

# War and humanitarian aid

Rony Brauman

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Le *Centre de réflexion sur l'action et les savoirs humanitaires* (CRASH) a été créé par Médecins sans frontières en 1999. Sa vocation : stimuler la réflexion critique sur les pratiques de l'association afin d'en améliorer l'action.

Le Crash réalise des études et analyses portant sur l'action de MSF dans son environnement immédiat. Elaborées à partir des cadres et de l'expérience de l'association, ces textes ne représentent pas la « ligne du parti » MSF, pas plus qu'ils ne cherchent à défendre une conception du « vrai humanitaire ». Leur ambition est au contraire de contribuer au débat sur les enjeux, contraintes, limites – et par conséquent dilemmes – de l'action humanitaire. Les critiques, remarques et suggestions sont plus que bienvenues, elles sont attendues.

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The Crash carries out in-depth studies and analyses of MSF's activities. This work is based on the framework and experience of the association. In no way, however, do these texts lay down the 'MSF party line', nor do they seek to defend the idea of 'true humanitarianism'. On the contrary, the objective is to contribute to debate on the challenges, constraints and limits –as well as the subsequent dilemmas- of humanitarian action. Any criticisms, remarks or suggestions are most welcome.

# War and humanitarian aid

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Aid delivered on humanitarian grounds is defined as selfless assistance provided to people in serious difficulty, with our common humanity our only bond. In principle, it is distinguished from other forms of aid that are motivated by political support or ethnic solidarity. Although this definition is universally accepted, it does not take into account the various meanings that have held sway during its short history nor the confusion and contradictions in current uses of the term. In practice, humanitarian aid is described as assistance provided to civilian populations suffering from a severe crisis, with the implicit qualification that the players involved are considered legitimate by general opinion – and only under this condition. This latter point can be evaluated by determining the situations in which the word is – or is not – used. Few observers, for example, have described as “humanitarian” the aid provided to the victims of natural disasters in Pakistan (2005 earthquake and 2010 floods) by Taliban organisations or by Hezbollah to Lebanon following the 2006 war. The term is widely used, however, to characterise aid provided by the Western occupation forces in Afghanistan. The variations in meaning over time can be assessed by noting that it would have been and would still be incongruous to apply this term to the Marshall Plan (1947) or the Berlin airlift during the Soviet blockade (1948-1949), even though the same thing was done during the siege of Sarajevo (1992-1995). During the Vietnam war, no one worried about a “humanitarian crisis” or employed the term “humanitarian” to describe the assistance given to the civilian population by the American military. The civilian aid that “anti-imperialist” organisations sent to the country, such as medicine, bicycles and generators, came under the rubric of political solidarity and it would have seemed out of place and even offensive to call it humanitarian. The Red Army in Afghanistan in the 1980s also provided aid to civilians, but only those supporting the invasion deemed it humanitarian. Numerous examples illustrate that while the term “humanitarian” is sometimes fluctuating and vague and at other times normative and bold, it is always caught up in power relationships that are only magnified by war.

In an attempt to grasp and analyse the political and ethical issues related to wartime humanitarian aid, it is essential to keep in mind the varying ways the term is used by experts and the public. As inconsistent as they may sometimes be, these various definitions nevertheless share a common rationale as long they are primarily dependent on general political views toward the supposedly “relevant” players and the various situations, as above-mentioned. Beginning with the creation of the Red Cross, we will therefore examine both the environment and practices of wartime humanitarian aid, without claiming to write its history. We will review its inception in the late 19th century then directly address the contemporary post-colonial period, examining the issue at various scales of analysis and presenting contrasting perspectives and objectives.

