of the Movement, recruits its members by cooptation from among Swiss citizens, is seen by States as a further guarantee of the ICRC's neutrality. It has to be stressed, however, that a careful distinction must be drawn between ICRC neutrality and that of Switzerland, which probably helped bring the former into being.¹⁸

¹⁵ H. Meyrowitz, *Le principe de l'égalité des belligérants devant le droit de la guerre*, Paris, 1970, p. 392.

¹⁶ C. Swinarski, “La notion d'un organisme neutre et le droit international”, *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, C. Swinarski ed., ICRC, Geneva, 1984, pp. 819-835, p. 823.

¹⁷ *Ibid.*, p. 833.

¹⁸ See C. Sommaruga, President of the ICRC, “Swiss neutrality, ICRC neutrality: are they indissociable? — An independence worth protecting”, *IRRC*, No. 288, May-June 1992, pp. 264-273.

On the other hand, it is doubtful whether a body could be granted the permanent ability to act as a neutral intermediary unless its lack of subordination to other subjects of international law were established.¹⁹ It follows that neutral status, if attributed to an entity other than a State, presupposes international personality. In any event, the fact that the ICRC is designated to act as a substitute for the Protecting Power testifies to its capacity to have rights and obligations under international law, and its international personality now seems to be generally acknowledged.²⁰

The neutrality of an entity other than a State implies duties of abstention which, insofar as they are relevant to such an entity, are no different from those of a neutral State. It may be noted in that respect that the fact of not taking part in hostilities holds good for both international and non-governmental organizations. On the one hand, at least one inter-governmental organization, namely the United Nations, is entitled to resort to armed force under Chapter VII of its Charter. On the other, armed force may be used outside the monopoly of States. For instance, it is significant that the Statutes of the Movement prescribe for its component organizations the duty not to "*take sides in hostilities*".²¹ Similarly, the organizations also have to consider the question of armed protection (or military escorts) for relief consignments in the light, *inter alia*, of the principle of neutrality.²²

The ICRC's duty of impartiality can come into play only within its own particular sphere of activity, that is, aiding the victims of armed conflicts and internal disturbances. This means that the ICRC will adopt the same attitude to all parties to the conflict and will be guided solely by the best interests of the individuals covered by that sphere of activity.²³ The ICRC is therefore a neutral and humanitarian body or, according to the wording of the Geneva Conventions and Additional Protocol I, an impartial humanitarian body (or organization).²⁴

¹⁹ C. Swinarski, *op. cit.* (note 16), p. 826. D. Schindler, "Die Neutralität des Roten Kreuzes", *Des Menschen Recht zwischen Freiheit und Verantwortung*, Festschrift für K. J. Partsch zum 75. Geburtstag, J. Jekewitz, K. H. Klein, J. D. Kühne, H. Petersmann, R. Wolfrum (eds.), Dunker & Humblot, Berlin, 1989, pp. 141-152, p. 145.

²⁰ See Articles 10/10/10/11 of the four Geneva Conventions and Article 5 of Additional Protocol I. For the international personality of the ICRC, see in particular C. Dominicé, "L'Accord de siège conclu par le Comité international de la Croix-Rouge avec la Suisse", *Revue Générale de Droit International Public*, Tome IC-1995, pp. 5-36, p. 25 *et seq.*

²¹ See section 2B below.

²² See section 3B below.

²³ See section 2B below.

²⁴ See the articles quoted in note 5 above.

Let us now consider the link between the attributes of “*neutrality*” and “*independence*”.

We have already identified independence in the technical sense as a quality related to international personality. In the ordinary sense, any body that is not subordinate to another must be regarded as independent. From that perspective non-governmental organizations must, like intergovernmental organizations, be independent to the extent that they enjoy legal personality arising from national or international law. Lastly, the body of law governing the components of the International Red Cross and Red Crescent Movement suggests a third acceptance of the term “independence”, namely, that of a principle linking those components and having its own scope.

