

## OPINION NOTE



# Médecins Sans Frontières and the ICRC: matters of principle

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How do Médecins Sans Frontières (MSF) and the International Committee of the Red Cross (ICRC) differ, and how are they alike? The question came from the Editor-in-chief of this *Review*, but it is regularly discussed at MSF, which might just as well have queried a member of the ICRC on the same subject. It comes up all the more frequently because, since the early 1990s, the two organisations have often worked in close cooperation, particularly in cities at war. Their central leaderships meet regularly; their members now speak the same language, and agree about where to draw the line, in particular, regarding the proper relationship between civilian humanitarian agencies and the military. In short, their ‘Dunantist’ mission – inherent for one, acquired for the other – seems to bring them together to the point where there is no need to talk about the difference or differences between them, the main point being what they have in common. This is what I discuss below.

I should first explain that it is not my intention here to go into the specifics of the relief efforts, which for MSF are basically limited to medical care, while for the ICRC they have many other facets. As a result, any attempt to make a comparative assessment of these organisations' overall action would be very difficult. Instead, I focus on their operational choices in conflict situations, the principles underlying those choices, and the public expression of these principles, while noting that, in contrast to the ICRC, working in war zones accounts for no more than a third of all MSF operations. Defining the scope of the comparison in this way facilitates discussion of the two organisations' discourse and action in similar situations. However, it leaves intact a major difficulty with the argument, which relates to their very different structures. When the ICRC makes a public pronouncement, it speaks with one voice. Its appeals and statements are clearly signed 'International Committee Geneva', in line with the words appearing on the emblems. The same is not true for MSF. It consists of five national sections known as operational centres,<sup>1</sup> which are attached to partner sections. Each one has its own history and organisational form – in short, its culture – and disagreements between, and within, the sections are rife. This complicates and undermines, but does not prohibit, the treatment of MSF as a homogeneous entity. This article is not, therefore, the expression of a shared doctrine, but of ideas running through the overall MSF movement, which it does not claim to represent.

## The myth of Biafra

It is commonly acknowledged that MSF was established in response to the commitment to remain silent made by French Red Cross personnel working under the auspices of the ICRC during the war in Biafra (1967–1970). Hence, MSF began by rejecting a predetermined neutrality that the French doctors viewed as passive complicity with the Nigerian government, which had been accused by its adversaries of committing genocide. The silence of all parties, including the ICRC, about the annihilation of the Jews under the Third Reich formed the backdrop to this accusation.

'I had signed; I was a perjurer. Upon my return [from Biafra] to France', wrote Bernard Kouchner, 'I formed a committee against genocide in Biafra. My reasoning was simple. I did not want to repeat the mistake of the ICRC, which, during the 1939–1945 war, had not condemned the Nazi extermination camps. That was the origin of Médecins Sans Frontières and Médecins du Monde (Doctors of the World)'.<sup>2</sup>

In this passage, Kouchner described the *raison d'être* behind 'bearing witness' – a moral challenge, an action slogan, a call for mobilisation. It was necessary to free oneself from an organisation that, bound by diplomatic constraints, was repeating

1 Paris, Brussels, Geneva, Amsterdam, and Barcelona, in order of establishment.

2 Bernard Kouchner, *Charité Business*, Editions Le Pré aux Clercs, Paris, 1986, p. 217.

the ‘mistake’ made during the Second World War.<sup>3</sup> Speaking out, denouncing, standing up for victims against their murderers, such was to be the thrust of the new humanitarian commitment embodied by MSF, founded in 1971 – in opposition, therefore, to the ‘culture of silence’ imposed by the Red Cross.

The historian Marie-Luce Desgrandschamps has shown what this account owes to retrospective reconstruction, stressing in particular that the articles published by the French doctors were well received in Geneva. The ICRC even asked the newspaper *Le Monde* for permission to reprint large excerpts from one of them in the *International Review of the Red Cross*, which was done in January 1969.<sup>4</sup> It is true that in these articles Bernard Kouchner and Max Récamier eloquently described the horrors of the Biafra war and the hard work of the humanitarian volunteers, and did so without making accusations against the Nigerian government. Some of the French doctors felt the need to go further and to denounce the atrocities committed by the federal troops, while others confined themselves to a more tactful reminder of the government’s commitments. In fact, Desgrandschamps notes, there was a dividing line running ‘apparently not only between the small number of French doctors and the ICRC, but also within the ICRC itself, between the staff in Biafra and those responsible for managing the whole operation’. The ICRC’s publication of the article from *Le Monde*, like the subsequent return of its authors to Biafra, again with the Red Cross, proves that the tensions were far from the breaking point that was described years later.