## Civilising war

Evacuating soldiers injured on the battlefield, removing them from hostilities as soon as they are away from the fighting and protecting workers providing them with aid summarises the contents of the first diplomatic humanitarian treaty signed in Geneva on 22 August 1864 by 12 States. Until that point in the 19th century, the term “humanitarian” referred to a kindly disposition and confidence in humanity’s ability to improve. Appearing for the first time in France in 1835 in the writings of Alphonse de Lamartine, a poet and member of Parliament, the word meant “for the good of humanity”. The fact that it was used ironically and even mockingly is evidenced by the 1884 edition of the French Academy dictionary, which defines it as follows: “designates certain opinions and doctrines claiming the good of humanity as their goal”. With the signing of the Geneva Convention and the creation of the Red Cross, humanitarianism was no longer the expression of optimistic anthropology or pacifist universalism, but also and primarily a set of norms

and an apparatus for providing assistance. Relief societies had previously been created, and efforts widely publicised by the press had been carried out by philanthropists for the sick and wounded on various battlefields, but they had always been private initiatives. Here we should note the role of information during an era of daily news. At a time of rotary presses and telegraphs, far more people were exposed to the suffering of war; descriptions of carnage on distant battlefields could be read the following day in European homes. For example, the horrifying spectacle of thousands of British soldiers dying of dysentery had been covered in the daily newspaper, *The Times*, during the Crimean War (1853-1856), giving rise to a protest movement to which the authorities responded by improving the inadequate medical care system. Florence Nightingale, already well known in Great Britain for her commitment to social justice, reform of the Poor Laws and improvements to public health, played a key role with the support of the British authorities.

Against this backdrop, an assembly of 16 States met in August 1864 on the banks of Lake Lemman, adopted a convention "for the Amelioration of the Condition of the Wounded in Armies in the Field". The Geneva Convention affirmed the permanent commitment of the signatories, soon joined by most of the other major powers, to provide care to sick and wounded soldiers "regardless of their nationality". Recognisable by its emblem, a red Maltese cross on a white background adopted in tribute to the Swiss flag, the medical services were to henceforth be respected, protected by law and not left to the discretion of military leaders. The Red Cross can trace its true origins to this promise of inviolability for its medical facilities. The political order that demanded sacrifice and killing was accepted as an unstoppable reality, as evidenced by the existence of armed violence from time immemorial. Without any possibility of eliminating war, attempting to civilise it was the only option. "Inter Arma Caritas" (Amidst Arms, Charity): it was not war that was called into question, but the excessive suffering it engendered, leading to the first international law to be codified. An ardent Protestant and admirer of Napoleon III, Swiss philanthropist Henry Dunant founded the Red Cross, whose purpose he described in "Un Souvenir de Solferino" (A Memory of Solferino, 1859). He wrote the book after seeing dying soldiers abandoned on the Solferino battlefield (1859), where he had travelled in an attempt to meet with the French emperor. In this book, which became a best-seller in Europe, he proposed "[...]during a period of peace and calm, [of] forming relief Societies whose object would be to have the wounded cared for in time of war by enthusiastic devoted volunteers fully qualified for the task". These societies, as well as evacuated soldiers, he wrote, would be protected under an "international principle sanctioned by a convention inviolate in character" and recognised by States. Together with the pacifist Frédéric Passy, Dunant received the first Nobel Peace Prize in 1901.

Three subsequent conventions held in Geneva in 1906, 1929 and 1949 dealt with the "conduct of hostilities", which were subject to growing obligations concerning prisoners and civilian populations, including those in occupied territories. Additional protocols in 1977 [Bouchet-Saulnier F., 2013] addressed combatants and casualties of internal armed conflicts. The scope of humanitarian law gradually expanded, limiting the right to destroy lives and property and requiring certain types of material assistance. The obvious tension between the permission to kill and the incitation by modern states to keep people alive immediately emerged as an insurmountable contradiction to pacifist figures of the 19th century, such as Nightingale and the future Nobel Peace Prize winner Alfred Fried, who saw nothing but an attempt to make war a palatable endeavour. While this conflict is no longer a major issue, it retains a certain relevance under a new form – the rhetoric about "humanitarian wars". The line between those who should be protected and sacrificed changes over time; the "limits of the intolerable" [Fassin D., Reichtman R., 2004] that every society draws vary according to time and place. For example, Czar Alexander II prohibited certain munitions, such as explosive bullets. Yet while he banned them during wars between "civilised nations", namely the signatory States, he authorized them for conflicts against "savages", i.e. colonised populations. The Saint Petersburg Declaration (1868), which prohibited certain projectiles, confirmed the customary rule banning the use of arms causing "unnecessary suffering". Incorporated into the Hague Regulations of 1899 and 1907, the Declaration is referred

