

Oases of Humanity and the Realities of War: Uses and Misuses of International Humanitarian Law and Humanitarian Principles

Rony Brauman

Centre de réflexion sur l'action et les saviors humanitaires, Fondation MSF; rony.brauman@paris.msf.org

Translated by Nina Friedman

Abstract

The rehabilitation of international humanitarian law (IHL) has become a priority for those who think that the horrors of contemporary wars are largely due to the blurring of the distinction between civilians and combatants and for those who think that campaigning for the respect of IHL could result in more civilised wars. Similarly, respect for humanitarian principles is still seen by many as the best tool available to protect the safety of aid workers. In this text, I argue that both assumptions are misled. The distinction between civilians and combatants, a cornerstone of IHL, has been blurred in practice since the late nineteenth century. In addition, humanitarian agencies claiming to be 'principled' have been victims of attacks as much as others. History and current practice tell us that neither IHL nor humanitarian principles provide safety or can guide our decisions. Accepting their symbolic value, rather than their unrealised potential to protect and solve operational dilemmas, would free humanitarian agencies from endless speculations.

Keywords: humanitarian principles, International Humanitarian Law, humanitarian security, Geneva Conventions

But of all our contemporary illusions, the most dangerous ... is the idea that we live in a time without precedent.

Tony Judt, *Reappraisals: Reflections on the Forgotten Twentieth Century* (Judt, 2008)

If some humanitarian-organisation spokespeople are to be believed, the norms and principles underpinning their action have been under attack since the end of the Cold War, which is endangering both humanitarian teams and the operations they conduct. References to 'before' have been heard since the mid-1990s, in the wake of the Bosnian War and the Tutsi genocide. The mass killings in Bosnia and Rwanda – coming on the heels of the Somali and Liberian civil wars – created a landscape of widespread violence, 'anarchic conflicts' in which not even humanitarian workers or journalists were safe. People stressed the contrast with earlier conflicts, which were kept in check by the superpowers, making the combatants accessible, at least in theory, to humanitarian efforts. 'Civilians are not simply the victims of conflicts,

they are the very target of conflicts; this is a significant change, at least with regard to the twentieth century', the director of operations for the International Committee of the Red Cross (ICRC) said in 1999 (Tauxe, 1999; emphasis added). With the launch of the 'War on Terror' following the 9/11 attacks, violations of international humanitarian law (IHL) have been described as 'increasingly serious', culminating – at the time of writing – in systematic attacks on hospitals and other civilian sites in Syria. Similar attacks in Afghanistan, Yemen and South Sudan add to the picture of once respected IHL being trampled. Some offer numbers as evidence, citing the fact that the overwhelming percentage of victims in World War I were soldiers, compared with contemporary armed conflicts, where the proportion is reversed, attesting to the excessive cruelty of these new wars.

We are obviously not disputing the reality or horror of civilian-district bombings in Syria, which are only too real and sickening. What we are questioning is the relevance of the campaigns and public discourse aimed at

rehabilitating IHL, supposedly better applied in the past, which – given how armed conflict has changed – has for some become an important issue for contemporary humanitarian action. This article is thus an historically informed contemplation on the political function of IHL and what we can expect from it.

The Soldier, the Legal Expert and the Rescuer

Let us begin with the first Geneva Convention, the starting point of contemporary IHL; it was signed on 22 August 1864¹ and did not even mention the word ‘humanitarian’. In ten articles occupying two pages, its subject (as reflected by its title) was ‘the amelioration of the condition of the wounded in armies in the field’. It can be summarised in just two points: first, it specified that which is necessary to care for sick and wounded soldiers – that is, ambulances and hospitals – must be recognised as neutral; and, second, it introduced a ‘distinctive and uniform flag’, an emblem to be shared by all nations, bearing a red cross against a white background, as well as an armband for ‘neutral’ personnel bearing that same emblem, based on the Swiss flag, in homage to the country hosting the conference.

The Geneva Conventions have evolved, filling out with each successive conference, and their scope has been broadened to include the shipwrecked (1906), prisoners (1929) and civilian populations (1949). ‘Additional protocols’ were adopted in 1977, in the wake of the wars of decolonisation and the Vietnam War, to cover ‘irregular’ forces in domestic conflicts. The original ten articles of the first convention have grown to 559 articles in the version currently in force. In other words, they are now a matter for civilian and military legal experts, who have material open to varied and contradictory readings.

