

## SELECTED ARTICLE ON INTERNATIONAL HUMANITARIAN LAW

# Humanitarians and their moral stance in war: the underlying values

**Eva Wortel**

Eva Wortel is Assistant Professor of Philosophy and Military Ethics at the Netherlands Defence Academy. She is currently completing a PhD on Civil-Military Relations at the Institute for International Law of Peace and Armed Conflict (IFHV) and the Institute of Development Research and Development Policy at Ruhr University, Bochum.

### **Abstract**

*In this article, the moral values underlying humanitarian principles are analysed. What were these original moral values? Have they changed? To what extent are they in danger today? Has humanity itself become an instrumental value? To answer these questions, the author examines the humanitarian discourse: firstly, how these values have been described by humanitarians themselves, and secondly, how they are used by humanitarians in specific contexts.*



‘At the end of January 1864 Prussia and Austria attacked the duchies of Schleswig and Holstein, thereby invading Danish territory. ... Faced with the overwhelming force of the combined Austrians and Prussians, the Danes ... quickly fell back. ... In Geneva, [the Red Cross Movement decided] to send delegates to the war, one to each side, to monitor the conduct of soldiers and officers ... and to try to implement the concept of neutrality of medical services on the battlefield.’

The Dutch delegate, Captain van de Velde, did not fare very well. The Danes were not only suspicious of his motives, but ‘Danish newspapers ... protested

loudly that the Red Cross Movement was failing its duty to condemn the brutality of the Prussian aggressors'.<sup>1</sup>

History shows that the moral dilemma of humanity versus justice is not new. On the one hand, it is difficult to remain silent in the face of acts of injustice; while on the other hand, the condemnation of these acts could have a negative impact on the trust of authorities and consequently lead to humanitarian access being blocked. This has been identified as one of the most fundamental dilemmas faced by the Red Cross Movement, and has evolved as an important discussion within the humanitarian community.<sup>2</sup>

While humanitarians were dealing with this moral dilemma as early as 1864, the context of humanitarian work has become even more complex. Today at least part of the humanitarian community seems to be suffering from an identity crisis. At the first World Conference on Humanitarian Studies (Groningen, 4–7 February 2009), Eva von Oelreich,<sup>3</sup> one of the keynote speakers, stated during a plenary session on 'Humanitarianism in the 21st century' that 'humanitarian values are eroded left and right'. She went on to argue that 'we [the humanitarian community] should ask ourselves what principles we are acting on – what are our key values?'

This article will analyse the values at stake for humanitarians: what were the original humanitarian values, have they changed, and to what extent are they in danger today?

In order to discuss the question of which values are at stake, this article will examine the humanitarian discourse.<sup>4</sup> It will then consider those values as they are described by humanitarians themselves, and how they are used in specific contexts. This analysis will focus in particular on the dilemma of humanity versus justice.

The first part will examine *A Memory of Solferino* by Henri Dunant<sup>5</sup> and *Red Cross Principles* by Jean Pictet<sup>6</sup> as two major narratives of the humanitarian

1 Caroline Moorehead, *Dunant's Dream: War, Switzerland and the History of the Red Cross*, Harper Collins, London, 1998, pp. 41–42.

2 See for example Fiona Terry, *Condemned to Repeat: The Paradox of Humanitarian Action*, Cornell University Press, Ithaca, New York, 2002; Hugo Slim, 'Relief agencies and moral standing in war: Principles of humanity, neutrality, impartiality and solidarity', in *Development in Practice*, Vol. 7, No. 4, 1997, pp. 342–353; Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries*, Kumarian Press, Bloomfield, 2002; Thomas G. Weiss, 'Principles, politics and humanitarian action', in *Ethics and International Affairs*, Vol. 13, 1999, pp. 50–69.

3 Eva von Oelreich is Executive Secretary of the Steering Committee for Humanitarian Response (SCHR), an alliance for voluntary action of major international humanitarian organizations and networks.

4 The author understands discourse as 'both a specific form of language use, and a specific form of social interaction, interpreted as complete communicative event in a social situation' – Teun van Dijk, 'Social Cognition and Discourse', in H. Giles and R. P. Robinson (eds.), *Handbook of Language and Social Psychology*, John Wiley and Sons, Chichester, 1990, p. 163.

5 Henri Dunant, *A Memory of Solferino*, ICRC, Geneva, 1986, available at <http://www.icrc.org/Web/eng/siteeng0.nsf/html/p0361> (visited 20 November 2009).

6 Jean Pictet, *Red Cross Principles*, ICRC, Geneva, 1956. This was one of the first attempts to codify some of the principles of the Red Cross and the humanitarian community.

community in which the basic dilemma between humanity and justice can already be identified. Both texts play an important role in the broader humanitarian discourse as well. In a way, they have produced ‘its founding past, its identity and its projections for the future’.<sup>7</sup>

In the second part of this article, the moral values identified in those narratives will be discussed in the light of specific contexts. For instance, the moral value of humanity<sup>8</sup> as presented in the texts of Dunant and Pictet has proved hard to uphold in the face of injustice, and can lead to moral dilemmas. To understand these dilemmas and the current usage of the humanitarian values, rules and principles, four central events will be discussed: the Second World War; the Nigerian Civil War in Biafra; the aftermath of the Rwandan genocide in Zaire; and the current wars in Iraq and Afghanistan. These events all had a major impact on humanitarian action, and therefore on the humanitarian identity.

## What is a moral value?

The concept of value is used broadly, and usually refers to ideals or things that we consider valuable. Moral values are qualities people deem important because they contribute to a good and meaningful life. They usually indicate that there is a deep motivation to act on this value. A principle, on the other hand, is typically described as a (general) guiding rule for behaviour which can be based on an (underlying) moral value.

When something is valued for the sake of something else, it is referred to as an instrumental value. Moral values are also referred to as intrinsic values, i.e. they are valuable *per se*. Intrinsic values traditionally lie at the heart of moral philosophy and ethics.

The difference between instrumental and intrinsic values can be illustrated by looking at how the dilemma of humanity versus justice has been described. Beat Schweizer characterizes it as a ‘moral dilemma between neutrality and political activism’.<sup>9</sup> A moral dilemma can be explained as a clash between two (or more) moral values, both (or all) of which cannot be respected at the same time in a specific situation. In the texts of Jean Pictet,<sup>10</sup> neutrality is not seen as a moral value but as a means of actualizing humanity. Neutrality would therefore be an instrumental value. In addition, political activism does not seem to be a value in itself for

7 Bobby Sayyid and Lilian Zac, ‘Political analysis in a world without foundations’, in E. Scarbrough and E. Tanenbaum (eds.), *Research Strategies in the Social Sciences*, Oxford University Press, Oxford, 1998, p. 261.

8 Humanity is described as the Red Cross Movement’s essential (moral) principle, although the same word is also commonly used to denote human nature or even the human species as a whole (J. Pictet, above note 6, p. 15).

9 Beat Schweizer, ‘Moral dilemmas for humanitarians in the era of “humanitarian interventions”’, in *International Review of the Red Cross*, Vol. 86, No. 855, September 2004, pp. 547–564.