to in the preamble of subsequent conventions signed in The Hague on the “laws and customs of war”. Geneva law and Hague law are the two branches of international humanitarian law, adopted as a universal standard by States, most of whom unleashed violence against civilians during the wars of the late 19th and early 20th centuries. This collaboration exemplifies a projection of power, as evidenced by the issuance of prohibitions – a position of dominance that the world’s “civilised nations” claim only for themselves.

### **Political benefits**

The normative framework of the Geneva conventions, guaranteed and promoted by the International Committee of the Red Cross (ICRC) and the States themselves as signatories, justifies dating wartime humanitarian aid to the creation of the ICRC and the adoption of the convention in 1864. The power relationships and balances of power in which the Committee operated, however, explains why the care provided to the wounded under the humanitarian emblem during later wars did not respect the neutrality principle to which its founders ardently aspired. In practice, the Red Cross national societies created by the convention’s signatory States exclusively served their own countries’ soldiers and took part in war propaganda beginning in 1870 [Hutchinson J., 1996]. A society belonging to a country not involved in a conflict was nevertheless permitted to care for victims of any nationality. The British Red Cross, for example, provided aid during the Franco-Prussian War of 1870, reserving medical care for its own soldiers during conflicts involving Great Britain. [Gill R., 2013]. During the Boer war (1899-1902), private organisations independent of the Red Cross tried to provide aid to civilian casualties, in this case populations considered as enemies. These included the Society of Friends, a Quaker organisation, and the Boer War Committee, set up by pacifist feminists. Between medical care for sick and wounded soldiers, visits and assistance to military and civilian prisoners, and aid to civilian populations caught up in the war, the presence of civilian relief workers on and near battlefields gradually became commonplace. Pacifists’ objection to wartime humanitarianism was eventually overcome by the reality of saved lives, which an anti-war stance of non-intervention would have condemned to death. Another objection was raised by military personnel during negotiations on the conduct of hostilities. According to certain strategists, imposing restrictions would lead to a longer war and increased suffering; they believed that the intensive, unrestrained use of violence was the only way to achieve a rapid victory that would ultimately save more lives. Aid to displaced or occupied populations, an important aspect of wartime humanitarian relief, has continually revived this debate, which re-emerged in the 1990s with talk about the “war economy”. This term refers to belligerents’ diversion of aid resources and their use for war purposes, thus leading to the prolongation of conflicts to the detriment of the victims for whom the aid was intended [Jean F., Rufin J.-C., 1996]. It should be noted that the objection raised by military strategists is similar to that raised by pacifists concerning combatants, i.e. both take a more theoretical than empirical view of the world. The strategists see the war as a purely military balance of power while the pacifists privilege a concept of non-violent human and social relations.

Relief provided to populations suffering from food scarcity and a series of ensuing epidemics in Belgium and northern France during World War I provides a general idea of the practical challenges and difficulties involved in addressing this issue. According to the British, who had placed Belgium under blockade, food aid was protecting the Germans from the riots that would likely have broken out otherwise, thus facilitating the occupation by alleviating its cruelty [Becker A., 1998]. Churchill, in particular, supported this position.