Nevertheless, the myth of a condemnation leading to a break with the Red Cross, of a refusal to consent through silence to the alleged genocide against the Biafrans, emerged as a story of origins – not at the time, incidentally, but at the end of the 1970s when humanitarian action and its spokespersons began to interest the media and even to make headlines occasionally. It was only then that the myth became the distinctive brand of MSF,<sup>5</sup> in the eyes of its members and the media: ‘Aiding the victims is a humanitarian approach; denouncing their executioners remains a militant one. This mix is what makes MSF such a valuable organisation’, *Le Monde* editorialized, on the day of the announcement in 1999 that MSF had been awarded the Nobel Peace Prize.<sup>6</sup> Contrary to what was abundantly said and written

3 Jean-Claude Favez, with Geneviève Billeter, *Une mission impossible? Le CICR, les déportations et les camps de concentration nazis*, Éditions Payot, Lausanne, 1988 [published in English as Jean-Claude Favez, John Fletcher and Beryl Fletcher, *The Red Cross and the Holocaust*, Cambridge University Press, Cambridge, 1999 ].

4 Marie-Luce Desgrandschamps, ‘Revenir sur le mythe fondateur de Médecins Sans Frontières: les relations entre les médecins français et le CICR pendant la guerre du Biafra (1967–1970)’ [Retracing the founding myth of Médecins Sans Frontières: Relations between French doctors and the ICRC during the war in Biafra (1967–1970)], in *Relations internationales*, No. 146, April–June 2011, available at: <http://www.cairn.info/revue-relations-internationales-2011-2-page-95.htm> (all the Internet references were accessed in January 2013, unless otherwise stated).

5 For a detailed analysis of MSF’s founding myths, see Rony Brauman, ‘Les liaisons dangereuses du témoignage humanitaire et de la propagande politique’ [The dangerous relationships between bearing witness and political propaganda], in Marc Le Pape, Johanna Siméant and Claudine Vidal (eds), *Crises extrêmes: Face aux massacres, aux guerres civiles et aux génocides* [Extreme crises: Facing massacres, civil wars and genocide], Éditions La Découverte, Paris, 2006, available at: <http://www.msf-crash.org/publications/#article99>.

6 ‘La cause des victimes’ [On the side of the victims], in *Le Monde*, 17 October 1999.

on that occasion, it must be pointed out that the concept of humanitarian intervention was never mentioned in connection with Biafra; that term (coined by Bernard Kouchner) dates from the 1980s and refers to the ‘right’ that humanitarian doctors gave themselves to cross borders clandestinely in order to reach certain war zones to which access was prohibited. As to the accusation of genocide, which was understandable in the light of the atrocities committed by the federal army, we know that it was mainly a political tool, a means of mobilizing support for Biafra’s independence. What was known at the time as ‘bearing witness’ therefore belongs in the category of psychological action or, in more mundane terms, war propaganda.

Is this to say – this episode being at best only a misunderstanding, and at worst a political manipulation – that once the myth has been deconstructed, MSF will at last yield to the ICRC’s arguments and define itself as the ICRC’s medical wing? No, but the issue continually arises, as evidenced by the later history of MSF: public statements of position, and denunciation, where necessary, have been both a constant affirmation of MSF and an internal stumbling block throughout its existence. Thus, the charter adopted by MSF at its founding stated that: ‘Doctors Without Borders observes neutrality and . . . complete independence, barring it from any interference in the internal affairs of the States, governments and parties in whose territory it is called upon to serve.’ As if to dispel any uncertainty, the charter reaffirmed that MSF members must ‘refrain from passing judgement or publicly expressing an opinion – favourable or unfavourable – with regard to events and to the forces and leaders that accept their aid’. A stronger condemnation of the positions taken by some of the founders – of whom only a small majority had worked in Biafra – would be hard to find. No doubt the intention was to give prior assurances to the governments of the countries in which the brand-new organisation planned to work. Not being a founder of MSF, and having discovered no traces of the debates between them, the author is not in a position to say with certainty what reasons led to the adoption of these provisions. The fact remains that, in adopting such a charter, MSF aligned itself with the tradition of a silent humanitarian agency, wholly focused on medical aid, a role that would not have been disowned by the ICRC – which, for that matter, remained the primary model for MSF members. As we will see, throughout its history, MSF has been, and remains, torn between a desire to speak out strongly and a discreet approach more conducive to good relations with the political authorities.

