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INTERNATIONAL REVIEW of the Red Cross

Humanitarian debate: Law, policy, action

Principles guiding
humanitarian action.



ICRC

Aim and scope

Established in 1869, the *International Review of the Red Cross* is a periodical published by the ICRC and Cambridge University Press. Its aim is to promote reflection on humanitarian law, policy and action in armed conflict and other situations of collective armed violence. A specialized journal in humanitarian law, it endeavours to promote knowledge, critical analysis and development of the law, and contribute to the prevention of violations of rules protecting fundamental rights and values. The *Review* offers a forum for discussion on contemporary humanitarian action as well as analysis of the causes and characteristics of conflicts so as to give a clearer insight into the humanitarian problems they generate. Finally, the *Review* informs its readership on questions pertaining to the International Red Cross and Red Crescent Movement and in particular on the activities and policies of the ICRC.

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**Principles guiding
humanitarian action**

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EDITORIAL

THE HUMANITARIAN ETHOS IN ACTION

London, 9 September 2015: As European countries are facing a massive humanitarian crisis with thousands of people seeking refuge from the Middle East and Africa, the British Red Cross feels the need to publish an article entitled “Why Do We Help Refugees and Migrants?” It explains: “Of course, here at the British Red Cross, we’re particularly well placed to support people in the UK ... But our principles mean that whenever we see people who need help, we don’t demand to see their passports. We just give them help and dignity—something we would all expect after a brutal journey into the unknown.”¹

This recent example from the British Red Cross (BRC) is an illustration of the application of the Fundamental Principles of the Red Cross and Red Crescent: *impartiality* in the provision of humanitarian aid according to the most pressing needs and not nationality or status; the necessary *independence* of the BRC in its ability to make autonomous decisions regarding the course of its humanitarian operations; and *neutrality* in the BRC’s decision to avoid taking sides on controversial aspects of the deeply politicized issue of migration, while taking a clear stand on the humanitarian imperative. Above all, the BRC’s position is motivated by the principle of *humanity*, the *raison d’être* of the humanitarian endeavour.

Around the world, relief and protection programmes in favour of the populations affected by conflicts, other situations of violence and disasters are meant to be guided by principles. These principles distinguish the humanitarian response from other forms of aid. Building on the experience of humanitarian professionals, they provide humanitarian actors with a compass to navigate difficult choices such as the dilemmas related to priority setting in situations where needs exceed limited resources, or the tension between security of humanitarian workers and access to populations.

These principles have been constantly challenged, and are now being tested in relation to phenomena such as the typology, duration and magnitude of current crises, the political environments in which humanitarian actors operate, and the evolution of the sector itself.

On the eve of the 50th anniversary of the adoption of the Fundamental Principles of the Red Cross and Red Crescent Movement (the Movement) and the 32nd International Conference of the Movement at the end of 2015, as well

as the World Humanitarian Summit in early 2016, several initiatives are under way to study the contemporary practice and impact of the Fundamental Principles, and to reaffirm their relevance.

The *Review* decided to contribute to this research and debate, both by soliciting contributions from experts and practitioners in this thematic issue, and in the context of the International Committee of the Red Cross's (ICRC) Second Research and Debate Cycle on Principles Guiding Humanitarian Action throughout 2015, which has hosted a number of substantive discussions on the Principles.²

What role have the Principles played in humanitarian action? What are the main challenges that humanitarian actors face in upholding them in today's crises and emergencies? What are the best practices in their application to contemporary field realities? These questions inspired us in the preparation of this issue.

The humanitarian ethos: Where values and pragmatism meet

The values underlying humanitarian principles – such as charity, compassion, mercy and respect for human life and dignity – are ever-present in all societies and religions (Christian alms, *dāna* in Hinduism, Buddhism, Jainism and Sikhism, *zakat* in Islam, *tzedakah* in Judaism etc.) and penetrate various areas of life: for instance, the need to provide medical care according to need and without any discrimination is enshrined in medical ethics.³

The humanitarian sector has generally adopted the four principles of humanity, impartiality, independence and neutrality, commonly referred to as humanitarian principles, to distinguish them from the Fundamental Principles of the Movement.⁴ The United Nations (UN) General Assembly has also adopted and recognized them as the main guiding principles for international humanitarian action under the UN system.⁵ In this issue of the *Review*, the

1 Craig Burnett, "Why Do We Help Refugees and Migrants?", *British Red Cross Blog*, 9 September 2015, available at: <http://blogs.redcross.org.uk/emergencies/2015/09/why-do-we-help-refugees-and-migrants/>.

2 Recordings of the events are available at: www.icrc.org/en/cycle-principles.

3 See, for instance, the Declaration of Geneva of the World Medical Association: "I will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient." Available at: www.wma.net/en/30publications/10policies/g1/.

4 The Fundamental Principles also include the principles of unity, universality and voluntary service, which are considered "organic" principles by Jean Pictet, as they have an institutional character. "These are standards for application, relating to the structure and operation of the institution, coming into play primarily in connection with specific tasks. They are less far-reaching than the previous principles." Jean Pictet, "The Fundamental Principles of the Red Cross: Commentary", *International Review of the Red Cross*, No. 210, May–June 1979, p. 136, available at: http://principlesinpractice.org/uploads/Library/Documents/RedCrossandRedCrescent/irrc_may-jun-1979.pdf.

5 See UNGA Res. 46/182, 19 December 1991, which states: "Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality." Independence was also recognized as a guiding principle for the provision of humanitarian assistance in 2004, in UNGA Res. 58/114, 5 February 2004.

phrase “principles guiding humanitarian action” is used to refer to both the Fundamental Principles and humanitarian principles.⁶

As guiding notions of humanitarian action, these principles emphasize the value of human life, with a view to protecting people in times of peril and emergency. In their contemporary codified form,⁷ the principles find their source at the intersection between humanism, philanthropy and the practical necessity related to organizing a systematic and effective response to multiple humanitarian needs. They derive from field practice and lessons learned over more than a century as part of the development of modern humanitarian action. While some of them were clearly present in the minds of the pioneers of modern humanitarian action, their actual formalization took several decades. Fifty years ago, the 20th International Conference of the Red Cross and Red Crescent Movement in Vienna officially adopted a list of seven Fundamental Principles. The Commentaries⁸ to the Fundamental Principles, authored by Jean Pictet, are still their most authoritative source of interpretation.

The Fundamental Principles not only define the purpose and *raison d'être* of the humanitarian endeavour (humanity, impartiality) but also specify what should be the characteristics of the actor providing assistance and protection (neutral, independent, voluntary, united and universal). For instance, neutrality is not a passive, defensive stance; it requires constant work aimed at being trusted and accepted by all in order to reach people in need. It is an “acting neutrality”, a means to an end. Furthermore, principles do not offer a comprehensive normative vision of the world. In that sense, the principles guiding humanitarian action do not form an ideology (as the use of the related word “humanitarianism” sometimes seems to imply). Both local and international actors alike can apply them. Used in combination, these principles are meant to guide the concrete action of humanitarian actors in a pragmatic and teleological – not dogmatic – way.

In recent years, the British Red Cross has produced a series of case studies demonstrating the practical relevance of the Fundamental Principles, including one on Lebanon published in a previous edition of the *Review*.⁹ Amelia Kyazze discusses

6 There are regular proposals to add possible new principles to the existing lists, including, in recent years, the principles of accountability and participation of beneficiaries, the “do no harm” principle, and the need for sustainability of relief efforts. See, for example, the Sphere Project (www.sphereproject.org) and the Humanitarian Accountability Partnership (<http://fr.hapinternational.org/>); and see UNICEF, *Core Commitments for Children in Humanitarian Action*, New York, 2010, p. 8, available at: www.unicef.org/lac/CCCs_EN_070110.pdf.

7 This includes the Statutes of the International Red Cross and Red Crescent Movement, available at: www.icrc.org/eng/resources/documents/misc/statutes-movement-220506.htm; the 1994 Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, available at: www.icrc.org/eng/resources/documents/publication/p1067.htm; UNGA Res. 46/182, 19 December 1991; UNGA Res. 58/114, 5 February 2004; The *Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, available at: www.spherehandbook.org; and the Core Humanitarian Standard on Quality and Accountability, available at: www.corehumanitarianstandard.org. These are but a few examples of the codification of the principles.

8 J. Pictet, above note 4.

9 See Sorcha O’Callaghan and Leslie Leach, “The Relevance of Fundamental Principles to Operations: Learning from Lebanon”, *International Review of the Red Cross*, Vol. 95, No. 890, 2013, p. 302.

the results of this work in this issue of the journal. Using evidence from nine different National Societies, she illustrates how the Fundamental Principles of the Movement are applied in today's diverse contexts.

The ICRC – which is often considered purist in its strict adherence to the Fundamental Principles – decided to assess its own practice in this regard. In 2013–14, it conducted its own in-house study on the application of the Principles across several contexts, the challenges to such application, and the way in which the Principles shape operational decision-making. Pascal Daudin and Jérémie Labbé share the main results of this internal study in this issue.¹⁰

Can principles stand the test of today's armed conflicts?

The application of humanitarian principles by humanitarian actors is a constant challenge and does not always guarantee the access, security and capacity needed to make a significant difference to the lives of people in need. The radicalization generated by armed conflict puts the principles to their most severe test. At the same time, it is in situations of armed conflicts that strict obedience to the principles is the most relevant, insofar as it can create the non-political and neutral space needed to care for those who are in dire need of life-saving assistance. Responding to situations of natural or technological disasters generally does not create the same political pressure on humanitarian actors.

Direct attacks against medical and humanitarian personnel and volunteers are among the most extreme and severe challenges, but they are only one of several that humanitarian actors fear and deal with in their day-to-day work. Parties to the conflict instrumentalize humanitarian aid to pursue political objectives, trading for some political gain what should be their non-negotiable obligations to their populations under international humanitarian law. When States engage in humanitarian assistance as part of a strategy of “winning hearts and minds”, this may lead to dangerous amalgamations between political agendas and the humanitarian imperative in the perception of local communities and armed opposition groups. Ultimately, this might lead to more intense fighting, more victims and more obstructions for humanitarian actors who want to access people in need. Similarly, if humanitarian engagement with armed opposition groups is criminalized, this reduces the space within which neutral and impartial humanitarian action can take place.

Several contributions in this issue analyze the range of pressures on neutral, independent and impartial humanitarian action that States and non-State armed groups can create in times of conflict and other situations of violence. Kubo Mačák discusses the key question of whether the principles of impartiality and neutrality of humanitarian action are legally binding, focusing on “States as

10 On ICRC practice of the Fundamental Principles, see also Fiona Terry, “The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 881, 2011.

humanitarian actors”. Andrew Thompson analyzes the challenges to the Fundamental Principles during and after decolonization, a period when the character of conflict changed and the principles were politicized, notably due to colonial counter-insurgency. Looking at the context of Australia today, Phoebe Wynn-Pope, Yvette Zegenhagen and Fauve Kurnadi analyze the present threat to neutral, independent impartial humanitarian action that counter-terrorism legislation can represent.

Can the principles be universal in a diverse and divided world?

The modern humanitarian endeavour is based on the affirmation that suffering has no borders, and that all human beings deserve minimum help in times of distress. “While people differ, human nature everywhere is the same and there is nothing more widespread than human suffering, to which all men are equally vulnerable and sensitive”,¹¹ wrote Jean Pictet in his Commentaries. As mentioned earlier, it is obvious that the values attached to charity, help and protection are deeply rooted in all cultures. Nonetheless, the universal nature of the principles has been constantly challenged throughout their history.

Principles are often perceived as an expression of Western values, potentially offensive to or dominant over local cultures or religions as a new manifestation of post-colonial domination, undermining the sovereignty of the receiving countries. This is explained by the fact that the core body of the humanitarian enterprise has its historical origins in the West in the 19th century, at a time of Western domination and expansion. While local charities had long existed everywhere, the organization of *international* relief actions on a systematic basis clearly finds its origin in a given place and period of time. Still today, the majority of large humanitarian organizations have a strong European or American footprint. Thus, humanitarian principles can easily be conflated with other political or economic agendas. The West has historically and continuously been accused of seeking political and economic advantage while exporting democracy and human rights. New powers emerging in the field of international humanitarian action may also face, in their turn, the same suspicion.¹²

In the context of the growth and development of humanitarian organizations from all over the world, the *Review* wanted to provide a space for different perspectives, including those of faith-based humanitarian actors, to be presented. Ronald Oferinger and Abdulfatah Said Mohamed give an overview of the “Islamic Voices in the Debate on Humanitarian Principles” and an account of the many initiatives that have been taking place in recent years to develop a code

11 *Ibid.*, p. 134.

12 See, for example, Andrea Binder, “The Shape and Sustainability of Turkey’s Booming Humanitarian Assistance”, *International Development Policy*, Vol. 5, No. 2, 2014, available at: <http://poldev.revues.org/1741>; David Shinn, *Turkey’s Engagement in Sub-Saharan Africa: Shifting Alliances and Strategic Diversification*, research paper, Chatham House, 2015, available at: www.chathamhouse.org/publication/turkey-engagement-sub-saharan-africa-shifting-alliances-and-strategic-diversification.

of conduct for Muslim humanitarian NGOs, and which reflect the perception that the current frames of reference for humanitarian action mainly emanate from the West. They highlight the relevance and importance of genuine dialogue between humanitarian actors of different backgrounds to achieve a common understanding and inclusive ownership of the principles. Lucy V. Salek challenges what she describes as the “exclusively secularist” paradigm in the mainstream concepts of relief and development. She draws on the research of Islamic Relief Worldwide to present the Islamic *maqasid al-Shari’ah* framework as an example of how faith-based approaches can provide a basis for humanitarian action that is both relevant to Islamic communities and complementary to humanitarian principles. In his Opinion Note, Mohd Hisham Mohd Kamal examines neutral humanitarian action during armed conflicts from an Islamic perspective. Finally, Kathryn Kraft discusses the case study of Lebanese evangelical churches providing food aid to Syrian refugees, and these churches’ efforts to respect impartiality.

The *Review* interviewed Ma Qiang, executive vice-president of the Shanghai branch of the Chinese Red Cross at the time, to better understand the specificities of the Chinese perspective on the Fundamental Principles. This conversation is critical at a time when Chinese disaster response organizations are increasingly involved in international crises. China, being one of the most disaster-affected countries in the world, has extensive experience in responding to crises on its own soil, which can be put to use globally. Recently, China has also been engaging in bilateral cooperation with States, but will the Chinese government choose to engage with – and support – non-governmental actors, and more specifically, independent humanitarian actors?

Today, all too often, humanitarian action still creates an intrinsically unequal relationship between the donor and the recipient of assistance. Aid generates tensions, especially when the provider of aid adopts a paternalistic attitude or violates its own essence when the aid is accompanied by abuses of its position of power. Unpacking the principle of humanity is also a means to prevent such dangerous drifts; it clarifies that respect of dignity should be the only real driver of aid. However, while humanity is the most uncritically and probably universally accepted humanitarian principle, it is not without controversy. In her contribution to this issue, Larissa Fast defines this “essential principle” (as Jean Pictet calls it¹³), uncovers its inherent tensions and makes a timely call for its operationalization through a series of practical measures.

In the current climate of radicalization, the contestation of the universal nature of the humanitarian principles can take the form of an outright rejection of the essential principle of humanity by armed extremist groups or members of marauding militias. Hostage taking and direct attacks against humanitarian workers prevent humanitarian actors from operating in vast areas of the Middle East, the Sahel and Central Africa. This is a sad fact, but it has nothing to do with incompatibility between religious beliefs or political/ideological causes as

13 J. Pictet, above note 4, p. 135.

such, and the principles guiding humanitarian action. In fact, religious leaders have openly refuted such practice.¹⁴

Far from discrediting the humanitarian principles, these challenges may well actually reinforce the need for adherence to those principles. Nonetheless, the questioning around the universal nature and value of the principles suggests an urgent need for a renewed dialogue between faith-based and secular actors, across different cultures, religions and State practices, on the various understandings of humanitarian concepts.

Will the principles dissolve in the global transformation agenda?

In recent years, new questions regarding the contemporary relevance of the principles have come from the parallel growth and diversification of the humanitarian sector and the broadening of the qualitative and quantitative expectations of the international community of humanitarian action.

While humanitarian principles have gained a broad acceptance and consensus across the humanitarian sector, the actors that compose it are not homogeneous and their interpretation of the principles may vary to a considerable degree. While the components of the Movement are bound by the Fundamental Principles, other organizations may choose to apply other guiding principles in their actions, or interpret the four humanitarian principles differently.

Some claim that they act according to principles, but in reality may be unable or unwilling to do so. For instance, when the main motive of an organization is *solidarity* with a given group on political, ethnic or religious grounds, the other party may rightly perceive the organization as taking a side with its enemy. By extension, all humanitarian actors may be perceived with suspicion if organizations' claims to apply the principles are not demonstrated through their actions. Ed Schenkenberg van Mierop writes in this issue about the need to assess the actual application of humanitarian principles, in particular neutrality and independence, and makes concrete, practical suggestions for doing so, such as its standards for financial independence.

“Paradoxically, one reason why the principles are so difficult to implement is their success”, argue Jérémie Daudin and Pascal Labbé in their piece for this issue.¹⁵ In their analysis, “[t]hese days, there are more and more agencies with competing interpretations of the principles. The ambitions of the sector have grown to include addressing not just the effects but also the causes of crises.” Accordingly, humanitarian actors are led to engage in a wider transformative

14 In 2014, in an open letter to the head of Islamic State, Islamic scholars of different schools of thought highlighted how some of the basic tenets of humanity are part of Islam, recalling for instance that it is forbidden in Islam to kill “emissaries, ambassadors, and diplomats; hence it is forbidden to kill journalists and aid workers”. Available at: www.lettertobaghdadi.com.

15 See Jérémie Labbé and Pascal Daudin, “Applying the Humanitarian Principles: Reflecting on the Experience of the International Committee of the Red Cross”, in this issue of the *Review*.

agenda of the international community. The integrated approach developed by the UN began from classic peacekeeping and became a global transformation project that combines policing, stabilization, establishing the rule of law, carrying out development programmes and providing humanitarian aid. Many organizations have aligned with this broader agenda. This comprehensive response to conflict, combining political, social, economic and humanitarian objectives, is perpetuated by and reflected in donor policy (e.g. a “whole-of-government approach”¹⁶). It has been persuasively argued that such an approach brings an entirely different set of ethical goals and methodologies, which extend far beyond humanitarian ethics.¹⁷ This was recognized as problematic in the Active Learning Network for Accountability and Performance (ALNAP) 2012 report on the state of the “humanitarian system”, which stated:

The findings highlight the on-going and uncomfortable stretching of humanitarian funds into spheres of activity on the edges of response work, including preparedness, disaster-risk reduction and resilience activities, on one side, and early recovery, infrastructure rehabilitation and the indefinite provision of basic services in the absence of a state-led alternative.¹⁸

Antonio Donini and Stuart Gordon present in their article the general critique of what they call the “new humanitarianism” (as opposed to humanitarian relief as practiced by the traditional principles-abiding organizations). They conclude that still, the best chance of gaining access to people in need today is through adherence to the traditional humanitarian principles. The ICRC’s Peter Maurer echoes this conclusion when he affirms: “our experience shows that emergency access to vulnerable populations in some of the most contested areas depends on the ability to isolate humanitarian goals from other transformative goals, be they economic, political, social or human rights-related”.¹⁹

While the advantages of having a diversity of international actors and modes of action are obvious, the questions of the broadening agenda of humanitarian action and of preserving the capacity of principled humanitarian action to operate in polarized crises free from other agendas could be topics for discussion among humanitarian actors and with participating States at the 32nd International Conference of the Movement and at the World Humanitarian Summit in 2016.

16 See, for instance, Organization for Economic Cooperation and Development, *Whole of Government Approaches to Fragile States*, DAC Guidelines and Reference Series, 2006, available at: www.oecd.org/dac/governance-peace/conflictfragilityandresilience/docs/37826256.pdf.

17 Hugo Slim and Miriam Bradley, “Principled Humanitarian Action and Ethical Tensions in Multi-Mandate Organizations in Armed Conflict”, *World Vision*, March 2013, available at: www.alnap.org/resource/9794.

18 ALNAP, *The State of the Humanitarian System*, 2012 edition, Overseas Development Institute, London, 2012, p. 85.

19 Peter Maurer, “Humanitarian Diplomacy and Principled Humanitarian Action”, speech delivered at La Maison de la Paix, Geneva, 2 October 2014, available at: www.icrc.org/en/document/webcast-peter-maurer-humanitarian-diplomacy-and-principled-humanitarian-action. This speech is also reproduced in this issue of the *Review*.

Can humanitarian workers be both “professional” and “principled”?

As mentioned above, the development of the principles was actually the “crystallization” of the long experience of Red Cross and Red Crescent humanitarian workers. In that sense, it contributed to the *professionalization* of the sector, in the real sense of the word. Donors and organizations, however, have often understood professionalization as the adoption of professional standards of the business sector or administration in opposition to the perceived “amateurism” of the past. As Fabrice Weissman of MSF has noted in mapping the state of the humanitarian sector, “One of the main issues, in my opinion, is the phenomenon of bureaucratization: More and more resources are allocated to the management of organizations, to the detriment of the social mission.”²⁰

While humanitarian organizations need to constantly strive to progress and increase their effectiveness in order to provide services to human beings in need, the measurement of their performance may not follow the same criteria as are found in the private sector. Corporate professional standards of performance (which resurface in contemporary discussions on “value for money” in the delivery of humanitarian assistance) may not capture the human dimension of suffering and the human response to it. Supporting and restoring human dignity is not the mechanical outcome of a process, and adhesion to the principles needs to – and can – be factored in. Respect for the principles may be the real mark of a truly professional humanitarian sector. This should be remembered in the future, when humanitarian assistance may be outsourced to private companies, leading to what might be considered a privatization of aid.

If one looks for a third way between *charitable amateurism* on the one hand and *mercenaryism of charity* on the other, humanitarian principles may well be pointing in the right direction – hence the growing interest in the development of good humanitarian leadership, where the principles could be a key source of inspiration for decision-making and action. Humanitarian actors also need to maintain their attractiveness to young, motivated professionals, including volunteers, and there again, adhesion to the principles can act as a powerful force for motivating enthusiastic new recruits and cementing the cohesion of the humanitarian workforce.

In her piece for this issue of the *Review*, Katrien Beeckman explains how to make the Fundamental Principles come alive in people’s behaviour by nurturing the humanitarian values that underpin them, such as respect for diversity, equality, dialogue, non-violence and mutual understanding. The International Federation of Red Cross and Red Crescent Societies has adopted this most innovative

20 ICRC translation. Original French text: “L’un des principaux enjeux est, à mon sens, le phénomène de la bureaucratization: de plus en plus de ressources sont consacrées à la gestion de l’appareil au détriment de la mission sociale.” See “Etat des lieux du secteur humanitaire: Entretien avec Fabrice Weissman”, *La Revue Internationale et Stratégique*, Vol. 2, No. 98, 2015, pp. 70–71.

approach to the inculcation of the Principles through experiential learning at the individual level in the training of volunteers and staff.

To complete the overview of the practice of humanitarian principles, this issue of the *Review* also hosts three pieces on the particular principles and working methods of two so-called “Dunantist” humanitarian organizations. Caroline Abu Sa’da and Xavier Crombé explore the meaning of the principle of voluntary service at MSF, particularly in relation to risk-taking. The article by Els Debuf on the ICRC’s legal status, privileges and immunities and the ICRC Memorandum on the organization’s privilege of non-disclosure of confidential information clarify the ICRC’s working methods and explain the rationale behind them.

The principles guiding humanitarian action seem to serve two main important purposes for the humanitarian sector: they function simultaneously as “tools to do the job”, and as catalysts for its identity. With regard to the first of these two purposes, they provide a framework for making difficult choices in the field, in particular, and they help gain trust in the eyes of armed actors and society in general in times of conflicts and violence, when perceptions are a matter of life and death. In relation to the second, their codification is the result of the experience of humanitarian workers and in turn, since their adoption, they have contributed significantly to the shaping of the humanitarian sector’s identity, including the delimitation of its boundaries. This dual nature reinforces the inherent tension within the principles: they often tend to be invoked in a rhetorical, if not dogmatic, manner as a reminder of the sector’s specific identity (and concomitant status) without being accompanied by action that is aligned with them. This can lead to allegations of hypocrisy, with a negative impact on the broader humanitarian endeavour. All those claiming to abide by the principles need to “walk the talk”.

These two dimensions will continue to generate discussions and debate as the humanitarian sector evolves and needs to adapt to new types of crises in an ever-changing international political landscape. However, what may be the most important dimension of the principles is their universal appeal, beyond the humanitarian sector – they are not only principles of humanitarian actors, they are *humanitarian principles*, an ethos in action. The call to uphold human dignity, which lies in the principle of humanity, can and should be heard by all of us. Hugo Slim writes:

When human life is threatened amid violence and disaster, the person *is* the humanitarian goal, rather than some grand version of political society. Humanitarian action is a theology of person, not politics. There is no greater goal beyond the person in humanitarian action: not peace; not democracy; not religious conversion; not socialism; not political Islam; and not military victory.²¹

21 Hugo Slim, *Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster*, Hurst & Co., London, 2015, p. 47 (emphasis added).

This is perhaps the principle of humanity in its universal dimension, which today needs to be reaffirmed the most, in particular in the face of armed actors who deny the basic tenets of humanity and in the face of a *raison d'état* which continues to subjugate the humanitarian imperative to political, economic or military considerations.

Genuine and inclusive dialogue among humanitarian actors from different backgrounds can contribute to that. In order to avoid finding themselves serving other agendas or falling into obsolescence, humanitarian actors themselves need to reconnect to the very ideal that set them in motion at their origins: that of humanity.

Vincent Bernard
Editor-in-Chief

The Fundamental Principles of the International Red Cross and Red Crescent Movement*

The Fundamental Principles were proclaimed by the 20th International Conference of the Red Cross, Vienna, 1965. This is the revised text contained in the Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross, Geneva, 1986.

Humanity

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality

It 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.

Neutrality

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.

Independence

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.

Voluntary service

It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity

There can be only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality

The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

* See: www.icrc.org/eng/resources/documents/red-cross-crescent-movement/fundamental-principles-movement-1986-10-31.htm.

The new Editorial Board of the *International Review of the Red Cross*

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The editorial team of the *Review* is pleased to introduce the journal's new Editorial Board. The Editorial Board ensures the journal's academic independence and assists in developing the editorial line. It further assists the editorial team in selecting future themes, identifying potential authors and peer reviewers, and representing the *Review* worldwide. The diversity of the Editorial Board's composition additionally helps the journal to take into account all relevant perspectives, including in terms of academic fields and geographic origins, in exploring today's humanitarian challenges.

Beyond an expertise in international law and international relations, the Editorial Board members bring a considerable wealth of experience in the fields of history, political science, human rights and humanitarian action.

The *Review* has a unique editorial line which is located at the crossroads of field realities and humanitarian law and policy. The journal is widely distributed to academic institutions, governments and military legal circles by Cambridge University Press and by delegations of the International Committee of the Red Cross (ICRC) across the world. The journal further benefits from a global outreach due to its online distribution and availability of selected articles in Arabic, Chinese, French, Spanish and Russian.

The *Review's* main role today is to foster academic research on and understanding of international humanitarian law (IHL) and principled humanitarian action. It has a double-blind peer review process, is indexed, and welcomes contributions of an academic nature.

Since 2013 the *Review* has been part of the ICRC Law and Policy Forum, a unit which groups together the ICRC's resources in terms of relations with academia, legal training, conferences and law and policy outreach. The articles and reports published in the *Review* benefit from wider promotion via launch events, conference cycles and academic debates at the *Humanitarium* – the ICRC's new conference centre in Geneva¹ – and all over the world. These events are available online on the “Law and Policy” section of the ICRC website.²

A new Editorial Board was formed in 2015 and met for the first time in Naivasha, Kenya, on 19–20 April 2015. The meeting took place in parallel with the annual training course for humanitarian professionals and policy-makers organized by the ICRC in Naivasha³ in which some of the board members presented and participated. The Editorial Board meeting in Naivasha was a great opportunity to welcome and brief the new members, take stock of the past four years and exchange ideas regarding the future development of the journal.

A joint decision was taken by the Board and the editorial team to reduce the production from four to three issues per year as of 2016. This frequency is more realistic and in line with the recent evolutions of the journal and its production capacities. The Editorial Board selected the future themes of the *Review* for 2016 according to their relevance and academic interest. Authors are encouraged to send their submissions to the journal on relevant topics, preferably in the following areas:

1. Spring 2016: War in cities/Explosive weapons in densely populated areas
2. Summer 2016: Detention: addressing the human cost
3. Autumn 2016: The protection of migrants, internally displaced persons and refugees

The next Editorial Board meeting will take place on **20–22 April 2016 in Geneva**, where a new strategy for the next four years of the journal will be discussed. The *Review* will continue to maintain and develop the highest academic standards in the field of international humanitarian law, policy and action, with a view to contributing to pressing contemporary law and policy debates.

The editorial team of the *Review* takes this opportunity to thank the members of the previous Editorial Board (2011–14), as well as the journal's authors and peer reviewers, for their contribution to the quality and overall influence of the journal.

1 See: www.icrc.org/eng/who-we-are/humanitarium/index.jsp (all internet references were accessed in November 2015).

2 See: www.icrc.org/en/war-and-law/law-and-policy.

3 See: www.alnap.org/event/801.aspx.

Members of the Editorial Board of the *International Review of the Red Cross*



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Vincent Bernard, ICRC Geneva, Editor-in-Chief of the *International Review of the Red Cross* (France)

Vincent Bernard is Editor-in-Chief of the *International Review of the Red Cross* and head of the Law and Policy Forum, which runs ICRC's engagement with academia, legal and policy training and the Humanitarium, the ICRC's conference and visitors' centre. A graduate of Strasbourg's Political Sciences Institute, he holds a master's degree in political science, an LLM in international law (law faculty at Strasbourg and King's College London) and a DES in international relations from the Geneva Graduate Institute of International Studies. After lecturing on international law and IHL at the University of Marmara in Istanbul, he joined the ICRC in 1998. He has worked both in the field (Regional Delegation for West Africa in Dakar, Regional Delegation for East Africa in Nairobi, and Israel and Occupied Territories) and at headquarters, and in various areas and capacities (integration and promotion of IHL, Communication Coordinator, Head of Sector for Africa and Head of Field Communication).



Annette Becker, University Paris-Ouest Nanterre, Institut Universitaire de France (France)

Annette Becker, Professor of Modern History at Paris Ouest Nanterre La Défense and a former senior member of the Institut Universitaire de France, has written extensively on the two World Wars and the extreme violence they inflicted against civilians, with an emphasis on military occupation and genocide. She has devoted research to humanitarian politics, trauma and memories, particularly among intellectuals and artists. Her last three books were *Guillaume Apollinaire: Une biographie de guerre* (Tallandier, 2009), *Les cicatrices rouges 1914–1918: France et Belgique occupées* (Fayard, 2010) and *Voir la Grande Guerre: Un autre récit, 1914–2014* (Armand Colin, 2014). She was one of the contributors to the *Cambridge History of the First World War* (3 vols, 2014) and directed its French edition, *La Première Guerre mondiale* (Fayard, 2014). She is now writing on Raphael Lemkin and Jan Karski, two important voices of the twentieth century and its catastrophes.



Chaloka Beyani, Special Rapporteur on the Human Rights of Internally Displaced Persons, London School of Economics (Zambia)

Chaloka Beyani (DPhil, Oxon; LLB, LLM, Zambia) is the United Nations' (UN) Special Rapporteur on the Human Rights of Internally Displaced Persons and Associate Professor in International Law and Human Rights at the London School of Economics and Political Science, where he has taught since 1996. He has taught international law

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and human rights at Oxford and at the University of Zambia. His publications are in public international law, human rights, the movement of persons and populations, territorial disputes, legitimacy of states, migrants, African legal systems, and constitutional reforms. Beyani is an international UN expert on internally displaced persons, population transfers, mercenaries and private military companies, sexual and reproductive health, climate change and human rights, and the human rights approach to development. He is a member of the UN Deputy Secretary-General's Senior Expert Group on Human Rights Up Front, a member of the advisory group to the Foreign Secretary of the United Kingdom, a member of the Steering Board of the UK Prime Minister's Special Envoy on Sexual Violence in Armed Conflict, and a member of the Africa Advisory Committee for the Open Society Justice Initiative. He was Chair of the Coordination Committee of the UN Human Rights Special Procedures, and of the Advisory Board of the Centre for the Study of Human Rights at the London School of Economics. He is a former member of the board of Interights, Oxfam, the International Minority Rights Group, and Independent Diplomat. Beyani was a member of the High-Level Panel of Eminent Persons of the African Union on the Formation of an African Union Government, has advised the African Union on the issue of universal jurisdiction, and was a member of the African Union and European Union *ad hoc* Expert Group on Universal Jurisdiction. He drafted and negotiated the adoption of the Pact of Peace, Stability and Development of the Great Lakes Region in 2006, and the African Union Convention on the Protection and Assistance of Internally Displaced Persons in 2009. He was a member of the Committee of Experts on the Constitutional Review of the Constitution of Kenya, which prepared and drafted the new Constitution of Kenya 2010.



Françoise Bouchet Saulnier, Médecins Sans Frontières (France)

Françoise Bouchet-Saulnier, a Doctor of Law and Magistrate, is the Legal Director of Médecins Sans Frontières (MSF). She is the author of several books and articles on humanitarian action, humanitarian law and international justice, in particular the *Practical Guide to Humanitarian Law* (Rowman & Littlefield, 2002). She is involved in framing

the rights and responsibilities of MSF humanitarian and medical activities in situations of armed conflict or internal tensions, as well as medical rights and duties when treating sick or wounded individuals and victims of sexual violence and interacting with judicial systems. Over the past twenty years, she has been involved in developing key MSF policies and public positioning on humanitarian action and mass crimes, military intervention and international criminal justice. She is also a member of the Editorial Committee for MSF's Speaking Out Case Studies.



Hilary Charlesworth, Australian National University (Australia)

Hilary Charlesworth is a Distinguished Professor of International Law and Human Rights at the Australian National University. She also currently holds an Australian Research Council Laureate Fellowship. She holds degrees in arts and in law from the University of Melbourne and an SJD from Harvard Law School. Her research includes the

structure of the international legal system, peacebuilding, human rights law and IHL, and international legal theory, particularly feminist approaches to international law. Prof. Charlesworth has been a visiting professor at institutions including Harvard Law School, New York University Global Law School, UCLA, Paris I and the London School of Economics. She is an associate member of the Institut de Droit International and served as Judge *ad hoc* in the International Court of Justice for the *Whaling in the Antarctic* case (2011–14).



Sarah Cleveland, Columbia Law School (United States)

Sarah Cleveland is Louis Henkin Professor of Human and Constitutional Rights, and Faculty Co-Director of the Human Rights Institute at Columbia University Law School. She is also a member of the UN Human Rights Committee, the US member on the Venice Commission of the Council of Europe, and Co-Director of the Project on Harmonizing Standards for Armed Conflict. From 2009 to 2011, she

served as Counselor on International Law to the Legal Adviser at the US Department of State, where she helped supervise the office's legal work relating to the law of armed conflict, international justice, and human rights. She continues to serve as a member of the Secretary of State's Advisory Committee on International Law, and is a member of the Executive Council of the American Society of International Law, and a Council Member of the International Bar Association's Human Rights Institute. A former Rhodes Scholar and law clerk to US Supreme Court Justice Harry Blackmun, Cleveland holds a baccalaureate degree from Brown University (1987), a master's degree from Oxford University (1989) and a JD from Yale Law School (1992). She has written widely on issues of international law, national security and human rights.



Adama Dieng, UN Secretary-General's Special Adviser on the Prevention of Genocide (Senegal)

Adama Dieng, a Senegalese jurist, assumed his position as UN Undersecretary-General and Special Adviser to the Secretary-General on the Prevention of Genocide on 1 September 2012. Prior to this appointment he served since 2001 as Assistant Secretary-General and Registrar of the International Criminal Tribunal for Rwanda. Before joining the UN, Mr Dieng was for ten years Secretary-General of the Geneva-based

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International Commission of Jurists (1990–2000). While holding this post, he was appointed as the UN Independent Expert for Haiti (1995–2000). He also served in 1993 as the UN Secretary-General's Envoy to Malawi, tasked with mediating between the government and pressure groups. He was the driving force behind the establishment of the African Court on Human and Peoples' Rights and produced the draft version of the African Convention to Fight Corruption. He is a former board member of various institutions, including the International Institute for Democracy and Electoral Assistance, the International Institute of Humanitarian Law, the International Human Rights Institute (Institut Rene Cassin) and the Africa Leadership Forum. Mr Dieng has a long-standing relationship with the ICRC dating back to 1980. In recognition of his contribution to the strengthening of the rule of law and the fight against impunity, he was made an Honorary Chairman of the Washington-based World Justice Project.



Fyodor Lukyanov, *Russia in Global Affairs*, Council on Foreign and Defense Policy (Russia)

Fyodor Lukyanov has been editor of *Russia in Global Affairs*, a journal published with the participation of *Foreign Affairs*, since its founding in 2002. Under his leadership the journal has become one of the most authoritative sources of independent information on foreign policy and international relations in Russia. In December 2012 Mr Lukyanov was elected as Chairman of the Council on

Foreign and Defense Policy, the oldest Russian NGO providing expertise in the field of security and foreign affairs. He is member of the Presidium of the Russian International Affairs Council, and since 2015 has been a Research Professor at the Faculty of World Economy and International Relations at the National Research University Higher School of Economics in Moscow. His column appears regularly in the *Moscow Times*, the Russian edition of *Forbes*, *Rossiyskaya Gazeta* and *Gazeta.ru*. He has an extensive background in Russian media since 199 and is now one of the most quoted commentators on Russian foreign policy worldwide. He graduated from Moscow State University in 1991 with a master's degree in German language and literature.



Ximena Medellín Urquiaga, Centro de Investigación y Docencia Económicas (Mexico)

Ximena Medellín is a Law Professor at the Division of Juridical Studies of the *Centro de Investigación y Docencia Económicas* in Mexico City. She holds degrees in law from the Universidad Iberoamericana, Mexico City (LLB, 2004), and the University of Notre Dame (LLM, 2007, *magna cum laude*). She is the author of several publications in the fields

of international human rights law, international criminal law, IHL and transitional justice. Some of her most recent books include the *Digest of Latin American Jurisprudence on International Crimes* (Vols 1 and 2) and the *Digest of Latin American Jurisprudence on the Rights of Victims*. Prof. Medellín has been a consultant to national and international organizations, including the ICRC and the Office of the United Nations High Commissioner for Human Rights. She has extensive experience working with armed and police forces, diplomats, journalists, litigants, judges and university professors within the Latin American region. Her current research focuses on the interaction between international human rights law, IHL, international criminal law and comparative constitutional law.



Tasneem Meenai, Jamia Millia Islamia (India)

Tasneem Meenai is Director of the Nelson Mandela Centre for Peace and Conflict Resolution, Jamia Millia Islamia, New Delhi, India. She previously worked as Research Fellow at the Institute for Defence Studies and Analyses (IDSA), New Delhi, on the research project “Role of Multilateral Institutions in Conflict Resolution”. She has also taught political science at Aligarh Muslim University for a number of years. A graduate of Jamia Millia Islamia, Dr Meenai holds an MA in international relations from the Australian

National University, Canberra, and in politics from Jawaharlal Nehru University, New Delhi, and a PhD in political science from the University of Mumbai. Her areas of research and interest are humanitarian dimensions of armed conflict, humanitarian protection, multilateral institutions and conflict resolution, UN peacekeeping, peacemaking and peacebuilding, and other issues of conflict resolution, peace and security, especially in South Asia and West Asia. She is co-editor (with K. Santhanam *et al.*) of *United Nations: Multilateralism and International Security* (Shipra, 2005), and co-author (with K. Santhanam *et al.*) of *Iraq War 2003: Rise of the New Unilateralism* (IDSA and Ane Books, 2003). She is currently also Dean of Students’ Welfare in Jamia Millia Islamia and is a member of the Managing Body of the Indian Red Cross Society (Delhi branch) for 2015–16.

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Sorcha O'Callaghan, British Red Cross (United Kingdom)

Sorcha O'Callaghan is Head of Humanitarian Policy at the British Red Cross. She works on a range of different issues, including humanitarian principles, civil–military relations, resilience and accountability. She previously worked as Research Fellow at the Overseas Development Institute. She led the Humanitarian Policy Group's work on protection of civilians and has published on protection, livelihoods and humanitarian principles. O'Callaghan has worked on and in

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Sudan, where she coordinated the Sudan Advocacy Coalition, a consortium involving Care, Christian Aid, the International Rescue Committee, Oxfam GB, Save the Children UK and Tearfund. With a background in law, she has also worked in the refugee and asylum sector in Ireland.



Emre Öktem, Galatasaray University (Turkey)

Emre Öktem is a Professor of International Law at the Faculty of Law of Galatasaray University, Istanbul. He is the author of the books *Freedom of Religion in International Law, Terrorism, Humanitarian Law and Human Rights, Piracy and Privateering: History and Law* (co-author) and *Customary International Law*, and various articles on human rights, humanitarian law, minority rights, terrorism

and statehood, as well as essays on history. Actively engaged in interfaith dialogue, he is collaborating with religious minorities' institutions in Turkey for the defence of religious rights. He has served as an expert at the Advisory Council for the Freedom of Religion and Belief at the Organization for Security and Cooperation in Europe, and as an expert witness in international investment arbitrations. Öktem worked on the critical edition in Turkish of the Geneva Conventions and their Additional Protocols, and the translation of the ICRC study *Customary International Humanitarian Law*, by Jean-Marie Henckaerts and Louise Doswald-Beck.



Marco Sassòli, University of Geneva, Geneva Academy of International Humanitarian Law and Human Rights (Switzerland)

Marco Sassòli, a national of Switzerland and Italy, is Professor and Director of the Department of International Law and International Organisation of the University of Geneva. From 2001 to 2003, he was Professor of International Law at the University of Québec in Montréal, where he remains Associate Professor. He is Commissioner

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and alternate member of the executive board of the International Commission of Jurists. He graduated with a doctor of laws from the University of Basel

(Switzerland) and is member of the Swiss Bar. He has also served as Executive Secretary of the International Commission of Jurists and as Registrar at the Swiss Supreme Court. He worked for the ICRC at its headquarters in Geneva from 1985 to 1997, *inter alia* as Deputy Head of its Legal Division, and in the field, *inter alia* as Head of Delegation in Jordan and Syria and as Protection Coordinator for the former Yugoslavia. In 2011, Prof. Sassòli took a sabbatical in order to take up a six-month assignment as Legal Adviser for the ICRC in Pakistan.



Michael N. Schmitt, US Naval War College, University of Exeter (United States)

Michael Schmitt is the Charles H. Stockton Professor of International Law and Director of the Stockton Center for the Study of International Law at the US Naval War College. He is also Professor of Public International Law at Exeter University in the United Kingdom, a Fellow at Harvard Law School's Program on International Law and Armed Conflict and a Senior Fellow of the NATO

Cooperative Cyber Defence Centre of Excellence. Prof. Schmitt serves as Editor-in-Chief of *International Law Studies* and has been elected a member of the Council on Foreign Relations and a Fellow of the Royal Society of the Arts.



Yuval Shany, Hebrew University of Jerusalem, Israel Democracy Institute (Israel)

Yuval Shany is the Hersch Lauterpacht Chair in International Law and Dean of the Law Faculty of the Hebrew University of Jerusalem. He also serves currently as a member of the UN Human Rights Committee and is a Senior Research Fellow at the Israel Democracy Institute. He holds degrees in law from the Hebrew University (LLB, 1995, *cum laude*), New York University (LLM, 1997) and the University of London (PhD, 2001). He has published a number of books

and articles on international courts and arbitration tribunals and other international law issues such as international human rights law and IHL. He received the 2004 American Society of International Law book award (creative legal scholarship) and a 2008 European Research Council grant awarded to pioneering research leaders. Shany has taught in a number of law schools in Israel, and has been in recent years a Research Fellow at Harvard University and Amsterdam University, and a Visiting Professor at the Georgetown University Law Center, Michigan University Law School, Columbia University Law School and the Faculty of Law of the University of Sydney.

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Sun Shiyan, Chinese Academy of Social Sciences (China)

Shiyan Sun is Research Fellow, Professor of International Law and Head of the Research Department of Public International Law at the Institute of International Law, Chinese Academy of Social Sciences. He holds a PhD from the Graduate School of Chinese Academy of Social Sciences, and an LL.M. and LL.B. from Jilin University in China. He was Associate Professor at Jilin University School of Law and Visiting Professor at the Raoul Wallenberg Institute of Human Rights and

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Humanitarian Law of Lund University in Sweden. He is currently a member of the Board of Editors of the *Chinese Journal of International Law* and the *Chinese Review of International Law*. He has published many articles and books on international law and international human rights law.



Fiona Terry, Independent Researcher (Australia)

Fiona Terry has spent most of the last twenty years involved in humanitarian operations in different parts of the world including Northern Iraq, Somalia, the Great Lakes region of Africa, Liberia and Sudan. She was a Research Director for MSF in Paris from 2000 to 2003, working on North Korea, Sierra Leone and Angola, before spending three years with the ICRC in Myanmar (Burma). She holds a PhD in international relations and political science from the Australian National University and is the author of

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Condemned to Repeat? The Paradox of Humanitarian Action (Cornell University Press, 2002), which won the 2006 Grawemeyer Award for Ideas Improving World Order. More recently she has been teaching at Duke University in North Carolina, and has undertaken several in-depth studies for the ICRC including on the practice of neutrality in Sudan and Afghanistan, and on the protection of health care in Afghanistan, Somalia and the Democratic Republic of the Congo. Since early 2014 she has been working with MSF in Somalia, evaluating the impact of the organization's withdrawal from the country in mid-2013 and investigating possibilities for a safer re-engagement in this difficult context.



Interview with Mr Ma Qiang

Former Executive Vice-President
of the Shanghai branch of the
Chinese Red Cross*

In this issue, the Review wanted to give a voice to different perspectives on the principles guiding humanitarian action. The Chinese Red Cross is an interesting example of a member of the International Red Cross and Red Crescent Movement operating according not only to the seven Fundamental Principles of the Movement, but also to three additional values (or “spirits”), namely humanity, fraternity and dedication. Whereas the Fundamental Principles serve as institutional rules and provide operational guidance, the three spirits serve as an ideology for members of the Chinese Red Cross. In addition, over the last few years, the Chinese Red Cross has become more and more involved in disaster response operations abroad (for instance, in the response to Typhoon Haiyan in the Philippines in 2013 and the earthquake in Nepal in 2015), as well as in China. It is expected that Chinese disaster response organizations will be increasingly involved in future international crises. The Review spoke to Mr Ma Qiang, former Executive Vice-President of the Shanghai branch of the Chinese Red Cross, the oldest Red Cross branch in China, to find out more about how he sees the evolution of the humanitarian sector and the challenges to principled humanitarian action in today’s world.

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* This interview was conducted in Shanghai on 30 January 2015 by Vincent Bernard, Editor-in-Chief of the *International Review of the Red Cross*, Nicole Martins-Maag (ICRC Geneva) and Wen Zhou (ICRC Beijing).

Ma Qiang served as Executive Vice-President of the Shanghai branch of the Red Cross Society of China from 2008 to 2015 and was a Member of the Council of the Red Cross Society of China from 2009 to 2015. He is the co-editor of the book *Red Cross in Shanghai 1904–1949*.¹

He currently serves as a Permanent Member of the Chinese People's Political Consultative Conference Shanghai Committee and Chairman of the Medical Ethics branch of the Chinese Medical Association. He is also Vice-President of the Shanghai Medical Association, Deputy Director of the Shanghai Medical Technology Awards Committee, and a Distinguished Professor of Central South University and Suzhou University.

He was Chief Administrator of the Shanghai Municipal Health Department from 1997 to 2008 and Vice-President of Shanghai Second Medical University from 1994 to 1997.

Can you tell us a little bit about the history of the Shanghai branch of the Red Cross and give us an overview of the work it does?

Shanghai is one of the first ports in China that opened to the outside world. In the late nineteenth century and the early twentieth century, humanitarianism and the Red Cross were actively promoted by a number of Shanghai personalities such as Mr Sun Gan,² who used *Shen Bao* [the *Shanghai Times*] and a number of other newspapers and media as platforms and widely disseminated the concept. Dr Sun Yat-sen's³ translation of a Red Cross handbook of first aid and news of the Red Cross Movement from other countries often appeared in newspapers. As the main trading port in China, Shanghai, with its unique status, became an entry point for the Red Cross culture and practice, and the ideas spread from here to other parts of China. On 10 March 1904, Mr Shen Dunhe⁴ and a number of famous Shanghai merchants and gentlemen, taking advantage of Shanghai's advanced industries, commerce, charity, and open ports for international and domestic exchanges, established the National Red Cross Society in China – the Shanghai Wan Guo Red Cross Society. Since then, the Red Cross culture has been integrated with the traditional culture of our

1 Ma Qiang and Chi Zihua (eds), *Red Cross in Shanghai 1904–1949*, China Publishing Group, Shanghai, 2014.

2 Sun Gan (孙淦) was a Shanghai businessman and patriotic overseas Chinese citizen, doing business in Japan for a long time. He joined the Red Cross during his stay in Japan, and later came up with the idea of establishing a Red Cross National Society in China. In 1897, he submitted a letter to the Chinese ambassador to Japan calling for the establishment of a Red Cross National Society in China.

3 Sun Yat-sen (孙中山) (1866–1925) was the first president and founding father of the Republic of China. Sun played an instrumental role in the overthrow of the Qing dynasty, and co-founded the Kuomintang, serving as its first leader. He was also a medical practitioner, and he translated a Red Cross handbook of first aid into Chinese in 1897.

4 Shen Dunhe (沈敦和) (1866–1920) was a well-known Chinese social activist and philanthropist. In his early years, he studied at the University of Cambridge. In 1904, he established the Shanghai Wan Guo Red Cross Society with other merchants and gentlemen in Shanghai. From 1907, he served as vice-chairman of the Red Cross Society of China.

country and with the local context. The Chinese Red Cross opened its headquarters in Shanghai, and the chief executives carried out the work using Shanghai as a base. Shanghai became the centre for the Red Cross and Red Crescent Movement in China.

The Shanghai branch of the Chinese Red Cross [SHRC] was established in 1911. There are currently four departments [Relief and Rescue Department, Youth Department, Voluntary Service Department, Communication and Information Department] and a general department [the General Office]. There are two independent affiliated institutions: the Disaster Preparedness and Response Centre and the Training and Exchange Centre. Nearly 100 full-time staff work at the SHRC at municipality level. The SHRC covers seventeen counties, more than 200 townships and several thousand villages. Some of the industrial and development zones, schools and medical institutions have also established Red Cross grass-roots units,⁵ forming a fairly comprehensive network.⁶

Shanghai is a very developed international city, and it is not prone to natural disasters. However, as residential structure fires occur every so often, we have set up a residential fire project for Shanghai and developed our own rescue principles, models and approaches. So, if a residential fire occurs anywhere within the city, local Red Cross grass-roots units will immediately move to provide assistance, and we will ensure that this assistance arrives at the scene.

Now, over ten different types of services that we provide directly through the Red Cross cover all of our counties, towns and villages, and schools.

Another area of expertise for the SHRC is restoring family links. After 1949, when the government of China withdrew from mainland Taiwan, many families were separated. So since the 1980s, we have helped more than 4,600 families to restore links with family members. The peak time was during the 1980s and 90s, but there are still some sporadic cases now, including many foreigners, especially Jews, who lived in Shanghai before 1949.

5 Article 40 of the Statutes of the Red Cross Society of China (revised in 2015) states:

The Red Cross organizations established in townships, streets (communities), corporations, enterprises, schools, medical institutions and other organizations are Grass-roots units.

The main responsibilities of the Red Cross Grass-roots units are: to disseminate knowledge about the Red Cross, carry out humanitarian relief activities, organize primary first-aid training, disseminate knowledge about public health, and other activities consistent with the goals of the Red Cross.

6 According to its statistics, as of the end of September 2014, the SHRC at all levels had 4,048 grass-roots organizations, 1,278 group members, 325 full-time staff and 3,186 part-time staff. Among them, three industries (steel, fire-fighting and railway) and thirteen economic development zones have established Red Cross units. Seventeen districts (or counties) and 209 street neighbourhoods (or townships) have established 4,727 Red Cross service stations in residential and public places. There are 1,390 Red Cross clubs in schools, and sixty-four Red Cross medical institutions. There are 1,115,200 Red Cross members, 1,278 group members and 244,100 volunteers. Volunteers, including first-aiders and disaster-monitor volunteers, cover virtually all neighbourhoods, townships and villages in Shanghai.



Disaster Preparedness and Relief Centre, SHRC. Source: SHRC.



Grass-roots Red Cross unit providing service to communities. Source: SHRC.

In your view, how do you see that the humanitarian work of the Movement and its Fundamental Principles relate to the Chinese tradition of philanthropy and relief in times of crisis?

China has a long tradition of famous philanthropists, such as Fan Zhongyan, Liu Zai, Li Wu, Bai Lunsheng and Xiong Xiling. Some of them even received commendations from emperors. So the concept of charity and benevolence is deeply embedded in the Chinese culture. For example, in 1874, *Shen Bao*, the most influential newspaper in China at the time, reported that there were many charity organizations in Shanghai alone. There were as many charity organizations as there are trees in a forest in a small place like Shanghai.

When the Chinese Red Cross was established in Shanghai in 1904 and the Red Cross concept of humanity was introduced to China, it was immediately accepted by many philanthropists. The Chinese Red Cross was sponsored by many powerful people such as the Empress Dowager Ci Xi, but ordinary people also donated money. It quickly spread, and more and more Red Cross branches were founded across China because the aim – to alleviate human suffering – is in line with Chinese culture and tradition.

In many ways, the work of the Chinese Red Cross is adapted to the Chinese context, but at the same time, it follows the seven Fundamental Principles of the International Red Cross and Red Crescent Movement.

The Chinese Red Cross has adopted different principles guiding its work, namely humanity, fraternity and dedication, so it seems that there are some specificities and differences. Can you describe the Chinese principles? Why does the Chinese Red Cross put forward these three, which are partly different from the seven Fundamental Principles of the Movement?

Humanity, fraternity and dedication are the spirits advocated by the Chinese Red Cross. The first principle of the Chinese Red Cross is humanity, which is the same as the first Fundamental Principle and means that the Chinese Red Cross is protecting life and health and ensures respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all people. It is the most fundamental approach when dealing with any human life.

Fraternity is described in China as a very far-reaching type of love which is able to extend beyond all types of discrimination and other borders. A doctor's heart, for example, should be a heart of universal love – love that is strong enough to break boundaries, even of classes, ethnic groups, religion, etc. This fraternity includes a concern with how one can provide fair and equitable treatment to all those individuals that need assistance. It is therefore in line with the Fundamental Principle of impartiality and means that when providing humanitarian assistance, you cannot discriminate.

And then there is the principle of dedication, comparable to the idea of voluntary service, which is also one of the seven Fundamental Principles. One must have the spirit of dedication if one is to become involved in voluntary service. If we do not have this spirit of dedication, then we will not be able to reach our goal of providing quality voluntary service. So, when approached from this angle, these three concepts of the Chinese Red Cross are actually consistent with the seven Fundamental Principles.

These three concepts express the “spirit” of our work. We did not feel that it was necessary to include organizational-related principles⁷ along with these three concepts.

The seven Fundamental Principles of the Red Cross and Red Crescent Movement were developed over the first hundred years after the Movement had taken up its work. China is a developing country, and we need to allow enough time for the country to fully embrace the work and presence of the Movement. I believe that these principles will be expressed more fully and in a way that is understood by the Chinese. We will also gain better understanding of these principles as they are being applied to the specific context in China.

Can you explain the use of the word “spirit” of the Chinese Red Cross, in comparison with the “Principles” of the Movement?

Whenever someone becomes involved in an activity, or begins striving to accomplish a certain goal, they will be doing so with a particular state of mind. With the proper state of mind, or spiritual awareness, this individual will be better equipped to be successful in the task they are hoping to accomplish. This is what we mean by spirit.

So spirit and principles are two different concepts. Principles serve as institutional rules and a measuring stick, whereas spirit is about one’s state of mind and is more ideological. Working for the Red Cross, I need to have the spirit of humanity, fraternity and dedication. But when I actually do specific work, I must adhere to the seven Fundamental Principles.

The work of the Chinese Red Cross is carried out based on the seven Fundamental Principles. However, when we are informing the general public about our work and are promoting our values, we tend to use the principles of humanity, fraternity and dedication. It makes it easier for us to mobilize the public to donate and/or take part in our humanitarian and charitable work, since these principles are in line with the Chinese cultural tradition and the Chinese language. The humanity, fraternity and dedication of Chinese Red Cross workers embody the Chinese humanitarian spirit, but we still adhere to the seven Fundamental Principles of the Movement.

⁷ According to Jean Pictet’s commentaries on the Fundamental Principles of the Movement, the principles of unity, universality and voluntary service are considered to be organizational principles. Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, ICRC, Geneva, 1979, available at: www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm.



Henry Dunant statue in the city centre of Shanghai.
Source: SHRC.

It is a way to mobilize resources from the general public. The principle of dedication represents the common spirit and ambition of an entire nation and the Movement. We, as part of the Red Cross and Red Crescent Movement, need to dedicate ourselves as individuals, and also advocate for this dedication so that all members of society join us and dedicate themselves as well. The spirit of dedication is to a certain extent expressed by the principle of voluntary service, which is one of the seven Fundamental Principles. However, voluntarism represents more a form of service rather than a spirit or belief.

Fraternity and dedication are powerful concepts that are very appealing to people. The concept of fraternity was proposed by Mr Sun Yat-sen, the founding father of the Republic of China. Mr Sun combined the Chinese concepts of charity and benevolence and Western concepts of humanitarian love and proposed what has become known in China as fraternity [博爱].

The principle of dedication [奉献] embodies the spirit and work of the Movement. For example, many colleagues of the International Committee of the Red Cross [ICRC] have lost their lives in armed conflicts throughout the world to fulfil humanitarian duties. This shows a spirit of dedication. It is not only something concerning people who work for the Movement, but it also calls for a similar devotion on the part of the whole society.

Red Cross and Red Crescent National Societies have an auxiliary status to the government, and at the same time operate under the principle of independence. Do you have practical examples from the Chinese Red Cross of how these two requirements can be combined?

In fact, the independence principle is a very important principle among the seven Fundamental Principles for a Red Cross and Red Crescent National Society.

The first example of the independence of the Chinese Red Cross I can give you is a historical one. At the end of the nineteenth century, the relationship between China and Japan was very difficult, and the First Sino-Japanese War started in 1894. Subsequently in 1904, the war between Japan and Russia was fought on Chinese territory. However, when the eastern Japanese earthquake took place in 1923, the Chinese Red Cross called for public donations and the Shanghai branch organized an emergency response team comprised of more than twenty people. The team was deployed to Japan, and helped with the relief work.

My second example is a more recent one. On 12 May 2008, the Sichuan earthquake hit China.⁸ During this major natural disaster, the Chinese Red Cross independently undertook fundraising efforts and shipped all relief materials to the disaster area for its relief projects. At that time, the Shanghai branch of the Chinese Red Cross alone raised 1.17 billion yuan that was sent to the disaster area. All these efforts were independent initiatives by the Red Cross in order to help the affected regions. After we had raised the money, we worked closely with the government in order to meet the most urgent needs of the victims during the earthquake.

In the post-disaster reconstruction, it was the SHRC that made the decisions on what projects should be pursued. The local government helped the local Red Cross branch to implement the reconstruction. The government organized the reconstruction team, and the Red Cross supervised to make sure that the team met its standards. In this way, the Red Cross was able to combine its independence with the leverage of government support. In order to rebuild the ruined area, the government made an overall plan, and the Red Cross participated in the planning in order to fit our project with the goals and the requirements of the government. But it was the Red Cross that made the decisions on the projects, raised the money, and also conducted the inspection and supervision. When the construction was finished, the SHRC then organized visits by our donators to the disaster area to monitor and evaluate the project.

Therefore, we can conclude that the principle of independence plays an important role in the core decision-making of the Red Cross. But we can also benefit from government support, which helps us to do things faster and better. On the one hand, we are the government's auxiliary, but on the other hand, we are independent. The relief effort for the Sichuan earthquake is a good example of this combination.

At the local level in Shanghai, we have our own humanitarian assistance projects for vulnerable people in the city. The SHRC fulfils its duty in accordance with the Law of the People's Republic of China on the Red Cross Society in that respect. We have an executive committee that makes independent decisions

8 The Sichuan earthquake, which measured 8.0 in magnitude and occurred on 12 May 2008 in the Sichuan province of China, left 69,197 dead and 374,176 injured, with 18,222 listed as missing. It was the deadliest earthquake to hit China since the 1976 Tangshan earthquake. The Red Cross Society of China raised donations of around 4.29 billion yuan (US\$680 million) in total.

regarding issues that concern our day-to-day internal work, our mode of operation, our fundraising methods, our humanitarian aid programmes and so on. We do not need to consult with any government departments when making these decisions, and no one can intervene in the decision-making process. The role of the government is to provide some positive support and to ensure non-intervention with the implementation of the projects.

On a personal level, ever since I took this position, I have been trying to transform myself from the mode of government administration into a qualified social activist, a humanitarian and a practitioner, a believer in the spirit of humanitarianism. So from this aspect, this is an elevated spirituality and a dedication to implementing humanitarianism. In the past seven years, I've been deeply moved and inspired by the Red Cross and its mission, and I am deeply in love with its cause. Joining the Red Cross has been a life-changing experience for me, and the Movement has become part of my life.

What are the primary challenges that the Chinese Red Cross, including the SHRC, is facing in the implementation of the seven Fundamental Principles?

The primary mandate of the Movement is to provide humanitarian assistance in situations of armed conflict and disasters. It is more difficult to disseminate the principles and spirit of the Red Cross in peaceful countries than in countries dealing with armed conflict or severe disasters. In the first half of the last century, China was in a state of war, so it was very easy for Chinese people to accept and understand the Red Cross at the time, and the public was willing to support and participate in our mission. But having been at peace for a long time, it has become difficult for young people to care about something that is so distant and alien to them.

The principle of neutrality can be found in traditional Chinese culture, and this has been demonstrated by the process of the development of the Red Cross. However, it is not very obvious and is difficult to define. Neutrality reflects more of a mode of action than a spirit. I believe that as China becomes more integrated with the rest of the world, this principle will find a richer definition in Chinese culture.

We need to develop an effective method to help young people understand our work. We need to take the Red Cross as well as a complete and accurate understanding of the seven Fundamental Principles and adapt this to the Chinese context. This is the way by which we will be successful in the objective of introducing the principles of humanity, fraternity and dedication.

Another challenge that we are facing relates to the stability of the Red Cross leadership as well as to the improvement of their understanding of the Red Cross and Red Crescent Movement. If we are able to successfully address these issues, the other tasks that we take on will not pose a significant challenge. The first task, therefore, is to spread the history of the Red Cross and the right messages about the seven Fundamental Principles among the leadership of National

Societies at all levels. If at any branch or headquarters the leadership does not understand the principles, the whole National Society will not be on the right track as a result.

Therefore, it is very important that people who start working for the Movement receive high-quality, comprehensive training during their first year on the job. I was trained years after I started this work, but the introductory courses I participated in were not very convincing due to curriculum settings. It took me over a year to really get the hang of things and move past the initial stage of confusion after I started to work for the Red Cross in 2008. So in the seven years that I have spent working at the SHRC, I am pleased that we now have a well-functioning team that is very professional. Without well-trained key staff or professional leadership, our aim cannot be achieved; this is very important in China.

I have also noticed, for example, that the ICRC and the International Federation of Red Cross and Red Crescent Societies are interested in exploring how these principles can be spread to a group of key individuals throughout the world, in order to turn them into strong and long-term advocates for the principles.

The ICRC has had reasonably stable staff that have worked for the institution for five to ten years, or even longer. Having long-term staff will help advance the work of the Movement. We need to maintain the stability of staff who have the spirit of dedication and devotion and are able to spread the principles and become Red Cross activists.



Shanghai Debating Competition on Humanitarian Issues, final round, May 2015. Source: SHRC.

Voluntary service is one of the seven Fundamental Principles of the International Red Cross and Red Crescent Movement. What suggestions would you like to give to the Movement to reconcile this with the growing demands to enhance the professionalization of humanitarian actors and organizational effectiveness of the sector?

This is an issue that I spent a great amount of energy working on after I joined the Red Cross, and I feel that working to successfully increase the professionalism of our organization is a task that needs to be approached from three different levels.

Firstly, the resources that are available to the Red Cross primarily derive from donations, and therefore it is not possible to employ a huge amount of people and our organization cannot afford to pay a large number of top management salaries. National Societies need to attract professionals who will work as Red Cross volunteers. So in order to accomplish its goals, the Red Cross needs to be skilled at building a team consisting of volunteers and employees.

Secondly, even when we have a large amount of volunteers joining our ranks, we still need highly skilled personnel. We need to identify volunteer leaders who can provide training for less skilled individuals and assist those individuals who are not yet familiar with the Red Cross's work. In this way, we will be able to produce a stronger team of what we call "student leadership", a volunteer cadre or volunteers in positions of leadership. They can serve as a sort of connection between employees and volunteers and will allow for in-depth relationships.

Thirdly, we need to be successful in training professional volunteers. The individuals that take part in our work need to be very professional. Just like I place a demand on myself to be a good disseminator and a professional manager of the Red Cross cause, I expect from our volunteers that they act in a very professional manner when they are working for us. In order to achieve this, the management of National Societies, and of local branches, is very important, and the organizers of voluntary services have to be very professional. Managers need to know how to lead a team in order to provide humanitarian services with a team of volunteers.

The Chinese Red Cross was established by businessmen and philanthropists in Shanghai in 1904. When you look at the situation today, do you feel that the private sector in China is willing to carry on this tradition of philanthropy? If so, how would it go about doing this?

Currently, the private sector occupies about two thirds of the economy and is in a very strong position, and undoubtedly, private businesses and individuals are accounting for a vast majority of charitable donations.

In the past, these private enterprises were run by individuals and operated on a limited scale. As these enterprises have grown bigger, more and more have adopted shareholder systems, and their boards of directors are making

decisions – also regarding charitable donations – that are now more standardized and transparent.

Both public and private enterprises have shown great enthusiasm for charity, and with improvements on the management of State-owned assets, joint-stock enterprises and the corporate governance structure, the collection and use of charitable donations will become more professionalized and regular.

The key point of the question is how we can mobilize the private sector to donate for the Red Cross cause. We need to inform the private sector about our work, because often there is limited knowledge about the Red Cross and its main activities. We need to help the private sector understand the importance of our humanitarian work and projects. How can we inspire that sector with the Red Cross spirit, how can we share the important achievements of the Movement and how can we increase trust in the Red Cross leadership?

Of course, this will take some time, and we need a large number of experienced Red Cross activists and leaders. I believe that the abilities, the calibre and the skills of the Red Cross executive teams will determine the level of commitment of the private sector. Of course, while we attract private-sector actors to get involved, we should strengthen the Red Cross value of “expecting no return” and reward them for being enterprises that care about corporate social responsibility. To achieve this goal, we need to improve the Red Cross’s organizational structure, team-building, capacity-building, programme development, information sharing, etc. We need to constantly improve the abilities and skills of Red Cross staff and volunteers with regard to spreading knowledge about the International Red Cross and Red Crescent Movement.

For example, during the Sichuan Lushan earthquake in 2013, an enterprise from Taiwan wanted to make a donation. However, the management were very hesitant since they did not really understand what the Red Cross was doing. We invited them over and explained to them what the Red Cross is all about and how we manage and make use of donations, and won their trust. On the spot, a representative made a donation of 1.5 million yuan, and later another of 800,000 yuan. We are also in contact with executives of a Korean enterprise. We asked one of the executives to take part in the volunteer service that we were providing for disabled patients in the Red Cross voluntary service base in hospitals. Every year, this executive donates over 1 million yuan for the humanitarian cause, as well as between 5,000 and 10,000 emergency life kits to our organization. He decided to make these donations after gaining an understanding of what our organization does.

Is there a Chinese model of humanitarian action, compared to the West? If so, in your view, what is the specificity of a more Chinese model of humanitarian action?

I do not agree with dividing humanitarian action into Western and non-Western and the creation of this dichotomy. They might have their own specific

characteristics, but they are not in conflict. One could say that everything is unique in its own way, that there are no two things in the world that are absolutely the same. Looking at the Red Cross and Red Crescent Movement, we see that every National Society adheres to the seven Fundamental Principles, regardless of whether it is based in the West or China.

However, China is a big country and it has reached different levels of development in different areas. Many underdeveloped regions still exist in China, on the one hand, and then on the other hand you have highly developed places such as Shanghai, which counts as one of the most developed cities in the world. So in countries as big as China, there may be different approaches adopted by different regions in accordance with the state of development. This allows everyone to move gradually onto the same path. So when we put it that way, it could be true that some countries feel that “China is a little different”. This is in fact not the case. When we are working to reach a common goal, some people run a little faster, and some people run a little slower. Some people run with very good posture, and others look as though they are dancing when they run. This does not influence the commonalities that we have.

In my opinion, the concept of having models and standardizations originates from the corporate world. A model ensures that everything that is produced is perfectly uniform. I don’t feel that it is appropriate to use this concept when looking at the Red Cross and Red Crescent Movement. For example, when we look at a cup, it may be the case that one cup is made from glass and another one is made from porcelain. But even though they are made from different materials, they are both able to contain water. The purpose of each one of these cups, as well as the benefit that they yield, is the same. So I feel that, as a nation develops, every National Society should take its own national conditions into consideration. However, at the same time, it should consider the seven Fundamental Principles in its work, as well as the overall aims and goals of the Red Cross and Red Crescent Movement. It means that the road and methods might be slightly different but the objective is the same.

Without doubt, the Chinese Red Cross has seen a rapid development these last few years, with the evolution of its own character and features. For example, we act on the basis of the Law of the People’s Republic of China on the Red Cross Society; we have successfully utilized a combination of our networking with the government, the public and enterprises, and as a result, we have created great opportunities for development. The key for success for the development of the Chinese Red Cross is to make the best out of all resources that are available to it and to focus on a specific goal.

In addition, I feel that for anything in the world, it is diversity that will allow for its rapid development. So while China is in a state of development, it is important to consider China’s national conditions and adopt methods that utilize its advantages as well as all its different resources when working toward the rapid development of the Red Cross. In fact, when we look back to 1863, when the ICRC was established, we can see that it also utilized the different



International Medical Emergency Relief Team of the Red Cross Society of China departing from Shanghai to perform international disaster relief operations. Source: SHRC.

characteristics of the different European countries. In doing so, it established the committee of five, later adopted the First Geneva Convention, and then attracted the participation of dozens of countries. It took advantage of these conditions at the time, and in this way was able to allow each of these individually unique countries to utilize its own individual resources in accomplishing the goal of training a group of motivated individuals that share our beliefs. The wonderful rewards of all of our hard work are further down the road.

In the past two decades, China has experienced rapid economic growth. During this process, China's international status has become more and more important. What impact will China's growing international status have on its future participation in international humanitarian work?

In fact, as China started out as an underdeveloped country and is now making strides toward development, I think we can share our experiences and our path of development with the rest of the world, while keeping in mind the differences of each country.

I believe that the contribution of the Chinese Red Cross on the international humanitarian stage will be multi-dimensional in the future. This includes deploying staff overseas, material and financial contributions and training of Red Cross personnel etc.



Dispatch of relief goods from the Disaster Preparedness and Relief Centre of the SHRC. Source: SHRC.

China's economic, social and cultural development will form the foundation for the country's participation in international humanitarian work. After experiencing a few decades of reforms and opening up to the international community, China is gradually integrating itself into the world in its politics, economics, education and humanitarian work.

As China's economic status and educational levels rise, China will become more and more involved in international humanitarian work. This is an inevitable result of these advances. One can see the enthusiasm for expanding cooperation abroad not only in Shanghai, but also in the various provinces throughout China.

China used to be very poor for decades, and the high-speed economic development of China started only in 1978.⁹ In this context, providing foreign aid has become more and more frequent in recent years. The Chinese Red Cross offered its emergency aid after the Indian Ocean Tsunami in 2004 and sent its first emergency response operations after Typhoon Haiyan in the Philippines in 2013, but the bilateral humanitarian aid between National Societies from China and other National Societies

9 From 18 to 22 December 1978, the 3rd Plenary Session of the 11th Central Committee of the Communist Party of China was held in Beijing. This conference marked the beginning of the "Reform and Opening Up" policy. It was a decisive turning point in post-1949 Chinese history, marking the beginning of the wholesale repudiation of Mao's Cultural Revolution policies, and set China on course for nationwide economic reforms.

dates back much longer. After the founding of the People's Republic of China, Shanghai became known as the gateway to China, and over the years, the SHRC has provided foreign aid to more than eighty National Societies, mainly in the form of emergency relief materials, but also human resources like medical teams.

When it comes to the contribution that China is capable of making toward the International Red Cross and Red Crescent Movement, it should also be noted that China is home to 1.4 billion people, which is about one fifth of the world's population. It would be a great contribution to the world if the Chinese Red Cross is well developed to serve those 1.4 billion people.

Humanitarian principles put to the test: Challenges to humanitarian action during decolonization

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Abstract

This article examines the meaning and purpose of the Fundamental Principles of the Red Cross and Red Crescent Movement during and after decolonization. This was a period when the character of conflict experienced far-reaching changes, when the limitations of international humanitarian law were sharply exposed, and when humanitarian organizations of all kinds – the International Committee of the Red Cross included – redefined their missions and mandates. The Fundamental Principles were caught up in these processes; subject to a resurgent State sovereignty, they were both animated and constrained by the geopolitical forces of the era. The article pays particular attention to the politicization of the Principles in the contexts of colonial counter-insurgency, political detention and transfers of power.

* This article draws on research in the archives of the British Red Cross Society in London and the International Committee of the Red Cross (ICRC) in Geneva. I am grateful to Jean-Luc Blondel, Fabrizio Bensi, Paul Castella, Geoff Loane, Jacques Moreillon and Daniel Palmieri for their guidance and advice on the history of the ICRC.

Keywords: Fundamental Principles, Red Cross and Red Crescent Movement, Geneva Conventions, decolonization, forced resettlement, liberation movements, colonial counter-insurgency, political detention.

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Time and again, the wars of decolonization¹ starkly exposed the weaknesses of international humanitarian law (IHL) in the face of armed conflicts of a non-international character.² The type of conflict experienced during the end of empire was uncharted territory for many humanitarians. Decolonization was the cumulative consequence of forces of disintegration, and those forces destroyed not only colonial relationships but an entire global order.³ Anti-colonial insurgencies, guerrilla warfare and liberation movements required aid and relief agencies of all kinds to devise new means of crisis response and new ways of protecting the victims of armed conflict. Even though the “hottest” of these conflicts – such as Algeria – reverberated internationally, they were regarded by Europe’s colonial powers as matters that fell entirely within their domestic jurisdiction. The wars of decolonization brought into sharp relief, therefore, the legal characterization of violent insurrections and revolutionary warfare and the limits of humanitarian action in situations that were poorly provided for by the 1949 Geneva Conventions.⁴ Barely had the ink begun to dry on those Conventions than the International Committee of the Red Cross (ICRC) and other leading humanitarian organizations were gathering themselves to press for a fortification of Article 3 common to the four Geneva Conventions – the “mini-Convention” which sets out certain minimum rules in conflicts that occur within rather than between States, or so-called “non-international armed conflicts”. Their efforts to bring a very different type of conflict more firmly within the

- 1 For a fuller analysis of the International Red Cross during decolonization, see my forthcoming book, *Humanitarianism on Trial: How a Global System of Aid and Development Emerged Through the End of Empire*.
- 2 Traditionally, armed conflicts were fought between two or more States and were therefore of an international character. Non-international armed conflicts (NIACs) are conflicts that are fought between governmental forces and non-State actors or between such non-State actors only. Wars of liberation were recognized as conflicts of an international character with the adoption of Additional Protocol I; this will be explained in more detail below. For the issue of NIACs in IHL, see François Bugnion, *The International Committee of the Red Cross and the Protection of War Victims*, Macmillan, Oxford, 2003, pp. 330–44.
- 3 Antony G. Hopkins, “Rethinking Decolonization”, *Past & Present*, No. 200, 2008, pp. 212–247; John Darwin, *Unfinished Empire: The Global Expansion of Britain*, Allen Lane, London, 2012, Chapter 11; Dieter Rothermund, *The Routledge Companion to Decolonization*, Routledge, London, 2006.
- 4 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I); Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950); Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV).

realm of the laws of war were resolutely resisted by Europe's colonial powers – Britain, for example, did not even ratify the four Geneva Conventions until 1957, out of concern that they would restrict the operations of its security forces when fighting insurgents in anti-colonial struggles.⁵ (Most of Europe's other colonial powers ratified earlier – France in 1951, Belgium in 1952, the Netherlands in 1954 – and only Portugal later, in 1961). In the view of the ICRC, however, common Article 3 had simply not gone far enough to account for “the demands of humanity”⁶ in all of the new types of conflict that the organization was witnessing. As a world of imperial States was replaced by a world of nation States, so the laws of war had to be reconstructed for a very different age. For this to happen, a radically new balance had to be struck between protecting the rights of the individual as a person and protecting those of the State as a guarantor of public order.

What grew over the next quarter-century into a major, multifaceted campaign to solve one of the most intractable problems of international law was later to be pushed to the margins of historical memory. Yet it is a campaign that, however much overlooked in the historical literature on international institutions and global governance, has long since been hiding in plain sight. The fight for a fortified common Article 3 raised the profile of the Geneva Conventions at the United Nations (UN), bolstered the precarious position of the ICRC after the end of the Second World War,⁷ and set the stage for the last of the major set-piece rhetorical battles over decolonization. It also succeeded in bridging – in an unexpected and perhaps unprecedented way – a growing divide between the humanitarian and human rights communities. A succession of expert enquiries, specialist publications, targeted lobbying and international meetings culminated in the 1974–77 Diplomatic Conference on the Reaffirmation and Development of International Law Applicable in Armed Conflicts and the two Additional Protocols to the Geneva Conventions of 1977.⁸ The first Additional Protocol (AP I)⁹ aimed to provide greater protection for civilians in international armed

5 Huw Bennett, *Fighting the Mau Mau: The British Army and Counterinsurgency in the Kenya Emergency*, Cambridge University Press, Cambridge, 2013, p. 66.

6 Roger Gallopin, Executive Director, ICRC, “Action du CICR en faveur des victimes des guerres civiles et des troubles intérieurs”, 3 September 1958, Archives du Comité International de la Croix-Rouge (ACICR), B AG 225 000-003.01, subsequently discussed with the Executive Committee of the League of Red Cross Societies, 24 September 1958.

7 Daniel Palmieri, “An Institution Standing the Test of Time? A Review of the History of the International Committee of the Red Cross”, *International Review of the Red Cross*, Vol. 94, No. 888, 2012.

8 For the 1977 Additional Protocols, see Richard Reeve Baxter, “Humanitarian Law or Humanitarian Politics? The 1974 Diplomatic Conference on Humanitarian Law”, *Harvard International Law Journal*, Vol. 16, No. 1, 1975; David Forsythe, “The 1974 Diplomatic Conference on Humanitarian Law: Some Observations”, *American Journal of International Law*, Vol. 69, 1975; George Aldrich, “Some Reflections on the Origins of the 1977 Geneva Protocols”, and Medard R. Rwelamira, “The Significance and Contribution of the Protocols Additional to the Geneva Conventions of August 1949”, in Christophe Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles*, Martinus Nijhoff, Leiden, 1984.

9 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978).

conflict and went some way to doing so. The second Additional Protocol (AP II)¹⁰ sought to strengthen the rules regarding conflicts not of an international character, yet was effectively emasculated by a fierce struggle between the developed and developing worlds over the status of liberation movements. For their part, Europe's colonial powers had not wanted these movements represented at the Conference at all. But African and Asian liberation movements insisted not only upon a seat at the conference table but a wholesale redefinition of international armed conflict to embrace all peoples fighting against "colonial domination", "alien occupation" and "racist regimes".¹¹ Once they had succeeded in their quest to reconstruct the laws of war, however, postcolonial States proved extremely reluctant to have their own domestic jurisdiction curtailed.¹²

As a post-war generation of humanitarians sought to expand their organizations' missions and mandates, the need for a set of basic principles to underpin and justify new forms of assistance and protection was all the greater. In this sense, debates about the laws of war and debates about humanitarian principles were inextricably linked.¹³ The limitations of the former put pressure on the latter to secure State recognition of forms of humanitarian practice for which the legal basis was uncertain and insecure. This was particularly true for the ICRC; founded in 1863, the organization had not been deeply involved in any of the colonial wars of the second half of the nineteenth century or the first half of the next. After 1945, the ICRC had to learn how to navigate its way through the greatest geopolitical change of the twentieth century: the end of empire. In the newly emerging contexts of anti-colonialism, superpower rivalry and postcolonial wars, where conflict revolved as much around the control of people as territory and frequently entailed their forced movement or flight, a difficult yet

10 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978).

11 AP I, Art. 1(4). See also R. R. Baxter, above note 8, p. 12; Geoffrey Best, *Humanity in Warfare: The Modern History of the International Law in Armed Conflicts*, Weidenfeld & Nicolson, London, 1980, p. 321; Medard Rwelamira, "The Significance and Contribution of the Protocols Additional to the Geneva Conventions of August 1949", in C. Swinarski (ed.), above note 8, pp. 230–231.

12 For the latest study on the Additional Protocols, see Giovanni Fabrizio Casas, "Under (Social) Pressure: The Historical Regulation of Internal Armed Conflicts through International Law", PhD diss., University of Minnesota, 2013.

13 Throughout this article, I use the term "humanitarian principles" to refer to the way in which humanitarian actors of various types sought to justify, explain and defend their actions with reference to a set of underlying, basic or core values and beliefs, and the term "Fundamental Principles" to refer to the specific way in which the ICRC and the wider Red Cross and Red Crescent Movement agreed to abide by the principles of humanity, impartiality, neutrality, independence, voluntary service, unity and universality. While States did not necessarily have to accept the Fundamental Principles themselves, they were expected to respect that the ICRC and the Movement would adhere to them: this expectation was implicit until 1986, when it was formalized in Article 2 of the Statutes of the Movement. While the distinction between humanitarian principles generally, and the Fundamental Principles specifically, is important to maintain, it is equally necessary to recognize the overlap and exchange between them. The Fundamental Principles were never an island unto themselves; on the contrary, they were linked into a wider set of debates about humanitarian principles that rippled throughout the constellation of organizations collectively referred to as the humanitarian "system" or "sector".

decisive dialogue opened up within the ICRC and the wider Red Cross and Red Crescent Movement (the Movement) about the meaning, value and purpose of the Movement's Fundamental Principles.¹⁴ Concerned as much with the practicalities of humanitarian action as with the values that drove it, this dialogue developed through day-to-day decision-making as well as the framing of strategy and policy. Whether in the field or back at headquarters, the world's leading humanitarian agency wrestled with the question of how its Fundamental Principles were to be applied in a world of increasing uncertainty and instability in which Europe's colonial powers and their opponents were involved in violent struggles to re-order the human landscape. What, if any, adjustments to these principles would be required to address the concerns of nearly and newly independent African and Asian States? What authority could "humanity", "impartiality", "neutrality" and "independence" hope to command in a newly decolonizing world?

The Second World War had generated intense controversy over the bombing of civilian populations.¹⁵ The wars of decolonization further blurred the distinction between combatant and non-combatant – a cornerstone of IHL.¹⁶ As a result, humanitarians were confronted with situations for which past experience had left them ill-prepared. Should the rules governing the treatment of prisoners of war (POWs) extend to members of anti-colonial, liberation and revolutionary movements, even if they did not wear uniforms and lived as civilians when not engaged in military operations? Should those fleeing colonial conflict be treated as refugees even if they might once have been fighters and might become fighters again? Should those detained under emergency legislation be distinguished from those convicted of ordinary criminal offences? Each of these specific questions raised a larger and more fundamental question – namely, what was the legitimate scope of humanitarian aid? In an attempt to answer this conundrum, the Movement's Fundamental Principles were to be politicized in ways they had not been before. This was not unique to the ICRC: in the wake of global conflict, many international organizations found themselves stretching humanitarian principles further than ever at precisely the moment when imperialist and Cold War ideologies were seeking to exploit the military and strategic advantages of humanitarian aid.¹⁷ A thoroughgoing penetration of aid and relief activity by

14 The "Fundamental Principles" were adopted at the 20th International Conference of the Red Cross and Red Crescent Movement in Vienna in 1965. They provide an ethical, operational and institutional framework guiding the work of the Movement, which was developed over a century of humanitarian action in the field. For my reflections on the history of the Fundamental Principles, see: www.odihpn.org/the-humanitarian-space/news/announcements/blog-articles/the-future-of-the-past-shining-the-light-of-history-on-the-challenges-facing-principled-humanitarian-action (all internet references were accessed in May 2015).

15 Richard Overy, *The Bombing War: Europe, 1939–45*, Allen Lane, London, 2013.

16 On this point, see François Bugnion, "From the End of the Second World War to the Dawn of the Third Millennium: The Activities of the International Committee of the Red Cross during the Cold War and Its Aftermath: 1945–1995", *International Review of the Red Cross*, No. 305, 1995; D. Palmieri, above note 7; William R. Smyser, *The Humanitarian Conscience: Caring for Others in the Age of Terror*, Palgrave Macmillan, Basingstoke, 2003, Chapters 4–6.

17 Jean Pictet, "Armed Conflicts: Laws and Customs", *Review of the International Commission of Jurists*, No. 1, March 1969, p. 34.

Europe's colonial powers underscored the necessity of humanitarian principles even as it threatened to undermine them.

The rest of this article explores what happened to humanitarian principles in general – and the Fundamental Principles of the Red Cross and Red Crescent Movement in particular – during decolonization. It explores the relationship between principled humanitarian action and humanitarian practice through the prism of Europe's largest empire: that of the British. For Britain, decolonization was nothing if not a truncated process. The speed with which the world's largest empire was liquidated – more than forty new States emerged from the late 1950s to the early 1960s – caught humanitarians by surprise as much as it did colonial administrators. This article will argue that, for the ICRC and the wider Red Cross and Red Crescent Movement, the transition between a late-colonial world and a postcolonial world provided a test of the Fundamental Principles very much the equal to late twentieth- and early twenty-first-century experiences of “liberal interventionism” and the “war on terror”. Colonial States and Cold War powers were just as resistant as warring parties in Iraq, Afghanistan and Syria to placing victims on a truly equal footing. In both periods, the classification of conflict and the naming of violence shaped perceptions of the moral status of combatants and the justice of the causes they espoused. Competing – and aggressive – views among States as to who were the real victims of conflict went hand in hand with the reframing of acts of war as “acts of terror”. In a polarized, binary and Manichean international order, there was little space for detached or disinterested humanitarian action. The language of warfare forced people to take sides; indeed, amidst this “crisis of names”, the very idea of humanity seemed to depend on finding names for its other.¹⁸ Whether during decolonization or the “war on terror”, therefore, the turn to humanitarian principles pointed in part to the imperative of recognizing the totality of suffering and resisting the creation of hierarchies among victims.

Decolonization and international humanitarianism

For Peter Maurer, the ICRC's president at the time of writing, the wars of liberation were a “definitional event”.¹⁹ The decades of the 1960s and 1970s saw a rapid and far-reaching reorientation of the work of humanitarian organizations away from the problems of Europe and toward those of the developing world. Europe's colonial rulers reacted ambivalently.²⁰ They realized that colonialism was fast losing its moral and political legitimacy and that their position in the international sphere

18 Arjun Appadurai, “Tactical Humanism”, *Polis*, Vol. 9, 2002, p. 1.

19 “Perspectives on the Future of Humanitarian Action”, live web seminar, 11 February 2013, available at: www.icrc.org/eng/resources/documents/event/2013/03-13-future-humanitarian-action-web-seminar.htm.

20 For an insightful study of humanitarian and human rights interventions in Kenya and Algeria, based on the ICRC and UN archives, which brings out these themes, see Fabian Klose, *Human Rights in the Shadow of Colonial Violence: The Wars of Independence in Kenya and Algeria*, University of Pennsylvania Press, Philadelphia, PA, 2009.

had to be more actively defended. As part of a “second colonial occupation”, an army of welfare specialists, health professionals and agricultural experts was despatched to their colonies, some of whom later found employment in one of the UN’s specialized agencies or a growing number of international NGOs.²¹ By harnessing their energy and expertise, Europe’s colonial powers hoped to improve the material realities of the lives of their subjects and to present a more benevolent image of their rule. At the same time, influential international organizations like the ICRC threatened to break down the seclusion of the late-colonial world and to expose Western colonial powers to greater external scrutiny.²² Their appeals to donor publics were a formative factor in how European electorates engaged with decolonization. The advocacy and fundraising campaigns of leading NGOs propelled questions of emergency aid and relief into the public sphere.²³ In doing so, these organizations gained the capacity to direct the sympathies of their supporters in one direction or another, even to the point of determining whether different categories of victim were felt to be genuinely deserving or, conversely, to deserve their own plight.

The end of empire also pitted against each other opponents whose means were very unequal.²⁴ Insurrectionary movements drew on limited resources but had highly motivated fighters; colonial armies were larger and better equipped. Extending over several years, many of decolonization’s wars took a heavy toll on civilian populations. Cycles of insurgency provoked reprisals and repression from beleaguered colonial powers. Forced removals, mass arrests, food denial operations, detention without trial and communal punishments were the methods to which Europe’s colonial powers regularly resorted.²⁵ Nor did the situation necessarily improve after independence – the hopes of many post-colonial African and Asian States foundered on the gulf between their goals and their means to meet them, while the solidarity instilled by liberation struggles dissipated in the face of ethnic, linguistic and religious tensions and the lack of resources available to satisfy conflicting interests.²⁶ Often the violence unleashed by the end of empire not only continued but actually intensified after independence; large-scale refugee flows, inter-communal strife and secessionist movements were widespread.²⁷

21 John Darwin, “What Was the Late Colonial State?”, *Itinerario*, Vol. 23, No. 3–4, 1999; David A. Low and John M. Lonsdale, “Towards the New Order, 1945–63”, in David A. Low and Alison Smith (eds), *The History of East Africa*, Vol. 3, Oxford University Press, Oxford, 1976.

22 This argument is developed in greater detail in my forthcoming book, above note 1.

23 Mark Duffield, *Development, Security and Unending War: Governing the World of Peoples*, Polity Press, Cambridge, 2007; Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity*, University of California Press, Berkeley, CA, 2002.

24 For two recent studies of late-colonial warfare, see Michael Burleigh, *Small Wars, Far Away Places: The Genesis of the Modern World, 1945–65*, Macmillan, Oxford, 2013; Martin Thomas, *Fight or Flight: Britain, France and Their Roads from Empire*, Oxford University Press, Oxford, 2014.

25 For a recent analysis and overview of the violence of the end of empire, see M. Thomas, above note 24.

26 Jean-François Bayart, *L’Etat en Afrique: La politique du ventre*, Fayard, Paris, 1989; Crawford Young, *The African Colonial State in Comparative Perspective*, Yale University Press, New Haven, CT, 1994.

27 This point is eloquently made by several of the case studies in M. Burleigh, above note 24.

In the midst of these upheavals, new threats to humanitarian principles emerged from what have been aptly described as “protracted social conflicts” in which the frequency and intensity of violence fluctuated over time.²⁸ This type of asymmetric warfare – or “lower threshold” armed conflict – was marked by a proliferation of non-State armed groups, the extensive involvement of civilian populations, and the expenditure of huge quantities of human as well as material resources. Late-colonial States and their postcolonial successors, moreover, were not beyond presenting their own military presence in such conflicts as essentially humanitarian – in fact, this was part of their justification for absorbing charities, NGOs and voluntary agencies into their security operations. Much effort was expended in trying to control where voluntary aid workers went and what they did. The labelling of conflict thus became an integral part of the fighting: it was by stigmatizing their opponents that Europe’s colonial powers sought to legitimize their use of escalating levels of force to a domestic audience and the wider international community. Their aim was to exert pressure on all actors in conflict – including humanitarians – to take partisan views and, as a result, to reduce the scope for genuinely “neutral” or “impartial” responses. Even when humanitarians were able to resist such pressures, their donor publics often were not.²⁹

Two documents published in the early 1960s – “Human Fellowship against Hatred” and “La Croix-Rouge s’élève contre la torture et l’abus des actes de violence” – reveal how the ICRC struggled to adapt to the increasing acts of violence that it was witnessing outside of “the normal course of justice”.³⁰ These documents vividly recount how armed rebellions against the established order had led to “outbursts of hatred”, “the piling up of distress by many acts of vengeance” and many practices “expressly forbidden by international law”.³¹ According to the ICRC, an “implacable and ruthless character” marked decolonization’s wars, as they inflicted “untold suffering” upon civilian populations.³² Among the worst features of the end of empire was a recrudescence of terrorist activity – significantly, in the view of the ICRC, this was not only from insurgent groups. “In a terrible abdication of humanity”,³³ and

28 For the idea of “protracted social conflict”, see Edward E. Azar, Paul Jureidini and Ronald McLaurin, “Protracted Social Conflict: Theory and Practice in the Middle East”, *Journal of Palestine Studies*, Vol. 8, No. 1, 1978/9, pp. 41–60. The authors note a marked increase in conflict in the period from 1945 to 1972 (congruent with decolonization), taking place predominantly in the “Third World”, as well as an increase in Western and communist interventions in conflict during these years.

29 Both Oxfam and Christian Aid were reluctant to work among the Mau Mau during the Kenyan Emergency but were willing to deliver aid to loyalist Kikuyu, and privately explained this decision in terms of the likely reaction of their donors and supporters: see my forthcoming book, above note 1. For the actions of the British Red Cross during the Kenyan and other emergencies (which were influenced more by the National Society’s links to the Colonial Office in Britain than to their membership in the Red Cross), see below.

30 “The ICRC in Algeria: Human Fellowship Against Hatred”, September 1960, ACICR, B AG 202 000-003.07; “La Croix-Rouge s’élève contre la torture et l’abus des actes de violence”, October 1962, ACICR, B AG 202 008-001.

31 “The ICRC in Algeria”, above note 30, p. 1.

32 *Ibid.*

33 “La Croix-Rouge s’élève contre la torture”, above note 30, p. 3.

under the cover of emergency legislation, terrorism was also widely practised by the colonial States themselves. In these new circumstances, the ICRC lamented that its work had not only become extremely “arduous” and “unpleasant” but was also “greeted with suspicion”, “misunderstood” and “wilfully misinterpreted for the purposes of propaganda”.³⁴ On a note of weary resignation, it concluded that “once the genie is let out of the bottle it is almost impossible to put it back in”.³⁵

Humanitarian principles and colonial counter-insurgency

The tension between the desire to remain apolitical – expressed by the principles of “impartiality”, “neutrality” and “independence” – and humanitarianism’s reliance on politics to achieve its aims entered a new and difficult phase during decolonization. After 1945, colonial States were far more interventionist than their “night watchman” predecessors of the interwar years. To be sure, they were security States that drastically reinforced their policing and military apparatus in the face of escalating resistance to colonial rule. However, as well as security States, they were also development States that saw concrete expressions of government power deriving not only from repression and coercion but also from the provision of basic welfare services. Herein lay the humanitarian paradox of the end of empire. Viewed from one perspective, the security measures undertaken by late-colonial States were responsible for much of the suffering that humanitarians brought to the public eye. Viewed from another, by extending bureaucratic power into new spheres of social and economic life, cash-strapped late-colonial States were compelled to draw more and more on the resources of the voluntary, charitable and humanitarian sectors.³⁶

Colonial counter-insurgency and the instrumentalization of humanitarian aid

Nowhere did this humanitarian paradox present itself more starkly than in the context of late-colonial counter-insurgency campaigns. For Europe’s colonial powers, defeating insurgencies meant demonstrating control of the security situation and establishing their authority over civilian populations. The distribution of relief and the giving or denying of aid were a way to achieve these ends. Hence, decolonization posed very starkly the question of whether humanitarians were able to set conditions about their presence in conflict zones when tied to interests very different to their own.

Humanitarian action during decolonization is best conceived as a series of encounters between multiple and competing interests from which compromises

34 “The ICRC in Algeria”, above note 30, p. 1.

35 “La Croix-Rouge s’élève contre la torture”, above note 30, p. 4.

36 This point is particularly well captured in Joanna Lewis, *Empire State-Building: War and Welfare in Kenya, 1925–52*, James Currey, Woodbridge, 2000. See also James Midgley and David Piachaud (eds), *Colonialism and Welfare: Social Policy and the British Imperial Legacy*, Edward Elgar, Cheltenham, 2011.

were born. Constraints were a constant, a condition of the very existence of aid rather than a distortion or denial of its true self. Principles were needed to help aid agencies to navigate their way through these difficult negotiations and to protect what has recently been described as “humanitarian space”.³⁷ In its physical dimensions, the idea of “humanitarian space” refers to the challenge of gaining access to people in need; in its operational dimensions, it refers to the type of activity humanitarians are permitted to undertake. The crafting of compromise was integral rather than antithetical to a principled approach. The real challenge for the ICRC’s Fundamental Principles was not to avoid any form of compromise but rather to pinpoint when compromise morphed into complicity and when aid, even if bringing benefit, risked greater harm.³⁸ Here it is important to recall that, in the post-war period, State-based humanitarian action and non-State-based humanitarian action were not necessarily thought of as incompatible in the way they tend to be today. Virtually all of the NGOs, UN agencies and religious missions that delivered health and welfare programmes in Africa and Asia after the Second World War had little or no choice but to forge relationships with the colonial authorities, as a result of which they developed at least a degree of dependence upon them. To be sure, many of these organizations were protective of their independence, but “independence” was never understood to be absolute – rather, it was exercised to greater and lesser extents.³⁹

In the upper echelons of the ICRC, the politicization of humanitarian aid was of as much a concern as the reluctance of colonial powers to observe the basic rules of war. During the wars of decolonization, “humanitarian nationalism” repeatedly asserted itself over “international humanitarianism” as aid agencies of all kinds felt the political pressures exerted by increasingly assertive European States – none more so, perhaps, than the colonial branches of the Red Cross National Societies of Britain, France, Belgium and Portugal. Speaking in East Africa toward the end of decolonization, Jacques Moreillon, the ICRC’s delegate-general in the region, explicitly raised the difficulty of how the National Societies of colonial powers should respond when prevented by their governments from working neutrally on all sides of a conflict or impartially among different sections of colonial society.⁴⁰ Moreillon pulled no punches. National Societies, he argued, should restrict their assistance to that which was strictly required. They should then let other aid agencies undertake less urgent work, or any work that stood to jeopardize future Red Cross and Red Crescent activity. In making these decisions, National Societies should be mindful of

37 Cynthia Brassard-Boudreau and Don Hubert, “Shrinking Humanitarian Space? Trends and Prospects on Security and Access”, *Journal of Humanitarian Assistance*, 24 November 2010, available at: <http://sites.tufts.edu/jha/archives/863>.

38 Jean-Luc Blondel kindly shared with me a transcript of a workshop he had organized on this very question.

39 I am grateful to Geoff Loane, Jacques Moreillon and Jean-Luc Blondel for sharing their views regarding the implications of the “auxiliary status” of National Societies for the scope of independent humanitarian action.

40 Address by Jacques Moreillon, Delegate-General for Africa, 23 July 1974, ACICR, B AG 122 231-008.

preserving the image and principles of the Red Cross and Red Crescent Movement. “Just put out the fires”⁴¹ was the advice Moreillon gave.

The British Red Cross Society and colonial counter-insurgency

The British Red Cross Society was one of the most influential in the wider Red Cross and Red Crescent Movement and showed itself determined to play a major role in the four colonial emergencies that witnessed the largest infusions of British manpower and weaponry: Malaya, Kenya, Cyprus and Aden. After 1945, two individuals were responsible for creating a rapidly expanding network of overseas colonial branches: Joan Whittington, the director of overseas branches, a highly influential yet long-forgotten figure in the post-war history of humanitarianism; and Lady Angela Limerick, vice-chairman of the British Red Cross as well as vice-chairman of the League of Red Cross Societies from 1957 to 1973. The scale of Whittington’s and Limerick’s ambitions for the British Red Cross – and the speed with which they were realized – had established the National Society as a major global humanitarian player by the end of the 1950s.⁴² It is important to remember that the operational role of the ICRC was much smaller during this decade than it was to become in the context of the postcolonial conflicts of the 1960s. Hence it fell to National Societies to undertake many of the tasks that would later be supported and directed from Geneva; indeed, National Societies, like those of Britain and France, could be very critical of the ICRC when they considered it to be intruding on what they regarded as their humanitarian domain. At the same time, the territorial expansion of the British Red Cross – which, intriguingly, occurred toward the end rather than at the height of empire – raised the vexed question of whether there could ever be a natural community of interest between a National Society and its own government.

Just as decolonization followed different paths in different colonies, so too did humanitarian action.⁴³ During the emergency in Malaya, Whittington and Limerick were approached by the colonial authorities to supply teams for resettlement work.⁴⁴ In Kenya, by contrast, their offer of help was at first declined, as it was in Cyprus,⁴⁵ whose governor relented only on the understanding that Red Cross workers target the villagers rather than the more politically active towns.⁴⁶ In Malaya and Kenya, the security forces inflicted far

41 *Ibid.*, p. 6.

42 My research in the British Red Cross Society archive in London and interviews with former Red Cross workers in Britain’s colonies reveal the extraordinary speed with which the National Society expanded into the colonies following the Second World War: see, for example, the typescript of the *Desert Island Discs* interview with Joan Whittington, interviewed by Roy Plomley, 16 September 1970, Archives of the British Red Cross Society (ABRCS), Acc 0287/43-45.

43 For a clear explanation of the former, and a sense of the latter, see David French, *The British Way in Counterinsurgency, 1945–1967*, Oxford University Press, Oxford, 2011.

44 Deputy-Chairman of British Red Cross Society to Major-General E. S. Lindsay, Chief of Staff to High Commissioner of Malaya, 18 January 1953, ABRCS, 1983/51.

45 “Notes on BRCS Work in Connection with the Emergency”, ABRCS, 0287/43-45.

46 “Cyprus. May 1949. Miss Ainley”, and “Report of visit by Phylis Ferris, 19/2/1950 to 26/4/1950”, ABRCS, 76/16/1.

more casualties on insurgents than they themselves suffered; this was not true of either Cyprus or Aden.⁴⁷ Red Cross activity in Malaya centred on the relocation of upwards of half a million “Chinese squatters” into “new villages” in an attempt to cut off Communist insurgents from civilian support. In Kenya, branch activity was far more diverse: Red Cross workers were present in several of the transit and detention camps, the so-called “pipeline” into which captured Mau Mau insurgents were channelled, but they also distributed food and promoted health services in the African reserves, established a training centre for African women, and ran a home for abandoned and orphaned Kikuyu children. In Cyprus, the British Red Cross’s efforts centred on launching an island-wide rural health scheme. In Aden, where infant mortality was very high, the Red Cross prioritized maternity care, child welfare and the training of local women as health visitors.

From the outset, the defence of humanitarian principles in the midst of counter-insurgency proved a decidedly delicate task. During a “considerable rumpus” about the appalling state of Kenya’s prisons in 1954, the Red Cross sent a very adverse report to officials which demanded that something “radical” be done “on the health side”.⁴⁸ Michael Wood, an East African surgeon who later pioneered a flying doctor service, seized on this episode to argue that Red Cross workers had to be kept distinct “if they were to keep Government up to the mark”.⁴⁹ Wood feared being “swallowed up” by one or more of the departments that the Red Cross was working alongside. He was right to be worried. There was a fine line between cooperating with the colonial authorities and coming under their control.

To stay on the right side of that line was never easy, and depended on several factors. One of these factors was the ability of humanitarians to manage the media – or, more accurately, to prevent themselves from being managed by the media. Media coverage generated vital public support for aid agencies, but equally, emotive and sensational reporting could impose unwelcome constraints. To keep themselves out of politics, many colonial branches of the British Red Cross eschewed press publicity, even at the expense of fundraising. In Cyprus, for example, Red Cross nurses and welfare officers worked slowly and quietly among Greek and Turkish communities to gain their acceptance. To this end, the Cyprus branch deliberately kept clear of the prisons and detention camps where Turkish guards and British soldiers watched over EOKA (Greek-Cypriot nationalist) prisoners.⁵⁰ This strategy was largely successful until 1959, when a visit by an ICRC delegate, David de Traz, produced a media storm in Britain. An indignant right-wing press ran stories about “Red Cross funds” (distributed by de Traz) being squandered on EOKA detainees to pay for recreational pursuits.⁵¹ The

47 D. French, above note 43, pp. 122–123.

48 Michael Wood to Joan Whittington, 26 May 1954, ABRCS, 1983/54.

49 *Ibid.*

50 EOKA stood for Ethniki Organosis Kypriou Agoniston (National Organization of Cypriot Fighters).

51 Evelyn Bark to Dr Stuart Stanbury, 4 February 1959, and Joan Whittington to Léopold Boissier, 21 January 1959, ABRCS, 775/105.

British Red Cross complained bitterly of having to accept responsibility for the ICRC's actions just as if they had been its own. Invoking the Fundamental Principles, the National Society insisted that its reputation for "neutrality" and "impartiality", painstakingly cultivated over the previous decade, had been badly damaged.⁵² What this episode reveals is how, by the end of the 1950s, the Fundamental Principles had become ensnared in debates between the ICRC and the National Societies. Although designed to provide cohesion and unity amongst the wider Red Cross and Red Crescent Movement, the Principles could be used for quite contrary purposes by the National Societies of Europe's colonial powers, which were determined to assert their interests (or those of their governments) over those of the ICRC (or, as we shall see in the case of Aden, the National Societies of the Muslim world).

A further critical factor influencing the Red Cross's relations with European colonial powers was the level of protection required by Red Cross workers. Recognition and respect for the Red Cross emblem could never be taken for granted during decolonization. In a recent interview with the author, the British Red Cross worker Pegeen Hill recalled her experience as a welfare officer in Cyprus as being "a bit hairy". In order to protect Red Cross neutrality, Hill and her female colleagues were not supposed to be accompanied by the army, yet army officers often insisted on them travelling with military protection because of the frequency of EOKA ambushes.⁵³ Meanwhile, Penelope Tremayne, who spoke fluent Greek and later recorded her experiences of the Cyprus emergency in a vivid memoir, *Below the Tide*, battled with the British authorities on the island to be allowed to work alone, unhampered and unprotected, in the villages of the EOKA-controlled Troodos mountain range.⁵⁴

The Malayan and Kenyan emergencies

From a humanitarian perspective, it is instructive to compare the security situation in Malaya with that in Kenya. In Malaya, Red Cross personnel had no protection whatsoever despite the fact that Communist insurgents made a speciality of ambushing Europeans. A letter was delivered by the Malayan National Liberal Army to the British Red Cross undertaking not to attack any of its Land Rovers and requesting that a large Red Cross sign be painted on their roofs and sides so snipers could avoid firing upon them.⁵⁵ Because the Red Cross could travel unarmed and unescorted throughout the whole area of military operations in Malaya, the young Teresa Spens and Janet Grant were able to treat any wounded insurgents they encountered while refusing to pass on information about their

52 *Ibid.*

53 Telephone interview with Pegeen Hill, May 2012.

54 For her own account, see Penelope Tremayne, *Below the Tide: War and Peace in Cyprus*, Hutchinson & Co, London, 1958.

55 Anthea Hall, "Emblem that Even Bandits Respect", *ABRCS*, 76/39/2; Bran Hodgson, "The Winds of Change", in Pauline Samuelson (ed.), *I Owe My Life to You (Red Cross)*, Bloomsbury, London, 1995, p. 101.

whereabouts to the police.⁵⁶ In Kenya, the position could not have been more different. Acute concern for the security of the six Red Cross teams stationed in the colony meant that every reasonable safety precaution was taken. Red Cross workers were not permitted to travel without an armed escort; each escort had its own jeep for greater safety in case of breakdown; teams did not travel after dark; and escorts remained with the teams while working.⁵⁷ The need for police protection was a major obstacle to the expansion of the Red Cross presence in Kenya; compared to Malaya, Red Cross workers in Kenya were under far greater official control.

Kenya and Malaya are stark reminders that no two counter-insurgencies are ever quite the same. They also point to two other factors that shaped the experiences of the British Red Cross in counter-insurgency operations: namely, the internal dynamics of – and balance of power within – colonial bureaucracies, and the degree to which, in their pursuit of the “hearts and minds” of civilian populations, those bureaucracies were themselves dependent upon Red Cross support.

The risks of what has become known as “embedded humanitarianism” are thrown into sharp relief by the experiences of the colonial branches of the British Red Cross as they strove to retain a distinct identity. These branches operated within government health, welfare and community development departments, yet alongside the security forces. When General Templer, Malaya’s high commissioner, raised with Lady Limerick the “propriety of Red Cross girls treating bandits for gunshot wounds”,⁵⁸ he was quickly and roundly rebuffed. Templer was told by Limerick in no uncertain terms that the Red Cross would remain firm in its principle of treating everyone alike. As she wrote in her diary at the time, “we had the fireworks which I expected”.⁵⁹ Similarly, in Kenya it is clear that the issue of Red Cross neutrality was a source of constant tension with local colonial officials. On one occasion a district officer had to be reprimanded by his superiors when he withdrew relief from a village suspected of harbouring a gang of suspected Mau Mau Kikuyu insurgents. Two indignant Red Cross personnel were assured that this would not happen again.⁶⁰

Humanitarian responses to forced resettlement in Malaya and Kenya

Nowhere are the moral hazards of humanitarianism during decolonization more apparent than in relation to the forced resettlement of civilians – a recurrent feature of military operations in counter-insurgencies that remains poorly regulated by international law to this day.⁶¹ The compulsory relocation of rural

56 Noel Barber, *The War of the Running Dogs*, Collins, London, 1971, pp. 106–107.

57 Joan Whittington to Angela Limerick, 17 March 1954 and 26 March 1954, ABRCS, 0287/43–45.

58 Diary of Lady Limerick’s Tour of the Far East, January–March 1953, ABRCS, 1594/18, p. 8.

59 *Ibid.*

60 Oswald Hughes, Office of District Commissioner, Nyeri, to Joan Whittington, 26 May 1954 and 5 July 1954, ABRCS, 0297/43–45.

61 David Cantor, “Does IHL Prohibit the Forced Displacement of Civilians During War?”, *International Journal of Refugee Law*, Vol. 24, No. 4, 2012. For studies of forced resettlement (or “villagization”) policies during decolonization, see Caroline Elkins, *Britain’s Gulag: The Brutal End of Empire in*

populations into “new”, “protected” or “consolidated” villages was driven by security considerations.⁶² Resettlement and control of food supplies went hand in hand. By preventing food from leaving these villages, insurgents were forced to leave their hideouts in order to secure supplies or new recruits. The policy was, however, frequently justified on humanitarian grounds. Security forces claimed to be providing greater protection for civilians who, rather than being preyed upon by insurgents in open countryside, would live in closely guarded settlements in which they were less vulnerable to attack.⁶³

The reality of these resettlement areas – especially in their initial phases – was quite different. The sheer speed with which people were moved meant planning was rudimentary: immovable property and livestock had to be left behind, and there was little time to select and inspect suitable areas for relocation. Once relocated, people’s lives were highly restricted and curfews were common. People had to walk long distances from their compounds to their places of work, if they were able to leave the former at all. Often it was the weaker troops who were assigned to protect them. From a humanitarian perspective, work in these “new villages” presented huge challenges: sanitation was poor, there were few medical clinics or schools, and basic amenities were largely or entirely lacking.

This is where the Red Cross stepped in. In Kenya’s “new villages”, to which over a million people were moved, humanitarian action was subject to intense political pressures.⁶⁴ Some of these pressures could be resisted, but money talked. Generous funding from Kenya’s commissioner of police to support welfare work among African police and their families contrasted with the colony’s notoriously parsimonious white settlers, many of whom refused to support any welfare work among the African population at large.⁶⁵ Thomas Askwith, the colony’s commissioner of community development, was unable to persuade its governor, Evelyn Baring, to provide either the budget or the manpower to tackle what the Red Cross described as the “huge problems brewing in the African Reserves”.⁶⁶ A dozen or so Red Cross personnel found themselves working alongside a mere six full-time community development officers; by the branch’s own calculations, at least four times as many were required. Baring also insisted that priority was given by the Red Cross to the Kikuyu loyalists (who were demanding greater

Kenya, Pimlico, London, 2005; Richard Stubbs, *Hearts and Minds in Guerrilla Warfare: The Malayan Emergency, 1948–60*, Oxford University Press, Oxford, 1989; Heike Schmidt, *Colonialism and Violence in Zimbabwe: A History of Suffering*, James Currey, Oxford, 2013. For forced resettlement and humanitarianism, see Nicholas Van Hear and Christopher McDowell (eds), *Catching Fire: Containing Forced Migration in a Volatile World*, Lexington, Oxford, 2006.

62 See, for example, Jimmy Patrick, Officer in Charge of Resettlement, “Reasons and Objects of Resettlement”, 22 October 1951, ABRCS, 76/31.

63 For the defence of the policy, see, for example, N. Van Hear and C. McDowell (eds), above note 61.

64 For the latest studies of the Mau Mau and Kenya’s counter-insurgency, see David Anderson, *Histories of the Hanged: Britain’s Dirty War in Kenya and the End of Empire*, Weidenfeld & Nicolson, London, 2005; H. Bennett, above note 5; Daniel Branch, *Defeating Mau Mau, Creating Kenya: Counterinsurgency, Civil War, and Decolonization*, Cambridge University Press, Cambridge, 2009; C. Elkins, above note 61.

65 “Kenya Branch of BRCS Report, 1953”, ABRCS, 0297/43-45; Joan Whittington to Eileen Timms, 8 June 1954, ABRCS, 1983/54.

66 Joan Whittington’s Diary, 1954–55, ABRCS, 1983/54.

government support) rather than to areas of greatest need. The rhetoric of the “relief of suffering wherever it may be found” rang very hollow in Kenya. Forced relocation was a policy aimed at promoting and expanding those factions within Kikuyu society which, for largely pragmatic reasons, opposed Mau Mau. Confronted by overcrowding, malnutrition and high infant mortality, as well as the need for “staggering amounts of urgent clinical work”,⁶⁷ the Red Cross in Kenya struggled to maintain the necessary independence from the colonial authorities to act with impartiality and neutrality. It was largely if never quite entirely subsumed by the colonial State’s renewed drive for legitimacy.⁶⁸

In Malaya, the forced resettlement of Chinese “squatters” – to whom the Malayan National Liberation Army turned for food, information and recruits – moved into high gear in the early 1950s. As 385,000 people were resettled in one year alone, concern grew over the spread of epidemic disease.⁶⁹ Determined to drive the resettlement process forward, yet aware that civilian cooperation required people’s new lives to be more attractive than their old ones, General Templer pushed hard to expand basic services. Sixty teams of social workers, nurses and doctors were in daily contact with a cadre of 500 European resettlement officers and Chinese assistant resettlement officers – a striking humanitarian deployment for this period. To a far greater extent than was the case in Kenya, the Malayan administration relied on the Red Cross – in this case, British and Australian.⁷⁰ Funding for welfare – boosted by the Korean War boom in tin and rubber and by a donation from the Malayan Chinese Association – enabled a rapid expansion of Red Cross dispensaries and infant welfare centres.⁷¹ By the end of 1953, the Malayan branch of the British Red Cross claimed to have reached 400,000 people.⁷² Although many villages still had to receive medical help, Red Cross workers were by then a familiar sight. The UN’s International Bank for Reconstruction and Development praised their contribution to public health.⁷³ The problem, as far as the Fundamental Principles were concerned, was exactly the opposite to that of Kenya. Among the largely loyal Malay population,

67 “Vice-Chairman’s Visit to East Africa”, 1957, ABRCS, 1594/27.

68 For conditions in the villages, see *ibid.*; and “Report on Red Cross Work in Kenya after visiting Reserves, by Lady Grey”, ABRCS, 0297/43-35.

69 For the policy of forced resettlement in Malaya, see John Coates, *Suppressing Insurgency: An Analysis of the Malayan Emergency, 1948–54*, Westview Press, Boulder, CO, 1992; Karl Hack, “‘Iron Claws on Malaya’: The Historiography of the Malayan Emergency”, *Journal of Southeast Asian Studies*, Vol. 30, No. 1, 1999; Kumar Ramakrishna, *Emergency Propaganda: The Winning of Malayan Hearts and Minds, 1948–58*, Curzon, Richmond, 2002; Anthony Short, *The Communist Insurrection in Malaya, 1948–60*, Crane, Russak & Co, New York, 1975; R. Stubbs, above note 21.

70 A smaller number of St John’s relief teams were also involved in the resettlement programmes in Malaya. St. John Ambulance is a British Charity that was set up in 1877. It is particularly well known in the UK but also has an international presence.

71 By April 1953, \$26,248,000 had been spent on resettlement, including \$3,917,000 on “aftercare” services. The Malayan Chinese Association raised \$4 million for new village projects and supported the work of the British Red Cross.

72 British Red Cross Society Annual Report on the Federation of Malaya Branch, 1953, ABRCS, 1983/51.

73 Rosemary Wall and Anne Marie Rafferty, “Nursing and the ‘Hearts and Minds’ Campaign, 1948–58: The Malayan Emergency”, in Patricia D’Antonio, Julie Fairman and Jean Whelan (eds), *Routledge Handbook on the Global History of Nursing*, Routledge, Abingdon, 2013, p. 230.

feelings ran high that while fighting to save the country they had hardly benefited from any of the additional investment in infrastructure or amenities. When the British Red Cross reduced its activity in the Chinese “new villages” to take greater account of the rural Malay *kampongs*, it is telling that the National Society was greeted with much suspicion.⁷⁴ Clinics were not well attended by Malays, and the Society’s concern about not having worked more even-handedly across the colony’s different communities proved well-founded.

During periods of colonial emergency, the Fundamental Principles were first and foremost a strategy for managing the tension between humanitarian action and State authority. Ever fearful of insurgent groups siphoning off relief supplies for themselves and their supporters, Europe’s colonial powers sought to control where, when and to whom aid was provided. They could not always exercise as much control as they desired, however. Those very same colonial powers were, to varying degrees, dependent on international humanitarian organizations for the expansion of basic welfare and social services. Moreover, in extending their activities beyond Europe and into Africa, Asia and Latin America, humanitarians subjected Europe’s colonial powers to greater and often unwelcome external scrutiny. The ICRC and National Societies were not the only agencies to do so. The various organs of the UN were likewise a part of a process whereby colonial questions were thrust into a new and more volatile international arena. By the 1960s, the UN had in fact made decolonization a central concern – but its specialized agencies were of a very different character. After the passing of Resolution 1514 (XV) in 1960, which proclaimed “the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations”,⁷⁵ the General Assembly requested that the UN’s specialized agencies participate in the application of the “Decolonization Declaration”, including the provision of moral and material assistance to national liberation movements. The fora of the UN thus became increasingly and at times intensely politicized.⁷⁶ Had the ICRC openly followed the UN’s more overtly political path, it is questionable whether it could have survived. The tensions within the wider Movement resulting from such a course of action would have been acute. For the ICRC, the Fundamental Principles provided more than the basis for broadening the scope of humanitarian assistance and protection into new realms: they were a means to resolve disputes within the Movement that arose from this very process of expansion. The force of this point is brought home when we examine an aspect

74 Whittington to Chairman of Branch, 10 November 1951, and Report of Trengganu Branch, 8 September 1951, and Report of Perak Branch, 31 December 1953, ABRCS, 1983/51.

75 Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by UNGA Res. 1514 (XV), 14 December 1960, available at: www.un.org/en/decolonization/declaration.shtml.

76 On the UN and decolonization, including the 1960 Declaration, see David Kay, *The New Nations in the United Nations, 1960–67*, Columbia University Press, New York, 1970; John Sankey, “Decolonisation: Cooperation and Confrontation at the United Nations”, in Erik Jensen and Thomas Fisher (eds), *The United Kingdom – The United Nations*, Palgrave Macmillan, Basingstoke, 1990, pp. 90–119; William Roger Louis, “Public Enemy Number One: The British Empire in the Dock at the United Nations, 1957–71”, in Martin Lynn (ed.), *The British Empire in the 1950s: Retreat or Revival?*, Palgrave Macmillan, Basingstoke, 2005, pp. 186–213.

of activity that is now regarded as core to the organization's mission, but which only half a century ago the ICRC and wider Movement debated whether to be engaged in at all: the visiting of "political detainees" in non-international armed conflicts.⁷⁷

Humanitarian principles and political detention

The humanitarian challenge of containing the violence of the end of empire was compounded by the introduction of sweeping security laws and the resort to political detention. The aim of detention was physical isolation. It was the method of choice for colonial powers confronted by nationalist opposition, creating opportunities to extract intelligence from insurgents which could not be gathered from other sources. After interrogation, detainees were transferred to prisons, often without being charged or indeed having committed any prosecutable crime. Detention regimes were harsh, intimidating and disorientating experiences, taking place in inherently controlled and constrained environments. That said, in many colonies detainees were also symbols and vanguards of liberation struggles. Detention camps were turned into places where colonial authority was vigorously challenged and contested, and prison populations were in several respects a microcosm of the new societies that detainees wished to build.⁷⁸

The ICRC and political detention in a post-war world

The ICRC led the way in holding late-colonial and postcolonial States to account for their treatment of political detainees. From the early 1960s to the mid-1970s, something in the order of 100,000 detainees were visited, in 400 prisons across seventy countries, the majority being in Africa, Asia and Latin America.⁷⁹ This was nothing short of an unannounced revolution in detention visiting. Unable to gain access to prisoners on both sides of the conflicts in the first Indochina, Korean and Vietnam wars, ICRC delegates exercised their "right of initiative" in order to establish themselves as neutral intermediaries in the wars of decolonization.⁸⁰ As Jacques Moreillon wrote to Edward Ndlovu, the national secretary of Zimbabwe's African People's Union: "A fireman must be close to the

77 "Security detainees" is the term now widely used, but in the period in question this was not the case, and "political detainees" was the preferred description.

78 For this point, see, especially, Fran Lisa Buntman, *Robben Island and Prisoner Resistance to Apartheid*, Cambridge University Press, Cambridge, 2003; Munyaradzi Munochiveyi, "The Political Lives of Rhodesian Detainees during Zimbabwe's Liberation Struggle", *International Journal of African Historical Studies*, Vol. 46, No. 2, 2013, pp. 283–304; Derek Peterson, "The Intellectual Lives of Mau Mau Detainees", *Journal of African History*, Vol. 49, 2008, pp. 73–91.

79 Address by Jacques Moreillon, Delegate-General for Africa, 23 May 1975, ACICR, B AG 225 231-004. See also Georges Willemín and Roger Heacock under the direction of Jacques Freymond, *The International Committee of the Red Cross*, Martinus Nijhoff, Boston, MA, 1984, p. 13.

80 For the legal basis of this "right of initiative", see common Art. 3(2); AP I, Art. 81(1); GC I–III, Art. 9; GC IV, Art. 10.

fire and those people who are the main concern of the ICRC, political detainees, must be within easy reach of our Delegate.”⁸¹ Although the ICRC championed the widest possible interpretation of common Article 3 – any collective armed action not suppressed by ordinary means – Europe’s colonial powers firmly resisted its application to situations of large-scale internment. Detention visits were from time to time permitted, yet very tightly regulated. The intention of Britain, France and other colonial powers was to counter international criticism while minimizing any hindrance to their military operations.⁸²

Political detention laid bare the weaknesses of the Geneva Conventions regarding internal armed conflict. As Jacques Moreillon went on to argue, “This is one of the crazy situations of today’s international law. The alien is better protected than your own national.”⁸³ Not everyone shared this perspective, however. The decision whether to accord POW status to political activists organizing against, or insurgents taking up arms against, Europe’s colonial powers was a flashpoint between the ICRC and several of Europe’s Red Cross National Societies. The ICRC saw these National Societies as liable to be pro-government, while the National Societies saw the ICRC as venturing into territory that was fraught with political implications and strong emotions and likely to antagonize their host governments.⁸⁴

The ICRC’s Commissions of Experts (1953, 1955 and 1962)

Declaring the difficulty of gaining access to political detainees “a growing worry” for all those “who have humanitarian principles at heart”,⁸⁵ the ICRC convened three Commissions of Experts, in 1953, 1955 and 1962, to examine the problem.⁸⁶ Each of these Commissions declared the foundation of detention visits to be the ICRC’s doctrine of impartiality and reputation for independence.⁸⁷ From the outset, concern was expressed over the National Societies’ ability to fulfil their duties in situations arising from internal conflict which ranged from internal disturbances to full-blown civil wars.⁸⁸ For almost a decade the Commissions wrestled with the question of whether National Societies possessed the necessary independence to

81 Jacques Moreillon to Edward Ndlovu, 16 August 1974, ACICR, B AG 252, 231-002.

82 See H. Bennett, above note 5; David French, *Fighting EOKA: The British Counter-Insurgency Campaign on Cyprus, 1955–1959*, Oxford University Press, Oxford, 2015; “ICRC in Kenya”, ABRCS, Acc 1337/1; “ICRC in Cyprus”, ABRCS, 76/16/1, 30 December 1959; and for Aden, Ian D. M. Reid, Assistant Secretary-General, to Director of International Affairs Department, British Red Cross Society, 13 January 1965, and Sir Patrick Renison, Vice-Chairman, to R. F. A. Shegog, Colonial Office, 26 January 1965, ABRCS, Acc 0287/14.

83 Address by Jacques Moreillon, Delegate-General for Africa, 23 May 1975, ACICR, B AG 225 231-004.

84 Lady Limerick to Paul Ruegger, 24 August 1953, ACICR, B AG 225 000-007.

85 “Memorandum on the Application of Humanitarian Principles in Internal Conflict”, 1995, ACICR, B AG 225 000-001; Léopold Boissier, Vice-President, ICRC, to Mr Nansen, 20 April 1955, ACICR, B AG225 000-007.

86 ACICR, BAG 225 000-001/002/003/007/013/016.

87 “Mémoire documentaire sur l’assistance aux détenus politiques”, 1953, ACICR, B AG 225 000-001.

88 “Memoire sur l’application des principes humanitaires en cas de troubles intérieurs”, 1955, ACICR, B AG 225 000-001.

act in conformity with the Movement's Fundamental Principles. Their "limited" independence – as "auxiliaries" of their respective States – was contrasted with the "absolute" independence of the ICRC. Yet the reality was more complex. The fact that the ICRC was a private organization, mono-national and Swiss in character, by no means prevented it from being sucked into the fierce ideological battles waged after 1945 between capitalist and communist powers and between the developed and developing worlds.⁸⁹

So acute was the concern that the last of these Commissions, in 1962, laid down three conditions for National Societies to be able to function amidst internal armed conflict.⁹⁰ First, they had to adopt a structure capable of withstanding serious upheaval, including leaders who did not take an active part in political struggles and could therefore serve as a link between opposing parties. Second, they had to be sufficiently decentralized for local and regional sections not to be paralyzed if contacts with headquarters were disrupted. Third, any attempt by governments to prevent National Societies from playing their humanitarian role on behalf of all victims had to be resisted. If these conditions were not fulfilled, the Commission added a further proviso: in the event that a National Society found itself "under the strict domination of a government whose extortions it merely hides"⁹¹ and could not act impartially, the ICRC was to take over its responsibilities.

A few years later, the British Red Cross Society offered its own perspective on the role of National Societies vis-à-vis the protection of detainees. The Society's leaders debated at length whether they could act as neutral intermediaries by visiting political prisoners in situations where the ICRC did not feel justified in offering its services. In view of the fact that the representatives of National Societies were nationals of – and hence subject to – the government they would be investigating, after some discussion the British Red Cross finally decided that it did not possess the ICRC's *neutrality* in order to be able to visit detainees, yet could nevertheless act *impartially* by providing welfare to them.⁹²

The experience of protecting political detainees in Kenya, Nyasaland, Aden and South Africa

This was the theory. To understand what actually happened in practice, however, it is necessary to drill down into the experiences of particular ICRC delegates. Just as the nature of detention regimes varied from one colonial emergency to another, so the different personalities and personal ambitions of ICRC delegates led to

89 This was particularly true of the ICRC's stance during the Cold War, when its anti-communist sympathies were evident with regard to the conflict in Korea: see Barbara Ann Riffer-Flanagan, "Is Neutral Humanitarianism Dead? Red Cross Neutrality: Walking the Tightrope of Neutral Humanitarianism", *Human Rights Quarterly*, Vol. 31, No. 4, 2009, pp. 888–915.

90 "Commission D'Experts chargée d'examiner la question de l'aide aux victimes des conflits internes", 1962, ACICR, B AG 225 000-016; "Role of the ICRC and the National Societies in the Case of Internal Conflicts", 1963, ACICR, B AG 225 000-013.

91 *Ibid.*, p. 5.

92 Secretary-General to Vice-Chairman, 3 December 1962, and Secretary-General to Roger Gallopin, 21 January 1964, ABRCS, 287/14.

variations in detention visiting. This is not to deny that these delegates shared experiences – in fact, the basic framework for visiting detainees was to a large extent constructed and consolidated during this period.⁹³ It was during decolonization that ICRC delegates began to insist on what would later be recognized as the preconditions for effective visits: access to all detainees and to all detention facilities, the authorization of repeat visits, the possibility of speaking freely and in private with detainees, the right to distribute aid to them and their families, and inspection by medically qualified delegates to verify the health of prisoners and, where applicable, allegations of mistreatment. Yet the specificities of different detention sites, combined with the wide discretion exercised by ICRC delegates at this time – many critical of Geneva’s conservative and centralized diplomacy – exposed the organization to criticism from within as much as without. Nowhere was this more the case than with respect to charges of practising a “selective humanitarianism”, whereby the ICRC was more attentive to the existence of human suffering in some places of detention than others and more willing to challenge the actions of some Detaining Powers than others.⁹⁴ Comparing the actions of Henri Philippe Junod in Kenya, Godfrey Senn in Nyasaland and South Africa, and André Rochat in Aden – three of Britain’s major colonial emergencies in which the practice of detention was widespread and attracted a lot of attention in the British parliament and press, alongside a former British colony (apartheid South Africa) that incarcerated thousands of black political opponents and generated more international criticism than anywhere else – can provide a good basis for assessing how far these charges were justified.

Unlike the Malayan Emergency, where many Chinese people were deported, a large and complex network of detention camps became the first line of Britain’s defence against the Mau Mau insurgency in Kenya. In Kenya, moreover, Mau Mau detainees faced a notoriously coercive “rehabilitation” process. The British likened adherence to Mau Mau to a pathological illness. Those suspected of membership of the insurgency were forced to confess their crimes and repudiate their allegiance to the cause. Rehabilitation, it should be noted, found supporters beyond as well as within the colonial bureaucracy. For example, many missionaries saw the suppression of the Mau Mau’s anti-Christian message as an opportunity for conversion.⁹⁵ Nor does rehabilitation appear to have been much disputed by the British Red Cross. Joan Whittington was critical of the squalid and overcrowded conditions in the detention camps – the situation in Nakuru was described by one Red Cross worker as “quite horrifying”, and its accommodation as “unfit to house animals”.⁹⁶ Nevertheless,

93 For an overview of the ICRC and detention, see David Forsyth, *The Humanitarians: The International Committee of the Red Cross*, Cambridge University Press, Cambridge, 2005, pp. 297–304.

94 See, especially, Richard Ashby Wilson and Richard Brown (eds), *Humanitarianism and Suffering: The Mobilization of Empathy*, Cambridge University Press, Cambridge, 2011.

95 C. Elkins, above note 61, pp. 299–300.

96 “Extracts from Minutes of a Meeting of the Executive Committee of the Kenya Branch of the British Red Cross Society”, 28 July 1955, ABRCS, Acc 0287/43-45.

when Lady Limerick witnessed the coercive screening process presided over by the brutal Katherine Warren Gash at the all-female Kamiti detention camp, she did not question it, even when applied to girls under the age of 17.⁹⁷

The ICRC's delegate in Kenya was the independent-minded H. P. Junod; the son of a famous Swiss missionary, he was a paternalistic liberal who believed in the gradual emancipation of Africans. Junod twice visited the camps in Kenya, in 1957 and 1959.⁹⁸ Never afraid to clash with the authorities, or for that matter his superiors, Junod is however accused of failing to condemn torture in Kenya's detention camps. This is not strictly true. Reports of Junod's second visit to Kenya did highlight "cruel and brutal treatment" by the prison authorities as well as several reprisals against detainees who had previously complained. What is sadly true is that Junod saw what are now known as "advanced" or "enhanced" interrogation techniques as a justifiable price to pay for overcoming resistance to rehabilitation from Mau Mau's "hard-core" elements.⁹⁹

The energetic, fiery Godfrey Senn, the ICRC delegate in South-East Africa, was quick to point out the likely consequences of Junod's stance. Senn insisted that the Red Cross would "quite rightly" be seen as "siding with the rulers and assisting them against the ruled"; by undermining the principles of neutrality and impartiality – "the decisive factor" in how Africans viewed the Red Cross – he felt Junod had badly damaged the ICRC's relations with Kenya's political detainees.¹⁰⁰ Interestingly, Senn – no friend of European settlers or for that matter the British Red Cross, yet perfectly capable of patronizing language towards Africans – was himself confronted by a "show-down over rehabilitation" in the notorious Kanjedza camp in Nyasaland in 1959. Relations with the authorities in Kanjedza had broken down completely when detainees refused to have any dealings with the camp's welfare officers and shunned all attempts to "re-educate" them. As a result, they were locked up for three days on half-rations, put into stress positions and denied all privileges for a further week.¹⁰¹ In contrast to Junod, Senn saw "prolonged detention" and "intensive indoctrination" as totally at odds with the detainees' rehabilitation into the "existing social order".¹⁰²

André Rochat, Middle East delegate in civil-war-torn Yemen and Britain's troubled Aden protectorate, faced a rather different set of problems to Junod and Senn in Africa. Rochat's lavishly illustrated *Fonds d'archives privé* is testimony to how he saw himself as a sort of freelancing humanitarian Lawrence of Arabia and a pioneer of ICRC operations in the Middle East.¹⁰³ However egotistical, Rochat

97 Diary of Visit of Vice-Chairman to East Africa, 13 January 1957 to 9 February 1957, ABRCs, 1594/27.

98 Eric Morier-Genoud, "Missions and Institutions: Henri-Philippe Junod, Anthropology, Human Rights and Academia between Africa and Switzerland, 1921–1966", *Schweizerische Zeitschrift für Religions- und Kulturgeschichte*, Vol. 105, 2011.

99 *Ibid.*

100 Godfrey Senn to Pierre Gaillard, 24 October 1955, ACICR, D AF RHODE 2 01-001.

101 G. Senn to P. Gaillard, 1 February 1960, ACICR, B AG 225 231-001; Report on Detainees in D Compound at Kanjedza Camp, 25 October 59, ACICR, B AG 225 231-004.

102 G. Senn to Minister of Law, 22 December 1959, ACICR, B AG 225 231-005.

103 André Rochat, *Fonds d'archives privé André Rochat: Les missions du CICR au Moyen-Orient de 1963 à 1971*, Geneva, 2008.

was nevertheless a highly skilled and self-confident negotiator and a man of great personal courage. Yemeni claims to sovereignty over Britain's colony and protectorate in Aden grew louder and stronger during the late 1950s, when British power was seen to be in decline.¹⁰⁴ From the outset, the British authorities resolutely opposed any inspection of British military operations in the mountainous Radfan region (where local tribesmen backed by the Yemenis, who were in turn backed by the Egyptians, had the British under daily attack) and any visits to detainees in Aden's prisons (who were mostly supporters or fighters for the Egyptian-backed National Liberation Front), fearing what the ICRC would find. Even the British Red Cross, acknowledging the "explosive" situation in Aden, was frustrated by this stance.¹⁰⁵ Rochat found himself caught in the Yemen between the opposing forces of the Western colonial and Arab worlds. In 1966, the UN asked the ICRC to consult with its specialized agencies with a view to assisting refugees in the Aden colony and protectorate. It went on to note with "deep concern" the military operations of the Administering Power and called for an immediate end to "repressive actions against its people", including the release of all political detainees.¹⁰⁶ The Suez crisis had earlier provided a regional focus for the mobilization of Arab humanitarianism. In advance of the UN's intervention in Aden, the secretary-general of the Red Crescent Society of the United Arab Republic and the permanent delegate of the Arab League in Geneva had both pressed the ICRC to provide aid to the Arab tribes bombed by the Royal Air Force in Radfan and to investigate allegations of torture of Aden detainees.¹⁰⁷ The British authorities responded by accusing the ICRC of turning itself into a propaganda instrument of the Arab League.¹⁰⁸ Rochat persisted, however, determined to secure his position in the Yemen, where the ICRC had mounted one of its largest operations of the decade. Yemeni republicans – invoking Red Cross principles – threatened to eject the ICRC if it did not prove its "impartiality" by looking into the "horrors of the south". Rochat was eventually granted access to the detention centre at Al-Mansura, where he learned first-hand of detainees' experiences of torture. Indeed, such were the restrictions imposed by Al-Mansura's governor that, by 1967, Rochat declared the prison to be "L'empire de la peur". Only two inspections were granted of Fort Morbut Prison, the interrogation centre – to go further, calculated Britain's high commissioner, was likely to halt interrogations entirely.¹⁰⁹

104 Robin Neillands, *A Fighting Retreat: The British Empire, 1947–97*, Hodder Headline, London, 1996, p. 330.

105 Memorandum of I. D. M. Reid, Assistant Secretary-General, 14 November 1962, ABRCS, 0287/14.

106 N. Rafai, Acting UN Officer in Charge of Trusteeship and Non-Self Governing Territories, to Samuel Gonard, 26 July 1966, ACICR, B AG 200 001-002. See also UN Resolution of the Special Committee Granting Independence to Colonial Countries and Peoples, UN Doc. A/AC 109/179, June 1966.

107 Enquiry from Secretary-General of Red Crescent Society of the United Arab Republic regarding Aden Detainees to Pierre Gaillard, 19 January 1965, ACICR, B AG 225 001-002. See also Jean Pictet to André Rochat, 4 March 1965, ACICR, B AG 200 226-001.

108 Vice-Chair to Chair, 6 November 1964, and "Information Notes, Federation of South Arabia", 9 October 1964, ABRCS.

109 For Rochat's reports, see ACICR, B AG 202 001-001, 225 001-002, 225 001-004. Quotation from F. Rais to Pierre Gaillard, 11 September 1967, ACICR, B AG 225 001-005.

In Aden, friction had arisen over an alleged breach of the ICRC's policy of confidentiality¹¹⁰ – the organization's basis for reporting to detaining authorities. In order to build trust and gain access to places that were off-limits to other international organizations, any concerns arising from visits were taken up directly in private and discrete dialogue. Amnesty International, whose own controversial report on Aden had to be based on affidavits from former prisoners rather than interviews with detainees, had indicated familiarity with RoCHAT's reports, even claiming that they largely corroborated Amnesty's own findings. In the face of criticism from the British colonial authorities, the ICRC publicly rejected Amnesty's statement.¹¹¹ In theory, the policy of confidentiality and the Fundamental Principles were distinct: confidentiality, the ICRC argued, allowed for public denunciation in cases of repeated and egregious violations of humanitarian law. In the highly charged atmosphere of decolonization, however, critiques in which "neutrality" was conflated with "passivity", and "confidentiality" with "collusion", were easily constructed. This was particularly true of South Africa during the 1960s and 1970s, where the ICRC's logic of "remaining confidential to remain effective" was tested to its limits, and criticisms of the ICRC for not speaking out more vociferously momentarily deflected media attention from the actions of the apartheid regime.

The ICRC, apartheid and Robben Island

The ICRC insisted that the policy of confidentiality protected its freedom to privately criticize the Detaining Power. Yet the force of this argument was undermined by the highly selective citation of the ICRC's reports by the South African authorities. On its own admission, detainee confidence in the ICRC's neutrality and impartiality was seriously damaged. In 1978, Alexandre Hay, the ICRC's then president, wrote to James Kruger, South Africa's minister of justice, police and prisons, to say as much.¹¹² At the time of writing, many detainees were even refusing to talk to the ICRC's delegates on the grounds that their visits "served no useful purpose" and simply "whitewashed" the South African authorities.¹¹³ In fact, allegations of the ICRC "defending and sheltering white supremacy"¹¹⁴ had surfaced with great fanfare a decade earlier at the UN. In November 1966, the South African government had, to its advantage, published the report of the first ever visit of an ICRC delegate, Georg Hoffmann, in April 1964. In correspondence with the UN Secretary-General, South Africa's ambassador to the UN rejected the proposal for the UN's Special Committee on

110 For the principle of confidentiality, see Memorandum, "The ICRC's Privilege of Non-Disclosure of Confidential Information", in this issue of the *Review*.

111 T. Mathez to Dr Selahaddin Rastgeldi, 7 November 1966, and Pierre Gaillard to Robert Swann, 22 July 1966, ACICR, B AG 225 001-002.

112 Alexander Hay to James T. Kruger, 10 November 1978, ACICR, D AF RHODE 02-006.

113 *Ibid.* A source of great tension was the fact that ICRC visits were restricted to those held under Section 10 of the Security Act, and access to those held under Section 6 of the Terrorism Act was denied.

114 Godfrey Senn to Jacques de Heller, 3 March 1968, ACICR, D AF RHODE 2 01-001.

Apartheid to visit the country. The ambassador's assertion that the South African government had nothing to hide in respect of the administration of its prison system and the treatment of prisoners relied largely on the (erroneous) claim that his government had allowed "unrestricted inspection" by representatives of the ICRC, which, "by reason of its long tradition of objectivity", was regarded as the proper body to establish the truth of the situation.¹¹⁵

Hoffman's visit occurred at precisely the moment when a special group of the UN Human Rights Commission, charged with investigating allegations of torture, was interviewing former detainees and their representative organizations outside of the country.¹¹⁶ Because the tone of the Hoffmann report was so subdued – most likely out of fear that the South Africans would otherwise have forbidden further visits – it failed to convey the seriousness of the problems. While a more nuanced and measured response to the ICRC's predicament came from the influential International Defence and Aid Fund, led by the Reverend John Collins, that Fund nevertheless concluded that the South African government had successfully exploited the ICRC's prestige in order to deflect criticism of its actions.¹¹⁷

Godfrey Senn, the first delegate to interview Nelson Mandela on Robben Island in April 1967, was again adamant that the ICRC had not been sufficiently outspoken.¹¹⁸ He was no doubt swayed by the furore – and embarrassment – caused by the coruscating critique of the Hoffman report at the UN. The ICRC and its president were stung into action by comparisons drawn by Nigeria and the Soviet Union between the Red Cross's investigations in South Africa and its earlier ineffectual investigations of the Nazi concentration camps. Faced by dismissals of the ICRC as an "innocuous organisation without either power or authority", its president, Samuel Gonard, wrote to the UN Secretary-General, U Thant, and to Marc Schreiber, the director of the UN's Division of Human Rights, to say that he had been "deeply perturbed" by these allegations, which were "so obviously contrary to the truth". Taking an unusual step, Gonard even pressed for his letter of rebuttal to be circulated among the members of ECOSOC, the UN's Economic and Social Committee.¹¹⁹

Unlike Algeria – where, in January 1960, a summary of leaked ICRC reports published in *Le Monde* exposing prison conditions and cases of torture had not, as was feared, damaged the ICRC's reputation, but rather forced the

115 Access was not in fact unrestricted at this time. M. I. Botha, South African Ambassador to the UN, to U Thant, UN Secretary-General, 13 April 1967 and 17 April 1967, Archives of the UN Human Rights Commission (AUNHRC), SO 234 (13-1), 03.1967-12.1969. Botha's very carefully worded letters referred to the fact that "reports have been issued and statements made by these independent persons" without saying anything about their actual contents.