For the Germans, who requisitioned most of the country’s food supplies to feed their troops, the aid legitimised the blockade and the presence of foreigners in the occupied zone. For the most part, provisions were collected and distributed by the Commission for Relief in Belgium (CRB), an American organisation headed by the industrialist Herbert Hoover. The food, property of the United States, which was then neutral, was distributed by a Belgian committee under the supervision of

CRB representatives. The operation, which lasted nearly three years, may have freed the occupiers from this obligation, but there is no evidence they would have provided aid themselves had relief not been forthcoming. In any case, the aid proved useful to the various belligerents, with each party noting the benefit its enemy would derive as the reason for opposing it. Paradoxically, this was undoubtedly the reason that it was allowed at all: its very existence was constantly conditioned on using it for political ends (“instrumentalisation”) during wartime before it came under attack for the same reason. In other words, it is reasonable to assume that because the political cost of rejecting aid was higher than the cost of accepting it, the warring parties authorised the provision of essential, sometimes vital, aid to hundreds of thousands of civilians in occupied territories. Both then and now, in addition to the theoretical rights and obligations of international humanitarian law, it is generally these changing and contradictory set of interests that enable relief organisations to operate in conflict zones.

### **From Biafra to Indochina**

The first generation of wartime humanitarian action emerged in imperial Europe during the era of telegraphs and railroads. The second generation arose in the middle of the Cold War during the period of decolonisation, air transport and television. There is general agreement that this second era originated with the Biafran war (1967-1970), which was provoked by the secession of Nigeria’s eastern province. A relief operation comprising various Red Cross societies, mainly French and Scandinavian, was set up under the direction of the ICRC in territory controlled by secessionist forces and surrounded by government soldiers. Aid organisations affiliated with the Protestant and Catholic churches also participated in the operation. An airlift out of Sao Tome Island, a Portuguese colony at the time, supplied the international teams with drugs and food and the combatants with weapons and munitions. The magnitude of aid provided to the Biafrans as well as the wide range of relief organisations, including the Red Cross, churches and NGOs, would suffice to make this operation the inaugural event of a new era of humanitarian aid. But an additional factor made this relief effort particularly significant: the condemnation of genocide as a key element in communications about the suffering in Biafra. There was a striking contrast in the messages used to mobilize public opinion regarding the war in Vietnam (1965-1975), characterised as a “heroic” combat against American imperialism, and the war in Biafra, described as a “massacre of innocent people”. 3,000 children were reportedly dying every day. Horrifying images of emaciated children epitomized the agony under western cameras of the civilians trapped in the Biafran enclave. African governments rejected Biafran independence, which would have required drawing a new border, because they viewed the post-colonial borders as inviolable. The suffering of innocent victims was highlighted to justify continuing the war, with children, symbols of the ongoing extermination, held up as the primary casualties. Financed by the French special services, this psychological warfare was developed by a political communications firm and relayed by churches, numerous media outlets and certain humanitarian organisations [Hentsch T., 1973]. The general amnesty declared by the Nigerian authorities upon the surrender of the separatist forces, in addition to the protection previously granted to the millions of Biafrans living outside the war zone, proved the genocide accusation to be unfounded. Despite its disturbing connections with psychological warfare, otherwise known as propaganda, humanitarian testimony would eventually become a key aspect of humanitarian action. The food and medical aid provided for more than two years under often dangerous conditions saved the lives of many Biafran civilians and fighters. But did it help prolong the conflict? This cannot be ruled out but, to be precise, it is necessary to put such criticism in perspective by comparing this life-saving relief to other forms of outside support. The diplomatic and military assistance that France provided in the autumn of 1968 while negotiations were getting underway played a major role in encouraging the secession movement’s most hard-line positions, which were opposed to any form of compromise. The resistance movement’s uncompromising stance must primarily be attributed to then French president General de Gaulle’s political support for the separatists. De Gaulle became involved in the conflict under pressure from Nigeria’s French-speaking neighbours, which were seeking to

weaken the region's English-speaking giant, against the backdrop of the rivalry between France and Great Britain in Africa, with London supporting the Nigerian government.