Let us go back to IHL’s origins, which can give us an idea of how difficult it was to apply IHL long before what are now described as its more serious and frequent contemporary violations. Humanitarian law is part of a long-established normative framework – the distinction between combatants and non-combatants was theorised by Enlightenment philosophers and legal experts (Grotius, Rousseau and Vattel, most notably). The safeguards granted to prisoners of war by the 1929 Convention were already a part of the 1785 Treaty of Amity and Commerce between Prussia and the United States, and long before the humanitarian conventions were formalised as such, the treatment of POWs had become a key political issue with the rise of mass military mobilisations (Farré, 2014).

In the memory of the humanitarian movement, the Battle of Solferino stands as the inaugural event leading to the adoption of the first diplomatic treaty with

humanitarian aims. A Franco-Sardinian coalition led by Napoleon III was fighting the Austrian army led by Emperor Franz Joseph. It was outside Solferino, a small town in northern Italy, that one of the bloodiest battles since the end of the Napoleonic Wars was fought in 1859, leaving more than 30,000 dead and wounded in a single day of combat. Henry Dunant, a Swiss citizen who was trying to get in contact with Napoleon III to request a concession in Algeria, came upon the battlefield and the dying, and the spectacle shocked the fervent evangelical (he was one of the founders of the Young Men’s Christian Association, later known as the YMCA). Dunant took an active part in organising first aid for the wounded, regardless of nationality, and later wrote a gripping account of the battle, celebrating the battlefield exploits of the combatants and depicting in unvarnished detail the appalling suffering of the wounded left to their fate.

His book *A Memory of Solferino*, which he published in 1862 and called his ‘humanitarian manifesto’, was a major success in Europe. It led to the founding, in 1863, of the ‘International Committee for Relief to the Wounded’ – ten years later it would become the ICRC – whose first effort was the above-mentioned diplomatic conference, which started in 1864. Less than two years had elapsed between the publication of his account and the conference; that is to say, the project had resonated favourably both in the halls of power and in public opinion, and imperial France seemed particularly open to it. The first president of the new humanitarian society was a former officer in Napoleon III’s army: Swiss general Guillaume-Henri Dufour.

This serves as a reminder that the laws of war (*jus in bello*) are first and foremost the business of the belligerents – the political powers – and that the terms of humanitarian conventions have always been negotiated by plenipotentiaries and generals from the signatory states. Such laws are not just the work of visionary philanthropists, as making Henry Dunant their face suggests, but evidence of the militarisation of charitable organisations. The Red Cross societies ‘have been considered a volunteer auxiliary of armies in the field since the end of the nineteenth century’ (Farré, 2014: 21).

We will return to this idea, after pointing out that the blurring of the distinction between civilians and combatants did not start in the last thirty years: it was already happening at the time the first Geneva Convention was signed. Cruel as it was, the Battle of Solferino was in fact conducted more like a group duel. Fought outside of the town by uniformed combatants, it began at dawn and ended that evening when one side was routed – in this case, the Austrians. Far from a model for wars to come, it was the last of its kind, due to the technical advances and political changes of the era.

The American Civil War (1861–65), for example, involved weapons of unprecedented power, like the machine gun and the first tanks, and new logistical resources, like trains, as well as guns that could shoot faster and farther. In 1864, in the fight against Confederate soldiers supported by a significant percentage of the South's population, General William Tecumseh Sherman sent his Union troops on a 'march to the sea', giving no quarter, destroying buildings and crops, in the hopes of demoralising the enemy by forcing civilians to bear the burden of the war. Although the United States was not a party to the first Geneva Convention, it had developed its own *jus in bello*, the Lieber Code, a collection of existing texts aimed at limiting the violence against the populations of Confederate states. Lieber acknowledged civilians in the war while explicitly denying them political recognition. In contrast, civilians caught up in international conflicts subject to the Geneva Conventions were ignored until 1949. While the codification of armed conflict, whether international or domestic, was inspired by a desire to limit the violence, it gave the generals – not surprisingly – the final say in assessing 'military necessity', a key concept naturally covered by humanitarian law.