10 J. Pictet, above note 6.

humanitarians, but a means of creating justice. In the author's view, the dilemma should be described as one between humanity and justice.

Intrinsic values can also be distinguished from virtues. For instance, justice can be an intrinsic value, but it can be a virtue as well. The value of justice can be an ideal and motivation for action, but when one speaks of justice as a virtue, it refers to the idea that a person has fully internalized a moral value by repetition and by actually putting it into practice in specific contexts.

## Humanitarian heritage

While the first organized group efforts to care for the wounded and the sick on an international basis can be traced back to the Christian orders of the Middle Ages, the creation in 1863, at the initiative of Henri Dunant, of what later became known as the Red Cross is widely viewed as the origin of the development of humanitarian values.<sup>11</sup> For this reason, the International Red Cross and Red Crescent Movement and, more specifically, the International Committee of the Red Cross (ICRC), will be taken as a starting point.

### A Memory of Solferino

The experience of the Battle of Solferino impelled Dunant, who came from a devout and charitable Calvinist family, to find a way in which such suffering could be prevented or at least attenuated in future wars.

Dunant was on a business trip in northern Italy in 1859 when the Battle of Solferino was in progress nearby between the Austrian army and the French and allied forces. More than 200,000 soldiers fought in the battle. It resulted in more than 6000 soldiers being killed, over 20,000 wounded and 5000 captured or missing. When the towns and villages in the vicinity filled with casualties and the army medical services proved inadequate, Dunant strove to organize care for the wounded and to alleviate their suffering.

Dunant thought highly of the French and Austrian soldiers, stressing their character, courage and humanity. In his book *A Memory of Solferino* he wrote that French officers deserved the praise of (the Austrian) General von Salm, who said: 'What a nation you are! You fight like lions, and once you have beaten your enemies you treat them as though they were your best friends!'<sup>12</sup> Both courage and humanity and, more generally, the character of these soldiers can be identified as important values for Dunant. The Croats and Hungarians, on the other hand, are described as savages and barbarians who 'always killed the wounded'.<sup>13</sup>

11 Yves Beigbeder, *The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance*, Martinus Nijhoff Publishers, Dordrecht, 1991, p. 9.

12 H. Dunant, above note 5, p. 13.

13 *Ibid.*, p. 13.

Nevertheless – and this was new – Dunant made no distinction between nationalities: ‘How many young men ... had come reluctantly, here, from the depths of Germany or from the Eastern Provinces of the immense Austrian empire – and some of them, perhaps, under rude compulsion – were forced to suffer not only physical pain, but also the griefs of captivity. And now they must endure the ill-will of the Milanese who have a profound hatred for their race ...’<sup>14</sup>

Inspired by his understanding of Christianity, which the text indicates as being a major source of values, Dunant has a moral sense of the importance of human life. He clearly acts on an emotional impulse and not after having reasoned the matter out. From a moral philosophical point of view, this emotional impulse seems closest to a form of Christian virtue ethics: traits of character that are manifested in habitual actions. In *A Memory of Solferino*, humanity appears to be a key ideal and value, and also a theological code of conduct. Dunant does not seem to act on a categorical imperative as described by the philosopher Immanuel Kant, for whom a categorical imperative is an obligation not dependent on contingent situations or desires, but an absolute moral rule to which there cannot be any exceptions. Nor does Dunant act on the basis of (rule) utilitarianism, looking specifically for the effects of humanitarian aid in accordance with the principle of utility. Instead, his actions seem to derive from a sincere concern for the lives of those people. This concern is so strong that he even overcomes his own prejudices: he assists the ‘barbarians’ as well.

Dunant’s opinion of the situation in Denmark in 1864 is a further example which shows that although he speaks in terms of duties, he did not think of humanity as a categorical imperative. He wrote in 1864: ‘The duty of the International Committee ... whose opinion has so much significance and influence, is to know and then to utter the whole truth, to publish this truth in all its good or evil, to set the facts straight and to stigmatize every kind of hateful occurrence’<sup>15</sup>. Even then, most of the founders disagreed; they held that the main duty lay in helping the wounded: no-one could be both Good Samaritan and arbiter at once.<sup>16</sup>

## Towards a firm doctrinal basis

Based on humanity, Christianity and civilization, Dunant’s book puts forward two proposals: first, to set up volunteer groups in peacetime to take care of casualties in wartime; and second, to convince countries to allow and support first-aid volunteers on the battlefield. Whereas the International Red Cross Movement came into being under the influence of Christianity, the Movement developed its doctrine in the name of universal (secular) human reason.

14 *Ibid.*, p. 17.

15 C. Moorehead, above note 1, pp. 42–43.

16 *Ibid.*, p. 43.

In 1863, a year after Dunant's book was published, a private committee – consisting of General Guillaume-Henri Dufour, Gustave Moynier, Théodore Maunoir, Louis Appia and Henri Dunant himself – organized a conference in Geneva to which 16 countries sent representatives. The conference recommended that national relief societies be set up and asked the governments to protect and support them. In addition, it expressed the wish for belligerent parties to declare field hospitals neutral in wartime, for similar protection to be extended to army medical staff, voluntary helpers and the wounded themselves, and finally for the governments to choose a common distinctive sign indicating persons and objects to be protected.

From the resolutions of that preparatory conference, and on the basis of the original Geneva Convention adopted by the following Diplomatic Conference in 1864, the International Red Cross Movement and the substantial body of universally recognized rules which now make up the Geneva Conventions were developed. The original convention constituted the first attempt in modern times to codify the values described by Dunant into an organizational ethos.

During the First World War, the activities of the Movement developed considerably and it became vital for the Movement to have a firm doctrinal basis. Charity and universality, together with independence and impartiality, were identified as the essential and distinctive features of the Red Cross. These fundamental principles first found expression in 1920.<sup>17</sup>

The Movement has always claimed that it does not raise its working principles, such as the principle of neutrality, to the status of absolute values.<sup>18</sup> Later, the author will argue that some of these 'principles' are in fact treated as being unconditional and that they are, in that sense, used as absolute moral values.

According to Jean Pictet, the first principle – humanity – is the greatest principle, the motivating force and ideal of the Movement. All other principles represent the means of achieving this aim.<sup>19</sup> While the principles of voluntary service, unity and universality are relevant mainly for the internal functioning of the Movement, the other principles – humanity, impartiality, neutrality and independence – still provide the basis for discussion of the ethical framework of humanitarian action in general.<sup>20</sup> The following section will therefore focus on these four principles.

17 J. Pictet, above note 6, p. ii.

18 Denise Plattner, 'ICRC neutrality and neutrality in humanitarian assistance', in *International Review of the Red Cross*, No. 311, March–April 1996, p. 1; J. Pictet, above note 6, p. 14.

19 J. Pictet, above note 6, p. 12.

20 B. Schweizer, above note 9, p. 548; Hugo Slim, 'Humanitarian ethics in disaster and war', in *World Disasters Report 2003: Focus on Ethics in Aid*, 2003, Chapter 1 – Summary, available online at: <http://www.ifrc.org/publicat/wdr2003/chapter1.asp> (visited 20 November 2009).

### Humanitarian principles

**Humanity:** The International Red Cross and the 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, co-operation and lasting peace among 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.