116 Godfrey Senn to Claude Pilloud, 21 February 1968, ACICR, D AF RHODE 2 02-002. See also Jacques Moreillon, *Internal Study: Moments with Madiba*, May 2005, pp. 22–29. I am grateful to Dr Moreillon for supplying me with a copy of this document prior to publication.

117 Rev. John Collins to Jean Pictet, 13 April 1967, ACICR, D AF RHODE 2 02-002.

118 Godfrey Senn, "Note for the ICRC", 8 October 1969, ACICR, D AF RHODE 2 01-009.

119 See Marc Schreiber to Curtis Roosevelt, Chief NGO Section, ECOSOC, 17 November 1967, AUNHRC, SO 234 (13-3), 07-1967-12.1967; and Samuel Gonard to U Thant, 27 June 1967, copy in Claire Howe to Charles Hogan, 11 July 1967, AUNHRC, SO 234 (13-3), 04.1967-07.1967.

French government to confront its responsibilities in North Africa – the situation in South Africa several years later produced a change to the policy of confidentiality.¹²⁰ The South African government was warned that, if it would not publish *in extenso* reports of all visits, either the ICRC would feel free to do so or those reports would be made available to other organizations on request. In South Africa, the leaking of confidential reports was perceived to have compromised the ICRC's reputation both for independence and for neutrality and to have made the organization look a lot less critical of the apartheid regime than it actually was. The need to protect the Fundamental Principles therefore took precedence over the policy of confidentiality; the latter had to give way to the former.

The ICRC's growing preoccupation with the problems of political detainees during the decades of decolonization was reflected in the rapidly rising number of detention visits, as well as the extensive coverage of those visits in the organization's Annual Reports. Without any firm basis in international law, the ICRC intervened in many of Europe's colonies and former colonies, at first cautiously but later with less reserve.¹²¹ More than that, there was an argument to win *within* the Red Cross and Red Crescent Movement that visiting *all* categories of detainees was a necessary, sustainable and legitimate pursuit, to which the ICRC was right to devote more time and more resources. Without the Fundamental Principles, it is far from clear that the ICRC could have pursued the protection of detainees as decisively and determinedly as it did.

That said, the tragic circumstances of political detention also cast doubt over whether the Fundamental Principles could be safeguarded in the new types of conflict that emerged after the Second World War. The ICRC invoked its status as an independent private Swiss body, whose role was not to dispute whether a person should have been incarcerated, but only to concern itself with the conditions of their incarceration.¹²² Yet in a very loose-knit federated movement, comprised of the ICRC, the League and an expanding and diversifying number of National Societies, the principle of independence was far from uncomplicated – especially for the National Societies of Europe's colonial powers.¹²³ There were concerns in Geneva that expanding detention visits might “momentarily paralyse” the National Societies, as calls were heard for a new declaration of their independence.¹²⁴ To be sure, this inherent tension between the universalist ethos of an internationally active humanitarian organization, the component parts of which were nevertheless closely integrated into national

120 The ICRC did suffer the temporary setback of having to spend a year renegotiating access to detention sites in Algeria. For a fuller account of this episode and its consequences, see Françoise Perret and François Bugnion, “Between Insurgents and Government: The International Committee of the Red Cross's Action in the Algerian War (1954–62)”, *International Review of the Red Cross*, Vol. 93, No. 883, 2011, pp. 730–732.

121 G. Willemin and R. Heacock, above note 79, pp. 70–76, 112–16.

122 “Memorandum on the Assistance of Political Detainees”, 1953, ACICR, B AG 225 000-001.

123 “Réunion d'une commission d'experts prévue pour 1959 et finalement renvoyée”, ACICR, B AG 225 000-001.04.

124 “Role of the ICRC and the National Societies in the Case of Internal Conflicts”, ACICR, B AG 225 000-013.

frameworks of supporting States, was by no means unique to the ICRC. It was, however, a tension that underlay many of the challenges to the Fundamental Principles that emerged at the end of empire. Furthermore, it was a tension that manifested itself with regard to what was arguably the greatest challenge of all for a post-war generation of humanitarians: that of charting a path for non-European branches of international organizations from colony to independent nation State.

Humanitarian principles on the eve of colonial independence

The end of empire involved nothing less than the dismantling of an entire international system – an old imperial order was swept away by a new world order of sovereign nation States, and the deadening certainties of the past were replaced by the disconcerting uncertainties of the future.¹²⁵ During this period, humanitarians lived through a time of profound change as well as having that change thrust upon them. The facts of armed conflict suddenly shifted after 1945. The wars of decolonization formed part of a new era of African and Asian societies fighting for their independence and right to self-determination, in the midst of capitalist and communist blocs vying for global supremacy. Faced by a variety of armed struggles – classic liberation movements, proxy conflicts, internationalized civil wars, and UN peacekeeping interventions – a post-war generation of humanitarians frequently had to improvise as events unfolded rapidly in the run-up to transfers of power whose prospects had often seemed more distant than they actually were.

Just as Britain and other European colonial powers were scaling down their imperial commitments, so too were they simultaneously scaling up their humanitarian commitments. As we have seen, after 1945, the very term “humanitarianism” came to be used in a much more inflationary way. Aid agencies pushed the limits of international law to address aspects of armed conflict that they had hitherto dealt with far less frequently, if at all. Precisely because of the lacunae of international law, the wars of decolonization threatened to become what one leading international lawyer called a “no-man’s land in humanitarian action”.¹²⁶ This, in turn, stoked up the pressure on humanitarian principles to justify new types of activity regarded with suspicion, if not hostility, by Europe’s colonial powers.

For an organization like the ICRC, which prided itself on proximity to victims, the Fundamental Principles performed a vital role in securing access to conflicts which Europe’s colonial powers saw as falling exclusively within their domestic jurisdiction. While those powers were trying to control the decolonization process in ways that advanced their own interests, by the 1970s

125 Bernard Waites, *Europe and the Third World: From Colonisation to Decolonisation, c.1500–1998*, Macmillan, Basingstoke, 1999, Chapter 8.

126 The phrase is taken from Jean Pictet, “The Need to Restore the Laws and Customs relating to Armed Conflicts”, *Review of the International Commission of Jurists*, No. 1, March 1969, p. 34.

the ICRC and other leading humanitarian agencies were in regular and direct contact with liberation movements. In this situation the significance of the Fundamental Principles was, if anything, magnified: they were a way of framing a debate about what kinds of protection humanitarians could legitimately provide, in which situations they could provide it, and to whom.¹²⁷

Because humanitarian principles were part of a power play between the developed and developing worlds, they were increasingly and inevitably politicized. This was as true for other aid agencies and human rights groups – such as Oxfam, Christian Aid and Amnesty – as it was for the ICRC. Yet by publicly codifying its Fundamental Principles at Vienna in 1965, the ICRC turned the Principles into something more: not only a statement of its values and purpose, but even perhaps an article of faith. In the midst of decolonization, there was therefore an uncomfortable yet inescapable question for the world’s leading humanitarian agency. Did there exist in human beings universal values and dispositions that would allow international aid agencies to expect their members to respond to human suffering in the same or similar ways regardless of the particular circumstances and conditions in which they were located, and if so, who would ensure that the Fundamental Principles were respected across the Movement? The transition from the late-colonial to the postcolonial era was a watershed in twentieth-century history – a moment of considerable flux. It had, after all, taken not much more than twenty years to do away with the formal institutions of colonialism. Yet the question remained as to just what had come to an end with decolonization. How would the formerly colonized powers that had mobilized so successfully at the UN during the 1960s make their presence felt in the international humanitarian arena before and after independence?

If the sovereign States which grew out of decolonization were profoundly unsettled by the process, so too was a post-war generation of humanitarians. Nowhere was this more so than with respect to the unprecedented growth of humanitarian action in today’s Global South. The process of “re-globalization” that occurred after the Second World War expanded the range of voices that humanitarians had to listen to, whilst radically differentiating them. International organizations like the Red Cross were among the first to experience and to have to respond to this far-reaching change. When, in 1962, Samuel Gonard was despatched on a mission to Equatorial and Central Africa (covering British, French and Belgian colonies and ex-colonies) to gather information on what activities the ICRC might usefully undertake, it was far from clear that what had hitherto been “an essentially European organisation” would be perceived as sufficiently independent, or sufficiently free from prejudices derived from decades of colonial domination, to establish itself on the continent.¹²⁸ The question of universality hung ominously over the Fundamental Principles. Were they

127 For the post-war expansion humanitarian activity, and the role of international law and humanitarian principles in justifying this expansion, see, especially, Elizabeth Ferris, *The Politics of Protection: The Limits of Humanitarian Action*, Brookings Institution Press, Washington, DC, 2011, pp. 2–3, 6, 59–61; William R. Smyser, above note 16, Chapters 5 and 6.

128 G. Willemin and R. Heacock, above note 79, pp. 46–48 (quotation from p. 47).

inherently Western or European constructs, or could they underpin the unity and self-conception not only of the ICRC but of a rapidly expanding and diversifying Red Cross and Red Crescent Movement?

There is today a growing recognition of the need to recognize and better comprehend the various non-Western manifestations of humanitarianism. There is, however, insufficient appreciation of how the post-war growth of non-Western forms of humanitarian aid revolved around the formation of new African, Asian and Latin American branches of international organizations. From 1950 to 1979, a slew of new Red Cross and Red Crescent National Societies were established in newly created States around the world – in fact, no less than sixty-three new National Societies emerged, many carved out of former European colonies. In 1950, sixty-seven National Societies were members of the League; by 1963, this number had reached 102.¹²⁹ Decolonization had produced a sudden burst of growth within the Movement, and together these new National Societies shifted its centre of gravity away from Europe. The marked increase of Arab membership in countries with majority Muslim populations constituted a particularly striking development for an organization previously dominated by Europeans.¹³⁰

The post-war history of the International Red Cross and Red Crescent Movement provides a vital if neglected regional perspective to the globalization of humanitarian aid. To varying degrees, the journey from being a branch of a colonial society to becoming a newly independent National Society reproduced the pattern of decolonization in the territory concerned. More than that, however, this was a journey that bore the hallmarks of how British, French, Belgian and Portuguese National Societies responded to the challenge of indigenization. The challenge of indigenization in turn reflected the commitment (or lack thereof) toward principled humanitarian action. When white settlers were indifferent toward humanitarian work among African and Asian populations, when expatriate European field officers refused to cede control to local leaders, and when a large-scale exodus of Europeans (including doctors and nurses) occurred in the run-up to independence, the establishment of new National Societies was decidedly difficult.

In some cases – most dramatically in Portuguese Angola and Mozambique – those National Societies collapsed under the weight of their internal conflicts and contradictions. In Nyasaland and Rhodesia, the experience of the British Red Cross was very similar. In Nyasaland, where the Red Cross was judged to be “still very far away from the principles of ‘above race, colour, creed and class’”,¹³¹ Africans complained bitterly that, during the emergency, the branch had willingly supported government troops and the police yet had refused help to African political

129 Figures from Hans Haug, *Humanity for All: The International Red Cross and Red Crescent Movement*, Paul Haupt Publishers, Berne, 1993, pp. 70, 355–356.

130 Jonathan Benthall and Jerome Bellion-Jourdan, *The Charitable Crescent: Politics of Aid in the Muslim World*, I. B. Tauris, London, 2003.

131 “Development of the Federation of Rhodesia and Nyasaland since 1950”, 15 March 1957, and Godfrey Senn to Roger Gallopin, “Note for the ICRC”, 6 March 1959, ACICR, B AG 209 231-002.

detainees.¹³² Red Cross clinics were widely boycotted in the run-up to Malawi's independence, with rumours circulating that the future prime minister and president, Dr Hastings Banda, required an official apology from the Red Cross as the price of future cooperation.¹³³ In Rhodesia, where white settlers had usurped independence with the accession of Ian Smith's regime in 1965, the Red Cross had, if anything, an even worse record. To their great frustration, Africans were consigned to a secondary and subordinate role in a branch in which the process of Africanization was as piecemeal as it was protracted.¹³⁴ In a highly unusual move, which sprang from the recognition that the Rhodesian branch was incapable of transforming itself, two ICRC delegates stepped in to accelerate the process. A further ICRC representative was then sent to train Zimbabweans in Red Cross principles in the hope of persuading them that the organization was not only for white men and women.¹³⁵

The reluctance of many colonial branches to embrace the Fundamental Principles cast a long shadow over the next half-century of humanitarian aid. In situations of entrenched racial discrimination, the impossibility of seriously entertaining any of the Principles was all too apparent. The end of empire had destabilized unqualified claims to universalism, be they secular or religious. Were there fundamental standards of humanity that applied at all times and to all actors involved in armed conflict? The very use of the term "humanity" in societies where hierarchical racial principles were a cornerstone of the political order suggested otherwise. Europe's colonial powers had long linked "humanity" to their belief in the idea of "civilization". In the decades after the Second World War, they continued to regard some societies as less "human" than others – and some, perhaps, as not "human" at all. Concern over the division of opinion and resulting disarray within the Movement surfaced at the International Red Cross Conference in Mexico City in 1971, and lay behind a major study reappraising the role of the Red Cross, the Tansley Report, published the following year.¹³⁶

Conclusion

If there is talk today of an international humanitarian system on the verge of decolonizing itself, either in terms of expunging its colonialist features or opening up to new actors from the Global South, it is only by returning to the post-war

132 Godfrey Senn to R. Moffat, 17 November 1961, ACICR, D AF RHODE 2 01-004; Philippe Zuegger to Nicolas de Rougemont, 27 March 1976, ACICR, B AG 122 231-007.

133 Lady Limerick to Léopold Boissier, 8 February 1962, ACICR, B AG 209 231-002.

134 Brian W. S. O'Connell, Chairman, Rhodesian Red Cross, to Frank Schmidt, 9 October 1976, ACICR, B AG 122 231-008; F. C. Maurer, "Note No. 1958", 6 August 1979, ACICR, B AG 122 231-004.

135 Meeting of representatives of ICRC, BRCS and Rhodesian Red Cross on Future Organisation and Activities of Rhodesian Red Cross in relation to the ICRC's Emergency Operations in Rhodesia, London, 4 July 1978, ACICR, B AG 122 231-003.

136 Jacques Meurant, "The 125th Anniversary of the International Review of the Red Cross – A Faithful Record. III. The International Red Cross and Red Crescent Movement: Solidarity and Unity", *International Review of the Red Cross*, Vol. 35, No. 307, 1995.

era that we can truly grasp why this is so.¹³⁷ This was a period when there was a “significant expansion in humanitarian action as a form of international relations and as an increasingly ordered part of a nascent global governance”.¹³⁸ It was also a period when humanitarianism sought to change the face of a decolonizing world; meanwhile, that decolonizing world profoundly affected what humanitarianism was able to do and what it eventually became. The ICRC and the wider Movement were situated at the very heart of these developments. During the 1960s and the 1970s, many National Societies in newly independent colonies struggled to find their feet. Some of these National Societies were absorbed into the apparatus of postcolonial States, others caught up in major humanitarian crises such as those in the Congo (1960–65) and Nigeria-Biafra (1967–70). The call for a reaffirmation of humanitarian principles after 1945 was not simply, therefore, a response to the more confined and challenging environment in which the ICRC had to operate, nor can it be explained solely by the hyper-politicization of aid, though both factors are important. Rather, the Movement’s Fundamental Principles were the terrain upon which colonizer and colonized encountered each other to address the most basic questions of all. Who were the humanitarians? What matters were to be defined as humanitarian? And who and what would determine the recipients of aid?

That the Fundamental Principles did not yield clear-cut answers to these questions was a verdict not so much upon the Principles *per se* as it was upon the strength of the geopolitical forces with which they had to contend. At a time when the proper boundaries of humanitarian action were very much up for grabs, the Fundamental Principles provided a way of talking across different cultures and societies about the best means of protecting people during times of war. This explains why other aid agencies were from time to time drawn to the language of “neutral”, “independent” and “impartial” humanitarian action to describe and legitimize what they did. Yet ultimately only one of those principles, the one that stated an *objective* – a shared humanity – had the capacity to counter the violent expression of opposing interests that lay behind decolonization, or to mobilize the empathy and solidarity necessary to prevent certain people from being placed beyond humanity’s pale. Then – as now – the emotive power of humanitarian narratives designed to affirm the inherent worth and dignity of human beings ran up against the emotive power of narratives of terror designed to direct public sympathy toward certain categories of victim while denying that sympathy to others. In the past as much as the present, the underlying objective of framing acts of non-State violence in the context of a “global war on terror”, aptly described as “an extreme kind of othering”,¹³⁹ has been to render some actors in conflict less human or even perhaps sub-human. Those who provoke their own torment are said to deserve their fate.¹⁴⁰ To be sure, the Fundamental

137 For the neo-colonial characteristics of contemporary humanitarianism, see Hugo Slim, *Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster*, Hurst & Company, London, 2015, pp. 10–11.

138 *Ibid.*, pp. 3–4.

139 Alexander Spencer, *Lessons Learnt: Terrorism and the Media*, AHRC Public Policy Series No. 4, Swindon, 2012, p. 19.

140 R. A. Wilson and R. Brown (eds), above note 94, pp. 19, 23–25.

Principles are integrally linked; they either stand together, or arguably not at all. But the ultimate purpose of the Fundamental Principles is to produce predominantly or exclusively humanitarian action. For that purpose to be fulfilled, it is necessary for each generation to pay renewed attention to the essential and inspirational principle of a shared humanity. For it is the principle of humanity that provides the strongest foundation for compassionate responses to forms of suffering arising from organized violence that might otherwise remain overlooked.

Romancing principles and human rights: Are humanitarian principles salvageable?

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Abstract

“Classical” or “Dunantist” humanitarianism has traditionally been constructed around the core principles of neutrality (not taking sides) and impartiality (provision of assistance with no regard to ethnicity, religion, race or any other consideration, and proportional to need), plus the operational imperative (rather than a formal principle) to seek the consent of the belligerent parties. These principles, whilst never unchallenged, have dominated the contemporary discourse of humanitarianism and have been synonymous with or at least reflections of a presumed essential, enduring and universal set of humanitarian values. This paper offers a more dynamic and changing vision of the content of humanitarian action. It maps the origins and content of the “new humanitarian” critique of the humanitarian sector and principles and argues that this has both misrepresented the ethical content of neutrality and obscured what amount to significant operational adaptations that leave traditional humanitarianism well prepared for the contemporary operating environment.

Keywords: humanitarian, new humanitarianism, humanitarian principles, neutrality, impartiality, reform, history.

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The dominance of the principles?

During the Cold War, “classical” humanitarian principles¹ clearly occupied a privileged place across a relatively homogenous, albeit fragmented, decentralized and limited humanitarian sector that was ostensibly rooted in the global North.² They were enshrined in the declaratory positions of many of the major humanitarian agencies and were embedded in fundamental ways in the legalistic instruments of the humanitarian system itself: the Fundamental Principles of the Red Cross and Red Crescent Movement (the Movement), UN General Assembly Resolution 46/182 and the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1994 Code of Conduct).³

- 1 This paper uses the phrases “classical”, “Dunantist” and “traditional” humanitarianism interchangeably and as a euphemism for the form of emergency, life-saving relief assistance and protection historically provided by the International Committee of the Red Cross (ICRC).
- 2 Odeh defines the global North as the economically developed societies of Europe, North America, Australia, Israel, South Africa and others. He contrasts this with the global South, the “economically backward countries of Africa, India, China, Brazil, [and] Mexico amongst others”. He suggests that global North States are “wealthy, technologically advanced, politically stable and aging as their societies tend towards zero population growth”. The opposite is the case with global South countries. The global North “has continued to dominate and direct the global south in international trade and politics”. Lemuel Ekedegwa Odeh, “A Comparative Analysis of Global North and Global South Economies”, *Journal of Sustainable Development in Africa*, Vol. 12, No. 3, 2010, p. 4.
- 3 ICRC, *The Fundamental Principles of the Red Cross and Red Crescent*, Publication Ref. 0513, 1996, available at: www.icrc.org/eng/assets/files/other/icrc_002_0513.pdf; UNGA Res. 46/182, 19 December 1991, available at: www.un.org/documents/ga/res/46/a46r182.htm; International Federation of Red

Humanitarianism was also equated by the International Court of Justice with the work and modalities of the International Committee of the Red Cross (ICRC).⁴ Variations of the principles also emerged in the Humanitarian Charter and Minimum Standards in Disaster Response elements of the Sphere Project,⁵ and there have been various attempts to embed the principles at the field level by the United Nations (UN) and by NGO coordination groups⁶ such as the Joint Policy for Operations in Liberia,⁷ the Ground Rules framework in Southern Sudan⁸ and the Strategic Framework in Afghanistan.⁹ As a result, the humanitarian principles have become more than simply a pragmatic mode of access to victims and closer to a motif of humanitarianism itself – they have been gradually elevated from a simple means for securing access to something that, for some, borders on being the “end” of humanitarian action. This is not to say that the ICRC itself sees humanitarian principles as raised to the status of absolute values.¹⁰ Their more limited role as pragmatic guides was clear even to Jean Pictet, long considered the founding father of the Fundamental Principles of the Movement. He framed them as “a rule, based upon judgement and experience, which is adopted by a community to guide its conduct”.¹¹ But throughout most of the twentieth century the principles were variously constructed *simultaneously* as global, permanent and immutable talismans of access and as central motifs *qua* objectives of the humanitarian discourse. In many ways this ensured that challenges to classical humanitarianism as a paradigm of action could be routed through criticisms of the principles themselves.

This paper follows two principal lines. Firstly, it raises the question of whether the humanitarian principles – of humanity, impartiality, independence and neutrality¹² – represent an authentic and fixed consensus on the nature and content of humanitarianism by situating them within a changing vision of the content of humanitarian action. It then maps the origins and content of the

Cross and Red Crescent Societies (IFRC) and ICRC, Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, Geneva, 1994 (1994 Code of Conduct), available at: www.icrc.org/eng/assets/files/publications/icrc-002-1067.pdf (all internet references were accessed in June/July 2015).

- 4 International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, ICJ Reports 1986, para. 243.
- 5 The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response*, 1998, available at: www.spherehandbook.org.
- 6 Kate Mackintosh, *The Principles of Humanitarian Action in International Humanitarian Law*, Humanitarian Policy Group (HPG) Report No. 5, Overseas Development Institute (ODI), March 2000.
- 7 Philippa Atkinson, *The War Economy in Liberia: A Political Analysis*, Network Paper No. 22, Relief and Rehabilitation Network, ODI, 1997.
- 8 Iain Levine, *Promoting Humanitarian Principles: The Southern Sudan Experience*, HPG Network Paper No. 21, May 1997, p. 31.
- 9 Antonio Donini, “Principles, Politics, and Pragmatism in the International Response to the Afghan Crisis”, in Antonio Donini, Norah Niland and Karin Wermester (eds), *Nation-Building Unraveled? Aid, Peace, and Justice in Afghanistan*, Kumarin Press, Bloomfield, CT, 2004.
- 10 Denise Plattner, “ICRC Neutrality and Neutrality in Humanitarian Assistance”, *International Review of the Red Cross*, No. 311, 1996, pp. 161–180.
- 11 J. Pictet, *The Fundamental Principles of the Red Cross: Commentary*, Henry Dunant Institute, Geneva, p. 8.
- 12 For further consideration of these Principles, see Jean Pictet’s basic works: *ibid.*, pp. 37–60; and Jean Pictet, *Red Cross Principles*, ICRC, Geneva, 1956, pp. 32–76.

post-Cold War critique of the humanitarian system, and particularly the criticism of the principles levelled in the “new humanitarian” literature. It portrays this critique as the product of an alternative paradigm for assistance that poses an existential threat to humanitarianism through challenging both the ethical content and operational relevance of traditional humanitarian principles.

The paper then deconstructs and evaluates the nature of these criticisms and in particular those levelled against the concept of neutrality. The paper questions whether the context of humanitarian action has changed to such a degree that the principles no longer remain the most effective means of guaranteeing access, suggesting that critics have both misrepresented the ethical content of neutrality and obscured what amount to significant adaptations within the classical system that (arguably) underline its continuing operational relevance. In fact, when operationalized consistently, the principles offer the best mode of access, but at the expense of the much broader aims of the new humanitarianism. The paper also argues that it is inevitable and beneficial that new humanitarian paradigms will emerge (and in fact already are emerging) alongside traditional humanitarianism, but the latter remains valuable and deserving of maintenance.

A permanent humanitarian ethic?

A particular component of the challenge to the principles has been the questioning of their continued relevance. Whilst the traditional principles undoubtedly have a definite air of permanence about them, many authors¹³ recognize their historical specificity, seeing them as products of a “particular geopolitical context, in which the only type of conflict was the classic inter-state conflict, with a clear separation of military and civilians, of relief and development assistance, and in which the sovereignty of a state was inviolable”.¹⁴ In many respects it is right to challenge whether particular visions of humanitarianism remain relevant, as it has never been entirely fixed in its content. Michael Barnett and Tom Weiss¹⁵ stress this as its continuous evolution, arguing that “humanitarianism” has always represented a “work in progress”, with meanings and practices that have changed over the years and continue to do so.

13 Madalina Elena Nan, “New Humanitarianism with Old Problems: The Forgotten Lesson of Rwanda”, *Journal of Humanitarian Assistance*, 4 October 2010, available at: <https://sites.tufts.edu/jha/archives/780>. See also Michael Barnett, *Empire of Humanity: A History of Humanitarianism*, Cornell University Press, New York, 2001; Juliano E. M. Fiori, *The Discourse of Western Humanitarianism*, Institut de Relations Internationales et Stratégiques, 2013, available at: www.iris-france.org/docs/kfm_docs/docs/obs_questions_humanitaires/ENG-JulianoEM-Fiori-october2013.pdf; Antonio Donini, “Decoding the Software of Humanitarian Action: Universal or Pluriversal?”, in Volker Heins, Kai Koddenbrock and Christine Unrau (eds), *Humanitarianism and the Challenges of Cooperation*, Routledge, London, forthcoming 2015.

14 M. E. Nan, above note 13.

15 Michael Barnett and Thomas G. Weiss, *Humanitarianism Contested: Where Angels Fear to Tread*, Routledge, Oxford, 2011, p. 105.

Humanitarianism's fluid content reflects its nature as a socially constructed phenomenon manufactured by the interaction of compassion with human suffering. As Fiori argues, humanitarianism "reflects the politics of its time, and its relationship to suffering and vulnerability is a product of the specificity of the contemporary moment and the trajectory of historical currents leading up to that moment".¹⁶ As a socially constructed phenomenon, ideas of humanitarian action have always reflected a highly fluid politics of compassion. From its origins in European enlightenment ideas of both community and individual freedoms through nineteenth-century social and religious movements seeking the abolition of slavery, Victorian prison reform, improvements to the conditions of the urban poor, enhanced medical care to the battlefield wounded, and improvements to the spiritual and social lives of colonial subjects in Africa, there has been an evolving domain in which a particular politics of compassion has regulated the boundaries and content of humanitarian action as well as the forms of suffering its institutions have been configured to address. Changes in this politics of compassion have arisen from the constant renegotiation of evolving notions of "inhumanity" and "suffering", confronting equally fluid impulses towards solidarity, compassion and shared humanity. As a result, only some situations of "inhumanity" and "suffering" are ever transformed into "humanitarian crises" that are suitable for action by "humanitarian" actors. In other words, the content of humanitarianism has always been determined both by the supply of human suffering and the willingness to set boundaries around those forms of suffering that are considered "appropriate" for responses by a particular group of institutions that define themselves as "humanitarian". In this sense, classical humanitarianism is constructed as a "paradigm" with its own institutions, bureaucracies, principles and repertoires of individual and collective action, a comprehensive model of understanding and interpreting reality that provides individual humanitarians with cognitive maps – viewpoints and rules – on how to look at problems and how to solve them. In effect, humanitarianism is also a mental script that helps to shape the priority and nature of key problems to be explained and the legitimacy of particular actions in responding to them. Also, because the norms of humanitarianism are embedded in social structures and bureaucracies, they are a currency or domain of power, empowering some institutions and individuals to promote particularistic individual as well as collective interests. As such, humanitarianism is a dominant discourse that maintains the dominance of particular institutions and modalities as well as defining the content of purportedly universal values of charity and compassion in *specific* types of situations of crisis that are labelled "humanitarian crises". Arguably, as a socially constructed and exclusive domain, this *inevitably* generates challenges from within and without. Simply because dominant modes of power reflect particular interests and preferences, they inevitably create the potential for challenge by contenders who question the dominance of those very legitimizing institutions, norms and practices.¹⁷ Hence the challenges posed by "new

16 J. E. M. Fiori, above note 13.

17 This is not to suggest that there are no differences; religiously inspired humanitarianism, Wilsonian traditions and military variations all have differing mental scripts. It is also interesting to note that

humanitarianism” in the 1990s were in part an *inevitable*, alternative and existential threat arising within the global North. The subsequent challenges from the rejectionists (in particular Al Qaeda and the Islamic State in Syria and Iraq), who see no place for humanitarian action unless it is within their own terms, and the broader challenges arising from the decline of the West and the emergence of different, mainly statist approaches to providing succour in times of crisis are equally inevitable. Whilst ostensibly dissimilar, these challenges have shared the tactics of questioning the ethical content and continuing relevance of traditional humanitarian principles. However, in the process of doing so they have obscured significant adaptations that have taken place within the domain of classical humanitarian ideas.

An evolving or revolutionary paradigm? Broadening the politics of compassion

The next part of the paper explores the way in which humanitarianism is socially and dynamically constructed. Notwithstanding a variety of roots, throughout most of the late nineteenth and early twentieth centuries, humanitarian ideas and more importantly practices were dominated by an essentially charitable ethic of “giving”, while beneficiaries were deserving of help simply because of their status as victims and their capacity to generate pity. This implicitly equated classical humanitarianism with what David Rieff has described as “bed for the night humanitarianism”,¹⁸ a form of largely paternalistic and symptomatic relief rather than a transformative or emancipatory agenda for social change.¹⁹

The geopolitical context of humanitarianism changed from the 1950s, and this had a significant impact on the ambition and nature of this particular politics of compassion. Decolonization processes, liberation struggles, the growth in the reach and resources available to the UN, and the rise of new logistics and information technologies accompanied and in many ways drove the increasing institutionalization of internationalized compassion, making it far more able to engage with distant venues of suffering in both an emotional and practical sense. Similarly, the rise of a powerful liberal discourse in the global North contributed to new perspectives on the nature, reach and purpose of humanitarian action and ideas of “proximity” to beneficiary and recipient communities. This was reflected in the growth of new types of humanitarian NGOs from the late 1960s, in particular the multiplication of solidarity movements, especially following the Biafran War, and NGOs dedicated to removing the deep structural causes of suffering and poverty.²⁰ There was also an impact on the modes of humanitarian

“humanitarianism” has no equivalent in French, which refers to it not as an ideology but as an activity (*l'action humanitaire*).

18 David Rieff, *A Bed for the Night: Humanitarianism in Crisis*, Vintage, London, 2002.

19 Michael Barnett and Thomas G. Weiss, “Humanitarianism: A Brief History of the Present”, in M. Barnett and T. G. Weiss (eds), *Humanitarianism in Question: Politics, Power, Ethics*, Cornell University Press, New York, 2008, pp. 1–48.

20 J. E. M. Fiori, above note 13.

action: an increasingly strident liberal human rights-based discourse in the global North saw the increasing numbers of NGOs as providers of broad-based solidarity rather than simply limited forms of essentially material support. This was augmented by an emancipatory vocabulary of rights,²¹ or what David Rieff describes as a “rights-based universalism”²² enshrined in an increasingly rights-based and avowedly activist humanitarianism which began to usurp that rooted in charity.²³ Increasingly, suffering was expressed in terms of the violation of rights, and all acts of empowerment in terms of the protection, promotion or defence of those rights.²⁴ As Kennedy contends, “efforts which cannot be articulated in these terms seem less legitimate, less practical, less worth the effort”,²⁵ reflecting authors such as Hugo Slim’s contention that philanthropy without rights threatens to reduce those suffering from disaster to pitiful victims who are unable to act against their own suffering.²⁶ The rights-based approach therefore sought to correct the powerlessness of those suffering, recognize their inherent rights and empower them to act as agents of their own change.²⁷ This increasing focus on the realization of natural rights and broader visions of social and individual justice, rather than simply “pity and help”, broadened the politics of compassion, making “political space for itself to challenge, mitigate, and even transform the particular politics of violence and war”.²⁸ In such a context, an emphasis on development aid and the protection of human rights (tools for the progress of peoples) that could challenge the structural causes of suffering, rather than simply address the symptomatic relief of suffering through humanitarian relief, became a natural component of the politics of compassion and challenged the compassionate minimalism inherent in traditional or classical humanitarianism – although ironically, this was something of a return to earlier campaigning forms of humanitarian action – such as the anti-slavery movement, Lord Byron’s Kouchner-style agitation for the freeing of the Greeks from the Ottoman yoke, and other more or less interested Western concerns for the plight of suffering Christian minorities in the nineteenth century.²⁹

21 David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism*, Princeton University Press, Princeton, NJ, 2004.

22 David Rieff, “The Ruthless Luxuries of Peace”, *World Policy Journal*, Vol. 17, No. 1, 2000.

23 Stephen Hopgood, “Saying ‘No’ to WalMart? Money and Morality in Professional Humanitarianism”, in Michael Barnett and Thomas G. Weiss (eds), *Humanitarianism in Question: Politics, Power, Ethics*, Cornell University Press, New York, 2008, pp. 98–123; D. Kennedy, above note 21; Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries*, Kumarian Press, Bloomfield, CT, 2002.

24 Alpaslan Özerdem and Gianni Rufini, “Humanitarianism and the Principles of Humanitarian Action in Post-Cold War Context”, in Sultan Barakat (ed.), *After the Conflict: Reconstruction and Development in the aftermath of Conflict*, Palgrave Macmillan, London, 2005, available at: www.terzomondo.org/writings/writings/Gianni_Rufini_2005_York_Humanitarianism_and_Principles.pdf.

25 D. Kennedy, above note 21.

26 Hugo Slim, “Why Protect Civilians? Innocence, Immunity and Enmity in War”, *International Affairs*, Vol. 79, No. 3, May 2003, pp. 481–501.

27 *Ibid.*

28 Hugo Slim, “Not Philanthropy But Rights: The Proper Politicisation of Humanitarian Philosophy in War”, *International Journal of Human Rights*, Vol. 6, No. 2, 2002.

29 Gary J. Bass, *Freedom’s Battle: The Origins of Humanitarian Intervention*, Knopf, New York, 2008.

Broadening the conceptualization of crisis

The changing ethical content of humanitarianism was accompanied by profound changes in the conceptualization of what constitutes humanitarian crises themselves. In the immediate post-Cold War period, disasters were increasingly recast as “complex emergencies” – or complex combinations of natural and man-made causes and diverse sources of vulnerability.³⁰ For the UN, complex emergencies were conceptualized as humanitarian crises in a country, region or society where there existed a total or considerable breakdown of authority resulting from internal or external conflict and which required an international response that went beyond the mandate or capacity of any single agency and/or the ongoing UN country programme.³¹ Commonly, a long-term combination of political, conflict and peacekeeping factors was also involved.³² In effect the concept of the “complex emergency” transformed the short-term, sudden “innocence” of a “natural” disaster into a major complex political emergency, multi-causal in nature and demanding of a protracted and system-wide response. Increasingly, humanitarian catastrophes were tied both to conflict and to the existence of State and broader political failures.

This conceptualization of crises as complex emergencies demanding comprehensive and coherent international responses focused increased attention on the poor performance of (mainly Western) organized humanitarianism as a whole. In many ways, this was not new. The failure to respond effectively and efficiently as a system had been the source of much controversy following the large-scale emergencies of the 1960s and 1970s: the Biafran War (1967–70), the Great Peruvian earthquake (1970), the Bhola cyclone in East Pakistan (1970) and the Indo-Pakistani War of 1971. This had already precipitated significant reforms of the UN’s humanitarian coordination structures. In 1971, the General Assembly passed Resolution 2816,³³ establishing the Disaster Relief Coordinator post and the UN Disaster Relief Organization (UNDRO). Despite what appeared to be a strong mandate to mobilize, direct and coordinate UN humanitarian assistance for natural disasters, and to coordinate UN assistance with the activities of non-UN actors, UNDRO was never able to effectively mobilize the UN’s humanitarian system and galvanize a coherent international response. UNDRO lacked the finances and personnel to translate its legal mandate into a robust coordination mechanism. Consequently, parallel, separate and *ad hoc* coordination arrangements emerged within and between UN departments and specialized agencies for specific humanitarian situations. These included

30 IFRC, *World Disasters Report 2003: Ethics in Aid*, IFRC, Geneva, 2003, available at: www.ifrc.org/en/publications-and-reports/world-disasters-report/wdr2003/.

31 UN Inter-Agency Standing Committee, *Civil-Military Guidelines and Reference for Complex Emergencies*, 28 June 2004, p. 8, available at: www.refworld.org/pdfid/47da82a72.pdf.

32 Mark Duffield, “Complex Emergencies and the Crisis of Developmentalism”, *IDS Bulletin*, Vol. 25, No. 4, October 1994, pp. 3–4.

33 UNGA Res. 2816 XXVI, 14 December 1971, available at: [www.un.org/french/documents/view_doc.asp?symbol=A/RES/2816\(XXVI\)&TYPE=&referer=http://www.un.org/french/documents/ga/res/26/fres26.shtml&Lang=E](http://www.un.org/french/documents/view_doc.asp?symbol=A/RES/2816(XXVI)&TYPE=&referer=http://www.un.org/french/documents/ga/res/26/fres26.shtml&Lang=E).

little-remembered structures such as the Office of Emergency Operations in Africa (OEOA) and the UN Office for the Coordination of Humanitarian and Economic Assistance Programmes relating to Afghanistan (UNOCA). Often these arrangements were inefficient, worked at cross-purposes or became vehicles or players in the competition for visibility and financial support. While it was often discussed previously, rationalization only occurred in the 1990s, starting on 19 December 1991 with General Assembly Resolution 46/182,³⁴ which created the UN Department for Humanitarian Affairs and the post of the Emergency Relief Coordinator, and then only as a result of geopolitical changes brought about by the end of the Cold War and the increased focus on systemic performance that derived from it.

From poor performance to existential crisis?

The early 1990s saw the critiques of humanitarianism change. The increasingly complicated environment of the complex emergency witnessed the habitual deployment of UN humanitarian organizations alongside the UN's political and peacekeeping actors. In such a context the chronic shortcomings in the system's performance became more obvious, both because the humanitarian response itself was frequently perceived internally as being poorly led and because coordination with other mission components was perceived as weak by political and military actors. Both the Gulf War of 1990–91 and the ensuing Kurdish refugee crisis at the Iraq–Turkey border highlighted the need for a dedicated and more empowered humanitarian coordination entity that was more able to effectively coordinate responses encompassing both internally displaced persons and refugee caseloads, and to improve the de-confliction between humanitarian agencies and deployed military forces. But it was the wars in the Balkans, the Great Lakes region and Somalia that led to a wave of political pressure for Western States' militaries to support the delivery of humanitarian assistance but also to substitute humanitarian action for robust political and military interventions. The genocide and civil wars in Rwanda and the Great Lakes region in 1994 raised important questions about the international community's willingness to act, the coherence of its responses and the overall levels of competence and professionalism within the humanitarian sector. Despite early warning of the impending genocide, the international community failed to act whilst the Joint Rwandan Evaluation³⁵ drew attention to the belief that poorly managed and unprofessional relief operations in the refugee camps following the genocide created conditions for a renewal of the conflict and led to thousands of what it described as avoidable deaths.³⁶

34 UNGA Res. 46/182, above note 3.

35 ODI, *The Joint Evaluation of Emergency Assistance to Rwanda*, London, June 1996, available at: www.isn.ethz.ch/Digital-Library/Publications/Detail/?lang=en&id=121184.

36 John Eriksson, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience, Synthesis Report*, Joint Evaluation of Emergency Assistance to Rwanda, March 1996, p. 23, available at: www.oecd.org/derec/sweden/50189495.pdf.

The necessity for enhanced humanitarian leadership also reflected demands for reform within the humanitarian community – in particular the need to formulate stronger policy and advocacy positions and develop a leadership that was able to safeguard the space for impartial, neutral and independent assistance in the maelstrom of politics that accompanied the increasingly “integrated” or “comprehensive” peacekeeping (and enforcement) missions of the first half of the 1990s. As a result of these failures and pressures, humanitarian action was increasingly characterized as chaotic, poorly managed, instrumentalized and ill-conceived; consequently, and crucially, it was also seen as becoming far more politicized.³⁷

Paradigm crisis?

Undoubtedly, the international interventions in Somalia, the former Yugoslavia, Afghanistan, Sudan and Rwanda established conditions in which alternatives to the dominant modes and organization of humanitarianism *could* be considered.³⁸ Humanitarian workers increasingly perceived themselves to be operating in different and profoundly complex environments in which a multitude of pressures undermined the effectiveness of humanitarian principles as guarantors of access, and even potentially transformed them into a moral liability whereby neutrality meant inaction or complacency in the face of human rights abuses or aid diversion that underpinned elements of the war economy. The perception of widespread abuses of rights and armed actors’ failure to uphold the laws of war provided a sense that the context of the so-called asymmetric “new wars” – that followed the end of the Cold War – was increasingly confounding civilian efforts to provide assistance.³⁹ The perceived instrumentalization and/or rejection of humanitarian assistance by belligerents appeared to subordinate needs-based humanitarianism to strategic political and military objectives and eroded the ability to provide impartial humanitarian assistance.⁴⁰ The increasingly protracted nature of emergencies also highlighted the perceived role of external aid in

37 The Synthesis Report of the Joint Evaluation of Emergency Assistance to Rwanda refers to the “hollow core” of the humanitarian system: *ibid.*, p. 31. On politicization in the 1990s, see Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries*, Kumarian Press, Bloomfield, CT, 2002, pp. 75 ff.

38 Dorothea Hilhorst, “Being Good at Doing Good? Quality and Accountability of Humanitarian NGOs”, *Disasters*, Vol. 26, No. 3, 2002, pp. 193–212.

39 It is difficult to say authoritatively that there are more abuses today than, say, fifty years ago, but much of the literature inspired by Mary Kaldor’s “new wars” thesis draws attention to an increase in violence and an increased ratio of civilian to military casualties. Mary Kaldor herself argues that the ratio of civilians to military casualties used to be eight combatants to one civilian killed in old wars, but that this has dramatically changed in new wars, where it is now approximately eight civilians to one combatant. Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era*, 2nd ed., Polity Press, Cambridge, 2006, p. 9. In addition to the increase in civilian casualties, it is argued that the new wars are “more bloody than any other kind of war since 1945”: Herfried Münkler, *The New Wars*, Polity Press, Cambridge, 2002, p. 15.

40 Kurt Mills, “Neo-Humanitarianism: The Role of International Humanitarian Norms and Organizations in Contemporary Conflict”, *Global Governance*, Vol. 11, 2011, pp. 161–183.

fuelling conflict, prolonging war and escalating the levels of violence and suffering amongst civilians.⁴¹ Similarly, the sector's lack of professionalism was portrayed as a blanket characteristic of classical humanitarian organizations themselves, contributing both to a growing sense of the inefficient use of aid resources for unaccountable and counterproductive programmes and the fuelling of conflict and abuse of aid through a lack of conflict sensitivity and adequate processes, effectively delivering perverse and unintended consequences contrary to the charitable spirit motivating much assistance.⁴² Similarly, the palliative nature of traditional humanitarianism, particularly where it fuelled crisis and conflict,⁴³ was increasingly portrayed as unsustainable, and the resort to humanitarian principles as an alibi for avoiding making difficult choices. Neutrality in particular became a "dirty word" within what was increasingly labelling itself as the "new humanitarianism".⁴⁴ Overall, the principles were characterized as leading to politically blind acts of charity where the act of giving was more important than delivering positive impact, which was itself made almost impossible by the very nature of complex emergencies. The classical formulation of humanitarian principles was increasingly portrayed by its critics as an anachronism left over from an inter-State system and the Cold War, at best irrelevant and at worst "untenable" and "dysfunctional" in the face of new modes of warfare.⁴⁵

In contrast, the new humanitarianism – the alignment of humanitarian assistance more or less closely with Western liberal peace agendas⁴⁶ – offered an extremely attractive vision of a potentially transformative approach able to address the structural conditions that endangered populations. More importantly, it emerged as a "saving idea" in the protracted conditions of complex emergencies, offering to remedy the paradox that simply saving individuals *today* made little sense if they remained in jeopardy *tomorrow*.⁴⁷ In such a context, an emphasis on development aid and the protection of human rights appeared to make infinitely more sense than stressing the palliative approaches of traditional emergency relief and material forms of humanitarian assistance, which often had

41 David Chandler, "The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda", *Human Rights Quarterly*, Vol. 23, No. 3, 2001, p. 681.

42 Mary Anderson, *Do No Harm: How Aid Can Support Peace – or War*, Lynne Rienner, Boulder, CO, 1999.

43 Sarah Kenyon Lischer, "Collateral Damage: Humanitarian Assistance as a Cause of Conflict", *International Security*, Vol. 28, No. 1, 2003, pp. 79–109; Pierre Perrin, "The Impact of Humanitarian Aid on Conflict Development", *International Review of the Red Cross*, No. 323, June 1998; S. Neil MacFarlane, "Humanitarian Action and Conflict", *International Journal*, Vol. 54, No. 4, 1999, pp. 537–561; Elena Lucchi and Clea Kahn, "Are Humanitarians Fueling Conflicts?", *Humanitarian Exchange*, No. 43, June 2009, available at: <http://odihpn.org/magazine/are-humanitarians-fuelling-conflicts-evidence-from-eastern-chad-and-darfur/>; Philippe le Billon, *The Political Economy of War: What Relief Agencies Need to Know*, Humanitarian Practice Network Paper No. 33, ODI, London, July 2000.

44 Fiona Fox, "New Humanitarianism: Does it Provide a Moral Banner for the 21st Century?", *Disasters*, Vol. 25, No. 4, 2002, p. 277.

45 Thomas G. Weiss, *Global Governance: Why? What? Whither?*, Polity Press, London, 2013, p. 68.

46 Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security*, Zed Books, London and New York, 2001.

47 Michael Barnett, *Empire of Humanity: A History of Humanitarianism*, Cornell University Press, Ithaca, NY, 2011, p. 105.

only a symptomatic impact on contemporary forms of suffering in complex emergencies.

From the horrors of the Rwandan genocide to the battlefields of Afghanistan, externally provided humanitarian action appeared caught between two identities: the one it sought entailed the operationalization of an agenda of a common humanity and universal solidarity, while the one with which it was rudely confronted was that of an instrument of political and economic agendas which delivered outcomes that ran directly counter to the explicit objectives of human philanthropy. There was a perception of a growing incompatibility between the humanitarian responses being proffered by the international community and the kinds of problems increasingly being encountered, and as a consequence, the challenge to humanitarianism evolved from a critique of its performance into a far broader challenge to humanitarian values⁴⁸ and to the very idea that the sector was worth reforming at all.⁴⁹

In terms of reform, the new humanitarians sought change through programmes of both professional reform and standard-setting, but also the adoption of more political and emancipatory forms of humanitarianism that offered a radical break from the past. The new humanitarianism promised to support transformative, developmental outcomes and even peacebuilding initiatives.⁵⁰ In the words of Daniela Nascimento, it promised a “combination between the immediate needs and future development, reinforcement of local services and structures, empowerment, participation and enhancement of the population’s capacities, human rights promotion and protection (including gender issues) and contributions to *peacebuilding*”.⁵¹ In particular, it extended humanitarian goals beyond the short-term saving of lives to include peacebuilding and State-building, the empowerment of minority groups and women, bridging the gap between relief and development, and ultimately incorporating a much broader rights-based approach. It also sought to change the focus on the humanitarian *act* – characterized as the charitable impulses of the giver or their compliance with humanitarian principles – to the rights of an empowered beneficiary seeking to realize rights to which s/he was entitled. Consequently, the new humanitarianism set out to expand the boundaries of both the types of “crises of humanity” addressed by humanitarian actors and the repertoire of “acts of compassion” that were considered appropriate for humanitarian actors. In effect, the incorporation of new conceptualizations of crisis, professional technical tools, standard-setting and emancipatory rather than palliative forms of assistance under the new humanitarian label promised a

48 Especially those associated with Dunantist principles encompassing the norms of the International Red Cross and Red Crescent Movement.

49 Joanna Macrae, “The Death of Humanitarianism? An Anatomy of the Attack”, *Disasters*, Vol. 22, No. 4, 1998, pp. 309–317.

50 M. Barnett and T. G. Weiss, above note 19.

51 Daniela Nascimento, “One Step Forward, Two Steps Back? Humanitarian Challenges and Dilemmas in Crisis Settings”, *Journal of Humanitarian Assistance*, February 2015, available at: <https://sites.tufts.edu/jha/archives/2126>.

dramatic corrective to the challenges brought about by classical humanitarianism and enabled the new humanitarianism to portray itself as being capable of delivering a radical rupture with the past. This claim was bolstered in the early 1990s by the post-Cold War, more interventionist posture⁵² of many Western States and by the consequent expansion of budgets for foreign and humanitarian aid.

It should be noted, however, that not all segments of the humanitarian enterprise subscribed to the new humanitarianism. As a result, there have been intense and often increasingly polarized debates between “Wilsonian” and solidarist actors (who have adhered to the foreign policy objectives of their funders or espoused particular advocacy positions) and traditional “Dunantist” visions of humanitarian ideals.

A new paradigm and new interests?

The debates between traditional and “new” humanitarians are sufficiently polarized and the differences so profound that it is fair to describe the new humanitarianism as an insurgent idea which sought to replace classical approaches with its own vision – a new paradigm. The attraction of the idea, however, reflected not only the challenges of the post-Cold War era but also the interests of particular actors, particularly donors, Western governments’ State security actors and groups of NGOs that had been somewhat marginalized by the dominant, Western and essentially secular humanitarian institutions.⁵³ The exponential growth in the numbers and diversity of such NGOs led to a rise in the numbers of multi-mandate organizations that co-opted the principles of classical humanitarianism but behaved in ways that differed fundamentally from the modalities of the ICRC. Many developmentally oriented NGOs were anxious to provide a form of normative legitimation to activities that actually fell outside of the traditional humanitarian framework in conditions where relief funding was growing partially at the expense of other forms of official development assistance. The explosion in overall NGO numbers also partially obscured the increasing importance of Western faith-based international NGOs such as World Vision and Catholic Relief Services in the broader pantheon of humanitarian actors. Some faith-based actors (from all religions and denominations) behaved in ways which were inconsistent with traditionally principled humanitarian action, particularly if they engaged in forms of proselytization, and were therefore uncomfortable both with efforts to establish coherence and with the implications for their work of upholding ideas of impartiality, independence and neutrality.

52 Such as the “ethical” foreign policy controversially pioneered by British prime minister Tony Blair’s government from 1998.

53 The fault lines were, however, often fluid and dependent on individuals, issue and context. Also, the NGOs moved between these various camps over time, and the fault lines were often as much within as they were between organizations.

Similarly, the new humanitarianism also promised much to donors, who were anxious both to halt the descent of crises into perpetual emergencies and to bridge the gap between relief and development. Following the Cold War, military doctrine and development policy converged on the assumption that underdevelopment was a powerful motor for national instability and consequently international insecurity. Similarly, while developmentalists recognized the need for conditions of “security” in order to facilitate development outcomes, military strategists increasingly considered development to be a fundamental component of stability and security.⁵⁴ This blending of development and security models blurred the boundaries between worlds that had increasingly been seen as separate, even if the historical relationship between the two had actually been one of great intimacy. Also, while *post facto* the process of blurring has often been characterized as that of the non-consensual and instrumental acquisition of development by security actors, the reality has in fact been far more complex and more consensual, with developmentalists pushing for access to the increases in funding made possible by the association with security agendas and at times suggesting that rather than development being securitized, security could be humanized. In such a context, the new humanitarianism was drawn into a powerful vortex in which development priorities and concerns were increasingly being associated with broader security goals.⁵⁵

Dysfunctional principles? The contours of the critique

Having identified the tensions between traditional Dunantist approaches and the more politicized new humanitarian agenda’s promise to address both the consequences and the root causes of crises, we now ask whether traditional humanitarianism is in fact reformable. Perhaps the most powerful element of the critique of classical humanitarianism is levelled against the central principle of neutrality,⁵⁶ which Fiona Fox argues has “become a dirty word” amongst new humanitarians.⁵⁷

This line of critique certainly questions the moral foundation of classical humanitarianism. Authors such as David Chandler⁵⁸ have rejected neutrality on the grounds that since conflicts are themselves a product of the chronic violation of human rights, humanitarianism should pursue a more expansive vision of good. Conflicts by their nature are constructed around victims and perpetrators; hence Fiona Fox argues that humanitarian action should not remain neutral between the “Serb militiamen and the Muslim civilians or between Hutu genocidaires and their Tutsi victims”.⁵⁹ In a different piece, and citing former

54 M. Duffield, above note 46, p. 3.

55 Björn Hettne, “Development and Security: Origins and Future”, *Security Dialogue*, Vol. 41, No. 1, 2010, pp. 31–52.

56 M. Barnett and T. G. Weiss, above note 19.

57 F. Fox, above note 44, p. 277.

58 D. Chandler, above note 41.

59 F. Fox, above note 44, p. 277.

Médecins Sans Frontières (MSF) president Phillipe Biberson's reference to the ICRC's refusal to compromise its neutrality by condemning human rights abuses, she quotes Biberson as saying that "if we are not sure that words can save, we do know that silence kills".⁶⁰

Neutrality as moral apathy?

Influential liberal authors and commentators such as Alex de Waal,⁶¹ Ed Vulliamy,⁶² Tim Judah,⁶³ Martin Bell⁶⁴ and Michael Ignatieff⁶⁵ have all adopted similar arguments with regard to the neutral positions adopted by the international community in the Balkans and the Rwandan genocide, contending that adherence to the principle of neutrality, particularly by humanitarian actors, constitutes a form of complicity in the underlying crimes. Some explicitly argue that the ICRC's refusal to make any form of critical public statement about the cost in human suffering of certain methods of combat or kinds of repression constitutes complicity. As a result, both Biberson and MSF (France) itself were content to call for an armed intervention to halt the genocide in Rwanda, as was Alex De Waal,⁶⁶ that well-known critic of the "humanitarian international".

But even if these positions represent the high-water mark of the rejection of neutrality by elements of the liberal and humanitarian intelligentsias, it has often been suggested by new humanitarian practitioners that the very presence in the affected country of actors such as the ICRC casts a cloak of respectability on movements or authorities that are striving for recognition. Another frequently voiced criticism is that for some aid agencies, neutrality is used to hide their lack of accountability, needs assessment and other formalized operational procedures.⁶⁷

New criticisms?

But the maximalist criticisms described above are far from new accusations; rather, they reach back at least to the criticism of the ICRC's (lack of) response to the Nazi concentration camps of World War II. The alternative to this position has often been equated with solidarity with the victim, an approach epitomized in the *modus operandi* of MSF and captured in its slogan of "Soigner et témoigner"

60 Fiona Fox, "Conditioning the Right to Humanitarian Aid? Human Rights and the 'New Humanitarianism'", in David Chandler (ed.), *Rethinking Human Rights: Critical Approaches to International Politics*, Palgrave Macmillan, London, 2002, p. 26.

61 Alex de Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa*, James Currey, Oxford, 1997.

62 Ed Vulliamy, *Seasons in Hell: Understanding Bosnia's War*, St Martins Press, New York, 1994.

63 Tim Judah, *Kosovo: War and Revenge*, Yale University Press, New Haven, CT, 2002.

64 Martin Bell, *In Harm's Way*, Icon Books, London, 1995 (revised ed. 1996).

65 Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience*, Metropolitan Books and Henry Holt, New York, 1998.

66 A. de Waal, above note 61.

67 Private interview with Sir John Holmes, former UN Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator, London, 23 November 2014.

(“Heal and witness”). While the solidarist position is still based on the humanitarian principles of neutrality, independence and impartiality, it appears far more cognisant of the potential for neutrality to equate to inactivity and is therefore, superficially at least, enormously appealing.⁶⁸ However, this framing of the debate is itself misleading. It reflects a particular set of challenges relating to the mid-1990s, underestimates changes in the way in which the ICRC has managed this dilemma and also misrepresents the implications of all interpretations of neutrality in key ways, particularly the relationship between moral principles and consequences.

In terms of the latter, ethical debates have always considered the relationship between moral principles and desired ends, distinguishing between what are described as deontological and teleological or consequentialist positions. For example, when actions are judged morally right based upon their consequences, it is described as a teleological or consequentialist ethical theory.⁶⁹ Such an approach privileges the consequences of an act in the moral calculus; hence, when we make choices that result in the correct consequences, we are acting morally, and when we make choices that result in the incorrect consequences, we are acting immorally. When actions are judged morally right based upon how well they conform to some set of independent moral rules or duties, it is described as a deontological ethical theory. Morality stems directly from following the dictates of duty, and when we fail to follow these, we are obviously behaving immorally. Thus, the prerequisite for making moral choices is an understanding of what our moral duties are. For instance, Immanuel Kant,⁷⁰ an absolute deontological thinker, would argue that it is always wrong to lie, no matter what the consequences may be.

Characterizing humanitarian agencies as either deontologically or teleologically rooted is challenging, as both positions are important and have their place in decision-making, but it would be reasonable to suggest that the ICRC’s position, rooted in behaving in accordance with humanitarian principles, is frequently conceived as equating most closely with the deontological perspective.⁷¹ While MSF’s erstwhile solidarist position has elements of both perspectives, the new humanitarianism is most clearly rooted in teleological perspectives and in this sense sees itself as occupying a different moral universe to that populated by traditional humanitarians.

68 A. Özerdem and G. Rufini, above note 24.

69 For an excellent overview of the differences and similarities between deontological, virtue and consequentialist ethics, see Marcia Baron, Philip Pettit and Michael Slore, *Three Methods of Ethics: A Debate*, Blackwell, Malden, MA, 1997; Hugo Slim, “Claiming a Humanitarian Imperative: NGOs and the Cultivation of Humanitarian Duty”, *European Journal of Development Research*, Vol. 11, No. 2, 1999, pp. 87–115; Hugo Slim, “Doing the Right Thing: Relief Agencies, Moral Dilemmas and Moral Responsibility in Political Emergencies and War”, *Disasters*, Vol. 21, No. 3, 1997, pp. 244–257; Hugo Slim, “Relief Agencies and Moral Standing in War: Principles of Humanity, Neutrality, Impartiality and Solidarity”, *Development in Practice*, Vol. 7, No. 4, 2007, pp. 342–352.

70 Immanuel Kant, “The Metaphysics of Morals”, in Hans Reiss (ed.), *Kant: Political Writings*, trans. H. B. Nisbet, 2nd enlarged ed., Cambridge University Press, Cambridge, 1991.

71 A. Özerdem and G. Rufini, above note 24.

Reinventing neutrality?

However, while the classification of institutions in this way partly explains the vitriolic debates that have raged between classical and new humanitarians, it does not accurately reflect contemporary interpretations of classical humanitarianism's commitment to neutrality. Instead it can be argued that the new humanitarianism constructed a straw man of classical humanitarian ethics in which *neutrality* was portrayed as implicitly deontological and as necessitating the application of a range of duties derived from the humanitarian principles themselves. Arguably this led to an implicit sense that traditional humanitarians, and the ICRC in particular, engaged in visceral, unreflective and unthinking forms of charity and philanthropy that amounted to a denial of politics and favoured the application of the principles as the primary benchmark of success. In effect, the principles were portrayed by the new humanitarians as having become sovereign, leading to a misplaced argument that the principles and the ICRC's working methods had been elevated to a status that was more important than addressing the suffering of the human beings that it was duty-bound to relieve.⁷² Equally, from this perspective questioning the moral value of the principles of universality, humanity and neutrality resulted in a different moral calculation⁷³ – namely, that speaking out only in selected cases was wrong. If all suffering is considered to be genuinely equal, it is incumbent on the ICRC to speak out and denounce the pernicious effects of doctrines and ideas that lead to such appalling levels of misery and death.

However, whilst this critique is a powerful one, it can also be applied to most if not all of the Western relief agencies in the 1990s. In these contexts many agencies privileged their delivery of material assistance in ways that were decidedly unreflective and deontological in approach. This is not to say that the ICRC has been innocent of deontological approaches. Undoubtedly in the ICRC's past, and despite Pictet's very focused sense of their practical rather than ideological nature, the humanitarian principles *have* enjoyed a revered status both within and without the organization. In fact, it would be strange if a hierarchical and essentially Swiss bureaucracy did not coalesce firmly around such principles and police their application; after all, they have conferred significant normative legitimacy both on the organization and in the construction of professional and personal identities amongst humanitarians. But deontological ethics are no longer as compatible as they once were with postmodern societies. European society has undoubtedly become less hierarchical, more individualistic and less supportive of rigidly prescriptive ethical codes, and Swiss society has not been immune to these changes. The growing professionalization of ICRC staff and the impact of media and internet scrutiny have had significant consequences for the organization.

72 Peter J. Hoffman and Thomas G. Weiss, *Sword and Salve: Confronting New Wars and Humanitarian Crises*, Rowman & Littlefield, Oxford, 2006.

73 See above note 3 for an identification of humanitarian principles and those applying solely to the International Red Cross and Red Crescent Movement.

Consequently the ICRC has been forced, like other humanitarian bureaucracies, to adapt to the increasing challenges of complex and protracted emergencies by being more reflective and responding to crises in more nuanced ways. As a consequence, the organization has increasingly engaged in more “thoughtful” forms of humanitarian response, incorporating its own forms of conflict analysis, do-no-harm prescriptions and teleological calculations in much the same way that advocates of the new humanitarianism have argued characterizes change within their own paradigm.⁷⁴

This teleological adaptation can be seen most clearly in the application of the principle of neutrality. Marion Harroff-Tavel⁷⁵ implicitly but firmly argues against the deontological understanding of neutrality that is presumed to characterize traditional humanitarianism, solidly rebutting the idea that the ICRC considers its principles and working methods to be more important than its duty to relieve the suffering of human beings. She characterizes the purpose of neutrality as meaning “standing apart from contending parties or ideologies, so that everyone will trust you”,⁷⁶ and echoes Pictet in her construction of neutrality as a utilitarian instrument rather than ethical position – “a means to an end, not an end in itself”.⁷⁷ The concealed nature of the ICRC’s deliberations on neutrality also leads to the incorrect assumption that neutrality can be equated with “being silent, indifferent, passive, and even cowardly”.⁷⁸ In a direct echo of the solidarist positions of the new humanitarianism, she argues that the alternatives “overlook the fact that the Movement must never be neutral towards human suffering, but always towards men who are fighting each other and towards the differences that divide them”.⁷⁹ Here solidarity is expressed in terms of continuing to function in situations where suffering is rife. This interpretation of neutrality is decidedly teleological and consequentialist in its ethics:

Neutrality does not always mean keeping quiet; it means keeping quiet when to say anything would inflame passions and provide material for propaganda without doing any good to the victims the movement is trying to help. It requires common sense. There is unfortunately no standard way of distinguishing between what can be said and what should not be said. Every case and situation is different from those of the past.⁸⁰

But the ICRC is adamant that the consistent application of humanitarian principles continues to make the organization acceptable in situations where armed actors

74 Rony Brauman, “Médecins Sans Frontières and the ICRC: Matters of Principle”, *International Review of the Red Cross*, Vol. 94, No. 888, 2012.

75 Marion Harroff-Tavel, “Neutrality and Impartiality: The Importance of these Principles for the International Red Cross and Red Crescent Movement and the Difficulties Involved in Applying Them”, *International Review of the Red Cross*, Vol. 29, No. 273, 1989, p. 540.

76 *Ibid.*, p. 540.

77 *Ibid.*, p. 540.

78 *Ibid.*, p. 539.

79 *Ibid.*, p. 539.

80 *Ibid.*, p. 540.

would never let it in if they feared that it would disclose information of use to their opponents. For example, the ICRC considers that its reports on its visits to places of detention, and the recommendations contained in those reports, are for the confidential information of the authorities to whom they are submitted.⁸¹

The ICRC's ambitions to intervene in situations that go beyond its formal legal mandates in the more conventional forms of inter-State war also encourage significant caution on its part. In situations of internal disturbances and tensions, States and non-State armed groups are not under a direct international humanitarian law (IHL) obligation to accept the ICRC's presence; instead, the organization has an extremely fragile mandate by virtue of its own Statutes and those of the Movement as a whole, as well as its global reputation for discretion. This creates a particular form of teleological "politics of discretion" as opposed to the apolitical and deontological application of a principle as a *duty*, which, while perhaps not precisely apolitical, arguably has a certain blindness to the ways in which local politics are constructed. The process involves a delicate balancing act that is nicely framed by Etxeberria,⁸² quoted in Alp Ozerderm and Gianni Rufini's excellent article,⁸³ through two related scenarios. The first asks whether, if a humanitarian agency is aware of gross human rights abuses by authorities and armed factions, it should denounce them publicly, which might lead to the organization's expulsion from its area of operations and therefore an increase in the suffering of its targeted population, or ignore those abuses as the trade-off for ensuring the continuation of its programmes. The second asks whether a humanitarian agency should accept some complicity with local militias in its area of operations in order to ensure the provision of humanitarian assistance to civilians – and if it does, what would this mean to the integrity of the twin principles of impartiality and neutrality? In effect, the necessity for confidentiality⁸⁴ leaves the ICRC with a severely constrained set of choices that present it with an extremely challenging ethical dilemma: it can only choose to cease its operations if its recommendations to the belligerents consistently have no impact, but this would leave unprotected the very persons that it strives to help, and there is little guarantee that withdrawal would lead to a change in the abusers' behaviour anyway. But this is not to say that adherence to this form of discretionary politics prevents other bodies – humanitarian organizations, churches, journalists, and any other individual or organization concerned – from bearing witness and publicly exposing the repression to which those people are subjected. In fact, the achievement of improved outcomes for "humanity" relies precisely upon this division of labour. However, the ICRC's day-to-day mission⁸⁵

81 *Ibid.*, p. 540.

82 Xabier Etxeberria, "The Ethical Framework of Humanitarian Action", in *Reflections on Humanitarian Action: Principles, Ethics and Contradictions*, Pluto Press, London, 2001.

83 A. Özerdem and G. Rufini, above note 24.

84 See Memorandum, "The ICRC's Privilege of Non-Disclosure of Confidential Information" in this issue of the *Review*.

85 This is not to suggest that the ICRC has no role in other, broader activities, such as prevention.

is simply to preserve individual human beings from bodily harm and personal indignity, not to resolve all of the problems of an “inhumane” condition. It has the complex and extremely delicate task of maintaining negotiations

with authorities or movements guided by political or ideological considerations that are often far from humanitarian. Its strength resides in its self-imposed limitations. It refuses to enter into ideological controversy, to express condemnation or approval, to say on which side justice lies. It takes sides only with the victims, and works actively and pragmatically to alleviate their plight.⁸⁶

The politics of discretion and confidentiality

Not only is this “politics of discretion” resplendent with its own ethical challenges, but it also generates new problems of credibility in demonstrating that the ICRC’s own pursuit of neutrality does not prevent the organization from expressing its concern with regard to violations of IHL. In effect, the ICRC has difficulty demonstrating that its strategic decision to remain publicly silent is legitimately rooted in calculations of discretion and confidentiality rather than illegitimately resulting from the dogged pursuit of neutrality.⁸⁷ Because the future is inherently unpredictable, it is impossible to determine in advance whether better consequences will result from remaining silent rather than disengaging. Furthermore, the particular optics of crisis decision-making privilege visible changes in direction, or “loud decisions” in response to “loud” and consistent abuses, while the ICRC’s silence in the face of continued and systematic abuses suggests to many a failure on the part of the international community as a whole to pull out all the stops, creating the risk that the organization will become a convenient symbol of international inertia and amorality. Hence, the ICRC has a tendency to be viewed as a prisoner of what appear to be *status quo* decisions by remaining engaged with abusers but publicly silent regarding their abuses. In effect, it lacks the ability to explain its position in a way that provides ethical credibility in the arena of public morality.

The lack of equivalence between remaining engaged and visible forms of disengagement should come as no surprise. One of John F. Kennedy’s favourite quotations, based upon a misinterpretation of Dante’s *Inferno*, elaborates on the risks of a neutral position: “The hottest places in Hell are reserved for those who in time of moral crisis preserve their neutrality.”⁸⁸ Whilst not actually found anywhere in Dante’s work, it is based upon a scene in the third canto of the *Inferno*. In this scene,

86 M. Harroff-Tavel, above note 75, p. 542.

87 For an explanation, see Memorandum, “The ICRC’s Privilege of Non-Disclosure of Confidential Information” in this issue of the *Review*.

88 John F. Kennedy Presidential Library and Museum, *John F. Kennedy’s Favorite Quotations*, available at: www.jfklibrary.org/Research/Research-Aids/Ready-Reference/JFK-Fast-Facts/Dante.aspx.

Dante and his guide Virgil, on their way to Hell, pass by a group of dead souls outside the entrance to Hell. These individuals, when alive, remained neutral at a time of great moral decision. Virgil explains to Dante that these souls cannot enter either Heaven or Hell because they did not choose one side or another. They are therefore worse than the greatest sinners in Hell because they are repugnant to both God and Satan alike, and have been left to mourn their fate as insignificant beings neither hailed nor cursed in life or death, endlessly travelling below Heaven but outside of Hell.⁸⁹

However, the ICRC's position is not one of moral ambivalence. Far from being a sin of omission, it is a position that remains based in pragmatic calculations of access. In some ways this calculation is made easier by the rapid growth in media outlets, which increases the probability that moral outrages will be publicized without the ICRC taking an active part. The ICRC has also invested considerably in identifying the conditions under which it *can* make public statements concerning violations of IHL, in part to make sure that any resulting statements can be defended as something clearly other than political opportunism and silence can be seen to imply that the calculus of humanitarian benefits remains, for the time being, stacked in favour of public silence and private advocacy.⁹⁰

However, it is clear that neutrality, alongside “discretion”, remains a difficult concept to legitimize, despite the argument that the ultimate goals of humanitarian action and the rights-based approaches of the new humanitarianism ultimately overlap and are therefore analytically compatible,⁹¹ even if they do represent different forms and strategies of humanitarianism. Rather than providing alternatives, James Darcy believes that the rights-based approach and humanitarianism share a common concern for protecting people from violence, and the belief that IHL should be upheld and that those who break it should be held accountable. However, despite this theoretical consistency, neutrality comes with a significant price. As Duffield eloquently states, hinting at its inability to ultimately deliver transformative social outcomes, “the insistence that humanitarianism is ‘neutral’ and separate from politics, means that humanitarians can only grasp human life as bare life”.⁹² Alain Desthèxe, former secretary-general of MSF and writing in his personal capacity, points to the incompatibility of even more limited forms of justice and neutrality by warning against the widespread adoption of the principle:

The humanitarian world needs only one neutral organization: the International Committee of the Red Cross (ICRC) is essential and quite sufficient Private

89 *Ibid.*

90 See ICRC, “Action by the International Committee of the Red Cross in the Event of Violations of International Humanitarian Law or of Other Fundamental Rules Protecting Persons in Situations of Violence”, *International Review of the Red Cross*, Vol. 87, No. 858, 2005, available at: www.icrc.org/eng/assets/files/other/irrc_858_violations_ihl.pdf.

91 See James Darcy, “Locating Responsibility: The Sphere Humanitarian Charter and Its Rationale”, *Disasters*, Vol. 28, No. 2, 2004, p. 15; H. Slim, above note 28.

92 Mark Duffield, *Carry On Killing: Global Governance, Humanitarianism and Terror*, Danish Institute for International Studies Working Paper No. 13, 2004, p. 23.

humanitarian action must break free from the double yoke of simple compassion and neutrality and arm itself with a demand for justice.⁹³

Perhaps the core conclusion to draw from this debate is that the diversity found within humanitarianism has some positive aspects. Despite the oft-repeated remark by Sir John Holmes, former undersecretary-general for humanitarian affairs and emergency relief coordinator (2007–2010), that the humanitarian system “is not a system in any recognisable state” but “a haphazard collection of organisations”,⁹⁴ the inherent variety of positions can have beneficial effects. However, while in some situations the blooming of a thousand flowers is positive, in others the *mélange de genres* is potentially confusing and dangerous. There are two issues here. One is that you don’t necessarily have to be neutral to do good humanitarian work (in some situations), and that multi-mandate organizations, faith-based groups, solidarists and even (in some situations) the military can do useful work. The other is that pretending to be who you are not (e.g., a multi-mandate NGO in Afghanistan claiming to be humanitarian) is a recipe for confusion or worse. Also, positions taken have consequences over time: the context changes, and yesterday’s alignments can be tomorrow’s pitfalls. Hence, more clarity and perhaps even a clearer bifurcation between Dunantists and the variegated others would be a good thing.

Access debates and principles

While adherence to the principle of neutrality is not as ethically damaging as the new humanitarians would have us believe, this still leaves their challenge that circumstances and “new wars” have rendered it an impractical instrument for gaining access. In practitioner debates, much has been made of the rising incidents of the targeting of humanitarian agencies by belligerents and the resulting contraction of humanitarian space. However, there is an alternative perspective. Notwithstanding the fact that the blurring of boundaries between humanitarian, political and military choices, the increasing number of attacks on humanitarian organizations and the fragmentation of armed actors in many complex emergencies all create a highly complex and dangerous environment, humanitarian principles continue to be essential to the ICRC’s ability to function, though they have clearly demanded significant investment in new resources.⁹⁵

Looking beyond the increasing numbers of violent attacks against aid workers and yearly rising casualty tolls, the empirical data puts into question the raw assumption that the principles are redundant. The evidence undoubtedly depicts a dramatic rise in violence against aid workers from 143 victims in 2003

93 Alain Desthèxe, *Rwanda: Essai sur le génocide*, Éditions Complexe, Brussels, 1994, p. 87.

94 Quoted in Paul Cornish, *Humanitarian Response and International Engagement in Fragile States*, Report of the Canada–UK Colloquium, West Sussex, 1–3 November 2011, p. 19.

95 Fiona Terry, “The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 881, 2011, pp. 173–188.

to 460 in 2013, but it is important to note that only five countries – Syria, South Sudan, Sudan, Afghanistan and Pakistan – accounted for 75% of all attacks.⁹⁶ That points to a concentration of incidents within high-violence contexts rather than a tendency applicable to all humanitarian activities. In these, the most dangerous of settings, the majority of attacks can either be attributed to banditry, as was common in Sudan, or to politically oriented efforts to pursue national aims, as in Afghanistan by the Taliban and other insurgent groups.⁹⁷ This implies not only that humanitarian personnel become in many cases victims of criminality or nihilistic violence, but also that “security incidents suffered by aid agencies are due to foolish mistakes by ill-prepared individuals, and to faulty appraisals of local conditions”.⁹⁸ Both Pierre Gassmann and Fiona Terry conclude that the ICRC was able to remain active in such situations due to its long-standing adherence to humanitarian principles and its investment in constructing consent amongst the increasingly fragmented armed actors and local communities.⁹⁹ In Terry’s analysis of the ICRC’s operations in Afghanistan, she argues that while many humanitarian actors abandoned neutrality as a guiding principle, the ICRC persevered and, through some innovative and sometimes risky initiatives, managed to show both sides the benefits of having a neutral intermediary in conflict. As a consequence, the ICRC has been able to continue to expand its humanitarian action in Afghanistan.¹⁰⁰ This was also the case in Kosovo, where the refusal by the ICRC to rebuke Serb atrocities contributed to Milošević’s decision to allow the ICRC to negotiate access to Serbia. The ICRC was the only international humanitarian body assisting the victims of NATO bombings in Serbia. In light of this, Cornelio Sommaruga argues that the “humanitarian endeavour and political action must go their separate ways if neutrality and impartiality of humanitarian work are not to be jeopardized”.¹⁰¹

It is also the case that attacks on ICRC staff did not register significant increases between 2003 and 2013.¹⁰² Hence one can argue that the ICRC’s

96 Aid Worker Security Report, *Unsafe Passage: Road Attacks and Their Impact on Humanitarian Operations*, 2014, available at: <https://aidworkersecurity.org/sites/default/files/Aid%20Worker%20Security%20Report%202014.pdf>.

97 Abby Stoddard, Adele Harmer and Victoria Di Domenico, *Providing Aid in Insecure Environments: 2009 Update Trends in Violence against Aid Workers and the Operational Response*, HPG Policy Brief No. 34, April 2009, available at: www.humanitarianoutcomes.org/sites/default/files/resources/ProvidingAidInInsecureEnvironments20091.pdf.

98 *Ibid.*

99 Pierre Gassmann, “Rethinking Humanitarian Security”, *Humanitarian Exchange*, No. 30, June 2005, available at: www.odihpn.org/humanitarian-exchange-magazine/issue-30/rethinking-humanitarian-security; Michael Khambatta, *Humanitarian Space and Stability Operations*, Edges of Conflict Working Paper, 2009, available at: www.ligi.ubc.ca/sites/liu/files/Publications/RC_09_07_edges_report_r4.pdf.

100 See also Marcos Ferreira, “Blurring of Lines in Complex Emergencies: Consequences for the Humanitarian Community”, *Journal of Humanitarian Assistance*, 24 December 2012, available at: <http://sites.tufts.edu/jha/archives/1625>.

101 “Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations Organization”, Statement by Mr Cornelio Sommaruga, President of the ICRC, at the UN General Assembly, New York, 20 November 1992, *International Review of the Red Cross*, Vol. 33, No. 292, 1993, pp. 49–56.

102 Aid Worker Security Report, above note 96.

increased investment in effective acceptance and humanitarian negotiation strategies (alongside high-quality and relevant programmes) has enabled it to remain in spaces that are closed to other agencies – even whilst recognizing that humanitarian principles still, as historically has always been the case, do not guarantee universal access by all warring parties.¹⁰³ In effect, the ICRC’s pedigree of providing predictable, reliable, independent and discrete forms of humanitarian action in many highly polarized and fragmented conflicts, plus its investment in manufacturing and maintaining consent amongst numerous localized armed actors, has enabled it to remain clearly distinct from all political and military actors and even many other forms of humanitarian action. Besides the ICRC, and to a lesser degree MSF, few if any humanitarian organizations routinely make the organizational investments necessary to build these required capacities in risk management.¹⁰⁴ This supports Jansen and Hilhorst’s¹⁰⁵ argument that rather than spontaneously manifesting as a consequence of humanitarian principles, humanitarian space is socially negotiated between a wide range of actors that shape the emergence of this space. In this process, “humanitarian” actors (broadly defined) employ the principles and the idea of humanitarian space to increase the probability of safe access. Consequently, increasing engagement in high-profile, complex, volatile and fraught environments without appropriate capacities in risk management and negotiation strategies may have a significant part to play in explaining the security challenges faced by the humanitarian sector, rather than a simple association with Western geopolitical interests and the rise of barbarity.¹⁰⁶ Similarly, in an age of mass media, multi-mandate organizations may find it more difficult to establish trust and credibility if they have manifestly failed to uphold commitments to humanitarian principles on a global scale even whilst claiming to do so.

Principles, power and geopolitical shifts: The challenge of universality

Whilst the principle of neutrality has undoubtedly been controversial, there are parallel issues with the universality of the principles – and the way in which it relates to the new humanitarianism. Arguably the discourse relating to the principles has tended to presume the existence of a meaningful “global humanitarian community” that is bound by standards and linked by technology

103 P. Gassmann, above note 99.

104 Jan Egeland, Adele Harmer and Abby Stoddard, *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments*, OCHA Policy and Studies Series, Policy Development and Studies Bureau, New York, 2011.

105 Dorothea Hilhorst and Bram J. Jansen, “Humanitarian Space as Arena: A Perspective on the Everyday Politics of Aid”, *Development and Change*, Vol. 41, No. 6, 2010, pp. 1117–1139.

106 Cynthia Brassard-Boudreau and Don Hubert, “Shrinking Humanitarian Space? Trends and Prospects on Security and Access”, *Journal of Humanitarian Assistance*, 2010, available at: <http://sites.tufts.edu/jha/archives/863>.

and networking.¹⁰⁷ But to what extent can we say that such a humanitarian community actually exists? Even though the majority of agencies within the “sector” have made reference to the humanitarian principles, Fiori notes that there has been a “significant divergence between them on how they are conceived and how they are applied”. Moreover, outside of the “sector”, other principles are often given primacy over “core humanitarian principles”. In South-East Asia, neutrality and independence have been seen as secondary to the principle of non-interference. In China, where the notion of the State as guarantor of the welfare of its people is grounded in Confucian tradition, the independence of humanitarian agencies from governments is not considered to be necessary, desirable or even possible. In fact, Hirono argues that the ideal of a well-ordered State is one of the three central features of Chinese humanitarian ideas.¹⁰⁸ Similarly, in Japan, Osa argues that the social predisposition to view that State as the most legitimate provider of both social and humanitarian services shapes the content of Japanese overseas humanitarianism and the delivery of assistance.¹⁰⁹ And in Latin America, support for those affected by conflict, extreme poverty and disaster “has often been guided by a solidarity that precludes neutrality and impartiality”.¹¹⁰

In many respects, the claim that principles are universal is based on a pretence that humanitarian principles and compassion are universal and separate from issues of global governance. But during the post-Cold War period it has become clearer that humanitarianism has transformed from being something of an “epiphenomenon” of international relations into being, as Vincent Bernard argues,

a support for the projectionist will of certain states, including some emerging countries. Its future will depend on the evolution of crises and of political and military actors, but also on its own ability to enhance its quality, its principles, and in particular its independence vis-à-vis donors and recipients.¹¹¹

Without restating the arguments as to whether human rights are locally or universally conceived, it is reasonable to say that humanitarian principles in the hands of multi-mandate NGOs and the UN system have become consubstantial with forms of State, epistemic and cultural power. As such they are only very

107 Peter Walker and Catherine Russ, *Professionalising the Humanitarian Sector*, Enhanced Learning and Research for Humanitarian Assistance, April 2010, available at: www.elrha.org/uploads/Professionalising_the_humanitarian_sector.pdf

108 Miwa Hirono, “Three Legacies of Humanitarianism in China”, *Disasters*, Vol. 37, 2013, pp. 202–220; Hanna B. Krebs, *Responsibility, Legitimacy, Morality: Chinese Humanitarianism in Historical Perspective*, ODI, September 2014, available at: www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9139.pdf

109 Yukie Osa, *Seeking Japanese Conceptions of Humanitarianism*, paper contributed to the Cultures of Humanitarianism: Perspectives from the Asia-Pacific project, October 2012, available at: www.nottingham.ac.uk/iaps/documents/project/osa.pdf

110 J. E. M. Fiori, above note 13.

111 Vincent Bernard, “The Future of Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011, p. 897, available at: www.icrc.org/eng/assets/files/review/2011/irrc-884-editorial.pdf

partially acceptable outside the Western world, particularly given the rise of the new humanitarians' emphasis on rights.

The argument goes like this: the process of extension of the Western model, which we label, *inter alios*, "coloniality", is seen as an exclusively European phenomenon that has spread with modernity.¹¹² Starting from the Renaissance, it spread around the world through the Reformation, the Enlightenment and the French Revolution, scientific discoveries, and of course the web-like expansion of the capitalist system. In this way, the myth of Eurocentrism identifies European particularity with universality *tout court*.¹¹³ Coloniality undermines the coexistence of diverse ways of producing and transmitting knowledge because it orders all forms of human knowledge on an epistemological scale from the traditional to the modern, from barbarism to civilization, from the community to the individual, from the North to the South, the West to the East. By way of this strategy of epistemic colonization, European (and later, Western) scientific thought has positioned itself as the only valid form of producing knowledge. The West thus acquired an epistemological hegemony over all the other cultures of the world. Quijano ends this argument with the natural consequence: if knowledge is colonized, the task ahead is to decolonize knowledge. This epistemic decolonization could be achieved either by de-linking from the Western canon or by its implosion and the emergence of a "pluriversity" of systems of knowledge, in this case the emergence of differing forms of humanitarian ideas and practice.¹¹⁴

In the past fifteen years or so, humanitarianism and humanitarian action have seen a rise in scholarly analysis aimed at understanding the functions they perform in North–South relations, world ordering and the promotion of liberal peace.¹¹⁵ While much has been uncovered about how political and humanitarian agendas tend to reinforce each other, it is necessary to dig deeper into the nature of humanitarianism by looking at how – as a discourse, an ideology, a set of institutions and professions, and a political economy – it is deeply embedded in a system of knowledge that professes to be universal but is in reality an extension of European and Western hubris. What Mignolo calls the "Western code" is the hidden software of modernity. It is the *patron de poder*, the matrix of power.¹¹⁶ It is predicated on the assumption that it is the only game in town and that as the modern (capitalist) system expands, the code replaces all other primitive, non-Western and non-modern codes; hence the inherent coloniality of the code, and by extension the inherent coloniality of all aspects of dominant relations – economic,

112 The coloniality of power is a concept interrelating the practices and legacies of European colonialism in social orders and forms of knowledge. It is advanced in postcolonial studies and Latin American subaltern studies, most prominently by Anibal Quijano. See Anibal Quijano, "Coloniality and Modernity/Rationality", *Cultural Studies*, Vol. 21, No. 2–3, 2007, pp. 168–178; Walter D. Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options*, Duke University Press, Durham, NC, 2012.

113 Immanuel Wallerstein, *European Universalism: The Rhetoric of Power*, The New Press, New York, 2006.

114 V. Bernard, above note 111.

115 For example, M. Duffield, above note 46; Didier Fassin, *La raison humanitaire: Une histoire morale du temps présent*, Gallimard and Seuil, Paris, 2010; Antonio Donini, "The Far Side: The Meta Functions of Humanitarianism in a Globalized World", *Disasters*, Vol. 34, Supplement S2, 2010.

116 W. Mignolo, above note 112.

cultural, developmental – between the North and the South, including the humanitarian endeavour. According to Mignolo and other “coloniality thinkers”, this Western epistemic code still undergirds the processes through which the world is conceptualized, including both liberal and anti-capitalist critiques of the model, and therefore much of current humanitarianism.¹¹⁷

The implication of the process is that as long as the West was rising, its epistemic dominance was broadly acceptable. However, now that the East and other centres of power are on the ascendant, the West’s dominance is becoming more problematical. Many of the new or emerging powers have no obligation, nor perhaps the inclination, to conform to the boundaries of the traditional humanitarian sector. Indeed, they can, and often do, define “humanitarian” in their own terms, not feeling obliged to follow the structures created by the dominant humanitarian sector – hence the criticism of humanitarian principles coming from non-Western States. Some even postulate the emergence of an “Eastphalian” approach to the incorporation of relief for those affected by conflict and crisis into statist political agendas¹¹⁸ (not that Westphalian states were innocent of instrumentalizing relief, of course). The West, for its part, has also participated in undermining the principles through the “global war on terror” by press-ganging international NGOs into supporting political-military interventions or the use of anti-terror legislation to deny access to or interaction with certain groups and the populations they control.¹¹⁹ Our sense therefore is that organized humanitarianism, which has grown in parallel with contemporary forms of Western capitalism, has now reached its structural limits. As globalization becomes more diverse and power transfers to the East, humanitarianism is itself bound to be contested and to change.

The universality of traditional principles is also challenged within the new humanitarian paradigm due to the convergence of the latter with modes of power that seek to “contain” migration using humanitarian instruments, particularly in the context of refugee camps. The new humanitarianism’s entry into the exercise of modes of governance has not been easy,¹²⁰ as the tragedy of managing *génocidaire*-dominated refugee camps in the aftermath of the Rwandan Genocide

117 A. Quijano, above note 112; W. Mignolo, above note 112.

118 On the intriguing concept of “Eastphalia” as an alternative to the traditional Westphalian concept of the State, see Tom Ginsburg, “Eastphalia and Asian Regionalism”, *UC Davis Law Review*, Vol. 44, No. 3, 2010.

119 Research by the Humanitarian Policy Group suggests that donor State counterterrorist polices have increased operating costs, slowed down administrative functions and operational responses, curtailed funding and undermined humanitarian partnerships. They have also prevented access and altered the quality and coordination of assistance, making it more difficult for humanitarian actors to operate in accordance with the principles of neutrality and impartiality. See Sara Pantuliano, Kate Mackintosh and Samir Elhawary with Victoria Metcalfe, *Counter-Terrorism Legislation and Humanitarian Action: Tensions, Impacts and Ways Forward*, HPG Policy Brief, October 2011, available at www.odi.org.uk/resources/docs/7347.pdf. On the use of anti-terror legislation to deny assistance to proscribed groups, see Mark Bradbury and Robert Maletta, “When State-Building Fails: Famine, Counter-Terrorism and the Politicization of Humanitarian Action in Somalia”, in Antonio Donini (ed.), *The Golden Fleece: Manipulation and Independence in Humanitarian Action*, Kumarian Press, London, 2012. See also the article by Phoebe Wynn-Pope, Yvette Zegenhagen and Fauve Kurnadi in this issue of the *Review*.

120 D. Kennedy, above note 21, p. 357.

amply demonstrated.¹²¹ These spaces of refuge may be “humanitarian” in a sense, but their static and semi-permanent nature means that they cannot be free of governance. This has led to the profusion of labels such as Mariella Pandolfi’s “mobile sovereignty”¹²² and Laurence McFalls’ “Therapeutic Legitimate Domination” and “therapeutic governance”.¹²³ However, a common theme is that containment strategies generate their own modes of iatrogenic violence through reducing life in the camps to the mere maintenance of what Giorgio Agamben describes as “bare life”.¹²⁴ McFalls for one argues that with the

proliferation of threats to the survival of the species, from ethnic conflict to global warming, a permanent state of emergency has transformed humanitarian government into a dictatorship above and beyond the discussion, debates, and contestations of ordinary politics. To be sure, it is a benevolent dictatorship, but it is one that suspends or makes obsolete political action in pursuit of a just, equitable or otherwise good social order.¹²⁵

In part this is a reflection of the broader instrumentalization of the new humanitarianism in this global arrangement. From the ethical foreign policy of Tony Blair through the “humanitarian war” launched by NATO in Kosovo in 1999 to the development of a “humanitarian strategy” by powers such as France in 2012 and several of Colin Powell’s speeches,¹²⁶ the word “humanitarian” has been hijacked, distorted and abused to describe everything including military intervention as legitimately humanitarian and as serving the protection of civilians and enforcing humanitarian access. But far from the humanitarianization of all forms of intervention, Western States’ pro-humanitarian intervention stance can be viewed as “the violent externalization of the project of liberal democracy under the label humanitarian intervention”,¹²⁷ and whilst many NGOs are indeed vocal in their opposition to this process of distortion, many also conveniently and confidently forget or deny that a good number of them have been complicit in these processes. The new humanitarianism has been stretched, adapted, harnessed and used for anything

121 Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action*, Cornell University Press, Ithaca, NY, and London, 2002.

122 Mariella Pandolfi, “L’industrie humanitaire: Une souveraineté mouvante et supracoloniale. Réflexion sur l’expérience des Balkans”, *Multitudes*, Vol. 3, November 2000, pp. 97–105; Mariella Pandolfi, “‘Moral Entrepreneurs,’ souverainetés mouvantes et barbelé: Le bio-politique dans les Balkans post-communistes”, *Anthropologie et Sociétés*, Vol. 26, No. 1, 2002, pp. 1–24.

123 Laurence McFalls, “Benevolent Dictatorship: The Formal Logic of Humanitarian Government”, in Didier Fassin and Mariella Pandolfi (eds), *Contemporary States of Emergency*, Zone Books, New York, 2013, pp. 317–333, available at: www.mcgill.ca/isisd/files/isisd/FormalLogic.pdf.

124 Quoted in Mark Duffield, *Development, Security and Unending War: Governing the World of Peoples*, Polity, Malden, MA, 2007, pp. 15, 226–227.

125 L. McFalls, above note 123.

126 Colin Powell, “Remarks to the National Foreign Policy Conference for the Leaders of Nongovernmental Organizations”, Washington, DC, 26 October 2001, available at: <http://2001-2009.state.gov/secretary/former/powell/remarks/2001/5762.htm>.

127 Patricia Owens, “Hannah Arendt, Violence, and the Inescapable Fact of Humanity”, in Anthony F. Lang Jr and John Williams (eds), *Hannah Arendt and International Relations: Readings Across the Lines*, Palgrave, London, 2005.

and everything, to such a degree that is quite reasonable to ask whether it still holds any meaning today. In the face of repeated attacks from States, political leaders, military forces and the media, the new humanitarian NGOs have gradually, but definitively, lost the communications battle to defend the meaning of the word “humanitarian” as they understand it, and the greatest tragedy of all is their refusal to accept their defeat.

Even the dramatic and apparently unburdened notion of the “humanitarian emergency” has been distorted to, in effect, hide the perpetrator and the nature of the suffering behind the suffering of the victim, depoliticizing the causes involved and converting the response into an essentially technical one. Henry Radice quotes James Orbinski’s Nobel lecture at length:

The 1992 crimes against humanity in Bosnia-Herzegovina. The 1994 genocide in Rwanda. The 1997 massacres in Zaire. The 1999 actual attacks on civilians in Chechnya. These cannot be masked by terms like “Complex Humanitarian Emergency”, or “Internal Security Crisis”. Or by any other such euphemism – as though they are some random, politically undetermined event. Language is determinant. It frames the problem and defines response, rights and therefore responsibilities. It defines whether a medical or humanitarian response is adequate. And it defines whether a political response is inadequate. No one calls a rape a complex gynecologic [*sic*] emergency. A rape is a rape, just as a genocide is a genocide. And both are a crime. For MSF, this is the humanitarian act: to seek to relieve suffering, to seek to restore autonomy, to witness to the truth of injustice, and to insist on political responsibility.¹²⁸

The point here is not that humanitarianism is dead but that the new humanitarianism is incapable of defending its own boundaries in the way that traditional humanitarianism, consistently applied, has been able to. This point is amplified by Pierre Krähenbühl, a former ICRC director of operations. He argued that it “also means making a strong stand for neutral and independent humanitarian action. Old recipes for a different world? Not in our view certainly. Quite on the contrary, a principled position maintained with conviction in the face of challenge.”¹²⁹

Conclusion

The blood-soaked fields of Solferino are generally seen as the birthplace of modern organized humanitarian action. “Humanitarianism 1.0” was the heroic phase articulated around the Dunantist principles of humanity, impartiality and, at

128 Henry Radice, *The Responsibility to Protect as Humanitarian Negotiation: A Space for the ‘Politics of Humanity’?*, unpublished mimeo, 2015.

129 Pierre Krähenbühl, “Humanitarian Security: ‘A Matter of Acceptance, Perception, Behaviour...’”, address given at the High-Level Humanitarian Forum, Palais des Nations, Geneva, 31 March 2004, available at: www.icrc.org/eng/resources/documents/misc/5xsgwe.htm.

times, neutrality, as well as the European traditions of charity and compassion. It was volunteerist and diverse, and sometimes unstructured. It was also marginal in the sense that it was confined to working outside conflict rather than “in” or “on” it. Geopolitical changes at the end of the Cold War gave birth to a process of unprecedented quantitative and qualitative change: institutionalization, professionalization and proceduralization on the one hand, and because of the important governance functions that humanitarian action performs, instrumentalization on the other. The resulting “humanitarianism 2.0”, the new humanitarianism, was based on the sometimes competing “three Cs” of compassion, change and containment,¹³⁰ as well as the “two Cs” of capitalism and coloniality. What characterized the diverse agencies that comprised this new humanitarian endeavour, whether they were pressed into the service of liberal peace or not, was the increasing institutionalization, standardization, oligopolization and normalization of an enterprise that remains inescapably (for now) Northern and Western. And of course, the software that this enterprise runs on is still, essentially, the Western code of coloniality through which the world is seen and interpreted from the “zero point” of the West, where the colonial and capitalist endeavour started. Through it, Western knowledge of all kinds deems itself universal; it does not accept that it is fundamentally Eurocentric.¹³¹

Arguably, classical humanitarianism is rooted in three broad assumptions: that there exists a common humanity, that the human condition is a universal one, and that it is possible to generate consensus on the nature and modalities of the forms of humanitarian action that arise from this. Whilst this article has focused mainly on the challenges to the last of these assumptions, each has now been challenged in fundamental ways by the rise of multiple humanitarianisms, whether “new”, faith-based, solidarist or non-Western versions. The critique of the principles followed two main lines, the first a consequentialist one relating to whether the specific conditions that gave rise to the principles had changed to such a degree that the principles no longer remained the most effective means of guaranteeing access, and the second asserting that the version of humanitarianism implied by the principles did not represent a permanent consensus on the nature and content of humanitarianism. In terms of the former, the paper has concluded that the evidence suggests the reverse of this – that the principles, operationalized consistently, did in fact offer the best mode of access, but at the expense of the broader aims of the new humanitarianism. In this sense the process of questioning the principles has reflected a deeper and perpetual struggle to define the fundamental content of an ethic of humanity, compassion and solidarity.

The paper has addressed the challenge of the new humanitarianism’s rights-based approach to the fundamental ethical core of traditional

130 Peter Walker and Daniel Maxwell, *Shaping the Humanitarian World*, Routledge, New York and London, 2009, p. 21.

131 I. Wallerstein, above note 113.

humanitarianism. It argues that this critique has failed to demonstrate the inadequacy of the principles in securing access. Foregoing neutrality in fact threatens the humanitarian access accorded to neutral humanitarians by warring parties and impedes these actors from assisting affected populations.¹³² The thrust of this paper accords with authors such as Leebaw¹³³ and Macrae,¹³⁴ who have written that the application of the rights-based approach at the operational level threatens the very basis upon which humanitarianism was founded. Even Jean Pictet has argued that “[o]ne cannot at the same time be a champion of justice and charity. One must choose.”¹³⁵ Ultimately, traditional and new humanitarianism represent ethical projects that differ in their scope. In this conclusion the paper perhaps differs from writers such as James Darcy,¹³⁶ who advocates the “deepening” of humanitarianism to consider human rights implications, as well as those such as Chandler, who pushes for its “broadening” to incorporate more long-term development goals.¹³⁷ Traditional humanitarianism is far less ambitious in scope, and the belief that humanitarianism should uncritically embrace aspects of the human rights agenda misinterprets the intentions behind emergency humanitarian action and threatens access for the community as a whole.¹³⁸ In particular, the new humanitarianism raises risks that have just as much potential to lead to damaging results as does a formulaic deontological adherence to principles.

In particular, adherence to a rights-based approach risks compromising the universality of aid and establishing a conditionality that creates a hierarchy of “deserving” and “undeserving” victims, which Stockton warns has led to the “demonization of the undeserving disaster victim”.¹³⁹ Aid policy has become increasingly linked with a range of political and security objectives, and in such an environment it seems strange that the new humanitarianism’s attachment to a rights-based approach has the potential to claim a universal entitlement to certain rights but also that some rights (and therefore the needs of some people) are more important and more deserving than others.¹⁴⁰ For example, the controversial humanitarian response to the post-genocide refugee camps in Zaire exemplified a disturbing trend in ranking recipients’ rights to aid on criteria other than needs, with different refugee groups being deemed “worthy” or “unworthy” of humanitarian assistance.¹⁴¹ While the idea of providing material assistance to individuals who had committed crimes against humanity was (and remains) morally uncomfortable, so too was the withholding of aid to those in

132 F. Fox, above note 44.

133 Bronwyn Leebaw, “The Politics of Impartial Activism: Humanitarianism and Human Rights”, *Perspectives on Politics*, Vol. 5, No. 2, 2007, pp. 223–239.

134 J. Macrae, above note 49.

135 J. Pictet, above note 11, p. 39.

136 J. Darcy, above note 91.

137 D. Chandler, above note 41.

138 J. Macrae, above note 49.

139 Nick Stockton, “In Defence of Humanitarianism”, *Disasters*, Vol. 22, No. 4, 1998, pp. 352–360.

140 H. Slim, above note 28.

141 F. Fox, above note 44.

need. In the context of the Hutu exodus from Rwanda in 1994, for example, it was inconceivable to assume that all refugees were guilty of the genocide – a conclusion that, if acted upon, itself constituted an egregious violation of the principle of humanity.¹⁴² Similar processes haunted international responses towards Serbia's 8 million-strong population due to alleged apathy in the face of Milošević's atrocities in Kosovo, resulting in a punitive sanctions regime against Serbia and a curtailment of the impartial humanitarian imperative.¹⁴³

Paradoxically, proponents of a rights-based approach have also argued against relief aid in order to avoid the situation in which humanitarian assistance provided Western governments with the “appearance of doing something in the face of a tragedy while providing an alibi to avoid making a riskier political or military commitment that could address the roots of a crisis”.¹⁴⁴ Hence, while the rights-based approach's supposed focus on the root political and social causes of conflict and poverty through long-term development aid¹⁴⁵ is laudable, in practice, and more so in crisis situations, multi-mandate organizations find it rather difficult to operationalize both a rights-based approach and the principles of humanitarian action¹⁴⁶ and have frequently promised or implied far more in the way of transformational assistance than they have been able to deliver.

The increased importance of political considerations in decisions to provide aid also increases the potential for the humanitarian system to be manipulated in pursuit of broader political goals that run contrary to purely humanitarian considerations. Most prominent on this list is the risk that humanitarianism can justify military action. David Chandler,¹⁴⁷ Joanna Macrae¹⁴⁸ and David Reiff¹⁴⁹ all argue that the rights-based approach to humanitarian action sets a dangerous precedent, pointing to military campaigns in the Balkans, Afghanistan and Iraq. On a lesser scale, Marc DuBois, former head of MSF (UK), argues that the rights-based approach contributes to a “delusion” that humanitarianism can offer more ambitious forms of protection; it represents itself as a saving idea, but it is one that ultimately cannot save.¹⁵⁰

The final challenge is that the new humanitarianism fundamentally confuses the issue of who holds rights and obligations in the international system. In a system of States, only States and not NGOs can ever truly be the duty bearers in upholding human rights, as stated *inter alia* by Darcy,¹⁵¹ Stockton¹⁵²

142 *Ibid.*

143 Geoffrey Robertson, *Crimes against Humanity*, Penguin, London, 1999, p. xvi.

144 D. Chandler, above note 41.

145 F. Fox, above note 142.

146 Lin Cotterrell, *Human Rights and Poverty Reduction: Approaches to Human Rights in Humanitarian Crises*, ODI, October 2005, p. 6, available at: www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4345.pdf.

147 D. Chandler, above note 41.

148 J. Macrae, above note 49.

149 D. Reiff, above note 18.

150 Marc DuBois, “Protection: The New Humanitarian Fig Leaf”, *Dialogues*, Vol. 4, 2007, p. 1, available at: www.urd.org/IMG/pdf/Protection_Fig-Leaf_DuBois.pdf.

151 J. Darcy, above note 91.

152 N. Stockton, above note 139, p. 355.

and Leebaw.¹⁵³ The role of the humanitarian community is not to usurp these rights. Even within the camp of the classical humanitarians, few deny the importance of solidarity, compassion, the promotion of human rights, and developmental or peacebuilding agendas – but they do not see these as their role. They remain committed to the sense that there are circumstances in which protecting and saving lives is a valuable objective in itself, and humanitarian principles remain the most pragmatic way of doing so. In such a context, there is clearly a role for solidarity with victims and for the promotion of human rights, but not in a traditional humanitarian guise.

Whilst humanitarianism has perhaps always been the product of the expansion of Western values and economic power, the neoliberal capitalist system, building on its colonial past, has colonized the new humanitarianism. The new humanitarianism has led the sector into the troubled waters of instrumentalization, to levels hitherto unseen. Similarly, given the ways in which beneficiaries in the global South are often uncomfortable with the intrinsic coloniality of Western humanitarianism, and given the emergence of both non-Western approaches amongst new donors (statist, Eastphalian, etc.) and the increasing significance of rejectionists such as Islamic State, the best chances of access and effective humanitarian action are provided by adherence to traditional humanitarian principles.

153 B. Leebaw, above note 133.

Unpacking the principle of humanity: Tensions and implications

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Abstract

Humanity is at once the most universally and uncritically accepted humanitarian principle. It is not, however, without controversy. This article defines the principle of humanity and then explores its inherent tensions, related to universality and particularism, inclusion and exclusion, and equality and inequality. The article concludes with a call to operationalize and concretize humanity through three sets of transformative practices and everyday actions. Together these embody the relational nature of humanity, and suggest ways forward in reforming humanitarianism.

Keywords: humanity, humanitarian action, humanitarian principles.

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Following the outbreak of Ebola virus disease (EVD) in West Africa in 2014, Gayle Smith, a senior US official at the National Security Council, called Ebola a “threat to all humanity” and challenged the notion that it is an “African disease”.¹ She was referring to the need for action based on the idea that Ebola is a shared threat to all humans, and not only to a particular group of human beings. One hundred years before, on Christmas Eve 1914, soldiers on opposite sides of the battlefield engaged in an act of shared humanity, in what has become known as the Christmas Truce. After fighting, maiming and killing each other, German and Allied soldiers exchanged greetings and gifts, collected and buried their dead, and sang Christmas hymns, including “Silent Night”.² The latter story exemplifies what Cornelio Sommaruga, the former president of the International Committee of the Red Cross (ICRC), has called an “island of humanity in the midst of war”.³

Both examples evoke an ideal conception of humanity, rejecting difference and appealing to a common sense of our identities as human beings. In humanitarian work, *humanity* is a core and widely accepted principle. Jean Pictet, the architect of the modern-day Fundamental Principles of the Red Cross and Red Crescent Movement (the Movement), referred to humanity as the essential principle “from which all other principles are derived”, signalling its foundational nature for the humanitarian endeavour. However, he did not define it beyond claiming its “special place because it is the expression of the profound motivation of the Red Cross”.⁴ Nevertheless, in his commentary, Pictet describes the purpose of the Red Cross, as the expression of humanity, as being to “prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being.”⁵ Moreover, he writes, humanity is not simply about preventing and alleviating suffering; the manner by which humanitarians provide assistance and protection is significant. In his words, “the way in which that help is given is of great importance. When nursing a patient or giving help, one must show some humanity.”⁶

As a principle, humanity implies an inherent worth and dignity of the person, and by extension, the right to life. It is thereby tied to the equality of individuals and the integral nature of protecting civilian populations to humanitarian assistance. It is one of four principles informing the modern humanitarian response, on the battlefield and beyond. It is fundamentally

1 David McCormick, “Ebola is a Threat to All of Humanity Warns U.S. Official as Fatalities in West Africa Surge to Over 1,900 and a Second Cluster of Cases is Confirmed in Nigeria”, *Daily Mail*, 3 September 2014, available at: www.dailymail.co.uk/news/article-2741765/Missionary-infected-Ebola-discuss-recovery.html (all internet references were accessed in May 2015).

2 Documented at: www.christmastruce.co.uk/article.html.

3 Cornelio Sommaruga, “Humanity: Our Priority Now and Always. Response to ‘Principles, Politics, and Humanitarian Action’”, *Ethics and International Affairs*, Vol. 13, 1999, p. 26.

4 Jean Pictet, “The Fundamental Principles of the Red Cross: Commentary”, *International Review of the Red Cross*, Vol. 210, 1979, p. 135. Aside from humanity, the Fundamental Principles of the Movement are impartiality, neutrality, independence, voluntary service, unity and universality. By contrast, humanitarian actors tend to refer to humanity, impartiality, neutrality and independence as the four classic or traditional humanitarian principles.

5 *Ibid.*

6 *Ibid.*

normative. The modern, institutional and system-oriented response is built on the classic principle of humanity as well as that of impartiality, referring to the provision of assistance according to need (proportionality) and without discrimination, and the operational principles of independence (autonomy of action) and neutrality (not taking sides).⁷

On the surface, humanity is the least controversial of the four classic principles of humanitarian action and holds primacy as a space of common ground among a diverse community of aid actors. Indeed, the desire to help and protect civilians suffering the malevolent effects of violence is what motivates the choice of many humanitarians to help and to put themselves in harm's way. According to one analyst, "What unites the various facets of humanitarianism is a broad commitment to alleviating the suffering and protecting the lives of civilians caught up in conflict or crisis."⁸

Paradoxically, the broad acceptance of this commitment to humanity means it is often lost as an operational or orienting principle. On the one hand, humanity is a philosophical and emotive concept rooted in compassion, empathy and sameness: we are all part of the same human race, and as a result, we are all deserving of respect, dignity and rights. The endowed and inherent qualities of our common humanity are eloquently spelled out in the Preambles to the United Nations (UN) Charter and the Universal Declaration of Human Rights.⁹ This is the universality of humanity.

On the other hand, humanity's meaning and application are not without controversy, nor is its compassionate essence always entirely laudable.¹⁰ Critics of humanitarianism have pointed to the inherent inequality of exchange, a dual world of givers and receivers where some are elevated in status and a world in which the role of power is ignored.¹¹ Others have noted the exclusivity of "humanity", in which some are included and others are inadvertently or deliberately excluded from our notions of humanity. This is particularly true in armed conflict. For instance, a recent Al-Jazeera editorial regarding its commemorative story of the fifth anniversary of the Syria conflict illustrated the limits and exclusivity of humanity. The editorial revealed that although many

7 ICRC, *The Fundamental Principles of the International Red Cross and Red Crescent Movement, In Brief*, Geneva, 8 August 2014, available at: www.icrc.org/eng/resources/documents/publication/p4046.htm.

8 Antonio Donini, "The Far Side: The Meta Functions of Humanitarianism in a Globalised World", *Disasters*, Vol. 34, Suppl. 2, 2010, p. 220.

9 Charter of the United Nations, 26 June 1945, 1 UNTS XVI (entered into force 24 October 1945). The Charter is available in its entirety online, including the Preamble, at: www.un.org/en/documents/charter/preamble.shtml. Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: www.un.org/en/documents/udhr/.

10 Ilana Feldman and Miriam Ticktin, "Introduction: Government and Humanity", in Ilana Feldman and Miriam Ticktin (eds), *In the Name of Humanity: The Government of Threat and Care*, Duke University Press, Durham, NC, 2010. See also Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*, University of Minnesota Press, Minneapolis, MN, 2000; and Ilana Feldman and Miriam Ticktin (eds), *In the Name of Humanity: The Government of Threat and Care*, Duke University Press, Durham, NC, 2010.

11 On the inequality of exchange, see Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies*, trans. I. Cunnison, Martino, Mansfield Center, CT, 2011, first published 1954.

people retweeted Al-Jazeera's assertion that the world did not care about Syria, few bothered to actually read the story.¹² Others have criticized European governments' responses to the migrant crisis in the Mediterranean Sea as being overly focused on security and border regulation as opposed to humanitarian concerns or human rights.¹³

On the battlefields of Solferino, as eloquently captured in Henri Dunant's *Memory of Solferino*,¹⁴ and in the first Geneva Convention of 1864, "humanity" – particularly in its legal sense – referred primarily and even exclusively to wounded soldiers, thus reflecting the reigning European prejudices of the day.¹⁵ At a minimum, the visions of humanity that animated the imaginations of the founders of international humanitarian law (IHL) and early humanitarian campaigns likely reflected a different vision than that of today.¹⁶ In war, belligerents appeal to an exclusive humanity and dehumanize the "other" in ways that enable – not delegitimize – violence.¹⁷ It is precisely an exclusive humanity that makes violence possible, even palatable. As Hannah Arendt asserted several decades ago, a "highly organized and mechanized humanity" could, by majority decision, choose to "liquidate" part of humanity.¹⁸ In the Rwandan genocide of 1994, Hutu militants referred to Tutsis as "cockroaches", and in World War II Allied and Axis forces alike created caricatures of the other side that portrayed them as monkeys, monsters or malleable and weak individuals motivated by greed and power.¹⁹ Such enemy images still characterize, and subsequently enable, the torture and degrading treatment at Guantanamo Bay and Abu

12 In the words of the author, "When we tweeted the accusation that the world didn't care, many people retweeted it. But most didn't click the link to read our stories. Perhaps they wanted to be seen to care. Perhaps they believed that people should care. But they didn't care enough to read what we had written." Barry Malone, "You Probably Won't Read this Story about Syria", *Al-Jazeera*, 17 March 2015, available at: www.aljazeera.com/blogs/middleeast/2015/03/wont-read-piece-syria-isil-iraq-isis-150317125900133.html.

13 E.g., Alexander Betts, "Forget the 'War on Smuggling', We Need to Be Helping refugees in Need", *The Guardian*, 25 April 2015, available at: www.theguardian.com/commentsisfree/2015/apr/25/war-on-trafficking-wrong-way-to-tackle-crisis-of-migrant-deaths.

14 Henri Dunant, *A Memory of Solferino*, ICRC, Geneva, 1986, first published 1862.

15 Michael Barnett, *Empire of Humanity: A History of Humanitarianism*, Cornell University Press, Ithaca, NY, 2011.

16 See, for example, Rotem Giladi, "A Different Sense of Humanity: Occupation in Francis Lieber's Code", *International Review of the Red Cross*, Vol. 94, No. 885, 2012.

17 This dehumanization holds for the victims and, sometimes, for their tormentors and killers. The individuals from Islamic State/ISIS who are responsible for the gruesome beheadings of aid workers and journalists (Steven Sotloff, James Foley and Peter Kassig, among others) dehumanized their victims to enable the violence. At the same time, the lack of identifiable features, even extending to the location of the murders, makes it easier to dehumanize the perpetrators.

18 Hannah Arendt, *The Origins of Totalitarianism*, Harvest, San Diego, CA, 1979, p. 299. See also David Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, Back Bay Books, Hachette, New York, 2009; J. Glenn Gray, *The Warriors: Reflections on Men in Battle*, Bison Books, Lincoln, NE, 1998.

19 Sam Keen, *Faces of the Enemy: Reflections of the Hostile Imagination*, Harper & Row, San Francisco, CA, 1986.

Ghraib²⁰ as well as the recent violence at *Charlie Hebdo*.²¹ Therefore, humanity as a principle must also be defined legally and morally by what it is not: inhuman treatment, the denial of human rights or the degradation of the person, all of which imply the absence of respect and dignity.

As an operational principle, humanity has received far less attention. Its contributions are usually more abstract, with uncritical reference to its universality as a principle. Its compelling character and capacious meaning allow its use to justify military action in service of foreign policy or national security interests²² and motivated Martin Luther King Jr's eloquent appeal to an "inescapable network of mutuality" to dismantle segregation in the United States through non-violent resistance and civil disobedience.²³ Reference to humanity consequently encompasses a plethora of means, from military operations to non-violent actions, in search of a common end: the humanity implied by our essential sameness. Clearly, humanity elicits multiple and contradictory interpretations.

The purpose of this article is not to trace the history of humanitarianism²⁴ or the motivating power of humanity, with its *mission civilisatrice* and patronizing or belittling impulses, nor to comprehensively delineate the philosophical or legal debates surrounding the principle, its proponents and its critics. While naive and uncritical views of humanity are of limited use for humanitarians in the field, so too are abstract debates that ignore the operational implications of humanity. Instead, the article explores the interlocking, inherent tensions of the principle of humanity, rooted in its ideal vision and its imperfect manifestations. It articulates their operational implications, and argues that humanity as a principle must be concretized and operationalized in everyday actions. Regardless of whether an agency claims solidarity or neutrality, or operates from a faith-based or secular perspective, humanity, with its associated practices, can and must serve as an

20 Guantanamo Bay refers to the US military detention centre on the naval base of the same name on the island of Cuba. Abu Ghraib is an Iraqi prison, used first by Saddam Hussein and later by the US military, at which many Iraqis were housed in inhumane conditions, abused, humiliated and tortured. On Abu Ghraib, see Seymour M. Hirsh, "Torture at Abu Ghraib", *The New Yorker*, 10 May 2004, available at: www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib.

21 In early January 2015, two gunmen attacked the offices of the French satirical magazine *Charlie Hebdo*, killing twelve people. The gunmen were affiliated with the Yemeni branch of al-Qaeda. BBC News, "Charlie Hebdo Attack: Three Days of Terror", *BBC News*, 14 January 2015, available at: www.bbc.com/news/world-europe-30708237.

22 See, for example, Taylor Teaford, "Helping Humanity and Advancing American Interests", *War on the Rocks*, 2 October 2014, available at: <http://warontherocks.com/2014/10/helping-humanity-and-advancing-american-interests/#>. In the blog post, the author advocates for expanding US military presence in West Africa through its Ebola response.

23 While King did not use the term "humanity", he does appeal to humanity-as-sentiment through the connectedness of blacks and whites in the United States: "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly." Martin Luther King Jr, *Letter From a Birmingham Jail*, 16 April 1963, p. 2, available at: <https://kinginstitute.stanford.edu/king-papers/documents/letter-birmingham-jail>.

24 See, for example, M. Barnett, above note 15; and Craig Calhoun, "The Imperative to Reduce Suffering: Charity, Progress, and Emergencies in the Field of Humanitarian Action", in Michael Barnett and Thomas G. Weiss (eds), *Humanitarianism in Question: Politics, Power, Ethics*, Cornell University Press, Ithaca, NY, 2008, available at: www.hhh.umn.edu/img/assets/28237/3%20Calhoun.pdf.

orienting principle for humanitarianism. While many of the practices outlined below are already considered good and ethical practice and are implemented in current humanitarian responses, they are rarely linked to or conceptualized as manifestations of the foundational principle of humanity. Shifting the principle from the abstract to the concrete and everyday makes humanity tangible and, in the process, opens space to promote systemic and principled reform through a more inclusive vision of the humanitarian endeavour.

In what follows, humanity is conceptualized as rooted in a person's inherent dignity and right to life, modified by a recognition of the social and therefore relational nature of human beings.²⁵ The first section briefly summarizes the legal foundations of the principle. Next, humanity's inherent tensions, related to the universal and particular, to equality and inequality, and to inclusivity and exclusion are explored. These inherent tensions imply three sets of practices that emerge from an interpretation of the principle of humanity as an operational guide for humanitarianism. The final section articulates the contributions of a concrete and operationalized humanity, both for practice and for prompting systemic reform.

Conceptualizing “humanity” in international law

Scholars of international law, including human rights law and IHL, agree that humanity is a central concept in international law and the Geneva Conventions²⁶ in particular, but disagree as to its precise meaning, scope of applicability and normative value. Robin Coupland, an ICRC field surgeon and adviser, asserts that international law is ambiguous about the meaning of humanity, which has prevented it from assuming a more central, guiding role. He suggests that two distinct but related concepts coexist in international law. The first is “humanity-humankind”, which refers to the collective existence of human beings. The second, “humanity-sentiment”, captures the behaviours and dispositions that are congruent with the (moral) view of being humane. As he notes, the link between the two is not entirely clear because “collective human existence is not necessarily associated with humane behavior of individuals”.²⁷ Tracing legal ambiguity

25 Larissa Fast, *Aid in Danger: The Perils and Promise of Humanitarianism*, University of Pennsylvania Press, Philadelphia, PA, 2014.

26 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950); Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950); Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950).

27 Robin Coupland, “Humanity: What Is It and How Does It Influence International Law?”, *International Review of the Red Cross*, Vol. 83, No. 844, 2001, p. 972. See also Robin Coupland, “The Humanity of Humans: Philosophy, Science, Health, or Rights?”, *Health and Human Rights*, Vol. 7, No. 1, 2003, pp. 159–166; and Thomas W. Laqueur, “Mourning, Pity, and the Work of Narrative in the Making of ‘Humanity’”, in Richard Ashby Wilson and Richard Brown (eds), *Humanitarianism and Suffering: The Mobilization of Empathy*, Cambridge University Press, Cambridge, 2009.

backwards in time, Coupland examines the foundational texts of the ICRC, which contain a concept of humanity more akin to “humanity-sentiment” than to “humanity-humankind”, but fail to differentiate between the two.²⁸

Humanity’s opposite, inhumanity, is perhaps more instructive, since it is more clearly defined in international law, and it is possible to identify the absence of humanity-as-sentiment in acts of inhumanity.²⁹ Such acts include torture, degradation and ill-treatment. Coupland suggests humanity “arises from and signifies restraining the capacity for armed violence and limiting its effects on security and health”.³⁰ For example, international law related to arms control and disarmament promotes humanity by reducing the likelihood of war and otherwise constraining the use of armed force. Human rights law focuses on personal/individual security. IHL bridges the two, and promotes humanity by protecting personal security and health in situations of armed conflict.

Like Coupland, legal scholar Ruti Teitel traces the development of what she terms “humanity law” over time, suggesting the evolution of a new normative order. She argues that a shift has occurred in the way law is applied and even conceptualized, in favour of the protection of individuals and peoples. As a legal framework, humanity law encompasses IHL, human rights law and criminal justice law and emphasizes the “protection and preservation of persons and peoples”³¹ in situations of violence. Humanity law has, over time, restricted State sovereignty and the use of force. This arises in part because many contexts are neither at war nor at peace in a traditional legal sense – thus, the law applies beyond situations of armed conflict and specifies a minimum order – and because State boundaries are no longer sacrosanct (e.g., a consequence of the effects of climate change that ignore borders and the prosecution of human rights violations in countries other than where the violations occurred). The end result is a legal regime that operates in favour of humanity rather than protecting the rights of States, and that restricts the excesses of State action.³² Similarly, in

28 See R. Coupland, “Humanity”, above note 27.

29 The advantage of defining something by its absence is its precision. While clearly important to any conceptualization of humanity, confining the principle of humanity to its negative meaning significantly narrows its scope since this only prohibits certain acts and does not encourage the compassion, respect or dignity implied in Pictet’s conception or other articulations of the principle of humanity. Johan Galtung, a prominent peace scholar, offers a similar critique of definitions of peace that are limited to the absence of war. Johan Galtung, “Violence, Peace and Peace Research”, *Journal of Peace Research*, Vol. 6, No. 3, 1969.

30 R. Coupland, “Humanity”, above note 27, p. 988. See also Jonathan Glover, *Humanity: A Moral History of the 20th Century*, 2nd ed., Yale University Press, New Haven, CT, 2012.

31 Ruti G. Teitel, *Humanity’s Law*, Oxford University Press, Oxford, 2011, p. 13. Legal theorist Costas Douzinas offers a counterpoint, distinguishing between the empirical universalism of the number of States that have ratified a given treaty and an idealized, normative universality of the human rights regime. He writes: “The community of human rights is universal but imaginary; universal humanity does not exist empirically and cannot act as a transcendental principle philosophically.” Costas Douzinas, “Humanity, Military Humanism and the New Moral Order”, *Economy and Society*, Vol. 32, No. 2, 2002, p. 160.

32 Arguments such as Teitel’s are akin to the International Commission on Intervention and State Sovereignty (ICISS)-defined “Responsibility to Protect” (R2P). The ICISS hallmark report from 2001 makes the case for the responsibility of the international community to uphold human rights – in situations of genocide, war crimes, ethnic cleansing or crimes against humanity – in the event that a

articulating the unique value of the principle of humanity, Hugo Slim argues for the application and ownership of humanity beyond the humanitarian community, precisely because of its prophetic power to restrict the excesses of war.³³

Both Coupland and Teitel recognize a fundamental tension between the individual nature of rights and the collective and social nature of human societies. Teitel suggests that the “law of humanity affirms the role of the individual within a layered conception that also takes account of the collective character of contemporary violence”,³⁴ despite the conflictual nature of the individual and collective “faces” of humanity. Others have likewise interrogated this tension, in the form of the universal duties and the particular aspects of one’s social identities, including citizenship. For example, Bhikhu Parekh writes:

Even as the citizen’s legal and political obligations should not lightly override his familial, ethnic, religious and other duties, neither should they ignore the universal obligations of his humanity, including such negative and positive ones as the duties to respect other human beings, to acknowledge their claims to equal consideration, to take account of their interests when one’s actions affect them, not to cause them harm, to relieve their suffering, and to help them flourish within the limits of one’s capacities and subject to one’s other obligations.³⁵

The agreements and disagreements within the law are instructive on several points in relation to the conceptualization of humanity and its application. First, in relation to the humanitarian response, the principle of humanity, as articulated in law, restricts the permissible actions of fighting forces and thereby the excesses of war. While not defining humanity in a positive sense, these restrictions define the absence of humanity in articulating what constitutes inhumane practice. Moreover, the law highlights a central tension between individual rights and the collective or social identities that moderate these rights. Finally, these legal discussions presage the inherent tensions, discussed below, between an inclusive and universal humanity and its exclusive and unequal application in reality. Under the law, humanity is universal and equal. Yet the interlocking tensions described above represent the gap between the legal, aspirational – not yet enacted – elements of humanity that motivate a compassionate, humanitarian

State is unwilling or unable to offer such protection. ICISS, *Responsibility to Protect*, International Development Research Centre, Ottawa, 2001. It thereby subordinates State sovereignty to the responsibility to protect. UN Security Council Resolution 1674, 28 April 2006, based on R2P, codifies into law the prevention of armed conflict and the protection of civilians, including gender-based and sexual violence.

33 Hugo Slim, “Sharing a Universal Ethic: The Principle of Humanity in War”, *International Journal of Human Rights*, Vol. 2, No. 4, 1998. In his more recent book *Humanitarian Ethics*, Slim frames his discussion of humanity in terms of ethics and the need to interpret and balance between conflicting principles. Hugo Slim, *Humanitarian Ethics: A Guide to Morality of Aid in War and Disaster*, Oxford University Press, Oxford, 2015, pp. 40–45.

34 R. Teitel, above note 31, p. 33.

35 Bhikhu Parekh, “Rethinking Humanitarian Intervention”, *International Political Science Review*, Vol. 18, No. 1, 1997, p. 61.

response and the pragmatic yet imperfect reality of its implementation as a principle.

The inherent tensions of humanity

The philosophical debates about humanity revolve around the tension between the universal and the particular, with overlapping implications for who is included and who is excluded. They therefore relate to the equality and inequalities of humanity. The philosophical debates place in stark relief the deficits and imperfect implementation of a universal and equal conceptualization of the principle of humanity.

As an abstract yet emotive concept, humanity denotes the universality of the human being. We, as humans, are the same; we are one. As humans we are not simply reducible to our biology and basic needs. Our lives are lived in rich and affective detail; we possess individual and unique biographies.³⁶ Hugo Slim refers to this as the value of humanity. It is precisely the affective appeal to compassion and even love that motivates humanitarian acts. The humanitarian act in response to armed conflict and natural disaster restores humanity by providing assistance and protection, particularly for those living *in extremis*. This is the virtue of humanity, which encourages us to act humanely toward others.³⁷

Yet the universalist entreaty of humanity masks a central tension between the appeal to sameness, on the one hand, and particularism, on the other. To assume all humans are the same, and thus equal, simultaneously assumes no difference and essentializes people to their “bare” and biological lives.³⁸ Saving lives involves counting lives, which reduces individual human beings to a dichotomous and minimalist state of living or dead.³⁹ In practice, this often means that some lives are valued over others: those affected by natural disaster over those enmeshed in violent conflict,⁴⁰ refugees over internally displaced, or international over national aid workers.

A number of scholars of humanitarianism deconstruct this tension, with particular reference to refugees.⁴¹ Humanity, according to Michel Agier, suggests

36 For more on the distinction between biologic and biographical lives, see Didier Fassin, “Humanitarianism as a Politics of Life”, *Public Culture*, Vol. 19, No. 3, 2007; and H. Slim, *Humanitarian Ethics*, above note 33, p. 48.

37 *Ibid.*, pp. 45–55.

38 The notion of “bare life” draws upon the work of Giorgio Agamben. Those cited here, including Michel Agier, Dider Fassin and Jennifer Hyndman, are scholars who draw upon Agamben in their critiques and fall within the tradition of Foucauldian critical theory. See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, translation by Daniel Heller-Roazen, Stanford University Press, Stanford, CA, 1998.

39 C. Calhoun, above note 24.

40 Rony Brauman, “Global Media and the Myths of Humanitarian Relief: The Case of the 2004 Tsunami”, in Richard Ashby Wilson and Richard D. Brown (eds), *Humanitarianism and Suffering: The Mobilization of Empathy*, Cambridge University Press, Cambridge, 2009.

41 See also Liisa Malkki, “Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization”, *Cultural Anthropology*, Vol. 11, No. 3, 1996.

a complete and essentializing identity, “with no room for inequality”.⁴² This mass of humanity is also a world of nameless victims, devoid of religion, sex or political opinion.⁴³ He writes: “Inside the camps, the category of ‘refugee’ is itself divided into several distinct subcategories of ‘vulnerability,’ which end up creating a hierarchy of misery.”⁴⁴ Thus, for Agier humanity is a fictional identity that categorizes people generically as “universal victims”, and operationally as members of a specific, vulnerable group, such as unaccompanied children or female-headed households. In order to be recognized, people must submit to the absolute (bio-)power of humanitarian agencies, sharing information, recounting trauma and embodying or showing injuries. In this, humanitarians hold the power to narrate and shape the biographies of other people’s lives. Humanitarians are therefore witnesses, while those they help are too often passive objects in the stories that engulf them.⁴⁵

Jennifer Hyndman, like Agier, points out the inherent tension between an essentialist identity and one based on difference. Focusing on UN humanism and the role of culture as shared humanity and culture as a basis of difference, she asks: “How, in the context of humanitarian assistance, can one practically avoid the consequences of constructing subjects as universal – a move which effectively subsumes differences of gender, ethnicity, and nationality – without essentializing identities and reifying these same categories?”⁴⁶ Countering this essentialism, she suggests, requires engaging with the particular cultures, politics and histories of the displaced. Didier Fassin similarly highlights the tension between humanity’s universalism and its particularism, where its aspirations are universal yet its enactment is rooted in inequality and difference, which are invariably particular.⁴⁷ Others interrogate the universal and particular aspects of humanity with reference to “enlarging the circle of moral inclusion”.⁴⁸

A related critique concerns humanity and charity, which highlights the inequalities and hierarchies between the beneficiaries/recipients and the providers of humanitarian assistance. In fact, humanity enacted as charity is often predicated on hierarchy, where those of higher status and means give of their

42 Michel Agier, “Humanity as an Identity and Its Political Effects (A Note on Camps and Humanitarian Government)”, *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, Vol. 1, No. 1, 2010, p. 33.

43 Recognizing the fact that fundraising appeals linked to individuals, as opposed to a “mass of humanity”, are more successful, many aid agencies reference a specific individual and the ability of donations to better his or her life and community.

44 M. Agier, above note 42, p. 39.

45 D. Fassin, above note 36, p. 518.

46 Jennifer Hyndman, “Managing Difference: Gender and Culture in Humanitarian Emergencies”, *Gender, Place and Culture*, Vol. 5, No. 3, 1998, p. 242. Hyndman examines these and other issues in more depth in *Managing Displacement: Refugees and the Politics of Humanitarianism*, University of Minnesota Press, Minneapolis, MN, 2000. While somewhat dated, her analysis demonstrates both the long-standing tension between the universal and the particular and the still-current relevance of her critique.

47 Didier Fassin, “Inequality of Lives, Hierarchies of Humanity: Moral Commitments and Ethical Dilemmas of Humanitarianism”, in I. Feldman and M. Ticktin (eds), above note 10.

48 Ilana Feldman and Miriam Ticktin, “Introduction: Government and Humanity”, in I. Feldman and M. Ticktin (eds), above note 10, p. 4; T. W. Laqueur, above note 27; Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens*, Cambridge University Press, Cambridge, 2004.

excess to those with less, and thereby incur obligations on the part of the latter to the former.⁴⁹ Jeffrey Stout refers to charity as the “gift that keeps on taking”.⁵⁰ These exchanges are inherently unequal and even disempowering.

Other critiques focus on the visual portrayal of the “beneficiaries” of assistance in advertising and advocacy campaigns, suggesting that many of the images implicitly remove the victim’s humanity.⁵¹ Even the terminology of beneficiaries and recipients can be disempowering. The narrative of the “beneficiary” highlights the unequal balance of power and resources in charitable exchange and removes any possibility of agency on the part of the recipient of assistance. This inequality also manifests in the marginalization of local expertise and resources in humanitarian response, where outsider and technical knowledge is elevated above the contextualized and lived expertise of those affected by natural disaster or violence.⁵²

These hierarchies characterize the relationships between aid workers/agencies and beneficiaries, as well as aid workers as a category. In deconstructing humanitarianism, Fassin highlights the “hierarchies of humanity”⁵³ that emerge in humanitarian response – hierarchies that value soldiers’ lives over those of civilians, the “freely sacrificed lives of aid workers”⁵⁴ set against the lives of the populations engulfed in the violence, and the lives of expatriate over national staff members. Thus, the hierarchies exist both in relation to external actors (e.g., soldiers or the civilian populations that humanitarian agencies assist) and within aid agencies. These particular and unequal hierarchies are at odds with the universal character of humanity.

As a category of actors, aid workers (referring to the staff of humanitarian as well as multi-mandate development organizations) are exceptionalized, a category that serves to mark them as separate and special under the law and in the spotlight of media attention. Under international law, aid workers, and UN and associated personnel in particular, receive special protections that accrue because of their status as aid workers.⁵⁵ This legal protection codifies the

49 T. W. Laqueur, above note 27; M. Mauss, above note 11. Michael Walzer, in contrast, suggests that humanitarianism is both charity and duty, a “two-in-one” in which we as individuals “choose to do what we are bound to do”. Michael Walzer, “On Humanitarianism: Is Helping Others Charity, or Duty, or Both?”, *Foreign Affairs*, Vol. 90, No. 4, 2011, p. 80.

50 Jeffrey Stout, *Blessed Are the Organized: Grassroots Democracy in America*, Princeton University Press, Princeton, NJ, 2010. I heard Stout use this phrase in a lecture on his book presented at the Kroc Institute, University of Notre Dame, on 18 October 2013.

51 See, for example, Denis Kennedy, “Selling the Distant Other: Humanitarianism and Imagery – Ethical Dilemmas of Humanitarian Action”, *Journal of Humanitarian Assistance*, 28 February 2009, available at: <http://sites.tufts.edu/jha/archives/411>.

52 This issue has received and continues to receive attention. See, for example, Alex de Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa*, James Currey, Oxford, 1997. For a more recent account, see Séverine Autesserre, *Peaceland: Conflict Resolution and the Everyday Politics of International Intervention*, Cambridge University Press, Cambridge, 2014.

53 Didier Fassin, *Humanitarian Reason: A Moral History of the Present*, University of California Press, Berkeley, CA, 2012, p. 223.

54 *Ibid.*, p. 227; D. Fassin, above note 47.

55 E.g., Convention on the Protection of UN and Associated Personnel, 9 December 1994, UNTS 2051 (entered into force 15 January 1999); Optional Protocol to the Convention on the Protection of UN and Associated Personnel, 8 December 2005, Doc. A/60/518 (entered into force 19 August 2010);

hierarchy between aid workers and civilians more generally, even though they are also civilians, and already deserving of the more extensive protections outlined for civilians under international law, including IHL.⁵⁶

This unequal treatment of aid workers and civilians likewise characterizes media stories. The deaths of civilians, for instance, usually appear as “dozens” or “hundreds” or, in the extreme cases, “thousands” of unidentifiable and nameless civilians who are killed in war, armed conflict or natural disaster. For example, recent headlines read “Europe Hesitates as Thousands Die Annually on Mediterranean”,⁵⁷ “Dozens Die in New Tremor” in Nepal,⁵⁸ and “More than 10,000 Afghan Civilians Died or Were Injured in 2014”.⁵⁹ Their deaths are often condemned, with calls to track down or punish the perpetrators. At other times, their deaths are relegated to obscurity, not even appearing in mainstream news sources. The deaths of aid workers likewise appear in news stories with depressing frequency. In contrast, however, their deaths are usually individual, with names, faces, biographies, accolades about their selfless work and descriptions of the grief of the families, friends and colleagues they leave behind.⁶⁰

It is not that aid workers are not deserving of these tributes – they usually are – but their powerful and individual stories exist in marked contrast to those of the affected civilians they help, who comprise a nameless and faceless humanity. Bombarding the consumer of news with the names and stories of every individual is not only impossible but is bound to backfire as people become numb to suffering. Yet it is precisely the individuality and specificity of the human stories that evoke empathy and sadness and that give power to memorials such as the Vietnam Memorial (United States), Yad Vashem (Israel) and Tuol Sleng (Cambodia), all of which name individual victims. While human rights organizations employ specific stories to evoke an emotional reaction – whether revulsion for the act or for the perpetrator – and elicit action, humanitarians often rely upon sheer numbers and their nameless/faceless corollary to prompt a

UNSC Res. 1502 (2003); and Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002), Art. 8(2)(vii).

- 56 For an in-depth discussion of the concept of humanitarian exceptionalism and the legal protections for aid workers, see L. Fast, above note 25, pp. 197–207. On legal protections, see also Kate Mackintosh, “Beyond the Red Cross: The Protection of Independent Humanitarian Organizations and Their Staff in International Humanitarian Law”, *International Review of the Red Cross*, Vol. 89, No. 865, 2007.
- 57 Max Ehrenfreund, “Europe Hesitates as Thousands Die Annually on Mediterranean”, *Washington Post*, 21 April 2015, available at: www.washingtonpost.com/blogs/wonkblog/wp/2015/04/21/wonkbook-europe-hesitates-as-thousands-die-annually-on-mediterranean/.
- 58 BBC News, “Nepal Earthquake: Dozens Die in New Tremor near Everest”, *BBC News*, 12 May 2015, available at: www.bbc.com/news/world-asia-32701385.
- 59 Sudarsan Raghavan, “More than 10,000 Afghan Civilians Died or Were Injured in 2014, UN Says”, *Washington Post*, 18 February 2015, available at: www.washingtonpost.com/world/more-than-10000-afghan-civilians-died-or-were-injured-last-year-un/2015/02/18/90aab7c6-b753-11e4-9423-f3d0a1ec335c_story.html.
- 60 When ten aid workers were killed in Afghanistan, stories of their work and lives appeared in multiple news stories. See CNN Wire Staff, “A Look at the 10 Aid Workers Killed in Afghanistan”, *CNN*, 9 August 2010, available at: www.cnn.com/2010/WORLD/asiapcf/08/09/afghanistan.victims.list/; and Shaila Dewan and Rod Nordland, “Slain Aid Workers Were Bound by Their Sacrifice”, *New York Times*, 9 August 2010, available at: www.nytimes.com/2010/08/10/world/asia/10aidworkers.html?_r=0.

similar reaction.⁶¹ The unequal treatment allotted to aid workers and civilians is yet another example of the particularism that characterizes the imperfect ideal of universal humanity.

Within aid agencies, the hierarchy manifests in terms of the treatment, resources, salary and benefits that accompany the status of international/expatriate and national or local staff. The salaries and benefits of international aid workers, including base pay, paid leave, health and other insurance, training opportunities and even evacuation in the case of violence, usually far surpass those offered to national staff. Even multiple subcategories exist within the category of “national staff”. Regional (those from neighbouring countries) and local staff (from the village or area in which they work) are treated as national staff, even though they are more or less familiar with the cultural context in which they operate and face different risks.⁶² Only occasionally do such hierarchies penetrate the public discourse. For example, given the significant burden of risk for those directly involved in caring for Ebola victims, international agencies faced the dilemma of recruiting foreign health workers to assist with the Ebola crisis response. While some victims with foreign passports were evacuated and received care in their home countries, the costs involved in evacuating individuals are significant. Instead, US officials decided to build a state-of-the-art medical facility in Monrovia to treat Ebola health workers, both from abroad and from Liberia.⁶³ While still indicative of an inequality between Ebola victims as civilians and as health workers, this hierarchy also addresses the higher risk that health workers face in the Ebola response.

Clearly, particularities, exclusivities and inequalities characterize the principle of humanity, as expressed in humanitarian response. These systemic tendencies are problematic, and the tensions they elicit will continue to characterize humanitarian response. Acknowledging them is crucial, even as their

61 Amnesty International advocates for specific victims of human rights abuses, and Human Rights Watch often employs individual stories in its reports. The Human Rights Data Analysis Group (HRDAG) triangulates lists of victims through multiple systems estimation to arrive at overall counts of human rights violations. See Megan Price, “When Data Doesn’t Tell the Whole Story”, *HRDAG*, 7 May 2015, available at: <https://hrdag.org/when-data-doesnt-tell-the-whole-story/>. The use of child sponsorship and of individual representative stories to highlight the positive effects of a donation are exceptions, whereby humanitarians employ individual narratives. Yet, as Fassin points out, all of these are examples where people’s biographical lives are narrated by a more powerful other. See D. Fassin, above note 36.

62 For example, in research based in East Africa (Kenya, South Sudan and Uganda), staff from different regions of a country or from neighbouring countries faced different risks based on where they were from, even though they tended to be lumped together as national staff and often received little or no customized training or benefits. See Larissa Fast, Faith Freeman, Michael O’Neill and Elizabeth Rowley, *The Promise of Acceptance: Insights into Acceptance as a Security Management Approach from Field Research in Kenya, South Sudan, and Uganda*, Save the Children, Washington, DC, 2011, available at: <http://acceptanceresearch.org/reports/final-report/>. Even though the example originates in East Africa, it is arguably relevant beyond this region and points to the importance of disaggregating risk according to multiple characteristics, including birthplace/location, ethnicity and nationality as well as job position and gender, and the subsequent complexity of risk management.

63 Sheri Fink, “Treating Those Treating Ebola in Liberia”, *New York Times*, 5 November 2014, available at: www.nytimes.com/2014/11/06/world/africa/treating-those-treating-ebola-in-liberia.html?emc=edit_th_20141106&nl=todaysheadlines&nlid=26958110&r=0.

manifestations are not set in stone. Unpacking the gestures of humanitarianism suggests the need to first identify, then to gradually chip away, and ideally to dismantle the hierarchies and exclusions that characterize the humanitarian endeavour. Instead, we must look to the sets of transformative practices and everyday actions that embody humanity and challenge the essentialism and exclusions of institutionalized humanitarianism. It is toward these everyday gestures and practices that operationalize the principle of humanity, and thereby enlarge the circle of moral inclusion, that the article now turns.

Operationalizing humanity

The inherent tensions of the principle of humanity and the critiques that accompany them raise fundamental questions for humanitarians to ponder, and ponder them they must. The critiques, however, often fail to take account of the ways in which humanity is, could and should be enacted in everyday actions and relationships, and how these point to the possibility of a more inclusive, effective and diverse humanitarian response. Thus, the tensions help to illuminate ways that humanity could be and already is better operationalized.

Three transformative practices and everyday actions hold the promise of moderating the inherent tensions of humanity: affirming local context and capacity; adopting vertical and horizontal accountability; and valuing proximity and presence. These, and the relationships they foster, occur at both the individual and organizational levels and are enacted in the mundane yet crucial daily interactions that take place between colleagues, partners and affected communities. These practices represent what is commonly recognized in existing codes of conduct as good practice and ethical conduct, even if not consistently applied. Yet they are not simply this; they are also manifestations of the principle of humanity. In breaking apart humanity into its daily and component parts, it acquires new meaning and operational implications. Making humanity less abstract and grounding it in everyday action and transformative practices can help to lodge the principle at the forefront of the humanitarian consciousness. Linking these actions to the principle of humanity not only makes the principle more tangible but also grounds efforts to reform the system in the principles. Taken seriously, they imply a profound reorientation of the ways in which humanitarianism is enacted.