A few years later, the German command used the Geneva Convention to justify their violence in putting down *francs-tireurs* in the Franco-Prussian War, claiming that France had violated the agreement by using irregular combatants. Shortly thereafter, the nascent humanitarian law was again caught flat-footed during the siege of Paris, in a war where the concept of a battlefield – and hence the distinction between combatants and non-combatants, between front and rear – had disappeared. And though Henry Dunant, an admirer of Napoleon III, was in Paris when the regular French army crushed the Paris Commune during *Semaine Sanglante* (21–28 May 1871), he barely mentioned it in his writings – the man who had been shocked by the carnage in Solferino. Selective indignation has a long history!

The final third of the nineteenth century, with its progress in transport and communications, was also a time of accelerating colonial conquest, 'transformed ipso facto into just wars in the name of natural law, trade, movement, and property', in the words of historian Enzo Traverso (Traverso, 2004). While humanitarianism by definition refers to a single human species, the concept of the existential equality of all humans is not necessarily included (all humans, but some more than others, as Orwell might say). For example, the Declaration of St. Petersburg (1868) prohibited explosive munitions for being 'excessively cruel'. But they were still permitted for big-game hunting and colonial wars. Gustave Moynier, co-founder and first president of the Red Cross (a position he held for thirty-six years), theorised about this

distinction in the language of the time, writing that the organisation's founding principles were the product of evangelical morality and civilisation. The humanitarian ideal was therefore 'inaccessible to savage tribes that ... follow their brute instincts without a second thought, while civilized nations ... seek to humanize it' (Moynier, 1888). This goes to show that humanitarian principles, far from being a timeless good, are not immune to prevailing stereotypes or political power relationships.

As a treaty aimed at an emblematic nineteenth-century battle was being signed, the conflicts and massacres of civil wars and imperial conquests were foreshadowing the twentieth century's mechanised and industrialised total wars. Dunant himself anticipated the evolution of armed conflict towards total war in a collection of writings published at the end of his life, presciently entitled *L'Avenir sanglant* (the bloody future). We know what happened to humanitarian norms during what historian Eric Hobsbawm dubbed the 'age of extremes', with its colonial massacres, world wars, genocides, civil wars and concentration camps. If there was ever a time in history where there was no regard for either the principle of mercy or the value of human life, it was the 'short twentieth century' (1914–91) – far more than the last thirty years.

The supposed decline in humanitarian norms is assumed to have resulted from the changing nature of contemporary conflicts, which are now intra-, rather than inter-, national. It is true that most post-Cold War conflicts have been internal, rather than between countries. Foreign states continue to be involved, however, and as current conflicts in the Near East and Africa remind us, the end of the Cold War did not mean the end of proxy wars. Yet the 'proxies' are no longer docile clients of powerful patrons; they avoid being controlled by their backers by forging their own alliances and have a tendency to fragment, as evidenced by the increasing number of armed groups. The end of the Cold War has resulted in a *de facto* change in the shape of conflictual relationships.

Does that mean that they now claim more victims among civilians than among combatants? That is what was claimed – to take just one example – in UNICEF's 1996 report to the UN General Assembly and reiterated in another UNICEF document in 2009:

The 1996 Machel study noted with deep concern how war tactics had changed, with civilians, including children, increasingly becoming the targets of violence and the victims of atrocities. Regrettably, this trend continues. Armed conflicts today have an even more horrific impact on children, and on civilians generally. In today's wars, the strategies adopted by armed groups 'seek to bring the battle

more immediately, more systematically, and more massively to the core of the civilian population’.

(UNICEF, 2009)

Condemnation of this alleged trend has become a cliché in the humanitarian world, where one frequently hears the depressing observation above, often summed up with two figures: during the First World War, 80–90 per cent of the victims were soldiers, whereas the proportions are now reversed (Kaldor, 1999; Roberts, 2010).

In reality, the biggest victims of current conflicts – at least in terms of numbers – are young men of fighting age. We are no doubt more sensitive to the loss of women and children, but that loss is numerically smaller than that of men. The 90/10 ratio is more an attempt to dramatise than a quantitative estimate. We should also point out how hard it is to distinguish civilians from combatants in internal conflicts, where people can often be both, depending on the moment. As discussed above, that distinction has been blurred since the late nineteenth century and, contrary to what is often said, has nothing to do with the ‘new wars’. What makes that assertion particularly shocking is its positive portrayal of the First World War, and its blithe acceptance of the deaths of nearly 20 million people (half of them civilians) and the maiming of several million more. That such slaughter can be cited publicly as an example of respect for IHL without an immediate backlash shows how easily IHL can be reconciled with mass killings, provided they can be classified as ‘military necessities’.

