

Volume 93 Number 884 December 2011

# INTERNATIONAL **REVIEW** of the Red Cross

Humanitarian debate: Law, policy, action

## The future of humanitarian action



ICRC

### Aim and scope

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

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## EDITORIAL: THE FUTURE OF HUMANITARIAN ACTION

What evolution and underlying trends influence the future of humanitarian action and its ability to respond to the crises of tomorrow? Since the end of the Cold War, humanitarian activity has grown exponentially to the point that, given the development of such organizations in number, weight, and professionalization, it is now possible to speak of a 'humanitarian sector' or an 'industry'.<sup>1</sup> Polymorphic and complex, this sector is composed of different systems or 'networks of networks' with no central governance. We see three main components to this sector today: non-governmental organizations of extremely diverse size and missions, the United Nations humanitarian agencies, and finally, the components of the International Red Cross and Red Crescent Movement. The largest of these organizations, whose headquarters are all in the Western world, manage large and constantly increasing budgets, and exercise an influence that, while fluid, is nonetheless real and one of a truly international civil society.

Several factors today seem to demonstrate profound changes in the humanitarian sector. These are factors related first to the development of crises and vulnerabilities and the risks that are emerging, second to the environment around humanitarian action and the contemporary challenges to compliance with humanitarian principles, law, and access to victims, and third to new methods and changes in the composition of the sector itself.

In this edition, the *Review* gives the floor to representatives of a number of humanitarian organizations and research centres to discuss each of these three aspects of change that we think are critical to the future of humanitarian action.

### **New threats, new responses**

While conflicts, in particular non-international ones, still represent a major cause of suffering, humanitarian action also responds with increasing frequency to disaster situations, natural or massive technological catastrophes, which have worsened in terms of frequency and magnitude.<sup>2</sup>

The basic idea behind the humanitarian approach is that human suffering knows no borders and, that in dealing with crises, not all countries seem to be in the same boat. Southern countries, more vulnerable to climate change, pay the price of the ecological bill for the development of the powers of the 'North'. In addition, those who live in the slums of Port-au-Prince or the farmers of the Indus Valley are

just as much the victims of earthquakes or floods as they are of poor infrastructure, a lack of local relief capacity, and governance problems. The map of climatic risks is thus often overlapped by patterns of political instability, chronic insecurity, and underdevelopment. The line between crisis response and long-term development is consequently unclear, particularly in the context of chronic conflict (for example, in Afghanistan, Somalia, and the Democratic Republic of Congo). One uses the term ‘complex emergencies’ to emphasize the interdependence of the factors governing the vulnerability of populations. Nevertheless, the earthquake in Japan and the nuclear crisis that the tsunami triggered remind us that, in certain circumstances, even rich countries are not immune from crisis, and that their technological superiority can be intricately related to their weaknesses.

The root causes of conflicts between nations have not all been extinguished – far from it. Tensions around Iran, the two Koreas, and both Sudans are just some examples of political and humanitarian fault lines. Nor have non-international armed conflicts decreased in frequency and gravity. In fact, most conflicts today have a long history and some are seemingly intractable, while the popular uprisings in the Arab world (and the repression that they have encountered) have caused new outbreaks of violence.

Finally, whether manmade or not, whether they strike the richest or the poorest, crises of political, climatic, epidemiological, or tectonic origins affect communities that are increasingly populated and urbanized, the city acting as an amplifier to the vagaries of nature and war.<sup>3</sup> Faced with these multiple causes, planning the humanitarian response becomes more demanding and difficult to implement.

## Humanitarian principles put at test

After giving an overview of the risks to populations and possible response strategies, this edition of the *Review* examines in detail some of the challenges to the principles of humanitarian action that have arisen in recent years, particularly in terms of the manipulation of humanitarian actors or viewpoints for political ends and the consequences that this has for access and perceptions. The future of humanitarian

- 1 ALNAP refers to a ‘system’, see, *The State of the Humanitarian System*, Paul Harvey *et al.*, 2010, available at: <http://www.alnap.org/forum/post/60.aspx> (last visited 20 December 2011). For a statistical evaluation of the volume and evolution of humanitarian aid, of its principal donors and recipients in 2011, see Global Humanitarian Assistance (GHA) *Report 2011*, Development initiative, available at: [www.globalhumanitarianassistance.org](http://www.globalhumanitarianassistance.org) (last visited 20 December 2011).
- 2 The frequency and intensity of catastrophes continue to grow. Thus, in 1975, there were 78 catastrophes recorded in the world, whereas there were 385 in 2011 (statistics and tendencies cited by ECHO, available at: [http://ec.europa.eu/echo/about/presentation\\_en.htm](http://ec.europa.eu/echo/about/presentation_en.htm) (last visited 20 December 2011)). See also M. Webster *et al.*, ‘The humanitarian response costs of climate change’, *Feinstein International Center*, 2009, available at: [http://www.unisdr.org/files/8058\\_Feinstein\\_Tuftsclimatechange.pdf](http://www.unisdr.org/files/8058_Feinstein_Tuftsclimatechange.pdf) (last visited 20 December 2011).
- 3 See particularly the thematic edition of the *Review* on urban violence, Vol. 92, No. 878, 2010. For the humanitarian response in urban environment, see, for example, Inter-Agency Standing Committee, ‘IASC Strategy: Meeting Humanitarian Challenges in Urban Areas’, IASC, 2010, p. iii.

action is also conditioned by military, political, or civilian actors who can not only facilitate but also manipulate or obstruct humanitarian action.

Humanitarian actors, which are much more numerous and present in more areas than in the past, are more exposed to criminal attacks by uncontrolled groups and individuals taking advantage of lawlessness. The fact that most of today's conflicts are non-international in nature complicates access to victims: there has been an increase in fragmentation of armed groups in these conflicts and some of them reject any involvement of foreign actors. In turn, states are often reluctant to allow humanitarian actors to operate on their own territory and may impede dialogue with armed groups that they characterise as terrorist or criminal. Given the risks, humanitarian aid is sometimes conducted through local intermediaries, without the presence of foreign personnel. For example, many humanitarian operations in Somalia are conducted by 'remote control'.

Nevertheless, in situations of armed conflict, the action of impartial humanitarian organizations is envisaged by international law. In view of this pressing challenge, Switzerland has recently developed means for the promotion – to both humanitarian organizations and to parties to conflicts – of the rules allowing access.<sup>4</sup>

Among the challenges to humanitarian action in conflict situations is the question of the perception by parties to the conflict of humanitarian actors, their activities, and the law. This question of perception is not just one of acceptance in conflict zones. It also arises in public opinion and among policy-makers of the great powers, particularly the United States. Often described as obsolete or irrelevant, international humanitarian law has been particularly tested during the last decade, marked by the 'global war on terror'. The rhetoric of this confrontation has excluded neutral humanitarian space between the coalition of states involved, and the armed groups and terrorist organizations. This question of perception is likewise discussed in the current edition.

Recent crises have also seen a growing number of states entering the humanitarian field, showing more concern towards their own populations. Furthermore, states that are newcomers in humanitarian action, such as Brazil, China, Turkey, and Saudi Arabia, are beginning to integrate international solidarity as part of their foreign policy. In so doing, they define the humanitarian response in their own terms, challenging the *de facto* monopoly of Western organizations. Their conceptions of 'humanitarianism', their motives for supporting aid, and the terms of their support reflect a humanitarian approach different from that of established organizations and donors and more concerned with respecting the sovereignty of the state receiving the aid. In a world that has become multipolar, this change in the structure of the humanitarian sector presents both challenges and opportunities for the traditional Western actors.

4 Swiss Federal Department of Foreign Affairs, *Humanitarian Access in Situations of Armed Conflict: Handbook on the Normative Framework*, and *Humanitarian Access in Situations of Armed Conflict: Field Manual*, available at: <http://www.eda.admin.ch/eda/en/home/doc/publi/phumig.html> (last visited December 2011). This work is also presented in the current edition.

Another challenge to principled humanitarian action is the continuous tendency by some states and armed groups to use it for political purposes or to control, or even prevent, the action of foreign humanitarian actors perceived as subversive or unwilling to submit to political injunctions. As we have already mentioned in previous editions of the *Review*,<sup>5</sup> the states involved in conflicts in Iraq and Afghanistan have adopted a 'comprehensive approach' against the insurgency: both development efforts and humanitarian assistance to local populations are conducted in parallel with, or in continuation of, combat operations against insurgents. Some humanitarian actors have been asked to participate in the 'stabilization' of Afghanistan or Iraq. They have thus risked putting into question their independence and their neutrality. Many humanitarian actors and researchers have warned, including in the *Review*,<sup>6</sup> against the danger engendered by this type of action of confusing and mixing humanitarians with the military. This approach may be questionable in terms of principles and perception, but it may also turn out to be inefficient, if it fails to win active and sustainable support from the population.

As was recently the case in Libya, states can also call on the need to use force to protect civilian populations. Paradoxically, when military operations present 'humanitarian' objectives, there is a high risk that victims will be designated as 'good' or 'bad'. The use of force to protect civilian populations is also likely to create an amalgam between humanitarian and military action in the eyes of the state against which the battle is being waged. The NATO intervention in Libya – portrayed as a 'humanitarian war' and supported by the concept of the 'Responsibility to Protect' – has contributed to casting doubts about the true nature of the humanitarian endeavour.

While tensions between humanitarian and political actors can be particularly acute in times of conflict, natural disasters also present challenges to organizations' access to, and co-ordination with, local authorities, especially when they hit areas already marked by poverty and/or violence. The massive floods that devastated Pakistan in 2010 affected over 20 million people in a country struggling with several armed groups and having to manage a serious problem of internally displaced persons. Besides the response of international organizations and non-governmental organizations, the Pakistani army was immediately mobilized to respond to the crisis. There are several lessons to be learnt from the experience of humanitarian actors in their co-ordination with the Pakistani authorities, as discussed by one of the contributions in this edition.

5 See 'Conflict in Afghanistan (I)' and 'Conflict in Afghanistan (II)', Vol. 93, Nos 880 and 881 in *International Review of the Red Cross*. Also see 'Understanding armed groups and the applicable law', and 'Engaging Armed Groups', Vol. 93, Nos. 882 and 883 of the *International Review of the Red Cross*.

6 See, particularly, Antonio Donini, 'Between a rock and a hard place: integration or independence of humanitarian action?', in *International Review of the Red Cross*, Vol. 93, No. 881, 2011, pp. 141–157; Fiona Terry, 'The International Committee of the Red Cross in Afghanistan: reasserting the neutrality of humanitarian action', in *International Review of the Red Cross*, Vol. 93, No. 881, 2011, pp. 173–188.

## Changing actors and evolving practice

Finally, the humanitarian sector itself is also changing in its composition and practice. The last part of this edition relates to key internal and external developments affecting humanitarian actors and their methods.

Following the rise of Western humanitarian organizations during the 1990s, there has been a new wave of humanitarian actors, this time coming from emerging countries. Donors, organizations with an international mission – including Islamic-inspired organizations – and local movements of citizens and diasporas are increasingly present and visible in crisis response. In addition, the exemplary solidarity of Tunisians vis-à-vis the refugees during the crisis in Libya reminds us that the first acts of assistance generally are the work of the population itself. Support for local capacity-building can play a greater role in the international response, in the name of efficiency. It is also a model promoted by the concerned states, as it is perceived as being more respectful of their sovereignty. However, the model of intervention for humanitarian organizations generally remains that of the unilateral deployment of Western expertise to support the victims of the ‘South’. Besides the public intentions to strengthen partnerships, organizations are still struggling to change their practice in this area.

The performance of humanitarian organizations is regularly the object of criticism – and even more of self-criticism – especially during major crises that mobilize international solidarity. Thus, the entire humanitarian sector has been blamed for poor response and co-ordination of the response to the earthquake in Haiti and the floods in Pakistan. In other contexts, such as recently in Libya, it was rather the inability of most organizations to operate in an arena of conflict that called for the sector to reflect critically on its access to populations. The global economic crisis has affected aid funding for many organizations, while donor pressure demanding better performance has increased.<sup>7</sup> Organizations are becoming more professional<sup>8</sup> in order to meet the need for transparency and to respond to concerns to provide the best response for victims. Over time, the sector has changed dramatically by acquiring training, procedures and standards, and mechanisms of assessments and certifications.

Another developing method is that of ‘humanitarian diplomacy’. Henry Dunant is certainly the precursor of this practice since, as a private citizen, he created an international movement that persuaded the greatest powers of his time to adopt the first Geneva Convention, thus laying the foundation not only for the Movement of the Red Cross and Red Crescent but also for international humanitarian law. The Movement in general, and the ICRC in particular, already

7 The UK Department for International Development (DFID) has even published its own classification of these organizations. See DFID, *The 2011 Multilateral Aid Review*, available at: <http://www.dfid.gov.uk/what-we-do/how-uk-aid-is-spent/a-new-direction-for-uk-aid/multilateral-aid-review/> (last visited December 2011).

8 On professionalization of humanitarian action, see Peter Walker, ‘Professionalizing the humanitarian sector: a scoping study’, Feinstein International Center, Tufts University and Catherine Russ, RedR UK Report, commissioned by ELRHA, April 2010.

have a highly developed method of practising humanitarian diplomacy.<sup>9</sup> However, it still remains relatively unknown beyond the Movement. In including a contribution on humanitarian diplomacy in this edition, the *Review* aims to improve the understanding and recognition of this practice.

Since the late 1980s, communication and information technologies have profoundly changed the way in which humanitarian action is perceived and conducted. The immediacy of information on major world crises (the so-called ‘CNN effect’) has contributed to reinforcing the importance of the humanitarian response. A new revolution is being realized through the widespread use of communication technology both by the humanitarian organizations and by the beneficiaries. Geo-localization and the use of satellite imagery can detect population movements, measure the extent of a disaster, or confirm the existence of atrocities. Internet access helps people who have been separated to find each other more easily and to mobilize volunteers around the world. The widespread use of mobile phones allows people to communicate their needs or call for help. These technologies are also increasingly used in overcoming problems of access and security, and in facilitating the conduct of operations by ‘remote control’. They have greatly reduced the distance between the headquarters of organizations and teams deployed in the most remote places. New information technologies could signify profound changes for the sector with the emergence of new actors, allowing victims themselves to articulate their needs thus creating, *de facto*, a greater accountability for organizations.



‘As for the future, your task is not to foresee it, but to enable it’, wrote Antoine de Saint-Exupéry in *The Wisdom of the Sands* (1948). Nobody predicted the violent shocks that have crossed the Arab world for over a year, or that a tsunami would result in the questioning of nuclear power in Japan. Unpredictability is more than ever the rule in the humanitarian field, and there can be no question either of *predicting* or of preventing future crises but rather of preparing for them. *Anticipating* the worst situations is essential to saving lives. The ability of humanitarian actors to aid the victims of tomorrow will depend on their ability to improve their tools of preparation and rapid response. Because of the high stakes and the influence acquired by the non-governmental sector, the question of the future of humanitarian action goes beyond the introspective debate of a corporation on its own ‘business model’ (to use the expression of the World Economic Forum<sup>10</sup>), being open to all practitioners and researchers interested in international

9 See, for instance, Marion Haroff-Tavel, ‘The humanitarian diplomacy of the International Committee of the Red Cross’, in *African Yearbook of International Humanitarian Law*, 2006, pp. 1–16.

10 See the World Economic Forum’s Global Agenda Council on Humanitarian Assistance Report, ‘A new business model for humanitarian assistance’, 2009, available at: <http://www.international-alert.org/resources/publications/new-business-model-humanitarian-assistance> (last visited December 2011).



issues. In the future, the *Review* will continue to reserve a part of its pages for discussions on contemporary challenges to the humanitarian response to crises.

During the last twenty years, humanitarian action has ceased being a simple epiphenomenon of international relations. It has gained a real influence. It has also become a support for the projectionist will of certain states, including some emerging countries. Its future will depend on the evolution of crises and of political and military actors, but also on its own ability to enhance its quality, its principles, and in particular its independence vis-à-vis political and armed actors, and its accountability vis-à-vis donors and recipients.

While there are many pressures and changes in external factors in the field, there are also internal risks. The ongoing professionalization should not necessarily mean the growth of bureaucratization, even if that risk exists. Nor does it necessarily entail copying the recipes of private sector management. As a victim of its own growth, one of the most pernicious risks for the humanitarian sector is that, by creating large-scale administration or by copying the multinationals, it will come to identify itself through its structure rather than its humanitarian mission.

Indeed, acting as a humanitarian professional cannot be reduced to a series of practical and technical skills. The task is first and foremost to recognize the humanity in each one of us, as remote and different as we may be, and most importantly to refuse to remain a spectator when this humanity is denied or violated.

*Vincent Bernard*  
*Editor-in-Chief*



## Discussion: What are the future challenges for humanitarian action?



Thomas Vanden Driessche, ICRC

*Dr. Kristalina Georgieva, European Commissioner responsible for International Cooperation, Humanitarian Aid and Crisis Response, and Dr. Jakob Kellenberger, President of the International Committee of the Red Cross\**

\* This debate was conducted in Brussels on 4 October 2011 by Vincent Bernard, Editor-in-Chief, and Mariya Nikolova, Editorial Assistant.

## Editor's Note

*This edition of the Review is introduced by the reflections of two of the leading humanitarian action policy makers. In 2010, Kristalina Georgieva was named the first Commissioner of the European Union specifically appointed for humanitarian aid and crisis response. In this capacity she heads the Directorate-General for Humanitarian Aid and Civil Protection of the European Commission (ECHO), a major donor of international aid. Dr Jakob Kellenberger's second term as President of the International Committee of the Red Cross (ICRC) is drawing to a close, following a decade during which the principles defended by the International Red Cross and Red Crescent Movement and international humanitarian law have been severely tested. Commissioner Georgieva and President Kellenberger have met regularly to exchange views on the working files common to both organizations. The Review asked them to extend one of their interviews in order to discuss the threats and challenges facing humanitarian action. They give their respective positions on several questions of current importance, such as that of the continuum between crisis and development or the problem of coordination among humanitarian actors. Commissioner Georgieva also gives her view of humanitarian principles, including the independent financing of humanitarian action vis-à-vis the states since the adoption of the EU Lisbon Treaty and the creation of an External Action Service responsible for conducting the new European Union Common Foreign and Security Policy.*

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***The Review: Let us begin with a question on the main challenges for humanitarian action and humanitarian actors in the years to come. Madame Commissioner, perhaps you could start by sharing your views on the trends we observe today and their impact on humanitarian action?***

**Kristalina Georgieva:** We clearly live in a world which may be richer today but is also more fragile. We are facing an increase of the frequency and intensity of natural disasters and an increase in the complexity of conflicts and their effect on communities and countries. These two trends, unfortunately, overlap in many parts of the world. Countries that are unstable are also in areas that are vulnerable to natural disasters. The Horn of Africa is a very typical example where we have fragility caused by nature, such as recurrent droughts that affect communities. Affected countries include Somalia, Kenya, Ethiopia, and Djibouti but also, in prior years, Uganda, Niger, and Mali. Then we also have the conflict in Somalia, which makes access to people in need so much more difficult.

So what does the future look like? I very much believe that we will see conflicts continuing to tear apart societies and becoming even more difficult to resolve because of the exponential growth of populations and the very fragile lands and ecosystems in which they take place. What will make such conflicts particularly difficult is the rapid urbanization in the developing countries, including in these fragile countries. In such contexts, the urban area brings the extra danger of 'anonymity', which breaks the social fabric that sometimes – in smaller

communities – helps people stay together, especially in times of conflict. Then, on top of that, we have climate change, which is making the whole world – the poor and the rich world alike – more fragile.

We talk about these threats, but very rarely do we try to project what they mean for the humanitarian community, for the development community, for politicians. That is where I think we are falling behind the changes in the world.

I want to raise another point – and I would be very interested in President Kellenberger's reaction to it – and this is the combination of ecological fragility and population growth. I was actually quite shocked to learn that, since independence in 1960, the countries today suffering in the Horn of Africa have all increased their population by five or more times. That was a wake-up call for me. To give an example, in 1960 Bulgaria and Kenya had a similar-sized population. In fact, if I remember it correctly, Bulgaria was 56th in the global ranking, with 7.9 million people; Kenya was right after, 55th in the global ranking with 8.1 million. Today Bulgaria has a population of about 7.4 million, while Kenya has more than 40 million! All of a sudden, it hit me – I tried to imagine what my country would look like if we were 40 million people! And again, my country is more fortunate because it has a richer natural environment, whereas Kenya has a big part of its territory in arid and semi-arid lands. Then you look at Somalia, which had a population of 2.5 million in 1960. It now has a population of almost 10 million people, living in ecologically very fragile areas.

My point is that, if you take the map of the world, and you overlay on this map natural fragility, frequency of disasters, and conflicts, there would be a remarkable overlap between where conflicts take place, where natural resources are scarce, and where the ecological environment is fragile. My conclusion from this is that we have to become much more focused on thinking not only about the changes in the world but also about what they mean for us in our action.

President Kellenberger and I have talked about one of the important points that comes out of this – that we have to build more resilience. How do you build resilience? With development. This means that the humanitarian world and the community of development professionals have to come closer together.

**Jakob Kellenberger:** Yes, perhaps I can start with what the Commissioner just said, and I would perhaps generalize a bit. Humanitarian organizations are likely to be increasingly faced with situations where populations are under different layers of pressure: demographic pressure, economic forms of pressure, pressure from natural and technological disasters, conflict pressure, climate change pressure, and so on. I think that the number of these types of situations will increase. I also think we will see an increase in the number of situations where you have a humanitarian crisis which lasts a long time because of these different layers.

I think Somalia is a case that we all have in mind, but there are other similar situations. As far as the challenges for the humanitarian sector are concerned – I think perhaps one of the first challenges for the humanitarian organizations would be for them to be clear themselves about what they understand

by 'humanitarian action'. If they were very clear about what they understand by that, this could greatly facilitate co-operation. For instance, if they understand by humanitarian action only emergency action, or emergency action *and* early recovery, or even also activities embracing development and social work. More common understanding of what is meant by 'humanitarian action' would be helpful for co-operation.

Regarding the challenges, the Commissioner put it in other words, but I think she meant the same thing: humanitarian organizations focusing on natural disasters and technological disasters, in order to prepare well for the future, have to invest a lot in disaster preparedness. The preparedness challenge looks a bit different for armed conflicts and other situations of violence.

We have enough proof from around the world that the humanitarian consequences of natural disasters can be very different, depending on the level of preparedness of the populations affected by these disasters. It is sufficient to think of the earthquakes that took place in 2010 in Haiti and Chile. It makes a lot of sense to invest more in preparedness and resilience. For those who are working in armed conflict and other forms of collective violence, such as the ICRC, I take it that the future will present a lot of unforeseen situations, with a lot of contexts that you could not even think about in advance. The point is to be really on the spot, if possible, and to be physically present, wherever you have a feeling your action may be needed. You have to integrate in your mind the certainty of uncertainty, and draw the right conclusions. Developing rapid deployment capacities and widening the network of your interlocutors are measures useful in any situation.

**Kristalina Georgieva:** Yes I agree with that.

If you look at the social resilience of countries, it very much depends on the institutions countries have: the institutions of law and order, the educational institutions, jobs opportunities. What we recognize is that, at any given time, some thirty to forty countries, because of a lack of institutional capacity, are either in a conflict, slipping into a conflict, or coming out of a conflict. So we have a significant number of countries that, at any one time, are simultaneously on that path. This translates into three major challenges for us.

First, there are, unfortunately, more places that are becoming very dangerous to work – Afghanistan, Somalia, Iraq (or at least parts of Iraq) ... Yemen, too, is slipping in this direction. Second, more often – because of the big number of fragile societies – we have an explosion of unexpected crises: consider Kyrgyzstan in 2010 and Côte d'Ivoire in 2011. Third, we have more protracted crises, some of which last for 10, 15, 20, 30 years: the occupied Palestinian territories, or the refugee inflows from Myanmar and Darfur, for example. We can go on and on. When you look at these three challenges and you look at the capacity of the humanitarian community to respond, we all have to recognize that we have to reach out to the development community and to work on social resilience, on the institutions in these countries. We also need to be able to sustain a presence that builds resilience and opportunities in these countries. All this is to say that we have a

change in the world that we have not yet translated into a change in our collective response.

Then you look at the ever more frequent occurrence of natural disasters. When I was younger, in the '60s and '70s, the number of registered disasters was much lower than it is today. In 1975, the year I graduated from university, there were 78 major disasters. Last year, there were 385: a five-fold increase. In the last decade, the average disaster occurrence is just below 400 per year. So, obviously, that means that the investment in preparedness and prevention for resilience to natural disasters also has to increase. Yet sometimes humanitarian organizations and professionals would say 'our job is lifesaving', and that is all. You save a life and you do not ask the next question – is this life worth living, is this life going to be at risk again tomorrow? You could also say that your job is to build this resilience and to build bridges with the development community, with those who have a longer-term perspective and look into the institutions; you could advocate with these people to focus more on linking relief, rehabilitation, and development.

***Let us talk more about the 'relief-development' continuum. How can we better address transitional contexts, which are not humanitarian crises per se, but which are also not purely development contexts? How can your respective institutions contribute to an adequate and efficient response?***

**Kristalina Georgieva:** I would make two points here. The first one is paramount for the humanitarian community operating in protracted crises' environments: there is a need to professionalize more into linking relief to rehabilitation and development, to be more open to using humanitarian means to promote sustainable results. For example, using cash-for-work programmes to help people to develop skills and generate some income from their activities so they can eventually break out of their dependency on aid; or having more flexible funding that also allows the



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funding of training programmes for those who spend a large portion of their lives in camps; or promoting environmental measures because, very often, in protracted crises, the natural environment on which people depend becomes completely destroyed. For instance, humanitarian organizations working in a refugee camp put no requirements for reforestation of the area, for water resource management, for cleaning and processing the garbage because they do not have the skills or they do

not feel, as President Kellenberger said, that it is their mandate. So there has to be an improved understanding of such responsibility.

Number two – and this goes to the development community – they need to be more willing to link what they do with relief efforts. I came from the development world and I am now in the humanitarian world. Both worlds look down upon each other. The humanitarian world thinks of itself as fast and says the development people are very slow. The development people think of themselves as sustainable, and they think of the humanitarians as ‘fire-fighters’ who do not understand long-term problems. This culture has to be changed. In this regard, we had a first high-level dialogue on humanitarian action and development in the World Bank last September, with Mr. Robert Zoellick,<sup>1</sup> Ms. Valerie Amos,<sup>2</sup> Ms. Helen Clark,<sup>3</sup> Mr. Rajiv Shah,<sup>4</sup> myself, Mrs. Ogata,<sup>5</sup> and we pledged that we would make this topic of resilience a common platform and that we will systematically build these bridges. President, my colleagues asked me why I think there is this gap between humanitarian and development action. I said, ‘three Cs – culture, cash, capacity’. And culture, to my mind, is critical for unlocking both cash and capacity. There is a need for a culture change in the two worlds.

**Jakob Kellenberger:** You know, one of the modern philosophers characterized today’s world not so much as a world of ‘either/or’ but rather as a world of ‘as well as’. I have to say that, when you see how fluid the limits have become between what you would consider a humanitarian crisis context or a transitional period or a development context, you can already see that the different actors have to become more flexible and look at the context in which they operate, in order to determine how far they go. The ICRC links relief to rehabilitation, maintaining and developing water supply systems, for example, or by delivering tools, seeds, and fertilizers.

Your point of view is interesting, Madame Commissioner. I have never seen it exactly in such terms, but we may mean the same thing. In recent years, I was asked again and again about exit strategies of humanitarians. When I asked the question about ‘entry strategies’ for development actors, people looked surprised and had no answer. Building bridges means for me serious work and bringing together these strategies, preferably in the field. The real challenge consists not so much in bridging the gap conceptually, but rather at the level of action. For this to happen, the actors concerned have to be present and demonstrate relevant capacities. In a world characterized by increasingly blurred lines between different forms of activities, different forms of violence, different bodies of law, etc., clear conceptual frameworks are even more important than in earlier times. The ICRC ‘Strategy 2011–2014’ is an example for this. All this being said, a real humanitarian organization should have the capacity to do relevant work itself in emergency

1 President of the World Bank.

2 UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator.

3 Administrator of the United Nations Development Programme (UNDP).

4 Administrator of United States Agency for International Development (USAID).

5 President of the Japan International Cooperation Agency (JICA).



situations. This is its core responsibility. The challenge is not to feel and to declare oneself responsible for everything, but to assume concrete responsibilities in specific areas.

I think this is my way of giving the same answer. If one really wants to link, in a decent way, post-crisis situations with pre-development situations, I think it will be very important that the humanitarians and the development agencies talk and work more together, really in terms of knowing who is capable of doing what, and who is going how far. I'll give you an example: some time ago the notion of 'early recovery' was introduced into the humanitarian/development debate. You had to position yourself with regard to this notion. To be more assertive and systematic in 'early recovery' is part of the ICRC 'Strategy 2011–2014'. This summer we felt we had to put on one page what we understood by 'early recovery' and in which type of activities the ICRC saw its value added in early recovery activities. This would help us be predictable partners for all concerned by early recovery activities – beneficiaries and donors alike. It is, for example, important to know if you can count – or not – on an organization when internally displaced persons return home. I think Commissioner Georgieva knows by now what the ICRC means when it talks about 'early recovery', and what type of action that she could expect from us. We try to make it easier for Commissioner Georgieva so that she is then able to decide what allocations she will make for humanitarian and early recovery actions in a specific context.

**Kristalina Georgieva:** Yes, and yet we still have to work hard to make sure that funding is available for humanitarian action – usually fast-delivery, more flexible funding can be matched with development funding that is at a similar level of speed and flexibility so that we can connect the resources in a seamless manner.

**Jakob Kellenberger:** We hope that Dr Georgieva will be successful in her efforts to have more flexible rules about support of projects that would clearly fall into the category of what we understand by 'early recovery'. I think it would make a lot of sense in this world where we have these fluid limits between different situations.

**Kristalina Georgieva:** If I can just add to that, there are some good examples already. We should not leave you with the impression that this is totally uncharted territory. There are many good examples where actions that are related to putting out the fire of a conflict contribute to rehabilitation and to development. One example is the work with war-affected children: the humanitarian community may offer a programme to provide post-trauma rehabilitation and psychological support, and then the development community could bring them into schools. With this, we not only provide immediate help to those children, but we already have a longer-term plan for them to be educated and re-integrated. Another

example, perhaps less related to humanitarian work in a post-conflict situation, are the cash-for-work programmes in a post-disaster environment: in that context, the cash-for-work programme could be followed by a development programme (UNDP or somebody else), which could turn it into a much bigger activity. We have also good synergies with our development colleagues at country level, which is bringing a more effective response. In the Sahel region, for example, our support to livelihoods, notably through regional food purchases, creates an incentive for farmers to produce, and makes an important contribution to food security and nutrition. These are also important sectors for interventions by development agencies. Yet these are still the exceptions, rather than the rule, of how we work, and we need to turn them into a rule in this new world.

**Jakob Kellenberger:** Yes, and perhaps you would agree that the development agencies are not yet starting to enter a bit earlier into post-crisis situations. This means that humanitarians will be forced to go into early recovery and pre-development more and more.

**Kristalina Georgieva:** I do agree.

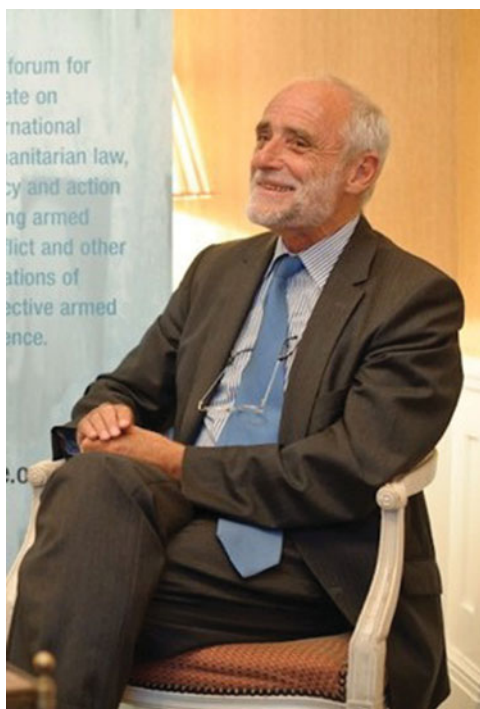
*International humanitarian law (IHL) is another topic very close to the ICRC, and it is also one which obviously concerns the European Union, especially since the adoption of the 'EU Guidelines on Promoting Compliance with International Humanitarian Law'. How do you see the role of IHL in future conflicts? Maybe we could start with President Kellenberger, and then, Madame Commissioner, you could tell us how you envision supporting the development of IHL in the future?*

**Jakob Kellenberger:** At the ICRC, and I think rightly so, when we talk about IHL, we first talk about getting better implementation for existing rules. In this regard, the co-operation with the Council and the Commission of the European Union is excellent. The revised EU Guidelines of 2009 are exactly the type of measure we would wish from states, because they show that one is taking seriously the responsibility to promote the respect of IHL. I always take these Guidelines as an example in terms of what we would wish to see. Now there is even a yearly reporting requirement about the implementation of IHL, which is excellent.

Even if getting better implementation for existing rules is the priority, the development of new rules cannot be neglected in order to obtain better protection for those affected by armed conflicts. The ICRC, based on a thorough study of existing gaps in IHL, especially IHL applicable in non-international armed conflicts, has worked out proposals for development of the law. Thinking of the future, my feeling is that the humanitarian consequences of situations of violence other than

armed conflicts may become more important than the humanitarian consequences of armed conflicts. A humanitarian organization like the ICRC, while maintaining its ambition to be the reference organization for IHL, has to become more and more competent in the field of international human rights law. This is the international law reference in such different contexts as Kyrgyzstan in Summer 2010 or Mexico. Contexts of collective non-state organized armed violence below the threshold of armed conflict could become much more frequent in the future.

The notion of 'other situations of violence' has to be handled with care and explained well. It may be more closely defined to avoid misunderstandings, in particular with regard to individual and collective armed and unarmed violence. This notion can also be abused by states in order to deny the applicability of IHL and the right, for exclusively humanitarian purposes, to be in contact with all parties to a conflict.



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**Kristalina Georgieva:** For us, we are fortunate as Europeans that the EU Member States not only support the implementation of IHL, as it is their obligation to do so under the Geneva Conventions, but some of them are also active in promoting respect for IHL at the UN, and in other fora.

We support three types of concrete activities for the dissemination and implementation of IHL. First, we fund training programmes that can reach out to people, especially when in new types of conflicts we are faced with non-state armed groups, which usually have no clue of any law, least of all IHL. Reaching out to people who are party to a conflict is important, so that they can understand a very simple thing – that, even in the direst environment, there has to be space for humanity. We fund training in IHL through our implementing partners, in places such as Colombia, India, the border between Thailand and Myanmar, and the Occupied Palestinian Territories.

Second, we also fund activities aimed at increasing the capacities of humanitarian workers and of those who design humanitarian policies in advocating for IHL. Over a period of one year, more than 130 people from all over the world, living in conflict or post-conflict situations (including staff from the Red Cross and

Red Crescent National Societies) have been trained in IHL. I believe that they will be able to disseminate their knowledge further. We are likewise keen to get our own staff, who work in fragile contexts, to understand the significance of being well prepared.

Third, we try to raise awareness among our partners worldwide about some of the unintended consequences of new counter-terrorism legislation and policies, which may limit or hamper training in international humanitarian law. As you know, some states have passed domestic criminal legislation prohibiting material support to listed terrorist entities. Such legislation also effectively prohibits the funding of training in IHL where such training is directed to armed groups labelled as 'terrorist'. So my staff and I are active in promoting more awareness of the risk of curtailing effective humanitarian engagement through such legal developments.

Finally I think that IHL has developed over time but the nature of conflicts has changed very rapidly, and the law may also need to be adapted to the new realities of armed conflicts. I therefore fully support the initiatives undertaken by the ICRC to strengthen and develop IHL further.

*Let us discuss the principles that, according to you, should guide humanitarian action in the future. Madame Commissioner, since the entry into force of the Lisbon Treaty, how do you see your services keeping their autonomy from the External Action Service of the EU, and more generally from the EU Common Foreign and Security Policy?*

**Kristalina Georgieva:** In fact, after the entry of the Lisbon Treaty into force, we have a stronger legal ground for the impartiality and neutrality of EU humanitarian action. We have an article in the Lisbon Treaty defining 'humanitarian aid' as a specific policy clearly distinct from foreign and security policy objectives and decision-making, and we have an institutional change that comes with the establishment of my position as Commissioner for Humanitarian Aid and Crisis Response, separate from the External Action Service.

My staff is outside the European External Action Service and my decisions on providing humanitarian assistance are driven by only two factors – need and ability to access people in need – nothing else. We are blind to political, religious, or any other considerations. This being said, we also advocate for these principles of impartiality, neutrality, and non-discrimination with our colleagues in development and our colleagues in the political arm of the EU in the External Action Service.

So we retain our operational independence and our ability to fund humanitarian organizations like the ICRC to carry out their mandate with zero interference on the way they do their job, protecting their independence as well. But we also are a strong voice for the most vulnerable people around the world and for the protection of our capacity to reach out to them.

***Thank you, Madame Commissioner. President Kellenberger, would you like to react to that?***

**Jakob Kellenberger:** Well, I wanted to say that one of the best proofs that the European Commission is so attached to the principles is the genuine support given to the ICRC, which is a credible independent, neutral and impartial organization.

**Kristalina Georgieva:** That's very true.

**Jakob Kellenberger:** And why? I think because the Commissioner has seen that, in certain contexts, only if you are a credibly independent, neutral, and impartial actor, will you have access to all; if you are not – or if you are perceived as not being one – you will not have access. This being said, even if you stick to all their principles, you may be denied access. But this clearly is the exception.

In addition to being clear on the principles, you also have to deliver on your promises. You have to be explicit whether you talk about intentions (or declarations thereof) or about actions actually carried out on the ground. These are two different worlds for people in urgent need of assistance and protection. And your actions have to be relevant for them, to correspond to people's most urgent needs.

**Kristalina Georgieva:** Absolutely. Very often we talk about the humanitarian principles as a matter of safety and security of humanitarian workers, and this is because humanitarian workers are in the greatest danger. More people die in humanitarian action than peacekeepers, which in itself is a matter of great concern. But another big concern is access to people in need. If you want to help people who are affected by conflicts, you have to be able to get to them, and the only way to get to them is by protecting the neutrality, independence, and impartiality of what you do. We have numerous experiences. One is Yemen and the Huthi rebels in the North. My ability to talk to Huthi commanders stems only from the fact that I do not represent a political entity. I represent one simple thing, which is that humanity must retain its space, even in the most difficult environments.

In order to do so, different types of strategies for access in difficult environments have been used by my staff and implementing partners. These are quite similar to other humanitarian agencies' approaches put in place by the UK, Switzerland, the UN, or the Red Cross Movement. We develop different types, levels, and techniques of advocacy in order to increase humanitarian access. In instances where vocal advocacy is likely to be detrimental to maintaining or gaining access for implementing partners, and when, at some point, administrative or other impediments become so great that an effective, principled humanitarian intervention is no longer possible, we implement jointly with our partners strategies of remote control. But this must be compatible with principles of sound financial and operational management.

At other times, armed escorts or humanitarian air services can be used also to gain access in difficult security contexts. Our aim is to find a balance between the humanitarian imperative to intervene in situations of emergency with the need to maintain the humanitarian principles of neutrality, impartiality, and independence. Our legal obligation to ensure our accountability to the European taxpayer goes hand in hand with that. We also fund a capacity-building training programme for partners so as to improve the efficiency and accountability of their own programmes and activities.

*Let us now turn to the events in Libya, where ECHO<sup>6</sup> found itself actively engaging in co-ordination. What did this experience teach you? And more generally, what views do you both have on co-ordination of the humanitarian response as a whole? What is the right formula that we should pursue in the humanitarian world in the future?*

**Jakob Kellenberger:** Now, this is a big passion for me! I would wish more concrete field-related co-ordination and less trivial, repetitive debate about co-ordination. We need *real* co-ordination, and by that I understand co-ordination that has a humanitarian value added to it. This has to happen on the ground, and those participating have to be transparent and precise on their capacities and their human resources; on where they have access, where they do not have access; on whether they are carrying out the actions themselves or delegating it to implementing agencies. I think it is indispensable to improve co-ordination but not really in the way it is often done – leading to much more costly bureaucracy – but rather in the way of having really transparent information on the relevant issues between agencies which have the capacity to act. There is a real risk of an enlarging gulf between bureaucratic and operational wings in the humanitarian sector.

**Kristalina Georgieva:** More often than not, in a humanitarian crisis, speed and the ability to address new and very often difficult problems are essential. So I agree with President Kellenberger that co-ordination is not for co-ordination's sake. It is for reaching more people faster, more effectively. Therefore, effective co-ordination is about skills, capabilities, and delivery, sometimes in dangerous zones. All of us strive for a 'space' – but the decision about who should be inside that space has to be based on what it is that one brings to the solution. And we have to be very honest in making an assessment.

This would differ from one situation to another but there has to be less emphasis on process and more emphasis on results, on outcome. That is important for the people we are trying to help and it is important for the credibility of the humanitarian community. In a world where needs are growing and resources are

<sup>6</sup> ECHO stands for Directorate-General for Humanitarian Aid and Civil Protection of the European Commission.

not – hence, where we all compete for resources – we are actually making a plea for the generosity of our citizens in a difficult time. That plea can only be based on credible action. It is not good enough any more for me to say, Mr. Kellenberger, I am responsible for €1.1 billion in assistance. It is only credible if I can say that I am responsible for helping 140 million people around the world, which is the number we reached last year. But who are these people? Who can help? How? These are the questions of co-ordination that must drive us.

***Madame Commissioner, this is a question directed to you. You mentioned remote-controlled operations. Can you elaborate on ECHO's stance on supporting activities in remote-controlled contexts, where there is no possibility of reaching all requirements in terms of accountability?***

**Kristalina Georgieva:** ECHO-funded projects are often in areas where access is difficult because of security concerns or other problems. It is vital that we reach those in need even in the most difficult circumstances. We try to minimize risks through remote-control and monitoring systems. To that end, we have a field network of experts and our local implementing partners to rely upon. But we do accept whatever risks remain because, if we did not, we would in certain cases have to abandon people in need, which runs counter to our humanitarian principles and values. In Somalia, over 80% of funded operations are being implemented in Al-Shabaab-controlled areas, where, due to insecurity and limited access, partners are operating through remote management. While accepting the increased risks, we have also tried to further reduce them, for example through a rigorous selection of partners with proven high accountability.

***Our final question, to both of you, concerns the evolution of the humanitarian sector. What are your reflections on its future composition (especially the rise of non-Western donors), its professionalization, and its practice?***

**Kristalina Georgieva:** As already mentioned at the beginning of this interview, the world is changing at a pace and a magnitude that we can hardly grasp and all this affects the scale and nature of the humanitarian challenges we face nowadays. Not only has the global level of humanitarian needs gone up, but the humanitarian contexts have become more complex and difficult for reasons that we discussed earlier.

In this changing humanitarian context, the need for co-operation is vital. There is no hope for advancing a global consensus on humanitarian aid if the governance of the humanitarian system is not changed. The current system is too fragmented and divided between traditional donors and new donors, as well as between donors and humanitarian organizations. New donors tend to act outside the multilateral frameworks often dominated by Western countries. This creates an





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unhealthy perception of a divide in the international community, with competing systems of norms and practices in humanitarian assistance.

A first important step forward would be to broaden the dialogue about international humanitarian action to all donors – traditional, non-traditional, and emerging ones. Developing regular high-level platforms for such dialogue would give greater legitimacy and effectiveness to the humanitarian system. And it would bring about a better shared understanding and commitment to the fundamental goals and principles that underpin humanitarian action.

Another key step would be to strengthen the co-ordination between the civil and military agencies, because armed forces are becoming increasingly involved in crisis response. The lack of understanding of each other's mandates and responsibilities often leads to the blurring of lines, endangering vital access and protection for humanitarian agencies. This is why early co-ordination and interaction among different agencies is so important. Two instruments currently exist to guide the appropriate use of military resources in humanitarian situations. These are the 'Oslo' Guidelines for Disasters, and the United Nations Military and Civil Defence Assets guidelines for complex emergencies. These make possible the use of military capabilities in certain circumstances, while avoiding opening the door to an unwelcome deployment of military assets for every emergency.

The growing number of private companies providing a myriad of services – ranging from security to the provision of assistance – has added yet another challenge. States contracting these companies should ensure appropriate accountability under international law, especially in conflict situations.

For all these reasons professionalism in the delivery of humanitarian aid is more important than ever, which is why my services insist upon maintaining a high level of professionalism and accountability in the delivery of aid. We conclude a Framework Partnership Agreement with organizations we fund, and this agreement guarantees that our partners have and maintain a high level of competence, commitment, and expertise. In addition, our reporting requirements on the



implementation of specific projects remain some of the most stringent among public donors.

**Jakob Kellenberger:** I believe the number of state and private actors in the humanitarian field is likely to further increase in the future. 'Humanitarian' is a good label. There are also new needs to be covered, at least in part. I do not expect this wide range of actors to become more principled. Increased competition – not so much in insecure, difficult operational contexts, but in relatively safe contexts which enjoy high political and media attention – can make some organizations more vulnerable to politicization. Such organizations may prefer to stay in a context, giving in on basic principles like independent assessment of needs and control of distributions. They may just prefer to be able to tell donors they are present instead of leaving because independent and impartial humanitarian action is no longer possible. To the extent that increased competition leads to better and more timely humanitarian action, I can only welcome it. It would be a pity, however, if donor money goes to those speaking the loudest and not to those carrying out actual humanitarian relief.

Second, Islamic relief organizations and private enterprises are likely to play a more important role in specific activities in the future, especially in Islamic contexts (as far as the former type of actor is concerned). It is generally most likely (and welcome) that local humanitarian actors will play a more important role. It is less clear what this will mean for international humanitarian organizations that are less and less operational and channel the money from donors to local humanitarian actors. Such organizations will probably be under increased pressure to explain the added humanitarian value of the money retained on the way from donors to those who carry out the action in the field.

The multi-storey construction of the humanitarian building will be increasingly challenged in a context where donors insist on added humanitarian value for their money. I presume this will be felt more in the bureaucratic wings of humanitarian organizations than in their operations.

Finally, I expect the professionalization in the humanitarian sector to progress further, not least as a consequence of new actors entering the sector with very specific skills: for example, in the field of information technology or logistics. Such developments will, however, never replace genuine humanitarian commitment.



# Megatrends and the future of humanitarian action

**Elizabeth Ferris\***

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## Abstract

*This article assesses the implications of six megatrends for humanitarian action in the future, including changes in demography, technology and science, economics, political power, climate, and patterns of conflict. The interaction of these trends suggests a particularly complex landscape for future humanitarian response. For example, conflict in the future is more likely to take place in cities that are growing as a result of economic and environmental factors. Social media are contributing to both political change and humanitarian response, while changes in global political and economic power are likely to influence the way in which the international humanitarian system is financed and supported.*

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Humanitarian actors are better at responding to crises than at preventing or preparing for them. Preparing for the crises of the future means not only developing more efficient relief delivery mechanisms and protection strategies, but also analysing the political and economic context that will shape the nature of future challenges. Over the past twenty-five years, the international humanitarian system has gone through major changes as a result of crises such as the Kobe earthquake, conflicts in Bosnia, Rwanda, and Somalia, the 11 September 2001 terrorist attacks on the United States, the war in Afghanistan, the Indian Ocean tsunami, the famine and conflict in Darfur, the earthquake in Haiti, and hundreds of smaller

\* With thanks to Chareen Stark for her research assistance. E-mail: [eferris@brookings.edu](mailto:eferris@brookings.edu).

emergencies. Indeed, the system has dramatically improved in responding to crises quickly, effectively, and professionally. Humanitarians have become much better at responding to emergencies and lives have been saved because of those changes.

Nonetheless, in the past few years, the humanitarian system has come under enormous stress in responding to new mega-crises, which have occurred on top of a growing number of protracted crises. For example, international organizations have found it easier to raise funds for a high-visibility emergency, such as the Haitian earthquake, than for refugees streaming out of Côte d'Ivoire, or internally displaced persons (IDPs) living for years in Iraqi cities or for decades in Colombian ones. The system is already stretched, but it is likely to experience additional stress in the coming decades.

This article reviews six megatrends likely to shape the future context of humanitarian response over the next twenty-five years and draws out their implications for future humanitarian work. These are not new trends. Indeed, with the exception of technology and science, all of them were highlighted twenty-five years ago by the United Nation's Report of the World Commission on Environment and Development, *Our Common Future*.<sup>1</sup> Even today's prediction of the increase in sudden-onset natural disasters was foreshadowed in this 1987 report, although the links with climate change were not at that time so definitively drawn. In the past couple of years, there has been growing interest in looking at the implications of global trends on future humanitarian action,<sup>2</sup> which is itself a recognition that the humanitarian system must change to meet future challenges.

Predicting the future is particularly difficult in an era of rapid technological development. Who could have imagined twenty-five years ago the role of social media in the popular uprisings known as the Arab Spring? Or the collaborative mapping of earthquake damage in Haiti, carried out not by professional humanitarians but by individuals sitting at computers far from the earthquake's epicentre? It is also difficult to predict a truly catastrophic event, such as a global pandemic, a nuclear war, or even collision with an asteroid. Few in the humanitarian community are considering such possibilities but, as the concluding section of this article suggests, it behoves them to do so.

The six megatrends analysed here are:

- demographic trends: more people, older people, more urbanization;
- technology and science: rapid change;
- economic trends: uneven growth, increasing inequality;
- political power: changing global patterns, changing domestic determinants;

1 See Report of the World Commission on Environment and Development, *Our Common Future*, transmitted to the General Assembly as an Annex to UN Doc. A/42/427, 1987, available at: <http://www.un-documents.net/wced-ocf.htm> (last visited 11 January 2012).

2 See for example Kirsten Gelsdorf, *Global Challenges and their Impact on International Humanitarian Action*, OCHA Occasional Policy Briefing Series No. 1, New York: OCHA, Policy Development and Studies Branch, January 2010; and *Humanitarian Horizons: A Practitioner's Guide to the Future*, Tufts University, Feinstein Center, 2010, available at: <http://sites.tufts.edu/feinstein/2010/humanitarian-horizons-a-practitioners-guide-to-the-future> (last visited December 2011). This was a joint initiative of several non-governmental organizations (NGOs) to identify future trends.

- climate change: more disasters; and
- conflict: prolonged, simmering, and increasingly urban.

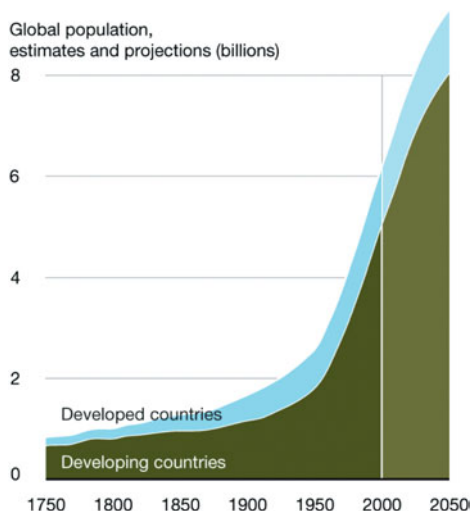


Figure 1. Global population, 1750–2050. From United Nations Environment Programme, <http://maps.grida.no/go/graphic/trends-in-population-developed-and-developing-countries-1750-2050-estimates-and-projections>.

## Demographic trends: more people, older people, more urbanization

The UN predicts that the world's population will continue to grow, reaching the level of 10.1 billion by 2100; this is an increase over earlier projections that the population would level off by the middle of this century.<sup>3</sup> The expansion of the population to 8 billion by 2025, coupled with changing consumption patterns, is expected to lead to a 50% increase in global food production.<sup>4</sup> Most of this growth will take place in developing countries and will result in a different balance in the relative populations of developed and developing countries. In 2003, the population of Canada, the US, and Europe made up 17% of the world's population; by 2050, that figure will shrink to 12%.<sup>5</sup> Whereas today Europe and Africa are each home to about one-eighth of the world's population, by 2050 Europe's share will shrink to about 6.8%, while Africa's share will grow to 21.8%.<sup>6</sup>

3 UN Population Division, *World Population Prospects*, 2010 revision, 2011, available at: <http://esa.un.org/unpd/wpp/index.htm> (last visited January 2012).

4 K. Gelsdorf, above note 2, p. 6.

5 Jack A. Goldstone, 'The new population bomb: the four megatrends that will change the world', in *Foreign Affairs*, Vol. 89, No. 1, January–February 2010, pp. 31–43.

6 UN Department of Economic and Social Affairs, *World Population Until 2300*, New York, 2004, p. 22.

The demography within countries will also change, with increasing percentages of elderly people. Indeed, the UN projects that 58% of the world's population growth will come from increases in the number of people over 60, whereas only 6% will come from people under 30.<sup>7</sup> This trend is already evident in developed countries, particularly Europe, Japan, and Korea, where the decline in the labour force and corresponding increase in retirement expenditures is taxing economies. Predictions are that aging populations will constrain economic growth in these countries, increase the demand for migrant labour, and affect the ability of these governments to be active participants in the international arena.<sup>8</sup>

This aging of the world's population will be uneven. Longman notes, for example, that it is already apparent in the world's middle-level powers, where countries such as Iran and Mexico will have a larger percentage of their populations over the age of 60 than France does today.<sup>9</sup> The consequences of these demographic developments will be manifold. For example, demographic pressures leading to Mexican migration to the US will fall off (and, indeed, such migration is already decreasing), even as the demand for foreign labour will increase in the US and other developed countries.

Most of the world's expected population growth will be concentrated in countries that are already poor and young, particularly in Africa and in countries with substantial Muslim populations. Fertility continues to be very high in some countries, especially sub-Saharan Africa, and is the reason why the UN Population Division revised its prediction to forecast much higher global population growth rates. Thus Malawi, a country of 15 million today, could grow to 129 million by 2100. Yemen, whose population has increased from 5 million to 25 million between 1950 and 2010, is expected to quadruple its population again, to 100 million, by the end of the century.<sup>10</sup> Today Afghanistan has 28 million people; by 2025, there will be 45 million and by 2050 there will be close to 75 million.<sup>11</sup> This growth in population in developing countries will outpace educational and especially job opportunities. Governments and economies of developing countries will be unable to produce the jobs needed by a growing population, which will have political consequences as well as increasing pressures for migration. This so-called 'youth bulge' will put increased stress on the governments of fast-growing developing countries. In an extreme case, the Palestinian territories are likely to see an 84% increase in youth population between 2005 and 2025.<sup>12</sup> Pressure to create jobs for these young people will intensify.

In sum, rich countries will have a proportionately smaller percentage of the world's population, both rich and middle-income countries will have older

7 Phillip Longman, 'The world will be more crowded – with old people', in *Foreign Policy*, September–October 2011, p. 87.

8 See, for example, J. A. Goldstone, above note 5, pp. 31–43.

9 P. Longman, above note 7, p. 87.

10 Justin Gillis and Celia W. Dugger, 'UN forecasts 10.1 billion people by century's end', in *New York Times*, 3 May 2011, available at: <http://www.nytimes.com/2011/05/04/world/04population.html> (last visited December 2011).

11 J. A. Goldstone, above note 5.

12 K. Gelsdorf, above note 2, p. 5.

populations, and the demographic pressure on presently poor countries will continue. These trends have global political and economic consequences. Politically, countries of the global south will become more powerful in multilateral fora as a result of their burgeoning populations. Meanwhile, developed countries will spend increasing percentages of their domestic budgets on pensions and medical costs of caring for an aging population.

Another major trend will be the continuing urbanization of the world's population, particularly in the developing world. As agriculture becomes more mechanized, there will be a continued shift from rural areas to cities – a shift accelerated by the powerful expansion of media messages touting the modernity of urban life. Intra-urban migration will also increase. Megacities – those with populations of more than 10 million – will get larger, and the number of moderate-sized cities of 1 million will skyrocket.<sup>13</sup> This will lead to more pressure on urban land and will have political consequences as urban residents everywhere demand more from their governments than people living in rural areas. In the longer term, urbanization is leading to a slower rate of population growth, as it seems that the high cost of raising children in megacities is a main reason for falling global birth rates.<sup>14</sup> Urban residents not only demand more from their governments, but they earn and consume more. For example, people spend an average of 30% more on food in urban than in rural areas.<sup>15</sup> Most urban growth is occurring in slums and shantytowns, which increases vulnerability of populations to disasters and disease. UN-Habitat reports that 43% of urban residents in developing countries and 78% of those in the least-developed countries live in slums with lodgings of impermanent materials<sup>16</sup> – a factor that increases their vulnerability to disasters of all types. As Ronak Patel concludes, '[u]rbanization, in fact, is a health hazard for certain vulnerable populations'.<sup>17</sup> Given the rising density of populations, the potential for the spread of disease increases, and the increasing international travel associated with globalization, the threat of pandemics is very real.<sup>18</sup>

Finally, 3 billion more people on the planet, particularly if they are living in urban areas, will produce significantly more greenhouse gas emissions, increasing global warming.

13 UN Human Settlements Programme, *State of the World's Cities 2008/2009: Harmonious Cities*, 2008, available at: <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2562> (last visited December 2011). See also Inter-agency Standing Committee (IASC), *Final Strategy for Meeting Humanitarian Challenges in Urban Areas*, 2010, p. 10, available at: [http://www.citiesalliance.org/ca/sites/citiesalliance.org/files/CA\\_Images/IASC\\_Strategy\\_Meeting\\_Humanitarian\\_Challenges\\_in\\_Urban\\_Areas\\_%5B1%5D.pdf](http://www.citiesalliance.org/ca/sites/citiesalliance.org/files/CA_Images/IASC_Strategy_Meeting_Humanitarian_Challenges_in_Urban_Areas_%5B1%5D.pdf) (last visited December 2011).

14 P. Longman, above note 7, p. 88.

15 See Food and Agriculture Organization of the United Nations (FAO), *Urban Food Security*, 10–13 June 2002, available at: [www.fao.org/ag/magazine/pdf/ag01.pdf](http://www.fao.org/ag/magazine/pdf/ag01.pdf) (last visited January 2012).

16 UN Human Settlements Programme, *The Challenge of Slums: Global Report on Human Settlements 2003*, Earthscan, London, 2003.

17 Ronak P. Patel and Thomas F. Burke, 'Urbanization: an emerging humanitarian disaster', in *New England Journal of Medicine*, Vol. 361, No. 8, 2009, pp. 742–743.

18 Kate Jones *et al.*, 'Global trends in emerging infectious disease', in *Nature*, Vol. 451, February 2008, pp. 990–993.

## What does this mean for humanitarian action in the future ?

So what do all of the above trends mean for future humanitarian action? First, increased population and increased concentration of populations in urban areas mean that more people are likely to be affected by conflict and natural hazards in the future. Second, there are also likely to be increasing numbers of conflicts over resources, as more people compete for finite quantities of arable land, water, and other resources. Third, a larger proportion of older people in the population means that humanitarian actors will need to be able to respond to the particular needs of the elderly in conflicts and natural disasters. This involves not only taking into consideration specific medical needs of older populations (e.g. more medicines for hypertension, fewer for infant diarrhoea) but also factoring this into planning for long-term solutions for those displaced by conflict or disasters. As the 2011 Japanese earthquake demonstrated, the elderly were not only disproportionately affected by the earthquake but are also finding it more difficult to restart their lives.<sup>19</sup>

## Technology and science: rapid, rapid change

It is hard to overstate the impact of technological and scientific innovation over the past twenty-five years. The world's population growth is at least partly the result of higher crop yields resulting from improved agricultural technologies. Similarly, both the world's improving health and the aging of the population are due in large measure to developments in medical research and consequent improvements in both the quality and the availability of health care. Increasing access to birth control has contributed to declines in fertility rates, even as medical research has made it possible to select the gender of children. Robots are reducing the possibility of errors in surgery, while mobile technologies, as well as low-tech solutions, can enable remote communities to access sophisticated medical attention.<sup>20</sup> Medical research will find new (and often more expensive) ways of keeping people healthy for longer, and life expectancy is likely to increase in all regions. At the same time, access to medical technology will be uneven, with a significant gap between rich and poor within countries.<sup>21</sup>

The pace of technological and scientific innovation will increase. Computers will become smaller, faster, and cheaper, which means that more

19 US–Japan Research Institute (USJI), Reconstruction after the Great East Japan Earthquake, Seminar 2: 'Reconstruction and beyond: the Great East Japan earthquake and its impact on an aging Japan', Washington DC, 9 September 2011, recording available online at: <http://www.youtube.com/watch?v=5cXNQFKOZkk> (last visited December 2011).

20 'Robotic surgery of "tremendous benefit" to patients', in *Science Daily*, 12 January 2011, available at: [www.sciencedaily.com/releases/2011/01/110112161000.htm](http://www.sciencedaily.com/releases/2011/01/110112161000.htm) (last visited December 2011); Mark Tran, 'Could donkey ambulances save lives in poor countries?', in *The Guardian*, 8 September 2011, available at: [www.guardian.co.uk/global-development/poverty-matters/2011/sep/08/appropriate-medical-devices-poor-countries?intcmp=122](http://www.guardian.co.uk/global-development/poverty-matters/2011/sep/08/appropriate-medical-devices-poor-countries?intcmp=122) (last visited December 2011).

21 Moreover, the diseases associated with developed countries – diabetes, hypertension, obesity – are likely to become more prevalent.



people, in both developed and developing countries, will be connected via the Internet. Mobile phone technology, now the dominant tool of communication in many regions, will reach close to global coverage in the coming generation.<sup>22</sup> Technologies will become more than repositories of knowledge: they will be increasingly smarter, more autonomous, and more anthropomorphic, with voice- and gesture-based commands. On the economic level, more work will be automated, particularly in developed countries, resulting in fewer jobs in the service sector. For example, even in the food service industry – a bastion of entry-level jobs for unskilled workers – increased automation is occurring. Automated sushi bars serve customers in Japan, while the possibility of touch-screen orders at McDonald's is actively discussed.<sup>23</sup> Technologies such as mobile banking will increase, with a corresponding decrease in the use of cash.<sup>24</sup> This has implications for humanitarian assistance, as evidenced by the practice of aid distribution through prepaid bank cards as used in response to the 2010 floods in Pakistan, as well as for mobilizing charitable contributions, such as those witnessed in response to the 2010 earthquake in Haiti, the 2010 floods in Pakistan, the 2011 tsunami and earthquake crisis in Japan, and ongoing drought in East Africa.<sup>25</sup>

Global connectivity will continue to increase; social media such as Twitter and Facebook (and new ones that have yet to emerge) will continue to expand. There will be a fusion of mainstream and social media, now evident in CNN's regular reporting on Twitter, but mainstream media will decrease in power as social media grow. This change is driving a transformation not only in the nature of news but in the possibilities of popular response. News is now defined less by experts sitting in headquarters offices than by people reporting their direct experiences in their communities. People everywhere will read less and depend more on visual sources for information. And information will lead to increased popular action, as demonstrated in the Arab Spring.<sup>26</sup>

22 Euromonitor Global Market Research Blog, 'Q&A: the importance and prospects of mobile telephony', 11 May 2011, available at: <http://blog.euromonitor.com/2011/05/qa-the-importance-and-prospects-of-mobile-telephony.html> (last visited December 2011).

23 Econfuture, 'Google's cloud robotics strategy could accelerate progress toward truly advanced robots', 2 January 2012, available at: <http://econfuture.wordpress.com/2012/01/02/googles-cloud-robotics-strategy-could-accelerate-progress-toward-truly-advanced-robots/> (last visited January 2012).

24 Ayesha XXX and Parag Khanna, 'Technology will take on a life of its own', in *Foreign Policy*, September–October 2011, pp. 67–72.

25 On the Watan prepaid debit card system in Pakistan, see UNHCR/Protection Cluster Working Group, *The WATAN Scheme for Flood Relief: Protection Highlights 2010–2011*, [http://floods2010.pakresponse.info/LinkClick.aspx?fileticket=\\_SpKC9jJCiY%3D&tabid=206&mid=1604](http://floods2010.pakresponse.info/LinkClick.aspx?fileticket=_SpKC9jJCiY%3D&tabid=206&mid=1604) (last visited December 2011); Joe Mwihaia, 'Kenyans use mobile phones to send drought aid money', in *Associated Press*, 29 August 2011, available at: [www.usatoday.com/tech/news/story/2011-08-29/Kenyans-use-mobile-phones-to-send-drought-aid-money/50176520/1](http://www.usatoday.com/tech/news/story/2011-08-29/Kenyans-use-mobile-phones-to-send-drought-aid-money/50176520/1) (last visited December 2011). Two of the US-based non-profit organizations that have organized several text-based giving campaigns benefiting humanitarian relief organizations in the wake of crises around the world are the Give Foundation ([www.mgivefoundation.org](http://www.mgivefoundation.org)) and the Mobile Giving Foundation ([www.mobilegiving.org](http://www.mobilegiving.org)).

26 On the important role of new media in the Arab Spring, see Michael S. Doran, 'The impact of new media: the revolution will be tweeted', in Kenneth M. Pollack *et al.*, *The Arab Awakening: America and the Transformation of the Middle East*, Brookings Institution Press, Washington, DC, 2011, pp. 39–46. As Doran notes, 'It was the book *Smart Mobs*, published in 2002, that first explored the idea that

The robotics revolution in military technology has been apparent in developed countries for some time, but it is rapidly spreading to developing countries, to non-state actors, and even to individuals.<sup>27</sup> The US now carries out military offensives in Pakistan with drones and has used robots to disarm roadside bombs in Iraq. Robots will move into ever more sophisticated realms of artificial intelligence.<sup>28</sup> This likelihood challenges the very notion of responsibility. Who is responsible when a drone kills civilians? The battlefield commander? The software programmer working from a distance of thousands of miles away? The situation is further complicated by the fact that more actors will have access to these high-tech military weapons. As Krepinevich warns, non-state actors will be able to use much more dangerous weapons, which will make roadside bomb threats in Afghanistan and Iraq seem 'trivial by comparison'.<sup>29</sup>

Perhaps the most exciting – and sometimes frightening – technological innovation has come at the intersection of different fields, such as mobile phones and banking, nanotechnology and genetics, traffic and robots, viruses and military equipment. The development of technology will become even more democratic. While much of the technological growth of recent decades has been dominated by developed countries, this is changing as more developing countries are investing in research capacities and as innovation by individuals (wherever they live) is rewarded.

There is, of course, a downside to all of this technological development. The increasing dependence on high-tech tools for survival means increased dependence on energy. If the electricity fails or the 'computers are down', the economy comes to a standstill. And the potential damage of cyber attacks grows by the day. The experience of the Stuxnet attack on Iran, coupled with the escalation in the sheer quantity of malware – an average of 73,000 new samples a day in the first quarter of 2011, 26% more than during the same period in 2010 – means that technological advancement is accompanied by increased vulnerability.<sup>30</sup> When advances in

user-generated mass communications technologies enable leaderless groups to organize collective action' (p. 42).

27 Peter W. Singer, *Wired for War: The Robotics Revolution and Conflict in the 21st Century*, Penguin Press HC, New York, 2009.

28 *Ibid.*

29 Andrew Krepinevich, 'Get ready for the democratization of destruction', in *Foreign Policy*, September–October 2011, pp. 80–81.

30 On Stuxnet, see Isaac R. Porche *et al.*, *A Cyberworm That Knows No Boundaries*, Rand Corporation, 2011, available at: [www.rand.org/content/dam/rand/pubs/occasional\\_papers/2011/RAND\\_OP342.pdf](http://www.rand.org/content/dam/rand/pubs/occasional_papers/2011/RAND_OP342.pdf) (last visited December 2011); Michael Schrage, 'Stuxnet was about what happened next', in *Financial Times*, 16 February 2011, available at: [www.ft.com/intl/cms/s/0/c8142b5a-3a04-11e0-a441-00144feabdc0.html#axzz1iWzVPYTy](http://www.ft.com/intl/cms/s/0/c8142b5a-3a04-11e0-a441-00144feabdc0.html#axzz1iWzVPYTy) (last visited December 2011); William J. Broad, John Markoff, and David E. Sanger, 'Israeli test on worm called crucial in Iran nuclear delay', in *New York Times*, 15 January 2011, available at: [www.nytimes.com/2011/01/16/world/middleeast/16stuxnet.html?pagewanted=all](http://www.nytimes.com/2011/01/16/world/middleeast/16stuxnet.html?pagewanted=all) (last visited December 2011). The security technology company ESET reported 100,000 new malware samples per day in 2009 on 500,000 PCs; see ESET, 'Proactive protection', available at: [www.eset.com/me/business/whyeset/technology](http://www.eset.com/me/business/whyeset/technology) (last visited December 2011), and eWeek, 'Compromised computers host an average of 3 malware families', 3 September 2009, available at: [http://securitywatch.eweek.com/online\\_malware/compromised\\_computers\\_play\\_host\\_an\\_average\\_of\\_3\\_malware\\_families.html](http://securitywatch.eweek.com/online_malware/compromised_computers_play_host_an_average_of_3_malware_families.html) (last visited December 2011). For analysis on cybercrime, see Noah Shachtman, 'Pirates of the ISPs: tactics for turning online crooks into international pariahs', Brookings Institution, July 2011, available at: [www.brookings.edu/](http://www.brookings.edu/)

biology and biotechnology are coupled with military intent – such as the possibility of designing not only new and deadly pathogens but also delivery systems, there are new and frightening possibilities for terrorist actions, particularly with the growing proportion of people living in cities.<sup>31</sup>

### What does this mean for humanitarian action in the future?

Based on the above discussed trends, one can predict that, first, humanitarian actors will increasingly employ technologies in new and creative ways. This includes using mobile telephones to monitor the security of returning refugees; using mobile banking technology to distribute assistance; using GPS technology to map both conflict-affected and disaster-affected populations; using new developments in medical and nutrition research to develop more efficient ways of delivering both medical assistance and high-protein food for populations in need; and using social media as an early warning system, a means of more effectively targeting humanitarian relief and raising funds.<sup>32</sup> Second, new threats will emerge in the form of cyber attacks, insurgent/terrorist groups using increasingly sophisticated weaponry with consequent effects on civilian populations, and the possibility of a catastrophic event, which will overwhelm both national capacity and the international humanitarian system.

### Economic trends: uneven growth, increasing inequality

Over the past twenty years, the world as a whole has become much richer. Gross domestic products have risen in all countries, with corresponding increases in education, life expectancy, and access to public services. In the last two decades, income per capita increased by 47%, education by 20%, and life expectancy by 7%.<sup>33</sup> At the same time, inequality has increased. Rich countries have become wealthier in

[~/media/Files/rc/papers/2011/0725\\_cybersecurity\\_shachtman/0725\\_cybersecurity\\_shachtman.pdf](#) (last visited December 2011).

- 31 Some experts assert that the threat of bioterrorism is serious and imminent: see, for example, The Commission on the Prevention of WMD Proliferation and Terrorism, *World at Risk: The Report of the Commission on the Prevention of WMD Proliferation and Terrorism*, December 2008. In contrast, the Scientists Working Group on Biological and Chemical Weapons called the threat of bioterrorism ‘exaggerated’, in Scientists Working Group on Biological and Chemical Weapons, Center for Arms Control and Non-Proliferation, ‘Biological threats: a matter of balance’, in *Bulletin of the Atomic Scientists*, 2 February 2010; for this opinion, see also, Scientists Working Group on Biological and Chemical Weapons, *Biological Threats: A Matter of Balance*, 26 January 2010. Also see Laurie Garrett, ‘Flu season’, in *Foreign Policy*, 5 January 2012, [http://www.foreignpolicy.com/articles/2012/01/05/flu\\_season](http://www.foreignpolicy.com/articles/2012/01/05/flu_season) (last visited January 2012).
- 32 These technologies are all presently being used. See for example, UN Office for the Coordination of Humanitarian Affairs, *Disaster Relief 2.0: The Future of Information Sharing in Humanitarian Emergencies*, March 2011; Daniel Stauffacher et al. (eds), *Peacebuilding in the Information Age: Sifting Hype from Reality*, ICT4Peace Foundation, January 2011, available at: <http://ict4peace.org/updates/peacebuilding-in-the-information-age-sifting-hype-from-reality> (last visited December 2011).
- 33 United Nations Development Programme, *The Human Development Report 2010*, Palgrave Macmillan, New York, 2010, p. 28.

comparison with developing countries, and inequality within countries has risen. In 1970 the richest 25% of countries in the world had an average per-capita income 23 times greater than that of the poorest 25%. By 2010 the gap had widened to 29 times, owing to the fact that rich countries on average experienced faster growth than poorer ones. But for several of the poorest countries real average income has fallen over the past forty years. For thirteen countries in the bottom 25% of the world income distribution, the real average income is lower today than in 1970.<sup>34</sup> Approximately half the world's population lives on less than 1% of its wealth<sup>35</sup> and over 1 billion people worldwide – one-sixth of the population – suffers from hunger.<sup>36</sup> African states, in particular, seem particularly at risk of falling behind other developing countries in terms of economic progress.

With population growth and technological development, global wealth is likely to increase in the future, but patterns of economic power will probably change. In 2010 China surpassed Japan as the world's second-largest economy, even though its population is expected to fall, after peaking at 1.4 billion in the next two decades, to 941 million by 2100.<sup>37</sup> Malaise in the US economy, serious problems in European Union economies, and the projected costs of caring for aging populations seem to portend relative stagnation of those currently at the top of the pile, while the potential for growth in some developing countries will become much stronger. Less burdened by the need to care for aging populations or to maintain large military arsenals, they have access to young, cheap labour and either have or are likely to develop a large consumer base to drive economic growth. Of course, there will be as many differences as similarities in the economic prognosis for developing countries, with some countries, such as Brazil, Indonesia, Turkey, Poland, and South Africa, becoming economic powerhouses, while those that are presently considered failed states – for instance, Haiti, the Democratic Republic of the Congo, and Somalia – will remain at the bottom.

Technological development seems to portend a fundamental change in the relationship between productivity and employment, as shown in [Figure 2](#). This means that the economy can grow without producing many jobs, a trend with particular import in those countries that still have a growing youth population – countries that tend to be at the bottom of the global power scale.

In spite of the democratization of at least some forms of technology, there is little reason to expect decreasing inequality. Rather, trends of increasing economic inequality – particularly the growth of the very rich – are likely to continue. Economic growth will be driven by technology that has the potential to increase the power of large corporations. There will be more consolidation of large businesses: a trend well underway, as a quick glance at the airline or any other major industry will show. In wealthy countries, labour-intensive work will increasingly be outsourced to Asia and there will be more automation/robots in sectors where

34 *Ibid.*, p.42.

35 K. Gelsdorf, above note 2, p. 4.

36 *Ibid.*, pp. 4 and 18.

37 J. Gillis and C. W. Dugger, above note 10.



Figure 2. Productivity and Employment, 1947–2010. From Econfuture, <http://econfuture.wordpress.com/>. Source: BLS.

unskilled workers have traditionally found jobs, giving rise to a permanent underclass of unemployment.

The big wild card in predicting economic growth is energy. The trends are all in the direction of increased energy consumption, driven by both the developed world's continuing addiction and industrializing countries' desire for economic growth. The world's energy consumption is likely to double by 2030, with China accounting for half of that growth.<sup>38</sup> While it seems likely that there will be a steady increase in renewable energy sources and increasing use of technology to create fuel efficiencies, coal and oil are likely to continue to be the dominant sources of energy for the foreseeable future. In the post-Fukushima world, the possibilities of dramatically increasing reliance on nuclear energy seem less likely. Energy is fundamentally tied to economic power, which is fundamentally tied to political power. And the results of increased consumption of fossil fuels are increasing greenhouse gases, the main factor driving climate change.

New governance structures will emerge to account for the new economic powers,<sup>39</sup> but those at the bottom will become even more marginalized, as countries that once advocated for them (e.g. South Africa, Brazil) gain a seat at the table of the powerful. Transnational corporations have long operated with little regard for state borders and it is possible that future economic drivers, coupled with developments in technology, could create a growing global technocratic class less bound by traditional state borders.

Global economic trends will have an impact on the way in which the international humanitarian system is financed. Until now, developed countries have

38 Robert D. Kaplan, 'The South China Sea is the future of conflict', in *Foreign Policy*, September–October 2011, pp. 76–84.

39 Anne-Marie Slaughter, 'Problems will be global – and solutions will be too', in *Foreign Policy*, September–October 2011, p. 89.

been the backbone of the international humanitarian system. Of the total international humanitarian contribution in 2010 of US\$16.7 billion, governments contributed US\$12.4 billion while US\$4.3 billion came from private voluntary sources. Of the amount governments contributed, US\$11.8 billion, approximately 95%, came from members of the Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC). Non-DAC countries contributed US\$623 million, approximately 5% of the total contributed by governments.<sup>40</sup> The question is whether developed countries will continue their commitment to international humanitarian assistance – particularly given current trends of economic malaise and aging populations, and the likelihood that more assistance will be required in the future. A further question is whether emerging economies will display greater commitment to providing humanitarian assistance in the future, and whether this support will be channelled to multilateral organizations or will be directed bilaterally, including through international non-governmental organizations (NGOs), in support of foreign policy goals.

Presently about 25% of donations come from private contributions. Individual donations to humanitarian response are likely to increase as a result of increasing social media and possibilities of organizing citizen response.

The possibility of more private financing of humanitarian action – by individual philanthropists and companies – cannot be overlooked. This is likely to happen in developing as well as developed countries, is likely to be facilitated by social media, and is likely to be directed at high-profile emergencies. However, corporate support for humanitarian action is likely to be directed at ‘less-political’ natural disasters rather than long-term simmering conflicts. If this trend develops, the result could be that international multilateral organizations could be left with the challenge of supporting the poor intransigent conflicts.

In this respect it is interesting to look at China’s record. In 2010 China contributed US\$37.6 million in humanitarian aid, ranking it as the year’s fifth largest non-DAC donor.<sup>41</sup> This was its second largest contribution in ten years and was significantly larger than most of its previous annual contributions.<sup>42</sup> The majority of China’s 2010 contribution, US\$28.5 million (approximately 75%) was given bilaterally to affected governments,<sup>43</sup> with only 10.9% going to multilateral organizations.<sup>44</sup> To put this in perspective, in 2010 China contributed less humanitarian aid than Luxembourg, a country of 500,000,<sup>45</sup> which gave US\$52

40 Global Humanitarian Assistance, *GHA Report 2011*, Development Initiatives, July 2011, pp. 4, 6, and 13; Global Humanitarian Assistance, *Non-DAC Donors and Humanitarian Aid, Changing Trends*, Development Initiatives, July 2011, p. 8.

41 Global Humanitarian Assistance, *Non-DAC Donors*, above note 40, p. 8.

42 *Ibid.* The outlier year was 2005, when China contributed US\$65.8 million in international humanitarian aid, largely in response to the Indian Ocean tsunami.

43 See Global Humanitarian Assistance, *Country Profile: China – Who, What, How*, available at: <http://www.globalhumanitarianassistance.org/countryprofile/china> (last visited 9 September 2011).

44 *Ibid.*

45 Central Intelligence Agency, ‘Luxembourg’, in *The World Factbook*, August 2011, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/lu.html> (last visited 9 September 2011).

million.<sup>46</sup> China's contribution to multilateral organizations, such as the World Food Programme, is significantly less than the amount contributed by Algeria, which gave US\$8.1 million to the World Food Programme in 2010.<sup>47</sup>

### What does this mean for humanitarian action in the future ?

In all likelihood, Africa will continue to be the region most in need of international humanitarian assistance, although there could well be new needs and new possibilities in the Middle East. The countries presently seen as failed states will continue to need massive injections of international support just to keep their populations alive, but there are questions about the willingness of developed countries, themselves facing increasing pressure on their economic models, to provide such support indefinitely. In the worst-case scenario, this could mean that developed countries respond to immediate security threats posed by failed states (e.g. Somali piracy) but leave suffering civilians to an uncertain fate.

Second, humanitarian actors need to have much greater engagement with emerging powers to broaden the base of support beyond the traditional, largely Western powers that created the humanitarian system and continue to provide over 95% of its funding. This is probably not just a question of encouraging developing countries to support the present system, but also of offering them a role in reshaping it for the future. This is a somewhat risky endeavour for those humanitarian actors committed both to humanitarian principles and to values such as gender equality. At the same time, some countries that have been recipients of large-scale international aid, such as Indonesia, will have an increasing capacity to respond to domestic disasters. And some, such as the Philippines, are ready and willing to provide increased technical assistance to other countries on the basis of their experience.

### Political power: changing global patterns, changing domestic determinants

At the international level, the relative power of Western liberal democracies will decline as they struggle to deal with both demographic and economic shifts, even as the power of other countries increases. While the trends seem clear that China's power is rising while the US is declining as a hegemonic power, these are likely to develop over several generations. Power is slowly but clearly slipping from the Atlantic alliance to the Pacific region (although the differences within Asia are probably greater than those within the Atlantic region). Power dynamics are likely to become more complex as more middle-income powers acquire military and

46 Global Humanitarian Assistance, *GHA Report 2011*, above note 40, p. 101.

47 See United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA), *Financial Tracking Service*, available at: [http://fts.unocha.org/pageloader.aspx?page=search-reporting\\_display&CQ=cq090911173656bWlhVKbnSS](http://fts.unocha.org/pageloader.aspx?page=search-reporting_display&CQ=cq090911173656bWlhVKbnSS) (last visited 9 September 2011).



economic power that translates into political power. While it seems likely that regional organizations and initiatives will increase in importance, developments in the European Union in recent years seem to indicate that advances in such regional initiatives will be uneven at best. At the international level, exercise of power will become more complicated, as global consensus will need to be exercised between a larger number of actors. As the West's influence diminishes and powers ebb and flow, the possibility of military confrontations cannot be ruled out. Robert Kaplan, for example, argues that China's naval expansion gives rise to possible conflicts in the South China Sea – conflicts that could stand in contrast to the land-based wars of recent decades, with fewer civilian casualties and fewer ethical dilemmas.<sup>48</sup>

While economic and technological developments seem to be moving in the direction of a weakening role of the state, it is unlikely that issues of sovereignty and nationalism will diminish in importance. For one thing, Asian countries – now ascendant – have been in the forefront of efforts to defend national sovereignty. On the other, continuing concerns with military interventions by the US and NATO stoke nationalist tendencies. If Western powers, particularly the United States, retreat from their role as global policemen, several scenarios are possible: an invigorated multilateral system of response, new leadership patterns as emerging powers step up to the plate or (in the worst case) anarchy.

As demonstrated most recently by the Arab Spring, however, the possibility of widespread changes in the relationship between the governing and the governed is likely. The era of dictators seems to be coming to an end – at least, of dictatorships as we know them – although it is still too early to tell. The power of social media, rising standards of living, increasing access to education, and urbanization will all drive citizens to demand more of their governments. On the one hand, this means more democratic forms of government. On the other hand, it means more populism, including nationalistic and religious/sectarian-inspired calls to action, on the part of political leaders who must depend on popular support for continued rule. In Western countries, there will be a tendency to blame China and other Asian countries for the West's relative economic decline. It is likely that people and political leaders in these countries will insist on more attention being paid to domestic issues, resulting in both more isolationism and more right-wing politicians playing on fear. In developing countries, politicians will need to make promises – particularly for jobs – that they cannot keep, in order to get elected. When popular discontent increases, governments are likely to be replaced by political leaders making even more promises. While governments are likely to rise and fall bloodlessly (without armed revolutions), political instability and new forms of 'democratic authoritarianism' are likely to emerge. Social media will be key – maybe as important as formal elections – in the rise and fall of political leaders, and they offer hope for new accountability.<sup>49</sup>

48 R. D. Kaplan, above note 38.

49 As Clay Shirky has noted, social media, while they have not always successfully altered political landscapes, were a catalyst for the ousting of the Philippine President Joseph Estrada in 2001, followed by that of the Spanish Prime Minister José María Aznar in 2004 and of the Communist Party in Moldova in 2009; see Clay Shirky, 'The political power of social media: technology, the public sphere, and political



Another likely political development is that there will be both more emphasis and more pressure on municipal authorities: the growth of urban areas, the failure of centralized bureaucracies to deal with the range of problems experienced on the local level, and increasing citizen activism are all likely to mean an increased focus on mayors. In fact, a major political issue of the future in countries as diverse as Turkey, Colombia, and Zimbabwe is the relationship between central and municipal authorities. Recent decades have witnessed a spate of measures to decentralize political authority, but this decentralization is often not accompanied by devolution of authority and finances.

### What does this mean for humanitarian action in the future?

The way in which a government responds to a disaster has always had political consequences but, in the future, there will be more media coverage of such response. There will be more pressure to respond to urban disasters. There will also be increased risk that international humanitarian response will be used by national politicians in support of their political objectives.

On the positive side, democracies tend to respond better to the needs of their populations than dictatorships.<sup>50</sup> The development of global communications and social media will lead to more citizen involvement in response – more grassroots groups will become more engaged in more humanitarian activities – but this will pose challenges to traditional humanitarian actors and to the already weak system of humanitarian co-ordination.

As for humanitarian actors themselves, they will have to engage much more with municipal authorities. States, at least in some countries, will become much more assertive in dealing with international humanitarian actors. The days of international bodies running autonomous ‘fiefdoms’ (such as in refugee camps) are probably limited. The challenge of building local capacity will become an imperative, not just because it is good humanitarian practice but also because it will be politically necessary.

Finally, changing shifts in power should mean that rising countries, such as Brazil, Turkey, and South Africa, will play a much more important role not only in financing international humanitarian work but also in shaping and supporting the future work of multilateral agencies. However, as these institutions are typically associated with presently developed countries, it may be that new forms of global governance will emerge. It is also likely that the BRIC countries (Brazil, Russia, India, and China) could devote more energy and effort to building up regional mechanisms designed to respond to regional humanitarian emergencies.

change’, in *Foreign Affairs*, Vol. 90, No. 1, January–February 2011, pp. 28–41. At the same time, the use of social media can be used by governments to track and crack down on protesters.

50 Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation*, Clarendon Press, Oxford, 1981.

## Climate change: more natural disasters

The likely trends over the next thirty years are for increases in the severity and intensity of sudden onset natural disasters, particularly those related to weather (storms, hurricanes, cyclones, flooding). These will increasingly affect urban populations, in part because there will simply be more people living in cities and in part because more people will be living on more marginal land. Climate change will also drive rural to urban migration. As droughts, dry conditions, and unpredictability in rainfall patterns increase, pressure will grow on rural communities, whose inhabitants will move to towns and then cities. Pastoralist and indigenous groups will be particularly affected. Climate change is also expected to reduce potential agricultural output by up to 30% in Africa and up to 21% in Asia<sup>51</sup> – further adding to the pressure on already high food prices. Food prices are presently 41% higher than their 2002–2004 levels;<sup>52</sup> predictions of increased drought, coupled with a growing population, suggest that food insecurity will increase, particularly in countries already experiencing difficulties.

Rising sea levels will particularly affect the mega-deltas of Asia, but the impact of sea-level rise will be felt in a variety of ways, from increased salinization of water on Pacific islands to new maritime routes opening up in the Arctic.<sup>53</sup> At present, nearly 634 million people – one-tenth of the world's population – live in at-risk coastal areas just a few metres above existing sea levels.<sup>54</sup> And rising temperatures will mean a rise in the prevalence and geographical scope of dengue fever, malaria, and waterborne illnesses.

Natural disasters will affect rich as well as developing countries. Loss of life will be greater in developing countries, while the economic costs of disasters will be far higher in developed countries. Moreover, with increased urbanization and increased wealth, the economic costs of disasters will grow. As John Seo wrote:

This year's earthquake in Japan, which caused more than \$300 billion in economic damage, was just a preview; a decade and a half from now, a single hurricane or earthquake will come with a potential price tag of \$1 trillion or more.<sup>55</sup>

Disasters have always affected economic growth and development, but in a world where more people and more assets are concentrated in cities and where the number and intensity of disasters increases, this effect will be even more dramatic. There will be more cases where response to natural disasters is shaped by conflict and more

51 See UN Food and Agriculture Organization (FAO), '2050: climate change will worsen the plight of the poor', 1 October 2009, available at: <http://www.fao.org/news/story/en/item/35831/icode/> (last visited December 2011); see also FAO, 'Agriculture to 2050: the challenges ahead', 12 October 2009, available at: <http://www.fao.org/news/story/en/item/36193/icode/> (last visited December 2011).

52 K. Gelsdorf, above note 2, p. 18.

53 See Intergovernmental Panel on Climate Change, *IPCC Fourth Assessment Report: Climate Change 2007, Working Group II: Impacts, Adaptation and Vulnerability*, 2007, available at: [http://www.ipcc.ch/publications\\_and\\_data/ar4/syr/en/contents.html](http://www.ipcc.ch/publications_and_data/ar4/syr/en/contents.html) (last visited December 2011).

54 International Institute for Environment and Development, cited by K. Gelsdorf, above note 2, p. 17.

55 John Seo, 'Everything will be too big to fail', in *Foreign Policy*, September–October 2011, p. 75.

cases where natural disasters will be associated with industrial, technological, or nuclear disasters.

Social media will provide immediate coverage of major disasters and of the response (which will almost always be much slower than people expect). There will be increased political pressures to respond quickly; governments that are perceived as responding slowly will suffer politically. In democracies, governments will want to send the signal that they are taking disasters seriously, as evidenced by the comprehensive response in the US by both the Obama administration and local governments in responding to Hurricane Irene in August 2011 and by recent efforts in the European Union to develop more effective (and co-ordinated) civil defence mechanisms.

### What does this mean for humanitarian action in the future ?

First of all, if, as expected, sudden-onset natural disasters increase in severity and frequency, there will be a corresponding increase in pressure on humanitarian actors. Presently, the international system is hard-pressed to respond to more than one major natural disaster a year, as demonstrated in 2010.<sup>56</sup> Response to more sudden-onset natural disasters is likely to divert resources away from protracted conflict situations. If the system is not able to respond quickly and effectively to a particular disaster it could fuel resentment, particularly if the connections are drawn to climate change caused by developed countries.

Second, natural disasters in developed countries, because they are so economically costly, could limit the ability and willingness of developed countries to support relief efforts in other parts of the world, particularly in areas of limited strategic importance.

Third, much more expertise is needed within the humanitarian community to think through and plan for response to the deadly combination of natural hazards, simmering conflict, and industrial/technological accidents all occurring in urban areas. For example, the destruction of a chemical plant by an earthquake in an urban area of a developing country is likely to pose enormous challenges to humanitarian response.

Finally, while there is a possibility that the world will respond in ways to prevent the most egregious consequences of long-term climate change through enhanced mitigation and adaptation measures, the signs are not positive. Rather, the trends are that the frightening scenarios presented by the Intergovernmental Panel on Climate Change (IPCC) back in 1990 will play out at the high end of the spectrum, such as a 4° Celsius rise in temperature by the end of the century rather than the 1.5° at the low end. If this does occur, then the consequences for humanitarian actors (as well as governments, NGOs, and development agencies) will be enormous. For example, a rise in sea levels of only a metre would have

56 Elizabeth Ferris and Daniel Petz, *A Year of Living Dangerously: A Review of Natural Disasters in 2010*, Brookings–LSE Project on Internal Displacement, The Brookings Institution, Washington, DC, 2011.

devastating humanitarian consequences for which the humanitarian community is not prepared.

## **Conflict: prolonged, simmering, and increasingly urban**

The first point to make about future trends in conflict is that it is likely that many of today's simmering conflicts will continue to do so in the coming decades. The Palestinian–Israeli conflict is now in its seventh decade, and there is little indication that a resolution will be found soon. Countries such as the Democratic Republic of the Congo and Somalia are likely to continue to need international assistance for the foreseeable future. However, there are situations where political change may offer prospects of an end to oppressive regimes, which in turn could result in less conflict, more stability, and less need for humanitarian response – for instance, in Egypt, Zimbabwe, Venezuela, Libya, and Yemen. But, given the historical record, it is unlikely that all such political changes will result in peace and stability. Long-standing disputes, such as China–Taiwan, India–Pakistan, and South Korea–North Korea are likely to continue, with possibilities for sudden escalation.

Future civil conflicts will probably occur in developing countries over ethnic and religious issues, which in themselves usually overlap with economic and social fault-lines; perhaps, in reaction to the inexorable creep of Western culture, there will be efforts to resist homogenization by asserting particular identities.<sup>57</sup> Conflicts over land and access to resources are expected to intensify. However, it is likely that a smaller percentage of the world's population will die in civil conflicts than in previous eras as a result of the combination of global population growth,<sup>58</sup> decreasing civilian casualties in conflict, and the continued presence of UN peacekeeping operations. The conflicts that do take place will receive more media coverage and will demand an increasingly visible humanitarian response. Terrorism is likely to continue and to be manifest in both low- and high-tech forms.

Most conflict in the future is likely to be protracted, to be fought by armed groups for personal gain, and to be fought in cities. The lines are becoming more blurred between gangs, warlords, insurgents, child soldiers, paramilitary forces, and drug traffickers, all of whom will increasingly operate in urban environments. Of course, non-state actors have engaged in criminal activities to finance their struggles for years. What is new today is the growth in the number and capabilities of exclusively criminal gangs and the blurring of lines between street gangs and other non-state actors. In countries without a strong public security sector, the rich will hire private security firms to protect themselves, as witnessed over the past few years in Mexico – forces that may themselves become parties to the

57 Benjamin R. Barber, 'Jihad vs. McWorld', in *Atlantic Magazine*, March 1992.

58 While the number of civilian casualties may increase, the fact that the world's population is growing makes it likely that civilian casualties will be a smaller percentage than is presently the case.

conflict (as occurred in Colombia in the 1980s).<sup>59</sup> In another part of the world, the South African vigilante group 'People against Gangsterism and Drugs' began as an organization protecting Capetown neighbourhoods against local criminals, but evolved into a criminal entity.<sup>60</sup>

More and more areas of conflict – and areas of acute humanitarian need – will become no-go areas. According to Peter Singer, '[t]he CIA today counts some fifty countries that have "stateless zones", where the local government has lost all effectiveness or simply given up'.<sup>61</sup> And when conflicts are protracted, a particular dynamic of violence is created that is difficult to overcome, even when peace agreements are signed. The breakdown of social values and the loss of authority of the state and of civic institutions can lead to the emergence of criminal gangs that take advantage of the resulting lawlessness to threaten, rob, rape, and kill civilians. This constellation of factors will make it difficult for humanitarians to respond either to conflicts or to natural disasters occurring in cities.

While some have seen Iraq and Afghanistan as the wars of the future, it is unlikely that the United States will engage in many more such long-term costly ventures. Domestic pressures against foreign entanglements, the realization that terrorism is not linked to a particular geographic territory, and the difficulty in actually winning such wars, as well as growing economic pressures in developed countries, mean that it is unlikely that there will be many wars of this kind in the future.<sup>62</sup> Rather, the US and other military powers will increasingly pursue their security interests in strategically important countries by means other than outright military invasion: for example, through increased reliance on multilateral military and police initiatives, as well as through deployment of Special Forces, use of proxy states, and increased use of high-tech weaponry.

However, in areas where the US military is directly involved in conflict, stabilization measures will be the key to the conduct of the war, and they will present humanitarian actors with tough choices in working with the military. Technological developments in military weapons systems will have far-reaching consequences for the future of warfare – and for civilians. The increasing use of robotic technologies in warfare will have implications for future conflicts, the military as an institution, and the laws of war. Wars in which the US or other developed countries are involved will increasingly be fought by unmanned drones and robots, controlled by computer technicians a safe distance away. Moreover, as Singer explains, robots can be programmed to make decisions without later human involvement,<sup>63</sup> giving rise to possibilities of wars carried out between machines, and of wars where the only

59 Mark Lacey, 'For more of Mexico's wealthy, cost of living includes guards', in *New York Times*, 16 November 2008, available at: [www.nytimes.com/2008/11/17/world/americas/17mexico.html?pagewanted=all](http://www.nytimes.com/2008/11/17/world/americas/17mexico.html?pagewanted=all) (last visited December 2011).

60 Robert J. Norton, 'Feral cities: problem today, battlefields tomorrow?', in *Marine Corps University Journal*, Vol. 1, No. 1, Spring 2010, p. 60.

61 P. Singer, above note 27, p. 286.

62 See, for example, Sarah Collinson *et al.*, *States of Fragility: Stabilisation and Its Implications for Humanitarian Action*, Humanitarian Policy Group Working Paper, Overseas Development Initiative, London, May 2001.

63 P. Singer, above note 27.

casualties will be civilians. The jury is still out on whether such technologies will reduce future atrocities by taking some of the passion and personal angst out of warfare.

Finally, there is terrorism. As high-tech weapons become smaller, cheaper, and more widely available, they will be used by an even wider variety of groups than they are now. And there are possibilities for more deadly attacks – such as bioterrorist and cyber attacks – in the future. It cannot be ruled out that, sometime in the next twenty-five years, there will be an attack on civilian populations with incredibly far-reaching consequences.<sup>64</sup> And in the future, as in the present, governmental efforts to protect their populations from terrorism will put limits on humanitarian action.<sup>65</sup>

### What does this mean for humanitarian action in the future ?

While there will be considerable attention focused on the new mega-disasters and pressure to divert resources away from protracted conflicts, it is likely that the majority of funding, staffing, and energy of humanitarian action will continue to be directed to long-standing conflict situations. At present, probably two-thirds of humanitarian funding is directed towards humanitarian situations that have lasted at least five years; in some cases, to situations that have gone on for decades. While humanitarian action, by definition, consists of immediate life-saving assistance and a premium is placed on rapid response, the reality is that much humanitarian assistance is simply care and maintenance – keeping people alive, sometimes for years, in the absence of a political solution. However, if the scale and intensity of natural disasters does increase significantly as a predicted result of climate change, pressure on humanitarian actors will increase.

Working in urban environments will become more dangerous, given the concentration of criminal gangs, drug traffickers, and private security forces in cities. In spite of the efforts of some governments to regain control of urban areas through military force, it is likely that parts of major cities will remain beyond the reach of law enforcement agencies.<sup>66</sup> Even responding to a natural disaster, such as an earthquake, may put humanitarian actors at risk of being attacked by armed groups. Municipal authorities will therefore become more important actors in their own right.

64 See for example, Russell D. Howard, Reid Sawyer, and Natasha Bajema (eds), *Terrorism and Counterterrorism: Understanding the New Security Environment: Readings and Interpretations*, McGraw-Hill/Dushkin, Dubuque, IA, 2004. John Parachini, 'Putting WMD terrorism into perspective', in *Washington Quarterly*, Fall 2003, Vol. 26, No. 4, pp. 37–50. For an analysis of trends in 2011, see Sunny Peter, 'Review of Maplecroft's "Terrorism Risk Index 2011"', available at: <http://foreignpolicyblogs.com/2010/12/04/review-of-maplecrofts-%E2%80%9CTerrorism-risk-index-2011%E2%80%9D/> (last visited December 2011).

65 For example, see Sara Pantuliano *et al.*, 'Counter-terrorism and humanitarian action', HPG Policy Brief No. 43, Overseas Development Institute, October 2011, available at: <http://www.odi.org.uk/resources/docs/7347.pdf> (last visited December 2011).

66 See Vanda Felbab-Brown, 'Bringing the state to the slum: confronting organized crime and urban violence in Latin America', 5 December 2011, The Brookings Institution, available at: [www.brookings.edu/papers/2011/1205\\_latam\\_slums\\_felbabbrown.aspx](http://www.brookings.edu/papers/2011/1205_latam_slums_felbabbrown.aspx) (last visited January 2012).

Finally, the rise of high-tech weaponry raises fundamental challenges about the applicability of international humanitarian law, challenges that the international community is not yet grappling with. The use of high-tech weaponry should allow for more precision in targeting, with decreased civilian casualties, but errors do occur, as shown in US use of drones in Pakistan and Afghanistan. What does it mean for responsibility when military decisions resulting in civilian casualties are made by computer programmers far from the battlefield?<sup>67</sup>

The present international humanitarian system is unable to keep up with the challenges of today and indeed seems incapable of responding to more than one mega-disaster at a time. What will things look like for the future?

## Further implications for future humanitarian action

The present international assistance architecture is based on a belief that those displaced by violence are particularly vulnerable and particularly in need of assistance. This is evidenced by the progressive development of the international refugee regime over the course of the last century and by the expansion of concern to internally displaced persons. Many of today's major international NGOs, for example, were established to respond to the needs of refugees. While the displaced have particular needs – for protection (particularly refugees, who by definition do not enjoy the protection of their governments), shelter, and documentation – this paradigm needs to be refined. Sometimes the most vulnerable people are those who are not displaced – people who could not escape the violence or the effects of a natural hazard. Particularly as humanitarian work is increasingly carried out in urban areas, it is likely that distinctions between the displaced and the urban poor will become more difficult to sustain, as presently demonstrated in Haiti. This should give rise to further efforts to reassess the relationship between humanitarian and development actors. While this has been a theme in the humanitarian community for at least the past twenty-five years, with little signs of significant improvement, it will become more serious in the future. There are possibilities of increased synergy between emergency preparedness, disaster risk reduction, community protection techniques, and climate change mitigation/adaptation measures, but bringing together different institutional interests, approaches, and responses will require far-sighted global leadership.<sup>68</sup>

The proliferation of actors in humanitarian action, particularly in high-profile emergencies, will make issues of co-ordination more difficult and complex, and will raise fundamental issues about the balance between inclusivity and

67 P. Singer, above note 27.

68 The European Union has sought to implement the concept of 'linking relief to rehabilitation and development', referred to as LRRD, to address the gap between humanitarian aid and development aid; see further, European Union, 'Linking relief, rehabilitation and development (LRRD)', available at: [http://europa.eu/legislation\\_summaries/humanitarian\\_aid/r10002\\_en.htm](http://europa.eu/legislation_summaries/humanitarian_aid/r10002_en.htm) (last visited 10 December 2011); see also 'European Union humanitarian aid policy in the world', in *Australian Development Review*, 18 March 2011, available at: [www.theadr.com.au/wp/?p=347](http://www.theadr.com.au/wp/?p=347) (last visited December 2011).



effectiveness in response. The experience with clusters in Haiti illustrates this dilemma: the health cluster, for example, had over 500 participants in its regular co-ordination meetings.<sup>69</sup> When there are so many actors, effective co-ordination is impossible, which means that the large, established, experienced actors simply find other fora to provide the needed co-ordination. The growth in the number of NGOs seeking to respond to large-scale disasters is likely to lead to a certification process, creating a publicly recognized tier system of responders. And yet, while high-profile emergencies will be characterized by the involvement of a plethora of actors, smaller and lower-profile emergencies will suffer from a lack of humanitarian attention. For example, the International Federation of Red Cross and Red Crescent Societies (IFRC) estimates that 90% of natural disasters have fewer than fifty casualties and that response to these small-scale disasters tends to be poorly funded.<sup>70</sup>

The issue of military involvement in humanitarian response will become both more central and more difficult in coming years. For example, in large-scale natural disasters, military assets will be needed. For military forces, increasing involvement in these disasters can be justified on national security grounds but also by the argument that responding to natural disasters is applicable to military roles elsewhere (for buying goodwill, for training, or for testing equipment). If military and civilian actors can enhance their understanding of how to work together, new possibilities for humanitarian action may emerge. For example, military technology may be helpful in changing the way that internationals respond to sexual and gender-based violence, as personal protection devices (such as taser guns) and other technologies become more sophisticated. Rather than giving women in Haitian IDP camps whistles to call for help when they are assaulted, in the future there may be ways of using GPS technology and cell phones to trigger an immediate response by police.

The military is also involved in national preparedness efforts and in contingency planning for worst-case scenarios. For example, an area where the international humanitarian community has not (at least publicly) been engaged is planning for the possibility of a major terrorist attack or a major natural disaster coupled with a nuclear or major industrial accident. In the past two decades, there has been growing concern about the security of humanitarian workers working in conflict situations, who have been attacked, killed, and kidnapped in greater numbers than ever before. However, these security concerns are dwarfed by the possibility of a nuclear accident or even a large-scale industrial accident involving the release of deadly chemicals. Such a situation could be a by-product of a natural hazard (such as the Japanese earthquake) or a terrorist incident (such as the release of deadly chemicals by the attacks of 9/11, which had long-term health consequences for those responding). Or it could be the result of a deliberate

69 Personal communication with author, Port-au-Prince, January 2011.

70 Malcolm Lucard, Iolanda Jaquemet and Benoît Carpentier, 'Out of sight, out of mind', in *Magazine of the Red Cross and Red Crescent Movement*, No. 2, 2011, available at: [http://www.redcross.int/EN/mag/magazine2011\\_2/18-23.html](http://www.redcross.int/EN/mag/magazine2011_2/18-23.html) (last visited 10 December 2011).



terrorist attack: the Sarin gas attack on a Tokyo subway in 1995 killed thirteen people but raises the possibility of much more deadly attacks in the future.

The capacity of humanitarian actors to respond to these kinds of threats is limited. If there were, for example, a terrorist attack involving biological, chemical, or nuclear agents – such as an attack on a large city’s public transportation sector – the international humanitarian community would be poorly placed to respond. The 2011 Great East Japan earthquake and tsunami was the first case where a natural hazard created a major nuclear accident, raising a new set of security concerns for humanitarian workers. Given the patterns of urban and industrial growth, it is not unlikely that a future natural hazard – a hurricane or cyclone, an earthquake or a tsunami – would cause damage to a nuclear reactor, resulting in the release of radioactive material. Few humanitarian actors would have the capacity or would have done the planning necessary to respond to such a situation. Rather, response would fall under the state’s disaster plans or military contingency planning. In some highly developed countries plans have been developed to respond to such catastrophic situations; they may or may not be sufficient. In other countries, the planning for response has been much lower and it seems unlikely that their systems would be able to cope. In all of these situations, it is uncertain how and where either national or international humanitarian actors would be asked to or could respond.

The theme of accountability has become central on many levels. The International Criminal Court, for example, has made it difficult for dictators to get away with atrocities. Social media are increasing the visibility of actions – by dictators and humanitarian NGOs alike – that previously operated far off the radar screen. Questions of accountability to beneficiaries have long been discussed by humanitarians, but there are new possibilities for this to be translated into reality. For example, participatory needs assessment is moving into the mainstream of humanitarian operating procedures, and numerous accountability initiatives are seeking to increase accountability to beneficiaries.<sup>71</sup> With increasing access to communication, beneficiaries are also challenging humanitarian actors in new ways. To cite a personal experience, when visiting an IDP camp in Haiti with an NGO representative, the author was surprised to hear an IDP leader challenge the NGO by saying: ‘We saw on your website that you’ve raised an additional million dollars for Haiti, but where are you spending the money? We don’t see it here.’<sup>72</sup>

Most fundamentally, the coming changes signal a need to re-think our basic humanitarian model, which has been based on the practice of parachuting expatriates into a disaster situation. But we have not yet got it right in terms of building up local capacity. The ability of the affected state and of local organizations to respond to humanitarian crises must be increased. The emerging powers must play a more active role, not only in financially providing for the victims of wars and

71 Katherine Haver and Conor Foley, *International Dialogue on Strengthening Partnership in Disaster Response: Bridging National and International Support*, Background Paper No. 2, Regional and International Initiatives, September 2011, available at: [www.ifrc.org/PageFiles/90118/Background%20paper%202.pdf](http://www.ifrc.org/PageFiles/90118/Background%20paper%202.pdf) (last visited December 2011).

72 Author’s notes, Port-au-Prince, January 2011.

natural disasters but in shaping the existing system to better meet the needs of the future.