Affirming local context and capacity

A consistent critique of the humanitarian response, identified above, is that it ignores or undermines local actors. Humanitarians are driven by the urgency of need before them, yet rushing in with outside resources and expertise displaces the local. When the international system moves in, it creates a wave of international resources and attention that overwhelms existing actors and responses that both predate and outlast international attention and action.

Related critiques highlight a dearth of listening and a tendency to privilege immediate action over reflection or deliberation. These critiques deftly identify the imperfect and hierarchical implementation of humanity as manifested in an unequal valuing of the knowledge, actions and expertise of those involved in giving and receiving assistance. These are manifestations of a conceptualization of humanity that elevates the universal over the particular.

Moreover, a conceptualization that relies solely upon the universality of humanity leaves no room for difference or for the role of culture. Among other things, the Ebola crisis and accompanying response have highlighted the necessity of cultural awareness and engaging the community in an emergency, not only in addressing public health crises but arguably for the more traditional humanitarian responses as well. For example, anthropological analyses of funerals and marriage rituals shed light on how and why Ebola spread between communities.⁶⁴ As one EVD responder passionately argued:

But in a public health emergency of this scale and danger, patient communication and counseling can be brushed aside under the pretext of urgency. Ebola patients can be considered mere disease-carriers rather than complicated, emotional human beings – and while at the highest levels reducing transmission is the top priority, neglecting the humane aspects of care can gravely undermine the public health response. ... But while cultural differences could contribute to the tension, it may also be that more universally human processes are going unacknowledged. In what culture would it be acceptable or productive to walk into a village and so brusquely identify and inform people that they have only days to live?⁶⁵

In the passage, the author makes a case for seeing individual victims as “complicated, emotional human beings”, for attention to the ways in which humanitarians deliver care, and for the importance of seriously considering mental health and the socio-cultural aspects of a response. All can be linked to a conceptualization of humanity that is both individual and rooted in social identity, and that affirms the particular, local context.

The humanitarian community is awakening to the role of culture and society as key determinants of the effectiveness of a humanitarian response. Aid programmes that are designed to “go slow to move fast” and that build from local and existing expertise and resources do exist.⁶⁶ The 2014 *World Disasters Report*⁶⁷ and the 2015 *World Development*

64 Paul Richards and Alfred Mokuwa, “Village Funerals and the Spread of Ebola Virus Disease”, *Cultural Anthropology Online*, 7 October 2014, available at: www.culanth.org/fieldsights/590-village-funerals-and-the-spread-of-ebola-virus-disease.

65 Raphael Frankfurter, “The Danger of Losing Sight of Ebola Victims’ Humanity”, *The Atlantic*, August 2014, available at: www.theatlantic.com/health/print/2014/08/the-danger-in-losing-sight-of-ebola-victims-humanity/378945/.

66 Mary B. Anderson, Dayna Brown and Isabella Jean, *Time to Listen: Hearing People on the Receiving End of International Aid*, CDA Collaborative Learning Projects, Cambridge, MA, 2012.

67 International Federation of Red Cross and Red Crescent Societies, *World Disasters Report, 2014: Focus on Culture and Risk*, Geneva, 2014, available at: www.ifrc.org/world-disasters-report-2014.

*Report*⁶⁸ are devoted to the role of culture and the importance of human behaviour and social norms in emergencies, disaster response and development. Cultural norms and behaviours, for instance, influenced both the spread of Ebola and arguably its mitigation. Anthropologists and other social scientists commented on various aspects of the response, from the histories of conflict and distrust of government to the cultural practices surrounding burials, and how these influenced the spread of the disease.⁶⁹ Indeed, the international response to the Ebola crisis was the first in which the UN employed an anthropologist as part of the mission.⁷⁰ After the chaos of the first months, agencies adapted their programming to better reflect the cultural context. These acts represent moves forward in better adapting emergency programming to context. It remains to be seen whether and how the valuing of culture will translate into the future. Operationalizing humanity, however, calls for a humanitarian response that affirms the particular – local actors, responses and cultural context – and not simply an abstract universal. As such, it suggests the need for greater humility on the part of international actors involved in humanitarian response, a humility that is geared toward the idea of contribution to the size, scope or effectiveness of a response as opposed to attributing these factors solely or primarily to individual agencies or non-local actors.

Adopting horizontal and vertical accountability

The concept of accountability in humanitarian response has received significant attention in the practice-focused and scholarly literatures.⁷¹ The call to operationalize humanity and the inherent tensions discussed above together suggest at least two important sets of practices related to accountability. First, the tensions highlight the hierarchies and inequalities that are baked into the current humanitarian system, particularly with respect to the treatment (e.g., pay scales)

68 World Bank Group, *World Development Report, 2015: Mind, Society and Behavior*, Washington, DC, 2015, available at: <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTWDRS/EXTNWDR2013/0,,contentMDK:23330018~pagePK:8258258~piPK:8258412~theSitePK:8258025,00.html>.

69 See, for example: www.ebola-anthropology.net and www.culanth.org/fieldsights/585-ebola-in-perspective. Many of these analyses rightly deconstructed the response, providing contextual interpretation that helped explain some of the failures of the early days of the response. Unfortunately, however, not all took the next step of suggesting practical steps for how responders could have taken account of the cultural context in their programming.

70 Anthony Banbury, “Creating UNMEER: Ebola and the UN’s First Emergency Health Mission”, *International Peace Institute Webcast*, 3 February 2015, summary available at: www.ipinst.org/events/speakers/details/597-banbury-credits-ban-with-mobilizing-un-ebola-response.html.

71 For more on accountability in humanitarian response, see the Humanitarian Accountability Partnership website, available at: www.hapinternational.org. For academic literature, see, among others, Dorothea Hilhorst, “Being Good at Doing Good? Quality and Accountability of Humanitarian NGOs”, *Disasters*, Vol. 26, No. 3, 2002; and Thomas D. Kirsch, Paul Perrin, Frederick M. Burkle, William Canny, Susan Purdin, William Lin and Lauren Sauer, “Requirements for Independent Community-Based Quality Assessment and Accountability Practices in Humanitarian Assistance and Disaster Relief Activities”, *Prehospital and Disaster Medicine*, Vol. 23, No. 3, 2012.

and classification of staff that provide access to benefits or resources (e.g., as “relocateable” in cases of violence breaking out and forcing agencies to withdraw staff). Equality does not imply sameness. While some inequalities are inevitable, the operationalization of humanity demands attention to these inequalities. This type of accountability is horizontal, referring to the need for accountability within aid agencies and all of their constituent staff members. For example, security management has too often focused on international as opposed to national staff.⁷² Operationalizing humanity requires analysis of the differential risk that all staff face and accounting for this in security management plans, such as through better access to training and other resources, and through adaptive and contextualized security measures. It suggests the need to provide for better mental health support for all staff. The above conceptualization of the principle of humanity suggests that it is impossible, and even inappropriate, to strive for or guarantee the same treatment for all staff. Yet it does require an assessment of the ways that aid agency policies and procedures support an exclusivist interpretation of humanity. It encourages agencies to take steps to rectify these exclusions and inequalities.

A second set of practices is linked to the affirmation of local context and capacity and suggests the need for vertical accountability, not only “upward” to donors but also “downward” to those affected by violent conflict, disasters or other crises. The call for greater accountability to the recipients of assistance, particularly refugees and displaced persons, is not new.⁷³ An evolution in this concept, linked to the technological advances of our world, is to conceive of this accountability in terms of the need to provide information to and to hear from affected communities and to use this information to adapt programming to better reflect context. Drawing upon the 2005 *World Disasters Report*, a 2013 UN Office for the Coordination of Humanitarian Affairs (OCHA) report identified information as a basic need in emergency response, linking it to the concept of human rights:

Humanitarian organizations have an operational and moral obligation to incorporate information into their work. It is demanded by the communities and individuals that humanitarian organizations serve. The freedom to seek, receive and impart information is part of the Universal Declaration of Human Rights.⁷⁴

Seeking out the perspectives of affected community members, carefully listening to them and, perhaps most critically, responding through programme adaptation are therefore requisite components of operationalizing the principle of humanity.

72 See L. Fast, above note 25; and Abby Stoddard, Adele Harmer and Katherine Haver, *Aid Worker Security Report. Spotlight on Security for National Aid Workers: Issues and Perspectives*, Humanitarian Outcomes, New York, 2011.

73 See, for example, M. Agier, above note 42; and J. Hyndman, *Managing Displacement*, above note 46.

74 UN OCHA, *Humanitarianism in the Network Age*, Policy and Studies Series, OCHA, New York, 2013, p. 56.

Valuing presence and proximity

A final practice that emerges from the discussion of the inherent tensions relates to the dangers of essentializing identities. Critics have commented on the monolithic and impersonal humanitarian system. Michel Agier, for example, asserts that the function of humanitarian organizations, “while technically distinct, tends to merge in everyday life into the manifestation of a single international, and totally sovereign, force”.⁷⁵ He later writes that the “humanitarian apparatus [is] a contemporary system of government and power, where control and assistance are entangled”.⁷⁶ Such a system essentializes those whom it purports to assist. Yet this analysis ignores the ways by which everyday practices reinforce and can challenge this totality, and assumes that the recipients of assistance are not necessarily capable of distinguishing between organizations within a system of control and assistance. This is both fundamentally true and incorrect, since community members can and do distinguish between organizations and their technical expertise.⁷⁷ Individual, everyday acts of compassion and respect do matter, and can pierce the monolithic identity of a “humanitarian government”. In the words of Vincent Cochetel, an aid worker who was kidnapped in Chechnya in 1998 and held captive for 317 days:

I think helping people in danger is responsible. In that war [Chechnya], that nobody seriously wanted to stop – and we have many of these today – bringing some assistance to people in need or a bit of protection was not just an act of humanity, it was making a real difference for the people.⁷⁸

Years later, a South Sudanese community remembered and celebrated a specific aid worker who assisted and stayed with them – who accompanied and literally walked with them – through the years of violence.⁷⁹

Countering essentialist identities requires seeing people as individuals who defy the confines of their labels and as needing more than the basic necessities. The value of humanity, then, cannot be restricted to simply providing protection or things, such as food, clean water, seeds or tools. It must also encompass the value of remaining present and proximate to those in need. Humanitarian assistance, as most aid workers know, is not only about providing assistance or protection. It is about how this assistance and protection are provided, and the profound value of

⁷⁵ M. Agier, above note 42, p. 34.

⁷⁶ *Ibid.*, p. 42.

⁷⁷ See Larissa Fast, Reginold Patterson, Alfred Amule, Simon Bonis, Lasu Joseph, Anthony Kollie, James Luer Gach Diew, Sirocco Mayom Biar Atek, Christopher Nyamandi and Jimmy Okumu, *South Sudan Country Report: Key Findings from Field Research on Acceptance in South Sudan*, Save the Children, Washington, DC, 2011, available at: <http://acceptanceresearch.org/reports/south-sudan-country-report>; Laura Hammond, “The Power of Holding Humanitarianism Hostage and the Myth of Protective Principles”, in M. Barnett and T. G. Weiss (eds), above note 24, pp. 172–195.

⁷⁸ Vincent Cochetel, “Attacks on Humanitarians Are Attacks on Humanity”, TEDx, Place des Nations, Geneva, 11 December 2014, published on 8 January 2015, available at: www.youtube.com/watch?v=1F5CsD2ekSA.

⁷⁹ Personal interview, South Sudan, April 2011.

knowing that others are paying attention. Some organizations, such as Médecins Sans Frontières, refer to witnessing, while others call this solidarity,⁸⁰ which implies a greater degree of affinity toward a particular group.⁸¹ The value of presence, therefore, is part of the power of the humanitarian response. This presence, however, points to the intangible aspects of the humanitarian response. Presence denotes “being present” as well as accompanying and “walking beside” those affected by disaster, war or armed conflict over the long haul.

The implications of such a conceptualization are not trivial. In particular, it questions the turn toward “remote management” in insecure contexts, where international staff leave and national staff remain to carry out programming. Proximity and presence require outsiders, and as a consequence, they imply a significant degree of risk. Witnessing by those who are in some way embedded within the context is important, yet it is the presence of a proximate outsider that provides its deterrent effect. Proximity and presence also challenge the use of fortified measures as elements of a security or risk management approach, which further separate aid workers from the people they assist. The benefits and drawbacks of remote management are contested,⁸² as is the value of humanitarian “bunkers” that more closely resemble fortified military compounds than aid agency offices or guesthouses.⁸³ These measures complicate any effort to be truly present in the midst of violence. A humanity-based humanitarianism requires, at minimum, a concerted evaluation of the intangible costs of these approaches, particularly in the most dangerous places.⁸⁴

Humanity as embodying the relational nature of humanitarianism

Unpacking humanity and the gestures of humanitarianism uncovers a series of contradictions and tensions. These tensions, however, can serve as platforms from which to analyze the shortcomings of humanitarian acts and identify pathways for reform. Humanitarianism is enacted within a complex set of interdependent relationships: between aid workers of various nationalities, between the givers and receivers of assistance, between local and national officials and aid workers, between donors and staff. Operationalizing humanity calls attention to these relationships and encourages a corresponding ethic that challenges the hierarchies

80 The MSF Charter refers to “bearing witness” (www.msf.org/msf-charter-and-principles). Norwegian People’s Aid refers to “solidarity in practice” (www.npaid.org/About-us), and Catholic Relief Services adopts solidarity as a guiding principle (www.crs.org/about/guiding-principles.cfm).

81 Obviously, solidarity in the sense of affirmation or endorsement of a specific group or agenda is at odds with the humanitarian principles of neutrality and, in some cases, impartiality. Solidarity-as-presence, in the sense of accompaniment for affected populations, however, might occupy a metaphorical space between neutrality and solidarity-as-endorsement.

82 See, e.g., Joe Belliveau, “‘Remote Management’ in Somalia”, *Humanitarian Exchange*, No. 56, January 2013, pp. 25–27.

83 Mark Duffield, “Risk Management and the Fortified Aid Compound: Everyday Life in Post-Interventionary Society”, *Journal of Intervention and Statebuilding*, Vol. 4, No. 4, 2010, pp. 453–474.

84 L. Fast, above note 25. Chapter 6 includes an expanded critique of these approaches.

and inequalities which exist within aid organizations and within the system itself, such as between the categories of civilians and aid workers as exceptions. Operationalizing humanity moves away from an exclusive and particular vision of the principle and suggests a relational, intersubjective interpretation of humanity as a way of further extending the boundaries of inclusion and a pathway to reforming the humanitarian system. Building from and on local context and capacity, enlarging accountability to include its horizontal and vertical dimensions, and affirming the value and implications of proximity and presence all encourage a different humanitarian system. Their value as responses to the inherent tensions of the principle is threefold: they explicitly link existing good and ethical practice to a foundational principle; they identify ways in which it is possible to moderate between the inherent tensions of humanity; and they recognize the possibility of operationalizing humanity in ordinary, everyday actions, thereby contextualizing the abstractions of humanity as a lofty and unattainable principle. Vertical and horizontal accountability link the internal and external practices of aid agencies. Presence and proximity embody the virtue and universality of humanity and elevate the role of the outsider. Affirming local context and capacity acknowledges the central place for the particular and the affected insider.

Operationalizing humanity will force aid agencies to recognize and grapple with the tension and inequalities that do exist and with the ways by which the everyday practices of aid define its meaning. It thereby holds the enterprise as a whole to a higher standard and helps to move it toward a vision that affirms the connectedness and equality inscribed in humanity as a guiding principle, both internally within organizations and externally in their relations with others suffering, living and working in the areas in which they operate. Additionally, it offers the possibility of a humanitarianism more consistent with the principles that it espouses.

In conclusion, the principle of humanity not only offers a prophetic call against the excesses of war, as Slim suggests,⁸⁵ or as a restraint on violence, as Coupland observes,⁸⁶ but also radically undermines the dominant dynamic of violence, which relies upon dehumanization and the denial of the humanity of the “other” to sustain it. To return to the words of former ICRC President Cornelio Sommaruga,

If humanitarian action can offer a respite in the fighting and preserve an island of humanity in the midst of conflict, then it can assume a positive and even politically useful role in the pursuit of reconciliation and reconstruction and in the development of new national and regional structures and ways of thinking.⁸⁷

85 H. Slim, above note 33.

86 R. Coupland, above note 27.

87 C. Sommaruga, above note 3, p. 25.

Failing to recognize this fact underestimates the profound potential of the principle of humanity.

The imperfect implementation of the principle of humanity will likely remain, yet it does not excuse the humanitarian community from taking steps to rectify its exclusiveness and particularities. Cochetel concludes his talk by passionately and movingly explaining his continued motivation for humanitarian work, after his kidnapping in Chechnya: “We try to do whatever we can to provide some assistance, some protection, some comfort. We have to, we can’t do otherwise. It is what makes us feel, I don’t know, simply human.”⁸⁸ To him, not trying is worse than failing. He recounted his reply to colleagues and others who asked him why he continued as an aid worker: “My answer was very simple. If I had quit, that would have meant that my kidnappers had won. They would have taken my soul, my humanity.”⁸⁹ Indeed, the principle of humanity, along with its inherent tensions, offers a framing from which to challenge the existing system and work toward reforming the institutionalized response. None of the transformative practices and everyday actions articulated above is new or original. Together, however, they add up to a more inclusive, equal and universal humanity and a more responsive humanitarianism.

88 V. Cochetel, above note 78.

89 *Ibid.*

Volunteers and responsibility for risk-taking: Changing interpretations of the Charter of Médecins Sans Frontières

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Abstract

The Charter of Médecins Sans Frontières (MSF), the guiding document for all of the organization's members, states in the final paragraph that volunteers "understand the risks and dangers of the missions they carry out". Through a review of the different periods in the history of MSF, this article analyzes the changing interpretations that the organization's successive leaders have given to this reference to the acceptance of risk by individuals. The professionalization and

* This article is the result of a joint reflection with the members of the Centre de Réflexion sur l'Action et les Savoirs Humanitaires (CRASH) of MSF France, and greatly benefited from access to French section sources and the work carried out by Michaël Neuman on the history of this section's debates on security issues. See Michaël Neuman, "Value of Danger, Refusal of Sacrifice and Logics of Professionalisation: MSF's Debates over Security", in Michaël Neuman and Fabrice Weissman (eds), *Saving Lives and Staying Alive: The Professionalisation of Humanitarian Security*, Hurst & Co., London, forthcoming 2016. The authors would like to thank Rony Brauman, Françoise Duroch, Michaël Neuman and Fabrice Weissman for their careful reading of this article and their insightful suggestions.

expansion of MSF, coupled with its diversifying volunteer base and the changing international environment, have required constant renegotiation of the balance between institutional and individual responsibility for the dangers faced in the field. No doubt this process is far from over.

Keywords: humanitarian principles, Médecins Sans Frontières, security, volunteers, humanitarian action, institutional responsibility.

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Unlike the International Committee of the Red Cross (ICRC), the organization Médecins Sans Frontières (Doctors Without Borders, MSF) has no formal mandate – it has not been commissioned by States or other institutions to carry out humanitarian action – and instead bases its work on the principles enshrined in its Charter.¹ The MSF Charter refers to the three “Dunantist” principles of neutrality, impartiality and independence shared with the International Red Cross and Red Crescent Movement, but it is in the name of “universal medical ethics and the right to humanitarian assistance” and with respect for their “professional code of ethics” that the organization’s volunteers claim “full and unhindered freedom in the exercise of their function”.² The legitimacy of MSF’s humanitarian action was originally derived less from international humanitarian law (IHL) than from the affirmation of medical care as a universal right and from a politico-philosophical engagement. In the Cold War years, when the organization was founded, the symbolic figure of the *sans frontières* doctor probably owed less to the Geneva Conventions than to the position held by Albert Camus, who refused to choose between two murderous ideologies and proposed that we should “at least save human lives, so as to ensure the future”.³ But it is the final paragraph of the Charter that deserves particular attention: “As volunteers, members understand the risks and dangers of the missions they carry out and make no claim for themselves or their assigns for any form of compensation other than that which the association might be able to afford them.”⁴

The MSF Charter is the document that cements the collective identity of the organization and its members. As asserted in all the intersectional agreements adopted throughout the history of the MSF movement, the Charter is the basic

1 MSF Charter, available at: www.msf.org/msf-charter-and-principles (all internet references were accessed in June 2015).

2 *Ibid.*

3 “[A]u moins de sauver les corps, pour que l’avenir demeure possible”: Albert Camus, “Ni victimes ni bourreaux”, *Combat*, November 1948. The guiding principles adopted by the MSF sections as a result of the Chantilly Conference in 1997 echo more clearly still the Camusian position: “Médecins Sans Frontières (MSF) was founded to contribute to the protection of life and the alleviation of suffering out of respect for human dignity. MSF brings care to people in precarious situations and works towards helping them regain control over their future.” MSF International Bureau, *Principes de référence du mouvement Médecins Sans Frontières*, 1997, English translation available at: http://association.msf.org/sites/default/files/rst_library_item/Principles%20Chantilly%20EN.pdf.

4 MSF Charter, above note 1.

document to which all its national sections⁵ commit themselves to adhere. All the volunteers sent into the field to take part in operations are also bound by the Charter. However, several decades after it was drafted, the ethical and legal value of the final paragraph of the document is not beyond question. At a time when there is deep concern across the international humanitarian movement about threats perceived to be of an unprecedented scale and nature, and when legal and technical rules borrowed from the private for-profit sector, notably the duty of care, are increasingly influencing employment relationships and institutional responsibilities in the aid sector,⁶ what does the text of the MSF Charter actually mean in practical terms with regard to responsibility for risk-taking? Is it still a relevant guide for the organization's work?

Rony Brauman observed in a past edition of this journal that the commonly held idea that MSF was created in opposition to the ICRC's commitment to remain silent is something of a founding myth written in retrospect.⁷ Another little-known part of MSF's history is that some of the founders, despairing of ever being able to establish an independently operating organization, had resolved, three years after it was created, to make MSF a recruitment platform that would provide existing aid agencies with health-care volunteers, ensuring that their work received media attention.⁸ For more than a decade, the leaders of the organization talked more about *the Médecins Sans Frontières* than about MSF the organization. Although the Charter defined the collective ethos that united these committed professionals, the final paragraph of the text and its implementation in operational terms – taking into account that the material and logistical support that the organization could provide for its volunteers was, in practice, extremely limited – required of each of them an individual commitment and seemed to value a spirit of selflessness and vocation, only heightened by the reference to potential dangers. The original text of the Charter lent itself to this interpretation, as the Doctors Without Borders were presented as “anonymous” and unpaid (“bénévole”) and expecting “no personal or collective reward from their work”.⁹

The emphasis that the authors of the Charter apparently placed on individual choice and responsibility was never formally abandoned. Yet, by breaking away from the vision of the founders at the end of the 1970s and setting

5 MSF is now an international movement consisting of twenty-three national associations or sections, each governed by a Board which is elected by its members at its Annual General Assembly.

6 See Dr Liesbeth Claus, “Duty of Care and Travel Risk Management Global Benchmarking Study”, *International SOS Benchmarking Series*, 2011, available at: www.internationalsos.com/~media/corporate/files/documents/global_duty_of_care_benchma1.pdf; Edward Kemp and Maarten Merkelbach, *Can You Get Sued? Legal Liability of International Humanitarian Aid Organisations Towards Their Staff*, Security Management Initiative Policy Paper, November 2011, available at: www.securitymanagementinitiative.org.

7 Rony Brauman, “Médecins Sans Frontières and the ICRC: Matters of Principle”, *International Review of the Red Cross*, Vol. 94, No. 888, 2012, pp. 1523–1535.

8 See, for example, Anne Vallaëys, *Médecins Sans Frontières, la biographie*, Editions Fayard, Paris, 2008.

9 Original text of the MSF Charter published in the medical journal *Tonus*, No. 493, 3 January 1972; see www.msf.fr/association/charte-medecins-sans-frontieres. It was not until 1991 that the current text of the Charter replaced this initial version.

in motion the progressive development of an organization equipped with the human, logistical and financial resources required to implement independent relief activities, the generation that carried on the MSF project was in effect making volunteers increasingly reliant on institutional and hierarchical mechanisms. This entailed a sharing of responsibilities in terms of risk-taking and security, which has been subject to constant renegotiation ever since. The growth of the organization itself has continued to provoke opposing positions on the question of dangers faced in the field: on the one hand, security issues and threat assessment were seen to justify acquiring more resources, professional skills and procedures, while on the other, it was argued that uncontrolled growth would pose new risks for volunteers.

The very concept of volunteering has been another issue that has remained open to debate. In 1991, the five sections founded over the previous two decades agreed to revise the text of the Charter, and it was in this revised text that the final paragraph introduced the word “volontaire”/“volunteer”. The amendment did not, however, add anything in terms of status or specific legal content to the concept. In France, there is a legal definition of the term “volontaire”,¹⁰ which distinguishes it from “salaried employee” as well as “bénévole” (a *bénévole* receives no monetary compensation, while a *volontaire* receives an allowance), but this is not the case in all the countries with MSF national sections. The move to introduce a salaried status for some expatriate positions in the field did not preclude either that these employees continued to be referred to as “volunteers” in the organization’s discourse. In effect, the “volunteers” referred to in the Charter soon came to mean all professionals who engage with the organization’s work by joining its teams in the field. By so doing, they were becoming members of the MSF organization, which, up until the early 2000s, differentiated them from national staff. From then on, the issue of the geographic origin of MSF volunteers, previously of mainly Western origin, and the dividing line between expatriates and “national” staff would become the subject of debate and, later, reforms which are still in progress today. The profile of the MSF volunteer has thus evolved. However, in the numerous debates that have punctuated the history of the organization, whether to praise or to limit individual risk-taking has remained a pending issue.

While the work of sociologists such as Pascal Dauvin and Johanna Siméant focuses on the evolution in the motivations of humanitarian volunteers,¹¹ the authors of this article aim to analyze the changing interpretations given to the MSF Charter and its reference to the individual acceptance of risk by volunteers throughout the history of the organization, from the point of view of the institution through the discourse of some of its representatives.¹² This account,

10 In fact, there are various categories of volunteers recognized in French law. See, for example: www.associations.gouv.fr/955-benevolat-et-volontariat-en-france.html.

11 Pascal Dauvin and Johanna Siméant, *Le travail humanitaire: Les acteurs des ONG du siège au terrain*, Presses de Sciences Po, Paris, 2002.

12 The authors, who are members of the French and Swiss sections of MSF, chose, for reasons of ease of access to archives and adaptation to the format of this article, to use as their main sources the reports of the presidents of these two sections and the reports of some of their Board meetings. The

which does not claim to be exhaustive, is divided into three periods, which have been called the “time of adventure”, the “time of concern” and the “time of terror”, based on the changing outlook of key players and the prevailing geopolitical factors. The aim is to show the persistence of certain dilemmas and major ethical and political questions, to which the profound changes occurring in the organization and in the world in general make it necessary to find new, yet always momentary, answers.

The time of adventure

During the first decade of MSF operations and even beyond that time, the dangers faced by volunteers in the field were highly romanticized. The organization’s first spokespersons saw them as a matter of “destiny”, the inevitable “price to pay”, the necessary trade-off for the boldness of the volunteers’ mission.¹³ Under this vision, the Charter appeared largely sacrosanct as the founding document; it not only founded the organization and established a “duty”¹⁴ that its members were to fulfil, primarily in dangerous situations, but also initiated a unique, pioneering venture, which would inevitably be met with hostility and suspicion by a world that was not ready for the enlightened “reason” embodied by the Doctors Without Borders. “In this world, neutrality is always suspect ... we have not been able to avoid the insinuations, the murmurs of disapproval, the misinterpretations”, remarked MSF’s charismatic founder Bernard Kouchner in 1977.¹⁵ Three years later, when the first volunteer to be injured by gunfire was brought back from Chad, Xavier Emmanuelli¹⁶ observed that it was inevitable “that there should be combatants who are suspicious of us because we want to care for the weak and the abandoned, that there should be armed men gone mad to aim at our doctors and shoot them – for no reason”.¹⁷ There were, however, some reasons, of which the organization was not unaware: the actions of the

President’s Reports are the annual reports that the presidents of each MSF section present at the section’s General Assembly. They contain an overview of the progress of operations and major issues raised over the year in question. They are therefore a key source of institutional information, intended for internal use but not confidential, which symbolically involves the entire association, as all the members present vote to adopt or reject each report. Although the personality of the presidents is a factor, and different analyses and sensibilities may no doubt be expressed in other sections, the sociological developments and the dilemmas faced in the field, particularly with regard to risk-taking, have been extensively shared among MSF’s different operational sections throughout the organization’s history. Proof of this is the intersectional La Mancha Agreement and the debates that preceded it, which are extensively discussed in the third part of this article.

- 13 “We are well aware of the risks we run ... but we do it because this is our mission, and our mission is enshrined in our Charter.” MSF France, President’s Report, 1981 General Assembly, internal document, 1981.
- 14 “We will go – it is our duty – it is our Charter.” MSF France, President’s Report, 1980 General Assembly, internal document, 1980.
- 15 MSF France, President’s Report, 1977 General Assembly, internal document, 1977.
- 16 One of the twelve founders of MSF, Xavier Emmanuelli sided with the young proponents of the growth of the institution against Bernard Kouchner. The conflict led to Kouchner and most founders leaving the organization, while Emmanuelli stayed on until 1987 as a patron figure.
- 17 MSF France, President’s Report, 1980 General Assembly, internal document, 1980.

French army, which was a strategic ally of Hissen Habré, the president of Chad, clearly contributed to “the mistrust shown by the armed opposition group towards Europeans and the French in particular”.¹⁸ The small MSF medical team that had been working with the ICRC quickly resigned itself to withdrawing – possibly at the request of the ICRC? team itself – in order “to avoid putting the Swiss teams at greater risk”.¹⁹

Emphatic though it was, the discourse of the time did not therefore rule out the recognition of limitations on medical assistance or the adoption of measures to try to reduce the risks. Exploratory missions constituted the first such measure and indeed the first boundary for the exercise of individual judgement and free choice by volunteers. While asserting that “nothing great is achieved, nothing is built ... without taking risks”,²⁰ Francis Charon, president of the French section from 1980 to 1982, urged volunteers to exercise caution and a degree of discipline: “respect the guidelines proposed by exploratory missions. We are not expected to be heroes, we are asked to do our work as best we can, as warm-heartedly as possible, and above all to come back alive.”²¹ It is in fact not uncommon for exploratory missions or contacts with belligerents, sometimes on the initiative of the latter, to result in the decision not to send volunteers or to suspend relief operations. This was the case in Honduras, in 1980, when MSF refused to meet demands made by Farabundo Martí National Liberation Front (FMLN) guerrillas to send them a surgical team. Both ethical and security reasons were put forward to justify the refusal. As the FMLN did not control any territory in Honduras, MSF leaders considered that if they complied with the request, the volunteers would become “guerrilla doctors”, exclusively serving the armed group, which would expose them to attacks from anti-communist paramilitary groups in Honduras.²² The first mission to Afghanistan was also interrupted in the same year, because the Afghan contacts on which the operation depended were deemed unreliable. According to the head of mission, the demands for money made by the Mujahideen to escort the MSF teams “bordered on extortion”.²³

Added to this initial clash between the call for caution and the spirit of adventure, which continued unabated during the 1980s, was the tension inherited from the dispute that prompted Bernard Kouchner and most of the founders to leave the organization in 1979. Under its new leadership, MSF increased its human and technical resources. These measures were meant to professionalize the organization, but were also justified in the name of security: field coordinator positions became increasingly common, and so did the new means of communication for which they are responsible – “radios and walkie-talkies in Somalia and Honduras, planes in Uganda and telephones in Zimbabwe reinforce security”.²⁴ These new resources

18 *Ibid.*

19 *Ibid.*

20 MSF France, President's Report, 1981 General Assembly, internal document, 1981.

21 *Ibid.*

22 MSF France, Report of the Board, internal document, January 1981.

23 MSF France, Report of the Board, internal document, November 1980.

24 MSF France, President's Report, 1980 General Assembly, internal document, 1980.

evidently restricted the volunteers' autonomy, and the organization's new management felt compelled to defend itself from the "Kouchnerian" criticism that it was becoming overly bureaucratic: "Are [these innovations] necessary or do they weigh down the machinery of MSF? We believe that they are essential; we should no longer leave large or dispersed teams alone in these dangerous countries without any contact with France".²⁵ Although this issue was provisionally resolved in the 1980s, it has since resurfaced again and again in the wake of institutional growth and the creation of new national sections within the MSF movement.

Parallel efforts focused on winning over public opinion as a means of controlling the risks run by MSF teams. The new means acquired by the organization also contributed to this goal: opinion campaigns to secure the release of imprisoned volunteers and to denounce the Red Army bombings of field hospitals set up by Western NGOs in Afghanistan required new logistics, telecommunications and mobilization resources. These campaigns, in particular the one launched jointly with Médecins du Monde and Aide Médicale Internationale for the release of Dr Augoyard, jailed in Afghanistan for six months, led Rony Brauman, then president of the French section, to conclude in 1984 that "the support of public opinion [is] our only real protection".²⁶ The campaigns also gave the three NGOs, the so-called French Doctors, the idea of drafting a "charter for the protection of the medical mission" for States and intergovernmental organizations to sign, again relying on the pressure of public opinion.²⁷ This reflects the other main trend in this era, whereby MSF leaders regarded their work not as an effort to implement IHL but as an extension of it, a struggle to have new rights recognized. As Brauman put it, while accepting the risks of war is an integral part of the organization's mission,

part of these risks are due to the non-recognition, at the international level, of humanitarian action [carried out by foreign organizations in undeclared conflicts]. What is at stake there, the right to humanitarian assistance, the right to care, is in any case worth fighting for.²⁸

Contrary to the common perception that the 1980s were the final years of the golden age of humanitarian action, MSF members saw this decade as a time when they were struggling toward progress – that is, recognition for their cause, which should lead to improved security conditions for volunteers in the field. Although the above-mentioned joint project for a charter was promptly shelved, progress seemed to be made as the organization's reputation continued to grow, with bravery shown in action in the field closely linked to the courage shown in bearing witness and speaking out.²⁹ As Brauman proclaimed in 1987:

25 *Ibid.*

26 MSF France, President's Report, 1984 General Assembly, internal document, 1984.

27 *Ibid.*

28 *Ibid.*

29 The practice of bearing witness, which was never intended to be systematic, was at times renounced in the 1980s. One example is the case of Sri Lanka, where, for fear of reprisals against field teams and to avoid running the risk of being expelled from the country at a time when MSF was the only organization on the

Our work in the field is at the core of the highly positive image we enjoy ... and the difficulties arising from often sensitive environments give it a sense of adventure. However, our role as agitators, as expositors of closed-door massacres, remains a critical part of our work.³⁰

An example of this was the successful resolution of the abduction of an MSF team on the Somali border by an opposition group, which was largely attributed to the positive public image that MSF had achieved.³¹ Hence, the string of killings that left three MSF volunteers dead in Sudan in 1989 and in Afghanistan the year after were not seen as marking the end of an era, in spite of the evident shock sparked by these first fatal attacks. They were, rather, a tragic confirmation that the absence of targeted fatalities in previous years was largely due to “luck” and the “miracles” constantly referred to in the President’s Reports. Following the killings, Dr Olivier Strasser, president of the Swiss section of MSF (founded in 1981), observed:

Our vocation to provide medical assistance to civilian populations takes us to conflict areas where the safety of our volunteers is dependent on safeguards granted by the combatants. As a general rule, humanitarian assistance is respected. We must do everything in our power to ensure that this situation does not deteriorate and that recognition of the right of civilian populations at risk to receive assistance is spread throughout the world. To promote this right and denounce, in extreme cases, obstacles preventing it from being exercised is not the least of our organization’s roles.³²

The time of concern

The understanding of MSF’s role as a necessary denouncer of obstacles preventing populations’ right to receive assistance was definitely put to the test in the 1990s. As a consequence, some new operational *modus operandi* have been developed and the institutional structure has adapted, again bringing into question where the responsibilities lie – from the organization, including the associative part, to the volunteers – and indeed the very definition and understanding of volunteerism.

New compromises

At the 1990 MSF France General Assembly, held after the first violent volunteer deaths, the French section reaffirmed its commitment to war missions, defending

ground, the organization resigned itself to remaining silent, probably at the request of the volunteers themselves. See MSF France, Report of the Board, internal document, September 1989.

30 MSF France, President’s Report, 1987 General Assembly, internal document, 1987.

31 *Ibid.*

32 MSF Switzerland, President’s Report, 1990 General Assembly, internal document, 1990. This report also refers to the machine gun attack on an MSF vehicle in Uganda, in which three members of a team were injured and which prompted MSF to withdraw from the country.

them as a “foundational and fundamental characteristic of MSF”.³³ However, a debate arose on how best to adapt operational models to these more dangerous contexts. The outcome was a series of proposals, falling short of establishing new standards and essentially leaving the debate open:

[M]ore streamlined, periodic missions, where appropriate, exclusively curative objectives, highly detailed briefings and regular visits to assess the security environment by people not directly involved in the programme, preferably members of the Board, are some of the main points that have emerged from the debate so far.³⁴

The debate also prompted a rethinking of the sharing of responsibilities with regard to risk assessment and decision-making. Here also, it was a pragmatic approach that Brauman defended, taking into account the psychological conditions of volunteers in the field:

Although we all know that trivialization of a situation is one of the worst enemies of security, we are also well aware that it is, to a certain extent, essential to maintaining a mission; you cannot live and work while facing constant threats everywhere.³⁵

Following on from this and confirming the collective, but also potentially conflictive, nature of risk assessment, Brauman concluded that “it is by combining and contrasting points of view from the field and from HQ that we can piece together our responses and, when discrepancies arise, arbitral decisions will always err on the side of caution”.³⁶ However, these attempts to find a middle ground soon ran into difficulties, because with the multiplication of what would be called “extreme crises”³⁷ in the following years, even the path of caution led to dilemmas that were difficult to resolve.

The end of the Cold War and the conflicts that broke out in the early 1990s forced MSF to reconsider the limits of its action. To begin with, however, this did not seem to be interpreted as constituting a fundamental break with the volunteers’ past experiences, although it did oblige the organization to find new compromises and new positions. In Croatia, in the Battle of Vukovar, the explosion of a mine targeting an MSF convoy, in which two nurses belonging to the Swiss and French sections were seriously wounded, “revived”, according to the president of MSF Switzerland, Olivier Strasser, “the debate on how to protect our teams in situations in which even negotiation with all the parties to the conflict does not guarantee protection”.³⁸ In Somalia, an unprecedented solution was found to deal with the problem: the use of paid armed guards was negotiated

33 MSF France, President’s Report, 1990 General Assembly, internal document, 1990.

34 *Ibid.*

35 MSF France, President’s Report, 1991 General Assembly, internal document, 1991.

36 *Ibid.*

37 See Marc Le Pape, Johanna Siméant and Claudine Vidal (eds), *Crises extrêmes: Face aux massacres, aux guerres civiles et aux génocides*, La Découverte, Paris, 2006.

38 MSF Switzerland, President’s Report, 1992 General Assembly, internal document, 1992.

with the warring factions. According to the president of MSF France, “this solution pose[d] a serious problem of principle”³⁹ and was considered to be a compromise both temporary and unsatisfactory, even when compared with past reliance by field teams on Afghan Mujahideen groups or UNITA forces for their protection in the course of the previous decade. At the same time, the offensive nature of UN-mandated troops, particularly when led by Western forces, as in the case of Operation Restore Hope in Somalia, was beginning to raise concerns about the blurring of the lines between military and humanitarian action. This evolution prompted the French section to recruit an IHL expert and take this body of law into account in a much more systematic and rigorous manner than in the past in reminding these combatants about their responsibilities, although they were then much more focused on the “protection of civilian populations” than on the dangers to aid workers.⁴⁰

These new developments and challenges did not stop Brauman from voicing his scepticism, in 1993, about

the rather vague statements concerning the closure of the world, a new international context in which humanitarian action would become more and more difficult and less and less accepted. Comments about revival of identity, nationalist tensions, the rise of religious fundamentalism are bandied about. They are all real factors, but nobody has been able to prove, taking into account the importance of humanitarian action seen in the field, that these are insurmountable obstacles.⁴¹

Experiencing large-scale massacres and targeted attacks

The experience of MSF teams on the ground in Rwanda at the time of the genocide of the Rwandan Tutsi in 1994 was of a different nature.⁴² Up until the massacres began, following the assassination of the Rwandan president on 6 April 1994, the volunteers had not anticipated or understood the full implications of the political situation in the country, which they regarded as a civil war mainly affecting neighbouring Burundi. It was, in fact, Burundian refugees in Rwanda who were the first beneficiaries of MSF’s medical assistance. As the violence swept through the country, the teams were evacuated one after another. Almost always, they had to leave behind their Rwandan colleagues, who were mostly Tutsi, and many of whom were subsequently killed in the massacre. It was therefore a bitter observation that Philippe Biberson, the new president of MSF France, made a year later: “This failure to understand the situation and the hasty departure of

39 MSF France, President’s Report, 1992 General Assembly, internal document, 1992.

40 Judith Soussan, *MSF and Protection: Pending or Closed?*, Les Cahiers du CRASH, MSF, 2008, p. 21, available at: www.msf-crash.org/en/publications/2009/06/03/243/msf-and-protection-pending-or-closed/.

41 MSF France, President’s Report, 1993 General Assembly, internal document, 1993.

42 For a full account of these operations and the issues they raised, see Laurence Binet, “Genocide of Rwandan Tutsi (1994)”, *MSF Speaking Out*, 2004, available at: <http://speakingout.msf.org/en/genocide-of-rwanda-tutsi>.

our field teams brings to light our lack of preparation for the worst, which meant that we had to abandon our Rwandan staff in tragic circumstances.”⁴³ There is no shortage of examples of individuals taking risks in this tragic episode to care for or protect patients or colleagues, but most of these efforts were in vain. A notable exception, although with limited effect, was the medical and surgical team of six volunteers which managed to set up again in Kigali in mid-April and continued to provide assistance under the banner of the ICRC until the capital was taken by the opposition army, the Rwandan Patriotic Front.⁴⁴

Besides the lasting trauma that these events caused among the different sections of the MSF movement, the extreme violence perpetrated during the Rwandan genocide was to have repercussions in the Great Lakes region too, including, in some cases, targeted attacks against humanitarian organizations. Burundi was an emblematic case, with at least 17 expatriates killed in the period between 1994 and 1996, including three delegates of the ICRC. At the same time, the conflicts in Liberia, Sierra Leone and, to an even greater extent, Chechnya, where the mixture of criminal and political violence resulted in an escalation of killings and kidnappings, intensified and increased exposure to risks for members of the organization to an unprecedented level. In 1995, this situation gave rise to a new debate on the issue of responsibility, which attested to the growing complexity of decision-making mechanisms. As programme managers (PMs) at headquarters were able to maintain more regular contact with teams in the field, thanks to the increasing speed of telecommunications, their responsibility for risk-taking increased. At a Board meeting at MSF France HQ, PMs referred to the “unhealthy pressure” arising from a sense of “‘duty’ to stay in place at all costs”.⁴⁵ They also highlighted a growing contradiction in their functions, which they summarized as follows:

The PM informs the expatriate of the risk of attack and the safety measures he or she should take. Coordinators [in the field], while ready to take risks themselves, are reluctant to risk the lives of their teams. The PM [must therefore] advise them and encourage them to take risks.⁴⁶

They thus asked the Board members to provide a clear position on this matter: “It is up to MSF to place limits on the risks to be taken”.⁴⁷ The Board based its response on the fact that “risk is mentioned in the MSF Charter”.⁴⁸ There was no mention in this statement of volunteers on the ground having the primary responsibility for assessing risk. On the contrary, the Board members considered that, so long as the assessment is made by the operations department and its conclusions shared, “the association bears collective responsibility”.⁴⁹

43 MSF France, President’s Report, 1995 General Assembly, internal document, 1995.

44 L. Binet, above note 42, p. 19.

45 MSF France, Report of the Board, internal document, June 1995.

46 *Ibid.*

47 *Ibid.*

48 *Ibid.*

49 *Ibid.*

Over the following years, the Board was repeatedly requested to clarify the organization's position on sending teams to particularly dangerous areas or on maintaining them in such places.

The aid world under question

Concern expressed during this period was due not only to dangerous contexts, but also to developments within the aid world that were increasingly identified as risk factors. Philippe Biberson, president of the French section from 1994 to 2000, reiterated this warning with increasing emphasis throughout his term in office. In relation to the MSF operation in Chechnya, he lamented that “the tendency to design our response based on the range of resources at our disposal” rather than on context-specific considerations “has put us in a straightjacket, which constrains us and makes us vulnerable because we are too visible and have too much to lose”.⁵⁰ The following year, after humanitarian agencies had been repeatedly looted in Liberia, he condemned the “vain displays of power” and the “disparate intentions” of the aid world.⁵¹ At the MSF France General Assembly in 1997, he observed that “humanitarian missions have always been dangerous, but the multiplication of obstacles to aid [and] instances of intimidation, attacks, killings, raids, expulsions and hostage-taking affecting aid workers is a phenomenon that seems to be escalating”.⁵² The risks associated with war and crime are not new; it is the “political targeting” that, while not unknown in the past, “is particularly troubling today”.⁵³ Biberson also pointed to the increasingly crowded humanitarian landscape, with the multiplication of organizations and volunteers carrying out increasingly large-scale activities, many in the midst of conflicts, rather than on the periphery as in the past. In his view, the increase in the dangers faced in the field was due both to political factors, such as “imitative behaviour by organizations [and] standardization and assimilation of NGOs to States or international institutions”, and to economic factors, with “the sheer size of programmes being a contributing factor that exacerbates the problems and risks”.⁵⁴ He also stressed the fact that deteriorating security conditions often stem from a decline in protection of and respect for the civilian population: “in the Great Lakes region, in Chechnya, when there are victims from humanitarian organizations, there are thousands of deaths among the civilian population too”.⁵⁵

While there is a link between violence against aid workers and violence against the people they are trying to help, the technical, ethical and political options put forward to address these concerns may clash. In 1997, the French section opposed the veto imposed by other MSF sections, in the name of the security of their teams, on the publication of articles bearing witness to the

50 MSF France, President's Report, 1995 General Assembly, internal document, 1995.

51 MSF France, President's Report, 1996 General Assembly, internal document, 1996.

52 MSF France, President's Report, 1997 General Assembly, internal document, 1997.

53 *Ibid.*

54 *Ibid.*

55 *Ibid.*

systematic massacre of Rwandan refugees in eastern Zaire.⁵⁶ Operations managers and the members of the Board in Paris affirmed that “an approach seeking to defend civilian populations in danger takes absolute precedence over approaches seeking international coherence, internal functioning and ‘team safety’”. They were willing to agree to a “security warning” being issued to give volunteers twenty-four hours’ notice, but refused to be bound by a veto on speaking out on the subject.⁵⁷ A year later, Philippe Biberson voiced a new criticism concerning the problems caused by the security argument:

After the aid workers’ “blues”, it’s the security of aid workers that has become the new popular topic! Some organizations offer security training for their volunteers (can they still be called volunteers?) on what to do if they are taken hostage. This training is provided by security experts recruited from among retired army personnel The concept of humanitarian space is mishandled to the point that it becomes nothing more than an entrenched camp for humanitarians! It is often the image that we convey that makes us a target.⁵⁸

It is worth questioning the implicit nostalgia evoked by this identity crisis, which identified in the emergence of a “humanitarianism with many different faces” the probable cause of a “loss of respect from the civilian populations”.⁵⁹ As we have seen, MSF volunteers in the early years of the organization were not always welcomed. However, the “misinterpretations” about them were seen to come not from the “civilian populations”, but from armed groups, States or isolated individuals “gone mad”, tied up in logics of political calculation, ideological dogmatism or ignorance against all “reason”. Though they imagined that they were breaking with the past, notably with a long history of colonial and missionary medicine, the spokespersons of the first *sans frontières* doctors displayed little insight: no potential tension or power imbalances were envisioned in the relationship between humanitarian doctors and their patients. Instead, the practice of MSF doctors, naturally on the side of “oppressed peoples”⁶⁰ and often prone to the same perils that those peoples faced,⁶¹ could only be at odds with the world’s oppressors. Even the reference to the “complex ‘Western doctor–Afghan patient’ relationship” in the President’s Report of 1983 was soon eclipsed by the constraints that the Soviet occupying force had imposed on the assistance of the French Doctors.⁶² This polished image of the Western volunteer caregiver also came into crisis on the eve of the twenty-first century.⁶³

56 MSF France, Report of the Board, internal document, April 1997.

57 *Ibid.*

58 MSF France, President’s Report, 1998 General Assembly, internal document, 1998.

59 MSF France, Report of the Board, internal document, January 1997.

60 MSF France, President’s Report, 1982 General Assembly, internal document, 1982.

61 “Traditionally, in the doctor–patient encounter, the patient risks everything, while the doctor risks only his or her reputation. However, at MSF, the risks are shared, and the doctor also has a lot to lose in the encounter. This is what makes it so specific.” MSF France, President’s Report, 1981 General Assembly, internal document, 1981.

62 MSF France, President’s Report, 1983 General Assembly, internal document, 1983.

63 Significantly, it was in 2000 that Rony Brauman published his critical work on this subject: Rony Brauman (ed.), *Utopies sanitaires*, Editions Le Pommier and MSF, Paris, 2000.

“Who is the ‘MSF volunteer’?”

The growth and professionalization of the organization (which has placed new strains on human resource issues), the introduction of “remote control” programmes with teams formed solely of national staff in areas where expatriates are commonly targeted, such as Chechnya, and the increasing number of locally recruited people wishing to become expatriates after working with MSF for several years have led to fundamental changes in “traditional” volunteer profiles since the late 1990s. These changes did not, however, come about without resistance, as MSF Switzerland president, Olivier Dechevrens, pointed out in 1999:

Is a “good humanitarian” necessarily someone who goes abroad as an expatriate to help “others”? Is it inconceivable that nationals of the countries where we traditionally carry out operations should work with MSF for the same righteous reasons as Europeans? Is their motivation solely financial, as many say? Are the motivations of our expatriates themselves always so righteous?⁶⁴

In addition to the issue of the origin of volunteers, another tension arose from the search for a new balance between skills and commitment. This question, which has revived the foundational debate between the advocates of professionalization and the critics of bureaucratization, was a prominent and recurring theme in the President’s Reports of this period, highlighting the need for awareness and mediation efforts. In 2000, the president of MSF Switzerland observed: “We need more people, preferably trained, competent, enthusiastic and totally committed. That is a lot to ask and, unfortunately, the ideal expatriate is not so easy to find.”⁶⁵ The matter was brought up again the following year: “Who is *the* ‘MSF volunteer’? ... We must promote professionalism in our work, not in the sense of ‘humanitarian careerism’, but by promoting professional skills to be employed in the pursuit of our mission.”⁶⁶

This questioning of volunteer identity once again raised the issue of the division between individual and institutional responsibility, because higher expectations toward volunteers also apply to their recruiters. This is something that the president of the Swiss section had already commented on in 1999: “Taking into account and assessing *savoir-être* [interpersonal skills] and not only *savoir-faire* [know-how] is undoubtedly one of the biggest challenges for our colleagues in human resources.”⁶⁷ This challenge was starkly highlighted in 2002, with revelations of widespread sexual abuse in camps in West Africa by aid agency personnel. Beyond the media scandal, it served as a reminder that

working in unstable or dangerous situations, in war-torn societies or in camps for displaced persons, where one may be the only provider of the assistance needed by vulnerable people to survive, places one in a position of great

64 MSF Switzerland, President’s Report, 1999 General Assembly, internal document, 1999.

65 MSF Switzerland, President’s Report, 2000 General Assembly, internal document, 2000.

66 MSF Switzerland, President’s Report, 2001 General Assembly, internal document, 2001.

67 MSF Switzerland, President’s Report, 1999 General Assembly, internal document, 1999.

power to which is attached a heavy individual responsibility. Each expatriate, each national staff member must be aware of this All the information provided at the initial briefing before departure and all the codes of conduct, however important they may be, are only safeguards, not guarantees.⁶⁸

The focus on these questions sharpened in the following years, as the effects of the discourse of the “war on terror” aroused concern among humanitarians about how they might be perceived. As national staff came to contribute to the image of MSF, as well as playing their part in operations, the all too evident distinction between local “employees” and “volunteers” became even more problematic. This concern was voiced by Jean-Hervé Bradol, the new president of MSF France, in 2003:

We must redefine field teams. Expatriation and profession should no longer be factors accorded priority over the real nature of the work carried out on the ground. There are missions where the driver is effectively an ambassador, someone who mediates with the local power-holders and with the population; in such cases, the driver must be a full-fledged member of the volunteer team In practice, we must open up to national staff. This would involve a change in the association’s membership.⁶⁹

The time of “terror”

While the perception of risks derives from an understanding of world and conflict dynamics, exposure to risks comes from both an institutional choice and an individual decision. However, shared lines within the MSF movement were being drawn at the dawn of the new millennium: martyrdom was definitely not an option, and since the organization had decided to remain committed to providing medical care in conflict situations, both the individual and the institutional ability to understand contexts, conflict dynamics and networking capacities would be put forward as ways to handle various types of risks, including reputational ones.

Continuity...

It should by now be clear through this overview of nearly three decades of reports by MSF’s representatives that many of the issues supposedly characterizing the “new” environment facing humanitarian aid actors in the wake of the terrorist attacks of 11 September 2001 had already raised dilemmas and prompted reflection within the organization. That this should come as a surprise suggests that the rhetoric of the “war on terror” and its manifestations have largely squeezed the outbursts of threats and violence of the 1990s out of the public debate.

Risk assessment, as entrusted to volunteers in the organization’s Charter, is evidently not immaterial to the collective and commonly acknowledged

68 MSF Switzerland, President’s Report, 2002 General Assembly, internal document, 2002.

69 MSF France, President’s Report, 2003 General Assembly, internal document, 2003.

representation of the state of the world, and of the anticipated threats and specific risks facing humanitarians. In this regard, the events of 9/11 and their aftermath gave rise to divergent attitudes on the part of the respective presidents of the French and Swiss sections. At the MSF France General Assembly following the attacks and the launch of the “war on terror” by the US government, Jean-Hervé Bradol, the new president of MSF France, called for caution:

I remember how, a decade ago, the customary opening for any address or report was “after the fall of the Berlin Wall”. I hope that this is not going to happen with “after 11 September” Although 11 September was clearly a major event, it would be wrong to look at the balance of power and all developments in international relations through this prism alone. ... [I]t must never be forgotten that, in any broad geopolitical analysis, there is always a tendency to assume that the world will be worse, harder and crueller in the future. [However,] there has been good news this year, with the gradual abatement of conflicts ... in the Balkans, Sierra Leone, Timor and Sri Lanka.⁷⁰

In addition to being a guarantee of independence, this rejection of a totalizing interpretation was re-emphasized by Bradol, the following year, as a matter of volunteer safety:

The first line of protection [for our teams] is our own position, our understanding of the context, our ability to forge links. This is what protects us, the clarity, the neutrality and the impartiality with which we perform our mission as a humanitarian medical team.⁷¹

Exposure to risk is also a matter of institutional choice. In the same year, the president of MSF France endorsed the conscious effort by the organization to “refocus on the victims of conflicts”, after extreme dangers had led to the discontinuation of several missions in conflict areas in the previous decade and had reduced the share of this type of activity in MSF’s work. It is therefore up to the organization to assume the consequences – “it is important to be aware that this has an impact on the exposure of staff members to danger” – and to define the limits of its action, although this does not prevent individuals in the field from making choices:

We must redefine the limits of this commitment. There is no question of “encouraging suicidal action” in our organization. We do not think that it is a positive thing to knowingly sacrifice your life, to go to your death to provide assistance. Each of us is free to engage in an action or not. Moreover, when situations are too dangerous, it is not only necessary to decide whether conditions are too hazardous for MSF teams to provide assistance, but also to assess whether the level of violence on the ground has reached the point

70 MSF France, President’s Report, General Assembly 2002 (internal document).

71 MSF France, above note 69.

where our action could actually jeopardize the safety of those we seek to help.⁷²

Technological advances in the means of communication had already been at the heart of the debate on the responsibility of programme managers and the responsibility of MSF as an organization in the mid-1990s. Jean-Hervé Bradol prolonged that debate to justify the necessary part played by the volunteers' judgement regarding risk-taking. Defending the controversial decision that had resulted in a team being left in Baghdad when the US military operation started,⁷³ he reversed the perspective on the issue, emphasizing MSF's faith in individual initiative in the field:

How can the level of danger be assessed? There is a growing tendency to take decisions and judge the level of danger from thousands of kilometres away, by telephone, by email There can be no black and white approach to these discussions, with yes or no answers. The role of individuals, their determination, their enthusiasm, their network of personal relations on the ground, their aspirations, their mood that morning before getting into the car, all these are crucial factors. From this point of view, the Board considers that the best approach is to have faith in people rather than in systems and procedures when it comes to taking decisions.⁷⁴

... or a break with the past?

In the same year, Bradol's counterpart at MSF Switzerland, Olivier Dechevrens, analyzed the post-9/11 international context as a fundamental break with the past that set new challenges for the organization. During the preceding year, the Swiss section had suffered a double tragedy: the kidnapping of its head of mission in the Dagestan region, on the border with Chechnya, and the deaths of seven members of its Angolan medical staff, who were killed by a mine. Associating these events with those in Iraq, he made the following observation:

[T]he political environment has undergone profound changes since 11 September 2001. Humanitarians are faced with a dilemma, a choice that is practically impossible to make. How can we continue our work without putting the members of our teams in danger while at the same time maintaining our presence in support of the most vulnerable populations but without compromising ourselves with anyone? How can we work with a vision that is more refined than the binary perspective of the Coalition of the Good against the Axis of Evil?⁷⁵

72 *Ibid.*

73 MSF's operation in the area did not prove effective, though the number of casualties from the air attack was limited. Above all, the operation was discontinued as a result of the disappearance of two expatriates, including the head of mission, who were imprisoned by the Iraqi security services. They were released several days later after the fall of Saddam Hussein's regime.

74 MSF France, President's Report, 1999 General Assembly, internal document, 1999.

75 MSF Switzerland, President's Report, 2003 General Assembly, internal document, 2003.

Two years later, the new president of MSF Switzerland, Isabelle Ségui-Bitz, outlined a response to this dilemma. It was influenced by the shock of the killing of five members of MSF Holland in Afghanistan the previous summer, which had prompted all sections to withdraw from the country. While she agreed with her predecessor's view that 9/11 marked a break with the past, her analysis of security conditions and the limitations of MSF's action was more in line with that of the president of MSF France:

We are not destined to become martyrs for humanitarianism! Let's be clear on this. Our work in high-risk areas can only be carried out if minimum requirements are met and the risks we take are acceptable. There is a great deal of work that must be carried out in advance: establishing contacts with all the parties, explaining the purpose of our work again and again and promoting local contacts, while ensuring, at the same time, that we maintain our independence of action. If these requirements are not met, we must give up and leave. The world has changed since 11 September, and our work has been called into question by some who regard us as undercover agents serving in the "war on terror".⁷⁶

The issue at the core of this analysis of the international context from the perspective of a radical break is the change in the perceptions that "some" have of humanitarians, which, as in the early decades of MSF's history, have more to do with political and military actors than with the populations of the societies where volunteers work. The primary responsibility of the organization is to work actively to restore these perceptions and ensure that "all parties", starting with those targeted in the "war on terror", do not misunderstand MSF's identity and its objectives. The only way to put this into practice is through the day-to-day work of its field volunteers at the local level.

The La Mancha Agreement⁷⁷ and beyond

The combination of these "external challenges" and profound changes in the organization and the way it is run prompted the International Board of MSF and the general directors of the then nineteen sections to launch the La Mancha process in 2004. Based on a broad consultation involving MSF members and knowledgeable non-members, the process was designed to establish a new intersectional agreement allowing the organization to better define, in the words of MSF's international president, its "basic raison d'être" and its roles and limitations in this new period of its history.⁷⁸ The La Mancha Agreement was

76 MSF Switzerland, President's Report, 2005 General Assembly, internal document, 2005.

77 For a detailed analysis of the issues involved in the La Mancha process and Agreement, see Renée C. Fox, *Doctors Without Borders: Humanitarian Quests, Impossible Dreams of Medecins Sans Frontieres*, Johns Hopkins University Press, Baltimore, MD, 2015, pp. 101–117. See also Peter Redfield, *Life in Crisis: The Ethical Journey of Doctors Without Borders*, University of California Press, Berkeley, CA, 2013, pp. 140–145.

78 Rowan Gillies, "Why La Mancha?", in MSF, *My Sweet La Mancha: Invited and Voluntary Contributions, July–October 2005*, internal publication, 2006, p. 10.

adopted in June 2006. The text that serves as a preamble includes an overview of the changing international environment proposed by the members of MSF's International Board. This closely resembles the one given by Isabelle Ségui-Bitz, although the suggested time frame is longer than that of the "war on terror", as if to distance itself from that discourse:

In recent years we have seen the multiplication of military interventions that include the deployment of a "humanitarian" component among their strategic goals (Kosovo 1999, Afghanistan 2001, Iraq 2003) and the emergence of political and military forces that reject our very presence. This reality has led us to define our understanding of risk, and the reaffirmation of our independence from political influence as essential to ensuring the impartial nature of our assistance.⁷⁹

This independence is essentially reflected in two of the agreement's articles. While Article 1.1 establishes that "[p]roviding medical assistance to the most vulnerable people in crisis due to conflict [remains] at the core of MSF's work", Article 1.10 stipulates that the organization "intervenes by choice – not obligation or conscription – and may decide not to be present in all crises, especially when targeted threats against aid workers exist".⁸⁰ Article 1.11 also establishes the collective responsibility to "strive to prevent the work we do and our assets, both symbolic (i.e. our trademark and image) and material, from being diverted or co-opted for the benefit of parties to conflicts or political agendas".⁸¹ Unlike the MSF Charter, the La Mancha Agreement is concerned above all with the collective responsibility of the associations that make up the MSF movement. The issue of the individual responsibility of volunteers is addressed not with regard to their safety, but in connection with their behaviour, specifically in Article 2.5: "MSF staff members are personally responsible and accountable for their own conduct, in particular regarding abuse of power. MSF is responsible for establishing clear frameworks and guidelines for holding staff accountable for their conduct."⁸² The focus here, again, is on how the organization not only can improve its practices – and there are several provisions on the institutional commitment to improve care practices – but also controls its image and therefore the perceptions that it creates outwardly, which could be adversely influenced by the conduct of its volunteers.

Although the La Mancha Agreement establishes an intersectional consensus defining how the organization deals with risk in the new international environment, it does not address the question of the balance between individual and collective responsibility in matters of security. It is during the process of consultation undertaken to develop the Agreement that two positions emerged on

79 La Mancha Agreement, Athens, 25 June 2006, p. 2, available at: <http://association.msf.org/node/5632>.

80 *Ibid.*, p. 3.

81 *Ibid.*, p. 4.

82 *Ibid.*, p. 4.

this subject, standing out as two poles delineating the spectrum of views within the organization.

The first, voiced by the director of operations for the Dutch section at the time, Kenny Gluck, called for MSF to ensure “a greater sense of respect for the right of individuals, committed to the provision of assistance to people in crisis, to accept the risks involved in providing assistance”. Although Gluck did not explicitly refer to the organization’s Charter, it was no doubt the founding document he had in mind when he questioned the basis for “an institutional limit for risk – even where it is taken freely, consciously and legitimately”.⁸³ He concluded:

The balance between the individual right to take risks in order to provide assistance and the institution’s right to limit this risk touches on the identity of MSF as an organization of volunteers Respecting the essence of a volunteer organization requires MSF to respect the individual yardsticks against which we balance humanitarian assistance against risk and reject the tendency for this to be subsumed into the systems and hierarchies of MSF the institution.⁸⁴

Reviewing this line of reasoning in order to more clearly refute it, Pierre Salignon, general director of the French section in 2005, sought to reaffirm that the onus of responsibility for establishing what level of risk is acceptable lies with the association:

[V]olunteers and those in charge of operations could, in the name of humanitarian principles, undertake initiatives that put in danger their own lives or those of their colleagues in order to open up so-called humanitarian space in the universe of extreme violence, even if it means going against (or without) the advice of their association, regarded as bureaucratic or too overcautious. ... [I]f security management in the field covers individual aspects and there is a place for each person to express their views, decisions about taking risks are, on the contrary, a collective matter, going beyond personal choice alone, and are the reason why the association may sometimes decide on the basis of security reasons to terminate a project or a mission against the opinion of the teams in the field. It is not a question of the Boards arbitrating over operational decisions; rather, it is one of setting the benchmarks enabling those who put the operations together to measure the risks for the populations and for those seeking to bring them help.⁸⁵

Since the La Mancha Agreement, views within MSF have continued to fluctuate between these two poles, reflecting differences that can probably be more properly attributed to varying sensibilities than to opposed visions and that are not specific to one section or another, but spread across the movement as a

83 Kenny Gluck, “Of Measles, Stalin and Other Risks – Reflections on Our Principles, Témoignage, and Security”, in MSF, above note 78, p. 155.

84 *Ibid.*

85 Pierre Salignon, “From Taking Risks to Putting Lives in Danger?”, in MSF, above note 78, pp. 285–286.

whole. The position expressed by Jean-Hervé Bradol during discussions at a Board meeting in 2008 may thus be seen as a middle ground between these two poles. While defending a definition of volunteering that gives precedence to individual initiative and choice, he also upheld the sections' function of setting "benchmarks" for the action of individuals: "Volunteering does not release us from responsibility, but reverses the perspective. We are there because there are volunteers who represent us and take decisions for themselves. Our responsibility is to ensure that certain requirements are met".⁸⁶ These requirements were clarified at the MSF France General Assembly held the same year, a few months after a young expatriate had been killed in the Central African Republic. It is the responsibility of the organization to:

ensure that the teams are providing meaningful assistance, that their action is effective and not merely a symbolic presence to defend a cause; ... [and to] ensure that care is taken to prevent our assets, both material and symbolic (our emblems, our identity), from being diverted, notably to military purposes. A limitation we also impose is that when a political group ... announces that it intends to target aid workers and kill them, in areas where these groups have enough influence to carry out their threat, we will not support that teams remain present on the ground.⁸⁷

With these caveats, "the decision to expose oneself to danger remains an individual choice" and volunteers are free to change their mind and "stop at any time".⁸⁸ Jean-Hervé Bradol reaffirmed his conception of volunteering as the driving force behind MSF's action with the following words: "If we are able to maintain a presence in particularly dangerous areas, it is thanks to the sum of individual decisions which the association supports with the means and resources at its disposal."⁸⁹

Conclusion

Various factors have influenced changes in the interpretation of the Charter with regard to the balance between institutional responsibility and individual responsibility for risk-taking. An important factor is obviously the growth of the MSF organization itself, from a small French association with a pioneering spirit in the early years to the multinational, professionalized movement it is today. Complex internal balances, the development of the decision-making structure and the incorporation of technological and human resources to manage and control operations have clearly altered the terms of HQ responsibility. The ramifications of these changes need to be nuanced, however. While new means of communication have changed the way in which risks are assessed through the

86 MSF France, Report of the Board, internal document, March 2008.

87 MSF France, President's Report, 2008 General Assembly, internal document, 2008.

88 *Ibid.*

89 *Ibid.*

necessary process described by Rony Brauman as “combining and contrasting points of view” from HQ and from field teams,⁹⁰ the illusion of virtual proximity in decision-making has been frequently criticized. Over the four decades of MSF’s history, volunteers’ profiles, their skills, their geographic origin, their personal experience and their status have also been constantly changing. This new sociological and cultural complexity sets new limitations on forms of authority and communication and on criteria for determining acceptable risk for field teams and the individuals that make them up. In this regard, current concerns about the influence of legal obligations such as the duty of care on humanitarian organizations, and the restrictions that they place on risks run by volunteers, must also be put into perspective. These concerns emerged in the mid-1990s, accompanied by the adoption of codes of best practice by aid agencies.⁹¹ It was also at this time that the Sphere project was launched to develop quality standards for international aid.⁹² MSF withdrew from the process on the grounds that the adoption of minimum technical standards was likely to lower quality requirements for aid agencies overall while leaving unaddressed the question of their responsibility for the actual use of aid and possible attempts to turn it against its intended beneficiaries. Should the legal responsibility of “MSF the employer”, then, be the prime mover in risk reduction and the provision of information for volunteers departing for dangerous areas, along with any other assistance the organization would be expected to give them?

Since the La Mancha Agreement, and particularly in recent years, there has been no lack of dangerous contexts for MSF, imposing new limitations on its action. In 2013, all the operational sections withdrew from Somalia following the kidnapping of two Spanish section volunteers, who were held for almost two years. The following year, five volunteers from the Belgian section were abducted by the armed group Daesh in Syria, leading to the discontinuation of all MSF programmes in areas under the control of this group in Syria and Iraq. Events such as these fuel the perception that the “time of terror” is not yet over: political and criminal “terror” inspired by groups such as Daesh and Boko Haram; biological “terror” caused by the Ebola epidemic in West Africa and the exposure of volunteers and their national colleagues to real contamination risks. Yet, the link commonly made between these two realities to highlight the increased level of danger for humanitarian actors is echoed in the commentary of historian Bertrand Taithe, who observes that “[t]he idea that Ebola has become almost primarily a global security threat says a lot more about our militarised world view than about the disease”.⁹³ While it is true that MSF has withdrawn its volunteers from Somalia and Syria, it has also recently redeployed teams in Afghanistan

90 MSF France, President’s Report, 1991 General Assembly, internal document, 1991.

91 See Jon Edwards, “Who Benefits from Duty of Care?”, in Michaël Neuman and Fabrice Weissman (eds), *Saving Lives and Staying Alive: The Professionalisation of Humanitarian Security*, Hurst & Co., London, forthcoming 2016.

92 See Susan Purdin and Peter Walker, “Birthing Sphere”, *Disasters*, Vol. 28, No. 2, 2004, pp. 100–111.

93 Bertrand Taithe, “Humanitarian Aid after Ebola”, *Alnap*, 10 November 2014, available at: www.alnap.org/blog/119.

after a six-year absence.⁹⁴ This is a reminder not to make assumptions about the future and to acknowledge the fluidity of contexts characterized by a high level of violence. The risks involved in managing the Ebola crisis mean that MSF the organization now has to contend with new responsibilities towards its volunteers, which will no doubt be an issue again in the future.⁹⁵ However, *Time* magazine's choice of Ebola fighters for Person of the Year 2014, including several members of MSF's local and international staff,⁹⁶ is proof that social expectations and respect for the individual commitment still associated with humanitarian volunteers belie the trend suggested by the debate on the duty of care, which would make the relationship between MSF and its volunteers an employer–employee relationship like any other.

Throughout MSF's history, the occurrence of particularly serious incidents provoked, for a time, a prevailing sense of rupture throughout the movement, when the letter of the Charter and the individual responsibility of volunteers took a backseat to institutional responsibility. However, as the choice, consistently reaffirmed by all the operational sections, to put assistance for conflict victims at the heart of their work implies, it is the faith that the organization places in its volunteers – or at least, in highly dangerous situations, the most experienced of them – that enables it to pursue its mission. Essentially, while the institution's responsibility for assessing risk undoubtedly has greater legal content than the individual responsibility of volunteers does on the basis of the MSF Charter, there remains a shared responsibility to find the right balance, always momentary and context-specific, between the two.

94 Xavier Crombé and Michiel Hofman, “Afghanistan: Regaining Leverage”, in Claire Magone, Michaël Neuman and Fabrice Weissman (eds), *Humanitarian Negotiations Revealed: The MSF Experience*, Hurst & Co., London, 2011, pp. 49–68.

95 B. Taithe, above note 93.

96 Nancy Gibbs, “The Choice”, *Time*, 10 December 2014, available at: <http://time.com/time-person-of-the-year-ebola-fighters-choice/>.

A matter of principle(s): The legal effect of impartiality and neutrality on States as humanitarian actors

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Abstract

This article examines the legal nature of the principles of impartiality and neutrality of humanitarian action, focusing on States as humanitarian actors. It argues that international law does not provide a general legal basis for the universal applicability of these principles, contrary to a common interpretation of the International Court of Justice's 1986 judgment in the Nicaragua case. Nevertheless, impartiality and neutrality may have a significant legal effect on the conduct of States. They may be directly binding on States through the operation of Security Council resolutions drafted in mandatory language. In addition, they may have indirect effect due to the States' obligation to respect humanitarian organizations' adherence to the principles. On the basis of this argument, the article pleads for increased conceptual clarity and, in turn, effectiveness of humanitarian action.

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In spite of its crucial significance for the unification of Italy, the battle of Solferino between France and Austria in 1859 is now better known as a historical watershed event marking the onset of modern humanitarianism. By organizing assistance to the thousands of wounded soldiers left on the battlefield, Swiss businessman Henry Dunant laid the foundations for the Fundamental Principles of humanitarian action. “He negotiated access, he chose to act impartially, he used his position of neutrality, and he organized civil society in a voluntary, non-coerced fashion.”¹ Dunant’s selfless acts and his impassioned book *A Memory of Solferino*² inspired, among many other things, the formulation of modern humanitarian principles.³

In virtually any rendition,⁴ these principles include the principles of impartiality and neutrality of humanitarian assistance.⁵ Naturally, their significance in times of armed conflict cannot be overstated. Assistance provided

1 Peter Walker and Daniel G. Maxwell, *Shaping the Humanitarian World*, Routledge, New York, 2014, p. 22.

2 Henry Dunant, *A Memory of Solferino*, ICRC, Geneva, 1986 (first published 1862).

3 See generally Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, Henry Dunant Institute, Geneva, 1979. See also Daniel Thürer, “Dunant’s Pyramid: Thoughts on the ‘Humanitarian Space’”, *International Review of the Red Cross*, Vol. 89, No. 865, 2007, p. 50 (“It is striking how the story that Dunant tells already contains in embryonic form all those elements that are later to constitute the form and organizational system of the Red Cross and, to some extent, of other humanitarian organizations.”); Michael Barnett, *Empire of Humanity: A History of Humanitarianism*, Cornell University Press, New York, 2011, p. 1 (“The Battle of Solferino became to modern humanitarianism what the Treaty of Westphalia was to modern politics.”); but see *ibid.*, pp. 78–79 (noting that Dunant was not a lone voice at the time and that there had been others before him who had advocated for the improvement of medical relief in wartime).

4 Most attempts to list humanitarian principles contain at least the following four: humanity, impartiality, neutrality and independence. See, e.g., Humanitarian Accountability Partnership (HAP), *The 2010 HAP Standard in Accountability and Quality Management*, 2nd ed., Geneva, 2010 (HAP Standard), p. 8, available at: www.hapinternational.org/pool/files/2010-hap-standard-in-accountability.pdf (all internet references were accessed in July 2015); Office for the Coordination of Humanitarian Affairs (OCHA), *What are Humanitarian Principles?*, June 2012, p. 1, available at: https://docs.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf; HAP International, *People in Aid and the Sphere Project, Core Humanitarian Standard on Quality and Accountability*, 2014 (CHS), p. 8, available at: www.corehumanitarianstandard.org/files/files/Core%20Humanitarian%20Standard%20-%20English.pdf. These four humanitarian principles are derived from the Fundamental Principles guiding the work of the Red Cross and Red Crescent Movement, proclaimed in 1965 in Vienna. See 20th International Conference of the Red Cross, “Proclamation of the Fundamental Principles of the Red Cross”, *International Review of the Red Cross*, Vol. 5, No. 56, 1965, pp. 573–574.

5 For a definition of these principles, see the corresponding text to notes 14–18 below. The principle of neutrality of humanitarian assistance should be distinguished from neutrality as the status of a State which is not participating in an international armed conflict. In the present article, the term “neutrality” is used only in the former sense. For a general overview of the law of neutrality in the latter sense, see, e.g., Michael Bothe, “The Law of Neutrality”, in Dieter Fleck (ed.), *The Handbook of International Humanitarian Law*, Oxford University Press, Oxford, 2013, p. 549. For the overlaps between neutrality as a humanitarian principle and the law of neutrality, see Denise Plattner, “ICRC Neutrality and Neutrality in Humanitarian Assistance”, *International Review of the Red Cross*, Vol. 36, No. 311, 1996, pp. 163–165.

exclusively to one party to the conflict or denied to some of the victims only because of their race, ethnicity or sex would not only lead to justified criticism on moral grounds but could also worsen human suffering during wartime, contribute to the escalation of conflicts and undermine the efficiency of humanitarian action in general.

Despite their undoubted importance, the normative nature of the principles remains little understood. Although they are sometimes described as binding on States and other humanitarian actors⁶ as a matter of international law, such assertions are usually accompanied by little or no analysis as to their specific legal basis.⁷ This state of affairs may to some extent be explained by the perceived moral desirability of the two principles. It is undisputed that a convincing moral case can be made in favour of the impartial and neutral character of any humanitarian aid. Nonetheless, more is needed to establish the legal validity of any norm under international law.

The importance of understanding the normative nature of humanitarian principles is particularly pressing in modern-day conflicts characterized by the asymmetry of belligerent parties⁸ and the proliferation of humanitarian actors.⁹ The militarily more powerful party to a conflict now typically finds itself taking on a multiplicity of tasks beyond strict military engagement.¹⁰ These frequently involve activities previously reserved for a handful of humanitarian organizations

6 References to “humanitarian actors” throughout the text should be read broadly as encompassing all actors involved in the provision and distribution of humanitarian aid, including States, international organizations, non-governmental organizations and private entities. In the same vein, see, e.g., Toni Pfanner, “Humanitarian Actors: Editorial”, *International Review of the Red Cross*, Vol. 89, No. 865, 2007, p. 5 (“Multiple humanitarian actors with different objectives, principles and *modi operandi* intervene in situations of armed conflict and internal violence in order to alleviate the plight of the victims of those situations: governmental and nongovernmental organizations, international organizations, national Red Cross and Red Crescent societies, private companies and even the armed forces.”).

7 See, e.g., Marion Harroff-Tavel, “Neutrality and Impartiality – The Importance of these Principles for the International Red Cross and Red Crescent Movement and the Difficulties Involved in Applying Them”, *International Review of the Red Cross*, Vol. 29, No. 273, 1989, p. 550; Maurice Torrelli, “From Humanitarian Assistance to ‘Intervention on Humanitarian Grounds’?”, *International Review of the Red Cross*, Vol. 32, No. 288, 1992, p. 239; François Bugnion, “Red Cross Law”, *International Review of the Red Cross*, Vol. 35, No. 308, 1995, p. 507; Vincent Chetail, “The Contribution of the International Court of Justice to International Humanitarian Law”, *International Review of the Red Cross*, Vol. 85, No. 850, 2003, p. 265; Sylvain Beauchamp, *Defining the Humanitarian Space through Public International Law*, on the Edges of Conflict Working Paper, 2008, p. 14; François Bugnion, “The International Conference of the Red Cross and Red Crescent: Challenges, Key Issues and Achievements”, *International Review of the Red Cross*, Vol. 91, No. 876, 2009, p. 702. Some of the authors seek this legal basis in the ICJ’s judgment on the merits in the *Nicaragua* case. It will be shown below that this ruling does not provide a satisfactory justification for such a conclusion and amounts to little more than an instance of judicial fiat: see the corresponding text to notes 28–43 below.

8 See further Toni Pfanner, “Asymmetrical Warfare from the Perspective of Humanitarian Law and Humanitarian Action?”, *International Review of the Red Cross*, Vol. 87, No. 857, 2005, pp. 149–174.

9 See, e.g., Elizabeth Ferris, “Megatrends and the Future of Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011, pp. 935–936.

10 See, e.g., Antonio Donini, “Between a Rock and a Hard Place: Integration or Independence of Humanitarian Action?”, *International Review of the Red Cross*, Vol. 93, No. 881, 2011, pp. 149–151 (describing these so-called “comprehensive” approaches to conflict resolution undertaken by Western forces in Afghanistan after 2002).

committed to a similar set of values.¹¹ In this connection, concerns have appeared about the alleged “blurring of the lines” between military, political and humanitarian efforts.¹² Today, States, intergovernmental organizations, NGOs and others compete to achieve their goals in an increasingly shrinking humanitarian space.¹³ The extent to which international law constrains the activities of these diverse humanitarian actors therefore demands close attention.

The aim of the current article is to address this need by scrutinizing the position of the principles of impartiality and neutrality of humanitarian action in international law. In particular, the article challenges the view that a general legal basis underpinning both principles exists in international law, with a resulting binding effect on all humanitarian actors in their activities. The analysis focuses on States as humanitarian actors and further explores the effect of the principles on States’ interaction with other stakeholders, including the United Nations (UN) Security Council and humanitarian organizations such as the International Committee of the Red Cross (ICRC).

The article proceeds in three consecutive steps. First, it defines and distinguishes the notions of impartiality and neutrality of humanitarian action. Second, the article analyzes whether a general legal basis providing for the universal applicability of the two principles can be found in one of the three principal sources of international law set out in Article 38(1) of the Statute of the International Court of Justice (ICJ): treaties, customary international law and general principles of law. Third, the article examines whether the principles may produce legal effects for the conduct of States even without such a legal basis. It considers the potential direct effect of UN Security Council resolutions demanding compliance with the principles as well as the indirect effect brought about by States’ obligation to respect humanitarian organizations’ adherence to the principles.

Conceptualization of the principles of impartiality and neutrality

Although the principles of impartiality and neutrality support and reinforce each other, the difference between them should be noted at the outset. It is true that in general parlance, the two principles are frequently used as synonyms; indeed,

11 See also the corresponding text to notes 134–140 below (outlining the nature, aims, and objectives of the so-called “Dunantist” humanitarian agencies).

12 See, e.g., Kenneth Anderson, “Humanitarian Inviolability in Crisis: The Meaning of Impartiality and Neutrality for U.N. and NGO Agencies Following the 2003–2004 Afghanistan and Iraq Conflicts”, *Harvard Human Rights Journal*, Vol. 17, 2004, p. 64; Alice Gadler, “Armed Forces as Carrying both the Stick and the Carrot? Humanitarian Aid in U.S. Counterinsurgency Operations in Afghanistan and Iraq”, *Goettingen Journal of International Law*, Vol. 3, No. 1, 2011, p. 231; A. Donini, above note 10, pp. 156–157; Claudia McGoldrick, “The Future of Humanitarian Action: An ICRC Perspective”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011, p. 966.

13 See, e.g., Cynthia Brassard-Boudreau and Don Hubert, “Shrinking Humanitarian Space? Trends and Prospects on Security and Access”, *Journal of Humanitarian Assistance*, 24 November 2010, available at: <https://sites.tufts.edu/jha/archives/863>.

dictionaries often use one to define the other.¹⁴ In the field of humanitarian action, however, each carries a separate meaning and, as will be shown, is of a different legal nature.

On the one hand, the principle of neutrality is a macro-level principle of abstention. It requires the provider of humanitarian action to abstain from associating with the ideological or political aims of any of the parties to the conflict. It is the embodiment of the idea that humanitarian actors must remain ideologically free and may not take sides in political or religious controversies.¹⁵

The principle of impartiality, on the other hand, is a micro-level principle of action. It requires that all humanitarian action be undertaken only on the basis of, and in proportion to, the need of the victims. In line with Jean Pictet's useful systematization, it can thus be better seen as a set of the three intertwined but separate sub-principles of non-discrimination, proportionality and impartiality *stricto sensu*.¹⁶ It has been suggested that impartiality also operates (or should operate) on a global scale in the form of a demand for equitable treatment of victims of all conflicts.¹⁷ However, in this article, impartiality is understood in its traditional sense of a victim-oriented micro-level principle of humanitarian action with impact on conduct within a particular armed conflict.¹⁸

Together, the two principles "serve the overarching goal of humanity" by their operational and instrumental nature.¹⁹ It is sometimes said that aid given to one side of the conflict does not necessarily have to be in violation of these

14 See, e.g., "Neutral", *Thesaurus.com*, available at: <http://thesaurus.com/browse/neutral> ("Definition: impartial, noncommittal"; emphasis added); Joseph R. Nolan and Jacqueline M. Nolan-Haley (eds), *Black's Law Dictionary*, 6th ed., West Publishing, St. Paul, MN, 1990, p. 1042 (defining the term "Neutral" as the state or quality of being "[i]ndifferent; unbiased; impartial"; emphasis added).

15 See further J. Pictet, above note 3, pp. 34–39; Hugo Slim, "Relief Agencies and Moral Standing in War: Principles of Humanity, Neutrality, Impartiality and Solidarity", *Development in Practice*, Vol. 7, No. 4, 1997, p. 347; M. Harroff-Tavel, above note 7, p. 537; K. Anderson, above note 12, p. 56; Ruth Abril Stoffels, "Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps", *International Review of the Red Cross*, Vol. 86, No. 855, 2004, pp. 542–544.

16 J. Pictet, above note 3, pp. 24–33. Pictet understood non-discrimination as the avoidance of "distinction or segregation which one makes to the detriment of certain other persons, for the sole reason that they belong to some specific category" (p. 24); proportionality as the endeavour "to relieve the suffering of individuals in proportion to the degree of their suffering and to give priority according to the degree of urgency" (p. 27); and impartiality *stricto sensu* as the provision of aid "without taking sides, either for reasons of interest or sympathy" (p. 31).

17 Cf. Yves Sandoz, "Foreword", in Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), p. xiv ("For the ICRC, impartiality means not only avoiding discrimination between the different victims of a given conflict, but also constantly striving to ensure that *all the victims of all the conflicts on the planet* are treated equitably, without regional or ethnic preference and independently of the emotions sparked by media-selected images"; emphasis added); see also Dirk Salomons, "The Perils of Dunantism: The Need for a Rights-Based Approach to Humanitarianism", in Andrej Zwitter, Christopher K. Lamont, Hans-Joachim Heintze and Joost Herman (eds), *Humanitarian Action: Global, Regional and Domestic Legal Responses*, Cambridge University Press, Cambridge, 2015, p. 41 (arguing that true impartiality would "require a methodology whereby we could compare relative needs on a global scale, assessing the relative value of helping flood victims in Pakistan versus providing food aid for the victims of famine in East Africa").

18 See further J. Pictet, above note 3, pp. 24–33; H. Slim, above note 15, pp. 348–349; M. Harroff-Tavel, above note 7, pp. 537–538; K. Anderson, above note 12, p. 56; R. A. Stoffels, above note 15, pp. 540–541.

19 D. Thürer, above note 3, p. 55.

principles.²⁰ To some extent, this is obviously true. A humanitarian actor should not be expected to provide a strictly equal amount of aid to both sides. Such a goal might not reflect the size of the affected population or the needs of the victims – after all, a conflict may disproportionately affect the population in a territory controlled by one party to the conflict only, while leaving the situation relatively stable for those on the territory of the other side. For instance, it would be absurd to claim that humanitarian aid distributed in the Federal Republic of Yugoslavia during the 1999 aerial bombing campaign would not have been neutral and/or impartial unless matched by equal assistance to the NATO countries.²¹

Nevertheless, unilateral actions undertaken on the basis of the nationality of the victims or their other association with one party to the conflict should be seen as *prima facie* inconsistent with the principles of impartiality and neutrality. Such assistance takes into account an extraneous consideration other than the needs of the victims and thus lends itself to accusations of partiality.²² It additionally specifically assists one side of the conflict only and thus impinges on the principle of neutrality.²³

The ICRC Commentary to the Additional Protocols to the Geneva Conventions seems to take the opposite view, arguing that a “unilateral action cannot be considered as indicating a lack of neutrality”.²⁴ The explanation in the Commentary is remarkably frank, stating that “traditional links, or even the geographical situation, may prompt a State to undertake such actions, and it would be stupid to wish to force such a State to abandon the action”.²⁵ It is, however, difficult to see what would be left, in particular of the principle of neutrality, if a humanitarian actor could escape an accusation of a violation simply by remaining silent about its true incentives.

It is suggested in response that the better view is to separate the question of whether such conduct breaches the principles from the question of whether that

20 See, e.g., Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, p. 818, para. 2803; Michael Bothe, Karl Josef Partsch and Waldemar A. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, Martinus Nijhoff, The Hague, 1982, p. 486; Frits Kalshoven, “Impartiality and Neutrality in Humanitarian Law and Practice”, *International Review of the Red Cross*, Vol. 29, No. 273, 1989, pp. 523–524.

21 Whether relief provided in relation to the 1999 conflict did in fact comply with all humanitarian principles is a separate question. For criticism of the Western involvement in the conflict from this angle, see, e.g., Toby Porter, “The Partiality of Humanitarian Assistance – Kosovo in Comparative Perspective”, *Journal of Humanitarian Assistance*, 17 June 2000, available at: <https://sites.tufts.edu/jha/archives/150> (arguing that the principle of impartiality “was compromised or even discarded during the Kosovo crisis”).

22 See, e.g., D. Salomons, above note 17, p. 43 (criticizing humanitarian assistance disbursed to persons in Darfur at the expense of those living in other parts of the Republic of Sudan); Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action*, Cornell University Press, Ithaca, NY, 2013, pp. 74–75 (criticizing assistance provided by the United States during the Afghan conflict in the 1980s as being aimed at the strengthening of the resistance forces and even specific commanders).

23 See, e.g., S. Neil MacFarlane, “Humanitarian Action and Conflict”, *International Journal*, Vol. 54, No. 4, 1999, pp. 543–544 (criticizing the majority of humanitarian assistance provided during the Spanish Civil War as one-sided and thus decidedly “non-neutral” due to the politicization of many contemporary humanitarian actors).

24 Y. Sandoz, C. Swinarski and B. Zimmermann, above note 20, p. 818, para. 2803.

25 *Ibid.*

would mean that the State must abandon the action (which depends on the normative nature of the principle in question). As will be shown, in the present state of international law, there is no general requirement for States to abide by the principles at all times, and thus assistance of the kind suggested in the ICRC Commentary may still be permissible in law despite not being neutral in principle.

Search for a general legal basis of the principles of impartiality and neutrality

If one accepts that impartiality and neutrality are essential for the furtherance of “the overarching goal of humanity” on the international plane,²⁶ one would be forgiven for assuming that these principles must be firmly anchored in the binding corpus of international law. This is also, as will be seen, a frequent interpretation of the ICJ’s judgment on the merits in the *Nicaragua* case.²⁷ Accordingly, this section revisits the relevant part of the *Nicaragua* judgment to unpack the analysis provided by the ICJ. It then considers whether any of the three main sources of international law – treaties, custom and general principles of law – can be said to provide a general legal basis for the two principles.

Nicaragua revisited

In *Nicaragua*, the ICJ had to decide on the lawfulness of the assistance provided by the US government in the early 1980s to the *contras* fighting against the Nicaraguan government.²⁸ Notably for the present purposes, the assistance in question was provided by a State, not by a humanitarian organization or any other non-State actor. In the first step of its analysis, the Court asserted that humanitarian assistance could not be seen “as in any ... way contrary to international law” as long as it was in line with the principles of humanity and impartiality declared by the 20th International Conference of the Red Cross.²⁹ However, on the facts of the case, the US assistance *was* limited to one side of the conflict only and thus it was, the Court observed, not “given without discrimination to all in need in Nicaragua, [but] merely to the *contras* and their dependents”.³⁰ In the second step of its reasoning, the Court held that this amounted to an intervention in the internal affairs of Nicaragua and ultimately a violation of international law by the United States.³¹

26 D. Thürer, above note 3, p. 55; see also the corresponding text to note 19 above.

27 International Court of Justice (ICJ), *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Judgment, *ICJ Reports* 1986, p. 14.

28 See *ibid.*, para. 20.

29 *Ibid.*, para. 242. The present name of the conference is the International Conference of the Red Cross and Red Crescent. It brings together governments, policy-makers and the components of the International Red Cross and Red Crescent Movement. See further ICRC, “International Conference of the Red Cross and Red Crescent”, 27 September 2014, available at: www.icrc.org/en/document/international-conference-red-cross-and-red-crescent.

30 ICJ, *Nicaragua*, above note 27, para. 243.

31 *Ibid.*, paras 246 and 292(3).

The ICJ judgment thus appeared to require any actor providing humanitarian assistance to abide by the Fundamental Principles of the International Red Cross and Red Crescent Movement (the Movement).³² In this connection, it should be mentioned that the ruling spoke expressly only of the principles of humanity and impartiality.³³ However, in its analysis of the facts of the case, the Court placed the greatest emphasis on the fact that aid was disbursed to one side of the conflict only.³⁴ In this sense, the United States' conduct primarily amounted to a breach of the principle of neutrality due to the country's not-so-subtle alignment with the political and ideological aims of one party to the conflict.³⁵

The ICJ did not, however, cite any law in support of its analysis in this part of the judgment, apart from the declaration of the Fundamental Principles of the Movement,³⁶ which it (correctly) did not describe as legally binding with respect to either of the parties to the dispute.³⁷ In fact, the Court merely stated that “[a]n essential feature of truly humanitarian aid” is that it is provided without any discrimination (thus invoking an aspect³⁸ of the principle of impartiality).³⁹ The ICJ all but admitted that its position amounts to little more than judicial fiat in the following sentence, which it opened simply with the words “In the view of the Court”.⁴⁰

In spite of these deficiencies, the judgment has been widely interpreted as confirming the mandatory legal nature of the principles in question for humanitarian actors both public and private. In particular, it has been described as having recognized the general binding force of the Fundamental Principles of the Movement,⁴¹ as laying down “the essential conditions for *all* humanitarian action”⁴² and as providing “a source of obligations for states themselves, if [they] claim to be engaged in humanitarian activity”.⁴³ Therefore, it is necessary to investigate whether the legal basis for the two principles could be properly

32 See F. Kalshoven, above note 20, pp. 517–519. This is also how the ruling has been interpreted by a number of commentators: see notes 41–43 below.

33 ICJ, *Nicaragua*, above note 27, para. 242.

34 See also D. Plattner, above note 5, p. 176 (viewing this passage in the judgment as confirming an aspect of the principle of neutrality).

35 See the corresponding text to note 15 above.

36 See “Proclamation of the Fundamental Principles of the Red Cross”, above note 4.

37 Cf. ICJ, *Nicaragua*, above note 27, para. 242.

38 For Jean Pictet's classification of the three subprinciples of the principle of impartiality, see note 16 above.

39 ICJ, *Nicaragua*, above note 27, para. 243.

40 *Ibid.*

41 V. Chetail, above note 7, p. 265 (“the Court not only confirms the customary character of the fundamental principles of the Red Cross, but considers that these principles have to be respected with regard to any kind of humanitarian assistance, whether it is provided by the Red Cross, or through the United Nations or by States individually”).

42 M. Torrelli, above note 7, p. 239 (emphasis added).

43 F. Bugnion, “The International Conference”, above note 7, p. 702 (“The International Court of Justice thus clearly recognized the mandatory force of the Fundamental Principles of the Red Cross; they not only oblige states to allow Red Cross and Red Crescent bodies to abide by them, but they are also a source of obligations for states themselves, if the latter claim to be engaged in humanitarian activity.”).

located in any of the three main sources of international law. Accordingly, each of the following subsections examines one of these sources.

Treaties: The Geneva Conventions and their Additional Protocols

The treaty law relating to the provision of humanitarian relief in times of armed conflict includes primarily the four Geneva Conventions⁴⁴ and their two Additional Protocols.⁴⁵ With the exception of one provision replicated in all four Geneva Conventions – designated as common Article 3 – the Conventions and Additional Protocol I (AP I) apply in situations of international armed conflict.⁴⁶ Conversely, common Article 3 and the entirety of Additional Protocol II (AP II) apply in non-international armed conflicts.⁴⁷

Principle of impartiality

To begin with, this body of treaty law does not contain any general endorsement of either principle with respect to all humanitarian action undertaken in situations of armed conflict. Of the two, impartiality is more prominent in the instruments, with several provisions mentioning this principle expressly.⁴⁸ However, these provisions do not endow the principle with a general binding force with respect to all humanitarian actors. Instead, they serve two principal functions.

First, the relevant provisions in the Geneva Conventions that refer to impartiality use it mainly as a defining characteristic of humanitarian bodies which are to be given access to victims of war.⁴⁹ For instance, Article 59(2) of GC IV provides that relief schemes on behalf of the occupied population may be undertaken “either by States or by *impartial* humanitarian organizations such as the International Committee of the Red Cross”.⁵⁰ This means that only bodies

44 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I); Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II); Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV).

45 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) (AP I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 12 December 1977, 1125 UNTS 609 (entered into force 7 December 1978) (AP II).

46 Common Art. 2; AP I, Art. 1(3).

47 Common Art. 3; AP II, Art. 1(1).

48 See, in particular, common Art. 3(2); common Art. 9/9/9/10; GC IV, Arts 59(2), 61(1); AP I, Art. 70(1); AP II, Art. 18(2).

49 Common Art. 3(2); common Art. 9/9/9/10; GC IV, Arts 59(2), 61(1).

50 GC IV, Art. 59(2) (emphasis added).

whose “impartiality is assured”⁵¹ are legally privileged in the sense that they are entitled to free passage and protection of their relief consignments.⁵²

Second, the two Additional Protocols stipulate that in case of a lack of supplies essential for the survival of the civilian population, “humanitarian and impartial” relief actions “shall be undertaken”.⁵³ These provisions, however, do not designate the subject of this obligation, nor do they forbid assistance that would not meet the criterion of impartiality. Undoubtedly, the prohibition of adverse distinction in the application of international humanitarian law (IHL) is one of the fundamental tenets of this body of law.⁵⁴ However, it should be recalled that this prohibition corresponds to the subprinciple of non-discrimination only and does not cover the entire scope of impartiality.⁵⁵ Therefore, to the extent that the rules in question are to apply generally, the relevant phrase should be seen as exhortatory only, encouraging relief action of the kind described but not requiring in itself that such aid be in fact provided by a specific actor designated *ex ante*.

Nevertheless, the modifiers “humanitarian and impartial” are certainly not without any legal effect. Assistance that meets the said criteria is privileged and protected under the terms of the Additional Protocols. In the context of international armed conflicts, AP I expressly provides that “[o]ffers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts”.⁵⁶ This serves to address potential claims by the territorial State to that effect and exclude them as a legal basis of objections to humanitarian action.⁵⁷ In the context of non-international armed conflicts, no corresponding stipulation has found its way into the text of AP II.⁵⁸ Nonetheless, assistance which meets these criteria must be perceived as being endorsed by AP II⁵⁹ and hence can only be refused by the territorial State for reasons that are neither arbitrary nor capricious.⁶⁰

51 Jean Pictet (ed.), *Geneva Convention relative to the Protection of Civilian Persons in Time of War: Commentary*, ICRC, Geneva, 1958, p. 321.

52 GC IV, Art. 59(3); see also J. Pictet, above note 51, pp. 321–322.

53 AP I, Art. 70(1); AP II, Art. 18(2); see also Harvard School of Public Health, *HPCR Manual on International Law Applicable to Air and Missile Warfare*, Bern, 2009, Rule 100(a).

54 See common Art. 3; GC III, Art. 16; GC IV, Art. 13; AP I, Art. 75(1); AP II, Art. 4(1); ICRC Customary Law Study, above note 17, p. 308, Rule 88.

55 See the corresponding text to notes 16–18 above, and particularly note 16 above (detailing Pictet’s classification of the subprinciples of the principle of impartiality).

56 AP I, Art. 70(1).

57 M. Bothe, K. J. Partsch and W. A. Solf, above note 20, p. 486.

58 Cf. AP II, Art. 18.

59 Y. Sandoz, C. Swinarski and B. Zimmermann, above note 20, p. 1479, paras. 4882–4883.

60 M. Bothe, K. J. Partsch and W. A. Solf, above note 20, pp. 800–801; see also Y. Sandoz, C. Swinarski and B. Zimmermann, above note 20, p. 1479, para. 4885 (the refusal of humanitarian and impartial relief without good grounds may amount to a violation of the prohibition against the use of starvation as a method of combat); International Institute of Humanitarian Law, *The Manual on the Law of Non-International Armed Conflict*, San Remo, 2006, available at: www.iihl.org/iihl/Documents/The%20Manual%20on%20the%20Law%20of%20NIAC.pdf, p. 61, para. 5.1.4 (measures taken by the conflict party in control of an area should not unduly impede or delay the provision of humanitarian assistance); ICRC Customary Law Study, above note 17, p. 193, Rule 55 (“parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control”).

Principle of neutrality

In contrast to impartiality, the principle of neutrality of humanitarian action is not expressly mentioned in the text of the Geneva Conventions or their Additional Protocols. To some extent, this can be explained by the fact that the notion of neutrality already carries a different contextual connotation in the law of armed conflict, namely as a reference to the law of neutrality, and the drafters may have wanted to avoid confusion between these two terms.⁶¹

It would be inaccurate, however, to claim that the principle of neutrality of humanitarian action does not feature at all in the treaty framework of IHL. Both the Geneva Conventions and AP I refer to “fundamental principles of the Red Cross” in a number of provisions.⁶² Interestingly, the formulation of these principles at the time of drafting of the Geneva Conventions did not yet expressly include the principle of neutrality⁶³ – it was first included at the 25th session of the Board of Governors of the Red Cross⁶⁴ in 1959⁶⁵ and was incorporated into the present-day list of seven Fundamental Principles (humanity, impartiality, neutrality, independence, voluntary service, unity and universality) in 1965.⁶⁶ Therefore, at least since 1965, neutrality has been accepted as one of the Fundamental Principles of the Movement and it can thus be said that the Geneva Conventions and AP I indirectly recognize this principle as well.

However, this does not mean that the treaties somehow elevate neutrality or any of the other principles to the level of principles of general application. Instead, the provisions in question should properly be read as conditioning the duty of States to facilitate access to components of the Red Cross and Red Crescent Movement upon these components’ compliance with their own principles. Oddly, AP I refers to these principles with respect to the National Red Cross and Red Crescent Societies⁶⁷ and the League (now Federation) of Red Cross and Red Crescent Societies,⁶⁸ but not the ICRC.⁶⁹ Nevertheless, the ICRC made it clear in

61 Kate Mackintosh, *The Principles of Humanitarian Action in International Humanitarian Law*, Humanitarian Policy Group (HPG) Report No. 5, Overseas Development Institute, London, March 2000, p. 8. For the difference and overlaps between these two meanings of “neutrality”, see further note 5 above and the references cited therein.

62 GC I, Art. 44(2); GC IV, Art. 63(1)(a); AP I, Art. 81(2)–(3).

63 See Board of Governors, XIXth Session, Oxford, 1946, Resolution 12, and Board of Governors, XXth Session, Stockholm, 1948, Resolution 7, reproduced in ICRC, *Handbook of the International Red Cross and Red Crescent Movement*, 14th ed., ICRC, Geneva, 2008, pp. 723–724.

64 In 1979, this body was replaced by the General Assembly of the International Federation of Red Cross and Red Crescent Societies.

65 Board of Governors, XXVth Session, Athens, 1959, Resolution 16, reproduced in ICRC, above note 63, pp. 724–725 (“it is essential for the Red Cross to observe strict neutrality in political spheres”).

66 “Proclamation of the Fundamental Principles of the Red Cross”, above note 4, pp. 573–574. The text was further revised in 1986 in order to replace references to “Red Cross” with “Movement”. For this final version, see ICRC, “The Fundamental Principles of the International Red Cross and Red Crescent Movement”, 31 October 1986, available at: www.icrc.org/eng/resources/documents/red-cross-crescent-movement/fundamental-principles-movement-1986-10-31.htm.

67 AP I, Art. 81(2).

68 AP I, Art. 81(3).

69 Cf. AP I, Art. 81(1).

the text of its own Commentary to AP I that as “the traditional guardian of the Movement’s principles”, it considers itself equally bound to observe these principles.⁷⁰

As with the specific principle of impartiality discussed above, the treaty framework does not generalize the applicability of the Fundamental Principles of the Movement to all humanitarian actors. With respect to “other humanitarian organizations”, AP I merely stipulates that they conduct their activities “in accordance with the provisions of the Conventions and this Protocol”.⁷¹ On the basis of the legal framework described above and in particular due to the operation of common Article 9/9/9/10 of the Geneva Conventions,⁷² this may import yet again a condition of impartiality.⁷³ If the actors in question do not meet this condition, the territorial State may lawfully refuse access.⁷⁴ Nevertheless, no requirement of neutrality should be seen as imposed upon these actors by operation of the treaty framework. In addition, none of these requirements, applicable as they are only to Movement components and humanitarian organizations proper, can be extended to States or the providers of humanitarian action in general.

It can be concluded that despite their frequent invocation, as a matter of treaty law, the significance of the principles of impartiality and neutrality is limited and mutually distinguishable. The legal effect of the principles is almost exclusively limited to humanitarian organizations and in particular to the components of the Movement. The effect on States is indirect only, obliging them under certain circumstances to accept assistance that is in line with the principles. The treaty language does not, however, oblige States (or parties to armed conflicts more generally) to provide assistance of this kind themselves.

Although this interim conclusion may appear somewhat unsatisfying, it is congruous with the specific role anticipated for States under the Geneva Conventions and their Additional Protocols. Under the treaty framework, States are primarily seen as potential belligerents and not as humanitarian actors in their own right. Insofar as the treaties consider the question of the provision of humanitarian relief, they focus not on States, but on international and domestic organizations such as the National Red Cross and Red Crescent Societies. The

70 Y. Sandoz, C. Swinarski and B. Zimmermann, above note 20, pp. 941–942, para. 3322.

71 AP I, Art. 81(4).

72 The article reads as follows (emphasis added): “The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other *impartial humanitarian organization* may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.”

73 Cf. M. Bothe, K. J. Partsch and W. A. Solf, above note 20, p. 563.

74 In the same vein, see, e.g., ICRC, “Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations”, statement by the ICRC to the UN General Assembly (UNGA), New York, 12 December 2013, available at: www.icrc.org/eng/resources/documents/statement/2013/united-nations-humanitarian-coordination-2013-12-12.htm (“a State may refuse access to relief only for valid reasons, such as ... if the relief being offered is not considered to be humanitarian or impartial”).

specific conduct of States in that regard is thus largely left *praeter legem* as far as the treaties are concerned.

Customary international law

It could certainly be argued that the ICJ's intuitive conclusion in *Nicaragua* reflected the position of States and thus amounted to a correct analysis of the applicable customary international law.⁷⁵ Undoubtedly, customary law contains both rules and principles.⁷⁶ As a matter of legal theory, principles are norms which "operate at a higher level of generality than rules"⁷⁷ and which help to explain the individual rules or provide the reason for them.⁷⁸ There is thus no conceptual barrier to recognizing the principles of impartiality and neutrality as principles of customary law. However, their existence would have to be "established ... in the same way as rules (by practice and *opinio juris*) or derived by extrapolation or analysis from such rules".⁷⁹

Opinio juris

Already the identification of the *opinio juris* in this connection poses considerable difficulty. It is true that many proclamations have been made by a plethora of actors endorsing the principles of impartiality and neutrality on the international plane. The UN General Assembly set out the principles of humanity, neutrality and impartiality as the "guiding principles" of humanitarian assistance in a non-binding resolution in 1991.⁸⁰ In the following years, the General Assembly frequently reaffirmed the said principles.⁸¹

Significantly, many States have since endorsed these principles and have committed themselves to adhering to them in undertaking humanitarian

75 Cf. V. Chetail, above note 7, p. 265; A. Gadler, above note 12, p. 228.

76 See, e.g., Hugh Thirlway, *The Sources of International Law*, Oxford University Press, Oxford, 2014, p. 94.

77 International Law Association (ILA), *Statement of Principles Applicable to the Formation of General Customary International Law*, London, 2000, p. 11.

78 Gerald Fitzmaurice, "The General Principles of International Law Considered from the Standpoint of the Rule of Law", *Recueil des cours*, Vol. 92, 1952, p. 7. But see, e.g., Michael Scharf, *Customary International Law in Times of Fundamental Change: Recognizing Grotian Moments*, Cambridge University Press, Cambridge, 2013, p. 29 (arguing that the terms "norms", "principles" and "rules" of customary law may be used interchangeably as normative equivalents).

79 H. Thirlway, above note 76, p. 94. The two traditional constituent elements of custom are (1) sufficient State practice backed by (2) evidence of the view that such practice is required by law (i.e. *opinio juris*). See further, e.g., James Crawford (ed.), *Brownlie's Principles of Public International Law*, 8th ed., Oxford University Press, Oxford, 2012, pp. 23–27; H. Thirlway, above note 76, pp. 56–79; ICRC Customary Law Study, above note 17, pp. xxxvii–li.

80 UNGA Res. 46/182, 19 December 1991, Annex, para. 2.

81 See, e.g., UNGA Res. 51/194, 10 February 1997, preambular para. 12; UNGA Res. 58/114, 17 December 2003, preambular para. 4; UNGA Res. 60/124, 8 March 2006, preambular para. 4; UNGA Res. 61/134, 1 March 2007, preambular para. 4; UNGA Res. 62/94, 25 January 2008, preambular para. 3; UNGA Res. 63/139, 5 March 2009, preambular para. 3; UNGA Res. 66/119, 7 March 2012, preambular para. 3; UNGA Res. 69/243, 23 December 2014, preambular para. 2.

action.⁸² However, these have almost exclusively been Western States, and it would thus be premature to speak of any general acceptance of the said principles.⁸³ In fact, when non-Western States do make a reference to the humanitarian principles in international fora, they typically limit their import to international organizations and humanitarian agencies.⁸⁴

Moreover, with respect to those States who are member States of the European Union (EU), it is arguable that the statements in question are in fact referable to EU law, and not to international law. This is due to the operation of Article 214(2) of the Treaty on the Functioning of the European Union (TFEU), which provides that “[h]umanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination”.⁸⁵ It is thus questionable to what extent States’ individual commitments can be taken to signify a belief on their part that conduct in line with these principles would actually be required by international law. Such doubts remain particularly strong with respect to those States that specifically refer to the TFEU as the applicable legal framework.⁸⁶

What is more, most of the proclamations referred to above are found in documents designated as the individual States’ “humanitarian strategy” or “humanitarian policy”, thus again indicating that the commitments in question were entered into not on a legal level – in other words, with the intention of being bound by international law – but only as a matter of policy or even international morality.⁸⁷

- 82 See, e.g., Ministry of Foreign Affairs of Denmark, *Strategy for Danish Humanitarian Action 2010–2015*, September 2009, pp. 10–11, available at: <http://um.dk/en/danida-en/activities/strategic/stab-protect/hum-ass/>; Swiss Federal Department of Foreign Affairs, *Humanitarian Access in Situations of Armed Conflict: Field Manual—Version 1.0*, 2011, section 3.2, available at: www.cdint.org/documents/PAIV_111118_Humanitarian%20Access_Field%20Manual_mit_Inhalt.pdf, UK Department for International Development, *Saving Lives, Preventing Suffering and Building Resilience: The UK Government’s Humanitarian Policy*, 2011, p. 6, available at: www.gov.uk/government/publications/the-uk-governments-humanitarian-policy-september-2011-final; Ministry of Foreign Affairs of France, *Humanitarian Strategy*, 6 July 2012, p. 14, available at: www.diplomatie.gouv.fr/fr/IMG/pdf/Strategie_Humanitaire_ANGlais_2012_cle89af5f.pdf; Federal Foreign Office of Germany, *Strategy of the Federal Foreign Office for Humanitarian Assistance Abroad*, November 2012, p. 8, available at: http://www.auswaertiges-amt.de/cae/servlet/contentblob/634144/publicationFile/177866/121115_AA-Strategie_humanitaere_hilfe.pdf; Ministry for Foreign Affairs of Finland, *Finland’s Humanitarian Policy*, 14 June 2013, p. 11, available at: <http://formin.finland.fi/public/default.aspx?contentid=101288>.
- 83 Cf. ILA, *Statement of Principles Applicable to the Formation of General Customary International Law*, London, 2000, p. 32, para. 16 (a belief on the part of the generality of States is sufficient to prove the existence of a customary rule).
- 84 See, e.g., United Nations Security Council (UNSC), Meeting Record, UN Doc. S/PV.7244, 19 August 2014, p. 14 (China) (“United Nations humanitarian agencies and relief organizations ... should ... uphold the principles of humanitarianism, namely neutrality, impartiality and independence”), p. 20 (Jordan) (“We must also ensure that humanitarian workers are committed to upholding the basic humanitarian principles related to neutrality, impartiality and independence”).
- 85 Consolidated Version of the Treaty on the Functioning of the European Union, OJ C 115/47, 9 May 2008, Art. 214(2).
- 86 See, e.g., Ministry of Foreign Affairs of France, above note 82, p. 14.
- 87 Cf. ICJ, *Nuclear Tests (Australia v. France)*, Judgment, *ICJ Reports 1974*, para. 43; ICJ, *Nuclear Tests (New Zealand v. France)*, Judgment, *ICJ Reports 1974*, para. 46; International Law Commission (ILC), *Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations*, UN Doc. A/61/10, 9 September 2006, Principle 1.

State practice

Even if it could be accepted that the statements referred to above amount to *opinio juris* sufficient to justify the customary character of the principles under scrutiny, one cannot draw the same conclusion with respect to the parallel requirement of State practice. Although in general statements of the kind discussed above, States typically refer to impartiality and neutrality alongside one another,⁸⁸ it is more accurate to distinguish between them as far as actual practice is concerned.

First, as far as impartiality is concerned, there is strong evidence to the effect that States have frequently permitted extraneous considerations in addition to the simple needs of the victims in their decision-making about the disbursement of aid. These have often featured an element of politicization and conditioning of aid.

Politicization of humanitarian action can take a number of different forms. For example, in a study about the instrumentalization of aid in the context of the conflict in Afghanistan, Fiona Terry observed that Western military forces

dropp[ed] pamphlets over southern Afghanistan that told residents they were to give information on the Taliban and Al Qaeda if they wished to continue receiving “humanitarian” aid, and generally us[ed] aid as a tool to “win the hearts and minds” of the Afghan population.⁸⁹

Another well-documented example concerns the US humanitarian aid to Cambodian refugee camps along the Thai–Cambodian border after the fall of the Khmer Rouge regime in 1979.⁹⁰ As summarized by Christine Mikolajuk, the assistance motivated by the US opposition to the communist government of Cambodia in fact served to revive the Khmer Rouge and contributed to the continuation of the conflict, thus worsening rather than alleviating the plight of the refugees.⁹¹

A more problematic practice has been to subject the provision of humanitarian assistance to express conditions set by the potential donor. This is a well-accepted feature of international development aid,⁹² but it goes against the nature of humanitarian assistance as a way of relieving the suffering of the victims of crisis and conflict.⁹³ A prominent example in this regard is the withdrawal of humanitarian staff and emergency assistance from Sierra Leone

88 See sources cited in note 82 above.

89 Fiona Terry, “The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 881, 2011, p. 175.

90 Christine Mikolajuk, “Thanks, But No Thanks: The Other Face of International Humanitarian Aid”, *Harvard International Review*, Vol. 26, No. 4, 2005, pp. 33–34.

91 *Ibid.*, p. 33.

92 See, e.g., Jonathan R. W. Temple, “Aid Conditionality”, in Vandana Desai and Robert B. Potter, *The Companion to Development Studies*, 3rd ed., Routledge, New York, 2014, pp. 547–551.

93 But see K. Mackintosh, above note 61, p. 11 (arguing that limited forms of human rights conditionality may be in conformity with IHL, as long as the aim of such measures is “genuinely ... to improve the condition of individuals”).

after a *coup d'état* in 1997.⁹⁴ The UN political leadership took the decision, and the UK government supported it; both actors' aim was "to try and effect the political objective of regime change".⁹⁵ In reality, this conditioning not only failed to bring about the intended political objective but has been excoriated for contributing to unnecessary loss of life in Sierra Leone.⁹⁶

Although these instances have been criticized by academics and NGOs, they have not been subject to any international condemnation by States or intergovernmental organizations for failing to live up to the demands of impartiality. Hence, the recurring practice of politicization and conditionality of aid places significant doubts on any claim that the adherence to the principle of impartiality by States providing humanitarian aid has been "constant and uniform" as required by international law for the establishment of custom.⁹⁷

Second, the principle of neutrality has been treated even more liberally by States. Writing in 1989, Professor Frits Kalshoven noted that States had frequently described as "humanitarian assistance" the material support provided to the sympathetic party to an armed conflict, in particular in the context of decolonization.⁹⁸ He added that far from inviting any international condemnation, such support was welcomed by the international community as "a highly desirable expression of support for the cause of self-determination of the peoples involved".⁹⁹

The post-Cold War era changed very little about this practice. The alliances have shifted, but the powerful States have generally continued playing the dual role of providing aid and projecting their own political aims at the same time. The United States was open about its aim to integrate the delivery of assistance within its counter-insurgency strategy, so much so that the US secretary of State at the time, Colin Powell, described humanitarian agencies with arresting candour as "such a force multiplier for us, such an important part of our combat team".¹⁰⁰ For instance, international "coalitions of the willing" such as the Friends of Syria grouping of eleven Western States and the informal "Libya contact group" of about forty nations have been open about their aim to channel "humanitarian assistance" to the opposition in both Syria and Libya.¹⁰¹ Even more recently,

94 See further Henry Dunant Centre for Humanitarian Dialogue, *Politics and Humanitarianism: Coherence in Crisis*, February 2003, pp. 9–12, available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/2356D2703EB313DE85257138007053DF-politics%20and%20humanitarianism.pdf>.

95 *Ibid.*, p. 10.

96 *Ibid.*, pp. 10–11.

97 Cf. ICJ, *Right of Passage over Indian Territory (Portugal v. India)*, Judgment, ICJ Reports 1960, p. 40.

98 F. Kalshoven, above note 20, pp. 518–519.

99 *Ibid.*, p. 519.

100 United States, *Remarks of Secretary Colin Powell to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations*, 26 October 2001, available at: http://avalon.law.yale.edu/sept11/powell_brief31.asp.

101 See Foreign and Commonwealth Office of the United Kingdom, "London 11" Friends of Syria Core Group Ministerial Communiqué, London, 15 May 2014, available at: www.gov.uk/government/news/london-11-friends-of-syria-core-group-ministerial-communication (concerning Friends of Syria); Steven L. Myers, "\$1 Billion Is Pledged to Support Libya Rebels", *New York Times*, 9 June 2011, available at: www.nytimes.com/2011/06/10/world/africa/10diplo.html?_r=0 (concerning the Libya contact group).

Russia dispatched a convoy described as carrying “humanitarian relief” to the separatist-controlled part of the Ukrainian territory.¹⁰²

Admittedly, it is conceivable that this conduct, while inconsistent with the principle of neutrality, would nonetheless not frustrate the customary status of that principle. The ICJ held in *Nicaragua* that practice corresponding with a putative rule of customary law need not be “in absolute rigorous conformity with the rule”; it suffices that instances of inconsistent conduct “should generally have been treated as breaches”.¹⁰³ However, this has emphatically not been the case here. It is true that some of the non-neutral conduct described above was condemned on the international plane. In particular, the Russian “humanitarian convoy” was decried as tantamount to invasion by both Ukraine¹⁰⁴ and a number of third States.¹⁰⁵ Notably, however, with one known exception,¹⁰⁶ the condemnatory statements referred to other norms of international law as being violated, in particular the territorial integrity and sovereignty of Ukraine¹⁰⁷ and – with respect to humanitarian assistance specifically – the need to secure the consent of the territorial State for any relief action.¹⁰⁸ It can thus be summarized that existing State practice with respect to the principles of impartiality and neutrality does not support their existence in customary international law as generally binding principles.¹⁰⁹

General principles of law

Given that the principles have not been found to bear the force of customary law, it remains to be seen whether they might nevertheless be considered as “general

102 Ministry of Foreign Affairs of the Russian Federation, *Russian Foreign Ministry Statement on the Start of the Delivery of Humanitarian Relief Aid to Southeastern Ukraine*, 22 August 2014, available at: www.mid.ru/brp_4.nsf/0/8CBBD5BFE558C6E344257D3C003D4DF0.

103 ICJ, *Nicaragua*, above note 27, para. 186.

104 See, e.g., UNSC, Meeting Record, UN Doc. S/PV.7253, 28 August 2014, p. 15 (Ukraine); UNSC, Meeting Record, UN Doc. S/PV.7289, 28 October 2014, p. 83 (Ukraine).

105 See, e.g., UNSC, Meeting Record, UN Doc. S/PV.7253, 28 August 2014, p. 3 (Lithuania), p. 7 (Australia); UNSC, Meeting Record, UN Doc. S/PV.7269, 19 September 2014, p. 14 (Lithuania).

106 NATO, “NATO Secretary General Condemns Entry of Russian Convoy into Ukraine”, 22 August 2014, available at: www.nato.int/cps/en/natohq/news_112112.htm (condemning the “disregard of international humanitarian principles” by Russia).

107 See, e.g., UNSC, Meeting Record, UN Doc. S/PV.7253, 28 August 2014, p. 3 (Lithuania), p. 5 (Luxembourg), p. 13 (United Kingdom).

108 See, e.g., European Union (EU), *EU Statement on the Violation of OSCE Principles and Commitments by the Russian Federation and the Situation in Ukraine*, 28 August 2014, p. 1, available at: http://eeas.europa.eu/delegations/vienna/documents/eu_osce/permanent_council/2014/pc_1014_eu_on_ukraine.pdf (“we deeply regret that a Russian convoy of 227 vehicles entered Ukrainian territory without the consent of the Ukrainian authorities and in violation of previous understandings and the involvement of the ICRC”). See also European Union External Action, *Statement by the Spokesperson on the Second Russian “Humanitarian Convoy” Dispatched to Eastern Ukraine*, Brussels, 15 September 2014, available at: http://www.eeas.europa.eu/statements/docs/2014/140915_02_en.pdf.

109 Cf. ICRC Customary Law Study, above note 17. This comprehensive study of existing customary IHL has equally not included impartiality and neutrality among the customary rules it has identified. See also *ibid.*, p. 193, Rule 55, stipulating a specific duty to “allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is *impartial* in character and conducted without any adverse distinction” (emphasis added).

principles of law” in the sense of Article 38(1)(c) of the ICJ Statute. Some arguments in favour of this proposition could certainly be made. First, since impartiality and neutrality are “principles” by their designation, their nature seems to be more readily aligned with the category of general principles of law than with any other type of sources of international law. Second, they are closely connected with the principle of humanity, which some¹¹⁰ have considered to have received legal recognition as a general principle of law by the ICJ in the *Corfu Channel* case.¹¹¹ It could thus be argued that the same conclusion could be reached with respect to these two principles.¹¹²

The two contentions should be analyzed separately. The first one is problematic in that it does not square with the prevailing conception of general principles of law as a source of international law. According to this conception, general principles are properly understood as “those which can be derived from a comparison of the various systems of municipal law and the extraction of such principles as appear to be shared by all, or a majority, of them”.¹¹³ General principles of law are thus emphatically not moral principles or general principles of international relations. Significantly in this respect, impartiality and neutrality of humanitarian action originate on the international plane and not within domestic legal systems. Their origins lie in IHL and in the activities of the components of the Red Cross and Red Crescent Movement.¹¹⁴ Although they have now been adopted as guiding principles by some international organizations and even States,¹¹⁵ it can hardly be suggested that they can now be extracted from the domestic law of all or even just a majority of States, if only for the reason that most States do not in fact actively and regularly engage in the provision of humanitarian assistance.¹¹⁶

110 See, e.g., Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Cambridge University Press, Cambridge, 1986, p. 4; Nils Melzer, *Targeted Killing in International Law*, Oxford University Press, Oxford, 2008, p. 187.

111 ICJ, *Corfu Channel Case (United Kingdom v. Albania)*, Judgment, *ICJ Reports 1949*, p. 4.

112 Interestingly, the International Law Commission has recently faced the same issue in the context of its work on the protection of persons in the event of disasters. However, its brief treatment of the matter can at best be described as avoiding the question. In fact, the ILC’s commentary to the Draft Articles on the Protection of Persons in the Event of Disasters expressly declined to determine whether these principles also qualify as general principles of international law. Report of the International Law Commission on the Work of Its Sixty-Sixth Session, UN Doc. A/69/10, 2014, Chapter V, p. 103, para. 1: (“the principles [of humanity, neutrality and impartiality] are considered by the Commission to constitute humanitarian principles that underlie disaster relief and assistance. On this basis the Commission did not find it necessary to determine whether these principles are also general principles of international law”).

113 H. Thirlway, above note 76, p. 95, relying on Hersch Lauterpacht, *Private Law Sources and Analogies of International Law*, Longmans, Green and Co., London, 1927. See also, e.g., American Law Institute, *Restatement (Third) of the Foreign Relations Law of the United States*, American Law Institute Publishers, St. Paul, 1986, paras 102(1)(c), 102(4) (referring to “general principles common to the major legal systems”; emphasis added).

114 See generally Jean-Luc Blondel, “The Fundamental Principles of the Red Cross and Red Crescent: Their Origin and Development”, *International Review of the Red Cross*, Vol. 31, No. 283, 1991, pp. 349–357.

115 See notes 81–82 above.

116 See, e.g., Global Humanitarian Assistance, *Global Humanitarian Report 2013*, pp. 20–27, available at: www.globalhumanitarianassistance.org/wp-content/uploads/2013/07/GHA-Report-2013.pdf (reporting official humanitarian assistance as coming from a total of seventy-seven governments).

The second contention requires a closer look at the ruling of the ICJ in the *Corfu Channel* case and the subsequent jurisprudence of that Court. It can be accepted *arguendo*¹¹⁷ (although this view is not universally endorsed¹¹⁸) that *Corfu Channel* recognized “elementary considerations of humanity” as general principles of law and applied them as a basis for the finding of a legal obligation in the case.¹¹⁹ Furthermore, the principles of humanitarian action indisputably find their basis in considerations of humanity; after all, “humanity” is such a principle on its own, and there are many links between impartiality and neutrality on the one hand and humanity on the other.

However, in the *South West Africa* cases, the ICJ forcefully rejected the suggestion “that humanitarian considerations are sufficient in themselves to generate legal rights and obligations”.¹²⁰ In *Nicaragua*, the Court further elaborated that the notion of “elementary considerations of humanity” had a more limited meaning which was in fact reflected in common Article 3.¹²¹ As discussed above, this provision does not contain a general endorsement of the principles of humanitarian action any more than the other provisions in the Geneva Conventions and their Additional Protocols.¹²² It is thus submitted that, whatever the true impact of the inclusion of the term “elementary considerations of humanity” in the *Corfu Channel* case was, it did not in itself serve to endow the connected notions of impartiality and neutrality with binding force under international law.

In summary, one may concede that equating humanitarian principles with general principles of law holds a certain superficial appeal. However, closer scrutiny of the origins and nature of impartiality and neutrality, as well as of the relevant international jurisprudence, reveals that these principles do not in fact qualify as general principles of law in the sense of an autonomous source of international law.

Potential direct and indirect legal effect of the principles of impartiality and neutrality

As seen in the previous section, the examination of the three principal sources of international law suggests that the ICJ’s position in *Nicaragua* – in particular as interpreted in subsequent writings¹²³ – does not square with the current state of

117 See note 110 above.

118 See, e.g., Brian D. Lepard, *Customary International Law: A New Theory with Practical Applications*, Cambridge University Press, Cambridge, 2010, p. 146 (“the Court’s precise reasoning is ambiguous ... [it] implies that ‘elementary considerations of humanity’ may, because of their moral character, be a basis for recognizing a customary legal obligation”); Christian Tomuschat, “General Course on Public International Law”, *Recueil des cours*, Vol. 281, 1999, p. 355 (arguing that the ICJ had in fact derived binding legal precepts from “the constitution of the international community”).

119 ICJ, *Corfu Channel*, above note 111, p. 146.

120 ICJ, *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Second Phase, Judgment, *ICJ Reports* 1966, p. 34, para. 49.

121 ICJ, *Nicaragua*, above note 27, para. 218.

122 See section on “Treaties”, above.

123 See the corresponding text to notes 41–43 above.

international law. Nevertheless, it would be wrong to dismiss the importance of the principles of impartiality and neutrality from the perspective of international law altogether. In fact, there are at least two important ways in which these principles may bring about significant legal effects for States in international law.

UN Security Council resolutions

First, adherence to the principles may be specifically demanded of humanitarian actors by the UN Security Council. The Security Council has done this on a number of occasions, while expressly acting under Chapter VII of the UN Charter.¹²⁴ For example, in Resolution 1341 (2001) concerning the situation in the Democratic Republic of the Congo, the Council called upon “all the parties to respect the principles of neutrality and impartiality in the delivery of humanitarian assistance”.¹²⁵ Due to the operation of Articles 25 and 103 of the Charter, resolutions adopted under Chapter VII are binding on all member States of the UN and prevail over conflicting obligations under any other agreement.¹²⁶

In other instances, the Security Council has endorsed the principles of impartiality and neutrality (frequently alongside other principles of humanitarian action) with lesser force. On some occasions, in resolutions not adopted under Chapter VII, the Council has included demands that humanitarian assistance be delivered in accordance with these principles.¹²⁷ In accordance with the ICJ’s ruling in the *Namibia* Advisory Opinion, the language used in such resolutions supports the view that these “demands” should also be seen as binding on the concerned States.¹²⁸ The view that all Security Council decisions are legally binding has been openly endorsed in the recent practice of the Council itself.¹²⁹

124 See, e.g., UNSC Res. 2060, 25 July 2012, op. para. 6; UNSC Res. 2093, 6 March 2013, op. para. 21 (regarding the UN Mission to Somalia); UNSC Res. 1341, 22 February 2001, op. para. 12; UNSC Res. 2109, 11 July 2013, op. para. 2 (regarding the UN Missions in Sudan).

125 UNSC Res. 1341, 22 February 2001, op. para. 12.

126 ICJ, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Order, Provisional Measures, *ICJ Reports* 1992, para. 39; ICJ, *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States)*, Order, Provisional Measures, *ICJ Reports* 1992, para. 42.

127 See, e.g., UNSC Res. 2113, 30 July 2013, op. para. 16; UNSC Res. 2134, 28 January 2014, op. para. 26; UNSC Res. 2228, 29 June 2015, op. para. 17.

128 ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, *ICJ Reports* 1971, paras 113–114: “Article 25 is not confined to decisions in regard to enforcement action but applies to ‘the decisions of the Security Council’ adopted in accordance with the Charter. ... The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.”

129 For an early commentary, see, e.g., Marie Jacobsson, “A Snapshot of a Legal Time-Frame: The United Nations Security Council Resolution 2118 (2013) and the OPCW Executive Council Decision”, in Jonas Ebbesson *et al.*, *International Law and Changing Perceptions of Security: Liber Amicorum Said Mahmoudi*, Brill, Leiden, 2014, pp. 142–146.

In two resolutions concerning the situation in Syria, it “underscor[ed] that Member States are obligated under Article 25 of the UN Charter to accept and carry out the Council’s decisions”.¹³⁰

In addition, the Council has frequently limited itself to “underscoring” or “emphasizing” the importance of upholding the principles of humanitarian action, at times specifically with respect to UN organs¹³¹ or humanitarian organizations,¹³² but most commonly in a general way without stating which actors it has in mind.¹³³ However, such language is probably better seen as exhortatory, and thus the resolutions in question would not amount to creating a binding legal obligation on the member States to abide by the principles of humanitarian action beyond their already existing legal duties. *A contrario*, resolutions by which the Security Council “demands” or “calls on” member States to adhere to these principles in the provision of humanitarian assistance have the effect of conferring binding force on the said principles within the scope of such resolutions.

Commitments made by humanitarian organizations to respect impartiality and neutrality

Second, the principles of impartiality and neutrality carry constitutional significance with respect to “Dunantist” humanitarian organizations.¹³⁴ These organizations, such as the components of the Red Cross and Red Crescent Movement and Médecins Sans Frontières (MSF), enshrine the legacy of Henry Dunant by incorporating the principles of humanitarian action in their constitutive

130 UNSC Res. 2118, 27 September 2013, preambular para. 14; UNSC Res. 2165, 14 July 2014, preambular para. 19.

131 See, e.g., UNSC Res. 2102, 2 May 2013, op. para. 7 (regarding UNSOM).

132 See, e.g., UNSC Res. 1296, 19 April 2000, op. para. 11; UNSC Res. 1502, 26 August 2003, preambular para. 4; UNSC Res. 2147, 28 March 2014, preambular para. 17; UNSC Res. 2175, 29 August 2014, op. para. 5.

133 See, e.g., UNSC Res. 1674, 28 April 2006, op. para. 21; UNSC Res. 1814, 15 May 2008, preambular para. 17; UNSC Res. 1894, 11 November 2009, op. para. 13; UNSC Res. 1972, 17 March 2011, preambular para. 6; UNSC Res. 2041, 22 March 2012, preambular para. 28; UNSC Res. 2063, 31 July 2012, op. para. 14; UNSC Res. 2096, 19 March 2013, preambular para. 27; UNSC Res. 2098, 28 March 2013, preambular para. 15; UNSC Res. 2100, 25 April 2013, preambular para. 8; UNSC Res. 2127, 5 December 2013, preambular para. 19; UNSC Res. 2145, 17 March 2014, preambular para. 27; UNSC Res. 2200, 12 February 2015, preambular para. 5; UNSC Res. 2210, 16 March 2015, preambular para. 23; UNSC Res. 2227, 29 June 2015, preambular para. 23.

134 See, e.g., Abby Stoddard, *Humanitarian NGOs: Challenges and Trends*, HPG Briefing Paper No. 12, London, July 2003, p. 2, available at: www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/349.pdf; Michael Barnett, *The International Humanitarian Order*, Routledge, London, 2008, pp. 181–182; A. Donini, above note 10, p. 146; Rony Brauman, “Médecins Sans Frontières and the ICRC: Matters of Principle”, *International Review of the Red Cross*, Vol. 94, No. 888, 2012, p. 1527, fn. 10. By contrast, organizations which are willing to abandon strict neutrality and impartiality and promote instead transformative policies in line with specific political and ideological aims are described by these authors as “Wilsonian”. Notably, the classification of some organizations may pose problems; for example, while the HPG Briefing Paper cited above considers Save the Children to be an example of a Dunantist organization, Barnett calls it one “of the most famous members of [the Wilsonian] camp”. See A. Stoddard, *ibid.*, p. 2; M. Barnett, *ibid.*, p. 181.

documents.¹³⁵ In addition to the two organizations just mentioned, several other international organizations and NGOs have likewise committed themselves to complying with these principles in all their humanitarian activities, with prominent examples including the International Office for Migration,¹³⁶ the International Rescue Committee¹³⁷ and the World Food Programme.¹³⁸ These self-commitments have an indisputable role in these organizations internally and serve as guidance for their conduct.¹³⁹ Moreover, initiatives such as the Humanitarian Accountability Partnership (2010) and the Core Humanitarian Standard on Quality and Accountability (2014) further promote the principles to participating organizations, increasing the likelihood that “Dunantist” commitments will continue to be made in the future.¹⁴⁰

The inclusion of the principles in the charters and constitutive documents of humanitarian organizations may also have an indirect effect on States. This is most apparent with respect to the components of the Red Cross and Red Crescent Movement. Significantly, States agreed that they “shall at all times respect the adherence by all the components of the Movement to the Fundamental Principles” when they adopted the Statutes of the Movement in 1986.¹⁴¹ Although the Statutes were not concluded in the form of an international treaty, an argument has been advanced as to their binding nature under international law on the basis of their content and method of adoption.¹⁴² Whatever the merits of this argument and thus irrespective of the legal status of the entirety of the Statutes, the duty of States to respect the commitment of the components of the Movement to adhere to their Fundamental Principles may also be inferred from the texts of the Geneva Conventions and their Additional Protocols, which expressly endorse these principles.¹⁴³

This indirect obligation of States has direct and observable real-world consequences. For instance, in the *Simić* case, a Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) inferred on this basis that the ICRC had a right to non-disclosure of information relating to its activities in judicial proceedings in order to effectively discharge its

135 “Proclamation of the Fundamental Principles of the Red Cross”, above note 4, pp. 573–574; MSF, *MSF Charter and Principles*, 2015, available at: www.msf.org/msf-charter-and-principles.

136 International Office for Migration (IOM), Res. 1243 (CI), *IOM Migration Crisis Operational Framework*, 27 November 2012, pp. 12–14, available at: www.iom.int/files/live/sites/iom/files/What-We-Do/docs/1243_-_IOM_Migration_Crisis_Operational_Framework_0.pdf.

137 International Rescue Committee, “IRC, Fellow Humanitarian Agencies Express Concern Regarding an Upsurge in Fighting in Somalia”, 17 July 2011, available at: www.rescue.org/news/irc-fellow-humanitarian-agencies-express-concern-regarding-upsurge-fighting-somalia-6928.

138 World Food Programme, *Consolidated Framework of WFP Policies*, Rome, October 2008, p. 16, available at: www.wfp.org/sites/default/files/wfp187807~1.pdf.

139 See further Marc Weller, “The Relativity of Humanitarian Neutrality and Impartiality”, *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 91, 1997, pp. 445–446.

140 HAP Standard, above note 4, p. 8; CHS, above note 4, p. 8.

141 Art. 2(4) of the Statutes of the International Red Cross and Red Crescent Movement adopted by the 25th International Conference of the Red Cross and Red Crescent, Geneva, October 1986, in *International Review of the Red Cross*, Vol. 27, No. 256, 1987, pp. 25 ff.

142 See F. Bugnion, “Red Cross Law”, above note 7, pp. 501–502.

143 See section on “Treaties”, above.

mandate.¹⁴⁴ The Trial Chamber specifically held that the parties to the Geneva Conventions and their Additional Protocols “must be taken as having accepted the fundamental principles on which the ICRC operates, that is impartiality, neutrality and confidentiality, and in particular as having accepted that confidentiality is necessary for the effective performance by the ICRC of its functions”.¹⁴⁵ This reasoning led it to decide that a former ICRC employee should not be called as a witness in that case.¹⁴⁶

To sum up, the principles of impartiality and neutrality can be said to have an indirect legal effect due to States’ duty to respect the commitment to these principles undertaken by certain humanitarian organizations. Nevertheless, it would be overstating the point to claim that the principles are “binding upon the States Parties to the Geneva Conventions *because* they were incorporated into the Statutes of the Movement”.¹⁴⁷ It bears reminding that States are not members of the Movement. As such, they are merely bound to respect the adherence to the Fundamental Principles by the components of the Movement; the Statutes do not contain a separate legal basis for a directly binding obligation for States when they engage in humanitarian action themselves.

Conclusion

In a 1979 Commentary on the Fundamental Principles of the Red Cross aimed at a general lay audience,¹⁴⁸ Jean Pictet warned that

[W]e must avoid confusion of the principles of the Red Cross with the principles of international humanitarian law, mainly embodied in the Geneva Conventions for the protection of the victims of war. The former serve at all times to inspire the action of the Red Cross as a private institution, whereas the latter, which have an official character, *regulate in wartime the conduct of States vis-à-vis their enemies*.¹⁴⁹

It would appear that his reminder is no less relevant today than it was over thirty-five years ago. It is understandable that the indisputable moral force of the principles of impartiality and neutrality may at times tempt academic writers to overestimate their legal position under international law. The ICJ’s desire in *Nicaragua* to distinguish between forms of aid that are benign and those that amount to unlawful interference is equally comprehensible. However, neither of

144 International Criminal Tribunal for the former Yugoslavia (ICTY), *The Prosecutor v. Blagoje Simić et al.*, Case No. IT-95-9-PT, Decision on the Prosecution Motion under Rule 73 for a Ruling Concerning the Testimony of a Witness (Trial Chamber II), 27 July 1999, para. 73.

145 *Ibid.*

146 *Ibid.*, part IV (Disposition).

147 S. Beauchamp, above note 7, p. 14 (emphasis added).

148 J. Pictet, above note 3, p. 5 (noting that the Commentary answers a call “for a simple and modern commentary which would make these principles understandable to everyone, and especially to the young people, who represent the future”).

149 *Ibid.*, p. 6 (emphasis added).

these tendencies has converted the two principles in question into norms that would directly, in Pictet's turn of phrase, "regulate in wartime the conduct of States".

Yet, the principles have proven to have important indirect effect on the conduct of States, in particular in their interaction with humanitarian organizations of the "Dunantist" type. Assistance that is provided in line with these principles is privileged and protected under IHL, and organizations that commit themselves to the same principles may under certain circumstances expect privileged treatment, too. Additionally, States may find themselves directly affected by the two principles within the narrow confines of an appropriately worded binding resolution of the UN Security Council.

Although the conclusion advocated here may at first blush find little favour with the proponents of the humanitarian cause, it is submitted that its consequence may in fact be more optimistic upon closer inspection. It would be unrealistic to expect States to abandon all aid efforts undertaken as part of their counter-insurgency strategies or State-building efforts during a time of armed conflict. As shown above, these types of assistance form a central component of States' toolkits for times of crisis. Still, by its nature, such aid cannot help but deviate from strict impartiality and neutrality.

A clue for the resolution of this conundrum may be found in repeated calls made by representatives of established humanitarian agencies concerned with the trend of "blurring the lines" between military, political and humanitarian efforts. For instance, in December 2009 the president of MSF told an audience composed primarily of NATO military personnel that "we have no principled objection to military units delivering aid as part of the war effort [or] to aid being part of hearts and minds campaigns".¹⁵⁰ What is key, he insisted, is that "[s]uch aid should not be attached to the term 'humanitarian'".¹⁵¹ Similar public statements have been made on a number of occasions by leading representatives of the ICRC.¹⁵²

150 MSF, "Our Purpose is to Limit the Devastations of War: Speech by Christophe Fournier", 8 December 2009, available at: www.doctorswithoutborders.org/news-stories/speechopen-letter/our-purpose-limit-devastations-war.

151 *Ibid.*

152 See, e.g., ICRC, "An ICRC Perspective on Integrated Missions: Speech by ICRC's Vice-President Jacques Forstier", Oslo, 31 May 2005, available at: www.icrc.org/eng/resources/documents/misc/6dcgrn.htm ("armed and police forces ... should not claim that humanitarian action will "win the war" – by winning hearts and minds ... the military, when they engage in activities of a humanitarian nature, should clearly identify themselves as military"); ICRC, "Humanitarian Principles – The Importance of Their Preservation During Humanitarian Crises: Speech by ICRC's Director-General Angelo Gnaedinger", Lisbon, 12 October 2007, available at: www.icrc.org/eng/resources/documents/statement/humanitarian-principles-statement-121007.htm ("Armed forces also have a very important *military* role to play in providing security. They should devote their efforts to these key responsibilities and avoid blurring the line between military, political, and humanitarian action by labelling all of them as *humanitarian*"; emphasis in original); ICRC, "World Humanitarian Day – Protection of Humanitarian Workers: Statement by ICRC's President Peter Maurer to the United Nations Security Council", Geneva, 19 August 2014, available at: www.icrc.org/eng/resources/documents/statement/2014/08-19-world-humanitarian-day-protection.htm ("The Security Council should not be – and should not be expected to behave as if it were – a humanitarian actor, for that risks blurring further the distinction between political and humanitarian functions.").

Although these comments were not made in relation to the legal basis of impartiality and neutrality, they confirm the need for a more nuanced understanding of the role these principles play vis-à-vis the relevant actors in modern-day conflicts. To describe them as generally and uniformly binding on all actors involved in the provision of aid only results in conceptual confusion and fruitless accusations of violation on part of those actors who cannot by the nature of some of their activities fully abide by these principles. At the same time, States should refrain from appropriating the terminology of humanitarian assistance for activities inconsistent with humanitarian principles. It needs no emphasis that doing so undermines genuine humanitarian efforts, creates the pretext for arbitrary refusal of aid, and even increases the risk that humanitarian personnel will be targeted during armed conflicts.