## What are we talking about?

In an article entitled ‘Speaking out or remaining silent in humanitarian work’,<sup>7</sup> Jakob Kellenberger, the former president of the ICRC, recalls that, in order to carry out its exclusive mission of protecting and assisting victims of armed conflict, the ICRC must ensure that its presence is accepted by all parties. This is the essential

<sup>7</sup> Jakob Kellenberger, ‘Speaking out or remaining silent in humanitarian work’, in *International Review of the Red Cross (IRRC)*, Vol. 86, No. 855, 2004, pp. 593–609.

condition for implementing its mandate throughout the world. He adds that the ICRC does not refrain from commenting publicly in some situations, but that it must avoid any one-sided or overly explicit condemnation of one party. Bearing in mind that the ICRC can then be accused of helping to maintain an acceptable image of the oppressors, he notes that the action of numerous advocacy organisations nullifies this argument and exempts the ICRC from having to review its priorities. It must be acknowledged that, in many situations, MSF acts no differently, at times even going so far as to renounce in writing any public expression not explicitly approved in advance by the governmental authorities. Such was the case in Sri Lanka during the governmental assault on the Liberation Tigers of Tamil Eelam between January and April 2009, which ended in the crushing of the separatists and the death by bombing of tens of thousands of civilians. Having decided to conduct its terminal offensive in secret, the government had declared the combat zones off-limits to all humanitarian organisations except the ICRC, which alone was granted access to them in order to evacuate the wounded by sea. In this extreme state of affairs, MSF agreed, in the words of the president of the French section, to ‘abdicate [a strategy of roundly criticizing institutions], and wait for the order for all-out war to be replaced by one in which humanitarian aid can play its part’.<sup>8</sup>

It is not the aim of this article to reconstruct the tortuous path of the various public positions and controversies and the tensions that they aroused.<sup>9</sup> Having recalled that the demand for a critical or even denunciatory discourse is, along with medical care in crisis situations, MSF’s ‘signature’ – that which distances it de facto from the ICRC – the author turns instead to the interpretation of the principles common to both organisations, the ‘Dunantism’ to which MSF also lays claim, and which unites them.<sup>10</sup> As Marie-Luce Desgrandschamps has shown,<sup>11</sup> it was ultimately because of their political support for the cause of Biafran independence that several of MSF’s founders questioned the validity of the ICRC’s neutrality. While their successors surely do not identify with that position, they nonetheless, like the founders concerned, reject an ‘apolitical’ humanitarianism that takes refuge in a predetermined strict neutrality, which forbids them to make any public statement that could be interpreted as partisan. The ICRC’s bias toward confidentiality is not, of course, a vow of silence: the ICRC makes public declarations, but does so mainly in the form of appeals to warring parties to respect their treaty obligations. It may also, as was the case following the massacre in Douéké, Côte d’Ivoire (March 2011), bring to light atrocities and indirectly

8 Marie-Pierre Allié, ‘Introduction: Acting at Any Price?’, in Claire Magone, Michaël Neumann and Fabrice Weissman (eds), *Humanitarian Negotiations Revealed: The MSF Experience*, Hurst, London, 2011. See also, Fabrice Weissman, ‘Sri Lanka. Amid All-out War’, *idem*.

9 See, on this subject, Anne Vallaeys, *MSF: La biographie* [MSF: The biography], Editions Fayard, Paris, 2004, and Laurence Binet (ed.), *Prises de position publiques* [‘Case Studies: Médecins Sans Frontières Speaks Out’ series], MSF International, Paris, 2004.

10 It is common to distinguish between Dunantist organizations, such as the ICRC, MSF, and Save the Children, which distance themselves from the interests of the state, and ‘Wilsonian organizations, which consider American values and, more broadly, those of democratic states as a force for good.