Should we just dispense with IHL, then? No, because it helps humanitarian organisations create negotiation space with governments – the ones that accept the principle, of course, and not all do, although many agree to it. Humanitarian organisations can use those governments’ commitments to IHL to support their requests for authorisation to act and to bolster their status as legitimate actors in conflicts. Neither a moral code to be brandished nor a relic to be dismissed, IHL helps humanitarian organisations find their place in war. That is not nothing, and it makes IHL worth defending. To expect more is to forget what it is, at bottom, and delude ourselves about its virtues. To imply that war can be civilised by law is to ignore the political realities of both law and war.

Henry Dunant talked about creating ‘oases of humanity’ in the flood of violence that is war. Let us take that at its word; humanitarians try, with varying but real success, to create oases of at least some humanity, whether medical facilities or places where food and survival kits are distributed. The fact that these are invaluable, sometimes life-saving, for those who can take advantage of them should not mask the stark reality that humanitarians and the principles they invoke have no

impact at all on the reality of war, which is a wrecking ball.

‘Even war has rules’, say the Médecins sans Frontières (MSF) flyers protesting hospital bombings. In theory, hospitals and other civilian assets should be spared. In practice, however, there is only one rule: to pursue victory or various advantages. The means used to achieve that end nevertheless differ from one situation or time period to another. The fundamental point is that for political forces engaged in armed conflict, whether state or non-state actors, the threshold of what is tolerable depends on their interests. More generally, how the power treats the population will depend on how concerned (or not) it is about earning its goodwill. And it will moderate its brutality according to the importance it attaches to its international image. For example, the US Army has developed software that its officers can use to predict – based on a variety of parameters (population density, time of day, type of buildings, etc.) – the collateral damage from bombing urban areas. The objective is to avoid causing more than twenty-nine civilian deaths, because, according to its advisors, thirty is the threshold at which negative reports begin to appear in the press (Weizmann, 2010).

Another example is modern flamethrowers, which were first used by Germany in 1915 and became widespread thereafter; in the 1970s, they came to symbolise the brutality of the Vietnam War. The famous photograph of the burned little girl fleeing a napalm attack aroused general indignation, especially in the United States, and impelled the Pentagon to ban flamethrowers from the battlefield in 1978. In one article on the subject, an officer who had fought in Vietnam explained that, aside from its negative image, the weapon was considered useless in the hypothetical context of a war with the Soviets, but that in contemporary conflicts – where close combat has made a comeback – that argument no longer holds. He welcomed their lawful return to the US military arsenal in 2003, saying, ‘The use of weapons that employ fire, such as tracer ammunition, flamethrowers, napalm, and other incendiary agents, against targets requiring their use is not a violation of international law. ... They should not, however, be employed to cause unnecessary suffering to individuals’ (Keller, 2018). The Israeli Army offered the exact same argument in 2014, during Operation Cast Lead, to defend its use of phosphorus bombs in Gaza – a use dictated by ‘military necessity’. Otherwise, why use them?

In October 2016, the ICRC held a roundtable in Geneva on ‘Translating humanitarian law into military tactics’. The aim was to consider how to conduct military operations within the limits of IHL and, in particular, to ponder appropriate, effective and yet legally acceptable

rules of armed engagement. The four panellists included two military legal advisors (from NATO and the United States) and a colonel. While this may seem extremely cynical, the effort to better incorporate IHL into military tactics is yet another reminder of its origins and approach, too often concealed behind the archetypal image of a rescuer bent over his victim. Also, the ICRC is not just another humanitarian organisation but an authorised agent of states and the promoter of an international treaty whose primary stakeholders and ultimate executors are diplomats and soldiers. As such, the ICRC is responsible for discussing with states the lawful, questionable or unlawful ways of killing of human beings. That is its primary role, and that is what it does. It is hard to see why any NGOs should agree to help them promote that kind of death sentence.

The Principles: Compass or Symbol?