Source: *Compendium of Reference Texts on the International Red Cross and Red Crescent Movement*, ICRC/League, Geneva, 1990, p. 8. This text was adopted by the 25th International Conference of the Red Cross, Geneva, 1986.

### Four key principles: humanity, impartiality, neutrality and independence

These principles will be analysed first by looking at what Pictet wrote about them in his *Red Cross Principles*;<sup>21</sup> the analysis will be followed by a brief reflection on them.

21 J. Pictet, above note 6.

In the following section, it will be seen whether they should be understood as principles, values or virtues.

## Humanity

The principle of humanity stands on its own in the doctrine of the Red Cross and all other principles flow from it; 'it is ... its ideal, the reason for its existence and its object'.<sup>22</sup>

For Pictet, this principle of humanity is a synonym for charity: 'loving one's neighbour'. It is a true altruistic love; the person who gives it is not considering his own happiness. Pictet explains that in ancient Greek, love was translated as both *eros* and *agape*. *Eros* is the desire to appropriate something for oneself, whereas *agape* is altruistic, disinterested love. Humanity should be understood as *agape*.<sup>23</sup> Pictet describes it as a feeling which 'demands a certain amount of self-control; it may result from an effort [we are] required to make; its object may even be the enemy or a criminal'.<sup>24</sup> Looking into the origin and development of *agape*, there is an obvious link with virtue ethics.

While Pictet argues that he refers to a Greek tradition, he is more likely referring to Christian thinkers; Greek philosophers such as Plato and Aristotle were mostly interested in *eros* and *philia*.<sup>25</sup> *Agape* received much broader usage among later Christian writers. In *The Good Samaritan*, Max Huber also argues that *agape* is developed within Christian virtue ethics: '*Agape*, Christian love, seeks nothing for itself, for though bestowed by men on men, it is only the response to the love of God, which has stooped to make its dwelling in human hearts'.<sup>26</sup> Charity, he writes, is 'the entire attitude of a soul towards the other members of creation, after it has been taken possession of and made new by faith'.<sup>27</sup>

In his *Summa Theologica*, Thomas of Aquinas, influenced by Aristotle, argues that charity, or *agape*, is divinely infused practical wisdom. According to Aquinas, a man is virtuous because his actions correspond to an objective norm. For Aristotle this was reason and for Aquinas, reason and faith.

Virtue ethics was the prevailing approach to ethics in the ancient and medieval periods, which strongly influenced many Christian writers. It emphasized character, rather than rules or consequences, as the key element of ethical thinking. *Agape* was one of the theological virtues mentioned by the Apostle Paul in I Corinthians 13: faith, hope and love (charity or *agape*).

22 *Ibid.*, p. 14.

23 *Ibid.*, p. 16.

24 *Ibid.*, p. 16.

25 In *Ethica Nicomachea*, Aristotle describes *philia* as a genuine friend, someone who loves or likes another person for the sake of that other person. Wanting what is good for the sake of another he calls 'good will' (*eunoia*), and friendship is reciprocal good will, provided that each recognizes the presence of this attitude in the other.

26 Max Huber, *The Good Samaritan: Reflections on the Gospel and Work in the Red Cross*, Victor Gollancz Ltd, London, 1945, p. 44.

27 *Ibid.*, p. 46.

It is interesting that Pictet describes humanity, in the sense of charity, as a (universal) encounter.<sup>28</sup> It is worthwhile comparing this to what the German philosopher Martin Buber argues about an encounter in *I and Thou*: that in a genuine encounter, the receiver must also be viewed as worthy by the giver.<sup>29</sup> If not, the encounter is fundamentally instrumental in nature: such 'I-it' relations are oriented toward domination because they are relations in which the subject (the 'I') takes its partner (the 'it') as an object.

If this is what is implied, it should be impossible to speak of humanitarian aid, and the value of humanity, in instrumental terms. In fact, in this encounter with the Other it is very likely that one becomes concerned and involved with the situation of the Other. As a result, if injustice is being done, the urge is to act for the 'good' of one's fellow human beings.<sup>30</sup>

What exactly this 'good' for one's fellow man consists of is a question that, for Pictet, was one that 'hardly arises ... in connection with the Red Cross'<sup>31</sup> and, according to him, was not relevant.<sup>32</sup> However, from the events discussed below it is obvious that this has become an elementary question: what exactly was the 'good' for Jews in Nazi Germany, Ibos in Nigeria or Rwandan Hutu refugees in Zaire? In these cases, for many humanitarians the 'good' is related to the ideal, or value, of justice.

When this value of justice implies that some deserve aid more than others, there could be a tension within the definition of humanity itself.

### *Impartiality*

The second principle is impartiality: no discrimination should be made with regard to nationality, race, religious beliefs, class or political opinions. In order to relieve the suffering of individuals, one should be guided solely by their needs and give priority to the most urgent cases of distress.

According to Pictet, impartiality implies that one does make a choice in accordance with pre-established rules. These rules are humanity, equality and due proportion – people who suffer must be helped; an equal degree of distress calls for equal aid; and the assistance given, in cases where the distress is not equal, aid must depend on the degree of the respective needs and their urgency.<sup>33</sup>

Interestingly, rather than defining impartiality as a rule or guideline, Pictet determines it to be a virtue or a competence: 'an inward quality, an intrinsic virtue of the agent [who must endeavour] to free himself from prejudices':<sup>34</sup> it demands that 'a prolonged and intense effort be made to free charitable action from the

28 J. Pictet, above note 6, p. 17.

29 Martin Buber, *I and Thou*, translated by W. Kaufman, T. & T. Clark, New York, 1970.

30 J. Pictet, above note 6, p. 17.

31 *Ibid.*, p. 16.

32 *Ibid.*, p. 16.

33 *Ibid.*, p. 54.

34 *Ibid.*, pp. 54–55.

influence of the personal factor'.<sup>35</sup> Pictet realizes the difficulty of prohibiting what he refers to as 'subjective distinctions between people, which spring from factors peculiar to the relationship existing between the agent and the person concerned ... for example ... a spontaneous feeling of sympathy'.<sup>36</sup>

### *Neutrality*

'The International Committee has refrained from making public protests about specific acts of which the belligerents are accused. ... charity has been regarded as more important than man's justice. For experience has shown that demonstrations of this kind may well, for an illusory result, jeopardize the work of relief which the Committee is in a position to carry out.'<sup>37</sup>

According to Pictet, neutrality seeks to underpin the value of humanity. Humanitarian aid should not be used for political purposes or to meet political agendas; it should be delivered without taking sides or engaging in controversies. Pictet emphasizes that neutrality is not a moral value, but simply a form of outward behaviour which demands a self-imposed restraint; it means refusing to express an opinion concerning the qualities of the men or the theories in question.<sup>38</sup> Humanitarian neutrality, therefore, is not equal to indifference or unprincipled relief workers; on the contrary, at least for the Red Cross Movement, the underlying value is humanity, and neutrality is only the operational means of achieving this ideal in an environment that is essentially hostile to it.<sup>39</sup>

Médecins sans Frontières (initially) called the means of neutrality into question. Bernard Kouchner, one of the founders of MSF, argued that neutrality imposes silence, and that if one's core value is justice, silence is reprehensible.<sup>40</sup> In the words of Jean Pictet: 'For while justice gives to each according to his rights, charity apportions its gifts on the basis of the suffering endured in each case ... It refuses to weight the merits and faults of the individual'.<sup>41</sup>

In the author's view, it is useful to make a distinction between instrumental (operational) and moral neutrality.<sup>42</sup> Neutrality as defined by the Red Cross Movement is similar to instrumental neutrality: it is the refusal to take a position on the conflict so as not to take sides in hostilities – and thus not to antagonize one of the parties to the conflict – in order to continue to relieve the suffering of

35 *Ibid.*, p. 56.