11 M.-L. Desgrandschamps, above note 4.

implicate the guilty parties without naming them.<sup>12</sup> On an exceptional basis, during the Darfur war in 2004, for example, the ICRC has gone as far as to pinpoint the specific responsibility of one government in the commission of mass abuses.<sup>13</sup> It can be easily imagined that, as the guardian and promoter of international humanitarian law, and therefore as an actor in diplomacy, the ICRC would remain within the limits assigned to it by the law, while retaining the ability to act that the law specifically confers on it. It should also be noted that the ICRC's public presence has intensified in the past two years.

While for its part denying any statutory obligation to remain silent, MSF amended its charter in 1991, deleting the lines referring to 'interference in the internal affairs of States' and prohibiting the public expression of a judgement, and replacing them with references to the principles of neutrality, impartiality, and independence. This adjustment of its founding text in light of subsequent practices conflicting with it does not, however, allow MSF to speak as freely as the human rights organisations. Like the ICRC, MSF gives priority to providing tangible aid on the ground, a priority to which it subordinates any other aims. Nevertheless, it avails itself of the 'right' to speak out publicly against repeated abuses of which its members are the sole witnesses, asserting that it puts in question its presence in the field when the latter appears to be part of the machinery of oppression.<sup>14</sup> This is what the Belgian section of MSF did, for example, when denouncing the torture practised in Misrata in January 2012 by the new Libyan authorities who expected the doctors to merely patch up the victims so that the interrogations could resume.<sup>15</sup> What MSF rejected in this instance was not just torture, which is practised in many other countries in which it operates, rather, it refused to be an active accomplice, helping to optimize the results of torture. This decision in turn elicited a response from the ICRC in the form of an operational update underscoring its delegates' presence in the detention centres – an indirect criticism of MSF's position.<sup>16</sup> The need to avoid becoming the medical enabler of oppression, whether it involves torture, forced population displacement, or famine, is the main purpose of the public statements of position that may, if necessary, lead to a withdrawal or an expulsion of MSF teams. When it is impossible to prevent the commission of a crime, an outside party can always avoid taking part in it. MSF's history is punctuated by

12 ICRC, 'Côte d'Ivoire: hundreds of civilians killed in Duékoué', News Release No. 11/82, 2 April 2011, available at: <http://www.icrc.org/eng/resources/documents/news-release/2011/cote-d-ivoire-news-2011-01-04.htm>.

13 Jakob Kellenberger, 'Too little, too late for the victims of Darfur', in *International Herald Tribune*, 30 August 2004.

14 The ICRC also reserves the right to issue a public condemnation when four conditions are met. See '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', in *International Review of the Red Cross*, Vol. 87, No. 858, 2005, p. 398, available at: [http://www.icrc.org/eng/assets/files/other/irrc\\_858\\_violations\\_ihl.pdf](http://www.icrc.org/eng/assets/files/other/irrc_858_violations_ihl.pdf).

15 MSF, 'Libye: Des détenus torturés et privés de soins médicaux' [Detainees tortured and denied medical care], in *msf.azg.be*, 26 January 2012, available at: <http://www.msf-azg.be/fr/presse/libye-des-d%C3%A9tenus-tortur%C3%A9s-et-priv%C3%A9s-de-soinsm%C3%A9dicaux>.

16 ICRC, 'Libya: hardship and danger remain', Operational Update No. 12/01, 16 February 2012, available at: <http://www.icrc.org/eng/resources/documents/update/2012/libya-update-2012-02-16.htm>.

such positions, which stem from an analysis of its political responsibilities rather than from bearing witness in the strict sense. Cambodia (1980), Ethiopia (1985), Bosnia (1994), the Rwandan refugee camps in Goma, Democratic Republic of the Congo (1994), the war in the Congo (1996–1997), North Korea (1999), Darfur (2005), and Libya (2012) are among the high points of this history, to mention only conflict situations, which are not the only examples in this regard as MSF works in many contexts other than wars.<sup>17</sup>