‘Humanitarian principles’ are also invoked by organisations claiming adherence to IHL, which point to neutrality, independence and impartiality, along with humanity, as an ethical framework, a guarantee of safety and a guide to their action in the field. It is this usage that I want to examine now, starting with the observation that only two of these principles – humanity and impartiality – appear in the Geneva Conventions. The other two – neutrality and independence – are taken from the ‘fundamental principles on which Red Cross action is based’, set out at the organisation’s XXth International Conference in 1965. Under the circumstances, the ICRC probably needed to reaffirm its calling, after a century of existence during which the national Red Cross societies had acted as political intermediaries for the states, whose auxiliaries they were – and still are – by statute. Simply repeating an assertion doesn’t make it a reality, however, and denying a contradiction doesn’t make it disappear; auxiliaries of the state serve the powers that be. The French Red Cross, for example, acted as a potent echo chamber for nationalism and its propaganda during the First World War (Hutchinson, 1996), obediently carried out the orders of the Vichy government’s ‘national revolution’ and was an active partner of the colonial authorities during the wars in Indochina and Algeria, to name a few striking examples. The same can be said for all the other national societies, though we should note that this is not the case for the ICRC itself, which has maintained its neutrality to the point that it has sometimes been criticised for it (Favez, 1999).

In that historical context, the Red Cross’s need to proclaim those principles – which it conveniently calls ‘fundamental’ – is understandable. The Red Cross movement is a unique entity, neither public nor private, a legal category unto itself – neither an NGO nor an IGO.

It has its own constraints and its own logic of action, which do not apply to other humanitarian organisations. That is one – but not the only – reason to question the universal validity of the principles it sets out. The other, more important, reason has to do with the vagueness of those principles, which lend themselves to contradictory interpretations and, because they are thrown about indiscriminately, prevent our understanding of the real situation. We will now take a closer look at the three constantly cited principles: neutrality, independence and impartiality (NIIHA, for neutral, impartial, independent humanitarian action, in international NGO lingo).

Let’s begin with the principle of impartiality, which is for good reason considered central, because it concerns an essential distributional commitment: the principle enjoins organisations to make no distinction other than that based on need. Note that it is not used in its usual sense, which differs little from that of neutrality. We say that courts or judges should be impartial, meaning that they should not take sides. In other words, we expect them to judge in a neutral manner. But the word has a very specific meaning in the realm of humanitarian aid. It would have been clearer to talk about the principle of proportionality or fairness – and thus eliminate any confusion with the usual meaning – because it is indeed a question of committing to positive discrimination. Beyond that semantic distinction, however, lies the issue of determining and prioritising ‘needs’, a notion that only appears to be objective. An examination of the types of action taken by humanitarian organisations shows that the former can be broken down into a number of non-exclusive categories: demographic (women and children, children under five or, more rarely, the elderly), social (a discriminated-against minority, a disadvantaged stratum of society or a so-called ‘vulnerable’ group), medical (injured people who can be successfully operated on or patients with a specific condition such as trachoma, AIDS, malnutrition, etc.), organisational (safe drinking water, food, shelter, education, etc.), situational (refugees, IDPs, armed conflict, or natural disasters) and others. Is it more impartial, in an armed conflict, to operate on the war-wounded than to offer dialysis to people in renal failure who cannot get it due to the circumstances? To provide care in an abandoned psychiatric hospital rather than clean drinking water to a neighbourhood? To take an interest in people wounded in war and turn our backs on those injured in another way? To care for children rather than old people?

Acting means choosing, and choosing means excluding. One need only observe the very different choices made by those claiming to adhere to the same principle of impartiality to be convinced of this, though few will agree: every humanitarian aid programme has inclusion

criteria limiting the so-called ‘beneficiary’ population, thus excluding those who do not meet those criteria, despite the fact that they do have needs. Aid providers tend to consider as needs that which is on their list of services, as Marion Péchayre’s survey in Pakistan shows (Lachenal *et al.*, 2014). As the author points out, the concept of need is relational, in the sense that it depends on who is expressing it and who is evaluating it. Impartiality consists of the completely sensible and respectable assertion of one’s commitment to be fair, reflected in actions that vary according to the preferences expressed and the limited options of the actors.

The second principle that is considered fundamental, yet also open to different interpretations, is neutrality. As the Red Cross itself states, it may ‘not take sides in hostilities’ in times of war or ‘engage at any time in controversies of a political, racial, religious or ideological nature’. That definition has eclipsed the original meaning of the concept – that is, the signatories’ commitment to respect medical facilities in the first Geneva Convention, Article 1 of which states that ‘Ambulances² and military hospitals shall be recognized as neutral, and as such, protected and respected by the belligerents as long as they accommodate wounded and sick’.