The complex array of actors who make up the international humanitarian system have become increasingly professional and effective over the past few years. Overall, the system has got better at responding quickly, at saving lives, at preventing death. Shocking reports of tens of thousands of Somali children dying of malnutrition in 2011 underscore how rare this has become in the last twenty years. But the humanitarian system has not been able to prevent the conflicts that produce humanitarian emergencies. Even when the warning signs are clear – as in Somalia, Côte d'Ivoire, Burundi, Yemen, and a dozen other places – humanitarian actors have not been able to stop the escalation of hostilities or prevent human rights abuses. And, in fact, it is not their responsibility to do so. Rather, it is the responsibility of political leaders and institutions to ensure peace and security (and to take actions to mitigate the effects of climate change for that matter), while the humanitarians are expected to respond to the human need that results from the failure of effective political action. And yet, the interface between prevention and response is not so clear-cut, as evidenced by the growing advocacy role of many humanitarian NGOs and the increasing engagement of the UN Security Council with humanitarian issues. Exploring and expanding the linkages between prevention and response will surely be one of the major challenges for future humanitarian action.

Responding to the challenges posed by the six megatrends explored in this article will require more – and more creative – thinking and visionary leadership. It will also require humanitarian actors to take time to step back from their day-to-day operations and think about the big-picture issues that will affect their work. Understanding future trends is a first step in preparing for them.

# Planning from the future: an emerging agenda

**Randolph C. Kent\***

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## Abstract

*In the foreseeable future, it is more than likely that the types, dimensions, and dynamics of crisis drivers will increase dramatically, in some instances exponentially. While a growing number of organizations with humanitarian roles and responsibilities sense that such changes are afoot, few have looked at how these might fundamentally affect not only what they do but also how they do it. This article suggests that it is time for humanitarian organizations to look far more systematically at the transformational factors that will increase disaster vulnerabilities around the world and also the opportunities that exist to mitigate them. The article notes that some of the most transformative factors affecting humanitarian action will be the result of new political structures in the post-Western hegemonic world and the growing political centrality of humanitarian crises. The consequences of these and other transformative factors mean that those with humanitarian roles and responsibilities will have to be far more anticipatory and adaptive than is the case today. They will have to pay far greater attention to innovation and*

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*innovative practices and significantly expand the ways in which and with whom they collaborate.*



Extrapolating lessons from the past will increasingly provide less guidance on how to deal with humanitarian *futures*. The types of humanitarian crisis driver are increasing exponentially, as are their dimensions and dynamics; furthermore, the systems, institutions, and assumptions that have emerged over the past two decades will not be adequate to meet the humanitarian challenges of the next two decades and beyond. Moreover, not only are the types, dimensions, and dynamics of crisis drivers significantly expanding, but at the same time the broader global context in which such crisis events take place is dramatically changing. It is the interplay between the changing nature of threats and the context in which they will increasingly play out that calls for a new humanitarian agenda – one underpinned by ‘planning from the future’.<sup>1</sup>

Conceptually, ‘planning from the future’ has its roots in a number of different disciplines – management, political science, new approaches to governance, and environmental management. What many of these areas share is an appreciation of insights from complexity theory. These insights suggest that reductionist analysis leading to top-down strategies, with finite objectives and pre-defined means for attaining them, is neither feasible nor desirable in a world in which ongoing economic and technological changes and increasing social complexities predominate. Nevertheless, in a number of cases, successful ‘planning from the future’ has emerged from adaptations of such conventional approaches. As Ramalingam has suggested in his analysis of successful vaccination programmes in the health sector:

We can see a clear evolution from a prescriptive model, a broad formal, rational, design approach, which tried to ‘solve the puzzle’...towards a learning, evolutionary, politically savvy approach, in which the context shaped the approach, and conscious effort was put into adapting the project as it progressed.<sup>2</sup>

‘Planning from the future’, in other words, assumes that one cannot predict what will be, but that one can learn how better to deal with and navigate uncertainty and complexity. It also assumes that this is an approach that can and has been learned. Increasingly modern social and natural sciences assume that ‘most phenomena in the universe are somewhere in the middle [between randomness and deterministic]; they mix determinism and randomness in complex and

1 The phrase ‘planning from the future’, besides being the title of this article, is the motto of the Humanitarian Futures Programme at King’s College, London. It suggests an approach in which standard futures analysis, which normally depends upon trends analysis, is replaced by scenario analysis, which focuses upon the complex interplay of non-linear factors that in and of themselves do not necessarily reflect consistent patterns of behaviour.

2 Ben Ramalingam, *Aid on the Edge of Chaos*, Oxford University Press, Oxford, forthcoming 2012.

unpredictable ways. In the twentieth century, science came to accept the messy and the indeterminate'.<sup>3</sup> With that in mind, it is evident that the capacities to deal with complex problems are often distributed vertically and horizontally across a wide range of actors and hierarchies, that they represent the sorts of problems not amenable to any single set of disciplines, and that they may reflect conflicting, divergent, and equally plausible interpretations.<sup>4</sup> As this article will suggest, this perspective has significant implications for the ways in which those with humanitarian roles and responsibilities develop policies, consider who should be at the policy formulation table, and, from a planning perspective, how objectives and inherently fluid contexts might interrelate.

While recognizing that what has been called the 'humanitarian industry' has become more professional over the past two decades,<sup>5</sup> the first section, 'Perceptual blind spots and the changing nature of threat', suggests that this professionalization has not been in response to a growing awareness of the implications of complexity. Rather, on the whole the humanitarian sector appears relatively oblivious to those implications, to what this article will discuss as the ever-expanding types, dimensions, and dynamics of humanitarian crises. As with all too many organizations, those in the humanitarian sector view professionalization in terms of better co-ordination, control, and executing abilities, but not necessarily in terms of better innovating and knowledge-creating abilities.<sup>6</sup>

An equally poignant challenge for what Harvey and others define as the 'humanitarian sector'<sup>7</sup> will be the extent to which those representing that sector are sufficiently sensitive to the changes that constantly emerge from any 'open complex adaptive system', or, in this case, from the myriad factors that represent the broader context in which humanitarian crisis drivers and their consequences are perceived and addressed. The second section, 'The changing global context', will attempt to capture aspects of that rapidly moving, multifaceted context in which the consequences of macro and micro impacts can often be indistinguishable.

For those with humanitarian roles and responsibilities, the ever more complex and seemingly random nature of humanitarian crises and the contexts in which they occur require new ways of preparing for the challenges of the future. The final section of the article, 'Planning from the future', suggests some measures that humanitarian organizations need to take to be ready. While these measures are regarded by a growing number of organizations as useful, they are all in one way or

3 Eric Beinhocker, *The Origin of Wealth: Evolution, Complexity and the Radical Remaking of Economics*, Random House Business Books, London, 2005, p. 99.

4 Harry Jones, 'Taking responsibility for complexity: how implementation can achieve results in the face of complex problems', Working Paper No. 330, Overseas Development Institute, London, June 2011, available at: <http://www.odi.org.uk/resources/docs/6485.pdf> (last visited December 2011).

5 John Holmes, 'New dimensions of collaboration and the corporate sector', speech to the RedR/King's College London conference 'Hard Realities and Future Necessities: The Role of the Private Sector in Humanitarian Efforts', London, 3 December 2009, p. 12.

6 E. Beinhocker, above note 3, p. 378.

7 Paul Harvey *et al.*, *The State of the Humanitarian System: Assessing Performance and Progress: A Pilot Study*, ALNAP/Overseas Development Institute, London, November 2010.

another underpinned by a more abiding recognition that the most important step to be fit for the future begins with ‘mind change’.

## **Perceptual blind spots and the changing nature of threat**

A former Thai Minister of Finance, M. R. Pridiyathorn, warned that, if the Thai government in 2011 continued to pursue its proposed rice-pledging schemes, they would result in policies that would ‘aggravate natural disasters’.<sup>8</sup> In neighbouring Cambodia, policy-makers were perplexed to discover that a major wealth creation scheme, namely the creation of casinos in Phnom Penh, was leading to a significant increase in suicides among the local population.<sup>9</sup>

The two concerns offer important reminders, if not lessons, for the humanitarian sector. The link between the Thai government’s rice-pledging schemes and so-called ‘natural disasters’ underscores the fact that humanitarian crises are generally reflections of the ways in which societies structure themselves and allocate their resources. They are not aberrant phenomena, divorced from normal life; they are reflections of ‘normal life’. Similarly, the Cambodian casino is a reminder that assumptions about the impacts of crisis drivers are not linearly based, but more often than not their consequences have to be seen in terms of their context and the multiplicity of phenomena that might potentially have an impact on that context. The analogue that has often been used is the flap of a butterfly’s wings in Brazil, the eventual consequence of which is a tornado in Texas.<sup>10</sup>

These cases reflect what might be called ‘blind spots’. They suggest a linear view of causation, a compartmentalized approach to expertise, and a general unwillingness to probe potentially complex contexts. Such blind spots permeate the world of humanitarian experts and professionals. They are in part perpetuated by institutional tendencies to compartmentalize problems, by the need to focus upon issues that are perceived to be acceptable, and by screening out issues that do not fit into recognized categories. It is instructive in this context to consider the way in which members of the World Economic Forum’s (WEF) Council on Disaster Management began its deliberations in 2011 on issues relevant to corporate humanitarian collaboration.

In their initial deliberations, members of the Council were urged to recognize the discreet nature of ‘natural disasters’, and that this category was different from other humanitarian concerns of the WEF such as ‘catastrophes’ and scientific and technological disasters.<sup>11</sup> The assumption that disasters can be categorized in terms of a specific type of crisis driver ignores the emerging reality

8 Wichit Chaitrong, ‘Government policies threatening to aggravate natural disasters’, in *The Nation*, 26 September 2011, p. 2A.

9 David Chandler, *A History of Cambodia*, 4th edition, Westview Press, Boulder, CO, 2008, p. 249.

10 Edward N. Lorenz, *The Essence of Chaos*, University of Washington Press, Seattle, WA, 1993.

11 Personal reflection of the author, who served as a member of the Council on Disaster Management of the World Economic Forum from 2011 to 2012.

that few humanitarian crises are the result of a single causal factor, such as a natural disaster. The March 2011 Fukushima crisis is a case in point.

The interplay between the tsunami and the subsequent leak of Unit 1 of the Fukushima nuclear reactor suggests why such conventional categories as 'natural disasters' and 'complex emergencies' may be linguistically convenient but conceptually flawed. The former fails to recognize that it is human agency that makes natural hazards a threat to lives and livelihoods; the latter is too often a cloak for describing the consequences of inter- or intra-state violence without recognizing the complexities and multidimensionalities that trigger such violence. In the case of Fukushima, the crisis that led to a total of 22,000 people being confirmed dead or missing and almost 250,000 people displaced had multiple drivers.<sup>12</sup> An earthquake, a tsunami, nuclear leakage, and collapsed infrastructure, which in various ways interacted with each other, created an unprecedented humanitarian crisis, requiring multiple response measures. The event was not a 'natural disaster' nor a 'technological disaster', but the result of multiple and interactive crisis drivers.

That disasters generally have multiple drivers has normally been the case. Recent examples abound. The impact of the Mumbai floods in 2005, for example, was the result of administrative decisions to reduce mangrove groves that heretofore had provided protective barriers against storm surges, as well as the sheer intensity of the rainfall. Collapsed sewage systems in highly vulnerable parts of the city and inadequate infrastructure were as responsible for the eventual consequences of the floods as the high level of rainfall itself. In 2011 in Hungary, a combination of heavy rains, lack of appropriate attention to toxic sludge in a bauxite storage facility, and untested safety measures to contain residual bauxite almost led poisonous 'red sludge' to enter the waters of the Danube. Similarly, the tragedy that befell New Orleans in the aftermath of Hurricane Katrina in 2005 was in no small part due to the failure of the US Army Corps of Engineers' surge protection system and the lack of adequate warning measures in Louisiana's coastal cities and towns.

All too often, experts tend to focus on one type of driver, and only subsequently recognize strands of other types. As experts tend to compartmentalize hazards based upon their expertise and institutional interests, they not only fail to plan upon the likely prospect of interactive drivers but also fail to explore the possibility that they will have to deal with new types of crisis driver.

## New types of crisis driver

If disasters are reflections of the ways in which societies structure themselves and allocate their resources, then it is more than likely that increasingly complex economic systems, the consequences of globalization, and the inter-related nature of technology, population growth, demographic shifts, and natural phenomena such as climate change will result in new types of crisis driver and also new types of interactive crisis.

12 'Nuclear energy: 2011 Japan nuclear crisis overview', in *New York Times*, available at: <http://topics.nytimes.com/top/news/business/energy-environment/atomic-energy/index.html> (last visited 10 December 2011).

The potentially disastrous consequences of cybernetic failure offer one example. In a world more and more dependent upon interconnected communications, information transmission, and access to a wide range of cybernetic systems, cascading failures, or networks that become severely impaired owing to malfunctions in hardware or software, will quite plausibly become major crisis drivers. Food supply chains, mobile communications, water systems, emergency logistics (air, land, and sea), and access to money or trading commodities are all increasingly dependent upon complex systems that rely upon internet communications and related satellite capacities. In developed as well as developing countries, the potential vulnerability of such systems are intensifying; unintended cybernetic failures or calculated cybernetic attacks are seen as factors that can bring large parts of society to their knees.<sup>13</sup>

In 2009, the US National Academy of Sciences prepared a report for the US National Aeronautic and Space Agency, entitled *Severe Space Weather Events: Understanding Societal and Economic Impacts*. In the 132-page report, analysts found that a 'super solar flare' followed by an extreme geomagnetic storm would mean that, in societies dependent upon high levels of technology, nothing would be immune. The loss of electricity would ripple across the social infrastructure with, for example,

water distribution affected within several hours; perishable foods and medications lost in 12–24 hours; loss of heating/air conditioning, sewage disposal, phone service, fuel re-supply and so on. The concept of interdependency is evident in the unavailability of water due to long-term outage of electric power – and the inability to restart an electric generator without water on site.<sup>14</sup>

China's determination to ensure adequate electric power and water for burgeoning urban populations demonstrates a related dimension of emerging crisis drivers – in this instance, the interface between sophisticated technologies and conventional crisis drivers. An earthquake measuring 7.9 on the Richter scale in Sichuan in 2008 was, according to one highly reputable source, triggered by the enormous weight of back-filled water in the recently constructed Zipingpu Dam pressing down on a fragile fault-line. The result, according to the chief engineer of the Sichuan Geology and Mineral Bureau, was an impact that had '25 times more' than a year's worth of natural stress from tectonic movement.<sup>15</sup>

In a recent study about the consequences of meltwater in South Asia's Hindu-Kush Himalaya region, a group of analysts suggested that the impact of

13 North Atlantic Treaty Organization, Lisbon Summit Declaration, 20 November 2010, para. 40, available at: [http://www.nato.int/cps/en/natolive/official\\_texts\\_68828.htm](http://www.nato.int/cps/en/natolive/official_texts_68828.htm) (last visited 10 December 2011).

14 United States National Academy of Sciences, *Severe Space Weather Events: Understanding Societal and Economic Impacts*, National Academies Press, Washington, DC, 2008, pp. 17–18.

15 Richard Kerr and Richard Stone, 'A human trigger for the great quake of Sichuan?', in *Science*, 16 January 2009, Vol. 323, No. 5912, p. 322. It should be said that not everyone is in agreement with the analysis of Kerr and Stone, including Kai Deng, *et al.*, 'Evidence that the 2008 Mw 7.9 Wenchuan Earthquake Could Not Have Been Induced by the Zipingpu Reservoir', in *Bulletin of the Seismological Society of America*, No. 1, November 2010, pp. 2805–2814.



climate-change-generated meltwater was far less a crisis driver than the ways that governments were working to increase agricultural productivity and electricity generation. Experts as well as policy-makers focused all too often on the short-term benefits of dam construction and hydroelectric power with too little attention paid to alternative uses of water power.<sup>16</sup> State boundaries, and not the natural flow of the region's rivers, determined the ways in which experts sought to meet infrastructural needs such as irrigation. Such approaches, in turn, compound the potential impact of natural hazards as well as become sources of conflict.

## Policy-making and the improbable

Policy-makers like to distinguish between low-probability, high-impact events – those events that are quite probable but with relatively low impact – and events that are not only probable but are quite likely to have high impact as well. All too often, they ignore the first category – low-probability and high-impact – because it is perceived to be unlikely to happen and too costly to prepare for the improbable. The fact that government officials in China had disregarded warnings about the potential impact that such large-scale dam projects could have in a seismically active area is reminiscent of more recent accusations about Japanese officials' failure to take into account the potential threat that the location of the Fukushima Daiichi reactor could pose.<sup>17</sup>

The use of such conventional probability/impact categories all too often fails to take into account the assumptions that underpin probability/impact calculations. A solar flare, *per se*, while potentially creating considerable disruption, may be perceived as a relatively rare phenomenon when compared, for example, with the occurrence of cyclones off the coast of the Bay of Bengal. And yet these calculations are only based upon one approach to identifying what has been called 'systems knowledge', or, in this instance, what are or are not 'natural parts of a system'. A complex, globally interconnected world requires problems to be identified and managed in ways that avoid rigid demands of certainty in hard facts or indisputable scientific laws of nature. The issue is not necessarily the relative probability that a solar flare will occur more or less frequently than a cyclone off the Bay of Bengal, but what might be the inter-relationship between the two events.

All too often, the pursuit of 'evidenced-based' knowledge, demands for 'objectivity', and hard data blinds those responsible for anticipating 'mega-crises'

16 Note the preface by Michael Jones, UN Resident Coordinator, to the Humanitarian Futures Program (HFP) Report, *Integrated Action Plan: A Phase One Analysis of the UN Country Team in Tajikistan*, HFP, King's College, London, 2008, available at: [http://www.humanitarianfutures.org/sites/default/files/IAP\\_Tajikistan\\_Report\\_Phase1.pdf](http://www.humanitarianfutures.org/sites/default/files/IAP_Tajikistan_Report_Phase1.pdf) (last visited December 2011). Note also HFP, China Dialogue, and University College, London, *The Waters of the Third Pole: Sources of Threat; Sources of Survival*, HFP, King's College, London, May 2010, available at: <http://www.humanitarianfutures.org/sites/default/files/Waters%20of%20the%20Third%20Pole.pdf> (last visited 10 December 2011).

17 Norimitsu Onishi and Martin Fackler, 'Japan held nuclear data, leaving evacuees in peril', in *The New York Times*, 8 August 2011, available at: <http://www.nytimes.com/2011/08/09/world/asia/09japan.html?pagewanted=all> (last visited 11 December 2011).

and ‘mega-messes’ to more sensitive and possible, if not plausible, causation.<sup>18</sup> For this reason, ‘systems thinking’ offers a more compelling way to come to grips with the sorts of complexities that form the loose, flexible, and malleable parameters of future crisis drivers:

In systems thinking, the physical sciences, certainly knowledge about the physical world, are inseparable from the social sciences and knowledge about the social world. . . . [W]hether we admit it or not, physical science is done by all-too-human beings that not only have a ‘psychology’ but operate within a ‘social context.’ The psychology and the sociology of the investigator or the ‘expert’ affect not only the production of physical knowledge but its very existence.<sup>19</sup>

## Policy-making and the sciences

As noted earlier, a major challenge for dealing with complexity involves ways to engage a broad range of actors on a wide spectrum of horizontal and vertical levels. Many of these actors will offer contending interpretations of any specific phenomenon under focus. The ways in which policy-makers engage the natural and social sciences provide cases in point.

In June 2011 the UK’s House of Commons Select Committee on Science and Technology issued a report on *Scientific Advice and Evidence in Emergencies*. It pointed to the fact that, in dealing with two recent crisis threats that affected the United Kingdom, the government had failed to use its chief scientific advisors (GCSA) effectively – particularly when it came to assessing risk. As the Committee noted:

Risk assessment underpins preparedness. In turn, risk assessment should be underpinned by the best available evidence. We were very disappointed to learn that the GCSA has had little involvement with what is a cross-Government process. It appears that, for both the volcanic ash emergency and the recent severe winter weather, the GCSA had been asked to provide advice after the emergency had happened, although we note with interest that the severe winter weather was not deemed an emergency. This is simply not good enough: scientific advice and evidence should be integrated into risk assessment from the start.<sup>20</sup>

18 Can M. Alpasalan and Ian I. Mitroff, *Swans, Swine, and Swindlers: Coping with the Growing Threat of Mega-crises and Mega-messes*, Stanford University Press, Stanford, CA, 2008, pp. 37–38. According to these authors, ‘all crises are messy’ for three reasons: i) stakeholders who are affected define crises differently and often disagree over what is happening and why; ii) all crises contain a wide variety of issues, problems, and assumptions that must be handled simultaneously; iii) crises are not isolated events, and normally trigger chain reactions.

19 *Ibid.*, p. 118.

20 House of Commons Science and Technology Committee, *Third Report: Scientific Advice and Evidence in Emergencies*, March 2011, para. 110, available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/science-and-technology-committee/publications/> (last visited December 2011).

While the sciences are invited increasingly into the room, they still too often are not invited to the policy-makers' table. In part, this is because policy-makers all too often are inclined to insist on certainty no matter how un-nuanced. In a related vein, longer-term threat analysis is still regarded as a luxury by policy-makers, pressured as they often feel by the demands of the immediate.

In the 2011 Horn of Africa crisis, for example, there were at least three problems that faced policy-makers when it came to using available science.<sup>21</sup> The first relates to the Parliamentary Committee's findings, namely that there was and is no systematic and consistent approach to bringing the sciences into policy-making. In part this has to do with how, all too often, science is used to confirm the opinions of practitioners rather than guide them. In part it has to do with the uncertainties that frequently permeate the ways in which findings are presented, and in part with the fact that scientific findings, when they do arrive on policy-makers' desks, have to be sieved through a host of contending priorities that have less to do with the findings *per se* and more to do with the political, administrative, and operational realities that surround them.

The second is that scientific information that is used by policy-makers and planners has to find ways to be more contextualized. In other words, patterns of drought impact in the Horn of Africa crisis in and of themselves still do not provide sufficiently precise information, for example, to identify differentiated effects upon populations, cattle, and agriculture. In the case of the present crisis in the Horn of Africa, a combination of satellite remote sensing and mobile technologies that can 'ground truth', or verify and differentiate impacts, are available, but not co-ordinated and integrated sufficiently well.

Finally, there is a more fundamental issue that the crisis in the Horn of Africa and a growing number of other crises illuminate. To date, there has rarely been any coherent action except when the signs of imminent crises are about to appear. There is no overarching framework or strategy that reflects a commitment to prevent and prepare for such events. In that sense, the lack of a full commitment to prioritizing and systematically addressing these ever-increasing disasters offers little incentive for a systematic and consistent dialogue between scientists and policy-makers to deal with this increase in crisis drivers, little incentive for the policy-maker to learn how to engage with the scientist and *vice versa*.

In a related vein, governments throughout a large swathe of the international community simply do not have sufficient dedicated, focused institutions undertaking research on disasters. As noted in the recently launched Forensic Investigations of Disasters (FORIN) project, while it is

true that scientific knowledge and modern technology are not uniformly distributed and that many developing countries have a lower capacity to utilize or introduce the science and technology that is theoretically available due to institutional or social capacity constraints...the fact that major disasters

21 Randolph Kent, 'Famine in the Horn of Africa: never again?', in *New Scientist*, No. 2829, 14 September 2011, pp. 28–29.

continue to occur in developed countries suggests that there must be more to the explanation than access to science and technology, and choice of location, and resource scarcity, important though these factors undoubtedly are. This points to a deficit and a deficiency in the preponderance of existing research on disasters.<sup>22</sup>

Greater interaction between humanitarian policy-makers and the sciences is not *the* solution for overcoming linear, over-compartmentalized thinking about complex and interactive crisis drivers. Nor does it resolve the tension between policy-makers' demands for certainty and natural and social sciences' more circumspect understanding about the nature of evidence. Greater interaction between the two, however, should expand the opportunities for greater cross-disciplinary understanding and for what earlier were called 'innovating and knowledge-creating abilities' so essential for identifying the sorts of humanitarian threats and the means to offset them that will be required for dealing with the future.

## The changing global context

A continuing blind spot in the world of traditional humanitarian policy-makers is reflected not only in the ways in which they identify potential risks and solutions but also in the assumptions that they make about the context in which such risks and solutions might occur. This is not to say, for example, that they are not aware of the rise of such emerging powers as Brazil, Russia, India, China, and South Africa (referred to as 'the BRICS') or the resurgence of sovereignty around the globe. Rather, it is to suggest that they appear to find it difficult to move beyond their traditional systems and approaches to accommodate new paradigms. The challenge for many remains that of finding ways to have traditional systems and approaches fit into new contexts, instead of seeking new systems and approaches for accommodating changing contexts.

In an October 2011 meeting of twenty-five heads of Canadian non-governmental organizations held in Ottawa to look at emerging future challenges, participants stressed the value of the event because it gave them 'time to think' before they had 'to return to the practical day-to-day routines' of running their organizations.<sup>23</sup> All too often, these day-to-day routines fail to provide the institutional transformations that may be required to meet global transformations. Continuing emphases, for example, on 'universal humanitarian principles', 'boots on the ground' approaches to relief operations, engaging with 'traditional donors', and improving the present 'humanitarian sector' all suggest that the future is likely

22 Disaster Risk (IRDR), The FORIN Project: Forensic Investigations of Disasters (IRDR RIA Publication No. 1), October 2011, p. 6.

23 See 'Foul Humanitarian Words', a comment on the dangers of the misuse of the terms 'practical', 'academic', and 'the field' for humanitarian policy-makers, arising out of discussions at the Policy and Advocacy Group for Emergency Relief, Ottawa, Canada, 20 October 2011, *HFP Newsletter*, November–December 2011, available at: <http://www.humanitarianfutures.org/newsletters/nov-dec11/foulwords> (last visited December 2011).

to be addressed from the perspective of the present. The probability that the sorts of transformation that are underway might require policy-makers to alter fundamentally the way in which they define problems and the means for resolving them does not readily enter the policy analysis process.<sup>24</sup>

And yet it is evident that major global transformations are underway and will require new ways for those with humanitarian roles and responsibilities to think and prepare for the future. Examples of such global transformations abound, but there are at least five inter-related factors that the humanitarian policy-maker should take into account: the implications of the post-Western hegemon, the political centrality of humanitarian crises, the resurgence of sovereignty, fluid multipolarity, and the globalization paradox.

### The post-Western hegemon

The rise of alternative powers around the world, including the 'BRICS' has been well documented, and its implications for the global economy, security, and global regimes well explored. The traditional assumptions about Western influence and authority are being challenged across the board; even US military might is seen by some as on the decline when it comes to influencing others.<sup>25</sup> Perhaps less well explored are the additional implications arising from the growing array of loosely defined secondary powers – from Indonesia and Malaysia to Argentina, from Nigeria to a variety of Middle Eastern and Gulf states. Combined with the BRICS, this next tier of actors further challenges the semblance of relative stability under Western-designed, if not Western-driven, institutions, traditions, principles, economic structures, and ultimately overwhelming military strength.

This is not to suggest that so much of what has been part of *Pax Americana* will not remain. The multilateral system – principally the United Nations and Bretton Woods structures – will most probably endure for the foreseeable future, though mechanisms such as the UN's Security Council and their procedures may well undergo significant change. Global approaches to such issues of global

24 The difficulty for the policy-maker to move out of what might be described as his or her 'comfort zone' is suggested in a critique by Harvard University's Stanley Hoffmann of a recent work by the distinguished political analysts, Thomas L. Friedman and Michael Mandelbaum, *That Used to Be Us: How America Fell Behind in the World It Invented And How We Can Come Back*, Farrar, Straus, and Giroux, New York, 2011. Hoffmann notes that, despite the authors' recognition that the world has changed fundamentally and that the United States is now just another power in a world of multiple powers, they nevertheless fall back on the contradictory assumption of 'American exceptionalism', namely the uniqueness of the American experience, which would enable it to resume its role as global leader. In other words, it is difficult for even highly trained analysts to let go of fundamental assumptions, despite the implications of major transformational change. See Stanley Hoffmann, 'A cure for a sick country?', in *New York Review of Books*, Vol. 58, No. 16, 27 October–9 November 2011.

25 Kishore Mahbubani, 'A letter to Netanyahu: time is no longer on Israel's side', in *Financial Times*, 11 November 2011, p. 9, in which Professor Mahbubani, Dean of the Lee Kuan Yew School of Public Policy at the National University of Singapore, suggests that 'shrinking [US] budgets will cut defence and aid expenditures... Countries will no longer hesitate to vote against American preferences.' Available at: <http://www.ft.com/cms/s/0/15537caa-0bc8-11e1-9310-00144feabdc0.html> (last visited December 2011).

concern – so-called ‘regime issues’ (such as those pertaining to the law of the sea) – will be used to address new and emerging concerns about humanitarian crisis drivers, such as cybernetic threats and the uses of outer space. Whether or not the economic structures that have led to unprecedented though all too often asymmetric economic growth over the past half century will endure remains uncertain, and the way in which physical power will be asserted will also probably undergo significant change. The fundamental difference, however, will be the diversity of actors who will influence the course of local, regional, and global events.

This diversity will lead to what will be noted below as fluid multipolarity and the resurgence of sovereignty. It will also offer up the prospect of far more disparate if not more divisive barriers to be overcome when attempting to reconcile contending interests. And in a world in which values such as ‘humanitarian principles’ have hitherto been regarded as universal, the decline of hegemonic influence will mean that it is quite likely that, in the words of the anthropologist, Arjun Appadurai, the humanitarian sector will have to accommodate a new approach to principles that he describes as ‘tactical humanism’ – a humanism that is prepared to see universals as ‘asymptotically approached goals, subject to endless negotiation, not based on prior axioms’.<sup>26</sup>

In that context, an ICRC official noted his surprise when, in a standard presentation on humanitarian principles, a member of an audience in the Middle East politely but firmly noted that in his society ‘justice’, too, was a humanitarian principle. ‘Where do your principles relate to ours?’ was, according to the official, a question of abiding importance.<sup>27</sup>

## The political centrality of humanitarian crises

Three decades ago, humanitarian crises were considered aberrant phenomena, relatively peripheral to core governmental interests. And, while the fall of Ethiopia’s Emperor Haile Salassie in 1974 was in no small part due to the way in which he failed to deal with the Wollo famine, governments around the world today increasingly see the repercussions of poorly managed crises in terms of their very survival. The evidence spans a growing catalogue of cases, from governmental reactions to Myanmar’s Cylone Nargis to the Thai government’s reactions to the 2011 floods, from the Turkish government’s response to the 2011 Van earthquake to Japan’s tsunami-generated Fukushima catastrophe in March 2010. Today, humanitarian crises now have far greater political significance than they had in much of the latter part of the twentieth century; and, as Hurricane Katrina in 2005 and the Deepwater Horizon oil spill five years later demonstrated, even the most powerful governments have to deal with serious reputational issues if they fail to respond adequately to humanitarian crises.

26 ‘[This is] not a recommendation in disguise for relativism, for tactical humanism does not believe in the equal claims of all possible moral worlds. It believes in producing values out of engaged debate’. Arjun Appadurai, ‘Tactical Humanism’, in Jerome Binde, *The Future of Values*, UNESCO, Paris, 2001, p. 18.

27 Personal communication, ICRC Geneva, 2004.

As humanitarian crises move to centre-stage in governmental interests, they are imbued with high levels of political significance – both domestically and internationally. While a government's survival may depend upon the way in which it responds to a humanitarian crisis, the way that other governments and international actors respond to that crisis will have increasing political consequence as well. This is by no means a new theme. The political consequences of external support for a beleaguered state are as old as humanitarian response itself.<sup>28</sup> What is new and will increasingly be of significance is the growing politicization of humanitarian engagement. It is not merely the types of assistance that are provided, but the context – the perceived public relations support or overt or implied criticism – that comes with assistance. For both sides – recipient and donor governments – this context will increasingly affect wider interests, including commercial relations and common security arrangements.

This means, in part, that how and who provides assistance will weigh heavily on recipient and donor government decision-makers, and that decisions will be more and more influenced by the abiding political interests that are linked to the provision of assistance even than they are today. What is referred to as the 'instrumentalization of humanitarian assistance', where assistance is used in an almost surreptitious way to achieve 'non-humanitarian objectives', will become more overtly calculated and political.<sup>29</sup>

### The resurgence of sovereignty

That humanitarian assistance – particularly in the context of international assistance – is imbued with political significance and calculations is by no means a new theme. In the midst of a series of humanitarian crises in Africa and eastern Europe at the end of the 1990s, the then UN Secretary-General warned states in sub-Saharan Africa that the international community could no longer tolerate the politicization of humanitarian response and the consequent abuse of human rights.<sup>30</sup> Yet that moral high ground had decreasing relevance as the political centrality of humanitarian crises intensified. The Democratic Republic of the Congo, Sudan, Uganda, and Zimbabwe were increasingly unwilling to abide by an externally imposed, international moral imperative.

Efforts to counter this tendency in Africa and around the globe persist. The International Federation of Red Cross and Red Crescent Societies, for example, continues to seek governments' commitment to International Disaster Response Laws;<sup>31</sup> and persistent efforts to promote the right to protect also continue through

28 Peter Walker and Daniel G. Maxwell, *Shaping the Humanitarian World*, Routledge, 2009.

29 Joanna Macrae, 'Understanding integration from Rwanda to Iraq', in *Ethics & International Affairs*, Vol. 18, No. 2, 2004, pp. 29–35. See also Antonio Donini, 'The far side: the meta-functions of humanitarianism in a globalized world', in *Disasters*, Vol. 34, Supplement S2, 2010, pp. S220–S237, available at: [www.humansecuritygateway.com/documents/ISA\\_thefarside.pdf](http://www.humansecuritygateway.com/documents/ISA_thefarside.pdf) (last visited 10 December 2011).

30 Kofi Annan, 'Two concepts of sovereignty', in *The Economist*, 18 September 1999, pp. 49–50.

31 David Fisher, 'Domestic regulation of international humanitarian relief in disasters and armed conflicts: a comparative analysis', in *International Review of the Red Cross*, Vol. 89, No. 866, June 2007, pp. 353–355.



an array of multilateral and bilateral fora. However, these and related initiatives are countered by a trend that does and will constrain their impact – the resurgence of sovereignty, or the growing confidence in more and more governments that they can resist the prescriptions and perceived intrusions of Western-oriented institutions and states.<sup>32</sup>

In no sense is this to argue that the resurgence of sovereignty automatically denies human rights, including the right to humanitarian assistance or the right to protection. Rather, it is to say that how these are interpreted and who will determine what is needed and when will be less and less negotiable, and in the foreseeable future increasingly determined by state's sovereign authority. Hence, the world's outrage over the 1984 Ethiopian famine and the intrusive though relatively successful 'Geldof phenomena' are unlikely to cohere with emerging geopolitical realities. Governments will be more inclined to resist unwelcome though well-intentioned external intervention, and will also be more insistent on determining whether or not external assistance is required and, if so, what will be provided, by whom, when, where, and how.

For traditional humanitarian actors, the consequences of more assertive sovereignty mean that there will be even less receptivity to arguments about rights of access, that alternative providers (i.e. non-traditional actors, including the private sector) might be preferred 'humanitarians', and that the free-wheeling nature of autonomous humanitarian agencies such as international non-governmental organizations will be less and less tolerated. As suggested in recent disaster situations such as Turkey's 2011 Van earthquake, that of Chile in 2010, and Myanmar's cyclone in 2009, governments have in many instances attempted to resist external pressures of humanitarian actors, and there are aspects of fluid multipolarity that will strengthen the capacities of governments to resist the beneficence of the well intentioned, and to insist on support that is driven more by demand and less by supply.

## The implications of fluid multipolarity

States' assertion of sovereignty will not stem solely from their individual capacities to resist external intervention. Their ability to assert their sovereignty will in part reflect the decline of Western hegemony, and also a tendency to resist change through blocs of states with shared interests. Such blocs or political alignments – be they nation-states or city-states – into groups intended to resist externally imposed change is as old as the concept of governance itself. And, in the foreseeable future, such blocs will not only continue but will also increase in number and complexity, and will enable members to resist various forms of external pressure. While the Arab

32 See Richard Falk, 'Dilemmas of sovereignty and intervention', in *Foreign Policy Journal*, 18 July 2011, available at: <http://www.foreignpolicyjournal.com/2011/07/18/dilemmas-of-sovereignty-and-intervention/> (last visited December 2011), who notes that the concept of sovereignty has all too often been a mechanism for legitimizing the space of states as a sanctuary for the commission of 'human wrongs'. He also notes that the West has historically claimed rights of intervention 'in the name of "civilization"', normally in the non-West – a trend increasingly resisted.



Union's 2011 denunciation of Syrian domestic violence and its earlier intervention in Libya would seem to challenge the proposition that state sovereignty is protected through the mechanisms of blocs and coalitions, there are two more-abiding reasons that would seem to support the proposition that emerging blocs and the resurgence of sovereignty will go hand in hand.

In the foreseeable future, two types of loose and shifting bloc alignments, or fluid multipolar blocs, will become increasingly evident. The first reflects a suzerainty dependency relationship where there is a trade-off between the commodity interests (such as food or minerals) of the suzerain power for the protection of sovereignty for the tributary power. Such alignments are already evident in relations between China and India and a variety of states in Africa. As opposed to geopolitics of yore, these alignments will resemble the fluidity of commodity markets, where shifting functional needs will be reflected in relatively fast adjustments in the relations between bloc members, but their existence will enable governments of weak states to resist unwanted external pressures more effectively than in the past. This would apply to all interventions, whether they be demands for adherence to international humanitarian law or humanitarian access to areas sensitive to local authorities.

Of course, there may well be instances where the stronger state might conversely insist that its 'vassal' abide by international demands, including those related to humanitarian obligations. The overarching point, however, is that the certainties of the moral imperative are ever more in decline, and that the key to the new order in this regard is to anticipate and understand these new relations.

A second dimension of fluid multipolarity will be reflected in what has been described as 'minilateralism'.<sup>33</sup> There is increasing concern among some political analysts that the time and effort consumed in seeking to persuade member-states around the world to agree to multilateral arrangements and regime issues are inherently inefficient. The minilateralist position is that smaller groupings of states with common functional interests will increasingly be inclined to bypass the tortuous route of multilateral negotiations, and will project their influence through arrangements that serve the interests of the like-minded. Whether the outcomes will be positive and in the interest of any single community over time is difficult to judge, but this trend is a further demonstration of the fluid nature of multilateralism in the foreseeable future, and the possible resistance to external pressures that can ensue.

### The 'globalization paradox'

Globalization is by no means a new theme, and is one that has been recognized since the 1970s as one of the transformative factors in the history of human kind. The intensity of global interconnectedness is evident in almost all aspects of modern life, and the new mantra in various quarters has moved from 'all politics is local' to

33 Moises Naim, 'Minilateralism: the magic number to get real international action', in *Foreign Policy*, July/August 2009, available at: <http://www.foreignpolicy.com/articles/2009/06/18/minilateralism?page=full> (last visited 11 December 2011).

‘all politics is global’. From basic means of survival to the complexities of manufacturing, from sources of innovation to the sustainability of infrastructure, there are few facets of human existence where, in the foreseeable future, some form of global inter-relatedness and interdependence will not be evident. And yet, as scholars have also noted, there is a ‘globalization paradox’, namely that the more globalized the world becomes, the more ‘localized’ it seems to be. In other words, the assumption that had underpinned the concept of globalization was that it would lead to a growing degree of uniformity and commonality around the world, and that individual cultures would disappear under relentless waves of global similarities and sameness. This is increasingly countered by new waves of nationalism,<sup>34</sup> and the growth of global commonalities and inter-relationships has in effect generated more intense interest by more and more nations determined to protect their customs, culture, and language.<sup>35</sup>

For the policy-maker concerned with humanitarian issues, the ‘globalization paradox’ brings together many aspects of the changing context in which they will have to operate. The decline of Western hegemony, the political centrality of humanitarian crises, and the resurgence of sovereignty in various ways will make localism – or the preference for one’s own customs, culture, and language – not only a preferred option but also a political necessity. It will be a preferred option because it will reflect a sense of political individuality and assertion that in turn is mirrored in sovereignty, unilateralism, and fluid multipolarity; and it will be a political necessity because the political centrality of humanitarian crises will make greater attention to local attitudes and operational control of increasing importance for governments of crisis-affected states.

These governments will become increasingly wary of those outside humanitarian organizations who feel that their biggest contributions will result from ‘boots on the ground’; in those instances where external involvement is acceptable, prerequisites might include proven competencies in local languages and an appreciation of local culture. Increasingly, external assistance will be driven less by supply and more by demand, and the conduit for such assistance might well be through acceptable regional organizations rather than the UN system or Western consortia. In that sense, the role of the Association of Southeast Asian Nations (ASEAN) as an aid conduit to Myanmar in the aftermath of the 2008 Cyclone Nargis is instructive.<sup>36</sup>

34 Mark Malloch-Brown, *The Unfinished Global Revolution: The Limits of Nations and the Pursuit of New Politics*, Allen Lane, London, 2011.

35 Claire Shearman, ‘Communities, networks, creativity and culture: insights into localisation within globalisation’, in Michael Talalay, Chris Farrands, and Roger Tooze (eds), *Technology, Culture and Competitiveness: Change and the World Political Economy*, Taylor & Francis, New York, 2005.

36 Yves-Kim Creac’h and Lillian Fan, ‘ASEAN’s role in the Cyclone Nargis response: implications, lessons and opportunities’, in *Humanitarian Exchange Magazine*, Issue 41, December 2008, available at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-41/aseans-role-in-the-cyclone-nargis-response-implications-lessons-and-opportunities> (last visited 10 December 2011).

## Planning from the future

Harford, in discussing evolution as a 'failure of the less fit' rather than 'the survival of the fittest', noted that 'disconcertingly, given our instinctive belief that complex problems require expertly designed solutions, [evolution] is completely unplanned'.<sup>37</sup> For policy-makers, the randomness and unpredictability of the source and solutions of complex problems can, indeed, be disconcerting. As noted earlier in this article, modern social and natural sciences increasingly assume that most phenomena in the universe are somewhere between random and deterministic, and that science has come to accept the messy and the indeterminate. Policy-makers, however, generally have not, and seek solutions that are unambiguous and readily implementable.

That, in the context of theories of complexity and uncertainty, goes against perceived reality. In this instance, those who are responsible for humanitarian policy will have to adjust to an operating environment in which crisis drivers, triggers, and causation are not readily apparent, and where consequences are uncertain and solutions potentially evasive. This is not, however, a call for passive circumspection. On the contrary, the active preparation required by organizations with humanitarian roles and responsibilities to deal with new humanitarian dynamics and dimensions is perhaps even more essential and demanding than it might have been in the past.

As one looks to possible humanitarian threats and opportunities to offset them, there are at least five inter-related characteristics that define policies and organizations that will be relevant and fit for humanitarian futures: anticipation, adaptation, innovation, collaboration, and strategic leadership. Each of these involves structural and institutional changes, but, perhaps even more significantly, each of them requires changes of 'mind sets' and attitudes.

### The art of anticipation

The art of anticipation is not about prediction; it is about promoting a sense that exploring the 'what might be's' is a recognized asset for the objectives of the organization and its ensuing policies.<sup>38</sup> While it would be wrong to argue against the fact that there are growing scientific and technological capacities to predict a vast range of phenomena – social as well as natural – it would be equally wrong to ignore the ever-present prospect of 'black swan' events and the extraordinary consequences of 'the flap of the wings of a butterfly'.<sup>39</sup> The organization has to be sensitive to the possibility that it will have to contend with the unforeseen and that its conventional standard operating procedures and repertoires will not necessarily be adequate for dealing with the unforeseen.

37 Tim Harford, *Adapt: Why Success Always Starts With Failure*, Little, Brown, London, 2011, p. 13.

38 'The point is to challenge our preconceptions about how things will develop – not to predict the future, but to give an array of future worlds that seem to flow from these assumptions'. Liz Else, 'Opinion interview: seizing tomorrow', in *New Scientist*, 1 December 2001, pp. 43–44.

39 See E. N. Lorenz, above note 10.

Anticipation is ultimately about ensuring that the organization and policy-makers promote and foster the flexibility and creativity necessary to deal with uncertainty and complexity. In so saying, there is a combination of inter-related steps that can achieve those aims for the institution as a whole and for individuals within those institutions, two of which are noted below.

From a process perspective, it is essential that throughout the organization there is a sense that speculation – new ways of thinking and exploring at the limits of plausibility – is not only accepted but valued. All too often, the creative essence needed to speculate about the ‘what might be’s’ is sacrificed by managers’ pursuit of productivity, efficiency, and control. As noted by the Asian Development Bank’s Knowledge Solution,

To manage for creativity and innovation in ways that keep clients, audiences, and partners satisfied, they have five levers: i) the amount of challenge they give to personnel to stimulate minds, ii) the degree of freedom they grant around procedures and processes to minimize hassle, iii) the way they design work groups to tap ideas from all ranks, (iv) the encouragement and incentives they give, which should include rewards and recognition, and (v) the nature of organizational support.<sup>40</sup>

From a more instrumental perspective, a study of future consequences of climate change suggests that an essential way to develop means to deal with the possible consequences of change is to identify ‘a sequence of steps, each with associated uncertainties’. The first emissions of greenhouse gases and aerosols need to be specified, but so, too, will their dependence on *unknown* socio-economic behaviour. These unknowns can be tackled by using scenarios designed to produce indicative rather than definitive analysis.<sup>41</sup>

The scenario – both as a concept and as a practical planning device – accepts the value of relative probabilities. In other words, one accepts that definitive explanation will be less probable in attempting to understand the future and that one will have to accept the need to plan based on a set of compelling probabilities. Scenario planning is intended to help management ‘think outside the box’, or to serve as ‘mind-shifting exercises’. At the same time, it is used to provide ‘high-level descriptions that help to clarify very long-term strategic direction, threats and opportunities’.<sup>42</sup> Scenario planning begins with making various assumptions and track them through different worlds, to provide an array of possibilities.

40 Oliver Serrat, *Harnessing Creativity for New Solutions in the Workplace*, Asian Development Bank, Knowledge Solutions no. 61, September 2009, p. 4.

41 The Royal Society, *Climate Change: What We Know and What We Need to Know*, Policy Document 22/02, August 2002, p. 7.

42 Hugh Courtney, *20/20 Foresight: Crafting Strategy in an Uncertain World*, Harvard Business School Press, Boston, MA, 2001, p. 1.

There is little acceptable alternative to the ambiguity of probability-based scenarios. It is increasingly regarded as inevitable at a time when

we are now emerging into another cultural epoch [where] it seems futile to suggest what lies in store fifty years into the future. However, there is a way to prepare for the unexpected so that the appropriate transition is facilitated even if it cannot be foreseen.<sup>43</sup>

## The adaptive organization

Many organizations with humanitarian roles and responsibilities make efforts to plan and even to develop longer-term strategies. While one might question whether such planning and strategizing are sufficiently long-term or adequately speculative,<sup>44</sup> there is nevertheless a clear effort by many to set out objectives that reflect assumptions about the values that the organization wishes to pursue, the context in which such values will be pursued, and the ways that it intends to do so. In this context, the difference between an adaptive and a maladaptive organization is indicated by four 'tests': i) the extent to which plans and strategies are understood within and across the organization; ii) the degree to which such plans and strategies relate to the organization's operational activities; iii) the extent to which the assumptions that underpin plans and strategies are regularly reviewed; and iv) the extent to which the results of reviews 'feed back' into operational activities.

The barriers to passing such tests are well known for all who have worked in even small, let alone large, organizations. It is worth reflecting on at least some of these barriers and some possible solutions.

## Cross-system organizations

The admission by one large US-based non-governmental organization that there was no real cross-over between the organization's vice-president for policy and the vice-president responsible for emergencies is indicative of the sorts of challenges that organizations face.<sup>45</sup> In this context, organizations may wish to look at recent business experiments with knowledge networks and communities of practice. These two types of structures mesh, based upon recognized needs to share information ('common ground') in order to achieve common goals, purposes, and objectives. Knowledge networks and communities of practice are non-hierarchical, fluid, interactive, and – as opposed to many aspects of organizational behaviour – non-judgmental. As Olson and Sarmiento point out, the world of disaster risk reduction is a key theme for such networks. The field is changing so quickly, according to these

43 Brian Goodwin, 'In the shadow of culture', in J. Brockman (ed.), *The Next Fifty Years: Science in the First Half of the Twenty-first Century*, Vintage Books, New York, 2002, p. 42.

44 The problem for many planners is that they assume that a plan must reflect relatively firm and fixed steps for a defined period of time. Hence, when one busy executive argued that anyone nowadays with a five or ten year plan is 'probably crazy', he implied that to plan one had to be relatively certain about the environment in which one was operating H. Courtney, above note 42, p. 160.

45 This is based upon a consultancy dealing with preparing for pandemics undertaken by this author in 2005.

authors, that one needs a far quicker and more interactive process than standard organizations can normally provide. Agility is vital.<sup>46</sup>

### *Promoting inter-disciplinary methodologies*

In a related vein, it is highly likely that every humanitarian organization that provides some form of technical assistance has experienced the gulf between its technical experts and its policy-makers and decision-makers. It might be amusing when management – at headquarters or at field level – is teased for not understanding the implications of the ‘techies’ language. Those small groups of experts that only understand each other are important, but at the same time the conceptual and linguistic distance between them and others in the organization can prove a serious constraint on broad-based organizational understanding – about the present and about the future.

Every effort at inter-disciplinary analysis faces the hardship of bringing to bear the full weight of relevant perspectives without over-simplifying or diluting the contribution of each individual discipline. It is a test rarely satisfied completely, except perhaps in the planning and making of policy on matters that are principally technical in nature.<sup>47</sup> All too often, though, even the concept of collaboration poses a difficult initial barrier.

One fundamental problem that needs to be confronted in promoting inter-disciplinary methodologies is that of language. It is a well-known issue, yet continues to hamper the contribution of science to the planning process.<sup>48</sup> The mutual challenge for the pure sciences, social sciences, and planners is to break down the language barriers that hinder the establishment of synergy, which is so necessary to understanding and responding to the dynamics of change.

### *Reducing the impact of unanticipated options*

Those responsible for strategic planning and policy formulation need to communicate regularly with decision-makers to ensure that ‘the future’ fits into a pattern of events that will not come as a surprise. In a recent review of approaches

46 Richard S. Olson and Juan Pablo Sarmiento, *Communities of Practice and Disaster Risk Reduction* (forthcoming). See also Etienne C. Wenger, ‘Communities of practice: a brief introduction’, available at: <http://www.ewenger.com/theory/> (last visited 10 November 2008).

47 It is interesting to note that studies by the RAND Corporation and British Telecommunications Research suggest that technological change will be enhanced by ‘multidisciplinary trends and interactions’. See Philip S. Anton, *The Global Technology Revolution: Bio/Nano/Materials Trends and their Synergies with Information Technology by 2013*, prepared for the National Intelligence Council, RAND, Santa Monica, CA, 2001, p. 35, available at: [http://www.rand.org/pubs/monograph\\_reports/2005/MR1307.pdf](http://www.rand.org/pubs/monograph_reports/2005/MR1307.pdf) (last visited December 2011). As Ian Pearson has said, ‘positive feedback’, or the way that technologies will inter-relate and interact, means that different technological disciplines will result in an acceleration of overall technological advance. See Ian D. Pearson, ‘What’s next?’, in *BT Technicology Journal*, Vol. 19, No. 4, October 2001, p. 101.

48 Gregory E. van der Vink, ‘Scientifically illiterate vs. politically clueless’, in *Science*, Vol. 276, 23 May 1997, p. 1175; David E. Blockstein, ‘How to lose your political virginity while keeping your scientific credibility’, in *BioScience*, Vol. 52, No. 1, January 2002, p. 92.

to strategic planning in post-conflict environments, representatives of the British government's Ministry of Defence, Foreign and Commonwealth Office, and Department for International Development agreed that one of the difficulties facing decision-makers is that issues and options are 'dropped on them' with little familiarity and without any frame of reference. In that sense, lack of familiarity relates to what had earlier been described as perceived utility and relevance.

Many participants argued that the inclination of decision-makers working under extreme pressure is to discard issues and options with which they are not familiar. Conversely, a way around this barrier would be to introduce means by which senior decision-makers were regularly briefed on trends and their implications – in order to enhance familiarity and reduce the potential dissonance created by unanticipated analyses, options, and proposals.<sup>49</sup>

## Innovation and innovative practices

The importance of innovation and of adopting innovative practices has been emphasized in various ways throughout this article. White has remarked that:

Currently, humanitarian organizations – responsible for implementing projects over a relatively short time frame (usually 12 to 18 months) – have little time to observe and reflect on the profile and changing needs of their 'customers' and on the efficacy of their implementation of goods and services.<sup>50</sup>

That said, there is no doubt that a growing number of scientific and technological innovations have the potential to expand policy-makers' capacities to prevent as well as to anticipate and respond to ever more complex humanitarian crises. The challenge for those involved in humanitarian policy and practice is how to identify, prioritize, and implement innovation and innovative practices when the very nature of both – as the mobile telephone phenomenon clearly demonstrates – can be so unpredictable.

Despite this challenge, there are ways in which organizations can identify, prioritize, and implement innovation and innovative practices more effectively than they do at present. In the first place, most organizations with humanitarian roles and responsibilities need to devote more time to studying the nature of the problems that they wish to resolve. Second, most need to recognize the fact that innovations and innovative practices that might be relevant to their concerns and needs will probably come from sources well outside the conventional humanitarian sector, reinforcing the importance of what were referred to above as knowledge networks and communities of practice. Finally, the policy-maker seeking appropriate innovation and innovative practices will also have to go to those who, in a seemingly paradoxical way, understand innovation and innovative practices as well as, if not

49 Personal communication, December 2003.

50 Stacey White, 'Turning ideas into action: innovation within the humanitarian sector – a think-piece for the HFP Stakeholders Forum', Humanitarian Futures Programme, King's College, London, 2008, available at: <http://www.humanitarianfutures.org/sites/default/files/InnovationsThinkPiece.pdf> (last visited December 2011).



better than, most: namely, the vulnerable, who survive in extreme conditions very often because of their ability to innovate. As Lasker points out, it is the innovative capacities of vulnerable populations in situations such as Hurricane Katrina that are too often ignored by presumed experts.<sup>51</sup>

The anticipatory organization will be far more speculative not only about the ‘what might be’s’, but also about the potential means to offset them. ‘Exploration competence’, or the ability to harvest ideas and expertise from a wide array of sources, is vital for staying on top of innovations and their implications, according to the authors of *Radical Innovation*.<sup>52</sup> Yet Wolpert warns that innovation is all too often ‘internalized’ and the essential external cross-fertilization necessary to maintain focus and development of ideas is sacrificed to insular institutional interests.<sup>53</sup> Adaptive organizations will need to develop open information and communication linkages with new types of partner, institutionally (e.g. commercial, non-governmental organizations) as well as geographically. They will also need to find ways to institute ‘a new kind of go-between’, such as knowledge networks and communities of practice, that will be responsible for ensuring the exchange and incorporation into planning processes of trends and innovative ideas.<sup>54</sup>

At the same time, organizations need to make greater efforts to identify and help scale up innovations and innovative practices that can be found within vulnerable communities. With that in mind, ‘one method is to learn from the people most immersed in a problem’. This advice from a highly experienced senior civil servant in the United Kingdom underscores the point that:

Anyone seeking to find an answer to the management of chronic diseases or alienation amongst teenagers may do best by looking at how people are themselves solving their problems, and starting from the presumption that they are ‘competent interpreters’ of their own lives.<sup>55</sup>

The challenge in this context is to ensure that organizations accept the premise that ‘customer-led’ approaches are essential to adopting appropriate innovative practices. The potential range of innovations and innovative practices that stem from community-based initiatives is impressive, but too often overlooked by those very external actors who ostensibly have community interests at heart. However, when it comes to vulnerability reduction and disaster preparedness, community-led initiatives can be the starting point.<sup>56</sup>

51 Roz Lasker, *The Expert’s Blindspot*, available at: <http://www.humanitarianfutures.org/tools/mediacent/film/expertsblindspot> (last visited December 2011).

52 Richard Leifer, et al., *Radical Innovation: How Mature Companies Can Outsmart Upstarts*, Harvard Business School Press, Boston, MA, 2000.

53 John D. Wolpert, ‘Breaking out of the innovation box’, in *Harvard Business Review*, Special Innovation Edition, Vol. 80, No. 8, August 2002, p. 78.

54 *Ibid.*, pp. 81 ff.

55 Geoff Mulgan, *The Art of Public Strategy: Mobilizing Power and Knowledge for the Common Good*, Oxford University Press, Oxford, 2009.

56 See Kamal Kar, with Robert Chambers, *Handbook on Community-led Total Sanitation*, Plan International UK, London, 2008, available at: <http://www.communityledtotalsanitation.org/resource/handbook-community-led-total-sanitation> (last visited 12 December 2011). See also King’s College, *Talking*



## New forms of collaboration

Looking to the spectre of future crises and solutions, it is quite plausible that the humanitarian sector as presently configured does not have the capacity needed to deal with what were described above as the changing types, dimensions, and dynamics of humanitarian threats.<sup>57</sup> In other words, capacity to deal with future threats, to enhance anticipatory and adaptive abilities, and to promote innovation and innovative practices emerges as one of the major challenges for those with humanitarian roles and responsibilities. With that in mind, the issue of capacity directly links to the collaborative partnerships and networks that humanitarian organizations need to develop, and the assumptions that humanitarian actors make about the humanitarian potential of 'non-traditional humanitarian actors'. These non-traditional actors encompass a bevy of new bilateral donors and regional organizations, the military, an extensive range of private sector organizations, the diaspora, so-called 'non-state actors', and virtual online crowd-sourcing and crowd-funding networks.

As the number of such non-traditional humanitarian actors is growing, the challenge for traditional humanitarian actors is how best to engage with them, how to identify the added value that they can bring and their comparative advantages. Similarly, as non-traditional actors become increasingly engaged in humanitarian action, they, too, will have to have a better understanding of the value and benefits of collaborating with those who have, up till now, been regarded as the mainstay of traditional humanitarian action.

There are various hurdles that have to be overcome to foster effective collaboration. One of these concerns 'language'. It is very evident that non-traditional and traditional actors have to have a clearer understanding about what the other means when it comes to engaging in humanitarian affairs. The issue of language can be as simple as the differences in terminology: for example, the private sector's use of 'continuity planning', which for many in the humanitarian sector translates into disaster risk reduction and preparedness. Below such linguistic differences, however, lies a far more complex issue, namely that of perceived motives. In the case of private sector-humanitarian relations, the relationship remains fraught with suspicion about the motives of each.<sup>58</sup> In this regard, there is a crescendo of calls for platforms at community and national levels in which humanitarian policy-makers, private sector representatives, and those from humanitarian and other concerned organizations can discuss openly what each has to offer.<sup>59</sup>

*Science, Talking Sense*, Humanitarian Futures Programme, London, 2011, available at: <http://www.humanitarianfutures.org/content/talking-science-talking-sense> (last visited December 2011).

57 See, for example, P. Harvey *et al.*, above note 7.

58 Joanne Burke and Randolph Kent, *Commercial and Humanitarian Engagement in Crisis Contexts: Current Trends, Future Drivers*, Humanitarian Futures Programme, King's College, London, June 2011, available at: [http://www.humanitarianfutures.org/sites/default/files/Commercial%20and%20Humanitarian%20Engagement%20\(EXEC%20SUMM.\).pdf](http://www.humanitarianfutures.org/sites/default/files/Commercial%20and%20Humanitarian%20Engagement%20(EXEC%20SUMM.).pdf) (last visited December 2011).

59 A study on the engagement of the private sector in humanitarian action is being led by the Humanitarian Futures Programme, King's College, London. It focuses on the role of global, regional, and national 'platforms' in supporting the private sector to play an effective humanitarian role. Historically, there have

A second such hurdle involves understanding the intrinsic capacities of non-traditional actors, which too often are not recognized by humanitarian practitioners. It is interesting to note, for example, that discussions about the added value supplied by the military in humanitarian action normally boils down to logistics, lift capacities (in terms of humanitarian operations, the amount of weight that can be lifted normally from pallets or from the ground, usually by helicopters or fixed-wing aircraft), and protecting civilians in armed conflict. While this sort of support can indeed be operationally important, for the twenty-first-century humanitarian organization the military's potential added value should also include its strategic capacity and its surge capacity (the ability to intensify operational resources to meet an unanticipated crisis), as well as its ability to undertake institution-wide transformation when it comes to adopting innovations and innovative practices.

A third hurdle relates to the ways in which traditional humanitarian organizations engage with a variety of different actors who form part of loose networks or disparate groupings. One such case is provided by diaspora-based communities. The dependence in many vulnerable countries upon the flow of remittances from families residing overseas is well known.<sup>60</sup> It is interesting to note, however, that, while the remittance and diaspora phenomena are recognized for their importance, few humanitarian organizations use such networks as early warning systems that indicate the onset of crises or as means to undertake support operations to provide assistance in complex relief settings.<sup>61</sup> Towards this end, social networking offers additional opportunities to engage with such communities of non-traditional actors more consistently and systematically.

been multiple obstacles that have impeded private sector involvement in humanitarian action, including differences in terminology, methodologies, procedures, and timescales. As a result, 'the debate rarely moves beyond general calls for more strategic collaboration with humanitarian actors and for a better understanding of the role and added-value of each sector. Therefore, this study will take this discussion to a new level, producing practical ways of "going beyond the problem" and options on the role that platforms can play in helping the private sector to engage more strategically in humanitarian action' (see <http://www.humanitarianfutures.org/content/supporting-private-sector-take-active-humanitarian-role---joanne-burke-partnerships-manager-> (last visited December 2011)).

60 On 15 January 2010, the US Department of Homeland Security announced that it would grant certain Haitian nationals in the United States temporary legal status and permission to work, a designation known as 'temporary protected status'. This, among other things, recognized the importance of maintaining the flow of remittances from the Haitian diaspora to their families in Haiti. Muzaffar Chishti and Claire Bergeron, 'Haiti tragedy raises important immigration issues for the United States', in *Migration Information Source*, 16 February 2010, Migration Policy Institute, Washington DC, available at: <http://www.migrationinformation.org/USFocus/display.cfm?ID=771> (last visited 12 December 2011).

61 Randolph Kent and Karin von Hippel, with Mark Bradbury, *Social Facilitation, Development and the Diaspora: Support for Sustainable Health Services in Somalia*, Report for the US Agency for International Development, International Policy Institute, King's College, London, November 2004, available at: [http://csis.org/images/stories/pcr/04\\_hippel\\_somalia.pdf](http://csis.org/images/stories/pcr/04_hippel_somalia.pdf) (last visited December 2011).

## Strategic leadership and the enabling environment

In Amartya Sen's review of William Easterly's *The White Man's Burden*, he borrows Easterly's distinction between 'planners' and 'searchers'.<sup>62</sup> The former incarcerate those whom they wish to assist in pre-set planning frameworks and solutions, while the latter are more willing to listen and understand local conditions and needs, and what might be wanted and when. In a world in which complexity and interconnectedness make top-down strategies obsolete, the planner is not an appropriate strategic leader, and the searcher is.

Strategic leadership in the twenty-first century needs, in the first instance, to change present approaches to planning and to focus upon three broad issues: i) new-style planning processes reflecting a range of key uncertainties likely to be faced in obtaining core value-driven goals; ii) diffuse and 'flatter' forms of leadership, where strategic leadership does not collide with 'managerialism', and is sustained by different leaders at various levels; and iii) blending of traditional leadership strengths with new dimensions of leadership.

Strategic leaders of the future will need to position themselves at the node where different networks connect, or where there is maximum overlap between the elements of a collaborative Venn diagram. They will need skills to build multi-sectoral collaborative networks, and also to enable others to learn from them. The strategic leader will have the ability to identify and seize opportunities for innovation, and through 'stakeholders' net assessments' will be better able to understand the value that he or she brings to stakeholders and the value that they in turn bring. Future strategic leaders will have to move beyond their traditional comfort zones and embrace the ambiguity that reflects reality, and consequently will have to develop appropriate anticipatory and adaptive skills.

Strategic leadership in the humanitarian sector will therefore require at least five competencies for enhancing the overall value and purpose of the humanitarian sector in general and humanitarian organizations in particular: i) *envisioning*, or the ability to identify and articulate value-driven goals that have overarching importance for the leader's own organization and a wider community; ii) *posing the critical question*, or the ability to challenge certitudes and seek alternative explanations; iii) *externalization*, or networking on a multi-sectoral and interactive basis; iv) *communication*, or disseminating value-driven goals in ways that become deeply embedded in the objectives of the organization as a whole; and v) *listening*, or the confidence never to pass up the opportunity to remain silent.

Strategic leaders and the organizations that they seek to guide will understand that the emerging agenda that will enable them to be relevant in a rapidly unfolding and ever more complex humanitarian future will not be merely an extension of the past. It will be a future that will require a much greater capacity to listen, to speculate, to network, and ultimately to be responsive to rapidly changing events and contexts. It will require *planning from the future*.

62 Amartya Sen, 'The man without a plan', in *Foreign Affairs*, March/April 2006, available at: <http://www.foreignaffairs.com/articles/61525/amartya-sen/the-man-without-a-plan> (last visited 10 December 2011).



# The future of humanitarian action: an ICRC perspective

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## Abstract

*The evolving global environment in which humanitarian actors operate is posing profound challenges, both in terms of the increasing complexity of major crises and their impact on affected people, and in terms of the changes within the humanitarian sector itself as it tries to respond. This article gives one perspective of what the International Committee of the Red Cross (ICRC) considers to be some of the key challenges facing humanitarian action now and in the coming years, and how the institution aims to address these challenges while remaining faithful to its fundamental principles of impartiality, neutrality, and independence.*

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## Setting the scene

'What we have is a single, long event which has the scale of the tsunami, the destruction of Haiti, and the complexity of the Middle East.' This was how

\* The author would like to thank numerous colleagues at the ICRC for their input and constructive comments, in particular Pascal Daudin, head of the ICRC's Policy Unit, for his substantial and invaluable contribution.

one senior humanitarian official described the situation in Pakistan in the wake of the devastating floods in 2010, which eventually affected more than 18 million people across one-third of the country.<sup>1</sup>

Indeed, the complexity of the humanitarian crisis in Pakistan was – and continues to be – severe. Hundreds of thousands of people already displaced by the armed violence that began in north-western Pakistan in mid-2008 were among the most vulnerable when the floods struck. Ongoing fighting since then has caused successive rounds of displacement, and left tens of thousands of already impoverished residents without access to basic services. The fallout from the fighting has worsened sectarian and ethno-political violence in major cities such as Karachi and Lahore, further affecting the living conditions there. At the same time, the south-western province of Balochistan continues to be affected by the armed conflict in neighbouring Afghanistan, with scores of casualties crossing the border in search of medical care.

The Pakistan government's resources and capacity to respond to the floods – coming on top of an already complex crisis – were dwarfed by the scale of the damage. The overall international humanitarian response failed to fill the breach, and came in for considerable criticism from different quarters. The blurring of lines between political, military, and humanitarian agendas; poor leadership; and a slow, muddled, and largely uncoordinated response by huge numbers of often competing humanitarian organizations were all said to contribute to the inadequate response, with large-scale needs still unmet many months after the disaster.<sup>2</sup> Much of the criticism echoed that levelled at the response to the Haiti earthquake earlier in 2010, which had already stretched the capacity of the international humanitarian community.

Pakistan has been one of the ICRC's biggest and most complex operations worldwide for several successive years, and the ICRC already had a significant presence in violence-affected areas when the floods struck. Indeed, it is one operation that perhaps most comprehensively encapsulates many of the types of challenge that will confront the ICRC more and more in different contexts around the world, and to which it will need to adapt. Moreover, the types of challenges prevalent in Pakistan will grow in the coming years, owing to the impact of multiple changes in the global environment on vulnerable people, and because of the changing humanitarian architecture as it tries to respond.

1 Jane Cocking, Humanitarian Director of Oxfam, quoted among others in BBC News, 'Pakistan: Senior UN figure criticises response', 23 August 2010, available at: <http://www.bbc.co.uk/news/world-south-asia-11054958> (last visited December 2011).

2 UK Parliament, International Development Committee, *Seventh Report: The Humanitarian Response to the Pakistan Floods*, 10 May 2011, available at: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmintdev/615/61502.htm#evidence> (last visited December 2011). Various international non-governmental organizations and humanitarian agencies submitted written evidence to the Committee.

What is at stake for the ICRC is the ability to deliver humanitarian response that respects the fundamental principles of impartiality, neutrality, and independence.<sup>3</sup> These principles are of great importance to the ICRC, because they allow it to gain the widest possible acceptance by all stakeholders, and thereby to gain safe access to populations in need of protection and assistance. The relevance, the effectiveness, and ultimately the perception of humanitarian action are crucial to gaining this acceptance.

However, few of these challenges facing humanitarian action are altogether new. The role of states, the politicization of aid, and the instrumentalization of humanitarian agencies – combined with the sometimes unprincipled or unprofessional performance of the last – have led to harsh criticism of humanitarian action over the decades. From the Biafran war in the 1960s (when the ICRC itself became mired in controversy and the neutrality of its actions was seriously challenged),<sup>4</sup> through to the aftermath of the Rwandan genocide and the debacle of the Goma camps in the mid-1990s, international humanitarian response has in many cases been found wanting. The 11 September 2001 terrorist attacks on the United States, and what subsequently became known as the ‘global war on terror’, marked a new turning point. The increasingly blurred political, military, and humanitarian objectives of Western donor governments – and the alleged collusion of humanitarian organizations in their own exploitation by these governments – prompted some writers and academics to declare that neutral humanitarian action is not just in crisis but is, in fact, dead.<sup>5</sup>

This overstates the problem. The global context for humanitarian action has evolved significantly over the years, and will continue to evolve in the years ahead. From the ICRC’s perspective, the institution has always worked to adapt continuously to the changing realities confronting it, and will continue to do so in the future. While some of the global changes – or at least the convergence of various changes or trends – are expected to become increasingly challenging, with significant implications for the future of humanitarian action in general, this reinforces rather than detracts from the importance of an impartial, neutral, and independent approach. Upholding and demonstrating the value of this approach will become all the more critical in terms of access and results for people affected.

3 The humanitarian action of the Red Cross and Red Crescent Movement is specifically based on seven Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, unity, and universality. References in this article to the ‘fundamental (humanitarian) principles’ are based on this definition. For further information, see: <http://www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm> (last visited December 2011).

4 David P. Forsythe, ‘The ICRC: a unique humanitarian protagonist’, in *International Review of the Red Cross*, Vol. 89, No. 865, March 2007, p. 69.

5 David Rieff, *A Bed for the Night: Humanitarianism in Crisis*, Simon & Schuster, New York, 2002; Kurt Mills, ‘Neo-humanitarianism: the role of international norms and organizations in contemporary conflict’, in *Global Governance: A Review of Multilateralism and International Organizations*, Vol. 11, No. 2, p. 161.



And while humanitarian practitioners can make some general predictions about how the humanitarian landscape will change in the near future – based on analysis and understanding of the contexts in which they currently work – it is neither realistic nor particularly useful to plan and develop operational response strategies for more than a few years at a time. This is partly because of the speed and unpredictability of change. After all, who in the humanitarian world had really anticipated, and prepared for, the consequences of recent events in North Africa and the Middle East? The speed and scope of the violent unrest took many by surprise, and the ultimate consequences remain to be seen. It is also because the nature of humanitarian financing, and thus response planning, is intrinsically short-term, and often reactive, despite the chronic nature of many crises and despite calls for more coherent links with development through early recovery and better preparedness, for example.

So what does the ICRC see as some of the key challenges facing humanitarian action now and in the next few years, both in terms of global trends affecting vulnerable people and in terms of changes in the humanitarian system as it tries to keep pace? And how does the institution aim to address these challenges – principally through its 2011–2014 institutional strategy – keeping people's needs at the centre of its work and building on their resilience in fulfilling its mission?

By way of response, the first section of this article will consider some of the key challenges of contemporary crisis, as observed in ICRC operations around the world, principally in how they affect the people whom the institution aims to protect and assist. The next section will describe some of the pressures and changes within the humanitarian 'system' itself,<sup>6</sup> and how these impact on principle-based humanitarian action. The ICRC's strategy and how it aims to address the wide-ranging challenges facing it will be examined in the third section. In conclusion, the article will reiterate some of the main challenges and constraints that are likely to face all humanitarian actors in the years ahead.

## Challenges of contemporary crises

### Convergence of global crises

In recent years, the term 'global crisis' has become almost a catch-all term, used mainly to refer to the convergence of the food, fuel, and financial crises, and

6 As noted by John Borton in *Future of the Humanitarian System: Impacts of Internal Changes*, Feinstein Center, November 2009, available at: <http://www.humanitarianfutures.org/sites/default/files/internal.pdf> (last visited December 2011), a striking feature of the 'humanitarian system' is the lack of clarity about what precisely it consists of and where the boundaries lie. There is no universal definition: some writers preface the term with 'international' to distinguish it from national and local elements within affected countries, while some reject the use of the word 'system' altogether, on the grounds that it implies actors oriented towards common goals. Borton himself uses a working definition of the 'multiplicity of international, national and locally-based organizations deploying financial, material and human resources to provided assistance and protection to those affected by conflict and natural disasters with the objective of saving lives, reducing suffering and aiding recovery' (p. 5).

their effects. The fallout continues to be as manifold as it is massive, having a profound impact on the vulnerability, needs, and also resilience of some of the world's poorest people. Unemployment in many countries is continuing to rise, nutritious food is often unaffordable, and tensions remain high between communities as they struggle to find ways to cope. Dwindling remittances from family members abroad make the situation even worse. In many places, these challenges are exacerbated by political instability or violence, and by environmental pressures. There are strong arguments that climate change – by redrawing the maps of water availability, food security, disease prevalence, and coastal boundaries – will reduce available food and water resources, increase migration, raise tensions, and probably trigger new conflicts.<sup>7</sup> Add into the mix population growth, displacement, and the relatively new phenomenon of 'environmental refugees', which according to some estimates will number about 150 million by 2050.<sup>8</sup> When a number of these trends converge – particularly in countries affected by both armed conflict and natural disaster or environmental problems – the result can be catastrophic.

The alarming situation in Somalia – where the food crisis worsened dramatically in 2011 – is one striking example. Harsh climate conditions, including the worst drought in decades, resulted in drastic crop failures and livestock losses, pushing food prices even higher.<sup>9</sup> Combined with the chronic insecurity and fighting, and extremely constrained humanitarian access, this situation has exhausted the coping mechanisms of an already beleaguered population. Furthermore, the spill-over effect of the situation in Somalia on its neighbours in the region cannot be underestimated. Heightened tensions following Kenya's military intervention is just one example.<sup>10</sup> Indeed, in such complex crises the consequences are rarely contained within one country.

Somalia remains one of the ICRC's largest – and most challenging – operations. In partnership with the Somali Red Crescent, the ICRC responded to the worsening situation principally through a significant expansion of its therapeutic feeding centres and healthcare facilities, boosting an already major relief operation. It is no secret, however, that in some conflict areas working conditions are very difficult owing to security concerns, which have prevented many humanitarian

7 See German Advisory Council on Global Change (WBGU), *Climate Change as a Security Risk: Flagship Report 2007*, May 2007, available at: <http://www.wbgu.de/en/flagship-reports/fr-2007-security/> (last visited December 2011).

8 Cited in Rajesh Chhabara, 'Climate change refugees seek a new international deal', in *Climate Change Corp*, 27 December 2008, available at: [www.climatechangecorp.com/content.asp?ContentID=5871](http://www.climatechangecorp.com/content.asp?ContentID=5871) (last visited December 2011).

9 See ICRC News Release 11/49, 'Somalia: malnutrition brings children to the brink of death', 13 July 2011, <http://www.icrc.org/eng/resources/documents/news-release/2011/somalia-news-2011-07-13.htm> (last visited 10 December 2011); Chris Niles, 'Amidst the region's worst drought in decades, Somali refugees crowd camps in Kenya', UNICEF, 11 July 2011, available at: [http://www.unicef.org/infobycountry/kenya\\_59174.html](http://www.unicef.org/infobycountry/kenya_59174.html) (last visited December 2011); UNHCR, 'Crisis in Horn of Africa: a worsening humanitarian situation', available at: <http://www.unhcr.org/pages/4e1ff4b06.html> (last visited March 2012).

10 For a detailed discussion of this intervention, see International Crisis Group, *The Kenyan Military Intervention in Somalia*, Africa Report No. 184, 15 February 2012, available at: <http://www.crisisgroup.org/~ /media/Files/africa/horn-of-africa/kenya/184%20-%20The%20Kenyan%20Military%20Intervention%20in%20Somalia.pdf> (last visited March 2012).

organizations from working in the country at all and have also constrained the ICRC's access. In some parts of south-central Somalia, the ICRC can only work with and through the Somali Red Crescent and local field officers.

As multi-layered crises have continued to unfold around the world, poor and vulnerable people have increasingly been forced to adapt to chronic hardship. In many cases, their capacity to recover and cope in the long term has been weakened, leaving them even more vulnerable to acute economic shocks. In the diverse contexts where the ICRC works – be it the Democratic Republic of Congo or Pakistan, Haiti, or Bangladesh – talk of a 'global recovery' has yet to be translated into any sign of reality for vast numbers of people on the ground.

Most armed conflicts today are chronic, often revolving around access to critical resources, and comprising a multiplicity of actors with divergent interests. Nine out of the ICRC's ten biggest operations in 2012 were the same as in the previous two years (comparing initial budgets) – including Afghanistan, Iraq, Sudan, Somalia, and Colombia – nearly all of them protracted armed conflicts.

## The changing nature of armed violence

Clearly, the nature of armed conflicts had already evolved enormously in the second half of the twentieth century. After 1945, the number of classic international armed conflicts greatly decreased. In their place came a vast array of multifaceted internal or cross-border confrontations, as well as complex situations where a multitude of actors motivated by greed or grievance pose a considerable threat to the civilian population. Lines between the parties, and between combatants and civilians, have become increasingly blurred.<sup>11</sup>

Beyond armed conflicts, the scope and humanitarian consequences of other situations of violence are expected to rise significantly in the coming years. The phenomenon of drug-related violent crime in Latin America, which kills thousands of people each year, is one dramatic example. The upsurge of violent unrest that continues to sweep parts of North Africa and the Middle East is another. Other parts of the world are also expected to be increasingly affected, with rapid urbanization and population growth being two key aggravating factors. Pakistan, for example, with a current population of 185 million, is projected to have a population of up to 315 million by 2050,<sup>12</sup> largely concentrated in mega-cities such as Karachi, where urban territory has over the years become a quasi-permanent battlefield between opposing political and ethnic factions.

According to one report, almost three-quarters of a million people are estimated to die each year as a result of violence associated with armed conflicts and

11 See ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report, 31st International Conference of the Red Cross and Red Crescent, 28 November–1 December 2011, available at: <http://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf> (last visited 10 December 2011).

12 United Nations, Department of Economic and Social Affairs, Population Division, data available at: [http://esa.un.org/unpd/wpp/Multiple-Figures/multiple-figures\\_1.htm](http://esa.un.org/unpd/wpp/Multiple-Figures/multiple-figures_1.htm) (last visited December 2011).

large- and small-scale criminality.<sup>13</sup> The majority of these deaths – some two-thirds of them – occur outside war zones. Beyond this are the countless numbers of physically injured or psychologically harmed victims of violence. In addition, estimates of the economic cost of armed violence in non-conflict settings – in terms of lost productivity due to violent deaths – are vast. This only further compounds the already complex effects of the ‘global crisis’ on the poorest and most vulnerable sectors of society.

## Challenges to international humanitarian law

International humanitarian law (IHL) has already necessarily adapted to changing realities over the decades. The adoption of the first two Additional Protocols to the Geneva Conventions in 1977, with the rules that they established on the conduct of hostilities and on the protection of persons affected by non-international armed conflict, is just one example. Specific rules prohibiting or regulating weapons such as anti-personnel mines and, more recently, cluster munitions are another.

The traumatic events of 9/11 and its aftermath set a new test for IHL. The polarization of international relations and the humanitarian consequences of the ‘global war on terror’ have posed a huge challenge. The blurring of terrorism and war, and the legal frameworks governing them, has tended to seriously undermine the construct of IHL, and to cause particular problems when the term ‘terrorism’ is manipulated for ulterior political motives. The proliferation of new actors, including non-state armed groups, the evolving methods and means of warfare, and the weakness of IHL-implementing mechanisms pose further challenges to IHL.<sup>14</sup>

IHL has so far withstood these challenges with its relevance intact, and its adequacy and adaptability as a legal framework for the protection of victims of armed conflict reaffirmed. However, just as the nature of armed conflict and the causes and consequences of such conflict will continue to evolve, it is essential that IHL continue to evolve too. It has become increasingly evident that certain issues require clarification, and that in some areas treaty laws need to be developed. To this end, the ICRC has carried out an in-depth study on strengthening legal protection for victims of armed conflicts, the conclusions of which it began discussing with states and other important stakeholders in the course of 2010 and thereafter.<sup>15</sup> As described in more detail later in this article, the conclusions of the study and the subsequent consultations formed the basis of a resolution on ‘Strengthening legal

13 Geneva Declaration on Armed Violence and Development, *Global Burden of Armed Violence*, Geneva, 2008, available at: <http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence/global-burden-of-armed-violence-2008.html> (last visited December 2011).

14 See ICRC, above note 11, pp. 48–52.

15 See ICRC, ‘Strengthening legal protection for victims of armed conflicts’, Draft resolution and Report, 31st International Conference of the Red Cross and Red Crescent, 28 November–1 December 2011, available at: <http://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-strengthening-legal-protection-11-5-1-1-en.pdf> (last visited 10 December 2011). See also the statement by Jakob Kellenberger, ‘Strengthening legal protection for victims of armed conflicts – States’ consultations and the way forward’, May 2011, available at: <http://www.icrc.org/eng/resources/documents/statement/ihl-development-statement-2011-05-12.htm> (last visited December 2011).

protection for the victims of armed conflicts’, adopted at the 31st International Conference of the Red Cross and Red Crescent in Geneva in December 2011, which effectively paves the way for future work on this issue.

## **Evolving methods and means of warfare**

The context for humanitarian action will also be increasingly shaped by new technological developments in the years ahead – in terms both of risks and of opportunities. Recent conflicts have seen the increasing use of remotely controlled weapons or weapons systems – including so-called ‘drones’ – and of automated weapons.<sup>16</sup> There is a possibility that in the future weapons systems may become fully autonomous, which raises certain concerns with regard to compliance with IHL, not least their ability to distinguish between combatants and civilians. This also requires careful scrutiny of the question of responsibility and liability. Another risk is cyber warfare, which has potentially enormous humanitarian consequences. For example, cyber attacks against airport control, hospitals, transportation systems, dams, or nuclear power plants are technically possible, and could result in profound infrastructure disruption and significant civilian casualties and damages. The ICRC is therefore closely following the rapid developments in this domain, and examining the application of rules of IHL (indeed, it has been doing so in various fora for almost ten years now).

## **Humanitarian response system in flux**

Just as principle-based humanitarian action is being tested by the multiple changes in the global environment, which are changing the nature of humanitarian needs, so it is being challenged by pressures and changes within the humanitarian system itself.

## **Acceptance and perception of aid**

Aid organizations are often accused of serving larger political strategies, or of being the unofficial bridgehead of foreign interests. Since the 1990s, but more often since 2001 and the launch of the ‘global war on terror’, aid organizations have sometimes been implicated in the unholy alliance between development and counter-terrorism, upholding the view that poverty is a contributing cause of terrorism. Some states now support their military actions with aid campaigns aimed not only at protecting their troops but also at contributing to stabilization strategies.

More generally, with the evolution of the international environment towards a new multipolar order and the diminishing influence of the ‘West’, some developing-country governments are increasingly resisting *diktats* from the international community (and finding it domestically popular to do so). In so far

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16 See ICRC, above note 11, pp. 36–40.

as international non-governmental organizations (NGOs) are sometimes perceived as 'Western' institutions, they are often the targets of this changing perspective. Their humanitarian role is no longer routinely accepted and they are placed under significant political and security scrutiny.

The notion that post-Cold War conflict would most frequently and violently occur because of cultural rather than ideological differences – famously put forward by the American political scientist Samuel P. Huntington in his 1993 article, 'Clash of Civilizations?'<sup>17</sup> – has been increasingly criticized by academics as simplistic, arbitrary, and a misplaced attempt to justify Western aggression against Islamic and Orthodox cultures. This has in turn put into question the very notions underpinning modern humanitarianism – namely Enlightenment ideas and nineteenth-century Christian thinking – with a growing number of countries or political entities rejecting aid interventions or programmes because of what they perceive as irrelevant or even dangerous 'imported' values. Radical Muslim thinkers have also sought to attribute difficulties of the Muslim world to the noxious effects of 'Western' moral decadence. The humanitarian world is very much part of the debate on cultural tensions and divisions.

One issue at stake with regard to humanitarian action is the challenge to the 'universality' of certain core values that are perceived as imported concepts. Whereas, for the ICRC, neutrality and independence are largely tools to secure access to all communities in need, impartiality and humanity represent the essence of humanitarian philosophy and cannot be compromised. Some aid actors, for example, are tempted to serve selected communities on ethnic or religious criteria and deliberately ignore those that do not meet these criteria. This cannot be labelled as humanitarian action. However, a number of aid organizations have tried to build a bridge between their own set of values and universally accepted humanitarian principles. The ICRC recognizes that it is highly necessary to be part of the debate on renegotiating, or redefining, universal principles and values.

## Assertive states

The current resurgence of state-based assertion of sovereignty is one trend that is significantly affecting humanitarian response, with increasing numbers of host states actively blocking, restricting, or controlling humanitarian response on their territory.<sup>18</sup> This may be in the guise of 'counter-terrorism' or 'internal policing'. Humanitarian agencies are sometimes used as a pawn, or scapegoat, in internal political struggles. Or governments may insist on their own definition or understanding of 'humanitarian assistance' – for example, restricting it to emergency relief – or impose bureaucratic obstacles in order to restrict appropriate

17 Samuel P. Huntington, 'Clash of Civilizations?', in *Foreign Affairs*, Vol. 72, No. 3, Summer 1993, pp. 22–49.

18 Recent research indicates the overall decline in host government respect for humanitarian principles. See Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP), *The State of the Humanitarian System*, 2010, available at: <http://www.alnap.org/pool/files/alnap-sohs-final.pdf> (last visited 10 December 2011).

humanitarian assistance to contested parts of the country. A number of states even consider a neutral and independent approach as an infringement of their right to manage conflicts or disasters unfolding on their territory.

In one way or another, non-Western host states increasingly want to be seen to deal with their own political and humanitarian crises – partly in line with their own responsibilities, and partly because they are sceptical about the effectiveness and intentions of the international humanitarian community. While the ICRC's insistence on an impartial, neutral, and independent approach may protect it to some extent from such practices – considering, for example, its hard-won access in Libya, Syria, and other crisis-ridden parts of the Middle East – it is still by no means immune to their effects. Sri Lanka is one case in point, where at the end of 2010 the government asked the ICRC to run its operations exclusively from Colombo.<sup>19</sup>

## Politicization of aid

Donor states and host states clearly want humanitarian action to contribute directly or indirectly to their own national interests. The resulting drive towards increased 'coherence' aimed at harmonizing political, military, and humanitarian objectives might seem inevitable – humanitarian action cannot happen in a political vacuum – but it does create various challenges to upholding humanitarian principles. This is perhaps most starkly illustrated in situations of international armed conflict such as Afghanistan, Iraq, and, more recently, Libya, with their multitude of different actors and different objectives.

In Afghanistan, humanitarian aid has been blatantly used as a tool for conflict management and counter-insurgency strategies, and the military's tactic of 'winning hearts and minds' through channels such as the Provincial Reconstruction Teams is intrinsically at odds with the fundamental humanitarian principles. As a result, there is a risk that all humanitarian organizations working in such an environment will be regarded as having political objectives. Indeed, multi-mandated NGOs who carry out both humanitarian and longer-term development activities in a conflict setting have been accused of worsening this 'blurring'.<sup>20</sup>

For the ICRC, the perception of its work as impartial, neutral, and independent has been absolutely crucial to achieving dialogue with parties to the conflict, and to obtaining humanitarian access to those in need. Yet the situation in Afghanistan is a highly complex one, with the conflict spreading to previously quiet areas and a continued splintering of armed groups. This has required the ICRC to

19 See ICRC News Release 11/68, 'Sri Lanka: ICRC closes its offices in the north', 25 March 2011, available at: <http://www.icrc.org/eng/resources/documents/news-release/2011/sri-lanka-news-2011-03-25.htm> (last visited 12 December 2011).

20 Médecins sans Frontières argues that the humanitarian community in Afghanistan has broadly lost the acceptance of the population that is necessary for the provision of humanitarian aid. See Michael Hofman and Sophie Delauney, 'Special report – Afghanistan: a return to humanitarian action', March 2010, available at: <http://www.doctorswithoutborders.org/publications/article.cfm?id=4311&cat=special-report> (last visited 10 December 2011).



work more and more through local partners, particularly the Afghan Red Crescent Society, in order to make its mandate and action more broadly understood and accepted, and thus to be able to reach the most vulnerable.<sup>21</sup>

More recently, in the case of Libya, where the UN Security Council authorized military intervention in March 2011 to protect the threatened civilian population, the political, military, and humanitarian agendas of the key international players were, in the public eye, difficult to separate clearly. Such blurring of roles ultimately complicates or hinders impartial humanitarian access to people on both sides of a conflict. The use of force to protect civilians as a last resort is sometimes unavoidable, but might be perceived as a political construct aimed at weakening the notion of state sovereignty and might thereby result in the rejection of all forms of humanitarian intervention.<sup>22</sup>

As a fully fledged international armed conflict unfolded in Libya, access for humanitarian organizations in general was extremely problematic, particularly in Tripoli and the government-controlled part of the country, with very few being able to operate effectively and reach people in need. While the ICRC was able to send a team to the eastern town of Benghazi within a few days of the violent unrest erupting in February, and subsequently to open an office in Tripoli and expand its operations in western Libya, obtaining such access was a hard-won achievement that could never be taken for granted. Gaining the trust and acceptance of the parties to the conflict through a strictly impartial, neutral, and independent approach was crucial to reach people in need, and to the security of ICRC staff. Strong partnerships on the local level, including with the Libyan Red Crescent, were also key to acquiring a thorough understanding of the situation and the needs of various communities, and to expanding the ICRC's outreach.

## Proliferation and diversification of new actors

Afghanistan and Libya also provide good illustrations of another current trend, namely the proliferation of new actors – both those who are involved in armed conflict and those who respond to it, sometimes with a blurred line between the two. On the one hand, many new non-state groups are emerging, both on a national and transnational level, whose influence will continue to grow and will ultimately determine the agenda of humanitarian organizations. The spectrum of these actors is very broad, encompassing a range of identities, motivations, and varying degrees of willingness, and ability, to observe IHL and other international law standards. Certain organized armed groups, private military and security companies, transnational corporations, urban gangs, militias, and the huge variety of transnational criminal entities – including ‘terrorist’ groups and pirates – all require scrutiny in this regard.

21 Fiona Terry, ‘The International Committee of the Red Cross in Afghanistan: reasserting the neutrality of humanitarian action’, in *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 173–188.

22 For a discussion on the Libyan situation and the evolution of the concept ‘Responsibility to Protect’, see Bruno Pommier, ‘The use of force to protect civilians and humanitarian action. The case of Libya and beyond’, in this edition.

On the other hand, humanitarian response itself is increasingly within the remit of new actors, including the private sector, new NGOs, and foreign military forces, often with ways of operating that are different from traditional approaches and not necessarily based on humanitarian principles. This increasingly calls into question the ‘value added’ of traditional humanitarian actors, as well as existing co-ordination mechanisms by which they operate. This has been demonstrated in Afghanistan, as it has in other situations of armed conflict, where competition between humanitarian actors has resulted in some compromising on humanitarian principles in order to gain profile and resources. Consequently, traditional humanitarian actors who insist on the principles of neutrality, independence, and impartiality may be marginalized, and their security put at greater risk. In large-scale natural disasters, as in Haiti, traditional humanitarian actors risk being sidelined by emerging actors such as armed forces and civil protection forces, owing to their superior resources in terms of finance, logistics, and expertise.

Donors, too, are becoming increasingly diversified. More and more ‘non-traditional’ or ‘emerging’ state donors are operating outside the Organisation for Economic Co-operation and Development’s Development Assistance Committee (DAC) and independently of the Good Humanitarian Donorship initiative.<sup>23</sup> A prevalent trend of non-DAC donor governments is to channel funds through host states rather than through humanitarian organizations, and they often tend to offer support to neighbouring countries. Significant humanitarian funding is also provided by increasing numbers of non-governmental donors, but this is often not systematically reported or not collated by established financial tracking mechanisms. This may include funding from the private sector, NGOs themselves (through public donations and other sources), military funding for humanitarian-related activities, and diaspora remittances.<sup>24</sup>

Clearly, it is important for humanitarian organizations such as the ICRC to engage with new and much more diverse networks of actors, particularly on a local level, and it will be essential to understand them properly.

## Co-ordination conundrum

The observation that humanitarian co-ordination is fraught with challenges is unanimous among humanitarian organizations, donors, UN agencies, and humanitarian ‘experts’. Since 2005, the UN’s Office for the Coordination of Humanitarian Affairs (UN OCHA) has played a crucial role in shaping a more efficient response to crises, sometimes with mixed results. Poor co-ordination has in some cases given rise to contradictory strategies and discrepancies in aid delivery.

This was starkly demonstrated in the international response to the January 2010 earthquake in Haiti, followed ten months later by Hurricane Tomas.

23 For the ‘Good Humanitarian Donorship’ initiative, see: <http://www.goodhumanitariananddonorship.org/> (last visited 12 December 2011). See also Andrea Binder and Claudia Meier, ‘Opportunity knocks: why non-Western donors enter humanitarianism and how to make the best of it’, in this issue.

24 See Peter Walker and Kevin Pepper, ‘The state of humanitarian funding’, in *Forced Migration Review*, No. 29, 2007, pp. 33–35.

'The cynical crisis of humanitarianism in the midst of a humanitarian crisis that has been going on for decades' was how one American journalist put it.<sup>25</sup> Poor leadership and weak co-ordination were among the main factors contributing to the chaotic situation that left some 1.3 million destitute Haitians still in need of housing by the end of 2010.<sup>26</sup> 'Is that what humanitarianism looks like?' asked the journalist, echoing widespread public scepticism and suggesting a gloomy prognosis for the future.

Such a prognosis is at least partly accurate. In a country such as Haiti – crushingly poor, prone to political disturbances, internal violence, and natural disasters – the profound complexity of humanitarian needs clearly put an already struggling international humanitarian system severely to the test.

However, while the majority of agencies seem to agree that the system must be improved, any consensus ostensibly stops there.<sup>27</sup> Few agencies propose convincing alternative solutions. One reason for this may be an inherent reluctance by them to compromise on their own mandates and methods in favour of a more inclusive co-ordination framework.

Increased competition between humanitarian organizations is a reality. Aid has become an industry, with an increasingly crowded marketplace in terms of actors. The survival of many organizations depends on their capacity to engage the media, raise funds, and exert an influence on political players. Emergency organizations must prove themselves to their constituency and to their donors in terms of being able to intervene quickly and reach affected communities. Advocacy specialists, communicators, and proposal writers are now often at the spearhead of humanitarian action in an emerging crisis.

Médecins sans Frontières's courageous decision in January 2005 to interrupt its fundraising campaign for tsunami victims in favour of more assistance for forgotten crises was met with dismay by a number of organizations.<sup>28</sup> Being absent from a particular crisis may lead to serious difficulties for some organizations, and may even force them out of the 'market'. This partly explains why some organizations with inadequate skills or limited capacity rush to places where they will contribute little to humanitarian solutions but rather add to the confusion. At the same time, it is very difficult to impose binding mechanisms, because all agencies want to preserve their own space.

In reality, the situation in the field is often more nuanced. Co-operation does exist, because like-minded organizations and sector specialists have developed a sense of complementarity and use a professional *lingua franca* to assess situations

25 Jane Regan, 'Haiti: humanitarian crisis or crisis of humanitarianism?' in *Huffington Post*, 5 December 2010, available at: [http://www.huffingtonpost.com/jane-regan/haiti---humanitarian-cris\\_b\\_779503.html](http://www.huffingtonpost.com/jane-regan/haiti---humanitarian-cris_b_779503.html) (last visited 12 December 2011).

26 *Ibid.*

27 Wolf-Dieter Eberwein, 'Quel futur de l'action humanitaire?', in *Grotius International*, 3 January 2011, available online at: <http://www.grotius.fr/quel-futur-de-l%E2%80%99action-humanitaire/>.

28 *La Liberté*, 6 January and 23 May 2005. See also Paul Barbagallo, 'Healing ways', March 2005, available at: <http://www.fundraisingsuccessmag.com/article/though-misunderstood-first-doctors-without-borders-bold-decision-stop-accepting-tsunami-relief-donation-could-help-revive-public-trust-nonprofits-32313/1> (last visited December 2011).

and design appropriate responses. In this vein, the goal for the ICRC – and for many other organizations – is to move beyond general debates about co-ordination mechanisms towards field-focused co-ordination between actors who are present and active, ensuring the best possible protection and assistance for the people who need it.

## New technology and humanitarian action

Just as new technology presents certain risks in terms of evolving means and methods of warfare, it also presents opportunities, in that it will influence more and more how humanitarian actors work, particularly with regard to information gathering and sharing. In the sphere of needs assessment, for example, the ever-increasing availability of new web-based technology means that ‘auto assessment’ by beneficiaries themselves is becoming more of a reality, thus empowering them to be better involved in identifying needs and formulating adequate responses. At the same time, this may challenge the priorities, and ultimately the authority, of aid agencies.

In Haiti, new media and communications technology were used in unprecedented ways to help the recovery effort. One example is ‘crowdsourcing’ – pioneered among others by Ushahidi (meaning ‘testimony’ in Swahili) – providing open-source software tools for communities and individuals to share real-time information using text messages, email, Twitter, and the Web.<sup>29</sup> In this way, a stream of real-time updates and interactive maps are made available on where help is most urgently needed or available.

At the same time, the free availability of web-based information, including through whistle-blowing websites such as Wikileaks, can pose other challenges for humanitarian organizations. For the ICRC, confidential dialogue with all parties involved is an essential tool in addressing possible violations of IHL with all stakeholders who have the power to improve the situation, facilitating communication and positive change through a relationship of trust. While confidentiality is not unconditional – and in exceptional cases the ICRC may make public denunciations – leaked information can ultimately harm the very people whom the ICRC aims to protect and assist. For example, the authorities may decide to prevent the ICRC from visiting certain people or places, making it impossible for the institution to help them. Rebuilding trust and regaining access can then be a very long and difficult process.

## Humanitarian financing and the response gap

The issue of humanitarian financing is highly significant in the context of an evolving humanitarian response, as the way in which humanitarian assistance is funded is a key factor in how it is delivered. The challenge of securing sufficient

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<sup>29</sup> For an in-depth discussion of this topic, see Patrick Meier, ‘New information technologies and their impact on the humanitarian sector’, in this issue.

unearmarked funding that allows for timely, effective response to the actual humanitarian needs of people affected by conflict or disaster is one from which no humanitarian organization is immune. Funding pressures affect the ICRC both directly and indirectly, in that they have an important impact on the contexts in which it works (in some cases preventing other humanitarian organizations from being present at all).

### *Global funding*

In the past few years, there has been a broadening of foreign assistance, seen in the increased contribution to development aid and humanitarian assistance by a diverse range of actors, including states, the private sector, and civil society. From 2000 to 2009, development aid increased from US\$84 billion to US\$129 billion per year, while humanitarian assistance given by states increased from US\$6.7 billion to US\$12.4 billion.

In 2010, global humanitarian funding (as recorded by the UN OCHA's Financial Tracking Service,<sup>30</sup> which includes Consolidated Appeals, natural disasters response, bilateral aid, and all other reported funding), reached an unprecedented US\$15.7 billion, driven largely by the natural disasters in Haiti and Pakistan. At the same time, the Consolidated Appeals Process received only 64% of the US\$11.3 billion requested – the lowest level of appeal coverage in six years – which was presumably due at least in part to the financial constraints of many donor governments.

More than half of the global funding was channelled through the UN and its agencies, and much of it through the UN-managed multilateral funding mechanisms born of the 2005 Humanitarian Response Review<sup>31</sup> and the subsequent reforms. However, NGOs and the Red Cross/Red Crescent Movement implement the majority of humanitarian aid,<sup>32</sup> and they are often the first to respond in emergencies.

### *Development focus*

The linking of humanitarian assistance with longer-term development goals is a noticeable trend among different actors engaged in humanitarian response, be they donor or recipient states, private sector, civil society, or multilateral actors. Mega-crises such as Haiti and Pakistan, the increasing occurrence and gravity of

30 Financial Tracking Service, available at: <http://fts.unocha.org/> (last visited 10 December 2011).

31 The Humanitarian Response Review, initiated by the UN Emergency Relief Coordinator and published in August 2005, included key recommendations aimed at reforming the collaborative response: namely strengthening the role and functions of Humanitarian Coordinators and improving the selection process, and the assignment of clear responsibilities to lead organizations at sector level. One outcome was the development of the 'cluster system'; new financing mechanisms were another. See *Humanitarian Response Review*, available at: <http://oneresponse.info/Coordination/ClusterApproach/Documents/Humanitarian%20Response%20Review.pdf> (last visited 12 December 2011).

32 For a comprehensive analysis of humanitarian financing, see the Global Humanitarian Assistance website at: <http://www.globalhumanitarianassistance.org/> (last visited 10 December 2011).

natural disasters, and the various global challenges referred to earlier are stretching the capacity of international humanitarian response. In an attempt to improve the effectiveness of this response, the international community has begun to focus increasingly on structural problems. More attention is now being given to predictable and adequate funding for preparedness activities and for the transition between relief and longer-term recovery.<sup>33</sup> One consequence of this trend will probably be to widen the scope of assistance operations, in an attempt to address short- and long-term objectives in the framework of larger, co-ordinated development plans.

Although both donor and recipient states generally agree with the need to link humanitarian assistance and development aid, their reasons for doing so are different. While the main objective of donor states is to ensure the efficient use of their resources and to achieve maximum impact with their aid, recipient states are more concerned with gaining greater 'ownership' of aid in order to direct it towards their own priorities. In most cases, both sides are genuinely motivated by the desire to achieve the most efficient use of resources, to meet civil society aspirations, and to improve accountability. In some cases, however, the objectives are less clear.

One recent example where this trend was noticeable was the Horn of Africa food insecurity crisis, where in 2011 donor governments and the UN humanitarian system clearly pushed the notion that emergency aid should have a development focus and should therefore be channelled into support for the host government. In a country such as Somalia – where the transitional federal government is barely able to function in the midst of conflict and disaster – such an approach is questionable. This also diverts attention from another key issue, which is the inability of many humanitarian organizations to secure access to key conflict zones, be they in sudden onset situation or protracted armed conflict.

### *Obstacles to ensuring impartial and effective response*

While there is much talk about the inadequacies of the current international humanitarian system driving governments, donors, and the humanitarian system as a whole to develop a new aid architecture, one where local ownership and leadership will be the cornerstone, current donor practice generally does not tend to favour national NGOs or other local actors. Some of the UN-managed funding mechanisms cannot be accessed by NGOs at all. Those NGOs that can obtain funding complain that they are subject to disproportionate bureaucratic requirements, more scrutiny and reporting, and in many cases do not receive overhead costs or contingency funds, making it onerous or even impossible to work in difficult or dangerous operating contexts such as Somalia or Yemen. National and

33 This question is also discussed in the joint interview by EU Commissioner Kristalina Georgieva and the ICRC's President, Dr. Jakob Kellenberger, 'What are the future challenges for humanitarian action?', in this issue.

local NGOs are even more disadvantaged in accessing funds through these mechanisms.

The challenge of meeting actual humanitarian needs in an impartial manner is further exacerbated by the fact that aid is still highly concentrated, both in terms of context and sector (with tied food aid representing the vast majority), and the fact that there is rarely a coherent, accurate measurement of humanitarian need in any given context. Lack of data and imprecise, mandate-based, uncoordinated needs assessments by often competing humanitarian organizations are partly to blame. Donors have an important role to play in supporting ongoing efforts for more coherent, accurate, and reliable needs assessments as the best means to ensure that resources are allocated strictly in accordance with actual humanitarian needs. Flexibility and diversity of funding – with an emphasis on non-UN and local actors – is also important in this regard.

### *Credibility gap*

All these factors contribute, at least partly, to the widening gap between what humanitarian actors say they will do and what they are in fact able to do on the ground – the credibility gap between words and action. Fierce competition for resources and profile – reflected in how (and how honestly) humanitarian organizations communicate about their activities (in terms of beneficiary numbers, access, and reliance on implementing partners, for example) – is one of the most pressing issues. Another factor is the growing trend among many humanitarian actors of outsourcing both response and risk. When funding passes from a donor to a UN agency, to an international NGO, to a local implementing partner, and in some form finally to the beneficiaries, with each actor in the chain keeping unspecified overhead costs and the extent of monitoring mostly unclear, who is ultimately accountable for how efficiently and effectively the money is spent? Can an aid organization unduly expose its national staff in the guise of ensuring diversity and local empowerment? Until there is a clear answer to these questions, the perception, acceptance, and relevance of humanitarian action will continue to be sorely tested.

### Efforts to remedy humanitarian response

The Humanitarian Response Review, started in 2005, was intended to address perceived weaknesses, particularly in co-ordination, leadership, and funding. Five years on, research showed some improvements in certain areas, including needs assessments, prioritization, and timeliness of humanitarian response.<sup>34</sup> The latest cluster evaluation has somewhat mixed findings. While it concludes that there is better coverage in some areas, with fewer gaps and less duplication, resulting in greater efficiency, and that the benefits of the cluster approach so far outweigh its costs, it does point to continuing limitations, including poor cluster

34 ALNAP, above note 18, p. 7.



management and failure to build on local capacity (in some cases actually weakening it).<sup>35</sup>

In recognition of some of the persistent weaknesses of the humanitarian system, in December 2010 the current head of UN OCHA, Valerie Amos, brought together representatives of UN agencies, NGOs, and the Red Cross/Red Crescent Movement, under the aegis of the Inter-Agency Standing Committee (IASC). The aim was to forge a 'new business model' for humanitarian response. The ICRC, which is a standing invitee of the IASC, supported and participated in this initiative, demonstrating its ambition to shape the humanitarian debate on a range of legal and policy issues related to its mission.

Although this project eventually narrowed into UN-led efforts to strengthen the existing humanitarian response 'model', the UN itself openly acknowledged that certain priority issues need to be addressed. These include the need to further strengthen and improve humanitarian leadership across the board, as well as operational co-ordination; the need to improve capacity-building by involving local and national NGOs and other local actors more closely; and, crucially, the need to ensure accountability to local populations, partly through better communication and participatory mechanisms, and by making use of new technology.

### *Certification and accountability*

The current drive towards the certification of humanitarian organizations, and the 'professionalization' of humanitarian workers, is intended to remedy some of the weaknesses and poor performance of the humanitarian system by ensuring adherence to standards, raising the quality and consistency of response, and increasing accountability. While the ICRC supports the general idea of a common operational approach, based on fundamental humanitarian principles as set out in the 1994 Red Cross/NGO Code of Conduct, for example, there are clearly limitations as to what codes or benchmarks of any kind can achieve. The choice – and objectivity – of the criteria on which organizations would be rated; who would grant certification; and how this would be monitored and enforced are all questions that for now have no clear answers and are highly contentious.