As a matter of international law, the principles of impartiality and neutrality play an important role, although they are not endowed with general binding force. A clear understanding of the legal scope and impact of the two principles – particularly insofar as States are concerned – is essential for the accurate calibration of expectations that are legitimately placed on various humanitarian actors. Only in this way may we advance Pictet’s call for conceptual clarity of IHL while at the same time heeding the legacy of Solferino, which forever reminds us of the importance of principled and efficient humanitarian action.

Applying the humanitarian principles: Reflecting on the experience of the International Committee of the Red Cross

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* The views expressed in this article, while based on the operational experience of the ICRC, are the authors' alone and do not necessarily reflect the ICRC's institutional position.

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Abstract

Applying the humanitarian principles of humanity, impartiality, neutrality and independence in a relevant manner in concrete operational settings is a constant challenge for humanitarian organizations. Bound by this set of norms, the International Committee of the Red Cross (ICRC) has incrementally developed over the years a rational framework that allows its leadership and staff on the ground to act according to these principles while developing adapted solutions and pragmatic approaches. This article begins by describing the history and development of the humanitarian principles; it then explains how the strategic choices of the ICRC are informed by these principles, and what the consequences are for the organization's capacity to act in favour of victims of armed conflicts.

Keywords: humanitarian principles, impartiality, neutrality, humanity, independence, assistance, protection, humanitarian action.

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Over the past couple of decades, the humanitarian aid sector has experienced a wave of expansion and development and has made considerable strides towards professionalization. Over the same period, more and more has been written about the principles underlying humanitarian action – humanity, impartiality, neutrality and independence.¹ These principles have gained broad acceptance, and a consensus has more or less been reached on their overriding importance in humanitarian activities. But their relevance, aim and interpretation remain the subject of constant debate and discussion.

Paradoxically, one reason why the principles are so difficult to implement is their success. Humanitarian action has never taken place in a political vacuum – it has always been politicized and instrumentalized – but emphasizing the apolitical

1 See, in particular, Larry Minear, “The Theory and Practice of Neutrality: Some Thoughts on the Tensions”, *International Review of the Red Cross*, Vol. 81, No. 1, 1999, pp. 63–71; Nicholas Leader, *The Politics of Principle: The Principles of Humanitarian Action in Practice*, Humanitarian Policy Group (HPG) Report No. 2, Overseas Development Institute (ODI), London, March 2000; Humanitarian Practice Network, *Humanitarian Exchange*, No. 25: *Neutrality*, HPG, ODI, London, December 2003; Daniel Thürer, “Dunant’s Pyramid: Thoughts on the ‘Humanitarian Space’”, *International Review of the Red Cross*, Vol. 89, No. 865, 2007, pp. 47–61; Antonio Donini, Larissa Fast, Greg Hansen, Simon Harris, Larry Minear, Tasneem Mowjee and Andrew Wilder, *Humanitarian Agenda 2015: Final Report. The State of the Humanitarian Enterprise*, Feinstein International Center, Medford, MA, March 2008; Caritas Europa, *Bridging the Gap between Policy and Practice: The European Consensus on Humanitarian Aid and Humanitarian Principles*, October 2011; Hugo Slim and Miriam Bradley, *Principled Humanitarian Action and Ethical Tensions in Multi-Mandate Organizations*, study commissioned by World Vision, March 2013; Ingrid Macdonald and Angela Valenza, *Tools for the Job: Supporting Principled Humanitarian Action*, Norwegian Refugee Council and HPG, ODI, October 2012; Yulia Dyukova and Pauline Chetcuti, *Humanitarian Principles in Conflict. Ensuring Humanitarian Principles are Respected in Armed Conflicts and Other Situations of Violence: ACF’s Experience and Position*, Action contre la Faim, member of the ACF International Network, December 2013.

and near-sacrosanct nature of the principles has laid bare a number of tensions and paradoxes within the sector. These days, there are more and more agencies with competing interpretations of the principles. The ambitions of the sector have grown to include addressing not just the effects but also the causes of crises. Countries that have traditionally received aid now have a greater capacity to respond themselves and, consequently, a greater desire to control aid delivery. And aid is now playing a central role in global governance. These are but a few of the reasons why the principles are now being so fundamentally called into question.

Consequently, the International Committee of the Red Cross (ICRC) – commonly regarded as an authority on humanitarian principles² – decided to assess its own application of these four principles, which together with three others are known within the International Red Cross and Red Crescent Movement (the Movement) as the Fundamental Principles.³ In late 2013 and early 2014, the ICRC carried out an in-depth study in seven of its delegations, which operate in very different settings. The study looked at how the Fundamental Principles were applied, what challenges their application presented, and how they shaped day-to-day decision-making. The aim was also to identify best practices.⁴

This article will first trace the history of the humanitarian principles and describe the contemporary political challenges in applying them. It will then examine the recurrent concrete operational challenges faced by the ICRC, reflect on best practices and give examples of the ways in which the organization itself has approached the application of the principles in different contexts. It will conclude by sharing some reflection on the relative utility of humanitarian principles to different brands of humanitarianism, from a relatively classic understanding limited to alleviating the suffering of people affected by crises to more transformative approaches that aim to address the root causes of vulnerability.

History of an ethical and operational framework guiding humanitarian action

Most people trace modern, organized humanitarian work back to the Battle of Solferino, in 1859.⁵ Henry Dunant, horrified by the untold number of wounded

2 Michael Barnett and Thomas Weiss have stated that “for many the ICRC’s definition of humanitarianism is the gold standard: the independent, neutral and impartial provision of relief to victims of armed conflicts and natural disasters”. Michael Barnett and Thomas Weiss, *Humanitarianism Contested: Where Angels Fear to Tread*, Routledge, New York, 2011, p. 9.

3 The other three Fundamental Principles are voluntary service, unity and universality. These are specific to the Movement and, for this reason, are not extensively discussed in the present article.

4 This study resulted in an internal report entitled “Snapshot of ICRC Application of Fundamental Principles”, October 2014.

5 Peter Walker and Daniel Maxwell, *Shaping the Humanitarian World*, Routledge, New York, 2009; M. Barnett and T. Weiss, above note 2; Katherine Davies, *Continuity, Change and Contest: Meanings of “Humanitarian” from the “Religion of Humanity” to the Kosovo War*, HPG, ODI, London, August

left dying on the battlefield, mobilized the local population to care for them, whatever their race or nationality. His experience, recorded in the book *A Memory of Solferino*,⁶ led to the founding of the ICRC in 1863 and the adoption of the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field – the first building block of international humanitarian law (IHL).

Over the following decades, the ICRC and its partners in the Movement built an ethical and operational framework underpinning their work, resulting in the adoption a century later of the seven Fundamental Principles of the Movement at the 20th International Conference of the Red Cross held in Vienna in 1965. The first four principles – humanity, impartiality, neutrality and independence – would heavily influence the normative development of the wider humanitarian sector. Indeed, the United Nations (UN) General Assembly adopted and recognized them as guiding principles for international humanitarian action under the UN system.⁷ The ICRC and the Movement influenced the development of IHL and the principles underlying humanitarian work to such an extent that it prompted historian Katherine Davies to speak of a “master-narrative” providing the ethical, operational and legal foundations for modern humanitarian activities.⁸ It is therefore worth examining those foundations as they are understood within the Movement.

Ethical foundations: Humanity as the ultimate goal

The ultimate and sole aim of humanitarian action, born on the battlefield of Solferino, is to prevent and alleviate suffering, protect life and ensure respect for the dignity of people in desperate situations as a result of conflict or disaster, regardless of their nationality or ethnic background, political or ideological views or social standing. This sole objective, contained in the principle of humanity, is the embodiment of a moral imperative that views the individual from an ontological perspective and refuses to take anything else into consideration. According to Jean Pictet, author of the Commentary on the Fundamental Principles of the Movement, humanity is the “essential principle” underlying the humanitarian endeavour and the only one whose nature is profoundly moral.⁹ Humanity is crucial – it is what should keep recipients of humanitarian assistance from being reduced to their needs. It also recognizes every individual as simply

2012; Jérémie Labbé, *Rethinking Humanitarianism: Adapting to Twenty-First Century Challenges*, International Peace Institute, New York, November 2012.

6 Henry Dunant, *A Memory of Solferino*, ICRC, Geneva, 1862.

7 UNGA Res. 46/182, 19 December 1991. This resolution stipulates that “[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality”. The principle of independence was not recognized as a guiding principle for the provision of humanitarian assistance until 2003, in UNGA Res. 58/114, 5 February 2004.

8 K. Davies, above note 5, p. 1.

9 Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, ICRC, Geneva, 1979, available at: www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm (all internet references were accessed in June 2015).

human. Logically, then, non-discrimination is inseparable from this moral imperative and is an integral part of the principle of humanity, even if more commonly associated with the principle of impartiality.

In addition, humanitarian action is not limited to alleviating physical suffering and protecting lives and health; it also strives to preserve human dignity. This involves listening to the victims of armed conflicts or natural disasters, respecting their cultural and religious sensitivities and understanding not only their needs but also their fears and aspirations. It is this ethical framework for humanitarian action that explains why the ICRC and its partners within the Movement have worked for so many years to build close ties with affected communities: so that they can assess situations as objectively as possible. Over the years, with that ideal in mind and drawing on its operational experience, the Movement has devised and adopted a set of strictly operational principles that allow it to achieve the ultimate goal enshrined in the principle of humanity, in situations that are by their nature chaotic and very often polarized.

Practical foundations: A pragmatic solution to operational challenges

If humanity and impartiality provide a moral ideal and an ethical framework for humanitarian action, neutrality and independence are above all the practical tools for making humanity and impartiality a reality. As Jean Pictet pointed out, they fall “within the domain of means and not ends” – the domain of professional ethos and not ethics.¹⁰ They arose mainly out of the ICRC’s practical responses to the operational challenges faced by the first modern humanitarians, particularly those working in conflict situations.

Pictet labelled impartiality a substantive principle (an objective) rather than a derived (or operational) principle, like independence and neutrality. But impartiality too has a practical side. Most humanitarian organizations agree that impartiality covers two ideas: non-discrimination, which is inseparable from humanity and thus from ethics, and proportionality, which dictates that assistance should be delivered according to the severity of needs and their urgency only. Recognizing that no organization can cover all needs, proportionality provides a logical and fair way of setting priorities. Impartiality is thus in part utilitarian.

The sole objective of the eminently pragmatic principles of neutrality and independence is to enable assistance and protection programmes to be implemented in an impartial manner in politically polarized situations such as armed conflicts. They have no intrinsic moral value. They were devised out of operational practice to facilitate dialogue with the parties to a conflict and win their trust: neutrality demonstrates that humanitarian work is not about favouring one party to a conflict over another or about backing a particular ideology; independence means determining needs and making operational decisions autonomously. In addition, these concepts are relative and not absolute,

¹⁰ *Ibid.*

in the sense that they must be interpreted and applied in light of concrete circumstances. Their relevance to an operation depends on how they are seen by a given party or authority. Far from being rigid and dogmatic, these principles can bend to fit the context, the forces at work and the sensitivities of the various groups. However, as we will see, they do require rigour and discipline and involve costs and limitations.

Legal foundations: Enshrining practice in IHL

In 1949, while the Fundamental Principles were still being developed and before their adoption at the International Conference in Vienna, the principles of humanity¹¹ and impartiality were already being incorporated into IHL via the Geneva Conventions. The Geneva Conventions recognize the right of “an impartial humanitarian body, such as the International Committee of the Red Cross”, to offer its services to the parties to the conflict, whether the conflict is international or non-international.¹² The condition that humanitarian assistance must be impartial was strengthened by the two Additional Protocols to the Geneva Conventions, which state that “relief actions which are humanitarian and impartial in character and conducted without any adverse distinction” may be undertaken.¹³

The enshrinement of the principle of impartiality in IHL demonstrates that non-discrimination is a universal requirement.¹⁴ It also implies that, for the States party to the Geneva Conventions, humanitarian action is acceptable if it is limited to providing assistance and protection to the victims of conflicts – the

- 11 The Geneva Conventions employ a version of the Martens clause in their denunciation clauses (common Article 63/62/142/158) to make clear that if they denounce the Conventions, the parties will remain bound by the principles of the law of nations, as they result from the usages established among civilized peoples, the laws of humanity and the dictates of public conscience. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Art. 63; Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Art. 62; Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Art. 142; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Art. 158. See Theodor Meron, “The Martens Clause, Principles of Humanity, and Dictates of Public Conscience”, *American Journal of International Law*, Vol. 94, No. 1, 2000, pp. 78–89. See also Jean Pictet, *Development and Principles of International Humanitarian Law*, Martinus Nijhoff Dordrecht, and Henry Dunant Institute, Geneva, 1985.
- 12 Article 3 common to the four Geneva Conventions, on non-international armed conflicts. Common Article 9/9/9/10, which applies to international armed conflicts, stipulates that “the provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other *impartial* humanitarian organization may ... undertake” (emphasis added).
- 13 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 70; and confirmed in nearly identical wording in Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 18.
- 14 As of 28 January 2015, 196 States have ratified the Geneva Conventions, making them essentially universally ratified.

essence of the principle of humanity – and “must not be affected by any political or military consideration”.¹⁵ As Kate Mackintosh notes, even though neutrality and independence are not mentioned explicitly in the Geneva Conventions, “the concept of non-participation (direct or indirect) in hostilities is at the core of the relief provisions [of the Geneva Conventions]”.¹⁶

The International Court of Justice confirmed the idea of non-intervention, and thus tacitly recognized neutrality and independence as an approach, finding in a 1986 judgment 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 ..., *not merely to [one party] and their dependents*.¹⁷

Even though neither neutrality nor independence are mentioned in the judgment, it is clear that, in the Court’s view, assistance provided exclusively to one party would constitute intervention in the affairs of a State and thus would not be strictly humanitarian.

Current international order and challenges to humanitarian principles

There is a broad consensus on the theoretical and practical legitimacy of the humanitarian principles. But like any set of standards, they are confronted with the reality of the political and operational contexts in which they are applied, and their relevance is sometimes questioned or put to the test by outside events and developments. The authors will look at just a few of these.¹⁸

Changes in the international order: Polarization and radicalization

The events of 11 September 2001 and their consequences have played a large part in further dividing the world politically and culturally and bringing back the moral

15 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 1: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva, 1952, p. 109.

16 Kate Mackintosh, “The Principles of Humanitarian Action in International Humanitarian Law”, Study 4, in *The Politics of Principle: The Principles of Humanitarian Action in Practice*, HPG Report No. 5, ODI, London, March 2000, p. 13.

17 International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, *ICJ Reports 1986*, para. 243 (emphasis added).

18 For a more in-depth discussion on contemporary challenges to humanitarian action, see Claudia McGoldrick and Pascal Daudin, “The Future of Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011.

justification of war to replace the cold calculation of strategic interests. The notion of a “global war on terror” represents, in a way, the re-emergence of the “just war”,¹⁹ whereby the enemy becomes an offender, and security or military action taken against such an offender becomes righteous.²⁰ At the same time, aid organizations that “pick sides” and postulate that humanitarian activities should serve a greater good or should better civilization, such as by rescuing vulnerable populations militarily or restoring peace through various stabilization strategies, constitute a threat to other humanitarian organizations. Organizations which operate in very polarized environments need to set themselves apart sometimes from those engaged in transformative strategies in order to maintain impartial access to the people they want to assist.

These humanitarian organizations are also starting to see some of their principles work against them. Neutrality, for example, is sometimes seen as indifference or suspended morality, as giving up on change, or simply as a lack of courage or political intelligence. Refusing to take sides can be interpreted as putting all sides on an equal moral footing, because those that do so do not allow themselves to consider the justifications or the share of responsibility for the violence.²¹ Critics of neutrality argue that by this logic, instances of suffering are “inevitable tragedies” about which nothing can be done. But, on the contrary, political neutrality is a position that allows organizations to work on behalf of all victims, including those for which the international community has little regard. As Jean-Hervé Bradol rightly said: “Humanitarian aid is primarily addressed to those whose demand to live clashes with the indifference or overt hostility of others.”²²

The ICRC does not believe that neutrality prevents it from taking steps to get perpetrators of IHL violations to stop their illegal actions. But the work of organizations such as the ICRC is only possible by making a clear distinction between *jus ad bellum* and *jus in bello*.²³ In no event is the legitimacy or morality of a conflict to be questioned, nor whether an armed intervention should be carried out to save communities in distress at the eleventh hour. The only concern of humanitarian organizations is how those interventions will affect their work.

19 See, for example, Jean-Marc Flükiger, *Nouvelles guerres et théorie de la guerre juste*, Infolio Éditions, Gollion, 2011; and Michael Walzer, “The Politics of Rescue” (1994), in Michael Walzer, *Arguing about War*, Yale University Press, New Haven, CT, 2004.

20 Régis Debray, *L'Emprise*, Gallimard, Paris, 2000.

21 See, for example, Jacques Pous, *De Gandhi à Fanon, un religieux face à la guerre d'Algérie*, Golias Éditions, Villeurbanne, 2012. For a critique of humanitarian principles *per se*, see Thomas G. Weiss, “Principles, Politics, and Humanitarian Action”, *Ethics and International Affairs*, Vol. 13, No. 1, March 1999, pp. 1–22.

22 Jean-Hervé Bradol, “The Sacrificial International Order”, in Fabrice Weissman (ed.), *In the Shadow of “Just Wars”: Violence, Politics and Humanitarian Action*, Cornell University Press, New York, 2004, p. 6.

23 The goal of *jus in bello* (law in war) is to limit the suffering caused by war by providing, to the extent possible, protection and assistance to the victims. It deals with the reality of conflict without taking into account the justifications for or legality of the use of force. Conversely, *jus ad bellum* (law on the use of force) determines the legality of the use of force.

Thus, the mere notion of “humanitarian intervention” leads to regrettable confusion between the purpose and principles of humanitarian action and political action taken to resolve crises. This ambiguity can and has resulted in tragic misunderstandings, especially when certain organizations more or less deliberately associate themselves with this kind of intervention. In addition, some radicalized movements declaring messianic goals and total war leave no or very little room for the very idea of humanitarian action. As the international community remains unable to quickly resolve conflicts and crises grow ever more complex, some humanitarian organizations are tempted to fill the social and political void, at times taking the place of governments.

Given these developments, neutrality and impartiality – requiring humanitarian actors not to take sides in political matters and to provide protection and assistance to all groups of victims of a conflict, without exception – have become problematic or at times even unworkable. It is becoming a crime to assist people who are presumed to support those whom the international community is fighting.²⁴ The notion that there are “good” and “bad” victims, and that the “bad” victims cannot or should not be saved, is a direct attack on the idea of humanity. Under such a notion, the principles would lose their intrinsic value and become inoperable.

The principles as an outgrowth of Western thought

Another common criticism of the humanitarian principles is that they are based on values that are not or are no longer universally held. Some critics are quick to point out the cultural limits of the standards underpinning some international instruments and claim that some foundations of humanitarian work are impenetrable or downright contrary to the frames of reference of some non-European societies.²⁵ Another variation of this criticism is that the same words do not carry the same meanings everywhere.

The question of whether the values underpinning the humanitarian principles (and the humanitarian philosophy in general) are universal or relative has been the subject of debate for many years. Inasmuch as the Movement’s Fundamental Principles were adopted by each country and each National Red Cross and Red Crescent Society as part of a democratic and transparent process,²⁶ there is little doubt that they are universally applicable from a

24 On the criminalization of aid and the impact of counter-terrorism measures on humanitarian action, see Naz K. Modirzadeh, Dustin A. Lewis and Claude Bruderlein, “Humanitarian Engagement under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape”, *International Review of the Red Cross*, Vol. 93, No. 883, 2011, pp. 623–647; and Kate Mackintosh and Patrick Duplat, *Study on the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, independent study commissioned by the Office for the Coordination of Humanitarian Affairs (OCHA) and the Norwegian Refugee Council, July 2013. See also the article by Phoebe Wynn-Pope, Yvette Zegenhagen and Fauve Kurdani in this issue of the *Review*.

25 See the article by Stuart Gordon and Antonio Donini in this issue of the *Review*.

26 The Fundamental Principles were adopted at the 20th International Conference of the Red Cross. The States party to the Geneva Conventions attended alongside the components of the Movement.

“normative” standpoint. They have also been confirmed time and again by resolutions, treaties and other instruments.²⁷ IHL too has been similarly criticized even though its instruments have been universally ratified.

Naturally, the civil society viewpoint is not always aligned with international commitments. One cannot shy away from a moral and philosophical examination of the humanitarian principles, whose ultimate goal is, after all, to respond to the needs arising out of political crises and natural disasters. Moreover, the legacies of the Enlightenment and more generally of the philanthropic humanism of the nineteenth century, sometimes inspired by political or religious motives,²⁸ from which modern humanitarianism has in part descended are severely criticized – not so much for their substance, but rather for how they have been imposed at certain times in history. In addition, the religious and ideological radicalization of some conflicts is also a serious concern for those working to gain acceptance of the principles.

It must also be remembered that these concepts were created and adopted in a specific historical context, at a time when relations between nations were, without a doubt, different than they are today. Just because a global political framework is built on recognized ideals does not mean that all of civil society is in agreement. The universal value of the principles has naturally been questioned by the encouragement of the use of religious or philosophical frames of reference; the emergence of new groups, some of which are clearly opposed to these ideals; and the affirmation or reaffirmation of some cultural peculiarities. At times, the principles have even been labelled as ethnocentric universalism.²⁹ It is well beyond the scope of this article to embark on an anthropological criticism or historiography of humanitarian thought. However, some scholars have indeed argued that certain values are fundamentally incompatible (i.e., incommensurable) with other cultures or are not transferable from one culture to another.³⁰ The few scientific studies on non-Western humanitarianism³¹ show that humanitarian work dates back to well before the Enlightenment period and

Furthermore, Article 81 of AP I stipulates: “The Parties to the conflict shall grant to their respective Red Cross ... organizations the facilities necessary for carrying out their humanitarian activities in favour of the victims of the conflict, in accordance with the provisions of the Conventions and this Protocol and *the Fundamental Principles of the Red Cross* as formulated by the International Conferences of the Red Cross” (emphasis added).

- 27 See, for example, European Consensus on Humanitarian Aid, 2008/C 25/01, Art. 2.1; Treaty on the Functioning of the European Union, 2012/C 326/01, Art. 214.2; and Economic Community of West African States, Humanitarian Policy, March 2012, available at: www.westafricagateway.org/files/Common%20Humanitarian%20Policy_0.pdf
- 28 Maurice Tournier, “Humanitaire est-il apolitique de naissance?”, *Mots*, No. 65: *L’humanitaire en discours*, March 2001, pp. 136–145.
- 29 Martin Hollis, “Is Universalism Ethnocentric?”, in Christian Joppke and Steven Lukes (eds), *Multicultural Questions*, Oxford University Press, Oxford, 2003.
- 30 See, for example, Ruth Benedict, *The Chrysanthemum and the Sword*, Mariner Books, New York, 2005.
- 31 See, for example, Jasmine Moussa, *Ancient Origins, Modern Actors: Defining Arabic Meanings of Humanitarianisms*, HPG, ODI, London, November 2014. See also Hanna B. Krebs, *Responsibility, Legitimacy, Morality: Chinese Humanitarianism in Historical Perspective*, HPG, ODI, London, September 2014; Andrea Binder and Björn Conrad, *China’s Potential Role in Humanitarian Assistance*, Global Public Policy Institute, Berlin, 2009.

has no clear geographic boundaries. The colonial legacy should not, however, be underestimated in the perception of humanitarianism.

Some of the above criticisms are valid, especially when the humanitarian principles are not understood or do not fit within the existing socio-cultural framework of specific groups or communities. Acknowledging this reality, the ICRC has held, since the 2000s, intensive discussions with religious authorities, militant groups and religious (especially Islamic³²) humanitarian organizations in order to create a forum for discussing the common grounds and areas of convergence between the principles and other religious, philosophical and cultural frames of reference. It has also always tried to tie the principles more closely to operational settings and their challenges. In 2009, for instance, the ICRC commissioned the independent consultant and researcher Fiona Terry to carry out an internal study on its neutrality in Sudan and Afghanistan.³³ In 2013, it carried out another internal study – mentioned in the introduction to this essay – to identify difficulties encountered when applying the principles in various operational settings. Also in 2013, as part of the preparations for the Council of Delegates in Sydney, the ICRC, the International Federation of Red Cross and Red Crescent Societies and the British Red Cross consulted with the National Societies to gain insight into any difficulties the latter faced in applying the Fundamental Principles.³⁴ That same year, the British Red Cross carried out similar studies in Somalia and Lebanon (in Lebanon, in partnership with the ICRC).³⁵ These various initiatives demonstrate that both the ICRC and the Movement are well aware of the importance of understanding how the principles work in practice.

These studies and exchanges have brought to light certain differences in the primary motives of humanitarian action but have not as yet revealed a major cultural gap in the interpretation of the principles. However, it is clear that efforts need to be made to understand operational settings and adapt the principles

- 32 See, for example, Ronald Oferinger, “La dialectique de l’image, de l’acceptation et du travail humanitaire dans les situations de conflit et de violence organisée”, in Caroline Abu-Sada (ed.), *Dans l’œil des autres: Perception de l’action humanitaire et de MSF*, Médecins Sans Frontières, Editions Antipodes, Paris, 2011. See also the article by Ronald Oferinger and Abdulfatah Mohamed in this issue of the *Review*.
- 33 Fiona Terry, *Research Project on the ICRC Practice of Neutrality*, internal document, ICRC, 2009. Some of the findings of this study were also discussed in Fiona Terry, “The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 881, 2011, pp. 173–188.
- 34 See the “key findings of consultations” section of the report for the workshop on the Fundamental Principles held in conjunction with the 2013 Council of Delegates, a meeting gathering all components of the Movement that takes place every two years: Council of Delegates, “Outline of Workshop 1 – Fundamental Principles of the Red Cross and Red Crescent”, CD/13/WS1, 2013, available at: www.standcom.ch/download/cod2013/wo/CD13_WS1_FP_outline_30Sept_clean_EN.pdf.
- 35 Sorcha O’Callaghan and Leslie Leach, *Principles in Action in Lebanon*, British Red Cross, ICRC and Lebanese Red Cross, London, 2012; Sorcha O’Callaghan and Jane Backhurst, *Principles in Action in Somalia*, British Red Cross and Somali Red Crescent Society, London, 2013. These two reports are available at: www.redcross.org.uk/About-us/Who-we-are/The-international-Movement/Fundamental-principles/Why-the-principles-matter-to-millions. See also Sorcha O’Callaghan and Leslie Leach, “The Relevance of Fundamental Principles to Operations: Learning from Lebanon”, *International Review of the Red Cross*, Vol. 95, No. 890, 2013, p. 302.

accordingly. Neutrality does not take the same form in an international armed conflict as in a civil war or situation of violence in which a government may be fighting a multitude of groups, including criminals, or those groups may be fighting each other. Impartiality is a bit like fairness: we think we have an innate idea of what is fair or impartial, but when we go to apply it, we discover that the reality is actually far more complex. Each case is different. The ICRC operates in historically complex contexts where the notion of victim is also determined by the collective memory: it may be that the people who are vulnerable today were associated with the executioners of yesterday.

Contending that certain conflicts take place in closed societies that are isolated from the outside world and not part of the flow of ideas in no way reflects the historical or operational reality. Rather, the authors believe that rejection of the principles is based on universal political trends and is more of an ideological position than a cultural one; it is usually more grounded in political considerations than in cultural concerns. Wars and conflicts are extreme events that have a profound impact on the affected societies. They put people on the defensive and bring out identity-based and nationalist sentiments. They are not propitious for tolerance and acceptance of differences.

The desire to come to the aid of all people, regardless of which side they are on, is not so straightforward when it is those brandishing weapons whose voices are heard and the deadly consequences of the violence are unmistakable. Neutral and impartial humanitarian action is a challenge in all cultures, including Western ones. The current debate on terrorism is a clear example of how difficult it is to convince the authorities and the public of the need to help all people affected. It is often hard to get across why political allegiance cannot be a condition for the assistance provided to these vulnerable groups.

Paradoxically, the ICRC's insistence on always being impartial is limiting because it can make negotiations more difficult. It is a dilemma because if the ICRC were to give in to short-term pragmatism and agree to provide assistance to just one side, it could compromise its chances of being accepted and carrying out operations later on. In Syria, the ICRC has refused to perform cross-border operations without the consent of the State because it considered that doing so would jeopardize its capacity to reach larger segments of the population through negotiated cross-line operations.³⁶ In 1979, however, the ICRC stuck to its decision to maintain its cross-border operations through Thai territory, because this was the only way to reach displaced populations under Khmer Rouge control.³⁷

Even in instances where an organization is allowed to analyze the humanitarian needs on both sides objectively, it remains extremely difficult for victims to tolerate the idea that the organization helping them would do the same for their enemies and would treat a wounded or captured soldier – who could be the source of their woes – the same as people displaced by the conflict.

36 Pierre Krähenbühl, "There Are No 'Good' or 'Bad' Civilians in Syria – We Must Help All Who Need Aid", *The Guardian*, 3 June 2013.

37 Interview with François Bugnon, *Magazine Croix-Rouge Croissant-Rouge*, No. 1, 2015.

For instance, a government facing an armed rebellion is generally more than willing to let an organization work in the regions that it controls and on behalf of the people it considers loyal. But it is another matter altogether when the vulnerable people needing assistance and protection are in the rebel zone or are deemed resistant to authority. The same rationale would apply when an armed group is in a position to decide whether humanitarian assistance should be extended to populations that are not considered loyal. Thus, there is a big difference between the legal morality developed by lawyers and governments in peacetime, and putting this morality into practice on the ground in a context of violence. It is a constant challenge – one faced everywhere, across all cultures.

Expansion of the sector and growing ambitions

A few years ago, Michael Barnett asserted that the new international political order had led to a politicization and institutionalization of humanitarian efforts.³⁸ This is probably somewhat exaggerated, but the sector has indeed gradually broadened its ambitions – based on a more fine-grained understanding of conflicts and other humanitarian crises – and is pushing the limits of what can be called humanitarian action.³⁹

For a long time, humanitarian endeavours were the preserve of just a few isolated organizations, but the massive aid mobilizations of the Bosnian War and other 1990s conflicts marked a turning point, and no doubt contributed to the sector's expansion. Since then, non-governmental organizations and UN agencies have progressively broadened the scope of their activities. This is the result of several factors, two of which are notable here.

The first was the feeling that humanitarian work was inadequate given how great and how complex people's needs and aspirations were. Faced with a lack of lasting political solutions and a growing number of protracted conflicts, a more system-wide aid response was required. As a result, humanitarian assistance has become at times a stopgap solution or even a substitute for failing governments in light of the international community's inability to find diplomatic or military solutions.⁴⁰

The second factor was the sharp increase in the quantitative and qualitative expectations of the international community, and of donors in particular.⁴¹ The role of aid workers has been transformed from rescuer to doctor. It is therefore not

38 Michael Barnett, "Humanitarianism Transformed", in Michael Barnett (ed.), *The International Humanitarian Order*, Routledge, London, 2010.

39 There is no universally accepted definition for humanitarian action, but, traditionally, it is supposed to be of short duration and limited to covering basic needs. "Humanitarian assistance is the assistance and action designed to save lives, alleviate suffering and maintain and protect human dignity during and in the aftermath of emergencies": Oliver Buston and Kerry Smith, *Global Humanitarian Assistance Report*, Development Initiatives, Bristol, 2013, p. 11.

40 Jennifer C. Rubenstein, *Between Samaritans and States: The Political Ethics of Humanitarian INGOs*, Oxford University Press, Oxford, 2015.

41 Hugo Slim, "Global Welfare: A Realistic Expectation for the International Humanitarian System?", in John Mitchell, *ALNAP Review of Humanitarian Action: Evaluation Utilization*, ODI, London, 2006.

enough to ease suffering and deal with the immediate effects – the underlying factors have to be addressed as well. Rights have to be defended or restored, foundations for sustainable development laid, past grievances redressed and impunity combated.⁴²

The integrated approach developed by the UN has evolved from classic peacekeeping to a global transformation project that combines policing, stabilization by incentives and force, establishing the rule of law, carrying out development programmes and providing humanitarian aid.⁴³ It strives to anticipate and prevent the problems that lead to armed conflict, to hasten the return to normality after armed conflict, and to integrate all the factors of vulnerability and human and societal development into its programmes. Sometimes the goal is also to transform societies that are deemed too archaic, pushing them to develop, changing their social structure and occasionally challenging the very roots of their traditions.

It is here that humanitarian assistance intersects with ideas of progress and universal justice.⁴⁴ The almost inevitable convergence of humanitarian efforts and the desire to improve society has detracted from efforts to meet basic needs. Previously, humanitarian work was, both philosophically and for expediency's sake, set apart from, if not in opposition to, politics. As humanitarian work has edged closer to social and political work, the friction with societies and governments has, unsurprisingly, increased. It is often not a big leap from the idea of social transformation to suspected neo-colonialism. Pushing for progress can breed mistrust. This fundamental shift towards a more global perspective on needs and aspirations is sometimes leading to a rejection of humanitarian efforts in the places where it would be easiest to agree on an emergency response – less ambitious, certainly, but also less limiting. As the scope of activities broadens, applying (real and perceived) independence and neutrality becomes ever more complex. As Peter Maurer rightly explained:

In theory we all share the same aspirations for global peace, development and security, as well as the understanding about the limits of humanitarian action in addressing or preventing the causes of crisis. In practice however, our experience shows that emergency access to vulnerable populations in some of the most contested areas depends on the ability to isolate humanitarian goals from other transformative goals, be they economic, political, social or human rights related.⁴⁵

42 Joel R. Charny, "Upholding Humanitarian Principles in an Effective Integrated Response", *Ethics & International Affairs*, Vol. 18, No. 2, 2004, pp. 13–20.

43 Victoria Metcalfe, Alison Giffen and Samir Elhawary, *UN Integration and Humanitarian Space: An Independent Study Commissioned by the UN Integration Steering Group*, HPG, ODI, and Stimson Center, London, December 2011.

44 *Ibid.*

45 Peter Maurer, "Humanitarian Diplomacy and Principled Humanitarian Action", speech delivered at La Maison de la Paix, Geneva, 2 October 2014, available at: <http://www.icrc.org/en/document/webcast-peter-maurer-humanitarian-diplomacy-and-principled-humanitarian-action>. This speech is also reproduced in this issue of the *Review*.

Technological advances

The development and use of new technologies in humanitarian work when it comes to collecting and analyzing information, digitization (such as electronic cash transfers) and transport (e.g. drones) represents a real challenge for the future application of certain principles.⁴⁶

These technologies do improve awareness and understanding of problems and the effectiveness of the humanitarian response, and can facilitate outreach and communication with affected people.⁴⁷ Communication technologies allow humanitarian actors to send undistorted messages and to receive first-hand information without interference by intermediaries, which may lead to greater independence and impartiality.

However, these technologies can also weaken the application of the humanitarian principles by fundamentally changing operational models. Organizations that use new technologies such as remotely operated aircraft could be seen as less neutral by authorities or the communities themselves because they associate such devices with military vehicles, due to their prevalent use by armed forces in some of the areas where humanitarians operate. And using or sharing data gained through invasive research techniques (e.g. satellite imaging, crowdsourcing) could also call organizations' intentions or their responsibility to protect their beneficiaries into question. In addition, focusing on people who are digitally connected could create discrimination and thus introduce significant ethical biases vis-à-vis *de facto* off-grid populations. Finally, the increasingly virtual nature of relations with recipients and the tendency to break down their vulnerabilities into measurable needs should prompt a re-examination of our duty of humanity, our commitment to close ties with the affected groups and our overall understanding of their suffering.

Operational challenges to principled humanitarian action

The humanitarian principles have been challenged not only on the basis of changes to the international political order and the expansion of the humanitarian sector, but also – and from the start – in the operational practice of organizations like the ICRC.⁴⁸ As discussed above, aid workers inevitably find themselves in complex situations and have to contend with the political divisions and radicalization

46 See for example, *The Red Cross and Red Crescent's Principled Approach to Innovation*, American Red Cross, July 2015, available at: <https://drive.google.com/file/d/0B6v07kjaKV-wTmJDWDNjZ0ctMHM/view>; Alexander Betts and Louise Bloom, *Humanitarian Innovation: The State of the Art*, OCHA Policy and Study Series No. 009, 2014.

47 Patrick Meier, *Digital Humanitarians: How Big Data Is Changing the Face of Humanitarian Response*, CRC Press, Boca Raton, FL, 2015. See also Katja Lindskov Jacobsen, *The Politics of New Technologies*, Routledge, New York, 2015.

48 It is commonly acknowledged that, throughout history, there have always been attempts at manipulating and instrumentalizing humanitarian assistance and its guiding principles for political aims. See, for example, Antonio Donini (ed.), *The Golden Fleece: Manipulation and Independence in Humanitarian Action*, Kumarian Press, Sterling, VA, 2012.

inherent in armed conflicts. Ethical dilemmas, the weighing up of interests and negotiations with all groups are part and parcel of humanitarian work. The humanitarian principles are an ethical and practical guide – not a dogma – for navigating these troubled waters, and they shape operational judgement. While they provide a clear moral compass as defined by the principle of humanity, they do not lend themselves well to a “box-ticking” or “one size fits all” approach. They provide a framework that must be used with consistency (which contributes to predictability, an important element of trust-building), but also intelligence and creativity. Internal case studies clearly show, for instance, that the way neutrality is perceived – and presented – in situations of criminal or gang violence is different from situations of conflict that are more political in character.⁴⁹

If applied with consistency and intelligence, the principles provide a formidable guide for delivering humanitarian assistance and protection in the most extreme circumstances, as demonstrated by the example of Afghanistan. In this context, the consistent application of the principles has allowed the ICRC to maintain its presence throughout decades of conflict and to operate across multiple frontlines. As Antonio Donini observed in 2010, “[s]o far, only the ICRC has been able to develop a steady dialogue on access and acceptance with the Taliban”; he further noted that “the World Health Organization, for example, needs to rely on the ICRC’s contacts for its immunisation drives”.⁵⁰ This acceptance and the access it made possible – at times benefiting other actors such as WHO – was not a straightforward process, however, as Fiona Terry emphasized in the study on ICRC neutrality in Afghanistan. Indeed, the ICRC faced multiple ups and downs, including the targeted murder of one of its staff in March 2003. The situation required perseverance, consistency and creativity in the way the ICRC applied the principles “to demonstrate to all sides the benefits of having a neutral intermediary in the midst of conflict”.⁵¹

The ICRC’s internal studies on the Fundamental Principles revealed a number of such challenges faced by its staff in the course of their work and showed how the principles are applied under these circumstances. The types of challenges and the examples given below illustrate the constant tug-of-war between competing priorities and objectives.

Challenges inherent to the humanitarian principles

A closer look at the operational reality of humanitarian organizations reveals a number of hidden dilemmas that are, to some extent, inherent to humanitarian

49 A recently adopted ICRC policy on the organization’s role in situations of violence below the threshold of armed conflict recognizes, for instance, the limits of the ICRC’s “neutral intermediary” role in situations in which violence is predominantly criminal. See ICRC, “The International Committee of the Red Cross’s (ICRC’s) Role in Situations of Violence Below the Threshold of Armed Conflict – Policy Document, February 2014”, *International Review of the Red Cross*, Vol. 96, No. 893, 2014, pp. 275–304, available at: www.icrc.org/en/international-review/article/international-committee-redcross-icrcs-role-situations-violence-below.

50 Antonio Donini, “Between a Rock and a Hard Place: Integration or Independence of Humanitarian Action?”, *International Review of the Red Cross*, Vol. 92, No. 880, 2010, pp. 156, 152.

51 F. Terry, “The ICRC in Afghanistan”, above note 33.

principles. At times, there can be tensions or even outright contradictions between them. Such has been the case with the moral imperative of humanity, which, through a semantic shift, has been used to justify political and coercive actions that have actually jeopardized humanitarian agencies' abilities to carry out their work. The so-called humanitarian imperative – whether in the form of the “droit d'ingérence humanitaire”⁵² or the Responsibility to Protect⁵³ – has been invoked to justify military interventions. Such actions make it harder for (unarmed) humanitarian organizations to provide impartial assistance and protection, especially to the people associated with the group the intervention is targeting.⁵⁴

The humanitarian imperative also creates moral dilemmas within aid agencies that can lead to other principles being compromised – almost always to the detriment of the people affected. For example, in a situation of famine in the Horn of Africa a few years ago, the ICRC allowed itself some leeway in its interpretation of impartiality. It undertook a project to repair and refurbish a canal in an opposition-controlled area, even though it was not able to determine exactly who would benefit from the canal and had a limited ability to monitor and evaluate the consequences. This decision was made in light of the severity of the situation, and with the goal of earning the armed group's trust and resuming dialogue with the said group in order to improve access to the area and to be able to respond to the pressing needs of the population – all in the name of humanity. However, this “trade-off” on the principle of impartiality did not result in improved dialogue and access as expected, and a precedent had been set regarding the ICRC's approach that was potentially harmful to the organization's ability to have this principle respected in the future. Conversely, on another occasion, the ICRC decided to suspend its activities when this same armed group demanded that it be allowed to carry out the aid distributions itself. The ICRC

52 A concept developed by the French jurist Mario Bettati that can be translated to “right of humanitarian intervention” and which argues that States have a right to interfere in another State's internal affairs in case of massive violations of international humanitarian or human rights law. See Mario Bettati, *Le droit d'ingérence: Mutation de l'ordre international*, Odile Jacob, Paris, 1996.

53 The Responsibility to Protect – known as R2P – refers to the obligation of States toward their populations and toward all populations at risk of genocide and other mass atrocity crimes. The three pillars of the responsibility to protect, as stipulated in the Outcome Document of the 2005 United Nations World Summit (A/RES/60/1, paras 138–140) and formulated in the Secretary-General's 2009 Report (A/63/677) on Implementing the Responsibility to Protect are:

- The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
- The international community has a responsibility to encourage and assist States in fulfilling this responsibility;
- The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations.

54 See, for example, Fabrice Weissman (ed.), *In the Shadow of “Just Wars”: Violence, Politics and Humanitarian Action*, Cornell University Press, New York, 2004; Bruno Pommier, “The Use of Force to Protect Civilians and Humanitarian Action: The Case of Libya and Beyond”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011, pp. 1063–1083.

felt that a “red line” had been crossed, as this was an unacceptable compromise of its independence and neutrality.⁵⁵

These examples clearly show how the interpretation of each of the principles is always contingent upon the others. Even the essential principle, humanity, must be interpreted bearing in mind the other principles and the specific operational circumstances. The principles provide a framework to guide decision-making, but they can never be applied without first weighing up the pros and cons of abiding by them while considering people’s best interests.⁵⁶ This weighing of interests often creates tensions between short- and long-term goals – between saving lives today with a few compromises, and maintaining the organization’s ability to save lives tomorrow by remaining consistent and preserving everyone’s trust. The principles are a compass for navigating these unavoidable dilemmas, for, in the words of Hugo Slim, “a moral dilemma is a choice between two wrongs”.⁵⁷ The principles are difficult to apply because they involve critical (and not always satisfying) choices and require constant re-examination and reconsideration.

The question of whether the ICRC should participate in the UN’s humanitarian coordination mechanisms highlights the potential tensions between impartiality and independence. In theory, the coordination of humanitarian activities allows the impartiality of the response to be more sector-wide and across the entire area affected by a crisis, and not just programme-based and at the local level. Coordination thus makes the combined response of all the aid organizations more impartial, compared to the level of impartiality that is achieved by each individual organization. However, the benefits of coordination in terms of impartiality and effectiveness must be weighed against the risk of damaging the organization’s reputation and perception by associating with entities that may be considered politically biased or that support one party to the conflict. This explains why the ICRC has opted not to be formally affiliated with the cluster system,⁵⁸ which would mean being accountable to the UN system. Because of its political governance and peacekeeping role, the UN system is seen in some conflicts as favouring one side over another.⁵⁹ Not joining the cluster

55 ICRC, above note 4.

56 Max Weber described this dilemma as two fundamentally differing and irreconcilably opposed maxims. An organization can either be oriented to an ethic of responsibility (*Verantwortungsethik*), meaning that it is accountable for the foreseeable consequences of its actions, or to an ethic of conviction (*Gesinnungsethik*), in which it is accountable only for applying its policy. See Max Weber, *Le savant et le politique*, Plon, 10/18, Paris, 1995.

57 Hugo Slim, “Doing the Right Thing: Relief Agencies, Moral Dilemmas and Moral Responsibility in Political Emergencies and War”, in Hugo Slim, *Essays in Humanitarian Action*, Oxford Institute for Ethics, Law and Armed Conflict, University of Oxford, 2012 (e-book).

58 The cluster system was adopted as part of the United Nations Humanitarian Reform of 2005. The cluster approach coordinates humanitarian groups by sector, e.g. health, shelter or nutrition. See “Cluster Coordination” on the OCHA website, available at: www.unocha.org/what-we-do/coordination-tools/cluster-coordination.

59 See, for example, Jérémie Labbé and Arthur Boutellis, “Peace Operations by Proxy: Implications for Humanitarian Action of UN Peacekeeping Partnerships with Non-UN Security Forces”, *International Review of the Red Cross*, Vol. 95, No. 891/892, 2013, pp. 539–559.

system does not, however, prevent the ICRC from taking a pragmatic approach and constantly reassessing the benefits of coordinating compared to the risks of damaging its capacity to operate. In fact, informed by the humanitarian principles, ICRC staff regularly meet and exchange with UN country team members either on a bilateral basis or by joining cluster meetings as observers, depending on the context and the associated reputational risks.

In addition, the ICRC weighs on a case-by-case basis the benefits to the affected people against the risks of damaging its reputation, and is quick to devise pragmatic and innovative approaches for mitigating those risks in order to allow for greater impartiality. Such was the case when displaced people sought refuge on a runway that was controlled by a multinational force and surrounded by the opposition group that the force was fighting. The ICRC and the local National Society were asked by the multinational force to set up a health-care centre in their compound to attend to the displaced people's medical needs, but had to decline due to the risk of being seen as affiliated with the force. However, they decided to set up mobile clinics that would go in and out of the compound to attend to the most pressing medical needs, while making sure to communicate clearly and transparently with the rebel group to explain their choices and their approach.

Finally, impartiality may be in tension with the principle of neutrality in particular circumstances. For instance, a rigid interpretation of the principle of impartiality might be counterproductive in terms of how neutral a humanitarian actor is perceived to be, and could hinder humanitarian action.⁶⁰ As Fiona Terry noted in her internal study on Sudan and Afghanistan:

While neutrality as a concept has been understood ... throughout the ICRC's presence in Sudan, the notion of impartiality has not, and the allocation of assistance in accordance with needs gives the impression of favouritism if the needs are not the same on either side.⁶¹

This can be the case, for instance, when humanitarian organizations focus on addressing the needs of internally displaced populations only, while completely ignoring the needs of the resident population, which can result in growing resentment and exacerbated tensions.

The ICRC always endeavours – in Sudan and other contexts – to tailor its response to the specific needs of different communities by conducting assessments on both sides of the frontline or in rival communities. Yet, it is because its staff fully acknowledge the potential for misperceptions about the ICRC's neutrality that they take special care in listening to all communities and explaining to them the ways in which the ICRC works. Such an interpretation of

60 This was the case in Myanmar, for example, in a context of sectarian violence. Humanitarian assistance given to the Muslim minority generated resentment against humanitarian organizations among the Buddhist majority communities, even though the latter were less in need. See Dana MacLean, "Analysis: Myanmar's Rakhine State – Where Aid Can Do Harm", *IRIN*, 3 July 2013, available at: www.irinnews.org/report/98351/analysis-myanmar-s-rakhine-state-where-aid-can-do-harm.

61 F. Terry, *Research Project*, above note 33, p. 37.

impartiality through the lens of neutrality ensures that the most severe needs are met, while accommodating in a relevant manner the needs of other communities who could resent and hinder an aid operation that they perceive as one-sided and could pose a real threat to the needier community or to ICRC staff.

Context-specific challenges to applying the principles

As shown above, some tensions between the principles are unavoidable. Others arise from particular circumstances, and require agility and creativity on the part of the ICRC. Studies by the ICRC showed, for instance, that security considerations and restrictions imposed by the authorities in charge of a country or territory could result in the ICRC adapting the way it operates, using the latitude allowed by the Fundamental Principles.

Whether to use armed escorts or protection is a good example of the kinds of dilemmas that arise out of operational circumstances. The ICRC's policy on this subject is categorical and follows from a strict interpretation of the Fundamental Principles: the ICRC does not use armed protection because, in armed conflicts or other situations of violence, it could be seen by one of the parties as a sign of collusion or even as siding with another party to the conflict, by extension making the ICRC a target. For the safety of its staff and operations, the ICRC relies mainly on the protection afforded by the emblems of the Red Cross and Red Crescent under IHL and on constant dialogue with all parties (made possible by the application of the principles) so that they understand, recognize and accept that protection.

However, there have been a few, rare exceptions to this prohibition on the use of armed protection – a concession on the part of the ICRC that specific circumstances can make it impossible to obtain sufficient assurances of safety. Such a decision to go against the prohibition is itself informed by the Fundamental Principles. Armed protection may only be used exceptionally and when security risks are related to ordinary crime, such as when there is widespread criminal violence due to a complete breakdown of law and order. The decision-making process – which is high-level and involves ICRC headquarters – takes into account a number of factors, such as perception risks among the parties to the conflict and the affected communities, the severity of needs and the organization's continued ability to provide impartial assistance based on objective needs assessments.

ICRC practice studies also showed that when the organization took the exceptional measure of using armed protection, the Fundamental Principles continued to guide decision-making, in order to alleviate the potential impact to its reputation and thus its ability to carry out its work. For instance, the ICRC adopted a low profile when working with armed protection in some contexts, such as by limiting the use of the Red Cross and Red Crescent emblem, to reduce the risk of being perceived as associated with armed entities. Along the same lines, the ICRC makes every effort to ensure that it selects security companies with flawless reputations. In using armed protection, the ICRC must not violate

the principle of neutrality and be seen as a party to the conflict, and armed protection may only be used to protect against ordinary crime and if the practice is accepted locally.

The armed protection example demonstrates that the Fundamental Principles are the starting point for the internal policies of the institution and provide guidance for determining when circumstances call for exceptions to the rule. And when exceptions are made, the principles continue to guide decision-making concerning how to lessen the potential impact. This illustrates the logic behind the principles, which help to draw “red lines” that should not be crossed, but also, given the complex nature of crises, provide a pragmatic framework for making operational decisions. Ultimately, it is by showing consistency and predictability in the way it applies its principles – but also adaptability to the context – that the ICRC has managed to maintain its presence across front lines in some of the most complex and insecure contexts in the world, from Afghanistan to the Democratic Republic of Congo, Colombia and Iraq.

Institutional choices and challenges to applying the principles

Other factors, such as operational choices, strategic decisions or even an organization’s nature or purpose, could also lead organizations to compromise the principles. For instance, an institutional decision to carry out programmes to increase a community’s resilience requires combining humanitarian and developmental modes of action toward the same operational and strategic goal. Yet, as Hugo Slim and Miriam Bradley point out, “while resilience strategies are appropriate and uncontroversial in many natural disasters, they can undermine the neutrality of humanitarian action in armed conflicts if the improvement of political and economic structures is perceived to advantage one side against the other”.⁶² The tensions between adhering to the principles and strategic and operational choices are particularly apparent in multi-mandate organizations, which may combine emergency humanitarian assistance with development aid or advocacy for human rights or democracy.⁶³

The ICRC’s internal study on the application of the Fundamental Principles shows that it is not exempt from such tensions. Some operational and strategic choices are the source of recurrent challenges. The internal study indicated that acceptance of the ICRC’s impartial, neutral and independent humanitarian action often depends on the existence of an armed conflict and the applicability of IHL. This presents a challenge when the ICRC decides to operate in a situation where the needs are great and are connected to armed violence, but IHL is not applicable as the situation does not qualify as an armed conflict (e.g. criminal armed violence or post-conflict situations). There may be significant

62 As this quote shows, it is not the strategies for improving communities’ resilience that could potentially impact neutrality, but rather the modalities under which these strategies are implemented that can make them seem political. H. Slim and M. Bradley, above note 1, p. 7.

63 *Ibid.*

need for humanitarian assistance in situations of urban violence when clashes break out between gangs and security forces, but it can be difficult to explain the ICRC's neutrality, both to the government authorities fighting the criminal groups and to the gangs themselves, who are primarily interested in the profits from their activities.⁶⁴ In post-conflict situations, impartiality and independence can be misunderstood by government authorities whose priorities are reconstruction and medium- and long-term development policies. The challenge for the ICRC is then to develop programmes that are relevant to and in line with a State's development plan – focusing for instance on the reconstruction and rehabilitation of particular areas that are strategically important for the authorities' efforts to consolidate peace – while continuing to assess the population's needs objectively and carry out its programmes independently.

There are also situations in which frictions arise between an organization's medium- or long-term strategic goals and the strict and immediate application of the principles. Such friction can arise, for instance, from the dual nature of the ICRC's work, which combines operational humanitarian action and promotion of IHL.⁶⁵ The emphasis placed on impartiality, neutrality and independence for carrying out assistance and protection activities in a given context can conflict with the strategic goal of engaging that country's government in a long-term dialogue on IHL. The ICRC must strike a balance between operational and strategic goals, but one that favours overall operational activities. This tension is not an insurmountable obstacle; rather, it forces the ICRC to convey a consistent message when explaining the tangible benefits of impartial, neutral and independent humanitarian action. In time, this could help further its strategic goals.

The cost of adhering to the principles

The internal study clearly illustrated the real and symbolic cost of impartial, neutral and independent humanitarian work, in addition to the challenge it represents for humanitarian organizations. Applying the principles is expensive. The principles of neutrality and independence – essential to impartiality in the circumstances in which the ICRC works – often mean that the ICRC has to have its own logistics and transportation. Where other humanitarian organizations would use the air transport made available by the UN, the ICRC sometimes has to charter its own airplanes so as not to be associated with the world body. This would happen if a peacekeeping force was or was perceived to be a party to the conflict or if being associated with the UN might jeopardize the other parties' or communities' acceptance of the ICRC.⁶⁶ By the same token, negotiations with corporate donors on the visibility of logos can be lengthy when there is a risk that the logo could affect the ICRC's perceived neutrality and independence. The ICRC has even

64 For a discussion of the work carried out in such situations and the related challenges, see: ICRC, above note 49.

65 ICRC, *The ICRC: Its Mission and Its Work*, Geneva, March 2009, p. 6, available at: www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf.

66 J. Labbé and A. Boutellis, above note 59.

repackaged some goods for distribution when their origin could be perceived negatively in a given country.

The ICRC's strict application of the principles has also limited its involvement in some activities that have a political or "transformative" element, such as human rights campaigns, and conflict prevention, peacebuilding, reconstruction and development activities. These activities could tackle the roots of conflicts or prevent future crises, but they are generally political projects or aim at social or economic transformations that not everyone supports and some may even strongly oppose. The ICRC's involvement in these activities, no matter how legitimate, represents a non-negligible risk for its future acceptance and operations, and would ultimately get in the way of meeting the short- and medium-term needs of victims of conflicts and other situations of violence. In that sense, respect for the principles has a cost for the ICRC as it limits the organization's ability to develop programmes aimed at addressing the root causes of conflict.

Beyond the principles: Key lessons learnt

The study of how the ICRC applies the Fundamental Principles revealed that good practice does not boil down to "neutrality plus independence equals impartial humanitarian assistance". The reality is far more complicated. An organization's ability to provide impartial assistance in fact depends on its ability to strike a balance between competing priorities and perceptions in order to preserve trust and acceptance. For instance, it must constantly manage the risk of being associated with a party to a conflict, a political authority, a controversial ideology or political programme, or anything or anyone else that could create friction. Finding this balance is more of an art than a science. There is no universal formula or manual, no predetermined checklist of activities, and there never will be. If the principles are to remain dynamic and relevant in changing circumstances, there must be a measure of discretion in the face of a given situation. An optimal outcome requires that the principles be applied relatively consistently and with a good knowledge not only of the situation at hand, but also of the global context.

The study also highlighted a certain number of strengths, positive qualities and good practices that allowed the ICRC to apply the principles for the most part rigorously, consistently and with a measure of flexibility, enabling it to maintain its presence and proximity with affected communities in the long term, sometimes over several decades, while remaining agile and adapting to changing circumstances.

A multidisciplinary approach

The internal study underscored the asset that the broad range of the ICRC's activities represents for overcoming certain challenges. The organization can call on a wide array of methods to carry out its mission, which is divided into four

separate but complementary approaches. These are (1) protection – protecting the lives and dignity of victims of armed conflict by ensuring that the authorities and other groups involved abide by their obligations and respect individuals’ rights; (2) assistance – covering the unmet essential needs of individuals and/or communities relating to health, sanitation, water, nutrition and economic security; (3) cooperation – coordinating and harnessing the full potential of the humanitarian efforts of the members of the International Red Cross and Red Crescent Movement; and (4) prevention – fostering an environment conducive to respect for people’s lives and dignity by promoting IHL and other applicable bodies of law.⁶⁷ This multidisciplinary approach contributes to reinforcing the application of the Fundamental Principles, above all that of impartiality. Indeed, it allows the ICRC to offer services that are adapted to the disparate needs of various categories of victims, be they detainees, victims of sexual violence, farming and herding communities who have lost their livestock or children separated from their families.

The ICRC’s wide range of activities also creates opportunities to speak with and offer relevant services to the parties to a conflict, affected communities and other groups involved. In her analysis of the ICRC’s neutrality in Afghanistan, Fiona Terry pointed out that the ICRC was sometimes perceived as being too close to the Taliban because of the medical activities it had carried out in Taliban-controlled areas. The ICRC tempered this perception by providing first-aid training to the Afghan police force and showing that such training on both sides does not amount to interference in the conflict.⁶⁸ The ICRC’s many activities bring it into contact with all groups involved: civilians when providing assistance, civilian authorities when planning sanitation projects, military authorities and armed groups during IHL awareness-raising programmes, prison authorities during visits to detainees, and judicial authorities when promoting the law.

Nurturing key institutional attributes and practices

Besides abiding by the humanitarian principles, the ICRC has also nurtured other practices and attributes that were essential for earning trust and gaining access to affected people in all the countries studied. These are transparency, confidentiality (i.e., discretion), consistency, proximity with affected people, and timely response to needs. The individual qualities of the staff were also critical to the ICRC’s image. Adherence to the principles – neutrality and independence in particular – is as much about perception as actual practice. By projecting positive qualities, an organization can more easily apply the principles and earn the trust of authorities, communities and others and shape its image.

Transparency is particularly important in operational settings. Even if the principles are applied in good faith, humanitarian organizations would still need

67 ICRC, above note 65, pp. 14–17.

68 F. Terry, “The ICRC in Afghanistan”, above note 33.

to deal with misperceptions or even accusations of bias on a regular basis. Communicating transparently with all influential parties as a matter of course is critical for explaining the organization's goals and operational choices and the restrictions it faces.

Transparent communication with all stakeholders is also critical for explaining some of the ICRC's policies or practices that are at times subject to criticisms or misunderstandings, such as its confidential approach. This confidential, bilateral dialogue with parties to a conflict is another key practice that enables the ICRC to maintain the degree of acceptance necessary to nudge perpetrators of IHL violations toward a greater respect for the law and to gain the safe access needed to deliver impartial humanitarian aid.⁶⁹ Even for organizations that do not follow the ICRC's strictly confidential approach, some discretion on particularly sensitive or controversial subjects can help humanitarian organizations earn the trust of key players and strengthen the perception of these organizations as neutral and independent.⁷⁰

Consistency is also crucial, particularly as it contributes to the predictability of an organization. The ICRC's consistency springs mainly from its specific mandate and its role as the custodian of IHL, which confers a certain objectivity; operationally, from its contacts and close ties with the parties to the conflict and the victims, which maintain its credibility; and from its application of the Fundamental Principles, which help it to be seen as strictly humanitarian. These three pillars (IHL, operations and Fundamental Principles) are the foundations of the ICRC's consistency and predictability, helping to maintain trust and, in turn, the acceptance needed for staff safety and humanitarian access.

Although some of these practices are specific to the ICRC and cannot be replicated elsewhere, all organizations can maintain some level of consistency and transparency. This can go a long way toward making application of the principles coherent, and ensuring that it is perceived as such.

The importance of adapting to the local context

Examination of ICRC operational practice has shown that adapting the Fundamental Principles to the circumstances also means ensuring that communication is context-appropriate. As argued above, the way neutrality is perceived – and presented – in situations of criminal or gang violence, for instance,⁷¹ is different from situations of conflict that are more political in character. In one particular delegation, for example, the ICRC developed a creative communication approach, called “neutralizing the vocabulary”, whereby

69 For more information on the ICRC's confidential approach, see Memorandum, “The ICRC's Privilege of Non-Disclosure of Confidential Information”, in this issue of the *Review*.

70 See HPG, *Humanitarian Advocacy in Darfur: The Challenge of Neutrality*, HPG Policy Brief No. 28, ODI, London, October 2007. This policy brief highlights the tensions and links between advocacy and neutrality in Darfur.

71 For an in-depth description of the role of the ICRC in such contexts, including a brief discussion on the ICRC's neutrality, see ICRC, above note 49.

ICRC delegates identified antagonistic words such as “hitman” and “drug cartels”, the mere use of which could be perceived as reflecting a biased position, especially by some criminal groups. In this context, ICRC staff simply refrained from using such words, preferring more neutral phrases like “organized violence groups”. Although mostly cosmetic in appearance, this subtle communication shift, informed by the principle of neutrality, considerably improved the dialogue with different stakeholders, resulting in greater acceptance of ICRC activities, better access and greater ability to engage communities and address their needs.

A similar approach has been taken by the Lebanese Red Cross. Given the religious tensions in Lebanon, the Red Cross encourages volunteers to use neutral nicknames that are devoid of religious connotations.⁷² This practice has increased communities’ acceptance of volunteers and the volunteers’ ability to work throughout the country.

For its part, the ICRC has developed programmes to improve understanding of local and national cultures, customs and standards in order to identify the similarities and areas of overlap with IHL and to provide a better idea of the universality of the Fundamental Principles and whether they will strike a chord locally. In Algeria, an international colloquium on Emir Abdelkader and IHL was organized to explore the nineteenth-century leader’s contribution to IHL and its underlying principles.⁷³ A few years ago, the ICRC delegation in Somalia examined *Biri-ma-Geydo* – a compilation of customary Somali rules – and *Shari’ah* rules that contain principles similar to those in IHL.⁷⁴ Initiatives such as these, aimed at putting the legal and operational framework of humanitarian activities in context, have led to a better understanding of these countries and have enabled the ICRC to adapt its institutional and operational message without altering the substance of the legal framework.

Finally, the ICRC’s internal study showed that the local setting can also call for adjustments to human resources. Having ethnically or religiously representative staff helps project the neutrality and impartiality of an organization. The same can be said for international staff. Expatriates are often seen as less involved in a given situation and thus more likely to maintain the image of neutrality. However, there are some situations where this diversity can work against the organization, such as when a staff member is a citizen of a foreign power that is involved in or has a vested interest in a conflict.

72 Sorcha O’Callaghan and Leslie Leach, “The Relevance of Fundamental Principles to Operations: Learning from Lebanon”, *International Review of the Red Cross*, Vol. 95, No. 890, 2013, p. 302.

73 ICRC, “Algeria: International Colloquium on Emir Abdelkader and IHL”, News Release No. 13/98, 27 May 2013, available at: <http://www.icrc.org/eng/resources/documents/news-release/2013/05-27-algeria-abdelkader-foundation.htm>.

74 ICRC, “Somalia: Using Traditional Law in Dialogues with Armed Groups”, 10 November 2014, available at: <http://www.icrc.org/en/document/somalia-using-traditional-law-dialogues-armed-groups>. A similar exercise was conducted in the Pacific region: ICRC, *Under the Protection of the Palm: Wars of Dignity in the Pacific*, May 2009, available at: <http://www.icrc.org/eng/assets/files/other/wars-of-dignity-pacific-2009.pdf>.

Conclusion

There is a certain paradox between the apparent simplicity of humanitarian principles and the difficulties associated with their sound application in real-life situations. Operationalizing them is certainly more an art than a science. Applying principles means interpreting them in an evolving setting. After decades of experience, the ICRC is still confronted with contradictions, dilemmas and sometimes rejection in its efforts to deliver assistance and protection in conflicts or other situations of violence. Good intentions and careful planning do not necessarily guarantee positive results.

It is the parties concerned that ultimately decide whether an organization can operate. Applying the principles in good faith does not guarantee acceptance, access or safety in all situations. In addition, there is an inherent difficulty in attempting to serve all victims on an equal footing in the context of conflict narratives that are about determining victors and losers, righteous combatants and villains, legitimate and illegitimate parties. In fact, some openly partisan organizations might operate more freely than principled organizations in territory controlled by the side they support, since they will likely be welcomed with open arms by the authorities that control this area. However, the ability of such organizations to deliver humanitarian assistance or protection across front lines, in areas controlled by other belligerents, is questionable.

The ICRC recognizes that its traditional approach also has more strategic limits: principled humanitarian action is not aimed at tackling the root causes of conflicts or humanitarian crises and can be hard sometimes to reconcile with the development approach needed to give countries and communities the means to recover from these crises. Humanitarian principles are not adapted to the notion of transformative humanitarianism aimed at creating better societies.

Sometimes, it may be also necessary to use coercive actions, duly authorized by the UN, to save people in extreme circumstances. But any humanitarian organization that associates itself with such an operation risks losing its long-term capacity to operate in the same environment. Organizations genuinely committing to abide by and apply humanitarian principles must acknowledge and accept the limitations that doing so entails.

The ICRC advocates for better recognition of and respect for the various ways of working and, if needed, a better distinction between them in order to harness their complementary approaches. In the words of Peter Maurer, ICRC president at the time of writing:

[The] ICRC's *modus operandi* is not the right way for everyone. "Neutral, impartial and independent" is not the solution to every problem or situation, but it is useful in specific contexts. It shows the need to implement distinct, complementary and separate activities and roles. [The] ICRC will strive to maintain its principled stand. This does not preclude others from engaging in

peace-building and human rights. Yet, distinction is needed and we should not confuse these different approaches.⁷⁵

What is the future of the humanitarian principles? It seems fairly likely that the situations in which humanitarian organizations will be working in the future will take on new forms, as will the associated needs and vulnerabilities. The ICRC's vision of humanitarian work and what it considers moral, effective, pertinent and justified will also necessarily evolve. New configurations of conflict will lead organizations to seek out new strategies for applying the principles in relevant ways. These changes will no doubt put the principles to the test, as all changes over the past fifty years have done.

Beyond providing the right tools for the job, the principles represent an aspiration – a willingness to go beyond what is purely effective and utilitarian, a reminder that respect for the principle of humanity is still possible even when tragic circumstances would lead us to doubt or deny it.⁷⁶ The present authors wager that the values underlying the principles will be more relevant than ever in future crises. Meanwhile, the authors call on all organizations to be more honest and transparent in the scope of their ambitions and their resulting ability or intent to genuinely apply the principles. Indeed, while humanitarian principles prove extremely useful for impartially addressing urgent needs in a given territory affected by a crisis, they quickly find their limits if the objectives of humanitarian actors are more transformative in character.

75 Peter Maurer, “At a Crossroads”, speech given at a conference organized by the Norwegian Refugee Council, Brussels, 4 December 2012. See Norwegian Refugee Council, *Principles in Practice: Safeguarding Humanitarian Action*, Brussels, 4 December 2012, p. 11, available at: www.alnap.org/resource/9582.

76 On this point, it is fascinating to revisit Claude Lévi-Strauss, *Race et histoire*, Denoël, Paris, 1999 (first published 1952), pp. 19–26.

Walking the walk: Evidence of Principles in Action from Red Cross and Red Crescent National Societies

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Abstract

Using evidence from nine different National Societies, this essay illustrates how the Fundamental Principles of the Red Cross and Red Crescent Movement are practically applied in today's diverse contexts. The research has found that the Principles are not just abstract concepts but are in fact practical tools for initiating and implementing a range of programmes, particularly in difficult situations. The Fundamental Principles are useful for increasing access in both conflict and peaceful situations. Strong leadership is an important factor to ensure that the Principles are applied, particularly when neutrality is challenged. Lastly, all seven Principles work together and give additional strength to programmes when working as part of the Movement.

Keywords: Red Cross and Red Crescent Movement, Fundamental Principles, National Societies, application of the Principles, volunteers, leadership.



Impartiality means you have to listen and observe, without making judgements. You don't have to give advice or try to change people. I use this a lot.¹

The extremists here don't accept humanity, the principle of humanity.²

The Red Cross and Red Crescent Movement (the Movement) is made up of the International Committee of the Red Cross (ICRC), the International Federation of the Red Cross and Red Crescent Societies (IFRC) and, at the time of writing, 189 National Societies. One aspect that ties its work together in all countries is the adherence to the Movement's Fundamental Principles. Agreed in Vienna in 1965, the seven Fundamental Principles are supposed to guide all of the Movement's work in natural disaster response, conflicts and other situations of violence, disaster preparedness, and in serving as an auxiliary to governments.³ The seven Fundamental Principles are humanity, impartiality, neutrality, independence, voluntary service, unity and universality. See [Table 1](#) for the definitions of each of the Principles.

The wider humanitarian community – including non-governmental organizations (NGOs), United Nations (UN) agencies and humanitarian donors – has widely accepted the first four Fundamental Principles as humanitarian principles guiding its work: humanity, impartiality, neutrality and independence. These have been broadly agreed by a wide swath of stakeholders since they were adopted into the Code of Conduct for the Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes in 1994 (1994 Code of Conduct). They were also codified in UN Resolution 46/182 in 1991, UN Resolution 58/114 in 2004, the Good Humanitarian Donorship Principles in 2003,⁴ the Sphere Project⁵ and the European Consensus for Governments.⁶ A range of literature has been published in the last decade about humanitarian principles (and the Fundamental Principles; see below). However, the literature from the humanitarian and academic sectors is more about the challenges and alleged breaches of these principles than how they are applied and to what effect.

Much of the literature is about challenges resulting from the actions of governments, donor States, the UN Security Council, terrorists and counter-terrorism agencies.⁷ The relevance of humanitarian principles is mostly seen as an

1 Interview with Red Cross volunteer working in Social Care, Omagh, August 2014.

2 Interview with disaster management colleague working in Asia, location withheld, October 2015.

3 More information is available at: www.icrc.org/eng/resources/documents/red-cross-crescent-movement/fundamental-principles-movement-1986-10-31.htm (all internet references were accessed in July 2015).

4 The Good Humanitarian Donorship Principles are available at: www.worldhumanitarianism.org/node/434472.

5 See www.sphereproject.org.

6 Available at: http://ec.europa.eu/echo/files/media/publications/consensus_en.pdf.

7 For example, see the discussion in Sarah Collinson and Samir Elhawary, *Humanitarian Space: A Review of Trends and Issues*, Humanitarian Policy Group (HPG) Report No. 32, Overseas Development Institute (ODI), London, April 2012, p. 1; Antonio Donini (ed.), *The Golden Fleece: Manipulation and Independence in Humanitarian Action*, Kumarian Press, Sterling, VA, 2012, pp. 2–40; Sara Pantuliano, Kate Mackintosh and Samir Elhawary with Victoria Metcalfe, *Counter-terrorism and Humanitarian Action: Tensions, Impact and Ways Forward*, HPG Policy Brief No. 43, ODI, London, October 2011;

Table 1. *The Fundamental Principles of the International Red Cross and Red Crescent Movement*

Humanity	The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavors, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.
Impartiality	It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavors to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.
Neutrality	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.
Independence	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.
Voluntary Service	It is a voluntary relief movement not prompted in any manner by desire for gain.
Unity	There can be only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.
Universality	The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

Source: www.icrc.org/eng/resources/documents/red-cross-crescent-movement/fundamental-principles-movement-1986-10-31.htm.

expression of universal values rather than as practical tools. However, the case studies in this article will show that National Societies are using the Fundamental Principles on a day-to-day basis in their work. These principles are crucial in gaining access, in ensuring that efforts remain focused on the most vulnerable, and in motivating staff and particularly volunteers for very difficult work.

The British Red Cross Principles in Action project

For a number of years, the British Red Cross (BRC) has spearheaded a project entitled Principles in Action.⁸ The aim of the Principles in Action project is to better document the ways in which the Fundamental Principles are applied, in order to further encourage their use and understanding. The project seeks to examine where the Principles have been useful for increasing humanitarian access and improving reach and the quality of humanitarian response. In the process, the BRC aims to learn from the creative and innovative ways in which National Societies are using the Fundamental Principles to augment their humanitarian responses and their access to vulnerable populations.

The project was initiated because there was a lack of systematically gathered examples of what is meant by applying humanitarian principles, and the Fundamental Principles in particular. Also, the Movement lacks the crucial evidence base built up to share with policy-makers of how the Fundamental Principles are working. It is repeatedly asserted in specific crises and in global platforms that the Principles are vital for gaining access and protecting humanitarian work.⁹ They are intended to be tools for humanitarian action, but the application and particularly the consequences of applying them have not been well understood. Perhaps the Movement has not been very proactive in providing robust and evaluated evidence of *how* the Fundamental Principles work, *why* they work, and *what actually happens* when they are used. One of the purposes of this article is to establish some lessons learned from the experience across a range of Red Cross and Red Crescent National Societies. The author builds on the earlier Movement case studies of the Lebanese Red Cross and the Somali Red Crescent conducted by Sorcha O'Callaghan, Leslie Leach and Jane Backhurst.¹⁰

Building an evidence base: The methodology

This article and the Principles in Action project supporting it use qualitative techniques to build up more evidence about the application of the Fundamental Principles. The type and quality of the evidence varies. Some of the work has been previously published and peer-reviewed, such as the case studies of Lebanon¹¹ and Somalia.¹² Other evidence comes from evaluations of project work

8 More information is available at: www.redcross.org.uk/About-us/Who-we-are/The-international-Movement/Fundamental-principles/Why-the-principles-matter-to-millions.

9 For example, see this statement signed by twenty-nine humanitarian organizations in February 2015: www.medair.org/en/stories/medair-signs-joint-statement-on-humanitarian-principles-endorsed-by-30-huma/.

10 Lebanon Case study: S. O'Callaghan and L. Leach, above note 7. Somalia case study: Sorcha O'Callaghan and Jane Backhurst, *Principles in Action in Somalia*, BRC, 2013.

11 S. O'Callaghan and L. Leach, above note 7.

12 S. O'Callaghan and J. Backhurst, above note 10.

from different National Societies, such as from Kenya¹³ and Uganda.¹⁴ Still more evidence comes from interviews with practitioners in the Red Cross and Red Crescent National Societies, such as the research from Canada, Sweden, Australia and Northern Ireland. In these cases, the approach was guided by a set of questions. An iterative process followed, allowing researchers to explore local variations of approaches.

The BRC Principles in Action project also draws on internal documentation within the Movement from workshops, consultations and training materials. Some of the research derives from the Safer Access project, including its context analysis methodology.¹⁵ The evidence from the Movement is prefaced by a short literature review from the wider humanitarian sector and academia wherein evidence was shared about practical approaches to applying humanitarian principles.

This article brings together the lived experience of staff and volunteers with other evidence to argue the following points:

- The Fundamental Principles are practical tools for gaining access and initiating programmes with new groups of vulnerable people, and they are useful because they are practical. They are not abstract, but lead to different kinds of actions and decision-making. They make the Movement distinct, and also present unique challenges when faced with real-world pressures.
- The Fundamental Principles are not just useful in conflict-affected situations. They prove to be useful for every National Society, whether dealing with violence, immigration issues, prison visits or disaster risk reduction, or just in how they introduce the National Society to a new community.
- Leadership matters to an extremely strong degree when it comes to organizing a National Society along the lines of the Fundamental Principles, particularly when neutrality is challenged. “Walking the walk” and making decisions along the lines of the Fundamental Principles is very important, with dramatic results possible in terms of access and acceptance.
- All seven of the Fundamental Principles work together. The Movement is in many ways defined by the principle of voluntary service. Some 17 million volunteers carry out the majority of the actions that define the Movement.¹⁶ The Fundamental Principles work to inspire volunteers, and to link their actions to the wider Movement and history of the Movement, with positive effects.

13 Feinstein International Center, Kenya Red Cross and Nairobi Peace Initiative – Africa, *Conflict Management and Disaster Risk Reduction: A Case Study of Kenya*, 2013; Steven Hogberg, *Final Project Report: Kenya Community Violence Prevention Project – Tana Delta*, Canadian Red Cross, 2014; Gurvinder Singh, *CRCS Support for Violence Prevention in Tana Delta, Kenya*, Canadian Red Cross, 2013.

14 Amelia Kyazze, Paula Baizan and Sam Carpenter, *Learning from the City: British Red Cross’s Urban Learning Project Scoping Study*, BRC, 2013. See also Alexandra Galperin, *Final Evaluation: Election Preparedness Program 2010/2011, Uganda*, BRC, 2011.

15 The research from Lebanon and South Africa consists of specific case studies from the Safer Access project. The Safer Access Framework is a tool and approach used by Red Cross and Red Crescent National Societies to increase their acceptance, security and access to vulnerable people and communities. See www.icrc.org/saferaccess.

16 IFRC, *Global Review on Volunteering*, 2014, available at: www.ifrc.org/what-we-do/volunteers/global-review-on-volunteering/.

- Working as part of the Movement matters – many great initiatives or difficult situations have been navigated by Movement partners working together or preparing ahead of time, acknowledging each other’s comparative advantages and weaknesses. This is the principle of universality in action.

Literature in the humanitarian sector about applying principles

There have been some recent attempts in the literature from the UN, NGO and academic sectors to capture some lessons learned from applying the four humanitarian principles, if not all seven of the Fundamental Principles. For example, the UN Office for the Coordination of Humanitarian Affairs (OCHA) commissioned a study in 2011 to examine approaches that enable staff to remain present and maintain access rather than evacuate in difficult humanitarian operations. In interviews with over 1,300 humanitarian practitioners, national staff and policy-makers, the authors found that humanitarian principles do make a difference in operational terms, according to those who deliver operations. Some 94% of those interviewed stated that there was a very real impact of the perception of neutrality on operational security, and they “strongly agreed on the effectiveness of humanitarian principles as operational tools to enhance their own security”.¹⁷ Lack of respect for humanitarian principles was found to be the third-largest contributor to insecurity, in the opinion of the interviewees.¹⁸

The report concludes that humanitarian principles remain the basis for acceptance for warring parties to be convinced to allow humanitarian access in times of conflict. The authors add that there is significant value in training local and national staff in humanitarian principles and understanding their operational value, and also communicating this internationally.¹⁹

Yulia Dyukova and Pauline Chetcuti authored a piece exploring Action Contre le Faim’s (Action Against Hunger, ACF) experiences applying humanitarian principles in conflict. The organization explicitly buttresses its commitments to the four humanitarian principles with reference to the ACF charter and its list of operational principles, including non-discrimination, free and direct access to victims, professionalism and transparency. The authors explore different challenges to these principles, such as maintaining neutrality in conflict, ensuring independence from donor political agendas, and standing firm in the face of opposition from local power holders.²⁰ Such an examination of challenges and the actual actions taken in response are useful for other agencies to digest and see how their organization would cope in similar circumstances.

17 Jan Egland, Adele Harmer and Abby Stoddard, *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments*, OCHA, 1 March 2011, pp. 3, 46.

18 *Ibid.*, p. 47.

19 *Ibid.*

20 Yulia Dyukova and Paula Chetcuti, *Humanitarian Principles in Conflict – Ensuring Humanitarian Principles are Respected in Armed Conflict and Other Situations of Violence: ACF’s Experience and Position*, Action Contre le Faim International, 2013.

Ingrid Macdonald and Angela Valenza carried out a series of field research visits to Afghanistan, the Democratic Republic of the Congo, Pakistan and South Sudan for the Norwegian Refugee Council, to explore whether and how humanitarian principles are applied.²¹ They found that applying humanitarian principles did increase access, according to interviewees, particularly when used to emphasize non-discrimination (neutrality) and attention towards the most vulnerable (impartiality). Interviews identified that the humanitarian principles supported negotiations and acceptance strategies by helping to negotiate community and stakeholder politics; helping to draft agreements to build trust with governments and local authorities; providing a basis for negotiations with armed groups that control territory; and helping to mitigate against the diversion and misappropriation of aid.

The authors conclude that organizations could significantly improve their consistent application of principles with clear and simple internal guidance, improved and relevant training, and integration of the principles into monitoring, evaluation and compliance frameworks. They also strongly recommend strengthening both individual and collective agencies' needs assessments.²²

As far as evidence provided from within the Movement regarding the application of Fundamental Principles is concerned, in addition to the work cited above by Sorcha O'Callaghan and colleagues, there is the work by Fiona Terry looking at the ICRC's application of the principle of neutrality in its work in Afghanistan.²³ Terry describes how the ICRC managed, after a tragedy, to renegotiate access by maintaining prison visits to advocate humane treatment. In addition, the maintenance of a series of health posts through a network of taxi drivers was paid for by the ICRC. Later on in the programme, first-aid training for people living in areas controlled by opposition fighters and negotiations for hostage operations further expanded the humanitarian space in which the ICRC could operate. While not without its daily security challenges, Terry concludes that "[r]emaining neutral in conflict is not a moral position but simply the most effective basis found to date on which to negotiate access to people in need of humanitarian assistance, wherever they are."²⁴

Red Cross Red Crescent Societies' application of the Fundamental Principles²⁵

We're working on understanding what it means to be the Red Cross in a divided society.²⁶

- 21 Ingrid MacDonald and Angela Valenza, *Tools for the Job: Supporting Principled Humanitarian Action*, Norwegian Refugee Council and HPG (ODI), October 2012.
- 22 *Ibid.* The report also has a significant number of recommendations for donors and governments about improving principled humanitarian response, or not impeding such a response.
- 23 Fiona Terry, "The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action", *International Review of the Red Cross*, Vol. 93, No. 881, 2011, pp. 173–188.
- 24 *Ibid.*, p. 187.
- 25 This article does not explore in any depth the application of the Fundamental Principles by the ICRC. For this, please see the article by Jérémie Labbé and Pascal Daudin in this issue of the *Review*.
- 26 Interview with Red Cross recruitment manager, Derry/Londonderry, August 2014.

The Fundamental Principles as a practical starting point

As a basis for all Movement responses, the Fundamental Principles provide the starting point for engagement. As demonstrated in the interviews below, the Principles provide a culturally neutral and reliable language. They are the platform from which to explain the identity, purpose and priorities of a National Society, with a view to gaining acceptance and access to the most vulnerable. This is particularly important when this is a new community that the National Society is approaching.

In interviews with colleagues from Canada, Australia, Britain and Kenya, it has emerged that the Fundamental Principles are often part of the first discussions with a community or the authorities. The Fundamental Principles are a key aspect of the identity of any Movement actor. This allows the organization to initiate important work based on new assessments of vulnerability. It also can ensure that volunteers and staff adhere to certain standards of behaviour.

More than twenty years ago, the Canadian Red Cross conducted a vigorous vulnerability and capacity assessment across the country which uncovered that aboriginal populations in Canada were underserved by the authorities and ranked very high in a number of indicators of vulnerability – for example, in terms of high exposure to flooding and snow emergency risk, low knowledge of swimming and self-protective measures, high levels of alcoholism, higher exposure to violence and harm, health problems, and high levels of children taken into care institutions relative to the rest of the population.

The management decided to hire new staff to work on improving the access of aboriginal communities to the work of the Canadian Red Cross, particularly its violence prevention methodology.²⁷ In addition, the curriculum and training packages for staff and volunteers were completely overhauled to improve relevance and acceptance with these communities.

Shelley Cardinal, the national aboriginal adviser of the violence and abuse prevention programme, describes the Fundamental Principles as integral to introducing the Canadian Red Cross to communities:

My mission is the Fundamental Principles. I use them so that people can know clearly what to expect from me. I introduce the Principles and also say that these are the guidelines by which I work. I talk about neutrality, and people are very interested. It's one of the big questions that come up. People want to hear about neutrality. I think this is because so much of aboriginal affairs with the State is characterized by political opposition; this is a new idea and clearly sets us apart.²⁸

27 The Canadian Red Cross uses a prevention education and capacity-building programme called RespectedED in order to address situations of violence and abuse. For more information about this approach, see: www.redcross.ca/training-and-certification/course-descriptions/violence-bullying-and-abuse-prevention-courses.

28 Interview with Shelley Cardinal of the Canadian Red Cross, September 2014.

In introducing the Canadian Red Cross to these communities, Cardinal utilizes a tool that shows the Fundamental Principles as threads, tying into accepted aboriginal principles (see [Figure 1](#)). This shows that the Fundamental Principles are part of a virtuous spiral of moral principles that agree with and support each other, but also remain distinct.

Used in this way, the Fundamental Principles directly support access and acceptance with vulnerable communities. Over the past twenty-five years, of the approximately 750 aboriginal communities nationwide, the Canadian Red Cross works with nearly half: some 300 communities.²⁹

The Fundamental Principles are not just useful in conflict-affected situations

The literature from outside the Movement largely refers to the application of humanitarian principles in conflict situations, or when there is a risk of conflict.³⁰ However, for the Movement, the Fundamental Principles are useful in both conflict and non-conflict situations. In fact, they prove to be useful for every National Society, whether dealing with violence, immigration issues, prison visits, disaster risk reduction or various other issues. They also prove to be useful when articulating the distinct approach and unique position of a National Society. They serve to tie in any particular programme to the wider Movement, with its history, approach, and reputation for impartial and neutral humanitarian action.

The Australian Red Cross has been monitoring conditions in immigration detention facilities in Australia for more than twenty years. It provides independent humanitarian monitoring of conditions and conducts confidential advocacy with the Department of Immigration and the Australian government to ensure respect for the dignity, health and well-being of people held in detention. The aim is to reduce harm and increase resilience among people in detention, especially those who are particularly vulnerable.

The Australian Red Cross is the only independent organization to visit all detention facilities on at least a quarterly basis. Based on this monitoring, the Australian Red Cross raises issues of humanitarian concern, whether individual or systemic, with the authorities. In order to discuss sensitive issues openly and constructively, the Australian Red Cross's engagement with the authorities is confidential.³¹

A former Australian Red Cross staff member described the Fundamental Principles as being very relevant to how one introduces the work of the Australian Red Cross; they serve to explain why the Red Cross is visiting immigration detention centres while not taking a political position. Without the

29 *Ibid.*

30 For example, see I. MacDonald and A. Valenza, above note 21.

31 See www.redcross.org.au/immigration-detention-monitoring.aspx.

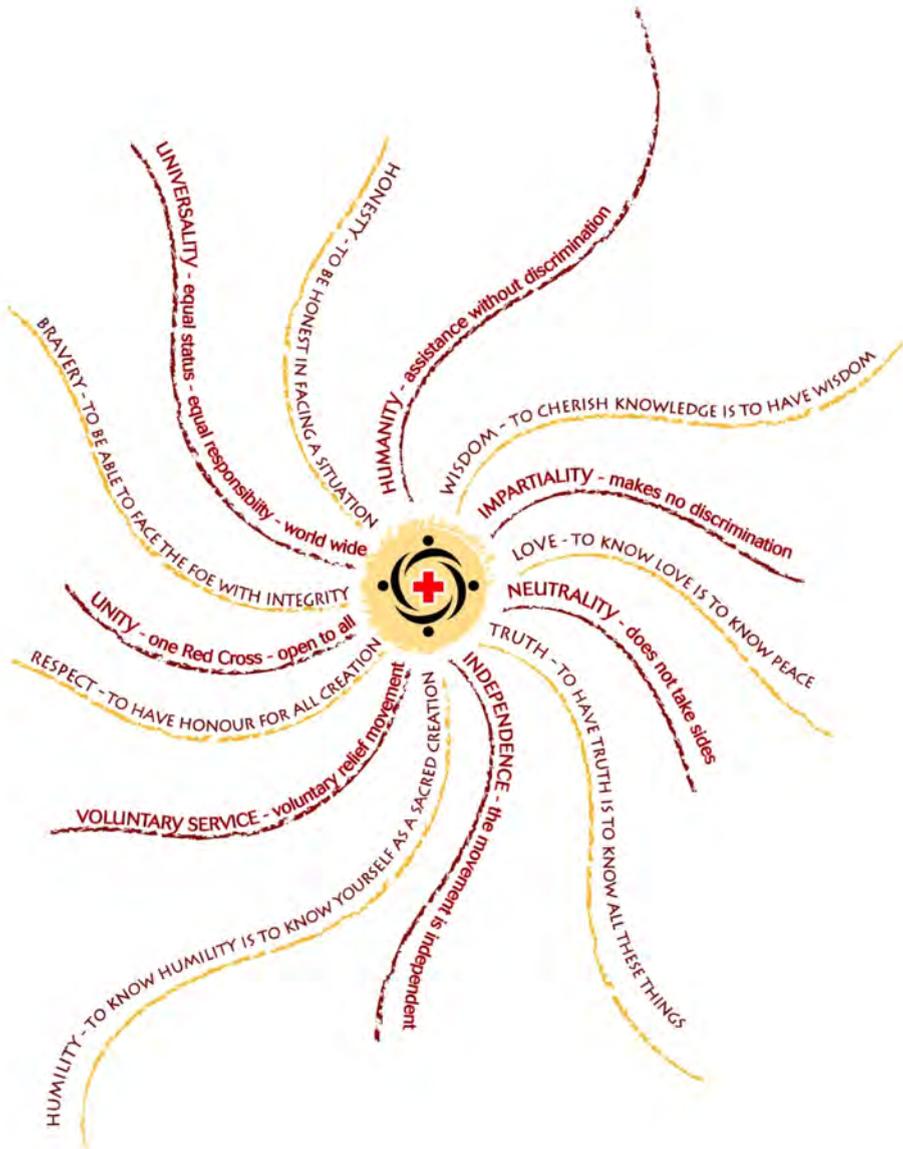


Figure 1. Fundamental Principles and aboriginal principles. Source: Canadian Red Cross, RespectedED project brochure.

Fundamental Principles, the information gained from these prison visits would potentially be susceptible to bias.

We are different to others who visit immigration detention facilities to provide legal, pastoral or advocacy support. We speak to everyone – people in detention and the staff. We remain independent and neutral, focusing on the health, well-

being and dignity of people in detention ... you have to keep your analysis independent. The Fundamental Principles are what ground you and help you to take the most appropriate action in the circumstances. It reduces any individual's ability to influence you.

The emotion of the situation can be very challenging. The Fundamental Principles enable you to be more objective and more constructive. In my experience the Fundamental Principles help in a context that can be political and emotional.³²

This positioning allows the Australian Red Cross to have continued access to detention facilities while regularly raising concerns about individuals or about systematic issues. No other organization has this access or unique position.

The Fundamental Principles provide staff and volunteers with the language and rationale needed to keep a programme focused on the most vulnerable, despite tensions or pressure to do otherwise. In Kenya, the emergency response work of the Kenya Red Cross Society is well known throughout the country and internationally. In the Tana Delta District (Coast Province), farming ethnic groups live alongside nomadic groups in a semi-arid land that is prone to drought. Conflict over the use of land and water resources in August and September 2012 led to nearly 200 people being killed and ninety injured. More than 34,000 people were displaced.³³ The Kenya Red Cross carried out emergency response operations, but Red Cross staff and volunteers realized that more was needed to bring the society back to peace. Outside academic observers have documented that the Kenya Red Cross is seen as an "honest broker" to help decrease communal violence.³⁴

The Fundamental Principles were the starting point for new programming in violence prevention and conflict resolution. It was essential to ensure that divided communities saw that neither group was favoured:

All the sessions started with an introduction to the mission of the Red Cross and the Fundamental Principles. Volunteers at the grassroots level do the dissemination in local language, using local concepts. As much as possible, we provide equal services based on need.

Also, if people want favours or special treatment, you come back to the Fundamental Principles. As the Kenyan Red Cross, there are things we cannot do. We are a humanitarian organization. We are based on these Fundamental Principles. They are what guides us. We cannot go against them.³⁵

In this way, the Fundamental Principles provide answers for staff and volunteers to give when challenged. The final project report for the Kenyan programme concluded that the project as designed – based on the Fundamental Principles – was quite successful in mitigating the key driving factor for conflict in the community.³⁶

32 Interview with former Australian Red Cross humanitarian observer, London, January 2015.

33 S. Hogberg, above note 13; G. Singh, above note 13.

34 Feinstein International Center *et al.*, above note 13.

35 Interview with Kenyan Red Cross staff member, September 2015.

36 S. Hogberg, above note 13.

Challenges to neutrality

Neutrality is very difficult. You have to work like crazy to establish it and maintain it.³⁷

There remain grim situations in current humanitarian crises where national or local actors attack aid workers, conduct human rights violations among the population, or restrict humanitarian relief for their own gain. The Fundamental Principles continue to be a practical basis on which to establish, maintain and regain neutral humanitarian space in operations.

Examples from National Societies show that it's not just talk; walking the walk, and making decisions along the lines of the Fundamental Principles, is very important. With the right approach, dramatic results are possible in terms of access and acceptance.

In Somalia, the Somali Red Crescent (or Ururka Bisha Cas) is the only national organization with reach across all of the country. This wide presence ensures that there is no preferential access for any political groups or particular clan. The Somali Red Crescent has a strong reputation for reach and impartiality, which was established during the 1990s. This is when, working with ICRC, it was providing food aid to over a million people, as well as cooked food provision to another 600,000.³⁸ Today's work includes rapid humanitarian response as well as health provision, promotion of international humanitarian law (IHL) and tracing, and disaster risk reduction. Impartiality is reinforced by proactively ensuring a balanced clan make-up within its leadership and staff.

The work to promote the Fundamental Principles is captured in a document known as "Biri-ma-Geydo", which means "Spared from the Spear". This is used by the ICRC and the Somali Red Crescent to disseminate IHL and the Fundamental Principles. It has inspired dramas, roundtables and debates, particularly aimed at young people and those who may be directly involved in armed clashes.

One example of the Fundamental Principles being challenged occurred at the Keysaney hospital in Mogadishu. The Somali Red Crescent has worked hard to ensure its neutrality despite very challenging years of conflict and upheaval. On one occasion, the roof was used as a military post for twenty days and patients could not all be evacuated. Somali Red Crescent staff stayed with the patients despite very high risks. They also worked to ensure that no military searches of patients took place despite great pressure from the warring parties. Advertising about the neutrality of the hospital on the radio increased the confidence of the community and brought people to seek treatment. As control of Mogadishu changed hands repeatedly in the mid- to late 2000s, the neutrality of that hospital was consistent, but hard-won.³⁹

37 Former IFRC disaster management staff, Geneva, December 2014.

38 S. O'Callaghan and L. Leach, above note 7.

39 *Ibid.*

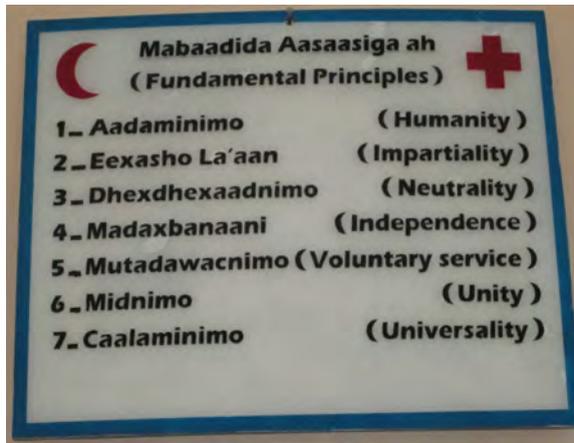


Figure 2. The Fundamental Principles in Somali. Source: Sorcha O’Callaghan, British Red Cross.

Interviews with staff, volunteers and other Red Cross members operational in Somalia show that the leadership of the Society, based on the Fundamental Principles, is a key element of its ongoing success. With leadership made up of a diverse and balanced membership from a range of clans, the principle of neutrality is reinforced even if conflict actors test the boundaries. In addition, strong and representative national leadership is linked to local and well-connected branch managers, all united by the Fundamental Principles. This allows the organization to brand itself as “a national organisation which is politically neutral ... and, as such, distinguish itself from all other humanitarian organisations in Somalia”.⁴⁰ This enables the Society to acquire and maintain access with a wide variety of groups across the country, unlike any other national organization (Figure 2 shows the Fundamental Principles in Somali including their English translation).

Another example of how the Fundamental Principles are helpful when neutrality is challenged comes from Uganda. In that country, in 2009, two Red Cross ambulances were attacked by angry mobs.⁴¹ Analysis after the event led to a conclusion that perhaps the mob either perceived the Ugandan Red Cross as being part of the government, or for some other reason did not consider the protection of ambulances, and the Red Cross emblem, as valid.⁴²

In the months and years following the incident, the leadership of the Ugandan Red Cross made distinctive efforts to strengthen dissemination and communication of the Fundamental Principles and the Red Cross mandate. They also focused on building the capacity of the Society to deal with situations of potential violence in the face of future elections and conflict. They developed significant analytical capacity for looking at political “hotspots”, and invested in

40 *Ibid.*, p. 18.

41 See www.icrc.org/eng/assets/files/2013/safer-access-selected-experience-uganda.pdf.

42 Every National Society has an obligation to promote the protection of the Red Cross emblem. For more information, see: www.redcross.org.uk/About-us/Who-we-are/The-international-Movement/The-emblem.

recruitment and training staff and volunteers in the Fundamental Principles, conflict analysis and scenario depiction. Communications were pitched to communities, authorities and local political leaders. Hospital staff were singled out as very important for dissemination as they could ensure that referrals would proceed with impartiality, focusing on those in most critical need of care.⁴³

The Society stepped up its public information efforts, including the use of television and radio, aiming to transmit clear information about the Fundamental Principles, the purpose of the Ugandan Red Cross, and the unique and protective function of the emblem. These programmes aimed particularly to communicate with the range of people who might participate in violence, or those who moved amongst political activists. As one colleague described it, “we found you need to target people who travel, and people who talk... like motorcycle drivers. If you persuade a few, you persuade many, if you get your messaging right”.⁴⁴ A final evaluation of this programme found that this communication campaign did enable the Ugandan Red Cross to ensure safe access and to work largely unimpeded by attacks or any confusion about its role.⁴⁵ The campaign – based on the Fundamental Principles – brought about a reversal of the earlier lack of respect and protection, and allowed the Ugandan Red Cross to access those most vulnerable during the violence.

The Fundamental Principles are useful for any National Society that has to recalibrate or adjust in the face of challenges. In some countries, this will take an intentional strategic shift towards clarity, based on the Fundamental Principles. In Sweden, the leadership of the Swedish Red Cross have embarked on a Society-wide initiative about the Fundamental Principles. This work and the Society’s reinvigorated approach to the Principles were tested by an incident in April 2014, when a volunteer for the Society was caught on camera treating a customer to the Swedish Red Cross shop disrespectfully, based on the customer’s perceived ethnic background. The video was made public on social media and there was an outcry against the organization. However regretful the volunteer’s actions, the leadership of the Society are not unhappy that this has come out into the open; it has served as an important impetus to refocus on the Fundamental Principles and what they mean for staff and volunteer behaviour.

The new five-year strategic plan for the Society is structured by the Fundamental Principles, and so they directly shape all domestic and international programmes for 2016–2019.

The leadership of the organization want to ensure that the Swedish Red Cross serves as a safe, neutral and impartial space. This flies in the face of rising xenophobia and public expressions of anger towards refugees and migrants in what they describe as a changing country.⁴⁶ The Swedish Red Cross has made efforts to expand access with immigrant and refugee groups, particularly to

43 A. Galperin, above note 14.

44 Interview with Red Cross colleague, 2012. Quoted in A. Kyazze, P. Baizan and S. Carpenter, above note 14, p. 34.

45 A. Galperin, above note 14.

46 Interview with Swedish Red Cross leadership, Stockholm, October 2014.

promote services offering first aid in communities that may not have access to education otherwise. In times of riots or upheaval, first aid may indeed be a life-saving skill. This also serves to reach out to potential volunteers from these communities, which can lead to a positive spiral and a change in the perception of the Swedish Red Cross over time, increasing acceptance and access.⁴⁷

The refugee support programmes are one very important way to promote the Fundamental Principles, particularly the principle of humanity. One former refugee from Morocco, who now serves as a Swedish Red Cross volunteer, describes it this way:

What do the Fundamental Principles mean to me? They mean humanity, tolerance, compassion, support, discretion, universality. When you first arrive in this country as a refugee, you feel abandoned. You don't have anything, not even any clothes. ... The Red Cross means respect for the individual, no matter what the circumstances.⁴⁸

In Sweden, applying the Fundamental Principles throughout the organization may lead to better access to communities in the face of potential future urban unrest. It is also contributing to an increase in morale and focus for the current staff and volunteers, who are inspired by the leadership.⁴⁹

The importance of leadership

As seen in the Somali, Australian and Canadian cases, good access does not come easily. There must be clear guidance from the top, and throughout the organization, to adhere to the Fundamental Principles in order to gain and increase access.

A deliberate strategy for gaining access and maintaining a level of safety and security for staff and volunteers requires preparation work based on the Fundamental Principles. This is the approach taken at the top of the Swedish Red Cross, and historically at the Canadian Red Cross, to lead to better access and acceptance today and in the future. The managerial courage to steer this kind of work should not be underestimated. Particularly – but not only – in conflict and post-conflict societies, experience shows that this type of work does not arise by accident. The pattern of access, negotiation and acceptance across the Movement, although far from perfect or uniform, has been drawn from efforts to use, demonstrate and live up to the Fundamental Principles.

Leaders in the Movement come in all forms and persuasions; some have not proven to be as inspirational as required.⁵⁰ While all National Societies are legal

47 Interviews with Swedish Red Cross staff, Stockholm, October 2014.

48 Interview with Swedish Red Cross volunteer and refugee, Stockholm, October 2014. Translated from French by the author.

49 Interviews with staff at Swedish Red Cross HQ, Stockholm, October 2014.

50 There remains an unanswered question about whether and how often the Fundamental Principles are violated by National Societies, but this is very rarely documented and so is outside of the scope of this article.

entities based on the Geneva Conventions and the Red Cross Act in their national legislation, some leaders are appointed by the government in power, and this is a challenge for the perception of independence. Fulfilling the auxiliary role, as required by the Statutes of the Movement, is a difficult balancing act. It is often a difficult negotiation in which authorities at different levels of government need to understand deeply the Movement's role and obligations, particularly to the Fundamental Principles.⁵¹

One leader of a National Society in the Middle East explained that, in order to push back against the demands of a person in authority, the work had to be acceptable to the volunteers. If they were not convinced that the work fulfilled the Fundamental Principles, particularly with regard to being impartial and based on need rather than on political decisions and attempts to curry favour, then the leader would not be able to lead them.⁵² The principle of voluntary service here serves to ensure adherence to the principles of independence and impartiality.

All seven Fundamental Principles work together

Unlike other humanitarian organizations, the Movement has the last three principles of voluntary service, unity and universality that, in some ways, define the way it works. These principles tie together the work on the local, national and international scales. In some ways the Movement is expressed by the work of the 17 million volunteers; linking all the Fundamental Principles together is one way to ensure that morale and performance do not falter in this volunteer workforce.

The Lebanese Red Cross Society is a leader in the Movement for innovative practices that ensure staff and volunteers adhere to the Fundamental Principles, which secure access. Inside Lebanon, the National Society is well known throughout the country as an active and impartial provider of emergency services. It currently runs the only national emergency service, with a fleet of 270 ambulances and forty-five ambulance stations staffed by approximately 2,700 volunteers. This is not without significant challenges, particularly running a 24-hour emergency service based on volunteers.⁵³ However, the work that the Lebanese Red Cross has been doing for decades has placed it in very good standing.

In the civil war, the Lebanese Red Cross was able to work across as many as fifty different internal "borders"; it could and still can reach areas inaccessible to government agencies, and is the only national institution with that reach.⁵⁴ It continues to be well known for its activities and neutrality.

51 IFRC in consultation with ICRC, *National Red Cross and Red Crescent Societies as Auxiliaries to the Public Authorities in the Humanitarian Field: Conclusions from the Study Undertaken by the International Federation of the Red Cross and Red Crescent Societies*, 28th International Conference of the Red Cross and Red Crescent, 2–6 December 2003, available at: www.icrc.org/eng/resources/documents/misc/5xfbfm.htm.

52 As shared at an ICRC/IFRC-hosted Regional Workshop entitled "Reaffirming the Fundamental Principles: A Movement-Wide Initiative", Beirut, March 2014.

53 Sorcha O'Callaghan and Leslie Leach, *Principles in Action in Lebanon*, BRC, ICRC and Lebanese Red Cross, 2012, p. 14.

54 *Ibid.*, p. 15.

One way the Lebanese Red Cross ensures neutrality is through a vigorous and ongoing process of recruitment based on the Fundamental Principles. During recruitment, volunteers need to sign a neutrality oath, and backgrounds are verified in the community to ensure political neutrality. New recruits are mentored for up to a year before deployment.

Due to the religious nature of the conflict and divisions within Lebanese society, once staff and volunteers are operational, they are called by nicknames that have no religious or cultural affiliation to further reinforce neutrality. No political discussions are allowed at ambulance stations, and at some stations even the news is turned off to prevent strong reactions to the media. All eighteen different confessional groups from Lebanese society are represented in the staff and volunteers, and there is strong representation of both men and women in the teams.⁵⁵

The Lebanese Red Cross has captured staff and volunteers' experiences in publications with the ICRC and the British Red Cross. Many other National Societies in the region and beyond, including ICRC staff, are inspired by the Lebanese example, and imitate some elements of the Lebanese Red Cross's work in applying the Fundamental Principles. However, there is very little documentation about this work and the innovations required to deliver according to the Fundamental Principles. It is felt that with 189 National Societies, there may be many more innovations being trialled. So far the Movement has not been very successful in capturing lessons learned and saving and sharing them in ways that can promote best practice over the wider network. This article is one attempt to do so.

Decision-making guided by the Fundamental Principles

It is not enough merely to talk about the principle of humanity in a vague way. Today's Movement actors need to have access to reliable and high-quality data to make strong decisions. As discussed above in the cases of Somalia, Uganda and Sweden, the context and power holders in any situation can change and shift. In addition, for services to be relevant and stand up to challenges, the National Society must be focused on the most vulnerable as a way of demonstrating impartiality. This is not a simple task of generalizations and assumptions. Rather, it relies on communications with a range of stakeholders from different parts of society, a thorough examination of relevant information and an excellent context analysis, revisited regularly.

As we saw above in the Canadian example, a good vulnerability and capacity assessment might lead a National Society in a new and different direction. In the United Kingdom, the British Red Cross works in Northern Ireland. Throughout the years of political tensions and conflict (known euphemistically as "the Troubles"), the Red Cross operated across sectarian lines and was known for national initiatives such as blood drives, social services and first aid.⁵⁶

55 S. O'Callaghan and L. Leach, above note 7.

56 Interview with former head of Londonderry Red Cross active during the conflict, Derry/Londonderry, August 2014.

In recent years, however, the management team in Northern Ireland has become concerned that services might not be focused exactly as they should be: on accessing communities that were most in need of the services, in accordance with the principle of impartiality. They examined people's access to the services that the BRC offered, whether those were emergency shelter, wheelchair loans or care in the home. This demanded a close look at the statistics across the region, using different mapping tools and indicators to identify those most vulnerable. For example, the team investigated the relevant social and geological data relating to flood risk, poverty levels, education levels and access to State services. The locations of Red Cross services and branches were also charted, and whether and how they were utilized. In small but significant ways, the data suggested that the Red Cross needed to make some different decisions and shift some of its staff, volunteers and services if it wanted to live up to the Fundamental Principles. Ambulances had to be stationed closer to where they were needed. Some branches had been operating where there was a historical link with past volunteers, but would be more useful closer to vulnerable communities.⁵⁷ With this in mind, the Red Cross in Northern Ireland is undergoing a process of realigning people and assets to more appropriately reflect the requirements of those in need across society. In addition, the management decided to look at the demographics of the staff and volunteer base; similar to the Swedish Red Cross and the Lebanese Red Cross, the BRC also had to take steps to ensure that its personnel base reflected the diversity of the communities that it aims to serve.

This process demanded significant managerial courage in a society that is still recovering from conflict. For the Red Cross management team in Northern Ireland, even embarking on a refocusing of the work along the lines of the Fundamental Principles raised very painful reactions in some staff, many of whom saw the Red Cross as a neutral haven where divisions in society were not to be spoken about. In order to keep staff and volunteers on board, and to further diversify the staff in the future, the Fundamental Principles have been the tools for decision-making and communication.

This alignment with the Fundamental Principles has real impact in terms of access, even on a small scale. For example, Derry/Londonderry is a city quite divided between different groups of people.⁵⁸ Political activism is still very much alive in the city, and graffiti decorates the walls and monuments in sectarian colours. The Red Cross provides a meals-on-wheels service that serves vulnerable people including those just out of hospital and the elderly. Volunteers for the service cross literal boundaries within the city four days a week.

Maintaining a position of neutrality and a focus on impartiality of services takes constant vigilance on the part of managers as well as staff and volunteers in a divided Society. A good context analysis accepts that the Society is changing, political processes are under way, and people may have very diverse views, even

57 Interview with Northern Ireland management team, Belfast, August 2014.

58 As an example, the population cannot agree on one name for the city: some call it Derry, while others call it Londonderry. Street signs towards the city state both names.

within a community. A Red Cross staff member described the line that staff and management have to walk:

You need to steer real clear of sectarianism. We promote our work as principled and relevant to today's people – not just to two different communities, but across divisions, such as the disabled, the elderly, those with alcohol problems, etc.⁵⁹

Another staff member described the importance of showing neutrality:

We're very conscious ... you always need to think that there could be allegations of favouritism. Politicians are always looking for something to poke a finger at. Some throw sectarian allegations to suit their politics. Then you have to bend over backwards to show it is not sectarian, that you represent a mixed group.⁶⁰

This work is difficult and subtle, and takes its toll on staff. However, it pays off in terms of access. A volunteer coordinator stated that volunteers who are retired policemen now have greater access to different parts of the city as Red Cross volunteers than they ever did during their long careers in positions of State authority.⁶¹

Training on the Fundamental Principles

Having staff and volunteers who can act and make decisions along the lines of the Fundamental Principles takes active and relevant training, and regular revisiting of the subject. It does not prove successful merely to use the Principles as part of staff members' introduction to a Society; lessons learned from different contexts show that coming back to the Fundamental Principles before, during and after a crisis makes the organization stronger and volunteers and staff more focused.

The South African Red Cross Society had to work on acceptance and capacity-building in order to overcome a history wherein it was felt that the Society was not supportive enough of the anti-apartheid struggle prior to the 1990s. The Society started to build its reputation by providing first aid and emergency evacuations in 1993 and 1994, and at political protests and demonstrations throughout the decade. At the outbreak of xenophobic violence in 2008, the Society quickly mobilized staff, volunteers and relief supplies. Building on existing relationships, which were based on past performance, access was secured by involving different communities in the process of identifying solutions and providing relief. In addition, the Society structured its programmes to bolster community self-help initiatives and empower community volunteers.⁶²

59 Interview with Red Cross staff, London, August 2014.

60 Interview with Red Cross staff, Omagh, August 2014.

61 Interview with Red Cross staff, Derry/Londonderry, August 2014.

62 South African Red Cross Society and ICRC, *Safer Access in Action Case Study: South Africa*, 2013, available at: www.icrc.org/eng/assets/files/2013/safer-access-case-study-south-africa.pdf.

One element considered key, identified by a Safer Access review of the work, was building on the competencies and skills of staff so that they could be strong Red Cross “ambassadors” to help gain acceptance. An important starting point for building these skills was identified to be the Fundamental Principles. Teaching community volunteers to use the Principles to guide decision-making and relief activities was considered key to positioning the organizations and securing access during disturbances. A compilation of lessons learned identified understanding of the Principles and the ability to translate them into action in daily work and life to be essential for the success of this response.⁶³

Managing volunteers, particularly in difficult, politicized or emotive situations, takes different management techniques and skills. In the Australian Red Cross, using the Fundamental Principles with volunteers was central to securing the right kind of behaviour and access. A colleague interviewed for this study commented:

I worked in a very supportive team who were very committed to the same approaches and objectives. We had some great volunteers – people in retirement, students and employed people – who made themselves available for one week per month for detention visits and then returning to the office to write up the report. That’s not easy volunteering.

Red Cross staff and volunteers need training on the Principles that gives deeper reasoning on their relevance and ties them to Movement practices and the history of access. A lot can be learnt through debriefing after activities to consider whether decisions and actions adhered to the Principles.

The Principles are part of the persuasion you need to have with Red Cross staff and volunteers, to convince them that their small actions matter.⁶⁴

The work in Australia would be inconceivable without the Fundamental Principles and the commitment of the wider Movement. Teaching the volunteers and continually supporting their work using the Fundamental Principles is the practical method the teams have found to sustain access and their difficult work in the long term.

In Northern Ireland, the British Red Cross has ensured that understanding of the Fundamental Principles does not just begin and end with a welcome workshop in the first few days. Managers of the different teams discuss the Fundamental Principles in monthly staff meetings, whether they are working with those who teach first aid, those who arrange wheelchair rentals or those who support refugees. This ensures a refreshed understanding of what it means to be a Red Cross volunteer, and a better ability to incorporate the Principles into daily decision-making.

Interviews with volunteers in Northern Ireland show that they do consider the regular discussions on the Fundamental Principles helpful for focusing and delivering their work. In the words of one volunteer:

63 *Ibid.*

64 Interview with former Australian Red Cross humanitarian observer, London, January 2015.

The principle of humanity means that you keep it focused. You treat people how you would want to be treated. Would you be happy with your mum getting these services? You need to understand that people all have the right to be treated with dignity and respect.⁶⁵

In addition to regular briefings and debriefings about the Fundamental Principles, the Red Cross in Northern Ireland has improved its training materials in order to better reflect the local reality faced by volunteers there. While the BRC carries out scenario-based training on the Fundamental Principles, it was strongly felt that the training needed to be updated in this specific context to give volunteers and staff more practice and discussion around decision-making according to the Principles. [Figure 3](#) shows an example of materials currently being used for training across Northern Ireland.

The Fundamental Principles are highly motivational for staff and volunteers. Staff are drawn to the Movement for what it stands for and how it goes about its work. In addition to providing training and interesting work, the Principles also can provide some protection. This was reported to the author by volunteers in Northern Ireland, Sweden and other places. In Lebanon, volunteering for the Lebanese Red Cross provided an alternative path to being conscripted by a militia group during the civil war.⁶⁶ In many countries there may be pressure to volunteer or work along lines drawn according to political divides, religious differences or ethnic affiliation. The Fundamental Principles help the National Societies to be a potentially positive place where neutrality is a considerable draw.

Working as part of the Movement

Maintaining neutrality and independence in tricky situations takes intentional strategy, with the support of the resources and identity of the Movement. The Fundamental Principles – all seven together – ensure that these situations are approached systematically and practically, supported by a range of National Societies, the IFRC and the ICRC. The principles of universality and unity are not often mentioned at first in discussions about the Fundamental Principles, but then, like the principle of voluntary service, it becomes clear that the work of the Movement would not have anywhere near the access or global reach that it has without these principles. The work in Kenya discussed above was supported by the Canadians. The Canadian approach to aboriginal communities is being duplicated with work in Australia. The Northern Ireland programme was supported by the ICRC, including a recent visit to Kosovo and Serbia to connect with the National Societies working in those contexts. The ICRC is a strong supporter of National Societies working in conflicts and other situations of violence – the work cited here in Somalia, Lebanon and South Africa was specifically facilitated or supported by the ICRC.

65 Interview with BRC volunteer, Omagh, August 2014.

66 S. O'Callaghan and L. Leach, above note 7.

In an area of the country where there has been serious political and religious tensions which have resulted in killings and violent demonstrations, the local Branch of the Red Cross has been asked to provide first aid cover for a planned demonstration.

The local Red Cross Branch has not been successful in recruiting from, or developing any real contacts with the relevant groups, and is concerned that its volunteers will be seen as ‘supporting’ the police and the authorities, or even as part of the ‘establishment’ against which the demonstrators are protesting, and that they may, therefore, be the target of attacks.

- How should the Branch respond to the request for first aid cover?
- What action should it take in the long-term?
- Which of the Fundamental Principles are most relevant?

The participants are then guided through a discussion, where consideration will be encouraged along the lines of: how the Branch management might go about making more contacts throughout the communities; how this might be a good opportunity to demonstrate impartiality and improve community contacts, if handled well; how to consider volunteers who will be a diverse mix that will be acceptable to the community, possibly drawing on other branch resources and staff as needed, and that the first aiders themselves are aware of upholding the Fundamental Principles and being seen to do so.

Figure 3. Training materials for Ideals in Action. Source: Northern Ireland Management Team, *Ideals in Action Training Package*, BRC, 2015.

And these are just a few examples. All of the large or complex emergencies across the world will have aspects of Movement coordination and decision-making, whether that be in response to the Ebola outbreak in West Africa in 2014–2015, or the ongoing Syrian refugee crisis across the Middle East. This is not to say that these relationships and programming options are easy and free from problems; regardless, it is inconceivable that the Movement would have the scale of operations and access it does without all the Fundamental Principles, and the principles of universality and unity tying it all together.

Conclusion

It is through debate and rigorous discussion that we keep the Fundamental Principles alive. We’ve achieved an enormous amount already.⁶⁷

67 Former IFRC disaster management colleague, Geneva, December 2014.

The Fundamental Principles may be the beginning for introductions with communities and recruiting volunteers, but they do not end there. They must be revisited, examined, emphasized in debates, used to approach dilemmas, and promoted in management decision-making and corporate strategies. They need to be living ideals, applied in real time in the daily work and challenges of National Societies.⁶⁸ In a review of the literature and Movement documents, as well as interviews, it emerges that the Fundamental Principles are largely what makes the work of the Movement possible. The Principles are practical and useful tools, literally translated into local languages and concepts that have resonance with different cultures. The Principles are not just for conflict contexts, but support the Movement's way of working in any difficult situation. With the right leadership and managerial courage, the Fundamental Principles are key to establishing access and acceptance, and are useful when that acceptance is threatened. For a Movement largely based on the delivery of services by millions of volunteers, all seven of the Fundamental Principles work together in concert and cannot be used as effectively in isolation.

This article has put forward a range of evidence emerging from nine National Societies, but it is also a strong call for more evidence to be gathered. The Movement undoubtedly has a large number of examples in which the Fundamental Principles have played a part in designing, delivering and evaluating programmes. However, there has been little attempt to collect the information systematically, so learning has been lost. In addition, there is little or no regular collection of information regarding breaches of the Fundamental Principles. While understandable in context, the failure to establish strong evidence about the impact of programmes based on the Fundamental Principles, and conversely of the consequences of failing to adhere to the Principles, weakens the wider argument about the effectiveness of principled humanitarian action. It is hoped that by sharing this article and others of its kind, further research will come to light and be disseminated, strengthening the call for the practice and application of the Fundamental Principles worldwide.

68 For a discussion of how the Principles can be applied on a day-to-day basis, see the article by Katrien Beckman in this issue of the *Review*.

Legislating against humanitarian principles: A case study on the humanitarian implications of Australian counterterrorism legislation

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Abstract

The humanitarian principles – humanity, neutrality, impartiality and independence – have come to characterize effective humanitarian action, particularly in situations of armed conflict, and have provided a framework for the broader humanitarian system. Modern counterterrorism responses are posing significant challenges to these principles and the feasibility of conducting principled humanitarian assistance and protection activities. This article explores the origins of the principles, the history behind their development, and their contemporary contribution to humanitarian action. The article then discusses some of the ways in which the principles are threatened, both by practice and by law, in the Australian context, and finally makes suggestions as to how the principles can be reclaimed and protected for the future of effective, impartial humanitarian action.

Keywords: humanitarian principles, principled humanitarian action, international humanitarian law, counterterrorism, anti-terrorism laws, Australia.

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In 1991, as the United Nations (UN) was creating the Department for Humanitarian Affairs, the UN General Assembly (UNGA) outlined some principles for humanitarian action. These principles were derived from the Fundamental Principles of the International Red Cross and Red Crescent Movement (the Movement),¹ and included humanity, neutrality, impartiality and independence.² These principles have underpinned modern humanitarian action and practice ever since.

However, in the context of new legal frameworks being developed as part of counterterrorism strategies, the application of the humanitarian principles is increasingly being challenged. There are instances of sanctions regimes and counterterrorism legislation effectively prohibiting the provision of material support to designated terrorist organizations (DTOs), which in some cases is

1 Humanity, impartiality, neutrality, independence, volunteer service, unity and universality are the seven Fundamental Principles of the Red Cross and Red Crescent Movement, proclaimed by the 20th International Conference of the Red Cross in Vienna in 1965. They bring together the humanitarian work of the National Red Cross and Red Crescent Societies, the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC). Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, 1 January 1979, available at: www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm (all internet references were accessed in July 2015). It is important to note that the first three principles of humanity, neutrality and impartiality also appeared in the very first Geneva Convention of 1864: Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 22 August 1864 (entered into force 22 June 1865, no longer in force), available at: www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=477CEA122D7B7B3DC12563CD002D6603.

2 These first three principles – humanity, impartiality and neutrality – were strongly affirmed as core principles within the UN system following the adoption of UNGA Res. 46/182, 19 December 1991. In 1994 the International Red Cross and Red Crescent Movement and disaster relief NGOs developed a Code of Conduct, which introduced the fourth humanitarian principle, independence. See ICRC and IFRC, Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief (1994 Code of Conduct), Geneva, 1994, available at: www.icrc.org/eng/resources/documents/publication/p1067.htm.

having a knock-on effect on the principled delivery of humanitarian aid. In other instances, contractual obligations required by donors directly threaten the neutral and independent status of humanitarian organizations. If one examines the unintended consequences of such legislation, it appears that States are effectively legislating against principles they have supported and endorsed through both hard and soft law. While some States, like Australia, have sought to minimize the unintended humanitarian consequences of counterterrorism legislation by offering protections to humanitarian actors through exemptions, these exemptions are rarely comprehensive and often limited in scope. Whether protection in the courtroom is sufficient in terms of protecting a humanitarian organization's reputation and ability to provide principled assistance to all in a neutral and impartial manner is still in question.

The year 2015 marks the 50th anniversary of the Fundamental Principles of the Movement, but even beyond the Movement, these principles have been espoused by many in the humanitarian system, and the humanitarian sector has an interest in defending them. This article will explore the origins of the humanitarian principles, and how the first four principles of the Movement (humanity, neutrality, impartiality and independence) came to characterize effective humanitarian action. The article will then discuss some of the ways in which these principles are threatened both by practice and by law, with a particular focus on the Australian context, and discuss the implications that such threats have for people in need of humanitarian assistance. Finally, the article will conclude by suggesting how the principles can be reclaimed and protected for the future of effective, impartial humanitarian action.

The humanitarian principles: A brief history

Whilst the origin of modern-day humanitarian principles is often credited to the Movement, and in particular to one of the Movement's founding fathers, Henry Dunant, broad concepts of humanitarian principles date back to the beginning of recorded history.³ Similarly, though humanitarian principles are championed as essential for effective humanitarian response, anthropologists have found evidence that as far back as prehistoric times, societal concepts of "charity" were derived from a sense of collective survival rather than altruism.⁴

The humanitarian principles, particularly impartiality – the concept of non-discrimination and the notion that urgency and distress ought to dictate which individuals' cases are given priority – are found in cultures and religions around the world.⁵ This knowledge has helped demonstrate that these principles

3 Jean Pictet, *Humanitarian Law and the Protection of War Victims*, Henry Dunant Institute, Geneva, 1975, p. 28.

4 Elizabeth Ferris, *The Politics of Protection: The Limits of Humanitarian Action*, Brookings Institution Press, Washington, DC, 2011, p. 7.

5 ICRC, *The Fundamental Principles of the Red Cross and Red Crescent*, Publication Ref. 0513, 1996, p. 4, available at: www.icrc.org/eng/assets/files/other/icrc_002_0513.pdf.

were never solely the concern of western ideals or gentlemen such as Henry Dunant. From the obligations of *zakat* in Islam⁶ and *tzedakah* in Judaism,⁷ to the *dāna* in Hinduism⁸ and Buddhism,⁹ principles abound that the most vulnerable members of society should be assisted in times of need. Impartiality in providing assistance to others is therefore not a new concept.

Ideas regarding limiting the suffering of war had already begun to emerge by the time Dunant had witnessed the battle of Solferino in 1859. It was Dunant, rallying villagers to assist the wounded and dying from both sides of the battle of Solferino, who began to solidify the idea of impartiality as a cornerstone of humanitarian response.¹⁰ Initially, the notion of impartiality was linked to Dunant's idea of voluntary relief societies undertaking humanitarian activities on the battlefield. However, when the 1864 diplomatic conference for the first Geneva Convention began, Dunant advocated that impartiality should also apply to military medical personnel. His idea was successful and the obligation of impartial assistance to all wounded persons on the battlefield became one of the cornerstones of international humanitarian law (IHL), binding government armed forces and humanitarian organizations alike.¹¹

This shared legal obligation on armed forces and medical personnel, enshrined in Article 6 of the 1864 Geneva Convention, went further than impartiality – the Convention also cemented the idea of neutral humanitarian assistance. For instance, Article 5 stated: “Generals of the belligerent Powers shall make it their duty to notify the inhabitants of the appeal made to their humanity, and of the neutrality which humane conduct will confer.”¹² Military ambulances and hospitals were explicitly recognized as neutral and therefore required to be respected and protected,¹³ along with military medical personnel and chaplains.¹⁴

6 *Zakat*, or the practice of giving alms, is “a form of Islamic social financing through which all Muslims whose wealth falls above a certain threshold are required by the Qur’an to give 2.5% of their assets each year to help people in need”: Chloe Stirk, *An Act of Faith: Humanitarian Financing and Zakat*, Global Humanitarian Initiative Briefing Paper, March 2015, p. 5.

7 *Tzedakah* is “a form of self-taxation rather than a voluntary donation” in which “money is generally given to the poor, healthcare institutions, synagogues or educational institutions”: *ibid.*

8 *Dāna* in Hinduism “can be given as offerings to deities (nirmalya), to individuals, to priests, spiritual guides or teachers and institutions (NGOs). Some scriptures suggest giving 10% of an individual’s earnings to charity, with the caution that a householder should never give gifts beyond their means – they should not make their family and dependents worse off on account of their generosity”: *ibid.*

9 The concept of *dāna* is a form of almsgiving that also exists in Buddhism. It is considered “the first of the Ten Perfecting Qualities (Dasa Parami Dhamma) that helps a Bodhisathwa to attain Buddhahood”: *ibid.*

10 ICRC, *Solferino and the International Committee of the Red Cross: Background, Facts and Figures*, June 2010, available at: www.icrc.org/eng/resources/documents/feature/2010/solferino-feature-240609.htm.

11 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Arts 12, 15; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II), Art. 12; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Art. 27.

12 Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 22 August 1864, Art. 5.

13 *Ibid.*, Art. 1.

14 *Ibid.*, Art. 2.

Further, all those evacuating the wounded and sick, along with the facilities used to do this, such as ambulances and hospitals, were to be considered “absolutely neutral”.¹⁵

The principles enshrined in the 1864 Convention have withstood the passage of time as the Convention has been revised, updated and consolidated. Indeed they have been rearticulated and expanded throughout the Geneva Conventions and their Additional Protocols.¹⁶ Of particular note is Article 3 common to the four Geneva Conventions, which provides a “right of initiative” for “an *impartial* humanitarian body” to care for the wounded and sick, further solidifying the clear necessity of impartial humanitarian action under international law.¹⁷ This is noteworthy because while the Geneva Conventions deal predominantly with international armed conflict, common Article 3 sets out the most basic obligations required in non-international armed conflicts.¹⁸ The inclusion of the right of initiative of impartial humanitarian bodies in common Article 3 demonstrates the importance given by States to ensuring that impartial humanitarian assistance is possible regardless of the categorization of the conflict, and cements it as one of the most fundamental expectations of States during times of armed conflict.¹⁹ Additional Protocol I strongly reinforces this in its Article 81, stating that States party to a conflict must facilitate the humanitarian work of Red Cross and Red Crescent National Societies, and where possible other humanitarian organizations, in favour of the victims of conflict in accordance with the principles of the Conventions and the Movement.²⁰ Thus, over 150 years since the adoption of the First Geneva Convention in 1864, the idea of neutral and impartial assistance for the sick and wounded – from both belligerent powers and humanitarian actors – has remained a bedrock of IHL. The unique universality of the Geneva Conventions makes these obligations all the more definite.²¹

15 *Ibid.*, Art. 6.

16 GC I; GC II; Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III); GC IV; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) (AP I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978) (AP II).

17 Common Art. 3, emphasis added.

18 International law categorizes armed conflict into two distinct types: international armed conflict (IAC) and non-international armed conflict (NIAC). While an IAC is concerned with conflict between two or more States (or High Contracting Parties to the Geneva Conventions), a NIAC is restricted to those conflicts taking place either between government armed forces and non-governmental armed groups, or between such groups. In terms of applicable treaty law, the four Geneva Conventions and AP I apply to IACs, whereas common Article 3 and AP II apply to NIACs.

19 Common Art. 3.

20 AP I, Art. 81(2–4).

21 As of 15 June 2015, there are 196 signatories to the four Geneva Conventions – that is, every State in the world. ICRC, *States Party to the Following International Humanitarian Law and Other Related Treaties*, 15 June 2015, available at: www.icrc.org/applic/ihl/ihl.nsf/.

Today, the humanitarian principles of humanity, impartiality, neutrality and independence²² are four of the seven Fundamental Principles of the Movement, the largest international humanitarian network in the world, and are enshrined in modern-day international law as obligations of States and humanitarian actors.²³ The Movement has refined and reaffirmed these principles in practice and “soft law”, starting with their formal adoption into the Movement Statutes in 1921.²⁴ Since then, the Fundamental Principles have been reaffirmed at International Conferences of the Movement,²⁵ with their current form being adopted in 1965. This required not only the consent of Movement components (the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies, and the National Societies), but also the High Contracting Parties to the Geneva Conventions.²⁶ This further demonstrates the strong commitment made by all States to uphold and respect these essential humanitarian principles.²⁷

The first three principles – humanity, impartiality and neutrality – were also strongly affirmed as core principles in humanitarian response within the UN

- 22 The Movement defines these four fundamental principles as follows: “**Humanity:** The Red Cross, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours – in its international and national capacity – to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples. **Impartiality:** It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours only to relieve suffering, giving priority to the most urgent cases of distress; **Neutrality.** In order to continue to enjoy the confidence of all, the Red Cross may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature. **Independence:** The Red Cross 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 Red Cross principles.” J. Pictet, above note 1.
- 23 “The first systematic presentation of the principles of the Red Cross ... dates from 1955 and served as the basis for the official Proclamation which today has the force of law”: *ibid.* Additionally, the 25th International Conference of the Red Cross reaffirmed the importance of the Fundamental Principles by including them in the Preamble to the Movement’s Statutes and, at all times, States are called upon to respect adherence by the Movement to the Fundamental Principles: ICRC, above note 5.
- 24 In 1921, the Fundamental Principles of the Movement were incorporated into the revised Statutes of the ICRC: *ibid.*
- 25 J. Pictet, above note 1.
- 26 Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in October 1986. The Statutes were first adopted in 1928, then revised in 1952. ICRC, *Red Cross Law*, 31 October 1995, available at: www.icrc.org/eng/resources/documents/misc/57jmr8.htm.
- 27 The 19th Session of the League’s Board of Governors (Oxford, 1946) adopted a declaration confirming the 1921 principles. The 18th International Conference of the Red Cross (Toronto, 1952) reaffirmed those principles adopted in 1946. The principles were not, however, the subject of a systematic treatise until 1955, when Jean Pictet defined and analyzed all the values which guide the work of the Movement. On the basis of this in-depth study, the Movement’s seven Fundamental Principles as they stand today were unanimously adopted in 1965 by the 20th International Conference of the Red Cross. The 25th International Conference of the Red Cross (Geneva, 1986) reaffirmed the importance of the Fundamental Principles by including them in the Preamble to the Movement’s Statutes. The responsibility of the National Societies to respect and disseminate knowledge of the Principles was underscored in new statutory provisions, while States were called upon to respect at all times the adherence by all components of the Movement to the Fundamental Principles.

system in 1991, when the UNGA adopted Resolution 46/182. The Annex to that resolution outlines guiding principles for humanitarian assistance and notes that “humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality”.²⁸ These principles were again reaffirmed in a second UNGA resolution in 2004.²⁹

In 1992, after the adoption of Resolution 46/182, the Steering Committee for Humanitarian Response and the ICRC developed a comprehensive document on humanitarian principles for the humanitarian system at large.³⁰ As a result, the 1994 Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief was developed.³¹ Absent was any direct reference to neutrality, which was viewed as too constrictive a principle to apply universally to the sector. However, next to the principles of humanity and impartiality, the authors included the fourth humanitarian principle discussed above, independence. In 2014 the Core Humanitarian Standard on Quality and Accountability, a document resulting from the Joint Standards Initiative,³² reintroduced neutrality as one of the four “core humanitarian standards” guiding humanitarian action, alongside humanity, impartiality and independence.³³

Over time, these principles have been affirmed and reaffirmed in international fora, such as the Sphere project,³⁴ the European Consensus on Humanitarian Aid³⁵ and the Good Humanitarian Donorship principles.³⁶ These projects and initiatives, often instigated by States, persistently reaffirm the humanitarian principles and demonstrate that governments are aware of their obligations not just to understand but also to respect these principles in humanitarian action.³⁷

28 UNGA Res. 46/182, above note 2.

29 UNGA Res. 58/114, 5 February 2004.

30 Steering Committee for Humanitarian Response, *SCHR Members*, 2015, available at: www.schr.info/about.

31 1994 Code of Conduct, above note 2.

32 Comprised of the Humanitarian Accountability Partnership (HAP) International, People In Aid and the Sphere Project, which joined forces to seek greater coherence for users of humanitarian standards.

33 Groupe URD, HAP International, People In Aid and the Sphere Project, *Core Humanitarian Standard on Quality and Accountability*, 1st ed., 2014.

34 Through its voluntary initiative, the Sphere Project brings together a broad spectrum of humanitarian agencies who share the common goal of wanting to improve the quality of humanitarian assistance and the accountability of humanitarian actors. The Sphere Project outlines a Humanitarian Charter and has over 540 organizational signatories: www.sphereproject.org/about/.

35 The European Consensus on Humanitarian Aid is a strategic framework working to guide the actions of the European Union and its member States to deliver effective, high-quality and coordinated humanitarian assistance, see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:ah0009>.

36 “The Good Humanitarian Donorship (GHD) initiative is an informal donor forum and network which facilitates collective advancement of GHD principles and good practices. It recognises that, by working together, donors can more effectively encourage and stimulate principled donor behaviour and, by extension, improved humanitarian action”, see www.ghdinitiative.org/.

37 States are made aware of these obligations through the four Geneva Conventions and various relevant UNGA and UN Security Council (UNSC) resolutions.

Legislating at the expense of humanitarian principles: Unintended consequences?

Despite these commitments to the humanitarian principles, new threats to global security and the ensuing political responses to them are having a dangerous effect on the ability of humanitarian organizations to consistently apply the principles. While States grapple with terrorism and other forms of violent extremism, two security-based responses are having an impact on principled humanitarian action: increasingly strict parameters on conditions for funding for humanitarian organizations, and the adoption of new and increasingly rigid counterterrorism legislation. The consequences have been the creation of laws and financial regulations that run counter to the long-established humanitarian principles. This in turn risks undermining the basis of the modern humanitarian system.

On 20 September 2001, George W. Bush stated in his address to a Joint Session of Congress and the American people: “Either you are with us or you are with the terrorists.”³⁸ In this statement the president set a clear divide between those supporting the action and approach of the United States and those supporting terrorism. However, in reality – particularly in principled humanitarian action – this divide is not so clear-cut. In humanitarian response situations, where the principles of impartiality and neutrality dictate one’s actions or approach, there is no room for taking sides.

As a result of this “with us or against us” approach, tensions between the humanitarian principles and concerns relating to the sponsorship, support and expansion of terrorist activities have increased.³⁹ In the immediate aftermath of the September 11 attacks on the World Trade Centre in New York, the United Nations Security Council (UNSC) passed Resolution 1373 recognizing international terrorism as a threat to international peace and security. Acting under Chapter VII of the UN Charter, the Security Council called on member States to implement domestic measures to “prevent and suppress the financing of terrorist acts”⁴⁰ and to “refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts”.⁴¹ States should also

[p]rohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or

38 George W. Bush, address to a joint session of Congress on 20 September 2001, available at: <http://edition.cnn.com/2001/US/09/20/gen.bush.transcript/>.

39 Jessica Burniske, Naz Modirzadeh and Dustin Lewis, *Counter-Terrorism Laws: What Aid Agencies Need to Know*, Humanitarian Practice Network, November 2014, available at: www.odihpn.org/hpn-resources/network-papers/counter-terrorism-laws-what-aid-agencies-need-to-know.

40 UNSC Res. 1373, 28 September 2001, para. 1(a).

41 *Ibid.*, para. 2(a).

indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.⁴²

No humanitarian or protection exemptions were included in the drafting of Resolution 1373, despite the obvious conflict caused by the practice of providing neutral and impartial aid.⁴³ This is a noticeable absence that has carried through into many domestic anti-terrorism laws – something that will be addressed below in the discussion of the Australian case.

Many States had already enacted counterterrorism laws prior to 2001, but the shock of September 11, combined with this directive from the Security Council in response to the threat of increasing terrorism, provided the impetus to implement stronger legislation. A wave of new, far-reaching (and often hastily drafted) anti-terrorism laws swept across the globe. Measures were introduced prohibiting financial and material support to terrorist groups and ensuring cooperation with other governments on anti-terrorism activities. This cooperation granted the capacity to investigate, arrest and prosecute individuals engaged in terrorist acts.⁴⁴ However, perhaps unintentionally, the reach of these measures is having a significant effect on humanitarian actors, particularly in their ability to provide principled aid and training to groups that have been designated as terrorist organizations. This has given rise to a growing tension between counterterrorism responses and principled humanitarian action.

Three of the important consequences of these legislative changes are the criminalization of providing material or other support either directly or indirectly to terrorists, the implementation of broad sanctions regimes, and the contractual obligations that donors place on humanitarian organizations delivering assistance to those who may live in territory controlled by a DTO. In some cases, these measures impede humanitarian organizations in their ability and capacity to provide assistance to those in greatest need, and to do so in a manner consistent with the humanitarian principles; and yet, examples of all three areas of concern are readily identifiable in national counterterrorism regimes around the world.

This issue – that counterterrorism measures are threatening to undermine principled humanitarian action – has been extensively discussed as regards the United States.⁴⁵ This is primarily because the United States presents the most

42 *Ibid.*, para. 1(d).

43 Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, UN Office for the Coordination of Humanitarian Affairs and Norwegian Refugee Council, July 2003.

44 UNSC Res. 1373, above note 40. This has been written on extensively: see K. Mackintosh and P. Duplat, above note 43; J. Burniske, N. Modirzadeh and D. Lewis, above note 39; George Williams, “A Decade of Anti-Terror Laws”, *Melbourne University Law Review*, Vol. 37, 2011.

45 See, for example: K. Mackintosh and P. Duplat, above note 43; Justin A. Fraterman, “Criminalizing Humanitarian Relief: Are U.S. Material Support for Terrorism Laws Compatible with International Humanitarian Law?”, *New York University Journal of International Law and Politics*, Vol. 46, Spring 2014, pp. 399–470; Peter Margulies, “Accountable Altruism: The Impact of the Federal Material Support Statute on Humanitarian Aid”, *Suffolk Transnational Law Review*, Vol. 34, 2011, pp. 539–568; Sam Adelsberg, Freya Pitts and Sirine Shebaya, “Chilling Effect of the Material Support Law on Humanitarian Aid: Causes, Consequences, and Proposed Reforms”, *Harvard National Security Journal*, Vol. 4, No. 2, 2012–2013, pp. 282–319.

obvious case study, as its counterterrorism regime is extensive and a number of its anti-terrorism laws have been tested in the courts. What is not as widely known is how the Australian context has developed, and how it compares with the US regime.

Australia's anti-terrorism laws: An overview

Similar to other jurisdictions, Australian laws relating to counterterrorism were relatively disparate prior to September 2001 and ranged from acts from the 1970s dealing with crimes committed on aircraft⁴⁶ to legislation dealing with the recruitment and training of mercenaries.⁴⁷ In 2002, the Australian federal parliament embarked on a turbulent period of anti-terrorism lawmaking.⁴⁸ In the decade following September 11 and the adoption of UNSC Resolution 1373,⁴⁹ Australia enacted a total of fifty new federal laws, with many others enacted in various States and Territories of Australia.⁵⁰ At the time of writing, sixty-four pieces of counterterrorism legislation had been passed into law,⁵¹ establishing a new legal reality within the country – a permanent, entrenched anti-terror regime reflective of a persistent threat of terrorism, rather than a “transient, short-term legal response”⁵² to the September 11 attacks. In his book *The 9/11 Effect: Comparative Counter-Terrorism*, Kent Roach describes Australia as “exceed[ing] the United Kingdom, United States and Canada in the sheer number of new antiterrorism laws that it has enacted since 9/11”.⁵³ He writes that “this degree of legislative activism is striking compared even to the United Kingdom’s active agenda and much greater than the pace of legislation in the United States or Canada”.⁵⁴

The anti-terrorism laws encompass a wide range of issues, but as regards the restrictions placed on humanitarian organizations, several provisions under Australia’s Criminal Code Act 1995 (Cth) (Criminal Code)⁵⁵ are of particular interest. These provisions fall into three categories: material support, sanctions and contractual obligations. Despite the proliferation of legislation since 2001, in several ways the Australian legislative experience has been quite different to that

46 See Civil Aviation (Offenders on International Aircraft) Act 1970 (Cth), which implemented the Convention on Offences and Certain Other Acts Committed On Board Aircraft, signed at Tokyo on 14 September 1963, to which Australia acceded on 22 June 1970. This act has now been replaced by the Crimes (Aviation) Act 1991 (Cth).

47 Crimes (Foreign Incursions and Recruitment) Act 1978 (Cth).

48 G. Williams, above note 44, p. 1137.

49 UNSC Res. 1373, above note 40.

50 Edwina MacDonald and George Williams, “Combating Terrorism: Australia’s *Criminal Code* since September 11, 2001”, *Griffith Law Review*, Vol. 16, No. 1, 2007, pp. 27–54, available at: www.gtcentre.unsw.edu.au/news/docs/Terrorism_Criminal_Law2.pdf.

51 Andrew Lynch, Nicola McGarrity and George Williams, *Inside Australia’s Anti-Terrorism Laws and Trials*, NewSouth Publishing, Sydney, 2015.

52 G. Williams, above note 44, p. 1137.

53 Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism*, Cambridge University Press, Cambridge, 2011, p. 310.

54 *Ibid.*

55 Criminal Code Act 1995 (Cth), 15 March 1995 (Criminal Code).

of the United States. This is seen most notably in relation to exemptions in various legislative provisions for humanitarian assistance⁵⁶ – though these are not uniformly included across all relevant legislative provisions as a matter of course.