The principle of independence is spelled out in the preamble to the Statutes of the Movement: “*The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement*”.

The key word here is certainly “*autonomy*”, for as Jean Pictet wrote: “*Under the penalty of being something else than what it is, the Red Cross must be sovereign in its decisions, acts and words; it must be free to show the way towards humanity and justice. It is not admissible for any power whatsoever to make it deviate from the line established for it by its ideals*”.²⁵ Seen in that light, independence appears to distinguish the ICRC from other intergovernmental and non-governmental organizations. Since the autonomy of the ICRC (which is not an auxiliary of the public authorities and does enjoy international personality) must be acknowledged to be greater than that of the National Societies, it can be said that its independence is determined by its non-governmental composition and its status as a neutral body.

B. Neutrality as a principle of the International Red Cross and Red Crescent Movement

According to the Preamble to its Statutes, the Movement²⁶ is “*guided*” by seven Fundamental Principles, namely, humanity, impartiality, neutral-

²⁵ J. Pictet, *The Fundamental Principles of the Red Cross, Commentary*, Henry Dunant Institute, Geneva, 1979, pp. 61-62.

²⁶ In regard to the Statutes, see note 6 above.

ity, independence, voluntary service, unity and universality. Paragraph 1 of Article 3 states that the National Societies carry out their humanitarian activities “*in accordance with the Fundamental Principles*”. For its part the ICRC must “*maintain and disseminate*” the Fundamental Principles (Article 5, para. 2a). Lastly, the Federation is required to perform its functions *inter alia* within “*the context of the Fundamental Principles*” (Article 6, para. 4).

The second principle of the Movement is impartiality, defined as follows: “[*The Movement*] *makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress*”.

The principle of neutrality is formulated as follows: “*In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature*”.

Both those principles thus impose the duties of abstention and of impartiality which have characterized State neutrality from the outset. Moreover, the requirement of abstention goes beyond the context of hostilities; it extends to “*not engaging in controversies of a political, racial, religious or ideological nature*”,²⁷ in keeping with the conception of State neutrality as developed in particular since the Second World War. As in the case of States, that restriction defines neutrality in peacetime and is intended to preserve wartime neutrality. As the Statutes indicate, the main point is to avoid undermining the trust of entities which one day may be involved in an armed confrontation. We may thus distinguish, as Jean Pictet does, between ideological neutrality and military neutrality.²⁸

One author says: “*(...) the principle of impartiality lays down two clear rules of conduct: (a) there must be no discrimination in distributing the aid given by the Movement (either in peacetime or in time of conflict or disturbances); and (b) relief must be proportionate to need—the greater the need, the greater the relief*”.²⁹ As portrayed in the Statutes of the

²⁷ M. Harroff-Tavel, “Neutrality and impartiality—The importance of these principles to the International Red Cross and Red Crescent Movement and the difficulties involved in applying them”, *IRRC*, No. 273, November-December 1989, pp. 536-552, p. 537.

²⁸ J. Pictet, *op. cit.* (note 25), pp. 54-56.

²⁹ M. Harroff-Tavel, *op. cit.* (note 27), p. 538.

Movement, impartiality means both non-discrimination and proportionality.

Closer scrutiny reveals that those requirements are derived from neutrality as applied to inter-State relations rather than covered by neutrality itself. Since the Movement is involved in humanitarian action by virtue of its first principle, that of humanity, certain criteria must be set to ensure that its action takes place within a framework capable of guaranteeing neutrality, particularly in relief operations. Non-discrimination applies more to relations with individuals than with communities, although the proscribed distinctions could lead to favouring one community at the expense of its adversary. Proportionality refers to the only criterion which must be taken into consideration once a relief operation is decided upon. Non-discrimination and proportionality are therefore the negative and positive poles of a neutral humanitarian operation.

Conversely, the impartiality to be observed in a situation where communities are in conflict implies, like State neutrality, that all be treated equally. Thus while non-discrimination and proportionality are relevant only in relation to an operation, particularly a relief operation, impartiality as an intrinsic facet of neutrality³⁰ involves the entire decision-making process of a humanitarian organization.