The main criterion should undoubtedly be operational efficiency, since adherence to humanitarian principles would be hard if not impossible to measure objectively and could lead to political disputes. Yet focusing only on technical aspects of humanitarian operations risks overlooking more difficult and sensitive issues of humanitarian action related to protection. Other concerns include the risk that certification could reduce innovation and adaptation of humanitarian action, particularly by non-traditional actors. When the Haiti earthquake struck in 2010,

35 Julia Steets *et al.*, *Cluster Approach Evaluation 2 – Synthesis Report*, URD and GPPI, April 2010, available at: <http://www.humanitarianinfo.org/iasc/downloaddoc.aspx?docID=5269> (last visited 10 December 2011).

for example, there was much debate about whether the Sphere standards<sup>36</sup> were achievable or even appropriate.<sup>37</sup>

Certification and individual accreditation systems may go some way to providing a remedy for the shortcomings that were so painfully highlighted in the Haiti response – but it will only be a partial one at best. Even in the absence of such systems, some major donors have already developed their own *de facto* certification or ‘ranking’ systems, measuring and comparing the performance of humanitarian organizations – including the ICRC – and ultimately their ‘value for money’. The 2011 Multilateral Aid Review by the UK’s Department for International Development was a marked departure in this respect,<sup>38</sup> with other donors set to follow suit.

## The ICRC strategy

In the face of these wide-ranging challenges to humanitarian action, how then does the ICRC strategy propose to address the needs and vulnerabilities of the victims of crisis in all their many dimensions, keeping them firmly at the centre of its work, to help strengthen and build their resilience, and to do so in a way that reinforces its own relevance and effectiveness?

### Principle-based humanitarian action

In aiming for these ambitious goals, the ICRC is guided by its institutional strategy 2011–2014, which sets out how it will respond to humanitarian needs within this period, while enhancing its expertise, co-ordinating with other humanitarian agencies, and developing its partnerships with National Societies.<sup>39</sup>

Within this framework, certain key issues require special focus. At the heart of these is the ICRC’s impartial, neutral, and independent humanitarian action in situations of armed conflict and internal violence – the basis of its mandate and a fundamental part of its identity.<sup>40</sup> Of course, many other humanitarian actors claim adherence to the fundamental humanitarian principles, so what is the difference? While there is general consensus about the principles underlying humanitarian

36 The Sphere Project: Humanitarian Charter and Minimum Standards in Disaster Response (launched in 1997 by a group of humanitarian NGOs and the Red Cross/Red Crescent Movement), <http://www.sphereproject.org/>.

37 IRIN, ‘Haiti: humanitarian best practice – dignity, not just digits’, 9 April 2010, available at: <http://irinnews.org/Report.aspx?ReportId=88752> (last visited 12 December 2011).

38 See UK Department for International Development (DFID), ‘Multilateral aid review’, 21 November 2011, available at: <http://www.dfid.gov.uk/what-we-do/how-uk-aid-is-spent/a-new-direction-for-uk-aid/multilateral-aid-review/> (last visited 10 December 2011).

39 ICRC, ‘ICRC Strategy 2011–2014’, available at: <http://www.icrc.org/eng/resources/documents/publication/p4050.htm> (last visited December 2011).

40 Report of the Symposium organized by the ICRC and the Institut d’Etudes de Sécurité (EU), ‘Humanitarian endeavour and armed conflict: contemporary challenges’, June 2010, available at: <http://www.icrc.org/eng/resources/documents/report/belgium-report-2011-07-06.htm> (last visited 10 December 2011).

action, there is undoubtedly great variation in how these are interpreted and put into practice.

While the Geneva Conventions and the Additional Protocols provide solid ground for humanitarian space that is impartial in character, IHL does not stipulate that assistance is exclusively in the remit of civilian actors. Since the authorities or occupying powers are responsible for providing for the survival of the population, it is hard to exclude the military – although it must not disguise itself as a civilian humanitarian actor, and a clear distinction between the two must be maintained at all times. Humanitarian action is in the domain of an increasing range of actors, both civilian and military, whose adherence to the fundamental principles may be inconsistent at best. However, by virtue of its mandate and the will of the States Parties to the Conventions, the ICRC may justifiably claim a specific identity of its humanitarian action, one defined by neutrality and independence.

Legal mandate is one thing, but putting humanity, neutrality, independence, and impartiality into practice is, of course, another. For the ICRC, this essentially requires an approach that is needs-based, has proximity to the beneficiaries, and entails engagement with all stakeholders – thereby gaining the widest possible acceptance and respect, and, through this, the widest possible humanitarian access.<sup>41</sup> This also helps to ensure the safety of staff. In recent crises, be they armed conflicts or other situations of violence – such as Côte d'Ivoire, Libya, and Syria – the ICRC has managed to gain access in this way, although it bears repeating that this is in many cases a hard-won achievement. And the fact that the ICRC has in many cases been the only international humanitarian organization able to secure a physical presence on the ground is hardly an ideal situation in terms of ensuring that the full range of protection and assistance needs of sometimes huge numbers of people are adequately addressed.

## Reference organization for IHL

Despite the fast-changing environment and the various current and emerging challenges that will shape humanitarian action in the coming years, ensuring respect for IHL in situations of armed conflict will also remain at the heart of the ICRC's mission, as it always has done, both in operational terms and on a legal and policy level. The institution firmly believes that the evolving context for humanitarian action reaffirms rather than weakens the relevance and importance of IHL in protecting the lives and dignity of the victims of armed conflict, despite – or rather because of – the flagrant violations by parties to conflicts around the world. At the same time, the ICRC is undertaking a broad range of initiatives towards the clarification and development of certain aspects of IHL.

One such initiative was an in-depth study on strengthening legal protection for victims of armed conflicts, the conclusions of which the ICRC began discussing with states and other important stakeholders in 2010. While the study confirms that IHL remains on the whole a suitable framework for regulating the conduct of parties

41 See F. Terry, above note 21, p. 7.

to armed conflict, it also identifies four areas in which IHL should be strengthened to offer better protection to the victims of these particular situations. These are the protection of persons deprived of liberty; international mechanisms for monitoring compliance with IHL and reparations for victims of violations; the protection of the natural environment; and protection of internally displaced persons. While all of these remain valid, the outcome of the first round of consultations with states was that priority should be given to addressing weaknesses in the law in the first area, and to enhancing and ensuring the effectiveness of mechanisms of compliance with IHL.

The 31st International Conference of the Red Cross and Red Crescent, held in Geneva in November–December 2011, saw the adoption of a strong resolution on the issue, bringing forward the conclusions of the ICRC's study and subsequent consultation process with states. This set the basis for further work to strengthen IHL in the areas of protection of persons deprived of their liberty in relation to armed conflicts, and of international mechanisms to monitor compliance with IHL. It also invited the ICRC to identify and propose a range of options and its recommendations on how the humanitarian problems should be addressed – either by reaffirming existing rules, by clarifying them, or even by developing them. In addition, a four-year plan for the implementation of IHL was adopted, setting out series of measures that states are urged to take to enhance implementation of IHL in key areas, including access by civilian populations to humanitarian assistance in armed conflicts and specific protection afforded to certain categories of people.

## Diversity of crises and flexibility of response

The evolving nature of humanitarian crises has demonstrated to the ICRC that it must be ready and able to respond quickly to complex humanitarian needs in increasingly diverse and unexpected situations.

The ICRC's rapid response when violent unrest broke out in Libya in February 2011 came hard on the heels of a major relief operation in Côte d'Ivoire, providing vital assistance to the victims of the rapidly escalating post-election violence in Abidjan and the west of the country. Just as the situation in these countries degenerated into fully fledged armed conflict in March, Japan was confronted with the tsunami and critical nuclear incident. Here, the ICRC intervened in support of the Japanese Red Cross in areas of its particular expertise (restoring family links; monitoring and advice related to its nuclear, radiological, biological, and chemical response capacity; and forensic expertise). This was regarded as essential in view of the scale of the disaster, and to reinforce the ICRC's credibility and ability to contribute to the international response to a critical situation affecting hundreds of thousands of people.

These events came in addition to what had been programmed for the ICRC's appeal for 2011 – which had already started with a record field budget of just over one billion Swiss francs – and put the institution's operational planning seriously to the test. They also reconfirmed the importance of the ICRC's rapid

deployment and rapid response capacity – one of the institution's main strengths, which will remain a priority in the years ahead.

## Response to changing forms of armed violence

The wave of violent unrest that began to sweep North Africa and the Middle East in 2011, from Tunisia and Egypt to Yemen and Syria, largely consolidated the ICRC's approach to the increasingly serious humanitarian consequences of situations of violence other than armed conflict. In many cases these situations are caused, and exacerbated, by other economic and social divides, and these phenomena are expected to increase in the coming years.

The challenge of knowing how to engage most effectively in, for example, concentrated urban areas characterized by violent crime gangs, lawlessness, and extreme poverty cannot be overestimated. An extremely pragmatic approach is required, balancing operational, political, and legal considerations. The ICRC was already engaged in different activities in different countries – mainly in Latin America – including medical and first aid, detention-related activities, and support to National Societies. Yet the scale of the violence and its consequences in North Africa and the Middle East were a catalyst for more systematic and effective intervention by the ICRC in this domain. This also requires the ICRC better to adapt its knowledge of various bodies of law – such as human rights law – to the expected operational needs in certain specific domains (for example, arrest, detention, and use of force).

## Needs assessment

As recent experiences in Haiti and Pakistan show, there is often an information gap in the early days of a crisis. Donors and other stakeholders may act without timely, accurate, or co-ordinated information. The humanitarian system is working to remedy this through a range of needs assessment tools and mechanisms, such as UN OCHA's humanitarian 'dashboard' and the UN's 'Global Pulse', a new technology-based resource.<sup>42</sup>

Within this potentially confusing picture of different initiatives, the ICRC, with its partners in the Red Cross/Red Crescent Movement, needs to be able to articulate a coherent position on precisely how it assesses needs. It is very clear that beneficiaries themselves must be better involved in identifying needs and formulating adequate responses. As the fast-moving developments in the field of web-based technology demonstrate – the aforementioned Ushahidi platform is just one example – this is already becoming a reality.

42 See the website of the 'Global Pulse', available at: <http://www.unglobalpulse.org/> (last visited 10 December 2011).

## Early recovery

Another priority for the ICRC now and in the coming years is the issue of 'early recovery' in the wake of an armed conflict or other situations of violence. While there is still very much a grey zone between emergency relief and development, one that necessarily eludes fixed time spans and inflexible criteria, the main aim of 'early recovery' is (or should be) to promote resilience and self-sufficiency. By helping people and communities to develop long-term coping mechanisms, the aim is also to give them dignity in a way that food aid or other emergency relief alone cannot.

The commonly understood UN definition of 'early recovery' begins in a humanitarian setting and seeks to build on relief efforts to catalyse sustainable development opportunities. However, the term has been used to describe a variety of concepts and approaches related to recovery, including humanitarian assistance, development, stabilization, peace-building, and state-building, which are often overlapping and sometimes conflicting.<sup>43</sup>

As we have already seen in this article, there are fundamental challenges in balancing longer-term development approaches – which can become politicized – with immediate, life-saving activities. Donors can use development assistance to promote change and ultimately their own objectives – imposing conditionality – which is incompatible with the fundamental principles of humanitarian action.

Humanitarian organizations undoubtedly have a crucial role to play in immediate post-conflict settings, since it is often the most vulnerable sections of society, such as detainees, internally displaced people, women, and children, that risk not receiving the protection and assistance they need to start rebuilding their lives.

In practice, the ICRC has for many years been doing 'early recovery' activities that go beyond helping people with their short-term needs only (even though the term itself is a relatively new addition to ICRC jargon, replacing 'action in periods of transition').<sup>44</sup> In June 2011, during an internal discussion, the ICRC President, Jakob Kellenberger, defined the ICRC's early recovery work as

aiming to restore and build up the physical and mental resilience of people affected by armed conflict and other situations of organized violence. It focuses on helping restore the autonomy of those affected and on action to help them cope with the shock and trauma caused. The organization conducts early recovery activities in tandem with other emergency humanitarian action and/or after the hostilities have ceased and should be adapted to the various realities of rural and urban environments.

43 See, for example, 'Untangling early recovery', Policy Brief No. 38, Humanitarian Policy Group/Overseas Development Institute, October 2009, available at: <http://www.odl.org.uk/resources/docs/5309.pdf> (last visited December 2011).

44 Marion Harroff-Tavel, 'Do wars ever end? The work of the International Committee of the Red Cross when the guns fall silent', in *International Review of the Red Cross*, Vol. 85, No. 851, September 2003, pp. 465–496.

The main question guiding the ICRC's activities is how the institution can best assist and protect people affected by armed conflict and other situations of violence, including by the long-term consequences of such situations (for example, the issue of missing persons, and the long legacy of explosive remnants of war). The type of activity is dictated by the particular needs and aspirations of affected people. The focus may be economic security, water and habitat, or medical services.

Capacity-building of rural communities in Darfur is one example. Another is Mirwais hospital in southern Afghanistan, which the ICRC has supported for almost two decades – initially just in treating war-wounded, but eventually much more broadly to assist the huge numbers of people indirectly affected by the conflict. Now the emphasis is more on capacity-building and training, to improve healthcare provision across the board (in obstetrics/gynaecology, paediatrics, etc). Yet another example is Iraq, where the ICRC provides emergency aid where needed, but also provides support to women-headed households through micro-economic initiatives. The fact that seven out of ten of the ICRC's current biggest operations are in situations of protracted armed conflict confirms the importance of identifying opportunities for early recovery in a humanitarian setting.

So, although 'early recovery' may not be anything particularly new for the ICRC, its clear ambition now is to approach the issue in a much more assertive, structured, and coherent way, and to consult carefully with development actors to define entry and exit strategies while keeping a careful distance from politically driven development processes.

## Importance of acceptance

In response to the challenges facing the acceptance and perception of humanitarian aid, as described earlier in this article, the ICRC has in recent years (and particularly since 2003, which saw the bombings in Baghdad of UN and ICRC offices) been following a concerted strategy to strengthen the perception and understanding of its neutral and independent humanitarian action. At the same time, it has continued to decentralize its security management (based on acceptance rather than passive security measures), and to enhance engagement with the Muslim world. It is the ICRC's aim to be able to demonstrate the added value of its neutral, independent approach, and the value of IHL, in practical rather than semantic terms.

In order to achieve this, the ICRC principally needs to build a broader support base through engagement with more diverse stakeholders, particularly local partners including National Societies and local NGOs. Failure to do so will create a risk of being marginalized by the state, military forces, civil societies, or faith-based organizations. Lack of acceptance could also have negative repercussions on the security of staff in the field.

More broadly, the ICRC is working to diversify its traditional support base by developing strategic relationships with specific emerging state actors, aimed at gaining increased legal, operational, and, in some cases, financial support. In turn, the ICRC stands to gain a greater understanding of the perspectives and views of



particular countries on humanitarian action, and then to integrate its insight in the way it conducts its activities and operations worldwide.

One indispensable feature of all the objectives in the ICRC's strategy is the need to further strengthen and develop partnerships within the Red Cross/Red Crescent Movement. In many situations of armed conflict or violence, the National Society is already a vital partner. In such challenging operational contexts as Afghanistan and Pakistan, Somalia, and Libya, co-operation with – and support for – the National Society is indispensable. The spirit of partnership within the Movement (which was reaffirmed at the 31st International Conference) is essential if the ICRC is to tackle the complexity of humanitarian needs with which it is faced today.

Key to the achievement not only of forging partnerships and support, and thus securing acceptance, but also of all aspects of the ICRC's strategy, are the organization's 13,000 staff members. Capitalizing on their skills and experience – be they internationally or locally hired – is essential in order to fulfil the ICRC's goals and objectives in the years ahead. Ensuring the highest standards of professionalism in terms of performance and accountability is also crucial. New human resources strategies are being defined and implemented to support the operational objectives set out in the ICRC's institutional strategy, particularly those related to optimizing the ICRC's performance. These are in tandem with new information management and fundraising strategies (with the latter notably in favour of increased fundraising in the private sector).

## Conclusion

This article has sought to provide a descriptive analysis of the wide-ranging challenges facing humanitarian action, now and in the next few years, and how the ICRC, for its part, aims to meet those challenges. In conclusion, some of the key 'landmarks' or characteristics of the changing humanitarian landscape that the ICRC, as well as other humanitarian actors, will need to navigate as it moves forward may be summarized, at the risk of oversimplification, in a few points.

The humanitarian 'system' as such is likely to become increasingly fragmented in the face of global trends and changes. There will probably be increasing coexistence of different types of aid, such as initiatives led by the private sector, deployment of military assets, bilateral state aid, UN-designed comprehensive actions, and neutral and impartial humanitarian action. Western states will eventually lose their monopoly on humanitarian funding, and newcomers will propose or impose their own agendas. Former aid recipients will play an increasingly important role in supporting humanitarian aid.

It has become evident over the past decade that military intervention has been insufficient to promote stabilization and peace. There is also a general consensus that economic divisions are at least contributing to conflicts. Pressures to control or direct humanitarian aid as a conduit for political crisis management are unlikely to disappear.



Humanitarian aid can sometimes be perceived as a form of colonial endeavour that creates an asymmetric relationship between communities and aid sector representatives. The shifting balance of international power will certainly jeopardize acceptance of integrated strategies such as nation-building or state-building where these are based on principles and values that are not necessarily shared. Diversity of staff will not, in fact, provide a lasting solution to the more profound philosophical problem of how to avoid dependency and how to empower communities. The imposition of 'universal' principles and technical solutions devised by Western academia will be met with increasingly stiff resistance. There is a need for better dialogue with local authorities and affected communities, and for the promotion of principled but not standardized solutions.

Recent developments in the humanitarian field have served as a reminder that humanitarian action does not happen in a political vacuum. In an international environment where states generally refrain from explicitly declaring their strategic interests and nationalistic ambitions, but rather promote notions of progress, stabilization, or development, the concept of 'pure humanitarianism' sits somewhat awkwardly. On the one hand, humanitarian action that serves no greater strategic purpose, that avoids examining the root causes of crises, and that largely borrows its ethics from the medical realm<sup>45</sup> is objectively less attractive to some states. On the other hand, some states are increasingly wary of humanitarian intervention being used as a front to impose political or other ideology. Re-establishing objective humanitarian action that allows unimpeded and timely access to people suffering from the effects of conflicts or natural disasters – without precluding the emergence of political and economic solutions – is the enormous task that lies ahead.

The crises in both Pakistan and Haiti have provided just two sobering manifestations of some of the most glaring weaknesses in the international humanitarian response 'system' – including the need to improve leadership; the need to improve capacity-building through effective local participation and appropriate co-ordination mechanisms; and the need to improve accountability, particularly to local populations. The overall failure in Haiti (which is by no means a unique case) even prompted the UK Minister for International Development at the time to declare that the global humanitarian system was 'not fit for purpose'.<sup>46</sup>

The limited success of recent humanitarian reforms, including the cluster system, in remedying these weaknesses is due at least in part to the primacy of individual agency mandates and interest. It is no secret that inter-organization rivalry, including within the UN itself, has hindered the development of a truly inclusive framework – be it in co-ordination or needs assessment – with individual agencies worried about losing profile and resources for their core mandates. These are fundamental issues, however, that no amount of ever more-refined structures and mechanisms can hope to remedy.

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

46 'Aid must double to respond to disasters', *The Independent*, 29 March 2010, available at: <http://www.independent.co.uk/news/world/politics/aid-must-double-to-respond-to-natural-disasters-un-warned-1929992.html> (last visited 10 December 2011).

It is time now to move on. The fast-evolving context for humanitarian action leaves no room for complacency or for being stuck on past failures. Humanitarian actors across the board should acknowledge their differences and build on them, speaking a common language and working according to compatible principles.

All humanitarian actors should be ready to give honest answers to some tough questions: what is their actual capacity in situations of emergency, and does this include both natural disasters and armed conflicts? Are some humanitarian initiatives in fact fuelling violence? Where do actors have humanitarian access and where do they not? To what extent do they delegate activities to partners, and how effectively do they monitor this? To what extent do they co-ordinate their activities in a meaningful way with actors who are actually present and active on the local level? And do humanitarian actors ever cede principles to pragmatism when it seems convenient to do so?

The ICRC is just one player on an ever-growing field, with a plethora of new actors claiming to carry out protection work. Reputation and acceptance must be earned through action – continuously. For the ICRC, this means contributing to the relevance and credibility of humanitarian action through an impartial, neutral, and independent approach, engaging with all stakeholders and co-ordinating with relevant operational partners in the field to ensure the most effective possible response to the needs of people affected by crisis. And those people are anything but passive victims, as recent events in the Middle East forcefully confirmed. The way in which humanitarian actors interact with the people whom they aim to protect and assist – building on their resilience and their often formidable coping mechanisms – must continue to improve.

Other humanitarian actors – including UN agencies, NGOs, and donors, with all the particular pressures and constraints that they face – each have their own role to play in ensuring the transparency, accountability, and impact of humanitarian action. The common factor for all of them must be to ensure that resources and response are prioritized and allocated according to actual humanitarian needs, and not according to any other objectives. In other words, the lowest common denominator for humanitarian action in all its shapes and forms must be the principle of impartiality.

There are many highly professional, talented, and committed individuals in the humanitarian world, and many individual humanitarian organizations that do commendable work. Unfortunately, for now, the whole is not as great as the sum of its parts, as was made excruciatingly clear in Haiti and other recent crises. Much work remains to be done before it can confidently be said that the future of humanitarian action is as fit for purpose as it could, or should, be.



# The legal framework of humanitarian access in armed conflict

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## Abstract

*Obtaining and maintaining humanitarian access to populations in need by humanitarian actors is a challenge. A wide range of constraints on humanitarian access exist, including ongoing hostilities or an otherwise insecure environment, destruction of infrastructure, often onerous bureaucratic requirements, and attempts by parties to armed conflict to block access intentionally. The difficulties that these constraints present to humanitarians are frequently compounded by a lack of familiarity – on the part of states, non-state armed groups, and humanitarian relief organizations – with the legal framework. The main purpose of this article is to lay out the existing international legal framework regulating humanitarian access in situations of armed conflict.*

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## The challenge: to obtain and maintain humanitarian access

Humanitarian access<sup>1</sup> to populations in need in conflict zones has become more difficult and complex in many cases in recent years and is viewed by many

\* This article reflects the views of the author alone and not necessarily those of the Swiss Federal Department of Foreign Affairs. The author thanks Damaris Carnal for her valuable comments.

humanitarian agencies as the most significant current challenge for humanitarian action to overcome in the future. Why is that so?

On the one hand, many of today's armed conflicts have become fragmented and complex, with many different groups fighting each other.<sup>2</sup> Complexity also arises when protracted crises overlap with conflicts and/or when a natural disaster strikes a country that already suffers from conflict. Most of today's armed conflicts are non-international, and humanitarian activities are sometimes denied because they are perceived as a threat to state sovereignty.

On the other hand, the number of humanitarian organizations has increased greatly. This means that more co-ordination and negotiation of humanitarian access is needed. In addition, the lines between military, political, and humanitarian operations have gradually been blurred. If one or more parties to a conflict, or parts of the population, start to perceive humanitarian actors as instruments of a political agenda, access to those in need can become difficult or impossible. Humanitarian workers are even at an increased risk of becoming an object of attack themselves because of these blurred lines.<sup>3</sup>

The difficulties that these constraints present to humanitarians are frequently compounded by a lack of familiarity – on the part of states, non-state armed groups, and humanitarian relief organizations – with the legal framework. The main purpose of this article is therefore to lay out the existing international legal framework regulating humanitarian access in situations of armed conflict, even though access constraints are rarely the result of purely legal obstacles.<sup>4</sup>

## **Reference sources: the *Handbook* and the *Field Manual on Humanitarian Access in Situations of Armed Conflict***

What reference sources on humanitarian access exist? The Swiss Federal Department of Foreign Affairs (FDFA), together with partners, has created two reference documents on humanitarian access in situations of armed conflict: the *Handbook on the Normative Framework of Humanitarian Access in Situations of*

1 The notion of 'humanitarian access' is not defined in international law. Here, humanitarian access is understood as a precondition for effective humanitarian assistance, which requires, to the extent discussed hereafter, the consent of the state or the entity controlling a territory (a non-state armed group). Where the need for such assistance is sustained over a period of time, the term should encompass not only access for goods and services to reach the beneficiaries rapidly but also the maintenance of such access as long as necessary.

2 Keynote address by Dr. Jakob Kellenberger, the President of the ICRC, during the 31st International Conference of the Red Cross and Red Crescent, Geneva, 28 November 2011, p. 2f., available at: [http://www.rcrcconference.org/docs\\_upl/en/Speech\\_ICRC\\_President\\_EN.pdf](http://www.rcrcconference.org/docs_upl/en/Speech_ICRC_President_EN.pdf) (last visited December 2011).

3 See, for example, Fiona Terry, 'The International Committee of the Red Cross in Afghanistan: reasserting the neutrality of humanitarian action', in *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 173–188; Antonio Donini, 'Between a rock and a hard place: integration or independence of humanitarian action?', in *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 141–157.

4 This article does not purport to offer an exhaustive analysis of the issues raised in its various parts.

*Armed Conflict and the Field Manual of Humanitarian Access in Situations of Armed Conflict.*<sup>5</sup>

The protection of civilians in armed conflict is a central component of Switzerland's foreign policy. The FDFA has therefore recently developed a strategy in this field.<sup>6</sup> One objective of this strategy is that humanitarian access to populations in need is guaranteed.<sup>7</sup> As early as August 2006, during the Stockholm Conference for Lebanon's Early Recovery, Switzerland announced its commitment to develop further the subject of humanitarian access. Later, the FDFA convened an expert meeting in Montreux from 30 June to 1 July 2008, to which governmental and military experts, academics, and humanitarian actors were invited, with the objective to identify the main constraints on access, and to think about means to overcome these difficulties at legal, political, and operational levels.<sup>8</sup> Among the constraints on humanitarian access identified by participants were the lack of clarity regarding the existing legal obligations on access for humanitarian actors and the need to create a practical tool on humanitarian access.

Based on the conclusions of the meeting in Montreux, a consultation group with representatives of the FDFA, the International Committee of the Red Cross (ICRC), the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), and Conflict Dynamics International was established in order to give advice on the elaboration of a *Handbook* on the normative framework of humanitarian access in situations of armed conflict and a *Field Manual* with a structured approach and practical guidance for humanitarian practitioners. The legal analysis of humanitarian access in this article is based on material in this *Handbook*.

## The international legal framework: why it matters

It is important to be familiar with the international legal framework (i.e. general international law, international humanitarian law, international human rights law, and international criminal law) because access is blocked in many crisis situations. The international legal framework is a tool to ensure humanitarian access,<sup>9</sup> and for

5 These two documents were presented during a side event of the 31st International Conference of the Red Cross and Red Crescent on 29 November 2011. They are available at: <http://www.eda.admin.ch/eda/en/home/doc/publi/phumig.html> (last visited December 2011).

6 Strategy of the Federal Department of Foreign Affairs (FDFA) 2009–2012 on the Protection of Civilians in Armed Conflict, available at: <http://www.eda.admin.ch/etc/medialib/downloads/edazen/doc/publi/aussen.Par.0009.File.tmp/EDA%20Schutz%20der%20Zivilbevoelkerung%20e.pdf> (last visited December 2011).

7 *Ibid.*, objective 2.2., p. 19.

8 State experts from Argentina, Canada, the Democratic Republic of Congo, Egypt, India, Iraq, Jordan, South Africa, Sri Lanka, Sudan, and Switzerland took part in the meeting, as well as representatives of international and non-governmental organizations. Participants expressed their views in a personal capacity. The discussion was limited to situations of armed conflict and was not focused on any specific context.

9 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report prepared for the 31st International Conference of the Red Cross and Red Crescent, Geneva, 2011, p. 24.

humanitarian negotiators it is an important basis for seeking agreement on access.<sup>10</sup> The legal framework specifies the obligations and rights of parties to armed conflict, for states not participating in the conflict, and for humanitarian actors. It also identifies conditions under which humanitarian actors may or may not gain access to people in need of assistance. It provides an objective set of rules, to which different actors can each or jointly refer in securing and sustaining access.

The international legal framework is described below, a section at a time, in order to give answers to the following questions:

- 1 Who is primarily responsible for ensuring the basic needs of affected populations?
- 2 If populations remain in need, what can humanitarian actors do?
- 3 To what extent must relief actions be consented to, and what are the conditions under which relief actions must be conducted under international humanitarian law?
- 4 What human rights obligations exist with regard to humanitarian access?
- 5 What are the consequences of violations?

The article finishes by reflecting on whether the current legal framework is an adequate tool to ensure humanitarian access. Finally, the legal framework on humanitarian access is summarized in a separate box.

## **Who is primarily responsible for ensuring the basic needs of affected populations?**

Under international law, states bear the primary responsibility for ensuring the basic needs of affected populations. This is a consequence of the principle of sovereignty<sup>11</sup> and has been confirmed in international practice.<sup>12</sup> For example, the UN General Assembly Resolution 46/182 (1991) (Guiding Principles on Humanitarian Assistance) confirms that:

Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory.<sup>13</sup>

10 See generally Gerard McHugh and Manuel Bessler, *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners*, OCHA, New York, 2006.

11 Charter of the United Nations, Art. 2(1).

12 See UNGA Res. 43/131 (1988), 8 December 1988; UNGA Res. 45/100 (1990), 14 December 1990; UNGA Res. 46/182 (1991), 19 December 1991; UNSC Res. 1706 (2006), 31 August 2006, para. 12; UNSC Res. 1814 (2008), 15 May 2008, para. 17; UNSC Res. 1894 (2009), 11 November 2009, preambular paras. 5 and 6; UNSC Res. 1906 (2009), 23 December 2009, para. 3; UNSC Res. 1910 (2010), 28 January 2010, preambular para. 16; UNSC Res. 1923 (2010), 25 May 2010, para. 2; and UNSC Res. 1970 (2011), 26 February 2011, preambular para. 9.

13 UNGA Res. 46/182 (1991), 19 December 1991, Annex, para. 4.



## If populations remain in need, what can humanitarian actors do?

The issue of access for humanitarian actors becomes acute when the state is unwilling or unable to live up fully to its legal responsibility to ensure the basic needs of affected populations in times of armed conflict. The question then is of what humanitarian actors can do to satisfy those needs. The answer is that they can offer their services according to international humanitarian law, which contains rules on humanitarian assistance and access to civilian populations affected by armed conflicts.<sup>14</sup>

Offers of relief action cannot be considered as foreign intervention in the receiving state's internal affairs insofar as the principles of humanity,<sup>15</sup> impartiality,<sup>16</sup> and non-discrimination<sup>17</sup> are respected.<sup>18</sup> The International Court of Justice (ICJ) noted that:

There can be no doubt that the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law.<sup>19</sup>

Humanitarian actors can therefore offer their services but do not have an obligation to do so.<sup>20</sup> To avoid being considered an unlawful interference in a state's internal affairs, humanitarian assistance must be provided in accordance with humanitarian principles.

14 Art. 3(2) common to the four Geneva Conventions; GC IV, Arts. 10 and 59(2); AP I, Art. 70(1); AP II, Art. 18(1) and (2).

15 The starting point must be the human suffering and the offer must be exclusively dedicated to addressing humanitarian needs.

16 The principle of impartiality requires that persons participating in the operation do not take side for reasons of interest, prejudice, or personal sympathy. Jean S. Pictet, *The Fundamental Principles of the Red Cross Proclaimed by the Twentieth International Conference of the Red Cross, Vienna, 1975: Commentary*, Henry Dunant Institute, Geneva, 1979, pp. 48ff.

17 The principle of non-discrimination prohibits distinctions made to the detriment of certain persons 'for the sole reason that they belong to some specific category' based on criteria such as race, religion, or political opinion. J. S. Pictet, above note 16, p. 38. However, the principle of non-discrimination does not exclude positive actions in favour of particularly vulnerable groups of the population. See Yves Sandoz *et al.* (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987, para. 2821.

18 UNGA Res. 46/182 (1991), 19 December 1991, Annex, para. 2. The clearest manifestation of the principle of non-intervention is Art. 2(4) of the UN Charter, which prohibits Member States from using force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

19 ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, *ICJ Reports* 1986, para. 242. The Court further noted that humanitarian aid is permitted if it involves 'the provision of food, clothing, medicine and other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles, or material which can be used to inflict serious bodily harm or death'. *Ibid.*, para. 97.

20 Yoram Dinstein, 'The right to humanitarian assistance', in *Naval War College Review*, Vol. 53, No. 4, 2000, pp. 77–92.

## **To what extent must relief actions be consented to, and what are the conditions under which relief actions must be conducted under international humanitarian law?**

The extent to which relief actions must be consented to and the conditions under which relief actions must be conducted will be outlined according to the three situations that international humanitarian law regulates: international armed conflict (other than occupation), non-international armed conflict, and occupation. Although military occupation is a form of international armed conflict, this part will be analysed at the end because humanitarian access is regulated quite differently in this situation.

### **Consent and conditions in international armed conflict (other than occupation)**

In territories other than occupied territories, humanitarian operations are subject to the consent of the parties concerned according to Article 70(1) of Additional Protocol I of 1977. This precondition balances the interests of the civilian population and the interests of the receiving state.<sup>21</sup> The draft versions of the Additional Protocols of 1973 contained an obligation to accept relief, if the relief met certain requirements, such as impartiality and humanity.<sup>22</sup> However, in order to protect the sovereignty of the state accepting relief, the requirement of consent was added during the diplomatic conference of 1974–1977.<sup>23</sup> State representatives nonetheless clearly stated that this condition did not imply that the affected parties had absolute and unlimited freedom to refuse their agreement to relief actions.<sup>24</sup>

21 Heike Spieker, 'The right to give and receive humanitarian assistance', in Hans-Joachim Heintze and Andrej Zwitter (eds), *International Law and Humanitarian Assistance: A Crosscut Through Legal Issues Pertaining to Humanitarianism*, Springer Verlag, Berlin/Heidelberg, 2011, p. 13.

22 Art. 62(1) of Draft Additional Protocol I to the Geneva Conventions (1973): 'If the civilian population is inadequately supplied, in particular, with foodstuffs, clothing, medical and hospital stores and means of shelter, the Parties to the conflict *shall agree* to and facilitate those relief actions which are exclusively humanitarian and impartial in character and conducted without any adverse distinction' (emphasis added). ICRC, 'Draft Additional Protocols to the Geneva Conventions of 12 August 1949', Geneva, 1973, p. 78, available at: [http://www.loc.gov/rr/frd/Military\\_Law/pdf/RC-Draft-additional-protocols.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/RC-Draft-additional-protocols.pdf) (last visited December 2011). See also Art. 33(1) of Draft Additional Protocol II to the Geneva Conventions (1973): 'If the civilian population is inadequately supplied, in particular, with foodstuffs, clothing, medical and hospital stores and means of shelter, the parties to the conflict *shall agree* to and facilitate, *to the fullest possible extent*, those relief actions which are exclusively humanitarian and impartial in character and conducted without any adverse distinction' (emphasis added). *Ibid.*, p. 165.

23 Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (CDDH), Geneva, 1974–1977, available at: [http://www.loc.gov/rr/frd/Military\\_Law/RC-dipl-conference-records.html](http://www.loc.gov/rr/frd/Military_Law/RC-dipl-conference-records.html) (last visited December 2011).

24 The Swiss representative said that his delegation would have preferred to delete the words 'subject to the agreement of the Parties concerned', which it felt conflicted with the philosophy of the fourth Geneva Convention. The German representative stressed that a party refusing its agreement must do so for valid reasons, not for arbitrary or capricious ones. See CDDH, above note 23, Vol. 12, CDDH/II/SR.87, p. 336, paras. 26–27, available at: [http://www.loc.gov/rr/frd/Military\\_Law/pdf/RC-records\\_Vol-12.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/RC-records_Vol-12.pdf) (last visited December 2011).

To what extent is a state obliged to accept relief? As a minimum, consent cannot be refused on arbitrary grounds.<sup>25</sup> A refusal must be based on valid reasons.<sup>26</sup> Whether a decision not to accept assistance is arbitrary depends on the circumstances and should be determined on a case-by-case basis.<sup>27</sup> In extreme situations, where the lack of relief would amount to starvation, no valid reasons can be invoked to justify the refusal.<sup>28</sup> Article 54(1) of Additional Protocol I provides that 'starvation of civilians as a method of warfare is prohibited'.<sup>29</sup>

What are the conditions under which relief actions must be conducted? According to Article 70(2) of Additional Protocol I, all states must 'facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel, ... even if such assistance is destined for the civilian population of the adverse Party'. This provision applies to the whole civilian population (not only to vulnerable groups), and relief consignments include all supplies essential to the survival of the population (not only to specific categories of goods).<sup>30</sup> Additional Protocol I further

25 This view is confirmed in soft law instruments. The Guiding Principles on Internal Displacement confirm that consent to assistance provided by humanitarian organizations and other appropriate actors 'shall not be arbitrarily withheld [by national authorities], particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance ...' (Principle 25). In 1998, the UN Secretary-General stated that '[h]umanitarian access is, inter alia, a right of refugees, displaced persons and other civilians in conflict situations and *should not be seen as a concession to be granted to humanitarian organizations on an arbitrary basis*': UN Secretary-General, Report on Protection for Humanitarian Assistance to Refugees and Others in Conflict Situations, UN Doc. S/1998/883 (1998), para. 15 (emphasis added). Several experts attempted to give examples of the meaning of 'arbitrary' in the context of a duty to admit humanitarian assistance without drawing up an exhaustive list. For instance, state sovereignty, internal legal order, national pride and/or interests, political orientation, and interests of the regime in power should not prevail if assistance is really necessary for saving lives. See *Yearbook of the Institute of International Law*, Session of Bruges, Paris, Vol. 70, Part I, 2003, p. 563; Robert Kolb, 'De l'assistance humanitaire: la résolution sur l'assistance humanitaire adoptée par l'Institut de droit international à sa session de Bruges en 2003', in *International Review of the Red Cross*, Vol. 86, No. 856, 2004, p. 869.

26 Reasons of imperative military necessity may be considered valid reasons according to Katja Luopajarvi, 'Is there an obligation on states to accept international humanitarian assistance to internally displaced persons under international law?', in *International Journal of Refugee Law*, Vol. 15, No. 4, 2003, p. 689.

27 Institute of International Law, *Resolution of the Institute of International Law on Humanitarian Assistance*, Bruges Session 2003, Art. VIII.1, concludes that 'Affected States are under the obligation not arbitrarily and unjustifiably to reject a *bona fide* offer exclusively intended to provide humanitarian assistance or to refuse access to the victims. In particular, they may not reject an offer nor refuse access if such refusal is likely to endanger the fundamental human rights of the victims or would amount to a violation of the ban on starvation of civilians as a method of warfare'.

28 Rebecca Barber argues that there is an obligation in customary international law to consent to humanitarian assistance whether or not the denial of that assistance may lead to starvation. See Rebecca Barber, 'Facilitating humanitarian assistance in international humanitarian and human rights law', in *International Review of the Red Cross*, Vol. 91, No. 874, 2009, p. 391.

29 This rule is also of a customary nature: see Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, ICRC and Cambridge University Press, Cambridge, 2005, Rule 53 (hereafter ICRC Study on Customary International Humanitarian Law). For online access to the study, see <http://www.icrc.org/customary-ihl/eng/docs/home> (last visited December 2011). Starvation is understood as 'causing the population to suffer hunger, particularly by depriving it of its sources of food or of supplies'. Y. Sandoz *et al.*, above note 17, para. 2089.

30 Art. 17 of GC IV only concerns evacuation of certain vulnerable groups (wounded, sick, infirm, aged persons, children, and maternity cases) and the passage of ministers of all religions, medical personnel, and equipment. Art. 23(1) of GC IV limits relief to particular types of goods and the obligation to allow free passage of other supplies, such as food or clothing, is only for the benefit of particularly vulnerable civilians.

prohibits states from delaying the forwarding of relief consignments and from diverting them from the purpose for which they are intended. Exceptions are permitted only in cases of urgent necessity and if this is in the interest of the population concerned.<sup>31</sup> This means that the delay can only be justified if it is impossible for reasons of security to enter the territory where the receiving population is situated, or to cross some part of the territory of the party allowing the transit, particularly if this is a party to the conflict. According to the Commentary on the Additional Protocols, diverting relief consignments could be allowed particularly:

when there is a delay in the transport of perishable foodstuffs, always provided that they are replaced by fresh provisions as soon as normal conditions are restored. It might also be justifiable in the case that a natural disaster . . . affected the Party through whose territory the relief consignment was passing, so that the provisions were even more necessary for the victims of this disaster than for those for whom they had initially been intended. However, in this case the consignment should only be diverted with the agreement of the donor.<sup>32</sup>

Parties to the conflict have an obligation to take positive action to protect relief consignments and to facilitate their rapid distribution, as well as a duty to encourage and facilitate effective international co-ordination of the relief actions.<sup>33</sup> However, the parties to the conflict and other States Parties to Additional Protocol I have the right to prescribe technical arrangements, such as pre-determined times and routes.<sup>34</sup> They are also allowed to control the consignments or to ask for the local supervision of the relief action by a Protecting Power or an impartial humanitarian organization.<sup>35</sup>

Relief personnel must be respected, protected, and assisted, to the fullest extent practicable, in carrying out their mission.<sup>36</sup> But relief personnel may not exceed the terms of their mission under any circumstances, and must respect security requirements imposed by the states in whose territory they are working. The mission of those who do not respect these conditions may be terminated.<sup>37</sup>

## Consent and conditions in non-international armed conflict

The issue of humanitarian assistance and access is not expressly addressed in Article 3 common to the four Geneva Conventions. However, article 18(2) of Additional Protocol II provides that relief actions shall be undertaken subject to the

31 AP I, Art. 70(3)(c).

32 Y. Sandoz *et al.*, above note 17, paras. 2845–2847.

33 AP I, Art. 70(4) and (5).

34 AP I, Art. 70(3)(a). See also GC IV, Art. 23.

35 AP I, Art. 70(3)(b). See also GC IV, Art. 23. A Protecting Power is a state that represents the interests of the 'protected' state and its nationals in the third state.

36 AP I, Art. 71. It is also a rule of customary international humanitarian law that humanitarian relief personnel and objects must be respected and protected. See ICRC Study on Customary International Humanitarian Law, above note 29, Rules 31, 32, and 56.

37 AP I, Art. 71(4).

consent of the affected state.<sup>38</sup> As in international armed conflicts, where the lack of relief would lead to starvation, no valid reason can be invoked to justify a refusal. Article 14 of Additional Protocol II prohibits starvation of civilians as a method of warfare.

From a practical point of view, the consent of relevant non-state armed groups controlling or operating in the territory in question is necessary for relief actions to be carried out.<sup>39</sup> Nevertheless, to ask a non-state armed group for its consent to humanitarian operations does not constitute recognition, nor does it confer any legal status upon that actor.<sup>40</sup> The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) is innovative in that it refers specifically to armed groups.<sup>41</sup> The treaty states that members of armed groups are prohibited from impeding humanitarian assistance and passage of all relief consignments, equipment, and personnel to internally displaced persons.<sup>42</sup>

According to a customary rule, parties to non-international armed conflicts must facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.<sup>43</sup> In addition, humanitarian relief personnel and objects must be respected and protected, and the freedom of movement of authorized humanitarian relief personnel must be ensured. Their movements may only be temporarily restricted in case of imperative military necessity.<sup>44</sup>

## Consent and conditions during occupation

Under the law of occupation, there is a clear obligation for the Occupying Power to ensure that the basic needs of the population under its control are fulfilled. This mainly results from Article 55(1) of the Fourth Geneva Convention, which provides that the Occupying Power has the duty to ensure the provision of food and medical supplies for the civilian population. Article 69(1) of Additional Protocol I further stipulates that the Occupying Power must ensure without adverse distinction the

38 This obligation is also found in customary law. See ICRC Study on Customary International Humanitarian Law, above note 29, Rule 55: 'The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control'.

39 Even though AP II, Art. 18(2) gives the legal government an advantage over the rebel party by requiring the agreement of the 'High Contracting Party'. See Denise Plattner, 'Assistance to the civilian population: the development and present state of international humanitarian law', in *International Review of the Red Cross*, Vol. 32, No. 288, pp. 249–263. See also Joakim Dungel, 'A right to humanitarian assistance in internal armed conflicts respecting sovereignty, neutrality and legitimacy: practical proposals to practical problems', in *Journal of Humanitarian Assistance*, 2004, available at: <http://sites.tufts.edu/jha/archives/838> (last visited December 2011).

40 See, for example, Common Art. 3(4).

41 According to Art. 1(e) of the Kampala Convention, "'Armed Groups" means dissident armed forces or other organized armed groups that are distinct from the armed forces of the state'. This treaty has not yet entered into force as binding international law.

42 Kampala Convention, Art. 7(5)(g). It is important to note that this treaty includes a disclaimer to avoid the treaty being used as proof of legitimacy for the groups addressed: see Art. 7(1).

43 ICRC Study on Customary International Humanitarian Law, above note 29, Rule 55.

44 *Ibid.*, Rules 31, 32, and 56.

provision of clothing, bedding, means of shelter, and other supplies essential to the survival of the civilian population, as well as objects necessary for religious worship.<sup>45</sup> While imposing clear obligations in this regard, the Fourth Geneva Convention and Additional Protocol I do not ignore the material difficulties that the Occupying Power may face in practice. These instruments provide that the Occupying Power is bound to meet these needs '[t]o the fullest extent of the means available to it'.<sup>46</sup> Financial constraints or transport problems, for instance, may seriously affect the concerned authorities' capabilities to meet their obligations.<sup>47</sup>

However, if the Occupying Power is not in a position to fulfil its duty to provide the civilian population under its control with essential supplies, it must agree to relief schemes on behalf of this population.<sup>48</sup> This obligation is unconditional.<sup>49</sup> The Occupying Power must either ensure that the civilian population receives essential supplies or agree to relief actions.

The Occupying Power has the obligation to facilitate relief actions by all the means at its disposal.<sup>50</sup> Occupying Powers must also facilitate the rapid distribution of relief consignments, which must be exempt from all charges, taxes, or customs duties except if they are necessary for the economy of the occupied territory.<sup>51</sup> Relief consignments must not be diverted from the purpose for which they are intended. Exceptions to this rule are allowed in cases of urgent necessity only and if this is in the interest of the occupied population and with the consent of the Protecting Power.<sup>52</sup> The rights and duties of relief personnel also apply in times of occupation.<sup>53</sup>

In addition, the Fourth Geneva Convention sets out obligations for third states, including, most notably, those through whose territory relief consignments must pass. Parties to the Convention must permit the free passage of such consignments and guarantee their protection.<sup>54</sup> However, authorities granting the authorization are allowed to check the consignments to satisfy themselves that the operation is strictly humanitarian, and may regulate their passage according to prescribed times and routes.<sup>55</sup>

45 These obligations may be conceived as a logical consequence of the Occupying Power's general duty to take all feasible measures to restore and ensure adequate conditions of life for the civilian population. Hague Regulations concerning the Laws and Customs of War on Land, 18 October 1907, Art. 43.

46 GC IV, Art. 55(1); AP I, Art. 69(1).

47 Jean S. Pictet (ed.), *The Geneva Conventions of 12 August 1949: Commentary, (IV) Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, ICRC, Geneva, 1958, p. 310.

48 GC IV, Art. 59(1).

49 J. S. Pictet, above note 47, p. 320; Y. Sandoz *et al.*, above note 17, p. 813.

50 GC IV, Art. 59(1).

51 GC IV, Art. 61(2).

52 GC IV, Art. 60. On urgent necessity, see comments above under 'Control in international armed conflict (other than occupation)'.

53 AP I, Art. 69(2) in connection with AP I, Art. 71. See comments above under 'Control in international armed conflict (other than occupation)'.

54 GC IV, Art. 59(3). This obligation also binds states imposing a blockade on occupied territories. Relief consignments for the population must be allowed to pass through the blockade. See International Institute of Humanitarian Law, *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Cambridge University Press, Cambridge, 1995, para. 103, which is widely recognized to reflect international customary law.

55 GC IV, Art. 59(4).

## What human rights obligations exist with regard to humanitarian access?

International human rights law continues to apply, alongside international humanitarian law, in times of armed conflict, whether of an international or of a non-international character. The two are complementary and not mutually exclusive.<sup>56</sup> The major human rights law instruments do not refer explicitly to humanitarian assistance and access. However, some references are found in the Convention on the Rights of the Child,<sup>57</sup> the African Charter on the Rights and Welfare of the Child,<sup>58</sup> and the Kampala Convention.<sup>59</sup>

Generally, states have an obligation to ensure the minimum essential levels of all economic, social, and cultural rights at all times.<sup>60</sup> In determining the contents of those obligations, the UN Committee on Economic, Social and Cultural Rights (CESCR) has referred to essential food, primary health care, and basic shelter and housing.<sup>61</sup> States must respect, protect, and fulfil these rights.<sup>62</sup> The right to food and the right to health are described as examples.

Regarding the right to food,<sup>63</sup> CESCR has stated that the

obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or

56 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para. 106. See also Report of the International Commission of Inquiry on Darfur to the UN Secretary-General (2005), para. 143; UN Human Rights Committee, General Comment No. 31, CCPR/C/21/Rev.1/Add.13 (2004), para. 11.

57 UN Convention on the Rights of the Child, Art. 22(1).

58 African Charter on the Rights and Welfare of the Child, Art. 23(1).

59 Kampala Conventions, Art. 5(6) and (7), Art. 7(5)(b) and (5)(g).

60 The International Covenant on Economic Social and Cultural Rights (ICESCR) does not allow for derogation in times of public emergency, and the general nature of state obligations in the realization of these rights is found in Art. 2(1) of the ICESCR: 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to progressively achieving the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'.

61 CESCR, General Comment No. 3, para. 10; General Comment No. 12, paras. 8–13. Similarly, Principle 18(2) of the UN Guiding Principles on Internal Displacement provides that: 'At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to (a) Essential food and potable water; (b) Basic shelter and housing; (c) Appropriate clothing; and (d) Essential medical services and sanitation.'

62 CESCR, General Comment No. 12 on the right to adequate food, para. 15; CESCR, General Comment No. 15 on the right to water, para. 20; CESCR, General Comment No. 14 on the right to the highest attainable standard of health, para. 33; Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 22–26 January 1997, para. 6.

63 ICESCR, Art. 11. See also Jelena Pejic, 'The right to food in situations of armed conflict: the legal framework', in *International Review of the Red Cross*, Vol. 83, No. 844, 2001, pp. 1097–1109.



group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.<sup>64</sup>

The minimum core obligations inherent to the right to health<sup>65</sup> require states at least to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; to ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone; to ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water.<sup>66</sup>

It can be argued that international human rights law, and particularly the protections enshrined in the International Covenant on Economic Social and Cultural Rights (ICESCR), provides a more substantive protection of humanitarian assistance than does international humanitarian law in situations where the restrictions to humanitarian assistance are attributable to State Parties to the ICESCR.<sup>67</sup>

States must seek international assistance indispensable for the survival and the fulfilment of a population's essential needs.<sup>68</sup> A state that claims that it is unable to fulfil its legal obligations for reasons beyond its control must show that it has made 'every effort to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations'.<sup>69</sup> In determining whether a state is truly unable to fulfil its obligations under human rights law, it is necessary to consider both the resources existing within a state and those available from the international community.<sup>70</sup>

## What are the consequences of violations?

A state is responsible for violations of international law regarding humanitarian access in situations of armed conflict where the violations are attributable to the state.<sup>71</sup> The UN Security Council has addressed violations of international law by

64 CESCR, General Comment No. 12, para. 15.

65 ICESCR, Art. 12.

66 CESCR, General Comment No. 14, para. 43.

67 R. Barber, above note 28, p. 395.

68 Institute of International Law, Resolution of the Institute of International Law on Humanitarian Assistance, Bruges Session 2003, Art. III.3; R. Kolb, above note 25, p. 864. See also Kampala Convention, Art. 5(6).

69 CESCR, General Comment No. 3, para. 10; CESCR, General Comment No. 12, para. 17. See also Statement of the CESCR, An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant, UN Doc. E/C.12/2007/1 (2007), 10 May 2007, para. 4.

70 CESCR, General Comment No. 3, para. 13.

71 The draft articles on state responsibility of the International Law Commission recall the general principle of international law that a breach of a state's international obligation constitutes an international wrongful act, which entails the international responsibility of that state. International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Arts 1 and 2.

non-state armed groups on numerous occasions.<sup>72</sup> Moreover, international criminal law prohibits certain conduct and holds individual perpetrators accountable for violations of these rules.

## War crimes

The denial of humanitarian assistance and access to civilians may under certain conditions constitute the war crime of starvation. International humanitarian law prohibits the starvation of civilians as a method of warfare in both international and non-international armed conflict.<sup>73</sup> The Rome Statute of the International Criminal Court draws a distinction between international and non-international armed conflict as regards the starvation of civilians. In international armed conflict, the intentional starvation of civilians as a method of warfare through deprivation of objects indispensable to their survival is prohibited, 'including wilfully impeding relief supplies as provided for under the Geneva Conventions'.<sup>74</sup> In non-international armed conflict, starvation as a method of warfare does not constitute a war crime under the Statute. However, starvation of civilians as a method of warfare constitutes a war crime under several national legislations, and states have denounced alleged instances of the use of starvation in non-international armed conflicts.<sup>75</sup>

Attacking persons or objects involved in the provision of humanitarian assistance – provided that they are not directly participating in hostilities – is a war crime according to the Rome Statute, if such attacks take place during, and in connection with, an international or non-international armed conflict.<sup>76</sup> States have committed themselves to ensure that perpetrators of attacks against humanitarian personnel are held accountable, by encouraging disciplinary measures and criminal prosecutions.<sup>77</sup>

72 For example, in a resolution on the crisis in Guinea-Bissau, the Security Council called 'upon all concerned, including the Government and the Self-Proclaimed Military Junta, to respect strictly relevant provisions of international law, including humanitarian and human rights law, and to ensure safe and unimpeded access by international humanitarian organizations to persons in need of assistance as a result of the conflict'. UNSC Res. 1216 (1998), 21 December 1998, para 5. See also UNSC Res. 1478 (2003), 6 May 2003, para. 8; UNSC Res. 1649 (2005), 21 December 2005, preambular paras. 4 and 5; UNSC Res. 1674 (2006), 28 April 2006 para. 22; UNSC Res. 1794 (2007), 21 December 2007, para. 17; UNSC Res. 1936 (2010), 5 August 2010, preambular para 14.

73 AP I, Art. 54; AP II, Art. 14; ICRC Study on Customary International Humanitarian Law, above note 29, Rule 53.

74 Rome Statute of the International Criminal Court, 17 July 1998, A/CONF.138/9, Art. 8(2)(b)(xxv).

75 ICRC Study on Customary International Humanitarian Law, above note 29, Vol. I, Rule 53, pp. 187–188. This could indicate the emergence of a customary criminalization of starvation of the civilian population in non-international armed conflicts. See also J. Dungal, above note 39.

76 The Rome Statute defines it as follows in Art. 8(2)(b)(iii) and (e)(iii): 'Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict'.

77 31st International Conference of the Red Cross and Red Crescent, Resolution 2: '4-Year Action Plan for the Implementation of International Humanitarian Law', 31IC/11/R2, available at: [http://www.rccconference.org/docs\\_upl/en/R2\\_4-Year\\_Action\\_Plan\\_EN.pdf](http://www.rccconference.org/docs_upl/en/R2_4-Year_Action_Plan_EN.pdf) (last visited December 2011).

## Crimes against humanity

Acts constituting crimes against humanity could include the denial of humanitarian assistance and access when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.<sup>78</sup> They include murder, extermination, torture, persecution, and other inhumane acts.<sup>79</sup> The Rome Statute defines the crime against humanity of ‘extermination’ as including ‘the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population’.<sup>80</sup> The individuals responsible can be prosecuted in national and international courts.

## Conclusion: is the current legal framework an adequate tool to ensure humanitarian access?

The tension between the needs of victims to receive humanitarian assistance, the interests of the international community in providing relief, and the right of the state to decide who and what can enter its territory is obvious.<sup>81</sup> Generally, international humanitarian law demands that a balance be struck between military necessities and the requirements of humanity.<sup>82</sup> The difficult questions with regard to humanitarian access are: how exactly is that balance to be struck and what are possible areas of further clarifications?

The extent to which parties to both international and non-international armed conflicts are bound to accept relief actions could be clarified. It could be defined on which grounds – besides starvation – consent cannot be refused.<sup>83</sup> Or, positively, an obligation to accept relief could be determined.<sup>84</sup> Clarifications on the scope and limitations of the right of control that the parties are allowed to exercise on relief operations would also be helpful. For instance, the extent to which humanitarian organizations are entitled to enjoy freedom of movement in their activities and the correlative right of the parties to armed conflicts to restrict their

78 See Christa Rottensteiner, ‘The denial of humanitarian assistance as a crime under international law’, in *International Review of the Red Cross*, Vol. 81, No. 835, 1999, pp. 555–582.

79 Rome Statute, Art. 7(1).

80 Rome Statute, Art. 7(1)(b) and Art. 7(2)(b).

81 States may, for example, declare that there is no need for humanitarian assistance in order to limit humanitarian access. Ruth Abril Stoffels, ‘Legal regulation of humanitarian assistance in armed conflict: achievements and gaps’, in *International Review of the Red Cross*, Vol. 86, No. 855, 2004, pp. 537–538.

82 See, for example, AP I, Art. 51, on the protection of the civilian population; Daniel Thürer, *International Humanitarian Law: Theory, Practice, Context*, Hague Academy of International Law, The Hague, 2011, p. 69.

83 States have committed themselves to adopt adequate measures at a domestic level, including national legislation, to comply with their international obligations concerning arbitrary obstruction of humanitarian assistance. See 31st International Conference of the Red Cross and Red Crescent, Resolution 2, above note 77.

84 There is also a debate on a potential right to impose assistance without the consent of the parties concerned. Spieker concludes that, to date, a ‘right to access’ has not crystallized in customary international law. See H. Spieker, above note 21, pp. 17–18.

freedom for reasons of imperative military necessity could be defined more precisely.

Overall, the current legal framework is an adequate tool to ensure humanitarian access but the abovementioned areas could be clarified. This said, it needs to be pointed out that nothing prevents humanitarian actors from seeking to obtain greater access than that specified in international law. International law only represents the limits or minimum standards of humanitarian access. The key is to use the most persuasive arguments that allow the provisions of international law on humanitarian access to be implemented and the well-being of civilian populations secured.<sup>85</sup> Even though access constraints are rarely the result of purely legal obstacles (humanitarian access is often complicated by administrative restrictions, such as difficulties in obtaining visas, import authorizations for relief supplies, or repeated controls), the legal framework is a useful tool to obtain and secure access to affected populations. This implies that this legal framework must be widely known and disseminated,<sup>86</sup> and both humanitarian actors and those who can prevent access need to be trained in this legal framework.<sup>87</sup>

## Summary

The following points summarize the international legal framework on humanitarian access in armed conflict as discussed in this article:

- States bear the primary responsibility for ensuring the basic needs of affected populations.
- Humanitarian actors can offer their services but do not have an obligation to do so. To avoid being considered unlawful interference in a state's internal affairs, humanitarian assistance must be provided in accordance with humanitarian principles.
- In territories other than occupied territories, humanitarian operations are subject to the consent of the parties concerned. The legal challenge is to determine in each specific case whether concerned states may invoke valid reasons to refuse relief actions on their territories. It must be established under which criteria the refusal may be considered as arbitrary, and therefore

85 The UN Office for the Coordination of Humanitarian Affairs (OCHA) published a study in 2011 that highlights seven categories of good practices for securing and sustaining humanitarian access in high-risk environments. See Jan Egeland, Adele Harmer, and Abby Stoddard, *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments*, OCHA, New York, 2011, pp. 18ff. See also *Aide Memoire for the consideration of issues pertaining to the protection of civilians in armed conflict*, adopted by presidential Statement S/PRST/2010/25 of 22 November 2010. Furthermore, UNITAR'S Operational Satellite Applications Programme (UNOSAT) – a technology-intensive programme delivering imagery analysis and satellite solutions – can help humanitarian actors within and outside the UN to help make a difference in critical areas such as humanitarian relief. See <http://www.unitar.org/unosat/> (last visited December 2011).

86 See GC I, Art. 47; GC II, Art. 48; GC III, Art. 127; GC IV, 144; AP I, Art. 83; AP II, Art. 19.

87 Objective one of the 4-Year Action Plan for the Implementation of International Humanitarian Law adopted by the 31st International Conference of the Red Cross and Red Crescent is to enhance access by civilian populations to humanitarian assistance in armed conflict. See Resolution 2, above note 77.

contrary to relevant provisions of international humanitarian law. In extreme situations, where the lack of relief would amount to starvation, there is no valid reason justifying a refusal.

- To ask a non-state armed group for its consent to the provision of humanitarian assistance does not constitute recognition of, nor does it confer any legal status upon, that actor.
- In occupied territories, there is a clear obligation for the Occupying Power either to ensure adequate supplies to the population or to agree to and facilitate relief actions, if all or part of the population is inadequately supplied.
- Humanitarian relief personnel and objects must be respected and protected, and the freedom of movement of authorized humanitarian relief personnel must be ensured. Parties to the conflict have the right to prescribe technical arrangements, such as pre-determined times and routes. Relief personnel must respect security requirements imposed by the states in whose territory they are working.
- States have an obligation to ensure the satisfaction of the minimum essential levels of all economic, social, and cultural rights and to take the necessary action even in situations of armed conflict. A state that claims that it is unable to fulfil its legal obligations for reasons beyond its control must show that it has made every effort to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.
- A state is responsible for violations of international law regarding humanitarian access where the violations are attributable to the state.
- The denial of humanitarian assistance and access may constitute a crime under international criminal law. Relevant examples include the war crimes of starvation and of launching attacks against persons involved in humanitarian assistance. The individuals responsible can be prosecuted in national and international courts.
- The current legal framework – which should be widely known and disseminated – is an adequate tool to ensure humanitarian access but could be clarified further.

# What Americans think of international humanitarian law

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## Abstract

*The United States' foreign policy in the first decade of the twenty-first century and its involvement in armed conflicts in Iraq and Afghanistan have given rise to a reinvigorated interest in international humanitarian law (IHL), commonly referred to in the United States as the law of armed conflict. Conversations about whether to classify detainees as prisoners of war, debates about what constitutes torture, and numerous surveys attempting to measure the public's knowledge about and views on the rules of war are offering an opportunity to examine Americans' views on IHL.*

\* The views reflected in this paper are those of the authors and do not represent the official position of the American Red Cross or its affiliates.

*This article will reflect on those views, providing numerous examples to illustrate the complexities encountered when near universally accepted legal standards of conduct are layered upon the fluid and unpredictable realities of modern warfare. The article will also highlight the impact that battlefield activities can have on domestic debates over policy choices and national conscience.*

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For the majority of the twentieth century, the United States was generally regarded by the international community as a consistent advocate of human rights and, during times of conflict, a faithful adherent to its international obligations as a signatory to the Geneva Conventions.<sup>1</sup> Although there were isolated deviations from this record – such as the 1968 My Lai massacre of civilians in Vietnam – there are also historical examples that were deemed within the purview of military necessity at the time, but would most certainly be judged unacceptable today, such as the fire bombing of German cities and Tokyo during World War II. These instances aside, the general perception of the US, domestically and internationally, was that the country followed the rules to which it ascribed through international treaties. However, some widely publicized incidents in the aftermath of the 11 September 2001 terrorist attacks and during the course of the decade-long war on terror have cast a shadow across the view that many around the world hold of the US. These incidents have included accusations of torture, extraordinary renditions, detainee mistreatment at the Abu Ghraib prison in Iraq, and indeterminate terms of detention for some Guantánamo detainees.

The incidents mentioned above have raised awareness in recent years of the Geneva Conventions and their status as the rule book for the conduct of war. The debates that ensued across the United States' social and political landscape during this same time-frame suggest, however, that, while people may have become more aware of the Conventions' existence, they have not necessarily become better versed in the Conventions' content and the significance of that content. For example, in a public opinion survey conducted in February 2011 by the American Red Cross in the US, 55% of adults surveyed felt that they were somewhat or very familiar with the Geneva Conventions, but 51% also stated that they believed it was acceptable to torture enemy soldiers.<sup>2</sup> Additionally, most Americans are not aware of the role that the US played in the nineteenth-century development of codified rules governing the conduct of war. At a panel discussion at the American Society of International

- 1 See Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949 (GC I or First Geneva Convention); Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949 (GC II or Second Geneva Convention); Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949 (GC III or Third Geneva Convention); Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (GC IV or Fourth Geneva Convention).
- 2 American Red Cross, 'Survey on international humanitarian law', March 2011, research conducted by ORC International, available at: <http://www.redcross.org/www-files/Documents/pdf/international/IHL/IHLSurvey.pdf> (last visited December 2011).



Law held in May 2011, panellists discussed the birth of international humanitarian law concepts during the American Civil War 150 years earlier. John Witt, Professor of Law at Yale Law School, described the 1863 creation of the Lieber Code and its goal of maintaining America's commitment to international customary law and to humane treatment in times of war.<sup>3</sup> However, public knowledge of this extraordinary document is extremely low, and ignorance of the fact that many rules of war actually originated in the US hinders acceptance of laws that are often perceived by some in the US as international 'impositions' on American sovereignty.<sup>4</sup>

The goal of this article is to take stock of current perceptions of international humanitarian law (IHL) in the United States through examining the results of the American Red Cross and other surveys conducted over the past decade, to analyse samples of public commentary and US government policies on issues relevant to IHL, and to reflect on the impact of the actions of military and civilian decision-makers on IHL perceptions. Understanding the level of IHL knowledge and the public's acceptance of its tenets is important. Those indicators speak to the importance of educational opportunities through which better understanding can be achieved. As Daniel Muñoz-Rojas and Jean-Jacques Frésard point out, education can play a key role in bridging the gap between the broad consensus that exists in the acknowledgement of IHL norms and the relativism with which those same norms are applied against a specific situation.<sup>5</sup> The indicators above also shed light on how the American views toward IHL may shape public attitudes toward the application of IHL in future US international engagements.

The article is divided into three sections. The first section provides an overview of IHL in the United States by highlighting its historical development and its applications in the war on terror, the state of American public opinion on the topic, and the influence of the media in shaping those views. The article will address these issues by reviewing results from numerous public opinion surveys, including one conducted by the American Red Cross in March 2011, by examining public statements made by policy-makers, and by referring to academic works engaged in the long-standing debate on the influence that media and entertainment have on the public's views toward violence and elements of IHL, such as torture and detention.

The second section looks at the obligations to disseminate IHL. The focus is on the legal foundations and the contemporary challenges that shape the dissemination of IHL across the US. The third section presents three case studies that highlight the debates in the US on various aspects of IHL: these are the reaction to the International Committee of the Red Cross (ICRC)'s teaching of first aid to members of the Taliban in Afghanistan; views expressed about the requests to allow

3 American Society of International Law discussion, 'The Civil War and the law of war', 18 May 2011, recording available at: [http://www.asil.org/activities\\_calendar.cfm?action=detail&rec=196](http://www.asil.org/activities_calendar.cfm?action=detail&rec=196) (last visited 17 August 2011).

4 Andrew McCarthy, 'International law targets American sovereignty', in *National Review Online*, accessed at: <http://www.nationalreview.com/articles/213091/international-law-targets-american-sovereignty/andrew-c-mccarthy> (last visited December 2011).

5 Daniel Muñoz-Rojas and Jean-Jacques Frésard, 'The Roots of Behaviour in War: Understanding and Preventing IHL Violations', in *International Review of the Red Cross*, Vol. 86, No. 853, March 2004, pp. 191–192.

family visits to detainees in Guantánamo Bay, Cuba; and the decisions made by military and civilian leaders to attempt to reduce the level of collateral damage from military strikes in Afghanistan. The article concludes with a brief analysis of why perceptions of IHL matter and how the current perceptions may influence future American engagement abroad.

## **IHL in the United States: history, public opinion, and the media**

### **Background to the current debate**

The four Geneva Conventions of 1949, to which all states in the world have agreed to be bound, and their Additional Protocols form the core of IHL. Many of the obligations enshrined in the Geneva Conventions today have their origins in a document entitled the 'Instructions for the government of armies of the United States in the field'. Requested by President Abraham Lincoln to lay out a set of rules for the conduct of wartime activities by the Union Army during the American Civil War, that document, the so-called Lieber Code, was disseminated to the Union Army in 1863.<sup>6</sup> In a similar way, the Geneva Conventions prescribe the standards of protection to be granted to people and property affected (or possibly affected) by war, and limit the use of means and methods of warfare out of humanitarian considerations. Unlike the Lieber Code, however, which was a domestic instrument, the Geneva Conventions form part of public international law, the body of law that regulates inter-state relations. The provisions that they contain seek to strike a balance between humanitarian concerns and the military interests of states. Until the elaboration of Additional Protocol II, the majority of rules included in the Geneva Conventions applied only to international armed conflicts, with Common Article 3 to the four Conventions being the only provision regulating non-international armed conflict. Additional Protocol II of 1977 codified and elaborated the rules applicable to non-international armed conflicts but its provisions only apply to states that have ratified it. While the US has signed Additional Protocol I,<sup>7</sup> Additional Protocol II,<sup>8</sup> and Additional Protocol III,<sup>9</sup> it has yet to ratify – and thus become a State Party to – Additional Protocols I and II (it deposited its instrument of ratification for Additional Protocol III in 2006<sup>10</sup>). While the language in

6 A complete version of the Lieber Code can be found on numerous websites, including those of the International Committee of the Red Cross, available at: <http://www.icrc.org/ihl.nsf/FULL/110?OpenDocument>, and of Yale University Law School, available at: [http://avalon.law.yale.edu/19th\\_century/lieber.asp](http://avalon.law.yale.edu/19th_century/lieber.asp) (last visited December 2011).

7 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 8 June 1977.

8 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (Additional Protocol II), 8 June 1977.

9 Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Additional Protocol III), 8 December 2005.

10 The Geneva Distinctive Emblems Protection Act 2006 (H.R. 6338), signed by the President, 12 January 2007.

Additional Protocol III is general in nature, providing for the international recognition of a third protective emblem – commonly referred to as the Red Crystal – the ratification resolution text forwarded to the US Senate by the Executive Branch highlighted the value of this emblem for those ‘governments and national societies that face challenges using the existing emblems’.<sup>11</sup>

Despite the US not having ratified Additional Protocols I and II, domestic legislative action has codified many of the provisions contained therein, particularly as those provisions parallel the components of Common Article 3. The War Crimes Act of 1996 (18 U.S.C. § 2441) as amended, imposes criminal penalties for breaches of the 1949 Geneva Conventions, including violations under Common Article 3.<sup>12</sup> In succeeding years, the war on terror led US officials to re-examine the War Crimes Act provisions. The Military Commissions Act of 2006 (P.L. 109-336) amends the War Crimes Act so as to criminalize only certain violations of Common Article 3, known as ‘grave breaches’ to the Conventions.<sup>13</sup>

In terms of implementation of IHL standards, the war on terror has also presented particularly thorny legal questions for the US government for determining the appropriate interpretation of IHL domestically. The Bush Administration, and some academics, argued that members of Al Qaeda and the Taliban technically do not qualify for prisoner-of-war status because they do not meet the conditions of Article 4(A) of the Third Geneva Convention Relative to the Treatment of Prisoners of War (a) ‘being commanded by a person responsible for his subordinates’; (b) ‘having a fixed distinctive sign recognizable at a distance’; (c) ‘carrying arms openly’; and (d) ‘conducting their operations in accordance with the laws and customs of war’.<sup>14</sup> Others said that Taliban detainees should be legally considered prisoners of war because one element of the definition of that category in the Third Geneva Convention is that ‘[p]risoners of war, in the sense of the present Convention, are . . . members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces’.<sup>15</sup> Despite this definitional ambiguity, in military practice the objective is to ensure that those detained by the US military are treated humanely, including those held in

11 See US Senate Treaty Document 109-10, ‘Protocol III to 1949 Geneva Convention and an Amendment and Protocol to 1980 Conventional Weapons Convention’, 109th Congress, 2nd Session, U.S. Government Printing Office, available at: <http://www.gpo.gov/fdsys/pkg/CDOC-109tdoc10/html/CDOC-109tdoc10.htm> (last visited December 2011).

12 See text of Military Commissions Act of 2006, Section 6(2), available at: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_bills&docid=f:s3930enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s3930enr.txt.pdf) (last visited December 2011). Michael John Garcia also provides an analysis of the law’s impact in ‘The War Crimes Act: current issues’, Congressional Research Service RL33662, 22 January 2009, p. 1, available at: <http://www.fas.org/sgp/crs/intel/RL33662.pdf> (last visited December 2011).

13 Military Commissions Act, above note 12, Section 6(2).

14 See CG III, Art. 4. See also Jay Bybee, ‘Status of Taliban forces under Article 4 of the Third Geneva Convention of 1949’, Memorandum Opinion to the President, US Department of Justice, 7 February 2002, available at: <http://www.justice.gov/olc/2002/pub-artc4potusdetermination.pdf> (last visited December 2011).

15 GC III, Art. 4. George Aldrich, writing in the German Red Cross journal, *Humanitäres Völkerrecht*, in 2002, argued that detained Taliban fighters should be afforded prisoner-of-war status because they are military members of a Party to the conflict as required by the Third Geneva Convention. See his article, ‘The Taliban, Al Qaeda, and the determination of illegal combatants’, available at: [http://www.pegc.us/archive/Journals/aldrich\\_illegal\\_combatants.pdf](http://www.pegc.us/archive/Journals/aldrich_illegal_combatants.pdf) (last visited December 2011).

relation to the war on terror. Although some detainees have not been classified as prisoners of war, Defense Department lawyers are instructed that the Third Geneva Convention 'nonetheless provides a useful template for detainee protection and care'.<sup>16</sup>

## Public opinion

In order to understand better the opinions of American citizens about IHL, the American Red Cross commissioned a survey in February 2011 on views of specific protections afforded under the Geneva Conventions.<sup>17</sup> In this section we compare those poll results with other survey findings on similar topics to get a broader picture of American attitudes.

Americans tend to express strong moral positions. In a 2008 poll, for example, more than two-thirds of Americans supported 'using United States troops to stop a government from committing genocide and killing large numbers of its own people'.<sup>18</sup> In the 2011 American Red Cross poll, about 70% of Americans believed that depriving civilians of food, medicine, or water to weaken an enemy is rarely or never acceptable, and only one in five found the use of hostage-taking of civilians in order to get something in exchange from the enemy an acceptable tactic. Four out of five Americans also agreed that increasing the accuracy of military weapons to reduce civilian casualties is an important goal.<sup>19</sup> However, other widely held opinions on humanitarian issues might appear at odds with this broad public identification with morality and might reveal other dilemmas that US citizens are facing as they weigh the threat of deaths of innocent civilians with humane treatment of detainees.

One phenomenon that has surprised many observers has been that of the opinions expressed by Americans about torture over the past decade. It is important to note as we begin this discussion that when examining the polling data on such specifics as torture, research has demonstrated a significant disparity between the perceptions of Americans' support for torture as presented by journalists and politicians and the conclusions reached as a result of polling data analysis. For example, in examining thirty-two public survey polls on torture between 2001 and 2009, Paul Gronke and Darius Rejali did not find a majority of Americans willing to accept the use of torture, even in cases where it might prevent a terrorist attack, until

16 Marie Anderson and Emily Zukauskas (eds), *Operational Law Handbook 2008*, The Judge Advocate General's Legal Center and School, Charlottesville, 2008, p. 26.

17 The American Red Cross survey was conducted on 24–27 February 2011 using two telephone surveys and it included 1,019 adults aged 18 or over and 502 young people aged 12–17. Select variable weighting for adults respondents included age, sex, race, geographic region, and education level. Youth weighting used the same criteria, with the omission of the education level. The margin of error was  $\pm 3.1\%$  at the 95% confidence level for adults and  $\pm 4.4\%$  for the 95% confidence level for the young people.

18 The Chicago Council on Global Affairs, 'Anxious Americans seek a new direction in United States foreign policy: results of a 2008 survey of public opinion', p. 12, available at: [http://www.thechicagocouncil.org/UserFiles/File/POS\\_Topline%20Reports/POS%202008/2008%20Public%20Opinion%202008\\_US%20Survey%20Results.pdf](http://www.thechicagocouncil.org/UserFiles/File/POS_Topline%20Reports/POS%202008/2008%20Public%20Opinion%202008_US%20Survey%20Results.pdf) (last visited 17 August 2011).

19 American Red Cross, above note 2.

the summer of 2009.<sup>20</sup> On the issue of ‘enhanced interrogation techniques’, polling throughout the last decade demonstrated that the majority of Americans opposed the use of all of the most severe interrogation methods, including waterboarding, electric shock, forced nakedness, and exposure to extreme heat or cold.<sup>21</sup> The opposition to these methods was not dependent on any one method being linked to the term ‘torture’. These polling results stand in contrast to the ‘conventional wisdom’ of what ‘most Americans’ believe, so often cited by journalists, public commentators, and even the American public when speculating on the beliefs of their fellow citizens. All this being said, the fact that polling data indicates that a substantial percentage of the American public accepts the use of torture in some circumstances is cause for concern in the evaluation of IHL and its tenets in the minds of the American public.

Relying on what they term ‘false consensus’, Gronke and Rejali argue that there is a long psychological tradition of people believing that the views that they hold are reflective of the view of the majority of their compatriots.<sup>22</sup> This phenomenon can lead people to transfer their own viewpoint to another without actually having any data to substantiate the claim. This caveat to the actual survey data aside, the thirty-two surveys referenced by Gronke and Rejali reveal a consistent trend between those polled who accept the use of torture to some degree in the war on terrorism and those who oppose its use outright, with a gradual increase in those accepting torture. From 2001 to 2009, twenty-nine of the thirty-two surveys reported that at least 30% of the respondents found torture acceptable.<sup>23</sup> In only the last two of the surveys, conducted in 2009, was the majority 50% threshold reached. The American Red Cross survey in 2011 revealed that 51% of adults (age 18 and older) polled believed that it was at least sometimes acceptable to torture enemy soldiers in order to get important military information.<sup>24</sup> This belief stands in direct contrast to the provisions of the Third Geneva Convention, outlining the treatment of prisoners of war, which states in Part III, Section 1, Article 17:

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

The American Red Cross survey also sampled young people (aged 12–17) separately from adults, leading to interesting results.<sup>25</sup> Only one in five of these respondents reported being familiar with the Geneva Conventions, and 59% felt that it was at least sometimes acceptable to torture captured enemy soldiers. What came as

20 Paul Gronke and Darius Rejali, ‘U.S. public opinion on torture, 2001–2009’, in *PS: Political Science and Politics*, July 2010, p. 437.

21 *Ibid.*, p. 441.

22 *Ibid.*, p. 440.

23 *Ibid.*, p. 439.

24 American Red Cross, above note 2.

25 American Red Cross, above note 2.

perhaps the biggest surprise, however, was that 41% of the young people surveyed believed that the torture of captured American soldiers is at least sometimes acceptable. This was despite the fact that seven in ten young people reported having a close friend or relative who has served in the armed forces.

In general, the young people surveyed were more likely to find activities violating IHL acceptable in wartime. There were notable gaps between adult and youth acceptance of two particular activities in the survey: 56% of young people felt that killing enemy prisoners is an acceptable form of retaliation if the enemy has killed prisoners that it has captured, while only 29% of adults felt that it was acceptable conduct. As noted above in regard to the opinions on torture, the belief that retaliation against enemy soldiers is acceptable is in violation of the Third Geneva Convention (Part III, Section 1, Article 13).<sup>26</sup>

According to the survey, the issue of neutral organizations being allowed to visit prisoners to determine their welfare is also clearly misunderstood in the United States, particularly by young people. A full 71% of youth respondents and 55% of adults felt that a warring party could refuse to grant such neutral access. On a positive note, however, young people in particular expressed a strong interest in increased efforts to educate the public on IHL, with almost eight in ten agreeing that the government should educate people of their age on the rules of war before they are old enough to vote or to enlist in the military. Education efforts and innovative initiatives to engage the young and to fill this knowledge gap on global issues and IHL will be addressed below in the section on 'Dissemination of IHL'.

## Influence of the media

While there are strong opinions about the influence of television programming, movies, and video games on the attitudes and behaviour of young people, the academic debates continue regarding whether there is a correlation between the exposure to violence and media programming glorifying or sanctioning torture and a young person's preponderance to engage in unhealthy violent activity or possess beliefs and attitudes supporting torture. Two examples of the extreme sides of this debate can be found in the writings of Craig Anderson, *et al.* on one side, and Jonathan Freedman, on the other. Anderson's 2003 group study entitled: 'The influence of media violence on youth' begins with the statement 'Research on violent television and films, video games, and music reveals unequivocal evidence that media violence increases the likelihood of aggressive and violent behavior in both immediate and long-term contexts'.<sup>27</sup> Freedman, on the other hand, said: 'I began systematically reading and reviewing every single scientific study I could find that dealt with the question whether exposure to film and television violence causes aggression', then concluded that the research on the subject generally does *not* demonstrate that exposure to media violence

<sup>26</sup> *Ibid.*

<sup>27</sup> Craig A. Anderson *et al.*, 'The influence of media violence on youth', in *Psychological Science in the Public Interest*, Vol. 4, No. 3, December 2003, p. 81.

causes aggression.<sup>28</sup> While Anderson and his colleagues cite examples of violent events taking place that nearly copy plots in video games or movies, Freedman provides other examples in which perpetrators of violent acts who were supposedly motivated by a movie or television show never actually saw the media event alleged to have driven them to violence.

Academic studies on the relationship between violence in the media and real-life acts of violence are inconclusive at best. Scholars split themselves between those who argue that a link between television and actual violence exists and those who are sceptical of causality between media violence and more aggressive behaviour. In particular, one popular American television series, *24*, led to debate among commentators that it could be causing the American public to accept the practice of torture. Watched by millions from 2001 to 2010, in a period when the issue of torture became part of the public debate, *24* regularly depicted scenes of torture. American security agents were alternately the perpetrators and the victims of the torture depicted in the show. This long-running and widely watched series coincided with the initiation of wars in Afghanistan and Iraq and subsequent torture and detainee abuse scandals. Owing to this chronological coincidence, many point to *24* in discussions of American views on torture. At a June 2011 panel dialogue on humanitarian law, Rosa Brooks mentioned *24* as one factor in the shifting perceptions of the norms and particularly the morality of torture.<sup>29</sup> Another scholar has pointed out that the central character, Jack Bauer, 'dramatized torture, making it real: something enacted in people's living-rooms'.<sup>30</sup> In 2007, a journalist also noted that, while network television shows such as *24* broadcast scenes of torture and cable channels ran violent shows incorporating torture (such as *The Sopranos*), no less than eight films that included graphic scenes of torture were also being shown in cinemas at the time.<sup>31</sup>

The idea of the 'ticking time-bomb scenario', depicted repeatedly in *24*, asks whether torture is acceptable when a high-casualty terrorist attack is imminent and someone in custody knows where the bomb is. Proponents of torture have used the dilemma to argue that torture could potentially be used to disclose information that would enable authorities to stop the attack. During the primaries in the 2008 presidential campaign, for example, this scenario was posed to candidates during a debate – the question and the answers to it revealed that 'the way that entertainment depicts reality can have significant political implications'.<sup>32</sup> Senator John McCain, a

28 Jonathan Freedman, *Media Violence and its Effect on Aggression: Assessing the Scientific Evidence*, University of Toronto Press, Toronto, 2002, p. ix.

29 Rosa Brooks, remarks made on 3 June 2011 at the United States Institute of Peace for an event to publicize the American Red Cross IHL survey. A full audio of that event can be found at: <http://www.usip.org/newsroom/multimedia/audio/ten-years-after-911-evaluating-decade-conflicts-the-rules-war> (last visited December 2011).

30 James Curran, *Media and Democracy*, Routledge, New York, 2011, p. 70.

31 John Hayes, 'Films and TV up the ante on graphic torture scenes', in *Pittsburgh Post-Gazette*, 19 January 2007, available at: <http://www.post-gazette.com/stories/ae/movies/films-and-tv-up-the-ante-on-graphic-torture-scenes-468338/> (last visited December 2011).

32 See J. Curran, above note 30, p. 69, and Rosa Brooks, 'The GOP's torture enthusiasts', in *Los Angeles Times*, 18 May 2007, available at: <http://www.latimes.com/news/opinion/commentary/la-oe-brooks18may18,0,732795.column> (last visited December 2011).



former prisoner of war and himself a victim of torture, and Congressman Ron Paul stated unambiguously that torture would still be wholly unacceptable under such circumstances.<sup>33</sup>

Academics, lawyers, policy-makers, and members of the public alike have often ignored the holes in the theoretical situation of the ticking time bomb, however. On television, it is easy to meet the numerous requirements central to this argument:

that the torture be effective enough to elicit the information needed in the short time available; that the information the captive gives under torture will be accurate rather than designed to mislead in order to buy time; and of course that [the persons detained] actually have the information in the first place.<sup>34</sup>

The prevalence of torture on television and the recurrence of the ticking time-bomb scenario depicted as a realistic threat to ordinary citizens is a part of the public dialogue in the US, a part of how Americans view themselves and are viewed by others, even if Americans' acceptance of torture remains relatively stable.

The issue of political leaders' views on waterboarding is another factor that has contributed to confusion among the US public about torture and humane treatment. US media, elected officials, and candidates for public office have introduced the term 'waterboarding' into political debates, usually without any substantive discussion of the act itself, its history, or how exactly it has been used in recent years. During a nationally televised presidential campaign debate focusing on the topic of national security held on 12 November 2011, candidates Herman Cain and US Representative Michele Bachmann stated that they did not believe that waterboarding was torture and that they would reinstate the practice if elected to the United States presidency.<sup>35</sup> These proclamations were made despite a historical US judicial precedent dating back to the Spanish American War in which servicemen and lawmen were prosecuted and convicted for using the waterboarding technique as a form of torture.<sup>36</sup> This is not to say that all elected officials or political candidates in the United States share the opinions of Mr. Cain or Ms Bachmann. US Representative Ron Paul, another participant in the debate, maintained his stance against torture as expressed in the 2008 campaign mentioned above. In a statement to the media two days after the Republican presidential primary debate,

33 See United States presidential debate between candidates Mitt Romney and John McCain, 28 November 2007, available at: <http://www.youtube.com/watch?v=tNf6ubjdYmc&feature=related> (last visited December 2011).

34 Bob Brecher, *Torture and the Ticking Time Bomb*, Blackwell, Malden, MA, 2007, p. 16.

35 For a full transcript of the debate proceedings, see The American Presidency Project, 'Republican candidates debate in Spartanburg, South Carolina', available at: <http://www.presidency.ucsb.edu/ws/index.php?pid=97038&axzz1hrizZzUf> (last visited December 2011).

36 For a brief summary of some of these cases, see 'Background information on waterboarding', available at: [http://usiraq.procon.org/sourcefiles/background\\_information\\_waterboarding.pdf](http://usiraq.procon.org/sourcefiles/background_information_waterboarding.pdf) (last visited December 2011).



President Obama reiterated his belief that waterboarding is torture and that it is inconsistent with how the US conducts itself.<sup>37</sup>

A complete discussion of different strategies to deter terrorists, interrogate terrorists, and punish terrorists is usually lacking in the current media context of short sound bites. A substantive discussion of US values, goals, and strategies is needed to debate the efficacy of various policies and their underlying assumptions. For such a debate to be productive, it is essential for everyone to have a basic knowledge of what is and is not already required by the Geneva Conventions and IHL, as well as how the law of war has been developed by US military and civilian leaders throughout our nation's history.

Regarding the role of the media, there is currently no consensus on whether the media and the violence often depicted therein have a direct impact on levels of violence or acceptance of practices that, in the real world, would constitute violations on IHL. What is clear is that the debate is alive and well. News coverage of political debates dealing with questions of national security, and the continued creation of entertainment products in which violence is a prominent theme, will ensure that the link continues to be examined and discussed. The conversation also provides a useful entrée into promoting the need for greater awareness about IHL and the international obligations of states who are party to the Geneva Conventions and their Protocols.

## **The obligation to disseminate IHL: the American experience**

### **Legal basis**

The dissemination of the rules of war as established in the four Geneva Conventions is a fundamental responsibility of each signatory to the Conventions. Each Geneva Convention contains an Article directing that:

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.<sup>38</sup>

The International Federation of Red Cross and Red Crescent Societies has an obligation to 'assist in the promotion and the development of international humanitarian law and to disseminate this law'.<sup>39</sup> In the US, the American Red

37 Mary Bruce, 'Obama says GOP candidates are wrong, waterboarding is "torture"', in *ABC News Online*, 14 November 2011, available at: <http://abcnews.go.com/blogs/politics/2011/11/obama-says-gop-candidates-are-wrong-waterboarding-is-torture/> (last visited December 2011).

38 This requirement is found in Articles 47, 48, 127, and 144 of GC I, II, III, and IV respectively.

39 Section 1, Art. 5, para. 1 (B) (c) of the IFRC Constitution, revised and adopted by the VIth Session of the General Assembly, Rio de Janeiro, Brazil, 23–26 November 1987, available at: [http://www.ifrc.org/Global/Governance/Statutory/Constitution\\_revised-en.pdf](http://www.ifrc.org/Global/Governance/Statutory/Constitution_revised-en.pdf) (last visited December 2011).

Cross, in support of the International Federation, in accordance with Article 3.2 of the Statutes of the International Red Cross and Red Crescent Movement and as a humanitarian auxiliary to the US government, plays a key role in disseminating the principles of IHL to the civilian population through its Exploring Humanitarian Law (EHL) programme.<sup>40</sup> As will be described in more detail below, the United States Department of Defense conducts a Law of War Program that mandates training and education for all military men and women and establishes a Law of War Working Group to facilitate collaboration across the military legal community in IHL matters.<sup>41</sup>

## Contemporary challenges

Awareness levels of the rules of war are higher in the military than the civilian population in the US. The 2011 American Red Cross poll found that only about half of Americans in general indicated awareness of the Geneva Conventions, while about four in five who have served in the military are aware of them.<sup>42</sup> Training on international law issues is usually required before deployment to combat situations. There were mandatory refresher courses before Operation Iraqi Freedom, and later training courses were mandated during the course of operations 'to address observed areas of concern, such as overzealous detention of civilians'.<sup>43</sup> Department of Defense Directive Number 2311.01E requires that the heads of each Defense Component, 'institute and implement effective programs to prevent violations of the law of war, including law of war training and dissemination' as required by the Geneva Conventions.<sup>44</sup> Training takes place both in American military academies, which offer their officer cadets courses on military law, and in general instruction for enlisted troops during basic training courses. All soldiers in the US Army are expected to take some form of training on military justice and the law of armed conflict every six months, and all Marine Corps commanders and officers are required to be trained in the law of war.<sup>45</sup> The Air Force requires start-of-service training for all personnel, and specialized law of armed conflict training based on personnel duties during service.<sup>46</sup> The United States Military Academy at West

40 Handbook of the International Red Cross and Red Crescent Movement, Geneva, 2008, p. 522. Details of the American Red Cross EHL programme are available at: <http://www.redcross.org/portal/site/en/menuitem.86f46a12f382290517a8f210b80f78a0/?vgnextoid=22874749b48bb110VgnVCM10000089f0870aRCRD> (last visited December 2011).

41 See United States Department of Defense Directive 2311.01E, 9 May 2006, updated 15 November 2010, available at: [http://www.fas.org/irp/doddir/dod/d2311\\_01e.pdf](http://www.fas.org/irp/doddir/dod/d2311_01e.pdf) (last visited December 2011).

42 American Red Cross, above note 2.

43 Marc Warren, 'The "fog of law": the law of armed conflict in Operation Iraqi Freedom', in Raul A. Pedrozo (ed.), *The War in Iraq: A Legal Analysis*, International Law Studies Series Vol. 86, United States Naval War College, Newport, RI, 2010, p. 169.

44 Department of Defense, above note 41, Section 5, para. 5.7.2, p. 4.

45 See Marine Corps Order 3300.4, Department of the Navy, United States Marines Headquarters, 20 October 2003, available at: <http://www.marines.mil/news/publications/Documents/MCO%203300.4.pdf> (last visited December 2011).

46 See Air Force Policy Directive 51-4, Department of the Air Force, 4 August 2011, available at: <http://www.e-publishing.af.mil/shared/media/epubs/afpd51-4.pdf> (last visited December 2011).

Point requires all students to take a course on constitutional and military law, and the United States Naval Academy curriculum includes a legal studies course requirement that, in part, introduces students to the law of armed conflict.<sup>47</sup> Requirements on teaching the law of armed conflict to all Air Force Academy cadets have also been put in place, and the United States Naval War College has a renowned international law department.

The Department of Defense has expressed interest in addressing the requirement of ensuring effective training is provided to service members. Efforts have been made to improve training on the rules of war, particularly after the incidents at Abu Ghraib prison in Iraq in 2003 and the resulting increase in scrutiny of US detention programmes. After the extent of the abuses at Abu Ghraib was revealed, an investigative panel noted the strong need for professional ethics training for all personnel involved in detention operations.<sup>48</sup> The panel also emphasized the need to reinforce the standard of reciprocity within the context of IHL,<sup>49</sup> namely, that the laws are there to be observed and upheld by all parties, and in ideal situations each party to a conflict will honour their obligations in the hope that their forces will be granted like consideration by the opposing side. The independent panel noted that taking those steps would facilitate the 'preservation of United States societal values and international image that flows from an adherence to recognized humanitarian standards'.<sup>50</sup>

Several studies have been undertaken within the Department of Defense to uncover deficiencies and to develop potential strategies to avoid the abuses of the early and mid-2000s in the Iraq and Afghanistan wars: 'in exercises conducted before the war, considerable effort was put into training to apply the law of armed conflict in targeting decisions and in the rules of engagement'.<sup>51</sup> Legal experts were tasked with creating pocket cards and training vignettes on rules of engagement and the law of war for the education of troops in the conflict. Efforts were also made to attach judge advocate officers to every battalion in forward operating environments so that commanders had the necessary legal advice readily accessible at all times. This requirement has thus far been welcomed unanimously by commanding officers who have been assigned judge advocates as a clear 'force multiplier that enhanced the ability of the battalion to accomplish its mission'.<sup>52</sup> While these steps were not sufficient to prevent the abuse that occurred at Abu Ghraib in 2003, they are

47 For information on US service academy curricula, see their respective webpages. The US Naval Academy course NL400, 'Law for the junior officer', for example, is a required professional education course for all midshipmen cadets. The Air Force Academy offers two courses, 'Law 361: modern application of the law of armed conflict (LOAC)' and 'Law 466: advanced topics in the law of armed conflict (LOAC)' to fulfil its IHL training requirements.

48 'Final Report of the Independent Panel to Review DoD Detention Operations', August 2004, p. 91, available at: <http://www.au.af.mil/au/awc/awcgate/dod/d20040824finalreport.pdf> (last visited December 2011).

49 *Ibid.*

50 *Ibid.*

51 M. Warren, above note 43, p. 170.

52 See 'Legal services support to operational commanders: a summary of observations and lessons from OEF/OIF judge advocates and infantry commanders', Marine Corps Center for Lessons Learned, 3 May 2006, p. 9, available at: <http://info.publicintelligence.net/MarinesLegalSupport.pdf> (last visited December 2011).

important moves that can begin to make a difference in the understanding of international law obligations among American troops.

While the US armed forces have training systems in place that can be enhanced and improved, it is important that policy-makers who influence military procedures receive increased training and awareness on the rules of war. Unfortunately, the opinions of political leadership on the issues and morality of torture have been no more coherent than those of the public. The current political climate also reveals lack of clarity, misperceptions, and occasional disregard for international legal norms. The comments of candidates for political offices, as highlighted in the previous section on the role of the media, offer just one example of IHL norms being blurred for possible political expediency. The debate over humane treatment of detainees or torture suspects has become confusing and difficult to follow. The United States Congress tried to add clarity through legislation by defining torture in the War Crimes Act of 1996, as amended. Some argued that the clarification was needed because of the changing threats of terrorism and changing nature of war. Others argued that the definition of torture in the Geneva Conventions was still adequate and useful, and that any attempt to redefine it would mean reducing US commitment to humanitarian principles.

Outside the military and government policy arena, the education of America's citizenry on the tenets of IHL is equally important, and, according to the American Red Cross poll, desired. Approximately 80% of young people polled indicated that they believed that educating people of their age about IHL before they are old enough to enlist in the military could reduce civilian casualties.<sup>53</sup> As mentioned previously, under the Statutes of the International Red Cross and Red Crescent Movement, the American Red Cross fulfils an auxiliary role to the US government by assisting the government in fulfilling its Convention-mandated duty to disseminate knowledge of the body of law to the public.<sup>54</sup> The American Red Cross programming on this issue has been expanding over the last several years, and new programmes have been developed to instruct community members, teachers, and students on the basics of the rules of war. The EHL programme, a curriculum developed by the ICRC, has been introduced in schools in sixty countries around the world since 2002.<sup>55</sup> More than 2,000 American teachers across the country have been trained to use EHL in their classrooms to address the knowledge gap on global issues and IHL.<sup>56</sup> EHL introduces young people to the fundamental rules and principles of IHL, based on both historical and contemporary conflicts, and shows how the laws of armed conflict aim to protect life and human dignity to reduce the suffering and devastation caused by war. Perhaps most importantly, the programme

53 American Red Cross, above note 2.

54 The basis for this obligation stems from the Statutes of the International Red Cross and Red Crescent Movement, Section II, Art. 3, Para. 2, available at: <http://www.icrc.org/eng/assets/files/other/statutes-en-a5.pdf> (last visited December 2011).

55 More information on the ICRC's EHL programme is available at: [http://www.ehl.icrc.org/index.php?option=com\\_content&task=blogcategory&id=49&Itemid=468](http://www.ehl.icrc.org/index.php?option=com_content&task=blogcategory&id=49&Itemid=468) (last visited December 2011).

56 See American Red Cross, 'Exploring humanitarian law: a guide for teachers', available at: <http://ehl.redcross.org> (last visited December 2011).

strives to prepare students to understand better a world fraught with complex dilemmas that often occur in the fog of war, recognizing that young people today are also the political and military leaders, policy- and decision-makers, service members, and humanitarian workers of tomorrow.

The goal is ultimately to develop young people's understanding of the humanitarian issues and the legal protections that arise in times of conflict, so that, when confronted with a difficult and complex decision, they will have developed the critical thinking and analytical skills to make choices that can prevent violence, and to take action to improve the world around them. In recognition of the 150th anniversary of the start of the United States Civil War in 2011, and in an effort to show the relevance of IHL in American history, the American Red Cross developed a special Civil War module for its EHL curriculum.<sup>57</sup> Featuring prominently in that module is a discussion about President Lincoln's Lieber Code to regulate the conduct of hostilities and its impact on the conduct of the war, including specific rules for protecting civilians and their property, treating prisoners and the wounded humanely, and prohibiting the use of torture. The Lieber Code represented the first attempt to codify the laws and customs of war. Despite the fact that the Code significantly influenced other military codes, especially in Europe, and also became the basis for many international humanitarian treaties, very few Americans are aware of this important legacy of the Civil War. One of the Red Cross survey findings revealed that only 7% of adults know that the US first adopted rules regulating warfare during the American Civil War.<sup>58</sup> Interestingly, the percentage of young people surveyed who were aware of this fact was more than double that of the adults, at 18%.

In addition to efforts to educate students and build awareness of IHL at the high-school level, outreach efforts on college campuses have been intensifying to capture the increasing interest by undergraduate, graduate, and law professors in humanitarian law issues around the country. The American Red Cross is also starting to work with US-based humanitarian organizations to develop IHL training tools for their staff involved in international field operations, many in current conflict settings. The need for training in IHL among organizations involved in humanitarian work in the field also highlights the existing gap in knowledge on the protections afforded by IHL and constitutes an important area where capacity-building is of critical practical and operational importance. One excellent example of international capacity-building in the IHL arena can be found at the United States Institute for Peace, which has published a *Law of War Manual* and conducts a 'Law of War' course as part of its programming.<sup>59</sup>

57 See American Red Cross, 'The American Civil War: a humanitarian perspective', Lessons and Resources for Teachers and Students, 2010, available at: <http://ehl.redcross.org/resources/downloads/CivilWarLessons.pdf> (last visited December 2011).

58 American Red Cross, above note 2.

59 For details on USIP's Law of War materials, see their website at: <http://www.usip.org/publications/law-war-training-publications-military-and-civilian-leaders> (last visited December 2011).

## Case studies

The engagement of the United States in a wide-ranging effort against global terrorism and its conduct of two wars over the past decade have given rise to a number of humanitarian law issues, which have repeatedly generated intense media storms and occasionally ardent public outcries, particularly over policies on the treatment of prisoners detained in the course of hostilities. As the effort has shifted from Iraq to Afghanistan, the issue of collateral damage and civilian casualties has also become highly visible. In this section, the article will look at three case studies to bring the focus onto the views of Americans toward IHL standards. The cases will deal with impartial humanitarian assistance, detainee rights to maintain contact with family members, and efforts made by the US military to decrease civilian casualties. All reinforce the findings of public opinion surveys of fairly widespread misunderstandings of IHL standards.

### First aid and the Taliban

A telling example of American perceptions of IHL is the public furore over medical training and treatment of Taliban forces by the ICRC. Despite the overarching benefits of medical training for all those involved in armed conflict, some in the US voiced concerns through blog postings and other social media channels. Some said that the practice is ‘treason’ if done by Americans, ‘aiding the enemy’, or providing ‘logistical support they would not otherwise have, freeing up manpower resources for combat – or terror’.<sup>60</sup> Others feared a slippery-slope effect: if medical training is provided, then other types of training would be appropriate as well.<sup>61</sup> There were calls by some bloggers to reconsider donations to the ICRC, references to the millions of dollars that the US government donates in American tax money to the organization, and even an occasional call to put the ICRC on trial for these actions.<sup>62</sup> The American Red Cross received nearly 300 inquiries and complaints from the public after the news broke, indicating a misunderstanding over the separate roles of a national society, such as the American Red Cross, and the ICRC within the International Red Cross and Red Crescent Movement.<sup>63</sup>

60 Ashish Sumar Sen, ‘Taliban learning first aid from Red Cross workers’, in *Washington Times*, 26 May 2010, available at: <http://www.washingtontimes.com/news/2010/may/26/taliban-learning-first-aid-from-red-cross-workers/?page=all> (last visited December 2011) (see comments on 28 May 2010 at 4:12 AM and 27 May 2010 at 4:42 AM).

61 *Ibid.*

62 See ‘Red Cross lends a hand to the taliban’, in *FrumForum*, 27 May 2010, available at: <http://www.frumforum.com/red-cross-lends-a-hand-to-the-taliban/> (last visited December 2011).

63 The American Red Cross is one of 187 national societies belonging to the International Federation of Red Cross Red Crescent Societies. Its primary mission is to respond to humanitarian disasters in the United States and around the world. The ICRC is a Swiss corporation entrusted by the High Party States of the Geneva Conventions to serve as an impartial humanitarian ‘guardian’ of those Conventions that form the basis of IHL. Both organizations are members of the International Red Cross and Red Crescent Movement, but with very different humanitarian missions. The American Red Cross neither plays any role nor takes any position on the confidential bilateral relationships that exist between the ICRC and individual states.

What critics of the ICRC actions failed to understand is that all four of the Geneva Conventions stipulate that the provisions of the respective Conventions 'constitute no obstacle to the humanitarian activities which the [ICRC] or any other impartial humanitarian organization may, subject to the consent of the parties to the conflict concerned, undertake for the protection' of the wounded and sick,<sup>64</sup> shipwrecked,<sup>65</sup> prisoners of war,<sup>66</sup> and civilian persons.<sup>67</sup> Medical personnel and chaplains are also covered by the text in the First and Second Conventions. Common Article 3 in all four Conventions extends this access to conduct impartial humanitarian activities to conflicts not of an international character.

Impartiality and neutrality are principles that guide ICRC operations around the world. The organization strives to ensure 'its impartial assistance – with its partners – to all wounded and sick, whichever group they belong to'.<sup>68</sup> Supplying impartial health care and training increases the chances of survival for all participants in armed conflict. Medically trained combatants are better equipped to provide assistance to wounded and sick individuals on both sides of the conflict. In addition, the ICRC's impartial and neutral approach has helped foster a level of access to conflict areas unmatched by any other humanitarian organization.

The Geneva Conventions make medical care for the wounded a high-priority obligation of parties involved in both international and non-international armed conflict. Medical care and basic training of armed forces allows this obligation to be fulfilled, although the ICRC is not legally obliged to provide training and medical supplies to a party to an armed conflict. When the story was first reported by the international press in May 2010, the ICRC had trained more than seventy members of the opposition forces fighting against the Afghan government and coalition forces in basic first aid and had provided some basic medical supplies to the groups.<sup>69</sup> At the same time, more than a hundred Afghan soldiers, policemen, and taxi drivers who double as unofficial ambulance drivers had also been trained. This training had been occurring for more than four years, and it was provided to participants from both sides of the conflict for practical reasons in order to allow some stabilization of wounded combatants and anyone else injured in the course of the conflict.

The ICRC noted that 'it had introduced the classes because pitched battles, landmines and roadblocks stopped people in the most volatile areas from getting to the hospital'.<sup>70</sup> Moreover, the organization viewed the three-day course including lessons in IHL and basic first aid as 'a chance to remind all sides about respect for

64 GC I, Art. 9.

65 GC II, Art. 9.

66 GC III, Art. 9.

67 GC IV, Art. 10.

68 ICRC, 'First aid and hospital care', 29 October 2010, available at: <http://www.icrc.org/eng/what-we-do/health/first-aid-hospital-care/overview-first-aid-hospital-care.htm> (last visited December 2011).

69 CNN World, 'Red Cross defends helping Taliban treat casualties', 27 May 2010, available at: [http://articles.cnn.com/2010-05-27/world/afghanistan.red.cross.taliban\\_1\\_icrc-kandahar-taliban?\\_s=PM:WORLD](http://articles.cnn.com/2010-05-27/world/afghanistan.red.cross.taliban_1_icrc-kandahar-taliban?_s=PM:WORLD) (last visited December 2011).

70 Jon Boone, 'Red Cross gives first aid lessons to Taliban', in *The Guardian*, 25 May 2010, available at: <http://www.guardian.co.uk/world/2010/may/25/red-cross-first-aid-taliban> (last visited December 2011).



civilians and proper treatment of detainees'.<sup>71</sup> For example, a driver who transports those needing medical care in Helmand told the ICRC that a two-hour drive to the closest medical facility could take as long as six or seven hours owing to insecurity, mines, checkpoints, and roadblocks along the way.<sup>72</sup> While some in the Afghan government expressed strong disapproval of the ICRC activities, a NATO spokesman relayed support for the humanitarian work of the ICRC in Afghanistan and noted that coalition forces 'also provide treatment to any case caught up in this conflict, including [their] opponents, in line with [their] own obligation to respect the rules of armed conflict'.<sup>73</sup> A Fox News reporter noted on air that American marines interviewed on a base in Afghanistan were not shocked or upset by the news because they routinely treated wounded Taliban members when they captured them in combat.<sup>74</sup>

Some of the public debate over this issue of first aid training did incorporate an understanding of humanitarian principles and showed that real-life dilemmas from the battlefield are never simple and can provide a good opportunity for people with different views to engage in substantive dialogue. Many of the comment sections of blog postings and opinion articles point to the importance of the ICRC remaining neutral and impartial in conflict situations, as it is indeed required to do by the Geneva Conventions.<sup>75</sup> Some opinions point to a need for greater education of the tenets of IHL and how it can be violated. For example, some question whether non-governmental organizations violate these legal norms by providing assistance to combatants known to commit crimes of war frequently.<sup>76</sup> The complexity of the current reality of conflicts is well discussed in Fiona Terry's 2011 article, 'The International Committee of the Red Cross in Afghanistan: reasserting the neutrality of humanitarian action'.<sup>77</sup> Arguing that the ICRC's work in Afghanistan facilitating the protection of civilians caught in the conflict was in accordance with its mandate from States Parties to the Geneva Conventions, Terry acknowledges that some critics challenge that mandate when it involves organizations such as the Taliban or Al Qaeda.<sup>78</sup> Article 10 of the Fourth Geneva Convention declares that

the provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may ... undertake for the protection of civilian persons and for their relief.