36 *Ibid.*, p. 56.

37 *Ibid.*, p. 74.

38 *Ibid.*, pp. 59–61.

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.

40 D. Plattner, above note 18, part 2B.

41 J. Pictet, above note 6, p. 48.

42 Fred van Iersel, 'De krijgsmacht: een voorbeeld voor de samenleving', in *Militaire Spectator*, Vol. 165, No. 11, 1996, pp. 516–524; Ted van Baarda and Fred van Iersel, 'The uneasy relationship between conscience and military law: The Brahimi Report's unresolved dilemma', in *International Peacekeeping*, Vol. 9, No. 3, 2002, pp. 25–50.

victims on both sides. Moral neutrality, on the other hand, would imply indifference; in the parable of the Good Samaritan, the (morally) neutral figure is the Levite who passes by indifferent to the dramatic scene. Moral neutrality implies that the distinction between right and wrong loses its practical significance. The difficulty is that it seems impossible to separate operational and moral neutrality completely. It is clear, however, that one cannot remain silent when being faced with the most heinous crimes. When confronted with such crimes, human beings cannot remain operationally neutral without losing their personal moral integrity. If neutrality were to become an absolute, a 'dogma',<sup>43</sup> the ability to choose not to be morally neutral and to take the side of humanity would be ruled out.

### *Independence*

Independence with respect to political and economic powers (both donors and recipients) and the media is important because the Red Cross Movement must be 'free to base its actions on purely humanitarian motives, applying its own principles on all occasions and treating all men with equal consideration; it must be free to remain universal. ... It is, moreover, essential for the Red Cross to inspire the confidence of everyone it may be called upon to assist, even, and especially, if they do not belong to the ruling circles'.<sup>44</sup>

Pictet argues in favour of full independence: 'The fact that its work depends entirely on donations, may make this condition a very hard one: but no concession can be made. Even if its resources dry up as a result, the Red Cross must refuse any financial contribution which would affect its independence to even a very slight extent'.<sup>45</sup>

As Etxeberria states, 'a limited ceding of independence is difficult because an organization may be falling into the temptation to be unable to say no to donations from political, economic and media powers, while the real motivation is not the good of the victims but merely the self-interest of the ... organization'.<sup>46</sup>

Interestingly, Pictet does put forward a more liberal attitude towards co-operation with outside bodies: 'To be in the Red Cross does not merely mean bearing a name and wearing a badge; it means possessing a certain attitude of mind and respecting an ideal. And under that heading, there are sometimes others from whom we have to learn'.<sup>47</sup>

43 Y. Beigbeder, above note 11, p. 147.

44 J. Pictet, above note 6, p. 79.

45 *Ibid.*, p. 82.

46 Xavier Etxeberria, 'The ethical framework of humanitarian action', in Humanitarian Studies Unit (ed), in *Reflections on Humanitarian Action: Principles, Ethics and Contradiction*, Pluto Press, London, 2001, p. 89.

47 J. Pictet, above note 6, p. 82.

## Principles, moral values or virtues?

Pictet uses the rather ambiguous notion of principles for humanity, neutrality, impartiality and independence. A principle can be used as a synonym for a moral value but by no means has to be one. This can easily lead to confusion. When it remains unclear whether these principles are principles, values or even attitudes or virtues, the discussion easily becomes unfocused.

Peter Walker (quoting Pictet) does regard neutrality as a value in his text ‘What does it mean to be a professional humanitarian?’. Walker states that a ‘value often voiced but much less certain in its universality is the value of neutrality’, and goes on to say that ‘The problem with neutrality is that it is a relative, not an absolute, value’.<sup>48</sup> The terminology is rather puzzling. If all principles are also values, are they also moral values? What exactly defines the difference between an absolute and relative value?

From Pictet’s text, it is clear that neutrality has a rather different status to the other principles. Neutrality, while also defined as a principle, is merely a ‘means for accomplishing humanity’; it is an operational or an intrinsic value and not a moral value in itself.

Humanity is defined as a principle, as well as being the ideal and reason for the existence of the ICRC, and is referred to as the sentiment of humanity which is the moral idea underlying the Geneva Conventions.<sup>49</sup> These descriptions are very similar to the concept of a moral value.

What is the exact status of impartiality? Should we consider impartiality to be a principle or also a value; a moral value or a virtue? If impartiality assumes that one frees oneself from prejudices and sympathies with respect to persons or ideals involved, it seems to be an attitude, or competence, rather than a rule or principle.

If the humanitarian principles are also intended as virtues, capturing these virtues in a doctrine is, in my view, inadequate and perhaps even impossible. In Aristotle’s language, a moral virtue is a certain habit of the faculty of choice, consisting of a means suitable to our nature and fixed by reason in the manner in which a prudent man would act. This implies by definition that one always has to consider the context. It might be possible to inculcate virtues through training and education, but it seems impossible to prescribe them in a doctrine.

48 Peter Walker, ‘What does it mean to be a professional humanitarian?’, in *Journal of Humanitarian Assistance*, 2004, available at <http://www.jha.ac/articles/a127.htm> (visited 20 November 2009).

49 J. Pictet, above note 6, p. 30.

## The Code of Conduct

### The Code of Conduct (1994)

Principal commitments:

1. The Humanitarian imperative comes first.
  2. Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone.
  3. Aid will not be used to further a particular political or religious standpoint.
  4. We shall endeavour not to act as instruments of government foreign policy.
  5. We shall respect culture and custom.
  6. We shall attempt to build disaster response on local capacities.
  7. Ways shall be found to involve programme beneficiaries in the management of relief aid.
  8. Relief aid must strive to reduce future vulnerabilities to disaster as well as meeting basic needs.
  9. We hold ourselves accountable to both those we seek to assist and those from whom we accept resources.
  10. In our information, publicity and advertising activities, we shall recognize disaster victims as dignified human beings, not hopeless objects.
- <http://www.ifrc.org/publicat/conduct/>

The Code of Conduct was the first document to emerge from the international NGO community in the 1990s. It was prepared jointly by the International Federation of Red Cross and Red Crescent Societies and the ICRC, in consultation with the members of the Steering Committee for Humanitarian Response (SCHR). Although the Code of Conduct was primarily related to relief in natural disasters, it has always been seen as applicable to NGOs' humanitarian work in armed conflicts too.<sup>50</sup>

With the explicit claim that the principle of humanity 'stands on its own in the doctrine of the Red Cross',<sup>51</sup> the original moral value (and perhaps virtue) as defined by Dunant became a norm – as such, it can be interpreted as an absolute duty or an obligation.<sup>52</sup> In fact, in an effort to give the principle of humanity an 'imperative gloss' by making it a moral absolute, the term 'humanitarian imperative' was adopted in the first principle of the Code of Conduct.