That aspect of neutrality is not expressly set out in the Statutes of the Movement. It is true that it is of concern primarily to the ICRC because its value becomes apparent essentially in situations of armed conflict. It is indeed vital for the ICRC to adopt an even-handed attitude towards the belligerents if it is to continue to be regarded - perceived - as neutral by those belligerents. By way of example, the fields of activity to which the duty of equal treatment applies include the interpretation of humanitarian law, offers of services in the event of non-international armed conflicts³¹ and the denunciation of violations of humanitarian law.³²

It is in regard to the issue of denouncing violations of the law that neutrality has been called into question by non-governmental organizations of French origin. With hindsight, their objections appear to be based

³⁰ J. Pictet, *Red Cross Principles*, ICRC, Geneva, 1956, pp. 70-71.

³¹ Y. Sandoz, "Le droit d'initiative du CICR", *Jahrbuch für internationales Recht*, Vol. 22, 1979, pp. 353-373, p. 368; M. Harroff-Tavel, *op. cit.* (note 27), p. 544.

³² See "Action by the ICRC in the event of breaches of international humanitarian law", *IRRC*, No. 221, March-April 1981, pp. 76-83, p. 81 *et seq.*

on two premises: neutrality imposes silence³³ and, from the standpoint of justice, silence is reprehensible.³⁴

In fact, as Yves Sandoz has noted, "(...) *silence has never been set up as a principle by the ICRC. The question has always been considered from the angle of efficiency in achieving the objective set by the principle of humanity*".³⁵ A simple proof of this is that the ICRC does not always abstain from denouncing humanitarian law violations; it subjects denunciations to certain conditions, notably the requirement that any such publicity be in the interests of the persons or populations affected or under threat.³⁶ As to the antithesis between justice and neutrality, this has not been denied by ICRC representatives. Jean Pictet wrote: "*For while justice gives to each according to his rights, charity apportions its gifts on the basis of the suffering endured in each case (...). It refuses to weigh the merits and faults of the individual*".³⁷ Now that *Médecins sans frontières* is considering whether neutrality should not be abandoned,³⁸ the positions of the two organizations concerning the interpretation of the principle are apparently coming together. Any divergence would then clearly arise in relation to the merits of the principle, since the French organization appears to want to preserve the possibility of speaking out on some occasions.³⁹

The ICRC for its part has always regarded neutrality not as an end in itself but as a means of carrying out its mandate on behalf of victims

³³ On the link between neutrality and the attitude of the ICRC with regard to violations of humanitarian law, see J. Pictet, *op. cit.* (note 30), p. 73 and, for a paper on "silence", B. Kouchner, *Le malheur des autres*, Éditions Odile Jacob, Paris, 1991, p. 107 *et seq.*

³⁴ See, for example, A. Desthèxe, former Secretary-General of *Médecins sans frontières*, who in a work admittedly written in his personal capacity said the following: "*The humanitarian world needs only one neutral organization: the International Committee of the Red Cross (ICRC) is essential and quite sufficient (...). Private humanitarian action must break free from the double yoke of simple compassion and neutrality and arm itself with a demand for justice.*" A. Desthèxe, *Rwanda: essai sur le génocide*, Éditions Complexe, Brussels, 1994, p. 87.

³⁵ Y. Sandoz, "'Droit' or 'devoir d'ingérence' and the right to assistance: the issues involved", *IRRC*, No. 288, May-June 1992, pp. 215-227, p. 226.

³⁶ *Op. cit.* (note 32), p. 81.

³⁷ J. Pictet, *op. cit.* (note 30), p. 48.

³⁸ V. Kassard, "Vous dites neutralité?", *Messages — Journal interne des Médecins sans frontières*, No. 78, May 1995, p. 2.