71 CNN World, above note 69.

72 International Committee of the Red Cross, 'Afghanistan: ICRC steps up efforts to help the sick and wounded', operational update, 25 May 2010, available at: <http://www.icrc.org/eng/resources/documents/update/afghanistan-update-250510.htm> (last visited December 2011).

73 J. Boone, above note 70.

74 Fox News, 'Red Cross teaching Taliban first aid', 26 May 2010, available at: <http://video.foxnews.com/v/4214695/red-cross-teaching-taliban-first-aid/> (last visited 16 August 2011).

75 A. S. Sen, above note 60.

76 *Ibid.*

77 Fiona Terry, 'The International Committee of the Red Cross in Afghanistan: reasserting the neutrality of humanitarian action', in *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 173–188.

78 *Ibid.*, p. 186.

An article by the law professor Kenneth Anderson, as cited in Terry's piece, argues that opposition groups are not governments, thus nullifying the ICRC's mandate.<sup>79</sup> This demonstrates the varied public knowledge in the US of the protections that IHL affords to combatants, humanitarian workers, and healthcare providers in times of conflict. The passion of the discourse also highlights the immediacy of the topic to Americans given the US involvement in the conflict. Whether these issues would receive the same reaction if the story was about ICRC activity in a remote conflict in Africa, where the US is not involved, is an interesting question to ponder.

The importance of this case lies in the revelation that American perceptions about fundamental battlefield conduct often do not reflect acceptance of core IHL principles. Caring for the sick and wounded was the essence of Clara Barton's work during the American Civil War that was one of the factors in the creation of the American Red Cross. It is therefore interesting to see that the application of this standard of conduct on the modern battlefields of Afghanistan and Iraq is difficult for some Americans to accept. There is a clear educational opportunity in this case for the EHL programme in the US.

### Family visits for Guantánamo detainees

On 11 May 2011, the *Washington Post* published a news story with the headline 'Guantanamo Bay detainees' family members may be allowed to visit'. Within twenty-four hours there were 190 comments posted to this story, the vast majority highly critical of the reported negotiations between the ICRC and the US Department of Defense seeking to allow family members of detainees held by the United States at Guantánamo Bay, Cuba, to visit their relatives.<sup>80</sup> On media websites that allow user feedback to articles, those posted online about the potential visits were often harshly critical of allowing family visits to Guantánamo. While not all disagreed with the idea, those who did not support family visits made comments that ranged from some calling the idea 'silly' to those who termed the decision-makers involved 'imbeciles' and the ICRC a 'terrorist sympathizer'. A commenter who called into a radio show discussion of the family visit topic was adamantly against the policy, calling the detainees at Guantánamo 'animals' that deserve no rights.<sup>81</sup> An online commenter stated emphatically in reference to a news article on MSNBC.com that he would no longer support the Red Cross. The same commenter, revealing his misunderstanding of the roles of the government and humanitarian

79 Kenneth Anderson, 'Humanitarian inviolability in crisis: the meaning of impartiality and neutrality for U.N. and NGO agencies following the 2003–2004 Afghanistan and Iraq conflicts', in *Harvard Journal of Human Rights*, Vol. 17, 2004, p. 63.

80 Peter Finn and Julie Tate, 'Guantanamo Bay detainees' family members may be allowed to visit', in *Washington Post*, 11 May 2011, available at: [http://www.washingtonpost.com/national/guantanamo-bay-detainees-family-members-may-be-allowed-to-visit/2011/05/11/AFGAMtsG\\_story.html](http://www.washingtonpost.com/national/guantanamo-bay-detainees-family-members-may-be-allowed-to-visit/2011/05/11/AFGAMtsG_story.html) (last visited December 2011).

81 'Family visits at Gitmo?', recording of 18 May 2011, segment on Southern California Public Radio show *AirTalk*, available at: <http://www.scpr.org/programs/airtalk/2011/05/18/19126/family-visits-at-gitmo> (last visited December 2011).

actors involved, asked about those released from Guantánamo who ‘are back out there trying to kill Americans. What is the Red Cross doing about that?’<sup>82</sup>

The Third Geneva Convention provides the legal framework for the treatment of prisoners of war. Among the provisions that oblige states to ensure that ‘prisoners of war must at all times be humanely treated’ is an entire section dedicated to relations of prisoners with the external world.<sup>83</sup> Article 71 of that Convention provides for the assurance that prisoners will be permitted to exchange correspondence with their families.<sup>84</sup> Several provisions embodied in IHL stress the importance of maintaining family links and maintain that ‘other than in absolutely exceptional circumstances, the authorities must allow and even arrange for the exchange of family news within a reasonable lapse of time’.<sup>85</sup> The ICRC facilitates these linkages in practice. While the US does not consider those held at its facility in Guantánamo Bay, Cuba, to be prisoners of war, the guidance in the Conventions is still considered a model for treatment by the US military, as discussed previously.<sup>86</sup>

Interestingly, this pledge by the US to abide by the provisions in the Geneva Conventions reinforces the validity of the family visit request. If the position is accepted that the detainees are not eligible for prisoner-of-war status, then as foreign nationals present in the territory of a party to the conflict, the detainees could receive the protections of the Fourth Geneva Convention, which provides for the protection of civilian persons and those removed from the conflict owing to sickness, injury, or detention.<sup>87</sup> Article 25 allows for the conveyance of news of a strictly personal nature to and from family members. Article 116 specifically allows for the receipt of visitors by detainees, especially near relatives, at regular intervals.

Regardless of the legal justification used, the ICRC was in keeping with its impartial humanitarian mandate in making the request for family visits to Guantánamo. The ICRC considers its role as a facilitator of family messages as fulfilling two functions, namely to remind ‘authorities of their obligations with regard to establishing and maintaining family contact’ and simultaneously to provide detainees with the ability ‘to exchange news of a strictly private and family nature’.<sup>88</sup> The ICRC was granted the right of access to prisoners of war and civilians interned in international armed conflict by the Geneva Conventions.<sup>89</sup> That right is also applicable in situations of non-international armed conflicts with the permission of the detaining state. The US encourages this work by allowing access to persons it has detained around the world, including during the current ongoing conflicts. The ICRC has been visiting the facilities at Guantánamo Bay quarterly since early 2002, assessing the conditions and treatment of those held there and assisting them in communications with their families, as they do with detainees held

82 See comments at: <http://www.msnbc.msn.com/id/43008249/> (last visited December 2011).

83 GC III, Art. 13, Part II, and Part III, Section 5.

84 GC III, Art. 71.

85 Alain Aeschlimann, ‘Protection of detainees: ICRC action behind bars’, in *International Review of the Red Cross*, Vol. 87, No. 857, March 2005, p. 116.

86 M. Anderson and E. Zukauskas, above note 16.

87 GC IV, Art. 4.

88 See A. Aeschlimann, above note 85, p. 116.

89 See GC I/II/III, Art. 9, and GC IV, Art.10.

elsewhere around the world. The ICRC reports that, between 2002 and 2009, it facilitated the exchange of over 43,000 Red Cross messages between detainees and their families.<sup>90</sup>

Beyond assistance with mail exchanges, the ICRC has also worked with the US government to create other mechanisms for family communication. In April 2008, for example, authorities allowed the implementation of 'a system enabling detainees to regularly speak to their families by telephone, facilitated by the ICRC through its delegations around the world'.<sup>91</sup> This policy began as a single phone call allowed annually per detainee, and although more than one call per year is now permitted, detainees must still meet certain undisclosed conditions set by the military to be eligible. The ICRC reports that, at Guantánamo, 'Around 1,800 telephone calls have been made since the system was established'.<sup>92</sup> This is reinforced by a second system that facilitates telephone calls for detainees in cases of emergency, such as when a death occurs in the family. Beginning in September 2009, the ICRC and the Department of Defense collaborated to set up monitored video links for some detainees to speak with their family and close friends.<sup>93</sup> Access to this system was based in part on capacity in their country of origin, so the programme slowly expanded over the following years. Yemeni detainees, for example, the largest nationality represented at the base, gained access to video links in late 2010. Some of those detainees had been held for over nine years, making the one-hour video-conference calls the first time that they had seen family members in almost a decade. So-called 'high-value' detainees held in the tightest security facility at Guantánamo are allowed written communication but not telephone or video contact with family members.<sup>94</sup> The administration has acknowledged that it is also exploring the possibility of allowing actual visits to the facility by detainee family members.

The Obama Administration expressed a commitment to close the facility in early 2009, but efforts to do so have stalled and now appear unlikely to be successful at any point in the near future. The United States Congress has made several moves to restrict the options open to the Administration related to the prison camp and the detainees housed there, and President Obama has been forced to back away from plans for detainee transfers and a quick closure of the detention facility. Meanwhile, US public opinion has shown increased support for keeping the facility open, with 58% of those polled by Rasmussen in March 2011 saying that Guantánamo should not be closed.<sup>95</sup> The question of family contact therefore has repercussions that

90 ICRC Regional Delegation for the United States and Canada, 'News and notes', February 2009, available at: [http://archive.constantcontact.com/fs013/1102236947549/archive/1102427885827.html#LETTER\\_BLOCK7](http://archive.constantcontact.com/fs013/1102236947549/archive/1102427885827.html#LETTER_BLOCK7) (last visited December 2011).

91 ICRC, 'Persons detained by the US in relation to armed conflict and the fight against terrorism – the role of the ICRC', 9 January 2012, available at: <http://www.icrc.org/eng/resources/documents/misc/united-states-detention.htm> (last visited December 2011).

92 *Ibid.*

93 *Ibid.*

94 *Ibid.*

95 See Rasmussen Reports, 'Most voters still support Guantanamo prison, military tribunals for terrorists', 14 March 2011, available at: [http://www.rasmussenreports.com/public\\_content/politics/general\\_politics/](http://www.rasmussenreports.com/public_content/politics/general_politics/)

could affect detainees for a prolonged and indefinite period of time well into the future.

The ICRC and the Department of Defense have released few details on possible visits because their discussions are confidential. However, family visits to those convicted of terrorism already occur at other US detention facilities on the American mainland. Under strict supervision, up to five family visits per month are permitted at the highest-security US federal prison installation in existence, the United States Penitentiary Administrative Maximum Facility near Florence, Colorado.<sup>96</sup> Prisoners detained there include ‘shoe bomber’ Richard Reid and numerous individuals convicted of involvement in terrorist attacks, including the 1993 attack against the World Trade Center in New York and the 1999 American embassy bombings in Africa. Family visits to detainees are also permitted at US military detention centres in Afghanistan at Bagram Airbase, the largest detention facility in Afghanistan.<sup>97</sup>

The viscerally negative reactions to the news of visit requests and to reports on medical care and training of the Taliban among both policy-makers and members of the public illustrates a trend towards either misunderstanding or disregarding principle tenets of IHL. The position of the United States Executive Branch that detainees at Guantánamo are not legally entitled to prisoner-of-war privileges afforded by the Geneva Conventions but that detainee treatment will still be modelled after the Geneva Conventions provisions makes it difficult to know exactly which provisions apply and do not apply. Members of the United States Congress have sought to define these privileges and where they end as well. A better understanding of the Geneva Convention requirements would be helpful for all of those engaged in the discussion, even those arguing that the Geneva Conventions are not applicable to this case. Furthermore, an understanding of why the Geneva Conventions offer this privilege and how the detaining authorities themselves may benefit from them (e.g. a more compliant and stable prisoner population) could better guide the discussion if the US seeks those benefits as well in this particular case, whether it is legally obliged to do so or not. Further working to clarify the legal situation for detainees and combatants involved in the war on terrorism is also a deeply needed effort so that the appropriate standards for their treatment are made clearer to everyone.

## Collateral damage in Afghanistan

The number of civilians killed in the war in Afghanistan will probably never be known, but it is clear that it will run into the thousands by the end of the conflict. These casualties have been caused directly and indirectly by all parties to the conflict, whether international troops or anti-government forces. Reliable statistics,

[march\\_2011/most\\_voters\\_still\\_support\\_guantanamo\\_prison\\_military\\_tribunals\\_for\\_terrorists](#) (last visited December 2011).

96 ADX Florence, ‘Visiting procedures handbook’, available online through the Federal Bureau of Prisons at: [http://www.bop.gov/locations/institutions/flm/FLM\\_visit\\_hours.pdf](http://www.bop.gov/locations/institutions/flm/FLM_visit_hours.pdf) (last visited December 2011).

97 ICRC, above note 91.

however, are nearly impossible to establish in such a dangerous operating environment. The United Nations Assistance Mission to Afghanistan has published estimates on civilian casualties since 2006, with the caveat that the numbers potentially under-report casualties, and from 2006 to 2010 alone an estimated 8,832 non-combatants were killed in the conflict.<sup>98</sup> Civilian casualties rose each year that statistics were collected, though 'efforts by international and Afghan military forces to reduce civilian casualties resulted in fewer civilians killed and injured by these forces in 2010 than in previous years'.<sup>99</sup>

From a purely humanitarian perspective, the degree of collateral damage in Afghanistan, including civilian deaths, is deeply concerning. From a legal perspective, it raises questions about the combatants' adherence to the provisions in the Fourth Geneva Convention, Additional Protocol I, and the 1954 Hague Convention for the Protection of Cultural Property in the Event of an Armed Conflict.<sup>100</sup> The Fourth Geneva Convention provides for the protection of civilian peoples in time of war. Article 27 specifically requires that protected persons be humanely treated and protected against all acts of violence or threats thereof. Article 51 of Additional Protocol I offers more detailed protections to civilians in conflict, outlining prohibitions on general attacks on civilians, indiscriminate attacks, attacks for purpose of reprisal, and so forth. The 1954 Hague Convention addresses the need to protect cultural and historically sensitive sites from destruction during times of war.

Public opinion in the US on this issue is important given that the US has led international forces in Afghanistan since 2001. In the February 2011 American Red Cross poll, 29% of adults and 37% of young people believed that it was at least sometimes acceptable to deprive civilians in combat areas of food, medicine, or water in order to weaken the enemy. When asked whether a ban on landmines should be implemented, 70% of adults and 57% of young people agreed, owing to the strong possibility of civilian casualties. A 1999 ICRC survey also found that between 5% and 10% more American respondents than other Security Council member citizens sanctioned actions such as attacking civilians to weaken the enemy or to punish them for aiding the enemy.<sup>101</sup> Yet, as mentioned above concerning the landmine issue, almost three in four American adults and three in five young people supported increasing the accuracy of weapons to reduce unintended civilian casualties. The ICRC study noted that

Pragmatic views of the power of weapons of mass destruction, lack of direct experience of war on US territory, constant media exposure to conflicts that

98 United Nations Assistance Mission in Afghanistan and Afghanistan Independent Human Rights Commission, *Afghanistan Annual Report 2010: Protection of Civilians in Armed Conflict*, Kabul, Afghanistan, March 2011, p. i, available at: <http://unama.unmissions.org/Portals/UNAMA/human%20rights/March%20PoC%20Annual%20Report%20Final.pdf> (last visited December 2011).

99 *Ibid.*, p. iv.

100 Convention for the Protection of Cultural Property in the Event of an Armed Conflict, The Hague, 14 May 1954, available at: <http://www.icrc.org/ihl.nsf/FULL/400> (last visited December 2011).

101 Greenberg Research, Inc., 'The people on war report: International Committee of the Red Cross worldwide consultation on the rules of war', December 1999, p. 62, available online at: [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0758.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0758.pdf) (last visited December 2011).

claim untold numbers of civilian lives – along with many other factors – may help explain this trend<sup>102</sup>

of differing American public views toward non-combatant casualties as compared to citizens in other nations.

The issue of civilian casualties has become a very clear and public concern of international force commanding officers in Afghanistan in recent years. A December 2008 tactical directive by the International Security Assistance Force Commander, General David McKiernan, stressed that ‘minimizing civilian casualties is of paramount importance’<sup>103</sup> to operations and that training to prevent those casualties was critical. The succeeding commander, General Stanley McChrystal, elevated the prevention of non-combatant casualties even further in both tactical directives and in discussions with American officials and the media. His mid-2009 revision of the tactical directive guiding forces operating in Afghanistan argued that soldiers ‘must avoid the trap of winning tactical victories – but suffering strategic defeats – by causing civilian casualties or excessive damage and thus alienating the people’.<sup>104</sup> He noted that this is not only a legal and moral issue but that it also is significantly related to efforts to win public opinion and thereby bolster support for the Afghan government. Lowering non-combatant deaths by tightening military rules of engagement was a central tenet of McChrystal’s Afghan strategy, and this included limits on the use of airstrikes, restrictions on the use of certain weapons against locations where the likelihood of civilian presence is high, and modified policies that affect operations by American Special Forces.

These tactical shifts aimed at reducing collateral damage were widely discussed in the media. Some praised the moves that were publicized by General McChrystal in mid-2009. In June 2009, the *New York Times* argued in an editorial that ‘[p]rotecting Afghan civilians, and expanding the secure space in which they can safely go about their lives and livelihoods must now become the central purpose of American military operations in Afghanistan’.<sup>105</sup> The Council on Foreign Relations Fellow Micah Zenko argued in *The Guardian* that the directive issued by McChrystal was ‘much welcomed and long overdue’, but that it was also unlikely to lower the number of civilian casualties noticeably, owing to ‘insufficient ground forces, the nature of the enemy and the constant fog of war’.<sup>106</sup> In a February 2010 public radio interview, Sarah Holewinski from the Campaign for Innocent Victims

102 *Ibid.*, p. 61.

103 International Security Assistance Force Commander Gen. David McKiernan, ‘Tactical directive’ (non-classified excerpts), Kabul, Afghanistan, 30 December 2008, available online at: [http://www.nato.int/isaf/docu/official\\_texts/Tactical%20Directive\\_090114.pdf](http://www.nato.int/isaf/docu/official_texts/Tactical%20Directive_090114.pdf) (last visited December 2011).

104 International Security Assistance Force Commander Gen. Stanley McChrystal, ‘Revised tactical directive’ (non-classified excerpts), Kabul, Afghanistan, 2 July 2009, available online at: [http://www.nato.int/isaf/docu/official\\_texts/Tactical\\_Directive\\_090706.pdf](http://www.nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf) (last visited December 2011).

105 See ‘Editorial: measuring success in Afghanistan’, in *The New York Times*, 8 June 2009, p. A18, available at: <http://www.nytimes.com/2009/06/08/opinion/08mon1.html> (last visited December 2011).

106 Micah Zenko, ‘Collateral damage in Afghanistan is unavoidable’, in *The Guardian*, 30 June 2009, available at: <http://www.guardian.co.uk/commentisfree/cifamerica/2009/jun/24/mcchrystal-usa-afghanistan-air-attacks> (last visited December 2011).



in Conflict praised the strides made by the military under McChrystal, noting that civilian deaths caused by international forces had dropped by about 30% since the new directive had been issued.<sup>107</sup> After McChrystal's removal from command in 2010, Senator Patrick Leahy of Vermont praised his efforts to reduce civilian casualties in Afghanistan and stated that: 'There is no basis . . . military or otherwise, to criticize these efforts to protect civilian lives'.<sup>108</sup>

Unfortunately, few polls have examined American public opinion on the topic of civilians killed in conflicts. There was, however, a vocal backlash by some against the new restrictions placed on troops in Afghanistan that were meant to save civilian lives. Diana West of the *Washington Examiner* characterized the rationale behind the new rules of engagement to protect civilians as 'hallucinatory thinking',<sup>109</sup> while Senator Joseph Lieberman of Connecticut argued that the welfare and safety of American troops was paramount and noted that the new rules endangered them and harmed morale.<sup>110</sup> A *New York Times* article also cited several members of the US military serving in Afghanistan who felt that they were at greater risk under the new rules, which they felt 'concede advantages to insurgents'.<sup>111</sup>

Gauging public opinion on these issues of civilian casualties is difficult owing to a lack of polling data and scholarly analysis of the topic. Polls tend to focus on American opinions about soldiers in the field rather than the effects of the war on Afghan civilians. While praised by many as important for moral, legal, or strategic reasons, US military actions to reduce civilian casualties have not always been greeted positively by media analysts and politicians, many of whom worry in particular about the effects that such moves will have on the safety of American troops. The American military has made notable efforts to reduce some activities that cause casualties among non-combatants (as noted above with regards to McChrystal's tactical directives), and statistical evidence reveals that policies such as reducing the use of air support in combat situations have in fact lowered civilian casualty rates, and the majority of those casualties in Afghanistan are now caused by insurgent forces.<sup>112</sup> In-depth analysis of public opinion on this issue would be extremely useful in helping to address gaps in the understanding of the

107 Matthew Bell, 'McChrystal Apologizes for Afghan civilian deaths', *Public Radio International*, 24 February 2010, available at: <http://www.pri.org/stories/world/middle-east/mcchrystal-apologizes-for-afghan-civilian-deaths1888.html> (last visited December 2011).

108 Senator Patrick Leahy, 'Press release: protecting Afghan civilians', 29 June 2010, available at: [http://leahy.senate.gov/press/press\\_releases/release/?id=6ade9d06-01eb-4b7a-8fd8-943ff531eddb](http://leahy.senate.gov/press/press_releases/release/?id=6ade9d06-01eb-4b7a-8fd8-943ff531eddb) (last visited December 2011).

109 Diana West, 'Afghan war rules endanger U.S. troops', in *Washington Examiner*, 13 September 2009, available at: <http://washingtonexaminer.com/opinion/op-eds/2009/09/diana-west-afghan-war-rules-endanger-us-troops/36582> (last visited December 2011).

110 Roxana Tiron, 'Lieberman: rules of engagement hurting morale of U.S. troops in Afghanistan', in *The Hill*, 4 July 2010, available at: <http://thehill.com/homenews/senate/107125-lieberman-rules-of-engagement-hurting-troop-morale-in-afghanistan> (last visited December 2011).

111 C. J. Chivers, 'General faces unease among his own troops, too', in *New York Times*, 22 June 2010, p. A11, available at: <http://www.nytimes.com/2010/06/23/world/asia/23troops.html> (last visited December 2011).

112 Laura King, 'New U.S. Tactics Said to Reduce Afghan Civilian Deaths', *L.A. Times Online*, 28 August 2009, available at: <http://articles.latimes.com/2009/aug/28/world/fg-afghan-civilians28> (last visited December 2011).

principles and enormously useful for Americans as the conflict in Afghanistan comes to a close.

## **Conclusion: why perceptions matter**

While assessing people's perceptions of complex issues such as IHL and its application to the modern battlefield is always a somewhat subjective exercise, based on trusting sincerity in survey responses and accepting public statements at face value, this article has dared to examine a number of public opinion polls, policy-maker statements, and blog/internet comment sites in an attempt to understand better how Americans view IHL and its application in real-world situations. The reality is that many Americans have never been taught about the Geneva Conventions, except perhaps that they exist. The fact that two in five young people and one in three adults in the US believe that American soldiers detained abroad can be tortured in some circumstances is disturbing, and it should trigger intense focus on these issues.

The US is currently engaged in a political exercise to choose its next president. As highlighted earlier, there have been candidates for this highest of American offices who would consider resorting to interrogation techniques generally regarded as torture should the situation dictate such extreme measures. It is not known with any high degree of certainty whether the individuals stating such a position were fully aware that such practices would be in direct violation of IHL. It can only be hoped that before they would be forced to decide such a course of action as the American President that they and/or their legal advisors would recognize that torture, under any circumstances, is illegal under international law (and US domestic law) and, further, that it undermines the international standing of the US.

Perceptions on IHL matter because the same people who will elect the next president are the parents, teachers, and role models of America's next generation of soldiers, policy-makers, and presidents. The messages that our young people receive today will shape how they behave when they are faced with the battlefield decision whether to destroy a village, kill or torture a captured soldier, or provide medical aid to a wounded enemy combatant. The youth respondents in the American Red Cross survey overwhelmingly stated that they want more IHL education. If the perceptions of Americans toward IHL presented in this paper are any indication, those respondents should be applauded for their youthful wisdom and provided with the knowledge they desire.

IHL education in the United States has taken on new importance over the past decade. Department of Defense policies have refocused the need for the broadest exposure to IHL among American military forces. The American Red Cross, in co-ordination and collaboration with the ICRC, is positioning itself to be a national leader in increasing the understanding of IHL in schools and communities across the US. One can only hope that, if this article were to be rewritten in ten to fifteen years' time, the educational efforts in civilian and military circles would reap a more enlightened perception of IHL among the American citizenry.

# Using humanitarian aid to ‘win hearts and minds’: a costly failure?

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## **Abstract**

*This article contends that the integration of humanitarian assistance in efforts to ‘win hearts and minds’ in counter-insurgencies has not been successful, and that the costs, both operational and legal, clearly outweigh any benefits. It demonstrates how such manipulation of humanitarian assistance runs counter to fundamental principles of international humanitarian law. In addition, a growing body of research suggests that the use of short-term aid and relief programmes as part of counter-insurgency has been ineffectual, and that, in places such as Afghanistan, it may even have undermined the overall military goal of defeating insurgents. With the United States and NATO military operations winding down in Afghanistan, it is time for the military and policy-makers reviewing ‘winning hearts and minds’ as a counter-insurgency strategy to draw the lessons*

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*and recognize the importance of a neutral and independent space for humanitarian aid.*

.....

The concept of counter-insurgency (COIN) has been with us for decades, with many non-international armed conflicts in various regions of the world seeing conventional armed forces and governments being confronted by a variety of insurgents, each with their own distinct motivations.<sup>1</sup> This century’s conflicts in Afghanistan and Iraq have again brought counter-insurgency to the fore and have called for a rethink of strategies to defeat insurgents who differ substantially from those of the Cold War era. In the United Kingdom and the United States, counter-insurgency operations field manuals have been revamped and doctrine developed in a bid to outsmart new radical forms of insurgencies.<sup>2</sup> Counter-insurgency is again at the forefront of military planners’ and policy-makers’ interests. US President Lyndon B. Johnson’s statement on Vietnam that ‘the ultimate victory will depend upon the hearts and minds of the people who actually live out there. By helping to bring them hope and electricity you are also striking a very important blow for the cause of freedom throughout the world’,<sup>3</sup> was echoed in President Obama’s 2007 strategy for Afghanistan, ‘a campaign against extremism will not succeed with bullets or bombs alone’.<sup>4</sup>

As part of the rethink over the last few years, in particular in Afghanistan, there has been a greater emphasis on soft power and aspects of counter-insurgency that aim at increasing acceptance of the local population without force, to take support away from the insurgents.<sup>5</sup> Translated into operational terms, a successful counter-insurgency is said today to require less force and more so-called ‘consent-winning’ and ‘gratitude-seeking’ elements. According to the US Army Field Manual 3-24, success in counter-insurgency is gained by protecting the local

1 Counter-insurgency (COIN) was strongly associated with the Cold War counter-insurgency campaigns fought by the British in Malaya, Oman, and Aden, and the US in Vietnam. France, while not embracing the expression ‘counter-insurgency’, also has a rich experience in fighting insurgencies, notably in Algeria and Indochina.

2 Notably British Army Field Manual, Vol. 1, Part 10, Countering Insurgency, Army Code 71876, October 2009, (GB COIN), and the U.S. Army and Marine Corps Counterinsurgency Field Manual, U.S. Army Field Manual No. 3-24, *Counterinsurgency*, Marine Corps Warfighting Publication No. 3-33.5, December 2006 (hereafter FM 3-24).

3 Remarks by Lyndon B. Johnson at a Dinner Meeting of the Texas Electric Cooperatives, Inc., 4 May 1965, available at: <http://www.presidency.ucsb.edu/ws/index.php?pid=26942#axzz1uDRuoCji> (last visited December 2011).

4 Remarks by President Obama on a New Strategy for Afghanistan and Pakistan, 27 March 2009, available at: [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-on-a-New-Strategy-for-Afghanistan-and-Pakistan/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-a-New-Strategy-for-Afghanistan-and-Pakistan/) (last visited December 2011).

5 Counter-insurgency places much emphasis on the need for effective and timely intelligence-gathering as success criteria for any mission. The counter-insurgents must not only strive to understand the enemy, as in conventional warfare, but also gather a better knowledge of the local populations, their needs, concerns, and support rationale. See generally David Kilcullen, ‘Intelligence’, in Thomas Rid and Thomas Keaney (eds), *Understanding Counterinsurgency: Doctrine, Operations, and Challenges*, Routledge, Oxford and New York, 2010, pp. 141–159.

population, not the COIN force, with some of the 'best weapons for counter-insurgents' being those that 'do not shoot'.<sup>6</sup> The military is no longer conceived exclusively as an instrument of force. In counter-insurgencies, soldiers and marines are now expected to take on a variety of tasks including providing short-term humanitarian assistance, and, in the medium to long term, helping to rebuild the country's infrastructure, from the construction of schools and hospitals to training local security and cementing good governance and the rule of law.

In war-torn contexts where insurgents thrive on the failures of the state authorities to bring security and economic development, any approach that promises to deliver sustainable peace and stability appears welcome. In the short term, the delivery of essential humanitarian assistance by the military to affected populations is also welcome, to the extent that it is provided impartially and is needs based. However, as witnessed in Afghanistan and Iraq, counter-insurgency planners have at times conceived of the delivery of aid and humanitarian assistance as being an intrinsic component of the overall military strategy to defeat the insurgents.

Such use of humanitarian aid for political and military gain in non-international armed conflicts has understandably given rise to much unease within the humanitarian community. This has been of particular concern in the conflict in Afghanistan, where US and NATO forces would often gear the provision of aid and relief to the aim of sapping the insurgency of local patronage. The International Committee of the Red Cross (ICRC) and others have publicly resisted counter-insurgency where it encroaches on the independence and impartiality of humanitarian assistance and actors. Indeed, it has been asserted that security of aid workers can be put at grave risk in complex non-international armed conflicts when the aid delivered by non-combatants is perceived to further the military aims of one of the parties to the conflict.<sup>7</sup> In addition to negative operational consequences, from a legal standpoint, international humanitarian law (IHL) places clear obligations on the belligerents with regard to the distribution of aid and relief: it must be given to those in need without any adverse distinction, and cannot be manipulated to serve military goals.<sup>8</sup>

Despite this push back by many humanitarian organizations, and the undermining of fundamental IHL principles, the delivery of aid and humanitarian assistance continued to be advocated by policy-makers as an essential tool for successful counter-insurgency. The establishment of such programmes as the Provincial Reconstruction Teams in Afghanistan and Iraq testified to this strategy. However, there is a growing body of research and literature suggesting that the provision of aid and development by the US military and NATO partners in these contexts has proved to be ineffective. It is being demonstrated that local populations

6 FM 3-24, above note 2, sections 1-149 and 1-153.

7 According to the ICRC Director of Operations: 'Over the past decade, deliberate attacks against humanitarian personnel have become commonplace. They are clearly illegal and unacceptable and must be condemned in the strongest terms. The rejection of humanitarians is, however, the by-product of policies that integrate humanitarian aid into political and military strategies', Opinion, in *Stars and Stripes*, 15 January 2011.

8 See below, in 'Does a "winning hearts and minds" strategy clash with IHL principles?'

respond more favourably to the restoration of security and good governance, and to those programmes that can substantively address social and economic concerns, especially if delivered by the national authorities.<sup>9</sup>

While many of the early indicators focus on the seeming failings of medium- to long-term development programmes, as this article discusses, there is also evidence to suggest that the ‘winning of hearts and minds’ through the delivery of short-term humanitarian assistance has likewise been ineffectual, with any benefits and gratitude from the local population found to be short-lived, often providing, at best, limited force protection gains. Moreover, recent studies indicate that a ‘hearts and minds’ approach focused on the delivery of aid and short-term assistance by the military has actually undermined the military strategy in parts of Afghanistan and can even be counter-productive to the overall military objective of defeating the insurgency.<sup>10</sup>

With the US and NATO military operations winding down in Afghanistan, military and policy-makers will in all likelihood be reviewing the lessons learned on the value, benefits, and shortcomings of counter-insurgency as a strategic model in future conflicts. With this in mind, this paper will argue, after explaining aspects of counter-insurgency, that fundamental IHL principles, the well-founded concerns of humanitarian organizations, and the early indicators of the ineffectiveness of counter-insurgency aid and relief programmes call, at the very least, for an important strategic rethink, before allowing the delivery of short-term aid and humanitarian assistance by the military to be part of a ‘hearts and minds’ strategy again.

## **Counter-insurgency, humanitarian assistance, and ‘winning hearts and minds’**

### **Counter-insurgency explained**

Until the turn of the twenty-first century, discussions on counter-insurgency operations and doctrine were very much the preserve of military strategists and historians. Although there had been numerous conflicts driven through a counter-insurgency lens during the twentieth century, counter-insurgency was not within the public discourse to the same extent as it is today. The RAND Institute has listed eighty-nine insurgencies that have occurred between 1945 and the present day, in a variety of countries, from Greece to Namibia and Bangladesh.<sup>11</sup> Despite the

9 See below, in Section ‘Does humanitarian assistance win hearts and minds?’ of this article.

10 *Ibid.*

11 David C. Gompert and John Gordon IV *et al.*, *War by Other Means: Building Complete and Balanced Capabilities for Counterinsurgency*, RAND National Defense Research Institute, Santa Monica, CA, 2008, Appendix A, Table A.1 (hereafter RAND Report). The RAND National Defense Research Institute suggested four broad types of insurgency. Type I insurgencies, deemed ‘local’ and similar to the situation in Colombia, are self-contained in ‘cause, scope and effects’; they are seen as the most common type, making up the best part of 60% of insurgencies as of 2007. In Type II, called ‘local-international’, the insurgents receive external support such as money, arms, expertise, fighters and media coverage; according

numbers, except for the more specialized commentators and military, counter-insurgency was not cited so widely when speaking about these conflicts. Today, however, counter-insurgency as a term has crept into common parlance discussed by the media and the general public in many countries, and has notably been made accessible as a concept by US General David Petraeus<sup>12</sup> and Dr. David Kilcullen.<sup>13</sup>

Even the popular understanding of counter-insurgency highlights as one of its central tenets the attempt to delegitimize an insurgency by isolating it from its grassroots support. Fighting insurgents and overcoming their adversity is no longer just a question of inflicting the greatest death toll upon the enemy in the minimum time possible, an approach favoured by General Patton during World War II, but significantly about ‘winning hearts and minds’, and thus depriving the insurgent groups of the support of the local population. Conflict is less about the exclusive use of lethal force on the adversary, and more a blending of military, political, and economic means to defeat insurgents. As General Sir Rupert Smith from the UK explained:

In our new paradigm, which I call ‘war amongst the people’, you seek to change the intentions or capture the will of your opponent and the people amongst which you operate, to win the clash of wills and thereby win the trial of strength. The essential difference is that military force is no longer used to decide the political dispute, but rather to create a condition in which a strategic result is achieved. . . . In large measure, the strategic objective is to win the hearts and minds of the people. In other words this isn’t a supporting activity of your tactical battle. It is the purpose of what you are doing. So arriving afterwards to paint a school or deliver toothpaste isn’t helping if you’ve blown the school away in the first place.<sup>14</sup>

to the Institute nearly 35% of insurgencies have been Type II since the end of World War II. In Type III, a local insurgency receiving external support can become the platform for a wider regional or even global struggle; these have only formed 5% of insurgencies since World War II, but they are seen to be the fastest growing type of insurgency, especially in the Muslim world, and combine local political aims with global religious aims and means. The Institute sees Type III insurgencies, as the most relevant for the US today, not only as it counters ‘Islamic insurgencies’ but also for future insurgencies with similar traits. Finally, Type IV ‘global’ insurgencies – targeting the nation-state order itself – are few and far between.

12 At the time of writing, General Petraeus is head of the Central Intelligence Agency. He is seen as the chief architect of the present US counter-insurgency doctrine.

13 David Kilcullen’s *The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One*, Oxford University Press, Oxford, 2009, was listed as a *Washington Post* bestseller. For a discussion on counter-insurgency by Kilcullen, see ‘Interview with David Kilcullen’, in *International Review of the Red Cross*, Vol. 93, No. 883, September 2011, pp. 1–15. Counter-insurgency terminology is now even found in the popular British tabloid press: ‘It’s much easier getting shot at than gaining trust. . . we’re trying to correct 30 years of mayhem with words, not weapons’, Virginia Wheeler, ‘Sun joins “Mighty Munch” marines on hearts and minds mission’, in *The Sun*, available at: [http://www.thesun.co.uk/sol/homepage/news/campaigns/our\\_boys/3646913/Sun-joins-Marines-involved-in-the-most-advanced-counter-insurgency-strategy-in-HISTORY-in-Afghanistan.html](http://www.thesun.co.uk/sol/homepage/news/campaigns/our_boys/3646913/Sun-joins-Marines-involved-in-the-most-advanced-counter-insurgency-strategy-in-HISTORY-in-Afghanistan.html) (last visited December 2011). See also Chris Hughes, ‘Afghanistan: the battle for hearts and minds: beating the Taliban with a toy gun’, in *The Mirror*, available at: <http://www.mirror.co.uk/news/top-stories/2010/09/13/beating-the-taliban-with-a-toy-gun-115875-22557453/> (last visited December 2011).

14 Interview with General Sir Rupert Smith, in *International Review of the Red Cross*, Vol. 88, No. 864, December 2006, pp. 719 and 724.



Modern-day thinking on counter-insurgency reflects this population-centric approach when dealing with new threats in complex non-international armed conflicts.<sup>15</sup> As the US Center for Army Lessons Learned describes,

the higher goal of military and civil action is to win over the population, while killing the insurgents is a supporting or shaping effort. In other words, hostile individuals do not create hostile populations, rather, hostile populations will continue to create hostile leaders until the source of the hostility is alleviated.<sup>16</sup>

Thus, while counter-insurgency is warfare, it is not merely military, but also political, as the outcome of the operation is deemed by the military themselves to depend in large part on the strength of the relationship between ‘the people, the government, and the military’.<sup>17</sup>

In terms of specific strategies to gain the support of the local population, counter-insurgency planners have often resorted to either a ‘carrot-and-stick’ approach or a ‘winning hearts and minds’ strategy. In the former, military force is used to punish, while assistance and financial aid are used to reward those who do not back the insurgents. ‘Winning hearts and minds’ can overlap with a ‘carrot-and-stick’ strategy, though the focus is much more on seeking to gain the local population’s allegiance and support, ideally without resorting to force.<sup>18</sup> ‘Winning hearts and minds’ is seen as a race for people’s trust and confidence and convincing people that a better life lies ahead.<sup>19</sup>

A third strategy, whether complementary to the first two or as a standalone strategy, and particularly useful in context of failed or failing states, aims to introduce rule of law, develop the capacity of the domestic justice mechanisms, and implant good governance. In theory, grievances will be addressed through this newly transformed system rather than by turning to the insurgency.<sup>20</sup>

From a humanitarian perspective, it is the first two strategies that have proved more problematic, especially where short-term aid programmes and humanitarian assistance have been used to gain the loyalty of the local population. Such loyalty, for the military, can be crucial for operational success. This is particularly relevant immediately after combat operations. Sometimes tellingly referred to as ‘exploitation’, it is premised on the injection of humanitarian and economic assistance and establishment of a secure environment to gain the support of the local population.<sup>21</sup>

15 GB COIN, above note 2, p. 1.1.

16 Center for Army Lessons Learned (CALL), *PRT Playbook: Tactics, Techniques, and Procedures*, Handbook No. 07-34, September 2007, p. 1, available at: <http://usacac.army.mil/cac2/call/docs/07-34/07-34.pdf> (last visited December 2011).

17 GB COIN, above note 2, p. 1.1.

18 See RAND Report, above note 11, pp. 90–91.

19 See Peter Mansoor, ‘Army’, in T. Rid and T. Keaney, above note 5, p. 82.

20 See RAND Report, above note 11, pp. 92–93.

21 See D. Kilcullen, *The Accidental Guerrilla*, above note 13, p. 69.

## The blending of humanitarians and military

The US Army Field Manual 3-24 notes that, in counter-insurgency, an integrated military and civilian approach is required: 'Political, social, and economic programs are usually more valuable than conventional military operations in addressing the root causes of conflict and undermining an insurgency'.<sup>22</sup> Meeting the 'local populace's fundamental needs' rides in tandem with military action. As such, according to FM 3-24, 'COIN actors' include not only traditional military personnel but also individuals from a variety of backgrounds, from politicians and diplomats to local leaders and humanitarian workers.<sup>23</sup>

FM 3-24 recognizes that civilian entities such as intergovernmental organizations (IOs) and non-governmental organizations (NGOs) bring required expertise to complement that of the military.<sup>24</sup> For the drafters of FM 3-24, the focus should not be on who provides the assistance, but rather on ensuring that the identified social, political, and economic programmes are effectively implemented. In the absence of adequate civilian capacity, 'military forces fill the gap'.<sup>25</sup>

For counter-insurgency planners, humanitarian groups are seen to play critical roles in implementing the counter-insurgency effort, even if they are outside the control of the military or civilian governing agencies.<sup>26</sup> One author goes as far as to suggest that, because the local population must be convinced that it is better to support the legitimate government rather than the insurgents, humanitarian assistance is an essential element of the 'counterinsurgency toolkit'.<sup>27</sup> This could obviously lead to humanitarian actors being misused as part of the overall military strategy. The US Field Manual recognizes the difficulties in establishing formal relationships with NGOs and local organizations because of their differing goals and fundamental independence. It goes on to appreciate that in some situations it would even be impractical as well as undesirable to have direct interaction with some organizations, and that at best only general, contextual information-sharing can be achieved.<sup>28</sup>

Although the Manual notes that many NGOs do not want to be seen as associating with the military, it emphasizes that commanders in the field must develop trust-based complementary relationships with such organizations.<sup>29</sup> Commanders are expected to gain basic awareness of NGOs and their activities, and to encourage them to participate in planning for the delivery of essential services to the local populations. Commanders, when meeting with NGOs, are to 'help them understand mutual interests in achieving local security, stability, and relief objectives'.<sup>30</sup> NGOs are seen 'to play important roles in resolving

22 FM 3-24, above note 2, section 2.2.

23 *Ibid.*, sections 2.3 and 2.4.

24 *Ibid.*, section 2.8.

25 *Ibid.*, section 2.5.

26 *Ibid.*, section 2.16.

27 See P. Mansoor, above note 19, p. 82.

28 FM 3-24, section 2.12.

29 *Ibid.*, section 2.29.

30 *Ibid.*, Table 5-4, 'Considerations for developing the essential services LLO [logical line of operations]'.

insurgencies’;<sup>31</sup> they are present in conflict zones before the arrival and after the departure of the military, and can support lasting stability.<sup>32</sup>

Thus, the recent and current US counter-insurgency doctrine presupposes a mix of tools to defeat the insurgents. The military will first attack, after which operations will be aimed at holding, controlling, and sustaining the targeted environment. Civilian agencies, including IOs and NGOs are to be brought into the equation after the initial hostilities, in a bid to win the support of the local community. Although the respective mandates of all actors are to be respected, it is clear that the military remains in the director’s seat. Disconcertingly for humanitarians, the military has often been ready to usurp aid and relief programmes during the initial phases of the operations to gain access to the local population.

## The ‘militarization’ of humanitarian aid

The counter-insurgency in Afghanistan has challenged fundamental principles underpinning the provision of humanitarian assistance in conflict situations. In Afghanistan, many commanders saw humanitarian organizations as essential components of the counter-insurgency equation. Major General Michael Tucker, Deputy Chief of Staff for Operations of the International Security Assistance Force (ISAF) and Deputy Commander for Operations for US Forces Afghanistan, was quoted as saying: ‘Obviously, humanitarian aid is a key factor in any population-centric operation. . . . They both work hand in hand. One sets the condition for the other. And it’s absolutely essential to progress in counterinsurgency operations.’<sup>33</sup> Referring to aid workers, the New York Times cited a US colonel as saying: ‘Those are the guys who are going to win it for us . . . That’s how we’re really going to defeat the root causes . . .’.<sup>34</sup>

There is obviously a need for co-ordination and co-operation between the armed forces and humanitarian actors in conflict zones. Parties to an armed conflict may restrict access to certain areas for valid security reasons, as long as it is not to the overt detriment of the populations in need.<sup>35</sup> Humanitarian organizations will need to communicate with the military to ensure that it is safe for them to travel into

31 *Ibid.*, section 2.29. Listed as examples of NGOs are the ICRC, World Vision, Médecins sans Frontières, CARE, OXFAM, Save the Children, Mercy Corps, and Academy for Educational Development.

32 *Ibid.*

33 Kevin Baron, ‘Mixing fighting and food in Afghanistan’, in *Stars and Stripes*, 15 September 2009, available at: <http://www.stripes.com/news/mixing-fighting-and-food-in-afghanistan-1.94760> (last visited December 2011).

34 ‘Taliban raids widen in parts of Afghanistan’, in *New York Times*, 1 September 2003, available at: <http://www.nytimes.com/2003/09/01/world/taliban-raids-widen-in-parts-of-afghanistan.html?pagewanted=all&src=pm> (last visited December 2011).

35 For an overview of state obligations under IHL, see ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report prepared by the ICRC for the 31st International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 28 November–1 December 2011, Geneva, October 2011 (hereafter ICRC Challenges Report), pp. 23–26, available at: <http://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf> (last visited December 2011).

zones where there might be ongoing hostilities. The military may themselves be better placed to deliver much needed humanitarian assistance, especially in newly secured areas where aid agencies have yet to arrive. However, this co-operation should not be transformed into the control or co-opting of aid and humanitarian agencies by the parties to the armed conflict in a bid to advance military strategy. For many humanitarian organizations, any association – whether perceived or real – with military operations can create security risks for their personnel as well as for civilians.

As a matter of policy, for the Red Cross and Red Crescent Movement, the independence of humanitarian action should never be compromised: ‘Military force, policy and humanitarian action as an instrument for gaining peace is for the [Movement] not applicable. We strictly confine our focus towards our independent, humanitarian mission.’<sup>36</sup> Failure to adhere to this principle can jeopardize the impartiality and perception of impartiality of a humanitarian organization, thereby creating a security risk for workers and beneficiaries alike. The 2011 ICRC report on contemporary challenges to IHL noted that, where parties to an armed conflict perceive ‘humanitarian operations as instruments of military or political agendas’, access to the populations in need will be rendered more difficult, and the security of humanitarian workers will be ‘seriously jeopardized’.<sup>37</sup> The ICRC Director General likewise emphasized that ‘aid must be prioritized and allocated strictly on the basis of humanitarian needs, not on political, military or economic objectives’.<sup>38</sup>

Despite the many challenges posed by contemporary counter-insurgencies, where some of the parties to the conflict no longer see civilians as simple bystanders, and despite the pressures to ‘adapt’, the ICRC has consistently maintained its stance: ‘Old recipes for a new world? The ICRC thinks differently; it maintains a principled position in the face of challenge.’<sup>39</sup> For the ICRC, such a position is ‘the one that is most in accordance with its mandate and serves its humanitarian goals’, having taken into account the various views on the issue, presumably civilian and military.<sup>40</sup> Humanitarian action should not form part of military campaigns designed to win over hearts and minds, or be used as a ‘tool to promote or accompany armed changes of regime’.<sup>41</sup>

The ICRC is not alone in underscoring the risks of blending humanitarian assistance with military action. Médecins sans Frontières (MSF) cited as one of the main reasons for deterioration in independent humanitarian assistance the

36 Council of Delegates of the International Red Cross and Red Crescent Movement, Seoul, Republic of Korea, 16–18 November 2005, *Neutral and Independent Humanitarian Action*, Consolidated report of the Commissions, 18 November 2005, p. 3, available at: [http://www.icrc.org/eng/assets/files/other/cd2005\\_commissionsniha\\_consolreport\\_final\\_eng\\_22.11.pdf](http://www.icrc.org/eng/assets/files/other/cd2005_commissionsniha_consolreport_final_eng_22.11.pdf) (last visited December 2011).

37 ICRC Challenges Report, above note 35, p. 23.

38 Yves Daccord, ‘Protection of civilians: lessons from Libya and Ivory Coast’, editorial, 10 May 2011, available at: <http://www.icrc.org/eng/resources/documents/article/editorial/protection-civilians-article-2011-05-18.htm> (last visited December 2011).

39 Pierre Krähenbühl, ‘The ICRC’s approach to contemporary security challenges: a future for independent and neutral humanitarian action’, in *International Review of the Red Cross*, Vol. 86, No. 855, 2004, p. 510.

40 *Ibid.*, p. 513.

41 *Ibid.*, p. 512.

‘co-optation of the aid system’ by the international military coalition in Afghanistan. This co-optation made it difficult to distinguish between humanitarian aid efforts and military action.<sup>42</sup> In a very blunt assessment of counter-insurgency strategies in Afghanistan, MSF was very critical of organizations that had seemingly forsaken their neutrality to work alongside ISAF:

Peace and stability are no doubt noble objectives, but when aid organizations seek to transform a society by promoting the strategy of one of the belligerents in the midst of a war, they are no longer seen as impartial by all sides and subsequently lose the ability to access and provide assistance to all people in need. . . . Neutrality is often abandoned for a so-called ‘pragmatic’ approach by organizations hoping to participate in the integration of development and nation-building efforts.<sup>43</sup>

In April 2009, sixteen NGOs involved in humanitarian assistance in Afghanistan addressed a letter to NATO and the relevant heads of state, urging NATO troops clearly to distinguish military actions from humanitarian activities, as a means of protecting Afghan civilians and aid workers.<sup>44</sup> The NGOs (which included Action Contre la Faim (ACF), ActionAid, Care, Catholic Relief Services, Concern World Wide, Cordaid, the Danish Committee for Aid to Afghan Refugees (DACAAR), the International Rescue Committee, the Norwegian Refugee Council, Save the Children, War Child Holland, ZOA (Zuidooost-Azië)) underscored how important it was that

military forces should not use relief or development activities to attempt to win people’s hearts and minds for tactical, counter-insurgency or other military objectives, and that the military should refrain from relief activities when there are civilian actors capable of delivering assistance.<sup>45</sup>

As recently as August 2011, the International Crisis Group (ICG) reiterated this concern, concluding in its report on Afghanistan that the ‘militarization of aid is undermining humanitarian assistance’.<sup>46</sup>

The Provincial Reconstruction Teams (PRTs), combining civilian, diplomatic, military, and development agencies under military control in Afghanistan, were particularly criticized for jeopardizing the impartiality of humanitarian aid. Initially developed for Iraq, PRTs aim to stabilize and reconstruct the host nation

42 Michiel Hofman and Sophie Delaunay, ‘Afghanistan: a return to humanitarian action’, special report, Médecins sans Frontières, 11 March 2010, p. 2, available at: <http://www.doctorswithoutborders.org/publications/article.cfm?id=4311&cat=special-report> (last visited December 2011).

43 *Ibid.*, pp. 3 and 6.

44 See International Rescue Committee, ‘Aid groups urge NATO to separate military and humanitarian activities to protect civilians in Afghanistan’, available at: <http://www.rescue.org/news/aid-groups-urge-nato-separate-military-and-humanitarian-activities-protect-civilians-afghanista-4463>, and the letter itself, available at: [http://www.nrc.no/arch/\\_img/9390968.pdf](http://www.nrc.no/arch/_img/9390968.pdf) (both last visited December 2011).

45 *Ibid.*

46 International Crisis Group, *Aid and Conflict in Afghanistan*, Asia Report No. 210, 4 August 2011, p. 21, executive summary and recommendations available at: <http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/210-aid-and-conflict-in-afghanistan.aspx> (last visited December 2011).

through capacity-building. As the conflict was deemed by the military to have evolved from a phase of combat operations to one marked by stability operations and sustainable development, the military considered that they would scale back their activities and that civilian components would start focusing on social, economic, humanitarian, and rule of law programmes. In Afghanistan, the twenty-six PRTs were all connected to ISAF. PRTs were to be the 'softer-side' of counter-insurgency, and according to some informed observers became 'America's primary tool for using large-scale reconstruction to improve security in Afghanistan'.<sup>47</sup>

Even if, conceptually, the PRTs were to distinguish military from civilian endeavours, from the outset they were primarily militarily organizations because they were led by the military. They were strategic outposts predominantly staffed by the military and delivering aid and relief as part of the counter-insurgency. The first PRT, established in 2002 in Gardez, was co-located with US Special Forces, with army civil affairs interacting with locals and tribal leaders and the 82nd Airborne Division providing security.<sup>48</sup> There were very few civilian personnel, for obvious security reasons. 'PRTs do not conduct development for development's sake':<sup>49</sup> in other words, their objective is counter-insurgency driven, aimed at 'turning Afghans away from the insurgency and thereby creating a stable environment in which the Afghan government can exert its authority'.<sup>50</sup>

Some initial reports on PRTs suggested that they should be renamed 'Provincial Security Teams', as they were much better suited 'to security-related tasks than to delivering development assistance'. They were found to excel at providing, notably, 'a security presence' and also disarmament, demobilization, and de-mining services.<sup>51</sup> However, a 2011 report of the Feinstein International Center found that PRTs were consistently perceived negatively in various Afghan provinces.<sup>52</sup> Allegations of corruption and bias were often levelled at the PRTs and their disbursement of development assistance.<sup>53</sup>

The ICRC cited PRTs as an example of parties to the conflict making humanitarian action one of their tools in the conduct of their military campaigns.<sup>54</sup> Even though humanitarian organizations were not expected to work directly with PRTs, the very nature of the PRT activities risked creating a perception that the

47 Carter Malkasian and Gerald Meyerle, *Provincial Reconstruction Teams: How Do We Know They Work?*, United States Army War College, Strategic Studies Institute, March 2009, p. 1, available at: <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubid=911> (last visited December 2011).

48 U.S. Center for Army Lessons Learned, *Afghanistan: Provincial Reconstruction Team – Observations, Insights, and Lessons*, Handbook, No. 11–16, February 2011, Introduction, available at: <http://usacac.army.mil/cac2/call/docs/11-16/11-16.pdf> (last visited December 2011).

49 C. Malkasian and G. Meyerle, above note 47, p. 6.

50 *Ibid.*

51 Robert M. Perito, *The U.S. Experience with Provincial Reconstruction Teams in Afghanistan*, Special Report 152, United States Institute for Peace, October 2005, available at: <http://www.usip.org/files/resources/sr152.pdf> (last visited December 2011).

52 Stuart Gordon, *Winning Hearts and Minds? Examining the Relationship between Aid and Security in Afghanistan's Helmand Province*, April 2011, Feinstein International Center, Tufts University, available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_589.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_589.pdf) (last visited December 2011).

53 *Ibid.*

54 P. Krähenbühl, above note 39, p. 508.

delivery by whichever agency or organization of any short-term aid and relief was part of US and NATO military strategy. Though efforts were made in 2008 by the Afghanistan Civil Military Working Group, involving the United Nations Assistance Mission for Afghanistan (UNAMA), ISAF, and Operation Enduring Freedom (OEF), to reiterate and recognize the difference between the roles of humanitarian actors and the military, this was arguably too little too late.<sup>55</sup>

Once a perception of loss of neutrality has been created, it is very difficult to undo, not only with respect to the organization seen to be ‘co-operating’ but also arguably for the humanitarian community as a whole. According to the Humanitarian Policy Group, ‘a few years ago Afghan locals made distinctions between organizations, for instance between agencies that were working with the coalition force’s Provincial Reconstruction Teams and agencies that were not’.<sup>56</sup> However, since then, this distinction has apparently made way to an environment where ‘all Western-based international humanitarian organizations are judged as partisan’ and being part of a ‘Western agenda’, except for the ICRC, which, according to the authors, ‘seems to have effectively staked out a special identity and neutral space for its work’.<sup>57</sup>

Despite efforts by NGOs to minimize any such negative perception, the 2008 agreement signed by 100 NGOs and NATO’s ISAF to clearly distinguish civilian activities from the military’s actions against insurgents, supposedly went unnoticed by the Taliban: ‘We have no idea about these guidelines and were never part of the process which produced them, . . . We only respect truly neutral and independent aid organizations which do not work at the behest of American and Western forces.’<sup>58</sup> In a recent article published in the *Review*, it was explained that the ICRC faced major challenges in demonstrating its continued independence from coalition forces. It added that, although ultimately the ICRC was able steadily to increase its activities and reach into various regions of Afghanistan, this was a time-consuming process during which civilians were arguably deprived of essential humanitarian assistance.<sup>59</sup>

Making matters more complex for humanitarian agencies is the overlap between counter-insurgency and counter-terrorism. Recent restrictions imposed by counter-terrorism legislation have the potential to constrain activities of humanitarian actors still further. Legislation aimed at criminalizing any form of material support to terrorism, broadly interpreted by the US Supreme Court, is putting the

55 The United Nations’ mandate of helping coalition forces and the Afghan government reconstruct and develop Afghanistan has also been cited as a reason for UN agencies not being seen as independent and impartial. See Antonio Donini, ‘Between a rock and a hard place: integration or independence of humanitarian action?’, in *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 141–157.

56 Abby Stoddard, Adele Harmer, and Victoria DiDomenico, *Providing Aid in Insecure Environments: 2009, Update: Trends in Violence Against Aid Workers and the Operational Response*, Humanitarian Policy Group, HPG Policy Brief 34, April 2009, p. 6, available at: <http://www.odhpn.org/resources/docs/4243.pdf> (last visited December 2011).

57 *Ibid.*

58 K. Baron, above note 33.

59 Fiona Terry, ‘The International Committee of the Red Cross in Afghanistan: reasserting the neutrality of humanitarian action’, in *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 173–188.



control of aid delivery at the core of counter-terrorism strategies in Afghanistan and elsewhere.<sup>60</sup> A perverse effect of the tightening of the criteria and due diligence requirements imposed for funding is that those IOs and NGOs that are successful in obtaining funds run the risk of being perceived by insurgents as being extensions of the donor states' overall counter-insurgency strategy against them.<sup>61</sup>

While it is difficult to quantify this empirically, the loss of perception of neutrality can have serious security repercussions for humanitarian organizations. The ICRC has suggested a connection between certain attacks against the ICRC and the blending of humanitarian assistance and military action:

Over the past decade, deliberate attacks against humanitarian personnel have become commonplace. They are clearly illegal and unacceptable and must be condemned in the strongest terms. The rejection of humanitarians is, however, also the by-product of policies that integrate humanitarian aid into political and military strategies.<sup>62</sup>

Humanitarians are not the only ones targeted as a result of the aid being used to serve strategic goals; civilians also pay a high price. It has been suggested that insurgents have attacked villages that have accepted such aid, in retaliation for 'collaborating' with the enemy.<sup>63</sup> Even talking with US and NATO forces make local communities fearful of reprisals. During an exchange in the documentary *Armadillo* a local man explains to a Danish soldier that the soldiers 'come with all [their] weapons', then leave, while he and his village are 'staying here then the Taliban will come'. The local man explains that he cannot co-operate with the soldiers to provide information on Taliban in the area. The soldier notes that, 'If you do not co-operate we cannot secure the area and build you a school for your kids'. Still not persuaded the local man replies 'You have guns, they have guns, if I talk, they'll cut my throat'.<sup>64</sup>

All the above elements plead in favour of a clear distinction between humanitarian aid, on the one hand, and strategic objectives and military actions, notably as part of counter-insurgency operations, on the other, and of the separation of these two domains to preserve their specificities. As the Norwegian Refugee Council explained: 'Humanitarians also assist in "clear, hold and build" campaigns, as part of NATO's counter-insurgency strategy. Make no mistake: this is military,

60 Supreme Court of the United States, *Holder et al. v. Humanitarian Law Project et al.*, Decision of 21 June 2010, 561 U.S., 2010.

61 On this, see Sara Pantuliano et al., *Counter-terrorism and Humanitarian Action: Tensions, Impact and Ways Forward*, Humanitarian Policy Group, HPG Policy Brief 43, October 2011, available at: <http://www.odi.org.uk/resources/docs/7347.pdf> (last visited December 2011).

62 Pierre Krähenbühl, 'The militarization of aid and its perils', 22 February 2011, available at: <http://www.icrc.org/eng/resources/documents/article/editorial/humanitarians-danger-article-2011-02-01.htm> (last visited December 2011).

63 See Fiona Terry, above note 59, p. 175, 'Civilians have paid the highest price for this instrumentalization of aid: in retaliation for "collaborating" with the enemy, insurgents have attacked villages that have accepted such aid; and villages thought to be harbouring insurgents have been bombed or raided by NATO forces on the basis of intelligence collected while doling out the "good stuff".'

64 From the documentary *Armadillo*, following Danish ISAF troops deployed in Helmand Province, Afghanistan, in 2009.

not humanitarian action.’<sup>65</sup> Subjecting the humanitarian needs of a population to a strategy designed to defeat an opponent or enemy is, in the view of the ICRC Director of Operations, ‘incompatible with the fundamental principles that govern the ICRC operations’.<sup>66</sup>

## Does a ‘winning hearts and minds’ strategy clash with IHL principles?

International humanitarian law, notably the 1949 Geneva Conventions and their Additional Protocols of 1977, seeks to find equipoise between military necessity and humanitarian considerations. In a sense, IHL is a strict code of conduct for the warring factions, endorsed by states, with violations thereof requiring repression. It is also the one of the most important safeguards for persons not taking any part in the hostilities. It recognizes that they are outside of the fight, as such. The respect of IHL by the parties to the conflict allows for a perceptible semblance of humanity to remain in the midst of violent hostilities. Aid and humanitarian assistance enable the civilian population to survive the hardships of the conflict and, to the extent possible, to maintain dignity throughout.

In accordance with IHL, humanitarian assistance is to be given without adverse discrimination and in an impartial manner, to all of those in need, irrespective of any allegiance that they may have to either of the parties. As the International Court of Justice explained in the *Nicaragua* case:

An essential feature of truly humanitarian aid is that it is given ‘without discrimination’ of any kind. In the view of the Court, if the provision of ‘humanitarian assistance’ is to escape condemnation as an intervention in the internal affairs of Nicaragua, not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely ‘to prevent and alleviate human suffering’ and ‘to protect life and health and to ensure respect for the human being’; it must also, and above all, be given without discrimination to all in need in Nicaragua, not merely to the *contras* and their dependents.<sup>67</sup>

The armed forces are not specifically prohibited from aiding civilians. On the contrary, the presumption is that the parties to the conflict are primarily responsible for ensuring that humanitarian assistance reaches those in need. Where they are unable or unwilling to deliver the aid themselves, they are to allow aid and relief to be delivered by impartial humanitarian organizations, to reach those in need.<sup>68</sup> This

65 2010 ECHO Annual Partners conference, ECHO Conference Panel Intervention, Elisabeth Rasmusson, Secretary General of Norwegian Refugee Council, available at: [http://ec.europa.eu/echo/files/partners/humanitarian\\_aid/conferences/2010/Roundtable/NRC.pdf](http://ec.europa.eu/echo/files/partners/humanitarian_aid/conferences/2010/Roundtable/NRC.pdf) (last visited December 2011).

66 P. Krähenbühl, above note 39, p. 513.

67 International Court of Justice, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment of 27 June 1986, para. 243.

68 See Geneva Conventions I–III, Art. 9; Geneva Convention IV (GC IV), Arts. 10 and 59; Additional Protocol I (AP I), Art. 70; Additional Protocol II, Art. 18; ICRC Challenges Report, above note 35, p. 23.

is a corollary of the obligation of the parties to do their utmost to protect civilians from the effects of the hostilities.

While the Geneva Conventions and their Additional Protocols do not address all of the specifics of how the parties should ensure that aid reaches the civilian population, they do provide a general framework and some description of appropriate relief goods, and they underscore certain minimum actions that must be taken by the parties. The parties to the conflict can establish hospital and safety zones and localities, as well as neutralized zones where wounded soldiers and civilians can be sheltered from attack.<sup>69</sup> No military activities are to be carried out in these areas. Free passage of medical and hospital stores destined for civilians of another state, as well as objects for religious worship, is to be granted by a party to a conflict, even if the other state is the adversary.<sup>70</sup> There are a number of provisions relating to the delivery of relief in occupied and non-occupied territories, and on the importance of family contacts and reunification.<sup>71</sup>

In the context of non-international armed conflicts, where counter-insurgency prevails, there are far fewer provisions. Nonetheless Common Article 3 to the Geneva Conventions does speak of the delivery of aid and relief, and Article 18 of Additional Protocol II underscores that, where the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, parties to the conflict are to allow for relief supplies 'which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction'.

This demonstrates the central place devoted by IHL to the provision of impartial humanitarian assistance. If the armed forces themselves cannot provide the aid, humanitarian organizations are to be allowed to do so, without adverse discrimination. In other words, the beneficiaries of aid and relief are those who are in need and who are suffering because of the conflict, not those who might be strategically important in overcoming insurgents. To allow the latter criterion to be a determinant in how aid is distributed runs afoul of the purpose of IHL.

It is therefore understood that humanitarian organizations must not be 'affected by any political or military consideration'. They must be concerned with the 'condition of man', as human beings, 'regardless of his value as a military political, professional or other unit'.<sup>72</sup> Moreover, the actions of humanitarian organizations and aid societies must be impartial and may not themselves compromise military operations, for instance by using their privileged position to collect or transmit political or military information.<sup>73</sup>

69 GC IV, Arts. 14 and 15.

70 GC IV, Art. 23.

71 See generally GC IV, Arts. 59–62; AP I, Arts. 68–71.

72 Jean S. Pictet (ed.), *The Geneva Conventions of 12 August 1949: Commentary, (IV) Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, ICRC, Geneva, 1958, (hereafter *Commentary on GC IV*), Art. 10, pp. 96–97.

73 Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987 (hereafter *Commentary on AP I*), Article 81, paras. 3337–3338.

For the Red Cross and Red Crescent Movement, the need to maintain such neutrality and impartiality is particularly important in the context of a non-international armed conflict, which is fertile ground for counter-insurgency operations. On the one hand, there is the risk that the state on whose territory the conflict is occurring may feel that humanitarian organizations are encroaching in internal affairs. On the other, because states exert some *de facto* control over how and where aid is distributed, insurgents and the local populations might perceive humanitarian organizations as mere extensions of the states’ policy, as a tool of the invading forces.

Common Article 3 to the four Geneva Conventions specifically addresses the former concern by stipulating that any impartial humanitarian organization, such as the ICRC, can offer its services to deliver aid and assistance to those in need. This provision was expressly added to move away from the perception of an ‘offer of charitable services . . . as . . . an inadmissible attempt to interfere in the internal affairs of the State’ on whose territory the conflict was occurring.<sup>74</sup> The insertion of this clause gave legal footing to the offers of services by the ICRC and NGOs. It also sought to iterate that the provision of humanitarian aid is to be impartial and not driven by the politics of the conflict, aimed only at alleviating suffering.<sup>75</sup>

Through public statements and the elaboration of a code of conduct, humanitarian organizations have sought to minimize the risk of being perceived as part of the military toolkit. Thus the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief adopted in 1996 calls upon NGOs and other humanitarian actors to maintain high standards of independence, and to comply with IHL in times of armed conflict.<sup>76</sup> It recalls the obligation of members of the international community to provide humanitarian assistance ‘wherever it is needed’.<sup>77</sup>

In accordance with IHL, the giving of aid is not – and should not be viewed as – a ‘partisan or political act’, and it is to be calculated on the basis of ‘need alone’.<sup>78</sup> Humanitarian organizations are expected not to act as instruments of government foreign policy: the signatories to the Code of Conduct are to formulate their own independent policies, and to act in a strictly humanitarian manner and not ‘as instruments of foreign policy of donor governments’.<sup>79</sup> Coupled with pushback from the humanitarian community, and legitimate concerns about the risk of militarizing aid, there are already many reasons to advocate a rethink of how counter-insurgency and ‘hearts and minds’ are executed. It is clear: delivery of short-term humanitarian assistance must remain needs-based, and be provided

<sup>74</sup> *Commentary on GC IV*, above note 72, Common Article 3, p. 41.

<sup>75</sup> *Ibid.*

<sup>76</sup> The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, available at: <http://www.ifrc.org/en/publications-and-reports/code-of-conduct/> (last visited December 2011).

<sup>77</sup> *Ibid.*, para. 1.

<sup>78</sup> *Ibid.*, paras. 1 and 2.

<sup>79</sup> *Ibid.*, para. 4.

without adverse discrimination and not as part of military strategy. Yet this proposition might face some resistance from policy-makers and military strategists who believe that the use of aid to 'win hearts and minds' is indispensable if counter-insurgency is to work in Afghanistan and elsewhere. Reconsideration of this approach might be warranted, however, as early indicators seem to suggest that, in practice, 'winning hearts and minds' has not worked as a strategy in Iraq and Afghanistan.

## Does humanitarian assistance 'win hearts and minds'?

As described above, counter-insurgency promoters in Afghanistan reasoned that hearts and minds would be won by blending civilian and military, and by allowing short-term humanitarian assistance to be part of military operations: this implicitly rejects the notion of a true neutral independent humanitarian space in conflicts.<sup>80</sup> If there was at least some evidence that in Afghanistan and Iraq the militarization of aid decreased violence, that access to those in need was facilitated, and that ultimately the civilian population endured less suffering and inhumanity, then it might have to be conceded in part that co-optation of humanitarian assistance by the military is not necessarily all bad news, notwithstanding the pushback from the humanitarian community and the obvious undercutting of certain fundamental IHL principles. The groundswell argument would be that new warfare and new enemies require different approaches from those contemplated after World War II.

However, to date, findings produced by recent research seem to be pointing the other way: the 'winning of hearts and minds' through the provision of short-term aid and relief has not, in fact, been a wholesale success in countering insurgents nor demonstrably beneficial to the civilian population.

## Militarization of aid is not 'winning hearts and minds'

The main focus of counter-insurgency is to modify the environment in such a way as to deprive the insurgents of the support of the local population. A crucial component for success is ensuring that any negative perceptions on the part of the local government are undone. To do so requires creating the necessary conditions in terms of security, development, rule of law, and good governance. For US and NATO forces engaged in Afghanistan, the aim ultimately should be to bring stability and security to communities, thereby undermining insurgents. Their actions should not simply be about legitimizing their role and presence in a foreign land.<sup>81</sup> Operationally, the litmus test is therefore whether the provision by the

80 Humanitarian space is understood to be the space needed for relief and humanitarian agencies to be able to operate effectively in conflict situations. However, there is no commonly agreed definition of the term.

81 See, for instance, views attributed to British General Sir Gerald Templar in the 'Report on Wilton Park Conference 1022: winning "hearts and minds" in Afghanistan: assessing the effectiveness of development aid in COIN operations', 11–14 March 2010, p. 6, available at: <http://www.eisf.eu/resources/library/1004WPCReport.pdf> (last visited December 2011).

military of aid and assistance, whether in the short, medium, or long term, has succeeded in contributing to this objective.

Admittedly, it may be both empirically difficult and possibly premature to draw any concrete conclusions from the ‘long war’ in Afghanistan. However, there is a small but growing body of research tending to suggest that, writ large, development initiatives and improvement of economic situations have partially improved the security situation and increased support for the local government, thereby seemingly vindicating a counter-insurgency ‘hearts and minds’ approach. But any success has been tempered, both in terms of effectiveness and duration, especially if delivered by the international forces.

One study on the economics of counter-insurgency in Iraq hints at a correlation between increased spending on aid and development programmes and a decrease in violence. It also notes that this may have coincided with the 2007 surge in US troop strength.<sup>82</sup> Another study on Afghanistan concluded that there was an obvious link between improved economic situations and attitude towards the Afghan government.<sup>83</sup> However, the authors found that this did not observably translate into improvements in security. Interestingly, programmes that were seen to have a significant positive effect on both the ‘perception of economic wellbeing’ and ‘attitudes of the civilian population toward the central and local government’, and NGOs, were those provided by the Afghan government and not by the international forces.<sup>84</sup> Such findings are not too dissimilar to the suggestion of T. E. Lawrence, nearly a century ago, that it is better to leave the local authorities to take charge:

Do not try to do too much with your own hands. Better the Arabs do it tolerably than that you do it perfectly. It is their war, and you are to help them, not to win it for them. Actually, also, under the very odd conditions of Arabia, your practical work will not be as good as, perhaps, you think it is.<sup>85</sup>

Despite the moderate successes of medium- to long-term aid and development programmes, in reviewing the limited research available, there is little, if any, evidence that short-term humanitarian assistance initiatives, when implemented by the international forces, have benefitted the overall counter-insurgency strategy, especially in Afghanistan. This is despite coalition policy-makers and the military having identified the winning of hearts and minds as a lynchpin of counter-insurgency operations in Afghanistan, and the immense efforts since 2008 to turn the local population away from the insurgency. A number of factors have been advanced for these apparent failings: the coalition strategy focused on acceptance of ISAF forces rather than on generating support for the government; the

82 Elin Berman, Jacob N. Shapiro, and Joseph H. Felder, ‘Can hearts and minds be bought? The economics of counterinsurgency in Iraq’, in *Journal of Political Economy*, Vol. 119, No. 4, August 2011, pp. 766–819.

83 Andrew Beath, Fotini Christia, and Ruben Enikolopov, ‘Winning hearts and minds? Evidence from a field experiment in Afghanistan’, MIT Political Science Working Paper No. 2011-14, pp. 2–3, 20, available at: [http://www.humansecuritygateway.com/documents/MIT\\_WinningHeartsandMinds.pdf](http://www.humansecuritygateway.com/documents/MIT_WinningHeartsandMinds.pdf) (last visited December 2011).

84 *Ibid.*, pp. 11 and 20.

85 T. E. Lawrence, ‘The 27 articles of T.E. Lawrence’, in *Arab Bulletin*, 20 August 1917, available at: [http://www.lib.byu.edu/index.php/The\\_27\\_Articles\\_of\\_T.E.\\_Lawrence](http://www.lib.byu.edu/index.php/The_27_Articles_of_T.E._Lawrence) (last visited December 2011).

use of force by the military cannot be reconciled with winning hearts and minds; trying to win hearts and minds can actually breed contempt and insecurity.

Although exact figures are difficult to find, millions of US dollars have been spent on short-term, quick-impact, consent-winning initiatives in Afghanistan to undermine the insurgency.<sup>86</sup> Of course, the provision of humanitarian assistance by the military through such projects as part of a counter-insurgency strategy, in many cases well intentioned, can provide some short-term benefits *in situ* for the military and engender the gratitude of the beneficiary population. Indeed, a 2012 report issued by the Feinstein International Center examining the relationship between aid and security in five provinces in Afghanistan noted that it had been reported by military officials that, 'in some areas, military-administered aid projects may have had short-term security benefits, at least in the limited sense of force protection'.<sup>87</sup> On the subject of force protection benefits, a civilian-military co-operation (CIMIC) officer was quoted as saying: 'in the short-term, this avoids people throwing rocks at patrols, so that NGOs can operate, and in turn help with long-term security'.<sup>88</sup> The same study noted that, in two other provinces, the military felt that such projects saved lives because the local community was more willing to provide information on improvised explosive devices (IEDs), and the military gained better access to villages.<sup>89</sup>

However, while military-administered aid projects might help at a tactical level by allowing the international forces some interaction with the local community, to gather 'atmospherics and intelligence', they have little long-term overall strategic effect.<sup>90</sup> As Kilcullen explained with blunt rationale: 'In a counterinsurgency, the gratitude effect will last until the sun goes down and the insurgents show up and say, "You're on our side, aren't you? Otherwise, we're going to kill you"'.<sup>91</sup>

Moreover, other early research has shown that in counter-insurgency operations, such as in Afghanistan and Iraq, short-term incentives and concessions do not necessarily go hand in hand with a long-term transformation strategy aimed at putting in place sustainable and durable judicial mechanisms and good governance.<sup>92</sup> This is particular true for powers such the United States and NATO fighting on foreign soil. Not only do they have to overcome negative perceptions as invading forces, but they must also strive to strengthen good domestic governance. In contexts such as Afghanistan, the RAND Institute concludes that provision of

86 According to the Feinstein Center nearly 2.64 billion US dollars were channelled through the Commanders Emergency Response Program for the Provincial Reconstruction Teams alone. See Paul Fishstein and Andrew Wilder, *Winning Hearts and Minds? Examining the Relationship between Aid and Security in Afghanistan's Helmand Province*, January 2012, Feinstein International Center, Tufts University, p. 6, available at: <http://sites.tufts.edu/feinstein/files/2012/01/WinningHearts-Final.pdf>.

87 *Ibid.*, p. 54.

88 *Ibid.*

89 *Ibid.*

90 'Report on Wilton Park Conference 1022', above note 81, p. 2.

91 Quoted in George Packer, 'Knowing the enemy: can social scientists redefine the "war on terror"?', in *New Yorker Magazine*, 18 December 2006, available at: [http://www.newyorker.com/archive/2006/12/18/061218fa\\_fact2?currentPage=all](http://www.newyorker.com/archive/2006/12/18/061218fa_fact2?currentPage=all) (last visited December 2011).

92 RAND Report, above note 11, p. 94.



assistance by the US might have short-term benefits for the safety of US forces, but that it ‘does very little to boost popular allegiance to the host nation. Indeed, when the host-nation government is performing poorly in comparison, U.S. assistance may actually discredit the indigenous government.’<sup>93</sup>

As an example of problematic areas, a 2011 report by the Feinstein International Center cited Quick Impact Projects (QIPs) used by UK forces and the PRT in Helmand Province in 2008. QIPs were integrated into the ‘Consent Winning Approach’ whereby assistance projects were ‘assumed capable of “buying” Afghan loyalty’.<sup>94</sup> Projects included hospitality, goodwill payments, and small-scale, rapidly implemented construction. The report found that these projects failed because they were in part ‘underpinned by unrealistic optimistic expectations’.<sup>95</sup> A combination of incoherence by the PRT, lack of local ownership of the projects, and corruption of local officers meant that the intended objective of consent generation was not met and at times even undermined any positive effects that QIPs could have.<sup>96</sup>

In its follow-up 2012 report that considered aid and security and ‘hearts and minds’ in five Afghan provinces, the Feinstein International Center made comparable findings about corruption and inequitable distribution of aid. The report noted that the local communities also felt that large-scale, visible, infrastructure projects were preferable to small-scale projects that did nothing for the development of Afghanistan. The larger projects had the potential to create jobs and boost the local economy, thereby strengthening security.<sup>97</sup> Similarly, in its report on aid and conflict in Afghanistan, the ICG felt that any chance of success and long-term stability required institution-building and improving ‘jobs, human security, justice and governance’. For the ICG, the tying of aid to counter-insurgency objectives had ‘skewed how aid is perceived and the conditions under which it is delivered’.<sup>98</sup>

## ‘Winning hearts and minds’ in Afghanistan: more harm than good?

For some commentators, including a US Army colonel, ‘winning hearts and minds provides the wrong focus’ for US counter-insurgency efforts in Afghanistan: if the ‘goal is to leave Afghanistan’, the US forces need only ‘maintain good relations with the people’ and create for the local population a sense of ‘hope’ in the future and ‘faith’ in the ability of the Afghan authorities. It is for the Afghan authorities to win hearts and minds.<sup>99</sup>

93 *Ibid.*, p. 92.

94 S. Gordon, above note 52, p. 42.

95 *Ibid.*

96 *Ibid.*, pp. 42–43.

97 P. Fishstein and A. Wilder, above note 86, pp. 42–51.

98 International Crisis Group, above note 46, VI Conclusion.

99 Colonel John M. Spitzer, ‘Counterinsurgency in Afghanistan: lessons learned by a brigade combat team’, in *Military Review*, January–February 2011, pp. 73–74, available at: [http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview\\_20110228\\_art012.pdf](http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20110228_art012.pdf) (last visited December 2011).

Despite this criticism, counter-insurgency strategists may feel that any positive feedback and co-operation from the local population, however slight and meagre, is better than nothing. And if there is some benefit to be gained, they might add, the military should persevere with 'humanitarian', consent-winning programmes. This could, however, come at a cost. If the focus of counter-insurgency is to create support for the local government and a secure and economically viable environment, should one persist with militarized short-term humanitarian assistance programmes that do not match up with these overall objectives?

Another question that military planners need to ask is whether soldiers can ever in practice win the hearts and minds of an unfriendly and less than receptive local population. One of the appendices in the US Army's 'Tactics in Counterinsurgency' itself highlights this tension in the role of the military in winning hearts and minds as part of counter-insurgency:

Once you have settled into your sector, your key task is to build trusted networks. This is the true meaning of the phrase hearts and minds, which comprises two separate components. Hearts means persuading people their best interests are served by your success; minds means convincing them that you can protect them, and that resisting you is pointless. *Note that neither concept has anything to do with whether people like you.*<sup>100</sup>

Equally, the documentary *Restrepo* in many ways encapsulates the challenge of winning the hearts and minds of a local population in a particular hostile environment, the Korengal valley in Afghanistan. With active hostilities still ongoing, and force still needed to overcome insurgents, can soldiers be expected to implement a 'winning hearts and minds' strategy effectively?<sup>101</sup> In the documentary, one of the officers explains, following a weekly *shura*, how the attempts of US forces to gain the confidence of the local population are hamstrung in the face of civilians casualties caused by their own kinetic actions. Elsewhere in the film, a radio conversation between two soldiers reveals a glimpse into their feelings about 'hearts and minds'. As one soldier mentions the strategy, the other replies: 'Yeah, we'll take their hearts and we'll take their minds.'<sup>102</sup>

More poignantly, elsewhere in the film, another soldier explains that the 'hearts and minds thing is not working'. Noting that, as infantrymen, they are not well trained to implement 'hearts and minds', he adds:

This whole going there and act like a friend thing doesn't work... especially when you've the Afghani we've caught putting the roadside bomb, the IED, just spitting at us and calling us infidels and stuff... Hearts and minds is out of the

100 U.S. Department of the Army, 'Tactics in Counterinsurgency', FM 3-24.2, April 2009, Appendix C: 'Twenty-eight articles: fundamentals of company-level counterinsurgency', p. C-4, point 13, emphasis added.

101 Sebastian Junger and Tim Hetherington (dir.), *Restrepo*. See <http://restrepthemovie.com/> (last visited December 2011).

102 *Ibid.*

window when you see the guy shooting at you and he puts his wife and kids . . . knowing well that we won’t shoot back . . . or the guy that comes, shakes our hands, takes the ten bags of rice we give him for his family and the school supplies and the coats, immediately walks up the mountain and shoots an RPG at us, walks back down and smiles the next morning when he’s walking his goats. F\*\*k his heart, f\*\*k his mind.<sup>103</sup>

The film highlights that neither the local population nor the military seem to be convinced that a ‘hearts and minds’ strategy can work. For the local population, it remains a question of trust and not quite understanding how the US forces can feed with one arm yet kill with the other. For the soldier, there is obvious frustration and some cynicism about their dual role in the counter-insurgency.

Besides the practical challenges, what should be more worrisome for those who firmly believe that winning of hearts and minds can work are recent indicators that the provision of aid in general as part of a counter-insurgency strategy may actually be driving insecurity and have a destabilizing influence. Pointers in the 2012 Feinstein report suggested that aid projects might be causing ‘tensions and conflicts’ because they were ‘perceived to reinforce inequalities and create winners and losers’.<sup>104</sup> The report noted that, while some regions might be incentivized to make an area secure to attract aid projects, others might actually be creating problems to prevent monitoring of existing projects. Of greater concern for counter-insurgency operators should be the comments of respondents in the report that a good strategy for attracting aid projects ‘would be to create a little noise to suggest that insurgents were operating in the area and that a little “hearts and minds” activity was needed’.<sup>105</sup> International aid officers were also quoted as claiming that some communities were using the ‘mantra of “bring us development”’ as a threat.<sup>106</sup> While the relevant parts of the report did not distinguish between short-term consent-winning projects and medium- and long-term development programmes, these findings should nonetheless be heeded where aid is being used by the military and policy-makers to gain the gratitude and acceptance of local communities.

Whereas the findings derived from the initial research are by no means exhaustive and will certainly merit further complement as coalition forces disengage from Afghanistan, there seems to be little observable evidence to conclude that short-term aid and humanitarian assistance projects driven by the US and its allies have made a significant contribution to stability in Afghanistan. Instead, there is a growing body of work indicating that aid and development projects as part of a counter-insurgency strategy are seen as ineffectual, and might even be counter-productive to the overall strategy.

Notwithstanding, counter-insurgency operators might argue that in the absence of further empirical data, the short-term security and intelligence benefits to

103 *Ibid.*, and specific clip of Specialist Kyle Steiner on ‘hearts and minds’, available at: <http://www.youtube.com/watch?v=ik9dVd5IutM> (last visited December 2011).

104 P. Fishstein and A. Wilder, above note 86, p. 61.

105 *Ibid.*, p. 64.

106 *Ibid.*

the troops on the ground still outweigh the lack of overall stabilizing contributions, and that, as such, the co-opting of humanitarian aid is still viable as part of their overall counter-insurgency strategy. Maintaining this approach would certainly perpetuate the tensions with the humanitarian community, as well as give rise to continued conflict with the fundamental principles of international humanitarian law. Is it really worth it, and should there not be a serious re-evaluation of the costs and benefits of militarizing aid in counter-insurgency as the military and policy-makers develop doctrine and strategy for future conflicts?

## A future for counter-insurgency?

Predicting conflict trends is beyond the scope of this article, though it would seem that counter-insurgency-driven conflicts in the Afghanistan mould are likely to diminish over the next few decades. Indeed, strategic thinking of the US and other major military powers tends to suggest that conventional all-out wars are on the wane and that, in their place, expeditionary wars among local populations, with some counter-insurgency operations, are likely to prevail in the foreseeable future.<sup>107</sup>

The US Department of Defense predicts a 'complex and uncertain security landscape in which the pace of change continues to accelerate'.<sup>108</sup> This will be accompanied by 'the rise of new powers, the growing influence of non-state actors, the spread of weapons of mass destruction and other destructive enabling technologies, and a series of enduring and emerging trends' creating major challenges to future international orders.<sup>109</sup> Similarly, the UK government, in its 2010 National Security Review, painted a complex future landscape:

State-on-state conflict will not disappear, but its character is already changing. Asymmetric tactics such as economic, cyber and proxy actions instead of direct military confrontation will play an increasing part, as both state and non-state adversaries seek an edge over those who overmatch them in conventional military capability.<sup>110</sup>

107 See Thomas Rid and Thomas Keaney, 'Counterinsurgency in context', in T. Rid and T. Keaney, above note 5, pp. 255–260.

108 US Department of Defense, *Quadrennial Defense Review Report*, February 2010, p. 5, available at: <http://www.defense.gov/qdr/> (last visited December 2011).

109 *Ibid.*

110 UK Government, *Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review*, October 2010, p. 16, available at: [http://www.direct.gov.uk/prod\\_consum\\_dg/groups/dg\\_digitalassets/@dg/@en/documents/digitalasset/dg\\_191634.pdf](http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_191634.pdf) (last visited December 2011). The UK is also looking to prevention and civilian action rather than military intervention in future conflicts and zones of instability: 'to help bring enduring stability to such countries, we [the UK] will increase significantly our support to conflict prevention and poverty reduction. We will deliver this support through an integrated approach that brings together our diplomatic, development, defence and intelligence resources' (*ibid.*, p. 44).

In its 2011 report on contemporary challenges to IHL, the ICRC likewise noted the predominance of non-international armed conflicts, marked by a blurring between ideological and non-ideological confrontations and longer duration.<sup>111</sup>

Regarding the specific issues of counter-insurgency and counter-terrorism, the US does not see them as ‘transitory or anomalous phenomenon[a] in the security landscape’.<sup>112</sup> Instead the Department of Defense speaks of an ‘indefinite future’ where ‘violent extremist groups, with or without state sponsorship, will continue to foment instability and challenge U.S. and allied interests’.<sup>113</sup> However the Department falls short of embracing counter-insurgency to deal with these threats. A reluctance to do so expressly is understandable, if, as Kilcullen predicts, the fight against ‘Al Qaeda’ will be a protracted, multigenerational conflict, possibly lasting between 50 and 100 years, with peaks and troughs in the level of violence during this period.<sup>114</sup>

It would appear, therefore, that the road ahead is not to be paved with counter-insurgencies implicating a large military presence on the ground, as witnessed in Afghanistan and Iraq. This position finds particular support given the apparent temporal indefiniteness of conflicts against radicalized insurgents, and the recent limited success of counter-insurgency. According to the RAND Institute, ‘there is no empirical basis for expecting successful COIN in conjunction with large-scale foreign military intervention. If anything, there is a negative correlation between large-scale foreign military intervention and successful COIN’.<sup>115</sup> It adds that ‘at best, large-scale foreign military involvement is generally unproductive; at worst, it is counterproductive’ in counter-insurgency contexts.<sup>116</sup> Kilcullen argues that, in the future, large-scale, unilateral military interventions in the Islamic world should be avoided.<sup>117</sup>

As such, and based on lessons learned from counter-insurgency in Iraq and Afghanistan, but also on the counter-insurgency experiences of the US, UK, and France elsewhere, it is slowly being recognized that more ‘civilian’ and less military involvement is going to be required to counter insurgents, especially in situations where a local insurgency is receiving external support. There is therefore also a growing consensus that the role of the armed forces should be primarily reserved for their traditional coercive functions. Moreover, budget cuts are likely to affect the US and UK military, requiring streamlining and retrenching of defence capabilities. Jeh Johnson, General Counsel for the US Department of Defense, confirmed this structural change and the realities of economic constraints:

we [the US] have in these times of fiscal austerity, embarked upon a plan to transform the military to a more agile, flexible, rapidly deployable and

111 ICRC Challenges Report, above note 35, pp. 5–6.

112 US Department of Defense, above note 108, p. 20.

113 *Ibid.*

114 D. Kilcullen, *The Accidental Guerilla*, above note 13, p. 284.

115 RAND Report, above note 11, p. 243.

116 *Ibid.*, p. 244.

117 D. Kilcullen, *The Accidental Guerilla*, above note 13, p. 269.

technologically advanced force, that involves reducing the size of the active duty Army and Marine Corps, and the defense budget by \$487 billion over 10 years.<sup>118</sup>

Operationally, the military will consequently have to be more selective in nature, preferring 'direct action against high-value targets in remote or populated areas; clandestine operations; precision strike' over indefinite 'hearts and minds' operations.<sup>119</sup>

In the stead of large military interventions, Kilcullen suggests less intrusive and more indirect interventions built on partnerships with local authorities, security services, and civil society leaders as the better *modus operandi*. In his view, preference should be given to civilian agencies over military forces, and to local nationals over international forces.<sup>120</sup> The RAND Institute makes similar recommendations, calling for the developing of complete and balanced capabilities for counter-insurgency, with an increased deployment of civilian agencies and a focus on local security capacity-building.<sup>121</sup> With the military drawdown in future counter-insurgencies, it has been recommended that the focus of on-the-ground civilian agencies should be on building the capacity of the local government, making it inclusive and responsive to address substantively the needs of the people.<sup>122</sup>

For the US and the UK in particular, a greater focus will be on prevention, by addressing the socio-economic causes of instability to lessen any risk of conflict erupting. Where the military is called upon to act, the vision for future military interventions in third countries seems then to be one of rapid incursions in hostile zones, with greater reliance on local forces and on unmanned automated vehicles, such as drones. Counter-insurgency-driven operations involving the military will continue, though in all likelihood in a modified and much more limited manner. The military will be called upon to revert to its traditional role of neutralizing the 'enemy' through the use of force, and be relieved of the 'hearts and minds' role that they were bequeathed in Afghanistan and Iraq.

If this model proves to be the way forward, there will hopefully be less manipulation of the delivery of humanitarian aid to achieve military objectives. In

118 Dean's Lecture at Yale Law School, 'National security law, lawyers and lawyering in the Obama Administration', by Jeh Charles Johnson, General Counsel of the Department of Defense, 22 February 2012, available at: <http://www.cfr.org/national-security-and-defense/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448> (last visited December 2011).

119 RAND Report, above note 11, p. xviii.

120 D. Kilcullen, *The Accidental Guerilla*, above note 13, p. 283. He also underscores that any military assistance should be aimed at dealing with poor governance, lack of development, and institutional corruption, all of which provide leverage for insurgents. Only through 'full-spectrum' co-operation with aid agencies, charities, educators, and departments of foreign affairs and states can this be achieved (*ibid.*, p. 289).

121 RAND Report, above note 11, pp. 83–84, 351–353. Note that comparable approaches have been proposed by some authors for the Somali conflict. Constructive disengagement and earned engagement are just two theories being advanced, each premised on civilian rather than military, and local over international, solutions. See Bronwyn Bruton and J. Peter Pham, 'How to end the stalemate in Somalia', in *Foreign Affairs*, 30 September 2011, available at: <http://www.foreignaffairs.com/articles/68315/bronwyn-bruton-and-j-peter-pham/how-to-end-the-stalemate-in-somalia> (last visited December 2011).

122 *Ibid.*, pp. 363–365.

turn, all being well, this will allow for neutral independent humanitarian space to be maintained, with the distribution of aid and relief being determined on the basis of needs and not as an integral part of military strategy.

## Conclusion

If counter-insurgency is here to stay, in whatever shape or form, then, as US and coalition forces wind down their operations in Afghanistan, it will be interesting to see what lessons can be learned from the experiences of blending humanitarian and military activities as part of counter-insurgency operations. Research and practice has shown that counter-insurgency operations are continuously expected to adapt to best meet the challenges posed by insurgents. It also appears that a strategy built on ‘winning hearts and minds’, with humanitarian assistance being part of the toolkit, does not necessarily benefit the overall military goal. At best it may gain the short-term gratitude of the local community, which is quickly dissipated; at worst it could be strategically counter-productive.

From a humanitarian perspective, it is hoped that planners of future counter-insurgency military engagements will be fully mindful of the risks associated with using humanitarian assistance as part of the overall military strategy to win over hearts and minds. The serious concerns voiced by humanitarian agencies should be heeded from both a legal and a practical viewpoint. The blending of aid work with military goals can put at risk humanitarian actors, who, in the eyes of insurgents are seen to be in cahoots with the ‘invading’ foreign military powers. If humanitarian actors are unable to function effectively in regions desperate for relief, the suffering of civilians in need of aid will be accentuated, in turn potentially fuelling more instability. As the ICRC Director of Operations explained:

Given the stakes, I believe it is essential that political and military decision makers seriously confront the far reaching consequences of making humanitarian aid an integral part of counter-insurgency operations. Humanitarian organizations for their part must debate the consequences of their choices in a more self-critical and honest fashion and genuinely decide how they wish to operate. Failure to do so will continue to weaken the security of humanitarian workers and, more significantly, further isolate and endanger the victims of armed conflict.<sup>123</sup>

Without a separation of humanitarian assistance from military strategy in complex conflict situations, humanitarian organizations will continue to run the risk of being perceived by insurgents and even the local population as not being impartial and neutral, and serving the cause of the counter-insurgents. Although in Afghanistan many humanitarian organizations have been able to regain credibility and carve out a much-needed humanitarian space, it has been a time-consuming and obstacle-ridden process. As the experiences have shown, once the negative perception is

123 P. Krähenbühl, above note 62.



created it is very difficult to undo, often to the detriment of the population in need of aid.

For policy-makers and military strategists, the challenge will be to incorporate these lessons as they develop effective counter-insurgency operations strategies for future conflicts. For a variety of reason, it is clear that the co-opting of humanitarian assistance to win over hearts and minds is fraught with controversy and risks, and very possibly ineffectual as a counter-insurgency strategy.



# The use of force to protect civilians and humanitarian action: the case of Libya and beyond

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## Abstract

*The Libyan crisis of 2011 has again raised the crucial problem of the choice of means in protecting civilians. Authorized by the international community as part of military operations in Libya, the use of force in protecting civilians has revived the concept of 'humanitarian war' and has raised a number of issues for humanitarian organizations, in particular concerning the notion of neutral, impartial, and independent humanitarian action.<sup>1</sup> The article focuses on these humanitarian issues and, inter alia, on the possible impact on humanitarian action of the concept of the Responsibility to Protect (R2P), which was at the basis of the intervention in Libya.*

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After street pressure had toppled the governments of neighbouring countries, a popular uprising also took place in Libya. The first demonstrations demanding Muammar al-Gaddafi's departure took place in the city of Benghazi on 15 February

\* Bruno Pommier has written a book on humanitarian action, published in June 2009 by Presses Universitaires de France. This article was written in a personal capacity and does not necessarily reflect the views of the International Committee of the Red Cross (ICRC).

2011 and were severely repressed. This was the beginning of the escalation of violence leading to the adoption of two resolutions of the United Nations (UN) Security Council and a military intervention of foreign forces in Libya to ‘protect the civilian population’.

On 17 March 2011, the Security Council adopted Resolution 1973 authorizing the use of force in Libya.<sup>2</sup> While Germany, Brazil, China, India, and Russia abstained, the resolution drafted by France and the United Kingdom and co-sponsored by Lebanon and the United States received ten favourable votes out of fifteen (South Africa, Bosnia and Herzegovina, Colombia, France, Gabon, Lebanon, Nigeria, Portugal, the United Kingdom, and the United States).

Focusing on protecting the civilian population, Resolution 1973 called for an immediate cease-fire and the complete cessation of violence against civilians. It authorized Member States to take all necessary measures to protect civilians under Chapter VII of the UN Charter, while excluding any form of occupation of Libyan territory.<sup>3</sup> In addition, it allowed Member States to take all measures required to implement the flight ban over Libyan airspace (the ‘No-Fly Zone’). Finally, the text strengthened the arms embargo, banning flights of Libyan airlines and freezing Libyan financial assets such as those already defined in Resolution 1970 of 26 February 2011. Implicitly underlying this call for the protection of civilians was the concept of the Responsibility to Protect (R2P), although the R2P concept was not always explicitly raised in the debates leading to the adoption of the resolutions.

Written a few months after the end of military operations undertaken following the adoption of Resolution 1973, this article aims to identify some of the lessons that can be drawn from the Libyan crisis, particularly in regard to the effects on humanitarian action and to discourse on the use of the notion of civilian protection. The article also initiates an examination of issues of importance to humanitarian actors attached to a neutral, independent, and impartial action. Far from any moral stance counterposing the actions of political and humanitarian actors, the essential intention is to highlight the care needed in the use of the concepts ‘humanitarian action’ and ‘protection of civilians’, whose meanings and implementations can sometimes be fundamentally different.

In the first section, we unpack the meaning of R2P and place it in the context of armed intervention in Libya. We then address a series of topics with political or operational importance for humanitarian actors, including the value and usefulness of the principles of impartiality, neutrality, and independence.

1 A much debated and controversial notion, in particular during the Kosovo war. This use of the term ‘humanitarian’ to qualify and even justify the use of armed force is of great concern to many humanitarian actors who base their actions on agreement between parties. On this topic, see Cornelio Sommaruga (the former ICRC President), ‘Il n’y a pas de “guerre humanitaire”’, paper given at ‘Le droit international humanitaire au seuil du troisième millénaire: bilan et perspectives’ conference, 30 October 1999, Geneva, available at: [http://www.horizons-et-debats.ch/9\\_10/cicr/pas%20de%20guerre%20humanitaire.htm](http://www.horizons-et-debats.ch/9_10/cicr/pas%20de%20guerre%20humanitaire.htm) (last visited October 2011).

2 See UNSC Res. 1973, 17 March 2011.

3 Chapter VII of the UN Charter (arts 39–51), entitled ‘Action with respect to threats to the peace, breaches of the peace, and acts of aggression’, is the chapter authorizing the use of force.

Finally, we explore the different options for future use of armed force in protection of civilians.

## **The Responsibility to Protect (R2P), the protection of civilians, and Resolutions 1970 and 1973**

### Review of the R2P concept

#### *Origins*

The lack of an international response capable of preventing the mass slaughters of the late twentieth century (Rwanda, Liberia, the former Yugoslavia, and so on) has fuelled the idea that the protection of civilians should be seen as an inescapable moral imperative and a collective responsibility of states.<sup>4</sup> In response to a clarion call by the UN Secretary-General Kofi Annan at the General Assembly, in September 2000 the Canadian government and a group of major foundations announced the creation of an International Commission of Intervention and State Sovereignty (ICISS).<sup>5</sup> This commission's role was to support the discussions in the UN on the Responsibility to Protect. The International Crisis Group, led by its President, Gareth Evans, was a driving force in formulating the concept, which, while referring to the 'right of intervention' developed by Bettati and Kouchner,<sup>6</sup> saw the question from the angle of sovereignty having responsibilities and as one that was not built solely around interventionist logic.

In 2005, the World Summit Outcome Document finally presented the concept of R2P, a minimal agreement between states after long and arduous negotiations.<sup>7</sup> Although this concept targeted a variety of situations including, but not limited to, armed conflict, a link was specifically made to Security Council procedure in 'Protection of Civilians in Armed Conflict'.<sup>8</sup> Indeed, in 2006, Security Council Resolution 1674 on protection of civilians in armed conflict directly referenced the 2005 text.<sup>9</sup> This resolution attempts to reconcile national

4 UNGA Res. 43/131, 8 December 1988 and 45/100, 14 December 1990, vectors of the right of intervention, already presented a dichotomy between the responsibilities of the state on whose territory the violations were committed and those incumbent upon the community of states.

5 Kofi A. Annan, 'We the peoples: the role of the united nations in the twenty-first century', UNGA Doc. A/54/2000, 27 March 2000: 'if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how *should* we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?', available at: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan000923.pdf> (last visited December 2011).

6 Mario Bettati and Bernard Kouchner, *Le devoir d'ingérence*, Editions Denoël, Paris, 1987; Mario Bettati, *Le droit d'ingérence*, Éditions Odile Jacob, Paris, 1996.

7 See 'The 2005 World Summit', High-level plenary meeting of the 60th session of the General Assembly, 14–16 September 2005, available at: <http://www.un.org/summit2005/> (last visited October 2011).

8 The 'Protection of Civilians in armed conflicts' (PoC) brings together all the measures taken in conflicts and aimed at protecting civilians, measures rooted in the provisions of international humanitarian law (IHL), human rights, and rights of refugees. The PoC has been an established concept in the thematic agenda of the UN Security Council since 1999.

9 See UNSC Res. S/RES/1674, 28 April 2006, para. 4.

sovereignty – a cardinal principle of international law dear to emerging countries – and the controversial ‘right or duty of humanitarian intervention’.

### *Principles*

R2P provides that every state has the primary responsibility of protecting populations within its jurisdiction against acts of genocide, war crimes, ethnic cleansing, and crimes against humanity. However, if the concerned state is unable or reluctant to stop these crimes, the international community as a whole has a collective and subsidiary responsibility to take appropriate measures to ‘protect the civilian population’ who are victims of war crimes, crimes against humanity, genocide, or ethnic cleansing. Specifically, R2P rests on three pillars: first the responsibility of each state; second, the responsibility of the international community to support a particular state in exercising its responsibility to protect its people; and finally, in cases where a state fails in its duty, the responsibility of the international community to take diplomatic, humanitarian action or other means to stop these violations. While initially non-violent, these additional measures may be extended to armed or unarmed coercive means, as authorized under Chapter VII of the UN Charter. According to those who developed R2P, responsibility for the use of force should be guided by strict criteria: seriousness of the harm done to the population; a just cause for intervention; intervention as a last resort; proportionality of the means used and an assessment of its consequences.<sup>10</sup> While these criteria were also in the report of the UN Secretary-General in 2005, they were not, however, included in the outcome document of 2005 which founded the R2P, and as such are not formally attached to the concept, which does not detract from their relevance, as we shall see below.

Two further points should be emphasized. R2P is a political concept and is not and does not purport to be a new norm of international law, while basing its arguments on the existing body of such laws. Furthermore, R2P is not a new label aimed at authorizing military intervention, and is primarily focused on preventive efforts.

### **Resolutions 1970 and 1973 and the use of force**

Resolutions 1970 and 1973 clearly concern the situation covered by the third pillar of R2P. Indeed, the two resolutions were adopted under Chapter VII of the UN Charter, which provides for the use of coercive means ‘in case of any threat to peace, breaches of the peace or acts of aggression’.<sup>11</sup>

Resolution 1970 referred the Libyan case to the International Criminal Court, and provided for both an arms embargo against Libya and also a travel ban and an asset freeze for those involved in violations of human rights (including

<sup>10</sup> Criteria established in 2001 by the ICISS, which brought together members of the UN General Assembly.

<sup>11</sup> UN Charter, Art. 39.

attacks against civilians).<sup>12</sup> Only persons linked to the Gaddafi regime were targeted by the latter measures.

Resolution 1973 reaffirmed the objectives of Resolution 1970, giving even greater emphasis to the concept of 'protection of civilians' in the preamble of the resolution.<sup>13</sup> Moreover, a specific paragraph of the resolution is dedicated to this question and authorizes governments to use all means, including force, to protect civilians in Libya.<sup>14</sup> It is interesting to note that the resolution assigns a central role to a regional organization, the League of Arab States, for the implementation of measures related to the protection of the civilian population and the no-fly zone.<sup>15</sup>

## The objectives and rationale for intervention

Resolutions 1970 and 1973 create a sort of amalgam between 'humanitarian' objectives and other political considerations such as 'the legitimate demands of the Libyan people vis-à-vis the necessary reforms'. It is symptomatic that, on several occasions, the notion of a 'just' or a 'humanitarian war' has reappeared, particularly in the European press.<sup>16</sup> It has even been said by many analysts that, for the first time, the conditions for a 'just war' had been brought together, and some were pleased to see 'the UN finally acting': a war whose purpose was to protect civilians would be just, and the validation by the UN would give it the legality and additional legitimacy that the intervention in Kosovo had only timidly been granted and that *ex post facto*. At the same time, however, critics of the operation condemned this principle of a 'just war', which could be declared only by the discretionary authority of the great military powers and which would not be free from ulterior motives aiming at regime change. Those government leaders most active in implementing the resolution did not hide the fact that, in their own words, 'Gaddafi has to leave'.<sup>17</sup> This unequivocal position concerning the political future was not translated, during the first few months of the intervention, into military actions

12 See UNSC Res. 1970, 26 February 2011, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4d6ce9742> (last visited June 2011).

13 See UNSC Res. 1973, above note 2, preamble.

14 *Ibid.*, para. 4.

15 *Ibid.*, para. 8.

16 The doctrine of 'just war' is a conceptual model defining the conditions under which war is a morally acceptable action. There is a moral philosophy of war that has been developed since ancient times and conceptualized from the fourth century by Christian thinkers such as Thomas Aquinas. In modern times, Michael Walzer considers that, to be just, war must be undertaken only as a last resort; the probability of success must be greater than the damages inflicted; violence committed in the conflict must be proportionate to the damage inflicted; and civilians must be distinguished from the military aggressors. The ultimate goal of a just war is to restore peace. See Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Basic Books, New York, 1977, with further editions in 1992, 2000, and 2006.

17 Common letter of Presidents Obama and Sarkozy and Prime Minister Cameron published in *Le Figaro*, *The Times*, *The International Herald Tribune*, *The Washington Post*, and *Al-Hayat*, 15 April 2011. See also the US State Department Press Release, 23 May 2011 (AFP), indicating that 'the United States remains committed to protecting Libyan civilians and believes Qadhafi must leave power and Libya', available at: <http://188.93.97.21/headline/assistant-secretary-feltman's-travel-benghazi-libya> (last visited December 2011).



that would have ostensibly demonstrated a desire to eliminate the Libyan leader. However, it would be difficult not to recognize that, over the course of the operation, the military as well as the diplomatic activities of the coalition strongly converged with a goal of regime change. Parallel to the military pressure that gradually neutralized the capacity of those loyal to the regime, the Libya Contact Group demanded at every opportunity, starting with its second meeting (Rome on 5 May, Abu Dhabi on 9 June, and Istanbul on 15 July), the end of the regime, in words generally formulated as follows: ‘Gaddafi (and his family) and his regime have lost all legitimacy’; ‘They must go so that the Libyan people can determine their own future’.<sup>18</sup>

## The implementation of Resolutions 1970 and 1973

### *Military operations*

Abstentions during the Security Council vote indicated that some governments already had reservations about implementing the protection of civilians by force. From the beginning of operations, tensions emerged within the international community concerning what Resolution 1973 specifically allowed.