From that perspective, neutrality is a principle of restraint that should apply to the belligerents, not humanitarian organisations. We might add, if only to better appreciate how far we have come from that first Convention, that it allowed for the permanent repatriation of the wounded, provided they did not take up arms again for the duration of the war (Art. 6). While such a provision was conceivable in the context of nineteenth-century conflicts, the advent of total war rendered it anachronistic. It was removed in 1906 with the Convention’s first revision, which granted the wounded prisoner-of-war status.

With that genealogical detail out of the way, let us return to the generally accepted use of the ‘neutrality’ concept and ask ourselves whether it is ethically acceptable to pledge not to get involved in any controversies, in particular when they are political or racial in nature. Objectively, MSF’s repeated criticisms of European leaders regarding the fate of migrants³ – an extremely political, sensitive and controversial subject – contradict its assertion of neutrality. It might be more morally correct to condemn the atrocities witnessed by humanitarian workers than to ‘not take sides in a political controversy’, but we cannot ignore the fact that such condemnation amounts to taking a side in the controversy.

Should a Burmese Buddhist organisation protesting (just hypothetically) the atrocities against the Rohingya and offering them help be considered in violation of humanitarian principles? One can argue that, on the contrary, it should be supported for its humanitarian

commitment, even if that commitment violates the principle of neutrality. In both this and the MSF case, as in many others, there is a contradiction between the principle of neutrality and a concern for humanity. Ignoring that contradiction means retreating into a rhetorical bubble, at the risk of being cut off from the real world. In Afghanistan, for example, the Provincial Reconstruction Teams (PRTs) were civilian military units that supplied the population with services and goods. Set up by NATO, their mission was to win ‘hearts and minds’ and gather information on the Taliban. NGOs vehemently criticised this classic counter-insurgency strategy, accusing the PRTs of compromising their neutrality by ‘blurring the line between humanitarian activity and military operations’ and endangering them. Without a doubt, that dividing line – if it exists – was blurred in Afghanistan, but at a much deeper level than this superficial one. The entire international aid system, including the NGOs, was working on behalf of a government at war, in an occupied country. Right from the start, the approach was described by US General Colin Powell in the following way: ‘NGOs are ... a force multiplier for us ... an important part of our combat team’.⁴ In fact, that statement, which shocked the NGOs, described an empirically observable reality compared to which the PRT issue was trivial. The entire aid system in Afghanistan was placed under the control of the government and the occupying forces. For those who saw the unvarnished truth of that reality, the protest campaign looked like an attempt by the NGOs to find a scapegoat, a way out of the awkward position that the disconnect between their stated principle and the reality of their unilateral action in the country had put them in. In any case, it was absurd, even dangerous, because it created a misleading sense of neutrality and safety, as the former was considered necessary for the latter. Aid workers were indeed killed in Afghanistan, though those murders had nothing to do with military-humanitarian confusion. Analysis of those events has shown that in each case there were different local reasons, unrelated to the confusion about which the NGOs were complaining (Magone *et al.*, 2011). The deadliest of those incidents (the October 2016 bombing of the Kunduz Hospital) was the fault of Afghan government forces and the US Air Force, not the Taliban.

Let us be clear: it is not my intention to discredit the actions of the NGOs working in Afghanistan. They make themselves useful in a number of areas and they try not to exclude anyone at their field projects and in the areas where they work – and that is what counts. There, as elsewhere, they do what they can, as they do in the many situations where they can only be present on one side. But if we look at actions rather than intentions, their claim of neutrality does not stand up to scrutiny.

If criticism of that claim has any importance, it is because its incoherence obscures our view of the challenges of humanitarian action. For example, during the siege and battle of Mosul (2016–17), MSF and the ICRC refused to participate in the aid system set up by the WHO, believing that proximity to coalition forces would harm their neutrality (Lafta *et al.*, 2018). Compromising their relief operations with that refusal, the two organisations gave the impression that they were more concerned with the hypothetical risk of violating their principles than with working as near as possible to the victims of that war. This shows how the principles, though intended to facilitate action by dint of the trust they are supposed to inspire, can actually become an obstacle if treated as a moral code in and of themselves.