³⁹ In the article cited in note 38, for instance, V. Kassard states: "*Médecins sans frontières* practices occasional neutrality — neutrality yes, but MSF action first — and it is sometimes invoked as a brake on speaking out!"

of armed conflict and internal disturbances.⁴⁰ It therefore regards respect for the different duties implied by neutrality as essential for maintaining its status and its functions.

3. Neutrality of humanitarian assistance

A. Elements of the debate

It is only fairly recently that experts in international relations have started focusing on neutrality as it pertains to humanitarian assistance. Their interest is closely related to the favourable light in which all things humanitarian are regarded and, above all, to the development of coordination of humanitarian action within the United Nations system. Their thinking has sometimes strayed beyond the bounds of the actual provision of relief to cover everything intended to protect the individual from threats to his or her life, physical integrity and dignity.⁴¹ Seen from that angle, neutrality is divested of its legal meaning and becomes a criterion for distinguishing between different forms of international action.

Even the neutrality of humanitarian law is sometimes invoked;⁴² here, the implementation of humanitarian law cannot be regarded as detrimental to the military or political positions of the parties to a conflict⁴³ because its rules have been adopted by States as an acceptable compromise between military necessity and humanitarian imperatives. That case apart, scrutiny of other branches of international law in the light of the concept of neutrality seems inappropriate and likely to lead to misunderstandings. Impartiality, on the other hand, is a relevant principle for application of the law and, more specifically, for the administration of justice. However, it has a very precise meaning and only a remote bearing on neutrality.

⁴⁰ See *inter alia* J. Pictet, *op. cit.* (note 30), p. 58; Y. Sandoz, *op. cit.* (note 35), p. 234; M. Harroff-Tavel, *op. cit.* (note 27), p. 580; J. Meurant, "Principes fondamentaux de la Croix-Rouge et humanitarisme moderne", *Studies and essays in honour of Jean Pictet, op. cit.* (note 16), pp. 893-911, p. 899.

⁴¹ For instance, "The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies" (published by the World Conference on Religion and Peace, February 1994), which mention neutrality and impartiality among their principles, are guidelines covering a field of activity far wider than the mere provision of relief.

⁴² See for example T. A. von Baarda, "The involvement of the Security Council in maintaining international humanitarian law", *Netherlands Quarterly of Human Rights*, Vol. 12, 1994, No. 2, pp. 137-152, p. 146.

⁴³ J. Pictet, *Humanitarian law and the protection of war victims*, A. W. Sijthoff, Leyden/Henry Dunant Institute, Geneva, 1975, p. 44.

In considering neutrality as applied to assistance, a distinction must be made between activities related to the distribution of relief, which are designated by the word "*assistance*", and other forms of action which may be undertaken by organizations operating in the sphere of food and medical relief. As Professor Torrelli points out, the impact that the denunciation of alleged violations of the applicable rules might have on relief operations must be considered.⁴⁴ This distinction is similar to that which must be drawn between the neutrality of an entity and neutrality as applied to a given form of international action.

Abstention and impartiality as applied to the action of United Nations forces has recently come in for criticism by several writers. "*Humanitarian aid may rest upon universalist motives and principles, but in its implementation it inevitably takes on a partisan political character, long considered inappropriate for peacekeepers under the UN banner as a threat to their impartiality.*"⁴⁵ "*If impartiality and neutrality are compromised, an ongoing humanitarian operation should be reconsidered, scaled down or terminated.*"⁴⁶ Then again, "*in intra-State conflicts impartiality has often failed to restore peace and, in some cases such as Bosnia, may have actually prolonged suffering.*"⁴⁷ "*Is the conclusion, then, that being neutral and impartial is not enough?*"⁴⁸

In theory, the objections raised in regard to discrepancies between the objectives of United Nations forces and observance of abstention and impartiality should not compromise the position of the ICRC. However, since these objections do not always draw a distinction between the military and the humanitarian applications of the concept of neutrality,

⁴⁴ M. Torrelli, "From humanitarian assistance to intervention on humanitarian grounds", *IRRC*, No. 288, May-June 1992, pp. 228-248, p. 241.