In view of the real development of operations and of what we now know, it appears that the notion of civilian protection was extended beyond its initial conception as expressed in the resolution, applying military and political objectives that had only an indirect link to threats to the civilian population. Indeed, it appeared that the military operations, at least in part, were aimed at supporting the forces assembled by the National Transition Council (NTC) – the representative body of the Libyan opposition – in its efforts to rout the elements loyal to the regime. Once the threat of a massacre in Benghazi had been ruled out, but with actions by Gaddafi’s troops against other cities continuing, the operations entrusted to the North Atlantic Treaty Organization (NATO) continued, with an increasingly blurred line between the prevention of massacres on the one hand and, on the other, a systematic air campaign that aimed to dismantle the military apparatus and whose ultimate goal was regime change.

With the risk of getting bogged down, the contact group initiated other actions: arming the rebellion and sending it military advisors; sending it financial support through the creation of a fund supplied, in part, by the regime’s frozen assets; repeated and solemn calls for Gaddafi’s departure; growing recognition of the legitimacy of the rebel movement represented by the NTC. It became clear over the months that the coalition’s objective was the collapse of the Gaddafi regime, finally

18 The Libya Contact Group was a coalition of forty countries and international organizations entrusted with the political leadership of the implementation of the military campaign launched in the framework of Resolution 1973. The Contact Group brought together the contributors and supporters of the intervention and six international institutions, including the UN, the European Union, the North Atlantic Treaty Organization, the Organization of the Islamic Conference, the League of Arab States, and the Gulf Cooperation Council, the last three having observer status until the July meeting.

considering this objective as one of the ‘necessary measures to protect civilians and civilian populated areas under threat of attack’.<sup>19</sup> The increasing pressure from NATO and its air raids not only weakened the offensive capacity of loyalist forces but also gradually undermined their ability to respond to the actions of the armed opposition. The fall of Tripoli on 22 August did not put an end to NATO forces’ effective support of the continuing armed action of NTC, which continued until the surrender of Sirte and the last bastions of Gaddafi supporters, even after the death of the Colonel himself.

So we see that – in the Libyan case at least – the ‘protection of civilians’ was open to a very broad interpretation, going far beyond its originally declared objectives and provoking a strong, though expected, reaction from those governments that felt they had been forced into not opposing the adoption of Resolution 1973, namely Russia and China.

The perception that the legitimacy of the use of force to ‘protect civilians’ had been distorted also divided the international community. Evoking this protection in a campaign based on Chapter VII to justify operations whose objective seemed more and more clearly oriented towards the overthrow of Gaddafi’s regime by supporting the rebel forces had cast doubts not only on the intentions of the protagonists but also on the validity of the principle of using force to protect civilians.

### *The attempt to establish a military–humanitarian operation*

Another episode deserves some reflection, namely the unrealized project of using armed force, this time not to protect civilians but rather to facilitate the delivery of humanitarian aid. In the first months of the operation, the possibility of military backing for humanitarian assistance received growing support in the face of the resistance of loyalist forces and the fear of losing access to affected populations caught in the midst of the conflict. Several initiatives were undertaken, such as a unilateral action in early April 2011 by British, Turkish, and American marines in a co-ordinated evacuation of civilians and wounded from Misrata, and the construction of the European Union Force–Libya (EUFOR Libya) a European project for a humanitarian operation supported by military means. The decision to create EUFOR Libya was taken on 1 April 2011, in preparation for possible intervention to support humanitarian assistance in the area if so requested by the UN Office for the Coordination of Humanitarian Affairs (OCHA). Although not deployed in the field, EUFOR Libya was assigned an operational headquarters in Rome and headed by an Italian rear-admiral. The operation’s aim was to ensure the safe movement and evacuation of displaced persons, as well as to use its specific capabilities in support of the activities of humanitarian agencies. There was tremendous pressure from European states, some of which were themselves contributors to allied military operations, for the UN Secretary-General to activate the European offer to provide military support

19 UNSC Res. 1973, above note 2, para. 4.

to humanitarian action. Nevertheless, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Valerie Amos, refrained from using this military operation, considering it unnecessary and to be used only as a last resort.

The strong position of the humanitarian branch of the United Nations was maintained until the end. This episode is nevertheless symptomatic of a growing tendency to consider the use of armed force for logistical and occasional security support of humanitarian action. In terms of civil–military relations we can expect, however, that the Member States will propose new projects such as EUFOR Libya. These attempts developed for the Libyan case represent one more manifestation of a trend applicable to other contexts. This trend points to undertaking humanitarian action with the strong support of military action, thus depriving humanitarian action of its strictly civilian character.

## The concerns for humanitarian action

The explicit legitimization of the use of force in preventing serious violations raises a number of concerns, which we propose to group under four main themes:

- international humanitarian law (IHL) and the use of armed force to protect civilians: specific issues;
- the politicization of the concept of protection of civilians;
- the public positioning of humanitarians concerning the armed component of R2P;
- the value of the humanitarian principles of impartiality, neutrality, and independence.

## IHL and the use of armed force to protect civilians

The situation in Libya on the eve of the vote on the resolution presaged a bloody crackdown on the population of rebellious Benghazi, which statements of the regime did little to conceal: Gaddafi bluntly declared on 17 March 2011 that his forces would show no mercy and no pity for the insurgents.<sup>20</sup>

The fact that the UN Security Council sought to ensure the physical protection of civilians at risk cannot be criticized in and of itself. One might congratulate the commitment *in extremis* of the international community in trying to prevent massacres, which in the past would have been committed with impunity amid general helplessness. While the consensus that led to coalition military operations had been obtained on the basis of quite a fragile agreement, it had nonetheless been developed within the framework of the UN and with consultation

20 See 'Frappes aériennes ou pas, Kadhafi menace Benghazi', *L'Express*, 17 March 2011, available at: [http://www.lexpress.fr/actualite/monde/frappes-aerien-ou-pas-kadhafi-menace-benghazi\\_973573.html?xtor=x](http://www.lexpress.fr/actualite/monde/frappes-aerien-ou-pas-kadhafi-menace-benghazi_973573.html?xtor=x) (last visited October 2011).

with the regional bodies most concerned. This was an action that many considered to be perfectly legal from the standpoint of international law, at least in terms of the decision-making process that had been followed.

It is interesting at this stage to consider the use of armed force in terms of IHL. International humanitarian law, or *jus in bello*, regulates how war is waged. Having a purely humanitarian mission, this branch of law aims to limit the suffering caused by war, regardless of considerations relating to its justifications or motives, or to prevent war, as covered by *jus ad bellum*.<sup>21</sup> While the decision to resort to the use of force remains a matter of *jus ad bellum*, which has no basis in *jus in bello*, the combination of Article 1 common to the Geneva Conventions 1949 and Article 89 of the Additional Protocol I of 1977 form a point of contact between *jus ad bellum* and *jus in bello*.<sup>22</sup> Part of the legal doctrine, including the ICRC Commentaries to Additional Protocol I, in fact recognizes the opportunity provided by the combination of these two articles to use force to stop violations of IHL to the extent that this is done in the framework of the UN Charter.<sup>23</sup> While this interpretation is disputed, at least we can note that nothing in IHL prohibits the use of armed force in implementing the obligations contained in the above articles, provided that this is done in compliance with the Charter. This does not mean that IHL can be considered as providing a legal basis for the use of force, which is solely the prerogative of the UN Charter. The measures implementing the obligations described in Common Article 1 to the Geneva Conventions concern states, both independently and through the collective security mechanism described in the UN Charter. Civilian protection, being the first responsibility of governments, may if necessary – when the state does not fulfil its responsibility – be ‘transferred’ to the international community and assumed by them. If this responsibility is made effective through the use of armed force, such use of force must obviously comply with the relevant rules of IHL.

As in any military action, it is obvious that military actions with the stated goal of protecting civilians must be conducted with the utmost respect for civilians and in accordance with the relevant rules of IHL. It therefore appeared essential, in the case of Libya, to establish a regular and serious consideration of how the war would be conducted. For humanitarian organizations devoted to ensuring respect for the life and integrity of those affected, and particularly for the International Committee of the Red Cross (ICRC) in its capacity as guardian of IHL, the challenge was how to accomplish such a task. This is the necessary basis in the development of

21 See ICRC, ‘IHL and other legal regimes: *jus ad bellum* and *jus in bello*’, 29 October 2010, available at: <http://www.icrc.org/eng/war-and-law/ihl-other-legal-regimes/jus-in-bello-jus-ad-bellum/overview-jus-ad-bellum-jus-in-bello.htm> (last visited December 2011).

22 Geneva Conventions, Common Article 1: ‘The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances’. Additional Protocol I (AP I), Art. 89: ‘In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter’.

23 See Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977*, ICRC/Martinus Nijhoff Publishers, Geneva, 1987, paras. 3597–3599.

a credible IHL dialogue concerning the respect for IHL and the conduct of hostilities based on law and informed by the facts.

Thus, the ICRC sent numerous memoranda on IHL rules to all the protagonists, including the Libyan government, the armed opposition as represented by the NTC, members of the coalition, and NATO. These memoranda on humanitarian law were made at various times, as a function of the changing situation. They concerned the protection of those who took no part in, or were no longer taking part in, hostilities; the conduct of hostilities; the respect for medical missions; and the treatment of missing persons and the dead.

In addition to these memoranda we should also note how, from the opening of hostilities, the ICRC was able to contribute rapidly to a code of conduct for combatants in the armed opposition concerning obligations relating to compliance with IHL.<sup>24</sup>

## The politicization of the protection of civilians

It is perhaps appropriate to recall the obvious fact that the concept of protection is not the sole prerogative and responsibility of humanitarian action. Physical protection against a recognized imminent danger unquestionably exceeds the possible scope of action of humanitarian organizations when a state explicitly declares its intention of not respecting its obligations.

In the political-mediatised environment of the Libyan crisis, the notion of protection of civilians has increasingly been associated with political and military actors – not only national but also international. The rationale developed to justify the use of armed force relies on the notion of civilian protection. But this notion, which is also central to *jus in bello*, is only concerned with the humanitarian aspects of conflict and not with the reasons for or the legality of the use of force. It lies outside politics, while *jus ad bellum*, which tries to limit the use of force between states, is at the centre of political debate within the collective security mechanism of the UN. Thus, we see that the same concept – the protection of civilians – is used alternately and simultaneously in fundamentally different fields: one resolutely detached from politics and the other impregnated with it.

Resolution 1973 and the ensuing armed action therefore derive from a political decision. Protection through the respect of IHL lies in the legal field. The measures prescribed by IHL are to be applied by all parties from the start of armed conflict, and the obligatory provisions of international human rights law (such as the right to life, prohibition of torture, and guarantees of due process) are applicable at all times. The value and application of these rules should not be affected by uncertainties about the legal significance of the concept of R2P or by its excessive politicization. The assessment of the applicability of IHL has in itself

24 For the text of the code of conduct, see 'A collection of codes of conduct issued by armed groups', in *International Review of the Red Cross*, Vol. 93, No. 882, June 2011, pp. 497–500, available at: <http://www.icrc.org/eng/resources/documents/article/review-2011/irrc-882-codes-conduct.htm> (last visited December 2011).

no relation to the decision process leading, or not, to launching an intervention to protect civilians by decision of the UN Security Council, whether or not this is done in reference to R2P. As a result, by limiting the argument to IHL alone, the efforts taken to promote its implementation are necessary from the beginning of armed conflict (and even earlier, from the point of view of prevention). This is true, regardless of possible controversies surrounding the consideration of military intervention, as was the case with Libya. Thus, when the ICRC or another organization supporting IHL invokes the protection of civilians, such a call is first and foremost aimed at the parties to the conflict and should not be perceived as a call for the use of force by external forces, even if this came with a UN blank cheque. Therefore, there are real stakes in ensuring that the efforts for implementation of IHL are not derailed by debates related to the political interpretation of the notion of civilian protection in the resort to the use of force, whether or not reference is made to R2P.

As a result, humanitarians must be constantly concerned to avoid confusion regarding the concept of protection of civilians. Such confusion could be harmful to organizations such as the ICRC, which work tirelessly to promote the concept of protection of civilians in armed conflict by convincing governments and parties directly responsible to meet their obligations as codified by IHL. These organizations pursue an approach that seeks to limit the dangers to which civilians are exposed and to stop or prevent abuse by putting violations under conventional and customary standards. The implementation of this protective action is significantly different from that invoked in the context of *jus ad bellum*, which undertakes coercive action by mixing juridical principles with considerations that have a political and diplomatic echo and may also arise from a sense of moral imperative.

### The public positioning of humanitarians as to the use of force to protect civilians

Humanitarians may demonstrate in both word and deed the specific protection activities that they have undertaken, but this may still be insufficient for them to avoid positioning themselves on a topic such as the armed intervention in Libya. In fact, humanitarian actors face the dilemma of taking a public position over the use of force to protect civilians. Considering the politicization and the intellectual web of concepts and principles open to various interpretations and applications, humanitarians find this a difficult question in communication, but probably one that it is impossible to avoid. Humanitarian actors must therefore distinguish themselves by supporting their strictly humanitarian interpretation of principles and concepts to which others apply various meanings. Humanitarian organizations that present themselves as ‘principled’ – that is to say, that base their actions on the principles of impartiality, neutrality, and independence, and are sometimes categorized as ‘dunantistes’ – find themselves in an uncomfortable position. From a moral standpoint, as well as in the name of consistency with regard to principles, many of them cannot or will not legitimize or openly call for military action, even when its sole objective is that of protecting civilians. Such a call would taint their overall

capacity for action linked to their being seen as neutral. But neither can they condemn such action on its merits because it might give the impression that they denied the existence of the physical danger that a part of the population would confront (while being powerless to remedy it) or that they challenged the objective merits of certain aspects of the action (such as NATO's efforts to maintain mine-free access to the port of Misrata throughout the siege of the city by loyalist troops between April and August 2011). A position that would amount to challenging the decisions of the international community expressed through the voice of the UN Security Council would not only be totally misunderstood by the affected population and much of the international community but would also be politically difficult to sustain in the international arena and questionable in terms of the interpretation of law.

The least dangerous road for humanitarians would probably be to keep to a division of roles (*jus ad bellum* – use of force and R2P – for governments, versus *jus in bello* – IHL – for humanitarians), leaving discussions more or less touching on the broader interpretation of the protection of civilians to politics and states. This would seem particularly suitable vis-à-vis the concept of R2P, as an illustration of protection of civilians specifically aimed at states. This restrained approach is probably the most viable diplomatically, helping humanitarian organizations to avoid being caught in the 'crossfire' between those states that are resolutely sceptical and intransigent concerning the concept of sovereignty and other states defending the legitimacy of the principle of challenging absolute state sovereignty.

Beyond these concerns, in different ways according to their mandates, missions, and specific identities, the humanitarian organizations may also warn that any form of armed intervention is risky, that it should probably be initiated only as a last resort, and that it must take into account the protection of persons, as provided by law.

Specifically it would be possible to highlight the perverse and unintended effects of such interventions. In the short term, such effects may include collateral damage linked to military operations and the risk of reprisals on civilians far greater than the evils that such operations were meant to prevent. Long-term effects might include the emergence of a damaging amalgam with the notion of protection afforded by the *jus in bello* and a subsequent weakening of the law, endangering humanitarian actors or limiting their ability to intervene, and the growing distrust of states concerning the notion of protection in general.

### *Divergent views*

In conclusion, by reviving fears raised in the theoretical debates of the 1990s and 2000s around the concepts of right and duty to intervene and R2P, Resolution 1973 has also brought to light the issue of politicization of humanitarianism, when humanitarian action is perceived to be, and sometimes used as, a vector of foreign policy or expansion of power.

Some states, primarily Western ones that are the most active promoters of R2P, believe that the use of force for humanitarian purposes is a duty in certain



circumstances (its being a convergence between a duty to intervene and the concept of 'just war').<sup>25</sup>

Emerging countries, often in the stage of asserting their power, as well as those who are champions of respect for national sovereignty and territorial integrity such as China and Russia, have a visceral distrust vis-à-vis R2P and therefore consider the humanitarian argument as a pretext for justifying any kind of intervention (military or not) in the internal affairs of other states. On the one hand, humanitarian aid is invoked as an opportune expedient of a broader policy. On the other hand, the same humanitarianism is associated with a general disapproval of a policy deemed at best too intrusive, and at worst decidedly neo-imperialist. In both cases, humanitarianism is undermined.

Having established this amalgam or misuse of the concept of humanitarianism, we propose to consider the confusion that sometimes arises concerning the principles of humanitarian action, principles that today are more relevant than ever.

### Humanity, neutrality, impartiality, and independence: imperfections and approximations in implementing principles that remain essential

As seen above, in some situations the commitment of military resources is considered by some as the only way to save lives. On the eve of the adoption of Resolution 1973, Libya became recognized as one of these cases. The space in which humanitarian organizations operated thus became a polymorphic one, in which a very diverse range of actors coexisted, each one with its unique motivations, acting according to its own operational methods. Activities described as 'humanitarian' but performed by non-humanitarian actors easily generate confusion, since they attribute the same label to different approaches and intentions. In a Briefing Note of May 2011, the Overseas Development Institute (ODI) concluded its presentation as follows:

In Libya, as in Afghanistan, Iraq and Pakistan, any blurring of lines between humanitarian, military and political objectives may have a deep impact on the civilian population, ultimately jeopardising efforts to achieve the shared objectives of saving lives and delivering assistance.<sup>26</sup>

The main risk for the traditional humanitarian worker is having his or her perception blurred by the confusion of interests, objectives, and mandates of a plurality of actors, putting access or safety in jeopardy; hence the repeatedly engaged battle over the right to use – or to abuse – the term 'humanitarian' so as to preserve a space for a strictly humanitarian action, namely one which is impartial, neutral, and independent. However, confusion also exists within the community of

25 Michael Walzer, for example, says: 'I do believe that there are just and even morally necessary wars'. See his interview with Dominique Simonnet, 'Michael Walzer: "La guerre contre la terreur ne peut pas être unilatérale"', *L'Express*, 25 October 2004, available at: [http://www.lexpress.fr/culture/livre/la-guerre-contre-la-terreur-ne-peut-pas-etre-unilaterale\\_820027.html](http://www.lexpress.fr/culture/livre/la-guerre-contre-la-terreur-ne-peut-pas-etre-unilaterale_820027.html) (last visited December 2011).

26 Overseas Development Institute (ODI), 'Friend or foe? Military intervention in Libya', Briefing Note, May 2011, available at: <http://www.odi.org.uk/resources/docs/7119.pdf> (last visited December 2011).

humanitarian actors. Above and beyond a semantic controversy over nuances in the definitions of humanitarian principles, the question is to consider the considerably varied application that is made of these principles.

Influenced by the ICRC's work in mobilizing around these action principles, by the specific history of some of the non-governmental organizations (such as Doctors without Borders), and finally as the result of their official recognition in the UN humanitarian resolutions of 1991<sup>27</sup> and 2004,<sup>28</sup> the principles of humanity, neutrality, impartiality, and independence have been proclaimed as pillars of humanitarian action. This is so much the case that, for some proponents of humanitarianism, these principles are presented as the necessary frame of reference of 'real' and genuine humanitarian action.<sup>29</sup>

This practice of labelling humanitarian action clashes with reality. In Libya, as in other contexts, the zeal with which humanitarian actors as a whole (UN agencies, non-governmental organizations) have verbally defended the principles of independence and neutrality has not always been confirmed in practice.<sup>30</sup> The humanitarians of the United Nations, naturally the most exposed to an amalgam with their political and military wing, have indeed tried to maintain an autonomous space and distance themselves from the political process of the UN. To this end, they invoked the principles of neutrality, impartiality, and independence and have made themselves the representatives of the entire humanitarian world. This is not a peculiarity of the Libyan conflict. It can be seen wherever humanitarian actors strive to present their activities as neutral and independent, whether or not they are intentionally related to processes that are not strictly humanitarian, such as political or judicial processes. It is to be feared that this distortion, which is not due merely to the Libyan context, will gradually weaken the value of these principles themselves.

Ultimately, is it appropriate for humanitarian actors to continue in an unclear way along the lines of continuous and uniform support of 'principled' action? The reality of a universal humanitarian model based on these principles is often no more than rhetoric. Rather than insisting on respect for humanitarian principles for all humanitarian action, would it not be more appropriate to recognize the coexistence of various humanitarian projects, some 'principled' and others not, without necessarily making value judgements? In this sense, a reflection on the part of humanitarian actors on humanitarian principles appears more

27 UN General Assembly Resolution AG 46/182, 19 December 1991.

28 UN General Assembly Resolution AG 58/114, 5 February 2004.

29 For instance, the UK's humanitarian policy makes a series of commitments to respect humanitarian principles of humanity, impartiality, neutrality, and independence. See Department for International Development, (DFID) 'Humanitarian principles and policy', available at: <http://www.dfid.gov.uk/what-we-do/key-issues/humanitarian-disasters-and-emergencies/humanitarian-principles-and-policy/> (last visited October 2011). For OCHA, humanitarian principles provide the fundamental foundations for humanitarian action; see OCHA, 'What are humanitarian principles?', available at: [http://ochanet.unocha.org/p/Documents/OOM\\_HumPrinciple\\_English.pdf](http://ochanet.unocha.org/p/Documents/OOM_HumPrinciple_English.pdf) (last visited October 2011).

30 See, among other declarations, Valerie Amos's statement to the Security Council on the Libyan humanitarian situation, 9 May 2011, available at: [http://ochanet.unocha.org/p/Documents/USG%20Amos%20briefing%20to%20the%20Security%20Council%20on%20Libya\\_9%20May%202011.pdf](http://ochanet.unocha.org/p/Documents/USG%20Amos%20briefing%20to%20the%20Security%20Council%20on%20Libya_9%20May%202011.pdf) (last visited October 2011).

justified and even more desirable than ever.<sup>31</sup> Perhaps this would help shape the dialogue with other actors and help build bridges to them, including to local communities and new actors from the private sector. This would certainly help clarify the coexistence of various actors within an inevitably plural and shared humanitarian space.

Finally, the Libyan episode demonstrates the functional requirements, going beyond speeches or positions, required by an action truly based on the principles of neutrality, independence, and impartiality. It also demonstrates the possibilities that these requirements, when duly observed, open in terms of access to populations. For, while impartiality is a fundamental – one might call it an ethical – requirement of humanitarian action, it is, alongside ‘humanity’, the only legal requirement under the Geneva Conventions and their Additional Protocols. Neutrality and independence arise as principles of action. These principles help humanitarian actors build the necessary acceptance among the population and the various interested parties in a given situation.

## **The future of ‘humanitarian war’: different interpretations of R2P and the confirmed relevance of IHL following the events in Libya**

### **Was the war in Libya ‘humanitarian’?**

Since one of the rationales for this article is to recall that words have meaning, it would be appropriate to consider at this point whether it is legitimate or unjust to describe the intervention in Libya as ‘humanitarian’. The question is: can a military engagement with the explicit goal of saving lives be described as ‘humanitarian’?

Consideration of two criteria may provide clues in answering this question: the motivation (intention) and the impartiality of the ‘military humanitarian’ action. On the one hand, the motivation should not hide other objectives such as political or military aims under a humanitarian label. On the other hand, the underlying principle of the relief and protection aspects of the action must be that of impartiality, the cardinal principle from which every actor claiming to pursue humanitarian action should not deviate. In the case of the Libyan intervention, we should therefore assess the conduct of military actions from March to November 2011 in the light of these two criteria of motivation and impartiality. An appreciation of the real motivation can be developed based on an examination of the facts, as well as of the discourse and positions taken by the coalition members. In this case, although NATO communications with the monitoring committee of the UN continued to justify its entire operation as intended for the protection of

31 Simon Schorno, ‘MSF on the politics of humanitarian action’, *Intercross* weblog, 27 January 2012: ‘[Michael] Neuman explains why an honest debate about the realities of humanitarian action is today necessary and healthy, not only for MSF but for all humanitarian actors’, available at: <http://intercrossblog.icrc.org/> (last visited January 2012).

civilians, its political statements regularly advocated regime change, without anyone being reasonably able to make a direct and permanent link between the alleged need for such regime change and the need to protect civilians from imminent danger. Even for a casual observer, not all the military operations seemed to have a direct link to the prevention of acts against civilians.

As for impartiality, some voices were raised denouncing violations against civilians or non-combatants by soldiers of the armed opposition, whether they were due to individual acts or were the result of military tactics that did not sufficiently spare civilians. It is not the purpose of this article to review these allegations. In addition, without further research it would be difficult to determine whether or not a particular action of the coalition was able to halt or to interrupt these attacks on the civilian population, and the aim should be to measure carefully the efforts made by the forces of the NTC regarding distinction and proportionality. One thing is certain, however: to our knowledge, and thus without full knowledge of the range of actions and intentions, it was never considered a possibility to carry out the coalition's mission to protect civilians in the case of civilians threatened by the actions of the armed opposition. It can therefore be argued that, given the information at our disposal and in the light of the criteria of motivation and impartiality, the operation launched by Resolution 1973 cannot be described as 'humanitarian', although it was partly intended to save lives.

It is therefore important to recognize that the same terminology – namely the protection of civilians – can, on the one hand, support politico-military actions and, on the other hand, partly be a main focus of 'humanitarian' action with fundamentally different realities and principles. This finding does not mean that there is no sustainable moral case for Resolution 1973, as seen above with the notion of a just war, or that, in its application – which certainly was neither neutral, nor impartial, nor humanitarian – Resolution 1973 did not produce clear positive effects for the protection of civilians. It simply means that, in the light of an examination of the intentions and impartiality of the action, it would certainly be wrong to talk of the intervention as 'humanitarian'. To this, one should also add that the humanitarian approach, which bases its action on the agreement of the concerned parties, is fundamentally antithetical to the use of armed force, even more so when it is directed against a particular camp. Finally, recalling in addition that any war claims lives, we can conclude that, even if the primary motive of a war was to put an end to serious violations of human rights and of international humanitarian law, this would not be sufficient to make it a 'humanitarian war'.

## What about the principle of R2P following the Libyan crisis?

Without expressing an opinion on whether the Libyan operation was an R2P operation or simply a use of force with the aim of protecting civilians through the utilization of means of restoring peace and international security, we note that R2P has been so widely debated that it raises the question of the impact that the Libyan crisis may have had on this concept. Differences of opinion are particularly sharp. Most analysts, while conceding that the launching of the operation was almost

a textbook case for R2P, consider that it subsequently deviated from this principle.<sup>32</sup> Nevertheless, their conclusions differ widely. In late October 2011, Marcel Boisard, former Assistant Secretary-General of the United Nations, wrote:

Nothing has been respected. No real negotiations towards a ceasefire have taken place. The exclusive control of the air was used to support the insurgents. Protection of civilians was the pretext to justify any operation. . . . It was no longer a question of protection, but of regime change. . . . The principle of 'responsibility to protect' died in Libya, just as 'humanitarian intervention' died in Somalia in 1992.<sup>33</sup>

While stressing the moral hazard of the notion of R2P in that just war has its share of barbarism, David Rieff considered that when this concept was diverted it became a threat to the legitimacy of the international system that had launched it.<sup>34</sup> Nathalie Nougayrède reported in *Le Monde*: 'According to the Indian ambassador to the United Nations, "Libya has given a bad name to R2P". His Russian counterpart accuses NATO of having bombed civilian areas in the name of "protection of civilians"'.<sup>35</sup> We may well ask ourselves, as did Philippe Boloïon of Human Rights Watch, whether R2P had not become 'collateral damage of Libyan operations'.<sup>36</sup>

Since R2P is a principle whose use is political, it is instructive at this stage to consider what some states have had to say about it. In a letter of 7 December 2011 to the General Assembly and Security Council of the United Nations, the BRICS states (Brazil, Russia, India, China, South Africa), among the most influential critics of the Libyan intervention, called for a thorough examination of the conformity of the actions taken by the coalition with the provisions of Resolutions 1970 and 1973. In the same paragraph, dealing significantly with both Libya and Syria, the BRICS states insisted that any external intervention in Syrian affairs conducted outside the UN Charter should be excluded. These very strict positions tend to reinforce the feeling that, even if only implicitly, this first mobilization of the coercive and armed chapter of the third pillar of R2P has acted *de facto* as a foil. While the Libyan example has probably discouraged stronger action by the Security Council in contexts such as Syria, and even in South Kordofan in Sudan, it would be premature to hastily bury a concept that, if applied impartially, would win fairly generally support. As such, Brazil's initiative in late 2011 is interesting in that, with a different formulation, it repeats the idea of criteria for applying R2P that was left out of the texts of the 2005 World Summit. Brazil proposes taking into account the concept of 'Responsibility while Protecting'.<sup>37</sup> This would mean agreeing on a series of

32 David Rieff, 'Muammar el-Qaddafi's threat in March to unleash a bloodbath in rebel-held Benghazi was just the kind of extreme instance that R2P's framers had in mind', in *International Herald Tribune*, 8 November 2011.

33 Marcel Boissard, 'La responsabilité de protéger, un principe jetable et à usage unique (The responsibility to protect: a principle that is disposable and expendable)', in *Le Temps*, 28 October 2011.

34 D. Rieff, above note 31.

35 Nathalie Nougayrède, 'Réguler l'ingérence', in *Le Monde*, 24 September 2011.

36 Cited in *ibid*.

37 See UN General Assembly, 66th session, Agenda items 14 and 117. Letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations, addressed to the Secretary-General, UN

elements that would ensure that the concept of R2P not be diverted to purposes other than the protection of civilians, such as for regime change. In particular, the international community should first and in each case undertake a detailed analysis of the possible consequences of any military intervention in order to avoid aggravating existing conflicts, encouraging terrorist activities, and generating new cycles of violence that could ultimately make the civilian population even more vulnerable. Without going any further, we can see that the concept of R2P will continue to be debated, and that the conditions of its applicability may be better defined and refined, particularly concerning the questions of accountability and responsibility, which need to recall the ‘do no harm’ concerns and accountability of humanitarian actors. Finally, note that the concept remains relevant for the United Nations judging by an address that the UN Secretary-General made to the Stanley Foundation Conference on 18 January 2012, in which he urged UN Member States to ‘make the Responsibility to Protect a reality for the peoples of the world’ and noted in particular that ‘prevention does not mean looking the other way in times of crisis, with the vain hope that things are improving’.<sup>38</sup>

### The Libyan crisis: a defence and an illustration of the importance of the legal gains and protection provided by IHL

The singularity of the Libyan operation, whether or not a case of R2P *stricto sensu*, demonstrates that it is inherently more complicated to apply such a concept than simply to declare it. Because this doctrine is not a norm, it is even more prone, as we have seen, to a selective, case-by-case utilization. That does not necessarily make it a hypocritical construct but it deprives it of two fundamental attributes: predictability (and thus a degree of reliability) and impartiality. By contrast, the relevance of IHL seems even stronger, and this is certainly another lesson from the Libyan crisis. While it is true that the application of IHL continues to clash with political considerations, because of its juridical character it is an imperative, committing the responsibility of the state. Well before the confrontation over the concepts of R2P or of intervention, states had undertaken to respect and enforce a set of provisions and measures that provided real protection to populations and whose scope was much wider than that of R2P.<sup>39</sup> Two years before the Libyan crisis, Nathalie Herlemont-Zoritchak, made very firm recommendations to states: ‘For the state, the responsibility to protect is primarily to demonstrate a real willingness to apply IHL, without any possible diplomatic exemption. Start there and the short cuts will seem less important.’<sup>40</sup> This statement has the merit of pointing out that, in order to

Doc. A/66/551-S/2011/701, 11 November 2011, available at: <http://www.un.int/brazil/speech/Concept-Paper-%20RwP.pdf> (last visited December 2011).

38 Ban Ki-moon, ‘Address to Stanley Foundation Conference on the Responsibility to Protect’, 18 January 2012, available at: [http://www.un.org/apps/news/infocus/speeches/statments\\_full.asp?statID=1433](http://www.un.org/apps/news/infocus/speeches/statments_full.asp?statID=1433) (last visited January 2012).

39 Geneva Conventions, Common Article 1.

40 See Nathalie Herlemont-Zoritchak, ‘Droit d’ingérence et droit humanitaire: les faux amis’, in *Revue Humanitaire, Enjeux, Pratiques, Débats*, 23 December 2009.

protect civilians in armed conflict, the first responsibility is to apply IHL without it necessarily being appropriate or always helpful to draw on concepts having no juridical force.

This defence of IHL is a state's permanent responsibility. Moreover, in some countries it may be important to engage in more prevention activities. It is clear that, prior to the conflict, Libya was a kind of *terra incognita* for IHL. Organizations such as the ICRC had not really been involved in disseminating the ideas of IHL to the unreceptive Libyan authorities. As for those states that are signatories of the Geneva Conventions and are therefore required to ensure respect of IHL, this defence apparently played only a minor role in their exchanges with Gaddafi's Libya. The Libyan crisis should therefore encourage states to favour greater work in preventing violations of the law prior to a crisis and distinct from the work of preventing conflict in order to encourage greater compliance with IHL provisions should an armed conflict arise.<sup>41</sup>

Despite the low level of IHL awareness in Gaddafi's Libya, the Libyan crisis also demonstrated the value of any strictly humanitarian action based on IHL. Throughout the entire period of air operations, the ICRC was able to conduct its activities in areas controlled by the government, as well as those in the hands of the NTC. Again, we should emphasize that this was possible thanks to real neutrality and independence, which were both recognized as such, and to the total lack of connection to other, politically motivated, actions, including those designed and conducted in reference to the responsibility to protect. Parallel to its relief action, the ICRC collected eye-witness accounts, analysed situations thanks to its real presence on the ground, and collected reliable information that, in cases in which violations were found, could be submitted to the concerned parties in a confidential dialogue.

This finding should be an encouragement to humanitarian organizations to maintain their humanitarian assistance and protection efforts in close reference to IHL and in the absence of any political connotation. The Libyan crisis has thus demonstrated that it is still possible, in complex contexts, to develop those activities that alone make feasible a physical presence alongside the population and local partners with an approach rooted in the principles of impartiality, neutrality, and independence. In this sense, this is an invitation to humanitarian organizations to pursue strictly humanitarian work based on humanitarian principles.

## The future of 'humanitarian war' and the evolution of international relations

Resolution 1973 was made possible by a set of very special circumstances and soon elicited negative reactions from some members of the UN Security Council.

41 See 'International Committee of the Red Cross: prevention policy', in *International Review of the Red Cross*, Vol. 91, No. 874, June 2009, pp. 415–430, available at: <http://www.icrc.org/eng/resources/documents/article/review/review-874-p415.htm> (last visited December 2011).



While one of the protagonists regarded by the international community as a risk to his own population had been eliminated, it is rather difficult in the wake of the operation to know whether the resulting damage done to the civilian population was more or less than that estimated for a non-intervention. In addition, not enough time has passed in the evolution of post-Gadhafi Libya to enable a comparative analysis of real and perceived damage. In any case, the tumult in the family of nations has left lasting scars, and the operation itself imposed great suffering on the civilian population. Such armed support to protect civilians, whether or not in the context of R2P, could be extremely difficult to implement in the future and would depend on changing power relations within the international community.

These difficulties could also be seen as reasons to increase efforts to avoid military action, even as a last resort. Resolution 1973 and its implementation is a landmark with a profusion of reactions and analyses produced by the Libyan situation. There will be a 'before' and an 'after'. The rulers of a state that is violently attacking its own civilian population now know that a reaction up to and including the use of force against them is possible, even if not always probable. A progressive effect of deterrence may result from this, similar to the one we have seen with the implementation of the international criminal justice system. Practice creates deterrence. Twelve years after the Kosovo intervention, the notion of 'humanitarian war' has just undergone a new incarnation and thus created a new precedent, even though everyone knows that such war cannot be disinterested and devoid of political intentions. Therefore, while it is not absolutely certain that Resolution 1973 is the precursor of a new trend towards greater use of force, we can still assume that some state actors will explore the concept of prevention and other constitutive measures of R2P, including actions of a coercive but non-violent type.

We close with a comment from Antoine Rougier, published in 1910 in an article on humanitarian intervention:

The conclusion that emerges from this study is that it is virtually impossible to separate the humanitarian from the political motives for intervention and to ensure the absolute disinterestedness of the intervening states. We will not say that respect for human rights will never be an accessory motive to an intervention: history has shown that it can sometimes be a main reason, but it will never be a unique motive. From the moment that the intervening powers are judges of the appropriateness of their own action, they will consider this opportunity from the subjective point of view of their current interests. Among many inhumane acts of which they are spectators, they will in preference repress the one that in some respect is harmful to them.<sup>42</sup>

42 Antoine Rougier, 'La théorie de l'intervention d'humanité', in *Revue Générale de Droit International Public*, Vol. 17, No. 1, 1910, p. 525.

This underscores the persistence of this debate in the political field and between states, still alive after one hundred years, although many juridical tools in support of human rights have been developed since then. As a counterpart, we can see the huge advance that the development of resolutely apolitical humanitarian law and action has represented, an advance that has once again proven its relevance in 2011 in Libya.



# Civil–military relations in natural disasters: a case study of the 2010 Pakistan floods

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## Abstract

*In 2010, Pakistan was struck by devastating floods, the latest in a series of disasters to strike the country in recent years. As it had during the 2005 Kashmir earthquake, the Pakistan military played a significant operational and co-ordination role in the humanitarian response that followed. Its role raised important questions about civil–military relations between humanitarian actors and national (as opposed to international) militaries. This article looks at the interaction between the humanitarian community and the Pakistan military in responding to the 2010 floods in order to identify key successes and challenges. It also highlights a number of*

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*issues that emerged in the context of Pakistan but that may also be relevant to civil–military relations – particularly between the humanitarian community and the national military of an affected state – in other natural disaster and complex emergency settings.*



In recent years, the role of militaries in responding to natural disasters has grown, as the result of various factors. These include: an increase in the scale and incidence of natural disasters; a concurrent trend towards militarization of humanitarian response in conflict situations; and increased interest in disaster response on the part of militaries. Some of the reasons for military actors' increased interest in disaster response are related to public perception, staff morale, relevant training opportunities, and humanitarian operations as a means for armed forces to diversify their role and expertise.<sup>1</sup> Military resources were used in response to the 1991 cyclone in Bangladesh; after Hurricane Mitch in Central America in 1998; following Hurricane Katrina in 2005; in Indonesia after the 2005 Asian tsunami; in the UK during flooding in 2007; and in China in the aftermath of the 2008 earthquake in Sichuan province. More recently, the US military in particular played an important role in the response to the earthquake in Haiti in 2010. With the increased engagement of military actors in humanitarian response to both conflict and natural disasters, interaction on the ground between humanitarian and military actors has increased and has cast the spotlight on issues related to civil–military co-operation, co-ordination, and the effectiveness of militarized emergency assistance in general.

## **Civil–military relations in natural disasters**

The international humanitarian community by and large recognizes that the military can play a vital role in disaster response. It can provide, among other things, a search and rescue capacity unmatched by the humanitarian community; logistical support; expertise and material resources for infrastructure projects; trained manpower; and, on occasion, security for relief workers. At the same time, there is serious concern that the involvement of military personnel and assets poses a potential threat to the core principles of impartiality, neutrality, and independence that underpin the work of humanitarian agencies. This in turn can threaten the security and operations of these civilian humanitarian agencies.

1 See Charles-Antoine Hofmann and Laura Hudson, 'Military responses to natural disasters: last resort or inevitable trend?', in *Humanitarian Exchange Magazine*, No. 44, September 2009, available at: <http://www.odihpn.org/report.asp?id=3030> (last visited 12 September 2011); Wilton Park, 'The use of military assets in the humanitarian response to natural disasters', Report on Wilton Park Conference 994, 28–30 September 2009, p. 1. See also Sharon Wiharta, *et al.*, *The Effectiveness of Foreign Military Assets in Natural Disaster Response*, Stockholm International Peace Research Institute, Solna, 2008; Wilton Park, 'Civil–military co-ordination in complex humanitarian situations', Report on Wilton Park Conference 895, 28–31 January 2008.

Humanitarian and military approaches to security often diverge, creating tensions between the two types of actor despite shared goals in disaster response. Military approaches to security tend to focus on deterrence, or on physical (kinetic) security, which can lead to fortified compounds and the presence of arms at distribution points. On the other hand, humanitarians, particularly non-governmental organizations (NGOs) and the International Red Cross and Red Crescent Movement, tend to rely on acceptance-based security, which seeks to gain the consent of all stakeholders in an operational area, and proscribes the presence of arms at distribution points. The question of whether civil–military relations can undermine security management and humanitarian principles is more contentious in conflict settings, where association with the military often carries the risk of loss of acceptance, access, and legitimacy for humanitarian actors, as well as increased security risks.

Further, as militaries are instruments of states, there are concerns that, when militaries are deployed to respond to natural disasters, political and security considerations may at times override humanitarian considerations, undermining humanitarian assistance based on need. For instance, humanitarians worry that the methods used by military authorities to undertake assessments and consultations with local communities may challenge their ability to provide assistance to the most vulnerable in an accountable and impartial way. There are also concerns that the short-term nature of their response to natural disasters – usually no more than six weeks – leads militaries to employ response strategies focused on immediate effect, which may undermine the longer-term ‘do no harm’ strategies of humanitarian agencies.

This article looks at the interaction between the humanitarian community and the Pakistan military in responding to the devastating floods that struck Pakistan in 2010. It is a useful case study, owing to the significant operational and co-ordination role played by the Pakistan military during the humanitarian response that followed. Its role raised important questions about civil–military relations between humanitarian actors and national militaries (as opposed to international militaries),<sup>2</sup> whose role in disaster relief has otherwise received limited attention thus far. The fact that the floods occurred against a backdrop of continued armed violence and in the aftermath of an ‘internally displaced persons’ (IDP) crisis stemming from continued military operations in the north-west also makes this a good example of the challenging dynamics associated with civil–military relations in the context of a complex emergency.

A brief note on methodology is in order here. The case study presented in this article is based on desk research, supplemented by a series of consultations with key stakeholders in Pakistan, London, and Geneva. They included representatives from the Pakistan government, the United Nations (UN), international non-governmental organizations (INGOs), the International Red Cross and Red Crescent Movement, and Pakistani NGOs and religious

2 By international militaries, we mean militaries operating outside their own national boundaries, rather than internationally mandated military forces, such as United Nations peacekeeping forces.

organizations. The interviews were conducted over ten days in May 2011 in Pakistan, in both Islamabad and Peshawar. Despite best efforts, owing to time, budgetary, and other constraints, it proved difficult to gain a wide range of views from within the Pakistan military. It was also beyond the scope of the study to undertake research with affected communities. The main issues and perspectives highlighted are therefore those of the interviewees, particularly the international humanitarian community, the Pakistani authorities, and local organizations involved in the relief effort.

The discussion takes form in five sections. The first provides a brief overview of the normative landscape of civil–military relations in humanitarian relief generally. The second section turns to the specific context of civil–military relations in Pakistan, while the third gives an overview of the respective responses of the humanitarian community and the Pakistan military to the 2010 floods. The fourth section takes stock, drawing out key lessons that can be learned from the response to the flooding about both civil–military relations and the overall humanitarian response. By way of conclusion, the fifth and final section summarizes the key issues that arose in the context of Pakistan, but which may also be relevant to civil–military relations in other natural disaster and complex emergency settings.

## **The normative landscape: whither the role of national militaries?**

Two sets of internationally recognized guidelines provide direction, co-ordination, and advice on the role of the military in international humanitarian response. These are the ‘Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief’ and the ‘Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies’, otherwise known as the ‘Oslo guidelines’ and the ‘MCDA guidelines’ respectively.<sup>3</sup> The Oslo guidelines were the result of a two-year process that culminated in an international conference in Oslo, Norway, in 1994, where the guidelines were accepted by the forty-five states and twenty-five organizations present. They were most recently updated in 2006. In 2003, it was felt that a separate set of guidelines was required for complex emergencies, as humanitarian actors and military forces were both involved in relief in places such as Iraq and Afghanistan. This led to the development of the MCDA guidelines. Both sets of guidelines are non-binding and do not affect the rights, obligations, or responsibilities of states under international humanitarian law. Both sets also affirm the primary responsibility of the affected state in disaster response, and clearly state that the use of foreign military assets is a means of ‘last resort’. They follow a similar format; the main difference is that the Oslo guidelines address natural disasters in times of peace only. The Oslo guidelines

3 ‘Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief’, November 2006, and ‘Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies’, March 2003, both available at: <http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-products-products&productcatid=8> (last visited 28 October 2011).



further affirm the importance of humanitarian principles and the primary role of civilian actors in disaster relief.

Despite being otherwise comprehensive, there is an important gap in these guidelines. They are intended to guide operations regarding the use of foreign military assets and give limited attention to the role of national militaries in disaster relief. National militaries, particularly in developing countries, are more often than not the 'first resort' of governments in large-scale disasters. In some cases, they are an integral part of national disaster-management plans and have significant experience of humanitarian operations.<sup>4</sup> Though there is variation across countries, national militaries tend to be well-resourced actors who can reach affected areas quickly and play a critical role in reducing immediate loss of life. The Oslo guidelines recognize that the primary responsibility for providing humanitarian assistance lies with an affected state, and acknowledge that, in such contexts, the involvement of domestic military forces is often a 'first resort', owing to lack of capacity elsewhere. However, there is little discussion about how national and international humanitarian actors should engage with national militaries. There is also no examination of the complexities of upholding humanitarian principles in a sovereign state where the national military has the primary mandate for disaster relief, or where the national military is involved in an ongoing conflict.

## The situation in Pakistan

Ranked 145 out of 169 on the Human Development Index (HDI),<sup>5</sup> Pakistan has a population of 184.7 million, of which about 60% live on less than \$2 a day.<sup>6</sup> It is prone to natural disasters, such as droughts, earthquakes, floods, and landslides. Owing to its complex ethnic make-up and its location in a volatile neighbourhood that includes Afghanistan, China, Iran, and India, it has also struggled to maintain stability and has frequently faced conflict, most recently as a frontline state in the 'global war on terror'. The presence of North Atlantic Treaty Organization (NATO) and US forces in neighbouring Afghanistan and the spill-over from the Afghan conflict into its territory and political life have meant that wider geopolitical considerations often play a role in shaping interaction inside and with Pakistan.

The military has been the predominant political force in Pakistan since independence and enjoys more autonomy than any other state institution. Experienced, well organized, and well resourced, the Pakistan military is more than an armed force – it has extensive economic interests.<sup>7</sup> It sets the national

4 Wilton Park, 'The use of military assets in the humanitarian response to natural disasters', above note 3, p. 4.

5 See United Nations Development Programme, 'Pakistan country profile: human development indicators', available at: <http://hdrstats.undp.org/en/countries/profiles/PAK.html> (last visited December 2011).

6 OCHA Pakistan, available at: <http://www.unocha.org/where-we-work/pakistan> (last visited 28 October 2011); Development Initiatives, 'GHA Report 2011', p. 31, available at: <http://www.globalhumanitarianassistance.org/report/gha-report-2011> (last visited 28 October 2011).

7 See Ayesha Siddiq, *Military Inc.: Inside Pakistan's Military Economy*, Pluto Press, London, 2007.

security agenda and has a history of intervening, both directly and indirectly, in internal political processes. Under Pakistan's constitution, it is also obliged to come to the aid of civilian authorities in times of crisis, when called upon to do so, and has traditionally played the lead role in emergency and disaster relief. Consequently, in any international humanitarian response inside Pakistan, civil–military relations have been a key issue.

In that respect, the 2010 floods were only the latest in a series of emergencies to affect Pakistan over the past five years, during which humanitarian actors faced the challenge of ensuring principled and need-driven humanitarian action within a heavily militarized context. In October 2005, a devastating earthquake struck northern Pakistan and the disputed territory of Kashmir, killing or injuring 145,000 people and leaving an estimated 3.5 million homeless.<sup>8</sup> Rescue and relief operations were led by the Pakistan military, which reached communities in remote and inaccessible areas by co-ordinating the largest humanitarian helicopter airlift ever.<sup>9</sup> Although some concerns were raised, there was general support for the role played by the military and recognition of the complementary roles of local, national, and international humanitarian actors. It came to be widely regarded as one of the most effectively implemented responses to a large-scale natural disaster.<sup>10</sup> The experience helped build trust between the humanitarian community and the Pakistan military and established the military as a primary and effective responder to natural disasters, but it also highlighted the need for more effective civil–military co-ordination.<sup>11</sup> In 2007, therefore, the Pakistan government set up the National Disaster Management Agency (NDMA) – a civilian body headed by General Nadeem Ahmed, a senior military figure. The NDMA was tasked with co-ordinating the country's emergency response, including co-operation within government and between government and humanitarian actors.

Between the 2005 earthquake and the 2010 floods, Pakistan faced a number of humanitarian emergencies. Civil–military relations, which had been characterized by mutual goodwill and respect during the 2005 earthquake relief effort, became increasingly strained as the result of a changing geopolitical environment and increasing insecurity. The so-called 2008–2009 IDP crisis, when military operations against militants led to the displacement of over two million people from Khyber Pakhtunkhwa and the Federally Administered Tribal Areas was of particular note.<sup>12</sup> Though involved in military operations, the Pakistan military also played a

8 Andrew Wilder, 'Perceptions of the Pakistan earthquake response', Humanitarian Agenda 2015: Pakistan Country Study, Feinstein International Center (Tufts University), Medford, MA, 2008, p. 3, available at: <http://sites.tufts.edu/feinstein/2008/humanitarian-agenda-2015-perceptions-of-the-pakistan-earthquake-response> (last visited December 2011).

9 C.-A. Hofmann and L. Hudson, above note 1.

10 Marion Péchayre, 'Humanitarian action in Pakistan 2005–2010: challenges, principles, and politics', Feinstein International Center, Tufts University, Medford, MA, 2011, pp. 4–5, available at: <http://sites.tufts.edu/feinstein/2011/humanitarian-action-in-pakistan-2005-2010> (last visited December 2011); A. Wilder, above note 8, pp. 3–7 and 12–16.

11 M. Péchayre, above note 10, p. 5.

12 Humanitarian Policy Group, 'A clash of principles? Humanitarian action and the search for stability in Pakistan', HPG Policy Brief 36, Overseas Development Institute, London, 2009, p. 2, available at: <http://>

major role in co-ordinating the humanitarian response. The military characterized the crisis as a function of a wider 'law enforcement' operation, leading it to control humanitarian access, as well as the distribution of relief, to affected populations. It also came to view the international humanitarian community as slow, inefficient, and an operational hindrance.<sup>13</sup> On the other hand, humanitarian actors were wary of the military, given its role in armed violence, and concerned that co-operation with it could undermine their core principles and security. Different aid actors had different levels of co-operation with the military; overall, humanitarian agencies faced criticism for not challenging what was viewed as significant politicization and militarization of the response, and corresponding restriction of 'humanitarian space'.<sup>14</sup> A real-time evaluation of the response argued that the failure to address this encroachment set poor precedents in a context where future complex emergencies were likely.<sup>15</sup>

## The 2010 Pakistan floods response

The 2010 floods, the worst in Pakistan's history, began in late July following extremely heavy monsoon rains. Initially the provinces of Khyber Pakhtunkhwa and Balochistan were flooded, followed by Sindh and Punjab as the waters surged downstream, transforming the Indus River basin into a vast inland sea that submerged approximately a fifth of the country's landmass – an area larger than England.<sup>16</sup> Around 2,000 people were killed and 1.7 million homes were damaged or destroyed. Over 20 million people were severely affected (homeless, injured, malnourished, or sick) across 84 of Pakistan's 121 districts, more than the total number of people affected by the 2004 Indian Ocean tsunami, the 2005 Pakistan earthquake, and the 2010 Haiti earthquake combined. The disaster was

[www.odi.org.uk/resources/details.asp?id=3765&title=conflict-humanitarian-pakistan-stability-taliban](http://www.odi.org.uk/resources/details.asp?id=3765&title=conflict-humanitarian-pakistan-stability-taliban) (last visited December 2011).

- 13 John Cosgrave, Riccardo Polastro, and Farwa Zafar, 'Inter-agency real time evaluation (IA RTE) of the humanitarian response to Pakistan's 2009 displacement crisis: commissioned by the Inter-Agency Standing Committee', Final Report, Version 1.95, DARA, 9 August 2010, pp. 33–34 and 38–39, available at: [http://daraint.org/wp-content/uploads/2010/10/IARTE\\_PK\\_displacement\\_2010\\_report.pdf](http://daraint.org/wp-content/uploads/2010/10/IARTE_PK_displacement_2010_report.pdf) (last visited December 2011).
- 14 The term *espace humanitaire* was coined by the former Médecins sans Frontières (MSF) President Rony Brauman, who described it as 'a space of freedom in which we are free to evaluate needs, free to monitor the distribution and use of relief goods, and free to have a dialogue with the people'. Johanna Grombach Wagner, 'An IHL/ICRC perspective on humanitarian space', in *Humanitarian Exchange Magazine*, Issue 32, December 2005, pp. 24–26. J. Cosgrave, R. Polastro, and F. Zafar, above note 13, pp. 38–39; Humanitarian Policy Group, above note 12, p. 1.
- 15 J. Cosgrave, R. Polastro, and F. Zafar, above note 13, pp. 4 and 39.
- 16 Except where noted otherwise, the facts and figures in this section of the report are drawn from the following: Riccardo Polastro *et al.*, 'Inter-agency real time evaluation of the humanitarian response to Pakistan's 2010 flood crisis', DARA, March 2011, pp. 17–18 and 55, available at: <http://daraint.org/2011/03/30/1354/report-inter-agency-real-time-evaluation-of-the-humanitarian-response-to-the-2010-floods-in-pakistan/> (last visited December 2011); Niaz Murtaza *et al.*, 'Pakistan floods 2010: the DEC real-time evaluation report', ThinkAhead, March 2011, p. 5, available at <http://www.dec.org.uk/node/1776> (last visited December 2011).

compounded by pre-existing poverty, inequality, inadequacies in governance, and, in the case of Khyber Pakhtunkhwa and Balochistan, conflict and displacement.

The floodwaters also devastated fertile agricultural lands, livestock, stored commodities, water supply and sanitation facilities, and essential infrastructure. This included more than 5,000 miles of roads and railways, 7,000 schools, and 400 health facilities, thereby washing away years of development efforts and future livelihoods.<sup>17</sup> With around 80% of food reserves lost and entire farming communities destroyed, food prices soared nationwide. The overall economic damage caused by the disaster was assessed at \$9.7 billion by the World Bank and the Asian Development Bank.<sup>18</sup>

Scant months prior to the onset of the flood disaster, an important initiative had been undertaken by the humanitarian community to ensure more principled civil–military interaction. This was the adoption in early 2010 of country-level Pakistan Civil–military Guidelines by the UN humanitarian country team (HCT),<sup>19</sup> which were developed by the UN Office for the Co-ordination of Humanitarian Affairs (OCHA). The guidelines are comprehensive and meticulous; and they recognize the differences between responses to complex emergencies and those to disasters in peacetime and set different standards and thresholds for civil–military interaction in each. However, in both contexts the guidelines seem to acknowledge the potentially negative implications of the use of military assets for the perception of humanitarians' neutrality and impartiality in Pakistan. They set out as a principle that 'military and civil defence assets shall not be used to support humanitarian activities' in response to complex emergencies or natural disasters that occur in the larger context of complex emergency. The guidelines recognize, however, that in certain extreme and exceptional circumstances the use of military assets may be required, and they set out five criteria to help assess where this may be the case. These are: use of the asset is based solely on humanitarian criteria; it is a last resort, when a highly vulnerable population cannot be assisted or reached by any other means and there is no appropriate civilian alternative; the urgency of the task at hand demands immediate action; use of the asset is clearly limited in time and in scale; and use of the asset is approved by the HCT.<sup>20</sup>

These country-specific guidelines were set out to achieve two things: to provide a unified strategy towards civil–military relations for the HCT that specifically and clearly recognized the role of the national military; and to provide the Pakistan government and military with a better understanding of the humanitarian principles under which the international humanitarian agencies operated. However, despite the attempt to agree a unified strategy towards

17 M. Péchayre, above note 10, p. 9.

18 World Bank, 'ADB-WB assess Pakistan floods damage at \$9.7 billion', press release no. 2011/134/SAR, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22733998~pagePK:64257043~piPK:437376~theSitePK:4607,00.html> (last visited December 2011).

19 The Humanitarian Country Team (HCT) is a group of UN agencies, including OCHA, WFP, and UNHCR, tasked with providing strategic-level decision-making during disasters.

20 Nicki Bennett, 'Civil–military principles in the Pakistan flood response', in *Humanitarian Exchange Magazine*, Issue 49, February 2011, available at: <http://www.odihpn.org/report.asp?id=3167> (last visited 12 September 2011).

civil–military relations, differences in opinion remained within the humanitarian community in relation to the use of military assets. Particularly with respect to the definition of ‘last resort’, there was a lack of agreement on the principles within the donor community and it was also clear from interviews that the Pakistani authorities did not endorse the guidelines. As is outlined below, the lack of universal endorsement of the guidelines, and of a common position towards civil–military relations, led to divisions both within the humanitarian community and between humanitarian actors and the military and political communities.

## Response of the Pakistan military

Given its obvious capacity, constitutional mandate, strength, and experience, the military (alongside the local population and civilian authorities) was among the first to respond to the crisis. Troops were mobilized within seventy-two hours to evacuate people and distribute immediate life-saving assistance, including rations from the military’s own supplies. Over 600 boats and a range of aircraft, including C-130 planes and helicopters, some belonging to foreign militaries but put under the control of the Pakistani authorities, were used to reach cut-off parts of the country, allowing 850,000 people to escape to safety.<sup>21</sup> The military also set up field hospitals, mobile veterinary teams, and over 100 relief camps. Afghanistan, Australia, Japan, the UAE, and the US also mobilized military personnel, medical teams, field hospitals, and air logistics facilities. According to NDMA officials, Pakistan’s armed forces spent nearly 25% of their annual budget on the flood response.

Most interviewees, irrespective of their particular views of the military, thought that the Pakistan military had committed significant resources to mount an effective response, which had helped prevent a greater loss of life, although the humanitarian situation a year later suggests that the scale of the crisis overwhelmed even this effort. There was also criticism of the Pakistan military for a lack of humanitarian expertise, despite its involvement in previous emergency responses such as the 2005 earthquake and 2008–2009 IDP crisis. In the view of the humanitarian community, the military’s targeting of assistance to those in need was poor (therefore not necessarily reaching the most vulnerable), and there was a focus on physical (or kinetic) security as opposed to acceptance-based security.

The Pakistani authorities and the humanitarian community do not always share the same standards for evaluating needs, which can cause misunderstanding and confusion when information is shared between humanitarian agencies and the government. Further, humanitarians felt that the Pakistani authorities prioritized damage assessment over the humanitarian needs of affected people. Many thought that the military’s response also lacked disaster reduction or disaster preparedness

21 UK House of Commons International Development Committee, ‘The humanitarian response to the Pakistan floods: government response to the Committee’s seventh report of session 2010–12’, 12 July 2011, p. 3, available at: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmintdev/1435/1435.pdf> (last visited December 2011).

strategies. Normally, such strategies would be expected of the civilian government, but, given the mandate and role of the military in Pakistan, there was an expectation that these should have formed part of the Pakistan military's responsibilities.

## Response of the international humanitarian community

The humanitarian response in Pakistan was one of the largest relief operations launched by the international community. The UN appeal for the floods, for example, was the largest one-country appeal for a natural disaster in its history until that point.<sup>22</sup> Key roles played by the international humanitarian community included the provision of mobile disease early warning systems, which, along with an integrated food, nutrition, and water and sanitation approach, were considered effective in controlling major epidemics of diseases. Millions were prevented from falling into food insecurity, thanks to the World Food Programme (WFP) and its partners increasing their distribution from three million to eight million beneficiaries between August and October 2010.<sup>23</sup>

However, the sheer scale of the emergency meant that the response was soon stretched to the limit. Some critics have suggested that the international response was too late to be considered immediately life-saving, except in a few areas, and that it instead served as a second wave of support.<sup>24</sup> Notably, funding through the UN-led cluster system, and in some cases through direct donors, was slow to become available to implementing agencies and equally slow to be disbursed. This was because of both the process-orientated nature of the cluster system and the slowness of donors to fulfil their pledges to the UN consolidated appeal.

Overall, aid agencies faced significant challenges in scaling up their operations. Their presence tended to be concentrated in larger towns and areas. This was in part for logistical reasons, but also due to political and security considerations, particularly in the districts in Khyber Pakhtunkhwa that were affected by conflict and lay close to the border with Afghanistan. At the onset of the disaster, most humanitarian agencies only had a presence in Khyber Pakhtunkhwa because of their continuing engagement with previous disaster responses (mainly the 2005 earthquake and the 2008–2009 IDP crisis).<sup>25</sup> Further, the damage caused by the floods to supply lines and communication networks meant that only large and established organizations with national and regional stocks of relief items, such as the International Committee of the Red Cross (ICRC) and the UN High Commissioner for Refugees (UNHCR, also known as the UN Refugee Agency), were able to respond immediately.<sup>26</sup> Humanitarian capacity was even weaker in Balochistan, Punjab, and Sindh, where the numbers of people affected were also higher: around 8.2 million and 7 million people were affected in Punjab and Sindh

22 OCHA, 'Pakistan: one year on', 2011, pp. 23 and 61, available at: <http://www.unocha.org/top-stories/all-stories/pakistan-one-year> (last visited December 2011).

23 R. Polastro *et al.*, above note 16, p. 35.

24 *Ibid.*, p. 34.

25 *Ibid.*, p. 9.

26 *Ibid.*, p. 38.

respectively, as opposed to 3.8 million in Khyber Pakhtunkhwa.<sup>27</sup> The inter-agency real-time evaluation concluded that coverage of humanitarian needs was proportionally larger in Khyber Pakhtunkhwa than in Sindh.

## Lessons learned

One year on from the floods, water and sanitation facilities have been restored and about 1.6 million homes, as well as other buildings, bridges, and roads, have been rebuilt.<sup>28</sup> However, Oxfam estimates that more than 800,000 families are continuing to live in makeshift tents and shelters, while more than one million people still need food assistance.<sup>29</sup> There have been outbreaks of disease as the result of inadequate access to clean drinking water and sanitation facilities; hunger, malnutrition, and lack of security remain serious concerns. Flood-prone areas still have weak levels of resilience and preparedness for disasters, leaving survivors vulnerable to another crisis. Taking stock is therefore vital. A number of lessons can be learned from the 2010 floods about civil–military relations, as well as about the overall humanitarian response.

### Lessons learned about civil–military interaction

#### *Improved humanitarian outcomes?*

Despite the shortcomings of the overall response to the floods, many interviewees highlighted the complementary roles played by humanitarian and military actors. In particular, the role of the military in serving as ‘first responders’<sup>30</sup> in evacuating people and distributing relief to isolated populations was seen to have prevented massive loss of life. Humanitarian actors in turn were credited with helping to bring the humanitarian situation under control; their work to minimize hunger and the outbreak of epidemics was considered instrumental in stopping a second wave of deaths. Furthermore, while the military possessed the quickest means of delivery, it was primarily the humanitarian actors who had international access to key relief items, as well as the specialist knowledge to ensure their efficient use. This highlights the distinct but complementary roles that can be played by military and humanitarian actors in emergency response and how these roles can help meet the humanitarian imperative.

27 UK House of Commons International Development Committee, above note 21, p. 2.

28 Ajay Chhibber, ‘Pakistan’s flood victims still need support’, in *Washington Post*, 13 August 2011, available at: [http://www.washingtonpost.com/opinions/pakistans-flood-victims-still-need-support/2011/08/02/gIQAWhmxBJ\\_story.html](http://www.washingtonpost.com/opinions/pakistans-flood-victims-still-need-support/2011/08/02/gIQAWhmxBJ_story.html) (last visited December 2011).

29 Arif Azad and Helen McElhinney, *Ready or Not: Pakistan’s Resilience to Disasters One Year on from the Floods*, Oxfam Briefing Paper 150, 26 July 2011, p. 1, available at: <http://policy-practice.oxfam.org.uk/publications/ready-or-not-pakistans-resilience-to-disasters-one-year-on-from-the-floods-138689> (last visited December 2011).

30 See R. Polastro *et al.*, above note 16, p. 33.



However, these complementary roles were not without their complications. The humanitarian response has been criticized for its lack of a principled approach, based in part on an absence of independent needs assessment and limited access, but also owing to claims of civil and military control over the distribution of aid.<sup>31</sup> Interviewees were also concerned about the military's limited understanding of the importance of impartiality in the distribution of aid, which they claimed led in part to the disproportionate level of support to Punjab compared to other areas. There were also technical differences: for instance, the government of Pakistan had a different interpretation of the transition from relief to recovery, and rejected the relevance of Sphere standards in some sectors.<sup>32</sup> This confirms again that, while there may be improved humanitarian outcomes when civil and military actors work together, this is not without cost to other humanitarian principles and adherence to internationally recognized standards.

### *Inconsistency and different interpretations of 'last resort'*

The question of whether humanitarian actors should transport food and other heavy goods using military assets arose very quickly, given the scale of the flooding and the impassability of large areas (particularly in the northern districts of Swat, Kohistan, and Shangla, where almost all major bridges and roads had been washed away or severely damaged).<sup>33</sup> Using the in-country civil–military guidelines, the HCT endorsed the use of military helicopters on the grounds of 'last resort' by the World Food Programme (WFP) to transport food to areas that were inaccessible by other means, at least until the UN Humanitarian Air Services could take over.<sup>34</sup> With flooding expanding into southern areas and affecting accessibility in large areas of Balochistan, Punjab, Sindh, and Gilgit-Baltistan, this authorization was broadened to include the transport of a range of life-saving relief items across Pakistan, involving UN agencies and a number of NGOs. The UN agreed measures to limit potential negative implications, such as ensuring that military officials were clear that their involvement was limited to the transportation of goods, and that humanitarian and media representatives' passage on military flights was restricted.<sup>35</sup> These decisions have since been criticized, with concerns raised in particular about humanitarian actors' use of military assets in areas of Balochistan and Khyber Pakhtunkhwa, where the Pakistani military is active operationally.<sup>36</sup>

31 Christopher Stokes, 'Drowning humanitarian aid', in *Foreign Policy*, 27 October 2010, available at: [http://afpak.foreignpolicy.com/posts/2010/10/27/drowning\\_humanitarian\\_aid](http://afpak.foreignpolicy.com/posts/2010/10/27/drowning_humanitarian_aid) (last visited December 2011).

32 The Sphere Project was launched in 1997 to develop a set of minimum standards in core areas of humanitarian response. This resulted in the publication of a handbook, *Humanitarian Charter and Minimum Standards in Humanitarian Response*, which was last updated in 2011. The standards set out in the Sphere handbook are widely accepted by the humanitarian community.

33 Transport and medical facilities were provided by both Pakistani helicopters and international assets on loan – American Chinook helicopters, British Bailey bridges, and Chinese field hospitals to name a few – which created an ambivalent situation regarding the distinction between international and national military assets, though international markings were removed or covered up.

34 M. Péchayre, above note 10, p. 12.

35 N. Bennett, above note 20.

36 See, for example, R. Polastro *et al.*, above note 16, p. 37.

The government did not permit the UN Humanitarian Air Services to deploy civilian helicopters at first;<sup>37</sup> therefore initially, when air access was most needed, the only air assets allowed into the north-west were military.

Lack of consistency among humanitarian agencies was evident across all civil–military debates. Many local NGOs, while demonstrating different levels of interaction depending on their political affiliation, largely accepted the role of the military in the response as a natural governmental function. The Pakistan Humanitarian Forum,<sup>38</sup> representing a large number of international humanitarian NGOs working in Pakistan, made a collective decision not to use military assets, national or international. However, local NGOs were frequently not party to what were largely debates by international actors on civil–military relations. Within the international humanitarian community, there were different interpretations of when the threshold of ‘last resort’ to use of military assets had been reached, while still others – including Médecins sans Frontières (MSF) and the ICRC – argued against the use of military assets in their own operations in order to safeguard perceptions.<sup>39</sup>

### *Geopolitical pressures*

Given the severity of the humanitarian crisis and Pakistan’s proximity to Afghanistan, the question of whether NATO military assets should be involved in the response was almost inevitable. In early August, NATO offered assets, including an air bridge,<sup>40</sup> to the Pakistan government. This happened on 20 August, at which point NATO also publicly offered this capability to humanitarian organizations. The issue led to heated debate in the humanitarian community, owing to the role of NATO in the Afghan conflict and the regional political implications. Representatives from the UK, US, and Pakistan governments advocated strongly for humanitarians to use the air bridge,<sup>41</sup> claiming that it would speed up delivery and reduce costs associated with assistance. These assertions were challenged at the time, and have been since, by OCHA.<sup>42</sup> Meanwhile, the European Commission Directorate-General for Humanitarian Aid (ECHO) took a different position, letting it be known that, if any of their implementing partners violated humanitarian principles in the use of military assets, they would be in breach of their contract. The HCT finally ruled out use of the NATO air bridge on the basis that it was not a last resort because civilian transport was available. Despite this collective decision, WFP

37 M. Péchayre, above note 10, p. 10.

38 The Pakistan Humanitarian Forum was established in 2003, following the 2002 earthquake in the northern areas of Pakistan. Membership of the forum includes nearly all the major INGOs in Pakistan, including Oxfam, Save the Children, Action Aid, and Islamic Relief. The forum collectively represents the international humanitarian community with the UN and the Pakistan government.

39 Indeed, both also refused their activities to be included in the UN situation updates.

40 ‘Air-bridge’ is a term in logistics to describe the route and the means of delivering material from one place to another using an airlift.

41 UK House of Commons International Development Committee, above note 21, pp. 5–6.

42 See N. Bennett, above note 20.

and UNHCR used the air bridge on a short-term basis,<sup>43</sup> as did a number of NGOs. It is important to note that at no time did NATO planes fly into areas affected by conflict or the disaster. Instead, supplies were flown directly from Europe to Chaklala Airbase outside Islamabad.

### *Different approaches to security*

Other challenges related to the use of armed escorts. Certainly, there was pressure from Pakistani authorities to use armed escorts in specific districts of Khyber Pakhtunkhwa, Punjab, and Sindh.<sup>44</sup> This was met with different responses from humanitarian actors, with some accepting the armed escorts, others gaining exceptions, and still others suspending operations. Many humanitarian actors were extremely reluctant to use armed escorts provided by the Pakistan military or police because they believed that it would undermine their acceptance in the long term and place their staff and programmes at risk. The Pakistani authorities, on the other hand, were fearful of the media attention that a serious security incident involving an international actor would bring, and therefore insisted that humanitarian actors used police escorts in a number of sensitive areas. While Pakistani authorities in Islamabad often understood humanitarian security strategies, that understanding did not filter down to the field in Punjab and in some places in Khyber Pakhtunkhwa, which led to an insistence on the use of armed escorts, confusion about the necessity of No Objection Certificates, and nervousness of provincial authorities to allow expatriate staff to deliver aid. This, perhaps more than any other issue, frustrated the relationship between humanitarian actors and the Pakistani authorities at the field level.

### *Lessons learned about humanitarian response*

One of the central issues to emerge from the response to the Pakistan floods is that it matters how a crisis is characterized. There is often significant disagreement among responders over this issue. Humanitarian principles, particularly neutrality and impartiality, are recognized by humanitarian agencies as key to facilitating safe and secure access to populations in need. As this is particularly pertinent in situations of armed violence or conflict, the level of civil–military interaction that will be perceived as appropriate will change depending on the context: risk thresholds will vary, while different civil–military guidelines apply in times of peace or conflict. How a crisis is perceived and defined is therefore key to the level and pitch of civil–military relations.

Pakistani authorities and organizations, as well as some UN agencies and INGOs, viewed the 2010 floods as a purely natural disaster; following on from that, they perceived the sensitivities felt by others around neutrality and acceptance as

43 Pakistan Civil–Military Coordination Working Group meeting, 30 September 2010, available at: <http://bit.ly/Jzs2qA> (last visited December 2011).

44 *Ibid.*

inappropriate. However, for members of the International Red Cross and Red Crescent Movement, a number of INGOs, and some UN agencies, the 2010 floods took place in the context of a larger complex emergency. Issues around neutrality and acceptance were seen to be highly relevant. This divergence in understandings of the crisis was felt across the board in civil–military relations, including over the use of military assets, the use of armed escorts, and the applicability of guidelines.

Broadly speaking, it is possible to identify three distinct approaches taken by international organizations:

1. Those who saw themselves responding to a purely natural disaster tended to follow the Oslo guidelines;
2. Those who saw themselves responding to a complex emergency, in which both the Pakistan national military and NATO were perceived to be parties to a conflict, tended to follow the MCDA guidelines and to maintain an appropriate distance from the military where possible;
3. Those who saw themselves responding to a natural disaster within a complex emergency, for which there are no international guidelines and where neither the Oslo guidelines nor the MCDA guidelines provide guidance on civil–military relations with the national military, tended to have varying responses to civil–military issues.

Local NGOs had diverse positions. Some showed little concern for civil–military issues and accepted the heavy involvement of the military as normal. Access was the only issue on which they interacted or negotiated with the army. Others were less ambivalent and had poor or distant relations with the military. However, this had had greater impact on their positions and operations during the 2008–2009 IDP crisis; many interviewees stated that such concerns were largely irrelevant during the 2010 flood response.

While principles and guidelines had a dominant influence over how civil–military relations were understood, there were some pragmatic considerations that also affected the different positions that actors took and that were independent of the different frameworks through which they viewed the crisis. These included:

- a) *Scale of the disaster and the humanitarian imperative.* The number of people affected in the 2010 floods was unprecedented in Pakistan. The need to deliver assistance as quickly as possible, and the obvious and readily available life-saving capacities of the military, may have softened some humanitarian agencies' positions towards civil–military interaction, while also encouraging the military to engage with humanitarian responders to the greatest extent possible.
- b) *Size of programmes.* The size of an agency's programme has an effect on its willingness to work with the military and to use military assets. The overwhelming amount of aid distribution, even in large-scale operations, was done with the use of civilian contractors. Agencies, such as WFP, that were delivering huge amounts of food to affected people largely through civilian means were not willing to take a hard stance on the small portion of their total

assistance delivered using military assets, which risked damaging their relationship with the Pakistani authorities.

- c) *Organizational mandate.* Organizations active in areas of armed violence in Pakistan, particularly MSF and the ICRC, were not willing to risk their longer-term interests and acceptance with armed actors by using military assets. In these cases, organizations tended to use low-tech methods such as donkey caravans to reach remote communities.
- d) *Media and public pressure on the Pakistani authorities.* The pressure within Pakistan to deliver aid quickly and effectively was extremely high. The civilian government at the time was quite fragile. Given the scale of the disaster, it was important for the government, as well as for the military, to respond quickly to maintain their popular legitimacy. This explains, at least in part, their desire to control the humanitarian operation to the greatest extent possible.
- e) *Geopolitical pressures on all actors.* Humanitarian agencies, international donors, and the Pakistani authorities were all heavily affected by geopolitical sensitivities. The international media were quick to point out that charities allied with militant groups were filling gaps where the Pakistani authorities and international humanitarian agencies were not responding adequately. This led to a general fear that, if the charity wings of militant groups were distributing aid on a large scale, then support for these organizations and ideology would increase.
- f) *Lack of knowledge of civil–military principles and guidance on all sides.* Many in the humanitarian community and among the Pakistani authorities professed awareness of the Oslo and MCDA guidelines and of civil–military issues in general. However, a detailed and nuanced understanding of the issues was rare, resulting in possible overreactions or misunderstandings with regard to civil–military issues, which damaged relationships between civil and military actors. These included the different interpretations of ‘last resort’, which is explained well in the guidance. One reason for this was too much dependence on written guidelines and limited in-country training and dissemination, both during the flood response and in the period preceding it. While there was a major emphasis on formulating guidelines and gaining HCT endorsement, less attention was paid to ensuring that the resulting guidance was disseminated and understood.

## Conclusions

### Principles and pragmatism in civil–military interaction

Humanitarian agency views on civil–military relationships are rooted in humanitarian principles, particularly neutrality and independence. Humanitarians argue that they require distance from the military, particularly during conflict, in order to obtain access to and be accepted by populations in need. Different aid organizations pursue these principles in different ways. MSF, for instance, seeks to ensure financial

independence, so its programmes in Pakistan are not funded by any governmental donor. This is a tool that it uses for negotiating access, as it can claim that its response is on the basis of need alone and is independent of the political priorities of donor governments.

Ensuring acceptance in a complex environment such as Pakistan is not easy. For example, gaining international access in Pashtun-dominated tribal areas has long been difficult, owing to negative local perceptions of international actors, which have been further eroded by the 'global war on terror'. The role of the UN and other actors in supporting internationally led stabilization efforts in Pakistan in the context of the IDP crisis has not helped with local perceptions of independence and neutrality.<sup>45</sup> Security concerns in Pakistan have increasingly led humanitarian organizations to adopt protective and deterrent security measures, often meaning that their staff are confined to highly fortified compounds in large cities.

As a result, few humanitarian organizations operating in Pakistan – with the exception of MSF and ICRC – seek contact or maintain relationships with non-state armed actors in Pakistan, and therefore do not have access to populations under their control or influence. Without these relationships – which require skills, ongoing analysis, effort, and dedicated capacity to build – the degree to which agencies are perceived as neutral and accepted by non-state armed actors is unclear, arguably regardless of their degree of interaction with the military. Whereas UN agencies are prevented from engaging with some non-state actors in Pakistan owing to institutional constraints such as the prohibition of engagement with proscribed groups, international NGOs have the potential – at least in principle – to do more in this regard.

Those agencies that have maintained contact with non-state armed actors in Pakistan have tended to view civil–military issues in a more nuanced manner and as integrated into a holistic and contextualized understanding of humanitarian principles. In relatively peaceful areas such as northern Sindh, the use of military assets was often seen as a relatively minor issue by them. In others, such as the Federally Administered Tribal Areas, where armed violence is prevalent, it was viewed as much more sensitive and critical. Yet, in all cases their decision-making was guided by interest in maintaining engagement with non-state armed actors and thereby their continued ability to access populations in areas under the latter's control or influence.

This raises the question of the relationship between humanitarian principles and civil–military relations. In particular, it begs questioning the degree to which the use of civil–military assets *per se* is fundamental to an organization's neutrality, or whether it is just one of many issues that play into how it is perceived. On the one hand, refusal to use military assets can be interpreted as an effort to ensure a principled approach. On the other hand, in the absence of any previous engagement with non-state armed actors, it can be perceived as a knee-jerk reaction, or even grandstanding over principles, if not combined with a detailed and nuanced understanding of context.

45 Humanitarian Policy Group, above note 12, p. 7.

## Approaches to the affected state

The primary role of the affected state in disaster response is a principle affirmed by the Oslo and MCDA guidelines, UN General Assembly Resolution 46/182, and the Sphere handbook, and the appropriateness of this approach has been confirmed by independent research.<sup>46</sup> While the role and responsibility of the affected state has been accepted as a matter of law and policy, it has rarely been fully integrated in practice into the approaches taken by various international humanitarian actors toward national authorities. Yet co-ordination between national militaries and humanitarian actors is essential in large-scale natural disasters such as the 2010 Pakistan floods, owing to the overwhelming humanitarian imperative.

Given the necessity for civil–military co-ordination in Pakistan, country-level civil–military guidelines were developed in 2009 by an HCT working group. This was led by OCHA and endorsed by the HCT to cover civil–military interaction in humanitarian relief operations during both complex emergencies and peacetime. This initiative was particularly important given that the relevance and application of international civil–military guidelines is unclear in a context where most of the military assets in question are under the control of the national military (as opposed to foreign militaries). Within the humanitarian community, the guidelines were widely thought to be detailed, useful, and thorough. However, the guidelines had not been officially accepted by the Pakistani authorities by the time of the floods and have yet to be signed off by the government of Pakistan in 2012. When pressed for an answer as to why these guidelines have still not been accepted, representatives from the NDMA argued that they were not applicable to a sovereign nation such as Pakistan with an internationally recognized capacity for disaster response and a wealth of experience acquired through participation in UN peacekeeping operations around the world. They felt that the guidelines were more appropriate for humanitarian emergency settings in which no functioning government exists.

Given the meticulous nature of the guidelines themselves, the problem lay more in the process by which they were developed and presented to the Pakistani authorities than their actual content. In view of the primary role played by the Pakistani authorities within the country and their recognized leadership in previous crises, the development of civil–military guidelines would have required a participatory approach and careful relationship management by the international humanitarian community. However, instead of a set of guidelines developed jointly, the Pakistani authorities felt that they had been presented with a *fait accompli* in the form of guidelines mainly developed by international humanitarian organizations, which dictated how the Pakistan government should interact with the international organizations operating on its territory.

46 Paul Harvey, 'Towards good humanitarian government: the role of the affected state in disaster response', HPG Policy Brief No. 37, Overseas Development Institute, London, 2009, available at: <http://www.odi.org.uk/resources/details.asp?id=4196&title=good-humanitarian-government-affected-state-disaster-response> (last visited December 2011).



Guidelines themselves are not binding; they only guide practice if there is 'buy-in' from all sides. Proper participation, accompanied by sustained and nuanced humanitarian diplomacy, is required to obtain the vital ingredient of 'buy-in'. Though different organizations and individuals had contrasting views on how the process had been managed in Pakistan, in the final analysis it was the perception of the Pakistani authorities that mattered most and that prevented the guidelines from being accepted. The failure of the country-level guidelines to be accepted by the Pakistani authorities ahead of the 2010 emergency demonstrates that the diplomatic skills required to obtain buy-in are as important as, if not more important than, the technical skill required to develop solid guidelines. Part of the problem is that the relationship between national militaries and international humanitarian actors has tended to be seen as a rivalry. This is inappropriate given the role of the affected state and the necessity of civil–military interaction in such large-scale disasters.

### Local organizations and civil–military relations

Local organizations, particularly those that did not regularly serve as implementing partners for international agencies, had little awareness of civil–military issues. They tended to view the pervasive military presence as a permanent aspect of life in Pakistan and were largely unaware of guidelines on civil–military relations developed by international humanitarian organizations. Many of these organizations had grave reservations about the role of the military, but did not see working with, or independently of, the military as a particularly relevant concern. In some cases, owing to the volunteer base that they had within affected communities, it was clear that they were correct in not placing too much emphasis on civil–military relationships, as many search and rescue activities could be carried out by people within the affected communities themselves before military assistance had arrived. Meanwhile, other local actors have challenged the high degree of focus among international humanitarian actors on how they co-ordinate with the military, as opposed to how they could be influencing the actions of the military, as a 'black and white' interpretation of principles.<sup>47</sup> When thinking about civil–military principles in the context of local organizations, their unique dynamics and positions need to be taken into account. It is unclear how appropriate guidelines and civil–military approaches, originally developed for international organizations, are for national organizations, and much more study is required to understand this critical issue.

### Gaps in guidance

There are clearly gaps in international guidelines that govern civil–military relations. In particular, there is little or no guidance on engagement with national militaries.

47 Zahir Shah, 'Military–humanitarian relations in Pakistan', in *Humanitarian Exchange Magazine*, Issue 49, February 2011, available at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-49/military-humanitarian-relations-in-pakistan> (last visited December 2011).

Existing guidelines also make a sharp distinction between complex emergencies and natural disasters in peacetime. However, matters are not always so black and white in actuality. Nonetheless, the issue is vital, because the way in which a crisis is characterized matters for the pattern of civil–military relations that subsequently develop. During the Pakistan flood response, responders who saw themselves addressing a pure natural disaster tended to have a laxer approach to civil–military relations, while agencies who viewed the crisis as part of a larger complex emergency tended to take a stricter line with regard to the use of military assets. Given the increasing number of natural disasters occurring in conflict contexts, inconsistency in the application of guidelines is likely to manifest itself elsewhere.

During the 2010 floods, there was not only disagreement about the relevance of guidelines but also about how they were interpreted; in particular there was disagreement about how the concept of last resort was interpreted. Disagreement existed among government actors (namely Pakistan, the US, UK, and ECHO), as well as among humanitarian responders. According to OCHA, some agencies that did not resort to military assets argued that it was possible to carry out their humanitarian action using civilian assets, and so the threshold had not been reached. Others claimed that last resort only applies when there is a direct and immediate threat to life and security, and so was largely relevant only in the immediate life-saving phase of the response. Others argued that cost should be a consideration in ‘last resort’, especially when advocating for the use of strategic air assets funded by NATO. The HCT’s interpretation included the need to save lives and to alleviate suffering, including through indirect means, allowing for authorization to be provided for the use of military assets to transport relief items to areas that were hard to access.<sup>48</sup>

While in certain instances interpretation was on the basis of principles, it was often also related to pragmatic concerns, such as the size of the operation and even whether the agency was prepared to move to a new location or whether it had funding. The fact that ‘last resort’ and the guidelines themselves can be interpreted in such vastly different ways undermines the very value of guidance and points to an urgent need for greater clarity and agreement on the principle.

The gap in existing guidance on engagement with national militaries can be addressed in part by the development of country-specific guidelines, as was the case in Pakistan. However, as Pakistan also shows, guidelines themselves are insufficient. Guidelines, whether international or country-specific, are not binding and will only guide practice if they achieve buy-in from humanitarian agencies and the national authorities. International humanitarian agencies need to invest more in sensitizing national authorities to internationally recognized humanitarian principles through respectful and participatory engagement, and not simply assume that these principles will automatically be respected. A corresponding civil–military strategy could be promoted through nuanced humanitarian diplomacy. It is worth considering that country-specific guidelines have very rarely been accepted by

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48 See N. Bennett, above note 20.

national governments and militaries. Yet the humanitarian imperative makes principled and effective co-ordination between humanitarian agencies and governments essential, particularly in large-scale natural disasters, where national militaries are likely to take a leading role. This in turn underlines the critical importance of addressing the question of 'ownership' by the affected state, in terms of both guidelines and the overall humanitarian response.



## IN FOLIO

# ‘Yo lo vi’. Goya witnessing the disasters of war: an appeal to the sentiment of humanity

**Paul Bouvier\***

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### Editor's Note

*The humanitarian mission maintains its ultimate objective of preventing and alleviating human suffering in situations of extreme crisis. In a different vein from the main subject of this edition- the future of humanitarian action – and using the power of images, Paul Bouvier, ICRC Senior Medical Advisor, brings us back exactly two centuries, to the ‘Peninsular War’ between French, Spanish and British, among the fiercest of the Napoleonic Wars.*

*The artist Francisco de Goya produced a series of etched plates known as The Disasters of War, which offered a hitherto uncommon view of war. By showing the horror and devastation of armed violence, the resulting dehumanization, and the*

\* The opinions expressed in this article are those of the author and not necessarily those of the ICRC. The article was presented in part at the symposium ‘L’expérience créative permet-elle d’élaborer des liens’ organized by the Fondation Recherche et Formation pour l’Éducation des Patients (Tiziana and Jean-Philippe Assal) and the Fondation des Treilles (Catherine Bachy), in Tourtour, France, February 2011. Email: pbouvier@icrc.org.

*distress and suffering of the victims, he denounced the consequences of war and famine and the ensuing political repression. Goya’s lucid, compassionate, yet uncompromising depictions of war and its consequences are not only unique but also highly relevant today. His work is also an outcry and a plea for acts of humanity in the turmoil of armed violence, and anticipates the initiative that Henry Dunant would be prompted to take sixty years later, in Solferino. In a way, Goya announced Dunant.*

*Walking us through a selection of Goya’s sketches, Paul Bouvier looks at victims, perpetrators, and eye-witnesses, and discusses how these images relate to the contemporary experience of humanitarian workers faced with the extreme violence of war. The author decrypts Goya’s sketches and relates them to the essence of humanitarian action as a response to human suffering.*

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## War and its consequences

Two hundred years ago Francisco de Goya produced a series of etched plates on the war of independence that devastated Spain in the years 1808 to 1814,<sup>1</sup> and which was not only an international conflict, fought against the army of Napoleon, but also a civil and guerrilla war. Merciless fighting and unspeakable horrors gave way first to horrific famine and then to ruthless repression. If we look today at Goya’s one-of-a-kind work, we are struck by its significance to current events and the force and relevance of its message, which resonates in particular with modern-day humanitarian aid workers. The engravings, which depict a world devastated by a war without limits, whose victims are without aid or protection, are like a negative image of the challenges faced by humanitarian law and humanitarian work in armed conflict.

Goya’s work draws its richness from the way in which it focuses entirely on the human being. His depictions of violence are lucid and engaged, without prejudice or complacency, yet sensitive to the suffering of the victims, thereby paving the way for neutral, independent humanitarian action. The engravings also reflect Goya’s personal experience of war, as painful as it was traumatic. They are the testimony of a man who witnessed the extreme violence and harm that man inflicts upon his fellow man once violence is unleashed. Like Goya the painter, humanitarian workers see this violence, see things that are unbearable to look at and that words cannot express. Both are exposed to psychological trauma and, through and in their work, try to find meaning and a path to humanity where there no longer is one.

Through his work, then, Goya not only denounces extreme violence by showing how dehumanizing it is, how it destroys what is human in man. Faced with a world of devastation, destruction, suffering, and neglect, he cries out with indignation, pleading for a gesture of humanity: ‘There is no one to help them!’ Fifty

1 We would like to thank the Real Academia de Bellas Artes de San Fernando, Calcografía Nacional, Madrid, which generously provided the reproductions of engravings in the series *The Disasters of War*, and the Archivo Ornoz, Madrid, for the reproductions of [Figures 1](#) and [2](#).

years later, the same indignation rose up in Henry Dunant when he saw the wounded and dead lying abandoned on the battlefield of Solferino, and it prompted him to come to the aid of the victims.

Goya shows us a world of extreme violence, in which no help is offered to the victims, in which the earth is empty and bare and all feelings of humanity seem to have vanished. His depictions point to the absolute and urgent need for limits to violence in armed conflict, and his plea for help for the victims is as authentic as it is obvious. Goya's extraordinary work would not be published until 1863, thirty-five years after his death and in the year of the first international conference of the Red Cross.

Much has been written about Goya's life and work<sup>2</sup> and there is an abundance of literature on *The Disasters of War*.<sup>3</sup> The present article proposes to examine this vast body of work in a different light – that of humanitarian action in armed conflicts. Following in Goya's footsteps, it will therefore begin the assessment of each image by looking at the victims, perpetrators, and eye-witnesses of violence, and then discuss the implication of these images for humanitarian action and those carrying out humanitarian work in the extreme violence of war. First, however, a brief summary of Goya's life before the war.

Francisco de Goya y Lucientes was born on 30 March 1746 in Fuendetodos, a village near Saragossa, in Aragon. After being apprenticed to a painter and spending time in Italy, Goya married at the age of 27. In 1775 he settled in Madrid, painting religious works and tapestry cartoons for the El Prado palace. Many of these tapestries depict an idyllic world in which men, women, and children enjoy the bounteous and fertile beauty of nature, in welcoming, light-filled surroundings.<sup>4</sup> The paintings are inhabited by elegant, graceful people engaged in play and happily enjoying festive moments.

Goya's series of six paintings of children at play (1778–1785) are evidence of his keen sense of observation, the attention he paid to human beings, and the sensitivity and tenderness that he felt towards the youngest among them. The works show children at play, sometimes quarrelling, or crying in a corner. In his painting of children playing at soldiers (Figure 1), war seems but innocent child's play.

In 1789 Goya was appointed court painter and produced several official portraits. In Spain, the French Revolution made itself felt in feelings of hope but also uncertainty and insecurity. Goya sympathized with the ideals of the Enlightenment and the hopes associated with the Revolution. Three years later, he fell seriously ill. Although he recovered, his illness left him completely and permanently deaf. When he resumed work, his paintings became more personal, often portraying nature as

2 For an introduction to the life and work of Goya, see Jeannine Baticle, *Goya: Painter of Terrible Splendor*, Harry N. Abrams Inc., New York, 1994.

3 An excellent edition may be found in Sandra Balsells, Juan Bordes, and José Manuel Matilla (eds), *Goya, Chronicler of War: Los Desastres and the Photography of War*, Real Academia de Bellas Artes de San Fernando, Calcografía Nacional, Madrid, Centro Atlántico de Arte Moderno (CAAM), Cabildo de Gran Canaria, 2009. Reproductions are available at: [http://commons.wikimedia.org/wiki/Los\\_desastres\\_de\\_la\\_guerra](http://commons.wikimedia.org/wiki/Los_desastres_de_la_guerra) (last visited December 2011).

4 Juan Sureda, *Goya in Italy*, Turner/Fundación Goya en Aragón, Saragossa, 2008, p. 159.





Figure 1: Francisco de Goya, *Niños jugando a los soldados* (*Boys playing at soldiers*), 1776–1785. Madrid, Colección Santamarca.

hostile and as setting for disasters and violence: themes included shipwrecks, fires, an attack on a stage coach, assassinations, scenes from prisons and lunatic asylums, and, later, witchcraft and superstition.

In 1799 Goya was appointed to the position of first court painter. The same year he published a series of etchings entitled *Los Caprichos*, in which he depicted the foibles of people and society, pointed out the dark side of human behaviour, unveiled hypocrisy, and denounced the abuse of women, the ill-treatment of children, and other forms of social violence. For Goya, it was time for reason to rule: when reason sleeps (Figure 2), superstition and menacing shadows return.

## The Disasters of War

In 1807, the army of Napoleon Bonaparte began its invasion of Spain. On 2 May 1808, following the abdication of the king, a popular uprising in Madrid was repressed by the French cavalry. The incident pushed Spain into a terrifying war. What began as a fight against the invaders turned into civil war as the French occupiers enjoyed the support of numerous Spanish partisans hoping to end the system of absolute monarchy. For Goya, who was 63 years old at that time, the shock was terrible, torn as he was between his liberal, enlightened views and the horrific cruelties and abuse that were to last for six years. During this period he travelled throughout Spain and witnessed first-hand the ravages of war and the suffering of the population. After the first siege of Saragossa in the summer of



Figure 2: Francisco de Goya. *El sueño de la razón produce monstruos* (*The sleep of reason produces monsters*). Caprichos, plate 43 (preparatory drawing) 1797. Museo Nacional del Prado, Madrid.

1808, the Spanish general Palafox invited Goya and two other artists to come and see the devastation caused by the bombardments. The etchings subsequently published by his colleagues depict combat scenes, destroyed monuments, and heroic



Figure 3: *The Disasters*, plate 1, *Tristes presentimientos de los que ha de acontecer* (Gloomy premonitions of what must come to pass).

figures:<sup>5</sup> throughout time, art has been used by the victors for the glorification of war.<sup>6</sup> Goya returned from his voyage in a state of upheaval and did not start work until two years later, in 1810, when for more than five years he produced drawings and copper prints of scenes of war, the terrible famine of 1811–1812, and the ensuing repression. The series of engravings, which he entitled ‘Fatal consequences of the bloody war in Spain with Bonaparte’, was not widely distributed. Goya died in 1828. The prints were eventually published thirty-five years later, under the title *The Disasters of War*.

*Tristes presentimientos de los que ha de acontecer* (Gloomy premonitions of what must come to pass) (*The Disasters*, plate 17)

The sky has darkened and in the distance we can almost hear the sound of marching boots and rolling drums. War is imminent, appears inevitable. The imploring look

5 José Manuel Matilla, ‘Estampas españolas de la Guerra de la Independencia: propaganda, conmemoración y testimonio’, in S. Balsells, J. Bordes, and J. M. Matilla, above note 3, p. 5.

6 Carlos Serrano, ‘Que la Guerre était jolie!’, in Jean-Paul Duviols and Annie Molinié-Bertrand (eds), *La violence en Espagne et en Amérique (XV<sup>e</sup>–XIX<sup>e</sup> siècles)*, Presses de l’Université Paris-Sorbonne, Paris, 1997, p. 105.

7 The numbers in the captions reflect the numbering of the plates in the series *The Disasters of War* by Francisco de Goya.



on the man's face is an expression of deepest distress and anxiety about the events that are about to take place. Alone, on his knees, he is surrounded by dark shadows and haunted by menacing, grimacing figures. What light there is reveals his near-nakedness, his ragged clothes. He is pleading for help, powerless in the face of events from which there is no escape.

The image, which is the frontispiece to *Disasters of War*, could be considered a warning to the viewer. What the man seems to say is: 'You who are about to turn these pages, be ready to look at the face of human suffering and the horrors of war.' In Goya's time most works of art depicted the death of a hero,<sup>8</sup> representing war as positive, beautiful, and glorious, and the deceased as hero of a great cause. Pictures of war had moral qualities and spared little space for suffering. From the outset, Goya adopted a radically different, original attitude, rejecting the bellicose, heroic, sacrificial, and triumphalist approach. His work centres fully on the human person.

The anxiety portrayed in the drawing is a reflection of the extreme violence witnessed by Goya and, in modern times, by humanitarian workers reaching out to victims of violence. In this sense, the frontispiece image is also an invitation to silence. Learning to observe<sup>9</sup> and to listen to others are great qualities common to both artists and humanitarian workers.

### *Con razon ó sin ella (With or without reason) (The Disasters, plate 2)*

Without transition the artist plunges us into the heart of violence at its most brutal. The print depicts, on one side, the mechanical, faceless, impersonal violence of Napoleon's army. The rifles aimed by invisible faces reappear in the painting *The Third of May 1808*. On the other side, facing the viewer, are the violent insurgents. They have faces, the ferocious expressions on which reveal that this is a fight without mercy. Behind them lies a pile of bodies, both wounded and dead. In the next print, entitled *The same thing* (plate 3), a Spanish insurgent raises an enormous axe above a French hussar who, terrorized, attempts to plead for mercy. Violence dehumanizes both sides of the conflict.

As the title says: never mind the reason for it, violence is always the same and always has the same consequences: injuries, suffering, death, and devastation. Goya was familiar with the prints entitled *The Miseries of War*, by Jacques Callot.<sup>10</sup> This series of eighteen etchings,<sup>11</sup> published in 1633, depicts the ravages of the war waged in Lorraine in 1630, the unbridled violence and cruelty, bloody clashes

8 C. Serrano, above note 5, p. 105.

9 Juliet Wilson-Bareau, "'Aprende a ver": hacia un mejor entendimiento del inventario de 1812 y de la obra de Goya', in Manuela B. Mena Marqués (ed.), *Goya en tiempos de guerra*, Museo Nacional del Prado, Madrid, 2008, pp. 31–33.

10 Juan Bordes, 'Los Desastros de la Guerra: interpretaciones históricas', in S. Balsells, J. Bordes, and J. M. Matilla, above note 3, pp. 77–245.

11 Jacques Callot, *Les Grandes Misères de la Guerre*, Nancy, 1633. Pictures available at: <http://www.fulltable.com/vts/c/callot/callot.htm> (last visited December 2011).



Figure 4: *The Disasters*, plate 2, *Con razon ó sin ella* (With or without reason).

between armies, revenge wreaked by civilians, devastation, theft, rape, burning, and pillaging, the bandits, assassins, and condemned prisoners, the executions, hangings, and torture. Callot painted groups of people and crowds in wide perspective, from a distance and using symmetrical compositions that create an impression of order underlying the cruelty being depicted. Goya alters the perspective – a photographer would talk about a change in framing – and draws the viewer into the image, close to the violence and human suffering, in compositions that disorient the viewer.

*With or without reason*: Goya's subtitle appears to echo that of a print by Callot: 'It is not without reason that the great Leaders were well advised to invent these punishments'. The image shows torture by strappado (in *The Great Miseries of War*, plate 10<sup>12</sup>). Yet, even as he depicted these horrors, Callot seemed to condone a political or moral order that would be restored by legitimate authority and punishment. Goya considered that nothing could ever justify exactions by armed violence. He stood alone among his contemporaries in refusing to see anything heroic or glorious in actions that transform the warring parties into barbarians.<sup>13</sup>

The subtitle chosen by Goya is also an indication of his disillusionment, he who had believed so strongly in the force of reason. The power of reason celebrated

12 The picture is available at: <http://www.fulltable.com/vts/c/callot/26.jpg> (last visited December 2011).

13 Jeannine Baticle, *Goya*, Fayard, Paris, 1992, pp. 353–355.



Figure 5: *The Disasters*, plate 4, *Las mujeres dan valor* (*The women give courage*).

by the Enlightenment had proved impotent in the face of violence. Goya dismissed both protagonists in the conflict as equally at fault, by demonstrating that when violence is unleashed reason ceases to be of any value. Here, humanity itself is at stake.

#### *Las mujeres dan valor (The women give courage) (The Disasters, plate 4)*

Violence was spreading throughout the country. The insurgents engaged in a *guerrilla*, a term that would enter English usage after this conflict. The Spanish authorities called on all men to take part in the fighting, setting no limits as to the means that they could deploy.<sup>14</sup> In this plate, Goya portrays the role of women, showing their courage and vulnerability at the same time. On the right, a woman seems to be struggling in vain against a soldier who is clearly much stronger than her. On the left, a second woman has plunged her weapon into the body of an enemy soldier. In the next plate, entitled *And they are fierce* (plate 5), a fighting woman clutches her child under one arm, while spearing an enemy with the other.

14 David A. Bell, *La première guerre totale: l'Europe de Napoléon et la naissance de la guerre moderne*, Champ Vallon, Seyssel, 2010, p. 326.





Figure 6: *The Disasters*, plate 7, *Que valor!* (*What courage!*).

These images are appalling. But they bear witness to the cruelty inflicted upon women and children, and the acts of cruelty that women committed against enemy soldiers.<sup>15</sup> Goya takes an unflinching look at the sort of violence that, once it has erupted, spreads as if by contagion in such a way that atrocities are at times also perpetrated by the most vulnerable members of society, including women and even children. Several recent conflicts have confirmed this.

### *Que valor! (What courage!) (The Disasters, plate 7)*

A woman ignites the powder fuse of a cannon while dead or wounded artillery soldiers lie at her feet. Like other women she wears white, a symbol of innocence and vulnerability. Amid the play of shadows and light, only her garment, the barrel of the cannon, and the bodies in the foreground are lit up. This print is the only one in the series to show an act of combat in a positive light. It illustrates the actions of one Agustina de Aragón, who rose to fame during the siege of Saragossa. And yet, whereas Goya's colleagues in Saragossa exalted her heroism by portraying her in a theatrical pose,<sup>16</sup> he shows her from the back, her face obscured. Obstinate

<sup>15</sup> *Ibid.*, p. 330.

<sup>16</sup> See, for example, Juan Galvez, Fernando Brambila, *Agustina de Aragón*, Madrid, 1812, available at: [http://en.wikipedia.org/wiki/File:Agustina\\_de\\_Aragon.jpg](http://en.wikipedia.org/wiki/File:Agustina_de_Aragon.jpg) (last visited December 2011).



Figure 7: *The Disasters*, plate 11, *Ni por esas* (*Neither do these*).

refusing all references to heroism, he thus honours the courage of one woman and, through her, the dignity of a people.<sup>17</sup>

### *Ni por esas* (*Neither do these*) (*The Disasters*, plate 11)

Goya continues the theme of women in war with three scenes of rape. Their titles speak for themselves: *They do not want to* (plate 9), *Nor do these* (plate 10), and *Neither do these* (plate 11), as if there were a need to remind us that rape is rape, and nothing less than a crime. The titles reveal the artist's indignation at the acts, and at the denial and leniency with which they have been received throughout history. The scene is set in the shadows, under an archway, before the eyes of a prone, powerless figure and of a baby lying at the feet of the young woman dressed in white. The background features a church; yet the situation seems hopeless and the outcome inevitable.

Like many others, these terrible images may shock, and in doing so raise questions as to the role and limits of images in war: should scenes like these be shown? And if so, for what purpose? The same questions are still asked today with regard to photographs and documentary war films.<sup>18</sup> Goya replies through

17 J. Bordes, above note 11, p. 94.

18 Susan Sontag, *Regarding the Pain of Others*, Picador, New York, 2003, p. 75.





Figure 8: *The Disasters*, plate 12, *Para eso habeis nacido* (*This is what you were born for*).

his work, by portraying these acts in a compassionate light that denounces the sexual violence, unmasks the shameful attitude of the perpetrators, and highlights the courage and dignity with which the women defend themselves. And Goya goes even further. His images invite us not to reduce violence to the acts themselves but to turn our attention to the experience of the victims. He invites us to plunge our eyes into those of the victims, to look at the situation from the victims' perspective, with compassion and humanity. The images prompt us to acknowledge not only the crime and its perpetrators but also the vulnerability, suffering, and dignity of the victims. They are an appeal to the sentiment of humanity.

*Para eso habeis nacido* (*This is what you were born for*) (*The Disasters*, plate 12)

The ground is strewn with corpses. In a bare landscape under a heavy sky, smoke rises up from burning villages. The practice of burning was so widespread that it was possible to follow the movements of the French army by observing the clouds of smoke.<sup>19</sup> A man retching at the sight of the bodies collapses, arms outstretched, vomit flowing from his mouth. It is a scene of death, devastation, and horror. Does life have no meaning at all?

<sup>19</sup> D. A. Bell, above note 14, p. 331.

Those who are witness to situations of extreme violence have to face scenes of unbearable suffering while being powerless to do anything about it. With a few strokes of his brush, Goya has thus depicted an acute traumatic response. Psychological trauma is caused by intense events involving death, serious injury, or a threat to the physical integrity of the person himself or herself or of others, and to which the individual in question was unable to respond appropriately. Whether someone was directly threatened or a witness, the traumatic event causes long-term upheaval in the psychological make-up of the individual and produces intense fears and feelings of impotence or horror.<sup>20</sup>

It is conceivable that Goya is describing a traumatic response that he himself experienced at some point in his life. Being fairly advanced in years and isolated by his hearing loss, his natural vulnerability was probably aggravated by his sensitivity to human suffering. The two-year delay before proceeding with the engraving and the almost obsessive perseverance with which he worked at this series of plates for five years would seem to support this theory. No doubt his work provided him with an element of resilience that enabled him to overcome the trauma resulting from the horrors of war and to look for a meaning. Goya 'does not confine himself to telling a story: he relates himself',<sup>21</sup> and in doing so constructs a narrative allowing him 'to restore clarity to his world and to make it coherent'.<sup>22</sup>

People working in situations of armed conflict or with victims of extreme violence will be confronted with traumatic reactions. It is important that humanitarian workers should be able to recognize psychological trauma so as to be capable of understanding and helping those affected by conflict and of comprehending their own experience of, and reactions to, extreme violence. Denying these emotions or feeling invulnerable have highly negative effects on both the individual concerned and his or her work. Acknowledging such feelings and traumatic reactions makes it possible for humanitarian workers' activities to gain in relevance, and is a source of support in a very demanding job.

### *Enterrar y callar (Bury them and keep quiet) (The Disasters, plate 18)*

The title of this plate might also be translated as 'be quiet and bury them', in the same way that we say 'be quiet and eat' (in Spanish, 'comer y callar').<sup>23</sup> Again, the scene before us is horrendous: a heap of bodies on a hilltop. Next to them stands a couple, evidently powerless.

Keep quiet. After all, in whom might we confide? Who will listen to our cries of distress? Whom can we tell what happened? Who is there to listen? Who can understand what it means – the mass of decomposing bodies, the stench, the nausea, the shame, horror, and dehumanization? Even our friends and loved ones politely turn their heads: 'That's enough, your stories are making our heads spin, stop

20 Françoise Sironi, *Psychopathologie des violences collectives*, Odile Jacob, Paris, 2007, p. 39.

21 Claude Roy, *Goya*, Editions Cercle D'Art, Paris, 1952, p. 24.

22 Boris Cyrulnik, *Les murmures des fantômes*, Odile Jacob, Paris, 2003, pp. 129–136.

23 M. B. Mena Marqués, above note 9, p. 318.



Figure 9: *The Disasters*, plate 18, *Enterrar y callar* (Bury them and keep quiet).

going on about this nonsense. Let's not talk about it. And so survivors and witnesses alike are condemned to silence, like the soldiers who fought in wars that were lost.<sup>24</sup> Although speaking out, putting words to a traumatic, chaotic experience, is a fundamental component of the process of resilience, there are things that cannot be told, not using words, or at least not right away, and, if at all, then in bits and pieces. Sometimes other forms of expression, such as a work of art, can make it possible to find words for the story and to share it with others.<sup>25</sup>

Keeping quiet would thus seem the only option. What else is there to be done? Well, for a start, there are the dead to be buried: the ultimate gesture acknowledging the dignity of those who died and of their loved ones. 'Charity', Goya writes sarcastically in a print showing bodies thrown like garbage into a mass grave (*Caridad*, *The Disasters*, plate 27). Respect for human dignity requires respect for the dead. Taking care of their remains, identifying them, informing and accompanying grieving families, providing a decent burial according to the rites of the local culture: all of these actions are an integral part of humanitarian assistance in armed conflicts.<sup>26</sup>

24 See F. Sironi, above note 20, p. 122.

25 B. Cyrulnik, above note 22, p. 143.

26 ICRC, 'Missing persons: a major humanitarian concern', interview with Morris Tidball-Binz, 28 August 2009, available at: <http://www.icrc.org/eng/resources/documents/interview/missing-interview-280908.htm> (last visited December 2011).