The third principle invoked is independence, which the Red Cross tells us is a necessary condition for respecting the first two. Leaving aside the aforementioned fact that a national Red Cross society cannot be both an auxiliary of the government and independent of it, let us look at the meaning and limits of the concept for NGOs. Most NGOs are funded by institutional donors (the EU's European Civil Protection and Humanitarian Aid Operations (ECHO), the United States Agency for International Development (USAID), the UK's Department for International Development (DFID), etc.) and therefore cannot decide, on their own, how to allocate their resources or how long their field programmes should last, as these must be discussed with their funders. Dependent on the priorities and constraints of the organisations that make their actions possible, they can claim little more independence than the national Red Cross societies. The limitation on their freedom of action and of public expression does not, however, prevent them from doing useful work in just as humanitarian a spirit as their self-funded counterparts. It does, however, force them to submit intervention decisions to their funders for evaluation, for example, and sometimes to end a programme not because it has become unnecessary but because the funding has run out and cannot be renewed.

Even organisations funded by individual donors, who have full control over their money, cannot claim to be independent in the usual sense of the word – that is, free to decide how to use their resources. They can – and this is what characterises them – mobilise funds quickly in cases of emergency, choose to offer their services to (state and non-state) actors as they see fit and negotiate the terms of that assistance without interference from institutional donors, who have their own politics. While that responsiveness and flexibility are valuable assets, the freedom that makes them possible is not absolute, because the practical details and locations of any programme, like its orientation, must be negotiated with local authorities (Magone *et al.*, 2011). Hence funding is

only one aspect of independence. But not depending on institutional donors does offer freedom in two essential ways: first, being able to take initiatives not authorised by institutional donors, such as working in rebel territory, engaging with non-recognised interlocutors and using unauthorised protocols; and, second, being able to decide to end a programme if it is doing the target population more harm than good, or if the inclusion criteria are ethically unacceptable. In short, it is at the two extremities – the start and end of a humanitarian aid programme – that financially independent humanitarian actors are able to make independent decisions. What happens between those two extremities depends on the relationship with the powers that be, since an NGO's negotiating power depends on its usefulness – that is, the political benefits it offers – to those in charge.

Should We Dispense with Humanitarian Law and Principles?

The ultimate argument in defence of these principles is the safety of the humanitarian teams, in conjunction with the immunity status afforded them by the Geneva Conventions. Echoing the ICRC, people keep saying that respect for these principles is the only real protection – that they provide safety by inspiring the trust of the 'parties to the conflict'. In practice, however, being clear about our intentions – to offer assistance with no political ulterior motives or hidden agenda – is no protection, as shown by an analysis of violent incidents against humanitarian workers over the past three decades (Neuman and Weissman, 2016; Neuman, 2014). 'Principled organisations' suffer no fewer victims than the others, and the attackers are always after some type of gain (political, financial or personal), not punishment for a supposed breach of principles. Granted, it was not unreasonable to consider neutrality and independence as prerequisites to action in the early days of organised humanitarianism. It is careless, however, and sometimes quite risky, to ignore the fact that assumption has never been proven. As Fabrice Weissman (Weissman, 2016) so strikingly summed it up, the necessary condition for working in relative safety is to be more useful to our potential attackers present and alive than absent or dead (or detained).

So what good are the principles if they don't provide either direction for action or safety for the actors? Wouldn't it be enough to call ourselves 'humanitarian' – that is, driven by the desire to be useful without expecting anything in return? That's how MSF – more concerned about demonstrating its practical usefulness than its adherence to principles – presented itself for the first half of its existence. But since the 1990s, as the number and variety of self-proclaimed humanitarian

actors has grown, the meaning of the word has become blurred and needs clarification. Claiming to be 'neutral/impartial/independent' in this new context amounts to waving a white flag signalling that one has no enemies – in other words, a symbol meant to distinguish an organisation from other relief groups with other intentions (religious, community-based, political, commercial) but nothing more. That is why this author, who has long viewed neutrality as something between intellectual laziness and political cowardice, has come to support it, in this narrow sense. Viewing it only as a symbol, and not a compass, we can avoid idle speculation, since trying to determine whether or not a given position or operational choice is neutral or impartial is a useless – even counterproductive – exercise, as I have attempted to show.

This is not to advocate for a purely pragmatic approach, where our only duty would be to implement the most appropriate methods and skills – that is, an 'obligation of means' and the use of process. Such technical requirements are meaningless without an ethical framework: knowing who should be included and excluded from aid programmes and being able to explain it; worrying about being more useful to the powers that be than to the population; and paying attention to anything that might contradict the initial assumptions. These challenges regarding humanitarian organisations' specific responsibilities have no simple solutions. They are not set in stone, like doctrine, and cannot be summed up neatly in a Power-Point presentation. Rather than the false clarity of 'principles', they offer the discomfort of unresolved questions. For that very reason, they seem to offer a more concrete way to assess how well beneficiary populations are being served and a more substantial motivation for aid teams than the futile pursuit of some orthodoxy.