⁴⁵ See M. Pugh, *International Peacekeeping*, Vol. 1, Winter 1994, No. 4, pp. 503-505, p. 503; T. G. Weiss and L. Minear, "Humanitarian aid across borders: Sustaining civilians in times of war", Lynne Rienner Publishers, Colorado and London, 1993; for comments on neutrality in the work in question, see G. Smith, "Relief operations and military strategy", pp. 97-116, p. 98.

⁴⁶ See "Military support for humanitarian aid operations; IISS — strategic comments", *IISS — International Institute for Strategic Studies*, No. 2, 22 February 1995.

⁴⁷ See S. Duke, "The United Nations and intra-State conflict", *International Peacekeeping*, Vol. 1, No. 4, Winter 1994, pp. 375-393, p. 389. Similarly, see R. K. Betts, "The delusions of impartiality", *Foreign Affairs*, November-December 1994, pp. 20-33, p. 20.

⁴⁸ See A. Donini, "Beyond neutrality: on the compatibility of military intervention and humanitarian assistance", *The Fletcher Forum of World Affairs*, Vol. 19, No. 2, Summer/Fall 1995, pp. 31-45, p. 44.

they may be construed as blanket criticism of the principle, covering all the fields to which it may be applied.

As to the application of the principle of neutrality among non-governmental organizations, one such organization has claimed that *"the devaluation of the ICRC's concepts, symbols and procedures through their adoption by other less scrupulous relief organizations has profound implications for the integrity of the ICRC itself"*.⁴⁹ While we do not fully share the pessimism of that organization, much less its severity, we do think that a clarification of terms is needed and could prove helpful to those studying certain forms of international action in the light of the principle of neutrality.

B. In search of a definition

Neutrality applicable to relief operations for victims of armed conflict does seem to exist as a legal concept.

First, the relevant provisions of Additional Protocols I and II mention two conditions closely associated with neutrality, namely impartiality and non-discrimination. For instance, Article 70, para. 1, of Additional Protocol I refers to *"relief actions which are humanitarian and impartial in character and conducted without any adverse distinction"*; similarly, Article 18, para. 2, of Additional Protocol II deals with *"relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction"*.

Moreover, United Nations General Assembly resolutions on strengthening the coordination of emergency humanitarian aid provided by the United Nations generally refer to the principles of humanity, neutrality and impartiality.⁵⁰ In particular, the guiding principles annexed to reso-

⁴⁹ "Humanitarianism unbound", *African Rights*, Discussion Paper No. 5, November 1994, p. 25.

⁵⁰ For instance, resolution 43/131 of 8 December 1988 recalls that "in the event of natural disasters and similar emergency situations, the principles of humanity, neutrality and impartiality must be given utmost consideration by all those involved in providing humanitarian assistance". In resolution 45/100 of 14 December 1990, the General Assembly expresses awareness "that alongside the action of Governments and intergovernmental organizations, the speed and efficiency of this assistance often depend on the help and aid of local and non-governmental organizations working in an impartial manner and with strictly humanitarian motives" and "stresses the important contribution made in providing humanitarian assistance by intergovernmental and non-governmental organizations working impartially and with strictly humanitarian motives". In resolution 48/57 of 14 Decem-

lution 46/182 of 19 December 1991 include the following: "2. *Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.*"

Similarly, many texts issued by bodies concerned with relief operations cite neutrality and/or impartiality as guidelines for their activity or for assistance activities in general. For example, neutrality is included in "*Humanitarian principles and dilemmas during operations in areas of armed conflict*" of the United Nations Development Programme (UNDP);⁵¹ impartiality and neutrality are mentioned in "*The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies*",⁵² and in the "*Guiding Principles on the Right to Humanitarian Assistance*" adopted by the Council of the International Institute of Humanitarian Law at its session in April 1993.⁵³ Occasionally the same principles even crop up in texts unrelated to situations of armed conflict, which at first sight may seem surprising in that neutrality presupposes the existence of communities in conflict.⁵⁴ Lastly, eminent specialists like C. Dominicé⁵⁵ and M. Torrelli⁵⁶ have studied neutrality in connection with humanitarian assistance.