Figure 10: *The Disasters*, plate 20, *Curarlos, y á otra* (*Get them well, and on to the next*).

*Curarlos, y á otra* (*Get them well, and on to the next*) (*The Disasters*, plate 20)

Several of the prints show wounded soldiers being cared for on the battlefield. The titles ironically indicate that care is not dispensed in a humanitarian spirit. The aim is to get back on their feet those who are still able to fight: *They can still be of use* (plate 24), and *These too* (plate 25).

This situation is similar to the one that Henry Dunant experienced fifty years later in Solferino. Those wounded soldiers who could not be 'restored' to service were abandoned to their fate, as were the bodies of the dead. In his remarkable, powerful book, *A Memory of Solferino*, Dunant offers a poignant description of the excruciating suffering of those left on the battlefield without assistance. Goya, in turn, in the plates *It will be the same* (plate 21), *As much and more* (plate 22), and *The same elsewhere* (plate 23), shows the ground strewn with abandoned bodies, whether alive or dead it is impossible to tell. Confronted with the same type of situation, Dunant mobilized efforts to bring assistance to the wounded, accompany the dying with dignity, and organize relief in an impartial way.

*No se puede mirar* (*One cannot look at that*) (*The Disasters*, plate 26)

This poignant image anticipates the painting *The Third of May 1808*. It shows, on the right, the barrels of guns pointing at a group of civilians who are pleading for mercy or have already collapsed.





Figure 11: *The Disasters*, plate 26, *No se puede mirar* (One cannot look).

The title states, ‘One cannot look at that’; it does not say ‘one cannot see that’. It is possible to see atrocities of this kind, and during the war in Spain there would have been countless occasions to witness cruelty and inhumanity in the form of collective punishments, arbitrary executions, torture, and other unspeakable acts of extreme violence. All were described in eye-witness accounts.<sup>27</sup>

Scenes such as these are unbearable. Jorge Semprun, writing about his internment in a concentration camp, expressed it this way:

I doubt whether it is possible to relate my experience. But not because it is indescribable. It was unbearable, which is quite a different matter . . . . A matter that does not concern the form of the story, but its substance. Not the way it is articulated, but its density. Only those who succeed in transforming their experience into an object of art, into a creative – or recreational – space will be able to reach down to this substance, this transparent density. Only the artifice of a controlled narrative will succeed in transmitting some element of the truth in witnesses’ accounts.<sup>28</sup>

One cannot look: this is also true for those in charge of carrying out the executions. They are faceless. All we see are the barrels of the guns and the blades of the bayonets. In the print *With or without reason* (see [Figure 4](#) above) and the painting *The Third of May 1808*, only the lowered helmets of the soldiers are shown,

27 D. A. Bell, above note 14, p. 329.

28 Jorge Semprun, *L’écriture ou la vie*, Gallimard, Paris, 1994, pp. 25–26.



Figure 12: *The Disasters*, plate 30, *Estragos de la guerra* (*Ravages of war*).

as if they were taking aim without looking. It is impossible to look at a person whom we are about to kill because it is impossible to kill a person who is looking at us. A perpetrator of genocide in Rwanda put it this way: 'It was by far preferable to kill people we didn't know rather than acquaintances, because those who knew us had time to fix our eyes with a piercing stare'.<sup>29</sup>

'One cannot look at that', wrote Goya, and yet he drew the scene and in so doing made it visible for us, presumably to make us partake in his own traumatic experiences, to raise awareness of the reality of war, and to express his indignation.

### *Estragos de la guerra* (*Ravages of war*) (*The Disasters*, plate 30)

A vision of horror and destruction. The world is upside-down.<sup>30</sup> Everything is in a state of disorder, people are killed indiscriminately, whether man, woman, or child. All coherence and meaning have been lost. The scene is puzzling, bordering on the impossible. Are we looking at the inside of a house after a bombardment? Or are we

29 Jean Hatzfeld, *Une saison de machettes*, Seuil, Paris, 2003, p. 149.

30 Marc Bouyer, 'Les signes picturaux de la violence dans les "Désastres de la guerre" de Goya' in J.-P. Duviols and A. Molinié-Bertrand, above note 6, p. 360.



Figure 13: *The Disasters*, plate 37, *Esto es peor* (*This is worse*).

looking in from above, through the smashed roof?<sup>31</sup> The French army's artillery relentlessly pounded the city of Saragossa, firing off more than 42,000 shells in the month of December 1808 alone.<sup>32</sup>

Confusion and loss of meaning are closely linked to violence. When humanitarian workers arrive in the field they think that they understand the conflict and the reasons behind it. Once they are there, however, the situation often turns out to be confusing. Uncertainty and confusion result in ethical challenges and substantial inner tensions. What is the meaning of humanitarian work amid chaos and confusion? The ethical question of how we can remain human in the face of inhumanity is omnipresent.

### *Esto es peor (This is worse) (The Disasters, plate 37)*

There is worse to come. The prints that follow depict scenes of atrocities committed on human remains. The barbarous acts include bodies that have been mutilated, impaled, or sawn into pieces, and limbs put on display. The titles underscore Goya's horror: *Why?* (plate 32), *What more can be done?* (plate 33), and *This is worse* (plate 37). These horrific images may appear extreme, unreal, and exaggerated, and some

31 Claude-Henri Roquet, *Goya*, Buchet-Castel, Paris, 2008, p. 239.

32 D. A. Bell, above note 14, p. 320.



consider them a symbolic representation of war, an artist's view, the product of Goya's imagination.<sup>33</sup> However, such scenes certainly took place on both sides of the conflict<sup>34</sup> and Goya might have encountered them while travelling to Saragossa, or in the area around Madrid. Contemporaries of Goya who are known to have witnessed events of this kind include the young Victor Hugo, who returned from Madrid to France via Burgos and Vittoria.<sup>35</sup>

Today, in the year 2012, similarly terrible scenes are played out in many situations of armed violence. 'Why?' asked Goya. There is no answer to his question. Horrific acts of violence terrorize the population and traumatize both the first-aid workers called in to help and the families and loved ones of the victims. Violence gains in strength by the fact that images of it are spread through the media. This again raises the question as to whether scenes of violence should be made public. The debate results in serious ethical dilemmas, particularly in Latin America and Africa, where the desire of ordinary citizens to use images to highlight the severity of acts of violence clashes with political decisions not to afford them any publicity or even to black out information.

### *Yo lo vi (I saw this) (The Disasters, plate 44)*

A group of people is running to escape from violence. Although we do not know what menace they are fleeing from, we do see the expression of terror on their faces. It seems that the worst is about to come: the motto is, 'each man for himself', the only exception being the woman in the foreground who turns and moves towards the source of the danger in an attempt to save the life of her child.

Goya wrote 'Yo lo vi', meaning: 'Me, I saw this'. 'I saw it myself, I was there, I saw unbearable, inhuman scenes such as these. I am a witness.' To Goya, observing nature was synonymous with truth, experience, and experiences. Nature, he said, was his master.<sup>36</sup>

'Yo lo vi': the pronoun 'Yo' has a strong, insistent quality to it. It conjures up Don Quixote exclaiming 'Yo sé quién soy!' – 'I know who I am!'<sup>37</sup> Those who have come face to face with horror, like survivors of concentration camps, no longer know who they are: Goya seems to be saying, 'I am returning from another world, the world of horror; I am no longer the same, I no longer belong to the human community.' Experiencing horror is traumatic and dehumanizing. At the same time as he tells us this, Goya offers us this scene, to share it with us and in doing so to restore his link with humanity. It is as if he was telling those looking at his works of art: 'I have returned to the world of humans and I am trying to show you, to make

33 Rose Marie Hagen and Rainer Hagen, *Goya*, Taschen, Cologne and Paris, 2003, p. 57.

34 D. A. Bell, above note 14, p. 329.

35 Adèle Hugo, *Victor Hugo raconté par un témoin de sa vie*, Librairie Internationale, Brussels, 1863, pp. 208–210, available at: <http://www.archive.org/stream/victorhugoracon01hugo#page/208/mode/2up> (last visited December 2011).

36 Sophie Renouart de Bussierre, 'Rembrandt-Goya', in Maryline Assante di Panzillo and Simon André-Deconcha (eds), *Goya: Graveur*, Paris-Musées et Nicolas Chaudun, Paris, 2008, p. 63.

37 Miguel de Cervantes, *Don Quijote de la Mancha*, Madrid, 1605, Book I, ch. 5.



Figure 14: *The Disasters*, plate 44, *Yo lo vi* (I saw this).



Figure 15: *The Disasters*, plate 48, *Cruel lástima! (Cruel tale of woe!)*.

you see things that no one can look at.' Through his art, Goya restored his own identity as a human being, a member of the human community. By sharing his traumatic experience, he allows others who have been traumatized or deeply upset to restore their ties with humanity and to build resilience.

### *Cruel lástima! (Cruel tale of woe!) (The Disasters, plate 48)*

The second part of *The Disasters of War* consists of a series of prints on the famine that devastated Madrid in 1811 and 1812. Men, women, and children were starving to death in the streets. Goya was not only a direct witness of the suffering but himself a victim of suffering, desolation, and the death of loved ones. In the image a man is begging, standing near his huddled wife and a baby lying on the ground. Next to them lie victims of the famine, some of them perhaps already dead.

The famine is a 'cruel tale of woe': cruel because of the suffering it causes, but cruel also when it is the result of indifference, cynicism, and complacency – or when it is intentional, since famine can be a weapon in disguise, the product of either political negligence or deliberate policy.<sup>38</sup> Famine is a 'discreet and silent killer, leaving no trace, no evidence that it was intentional'.<sup>39</sup>

38 Hugo Slim, *Killing Civilians*, Hurst, London, 2007.

39 F. Sironi, above note 20, p. 128.

Some of the prints in this series show rich and powerful figures arrogantly walking past famine victims without paying them the slightest bit of attention: ‘Perhaps they are of another breed’, writes Goya ironically (plate 61). Asking them for help is futile: ‘Appeals are in vain’, he notes elsewhere (plate 54).

Terrible events, events that were seen . . . . The same reality is shown in photographs taken in 1941 in the Warsaw ghetto.<sup>40</sup> How troubling it is to see the same scenes of desolation, begging, extreme malnutrition, the distress on the faces, and even piles of dead bodies (*Muertos recogidos*, plate 63), the wagonloads of corpses being carried to the cemetery (*Carretadas al cementerio*, plate 64). The photographs, however, which were taken by a German sergeant with time on his hands, prove to be inhuman, lacking in awareness and conscience, obscene. Goya the artist confers on his work an indignant quality and appeals to our sense of humanity.

### *Lo peor es pedir (The worst is to beg) (The Disasters, plate 55)*

The scene is again one of a family struck down by famine. A fashionable woman is moving towards a well-dressed man in the background. Both these elegant figures are entirely indifferent to the beggars struggling to survive.

Asking for help means being dependent on the charity and goodwill of donors without being able to reciprocate. When this happens, victims lose the possibility of exercising their capacity for action and become dependent and passive. Human identity is linked to a recognition of our capacities and our vulnerability.<sup>41</sup> Humanitarian action therefore runs two risks: that of falling into indifference and denying people’s vulnerability and our shared humanity, which is the basis of all solidarity; and that of developing feelings of contempt when humanitarian aid reduces people to passive victims having no opportunity to reciprocate. The dynamic of giving, reciprocity, and mutual recognition is at the heart of human dignity.<sup>42</sup> In fact, for the traumatized individual the possibility of giving something back constitutes an element of resilience. Giving may take a variety of forms: putting on a show, sharing your thoughts, building a relationship, even having a good laugh together – all of these mean that ‘we become the one who gives’ and ‘in this way repair our wounded self-esteem’.<sup>43</sup>

40 Günther Schwarberg, *In the ghetto of Warsaw: Heinrich Jöst’s photographs*, Steidl, Göttingen, 2001. Pictures available at: <http://riowang.blogspot.com/2011/10/warsaw-memories.html> (last visited December 2011).

41 Paul Ricœur, *Devenir capable, être reconnu*, Esprit, Paris, July 2005, p. 125.

42 Paul Ricœur, *Parcours de la reconnaissance*, Stock, Paris, 2004, pp. 332 and 350.

43 B. Cyrulnik, above note 22, p. 57.





Figure 16: *The Disasters*, plate 55, *Lo peor es pedir* (*The worst is to beg*).

*De qué sirve una taza? (What is the use of a cup?) (The Disasters, plate 59)*

This image filled with humanity and tenderness is like an icon of the humanitarian gesture, of solidarity in action when another person is suffering. Notice the beseeching look on the face of the elderly woman. She is dressed in black and her head is covered by a scarf, both signs that she is in mourning. She is holding up a young woman dressed in white, who is stretched out on the ground, her strength failing, and perhaps on the verge of death. Other victims of famine are lying at their feet. The background is sombre and empty, the sky heavy, the earth dry and bare; smoke is rising in the distance. A harsh light falls on this desolate scene. The other woman, shown in profile, is simply dressed and also wears a headscarf. She is offering a bowl of soup to the prone woman, to ease her hunger and perhaps to save her life. Kneeling, she is leaning towards her, her face lit up by a lovely expression of tenderness. Her attitude shows caring, humility, and attentiveness to a suffering fellow human being.

This woman's gesture of sharing what little food she has testifies to her solidarity and compassion. It is an image of the basic humanitarian gesture, an act of humanity that is valued in cultures and religions throughout the world. It is essentially the gesture that Henry Dunant would perform many years later on the battlefield of Solferino.



Figure 17: The Disasters, plate 59, De qué sirve una taza? (What is the use of a cup?).





Figure 18: *The Disasters*, plate 60, *No hay quien los socorra* (*There is no one to help them*).

As he portrays the beauty of the gesture, Goya asks us to consider: 'What use is a cup?' He shows his indignation at the inadequacy of this isolated, pathetic act, a feeling of powerlessness that will be familiar to anyone who has worked in humanitarian aid. Often it is triggered by a lack of means in the face of suffering and need on a vast scale, sometimes by the apparent futility of our efforts when confronted with the cynicism of the powers that be. Either case begs the question: what use is this gesture?

*No hay quien los socorra* (*There is no one to help them*) (*The Disasters*, plate 60)

This print answers the question in the negative. The reply takes the form of a cry of indignation: 'There is no one to help them!' The poignant image echoes the previous one. Here, a couple is shown standing, their attitude marked by distress and dignity in the face of misfortune. The man has wrapped himself in a dark blanket, his right hand hiding his tears and despair. The woman behind him is wearing black. She is but a shadow. At their feet lie several bodies, their strength fading, all dressed in white. Presumably they are family members, victims of war and famine.

Goya cries out in despair: 'Not helping them is inhuman!' Henry Dunant expressed the same indignation after the battle of Solferino, and transformed his cry





Figure 19: *The Disasters*, plate 69, *Nada. Ello dirá* (Nothing. That is what it says).

of revolt into a universal call to action, first by organizing the local population to give assistance on the spot, and then by mobilizing the international community, which ultimately led to the founding of the Red Cross.

*Nada. Ello dirá* (Nothing. That is what it says) (*The Disasters*, plate 69)

A decomposing corpse holds a sign on which is written ‘Nada’ (‘Nothing’). Behind it, a mass of threatening figures emerges from the shadows. On the left we can just make out the scales of justice. Yet there is no justice. This print is part of a third group, some of which were produced after the war in the years 1815 to 1820 and in which Goya denounced the consequences of war on society, the hypocrisy, compromises, profiteering, and return of superstition and charlatans, stopping at nothing and sparing no-one. One print is entitled *Truth has died* (plate 79) which, as a statement, may appear banal: during and after armed conflicts, lies, injustice, and institutional decadence reign.

‘There is nothing.’ Is that the artist professing his faith? Or expressing his state of mind and scepticism about war and the peace that follows it? What we can say is that his expression of distress and feelings of emptiness and absolute nothingness strike many people who are confronted with extreme violence, horror, and death. In his work, Goya expressed what traumatized persons feel. Finding new

meaning in life and nourishing our hope for a just world enable us to build resilience.<sup>44</sup>

## Conclusion

In 1814 Goya completed two paintings universally acknowledged as masterpieces: *The Second of May 1808* and *The Third of May 1808*, both of which portray the popular uprising against the French invader and its ruthless suppression the following day, and which testify to the cruelty and inhumanity of war and armed conflict. These famous paintings are the product of years of hard work spent in the solitude of his studio in the years following 1810.

In his engravings and etchings, Goya depicts war and armed conflict by concentrating not on the motivations for them but on their consequences. He takes a different and radically new look at war, 'where heroes have vanished and only human beings remain'.<sup>45</sup> His focus is on the person as perpetrator, witness, or victim of the worst forms of violence. His work is that of a man who has experienced, seen, and felt the violence and devastation of war, which has brought him to question violence itself by showing the extremes to which it can lead, boundless in their horror and desolation and a source of endless suffering. War destroys lives, families, institutions, and the very foundations of society. It also dehumanizes both sides of the conflict. Goya's attitude to war was considered subversive and it was no doubt for political reasons that he was unable to distribute this work.<sup>46</sup> Forty years would pass before his prints were eventually published in 1863, the year in which the first international conference of the Red Cross was held in Geneva, marking the beginnings of organized humanitarian action and humanitarian law in armed conflicts.

Examining the work of Goya and listening to his cries of indignation in the face of unfettered violence, the suffering of the victims, the indifference of those in power, and their inaction in plain view of distress and devastation allow us to appreciate the importance of our heritage: the humanitarian principles, international humanitarian law, and humanitarian organizations. It also enables us to understand the great challenges of humanitarian action in armed conflicts, its limits, dangers, and difficulties, the risks associated with confronting violence and trauma, but also the humanizing power of gestures of solidarity and compassion. Like Goya, many humanitarian workers can say 'Me, I saw this', and share their feelings of shock, revolt, and indignation; but, like Goya, we also understand that the essential aspect of our work is encountering the other person.

44 B. Cyrulnik, above note 22, p. 197.

45 M. Bouyer, above note 30, p. 360.

46 Juliet Wilson-Bareau, 'Goya maître-graveur: technique et esthétique' in M. B. Mena Marqués, above note 9, p. 28.



# Opportunity knocks: why non-Western donors enter humanitarianism and how to make the best of it

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## **Abstract**

*Non-Western countries such as Saudi Arabia, China, Brazil, and Turkey have all started to take part in global humanitarian action. Their engagement raises a number of fundamental questions: how will the diversification of government donors affect humanitarian activities and principles; and how will it affect the people and governments of crisis-affected countries or humanitarian organizations? This article finds that the rise of non-Western donors involves both risks, such as normative conflicts, and great potential, such as increased access and more resources. It also finds that non-Western humanitarian engagement has become too substantial to ignore and that opportunities can only be seized and risks mitigated if traditional actors actively engage with non-Western donors on a level playing field.*

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From the days of Solferino in 1859 to the Indian Ocean Tsunami in 2004, humanitarianism has been dominated by the norms and interests of governments and organizations from the West – despite its claim for universality. Those days are now over. International food assistance, for example, is no longer exclusively shaped

by Europe, North America, and Japan. States such as India and Brazil support the World Food Programme (WFP)'s school feeding programmes, a form of intervention that Western donors would like to see abolished as it fails to reach the most vulnerable. In addition, Saudi Arabia's cash contribution of 500 million US dollars to the WFP in 2008 allowed the organization to step up its cash-based programming, which is generally considered an important innovation in humanitarian assistance.

While these examples only provide anecdotal evidence, they must be understood in the context of an increasingly multi-polar world. Voices from Latin America, Africa, and Asia confidently demand their own space as aid providers,<sup>1</sup> whereas economic decline, crippling debt, and domestic political discourses increasingly contest the leading role of Europe and North America in foreign assistance. Therefore, donors and humanitarian organizations can no longer ignore non-Western donors.<sup>2</sup>

The growing prominence of non-Western donors raises important questions for the future of humanitarian action:<sup>3</sup> will the diversification of government donors change the international humanitarian architecture, the organizations involved, the kinds of actions undertaken, or the humanitarian principles? Can we expect a further regionalization of humanitarian action under the leadership of regional powers? What role will the peoples and governments of crisis-affected states play in the future?

These questions are fundamental and – apart from some celebration over new sources of income – most traditional humanitarian actors are anxiously observing the rise of non-Western donors. They fear the loss of shared principles and hard-won standards.<sup>4</sup> So far, however, most humanitarians have neither systematically analysed nor strategically addressed the motivations for and possible implications of the rise of non-Western donors. This lack of knowledge and strategy keeps traditional actors on the defensive as they react to instead of influence new developments. Yet a thorough analysis of the humanitarian behaviour of non-Western donors and the implications for the current humanitarian system could prompt long-standing humanitarian actors to change tack and go on the offensive. This would mean actively shaping the contours of a diversified humanitarian system

1 The outcome document of the recent 2011 High Level Forum on Aid Effectiveness in Busan, for example, states that the 'nature, modalities and responsibilities that apply to South–South co-operation differ from those that apply to North–South co-operation'. High Level Forum on Aid Effectiveness, 'Busan Partnership for Development Effectiveness', 29 November–1 December 2011, available at: [http://www.aideffectiveness.org/busanhlf4/images/stories/hlf4/OUTCOME\\_DOCUMENT\\_-\\_FINAL\\_EN.pdf](http://www.aideffectiveness.org/busanhlf4/images/stories/hlf4/OUTCOME_DOCUMENT_-_FINAL_EN.pdf) (last visited December 2011).

2 This article purposely refrains from giving estimates on the total financial volume of non-Western donor contributions because available statistics are incomplete.

3 For this article, we use the definition of humanitarian action given by the Organisation for Economic Co-operation and Development (OECD)'s Development Assistance Committee (DAC), thus encompassing assistance and protection activities 'designed to save lives, alleviate suffering and maintain and protect human dignity during and in the aftermath of emergencies'. OECD/DAC, *DAC Statistical Reporting Directives*, 2010, p. 38, available at: [www.oecd.org/dataoecd/28/62/38429349.pdf](http://www.oecd.org/dataoecd/28/62/38429349.pdf) (last visited December 2011).

4 Personal conversations with several representatives of established donors in 2010 and 2011.

while anticipating possible negative effects. It could also allow traditional actors to seize the opportunity for a truly universal humanitarianism – the great promise underlying the rise of non-Western donors.

This article summarizes the findings of a two-year research project on non-Western humanitarian giving.<sup>5</sup> Although non-Western donors cannot and should not be treated as a monolithic block, our research has found some common behavioural patterns. The article focuses on non-Western conceptions of humanitarianism, motivations for providing funds, aid modalities, and modes of co-operation with others. On the basis of our research findings, we then suggest ways forward to achieve a truly universal humanitarianism by seizing anticipated opportunities and addressing emerging risks for humanitarian action.

## Conceptions of humanitarianism

Despite their increasing humanitarian engagement, few non-Western donors have official policies that define their understanding of humanitarianism and guide their actions. Yet an analysis of government reports, public statements, and conversations with government representatives and other experts reveals the stance that non-Western donors take on the language, principles, and scope of humanitarian action.

First, when talking about humanitarianism, traditional and non-Western actors speak different languages. Traditional actors share a basic understanding of humanitarian action as activities ‘designed to save lives, alleviate suffering and maintain and protect human dignity during and in the aftermath of emergencies’.<sup>6</sup> By contrast, for many non-Western donors, the term ‘humanitarian’ encompasses all forms of selfless help to people in need, including religious charity, development co-operation, and assistance in times of disaster. In China and India, for example, officials often refer to ‘disaster assistance’ to differentiate short-term from long-term aid. Furthermore, the terminology that representatives of non-Western donors use often depends on their exposure to the international humanitarian discourse. Whereas Indian officials in Geneva or New York naturally refer to humanitarian principles, officials in New Delhi speak instead about the ‘non-political’ nature of aid when referring to impartiality. Moreover, they understand ‘principles’ as a reference to the Paris declaration for aid effectiveness, which they oppose as a Western-driven agenda.<sup>7</sup> Such semantic and interpretive differences are a potential

5 The outputs of the project were a mapping study on non-Western donorship and in-depth case studies on India and Saudi Arabia that positioned a country’s humanitarian engagement in its overall foreign policy. The studies were conducted in mixed teams, including one researcher from the respective country. A study on Brazil is underway, and further case studies are planned pending funding. For more information on the project, see: <http://www.gppi.net/?id=1819> (last visited December 2011).

6 OECD/DAC, above note 3, p. 38.

7 Drawn from several interviews with Indian foreign affairs officials conducted in 2010. For the complete analysis see Claudia Meier and C. S. R. Murthy, *India’s Growing Involvement in Humanitarian Assistance*, Global Public Policy Institute (GPPi) Research Paper No. 13, 2011, p. 8, available at: [http://www.gppi.net/fileadmin/media/pub/2011/meier-murthy\\_2011\\_india-growing-involvement-humanitarian-assistance\\_gppi.pdf](http://www.gppi.net/fileadmin/media/pub/2011/meier-murthy_2011_india-growing-involvement-humanitarian-assistance_gppi.pdf) (last visited December 2011).

source of misunderstanding between traditional humanitarian actors and non-Western donors.

Second, the norms underpinning humanitarian action of non-Western donors are a blend of a commitment to traditional humanitarian principles, principles of South–South co-operation, and, at times, religious norms. Even if not always articulated in the same way, the principles of impartiality and neutrality in particular are widely accepted among emerging donors and are not perceived as a Western construct.<sup>8</sup> Non-Western government officials refer to them as universally valid, primarily because they are internationally agreed in the UN General Assembly resolution on humanitarian co-ordination.<sup>9</sup> This behaviour is contrary to the dominant narrative among Western donor representatives, who expect their non-Western counterparts to call in question the humanitarian principles.

Yet respect for the sovereignty of the disaster-affected state is also an important norm informing non-Western humanitarian action. Sovereignty is seen as part of a distinct South–South co-operation approach that looks to promote an equal relationship between the governments that provide aid and those that receive it. Accordingly, the Brazilian government frames its engagement as ‘humanitarian co-operation’ instead of ‘humanitarian assistance’.<sup>10</sup> In practice, this means that the affected government is seen as the most appropriate entity for defining the need for assistance, rather than outsiders assessing the needs of the affected population. One consequence of this approach is that non-Western donors rarely fund protection activities. The norms of sovereignty and impartiality may clash in internal armed conflict situations if the affected government is unwilling or unable to assist and protect its population. Therefore India tends either to refrain from financing assistance in situations of armed conflict (with the exception of its strategically important backyard, South Asia) or to fund multilaterally (as in the case of the occupied Palestinian territories).<sup>11</sup> However, there is no general pattern for how non-Western donors deal with the sovereignty–impartiality trade-off.

The humanitarian imperative of compassion with and support for the suffering can be traced back to all of the world’s major religions.<sup>12</sup> Religious norms therefore shape humanitarianism in the West as well as in other parts of the world. The Saudi Public Campaigns, a popular nationwide public–private fundraising

8 This article cannot assess how non-Western donors’ commitment to humanitarian principles on paper is translating to aid practice on the ground, as this would require extensive research in crisis-affected countries. However, the question of how practice follows principles remains equally unanswered for many Western-based and multilateral humanitarian organizations.

9 UNGA Res. A/RES/46/182, 19 December 1991, first agreed in 1991 and since then reconfirmed yearly in the General Assembly, refers to the principles of humanity, neutrality, and impartiality.

10 Ministry of External Relations, Brazil, *International Humanitarian Cooperation: Report 2006–2010*, 2011.

11 In 2008 and 2009, India provided a total of US\$ 3 million to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) as core contributions and in response to the Gaza appeal. See C. Meier and C. S. R. Murthy, above note 7, p. 20.

12 See for example, Michael Barnett *et al.*, ‘Religion and humanitarianism: floating boundaries in a globalizing world’, Conference Report, Graduate Institute of International Studies, 2009, available at: <http://www.humanitarianforum.org/data/files/resources/752/en/Geneva-Review-30.pdf> (last visited December 2011).



instrument,<sup>13</sup> are the equivalent of traditional donations for humanitarian or development projects during the Christmas period. The campaigns build on the Muslim tradition of *sadaqa*<sup>14</sup> and are launched for major natural disasters and conflicts in other Muslim countries or when disasters hit the home countries of large migrant worker communities.<sup>15</sup> Funds collected through the campaigns are mostly used for humanitarian assistance, but also for religious purposes – such as rebuilding mosques – or long-term reconstruction. Moreover, many young Saudis welcome voluntary humanitarian action in the name of Islam as a meaningful pastime and alternative to social apathy and consumerism.<sup>16</sup> However, while religious considerations are a motor for humanitarian funding, the Saudi leadership emphasizes that its assistance is given ‘on the basis of humanitarian principles and regardless of nationality, race or religion’.<sup>17</sup>

Third, in terms of scope, non-Western donors have a strong preference for funding assistance in natural disaster situations and specific sectors, predominantly food and health. For example, nineteen out of twenty-four emergencies that Brazil provided humanitarian funding to, and all twelve crises that India was active in, were in response to natural disasters or epidemics.<sup>18</sup> In addition to the sovereignty–impartiality trade-off, the reactive nature of non-Western aid bureaucracies helps explain this preference. In the absence of a policy, authorities fund assistance on an ad hoc basis, following appeals from national governments or alerts from their ambassadors in a crisis-affected country.<sup>19</sup> Large-scale sudden-onset disasters are more likely to be on the radar of decision-makers, and affected governments tend to approach donors for assistance in natural disasters rather than in armed conflicts.

Food assistance, on the other hand, resonates with societies that have been – or still are – struggling with malnutrition themselves. Brazil aims to support other countries with the ‘zero hunger’ programme after its own good experiences with the combination of short-term and long-term food security interventions for

13 For a more in-depth discussion of the different public fundraising instruments in Saudi Arabia, see Khalid Al-Yahya and Nathalie Fustier, *Saudi Arabia as a Humanitarian Donor: High Potential, Little Institutionalization*, GPPi Research Paper No. 14, pp. 14–15, available in Arabic and English at: [http://www.gppi.net/approach/research/truly\\_universal/saudi\\_arabia\\_and\\_humanitarian\\_assistance/](http://www.gppi.net/approach/research/truly_universal/saudi_arabia_and_humanitarian_assistance/) (last visited December 2011).

14 *Sadaqa* is a form of giving to the poor in Islam. Contrary to the *zakat*, the (religious) obligation to give 2.5% of one's possessions to those in need, *sadaqa* is voluntary.

15 For a more detailed analysis of this phenomenon, see K. Al-Yahya and N. Fustier, above note 13, pp. 14–15 and 26–27.

16 Nora Derbal, ‘Actors of the institutionalized philanthropic field in Jeddah, Saudi Arabia: the benevolent woman and the youth activist’, paper presented at the 2nd World Conference on Humanitarian Studies, Boston, MA, 2011.

17 Andrea Binder, Claudia Meier, and Julia Steets, *Humanitarian Assistance: Truly Universal? A Mapping Study of Non-Western Donors*, GPPi Research Paper No. 12, 2010, p. 19, available at: [http://www.gppi.net/fileadmin/media/pub/2010/Binder\\_Meier\\_Steets\\_2010\\_Truly\\_Universal\\_-\\_Mapping\\_Study\\_GPPi\\_RP\\_12.pdf](http://www.gppi.net/fileadmin/media/pub/2010/Binder_Meier_Steets_2010_Truly_Universal_-_Mapping_Study_GPPi_RP_12.pdf) (last visited December 2011).

18 Ministry of External Relations, Brazil, above note 10, pp. 12–31.

19 Interviews with Indian and Saudi officials conducted in 2011. For the full analyses see C. Meier and C. S. R. Murthy, above note 7, pp. 11–12, and K. Al-Yahya and N. Fustier, above note 13, pp. 11–13.

the Brazilian population.<sup>20</sup> The country identified food assistance as a clear niche for its humanitarian efforts, focusing a majority of its funding in this area. While many non-Western donors have a narrow sectoral scope, they have a broad temporal scope. They fund intertwined short- and long-term humanitarian and development projects without a second thought, and criticize Western donors for separating the two. Brazil even introduced sustainability as an additional humanitarian principle, so that the state's contributions can also address the root causes of disasters.<sup>21</sup>

## Motivations for funding humanitarian action

Traditional donors tend to portray their contributions to humanitarian action as motivated purely by a desire to help the needy according to the principles of impartiality, independence, and neutrality.<sup>22</sup> Yet, as in any other area of foreign policy, interests such as national security or regional stability also influence the humanitarian behaviour of traditional donors. Likewise, non-Western donors have both a genuine desire and strong interest-based motives to be participating in humanitarian action. Rapid economic growth of the past years has given emerging powers new opportunities to contribute to global public goods and thereby establish their countries' leadership – on the world stage, in their own region, vis-à-vis disaster-affected countries, and domestically. Humanitarian donorship is a soft-power instrument that, as many non-Western donors are increasingly starting to discover, is an ideal tool for staking a claim in this way.

Globally, states such as China, India, Brazil, and Turkey are all still in the process of defining their roles and cementing their influence. Engagement in humanitarian assistance is one way to 'project an image of "responsible statehood"' <sup>23</sup> in return for increased political weight in multilateral organizations.<sup>24</sup> Contributions to UN organizations are usually met with significant public recognition. When Brazil pledged US\$ 7.5 million to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in 2011, it was lauded as 'a country with growing global influence – a country of

20 See for example, World Food Programme (WFP), 'Brazil and WFP launch Centre of Excellence Against Hunger', 2011, available at: <http://www.wfp.org/stories/brazil-and-wfp-launch-centre-excellence-against-hunger> (last visited December 2011).

21 Ministry of External Relations, Brazil, above note 10, p. 11.

22 Refer, for example, to the Good Humanitarian Donorship initiative (<http://www.goodhumanitarianonorship.org/>) or national policies such as the humanitarian policy of the UK Department for International Development (<http://www.dfid.gov.uk/Documents/publications/humanitarian-policy.pdf>), or the 'Twelve Basic Rules' of German humanitarian aid ([http://www.auswaertiges-amt.de/EN/Aussenpolitik/HumanitaereHilfe/Grundregeln\\_node.html](http://www.auswaertiges-amt.de/EN/Aussenpolitik/HumanitaereHilfe/Grundregeln_node.html)) (all last visited December 2011).

23 Miwa Hirono, *China's State-centric Post-disaster Assistance: An Alternative Perspective to the Concept of Humanitarianism*, forthcoming, p. 3.

24 Andrea Binder and Bjoern Conrad, *China's Potential Role in Humanitarian Assistance*, GPPi Policy Paper No. 5, pp. 11–12, available at: [http://www.gppi.net/fileadmin/gppi/Binder\\_Conrad\\_2009\\_CHN\\_in\\_Hum\\_Assis.pdf](http://www.gppi.net/fileadmin/gppi/Binder_Conrad_2009_CHN_in_Hum_Assis.pdf) (last visited December 2011); C. Meier and C. S. R. Murthy, above note 7, p. 32.

the future'.<sup>25</sup> Saudi Arabia, on the other hand, conveys a different message to the international audience. After the 11 September 2001 terrorist attacks on the United States, many religious charities in the country were suspected of funding terrorist activities. To challenge this negative image, the Saudi leadership not only tightened the control over charitable organizations but also increased its contributions to multilateral organizations, in an attempt to portray the country as a 'humanitarian kingdom'.<sup>26</sup>

Regionally, China, India, Brazil, and Turkey try to dispel neighbours' fear of their rising power while increasing their immediate zone of influence.<sup>27</sup> Take, for example, the Turkish Prime Minister Erdogan's trip to famine-affected Mogadishu during the 2011 Horn of Africa crisis. The much publicized visit was followed by a record contribution of US\$ 49 million to the UN humanitarian appeal for the Horn of Africa, making Turkey the sixth largest government donor in 2011 for this crisis.<sup>28</sup> The engagement intended to demonstrate that 'Turkish foreign policy is anchored in moral authority, not military and economic clout'.<sup>29</sup> Or consider India, which spent more than 75% of its humanitarian assistance in only five South Asian neighbouring countries in the past decade<sup>30</sup> in a clear attempt to keep the region stable and exert its regional influence by peaceful means.

With regards to disaster-affected countries, non-Western donors are often motivated to provide aid to improve bilateral relations. Funding humanitarian assistance can help strengthen bilateral ties as emerging powers are developing diplomatic networks outside their traditional zones of influence. For India, building 'friendly relations' is an explicit goal of humanitarian action.<sup>31</sup> The aim of its medical missions in Afghanistan, for instance, is portrayed as an effort to create 'a positive humanitarian image of Indian doctors' in the country.<sup>32</sup> This strategy seems to bear fruit: in a recent survey, Afghan citizens perceived India as one of the largest donors – even ahead of the United Kingdom, which funds far more development and humanitarian aid in absolute financial terms.<sup>33</sup>

25 UNRWA, 'Brazil contributes US\$ 960,000 and announces a further donation of US\$ 7.5 million to UNRWA', Press Release, 2011, available at: <http://www.unrwa.org/etemplate.php?id=1193> (last visited December 2011).

26 For example, in the official *Al Hayat* newspaper. See K. Al-Yahya and N. Fustier, above note 13, p. 9.

27 A. Binder and B. Conrad, above note 24, pp. 11–12; C. Meier and C. S. R. Murthy, above note 7, p. 32.

28 Financial Tracking Service, 'Table B: Somalia 2011: total humanitarian assistance per donor', 2011, available at: [http://fts.unocha.org/reports/daily/OCHA\\_R24\\_E15940.PDF](http://fts.unocha.org/reports/daily/OCHA_R24_E15940.PDF) (last visited December 2011).

29 Abdirahman Aynte, 'Understanding Erdogan's historic visit to Somalia', 2011, available at: [http://www.hiiraan.com/op4/2011/aug/20012/understanding\\_erdogan\\_s\\_historic\\_visit\\_to\\_somalia.aspx](http://www.hiiraan.com/op4/2011/aug/20012/understanding_erdogan_s_historic_visit_to_somalia.aspx) (last visited December 2011).

30 According to data from the annual reports of the Indian Ministry of Foreign Affairs from 2000 to 2010. For a detailed analysis, see C. Meier and C. S. R. Murthy, above note 7.

31 See, for example, the Indian Embassy in Havana, which describes India's humanitarian assistance to Haiti as a 'symbol of friendship'. Embassy of India, 'India-Haiti bilateral relations', 2011, available at: <http://www.indembassyhavana.org/?q=en/node/26> (last visited December 2011).

32 Indian Ministry of External Affairs, *Outcome Budget 2010–2011*, 2010, p. 47, available at: <http://www.mea.gov.in/meaxpsite/budget/MEAOutcomeENG2010-11.pdf> (last visited December 2011).

33 Mohammad Osman Tariq et al., *Afghanistan in 2011: A Survey of the Afghan People*, Asia Foundation, 2011, pp. 5 and 67, available at: <http://asiafoundation.org/resources/pdfs/TAF2011AGSurvey.pdf> (last visited December 2011).

Finally, as in established donor countries, humanitarian donorship in non-Western countries is a function of domestic politics. Therefore, media attention is instrumental in shaping the country's engagement and, at least in some cases, minority politics also direct the discourse. Saudi Arabia and neighbouring Gulf states use their humanitarian engagement to appease expatriate worker populations from disaster-prone countries such as Bangladesh, Pakistan, or the Philippines who often face miserable working conditions.<sup>34</sup> The Indian government tries to conciliate the Tamil community by funding humanitarian assistance efforts in predominantly Tamil areas of Sri Lanka. There, the influence of federal entities also becomes apparent: in 2008 and 2009, the government of the Indian state of Tamil Nadu provided in-kind assistance of total of US\$ 5 million to the operations of the International Committee of the Red Cross (ICRC) in Sri Lanka.<sup>35</sup>

## Channels for humanitarian funding and aid modalities

Donors can channel humanitarian in-kind or cash contributions through multi-lateral humanitarian organizations and humanitarian non-governmental organizations (NGOs), or they can directly support the affected governments and populations. They can do so transparently or confidentially; and they can ask for accountability in return or ignore the whereabouts of their donations. The different options allow for varying degrees of independence of humanitarian agencies and receiving governments, of accountability, and of donor influence.

First, emerging donors provide much assistance in kind,<sup>36</sup> because it allows them to re-use surplus production of food or medical products. Surplus disposal – long (and in individual cases still) practised by the West – is today seen critically, and most established humanitarian actors push for direct cash contributions. However, some emerging donors seem to catch up quickly with current good practice. Brazil, one of the world's largest agricultural producers, has recently committed to procure more food assistance locally, instead of shipping it from Brazil.<sup>37</sup>

Second, in line with the normative framework of non-Western giving – the emphasis on sovereignty and the desire to build 'friendly relationships' – and internal decision-making structures, non-Western donors currently provide a large

34 The Saudi Campaign for Sri Lanka and Indonesia after the tsunami of 2004 raised US\$ 86 million, more than the Gaza 2009 and Lebanon 2006 campaigns combined (US\$ 64 million): see K. Al-Yahya and N. Fustier, above note 13, p. 14.

35 Indian Ministry of External Affairs, *Annual Report 2008–2009*, 2009, p. 15, available at: <http://www.mea.gov.in/mystart.php?id=500415091> (last visited December 2011).

36 These contributions are difficult to quantify to compare them with cash contributions. However, they still make up a large part. India, for example, provided all but two contributions to the South Asian region between 2000 and 2010 in kind, including fortified biscuits to the WFP in Afghanistan and in-kind goods to the UN High Commissioner for Refugees (UNHCR) and the ICRC in Sri Lanka.

37 Gilberto Carvalho, Brazilian Minister of State, in Ministry of External Relations, Brazil, above note 10, p. 38.

part of their humanitarian assistance directly to the affected government. In India, the regional desks in the Ministry of External Affairs make most decisions on humanitarian action.<sup>38</sup> In the absence of a formal humanitarian policy, officials react to requests from disaster-affected states and often provide funding directly to their counterparts in these countries. In Saudi Arabia, the ambassadors in disaster- or conflict-affected countries often bring humanitarian issues to the attention of the Royal Court, the innermost circle of Saudi politics, where decisions on humanitarian action are taken.<sup>39</sup> However, there is also a marked trend towards multilateral giving, particularly to UN agencies. Between 2005 and 2010, the reported multilateral contributions of major non-Western donors increased on average three times more than overall contributions.<sup>40</sup> So far, however, multilateral funding remains linked to specific emergencies; few international organizations receive support for their annual budgets from any non-Western donor.

Why and when non-Western donors opt for multilateral rather than bilateral channels remains unclear. Yet our research indicates that the decision for multilateral giving is a function of a successful outreach strategy of the international organization, the desire for international visibility, the wish to avoid political instrumentalization of aid in internal armed conflicts, and a strategy to help the recipient country to save face. For example, when India offered assistance to Pakistan after the 2010 floods, Pakistan accepted the offer under the condition that India channelled the US\$ 25 million through UN organizations.<sup>41</sup>

To varying degrees, some non-Western donors also fund domestic organizations for their humanitarian activities abroad. Especially in the Gulf region, but also in China, national Red Cross and Red Crescent organizations become increasingly active when disasters strike in neighbouring countries. Owing to increasing activities abroad, government funding to the Saudi Red Crescent, for example, went from US\$ 150 million per year in 2008 to US\$ 433 million in 2010.<sup>42</sup> In addition, in response to the Pakistan floods 2010, the state-owned Saudi Fund for Development became active for the first time in a disaster-affected country as a funder for multilateral and local initiatives.<sup>43</sup>

Third, most non-Western donors do not track their contributions internally, let alone ask for reports from recipient organizations on what contributions were used for. This leaves the door open to inefficient use of resources or even misuse. A puzzling example is Saudi Arabia. It has started to demand very high reporting standards when providing funds to multilateral organizations, but not for bilateral, government-to-government contributions.

38 C. Meier and C. S. R. Murthy, above note 7, pp. 9–11.

39 K. Al-Yahya and N. Fustier, above note 13, pp. 11–12.

40 Based on Financial Tracking System data, the combined contributions of Brazil, China, India, Qatar, Saudi Arabia, Turkey, and the United Arab Emirates to multilateral institutions (pooled funds, UNHCR, UN Office for the Coordination of Humanitarian Affairs (OCHA), and WFP) increased by 640% per year on average, whereas their overall humanitarian funding increased by 250%. See UN OCHA's Financial Tracking System data at: <http://fts.unocha.org/> (last visited December 2011).

41 Interviews with Indian officials: see C. Meier and C. S. R. Murthy, above note 7, p. 17.

42 Data from the Saudi Ministry of Finance, 2011: see K. Al-Yahya and N. Fustier, above note 13, p. 14.

43 *Ibid.*, p. 18.

During the Pakistan 2010 flood response, these conditionalities prohibited an agreement over a significant US\$ 100 million contribution to different UN organizations because they failed to meet the requirements from the Saudi Fund for Development.<sup>44</sup>

The aid channels and modalities of non-Western donors differ from country to country and from crisis to crisis. However, there is a certain tendency towards in-kind over cash contributions, bilateral over multilateral channels, and hands-off over highly transparent giving. This tendency suggests that non-Western donors may be closer to the needs voiced by affected governments than their Western counterparts. It also implies that traditional humanitarian organizations have a hard time engaging with non-Western donors, who focus their humanitarian engagement on governments. In addition, the hands-off approach of non-Western donors points to the risks for impartial humanitarian assistance that come with government involvement in situations of armed conflict or the absence of accountability mechanisms. However, as the examples above show, there are also signs of convergence, with non-Western donors adapting their humanitarian practice to well-established good practices.

## Modes of co-operation and co-ordination

How do non-Western donors co-operate and co-ordinate with traditional humanitarian donors and operational agencies? Although Brazil and South Korea joined the Good Humanitarian Donorship initiative, and the latter intends to align all of its assistance to UN-led international appeals, so far most non-Western donors are absent from existing global donor co-ordination fora;<sup>45</sup> the global option seems fairly unattractive to them. Instead, regional co-operation on humanitarian issues is flourishing as regional organizations become increasingly involved in humanitarian co-ordination. The Organisation of Islamic Cooperation (OIC)<sup>46</sup> established a humanitarian department in 2008, and opened an office in Mogadishu in 2011 to co-ordinate the relief efforts of its members. In the same year, the Association of South-East Asian Nations (ASEAN) opened a co-ordination centre for regional humanitarian assistance in Jakarta. Other regional organizations on the African and South American continents are also moving in the direction of regional co-ordination.<sup>47</sup>

44 Interviews with Saudi Fund for Development and UN officials, 2010. For a detailed analysis see K. Al-Yahya and N. Fustier, above note 13, pp. 18–19.

45 A. Binder, C. Meier, and J. Steets, above note 17, pp. 5–7.

46 Formerly, the Organization of the Islamic Conference.

47 The Economic Community of West African States (ECOWAS), for instance, is currently working on a humanitarian policy and has also approved a contribution of US\$ 3 million to the Sahel 2012 response. See <http://reliefweb.int/node/477513> (last visited December 2011).

## Ways forward

Non-Western donors and traditional donors are driven by the same two key motivations: first, both have a genuine desire to assist people in need and express international solidarity through principled humanitarian assistance. Second, a good portion of self-interest motivates their humanitarian engagement: the desire to establish their own country as a benevolent, yet influential global player, to promote national security through regional stability, to be responsive to domestic demands, and to be visible for their good deeds.

The resulting humanitarian behaviour is, however, quite different: non-Western donors prefer the regional over the global both for giving and for organizing aid; they may at times prioritize sovereignty over humanitarian principles and tend to focus their aid on a very limited number of sectors; and they prefer to offer support after natural disasters rather than during conflicts. This divergent behaviour, along with the different language that non-Western donors use when speaking about humanitarian action, is the main reason for traditional humanitarians' wariness of the rise of non-Western humanitarian activity.

And yet, if humanitarian organizations and established donors want an international system that is fit to address the humanitarian needs of tomorrow, there is no way around a dialogue with and – in the medium term – active involvement of non-Western donors. Humanitarian needs are likely to increase, the capacity of traditional donors is limited by the financial and economic crises of the past years, and the engagement of non-Western donors is too substantial to ignore.

Some representatives of established donors and humanitarian organizations counter this argument by saying that they have tried to approach non-Western donors but have been, with a few exceptions,<sup>48</sup> unsuccessful. Our analysis shows, however, that past co-operation efforts were not successful because they were built on the assumption that non-Western donors would join the existing humanitarian architecture as a new source of funding without changing the parameters of humanitarian action. It would be strategically wiser to offer non-Western donors and recipient countries a say in shaping a common system because it is unlikely that non-Western donors will join the humanitarian debate otherwise. This, in turn, will hinder common progress to high-quality humanitarian assistance and may undermine the universality of the humanitarian endeavour in the long run.

This is not to suggest that time-honoured humanitarian principles and decades of efforts to professionalize humanitarian assistance should just be dropped. Rather, there should be a respectful debate – between traditional organizations and non-Western donors just as between Western and non-Western donors – on a mutually agreeable approach to humanitarian action that reaps the fruit of a more universal system while addressing potentially fundamental disagreements in

48 The WFP was already reaching out to non-Western donors ten years ago, and was able to secure steadier funding and in-kind contributions than others. UN OCHA has not sought contributions from any of these donors until very recently, but has now become very active and vocal: see, for example, IRIN, 'A bigger role for Asia in humanitarian response', 12 October 2011, available at: <http://www.irinnews.org/report.aspx?ReportId=93939> (last visited December 2011).



principle and practice. Among donors, the initiative of the governments of Brazil and Sweden to establish a new platform for dialogue among representatives of selected non-Western and traditional donors and recipient countries in New York in early 2011 is thus a step in the right direction.<sup>49</sup>

Nevertheless, approaching non-Western donors on equal footing does yield two important risks. First, it might allow national sovereignty to become a normative element of humanitarianism. The resulting bilateral government-to-government contributions – often with no mechanism to ensure that the money is spent on the right cause – and possible restraint in situations that are particularly threatening for civilian populations could amount to a serious threat to principled humanitarian action.

Second, although few non-Western donors are completely new to humanitarian action,<sup>50</sup> their decision-makers are not experienced enough in this area and are only slowly learning about internationally developed standards. For example, one of the camps in Northern Yemen sponsored by the United Arab Emirates has air-conditioned tents but inhabitants do not get clean water. In addition, women living in peripheral areas of the camp have difficulty accessing food because it is cooked centrally and they are not allowed to move that far in public.<sup>51</sup> Without dialogue, non-Western donors may systematically repeat the errors that traditional donors made in the past, including the focus on in-kind aid, or the lack of co-ordination with other actors.

On the other hand, co-operation with non-Western donors promises at least three important gains for the affected populations and the international humanitarian system. First, working together improves the status of humanitarianism and deflects criticism that humanitarianism is the henchman of Western imperialistic dominance, which frequently hampers access in places such as Afghanistan, Somalia, or Burma. In November 2011, for instance, when the Al Shabaab militia in Somalia banned several UN organizations and Western NGOs from operating in the territory under their control, the NGO Islamic Relief was still able to work in Mogadishu: the organization's Muslim background allowed it to reach people in need.<sup>52</sup> Similarly, when several Western NGOs were forced to leave the Sudanese province of Darfur, Mercy Malaysia continued working in this region.<sup>53</sup> And when cyclone Nargis hit Burma in 2008, the Indian government provided assistance to communities in the delta long before Western aid agencies were even allowed to enter the country; indeed, the Indian government publicly put the government under pressure to accept international aid.<sup>54</sup>

49 Personal conversations with UN OCHA staff and representatives of non-Western and Western donors in New York, 2011.

50 The Indian army, for example, supplied relief materials to civilians in the besieged city of Jaffna in 1987 during the Sri Lankan civil war. See C. Meier and C. S. R. Murthy, above note 7, p. 4.

51 Direct observations of a GPPi evaluator in Northern Yemen, 2010.

52 Jehangir Malik, 'Somalia famine: our agency is able to deliver aid', in *The Guardian*, 29 July 2011, available at: <http://www.guardian.co.uk/global-development/poverty-matters/2011/jul/29/somalia-famine-islamic-relief-response?INTCMP=ILCNETTXT3487> (last visited December 2011).

53 Personal conversation with former Mercy Malaysia staff.

54 C. Meier and C. S. R. Murthy, above note 7, p. 39.

Second, both established donors and organizations can learn from non-Western donors how to take host governments more seriously, particularly in natural disaster settings. Time and again, evaluations find that the general trend is to sideline affected governments, weakening future disaster preparedness and response.<sup>55</sup>

The third possible gain from partnering with non-Western donors ultimately concerns money. With the financial crisis and excessive national debt, established donors are facing times of austerity, resulting in the cutback of development and humanitarian spending, as the unusual 5% decrease of the UN's biannual budget for 2012–2013 already indicates.<sup>56</sup> For the next decades, experts anticipate a more equal distribution of economic wealth across the globe.<sup>57</sup> These trends will make additional contributions invaluable, in particular because of the potential increases in costs of humanitarian assistance owing to a growing number of natural and urban disasters.

We must keep in mind, however, that systematic normative clashes and failures represent risks, while increased access and resources represent opportunities, not realities. However, if the established humanitarian actors continue to ignore the non-Western elephant in the room, the opportunities may well be lost and the risks may become realities. Therefore, established donors and humanitarian agencies should approach non-Western donors on the same level. To engage non-Western donors meaningfully, the traditional humanitarian actors should start small, addressing practical rather than normative issues first to build trust over time. They could do this in four steps.

First, traditional humanitarian organizations and donors could engage non-Western donors in a knowledge-sharing exercise. As an example, while non-Western donors could learn about standards and processes, established actors could learn about effective disaster management in urban or heavily populated areas. For instance, the Saudi Red Crescent has a long history of dealing with medical support to massive population influxes in the annual pilgrimages to Mecca.<sup>58</sup> Chinese rescue teams likewise have a lot of experience in responding to natural disasters in urban areas, some of it with technology that is potentially better placed to interface with the infrastructure of developing countries. Traditional organizations could engage non-Western donors individually in their area of specialization: Save the Children and UNICEF, for example, could exchange knowledge on children in emergencies. Explicitly decoupling these discussions from fundraising efforts or the assessment of non-Western donors' engagement in specific crises would help to take some of the

55 See, for example, Riccardo Polastro *et al.*, 'Inter-Agency real time evaluation of the humanitarian response to Pakistan's 2010 flood crisis', DARA, March 2011, available at: <http://daraint.org/wp-content/uploads/2011/03/Final-Report-RTE-Pakistan-2011.pdf>; or Tsunami Evaluation Coalition (TEC), 'Consolidated lessons and recommendations from the TEC synthesis report and TEC thematic evaluations', January 2007, available at: <http://www.alnap.org/resource/5600.aspx> (both last visited December 2011).

56 UN News, 'Ban welcomes approval of UN budget for next two years', 24 December 2011, available at: <http://www.un.org/apps/news/story.asp?NewsID=40837&Cr=general> (last visited December 2011).

57 OECD, *Perspectives on Global Development 2010: Shifting Wealth*, 2010, p. 15.

58 K. Al-Yahya and N. Fustier, above note 13, p. 29.

politics out of the interaction. Over time, this would build the trust necessary for further engagement.

As a second step, Western and non-Western donors could issue joint statements in certain situations, for example demanding unimpeded access for humanitarian workers. These joint statements could satisfy the desire of non-Western donors to be visible on the global stage and help stress the universality of the humanitarian cause.

Third, non-Western donors and traditional humanitarian actors should work together where no normative tensions arise. Collective activities could range from triangular partnerships (non-Western donor, Western donor, humanitarian organization) to co-ordination of activities and 'co-branding' of common initiatives. This might occur, for example, after natural disasters that are in the respective donor's sphere of interest and that have an impact on a sector in which the non-Western donor is active (such as food assistance or health). It might also occur at times other than emergencies, through common events. Once working relationships are established, such co-operation should be expanded to other areas, in which growing regionalization of the humanitarian system also suggests a more regional division of tasks. At the global level, this new, larger group of donors should have a discussion about who is funding what kind of humanitarian action and in which context, to ensure that their activities correspond to needs. If current trends continue, we may soon witness a shift of funding away from humanitarian action in armed conflicts and towards assistance in natural disasters; non-Western donors generally prioritize the latter while avoiding the former because of the possible tension between sovereignty and humanitarian principles. Also, as the relative amount of funding from non-Western donors increases, assistance activities may receive more attention than protection activities. If this trend continues, traditional donors should refocus their aid if it is compatible with their interests: for example, by offering more funding for protection activities in armed conflict and less for in-kind food assistance. Working together would also presuppose that Western donors are able to fund organizations that originate in non-Western countries and that traditional humanitarian agencies will partner with them. Today, bureaucratic regulations hinder such co-operation because many established donors, including the European Commission, can only fund organizations that fall within their purview. Co-operation between Western and non-Western organizations also often fails, owing to a lack of mutual understanding.

Fourth and finally, non-Western and those traditional actors that provide or fund principled humanitarian assistance should engage in an exchange on remaining normative issues. The sovereignty–impartiality trade-off is probably the most contentious issue facing non-Western and traditional actors. Working together will itself solve some tensions through practical co-operation, since the humanitarian principles are not only justifiable on normative grounds but simply make operational sense. The usefulness of a principled approach will certainly become clearer to non-Western donors once they increase their level of operational engagement. In parallel, humanitarian organizations – particularly the ICRC – should involve non-Western donors in a discussion on how they engage

in protection activities while fully respecting the sovereignty of the affected government. The combination of hands-on co-operation and normative exchange will most likely reduce the number of instances where non-Western donors prioritize sovereignty over impartiality of aid.

Either way, given the multipolarization of the international system, the changing distribution of global economic wealth, the regionalization of the humanitarian system, and growing humanitarian needs, better co-operation between non-Western and Western donors and organizations is no longer a matter of goodwill and respect towards other traditions of humanitarianism. Rather, it has become a necessity. States and humanitarian organizations owe it to affected populations to move into uncharted waters and to co-operate with non-Western donors to ensure that all available resources are used for the benefit of those in most dire need.



# What future role for local organizations? A reflection on the need for humanitarian capacity-building

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## **Abstract**

*While treating the humanitarian organizations themselves as rational actors, this article considers the factors that influence the decisions and the current logic of Western humanitarian organizations in their dealings with local organizations. This reflection necessarily leads to a re-examination of the current structure of these organizations and to proposed scenarios to identify the best methods for the future, particularly in the relational framework between international organizations and their local partners. Ultimately, the humanitarian organization interventional model must be broadened, taking local humanitarian capacity-building into greater consideration.*

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In a period in which the humanitarian system is tending to have a growing influence in world politics, a number of the fundamental pillars of contemporary humanitarianism are being questioned. How will the professionalization of organizations develop? Are humanitarian principles still realistically applicable? Are international humanitarian organizations still legitimate? These are among the

questions raised in academic and specialized literature that address the core elements of a future humanitarian system.<sup>1</sup>

As described by Pierre Micheletti and Daniel Henrys, this system consists of a score of international humanitarian organizations that have taken root in the West and are active in developing countries affected by disasters.<sup>2</sup> Each year more than two-thirds of all humanitarian activity is undertaken by these organizations, which are active both in looking for funding in the North and in project implementation in the South. This framework for humanitarian action is based on assumptions dating from period immediately following World War II and evolves only with great difficulty. Indeed, while norms tend to adapt to changes in technocratic fashion, the intervention model itself has altered little: Western expertise and funding in support of victims in the South.

International humanitarian organizations face many challenges in this complex and changing context. Among these, implementing local humanitarian capacity-building activities is at the top of the list. ‘Capacity-building’ is generally defined as a skill and knowledge transfer from an international to a local organization, the former investing resources to support and strengthen the latter.<sup>3</sup> This definition, which implies an asymmetrical power relationship between an organization *that has the capacity* and another *that wants to have it*, has tended to give way to a more balanced model of inter-institutional partnership relations. Indeed, humanitarian organizations now view their relationships with their local partners with more consistency. However, while there is a growing consensus in terms of the priority of capacity-building, most organizations have still been slow to invest seriously in support mechanisms for local humanitarian capacity development.

Besides, in the response to emergencies, the heart of the problem lies in the fact that international humanitarian organizations daily question their relationships with their local partners. Is it necessary to have local partners? Why work with partners that delay intervention while international organizations can act directly and quickly? What are the criteria to select them? What will be their role and how should the contractual and financial accountability be shared? What methods are preferable? What are the advantages of having such partners? Should such relationships focus on their results or on their progressive development? All of

1 See, in particular, 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. 342–352; Michael Schloms, ‘Le dilemme inévitable de l’action humanitaire’, in *Cultures & Conflits*, No. 60, 2005, pp. 85–102; Tony Vaux, ‘Humanitarian trends and dilemmas’, in *Development in Practice*, Vol. 16, No. 3, 2006, pp. 240–254; Marie Pierre Allier, ‘Introduction’, in Claire Magone, Michaël Neuman, and Fabrice Weissman (eds), *Agir à tout prix? Négociations humanitaires: l’expérience de Médecins sans frontières*, Éditions La Découverte, Paris, 2011.

2 Pierre Micheletti and Daniel Henrys, ‘Le “modèle humanitaire dominant” est mis en question en Haïti’, in *Le Monde*, 12 January 2011, available online at: [http://www.lemonde.fr/idees/article/2011/01/12/le-modele-humanitaire-dominant-est-mis-en-question-en-haiti\\_1464293\\_3232.html](http://www.lemonde.fr/idees/article/2011/01/12/le-modele-humanitaire-dominant-est-mis-en-question-en-haiti_1464293_3232.html) (last visited 27 January 2012).

3 Brooke Lauten, ‘Time to reassess capacity-building partnerships’, in *Forced Migration Review*, Vol. 28, 2007, p. 4.



these questions, however legitimate they may be, raise deeper issues concerning the value in international organizations really ensuring local institution-building.<sup>4</sup>

Inspired by a series of interviews with humanitarian organization administrators, this article's objective is to highlight some of the factors that influence the decision-making process concerning local humanitarian capacity-building and the future role of these organizations.<sup>5</sup> Treating the humanitarian organizations as rational actors, the article considers the factors that influence the decisions and the current logic of international humanitarian organizations in their dealings with local organizations.<sup>6</sup> While there is extensive literature analysing the problems that affect such partnerships, this contribution aims to present possible solutions and identify the best methods for the future, particularly regarding the framework of relations between international organizations and their local partners.

The text is divided into three sections. The first part defines the object of study and explores some of the arguments put forward by organizations to avoid investing in local humanitarian capacity-building. The second part counters these institutional arguments and demonstrates how the implementation of capacity-building is a positive vector for the effectiveness of the humanitarian system. The last section initiates a reflection on the responsibilities left to local organizations, and considers the means that can be used for developing better humanitarian partnerships.

## Local humanitarian capacity-building: debate or taboo?

Local capacity-building, sometimes called 'capacity development' or 'organizational development', is one of the sharpest points of disagreement in the humanitarian system. There are probably as many interpretations of capacity-building as there are organizations. While some, such as Oxfam and the International Federation of Red Cross and Red Crescent Societies (IFRC), see this activity as the central axis of their action or mission, others look at building local capacities with greater ambivalence.

- 4 For the purposes of this analysis, I will use a typology that includes the great diversity of existing local organizations and institutions, even if this obscures the complex realities in each particular case. Therefore, unless otherwise noted, the concept of 'local organizations' is taken to refer to organizations having a local constituency and/or status, and having a minimal capacity to play a role in future catastrophes. This includes formal and informal local organizations (civil society or community groups), decentralized government institutions, municipalities, and even the state itself. In particular, it also includes the decentralized offices of humanitarian organizations in the South, often called 'country offices' or 'missions'.
- 5 Organizations that were interviewed for this study are: Doctors without Borders, Doctors of the World, CARE, Save the Children, Oxfam, Caritas, the Canadian Red Cross, World Vision, and Handicap International. For confidentiality reasons, names and details of the interviews are not provided. The interviews were carried out between April and October 2011 as part of a study conducted by the Canadian Research Institute on Humanitarian Crisis and Aid (OCCAH) of the University of Montreal, Canada.
- 6 This study was particularly inspired by the postulates of rational choice theory in international relations described by Boudon, and by the interpretation of decision-making processes in organizations by Crozier and Freidberg. See Raymond Boudon, 'Théorie du choix rationnel ou individualisme méthodologique?', in *La Découverte/Revue du Mauss*, Vol. 2, No. 24, 2004, pp. 281–309; Michel Crozier and Erhard Freidberg, *L'acteur et le système*, Le Seuil, Paris, 1977.

How to apply capacity-building? Is it a principal orientation, a programme, or a method? One component of capacity-building includes preparedness and disaster and humanitarian action management, and relies largely on partnerships between Western organizations and local institutions in the South. The approach to building local humanitarian action capacity thus implies two challenges, the first related to the partnership itself, and the second to carrying out skill-transfer activities.

In our context, local humanitarian capacity-building refers to the efforts necessary in equipping local structures to respond better to potential disasters. Activities that characterize local humanitarian capacity-building are extremely varied and the subject of a vast literature. They include, among other things, the exchange of expertise, joint strategic planning, technology transfer, post-emergency transition measures, prevention, and risk reduction.<sup>7</sup> Such activities are not necessarily, or not always, structured in a coherent programme within humanitarian organizations.<sup>8</sup>

The debate goes much deeper, beyond the challenges linked to the implementation of such activities. While a consensus exists on the failures of humanitarian organizations in capacity development, few studies have tried to understand why humanitarian organizations do not invest in it adequately.<sup>9</sup> We can group the reasons for the lack of investment in local humanitarian capacity-building into four main arguments.

First, for some organizations, the subject is almost a taboo because local capacity-building is synonymous with development activities. In other words, these organizations see local capacity-building as an activity that is not necessarily within their remit, but is rather the responsibility of organizations that are working in long-term sustainable development or that are present for a longer period in the post-disaster continuum. For these organizations, maintaining relationships with local partners conflicts with their mission. But it turns out that, while the origin of local capacity-building is in fact related to the development programmes of the 1980s, this activity is now inseparable from the humanitarian action of all professional humanitarian organizations. In fact, the literature demonstrating the importance of such an approach in improving the effectiveness of interventions is now abundant, and there is a clear consensus on the need to integrate this approach.<sup>10</sup>

7 See, for instance, Inter-Agency Standing Committee, *Handbook for the Protection of Internally Displaced Persons*, June 2010, which presents excellent examples of humanitarian capacity-building, available at: <http://www.unhcr.org/4c2355229.pdf> (last visited December 2011).

8 A number of guides, standards, and practices detailing the issues and activities related to humanitarian capacity-building have developed in the wake of humanitarian reform. See, in particular, Global Humanitarian Response, 'A brief overview of the humanitarian reforms', 10 July 2006, available at: <http://www.globalhumanitarianplatform.org/doc00001833.html> (last visited December 2011).

9 See, for instance, Henk Tukker and Rob van Poelje, 'Capacity development in humanitarian crises: practice and lessons learnt about strengthening civil society organisations', in *PSO Capacity Development*, Praxis Note No. 54, INTRAC and PSO, June 2010, available online at: <http://www.intrac.org/data/files/resources/687/Praxis-Note-54-Capacity-Development-in-Humanitarian-Crises.pdf> (last visited December 2011).

10 See Ian Smillie (ed.), *Patronage or Partnership: Local Capacity Building in Humanitarian Crises*, Kumarian Press/IDRC, Bloomfield, CT, 2001; Mirna Mutiara, Ian Smillie, Henk Tukker, and Rob van Poelje, *Capacity Development in Humanitarian Crises*, papers presented at the PSO Panel, the World Conference

The consensus in the academic literature is also supported by the rhetoric of a growing number of humanitarian organizations.

This argument is related to the 'development-emergency' duality faced by many organizations, which inevitably limits investments in capacity-building. Indeed, these humanitarian organizations claim that they do not have the time, the resources, or the mandate to perform such actions and that they lie outside the traditional scope of their activities. Such organizations justify direct action based on an essentially Western expertise. In contrast, development organizations, or those working in the longer term, use these activities in a relatively systematic way. It should be noted that they are sometimes accused of practising some form of interference,<sup>11</sup> which is also one of the arguments used by some humanitarian organizations for avoiding these actions, claiming that they could jeopardize the impartiality of their intervention. In fact, part of the identity of the humanitarian movement has developed through an anti-development line of argument. Therefore, many organizations still have difficulty imagining a presence that precedes crises or that goes beyond the emergency period. However, the cases of complex and almost permanent emergencies are numerous, and organizations that work in such situations are generally there for a long period (in Haiti, Colombia, the Democratic Republic of the Congo, Somalia, etc.). Strategic inconsistencies arise in such situations, since some organizations develop annual strategic plans, knowing full well that they will remain there for longer periods. The pretext of the short term is no longer valid.

The second argument put forward by organizations is based on the fact that local humanitarian capacity-building implies certain preconditions to ensure results that are difficult to achieve: for example, having valid and legitimate interlocutors, which is relatively complicated, and sometimes impossible in conflict areas. Another argument is that such actions should not be undertaken during emergency relief interventions. This corresponds to an argument regularly used by some organizations explaining that they do not want to put victims' lives at risk by focusing on skill-transfer activities. This is certainly the most valid reason for not getting involved in capacity-building. In any case, most organizations plan to 'stay' beyond the initial emergency.

The third argument is linked to expertise: that the qualities needed by humanitarian emergency professionals are different from, and even incompatible with, those of capacity-building professionals. This ideological duality of 'emergency' versus 'development' often results in the creation of separate management teams for emergency and development within the same organization. However, while emergency professionals do indeed work under conditions that involve prioritizing rescue activities, they are also the best placed to ensure an

of Humanitarian Studies, February 2009, available online at: <http://www.pso.nl/files/CD%20in%20Humanitarian%20Crises%20Final%20February%202009.pdf> (last visited December 2011).

11 This critique is sometimes referred to as post-colonialism by the realist current in international relations. See, especially, Mark Duffield, *Development, Security and Unending War: Governing the World of People*, Polity Press, Cambridge, 2007.

exchange of expertise in this area. In addition, there are no professional humanitarian organizations that are limited strictly to emergency action.

Finally, the fourth and last argument demonstrates a certain amount of distrust on the part of humanitarian organizations confronted with investment in building local entities. This is usually due to a misunderstanding of the method, often linked to a lack of expertise, or to fear of a loss of efficiency at the point where external pressures are exerted to achieve quick results. This is caused, in particular, by limited funding, the pressure to present tangible results to donors and the media, or the conditions imposed by donors. While organizations must learn to manage their communications and the media, it should be noted that most donors now recognize the importance of local humanitarian capacity-building.<sup>12</sup> Accordingly, this argument of emergency specialists should not be seen as an obstacle to the efforts of humanitarian capacity-building. The action for local institutional capacity-building must be separated from the contradictory debate on ‘emergency versus development’.

Setting aside the arguments advanced by the organizations, local humanitarian capacity-building is above all a sincere and constructive attitude towards the Southern partners. It is about recognizing that local organizations and communities have intrinsic capabilities on which all forms of humanitarian co-operation should be based. The objective is that the on-site presence of foreign experts, which is intended to be a temporary measure, should be an opportunity for encouraging local partners to be better prepared to confront possible disasters.

It has now been demonstrated that if international organizations do not take local capacity into consideration in their intervention, foreign presence can have the opposite effect to that hoped for, namely the erosion of local capacity.<sup>13</sup> There have been numerous cases in which it has been found that the presence of foreign humanitarian organizations has helped to establish a system of Western dependence. Juma and Suhrke have described particularly well-documented situations in which the humanitarian actor has contributed to the deterioration of the capacity of local institutions, which would have, over time, completely destroyed the existing capacity.<sup>14</sup> In some of these cases, humanitarian organizations were forced to stay longer than expected in order to provide basic services, thus substituting for local institutions.<sup>15</sup>

Humanitarian organizations are generally aware of these risks. ALNAP (the Active Learning Network for Accountability and Performance in Humanitarian Action) has concluded that local participation in humanitarian operations is one of the biggest challenges faced by humanitarian organizations and that, when it is

12 This is particularly true of the European Union, which in 2008 established a specific funding programme to support humanitarian capacity-building. See ‘Strengthening humanitarian responses through global capacity building and grant facility: DG ECHO guidelines’, available at: [http://ec.europa.eu/echo/files/funding/grants/capacity-grant-guidelines\\_2009\\_en.pdf](http://ec.europa.eu/echo/files/funding/grants/capacity-grant-guidelines_2009_en.pdf) (last visited December 2011).

13 Mary B. Anderson and Peter J. Woodrow, *Rising from the Ashes: Development Strategies in Times of Disaster*, Westview Press, Boulder, CO/UNESCO, Paris, 1989.

14 Monika Kathina Juma and Astri Suhrke (eds), *Eroding Local Capacity: International Humanitarian Action in Africa*, Nordiska Afrikainstitutet, Uppsala, 2002.

15 *Ibid.*; see in particular the concluding chapter, p. 164.

implemented, the methodology involved is highly convoluted. Despite the existence of the ideas and standards of the Code of Conduct of the International Red Cross and Red Crescent Movement and Non-Governmental Organisations in Disaster Relief,<sup>16</sup> as well as the SPHERE project, community participation in humanitarian projects remains extremely limited.<sup>17</sup> Grünewald and the Braun report, which assess the humanitarian capacity-building of seven major organizations, all members of the Interagency Working Group on Emergency Capacity (IWGEC), reached the same conclusion.<sup>18</sup> Braun says, that: ‘community capacity building has not been strong in large part because of the weak capacity of country offices and their partners’.<sup>19</sup> The need to change humanitarian organizational culture, particularly in relation to the opening of positions to non-Western personnel and the establishment of a plan for the professional development of local staff, is one of the main conclusions of the report. It should be noted that the Braun report has enabled the development of a new joint initiative entitled the Emergency Capacity Building Project (ECB),<sup>20</sup> which is specifically designed to address some of these institutional shortcomings.

In fact, all organizations interviewed in this study agreed on the importance of local humanitarian capacity-building.<sup>21</sup> Yet, despite these findings and the apparent consensus, humanitarian organizations still resist integrating capacity-building into their activities. In other words, rhetoric has not been transformed into action. Moreover, the editors of *Forced Migration Review* aptly titled the July 2007 special issue ‘Enhancing Southern capacity: rhetoric and reality’.<sup>22</sup> In fact, all organizations are continuing to struggle to internalize local humanitarian capacity-building efficiently within their operations. Even organizations that claim

16 ‘The Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations (NGOs) in Disaster Relief’, prepared jointly by the IFRC and the ICRC, available at: <http://www.ifrc.org/Global/Publications/disasters/code-of-conduct/code-english.pdf> (last visited January 2012).

17 Active Learning Network for Accountability and Performance (ALNAP), *ALNAP Global Study: Participation of Disaster-affected Populations*, Practitioner’s Handbook (Draft), London, 2003, p. 11.

18 François Grünewald, *Bénéficiaires ou partenaires: quels rôles pour les populations dans l’action humanitaire?*, Éditions Karthala, Paris, 2005. Spee Braun, *Report on Emergency Capacity: Analysis for the Interagency Working Group (IWGEC) on Emergency Capacity*, July 2004, available at: <http://www.ecbproject.org/resources/library/8-emergency-capacity-report> (last visited December 2011). The constituent organizations of IWGEC are: CARE USA, Catholic Relief Services, International Rescue Committee, Mercy Corps, Oxfam GB, Save the Children-US, and World Vision International.

19 See S. Braun, above note 18, p. 29.

20 The ECB project aims to build staff capacity, to encourage risk reduction activities, to improve accountability, and to evaluate project impact. See details at: <http://www.ecbproject.org/WhatIsCEP> (last visited December 2011).

21 With regard to rhetoric and official communications (annual reports, websites, etc.), all the humanitarian organizations interviewed presented local capacity-building as an important component of their action. This observation is also shared by other studies on local humanitarian capacity-building: see, in particular, Ian Christoplos, ‘Institutional capacity building amid humanitarian action’, in *ALNAP Review of Humanitarian Action in 2004: Capacity Building*, Overseas Development Institute, London, 2005, pp. 29–71, available at: <http://www.alnap.org/pool/files/rha04-ch2.pdf> (last visited December 2011).

22 Marion Couldrey and Tim Morris, ‘Introduction’, in *Forced Migration Review*, Vol. 28, 2007, p. 2.

to implement these actions are finding it difficult to move beyond the stage of rhetoric.

Inspired by interviews with international organizations, this section has identified the reasons that organizations give for avoiding investment in local humanitarian skill enhancement. In opposition to this reasoning, the next section outlines the logic supporting the need for local humanitarian capacity-building.

## Why local humanitarian capacity-building?

While the partnership relations between Western organizations and those in the South were largely influenced by the ideologies of international solidarity that emerged in the 1970s and 1980s,<sup>23</sup> they are now specifically supported in order to improve programme efficiency, ensure some sustainability of funding from donors, and encourage local participation. In other words, technocratic standards such as results-based management have profoundly changed the partnership philosophy. Thus, the association between Northern and Southern organizations will be realized if the organizations agree that it will generate effects that would not have been possible without it.<sup>24</sup> In this exercise of negotiation, in which the calculation of costs and benefits is central to the decisions made by the organizations, multiple factors promoting or encouraging activities of local humanitarian capacity-building are counterposed.

There are as many objectives and degrees of relationship between partners as there are projects. The literature on this subject is abundant and explains the various forms and methods that capacity-building (humanitarian or otherwise) can take, as well as the challenges faced by organizations.<sup>25</sup> But beyond the organizational factors that justify partnerships and skill transfer, we should note two objectives concerning the need for local humanitarian capacity-building.

The first objective is to be found in the process of humanitarian empowerment of the South. This objective is based on the generally accepted idea that dependence on foreign assistance and expertise must gradually be reduced. Southern countries must themselves ensure the process of capacity-building. In fact, the central, but often hidden, idea behind local capacity-building is founded on the assumption that all countries should have sufficient capacity to respond to the humanitarian crises they might face. In other words, they should be able to assess their skills and vulnerabilities, to identify their needs, and to implement the process

23 Alain Fowler, *Striking a Balance: A Guide to Enhancing the Effectiveness of Non-governmental Organizations in International Development*, Earthscan, London, 1997.

24 David Brown, 'Bridging organizations and sustainable development', in *IDR Reports*, Vol. 8, No. 4, 1991, available at: <http://www.worlded.org/docs/Publications/idr/pdf/8-4.pdf> (last visited December 2011).

25 See William Postma, 'NGO partnership and institutional development: making it real, making it intentional', in *Canadian Journal of African Studies*, Vol. 28, No. 3, 1994, pp. 447–471; Jan Ubels, Naa-Aku Acquaye-Baddoo, and Alain Folwer, *Capacity Development in Practice*, Earthscan, London, 2010, available at: <http://www.snvworld.org/en/Documents/Capacity%20development%20in%20Practice%20-%20complete%20publication.pdf> (last visited December 2011); Debora Eade, *Capacity-Building: An Approach to People Centred Development*, Oxford, Oxfam UK and Ireland, 1997; H. Tukker and R. van Poelje, above note 9.

of enhancing their own humanitarian capacities. Thus, over time, the institutions of countries identified as 'beneficiaries' should have the necessary tools to ensure the safety of their own population. Humanitarian activities should not conflict with this objective, but rather commit themselves to this process of empowerment.

The second objective is based on the changing role of international organizations. While it is certain that they will continue to play an indispensable role, their presence on foreign soil should be looked at with a certain detachment. Their responsibilities, which have already changed dramatically in recent decades, will logically evolve so as to anticipate a sort of progressive withdrawal. This trend has been observed in several countries, such as in Peru and India with the organization CARE, or in Kenya with the Red Cross. This has happened, on the one hand, in order to allow more space for local institutions that now have increased capacity, and on the other, by modifying the organizations' actions to promote the transfer of skills. Direct interventions will gradually give way to support mechanisms. This can only be done by changing the traditional role of international humanitarian agencies towards the function of supporting local associations and transferring skills to local groups so as to delegate responsibilities. While disasters continue to occur in areas that require direct intervention, humanitarian agencies must anticipate this transition and voluntarily commit themselves to it.

Thus, the operating methods of humanitarian organizations need to adapt to increasing local capacity, and each situation will have a particular response. One observed risk is related to the pooled emergency response teams. These teams are mostly composed of Western experts, who are on standby so as to participate as needed in the evaluation efforts and responses to a crisis. The establishment of these regional structures (global response teams), which is currently favoured by many organizations, should not lead to them becoming monolithic response tools, applied to all interventions without being adapted to local contexts.<sup>26</sup> Despite the willingness of organizations to try to adapt their pooled teams to local contexts, this creates an asymmetrical power relationship with partners and local experts, since the teams usually consist mainly of Westerners. Little independent research has dealt with this way of working or with its possible effects on local authorities, but further analyses of these intervention models should give us a better understanding of the long-term impact of these structures on local capacities.

## The future role of local humanitarian agencies: some thoughts

The unfolding transition highlights the advent of new ways of functioning for international humanitarian organizations. The traditional humanitarian

26 For example, CARE has set up a pooled emergency response team called CARE International Emergency Response Team (CERT). For further information, see: <http://www.care.org/careswork/whatwedo/relief/ehau.asp> (last visited December 2011). Save the Children also has rapid deployment international emergency response teams, called Regional REDI teams: see Save the Children, 'Emergency Capacity Building Project: "case study of good practice"', available at: <http://www.peopleinaid.org/pool/files/pubs/building-capacity-for-emergency-response.pdf> (last visited December 2011).



interventionist approach will give way to a more symmetrical power relationship between Northern and Southern institutions. This change in organizational culture will affect North–South relations, as well as organizations' operational modalities. Accordingly, the responsibilities of local institutions will also continue their mutation.

Relations between Western humanitarian agencies and local institutions can take many forms and vary over time and space according to the organizations, projects, funding, and context of each crisis. As a result, it is unrealistic to propose a unique model of North–South humanitarian relations. However, using models of existing partnerships, and without exhaustive demonstration of expected roles of local humanitarian organizations, here are four of the most feasible forms of partnership in the decades to come.<sup>27</sup>

### The model of country offices: towards local governance

This structure, fairly standard across organizations, has a functional office in a country or a region considered as being in a humanitarian crisis. The leadership of the office is generally provided by Western expatriates, and employees of the projects are mainly of local nationality. The relationship with local employees is, for some organizations, the primary relationship of proximity with local capacity.

The country office structure is certainly the most widely used by humanitarian organizations. It is particularly popular among English-speaking organizations such as CARE, World Vision, Save the Children, and Oxfam, and has also inspired the European 'without borders' organizations, including Doctors without Borders. In the latter case, there are generally fewer local employees. Conversely, the number of expatriates is greater and the functions that they occupy carry more sectional responsibilities, particularly in the case of medical organizations.

With the evolution of the humanitarian structure, country offices will continue increasing their empowerment, advancing the decentralization of organizations' power, with greater progress towards the establishment of local governance. In these cases, local humanitarian capacity-building will take on its full meaning. By promoting the recruitment of local professionals for leadership positions and professional development plans, the country office will be headed by local experts, which will eventually allow them to become full members of their federation. Despite some internal resistance, this process is already underway at CARE International, particularly in its offices in Peru and India. Having become members of their confederation, these organizations have the opportunity to access international funds, enabling them to ensure their financial

27 Humanitarian organizations generally give out very few details as to their preferred management model and structure. The official institutional documents (websites, annual reports, institutional publications, etc.) reveal little information on this subject. The examples presented below are drawn from the personal experience of the author, as well as from information from interviews.

viability. This process is the most logical culmination of organizations with such structure, reducing the risk that local aid professionals work only for foreign interests.

### The model of decentralized partnership

This type of partnership is generally based on agreements between an international organization and a local one. The international organization can be located either in the country in crisis or in its country of origin. In both cases, the role of local organizations is critical because they are usually responsible and accountable for the implementation of all project activities or programmes. This relationship is based on bilateral agreements, related to conditions of financial management and the objectives to be reached. Most organizations use this form of partnership in one way or another. The types and duration of such partnerships vary greatly. In some areas, the local organization will be autonomous in the absence of a 'physical' presence of the international organization. We see this in particular in Colombia, which has an extensive network of capable humanitarian organizations. The same situation prevails in Cuba, where many organizations such as Oxfam work through Cuban organizations. In other cases, the partnership allows the establishment of consortia based on the interests and capacities of actors in the same sector. This relationship is generally asymmetrical because the local partner is dependent on funding from international organizations that manage foreign funds (institutional or private donors).

Since this kind of partnership is based on a pragmatic contractual relationship depending on the duration of funding, investments in local humanitarian capacity-building are often limited. This is a relationship based more on project management than on structured skill-transfer actions. While it is also true that some projects are mainly oriented towards building local capacity in various sectors, the organizations interviewed generally felt that these initiatives were still insufficient.

In any case, if this support is sincere, and the relationship is sustainable and centred on progressive development and not on results, local organizations will gain in experience and will be able to focus on looking for international financing. Nevertheless, this kind of partnership remains fragile because local capacity-building, as far as research for international funding is concerned, puts organizations in competition with each other, and their institutional survival remains an important question.<sup>28</sup> Yet, for some local organizations, access to international funds is often the only way to remain active and independent of their Northern partners.

28 For a management science analysis of humanitarian organizations, see Erwan Quéinnec, 'The ambivalence of the inherent nature and purpose of humanitarian organisations: a research theme for the management sciences', in *International Social Science Journal*, Vol. 55, No. 177, 2003, pp. 501–523.

## The implementing partnership model

These partnerships appear less frequently than the ones cited above. They are based on pragmatic agreements between international and local organizations, in accordance with a fixed level of funding, and they occur particularly in situations of conflict in which insecurity or the local government no longer allow expatriates to have access to areas affected by the crisis. The recent cases of Somalia and Myanmar are good examples of international organizations developing such implementing partnerships.<sup>29</sup> Ironically, in such contexts, international organizations target local partners according to their capacities, which were often not enhanced while conditions permitted.

International organizations' interest in this type of partnership is mainly based on the results, and organizations are bound by a contract from which elements related to local capacity-building are usually absent. The role of the local partner, although fundamental to the implementation of activities, is logically limited to the achievement of actions identified as part of a contract. The relationship usually ends with the end of funding. Some organizations are sometimes able to take advantage of contracts to develop their own capacities. On the other hand, others close their doors when financing ends.

This type of relationship will always be necessary when the circumstances impose. Nevertheless, international organizations now have extensive international networks and can both anticipate their partnerships and enhance the capacities of their partners when the situation allows. They will benefit from having better organized and better prepared local organizations, which will have greater chances of surviving at the end of their contracts. The main challenge lies in the financing of such activities, and donors must be convinced of the importance of this activity for preparing for disasters.

## The model of national societies

This structure is exclusive to the Red Cross and Red Crescent Movement. The statutes and principles of the Movement indicate that every country should have its own national society that acts as auxiliary to governments in disaster management. These societies are supported by the IFRC, the International Committee of the Red Cross (ICRC), and their sister partner societies in the form of bilateral relations. History has shown many positive partnership relationships between national societies that have helped develop a high-level of humanitarian expertise, as was the case with the Kenyan Red Cross, for example. Indeed, several UN agencies and international donors are increasingly interested in working with and financing national societies.

29 Some organizations also opt for such partnerships where funding is inadequate, and when crises do not generate enough interest for the deployment of expatriates or the establishment of a programme. The funds collected will then be channelled through a local organization in the framework of an implementing partnership.

A number of national societies are nevertheless still very weak and dependent on support from the rest of the Movement. The Haitian experience is a notable example of this situation. This national society, notwithstanding the fact that it has enjoyed widespread support in organizational development and funding for many years, has not been able to take the leadership in the aftermath of the earthquake of January 2010. Consequently, most reconstruction projects are now done directly by the rest of the Movement, without taking the Haitian Red Cross into consideration. In this case, factors identified as explaining this situation include the magnitude of the crisis, the pressure to achieve quick results, and the lack of co-ordination in the Movement. Nevertheless, the Movement will continue its efforts, ensuring that the current environment is an opportunity for the overall strengthening of the Haitian Red Cross.<sup>30</sup>

In all cases, despite the political and institutional challenges posed by the continuation of this structure, the model of national societies remains one of the best ways to guarantee the existence of local capacity in a sustainable manner. If they are adequately supported by the rest of the Movement, it is expected that Southern national societies will continue their emancipation. National societies in rich countries, like those of poorer regions, should continue to maintain their organizational development programmes. Financial independence and the balance between the administration and governance are some of the major challenges that national societies will face in coming decades. Nevertheless, this model continues to be a good example of the way in which strengthening of local institutions remains a priority approach.

## Conclusion: towards a paradigm shift?

The context within which the humanitarian system evolves is so complicated and there are so many possible multiple solutions that it seems unrealistic to conceive of the emergence of a consensual change in professional humanitarian organizations. However, the continuing debate indicates that humanitarian organizations agree on the need to review their partnership relations.<sup>31</sup> Consequently, the relationship between international agencies and their local partners will need to be fundamentally transformed in the future. If the aim of humanitarian organizations is to reduce human suffering, and their basic premise is that the first to arrive on the scene of a disaster is the local community, a rapid paradigm shift in intervention methods in the humanitarian partnership relationship is needed.

30 The *Strategic Plan of the Haitian Red Cross for 2010–2015* noted this institutional weakness prior to the earthquake, as well as the opportunity of looking at the resources channelled to Haiti in building their organizational capacity at all levels. See in particular p. 18 of the text, available at: <http://www.croixrouge.ht/wp-content/uploads/Strategie-Croix-Rouge-Haitienne-2010-2015-version-finale--2-fini.pdf> (last visited December 2011).

31 To learn more about the ongoing debates, see in particular Michael Edwards, David Hulme, and Tina Wallace, 'NGOs in a global future: marrying local delivery to worldwide leverage', background paper for the Third International NGO Conference, hosted by the University of Birmingham, 10–13 January 1999, available at: <http://www.futurepositive.org/docs/futures.pdf> (last visited December 2011).

According to Amhed Manzoor, a new business model to improve the humanitarian system is necessary and it must function in a sincere manner.<sup>32</sup> This organizational culture change will be essential for many organizations that still resist taking local circumstances into account when undertaking a humanitarian intervention. Organizations that have not yet started this development will have to do so quickly. These adjustments must also be conceived in parallel with donors and Northern governments, who too often insist on promoting their organizations, their expatriates, and (incidentally) their interests. It is indeed necessary to maintain and strengthen arguments to convince donor governments of the profitability of investing in the preparation of foreign partners.

This study has highlighted some key factors that influence organizations in justifying their inaction. While some of these factors are beyond the reach of organizations – such as the pressure to show results quickly to donors and the media, and the conditions imposed by donors – others may be more under their control. This is particularly true of the lack of clarity in the definition of capacity-building within organizations, of the lack of responsibility for capacity-building in terms of employees, and of the systematic recruitment of Western resources. Organizations should focus on these factors in order to promote the paradigm shift of the humanitarian system towards empowerment of Southern partners. In doing so, they will create an organizational culture that is less resistant to the empowerment of partners and local offices.

Thus, if the humanitarian movement is to maintain its purpose, preserve its value, and respond to criticism about the impact of its action, it must broaden its response through sincere and deeper consideration of local humanitarian capacity-building. International organizations need to rethink their actions and transform their management model from one of ‘delivering services’ to one of ‘support and local capacity-building’. This change implies that they should no longer be guided according to their own interests and capacities, but according to the interests and capacities of their Southern partners. It is undoubtedly a great challenge.

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32 Amhed Manzoor, ‘The future issues and challenges for humanitarian action and the role of Southern NGOs’, in *Revue humanitaire: enjeux, pratiques, débats*, 21 March 2011, available at: <http://humanitaire.revues.org/index915.html> (last visited December 2011).

# Humanitarian organizations involved in protection activities: a story of soul-searching and professionalization

**Pierre Gentile\***

Pierre Gentile has worked for the International Committee of the Red Cross (ICRC) since 1996. He spent ten years in the field as delegate and protection co-ordinator, and from 2007 to 2012 as head of unit in the Protection Division at ICRC headquarters in Geneva.

## **Abstract**

*In this article, I argue that humanitarian actors are becoming increasingly professional when designing and implementing protection activities in situations of armed conflict and violence. According to my own personal experience, the International Committee of the Red Cross (ICRC) has undergone drastic changes over the last two decades. The institution has diversified the type of protection activities it can implement; it now gives more attention to various population groups and their ability to develop resilience to different types of threat; and, finally, it is increasingly putting more emphasis on the training and career paths of its field delegates working on protection issues. Such changes are not the exclusive trademark of the ICRC. Many humanitarian and human rights actors working on protection issues have undertaken similar adjustments.*

*The article notes that much clarity on protection concepts, as well as considerable field experience, has been gained since the 1990s. The number of humanitarian and*

\* The article reflects the author's views alone and not necessarily those of the International Committee of the Red Cross (ICRC).

*human rights organizations implementing protection activities in the field has steadily increased. Positive as well as negative lessons learned have been documented and have helped to shape institutional guidance and guidelines. Inter-institutional exchanges have strengthened, allowing the development of professional standards for protection work, to ensure that protection work is as safe and efficient as possible. In the end, this professionalization of the field of protection is in the best interests of both the communities affected by violence and disasters, and the humanitarian field workers confronted by complex challenges.*

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I first witnessed the professionalization of protection work from the perspective of a field worker, as I implemented, and later on conceived, protection activities in different parts of the world over the course of ten years.<sup>1</sup> I saw how, gradually, the International Committee of the Red Cross (ICRC) put more emphasis on understanding how different segments of the population faced different threats; I also saw how the institution took a more structural approach to addressing protection issues with the authorities. At the time, the guidance documents on protection that I used as references were mostly produced at country level. While I worked in the field, I had many contacts with other protection actors on the ground, but I knew little about the more conceptual debates around the notion of protection that were initiated at headquarters level in Geneva or elsewhere. Having then myself worked for several years at ICRC headquarters in the Protection Division, I became heavily involved in these debates and ended up participating in numerous inter-institutional workshops and processes linked to protection. There, too, I witnessed the progressive professionalization of the field of protection.

The present article draws on my personal experiences. The first part retraces some of the changes that I observed when I was still working in the field with the ICRC. The second part presents various notions of protection, with an emphasis on how humanitarian actors define their role in protecting civilians. The third part is dedicated to the emergence of professional standards, a step that I see as fundamental on the road to professionalization. It describes the different initiatives that have emerged and how they have combined and complemented each other. The article then turns to other clear indications that the field of protection is going through a cycle of professionalization. Finally, the article ends by enumerating a few of the clear advantages but also some of the risks inherent in the way that the sector is becoming more professional when it comes to protection work.

1 The introduction to this article elaborates on some elements presented by the author at the Civil Military Affairs Conference 2011, themed 'Enhancing the Protection of Civilians in Peace Operations: From Policy to Practice', in Canberra in May 2011; other elements were presented by the author at a Roundtable on Civil-Military Coordination themed 'The Concept of Protection: Towards a Mutual Understanding', organized by the ICRC and the Overseas Development Institute (ODI) on 12 December 2011 at ICRC Headquarters in Geneva, available at: <http://www.icrc.org/eng/resources/documents/report/roundtable-civil-military-coordination-2012-02-07.htm> (last visited December 2011). The core of the article is derived from the experience of the author as project manager for the elaboration of professional Standards for Protection Work in 2008–2009, and the subsequent dissemination and discussion of these standards.



## Looking back at the road that the ICRC took towards professionalization

### From dialogue to the elaboration of complex protection strategies integrating multidisciplinary activities

Protecting populations from the effects of conflict and violence has been at the core of the ICRC's field activities for decades.<sup>2</sup> Documenting abuses and violations of international humanitarian law (IHL) and other relevant sets of rules to prepare representations to the concerned authorities, or armed groups, in the frame of a confidential dialogue has long been a task of the ICRC's field delegate.

In my personal experience during my first years with the ICRC, from the plains of Eastern Slavonia to the mountains of Afghanistan, via the jungle of Colombia, I listened to communities and individuals affected by violence and conflict to understand their fears and the threats that they faced. Their stories became the basis for discussions with local commanders and leaders. Working on protection issues, I had the feeling that being efficient was mostly about being able to find the right argument that would convince my interlocutors to take concrete measures to put a stop to, or at least to limit the occurrence of, abuses and IHL violations. To some extent it was true, especially for a delegate working in remote areas and confronted directly with both the communities affected and the different protagonists in the violence. With experience, however, I came to realize that protection work can take a variety of forms, and that conceptualizing and implementing coherent and successful protection strategies on a nationwide scale demanded much more than documenting violations of IHL and their consequences, and finding the right arguments to address the different stakeholders.

In 2007, the ICRC finalized a lengthy and mostly introspective piece of research on field protection activities in favour of communities and individuals affected by violence outside situations of detention. This research was essentially based on the lessons learned from past ICRC field experience. An internal handbook describing how to define and implement a protection strategy step by step<sup>3</sup> was edited and disseminated to all delegations. It soon became part of all standard internal training on protection.

An underlying assumption of the handbook was that a protection strategy should ideally comprise numerous and diverse protection activities, and not be

- 2 The ICRC's protection efforts are intended to benefit two categories of persons in particular: (1) those who have been arrested and detained, particularly in the framework of an armed conflict or other situation of violence; (2) civilians who are not or who are no longer participating in hostilities and violent confrontations. Special attention is paid to groups exposed to specific risks, such as children (recruitment of minors), women (sexual violence), and elderly, handicapped, and displaced persons. For a definition of the concept of protection see the section below "Towards a greater clarity between different notions of protection".
- 3 The different steps follow the logic of a project cycle from the 'problem analysis' through the definition of objectives to monitoring and evaluation. For more information, see the public version of this handbook: ICRC, *Enhancing Protection for Civilians in Armed Conflict and Other Situations of Violence*, ICRC, Geneva, September 2008.

reduced to the bilateral confidential dialogue that has long been the trademark of the ICRC when it comes to protection work. It is then up to each protection co-ordinator in their own context to define a coherent strategy by choosing the type of action that he or she deems the most appropriate considering the environment that he or she works in and the opportunities that it offers.

To do so, a protection co-ordinator must start by identifying existing and potential patterns of abuses affecting different communities and individuals, and define which one he or she will address as a priority. Therefore, in addition to understanding ongoing patterns of abuses as expressed by communities, a protection co-ordinator must also possess thorough knowledge of past trends of violations and abuses in the country where he or she works, as well as major incidents that occurred in previous crises. Finally, in order to select the types of activity to be conducted, several additional factors will be taken into account, in large part to determine their feasibility. Among those factors are the regularity with which access can be granted to communities at risk, the acceptance by all stakeholders of the ICRC's role in protection, the quality of the dialogue with the authorities, and the applicable legal framework, particularly the national legislation, in addition to the relevant international norms.

In recent years, the ICRC's protection strategies have tried to combine an authority-centred approach (engaging the responsibility of states and armed actors) with a community approach to protection (reducing their vulnerability).<sup>4</sup> This is a natural evolution as more time has been dedicated to understanding the vulnerabilities of different segments of the population in a multidisciplinary approach often combining assistance and protection. [Figure 1](#), which was first published in the above-mentioned handbook, is today a central piece in much of the ICRC's internal guidance and training. It summarizes the different categories of protection activities that the institution can potentially deploy in line with these two approaches.

## Towards a better understanding of the different risks faced by the population

This move to include a community-centred response within the ICRC's protection strategy accompanied the progressive realization that more emphasis was needed on understanding, and then responding to, specific needs within the population. Different population groups may face different threats and their vulnerability is often contextual and not always apparent. They may also benefit from different rights under international law or national legislation.<sup>5</sup>

4 While understanding the existing protection needs of a community, an ICRC field delegate should therefore map the existing coping mechanisms and resilience in order to identify any self-protective measures a community has developed that should be preserved or even supported if such mechanisms are efficient in reducing their exposure to risks.

5 Though the selection of relevant activities is usually not related to the applicable legal framework, the definition of any event as violation or abuse, and the subsequent recommendations to the authorities, are based on the applicable law. Thus, the ICRC's analysis must include both a 'needs'- and a 'rights'-based approach.

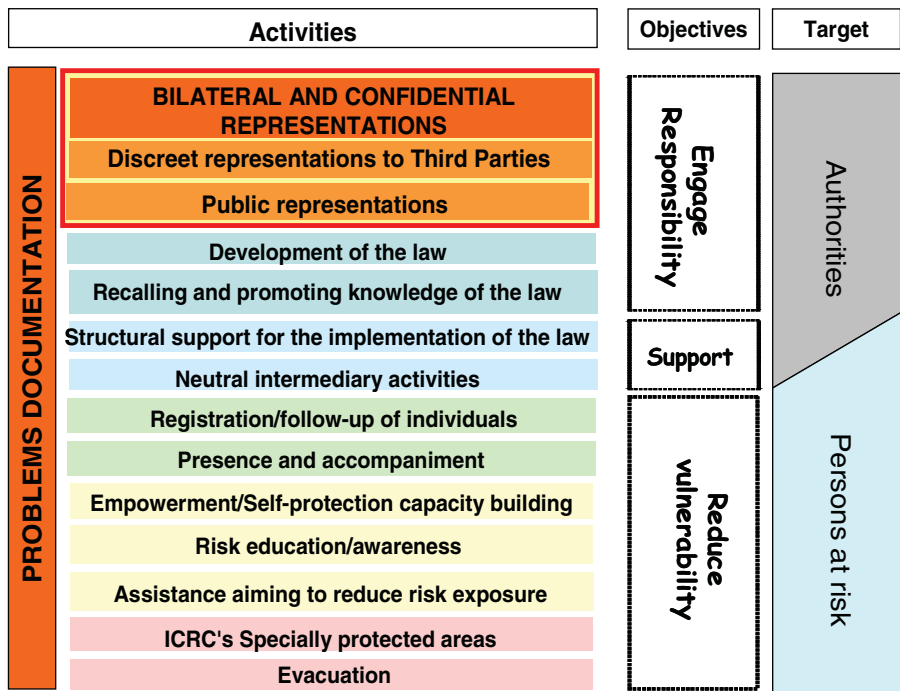


Figure 1. Protection activities implemented by the International Committee of the Red Cross.

Since the 1990s, the ICRC has dedicated time and resources to professionalizing its approach to different groups in the general population. It has drawn lessons from its own field experience and from the experiences of others. To give a few examples: evaluations were carried out following large-scale actions in favour of separated children in the Great Lakes and West Africa, which influenced subsequent guidance for unaccompanied children; an international conference preceded by experts' meetings was organized to discuss the rights and needs of families of missing persons in 2003; pilot programmes with personalized support were put in place for victims of sexual violence in the Democratic Republic of the Congo (DRC), and are now being replicated elsewhere. The overall result was that the ICRC's approaches became increasingly comprehensive<sup>6</sup> in terms of responses as the institution became more sensitive to the specific rights and needs of different population groups.<sup>7</sup>

Over the past few years, training programmes have been put in place to ensure that people working on specific protection issues, from work with families of missing persons to work in favour of detainees, benefit from, and contribute to, the

6 The ICRC has developed its capacities in many fields, from forensics to micro-credit for the disabled and group therapy for gender-based violence (GBV) victims.  
7 A good example is described by Caroline Douillet-Sabouba, 'Supporting women in a difficult security environment: the ICRC programmes for women-headed households in Iraq', in *Humanitarian Exchange Magazine*, Humanitarian Practice Network, London, Issue 51, July 2011, pp. 7–9.

latest institutional guidance and reflections.<sup>8</sup> Alongside this investment in in-house training and workshops on the specific needs of different population groups, the ICRC has recruited specialists at headquarters and in the field. Today, the ICRC has a handful of specialized staff working within the Protection or Assistance Division at headquarters, supporting the delegations setting up activities for the benefit of detainees, internally displaced persons (IDPs), women, children, families of missing people, and migrants. Furthermore, specialized staff can be engaged or deployed at field level upon the request of a delegation. Migrants are the most recent population group for whom the ICRC has adopted an internal reference framework to better define the role that it can play within the Red Cross and Red Crescent Movement in favour of people who are certainly among the most vulnerable to abuses in conflicts and in other situations of violence.

### Professionalization at the level of the whole humanitarian community

While several of the main actors involved in protection went through a similar internal process of professionalizing their own response, putting more emphasis on in-house training and lessons learned, something fascinating happened at the level of the humanitarian community as a whole. Indeed, the mid-nineties saw the emergence of what can best be described as a collective spirit of co-operation to professionalize the whole field. A small group of experienced practitioners familiar with protection work started to interact more and more, exchanging experiences and consolidating the conceptual foundations of what was to become a new specialization/profession within the humanitarian field. While it is true that the ICRC and the Office of the United Nations High Commissioner for Refugees (UNHCR) were still key references when it came to protection, many more organizations developed their own expertise – their specific knowhow – with dedicated professional staff.

### **Towards a greater clarity between different notions of protection**

#### Different notions of protection for different actors

*Is protection work specific to a few mandated agencies, or is it a moral imperative of any humanitarian actor? What about the role of other actors such as the military or the police, and their duty to protect? Can one provide protection from a humanitarian perspective without embracing the whole human rights agenda? What about the role of political organizations at the local, regional, or international level?*

8 As an illustration of the investment in training, the author participated in five training programmes for protection staff between 1996 and 2007. As head of the Unit dealing with Protection of Civilians, I delivered sessions in six training programmes for protection staff and in a dozen programmes for other ICRC senior staff (assistance, communication, lawyers), and also supervised two specialized training programmes from 2007 to 2011.

There have been endless discussions among humanitarian and human rights workers about their role in trying to enhance protection for civilians in armed conflict or in other situations of violence. In fact, in everyday usage the term ‘protection’ can be understood in a variety of ways:

- Protection as an overall objective (a result to be achieved): many actors, whether humanitarian, political, or integrated peacekeeping missions, wish that their intervention would, directly or indirectly, contribute to a better protection of the population.
- Protection as a set of legal obligations: another common understanding of protection relates to the consolidation of a protective legal framework; indeed, protection can be found in the implementation of many legal instruments. The protection offered by refugee laws is probably the most telling example. In that understanding, the notion of status is crucial (refugees, prisoners of war).
- Protection as a concrete activity or a set of activities: finally, and this is the meaning around which most debates revolve, protection can be understood as an activity, or a set of activities, implemented to ensure better protection for the population against identified threats and abuses. In that sense, the protection activities that humanitarian actors may undertake are distinct from legal action (e.g. prosecutions), political action (e.g. sanctions, advocacy), or military or security action (providing physical protection), which other actors may undertake even if all of these actions are aimed at ensuring that the rights of the individual are respected.

While states and political, military, and humanitarian actors can sometimes share a common objective that their intervention has a protective impact, their activities are often fundamentally different by nature. Their mandate, roles, and responsibilities differ, as do their *modi operandi*.