## Principles with varying interpretations

None of these positions is immune from criticism, and all have been the subject of internal discussions and, occasionally, public controversy. Sometimes what is at issue is the cogency of these positions, but for the most part it is the fact that they violate the principle of neutrality. In the first place, while compromise is always necessary for action, if that compromise crosses a certain threshold it becomes a surrender of principle. There is no perfectly reliable means of determining where that threshold lies. The danger exists that if this question is continually invoked, it will amount to empty rhetoric – and it must be acknowledged that ‘first, do no harm’ has become a widely echoed slogan in humanitarian forums. Yet if we are aware of the risk that our action may adversely affect those whom it was intended to help, we can guard against it. If, for example, we agree that, in extreme cases, abstinence may be preferable to action (putting into practice the Hippocratic oath), that gives us one of the main tools we need to negotiate with warring parties, or simply to exert pressure on them, as it leaves us the option of publicly implicating them. Second, as the concept of neutrality is vaguer and more open to interpretation than a simple refusal to take part in political controversies, such public positions do not in themselves undermine the principle of neutrality. Indeed, the historian Irène Hermann reminds us that:

in time of war or conflict, ‘neutrality’ may indicate a guarantee that a person will not be subjected to the ambient violence, and it is then similar to *inviolability*. In a less traumatic context, it is currently acquiring a second, derived meaning, and thus, like the word *impartiality*, designates those who do not belong to any camp. Lastly, the concept has many analogies to the notion of *independence* and thus relates to the possibility of taking decisions without needing to refer them to a higher authority.<sup>18</sup>

Any criticism addressed publicly to a political authority can be described (generally by the latter and its supporters) as breaking with ‘political’ neutrality. Strictly

17 See F. Weissmann, ‘Silence Heals . . . from the Cold War to the War on Terror, MSF Speaks Out: a Brief History’, in Magone *et al.*, above note 8.

18 Irène Hermann, ‘La Croix-Rouge et la neutralité’ [The Red Cross and neutrality], unpublished paper delivered at ‘Action humanitaire et complexité’ [Humanitarian action and complexity] symposium, Fribourg, 8 May 2009. I thank the author for having sent me the text.



speaking, however, it can be argued that it is the assent to political authority that constitutes such a break.

These lines are being written as war rages in Syria. Having succeeded in setting up three surgical units in opposition-held territory, without obtaining the government's permission to work there, MSF is continuing its efforts to establish itself legally, through one of its other sections not present in the 'liberated areas' (the South African section). In February 2012, on the basis of evidence gathered from wounded Syrians whom it was caring for in Jordan, MSF denounced the official authorities' use of medical facilities to capture alleged opponents.<sup>19</sup> It may be argued that taking such a public position is tantamount to accusing one of the warring parties and therefore represents a breach – one more! – of the principle of neutrality. On the other hand, it may be asserted that the authorities' action signals a breach of the principle that medical facilities are inviolable, and that to publicise the violation of a basic principle cannot be considered a breach of that principle. For its part, the ICRC is conducting a large-scale aid operation in Syria alongside the Syrian Arab Red Crescent (the National Society), providing food and water to more than a million people. Acting through a National Red Cross or Red Crescent Society can make for outstanding efficiency, as was the case during the worst moments of the war in Somalia, but it may raise issues in other circumstances, such as the Syrian armed conflict. While there can be no doubt that the members of the National Society's local branches are endeavouring to act in the best interests of the victims, whoever they may be, the fact remains that this organisation, like its counterparts, defines itself as an 'auxiliary of the public authorities', and therefore of the armed forces. This accounts in part for the hostility to which it has been subjected by Syrian armed groups (without, of course, justifying the murderous attacks carried out by some of them against the National Society's employees) and leads to questions about the impartiality of the ICRC's operations in Syria (as MSF's presence in opposition-held territory may also do). Inasmuch as the ICRC's observations concerning its visits to prisoners of war and civilian internees are confidential, that is, restricted to the authorities – in that country as elsewhere – we are unable to incorporate them into our analysis.

While recognizing that the goods provided by the ICRC are very useful and even essential to those who receive them, one may ask whether the ICRC's distribution priorities conform to the principle of impartiality, because, under such constraints, they cannot be commensurate with the scale of the needs. There again, however, we must first bear in mind the variable meanings of this seemingly clear and unequivocal concept (impartiality). Reflecting on the principles of commitment of the international humanitarian organisations, the philosopher Jennifer Rubinstein rightly highlights the tension between two equally humanitarian aims – prioritising those worst off and maximizing harm reduction. These are two different ways of meeting the needs created by a crisis – two ways of operating that

19 MSF, 'En Syrie, la médecine est utilisée comme une arme de persécution' [In Syria, medicine is used as a weapon of persecution], in *msf.fr*, 8 February 2012, available at: <http://msf.fr/presse/communiqués/en-syrie-medecine-est-utilisee-comme-arme-persecution>.



are certainly not always mutually exclusive, but that can in some cases conflict with each other and be reflected in different operational set-ups.<sup>20</sup> Thus, MSF-Holland clearly states its aim of reaching ‘those most abused and/or most in need in any context – over attempts to have the greatest impact for the greatest number’.<sup>21</sup> In other words, when the two aims cannot be achieved simultaneously, the former takes precedence over the latter. There is a similar order of priorities in Iraq, where MSF is focusing on complex surgeries, while the ICRC’s action extends beyond its traditional areas of activity (prisoners, the missing) to repairing infrastructure (water, electricity) and building agricultural capacity.