ber 1993, the General Assembly "stresses the importance of the Emergency Relief Co-ordinator participating fully in the overall United Nations planning of responses to emergencies in order to serve as the humanitarian advocate in ensuring that the humanitarian dimension, particularly the principles of humanity, neutrality and impartiality of relief assistance, is taken fully into account". Lastly, in resolution 49/139 of 20 December 1994, it "takes note of the measures outlined by the Secretary-General in his report for strengthening field coordination of humanitarian assistance, and acknowledges the need further to develop and strengthen system-wide coordination, including cooperation among operational agencies, the Department of Humanitarian Affairs and non-governmental organizations, in accordance with the provisions of resolution 46/182, to improve the capability for a quick and coordinated response to natural disasters and other emergencies while preserving the non-political, neutral and impartial character of humanitarian action".

⁵¹ Module prepared by L. Minear and T. Weiss. UNDP-DHA, Disaster Management Training Programme, 1994, p. 30.

⁵² See note 41 above.

⁵³ Published in *IRRC*, No. 297, November-December 1993, pp. 519-525. Also worth mentioning are Resolution 12 on humanitarian assistance in situations of armed conflicts adopted by the Council of Delegates in Budapest in 1991, *IRRC*, No. 286, January-February 1992, p. 56, and Resolution 11 on the principles of humanitarian assistance, adopted by the Council of Delegates in Birmingham in 1993, *IRRC*, No. 297, November-December 1993, p. 502. The main purpose of those resolutions is to define humanitarian assistance.

⁵⁴ See for example the "*Guidelines on the use of military and civil defence assets in disaster relief*", United Nations DHA, Geneva, Project DPR 213/3 MCDA, May 1994, p. 62 *et seq.*, p. 64.

⁵⁵ C. Dominicé, *op. cit.* (note 11), p. 120.

⁵⁶ M. Torrelli, *op. cit.* (note 12), p. 37.

However, none of the texts to which we have referred offers a definition of neutral humanitarian assistance. In our view, therefore, such a definition can be formulated only on the basis of a number of elements drawn from current law and thinking on the matter, as outlined below.

1. *Neutral assistance is assistance whose validity is grounded in international humanitarian law.* Article 70 of Protocol I and Article 18, para. 2, of Protocol II mention two conditions closely associated with neutrality, i.e., impartiality and non-discrimination. Moreover, neutrality is regarded as a principle of humanitarian law, which implies *inter alia* that “humanitarian assistance is never interference in a conflict”.⁵⁷
2. *Neutral assistance does not constitute interference in an armed conflict or an unfriendly act.* This arises from the very letter of Article 70 of Protocol I. Protocol II states more generally that none of its provisions can justify direct or indirect intervention in an armed conflict.⁵⁸
3. *Assistance imposed by armed force as part of a unilateral action is interference and therefore does not meet the criterion of neutrality.* Two authors who have studied the right to intervene, namely O. Corten and P. Klein, contrast unarmed humanitarian operations undertaken following arbitrary refusal by a State with unilateral armed reactions which they consider prohibited by international law.⁵⁹ As an example of the former, they cite the 1987 parachuting of food and medicines by Indian aircraft into Jaffna, in the Tamil-controlled area of Sri Lanka, although they conclude that the operation remained of dubious legality because the civilian aircraft used were escorted by Mirages.⁶⁰
4. *Only assistance of an exclusively humanitarian nature is neutral.* Unlike Article 70 of Protocol I, Article 18, para. 2, of Protocol II contains no reference to interference but it does stipulate that relief actions must be “of an exclusively humanitarian (...) nature”.

⁵⁷ J. Pictet, *op. cit.* (note 43), p. 44.