Philosophers and many others will immediately relate this term to a Kantian 'categorical imperative' – an absolute rule that admits no exceptions and

50 Hugo Slim, *Claiming a humanitarian imperative: NGOs and the cultivation of humanitarian duty*, International Council on Human Rights Policy Working Paper, presented at the Seventh Annual Conference of Webster University on Humanitarian Values for the Twenty-First Century, Geneva, 21–22 February 2002, p. 3.

51 J. Pictet, above note 6, p. 14.

52 X. Etxeberria, above note 46, p. 79.

imposes an obligation. Hugo Slim argues that: ‘Those choosing the phrase “humanitarian imperative” were obviously determined to reinstate emphatically the principle of humanity that they saw as being so undermined in practice around the world – first by the perpetrators of its violation, secondly by reluctant donor governments, and finally, perhaps, by more consequentialist observers emphasizing the potentially harmful effects of humanitarian aid in certain situations’.<sup>53</sup>

While there are more nuances in Kant’s theory, and one might even doubt if humanity can actually be a categorical imperative, it is interesting to see what this term means for practitioners and how they use it. If humanitarians do align themselves with absolute rules, there is an obvious danger, which is also characteristic of deontology (Kant’s theory), that they may not take the consequences sufficiently into account. Of course, there are many authors – Mary Anderson in particular – who have stressed that when assistance is given in a certain context, it is important to consider the consequences of the assistance and to try to do no harm.<sup>54</sup>

Nevertheless, when viewed as an absolute duty, a humanitarian imperative can easily be used as an excuse for not taking the consequences into account. For example, a local representative of one major humanitarian organization in the eastern Democratic Republic of Congo (DRC) claimed that he did not recognize any moral dilemma in providing food and medicine to a village, even though he was aware that bandits would come at night to take all the food and medicine, as well as hostages for whom exorbitant ransoms would be demanded.

He argued, ‘We simply have a humanitarian imperative, so there is no dilemma’. Obeying a universal obligation or rule without being able to recognize the moral dimension of a specific situation and identify the values at stake is very risky, and could lead to moral blindness.

Part of the problem is that in stating that the ‘humanitarian imperative’ comes first, it is important to understand exactly what humanity (as a moral value) and the humanitarian imperative mean. In the author’s view, this issue has not been sufficiently addressed by the humanitarian community.

The above interpretation means that aid should always be provided, regardless of the circumstances. As such, it obviously comes into conflict with, for instance, Principle 8 of the Code of Conduct: ‘Relief aid must strive to reduce future vulnerabilities to disaster as well as meeting basic needs’, and Principle 9: ‘We hold ourselves accountable to those we seek to assist’, which requires taking into account the context and consequences of relief aid.

The Code of Conduct itself also consists of principles that are commonly understood as prescribed rules of practice and professional obligations. As a result, the context in which aid is delivered – be it historical, legal or political – is not taken sufficiently into account.

53 H. Slim, above note 50, p. 4.

54 Mary B. Anderson, *Do No Harm: How Aid can Support Peace or War*, Lynne Rienner Publishers, Colorado, 1999.

## The context

### Second World War

On Wednesday, 14 October 1942, the ICRC decided not to issue a public appeal on behalf of the Jews of occupied Europe, who at the time were being systematically deported to the Nazi concentration camps.<sup>55</sup> The dilemma of publicly condemning injustice versus Red Cross access and aid to prisoners of war was an issue the ICRC had previously faced. As before, the ICRC chose to uphold its neutrality in order to retain that access. In the Second World War, neutrality indeed became a ‘dogma’,<sup>56</sup> which obviously has a much stronger connotation than that of a working principle.

As mentioned above, Dunant was inspired mainly by a sense of empathy with the victims and a moral sense of the importance of human life, which can be described as virtue of character rather than calculated action based on rules, dogmas or categorical imperatives. However, because a character or virtue cannot be based on principles or rules that give an agent the ability to decide how to act in any given situation, it is impossible to capture this attitude in a doctrine. Since the ICRC needed a doctrine in order to uphold the value of humanity and charity for all, the working principle of neutrality was hard to avoid.

During the war, while the ICRC failed to obtain an agreement with Nazi Germany on the treatment of detainees in concentration camps, it was able to assist the prisoners of war with parcels of food and medicine, inspect the conditions in the camps, trace missing soldiers, transmit messages between POWs and their families, and monitor compliance with the articles of the Geneva Conventions (which had been ratified by all the countries at war except for Russia and Japan).

It is possible to argue that by keeping silent, knowing of Nazi Germany’s mass murder of Jews, Roma, homosexuals, political opponents, mentally ill persons, Jehovah’s Witnesses and members of other minority religious groups, the ICRC was not only operationally neutral but morally as well. Since the end of the war, it has been severely criticized for its stance. As defined by Pictet, humanity should be understood as charity, but at the same time it is an encounter with the Other, in which there is an urge to act for the ‘good’ of the Other. In considering the moral dilemma of humanity versus justice, one can wonder whether the ICRC also failed to take sides with its most central value: humanity.

### Nigerian war: old and new humanitarianism

Amid rising ethnic tensions, the Ibos of eastern Nigeria – which had oil and was mostly Ibo territory – felt themselves to be increasingly under threat. The decision was taken to set up the independent state of Biafra. This attempted secession triggered the 1967–1970 Nigerian Civil War, which not only brought new players

55 C. Moorehead, above note 1.

56 Y. Beigbeder, above note 11, p. 167.

into the field of humanitarian aid, but also changed forever the way the ICRC thought about itself and how it operated.

The war lasted much longer than initially expected, and the Nigerian military set up a food blockade around the nation's self-proclaimed and newly independent south-eastern region. Biafra was the first famine disaster of modern times to be reported on television. Pictures reached the West of children with distended bellies and stick-like arms.

It was in Biafra that the International Committee recognized that assistance to prisoners of war and to the civilian population must go hand in hand (particularly during civil conflicts), and that relief to victims is a crucial component of modern wars. Since civil wars are the most complex intra-state situations, the way in which outsiders enter and assume important roles in these circumstances, including assistance to prisoners of war, are some of the most complex moral challenges confronting aid workers.<sup>57</sup>

The resulting war was ugly, and Nigerian commanders were open about their objectives. 'Starvation is a legitimate weapon of war', one said.<sup>58</sup> President Nyerere of Tanzania declared that, 'If I had been a Jew in Nazi Germany, ... I'd feel the same as an Ibo in Nigeria'.<sup>59</sup> The war was a severe test of the ICRC's neutrality: can a humanitarian organization be deemed to be neutral when it gives relief assistance to a rebellious and secessionist region on a sovereign state's territory?