For example, the Criminal Code makes it an offence to associate with a terrorist organization – something that is unique among most first-world counterterrorism regimes. Under division 102.8 of the Act, a person commits an offence if, on two or more occasions, he or she intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, a terrorist organization.⁵⁷ However, subsection 102.8(4) explicitly identifies several exemptions to this provision, including association for the sole purpose of “providing aid of a humanitarian nature”.⁵⁸

As mentioned above, exemptions for humanitarian aid are not included across all relevant legislative provisions. For example, there are two provisions relating to training. One is found in division 101.2 of the Criminal Code and relates specifically to offences of providing or receiving training connected with terrorist acts.⁵⁹ These offences mirror UK and European counterterrorism legislation.⁶⁰ The second is found in division 102.5, where it is an offence to intentionally provide training to, receive training from or participate in training with a terrorist organization.⁶¹ This is an extremely broad provision with no exemption for training that may form part of a purely humanitarian mission, for example the provision of first-aid training or dissemination of IHL. As regards dissemination of IHL, this is in direct contravention of the obligation placed on both States and National Societies and the ICRC to disseminate the laws of war.⁶²

Under division 102.6, it is an offence to intentionally and directly or indirectly receive funds from, or make funds available to, a terrorist

56 As Mackintosh and Duplat identified in K. Mackintosh and P. Duplat, above note 43, p. 46: “Although it is traditional for sanctions regimes to contain some form of humanitarian exemption, this is not always the case ... the statutory humanitarian exemption in US sanctions law (under the IEEPA) was overridden in the case of US counter-terrorist sanctions. An alternative type of humanitarian exemption is offered by the provision of a licence or waiver for one or more humanitarian organisations to operate in contexts subject to sanctions. However, as these licences apply to liability under economic sanctions regimes they do not provide any kind of legal immunity from prosecution under material support laws in jurisdictions where material support could encompass humanitarian action.” Unlike the United States, Australia has incorporated a humanitarian exemption into its domestic counterterrorism law, as will be discussed below.

57 Criminal Code, div. 102.8.

58 *Ibid.*, div. 102.8(4)(c).

59 *Ibid.*, div. 101.2.

60 UK Terrorism Act 2006, section 6 (refers to providing “instruction or training”); EU Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA), Art. 2 (refers to “supplying information or material resources, or by funding its activities in any way”).

61 Criminal Code, div. 102.5.

62 See GC I, Art. 47; GC II, Art. 48; GC III, Art. 127; GC IV, Art. 144. Art. 47 of GC I states: “The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.” See also the Statutes of the International Red Cross and Red Crescent Movement, Art. 3(2), which stipulates that National Societies “disseminate and assist their governments in disseminating international humanitarian law”.

organization.⁶³ Again, no exemption based on humanitarian grounds has been written in as a defence. This could possibly mean that a humanitarian agency which was, for example, compelled to pay for access into a region controlled by a DTO in order to legitimately deliver humanitarian assistance to the civilian population would be in breach of the law.

Attached to these provisions are penalties that depend on whether these acts were done in the full knowledge that the group in question was a terrorist organization (twenty-five years' imprisonment) or whether the person was simply reckless in failing to ascertain this information (fifteen years' imprisonment).⁶⁴ Similarly to the US laws, Australian legislation claims extraterritorial jurisdiction over these crimes and can prosecute non-citizens with the consent of the Attorney General, although at the time of writing, no prosecutions had been made under the Criminal Code.⁶⁵ These provisions, particularly those void of a humanitarian exemption, pose significant challenges to Australia's humanitarian community and the ability of humanitarian actors to engage effectively in principled humanitarian assistance.

In addition, there is uncertainty regarding the extent of the exemption for "providing aid of a humanitarian nature", as the term is not defined in the Criminal Code. Arguably, therefore, the exemption may not extend to activities which are illegal under other provisions of the Criminal Code, meaning that a contravention of one counterterrorism provision could result in many other offences also applying (in a similar way that illegal activities may disqualify an organization from a status as a charity).

There is also uncertainty as to the extent to which humanitarian organizations can associate and cooperate with other organizations (such as partner NGOs) which may themselves be involved in breaches of the Criminal Code, either under the express counterterrorism provisions or through other means, such as provisions aimed at combating organized crime.

Australia also made recent legislative changes with extremely broad prohibitions for Australian citizens and residents entering or remaining in a "declared area".⁶⁶ Specifically, division 119.2 of the Criminal Code makes it an offence to intentionally enter, or remain in, an area in a foreign country that has been labelled a "declared area" by the foreign affairs minister, where the person knows or should have known that the area is a declared area. At the time of writing, the Australian foreign affairs minister has declared the Mosul district in Ninewa province in Iraq and Al-Raqqa province in Syria to be areas invoking division 119.2.⁶⁷ This provision originated from the Australian government's

63 Criminal Code, div. 102.6.

64 *Ibid.*, divs 102.6(1) and (2) respectively.

65 K. Mackintosh and P. Duplat, above note 43, p. 24.

66 The term "declared area" is defined by the Australian government as an area in a foreign country in which it is established to the satisfaction of the minister for foreign affairs that a listed terrorist organization is engaging in hostile activity. Australian Government, *Australian National Security*, available at: www.nationalsecurity.gov.au/WhatAustraliaIsDoing/Pages/FrequentlyAskedQuestionsDeclaredAreaOffence.aspx.

67 Australian Government, *Australian National Security*, available at: www.nationalsecurity.gov.au/WhatAustraliaIsDoing/Pages/DeclaredAreaOffence.aspx.

concern that “Australians who travel to conflict zones would return ... with skills and intentions acquired from fighting or training with terrorist groups”.⁶⁸ The offence carries with it absolute liability and imprisonment for up to ten years.⁶⁹ While there have been some obvious criticisms of the broad scope of this provision, it does include an exemption for those remaining “solely for legitimate purposes”, which includes providing “aid of a humanitarian nature”.⁷⁰

Unintended humanitarian consequences: Three areas of concern

In 2007, in the case of *United States of America v. Tarik Ibn Osman Shah, Rafiq Sabir and Mahmud Faruq Brent*, doctors providing medical support to Al Qaeda were convicted under material support laws.⁷¹ Three years later, in the case of *Holder v. Humanitarian Law Project*,⁷² the US Supreme Court ruled that the provision of training by a human rights organization to a designated terrorist organization could constitute material support under the relevant statute, irrespective of the humanitarian nature of the training provided.⁷³ These consequences have become a real concern among humanitarian organizations since the post-9/11 introduction of counterterrorism laws throughout the world. While Australia’s position is not so different, a higher *mens rea* standard and the existence of a humanitarian exemption within the Criminal Code makes it difficult to imagine the realistic prosecution of an organization that is operating in accordance with the humanitarian principles. However, the way in which these laws are written still threatens the ability of humanitarian organizations to provide support, resources and training to all people everywhere in a neutral and impartial way.

Material or other support

The first counterterrorism measure of significance for humanitarian organizations is the nature of material support or resources that are prohibited by law. In the United States, an act considered to be in “material support” of terrorism is punishable by

68 *Ibid.*

69 Criminal Code, divs 119.2(1) and (2).

70 *Ibid.*, div. 119.2(3)(a).

71 US District Court, *United States of America v. Tarik Ibn Osman Shah, Rafiq Sabir and Mahmud Faruq Brent*, 474 F. Supp. 2d 492, SDNY 2007. Significant factors in these convictions were both the ideological affinity of the doctors and their intent to work under the “direction and control” of the group, which were found to be indicative of their material support for the group. Despite this, there does not seem to be a push to prosecute doctors operating independently of DTOs. The prosecution in *Shah* indicated that a doctor in the normal course of treating a “jihadist”, or an NGO doctor working in the course of his or her work, would not be prosecuted, though this has not yet been tested in court. See also Sara Pantuliano, Kate Mackintosh and Samir Elhawary with Victoria Metcalfe, *Counter-Terrorism and Humanitarian Action: Tensions, Impact and Ways Forward*, Humanitarian Policy Group Brief No. 43, October 2011, p. 11.

72 US Supreme Court, *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2010.

73 J. A. Fraterman, above note 49, p. 409.

fifteen years' imprisonment, regardless of the nationality of the accused. Under US federal law, "material support or resources" includes

any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation, except medicine or religious materials.⁷⁴

Although there is an exemption for "medicine and religious materials",⁷⁵ it is significant that an individual does not have to intend to further an organization's terrorist activities to be found guilty under the statute.

Australian provisions relating to support are narrower than US counterterrorism laws. Under Australian counterterrorism laws, a person will have committed an offence if they provide "support or resources" that would help an organization engage (directly or indirectly) in preparing, planning, assisting in or fostering the execution of a terrorist act.⁷⁶ In the United States, there are restrictions on the provision of support to particular DTOs – that is, other than "medicine or religious materials", it seems that the provision of any material support or resources to these organizations, irrespective of its humanitarian nature, would invoke US criminal law.⁷⁷

In Australia, even though no explicit exemptions for humanitarian actors are given, if support or resources are provided in an independent, impartial and neutral manner, and not in aid of a terrorist act, it is difficult to envisage that humanitarian organizations would find themselves in contravention of the support provision.⁷⁸ This is because the legislation requires that donors "intentionally [provide] to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of terrorist organisation", and paragraph (a) includes "preparing, planning, assisting in or fostering the doing of a terrorist act".⁷⁹

Interesting for the purposes of comparison is New Zealand's Terrorist Suppression Act,⁸⁰ which takes its humanitarian exemption one step further in this regard. It includes a list of "reasonable excuses" for the offence of providing "property, or financial or related services" to a terrorist organization. The types of property which fall within the definition of a "reasonable excuse" include food, clothing, medicine and other items that serve to do no more than "satisfy

74 18 USC 8 2339A(b)(1), 2006 and Supp. 1112009.

75 *Ibid.*

76 Criminal Code, div. 102.7. Despite its use throughout, the Criminal Code fails to define the term "support".

77 K. Mackintosh and P. Duplat, above note 43, p. 41.

78 Criminal Code, div. (1)(a).

79 *Ibid.*, div. 102.1.

80 Terrorism Suppression Act 2002.

essential human needs of (or of a dependent of) a designated individual”.⁸¹ This provision more fully appreciates the principle of impartiality.

As mentioned previously, in Australia it is an offence to intentionally make funds available to, or collect funds for or on behalf of, a terrorist organization.⁸² While this has not yet been tested in court, an accusation made by the Israel Law Center (Shurat HaDin) against World Vision Australia and AusAID shone a light on the potential humanitarian gap in the legislation. In October 2012, Shurat HaDin claimed to have evidence supporting an allegation that World Vision Australia and AusAID were funding a proscribed terrorist organization, the Popular Front for the Liberation of Palestine (PFLP), through the distribution of funds to a Palestinian NGO, the Union of Agricultural Work Committees (UAWC).⁸³ As part of its work, the UAWC has been responsible for delivering plant and seedling nurseries to the West Bank and Gaza in an attempt to provide food security to over 1,000 low-income households in those areas.⁸⁴ An AusAID examination eventually concluded that there was no evidence to support this allegation, making assurances that “project funding from AusAID through World Vision is not being used to support terrorists but is being spent on agreed, high priority development activities”.⁸⁵ However, if the allegations had been proven, the fact that the funds were intended solely for a humanitarian purpose would not have been a valid defence. Despite these findings, and given the non-existence of a humanitarian exemption to the offence of getting funds to, from or for a terrorist organization, World Vision Australia might have found itself liable for criminal activity, irrespective of whether or not those funds were intended for a humanitarian purpose. While IHL does not grant humanitarian organizations unlimited humanitarian access to conflict zones, treaty and customary law do expressly allow for humanitarian access,⁸⁶ and these counterterrorism measures are threatening humanitarian organizations and their ability to provide such access.

As regards “training”, the first provision relates to providing or receiving training specifically related to terrorist acts,⁸⁷ following a similar approach taken in the UK and Europe as mentioned above. Here the Australian provisions are sufficient, and not a matter of concern to humanitarian actors. Again, as a point

81 *Ibid.*, section 10(3).

82 Criminal Code, div. 102.6.

83 NGO Monitor, *World Vision*, 29 June 2014, available at: www.ngo-monitor.org/article/world_vision_international.

84 Australian Minister for Foreign Affairs, Union of Agricultural Work Committees, media release, 31 May 2012, available at: http://foreignminister.gov.au/releases/2012/bc_mr_120531.html.

85 *Ibid.*

86 See GC IV, Arts 10, 11, 23, 50, 59, 63; AP I, Art. 70(1); common Art. 3; AP II, Art. 18; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 55: “The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.” See also Naz K. Modirzadeh, Dustin A. Lewis and Claude Bruderlein, “Humanitarian Engagement Under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape”, *International Review of the Red Cross*, Vol. 93, No. 883, 2011, p. 626.

87 Criminal Code, div. 101.2.

of comparison, the UK and European approaches provide greater detail and clarity regarding what would constitute a training-related terrorism offence. In the UK, for example, the Terrorism Act⁸⁸ makes it an offence to provide or receive instruction in the making or use of firearms, radioactive material or weapons designed or adapted for the discharge of any radioactive material, explosives, or chemical, biological or nuclear weapons.⁸⁹ Further legislation adopted in 2006 in the UK defines “training”, and sets out specific acts that constitute an offence, thus placing narrow parameters around the 2000 Act.⁹⁰

Similarly, in the 2005 Council of Europe Convention on the Prevention of Terrorism, “training for terrorism” is defined as:

to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose.⁹¹

However, the second tranche of training offences in Australia goes beyond the training of terrorist acts, giving cause for concern for humanitarian actors. These provisions seem to lack both clarity and feasible parameters around training for and by humanitarian organizations. The law states that a person commits an offence if he or she intentionally provides training to, receives training from or participates in training with a terrorist organization.⁹² There are two issues of particular concern here. The first is that there is no definition given in the legislation for “training”, meaning that there is a lack of clarity in relation to what will constitute a crime under this section. The second is the very broad definition given for a terrorist organization in this section, as it includes blanket coverage of any organization specified in the regulations.⁹³ These two factors could severely limit the ability of humanitarian actors to engage with groups in any given area for humanitarian-related training, such as first-aid training or the dissemination of IHL. The prohibitions may also weaken the ability of humanitarian organizations to provide assistance if that assistance, or gaining access to a population in need of that assistance, necessitates engagement with a terrorist organization, the nature of which could be reasonably seen as “training”.

88 Terrorism Act 2000.

89 *Ibid.*, section 54.

90 The Terrorism Act 2006 provides a definition of the crime of training to supplement the training offence under section 54 of the 2000 Act. The definition under section 6 of the Act includes specific acts such as “the making, handling or use of a noxious substance”; “the use of any method or technique for doing anything else that is capable of being done for the purposes of terrorism, in connection with the commission or preparation of an act of terrorism or Convention offence or in connection with assisting the commission or preparation by another of such an act or offence”; and “the design or adaptation for the purposes of terrorism, or in connection with the commission or preparation of an act of terrorism or Convention offence, of any method or technique for doing anything”. This is in stark contrast to the definition taken by the United States in the *Holder* case.

91 Council of Europe Treaty Series, No. 196 (entered into force 1 June 2007), Art. 7.

92 Criminal Code, div. 102.5.

93 *Ibid.*, div. 102.1(1).

Further, being limited by and accepting of what the Australian government declares a “terrorist organization” potentially jeopardizes the impartiality, neutrality and independence of humanitarian actors.

Finally, read alongside the amendments made by the Australian Foreign Fighters Act,⁹⁴ the ambiguous training provision also creates potential complications for humanitarian actors entering or remaining in a “declared area” of a foreign country without a “legitimate purpose”.⁹⁵ Not only does this provision have implications for freedom of movement, but, despite the inclusion of an exemption for the provision of humanitarian aid,⁹⁶ it also raises legitimate concerns for humanitarian actors providing, receiving or participating in training in a “declared area”. This is, so far, an untested area of the law.

This ambiguity over what would constitute training under Australia’s current counterterrorism legislation was raised in a Supreme Court of Victoria case regarding the provision of financial support to the Tamil Tigers following the 2004 Boxing Day tsunami.⁹⁷ In his conclusions, the presiding judge made reference to Dr. John Whitehall, who at that time was chairman of paediatrics and child health at the University of Western Sydney. In 2004, Dr. Whitehall travelled to Sri Lanka and was there when the Boxing Day tsunami hit and devastated the country. During his time in Sri Lanka, Dr. Whitehall provided paediatric training to young medical students who he later came to learn were from the medical wing of the proscribed terrorist organization, the Liberation Tigers of Tamil Eelam (LTTE). Even though the training was unrelated to the terrorist activities of the organization and was done purely for humanitarian purposes, his acts still fall within the scope of “training a terrorist organisation or receiving training from a terrorist organisation” under division 102.5 of the Australian Criminal Code. The judge asked: “Is Dr Whitehall guilty of an offence ...? Technically he might be. I suspect he knows not of this offence, but ... we manage to turn a blind eye.”⁹⁸ Obviously the approach of hoping law enforcement and the judiciary “turn a blind eye” to anything that may fall foul of the legislation is not a satisfactory one for many humanitarian organizations who are faced with ongoing uncertainty as to what limits these provisions place on their policies and activities across a range of complex contexts.

These laws, which essentially withhold humanitarian training or relief from certain groups of people, erode the very concept of impartiality in the provision of humanitarian assistance. Such assistance must be based on need only, and not on criteria relating to potential or actual affiliation to certain groups deemed terrorist organizations by a particular government.

94 Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014.

95 Criminal Code, div. 119.2.

96 *Ibid.*, div. 119.2(3)(a).

97 Supreme Court of Victoria, *R v. Vinayagamoorthy*, VSC 148, 31 March 2010.

98 Kate Hagan, “‘Terror Arrest’ at Gunpoint: Police Warned”, *Sydney Morning Herald*, 5 February 2010, available at: www.smh.com.au/national/terror-arrest-at-gunpoint-police-warned-20100204-ngw0.html#ixzz3hRcbdx6D.

These consequences are therefore disturbing. The apparent criminalization of the provision of medical assistance is in direct contrast to a long tradition of respect and concern for the health and welfare of one's own troops, but also those of the enemy – something that has been constantly reiterated by States since the first Geneva Convention of 1864. The benefit of IHL is the reciprocity of care and treatment, for those *hors de combat* or the wounded or sick on the battlefield.⁹⁹ More generally, respect for hospitals and medical centres, and for doctors and health-care workers, has also long been a central part of international law and international discourse. This principle of IHL was reaffirmed at the 31st International Conference of the Red Cross and Red Crescent, where the Movement and States passed a resolution focused on “Health Care in Danger” and reiterated the need for States to “recall the obligations to respect and protect the wounded and sick, as well as health-care personnel and facilities” consistent with their international legal obligations.¹⁰⁰ This resolution has provided the basis of a global Movement campaign on the protection of the medical mission, acknowledging that medical personnel and services are increasingly under threat. More recently, the UN has debated the fact that health-care is increasingly under threat in both armed conflict and other situations of violence, and has again called on all parties to conflict to respect medical facilities, medical transport and medical and health-care professionals.¹⁰¹ The principle of good treatment and respect by all parties to a conflict for each other's combatants – the principle of impartiality in action – is key to the conduct of armed conflict being consistent with international law. If one side criminalizes such care and assistance, even in response to apparently indiscriminate and disproportionate conduct from the other side, the delicate balance of IHL is challenged, and the humanitarian system that has for so long supported the victims of armed conflict will come under threat.

Sanctions

In addition to the limits on the kinds of support that can be offered to populations in need, the second measure affecting humanitarian agencies is the wide range of sanctions regimes that have had a significant impact on the freedom of humanitarian action. Some of these regimes target specific groups considered a threat to international peace and security. Kate Mackintosh explains how humanitarian organizations, by bringing assistance to civilians living in areas controlled by people or groups listed under these sanctions regimes, could be seen as providing “material support” to terrorists.¹⁰² Using the US laws as an

99 GC I, Art. 12; GC II, Art. 12; GC III, Art. 16.

100 Health Care in Danger, Resolution 5, 31st Conference of the International Red Cross and Red Crescent Movement, 2011, para. 1, available at: www.icrc.org/eng/resources/documents/resolution/31-international-conference-resolution-5-2011.htm.

101 United Nations, “Governments, International Community Must Better Protect Health-Care Workers, Facilities during Armed Conflict, Deputy Secretary-General Tells High-level Event”, press release, DSG/SM/805-IHA/1345, 25 September 2014, available at: www.un.org/press/en/2014/dsgsm805.doc.htm.

102 Kate Mackintosh, “Holder v Humanitarian Law Project: Implications for Humanitarian Action: A View from Médecins Sans Frontières”, *Suffolk Transnational Law Review*, Vol. 34, No. 3, 2011.

example, Mackintosh says, “as long as the individual who provides any of the listed resources knows either that the group is on the list or that it engages in terrorist activities as defined by U.S. law, he or she will be in violation of U.S. criminal law”.¹⁰³ These sorts of restrictions expose humanitarian organizations and their staff to criminal liability, which was the case with the Humanitarian Law Project’s training activities in *Holder*.¹⁰⁴

As many scholars have observed, Somalia has become a leading case study for the humanitarian fallout, and decline in the perception of principled humanitarian action, resulting from the inability of NGOs to make the necessary assurances against aid misappropriation under sanctions regimes.¹⁰⁵ In 2008, UNSC Resolution 1844¹⁰⁶ implemented sanctions against organizations and individuals in Somalia, including Islamist DTO Al-Shabaab, which controlled a significant amount of territory in southern Somalia. The result was a suspension of a much-needed \$50 million in humanitarian aid to Somalia in 2009.¹⁰⁷ In 2010, the USAID Famine Early Warning Systems Network first anticipated the food crisis in Somalia. In that same year, the UNSC created a humanitarian exemption to the Somali sanctions regime due to the “importance of humanitarian aid operations”.¹⁰⁸ Despite this, humanitarian agencies were still slow to respond¹⁰⁹ and the US government did not issue even limited licences to NGOs until August 2011, by which time the famine had reached its peak.

While the causes of the famine are complex and multidimensional and will not be addressed in this paper, it is estimated that nearly 260,000 people died, half of them children younger than five years old. The myriad difficulties in delivering humanitarian assistance – the demands of al-Shabaab, general insecurity in the region, and the complexities and fear of prosecution under counterterrorism legislation – all contributed to the fact that 4.6% of the overall population in southern Somalia died.¹¹⁰ This is a clear indicator that the humanitarian system is at breaking point, and work needs to be done to address these difficult issues.

In Australia, UN sanctions regimes are given effect under the Charter of the United Nations Act 1945 (Cth) (UN Charter Act).¹¹¹ Under this act, the foreign minister is granted the power to list proscribed persons or entities for the purposes of implementing UNSC resolutions, including Resolution 1373.¹¹² Australia also imposes restrictions on financing terrorism through autonomous

103 *Ibid.*

104 *Ibid.*

105 K. Mackintosh and P. Duplat, above note 43, p. 81.

106 UNSC Res. 1844, 20 November 2008.

107 S. Pantuliano, K. Mackintosh and S. Elhawary with V. Metcalfe, above note 71, p. 7.

108 UNSC Res. 1916, 19 March 2010, para. 5.

109 Charity & Security Network, *Safeguarding Humanitarianism in Armed Conflict: A Call for Reconciling International Legal Obligations and Counterterrorism Measures in the United States*, June 2012, p. 50.

110 Robyn Dixon, “U.S. Policy Seen as Factor in Somalia Famine Deaths”, *Los Angeles Times*, 2 May 2013, available at: <http://articles.latimes.com/2013/may/02/world/la-fg-somalia-famine-20130503>.

111 Charter of the United Nations Act 1945 (Cth) (UN Charter Act).

112 UNSC Res. 1373, 28 September 2001.

sanctions regimes, which may supplement UNSC sanctions.¹¹³ Both sets of sanction laws dictate the “consolidated list” of proscribed persons and entities, which at the time of writing contained the names of 3,091 individuals and entities that are subject to asset freezes and/or travel bans under the laws.¹¹⁴ Any breach of these sanction laws will trigger penalties of up to ten years’ imprisonment as well as substantial fines.¹¹⁵

Section 21 of the UN Charter Act makes it an offence to directly or indirectly make any assets available to proscribed persons or entities as listed by the foreign minister.¹¹⁶ Strict liability applies to this offence, meaning that to fall foul of this provision, there is no need for an individual to have intended to support terrorism – simply the act of providing an asset to a proscribed person or entity will suffice.¹¹⁷ The Supreme Court of Victoria has further interpreted this mental element, holding that “it is sufficient for the prosecution to show that any accused was aware of a substantial risk of proscription and that such a risk was unjustifiable”,¹¹⁸ thus essentially finding “recklessness” to be the relevant mental test for this offence.

This Supreme Court case, *R v. Vinayagamoorthy*, concerned three Tamil Australians who were being prosecuted under the UN Charter Act for providing resources to the LTTE.¹¹⁹ The defendants pleaded guilty to the charges, but maintained that the funds and materials provided were solely humanitarian in nature. In sentencing them, the Court accepted that their motivations were “to assist the Tamil community in Sri Lanka” and that “the only real vehicle to do so was by dealing with the LTTE”. Although satisfied that their general motivations had a “humanitarian bent”, the Court did not find their contributions to be “solely confined to humanitarian work”,¹²⁰ and thus handed down their sentences. However, the Court did take the humanitarian nature of their acts into consideration and recognized this to the extent that in “the interests of justice” they were released on recognizance release orders.¹²¹ The Court’s decision in this instance was borne not of a humanitarian exemption, as the UN Charter Act contains no such exemption, but rather from the Court’s own discretion in sentencing. While this decision brings some relief to humanitarian organizations that operate in this context, it is less than ideal that humanitarian agencies must simply hope that, if prosecuted, a Court would come to the same determination.

113 Australian Government, Transaction Reports and Analysis Centre, *Terrorism Financing in Australia 2014*, 2014, p. 11. See also Autonomous Sanctions Act 2011 (Cth).

114 As of 4 June 2015. Australian Government, Department of Foreign Affairs and Trade, *Australia and Sanctions: The Consolidated List*, 4 June 2015, available at: <http://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>.

115 Australian Government, Transaction Reports and Analysis Centre, above note 113, p. 11.

116 UN Charter Act, section 21.

117 *Ibid.*, section 21(2).

118 Supreme Court of Victoria, *Vinayagamoorthy*, above note 97.

119 *Ibid.*

120 *Ibid.*, para. 59.

121 *Ibid.*, paras 67, 69.

Contractual obligations

In addition to limiting the scope and nature of permissible activities and beneficiaries, many States have imposed contractual obligations on humanitarian organizations working in complex environments. The contracts effectively require the organization and/or its partners to cooperate with counterterrorism efforts.¹²² A recent study conducted by the Harvard Law School Counterterrorism and Humanitarian Engagement Project noted that some contracts go so far as to include statements adopting common counterterrorism postures by the donors and humanitarian organizations alike, noting for example that they are both “firmly committed to the international fight against terrorism”.¹²³ While these measures exist, in large part, to counter financing of terrorism, they place significant responsibilities on humanitarian actors¹²⁴ and threaten the neutrality and independence of humanitarian agencies. One example of the types of requirements placed on NGOs is USAID’s Partner Vetting System,¹²⁵ which requires “foreign assistance grant applicants to submit detailed personal information on leaders and staff of local partner charities to be shared with US intelligence agencies”.¹²⁶ This contractual requirement effectively turns humanitarian NGOs into intelligence gatherers,¹²⁷ in direct violation of the principles of neutrality and independence. What this means in practice is that humanitarian organizations are increasingly perceived as collectors of information for US intelligence agencies by those to whom they ought to be seen as neutral. There are concerns that this dynamic is severely hampering the efforts of humanitarian organizations to bring assistance to civilians residing in territory under the control of a DTO.¹²⁸ It is also interesting that nearly all of the humanitarian organizations which took part in the Counterterrorism and Humanitarian Engagement Project noted that they drew “a ‘red line’ at screening the ultimate beneficiaries”.¹²⁹

Australia has also incorporated counterterrorism measures into contractual agreements with humanitarian agencies. Further to the allegations described above, made by Shurat HaDin against World Vision Australia and AusAID,¹³⁰ allegations were also made against the broader Australia Middle East NGO Cooperation Agreement (AMENCA), which is a \$35.4 million programme supporting

122 K. Mackintosh, above note 102, p. 510.

123 Counterterrorism and Humanitarian Engagement Project, *An Analysis of Contemporary Anti-Diversion Policies and Practices of Humanitarian Organizations*, May 2014, p. 3 and Annex 1D.

124 *Ibid.*, p. 10.

125 Counterterrorism and Humanitarian Engagement Project, *Partner Vetting in Humanitarian Assistance: An Overview of Pilot USAID and State Department Programs*, Research and Policy Paper, November 2013.

126 Charity & Security Network, above note 109, p. 15.

127 Counterterrorism and Humanitarian Engagement Project, above note 125, p. 4.

128 *Ibid.*, p. 15.

129 *Ibid.*, p. 41.

130 NGO Monitor, *World Vision*, 29 June 2014, available at: www.ngo-monitor.org/article/world_vision_international.

Australia's overall contribution to the Palestinian Territories.¹³¹ After the Australian government confirmed that the allegations were baseless, an independent review was conducted into the risk management mechanisms established in relation to counterterrorism, resulting in a number of observations surrounding the contractual obligations placed on Australian aid agencies in the humanitarian space.¹³² For instance, the assessment ascertained that, by way of a general guide, the Department of Foreign Affairs and Trade (DFAT) expects all development partners to abide by minimum due diligence standards in order to fulfil their contractual obligations in accordance with counterterrorism requirements¹³³ and to "use their 'best endeavours' to comply with Australian law", and requires "that the other party inform DFAT immediately if, during the course of the agreement, any link whatsoever to a proscribed person or entity is discovered".¹³⁴

The independent assessment also reviewed all agreements between the AMENCA NGO partners and those NGOs' implementing partners, determining that each agreement included a clause committing the partner NGO to counterterrorism.¹³⁵ One agreement even makes reference to anti-terror laws of the partner's own country, the reach of UNSC Resolution 1373, and other international anti-terrorism conventions. In 2013, DFAT then introduced a series of contractual amendments, including a spot check system, designed to check up on the due diligence and financials of partner NGOs. This mechanism includes a system in which second-tier partners carry out regular checks of names of individuals and organizations against the DFAT Consolidated List.¹³⁶ This particular requirement could lead humanitarian organizations partnering with DFAT to be perceived as collecting intelligence information in direct contravention to the principles of neutrality and independence. In addition, these requirements could be jeopardizing the humanitarian principles by disallowing the distribution of aid and assistance when funding might potentially reach those on the consolidated list. Specifically, this threatens the provision of impartial humanitarian assistance.

It is noteworthy that not all States are requiring counterterrorism measures in grant and partnership contracts. While the United States, Canada, Australia and the UK have robust counterterrorism-related donor requirements, the contracts developed by other States, such as Denmark, Norway, Sweden and Switzerland,

131 Department of Foreign Affairs and Trade, *Risk Management Review of the Australia-Middle East NGO Cooperation Agreement*, Final Report, May 2014, p. 2.

132 *Ibid.*

133 These requirements include "to know the persons or organisations that are being directly assisted; to make sure that people or organisations being directly assisted are not on either of the lists before assistance is provided; to make sure that directly funded persons or organisations are aware of and obliged to comply with these laws; to make sure that directly funded persons or organisations in turn are obliged to make sure that their distribution of the funds or support is made on the same basis." Department of Foreign Affairs and Trade, above note 131, p. 7.

134 *Ibid.*, p. 7.

135 *Ibid.*, p. 8.

136 *Ibid.*, p. 9.

did not include any counterterrorism-related measures.¹³⁷ This raises questions as to the effectiveness of such contractual measures in the mitigation of terrorism risk and whether the deep compromise of humanitarian principles imposed by such contractual requirements results in measurable security gains.

The effects of legislation, sanctions and contracting on effective and principled provision of aid

Some of the global counterterrorism measures described above have had tangible negative impacts on the capacity of humanitarian NGOs to undertake principled humanitarian action.¹³⁸ Three particular effects will be discussed below.

The effect on access to persons and communities in need

First, these measures can affect how humanitarian actors are perceived and therefore their ability to gain access to communities in need. Humanitarian organizations may no longer be viewed as being able to provide neutral, impartial and independent assistance, and thus their very presence may be perceived as a threat,¹³⁹ not only to their fellow humanitarian organizations but also to the humanitarian principles themselves. Consequently, they may be refused access and permission to provide life-saving assistance. If humanitarian organizations, and through them the system itself, are perceived to be biased or unable to provide principled assistance in one context, it reflects on all humanitarian action and threatens the perception of the capacity of humanitarian actors in all contexts.

The effect on neutrality

A second challenge is the dependence many humanitarians have on their neutrality, for security.¹⁴⁰ When a humanitarian actor's neutrality is compromised, for whatever reason, the risk of being seen to be involved in the conflict is significantly increased. This in turn risks humanitarian workers being perceived either as "the enemy" or as working for "the enemy". Trust is critical to gaining access to conflict-affected populations in need, and when trust is absent, it is very difficult for humanitarian actors to provide assistance. In the modern world, beset by social media, a perceived lack of neutrality in one country can affect how humanitarians are perceived elsewhere, thereby reducing the respect and protection afforded to aid workers everywhere. A recent study undertaken by the Feinstein Centre noted that "[n]eutrality and impartiality are not theoretical concepts or pie-in-the-sky constructs; they are essential ingredients for effective

137 Counterterrorism and Humanitarian Engagement Project, above note 125, p. 6.

138 K. Mackintosh and P. Duplat, above note 43.

139 Fiona Terry, "The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action", *International Review of the Red Cross*, Vol. 93, No. 881, 2011.

140 *Ibid.*

humanitarian action”.¹⁴¹ The study found that in Iraq, “[n]eutrality ... is regarded by communities and most remaining humanitarian organizations as an essential protection against targeted attack”.¹⁴²

The overall effect on principled humanitarian action

Third, it is not alarmist to say that if trust in the humanitarian system is lost, and humanitarian assistance is no longer perceived to be impartial, neutral, independent and based purely on the needs of humanity, then humanitarian organizations may lose their ability to work in complex humanitarian emergencies and in areas of armed conflict. Should this happen, the humanitarian consequences would be grave. Exemptions like those provided for in the Australian Criminal Code for humanitarian “association” with a terrorist organization¹⁴³ will work towards strengthening the historic practice of principled humanitarian action. Unlike the United States’ limited “medicine and religious materials” exemption, in the Australian context, the laws seek somewhat to uphold the principles that humanitarian aid has always represented. The New Zealand exemption, as discussed earlier, goes well beyond that.

Indeed, some measures have effectively criminalized the capacity of humanitarian agencies to provide assistance on the basis of need alone, the core tenet of humanitarian action. In addition, contractual and other obligations between donors and humanitarian actors have served to institutionalize interdependence, thereby jeopardizing independent humanitarian action. The challenge for the future of effective humanitarian response, therefore, is to reconcile security concerns that require strong and robust counterterrorism measures with the humanitarian needs and concerns of civilian populations affected by the activity of DTOs and the legal and policy provisions that bind States and humanitarian actors alike, to allow for the provision of impartial humanitarian action.

In IHL, the idea that assisting people in the territory of the enemy may assist the enemy itself is dealt with by acknowledging the role of the State in withholding or suspending consent to provide humanitarian assistance based on security concerns.¹⁴⁴ The ICRC’s Customary Law Study recognizes that the right to humanitarian assistance has entered into customary international law, and notes that the refusal to consent to the provision of humanitarian assistance must not be arbitrary.¹⁴⁵ However, while counterterrorism legislation acknowledges that not all contact with a DTO is necessarily prohibited, identification of whether such action could be used by the DTO to “free up other resources within

141 Feinstein International Center, *Humanitarian Agenda 2015: Final Report: The State of the Humanitarian Enterprise*, Tufts University, Boston, MA, p. 9.

142 *Ibid.*

143 Criminal Code, div. 102.8(4)(c).

144 AP I, Art. 70; AP II, Art. 18.

145 ICRC Customary Law Study, above note 86, Rule 55.

the organisation that may be put to violent ends”¹⁴⁶ is a matter of concern for States and humanitarian organizations alike. In the *Holder* case, this theory – the “fungibility theory” – formed the basis of the rationale put forward in the Court’s decision, wherein money is seen as fungible, and “when foreign terrorist organisations that have a dual structure raise funds, they highlight the civilian and humanitarian ends to which such moneys could be put”.¹⁴⁷ In practice, however, identifying where this may occur and the point at which action or inaction by humanitarian actors compromises humanitarian principles is enormously difficult.

Reflections on the way forward

How, then, is it possible to best ensure that human suffering is minimized, humanitarian assistance is provided consistent with the most basic precepts of humanity, and the tensions between counterterrorism measures and humanitarian action are addressed? In the first instance, it will be necessary for States to uphold their obligations under international law while enacting domestic counterterrorism legislation. In 2006, the UN General Assembly adopted the United Nations Global Counter-Terrorism Strategy.¹⁴⁸ While supporting and encouraging States to uphold their obligations to enact domestic legislation on counterterrorism in line with the demands of the UNSC, the resolution clearly calls on States to “ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law”.¹⁴⁹ *Inter alia*, these legal obligations include a requirement to respect and ensure respect for the provisions of the Geneva Conventions, including those relating to the provision of humanitarian assistance and the impartiality and independence of humanitarian action.¹⁵⁰

Secondly, it will be necessary to encourage and implement improved humanitarian exemption clauses that enable and facilitate humanitarian action wherever the need is greatest. For example, in November 2013 the Humanitarian Assistance Facilitation Act (HAFA) was developed in the United States in recognition of the limitations on humanitarian action during the Somali famine. The bill recognized that “the prohibitions contained in ... Executive orders and the Material Support Statutes discouraged and, in some instances, prohibited donors from contributing to aid efforts for all of Somalia”.¹⁵¹ If passed, it is intended that HAFA would

146 US Supreme Court, *Holder*, above note 72, p. 8.

147 *Ibid.*, p. 26.

148 UNGA Res. 60/288, 20 September 2006.

149 *Ibid.*, Plan of Action, IV(2).

150 Common Art. 1.

151 US House of Representatives, *H. R. 3526*, 113th Congress, 1st Session, Section 2(6), available at: www.gpo.gov/fdsys/pkg/BILLS-113hr3526ih/pdf/BILLS-113hr3526ih.pdf.

permit persons subject to the jurisdiction of the United States to enter into transactions with certain sanctioned foreign persons that are customary, necessary, and incidental to the donation or provision of goods or services to prevent or alleviate the suffering of civilian populations and for other purposes.¹⁵²

On 18 November 2013, the bill was referred to the Committee on Foreign Affairs and the Committee on the Judiciary for an unspecified period of time.¹⁵³ The bill has wide support, in particular from American Red Cross and sixty-six international humanitarian NGOs including Mercy Corps, Oxfam America and World Vision, which noted that “[w]ith HAFA, we can focus on doing what we are called to do: helping people survive and overcome adversity, no matter where in the world they live”.¹⁵⁴ Yet, the fact that the proposed legislation has not progressed since 2013 may indicate that there is little appetite for exemptions for humanitarian organizations.

In Australia, although exemptions for humanitarian assistance do exist, as noted earlier, there are still severe limitations and the contractual requirements placed on humanitarian organizations continue to threaten their independence and their ability to provide impartial humanitarian assistance to those in greatest need.

Third, humanitarian organizations, the UN and States need to think about how they are able to address security concerns while continuing to provide principled humanitarian assistance, and they will need to work together to achieve the necessary balance. There is much work to be done, both by the humanitarian sector and by States, in order to better understand, support and develop modalities of operation which ensure that the needs of humanity and security are satisfied.

Finally, it has been suggested that “both customary international law ... and international agreements, such as the Geneva Conventions and Protocols, should be read in light of these emerging international [counterterrorism] norms”.¹⁵⁵ However, if it is believed that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”,¹⁵⁶ then counterterrorism law should surely be written in light of customary international law.

The 50th anniversary of the Fundamental Principles of the International Red Cross and Red Crescent Movement and the 32nd International Conference of the Red Cross and Red Crescent in 2015, as well as the World Humanitarian

¹⁵² *Ibid.*

¹⁵³ Library of Congress, “H.R.3526 – Humanitarian Assistance Facilitation Act of 2013”, available at: www.congress.gov/bill/113th-congress/house-bill/3526.

¹⁵⁴ InterAction, *Statement of 66 Organizations in Support of the Humanitarian Assistance Facilitation Act of 2013*, available at: www.interaction.org/document/statement-66-organizations-support-humanitarian-assistance-facilitation-act-2013.

¹⁵⁵ Peter Marguiles, “Accountable Altruism: The Impact of the Federal Material Support Statute on Humanitarian Aid”, *Suffolk Transnational Law Review*, Vol. 34, No. 3, 2011, p. 561.

¹⁵⁶ UNGA, Universal Declaration of Human Rights, 10 December 1948, preamble, para. 1.

Summit in 2016, present timely and unique opportunities to reaffirm the humanitarian principles and bring States, the UN and humanitarian bodies together to work through some of these complex and important issues. It is only if States, the UN and humanitarian agencies genuinely commit to addressing these threats to principled humanitarian action that these critical issues can be resolved. There is no doubt that security and counterterrorism are complex and important issues that must be addressed. However, to pursue counterterrorism measures without fully considering the humanitarian consequences and the capacity for humanitarian assistance to be provided in a timely, effective and principled fashion is to misjudge the critical balance between security and humanity. Adopting appropriate and considered legislation is essential to recovering this balance, ensuring that States are fulfilling their international legal obligations and ensuring that principled humanitarian assistance can continue to reach those most in need.

From Fundamental Principles to individual action: Making the Principles come alive to promote a culture of non-violence and peace

Katrien Beeckman

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Abstract

This paper focuses on the individual perspective, as opposed to the institutional or operational one, towards the Fundamental Principles and their underpinning humanitarian values. It demonstrates the added value of this perspective, which goes beyond addressing challenges regarding the Fundamental Principles' understanding and application. By making the Principles and values come alive in peoples' behaviour, the individual perspective also enables Red Cross and Red Crescent staff and volunteers to inspire a change of mindset and behaviour towards

a culture of non-violence and peace. Two tools created to this purpose, as well as their impact, are presented: (i) the Seven Skills for Seven Principles (747) framework, which unpacks the high-level Principles into more concrete and tangible components, values and intra- and interpersonal skills; and (ii) the Youth as Agents of Behavioural Change (YABC) initiative, which, using a non-cognitive learning approach, fosters a personal connection towards the Principles and increases participants' ability to role-model them.

Keywords: Fundamental Principles, humanitarian values, behavioural change, ethical leadership, YABC, culture of non-violence and peace, education, intra- and interpersonal skills, non-cognitive (approach or learning methodology).



The decisions and actions of the Red Cross and Red Crescent Movement (the Movement), which was born on the battlefield of Solferino in 1859, are based on seven Fundamental Principles. Officially proclaimed by the 20th International Conference of the Movement in 1965 in Vienna, they are humanity, impartiality, neutrality, independence, voluntary service, unity and universality.¹ Jean Pictet, former vice-president of the International Committee of the Red Cross (ICRC) and author of the 1979 official Commentary on the Fundamental Principles, was unequivocal as to their essential nature and importance: “Without principles, the Red Cross [Red Crescent] would simply not exist.”² The year 2015 marks the 50th anniversary of their adoption.³

The purpose or role of the Principles is multiple. The Principles both establish the mission of the Movement and guide the way that actions need to be taken to fulfil this mission.⁴ Thus the principles serve as an ethical framework for the Movement. They are a precondition for building and maintaining trust with public authorities and thereby securing access to disaster- or conflict-affected people. Respect for the Principles is central to the safety of staff and volunteers

1 20th International Conference of the Red Cross, “Proclamation of the Fundamental Principles of the Red Cross”, Resolution 8, *International Review of the Red Cross*, No. 56, 1965, p. 573, available at: www.loc.gov/rr/frd/Military_Law/pdf/RC_Nov-1965.pdf (all internet references were accessed in June 2015).

2 Jean Pictet, *Commentary on the Fundamental Principles of the Red Cross*, Henry Dunant Institute, Geneva, 1979, p. 6, available at: www.ifrc.org/PageFiles/40669/Pictet%20Commentary.pdf.

3 See www.fundamentalprinciples.today/.

4 The Fundamental Principles are integral to a Red Cross or Red Crescent National Society, as demonstrated by the fact that respect for the Principles is a condition of their recognition from the outset. The Statutes of the Movement require National Societies to pursue their humanitarian mission in accordance with the Principles. The Geneva Conventions and their Additional Protocols require States to “facilitate the work of National Societies which is carried out in accordance with ... the [F]undamental [P]rinciples of the Red Cross as formulated by the International Conferences”. See, respectively, Statutes of the International Red Cross and Red Crescent Movement, 1986, amended in 1995 and 2006 (entered into force 8 November 1986), Art. 4(10), available at: www.icrc.org/eng/assets/files/other/statutes-en-a5.pdf; and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978), Arts 1 and 81(3).

and their acceptance in the communities in which they are working.⁵ They are a vital element of the collective identity of the Movement, “the cement which holds the stones together to make of them a solid and well-built edifice”.⁶

Notwithstanding, just as the road from theory to practice in any human endeavour is paved with hurdles, challenges regarding the application of the Fundamental Principles have been diagnosed frequently⁷ by the international official, statutory meetings⁸ of the Movement. As a response, with a view to overcoming these challenges in application, those meetings have frequently emphasized the need to enhance knowledge and understanding of the Fundamental Principles by Red Cross and Red Crescent (RCRC) staff, volunteers and members.

This paper presents a new approach, called Seven Skills for Seven Principles (747)⁹ – embedded in the 747 framework – which has been developed by the author in her professional assignment with the International Federation of Red Cross and Red Crescent Societies (IFRC) as head of the Principles and Values Department¹⁰ to

- 5 See Council of Delegates (COD), Resolution 7, “National Societies Preparing for and Responding to Armed Conflict and Other Situations of Violence”, Geneva, 2011, available at: www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-7-2011.htm. This resolution presents the Safer Access Framework developed by the ICRC, which “outlines the numerous interconnected actions that a National Society needs to carry out in order to increase its acceptance by individuals, communities, weapon bearers and authorities and thereby gain safer access to people and communities during armed conflict and other situations of violence”. As part of the decisions taken in this resolution, the Council of Delegates “encourages National Societies to intensify their commitment and efforts to adopt appropriate security/risk management systems, and to take other concrete measures to increase their safer access in armed conflict and other situations of violence. This includes the need to enhance the operational application of the Fundamental Principles and other relevant Movement policies as well as to obtain insurance coverage for staff and volunteers working in crises, to adequately compensate them for possible injury, including psychological trauma/stress, or death in the line of duty.”
- 6 J. Pictet, above note 2, p. 6. Pictet refers to the Principles as the doctrine which, “[a]long with, but more important than, the Statutes of the International Red Cross[,] creates the unity and the universality of the structure, which, indeed, makes the Red Cross a reality.”
- 7 See section one, “Understanding and Applying the Fundamental Principles: Challenges and Remedies”, below, as well as the 1991 ICRC-prepared report *Respect for and Dissemination of the Fundamental Principles*, second intermediary report, COD, Budapest, 1991. This report was based on a survey to which fourteen National Societies replied. Amongst the main difficulties encountered by National Societies in their daily work with regard to the implementation of the Fundamental Principles were poor understanding of their meaning, the fact that staff do not always succeed in shedding personal preferences and political affinities (respectively the principles of impartiality and neutrality), and national law, which can hinder their application, for instance in the context of illegal migration.
- 8 These are as per the Movement’s Statutes, the General Assembly, the COD and the International Conference of the Red Cross and Red Crescent. Whereas the General Assembly brings together only the National Societies, the COD unites all components of the Movement and also includes the International Federation of Red Cross and Red Crescent Societies (IFRC) and ICRC. The International Conference is an official meeting of all Movement components (National Societies, IFRC and ICRC), together with all States party to the Geneva Conventions. It is a truly unique forum, taking place every four years, where the Movement components operate on an equal footing with States and where decisions, called resolutions, are jointly taken on humanitarian matters.
- 9 Available at: www.ifrc.org/Global/Documents/Secretariat/201506/747leaflet-EN-FINAL.pdf.
- 10 The 747 framework was officially appreciated by the Humanitarian Principles and Diplomacy Advisory Body of the IFRC, and reported as such to the IFRC Governing Board in November 2012: “The Advisory Body expressed strong support for the work of the Secretariat (Principles and Values) on the development of a user-friendly matrix, which outlines the interpersonal skills needed when applying the Fundamental Principles and their underpinning humanitarian values. Emphasising concrete skills

enable individuals to increase their knowledge and understanding of the Fundamental Principles.

Also, as of 1999 within the context of the IFRC's Strategy 2010,¹¹ a new role of the (promotion of the) Fundamental Principles has been spelled out: to influence a change of mindset and behaviour in the community. This was later reaffirmed by the IFRC's Strategy 2020, adopted a decade afterwards in the context of the promotion of social inclusion and a culture of non-violence and peace.¹² This is in essence about nurturing the humanitarian values that underpin the Fundamental Principles, such as respect for diversity, equality, dialogue, non-violence, mutual understanding, cooperation and inclusiveness.¹³

The author's position, as well as that of the hundreds of RCRC youths united in Solferino in 2009 to reaffirm the vision of Henry Dunant 150 years later, is that the fulfilment of the latter purpose – i.e., the promotion of a culture of non-violence and peace through the Fundamental Principles – actually requires us to go further than ensuring knowledge, understanding and application of the Fundamental Principles, and to also *live by them* as individuals.¹⁴ This paper will also present Youth as Agents of Behavioural Change (YABC), an IFRC flagship initiative that is anchored in the 747 framework.¹⁵ This initiative was created to enable RCRC volunteers and staff to better apply, as well as live by, the Principles, and goes further, as will be seen throughout the paper, so as to influence behavioural change towards a culture of non-violence and peace. YABC is built on the vision that it is through change from within and “walking the talk” (or role-modelling) that a genuine, effective and sustainable change of mindset and attitude can be fostered.¹⁶

such as empathy, active listening, nonviolent communication and non-judgement will enable the secretariat to provide training and support to National Societies on the [F]undamental [P]rinciples that is practical rather than descriptive, and moves the discussion from the abstract into action.” IFRC Governing Board, *Report of the Humanitarian Principles and Diplomacy Advisory Body (HP&DAB), to the 26th Session of the Governing Board*, GB/19/1, Geneva, Switzerland, 7–9 November 2012, p. 2.

11 IFRC, *Strategy 2010: To Improve the Lives of Vulnerable People by Mobilising the Power of Humanity*, Geneva, 1999, adopted 1 October 1999 by the 12th General Assembly of the IFRC in Decision 23.

12 “The promotion of a culture of non-violence and peace ... is not an end or final goal, but a process. It is about creating an enabling environment for dialogue and discussion and finding solutions to problems and tensions, without fear of violence, through a process in which everyone is valued. ... The promotion of [a culture of non-violence and peace] is an essential part of IFRC's activities, as it not only reduces violence and discrimination but also creates stronger, healthier and more resilient communities.” IFRC, *The Red Cross Red Crescent Approach to Promoting a Culture of Non-Violence and Peace*, Geneva, 2011, p. 3, available at: [www.ifrc.org/PageFiles/53475/1205900-Advocacy%20report%20on%20Promotion%20of%20culture%20of%20peace-EN-LR%20\(2\).pdf](http://www.ifrc.org/PageFiles/53475/1205900-Advocacy%20report%20on%20Promotion%20of%20culture%20of%20peace-EN-LR%20(2).pdf).

13 *Ibid.*, p. 9.

14 “In a world full of challenges we, the youth of the International Red Cross and Red Crescent Movement, commit ourselves to: 1. Inner change and the development of skills to promote harmony and positive attitudes within communities, 2. Live our seven Fundamental Principles as agents of behavioural change in our communities.” IFRC, *Youth on the Move*, Youth Declaration, IFRC, Solferino, 2009, available at: www.ifrc.org/Global/Publications/youth/170700-Youth_declaration-EN.pdf.

15 Originally called, and still referred to as such by its participants, the YABC conceptual framework or chart.

16 See Katrien Beekman, “Youth as Agents of Behavioural Change”, *RedTalk*, 7 July 2011, available at: www.ifrcmedia.org/blog/katrien-beekman-on-youth-as-agents-of-behavioural-change-promotion-of-a-culture-of-nonviolence-and-peace/ (script) or www.youtube.com/watch?v=trvSqPAl1JQ.

Founded in 2008 by the author, in her professional assignment with the IFRC, YABC was co-shaped with a dozen youth staff and volunteers of Red Cross and Red Crescent Societies and with the support of training experts and the leadership of twenty-five National Societies.¹⁷ Seven years later, at the time of writing, it counts 1,725 trained peer educators in 125 RCRC National Societies worldwide and is being expanded into ABC (Agents of Behavioural Change), so as to also reach other RCRC target groups, such as volunteers, staff and leaders of all ages, beyond youth.

The first section will explain the context for creating the 747 framework and the YABC initiative. It will focus on an analysis of statutory decisions and official documents of the Movement prior to 2008, which identified reasons for challenges in the application of the Fundamental Principles and called for specific solutions to overcome them. Section two will explain the 747 framework in detail. Finally, the third section will present the ABC initiative as a concrete application of the 747 framework. It will also share its impacts, which have been documented in the YABC *Global Impact Report*¹⁸ as reaching beyond enhancing knowledge, understanding and application of the Fundamental Principles, as well as living them through behavioural change, to also contribute to enhanced service delivery and organizational effectiveness.

Understanding and applying the Fundamental Principles: Challenges and remedies

A first challenge relating to the Fundamental Principles is *insufficient knowledge and understanding* of them within the Movement. Actually, this cognitive gap pertains not only to the *meaning* of the Principles but also to their purpose and *raison d'être*.¹⁹

17 See www.youtube.com/watch?v=Ca2LVGpMfFg. Special tribute goes to Charlotte Tocchio, who first served as an intern with the Principles and Values Department and from 2010 onwards as the Principles and values officer in charge of the global coordination of YABC and pilot-testing of its toolkit; Juan Sáenz, a senior humanitarian and training consultant who designed YABC's peer educator training programme; Alex Malet, a senior inner peace consultant who developed the inner peace module, including a qi-gong manual and video; and Andres Morales, a peer education consultant who made the first draft of the YABC peer educator manual. For a table on the chronology of YABC's development and respective contributions of key co-shapers, see Ismael Velasco, Senior Research Fellow at Brighton University, *YABC: Global Impact Report 2008–2012*, IFRC, Geneva, 2013 (*Global Impact Report*), p. 67, available at: adore.ifrc.org/Download.aspx?FileId=57853&.pdf.

18 The *Global Impact Report* harnesses a mixture of internal evaluation and independent research, captured over five years. The data analyzed comprises 5,550 pages encompassing a global survey of peer educators (with 270 respondents out of a total of 620 at that time), internal in-depth interviews, semi-structured key informant questionnaires, fourteen IFRC reports (evaluating national, regional and international YABC peer educator training events) and thirty-four other internal reports (related to the implementation of the initiative through a variety of follow-up activities), as well as an independent academic study by Brighton University (including original source data). Due to the high volume and huge diversity of evidence sources, which presented a number of challenges to conventional research approaches, evaluation methods used include maximum variation sampling, mixed methods, triangulation, negative cases, and benchmarking with single-method probabilistic quantitative research. *Ibid.*

19 See for instance, COD, Resolution 7, "Respect for and Dissemination of the Fundamental Principles", Budapest, 1991; and COD, Resolution 3, "Promoting Respect for Diversity and Non-Discrimination: A

This first cognitive gap inevitably results in a second one of a practical nature: challenges regarding the *implementation* or application of the Fundamental Principles. Both types of challenges, cognitive and practical, have been repeatedly pointed out in the past by official RCRC decision-making fora. The “lack of commitment among some Movement components to apply these principles and in particular [the] insufficient understanding of the principles’ *raison d’être* and their meaning” has furthermore been expressed officially as an area of concern.²⁰

In 1999, the IFRC’s Strategy 2010 spelled out the promotion of the Movement’s Fundamental Principles – and humanitarian values – as the first of four core areas for action of National Societies.²¹ As mentioned in the introduction to this paper, the role of the promotion of the Fundamental Principles was therein expanded. Strategy 2010 explicitly stated that the purpose of this first core area for action was not simply to ensure that people knew of these principles and values, but also to influence behaviour within and outside the RCRC Movement.²² This expanded role was later on reaffirmed in Strategy 2020, adopted in 2009.²³

However, it also led to the introduction of new challenges, as expressed by the mid-term review of Strategy 2010, conducted in 2005:

several [National] Societies acknowledged the challenge of making some of the Principles “come alive” in communications terms, let alone in terms of their day to day activities and behaviours and, as already noted, there remains a lack of clarity about what our “humanitarian values” actually are.²⁴

A key purpose of the 747 framework, which will be presented in section two, is precisely to identify those humanitarian values as well as to clarify how they

Contribution to Peace and Friendship between Peoples”, Seoul, 2005, para. 3, available at: www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-3-2005.htm.

20 COD, Resolution 3, above note 19.

21 IFRC, above note 11, p. 15. The humanitarian values will be looked at in section two, “Towards Enhanced Understanding and Application Through Unpacking the Fundamental Principles: The 747 Framework”, below.

22 *Ibid.*

23 “Strategic Aim 3: Promote Social Inclusion and a Culture of Non-Violence and Peace”, in IFRC, *Strategy 2020: Saving Lives, Changing Minds*, adopted by the IFRC General Assembly in November 2009, p. 17, available at: www.ifrc.org/Global/Publications/general/strategy-2020.pdf. The promotion of the practical application of the Fundamental Principles figures as the first subsection under Strategic Aim 3. Before the adoption of Strategy 2020, several CODs had already referred to the promotion of humanitarian values across religious, political and ethnic lines so as to encourage a change in behaviour, promoting tolerance, nondiscrimination and respect for diversity. See, for instance, COD, Resolution 12, “Strengthening Humanitarian Values Across Religious, Political and Ethical Lines”, Geneva, 2001, available at: www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-12-2001.htm; and COD, Resolution 9, “Promote Respect for Diversity and Fight Discrimination and Intolerance”, Geneva, 2003, available at: www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-9-2003.htm.

24 IFRC, *Mid-Term Review of Strategy 2010*, Geneva, 2005, p. 15, available at: <http://www.eird.org/herramientas/eng/partners/federacion/ifrcstrategy.pdf>. See also, based on the mid-term review, IFRC, *Federation of the Future (2006–2010): Working Together for a Better Tomorrow*, Geneva, 2006, available at: www.ifrc.org/PageFiles/95733/01.%20Federation%20of%20the%20Future_IFRC.pdf.

relate to each of the Fundamental Principles.²⁵ Another purpose is to provide tools and intra-/interpersonal skills, through the practice and appropriation of which the Principles and values can “come alive” in individuals’ behaviours.

As to the reasons behind the challenges to understanding, applying and living the Fundamental Principles, the author has identified several over the course of her professional engagement with the IFRC. A first one lies in the “poster approach” that is often taken towards the Principles. This consists of adopting a complacent attitude to taking the Principles seriously by merely hanging up posters (or using mouse pads, screensavers, etc.) – that is, by putting them on display in highly visible places. The official reading out loud of the seven Fundamental Principles at the outset of each International Conference could be interpreted similarly, if there is no active will on the part of participants to go beyond lip service. In a nutshell, the poster approach can be described as an attitude of complacency that is content with just knowing or being aware of the Principles, and showcasing them.

Related to this is the usual theoretical or cognitive approach towards the Principles, focusing on their (literal or intellectual) definition and order (of presentation by Jean Pictet). This approach is generally linked to a predominantly institutional perspective on the Principles. The latter focuses primarily on their operational significance and relevance, rather than the individual perspective or how persons (staff, volunteers or members) apply and live the Fundamental Principles *individually* rather than collectively as an institution. Pictet *prima facie* prioritizes the institutional perspective, and sees the Principles as being intended to “serve at all times to inspire the action of the Red Cross as a private institution”.²⁶ Within the context of the principle of voluntary service, he clarifies that “[t]he spirit of service is indissolubly associated with the Red Cross [and Red Crescent] and is the source of its vital energy. It has not however been established as one of the fundamental principles, since it is not so much a characteristic of the institution as of the persons who serve the institution.”²⁷ A thorough reading of Pictet, though, at a deeper, unpacked level, also reveals the individual perspective, as will be seen in section two.²⁸ The IFRC strongly advocated for the addition of an individual perspective to the operational and institutional ones in the 2013 Movement-wide consultations, which were led by the IFRC, ICRC and British Red Cross, and whose outcome was shared officially in the 2013 Council of Delegates (COD).²⁹ An unequivocal key finding of those consultations pertained to the

25 See Table 1, below (third column, humanitarian values).

26 J. Pictet, above note 2, p. 52.

27 *Ibid.*

28 See in section two, below, the third component of the principle of impartiality as well as Pictet’s explanation of the application of the principle of neutrality in terms of qualities required in a human being.

29 The COD is an official statutory meeting of the RCRC Movement which takes place every two years and unites all RCRC National Societies (189 at the time of writing), the IFRC and the ICRC. Those 2013 consultations, the findings of which were brought to the 2013 COD, were part of the Movement-wide Initiative on the Fundamental Principles created at the occasion of the 50th anniversary of their adoption. The consultations sought the opinions of volunteers, staff, leaders and members of the Movement on their operational, institutional and individual perspective towards the Fundamental

relationship between the individual perspective on the one hand, and the operational and institutional ones on the other: “Translating the Fundamental Principles into individual behaviour as Red Cross and Red Crescent [leader,] volunteer or staff contributes to organisational adherence and operational impact.”³⁰

A third reason resides in the high-level concept nature of the Fundamental Principles for many individuals, as was observed during the research for the YABC *Global Impact Report* and will be explained under section three.³¹ As a consequence, they can feel disconnected or remote from the Principles and find it hard to see how they can be applied in their day-to-day realities. *A fortiori*, to live by them and embody them through their individual behaviour, with a view to influencing change of mindset and behaviour towards a culture of non-violence and peace, will come across as a particularly abstract and unrealistic idea. Section three will provide evidence as to the positive and transformative impact of the YABC initiative in this regard.

Finally, the official decisions of the Movement’s statutory meetings have frequently made recommendations to address the above-mentioned challenges. For instance, the 27th International Conference in 1999, in order to ensure that all volunteers and staff of the Movement understand *and* act on the basis of the Fundamental Principles in their day-to-day work, called for the “develop[ment of] innovative ways to explain and communicate the Fundamental Principles of the Red Cross and Red Crescent, inside the Movement”.³²

Within the context of the promotion of respect for diversity and non-discrimination which is seen by the IFRC as one of the three pillars of the promotion of a culture of non-violence and peace,³³ statutory decisions and documents prior to 2008 also provided indications on the path to take. Education, in particular humanitarian education,³⁴ skills and values-based

Principles. See Council of Delegates, *Workshop on Fundamental Principles*, background paper and outline, Sydney, 2013, available at: www.icrc.org/eng/assets/files/red-cross-crescent-movement/council-delegates-2013/cod-2013-draft-0-ws-outline-fp.pdf.

30 *Ibid.*, p. 3.

31 *Global Impact Report*, above note 17, p. 25 and Annex 6. Reference is made to an academic study (unpublished) conducted by the University of Brighton (UK) and Charles University (Czech Republic), in Jordan, on the common ethical vocabulary emerging from YABC training and embedded in the 747 framework (see section two, below). The most relevant and frequently used YABC values vocabulary identified in the study concentrates on the middle sphere that connects the Fundamental Principles to behaviour, namely the components and underpinning values of the various Fundamental Principles (see 747 framework in Table 1, below). This suggests that the Fundamental Principles alone may in fact be too abstract to link immediately to concrete attitudes and behaviours in many people’s minds and makes them naturally less personally relevant. On the other hand, their nested components and values, being more specific, may trigger more concrete associations, and thus be more immediately connected to attitudes and behaviours and individuals’ daily lives.

32 27th International Conference of the Red Cross and Red Crescent, Resolution 1, “Adoption of the Declaration and the Plan of Action”, Geneva, 1999, Annex 2, “Plan of Action 2000–2003”, Final Goal 3.2, “New Initiatives to Meet the Needs of Vulnerable People and to Reduce Discrimination and Violence in the Community”, paras 7 and 7(a), available at: www.icrc.org/eng/resources/documents/resolution/27-international-conference-resolution-1-1999.htm.

33 IFRC, above note 12, p. 12.

34 See www.ifrc.org/en/get-involved/learning-education-training/humanitarian-education/what-is-humanitarian-education/.

education³⁵ or peace education, was emphasized as constituting a key tool. The IFRC pledge at the 28th International Conference in 2003 highlighted the importance of youth in peer education and non-formal education to promote international friendship and understanding. In 2005, the COD adopted Resolution 3 on Promoting Respect for Diversity and Non-Discrimination: a contribution to peace and friendship between peoples, in which it requested that the Movement “serve as an example”³⁶ and endorsed the background report prepared by the IFRC and ICRC. The latter underscored the necessity of (humanitarian) education, which furthermore should go beyond the cognitive as it also “encompasses attitudes and behaviour, acquired via socialization”.³⁷

Both the 747 framework and YABC were created to enhance knowledge, understanding and application of the Fundamental Principles, as well as to answer the question of how to influence behavioural change in the community through living by the Principles and their underpinning humanitarian values.

The 747 framework seeks to move people away from a poster approach or purely cognitive knowledge and provides a matrix fostering a real understanding and a more personal connection of each individual with the Principles, which will then in turn serve as a basis for enabling the actual application of the Fundamental Principles in his or her area of work as an RCRC staffer, volunteer or member. It also links in with concrete “soft” or personal skills, which provide a key for living by the Principles or role-modelling them so as to influence behavioural change in the community and promote a culture of non-violence and peace.

YABC, which has the 747 framework as its conceptual framework, was originally called “Principles and Values Skills-Based Training Module to Empower Youth to Take Action in Their Community and Influence Behavioural Change”, when presented to the IFRC Youth Commission in April 2008.³⁸ It is centred on *living* the Principles so as to influence behavioural change towards a culture of non-violence and peace within the Movement and the community. Living the Principles goes much further than applying them. In the author’s view, application pertains to one’s decisions and actions, while living pertains to who one is and as such penetrates one’s entire being. YABC’s vehicle of transmission

35 A pledge to promote skills- and values-based education at the 30th International Conference of the Red Cross Red Crescent in 2011 today counts sixty-six signatories, amongst which are sixty National Societies, two States and four external organisations. Available at: www.ifrc.org/PageFiles/53475/Skills%20and%20Values%20based%20education%20pledge-with%20logo.pdf. See also Katrien Beeckman, “Skills and Values Based Education to Foster a Culture of Non-Violence and Peace”, *Education for Global Citizenship*, Education Above All, Doha, July 2012, pp. 138–140, available at: www.ineesite.org/uploads/files/resources/EAA_Education_for_Global_Citizenship.pdf; and Katrien Beeckman, “Multicultural Skills and Values Based Education Fostering a Culture of Non-Violence and Peace”, keynote opening address at the International Conference on Migration and Multicultural Education, Seoul National University, Korea, July 2012, available at: www.ifrc.org/fr/nouvelles/discours-et-points-de-vue/discours/2012/multi-cultural-skills-and-values-based-education-fostering-a-culture-of-nonviolence-and-peace/.

36 COD, Resolution 3, above note 19, 2.d.

37 COD, *Promoting Respect for Diversity, Fighting Discrimination and Intolerance: Guidance and Guiding Questions*, document prepared jointly by the IFRC and ICRC, COD 2005–5/1, Geneva, June 2005, p. 10.

38 See www.ifrc.org/en/what-we-do/youth/youth-development/youth-commission/.

is a youth peer education initiative which goes beyond the cognitive;³⁹ actually its entry points for learning are non-cognitive, as will be seen in section three. Also, it targets attitudes and behaviour acquired via a social setting and aims to break societal, cultural and other conditioning perpetuating discriminatory or violent patterns of mindset and behaviour.⁴⁰ It grew out of the following vision: learning comes from within, sustainable action comes from freedom of choice and genuine motivation, inspiring others comes from role-modelling or walking the talk, change of mindset and behaviour comes from trust and ownership.⁴¹ The next sections will respectively deal with the 747 framework and YABC.

Towards enhanced understanding and application through unpacking the Fundamental Principles: The 747 framework

The 747 framework is derived from a thorough reading of Jean Pictet's 1979 Commentary on the Fundamental Principles.⁴² As can be seen in [Table 1](#), the framework consists of four columns. Column 1 constitutes the Principles themselves, column 2 the Principles' components, column 3 the humanitarian values, and column 4 intra- and interpersonal skills. Each of them "unpacks" the previous column to its left, and seeks to make the Principles more concrete, tangible and actionable for the individual.

From the Pictet Commentary's table of contents, one can see a breakdown of each of the seven Principles into "components". They can be found in Column 2, entitled "components" in the 747 framework, and will be explained in the subsections below.⁴³ In the author's experience with YABC as well as with the Movement's induction courses for senior National Society leaders,⁴⁴ it is this breaking down or unpacking of the more abstract or generic Principles into more concrete components that has proven potential to bring more clarity and understanding about them. A case in point is the widespread confusion between impartiality and neutrality, which can be reduced when focusing on the much more concrete components embedded in each Principle, making the distinction clear.⁴⁵

39 On cognitive and non-cognitive education, see K. Beeckman, "Multicultural Skills and Values Based Education", above note 35.

40 *Ibid.*

41 K. Beeckman, "Skills and Values Based Education", above note 35, p. 141.

42 J. Pictet, above note 2.

43 Actually, the seven Principles as adopted in 1965 can be regarded as a contraction of a prior larger set of seventeen principles (and six rules of application) adopted by the Board of Governors of the League (the predecessor of the IFRC's Governing Board) at Oxford in 1956, also known as the "Oxford principles". See slide presentation at www.ifrc.org/en/who-we-are/vision-and-mission/principles-and-values/; and J. Pictet, above note 2, pp. 6, 32.

44 These are induction courses for newly appointed RCRC leaders, such as National Society presidents and secretaries-general, which take place on an annual basis.

45 See 747 framework, and quote from YABC trainer in section three, "Towards Living the Fundamental Principles and Promoting a Culture of Non-Violence and Peace: Youth as Agents of Behavioural Change", below, from *Global Impact Report*, above note 17, p. 205.

Table 1. *The 747 framework*

From Fundamental Principles...

7 Fundamental Principles	Fundamental Principles components	Related humanitarian values	7 Personal skills
Humanity	<ul style="list-style-type: none"> Alleviate and prevent suffering Protect life and health Assure respect for and protection of the individual 	<ul style="list-style-type: none"> Active goodwill and care Human dignity and well-being Mutual understanding and peace 	
Impartiality	<ul style="list-style-type: none"> Non-discrimination Actions are solely guided by needs, proportional to the degree of suffering and prioritised on the basis of urgency No individual action or decision on the basis of prejudice or personal preference 	<ul style="list-style-type: none"> Equality Respect for diversity Objectivity and openness 	
Neutrality	<ul style="list-style-type: none"> No taking sides in armed conflicts No engagement in controversies of a political, racial, religious or ideological nature 	<ul style="list-style-type: none"> Confidence (trust) Self-control and discipline Freedom of action and objectivity 	<ul style="list-style-type: none"> – Empathy – Active listening – Critical thinking and non-judgement
Independence	<ul style="list-style-type: none"> Not letting political, economic, social, religious, financial, public pressure interfere or dictate RCRC line/action Auxiliary to public authorities Maintain autonomy to be able to act in accordance with the Fundamental Principles 	<ul style="list-style-type: none"> Sovereignty Co-operation Freedom of action and confidence 	<ul style="list-style-type: none"> – Non-violent communication – Collaborative negotiation and mediation
Voluntary service	<ul style="list-style-type: none"> Freely accepted commitment No desire for gain Selflessness 	<ul style="list-style-type: none"> Spirit of altruism and generosity Spirit of service Spirit of responsibility and discipline 	<ul style="list-style-type: none"> – Personal resilience – Inner peace
Unity	<ul style="list-style-type: none"> One National Society per country Open to all Active in entire country 	<ul style="list-style-type: none"> Harmony and cohesion Diversity and pluralism Confidence 	
Universality	<ul style="list-style-type: none"> Universal vocation Equality of National Societies Solidarity 	<ul style="list-style-type: none"> Openness to all in the world Co-operation Mutual assistance 	

Analysis by IFRC, Principles and Values department, Beekman K. based on Pictet, J. *The Fundamental Principles of the Red Cross. Commentary.* Geneva, 1979, available at: www.ifrc.org/PageFiles/40669/Pictet%20Commentary.pdf

Source: Katrien Beekman, 747, available at: www.ifrc.org/Global/Documents/Secretariat/201506/747leaflet-EN-FINAL.pdf. Analysis by IFRC, Principles and Values Department, based on Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, Geneva, 1979. © IFRC.

The author's insight was also that whereas adding the column of components would enhance the *cognitive* understanding of the Fundamental Principles, inserting a third column further linking each Principle and its components to their underlying humanitarian values could actually make the Principles even more tangible and personally meaningful to individuals.⁴⁶ As a matter of fact, people connect to values beyond the cognitive realm, from the heart, and thereby relate to them on an emotional and personal level, which is conducive to strengthening their commitment to act upon them.⁴⁷ In addition, identifying those humanitarian values that are aligned with and underpin the Fundamental Principles and components would address the lack of clarity on what was meant by humanitarian values pointed out in the first section.⁴⁸

Although Jean Pictet does not directly or explicitly link each Principle with specific humanitarian values, he regularly refers to values throughout his commentary. Actually, the twenty values mentioned most often by Pictet are "peace", forty-four times; "charity" (today translated as goodwill, benevolence, compassion, kindness), forty-three times; "equality" of National Societies and of rights, eight and thirty-eight times respectively; "respect" (for), twenty-nine times; "confidence" (and trust), twenty times; "solidarity", sixteen times; "love", sixteen times; "care", fifteen times; "co-operation", fifteen times; "freedom", thirteen times (and "freedom of action", three times); "generosity", ten times; "brotherhood"/"fraternity", nine times; "friendship", eight times; "happiness", eight times; "openness to all", eight times; "benevolence", eight times; "non-partisan", eight times; "equity", six times; "mutual understanding", five times; and "responsibility", four times.

In the 747 framework's third column, those humanitarian values which are mentioned most throughout the Commentary, as well as those most closely connected to the meaning of a specific Fundamental Principle according to their frequency of mention in Pictet's analysis, have been retained. Some values, such as dignity, which is only mentioned twice in the commentary, diversity, referred to twice as "differences", and co-operation,⁴⁹ are also included, in light of their intrinsic link with the relevant Fundamental Principle or ability to capture its essence and meaning. The humanitarian values retained in the 747 framework are: (active) goodwill and care, human dignity and well-being, mutual understanding and peace; equality, respect for diversity, objectivity and openness; confidence (trust), self-control and discipline, freedom of action and objectivity; sovereignty, co-operation, freedom of action and confidence; (spirit of) altruism and generosity, (spirit of) service, (spirit of) responsibility and discipline; harmony and cohesion, diversity and pluralism, confidence; openness to all in the world, cooperation, mutual assistance.

46 See K. Beeckman, above note 16.

47 See IFRC, above note 12, p. 8, and statements referenced above.

48 See section one, above.

49 Respectively linked to the Fundamental Principles of humanity, impartiality and universality.

So, each column – from Fundamental Principle to component to humanitarian value – is in effect nested in the higher (previous) one and extends the latter’s meaning. This will become clear to the reader in the subsections below. As such, the framework has the effect of unpacking the abstract, high-level concepts of the Fundamental Principles into more readily understandable ones (the components) and concrete values to which individuals can connect, rendering the Principles more personally meaningful and actionable.

Finally, the framework adds a last, fourth column, to answer the question as to how we can live or embody the Fundamental Principles, and by doing so inspire others’ change of mindsets and behaviour towards a culture of non-violence and peace. The fourth column consists of concrete and tangible tools in the form of intra- and interpersonal skills (or qualities) which one can develop and put into practice to bring the Principles and values to life into individual behaviour and in the daily work of the RCRC volunteer, member, staffer and leader. Testimonies from YABC-trained peer educators on the 747 framework, quoted in section three, will bring further clarity on the mechanism of 747.

For reasons of symbolism and simplicity, seven skills (or skill sets) are embedded in the framework – seven skills to embody the seven Fundamental Principles through individual behaviour and action, explaining the “747 framework” name. These are (1) empathy, (2) active listening, (3) critical thinking, dropping bias and non-judgement, (4) non-violent communication, (5) collaborative negotiation and mediation, (6) personal resilience and (7) inner peace.⁵⁰ Each of these seven skills will now be analyzed in relation to the Fundamental Principles (and components and underpinning values) that it helps individuals to embody or live.⁵¹

Skill 1: Empathy – linked to humanity, voluntary service and universality

When explaining the principle of humanity, Pictet makes it crystal clear that its essence is about human connection: it is the “sentiment of active goodwill towards [humankind]”.⁵² Closely associated with humanity is charity, which is “an effort ... to relieve and put an end to the sufferings of others”.⁵³ Charity, Pictet explains, is synonymous with love for one’s neighbour, specifying that the love under consideration here is “altruistic and disinterested love ... which calls for a certain degree of self-control, a love which is extended even to our

50 See www.ifrc.org/Global/Documents/Secretariat/201506/747leaflet-EN-FINAL.pdf. The official brochure, available in six languages, adds two columns in which each individual can freely insert his/her own values (“my values”) and individual action plan (“my action”).

51 For readers who would like to go more in depth on the skills, see IFRC, *Promoting a Culture of Non-Violence through Youth as Agents of Behavioural Change: YABC Toolkit*, Geneva, 2014, of which a sample is available at: www.ifrc.org/en/what-we-do/principles-and-values/youth-as-agents-of-behavioural-change-yabc/. For a video presentation on the toolkit, see www.youtube.com/watch?v=4TVt_LE5R_k.

52 J. Pictet, above note 2, p. 13 (change by the current author from original “mankind” to “humankind”).

53 *Ibid.*, p. 14.

enemies”.⁵⁴ Pictet mentions compassion as one of the driving forces of charity, a forerunner of charity, at the essence of humanity. Compassion, he writes, is “a spontaneous movement, an instantaneous affective reaction to the sufferings of others”.⁵⁵ From this analysis it becomes apparent that a key interpersonal skill to embody humanity and demonstrate compassion is *empathy*.⁵⁶

Empathy is the ability to put ourselves in someone else’s shoes. It is about being present for the other through a heart-to-heart connection between humans. It is a genuine two-way communication at the deepest level. It underlies love, caring and compassion and further develops friendship and mutual understanding and calls for spontaneous action. In itself, empathy can be a form of assistance to alleviate the suffering of others, as it has an appeasing and sometimes healing effect. Also, before being able to alleviate suffering, empathy is required to understand and connect to the emotional, mental or moral suffering of others.⁵⁷

Empathy is also a required skill to embody the principle of voluntary service. A “volunteer is impelled by his [or her] desire to help and by his [or her] feelings of compassion”.⁵⁸ As empathy calls for spontaneous action from the heart, it will greatly encourage constant readiness to give help and hence translate the spirit of voluntary service into concrete and individual action.

Finally, one could also argue that “institutional empathy” is a required skill for putting the Fundamental Principle of universality into action. The latter indeed asks for mutual assistance between National Societies as “sister societies” and solidarity within the RCRC “family” in the face of suffering.

Skill 2: Active listening – linked to humanity and impartiality

Another crucial skill for the embodiment of humanity is *active listening*, which means giving full attention to the person who is speaking. It is listening to what is being said, as well as to how and why something is being said, to ensure we have a true understanding of its real meaning and of what it means to the speaker. Active listening is also about listening without relying on our own

54 *Ibid.*

55 As a synonym for compassion, Pictet mainly uses “pity”, a word whose meaning today has changed to become more negatively connoted.

56 Dalai Lama, *Widening the Circle of Love*, ed. and trans. Jeffrey Hopkins, Rider & Co, London, 2005.

57 IFRC, above note 51. Empathy is self-evidently also embedded in the Movement’s mission to “prevent and alleviate human suffering wherever it may be found, to protect life and health and ensure respect for the human being, in particular in times of armed conflict and other emergencies, to work for the prevention of disease and for the promotion of health and social welfare, to encourage voluntary service and a constant readiness to give help by the members of the Movement, and a universal sense of solidarity towards all those in need of its protection and assistance.” Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in October 1986 and amended by the 26th International Conference at Geneva in December 1995 and by the 29th International Conference at Geneva in June 2006, available at: www.standcom.ch/statutes-of-the-international-red-cross-and-red-crescent-movement/.

58 J. Pictet, above note 2, p. 47. Following changes made by current author: “her” added, and the word “sympathy”, used by Pictet, is replaced with “compassion”, to which Pictet in essence refers (see note 56 above).

preconceived ideas or biases.⁵⁹ To “prevent and alleviate human suffering wherever it may be found”⁶⁰ under the principle of humanity requires connecting with people at a deep level, beyond what is literally said by affected people or beneficiaries, to identify the essence, significance and magnitude of their suffering – physical, mental, moral or other. For this, active listening will be a useful and even indispensable tool. What is more, through active listening, potential suffering might be identified up front and prevented.

In addition, active listening is a key skill that can embody the principle of impartiality effectively. Impartiality has three components, reflected in the second column on impartiality in the 747 framework above (Table 1). The first one is non-discrimination; the third is the abstention of individual action or decisions on the basis of prejudice or personal preference. According to the second component of this Principle, the Movement’s decisions and actions need to be guided solely by needs, proportional to the degree of suffering and prioritized on the basis of urgency and vulnerability. Through active listening, we can identify needs that would otherwise not be noticed and assess the *real* degree, depth and meaning of suffering of a human being.

Skill 3: Critical thinking, dropping bias and non-judgement – linked to impartiality, unity, neutrality and humanity

Jean Pictet comments that “[i]mpartiality requires a precise, complete and objective examination of the problems facing us and an exact assessment of the values entailed”.⁶¹ This implies that in order to embody this principle, the development or practice of another skill (or rather set of skills) is required: the skill of critical thinking, defined as the ability to think clearly, rationally, objectively and neutrally.⁶²

The third component listed in Pictet’s Commentary related to the principle of impartiality, albeit not mentioned in the official description adopted in 1965, is called impartiality in its strict sense and means “to act without favour or prejudice towards or against anyone”.⁶³ Pictet explains that “impartiality, correctly construed, manifests itself in applying established rules, recognized as

59 IFRC, above note 51.

60 Proclamation of the Fundamental Principles of the Red Cross, 20th International Conference of the Red Cross, Vienna, 1965 (revised text), available at: www.icrc.org/eng/resources/documents/red-cross-crescent-movement/fundamental-principles-mov.

61 J. Pictet, above note 2, p. 31.

62 IFRC, above note 51.

63 J. Pictet, above note 2, p. 32. Pictet emphasizes that the third component is of direct individual relevance and application, since the agents of the Red Cross and Red Crescent (staff, volunteer, members), rather than the institution, are in a position to apply it. He explains that the principle of impartiality is a regrouping of three individual ones, before the 1965 adoption: the principle of non-discrimination and the principle of proportionality, both of which constitute substantive principles like the principle of humanity, and the actual (strict) principle of impartiality, which is, together with neutrality and independence a derivative principle, whose purpose is to assure the Red Cross and Red Crescent of the confidence of all parties, which is indispensable to it.

valid, without taking sides, either for reasons of interest or sympathy”.⁶⁴ He emphasizes that “in defining impartiality, it is essential to revert to the word ‘partial’ from which it originates. Partial means taking sides for or against something on the basis either of prejudice or of personal preference.”⁶⁵ Objective decision-making without letting personal preference, interests, affiliation or prejudice interfere – or phrased differently, critical thinking and dropping bias – is hence a key set of skills for staff, volunteers or members belonging to the Movement. It is a quality required of all RCRC agents “whose responsibility is to act for the benefit of those who are suffering”.⁶⁶ This quality or skill is not easy to develop and display, since impartiality “calls for a sustained effort to ‘depersonalize’ the charitable action – and will sometimes be the fruit of a victory in a hard-fought struggle within oneself”.⁶⁷ Pictet points out that the reason for impartiality is to preserve and not to violate the *trust* accorded to RCRC staff, volunteers or members by those suffering.⁶⁸ He also underlines the importance of critical thinking in his commentary under the principle of voluntary service:

[W]henver a RC body is called upon to act or make a decision, it must first of all ask itself what the interests of the victims are, and if the action will serve those interests. It will not always be easy however to ascertain the real interests of those in need. To do this requires in each case a careful weighing of all factors involved.⁶⁹

In addition, as shown in the 747 framework under the Fundamental Principle of unity, the Red Cross and Red Crescent must be open to all and in its composition a living reflection and expression of diversity, called “multitudinism” by Pictet.⁷⁰ This is actually the reiteration of the principle of non-discrimination at the institutional level pertaining to recruitment of staff, volunteers and members, and a request that the Red Cross and Red Crescent drop any bias that it may have, for instance, towards people of other religions or sexual orientations, to enable it to be genuinely open towards people and embrace diversity in its recruitment.⁷¹

64 *Ibid.*

65 *Ibid.*

66 *Ibid.*

67 *Ibid.*

68 *Ibid.*

69 *Ibid.*, p. 51.

70 *Ibid.*, p. 54.

71 “[The National Society] shall not withhold membership from any of its nationals, whoever they may be, on grounds of race, sex, class, religion or political opinions. This is a non-exhaustive list of grounds against which discrimination in recruitment is prohibited ... The principle of multitudinism does not mean that a Red Cross Society must accept all the citizens of its country without exception. On the contrary, it has the indisputable right to exclude individuals on grounds of their [ethical] character, and also on grounds of ability.” *Ibid.*, pp. 54–55. The current author uses the word “ethical” instead of “moral”, used by Pictet, since the latter today can have a religious connotation. See also the concrete recommendations on how to “ensur[e] openness and diversity within the components of the International Red Cross and Red Crescent Movement” in the annex to COD, Resolution 9, above note 23: “a. Presidents and Secretaries-General within the Movement organizations should undertake an assessment of the composition of the leadership, staff, volunteers and membership of the organizations they lead. b. Imbalances in

Pictet underscores the *raison d'être* behind this requirement of being open to all: “[I]t provides a guarantee of confidence in the [RCRC National] Society, both inside and outside the country and is the best antidote against favouritism.”⁷² Gaining and having *trust* is herewith underscored as a key driver behind the principle of unity, as was the case under the principle of impartiality seen earlier.

When turning to the principle of neutrality, critical thinking is equally a crucial skill. Actually, in this context, an additional sub-skill comprised in this skill set with critical thinking and dropping bias – which is non-judgement – will be required, as made evident by the following quote.

For the Red Cross, there is no just and no unjust war; there are only victims in need of help. ... [T]he neutral [human] refuses to make a judgment ... Neutrality demands real self-control; it is indeed a form of discipline we impose upon ourselves, a brake applied to the impulsive urges of our feeling. A [human] who follows this arduous path will discover that it is rare in a controversy to find that one party is completely right and the other completely wrong.⁷³

Non-judgement is intrinsically related to the Fundamental Principle of neutrality, the purpose of which, stated up front in its enunciation, is to maintain the confidence of all. Again, gaining and retaining trust is at the essence of the Red Cross and Red Crescent’s ability to deliver its humanitarian mission in accordance with the Fundamental Principles. Applying the principle of neutrality, by not judging or taking sides in a dispute, contributes toward safeguarding access to all those in need.

When seeking to influence a change of behaviour towards a culture of non-violence and peace, gaining and retaining *trust* at the individual and community levels is also essential. Non-judgement will thus also be a core skill required in order to live by the principle of neutrality in this context. Indeed, a judgement locks the judge and the person being judged into a fixed position or a dynamic that is unchangeable. The judgement will be received by the judged person as an imposed labelling or categorization into a rigid box where there is no more scope for flexibility, evolution or change. Judgement is therefore a “door-closer”. It reduces the willingness of the other to “open up” and to change of their own free will. It will not foster a genuine connection between two people; instead, it prevents the one being judged from placing trust in the judge. Non-judgement, on the other hand, fosters trust and is the “door-opener” for behavioural change. When change is not imposed but comes from within, it will be genuine, and able

membership on whatever ground – race, religion, sex, age, must be identified and urgently addressed. c. Components of the Movement, particularly National Societies, which have already taken actions in this regard are called on to share their experiences, so we can all learn from the work of others.”

72 J. Pictet, above note 2, p. 55.

73 *Ibid.*, p. 53 (change by current author from “man” to “human”). Pictet continues that the neutral person “will sense the futility of the reasons commonly invoked to launch one nation into war against another. In this respect, it is reasonable to say that neutrality constitutes a first step towards peace.” *Ibid.*, p. 34.

to effectively and sustainably contribute to building a culture of non-violence and peace.⁷⁴

The relevance of non-judgement is actually also touched upon by Pictet under the principle of humanity, a key pillar of which is compassion, or *charity* in Pictet's words, as seen above.

To judge means to separate the good from the bad, the just from the unjust; to measure the degrees of individual responsibility. Charity on the other hand has nothing whatever to do with this kind of justice. It refuses to weigh the merits or faults of this or that individual. It goes much farther. Going beyond and above the opposition between good and evil, it attains, in full serenity, the level of wisdom. Then it becomes the very image of mercy, of goodness without limit, as exemplified by the expression of Lao Tse, With a good man, I am good; with an evil man, I am also good.⁷⁵

Skill 4: Non-violent communication – linked to humanity, impartiality and neutrality

Non-violent communication means expressing oneself in a way that does not threaten, intimidate or harm others. It is communication with respect and in such a way that one expresses one's own feelings and needs with regard to a situation without accusing or putting the blame on the other person.⁷⁶ Non-violent communication requires an (emotionally) detached and objective stance, in contrast with a reactive stance fuelled by interpretation or judgement. It is as such closely related to the application of the principles of neutrality and impartiality. Active listening and empathy as well as critical thinking, dropping bias and non-judgement all make up essential ingredients of non-violent communication, as originally conceived by Dr Marshall Rosenberg, for whom the concept of non-violent communication grew out of a belief that we are all compassionate by nature and share the same basic human needs.⁷⁷

Non-violent communication is a necessary skill for all staff and volunteers associated with the International Red Cross and Red Crescent Movement, as it demonstrates the embodiment of the Fundamental Principles into individual behaviour. Practising non-violent communication will foster the principle of humanity, and in particular its component of assuring respect for and protection of the individual, as can be seen from the 747 framework (Table 1). It also furthers the Principle's underpinning humanitarian values of mutual understanding, peace and active goodwill.

74 See also K. Beeckman, above note 16. For more information on the skill of non-judgement, see IFRC, above note 51.

75 J. Pictet, above note 2, p. 22.

76 IFRC, above note 51.

77 See www.nonviolentcommunication.com/index.htm.

Skill 5: Collaborative negotiation and mediation – linked to independence, humanity, impartiality and neutrality

Collaborative negotiation is a type of negotiation in which parties view each other not as competitors but as partners. Securing the continuity and quality of the relationship is of the essence here.⁷⁸

Collaborative negotiation is an important skill for effectively applying the Fundamental Principle of independence, which requires the Red Cross and Red Crescent to safeguard its autonomy in order to be able to act in accordance with the Fundamental Principles, and not to let political, economic or social pressure influence or dictate the line of action. The Fundamental Principle of independence also enshrines the role of National Societies as auxiliary to their public authorities in the humanitarian field, which demands that they strike a delicate balance between a National Society's requirement for autonomy of action in order to comply with Fundamental Principles such as humanity, impartiality and neutrality, on the one hand, and its need to preserve a constructive relationship with the authorities, on the other.

It is this notion of balance that is precisely the essence of collaborative negotiation, through which National Societies not wanting to jeopardize their relationship with the public authorities with a “win for one and lose for the other” outcome, can work together constructively to achieve mutually satisfying outcomes that will be beneficial for the harmonious continuation or restoration of relationships.⁷⁹ For National Societies, the desired outcome needs, in line with the principles of humanity and impartiality, to serve the most vulnerable, objectively, by preventing or alleviating their suffering.

In the IFRC's Strategy 2020, under Strategic Aim 3, covering the promotion of social inclusion and a culture of non-violence and peace, mediation is emphasized as a behavioural skill for promoting the practical application of the Fundamental Principles and healing tensions or divides in the community. “We promote behavioural skills to communicate, mediate and diffuse tensions in a peaceful manner.”⁸⁰ As a voluntary process wherein the participants themselves are the key drivers,⁸¹ mediation can only be effective if the participants involved have trust in the mediator and in the latter's capacities to be neutral and impartial. When the Red Cross and Red Crescent adheres to the Fundamental Principles, in particular impartiality and neutrality, it will be endowed with confidence and trust. This trust will enable it to be in a privileged position to be called upon as a neutral intermediary by parties with diverging interests. Taking up this role is not to be interpreted as overstepping the principle of neutrality, if the latter is correctly understood as *not* asking for a passive stance, as explained by Pictet,

78 For more information, see IFRC, above note 51.

79 *Ibid.*

80 IFRC, above note 23, p. 17.

81 A mediator merely facilitates – i.e., enables the parties to explore and reach an agreement themselves through setting up an environment conducive to consensus-building. See IFRC, above note 51.

and if mediation serves the purpose of guaranteeing access to all those vulnerable with a view to alleviating or preventing their suffering.

Pictet also hints at mediation under the principle of humanity, according to which the Red Cross and Red Crescent promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples – but,

in the general framework of this effort for peace, the Red Cross [and Red Crescent] nonetheless constitutes an important moral element. It is the symbol of peace, present in the midst of combat. Every one of its acts thus becomes a pacifying gesture. To act as intermediary between enemies, to promote humanitarian law, means the creation of a climate of appeasement and reconciliation. ... It contributes to bringing together individuals and perhaps eventually whole peoples.⁸²

Skill 6: Personal resilience – linked to voluntary service and humanity

The International Red Cross and Red Crescent Movement was born on the battlefield in Solferino, Italy, in 1859, amidst the dying and crying out in agony of 40,000 wounded soldiers. Henri Dunant mobilized female volunteers from the neighbouring village of Castiglione. Together they worked without resting for several days and nights, washed and dressed the soldiers' wounds, and provided them with something to eat and drink. Clearly, inner strength and personal resilience were fundamental skills to enable Dunant and the women to care for the wounded combatants.⁸³

Personal resilience is the ability of an individual to cope with adversity, difficulty or catastrophe. In addition, it is the capacity to overcome adversity by positively adapting to it and transforming it into growth.⁸⁴ Personal resilience is closely linked to the Fundamental Principle of voluntary service: it is a vital skill for the millions of RCRC volunteers worldwide, operating in the most difficult and dangerous circumstances while giving selflessly of themselves.

It is also required to balance the application of the Fundamental Principle of humanity through the practice of empathy, so as not to overwhelm the empathizer emotionally and render him/her unable to act further. Personal resilience is thus required to be able to protect ourselves and remain balanced

82 J. Pictet, above note 2, p. 21.

83 Jean-Henri Dunant, *Un souvenir de Solferino*, Jules-Guillaume Fick, Geneva, 1862, available at: www.icrc.org/eng/assets/files/publications/icrc-002-0361.pdf.

84 IFRC, above note 51. Resilience is an interplay of individual, relationship, community and cultural factors. Factors that contribute to resilience include a positive view of ourselves and confidence in our strengths and abilities; the ability to manage emotions, strong feelings and impulses; good problem-solving and communication skills; "feeling in control" and not seeing ourselves as victims; seeking help and resources; coping with stress in healthy ways and avoiding harmful coping strategies such as substance abuse; close relationship with family and friends; and helping others. *Ibid.* See IFRC, above note 12, p. 20; and IFRC, *Youth as Drivers of a Culture of Non-Violence and Peace: The Power of Sports, Arts and Creativity*, report of the side event at the 28th International Conference of the Red Cross and Red Crescent, Geneva, 28 November 2011, intervention by Prof Dr M. Ungar, available at: www.ifrc.org/PageFiles/53475/31IC-sideeventIOCreportfinal.pdf.

and able to *effectively* alleviate human suffering. The same reasoning applies when seeking to promote a culture of non-violence and peace and when addressing issues like discrimination or violence, which is an energy- and stress-intensive endeavour.⁸⁵ Successfully coping with stress and preventing burnout requires the development and practice of personal resilience on the part of the humanitarian worker, who in turn is willing to contribute to building the community's resilience.⁸⁶

Skill 7: Inner peace – linked to humanity and voluntary service

The Fundamental Principle of humanity, incorporating the Red Cross and Red Crescent's role of promoting mutual understanding, friendship, cooperation and lasting peace amongst all peoples, makes it crystal clear how closely our mission and role are linked to peace. Ghandi's wisdom "Be the change you want to see"⁸⁷ reflects that peace amongst all peoples can be achieved through building inner peace within each one of us. Inner peace entails first taking up our own individual responsibility to create a state of peace and harmony within ourselves before seeking to expand it to others. Developing inner peace is hence a key skill for applying and embodying the principle of humanity. Inner peace is developed first by adopting personal ethics based in self-observation, self-awareness and self-reflection, and working continuously on oneself, one's ego and one's weaknesses. It requires cultivating virtues such as honesty, sincerity, integrity, patience, willpower, humility and discipline.⁸⁸

Finally, let us refer again here to Jean Pictet, quoting some of his sources of inspiration as well as those of the founder of the RCRC Movement, Henry Dunant, when expanding on the spirit of service which is at the core of the Movement and embedded in the Fundamental Principle of voluntary service.

*After the verb "to love", the most beautiful one in the world is "to help", wrote Bertha von Suttner, the great pacifist and source of inspiration for Henry Dunant. ... To serve is to sacrifice a part of oneself, a part of what one owns, for the benefit of another said Jean-G. Lossier. In his view, it is always necessary to begin by knowing oneself and finding oneself, as the only way of knowing and finding others. It is certainly true that the greater our interior richness, the more fruitful will be our work. If there is no light within us, how shall we find the path in the darkness?*⁸⁹

Developing inner peace is thus incontestably a key skill for applying and embodying the principle of voluntary service.

85 K. Beeckman, above note 16.

86 IFRC, *The Road to Resilience: Bridging Relief and Development for a More Sustainable Future*, Geneva, 2012, available at: [www.ifrc.org/PageFiles/40792/1224500-Road%20to%20resilience-EN-LowRes%20\(2\).pdf](http://www.ifrc.org/PageFiles/40792/1224500-Road%20to%20resilience-EN-LowRes%20(2).pdf).

87 Mahatma K. Gandhi, *The Collected Works of M. K. Gandhi*, Publications Division, New Delhi, 1942.

88 See IFRC, above note 51, which further explains how inner peace is also linked to individual (application of) neutrality and impartiality, and reinforces personal resilience and health.

89 J. Pictet, above note 2, p. 52.

Towards living the Fundamental Principles and promoting a culture of non-violence and peace: Youth as Agents of Behavioural Change

Before, we used to teach our Fundamental Principles in a theoretical manner, and did not approach them practically. Yes we have Fundamental Principles, and so what? How do we link them practically with our daily life, professionally, and with programmes? After so many years, we have now finally moved from the “sole” Fundamental Principles and Humanitarian Values to intra- and inter-personal skills, so we have moved from talking theoretically of the Fundamental Principles and Humanitarian Values to concretely applying them.⁹⁰

YABC is the IFRC’s flagship initiative on the promotion of a culture of non-violence and peace.⁹¹ Its vision, centred around the 747 framework presented above, is that each individual can inspire his or her peers, friends, family and community members to change and behave in a less discriminatory, excluding or violent way, and as such promote a culture of non-violence and peace, by role-modelling such a shift in his or her own way of thinking, taking decisions and acting, in alignment with the Fundamental Principles and their underpinning humanitarian values.

To reach this objective, YABC seeks to enhance individuals’ awareness and understanding of common societal challenges – such as discrimination, exclusion, gender inequality and violence – which are easily observable in their daily lives. Addressing these thematic issues brings out the *raison d’être* of the seven Fundamental Principles and allows individuals to relate the latter to very practical situations they have faced or observed. Through specific behavioural skills, anchored in the Fundamental Principles (see 747 above), YABC seeks to build individuals’ capacities to act positively and constructively in the face of such challenges – i.e., to actively listen, think critically, drop bias, not judge, communicate non-violently, negotiate collaboratively, mediate, demonstrate empathy and personal resilience, and operate from inner peace – and by doing so to apply and live personally by the Fundamental Principles and humanitarian values.

YABC was created with the initial support of the Youth Commission and twenty-five National Societies in 2008. The YABC toolkit was developed in 2009 with a culturally diverse group of RCRC youth volunteers and staff and field-tested from 2010 to 2012 all over the globe before being produced. It contains fifty-six non-cognitive, experiential and transformational learning activities,⁹²

90 YABC trainer, South Asia, male, quoted in *Global Impact Report*, above note 17, p. 20.

91 For more information, see www.ifrc.org/yabc.

92 The toolkit activities have a standard and easily usable format, following the same structure for each activity: 1. Goal; 2. Summary; 3. Expected learning; 4. Approximate time needed; 5. Required materials (on principle limited to the strict minimum and locally available); 6. Cross-cultural tips; 7. Facilitation tips; 8. Suggested step-by-step process; 9. Debriefing phases and questions; 10. Expected key points and

such as games, role-plays and simulation and visualization exercises, as well as concept papers and practical guidance. These activities and concept papers pertain to thematic issues relating to the promotion of a culture of non-violence and peace (non-discrimination and respect for diversity, intercultural dialogue, social inclusion, gender, violence prevention, mitigation and response, and international humanitarian law), and the seven intra- and interpersonal skills of the 747 framework analysed in section two. In addition, the YABC toolkit includes a peer educator manual, guidelines for peer educators working in community engagement, psychosocial support guidelines for toolkit users, a qi-gong manual and two DVDS on qi-gong and meditation.⁹³ Today, the global network counts over 1,725 trained peer educators from 125 RCRC National Societies worldwide.

Trained YABC peer educators, mostly RCRC volunteers and staff, have reached out to their local communities in various ways. YABC activities have been brought into schools, vocational training centres for vulnerable youth, and prisons with young offenders. YABC has inspired peace festivals, migration campaigns and inter-faith dialogue in the community. It has also helped awareness-raising on stigmatization against people living with HIV/AIDS, gender-based violence and exclusion of people living with disability, to name but a few.⁹⁴

An essential driver and mechanism of change: The YABC methodology

To trigger such a process of personal transformation in individuals and empower them as inspiring ethical leaders, individuals follow a five-day intensive and residential training course to become a peer educator.⁹⁵ The learning approach is affective, experiential and transformative and places the participant at the centre of the equation.⁹⁶ Through the use of games, role-plays, and simulation and

conclusions from participants; 11. Facilitation notes; 12. Possible variation. IFRC, above note 51. Access the introductory brochure as well as a sample of the toolkit at: www.ifrc.org/yabc.

93 See IFRC, above note 51, and the table of contents of the introductory brochure, available at: www.ifrc.org/PageFiles/53518/YABC%20toolkit%20introduction.pdf.

94 For further information on how YABC has been implemented in the community, see *Global Impact Report*, above note 17, pp. 42 ff., 131 ff.

95 These are organized mostly by National Societies and occasionally by the IFRC. A training of YABC peer educators takes five days, after which participants are able to use the methodology and understand the subject matter and are confident to facilitate the toolkit activities with other youth. In addition to the thematic and intra- and interpersonal skills focus, they are also trained on peer education, group dynamics, motivation and learning, communication skills, facilitation techniques and organization of a peer education session. Finally, they gain a brief training in community project design and social mobilization through creative platforms such as art, music, theatre and sport. For more information on the training, see K. Beeckman, "Skills and Values Based Education", above note 35, pp. 143–145.

96 Special tribute goes to Juan Sáenz, senior humanitarian and training consultant, who fleshed out YABC's non-cognitive learning approach and pedagogical model based on a combination of a wide variety of educational theories and lessons learned from humanitarian programmes, including in particular: Sean Lowrie, Emma Jowette and Juan Sáenz, *Lessons from the Sphere Training of Trainers (ToT) Courses: A Reference for Facilitators*, The Sphere Project, Geneva, January 2005, available at www.sphereproject.org/download-resource.php?guid=54e4659ed515; Malcolm Shepherd Knowles, *The Modern Practice of*

visualization exercises contained in the YABC toolkit, as well as creative platforms for community mobilization like art, music, theatre and sports, entry points for learning are “non-cognitive”. As such, all construction of knowledge, understanding and mindset change starts by tapping first into expressing and sharing one’s feelings, experiences, bodily sensations or direct/indirect dilemmas observed around challenging situations that participants face during the activities. Learning as such “comes from within”, in the true sense of education, stemming from the Latin *e-ducere*, “to bring out, to guide out what is already inside, within”.⁹⁷

The YABC process relies on peer education or facilitation by trained YABC peer educators, which is conducive to higher learning results for youth. This interactive exchange – at a level of equality – favours openness, trust and a collaborative exploration of solutions fully owned and supported by the learners. Free will and an inductive learning process are central. With themselves at the origin and core of their shift of attitude and mindset, learners can autonomously decide to change their behaviour. Starting with inner change, learners can then decide to freely take up the responsibility to be an agent of behavioural change in the community, for instance through engagement in awareness-raising activities or small-scale community outreach projects. It is this role-modelling or walking the talk that is the key to inspiring others.

The overall YABC peer educator training process is designed around the following four key stages that constitute the fundamental framework of the initiative’s pedagogical model, as reflected in the *Global Impact Report*:⁹⁸

- *Deconstruction/destabilization*: participants experience prejudice, discrimination, social exclusion, etc. through YABC toolkit activities; they are exposed to social conditioning and challenged (through feedback by other participants during the activity) in their positioning, taken-for-granted assumptions, black-and-white beliefs or (self-)perceived identity. This leads them to start questioning themselves and to identify the presence of dissonance and tension between their values – what they think and say they do – on the one hand, and their attitudes and behaviours – what they really do (as reflected back to them by other participants’ feedback on their behaviour) – on the other. This phase generally shakes one’s self-perception and ego and is often accompanied by denial or resistance to change.
- *Crisis/shift of perspective*: participants are at a critical moment of self-questioning/self-reflection, which results in an identity shock. Each group and

Adult Education: Andragogy versus Pedagogy, Follet Publishing Company, Chicago, IL, 1980; David A. Kolb, *Experiential Learning: Experience as the Source of Learning and Development*, Prentice, Englewood Cliffs, NJ, 1984; Samuel Bloom, David McKay, Bertram B. Masia and David Reading Krathwohl, *Taxonomy of Educational Objectives, Handbook II: Affective Domain*, David McKay Company, New York, 1964; Bruce Wayne Tuckman and Mary Ann Jensen, “Stages of Small Group Development”, *Group and Organizational Studies*, No. 2, 1977, pp. 419–427; Paulo Freire and Ana Maria Araújo Freire, *Pedagogy of Hope: Reliving Pedagogy of the Oppressed*, Continuum, New York, 1994. For additional references, see IFRC, above note 51; and *Global Impact Report*, above note 17, pp. 61–86.

97 K. Beekman, above note 16.

98 *Global Impact Report*, above note 17, pp. 61–86.

individual will experience this stage at a different time and in a very different way, and will hence manifest it differently as well.

- *Reconstruction/reframing*: participants experience a new paradigm of interaction based around their new self-awareness and develop intra-/interpersonal skills through YABC toolkit activities. They discover the possibility of redefining their identity inspired by a personal connection and appropriation of the Principles and values, based on the 747 framework. This leads them to realize their true potential and power to effect change, thereby deepening their self-confidence and increasing their willingness to serve others.
- *Empowering into action*: participants' released energy and motivation is channelled into personal and collective plans of social action that translate their inner change into immediate practice, focused particularly on incorporating the tools, skills and techniques learnt into their day-to-day lives and their voluntary work. As a result, individuals have gained high levels of self-efficacy⁹⁹ in relation to being the change they want to see.

YABC impacts pertaining to the understanding and application of the Fundamental Principles

Simply looking at the [747 framework] ... gives volunteers a sort of visualisation of the principles and values ... but looking at it through this interactive approach makes it easier for them to understand. For example, it is very useful for them to understand the difference between neutrality and impartiality. From the experience I have, it is a very appreciated part of the [YABC peer educator] training, because we saw that volunteers couldn't really understand the meaning of each Principle before. This allows them to understand the underpinning values and all... It is a very practical way to look in depth into the principles. It is really good to put it into practice, because if you just look at them like this, the principles might seem artificial, but it is important that they understand that all the system works together, the principles are all related.¹⁰⁰

YABC participants come to understand the Fundamental Principles in a wholly new way, to intimately own them, and in so doing redefine them, making them applicable and discoverable in the day-to-day realities of their lives.¹⁰¹ Through the five-day peer education training programme, participants develop an experiential and concrete understanding of the Principles and underpinning values, as well as a personal connection with them, which leads them to personally embrace and own them. This self-appropriation of the Principles in its turn enhances learners' self-efficacy to align their behaviour with and apply the

99 This is a person's feeling of capability to implement or practice the acquired learning, which in a YABC context is to behave and engage in action based on and aligned with the Fundamental Principles and humanitarian values. *Ibid.*, p. 19.

100 YABC trainer, Europe, female, quoted in *ibid.*, p. 205.

101 *Ibid.*, p. 53.

Principles in the day-to-day realities of their lives, starting with their activities in an RCRC context, and potentially, if the individual wishes to do so, beyond.

In the first section, challenges regarding the Fundamental Principles, as well as the root causes of those challenges, were presented. The first challenge – insufficient knowledge and understanding pertaining not only to the meaning of the Principles but also to their purpose and *raison d'être* – led to the second, concerning the application of the Fundamental Principles. It was also seen how the promotion of the Fundamental Principles and humanitarian values has been recently linked with the promotion of a culture of non-violence and peace, and how this has introduced a new challenge as to how to live by the Principles in order to inspire a positive change of mindset and behaviour in one's community.

YABC, anchored in the 747 framework and through its affective, experiential and inductive learning approach, was created with a view to addressing the above-mentioned challenges. The reasons for these challenges consisted of lip service to the Principles (what the author calls the poster approach), a theoretical approach, an institutional perspective towards the Principles rather than an individual one, and finally their high-level, abstract nature.

The *Global Impact Report* shows that YABC has addressed the above-mentioned challenges effectively while tackling the root causes identified, and presents the following shifts:¹⁰²

- From being unable to experientially understand or personally relate to the meaning of the highly abstract Fundamental Principles, participants begin to see each Principle as implying a range of more concrete, understandable values, thus making the Principle personally meaningful.
- From seeing the Fundamental Principles and humanitarian values as abstract ideals, participants come to understand them as practical life strategies requiring specific behavioural skills that can be gained through conscious practice.
- From seeing the Fundamental Principles as disconnected, stand-alone ideas, participants come to understand their interconnection as they apply them to their own daily lives.
- From emotional detachment from the Fundamental Principles, participants come to develop an emotional investment in them as they become integral parts of their personal identities and day-to-day interactions.
- From a vague sympathy toward the Fundamental Principles, participants develop a sense of direct and sometimes urgent responsibility for their application and promotion as a result of an understanding of the Principles' personal relevance to themselves and hence to those they care about.
- From learning about the Fundamental Principles as one-off information, participants come to appreciate them as a lifelong learning process/reference of critical reflection.

102 *Ibid.*, pp. 53–54.

The following testimonies from Movement managers bear witness to the impact of this in the day-to-day RCRC work of participants.

YABC is really useful here, as it develops these skills, and by doing so strengthens [staff and volunteers'] ability to work with the authorities without being associated with them or a particular group, to translate the [Red Cross and] Red Crescent's auxiliary role at community level in a conflict area while maintaining the Neutrality and Independence of the National Society.¹⁰³

We often feel involved in the conflicts between political parties and this is where it is important to distinguish very clearly the fact that we belong to an ideological trend at a personal level and that we have the duty to provide first aid without discrimination. The volunteers needed to remain volunteers of the [Red Cross and] Red Crescent and refrain from getting involved in the unrest; it was hard to understand these concepts. We made YABC exercises to address this ..., and it had a positive impact, by helping us not participate in conflicts and act only according to the humanitarian imperative.¹⁰⁴

YABC behavioural change relating to the promotion of a culture of non-violence and peace anchored in the Fundamental Principles and humanitarian values

The process of self-transformation that YABC triggers consistently results not only in changes in motivation, identity, vocabulary and attitudes, but also in behavioural changes of role-modelling a culture of non-violence and peace.¹⁰⁵ Participating individuals strengthen their open-mindedness, humility, self-confidence/esteem, positive thinking and patience. They learn to be self-aware and self-reflective, and can critically analyze and understand their own behaviour and its impact on others. General changes induced, as reported by the participants, pertain to communication, reactions to stress and lifestyle.¹⁰⁶ These changes have a domino effect that affects and frequently improves professional relationships and the dynamics of the participant's immediate environment (peers, family).

I have seen big changes in very conservative norms and traditions thanks to these YABC courses. Many of the males are socialised in having very sexist attitudes towards women. I have seen significant changes in males who have

103 IFRC country representative, MENA, *ibid.*, p. 191.

104 Former coordinator of relief operations during the civil unrest, National Society, MENA, quoted in *ibid.*, pp. 193–194.

105 For a contextualized example of the YABC impact, see Mohannad Jehad Saleem, Mahdi Al-Jamal, Nelima Lassen and Kleio Iakovidi, "The Beginning of a Journey: YABC – Youth as Agents of Behavioural Change in Palestine", *Coping with Crisis*, No. 1, 2014, pp. 24–25; and Katrien Beeckman and Charlotte Tocchio, "A Beacon of Light and Life: Results of the Global Impact Study", *Coping with Crisis*, No. 1, 2014, p. 26, available at: <http://pscentre.org/wp-content/uploads/Coping1-2014.pdf>.

106 See *Global Impact Report*, above note 17, pp. 34–35 and Appendix 5, for more quotations.

done the course and for females, they feel more empowered, and safer to speak out.¹⁰⁷

YABC has brought better results than other programmes with regard to the bonding between the two communities (South and North). YABC provides a unique platform where individuals from both communities have an opportunity to really sit and talk together about their real social issues, about the difficult times they went through, without entering into any political debate. YABC is an amazing neutral process for reconciliation work. It increases mutual understanding between participating individuals from both communities.¹⁰⁸

Organizational and operational impacts of YABC noted by the *Global Impact Report*

As a result of this sustained, refined understanding, application and living of the Principles upon which YABC is founded, the *Global Impact Report* also points to impacts of an organizational (or institutional) and operational nature, in particular where participants have been able to integrate the learning and 747 approach into existing RCRC programmes. When integrated into RCRC areas of work such as first aid, disaster management, migration, shelter, road safety and psychosocial support, YABC has been proven to further strengthen not only what is being done, but in particular *how* it is being done.

When working with beneficiaries, their approach would be more human, more personal, maybe somehow less focused on the technical aspect and rather trying to find the correct words to interact with them, mixing the values with the support and assistance provided.¹⁰⁹

I have a better relationship with beneficiaries, I can empathize more with them. Instead of being just a machine, giving them medical services, I can now feel them, which increases the quality of our relationship. They feel the difference between someone who provides assistance like a robot, and someone who has empathy. An example to illustrate: when we give first aid, there are several stations from different organizations but people are looking for the one of the [Red Cross], seeking the help of our first aiders who have all done YABC. The ambulances do their job and it is their job, but us, we deliver services voluntarily and with empathy. This is thanks to the YABC.¹¹⁰

As such, the development in RCRC staff and volunteers of a greater degree of understanding and compassion towards beneficiaries, and the application of newly acquired or further developed personal skills when engaging with them, results in a contribution on the part of YABC to improving the quality of RCRC services.

107 Head of IFRC Delegation, South Asia, quoted in *ibid.*, p. 188.

108 Former senior coordinator, IFRC Post-Conflict Recovery Programme, quoted in *ibid.*, p. 194.

109 Former senior coordinator, IFRC Post-Conflict Recovery Program, Asia-Pacific, quoted in *ibid.*, p. 194.

110 YABC trainer, National Society, MENA, quoted in *ibid.*, pp. 217–218.

As documented in the *Global Impact Report*, YABC also remarkably increases individuals' intrinsic motivation and sense of belonging to the Movement, which positively contributes to enhancing service delivery as well as the organizational climate, cohesion and culture.¹¹¹

I actually further loved the Movement thanks to this deeper understanding of its principles and values which YABC helped me to gain. My personal commitment for the Red Cross [and] Red Crescent increased a lot because of this.¹¹²

The *Global Impact Report* has also indicated its potential to enhance the organization's delivery capacity, resulting from gains in personal productivity and self-efficacy. A case in point is the development of greater risk resilience through YABC derived from a greater degree of emotional resilience and ability to operate more calmly and flexibly in order to cope and adapt in the face of stressful situations, crisis or enduring pressure.¹¹³ It has also noted an increased willingness to engage in activities that are particularly distressing or unpleasant, such as dead body management.

According to my experience in the field as the coordinator of the relief operations, I can say that the volunteers who have been initiated to the YABC programme have the ability to stay longer and to resist longer while keeping more or less the same productivity. They revitalize themselves more quickly and need much less time to rest, which leads to a bigger impact. In principle, the volunteer works during a week, maximum two, then rests during a week. But the YABC volunteers – who feel less stressed during their work – managed to stay longer without showing signs of stress or tiredness in the workplace as they found enjoyment in their work, they are less exposed to developing stress and hence have less need to go back home to recharge their batteries. Thanks to YABC, they also learn to verbalize their problems and maintain healthier social relationships, which also reduces the work constraints in situations of emergency. In this framework, YABC definitely has an impact on strengthening individual resilience.¹¹⁴

Other impacts at the organizational level pertain to transformation of the organizational culture in further alignment with our Fundamental Principles and humanitarian values. As such, the *Global Impact Report* provides evidence of YABC fostering respectful relationships, reducing tensions and strengthening collaboration within RCRC teams, and strengthening cohesion between branches of the RCRC.¹¹⁵

111 *Ibid.*, Part 3, "Organisational Impact of YABC", pp. 129 ff.

112 YABC trainer, National Society, Europe, *ibid.*, p. 204.

113 The YABC toolkit comprises psychosocial support guidelines for toolkit users.

114 Former coordinator of relief operations during civil unrest, National Society, MENA, quoted in *ibid.*, p. 197.

115 In the survey for YABC-trained peer educators conducted as part of the *Global Impact Report*, 95% of respondents replied positively to the question, "Does YABC strengthen cohesion/collaboration between branches under one National Society?" *Ibid.*, p. 229.

I now apply the skills and hence the Fundamental Principles even in my daily life ... I find myself further sticking to the principles and ... relating every decision in the National Society to the Fundamental Principles, and ... highlighting the alignment of these decisions with the Fundamental Principles (e.g. “This is a good decision as it is in accordance with the Fundamental Principles”).¹¹⁶

Conclusion

In the first section of this paper, challenges regarding the Fundamental Principles, as well as their root causes, were presented. A first cognitive challenge consisted of insufficient knowledge and understanding of the meaning, purpose and *raison d'être* of the Principles and led to a second, more practical challenge relating to their application. It was also seen how the promotion of the Fundamental Principles and humanitarian values has been recently linked with the promotion of a culture of non-violence and peace, and how this has introduced a new challenge as to how to live by the Principles in order to inspire a positive change of mindset and behaviour in one's community.

The 747 framework was presented in section two as a user-friendly tool enabling individuals to better understand and personally relate to the Fundamental Principles through unpacking them from remote, abstract ideals to more concrete and meaningful components and values, and hence to find guidance to ethically make decisions and solve dilemmas in alignment with the Principles and their underpinning humanitarian values.¹¹⁷ Furthermore, through the emphasis on skills, the 747 framework renders the Principles individually actionable – i.e., it enables individuals to live or embody them in their behaviour.

The paper emphasized the crucial importance of an individual perspective to the Fundamental Principles, in addition to the generally adopted institutional and operational ones, and illustrated the multiple benefits of this, including how translating the Principles into individual behaviour as RCRC volunteers or staff contributes to operational impact and institutional adherence. The YABC initiative served as a case study here.

While the three perspectives are intrinsically related, the present paper has provided arguments and evidence, drawn from the YABC *Global Impact Report*, that the individual perspective (i.e., individual alignment with the Principles and values) needs to be the cornerstone. This was also the opinion of Austrian Red Cross staff in their headquarters consultation submitted as part of a Movement-wide consultation on the Fundamental Principles in 2013: “the operational relevance or institutional effectiveness of the Fundamental Principles depends on the integrity of the

¹¹⁶ Trainer, National Society volunteer, MENA, quoted in *ibid.*, p. 204.

¹¹⁷ Respondents report that the YABC chart is often used not only in the Red Cross and Red Crescent but as a more general personal guide for resolving the challenges and dilemmas of their private affairs. See in-depth interviews with peer educators and trainers in *ibid.*, p. 76 (triangulated by observers; see *ibid.*, p. 31).

people”.¹¹⁸ Acting in full accordance with the Fundamental Principles constitutes a key ingredient of integrity.¹¹⁹

Alignment with the Principles and values is particularly of the essence for RCRC leadership. This was a headline conclusion of the Movement-wide consultation reported to the 2013 COD:

There is seen to be uneven understanding and application of the Fundamental Principles across the Movement. Given this challenge, the key role of the leadership in the Movement as guardians and promoters of the Fundamental Principles was emphasised by many throughout the consultation process.¹²⁰

Also, the indispensable need for ethical leadership, or alignment of RCRC leaders’ decision-making, actions and behaviour with the Principles and values, will be officially featured in the forthcoming IFRC Global Review on Volunteering, which shows a rapidly changing number of volunteers.¹²¹ As a matter of fact, the leadership and organizational culture highly influences volunteer retention. Leaders’ genuine or lip service commitment to the Movement’s mission and their ability or inability to apply its Fundamental Principles, as well as their *de facto* living or embodiment of them in their daily relationships with staff and volunteers, have been ascertained as being amongst the factors influencing volunteers to stay within or exit the Movement.

“Without principles, the Red Cross [and Red Crescent] would simply not exist”, affirmed Pictet in 1979.¹²² In 2015, at the doorstep of the official celebration of the fiftieth anniversary of their adoption, this paper invites the reader to deeply reflect on the following assertion: without individual alignment with the Principles, the Red Cross and Red Crescent will simply not survive.

118 Fundamental Principles consultation, Austrian Red Cross, 5 July 2013, notes submitted by email. Rewording added by author.

119 See the definition of integrity as “the extent to which the National Societies and their International Federation possess the will and the ability to act in pursuit of their respective declared objectives, policies and standards in full accordance with the Fundamental Principles of the Movement”, in IFRC, *Policy on the Protection of Integrity of National Societies and Bodies of the International Federation*, Geneva, 2009, as earlier adopted by the IFRC General Assembly, Doc. AG/20/1 of the 9th Session of the General Assembly, Birmingham, 1993, p. 3 (as amended by the 15th Session of the General Assembly, Seoul, 2005). See also IFRC, *National Society Development Framework*, Geneva, 2013, available at: www.ifrc.org/Global/Documents/Secretariat/201505/1269801-NSD%20framework%202013-EN-LR.pdf.

120 COD, *Workshop on Fundamental Principles*, background paper and outline, 2013, p. 3, available at: <https://www.icrc.org/eng/assets/files/red-cross-crescent-movement/council-delegates-2013/cod-2013-draft-0-ws-outline-fp.pdf>.

121 See www.ifrc.org/en/what-we-do/volunteers/global-review-on-volunteering/.

122 J. Pictet, above note 2, p. 6.

Coming clean on neutrality and independence: The need to assess the application of humanitarian principles

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Abstract

Neutrality and independence continue to be part of the four core humanitarian principles, in addition to humanity and impartiality. Promoting these principles needs to go hand in hand with efforts to apply and implement them. Applying neutrality and independence is a considerable undertaking. This article explains the various aspects of these two principles that are crucial for understanding and applying them. The author suggests that these aspects should be taken into account in assessing whether humanitarian organizations are managing to uphold the principles. In turn, these assessments will enable humanitarian organizations and other stakeholders in humanitarian action to understand what the opportunities and obstacles are in applying independence and neutrality.

Keywords: humanitarian principles, neutrality, independence, humanitarian action, ICRC, MSF, NGOs, accountability, verification.

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Nowadays there is general agreement that humanity, impartiality, neutrality and independence are the four core principles of humanitarian action.¹ These core principles exist in order to explain the identity and values of those who provide humanitarian response, which, in turn, makes them practical tools for the job. Maintaining humanitarian principles is not an end in itself, but these principles are key factors that distinguish humanitarian actors from commercial, political and military actors. The principles of humanity and impartiality have been singled out for their relevance for all humanitarian actors.² Neutrality and independence, the other two core principles, may be seen as more complex to apply. In the hierarchy of principles as defined by Jean Pictet, humanity and impartiality come first as substantive principles. Pictet observed that neutrality and independence are derived principles that “enable us ... to translate the substantive principles into factual reality”.³ Hugo Slim notes that humanity and impartiality set out the universal ethical goal of helping others, while the principles of neutrality and independence “achieve this goal in the actual political conditions of armed conflict and disaster”.⁴ The issue is not only what is good to do, but also how it is best done.⁵ This aspect is what makes neutrality and independence relevant: they are instrumental in making humanitarian action more effective.

Following a general explanation of the two principles, this article sets out why their application should be assessed by looking at a number of specific aspects. These aspects have been derived from the definition or context of the principles, and are crucial in understanding and applying the principles. Assessing these aspects will help humanitarian actors⁶ and others to understand the efforts that are being or should be made in applying and implementing these two humanitarian principles. At various points, the article refers to the practices of the International Committee of the Red Cross (ICRC) and Médecins Sans Frontières (MSF). Looking at their publications, these organizations appear to attach great importance to the principles of neutrality and independence, and their experiences contribute to our understanding of what can be done in terms of assessing the application of these principles.

- 1 “Principles of humanitarian action” and “humanitarian principles” are used interchangeably in this article, though Nick Leader has pointed to a difference between them. See Nick Leader, *The Politics of Principle: The Principles of Humanitarian Action in Practice*, Humanitarian Policy Group (HPG) Report No. 2, Overseas Development Institute (ODI), London, March 2000.
- 2 Yves Daccord, *Humanitarian Action in a Changing Landscape: Fit for Purpose?*, ICRC, 2013, available at: www.icrc.org/eng/resources/documents/article/editorial/02-04-humanitarian-action-yves-daccord.htm (all internet references were accessed in July 2015).
- 3 Jean Pictet, *Commentary on the Fundamental Principles of the Red Cross*, International Federation of Red Cross and Red Crescent Societies (IFRC), Geneva, 1979, p. 8, available at: www.ifrc.org/PageFiles/95341/Pictet%20Commentary.pdf.
- 4 Hugo Slim, *Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster*, Hurst & Co., London, 2015, p. 65.
- 5 *Ibid.*
- 6 This article uses the terms “humanitarian actors” and “humanitarian organizations” interchangeably. “Actors”, however, is a broader term.

Neutrality and independence: The instrumental principles

Neutrality means that humanitarian actors do not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature.⁷ Their only concern is to help people affected by armed conflict or natural disasters to survive. The point that humanitarian organizations cannot take sides in hostilities seems an obvious one, but as both Pictet and Slim point out in relation to military neutrality, humanitarian aid should avoid creating military advantages.⁸ Neutrality, however, is not a principle that is only applicable in contexts of armed conflict. The *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* developed by the International Federation of Red Cross and Red Crescent Societies (IFRC) also refer to the principle.⁹ Neutrality is included in the sources of humanitarian principles relevant to the various types of humanitarian actors. Broadly, four sources of humanitarian principles can be identified: United Nations (UN) General Assembly Resolution 46/182 (1991)¹⁰ and Resolution 58/114 (2004);¹¹ the seven Fundamental Principles of the International Red Cross and Red Crescent Movement (the Movement), proclaimed in Vienna in 1965 by the 20th International Conference of the Red Cross and Red Crescent Movement;¹² and the 1994 Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief (1994 Code of Conduct).¹³ The wording of neutrality is not exactly identical in these different instruments. Principle 3 of the 1994 Code of Conduct notes that “aid will not be used to further a particular political or religious standpoint”,¹⁴ which clearly refers to the obligation to not take sides. In the context of the Movement, the definition of neutrality is preceded by the phrase “In order to enjoy the confidence of all”,¹⁵ which points to the purpose of neutrality. It is supposed to create trust that no agendas other than a humanitarian one are pursued. Those in power must have the confidence that humanitarian actors will not take a stance on the types of issues noted in the definition of neutrality. This implies that

7 Office for the Coordination of Humanitarian Affairs (OCHA), *OCHA on Message (OOM): Humanitarian Principles*, June 2012.

8 J. Pictet, above note 3, p. 35; H. Slim, above note 4, p. 68.

9 IFRC, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, Geneva, 2011, Guideline 4.2, available at: www.ifrc.org/en/what-we-do/idrl/idrl-guidelines/.

10 UNGA Res. 46/182, 19 December 1991, available at: www.un.org/documents/ga/res/46/a46r182.htm.

11 UNGA Res. 58/114, 5 February 2004.

12 The revised text on the seven Fundamental Principles contained in the Statutes of the International Red Cross and Red Crescent Movement was adopted by the 25th International Conference of the Red Cross, Geneva, 1986, and is available at: www.icrc.org/eng/resources/documents/red-cross-crescent-movement/fundamental-principles-movement-1986-10-31.htm.

13 IFRC and ICRC, *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief*, Geneva, 1994 (1994 Code of Conduct), available at: www.ifrc.org/fr/publications/code-of-conduct/.

14 *Ibid.*, Principle 3.

15 Fundamental Principles, above note 12, “Neutrality”.

humanitarian actors need to make an effort to be seen as neutral. They can influence the perception that exists of them.

Neutrality is not without controversy; indeed, to paraphrase Pictet, no idea in the humanitarian world has created more confusion than neutrality.¹⁶ It has often felt like a straightjacket for a number of organizations working in the humanitarian field. It confines their activism in changing societies, precisely because this type of engagement might be of a political nature. Historically, the large majority of organizations delivering humanitarian response were set up as development organizations active in the areas of poverty reduction, social justice or peacebuilding, often in the same country where they deliver humanitarian work. Compared to organizations that have a specific – some would say narrow – focus such as the ICRC and MSF, which have been labelled “Dunantist”, many of these other organizations have combined or multiple mandates.¹⁷ Multi-mandate organizations see humanitarian action and their activities in community development, social cohesion or mediation as part of the same effort to build a better world.¹⁸ A recent debate within the NGO community revealed that a number of multi-mandate NGOs do not easily accept that they must abide by the principle of neutrality. In 2014, the development of a new humanitarian standard, the Core Humanitarian Standard (CHS),¹⁹ saw a heated debate on neutrality between those who find the principle essential in maintaining humanitarian action separate from other fields of activity, and those who advocate that neutrality should be left out (of the CHS), as parts of their work do not match with this principle. The debate ended in a compromise: the final CHS text includes a reference to neutrality as well as a footnote which explains that some organizations “do not consider that the principle of neutrality precludes undertaking advocacy on issues related to accountability and justice”.²⁰ This compromise is somewhat reminiscent of the inclusion of neutrality in the 1994 Code of Conduct. Peter Walker notes that at the time of drafting the Code, a number of NGOs saw their work on justice and development as not conforming to neutrality.²¹ The implications of advocacy and other activities for neutrality need to be part of the assessment of the degree to which humanitarian actors are making an effort to maintain this principle.

16 J. Pictet, above note 3, p. 34. Pictet wrote: “No idea in the Red Cross world has created more confusion than neutrality.”

17 The label “Dunantist” was used by Abby Stoddard in the HPG paper *Humanitarian NGOs: Challenges and Trends*, HPG Briefing No. 12, 2003, available at: www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/349.pdf.

18 This description fits not only many faith-based NGOs such as Caritas, Christian Aid and World Vision, but also organizations such as CARE, Oxfam and Save the Children.

19 HAP International, People in Aid and the Sphere Project, *Core Humanitarian Standard on Quality and Accountability*, 1st ed., 2014 (CHS), available at: www.corehumanitarianstandard.org/the-standard.

20 *Ibid.*, p. 8. The compilations of comments that were received on draft versions of the CHS provide particular insight into the controversy, and are available at: www.corehumanitarianstandard.org/the-standard/the-consultation-on-the-chs.

21 Peter Walker, “Cracking the Code: The Genesis, Use and Future of the Code of Conduct”, *Disasters*, Vol. 29, No. 4, 2005, pp. 329–330.

Independence is closely related to neutrality. In fact, it is very difficult for any humanitarian actor to maintain neutrality if it is not independent from political actors. Independence is defined as being autonomous from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is implemented.²² Autonomy is the ability to be free to determine one's actions. Humanitarian actors should be able to move around freely in order to assess needs, deliver services and evaluate impact without interference. The legitimacy of any humanitarian actor stands or falls on its capacity to withstand "any interference, whether political, ideological or economic, capable of diverting it from the course of action laid down by the requirements of humanity, impartiality and neutrality".²³ Independence implies institutional, political, financial and operational autonomy, but this freedom is not unlimited. Governments, be they donors or recipient governments, and other relevant authorities see and often use the humanitarian response as part of longer-term strategies and policy, if not political, objectives, and want humanitarian action to fit within their priorities. In making efforts to resist this instrumentalization, humanitarian actors are keen to point to the principle of independence, but only promoting it will not be enough. As with neutrality, humanitarian actors will need to demonstrate what actions they are undertaking to maintain their independence. In a sense, one might say that whereas neutrality is contested by a number of actors within the sector who see the principle as inconvenient, independence is under threat as a result of the actions of others.

Why assess these principles?

Donini is one of the authors who has written much about the instrumentalization of humanitarian aid.²⁴ As illustrated later in this article, governments and other actors use humanitarian action as a crisis management tool.²⁵ Given this trend, a number of authors and commentators have stated that neutrality and independence have become irrelevant.²⁶

In spite – or because – of these views, most humanitarian organizations are continuing to refer to the importance of humanitarian principles. Many of the policy discussions in the humanitarian community also reflect the expectation that every actor follows humanitarian principles. The predominant reaction from humanitarian organizations in asserting their neutrality and independence has been to demand respect for these principles. Apparently, it is presumed that by simply invoking the principles of humanitarian action, the integrity of

22 OCHA, above note 7.

23 See the definition of independence as provided by the IFRC in the Fundamental Principles, above note 12.

24 Antonio Donini (ed.), *The Golden Fleece*, Kumarian Press, Sterling, VA, 2012, p. 3.

25 See section on "Institutional and Political Independence" below.

26 See, for example, Kurt Mills, cited in Barbara-Ann Riefer Flanagan, "Is Neutral Humanitarianism Dead? Red Cross Neutrality: Walking the Tight Rope of Neutral Humanitarianism", *Human Rights Quarterly*, Vol. 31, 2009, p. 896.

humanitarian action will be recognized and access will be guaranteed.²⁷ It has also been noted that the limited attention given to the operational relevance of applying the principles can, to a degree, be explained by a lack of in-depth knowledge and training on how they can be used.²⁸ Egeland *et al.* have noted that “[w]hile simultaneously calling for respect for humanitarian principles, in the recent past humanitarian organisations have also willingly compromised a principled approach in their own conduct through close alignment with political and military activities and actors.”²⁹ A commitment to upholding the principles, therefore, does not come free. Good intentions to deliver principled humanitarian action are essential, of course, but they are not enough – it takes effort. If humanitarian organizations fail to stand their ground on the principles they preach, their moral authority will be weakened. Humanitarian actors should be able to explain what the principles of neutrality and independence mean for them and how they put those principles into practice. Accountability for the principles essentially implies that organizations are able to provide a reasonable explanation for their strategic and operational decisions and the way the principles were taken into account. This decision-making process can be verified. If it turns out that humanitarian organizations are not able to maintain the principles, the question should be asked as to what the reasons as well as the implications are of this non-compliance. Either it is accepted that, for various reasons, neutrality and independence have been eroded to the level of being meaningless, or there should be greater transparency and honesty regarding who is and who is not following these principles.

Assessing the application of the principles can be done by analyzing them for their different elements and verifying whether and how organizations have reflected on these issues in their decision-making and operational choices. This article attempts to identify the various elements that are part of the principles and that can be assessed. These assessments will have to be qualitative exercises in which views and perceptions matter. This article does not go into detail on the question of who should verify the application of or compliance with humanitarian principles; suffice it to say at this stage that it could be done by humanitarian actors themselves, as a self-assessment, or by an independent mechanism that they put in place.³⁰ Such verification, however, does not (yet) have any formal or legal implications for States or parties to a conflict, but this situation might change. The *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*

27 Sarah Colinson and Samir Elhawary, *Humanitarian Space: A Review of Trends and Issues*, HPG Report No. 32, ODI, London, 2012, p. 17.

28 Sorcha O’Callaghan and Leslie Leach, “The Relevance of the Fundamental Principles to Operations: Learning from Lebanon”, *International Review of the Red Cross*, Vol. 95, No. 890, 2013, p. 294.

29 Jan Egeland, Adele Harmer and Abby Stoddard, *To Stay and Deliver*, independent study commissioned by OCHA, United Nations, 2011, p. 4.

30 At the time of completing this article, the author is involved in efforts to create a new global mechanism, the Humanitarian Quality Assurance Initiative, which will verify the application of standards in humanitarian action. See: www.schr.info/assets/uploads/docs/Statement_announcing_the_creation_of_the_Humanitarian_Quality_Assurance_Initiative_7_July_2015.docx.

recommend that affected States establish criteria for “assisting actors” as part of their responsibilities in facilitating relief actions.³¹ It is recommended that these criteria include the requirement that organizations are able to demonstrate their application of the core humanitarian principles.³² Likewise, as Kate Mackintosh explains, it would be helpful for humanitarian actors in their negotiations with parties to an armed conflict to explain how their actions comply with the rules of international humanitarian law.³³ In turn, these parties would be well-served if they were able to verify the humanitarian character of goods and services as part of their obligation under the Geneva Conventions to allow relief actions to be undertaken, or the rapid and unimpeded passage of relief, when certain conditions are met.³⁴

Assessing the application of neutrality

In assessing the application of the principle of neutrality, aspects of the definition of the principle, or issues in the context of it, should be looked at. The following three aspects are suggested and used in this article:

- Do activities, in particular advocacy, imply an actual engagement in controversies of a political or related nature?
- Have the perceptions of all relevant actors with regard to the neutrality of humanitarian aid been gauged?
- What compromises need to be made in order to ensure a reasonable balance with other principles?

Political engagement or not?

The first element that should be assessed is the extent to which the work of the humanitarian actor in question is actually of a political nature. In answering this question, advocacy will come as an immediate area of attention, in particular because neutrality and advocacy have traditionally been each other’s enemies. Nowadays many, if not most, humanitarian actors see advocacy, understood as the act of speaking out on someone’s behalf, as an integral part of humanitarian action. Advocacy does not stand on its own – it is often closely related to the

31 IFRC, above note 9, Guideline 14.2.

32 *Ibid.*

33 See Kate Mackintosh, “The Principles of Humanitarian Action in International Humanitarian Law”, Study No. 4, in *The Politics of Principle: The Principles of Humanitarian Action in Practice*, HPG Report No. 5, ODI, London, March 2000.

34 The relevant articles are: Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Art. 23; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Art. 70; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978), Art. 18(2).

mission and objectives of an organization, which translate to its programmes and activities.³⁵ It has been argued that advocacy does not stand in the way of its neutrality, as long as the side of the victims is taken. This point is not entirely convincing. Victims – or to use the more modern terminology, crisis-affected people – have views and beliefs, and they may be politically engaged or part of an ethnic minority. Taking their side could be understood as furthering their (political) objectives. It is the content of the message that matters. The ICRC, for which strict neutrality is part of its DNA, serves as a point of reference. Perhaps under the influence of new means of communication such as social media, and new leadership of the organization, public statements on its assessments of humanitarian situations have become part of its standard practice. For example, in the middle of 2014, in the context of the conflict in the Occupied Palestinian Territories and Israel, the ICRC head of delegation reported regularly on the breaches of international law that he observed.³⁶ Even more recently, in the age of real-time information through social media, the ICRC has also done almost hourly updates on the conflict in Yemen.³⁷ Often, these messages include calls to respect the rules of international humanitarian law, but they do not attribute violations of humanitarian norms to specific actors.³⁸ Whereas the ICRC may have become more active and stronger in its public messages, MSF, which was born out of the desire to speak out more freely, seems to have become more muted. Differently from the 1990s, when the organization did not hesitate to call for military action in Somalia, the Balkans or the African Great Lakes region, Weismann maintains that since 2009, the year when MSF was one of sixteen organizations banned from working in Sudan, it has been more hesitant to speak out than ever before.³⁹ The organization seems to have become stricter in maintaining neutrality, possibly because of the security or operational consequences that a louder voice may bring. Interestingly, in 2006, Weismann noted that the neutrality of aid agencies required them to remain silent on the conduct of warring parties against the civilian population in Darfur. He accused Jan Egeland, the UN emergency relief coordinator, of making life more difficult for organizations that followed the principle of neutrality, as he felt that Egeland

35 Looking at programmes and activities is particularly relevant to understanding perceptions, which will be discussed as the next aspect of assessing neutrality in the following section.

36 Jacques de Maio, “No Wonder Gazans are Angry. The Red Cross Can’t Protect Them”, ICRC, 25 July 2014, available at: www.icrc.org/eng/resources/documents/article/editorial/07-24-gaza-israel-palestine-maio.htm.

37 See: https://twitter.com/icrc_je. See, for example, tweets in the period 8–14 July 2015.

38 In an interview, ICRC Director of Operations Dominik Stillhart provides very helpful insight into the ICRC’s policy on public messages and confidentiality. See “Confidentiality: Key to the ICRC’s Work but not Unconditional”, ICRC, 2010, available at: www.icrc.org/eng/resources/documents/interview/confidentiality-interview-010608.htm.

39 Fabrice Weismann, “Silence Heals... from the Cold War to the War on Terror, MSF Speaks Out: A Brief History”, in Claire Magone, Michael Neumann and Fabrice Weissman (eds), *Humanitarian Negotiations Revealed*, Columbia University Press, New York, 2011, p. 196.

had made it seem as if all humanitarian organizations were pushing for an international force to be deployed in Darfur.⁴⁰

Assessing whether or not messages cross a line in terms of taking sides or expressing political views, as per the first aspect of neutrality, may be challenging. Much depends on the wording and the context. Messages aimed at referring State actors to their international obligations, for example, may fit with the principle of neutrality, but the implications of these messages must be considered. One might think of a situation in which an NGO calls for a UN peacekeeping force, working under a Chapter VII mandate, to strengthen its deployment in order to offer better protection to the civilian population in an area. Assuming that the mandate of the UN force includes a protection of civilians element, such a message does nothing other than restating this international obligation included in the mandate of the international force. However, it may have implications for NGOs' contacts with those – for example, a rebel group – who threaten civilians in an area that the peacekeeping force is supposed to protect. Should the scenario occur in which the rebels manage to take control of that area, the NGO may find its operations blocked. Textbook guidance on neutrality says that as long as public messages are based on factual data and first-hand witnessing, and are addressed to relevant actors in an even-handed manner, this type of advocacy cannot be seen as contradicting the principle of neutrality.⁴¹ This can be assessed, but clearly, what also matters is how these messages, as well as the organization and its operations as a whole, are perceived.