⁵⁸ Article 3, para. 2; see also Article 5 of the resolution of the Institute of International Law on “The protection of human rights and the principle of non-intervention in internal affairs of states”, *Yearbook of the Institute of International Law*, 1990, Vol. 63-II, p. 339 *et seq.*

⁵⁹ O. Corten and P. Klein, *Droit d'ingérence ou obligation de réaction?*, University of Brussels, 1992, p. 220.

⁶⁰ *Ibid.*, pp. 144-145.

5. *Neutral assistance is confined to the purposes hallowed in the practice of the Red Cross.* In its ruling on the military and paramilitary activities in and against Nicaragua, the International Court of Justice took the view that “if the provision of ‘humanitarian assistance’ is to escape condemnation as an intervention in the internal affairs of [another State], not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely ‘to prevent and alleviate human suffering’, and ‘to protect life and health and to ensure respect for the human being’; it must also, and above all, be given without discrimination to all in need”.⁶¹
6. *The fact that assistance is provided even though a State or another party to the conflict has arbitrarily refused an offer of relief does not divest it of its neutral character, as long as it is not accompanied by the use of armed force.* As indicated earlier, an offer of relief which meets the terms of Article 70 of Protocol I and Article 18, para. 2, of Protocol II does not amount to interference. If the arbitrary refusal persists after fruitless negotiations, any relief action undertaken despite that refusal can, at least when undertaken by a third-party State, be regarded as a legitimate *counter-measure* and therefore does not constitute interference.⁶²
7. *The fact that assistance provided by one or other of the components of the International Red Cross and Red Crescent Movement is protected by armed escorts does not divest it of its neutral character, provided that the parties (or authorities) controlling the territory through which the convoy must pass and to which the humanitarian assistance is to be delivered have fully approved the principles and procedures of the armed escort, and that the purpose of the latter is to protect the relief supplies against bandits and common criminals.* Such were the conclusions reached by a joint working group of the ICRC and the Federation pursuant to Resolution 5 adopted by the Council of Delegates in 1993.⁶³ The same working group also stressed that the use of armed escorts should be decided upon only in exceptional cases, as a last resort and after careful weighing of the advantages and disadvantages of such a measure.

⁶¹ *Reports of Judgments, Advisory Opinions and Orders*, 1986, p. 125, para. 243.

⁶² O. Corten and P. Klein, *op. cit.* (note 59), p. 144.

⁶³ See “Resolutions of the Council of Delegates”, *IRRC*, No. 297, November-December 1993, pp. 477-478.

8. *In order to be neutral, assistance must not be discriminatory.* Article 70 of Protocol I and Article 18, para. 2, of Protocol II both use the term “*without any adverse distinction*”. In the instruments of humanitarian law, the most comprehensive list of adverse distinctions is contained in Article 75 of Protocol I.
9. *In order to be neutral, assistance must be aimed at relieving the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.*⁶⁴ That requirement is laid down in particular by the International Red Cross and Red Crescent Movement’s principle of impartiality.⁶⁵
10. *In order to be neutral, assistance must not favour certain groups or individuals over others.*⁶⁶ Distinctions other than those contained in the list of adverse distinctions and which are not justified having regard to the needs of victims therefore do not meet the condition of impartiality.
11. *Unilateral assistance is not necessarily non-neutral.*⁶⁷ Subject to other factors, assistance provided to victims belonging to only one party to the conflict is not contrary to the terms of humanitarian law.

Together, the above elements probably do not constitute an exhaustive definition of neutral humanitarian assistance, which has yet to be expanded by the lessons of recent practice.

The international community should in particular make up its mind about assistance provided in connection with an armed operation undertaken or authorized by the United Nations. The question at issue is whether assistance delivered by means of an operation that does not necessarily meet the criterion of abstention may nonetheless be regarded as neutral. As matters stand, it appears to be accepted that assistance protected by United Nations troops using force against one or more of the parties to an armed conflict cannot be neutral.⁶⁸ It therefore remains to be established

⁶⁴ *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Y. Sandoz, C. Swinarski and B. Zimmermann eds, ICRC, Geneva, 1986, p. 818, para. 2801.