The practice of sending humanitarian teams into rebel zones without any government authorization predates the Biafran war, but it became established as a model during this conflict due to its scope and visibility. Yet it would remain unrivalled for a number of years afterward although it might have seemed likely for the conflicts in Mozambique, Angola, Vietnam, Bolivia and Columbia, to mention just a few of the most intense clashes of the 1970s. Only the ICRC and occasionally religious NGOs operated in rebel areas. Several explanations are possible for this Biafran exception. The war's religious aspect was a key element in European involvement: the future Biafra defined itself as a Christian country struggling against Muslim forces. The other conflicts were viewed in ideological terms, claiming objectives of anti-imperialist and anti-colonialist solidarity. On top of these political considerations, it should be added that a solidarity-based involvement in the Third World mainly borrowed from the "development" lexicon. Beginning in the second half of the 1970s, with the influx of Vietnamese and Cambodian refugees and the increasing number of conflict areas in the Third World, humanitarian aid enjoyed a growing reputation and public support, leading to rapid development that continues to this day.

### War relief

From the standpoint of organising relief, armed conflicts can be characterized by three main types of effects: large population movements within a country and its neighbours; the disorganization of the health care system; and the weakening or collapse of the economy. Humanitarian organisations strive to meet the critical needs caused by these situations. Curative and preventive medical care, food aid, water supplies and provision of shelter are the essential relief services provided by the Red Cross, UN agencies and NGOs, along with local teams, who play a vital role that is often unknown.

Assistance to a country's internally displaced persons and to refugees, i.e. those seeking asylum in a neighbouring country, make up a substantial portion of relief aid. Central to the growth of contemporary humanitarian aid, this issue mainly focused on Europe after the two world wars, when the major concern was caring for and resettling refugees and stateless populations in Europe. The United Nations High Commissioner for Refugees (UNHCR), which was established in 1951, has been tasked since the 1970s with granting refugees legal status and protection and providing material assistance. \*\*\*\*While the UNHCR was originally established to assist opponents fleeing Eastern European Communist regimes, its mandate was later expanded by international conventions to help refugees as a whole. During the 1970s, after a period of post-colonial conflicts, war and political violence led to more uprooting in Southern countries, transferring durably the refugee issue to what was still called the Third World.

The end of the Indochina wars in 1975 was marked by the exodus of hundreds of thousands of people fleeing repression in Vietnam and Cambodia, followed by the Khmer-Vietnamese war (1979). The conflicts in the Horn of Africa during the same period led to the creation of huge refugee camps in Sudan and Somalia. In the late 1970s and early 1980s, the resumption of conflicts in southern Africa (Mozambique, Angola) and Central America (Nicaragua, El Salvador, Guatemala) had the same effect. All these wars took place in the polarised context of East-West rivalry, which endowed the refugees with political value. With most of them fleeing violence by pro-Soviet dictatorships or revolutionary wars, they benefited from the concern of the West, which viewed them as evidence of the Communist regimes' failures. Material assistance, provided mainly by the West, was an example of "soft power" by which the liberal camp could demonstrate its superiority. Under these circumstances, the right to asylum was no longer understood as a form of legal status entitling the refugee to permanent resettlement in a host country but as a right to a temporary haven and collective material support in a refugee camp.