The Biafrans and Nigerians alike had one main objective in mind: to win the war. The Biafrans had quickly perceived that the surest road to victory was to draw in international support, and that pictures of dying children would help them to do so. While it was known that foreign aid could prolong the war, most relief agencies decided to continue either raising or spending money to save lives. Even though the ICRC wanted to save lives, it was bound by law to its mandate: under the Geneva Conventions it had to seek permission from the government in Lagos for all its deliveries to Biafra. In June, the Nigerian government announced its decision that the Nigerian rehabilitation commission, rather than the Red Cross, would co-ordinate the relief operation. Flights were suspended, and the Red Cross decided to adhere to its traditional role of acting only with the consent of both parties.

Bernard Kouchner was one of the volunteer doctors flown by the ICRC to Biafra. He was frustrated by delays in receiving permission to assist the starving Biafrans and by the ban on speaking out that had been imposed by the ICRC. Having had members of his family murdered during the Nazi regime, Kouchner announced that he was not prepared to condone a second complicity in silence.<sup>60</sup> He publicly criticized the Nigerian government and the Red Cross for their behaviour. The fundamental idea was that concern for the victims should transcend

57 M. B. Anderson, above note 54.

58 Samantha Power, *A Problem from Hell*, Basic Books, New York, 2002, p. 82.

59 C. Moorehead, above note 1, p. 616.

60 Tim Allan and David Styan, 'A right to interfere? Bernard Kouchner and the new humanitarianism', in *Journal of International Development*, Vol. 13, Issue 6, 2000, p. 300; C. Moorehead, above note 1, p. 625.

state sovereignty and neutrality of humanitarian action. A new form of humanitarianism was born, and Médecins Sans Frontières (MSF) was created. MSF's example of a politically activist humanitarianism, openly denouncing oppression and injustice, was soon followed by other NGOs such as Oxfam in the UK.<sup>61</sup>

This 'new humanitarianism'<sup>62</sup> was based on the view that the old humanitarianism, which demanded operational neutrality in order to guarantee humanity as *agape*, posed a huge dilemma when faced with a situation where it was obvious that crimes against humanity were being committed with intent to destroy, wholly or in part, a national, ethnic, racial or religious group.

Concern for the victims, and hence for the ideal or value of justice, was essential for these new humanitarians. To keep silent and not to judge, in order to uphold humanity as *agape* – maintaining that even the worst criminal has a right to charity – was regarded as naive and unjust. The concept of humanity was consequently broadened and became more political.

The ICRC continued to argue that the price of denouncing injustice is usually expulsion from the scene of suffering, which in turn deprives victims of possible assistance and protection, and thus is likely to cause even greater suffering.<sup>63</sup>

## Post-Cold War world

After the Cold War, there was an enormous growth of institutions (not all of them equally principled) who tried to assert themselves as humanitarian. Neutrality and impartiality were the key concepts they used to do so.<sup>64</sup> As a direct result, these concepts have become rather unclear and are often misunderstood.<sup>65</sup>

Since the Iraqi occupation of Kuwait, which roughly coincided with the end of the Cold War, there has also been a substantial increase in the number of United Nations Security Council resolutions on the humanitarian aspects of armed conflict. Several UN peacekeeping missions have been authorized under Chapter VI and later under Chapter VII of the UN Charter.<sup>66</sup> The (mis)use of the concept of humanitarianism was, again, widened to a significant extent.

For the first 35 years of its existence, the Security Council had not engaged in humanitarian assistance. This was traditionally taken care of by humanitarian organizations. By the time of the 1991 operation in northern Iraq, however, the use of military forces for human protection purposes was considered a feasible option.<sup>67</sup> Even though these UN peacekeeping missions were accompanied by strict mandates aimed at guaranteeing the neutrality of the peacekeepers, the fact that

61 B. Schweizer, above note 9, p. 552.

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

63 B. Schweizer, above note 9, p. 552.

64 H. Slim, above note 39, p. 344.

65 African Rights, *Humanitarianism Unbound*, African Rights, London, 1994.

66 Ted van Baarda, 'The involvement of the Security Council in maintaining international humanitarian law', in *Netherlands Quarterly for Human Rights*, Vol. 12, No. 2, 1994, pp. 157–152.

67 P. J. Hoffman and T. G. Weiss, above note 62.

they were appointed by the UN means a case can be made that they were not politically neutral.<sup>68</sup>

One of the major dilemmas for humanitarians then involved the pros and cons of working side by side with military personnel who were also providing humanitarian aid. For reasons of space, only two events will be discussed here. The situation of the refugee camps in Zaire has shown that humanitarian aid, as *agape*, can have adverse effects when the recipient manipulates the aid, and ultimately that in Zaire, aid without security is meaningless. The experience of the wars in Iraq and Afghanistan shows that working alongside military forces may also have harmful effects on civilians and humanitarian operations.

## Refugee camps in Zaire

Up to one million lives were lost during the Rwandan genocide, which started in April 1994. It was a planned campaign to exterminate anyone who was perceived to support the Tutsi-dominated Rwandan Patriotic Front (RPF). It ended with the defeat of the government three months later.<sup>69</sup> In the aftermath of the Rwandan genocide, 200,000 Hutu refugees lost their lives in Zaire.<sup>70</sup>

The Hutu refugees sought asylum in Zaire (now the Democratic Republic of Congo), Tanzania and Burundi. The conditions in the refugee camps were appalling; thousands died of cholera, dysentery and exhaustion. Tensions concerning humanitarian roles and responsibilities were highlighted by humanitarian agencies. International military contingents engaged directly in the traditional activities of humanitarian agencies, seemingly encroaching on their 'turf'.<sup>71</sup> Military forces took on roles in the provision of water, shelter and health care.

For humanitarian agencies, the situation raised questions of quality and competition, as well as questions regarding collaboration. Some humanitarian organizations viewed collaboration with military troops from the US and France (Opération Turquoise had an operating base in Goma) as undermining their ability to deal with all the victims of the conflict and the new authorities.<sup>72</sup> France in particular is a country with strong political interests in the region and had a history of supporting the previous Hutu regime in Kigali.

68 T. Van Baarda, above note 66.

69 Philippe Mahoux and Guy Verhofstadt, *Parlementaire Commissie van Onderzoek Betreffende de Gebeurtenissen in Rwanda*, 1997, available at <http://www.senate.be/www/?Mlval=/Registers/ViewReg.html&COLL=S&POS=1&PUID=16778222&TID=16778570&LANG=nl> (last visited 20 November 2009).

70 Filip Reyntjens, *De Grote Afrikaanse Oorlog: Congo in de Regionale Geopolitiek 1996–2006*, Meulenhof/Manteau, Antwerp, 2009, p. 91.

71 Hugo Slim, 'Military intervention to protect human rights: The humanitarian agency perspective', Background paper for the International Council on Human Rights' Meeting on *Humanitarian intervention: Responses and dilemmas for human rights organisations*, Geneva, 31 March–1 April 2001, available at <http://www.jha.ac/articles/a084.htm> (visited 20 November 2009).

72 Larry Minear and Philippe Guillot, *Soldiers to the Rescue: Humanitarian Lessons from Rwanda*, Organisation for Economic Co-operation and Development (OECD), Paris, 1996, p. 148.