Perceptions

The second issue for consideration in assessing neutrality is gauging perceptions. As Nicholas Morris notes, “a combatant’s perception of the humanitarian operation has become the practical measure of its neutrality”.⁴² Humanitarian organizations may not have full control, but surely they can influence the perception of their neutrality. Efforts to influence the perception of neutrality can be verified, and the perceptions that exist of organizations can be measured. Humanitarian organizations can and should make continuous efforts to understand the way in which their intentions are understood and their activities are accepted by all relevant stakeholders, including governments, belligerents and crisis-affected populations. Perceptions and acceptance are closely related. One study notes that the perception of maintaining humanitarian principles can enhance acceptance.⁴³

40 Fabrice Weismann, “Humanitarian Aid Held Hostage”, *MSF Ideas and Opinions*, 15 November 2006, available at: www.doctorswithoutborders.org/news-stories/ideaopinion/darfur-humanitarian-aid-held-hostage.

41 See Conflict Dynamics International, *Humanitarian Access in Situations of Armed Conflict*, Practitioner’s Manual, Version 2, Swiss Federal Department of Foreign Affairs, December 2014, p. 153.

42 Nicholas Morris, *Humanitarian Aid and Neutrality*, report, conference on “The Promotion and Protection of Human Rights in Acute Crisis”, London, 11–13 February 1998, available at: www.essex.ac.uk/rightsinacutecrisis/report/morris.htm.

43 Ingrid Macdonald and Angela Valenza, *Tools for the Job: Supporting Principled Humanitarian Action*, Norwegian Refugee Council (NRC) and HPG, 2012, p. 9.

Perceptions and acceptance (also) depend on the type of activities, the modes of action, the quality of programmes and the results of an organization's efforts.⁴⁴ There is a growing interest in looking at how humanitarian organizations are perceived and accepted in general. This interest has come from two different directions in the last several years: staff security and accountability to affected populations.

Acceptance

In relation to the security of staff in volatile environments, Fiona Terry notes that the killing of an ICRC delegate in Afghanistan in 2003 forced the organization to reflect on the question of whether it could maintain the perception of being neutral.⁴⁵ As Larissa Fast notes, “the connection between security and perceptions is most apparent with regard to positing acceptance as a security management strategy. Acceptance is founded on effective relationships and cultivating and maintaining consent from beneficiaries, local authorities, belligerents, and other stakeholders”.⁴⁶ Due to the rising number of incidents and, indeed, casualties among humanitarian staff, several researchers have looked into quantitative and qualitative data that may provide evidence of politically motivated incidents and the deliberate targeting of humanitarian staff.⁴⁷ It is thought that association with a government, be it a donor that is part of an international coalition, or the government of a war-affected country, which is also a party to the conflict, may put humanitarian organizations at risk, for they are a soft target. A recent practitioners' manual on humanitarian access in situations of armed conflict recommends that “practitioners engage with any and all relevant actors with influence on access and the well-being of the population”.⁴⁸ The ICRC goes to great lengths to maintain a dialogue with all relevant parties. This practice is essential for the organization to counter any claims that it favours one party over another. It is part of the ICRC's daily experience that different sides fighting each other will accuse it of being on one side or the other. It follows that the organization will continuously have to explain and justify its identity, motivations and actions in all of its contact with parties to the conflict. According to a former ICRC director of operations, this approach gives it “the widest possible access

44 This is also illustrated in the research by Ashley Jackson, who looked at perceptions that Al-Shabaab and the Taliban have of aid agencies. See Ashley Jackson, *Negotiating Perceptions: Al-Shabaab and Taliban Views of Aid Agencies*, HPG Policy Brief No. 61, ODI, London, August 2014.

45 Fiona Terry, “The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 881, 2011, p. 175.

46 Larissa Fast, “Programming, Footprints, and Relationships: The Link between Perceptions and Humanitarian Security”, in Caroline Abu Sa'Da (ed.), *Dilemmas, Challenges, and Ethics of Humanitarian Action*, McGill-Queen's University Press, Montreal, 2012, p. 90.

47 See, for example, Abby Stoddard, Adele Harmer and Katherine Haver, *Providing Aid in Insecure Environments: Trends in Policy and Operations*, HPG Report No. 23, ODI, London, September 2006; Antonio Donini, *Humanitarian Agenda 2015: Afghanistan Country Study*, Briefing Paper, Feinstein International Center, 2006; Larissa Fast, *Aid in Danger: The Perils and Promise of Humanitarianism*, University of Pennsylvania Press, Philadelphia, PA, 2014.

48 Conflict Dynamics International, above note 41, p. 153.

both to the victims of the violence and to the actors involved”.⁴⁹ Engaging with all relevant parties does not need to be an expensive investment. It may involve drinking tea under a tree with community leaders in the late afternoon sun.

Accountability to affected populations

Acceptance is also closely related to the engagement of crisis-affected populations in humanitarian assistance efforts. This type of engagement has gained importance as part of the call for strengthening the accountability of humanitarian actors. In large part, it has been the multi-mandate organizations – those that see humanitarian action as part of a broader set of objectives and activities – that have been the driving forces behind this call. They stood at the cradle of a number of initiatives in the area of quality and accountability that have emphasized the importance of better involving crisis-affected populations in humanitarian action.⁵⁰ The Listening Project has been one significant initiative for understanding the views of recipients on the aid that they receive, although this research did not differentiate between development aid, support to peacebuilding and environmental aid.⁵¹ It is clear that continuous communications and exchanges about the intentions and content of programmes and engagement of community representatives during all phases of humanitarian action will improve our understanding of how humanitarian response is perceived and accepted. A number of issues remain unclear, however. An important factor will be which segments of the affected populations one chooses to involve – perceptions may differ between those who have not yet been identified or reached by humanitarian organizations, and those that have. Is there also a duty to reach out to these (unassisted) communities? In the same vein, engaging with community leaders who may not represent the interests of their communities may create a less than complete picture. It goes beyond the scope of this article to further analyze these issues, but one particular concern deserves much more attention. The emphasis on accountability to affected populations risks ignoring the wider context. As James Darcy puts it: “Limiting the discussion of humanitarian accountability to questions of aid organisations’ accountability to aid recipients seriously distorts the broader picture.”⁵² Darcy’s point raises the question of whether the mantra of accountability to affected populations has not been to the detriment of engaging with other stakeholders, such as relevant

49 See the interview with Pierre Kraehenbuehl, “The Neutral Intermediary Role of the ICRC: At the Heart of Humanitarian Action”, 7 July 2008, available at: www.icrc.org/eng/resources/documents/interview/neutral-intermediary-interview-070708.htm.

50 These initiatives include, for example, the Sphere Project, Humanitarian Charter and Minimum Standards in Humanitarian Response; the Active Learning Network for Accountability and Performance in Humanitarian Action; and the Humanitarian Accountability Partnership (HAP), which was succeeded recently by the CHS Alliance.

51 Mary B. Anderson, Dayna Brown and Isabella Jean, *Time to Listen: Hearing People on the Receiving End of International Aid*, CDA Collaborative Learning Projects, Cambridge, MA, November 2012.

52 James Darcy, “Have We Lost the Plot? Revisiting the Accountability Debate”, *2013 Humanitarian Accountability Report*, HAP, Geneva, 2013, p. 8, available at: www.hapinternational.org/pool/files/2013-har.pdf.

authorities, opposition groups or local leaders. In other words, whereas increased engagement with crisis-affected populations puts humanitarian organizations in an ideal position to understand the perceptions that exist of them, they should also gauge the perceptions of other relevant actors.

Caroline Abu Sa'Da's work in understanding perceptions of MSF is most relevant and instructive in this regard.⁵³ She looks at perceptions of MSF among those receiving medical care, (local) health authorities, staff and other institutional actors.⁵⁴ She notes that MSF strives for acceptance of its activities through adhering to humanitarian principles in order to ensure the safety of its teams in the field.⁵⁵ Her research sought to collect information on how the core principles of MSF's work (neutrality, impartiality and independence), as well as the notions of transparency and credibility, were understood and perceived by these different stakeholders.⁵⁶ Abu Sa'Da's study points to the need to establish relations with actors in the political sphere and for the organization to be more precise in its communications.⁵⁷ There is no doubt that other organizations can learn from this research in terms of understanding and measuring perceptions. It may help them to understand the further efforts they need to make in upholding neutrality. Verifying these efforts will be important in assessing compliance with the principle of neutrality.

Balancing neutrality with other principles

The third aspect that should be kept in mind in assessing the principle of neutrality is how this principle relates to the other principles. Maintaining neutrality is a balancing act. It is no secret that in operational contexts, humanitarian organizations need to make compromises in order to be perceived as neutral by the ruling majority, even if such a compromise is at the expense of the other core principles. A former MSF representative, for example, noted that his organization needed to set up a health clinic among a Buddhist community in Myanmar in order to be able to be seen as not taking sides in favour of the Rohingya Muslim minority, even though it felt that the needs among the Rohingyas were considerably higher.⁵⁸ In order to maintain good relations with the Buddhist majority, it decided to compromise on the aspect of proportionality in relation to the principle of impartiality, which implies that humanitarian aid should be provided first to those who need it most. Action contre la Faim refers to a similar example in relation to its operations in Yemen when it notes that it "decided to focus on providing assistance to populations in government-controlled areas

53 Caroline Abu Sa'Da (ed.), *In the Eyes of Others: How People in Crisis Perceive Humanitarian Aid*, MSF, Humanitarian Outcomes and NYU Center on International Cooperation, 2012; C. Abu Sa'Da (ed.), above note 46.

54 C. Abu Sa'Da, above note 53, pp. 48–60.

55 *Ibid.*, p. 5.

56 *Ibid.*, p. 27.

57 *Ibid.*, p. 71.

58 See video of ICRC event "Walk the Talk: Assessing the Application of Humanitarian Principles on the Ground", Geneva, 24 February 2015, available at: www.icrc.org/en/event/walk-the-talk.

when opening a new mission rather than entering unsecure parts of the country controlled by armed opposition”.⁵⁹

The point that neutrality does not lend itself to being assessed in isolation from other principles is also reflected in the highly complex questions around what mode of action is in the best interest of affected populations and thus fulfils the principle of humanity. Humanitarian action is fraught with difficult choices and dilemmas, and decisions are often a judgement call on the part of the organization(s) involved. These decisions will often depend on the organization’s mandate or mission statement and its preferred modes of action. For example, the ICRC may prioritize maintaining relations with all relevant parties to a conflict, requiring discretion and restraint. It will do so as long as it feels that its bilateral negotiations and silent diplomacy efforts are effective. However, it may end up in a situation in which it has to justify its silence on serious violations of humanitarian norms, such as in the case of the leaked ICRC reports on the serious misconduct in the detention of prisoners in Iraq and Guantanamo.⁶⁰ This may be an extreme example, but humanitarian actors may feel the temptation to express opinions on who and what is right or wrong.⁶¹ In general, however, it should be said that if organizations get into the business of pursuing justice, their neutrality will be compromised.⁶² One cannot combine humanitarian action and the pursuit of justice.⁶³

In sum, any verification of the application of the principle of neutrality should include a check of whether organizations are refraining from taking sides and making political statements. Their efforts to understand and influence the perceptions that exist of them in general, and of their neutrality in particular, should also be looked at. Lastly, the decisions and compromises that organizations have made in terms of weighing or balancing neutrality with the other (core) principles should be assessed.

Assessing independence

In looking at the principle of independence, in his book *The Golden Fleece*, Antonio Donini and others describe well how aid has been manipulated or instrumentalized, thus explaining that this principle is in jeopardy.⁶⁴ It is this thinking that is helpful in understanding and defining the principle of independence, as it obliges one to look

59 Yulia Dyukova and Pauline Chetcuti, *Humanitarian Principles in Conflict*, ACF-International, Paris, 2014, p. 10.

60 Caroline Moorehead, “Crisis of Confidence”, *Financial Times*, 18 June 2005.

61 Hugo Slim’s work provides excellent insights into moral dilemmas and ethical questions. See, for example, Hugo Slim, “Doing the Right Thing: Relief Agencies, Moral Dilemmas and Moral Responsibility in Political Emergencies and War”, *Disasters*, Vol. 21, No. 3, 1997, pp. 244–257; H. Slim, above note 4.

62 See, for example, Elizabeth Ferris, *The Politics of Protection*, Brookings Institution, Washington, DC, 2011, p. 178.

63 As Jean Pictet put it: “One cannot be at one and the same time the champion of justice and of charity.” J. Pictet, above note 3, p. 39.

64 A. Donini (ed.), above note 24.

at ways to counterbalance the co-optation or integration of aid by other actors in their policies and practices. Independence requires autonomy in actions and decision-making, for an organization cannot be free to assess needs and determine priorities based on those needs if it has ties to actors that are driven by motivations other than the humanitarian. This author suggests that it is the following three aspects that need to be examined when assessing compliance with the principle of independence:

- institutional and political independence;
- financial independence; and
- operational independence, including technical and logistical aspects.

Before describing these aspects in detail, one caveat with regard to independence should be made. Independence and isolationism are not the same. As no single humanitarian actor can address all needs alone, humanitarian action requires coordination and collaboration. Humanitarian organizations will need to engage with the relevant authorities in order to receive permission for all their operations. Verifying independence, therefore, will have to take into account not only the autonomy of humanitarian organizations but also their relationships with various other actors, which are essential to their effectiveness.

Institutional and political independence

In assessing institutional and political independence, it makes sense to differentiate between governmental and non-governmental organizations. For (inter-)governmental agencies, institutional independence appears to be a contradiction. Even political independence seems near-impossible for them, given that the governments which control these organizations are first and foremost political actors. As they are auxiliaries of their governments, Red Cross and Red Crescent Societies may encounter some of the respective issues that governmental and non-governmental organizations have in relation to independence. The issues that NGOs may face regarding political independence relate mostly to the degree to which they are implicated in or able to stay outside of government policies. The autonomy of government units covering humanitarian action, be they donors or governments of States affected by humanitarian crises, is not further examined here. Suffice it to say that what matters in assessing the principle of independence are the firewalls and institutional safeguards that have been established to provide these actors with a barrier against interference from the political sphere.

Independence in the context of the UN

As the UN is the inter-governmental and multi-mandate organization par excellence, it follows that assessing the independence of the (UN) humanitarian mission from other goals and agendas is controversial and complex. Just like other (inter-)governmental actors, UN agencies receive their instructions from member States. In natural disaster settings, close collaboration with the affected

member State is a given, and independence is less of an issue as there is a common interest in helping the State and its population to recover. In armed conflict, relations with the government, when this government is one of the belligerents, are very sensitive and constrained. A certain level of distance will be essential to securing independence, but the government is a UN member and will want to keep control. Assessing independence in this context implies verifying the decisions that UN agencies and their representatives have made in finding the balance between the principle of independence and maintaining relations.

In order to qualify the relevance of independence in the context of the UN, the UN Office for the Coordination of Humanitarian Affairs (OCHA) introduced the term “operational independence” in one of its documents.⁶⁵ Operational independence, according to an OCHA official, points to “the ‘independence’ of humanitarian decisions” by (UN) humanitarian actors.⁶⁶ Being the global multi-mandate organization, for the UN humanitarian aid will always be seen as instrumental to achieving its primary objective of peace and security. This issue of instrumentalization has become highly topical since the UN mission in Liberia in 2003, which was the UN’s first (formally) integrated mission. These missions bring together peace, human rights, development and humanitarian objectives and activities. They have been the subject of heavy criticism, because, as one NGO put it, “structural integration is seen to politicise humanitarian action as it can lead to the sub-ordination of humanitarian concerns to political and military objectives”.⁶⁷ Others feel that UN integration can have both negative and positive effects on humanitarian operations.⁶⁸ According to an OCHA representative, “current policies on UN-integration reaffirm the need to preserve humanitarian principles and humanitarian space and make clear that the objective of humanitarian action is separate from peace-consolidation objectives”.⁶⁹ In demonstrating their independence, therefore, UN agencies should be able to explain how these policies have enabled them to keep non-humanitarian considerations out of their decision-making. Have the policies been applied in setting up missions, and if so, what results have they had?

Independence in the context of National Red Cross and Red Crescent Societies

Institutional independence may be equally difficult, but not impossible, to realize for National Red Cross and Red Crescent Societies, which act in an auxiliary role to

65 OCHA, above note 7. In terms of formal recognition by the UN, the principle of independence (without the adjective “operational”) appeared for the first time in UNGA Res. 58/114, above note 11.

66 Explanation given in an email sent to the author on 1 April 2015.

67 NRC, *A Partnership at Risk? The UN-NGO Relationship in Light of UN Integration*, NRC Discussion Paper, 2011, available at: www.nrc.no/arch/img.aspx?file_id=9175273&text=.pdf.

68 See, for example, Victoria Metcalfe, Alison Giffen and Samir Elhawary, *UN Integration and Humanitarian Space: An Independent Study Commissioned by the UN Integration Steering Group*, HPG and Stimson Center, ODI, London, December 2011.

69 Email exchange between OCHA official and the author, 1 April 2015.

their respective governments.⁷⁰ In this role, National Societies are expected to perform tasks, such as emergency services, on behalf of the government. In fact, they are an extended arm of the government as they help to implement national strategies. As with the UN agencies, the issue for National Societies is what measures and actions they have taken to minimize the risk of government interference.⁷¹ In a number of cases, National Societies have government officials or their relatives on their boards. Members of royal houses are often closely involved. There are pros and cons to this level of association. It may be helpful in promoting humanitarian (and social) issues as priorities for the government, but as Mukesh Kapila writes, “it becomes a serious constraint when the government is of a repressive nature”.⁷² Larry Minear describes some famous examples of local Red Cross officials who were relatives of the leaders of Serbia and the Bosnian Republik Srpska during the war in the Balkans.⁷³ If, as the IFRC asserts, the Movement wants to maintain independence,⁷⁴ it should examine the implications of this commitment. One step forward could be to verify the value and solidity of the firewalls that National Societies have in place in their relations with the government.

Independence in the context of NGOs

Given their non-governmental status, the basic assumption is that it is easier for NGOs to assert their independence from governments on institutional grounds. This expectation may not necessarily apply to every NGO, however. For organizations such as the Danish Refugee Council and Norwegian Refugee Council (NRC), their names might create confusion. Do they represent a government or not? How do they avoid being associated with the political situation in their (home) countries? This issue became a real one for the Danish Refugee Council in 2006 in the context of the Danish cartoons of the Prophet Muhammad. Although the organization had, of course, nothing to do with the cartoons, it was expelled from Chechnya.⁷⁵ In addition, a number of NGOs seem unhesitant to take on former government officials as (senior) staff, which may also raise an issue in terms of perception. The International Rescue Committee, for example, recruited the former UK foreign secretary, David Miliband, as its president in 2013; one might think that having a former foreign minister of a permanent member State of the UN Security Council as president would entail

70 See, for example, Henryk Leszek Zielinski, *Health and Humanitarian Concerns: Principles and Ethics*, Martinus Nijhoff, Dordrecht, 1994, p. 14.

71 O’Callaghan and Leach describe a number of actions that the Lebanese Red Cross has taken to assert its independence. S. O’Callaghan and L. Leach, above note 28, pp. 300–301.

72 Mukesh Kapila, “The Red Cross and Red Crescent”, in Roger Mac Ginty and Jenny H. Peterson (eds), *The Routledge Humanitarian Companion*, Routledge, Milton Park, 2015, p. 185.

73 Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries*, Kumarian Press, Bloomfield, CT, 2002 p. 64.

74 See: www.ifrc.org/en/who-we-are/vision-and-mission/the-seven-fundamental-principles/independence/.

75 “Chechnya Expels Danish Aid Agency”, *New York Times*, 8 February 2006, available at: www.nytimes.com/2006/02/08/international/08chechen.html?_r=0.

risks in terms of perception and political bias. In commenting on Miliband's new role, one writer explained that Miliband's temptation is to confuse humanitarian action with more partisan intervention.⁷⁶

Other than demonstrating the absence of institutional links, in endorsing the 1994 Code of Conduct, many NGOs have committed to political independence by stating that they will not act "as instruments of government foreign policy".⁷⁷ The most extreme cases in which NGOs (and other humanitarian agencies) have had to argue for their independence are those in which they are expected to be on the same side as (their) governments in the "global war on terror" following the 11 September 2001 attacks in the United States. The most well-known example is the reference of the then US secretary of State, Colin Powell, to NGOs in their role of force multiplier as being "such an important part of our combat team".⁷⁸ To make things worse, in the same remarks, Powell referred to cooperation between governments and NGOs, which he affirmed "is not the same as co-opting you [the NGOs]. Always, we must respect your [the NGOs'] independence."⁷⁹ The Provincial Reconstruction Teams (PRTs) that have been deployed in Afghanistan provide another extreme example. These teams are civil-military units designed as stabilizing forces active in the areas of security, humanitarian aid and reconstruction efforts. They can be seen as the ultimate manifestation of the new paradigm of linking military, political and humanitarian aims in international peace operations and thus blurring, if not erasing altogether, the distinction between military and civilian actors. In several (donor) countries, there have been heated debates between relevant government ministries and NGOs on the implications of the PRT concept.⁸⁰

More recent is the debate on the impact of counterterrorism measures on humanitarian action. This topic has climbed rapidly up the list of policy issues for humanitarian organizations in the past few years. Humanitarian organizations are concerned that the measures that many States have adopted to combat terrorism have affected those in need and will do so even more in the future.⁸¹ These measures can range from preventing organizations' representatives from having

76 Simon Jenkins, "The Red Cross Needs to Reclaim its Hijacked Neutrality", *The Guardian*, 1 November 2013.

77 1994 Code of Conduct, above note 13, Principle 4.

78 Secretary Colin L. Powell, Remarks to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations, 26 October 2001, available at: <http://2001-2009.state.gov/secretary/former/powell/remarks/2001/5762.htm>.

79 *Ibid.*

80 For example, German NGOs have criticized the PRT concept from its inception because, as they note, "the mandates of civil and military actors are mixed up". VENRO, *Five Years of PRTs in Afghanistan: An Interim Stocktaking from the Angle of the German Aid Organisations*, VENRO Policy Paper No. 1/2009, 2009, p. 2, available at: www.venro.org/fileadmin/Publikationen/PDFs_engl/Afghanistan-Paper_engl_neu.pdf.

81 See, for example, Sarah Pantuliano, Kate Mackintosh, Samir Elhawary and Victoria Metcalfe, *Counter-Terrorism and Humanitarian Action: Tensions, Impact and Ways Forward*, HPG Policy Brief No. 43, ODI, London, October 2011. See also the article by Phoebe Wynn-Pope, Yvette Zegenhagen and Fauve Kurnadi in this issue of the *Review*.

contact with groups labelled as terrorist, to limiting the transfer of financial transactions and imposing travel bans for nationals or the transfer of goods to countries such as Iraq, Somalia and Syria. Although some countries have adopted specific clauses for humanitarian aid to be excluded from these measures, it is generally assumed that under these laws staff of humanitarian organizations could be prosecuted for alleged support to armed groups labelled as terrorists.⁸² In theory, for humanitarian organizations, determining the proper relationship with States that adopt counterterrorism measures is no different from engaging with any party to a conflict. In reality, the issue has been highly sensitive. Taking a stance against governments that are (among) their donors will not be easy for humanitarian organizations. In some cases, however, a number of NGOs have refused to accept funds from the governments of their home countries, when these governments, individually or by their membership of an international coalition, are in fact belligerents.⁸³ In short, assessing institutional and political independence requires organizations to explain what actions they have taken in counterbalancing the level of interference from political actors. These actions can be verified.

Financial independence

Another evident way to maintain independence is to withstand the conditions that may come with funding. Conversations on independence within the humanitarian community centre quickly on the issue of finances and the way in which humanitarian response is funded. This is for an obvious reason: if a humanitarian organization has to seek funds before it can launch operations, it will not have the freedom to decide where and when it should respond. Financial independence, through having discretionary funds, is essential to maintaining the principles of humanity and impartiality. This view finds support in the *Principles and Good Practice of Humanitarian Donorship*, which recommends that donors reduce earmarking of funds.⁸⁴ More generally, by endorsing these principles – or, for EU member States, the European Union Consensus on Humanitarian Aid,⁸⁵ which recognizes the four core principles – donor governments have made clear commitments to applying humanitarian principles in their decisions. In reality, however, the majority of humanitarian funding is provided bilaterally, from

82 See Kate Mackintosh and Patrick Duplat, *Study of the Impact of Counter-Terrorism Measures on Principled Humanitarian Action*, independent study commissioned by OCHA and NRC, July 2013; Naz. K. Modirzadeh, Dustin A. Lewis and Claude Bruderlein, “Humanitarian Engagement under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape”, *International Review of the Red Cross*, Vol. 93, No. 993, 2011, pp. 623–647.

83 See, for example, Y. Dyukova and P. Chetcuti, above note 59, p. 11.

84 Good Humanitarian Donorship (GHD), *23 Principles and Good Practice of Humanitarian Donorship*, 2003, available at: www.ghdinitiative.org/ghd/gns/principles-good-practice-of-ghd/principles-good-practice-ghd.html. The GHD initiative brings together more than forty donor governments.

85 Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, “The European Consensus on Humanitarian Aid”, *Official Journal of the European Union*, 2008/C 25/01, 30 January 2008.

donor to organization, earmarked for specific crises, and comes with strings attached. In the context of the Good Humanitarian Donorship (GHD) initiative and donor governments' discussions, a number of these donor governments have repeatedly pointed out that they will continue to earmark funds in terms of designating the funds' purpose, be it a specific crisis or a field of activity. Inevitably, such practices have an impact on the independence of humanitarian organizations. They also lend themselves to political influences in relation to foreign policy objectives from donors. In general, there is evidence of the increased politicization of funding decisions.⁸⁶ Humanitarian organizations need to take measures to withstand (political) influences from donors. It should be possible to assess what humanitarian organizations have done to hold off such pressures, which may derive from political priorities such as foreign policy objectives. Two questions come to mind: to what degree has the receiving organization tailored the design and implementation of the project proposal to the expressed priorities of donors, and to what degree are these donor preferences in line with the needs assessments and analysis of the organization itself?⁸⁷

Unrestricted funding

For humanitarian organizations to reach financial independence, they should secure a significant part of their funding as unrestricted. This implies mobilizing funds from private sources and/or government donors where the organization on the receiving end decides where and for what purpose the funds should be allocated. It can also reserve (part of) the money for new, unforeseen or forgotten crises. It should be noted that not all private funding comes un-earmarked. Whereas private funding may be the preferred source of income, especially for NGOs, this money may be earmarked too when it comes in relation to specific appeals for new emergencies or campaigns. Also, private donors may have expectations regarding how organizations spend their donations. Faith-based NGOs may have difficulties explaining that they allocate funds for activities in the area of reproductive health, for example.⁸⁸

Introducing a standard for financial independence

One criterion for financial independence that could be put in place would be to maintain a standard which determines that of the total funds an organization receives, a certain percentage should remain freely at its disposal. This standard would be relevant for all humanitarian organizations, inter-governmental or non-governmental, but different percentages could be set depending on the type of

86 See, for example, DARA, *Humanitarian Response Index 2011: Addressing the Gender Challenge*, Madrid, 2012, p. 42. See also DARA, *The European Consensus on Humanitarian Aid: An NGO Perspective*, NGO study commissioned by VOICE, Brussels, May 2014, p. 8.

87 See Ajaz Ahmed Khan and Willem van Eekelen, *Humanitarian Aid: Independence and Innovation*, Islamic Relief, 2008, p. 3.

88 *Ibid.*, p. 5.

organization. The exact percentage(s) should be decided by an inter-agency forum, but it should take into account that, according to estimations, private humanitarian funding grew to nearly 30% of total humanitarian funds in 2011.⁸⁹ In addition, it should be kept in mind that not all institutional donor funding comes as earmarked. The question could be raised as to why, in the multitude of quality and accountability instruments for humanitarian action, such a standard has not yet been set. At the very end of the CHS, it is noted that “the acceptance of resources does not compromise [a humanitarian actor’s] independence”.⁹⁰ Without adding a benchmark, this may remain a hollow statement. It also seems a missed opportunity to assert the principle of independence in a standard that is expected to be the common reference document.

In examining financial independence, diversity of funding sources is also important. Receiving a large percentage of funding, even if un-earmarked, from only one donor government may link that organization, at least in terms of perceptions, to that specific donor.⁹¹ If, for example, an NGO and one donor government have a long tradition of working closely together, the NGO may anticipate, even unconsciously, what it believes the donor’s conditions are for funding. As part of the diversification of humanitarian funding sources, it is generally good news that a number of non-Western donors have increased their humanitarian budgets.⁹² It is thought that these non-Western donors, from the Gulf or other emerging economies, have different principles, policies and practices.⁹³ It goes beyond the scope of this article to verify this assumption, but for humanitarian organizations, and even more so, affected populations, the increase of diverse funding sources is good news.

Promoting financial independence is not intended to suggest moving away from donor governments. In an interdependent international community in which governments have assumed responsibilities with regard to international humanitarian action, they also have obligations when it comes to providing the financial means for humanitarian response. MSF does not accept any funds from governments for its work in situations of armed conflict and does not accept any funding from the US government.⁹⁴ Interestingly, Abu Sa’Da’s study notes that whereas MSF prioritizes the aspect of financial independence as part of its

89 Velina Stoianova, *Private Funding for Humanitarian Assistance: Filling the Gap?*, Global Humanitarian Assistance (GHA), Development Initiatives, August 2013, p. 2.

90 CHS, above note 19, Commitment 9.6-F.

91 At the time of writing, the pledge of one donor country in response to the UN appeal for Yemen has created much controversy. This donor’s pledge is for the full amount of the appeal, but the donor government in question is also a belligerent in that conflict.

92 The *GHA Report 2014* notes that the role of governments outside of the Organisation for Economic Cooperation and Development’s Development Assistance Committee has continued to increase substantially, with their share of the government total more than doubling between 2011 and 2013, from 6% to 14%. GHA, *GHA Report 2014*, Development Initiatives, 2014, available at: <http://www.globalhumanitarianassistance.org/report/gha-report-2014>.

93 See, for example, Vincent Bernard, “Editorial Comment”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011, p. 893.

94 See: www.msf-me.org/en/section/frequently-asked-questions.

identity, “the general public are generally unaware of its funding sources”.⁹⁵ Off the record, some MSF representatives will admit that the organization’s consistent policy of accepting only a small percentage of government funding has had its downside: the organization’s network of contacts and relationships has been reduced.

Addressing standard practices

The main problem related to financial independence may actually exist within the context of the existing practices of donor governments and humanitarian organizations. These practices have become so routine that it seems they are not even noticed any more. For example, in international fora on humanitarian financing, donor government representatives may be heard as referring to “our NGOs”, which suggests an intimate relationship with the NGOs from these countries. Likewise, the use of the term “implementing partner” is commonly accepted. It refers to organizations that work as sub-contractors of a donor government or UN organization such as the UN High Commissioner for Refugees. The issue is, of course, whose programme is being implemented? Several larger (Western) donors have significant presences, including disaster assessment teams, in crises areas, and they may tender projects that they define. A number of donors also insist on visibility and the display of their name or logo on cars or other materials bought with their funding. A few organizations, in particular those that attach high importance to emphasizing their independence, have had long and intense debates with donors such as the European Commission Humanitarian Office in this regard. The degree to which organizations consider the display of donor names or keep the attribution of their funds to government sources at a (contractual) minimum can be assessed. Another development that is reason for concern is the recent practice of involving donor government representatives in operational humanitarian coordination mechanisms, be it at the global or field level.⁹⁶ These mechanisms used to be operational organizations’ only fora, and criticism has been expressed with regard to opening them up to donor governments, primarily those that are of Western or Northern origin.⁹⁷ Such a practice does not help to push back the perception that the humanitarian system is driven by the interests of these donors. In sum, in relation to assessing financial independence, it is essential to look at the degree to which organizations are having issues with these standard

95 C. Abu Sa’Da (ed.), above note 46, p. 61.

96 At the international level, the meeting of emergency directors of large humanitarian organizations regularly includes donor representatives and in a number of countries, donor government representatives participate in the meetings of Humanitarian Country Teams.

97 See, for example, Norah Niland, Riccardo Polastro, Antonio Donini and Amra Lee, *Independent Whole of System Review of Protection in the Context of Humanitarian Action*, commissioned by the NRC on behalf of the Inter-Agency Standing Committee (IASC) and the Global Protection Cluster, NRC, Geneva, May 2015, p. 19.

practices and to verify the policies or measures that organizations have taken to achieve sufficient financial flexibility.

Operational independence

Operational autonomy in technical and logistical areas can also be assessed. In order to be fit for purpose, an operational organization must have the capacity, skills and expertise to operate autonomously. If it is relying on others for the transport of goods and staff, it risks being seen as part of the same operation. It should not need technical instructions from others to deliver a high-quality job; its staff should have the requisite (technical) credentials. These elements can be assessed, but the operational picture is not straightforward. Firstly, an increasing number of international actors are delivering humanitarian response through local channels. This mode of action may be the delivery channel of choice in a number of settings, especially natural disasters – local actors are more knowledgeable on the circumstances, have a closer connection with the population and may stay on after the emergency phase. It entails a more development-oriented way of working. In some highly insecure environments, such as Somalia or Syria, international actors have also chosen to work through local groups, an approach that is frequently labelled “remote management”.⁹⁸ Operational independence has to be looked at differently in these contexts. It should take into account the type of relationship that has been developed between the international and the local actor; the transfer of attributes such as the international actor’s expertise, capacity and knowledge; and the level of interference from other actors in the delivery of relief items.

The second instance in which operational independence needs to be contextualized is when military forces are deployed for humanitarian reasons. Relevant guidelines prescribe that international military forces should only become involved in humanitarian response as a last resort – i.e., when no other civilian option is available. Policy documents also refer to the risk of the humanitarian principles becoming blurred if humanitarians associate themselves too easily and too closely with the military, especially in the context of armed conflict.⁹⁹ The last-resort criterion also applies to accepting armed escorts, as UN guidance notes that this is an exception to the general rule not to accept them.¹⁰⁰ These policies, adopted at the inter-agency level, have been the product of long and intense debates on the appropriate distance between humanitarian organizations and the military. The deployment of military forces in natural

98 See, for example, Abby Stoddard, Adele Harmer and Jean S. Renouf, *Once Removed: Lessons and Challenges in Remote Management of Humanitarian Operations for Insecure Areas*, Humanitarian Outcomes, New York, 25 February 2010.

99 IASC, *Civil-Military Guidelines and Reference for Complex Emergencies*, OCHA, 2008, p. vii. For a review of the literature on humanitarian civil–military coordination, see Victoria Metcalfe, Simone Haysom and Stuart Gordon, *Trends and Challenges in Humanitarian Civil–Military Coordination*, HPG Working Paper, ODI, London, May 2012.

100 IASC, *IASC Non-Binding Guidelines on the Use of Armed Escorts for Humanitarian Convoys*, 2013, p. 3.

disaster settings is less controversial. As an OCHA policy pamphlet notes: “In many States, national military or civil defence units are part of or even leading national responses to disasters and crises on their territory. Affected States have the responsibility to use whatever means at their disposal to respond to the needs of their citizens.”¹⁰¹ Humanitarian organizations might look at the military for their planning capability, logistical support, specialist resources for infrastructure and engineering projects, medical facilities, and search and rescue capacity. They may be tempted by these capacities, especially in settings where there is a shortage of capacity and in which one (military) helicopter for airlifting supplies might make a huge difference. In highly insecure environments, military assets may also be the only means for the evacuation of humanitarian staff of various organizations. Any assessment of the appropriate level of association of humanitarian organizations with the military, which may impact on their independence, will have to take into account the last-resort criterion. How much did the organization try to have its own capacity in place, or did it look for other, civilian alternatives to augment its capacity? These questions will be even more relevant in relation to countries that have both armed conflicts and natural disasters taking place at the same time. Humanitarian organizations should be very cautious in their relations with the military in these situations. While it would be feasible to assess operational independence, as with the other elements of the principle of independence, there is always a need for contextualization.

Conclusion

This article maintains that the application of neutrality and independence can and should be verified, as they remain part of the core humanitarian principles. It also argues that humanitarian actors must make an effort to uphold these principles. Promoting the principles by just referring to them is not enough. Humanitarian organizations should be able to demonstrate the actions that they have concretely undertaken to apply the principles and be transparent on the challenges and compromises they make. The various elements of the principles identified in this article are meant as references or a framework in this analysis. Without suggesting a monopoly (or bi-opoly) of the ICRC and MSF on neutrality and independence, the article points in several places to these two organizations for whom neutrality and independence appear as articles of faith. Why, in a world with hundreds, if not thousands, of other humanitarian actors, it is only these two organizations that stand out is, at least, a question that deserves further attention. A principled approach is not a luxury or the prerogative of a few agencies that favour a Dunantist view.¹⁰² One question that should be the subject

101 Available at: <https://docs.unocha.org/sites/dms/Documents/Last%20Resort%20Pamphlet%20-%20FINAL%20April%202012.pdf>

102 See Eva Wortel, “Humanitarians and Their Moral Stance in War”, *International Review of the Red Cross*, Vol. 91, No. 876, 2009, p. 800.

of further research is whether or not there is a noticeable difference between the Dunantist and multi-mandate organizations in their ability to successfully gain consent for operations from relevant authorities, and related to this, whether these differences can be attributed to these two types of organizations' respective levels of adherence to humanitarian principles. Overall, it is good news that the number of statements and policy documents from the broader humanitarian community on the importance of humanitarian principles continues to grow.¹⁰³ The next step for humanitarian actors is to put in place ways to verify the actions that they take to uphold the principles. Hopefully, this article has made a contribution to supporting them in this endeavour.

103 See, for example, the Joint Statement on Humanitarian Principles endorsed by forty-eight humanitarian NGOs as a common contribution to the World Humanitarian Summit consultations, available at: www.actioncontrelafaim.org/en/content/joint-statement-humanitarian-principles-endorsed-now-48-humanitarian-ngos.

Tools to do the job: The ICRC's legal status, privileges and immunities

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Abstract

The International Committee of the Red Cross (ICRC) enjoys a specific legal status and specific privileges and immunities under both international and domestic law. They enable the ICRC to effectively carry out its mandate, and to do so in full conformity with its Fundamental Principles and standard working modalities. This article clarifies the ICRC's particular legal status and explains the rationale, scope and legal sources of its privileges and immunities.

Keywords: ICRC, legal status, headquarters agreements, privileges, immunities, observer status, neutrality, independence, confidentiality, testimony.

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Introduction

The International Committee of the Red Cross (ICRC) is a neutral, independent and impartial humanitarian organization mandated by the international community of States to protect and assist victims of armed conflicts and other situations of violence. As such, the ICRC enjoys a specific legal status as well as specific

privileges and immunities under both international and domestic law.¹ This status and these privileges and immunities are granted to the ICRC by States in order to enable the organization to carry out its mandate and to do so in full conformity with the principles of neutrality, impartiality and independence and its standard working modalities, in particular confidentiality. As such, they are colloquially referred to as “tools” given to the ICRC by States “to do the job”. This article aims to clarify the particular legal status of the ICRC, to set out the privileges and immunities necessary for the ICRC to carry out its mandate, and to explain the rationale, legal sources and limits of such privileges and immunities.

The article is divided into four main parts. The first part discusses the ICRC’s legal status as an, albeit atypical, international organization (IO). The second part explains why States grant privileges, facilities and immunities to the ICRC and how these privileges and immunities are established in law. The third part discusses in more detail the specific privileges and immunities that are necessary for the ICRC to effectively carry out its humanitarian mandate and activities in full conformity with its Fundamental Principles and standard working modalities, in particular confidentiality. The final part deals with the limits to the ICRC’s privileges and immunities and with the settlement of disputes between the ICRC, States and third parties.

ICRC legal status: From a private association to an international organization

The ICRC’s mandate as the basis for its legal status

The ICRC was established as a private association under Swiss law in 1863. Ever since its foundation, the ICRC has worked to protect and assist victims of armed conflict and other situations of violence and has served as a neutral intermediary between parties to armed conflicts.² Originally working as a private initiative, though often upon the request of States, the ICRC was later officially mandated by States to carry out its humanitarian mission and activities. Today the ICRC’s mandate is enshrined in the 1949 Geneva Conventions, their Additional Protocols and the Statutes of the International Red Cross and Red Crescent Movement (the Movement),³ and can be summarized as follows:

- 1 For a definition of privilege and immunity, see note 47 below.
- 2 See Article 3 of the original ICRC Statutes, adopted on 15 November 1915 (on file with author), and the ICRC’s mission statement, available at: www.icrc.org/en/who-we-are (all internet references were accessed in April 2015).
- 3 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I); Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II); Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into

- to ensure the protection of and assistance for victims of armed conflicts and other situations of violence;
- to promote and work for the faithful application of international humanitarian law; and
- to serve as a neutral intermediary between parties to armed conflicts.⁴

With the conventional mandate entrusted to it by the international community of States,⁵ the ICRC obtained legal status as an IO, albeit an atypical one.⁶ Today, the ICRC is generally recognized, while in a class of its own, as having a legal status equivalent to that of an IO.⁷ In the following section, the legal status of the ICRC is discussed in more detail.

An international organization of its own kind

Admittedly, the ICRC is an atypical IO and is really one of a kind. There is no general definition of what qualifies an organization as an IO under international law, but there is a general tendency and practice by States to limit IO status and establish international legal personality and grant privileges and immunities to

force 21 October 1950) (GC IV), Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, Geneva, 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) (AP I); and Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978) (AP II), all available at: www.icrc.org/ihl; Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in 1986 and amended in 1995 and 2006 (entered into force 8 November 1986), available at: www.icrc.org/eng/resources/documents/misc/statutes-movement-220506.htm.

- 4 The following provisions of the 1949 Geneva Conventions make specific reference to the ICRC: GC I, Arts 3, 9, 10, 11, 23; GC II, Arts 3, 9, 10, 11; GC III, Arts 3, 9, 10, 11, 56, 72, 73, 75, 79, 81, 123, 125, 126; GC IV, Arts 3, 10, 11, 12, 14, 30, 59, 61, 76, 96, 102, 104, 108, 109, 111, 140, 142, 143. In accordance with Article 10 of GC I–III and Article 11 of GC IV, the ICRC can – and in practice does – exercise many of the functions entrusted to the Protecting Power by the following provisions: GC I, Arts 8, 16, 23, 48; GC II, Arts 8, 19, 44, 49; GC III, Arts 20, 121, 122, 128; GC IV, Arts 9, 23, 24, 35, 39, 42, 43, 45, 49, 52, 55, 60, 71, 72, 74, 75, 83, 98, 101, 105, 113, 129, 131, 137, 145. The relevant provisions in AP I are Articles 5, 6, 33, 78, 81, 97 and 98. Articles 2, 11, 45, 60, 70 and 84 of AP I deal with the Protecting Power. The status of the ICRC is also recognized in Article 24 of AP II. The role and functions of the ICRC are also helpfully summarized in Article 5 of the Statutes of the International Red Cross and Red Crescent Movement.
- 5 The ICRC's mandate is a universal one, as is illustrated by the universal ratification of the 1949 Geneva Conventions, the very widespread ratification of the 1977 Additional Protocols thereto (at the time of writing, there were 174 States party to AP I and 168 States party to AP II), and the adoption by consensus of the Movement's Statutes by the International Conference of the Movement, which enjoys universal State participation (all States party to the Geneva Conventions are represented at the International Conference). A full and up-to-date list of States party to the Geneva Conventions and their Additional Protocols is available at: www.icrc.org/ihl.
- 6 In Switzerland, where the organization was founded, the ICRC has a dual status: while maintaining its legal capacity as a private association for administrative reasons directly related to the presence of its headquarters in Geneva, the ICRC – per its headquarters agreement of 1994 – also has the legal status of an IO in Switzerland. See also note 8.
- 7 This recognition by States and IOs will be discussed in detail later in the article. See also Pierre-Marie Dupuy and Yann Kerbrat, *Droit international public*, 10th ed., Dalloz, Paris, 2010, p. 301; Yves Beigbeder, *The Role and Status of International Humanitarian Volunteers and Aid Organizations*, Martinus Nijhoff, Dordrecht, Boston and London, 1991, p. 327.

intergovernmental IOs only – that is, to those IOs established by a treaty and governed by the States party to that treaty. While some States have a broad and rather inclusive definition of an IO and grant IO status and privileges and immunities to a variety of international entities,⁸ the majority of States only grant IO status and privileges and immunities to IOs of an intergovernmental nature.⁹ In what follows, the term “international organization” is therefore used in this stricter meaning of an intergovernmental organization.

The typical example of an IO is the United Nations (UN). Its founding treaty, the UN Charter, sets up the organization, defines its functions and defines the inherently intergovernmental composition of its governing bodies.¹⁰ Interestingly enough for our present purposes, Articles 104 and 105 of the Charter provide that:

104. The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

105. (1) The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes. (2) Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in

8 The 2006 *Loi fédérale sur les privilèges, les immunités et les facilités, ainsi que sur les aides financières accordés par la Suisse en tant qu'Etat hôte* (available at: www.admin.ch/ch/fr/rs/c192_12.html) distinguishes between three types of international organizations to which Switzerland grants privileges and immunities: (1) intergovernmental organizations (such as the UN, its specialized agencies or the World Trade Organization), (2) other international organizations or so-called “international institutions” (such as the ICRC, the International Federation of Red Cross and Red Crescent Societies, or the Organization for Security and Cooperation in Europe), and (3) quasi-governmental international organizations (such as the International Air Transport Association or the World Anti-Doping Agency). For further details on the rationale for broadening the international beneficiaries of privileges and immunities and the definition and characteristics of the three types of IOs referred to above, see the official commentary on the law: *Message relatif à la loi fédérale sur les privilèges, les immunités et les facilités, ainsi que sur les aides financières accordés par la Suisse en tant qu'Etat hôte*, 13 September 2006, pp. 7609–7619, 7643–7646, available at: www.admin.ch/opc/fr/federal-gazette/2006/7603.pdf.

9 In some States this is even officially enshrined in domestic legislation regulating the privileges and immunities of IOs. See, for example, Australia's International Organisations (Privileges and Immunities) Act of 1963, which describes an IO to which the Act applies as “an organisation: (a) of which Australia and a country or countries other than Australia are members; or (b) that is constituted by a person or persons representing Australia and a person or persons representing a country or countries other than Australia”. Section 5, available at: www.comlaw.gov.au/Details/C2013C00673; Malaysia's International Organisations (Privileges and Immunities) Act of 1992, which contains a definition identical to that of the Australian Act quoted above. Section 3.1, available at: www.agc.gov.my; or the US International Organizations Immunities Act of 1945, which describes an IO to which the Act applies as “a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this [Act]”. Section 288, available at: www.law.cornell.edu/uscode/text/22/288.

10 Charter of the United Nations (UN Charter), 26 June 1945, 1 UNTS XVI (entered into force 24 October 1945) (UN Charter), available at: www.un.org/en/documents/charter/.

connexion with the Organization. (3) The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

These provisions reflect the principle of functionality, which is the cornerstone of the international legal regime on privileges and immunities of IOs and will be the starting point for discussion of the ICRC's status and privileges and immunities later in the article.

While the ICRC, like the majority of IOs, has received its mandate from the international community of States through international treaties,¹¹ it has neither been founded by States through a constitutive treaty, nor is it governed by States, not even by those that are party to the treaties that lay down its mandate. The ICRC was established by private individuals as a private association under Swiss law, and its governing body is composed of private individuals as opposed to State representatives.¹² In that sense, the ICRC is fundamentally different from the UN and other IOs and more similar to a private or non-governmental organization (NGO).¹³ This being said, it is worth pointing out that, even after being entrusted with an official mandate under the Geneva Conventions, at no point in time did States even suggest that the ICRC should be governed by States. On the contrary, the fact that the ICRC is governed by a body of private individuals, who act in their private capacity and are all of the same (Swiss) nationality, is generally seen as one of the mechanisms for ensuring the ICRC's capacity to be fully neutral, and to be perceived as such.¹⁴

- 11 See above notes 3 and 4. The Statutes of the International Red Cross and Red Crescent Movement do not necessarily qualify as "treaties", but the fact that they were adopted, by consensus, by a body of which all States party to the universally ratified 1949 Geneva Conventions are members, demonstrates their relevance as an international legal instrument for the purpose of defining the mandate entrusted to the ICRC by States.
- 12 The ICRC's governing body, the Assembly (also referred to as the Committee), co-opts its fifteen to twenty-five members, who serve in a private capacity, from among Swiss nationals. Statutes of the ICRC, above note 2, Articles 7 and 9; see also ICRC, "Who we are: Governance", available at: <https://www.icrc.org/en/who-we-are/the-governance>.
- 13 The term "NGO" is used here in the sense of a not-for-profit organization of a non-governmental nature – i.e., one set up and governed by private individuals, rather than States, and defining its own mission and functions, rather than being given a treaty-based mandate by States.
- 14 The Code of Conduct for Assembly Members (on file with author) prevents Assembly members from exercising any activity that could reflect negatively on the ICRC's neutrality or could otherwise be prejudicial to the ICRC. This includes holding high public office in Switzerland, working for an intergovernmental organization or working for an organization that supports or favours one or more parties to an armed conflict (Articles 2 and 6). The independence of Assembly members from their country of nationality, Switzerland, is further endorsed and guaranteed by the ICRC's headquarters agreement with Switzerland, which provides that the Swiss government "guarantees the ICRC's independence and freedom of action" and, conversely, that "Switzerland shall not incur, by reason of the activity of the ICRC on its territory, any international responsibility for acts or omissions of the ICRC or its staff" (Articles 2 and 20). These provisions mirror those in the headquarters agreements of other IOs – such as the International Labour Organization, the World Health Organization and the World Meteorological Organization – with Switzerland.

Thus, while the ICRC's existence and governance are not mandated by States, its functions and activities are. In that sense, the ICRC is really hybrid in nature and is neither a classic IO nor a typical NGO. As a matter of both law and practice, the ICRC – based on its mandate and its unique role in the regime established in particular by the 1949 Geneva Conventions – has come to be granted a legal status and treatment equivalent to that of an IO. Just like an IO, but unlike a national or international NGO,¹⁵ the ICRC not only has a treaty-based mandate but – directly derived therefrom – enjoys both international legal personality¹⁶ and privileges and immunities in both the international and domestic legal orders.¹⁷

This evolution in the ICRC's status – from a private association under Swiss law to an IO with legal personality – is illustrated well by the evolution of

15 Private associations and national and international NGOs do not enjoy international legal personality and as such have no legal capacity to act in the international legal order and generally do not enjoy any privileges and immunities but remain fully subject to the domestic law of their country of origin and of the countries in which they operate.

16 International legal personality generally can be derived from three criteria, all of which the ICRC fulfils: (1) capacity to conclude treaties (e.g. at the time of writing, the ICRC had concluded status agreements, which are by nature international treaties, with ninety-five States, and was negotiating thirteen more); (2) capacity to enter into diplomatic relations (in order to carry out its mandate, the ICRC has always engaged and continues to engage intensively in bilateral relations with States, bilateral relations that take place in accordance with formal diplomatic practice; moreover, observer status at the UN and almost thirty other international and regional intergovernmental organizations allows the ICRC to fully participate in multilateral diplomacy); (3) capacity to operate and entertain claims in its own right in the international legal order (contrary to an NGO, the ICRC acts in the international legal order in its own capacity and as such does not require intervention by any State to carry out its mandate or enforce its rights. For example, the ICRC directly intervenes with States to ensure they respect their obligations under the Geneva Conventions and their Additional Protocols, ICRC status agreements provide for direct and bilateral dispute settlement mechanisms – usually negotiation and arbitration – in case of disputes between the host State and the ICRC, and the ICRC intervened directly before the International Criminal Tribunal for the Former Yugoslavia (ICTY) to claim its right under international law to non-disclosure of confidential information: see ICTY, *Prosecutor v. Simić et al.*, Case No. IT-95-9, Decision on the Prosecution Motion under Rule 73 for a Ruling Concerning the Testimony of a Witness, 27 July 1999). For a slightly outdated but still relevant analysis, see Christian Dominicé, “La personnalité juridique internationale du CICR”, in Christophe Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, ICRC and Martinus Nijhoff, Geneva and The Hague, 1984. See also Malcolm N. Shaw, *International Law*, 6th ed., Cambridge University Press, Cambridge, 2008, p. 262 (“[International legal p]ersonality may be acquired by a combination of treaty provisions and recognition or acquiescence by other international persons. For instance, the [ICRC], a private non-governmental organisation subject to Swiss law, was granted specific functions under the 1949 Geneva Red Cross Conventions and has been accepted as being able to enter into international agreements under international law with international persons”). See also Christian Walter, “Subjects of International Law”, in *Max Planck Encyclopedia of Public International Law*, Oxford University Press, Heidelberg and Oxford, 2012, para. 7, available at www.mpepil.com (referring to “atypical subjects of international law” such as the Holy See, the Sovereign Order of Malta and the ICRC, whose “role in the promotion and implementation of the laws of war has led it to being endowed with specific functions under the 1949 Geneva Conventions. It has also entered into international treaties with a number of States and international organizations such as the UN”); James Crawford (ed.), *Brownlie’s Principles of Public International Law*, 8th ed., Oxford University Press, Oxford, 2012, p. 116 (“[I]t is states and organizations which represent the normal types of legal person on the international plane. However, the realities of international relations are not reducible to a simple formula. The ‘normal types’ have congeners which create problems, and various entities which are of neither type can have a certain personality – for example, the [ICRC]”).

17 For example, at the time of writing, the ICRC enjoyed privileges and immunities – through bilateral status agreements or on the basis of domestic legislation – in 103 countries, and was negotiating status agreements granting privileges and immunities in a further thirteen countries (numbers are up to date

the ICRC's observer status at the UN and by the treatment that States reserve for the ICRC in practice.

The ICRC at the UN: From consultative status as an NGO to observer status as an international organization

Initially, the ICRC enjoyed consultative status as an NGO with the United Nations' Economic and Social Council (ECOSOC).¹⁸ Article 71 of the UN Charter indeed provides for the establishment of "arrangements for consultation with [national or international] non-governmental organizations which are concerned with matters within its competence". But as of the end of the 1960s, this status – which predated and thus did not take into account the ICRC's mandate entrusted to it by the 1949 Geneva Conventions – quickly became both inadequate and inappropriate and no longer reflected the required relationship between the ICRC and the UN, two key actors on the international scene dealing with situations of armed conflict. In order to address this situation, UN General Assembly Resolution 45/6, sponsored by 138 UN member States, was adopted by consensus on 16 October 1990, granting the ICRC observer status to the UN General Assembly and effectively putting the ICRC on the same footing as IOs with UN observer status. The ICRC is the first and one out of only four IOs not of an intergovernmental nature to enjoy such a status in the UN system.¹⁹ As Resolution 45/6 spells out, the ICRC's status – which gives it observer access to the sessions of the UN General Assembly and Security Council and their commissions – derives directly from and is justified by its unique mandate. The Resolution states that the General Assembly,

Recalling the mandates conferred upon the [ICRC] by the Geneva Conventions of 12 August 1949,

Considering the special role carried on accordingly by the [ICRC] in international humanitarian relations,

until 1 April 2015). In at least four countries, the ICRC and its staff, in the absence of formal privileges and immunities, are *de facto* treated as (officials of) an IO. In the international legal order, the ICRC enjoys status and treatment as or equivalent to that of a classic IO with almost thirty international and regional intergovernmental organizations (usually through observer status as an IO). It also enjoys privileges and immunities before all international criminal tribunals. For more detail on the specific privileges and immunities of the ICRC, see the section "Privileges, Facilities and Immunities Necessary for the ICRC to Carry Out Its Mandate", below.

18 ECOSOC is one of the six main organs of the UN, responsible for coordination, policy review, policy dialogue and recommendations on economic, social and environmental issues (UN Charter, above note 10, Art. 62). NGOs working in these areas can register for consultative status with ECOSOC; currently, over 4,000 NGOs enjoy this status. See ECOSOC Office for Support and Coordination, NGO Branch, available at: <http://csonet.org/>).

19 The following three IOs of a non-governmental nature have also been granted observer status as IOs to the UN General Assembly: the International Federation of Red Cross and Red Crescent Societies (UN Doc. A/RES/49/2, 19 October 1994), the Inter-Parliamentary Union (UN Doc. A/RES/57/32, 19 November 2002) and the International Olympic Committee (UN Doc. A/RES/64/3, 20 October 2009). UN Permanent Observers, available at: <http://www.un.org/en/members/intergovorg.shtml>.

Desirous of promoting co-operation between the United Nations and the [ICRC],

1. *Decides* to invite the [ICRC] to participate in the sessions and the work of the General Assembly in the capacity of observer;

2. *Requests* the Secretary-General to take the necessary action to implement the present resolution.²⁰

In the debates on Resolution 45/6, several States took care to point out the unique nature and role of the ICRC, as a justification for the organization being granted observer status in spite of its non-intergovernmental character. The Permanent Representative of Italy, who introduced the Resolution on behalf of its 138 sponsors, noted:

In the view of the sponsors, this proposal should not be considered—indeed could not be considered—in any way as a precedent for any possible request to grant the same status to non-governmental organizations. The special—role conferred upon the ICRC by the international community and the mandates given to it by the Geneva Convention[s] make of it an institution unique of its kind and exclusively alone in its status.²¹

The Permanent Representative of India reinforced this proviso in his statement before the Assembly:

Mr. Barjinder Singh (India): ... We are considering granting observer status in light of the special role and mandates conferred upon the ICRC by the Geneva Conventions of 12 August 1949. It is against this background that India is happy to be one of the sponsors of this draft resolution. At the same time, ... my delegation would like to suggest that the draft resolution not be considered a precedent for other non-governmental organizations to seek or be granted observer status; in other words, the case of the ICRC should be considered unique in view of its status.²²

Moreover, the representative of the US stated:

Mr. Moore (United States of America): ... The ICRC ... is also a unique organization with a unique international legal standing stemming from its mandate The unique mandate of the ICRC ... sets the Committee apart from other international humanitarian relief organizations or agencies. It is, in part, the public recognition of this distinction that has led the Committee to seek, and the Members of the United Nations to grant, this observer status. Our consensus decision should in no way set a precedent for any other humanitarian organization, no matter how worthy, to be accorded the

20 UNGA Res. 45/6, “Observer Status for the International Committee of the Red Cross, in Consideration of the Special Role and Mandates Conferred Upon It by the Geneva Conventions of 12 August 1949”, 16 October 1990. The ICRC subsequently renounced its consultative status with ECOSOC.

21 UN General Assembly, Verbatim Record of the 31st Meeting, UN Doc. A/45/PV.31, New York, 16 October 1990, pp. 76–77.

22 *Ibid.*, p. 77.

status we have just given the ICRC. No other humanitarian organization possesses the ICRC's unique legal personality, as recognized by its specific responsibilities under international conventions.²³

Treatment as an international organization by States

Recognition of the ICRC's status as, or at least as equivalent to, that of an IO is further demonstrated by the fact that the ICRC is either *de jure* or *de facto* treated by States as an IO. At the time of writing, the ICRC had concluded bilateral status agreements granting it legal status and privileges and immunities similar to those of other IOs with ninety-five countries. Many of these agreements include an explicit provision that the status of the ICRC shall be, and its treatment shall in any case not be less favourable than, that of an IO.

In another eight countries, the ICRC has been brought – by legislative or executive action – into the scope of application of domestic legislation granting privileges and immunities to IOs. For some of these, legislative action was required to amend or otherwise remedy definitions of IOs that were restricted to intergovernmental IOs. Typically, such legislative action was justified by the unique mandate and status of the ICRC. For example, the Haitian decree extending IO privileges and immunities to the ICRC provides that

[T]he International Committee of the Red Cross is a private association under Swiss law with its headquarters in Geneva Considering, however, the special status granted to the International Committee of the Red Cross by international humanitarian law, its status as permanent observer to the United Nations and its specificity recognized by both the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court [and] [c]onsidering that to ensure the tasks entrusted to it by the international community, the International Committee of the Red Cross must benefit from the protection of the law; it is therefore appropriate that the Republic of Haiti should grant it a special status; ... The International Committee of the Red Cross ... [enjoys] privileges and immunities identical to those granted to the United Nations.²⁴

23 *Ibid.*, pp. 81–82. For some historical background and the practical effects of the change in status at the UN, see Christian Koenig, “Observer Status for the ICRC at the United Nations: A Legal Viewpoint”, *International Review of the Red Cross*, No. 280, 1991, available at: www.icrc.org/eng/resources/documents/misc/57jnwj.htm.

24 Unofficial translation. Original French text: “Le Comité international de la Croix-Rouge est une association privée de droit Suisse ayant son siège social à Genève Considérant cependant le statut particulier accordé au Comité international de la Croix-Rouge par le droit humanitaire international, son statut d’observateur permanent auprès des Nations Unies et sa spécificité reconnue tant par le Tribunal Pénal pour l’ex-Yougoslavie que par la Cour Pénale Internationale [et] [c]onsidérant que pour assurer les tâches que lui confie la communauté internationale, le Comité international de la Croix-Rouge doit pouvoir disposer de la protection de la loi; qu’il convient en conséquence, que la République d’Haïti lui accorde un statut dérogatoire; ... Le Comité international de la Croix-Rouge ... [bénéficie] de privilèges et immunités identiques à ceux accordés à l’Organisation des Nations Unies.” Préambule et article 1 du Décret relatif au Comité International de la Croix-Rouge, *Journal officiel de la République d’Haïti*, Vol. 160, No. 28, 11 April 2005, pp. 1–4.

The report of the French Senate submitted in the framework of a proposed law extending the scope of application under French law of the Convention on the Privileges and Immunities of the United Nations to the ICRC points out that:

[T]he parliamentary initiative helps to avoid any precedent. The privileges granted to [the ICRC] in France will remain an exception, which cannot be taken over by another non-governmental organisation, the *sui generis* status of the ICRC justifying its special treatment.²⁵

After several years in which the US State Department refused to consider and treat the ICRC as an IO, an amendment to the US International Organizations Immunities Act, followed by a presidential Executive Order implementing that amendment, brought the ICRC into the Act's scope of application, highlighting the ICRC's mandate and unique status as the justification for treating it as an IO:

The International Committee of the Red Cross, in view of its unique status as an impartial humanitarian body named in the Geneva Conventions of 1949 and assisting in their implementation, shall be considered to be an international organization for the purposes of this [Act] and may be extended the provisions of this [Act] in the same manner, to the same extent, and subject to the same conditions, as such provisions may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.²⁶

In order to give effect to the bilateral status agreement concluded with the ICRC, Australia amended its International Organisations (Privileges and Immunities) Act, which has a restrictive definition of an IO.²⁷ In an explanatory memorandum circulated when submitting the proposed amendment to Parliament, the ministry of foreign affairs explained:

Currently, the Act allows privileges and immunities to be conferred on “international organizations” and “overseas organizations”. However the Act

25 Unofficial translation. Original French text: “L’initiative parlementaire permet d’éviter tout précédent. Les privilèges accordés [au CICR] en France resteront une exception, qui ne pourra être reprise par une autre organisation non gouvernementale, le statut *sui generis* du CICR expliquant un traitement particulier.” *Rapport fait au nom de la Commission des Affaires étrangères, de la défense et des forces armées sur la proposition de loi, adoptée par l’Assemblée Nationale, relative aux privilèges et immunités de la délégation du Comité international de la Croix-Rouge en France*, Annexe au procès-verbal de la séance du Sénat du 12 mai 2003 (on file with author), p. 16 (the report describes in detail the mandate and functions of the ICRC under international law and the recognition of its unique legal status, similar to that of an international organization, by a significant number of States, international organizations and international tribunals).

26 International Organizations Immunities Act, 9 December 1945 (approved 29 December 1945), Section 288f-3, available at: www.law.cornell.edu/uscode/text/22/288f-3. This section was included by presidential Executive Order No. 12643 signed on 23 June 1988 pursuant to Section 743 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (PL 100-204), in order to overcome the Act's restrictive definition of IOs as intergovernmental organizations and allow for its applicability to the ICRC.

27 See above note 9.

defines these terms too narrowly to accommodate the independent and non-governmental character of the ICRC. New Section 9D addresses this by permitting the enactment of Regulations conferring privileges and immunities on the ICRC in accordance with the [bilateral status agreement concluded between Australia and the ICRC]. By inserting a new section 9D, rather than extending the definition of “international organizations” or “overseas organizations”, it is ensured that, in amending the Act to provide a legal basis for conferring privileges and immunities on the ICRC, the amendment will not inadvertently encompass any other organizations. It also ensures that the privileges and immunities conferred upon the ICRC will be limited to those set out in the [bilateral status agreement concluded between Australia and the ICRC].²⁸

The general recognition and treatment of the ICRC as an IO by both States and IOs is also demonstrated by the way in which these relations are managed in practice. Official correspondence and communications between the ICRC and States usually takes the form of verbal notes, in accordance with common diplomatic practice between States and IOs. In Geneva, home to the ICRC's headquarters, many Permanent Representatives of States to the UN and other IOs based in Geneva include the ICRC in their remit, and a courtesy visit to the ICRC president by incoming and outgoing Permanent Representatives has become common practice. In most countries where the ICRC has a permanent presence, its reference ministry is the Ministry of Foreign Affairs, usually through the department responsible for relations with IOs. The ICRC is generally registered in the protocol department's “Blue Book”, which registers States and IOs with an official representation in the country. Circulars sent by the Ministry of Foreign Affairs to diplomatic missions and IOs – informing them of issues relevant to their presence and administration – usually include the ICRC as an addressee. Expatriate ICRC staff are notified and often accredited to the Ministry of Foreign Affairs, and ICRC vehicles are issued diplomatic license plates, as is often the case for other IOs. The ICRC's head of delegation in a host country is usually treated in a manner equivalent to heads of diplomatic missions or IOs' country representatives. The ICRC's president is generally received and addressed in a manner equivalent to the treatment reserved for heads of State or government or for the highest officials of IOs, such as the Secretary-General of the United Nations.

As far as IOs are concerned, it has been noted above that the ICRC enjoys observer status and is generally treated as an IO by almost thirty international and regional intergovernmental organizations. The ICRC's unique status as an IO has also been recognized by, and has resulted in specific privileges and immunities before, the international criminal tribunals.²⁹

28 Australia, Ministry of Foreign Affairs, International Organisations (Privileges and Immunities) Amendment Bill, 12 June 2013, Explanatory Memorandum, available at: <http://parlinfo.aph.gov.au>.

29 For a full overview of the jurisprudence and the rules of procedure and evidence of the international criminal tribunals, see Memorandum, “The ICRC's Privilege of Non-Disclosure of Confidential Information”, in this issue of the *Review*.

The ICRC's privileges and immunities: Sources and rationale

This part of the article explains why States grant privileges and immunities to the ICRC (rationale) and how they do so (sources), before discussing the concrete privileges and immunities of the ICRC in more detail.

Legal sources

Being an IO with a mandate to assist and protect victims of armed conflicts and other situations of violence, the ICRC operates both in the international and in the domestic legal order of States. As these are two distinct legal orders, one can distinguish between the legal personality and privileges and immunities that the ICRC enjoys internationally – which are regulated exclusively by international law – and the legal personality and privileges and immunities that it enjoys domestically – which, depending on a State's particular legal system, will be regulated either exclusively by domestic law or by both domestic and international law.

International legal order

The ICRC's international legal personality – which devolves directly from its treaty mandate – has been discussed in detail above.³⁰ With regard to the ICRC's privilege of non-disclosure of confidential information, the International Criminal Tribunal for the former Yugoslavia explained in the *Simić* case that this privilege too is both implicit in the treaties that enshrine the ICRC's international mandate and part of customary international law:

72. The ICRC has a pivotal role in the regime established by the Geneva Conventions and their Protocols to guarantee the observance of certain minimum humanitarian standards. This role is unique. ... The Geneva Conventions and their Protocols must be construed in the light of their fundamental objective and purpose as described above, and for that reason they must be interpreted as giving to the ICRC the powers and the means necessary to discharge its mandate effectively.

73. The analysis [of the Court, based on submissions by the parties] has clearly indicated that the right to non-disclosure of information relating to the ICRC's activities in the possession of its employees in judicial proceedings is necessary for the effective discharge by the ICRC of its mandate. The Trial Chamber therefore finds that the parties to the Geneva Conventions and their Protocols have assumed a conventional obligation to ensure non-disclosure in judicial proceedings of information relating to the work of the ICRC in the possession of an ICRC employee, and that, conversely, the ICRC has a right to insist on such non-disclosure by parties to the Geneva Conventions and

30 See above note 16.

the Protocols. In that regard, the parties must be taken as having accepted the fundamental principles on which the ICRC operates, that is impartiality, neutrality and confidentiality, and in particular as having accepted that confidentiality is necessary for the effective performance by the ICRC of its functions.

74. The ratification of the Geneva Conventions by 188 States can be considered as reflecting the *opinio juris* of these State Parties, which, in addition to the general practice of States in relation to the ICRC ... leads the Trial Chamber to conclude that the ICRC has a right under customary international law to non-disclosure of the [information relating to its activities].³¹

Domestic legal order

In the majority of countries in which the ICRC enjoys privileges and immunities, these are established by a bilateral status agreement between the ICRC and the host State.³² At the time of writing, the ICRC had concluded ninety-five such agreements, most but not all of which are with countries where the ICRC has a permanent presence or is otherwise operational today.³³ The provisions of such status agreements to a large extent mirror provisions of the Vienna Convention on Diplomatic Relations and the Convention on the Privileges and Immunities of the United Nations.³⁴ In eight countries, the ICRC has been granted privileges and immunities on the basis of domestic legislation establishing the privileges and immunities of IOs, the scope of application of which was extended to include the ICRC.³⁵ As such domestic legislation is usually implementing legislation for the

31 ICTY, *Simić*, above note 16, paras 72–74.

32 As bilateral treaties, these status agreements require, in many States, an act of ratification to fully enter into force.

33 Status agreements are negotiated and concluded in the framework of a bilateral and confidential dialogue between the ICRC and the host State. As such, it is not for the ICRC to disclose the existence or content of such agreements.

34 Vienna Convention on Diplomatic Relations (VCDR), 18 April 1961, 500 UNTS 95 (entered into force 24 April 1964); and Convention on the Privileges and Immunities of the United Nations, 13 February 1946, 1 UNTS 15 and 90 UNTS 327 (entered into force 17 September 1946), both available at: <https://treaties.un.org>. The provisions of the UN Convention are also mirrored in treaties establishing the privileges and immunities of other IOs, such as those of the UN Specialized Agencies, the International Labour Organization, Food and Agriculture Organization, United Nations Educational, Scientific and Cultural Organization, International Monetary Fund, World Health Organization and World Trade Organization, all available at: <https://treaties.un.org>. For examples on where ICRC status agreements typically differ from the provisions of the VCDR and the UN Convention, see note 35 below.

35 Publicly available examples include Australia's International Organisations (Privileges and Immunities) Act, as amended in 2013, Malaysia's International Organisations (Privileges and Immunities) Act, as amended in 2011, and the US International Organizations Immunities Act, as amended in 1988 (all referred to in above note 9 and France's *Loi n° 2003-475 du 4 juin 2003 relative aux privilèges et immunités de la délégation du Comité international de la Croix-Rouge en France*, available at: www.legifrance.gouv.fr/affichTexte.do?jsessionid=353EAE4AC94611A1953F62A7D7618531.tpdila08v_1?cidTexte=JORFTEXT00000604191&dateTexte=20150615), as well as Hong Kong's Ordinance to Grant Privileges and Immunities in Hong Kong to the International Committee of the Red Cross and its Delegates, and for Connected Purposes, 1989, available at: www.legislation.gov.hk/blis_ind.nsf/CurEngOrd/F6705D2C1B4FC530C82564830033925F?OpenDocument.

Convention on the Privileges and Immunities of the United Nations, it generally reflects the privileges and immunities established in that Convention.

While the majority of bilateral status agreements concluded by the ICRC with host States to a large extent cover the same privileges and immunities as those granted to the UN, these bilateral agreements are more tailored to the specific nature and mandate of the ICRC and include a number of privileges and immunities that are either absent or only implicit in the UN Convention and domestic legislation which mirrors that Convention.³⁶

Why does the ICRC need privileges and immunities?

Underlying the legal regime of privileges and immunities of IOs is the principle of functionality, aptly though summarily expressed in the text of Article 105 of the UN Charter, which provides that IOs (in this case the UN) should enjoy “such privileges and immunities as are necessary for the fulfilment of its purposes”.³⁷ Following the precedent of the Charter, it has become a matter of common form to adhere to the principle of functionality as the measure of granting privileges and immunities to IOs.³⁸ The *travaux préparatoires* of the UN Charter further illustrate the meaning of the principle of functionality, including its inherent need to guarantee the independence of the organization:

The terms *privileges* and *immunities* indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs and to the independent exercise of the functions and duties of their officials [I]f there is one certain principle it is that no member state may hinder in any way the working of the Organization.³⁹

Miller explains moreover that:

The drafters of a prior version of this text noted that they had “seen fit to avoid the term ‘diplomatic’ and ha[d] preferred to substitute a more appropriate standard, based, for the purposes of the Organization, on the necessity of realizing its purposes and, in the case of the ... officials of the Organization, on providing for the independent exercise of their functions.”⁴⁰

36 Examples include the undertaking by the host country not to permit the disclosure of confidential ICRC information in legal proceedings, the explicit mention of testimonial immunity of ICRC staff, the explicit granting of air traffic rights and exemptions from overflight and landing fees, the issuance of radio frequencies assigned specifically to the ICRC, and the explicit inviolability of person of staff (for more detail, see the discussion of specific privileges and immunities below).

37 For background and a good description of the principle of functionality, see Anthony J. Miller, “The Privileges and Immunities of the United Nations”, *International Organizations Law Review*, Vol. 6, 2009, pp. 9–23 and 62.

38 C. Wilfred Jenks, *International Immunities*, Stevens & Sons and Oceana Publications, London and New York, 1961, p. 18.

39 *Documents of the United Nations Conference on International Organizations, San Francisco, 1945*, Vol. 13, Doc. 933, 12 June 1945, p. 705 (emphasis in original).

40 A. J. Miller, above note 36, p. 15; also see above note 24.

Article 105 of the UN Charter empowered the UN General Assembly to determine the details of the application of these privileges and immunities. The Assembly did so through the adoption of the Convention on the Privileges and Immunities of the United Nations in 1946, which has to a large extent become *the* reference point for the definition of the privileges and immunities of other IOs.⁴¹ The purpose of that Convention, as described by the Rapporteur of the Sixth Committee, also reflects the principle of functionality:

It is important that in setting up this great new international Organization we should not ask for it to possess privileges and immunities which are greater than those required for its efficient organization. That would lead to unnecessary conflicts with the national sovereignty of particular Member States. On the other hand, equally important is to ensure that it has adequate privileges and immunities. To give too few would fetter the ... Organization in the discharge of its tasks.⁴²

Jenks refers to the principle of functionality and its component principle of independence as “principles which are now regarded as the foundation of international immunities”⁴³ and explains that the rationale underlying privileges and immunities of IOs is “not concerned with the status, dignity or privileges of individuals, but with the elements of functional independence necessary to free international institutions from national control and to enable them to discharge their responsibilities impartially.”⁴⁴

In sum, privileges and immunities are tools granted to an IO to enable it to effectively carry out the mandate or functions entrusted to it by the international community of States, and to do so independently and in an efficient manner. In this sense, the ICRC's mandate or functions – enshrined in the 1949 Geneva Conventions, their Additional Protocols and the Statutes of the International Red Cross and Red Crescent Movement – are both the legal basis and justification for its legal personality and its privileges and immunities, and, as will be discussed further below, the limits thereto.⁴⁵ In pursuing its mission and mandate, the ICRC adheres strictly to its Fundamental Principles and its standard working modalities. Of particular relevance, as will be discussed in more detail below, are the principles of neutrality and independence, and confidentiality as the ICRC's standard working modality flowing directly from these principles.⁴⁶ Crucial to the

41 Convention on the Privileges and Immunities of the United Nations, above note 33.

42 Records of the First Part of the First Session of the General Assembly, Plenary Meetings of the General Assembly, GAOR, 10 January–14 February 1946, Verbatim Record of 13 February 1946, p. 452.

43 While they essentially mean the same, from a legal perspective the principle of independence as a principle of international law regulating the privileges and immunities of IOs is to be distinguished from the principle of independence that is part of the Fundamental Principles of the International Red Cross and the Red Crescent Movement, referred to below in note 45 and accompanying text.

44 C. W. Jenks, above note 37, p. 17.

45 See also above notes 23–27.

46 On the ICRC's Fundamental Principles, see further detail below. For the ICRC's standard working modalities, see ICRC, “Action by the International Committee of the Red Cross in the Event of Violations of International Humanitarian Law or of Other Fundamental Rules Protecting Persons in Situations of Violence”, *International Review of the Red Cross*, Vol. 87, No. 858, 2005, pp. 393–400;

ICRC's capacity to carry out its mandate around the world, these offer further justification for some of its privileges and immunities.

In light of the above, and applying the principle of functionality, the purpose of the ICRC's privileges and immunities is four-fold. They serve to:

- ensure and facilitate an efficient, speedy and independent operational capacity to fulfil the ICRC's mandate, and this at the lowest cost possible;
- guarantee the ICRC's capacity to act as a neutral, independent and impartial humanitarian actor, and – importantly – to be perceived as such;
- protect the confidential nature of the ICRC's work; and
- facilitate smooth financial, administrative and human resources management.

Before setting out in more detail the specific privileges and immunities required to serve this four-fold purpose, it is necessary to distinguish between two categories of beneficiaries of these privileges and immunities. While all privileges and immunities are for the benefit of the institution's capacity to carry out its mandate, some apply directly to the institution itself – i.e., the ICRC, the first and principal beneficiary of the ICRC's privileges and immunities – while others concern the individuals representing or working for the institution.⁴⁷ With regard to the latter, it is important to stress from the outset that privileges and immunities conferred upon such persons are granted in the interest of the ICRC and not for the personal benefit of the individuals themselves.

Privileges, facilities and immunities necessary for the ICRC to carry out its mandate

This part deals with the privileges, facilities and immunities⁴⁸ that are necessary for the ICRC to effectively carry out its humanitarian mandate and activities in full

and ICRC, *The ICRC, Its Mission and Work*, Geneva, March 2009, available at: www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf.

47 These include the ICRC's representatives (i.e., the Committee members) and staff members, as they constitute the very large majority of individuals through whom the ICRC carries out its mandate and activities. However, privileges and immunities of ICRC representatives and staff also extend to persons who directly contribute to the exercise of the ICRC's mandate and activities, albeit on a temporary or even occasional basis. These may include, for example, certain consultants but also staff or volunteers of National Societies who have been seconded to the ICRC for a specific period of time or take part in specific ICRC operations as an integral part of an ICRC team. See also International Criminal Tribunal for Rwanda, *Prosecutor v. Muvunyi*, Reasons for the Chamber's Decision on the Accused's Motion to Exclude Witness TQ, Case No. ICTR-2000-55A-T, 15 July 2005, paras 17–18.

48 "The distinction between an immunity and a privilege is not easy to define precisely, and the terms have often been used interchangeably, but in general a privilege denotes some substantive exemption from laws and regulations ..., whereas an immunity does not imply any exemption from substantive law but confers a procedural protection from the enforcement process in the receiving State." Sir Ivor Roberts (ed.), *Satow's Diplomatic Practice*, 6th ed., Oxford University Press, Oxford, 2009, p. 121. While most international treaties dealing with this subject matter only refer to "privileges" and "immunities" in their titles, a number of provisions do not really fit either of the definitions above, but are rather "facilities" granted by States to IOs to enable them to carry out their functions. Examples include facilities in respect of communications and currency or exchange restrictions, or repatriation facilities for staff and their relatives.

conformity with its Fundamental Principles and standard working modalities, in particular confidentiality. These privileges, facilities and immunities reflect and correspond to the specificity of the ICRC's mandate and activities, its identity and working modalities and the environments in which it operates. While many of the ICRC's privileges, facilities and immunities are similar or even identical to those generally enjoyed by IOs, they differ at times in order to take into account the specificity of the ICRC and the situations in which it is mandated to work.⁴⁹

Legal capacity and administrative and financial privileges and facilities

Legal capacity in the domestic legal order

Usually amongst the first provisions of a bilateral status agreement or law establishing the privileges and immunities of the ICRC is a provision transposing the ICRC's international legal personality into the domestic legal order.⁵⁰ This is a quintessential provision as it establishes the ICRC's legal capacity to enter into contracts, acquire and dispose of property and institute legal proceedings in the host country. As such, it is often a *conditio sine qua non* for basic administrative operationality as it enables the ICRC to hire staff, rent or acquire premises, open and operate bank accounts, and purchase goods and materials necessary to function and to carry out its operations. Legal capacity thus directly contributes to enabling the ICRC to carry out its operations and to facilitate administrative, financial and human resources management.

Administrative and financial privileges and facilities

Administrative privileges and facilities guarantee the ICRC the capacity to carry out its mandate and operations independently, speedily and efficiently, by minimizing administrative hurdles or burdens. They also facilitate smooth global administrative and human resources management. Financial privileges and facilities serve to minimize the expenses of the organization and to facilitate smooth and efficient global management of the ICRC's financial resources. They also ensure that these financial resources are spent as much as possible to the direct benefit of the victims whom the ICRC is mandated to assist and protect.

The ICRC as an institution is the primary beneficiary of administrative and financial privileges and facilities to meet these purposes. They typically include:

- the right to hold national or foreign currency and other financial assets, and to operate accounts in any currency, without being subject to laws and regulations governing exchange control and related matters;

⁴⁹ See also above note 35.

⁵⁰ Walter correctly points out that "a distinction must be made between domestic and international legal personality. International legal personality does not automatically imply national legal personality and vice versa. For many international organizations it is not sufficient that they possess international legal personality; for their proper functioning they also need to possess legal personality in the national legal orders of ... States." C. Walter, above note 16, para. 27.

- the right to freely transfer funds in national or foreign currency to, from and within the country, and to convert such assets freely into other currencies at the most favourable exchange rate at the time of conversion;
- exemption from all direct taxes, except for dues which constitute charges for public utility services;
- exemption from, or remission or reimbursement of, all indirect taxes (including value-added taxes) paid by the ICRC, in particular those paid on services or construction contracts, and those paid for purchases of articles intended for official use and articles intended for ICRC assistance programmes within the host country or in another country;
- exemption from customs duties, import duties and charges having equivalent effect and from all taxes and restrictions on the import, export or transit through the country of all goods and materials (including ICRC publications and audio-visual materials) intended for official use and/or for ICRC assistance programmes within the country or in another country;
- air traffic rights and exemption from overflight and landing fees for all transports over, through or to the country;
- freedom to use, for official purposes and without any interference, the means of communication that the ICRC deems most appropriate, in particular as regards its communication with its headquarters in Geneva and its offices around the world, with other related international agencies and organisations, with government departments, and with bodies corporate or private individuals;
- the right to install on its premises radio and telecommunication equipment and to use mobile equipment within the national territory, and exemption from licensing fees and from all other related fees, rates, taxes and charges;
- issuance of radio frequencies assigned to the ICRC in accordance with Resolution No. 10 (Rev.WRC-2000) of the International Telecommunication Union;⁵¹
- treatment not less favourable than that accorded to IOs or States' diplomatic missions in matters relating to official communications;
- registration of ICRC vehicles as vehicles of diplomatic missions, and issuance of diplomatic license plates; and
- authorization to own or hold or be granted, alienated, leased or transferred to, any land or any interest in any land for the purposes of the ICRC or the residence or office of its expatriate staff members.

It is relatively straightforward to see how these privileges and facilities contribute to the smooth and efficient administration of ICRC operations and infrastructure and to minimizing the organization's financial costs and expenses. Indirectly, they also guarantee that States in which the ICRC has a permanent presence do not derive direct financial benefits from that presence and as such contribute to ensuring

51 International Telecommunication Union, Resolution No. 10, "Use of Two-Way Wireless Telecommunications by the International Red Cross and Red Crescent Movement", Rev. WRC-2000, adopted by the World Radiocommunication Conference, Istanbul, 2000, available at: www.itu.int/dms_pub/itu-s/oth/02/01/S020100002E4001PDFE.PDF.

both independence of the ICRC from host States and equality between all States party to the treaties entrusting the ICRC with its international mandate. Incidentally, the capacity to reduce indirect or so-called overhead costs to an absolute minimum also responds to legitimate expectations by donors that the ICRC spend as much of their contributions as possible directly on the victims that it is mandated to protect and assist.⁵²

A few practical examples will illustrate how these privileges and facilities also contribute to speedy, efficient and independent humanitarian operations. For instance, the exemption from restrictions on the import of goods and materials intended for ICRC assistance programmes is crucial for responding quickly to urgent medical needs in the field when appropriate and adequate medical equipment or drugs are not available in the country, or are not available in sufficient quantities. Undue restrictions under domestic law on the type or quantity of equipment or drugs that may be imported may hamper a qualitatively and quantitatively adequate response by the ICRC to the needs of the populations affected. Moreover, procedures for obtaining authorization to import certain goods or materials or for overcoming restrictions are usually cumbersome and time-consuming. An exemption for goods and materials intended for ICRC assistance programmes can at times make the difference between life and death for the victims whom the ICRC seeks to assist.

Another example relates to the need to be granted air traffic rights. The ICRC often operates its own aeroplanes, rather than using commercial or government aeroplanes or those of other IOs. It does so in order to ensure that it can carry out its activities when other aeroplanes are unavailable or restricted from flying and/or to ensure that the ICRC is perceived by all parties to an armed conflict, as well as by the victims it seeks to protect and assist, as a truly neutral and independent humanitarian actor (a *conditio sine qua non* for guaranteeing both access and security). Hence the need to be granted appropriate air traffic rights and to be exempt from any landing or overflight fees. Diplomatic license plates are a clear indication for those who encounter ICRC vehicles that the organization has an international status and enjoys privileges and immunities, without the need to explain the “what” and the “how” in much detail. Together with visual identification of ICRC vehicles,⁵³ diplomatic license plates often facilitate and speed up the crossing of borders or the passing of checkpoints and roadblocks. Finally, the right to install and use mobile radio and telecommunications equipment and the issuance of Red Cross radio frequencies remains key, even in this age of satellite internet connections and smart phones.

52 The ICRC is funded primarily by voluntary contributions from States party to the Geneva Conventions, which account for about 80% of its budget. Other donors include National Red Cross and Red Crescent Societies, supranational organizations (such as the European Commission), and public and private sources. The ICRC accounts for its work and expenditure in its *Annual Report*. For further details, see: www.icrc.org/en/who-we-are/finances.

53 In order to allow quick and easy identification, ICRC vehicles, boats and aircraft generally carry the ICRC's logo (a red cross against a white background in a circle, with the words “Comité International Genève”) on all sides, and depending on the circumstances, also on the rooftop.

Radio is the one and only means of communication that continues to work in situations where phones and the Internet are down due to inclement weather, natural disasters, hostilities or other forms of violence, or manmade interventions. Key to ensuring the security of its staff and to the coordination and implementation of its humanitarian activities, radio remains of significant importance to the ICRC today.

ICRC representatives and staff who are assigned to work in countries of which they are not nationals or residents also enjoy certain administrative and financial privileges and facilities. These are granted not for the individuals' personal benefit but rather to facilitate the smooth administrative and financial management by the ICRC of its expatriate human resources. They include:

- the right of such individuals to import personal effects, including vehicles, duty-free upon their arrival, and the right to enjoy the same exemptions upon their departure;
- the right to sell their personal belongings under the same conditions as those accorded to members of diplomatic missions;
- in the event of armed conflict or other emergencies, the necessary facilities to leave the country, if they wish to do so, by the means they consider to be safest and quickest;
- the same privileges in respect of exchange facilities as are accorded to members of diplomatic missions; and
- exemption from taxes on salaries and other emoluments paid by the ICRC or received by them from outside the country in general.

Privileges and immunities required to uphold the Fundamental Principles of neutrality, independence and impartiality, as well as the working modality of confidentiality

In its operations, the ICRC adheres strictly to its Fundamental Principles of neutrality, impartiality and independence.⁵⁴ As a neutral humanitarian actor, the ICRC abstains from taking sides – or being perceived as taking sides – in armed conflicts or other situations of violence, or in any controversies of a political, racial, religious or ideological nature. Under the principle of impartiality, the ICRC seeks to protect and assist victims guided solely by their needs and regardless of their nationality, allegiance, race, ethnicity, gender, age, religion or political beliefs. This enables the ICRC to prioritize its activities on the basis of the degree of urgency and the types of needs of those affected. The ICRC's independence – from States and IOs, but also from any other persons, groups or entities that may seek to exert pressure or influence in situations of armed

54 The ICRC adheres to, and as a component of the Movement is bound by, all seven of the Fundamental Principles set out in the preamble of the Statutes of the International Red Cross and Red Crescent Movement, above note 3. The three principles mentioned here are, however, those that are immediately relevant to, and part of the legal basis and justification for, the ICRC's privileges and immunities.

conflict or other situations of violence – means that it has the autonomy it needs to accomplish the exclusively humanitarian task entrusted to it and directly contributes to its capacity to be neutral and impartial, and perceived as such, when attending to needs on the ground. The ICRC's standard working modality of confidentiality, under which it tries to persuade parties to armed conflicts and other situations of violence to abide by their obligations under international law and address humanitarian concerns through a confidential and bilateral dialogue, derives directly from these principles.⁵⁵

These principles, and the related working modality of confidentiality, have been widely recognized to be essential for the effective discharge of the ICRC's mandate and functions. By adhering to them, the ICRC has been able to obtain and maintain the trust of both parties to and victims of armed conflicts, as well as of all actors involved in other situations of violence. That trust has proved to be crucial in securing access to areas and populations affected by armed conflicts and other situations of violence and the security of ICRC staff.

In what follows we will list the privileges and immunities of the ICRC and its staff that guarantee the organization's capacity to adhere to its Fundamental Principles and abide by its commitment to confidentiality. We will then illustrate these with a few concrete examples.

Privileges and immunities for the ICRC as an institution:

- immunity for the ICRC, its property and assets, wherever located and by whomsoever held, from every form of legal and administrative process;
- inviolability of ICRC premises, property and assets, wherever located and by whomsoever held, including immunity from search, requisition, confiscation, expropriation or any other form of interference, whether by executive, judicial, administrative or legislative action;
- inviolability of ICRC archives and, in general, all documents belonging to the organization or held by it, including electronic documents and data, wherever located;
- exemption from obligations to provide evidence in legal proceedings;
- freedom to use, for official purposes and without any interference, the means of communication that the ICRC deems most appropriate, in particular as regards communication with its headquarters in Geneva, with other related international agencies and organizations, with government departments, and with bodies corporate or private individuals;
- the right to dispatch and receive its correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags, provided these bags bear visible external marks of their character and contain only documents or articles intended for official use; and
- undertaking by the host country to respect the confidentiality of ICRC reports, letters and other communications to its government representatives, which

55 For more detail, see Memorandum, above note 28.

includes neither divulging their content to anyone other than the intended recipient, nor permitting their use in legal proceedings, without prior written consent of the ICRC.

Privileges and immunities of ICRC staff and representatives:⁵⁶

In relation to any acts, omissions, words spoken or written or information obtained in the performance of their functions for the ICRC, and even after they have left the service of the ICRC:

- immunity from any form of legal or administrative process;
- inviolability of person, including personal arrest or detention and seizure of personal baggage;
- inviolability of private residences, vehicles, documents, manuscripts and all other personal effects;
- exemption from obligations to provide evidence in legal proceedings; and for the duration of employment with the ICRC;
- exemption from all immigration fees and restrictions and alien registration obligations – the government shall provide, free of charge and as quickly as possible, the appropriate travel documents, visas or other necessary certificates;
- exemption from all national service obligations; and
- freedom of movement and travel to, from and throughout the national territory.

In addition to the above-mentioned privileges and immunities, the head of the ICRC's representation in the host country and his or her deputy usually benefit from the same status accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations of 16 April 1961.⁵⁷

Like most if not all multilateral conventions and bilateral status agreements governing the privileges and immunities of IOs, the ICRC's status agreements or equivalent domestic laws invariably include immunity from legal and administrative process (also referred to as immunity from jurisdiction) and inviolability of premises, property, assets, archives and data for both the organization and its staff. These are essential and effective guarantees to ensure the independence the ICRC needs to be able to carry out its mandate without interference by third States or other IOs. Due to the particularly volatile, dangerous and geopolitically sensitive environments in which the ICRC operates and to the specificity of its mandate and identity (in particular with regard to neutrality and confidentiality), the lack or disrespect of such guarantees of independence would have even more severe repercussions on the ICRC's capacity to carry out its mandate than they would have for other IOs. The exemption from the full application of the domestic law of States around the globe also contributes directly to the ICRC's capacity to be, and be perceived as, a neutral

56 Privileges and immunities are granted to individuals through whom the ICRC carries out its mandate – i.e., all persons who are assigned by the ICRC to perform functions for the ICRC, or represent the ICRC as members of its governing body.

57 VCDR, above note 33.

and independent humanitarian actor. A typical example is the exemption from obligations under domestic law to testify or otherwise provide evidence in legal proceedings. Were the ICRC to be compelled to testify in favour or against one of the parties to an armed conflict, it would almost certainly be perceived as being neither neutral nor independent in that conflict. Finally, appropriate privileges and immunities for ICRC staff allow the ICRC to abide by its duty of care towards its employees by effectively shielding them from negative consequences⁵⁸ resulting from the mere exercise of their functions for the ICRC (such as engaging with proscribed groups to secure access to affected populations or address humanitarian concerns and alleged violations of international law) or from their efforts to respect their contractual duties to the ICRC (such as their duty of discretion, which includes a prohibition against providing evidence in legal proceedings without the prior consent of the ICRC⁵⁹).

Immunity from jurisdiction, inviolability of documents, manuscripts, archives and data, non-interference with official communications and the right to dispatch and receive correspondence by diplomatic courier or in sealed bags also contribute to the protection of confidential information related to the ICRC's mandate and activities. Further protections of such information include the exemption from obligations to provide evidence in legal proceedings and the undertaking by the host country to respect the confidentiality of ICRC reports, letters and other communications to its government representatives, by neither divulging their content to anyone other than the intended recipient nor permitting their use in legal proceedings without the prior written consent of the ICRC.

It is uncontested that the disclosure of confidential information related to the ICRC's activities – be it by authorities or entities with which the ICRC engages in a confidential dialogue to achieve its purposes, or by the ICRC itself as a result of an obligation under domestic law – would cause significant and at times irreparable damage to the ICRC's capacity to carry out its humanitarian mandate and to its reputation as a strictly neutral humanitarian actor. If, for example, parties to a conflict were under the impression that information gathered by the ICRC in theatres of armed conflict or in places of detention would subsequently be used in a court case, a public inquiry or similar proceedings, this would not only jeopardize the organization's efforts to gather relevant information and submit allegations of violations to the parties but would very likely prevent them altogether. Lack of guarantees of confidentiality would thus, at best, serve as a major disincentive for parties' cooperation with the ICRC, and at worst, preclude ICRC access to vulnerable persons and populations, with

58 Depending on the domestic legislation of the host country, such consequences may be as far-reaching as the imposition of a prison sentence, a fine or an obligation to pay damages, or a suspension or withdrawal of a license to exercise one's profession.

59 The duty of discretion also prevents staff from notifying local authorities of possible violations of domestic law about which they may become aware in the exercise of their functions, in spite of obligations under domestic law to report violent injuries (such as victims of gunshot or other "war" wounds), rape or other forms of sexual violence, child abuse or terrorist sympathies or activities. The duty of discretion is an absolute obligation; only the ICRC can relieve its present or former staff and representatives of that obligation.

the effect of increasing their vulnerability and the hardship suffered. In the same vein, public disclosure of confidential information may put the security of both ICRC staff in the field and the victims they seek to protect and assist at high risk.⁶⁰

The exemptions from immigration restrictions and alien registration obligations allow the ICRC to be fully independent in its selection of employees to be deployed to or employed in any given country. As such, the organization can assign the most qualified individuals for deployment in each given context, taking into account both the technical expertise and the linguistic and cultural baggage required to achieve the ICRC's objectives. These exemptions also limit the administrative hurdles and financial cost of adequate resourcing of ICRC activities and allow expatriate staff, once they are in the country, to fully dedicate themselves to their humanitarian tasks. In a similar vein, the speedy provision of appropriate visas, travel documents or other necessary certificates contributes significantly to the efficiency and speed of staffing in ICRC humanitarian operations. Efficiency and speed also benefit directly from the ICRC and its staff's freedom of movement and travel to, from and throughout national territories. That freedom, while of course always subject to reasonable constraints in order to ensure the security of ICRC staff and beneficiaries, moreover guarantees the ICRC's independence and contributes to its reputation of neutrality.

Where ICRC staff and representatives enjoy the full set of privileges and immunities listed above, the status equivalent to that of diplomatic agents granted to the head of the ICRC representation in a given country and his or her deputy does not add all that much. In some countries, however, it remains important to have direct access to government ministers, many of whom are indispensable interlocutors for enabling the ICRC to carry out its activities and programmes in the country.

Limits to privileges and immunities and dispute settlement

The ICRC's privileges and immunities are not and should not be without limits. The principle of functionality underlying the international legal regime on privileges and immunities of IOs also circumscribes their limits. Consequently, the ICRC is obliged to cooperate with the authorities of host States in order to facilitate the proper administration of justice and prevent the occurrence of any abuse of privileges and immunities. The ICRC can also waive immunities where, in its opinion, they would impede the course of justice, and they may be waived without prejudice to the interests of the ICRC, in particular its capacity to carry out its mandate and functions under international law.⁶¹ Provisions to that extent are also customarily

60 For the rationale for the ICRC's confidentiality and the sources of its legal protection, as well as the scope of application of the ICRC's evidentiary privilege, see Memorandum, above note 28.

61 To be valid, waivers of ICRC privileges or immunities must be explicit, in writing (usually through a verbal note to the Ministry of Foreign Affairs) and issued by the competent authority within the ICRC (i.e., its president or the person to whom the president has delegated this power).

included in ICRC status agreements and in domestic legislation regulating the privileges and immunities of IOs.

In this respect, it is helpful to reiterate that privileges and immunities conferred upon individuals representing or working for the ICRC are granted in the interest of the organization (i.e., its capacity to carry out its mandate) and not for the personal benefit of the individuals themselves, and that it is for the ICRC, not the individual, to decide on any waivers of the privileges and immunities they enjoy.

Moreover, ICRC staff and representatives undertake – to the extent that it is compatible with the ICRC's mandate, principles and working modalities – to respect the laws and regulations in force in the countries in which they work. Finally, the ICRC informs the Ministry of Foreign Affairs of the names, titles and functions of staff working in the country, the dates of their arrival in and departure from the country, and the commencement and termination of their service with the ICRC, as well as the names of accompanying relatives of expatriate staff.

In light of their immunity from the jurisdiction of domestic courts, IOs are required to provide for alternative mechanisms to settle disputes with host States and with private parties. In the absence of such mechanisms, States, or third parties with a private law claim, would not have any access to justice.

ICRC status agreements generally provide that disputes between the ICRC and the host country are to be settled by negotiation and that such negotiations are to take place in good faith, equitably taking into account both the national interests of the State and the interests of the ICRC related to its activities, mandate and mission, and with the discretion essential to continued good relations. Where such negotiations fail, disputes are generally submitted for final decision to an arbitral tribunal.

Arbitration clauses are also systematically included as the appropriate mechanism for settling disputes of a private law nature in contracts that the ICRC concludes with third parties. As far as labour law disputes with ICRC employees are concerned, it is worthwhile to note that expatriate staff whose employment contracts are subject to Swiss law have access to the Swiss labour courts. For other staff, the ICRC, as a matter of institutional policy, waives its immunity from jurisdiction if efforts to settle the case amicably or through the ICRC ombudsman's office have failed.

Conclusion

By granting the ICRC legal capacity and privileges and immunities that are similar to those granted to other IOs, but taking into account the distinct mandate and identity of the ICRC, States not only reaffirm their commitment to the ICRC's mandate under the Geneva Conventions, their Additional Protocols and the Statutes of the International Red Cross and the Red Crescent Movement, but offer the ICRC the means to fulfil that mandate fully and efficiently. Adequate

legal capacity and privileges and immunities allow the ICRC to protect and assist victims of armed conflict and other situations of violence in a timely and efficient manner, tailored to their immediate needs. They enable the ICRC to fully live up to its Fundamental Principles of neutrality, independence and impartiality and its commitment to a confidential bilateral dialogue with those concerned. As such, they contribute significantly to the ICRC's capacity to ensure better respect for international humanitarian law and to act as a neutral intermediary between parties to armed conflicts, as well as to the ICRC's access and proximity to victims and to the security of its staff on the ground. Finally, they facilitate sound and smooth financial, administrative and human resources management and allow the organization to carry out its humanitarian activities at the lowest cost possible and maximizing expenditures to the direct benefit of the victims it is mandated to protect and assist. Granting privileges and immunities to the ICRC is not a matter of courtesy, but is rather a concrete manner in which States reaffirm their commitment to the ICRC's humanitarian mandate and role and give the ICRC the tools that are indispensable for its efforts to alleviate as much as possible the human suffering caused by armed conflicts and other situations of violence.

Faith inspiration in a secular world: An Islamic perspective on humanitarian principles

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Abstract

In recent years, there has been more and more interaction and engagement between “faith-based” organizations (FBOs) and secular humanitarian organizations. While humanitarian organizations operate under the humanitarian principles of humanity, neutrality, impartiality and independence, it is often believed that faith-based organizations cannot be neutral or impartial due to their religious identity and agenda. Drawing on the research of Islamic Relief Worldwide, this article looks critically at connections that can be drawn between Islamic religious principles and those upheld as key to secular humanitarian action. The article outlines the Islamic maqasid al-Shari’ah framework as an example of how religious-based approaches can provide a basis for humanitarian action that is both relevant to Islamic communities and complementary to humanitarian principles.

Keywords: Islam, humanitarian principles, Islamic Relief Worldwide, secular, religion, development, humanitarian assistance, faith-based organizations.

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* Previously known as Lucy V. Moore. This article was written in a personal capacity and does not necessarily reflect the views or position of Islamic Relief. The author thanks her colleagues at Islamic Relief for permission to draw on their work and the time they took to give valuable feedback.

At first glance, it would appear that Islamic actors had little to no involvement in the development of international humanitarian law (IHL) and the principles that guide humanitarian action (such as humanity, neutrality, impartiality and independence). There were no Islamic States present at the Geneva International Conference in 1863,² and the role of Islamic actors was initially confined to that of the passive “other”. Over time, however, the influence of Islamic representatives served to widen the concept of humanitarianism:

Islam at first represented a critical oriental “other” against which the emerging modernist law of war delineated itself. Because of its own universalist and humanist tendencies this law was, however, forced to accommodate subjects from different cultural-legal systems and consequently to abandon its Christian roots. Islam thus prompted the definition of international humanitarian law in secular, universalist terms.³

Cockayne argues that the secular dynamics found in IHL were a result of the pressure exerted to account for the differences found in Islamic systems, particularly from the Ottoman Empire and Persian delegations.⁴

It is increasingly recognized that a religious identity has been viewed as posing an inherent risk to the neutrality or impartiality of humanitarian activities due to competing, even contradictory mandates between a humanitarian and a “religious” agenda. At various points, religion has been considered antithetical to “development” and it has been thought that religious approaches can even promote partisan alliances and create conflicts.⁵ There is a powerful irony in how influential this view has been, considering the historic role that religion and faith actors have played in the development of IHL and the provision of assistance to those in need, long before the concept of a professionalized, secular, humanitarian sector came into being.⁶ This is not to say that such fears are not founded on real examples of harmful behaviour and attitudes by faith groups, including exclusive proselytizing practices and naivety about the power dynamics inherent in the delivery of humanitarian assistance. The results of these issues

1 Available publicly at: <http://policy.islamic-relief.com/portfolio/working-in-conflict-a-faith-based-toolkit/> (all internet references were accessed in December 2014).

2 The Geneva International Conference of 1863 gave the impetus for the development of the humanitarian laws of war embodied in the Geneva Conventions of 1864, 1906, 1929 and 1949. It was also the founding conference of the International Red Cross and Red Crescent Movement.

3 James Cockayne, “Islam and International Humanitarian Law: From a Clash to a Conversation between Civilizations”, *International Review of the Red Cross*, Vol. 84, No. 847, 2002, pp. 599–600, available at: www.icrc.org/eng/assets/files/other/irrc_847_cockayne.pdf.

4 *Ibid.*

5 Wilfred Mlay, “Some Myths about Faith-Based Humanitarian Aid”, *Humanitarian Exchange Magazine*, 27 July 2004, available at: www.odihpn.org/humanitarian-exchange-magazine/issue-27/some-myths-about-faith-based-humanitarian-aid.

6 Carolyn Evans, “The Double-Edged Sword: Religious Influences on International Humanitarian Law”, *Melbourne Journal of International Law*, Vol. 6, 2005; Mashood A. Baderin, “Religion and International Law: Friends or Foes?”, *European Human Rights Law Review*, No. 5, 2009.

range from diplomatic incidents taken to the international stage⁷ to ignorance of local dynamics that borders on the comedic.⁸

Lord Carey, former Archbishop of Canterbury, points to 1997–1998 and the World Faiths Development Dialogue as offering an identifiable turning point for the relationship between international organizations and “faith-based” organizations (FBOs),⁹ an event that sought to increase understanding of the role of faith, FBOs and religious institutions in the provision of services, development and humanitarian activities.¹⁰ Since the Dialogue there has been a gradual increase in the interest expressed by the international aid architecture in the role of FBOs, faith communities and faith leaders in the provision of humanitarian assistance, often related to questions of the “added value” of faith. While a focus on service provision remains the most common approach by large-scale humanitarian donors towards FBOs, the nature of the conversation has developed in ways which indicate greater acceptance of the “value” provided by FBOs and engagement with faith actors more broadly. Since 2005 at least five UN agencies have developed guidance or frameworks on working with faith communities,¹¹ and since 2010 the United Nations (UN) Staff System College has hosted three

7 Examples of such incidents can be found in Michael D. McGinnis, “Proselytism Games and Humanitarian Aid”, prepared for and presented at the Annual Meeting of the Association for the Study of Religion, Economics, and Culture (ASREC) and the Society for the Scientific Study of Religion, Portland, OR, 19–21 October 2006, available at: www.global.ucsb.edu/orfaleacenter/luce/luce08/documents/McGinnis-ProselytismGames.pdf.

8 For example, in anonymous interviews with the author in 2011–2012, former Bosnian internally displaced persons (IDPs) noted that aid from some Muslim-majority countries during the 1990s included Qur’ans and booklets on religious practice, despite the recipients being from Muslim communities with ample access to such resources in their own language. This was described with amusement by interviewees, but also frustration as the resources could have contributed towards provision of needed supplies instead.

9 This term presents many difficulties in definition as it can encompass a multiplicity of organizations representing varying mandates and sectors. However, “faith-based” and more recently “faith-inspired” remain the most frequently used and recognizable terms, and hence are used here as defined by Gerard Clarke: “any organisation that derives inspiration and guidance for its activities from the teachings and principles of the faith or from a particular interpretation or school of thought within that faith”. Gerard Clarke and Michael Jennings (eds), *Development, Civil Society and Faith Based Organisations: Bridging the Sacred and the Secular*, Palgrave Macmillan, Hampshire and London, 2008, available at: [www.palgraveconnect.com/pc/polinstudextd/browse/inside/inline/9780230371262.pdf?chapterDoi=%7Bchapter.getDoiWithoutPrefix\(\)%7D](http://www.palgraveconnect.com/pc/polinstudextd/browse/inside/inline/9780230371262.pdf?chapterDoi=%7Bchapter.getDoiWithoutPrefix()%7D).

10 *Ibid.*, “Foreword by Lord Carey”, pp. xv–xvi.

11 For example, guidelines developed by UN agencies on engagement with faith communities and organizations include: Volker Türk, José Riera and Marie-Claude Poirier (eds), *Partnership Note: On Faith-Based Organisations, Local Faith Communities and Faith Leaders*, UNHCR, 2014, available at: www.unhcr.org/539ef28b9.pdf; United Nations Population Fund, *Culture Matters: Working with Communities and Faith-based Organizations*, 2005, available at: www.unfpa.org/resources/culture-matters-%E2%80%93-working-communities-and-faith-based-organizations#sthash.3Fg6GAiW.dpuf; UNAIDS, *Partnership with Faith-based Organizations: UNAIDS Strategic Framework*, 2009, available at: www.unaids.org/sites/default/files/media_asset/20100326_jc1786_partnership_fbo_en_0.pdf; UNICEF, *Partnering with Religious Communities for Children*, 2012, available at: www.unicef.org/about/partnerships/files/Partnering_with_Religious_Communities_for_Children_%28UNICEF%29.pdf; and United Nations Development Programme, *UNDP Guidelines on Engaging with Faith-based Organizations and Religious Leaders*, 2014, available at: www.undp.org/content/dam/undp/documents/partners/civil_society/publications/UNDP-CSO-Engaging-FBOs-RLs-October-2014.pdf.

Strategic Learning Exchanges between UN Agencies and FBOs.¹² Further examples include the launch of the Joint Learning Initiative on Faith and Local Communities in 2012, initiated to build collective understanding of the potential of local faith communities for improving community health and well-being,¹³ and the UN High Commissioner for Refugees (UNHCR) High Level Dialogue on refugee protection for religious leaders and faith-based humanitarian organizations, also in 2012. This dialogue discussed shared values informing assistance to refugee populations and sought to foster deeper relationships between secular and faith-based agencies,¹⁴ leading to the “Welcoming the Stranger” document,¹⁵ an innovative development that arguably would have been unheard of a decade previously.

The movement to engage with religious actors has been developing, and inevitably seeks to counteract a long history of religious identity being construed as inherently biased. The result of this history has been pressure on FBOs involved in humanitarian action to conform to secular narratives in order to be eligible for funding from major donors; this has had a palpable impact.¹⁶ Rick James of the International NGO Training and Research Centre (INTRAC)¹⁷ observes this downplaying by FBOs of their faith identity. Even with increased interest by donors and openness to working with religious groups, many such organizations are reticent to break down the barriers that have been drawn, potentially due to the threat that such action may pose to their professional identities. James’ research indicates that this division is perhaps less powerful for Muslim organizations, but Islamic Relief Worldwide has also experienced the impact of these pressures.

Islamic Relief grew from a small group of volunteers in 1984 to become the largest Muslim non-governmental organization (NGO) in the world thirty years later. As the organization became part of the international system, eventually questions were posed as to what extent adherence to humanitarian principles and the “secular” values¹⁸ of the wider sector had begun to overtake its identity as an

12 See www.unssc.org/home/activities/engaging-faith-organisations-and-communities-development-and-humanitarian-work regarding the 2014 event attended by the author.

13 See the website of the Joint Learning Initiative on Local Faith Communities, available at: <http://jliflc.com/about/>.

14 More information on the “Faith and Protection” session of the UNHCR Annual Consultations with NGOs is available at: www.unhcr.org/pages/501a39ce6.html.

15 UNHCR, *Welcoming the Stranger: Affirmations for Faith Leaders*, 2013, available at: www.unhcr.org/51b6de419.html.

16 Alistair Ager, “Faith and the Discourse of Secular Humanitarianism”, *Journal of Refugee Studies*, Vol. 24, No. 3, 2011.

17 Rick James, *What is Distinctive About FBOs? How European FBOs Define and Operationalise Their Faith*, Praxis Paper No. 22, INTRAC, 2009, available at: www.intrac.org/data/files/resources/482/Praxis-Paper-22-What-is-Distinctive-About-FBOs.pdf.

18 Although international principles and guidance (including the “rights-based approach”) were developed to enable a universal common ground for assistance to those in need, they have not been without their critics, for their relationship to a “Western” political agenda or theoretical underpinning. For example, see Juliano E. M. Fiori, *The Discourse of Western Humanitarianism*, Institut de Relations Internationales et Stratégiques, October 2013, available at: www.iris-france.org/docs/kfm_docs/docs/obs_questions_humanitaires/ENG-JulianoEM-Fiori-october2013.pdf.

Islamic FBO. The organization was founded on the basis that charitable giving and aid to others is a religious duty;¹⁹ faith was and remains the overt inspiration for the majority of staff and volunteers.²⁰ However, what the Islamic faith meant for the organization's approach to humanitarian action became less clear over time. Alienation was apparent between the secular language of the humanitarian sector and the religious language and meaning as it was understood internally. This is not to say that values or responses were contradictory, but rather that there was a lack of understanding on how the two interrelate and inform each other.²¹ This issue was given increasing attention during Islamic Relief's Strategic Review in 2010, and as a result the organization took the decision to utilize programmatic development funding from the UK Department for International Development²² for research into this area, specifically to increase the knowledge and understanding required to develop a "faith-literate" approach to humanitarian action by Islamic Relief. Subsequently, publications and policies examining complex theological teachings related to numerous issues²³ were developed in order to translate an Islamic "faith-based approach" to humanitarianism and development into resources and practical approaches.²⁴ This journey is not unique to Islamic Relief but indicative of the experience of a range of faith-based and faith-inspired agencies that are seeking to revive this knowledge and inspiration in a way that impacts their very approach to humanitarianism.

On the international stage, FBOs have willingly, and rightly, ascribed to humanitarian principles,²⁵ but a context in which engagement with faith organizations and communities is increasingly on the agenda also provides an opportunity to reflect on the nature of the relationship between FBOs and those

- 19 Interview with Dr Hany el-Banna at the Berkley Centre for Religion, Peace and World Affairs, 3 December 2007, available at: <http://berkleycenter.georgetown.edu/interviews/a-discussion-with-dr-hany-el-banna-president-and-co-founder-islamic-relief>. It is interesting to note that even at that early stage, the need to emphasize that the religious identity of the organization would not imply partiality was clear: "I presented it as a moral issue, and our response as a duty, not just for Muslims and Christians, but every single human being. ... Our message was about need and responsibility, and we stressed the need to help our fellow human beings, with no conditions, as an imperative coming from each and every faith, following the teachings of Jesus, Abraham, Mohammed and others. There should be no political, ethnic or racial distinction in the face of need."
- 20 Unlike some other FBOs, Islamic Relief operates with a non-discriminatory recruitment policy and there is no requirement to be a Muslim to be part of the organization, although staff are expected to abide by and be committed to the values of the organization. As a result, Islamic Relief employs a large number of staff from other religious backgrounds worldwide.
- 21 Interviews and discussions with Islamic Relief staff between January 2013 and April 2015.
- 22 Records of the Programme Partnership Arrangement funding to Islamic Relief are listed at: www.gov.uk/programme-partnership-arrangements-ppas and <http://devtracker.dfid.gov.uk/projects/GB-1-102415/>.
- 23 On conceptions of humanity, dignity, protective behaviour, environmental obligations and gender justice, to name but a few. Nearly all research by Islamic Relief on these subjects is available publicly at: <http://policy.islamic-relief.com/publication/>.
- 24 The resources that are publicly available are published on the Islamic Relief policy website at: <http://policy.islamic-relief.com/publication/>.
- 25 For example, training for Islamic Relief staff identifies the organization as adhering to the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, and focuses on humanity, impartiality, neutrality, independence, respect for culture and customs, coordinated action, building capacity, adherence to "do no harm" and a focus on vulnerability in the training of new emergency response personnel.

principles in the current day, and (in the case of this article) to critically examine how dialogue between humanitarian principles and Islamic theology takes place. There have been excellent efforts on a number of fronts to develop further the body of knowledge that relates IHL to Islamic law and legal theory, particularly through the efforts of the International Committee of the Red Cross (ICRC)²⁶ and others including Syracuse University.²⁷ Schwendimann has identified the difficulties associated with lack of familiarity with the legal framework of IHL,²⁸ and the understanding of humanitarian principles is arguably wider and easier for actors to get to grips with. Not least, assistance must be given in accordance with these principles to avoid aid being considered “unlawful interference in internal affairs”.²⁹

To critically examine how dialogue between humanitarian principles and Islamic theology takes place, this article will first examine humanitarian principles and Islamic principles in tandem, and discuss their commonalities and complementarities. A more critical approach will then be taken to consider where tensions and ethical concerns may arise from the nuances of interplay between the values held by an Islamic FBO and adherence to humanitarian principles. This will be followed by a discussion of the extent to which faith and faith actors may be instrumentalized and the issues this causes for humanitarian action. Finally, the article will look to a potential way forward and demonstrate how dialogue may take place between religious and humanitarian principles in practice, to result in a faith-driven approach to humanitarian action that is nonetheless complementary and in line with humanitarian principles. This will be done through presentation of the work of Islamic Relief on an Islamic approach to human development using the *maqasid al-Shari’ah*, the goals or objectives of Islamic law.

Humanitarian principles and Islamic concepts

In Islam an “act of charity” is not limited to material or resource transfers, but instead is considered to include any act of kindness or concern towards living things. Muslims will frequently cite the teaching of the Prophet Muhammad

26 This has particularly taken place through conferences inviting input from Islamic legal scholars – for example, a conference organized by the ICRC and the International Islamic University of Islamabad in 2005 (www.redcross.int/EN/mag/magazine2005_1/24-25.html); a seminar held with the ICRC, the Yemeni Red Crescent and Aden University on the protection of war victims under Islamic law and IHL (www.icrc.org/eng/resources/documents/feature/2006/islamic-law-ihl-feature-010606.htm); and an international conference on humanitarian action in the light of Shari’ah and IHL held in Pakistan in 2014 (www.icrc.org/en/document/pakistan-conference-humanitarian-action-light-sharia-and-international-humanitarian-law). See also the article by Abdulfatah Said Mohamed and Ronald Oferinger in this issue of the *Review*.

27 See <http://insct.syr.edu/projects/security-in-the-middle-east-islam/islamihl/>.

28 Felix Schwendimann, “The Legal Framework of Humanitarian Access in Armed Conflict”, *International Review of the Red Cross*, No. 884, December 2011, available at: www.icrc.org/eng/assets/files/review/2011/irrc-884-schwendimann.pdf.

29 *Ibid.*, p. 997.

(peace be upon him, PBUH³⁰) that even greeting another with a smile is considered an “act of charity”, while other guidance on what constitutes a charitable act can be as diverse as removing a small impediment from the path of another or listening to those who are suffering,³¹ the essential nature of charity being about connecting to God (Allah³²) through our relationships with one another. For Muslims, humanitarianism is understood as being associated with charity and therefore considered in this broader sense.³³ This has practical implications with the emergence of “non-traditional” donors, including from the Muslim world, for whom the concept of aid encompasses all forms of assistance to people in need, including religious charity such as the building of religious institutions, and cash donations with potentially less focus on follow-up on the impact of the funds donated.³⁴

Starting from this recognition that what constitutes humanitarian action is somewhat wider in a discussion regarding its intersection with Islamic principles and law, the following outlines the humanitarian principles as found in the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief (1994 Code of Conduct)³⁵ and in each case offers an outline of corresponding understandings and approaches from within the Islamic tradition, drawn from the research undertaken by Islamic Relief.³⁶ This section will consider the humanitarian imperative alongside the teachings of Islam on the nature of humanity and human dignity, and will discuss the principles of impartiality, independence and neutrality and their counterparts in Islamic law and jurisprudence. The article will finally discuss the commitment within the 1994 Code of Conduct to build local capacity³⁷ and how this finds its complement in guidance to Muslims on the importance of developing the self-reliance of the poor.

30 Prophets of God are honoured by Muslims with this saying when their name is mentioned.

31 Such sayings are recounted in the *ahadith* collections of al-Bukhari and Muslim (see below note 59).

32 “Allah” is transliterated from the Arabic word for God. Muslims will more often refer to God as Allah, even when speaking in languages other than Arabic.

33 Mamoun Abuarqub and Isabel Phillips, *A Brief History of Humanitarianism in the Muslim World*, Islamic Relief Worldwide, 2009, available at: <http://policy.islamic-relief.com/wp-content/uploads/2014/05/A-Brief-History-of-Humanitarianism-in-the-Muslim-World-New-Format.pdf>.

34 Andrea Binder and Claudia Meier, “Opportunity Knocks: Why Non-Western Donors Enter Humanitarianism and How to Make the Best of It”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011, p. 1137, available at: www.icrc.org/eng/resources/documents/article/review-2011/irrc-884-binder-meier.htm.

35 The 1994 Code of Conduct is available at: www.ifrc.org/en/publications-and-reports/code-of-conduct/. This article quotes from the full English text available at: www.ifrc.org/Global/Publications/disasters/code-of-conduct/code-english.pdf.

36 The author is indebted to the work of Islamic Relief colleagues Dr. Muhtari Aminu-Kano and Atallah Fitzgibbon for their writings on human development in Islam, published online as *An Islamic Perspective on Human Development*, Islamic Relief Worldwide, Birmingham, 2014, available at: <http://policy.islamic-relief.com/wp-content/uploads/2014/07/Human-Development-in-Islam.pdf>. This section also draws from the author’s own publication: Lucy V. Moore, *Working in Conflict: A Faith Based Toolkit for Islamic Relief*, Islamic Relief Worldwide, Birmingham, 2014, available at: <http://policy.islamic-relief.com/portfolio/working-in-conflict-a-faith-based-toolkit/>, particularly the writings published under Section 1 (“Policy”).

37 1994 Code of Conduct, above note 35, Arts 6, 7, 8, p. 4.

The humanitarian imperative

The right to receive humanitarian assistance, and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries The prime motivation of our response to disaster is to alleviate human suffering amongst those least able to withstand the stress caused by disaster. When we give humanitarian aid it is not a partisan or political act and should not be viewed as such.³⁸

As the subject of the first article of the 1994 Code of Conduct, the humanitarian imperative provides the foundation for the humanitarian principles as a whole. The principle of humanity and the concept of human dignity underpin this imperative that those in need have the right to receive humanitarian assistance, and that those who are able to assist have the right to provide it.³⁹ The obligatory (rights of those in need) and voluntary (right to provide assistance) nature of humanitarianism finds its Islamic partner in the two categories of charitable giving for Muslims – obligatory charity in the form of *zakat*, the third Pillar of Islam,⁴⁰ and voluntary charity in the form of *sadaqah*. In the case of *zakat*, each Muslim is obliged to provide a fixed proportion of their wealth or assets to those in need each year providing that their wealth is above a certain threshold, along with a fixed payment at the end of the month of Ramadan (*zakat al fitr*). *Sadaqah* is a charitable offering that can take place at any time for any amount and is actively encouraged in Islam. Charity, both obligatory and voluntary, is considered to be more than just a “good deed” but an action aimed towards social justice and intended to balance social inequality.⁴¹

At the core of Islamic teaching about the nature of humanity is the dignity (*karama*) conferred by God on all humanity. The Qur’an states that Allah “honoured the children of Adam and ... favoured them specially above many of those We have created”,⁴² and that at the moment when humanity was created, God breathed into Adam something of the Divine spirit⁴³; this relationship to the Divine and thereby human dignity is considered an innate attribute of

38 *Ibid.*, Art. 1.

39 *Ibid.* Human dignity and its relationship to humanitarian action is given clear discussion primarily in the Sphere Project Humanitarian Charter, available at: www.sphereproject.org/; however, it has its basis in the “right to life” enshrined in the Universal Declaration of Human Rights, as mentioned in the first lines of the document: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Universal Declaration of Human Rights, Preamble, available at: www.un.org/en/documents/udhr/.

40 The Five Pillars (or duties) of Islam are the *shahada* (profession of faith), *salah* (obligatory prayers), *zakah* (giving of charity), *saum* (fasting during the month of Ramadan) and *Hajj* (pilgrimage to the *Kabbah* in Mecca).

41 See also Ajaz Ahmed Khan, Ismayil Tahmazov and Mamoun Abuarqub, *Translating Faith into Development*, Islamic Relief Worldwide, Birmingham, 2009, available at: <http://policy.islamic-relief.com/wp-content/uploads/2014/05/Translating-Faith-Into-Development.pdf>.

42 Qur’an, *Surat al-Isra*, 17:70. All translations of Qur’anic verses (*ayahs*) in this article are from *The Qur’an: A New Translation* by M. A. S. Abdel Haleem, Oxford University Press, Oxford, 2005.

43 “Your Lord said to the angels, ‘I will create a man from clay. When I have shaped him and breathed from My Spirit into him, bow down before him.’” Qur’an, *Surat Sad*, 38:71–72.

humankind. Jurists are in general agreement on the equal dignity and worth of all human beings, and thus everyone has the right to live a life worthy of dignity and respect simply by virtue of being human.⁴⁴

At the heart of the Islamic tradition lies *Tawhid*, which refers to the state of unity, oneness and uniqueness of Allah. Islam is a monotheistic religion, and Muslims believe that God is one and the Creator of all; hence, the first of the Five Pillars of Islam is that Muslims make a declaration of faith (*shahada*), “There is no god but Allah”. Thus, all creation is a unified whole based on the unity of its source and origin. Emerging from this belief in *Tawhid* is the idea that unity can be found in all facets of humanity – that there is an inherent unity of various revelations sent from Allah, the unity of humanity, the unity of creations and ultimately the unity of all existence. Unity in Islam defines humankind’s vertical relationship with God, an individual’s relationship with himself or herself, human-to-human relationships and humanity’s relationship with other creations.

Tawhid further encompasses the integration and connected nature of a diverse humanity as emerging from one Divine source of creation:

People, we created you all from a single man and a single woman, and made you into races and tribes so that you should recognize one another. In God’s eyes, the most honoured of you are the ones most mindful of Him: God is all knowing, all aware.⁴⁵

Through *Tawhid*, Islam reconciles and connects the unity of God and creation to the diversity of that creation. While humanity and the universe are diverse by nature, they are interconnected through their creation by God and their relationship with the Divine. The innate dignity of humanity is further emphasized through the concept of *fitrah*, the sacredness of human life which recognizes the fundamental goodness of all people at birth: “We create man in the finest state.”⁴⁶ Because of *fitrah*, all human life is sacred and its dignity (*karama*) is to be preserved:

We decreed to the Children of Israel that if anyone kills a person – unless in retribution for murder or spreading corruption in the land – it is as if he kills all mankind, while if any saves a life it is as if he saves the lives of all mankind.⁴⁷

Based on the Qur’anic revelation that man is created “in the finest state” and the presence of Divine breath in the formation of humanity, the concept of human nature in Islam indicates that humans are essentially good, but we exhibit negative traits such as arrogance, greed or being unappreciative.⁴⁸ These are seen as deviations from our essential nature, and an indication that humans are able to

44 Mohammed Hashim Kamali, *The Dignity of Man*, Islamic Texts Society, Cambridge, 2002.

45 Qur’an, *Surat Al-Hujurat*, 49:13. See also *Surat Al-Ma’idah*, 5:48; and *Surat Yunus*, 10:19.

46 Qur’an, *Surat Al-Tin*, 95:4. See also *Surat Al-Baqarah*, 2:30–34; and *Surat Al-Isra*, 17:70.

47 Qur’an, *Surat Al-Ma’idah*, 5:32.

48 See *Surat Ibrahim*, 14:34; *Surat Al-Isra*, 17:11; *Surat Al-Khaf*, 18:54; *Surat Al-Hajj*, 22:66; *Surat Al-Ahzab*, 33:72; *Salat Az-Zukhruf*, 43:15; and *Surat Al-’Adiyat*, 100:6. For analysis see S. Ayse Kadayifci-Orellana, Mohammed Abu-Nimer and Amjad Mohamed-Salem, *Understanding an Islamic Framework for Peacebuilding*, Islamic Relief Worldwide, Birmingham, 2013, pp. 9–11, available at: <http://policy.islamic-relief.com/portfolio/understanding-an-islamic-framework-for-peacebuilding/>.

change their behaviour: “God does not change the condition of a people unless they change what is in themselves.”⁴⁹

Impartiality, independence and neutrality

Interwoven throughout the 1994 Code of Conduct is direction that NGO agencies should conduct themselves impartially and independently. Impartiality is embedded in various provisions – for example, where the Code states that the giving of humanitarian aid “is not a partisan or political act and should not be viewed as such” in Article 1,⁵⁰ and that “[a]id will not be used to further a particular political or religious standpoint” even where organizations retain the right to their political or religious opinions (under Article 3).⁵¹ Independence is explicitly identified under Article 4: “We shall endeavour not to act as instruments of government foreign policy. NGHAs [non-governmental humanitarian agencies] are agencies which act independently from governments In order to protect our independence we will seek to avoid dependence upon a single funding source.”⁵² Although not directly referenced in the 1994 Code of Conduct, neutrality is recognized as a further principle for humanitarian assistance as included in the Annex on Guiding Principles in UN General Assembly Resolution 46/182.⁵³ Adherence to neutrality as a principle for humanitarian action has in turn been adopted by NGOs, although it is not without complications.⁵⁴

It is a popular reading that Islamic teachings promote unequal treatment of non-Muslims, and this can become compounded when added to the fear that religiously based organizations tend to act partially towards those of the same faith. Although Islam, like other faiths, promotes closeness amongst its community of believers, evidence from its primary sources, and from practice in Muslim societies, does not bear out this reading. Muhammad Hashim Kamali⁵⁵ has conducted an analysis of this issue, finding that only three Qur’anic verses⁵⁶ may be interpreted as supporting unequal treatment of non-Muslims, and only limited examples of such discrimination can be found in the history⁵⁷ of the time

49 Qur’an, *Surat Ar-Ra’d*, 13:11.

50 1994 Code of Conduct, above note 35, p. 3.

51 *Ibid.*

52 *Ibid.*, pp. 3–4.

53 See www.un.org/documents/ga/res/46/a46r182.htm.

54 For a useful discussion on neutrality in humanitarian assistance (primarily focusing on the ICRC), see Denise Plattner, “ICRC Neutrality and Neutrality in Humanitarian Assistance”, *International Review of the Red Cross*, No. 311, 1996, available at: www.icrc.org/eng/resources/documents/misc/57jn2z.htm. This will also be discussed further below.

55 Muhammad Hashim Kamali, *Freedom, Equality and Justice in Islam*, Islamic Texts Society, Cambridge, 2002.

56 *Surat Al-Imran*, 3:110; *Surat Al-Tawbah*, 9:21; *Surat Al-Ma’idah*, 5:51.

57 This history is specifically referred to by Muslims as *Sunnah* and is a source of Islamic law and practice, particularly for Sunni Muslims.

of the Prophet Muhammad (PBUH), while many other passages in the Qur'an⁵⁸ and numerous *ahadith*⁵⁹ can be quoted to support equality for non-Muslims.

In the humanitarian sector this issue is most clearly seen in questions over who is eligible to be beneficiaries of the obligatory charitable payments of *zakat*. Guidance from the Qur'an itself does not specify that recipients of alms must be Muslim:

Alms are meant only for the poor, the needy, those who administer them, those whose hearts need winning over, to free slaves and help those in debt, for God's cause, and for travellers in need.⁶⁰ This is ordained by God; God is all knowing and wise.⁶¹

As such, the 1994 Code of Conduct exhorting organizations to "endeavour not to act as instruments of government foreign policy" and to ensure that "[a]id will not be used to further a particular political or religious standpoint"⁶² is well within the guidance for Muslims to give first to the poor and needy⁶³ and not at the direction of political or other considerations. In the cases of *sadaqah* this is widened further as it can be offered to anyone of the donor's choosing without restriction, and encompasses the charitable acts (such as smiling or listening) that would not be applicable as *zakat*.

Furthermore, classic Islamic jurisprudence includes a strong tradition of neutrality for the purposes of mediation. This article does not intend to outline the precedence and history of neutrality in Islamic law and theology, but it can find many expressions of it: it is classically found in the impartial nature of the judiciary as set up in the time of early Islam,⁶⁴ and in armed conflict neutrality as an equivalent to the *aman* (safe conduct) guaranteed for the emissary of a (foreign) nation, and even for any enemy who has asked for asylum.⁶⁵ There are also strong traditions contained in the *ahadith* of the Prophet Muhammad (PBUH) and early converts to Islam that point to the "neutral" position of some actors in a conflict who are to be protected:

58 *Surat Al-Baqarah*, 2:62; *Surat Al-Ma'idah*, 5:5; *Surat Al-Mumtahanah*, 60:8; and several *ahadiths*.

59 *Hadith* (plural: *ahadith*) are collected traditions containing sayings and actions of the Prophet Muhammad (PBUH) and constitute a major source of guidance for the majority of Muslims.

60 Readers will have noticed the wide variety of activities contained within this statement that are typically excluded from humanitarian action. These will be discussed in more detail below.

61 Qur'an, *Surat Taubah*, 9:60.

62 1994 Code of Conduct, above note 35, Art. 3.

63 For further information on *zakat*, *sadaqah*, Islam and humanitarianism, see Mamoun Abuarqub, *Faith Identity in Practice*, Islamic Relief Worldwide, Birmingham, 2010, available at: <http://policy.islamic-relief.com/portfolio/faith-and-identity-in-practice/>; Rianne C. ten Veen, *Charitable Giving in Islam*, Islamic Relief Worldwide, Birmingham, 2009, available at: <http://policy.islamic-relief.com/portfolio/charitable-giving-in-islam/>; Mamoun Abuarqub and Isabel Phillips, *A Brief History of Humanitarianism in the Muslim World*, Islamic Relief Worldwide, Birmingham, 2009, available at: <http://policy.islamic-relief.com/portfolio/a-brief-history-of-humanitarianism-in-the-muslim-world/>; Jamal Krafess, "The Influence of the Muslim Religion in Humanitarian Aid", *International Review of the Red Cross*, Vol. 87, No. 858, 2005, available at: www.icrc.org/eng/assets/files/other/irrc_858_krafess.pdf.

64 Ata ur Rehman, Dr. Mazlan Ibrahim and Dr. Ibrahim Abu Bakar, "The Concept of Independence of Judiciary in Islam", *International Journal of Business and Social Science*, Vol. 4, No. 2, 2013, available at: http://ijbssnet.com/journals/Vol_4_No_2_February_2013/8.pdf.

65 Qur'an, *Surat At-Tawbah*, 9:6.

In avenging the injuries inflicted upon us molest not the harmless inmates of domestic seclusion; spare the weakness of the female sex; injure not the infants at the breast or those who are ill in bed. *Refrain from demolishing the houses of the unresisting inhabitants*; destroy not the means of their subsistence, nor their fruit-trees and touch not the palm.⁶⁶

Building local capacity

While generosity is actively encouraged and charitable giving an obligatory duty for Muslims, this is not at the expense of developing people's resilience to poverty and disaster. This is based on a detailed *hadith* narrated by Abu Dawud which describes a poor man coming to the Prophet Muhammad (PBUH) to beg. The story details how the Prophet, instead of giving money, assisted the man in selling his few items and with that money assisted him in buying an axe, which in turn allowed the man to become financially self-sufficient through selling firewood.

The Prophet (PBUH) then said: 'This is better for you than that begging should come as a spot on your face on the Day of Judgment. Begging is right only for three people: one who is in grinding poverty, one who is seriously in debt, or one who is responsible for compensation and finds it difficult to pay.'⁶⁷

Shafi'i and *Hanbali* scholars state that *zakat* should not be paid to a person who is strong and capable of working and securing an income to satisfy their needs, unless they are unable to find suitable employment.⁶⁸

Although not explicitly one of the humanitarian principles, within the 1994 Code of Conduct there is a commitment to building on, rather than displacing, existing capacities: "All people and communities – even in disaster – possess capacities as well as vulnerabilities. Where possible, we will strengthen these capacities by employing local staff, purchasing local materials and trading with local companies."⁶⁹ NGOs also commit to "hold[ing] ourselves accountable to both those we seek to assist and those from whom we accept resources".⁷⁰ For Muslims, accountability for one's actions comes first and foremost from God, who is cognizant of all that you do: "Fulfil any pledge you make in God's name and do not break oaths after you have sworn them, for you have made God your surety: God knows everything you do."⁷¹ Furthermore, within the Qur'an it is explicitly indicated that people are accountable as individuals for their actions: "Whoever has done a good deed will have it repaid ten times to his credit, but

66 Abu 'Abd Allah Muhammad, *al-Maghazi*, Vol. 2, Beirut, Mu'ssasah al A'lami li 'l-Matbu'at, 1409/1898, pp. 757–758; Ahmad b. Zayni Dahlan, *al-Sirah al-Nubawiyah*, 1st edition, Vol. 2, Halb, Dar al-Qalam al-'Arabi, 1417/1996, p. 236; cf. Dr. Muhammed Munir, "The Prophet (Peace Be Upon Him)'s Merciful Reforms in the Conduct of War: The Prohibited Acts", *Insights, Sirah Special Issue*, Vol. 2, No. 2–3, 2009–2010, p. 235, emphasis added.

67 *Hadith* narrated by Abu Dawud, Book 9, *Hadith* 1637.

68 From research conducted by Sadia Kidwai for Islamic Relief Policy on *zakat*, 2014 (internal documents).

69 1994 Code of Conduct, above note 35, Art. 6.

70 *Ibid.*, Art. 9.

71 Qur'an, *Surat An-Nahl*, 16: 91.

whoever has done a bad deed will be repaid only with its equivalent – they will not be wronged.”⁷² For organizations like Islamic Relief, this is often combined with principles such as excellence (*ihsan*) and sincerity (*ikhlas*) to provide the religious basis for a beneficiary-focused approach, and accountability to the donor.⁷³

Tensions and ethical concerns

The theoretical grounding for the relationship between humanitarian and Islamic principles is sound and appears at first viewing to be relatively unproblematic. As with all “universal” approaches, however, while connections are easily made over broad principles (justice, peace, impartiality), it is over the details of how such principles are put into practice that tensions can arise. The separation of religion from humanitarian or charitable activities is very much an artificial construct for the majority of Muslim communities, as the relegation of faith to the private sphere is not a natural concept for the majority of Muslims.

Outside of the environments where humanitarian professionalism has been developed – overwhelmingly in European and North American contexts – this distinction is one which is constructed to respond to the need for professional identity, not in response to the realities of those organizations working with communities, so often defined by adherence to faith or a particular sect. Research by Elena Fiddian-Qasmiyeh has provided further evidence that the separation of religious identity and faith inspiration from humanitarianism at the local level is more a question of “performance” than reality,⁷⁴ and is done in order to communicate FBOs’ reality to secular international NGOs while remaining in line with the perceptions of donors that humanitarian principles are incompatible with an overt faith identity. This is intended to help retain access to aid from “secular” sources; in this regard, the relationship is reversed and, arguably, faith-based actors in turn “instrumentalize” humanitarian discourse in order to leverage resources and access.

Proselytism

To ensure that aid is given according to need, the 1994 Code of Conduct states:

Notwithstanding the right of NGHAs to espouse particular political or religious opinions, we affirm that assistance will not be dependent on the adherence of the recipients to those opinions. We will not tie the promise, delivery or

72 Qur’an, *Surat Al-’An’am*, 6:160.

73 Atallah Fitzgibbon, *The Importance of Spiritual Capital within Human Development in Islamic Teaching*, Islamic Relief Worldwide, Birmingham, 2012, available at: <http://policy.islamic-relief.com/portfolio/the-importance-of-spiritual-capital-within-human-development-in-islamic-teaching/>; *Faith Inspired Action: Global Strategy 2011–2015*, Islamic Relief Worldwide, Birmingham, 2011, available at: http://policy.islamic-relief.com/downloads/31-FAITH_INSPIRED_ACTIO.pdf.

74 Elena Fiddian-Qasmiyeh, “The Pragmatics of Performance: Putting ‘Faith’ in Aid in the Sahrawi Refugee Camps”, *Journal of Refugee Studies*, Vol. 24, No. 3, 2011.

distribution of assistance to the embracing or acceptance of a particular political or religious creed.⁷⁵

On the surface this has clear connections with restrictions in the Qur'an for Muslims related to proselytism – “There is no compulsion in religion.”⁷⁶ However, for Muslims, *dawah* – or “inviting” others to Islam – is perhaps a much broader concept than is used in the context of humanitarian principles. For Muslims the goal of this might more often be to inform rather than to convert, and conversion is not necessarily to be expected nor explicitly sought. Furthermore, to engage in *dawah* is not necessarily explicit, with many Muslims considering that positive actions by Muslims can speak louder for the faith than words, and so acting kindly or assisting others can be construed as a method of inviting people to Islam. This can be seen in its inclusion in the definition of appropriate beneficiaries for *zakat*:

Alms are meant only for the poor, the needy, those who administer them, *those whose hearts need winning over*, to free slaves and help those in debt, *for God's cause*, and for travellers in need. This is ordained by God; God is all knowing and wise.⁷⁷

The interpretation of “those whose hearts need winning over” and “for God's cause” in the modern context is a subject for greater analysis and theological scholarship, but the indication is that *zakat* can be spent in much broader ways than envisioned by the modern humanitarian community, and can be considered to include explicitly religious activities for some non-traditional donors.⁷⁸ From the perspectives of FBOs engaged with humanitarian action it can be felt that the pastoral and spiritual facets of any assistance are restricted or unwelcome once they receive funds from donors, and that this is to the detriment of the recipient of that assistance.

This is not to say that there are not risks to impartiality posed by *dawah* in a humanitarian context, but rather that proselytism, like all spiritual life, takes multiple forms. Spiritual life, not often recognized by aid agencies, is a priority to many conflict-affected communities, perhaps especially in situations of displacement. Humanitarian FBOs, including Islamic Relief, abide by policies not to build specifically religious buildings out of respect for humanitarian principles and to be sensitive to the implications that may arise for their position of impartiality. However, Muslim FBOs are frequently approached with requests for assistance in building mosques and religious schools, partly because their religious identification makes people feel such requests will be understood. Responding to the needs of displaced communities in particular, recognition that space for worship and religious education is considered a basic need and is a priority of the camp residents themselves has required reinterpretation of this

75 1994 Code of Conduct, above note 35, Art. 3.

76 Qur'an, *Surat Al-Baqarah*, 2:256.

77 Qur'an, *Surat Taubah*, 9:60, emphasis added.

78 Interview with Dr. Hany el-Banna, above note 19.

restriction, resulting in provision of temporary spaces for religious and spiritual use equitably to all communities (both Muslim and non-Muslim). Islamic Relief's stated mission is to relieve poverty based on need, and its policy is that spaces can only be provided where they can be fairly accessed by all members of the community, which is particularly the case in camps for refugee populations; for example, on the Egyptian border with Libya, a camp managed by Islamic Relief provided space for Christians and Muslims to worship together. In another instance, at Layan camp in Al-Rafid, Beka'a, Lebanon, a communal building was provided in the small camp, but as a small community of Muslims, the inhabitants chose to use it as a mosque.

The relegation of religion to "culture" by parts of the international aid community has had other, foreseen consequences in that it has undermined the potential for understanding the economic, political and social role of faith and faith communities in situations of forced migration crisis, and how this can have a positive impact on the design of response. One such example is the inclusion of religion in the 2014 *World Disasters Report*, which discusses religion most explicitly in Chapter 2, "How Religion and Beliefs Influence Perceptions of and Attitudes Towards Risk".⁷⁹ While this may be the most appropriate forum for discussion of religion for international organizations, the way in which it is discussed gives less consideration to the positive facets of faith in such contexts⁸⁰ and the analysis does not recognize that religious actors may see strong distinctions between "religion", "faith" and "culture". At the root of humanitarian agencies' concern is the potential difficulty of separating out FBOs' humanitarian role from their pastoral role. However, doing so has the potential to deny access to important pastoral services such as the comforting of the sick, traumatized and bereaved.⁸¹

Perceptions and policy

Abiding strictly by humanitarian principles can also cause tensions between FBOs and the communities from which their members are drawn. This takes a more obvious form when concerns are expressed that an "Islamic" organization is providing aid to non-Muslims,⁸² but can also find expression in the expectations of individual donors as to how *zakat* is distributed. The view of many scholars is

79 International Federation of Red Cross and Red Crescent Societies, *World Disasters Report 2014: Focus on Culture and Risk*, Geneva, 2014, pp. 37–64, available at: www.ifrc.org/publications-and-reports/world-disasters-report/world-disasters-report-2014/.