## Refugees

Refugee camps were the focal point of humanitarian action during this period. It was here that NGOs and UN aid agencies developed their new skills and practices, separate from those related to development aid, such as site planning, logistics, specific organisational and coordination methods, and relations with the political authorities. The decision about where to locate a camp must take into account hygiene issues, transport facilities, access to water and of course the space available based on the size of the refugee population. The host country is responsible for taking this decision, but it does so in coordination with the UNHCR. While it is essential to weigh the technical and practical aspects of this decision, political issues also play a role due to continuing ties between refugees and rebel movements. Opportunities granted to the rebels by host country authorities are often sources of tension with the home country government. For that reason, the distance separating border camps from war zones is a sensitive political topic for the host country, as clearly evidenced by, among many other examples, the controversy over Salvadoran camps in Honduras during the 1980s. The Honduran authorities wanted to move the refugees away from the border to demonstrate that they did not support the Salvadoran guerrillas. This relocation effort gave rise to a major international campaign against an initiative then described as “deportation” by activist organisations. The relocation never took place. The Honduran government presumably wanted to avoid appearing hostile to the peasants fleeing military repression. It is also likely that the access provided to Salvadoran guerrillas in the camps they controlled in Honduras, which were located right along the border, helped keep the Salvadoran army on its own territory. The ardent nationalism and strong territorial tensions characterizing relations between the two governments, both of which were pro-American and anti-Communist, made the camps a means by which the Honduran military could continue its low-intensity conflict with its Salvadoran counterparts. While refugee camps are sites intended for civilian aid and protection, they cannot avoid the power relationships at work in the respective societies or the balance of power between the States concerned. During these same years, the Cambodian, Afghan, Eritrean, Nicaraguan and Mozambican refugee camps, not to mention the most prominent conflicts of the 1980s, were the locus of similar political scenarios. Yet United Nations financial and legal assistance (funding for accommodation facilities, compensation for the host country’s social services, granting of refugee status, food aid) and NGO material aid (health care, water, nutrition, sanitation, sometimes schooling) still found its way to the refugees, providing them with extensive services.

For humanitarian workers, awareness of political tensions and dynamics, often invisible to outside players, is not a simple academic exercise but potentially a major ethical challenge, as evidenced by the exodus following the war and genocide in Rwanda (April-July 1994) [Terry F., 2002]. More than one million Rwandans crossed the border into Zaire in June 1994 while nearly 500,000 made their way to Tanzania. It quickly became clear that these camps were sheltering thousands of combatants and that the Rwandan “interim government”, known to be the genocide’s political leaders, was rapidly reorganizing and using UN and NGO financial and material resources for their own ends. The management of food stocks, tents and various goods provided by the aid system, like the hiring of refugees to work for humanitarian groups, are significant levers of power and funding for those who control them. As a result, some NGOs began questioning their very presence in the camps during the first few weeks, when it appeared likely that plans were underway for the recapture of Rwanda and the final massacre of Rwandan Tutsis, with the organisations’ unwitting help. The extremely urgent situation, caused by a devastating cholera epidemic that killed more than 30,000 refugees in just a few weeks, relegated these serious issues to the background, only to return to the foreground two months later once the epidemic had ended. These NGOs, who were in a minority, decided to end their participation once the life-threatening emergency was over, as they had no power to stop the aid diversions and their criminal purposes. Others, however, felt that it was not their place to express an opinion on the political nature of camp management and that their only duty was to provide assistance to the camps’ population. It



is difficult to come down definitively on one side or the other of these two notions of humanitarian responsibility, both of them based on an ethics of solidarity. It should be noted that in addition to assessing the two sides' judgements in this specific case, humanitarian aid's general principles of neutrality and impartiality do not enable us to decide between these conflicting positions, each of which can make legitimate arguments on its behalf. History, however, ended up backing those who decided to leave because the camps first became a base for attacking Rwanda then a target for reprisals and a counter-offensive by the Rwandan Patriotic Army (RPA). The war in Zaire, which has since become the Democratic Republic of Congo (1997), has experienced little respite since that time. From the beginning, it has been marked by large-scale massacres committed by the RPA and armed groups under its control. The eastern part of the country, particularly the two Kivu provinces, remains the site of an international peacemaking and peacekeeping operation employing 26,000 people, of whom 22,000 are soldiers.

### **Displaced persons**

The term "Internally Displaced Persons", or "IDPs" in aid jargon, refers to people forced to flee their homes due to war but who have not crossed an international border. During the 1990s, the IDP phenomenon became a humanitarian aid issue for three major reasons that a look back will clarify. Firstly, during this period, a number of Cold War-related conflicts found a political settlement, leading to the repatriation of refugees in Mozambique, Angola, El Salvador and Cambodia, among other countries, in the early part of the decade. Secondly, certain countries previously closed to international relief organisations opened their doors to the massive deployment of aid during crisis situations. And lastly, the end of Security Council paralysis following the dismantling of the Soviet Empire, resulted in the deployment of peacekeeping contingents in countries facing serious unrest. While the camps did not disappear, their locations changed due to the United Nations' proactive containment policy, as evidenced by the conflicts in Sudan (South Sudan, then Darfur), Bosnia and the Democratic Republic of Congo.