When humanitarian actors speak of their role in protection they are clearly interested in defining the set of activities that they can implement. Professionalizing the field of protection for humanitarian actors therefore implies defining what specific contribution humanitarian and human rights actors can bring to better protecting the population.<sup>9</sup>

9 In past years, the debate on how international military and police forces (especially, but not exclusively, when part of peacekeeping missions) and humanitarian actors can contribute to protection, and how they should or should not co-operate or co-ordinate their efforts has been central. The debate is complicated, as there is a need to distinguish between several scenarios, from large-scale natural disasters to conflict situations in which the military might themselves be involved. The Brookings Institution in Washington (in 2010) and ODI (in 2011–2012) conducted several workshops on the question, putting together humanitarian and military actors. The summaries can be found at The Brookings Institution, ‘Exploring civilian protection: a seminar series (Seminar 1: Understanding protection: concepts and practices)’, Washington, DC, 14 September 2010, available at: [http://www.brookings.edu/events/2010/0914\\_protection\\_series\\_one.aspx](http://www.brookings.edu/events/2010/0914_protection_series_one.aspx) (last visited December 2011), ODI, ‘Better protected? Stabilisation strategies and the protection of civilians’, Geneva, 25 March 2011, available at: <http://www.odi.org.uk/events/details.asp?id=2718&title=stabilisation-protection-civilians-humanitarian-action> (last visited December 2011). Last but not least, in Geneva in December 2011, the ICRC and ODI workshop organized a Roundtable on

## Establishing a common definition of protection for humanitarian and human rights actors

Humanitarian and human right organizations in the 1990s worked jointly on defining what protection work entails for them. Between 1996 and 2001, the ICRC organized a series of workshops, at Ecogia near Geneva, with practitioners from different international organizations. The outcome of each workshop was made public, but the publication that is most often referred to today is the one that summarizes the consensus reached at the end of the series: *Strengthening Protection in War: A Search for Professional Standards*.<sup>10</sup>

Despite its title, this publication did not contain agreed professional standards. Rather, it contained several key concepts to which different organizations can refer in order to frame their respective approaches (modes of action, responsive approach versus environment-building, type of protection activities). What it also contained is a definition of protection that became the standard one for humanitarian organizations. This definition was subsequently endorsed by the Inter Agency Standing Committee (IASC), who disseminated it widely (see Box 1).

### Box 1

In all its publications, the Inter-Agency Standing Committee (IASC) defines protection as: ‘all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights law, international humanitarian law, refugee law)’.

This publication already represented a clear step forward in gaining a common understanding of what protection work entails in the field, and how different actors can complement each other. In the end, although falling short of establishing clear standards, it did achieve what it was meant to do: ‘Promote shared principles and practices, and . . . raise the levels of professionalism and effectiveness in organizations working in the field of protection’.<sup>11</sup> The proof of its success is that, in the following years, several key publications also took up these concepts. Of particular interest are the ones published by two different networks of humanitarian organizations, the IASC and ALNAP/ODI.<sup>12</sup> Both publications aimed to further develop a common understanding of what concrete activities are entailed in protection work, detailing some lessons learned and some challenges.

Civil–Military Coordination entitled ‘The concept of protection: towards a mutual understanding’, above note 1.

10 Sylvie Giossi Caverzasio, *Strengthening Protection in War: A Search for Professional Standards*, ICRC, Geneva, 2001.

11 *Ibid.*

12 IASC, *Growing the Sheltering Tree: Protecting Rights through Humanitarian Action*, Geneva, 2002; Hugo Slim and Andrew Bonwick, *Protection: An ALNAP Guide for Humanitarian Agencies*, ODI, London, 2005.

## Distinguishing the implementation of core protection activities from mainstreaming protection in assistance and development programming

It is important to underline that the definition of protection that was adopted in the 1990s clearly does not imply that every activity carried out by humanitarian organizations falls under the scope of protection. Many activities are conducted to assist individuals and communities in need without addressing the root causes of violence or aiming to reduce abuses or violations. Those assistance activities are nevertheless not carried out in a vacuum. They can increase or decrease the exposure to risks of a given population. They can support their resilience or, on the contrary, increase covetousness of armed groups. A sound understanding of existing protection issues should therefore also inform such programmes.

When referring to protection, it is therefore necessary to distinguish two tasks with which many large organizations are confronted: putting in place programmes to address abuses and violations directly, and making sure that people managing assistance programmes (in emergency as well as in post-recovery situations) take into account protection issues in their respective planning.

This is the case for the ICRC. In addition to the diverse activities implemented as part of a protection strategy aiming to reduce the recurrence of abuses and violations, the ICRC makes continuous efforts to ensure that the protection concerns identified in a given context are mainstreamed (taken into account) in all the assistance and prevention activities that it will deploy in a specific country. Those activities range from its health programmes to its water and sanitation activities, to educational projects with schoolmasters and teenagers at risk in urban areas affected by conflict or violence.

As we will see below, this distinction between what can be called protection work (or ‘core protection activities’, as described by some donors), on the one hand, and mainstreaming protection in other activities, on the other hand, will later be reflected in the development of professional standards among humanitarian and human rights organizations. Before turning to professionalization, however, let us just illustrate the fact that, when it comes to defining what protection activities can mean on the ground, non-humanitarian actors have also developed their own guidance, taking into account their specific roles and responsibilities.

### Defining protection activities from the perspective of peacekeepers

One should note that, in the first decade of the twenty-first century, humanitarian actors were not the only ones to refine their understanding of how they could contribute to a better protection of the population through their activities. The United Nations (UN), and especially the Department of Peacekeeping Operations (DPKO), in close contact with Troops and Police Contributing Countries (TCCs and PCCs), took the initiative to stipulate what was expected from Peacekeeping Operations in terms of protection. This followed the publication in 2009 of a joint study between the United Nations Office for the Coordination of Humanitarian



Affairs (OCHA) and DPKO, pointing out serious deficiencies in how UN missions implemented their mandate when it came to protection.<sup>13</sup>

There are many ways to understand what the notion of protection of civilians can cover when deploying military and police forces. There is, of course, a first understanding linked to the need to respect applicable international rules when using force: IHL in conducting military combat operations; international human rights laws when engaging in law enforcement operations. Protecting civilians is at the core of these rules. Therefore training on adequate standard operating procedures is a necessity. There is a second understanding linked to the individual behaviour of each soldier or policeman, namely an obligation not to abuse the power given to him or her. Therefore codes of conduct are another imperative for all troops to be deployed. The third and most widely debated understanding of the notion of protecting civilians is not linked to the harm that the troops could cause (when using force or in relation to individual behaviour) but rather to their ability to prevent third parties from harming the population. In the end, this is often what motivates a peace mission in the first place. It is this crucial aspect of protecting civilians that DPKO reflected on after the 2009 study was published. To complicate matters, it is obvious that peacekeeping forces do not act in a vacuum. National authorities remain the primary duty bearers when it comes to protection, and their role must be reinforced whenever possible and not undercut. Armed groups also have obligations under IHL and they should not be neglected.

A year after the UN study, a concept note defining protection activities for DPKO missions was circulated.<sup>14</sup> It clearly (and rightly so) goes beyond protection as understood by humanitarian actors, incorporating the specificities and potential added value of UN missions, by categorizing the protection activities that a mission can implement into three tiers:

1. protection through the political process;
2. providing protection from physical violence; and
3. establishing a protective environment.

As Alison Giffen and William J. Durch, who have closely followed the debate on Protection of Civilians (PoC) and peacekeeping over the last years, expressed it:

Peacekeeping is a political enterprise usually engaged in encouraging the brokering or implementation of a peace agreement – a political document – which may require an operation to partner with the host-state government (engaging in reconstruction of the host state's security services) and/or use force to stop spoilers. Such activities may contradict the principles of neutrality, impartiality and independence that guide humanitarian work.

The first tier captures the political and advocacy efforts that mission leadership and personnel should undertake in regard to POC. The second tier

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13 Victoria Holt and Taylor Glyn, *Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges*, United Nations, New York, 2009.

14 DPKO/DFS, *Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations*, DPKO, New York, 2010.

outlines different actions that the mission will need to consider to prevent and pre-empt violence against civilians as well as respond to and finally consolidate a situation following an incident. The third tier captures activities such as promoting legal protection, facilitating humanitarian assistance and supporting effective national institutions.<sup>15</sup>

Based on this concept note, DPKO then developed a framework for protection strategies to be used by all missions tasked with protection, as well as training modules on protection of civilians. All those developments were constantly discussed with several UN humanitarian agencies, the ICRC, and a few non-governmental organizations (NGOs) and think tanks. While going beyond what humanitarians would and could implement in terms of protection activities, DPKO made a point not to develop concepts that would be at odds with the understanding and practices of other actors involved in protection.

It is worth noting that regional organizations have also reflected on what role they can play when it comes to implementing protection activities. The African Union, which has mandated peace missions on the continent, has developed its own thinking on how it can best integrate protection into its Peace and Security Architecture. It worked on a guidance note based on a four-tier approach in some respects similar to DPKO's three tiers, contained in its 2010 concept paper on protection.<sup>16</sup> This is no surprise, as the African Union has benefited from the expert advice of some of the people who were also involved in the larger debate on protection and peacekeeping operation.<sup>17</sup> The African Union's efforts are nevertheless extremely original and interesting because they put a lot of emphasis on the prevention of violence and abuses thanks to the continental early warning system and the capacity of the Union politically to mobilize members of the Council of the Wise (all well-respected figures on the continent) to mediate when a crisis arises and threatens to bring a country into conflict. The political dimension of protection that the African Union, as a regional institution, can play is therefore a central piece of its understanding of protection.

15 William J. Durch and Alison C. Giffen, 'Challenges of strengthening the protection of civilians in multidimensional peace operations', Background Paper prepared for the 3rd International Forum for the Challenges of Peace Operations, 27–29 April 2010, Queenbeyan, Australia, hosted by the Asia Pacific Civil–Military Centre of Excellence, October 2010.

16 The African Union organized a five-day Symposium on Protection of Civilians held in Addis in March 2010 to discuss a guidance note that has subsequently guided its thinking on protection, although it remained a draft text for a long time. The text mentions four tiers, because it singles out monitoring on human right abuses. The press release from the African Union on the event mentions: 'Multi-dimensional approaches to implementing protection tasks for different mission components, including political process, physical protection, rights based protection and the establishments of a secure environment': press release No. 26, 2010. The text also puts more weight on prevention measures. Nevertheless, it is in line with initiatives taken by DPKO since 2009.

17 The Australian Government, through its Civil–Military Centre for Excellence in Canberra, supported the African Union's efforts, linking key policy-makers within the African Union with military, police, and humanitarian experts.

## **The search for professional standards in protection for humanitarian actors**

### **Developments over the last two decades**

The need to establish common professional standards related to protection work carried out by humanitarian organizations had already been identified in the early 1990s. Commonly agreeing on professional and ethical standards represented an important step, demonstrating a sign of maturity for the field as a whole in requesting to go beyond institutional competition. It also reflected the fact that enough field experience had been gained collectively to draw such standards from the lessons learned. As I have already mentioned, the outcome of the series of workshops that took place in Ecogia between 1996 and 2001 was made public under the title *Strengthening Protection in War: A Search for Professional Standards*, even though it did not contain agreed professional standards as such, but rather key concepts that have since largely shaped the way in which humanitarian actors conceive their protection activities.

It is worth mentioning that the first edition of the SPHERE standards in 1997 represented the answer of the humanitarian sector to the need to strengthen responsible and efficient provision of assistance in emergencies (both natural catastrophe and conflict).<sup>18</sup> While containing many elements linking the provision of assistance with sensitivity to the environment in which such assistance is delivered, neither the first edition nor the second revised edition of 2004 contained a chapter on protection. As we will see, it was not until the third edition appeared in 2011 that the standards included a chapter dedicated to protection.

Shortly after the end of the Ecogia workshops, the ICRC looked inward and started to work on its own internal guidelines for protection work in favour of civilians. As mentioned in the introduction, these took several years to be completed and were disseminated internally in early 2007, with a public version being published in autumn 2008.<sup>19</sup> For a little while, the search for commonly agreed standards for protection work seemed to have been put on hold.

### **Agreeing on different sets of standards for different use**

Thankfully, the search for professional standards was not on hold forever. Before the SPHERE board finally decided to add a chapter on protection, two distinct initiatives to establish standards related to protection appeared almost simultaneously in 2008. They did not compete, but rather complemented each other.

18 The SPHERE Project defines itself as an initiative to determine and promote standards by which the global community responds to the plight of people affected by disasters. It was initiated in 1997 by a number of humanitarian NGOs and the Red Cross and Red Crescent Movement. See the website of the project at: <http://www.sphereproject.org/> (last visited December 2011).

19 ICRC, above note 3.

The first one came from a group of Australian NGOs who were implementing assistance programmes in various contexts and felt the need to share experience on how to integrate protection issues into their programming at field level. This initiative clearly targeted NGOs interested in mainstreaming protection in their ongoing field activities, rather than encouraging NGOs to develop new activities centred on protection. Their aim was to produce a 'systematic guidance for general and sector staff in the minimum actions that should be taken to improve the safety and dignity of individuals and communities participating in humanitarian programmes'.<sup>20</sup>

The ICRC spearheaded the second initiative. This time, the setting up of professional standards clearly targeted organizations willing to conceive and implement stand-alone protection activities, usually with dedicated protection staff. The ambitious nature of this initiative meant that it had to take into account the wide variety of protection actions that humanitarian and human rights actors can implement. From the start, it involved an advisory group of experienced protection practitioners from UN agencies, think tanks, and NGOs. A few underlying assumptions guided the work of those closely involved in the making of these standards. They were best summarized in the introduction of its first edition of 2009:

It is now generally agreed that an effective protection response demands adequate professional competence, and that a concerted effort is required to ensure that protection work by humanitarian and human rights actors meets commonly agreed, minimum professional standards. While respecting the diversity of actors and approaches involved, the aim is to establish a baseline to be respected by all.<sup>21</sup>

Both initiatives proved successful and led to the publication of the first sets of standards for humanitarian agencies interested in protection. Ten years after common concepts and definitions were adopted in the Geneva-based workshops, the time must indeed have been right for humanitarian organizations to take one more step towards professionalization.

It is interesting to note that the two initiatives followed different paths to establish the standards. While that of the Australian NGOs gained its legitimacy based on an extensive field testing over six months of a draft text,<sup>22</sup> the ICRC initiative gained legitimacy through a series of large consultation processes (conducted with IASC members and with several UN cluster lead agencies, as well

20 Louise Searle and Kate Sutton, 'Standards to incorporate protection into humanitarian response: do they work?', in *Humanitarian Exchange Magazine*, Humanitarian Practice Network, London, Issue 46, March 2010, available at: <http://www.odihpn.org/humanitarian-exchange-magazine/issue-46/standards-to-incorporate-protection-into-humanitarian-response-do-they-work> (last visited December 2011).

21 ICRC, *Professional Standards for Protection Work Carried Out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence*, ICRC, Geneva, 2009.

22 Caritas Australia, CARE Australia, Oxfam Australia, and World Vision Australia, *Minimum Agency Standards for Incorporating Protection into Humanitarian Response: Field Testing Version*, 2008, available at: <http://www.icva.ch/doc00002448.pdf> (last visited December 2011).

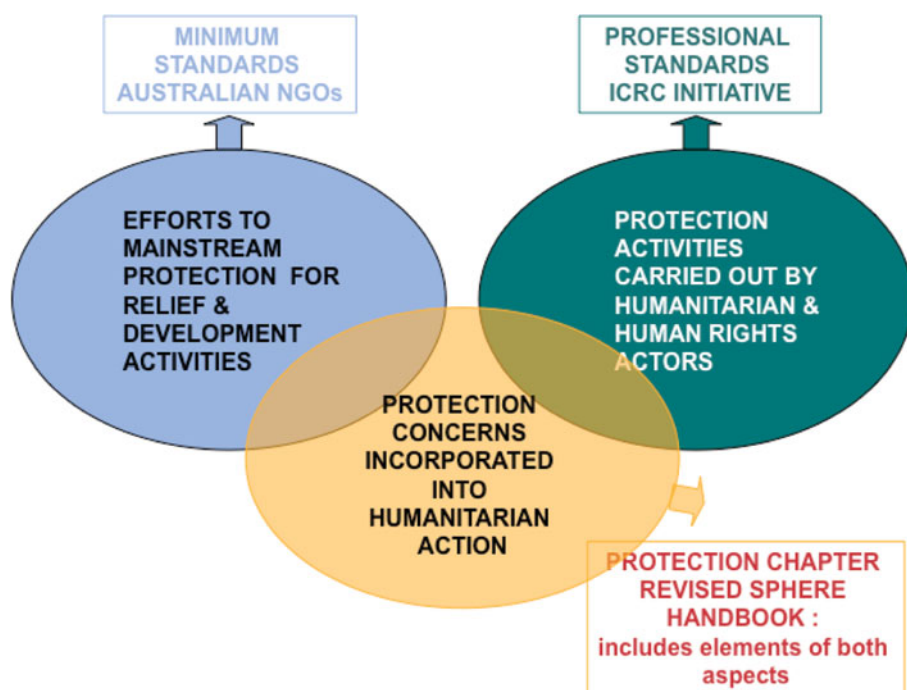


Figure 2. How the three different initiatives to create standards linked to protection are interlinked and complement each other.

as with the network of international NGOs of the International Council of Voluntary Agencies (ICVA)<sup>23</sup> and the network of US-based NGOs of Interaction US, among others). The consultation process extended to selected National Societies of the Red Cross and Red Crescent, as well as to a few key Médecins sans Frontières (MSF) policy-makers in charge of humanitarian affairs in different sections. Both sets of standards were subsequently presented at the Global Protection Cluster in Geneva, to then be sent to all Protection Clusters established in the field, contributing to their dissemination.<sup>24</sup>

While these sets of standards were being finalized, the board of SPHERE took the decision to include a section on protection in a revised edition of their standards. Several drafts – and drafters – later, the third edition of SPHERE,

23 ICVA is a global network of non-governmental organizations that advocates for effective humanitarian action.

24 As its website explains : ‘The Global Protection Cluster (GPC) is chaired by UNHCR, which is the global lead agency for protection. The role of the GPC is to lead standard- and policy-setting relating to protection, support the development of strengthened protection capacity, and provide operational advice and support when requested by protection working groups at the country level. It also ensures that protection is mainstreamed and integrated in other clusters and sectors.’ Available at: <http://oneresponse.info/GlobalClusters/Protection/Pages/default.aspx> (last visited December 2011).

presented to the public in 2011, does indeed contain a chapter on protection, constructed around a few key principles. In fact, this new chapter combines key elements and notions of both the Australian initiative and the professional standards for protection work edited by the ICRC.

The fact that these three initiatives to create standards in a domain that had none before were conducted almost simultaneously could have created confusion as to which standards apply to whom in what circumstances. Thanks to good communications and mutual reviews, coherence and complementarities between them were achieved.<sup>25</sup> This single fact is to be taken as a token of the co-operative spirit that exists between protection practitioners at working level, even when their respective organizations might sometimes compete for resources and recognition. Table 1 presents the comparative structure of the three initiatives.

All of these initiatives understood that, to be considered and respected as standards by a very diverse set of organizations interested in protection, their only strength was the fact that they capture what are currently considered to be commonly agreed best practices. There is no instance of certification (of the ISO type). There is no single protection actor that could take the responsibility to judge publicly which organization can be considered as professional.

This also means that all of these sets of standards are bound to evolve with time. De facto, none of the three initiatives had the pretention to be setting standards that would once and for all define the ethic and/or the rules of the game. The SPHERE Standards have already gone through two process of revision since they were first published in 1997. It is reasonable to imagine that in roughly five years a new edition will be on the way, with an even more substantial chapter on protection, addressed to all humanitarian actors.

World Vision UK edited a revised version of the Minimum Standards for Protection Mainstreaming in 2012, incorporating lessons learned in the dissemination and implementation of the set of standards first published by the group of Australian NGOs. This new version also contains an interesting table that summarizes the distinction between protection mainstreaming ('incorporating protection principles and promoting safety into humanitarian and development programmes') and stand-alone protection work ('preventing and responding to violence, or threat of violence, coercion and exploitation, any deliberate deprivation,

25 For example, a twenty-four-page document describing the differences between the 2011 and 2004 editions of the SPHERE Handbook can be found on the SPHERE website that reads: 'Given their global character, the Sphere Protection Principles are complementary to the professional protection standards, such as those developed by ICRC, which are directed at agencies explicitly mandated or stating that they undertake protection activities. The Sphere principles on protection are for all humanitarian agencies. Protection is an essential component of humanitarian work'. See Sphere Project, *2011 edition of the Sphere Handbook: What Is New?*, available at: <http://www.sphereproject.org/silo/files/what-is-new-in-the-sphere-handbook-2011-edition.pdf> (last visited December 2011).

Table 1. *Comparative structure of three initiatives setting standards for Protection*

| <i>Minimum Standards for Incorporating Protection (Australian NGOs)<sup>26</sup></i>                   | <i>Professional Standards for Protection Work (ICRC initiative)<sup>27</sup></i>         | <i>Protection Principles (SPHERE 2011 edition)<sup>28</sup></i>   |
|--|--|---|
| 31 standards with indicators and commentaries grouped in 7 sections                                    | 50 standards with commentaries grouped in 6 chapters                                     | 47 guidance notes under 4 principles  |
| Section I: Minimum standards for incorporating protection into all sector response programmes          | Chapter 1: Overarching principles in protection work                                     | Principle 1: Avoiding exposing people to further harm   |
| Section II: Minimum standards for incorporating protection into water and sanitation programmes        | Chapter 2: Outlining the protection architecture   | Principle 2: Ensure people's access to impartial assistance   |
| Section III: Minimum standards for incorporating protection into food aid and non-food-item programmes | Chapter 3: Building on the legal base of protection                                      | Principle 3: Protect people from physical and psychological harm arising from violence and coercion               |
| Section IV: Minimum standards for incorporating protection into livelihoods programmes                 | Chapter 4: Promoting complementarity (among human rights and humanitarian organizations) | Principle 4: Assist people to claim their rights, access available remedies and recover from the effects of abuse |
| Section V: Minimum standards for incorporating protection into shelter programmes                      | Chapter 5: Managing Sensitive Protection Information                                     |   |
| Section VI: Minimum standards for incorporating protection into health programmes                      | Chapter 6: Ensuring Professional Capacity  |   |
| Section VII: Minimum standards for incorporating protection into education programmes                  |  |   |

26 Caritas Australia *et al.*, above note 22.

27 ICRC, above note 21.

28 Sphere Project, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, 2011, available at: [www.sphereproject.org/content/view/720/200/lang,english/](http://www.sphereproject.org/content/view/720/200/lang,english/) (last visited December 2011).



neglect or discrimination, and supporting people to enjoy their rights in safety, and with dignity’).<sup>29</sup>

As far as the *Professional Standards for Protection Work* are concerned, two years after the standards were edited in 2009, the ICRC held a workshop with a few of the leading organizations working on protection to reflect on the dissemination and use of the said standards. During this workshop, which took place in September 2011 in Geneva, it was also decided that some chapters would be reworked, adapted, and expanded for a second edition that could be published in 2013.

Among the issues that were identified as justifying starting such a process of revision, three were predominant:

1. A growing feeling that we need more guidance regarding civil–military relations when it comes to protecting civilians, to avoid blurring the lines while developing constructive interaction and considering each other’s specific roles and responsibilities;<sup>30</sup>
2. The emergence of new technologies and the capability that they offer for individuals to communicate and report on abuses and developing situations in area of conflict and violence. Such technologies simultaneously present both opportunities for organizations working on protection issues and potential risks that need to be managed (in terms of individual data protection and the risks for individuals, in terms of risks of manipulation, etc.). Many crisis-mappers, who, as a community of practice, are at the forefront of creating and developing tools that can support humanitarian organizations, seem to be ready to engage in a discussion on how to manage the risks while benefiting from the information flow that new technologies can offer;
3. The standards clearly indicated the need to monitor protection activities, but gave little guidance in how to do so.<sup>31</sup> However, many organizations felt that they had gained valuable field experience in evaluation and monitoring of protection programming over the last years and that a few lessons could already be drawn and included in a new version of the standards.

In summary, the search for professional standards is not yet over, but it has definitively crossed a few milestones over the last five years, helping the whole profession to define itself better.

29 World Vision UK, *Minimum Standards for Protection Mainstreaming*, World Vision, London, 2012.

30 As mentioned earlier, over recent years some degree of clarity has been gained on the understanding of the roles and responsibilities that peacekeeping missions and the military can have in protecting populations, thanks to the work of DPKO and others. Lessons were drawn from contexts such as Afghanistan, the DRC, and Côte d’Ivoire; positive interactions on specific subjects (demining and demobilization, disarmament, and rehabilitation (DDR)) as well as clear risks in blurring the lines between humanitarian and military actors were identified.

31 The explanatory notes to the standard introducing the need to monitor and evaluate stipulate: ‘Although in recent years, monitoring and evaluation have been included more systematically in protection planning, the challenge of making this standard practice persists. It is nevertheless now recognized that protection actors have an increased responsibility to establish adequate monitoring and evaluation systems in order to assess the effectiveness of their work – both against their operational objectives, and against broader contextual realities.’ ICRC, above note 21, Standard 7, pp. 21–22. The push for monitoring and evaluation is therefore not donor-driven. It is a necessity if an organization wants to inform its strategy and take the necessary corrective measures in time, especially when such strategies are middle- to long-term ones.

## Professionalization beyond setting standards

The search for professional standards is, nevertheless, only one of the many signs indicating the professionalization of protection work among humanitarian and human rights organizations. It is not the sole symbol of an evolution towards professionalism, although it is a powerful one.

### A developing literature

Another indicator is the mere fact that the thinking on ‘protection in times of conflict and organized armed violence’ has gone beyond humanitarian organizations working in the field, to reach universities and think tanks. The latter have started to publish numerous articles and studies dealing one way or another with the protection of civilians.

If many of the publications are reports or articles interested in the protection of civilians debate at the level of the UN (reflecting DPKO interest in protection at mission level, or the debate around the more political notion of Responsibility to Protect at the Security Council/R2P), there are more and more reports and articles on protection work in favour of different population groups, from IDPs to victims of sexual violence or child soldiers. Many articles are still written by past or present practitioners who share experiences and lessons learned, but there are an increasing number of studies and books written by academics, bringing in a more historical and sometimes political perspective on some protection issues.

Indeed, the amount of research and the number of publications dealing one way or another with protection seems to have increased steadily over recent years to the point where it has clearly become too time-consuming for practitioners working in the field even to follow all the key research published on protection.<sup>32</sup> This is both a blessing in terms of recognition of specific programming and of exchanges of experience, and a risk to see more ‘silos’ being created within the humanitarian community. Indeed, to some extent many practitioners have started only to read articles related to their more specific area of expertise within the protection field (torture and ill-treatment in detention, child protection, gender-based violence, IDP rights and security). In the last section, we will come back to this specific challenge: how to develop specialized knowledge and programmes in favour of different population groups having different needs, while keeping some degree of coherence in the field, thus allowing a holistic approach to protection work.

Perhaps more telling than the increasing number of publications dealing with issues related to protection in times of conflict and/or armed violence is the fact

<sup>32</sup> Since 2009, the ICRC’s documentation centre has been tracking publications on protection of civilians, and every three months it sends a summary of all these publications to colleagues working on protection issues at headquarters to allow them to identify more easily which article they would be inspired to read.

that the field has entered the curricula of several universities offering postgraduate studies in humanitarian affairs, mainly in Europe.<sup>33</sup>

## Training and teaching on protection: once a rarity, now a must-do

It is interesting to look more closely at how teaching on protection has evolved over the last couple of decades. In the 1990s, the possibility of being taught on protection work was limited to a handful of workshops and seminars. Furthermore, most of them were strictly internal training programmes developed by a few agencies for their staff (in particular the ICRC and UNHCR). Even as I began my work with the ICRC in 1996, there was little teaching on protection available for new delegates, aside from the induction course that laid the basis for understanding the main notions and concepts to which the institution referred when speaking of its protection mandate, its role, and its practice. During my first three field missions I did not benefit from any additional protection training; I nevertheless participated in a few protection meetings that brought together the delegates working in the same country to discuss protection-related matters, usually around the implementation of contextualized guidelines. These meetings did offer valuable coaching and allowed exchanges of experiences within a given context. I had to wait until my fourth assignment before being offered training on protection (which I had to decline because of operational emergencies), and until my fifth actually to participate in one. I then participated every year in training for protection co-ordinators.

By the end of the 1990s, some external training opportunities started to appear; NGO field workers could enrol in short programmes. Such programmes were often given with the support of the same few agencies, which usually presented the participants with their methodology and some of their lessons learned. The 'Ecogia' seminars were probably the most well known among these. Sessions on protection work also progressively entered several on-the-job training courses for field workers who were not protection specialists; worth noting among these are the HELP course<sup>34</sup> and courses on international humanitarian law given by the Danish and Finish Red Crosses.<sup>35</sup>

33 As Marie Laure Le Coconnier and Bruno Pommier noted in their history of humanitarian action, in the 1990s humanitarianism became a profession from an academic perspective. Marie Laure Le Coconnier and Bruno Pommier, *L'action humanitaire*, Que sais-je ?, PUF, Paris, 2009.

34 The HELP (Health Emergencies in Large Populations) is a multicultural and multidisciplinary learning experience created to enhance professionalism in humanitarian assistance programmes conducted in emergency situations. These courses have been given in various parts of Latin America, North America, Africa, Asia, and western and eastern Europe. Some courses have had an overall presentation on protection work; the latest programme does not have a specific session on protection, but several aspects relate to the protection of health workers or the role that health workers can play in issues such as torture and ill-treatment. For further information see [http://www.icrc.org/eng/resources/documents/misc/help\\_course.htm](http://www.icrc.org/eng/resources/documents/misc/help_course.htm) (last visited December 2011).

35 Funded by the European Commission's European Community Humanitarian Office (ECHO), the Finnish Red Cross (FRC) and the Danish Red Cross (DRC) currently offer a three-day course in humanitarian law and principles for humanitarian professionals.

By the end of the first decade of the twenty-first century, many more training opportunities on protection have emerged. The ICRC alone has put in place, in Geneva, a series of training programmes on different themes: detention, tracing missing persons, working with families of missing persons, women and war, protection of the civilian population, data management. Each of them takes a week and is aimed at delegates whose work in the field or at headquarters is directly related to the corresponding theme. Introducing such courses was a recognition that working on different protection issues might entail acquiring different expertise; it was also a recognition that protection work has become more specialized over the course of the last decade.

In fact, the ICRC realized that the more specialized protection work becomes, the more the institution needs to be able to pass on, in a timely manner, knowledge on protection work that corresponds to the issues that delegates are dealing with in their current assignments. Courses given once a year at headquarters are still fundamental to allow exchanges of experiences between the participants and to create a strong corporate identity, but no longer respond entirely to this need to deliver knowledge in a timely manner.

To respond to the growing need of on-the-job training in protection, in 2011 the ICRC finalized a series of 19 e-learning modules for its staff deployed in the field and in charge of setting up and implementing protection activities for the good of the population.<sup>36</sup> Such e-learning modules are currently being developed for other aspects of protection work (tracing missing persons, visiting detention places).

Efforts to improve and diversify training on protection are not, of course, unique to the ICRC. Many humanitarian NGOs have also started developing their own training on protection. The Norwegian Refugee Centre and the IDMC have gone as far as training the UN PROCAP (UN protection officers on roster for emergencies). The UN has also invested in protection training. I mentioned earlier that DPKO has worked hard over the last couple of years to better define the contribution that peacekeeping missions can make to protect civilians once they are deployed. It is therefore only natural that, in 2010 and 2011, DPKO and the United Nations Institute for Training and Research (UNITAR) invested considerable resources to develop pre-deployment training on protection for troops and personnel leaving on missions. They created different training scenarios based on what they considered to be the existing protection needs that each mission would

36 These modules are divided into three sections. The first one deals with basic knowledge linked to protection work. The second section deals with working on the rights and needs of different groups of population – from IDPs, to migrants passing by children, or elderly. The third section is dedicated to protection work in the frame of conduct of hostilities, or law enforcement operations. The modules can be taken in groups or separately. Short ones are done in 30 minutes while longer ones may take two hours to go through. Many examples and key documents are attached.

have to address (security during displacement, security of IDP camps, threats against villagers). As DPKO summarizes it:

The pre-deployment training modules on POC and conflict-related sexual violence are designed to improve the overall coherence and effectiveness of POC activities by:

- 1) establishing a common understanding of what 'protection' means in the context of UN peacekeeping, as distinct from other, non-peacekeeping protection functions and actors;
- 2) clarifying UN institutional standards and expectations with regards to protection planning and the execution of protection activities;
- 3) clarifying the different roles and responsibilities of all protection actors – civilian, police and military – within a UN peacekeeping operation, and how the work of each actor relates and contributes to the overarching POC objectives;
- 4) supporting more effective protection planning by improving awareness of protection threats and civilian vulnerabilities, and by giving peacekeepers explanations of what has worked, and what has not; and
- 5) Providing an understanding of the challenges and dilemmas facing military and civilian decision-makers in the field, as well as best practices aimed at preventing or responding to sexual violence.<sup>37</sup>

DPKO and UNITAR worked with many partners to develop reference and training material on protection. DPKO worked in particular with UN Women on the theme of sexual violence, and the role that peacekeepers can have to prevent and reduce the occurrence of such violence.<sup>38</sup>

A recent film co-produced by UNITAR and the Australian Government called 'Mandated to Protect' was launched at the end of 2011. It presents the recent history of peacekeeping and how protection is taking a pre-eminent role for the missions. It also looks at challenges linked to applying a Protection of Civilians mandate at field level. The documentary 'will be incorporated into UNITAR's online training program, as well as being made available to all peacekeeping training centres around the world'.<sup>39</sup>

37 DPKO, 'Preface: specialized training materials on protection of civilians and prevention and response to conflict-related sexual violence', available at: <http://www.peacekeepingbestpractices.unlb.org/PBPS/Pages/Public/viewdocument.aspx?id=2&docid=1125> (last visited December 2011).

38 UN Women 'collaborated with DPKO and on behalf of UN Action against Sexual Violence in Conflict to develop an analytical inventory of best practices by peacekeepers to prevent and respond to conflict-related sexual and gender-based violence. This inventory compiles innovative solutions by UN missions, including firewood patrols, community liaison initiatives, and joint protection teams. UN Women will continue to collaborate with DPKO on the development and implementation of scenario-based training material to be undertaken by peacekeepers prior to being deployed.' See: [http://www.unifem.org/gender\\_issues/women\\_war\\_peace/peace\\_operations.php](http://www.unifem.org/gender_issues/women_war_peace/peace_operations.php)

39 Australian Civil-Military Centre, 'Centre launches new documentary on the topic of Protection of Civilians', available at: <http://civmilcoe.gov.au/2011/11/centre-launches-new-documentary-on-the-topic-of-protection-of-civilians/> (last visited December 2011).

In 2012, if one looks at what is offered in training on protection, one will find that it is no longer only humanitarian organizations and UNITAR offering such on-the-job training. Universities and training institutes have started to develop curricula incorporating protection. For example, on ReliefWeb, by the end of 2011, an Italian Institute for International Politics was advertising an online course on ‘Humanitarian protection’. This specific course looked like a crash course on protection work conducted by humanitarian organizations, condensed into nine sessions, going through notions such as the widely recognized model of the ‘protection egg’ developed during the ICRC’s sponsored workshop of the 1990s,<sup>40</sup> to end up with discussion on prisoners of war and Guantánamo.

Professionalization of protection work is an ongoing process. Protection work, as a field, will continue to grow in complexity and in size. The expectations of affected populations and donor countries will continue to require more accountability and relevance in protection programming.

## **Advantages of and risks inherent in the growing interest in protection**

In the last section of this article, I would like to go through some challenges that the field is likely to confront over the coming years. In fact, some of them are already being addressed by protection actors, while others are lurking.

### **Professionalization: a trend likely to last**

Over the last decade, more and more humanitarian workers have developed an interest, coupled with concrete field experience, in protection work. They have been exposed to more coaching and training on protection than in the past, and are more aware of the challenges of enhancing protection than I was when I started with the ICRC in the mid-nineties. Humanitarian aid workers are, in general, also more aware of the specific vulnerabilities and resilience of different population groups to abuses; and therefore the subsequent need to adapt protection strategies is well understood.

As I have described in these pages, the field has witnessed the emergence of real professional ethics behind many of the standards developed over the last five years. I have no doubt that this trend will continue for at least the foreseeable future. There are numerous platforms for discussing protection among humanitarian actors at both field and global level. This allows for exchanges leading to lessons

40 As the ALNAP guide for humanitarian agencies on protection indicates, this model uses the shape of an egg to think strategically about the different sphere of action in which protection needs to be addressed. It distinguishes three sphere of protective actions gravitating outward from an identified pattern of abuse : 1- Responsive and immediate action aiming to prevent the recurrence of the abuses, 2- Remedial actions taken to restore people’s dignity, 3- Environment-building action aiming to create or reinforce an environment – political, social, institutional, cultural, economical, legal- conducive to the respect for the rights of individuals and communities. See H. Slim and A. Bonwick above note 12.

learned being shared and influencing each other more quickly than in the past. Protection actors will continue to devote more resources to training their new staff and to keeping the ones who have already acquired significant field experience. This trend is also likely to continue at an individual level, with possibilities of enrolling in on-the-job training or in distance learning programmes. At the end of the day, all of these efforts are beneficial to populations affected by conflict and violence, as it is now widely admitted that an effective protection response requires adequate professional competence. Civilians continue to pay a high price when violence erupts. Soldiers are better trained and better equipped. Modern armies often suffer fewer casualties when they are deployed than in the past. Although many armies have clearly tried to limit casualties and destruction within the population, if one looks at recent confrontations around the world it is still civilians who bear the brunt of the violence, and the medium- and long-term consequences. The sense of injustice that this reality represents is today clearly felt by the communities affected. Those communities are increasingly well connected to the world, and able to communicate their needs almost immediately. Their expectation, in terms of protection, from the international communities and from humanitarian actors can only grow. The latter are accountable<sup>41</sup> to their own boards or directors, to their donors, and most of all to the populations that they support, and improving their capacities to address protection needs is certainly a must.

So where is the catch, where are the remaining challenges on the road to professionalism?

Many challenges accompany any sector that is professionalizing itself, and that is therefore going through changes that oblige even people with extensive work experience to keep abreast of new tools, methodology, or techniques. Here, I choose to present briefly three challenges that are somewhat more peculiar to humanitarian protection actors.

### *Human resource and time constraints*

Specialists working on protection at the headquarters of the main international humanitarian and human rights organizations are still few. Although their number is growing, it is still a small community. This presents some advantages, as it allows for confidence and interpersonal trust to be easily reached. Within the ICRC, the Protection Division has steadily grown, accompanying the professionalization of the institution's response in all domains.<sup>42</sup> Most of the resources of the Protection

41 One can argue that, even in the absence of legal responsibility, there is a moral duty for humanitarian actors do their utmost to reach the objectives that they set in their programming. Those will nevertheless vary contextually to take into account existing constraints. See ICRC, above note 21.

42 Visits to detainees, one of the trademarks of the ICRC in the field of protection, have evolved to incorporate a more structural approach on top of the traditional individual-centred approach that the ICRC had mastered. Tracing separated family members and looking for people unaccounted for, another feature of the ICRC, has also evolved rapidly with the arrival of new technologies.



Division are dedicated to improving its field programming, while still allowing it to interact with other protection actors at global level. While some interaction through specialized workshops can be less time-consuming, actively participating in collective consultations can demand a large amount of time and energy. For example, reaching consensus between very diverse protection actors in the elaboration of the *Professional Standards for Protection Work* was an enriching experience, but it took countless hours to integrate everyone's contribution – and this for over two years and numerous drafts.

For organizations that do not have as many specialized protection staff at headquarters, finding the equilibrium between a healthy participation in the collective effort to professionalize the field and the time needed to support field operations can be a catch-22 situation. In fact, it is an inherent difficulty as, in order to be relevant in the global debate, an organization has first and foremost to be effective and innovative at field level. Indeed, it is often through field practice that innovation arises. It is interesting to underline here that innovations can come as a result of well-thought-out and well-documented pilot projects as much as from more spontaneous initiatives taken by field workers confronted by a rapidly evolving situation. Nevertheless, for those field innovations to really influence the practice of the field they must be documented, summarized, shared, and commented on at the global level.

### *How to maintain a capacity to have a holistic approach while giving sufficient attention to specific needs*

As explained in the introduction, since the 1990s the ICRC has become more sensitive to the specific rights and needs of different population groups. It has dedicated time and resources to professionalizing its approach to different groups in the general population. Maintaining a holistic approach towards the consequences of violence for the population as a whole, while integrating the need to better understand, evaluate, and respond to specific vulnerabilities, is, nevertheless, a constant challenge.

There is a risk that, at field level, the ICRC delegate in charge of a local office, who represents the institution in the region that he or she covers, starts to see activities in favour of these different population groups as a task for specialists, owing to the increasing complexity of the programmes implemented.<sup>43</sup> This risk can be increased if the different tools that the organization develops to address the needs of different population groups begin to differ too dramatically. Maintaining internal coherence between the programmes and approaches in favour of different population groups is therefore critical to the development of increased capacities for all the delegates within the institution. It is important to ensure that common

43 Integrated responses do indeed, more and more often, integrate protection actions such as advocacy or presence with support aiming to strengthen the autonomy of the target population rather than to create dependence on humanitarian or state assistance; they possibly also comprise psychosocial support.

evaluation and reporting tools can be used at field level – that collecting and managing data on abuses against different population groups can be done with common methodology and tools. Dissemination of lessons learned, of new tools and further training must therefore not only be directed at specialists but also at generalists in middle-management positions in the field. Specialists should enrich the practice of all field delegates dealing with protection issues. Field delegates are the ones who are on the front line of any emergency response. They are the ones who have the responsibility of periodically establishing situation analysis as the conflict or violence evolves. They are also the ones who have to have the necessary proximity, humanity, and empathy to understand the short-, middle-, and long-term humanitarian consequences of the violence on the population. They should therefore be able to assess different protection issues, implement an adequate response in line with the organization's guidelines, or feel confident enough to refer the situation to other actors who are able to do so. Investing in the development of the capacities of all field staff is therefore paramount in addressing protection issues in areas where no specialists will be deployed.

To increase internal exchanges and ultimately cohesions and coherence between specialists, since 2010 the ICRC has instituted, at headquarters level, a 'platform' re-grouping the Assistance Division and the Protection Division, as well as all the institutional focal points for specific population groups such as IDPs, children, or detainees. This platform meets every two months to agree on common concepts and projects, and to exchange information on current field experiences. It has proven extremely useful from the outset.

This challenge might be seen as a purely ICRC preoccupation, given the mandate of the organization and its large operational coverage both in terms of countries and in terms of themes. In fact, the same challenge applies to some extent at the global level. Maintaining a certain degree of coherence between the tools and standards developed by the Global Protection Cluster and the ones developed by the different Protection Sub-Clusters is equally important to avoid the necessary professionalization ending up creating new 'silos'.

### *Still an overly strong Western flavour*

Protection work is, by essence, certainly not the exclusive domain of Western organizations, because it rests on enhancing respect for the universal rights contained in international treaties. Numerous national NGOs and countless civil society associations throughout the world have been engaged for years in what we consider protection work. At grassroots level, developing meaningful protection work that enhances respect for the basic rights of people in situations of conflict or crisis is indeed a universal preoccupation. This is certainly the case for local and national organizations, whose members can accomplish incredible tasks, taking risks. One can think of all the Israeli and Palestinian NGOs working – often side by side – on complex issues such as access to land or access to justice in the West Bank; or the associations of families of missing persons in Latin America, in Nepal, and in so many other places around the world. Some have gained international recognition

(as the mother of the Plaza de Mayo in Argentina) but most work in difficult conditions, often with little international recognition.

Despite this reality, discussing and conceptualizing protection work is still to a certain extent perceived by too many as a feature of international organizations whose headquarters are located in Western countries. Think tanks working on, and influencing, protection work conducted by humanitarians are almost all Anglo-Saxon. Some NGO networks regrouping organizations from different continents, such as ICVA, have relayed protection debates among their members over the last years, encouraging them to give feedback and to participate more actively in ongoing debates at the global level. But these efforts have been isolated. Until recently, key workshops on protection, although they sometimes gathered participants from different continents, tended to take place in London, New York, and Geneva. Traditionally, representatives of donor countries interested in protection were often present, but few representatives of countries experiencing conflict or humanitarian crisis were invited. This has probably contributed to the misperception of protection as a Western concern by some national or even regional authorities. Thankfully, this is now changing, slowly but surely.<sup>44</sup>

There is an urgent need for key international protection actors proactively to bridge the gap between themselves and national and local protection actors. They have to make sure that the professionalization that the field is going through is, and is perceived to be, universal.

## Conclusion

This article has underlined several aspects of the ongoing professionalization of protection work. Humanitarian actors have collectively invested in learning exercises and in defining various standards to mainstream protection in assistance activities and to implement stand-alone protection activities. We have seen that they have invested in developing their human resources accordingly. This positive outlook on the evolution of a relatively new field should nevertheless not hide the fact that humanitarian and human rights organizations are not always able to enhance the protection of populations affected by violence. If protection concerns of families of missing people or of demobilized children are effectively better taken into account today, there are plenty of protection needs that continue to go unanswered. If, on the one hand, the response of humanitarian organizations is more professional, on the other hand they face greater complexity in protracted as well as in emergency situations.

The article argues that several steps still need to be taken on the road to professionalization: working more closely, and in partnership, with local and regional organizations; better integration of the understanding of different vulnerabilities and resilience in a holistic approach; better use of new technologies

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44 Over the last few years, some workshops have taken place in Canberra, Addis Ababa, and Kuala Lumpur.

and how they can relay the voice of people affected by violence without endangering them; increasing the number of trained and skilled human resources.

Taking all these steps would enhance the capacity of humanitarian actors to address the challenges that they face in many countries. But they might well fall short of making a real difference on the ground if protection work is not seen as essential, at a time when humanitarian actors are struggling to access many areas affected by violence.

From the perspective of the populations affected by armed violence, protection and assistance should be the two faces of the same coin. Ideally, they should be interlinked in an approach that builds on synergies between programming. Yet there are too many places around the world where the ICRC, and other organizations for that matter, are struggling to implement meaningful protection activities on the ground. It has become a common occurrence that, as they address protection concerns with authorities or armed groups, their legitimacy, their impartiality, and sometimes even their approaches are questioned – regardless of the professionalism that these organizations can show. There is a risk of seeing protection concerns, although considered as a priority, not being addressed with the authorities for fear of jeopardizing assistance activities.

Maintaining the capacity to assist and protect at the same time therefore demands, on top of reinforcing a professional approach, a strong commitment from all humanitarian workers – from the field workers to the senior managers in headquarters.



# Fit for purpose: the role of modern professionalism in evolving the humanitarian endeavour

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## **Abstract**

*The humanitarian enterprise has grown in size and complexity over the past generation. Modern systems of scrutiny and accountability demand a higher level of accountability than ever before, both to programme beneficiaries and to donors. This, we believe, puts pressure on the system to become more professional and on aid workers to consider the establishment of a formal profession of humanitarian aid. This article reports on research carried out to test this hypothesis and on an approach that is presently being used to establish the necessary components of a professional system.*

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The humanitarian enterprise has expanded steadily over the past three decades. In 2010, the last year for which we have reliable figures, the traditional donor community – made up largely of the Organisation for Economic Co-operation and Development (OECD)'s states – contributed \$12.4 billion to humanitarian aid.

The general public, as recorded through their contributions to the main traditional Western-based non-governmental organizations (NGOs), contributed an additional \$4.3 billion.<sup>1</sup> These funds were used to deliver aid to an unknown proportion of the 215 million people affected by natural disasters, 27.5 million internally displaced persons, 10.5 million refugees, and an unknown population of war-affected people.<sup>2</sup>

Stoddard, Harmer, and DiDomenico<sup>3</sup> worked with available data from a number of the main humanitarian agencies and used it to extrapolate possible global figures for the number of workers who were active in delivering this aid.<sup>4</sup> They estimated that in 2008 there were approximately 595,000 aid workers (both development and humanitarian) active worldwide working for the UN agencies, the Red Cross and Red Crescent Movement, and the main NGOs.<sup>5</sup> The figure does not include peacekeepers and human rights workers, nor does it include national organizations active only in their own country. Stoddard, Harmer, and DiDomenico reasoned that, as a first approximation, the relative populations of humanitarian workers to total work force would be comparable to the relative proportion of humanitarian spending as to total aid spending. Using this approach, they came up with a figure for 2008 of approximately 210,800 humanitarian aid workers in the world and, again working from the financial data, a suggestion that this workforce might be growing at a 6% annual growth rate.

Thus, at a conservative estimate, the humanitarian enterprise delivers over \$16 billion worth of life-saving assistance and protection via a workforce of a little over 200,000 to an at-risk population of more than 250 million people. Unlike just about every other form of international exchange, such as trade, currencies, labour, or military, this exchange, or emergency aid from richer nations to poorer ones, is largely unregulated in its international workings, its functioning within a country, and indeed the internal functioning of individual agencies.

The picture painted above is deceptive. It is a picture of the old world, not of the one that is evolving. The new humanitarian aid world includes donors from outside the OECD, such as China, India, Turkey, and Malaysia.<sup>6</sup> It includes southern-based NGOs going global, such as BRAC (the Bangladesh Rehabilitation

1 Development Initiatives, *Global Humanitarian Assistance Report 2011*, pp. 4–5, available at: <http://www.globalhumanitarianassistance.org/wp-content/uploads/2011/07/gha-report-2011.pdf> (last visited December 2011).

2 *Ibid.*, p. 5.

3 Abby Stoddard, Adele Harmer, and Victoria DiDomenico, *Providing Aid in Insecure Environments: 2009 Update. Trends in Violence Against Aid Workers and the Operational Response: Why Violent Attacks on Aid Workers Are on the Increase*, Humanitarian Policy Group (HPG) Policy Brief No. 34, Overseas Development Institute (ODI), London, April 2009.

4 For a full description of their methodology, see their previous paper, Abby Stoddard, Adele Harmer, and Katherine Haver, *Providing Aid in Insecure Environments: Trends in Policy and Operations*, HPG Report No. 23, ODI, London, September 2006, available at: <http://www.odi.org.uk/resources/docs/269.pdf> (last visited December 2011).

5 Paul Harvey, Abby Stoddard, Adele Harmer, and Glyn Taylor, *The State of the Humanitarian System: Assessing Performance and Progress*, ALNAP, London, 2010, p. 18, available at: <http://www.odi.org.uk/resources/docs/5825.pdf> (last visited December 2011).

6 See Andrea Binder, Claudia Meier, and Julia Steets, *Humanitarian Assistance: Truly Universal? A Mapping Study of Non-Western Donors*, Global Public Policy Institute, Research Paper No. 12, Berlin, August 2010. See also Adele Harmer and Lin Cotterrell, *Diversity in Donorship: The Changing Landscape of Official*



Assistance Committee) and MercyMalaysia,<sup>7</sup> local NGOs and municipalities, as well as diaspora groups and volunteer hi-tech associations working on crisis mapping or smartphone communications. Thus, the old aid community is expanding and diversifying. At the same time, predictions over the impact of climate change and globalization of the less developed countries of the world suggest that we will see more frequent disasters in a greater number of countries,<sup>8</sup> along with more civil unrest in those states less able to cope with this rapidly changing environment, all generating a greater demand for humanitarian assistance.<sup>9</sup> As crises become more frequent in states with reasonably well-developed and democratic administrations, we are also seeing the beginnings of an assertion that the international aid system needs to be less exceptionalist and interventionist, and more a model of normal business, with the regulatory structures, checks, and balances that that entails.<sup>10</sup>

We are thus seeing an evolution of humanitarian action from an ad hoc, emotive-based, largely Western-driven system to a more global system of defined service delivery, which is increasingly pressured to define and regulate its competence, coverage, and purpose.<sup>11</sup> This move towards a professional approach and indeed the establishment of a profession in the humanitarian arena is manifesting itself in three ways: moves to define and establish the notion of the professional humanitarian worker; moves to reassert the role of the host state in regulating humanitarian aid; and moves within the present humanitarian community to develop mechanisms to judge more objectively and assure the quality of aid delivered. In this article we will explore the first of these trends. We will then go on to examine data generated by an opinion poll of aid workers. Finally, we will discuss what we believe are exciting and timely implications for the evolution of a more professional approach to humanitarian work.

## The modern concept of profession

Just what does 'professional' mean? In his presentation of the professional model, Hall differentiates between the structural and the attitudinal attributes of professions.<sup>12</sup> Structural attributes include 'such things as formal education and entrance requirements'. Attitudinal attributes are more concerned with the 'sense

*Humanitarian Aid*, HPG Research Report No. 20, ODI, London, September 2005, available at: <http://www.odi.org.uk/resources/docs/275.pdf> (last visited December 2011).

7 See BRAC's website: <http://www.brac.net/content/who-we-are>, and MercyMalaysia's website: <http://www.mercy.org.my/> (last visited December 2011).

8 See, for instance, Mackinnon Webster, *et al.*, 'The humanitarian response costs of climate change', in *Journal of Environmental Hazards*, Vol. 8, No. 2, 2009, pp. 149–163.

9 David D. Zhang *et al.*, 'Global climate change, war, and population decline in recent human history', in *Proceedings of the National Academy of Sciences*, Vol. 104, No. 49, 2007, pp. 19214–19219.

10 Peter Walker, Colin Rasmussen, and Sebastián Molano, 'Using disaster response law to promote international aid coordination', in *Disasters Journal*, 2012 (forthcoming).

11 Peter Walker *et al.*, 'A blueprint for professionalizing humanitarian assistance: good intentions are not enough', in *Health Affairs*, Vol. 29, No. 12, December 2010, pp. 2223–2230.

12 Richard H. Hall, 'Professionalization and bureaucratization', in *American Sociological Review*, Vol. 33, No. 1, February 1968, pp. 92–104.

of calling of the person to the field'. A similar distinction between systems and attitudes is made by Cruess, Cruess, and Johnston.<sup>13</sup> For them, the core of a profession is 'possession of a specialized body of knowledge and commitment to service'. They explain that 'because knowledge is used in serving others, professions are identified as being altruistic and value laden'. They go on to identify four main attributes of professions:

1. a monopoly over the use of specialized knowledge,
2. knowledge used in an altruistic fashion,
3. autonomy to establish and maintain standards of practice and self-regulation to assure quality,
4. responsibility for the integrity of knowledge, its expansion and proper use.

Schön picks up and supports this list of attributes, going on to describe how professionalism is more than the simple application of specialist knowledge.<sup>14</sup> The true professional has to 'think like a professional'. He refers to the 'reflective practitioner' as somebody capable of thinking on his or her feet, developing a new understanding in response to each context that arises. Here is a concept of professionalism that seems compatible with humanitarian work, where, in the midst of an emergency, the clear-headed humanitarian is expected to respond calmly and intuitively in a situation that may be totally new and unexpected. Thus, experience and training are both important components of an overall package of professional attributes. This does suggest that the current debate of whether humanitarianism is a profession in its own right or a collection of professionals working in a humanitarian setting could be resolved by analysing humanitarianism against the four professional attributes listed above and determining whether, together, they are substantially distinctive from the individual disciplines that interface in the sector.

## Aid worker views on professionalism

In 2009, we and colleagues carried out a survey on behalf of ELRHA (Enhancing Learning & Research for Humanitarian Assistance) of over a thousand aid workers to better understand how they saw their work and notions of professionalism associated with it.<sup>15</sup> Of the respondents to the survey, 92% indicated that they supported notions of professionalizing the work and structure of humanitarian aid. Respondents went on to detail the values, skills, and knowledge that they thought aid workers needed, the support structures that they should have, and the

13 Richard L. Cruess, Sylvia R. Cruess, and Sharon E. Johnston, 'Professionalism: an ideal to be sustained', in *The Lancet*, Vol. 356, No. 9224, 2000, pp. 156–159.

14 Donald A. Schön, *The Reflective Practitioner: How Professionals Think in Action*, Basic Books, New York, 1983.

15 The full methodology and results of the survey can be found in the original publication: P. Walker *et al.* above note 11.

methods for codifying competence that they thought should be put in place. Five critical areas for advancement were identified:

1. core competencies,
2. systems of certification,
3. apprenticeship and experiential learning,
4. professional associations, and
5. accreditation and accountability.

We will review each of these five areas and reflect on how the present humanitarian community might move towards establishing these building blocks of a profession.

### Core competencies

Originally proposed in business management literature,<sup>16</sup> the notion of core competencies seeks to identify attributes that are central to a business, to its success, and to the benefits that its consumers expect. The competencies should be applicable across the business, not just for one product or market, and they should give the business a competitive advantage over others. This approach has now been widely adopted in the health profession. In 2008, for example, the American Emergency Nurses Association established a set of 'Competencies for nurse practitioners in emergency care'.<sup>17</sup>

Competencies involve values, knowledge, and skills. They can exist at an entry level to a profession and can be expanded upon and become more expert in nature as professionals gain more experience and rise within their profession. In the professionalism survey already referred to, humanitarian workers were asked to rank the values skills and knowledge that they thought most important to their work. They ranked most highly the values of:

1. respecting and being accountable to humanitarian aid beneficiaries (the primary clients) and
2. independence and impartiality of action.

Top-ranked skills focused on the ability of aid workers to adapt and function in the difficult environment of a humanitarian crisis. Respondents seemed to be concerned with how to be a good logistician, accountant, or medic in the complex and stressful environment of an aid operation. They ranked highly skills such as team building, negotiating, listening, and multi-tasking.

Core areas of knowledge follow the same pattern of being less about a delivery profession and more about its application in crises. Needs assessments, monitoring, and evaluation ranked high, as did knowledge of security concerns and of the basic legal frameworks of humanitarian work (international humanitarian

16 Coimbatore Krishnarao Prahalad and Garry Hamel, 'The core competence of the corporation', in *Harvard Business Review*, Vol. 68, No. 3, 1990, pp. 79–91.

17 See Emergency Nurses Association, 'Competencies for nurse practitioners in emergency care', available at: <http://nursingworld.org/position/emergencycomp> (last visited December 2011).



Figure 1: A pyramid of competencies. All workers need the foundation competencies. More managerial and specialized roles need additional specific competencies.

law, human rights law, and refugee law). Specific expert applied knowledge ranked high within each area of expertise. Nurses were concerned with how nursing core competencies needed to be adapted for the humanitarian environment, and logisticians with how normal logistics skills needed to be adapted.

What seemed to be emerging was an assumed hierarchy of competencies where an individual would have the skills of their core **profession or discipline** (accountancy, management, surgery, etc.), as can be viewed in Figure 1, which would then be underpinned by additional specific technical **role/functional** competencies concerned with the adaption of their profession to the humanitarian environment. This would again be underpinned by a further set of competencies common across all professionals and focusing on the necessary behaviours, attitudes, and skills for successful professional work in the theatre of humanitarian crises. These would, in essence, be fundamental to any role in the sector and be those which we would call **core or common competencies** for the business.

This notion of core humanitarian competencies, initially developed by the UK-based ELRHA consortium,<sup>18</sup> has now been taken up and championed by the Consortium of British Humanitarian Agencies (CBHA). They have identified

18 Peter Walker and Catherine Russ, *Professionalising the Humanitarian Sector: A Scoping Study*, ELRHA, London, April 2010, available at: [http://www.elrha.org/uploads/Professionalising\\_the\\_humanitarian\\_sector.pdf](http://www.elrha.org/uploads/Professionalising_the_humanitarian_sector.pdf) (last visited December 2011).

and expanded upon six competencies that they believe are essential to all professionals working in the humanitarian field:

1. understanding humanitarian contexts and application of humanitarian principles,
2. achieving results effectively, considering the need for speed, scale, and quality,
3. developing and maintaining collaborative relationships,
4. operating safely and securely in high risk environments,
5. self-management in a pressured and changing environment, and
6. leadership in humanitarian response.<sup>19</sup>

These are further expanded upon to demonstrate how they can be learned, evaluated, and used to build the capacity of individuals and agencies.<sup>20</sup> If we take the first as an example, CBHA lists the following attributes that should be found in a humanitarian worker if they are to demonstrate the competency of 'understanding humanitarian contexts and application of humanitarian principles':

- demonstrate understanding of phases of humanitarian response including preparedness and contingency, DRR, response and recovery;
- apply understanding of the political and cultural context and underlying causes of the humanitarian crisis;
- demonstrate understanding of the gender and diversity dimensions of humanitarian situations;
- keep vulnerable people at the centre of the humanitarian response;
- ensure that programme goals and activities uphold the principles of the key national and international humanitarian frameworks, codes and commitments under which humanitarian organizations operate;
- demonstrate understanding of your role and that of your organization and others within the humanitarian system;
- integrate beneficiary accountability principles into your approach;
- demonstrate an understanding of coordination mechanisms.<sup>21</sup>

These definitions of competency are still in their early days. They are not yet truly global, in that they have mostly been derived from within the older traditional agencies, but over the past year these six competencies have been field tested in at least six countries in three languages in Asia, Africa, and South America, and have already been adopted by training providers such as Bioforce (a French-based institute dedicated to training in the humanitarian sector), and RedR (a global development and humanitarian training provider). The second ELRHA global

19 See CBHA, 'CBHA launches core humanitarian competency framework', 20 August 2010, available at: <http://www.thecbha.org/news/2010/08/20/cbha-launches-core-humanitarian-competency-framework/> (last visited December 2011).

20 See CBHA, 'Humanitarian Capacity Building Programme', Objective 1 Final Report, 10 August 2010, available at: [http://www.thecbha.org/media/website/file/CBHA\\_Objective\\_1\\_Final\\_report\\_published.pdf](http://www.thecbha.org/media/website/file/CBHA_Objective_1_Final_report_published.pdf) (last visited December 2011).

21 See CBHA, 'Core humanitarian competencies framework: keeping disaster and conflict affected people at the centre of what we do', available at: [http://www.thecbha.org/media/website/file/CBHA\\_Competency\\_Frameworks.pdf](http://www.thecbha.org/media/website/file/CBHA_Competency_Frameworks.pdf) (last visited December 2011).

professionalization survey results indicated that a further 1,000 respondents found them fit for wider adoption in the humanitarian sector for the purposes of professional development.<sup>22</sup> This work to date therefore demonstrates that it is possible to derive and agree upon a set of such competencies.

## Systems of certification

One of the most frequent complaints that we heard while conducting our research was that training, while it may be available within agencies and from some outside sources, is essentially unstructured and unregulated. Any 'certificate' that a worker earned for taking a training course was specific only to the agency offering the course; it had no currency. In addition, it was also clear that many courses offer certificates for attending the course, not necessarily for doing well on the course.

Humanitarian workers, particularly those from the global south, are eager to see a system whereby the training they take has currency: that is, it can have a value placed on it and can be transferred between employers. This in essence means moving towards a system of certification of individuals' knowledge, skills, and experience.

Professional certification of an individual typically occurs through three pathways:

- portfolio-based – requiring extensive documentation to show that competencies are covered by either the person's education and/or their professional experience,
- competency-based – requiring a person to demonstrate mastery of a common body of knowledge through a combination of experience and education, followed by assessment or examinations,
- curriculum-based – requires the completion of subject-based professional education.<sup>23</sup>

If humanitarian workers are to move towards certification, then all three paths will need to be utilized, particularly for a profession that places such emphasis on field experience. In practice, any certification system will need to reconcile the interests of existing practitioners with those of new entrants. Existing practitioners may be resistant to heightened standards that exceed their own qualifications. Wilensky describes 'a contest between the home guard who learned the hard way on the one hand, and the newcomers who took the prescribed course'.<sup>24</sup> Merton identifies this as a trend particular to emerging professions, and suggests that a 'grandfather clause,

22 See ELRHA, 'Global survey on humanitarian professionalisation', available at: <http://www.elrha.org/news/elrha/globalsurvey> (last visited December 2011).

23 Philip A. Barnhart, *The Guide to National Professional Certification Programs*, 2nd edition, CRC Press, Amherst, MA, 1997, pp. 6–7.

24 Harold Wilensky, 'The professionalization of everyone', in *American Journal of Sociology*, Vol. 70, No. 2, 1964, p. 144.

which exempts current members from having to meet the newly instituted and more rigorous standards of the profession', may be the way to move forward.<sup>25</sup>

In addition, the idea of a global 'Learning and Development Passport' has been consulted on widely in the sector through ELRHA's consultation hubs in four countries and a recent online survey, and is gaining traction as a way of increasing transferability and interoperability in the sector. The idea would entail field workers being recognized for work experience and skills gained in responding to disasters by way of an assessment. The competencies would then be logged in their passport and act as evidence of competence to prospective agencies when recruiting staff.

Moving towards a system of certification also implies sufficient agreement around core competencies to be able to construct the various levels of certification, as discussed above, and a global body with the authority to accredit certificates and institutions offering certification. This, in many professions, is a function that rests with the professional association, as discussed below. Of course, certification can have negative connotations. In some professions it can be used as a method of exclusion, where certification is an expensive process and where the training needed to certify is only available through exclusive institutions.

## Apprenticeship and experiential learning

All professions recognize that experience, as well as knowledge and skills, is an essential part of being a professional. Experience allows the individual to adapt their book knowledge to the realities of the context in which they are working. It allows a person to make judgements, not just calculations. Unfortunately, getting that experience is something of a catch-22. The common refrain from individuals wanting to break into the humanitarian field is that every job advertised requires you to have prior experience! But if every agency wants prior experience, where does that experience come from?

This dilemma exists in all professions. No one wants an inexperienced lawyer handling their case or an untested doctor diagnosing their illness. Traditionally, the professions have in the past used an apprenticeship system, and now an internship system, to get past this blockage. Apprenticeships and internships in the professions recognize the responsibility of the profession to provide early experiential learning, in a safe and controlled environment. New recruits from law and medical schools are mentored through internships and residencies to give them time to hone those people and judgement skills. Such programmes are not just about having the new recruit tag along behind the old surgeon or advocate. They all have three key elements:

- they have a well-defined system of mentoring,
- they have a structured learning programme, and

25 See Robert K. Merton, *Social Research and the Practicing Professions*, University Press of America, Lanham, MD, 1982, p. 205.



- they have rigorous systems for monitoring, correcting, and finally assessing how well the apprentice has taken on board the necessary experiential learning.

Very few humanitarian agencies provide anything like a formal apprenticeship system and this is perhaps one of the biggest gaps in the humanitarian community. To address this, the CBHA have developed two such programmes, the first of which is a one-year apprenticeship-type of career development programme for new entrants in the sector, called the ‘Humanitarian Leadership Skills Development Programme’.<sup>26</sup> Delivered by Save the Children in the UK and Kenya, it entails training, self-directed learning, online learning, work placements, and simulations in order to prepare individuals for the rigour of field work. The second is the ‘Staff Development Programme’, delivered by Oxfam for existing field staff, containing all of the above but lasting nine months. Properly implemented, these structured in-house training programmes allow staff from across the geographical reach of the organization to develop their skills and acquire recognized qualifications. Of course, organizations offering such training, particularly when they are among the first to initiate them, run the risk of losing trained staff to other organizations and thus not seeing the benefits of their investments.

## Professional associations

At the heart of all professions is a membership association. The association is open to all qualified members in that profession. Being a member of an association defines a certain qualification and/or experience level of the member. All associations also have mechanisms for expelling and removing membership privileges from members who falsify claims of their qualifications or who violate the core values of the association.

Cruess, Cruess, and Johnston believe that professional associations are vital to professionalism.<sup>27</sup> Associations ensure standards within the profession and ‘discipline unprofessional and incompetent behaviour’. Merton sees the setting and enforcement of ‘rigorous standards’ as the prime obligation of a professional association.<sup>28</sup> He describes them as ‘a ‘clearing house of professional knowledge’ and as a voice for the profession, ‘able to speak authentically and authoritatively on behalf of the profession’. For a professional association to have legitimacy it ‘must be representative of as many of the professions as possible’.<sup>29</sup> In the absence of some form of humanitarian association with agreed standards, professionalism presently arises within the humanitarian sector in an ad hoc manner, through the best efforts of individuals and employers.

26 See CBHA, ‘Humanitarian Leadership Development Programme, Newsletter 2’, 15 July 2011, available at: <http://www.thecbha.org/news/2011/07/15/humanitarian-leadership-development-programme-horn-africa-newsletter-2/> (last visited December 2011).

27 R. L. Cruess, S. R. Cruess, and S. E. Johnston, above note 13.

28 Robert Merton, ‘The functions of the professional association’, in *American Journal of Nursing*, Vol. 58, January 1958, pp. 50–54.

29 *Ibid.*, p. 54.

The prime purpose of a professional association, therefore, is to create an independent and self-governing quality assurance mechanism for that profession that is independent of donors, states, and employers. In addition, an association usually promotes information-sharing within its membership in the form of trade and academic journals that it publishes, conferences that it sponsors, and websites that it services.

Evetts sees professionalism as an ideal that transcends national boundaries:

The expansion of the service sector and knowledge work in the developed world and the growth or re-emergence of professions in both developing and transitional societies, indicate the appeal of the concept of 'professionalism' as well as the strength and persistence of 'professions' as an occupational form.<sup>30</sup>

### *Present experience*

There already are a few associations in the humanitarian field that show all the attributes of being true professional associations. Here are just a few examples:

**The World Association for Disaster and Emergency Medicine (WADEM).** WADEM was originally founded as the Club of Mainz on October 2, 1976 with the goal of improving the worldwide delivery of prehospital and emergency care during everyday and mass disaster emergencies. The founding members were renowned researchers, practitioners and teachers of acute care medicine, who joined together to focus their energies on the scientific, educational, and clinical aspects of immediate care. Following the constant development of its scope and extension worldwide, and to better reflect its nature, the organization's name was changed to the World Association for Disaster and Emergency Medicine.<sup>31</sup> WADEM presently has around 750 members across 50 countries.

**Humanitarian Logistics Association (HLA).** In 2003, working with the Fritz institute, a grouping of logisticians formed the HLA. They drafted the Marco Polo Declaration, whose 'signatories committed to establish an association which would serve as a catalyst to enhance the professionalization of humanitarian logistics and the recognition of its strategic role in the effective delivery of relief during humanitarian crises'.<sup>32</sup> Their membership is open to logisticians worldwide. They have established a temporary home within the Chartered Institute of Logistics and

30 Julia Evetts, 'The sociological analysis of professionalism: occupational change in the modern world', in *International Sociology*, Vol. 18, No. 2, June 2003, p. 399.

31 WADEM's mission statement is available at: <http://www.wadem.org/mission.html> (last visited December 2011).

32 See 'About HLA', available at: <http://www.humanitarianlogistics.org/about-hla/what-is-hla> (last visited December 2011).

Transport in the UK (CILT) and are reported to have a membership in the region of 400. HLA has also developed specific certified courses in humanitarian logistics.

**The International Humanitarian Studies Association (IHSA).** The IHSA was formed in 2009. It 'is a network of people engaged in the study of humanitarian crises caused by natural disaster, conflict or political instability'.<sup>33</sup> The association offers a venue for the scholarly and research community where it 'can meet and debate different insights and understanding of humanitarian crises, in dialogue with policy actors and implementing agencies'. It hosts a major international conference every two years and has a current membership of between 400 and 500 researchers and scholars worldwide.

**Professionals in Humanitarian Assistance and Protection (PHAP).** In 2009, a series of focus group discussions conducted by the Harvard Program on Humanitarian Policy and Conflict Research (HPCR)<sup>34</sup> with its online pool of over 16,000 professionals involved in its international humanitarian law training showed strong demand for an international humanitarian professional association. The programme at Harvard and HPCR International have embarked on a new collaboration to launch PHAP, with a mission to strengthen the protection of vulnerable populations by fostering a global network of professionals to engage in peer exchange on goals, strategies, and methods of humanitarian action. This body proposes to address the growing demand for a permanent and independent platform for professional exchange in humanitarian affairs, contribute to the humanitarian community's response to emerging challenges, and promote an independent professional voice in humanitarian policy debates.

### *An international association?*

Our survey showed a significant desire on the part of those completing the survey to see the creation of an international humanitarian professional association rather than a series of national associations. It is noteworthy that all the associations created to date that focus on the humanitarian area are international in nature, albeit focusing on specific areas of the profession and none of them yet representing the broad base of stakeholders present in the humanitarian sector, with some of them representing only their own alumni.

This suggests that there are at least two ways to move forward. One is to create a professional association that seeks to represent all humanitarian professionals. Individuals would have membership of the global association and possibly also membership of a more specific sectoral one. Alternatively, existing associations may choose to come together to form a global alliance or loosely federated structure, thus allowing for individuals to gain global professional status

33 See 'Welcome to IHSA', available at: <http://www.ihsa.info/> (last visited December 2011).

34 Program on Humanitarian Policy and Conflict Research, Harvard University, <http://www.hpcrresearch.org/> (last visited December 2011).

via their specific sectoral association. Either way, any such international humanitarian professional association would embody a number of functions:

- it would be responsible for the approval of the competencies required for certification as a professional humanitarian worker,
- it would recognize career pathways and progression routes for those entering and for those developing in the sector,
- it would provide general career guidance advice and information on jobs, apprenticeships, and traineeships,
- it would be responsible for recognizing the certification that individuals would earn from a training body,
- it would be responsible for handling complaints against individuals and have a mechanism for terminating their membership,
- it would provide a link to accountability and quality initiatives and networks, as well as any emerging global standards.

Having such a set of functions would allow a professional association to promote the competence of aid workers, to help develop career pathways, to promote the professional independence of workers, and to take action to safeguard the professions' reputation by, in extreme cases, removing professional accreditation from individuals.

### Accreditation and accountability

Two key challenges to moving towards a professional system revolve around accountability.

#### *Accreditation*

Who gives an NGO or a training institute the right to offer a certificate and who assures the quality of that institute? This process of quality assurance and accountability is at the heart of accreditation. Accreditation is 'to give official authorization to or approval of [or] to recognize or vouch for as conforming with a standard'.<sup>35</sup> Universities, for instance, have to earn formal approval from an accrediting government body to offer their degrees: 'Accreditation is a process of external quality review used by higher education to scrutinize colleges, universities and educational programs for quality assurance and quality improvement.'<sup>36</sup>

Two different sets of quality issues are being assured here. The first component is the content that is being delivered. Is it up to date, relevant, and pitched at the right level? The second component is the vehicle for delivery. Are the

35 Merriam Webster dictionary online, available at: <http://www.merriam-webster.com/dictionary/accreditation> (last visited December 2011).

36 See definition on the Council for Higher Education's website: <http://www.uv.es/alfa-acro/documentos/documentosinteres/27.htm> (last visited December 2011).

institution and its teachers and trainers competent? Does it have a proven track record of delivering good-quality work?

The issue of content assurance is an extension of the debate around core competencies. Often it is the professional body that accredits the curriculum, the overall content of training and education at any one level. That package is then offered, almost like a franchise, which employers, training instructors, and others, can take up and teach. A process of external accreditation is then used to assure the quality of these franchise deliverers.

In the past few years, with the spread of both distance learning and the need for individuals to be able to carry their training competencies from one country to another, innovative projects have arisen such as the one spearheaded by the agency Learning for NGOs (LINGOS) called the Project Management in Development (PMD PRO) Project Management certification; created by Project Management for Non-governmental Organizations (PM4NGOs)<sup>37</sup> – a consortium of NGOs, private sector programme managers, and training companies – to contextualize project management concepts for the development and humanitarian environment. Accredited by APMG-International, the Prince2 globally recognized accrediting body, the goal of the PMD-Pro is to:

- confer a professional certification status for project managers in the sector at two levels (and a third in the planning),
- provide certification and learning resources that are comprehensive, accessible, and appropriate to professionals working in the sector,
- integrate content that is contextualized for the international development and relief sector with other internationally recognized certifications.

This has been delivered through a number of agencies around the world to over 1,000 individuals, including World Vision, who have put their field staff through the programmes in a range of countries.

Another accreditation service is the International Association for Continuing Education and Training (IACET),<sup>38</sup> who offer a service to assure the quality of organizations providing training. If the organization passes IACET's requirements, they become accredited. Many professional organizations around the world recognize this accreditation and are thus willing to accept continuing education credits obtained through courses offered by such an accredited body. The IACET does not accredit individual courses *per se* but rather the provider of the courses.

It is likely, however, that, once the sector recognizes and agrees on a professional association, it will be overseeing and endorsing a variety of these quality assurance bodies, as it would be difficult to limit the sector to one or two, given the burgeoning environment and appetite for accreditation. A snapshot of emerging

37 For an overview of this certification, see <http://ngolearning.org/pm4ngos/pages/certification.aspx> (last visited December 2011).

38 See 'About IACET', available at: <http://www.iacet.org/> (last visited December 2011).

relationships between NGOs, accrediting bodies, and universities shows a growing landscape:

- Mango – Credit-rated finance course through Liverpool School of Tropical Medicine,
- UN Child Protection Working Group (Child Protection Cluster) – Diploma being developed through Kwazulu Natal University in South Africa with other partner universities around the world,
- Plan International and Save the Children UK – exploring accreditation of their in-house programmes through Edexcel,
- Tearfund – delivering Disaster Management Diploma accredited through the Leadership and Management Institute in the UK,
- RedR – Credit-rated courses and soon-to-be-launched Certificate through Oxford Brookes University,
- UN Global Nutrition Cluster – Partnered with University College London and three other universities in Uganda, Lebanon, and Thailand to deliver a nutrition course,
- International Federation of Red Cross and Red Crescent Societies – introduction of online postgraduate certificates, diplomas, MScs and PhDs through Manchester University.

All of these programmes are seeking to marry academic rigour and training competence with practitioner needs. Conceptually, this is exactly what is needed. The hope, of course, is that these early beginnings soon start to coalesce into a more organized structure rather than an ad hoc collection of offerings.

### *Accountability to clients*

Far more problematic, and an issue that plagues all professions, is creating a system of accountability of the professionals to their primary clients: the doctor's accountability to the patient, the professor's accountability to the student, the lawyer's accountability to the client. This is problematic for two principal reasons.

First, it is problematic because of history. Most professions started as guilds, self-defined clubs dedicated to protecting the privileges of that club, keeping others out and maintaining the power and mystique of the club with respect to those who bought its services.<sup>39</sup> It is really only since the 1960s that this elitist approach has been challenged and that the notion of accountability to the client has been promoted. In the late 1980s, Mark Frankel reflected on the rise of 'codes of ethics' within the professions as a tool to bridge the gap between professional and client accountability.<sup>40</sup> The professions are still adjusting to a democratic world and shedding the less useful vestigial aspects of their history.

39 Rosemary Stevens, 'Themes in the history of medical professionalism', in *Mount Sinai Journal of Medicine*, Vol. 69, No. 6, November 2002, pp. 357–362.

40 Mark Frankel, 'Professional codes: why, how, and with what impact?', in *Journal of Business Ethics*, Vol. 8, No. 2–3, 1989, pp. 109–115.

Second, there are important power dynamics that come into play. By definition, professionals have expert knowledge and skills not shared by the general public. Yet the public, be they patients or crisis victims, seek the services of these professionals at the very time when the client is least able to challenge their credibility and competence. The client needs the lawyer, the patient needs the doctor. The lawyer or doctor does not actually need that individual client or patient. We are therefore seeking to construct accountability between a small, powerful, elite group and a larger, less powerful group in need of the professionals' services, where the less powerful group often has to trust the competence of the professional. This has led to the development of three main approaches to accountability.

The first seeks to develop, from within the profession, codes of conduct and ethics; in effect, self-policing. The NGO Code of Conduct is a case in point.<sup>41</sup> Clients and beneficiaries play little role in developing these codes. Second, because professionals and their associations hold privileged positions within society, they can be held to account through professional malpractice legal suits or other similar legal mechanisms. While this practice is becoming frequent, if not common, in the industrialized nations, its expense and complexity, and its reliance on a functioning and fair judicial system make it problematic to apply in many of the environments where humanitarians work.

Third, and more recently, professional associations, the employers of professionals, and state bodies have begun developing complaint and whistleblower policies and facilities that allow individuals to report grievances.<sup>42</sup> These mechanisms function well where there is a regulator system in place, where clients/beneficiaries are aware of their rights to make such observations and have easy access to a mechanism to lodge such complaints safely, and where there is publically available evidence that the act of lodging complaints actually results in change. The Advertising Standards Authority in the UK provides an example of a well-managed and effective mechanism through which it is easy for members of the public to lodge a complaint, and there is evidence that justified complaints lead to action.<sup>43</sup>

## Conclusions

It is evident that the environment within which humanitarian assistance takes place is evolving. It is also evident that the community of organizations involved in the provision of aid and the cultural, legal, and regulatory framework within which they work is evolving too.

41 See the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, available at: <http://ifrc.org/en/publications-and-reports/code-of-conduct/> (last visited December 2011). For a comment on the origins, usage, and future of the Code, see Peter Walker, 'Cracking the Code: the genesis, use and future of the Code of Conduct', in *Disasters*, Vol. 29, No. 4, 2005, pp. 323–326.

42 Bernard Barber, 'Control and responsibility in the powerful professions', in *Political Science Quarterly*, Vol. 93, No. 4, 1978–1979, pp. 599–615.

43 See Advertising Standards Authority, 'How to complain', available at: <http://asa.org.uk/Complaints/How-to-complain.aspx> (last visited December 2011).



Humanitarian assistance is much more centre-stage, politically, than it was two decades ago and the regulatory frameworks of most nations now demand higher accountability from all public service providers, particularly for the spending of taxpayers' money. In addition, the advances in information and communication technologies and the increased globalization of commerce enable crisis-affected communities to have more of a voice and to start to demand a greater sense of accountability from those who provide vital services to them.<sup>44</sup> It is also clear that many of the elements of professionalization are in place or developing. Global codes of ethics and standards of competence exist. Small global associations dedicated to professionalism in their particular area are being established. Training providers are seeking ways to have their training more universally recognized, as has been recently witnessed through the development of the first International Development and Humanitarian Trainer Competency Framework:<sup>45</sup> spearheaded by RedR UK and Bioforce, it is supported by a range of agencies in the sector<sup>46</sup> and promotes minimum standards for informal and formal training provision.

There is a sense that the humanitarian endeavour is in the early, but very definite, stage of moving toward a more professional structure, making it timely and opportune to examine all aspects of such an evolution. In that examination, there are four critical issues on which we should be focusing. The first one is the issue of emancipation. One of the frequently heard complaints from humanitarian workers in the south is that the system is biased towards northern candidates, who are able to acquire the presently available professional qualifications associated with promotion, namely expensive masters degrees from northern universities. Under any evolving system, access to a system of accreditation and qualifications should be much more equitable and based more closely on merit, not access via nationality or wealth. We can envisage a future situation where local training institutions around the world could acquire the certified curriculum from the international humanitarian professional association and also acquire accreditation of their training competence from an internationally recognized source, so that they could provide the approved training at the same level of competence as might be offered in France or Canada, but at a price and accessibility suiting the local market. Such training would be recognized as having the same worth, regardless of where it was taught. Under a more global professional system, access would become more, not less, equitable.

Second is the issue of altruism and voluntarism. Some worry that a more professional system equates to a more materialistic one and a more protective one where an elite seeks to use the profession for personal gain. It is true that some

44 For example, Communicating with Disaster Affected Communities (CDAC) and Infoasaid work in tandem to help humanitarian organizations integrate two-way communications into their emergency programmes, and have gained prominence over the past few years in advocating for this to become a standardized humanitarian practice.

45 The Trainer Competency Framework is available on the RedR UK website at: [http://www.redr.org.uk/en/Resource\\_Document/Resource\\_Download.cfm/rid/EA2726FF-85F7-4E90-BECD8BEE2DE3CD28](http://www.redr.org.uk/en/Resource_Document/Resource_Download.cfm/rid/EA2726FF-85F7-4E90-BECD8BEE2DE3CD28) (last visited December 2011).

46 These include BOND, ELRHA, Intrac, Mango, and People in Aid.

professions, particularly those where practice has to be licensed by the state, do defend high rates of pay, as we see in medicine and law, but others, as we see in education, have not taken such a route. A sense of service and altruism is central to most professions, and there is no reason why this should not remain in humanitarianism. Also, we need to be clear that establishing a profession does not exclude others. Just as teachers' aids, administrators, and parent volunteers are vital complements to the professional teaching staff, so too are support staff and local volunteers to the work of the humanitarian professional. The first pilot of the European Voluntary Humanitarian Aid Corps<sup>47</sup> is underway with Save the Children UK, alongside Bioforce and NOHA (Network of Humanitarian Assistance), as partners to recruit and train volunteers for EU-funded humanitarian programmes. Further pilots from the Red Cross and Voluntary Service Overseas are launching in the coming months and there is every indication that the following pilots will twin with other continents and include African and Asian volunteers, among others.

Third, pursuing a professional structure, as well as professionalism, allows for those who care deeply about humanitarianism to have an organized voice separate from that of their employers. This is not to suggest that employers and employing institutions do not care, but rather to recognize that they are under different pressures and incentives. We see this today most starkly in the field of medicine where there is often a healthy tension between the opinions of the professional medical body and those of hospital administration. Humanitarianism needs this independent voice.

Finally, a vibrant sense of professionalism adds further pressure to the humanitarian endeavour to develop creative ways of being accountable to its clients or beneficiaries.

Professionalism and professional structures do not answer all the problems associated with the humanitarian endeavour. They do little to address its funding structure, or the tension between humanitarianism and the state and non-state parties that actively create and fuel crisis, but they do allow for more accountable and more consistently high-quality aid. They provide an additional mechanism to assert the independence of humanitarian action from political and institutional agendas. Above all, they assert that humanitarianism is about both compassion and competence.

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47 The European Voluntary Humanitarian Aid Corps is funded by the European Community Humanitarian Office (ECHO) as part of the EU Treaty of Lisbon (2007/C 306/01, 13 December 2007): see <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/413&format=HTML&aged=0&language=EN&guiLanguage=en> (last visited December 2011).

# The emerging concept of humanitarian diplomacy: identification of a community of practice and prospects for international recognition

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## **Abstract**

*In recent years the term ‘humanitarian diplomacy’ has become fashionable among humanitarian organizations in general, and within the Red Cross and Red Crescent Movement in particular. However, the very idea of ‘humanitarian diplomacy’ is not uncontroversial, owing to the imprecise and contested nature of the term, and to its*

\* The present article is the result of a research and training project on humanitarian diplomacy and disaster management, carried out in Geneva and Ottawa in co-operation with the International Federation of Red Cross and Red Crescent Societies (2010–2012). The author would like to thank Bruno Desparts, Research Assistant and student at the University of Ottawa Faculty of Law, for his much-valued collaboration.

*unclear operational application. The present article proposes to explore the definitions and scope of action of humanitarian diplomacy, as well as some of the challenges that it faces, with a view to preparing the way for its eventual recognition by the international community.*

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*'[Humanitarians] do nothing but negotiate, but are not always aware of it'.<sup>1</sup>*

Since the beginning of the twenty-first century, with the accelerating pace of globalization, a multiplicity of new areas of global diplomatic activity, relating to such issues as climate change, the environment, access to water, culture, health, and knowledge, has developed alongside classic national diplomacy.

Humanitarian diplomacy is an emerging term. Its definition does not match that of conventional diplomacy, whose objective is to manage the international relations of states through negotiation. Instead, humanitarian diplomacy focuses on 'maximising support for operations and programs, and building the partnerships necessary if humanitarian objectives are to be achieved'.<sup>2</sup> A first book was devoted to the subject in 2007,<sup>3</sup> and the expression has since been used with growing frequency by a number of humanitarian agencies. One of these is the International Red Cross and Red Crescent Movement, which is keen to emphasize its universality and the auxiliary role of the National Societies to their respective governments.<sup>4</sup> The International Committee of the Red Cross (ICRC), for instance, has developed its own definition of humanitarian diplomacy, which reflects its specific mandate.<sup>5</sup> Meanwhile, since 2010 the International Federation of Red Cross and Red Crescent Societies (IFRC) has established a new division in charge of promoting humanitarian diplomacy. Other organizations also use the term, or others that are very similar, such as 'disaster diplomacy' or 'intervention diplomacy'.

It would seem that humanitarian diplomacy refers to the policies and practices of national and international agencies active in humanitarian aid work. The term is used not only by humanitarian organizations but also by national co-operation agencies and ministries (foreign affairs, defence, development, civil protection) comprising humanitarian aid departments to respond to domestic or international emergencies. Humanitarian diplomacy is relevant in both risk

- 1 Deborah Mancini-Griffolli and André Picot, *Humanitarian Negotiation: A Handbook for Securing Access, Assistance and Protection for Civilians in Armed Conflicts*, Geneva, Centre for Humanitarian Dialogue, 2004, p. 12.
- 2 Christopher Lamb, 'Humanitarian diplomacy', 26 June 2008, available at: <http://www.ifrc.info/en/news-and-media/opinions-and-positions/speeches/2008/humanitarian-diplomacy> (last visited December 2011).
- 3 Larry Minear and Hazel Smith (eds), *Humanitarian Diplomacy: Practitioners and Their Craft*, Tokyo, United Nations Press, 2007.
- 4 See International Federation of Red Cross and Red Crescent Societies (IFRC), *Strategy 2020: Humanitarian Diplomacy Policy*, Nairobi, December 2009.
- 5 Marion Harroff-Tavel, 'The humanitarian diplomacy of the International Committee of the Red Cross', 1 January 2006, available at: <http://www.icrc.org/eng/assets/files/other/humanitarian-diplomacy-icrc.pdf> (last visited December 2011).

prevention and crisis management. It is not limited to the need to co-ordinate international humanitarian assistance but also operates at the national or local level to ensure, in an emergency situation, the concerted and efficient mobilization of the various relevant actors and their often scattered resources.

The definitions and perceived content of humanitarian diplomacy vary as widely as the number of organizations using the term and the humanitarian operations that they carry out. Humanitarian diplomacy is not yet a solidly established concept generally recognized by the international community: there is a big difference between conceiving the idea, using the term itself, and arriving at international recognition for its definition and agreement on how it should be conducted. The agencies that have taken the time to reflect about their own 'diplomatic practices' remain few and far between. The ICRC and Doctors Without Borders (Médecins sans Frontières, MSF) are the exception, but even they interpret the concept differently. Arriving at a universal definition will thus require consultation among agencies and organizations.

The present article will attempt to explore first the emerging definitions of humanitarian diplomacy, and then some legal dimensions related to the concept. A third section will examine the areas of action of humanitarian diplomacy both nationally and internationally. The article will then look at some of the most pressing challenges facing humanitarian diplomacy today.

Humanitarian organizations, as well as states and the private sector, could use humanitarian diplomacy as an instrument for raising awareness, negotiating, and mobilizing appropriate humanitarian aid in emergencies. Pooling the various practices related to humanitarian diplomacy while ensuring respect for local cultures and specific situations will open a path to the recognition of humanitarian diplomacy by teaching, training, and research institutions, and its subsequent validation at both conceptual and operational levels.

## **Definitions of the emerging concept of humanitarian diplomacy**

In 2010–2011, when the IFRC set out to prepare a strategic concept on humanitarian diplomacy, it found that there were eighty-nine different definitions among the relevant agencies and in the grey and scientific literature. These definitions include points of convergence and differences, which will serve as a basis for delimiting the concept of humanitarian diplomacy.

### **From conventional diplomacy to humanitarian diplomacy**

#### *The evolution of diplomacy*

The word 'diplomacy' derives from the ancient Greek word for documents that were rolled up and sealed to ensure their confidentiality. The Latin term *diplomatia* refers to official documents that conferred privileges on the bearer, who would have been acting in his capacity as a diplomatic intermediary and representative. Diplomacy

dates back to at least 3000 BC, especially in Asia Minor and the Far East, but did not flourish in western Europe until permanent embassies were established to facilitate relations among the Italian city-states of the Renaissance (in the fifteenth and sixteenth centuries). It peaked with the creation of nation-states between the eighteenth and twentieth centuries. The legal basis for diplomatic relations was set out in the Vienna Convention on Diplomatic Relations of 1961, which codified, *inter alia*, the rules governing diplomatic immunity and the privileges of embassies, consulates, and diplomatic staff charged with conducting state-to-state relations and with promoting national interests without recourse to war. The functions of classic diplomacy are: (i) to represent the state and to protect or promote its interests and those of its nationals; (ii) to collect, analyse, and report information on the host country; and (iii) to encourage cordial commercial and political relations and to negotiate agreements and treaties.<sup>6</sup>

Diplomacy is often confused with foreign policy, of which it is in fact an instrument. A country's foreign policy defines the objectives that diplomacy carries out, at times in conjunction with other means such as military action or economic pressure. It is a policy of interests; in the eyes of some States at least, foreign policy also implies shouldering responsibility at the global level. Diplomacy has several functions, such as representing the State and conducting negotiations in order to reach agreements and draw up rules for the international system. It is a mode of communication, one of whose chief attributes is to avert or regulate disputes in a politically fragmented international system: it thus serves to prevent conflicts and restore peace.<sup>7</sup>

Confidentiality in diplomacy has weakened since the decline of the superpowers and the bipolar world order, with the increase in the relative marginalization of the power of states in the face of the globalization of information and the private sector, and with the spread of new communication technologies that can strike at the very heart of diplomacy and intelligence (such as the Wikileaks scandal in 2010–2011). Diplomacy is becoming increasingly fragmented: it is no longer primarily bilateral but also multilateral, no longer simply intergovernmental but also multi-institutional and multi-functional (multi-track diplomacy), and no longer exclusively the prerogative of ministries of foreign affairs, given the growing role played by other ministries and multiple private actors and non-state pressure groups. A new diplomatic language (global and sector diplomacy) is rapidly spreading around the globe.

International actors create new forms of networks of influence and fora to engage in informal discussions: this is called 'track two diplomacy'. This form of diplomacy can bring together politicians, religious and community leaders, business people, members of non-governmental organizations (NGOs), academics, parliamentarians, or retired civil servants. It allows the community members concerned to

6 For a review of classical and new tools of international diplomacy, see the website and various activities of the Diplo Foundation towards more inclusive and effective diplomacy, available at: <http://www.diplomacy.edu> (last visited 21 July 2012).

7 M. Harroff-Tavel, above note 5, p. 4.

explore possible solutions informally with the support of third persons having a certain level of expertise. Sometimes government representatives take part in their individual capacity, with official authorization; this is often referred to as 'track 1 1/2 diplomacy'. They act as informal intermediaries to facilitate discussions between members of civil society from different sides and viewpoints. Such new forms of diplomacy can contribute to improving mutual understanding, developing personal relations, and negotiating a consensus in a sheltered environment where there is no risk of losing face, should the efforts fail.

### *Defining humanitarian diplomacy*

Diplomacy in all its forms is gradually winning against the use of force, since international conflicts have been declining markedly since 1945. Internal conflicts and disasters, in contrast, have been increasing steadily in number, frequency, and intensity. Humanitarian aid is predicted to double between 2000 and 2015, and expected to account for between 4% and 15% of the amounts budgeted for official development aid, which is equivalent to some 18 billion US dollars.<sup>8</sup> The situation has prompted researchers and humanitarian practitioners alike to reflect on the typology of these new crises, the entities involved in them, and the terminology and practices being proposed or experimented with,<sup>9</sup> including the practice of humanitarian diplomacy.

Humanitarian diplomacy is rooted in the history of humanitarian action going back to the nineteenth century, and draws its *raison d'être* from the efforts made by humanitarian aid workers internationally, but also nationally and locally, to be allowed access to victims at all times. However, unlike with traditional diplomacy and international negotiation, there is as yet no body of literature or specific manual dedicated to humanitarian diplomacy.

One can describe the term 'humanitarian diplomacy' through the following definition, as proposed in 2007:

The concept of humanitarian diplomacy encompasses the activities carried out by humanitarian organizations to obtain the space from political and military authorities within which to function with integrity. These activities comprise such efforts as arranging for the presence of humanitarian organizations in a given country, negotiating access to civilian populations in need of assistance and protection, monitoring assistance programmes, promoting respect for international law and norms, supporting indigenous individuals and institutions, and engaging in advocacy at a variety of levels in support of humanitarian objectives.<sup>10</sup>

8 IFRC, *World Disasters Report 2010: Focus on Urban Risk*, Imprimerie Chirat, Lyon, France, 2010. Human Security Report Project, *The Human Security Report 2009/2010: The Causes of Peace and the Shrinking Costs of War*, Oxford University Press, Oxford, 2011, p. 159. United Nations University and the Institute for Environment and Human Security, *World Risk Report, 2011*, Bonn, 2011.

9 The recently founded International Association of Humanitarian Studies has organized the first two World Conferences on Humanitarian Studies, in 2009 and 2011 respectively.

10 L. Minear and H. Smith, above note 3, Introduction, p. 1.



The above definition would indeed be more precise than the following attempts:

- ‘Humanitarian diplomacy is concerned with persuading decision-makers and opinion leaders to act, at all times, in the interests of vulnerable people, and with full respect for our fundamental principles.’<sup>11</sup>
- ‘Humanitarian diplomacy is the use of international law and the humanitarian imperative as complimentary [*sic*] levers to facilitate the delivery of assistance or to promote the protection of civilians in a complex political emergency.’<sup>12</sup>

An example of an organization’s definition of humanitarian diplomacy is offered by the ICRC, which has made substantial efforts to define humanitarian diplomacy, bearing in mind its specific mandate:

The ICRC’s humanitarian diplomacy consists chiefly in making the voices of the victims of armed conflicts and disturbances heard, in negotiating humanitarian agreements with international or national players, in acting as a neutral intermediary between them and in helping to prepare and ensure respect for humanitarian law.

The ICRC’s humanitarian diplomacy is defined by four specific traits: it consists of relations with a wide range of contacts, including non-State players; it is limited to the humanitarian sphere and the promotion of peace is not its primary objective; it is independent of State humanitarian diplomacy; and lastly, it often takes the form of a series of representations which, depending on events, may remain confidential or require the mobilization of a network of influence.<sup>13</sup>

The ICRC’s definition is narrower than those presented above, owing to the organization’s specific mandate, which often – but not always – requires its diplomacy to be confidential, and the fact that it carries out a wide range of highly specific actions.

### *Humanitarian diplomacy and traditional diplomacy*

Humanitarian diplomacy is often defined with reference to the diplomacy of states. However, the two forms of diplomacy differ in more points than they have in common and, as we will discover below, it would seem that the scope of humanitarian diplomacy is not limited to international relations alone. Aspects that they have in common are the collection and analysis of information, relatively similar approaches to negotiation (seeking to arrive at a compromise, if not consensus with contacts and beneficiaries), and the status of immunity (diplomatic passports and *laissez-passer*, which are not, however, usually issued to NGOs carrying out

11 IFRC, above note 4, p. 25.

12 Jonathan Whitall, “‘It’s like talking to a brick wall’: humanitarian diplomacy in the occupied Palestinian territory”, in *Progress in Development Studies*, Vol. 9, No. 1, January 2009, p. 38.

13 M. Harroff-Tavel, above note 5, p. 5.

humanitarian work). Humanitarian diplomacy does not reject traditional bilateral or multilateral diplomacy. On the contrary, to be as efficient as possible, it has to be co-ordinated with conventional diplomacy in capital cities and in the field, without thereby becoming subordinate to the latter.

Humanitarian agencies also have a genuine interest in participating in 'track two diplomacy', which enables them to shape opinions on humanitarian matters before official negotiations take place. Informal diplomacy supplements rather than replaces intergovernmental fora, and helps humanitarian agencies to facilitate contact and dialogue that might be extremely difficult to establish otherwise.

Minear and Smith draw our attention not only to the common ground shared by conventional and humanitarian diplomacy but also to their substantial differences. Traditional diplomacy operates at the political level. It includes diplomats in charge of humanitarian assistance and it could be argued that they are responsible for part of the humanitarian diplomacy conducted around the world. Some conventional diplomats working in ministries of foreign affairs, development aid agencies, and even agencies specializing in security and defence are specialists in humanitarian aid work. The diplomatic function is governed by rights and obligations defined by custom and by international diplomatic and consular law. Violations of this law are extremely rare and can result in immediate bilateral sanctions and even the use of force. Diplomats shy away from taking any risks that might threaten the interest of the state that they represent. They never publicly admit mistakes, and uphold discretion and confidentiality at all times. They have a wide range of means at their disposal for expressing the dissatisfaction of the state that they are serving. The adoption of sanctions and the use of force signal the end of diplomacy.

Humanitarian organizations, on the other hand, do not have a specialized body of 'humanitarian diplomats' at their disposal. Even the Red Cross and Red Crescent National Societies do not have 'humanitarian diplomats' available to them. Furthermore, no well-established career or university training programmes in humanitarian diplomacy are available anywhere in the world. Humanitarian diplomacy is thus conducted by staff of humanitarian organizations who are not trained in diplomatic negotiations and who feel uncomfortable with the pompous title of 'humanitarian diplomats'. They do not operate in a well-established international legal regime, with the exception of international humanitarian law (IHL) and human rights and refugee law. Their immunity is not sacrosanct (with the exception of employees of organizations such as the ICRC and the IFRC) in the way that that of diplomats is. The mission of humanitarian diplomats is to gain access to victims in specific contexts. Usually the purely diplomatic share of their activities accounts for a small portion of their work, unless the situation calls for negotiations with local authorities or (armed or unarmed) opposition groups.

While humanitarian diplomacy is not practised on the specific request of beneficiaries, in certain crisis situations victims manage to make themselves heard at the national and/or international level. Humanitarian diplomacy is therefore often improvised, depending on the needs at any given moment. It does not claim to be

able to open all doors, unlike state-conducted diplomacy. It has no political pretensions whatsoever, but seeks humanitarian dialogue between the protagonists in a conflict or disaster.

Humanitarian diplomacy frequently takes risks, acknowledges errors made in assessing a situation or actions taken, and can choose to make use of the media. Humanitarian workers may at any moment find themselves being refused visas, *laissez-passer*, customs privileges, security, and protection in ways that are rarely experienced by traditional diplomats. Unlike their conventional counterparts, as a matter of principle humanitarian diplomats do not carry any national political messages and do not promote a particular model of society. Nevertheless, some organizations (especially faith-based ones) have their own specific values and/or a diffuse wish for change, which compound the already exogenous nature of international humanitarian work carried out by ‘foreigners’. Even if the principle of neutrality of the Red Cross and Red Crescent Movement does not necessarily translate into political inaction, some humanitarian aid agencies do not fully subscribe to it.

Often humanitarian aid as an element of states’ foreign policy is one instrument among many for working towards peace and promoting human rights. In that event, however, state humanitarian diplomacy differs from humanitarian diplomacy as conducted by humanitarian aid agencies in the way it becomes subordinate to political and security interests that may run contrary to the fundamental respect for the life and rights of victims. With the exception of some of the provisions in the Geneva Conventions, which benefit the ICRC<sup>14</sup> or ‘any other impartial humanitarian organization’,<sup>15</sup> states have never unconditionally committed to allowing humanitarian workers to carry out their activities.

Although diplomats and humanitarian aid workers can complement each other in times of crisis, the former can also block the latter if reasons of state prevail.

## Priority areas of humanitarian diplomacy

Different organizations have identified different priorities for humanitarian diplomacy, and in very different socio-cultural contexts, depending on the geographical location of the crises. At the ICRC, for example, humanitarian diplomacy has precise objectives: providing protection and emergency relief (health and sanitation, food security, shelter, etc.), offering assistance to detainees, searching for the missing, re-establishing family links, and ensuring the safety of ICRC staff. The ICRC and some of the other major humanitarian agencies also contribute to efforts to negotiate and codify humanitarian norms and standards in national legislation and within the framework of international organizations such as the United Nations and the International Conference of the Red Cross and Red Crescent.

14 See, for example, Art. 126 of the Third Geneva Convention; Art. 76 and Art. 143 of the Fourth Geneva Convention.

15 See, for example, Arts. 9/9/9/10 of Geneva Conventions I to IV.

As part of its Strategy 2020, approved at the end of 2009, the IFRC carried out a large-scale survey on humanitarian diplomacy among the Red Cross and Red Crescent National Societies. Twelve priority areas of action for humanitarian diplomacy were identified by National Societies:<sup>16</sup>

1. Disaster reduction
2. Promoting Red Cross/Red Crescent auxiliary status
3. Preventing diseases and other public health challenges
4. Volunteer and youth promotion, protection, and recognition
5. Legal frameworks for disaster response (e.g. disaster law) and disaster relief and reduction management
6. Protecting the humanitarian space of the Red Cross/Red Crescent
7. Climate change adaptation
8. Food security
9. Addressing migration and human trafficking
10. Promoting non-violence
11. Addressing urbanization and its humanitarian consequences
12. Humanitarian sector reforms and cluster co-ordination.

It would be very useful if surveys of this kind were also carried out by the other major humanitarian organizations, as this would raise mutual awareness of (frequently convergent) practices in the same focus areas. Humanitarian diplomacy also includes advocacy and persuasion campaigns, as carried out, for example, by Oxfam on the issue of access to drugs to fight certain pandemics, or by MSF on 'humanitarian' interventions.<sup>17</sup> Defining the area of action of humanitarian diplomacy can be a delicate and controversial matter, as recently demonstrated by the crisis in Libya. To be able to better anticipate and manage crises, it has even been suggested that a humanitarian policy is needed at the universal or United Nations level, wherein humanitarian diplomacy would be the lever for negotiation to facilitate the mobilization of human and other resources.

## Levels of humanitarian diplomacy

Actions that can be qualified as falling within the realm of humanitarian diplomacy can be identified in both the co-operation of humanitarian agencies with national governments and international organizations, and in the humanitarian work carried out on a daily basis in the field. Therefore, both nationally and internationally, and sub-nationally and locally, there are several levels of contact and intermediation in humanitarian diplomacy.

<sup>16</sup> IFRC, 23rd Session of the Governing Board, 13–15 April 2011.

<sup>17</sup> J. L. Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical Legal and Political Dilemmas*, Cambridge, Cambridge University Press, 2003, pp. 175–204.

### *Humanitarian diplomacy at the international level*

Some protagonists of humanitarian diplomacy claim that true humanitarian diplomacy is conducted only at high levels of representation and centralized decision-making, in national capitals and at the headquarters of international and regional organizations.

At the international level, a global architecture of governance for dealing with humanitarian crises is co-ordinated by the United Nations (Office for the Coordination of Humanitarian Affairs, OCHA). Participants include the main humanitarian organizations (Caritas, Red Cross and Red Crescent National Societies, MSF, Oxfam, World Vision, etc.) and the national development aid agencies, which generally comprise a disaster relief division. The major humanitarian organizations also have representative offices at the headquarters of the United Nations, the European Union, and other regional organizations. Some have permanent consultative status with the United Nations and take part in various sector competency clusters concerned with humanitarian affairs. At this level of national and international interaction, the relevant agencies engage in humanitarian diplomacy and second some of their staff on an ad hoc or long-term basis to serve as their representatives and conduct crisis negotiations.

### *Humanitarian diplomacy at the national and local level*

At the national level, governments and parastatal agencies have at their disposal civil and military resources that can be mobilized in cases of emergency, domestically or abroad. The mobilization of these resources is frequently laid down in precise national security and emergency management plans,<sup>18</sup> which include established procedures for mobilizing resources and co-ordination of the different actors to define areas of responsibility for delivering relief supplies. Traditional diplomacy is used if there is a request for assistance in the wake of a disaster with international implications, with the ministry of foreign affairs acting as the focal point for co-ordination. Humanitarian diplomacy will always be necessary, but especially in the event of domestic disasters (the ministry of the interior and civil protection forming the core of a mechanism that would, in practice, require negotiations between various public and private institutions and civil society to allow for rapid, effective action).

Since most crises have an international component in addition to the national and local one, co-ordination is required between the humanitarian diplomacy conducted in capital cities and that needed in the field to meet the needs of the victims. Co-ordination has not always produced the desired results, as illustrated recently by the natural disasters that struck Haiti and Pakistan, since it is frequently far removed from the real needs of the victims and operational response capacities on the ground. It further tends to marginalize and even ignore local

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18 IFRC, *Legislative Issues in Disaster Management and Epidemic Response*, Humanitarian Diplomacy Guidance Note No 2, Geneva, December 2011.

operators, whose capacities, including the ability to absorb national and/or foreign aid, vary from country to country.

### *Humanitarian diplomacy at the intermediate level*

Humanitarian diplomacy also has to become active at the intermediate level of relief mobilization to ensure that relief assistance is successfully delivered to the field, an issue that does not only apply to large countries with low levels of centralization. It may be that there is a weak or missing link between the different protagonists conducting humanitarian diplomacy, that is to say between the headquarters of humanitarian organizations, their regional (and occasionally national) delegations, and the staff deployed locally at the site of the crisis. Although operational systems clearly have to be centralized, decision-making processes cannot be top-down only. Humanitarian aid workers in the field are the only impartial sources of information. They constantly seek to enter into dialogue and negotiations with local authorities and opposition groups alike. The assessment of needs in the field and the subsequent mobilization and delivery of humanitarian aid require substantial humanitarian diplomacy.