Between 1994 and 1996, a ‘refugee-warriors’ community was established in the refugee camps.<sup>73</sup> In the Great Lakes context, it is obvious that good intentions and *agape* are simply not enough: Terry points out that the analysis of the situation was – at times – clouded by strong emotions: ‘Everyone in the team felt deep discomfort about assisting people who had murdered others, particularly since few of the killers expressed remorse. The genocide against the Tutsis and those who were seen as supporting them continued in the camps...’<sup>74</sup> Strong emotions are usually indicators of an important value at stake. Again, the moral dilemma for humanitarians was between justice and humanity. For Terry, ‘refusing to make a judgment about who is right and who is wrong in many ways assumes a legal and moral equality between oppressors and their victims’.<sup>75</sup>

Many of the advocacy-based organizations called for international forces to separate Interahamwe<sup>76</sup> combatants and other *génocidaires* from civilians in the refugee camps. This can be considered as signalling a wider movement in the humanitarian agencies concerned to see individuals brought to justice.

At the time, there was no justice, and for MSF in 1995, the dilemma implied that they would have to leave. The dilemma was even more complex since security conditions for the staff were also risky, if not downright dangerous. CARE staff members, for instance, received various death threats. Self-protection can therefore be regarded as a relevant value as well.

The President of Rwanda, Paul Kagame, argued that the camps had been used as a base from which the former extremist (Hutu) government, army and Interahamwe militias had launched raids on Rwanda (as well as in Zaire) to continue the killing that had started in April 1994.<sup>77</sup> In 1996, across hundreds of sites in Zaire, Hutu refugees – men, women and children – were rounded up in camps, in the forest or on the road and either taken away, shot, or slaughtered with machetes where they stood. The licence to kill was premised on their ‘guilt by association’ with the perpetrators of the 1994 Rwandan genocide, who had been ensconced in Zairian refugee camps for the past two years.

While the Biafra context raised questions of whether aid could also prolong wars, in the aftermath of the Rwandan genocide it became clear that humanitarian assistance itself can be manipulated as a powerful contributor to the destruction of a society.<sup>78</sup>

Filip Reyntjens argues that rebels and their Rwandan counterparts made it (deliberately) impossible in many cases for humanitarian organizations to reach the sick and hungry refugees, and that furthermore, when humanitarians were allowed access, the humanitarian aid was used as bait to attract refugees who were

73 Fiona Terry, *Condemned to Repeat: The Paradox of Humanitarian Action*, Cornell University Press, Ithaca, New York, 2002, p. 6.

74 *Ibid.*, p. 2.

75 *Ibid.*, p. 22.

76 Interahamwe is a Hutu paramilitary organization. In Kinyarwanda the name means ‘those who stand/work/fight/attack together’.

77 F. Terry, above note 73, p. 1.

78 Kevin M. Cahill, *Traditions, Values and Humanitarian Action*, Fordham University Press, 2003.

hiding in the forest. After a while, the area would be declared a ‘military area’ and no humanitarian agencies or journalists would be allowed to enter.<sup>79</sup>

At first sight it may seem easy to identify the innocent as being the orphaned, the widowed and the murdered; but in all its complexity, the situation in Rwanda and Zaire shows that a neat distinction cannot be drawn, either historically or contextually, between the good and the evil, the innocent and the victimizers. Precisely in these most intricate cases, where the dividing line between victim and perpetrator is not clear, where the people who are suffering may not be entirely helpless but are defined as threatening and dangerous, it is hard to identify who exactly is the victim or the innocent person. Those same Hutus who were perpetrators in 1994 were attacked and murdered in 1996. Without denying the responsibility of the murderers, who may be victims themselves in another situation, ‘these relationships expose the ethical water as fundamentally murky, and there is a difficulty in assigning an ethical position to the belligerent violence of a group that is at the same time disenfranchised and victimized’.<sup>80</sup>

It is impossible to give the morally right answer to these dilemmas, in which every decision is likely to have a negative consequence. At least by being aware of the dilemmas and of the values at stake, organizations can try to make an informed decision which they can communicate and above all justify for themselves and to others. As Terry observes, ‘by ignoring ethical issues and emphasizing technical standards, some ... NGOs undermined efforts of agencies that were striving to minimize the abuse of aid’.<sup>81</sup>

## Afghanistan and Iraq

The terrorist attacks against the United States on 11 September 2001 and the subsequent ‘war on terror’ conducted in Afghanistan and Iraq made it clear that the provision of humanitarian aid by military forces not only raised the question of who should take part in the business of humanitarianism. With US forces engaging in humanitarianism in Afghanistan and in Iraq it became difficult, if not impossible, to see humanitarian activities as non-political and independent of political and partisan considerations. Humanitarian agencies found that they would have to deal with the military, and that at least some of the recipients would perceive their aid as the guise under which political manipulation takes place.<sup>82</sup>

For humanitarians, this created another complex moral dilemma. Should they uphold the working principle of neutrality and the principle of impartiality and not co-operate with military forces, therefore perhaps not being able to reach people in need? Should they reach out to people in need while individual aid

79 F. Reyntjens, above note 70, p. 94.

80 Elizabeth Dauphinée, *The Ethics of Researching War: Looking for Bosnia*, Manchester University Press, Manchester, 2007, p. 33.

81 F. Terry, above note 73, p. 202.

82 T. Van Baarda, above note 66, p. 138.

workers become a soft target for belligerents who do not, or do not want, to view them as neutral and impartial? Or should they co-operate with the UN in these violent areas in order to get their aid through and at the same time accept blending into military and political agendas?

Both in Afghanistan and Iraq, humanitarian aid is also part of the US-led intervention. Military forces rebuild schools, dig wells, and give food and medical aid, as well as ‘removing’ insurgents, upholding peace agreements and providing security for civilian organizations. This aid is referred to as civil-military co-operation (CIMIC). The North Atlantic Treaty Organization (NATO) defines it as: ‘The co-ordination and co-operation, in support of the mission, between the NATO Commander and civil actors, including national population and local authorities, as well as international, national and non-governmental organisations and agencies’.<sup>83</sup>

In Afghanistan, the Provincial Reconstruction Teams (PRTs) work according to this official NATO doctrine, which by definition uses humanitarian reconstruction projects as a means for achieving military objectives by gathering intelligence and ‘winning hearts and minds’ in order to increase the permissive environment.<sup>84</sup> What is new here is the explicit politicization of humanitarian action. Humanitarian aid, including food aid, is used as a weapon of war. Pentagon officials claim that, ‘If they see us giving aid they are less likely to shoot us’.<sup>85</sup> As a result, the concept of humanity is being used for aid delivery in which neutrality and impartiality are no longer relevant. Military intervention, even in the field of humanitarian assistance, is politically determined and is always secondary to political and military tasks.<sup>86</sup> As Hoffman and Weiss state, ‘Politicization has not just seeped into humanitarianism; it has flooded it’.<sup>87</sup> If it is flooded, humanitarianism undoubtedly is in danger.