There is little difference between the assistance provided to IDPs and refugees in the camps, both of whom are characterized by uprooting and mass gatherings in relatively small areas. Medical care, shelter, food, drinking water and sanitation are the essential services provided. Similar dilemmas can arise, as in Bosnia (1991-1995), when NGO officials and UN agencies accused European leaders of exploiting humanitarian aid to hide their impotence at ending the war, which was instigated by Serb nationalists. They also publicly questioned their role, concerned about being "complicit in ethnic cleansing". The population displacements were not the unintentional effect but rather the key objective of this war, and Europe was content with providing "minimum service", which was condemned as a "humanitarian alibi". In fact, France advocated saving the Yugoslav Federation while Germany had decided to immediately recognize Croatia, precipitating the country's dismantlement. While Europe failed to prevent the escalation of violence and forced displacements, it is clear in hindsight that Europe did manage to contain the conflict within its borders.

### **Dunantists and Wilsonians.**

The 1990s were marked by increased military deployments by the UN – a "wilsonisme botté" ("hard Wilsonianism"), an expression coined by French political scientist Pierre Hassner, referring to the growing trend of multilateral interventionism under American leadership. From 1990-1995, some 50,000 UN peacekeepers were deployed worldwide, equivalent to the total number during the UN's entire 45 years in existence. The doctrine of this new interventionism, with its goal of stabilising conflict zones, was stated in the "Agenda for Peace, Preventive Diplomacy, Peacemaking and Peacekeeping", a document presented in 1992 by UN Secretary-General Boutros Boutros-Ghali. The plan to create an armed force that could be mobilised at any time to serve the UN never got off the ground, but a growing number of international contingents was sent

to crisis areas while NGOs and UN agencies increased the scope and professionalism of their services, particularly the High Commissioner for Refugees and World Food Programme (WFP). The war in Somalia (1990- ) served as a laboratory for this new form of militarized interventionism, beginning with the spectacular landing of American troops in Mogadishu port on 8 December 1992 – an event that was filmed live. The failure of this operation, largely due to a lack of understanding of the political dynamics at play as well as the direct involvement of the American forces in the conflict, has generated extensive body of literature. The last US Rangers discreetly left Somalia in March 1994 and the American refusal to intervene in any way during the Rwandan genocide, which began the following month, was the first repercussion.

So-called humanitarian military operations, however, were not condemned in principle and their existence created a new situation for humanitarian NGOs. The UN asked them to merge their efforts with its own and play a peacemaking role, which raised difficult questions. While peace itself is a humanitarian objective, the same does not hold true for the specific means of “imposing” it – in other words, the political order created to implement it, which can involve designating an enemy. To help populations under the control of armed groups refusing a peace agreement supported by the United Nations – populations that are often in the most difficult situation – the NGOs must not be confused with those who are fighting these groups.

NGOs that conceive their work in a restrictive manner and view international contingents as one of the parties to the conflict are sometimes called “Dunantists”. In this regard, they stand in contrast to “Wilsonians”, who identify with the UN’s political goals and consider it a neutral player due to its multilateralism. The Dunantists, such as ICRC and MSF, openly identify as “principled organisations” that value independence, neutrality and impartiality, thus implying that the Wilsonians are turning their backs. In effect, during conflict situations, solely focusing on providing support to State social services, such as health, training and school renovation, can easily be confused with a counter-insurgency strategy. At this point, “winning hearts and minds” and humanitarian aid overlap. This strategy is rejected by Dunantist humanitarian groups, which hold all belligerents, regardless of affiliation, at the same arm’s length. Their primary concern is reaching populations isolated by war in line with the impartiality principle that requires a humanitarian organisation to focus its efforts on essential needs. It is possible to fully support this position, while believing that these essential needs, and thus priority responses, are based on subjective and changing preferences rather than an objective and fixed definition. Impartiality can be sometimes be defined as providing the greatest good to the largest number of people and sometimes as meeting the most urgent needs. These two concepts are mutually exclusive in some cases and neither one can legitimately lay claim to being more humanitarian than the other. It should also be noted that “winning hearts and minds” does not only apply to counter-insurgency strategies but just as much to insurgency strategies. Humanitarian organisations working in areas controlled by an opposition movement cannot avoid political instrumentalisation any more than those operating in government zones, with their acceptance by armed rebel groups dependent precisely on the NGOs’ political usefulness. Contrary to widespread belief, and as emphasized above, such instrumentalisation is not a perverse effect of humanitarian aid but a constant feature and a condition of its implementation.