### Political meaning of the action

MSF’s and the ICRC’s choice of priorities in Syria can be recognized here, though we must be careful not to characterise them as representing exclusive leanings. Like their counterparts, both organisations plan their various programmes in accordance with one or another of those priorities. The point here is not to judge them morally, but to emphasise that, as we saw in other respects with regard to neutrality, impartiality lends itself to very different or even opposing practical interpretations that are also equally valid in terms of general humanitarian aims. In all situations, humanitarian organisations are compelled either to decide between these operational strategies or to combine them. It is therefore in their interest to clarify them, in the first place for themselves, for to do otherwise is to be content with putting forth abstract principles – useless moral and legal standards that they would be hard-pressed to enact. With regard to Syria, the ICRC chose to base its public communication on a ‘constructive dialogue’ with the government. This choice, reflected in the satisfaction, however cautious and conditional, expressed by the ICRC president after meetings with the highest authorities in Damascus, can only intensify the questioning of its impartiality. States are of course required to respect the impartiality of the ICRC and other humanitarian organisations, but in the final analysis the humanitarians are the ones who must be accountable for their decisions. In fact, contacts with the opposition groups were only fleetingly mentioned in the news releases and statements issued after the president’s most recent visit to Damascus in September 2012. The failure, for security reasons, of several attempts to send cross-border convoys to people under the control of the opposition forces, and the difficulty of identifying contacts regarded as credible among them, are the main reasons for the ICRC’s absence from the Syrian ‘liberated areas’,<sup>22</sup> with the

20 Jennifer C. Rubinstein, ‘The distributive commitments of international NGOs’, in M. Barnett and T. Weiss (eds), *Humanitarianism In Question: Politics, Power, Ethics*, Cornell University Press, New York, 2008.

21 MSF-Holland, *Middle-Term Policy, 1/2003-12/2005*, cited by J. C. Rubinstein, in M. Barnett and T. Weiss (eds), above note 20, p. 221.

22 Editor’s note: For an ICRC position on issues related to the impartiality of humanitarian aid in Syria, see Pierre Krähenbühl, ‘There are no “good” or “bad” civilians in Syria – we must help all who need aid’, in *The Guardian*, 3 March 2013, available at <http://www.icrc.org/eng/resources/documents/feature/2013/03-05-syria-aid-krachenbuhl.htm> (last visited March 2013). For examples of ICRC activities carried out across

ICRC affirming its stubborn determination to reach all victims of the conflict from Damascus.<sup>23</sup>

Operations that are illegal under the law of the country concerned and international humanitarian law are rare for MSF. On the one hand, they are closely dependent on specific political configurations; on the other hand, MSF wishes to maintain proper relations with governments as this is generally the necessary condition for maximising the services provided. However, given the simple fact that some aid organisations have succeeded in establishing themselves in parts of Syria under the control of opposition groups, an observer is forced to conclude that, in the ICRC's view, laudable humanitarian efforts are being made by Damascus, whereas the opposition continues to require appeals for compliance with humanitarian law. In pointing out this asymmetry, it is not the ICRC's action that we are discussing, but its discourse about such action and hence the political meaning that the organisation attributes to it. It is undoubtedly here, in the political meaning attributed to the action, that the basic difference between the two organisations resides. For MSF, as soon as it becomes thinkable, and hence possible, to set up medical services in an area controlled by an opposition force, it is *necessary* to do so. If it is deemed useful to set up illegal medical services, then the only considerations that are taken into account are practical ones (whether a neighbouring country will authorise access, whether there is a liberated area, whether credible partners can be identified). From MSF's point of view, therefore, to decide instead to give priority to dialogue with the legal authorities in order to operate from government-controlled areas stems from a legitimate concern that MSF rejects, or from what amounts, by default, to a political choice, rather than a purely pragmatic one. Institutional constraints, like security problems and operational procedures, are specific and must be kept in mind if we are to understand this difference in positioning, but they do not fully account for it. The particular cultures of the two organisations – the way that they present their histories to themselves and others, and either do or do not discuss, internally and publicly, their relationships with political authorities and forces – must also be considered.