⁶⁵ See section 2B above.

⁶⁶ *Commentary on the Additional Protocols* (note 64), p. 818, para. 2802.

⁶⁷ *Ibid.*, para. 2803, and p. 820, para. 2812.

⁶⁸ For example, in his *Supplement to an Agenda for Peace*, United Nations Secretary-General Boutros Boutros-Ghali notes that operations requiring the use of force, except in cases of self-defence, deviate from the principles of consent of the parties, impartiality and the non-use of force, including force designed to ensure the protection of humanitarian operations while hostilities are continuing. In that connection he cites the precedents of Somalia and Bosnia-Herzegovina. See Boutros Boutros-Ghali, *Supplement to an Agenda for Peace: Position paper of the Secretary-General on the occasion of the Fiftieth Anniversary of the United Nations*, A/50/60-S/1995/1, 3 January 1995, paras. 33-35.

whether assistance distributed by military, police or civilian units involved in a coercive operation, or in a peace-keeping operation with or without coercive powers,⁶⁹ may be regarded as neutral.⁷⁰

Be that as it may, the foregoing elements suggest that neutrality as applied to humanitarian assistance is an autonomous notion that is not dependent on the nature of the body engaging in activities covered by the term "*humanitarian assistance*". In other words a State, even if not neutral, an intergovernmental organization or a non-governmental organization may provide the victims of armed conflicts with assistance which meets the criteria of humanitarian law. It is even conceivable that in some contexts its activities may be in accordance with humanitarian law while in other theatres of operation they are not. The ICRC's assistance activities, on the other hand, must always be regarded as being in accordance with neutrality as applied to the relief of victims of armed conflicts, because there is a point of contact between ICRC neutrality, neutrality as a principle of the International Red Cross and Red Crescent Movement, and neutrality as a quality of humanitarian assistance.

4. Conclusion

In the field of humanitarian action, neutrality is an attribute of the ICRC, a duty binding upon the components of the Movement, and a quality of the assistance afforded to the victims of armed conflict. The content of neutrality varies slightly in these three cases, depending on the purpose it must serve. However, it remains closely linked with the definition which introduced the concept into international law to designate the status of a State which decided to stand apart from an armed conflict. Consequently, its applications under positive law still depend on the

⁶⁹ In connection with peace-keeping operations having coercive powers, see the address given by Secretary-General Boutros Boutros-Ghali to the Graduate Institute of International Studies, Geneva, 3 July 1995 (Press release SG/SM/95/147 of 3 July 1995, p. 6).

⁷⁰ In this respect, specialists of the United Nations system appear to prefer the term "*impartiality*" to "*neutrality*" (see ICRC, "Symposium on humanitarian action and peace-keeping operations", Geneva, 22-24 June 1994, *Report*, Geneva, 1995, p. 84). Similarly, the Convention on the safety of United Nations and associated personnel, adopted by the United Nations General Assembly on 9 December 1994, simply refers to the "*impartial and international character*" (our emphasis) of the duties of such personnel (see Article 6, para. 1b, of that Convention, the text of which is annexed to resolution A/RES/49/59).

criteria of abstention and impartiality which have characterized neutrality from the outset.

Nowadays there tends to be a "for or against" attitude to neutrality, based on its usual rather than on its legal definition, and this leads to misunderstandings which stand in the way of any objective appraisal of its meaning. Moreover, the fact that neutrality is invoked in connection with various forms of collective peace-keeping or peace-making action reveals much uncertainty on the matter.

It would therefore be useful to achieve a better understanding of neutrality as applied to the assistance afforded to the victims of armed conflict; otherwise only such assistance as is provided by the ICRC may be regarded with any certainty as being neutral. After all, it must be acknowledged that an organization's neutrality affects the entire range of activities which that organization may be called upon to perform.

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Edouard Castres, *The international ambulance in the snow*, 1872.