### *Humanitarian diplomacy in the field*

Most humanitarian aid workers negotiate in some way every day as they carry out their work to provide assistance and protection. However, few are aware of the fact that their work calls for skills and knowhow related to humanitarian diplomacy, and most are not yet familiar with this emerging term.<sup>19</sup> One might therefore consider that the new concept of humanitarian diplomacy refers to routine negotiations for humanitarian purposes in the field, and can refer to the staff profiles and tools specific to each agency and type of humanitarian crisis.

One might also fear that, foreign humanitarian aid, which in some situations may – whether justifiably or not – be perceived as external intervention, occasionally relies on humanitarian diplomacy imposed by the great national and international stakeholders.<sup>20</sup> So far, few studies have been carried out to determine the existing or potential local capacities for negotiation, organization, and resilience (bottom-up humanitarian diplomacy) of decentralized authorities, NGOs (including those belonging to the opposition, whether armed or not), the private sector, social networks, local communities, and the media in the face of particular types of recurring natural disasters, pandemics, pollution, and other forms of crisis.<sup>21</sup> Local actors can play a role when it comes to representing the needs and rights of

19 D. Mancini-Griffolli and A. Picot, above note 1.

20 See J. L. Holzgrefe and R. O. Keohane, above note 17.

21 See Adenrele Awotana (ed.), *Rebuilding Sustainable Communities for Children and their Families Disasters*, Cambridge Scholars Publishing, Newcastle, 2010. See also Julian Gonsalves and Priyanka Mohan (eds), *Strengthening Resilience in Post-disaster Situations*, Academic Foundation together with International Development Research Centre Canada, New Delhi, 2011. Justin Veuthey, 'Inequalities and

the victims and mobilizing resources that might meet these needs. However, community-level humanitarian diplomacy has not yet been documented, and those who practise it are often sceptical or unaware of the humanitarian-diplomacy decisions made at the national and international levels in order to come to their assistance.

In practice, most humanitarian aid workers use more or less informal humanitarian diplomacy in their dealings with communities affected by crises and co-operate with local actors in an attempt to resolve humanitarian problems in their day-to-day work. It is further worth noting that when crises occur in urban settings, such as the earthquakes in Haiti in 2010 or Japan in 2011, a different form of humanitarian diplomacy is practised and that the new means of communication speed up emergency workers' response on the ground. There are municipalities that push for new concepts of decentralized or non-centralized humanitarian diplomacy, and attempt to draw up crisis anticipation and management plans that are as close as possible to the populations that they administer. However, no concepts have been developed for municipal-level humanitarian diplomacy carried out in conjunction with the local private and public-private actors indispensable for absorbing the effects of crises and starting reconstruction.

### *Multi-functional and intercultural dimensions of humanitarian diplomacy*

As observed above, humanitarian diplomacy cannot reasonably be considered a mere instrument used by humanitarian agencies for negotiation and the conduct of external relations, in the way in which traditional diplomacy handles the foreign relations of states. Doing so would mean forgetting that states and their decentralized bodies themselves conduct humanitarian policies (foreign affairs and internal and international security), as do the various civil society actors.

Humanitarian diplomacy therefore cannot be appropriated by any one single institutional actor but is multi-functional owing to the fact that it is used by different types of actors, whether official or not. It refers neither to a humanitarian diplomatic corps, nor to a clearly defined set of theories and professional practices. A growing and varied number of public and private agencies active in emergency management and their generalist or specialist staff, whether or not they are part of the traditional humanitarian sector, are required to negotiate the delivery of relief and reconstruction assistance in a wide range of situations.

Humanitarian diplomacy takes a variety of forms, depending on the specific cultural context and geographical location of the crisis setting. Although the obligation to protect and assist could be seen as a near-universal principle, common to all societies, its ethical, moral, and legal character can take various forms. Moreover, behaviour and the approach to dialogue and negotiations may vary



significantly depending on the origins and nationality of the humanitarian workers, both in agency headquarters and in the field. Any attempt at providing a body of material of humanitarian diplomacy potentially suitable for teaching and training will have to take into account these intercultural dimensions and be supported by numerous case studies.<sup>22</sup>

## The legal dimensions of humanitarian diplomacy

If public international law defines the framework for traditional bilateral and multilateral diplomacy (in the Vienna Convention in particular), the practice of humanitarian diplomacy is supported by the legal framework of International Humanitarian Law (IHL) and human rights law. Some humanitarian organizations, and in particular the components of the International Movement of the Red Cross and Red Crescent, have been granted a special role and legitimacy to enter into dialogue with states and help advance the legal framework permitting access to, and the protection of, victims of conflicts or disasters. Moreover, in recent years, the gradual elaboration of regulations for international disaster relief has paved the way for a broadening of the legal framework and scope of humanitarian diplomacy.

### Humanitarian diplomacy and international law

The foundations for the practice of humanitarian diplomacy lie in IHL as set out in the Geneva Conventions and their Additional Protocols. Addressing the full range of legal provisions relevant to humanitarian diplomacy would be beyond the scope of this article. Nevertheless, it is crucial to note that, under IHL, an impartial humanitarian organization has the right to offer its services to the Parties to a conflict.<sup>23</sup> This means that the Parties to a conflict cannot consider such offers as interference in their internal affairs. Acceptance of the legal framework for the implementation of IHL continues to grow, as illustrated by initiatives recently taken by the government of Switzerland and the 31st International Conference of the Red Cross and Red Crescent.<sup>24</sup>

Humanitarian diplomacy then comes into play to persuade states to ask for or accept outside assistance, invite all the Parties to respect their obligation to

22 Fondation française de l'Ordre de Malte, 'Diplomatie humanitaire et gestion des crises internationales', Proceedings of the International Conference on Humanitarian Diplomacy held at UNESCO, 27–18 January 2011, Paris, pp. 189–194.

23 See, for example, Article 3 common to the four Geneva Conventions of 12 August 1949 or Article 70(1) of Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts of 8 June 1977 (Additional Protocol I).

24 See 'Strategy 2009–12 of the Swiss Federal Department of Foreign Affairs on the protection of civilians in armed conflict', available at: <http://www.eda.admin.ch/eda/en/home/topics/human/hum/proci.html> (last visited December 2011). See also 31st International Conference of the Red Cross and Red Crescent, Resolution '4-year action plan for the implementation of international humanitarian law', 31IC/11/R2, available at: <http://www.icrc.org/eng/assets/files/publications/icrc-002-1130.pdf> (last visited December 2011).

facilitate and protect humanitarian assistance, and prevent or denounce any unlawful actions that might seriously harm the civilian population.

International human rights law gives greater leeway to humanitarian diplomacy insofar as it complements IHL. Even if it does not expressly refer to humanitarian aid, human rights law nevertheless requires states to guarantee minimum economic, social, civil, and cultural rights for their citizens. The international community considers that these rights include basic access to food, housing, and health care, including in emergencies.

## Humanitarian diplomacy and the international representation of the Red Cross and Red Crescent

In continuation of the relations that Henry Dunant established with the European governments and royal houses of his time, for the past 120 years the majority of the world's governments, together with the Red Cross and Red Crescent National Societies, the ICRC, and the IFRC, have attended an international conference held every four years. The conference represents humanitarian diplomacy at its finest, and over the years has made multiple contributions to the development of IHL.<sup>25</sup> The 31st International Conference was held in Geneva from 27 to 29 November 2011. The International Conferences are original in the sense that they bring together conventional diplomats as representatives of states and staff members in charge of humanitarian diplomacy at the ICRC, the IFRC, and the head offices of the National Societies. States, the ICRC, the IFRC, and National Societies take part in the deliberations and vote on an equal footing.<sup>26</sup> Politics is usually relegated to the corridors. Governments have always been represented in constant recognition of the auxiliary role, impartiality, and neutrality of the Red Cross and Red Crescent Movement. At a time when the participation and role of civil society are rising – such as during the process that led to the prohibition of anti-personnel landmines – the International Conference creates a unique synergy between diverging, and sometimes even opposing, interests. It is a form of high-level humanitarian diplomacy that can test the need for further international rules and/or recognize existing practices. It can also serve as a springboard for new ideas and regulations and prepare the ground for a full diplomatic conference of states, attended by traditional diplomats with the aim of examining new impulses for IHL, human rights law, disaster law, and other matters of humanitarian concern. The ICRC and the IFRC may be called upon to share their expertise or to help to explore new situations such as the 2011 Japanese earthquake, which, for example, was relevant to disaster law and nuclear security management.

25 On the significance of the International Conferences of the Red Cross and Red Crescent for the elaboration and development of IHL, including the Geneva Conventions and their Additional Protocols, see François Bugnion, 'The International Conference of the Red Cross and Red Crescent: challenges, key issues and achievements', in *International Review of the Red Cross*, Vol. 91, No. 876, 2009, pp. 688–689.

26 See Art. 9 of the Statutes of the International Red Cross and Red Crescent Movement (adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995 and 2006).

At the beginning of the 1990s, and following the ICRC, the League of Red Cross Societies (today, the IFRC) opened a representative office in New York. Its humanitarian diplomacy was crowned with success when it obtained UN General Assembly observer status in Resolution 49/2. This resolution is an example demonstrating that humanitarian diplomacy is no longer considered to consist merely in advocacy and persuasion carried out by state diplomacy on humanitarian priorities. This was confirmed by states in the adoption of the declaration 'Together for Humanity' at the 30th International Conference of the Red Cross and Red Crescent in 2007, and that success led directly to the preparation of the Strategy 2020 adopted by the IFRC at its General Assembly held in Nairobi in 2009. In this way, the IFRC obtained a measure of legitimacy to draft the initial outlines of its humanitarian diplomacy in 2010 and 2011, and to start putting its proposal to a debate during the 31st International Conference of the Red Cross and Red Crescent in 2011.<sup>27</sup>

The achievements of humanitarian diplomacy as conducted by the Red Cross and Red Crescent Movement are evidence of the fact that dialogue between states and humanitarian organizations can lead to useful, relevant, standard-setting advances in new or existing areas of humanitarian action. However, universal approval of this dialogue and its recognition and validation by all humanitarian organizations are yet to come. The involvement of states in multilateral humanitarian diplomacy would seem to be the determining factor, provided that humanitarian organizations are capable of co-ordinating among themselves and of arriving at a common position.

## Humanitarian diplomacy as an instrument of emerging disaster law

Disaster law (formerly, disaster reduction law) has been in formation since 2001, following a resolution adopted by the Council of Delegates of the International Red Cross and Red Crescent Movement.<sup>28</sup> The number of natural disasters has significantly increased during the last decade, as has the number of people affected.<sup>29</sup> It therefore seems essential to establish a legal and institutional framework that would ensure better co-ordination among the local, national, and international authorities having to manage disasters. Disaster law aims to facilitate and regulate disaster relief.<sup>30</sup> It intends to define international norms and standards to harmonize national disaster management regulations and practices, which may also prevent or slow down international disaster relief operations to be delivered locally. So far, more than seventy countries have adopted disaster legislation in one form or another at the national level, and sometimes also at the decentralized level.

27 IFRC, *Strengthening Disaster Laws*, Working Document, Geneva, August 2011. See also IFRC, above note 18; David Fisher, 'Domestic regulation of international humanitarian relief in disasters and armed conflict: a comparative analysis', in *International Review of the Red Cross*, Vol. 89, No. 866, 2007, pp. 345–372.

28 IFRC, 'About the Disaster Law programme', available at: <http://www.ifrc.org/en/what-we-do/idrl/about-idrl/> (last visited December 2011).

29 United Nations Development Programme (UNDP), *2009 Annual Report: Bureau for Crisis Prevention and Recovery*, United Nations, New York, 2009, p. 37.

30 IFRC, 'Law and legal issues in international disaster response: a desk study', Geneva, 2007, p. 21.

Even though it is not yet widely recognized, disaster law is increasingly being debated, especially since the major earthquake and subsequent nuclear disaster that struck Japan in March 2011. As Professor Hiroshi Higashiura noted during the Second World Conference on Humanitarian Studies held in Boston from 2 to 5 June 2011, in some Japanese prefectures the speed with which people received medical support was problematic.<sup>31</sup> Foreign medical teams had to enter into long and difficult negotiations with prefecture authorities in order to gain access to affected populations. Even when a clear humanitarian assistance request is made by a government, there remain considerable problems with the delivery of aid. In particular, customs issues can be a major obstacle. In Indonesia, a study showed that 400 containers of relief goods were still in customs in January 2006, two years after the tsunami of December 2004.<sup>32</sup>

Although some first steps towards the codification of disaster law were taken recently at the UN Law Commission in New York, it could take a number of years before the project is completed and adopted by governments.<sup>33</sup> Humanitarian diplomacy has a role to play in this process, as was demonstrated by the high-level discussions at the 31st International Conference of the Red Cross and Red Crescent in November 2011. Beyond codification, humanitarian diplomacy also has a role to play in the practical implementation of disaster law. Disaster law and disaster management plans and procedures involve a large number of national and international agencies, which have to be skilled at humanitarian diplomacy if they are to be able to mobilize the different types of institutions, human resources, funding, and logistics needed in an emergency.

In the event of a major disaster, hundreds of large and small NGOs from all over the world tend to rush to the site of the emergency to begin on-the-ground assistance. Many of them are new and have little or no previous humanitarian experience. This complicates international co-ordination and aid delivery effectiveness. To overcome this problem, some regional groupings, such as the Association of Southeast Asian Nations (ASEAN), have investigated the possibility of collaborating and working towards an ASEAN agreement on disaster law. Under this initiative, ASEAN member states would have to review their domestic disaster law systems in order to build a set of common rules and standards for foreign humanitarian intervention. To this end, they have initiated a new form of humanitarian diplomacy, both domestically and regionally.

## Areas of action of humanitarian diplomacy

If we were to assume that humanitarian diplomacy is restricted to high-level international negotiations, this would imply that it could be conducted only by senior staff of humanitarian organizations represented at the United Nations and

31 Professor Hiroshi Higashiura is currently the Director of the Japanese Red Cross Society's research institute on international humanitarian issues in Tokyo.

32 IFRC, *Humanitarian Diplomacy, Part II*, Guidance Series, Geneva, December 2011.

33 *Ibid.*, p. 13.

the departments in national ministries in charge of humanitarian policy. The present article, however, prefers to opt for a broad definition of humanitarian diplomacy, encompassing different techniques beyond negotiations and adopting first and foremost a national scope of action. It includes, in the event of disasters and international crises, negotiations among several ministries and public or private agencies, in charge of a range of tasks related to the mobilization, co-ordination, and deployment of humanitarian response resources. All countries have in place national and decentralized plans for the management of domestic or international humanitarian crises. However, irrespective of the precision and rigour with which procedures are followed, there is invariably intense communication and negotiation between actors both upstream and downstream of decisions to take protection and relief action in the field.

### Diplomacy involving advocacy and awareness-raising

Diplomacy involving advocacy and awareness-raising is directed at a wide range of national and international actors that are often far removed and unaware of the need for humanitarian assistance. For example, some Red Cross and Red Crescent National Societies have developed awareness-raising campaigns to inform members of parliament about IHL or disaster management regulations.<sup>34</sup> Moreover, in November 2011 the IFRC published a manual outlining its guidelines for a humanitarian diplomacy focused primarily on awareness-raising and advocacy, with a view to ensuring access to victims of crises at all times.<sup>35</sup>

Efforts to raise awareness of the challenges encountered in humanitarian crises and of the appropriate responses must be addressed to both states and the different civil society actors. In an actual crisis, advocacy must take the place of awareness-raising, in order to exert the greatest possible pressure on the civil and military authorities and thus to make it possible to meet the needs of victims and relieve their suffering.

### Humanitarian diplomacy and resource mobilization in emergencies

Even the most seasoned humanitarian agencies have to invest an enormous amount of time and effort into negotiating the mobilization, deployment, good management, and co-ordination of the resources needed to respond to emergencies. The multiplication of actors in hyper-mediatized major international crises makes this a delicate and sensitive job if the goal of ensuring the independence and transparency of humanitarian action (humanitarian action accountability) is to be achieved. Furthermore, resources are limited both nationally and internationally, and there is intense competition for access to them. The emergence of humanitarian diplomacy as a concept bears witness to a recent trend among governments, humanitarian

34 IFRC, above note 18.

35 IFRC, *Humanitarian Diplomacy, Part I: General Guidelines for the Practice of Humanitarian Diplomacy*, Guidance Series, Geneva, December 2011.

organizations, the private sector, and civil society to work harder before the outbreak of crises so as to ensure a more efficient operational response in the field and to improve post-crisis accountability.

Humanitarian diplomacy called upon to act on the international scene in times of crisis is joined by another form of humanitarian diplomacy based on the presence – or absence, depending on the country – of national emergency management plans, fund-raising regulations, and mobilization of logistics resources implemented and co-ordinated by a multitude of public security institutions carrying out various general or sectoral mandates.<sup>36</sup> In the event of an international crisis, these national institutions have to deploy the full range of humanitarian diplomacy tools to mobilize, co-ordinate, and deploy the national relief assistance best suited to the crisis situation, in synergy with partners in the international community working towards the same goal.

Negotiations conducted with a view to mobilizing national and international resources before humanitarian operations can take place are followed by repeated or continuous negotiations with the authorities, local communities, and all other actors directly or indirectly involved in a conflict or disaster. Negotiations that were successful in the sense that sufficient resources were mobilized for a humanitarian intervention can fall short if a second round of negotiations fails by not ensuring constant access to the victims and the right conditions for delivering aid.

A talent for mediation, for knowing when to apply pressure and when to hold back, and for patience and perseverance, plays a major role and can be acquired in the field and through experience but also through simulation exercises and training (in diplomacy, psychology, or intercultural sociology).<sup>37</sup> In addition, there is a need for specialist resource-management techniques to ensure the transparency of humanitarian assistance operations and to avoid the misappropriation of funds and material resources by local actors. Accusations of poor governance and corruption can rapidly harm the reputation of a humanitarian agency. In such situations, humanitarian diplomacy has to intervene and expertly handle the means of information and communication to preserve the integrity and independence of humanitarian actors in the eyes of states, private donors, and the wider public.

## External relations and humanitarian coalitions

The global and regional reach of humanitarian organizations varies widely, ranging from representative offices in the capitals of the states and/or regions in which they are active to, in the case of the largest organizations, permanent consultative status

36 IFRC and OCHA, *Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, Pilot Version, Geneva and New York, November 2011.

37 See, for example, IFRC, Certificate Program in Humanitarian Diplomacy (new), Red Cross Red Crescent Learning Program together with Diplo Foundation, <http://www.ifrc.org/learning> (last visited December 2011). ICRC and Swiss Foreign Ministry, *Humanitarian Access in Situations of Armed Conflict: Field Manual*, presented at the 31st International Conference of the Red Cross and Red Crescent, 27–29 November 2011, Geneva.

at the United Nations or other global or regional intergovernmental agencies. Their headquarters, in contrast, often do not have internal structures that clearly manage external relations (these are not to be confused with their communication and public relations services). It also happens that there is confusion or even rivalry between the general services, operations, external relations, communication, and public relations departments. Only the large organizations have legal services and standards, control, assessment, and ethics committees, which are increasingly called for by institutional donors (states, churches, businesses, foundations, etc.), the general public, and social media.

Emergency appeals, fund-raising and volunteer campaigns, staggered disbursement of financing, and the implementation of operational resources are governed by procedures that require employees well versed in diplomacy and the increasingly necessary humanitarian co-ordination among organizations and their international networks. This type of diplomacy is frequently politicized and exposed in the media of both donor nations and the countries receiving the humanitarian assistance. All these reasons demonstrate the importance of bringing resources and actors together.

The growing number of national coalitions and international platforms for collaboration between humanitarian organizations has given rise to new exchanges of dialogue and inter-institutional co-ordination. The objective of this new type of humanitarian diplomacy is also to become more effective at influencing governments and civil societies so as to better anticipate the risks of humanitarian crises and to have a greater say in how they are resolved.<sup>38</sup>

## Challenges to the implementation of humanitarian diplomacy

The following section presents a series of challenges for contemporary humanitarian diplomacy related to the environment in which humanitarian actors operate today.

### The challenge of humanitarian access in times of internal conflicts

During the last decade, the world has witnessed a major increase in internal armed conflict. In contrast to international armed conflicts, which have become increasingly rare, the number of internal disputes has exploded in recent years (up by 25% in 2004–2008).<sup>39</sup> An important characteristic of these conflicts is the types of actors involved. As in Sierra Leone, or more recently Libya, today's conflicts tend to pit government forces against non-state armed groups and tend to involve an increasing number of international actors (as in Afghanistan and Iraq). Non-state

38 An example of a national coalition is the Canadian Humanitarian Coalition, grouping Oxfam Canada, Oxfam Québec, Care, and Save the Children. The Tsunami Evaluation Coalition (TEC) platform was set up in London in 2005–2006 to enhance collaborations among major NGOs conducting recovery projects in the wake of the Indian Ocean tsunami.

39 Human Security Centre, *The Human Security Report 2009/2010: The Causes of Peace and The Shrinking Costs of War*, Oxford University Press, Oxford, 2011, p. 159.



armed groups often seek ‘to overcome their military inferiority by employing strategies that flagrantly violate international law’.<sup>40</sup> For instance, as reported by Lisa Grande, 116 incidents involving looting or violence towards humanitarian staff by rebel militia and the Sudan People’s Liberation Army have severely jeopardized humanitarian operations in South Sudan.<sup>41</sup> Nevertheless, to avoid generalizations it should be noted that not all non-state armed groups violate the law. Meanwhile, governments involved in conflicts do not necessarily respect the fundamental principles of IHL. These changes in the reality of today’s conflicts have brought uncertainty and unpredictability to the field. Consequently, humanitarian work on the ground has become even more complicated and dangerous.

Furthermore, since the beginning of the post-2001 ‘global fight against terrorism’, the perceptions by states of non-state armed groups (local and transnational ones) have been transforming. States have raised new obstacles to humanitarian agencies wishing to gain access to crisis areas and to reach territories where non-state groups are active. As some of these groups are classified as terrorist organizations, certain states have enacted legislations to criminalize any engagement with such groups, for fear of conferring legitimacy on them.<sup>42</sup>

The only possible humanitarian diplomacy response is multidimensional negotiations to obtain access to civilians in areas controlled by armed actors on any of the sides to a conflict. In that context, it is worth remembering that IHL is not devoid of provisions specifically relating to non-international armed conflicts.<sup>43</sup> Adding new provisions on non-international armed conflicts should not be considered an appropriate solution to the problem of regulating such conflicts. As the ICRC’s President Jakob Kellenberger noted in 2010, it would be more appropriate to strengthen the existing legal framework and to improve compliance by the Parties to conflicts.<sup>44</sup>

## The challenge of the use of force to protect civilians

The difficulties faced by humanitarian organizations do not come only from parties directly involved in conflict. Confronted with the new reality of internal conflicts, it has become usual for the international community to intervene in places where human rights have been violated, paving the way for what is now considered the

40 Report of the Secretary-General on the Protection of Civilians in Armed Conflict, UN Doc. S/2010/579, 10 November 2010, p. 2.

41 See ‘South Sudan facing severe food shortages, UN agencies warn’, *The Guardian*, 29 September 2011, available at: <http://www.guardian.co.uk/global-development/2011/sep/29/south-sudan-facing-food-shortages> (last visited December 2011). Lisa Grande is the UN Deputy Resident and Humanitarian Coordinator for Southern Sudan.

42 See, for instance, Naz K. Modirzadeh, Dustin A. Lewis, and Claude Bruderlein, ‘Humanitarian engagement under counter-terrorism: a conflict of norms and the emerging policy landscape’, in *International Review of the Red Cross*, Vol. 93, No. 883, September 2011, pp. 623–647.

43 See the obligations spelled out in Art. 3 common to the four Geneva Conventions and Additional Protocol II, as well as the ICRC Customary Law study.

44 Jakob Kellenberger, ‘Strengthening legal protection for victims of armed conflicts: the ICRC study on the current state of international humanitarian law’, in *International Review of the Red Cross*, Vol. 92, No. 879, September 2010, p. 800.

Responsibility to Protect.<sup>45</sup> These interventions by the international community may be in the form of military assistance or of economic sanctions, as we have witnessed in Libya.

On 7 March 2011, the UN Security Council adopted Resolution 1973 on Libya. This resolution was the first concrete step taken by the international community since the beginning of the uprising against the Gadhafi regime. Apart from the immediate cease-fire requested by the Security Council, Resolution 1973 also established a no-fly zone, which was accompanied by different economic sanctions.<sup>46</sup> These sanctions reinforced those undertaken in Resolution 1970. Article 9 of Resolution 1970 states that 'all Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to the Libyan Arab Jamahiriya ... of arms and related materiel of all types'.<sup>47</sup>

Such sanctions are likely to amplify the difficulties faced in the field by humanitarian workers. In an interview in summer 2011, Boris Michel indicated that, although not incompatible with humanitarian principles, sanctions have contributed to shortages in the health sector and other vital services.<sup>48</sup> Under such circumstances, the concept of humanitarian diplomacy may require an even more necessary but highly delicate co-ordination between political and military decision-makers, and humanitarian staff in the field.

Humanitarian diplomacy is not only about gaining access to those affected by armed conflicts, but also about maintaining and assuring the effectiveness of this access. The Libyan 'humanitarian' intervention under a very rare UN Security Council resolution indicates that the universal organization itself may adopt certain decisions without anticipating their consequences on the respect of fundamental humanitarian principles.<sup>49</sup> Humanitarian diplomacy was created to fill the gaps, and may be used more frequently in the future under similar circumstances.

## The challenge of engaging the private sector

Humanitarian actors need to create a new form of humanitarian diplomacy in order to interact with the corporate sector. This may include the negotiation of codes of conduct and volunteer commitments, disaster preparedness to avoid mismanagement and financial losses, and the building of public-private partnerships for delivering food security and livelihood security.

Humanitarian diplomacy has to take into account private entities, especially when they carry out local security or post-disaster management activities. Private security firms are gradually replacing civilian and military security forces in

45 J. L. Holzgrefe and R. O. Keohane, above note 16, pp. 175–204.

46 UN Security Council Resolution 1973, 17 March 2011, Art. 6.

47 UN Security Council Resolution 1970, 26 February 2011, Art. 9.

48 ICRC, 'Libya: humanitarian challenges six months on', Interview with Boris Michel, 8 August 2011, available at: <http://www.icrc.org/eng/resources/documents/interview/2011/libya-interview-2011-08-12.htm> (last visited December 2011). Boris Michel is the ICRC's head of operations for North and West Africa.

49 Bruno Pommier, 'The use of force to protect civilians and humanitarian actions: the case of Libya and beyond', in this edition.

many developing countries, but have more than once acted as new ‘mercenaries’ intervening in local and violent disturbances. They are almost entirely unprepared for humanitarian relief situations. Private entities play an increasing role in post-disaster management in sectors such as water and sanitation, shelter, health in emergencies, and food security. They sometimes compete with humanitarian organizations or duplicate their work instead of building public–private partnerships. Humanitarian diplomacy has to make them aware of their responsibilities. This could be facilitated by voluntary commitments to respect IHL and human rights, both civil and socio-economic.<sup>50</sup> However, the impact of voluntary corporate responsibility commitments – such as the code of conduct on ‘Voluntary Principles on Security and Human Rights’ adopted in 2000 by some petroleum and mining corporations – remains questionable. Since the adoption in 1999 of the United Nations Global Compact, some humanitarian agencies, together with a first group of leading transnational corporations, have made use of new public–private initiatives to obtain direct corporate support. The insurance and re-insurance corporate sector is a good example, as the direct and indirect costs of natural disasters have exploded in recent years, including in developed countries. Total losses suffered by the Japanese private sector after the 2011 tsunami and the financial impact of the exceptional floods in Thailand amounted to several dozen billion US dollars. Therefore, humanitarian diplomacy can encourage the corporate sector to play more than a charity role and to invest in disaster preparedness and management.<sup>51</sup>

### The challenge of inter-institutional co-ordination of emergency aid

As became clear after the 2004 Indian Ocean tsunami and the major earthquake that struck Haiti in 2010, the architecture of the international humanitarian system faces a number of problems related to co-ordination among governments, humanitarian agencies, development aid NGOs, and the private sector. There are tensions between the need for inter-agency co-ordination to ensure the maximum rapidity, wide-scale delivery, and effective impact of humanitarian aid and the independence of each public or private foreign agency travelling to the site of an emergency to assist local humanitarian actors already present. Problems of co-ordination can lead to delays, duplication, or loss of information, which are ultimately detrimental to those in need.

Furthermore, governments are often slow in issuing an official statement requesting humanitarian assistance.<sup>52</sup> When such statements are made, the lack of international, national, and local relief co-ordination may delay or hamper

50 See, for instance, the Montreux document on private military and security companies (PMSCs), which summarizes the legal framework that has a bearing on PMSCs in times of armed conflict, available at: <http://www.eda.admin.ch/psc>; and the more recent International Code of Conduct for Private Security Service Providers (ICoC), available at: <http://www.icoc-psp.org/> (both last visited December 2011).

51 World Economic Forum, *Global Risks 2010: A Global Risk Network Report*, a World Economic Forum Report in collaboration with CITI, MMC, Swiss Re, Wharton School Risk Centre and Zurich Financial Services, Geneva, January 2010.

52 *Ibid.*, p. 89.

the emergency aid process. The lack of crisis preparedness and the absence of a co-ordinated response is not limited to developing countries. Hurricane Katrina in the USA and the recent earthquake in Japan are obvious illustrations. There are many reasons why governments are reluctant to request relief assistance. The sensitive issue of sovereignty plays a role in many cases. Some governments do not want to acknowledge that they do not have the necessary resources to respond to the needs of their own citizens.<sup>53</sup>

Another co-ordination challenge faces those humanitarian agencies that are increasingly having to interact with a wide spectrum of international and local, large and small, development NGOs, most of which have no post-crisis reconstruction experience and often create confusion and co-ordination problems on the sites of conflicts or disasters. Some of these NGOs are well funded but do not necessarily subscribe to any international humanitarian agenda. They merely seek to impose their own vision of society, be it religious or otherwise. As a result, humanitarian diplomacy is needed as a tool for facilitating closer collaboration among organizations sharing the same fundamental values and for cautiously negotiating selective partnerships with the private sector.

### The challenge of an integrated approach

Humanitarian diplomacy can be thought of as an instrument to promote disaster preparedness, risk reduction and recovery, and peace and development. The concept of security has become much broader and no longer refers exclusively to military threats. As countries feel exposed to multiple threats (such as terrorism, pandemics, trafficking, migrations, and climate change), many governments consider that the only effective response is the integration of political, military, and humanitarian means. However, this integrated approach can undermine the independence of humanitarian action. Analysts have been critical of the so-called securitization of humanitarian aid and development assistance. The *de facto* association of humanitarian aid with Western security interests in fragile or failed states such as Afghanistan, Haiti, and Somalia has threatened the independence and impartiality of humanitarian aid and has resulted in considerable confusion among victims and aid recipients. In some cases, military and private security firms have even replaced humanitarian workers in the delivery of aid, without taking into account existing humanitarian programmes and without any understanding of the links between emergency relief and the reconstruction of local capacity for development.<sup>54</sup>

### The challenges (and opportunities) of the new information technologies

The information revolution and the rise of instant global communications have resulted in the media and public opinion lobbying both traditional diplomacy and

53 IFRC, above note 30, p. 13.

54 See, for instance, Fiona Terry, 'The International Committee of the Red Cross in Afghanistan: reasserting the neutrality of humanitarian action', in *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, pp. 173–188.

humanitarian diplomacy for better accountability and transparency, even in situations in which confidentiality should preferably be upheld. A single event on the ground instantly diffused on the Internet may grab the attention of governments and disrupt a difficult humanitarian negotiation or the early stages of a relief operation.<sup>55</sup>

From another viewpoint, humanitarian agencies tend more frequently to use opinion leaders to put direct or indirect pressure on states or non-governmental actors preventing access to the most vulnerable population groups. It is not surprising that the largest humanitarian agencies consider greater openness a necessity. They have made efforts to build their own public relations, and have done so in several languages. A new form of humanitarian diplomacy has emerged in which each field office has contacts with the local, regional, and even global media.

Finally, new technologies can also play a role in the professionalization of humanitarian action in general and humanitarian diplomacy in particular. For instance, some organizations have teamed up to develop virtual platforms to share experience and knowledge in humanitarian affairs; examples include the Tsunami Evaluation Coalition (TEC) established in London in 2006, and the common norms and standards for humanitarian operations, such as The Sphere standards.<sup>56</sup>

## The challenge of building human resources in the service of humanitarian diplomacy

The growing number and diversity of crises has resulted in new needs (and new terminology, some of which consists of simple, short-lived slogans, whereas other freshly coined terms designate new, concrete priorities). For example, humanitarian organizations have created posts for food security officers and, since the 2004 tsunami, officers in charge of post-crisis economic reconstruction (also called economic and livelihood recovery officers). In September 2010, the IFRC for the first time set up an entire division dedicated to humanitarian diplomacy.

The increase in the frequency, diversity, and intensity of crises requires greater levels of professionalism from humanitarian actors, who struggle to respond to needs with appropriate human resource policies and by developing training means that, even in the most established organizations, remain limited. Alliances and networks also attempt to help address the new demands for greater professionalism.<sup>57</sup>

55 An example of the impact on humanitarian actors is Wikileaks and, for instance, the release of confidential ICRC negotiations.

56 See, for instance, the Sphere Project: <http://www.sphereproject.org>; or the different contributions of ALNAP, available at: <http://www.alnap.org> (both last visited December 2011).

57 International Association for Humanitarian Studies (IAHS), Professionals in Humanitarian Assistance and Protection (PHAP), Network on Humanitarian Assistance-International Association of Universities (NOHA), Enhancing Learning and Research for Humanitarian Assistance (ELRHA), Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP). See also: ELRHA, *Professionalising the Humanitarian Sector: A Scoping Study*, Boston and London, 2011, available at: <http://www.elrha.org> (last visited December 2011); Geneva Center for Education and Research in

Humanitarian agencies are increasingly recruiting staff members of all nationalities to work both at their headquarters and in operational areas; in addition, local staff are recruited in the field. This globalization of the humanitarian workforce can be expected to result in a more multicultural approach to, and ways of practising, humanitarian diplomacy, which is indispensable given the diversity of the contexts and crisis locations. However, this positive trend also makes it necessary to strengthen individual and institutional humanitarian capacities to build a community of practice for humanitarian diplomacy while respecting the diversity of cultures and situations. Higher-education institutes and universities working together with professionals in humanitarian assistance can assist with this.<sup>58</sup>

Whether at headquarters or in the field, humanitarian diplomacy calls for interpersonal skills and gifts that are not innate. Most humanitarian aid workers are specialized in operational, logistical, or technical tasks, and the emergency and insecurity inherent in crisis situations leave them little space to work on their, usually improvised, humanitarian diplomacy skills. Although there is as yet no formal training in humanitarian diplomacy available, several ideas have been put forward and are being tested:<sup>59</sup>

- i. Diplomatic training combined with information on best practices in humanitarian action;
- ii. Documenting humanitarian diplomacy knowhow that is based on concrete experiences suitable for case studies;
- iii. Building the psychological and interpersonal skills of humanitarian workers as part of their training in intercultural negotiation, with a view to developing their capacities to engage in humanitarian diplomacy in various international crises and different regions of the world;
- iv. Mastering the appropriate communication tools and making selective use of the new social media.

## Conclusion

This article has aimed to explore the outlines of the emerging concept of humanitarian diplomacy from both the theoretical and the operational perspectives in a way understandable to the layperson. Humanitarian diplomacy deserves the attention of both those who practise it and researchers working in the

Humanitarian Action, *Humanitarian Studies 2010: University Training and Education in Humanitarian Action*, Geneva, 2010.

58 See, for example, the pilot initiatives in disaster management training set up by particularly innovative educational institutions such as BRAC University, Bangladesh, and the All India Disaster Management Institute, India.

59 A pilot training programme in humanitarian diplomacy and advocacy has been tested by the Geneva-based Diplo Foundation together with the IFRC during the first semester of 2012.

field of humanitarian studies. This article has further attempted to clarify the definition and area of action of humanitarian diplomacy, even if these remain subject to interpretation and different prioritizations. The main defining characteristics of humanitarian diplomacy can therefore be summed up as follows:

- Its objectives are to persuade others to take measures to protect and/or assist the victims of conflict or disasters, and/or to obtain access to these groups to carry out these activities directly.
- Its instruments are negotiations, communication, and awareness-raising activities conducted from the headquarters of organizations and/or in the field.
- It can take place at different decision-making and geographical levels, both centralized and decentralized, and either internationally or at various sub-national levels (national capital, provinces, large municipalities, districts, small towns, etc.).
- Its beneficiaries are victims and any other vulnerable population groups affected by man-made or natural crises.
- It is conducted by a wide range of governmental, inter-state and private civil society actors, which can be specialized in humanitarian assistance or offer more general services related to a variety of risk prevention and crisis-management services.
- Depending on circumstances, humanitarian diplomacy is either discreet or makes use of the media, is informal or official, and operates from the centre to the periphery (from representatives in national or regional capitals or at the United Nations), but increasingly also in the field, where communities affected by crises are developing their capacities for information and organization. These communities practise their own form of humanitarian diplomacy by talking to the authorities, opposition groups, and both national and foreign humanitarian actors.
- Its legal basis can be found mainly in IHL, human rights, and emerging disaster law.

The question as to the level of the actors involved in humanitarian diplomacy remains unresolved. Some consider humanitarian diplomacy to be reserved to a very limited number of persons in charge of high-level international negotiations and external relations at the most senior level (ministries of foreign affairs and national security, United Nations and regional organizations, international humanitarian aid agencies). Others consider humanitarian diplomacy to be conducted by all actors in charge of negotiating the mobilization, deployment, co-ordination of and effective access of emergency relief.

As in the case in conventional diplomacy, if we were to examine the sum of the conceptual and practical components of humanitarian diplomacy, one could readily agree on a broad framework of its practice. Like all other forms of diplomacy, humanitarian diplomacy is multiform and multicultural: situations in the field, the approaches to negotiations, the groups of actors involved, and the applicable codes



of behaviour and instruments being used vary from culture to culture and thus cannot be standardized.<sup>60</sup>

The 31st International Conference of the Red Cross and Red Crescent promoted a vision of humanitarian diplomacy focused mainly on advocacy and international disaster reduction law. It also prompted National Society and state representatives to consider humanitarian diplomacy as a tool for negotiating mobilization and more efficient and better co-ordinated deployment of protection and humanitarian relief resources. Over the next few years, humanitarian diplomacy may become enshrined in national and international disaster law, which will be required to fit in with national laws, regulations, plans and procedures pertaining to risk prevention and crisis management.

60 See Rama Mani and Thomas G. Weiss (eds), *Responsibility to Protect: Cultural Perspectives in the Global South*, Routledge, London, 2011. See also Michel Veuthey, 'Diplomatie humanitaire: préserver les chances de la diplomatie humanitaire au moment où elle est la plus nécessaire', in *La Revue Géopolitique*, 2 October 2011, available at: <http://www.diploweb.com/Diplomatie-humanitaire.html> (last visited December 2011).



# New information technologies and their impact on the humanitarian sector

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## **Abstract**

*New information and communication technologies are impacting the humanitarian sector in profound ways. Both crisis-affected communities and global volunteer networks are becoming increasingly digital. This means that the former are increasingly the source of relevant crisis information, while the latter are becoming more adept at managing and visualizing this information on live crisis maps. This article introduces the field of crisis mapping and provides key examples from Haiti, Russia, Libya, and Somalia to demonstrate how digitally empowered affected communities and volunteer networks are reshaping humanitarian response in the twenty-first century.*

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Mobile communication technology has been the most rapidly adopted technology in all of human history. Recent statistics from the International Telecommunications Union reveal that some 5.3 billion mobile phones existed by the end of 2010, a figure that represents a 25% increase over just the previous year.<sup>1</sup> By the end of 2012, the number of mobile-connected devices is expected to exceed the world's

\* Patrick Meier blogs at [iRevolution.net](http://iRevolution.net).

population.<sup>2</sup> In addition, over two billion people worldwide now have access to the Internet, with half a billion of these accessing the Internet by mobile phone – a number set to double by 2015.<sup>3</sup> Indeed, mobile data traffic is projected to increase eighteen-fold by 2016, and the Middle East and Africa are forecasted to have the strongest mobile data traffic growth of any region in the world, followed by Asia.<sup>4</sup> Meanwhile, the number of Facebook users is rapidly approaching 1 billion while more than 100 million active Twitter users are sending over 1 billion tweets every week.<sup>5</sup> Finally, more than 500 million Skype users are now talking for free thanks to voice-over IP technology. Staggering though these figures may be, the information revolution is only just getting started.<sup>6</sup>

Today's information revolution, however, is not only about greater access to information and communication channels. The dramatic fall in communication costs combined with the real-time, two-way nature of social media platforms is increasingly responsible for this revolution. Of course, some new technologies are acting as veritable *connection technologies* that facilitate both organization and collective action more rapidly and with more scalability than ever before. Indeed, the rapid spread of new information and communication technologies (ICTs) is democratizing information access, participation, and agency. What are the implications for the humanitarian space and how can organizations responding to crises make use of these technologies and the new players that come with them?

The purpose of this article is to assess the impact of new ICTs on the humanitarian sector. It focuses on the response to specific humanitarian crises – in Haiti, Russia, Libya, and Somalia – to illustrate how crisis-mapping technologies and digital volunteers are changing humanitarian organizations.<sup>7</sup> Each of these case studies highlights the different facets of humanitarian response that new technologies are changing. For example, ICTs are changing the ways in which information is collected and processed; they are bringing new volunteer networks to the fore of humanitarian response; and, as a result, they are spurring organizational change within established humanitarian organizations. One of the common threads

1 Steven Livingston, 'Africa's evolving infosystems: a pathway to security and stability', research paper from the African Center for Strategic Studies, National Defense University Press, Washington DC, March 2011, available at: [http://africacenter.org/wp-content/uploads/2011/02/ARP2\\_02072011.pdf](http://africacenter.org/wp-content/uploads/2011/02/ARP2_02072011.pdf) (last visited December 2011).

2 See Computer Information System Company (CISCO), 'CISCO visual networking index: global mobile data traffic forecast update, 2011–2016', available at: [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-520862.html?utm\\_&&&](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html?utm_&&&) (last visited December 2011).

3 S. Livingston, above note 1.

4 See CISCO, above note 2.

5 For a brief overview of various social media platforms, see 'Social Media 101', 9 December 2011, available at: <http://www.cmlor.com/blog/social-media-101> (last visited December 2011).

6 *Ibid.*

7 Digital volunteers who are engaged in Volunteer and Technical Communities are playing an increasingly important role in humanitarian response, as noted in the *Disaster 2.0 Report: The Future of Information Sharing in Humanitarian Emergencies* published by the UN Foundation/OCHA/Vodafone Foundation/HPCR, available at: <http://www.unfoundation.org/what-we-do/legacy-of-impact/technology/disaster-report.html> (last visited December 2011). One such volunteer and technical community is the Standby Volunteer Task Force (SBTF), which was co-founded by the author and which figures as a case study in this article.

in each of these case studies is the use of crisis maps to aid humanitarian response. The first section of the article introduces the new field of crisis mapping and the underlying technologies that power live crisis maps. Sections two, three, four, and five comprise crisis-focused case studies of crisis mapping in action. The sixth and final section weaves together the lessons learned from the case studies and formulates some recommendations on this basis.

## Crisis mapping

The proliferation of live maps is driven by the increasing availability of real-time geo-referenced data and new mapping technologies that are often free, open-source, and easier to use than earlier, proprietary systems. This new frontier in the field of geography is commonly referred to as 'neogeography' and consists of:

techniques and tools that fall outside the realm of traditional GIS, Geographic Information Systems. Where historically a professional cartographer might use ArcGIS, talk of Mercator versus Mollweide projections, and resolve land area disputes, a neogeographer uses a mapping API like Google Maps, talks about GPX versus KML, and geotags his photos to make a map of his summer vacation. Essentially, neogeography is about people using and creating their own maps, on their own terms and by combining elements of an existing toolset. Neogeography is about sharing location information with friends and visitors, helping shape context, and conveying understanding through knowledge of place.<sup>8</sup>

The birth of neogeography is often traced back to Google's acquisition of Keyhole Inc. in 2004, which led to the launch of Google Earth that same year. Google Maps went live shortly thereafter. Together, these mapping platforms went a long way to democratize interactive mapping and broaden public access to satellite imagery. In 2007, the Harvard Humanitarian Initiative (HHI) at Harvard University launched a two-year programme on Crisis Mapping and Early Warning to study the potential use of live mapping technologies in humanitarian response.<sup>9</sup>

The focus on crisis meant that collecting and displaying information in real time was imperative. The programme thus catalysed conversations between a wide number of technology professionals, geographers, and seasoned humanitarian practitioners. Recognizing the tremendous potential that existed, HHI launched the International Network of Crisis Mappers, a global network of some 4,000 members in over 150 countries actively interested in the application of live mapping technologies to crisis situations. Established in 2009, the Crisis Mappers Network has since become an important part of the neogeography story.<sup>10</sup>

8 Andrew Turner, *Introduction to Neogeography*, O'Reilly Media, 2006, available at: [http://pcmlp.socleg.ox.ac.uk/sites/pcmlp.socleg.ox.ac.uk/files/Introduction\\_to\\_Neogeography.pdf](http://pcmlp.socleg.ox.ac.uk/sites/pcmlp.socleg.ox.ac.uk/files/Introduction_to_Neogeography.pdf) (last visited December 2011).

9 The author, Patrick Meier, co-founded and co-directed this programme with Dr. Jennifer Leaning. For more information on the initiative, see: <http://hhi.harvard.edu/programs-and-research/crisis-mapping-and-early-warning> (last visited December 2011).

10 See 'Crisis mappers: the humanitarian technology network', available at: <http://www.CrisisMappers.net> (last visited December 2011).

Another milestone was the launch of the first Ushahidi map in 2008.<sup>11</sup> This simple web-based platform allowed Kenyans to report human rights violations during the post-election unrest.<sup>12</sup> Witnesses submitted these reports via web-form, email, and SMS. Reports from the mainstream media were also mapped. This enabled the ‘crowd’ to bear witness collectively to the unfolding violence across the country. Since then, over 20,000 Ushahidi maps have been launched in more than 140 countries. The launch of a hosted version of the Ushahidi platform – Crowdmap – in 2010 accounts for the majority of these maps. What is perhaps novel about the Ushahidi mapping technology is that it is free, open-source, and easier to use than proprietary tools. In addition, the information mapped on the platform is often ‘crowdsourced’ live, rather than collected months later.<sup>13</sup> This is particularly true for crisis-mapping applications of the Ushahidi platform. Of note are the crisis maps launched in Haiti, Chile, Pakistan, Russia, Syria, Tunisia, Egypt, New Zealand, Sudan, Libya, and, most recently, Somalia.

The taxonomy of crisis mapping is still evolving, but there are four core pillars or phases that are typically discussed when speaking about it: information collection, visualization, analysis, and decision support. Before information is mapped, it needs to be collected. Today’s technologies provide more possible channels for information collection than before and also new methodologies. For example, information can be collected from the social media space, such as Twitter. In addition, crowdsourcing can be used as a methodology to collect information from Twitter. The key component, however, is that the data collected have a geographic component so that the information can be visualized – the second phase of crisis mapping. The consequences of these new information collection technologies and methodologies for humanitarian response are vast: when disaster strikes, access to information is just as important as access to food and water. This link between information, disaster response, and aid was officially recognized by the Secretary-General of the International Federation of the Red Cross and Red Crescent Societies (IFRC) in the 2005 *World Disasters Report*.<sup>14</sup> Since then, disaster-affected populations have become increasingly digital, thanks to the widespread

11 See Ushahidi’s website: <http://www.Ushahidi.com> (last visited December 2011). Ushahidi means ‘witness’ or ‘testimony’ in Swahili.

12 A political and humanitarian crisis escalated in Kenya after the incumbent president, Mwai Kibaki, was declared the winner of the presidential elections that took place in December 2007. Supporters of the opposition candidate Raila Odinga cited extensive election fraud. A number of politicians and businessmen fuelled the tension, which resulted in some 600,000 displaced and over 1,000 killed. The Kenyan government played down the severity of the situation and placed some constraints on national media coverage.

13 The journalist Jeff Howe first coined the term ‘crowdsourcing’ in 2006 to explain a new phenomenon that he was observing. Some companies were no longer simply outsourcing work, but had begun to draw on a far larger ‘labour force’, namely anyone available and interested. Wikipedia is an example of a crowdsourced encyclopaedia. In Kenya, Ushahidi took the same approach to the collection of crisis information. Note, however, that the Ushahidi platform is an information collection and mapping *tool* whereas crowdsourcing is a *methodology* that can be used to collect information. Other methodologies, such as representative sampling, can also be used with the Ushahidi platform.

14 See International Federation of the Red Cross and Red Crescent Societies, 2005 *World Disasters Report: Focus on Information in Disasters*, 1 October 2005, available at: <http://www.ifrc.org/Global/Publications/disasters/WDR/69001-WDR2005-english-LR.pdf> (last visited December 2011).

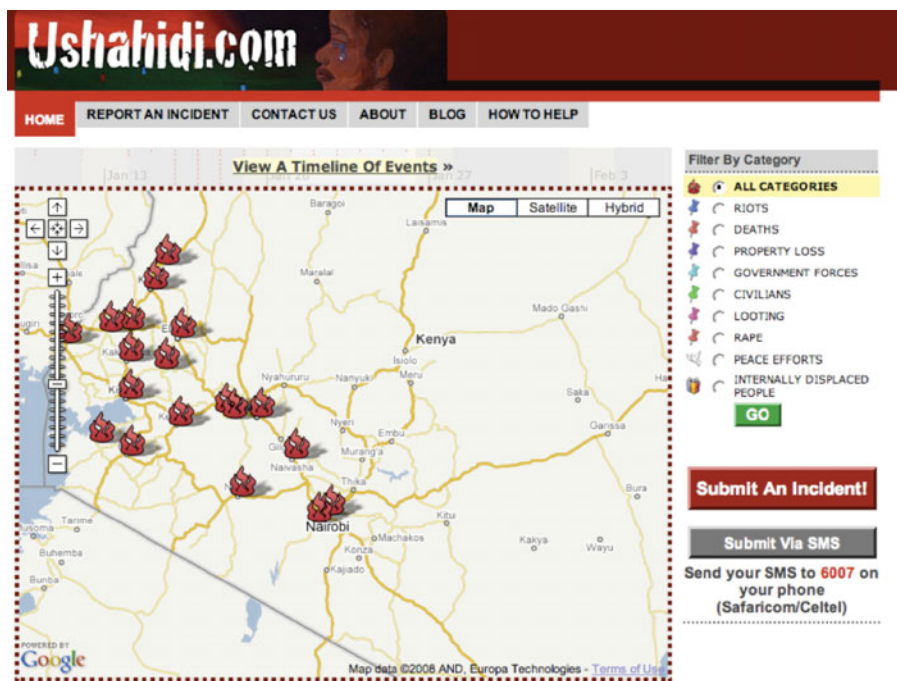


Figure 1. Screenshot of the first Ushahidi platform, launched in Kenya in January 2008.

adoption of mobile technologies. Indeed, as a result of these mobile technologies, affected populations are increasingly able to source, share, and generate a vast amount of information, which is completely transforming disaster response.

In terms of crisis-mapping visualization, there are more bad ways to visualize information than good ways. So cartography remains as important as ever, and more challenging since the underlying data is increasingly dynamic rather than static. In other words, visualizing data over time and space, such that patterns become visible and intuitive, is an important component of crisis mapping. But not all patterns are immediately discernible via simple visual analysis. This explains why geo-spatial analysis is also core to crisis mapping. Bringing otherwise hidden patterns to the surface by using GIS analysis and spatial econometrics enables users to make more informed decisions—the fourth and final pillar of crisis mapping. Of course, the ultimate purpose of crisis mapping is to provide better situational awareness so as to make more informed decisions. This means that crisis-mapping platforms should also serve as decision-support tools that enable users to simulate different scenarios and thereby identify the best path forward during crisis response.

The three case studies that follow illustrate how crisis mapping and new technologies intersect to impact the humanitarian sector in at times unexpected but profound ways.



## Responding to the Haiti earthquake

The devastating earthquake that struck Port-au-Prince in January 2010 resulted in massive casualties. Within hours, a live crisis map of Haiti was launched using the Ushahidi platform. Information on the impact of the disaster was initially collected from online sources, including social media channels such as Facebook and Twitter. Within days, an SMS short code provided by Digicel was integrated with the crisis map. This number, 4636, allowed anyone in Haiti to send in text messages with their most urgent needs and location. These text messages were then translated and geo-located by members of the Haitian diaspora. Here is one example of the kind of text message received: 'Good morning, in Croix-des-Bouquets at Dagou Block near the market, people are very hungry they don't receive anything, please pass this message for us'.<sup>15</sup> The most urgent, life-and-death text messages processed by the diaspora were subsequently pushed to the live crisis map of Haiti.<sup>16</sup> Just ten days after the earthquake, the Head of the US Federal Emergency Management Association (FEMA) publicly noted that this crisis map was the most comprehensive and up-to-date map available to the humanitarian community.

What is striking about this crisis map is both that it was unplanned but large scale and that it was not launched by any professional humanitarian organization. In fact, the entire project was generated by students in a dorm room at Tufts University in snowy Boston, some 1,500 miles north of Haiti. Indeed, the Haiti crisis map was largely a volunteer student effort. It was unplanned because the vast majority of volunteers had never done anything like this before. In fact, no one had. The Haiti crisis map represented the first major attempt to create a live map using new technologies. Ushahidi, Twitter, Facebook, Skype, and Google Docs were just some of the technologies that made this important milestone in crisis mapping possible.

What was the impact of this initiative? Some first responders, such as the US Marine Corps, noted that they used the crisis map every second of every day to save hundreds of lives.<sup>17</sup> An email from the Marine Corps (which was later made public with permission) noted the following:

I cannot overemphasize to you what the work of the Ushahidi/Haiti has provided. It is saving lives every day. I wish I had time to document to you every example, but there are too many and our operation is moving too fast. Here is one from the 22 Marine Expeditionary Unit: 'We had data on an area outside of Grand Goave needing help. Today, we sent an assessment team out there to validate their needs and everything checked out. While the team was out there, they found two old women and a young girl with serious injuries from the

15 Message from the Ushahidi Haiti dataset, available (password protected) at: <http://haiti.ushahidi.com> (last visited December 2011).

16 About 1,200 volunteers from the Haitian diaspora, based in 49 different countries, translated some 80,000 text messages sent to 4636. Of these, about 2% (or 1,500) were mapped on the Ushahidi-Haiti platform.

17 Ushahidi Blog Post, 'Taking stock of how we're doing', available at: <http://blog.ushahidi.com/index.php/2010/02/06/ushahidi-how-we-are-doing> (last visited December 2011).

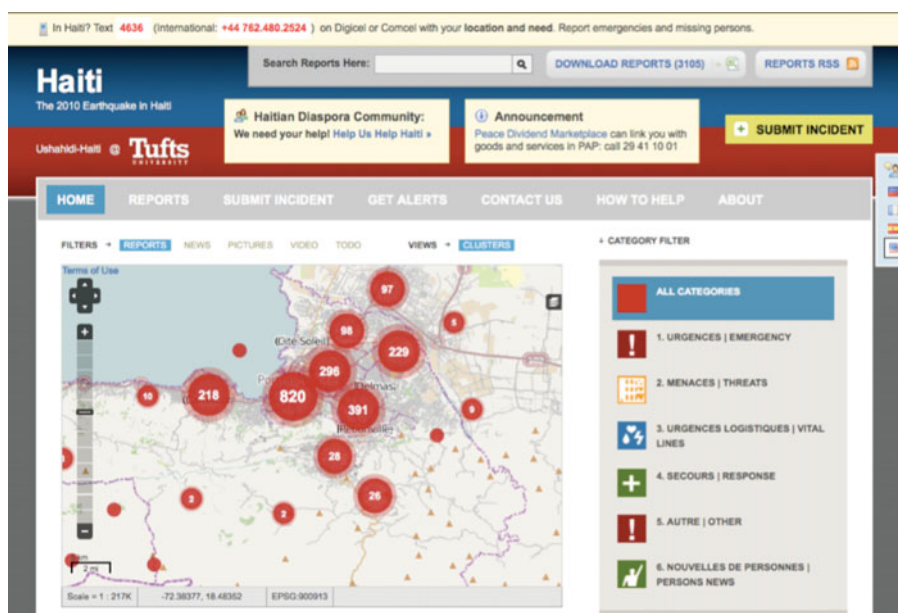


Figure 2. The Ushahidi-Haiti Crisis Map three months after the earthquake struck in January 2010.

earthquake; one of the women had critical respiratory issues. They were evacuated.’ Your site saved these people’s lives. I say with confidence that there are 100s of these kind of stories. The Marine Corps is using your project every second of the day to get aid and assistance to the people that need it most.

The US Coast Guard also stated that they used the map operationally.<sup>18</sup> The humanitarian community, however, was unsure as to how to make use of the crowdsourced crisis information.<sup>19</sup> In addition, they raised concerns over the reliability of the information displayed on the Haiti crisis map. The availability of crowdsourced crisis information and a dedicated live crisis map was simply too new for humanitarian organizations to understand how best to use it – particularly in the middle of a major disaster. In any case, this did not prevent American search and rescue teams from maximizing the value of the resource provided by volunteer students to evacuate individuals trapped under the rubble.<sup>20</sup>

In parallel to the Haiti crisis-mapping efforts, hundreds of volunteers from OpenStreetMap (OSM) sprang into action to create the most detailed street map of

18 Ushahidi blog post, ‘Crowdsourcing the response’, available at: <http://blog.ushahidi.com/index.php/2010/01/20/crowdsourcing-the-response/> (last visited December 2011).

19 See UN Foundation/OCHA/Vodafone Foundation/HPCR, above note 7.

20 See Patrick Meier, ‘Haiti and the power of crowdsourcing’, 26 January 2010, available at: <http://irevolution.net/2010/01/26/haiti-power-of-crowdsourcing> (last visited December 2011).

Port-au-Prince available.<sup>21</sup> This proved invaluable, since the Google Map of Haiti was particularly sparse, with half of the capital city simply missing from the map. This made the mapping of text messages and tweets particularly challenging. Within days of the earthquake, however, the OSM community was granted access to high-resolution satellite imagery, which enabled them manually to trace roads depicted in the imagery onto their OSM platform. Over 1.4 million edits were made to the OSM map of Haiti during the first month alone.<sup>22</sup> The Ushahidi–Haiti crisis map quickly switched over to using the OSM map of Haiti instead of Google Maps, which considerably facilitated the ability of volunteers to map actionable data.

The digital humanitarian response to the disaster in Haiti demonstrated an important potential, namely that new technologies and volunteer networks stand to have significant possible impact on the humanitarian sector. This explains why the UN's Office for the Coordination of Humanitarian Affairs (UN OCHA) took active steps several months later to understand better the opportunities and challenges of collaborating with new volunteer networks that are particularly agile with new technologies. Indeed, the main theme of the 2010 International Conference of Crisis Mappers (ICCM 2010) held in Boston was to explore new partnerships between traditional humanitarian actors and new informal networks.<sup>23</sup> One action-oriented result of ICCM 2010 was the launch of the Standby Volunteer Task Force (SBTF).<sup>24</sup>

Operationally, the Task Force is organized into about a dozen individual teams, each of which focuses on a specific information management process.<sup>25</sup> For example, the Media Monitoring Team monitors mainstream and social media sources for relevant information; the Geo-Location Team identifies the GPS coordinates for events reported by the Media Monitoring Team; the Verification Team seeks to verify the accuracy and validity of information being mapped; and the Analysis Team produces information products as part of regular situation reports provided to the organization that activated the Task Force. Each of these teams has a dedicated page on the Ning social networking platform used by the SBTF. Each team page also includes very specific workflows for the individual teams, along with multi-media training materials such as YouTube videos and Powerpoint presentations.

Since ICCM 2010, the SBTF has grown to more than 800 volunteers in over 80 countries worldwide. The majority of these volunteers are professionals from the technology and humanitarian sectors; most of them have graduate degrees

21 See OpenStreetMap's website at: <http://www.openstreetmap.org>; also see Andrew Turner, 'OpenStreetMap Haiti', 29 January 2010, available at: <http://opensource.com/osm> (both last visited December 2011).

22 See 'OpenStreetMap in the first month after the Haiti quake', available at: <http://www.maploser.com/2010/09/06/openstreetmap-in-the-first-month-after-the-haiti-quake> (last visited December 2011).

23 See Crisismappers' website at: <http://crisismappers.net/page/iccm-2010-haiti-and-beyond> (last visited December 2011).

24 See Standby Task Force, 'On standby doesn't mean always-on: an update on the SBTF', 27 March 2012, available at: <http://blog.standbytaskforce.com> (last visited December 2011).

25 See Standby Task Force, 'Our model', available at: <http://blog.standbytaskforce.com/our-model/> (last visited December 2011).

or are completing graduate programmes, including PhD programmes.<sup>26</sup> The purpose of the SBTF is to provide live crisis-mapping support to humanitarian and human rights organizations who request activation of the Task Force, and the global volunteer network has been engaged in some twenty individual deployments since it was launched in 2010.<sup>27</sup> These deployments have included partnerships with the UN OCHA, the UN High Commissioner for Refugees (UNHCR), the World Health Organization, Amnesty International USA and several other groups.

These partnerships were launched in response to the crises in Libya, Somalia, and Syria; and following earthquakes and floods in New Zealand, Turkey, Australia, and Colombia. For each deployment, only the necessary SBTF teams are activated – hence the strength of a modular team structure approach. Specific criteria need to be met, however, before the SBTF formally deploys to support an organization. First, the organization seeking to activate the SBTF needs to have the capacity and field presence to respond to a given crisis. Second, the organization needs to demonstrate a direct need for the crisis map and underlying data. Third, the activator of the SBTF needs to specify the duration of the deployment, which must typically be less than two weeks: the comparative advantage of the SBTF is short-term rapid deployments, not extended operations. Fourth and finally, if the Task Force is activated, the organization requesting support must provide regular feedback on how they are using the live crisis map to inform their decision-making. Note that every new volunteer who joins the SBTF is required to sign a Code of Conduct that is based on principles put forward by the International Committee of the Red Cross (ICRC).<sup>28</sup>

On occasion, the SBTF is deployed but not formally. This usually happens when the organization requesting SBTF support does not meet the SBTF activation criteria but still provides compelling grounds. For example, Al Jazeera partnered with the SBTF following the earthquake in Van, Turkey, and again during the snowstorm emergency in the Balkans.<sup>29</sup> During the first two weeks after the launch, the Balkans crisis map was the most popular page on the Al Jazeera Balkans website, on both a daily and a weekly basis. Even on the first day of the launch, the crisis map very quickly became the most-read item of the week. According to Al Jazeera, the crisis map was also the first to break the news on several incidents. In addition, the map provided the most comprehensive coverage of the snowstorm in the region. Indeed, the content populating the map was also shared via the Al Jazeera television newsroom. While Al Jazeera is obviously not an established humanitarian or human rights organization, they launched a crisis map that provided people living in Turkey and the Balkans with important, timely, and actionable information. Media

26 See Standby Task Force, 'What we do', available at: <http://blog.standbytaskforce.com/about/what-we-do> (last visited December 2011).

27 See Standby Task Force, 'Deployments', available at: <http://blog.standbytaskforce.com/deployments> (last visited March 2012).

28 See Standby Task Force, above note 25.

29 See 'Al Jazeera's crisis map of the snowstorm emergency in the Balkans', 22 February 2012, available at: <http://blog.standbytaskforce.com/al-jazeeras-crisis-map-of-the-snowstorm-emergency-in-the-balkans> (last visited December 2011).

organizations such as Al Jazeera continue to play an important role with regard to communicating with disaster-affected populations.<sup>30</sup>

In conclusion, digital volunteers played an instrumental – albeit reactive – role in the response to Haiti. Using social media, social networking platforms, SMS, satellite imagery, and open-source software, thousands of volunteers around the world – the majority of them from the Haitian diaspora – sprang into action to help the disaster-affected population in Port-au-Prince. In the process, they created the most detailed and up-to-date crisis map (and street map) available to the humanitarian community. And they did this all online without ever setting foot in Haiti. This case study clearly shows that both disaster-affected communities and digital volunteer networks are fast becoming digital. The former are increasingly the source of real-time information following a crisis, while the latter are rapidly becoming more agile at managing this digital content in near real time in support of humanitarian operations. While the nature of the volunteer response in Haiti was necessarily ad hoc and reactive, this catalysed the launch of a prepared and proactive standby volunteer task force, the SBTF.

## Russia on fire and volunteers on the frontlines

Hundreds of forest fires ravaged Russia during the summer of 2010, killing some 56,000 individuals and causing more than \$15 billion in damages. In response, several Russian bloggers who had been inspired by the Haiti response earlier that year decided to launch a live crisis map for the disaster.<sup>31</sup> Unlike previous live crisis maps, the Russian activists decided to turn the platform into a ‘help map’ by crowdsourcing both needs *and* offers for help. This was an important departure from previous uses of the Ushahidi platform. Clearly, not everyone is affected in the same way during a disaster or crisis. Those who are less affected often seek ways to help others in need. Providing a platform to facilitate this distributed but self-organized response can improve volunteer co-ordination and response. The first responders are not the search and rescue teams from Iceland who fly in seventy-two hours after a disaster: disaster-affected communities are by definition the first responders. And, whereas professional humanitarian responders cannot be everywhere at the same time, the crowd is always there.

The response to the ‘help map’ was overwhelming, with more than 600 reports mapped during the first week. The team thus decided to set up a co-ordination service and call centre in order to facilitate the matching of needs with the resources being offered. The free, volunteer-run call centre enabled the elderly – and others not otherwise connected to the Internet – to call in their needs or offers of help. In effect, Russian activists were able to launch their own

30 See, for instance, the ‘Somalia Speaks’ project developed by Ushahidi in collaboration with Al Jazeera, Souktel, Crowdfunder, and the African Diaspora Institute to aggregate and map out voices and stories from inside the country, available at: <http://www.aljazeera.com/indepth/spotlight/somaliaconflict/somaliaspeaks.html> (last visited December 2011).

31 Map available at: <http://russian-fires.ru> (last visited December 2011).



Figure 3. Russian fires 'help map' used to crowdsource needs and resources.

citizen-based disaster response agency in a matter of days by making use of both new and old ICTs. Where was the Russian government in all this? According to Gregory Asmolov,

because of its geographical size, high degree of corruption and reliance on an extraction economy, governance by *government* in Russia is often weak and ineffective. Russian political expert Liliya Shevtzova goes so far as to claim that the current regime is an imitation of governance. The 2010 wildfires demonstrated the limited capacity of the state to provide effective emergency response. Information technologies, and crowdsourcing platforms in particular, fulfill the gap of the limited statehood.<sup>32</sup>

In other words, not only were citizens helping themselves because of Russia's limited statehood, but they were actually taking over functions of the state, which the map made very explicit (see Figure 3).

This live map revealed the great potential for self-organized mutual aid at the community level, particularly in countries where the government is unwilling to react as quickly or incapable of doing so. Indeed, the Russian online community operated both online and offline. Some bloggers created their own volunteer

32 Gregory Asmolov, cited in Patrick Meier, 'Information and communication technology in areas of limited statehood: a new form of governance?', 3 April 2011, available at: <http://irevolution.net/2011/04/03/icts-limited-statehood> (last visited December 2011).



firefighters unit to provide direct assistance to those in need. Others purchased equipment such as fire hoses for professional firefighters. The informal help provided by volunteers was both more rapid and more visible than that of the Russian government. And, unlike the live and public help map, state and commercial mass media did not provide real-time updates to the general public. Indeed, state-controlled television revealed as little information as possible to the public about the fires and smog.<sup>33</sup> According to one poll conducted at the time, some 68% of people trusted information communicated about the fires via online media, while only 4% of respondents claimed to trust government sources.<sup>34</sup>

In sum, the help map showed that technology can at times replace the functions of government or at least overcome limited state capacity. Like the examples from Haiti and Kenya above, those engaged in these efforts were ordinary volunteers making use of existing technologies. Crisis-mapping technologies can thus act as platforms for self-organization – a match.com to connect local needs with local resources.

## The humanitarian crisis in Libya

On 1 March 2011, Brendan McDonald, the Head of OCHA's Information Services Section, requested activation of the Standby Task Force in response to the escalating situation in Libya. OCHA did not have any information management officers (IMOs) in Libya nor could they rely on Libyan government sources for accurate information. In short, the OCHA team had very little situation awareness when they needed it the most (considerable financial resources had to be allocated to responding to spiralling humanitarian needs). So OCHA formally requested crisis-mapping support to improve their situational awareness in Libya. They realized that, whereas little information was available via traditional sources, the social media space was brewing with eye-witness accounts that could potentially provide information on ongoing developments.

Within hours of the activation request, the SBTF had launched a live crisis map (see [Figure 4](#)) powered by the Ushahidi platform, and the Media Monitoring Team was already busy crowdsourcing crisis information in the social media space. While the focus was largely on Twitter and YouTube to begin with, the monitoring soon expanded to mainstream media sources and official humanitarian situation reports once these actors were mobilized and on the scene. In addition to the Media Monitoring Team, the Geo-Location, Reports, Verification, and Analysis Teams were also activated. The only team that was not activated was the Translation Team.

33 See Georgy Bovt, 'Putin's vertical power disaster', in *Moscow Times*, 13 August 2010, available at: <http://www.themoscowtimes.com/opinion/article/putins-vertical-power-disaster/412296.html> (behind paywall) (last visited December 2011).

34 See survey 'Which source of information about fires in central Russia do you trust most?' (ICRC translation), 2–4 August 2010, available in Russian at: <http://www.vedomosti.ru/poll/opinions/48/748> (last visited December 2011).





Figure 4. The official Libya Crisis Map of the UN OCHA.

In an unparalleled move, the SBTF deployment in Libya remained active for a total of four weeks, at the request of the OCHA team, making it the longest and most active deployment since the SBTF was launched in 2010. In April, the SBTF handed off the deployment to the OCHA Colombia Team, with the support of UN Volunteers who had been trained by the Task Force. So what was the impact of this combination of new technologies and volunteer networks on the humanitarian sector? In an official email to the SBTF leadership, Brendan McDonald highlighted the following:

Your efforts at tackling a difficult problem have definitely reduced the information overload; sorting through the signals on the crisis is no easy task. The Task Force has given us an output that is manageable and digestible, which in turn contributes to better situational awareness and decision making.<sup>35</sup>

Andrej Verity, OCHA's focal point for the partnership with SBTF noted:

OCHA did not have the idle capacity to gather, verify and process the enormous amount of available online information. In many ways the resulting data behind the map was the 'gold mine'. OCHA had a data specialist reviewing the data,

35 See 'Libya Crisis Map deployment 2011 report', 1 September 2011, available at: <http://blog.standbytaskforce.com/libya-crisis-map-report> (last visited December 2011).

looking for patterns or trends in the data, showing what ‘non-map’ products could be generated, and outlining how such data could be integrated into traditional coordination products.<sup>36</sup>

The crowdsourced data collected and mapped by the SBTF was in fact integrated into official OCHA infographics and other information products. Verity continued:

The LCM data was being incorporated into the traditional Who-is-doing-What-Where products and info-graphics which were being created remotely by OCHA IMOs [Colombia, DRC, Ethiopia, Kenya, Pakistan, South Africa, and South Sudan]. These products were then being printed and shared inside the emergency arena.<sup>37</sup>

The ultimate operational impact of the map on the ground is unclear, however. The SBTF was not able to obtain details from UN OCHA on exactly how the map was used or what decisions the map served to influence. Josette Sheeran, Executive Director of the World Food Programme (WFP), did publicly note that the Libya Crisis Map could also inform her programme’s humanitarian relief operations along the borders, but, again, no further information was subsequently provided.<sup>38</sup>

UN OCHA was not the only humanitarian organization to set up a live crisis map in Libya using the Ushahidi platform. Indeed, the International Organization for Migration (IOM) established its own crisis map on 15 March 2011 to provide information on the organization’s operations in Libya (see Figure 5). IOM’s Information Management Team for the Middle East and North Africa was tasked with categorizing and mapping incoming reports. According to the team lead on this project, the crisis map ‘served to help stranded migrants and provide information on IOM operations’.<sup>39</sup>

UN OCHA have since launched their own live crisis maps for the massive flooding in Colombia and also for refugee flows in Côte d’Ivoire. It is important to keep in mind that these maps, along with the Libya crisis maps, served as only *one* source of information that UN OCHA, WFP, IOM, and other agencies were drawing on to improve their situational awareness and inform their operations on the ground. Indeed, as one OCHA contact noted, ‘What was the impact of the last map you looked at?’<sup>40</sup> Humanitarian organizations produce hundreds of static crisis maps as part of their operations, but the direct and individual impact of these is equally challenging to assess. In essence, one would need to closely evaluate existing decision-making structures within humanitarian organizations to understand better how decisions are made in real time.

36 See Andrej Verity, ‘The (unexpected) impact of the Libya Crisis Map and the Standby Volunteer Task Force’, 19 December 2011, available at: <http://blog.standbytaskforce.com/sbtf-libya-impact> (last visited December 2011).

37 *Ibid.*

38 Josette Sheeran, ‘Excellent Libya Crisis Map can help UN, WFP plan humanitarian food, also 4 borders w/ Tunisia, Egypt’, Twitter message, 6 March 2011, available at: <http://twitter.com/#!/JosetteSheeran/statuses/44358346014334976> (last visited December 2011).

39 CrowdGlobe survey conducted by author in December 2011.

40 Comment made at a World Vision-sponsored workshop in Geneva, in November 2011.

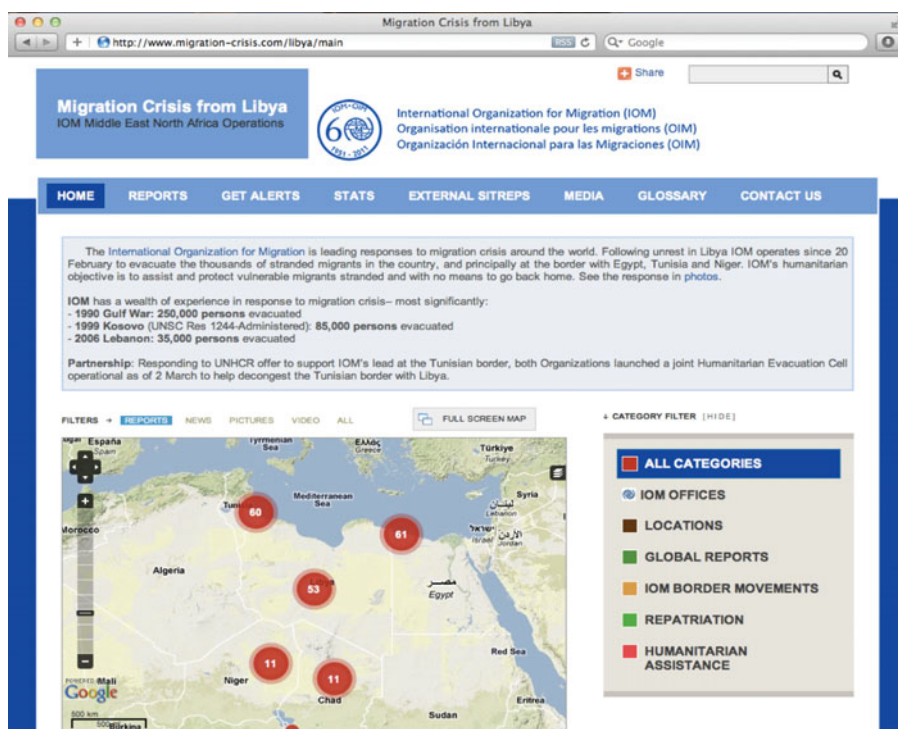


Figure 5. The official Libya crisis map of the International Organization for Migration.

That being said, there were some interesting, *unintended* impacts on UN OCHA. Based on some preliminary research, Verity noted that, 'we can already see that the SBTF has a significant impact on UN OCHA's way of working'.<sup>41</sup> For example, the collaboration with the Task Force allowed UN OCHA to produce standard information management products much faster than before with respect to the early phases of an emergency. Indeed, the difference in speed was 'quite stark and significant'. The collaboration with the SBTF also had unexpected consequences in terms of organizational set-up. Indeed, UN OCHA's Information Services Section subsequently adopted a number of the SBTF's strategies vis-à-vis organization and information management. As Verity explains,

The information management team in OCHA HQ was quite impressed with how well the always-open, tiered Skype chats worked in collaborating with the self-organized task-team based volunteers. The team has taken this approach and opened our own group for OCHA Information Management Officers (which has really made our internal IM Community of Practice flourish and provide support to each other). We have leveraged the same approach to help incorporate field-based staff into the development of standard tools and

41 See A. Verity, above note 36.

software – something we were rather poor at in the past. As well, when we had one IMO responding to floods in Cambodia, we asked for OCHA IM volunteers and placed them in a dedicated Skype group. We ended up with IMOs from Sri Lanka, Pakistan, Côte d'Ivoire, Liberia and Haiti helping out with the efforts. The OCHA IM team is really learning how we can leverage remote support and are incorporating these concepts into traditional mechanisms.<sup>42</sup>

In short, not only was some of the crowdsourced information produced and mapped by SBTF volunteers integrated within official UN OCHA information products, but the UN's collaboration with the SBTF also led to some cross-fertilization vis-à-vis standard operating procedures that make use of new technologies. Inevitably, there were also a number of challenges that UN OCHA faced when collaborating with the SBTF. For example, the SBTF was 'always on': because volunteers are located in different time zones around the world, there are always volunteers working on a deployment. This meant that UN OCHA was faced with the need to respond to volunteers around the clock.

The Libya crisis maps provide an important contrast to the Russian help map and the Haiti crisis map. Indeed, unlike these previous maps, the ones used in Libya were launched within the context of a hostile conflict environment, which presents specific challenges when using information provided by people on the ground. Government reprisals against 'informants' and the manipulation of information for political purposes are far more likely in humanitarian crises involving a repressive regime. Indeed, 'natural disasters' don't shoot back.

This explains why UN OCHA and the SBTF launched a password-protected Libya crisis map. Access to this map was only granted to established humanitarian organizations. When UN OCHA requested a public version of the map, the SBTF first drafted a risk mitigation strategy, which was subsequently approved by the UN. The public map was put on a twenty-four-hour time delay, so that new information that was published on the password-protected map would only appear on the public map twenty-four hours later (this time delay could also have been set at five days, or any other value). In addition, the public map was stripped of most of the information accessible via the password-protected map. For example, descriptions of individual reports, along with their sources and any personal identifiers, were *not* included in the public version; only the title and category were listed. In addition, SBTF volunteers were directly instructed *not* to communicate with individuals in Libya so as not to put them at risk. Indeed, no communication with crisis-affected communities is the 'Prime Directive' of the SBTF. To this end, SBTF volunteers were simply mapping information that had already been voluntarily placed in the public domain by being shared in the social media space. The SBTF Verification Team was activated as part of UN OCHA's Libya Crisis Map to verify as much information as possible. Any reports that could not be directly verified, but were plausible and important, were still mapped but clearly tagged 'not verified' in red letters.

42 *Ibid.*

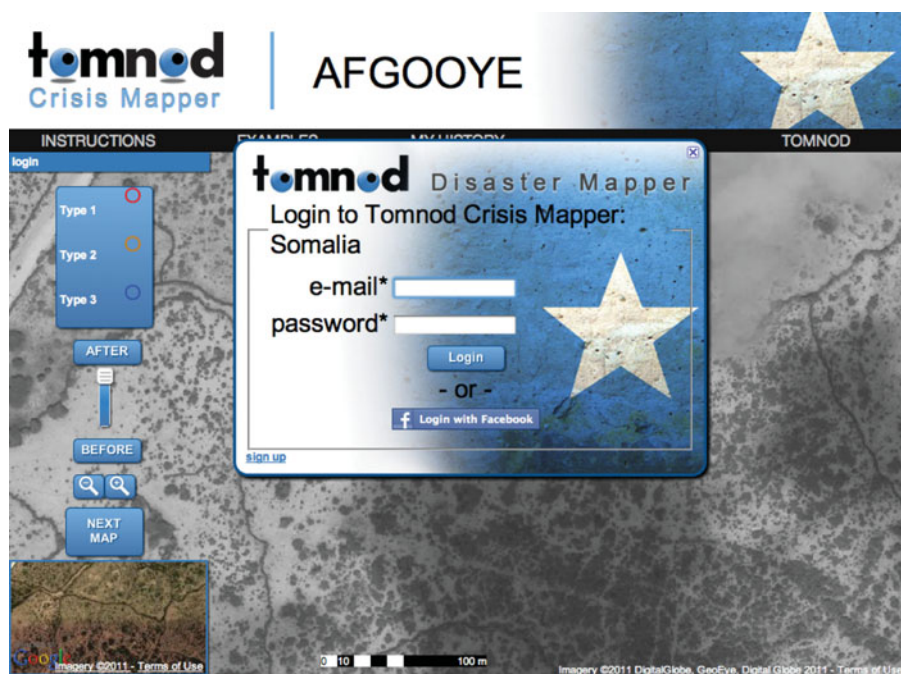


Figure 6. The Tomnod platform is designed to micro-task satellite imagery tagging and analysis.

## The complex emergency in Somalia

In August 2011, UNHCR approached the SBTF for support on Somalia. In 2010, two full-time UNHCR staff had spent four weeks analysing satellite imagery for the 'Afgooye Corridor' just west of Mogadishu. The purpose of this effort was to identify (and estimate) the number of informal settlements, in order to estimate the population of internally displaced persons (IDPs) in the area. They got in touch with the SBTF after a UNHCR GIS expert had come across a blog post that made a case for crowdsourcing the analysis of high-resolution satellite imagery to support humanitarian response operations.<sup>43</sup>

While initial conversations with the UNHCR were still taking place, the SBTF decided to launch a new team, the SBTF Satellite Imagery Analysis Team (Sat Team for short). They partnered with DigitalGlobe to acquire the relevant high-resolution satellite imagery and with Tomnod, a new start-up company that specializes in micro-tasking for satellite imagery analysis (see Figure 6). The Tomnod platform basically divides satellite imagery into a grid, that is, a series of much smaller rectangles. Each of these rectangles can then be analysed individually

43 Patrick Meier, 'Crowdsourcing the analysis of satellite imagery for disaster response', 6 October 2010, available at: <http://irevolution.net/2010/10/06/crowdsourcing-satellite-imagery> (last visited December 2011).



and tagged accordingly. The results are aggregated and collated for overall analysis. For example, a volunteer signs on to the Tomnod platform and looks for features of interest, such as an informal shelter. When such a feature is found, a volunteer simply uses the mouse and points to the feature to create a geo-tag, or marker, that represents an informal shelter (see [Figure 6](#)).

The real power of micro-tasking platforms such as Tomnod, however, is that these tags can be triangulated. For example, only when three volunteers individually tag a feature as an informal shelter does that 'data point' get approved and shared with UNHCR. In addition, a considerable volume of user statistics can be generated to understand how individual volunteers are tagging features. This enables the Sat Team to understand where and when volunteers are making systematic errors in their tagging.

To test out this new SBTF team and the Tomnod platform, the Sat Team organized a simple trial run in September 2011. An arbitrary type of shelter was selected and a simple feature-key with rule-set was developed. Feature-keys provide visual examples of what features are being sought out, while rule-sets describe the appearance of the said features using text. Within a week, SBTF volunteers analysed close to 10,000 satellite images and tagged almost 4,000 features that resembled the feature-type described in the feature-key and rule-set. Using Tomnod's triangulation feature resulted in 1,423 final tags.<sup>44</sup> The trial run provided the SBTF and Tomnod with a long list of lessons learned that needed to be internalized before any official activation of the SBTF by UNHCR in Geneva.

In October 2011, UNHCR formally partnered with the SBTF to co-develop a formal feature-key and rule-set. One month later, UNHCR activated the network to run a comprehensive analysis of satellite imagery for a larger area in Somalia. In addition to turning to the network's more than 700 volunteers, the SBTF Sat Team also reached out to the American Society for Photogrammetry and Remote Sensing (ASPRS), a network of graduate students studying satellite imagery analysis. The result? Over a quarter of a *million* features were tagged by 168 volunteers after processing nearly 4,000 satellite images in just 120 hours.<sup>45</sup> In doing so, volunteers closely scrutinized a space covering more than 100 square kilometres. Compare this to the more than thirty days that the two UNHCR staff took in 2010 to carry out similar analysis. However, instead of 4 eyes analysing the imagery, 336 eyes did so, the results of which could also be triangulated for quality control purposes. UNHCR and Tomnod recently completed the analysis of the data.

Using Tomnod's built-in quality control mechanisms, a total of approximately 47,500 shelters were triangulated and shared with UNHCR via a dedicated

44 See 'Crowdsourcing satellite imagery analysis for Somalia: results of trial run', 31 August 2011, available at: <http://blog.standbytaskforce.com/somalia-imagery-analysis> (last visited December 2011).

45 See 'Crowdsourcing satellite imagery analysis for UNHCR-Somalia: latest results', 10 November 2011, available at: <http://blog.standbytaskforce.com/unhcr-somalia-latest-results>; also 'Beyond brute force: unexpected lessons from crowdsourcing satellite imagery analysis for UNHCR in Somalia', 22 November 2011, available at: <http://blog.standbytaskforce.com/unhcr-somalia-lessons> (both last visited December 2011).

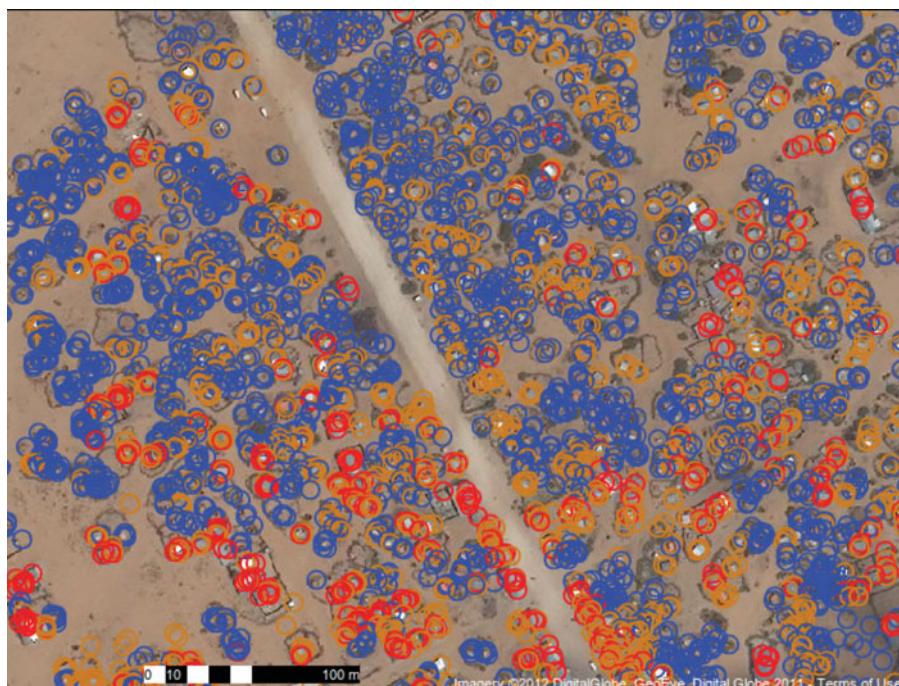


Figure 7. Shelters tagged by SBTF volunteers along with Tomnod's resulting triangulation.

Ushahidi platform (see [Figure 7](#)). UNHCR staff are currently analysing these results and comparing them with other IDP population estimates for the area. In addition, the European Commission's Joint Research Centre are also running their automated shelter detection algorithms on the same satellite imagery in order to estimate the IDP population in the Afgooye Corridor, for the purposes of cross-triangulation with the crowdsourced tagging. In the future, the hope is that crowdsourcing and automated methods can be combined to yield faster and more reliable results.

The project was subsequently presented to UNHCR's Deputy High Commissioner in Geneva at the end of 2011. He applauded the initiative and had this to say in an exclusive video addressed to SBTF volunteers:

I'm Alex Aleinikoff, the Deputy High Commissioner of UNHCR and I've just learned about the wonderful work done by the Standby Task Force which has permitted us to count shelters in the Afgooye Corridor in Somalia through the volunteer work of folks like you around the world. This is such a wonderful project for us; it provides enormously important information to UNHCR and helps to create a worldwide virtual community involved in helping refugees and internally displaced people. So I salute you for your work and for the time you have devoted to this project, it's important to us, it's important to people who



have been forced from their homes and who are trying to create a new home and a new beginning, thank you.<sup>46</sup>

Aleinikoff expressed a strong interest in seeing this type of collaboration continue. He values the collaboration not just on the information management side but equally in terms of community engagement with UNCHR's work. In other words, he was particularly interested in the impact of this initiative on the wider, public knowledge of UNCHR's programmes and the crisis itself in Somalia. As a result of the crowdsourcing, more SBTF volunteers and students from the ASPRS are now more informed both about UNHCR's work in Somalia and also about the unfolding crisis. In addition, most volunteers acquired new skills (in remote-sensing analysis) and have expressed an interest in future collaboration with the UNHCR around the world.

The UNCHR partnership with the SBTF demonstrated that volunteers could do more than simply map information drawn from social media, as on the Libya Crisis Map. While this was just a pilot project, it provided a proof of concept: namely that volunteers using new technologies such as the Tomnod platform can also support humanitarian organizations by rapidly analysing satellite imagery. In the future, UNHCR hopes actively to draw on volunteer networks such as the SBTF to support their operations in the field. At this point, this type of approach is still in research and development stage. Indeed, as with all the innovative uses of technologies described in this article, the innovation tends to come from volunteer networks in the form of do-it-yourself projects. Over time, as more of these DIY initiatives become part of formal humanitarian organizations, the technologies that make them possible are likely to become mainstream within the humanitarian sector.

## Lessons learned and the big picture

The purpose of this article was to demonstrate the impact that new information and communication technologies are having on the humanitarian sector. The analysis has focused specifically on new crisis-mapping technologies and digital volunteer networks that have surfaced in just the last two years. Each of the four case studies highlighted the impact of new technologies and volunteer networks on the humanitarian sector. More importantly, they demonstrated that crisis-affected communities are increasingly becoming the source of digital information, and thus critical nodes of information following a crisis. This radical shift in information source and volume is set to make a significant shift in the way that humanitarian organizations operate.

These innovations, however, are not devoid of serious challenges. What are the ethical and security implications of mapping user-generated content in a conflict

46 See 'Thank You video from UNHCR's Deputy High Commissioner', 15 November 2011, available at: <http://blog.standbytaskforce.com/thank-you-video-from-unhcrs-deputy-high-commissioner> (last visited December 2011).

zone? What legal liabilities might volunteers face as a result of their efforts? What data protection protocols should be adopted to guide the work of crisis-mapping projects worldwide? How does one verify crowdsourced information in near real time to ensure that the resulting map is accurate? How can volunteer engagement be maintained and better co-ordinated? Do humanitarian organizations even have the capacity and resources to respond to information added to crisis maps?

A recent review of data protection standards developed by humanitarian organizations reveals absolutely no reference to social media. The SBTF is thus collaborating with the ICRC to update existing data protection standards to account for the fact that (1) global volunteer networks are becoming more engaged in crisis response (albeit virtually), and (2) crisis information is increasingly generated by disaster-affected populations. In terms of legal liabilities, the SBTF is working closely with pro bono lawyers from several firms to understand better the potential risks of volunteer engagement. Equally importantly, SBTF's legal partners are drafting disclaimers and other important legal documents to guide and protect the work of skilled volunteers. As for ethical and security implications, the SBTF is carrying out a full internal review of its operations and also reaching out to experts for guidance in this process.

It is worth emphasizing that the majority of crisis maps are actually not launched by humanitarian organizations or digital volunteer networks. Indeed, because new ICTs are freer and easier to use than ever, ordinary individuals are launching their own maps. The Ushahidi platform itself has been used in over 140 countries in just a few years, and crisis-affected communities are already launching their own crisis maps; these too will lead to questions around ethics, security, liability, and data protection. While the SBTF and other partners may be able to navigate these issues and produce appropriate guidelines to inform crisis mapping, these cannot be globally enforced or easily disseminated to every new user of a crisis map. As noted in a recent exchange on the Crisis Mappers Network,

Crisis Mapping is not simply a technological shift, it is also a process of rapid decentralization of power. With extremely low barriers to entry, many new entrants are appearing in the fields of emergency and disaster response. They are ignoring the traditional hierarchies, because the new entrants perceive that there is something that they can do which benefits others.<sup>47</sup>

Another challenge revolves around the use of crowdsourcing as a methodology to collect crisis information, namely, how to ensure that said information is trustworthy and reliable? Many crisis-mapping projects map information found on Twitter, YouTube, Flickr, Facebook, and so on. Meanwhile, crisis-mapping platforms in Sudan, Egypt, and Russia have all been swamped with propaganda and misinformation, for example. More often than not, however, local groups are easily able to detect this propaganda. But there is no doubt that repressive regimes and other actors are becoming increasingly sophisticated at spreading misinformation. To cope with this challenge, the SBTF has set up a dedicated Verification Team,

47 Message from the Crisis Mappers' Google Groups Forum, 12 February 2012.

along with detailed guidelines on how to verify crowdsourced information from social media.<sup>48</sup> Evidently, humanitarians are not the only ones facing this challenge: journalists are increasingly confronted with the need to vet and verify crowdsourced information. This explains why many of the verification guidelines used by the SBTF come from best practices produced by the BBC and National Public Radio (NPR).

It is worth emphasizing that crowdsourcing is only *one* of many methodologies that can and are being used to collect information. A variant on crowdsourcing, for example, is ‘bounded crowdsourcing’, which is more formally referred to in statistics as ‘snowball sampling’.<sup>49</sup> With bounded crowdsourcing, one begins with a small network of trusted individuals who are the ones tasked with collecting relevant information. These individuals then invite two or three additional individuals whom they trust and can fully vouch for; and so on and so forth. In this way, the information collection network can continue to grow while remaining bounded by trust.<sup>50</sup> Of course, representative sampling can also be used to collect and map crisis information.<sup>51</sup> Finally, it is important to remember that emergency numbers such as 911 in the US or 999 in the UK are actually crowdsourcing platforms; and they clearly work.<sup>52</sup> So crowdsourcing is not new *per se*.

Another challenge has to do with the management of digital volunteer networks such as the SBTF. While the SBTF has set up co-ordinating structures and workflows, maintaining volunteer engagement is an ongoing challenge. Approximately 20% of volunteers tend to be available at any given time, and it is often the same volunteers who repeatedly offer their services. This leads to potential burn-out among digital volunteers, which explains why the SBTF recently launched its Psychological Support Team. Still, activating the other 80% of volunteers continues to be a challenge. In addition, because volunteer networks such as the SBTF are open networks – meaning that anyone is welcome to join – this has can have negative consequences, such as the presence of rogue volunteers. The SBTF has been fortunate enough only to have 4 rogue volunteers out of 800 (thus, only 0.005% of volunteers have turned out to be problematic). Nevertheless, these individuals can wreak havoc and seriously undermine morale. As a result of these difficult

48 See Patrick Meier, ‘Information forensics: five case studies on how to verify crowdsourced information from social media’, 29 November 2011, available at: <http://irevolution.net/2011/11/29/information-forensics-five-case-studies> (last visited December 2011).

49 See Patrick Meier, ‘Why bounded crowdsourcing is important for crisis mapping and beyond’, 7 December 2011, available at: <http://irevolution.net/2011/12/07/why-bounded-crowdsourcing> (last visited December 2011).

50 This methodology was used to perfection in Kyrgyzstan in 2010. See Patrick Meier, ‘How to use technology to counter rumors during crises: anecdotes from Kyrgyzstan’, 26 March 2011, available at: <http://irevolution.net/2011/03/26/technology-to-counter-rumors> (last visited December 2011).

51 See Peter van der Windt, ‘Voix des Kivus: a crowd-seeding system in DRC’, 16 May 2011, available at: <http://blog.ushahidi.com/index.php/2011/05/16/voix-des-kivus-a-crowd-seeding-system-in-drc> (last visited December 2011).

52 See Patrick Meier, ‘Calling 911: what humanitarians can learn from 50 years of crowdsourcing’, 22 September 2010, available at: <http://irevolution.net/2010/09/22/911-system> (last visited December 2011).

experiences, the SBTF has set up a Human Resource Team and clear protocols on how to deal with troubled volunteers.

The fact that both volunteer networks and crisis-affected communities are becoming increasingly digital presents another major challenge to the humanitarian community. While new live crisis maps and crowdsourcing platforms are constantly being launched, these technologies do not necessarily increase the humanitarian community's already overstretched ability to respond in emergencies. This gap can turn out to be dangerous for responders. A recent survey by the American Red Cross shows that the vast majority of those surveyed believe that national response organizations should regularly monitor social media sites in order to respond promptly.<sup>53</sup> In fact, more than one-third of those polled said that they would expect help to arrive in less than an hour after posting a need online during a crisis. There is thus clearly increasing pressure for professional humanitarian organizations to be more responsive.

The most important untold story in the response to Haiti has to do with the hundreds of Haitian volunteers who translated incoming text messages from the 4636 SMS short code. Several dozens of these volunteers were actively involved in responding to these text messages directly – even before the messages were added to the public Haiti crisis map. Haitians used their own networks in the diaspora and on the ground in Haiti to get help to those who texted in urgent requests for water, shelter, food, and medication. While not always possible and depending on context, partnering more closely with diasporas may alleviate some of the burden being placed on official humanitarian response organizations.

In other words, one way to cope with this increasing demand might be to take a more decentralized, bottom-up approach. Take the example of the Russia help map discussed earlier. This was a distributed, grassroots response to a major disaster. Providing platforms for citizens to organize themselves during a time of crisis may very well be the way forward. Recall that first responders are by definition the crisis-affected communities. One is more likely to get help from a neighbour than a search and rescue team in the immediate aftermath of an earthquake, for example. In other words, affected communities already help themselves out where and when they can. Put differently, many of the needs arising after a disaster can be met and responded to locally, and disaster-affected populations *already* self-organize following a crisis. You do not need ten years of work experience with the UN in Darfur to pull your neighbour out of the rubble. It is local communities rather than humanitarian professionals who save the most lives following a disaster.<sup>54</sup> In fact, estimates suggest that, 'no more

53 See American Red Cross, 'More Americans using social media and technology in emergencies', available at: <http://www.redcross.org/portal/site/en/menuitem.94aae335470e233f6cf911df43181aa0/?vgnextoid=7a82d1efe68f1310VgnVCM10000089f0870aRCRD> (last visited December 2011).

54 Claude Gilbert, 'Studying disaster: changes in the main conceptual tools', in E. L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question*, Routledge, London and New York, 1998, pp. 11–18.

than 10% of survival in emergencies can be attributed to external sources of relief aid'.<sup>55</sup>

The question, therefore, is how these populations can make better use of new information technologies to support their immediate self-organized response efforts, as in the Russian help map example. How can new technologies be used to help crowdsource humanitarian response?<sup>56</sup> The company LinkedIn is taking innovative steps to enable the matching of volunteers with various needs. They recently added a 'Volunteer and causes' field to their member profile page, which is now available to 150 million LinkedIn users worldwide.<sup>57</sup> Sparked.com is yet another group engaged in matching volunteers with needs. The company is the world's first micro-volunteering network, sending challenges to registered volunteers that are targeted to their unique skill set and the causes that they are most passionate about.<sup>58</sup> It is not farfetched to envisage how these technologies could be repurposed or simply applied to facilitate and streamline volunteer management following a disaster. Indeed, researchers at the University of Queensland in Australia have already developed a new smartphone application to help mobilize and co-ordinate volunteer efforts during and following major disasters.<sup>59</sup> The application not only provides information on preparedness but also gives real-time updates on volunteering opportunities by local area. For example, volunteers can register for a variety of tasks, including community response to extreme weather events.

Where is the humanitarian sector heading as far as new ICTs are concerned? Perhaps two very new initiatives may help answer that question and pave the way forward. The first is the Digital Humanitarian Network, a dedicated online platform designed to facilitate collaboration between professional humanitarian organizations and informal digital volunteer networks such as the SBTF. Digital Humanitarians is a 'network of networks' and a one-stop shop for humanitarian organizations seeking support from highly skilled volunteer groups. The second example is the American Red Cross's Digital Operations Center, launched in partnership with Dell. This is the

first social media-based operation devoted to humanitarian relief, demonstrating the growing importance of social media in emergency situations. The Red Cross also announced a Digital Volunteer program to

55 Dorothea Hilhorst, 'Complexity and diversity: unlocking social domains of disaster response', in Greg Bankoff, Georg Frerks, and Dorothea Hilhorst (eds), *Mapping Vulnerability: Disasters, Development and People*, Earthscan, London, 2004, pp. 52–66.

56 See Patrick Meier, 'How to crowdsource crisis response', 14 September 2011, available at: <http://irevolution.net/2011/09/14/crowdsource-crisis-response> (last visited December 2011).

57 See Meg Garlinghouse, 'The future of service is data', available at: <http://www.fastcoexist.com/1679444/the-future-of-service-is-data> (last visited March 2012).

58 The company's website is available at: <http://www.sparked.com/> (last visited December 2011).

59 See 'New app helps Queensland coordinate volunteers', 2 March 2012, available at: <http://www.homelandsecuritynewswire.com/dr20120302-new-app-helps-queensland-coordinate-volunteers> (last visited December 2011).

help respond to questions from and provide information to the public during disasters.<sup>60</sup>

The two initiatives may indeed be a sign of things to come, and if successful will further demonstrate the very real and important impact that new information and communication technologies can have on the humanitarian sector.

60 See American Red Cross, 'The American Red Cross and Dell launch first-of-its-kind social media digital operations center for humanitarian relief', available at: <http://www.redcross.org/portal/site/en/menuitem.94aae335470e233f6cf911df43181aa0/?vgnextoid=1cc17852264e5310VgnVCM10000089f0870aRCRD> (last visited December 2011).





## OBITUARY

### *In Memoriam:* **Antonio Cassese** **(1937–2011)**

It is with deep sadness that the *International Review of the Red Cross* notes the passing of the great jurist Antonio Cassese on 22 October 2011. A man of great intellect, vision, and determination, he made a considerable contribution to the development of international humanitarian law and international criminal law – as a scholar, as a jurist, and as an institutional architect.

Antonio Cassese began his career in academia, first in Pisa and later in Florence, at the University of Florence and the European University Institute. In 1993, he became the first President of the International Criminal Tribunal for the former Yugoslavia (ICTY), and later sat as a judge in the Trial and Appeals Chambers of the ICTY. The early judgments and decisions of the ICTY have not only provided a concrete mechanism for the implementation of international humanitarian law, but have also put forward a contemporary interpretation of certain rules and principles of this body of law. In the famous *Tadić* case, the ICTY set out a definition of armed conflict, expanded the prosecution of war crimes to non-international armed conflict, postulated that crimes against humanity can be committed in peacetime, and provided innovative reflections on the doctrines of command responsibility and joint criminal enterprise. Judge Cassese brought a decisive contribution to these normative developments.

Cassese strongly advocated the idea that the international community was capable of bringing to justice those accused of committing atrocities, regardless of their rank. Controversial at the time, this notion gave a strong impetus to the subsequent negotiations on the establishment of a permanent international court, the International Criminal Court. In 2004 Antonio Cassese was nominated to lead the United Nations Commission of Inquiry on Darfur. The report of the Commission resulted in the United Nations Security Council referring the Darfur situation to the International Criminal Court.

From March 2009 until two weeks before his death, Cassese served as President and Judge in the Appeals Chamber of the Special Tribunal for Lebanon

(STL). One of his final contributions was on the subject of terrorism in international law, an issue on which the Appeals Chamber of the STL delivered an important and hotly debated decision in February 2011, holding that terrorism is a crime under customary international law.

Besides being a judge and an institution builder, Antonio Cassese was also an outstanding academic. Over the course of his life, he produced numerous influential books and articles. He also helped found two important international law journals, which today host some of the most lively and informed debates in their respective disciplines – the *European Journal of International Law* and the *Journal of International Criminal Justice*. Cassese recognized the importance of discussion of contemporary developments in international law. In his contributions to the *International Review of the Red Cross*, as elsewhere, he managed to pose interesting questions and propose creative solutions to some of the most pressing challenges to international law.

Finally, Judge Cassese was no stranger to the work of the ICRC. He shared a genuine interest in the activities of the organization, nurtured lifelong friendships with ICRC staff members, and demonstrated his firm support for the organization's mandate on numerous occasions. Whether as a member of the Italian delegation during the negotiations of the Protocols Additional to the Geneva Conventions, or as President of the ICTY, Antonio Cassese strived to humanize war – an aspiration he shared with the ICRC. Numerous ICRC staff members have drawn inspiration and guidance from their interaction with him.

Beyond his many professional achievements, 'Nino' (as he wished to be called) was above all a warm and dedicated human being. He remained until his final days a tireless defender of the 'human dimension' of international law. He used to explain his drive with a simple Latin maxim: *Hominum causa omne jus constitutum est* ('Any rule of law is ultimately made on account of human beings').<sup>1</sup> This reflection illustrates perfectly his lifelong ambition – one invariably shared by the ICRC – to work through law towards the alleviation of human suffering. The rich heritage that Antonio Cassese has left behind will continue to guide all working towards this goal.

We join many others in the international community in offering our condolences to his family and honouring his memory.

1 Antonio Cassese, 'Soliloquy', in Antonio Cassese, Paola Gaeta, and Salvatore Zappalà, *The Human Dimension of International Law: Selected Papers of Antonio Cassese*, Oxford, Oxford University Press, 2008, pp. lx–lxv.

## BOOKS AND ARTICLES

### New Edition

The International Committee of the Red Cross (ICRC) has expanded and updated its core reference work on contemporary practice in International Humanitarian Law (IHL):

#### **HOW DOES LAW PROTECT IN WAR?**

#### ***Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law.***

Authors: Marco Sassòli, Antoine A. Bouvier and Anne Quintin  
with the collaboration of Julianne Garcia (2nd French Edition)

Now on its third English version and second French version, this three-part work demonstrates the ongoing relevance of IHL in contemporary practice and its ability to provide answers to humanitarian problems in armed conflicts.

**Part I** contains a systematic overview of IHL that presents the most fundamental and contemporary legal issues arising in armed conflicts, and provides references to relevant norms as well as to a selected bibliography. It also refers readers to relevant cases and documents in Part II.

A selection of nearly three hundred case studies, **Part II** provides university professors, practitioners and students with the most up-to-date and comprehensive selection of public and official documents on IHL, in chronological and geographical order. In the second French edition, many documents are available in French for the first time ever. The originality of this part lies in the Discussion section of each case, which raises thought-provoking questions on the case at hand.

**Part III** provides advice, recommendations and a series of course outlines for professors interested in setting up courses on IHL or in introducing its study into their teaching.

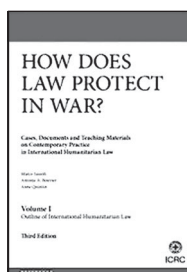
The whole content of the books, as well as extra documents, are available on a CD enclosed.

With this work, the authors hope to encourage practice-related teaching of IHL in universities worldwide and to provide experts in the field with a reliable reference work on contemporary practice.

3rd English edition, 2011

2nd French edition, 2012

3 volumes, 1 CD: CHF 70 (55 €). To order a copy: [www.icrc.org/eng/shop](http://www.icrc.org/eng/shop)



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# The future of humanitarian action

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