During the Libyan war, the ICRC immediately established itself in the 'liberated areas',<sup>24</sup> a decision that was remarkable for its rarity. Although this way of operating was introduced in Biafra under the auspices of the Red Cross, which made that choice after the Christian organisations had done so, it has become an identity

front lines, see, e.g., 'Syria: aid reaches beleaguered population in Homs and Harasta', Operational Update No. 14/2012, 25 October 2012, available at: [www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-10-25.htm](http://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-10-25.htm); 'Syria: assistance reaches people in Old City of Homs', News Release No. 12/213, 4 November 2012, available at: <http://www.icrc.org/eng/resources/documents/news-release/2012/11-04-syria-homs.htm>; and 'Syria: Humanitarian situation catastrophic', Press Briefing, 19 February 2013, available at: <http://www.icrc.org/eng/resources/documents/press-briefing/2013/02-15-syria-humanitarian-situation.htm>.

23 Author's interviews with several ICRC members in early November 2012.

24 Editor's note: In accordance with its mission, the ICRC seeks, rather, to be as close as possible to the victims in all the conflict situations in which it works. Many recent operations also show that the ICRC operates on both sides of the front lines. For further information on each ICRC operation, see 'Where we work – the ICRC worldwide', available at: <http://www.icrc.org/eng/where-we-work/index.jsp>.

marker for MSF and an exception for the ICRC. It is symbolically significant for MSF because it is consonant with its story of origins. This *modus operandi* indicates the way in which the organisation believes it can be most useful in some war situations, and justifies the considerable resources devoted to it. Beyond the Syrian context, however, in war situations and in peacetime, MSF allocates its resources in accordance with criteria that are subject to the same elastic interpretation of its principles and to the same ethical discussion as the ICRC's. To assert one's impartiality is to express an intention that is undoubtedly valuable, but that says nothing about the content of the action.

## Acting and denouncing

The question of publicly condemning atrocities committed by warring parties is, however, addressed differently by the two organisations, as we saw with regard to the issues of torture and attacks on medical facilities. However, we are a long way from a striking contrast. Although more inclined than the ICRC to take public positions for the reasons set out at the beginning of this article, and because it is not bound by an obligation of confidentiality, MSF actually ventures to do so less often than when it was first founded, mainly because anti-totalitarian activism, which was the basis of its public condemnations during the 1970s, lost its relevance with the end of the Cold War. Another reason is that, in the context of the liberal neo-interventionism of the 1990s, greater emphasis was placed on critical analysis of the ways in which aid was being strategically manipulated. In these new conflicts, the critique of humanitarian rhetoric and of the use of aid for counterinsurrection purposes took precedence over the denunciation of crimes that had been exposed by the media and by human rights organisations, particularly Human Rights Watch; such organisations became then far more active in armed conflict situations than they had been previously. Breaking with the Wilsonism of its roots, MSF gradually moved closer to Dunantism. Did it go so far as to merge with it? It may sometimes appear so, to the regret of a significant portion of MSF's membership. In any event, MSF's rapprochement with the ICRC makes any clear distinction between the two organisations on this point impossible. Yet if there is one episode of recent history that led to criticism within MSF, it was the ICRC's silence about the torture in Abu Ghraib.<sup>25</sup> Many MSF members, including the author of this article, believed that the ICRC itself was the source of the leak of its report on Iraqi prisons. There was great disappointment when it transpired that the information came from an employee of the United States administration, for what we had seen as the building of a political relationship of forces turned out in the end to be no more than an accident. 'We are active in more than 70 countries and we visit more than 460,000 detainees. That's our mission. If we commented publicly on each of our visits, we would no longer have access to prisoners', the ICRC spokesperson explained at the

25 The 'Abu Ghraib scandal' broke out in May 2004, with the publication of photos taken by US soldiers showing the abuses that they were inflicting on Iraqi prisoners.

time.<sup>26</sup> No doubt, but it may be assumed that publishing the photographs and disclosing the report's content through indirect channels, as the ICRC could have done discreetly, would have been a strong incentive for the US authorities to take rapid steps, with considerable benefits for the victims. The risk that such practices might have led to curtailment of the ICRC's access must be placed alongside the increase in public esteem, and therefore in subsequent negotiating power, that might have been elicited. Such, at least, is the political risk calculation, defensible in the context described, that we favoured.