80 "The two dimensions of beliefs that emerge most prominently in the context of [disaster risk reduction] are the way that beliefs form an obstacle to reducing risk (something that makes people think or do things that are counter to risk reduction or that increase their vulnerability) and the way in which beliefs influence people's understandings of risks." *Ibid.*, p. 37.

81 Sadia Kidwai, Lucy V. Moore and Atallah Fitzgibbon, "The Role of Religion in the Formation of Cross-Community Relationships", *Forced Migration Review*, No. 48, November 2014, available at: www.fmreview.org/faith/kidwai-moore-fitzgibbon#sthash.c7T1IkHs.dpuf.

82 While this is just a fraction compared to the messages of support that are received, it is not uncommon for comments to be posted on social media asking why an Islamic charity is providing aid to non-Muslims when the needs of the Muslim community around the world are so great.

that *zakat* was traditionally intended for Muslims, with the needs of non-Muslims being met with *sadaqah* funds etc. Equally, however, there are scholars who provide guidance that *zakat* may be spent on giving aid to non-Muslim countries, persons, organizations and tribes who are *fuqara* and *masakin* (poor and needy⁸³). The Qur'an does not specify that *fuqara* and *masakin* must be Muslim, with the example from Islamic tradition of Caliph Omar Bin Al-Khattab stating that a Jewish beggar would be a valid recipient of *zakat*.⁸⁴

While there is evidence for both responses to this question, there remains in many Muslim communities the perception that *zakat* is intended to assist the needy within the Muslim community, or *Ummah*.⁸⁵ Muslim FBOs may strategically choose where to spend funds and resources raised through *zakat* in order to remain within the expectations of their donors, but this runs contrary to the humanitarian principle of impartiality and non-discrimination. Those donating their *zakat* to an Islamic FBO may do so with the assumption that the funds will only be distributed to the needy amongst fellow Muslims, and if this is not the case, they may feel that the FBO has neglected its duty to distribute *zakat* within the boundaries of Islamic law.

To take the implications of strict adherence to humanitarian principles further, this tension could arguably be found in the provision of donations related to the celebration of Ramadan and *Eid-al-Adha*.⁸⁶ These two events are specific to Muslim communities, and Islamic NGOs fundraise specifically to support poor communities during the celebrations, for example amongst Muslim forced migrants. This would find similar expression should a Christian NGO raise funds to support Christmas or Easter celebrations. While these examples do not create tensions in the same way as explicit proselytism does, they do highlight the inherent tensions for FBOs that engage with specific faith communities and perceptions of how to adhere to humanitarian principles. In many cases, organizations will deliberately counter the perception of bias by offering assistance to non-Muslim communities at the same time.

Justice

You who believe, uphold justice and bear witness to God, even if it is against yourselves, your parents, or your close relatives.⁸⁷

83 Qur'an, *Surat Taubah*, 9:60.

84 This discussion of *zakat* is based on research led by Sadia Kidwai in support of Islamic Relief's *zakat* policy of 2014, which involved consultation with a panel of twelve Islamic scholars. This is an internal document to Islamic Relief, but for a detailed overview of Islamic jurisprudence on *zakat*, readers can refer to Dr. Yusuf Al-Qardawi, *Fiqh az-Zakat: A Comparative Study*, English translation, Dar Al Taqwa, 1999.

85 The *Ummah* is the description used by Muslims for the community of followers of Islam.

86 For *Eid-al-Adha*, Muslims traditionally sacrifice an animal. The family retains one third of the meat; another third is given to relatives, friends and neighbours; and the remaining third is given to the poor and needy.

87 Qur'an, *Surat an-Nisa*, 4: 135

The above *ayah*⁸⁸ of the Qur'an⁸⁹ provides insight into the primary tension felt by Muslims operating under humanitarian principles. For Muslims the primary principle is that of justice, and the Qur'an repeatedly reminds readers that they should be standing up and speaking out against injustice, even if this is at a cost to themselves. The tension between Islamic guidance and humanitarian principles most often finds expression in concerns about positions of neutrality and the requirement to remain impartial when faced with conflict scenarios.⁹⁰ This tension, as it is perceived, was well expressed by Hüseyin Oruç of the IHH Humanitarian Relief Foundation⁹¹ in conversation with the ICRC. He stated that while there are no difficulties in abiding by humanitarian principles, "there is some different understanding on neutrality. What is neutrality? As a Muslim I cannot be neutral for everybody. How can I close my eyes when the killers are killing the childrens [sic]?"⁹²

Within Islam there is a central concept of unity between believers, that all Muslims are a single community or *Ummah*.⁹³ Because of this concept the prospect of taking a "neutral" stance can be precluded; as the community of believers should remain united, Muslims may feel obliged to support other Muslims in a conflict situation, resulting in the English term "neutrality" being at some unease with Islamic values. For instance, Arabic does not have a direct translation of "neutrality", the closest being *hiyadiya*, which implies non-alignment.⁹⁴ However, this simple division is more complex in real terms, not least because of the internal divisions between Muslim communities or sects, and so the concept is not necessarily one that cannot be appreciated or used by Muslim communities. Additionally, within the concept of the *Ummah* is that of "brotherhood", which implies care for other members and a fundamental equality between people.

This is similar to the tensions that are felt by actors across the humanitarian sector, where it is not possible to have all good objectives be reconciled in every context, and the very position of neutrality might instead compromise the ability of an agency to act and save lives.⁹⁵ It is not uncommon for those working in any humanitarian agency to feel frustration that there seems to be no real difference

88 Within the Qur'an, an *ayah* is effectively equivalent to a Biblical verse.

89 See also *Surat An-Nisa*, 4:114 and 148; and *Surat Al-Shura*, 42:42.

90 Again referencing the Annex on Guiding Principles in UN General Assembly Resolution 46/182, which states as a guiding principle that "[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality". Available at: www.un.org/documents/ga/res/46/a46r182.htm.

91 İnsan Hak ve Hürriyetleri ve İnsani Yardım Vakfı: in English this translates as the Foundation for Human Rights and Freedoms and Humanitarian Relief. This is a Turkish NGO whose members are predominantly Turkish Muslims.

92 *Humanitarian Principles: Perspectives from an Islamic NGO*, interview with Hüseyin Oruç of IHH Humanitarian Relief Foundation, International Committee of the Red Cross, 4 June 2013, available at: www.youtube.com/watch?v=ZiPLjbHZUjY. On the question of whether neutral humanitarian action is permissible under Islamic law, see the Opinion Note by Mohd Hisham Mohd Kamal in this issue of the *Review*.

93 See above note 85.

94 See also Raymond Cohen, "Language and Conflict Resolution: The Limits of English", *International Studies Review*, Vol. 3, No. 1, 2001.

95 David Rieff, *A Bed for the Night: Humanitarianism in Crisis*, Simon and Schuster, New York, 2002.

between “Neutrality, Impartiality, [and] Complicity”.⁹⁶ The difference arises, perhaps, in the religious mandate inherently felt by Muslims – the call to abide by ethical guidelines is experienced in a way that is related to the believer’s relationship with God, and cannot be measured or compared in any quantifiable way.

There are two ironies inherent in this tension between the principle of neutrality and the experiences of Islamic faith-based organizations in the modern-day context. The first is that the purpose of humanitarian agencies acting with neutrality and impartiality can be derailed by the political realities of the operating environment, in such a manner that the “religious” identity that is so often avoided in the humanitarian sector becomes the only viable language with which to build credibility. It is commonplace for international aid agencies to struggle against perceptions of their “Western bias” and accusations that they collaborate with or are representatives for military actors and hostile governments; this has been exacerbated in cases where a “militarization of aid” has taken place, such as in Afghanistan,⁹⁷ or where international NGOs are required to undertake coordination with military and foreign governments. In such contexts local partners and explicitly Muslim FBOs have had an advantage in developing relationships with faith communities,⁹⁸ and trust relationships can frequently be formed simply on the basis of a visible religious identity, even if the question of shared values is not examined in any depth.

The other side to this scenario is that the current international political context of the “war on terror” has led to greater negative discrimination and partiality on the part of donors, based on the faith identity that is perceived of as a risk to impartiality on the part of the FBO. While in some contexts Islamic faith-based organizations are receiving greater support because of their ability to access areas that “Western” donors cannot reach, in others funding is lost or activities are rendered impossible to implement because of the risk of falling foul of counterterrorism legislation.⁹⁹

96 MoreAltitude, “Neutrality, Impartiality, Complicity”, *WanderLust: Notes from a Global Nomad*, April 2009, available at: <http://morealtitude.wordpress.com/articles-on-aid-work/neutrality-impartiality-complicity/>.

97 Lara Olson, “Fighting for Humanitarian Space: NGOs in Afghanistan”, *Journal of Military and Strategic Studies*, Vol. 9, No. 1, 2006, available at: www.jmss.org/jmss/index.php/jmss/article/viewArticle/121. See also Jonathan Goodhand, “Aiding Violence or Building Peace? The Role of International Aid in Afghanistan”, *Third World Quarterly*, Vol. 23, No. 5, 2002.

98 For the experience of Islamic Relief, see Islamic Relief Worldwide, *An Examination of Islamic Relief’s Work with Refugees and IDPs*, Birmingham, 2008, available at: <http://policy.islamic-relief.com/portfolio/an-examination-of-islamic-reliefs-work-with-refugees-and-idps/>.

99 See Kate Mackintosh and Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, Office for the Coordination of Humanitarian Affairs and Norwegian Refugee Council, July 2013, available at: https://docs.unocha.org/sites/dms/Documents/CT_Study_Full_Report.pdf; Sara Pantuliano, Kate Mackintosh and Samir Elhawary with Victoria Metcalfe, *Counter-terrorism and Humanitarian Action*, Humanitarian Policy Group Policy Brief 43, Overseas Development Institute (ODI), October 2011; Counterterrorism and Humanitarian Engagement Project, *Counterterrorism and Humanitarian Engagement in Somalia and Mali: Background Briefing*, Research and Policy Paper, March 2013, available at: <http://blogs.law.harvard.edu/cheproject/files/2012/10/CHE-Project-Somalia-and-Mali.pdf>; and Jessica Burniske, Naz K. Modirzadeh and Dustin Lewis, *Counterterrorism Laws: What Aid Agencies Need to Know*, Network Paper No. 79, Humanitarian Practice

Inspired by or instrumentalized through faith?

It can be argued that the impetus to better engage with faith, and particularly Islam, is primarily an example of religious teachings being instrumentalized to support predetermined approaches to humanitarian activities or development (such as advancement of human rights). This is in keeping with the prevalent approach today to understanding religious tradition, which Gideon Aran defines as “traditionalist” rather than “traditional”, where contemporary “users” of tradition harness examples to achieve their objectives, often accompanied by the belief that they are “faithfully returning the present to what they grasp as the authentic representation of the past”.¹⁰⁰ This argument can equally be made regarding the analysis offered earlier in this article of the relationship between Islamic and humanitarian principles. This reality is reflected in comments by some working on relating IHL and Islamic jurisprudence which acknowledge that “[s]ome of it is very instrumentalist”, where actors are looking for specific verses to assist them with specific scenarios (being kidnapped, for example),¹⁰¹ and that Islamic law does not simply “unlock the door” to particular outcomes.¹⁰²

Humanitarian agencies providing large-scale assistance continue to be viewed, for the time being, as coming predominantly from the global North, and the options for using approaches that do not instrumentalize religion to support existing approaches will remain limited by this. For those actors that emerge from Muslim communities, their ability to shape the narrative remains restricted by the bulk of their donor funds also coming from the same system that remains close to a secular ideology. This maintains the power relationship in favour of the “universal” approach (which is not, in fact, always felt to be universal by many of the communities it is designed to assist). However, once this aid is translated to the local or community level, these relationships become much more flexible. Once away from the expectations of the “international” actor, local communities more often use the ethical framework of their faith and the traditions of the community to communicate values and the ethical framework for action.

The importance of this was unequivocally stated by beneficiaries taking part in a conflict transformation project by Islamic Relief in Yemen in 2011:

Network, November 2014, available at: www.odihpn.org/hpn-resources/network-papers/counter-terrorism-laws-what-aid-agencies-need-to-know.

100 Gideon Aran, “On Religion and Violence”, *Contending Modernities*, University of Notre Dame’s Kroc Institute for International Peace Studies, 25 November 2014, available at: <http://blogs.nd.edu/contendingmodernities/2014/11/25/on-religion-and-violence/>.

101 Naz K. Modirzadeh, quoted in Heba Aly, “Can Islamic Law Be an Answer for Humanitarians?”, *IRIN News*, 24 April 2014, available at: www.irinnews.org/report/99989/can-islamic-law-be-an-answer-for-humanitarians. See also Heba Aly, “Jihadi Jurisprudence? Militant Interpretations of Islamic Rules of War”, *IRIN News*, 24 April 2014, available at: www.irinnews.org/report/99988/jihadi-jurisprudence-militant-interpretations-of-islamic-rules-of-war.

102 Andrew March and Naz K. Modirzadeh, “Ambivalent Universalism? Jus ad bellum in Modern Islamic Legal Discourse”, *European Journal of International Law*, Vol. 24, No. 1, 2013, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2100540.

While the trainer was making reference to the United Nations and international human rights, a participant responded by saying that Islam addressed human rights 1400 years ago Another participant stood up and said they (the trainees) would not believe or trust any book or material not related to Islamic concepts.¹⁰³

Such sentiments clearly challenge FBOs to develop approaches that are based on and relevant to the values and identities of the communities in which they operate, rather than simply “translating” international approaches into the local context. The analysis developed above has indicated that there are commonalities to be found between the international and the local, but sentiments like those just described indicate that the tensions may in fact come from a lack of communication about those relationships. Humanitarian principles retain respect for religion and religious practice, combined with the obligation to abstain from religious controversy, but the experience of FBOs would seem to indicate that this is not clearly understood by the recipients of humanitarian assistance. For example, in Lebanon, initial questions posed by the author to the staff and partners of Islamic Relief about how their faith inspires their work with Syrian refugees were immediately met with strong pronouncements on the importance of non-discrimination, with any discussion of faith being first understood in terms of its potential risk to humanitarian principles. Despite a rich history and theology on the rights of forced migrants in Islam,¹⁰⁴ religious inspiration was focused on the provision of charity in general rather than on an understanding of religious obligations for the support of displaced peoples.¹⁰⁵

In the humanitarian sector, “impartiality” and “neutrality” seem to have led to silence on religious discourse, their commonalities being missed where discussion on shared values is avoided rather than integrated into discussion on the principles of humanitarian action. As such, the challenge faced in making humanitarian principles relevant to diverse communities is perhaps one of communication rather than incompatibility.

An Islamic approach to humanitarian principles?

The humanitarian imperative is the first and foremost humanitarian principle. The 1994 Code of Conduct also commits, however, to “respect culture and custom”, to “attempt to build disaster response on local capacities”, to “involve programme beneficiaries in the management of relief aid” and to “recognise disaster victims

103 Islamic Relief Yemen, *Citizens Empowerment in Conflict Transformation and Peace Building Program*, Observation Report, December 2011 (internal document), quoted in L. V. Moore, above note 36, p. 4, available at: http://policy.islamic-relief.com/wp-content/uploads/2014/05/IR_Conflict-Toolkit_Introduction-for-external-agencies.pdf.

104 See Sadia Kidwai, *The Rights of Forced Migrants in Islam*, Islamic Relief Worldwide, Birmingham, 2014; and Ahmed Abou Abu-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, UNHCR, Riyadh, 2009.

105 S. Kidwai, L. V. Moore and A. Fitzgibbon, above note 81.

as dignified humans”.¹⁰⁶ There will always be a role for universal principles in determining good practice, but the way in which this is done may be able to respond to context in order to reduce the tensions (perceived or real) felt between religious ethical frameworks.

To indicate what such a methodology may look like, the remainder of this article will outline the approach to human development articulated by Islamic Relief based on *maqasid al-Shari’ah*.¹⁰⁷ *Maqasid al-Shari’ah* refers to the goals or objectives of Islamic law, with *maqasid* referring to goals and *Shari’ah* referring to the path towards Allah. Recognizing that the dominant paradigm in development study and practice has been rooted in a worldview that seeks to satisfy the chosen desires of individuals and is focused primarily on economic development, Islamic Relief sought to explore a different approach, based on an Islamic perspective which is predicated on human dignity and on the Unitarian concept that defines Islam’s holistic world view (*Tawhid*). While the model was developed as a foundation for Islamic Relief’s development initiatives, the approach has great potential and validity for understanding how humanitarian action more generally may be developed based on the ethical framework enshrined in the Islamic faith.

Muslim economists adopted the term *falah* (literally, “success”)¹⁰⁸ and have broadened their understanding of this term to refer to a comprehensive state of well-being in this world (including spiritual, cultural, political and socio-economic well-being) as well as success in the afterlife. Another term relevant to human development in Islam is *tazkiyyah* (development, literally “growth with purification”). Though it traditionally refers to spiritual development, scholars have broadened its applicability, allowing the concept to also refer to growth in terms of an individual’s relationship with God, with themselves, with other people and with the natural environment. The Arabic term commonly used to denote human development, *tanmiyya* (growth), is strongly connected with economic and materialistic development, somewhat similar to the predominant view of development used in secular discourse.

The principles of trusteeship (*khalifa*¹⁰⁹) and well-being (*falah*), combined with growth and purification (*tazkiyyah*), provide a comprehensive understanding of human enrichment and aim to put people and God at the centre of human development. In this view, focus on material requirements without regard for non-material and spiritual needs has disconnected humans from God, their own true nature and the natural environment, contributing to depleted resources, degraded environments and deepening inequality. The practical implication of an approach combining these Islamic principles is that wealth cannot be sought at the expense of spiritual health or at the expense of the environment.

106 1994 Code of Conduct, above note 35, Art. 7.

107 This section is based on the research and publications of Dr. Muhtari Aminu-Kano and Atallah Fitzgibbon, most specifically *An Islamic Perspective on Human Development*, above note 36.

108 Mohammad A. Muqtedar Khan, “The Philosophical Foundations of Islamic Political Economy”, *American Journal of Islamic Social Sciences*, Vol. 13, No. 3, 1994, pp. 389–400.

109 The Qur’an states that the earth was given as a “trust” to humankind, and humans are placed in a position of custodianship. See *Surat Al-Baqarah*, 2:30; *Surat Al-Ahzab*, 33:72; and *Surat An-Nur*, 24:55.

In Islam, the basic goal of development is to create an environment that enables people to enjoy spiritual, moral and socio-economic well-being in this world and success in the Hereafter (what is often referred to as *falah*). *Shari'ah*, or the “path of God”, refers to the moral code or religious law which Muslims believe can lead to this success if followed. According to al-Ghazali:

The objective of the Shari'ah is to promote the well-being of all mankind, which lies in safeguarding their faith (*din*), their human self (*nafs*), their intellect (*'aql*), their posterity (*nasl*) and their wealth (*mal*). Whatever ensures the safeguard of these five serves public interest and is desirable.¹¹⁰

The first identification of the five categories given above – i.e. faith, life, intellect, posterity and wealth – as the essential *maqasid* (necessities) was made by Imam Abu Hamid al-Ghazali, in his book *al-Mustasfa fi 'ilm al-usul*.¹¹¹ Imam al-Shatibi was the first scholar to write about the *maqasid* as an independent science in his book *al-Muwafaqat fi usul al-Shari'ah*.¹¹² Scholars are in agreement about the five essential values¹¹³ defined by al-Ghazali, although some have added other *maqasid* to the list.¹¹⁴ There are also minor differences between jurists in the nomenclature and order of importance of the five objectives. The individual components of *maqasid al-Shari'ah* are either explicitly stated in the Qur'an and *Sunnah* or have been deduced, directly or indirectly, from these primary sources.

The *maqasid* framework enabled Islam to remain contextually relevant and to respond to the changing circumstances of the modern world and to new contexts where the literal and nominal methods of ascertaining Islamic Law began to prove insufficient to provide full responses to the complexities of the evolving Islamic civilization and the new scenarios it faced.¹¹⁵ The *maqasid* framework is based on the approach that “[w]hatever ensures the safeguard of these five [components] serves public interest and is desirable”,¹¹⁶ and from this basis responses to such

110 As quoted in Muhammed Umer Chapra, *The Islamic Vision of Development in the Light of Maqasid al-Shari'ah*, Occasional Papers Series No. 15, International Institute of Islamic Thought, London and Washington, DC, 2000, p. 21.

111 Imam Abu Hamid al-Ghazali, *Al-Mustasfa min 'ilm al-usul [On Legal Theory of Muslim Jurisprudence]*; for links to translations and editions currently available, see: www.maktabah.org/en/item/933-al-mustasfa-min-ilm-al-usul-on-legal-theory-of-muslim-jurisprudence-by-imam-ghazali.

112 Ibrahim Ibn Al-Shatibi, *The Reconciliation of the Fundamentals of Islamic Law: Al-Muwafaqat fi Usul al-Shari'a*, Vols 1 and 2, trans. Imran Ahsan Khan Nyazee, Garnet Publishing, Reading, 2012 and 2014.

113 This article does not intend to detail the Islamic bases and understanding of these five dimensions. For further information, see Dr. M. Aminu-Kano and A. Fitzgibbon, above note 36.

114 Taqi al-Din ibn Taimiyyah (d. 728H) is understood to have been the first scholar not to confine the *maqasid* to a specific number. This approach has been adopted by contemporary scholars, including Ahmad al-Raisuni and Yusuf al-Qaradawi. For example, al-Qaradawi further extended the list of the *maqasid* to include human dignity, freedom, social welfare and human fraternity. See Adis Duderija, *Maqasid Al-Shari'a and Contemporary Reformist Muslim Thought: An Examination*, Palgrave Macmillan, New York, 2014.

115 Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, International Institute of Islamic Thought, London and Washington, DC, 2007, p. 16, available at: www.muslim-library.com/dl/books/English_Maqasid_alShariah_as_Philosophy_of_Islamic_Law_A_Systems_Approach.pdf.

116 Imam Abu Hamid al-Ghazali, as quoted in M. Umer Chapra, *The Future of Economics: An Islamic Perspective*, Islamic Foundation, Leicester, 2000, p. 118.

new scenarios could be assessed against the potential for public and private good or harm. While this is not the same as the humanitarian principles, there is sufficient compatibility, or complementarity, for such approaches to be considered in tandem. One such example can be seen in [Figure 1](#), on the *maqasid al-Shari'ah* elements in a rights framework.¹¹⁷ This is a visual representation of Islamic Relief's initial examination of how the *maqasid* approach to safeguarding the necessities of life may in turn translate, or be understood in relation to, a "rights-based" approach. For instance, the *maqasid al-Shari'ah* direct Muslims to consider the safeguarding of faith and life, which can be viewed as holding a compatible relationship to the rights enshrined in the Geneva Conventions to freedom of religion¹¹⁸ and the right to life and security.¹¹⁹ Investigating and using such frameworks can help to move the dynamics of exchange between the local and the national away from instrumentalization of heritage and towards dialogue.

While not replacing international norms, an approach that is based on an ethical framework familiar and relevant to Muslim communities may provide an effective approach to humanitarian activities that meaningfully "respect culture and custom", "attempt to build disaster response on local capacities", "involve programme beneficiaries in the management of relief aid" and "recognise disaster victims as dignified humans".¹²⁰ In this case, use of a *maqasid al-Shari'ah* framework to understand the role of the humanitarian agency may provide avenues for engagement with communities in a way that leverages shared values rather than instrumentalizing identity. As such, the *maqasid* framework, or indeed other Islamic principles such as *shura* (consultation), *'adl* (justice) and *karama* (dignity),¹²¹ can provide the basis for communication with Muslim communities, or even FBOs, on humanitarian principles.

In this scenario, rather than making reference solely to "humanitarian principles" or "human rights", FBOs would feel empowered to begin discussion with a community from the perspective of religious ethical frameworks. As such, decisions on the detail of how Muslim FBOs are to act with "neutrality" and "impartiality" could be discussed using the *maqasid* framework. Similar to a risk assessment, actions can be assessed against the potential for benefit or harm to the five necessities and human dignity. This would be compatible with humanitarian principles but developed from a basis that is recognizable to Islamic faith communities. Additionally, there would be greater impetus for integrated humanitarian and development action by Muslim NGOs and communities

117 For discussion of the interrelationship between human rights and humanitarian action, see Lin Cotterrell, *Human Rights and Poverty Reduction: Approaches to Human Rights in Humanitarian Crises*, ODI, October 2005, available at: www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4345.pdf.

118 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Art. 18, available at: www.un.org/Overview/rights.html.

119 *Ibid.*, Art. 3.

120 Quotations taken from 1994 Code of Conduct, above note 35, Arts 5, 6, 7 and 10 respectively.

121 For a further discussion on Islamic principles and how they relate to engaging with conflict issues, see Section 1 of L. V. Moore, above note 36.

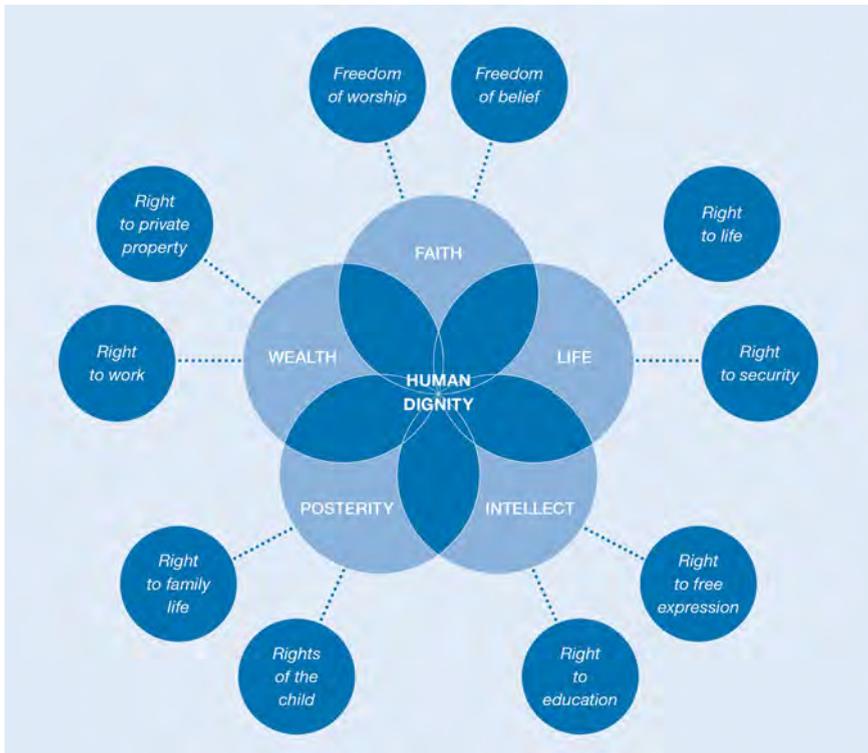


Figure 1. Example of *maqasid al-Shari'ah* elements in a rights framework. Source: Dr. Muhtari Aminu-Kano and Atallah Fitzgibbon, *An Islamic Perspective on Human Development*, Islamic Relief Worldwide, Birmingham, 2014, p. 17.

because of how the *maqasid* framework emphasizes the integrated nature of human dignity and development.

This approach has begun to be put into practice by Islamic Relief over the past three years. Research on how Islamic theology, and the *maqasid al-Shari'ah*, understands human development has highlighted how poverty needs to be dealt with in a holistic manner – i.e. by tackling barriers to the development of, or threats to, the five necessities (faith, life, intellect, posterity and wealth). This investigation drew attention to the holistic and integrated nature of poverty, leading to Islamic Relief developing its Integrated Sustainable Development programme.¹²² While derived from Islamic foundations, the approach is in line with calls in the wider humanitarian and development sector to move away from sector-focused programming to more integrated interventions that are sustainable

122 More information and resources on Islamic Relief Worldwide's Integrated Sustainable Development programme are available at: <http://policy.islamic-relief.com/portfolio/islamic-relief-worldwides-integrated-sustainable-development-programme/>.

over time.¹²³ In addition, new training developed by this author has looked to review potential projects for harm using the *maqasid al-Shari'ah* as a structure. In this case, staff outline all five necessities and consider the potential benefit and harm to each of these areas offered by a humanitarian or development intervention. While evidence is still being collected, initial responses have demonstrated that this is welcomed by Muslim staff members precisely because it is closer to their faith.¹²⁴

Conclusion

This examination of the role that faith can play to supplement or complement humanitarian principles exposes the difference between connections that are based around an identity label and those based on an understanding of shared values. The experience of Islamic Relief is that where a common faith is evoked as a shared value system, it can have a powerful impact. Separating out “faith” as an identity marker from “faith” as a shared value system is challenging, and is the point of engagement with frameworks such as *maqasid al-Shari'ah*. Critical examination of both the positive and negative roles that faith plays for FBOs indicates that while faith acts as the inspiration for those providing support, in most cases there is little in-depth discussion of those shared values. The use of approaches such as *maqasid al-Shari'ah* may start to address this.

Islamic approaches are not a panacea for all issues faced in humanitarian action, but there is recognition that a focus on shared values can be an impetus to effect behavioural change in a manner that non-specific direction from outsiders is unable to achieve. In contexts such as host–refugee conflicts where the communities share a religious identity, more open discussion of religious identity and values may assist efforts to ease such tensions in ways that narrow focus on humanitarian action cannot. This is supported by the experience of Islamic Relief in contexts such as Darfur, where discussion of religious values has assisted in reducing tensions between groups.¹²⁵

This article has deliberately provided a positive view of the potential role of faith and religion in the interpretation and understanding of humanitarian principles. This is not, however, intended to gloss over the complexities and risks that humanitarians face in relation to these issues. Islam is not a monolith, nor is it homogenous; Muslim communities hold views and use approaches as varied as

123 Discussions of sustainable and integrated development are found across the development sector in a disparate way. For an example of such discussions taking place at the time of writing, including information on initiatives related to integrated development, see Adee Z. Mahmud’s article on a panel held as a side event to the InterAction Forum, “Integrated Development – What Is It and Why Should We Care?”, *FSG Blog*, 7 July 2015, available at: www.fsg.org/blog/integrated-development%E2%80%9494what-it-and-why-should-we-care.

124 Drawn from internal monitoring and evaluation reports for Islamic Relief training on conflict transformation and conflict sensitivity collected between May 2014 and June 2015.

125 L. V. Moore, above note 36, “Section 4c: Conflict Transformation”, pp. 21–24, available at: http://policy.islamic-relief.com/wp-content/uploads/2014/05/IR_Conflict-Toolkit_4c_Conflict-transformation.pdf.

the contexts in which they live. There are, as diagnosed well by Nouria Brikci,¹²⁶ groups for whom the nature of conflict has escalated so far that the concepts of neutrality or independence are unrealistic, and “cultural proximity” alone is insufficient to ensure effective dialogue. However, investment by the humanitarian sector in understanding and appreciating alternative approaches to respecting and supporting human dignity may assist in breaking down some of the barriers between the international and the local, along with barriers to humanitarian principles being considered “universal” rather than a product of the “West”.

126 Nouria Brikci, “Is Cultural Proximity the Answer to Gaining Access in Muslim Contexts?”, *Humanitarian Exchange Magazine*, No. 29, March 2005, available at: www.odihpn.org/humanitarian-exchange-magazine/issue-29/is-cultural-proximity-the-answer-to-gaining-access-in-muslim-contexts.

“Rahmatan lil-’alamin” (A mercy to all creation): Islamic voices in the debate on humanitarian principles

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Abstract

This article documents the work of Islamic charities and NGOs from diverse backgrounds to develop sets of principles guiding their humanitarian and charitable work, in the framework of the dialogue and cooperation among Islamic NGOs and charities as well as between Islamic and Western humanitarian agencies. The authors look at draft documents that resulted from these processes, and the way these relate to the core principles of humanitarian action. They further follow how the dialogue and cooperation between humanitarian

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organizations from different backgrounds and origins has influenced the orientation of this debate on humanitarian principles from theory and identity to concrete and shared challenges and concerns.

Keywords: humanitarian principles, Islam, Islamic charities and NGOs, religion, dialogue.

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Over the last two decades, the world has seen a considerable increase in humanitarian emergencies in situations of armed conflict and natural disaster, due to the changing nature of violence, rising inequalities, economic and geopolitical shifts, population growth, the effects of climate change and considerable technological developments.¹ The established humanitarian system has witnessed unprecedented growth and further diversification,² but has also been facing serious challenges in responding to major crises such as the earthquake in Haiti, the 2010 floods in Pakistan and the escalating armed conflict in Syria.³

Humanitarian actors from the global South – local and international alike – have played an increasing role as first responders in reaching out and providing assistance to needy people in these crises and emergencies. In the course of the global power shift that took shape after the Cold War, re-emerging and new middle powers such as Turkey, Iran, Saudi Arabia and Qatar have become key donors and providers of humanitarian assistance,⁴ with distinct models and formulas that involve official aid and development agencies, National Red Cross and Red Crescent Societies, and faith-based NGOs and charitable organizations.⁵

- 1 See Jérémie Labbé, *Rethinking Humanitarianism: Adapting to the 21st Century Challenges*, International Peace Institute, November 2012, available at: www.ipinst.org/2012/11/rethinking-humanitarianism-adapting-to-21st-century-challenges; Edmund Cairns, *Crisis in a New World Order: Challenging the Humanitarian Project*, Oxfam Briefing Paper No. 158, 7 February 2012, available at: www.oxfam.org/en/research/crisis-new-world-order (all internet references were accessed in July 2015).
- 2 According to the *Global Humanitarian Assistance Report 2015*, a record US\$24.5 billion was spent on humanitarian aid in 2014. Development Initiatives, *Global Humanitarian Assistance Report 2015*, London, June 2015, available at: www.globalhumanitarianassistance.org/report/gha-report-2015.
- 3 On this, see e.g. Claudia McGoldrick, “The Future of Humanitarian Action, an ICRC Perspective”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011; and ACTED et al., *Failing Syria: Assessing the Impact of UN Security Council Resolutions in Protecting and Assisting Civilians in Syria*, 2015, available at: www.nrc.no/arch/img.aspx?file_id=9194005.
- 4 In 2014, Saudi Arabia contributed US\$755 million, Kuwait US\$342 million, and Qatar US\$162 million. *Global Humanitarian Assistance Report 2015*, above note 2, p. 34.
- 5 Turkey has reported US\$1.8 billion in humanitarian assistance to the Organisation for Economic Co-operation and Development in 2014 – as in the previous years, most of this was spent in the response to the Syrian refugee crisis inside Turkey. *Ibid.*, p. 38. On the specificities of the Turkish model, see Pinar Tank, *Turkey as a Humanitarian Actor: The Critical Cases of Somalia and Syria*, NOREF Report, March 2015, available at: www.peacebuilding.no/Themes/Emerging-powers/Publications/Turkey-as-a-humanitarian-actor-the-critical-cases-of-Somalia-and-Syria. On Saudi Arabia’s model, see Khaled al-Yahia and Natalia Fustier, “Saudi Arabia as a Humanitarian Donor: High Potential, Little Institutionalization”, GPPi Research Paper No. 14, March 2011, available at: www.alnap.org/pool/files/1267.pdf.

The Muslim world – mainly the fifty-seven member States of the Organization of Islamic Cooperation (OIC) – has had a particular share in this power shift, in terms of humanitarian donorship and response. At the same time, this part of the world has been the theatre of a sadly increasing proportion of armed conflicts – protracted and chronically unresolved conflicts such as Palestine/Israel and Afghanistan, and more recent ones such as the wars in Syria and Yemen.

The “global war on terror” following the attacks of 11 September 2001 had a substantial impact on humanitarian action, with the imposition of severe restrictions on the assets, transactions and personnel of a number of Islamic NGOs and charities that were designated by the United States and United Nations (UN) as terrorism supporters, and were curtailed by their host governments in the framework of local counterterrorism policies.⁶ In addition to that, the efforts to “win hearts and minds” in the major armed conflicts of this confrontation, e.g. in Afghanistan, have blurred the lines between political and military strategies on one hand, and humanitarian action on the other. This has had a deep impact on the perception of humanitarian actors by beneficiary communities and parties to armed conflict, and has contributed to an increase in security challenges, attacks on humanitarian workers and reduced access to communities in need.

In previous moments of change and crisis in the humanitarian sector, the principles of humanitarian action have been at the heart of the debate on challenges, ethical dilemmas, security and political constraints. Critical reflection on failures and shortcomings, along with lessons learned from field practice, has informed new initiatives aimed at codifying and redefining principles and standards. In the 1980s, such a process led to the development and subsequent adoption in 1994 of the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1994 Code of Conduct).⁷

In the early 2000s, a number of individuals, aid organizations and government officials launched initiatives to mitigate at least some of the effects of the post-9/11 counterterrorism sanctions and polarization on the humanitarian sector, in particular on Islamic NGOs. This article traces back these initiatives, in

6 On this, see Naz K. Modirzadeh, Dustin A. Lewis and Claude Bruderlein, “Humanitarian Engagement under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape”, *International Review of the Red Cross*, Vol. 93, No. 883, 2011.

7 The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1994 Code of Conduct) is a voluntary instrument that lays down ten points of principle to which all humanitarian actors should adhere in their humanitarian response work. It elaborates on the relationships that aid agencies should seek with donor governments, host governments and the UN system, and is available at: www.ifrc.org/en/publications-and-reports/code-of-conduct/. On the origins and the historical context of the 1994 Code of Conduct, see Peter Walker, “Cracking the Code: The Genesis, Use and Future of the Code of Conduct”, *Disasters*, Vol. 29, No. 4, 2005, available at: <https://icvanetwork.org/node/6125>; International Federation of Red Cross and Red Crescent Societies (IFRC) and Norwegian Refugee Council (NRC), *Equipped to Meet Tomorrow’s Humanitarian Challenges? 20th Anniversary of the Code of Conduct*, conference report, 5 December 2014, pp. 10–11, available at: www.hapinternational.org/pool/files/NRC-IFRC%20Code%20of%20Conduct%2020%20Anniversary%20Conference%20Report.pdf.

particular the discussions on humanitarian principles and standards that took place in this framework, and which have involved a number of Islamic NGOs and charities, Western NGOs, and international bodies. These discussions have linked up with other efforts of international Islamic NGOs and charities from different backgrounds and countries to develop and lay down sets of principles guiding Islamic humanitarian and charitable action, be it within the framework of the consultations between the OIC and civil society organizations from its member States, or in other multilateral fora. This article looks in detail at the draft documents that resulted from these discussions, in order to better understand the thinking behind them and to analyze the commonalities and differences with the established sets of principles guiding humanitarian action.

Perception issues have played an important role in this respect. Islamic organizations and activists tend to see the 1994 Code of Conduct as Western-centric,⁸ not least because its sponsors are mainly Western organizations, four out of eight being Christian faith-based groups.⁹

The relations between different centres and poles of power, and the tensions and conflicts that have resulted from the considerable power shifts since the end of the Cold War, have affected how international concepts and norms are perceived and implemented. In the Middle East, the concept and term of “modern humanitarianism” tends to be associated with the legacy of Western colonial ambition, in particular British, French and Russian demands for protection for Christian minorities in the Middle East as part of their respective efforts to gain influence and control over the Ottoman Empire.¹⁰ In India, China, Iran and Turkey, important powers before Western domination in the nineteenth and twentieth centuries, the efforts of intellectuals to counter the legitimatizing discourse for the military and economic onslaught of Britain, France, Germany and the United States have informed subsequent independence movements and are present in the collective memory.¹¹

In a world that is marked not only by these conflicts and power shifts but also by a general revival of religiousness, many people, weapon bearers and civilians alike, are bound more by religious beliefs and traditions than by the abstract texts of international norms and rules, and they look up to religious and community leaders for guidance. Reaching agreement on shared values and universally respected norms requires serious work and genuine dialogue based on the roots of these rules in all

8 *Ibid.*, p. 15.

9 The sponsors of the 1994 Code of Conduct are Caritas Internationalis, Catholic Relief Services, the IFRC, the International Save the Children Alliance, the Lutheran World Federation, Oxfam, the World Council of Churches and the International Committee of the Red Cross (ICRC).

10 Jasmine Moussa, *Ancient Origins, Modern Actors: Defining Arabic Meanings of Humanitarianism*, Humanitarian Progress Group Working Paper, November 2014, pp. 9–10.

11 On this, see Pankraj Mishra, *From the Ruins of Empire: The Revolt against the West and the Remaking of Asia*, Penguin, London, 2013. In his study, Mishra describes and analyzes the perceptions and reactions of important Muslim, Indian and Chinese thinkers with regard to the Western powers in the nineteenth century, and the way their thinking has informed what he describes as “the rise of Asia and the assertiveness of the Asian people” (p. 306). He comes to the conclusion that “no convincingly universalist response exists today to Western ideas of politics and economy, even though these seem increasingly febrile and dangerously unsuitable in large parts of the world” (*ibid.*).

civilizations, religions and traditions. In this sense, the dialogue on humanitarian law and action between Muslim scholars, law professionals, the International Committee of the Red Cross (ICRC) and other members of the International Red Cross and Red Crescent Movement (the Movement) has provided, to a certain extent, guidance for the debate on humanitarian principles from an Islamic perspective. The aim of this dialogue has been to explore the commonalities and differences between contemporary humanitarian law and the rich body of Islamic jurisprudence, and to overcome misperceptions on both sides.¹²

The humanitarian crises related to the popular uprisings in the Middle East and North Africa in 2011 brought a number of challenges in terms of access to communities in need and security risks for humanitarian workers, but also genuine opportunities in terms of dialogue and cooperation between humanitarian actors from different backgrounds and origins. This article follows how these challenges and opportunities further influenced the discussions on the principles of humanitarian action in which Islamic humanitarian actors have been involved.

The evolution of principles and standards guiding humanitarian action

The first time that principles of humanitarian action were formally adopted as such was in 1965, when the International Red Cross and Red Crescent Movement endorsed humanity, impartiality, neutrality, independence, unity, voluntary service and universality as its Fundamental Principles.¹³ Humanity, neutrality and impartiality were already inscribed in the 1864 Geneva Convention,¹⁴ but it took a century-long process of learning and trial and error in modern humanitarian practice to arrive at the Fundamental Principles of today. With the growth and diversification of the humanitarian sector, other instruments were developed, such as UN General Assembly Resolutions 46/182 and 58/114,¹⁵ the 1994 Code

12 For the background and rationale of the ICRC dialogue with Muslim scholars on humanitarian law and action, see: www.icrc.org/eng/resources/documents/feature/2006/islamic-law-ihl-feature-010606.htm. The ICRC has organized a series of conferences and workshops with Islamic Universities in Pakistan (2004), Iran (2005), Yemen (2006), Morocco (2006, 2009), Tunisia (2010), Mali (2008), Uganda (2011), Kenya (2013), Indonesia (2013), Senegal (2014) and again in 2014 in Pakistan. On the latter, see: www.icrc.org/en/document/pakistan-conference-humanitarian-action-light-sharia-and-international-humanitarian-law.

13 Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, ICRC, Geneva, 1979, available at: www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm.

14 Convention for the Amelioration of the Wounded in Armies in the Field of 22 August 1864 (entered into force 22 June 1865, no longer in force), available at: www.icrc.org/applic/ihl/ihl.nsf/INTRO/120?OpenDocument.

15 UNGA Res. 46/182, 19 December 1991, states that “humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and, impartiality” (Annex I, Guiding Principle 2, available at: www.un.org/documents/ga/res/46/a46r182.htm). UNGA Res. 58/114, 11 December 2003, emphasizes the importance of independence as a guiding principle for humanitarian assistance (available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/58/114).

of Conduct, the Sphere project and its humanitarian charter, People in Aid, and the Humanitarian Accountability Partnership (HAP) principles.¹⁶

These sets of principles and standards for humanitarian action reflect the efforts that have been made to define the roles and responsibilities not only of humanitarian workers and their organizations, but also of the host and donor countries. The dignity of the beneficiaries and their involvement in shaping and implementing humanitarian programmes are central themes of the 1994 Code of Conduct. The HAP principles focus on accountability to beneficiaries. In 2015, People in Aid and HAP merged to form the CHS (Core Humanitarian Standard) Alliance.¹⁷ The discussion and development of the principles of humanitarian action reflects the crises and failures of humanitarian organizations in dealing with operational challenges, ethical dilemmas and political constraints.¹⁸ Major conflicts and disasters have always influenced the course of development of humanitarian law and action.

Islamic NGOs and charities: Diversity and commonalities

Islamic charities and NGOs active in humanitarian assistance look back on a rich history of alms giving (*zakat*, one of the five pillars of Islam), other forms of non-compulsory charity (*sadaqa*), and the institution of the pious endowments (*waqf* or *habous*), which have served over centuries to maintain social and educational services.¹⁹

The Arabic words for “human being”, *insan*, and its plural form, *unas* or *al-nas*, which has the connotation of “mankind”, have been in use and have not

16 The Sphere project, initiated in 1997 by a number of aid agencies, consists of minimum standards for life-saving areas of humanitarian response and a humanitarian charter, available at: www.sphereproject.org. People in Aid is a project that helps its member organizations to enhance their impact by better managing and supporting their staff and volunteers; more information on the project and the Core Humanitarian Standard on Quality and Accountability (CHS) is available at: www.peopleinaid.org. HAP was established in 2003 as a self-regulatory body for relief and development organizations on accountability towards beneficiaries and quality management; its website is available at: www.hapinternational.org.

17 The CHS is a new instrument that is the outcome of a consultation process involving more than 2,000 humanitarian workers. It aims at a harmonization between existing humanitarian standards such as the HAP Standard in Accountability and Quality Management, the People in Aid Code of Good Practice in the Management and Support of Aid Personnel, and the Core Standards section of the Sphere Handbook. The text is available at: www.corehumanitarianstandard.org/files/files/Core%20Humanitarian%20Standard%20-%20English.pdf.

18 The CHS Alliance has put it like this: “The evaluations of the 1994 Rwanda genocide, the 2004 Asian tsunami, the 2010 Haiti earthquake and other major responses called for greater effectiveness, impact, accountability and quality in humanitarian action. Standards on quality and accountability help organizations deliver these. Between 2011 and 2014 there was a call for greater coherence among existing standards as a single, coherent and easy-to-use standard is more likely to be put into practice by all”: see <http://chsalliance.org/what-we-do/chs>.

19 On this, see Jonathan Benthall and Jerome Bellion-Jourdan, *The Charitable Crescent*, I. B. Tauris, London, 2003, in its first chapter on financial worship, and its second chapter on *waqf* and Islamic finance. See also Ameer Zemmali, “Al-’amal al-khairi fil-Islam” (“Charitable Work in Islam”), *al-Insani Magazine*, Cairo, Summer 2006, pp. 24–26.

changed since ancient times, and not only the believer but the human being as such has a central place in the Qur’an and the traditions of Prophet Mohammad. The terms being used for “humanitarian” and “humanitarianism” (*insani, insaniya*) are quite new in the Arabic language, and to a certain extent ambiguous, as they can also refer to humanism. There are a number of terms and concepts that refer to the wider field of charitable work, aid and assistance – more classical ones such as “generosity” (*jud, karam*), and more contemporary ones such as “assistance” (*i’ana*). Quite recent terms such as *ghawth, ighatha, najda* and *musa’ada* have the connotation of “rescue”, “relief” and a more “emergency” type of assistance.²⁰

The practices and traditions of charity, their functions as duties of worship and modalities (e.g. for *zakat*, supporting specific categories of the poor and needy), have shaped the way Islamic organizations have been operating. This does not mean that these organizations are one homogenous bloc or type of actors. There are traditional charities in Egypt, Lebanon, Morocco and Palestine that have been carrying out benevolent activities for more than a century. This type of more traditional charity has remained under the radar and is not sufficiently researched.

The charities and NGOs that explicitly refer to themselves as “Islamic” have in common the fact that they are part of the wider dynamic of resurgence of religiousness in the Muslim world (Islamic Awakening) since the 1970s. On the other hand, they are also part of the global dynamic of NGOs and civil society organizations that emerged in great numbers after the Second World War and subsequent decades.²¹

Under the impact of relations of power, political constellations, tensions and conflicts, Islamic as well as secular NGOs were often viewed as vectors for local opposition forces seeking power and popularity or as forefront organizations of regional or global powers, and sometimes also as instruments of local powers and authorities seeking to use charitable funds and action for their own ends.

In her thesis “For Humanity or for the Ummah?”, Marie Juul Petersen has distinguished between Muslim NGOs rooted in the “culture of aid” of the Middle East (and wider Muslim world), and others that emerged from Muslim diaspora communities in the West.²² Some of the charitable organizations in the Gulf Cooperation Council (GCC) countries started their work in disaster and conflict areas more than thirty years ago, benefiting from the oil wealth of their countries and the emergence of an affluent middle class with increased philanthropic ambitions, and driven by Islamic solidarity and a variety of different forms of activism (e.g. from Muslim Brotherhood-type social and educational activism to the Salafi concept of “predication and relief”).²³

20 See J. Moussa, above note 11, pp. 3–7.

21 Marie Juul Petersen, “Islamising Aid: Transnational Muslim NGOs after 9.11”, *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations*, Vol. 23, No. 1, 2012, p. 134.

22 Marie Juul Petersen, “For Humanity or for the Umma? Ideologies of Aid in Four Transnational Muslim NGOs”, University of Copenhagen, 2011, p. 73, available at: www.academia.edu/4368446/For_Humanity_or_for_the_Umma_Ideologies_of_Aid_in_Transnational_Muslim_NGOs.

23 See, for example, Direct Aid, based in Kuwait and founded in 1981 by the late Dr Abdurrahman al-Sumait, focusing on orphans and educational programmes in Africa (<http://direct-aid.org/cms/about-us/>). For a Salafi aid organization, see Sturla Godo Saether, “Humanitarian Salafism – A Contradiction in Terms?”

Islamic NGOs in the West, such as Islamic Relief Worldwide and Muslim Aid, have developed specific approaches and practices by fitting an Islamic faith-based identity with global humanitarian and development standards and frameworks.²⁴

During the “formative period” of contemporary Islamic charitable and humanitarian activism in the 1980s and 1990s, individual organizations in Islamic countries and in Muslim diaspora communities defined codes, values and principles for themselves. This was part of an effort to clarify the concept and framework of reference for relief work as a distinct field of Islamic or Islamist activism.²⁵

Islamic NGOs that emerged from Muslim diaspora communities in the West have also worked on the acculturation of existing instruments and standards. Islamic Relief Worldwide, for instance, after having signed up to the 1994 Code of Conduct, worked with a Jordanian Muslim scholar on rooting this code in the Islamic tradition.²⁶ This work has informed the subsequent development of the five core values of Islamic Relief Worldwide: social justice, sincerity, excellence, compassion and custodianship.²⁷

Qatar Charity, as an Islamic NGO based in a GCC country and thus in an Islamic culture of aid, worked in the early 2000s on acculturating the charter of the Sphere project with the values and norms of a Muslim-Arab environment.²⁸ Already for the 1994 Code of Conduct, a voluntary instrument without a clear mechanism for its application, it is rarely documented how organizations have applied its principles in practice.²⁹ It is even more difficult to trace or analyze

A Study of the Salafi Organisation ‘the Book and the Sunna Society’ and Their Efforts in Relief Work in Jordan”, master’s thesis, University of Oslo, Autumn 2013, p. 7.

24 See, for example, the article by Lucy V. Salek in this issue of the *Review*.

25 One of the key reference texts in this period was Sheikh Yousef al-Qaradhawi’s *Usul al-’amal al-khairi fil-Islam fi dhaw al-nusus wal-maqasid al-shar’iya (The Roots and Origins of Charitable Work in Islam in the Light of the Texts and Objective of the Shari’a)*, Qatari Red Crescent, Doha, 2007. Qaradhawi was an important inspiration for those involved in the Islamic Awakening to engage in social and relief work. See M. J. Petersen, above note 22, p. 129, and J. Benthall and J. Bellion-Jordan, above note 19, pp. 40–43. The West Bank Zakat Committees referred to the principles of non-discrimination and neutrality in their 1997 mission statements; see Emanuel Schäublin, *Role and Governance of Islamic Charitable Institutions: The West Bank Zakat Committees in the Local Context*, CCDP Working Paper No. 5, Geneva, 2009.

26 Atallah Fitzgibbon worked with Islamic Relief Worldwide during the joint Muslim Charities Forum, at the Islamic Relief Worldwide, International Council of Voluntary Agencies (ICVA) and ICRC workshop on “The Code of Conduct, Humanitarian Principles and Human Development in Islam”, London, 2 June 2013.

27 Islamic Relief Worldwide, *Human Development in Islam*, 2014, p. 11, available at: <http://policy.islamic-relief.com/portfolio/human-development-in-islam/>.

28 Conversation with Abd Rabbi Ben Sahra, director of planning and international cooperation, Qatar Charity, Istanbul, October 2009.

29 This has been one of the results of the learning events on the 1994 Code of Conduct that the ICVA organized in 2010 in the Middle East and South-East Asia, as stated by Ed Schenkenberg van Mierop, former coordinator of ICVA, at the IFRC and NRC Conference “Equipped to Meet Tomorrow’s Humanitarian Challenges? 20th Anniversary of the Code of Conduct”, Geneva, 5 December 2014. For examples of the concrete application of the Fundamental Principles of the Red Cross and Red Crescent Movement, see the Principles in Action project initiated by the British Red Cross, and its two case studies on the Somali Red Crescent and the Lebanese Red Cross, available at: <http://www.redcross.org>.

how organizations that have not signed up to this code are using their own guiding principles in practice and decision-making. Still, the dialogue and exchanges among Islamic NGOs and with other humanitarian actors are better documented and allow us to understand the way humanitarian principles are being looked at and dealt with.

Islamic debates on humanitarian principles: The trajectories

In the early 2000s, a number of initiatives set out to mitigate the consequences of counterterrorism sanctions and bans. Islamic organizations participating in these initiatives were encouraged to explain their identity, activities and *modus operandi*, and for that purpose, to establish codes of conduct from their own religious and cultural perspectives.

In January 2005, the Swiss Federal Department of Foreign Affairs launched the Montreux Initiative, which aimed at fostering cooperation in the removal of unjustified obstacles for Islamic Charities.³⁰ In an almost parallel move, the founder and first president of Islamic Relief Worldwide, Dr Hany al-Banna, invited leaders of major humanitarian organizations to discuss the consequences of the global war on terror on Islamic NGOs and charities and potentially on the whole humanitarian sector. This led to the founding of The Humanitarian Forum (THF), as a bridge-building mechanism for dialogue between Islamic organizations, Western NGOs and the multilateral system.³¹ These initiatives were pertinent and welcomed by many actors. The States involved saw their positive engagement with Muslim NGOs as a means to preventing radicalization in the West.³²

From 2006 until around 2010, THF focused on humanitarian principles and standards as one of its five priorities. The tasks for the module on humanitarian principles and standards were defined as follows: developing an inventory of existing humanitarian policies and standards; identifying opportunities for dissemination, dialogue and training on these instruments; identifying opportunities for the participation of Islamic and other faith-based NGOs, and NGOs based in Islamic countries, in ongoing humanitarian policy and standards processes;³³ and looking at the practical application of these

[uk/About-us/Who-we-are/The-international-Movement/Fundamental-principles/Why-the-principles-matter-to-millions](#). See also the article by Amelia B. Kyazze in this issue of the *Review*.

30 *The Montreux Initiative Newsletter*, No. 1, August 2006, p. 2.

31 Available at: www.humanitarianforum.org. Among the initiators and members of THF were the International Islamic Charitable Organization (IICO) from Kuwait, the IHH Humanitarian Relief Foundation from Turkey, Qatar Charity, the Qatari Red Crescent, the British Red Cross, the Muhammadiyah Foundation from Indonesia, Oxfam, the UK Charity Commission, the World Assembly of Muslim Youth from Saudi Arabia, and the Imam Khomeini Relief Foundation from Iran. The ICRC, the IFRC and the ICVA participated as “standing invitees”, as did the UN Office for the Coordination of Humanitarian Affairs. On THF and the IICO’s participation, see also M. J. Petersen, above note 22, p. 125.

32 See, for example, M. J. Petersen, above note 21, p. 137.

33 THF, draft concept note for Module 2, July 2006.

policies and standards with a view to formulating good practices. The ICRC and the International Council of Voluntary Agencies (ICVA) joined this process as facilitators. The existing instruments such as the 1994 Code of Conduct, the humanitarian charter of the Sphere project and the HAP principles were all considered to be reference documents, although *de facto*, the work focused on the 1994 Code of Conduct. In a working session in October 2008 in Sana'a, Yemen, the Fundamental Principles of the International Red Cross and Red Crescent Movement and the 1994 Code of Conduct were presented, discussed in the light of key tenets of Islamic jurisprudence, ethics and charitable work, and discussed in working groups. The relevance of these sets of principles was acknowledged, as well as the specificity of the Fundamental Principles to the Movement. It was decided that the 1994 Code of Conduct should be further studied, but there were also some reservations about the Western identity of the initiators of these standards of behaviour – “several members pointed out that their respective organisations had not signed up to it” – as well as issues of “vulnerability, gender, faith and local customs”.³⁴ A year later, THF decided to work with Muslim scholars, legal experts and humanitarian practitioners on an exercise aimed at rooting the 1994 Code of Conduct in Islamic ethics, law and charitable practice, in order to “work out the commonalities and possible differences between the Code of Conduct and the rules and principles that guide charitable work in Islamic law and Ethics”.³⁵ With this project, THF aimed to provide concrete guidance for the implementation of humanitarian principles, to widen the audience for the 1994 Code of Conduct, and to involve Islamic NGOs in future debates on revising or further developing the existing sets of humanitarian principles.³⁶

The Yemen branch of THF worked with Muslim scholars to root the basic principles of the 1994 Code of Conduct in Islamic law, ethics and charitable practice.³⁷ The result was a draft (Yemeni Rooting Document) that roots the concept of human dignity, the right of beneficiaries to receive humanitarian aid regardless of race, creed or nationality, the notion that aid will not be used to further a particular political or religious standpoint, and the principle of good humanitarian conduct (respect) in Islamic jurisprudence and tradition.³⁸

In June 2010, as part of a separate work stream on accountability, the national branch of THF in Indonesia organized a workshop in Jakarta with the large Muslim mass organization Muhammadiyah. The participants looked at the foundations of accountability and a wider set of humanitarian principles in

34 Minutes and outcomes of the THF Steering Committee meeting, Sana'a, 28–29 October 2008, p. 6.

35 THF, draft terms of reference of consultancy on the rooting of the 1994 Code of Conduct, December 2010.

36 Personal communication with James Shaw-Hamilton, executive director of THF, January 2011.

37 THF Yemen, *The International Red Cross and Red Crescent Movement and NGO Code of Conduct for Disaster Relief: Rooting in Sharia* (in Arabic), draft document, 2010 (Yemeni Rooting Document).

There is a rough English translation under the title *Project: The Principles of Islamic Conduct for Non-Governmental Organisations in Responding to Emergencies*, THF Yemen, 2010.

38 *Ibid.*

the Qur’an and the *Hadith* (sayings of Prophet Mohammad) in order to increase understanding and ownership of instruments and procedures such as the HAP.³⁹

Another process, with some similarities and differences, was driven by the OIC. One of the major projects of Ekmeleddin Ihsanoglu, secretary-general of the OIC from 2005 to 2014, in the framework of the ten-year action plan that the OIC member States adopted at the 2005 Mecca Conference, was to undertake sustained efforts to organize Islamic charitable and humanitarian work. For that purpose, it was important for the OIC to “build a strong partnership with the NGOs, without which our mission would not have been successful”.⁴⁰ The ten-year action plan laid out the rationale for this undertaking:

Islam advocates solidarity with, and assistance to all the needy without discrimination, which requires Islamic States to develop and adopt a clear strategy on Islamic relief action and support the trend towards cooperation and coordination between individual relief efforts of Islamic States and Islamic civil society institutions on the one hand, and intentional civil society institutions and organisations on the other.⁴¹

In 2008, the OIC established a Humanitarian Affairs Department in its headquarters in Jeddah.⁴² The recognition of NGOs functioning within the member States was, according to Ihsanoglu, “a rather sensitive issue” that required careful consultation with the governments.⁴³ Prior to the OIC Dakar Summit in March 2008, the organization convened the First International Conference of the Humanitarian NGOs of OIC Member States, in Saly Portudal (Senegal). The participants – representatives of sixty NGOs from twenty-seven countries – recommended, *inter alia*, that efforts be made to “root the concepts of humanitarian work in Islamic values and principles” and to “adopt codes of conduct and a code of honour for humanitarian and charitable action in Member States of the OIC”.⁴⁴

For the first follow-up meeting between NGOs from the OIC member countries and the diaspora in Libya in 2009, the Turkish Humanitarian Relief Foundation (İnsan Hak ve Hürriyetleri ve İnsani Yardım Vakfı, IHH) elaborated a first draft document under the title “Code of Conducts for Muslim Humanitarian Relief Organisations” (IHH Code of Conducts).⁴⁵ Later on, the Cordoba Foundation in Geneva and the International Center for Research and

39 THF Indonesia, “Workshop on ... Accountability Principles Based on Qorran and Hadist in Humanitarian Organisation”, Muhammadiyah Office, Menteng, Jakarta, 8 June 2010.

40 Ekmeleddin Ihsanoglu, *The Islamic World in the New Century: The Organisation of the Islamic Conference, 1969–2009*, Columbia University Press, New York, 2010, p. 177.

41 Available at: www.oic-oci.org/ex-summit/english/10-years-plan.htm.

42 Resolution 11/35-C, adopted by the 35th Session of the Council of Foreign Ministers, Kampala, June 2008.

43 E. Ihsanoglu, above note 40, p. 178.

44 OIC, General Report of the First International Conference of the Humanitarian NGOs of OIC Member States, Dakar, Senegal, 7–9 March 2008, points I.2 and II.6 of the recommendations.

45 IHH Humanitarian Relief Foundation, Code of Conducts for Muslim Humanitarian Relief Organizations, Istanbul, 20 March 2009 (IHH Code of Conducts). The Code consists of fifteen principles and an introduction.

Studies (al-Markaz al-Duwali lil-Dirasat wal-Abhath, MEDAD) worked on a project that was meant to become a “charter of Islamic charitable action”.⁴⁶ In 2010, the project was finalized as a draft *Mithaq islami lil-'amal al-khairi* (Islamic Charter of the Work of Goodness, ICWG)⁴⁷ and presented to the annual consultation between the OIC and the Islamic NGOs from its member States in Doha, Qatar.⁴⁸

As IHH, the owner of the first draft document for the dialogue between the OIC and the Islamic NGOs from its member States, is a member and trustee of THF, the IHH Code of Conducts was disseminated more widely and introduced in the respective working group of THF, and informed the subsequent discussions there.⁴⁹

The IHH Code of Conducts, the ICWG and the Yemeni Rooting Document are important insofar as they document to a certain extent the discussions around the meaning and wording of principles of humanitarian action from an Islamic perspective. At this stage, these have not been adopted or officially endorsed by an NGO consortium or a regional body. Still, they have served as guidance and orientation for individual organizations.

The Arab uprisings: New challenges and opportunities

The events in Tunisia, Egypt, Libya, Bahrain, Yemen and Syria in 2011 brought new dynamics in humanitarian emergencies, but also opened new perspectives for dialogue and cooperation between humanitarian organizations from different backgrounds. THF, the OIC and other partners such as the League of Arab States and the UN Office for the Coordination of Humanitarian Affairs convened in 2011 a series of consultation and coordination meetings on Libya, Syria and Yemen, in which international Islamic NGOs, Western NGOs, UN agencies and

46 The Cordoba Foundation was set up in 2002 in Geneva and has worked on issues related to humanitarian action; see: www.cordoue.ch. The Jeddah-based MEDAD specializes in charitable action and provides a range of services, including studies, training and documentation, for a wide variety of charitable organizations in Saudi Arabia and the wider GCC region; see: www.medadcenter.com.

47 The Islamic Charter of the Work of Goodness (ICWG) is available at: www.cordoue.ch/human-security/humanitarian-work/item/190-islamic-charter-of-the-work-of-goodness. For the history and background of this project, see Cordoba Foundation, *Transforming Conflict in the Humanitarian Field*, December 2014, p. 1 (outline on the Humanitarian Mediation (HUMED) programme). The term '*amal al-khair* or *al-'amal al-khairi* is normally translated into English as “charity” or “charitable work”. Still, the author of this document, Dr Abbas Aroua, has deliberately chosen the term “work of goodness” to emphasize the wide range of activities that fall into this category in the classical Islamic conception. A larger background document in Arabic on the work of goodness ('*amal al-khair*) is available at: www.cordoue.ch/human-security/humanitarian-work/item/191-related-book. A shorter English version of this text can be found in Abbas Aroua, *The Quest for Peace in the Islamic Tradition*, Kolofon Press, Oslo, 2013, pp. 99–120, available at: www.cordoue.ch/publications/books-a-chapters/item/275-the-quest-for-peace-in-the-islamic-tradition.

48 MEDAD proposed to the OIC that it would consult senior Muslim scholars to finalize this document, and would submit it for approval to the member States of the OIC so that it would become a binding reference for granting NGOs observer status at the OIC, and more importantly, for the practical work of these organizations. Khaled al-Sreih, MEDAD executive director, presentation to the THF working group on humanitarian standards and principles, Istanbul, October 2010.

49 For example, in a session of the THF working group on humanitarian principles and standards in April 2010 in Skopje.

members of the Movement, as well as local NGO and diaspora initiatives, explored concrete cooperation in the field, information sharing and training as well as capacity-building for local organizations and grass-roots initiatives.⁵⁰

The OIC, at its 39th Council of Ministers of Foreign Affairs in Djibouti in November 2012, adopted “Rules for Granting OIC Consultative Status to Humanitarian NGOs” – without further referring to a code of conduct or charter of Islamic charitable action, but mentioning criteria such as:

To be headquartered in an OIC Member State and registered officially and licensed to work in the activity submitted in the application for consultative status, or to be affiliated to Muslim minorities and communities, work in the field of humanitarian relief and be accredited in the States where these minorities and communities exist and operate in their favor.⁵¹

The rules further stipulate that “[t]he NGO’s objectives must not conflict with the principles and objectives of the OIC Charter”.⁵² One year later, at the 40th Council of the Foreign Ministers of the OIC in Conakry, the OIC granted consultative status to a first batch of twelve NGOs from OIC member States.⁵³

With the gradual turn of the Arab uprisings and the response of the authorities that led to armed conflicts in Libya, Syria and Yemen, and the aggravation of regional tensions and polarization that has taken place around these conflicts, the difficulties in getting access to people in need and the security of humanitarian workers became a major concern. Under these circumstances, the focus of these Islamic debates on humanitarian principles shifted from identity and wording towards principles in practice, and principled humanitarian action as a means to mitigate challenges and risks.⁵⁴

The Muslim Charities Forum (MCF) in the UK, with a membership that includes larger humanitarian agencies such as Islamic Relief Worldwide, Muslim Aid and Muslim Hands, but also smaller and more recently founded aid groups and diaspora initiatives, addressed the challenges that the workers and volunteers of its member organizations were facing in operational contexts such as Libya and Syria with a series of training workshops. In June 2013, working with the ICRC, ICVA and Islamic Relief Worldwide, the MCF organized a learning event

50 See, for example, the Stakeholder Conference “Humanitarian Response for Libya”, organized in Cairo, 8 May 2011, by the OIC, the League of Arab States and the Humanitarian Forum; see also the 2nd Conference “Connections and Collaboration for Yemen”, Cairo, 6 May 2012.

51 See the respective resolution and annex with draft rules on pp. 7–12 (quotation at p. 10), available at: www.oic-oci.org/english/conf/fm/39/ORG-DR-39-CFM%20-%20FINAL.pdf.

52 *Ibid.*, p. 10.

53 Available at: www.oic-oci.org/oicv2/subweb/cfm/40/fm/en/docs/ORG-40-CFM-RES-FINAL-REVISED.pdf.

54 In the introduction to the 2nd International Forum on Humanitarian Action, held on 26–27 November 2014 in Jeddah, the organizers (OIC, IIRO, IHH, IICO, Qatar Charity, MEDAD, World Assembly of Muslim Youth and ICRC) stated that “the large scale of conflicts, affected areas and people which is being witnessed by the region recently has added significant challenges to be faced by humanitarian workers”. To meet these challenges and to respond to the needs of the populations, the organizers highlighted the necessity of training, capacity-building and “raising awareness about the principles of humanitarian action and international standards” (Forum brochure, p. 2).

on “The Code of Conduct, Humanitarian Principles and Human Development in Islam”. PLAN International, a member organization of the ICVA, presented a case study on applying the 1994 Code of Conduct in its post-disaster relief work in the Philippines.⁵⁵ This provided an opportunity for exchange on concrete experience in the field, the challenges and dilemmas that humanitarian workers face, and the ways in which humanitarian principles can be applied. The participants discussed the 1994 Code of Conduct and Islamic draft sets of principles such as the IHH Code of Conducts and ICWG, in order to explore commonalities and differences. The participating NGO workers and volunteers suggested that such learning events should be organized in concrete operational contexts, but should also address related issues such as the impact of counterterrorism measures on humanitarian action.

In 2014, the ICVA and ICRC collaborated on a series of learning events on the 1994 Code of Conduct and humanitarian principles in the Middle East, West Africa and South-East Asia, with the participation of international Islamic NGOs, other faith-based organizations, local NGOs and National Red Cross and Red Crescent Societies.⁵⁶ The goal of these learning events was to “provide a forum for bridging perception gaps that exist between actors regarding the principles of humanitarian action and their application . . . , supporting the use of humanitarian principles in operational decision-making, [and] helping translate these into practice”.⁵⁷

Before going further into this practical experience, it is worth having a closer look at the two draft codes that represent the thinking of different Islamic organizations and activists on humanitarian principles. Both documents refer directly or indirectly to the core principles of humanitarian action (humanity, impartiality, independence and neutrality), and both include a wider set of principles inspired by development work, as is the case with the 1994 Code of Conduct.

The IHH Code of Conducts

The IHH Code of Conducts consists of an introduction and a set of fifteen rules or principles in both English and Arabic. For each rule or principle there is a reference from the Qur’an or the *Hadith*.⁵⁸

55 PLAN International has worked intensively, in cooperation with other aid agencies and local communities, on accountability to beneficiaries and the involvement of local communities in aid delivery. Details of this work are available at: <http://plan-international.org/about-plan/how-we-work/effectiveness/accountability-to-affected-people-in-the-haiyan-response>.

56 In 2010, the ICVA had already organized a number of regional learning events on the 1994 Code of Conduct, in which THF and some of its member organizations had participated. More information is available at: <https://icvanetwork.org/resources/icva-learning-events-code-conduct-and-its-related-humanitarian-principles>.

57 ICVA and ICRC, *Learning Events on Humanitarian Principles*, concept paper, June 2014.

58 IHH Code of Conducts, above note 45. It is worth noting that there are some minor inconsistencies between the English and Arabic texts in the document. These are due to the fact that the work on this

The IHH document is focused on humanitarian relief, based around principles like sincerity, humanity, independency, respect and cooperation. It refers equally, under the principle of arbitration, to mediation and prevention of “natural and human-made disasters”.⁵⁹ In addition to that, the document has a connotation of social activism, insofar as it speaks of the “reviving ... solidarity spirit” and the “struggle between advocates of factiousness and advocates of improvement”.⁶⁰

The Islamic Charter of the Work of Goodness

The ICWG consists of a set of twenty-one principles organized in seven chapters, with a comprehensive background document that was initially published in Arabic.⁶¹

The ICWG departs from a quite comprehensive understanding and definition of *amal al-khair* (work of goodness) that encompasses a whole variety of activities: predication (calling to God); humanitarian work – i.e., helping the needy and relieving the afflicted; protection and promotion of human rights (defending the victims of injustice); conflict transformation (bond mending); civic action (enjoining what is right and reprobatng what is wrong); and finally, the protection and promotion of the rights of animals and the protection of the environment.⁶² While the document makes an appeal in its Principle 4 that organizations involved in the work of goodness should adopt a holistic vision which looks at these different dimensions, it demands in Principle 10 that such organizations “state the domain of goodness”⁶³ and separate the different fields of work such as predication and humanitarian work, in order to avoid conflict between them. The background document develops further on the opportunities and risks of associating the different activities with each other, and elaborates that “the NGOs working in the area of proselytizing and relief must show transparency and honesty in their work and separate completely between these two areas at the organizational ... and field level”.⁶⁴ The relation between relief and human rights is being described as a dilemma for many relief organizations – “they often find themselves compelled to silence ... in order to keep the channels of communications with victims and provide them with the assistance they need”.⁶⁵ The combination of conflict transformation and relief is regarded as a fruitful synergy.

draft was carried out under significant time pressure, and that it was in any event foreseen that the draft document would be commented upon and revised later in the process. Conversation with Izzet Sahin, IHH, Geneva, 14 April 2014.

59 IHH Code of Conducts, above note 45, p. 9.

60 *Ibid.*, p. 2.

61 ICWG, above note 47.

62 A. Aroua, above note 47, pp. 99–101.

63 *Ibid.*, p. 117.

64 *Ibid.*, p. 103.

65 *Ibid.*, p. 103.

This reflects the reality that for many Islamic organizations carrying out humanitarian work, there is no clear distinction between relief and development. In Saudi Arabia, charitable work (*al-'amal al-khairi*) covers a wide variety of activities, from charity for the needy to social work in general, religious predication and the memorization of the Qur'an.⁶⁶

A closer comparative look: Humanity and “positive neutrality”

Humanity as the essential humanitarian principle is based on the concepts of one humankind, human dignity and the sacredness of human life. This translates into the imperative to preserve life, and to prevent and alleviate human suffering. These concepts have strong foundations in the primary sources of Islam, the Qur'an and the *Hadith*. For equality between human beings, and the concept of mankind as a whole, verse 49:13 of the Qur'an is of central importance – “O mankind, we have created you male and female, and appointed you races and tribes, that you may know one another. Surely the noblest among you in the sight of God is the most godfearing of you” – and it is quoted in the IHH Code of Conducts and the Yemeni Rooting Document.⁶⁷ Verse 17:70 is the reference for human dignity in Islamic teachings: “We have honoured the Children of Adam and carried them on land and sea, and provided them with good things, and preferred them greatly over many of those We created.”⁶⁸ Respect for human life and its sacredness are enshrined in verse 5:32:

We prescribed for the Children of Israel that whoso slays a soul not to retaliate for a soul slain, nor for corruption done in the land, shall be as if he had slain mankind altogether; and whoso gives life to a soul, shall be as if he had given life to mankind altogether.⁶⁹

The Yemeni Rooting Document mentions humanitarian aid as an “absolute right of all human beings”,⁷⁰ and refers therefore to the concept of justice in Islam. This relates to Islam's five fundamentals (*kulliyat*) of protection, namely the protection of human beings, protection of reason, protection of the human race, protection of religion, and protection of property/endowments.⁷¹

66 The scope of activities and coverage of the MEDAD centre is a good example of this; see the MEDAD website at: www.medadcenter.com.

67 This and the other Qur'anic verses are quoted from *The Quran Interpreted: A Translation by A. J. Arberry*, online version available at: <http://web.archive.org/web/20071219022352/http://arthursclassiconovels.com/arthurs/koran/koran-arberry10.html>. IHH Code of Conducts, above note 45, p. 4; Yemeni Rooting Document, above note 37.

68 *The Quran Interpreted*, above note 67.

69 Yemeni Rooting Document, above note 37, in the paragraph “Human Dignity Comes First”.

70 *Ibid.*, in the paragraph “Humanitarian Aid is Solely a Means to Provide Care to Mankind” (English translation revised based on the original in Arabic).

71 Ameer Zemmali, presentation on “The Fundamental Principles of the Red Cross Red Crescent Movement in the Light of Islamic Law (Shari'a) and Jurisprudence (Fiqh)”, THF, Sana'a, Yemen, 29 October 2008.

In the Islamic conception, humanitarian work is a “responsibility assigned to Muslims by God”.⁷² In the ICWG, this finds its expression in the postulate that “[t]he mission and goal of the [charitable organization] shall be to serve with benevolence the creatures, which is the way to please the Creator”.⁷³ So considering the “work of goodness as a binding act of worship” puts the religious identity of the organization at the centre of its philosophy.⁷⁴

It is widely acknowledged that modern Western humanitarianism has its origins in the Christian concept of charity. With the process of secularization, but also as a practice-driven endeavour, Western humanitarianism tried to transcend these origins and become universal by being shared widely across the globe. Jean Pictet expressed this effort in his Commentary on the Fundamental Principles by emphasizing that the idea of “Whatsoever ye would that men should do to you, do ye even so to them”, as he put it, was rooted in “all the great religions”.⁷⁵ So while for some, religiously motivated or faith-based humanitarian action is seen as compatible with their interpretation of the philosophy underlying modern humanitarianism, others see the explicit or exclusive religious framing of humanitarian action, in particular when it refers to an all-encompassing and self-referential model, as a challenge to, or even a contradiction of, the tenets of contemporary humanitarianism.

The concept of neutral intermediaries and the protection of diplomatic envoys in armed conflict has an equivalent in classic Islamic jurisprudence with the idea of *amân* (safe conduct) for the emissary of a (foreign) nation. Still, as a principle of humanitarian conduct, there is a clear tension between the notion of not taking sides, often perceived as a lack of empathy or even complicity, and the concept of justice.⁷⁶ In a joint ICVA–ICRC workshop in Amman in 2014, a lively and lengthy debate took place on the principle of neutrality, during which participants opined that the application of neutrality might result in treating the victim and the oppressor on an equal footing.⁷⁷ The ICWG includes a specific paragraph on “positive neutrality”, according to which an organization “shall act with empathy and bear true witness against any observed violation of the rights of creatures; it shall not remain silent before such abuse for the sake of neutrality”.⁷⁸

72 IHH Code of Conducts, above note 45, p. 4.

73 ICWG, above note 48, Principle 2. “The creatures, in this context, include human beings, animals and the inanimate”: *ibid.*

74 ICWG, above note 47, Principle 1.

75 J. Pictet, above note 13, “I: Humanity”. This ethical directive can be traced back to the Bible (Matthew 7:12), but also to the seventeenth-century philosopher Thomas Hobbes.

76 See, for example, Mohd Hisham Mohd Kamal, “Neutral and Independent Humanitarian Action: Islamic Perspective”, paper presented at the International Conference on “Humanitarian Action in the World of Today: Challenges and Perspectives in the Light of Shariah and Humanitarian Law”, organized by the International Islamic University of Islamabad and the ICRC, Islamabad, 22–23 October 2014. A revised and edited version of this paper is published in this issue of the *Review* in the form of an Opinion Note.

77 ICVA and ICRC, summary report, Humanitarian Principles and Code of Conduct Workshop, Amman, 23–24 June 2014, p. 3, available at: <https://icvnetwork.org/resources/report-humanitarian-principles-workshop-mena-2014>.

78 ICWG, above note 47, Principle 5.

It is probably due to this same perception that the IHH Code of Conducts does not mention neutrality at all. Still, it contains interesting parallels to the wording of the Red Cross and Red Crescent concept of neutrality – not defined as an end in itself, but as a means “to enjoy the confidence of all”.⁷⁹ The IHH Code of Conducts stipulates that humanitarian organizations should avoid controversy – the ideal humanitarian worker “does not agitate, ... behaves carefully and refrains from offending people”⁸⁰ – which is reminiscent of the Red Cross and Red Crescent imperative not to “engage at any time in controversies of a political, racial, religious or ideological nature”.⁸¹ In its principle of arbitration, the IHH says that “a humanitarian relief organisation takes initiatives and act[s] as arbitrator if necessary”,⁸² which could be interpreted in the sense of playing the role of an intermediary that has to be accepted by all parties. Under the rubric of “humanitarian diplomacy”, IHH has acted as an intermediary accepted by all sides in the Syria conflict, and has negotiated the release of Turkish journalists, Syrian detainees and Iranian captives from the government and opposition groups.⁸³

As the 1994 Code of Conduct only stipulates that aid should not be used “to further a particular political or religious standpoint”,⁸⁴ it comes closer to an understanding of neutrality being balanced by justice, or the imperative of not remaining silent on abuses that is evident in the Islamic draft documents and is related to the notion of justice. The most recent instrument for humanitarian principles and standards, the Core Humanitarian Standard, does refer to the principle of neutrality, but adds that “some organisations, while committed to giving impartial assistance and not taking sides in hostilities, do not consider that the principle of neutrality precludes undertaking advocacy on issues related to accountability and justice”.⁸⁵

It is interesting to note that Pictet, in his Commentary to the Fundamental Principles, explains the concept of humanitarianism as “a developed and rational form of charity and justice”.⁸⁶

Impartiality, independence, developmental principles

The principle of impartiality is part of the ICWG, which explicitly refers to non-discrimination and the selection of beneficiaries “based only on their needs”.⁸⁷ In the IHH Code of Conducts, non-discrimination is mentioned under humanity

79 J. Pictet, above note 13, “III: Neutrality”.

80 IHH Code of Conducts, above note 45, p. 6.

81 J. Pictet, above note 13, “III: Neutrality”.

82 IHH Code of Conducts, above note 45, p. 9.

83 Available at: www.ihh.org.tr/en/main/pages/suriye-insani-diplomasi/314.

84 1994 Code of Conduct, above note 7, Principle 3.

85 CHS, above note 17, p. 8.

86 In the French original: “L’humanitarisme moderne est une forme évoluée de la charité et de la justice.” Jean Pictet, *Les Principes Fondamentaux de la Croix Rouge : Commentaire*, ICRC, Geneva, 1979, p. 18.

87 ICWG, above note 47, Principle 6.

and “extends aid to all the ones in need regardless of their religion, sect, language, ethnicity, colour of skin, ideology and geography”.⁸⁸ Its principle of justice urges humanitarian workers to “act fairly in determining the needy people, the amount of aid and the process of aid delivery”.⁸⁹

In his study on the Book and the Sunna Society (BSS), a Jordanian Salafi organization, the Norwegian researcher Sturla Saether compares the practice of this organization with the first six principles of the 1994 Code of Conduct. On impartiality, which corresponds to the second and third principles of the 1994 Code of Conduct, Saether discusses in some detail the adherence of the BSS to these principles, but also possible contradictions. The BSS has a needs-based approach and does not discriminate between Muslim and non-Muslim beneficiaries – although most of its beneficiaries are Muslim due to the fact that most Syrians are Muslims.⁹⁰ While the BSS formally distinguishes between relief work and its predication activities, Saether considers that “the lines between them are blurred” in the field.⁹¹ The draft ICWG and IHH Code of Conducts both have paragraphs on independence – the ICWG distinguishes between independence from donors, in Principle 13; independence from the political and ideological authority, in Principle 14; and independence from military and intelligence agencies, in Principle 15.⁹² Under the latter, it mentions the risk of infiltration, to be countered by “strict mechanisms of control, particularly in matters of employment of staff or recruitment of volunteers”.⁹³

The principle of independence in the IHH document stipulates: “A humanitarian relief organisation works freely and independently of governments, military, commercial initiatives and lobbies in its decision making and enforcement processes.”⁹⁴

The wider set of principles that come from the field of development and are related to the dignity of beneficiaries (Principles 5 to 10 of the 1994 Code of Conduct) are widely covered in the Islamic draft documents: capacity-building, sustainable development, accountability, respect of the recipients’ dignity and cultural environment, and use of local resources.⁹⁵ In addition to that, the IHH Code of Conducts and the ICWG have each dedicated an explicit principle to

88 IHH Code of Conducts, above note 45, p. 4.

89 IHH Code of Conducts, above note 45, p. 10.

90 S. G. Saether, above note 23, pp. 29–30.

91 *Ibid.*, p. 30.

92 ICWG, above note 47. It is interesting to note a certain tension between independence from donors on the one hand, and respect for the donors’ wishes (Principle 16) on the other.

93 *Ibid.*, Principle 15.

94 IHH Code of Conducts, above note 45, p. 5.

95 1994 Code of Conduct, above note 7, Principles 5 (respect of culture and custom), 6 (attempt to build disaster response on local capacities), 7 (involve beneficiaries in management of aid), 8 (reduce future vulnerabilities), 9 (accountability to beneficiaries and donors), and 10 (respect of beneficiaries’ dignity in coverage of aid). The IHH Code of Conducts, above note 45, contains articles on sustainable development, efficiency, transparency, accountability and justice, raising consciousness, and voluntary service. The ICWG, above note 47, refers to capacity-building (Principle 8), sustainable development (Principle 9), respect of the recipients’ dignity (Principle 17) and cultural environment (Principle 18), use of local resources (Principle 20), and best practices (Principle 21).

cooperation with other, local and international, organizations.⁹⁶ It is also interesting to note that IHH's principle of timeliness corresponds with the second of the nine elements of the new Core Humanitarian Standard: "Humanitarian response is effective and timely."⁹⁷

Principles in practice, inclusive dialogue

The humanitarian emergencies and evolving armed conflicts that arose after 2011 brought opportunities for concrete exchanges and collaborations between Southern and Northern, international and local, faith-based and secular aid organizations – all were facing the same challenges.

Islamic Relief Worldwide and Muslim Aid have embarked on cooperation projects and campaigns (for example, with Christian NGOs on the humanitarian response to the crisis in the Central African Republic) to affirm the interfaith and thus non-discriminatory nature of their efforts to "deliver much needed humanitarian aid and [build] bridges between communities caught in a worrying cycle of distrust, fear and vengeance".⁹⁸

THF in Yemen used the Yemeni Rooting Document on the 1994 Code of Conduct as a basis for a project with other partners on the empowerment of civil society organizations through participation in local governance; this resulted in the formulation of an additional Code of Conduct for Civil Society Organizations in Yemen.⁹⁹ This code is based on the "rules of humanitarian action, as well as the scientific and objective standards of management",¹⁰⁰ and stipulates principles such as accountability, transparency and avoidance of "being affiliated with any political platforms, party or sectarian conflicts or with any process that might compromise the principle of autonomy and professionalism".¹⁰¹

As events unfolded, discussions between humanitarian organizations from the Middle East and North Africa and Europe, local and diaspora initiatives, international aid agencies and NGOs focused on very practical issues of access, information exchange and coordination. In a League of Arab States, OIC and

96 IHH Code of Conducts, above note 45, p. 5: "With the purpose of extending aid to the needy in a more efficient and rapid way, a humanitarian relief organization collaborates with national and international organizations in determining strategy and sharing information, sources and experience. This collaboration aims at increasing the capacity of local organizations." The ICWG, above note 47, Principle 19, stipulates: "The [work of goodness organization] shall cooperate with other local, regional or international organisations, working in the same field or in another one, for the sake of joining forces, networking, concerting, and exchanging experiences and information. It will work in the spirit of stimulating competition for the good and not in that of unhealthy rivalry."

97 CHS, above note 17, p. 11.

98 CAFOD, Islamic Relief, Muslim Aid and Muslim Charities Forum, *Joint Declaration of Catholic and Muslim Charities on the Central African Republic*, 8 May 2014, available at: www.muslimaid.org/media-centre/news/joint-declaration-of-catholic-and-muslim-charities-on-central-africa-republic/.

99 See: www.yementimes.com/en/1755/news/3478/Civil-society-organizations-come-together-to-sign-code-of-conduct.htm.

100 THF Yemen, Code of Conduct for Civil Society Organizations in Yemen, 2013–14, p. 2.

101 *Ibid.*, p. 3.

THF coordination meeting on Libya in Cairo in May 2011, NGOs were urged to “communicate to all concerned and put into practice their impartiality and neutrality” in this “extremely challenging situation”.¹⁰²

This emerging space of dialogue between different “cultures of aid” gave way to concrete field consultations, but also a number of workshops and conferences in multiple partnerships in the Arab and Muslim world. The reality and challenges of humanitarian emergencies, and the principles of humanitarian action and their application were discussed in light of the considerable difficulties being faced in terms of access to people in need as well as the security of humanitarian workers.

In the learning exercises on humanitarian principles and the 1994 Code of Conduct that the ICVA and ICRC organized in 2014, in multiple partnerships with other groups in Amman and Dakar, the four core principles and those focusing on the dignity of beneficiaries and respect for local culture and customs were discussed in case studies, and were related to concrete operational challenges such as the impact of rapid political and military changes in an armed conflict (Syria for Jordan), the impact of security and political agendas on humanitarian action, and competition between humanitarian actors.¹⁰³ Similar workshops were held in March 2014 in Sana’a with THF Yemen, and in Indonesia in cooperation with the Jakarta-based NGO Dompêt Dhuafa (Wallet of the Poor) and other partners.¹⁰⁴

In 2013, the OIC, the International Islamic Relief Organization (IIRO) and the ICRC initiated a series of regional fora for humanitarian practitioners from Islamic NGOs, in which Muslim scholars, medical and legal experts and experienced field workers looked at the protection of humanitarian workers and medical services in times of armed conflict within the scope of humanitarian law and Islamic jurisprudence. Participants and experts discussed practical measures of self-protection and the management of security risks in the field.¹⁰⁵ In the first forum in Jeddah in June 2013, participants discussed the Safer Access Framework, as an example of the application of humanitarian principles in practice.¹⁰⁶

102 Stakeholder Conference “Humanitarian Response for Libya”, Outcomes and Recommendations, Cairo, 8 May 2011, p. 4.

103 ICVA and ICRC, above note 77.

104 Dompêt Dhuafa is a large Islamic NGO that was founded in 1993 in Indonesia by young journalists. It carries out a considerable scope of educational and relief activities, and works in the field of disaster preparedness and response. It is a member of THF Indonesia. See: www.dompetdhuafa.org and www.dompetdhuafausa.com. A recent Dompêt Dhuafa report on Rohingya migrants stranded in Indonesia is available at: <http://reliefweb.int/report/indonesia/indonesia-rohingya-refugees-situation-report-period-8-july-2015>.

105 See the programme and background document of the workshop on the IIRO website at: www.egatha.org/portal/index.php?option=com_content&view=article&id=898:2013-06-06-12-01-35&catid=2:2010-08-03-15-18-49.

106 The Safer Access Framework consists of preparedness actions and acceptance measures, grounded in the Fundamental Principles and other Red Cross and Red Crescent Movement policies, that a National Society can take when responding in sensitive and insecure environments; see the ICRC website at: www.icrc.org/en/what-we-do/cooperating-national-societies/safer-access-all-national-societies. A report on the application of the Safer Access Framework by the Lebanese Red Cross is available at: www.icrc.org/eng/assets/files/2013/safer-access-case-study-lebanon.pdf.

Looking at instruments such as the 1994 Code of Conduct from different perspectives has been useful for increasing awareness about humanitarian principles. But probably more importantly, the dialogue on humanitarian principles in practice proved to be a very convenient avenue for overcoming misperceptions between humanitarian actors of different backgrounds, exploring commonalities and appreciating diversity and complementarity between different cultures of aid, as well as between humanitarian actors and other stakeholders – faith-based and secular, international and local, solidarity-based and “Dunantist”.

In the workshop “Humanitarian Action in the Arab Region”, held in Amman in January 2014, humanitarian principles and their application in practice was one of three major topics. In the summary report, the organizers noted that

the principles are largely accepted and recognised as central to humanitarian action, with no contradiction to the traditions and culture in this region. ... More could be done to show the similarities between the principles and local cultures, making them more accessible and easier to understand for those who are not familiar with them.¹⁰⁷

Among the challenges that impact on the “ability of the humanitarian community to fully implement the core principles of humanitarian action” are “political and security agendas such as stabilisation and counterterrorism initiatives”.¹⁰⁸ These measures are hampering organizations’ attempts to “engage with groups critical to obtaining access to populations in need”.¹⁰⁹ The criteria for the designation of armed groups as terrorist organizations are not always clear. In some cases observers have criticized designations as negatively impacting on ongoing efforts for negotiated political solutions, and in others, designations might have accelerated processes of further radicalization.

Conclusion

The debates on humanitarian principles among Islamic NGOs, and between humanitarian organizations from different backgrounds, reflect a process of change and integration. They informed and gradually became a track of the global debate on humanitarian principles, in particular the 1994 Code of Conduct.¹¹⁰ Humanitarian actors in the Middle East and the wider Muslim world

107 “Humanitarian Action in the Arab Region”, Amman, Jordan, 20–21 January 2014, summary report, pp. 6–7, available at: www.odi.org/sites/odi.org.uk/files/odi-assets/events-documents/5066.pdf. These comments were made with reference to the ICVA–ICRC workshops.

108 ICVA and ICRC, above note 57, June 2014.

109 “Humanitarian Action in the Arab Region”, above note 107, p. 7.

110 In the IFRC and NRC conference “Equipped for Tomorrow’s Humanitarian Challenges?” on the 20th anniversary of the 1994 Code of Conduct, Abbas Aroua from the Cordoba Foundation (Islamic Charter for the Work of Goodness), was one of the panelists, and the IHH Humanitarian Relief Foundation (IHH Code of Conducts) was among the participating organizations. See IFRC and NRC, above note 7.

have not necessarily challenged the existing sets of principles, but have presented differences, *inter alia*, on the definition of the scope of charitable action, as well as on the notions of justice, solidarity and respect.¹¹¹ The perceptions and interpretations of the principle of neutrality document commonalities with discussions among Western humanitarian actors of different backgrounds.

The IHH Code of Conducts and the ICWG demonstrate that there are shared and common values which “have application across a wide range of religious and cultural settings”.¹¹² The Islamic draft documents have also provided the opportunity to introduce the thinking in Islamic organizations to a wider audience, and to look at humanitarian principles from different perspectives.

Humanitarianism and charitable action are part of our common heritage, and their traditions are part of human history. The dialogue on humanitarian practice and principles has to be diverse and inclusive. The starting point for this dialogue has been a search for common ground and the identification of shared values. Under the circumstances of protracted conflicts, regional and global polarization, and double standards in the application of international rules and norms, universal acceptance is not a given – it can only be achieved through multipolarity and diversity. The inclusive dialogue on humanitarian principles including Islamic perspectives, in the framework of the bridge-building humanitarian consultations that have been discussed here, has created a kind of protected space that has bridged perception divides and helped to mitigate the post-9/11 polarization within the humanitarian field.¹¹³ In the future, this dialogue should include also Chinese, African and Indian communities, to become truly universal. For continuity, it will be crucial to anchor these discussions in the concrete challenges to humanitarian action in the field.

Counterterrorism measures have already had a considerable impact on humanitarian action in the post-9/11 years.¹¹⁴ With the renewed polarization around the conflicts in Syria and Iraq in 2014, there is a real risk that new counterterrorism measures and restrictions might again impact negatively on humanitarian aid and aid providers. Along with the risk of renewed and further politicization and instrumentalization of humanitarian aid due to this polarization of the international environment, this means that a concerted effort is required to maintain a protected space of diversity, inclusiveness and open dialogue.

As pointed out above, the dialogue between Muslim scholars, international humanitarian law (IHL) experts and aid workers on humanitarian law and action has informed and inspired the debate on humanitarian principles from different perspectives. Eminent Muslim scholars such as Dr Ali Qaradaghi, the

111 S. G. Saether, above note 23, p. 43, has concluded that the BSS as a Salafi organization doing humanitarian work has been highly successful because it acknowledges the spiritual and psychological needs of refugees.

112 IFRC and NRC, above note 7, p. 27.

113 “More inclusive dialogues to be held with a greater diversity of humanitarian organisations, which aim to promote shared values drawn from multiple culturally based Codes of Conduct, and discussing the practical application of shared values at local level.” *Ibid.*, p. 26.

114 See the article by Phoebe Wynn-Pope, Yvette Zegenhagen and Fauve Kurnadi in this issue of the *Review*.

secretary-general of the International Union of Muslim Scholars, and Ayatollah Ahmad Moballaghi, senior researcher in the Hawzah in Qom, have contributed to the discussions on humanitarian principles from an Islamic perspective, and have supported the consultation and cooperation between aid organizations from different backgrounds in concrete field contexts.

In the face of the above-mentioned risks of further polarization and instrumentalization of humanitarian aid, it will be important to maintain and further develop work and dialogue on acceptance and better respect for IHL. This means, on the one hand, addressing the challenges to IHL arising from the counterterrorism practices of States – from civilian casualties of drone attacks and indiscriminate and disproportionate attacks on civilians and civilian infrastructure to the negative impact on humanitarian assistance. On the other hand, the rooting of IHL in religious beliefs and the use of religious texts as references for the rules preserving human dignity in times of armed conflict will remain important for overcoming misperceptions and reaching a common understanding, and should not be seen as controversial and contradictory to the spirit of the law.¹¹⁵ For Muslim scholars and jurists, the extent and gravity of violations and the lack of respect for the rules of war in current conflicts should translate into an imperative to transcend well-appreciated but rather static references to sacred texts. It will be crucial to engage in debates – beyond polemics and politicized confrontation – that put Islamic law in the right place vis-à-vis the unlawful and outrageous conduct that has become all-too-common practice in the challenging conflicts of our time.

115 See Corri Zoli, *The God Gap in International Humanitarian Law: Lessons Learned from Islamic Jurisprudence*, Institute for National Security and Counterterrorism, Syracuse University, New York, 2012.

Faith and impartiality in humanitarian response: Lessons from Lebanese evangelical churches providing food aid

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Abstract

This case study of a network of evangelical churches in Lebanon, based on data collected during an evaluation in 2014, presents a critique of common understandings about the humanitarian principle of impartiality, and questions assumptions about the compatibility between religious fervour and humanitarian values. Churches attempting to respect impartiality while implementing a food aid project for Syrian refugees have sought to mitigate potential problems through relationship-building and promotion of human dignity in order to ensure needs-responsiveness. Though many Lebanese Evangelical Christians do continue to engage in evangelistic activity, they benefit from strong community ties and demonstrate a high level of sensitivity to their beneficiaries' urgent needs as well as their sense of dignity.

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Keywords: faith, religion, humanitarian principles, impartiality, dignity, evangelization, proselytization, Lebanon.

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Throughout much of the twentieth century, a dominant discourse of secularism crowded out voices of faith in humanitarian circles and in development studies. Nonetheless, as they have long done, people and institutions of faith continue to invest in education, health care, community-based empowerment, justice and other important types of service provision and social support.¹ In fact, during the years following World War II, many of the largest providers of relief were faith-based: a 1953 study found that as much as 90% of all post-war relief was provided by religious agencies.² During the decades that followed, however, those faith-based organizations which continued to play an active role in global humanitarian fora were those that began to downplay their religious identity.³ “Religion might have been instrumental in the establishment of humanitarianism, but it passed the torch to secularism”⁴ as academic, political and development discourses came to conceptualize religion as conservative and traditional, and in tension with societal progress.⁵ The past decade, however, has begun to see the pendulum shift back to an interest in the unique contribution made by religious institutions, communities of faith, and other entities that may fall under the broad umbrella category of faith-based organizations (FBOs).⁶

Discourse in humanitarian, development and academic circles has long been marked by suspicion about the capacity of faith-motivated institutions to contribute to humanitarian objectives. These concerns are most notable with respect to locally based and grass-roots entities, many of which have a faith orientation to some extent.⁷ In particular, practitioners and theorists alike have

1 Elizabeth Ferris, “Faith-Based and Secular Humanitarian Organizations”, *International Review of the Red Cross*, Vol. 87, No. 858, 2005, pp. 311–325; Richard Wilson and Richard Brown (eds), *Humanitarianism and Suffering: The Mobilization of Empathy*, Cambridge University Press, Cambridge, 2009.

2 E. Ferris, above note 1, p. 315.

3 Michael Barnett and Janice Stein, *Sacred Aid: Faith and Humanitarianism*, Oxford University Press, Oxford, 2012, p. 4; Alastair Ager and Joey Ager, “Faith and the Discourse of Secular Humanitarianism”, *Journal of Refugee Studies*, Vol. 24, No. 3, 2011, p. 456.

4 M. Barnett and J. Stein, above note 3, p. 5.

5 Ben Jones and Marie Juul Petersen, “Instrumental, Narrow, Normative? Reviewing Recent Work on Religion and Development”, *Third World Quarterly*, Vol. 32, No. 7, 2011, p. 1292.

6 The term “faith-based organization” will be used in this paper to describe any faith-driven institutions which in any way have a religious identity, regardless of their primary mandate or objectives; see Gerard Clarke, “Agents of Transformation? Donors, Faith-Based Organizations and International Development”, *Third World Quarterly*, Vol. 28, No. 1, 2007, pp. 77–96; Jenny Lunn, “The Role of Religion, Spirituality and Faith in Development: A Critical Theory Approach”, *Third World Quarterly*, Vol. 30, No. 5, 2009, pp. 937–951. The phrase “faith-motivated” will be used to describe the broader category of entities who have a faith ethos but which may or may not identify with a religious categorization.

7 The conceptualization of an organization as faith-based or secular is in itself contentious, as there are a range of attitudes amongst FBOs with regard to humanitarian principles, some almost indistinguishable from those of non-religious organizations. Other organizations, including arguably most local community-based organizations around the world, operate on a strong faith ethos but do not self-define as faith-based. See Sara Lei Sparre and Marie Juul Petersen, *Islam and Civil Society*:

expressed concern with regards to their ability to adhere to humanitarian principles, particularly that of impartiality.

Impartiality is one of the most oft-cited humanitarian principles (other commonly cited principles are humanity, neutrality and independence). As stated by then director-general of the International Committee of the Red Cross (ICRC), Angelo Gnaedinger, in 2007: “Humanity, impartiality, neutrality, and independence have become household names in the humanitarian community Humanity and impartiality are principles that most, if not all, humanitarian actors adhere to.”⁸ Humanitarian principles have long guided the operations of the ICRC, but they have also been adopted or adapted by other humanitarian actors over the course of the past century. The principles, which may be described “as a rudder with which to steer a course through the murky waters of relief provision in complex emergencies”;⁹ are intended *inter alia* to help minimize or, ideally, eliminate any impact that relief may have on the dynamics of the conflict situation. There is an implicit understanding that aid provision can inadvertently create or tip power imbalances in already fragile contexts; humanitarian principles, therefore, serve as a reminder to aid providers that they need to be sensitive to these power imbalances and design their interventions in a way that seeks to contribute to the saving of lives without engaging in local community dynamics.¹⁰

The principle of impartiality is described by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) as an understanding that “humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class or political opinions”.¹¹ A key component of the principle of impartiality, therefore, is non-discrimination – that is, the importance of not basing the provision of aid on “race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”,¹² as stated in Article 3 common to the four Geneva Conventions. Other key aspects of

Case Studies from Jordan and Egypt, Danish Institute for International Studies, 2007, p. 13; Thomas Jeavons, “Religious and Faith-Based Organizations: Do We Know One When We See One?”, *Nonprofit and Voluntary Sector Quarterly*, Vol. 22, No. 1, 2004, pp. 140–145.

- 8 Angelo Gnaedinger, “Humanitarian Principles: The Importance of Their Preservation During Humanitarian Crises”, speech delivered at the international conference “Humanitarian Aid in the Spotlight: Upcoming Challenges for European Actors in Lisbon”, 12 October 2007, available at: www.icrc.org/eng/resources/documents/statement/humanitarian-principles-statement-121007.htm (all internet references were accessed in July 2015).
- 9 Kate Mackintosh, *The Principles of Humanitarian Action in International Humanitarian Law*, Humanitarian Policy Group Report No. 5, Overseas Development Institute (ODI), London, March 2000, p. 1.
- 10 *Ibid.*, p. 5.
- 11 OCHA, *OCHA on Message: Humanitarian Principles Factsheet*, June 2012, available at: https://docs.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf.
- 12 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950); Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950); Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), common Art. 3.

impartiality are needed as the key deciding factor with regard to who receives which aid, and the expectation that potential beneficiaries not be required to do anything to deserve aid.¹³

Faith-motivated religious actors are therefore expected, by humanitarian agencies which subscribe to the humanitarian principles, to provide aid on the basis of need alone, without any discrimination in terms of religious affiliation or practice. Considering this shared understanding of impartiality and its importance in humanitarian response, humanitarian agencies are often concerned that FBOs may selectively choose their beneficiaries, prioritizing members of their own faith community,¹⁴ or that they may engage in proselytization – that is, taking advantage of the vulnerable situation of their beneficiaries to entice them into certain behaviour, such as changing their religion.¹⁵

This paper explores ways in which local faith-motivated humanitarian actors conceptualize the principle of impartiality, using the case study of a network of local faith communities (churches in Lebanon) that had recently received their first funding from humanitarian donors to implement a response to a rapidly evolving influx of refugees. While agreeing with the concept, they continued to engage in overtly religious activities, as may be expected of long-established religious institutions. They sought to ensure impartiality through a highly relational approach to aid provision. Church members believed they were being impartial and acting in keeping with the general spirit of the humanitarian principles because they placed high emphasis on need as a key criteria for aid provision and because they developed an approach which sought to promote and preserve the dignity of the affected population.

This case study raises a number of important questions about common ideas regarding impartiality among humanitarian actors, including the expectation that material assistance should be separated from faith convictions, and the concern that engagement in religious activities may distract aid providers from meeting beneficiaries' urgent needs. It also draws attention to the importance of promoting human dignity and presents the view of faith-motivated actors that human dignity is, for them, an important principle for humanitarian action. Finally, it raises questions about how relationships can help meet the holistic needs of affected populations, while at the same time creating challenges to ensuring impartiality in aid provision.

A case study of a network of nineteen evangelical churches in Lebanon providing food aid to Syrian refugees will be used to explore these issues. The next section will provide an overview of the case study and of the research methodology; then, an outline of the key issues identified in the emerging literature on faith in humanitarian response will be followed by a critique of the

13 K. Mackintosh, above note 9, p. 8.

14 E. Ferris, above note 1; G. Clarke, above note 6.

15 Saroj Jayasinghe, "Faith-Based NGOs and Healthcare in Poor Countries: A Preliminary Exploration of Ethical Issues", *Journal of Medical Ethics*, Vol. 33, No. 11, 2007, pp. 623–626; Rick James, "Handle with Care: Engaging with Faith-Based Organizations in Development", *Development in Practice*, Vol. 21, No. 1, 2011, pp. 109–117.

concept of humanitarian impartiality in current discourses. This will be followed by a discussion of how churches have adapted the concept of impartiality to their own *modus operandi*, in keeping with their religious and cultural values, by focusing on relationship-building with beneficiaries. The final section will discuss how churches have interpreted and applied their understanding of impartiality and humanitarianism in their own unique ways, highlighting the emphasis that they place on human dignity.

Case study: Evangelical churches in Lebanon and impartiality

The data for this case study was collected in tandem with an external evaluation conducted for the Lebanese Society for Educational and Social Development (LSESD) in July–August 2014, with preliminary data collection taking place in January 2014. LSESD was receiving funding from an institutional donor to provide food aid to a total of nineteen churches spread across Lebanon, many of which were based in neighbourhoods where the presence of larger humanitarian actors was limited. Each church received between fourteen and 900 monthly vouchers or food boxes to distribute to refugee families living in its community. The families were selected based on criteria developed by each church under the close supervision of LSESD. For this research, five of the participating churches were visited; at each church, a leader, one or more volunteers and at least three beneficiaries were interviewed. Church meetings and distributions were also attended. In addition, staff of LSESD were interviewed.¹⁶ For the evaluation, a variety of external stakeholders were also consulted, though data from those interviews, while used for identification of themes and triangulation of findings, are not presented in this paper.

The network established by LSESD provides an interesting case study for a number of reasons. First, very few of the leaders and members of these churches had ever engaged in humanitarian response prior to the influx of Syrian refugees that began in 2011. Some churches had provided assistance to displaced people during the six-week war between Hizbollah and Israel in 2006, but that experience was limited to a very short time period, and few churches developed active social programmes during or afterwards. During the Syria crisis, though, refugees have moved into almost every neighbourhood of Lebanon, and some were already into their third year of displacement at the time of this research. Local churches, as established community institutions, found themselves surrounded by extreme levels of need. Motivated by a combination of obligation, compassion and an opportunity presented by LSESD,¹⁷ these churches began assistance programmes for refugees. After the programme was up and running, church leaders attended

16 Interviews were conducted in both Arabic and English, and in all instances transcribed real-time into English as recording was deemed too sensitive for this context. All participants were informed that the interview would be used for the LSESD evaluation as well as for academic research purposes.

17 See www.lsesd.org.

training on the humanitarian principles offered by LSESD donors, who were international Christian non-profits headquartered in Europe. For most of the church leaders, it was the first time they had heard an argument for the importance of impartiality in humanitarian assistance.

Second, the churches providing aid through this network were composed of Evangelical Christians, most of whom have a strong doctrinal mandate for evangelization. Some church leaders explained that they believe the spiritual human is lasting, while the physical human is temporary, and as such they have a deep conviction that investing in the spiritual health of disaster-affected people is more important than investing in their physical health – that is, they prefer to provide spiritual salvation for eternity than physical salvation for the present. As they have engaged in food provision, they have come to respect the principle of impartiality, agreeing that no one should feel religiously coerced because of their material needs, but are not willing to compromise their belief that the most important assistance they can provide to a fellow human being is the message of their faith.¹⁸

Third, while these particular aid providers were Christian, the majority of their beneficiaries were Muslim. A long and complex history of inter-faith relations exists in the Middle East, as well as a historical tension between Syria and Lebanon, most recently expressed in events during the Lebanese Civil War of 1975–1991.¹⁹ For many Lebanese church members, their willingness to provide any type of assistance to Syrian Muslim refugees at all was novel and represented a shift in mindset from only a few years before, when their fear and hatred of Syrians precluded any thought of positive engagement at all. This, combined with a tendency to avoid extensive interaction with people of other religious sects, was initially a major barrier to considering working with Muslim refugees. For many of the churches in this case study, the very existence of their humanitarian work signifies a victory of faith-motivated compassion over historic animosity. Syrian Muslims' opinions about Christians vary considerably, but Syria does have a significant Christian minority of its own, and so the churches' beneficiaries were, at minimum, aware that they were receiving life-saving aid from members of a

18 This network of churches was developed by LSESD on a convenience basis, according to which churches had the willingness and resources to implement the project. Other evangelical churches are partnering with other NGOs, but most evangelical churches work only with donors who are themselves affiliated with evangelical churches, such as LSESD, which is a part of the Baptist Society. Other donor NGOs are less proactive about training their churches in humanitarian principles, and some actually require that their churches engage in evangelistic activity as a part of their aid programme. It bears stating that this case study is of evangelical churches; in contrast, non-evangelical Protestant (such as Presbyterian), Catholic and Orthodox churches typically do not engage in evangelistic activity but are also actively involved in aid provision for refugees in Lebanon.

19 From the early years of the Lebanese Civil War until 2005, the Syrian military occupied Lebanon as a self-designated peacekeeping force. The years of war in Lebanon exacerbated sectarian tensions, and the Syrian military was an active party in the conflict; many Lebanese in this research shared stories of atrocities committed by the Syrian military until they were forced out by public pressure in 2005, more than a decade after the Ta'if agreement which ended the conflict in Lebanon. Meanwhile, however, it bears noting that many Lebanese sought refuge in Syria and were provided with safe haven there at different times during the war in Lebanon.

different religious sect. The aid providers adhered to a religion that was indigenous to the country from which the refugees came as well as the one in which they were living, but the inter-faith nature of the aid provision allowed ample space for potential proselytizing motivations.

As such, LSESD, itself an NGO founded by the Lebanese Baptist Society, attempted to maintain a high level of impartiality while keeping to the mantra that – as stated by Rupen Das, then director of LSESD’s Relief and Development Department, and often repeated by LSESD staff and partners – they “let the church be the church”. Under LSESD’s guidance, churches developed their own approaches to respecting the principle of impartiality while also staying true to their own beliefs. These approaches will be explored below, after placing this discussion in the context of wider debates regarding the role of faith actors in humanitarian debates.

The role of faith actors in humanitarian response

Local faith communities (LFCs)²⁰ are often first responders in humanitarian crises.²¹ They respond quickly, but are also often approached by affected populations in the immediate aftermath of a disaster, sought out for both material and spiritual support, as well as for updated information.²² Faith communities tend to be well established and enjoy a high level of trust and social capital in their communities, with existing social and physical structures which help them to intervene efficiently when services are urgently needed.²³

Financially, faith-motivated actors are also well placed to act quickly. While unlikely to have contingency funds specifically set aside for emergencies, nor emergency preparedness plans in place, they are often able to mobilize flexible funds at short notice through their religious networks both locally and beyond.²⁴ While limited in size, donations received through religious channels are usually private and unrestricted, providing a resource base upon which FBOs can fall

20 Defined as religious and faith-based communities “such as congregations, mosques and temples ... whose members reside in relatively close proximity, such that they can regularly meet together for religious purposes, often in a dedicated physical venue”: Elena Fiddian-Qasmiyeh and Alastair Ager, *Local Faith Communities and the Promotion of Resilience in Humanitarian Situations: A Scoping Study*, Working Paper Series No. 90, Refugee Studies Centre at the University of Oxford, Oxford, February 2013.

21 Jean-Christophe Gaillard and Pauline Texier, “Religions, Natural Hazards, and Disasters: An Introduction”, *Religion*, Vol. 40, No. 2, 2010, p. 82; Ben Wisner, “Untapped Potential of the World’s Religious Communities for Disaster Reduction in an Age of Accelerated Climate Change: An Epilogue and Prologue”, *Religion*, Vol. 40, No. 2, 2010, p. 129; E. Fiddian-Qasmiyeh and A. Ager, above note 20, p. 4.

22 Fiona Samuels, Rena Geibel and Fiona Perry, *Collaboration Between Faith-Based Communities and Humanitarian Actors when Responding to HIV in Emergencies*, Project Briefing No. 41, ODI, London, May 2010, p. 2.

23 Nkwachukwu Orji, “Faith-Based Aid to People Affected by Conflict in Jos, Nigeria: An Analysis of the Role of Christian and Muslim Organizations”, *Journal of Refugee Studies*, Vol. 24, No. 3, 2011, p. 483; Ignatius Swart, “Churches as a Stock of Social Capital for Promoting Social Development in Western Cape Communities”, *Journal of Religion in Africa*, Vol. 36, No. 3, 2006, pp. 346–378.

24 F. Samuels *et al.*, above note 22, p. 2.

when funds are needed urgently.²⁵ The costs of FBOs are also often lower than those of secular organizations, as they may tap into significant volunteer resources, use existing facilities for running operations, and access other types of practical support through their religious communities.

The scope and scale of faith-based humanitarian response is largely unknown; much of the work of faith actors is “not quantified or recorded anywhere”.²⁶ At local, national and global levels, religious and denominational structures typically have their own system for donating and for responding, and rarely make an effort to incorporate those plans into the coordination systems of other humanitarian actors. While there may be many religious communities providing aid, each community’s reach is likely much smaller than that of large international organizations funded by institutional donors. As Elizabeth Ferris writes:

To date there has been no attempt to estimate the contributions of such diverse Christian groups as the Anglican Church in Kenya, the Christian Council of Malaysia, the YMCA in Sri Lanka and the Conferencia Episcopal de Colombia – all of which provide direct assistance to individuals in need from their own resources – in addition to the international support they may receive. Other religious traditions have a similarly varied assortment of organizations which provide assistance that is rarely included in tabulations of aid.²⁷

Perhaps this is one reason why FBOs’ voices in humanitarian and academic discussions have been somewhat limited thus far. Research, writing and discussion surrounding faith in development has been growing during the past decade; however, little research captures the specific perspective of religious institutions or people of faith with regard to how FBOs might best engage with the larger humanitarian community. The largest and most visible FBOs in humanitarian response, such as World Vision and Islamic Relief, tend to shy away from overtly religious activities, even though their foundations are deeply religious – indeed, World Vision was founded by an evangelist.²⁸ Meanwhile, more religiously zealous FBOs are moved to the sidelines of humanitarian discussions.²⁹

There is little research that investigates how faith-based actors develop their humanitarian or development discourses.³⁰ There are writings on the theology of

25 N. Orji, above note 23, p. 483.

26 Elizabeth Ferris, “Faith and Humanitarianism: It’s Complicated”, *Journal of Refugee Studies*, Vol. 24, No. 3, 2011, p. 610.

27 *Ibid.*, p. 610.

28 Erica Bornstein, “Child Sponsorship, Evangelism, and Belonging in the Work of World Vision Zimbabwe”, *American Ethnologist*, Vol. 28, No. 3, 2001, p. 605.

29 Marie Juul Petersen, “Islamizing Aid: Transnational Muslim NGOs After 9.11”, *Voluntas*, Vol. 23, No. 1, March 2011, pp. 126–155.

30 There are some interesting studies that do investigate humanitarianism from the starting point of faith; for example, Mathijs Pelkmans, “The ‘Transparency’ of Christian Proselytizing in Kyrgyzstan”, *Anthropological Quarterly*, Vol. 82, No. 2, 2011, pp. 423–445; Edward Smither, “Missão Integral [holistic mission or the ‘whole Gospel’] Applied: Brazilian Evangelical Models of Holistic Mission in the Arab-Muslim World”, *Verbum et Ecclesia*, Vol. 32, No. 1, Art. #483, September 2011; Mona Harb,

compassion in many religious traditions, but these theological works are generally quite different in focus and rhetoric from social science and development studies. As a result, there is little evidence available describing how FBOs actually engage with the principle of impartiality, and little space for dialogue between entities which define themselves primarily by faith and those which define themselves primarily by humanitarianism.³¹ Instead, FBOs are expected to either conduct their business in a manner akin to secular organizations, or are assumed to be not truly humanitarian.

Some researchers have suggested that secular humanitarian discourse struggles to find common ground with faith discourses in part because of its historic focus on material over psychosocial support. “The value of a religious tradition to a secularist humanitarianism, then, is only in terms of what it may offer to a material agenda.”³² Faith-motivated actors are more likely to contribute to meeting urgent needs holistically. This meets a strongly felt need among many disaster-affected populations, who are often eager to feel connected to a power larger than themselves, larger even than the event that has befallen them. Belief in God is, for many, an important coping mechanism.³³ “For many disaster survivors, their ability to recover hinges on their ability to make meaning of disaster experience and to integrate their disaster experience into their life narrative.”³⁴ This is most effectively done if the meaning fits within the framework of the existing beliefs and values of affected people.³⁵

Faith communities are actually uniquely positioned to liaise between affected communities and aid organizations, due to their continual presence in areas where a humanitarian response is taking place; this continuity and dependability can help ensure mutual trust.³⁶ But these same faith communities are often relatively small, with few staff and limited financial resources, so they rarely feel they have the capacity needed to engage with the wider humanitarian structure.³⁷ Humanitarian organizations are increasingly seeking ways to actively involve faith communities in their responses by, for example, partnering with national FBOs, engaging in dialogue with local faith leaders about culture and values, working within existing faith structures to deliver aid, and seeking to build the capacity of faith actors for humanitarian response.³⁸

“Faith-Based Organizations as Effective Development Partners? Hezbollah and Post-War Reconstruction in Lebanon”, in Gerard Clarke and Michael Jennings (eds), *Development, Civil Society and Faith-Based Organisations: Bridging the Sacred and the Secular*, Palgrave Macmillan, Basingstoke, 2008; Mona Atia, “‘A Way to Paradise’: Pious Neoliberalism, Islam, and Faith-Based Development”, *Annals of the Association of American Geographers*, Vol. 102, No. 4, 2011, pp. 808–827; M. J. Petersen, above note 29.

31 M. Barnett and J. Stein, above note 3, p. 4, A. Ager and J. Ager, above note 3, p. 461.

32 A. Ager and J. Ager, above note 3, p. 460.

33 E. Fiddian-Qasmieh and A. Ager, above note 20, p. 5; Monica Lindberg Falk, “Recovery and Buddhist Practices in the Aftermath of the Tsunami in Southern Thailand”, *Religion*, Vol. 40, No. 2, 2010, p. 97.

34 Jamie Aten, “Disaster Spiritual and Emotional Care in Professional Psychology: A Christian Integrative Approach”, *Journal of Psychology and Theology*, Vol. 40, No. 2, 2012, p. 133.

35 N. Orji, above note 23, p. 488.

36 F. Samuels *et al.*, above note 22, p. 2.

37 *Ibid.*, p. 3.

38 E. Fiddian-Qasmieh and A. Ager, above note 20, p. 6.

Impartiality in practice: Power dynamics and tension between religious and humanitarian discourses

The issue of proselytization and conditionality is a historic sore spot for the international humanitarian community, as well as for communities around the world who have been on the receiving end of colonial or missionary endeavours. Many FBOs have sought to distance themselves from these historical memories, since “stories abound of Christian organizations which take advantage of people’s desperation by creating conditional connections between the provision of relief and faith”.³⁹ Though proselytizing may be most closely associated with Christianity, Islamic *da’wa* preaching movements have raised similar misgivings. For their part, humanitarians have often voiced concern that those who place religious objectives over humanitarian objectives will ruin the reputation of other humanitarian actors.⁴⁰

Though statements outlining humanitarian principles, such as the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief,⁴¹ do not explicitly forbid attempts at proselytization, and they do acknowledge that aid agencies might espouse particular religious opinions, it is widely understood and agreed that impartiality precludes proselytizing activities.⁴² Disaster victims are highly vulnerable in a response situation, so there is a potential power imbalance whereby aid providers can wield great influence. Disaster victims may be emotionally susceptible and/or feel pressure to change their beliefs to conform to those of the people providing succour.⁴³ Even if aid providers do something as simple as include a religious text in their distribution packages, this may be perceived by members of the recipient community as pressure to convert or participate in religious activities, or even as an indicator that religious conscription is a condition of aid.

On the other hand, there is a secular bias in the interpretation of religious impartiality which should be acknowledged. “While secularism is in principle ‘neutral’ to religion, in practice the secular framing of the humanitarian regime marginalizes religious practice and experience in the conceptualization of humanitarian action at both global and local levels.”⁴⁴ In fact, the rhetoric of humanitarianism often resembles the rhetoric of colonialism by defining progress,

39 E. Ferris, above note 26, p. 609.

40 Eman Ahmed, “A Dangerous Mix: Religion & Development Aid”, *Challenging Fundamentalisms: A Web Resource for Women’s Human Rights*, July 2005, available at: www.iiv.nl/ezines/web/WHRnet/2005/July.PDF; E. Ferris, above note 26, p. 617; E. Ferris, above note 1.

41 International Federation of Red Cross and Red Crescent Societies (IFRC) and ICRC, Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief, 1994, available at: www.icrc.org/eng/assets/files/publications/icrc-002-1067.pdf.

42 *Ibid.*, Statement 3, for example, says: “Notwithstanding the right of NGHAs [non-governmental humanitarian agencies] to espouse particular political or religious opinions, we affirm that assistance will not be dependent on the adherence of the recipients of to those opinions. We will not tie the promise, delivery or distribution of assistance to the embracing or acceptance of a particular political or religious creed.”

43 E. Ahmed, above note 40; S. Jayasinghe, above note 15.

44 A. Ager and J. Ager, above note 3, p. 457.

human rights and materialist aims in a certain way, and unquestioningly espousing those values.⁴⁵ Humanitarian “doctrines” include, for example, civil society, good governance and privatization.⁴⁶ Indeed, the difference between secular humanitarian discourse and religious discourse may be more accurately described in how they refer to themselves: religious discourse describes itself as values- and beliefs-oriented, while secular humanitarian discourse attempts to claim value neutrality.⁴⁷

FBOs’ evangelization work is often critiqued for being coercive, but a similar critique is rarely applied by humanitarians to the “awareness-raising” and “consciousness-raising” work of humanitarian organizations. Such initiatives may be perceived by beneficiary communities as similarly “evangelistic” if they are introducing new ways of thinking or challenging cultural norms. Examples of such activities include hygiene promotion programmes which combine the distribution of hygiene kits with provision of informational materials that challenge traditional approaches to defecation or hand-washing,⁴⁸ or nutrition programmes that promote breastfeeding in communities where this practice is culturally sensitive, particularly in a context of disaster recovery.⁴⁹

The word “opportunity” has been used by groups doing psychosocial work in emergencies – that is, they have seen that the emergencies presented them with an opportunity to support the “transformation” of social relations into something considered better within the values of secular humanitarianism. This may be seen in the design of humanitarian interventions that seek to challenge traditional gender roles or establish community committees that are understood by the aid providers to be representative but which are not necessarily considered legitimate leaders by members of the affected community.⁵⁰ This may even reflect a political agenda on the part of donor governments, as argued by Bruno De Cordier:

Various development and relief actors are perceived by populations and authorities as being instrumental in a political agenda of both governmental and non-governmental interest groups. These actors serve as vectors for spreading and promoting values, norms and forms of social organization that are often perceived as alien by local beneficiaries and both formal and informal leaders.⁵¹

45 *Ibid.*, p. 463; Barbara Bompani, “Religion and Faith-Based Organisations in Africa: The Forgotten Actors”, *E-International Relations*, 27 September 2011, available at: www.e-ir.info/2011/09/27/religion-and-faith-based-organisations-in-africa-the-forgotten-actors/.

46 Bruno De Cordier, “The ‘Humanitarian Frontline’, Development and Relief, and Religion: What Context, Which Threats and Which Opportunities?”, *Third World Quarterly*, Vol. 30, No. 4, 2009, p. 667.

47 E. Fiddian-Qasmieh and A. Ager, above note 20, p. 6.

48 See, for example, Jelena Vujcic, Lauren Blum and Pavani K. Ram, *Strategies & Challenges to Handwashing Promotion in Humanitarian Emergencies*, State University of New York, Buffalo, NY, 2014, pp. 19–20; Sarah House, Suzanne Ferron, Marni Sommer and Sue Cavill, “Violence, Gender and WASH: A Practitioners’ Toolkit Making Water, Sanitation and Hygiene Safer through Improved Programming”, *Humanitarian Exchange Magazine*, No. 60, Humanitarian Practice Network (HPN), London, February 2014.

49 Ali Maclaine, “Infant Feeding in Emergencies: Experiences from Lebanon”, *Humanitarian Exchange Magazine*, No. 37, HPN, London, March 2007.

50 A. Ager and J. Ager, above note 3, p. 465.

51 B. De Cordier, above note 46, p. 667.

Such endeavours may be seen as much as a form of belief proclamation, or evangelization, as religious teaching, but are rarely questioned in terms of their adherence to impartiality and other humanitarian principles, in the way that religious groups' proclamations are.

Ignoring the ideological nature of such secular discourses can lead to an unquestioning imposition of values on affected communities without taking into account the perspectives of recipients.⁵² For example, as De Cordier writes: "With growing impressions and imagery of a global civilizational conflict pitching 'the West' against 'the Islamic world', development and relief actors increasingly find themselves in a situation where they are perceived to be instrumental in hidden 'neo-colonial', 'Christian' or 'Islamist' agendas."⁵³ Communities receiving aid, therefore, may be increasingly suspicious of humanitarian actors, particularly those with a secular identity who claim to be acting in an entirely impartial manner yet have at times been perceived as promoting their own ideologies. For these reasons as well as their aforementioned social capital and local community ties, in many contexts faith-based aid providers are in fact more easily understood and trusted.

This is likely less complex when aid providers share a religion with the aid recipients. De Cordier points out that religion can serve as "a component of cultural defence" and as a means of defending identity when people feel "threatened in the course of major cultural transitions like rural–urban or international migration and the erosion of traditional identities and sources of authority".⁵⁴ Though this defence is strongest when aid providers share a religious identity with their recipients, it is in some ways less about a shared religion than it is about a shared culture, language and history, which Lebanese and Syrians do have. The following section will explore how churches in Lebanon focus on relationship-building and affinity, seeking to garner the trust of the people they assist in order to ensure that they are meeting the most urgent needs of the affected community.

Impartiality sought through relationships

In the response to the influx of Syrian refugees in Lebanon, most of the church leaders in LSESD's network had attended training on humanitarian principles offered by LSESD's donors, and subsequently embraced the concept of impartiality. This did not, however, mean that they chose to refrain from evangelistic activity. Most saw their humanitarian work as a secondary ministry, and their evangelistic work as their primary calling from God; this was the message they communicated to the members of their churches who volunteered in the food aid programme.⁵⁵

52 A. Ager and J. Ager, above note 3, p. 462.

53 B. De Cordier, above note 46, p. 668.

54 *Ibid.*, p. 678.

55 Findings in this and subsequent sections are based on primary data collected for this case study, as described above.

They agreed that they did not want any of their beneficiaries to feel coerced or pressured to consider religious conversion and that they did want to assist those in greatest need. However, they distinguished between using food to pressure beneficiaries, and using food as a starting point for building relationships. It was then through those relationships that they could provide quality services to address refugees' material needs and ensure that beneficiaries would provide honest feedback if they were feeling any undue pressure, and also share the evangelistic message.

Project volunteers and church members seeking to reach the most vulnerable

Churches invested a large amount of time in interpersonal interaction with their beneficiaries, having mobilized teams of highly committed volunteers from amongst their membership. Church volunteers working on the response were expected by their leaders to demonstrate a strong level of commitment to the programme and an interest in spending time with beneficiaries. Home visits, usually conducted by these volunteers, were an important part of most churches' programmes, as an important means of assessing refugees' needs and identifying the most vulnerable.

Home visits ... provide a connection, a feeling of equality. We tell our volunteers that it is important for them to sit and drink tea, or drink coffee with them. They are our neighbours and our friends.⁵⁶

Churches demonstrated a strong commitment to identifying refugees' most urgent material needs and seeking to respond to those on a timely basis. Home visits were focused on needs identification, and were designed so as to provide volunteers with the flexibility to respond to a diversity of needs that may emerge:

We tell the teams that on the visits they should not talk; they should mostly listen. Then one member of the team talks while the other team member either prays silently or plays with the kids so that the parents can focus. Then what they do depends on the needs. The team takes people to the hospital, or we take them to a doctor.⁵⁷

In the context of home visits or extended conversations at community centres, church volunteers found they were often able to have an open conversation about beneficiaries' needs, as well as about those of other refugees living in the area. This helped build a sense of partnership with the beneficiaries and a shared understanding about vulnerability.

Most volunteers did not have time to consistently visit all refugees on their beneficiary lists as frequently or for as long as they may have wanted. In most of the churches visited, the frequency and duration of home visits had decreased over time

⁵⁶ Interview with church leader, Lebanon, August 2014.

⁵⁷ Interview with volunteer team leader, male, Lebanon, July 2014.

and with the growth of the project. Some beneficiaries received very frequent visits, while others were visited only rarely: as happens in relationships, volunteers developed a stronger affinity to, and even became good friends with, certain individuals, and so gravitated toward them, investing more in those relationships and spending more time with those beneficiaries. This at times made impartiality difficult, as refugees who were the closest friends with church members may have had easier access to assistance.

Not all church volunteers in all places effectively used their relationships with beneficiaries to identify and discuss their needs, however. In fact, some volunteers preferred to focus only on the relationships and to let other members of their churches discuss material needs with refugees. One volunteer who led activities for children and facilitated a support group of young women reported that, while she was aware that distributions happened at her church and material assistance was provided, she let the lead volunteer take care of that; she focused simply on the relationships she was building with her new refugee friends.⁵⁸

Relationships as a component of effective project design

Relationships did not replace structure in churches' responses. Those churches that used relationships with beneficiaries most effectively for ensuring that the most vulnerable were reached were also churches that had a clear system in place, with strong leadership and clear roles and responsibilities. Volunteer visits and other meetings with beneficiaries were carefully scheduled.

For example, at one centre, the team leader had a team of volunteers organized into pairs, with a male and a female member each. Each pair was assigned a group of families from the beneficiary list and was expected to visit those families on a regular basis, with specific instructions as to what to do and how to conduct themselves while on visits. Visits were scheduled to include time spent listening to refugees' stories, prayer, playing with the children, checking the physical facilities of the refugees' residence, identifying any medical needs, and scheduling visits to the pharmacy or other local service providers.

At another church, which had begun to operate its own education programme for refugee children in addition to providing food aid, parent-teacher conferences were scheduled on a monthly basis at the church building so that church staff could be sure they were regularly meeting with beneficiary parents. In addition, a system was put in place to ensure that each beneficiary family received a visit in their home at least once every six months.

Church volunteers experimented with a variety of means for engaging beneficiary input into project design, in keeping with principles of accountability. They found this challenging, however:

I can't involve them. I try. Maybe I try to collect some statistics. I ask them, "What's your biggest need now?" ... They say everything. So maybe I give

58 Interview with volunteer church member, female, Lebanon, January 2014.

them two choices, to choose between, for example, a hygiene kit and a winterization kit that are of the same value. I am looking for a style to engage them with. But everyone – not 90%, let's say 99.9% – says that they have need. But some really are, some are really very poor. So it is a challenge for me, to find a style to engage. ... They don't have the courage to complain – because they benefit.⁵⁹

Many Syrian refugees in Lebanon, newly displaced, had a low level of awareness about the various life skills required for living in crowded urban areas and had a low educational level on average. They were also living in extremely dire situations with many urgent needs. Therefore, it was difficult for them to provide specific input or recommendations. Church members explained that it was hard to capture just how difficult the situation was for many of these families, and that they often felt helpless to meet the many needs they encountered, though they went to great lengths to do what they could.

During meetings and visits, other vulnerabilities often came to light that, according to church volunteers, could only be noticed through a personal human connection. For example, one church's leadership made the strategic decision that all distributions would take place at the church; this was in fact against the initial advice of the church's donor, a North American non-profit, which had recommended delivering food packages to homes, but the pastor was confident about the leadership's decision, saying:

With food packages, they come to the church; we can make sure that they don't sell the food, and we build a relationship with them. Now they feel that the church is home and they come for any problem. Like if a husband has a problem with his wife, or the other way around, they come to us.⁶⁰

An LSESD staff member noted that, in part as a result of this decision, this church had begun to function like a community centre, with office hours for refugees, medical clinic services, educational activities for all ages, and a space where families could often be seen sitting around in the shade. She believed that this expansion of the role of churches beyond merely religious activities was more in keeping with what a faith community should be.

The emphasis on relationships did restrict some churches' ability to take their response to scale. A number of external stakeholders made this observation, though most church volunteers stated that they would provide food vouchers or packages to as many people as they could, if given the material resources. They were overwhelmed by the extent of need and vulnerability among refugees in their communities and wanted to help as many as possible. Nonetheless, a staff member at LSESD summarized well their limitations, saying:

One consideration to take into mind is the qualitative versus quantitative nature of the intervention. Do you help 500 people with just food, or fifty with food and

59 Interview with volunteer team leader, male, Lebanon, July 2014.

60 Interview with church leader, male, Lebanon, July 2014.

developing close relationships? I believe it is better to help just the fifty but to really invest in them.⁶¹

Though most church leaders expressed a desire to scale up, their actions indicated that their ability to reach more people with their current relational programming models was limited.

Beneficiaries' response to churches' focus on relationships

Beneficiaries expressed appreciation for the time invested in them by churches; in fact, many refugees came from Syria to Lebanon without any remaining social structures and so found that visits by church members met a deeply felt need.

I have an open relationship with all the church people, especially J. He and [his wife] visit me each week. I have also visited them in their home. I ask him for advice. He is truly a brother, and I can ask him for any advice.⁶²

I feel comfortable with them because there is love, affection, and I am able to relax with them.⁶³

They used to visit our neighbours, but now they are too busy; there is too much pressure on their time. We were so excited when they said they were coming today. Finally we could offer them a cup of coffee.⁶⁴

One man who had been benefiting from the food voucher programme for more than a year said that the church had become an integral part of his life and community, and that the church volunteers were the people whom he would tell if he had any problems. Usually, he acknowledged, they did not have the capacity to do anything to address his concerns, but he still felt comfortable sharing his worries with them, knowing that “they do what they can”.⁶⁵

It bears stating, though, that as much as churches may have sought to use personal relationships as a tool for ensuring that they served the most vulnerable and ran well-managed response programmes, most of the beneficiaries in LSESD's network of churches were, ultimately, primarily interested in accessing material assistance. Most church leaders and volunteers were aware of this. One volunteer observed that, in order to engage in this “ministry”, they had to love unconditionally, and be willing to be used and abused; it was hard for him to come to terms with the fact that someone would only act like his friend to get something.⁶⁶

61 Interview with LSESD staff member, male, Lebanon, July 2014.

62 Interview with beneficiary-volunteer, male, Lebanon, July 2014.

63 Interview with beneficiary, female, Lebanon, July 2014.

64 Interview with beneficiary, female, Lebanon, July 2014.

65 Interview with beneficiary, male, Lebanon, July 2014.

66 Interview with volunteer church member, male, Lebanon, January 2014.

Relationships, thus, were a culturally appropriate and generally appreciated means of ensuring that churches provided aid to the most vulnerable in their midst and identified the most urgent needs of the refugees living in their communities. As most church members were committed to and, in many cases, interested in developing relationships with refugees from a diversity of backgrounds, they found that this focus on building affinity was an effective means of helping churches to provide aid impartially by helping them to identify where the need was greatest and respond accordingly.

Shifting the focus: Churches' application of impartiality and emphasis on dignity

Though churches did seek to be needs-responsive and non-discriminatory, the emphasis on relationships had the potential of introducing criteria that may not have been religiously motivated *per se*, but were not fully needs-based. The process of identifying the most vulnerable was complicated, and was influenced by the personal investment and commitment of church members. It was also highly influenced by a strong emphasis placed on using human dignity as a guideline for decision-making. Furthermore, affinity between volunteers and beneficiaries did likely lead to higher levels of church engagement among Muslim refugees, which had some positive benefits but could at times also be interpreted as coercive.

An informal social contract: Food for participation

All churches engaged in LSESD's programme noted an increase in attendance at their Sunday services after beginning their response programmes, and many of the new attendees were Muslim Syrian refugees who were either receiving food aid or had been placed on the churches' waiting list. A number of staff and volunteers believed that many of these refugees attended church merely in order to access the aid, because they believed they would get material assistance if they attended – even though, in most cases, no one at the church ever communicated this to them as a requirement. Many volunteers were so enthusiastic about their church's evangelistic values that they habitually invited refugees to church, and even if it was little more than a rote invitation with little expectation, refugees may have interpreted those invitations as an explanation of what they could do in order to increase the odds of getting their names included on the distribution lists.

LSESD, knowing how sensitive Christian evangelistic work is in humanitarian circles, worked hard to convince churches of the need to be careful about this, and most churches agreed to commit to what they called “non-conditionality”. Regardless, many beneficiaries were not only willing but pleased to attend church in exchange for receiving aid. Therefore, while it was not formalized and churches did not describe their programmes in such terms, their assistance programmes operated somewhat like a Food for Work programme,

whereby humanitarian responses provide food assistance in exchange for beneficiaries' contributions to a work project on a day-labour basis. Food for Work contributions may be to infrastructure development, agricultural production or achievement of a humanitarian objective. In a similar tradition, Food for Education is a modality whereby families receive food when their children attend school regularly, in addition to school meals for children.

These programmes, while controversial, have been found to have a fair degree of success in some locations, preserving the dignity of beneficiaries and even strengthening their resilience while providing them with urgently needed food or cash assistance.⁶⁷ As discussed above, there have also been some response programmes that have required beneficiaries to attend awareness-raising sessions before receiving assistance packages; for example, both volunteers and refugees in this study told me that they had heard that some humanitarian actors in Lebanon were requiring beneficiaries to attend hygiene training sessions before receiving hygiene kits. Such practices were perceived by many members of the affected population as a type of neo-colonialist evangelism, though it may have been considered by others as humanitarian best practice.

Church meetings took on a similar role. One beneficiary woman explained:

Everyone who benefits from the project comes to the meeting. If they don't come, [the church leader] won't give them assistance, that's what he said. But that's fine. It's my right. I attend meetings, leave my children and my family to participate in the meetings, and in return they give me assistance. They can't just give me stuff if I don't do anything; that's not logical.⁶⁸

It is important to note that the leader of that particular centre stated that he did not require attendance at church meetings, and several staff and external stakeholders confirmed that beneficiaries were not actually being told that they needed to attend meetings. Nonetheless, this woman came to accept that she was, in a sense, employed as a church attendee in exchange for the ability to feed her family. This same woman reiterated what many beneficiaries stated in no uncertain terms: they are Muslim, and they are confident in their identity, so they did not feel that attending meetings at a Lebanese Christian church was in any way a threat to their religious identity.

They were, however, pleased to have an activity to do, and gain some education in the process. Most beneficiaries coming to the churches were women, and their attendance was possibly a means of empowerment whereby they could do something to support their families, since there are significant cultural barriers

67 Jamie Watts, *Synthesis Report of the Evaluation Series on the Impact of Food for Assets (2002–2011) and Lessons for Building Livelihoods Resilience*, World Food Programme, Office of Evaluation Report No. OEV/2014/11, May 2014; Sarah Adelman, Daniel Gilligan and Kim Lehrer, "How Effective are Food for Education Programs? A Critical Assessment of the Evidence from Developing Countries", *Food Policy Review*, No. 9, International Food Policy Research Institute, 2008.

68 Interview with beneficiary, female, Lebanon, July 2014.

to many Syrian women undertaking manual labour, which was what many of their husbands were doing.

Indeed, even church members did not necessarily understand the difference between “criteria” and “conditions”, and used the same word in Arabic for both. One volunteer in a church observed with regard to a project implemented in her church but not funded by LSESD:

I saw one paper written in Arabic ... that had a list of conditions like that they be in an extremely difficult situation, etc. And on that list it also said that they should be listening to the Message.⁶⁹

As she understood it, vulnerability was as much a condition placed on assistance as was interest in Christian teaching.

In comparison, the pressure on churches to behave in a humanitarian manner and to give every appearance of impartiality actually led to some confusion, including doubts among beneficiaries that they could trust church leaders’ reassurances that food was given unconditionally.

Some people want to hear God’s word. Others fear that if they don’t they won’t get support. But this is because of their desperate need of support, and it can be fed by the practices of some churches. Some pastors would agree with these concerns, but other pastors don’t mind creating fear.⁷⁰

A Syrian refugee who was volunteering at a church was very critical of the church’s approach, not because it was pressuring refugees to convert, but instead because of the church’s own confusion about refugees’ interest in Christianity:

The idea of combining the bread with the word is a failure. People think, “If I can get things from Christians, then that’s good.” Yes, they are taking advantage of the church. Every time there’s a message, people convert to Christianity. Yes, this is good, but that’s not really what’s happening. I’d say that maybe 5% would continue coming to church if there were no more assistance. You can tell who those 5% are. They are the ones who are asking for more discipleship and teaching. But more, they are the ones who didn’t complain when they stopped receiving assistance.⁷¹

One church visited for this research did require weekly attendance at meetings, and the level of confusion was indeed lower amongst beneficiaries and volunteers involved at that church: it was clear to all involved what beneficiaries were expected to do. Refugees did not “perform” according to what they believed the church members wanted to see in order to “ingratiate themselves” to the humanitarian actors,⁷² in this case church members; rather, there was a more clear sense of a trade-off of goods for services, food for attendance. However,

69 Interview with volunteer church member, female, Lebanon, July 2014.

70 Interview with LSESD staff member, female, Lebanon, July 2014.

71 Interview with beneficiary-volunteer, male, Lebanon, July 2014.

72 Elena Fiddian-Qasmieh, “The Pragmatics of Performance: Putting ‘Faith’ in Aid in the Sahrawi Refugee Camps”, *Journal of Refugee Studies*, Vol. 24, No. 3, 2011, p. 534.

most of that church's beneficiaries were Christians from Orthodox or Catholic traditions, still considered a different religious sect from Evangelicalism in Lebanon but socially less distant than adherents to Islam. Few Muslims were willing to agree to the social contract presented to them. In comparison, most churches which sought to achieve impartiality but still encouraged church attendance provided most of their assistance to Muslims, and many though certainly not all of their Muslim beneficiaries opted to attend church.