The problem is unlikely to go away. One of the direct consequences of that intervention has been that humanitarian workers are being perceived – at least by some – as part of Western-dominated military and political securitization agendas, and more broadly, as part of the failings of peace and reconstruction processes. This has led to serious security problems for humanitarian workers in both Afghanistan and Iraq.<sup>88</sup>

While the Red Cross Movement is strict about its doctrine and advocates maintaining a clear distinction between humanitarianism and military

83 NATO, *AJP-9 NATO Civil-Military Cooperation (CIMIC) Doctrine 2003*, available at <http://www.nato.int/ims/docu/AJP-9.pdf> (last visited 20 November 2009).

84 Eva Wortel and Desiree Verweij, ‘Inquiry, criticism and reasonableness: The Socratic dialogue as a research method?’, in *Practical Philosophy*, July 2008, p. 64.

85 Dennis Dijkzeul (ed.), ‘Between Force and Mercy; Military Action and Humanitarian Aid’, in *Bochumer Schriften zur Friedenssicherung und zum Humanitären Völkerrecht*, Berliner Wissenschafts-Verlag, Berlin, 2004, p. 322.

86 *Ibid.*, p. 331.

87 P. J. Hoffman and T. G. Weiss, above note 62, p. 145.

88 B. Schweizer, above note 9, p. 555.

interventions,<sup>89</sup> a Cordaid study<sup>90</sup> found that most other agencies take the pragmatic approach; they feel that a principled stance is a luxury only the rich organizations can afford.

Rietjens and Bollen argue that in Kosovo ‘... some humanitarian organizations considered their neutral and impartial relation to the local population compromised by co-operation with ... troops. However, most organizations take a more pragmatic view and co-operate with the military preferring the (temporal) use of ... additional resources’.<sup>91</sup> The same held true in the contexts of Pakistan,<sup>92</sup> Liberia and Afghanistan.<sup>93</sup>

It seems that in a spirit of getting things done, many humanitarian agencies are not asking themselves essential moral questions about their identity: should they diverge from their humanitarian principles and become part of the ultimate objective of a political design, or should they adhere to their initial principles and thereby hinder the effective delivery of (most) aid?

## Conclusion

What are the values at stake for humanitarians? If we examine the original humanitarian values, Christianity and civilization were important in the work of Dunant, but especially the value of humanity, of which there is no exact definition. Rather, humanity seems to be an emotional impulse or a virtue. With the development of an organizational code of ethics in *Red Cross Principles*, Pictet tends towards a more absolute, unconditional interpretation of humanity.

As a result, on the one hand there is the value of humanity as *agape*, as charity which demands unconditional neutrality. On the other hand, as numerous events testify, there is the value of justice and the immorality of silence in the face of injustice.

It seems that both the absolute and the relative are in play here. In my view, within the value of humanity there is a contradictory logic similar to that identified by Jacques Derrida within the concept of forgiveness.<sup>94</sup> There is the

89 D. Dijkzeul, above note 85; Jane Barry and Anna Jefferys, ‘A bridge too far: Aid agencies and the military in humanitarian response’, in *Humanitarian Practice Network Paper*, No. 37, 2002, available at: [http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5FKHH5/\\$file/odi-bridge-jan02.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5FKHH5/$file/odi-bridge-jan02.pdf?openelement) (visited 20 November 2009).

90 Georg Frerks, Bart Klem, Stevan van Laar and Marleen van Klingeren, *Principles and Pragmatism: Civil-Military Action in Afghanistan and Liberia*, Bart Klem Research/Universiteit Utrecht, May 2006, available at <http://www.cordaid.nl/Upload/publicatie/RAPPORT%20CMR.pdf> (last visited 30 November 2009).

91 Sebastiaan J. H. Rietjens, ‘Providing relief: The case of the Dutch engineers in Kosovo’, in S. J. H. Rietjens and M. T. I. B. Bollen (eds.), *Managing Civil-Military Cooperation*, Ashgate Publishing Ltd, Hampshire, 2008, p. 99.

92 Johan de Graaf, ‘Shaky grounds: Civil-military response to the Pakistani earthquake’, in *Managing Civil-Military Cooperation*, in Rietjens and Bollen (eds.), *ibid.*, p. 83.

93 Bart Klem and Stefan van Laar, ‘Pride and prejudice: An Afghan and Liberian case study’, in Rietjens and Bollen (eds.), *ibid.*, p. 139.

94 Jacques Derrida, *On Cosmopolitanism and Forgiveness (Thinking in Action)*, translated by M. Dooley and M. Hughes, Routledge, London, 2001, p. 44.

unconditional value of charity as *agape*; at the same time, there is the pragmatic imperative of historical, legal or political conditions which demand the opposite (i.e. taking sides). These two remain irreducible: humanitarian action thus 'has to be related to a moment of unconditionality ... if it is not going to be reduced to the prudential demands of the moment'.<sup>95</sup> On the other hand, such unconditionality can hardly be permitted to programme action, as decisions would be deduced from incontestable ethical precepts or principles.<sup>96</sup>

True humanitarianism requires respect for both poles of this tension. Thus it presents an immense difficulty, even for the ICRC. Humanitarians continue to be predisposed to choose where to help, where to judge and where to condemn, as well as to where to pronounce innocence.

Since Biafra, humanitarianism has become more associated with the defence and support of the underprivileged and the oppressed. The Western perception, like that of the ICRC, is that the Biafrans were the victims in the Nigerian Civil War – they were the ones who needed food and medicine. To uphold humanity as *agape* was regarded as naive and unjust. Since Biafra, humanitarian values have undoubtedly changed, not only because of the circumstances but also through the actions of humanitarians themselves.

In the post-Cold War era, military forces also engage actively in humanitarianism. In the aftermath of the Rwandan genocide, in the camps in Zaire and after the regimes were overthrown in Iraq and Afghanistan, this military involvement caused and continues to cause moral dilemmas for humanitarians. One of the main questions is whether humanitarians should work side by side with military personnel who claim to be providing humanitarian aid. As humanitarian action is used in such a broad sense, particularly since Iraq and Afghanistan, it could be argued that the original moral values are at risk. While different humanitarian organizations make very different choices, most of these organizations use the same notions of humanity, impartiality, neutrality and independence to describe their identity.

There are codes of conduct and principles, but it is disappointing to see that very little literature is to be found which discusses in depth the moral value of humanity underlying these principles. If what humanity consists of and why it should be an end in itself is not very clear, there is a real danger of humanity itself becoming an instrumental value for political or military players who use the humanitarian message (based on humanity) for their own purposes.

The moral dilemma between humanity and justice is unlikely to disappear, but this must not be an excuse for inaction. Rather, it requires well-trained professional humanitarians who are conscious of their own most fundamental moral values, so that they can make their position clear and are willing to stand up for these values. This can be regarded as a competence or virtue (practical wisdom) rather than as an obligation. Such a competence is vital not only for the suffering

95 Simon Critchley and Richard Kearney, *Preface*, in Derrida, *ibid.*, p. xii.

96 *Ibid.*

community in question but also, as Hugo Slim has already pointed out, for the individual relief workers operating in the field: ‘their impact is usually only palliative, at best they become some small beacon of alternative humane values in the midst of inhumanity. In such a context, their own personal contribution must make sense as a moral and active one within the violence around them, and the activity must be clearly explained in terms of the core moral values their organization has chosen to pursue’.<sup>97</sup>

97 H. Slim, above note 39, p. 350.