Notes

- 1 It was signed by twelve states: the Grand Duchy of Baden, Belgium, Denmark, Spain, France, the Grand Duchy of Hesse, Italy, the Netherlands, Portugal, Prussia, Switzerland and Württemberg.
- 2 That is, mobile medical facilities, according to the meaning at the time.
- 3 MSF has been strongly critical of the harassment of and violence against migrants in Calais. Several of the NGO's national sections have also decided to refuse EU humanitarian funding to protect the March 2016 agreement

between the EU and Turkey. That decision prompted sharp internal debate.

4 Powell (2001).

Bibliography

- Farré, S. (2014), *Colis de guerres, Secours alimentaire et organisations humanitaires (1914–1947)* (Rennes: Presses Universitaires de Rennes) p. 21.
- Favez, J. C. (1999), *The Red Cross and the Holocaust* (Cambridge: Cambridge University Press).
- Hutchinson, J. F. (1996), *Champions of Charity, War and the Rise of the Red Cross* (Oxford: Westview Press).
- Judt, T. (2008), *Reappraisals: Reflections on the Forgotten Twentieth Century* (London: William Heinemann).
- Kaldor, M. (1999), *New and Old Wars: Organized Violence in a Global Era* (Redwood City, CA: Stanford University Press).
- Keller, J. (2018), 'The Tactical Case for the Flamethrower, According To A Vietnam War Vet', 26 January, <https://taskandpurpose.com/bring-back-flamethrower> (accessed 27 June 2019).
- Lachenal, G., Lefèvre, C. and Nguyen, V. K. (eds) (2014), *La médecine du Tri. Histoire, éthique, anthropologie* (Paris: PUF).
- Lafta, R., Al-Nuaimi, M. A. and Burnham, G. (2018), 'Injury and Death during the ISIS Occupation of Mosul and Its Liberation: Results from a 40-Cluster Household Survey', *PLOS Medicine*, 15:5, doi: 10.1371/journal.pmed.1002567.
- Magone, C., Neuman, M. and Weissman, F. (eds) (2011), *Humanitarian Negotiations Revealed: The MSF Experience* (London: Hurst & Co).
- Moynier, G. (1888), *Les Causes du succès de la Croix-Rouge* (Paris: Académie des sciences morales et politiques).
- Neuman, M. (2014), 'Review: *Aid in Danger: The Perils and Promise of Humanitarianism*', *International Review of the Red Cross*, 96:894, 641–8.
- Neuman, M. and Weissman, F. (eds) (2016), *Saving Lives and Staying Alive: Humanitarian Security in the Age of Risk Management* (London: Hurst and Co).
- Powell, C. (2001), 'Remarks to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations', 26 October, US Department of State, Washington, DC, https://avalon.law.yale.edu/sept11/powell_brief31.asp (accessed 17 July 2019).
- Roberts, A. (2010), 'Lives and Statistics: Are 90% of War Victims Civilians?', *Survival*, 52:3, 115–36, https://weblearn.ox.ac.uk/access/content/user/1044/Survival_Jun-Jul_2010_-_AR_on_lives_statistics_-_non-printable.pdf (accessed 27 June 2019).
- Tauxe, J.-D. (1999), 'L'humanitaire face à de nouvelles parties au conflit mal identifiées', in *Actes du colloque 'L'Humanitaire en échec ?'* From a colloquium held in Paris, 4 February.
- Traverso, E. (2004), 'Entre Béhémot et Léviathan: penser la guerre civile européenne (1914–1945)', in Causarano, P., Galimi, V., Guedj, F. et al., *Le Xxe siècle des guerres* (Paris: Editions de l'Atelier, pp. 486–99).
- UNICEF (2009), *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World* (New York: UNICEF).
- Weissman, F. (2016), 'Violence against Aid Workers: The Meaning of Measuring', in Neuman, M. and Weissman, F. (eds), *Saving Lives and Staying Alive: Humanitarian Security in the Age of Risk Management* (London: Hurst and Co), pp. 55–70.
- Weizmann, E. (2010), 'Only the Criminal Can Solve the Crime', *Radical Philosophy*, 164, www.radicalphilosophy.com/article/forensic-architecture (accessed 27 June 2019).