Church involvement as a part of aid packages

Most Muslim refugees attending church began doing so of their own volition. Some came without any invitation, while in most churches, volunteers extended an invitation to refugees. Most volunteers and beneficiaries spoke of church involvement as primarily a means of further strengthening relational ties, both between volunteers and beneficiaries, and between refugees themselves.

The complexity of the connection between affinity and church involvement was reflected in the account of one church leader. He noticed that several food voucher recipients began attending church on Sundays, even though his volunteer team's policy was to not encourage them to do so, leaving him wondering about their motives. Then he told a story about a woman who was on the church's waiting list to get food vouchers – they recognized that she was in need, but had run out of vouchers to distribute – and who began attending church regularly. He admitted that when a spot on their distribution list opened up, they moved her to the top of the waiting list, in part because they saw how vulnerable she was but also because she had invested a significant amount of time in being an active member of the church community. However, he was impressed by her response: she refused to accept the voucher because she had observed that there were people who needed the assistance more urgently than her. The church leader concluded that, as she had attended the church, she had become friends with other refugee women who were also attending, which gave her a greater sensitivity to the needs of her fellow refugees. Her own morality thus challenged the church's natural tendency to reward attendance.⁷³

Indeed, for some refugees, church and friendships with volunteers became an important social outlet. According to the wife of a church leader, some of the Syrian women who had been attending her church told her that the greeting and social time was the reason they kept coming. One volunteer, when asked about the refugees' needs, said:

Their biggest need is to have a friend, to feel respected and cared for – that is, to be listened to and heard.⁷⁴

Confirming this sentiment, one church leader said that he figured many people, especially women and children, were just so bored, and their lives so empty in

73 Interview with church leader, male, Lebanon, January 2014.

74 Interview with volunteer church member, female, Lebanon, January 2014.

Lebanon, rarely leaving their homes, that they wanted to come to church for some social activity.⁷⁵

Refugee beneficiaries similarly expressed appreciation for the social outlet provided by the church. When asked whether she attended church, one woman explained that she attended for a few months because she wanted to hang out and see her friends; she came for the social atmosphere but eventually stopped attending Sunday services because her life had become too busy. She did, however, continue receiving the food vouchers.

Many beneficiaries who attended church also reported appreciation for the opportunity to expand their horizons and learn about Christianity from an educational point of view.

Before, I didn't know who Jesus is, but I wanted to know more, to develop myself culturally. ... But it's not just teaching about religion, also social and personal issues, learning more about God in general.⁷⁶

This was a new experience for many beneficiaries, particularly women, who were raised with little knowledge of Christianity, or in some cases were taught negative things about Christianity, even though Christianity is recognized as a predecessor to Islam.

Affinity in tension with vulnerability

As alluded to already, church members found it difficult to refuse aid to people with whom they had developed a strong personal connection, knowing that they were highly vulnerable, but also that there were others in the community who were even more vulnerable. One LSESD staff member noted:

Yes, [church partners] parrot back the importance of conditionality, and it's great that they know it, but some don't get the implications – for example, that vulnerability criteria should be used as *the* criteria. That need should be placed in higher importance over persistence. It will come up in conversation; we do discuss it a lot, and try to explain the importance to them.⁷⁷

She continued, observing that when a church member develops a relationship with someone, it is hard to then tell that person that they will not receive help. This was aggravated by the fact that, as observed by volunteers, some refugees whom they visited were more interested than others in investing in relationships with church members. Some volunteers found that home visits to some families felt like a formal meeting, while visits to others felt more like a social visit with friends.

Furthermore, the churches in LSESD's network, even those churches with well-structured systems ensuring that volunteers spend time regularly with beneficiaries, relied primarily on informal conversations to capture important

75 Interview with church leader, male, Lebanon, January 2014.

76 Interview with beneficiary, female, Lebanon, July 2014.

77 Interview with LSESD staff member, female, Lebanon, July 2014.

monitoring information. A child protection adviser working in the LSESD office at the time of the fieldwork commented:

I can see how the approach of depending only on visits to people's homes is good. It helps to build relationships, and there is a lot of accountability in relationships, for example to make sure people aren't lying about their need. But ... it's very risky. There is no one outside the relationship that people can go to if they have a problem.⁷⁸

Many church volunteers were aware of this. Out of a desire to preserve the highly personalized nature of the services they provided, they were resistant to putting strong monitoring and accountability systems in place; however, they did try to be attentive to possible concerns.

Our relationship encourages them to share. We are very open. But we have no system in place if they have a problem with the team. So we are observant.⁷⁹

Some beneficiaries also indicated that they valued their friendships with church members more than any opportunities to provide objective feedback. One beneficiary who was volunteering with the church, when asked if he had any critique of the programme, described members of the church as “truly his brothers” – that is, family who should not be criticized in the presence of an outsider.⁸⁰ Another woman commented that she would come to the church centre to ask for help meeting any need other than a material need. Since she saw the people who worked or volunteered at the centres as her friends, she preferred to go to someone with whom she had a more formal relationship – such as her Lebanese landlord or neighbours – with requests for financial assistance beyond the aid that the church already gave her.⁸¹

Furthermore, though most church leaders may have embraced the concept of impartiality, seeking to use affinity ties to identify the most vulnerable and stating that aid was unconditional, they were not willing to consider impartial humanitarian aid as a more important objective than evangelism, which was part of the founding ethos of their institutions. One couple explained that, as much as they were enjoying developing friendships with refugees and were pleased that they could help meet their most urgent needs, they were constantly alert for any opportunities to engage in religious discussion. After visiting a refugee family a few times, they felt that a friendship was developing, so they invited the beneficiary family to their home for dinner. They also invited a few Christian relatives to join them at the dinner, saying that they had hoped their presence would “pave the ground” for a spiritual conversation.⁸²

78 Interview with technical adviser working at LSESD, female, Lebanon, July 2014.

79 Interview with church volunteer team leader, male, Lebanon, July 2014.

80 Interview with beneficiary-volunteer, male, Lebanon, July 2014.

81 Interview with beneficiary, female, Lebanon, July 2014.

82 Interview with two volunteers, Lebanon, January 2014.

Dignity as churches' main "humanitarian principle"

While evangelical churches wrestled with applying impartiality, and did so in ways somewhat different from other humanitarian actors, they also had their own highly valued principles. In fact, some of the informants in this case study were somewhat critical of other, larger humanitarian actors for their poor respect of other guidelines that they considered essential to good humanitarian response. The "principle" most emphasized was that of human dignity.

We treat beneficiaries with respect. When they come in to the centre, we stand up, shake their hands, offer them a seat. This is different from the UN and their partners, who even refer to the refugees as "animals".⁸³

A member of LSESD staff who interacts regularly with local vendors had similar concerns about their behaviour and saw his role as ensuring that beneficiaries were treated with the dignity that other stakeholders were less likely to demonstrate:

There have been some shopkeepers who did not respect them, and they complained. I went straight to the shopkeepers and I spoke to them strongly. I warned them that if they did not respect the people, there were many other shopkeepers waiting for our business.⁸⁴

As seen above, church attendance became a means by which beneficiaries could preserve their dignity by contributing something instead of just receiving hand-outs. Churches and LSESD worked hard to defend the dignity of beneficiaries in other ways as well. Of particular concern was the liberal use of photography by foreign journalists or donors, often without beneficiaries' permission and without explanation to beneficiaries as to how the photographs would be used. One church leader said that he would like many more outside stakeholders to visit his centre and have the opportunity to meet beneficiaries,

but please, no pictures! They get suspicious of how we use the pictures, think we are taking advantage of them to get even more money than we are giving to them, or maybe for political purposes.⁸⁵

A member of LSESD staff, similarly, admitted:

I struggle with every picture on the website. ... We Lebanese have been displaced, too. I don't want my pictures used!⁸⁶

Leaders of one church said that one of their priorities was honour. Through their engagement in this response, they learned that Syrians typically came to Lebanon with a strong sense of honour, but felt that they had lost it when they were

83 Interview with volunteer team leader, male, Lebanon, July 2014.

84 Interview with LSESD staff member, male, Lebanon, July 2014.

85 Interview with volunteer team leader, male, Lebanon, July 2014.

86 Interview with LSESD staff member, female, Lebanon, July 2014.

displaced. This made it difficult for them to accept help, and even more difficult for them to ask for assistance.

They would be hurt if we were the “helpers” for them. So we reassure them in our actions and words, we show them how much we value them, that we see them as heroes. ... Typically Lebanese take a “downward approach” to Syrians.⁸⁷

Beneficiaries felt this respect for their own dignity, and saw it as one of the greatest benefits of receiving assistance from churches. They appreciated having an opportunity to smile and talk, and they liked the attention they received:

At the church I feel like I matter.⁸⁸

The main thing is that we are respected. Everyone else looks at us like martyrs or like the enemy. But here, we are alike, we sit together. The church members care for our children. If our children are happy, then we are happy.⁸⁹

A few beneficiaries also made a negative comparison with other local aid providers. One woman said that the quality of the assistance packages provided by the church was much better than the quality offered by the local Muslim community organization.

The mosque once gave us food, but it was just this little tiny packet with almost nothing, but they seemed so proud and were showing it off!⁹⁰

In comparison, she felt that church members were genuinely interested in her well-being, and it was this contrast in experience which led her to seek involvement in all the activities the church offered.

Learning to show respect for human dignity was actually a difficult process for many volunteers. A complex history between Syria and Lebanon led many Lebanese Christians to feel suspicion, and even hatred, towards Syrian Muslims. One volunteer explained that at first it was hard for her to empathize with refugees. There were a million Syrians in Lebanon but she did not notice them. Through her involvement in the food programme, she made Syrian friends, friendships based on mutual respect. She said that they now saw each other as fellow human beings, something that she believed was important for challenging growing tensions in Lebanese host communities.⁹¹

It bears noting that not all churches were focused on dignity. There were a few isolated instances of churches treating their beneficiaries with some degree of disdain.

87 Interview with volunteer team leader, female, Lebanon, January 2014.

88 Interview with beneficiary, female, Lebanon, July 2014.

89 Interview with beneficiary, female, Lebanon, July 2014.

90 Interview with beneficiary, female, Lebanon, July 2014.

91 Interview with volunteer church member, female, Lebanon, August 2014.

I went to one project in a large warehouse. ... I showed up and it was full of people sitting on the floor, very very quiet. I asked the pastor why it was so deathly calm. He said, "I am a dictator."⁹²

More commonly, though, there were limits to the level of dignity afforded to beneficiaries. Though valued, they were rarely trusted even though church members sought to earn their trust. In most churches, beneficiaries did not participate in decision-making. The leader of one church explained that beneficiaries were informed about the church's vision and plans when they attended distributions; this church's decisions were made primarily by a team including the pastor and two head volunteers. Occasionally church members also participated in strategic discussions, but not beneficiaries.⁹³

At another church, the volunteer committee was in a season of transition in management and was exploring options as to who to include in their team:

We are trying to grow the committee. But we are not getting [the one Syrian volunteer] involved in decision-making, for example who to provide assistance to. ... Maybe he can give us ideas about their situation. ... We asked him because we can trust him. He comes to all the meetings. Many people lie, though.⁹⁴

It was a big step for churches to start supporting and befriending Muslims; it would be a much bigger step to engage them in decision-making or entrust them with management responsibility. Dignity was considered of paramount importance, but churches were limited in the level of dignity they afforded their beneficiaries. This was, in part, because beneficiaries were refugees and Syrians, but also because they were not Christians. Nonetheless, many churches felt that they respected human dignity more than did other, non-faith-based humanitarian actors, and other members of Lebanese host communities.

Conclusion: Questioning conceptions of humanitarianism

The experience of evangelical churches providing assistance to Syrian refugees raises a number of questions about how the principle of impartiality is, or might be, applied in practice. While their work demonstrates a level of commitment and compassion which may be considered exemplary, the depth of their religious convictions was such that they could not separate material assistance from their understanding of refugees' spiritual needs. New to humanitarian work, church members agreed to seek to be impartial, in many cases with a great deal of conviction, and yet they continued to teach about Christianity and invite beneficiaries to their churches. There were ways in which their approach did not live up to the standards of humanitarian impartiality, but there were other ways

92 Interview with LSESD staff member, male, Lebanon, July 2014.

93 Interview with church leader, male, Lebanon, July 2014.

94 Interview with volunteer church member, female, Lebanon, August 2014.

in which they did demonstrate a strong sense of impartiality as well as emulating their own humanitarian values, rooted in their belief that human dignity is crucial. The following are some questions raised through this experience.

Can, and should, humanitarian actors seek to separate material assistance from their own convictions? Evangelical church members would answer that they should not, and if forced to choose, it seems likely that many would continue to preach their religion and cease to provide food to refugees, which would potentially leave many refugees vulnerable since churches have deeper access into many communities than other humanitarian actors do. Secular humanitarians, on the surface, may answer that material assistance should indeed be separated from convictions, but questions about the impartiality of secularism challenge such a view. Participants in this case study felt that they were being more needs-responsive and more attentive to their beneficiaries' humanity than other humanitarian actors, specifically because of their religious convictions.

How can aid providers distinguish between when religious activities meet a felt need, and when they may be experienced as religious coercion? Many Muslim beneficiaries interviewed for this case study spoke of Christian church activities as meeting felt needs for social and for educational services. Other beneficiaries, and indeed at times the same beneficiaries at other moments in the conversation, indicated that they participated in church activities to ingratiate themselves to their aid providers. None indicated that they felt coerced to attend church, but the example of one of the churches which required attendance at meetings suggests that other Syrian Muslim refugees may have opted not to accept assistance from churches, which is of concern if they are not accessing aid elsewhere.

If aid is provided with no conditions at all, how can the dignity of beneficiaries be preserved? Syria is a country which had not experienced any major natural disasters or conflict for several decades before the current crisis, so most of the refugees arriving in Lebanon were not accustomed to being on the receiving end of charity. Many beneficiaries found they could preserve a bit of honour and dignity by engaging as equals with church members both inside and outside of church meetings. Some decided that churches required their attendance at meetings in order to access aid, which suggests that churches were not acting in an impartial manner even if they did not intend to require attendance; but those same beneficiaries expressed pride in feeling they could do something to earn assistance, just as they would have done when they had a job in pre-conflict Syria. This seems to suggest that more intentional food-for-something activities, even if of a religious nature, may be a tool meriting further exploration for helping stem a trend toward aid-dependence in affected populations.

To what extent can relationships and the subsequent psychosocial support be provided to disaster-affected populations without leading to preferential treatment for beneficiaries with whom aid providers have developed an affinity? The personal touch is an important component of any emergency response programme, particularly in a context of displacement and conflict, where many beneficiaries are recovering from trauma. Churches and other faith-based actors are uniquely equipped to provide such personalized support, and one of the highlights of LSESD's programme was

its relational nature, utilizing a large network of volunteers from its partner churches. However, affinity ties inevitably became stronger with some members of the affected population than others, and it was easy for beneficiaries who had not made those personal connections with volunteers to be overlooked; this also has ramifications for humanitarian accountability, in that different beneficiaries were able to communicate to service providers with different levels of honesty on the basis of the personal relationships they had developed.

In conclusion, while local grass-roots faith-based entities agree with the humanitarian principles, they interpret them in markedly different ways than most secular actors, particularly those headquartered in other parts of the world than where a humanitarian emergency may be taking place. Improved dialogue between these local faith-based organizations and other, larger humanitarian agencies is invaluable. Such dialogue can help strengthen the quality of care given by all aid providers, by improving all parties' understanding of the humanitarian principles and how they can best be applied, taking into consideration the historical lessons learned that underpin the humanitarian principles as well as the perspectives of local community members.

OPINION NOTE

Is neutral humanitarian action permissible under Islamic law?

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Abstract

In this Opinion Note, Mohd Hisham Mohd Kamal examines neutral humanitarian action during armed conflicts from an Islamic perspective. By analyzing the Qur'an and the Sunnah, he finds that it is permissible to recognize a neutral third party. Moreover, Mohd Hisham Mohd Kamal considers siyasah al-Shar'iyyah and maqasid al-Shari'ah and finds that neutrality leads to the protection of lives and dignity and is thus compatible with the two concepts. He concludes that neutrality is permissible from the Islamic perspective.

Keywords: humanitarian action, humanitarian principles, neutrality, Islam.

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Provision of humanitarian assistance to victims of armed conflicts has become more important in recent years. Often, a big challenge in providing humanitarian assistance is a State's sovereignty. Generally speaking, a State has no obligation to admit foreigners to its territory, and its consent must be obtained before foreign humanitarian workers can legally enter a country. Another challenge is that conflicts nowadays involve non-State armed groups, and humanitarian workers

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often need to obtain the permission of a group, though this is not required by the law, before they can enter into its stronghold. In order to overcome this challenge, the International Committee of the Red Cross (ICRC) and wider Red Cross and Red Crescent Movement successfully conducts its humanitarian operations based on seven Fundamental Principles, namely: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.¹

In this piece, I will discuss the Islamic perspective on taking neutral humanitarian action to assist victims of armed conflicts. What is the view of Islam with regard to the application of the principle of neutrality by the ICRC and wider Red Cross and Crescent Movement and other humanitarian organizations in case of an armed conflict which has been caused by an aggression, which is an evil, by one side against the other? More generally, is it permissible under Islamic law to be neutral with regard to good and evil? The discussion is significant because there are many Muslims who work for humanitarian organizations that operate under the neutrality principle. It is hoped that with this discussion, Muslim humanitarian workers will comprehend the religious basis of their neutral stance.² It is also hoped that Muslim governments and armed groups will understand the benefits of neutral humanitarian action so that they will allow medical and other aid to reach victims of armed conflicts. I am using the definition of neutrality used by the Red Cross and Red Crescent Movement as a benchmark, but this definition can be applied to other humanitarian actors as well.

The ICRC principle of neutrality

At the beginning of the law of nations, neutrality meant the legal status of a nation which had decided not to participate in a war between two or more nations. A neutral State has a duty to abstain from providing military assistance to the belligerents, to prevent its territory from being used for bellicose purposes, and to be impartial to the two sides. Neutrality is a duty to abstain from any act which, in a conflict situation, might be interpreted as furthering or jeopardizing the interests of either party to the conflict.³ This status is recognized by the warring parties.⁴

Neutrality in humanitarian action has a different meaning. States party to the Geneva Conventions have endowed the ICRC with a neutral status. States in armed conflicts have an interest in ensuring that the humanitarian body that

1 Statutes of the International Red Cross and Red Crescent Movement, October 1986, Preamble, available at www.icrc.org/eng/resources/documents/misc/statutes-movement-220506.htm (all internet references were accessed in May 2015).

2 There is no literature on the Islamic perspective on whether humanitarian work can be neutral with regard to good and evil; thus, the present work is justified.

3 Denise Plattner, "ICRC Neutrality and Neutrality in Humanitarian Assistance", *International Review of the Red Cross*, No. 311, 1996, available at: www.icrc.org/eng/resources/documents/misc/57jn2z.htm.

4 Anke I. Bouzenita, "The Principle of Neutrality and 'Islamic International Law' (Siyar)", *Global Jurist*, Vol. 11, No. 1 (Advances), 2011, Article 4, p. 2.

operates in their territories respects the duty of neutrality.⁵ The ICRC has to adopt the same apolitical attitude to all parties to a conflict, so that the interests of the victims continue to be the central focus of relief efforts and so that the trust of others is not undermined.⁶

The ICRC is described by Article 3 common to the four Geneva Conventions as “an impartial humanitarian body” that “may offer its services to the Parties to the conflict”.⁷ Its Statutes also describe it as “an independent humanitarian organization”⁸ and identify its Fundamental Principles. According to the neutrality principle of the ICRC and the wider Red Cross and Red Crescent Movement, and in order to continue to enjoy the confidence of all, taking sides in hostilities or engaging at any time in controversies of a political, racial, religious or ideological nature is prohibited.⁹ Observing the principle of neutrality from the outset and at all times, the ICRC will win the confidence of States.¹⁰ The neutrality of the ICRC gives it the credibility to gain access to victims of conflicts. Neutrality is not an objective for the ICRC but rather a means of carrying out its mandate to assist victims of armed conflicts.¹¹

Neutrality from an Islamic law perspective

In this part, I seek to clarify the concept of neutrality in the Qur’an and the *Sunnah*¹² which are the two main and divine sources of Islamic law. Moreover, I attempt to find an answer to this issue from the perspective of *siyash al-shar’iyyah* (*Shari’ah*-oriented policy) and *maqasid al-Shari’ah* (objectives of *Shari’ah*).¹³

Neutrality according to the Qur’an and the *Sunnah*

Under Islamic law, it is permissible to render or accept relief work and/or medical services. According to Muhammad Hamidullah, it is permissible for Muslims to

5 D. Plattner, above note 3.

6 For the underlying rationale of the principle of neutrality, see Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, ICRC, Geneva, 1979, available at: www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm.

7 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950); Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950).

8 Statutes of the ICRC, 3 October 2013, Art. 1, available at: www.icrc.org/eng/resources/documents/misc/icrc-statutes-080503.htm.

9 J. Pictet, above note 6. This definition also figures in the Preamble to the Statutes of the International Red Cross and Red Crescent Movement, above note 1.

10 D. Plattner, above note 3.

11 *Ibid.*

12 *Sunnah* means sayings, deeds and approvals of Prophet Muhammad.

13 *Shari’ah* means the laws ordained by Allah for His servants through Prophet Muhammad. It is found in the Qur’an and the *Sunnah*.

accept ambulance services and medical help from neutral parties or even non-Muslims.¹⁴ It is also permissible for Muslims to render relief work to non-Muslims. He argues that this is based on verse 5:2 that provides to the effect: “O you who believe! ... Help you one another in righteousness and piety.”¹⁵ Al-Mawardi is quoted to opine that in this verse, Allah has turned to cooperation in righteousness and has connected it with cooperation in piety for Him, because in piety there is pleasure of Allah, and in righteousness there is pleasure of human beings, and whosoever gets both the pleasure of Allah and the pleasure of human beings, he/she is completely successful.¹⁶

Indeed, it is permissible for Muslims to render relief work to their enemies. This was practiced by Prophet Muhammad. Once, when famine was afflicting the Quraysh (Prophet Muhammad’s tribe) in Mecca, the Prophet sent a contribution of ripe dates and 500 dinars even though in the preceding year, the Quraysh had attacked his stronghold Medina, resulting in the martyrdom of many Muslims in the Battle of Uhud.¹⁷

However, if one State aggresses against another and systematically violates the law of war by, for instance, directing attacks against the civilians of the latter, committing murder and rape on a massive scale, is it permissible under Islamic law for Muslims who take humanitarian action in the armed conflict to remain neutral? It seems that being neutral with regard to good and evil is incompatible with the principle of justice that Islam enjoins.¹⁸ Justice in this context means establishing a balanced position, without inclining towards or favouring any side and without being swayed by biases or prejudice, and this is achieved by way of fulfilling everyone’s rights and obligations and eliminating excess and disparity.¹⁹ Neutrality in this situation also appears not to be in conformity with the commandment of the Qur’an on Muslims to enjoin good and forbid evil.²⁰ In

14 Muhammad Hamidullah, *Muslim Conduct of State*, revised ed., Kashmiri Bazar, Lahore, 1945, p. 271.

15 *Ibid.*

16 Abu ’Abd Allah Muhammad ibn Ahmad al-Ansari al-Qurtubi, *Al-Jami’ li-Ahkam al-Qur’an*, Vol. 6, Dar al-Kutub al-’Ilmiyyah, Beirut, n.d., p. 33.

17 Ahmed Zaki Yamanai, “Humanitarian International Law in Islam: A General Outlook”, in Hisham M. Ramadan (ed.), *Understanding Islamic Law: From Classical to Contemporary*, AltaMira Press, Lanham, MD, New York, Toronto and Oxford, 2006, p. 83; M. Hamidullah, above note 14, p. 216.

18 Qur’an, 4:58–59:

Allah commands you to render back your trusts to those to whom they are due; and when you judge between man and man, that you judge with justice: verily how excellent is the teaching which He gives you! For Allah is He Who hears and sees all things. (58)

O you who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah and His Messenger, if you do believe in Allah and the Last Day: that is best, and most suitable for final determination. (59)

Qur’an, 4:135:

O you who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest you swerve, and if you distort (justice) or decline to do justice, verily Allah is well-acquainted with all that you do.

19 M. Kamal Hassan, *The Need to Understand al-Wasatiyyah as Part of IIUM’s Mission of Islamisation*, Centre for Islamisation, CENTRIS IIUM, Selangor, 2013, p. 13; Mohamad Akram Laldin, *Introduction to Shariah and Islamic Jurisprudence*, CERT Publications, Kuala Lumpur, 2006, p. 33.

20 Qur’an, 3:110 in part:

addition, according to the Qur'an, failure to enjoin good or forbid evil is also an evil.²¹ Prophet Muhammad also laid down the principle of forbidding evil.²²

Muhammad Hamidullah writes that the term *i'tizala*, which means being neutral, was used by nations since before the advent of Prophet Muhammad and continued into his time.²³ Verses 4:88–91 of the Qur'an command the Muslims to fight those who pretend to be Muslims but actually support the Muslims' enemies.²⁴ However, the verses prohibit the Muslims from fighting a third party who does not want to fight the Muslims nor support the Muslims' enemy.²⁵ It is submitted that by the prohibition from fighting a genuine third party, the Qur'an, 4:88–91 permits the Muslims to recognize a neutral party.²⁶ Hamidullah gives examples that show variations of neutrality that occurred during the era of the Prophet. One example that is quite close to the modern concept of neutrality is the stance of Banu 'Abd ibn 'Adi²⁷ regarding the war between the Muslims and the Quraysh. In the fifth year after the Prophet's Migration to Medina, Banu 'Abd

You are the best of peoples, evolved for humankind, enjoining what is right, forbidding what is wrong, and believing in Allah ...

Qur'an, 3:104 in part:

Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong ...

Qur'an, 9:71 in part:

The Believers, men and women, are protectors, one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Messenger ...

21 Qur'an, 5:62–63:

Many of them (People of the Book) do you see, racing each other in sin and transgression and their eating of things forbidden. Evil indeed are the things that they do. (62)

Why do not the rabbis and the doctors of law forbid them from their (habit of) uttering sinful words and eating things forbidden? Evil indeed are their works. (63)

22 "Whosoever among you saw an evil should change it with his hands. If he is not able to do so, he should change it with his tongue. If he is not able to do so, he should hate it with his heart, but that is the weakest state of faith." (Sahih Muslim)

23 M. Hamidullah, above note 14, pp. 277–297.

24 Qur'an, 4:88–91:

Why should you be divided into two parties about the hypocrites? Allah has upset them for their (evil) deeds. Would you guide those whom Allah has thrown out of the way? For those whom Allah has thrown out of the way, never shall you find the way. (88)

They but wish that you should reject the faith, as they do, and thus be on the same footing (as they): so take not friends from their ranks until they flee in the way of Allah (from what is forbidden). But if they turn renegades, seize them and slay them wherever you find them; and (in any case) take no friends or helpers from their ranks – (89)

Except those who join a group between whom and you there is a treaty (of peace), or those who approach you with hearts restraining them from fighting you as well as fighting their own people. If Allah had pleased, He could have given them power over you, and they would have fought you: therefore if they withdraw from you but fight you not, and (instead) send you (guarantees of) peace, then Allah has opened no way for you (to fight) against them. (90)

Others you will find that wish to gain your confidence as well as that of their people: every time they are sent back to temptation, they succumb thereto; if they withdraw not from you nor give you (guarantees) of peace besides restraining their hands, seize them and slay them wherever you get them; in their case We have provided you with a clear argument against them. (91)

25 Abu al-Fida Ismail ibn Kathir, *Tafsir Ibn Kathir*, Vol. 2, abridged by Safi-ur-Rahman al-Mubarakpuri, 2nd ed., Darussalam, Riyadh, 2003, pp. 537–542.

26 A. I. Bouzenita, above note 4, pp. 12, 16.

27 Banu 'Abd ibn 'Adi was a clan of the tribe Banu al-Dil, of the Kinanah group.

ibn 'Adi called to the Prophet, "O Muhammad! ... We do not want to fight you. On the other hand, we are prepared to help you in your expeditions, except against the Quraysh of Mecca, for we would not want to fight against the Quraysh."²⁸ Regarding the war between the Muslims and the Quraysh, the tribe did not want to take a side but wanted to be neutral instead. Although the Quraysh was the aggressor who declared war on the Muslims²⁹ and had mutilated the dead Muslims' bodies in the Battle of Uhud, the Prophet did not say that the tribe's declaration of neutrality was unjust or tolerating evil. In fact, the Prophet recognized the neutral status of Banu 'Abd ibn 'Adi and did not fight the tribe. As there was no rejection by the Prophet of the declaration of neutrality, it is submitted that being neutral is originally permissible under the Islamic law.

The relevance of the concepts of *siyasah al-shar'iyah* and *maqasid al-Shari'ah* to neutrality

Neutrality in taking humanitarian action may be justified by the application of *siyasah al-shar'iyah* and *maqasid al-Shari'ah*. *Siyasah al-shar'iyah* (*Shari'ah*-oriented policy) is the science of State administration which is based on Islamic law and systems that brings goodness to the public and protects them from evil.³⁰ Its scope is very wide, covering politics, economics, and financial and social affairs.³¹ Policies must be based on the legal texts from the Qur'an and the *Sunnah*. If there is no legal passage in the Qur'an and no *Sunnah* on the matter, the policy must not be contrary to the basic principles of *Shari'ah*.³² The exercise of *ijtihad*³³ on numerous fields and sectors shapes government policies,³⁴ which aim towards *maslahah al-'ammah* (the general welfare).³⁵

The objective of *siyasah al-shar'iyah* is to carry out the *maqasid al-Shari'ah* (objectives of *Shari'ah*) in protecting the five human interests, namely: Muslim faith, life, mind, lineage and honour, and property. These five essential interests must be protected because their neglect will lead to total disruption and disorder, and hence an undesirable end.

28 M. Hamidullah, above note 14, p. 289; A. I. Bouzenita, above note 4, p. 17.

29 The first verse of the Qur'an revealed on the subject of fighting shows that it was the Quraysh who had declared war on the Muslims: "To those against whom war is made, permission is given (to fight)" (Qur'an, 22:39 in part).

30 Bharudin Che Pa, Siti Arni Basir and Shukeri Mohamed, "Perlaksanaan Siyasah Syar'iyah dalam Pentadbiran di Malaysia", *Jurnal Al-Tamaddun*, Vol. 5, 2010, pp. 57, 60; Shukeri Muhammad, "Siyasah Syar'iyah dalam Membentuk Gagasan Fiqh Masyarakat Majmuk", paper presented at Simposium Fiqh Masyarakat Bukan Islam dalam Negara Islam, organized by the Association of Muslim Scholars of Selangor Branch in cooperation with the Department of Islamic Religion of Selangor and the Council of Islamic Religion of Selangor, in Selangor on 23–24 December 2009.

31 B. Che Pa, S. A. Basir and S. Mohamed, above note 30, pp. 57, 60.

32 *Ibid.*, pp. 60–62.

33 *Ijtihad* means the process of inferring rules of *Shari'ah* from its sources or applying rules of *Shari'ah* to a particular issue.

34 B. Che Pa, S. A. Basir and S. Mohamed, above note 30, p. 62.

35 *Ibid.*, pp. 61–62.

Although the classical concept of *siyasaḥ al-sharʿiyyah* relates to the administration of the State, it is submitted that the concept can be extended to an international humanitarian organization that has an international legal personality. This extension is necessary because of the importance of protecting the five essential human interests. In 1999, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) declared in the case of *Prosecutor v. Simić et al.* that the ICRC enjoys a special status under international law, and it stated in a footnote that it “is generally accepted that the ICRC, although a private organization under Swiss law, has an international legal personality”.³⁶ Although the classical concept of *siyasaḥ al-sharʿiyyah* relates to the administration of a State which is Islamic in its ideology, it is contended that the humanitarian mission of the ICRC is generally and basically compatible with Islamic teaching. The application of the concept can therefore be extended to the ICRC.

The humanitarian mission of the ICRC is to protect the lives and dignity of victims of armed conflicts and to provide them with assistance. This policy leads to the general welfare of the victims and is generally compatible with the *maqasid al-Shariʿah* in the protection of the essential human interests. If the ICRC, for example, was to denounce collected evidence on violations of the law of armed conflict, no belligerent would give access to the ICRC in the future for the purposes of taking humanitarian action.³⁷ This would lead to an undesirable end.

Nevertheless, it is important that there are Muslims who fight aggressors and war criminals. When jihad is carried out by a group of Muslims, the *fard kifayah* (collective obligation) is considered to be fulfilled. Carrying out jihad is *fard kifayah*, based on the following verses of the Qurʿan:³⁸

Not equal are those Muslims who sit (at home), except those who are disabled, and those who strive and fight in the cause of Allah with their goods and their persons. Allah has granted a grade higher to those who strive and fight with their goods and persons than to those who sit (at home). Unto all (in faith) has Allah promised good: but those who strive and fight has He distinguished above those who sit (at home) by a special reward.³⁹

...

Nor should the Muslims all go forth together: if a contingent from every expedition remained behind, they could devote themselves to studies in

36 ICTY, *The Prosecutor v. Blagoje Simić, Milan Simić, Miroslav Tadić, Stevan Todorović, Simo Zarić*, Trial Chamber, 27 June 1999, para. 46, fn. 9.

37 For the principle of confidentiality, see Memorandum, “The ICRC’s Privilege of Non-Disclosure of Confidential Information”, in this issue of the *Review*.

38 Fakhr al-Din ʿUthman ibn ʿAli al-Zaylaʿi al-Hanafi, *Tabyin al-Daqaʿiq on the margin of Sharh Kanz al-Daqaʿiq*, ed. al-Shaykh Ahmad ʿAzr ʿInayah, Vol. 4, Dar al-Kutub al-ʿIlmiyyah, Beirut, 2000, p. 80. See also Mohammad Talaat al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, Martinus Nijhoff, The Hague, 1968, p. 141.

39 Qurʿan, 4:95.

religion, and admonish the people when they return to them – that thus they (may learn) to guard themselves (against evil).⁴⁰

The first verse provides that Allah distinguishes the Muslims who fight above those who sit in their homes not hindered by disability. The second verse enjoins that there must be Muslims who remain behind to study religion while the others go forth together for a jihad expedition. It means that not every Muslim is obliged to fight. The *fard kifayah* is sufficiently performed when a reasonable number of Muslims join the fight. Thus, relating this to the issue of rendering humanitarian assistance in times of armed conflict, it is submitted that as long as aggressors and war criminals are met with resistance by Muslims, it is permissible for other Muslims to remain neutral so that they can render humanitarian assistance to victims of armed conflict.

Pacta sunt servanda

Finally, many Muslim States are parties to the Geneva Conventions. According to the Qur'an, obligations under a contract or treaty must be fulfilled,⁴¹ and violations thereof will render the violating party responsible.⁴² In fact, verse 8:72 provides that even though Muslims are obliged to intervene to help a Muslim minority in another State, the intervention cannot be carried out if the oppressing State has a treaty of mutual alliance with the Muslims.⁴³ This shows that the legal principle of *pacta sunt servanda* (from Latin, meaning "agreements must be kept") prevails over the principle of justice for the oppressed and over the principle of forbidding evil. Thus, Muslim States who have agreed that the ICRC would be "an impartial humanitarian body"⁴⁴ have to accept that provision, because that is what is required by the Qur'an.

40 Qur'an, 9:122.

41 Qur'an, 5:1 in part:

O you who believe! Fulfill (all) obligations ...

Qur'an, 16:91–92 in part:

Fulfill the covenant of Allah when you have entered into it, and break not your oaths after you have confirmed them: indeed you have made Allah your surety; for Allah knows all that you do. (91)

And be not like a woman who breaks into untwisted strands the yarn she has spun after it has become strong. Nor take your oaths to practice deception between yourselves, lest one party should be more numerous than another ... (92)

Qur'an, 2:177 in part:

... But it is righteousness ... to fulfill the contracts which you have made ...

42 Qur'an, 17:34 in part:

... And fulfill (every) engagement, for (every) engagement will be enquired into.

43 Qur'an, 8:72 in part:

... But if they (Muslims who have not come into exile) seek your aid in religion, it is your duty to help them, except against a people with whom you have a treaty of mutual alliance. And Allah sees all that you do.

44 Common Art. 3 to the GC.

Conclusion

The ICRC successfully conducts its humanitarian operations based on its seven Fundamental Principles, in particular the principle of neutrality. The prohibition in the Qur'an against fighting a third party that does not want to fight against any side in a conflict means that it is permissible from an Islamic perspective to recognize a neutral party. There is also a practice of Prophet Muhammad recognizing the neutral stance of a tribe that did not want to fight him nor support his enemy. It is submitted that by way of analogy, which is a method of deducing Islamic law from its sources, as it is permissible for Muslims to recognize a neutral party, it is also permissible for Muslims to be neutral so that they can provide humanitarian assistance to victims of armed conflicts.

The above discussion requires an effort to reconcile divine sources that appear to be in conflict with each other, based on the understanding that Allah the Law-Giver does not intend repugnancy. There are great benefits to humankind in being neutral while providing humanitarian assistance to victims of armed conflicts, such as protection and saving lives, as can be seen in the successes of the ICRC. Such action can be justified based on the application of *siyasah al-shar'iyah* and *maqasid al-Shari'ah*. Even though there is no legal passage in the Qur'an or the *Sunnah* that directly deals with providing neutral humanitarian assistance, humanitarian operations that have the mission of protecting human lives and dignity can be carried out based on the principle of neutrality because such operations are consistent with the objective of *Shari'ah* to protect the five essential human interests identified above. As long as there are Muslims who carry out the *fard kifayah* of jihad against aggressors and war criminals, it is permissible for Muslim humanitarian workers to remain neutral.

MEMORANDUM

The ICRC's privilege of non-disclosure of confidential information

.....

Proceedings of a judicial, quasi-judicial, public inquiry, fact-finding or similar nature, in which confidential communications of the International Committee of the Red Cross (ICRC) risk being disclosed, raise important challenges for the ICRC's capacity to carry out its internationally recognized mandate. In order to carry out that mandate and fully assume its operational role in the protection and assistance of victims of armed conflict and other situations of violence, confidentiality is an essential tool that allows the ICRC to build the necessary trust to secure access, open channels of communication, influence change and ensure the security of its staff. The purpose of this Memorandum is to, first, provide the rationale for and broad practical context of confidentiality as the ICRC's working method; second, outline the legal sources on which the ICRC bases its requests that national and other authorities protect the confidentiality of its communications from public disclosure and from being used in legal proceedings; and third, set out the scope of application of the ICRC's evidentiary privilege regarding confidential information.

The ICRC's operational identity and working method

The ICRC is a humanitarian organization established in Geneva, Switzerland, in 1863 that adheres strictly to the Fundamental Principles of neutrality, impartiality and independence in its operations. As a neutral humanitarian actor, the ICRC abstains from taking sides – or actions that might be perceived as taking sides – in armed conflicts or other situations of violence, or in any controversies of a political, racial, religious or ideological nature. Based on the principle of impartiality, the ICRC does

not engage in any form of discrimination and carries out its activities guided only by the needs of the victims it seeks to protect and assist. The ICRC's independence – from States and international organizations, but also from any other persons, groups or entities that may seek to exert pressure or influence in situations of armed conflict – means that it has the autonomy it needs to accomplish the exclusively humanitarian task with which it is entrusted. As such, independence also contributes directly to its capacity to be neutral and impartial, and to be perceived as such, when attending to needs on the ground. These three principles are among the seven Fundamental Principles of the International Red Cross and Red Crescent Movement (the Movement), initially proclaimed by the 20th International Conference of the Red Cross in 1965 and revised and reaffirmed by the 25th International Conference held in 1986. The principles of neutrality and independence are of direct relevance and to a large extent justify the ICRC's working method of confidentiality. For the ICRC to be – and be perceived as – truly independent, international or domestic tribunals should not be able to compel the ICRC to provide confidential information related to the performance of its mandate and functions. And if such confidential information were used in legal proceedings in favour of or against one of the parties to an armed conflict, this would inevitably undermine the perception of – and trust in – the ICRC as truly neutral in that conflict.

The ICRC's mandate is set out in the 1949 Geneva Conventions that have been ratified by all States in the world, and in the 1977 Additional Protocols thereto, as well as in the Statutes of the International Red Cross and Red Crescent Movement which are adopted *inter alia* by States.¹ The ICRC's mandate is to provide protection and assistance to victims of armed conflict and other situations of violence, to work for the faithful application of international humanitarian law (IHL) and to act as a neutral intermediary between parties to armed conflicts. The organization does so primarily by means of its activities in the field: the ICRC currently operates in more than 80 countries and deploys over 13,400 staff worldwide who, on a daily basis, strive to preserve and restore human dignity in often very difficult situations. It is against this backdrop that the ICRC's long-standing policy and practice of confidentiality, derived directly from the principles of neutrality and independence, was developed as the organization's standard working method. The policy and practice mean that the organization requires confidential and bilateral communications, including written submissions, with the relevant authorities, and that it expects such authorities to respect and protect the confidential nature of its communications.

Establishing effective dialogue

Confidentiality as a working method is not an aim in itself. It was developed and adopted over time as a result of the ICRC's long field experience and the

1 At the time of writing, Additional Protocol I had been ratified by 174 States and Additional Protocol II by 168 States (for up-to-date numbers, see www.icrc.org/ihl, accessed in April 2015). The Statutes of the International Red Cross and Red Crescent Movement were adopted by consensus by the International Conference of the Movement, in which all States party to the Geneva Conventions participate.

realization that it is a crucial tool enabling the organization to establish and maintain an effective dialogue with parties to armed conflicts, whether State or non-State. The dialogue is aimed at helping the parties to adhere to their obligations under IHL and to put a stop to or prevent violations of IHL when and where they occur, and at ensuring they adequately address other humanitarian concerns.² The confidential nature of the ICRC's communications with parties to armed conflicts is thus a specific way of ensuring that violations of IHL are addressed by those responsible as they are happening, rather than only in a later, *ex post facto* manner, and that other humanitarian concerns are addressed as soon as the actual needs arise. The ICRC's ability to conduct a dialogue with States or organized armed groups involved in armed conflicts is, however, necessarily predicated on a relationship of trust that must be established with the relevant actor. The confidential nature of the communication that takes place is essential to that trust and enables the ICRC to work for adherence to IHL by means of concrete recommendations aimed at changing behaviour, particularly when violations of IHL are involved. The ICRC's working method is thus distinct, but complementary to other methods that exist for ensuring that there is no impunity for violations of legal obligations, such as criminal prosecution or public advocacy.

Gaining access

Confidentiality is also essential if the ICRC is to persuade the parties to an armed conflict to allow it to have access to conflict areas, to the civilian population, to persons deprived of liberty and to the fighting forces themselves. If parties to a conflict were under the impression that information gathered by the ICRC in theatres of conflict or in places of detention would subsequently be used in a court case, a public inquiry or similar proceedings, this would not only jeopardize the organization's ability to gather relevant information and submit allegations of violations or present other humanitarian concerns to the parties, but would very likely prevent it from doing so entirely. Lack of guarantees of confidentiality would thus, at best, serve as a major disincentive for parties' cooperation with the ICRC, and at worst, preclude ICRC access to vulnerable persons and populations, with the effect of increasing their vulnerability and the hardship suffered.

Security

Apart from enabling ICRC access to persons and places that would otherwise be out of reach, confidentiality as a working method also serves to protect ICRC staff in the field. Many of them work in highly dangerous operational contexts. Their physical security depends on the acceptance of the organization's presence in conflict areas,

2 To address humanitarian concerns, the ICRC also invokes other fundamental rules of international law besides IHL, as applicable, in situations of armed conflict. In other situations of violence, where IHL is, by definition, not applicable, the ICRC engages with authorities exclusively on the basis of the before-mentioned fundamental rules of international law.

which is largely based on the parties' recognition of the ICRC's neutrality and independence and their understanding that the ICRC will carry out its work and present its findings in a confidential manner. ICRC personnel are unique because they move about in conflict zones without armed protection, thanks to the trust that the parties place in the organization. Without confidentiality the ICRC's personnel would not be able to have direct access to victims of armed conflict and perform the humanitarian mandate entrusted to the organization by the community of States.

The confidential nature of the ICRC's communications applies not only to ICRC observations communicated to parties to a conflict, but also to ICRC personnel. Staff are contractually bound to maintain the confidential nature of information gathered or acquired in the course of their work for the organization both during their employment with the ICRC and thereafter.

Given its field-based focus and the significant impact of confidentiality on access, effective dialogue and security as described above, the ICRC places great reliance on compliance by relevant national and other authorities to protect confidential information from disclosure. This means, in particular, that confidential ICRC information must not be used or disclosed in the framework of any type of legal proceedings, as this could undermine the organization's capacity to carry out its operations, both locally and globally.

Sources of legal protection of ICRC confidentiality

The ICRC's privilege of non-disclosure is well established in both international and domestic law. In the international order this is reflected in the jurisprudence and/or rules of procedure and evidence of international courts and tribunals investigating and prosecuting serious violations of IHL and other international crimes. In the domestic legal order, the ICRC's privilege of non-disclosure forms part of the privileges and immunities that the organization enjoys in countries around the world.

International courts, tribunals and quasi-judicial bodies

At the international level, the ICRC's privilege of non-disclosure has been recognized in the jurisprudence of the *ad hoc* International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) as well as, indirectly, by the Special Court for Sierra Leone (SCSL). The ICRC's claim to a right to non-disclosure of confidential information was first upheld in a decision of the ICTY involving a case in which the prosecutor intended to call a former ICRC employee to testify. The ICTY determined that the ICRC has an absolute privilege to decline to provide evidence in connection with judicial proceedings as a matter of both international treaty and customary law:

72. The ICRC has a pivotal role in the regime established by the Geneva Conventions and their Protocols to guarantee the observance of certain minimum humanitarian standards. This role is unique. ... The Geneva Conventions and their Protocols must be construed in the light of their fundamental objective and purpose as described above, and for that reason they must be interpreted as giving to the ICRC the powers and the means necessary to discharge its mandate effectively.

73. The analysis [of the Court, based on submissions by the parties,] has clearly indicated that the right to non-disclosure of information relating to the ICRC's activities in the possession of its employees in judicial proceedings is necessary for the effective discharge by the ICRC of its mandate. The Trial Chamber therefore finds that the parties to the Geneva Conventions and their Protocols have assumed a conventional obligation to ensure non-disclosure in judicial proceedings of information relating to the work of the ICRC in the possession of an ICRC employee, and that, conversely, the ICRC has a right to insist on such non-disclosure by parties to the Geneva Conventions and the Protocols. In that regard, *the parties must be taken as having accepted the fundamental principles on which the ICRC operates, that is impartiality, neutrality and confidentiality, and in particular as having accepted that confidentiality is necessary for the effective performance by the ICRC of its functions.*

74. The ratification of the Geneva Conventions by 188 States can be considered as reflecting the *opinio juris* of these State Parties, which, in addition to the general practice of States in relation to the ICRC as described above, leads the Trial Chamber to conclude that the ICRC has a right under customary international law to non-disclosure of the Information.³

In reaching the above conclusions, the ICTY cited the ICRC's unique status and mandate under the doctrines and practices of IHL, including States' historical recognition of ICRC confidentiality. The Court also relied on its conviction, based on evidence presented, that the success of the ICRC's field operations depended on its continued ability to maintain its confidentiality.

The decision was subsequently confirmed by the ICTY Appeals Chamber,⁴ as well as by the ICTR,⁵ and there has been no decision to the contrary by either of those tribunals since. The SCSL, established in 2002, follows the jurisprudence of the international criminal tribunals for the former Yugoslavia and Rwanda. Pursuant to Article 20(3) of the SCSL's Statute:

3 ICTY, *Prosecutor v. Simić*, Case No. IT-95-9, Decision on the Prosecution Motion Under Rule 73 for a Ruling Concerning the Testimony of a Witness, 27 July 1999, paras 72–74 (emphasis added).

4 ICTY, *Prosecutor v. Brđjanin*, Appeals Chamber, Case No. IT-99-36, Decision on Interlocutory Appeal, 11 December 2002, para. 32.

5 ICTR, *Prosecutor v. Muvunyi*, Case No. ICTR-2000-55, Reasons for the Chamber's Decision on the Accused's Motion to Exclude Witness TQ, 15 July 2005, paras 14–16.

The judges of the Appeals Chamber of the Special Court shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the former Yugoslavia and for Rwanda. In the Interpretation and application of the laws of Sierra Leone, they shall be guided by the decisions of the Supreme Court of Sierra Leone.⁶

The seminal decision handed down by the ICTY in *Simić* has since been reflected and incorporated in the Rules of Procedure and Evidence of the International Criminal Court (ICC). Rule 73 expressly provides for the ICRC's absolute privilege to decline to submit evidence to the Court. The text embodies the consensus of the more than 100 States that took part in negotiations on the Rules of Procedure and Evidence subsequent to the adoption of the ICC Statute in 1998. No other organization, whether intergovernmental or non-governmental, was granted this privilege. Rule 73 provides in relevant part as follows:

4. The Court shall regard as privileged, and consequently not subject to disclosure, including by way of testimony of any present or past official or employee of the International Committee of the Red Cross (ICRC), any information, documents or other evidence which it came into the possession of in the course, or as a consequence of, the performance by ICRC of its functions under the Statutes of the International Red Cross and Red Crescent Movement, unless:

- (a) After consultations undertaken pursuant to sub-rule 6, ICRC does not object in writing to such disclosure, or otherwise has waived this privilege; or
- (b) Such information, documents or other evidence is contained in public statements and documents of ICRC.

5. Nothing in sub-rule 4 shall affect the admissibility of the same evidence obtained from a source other than ICRC and its officials or employees when such evidence has also been acquired by this source independently of ICRC and its officials or employees.

6. If the Court determines that ICRC information, documents or other evidence are of great importance for a particular case, consultations shall be held between the Court and ICRC in order to seek to resolve the matter by cooperative means, bearing in mind the circumstances of the case, the relevance of the evidence sought, whether the evidence could be obtained from a source other than ICRC, the interests of justice and of victims, and the performance of the Court's and ICRC's functions.⁷

6 Statute of the Special Court for Sierra Leone, 16 January 2002 (entered into force 12 April 2002), Rule 20, para. 3.

7 ICC, Rules of Procedure and Evidence, reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session, ICC-ASP/1/3 and Corr. 1, New York, 3–10 September 2002, Part II.A, Rule 73.

The ICRC's privilege has also been incorporated into the founding documents of other courts. Thus, the first paragraph of Rule 73 of the ICC Statute has been included *verbatim* in the 2009 Rules of Procedure and Evidence of the Special Tribunal for Lebanon (STL). Pursuant to Rule 164:

The Tribunal shall regard as privileged, and consequently not subject to disclosure, including by way of testimony of any present or past official or employee of the International Committee of the Red Cross (ICRC), any information, documents or other evidence which it came into the possession of in the course, or as a consequence of, the performance by the ICRC of its functions under the Statutes of the International Red Cross and Red Crescent Movement.⁸

The Mechanism for International Criminal Tribunals (MICT), which was established by the United Nations Security Council on 22 December 2010 to carry out a number of essential functions of the ICTR and ICTY after the completion of their respective mandates, provides in Rule 10 of its Rules of Procedure and Evidence that:

The International Committee of the Red Cross (ICRC) shall not be obligated to disclose any information, including documents or other evidence, concerning the performance of its mandate pursuant to the four Geneva Conventions of 12 August 1949 or their Additional Protocols or concerning its functions under the Statutes of the International Red Cross and Red Crescent movements [sic]. Nor shall such information acquired by a third party on a confidential basis from the ICRC or by anyone while in the service of the ICRC be subject to disclosure or to witness testimony without the consent of the ICRC.⁹

On a general note, it is worth pointing out that international bodies that have sought the views of the ICRC on the matter of disclosure of confidential ICRC information have generally understood the institution's concerns and have always accepted its position and fully protected its confidentiality.

Status agreements and legislation conferring privileges and immunities upon the ICRC in the domestic legal order of States

In the domestic legal order, the ICRC has been granted privileges and immunities that are necessary to fulfil its functions either through bilateral status agreements or through primary legislation. At the time of writing, the ICRC enjoys such privileges and immunities – aimed at ensuring that the necessary conditions for the performance of its mandate are met – in 103 countries and is in the process of negotiating status agreements with thirteen more countries.¹⁰

8 STL, Rules of Procedure and Evidence, STL-BD-2009-01-Rev.6-Corr.1, 20 March 2009, Rule 164.

9 MICT, Rules of Procedure and Evidence, MICT/1, 8 June 2012, Rule 10.

10 Numbers are up to date as of 1 April 2015.

These agreements generally grant the ICRC and its staff immunity from all forms of legal process as well as inviolability of documents, manuscripts, archives and data. While testimonial immunity is generally considered to be included in immunity from legal process, many of the ICRC's status agreements also explicitly provide for an exemption from obligations to provide evidence in legal proceedings.

Importantly, especially in light of the fact that the ICRC needs to share confidential information regarding alleged violations of IHL or other humanitarian concerns with the authorities capable of addressing these concerns, States recognize the need also to protect the confidentiality of ICRC information in their own hands. Therefore, recent status agreements include a provision to the effect that:

The State ... undertakes to respect the confidentiality of ICRC reports, letters and other communications to the government, which respect includes neither divulging their content to anyone other than the intended recipient, nor permitting their use in legal proceedings, without prior written consent of the ICRC.

Scope of the evidentiary privilege

In order to enable the ICRC to carry out its humanitarian mandate and to do so in full conformity with its Fundamental Principles as well as with the standard working modality of confidentiality derived therefrom,¹¹ the ICRC's evidentiary privilege necessarily has a broad material and temporal scope of application. At the same time, as it is granted for the sole purpose of enabling the ICRC to carry out its mandate, the privilege's personal scope of application is necessarily limited in nature.

Material scope of application

In order to achieve its objective, the ICRC's evidentiary privilege necessarily covers all confidential information related to or necessary for the performance by the ICRC of its mandate and activities, wherever and by whomever it is held. Such information may be contained in paper, electronic, audio-visual or any other format. Confidentiality is required in respect of both ICRC-generated documents and those produced by the relevant national authority (recipient) or any other third party and including or referring to confidential information originating within or from the ICRC.

11 See also the finding of the ICTY in the *Simić* case, above note 3, paras 72–73, reaffirming the ICRC's capacity to carry out its mandate as the rationale for its privilege of non-disclosure under international law. The same rationale underpins the privilege provided for in bilateral status agreements and primary domestic legislation.

Likewise, the privilege necessarily applies in all types of legal proceedings, be they judicial, administrative, executive or quasi-judicial in nature and regardless of the substantive nature of the jurisdiction of the bodies concerned. Indeed, the use of confidential information in any such proceedings is likely to have a negative impact on the ICRC's reputation as a neutral and independent humanitarian organization and on its operational access, dialogue and security. The privilege therefore generally applies in civil and criminal proceedings, access to/freedom of information proceedings, public inquiries, coronial and arbitral proceedings, traditional and transitional justice mechanisms, fact-finding and truth and reconciliation mechanisms, or any other form of proceedings before a national or international entity charged to look into abuses and violations of domestic or international law that may have occurred in situations of armed conflict or other situations of violence. The privilege moreover applies throughout the different stages of proceedings, including the fact-finding and investigation, discovery and trial stages.

Furthermore, the privilege is absolute in nature. The ICTY, in its landmark decision in the *Simić* case, explicitly rejected any balancing exercise as far as the ICRC's confidentiality interest is concerned:

76. It follows from the Trial Chamber's finding that the ICRC has, under international law, a confidentiality interest and a claim to non-disclosure of the Information, that *no question of the balancing of interests arises*. The Trial Chamber is bound by this rule of customary international law which, in its content, does not admit of, or call for, any balancing of interest. The rule, properly understood, is, in its content, unambiguous and unequivocal, and does not call for any qualifications. Its effect is quite simple: as a matter of law it serves to bar the Trial Chamber from admitting the Information.

* * *

79. [T]he Trial Chamber deems it important to touch on the issue of the relationship between the International Tribunal and the ICRC. They are two independent international institutions, each with a unique mandate conferred upon them by the international community. Both mandates are based on international humanitarian law and ultimately geared towards the better implementation thereof. Although both share common goals, their functions and tasks are different. The ICRC's activities have been described as "preventive", while the International Tribunal is empowered to prosecute breaches of international humanitarian law once they have occurred.¹²

Finally, the fact that information covered by the privilege has been disclosed in public or transmitted to the court by a third party without the ICRC's consent does not alter the fact that the privilege effectively bars courts or quasi-judicial mechanisms from admitting such information as evidence in proceedings. As the

12 ICTY, *Simić*, above note 3, paras 76, 79 (emphasis added).

ICC's Rules of Procedure and Evidence point out, the privilege retained in Rule 73 does "not affect the admissibility of the same evidence obtained from a source other than ICRC and its officials or employees", but only "when such evidence has also been acquired by this source independently of ICRC and its officials or employees".¹³

Personal and temporal scope of application of testimonial immunity

The rationale and legal justification for the ICRC's privilege of non-disclosure directly derives from the crucial importance of confidentiality as a necessary working method for the effective discharge of the ICRC's mandate under the Geneva Conventions, the Additional Protocols and the Statutes of the International Red Cross and Red Crescent Movement. The testimonial immunity, which is an inherent part of that privilege, therefore applies to those individuals through whom the ICRC carries out its mandate and activities. These typically include ICRC representatives and staff members. The privilege may, however, also extend to persons who are not members of or employed by the ICRC, but to whom the ICRC has assigned specific functions as part of specific ICRC operations. These may include consultants hired by the ICRC as well as volunteers or staff of National Red Cross or Red Crescent Societies when they are seconded to the ICRC or are deployed as part of ICRC teams on the ground.¹⁴ Testimonial immunity concerns information that these persons may have obtained, or become aware of, in the exercise of their functions for the ICRC and thus continues to apply even after these persons have left the service of the ICRC.

The unique role and mandate of the ICRC, which forms the basis of the organization's privilege of non-disclosure of confidential information, also limits the scope of application of the privilege to the ICRC. This is illustrated in the *Muvunyi* case, where the ICTR ruled that:

The privilege [of non-disclosure] derives from the ICRC's pivotal and unique role in the regime established by the Geneva Conventions and the first Protocol. As stated by an ICTY Chamber in the *Simic* case, such finding "does not open the floodgates in respect of other organizations." The Chamber notes that the ICC's Rules of Procedure and Evidence similarly grant such privilege only to the ICRC, and not to any other organization.¹⁵

Waiver of the privilege of non-disclosure of confidential information

The privilege of non-disclosure of confidential information related to, or necessary for, the performance of the ICRC's mandate and activities *can* be waived by the

13 ICC, above note 7, Rule 73.

14 See, for example, ICTR, *Muvunyi*, above note 5, paras 17–18.

15 *Ibid.*, para. 16.

ICRC in exceptional circumstances where, in its sole opinion, the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the ICRC, i.e. its capacity to carry out its mandate around the world, in full conformity with its Fundamental Principles and its standard working modalities. Any waiver of immunity that could result in a reduced operational capacity for the ICRC in the field – because of restrictions on access, security concerns (such as retaliatory acts against the ICRC, its staff or the beneficiaries of its activities) or the lack or insufficiency of an effective dialogue with those able to address humanitarian concerns and alleged violations of IHL – is considered prejudicial to the interests of the ICRC. Likewise, any testimony that could reflect negatively on the ICRC's reputation as a neutral and independent humanitarian actor is considered prejudicial to the interests of the ICRC.

The decision to waive the privilege of non-disclosure and/or the inherent testimonial immunity for persons carrying out official functions for the ICRC therefore needs to take into account a variety of factors related to the ICRC's access, security and operations around the world and to its perception of neutrality and independence. Only the ICRC has access to all this information and is therefore able to assess whether the criteria for a waiver are met.

Such a waiver is only valid when given explicitly, in writing, by the competent authority within the ICRC. Decisions on waivers are taken at the highest level in the ICRC.

Obligation of national and other authorities to protect ICRC confidentiality

The decisions of the international tribunals mentioned above, Rule 73 of the ICC's Rules of Procedure and Evidence and the provisions of the ICRC's status and other agreements all reflect the respect of the international community for the confidentiality of the ICRC's communications with the parties to an armed conflict. As outlined above, such respect is essential to the ICRC's ability to fulfil its humanitarian mandate. For this reason, and based on the legal authority stated above, the ICRC places the following standard confidentiality clause in confidential reports that it regularly submits to parties to a conflict:

[The relevant authority] ... undertakes to respect the confidentiality of ICRC reports, letters and all other forms of confidential communication with its representatives. This includes not divulging their content to anyone other than the intended recipients, making no public statements concerning their content, and not permitting the use of ICRC confidential documents in legal proceedings, unless the prior written consent of the ICRC has been obtained.

When a party receives such a communication from the ICRC, it does so subject to the conditions of confidentiality stated therein. This is entirely consistent with the limited purpose served by ICRC reports on visits to places of detention or reports on the protection of the civilian population. These reports are to be seen only by

the authorities to whom they are addressed and they serve the sole purpose of generating independent investigation by those authorities, with the aim of improving the conditions and treatment of persons subject to detention/internment or the protection of the civilian population in the case of hostilities. Thus, the authorities who receive such reports may not publish or otherwise transmit ICRC material beyond the scope of their authority, and especially may neither use nor permit the use of such communications in proceedings of a judicial, public inquiry, fact-finding or similar character because of the harm that would result to the ICRC's ability to fulfil its mandate. It is for these reasons that the ICRC declines to make these confidential communications available to parties other than the authorities to whom they are addressed.

International Committee of the Red Cross
Geneva, April 2015

REPORTS AND DOCUMENTS

Humanitarian diplomacy and principled humanitarian action

Speech given by Mr Peter Maurer,
President of the International Committee of the
Red Cross,
Maison de la Paix, Geneva, 2 October 2014

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The following speech was given by the President of the International Committee of the Red Cross, Peter Maurer, on 2 October 2014 at the Maison de la Paix in Geneva during a conference organized by the Graduate Institute of International and Development Studies. Maurer recalled the continued relevance and importance of the humanitarian principles and warned that a lack of common understanding, as well as politicized uses of the principles, jeopardizes the scope and scale of humanitarian action. The speech launched the ICRC's Second Research and Debate Cycle on Principles Guiding Humanitarian Action. Throughout 2015 – the year of the 50th anniversary of the adoption of the Fundamental Principles of the Red Cross and Red Movement (the Movement) and of the 32nd International Conference of the Movement, and leading to the World Humanitarian Summit in 2016 – the Research and Debate Cycle has gathered key actors in the humanitarian field during public events and high-level conferences.¹ These events have encouraged substantive discussions on the principles among experts from the Movement, the humanitarian, governmental and academic fields, and other informed participants.

This is an important moment on the eve of the launch of the Maison de la Paix² in Geneva on 3 October 2014. Peace deserves a home and there is hardly a better place than Geneva to offer this hospitality to all those who promote peace. It is even better to know that tonight is just the beginning of a series of conferences leading to the 32nd International Conference of the Red Cross and

Red Crescent Movement in 2015 and during which various presenters will offer their perspectives on critical humanitarian issues.

For over 200 years, Geneva has been at the crossroads of humanitarianism and international peace efforts, starting with Charles Pictet de Rochemont in early 1800 as one of the main architects of today's Europe, and Henry Dunant as the founder of today's Red Cross and Red Crescent Movement. Peace and humanitarian policies elaborated here do resonate across the globe. There are no other locations where one can understand better the interdependence and specificities of the various domains related to the international response to humanitarian crises. International Geneva is the privileged host of a number of specialized humanitarian agencies and organizations: it embodies the importance of promoting a coherent response to today's international challenges, and of preserving the professional integrity of the respective domains of activities. It is also a place which underlines the tensions that may arise when the more aspirational agenda for peace encounters the aspiration to preserve a minimum of humanity in war – but I will discuss this later.

The topic of today's discussion is humanitarian diplomacy and principled action at the crossroads, and I would like to reflect on the relevance of humanitarian principles in guiding today's international response to armed conflict.

Let me just set the stage first by situating the discussion. Over US\$20 billion are invested each year in responding to the essential needs of populations affected by humanitarian crises, including natural disasters, armed conflicts and other similar situations of violence. An estimated 250,000 humanitarian workers are engaged in these operations, many of which take place in highly hazardous environments, such as Ukraine, Syria/Iraq, South Sudan, the Central African Republic [CAR], Eastern Congo and now Liberia, with the latest Ebola pandemic. Relief and protection programmes in favour of these affected populations are guided by humanitarian principles building on the century-old experience of humanitarian professionals and distinguishing the humanitarian response from purely political on the one side, and charitable activities on the other, and providing a framework to deal with some of the most sensitive dilemmas with which we can be confronted in the real world of conflict.

What are those dilemmas? Dilemmas of priority-setting in situations of overwhelming needs and limited resources; dilemmas between fulfilling our commitment to humanity and taking into account the stark realities of power, injustice and discrimination in many areas of operations; between access to populations and security and safety of humanitarian personnel, and many more dilemmas.

Several guiding principles have emerged over the recent years, including the ones of accountability and participation of beneficiaries, the “do no harm” principle

- 1 For more information on the Second Research and Debate Cycle and to watch the recordings of some of the events, see: www.icrc.org/en/cycle-principles (all internet references were accessed in October 2015).
- 2 Editor's note: The Maison de la Paix (House of Peace) is the main building of the Graduate Institute of International and Development Studies in Geneva and also hosts other organizations working on international issues. For more information, see: <http://graduateinstitute.ch/maisondelapaix>.

and the quest for sustainability of relief efforts. None of them has matched the historical importance of the principles of humanity, impartiality, neutrality and independence, which are at the centre of the International Committee of the Red Cross's [ICRC] mission and identity, and which remain uncontested in the broader international community. These principles belong to the fundamentals of the International Red Cross and Red Crescent Movement. They were also the main sources of inspiration of the Guiding Principles of the United Nations action of UNGA Resolution 46/182, adopted by the UN General Assembly in 1991. They have been at the heart of all major humanitarian operations for over a century.

And yet, questions arise today about their relevance in addressing new and emerging challenges in a broadening humanitarian agenda:

What are those challenges? Look at the prolonged nature of some of the current conflicts – Afghanistan, the Democratic Republic of the Congo, Colombia or Sudan – and prolonged situations of occupation – like Palestine or Gaza – leading to a disintegration of State infrastructures. It is the disintegration of State infrastructure that affects the ability of public authorities to deliver basic services like health, education, nutrition, water and sanitation, or law and order. Most of the priority conflicts of today have been on top of the ICRC agenda for decades, while humanitarian action and principles were first and foremost developed to respond to a temporary crisis.

Look at the superposition of different factors weakening States and society: poverty, armed conflict, inter-communal violence and crime, undermining fragile States and societies, as we witness today in the CAR, Somalia and Yemen.

Look at the prevalent character of warfare, which is mostly affecting densely populated areas, leading to mass destructions and mass displacements. Where are the battlefields today? In Gaza, Lugansk, Aleppo, Bentiu and Gao, and in many other densely populated areas where millions of people live.

Look at the changing character of non-State armed groups carrying increasingly radical ideologies – feeding on corruption, exclusion and injustices under which populations have suffered for decades – and opposing today through their behaviour and through their words and ideas some of the most basic humanitarian values, as has been illustrated almost every day.

Look at the current dynamic of these de-structured and unstructured conflicts with effects of hostilities across entire regions and the displacement of large parts of the affected populations. What started as the Syrian crisis in 2011 is today a regional breakdown of systems with global and long-term effects. Even more so, the countries of the Sahel and sub-Saharan Africa have become a big regional and global area of instability.

We are thus confronted today with transforming vulnerabilities of populations and needs beyond the traditional scope of humanitarian action, like food, water, shelter and medicine. We see patterns of sexual violence emerge, calling for psychosocial responses; we see massive traumas of displaced populations needing more than war surgery as a response; we see children displaced in masses and demanding educational facilities and programmes as a

core expectation to humanitarian actors. So we are far beyond the definition of humanitarian action as a core survival of livelihoods.

In short, we are witnessing the broadening of the humanitarian response, or in other words, an increasing number of activities that fall under the category of humanitarian action today.

In response to these challenges, the international community has mobilized its energies not only to address the immediate consequences of these emergencies on populations, but also to deal with their causes and prevent their resurgence in a more consistent and coherent manner. It has set up monitoring mechanisms, in the Security Council and the Human Rights Council, to gather information on evolving situations of concern and vulnerabilities; it has developed regional and international peace-making and enforcing capabilities, equipped, like peacekeeping operations recently, with enforcement and protection mandates; it has fostered development programmes for conflict-affected populations – no development agency today would lack a conflict prevention division; and it has renewed its attempts to bring perpetrators of violence to justice, with the special tribunals and the International Criminal Court. In doing so, the international community has integrated the traditional emergency response and humanitarian action into a complex architecture of developmental, security, political and judiciary programmes drawing from various legal regimes – international humanitarian law, human rights law, refugee law, criminal law – making reference to international as well as national and regional jurisdictions. Since the Millennium Summit in the year 2000, the international community has to a large extent embraced and concretized the concept of an integrated, comprehensive and holistic approach to crises, and to conflict and underdevelopment.

While we at the ICRC certainly recognize the significance of greater integration of international programmes in the international community's strategy in contemporary crises, we also wonder about the specific role of humanitarianism in today's national and international response to such complex emergencies. There is a growing tension between the international efforts aimed at finding sustainable political solutions to ongoing crises on the one hand, and offering life-saving support to the most vulnerable populations according to strict requirements of impartiality and neutrality.

While the two objectives can be combined in practice, there are situations, such as Syria or Ukraine, where providing life-saving assistance to affected populations has been subjugated to political manoeuvrings of the parties. We have witnessed in Geneva 1 and 2 on Syria how the impossibility of addressing the political causes of the conflict has brought the UN and regional mediators to negotiate humanitarian access to besieged areas against larger political agendas, or as a first step of confidence-building in a transition process.

The signal was thus given to the parties to conflict, willing or unwilling, that humanitarian requirements were not obligations to follow as a matter of principle and practice, but rather issues to negotiate in the context of an overall political settlement. The same applies to the negotiations of relief convoys in Ukraine, facing at times incompressible political obstacles from all sides due to the

inability of all parties concerned to maintain a minimum of shared responsibility for the assistance and protection of over a million civilians affected by the armed conflict.

Connecting humanitarian and political negotiations in this way inevitably hijacks life-saving operations and impacts negatively on the credibility of international humanitarian actors. This is the reason why the ICRC, in Syria, Ukraine and elsewhere, is tirelessly offering credible alternatives to such situations, and which are compatible with fundamental humanitarian principles and implementable in practice. What does it mean? It means that defining precise modalities for access, control of goods, transparency of procedures of distribution, and creating confidence through proximity are all critical in our actions towards deploying neutral, impartial and independent humanitarian action.

I am proud that my colleagues in Syria, Ukraine, Iraq, South Sudan and many other places are continuously managing to find pragmatic solutions inspired by humanitarian principles to overcome such obstacles. The ICRC is present today in all parts of Ukraine, doing cross-line in Syria, assisting those many times displaced in the most remote places of South Sudan and Yemen, and chartering its way in some of the most difficult environments in Iraq.

The ICRC has at heart its historic contribution in the elaboration of the principles to guide the deployment of international assistance and protection programmes. These principles have been codified to a large extent in international humanitarian law. They emerged from a long humanitarian tradition of preserving the life and dignity of all those affected by armed conflicts, without any distinction towards the sick and wounded in the battlefield, prisoners of war and security detainees, as well as the civilians caught in the crossfire. Whoever wishes to brush up on their knowledge should visit the Red Cross Museum, which illustrates the emergence of humanitarian principles through history and cultures. It is important to remind ourselves – as these principles are questioned by too many today – that humanitarian principles are not the emanation of Western values but are deeply rooted in different cultures. In an open letter to the head of Islamic State, Islamic scholars of all currents of belief have illustrated how deeply rooted some fundamental humanitarian principles are in Islamic tradition and doctrine, and how far away from these principles the behaviour of extremist groups today is.³

These principles have also been shaped by practice over several decades. Humanitarian activities often take place in contested areas governed by loose coalitions of State and non-State entities. The ICRC's diplomacy of access is based on a continued process of negotiation to set its presence in these areas, maintain proximity to the affected people and communities, and seek the consent of the relevant parties to allow humanitarian operations to take place. This is, as everybody knows, a risky and often very frustrating, long process: we negotiated for months a cross-line operation in Aleppo, a license to operate in Sudan, minimal security guarantees for our field operations in Afghanistan, and many

3 Editor's note: The open letter is available at: www.lettertobaghdadi.com.

more examples. Because of the lack of progress in such negotiations, very often populations are unattended, suffering or dying.

Our experience illustrates that the maintenance of a space of “shared humanity” that can resist the temptation of politicizing or militarizing relief efforts is not a concept spontaneously shared by everybody. In a period where polarization, extremism, demonization and stigmatization are widespread and affecting body politics in many countries, and not only in remote areas, the notion of shared responsibility of all belligerents for a humanitarian space in which civilians are protected and prisoners treated humanely is not an easy sell.

Just pass in front of your eyes for a second the pictures from the recent ICRC exhibition in the Musée Rath,⁴ where prisoners of war are shown playing cards in leisurely guarded environments during the First World War, and compare them to the practice and rhetoric of today. I am sure you will agree that this does not look like progress of civilization or a reaffirmation of humanitarian space.

A key characteristic of this space is that all actors have the same roles and responsibilities in ensuring the assistance and protection of vulnerable populations. The failure of one party does not discharge the others from their duty. Equally, humanitarian assistance and protection is not the prerogative of a single party, State, non-State or multilateral organization. Through the presence and support of a neutral and independent organization such as the ICRC, the parties are able to preserve this space despite political tensions, and to consider regulating the effects of hostilities on populations.

The concepts as well as the practices of principled humanitarian action are increasingly being challenged in current conflicts. Parties to conflict themselves may explicitly desist from this project of shared humanity for ideological or political reasons, as witnessed in several instances over the recent years, when the so-called “enemy population” has been wholly and collectively dehumanized and degraded. The persistent demand to humanitarians on whether aid beneficiaries are in government or opposition-controlled areas reflects the same dangerous trend of designing programmes according to political orientations of populations and not to needs.

The legitimacy of principled humanitarian action is also being challenged in a more paradoxical way by a number of national and international actors who purposefully mix essential emergency programmes with political, security, developmental or otherwise transformative goals. We see an increasing number of programmes and donor criteria which expect humanitarian actors not only to cover humanitarian needs, but also to lay the ground for gender equality, social equity and sustainable development. While the integration of relief and assistance

4 Editor’s note: This is an art and history museum in Geneva, which served as the headquarters of the International Prisoners-of-War Agency set up by the ICRC in 1914 to centralize information about, and organize the dispatch of relief parcels to, prisoners of war during the First World War. In 2013, to commemorate the 150th anniversary of the ICRC, the Musée Rath organized an exhibition entitled “Humanizing War?”, illustrating key moments in the evolution of warfare and the history of the organization.

activities into such transformative agendas provides significant benefits in terms of sustained developmental goals or the promotion of human rights, it definitely comes at a cost: at the cost of politicizing the shared space of humanity, at the cost of marginalizing or even antagonizing parties, and at the cost of restraining avenues of collaboration and engagement.

Together all these elements come at a heavy price of hindering access to the populations in need.

The debate here is not one of principles, but one about pragmatism. The ICRC has learned along its history that the implementation of its humanitarian mission will require contextual balance of interest regarding its neutrality, its independence and even in some cases its impartiality. While it will never negotiate on its core goals of preserving the life and dignity of everyone affected by conflicts and similar situations of violence, it is dedicated to engaging in all confidentiality with all the parties to discuss and accommodate, as far as possible, other political, social and security constraints. It remains pragmatic and does not take sides on these or any other aspects of the conflict. It ensures that the experience and professionalism of its staff relentlessly negotiates the best possible deal in specific circumstances and at a given moment to maintain a space for humanity. This, again, is not an issue of abstract principles; it is an issue of pragmatic solutions inspired by principles.

The required debate today on pragmatism is very frankly not coming so much from the ICRC or other principled organizations like Médecins Sans Frontières, but from the side of NGOs, multi-mandated agencies, donor governments and international actors that have vowed to serve both the humanitarian needs of affected populations and the transformation agendas of the international community. In theory, we all share the same aspirations for global peace, development and security, as well as the understanding about the limits of humanitarian action in addressing or preventing the causes of crisis. In practice, however, our experience shows that emergency access to vulnerable populations in some of the most contested areas depends on the ability to isolate humanitarian goals from other transformative goals, be they economic, political, social or human rights-related. A specific pragmatism is required to operate in these areas – from Syria to Yemen, from Mali to Myanmar – that allows all the parties to recognize their shared humanity in the goals of the humanitarian organizations present on the ground. In the absence of this recognition and dialogue, our ability to intervene in favour of affected populations diminishes considerably.

There are evidently exceptions to this understanding. In situations where parties have persistently desisted from their humanitarian responsibility and denied access to the most vulnerable groups, different, more forceful approaches are required and explicitly regulated by the UN Charter. But this very clearly is no longer the area of humanitarian action, but of political action.

In many situations, however, the only way to access populations is to rely on seeking consent through dialogue and not coercion. Parties to conflict, State and non-State alike, need to see benevolent actors availing themselves to assist them in

implementing their humanitarian agendas. Such an approach does not prevent us from shaping and forming humanitarian action as a building block or a foundation for more ambitious response systems if such ambition is supported by a large consensus. But it imposes self-limitation first, and the ability to build and broaden consensus afterwards.

Let me make some concluding remarks. Emergency humanitarian response is and should remain a distinct professional domain from conflict resolution processes, development programming, stabilization efforts and the transformation of societies based on universal human rights. Principled humanitarian action and diplomacy is about the preservation of this neutral, impartial and independent space: an embodiment of our shared humanity that persists even in the most challenging circumstances of the armed conflicts and natural disasters of tomorrow.

But let me be very clear on this as well: distinct approaches do not mean unwillingness or inability to exchange, coordinate and cooperate. On the contrary, the distinct character of humanitarian action needs, in today's environment more than ever, tireless engagement to understand and define the interface between different actors and agendas, and a search for complementarity, coordination and cooperation where broad consensus allows.

In that sense, let me express my hope that the 32nd International Conference of the Red Cross and Red Crescent Movement in 2015 and the subsequent World Humanitarian Summit in 2016 will not become remote islands on which humanitarian organizations and bureaucrats work through their predefined agendas and discourses. These are too serious times to engage in business as usual.

We need international gatherings that put the needs of people first and true engagement on how best to respond, and not only conversations amongst humanitarian organizations. We need to have a serious and forward-looking debate and hopefully reach some understanding on how humanitarian action relates to the broader international agenda, how it interfaces with security, development, human rights and peace aspirations, how we finance the growing needs equitably, and how we intertwine local, regional and global efforts in a more creative way. With a series of international gatherings in 2015 – from revisiting the Hyogo Framework for Action and the Millennium Development Goals, to the Red Cross and Red Crescent Conference and the World Humanitarian Summit in 2016 – the field is wide open to find a better deal for people in need.

REPORTS AND DOCUMENTS

What's new in law and case law around the world?

Biannual update on national implementation of international humanitarian law* July–December 2014

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The biannual update on national legislation and case law is an important tool for promoting the exchange of information on national measures for the implementation of international humanitarian law (IHL).

In addition to a compilation of domestic laws and case law, the biannual update includes other relevant information related to regional events organized by the ICRC, to the development of national committees for the implementation of IHL and similar bodies, and to accession and ratification of IHL and other related international instruments.

ICRC Advisory Service

The ICRC's Advisory Service on International Humanitarian Law aims to provide a systematic and proactive response to efforts to enhance the national implementation of international humanitarian law (IHL). Working worldwide, through a network of legal advisers, to supplement and support governments' own resources, its four priorities are: (i) to encourage and support adherence to IHL-related treaties; (ii) to assist States by providing them with the technical expertise required to incorporate IHL into their domestic legal frameworks;¹ (iii) to collect and facilitate the exchange of information on national implementation measures; and (iv) to support the work of committees on IHL and other bodies established to facilitate the IHL implementation process.

* This selection of national legislation and case law has been prepared by Lucie Boitard, legal intern at the ICRC Advisory Service on International Humanitarian Law, with the collaboration of regional legal advisers.

Relevant ICRC regional events

To further its work on implementation of IHL, the ICRC Advisory Service organized, in cooperation with respective host States, a number of national and regional events directed at engaging national authorities in the period under review.

Of particular interest was the 14th Annual Regional Seminar on International Humanitarian Law co-organized by the South African Department of International Relations and Co-operation and the ICRC, from 2 to 5 September 2014 in Pretoria, South Africa. It gathered governmental officials, members of national IHL committees and representatives from regional and sub-regional organizations from Angola, Botswana, Comoros, the Democratic Republic of the Congo, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Zambia and Zimbabwe. The seminar dealt with topics such as the ICRC and IHL in the region, contemporary challenges to security, sexual violence in armed conflict, weapons, and repression of war crimes.²

Another event of interest was the 10th Meeting of Arab Government Experts on National Implementation of IHL, co-organized by Algeria's national committee for the implementation of international humanitarian law, the Arab League and the ICRC. The meeting brought together representatives from the governments of Algeria, Bahrain, Egypt, Iraq, Jordan, Lebanon, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, the State of Kuwait, Tunisia, the United Arab Emirates and Yemen, and from various Arab organizations. The aim of the meeting was to discuss activities of the ICRC in the region, recent developments in IHL-related topics and the priorities of Arab common action in the domain of national dissemination of IHL provisions, national reports regarding the implementation of IHL provisions and the plan of action adopted at the 9th Regional Conference on IHL for Arab States, development of and coordination among National IHL Commissions, and priorities of Arab common legislative action, and to provide an update on initiatives to strengthen legal protection in armed conflict (in the follow-up to the 31st International Conference of the Red Cross and Red Crescent). The meeting resulted in the adoption of a regional plan of action (2014–2016) on IHL implementation in Arab States.³

1 In order to assist States, the ICRC Advisory Service proposes a multiplicity of tools, including thematic fact sheets, ratification kits and model laws, all available on the unit's web page at: www.icrc.org/en/war-and-law/ihl-domestic-law (all internet references were accessed in December 2014).

2 See: www.icrc.org/en/document/geneva-conventions-150-years-later-still-relevant.

3 See Chérif Atlam and Mohamed Radwan Bin Khadraa, *Seventh Annual Report on the Implementation of the International Humanitarian Law at the level of Arab States, 2012–2014*, ICRC, p. 25, available at: www.icrc.org/eng/assets/files/publications/icrc-002-t2014-0210.pdf.

Update on the accession and ratification of IHL and other related international instruments

Universal participation in IHL instruments is a first vital step toward respect for life and human dignity in situations of armed conflict and is therefore a priority for the ICRC. In the period under review, thirteen IHL and other related international conventions and protocols were ratified or acceded to by various States.⁴ In particular, there has been notable adherence to the Arms Trade Treaty (ATT). Indeed, in December 2014, sixty-one States had ratified the ATT, allowing it to enter into force on 24 December 2014 as provided for in Article 22(1) of the treaty.⁵

The Advisory Service also supports adherence to other international conventions that are considered to be of a relevance for the protection of persons during armed conflicts, such as the International Convention for the Protection of all Persons from Enforced Disappearance.

The following table outlines the total number of ratifications of and accessions to IHL conventions and other relevant related international instruments as of the end of December 2014.

Ratifications and accessions, July–December 2014

Convention	States	Ratification/ accession date	Number of parties
1980 Convention on Conventional Weapons	Grenada	10 December 2014	119
	Iraq	24 September 2014	
1980 Protocol I to the Convention on Conventional Weapons	Grenada	10 December 2014	114
	Iraq	24 September 2014	
1980 Protocol II to the Convention on Conventional Weapons	Iraq	24 September 2014	94

Continued

4 To view the full list of IHL-related treaties, please visit the ICRC treaty database. ICRC, *Treaties and States Parties to Such Treaties*, available at: www.icrc.org/ihl.

5 Article 22(1) of the ATT reads as follows: "This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary."

(Cont.)

Convention	States	Ratification/ accession date	Number of parties
1980 Protocol III to the Convention on Conventional Weapons	Grenada	10 December 2014	110
	Iraq	24 September 2014	
1995 Protocol IV to the Convention on Conventional Weapons (blinding laser weapons)	Grenada	10 December 2014	104
	Iraq	24 September 2014	
1996 Amended Protocol II to the Convention on Conventional Weapons	Grenada	10 December 2014	102
	Iraq	24 September 2014	
2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict	Dominican Republic	14 October 2014	158
	Ghana	9 December 2014	
	Guinea-Bissau	24 September 2014	
2001 Amendment to the Convention on Conventional Weapons	Grenada	10 December 2014	81
	Iraq	24 September 2014	
2003 Protocol V to the Convention on Conventional Weapons (explosive remnants of war)	Greece	21 October 2014	87
	Grenada	10 December 2014	
	Iraq	24 September 2014	
2006 Convention against Enforced Disappearances	Slovakia	15 December 2014	44
	Togo	21 July 2014	
2008 Convention on Cluster Munitions	Belize	2 September 2014	88
	Congo	2 September 2014	
	Guinea	21 October 2014	
	Guyana	31 October 2014	

(Cont.)

Convention	States	Ratification/ accession date	Number of parties
2011 Optional Protocol to the Convention on the Rights of the Child on communications procedure	Costa Rica	14 January 2014	11
	Belgium	30 May 2014	
2013 Arms Trade Treaty	Argentina	25 September 2014	61
	Bahamas	25 September 2014	
	Bosnia and Herzegovina	25 September 2014	
	Czech Republic	25 September 2014	
	Dominican Republic	7 August 2014	
	Guinea	21 October 2014	
	Liechtenstein	16 December 2014	
	Lithuania	16 December 2014	
	Montenegro	18 August 2014	
	Netherlands	18 December 2014	
	New Zealand	2 September 2014	
	Poland	17 December 2014	
	Portugal	25 September 2014	
	Saint Kitts and Nevis	15 December 2014	
	Saint Lucia	25 September 2014	
	Senegal	25 September 2014	
Serbia	5 December 2014		
Sierra Leone	12 August 2014		
South Africa	22 December 2014		
Uruguay	25 September 2014		

National implementation of international humanitarian law

The laws and case law presented below were either adopted by States or delivered by domestic courts in the second half of 2014, or collected by the ICRC Advisory Service during that period. They cover a variety of topics linked to IHL, such as the protection of cultural property, the protection of the emblem, the regulation of the export of war material, the repression of torture, the concept of universal jurisdiction, and criminal repression of IHL violations.

This compilation is not meant to be exhaustive; it represents a selection of the most relevant developments relating to IHL implementation and related issues collected by the ICRC. The full texts of these laws and case law can be found in the ICRC's database on national implementation of IHL.⁶

A. Legislation

The following section presents, in alphabetical order by country, the domestic legislation adopted during the period under review (July–December 2014). Countries covered are Armenia, Austria, Chad, the Dominican Republic, Peru, Serbia, Spain, Switzerland and Tunisia.

Armenia

Decree of the Prime Minister establishing an Inter-Governmental Commission on the Implementation of Commitments undertaken by Armenia within the framework of the 1954 Hague Convention on the Protection of Cultural Property in Times of Armed Conflict and its Protocols⁷

On 8 December 2014, the prime minister of the Republic of Armenia issued a decree establishing an Inter-Governmental Commission on the Implementation of Commitments undertaken by Armenia within the framework of the 1954 Hague Convention on the Protection of Cultural Property in Times of Armed Conflict and its Protocols.

According to this decree, the Commission will be tasked with drafting and submitting recommendations on the national implementation of the above-mentioned Hague Convention and its Additional Protocols. The decree also stipulates that representatives of the Holy See Etchmiadzin as well as other interested organizations may be involved in the work of the Commission in an advisory capacity.

⁶ ICRC, *IHL: National Implementation Database*, available at: www.icrc.org/ihl-nat.

⁷ Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=FFA5BEECCB01E19DC1257EB9002737B2&action=openDocument&xp_countrySelected=AM&xp_topicSelected=GVAL-992BU7&from=state.

The Commission is composed of representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Defence, the Ministry of Culture, the Ministry of Emergency Situations, and the Constitutional Court of Armenia. It is presided over by the head of the International Organizations Department of the Ministry of Foreign Affairs.

Austria

*Federal Law No. 106/2014 amending the Criminal Code and the Criminal Procedure Code of Austria*⁸

On 18 December 2014, the Federal Law amending the Austrian Criminal Code was adopted by the Austrian Parliament. It entered into force on 1 January 2015.

The amendments were adopted for the purpose of completing the implementation of the Rome Statute of the International Criminal Court (ICC), the Second Protocol of 1999 to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Geneva Conventions of 1949 and their Additional Protocols of 1977.

The amended Criminal Code includes a new Chapter 25 entitled “Genocide, Crimes against Humanity, War Crimes”, which lists new offences. In addition to the provisions in section 321 on “Genocide”, sections 321a through j of Chapter 25 include crimes against humanity, war crimes against persons, war crimes against property and other rights, war crimes against international missions and misuse of protective or national emblems, war crimes for the use of prohibited methods of warfare, and war crimes for the use of prohibited means of warfare. They also establish the responsibility of commanders and other superiors for not having impeded the persons under their effective control from committing the offences listed under Chapter 25, and for the breach of their duty of supervision in failing to report such offences. It furthermore represses the commission of these offences under orders or other instructions.

The Criminal Code also includes a new section 312b prohibiting “enforced disappearance of a person”.

The amended section 64(1)(4c) of the Code provides that the Austrian courts can exercise jurisdiction over the crimes listed in Chapter 25 if the alleged perpetrator or victim is an Austrian citizen, if other Austrian national interests are infringed by the act, or if the perpetrator is a foreigner who has his habitual residence in Austria or is present in Austria and cannot be extradited.

In addition, according to amended section 32(1a)(8) of the Austrian Criminal Procedure Code, the Regional Lay Assessors’ Courts have jurisdiction for crimes under Chapter 25 of the Criminal Code.

8 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=1FBCA1207A77DCD5C1257EB900290127&action=openDocument&xp_countrySelected=AT&xp_topicSelected=GVAL-992BU6&from=state.

Chad

*Law No. 053/PR/2014 on Protection and Use of the Red Cross and Red Crescent Emblems and any other Distinctive Sign*⁹

On 5 December 2014, the National Assembly of Chad adopted a law on the Protection and Use of the Red Cross and Red Crescent Emblems and any other Distinctive Sign protected by a treaty to which Chad is a party.

The law regulates the use of the emblems both as indicative and protective devices and specifies in its Chapter 2 which entities are entitled to use the emblems both in time of peace and in time of war.

Chapter 3 of the law identifies ways by which respect for the rules related to the use of the emblems is ensured and specifically refers to the role of the Chadian Red Cross Society in preventing and repressing the misuse of the emblem.

In addition, Chapter 4 establishes sanctions for punishing the misuse of the emblem in wartime and peacetime alike.

Dominican Republic

*Decree No. 249-14 establishing the Regulation for the Implementation of the Law on the Protection and Use of the Emblems and Name of the Red Cross and Red Crescent*¹⁰

On 29 July 2014, the President of the Dominican Republic issued a decree establishing the Regulation for the Implementation of Law No. 220-07 on the Protection and Use of the Emblems and Name of the Red Cross and Red Crescent.¹¹

The Regulation includes two main parts on the protective and the indicative use of the emblem. In its Chapter 3, it establishes the procedure for the protective use of the red cross emblem in cases of armed conflict. It namely identifies the personnel, materials and facilities entitled to request the protective use of the emblem, the way the response will be delivered and the timeline of the response, the verification of documents, and the issuance and delivery of the identity card and armband.

For indicative use, Article 13 of the law states that the Dominican Red Cross Society is entrusted with establishing conditions for the use of the emblem in its internal regulations.

9 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=F8BAEC70AE6F70B9C1257EB90029B1F4&action=openDocument&xp_countrySelected=TD&xp_topicSelected=GVAL-992BU8&from=state.

10 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=B023ABA2EE691E69C1257E960030ABF3&action=openDocument&xp_countrySelected=DO&xp_topicSelected=GVAL-992BU8&from=state.

11 For further information regarding this law, please consult “What’s New in Law and Case Law Across the World? Biannual Update on National Legislation Implementing Humanitarian Law and Relevant Case Law, July–December 2007”, *International Review of the Red Cross*, Vol. 90, No. 871, 2008, p. 779, available at: www.icrc.org/eng/assets/files/other/irrc-871-national-imp-jul-dec-ihl.pdf.

Possible violations of the Regulation are to be punished in accordance with the applicable provisions of Law No. 220-07 on the Protection and Use of the Emblems and Name of the Red Cross and Red Crescent (Article 15).

Peru

*Supreme Decree No. 005-2014-JUS approving a National Plan on Human Rights*¹²

On 5 July 2014, Supreme Decree No. 005-2014-JUS approving a National Plan on Human Rights was published in the Official Gazette of Peru.

The National Plan on Human Rights 2014–2016 contains guidelines with respect to the implementation and enforcement of IHL. In particular, the plan includes activities such as training in human rights law and IHL for the armed forces and the national police (in Goal 1 of Strategic Guideline 1), and the promotion of the approval of education plans in human rights law, IHL and international criminal law at university faculties of law, political science and education (in Goal 2 of Strategic Guideline 1).

It also includes promotion of a legal debate about the modification and improvement of the criminal legal framework according to the standards of international human rights law, IHL and international criminal law (in Goal 2 of Strategic Guideline 2).

Goals 1 and 2 of Strategic Guideline 4 aim to promote the ratification of international treaties on human rights law, IHL and international criminal law and to ensure their implementation as well as that of international standards related to these bodies of international law.

Serbia

*Law No. 107/14 on the Import and Export of Weapons and Military Equipment*¹³

On 8 October 2014, the Parliament of the Republic of Serbia adopted a law to regulate the import and export of weapons and military equipment.

The law entered into force on 16 October 2014 and establishes a special registry in which all subjects related to the import and export of weapons and military equipment are registered. The law also regulates the process of issuing permits for the export and import of weapons and military equipment, as well as technical support and broker services in the defence industry. According to Article 17 of the law, in the process of issuing permits, authorities must take into

12 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=FAF85075E1D7A327C1257EB9002C5D8B&action=openDocument&xp_countrySelected=PE&xp_topicSelected=GVAL-992BUA&from=state.

13 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=18973C1A4A9F3A8FC1257EB9002F0F6A&action=openDocument&xp_countrySelected=RS&xp_topicSelected=GVAL-992BUP&from=state.

consideration several criteria notably related to the country's international legal obligations and obligations by virtue of Serbia's membership in international organizations, human rights and humanitarian law safeguards, prevention of armed conflicts or their escalation, regional peace and stability safeguards, and counter-terrorism. The law specifically provides in Article 17(2) that a permit will not be issued if it would endanger respect for human rights in the country of final destination or would contribute to a violation of internationally recognized rules of humanitarian law and international human rights law by that country. Similarly, according to Article 17(3), a permit will not be issued if it enables the outbreak or continuation of armed and other conflicts in the country of final destination.

The law proscribes providing technical support regarding weapons and military equipment to countries put under a sanctions regime by the United Nations (UN) Security Council, the Organisation for Security and Cooperation in Europe or other international organizations that the Republic of Serbia is bound by. It also proscribes technical support aimed at the development of weapons of mass destruction.

Spain

*Organic Law 8/2014 on the Disciplinary Regime of the Armed Forces*¹⁴

On 4 December 2014, Organic Law 8/2014 on the Disciplinary Regime of the Armed Forces was promulgated.

The objective of the law is to guarantee compliance with rules governing military behaviour, in particular discipline, hierarchy and unity, and to harmonize the rules governing military disciplinary with those governing military justice.

In particular, Article 7 of the law includes in the list of serious breaches ("faltas graves") non-compliance with the rules of engagement and careless inobservance of the duties set out in IHL.

In addition, according to the list of very serious breaches ("faltas muy graves") set out in Article 8, it is a very serious breach for a superior to omit carelessly ("omitir por imprudencia") to adopt the measures necessary to prevent or pursue actions of subordinates that are in breach of their duties set out in IHL.

14 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=54D03ED187950D88C1257EB90030EF59&action=openDocument&xp_countrySelected=ES&xp_topicSelected=GVAL-992BUA&from=state.

Switzerland

*Revised Ordinance No. 514-511 on War Material*¹⁵

On 19 September 2014, the Swiss Federal Council revised the Ordinance on War Material of 25 February 1998. This revision stems from an initiative by the Federal Assembly's Council of States following the adoption of the ATT and aims to give more flexibility to the Swiss Federal Council in granting licenses for the export of war material. The revised ordinance entered into force on 1 November 2014.

The ordinance regulates initial licenses and specific licenses for the trade, brokerage, import, export and transit of war material, as well as the conclusion of contracts for the transfer of intellectual property, including technical know-how and the granting of rights thereto.

The main revisions concern Article 5 of the ordinance, which relates to the licensing criteria for the export of war material. More specifically, the new Article 5 (1)c establishes that applications for export licenses will no longer be automatically rejected when “the country of destination is listed as one of the least developed countries on the current OECD-DAC list of countries in receipt of development aid”, but will instead be assessed on a case-by-case basis.

In addition, while the previous text of the ordinance established that licenses should not be granted if “the country of destination violates human rights in a systematic and serious manner”,¹⁶ the new Article 5(4) states that a license may be granted if the risk that the exported war material will be used to commit serious violations of human rights is low.

*Ordinance No. 520.31 on the Protection of Cultural Property in the Event of Armed Conflict, Natural Disaster or Emergency*¹⁷

On 29 October 2014, the Swiss Federal Council completely revised the Ordinance on the Protection of Cultural Property in the Event of Armed Conflict, executing the Federal Law on the Protection of Cultural Property in the Event of Armed Conflict, Natural Disaster or Emergency.¹⁸

The ordinance implements the federal law and notably expands the scope of its protections by including protection of cultural property in situations of natural disaster or emergency.

Amended internal regulation for the Interdepartmental Committee on International Humanitarian Law

15 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=DACF6A2B3A6EC963C1257EB900333419&action=openDocument&xp_countrySelected=CH&xp_topicSelected=GVAL-992BUP&from=state.

16 Ordinance No. 514-511 of 25 February 1998 on War Material (as of 1 January 2013), Art. 5(2)c.

17 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=871B29F229BE3A55C1257EB900336986&action=openDocument&xp_countrySelected=CH&xp_topicSelected=GVAL-992BU7&from=state.

18 For further information regarding this law, please consult “What’s New in Law and Case Law around the World? Biannual Update on National implementation of International Humanitarian Law, January–June 2014”, *International Review of the Red Cross*, Vol. 96, No. 895/896, 2014.

On 19 September 2014, the Swiss Federal Council approved amendments to the internal regulation of the Interdepartmental Committee on International Humanitarian Law.

The amended regulation, in its Article 1.1, expands participation in the work of the Committee to other departments of the federal administration than those initially composing the Committee. In addition, according to its Article 3.3*bis*, the Swiss Red Cross and the ICRC are entitled to attend all sessions of the Committee, while they were previously admitted to only one session per year.

Tunisia

*Decree No. 2014-4555, modifying Decree No. 2014-2887 establishing Criminal Chambers Specialized in Transitional Justice*¹⁹

On 29 December 2014, the head of government of Tunisia passed a decree establishing Criminal Chambers specialized in Transitional Justice within the Tribunal of First Instance of Tunis, Sfax, Gafsa, Gabés, Sousse, Le Kef, Bizerte, Kasserine and Sidi Bouzid, as listed in the first paragraph of Article 1.

This decree modifies a previous decree of 8 August 2014 by adding the city of Sfax to the list and by suppressing the second paragraph of Article 1, which stated that the dispositions of the decree were not applicable to the Tribunal of First Instance of Tunis 2, Sousse 2 and Sfax 2.

The creation of such chambers was provided for in the Organic Law Establishing and Organizing Transitional Justice of 2013.²⁰ Article 8 of the law specifies that these specialized chambers are competent to adjudicate cases related to gross violations of human rights as specified in international agreements ratified by Tunisia and in this law, such as deliberate killing, rape and any other form of sexual violence, torture, enforced disappearance, and execution without fair trial guarantees.

B. Case law

The following section lists, in alphabetical order by country, relevant domestic jurisprudence related to IHL and released during the period under review (July–December 2014). Countries covered are Italy, South Africa and the United Kingdom.

19 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=CADD922EF4026E2AC1257EB90033CC5A&action=openDocument&xp_countrySelected=TN&xp_topicSelected=GVAL-992BU6&from=state.

20 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=E65641E6572650FAC1257D2D0056813E&action=openDocument&xp_countrySelected=TN&xp_topicSelected=GVAL-992BUG&from=state&SessionID=DNYUTHMTFW.

Italy

*Case No. 238/2014, Constitutional Court*²¹

Keywords: immunity, constitution.

On 22 October 2014, the Italian Constitutional Court declared unconstitutional certain norms adopted by the Italian legislature in order to comply with the judgment of the International Court of Justice (ICJ) on jurisdictional immunities of the State, *Germany v. Italy; Greece Intervening*, General List No. 143, 3 February 2012.²²

The Italian Parliament had introduced Article 3 of Law No. 5/2013 relating to the ratification of the UN Convention on Jurisdictional Immunities in order to comply with the ICJ judgment of 3 February 2012. This article requires the national judge to comply with the rulings by which the ICJ excluded certain conducts of a foreign State from civil jurisdiction. The Court stated that the article requires Italian courts to deny their jurisdiction in the examination for damages for crimes against humanity committed by a foreign State in Italian territory, without other forms of judicial redress for the fundamental rights violated. Hence it concluded that Article 3 of the law is unconstitutional as it runs counter to the fundamental principle of judicial protection of fundamental rights guaranteed by Articles 2 and 24 of the Italian Constitution.²³

The Court also declared that Article 1 of the Law of Adaptation No. 848/1957 (the law on ratification of the UN Charter) is unconstitutional, “so far as it concerns the execution of Article 94 of the United Nations Charter, exclusively to the extent that it obliges Italian courts to comply with the Judgment of the ICJ of 3 February 2012 which requires them to decline their jurisdiction in case of acts of a foreign State constituting war crimes and crimes against humanity, in breach of inviolable human rights”.²⁴ Nevertheless, the Court made it clear that the rest of the Law of Adaptation No. 848/1957 continues to be indisputably in full force and effect.

Lastly, the Court stated that insofar as the international law concerning State immunity from the civil jurisdiction of other States includes acts violating international law and fundamental human rights, it could not be deemed to exist in the Italian legal order since it conflicts with the latter’s basic constitutional principles.

21 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=19B0BCFA4FD773A9C1257EBB002A1315&action=openDocument&xp_countrySelected=IT&xp_topicSelected=GVAL-992BUA&from=state.

22 Available at: www.icj-cij.org/docket/files/143/16883.pdf.

23 The Court recalled in this judgment (Constitutional Court of Italy, Case No. 238/2014, Judgment, 22 October 2014, para. 3.4) that: “The first [Article 2] is the substantive provision, in the fundamental principles of the Constitutional Charter, that safeguards the inviolability of fundamental human rights, including – this is crucial in the present case – human dignity. The second [Article 24] is a safeguard of human dignity as well, as it protects the right of access to justice for individuals in order to invoke their inviolable right[s].”

24 Constitutional Court of Italy, Case No. 238/2014, Judgment, 22 October 2014, para. 4.1.

South Africa

*Case No. CCT 02/14: National Commissioner of the South African Police Service v. Southern African Human Rights Litigation Centre and Another, Constitutional Court*²⁵

Keywords: universal jurisdiction, torture, customary international law.

On 30 October 2014, the Constitutional Court of South Africa ruled that the South African Police Service (SAPS) had the duty to investigate crimes against humanity that were allegedly committed in the territory of Zimbabwe in 2007. This ruling marked the end of a number of court decisions on the issue, meaning that the SAPS has been ordered by the highest court in South Africa to investigate, in the territory of South Africa, the alleged crimes against humanity committed in Zimbabwe.

The process began in March 2008, when the Southern Africa Litigation Centre (SALC) submitted a dossier to the National Prosecuting Authority of South Africa, documenting alleged torture committed by and against nationals of Zimbabwe in the territory of Zimbabwe. In June 2009, the acting national commissioner of the SAPS informed the SALC that it did not intend to initiate an investigation.

The SALC and a human rights organization called the Zimbabwe Exiles' Forum applied to the North Gauteng High Court for an order reviewing and setting aside the decision not to investigate. In May 2012, the High Court concluded that the decision refusing to initiate an investigation was unlawful and ordered it to be reviewed and set aside.²⁶

Thereafter, the national commissioner of the SAPS sought leave to appeal the decision to the Supreme Court of Appeal, which upheld the High Court's decision.²⁷

The national commissioner of the SAPS then sought leave to appeal to the Constitutional Court, the highest court in South Africa, seeking clarity on the extent to which the Constitution imposes a duty on the SAPS to investigate crimes against humanity allegedly committed in Zimbabwe by and against Zimbabweans.

The Constitutional Court granted leave to appeal. In 2014 the Constitutional Court held that the decision of the SAPS not to investigate was unlawful. The Court stated that under the SAPS Act, the Constitution of the

25 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=DA2A60D91013C49AC1257E930049C0FA&action=openDocument&xp_countrySelected=ZA&xp_topicSelected=GVAL-992BU6&from=state&SessionID=E4X03EOS8M.

26 For further information regarding this decision, please consult "What's New in Law and Case Law across the World? Biannual Update on National Legislation Implementing Humanitarian Law and Relevant Case Law, January–June 2012", *International Review of the Red Cross*, Vol. 84, No. 887, 2012, p. 1160, available at: www.icrc.org/eng/assets/files/review/2012/irrc-887-national-implementation.pdf.

27 For further information regarding this decision, please consult "What's New in Law and Case Law around the World? Biannual Update on National Implementation of International Humanitarian Law, July–December 2013", *International Review of the Red Cross*, Vol. 96, No. 893, 2014, p. 391, available at: www.icrc.org/en/international-review/article/whats-new-law-and-case-law-around-world-0.

Republic of South Africa and the Implementation of the Rome Statute of the International Criminal Court Act,²⁸ the SAPS had a legal duty to investigate crimes against humanity allegedly committed in the territory of Zimbabwe. It added that the crime of torture had been domesticated into South African law and is prohibited as it is a peremptory norm of customary international law, which itself is law in South Africa unless it is inconsistent with the Constitution or an Act of Parliament.

The Court further listed limitations to the exercise of universal jurisdiction in investigating international crimes, including the fact that the country in which the crimes occurred is unwilling or unable to investigate, and the practicability of an investigation. The Constitutional Court stated that an investigation within the South African territory did not “offend against the principle of non-intervention and there is no evidence that Zimbabwe has launched any investigation or has indicated that it is willing to do so”,²⁹ therefore permitting the South African authorities to do so. The Court also added that the anticipated presence of a suspect in South Africa is not a prerequisite to trigger an investigation but is only one of the factors to consider in the determination of whether an investigation would be practicable and reasonable. It added that, in the present instance, “there is a reasonable possibility that the SAPS will gather evidence that may satisfy the elements of the crime of torture allegedly committed in Zimbabwe”.³⁰

The Court thus dismissed the appeal and ordered that the SAPS investigate the complaint.

United Kingdom

*Case No. CO/11360/2012: FF v. Director of Public Prosecutions, High Court of Justice*³¹

Keywords: immunity, torture.

On 7 October 2014, the High Court of Justice of England and Wales handed down a decision ordering that the decision issued by the Director of Public Prosecutions for England and Wales (DPP) be quashed. The decision related to the possible opening of an investigation regarding alleged actions of Prince Nasser bin Hamad Al Khalifa of the Kingdom of Bahrain and the question of his immunity from prosecutions over torture claims.

28 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=BA5EFD75C6814503C1256E37004D89D8&action=openDocument&xp_countrySelected=ZA&xp_topicSelected=GVAL-992BU6&from=state.

29 Constitutional Court of South Africa, *National Commissioner of the South African Police Service v. Southern African Human Rights Litigation Centre and Another*, Case No. CCT 02/14, Judgment, 30 October 2014, para. 78.

30 *Ibid.*

31 Available at: <http://blog.cps.gov.uk/2014/10/statement-on-prince-nasser-of-bahrain-and-immunity-from-prosecution.html>.

In 2011, FF, a Bahraini citizen who was granted asylum in the United Kingdom, took part in political protests in Bahrain. FF made allegations that Prince Nasser was directly involved in the torture of individuals in a prison in Bahrain. In July 2012 the European Centre for Constitutional and Human Rights, appearing as an interested party, prepared a case containing evidence allegedly implicating Prince Nasser in the torture of detained prisoners in Bahrain. The case was submitted to the British police.

In August 2012, the Crown Prosecution Service for England and Wales (CPS) indicated that Prince Nasser would enjoy personal immunity under section 20 of the State of Immunity Act 1978 since he was a member of the Bahraini royal household. It added that, additionally or alternatively, Prince Nasser would enjoy functional immunity pursuant to section 1 of the same act in relation to any conduct in his role as Commander of the Royal Guard.

In September 2012, following a request for review of the CPS's decision, the CPS Special Crime and Counter Terrorism Division indicated that Prince Nasser did not enjoy personal immunity under section 20 of the State of Immunity Act 1978, as his household was independent from that of his father, the King of Bahrain. It however maintained that according to section 1 of the same Act, it was likely that Prince Nasser would enjoy functional immunity for his position as Commander of the Royal Guard.

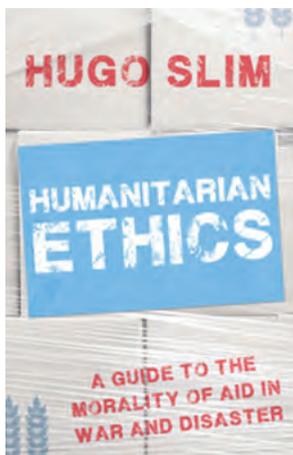
In October 2012, FF sought judicial review against the CPS's decision. He notably cited the *Pinochet III* case,³² in which the House of Lords rejected Pinochet's claim to immunity in respect of charges of torture. This case, FF argued, supported his contention that public officials of foreign States have no functional immunity from criminal process in relation to the international crime of torture.

The case was fixed for hearing on 7 October 2014. However, before the case was heard in the High Court of England and Wales, the DPP sent a letter stating that it no longer maintained that Prince Nasser could be entitled to functional immunity. It also accepted that, given the evidence before it, Prince Nasser would not benefit from personal immunity.

Therefore, on 7 October 2014, the decision that Prince Nasser would be entitled to immunity was quashed by the High Court of Justice of England and Wales.

32 House of Lords, *R v. Bow Street Magistrate and Ors, Ex Parte Pinochet Ugarte* (3), [2001] 1 AC 147, Judgment, 24 March 1999.

BOOK REVIEW



Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster

Hugo Slim*

Book review by Fiona Terry, an independent researcher who has completed studies for the International Committee of the Red Cross in Sudan and Afghanistan. She holds a doctorate in international relations from the Australian National University, and is the author of *Condemned to Repeat? The Paradox of Humanitarian Action* (Cornell University Press, Ithaca, NY, and London, 2002).

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As the humanitarian enterprise faces some of its toughest challenges in trying to help people suffering from an unprecedented number of simultaneous conflicts and disasters around the world, Hugo Slim's new book *Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster* takes us on a fascinating journey into the heart of what it is we are trying to do, why we are doing it, and how. His deeply insightful examination of humanitarian ethics unpacks the values behind the humanitarian endeavour, the moral tensions that arise in carrying it out, and the ways in which humanitarian individuals and organizations can think through these issues and strive to act in the most responsible way they can.

At a time when many humanitarian veterans struggle to see their passion and commitment to humanitarian ideals reflected in a newer generation of often career-minded, corporate-thinking aid executives, Slim offers a vital reminder of the sentiments that gave birth to humanitarianism, how these have been formalized and put into practice over the past few decades, and how tendencies

* Published by Hurst & Company, London, 2015.

to expand conceptions of humanitarian action into peacebuilding and the defence of human rights can compromise efforts to uphold the essential goal of saving lives and preserving dignity.

In keeping with his positive persona, Slim's tone throughout the book is one of optimism and encouragement, and he chides authors – including myself – who have emphasized the ethical pitfalls of humanitarian action. “The proper focus of humanitarian ethics should rest on how to be a good humanitarian worker, not on how to avoid being a bad one [T]he call to do good is a much more positive professional motivation than the more censorious call to avoid doing harm”, according to Slim.¹ He manages to sustain an even-handed commentary throughout the book, even when describing some of the most ethically problematic aspects of the aid industry, such as the disparity in treatment of national and international staff in, for example, medical or security evacuation protocols, or in the huge salaries and lavish lifestyle enjoyed by many United Nations (UN) personnel while working for the world's most vulnerable and dispossessed. But while I admire Slim's inspirational approach, I believe that his book should become the indispensable *vade mecum* of every humanitarian agency because such organizations often do not think clearly enough about what they are doing, how they are doing it, and the consequences for the populations they profess to assist as well as for other agencies who share the “humanitarian” label.

The major contribution of this book is to demystify the subject of ethics, to provide a clear and logical explanation of the ethical framework guiding humanitarian action, and to offer insight on how to balance competing principles or values according to the operating context on the ground. Although aid organizations are constantly making ethical decisions in the way that they decide which members of the population to prioritize or how much risk to take, these choices are rarely framed in the language of ethics. So, as Slim points out, for those aid agencies not used to hearing problems raised in these terms – which in my experience is the majority – an “ethical” problem immediately takes on dramatic importance and leads “unnecessarily into a predicament of extreme options” in an agency's thinking.² I have found that even within those organizations that do think about ethics, this is not always done in an informed or structured manner, and humanitarian principles are recited as a mantra and treated as moral absolutes. A tragic example of this occurred in Somalia, where an aid worker refused an offer from the African Union Forces (AMISOM) to take his seriously wounded colleague to the AMISOM hospital because his agency was “independent”. After delays in finding an alternative vehicle in the commotion, the wounded man was taken to a local hospital, where he died in surgery. Slim provides a refreshingly clear and lucid discussion on how to interpret the best meaning of humanitarian principles in a given context and how to balance this

1 *Humanitarian Ethics*, p. 7.

2 *Ibid.*, p. 156.

with ethical practices of deliberation, good judgement and practical wisdom in order to decide on the best course of action.

The book is divided into three parts, which are cleverly woven together to give maximum clarity to the concepts raised. Part 1 explores the ethical foundations of humanitarian action, tracing how some of the great philosophers, such as Aristotle, David Hume, Thomas Aquinas, Paul Ricoeur and Peter Singer, explain the humanitarian impulses of compassion, empathy and a sense of responsibility for the plight of distant strangers. Part 2 then looks at the modern elaboration of humanitarian principles, beginning with the four core principles of the Red Cross and Red Crescent Movement (humanity, neutrality, impartiality and independence) and then explaining some of the thirty-three other principles that Slim identifies as influencing the thought and actions of this vast “humanitarian” sector.³

The way Slim has organized the discussion of these principles helps enormously in breaking down some of the misconceptions and stereotypes around them. Humanity and impartiality are identified as the goal of humanitarian action, and Slim goes to considerable lengths to dissect them into their component ideas. He considers, for instance, how we might ensure the “radical equality” proscribed by impartiality, and determine what fairness in the provision of humanitarian aid might be. Neutrality and independence are presented as the “political principles”, thereby firmly establishing their roles as operational postures that facilitate “being inside a conflict without being problematically invested in it”,⁴ rather than as values to honour in themselves. Slim then explores what he terms the “dignity principles” of participation, empowerment and respect that feature in the Code of Conduct for aid agencies in disaster relief, pointing out some of the strengths and weaknesses found in their application in different contexts. Here his discussion on the dignified representation of aid recipients through respectful imagery in fundraising materials and his objection to condescending yet ubiquitous labels such as “beneficiary” strike an important cord. Lastly, he considers sustainability and accountability to be “stewardship principles”, guiding humanitarians to use their resources wisely and assuming responsibility for their actions in the immediate and longer term.

In the same chapter, Slim also identifies some of the structural weaknesses of the humanitarian sector which have compromised efforts to increase the accountability of humanitarian actors, particularly the continued dominance of accountability upwards to donors rather than to the people whom agencies profess to help, and the continued lack of regulation of the humanitarian sector: “no party, whether donor, agency, local authority or recipient community, is under real external scrutiny to see if and how they are making the most of aid and abiding by humanitarian law and principles in its application”.⁵

3 These principles are listed on p. 40, and are divided into four categories according to their main *raison d'être* (“principles in law”; “principles of action”, “principles of dignity, participation and stewardship”, and “principles of effectiveness”).

4 *Humanitarian Ethics*, p. 66.

5 *Ibid.*, p. 107.

Part 3 examines what it means to make ethical decisions on the ground, exploring many of the factors that influence the choices made by individuals and agencies. Chapter 7 tackles the role of reason and emotion in decision-making, and Chapter 8 examines what ethical deliberation might look like. But it is in Chapters 9, 10 and 11 that I think aid workers will find the most interest, as Slim unpacks the basic structure of moral choices from those that are obvious, those that require compromise, those that create a slippery slope, those that involve suspending a moral norm for a wider moral good, and those that constitute a genuine moral dilemma where one must choose between two equally bad options. Chapter 10 then addresses the crucial question of how we assess where moral responsibility lies, which requires consideration of a whole range of factors. These include the level of agency or involvement that an individual or organization had in an act; the intention behind the action; the motives of the actor; the level of knowledge or ignorance at the actor's disposal; the capacity of the actor, for one can only be held responsible for what one can realistically do; the mitigation measures that were engaged to limit the worst effects of the action; and the quality and quantity of deliberation undertaken before deciding on a particular course of action.

In Chapter 11, Slim gives us a stronger glimpse into his moral reasoning as he examines some of the persistent ethical problems that arise in the course of humanitarian operations, applying the ideas and principles developed in earlier chapters to specific problems encountered in various contexts. And it is here that we can most clearly see how two individuals or organizations can face the same moral problems in the same context and yet make very different decisions on how to respond to them, depending on which principles and values they prioritize and what information they choose to include in their ethical deliberation. Slim takes issue with what he considers are exaggerated claims against aid organizations of ethical responsibility for harm inflicted on populations in several morally problematic aid operations, such as the response to the Ethiopian famine in 1984–1985 and war and displacement in Darfur from 2004 to 2011. He rightly points to humanitarians only ever having a secondary responsibility in events caused by political and military actors, and makes a convincing case – drawing on the work of Chiara Lepora and Robert Goodin⁶ – for how the charge of aid agency “complicity” in wrongdoing is exaggerated when we dig deeper into what this notion really means. It is difficult to cite an instance where aid organizations plotted or colluded with political or military actors in oppressing, displacing or otherwise harming a community, and the most they can be charged with are contributing roles in some wrongdoing like, for example, lending legitimacy to some unjust action through participation in it, even if only to mitigate its worst effects. Moreover, as the International Committee of the Red Cross (ICRC) knows only too well, it is sometimes necessary to be associated with wrongdoing in some way in order to achieve a

6 Chiara Lepora and Robert E. Goodin, *On Complicity and Compromise*, Oxford University Press, Oxford, 2013.

greater humanitarian good: drinking beer with Interahamwe killers manning checkpoints during the Rwandan genocide allowed ICRC delegates to get ambulances carrying wounded Tutsis through to the hospital.

But where Slim is less convincing is in his treatment of cases where aid might be doing more harm than good, where it is actually turned against those it is intended to assist. He acknowledges that Médecins Sans Frontières' (MSF) Rony Brauman might be right in principle that in certain cases abstention or withdrawal may be preferable to action, but says that this "is a hard principle to enact without genuine consent from the affected population".⁷ So in the case of the Rwandan refugee camps in which aid was used by perpetrators of genocide to control the population and finance their military preparations for an attack on Rwanda, he argues that the responsibility of humanitarian agencies was one of mitigation only: "to find the best way to minimize the worst effects of aid theft and taxes, while still continuing to meet their primary responsibility to save lives and protect people".⁸

Two important elements seem to be overlooked in this analysis. The first is to question whether humanitarian aid was indispensable to the survival of these refugees, a point first raised by Alex de Waal in his work on Sudan.⁹ Aid agencies have a vested interest in pitching humanitarian assistance as the difference between life and death, but there is increasing acknowledgement in research findings of the important yet often overlooked role of local communities in their own survival. These refugees were not kept behind barbed wire, and indeed many of them left the camps and returned to Rwanda in the first months of the aid operation. Moreover, humanitarian organizations failed in any efforts to protect these refugees, either from their leaders whilst in the camps or from the brutal attack that dismantled the camps in late 1996, as Slim suggests was one of their two primary responsibilities. This violence was not only predictable but had actually been threatened by Rwandan president Paul Kagame several months before it took place. I feel that aid organizations needed to recalibrate their moral priorities under such circumstances.

The second issue follows from the first: what level of responsibility do aid recipients hold for their own predicament and survival? Empowerment of local communities is a strong value explored in this book, but should not their own agency be taken more into account in deliberating what to do when aid is clearly part of the problem? This question extends beyond the Rwandan case and is highly pertinent to Somalia today. MSF made the very difficult decision to close its projects in Somalia in 2013 as a result of numerous violent attacks on its members over twenty-two years of continuous operations in the war-torn country, the latest of which occurred with either the active involvement or tacit

7 *Humanitarian Ethics*, p. 204.

8 *Ibid.*, p. 186.

9 De Waal argues that relief is generally merely a footnote to the story of how people survive famine. Alex de Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa*, Africa Rights and International African Institute in association with James Currey and Indiana University Press, Oxford and Bloomington, IN, 1997, p. 1.

acceptance of Somali communities – even those directly benefiting from MSF’s medical services. Without respect for the most fundamental idea that “we help you and you don’t harm us”, MSF felt that it was impossible to continue. After nearly two years of absence, however, and a serious deterioration in the state of the health sector, MSF is investigating ways to return at the strong behest of Somali leaders and communities, and of other aid agencies. But imbuing Somali leaders with a sense of responsibility for the safety of humanitarian workers and proper use of resources remains a major challenge. After all, the head of an important Somali NGO that was found by a UN internal investigation¹⁰ to have fraudulently claimed or was unable to substantiate spending of nearly 80% of \$2.9 million allocated to emergency food and water during the 2011 famine is today a senior adviser to the president of one of Somalia’s regional administrations. Somalis are aware of these accusations, yet no one seems prepared to hold him to account for depriving his compatriots of millions of dollars of emergency aid.

It is precisely in providing practitioners and students with tools with which to think through these real-life moral problems from various angles that Slim’s book is a remarkable contribution to the humanitarian sector. Although Slim is sympathetic to the desires of some aid agencies to stretch the bounds of humanitarian action and do more to address the causes of suffering, he is clear that the responsibility of humanitarian action is first and foremost to alleviate it:

There is no greater goal beyond the person in humanitarian action: not peace, not democracy, not religious conversion; not socialism; not political Islam; and not military victory... the defining goal of humanitarian action is to save and protect individual lives so that they have an opportunity to flourish. It is not to determine how they should flourish and to organise that flourishing.¹¹

The post-2002 aid operation in Afghanistan clearly illustrated that those agencies who steered their action towards determining how Afghans should flourish undermined the neutrality of humanitarian action and found themselves unable to fulfil their primary purpose of helping those in need, regardless of the side of the conflict on which they were found.¹² It is a similar story in Somalia today, with those aid agencies perceived to be supporting one side rejected by the other to the detriment of all those in need. Aid agencies need to heed the messages conveyed in Slim’s book and forge a more coherent and consistent approach to their efforts to help people in these challenging times. If aid agencies do not make a clear choice about whether their aid should be neutral, impartial and

10 Confidential UN investigations into three Somali NGOs were leaked to Fox News and published in January 2015. See George Russell, “Millions in UN Somalia Aid Diverted; Hints that Some Went to Terrorists”, *Fox News*, 20 January 2015, available at: www.foxnews.com/world/2015/01/20/millions-in-un-somalia-aid-diverted-hints-that-some-went-to-terrorists/ (last accessed in June 2015).

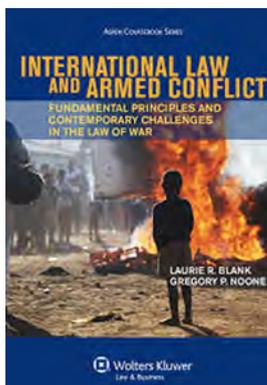
11 *Humanitarian Ethics*, above note 1, p. 47.

12 See Fiona Terry, “The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 881, 2011, pp. 173–188.

independent, belligerents may well make the choice for them, considering them to be enemies and treating them accordingly.

Humanitarian Ethics should be read and reread by everyone involved in humanitarian action in headquarters, in field capitals and on the ground. It does not provide answers to ethical quandaries, but rather, and more importantly, provides the tools necessary to think through what an ethically sound response to quandaries might be for individuals and organizations. It also restores meaning to many notions that have been reduced to mere slogans by the humanitarian enterprise. My only regret is that there were not more case studies unpacked from a variety of angles – the book introduces an abundance of examples, but usually to illustrate a specific point raised rather than from a holistic perspective. Perhaps such cases could be the subject of Volume 2?

BOOK REVIEW



International Law and Armed Conflict: Fundamental Principles and Contemporary Challenges in the Law of War

Laurie R. Blank and Gregory P. Noone*

Book review by Anne Quintin, Teaching Assistant at the Geneva Academy of International Humanitarian Law and Human Rights, and PhD Candidate at the University of Geneva. The reviewer is also the former Public Affairs Officer for International Humanitarian Law at the International Committee of the Red Cross Delegation for North America.

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Knowledge of law is an essential condition for its effective application ...: man should be made familiar from childhood with the great principles of humanity and civilization, so that they may become deeply rooted in his consciousness.

Jean Pictet¹

Many will readily agree with Jean Pictet that in-depth knowledge of international humanitarian law (IHL) – also often referred to as the law of armed conflict (LOAC) or the laws of war – is necessary for lawyers, members of the armed

* Published by Wolters Kluwer, New York, 2013.

forces, humanitarian practitioners and others involved in or working on issues related to armed conflicts. Few will generally advocate for a broad, non-targeted dissemination among the public at large. And yet, some degree of understanding of the basic rules and principles applicable in situations of armed conflict may also be valuable for anyone interested in world politics and international affairs. What is the nature of the conflict in Afghanistan today, and why does that matter? Is the Islamic State an organized armed group? How does the law protect the civilian population in Syria or in the Central African Republic? Are chemical weapons prohibited, and if so, how? These are only some of the questions that any well-informed citizen may ask on a daily basis, and IHL provides the answers to all of them.

This being said, IHL remains a complex body of law, and the appropriate amount of information one needs to receive to answer such questions will vary greatly depending on the audience's profile and the direct relevance of IHL for their respective professions. For that reason, very few publications manage to address a broad range of audiences at once. Here, Laurie Blank and Greg Noone have actually succeeded in the almost impossible task of offering an IHL textbook which both experts and laypersons will find worthwhile. *International Law and Armed Conflict: Fundamental Principles and Contemporary Challenges in the Law of War* is a welcome new resource on IHL that anyone interested in learning more about this body of law should have within reach on their bookshelves.

One may at first assume that the book is but another addition to an already long list of existing manuals and textbooks on IHL/LOAC – but this would be a mistake. This new publication is distinct from other works in many respects, and the back cover rightly presents it as “an innovative and integrated resource”. While these seem to be commonly used promotional terms, they could not have been more appropriately used than for Blank and Noone's work. One of the book's main qualities indeed lies in its creative structure: the typical chapter titles one would see elsewhere, such as “Conflict Classification”, “Protection of the Civilian Population” or “Means and Methods of Warfare”, have disappeared, to be replaced by the much more self-explanatory and intuitive “five Ws” (or rather, in this case, four Ws and one H): Why, What, When, Who, and How. Following a very pedagogical approach, the reader is taken on a journey through the detailed rules and principles of IHL, while always being reminded of what the question is that they are seeking to answer.²

Secondly, in the authors' own words, the manual is designed to “bring LOAC to life in the classroom”.³ And indeed, every section is accompanied by

1 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949, Vol. I: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, International Committee of the Red Cross (ICRC), Geneva, 1952, p. 348.

2 Indeed, the book is structured as follows: Part I, “Why” (looks at the basic principles and the history of IHL); Part II, “What and When” (includes chapters on the definition of armed conflict, the classification of conflicts, and occupation); Part III, “Who” (with clear chapters on combatants and civilians, followed by a chapter on battlefield status in NIAC); Part IV, “How” (mainly split into three chapters dealing with conduct of hostilities); Part V, “Implementation and Enforcement”.

3 *International Law and Armed Conflict*, Preface, p. xxiv.

several excerpts taken from relevant practice and case law, which all contribute to persuading the reader that IHL is not just the sum of the Geneva Conventions and other relevant instruments, but is actually a lively and rapidly evolving body of law. The wide array of supporting documents shows the authors' perseverance and commitment in always finding the most appropriate texts to support their theoretical explanations. Professors, students and laypersons will be able to find the now unavoidable cases, those that have undoubtedly contributed to advancing IHL, such as the various decisions made by the Trial and Appeals Chambers of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the famous *Tadić* case,⁴ the International Court of Justice's (ICJ) *Wall* case advisory opinion,⁵ and the US Supreme Court's decision in *Hamdan v. Rumsfeld*.⁶ At the same time, scholars and researchers looking for additional sources will be introduced to less commonly cited but equally relevant resources. To mention but a couple of examples, the book contains excerpts from a decision by a Belgian military court regarding the UNOSOM II operation in Somalia,⁷ and passages from a constitutional review of Additional Protocol II to the Geneva Conventions by the Colombian Constitutional Court.⁸ The wealth of the sources also lies in their variety, both in terms of types of documents (ranging from court decisions to military manuals, and from positions of the International Committee of the Red Cross (ICRC) to personal accounts from former Judge Advocates General) and in terms of their geographical provenance (the book includes materials from the US, the UK, France, Israel, Colombia, Russia and South Africa, in addition to a range of international courts and tribunals).

On this last point, the prevalence of documents emanating from US case law, legislation or practice may give some readers the impression that the book is overly US-centric. The authors have voluntarily (and rightly) included considerations from, and discussions on IHL's interaction with, other branches of law, in particular international human rights law, international criminal law and national security law. While the perspective of the first two branches will be useful to readers around the globe, national security law is inevitably linked to domestic legislation. Many of these considerations thus relate to US constitutional law and will only

4 ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, reproduced in *International Law and Armed Conflict*, pp. 93–96, 137–138, 155–156, 593–598; ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-T, Judgment, 7 May 1997, reproduced in *International Law and Armed Conflict*, pp. 107–110; ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, 15 July 1999, reproduced in *International Law and Armed Conflict*, pp. 139–143, 286–288.

5 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *ICJ Reports*, 9 July 2004, pp. 136, 215, reproduced in *International Law and Armed Conflict*, pp. 30–31.

6 US Supreme Court, *Hamdan v. Rumsfeld*, 548 US 557, 2006, reproduced in *International Law and Armed Conflict*, pp. 162–164.

7 Tribunal Militaire (Belgium Military Court), *Ministre Public et Centre pour l'égalité des chances et la lutte contre le racisme c. C. et B.*, *Journal des Tribunaux*, 4 April 1998, p. 286, reproduced in *International Law and Armed Conflict*, p. 119–121.

8 Colombian Constitutional Court, *Constitutional Review of Additional Protocol II*, Ruling C-225/95, Re: File No. LAT-040, reproduced in *International Law and Armed Conflict*, pp. 48–49.

sound familiar to an American audience. This being said, complex references to national security law remain occasional in the book, and the overwhelming majority will be as useful to non-US readers as it will be to US ones. In the end, the book is an extremely comprehensive resource for American readers willing to understand the various legal ramifications at play in situations of armed conflict, and will introduce non-US readers to national security considerations which are essential to apprehend the decisions and legal interpretations of a country that has been a prominent influence on the development of IHL in recent decades.

A third challenge, for any new IHL/LOAC textbook, is to find the right balance between theory and operational reality. Professors and students need to be provided with the correct theoretical background, with the conventional and customary rules and principles that form the foundations of any body of law. Humanitarian practitioners and military members will at the same time need to feel that the writers understand the challenges of application and implementation in concrete situations. Here, *International Law and Armed Conflict* stands out from other IHL/LOAC textbooks and manuals, which often (necessarily) target specific audiences. The book indeed integrates several perspectives and accordingly manages to speak to a large public. This is undoubtedly the result of the authors' diverse expertise: they combine thirty-five years of practice working in the military, think tanks and academia. Their in-depth comprehension of these actors underlies the whole manual, and ensures that it is a realistic presentation of the operational environment in which such actors evolve. As Michael Schmitt notes in the Preface, the structure itself "mirror[s] the analytical approach that militaries take to the application of the law of armed conflict, often termed the 'right kind of conflict, right kind of person' approach".⁹ This is particularly laudable in a world where academia and the military often criticize one another for being ignorant of their respective realities. Blank and Noone have avoided this pitfall and have managed to offer an excellent theoretical resource while still doing justice to the crucial idea that studying and teaching IHL cannot be separated from the way it will be applied.

Of course, a textbook should not be evaluated only on the basis of the quality of the sources it contains. With their new publication, Blank and Noone not only confirm their profound knowledge of contemporary history, as attested by the numerous references to past conflicts, but also demonstrate a sense of discernment in identifying tomorrow's unanswered questions and challenges. Several sections in the book are devoted to cyber-operations, for instance, with an interesting discussion on the status of "hacktivists" and whether their conduct could ever amount to direct participation in hostilities resulting in a loss of protection against direct attack.¹⁰ The authors also address the question of the standards for detention in non-international armed conflict (NIAC), within the chapter on battlefield status in NIAC. While the ICRC is currently working on a four-year-long process aimed at strengthening the legal protection of victims in

⁹ *International Law and Armed Conflict*, Preface, p. xxiv.

¹⁰ *Ibid.*, p. 350, para. 8.

NIAC, which should bring forward new proposals for developing the law of NIAC, the authors already offer a discussion highlighting the main issues arising from the lack of conventional provisions regulating internment in NIAC.¹¹ In general, the lists of “questions for discussion” included at the end of each section provide a good opportunity to assess the theoretical knowledge just acquired, to apply it to contemporary practice, and to broaden the debate by including references to additional resources.

Furthermore, despite the relative US-centrism of the references, the authors have refused to follow the positions of the successive US administrations, and have made sure to also include controversial voices. For instance, the discussion of Articles 43 and 44 of Additional Protocol I, which redefine the definitions of combatant and prisoner-of-war status – and thus constitute one of the reasons why the US has refused to ratify the Additional Protocol – includes a presentation of the ICRC letter sent to President Reagan to explain why Article 44(3) actually represents progress in IHL.¹²

In the end, the only suggestion for improvement one could pass on to the authors is that aspects related to the protection of persons in the hands of the enemy could be expanded. The book currently seems to focus more on aspects related to conduct of hostilities, and overall dedicates surprisingly few pages to the question of detention and internment. While the status and treatment of prisoners of war is extensively discussed,¹³ civilian internees and protected civilians detained on suspicion of having committed offences are only briefly covered, and mainly through document excerpts.¹⁴ The authors present in detail the concept of protected civilians, including through relevant case law, but quickly move on to discussing the protection of the civilian population against attacks. This is probably the only regret one may have when reading *International Law and Armed Conflict* – although it remains a negligible one.

In conclusion, one can only commend Blank and Noone for offering a well-written, nuanced and multidisciplinary book that will prove useful to readers from a wide variety of backgrounds. The concern mentioned in the book’s preface that “the good news is that today attention is being devoted to the law of armed conflict to an unprecedented degree ... but the bad news is that much of the material produced is of substandard quality”¹⁵ has been addressed: those who are learning IHL through Blank and Noone’s book will gain a knowledge of that body of law which will definitely be of a high standard. The authors have not only succeeded in bringing the law to life in the classroom, but their conviction, accompanied by a natural, easy-to-read style, will often make the reader want to continue the discussions in person.

11 *Ibid.*, Chapter 9, “Battlefield Status in Non-International Armed Conflict”, Part C, “Standards for Detention in NIAC”, pp. 386–392.

12 *Ibid.*, Chapter 7, “Combatants”, pp. 235–240.

13 *Ibid.*, Chapter 7, “Combatants”, Part C, “Prisoners of War: Purposes and Protection”, pp. 255–276.

14 *Ibid.*, Chapter 6, “The Law of Belligerent Occupation”, pp. 196–198.

15 *Ibid.*, Preface, p. xxxix.

BOOKS AND ARTICLES

New publications in humanitarian action and the law

This selection is based on the new acquisitions of the ICRC Library and Public Archives

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Arms

Articles

Jack M. Beard, “Autonomous Weapons and Human Responsibilities”, *Georgetown Journal of International Law*, Vol. 45, No. 3, 2014, pp. 617–681.

Bill Boothby, “Autonomous Attack: Opportunity or Spectre?”, *Yearbook of International Humanitarian Law*, Vol. 16, 2013, pp. 71–88.

Denise Garcia, “Humanitarian Security Regimes”, *International Affairs*, Vol. 91, No. 1, 2015, pp. 55–75.

ICRC Library and Research Services

The ICRC’s Research and Library Service is a public resource presently offering more than 25,000 books and articles, as well as 300 journals. The collection focuses on international humanitarian law, the work of the ICRC and the International Red Cross and Red Crescent Movement, the challenges of humanitarian work and issues of humanitarian concern in war, and the history and development of armed conflict. Other topics include international criminal law, human rights, weapons, detention, and refugees and displaced persons. The ICRC has acquired publications and periodicals since 1863, and holds specific collections including rare documents dating back to the foundation of the organization.

Grégoire Mallard and Paolo Foradori (eds), “The Middle East and the Atom: Continued Anarchy or a Regional Nuclear Energy Community?”, *Global Governance: A Review of Multilateralism and International Organizations*, Vol. 20, No. 4, 2014, pp. 499–544.

Gregor Noll, “Weaponising Neurotechnology: International Humanitarian Law and the Loss of Language”, *London Review of International Law*, Vol. 2, No. 2, 2014, pp. 201–231.

Parthan Shiv Vishvanathan, “A Game of Drones: The Legality of the Use of Unmanned Aerial Vehicles in Targeted Strikes and Targeted Killings”, *AALCO Journal of International Law*, Vol. 2, No. 1, 2013, pp. 165–180.

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Articles

Seira Yun, “Breaking Imaginary Barriers: Obligations of Armed Non-State Actors Under General Human Rights Law: The Case of the Optional Protocol to the Convention on the Rights of the Child”, *Journal of International Humanitarian Legal Studies*, Vol. 5, No. 1–2, 2014, pp. 213–257.

Detention

Articles

Jacques Hartmann, “The Copenhagen Process: Principles and Guidelines”, *Yearbook of International Humanitarian Law*, Vol. 16, 2013, pp. 3–32.

Hyeran Jo and Catarina P. Thompson, “Legitimacy and Compliance with International Law: Access to Detainees in Civil Conflicts, 1991–2006”, *British Journal of Political Science*, Vol. 44, No. 2, 2014, pp. 323–355.

James Turner Johnson, “A Dialogue: Ethics, Law, and the Question of Detention in Non-International Armed Conflicts”, *Yearbook of International Humanitarian Law*, Vol. 16, 2013, pp. 53–68.

Ramin Mahnad, “Beyond Process: The Material Framework for Detention and the Particularities of Non-International Armed Conflict”, *Yearbook of International Humanitarian Law*, Vol. 16, 2013, pp. 33–51.

Hazuki Tate, “Hospitaliser, interner et rapatrier: La Suisse et les prisonniers de guerre”, *Relations Internationales*, Vol. 159, 2014, pp. 35–47.

Thomas Winkler, “The Copenhagen Process and the Copenhagen Process Principles and Guidelines on the Handling of Detainees in International Military Operations: Challenges, Criticism, and the Way Ahead”, *Journal of International Humanitarian Legal Studies*, Vol. 5, No. 1–2, 2014, pp. 258–288.

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Articles

Jeff D. Colgan, “Oil, Domestic Conflict, and Opportunities for Democratization”, *Journal of Peace Research*, Vol. 52, No. 1, 2015, pp. 3–16.

Geopolitics – Africa

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Diane Frost, *From the Pit to the Market: Politics and the Diamond Economy in Sierra Leone*, James Currey, Woodbridge, 2012, 226 pp.

Danny Hoffman, *The War Machines: Young Men and Violence in Sierra Leone and Liberia*, Duke University Press, Durham, NC and London, 2011, 295 pp.

Articles

Jean-Arnold de Clermont, “Surmonter la crise en Centrafrique”, *Etudes: Revue de Culture Contemporaine*, Vol. 4213, 2015, pp. 7–17.

Lotje de Vries and Peter Hakim Justin, “Un mode de gouvernement mis en échec: Dynamiques de conflit au Soudan du Sud, au-delà de la crise politique et humanitaire”, *Politique Africaine*, Vol. 135, 2014, pp. 159–175.

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Max Hastings, *The Korean War*, Pan Books, London, 2010, 576 pp.

Pierre Journoud (ed.), *La guerre de Corée et ses enjeux stratégiques de 1950 à nos jours*, L’Harmattan, Paris, 2013, 478 pp.

Jude Lal Fernando, *Religion, Conflict and Peace in Sri Lanka: The Politics of Interpretation of Nationhoods*, LIT Verlag, Berlin, Münster, Wien, Zürich, London, 2013, 362 pp.

Jeffrey Lewis, *Paper Tigers: China’s Nuclear Posture*, Adelphi series, Vol. 446, International Institute for Strategic Studies, London, 2014, 158 pp.

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“Corée du Nord: Anatomie d’une monarchie communiste”, *Diplomatie: Affaires Stratégiques et Relations Internationales*, Vol. 71, 2014, pp. 39–61.

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Articles

Roy Allison, “Russian ‘Deniable’ Intervention in Ukraine: How and Why Russia Broke the Rules”, *International Affairs*, Vol. 90, No. 6, 2014, pp. 1255–1297.

Ute Finckh-Krämer, “Die Ukraine-Krise: Entscheidung über die Zukunft einer europäischen Friedensordnung”, *Die Friedens-Warte: Journal of International Peace and Organization*, Vol. 89, No. 1–2, 2014, pp. 17–290.

Hans-Joachim Heintze, “Der völkerrechtliche Status der Krim und ihrer Bewohner”, *Die Friedens-Warte: Journal of International Peace and Organization*, Vol. 89, No. 1–2, 2014, pp. 153–179.

Geopolitics – Middle East and North Africa

Books

Toby Dodge and Emily Hokayem (eds), *Middle Eastern Security: The US Pivot and the Rise of ISIS*, Adelphi series, Vol. 447–448, International Institute for Strategic Studies, London, 2014, 256 pp.

Articles

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Emile Hokayem and Charles Lister, “Syria’s Spreading Woes”, *Survival*, Vol. 56, No. 6, 2014–2015, pp. 59–133.

Fred H. Lawson, “Syria’s Mutating Civil War and Its Impact on Turkey, Iraq and Iran”, *International Affairs*, Vol. 90, No. 6, 2014, pp. 1351–1365.

Health/medicine

Articles

Eve Massingham and Kelisiana Thynne, “Promoting Access to Health Care in ‘Other Situations of Violence’: Time to Reignite the Debate on International Regulation”, *Journal of International Humanitarian Legal Studies*, Vol. 5, No. 1–2, 2014, pp. 105–129.

History

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“Etats neutres et neutralité dans la Première Guerre mondiale: I”, *Relations Internationales*, Vol. 159, 2014, 100 pp.

Thomas de Waal, “The G-Word: The Armenian Massacre and the Politics of Genocide”, *Foreign Affairs*, Vol. 94, No. 1, 2015, pp. 136–148.

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