Here, too, we must guard against applying this criticism too broadly, because, as has been noted, aid workers have very limited room for manoeuvre when making public denunciations. In Syria, working under the auspices of organisations linked to the opposition, MSF still is not significantly freer in its speech or movements than is the ICRC. Each organisation can rightly maintain that the information work carried out by the human rights groups and the media essentially eliminates any moral ambiguity hanging over their organisation's presence (with reference to the ICRC-at-Auschwitz paradigm mentioned above). That is to say, they are not participating in an effort to deceive, as everyone knows the reality of the abuses and massacres. Nevertheless, this shows that the 'strict independence' claimed by the Dunantists must be understood, not as an illusory assertion of sovereignty over their own action, but as a search for a negotiating framework – a quest for acceptable compromises.<sup>27</sup>

## Principles – and then what?

MSF and today's ICRC are close in terms of their origins, their culture of action in armed conflict situations, their budget, and the concern that they show for keeping their distance from the political ambitions of the various forces operating in the places where they work. Their relations, which were asymmetrical and ambivalent during MSF's first twenty years of existence, have strengthened since the 1990s, particularly since the 1994 war in Rwanda, when, with MSF working under the emblem and authority of the ICRC in Kigali, they both denounced the genocide taking place. In a gesture of mutual recognition, each one now regards the other as a yardstick against which other humanitarian agencies are measured. While, in each organisation's eyes, some of the other's activities do not entirely correspond to its own standards, they are both fully qualified, because of their sustained efforts to improve the quality and effectiveness of their operations, to claim such a leadership position – at the risk, however, of becoming technocratically blind to their errors or to the pernicious effects of their action.

26 'Tortures en Irak: le CICR avait averti Washington' [Torture in Iraq: The ICRC had warned Washington], in *Swissinfo.ch*, 6 May 2004, available at: [http://www.swissinfo.ch/fre/archive/Tortures\\_en\\_Irak:\\_le\\_CICR\\_avait\\_averti\\_Washington.html?cid=3891812](http://www.swissinfo.ch/fre/archive/Tortures_en_Irak:_le_CICR_avait_averti_Washington.html?cid=3891812).

27 For a discussion in context of humanitarian negotiations, see most of the chapters of *Humanitarian Negotiations Revealed*, above note 8.

Starting from an approach based on common legal and ethical principles – neutrality, impartiality, and independence – the two organisations take action in accordance with procedures that are sometimes similar and sometimes dissimilar, reflecting, in their differences, the extent of what is possible within their ‘thin moral’, in the words of the philosopher Michael Walzer.<sup>28</sup> The task of comparison that was entrusted to the author has not been completed; in the author’s view, this would require a detailed examination of comparable programmes implemented in a single context, which would reduce the scope of the analysis to a single operational assessment. However interesting such an exercise might be, it was set aside in favour of a discussion of common principles, which better illustrate positioning choices that differ while deriving from an identical framework. The ‘distributive justice of wartime’,<sup>29</sup> which is the two organisations’ *raison d’être* and the basis of their legitimacy, affords them only the illusion of a common idiom, that of the shared principles that they tirelessly put forward. Far from advocating that they abandon these principles outright – they serve a valuable purpose as a compass – we maintain that many other considerations, stemming from different political and operational cultures, play a role in the decision-making process. Since a compass does not show the terrain, it cannot help us to plot any improbable ‘good humanitarian path’. Confusion between the actions or images of MSF and of the ICRC would not be in the interest of either organisation, whether we are talking about the procedures for their public statements or their positioning on the ground. Far from seeking to become more like each other in the quest for a mirror image, they, and their counterparts, should keep striving to meet the internal demand for consistency and practical utility.

Lastly, while critical discussion and internal debate, and the value attached to them, are characteristic of MSF and present in its various sections, they are barely audible in the ICRC. This is a striking contrast between the two organisations.

28 Michael Walzer, *Morale maximale, morale minimale*, Bayard, Paris, 2004 [translation of Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, Notre Dame, University of Notre Dame Press, 1994].

29 *Ibid.*