### **Darfur: a genocidal war?**

Assistance to Darfur war (2003- ) victims illustrates this aspect of humanitarian action and highlights two of the major developments discussed above – operational growth and professionalisation. The effect, if not the goal, of the government’s violent response to the armed rebellion that broke out in 2003 in Sudan’s western province was the flight of hundreds of thousands of villagers, who gathered near Darfur’s cities. The war and terror operations conducted by pro-government militias raged in 2004 while the United Nations was preparing to commemorate the 10th anniversary of the Rwandan genocide. Under international pressure, notably by NGOs

and the UN humanitarian representative in Sudan, who were calling attention to the risk of another genocide, the regime opened Darfur to aid organisations. More than 10,000 humanitarian workers, including about 1,000 expatriates, set to work from 2005 to 2009 turning this region into the site of the largest humanitarian operation of the past 60 years. It is highly likely that the Khartoum regime counted on this gesture to improve its international image and probably intended to take advantage of this mobilisation to keep the displaced populations at their new locations and thus strengthen its political control [De Waal A., Flint J., 2008]. If that was indeed the case, its strategy proved only partially successful. In 2009, Sudanese President Omar al-Bashir was indicted for genocide by the International Criminal Court (ICC) while the camps, holding more than two million displaced persons, gradually passed under the partial control of the armed opposition movements. International aid saved tens of thousands of people, not only through the physical protection offered by the camps but also by preventing death caused by malnutrition and the related diseases that occur under such circumstances.

Serving as a site where humanitarian organisations could demonstrate their operational capacities, Darfur also acted as a backdrop for an intense controversy over an international armed intervention designed to put a stop to the violence, which was characterized as genocidal by the intervention's supporters. This operation, given impetus by neoconservatives, grew so extensive between 2004 and 2009 that it became an issue in the presidential campaigns of the United States in 2004 and France in 2007. Some NGOs, particularly human rights groups, campaigned in favour of the operation, while others, mainly humanitarian aid organisations, were publicly opposed or simply did not take part in the appeals. Like the controversy over the Biafran war, the debate primarily centred on whether to relabel a civil war genocide; in that case, the supposed plan to exterminate the Darfurians would reduce aid to a sham at best and complicity at worst. The aerial bombings of villages, the militias' terrorist violence, and the massacres of civilians were only too real, especially during the first 15 months of the conflict. These facts laid the groundwork for the decision of the International Criminal Court's Pre-Trial Chamber to issue an arrest warrant for the crime of genocide against President al-Bashir and several senior government officials, including the Sudanese commissioner for humanitarian aid. If these officials are ever handed over, it will be up to the ICC to distinguish between a counter-insurgency war and a genocidal war – in this case, the only distinction between the two being the intentions ascribed to their authors. According to the indictment, genocide was carried out in two stages: first by violent means and then by depriving the victims of sustenance; the displaced persons camps were described as concentration camps in which famine and epidemics finished the task begun by bombings and militia attacks. The effectiveness of the above-mentioned relief effort in the Darfur camps, however, was evidenced by morbidity, infant mortality and educational access indicators that were far better than those in the rest of the country – facts contradicting the indictment but that were ignored by the prosecutor. The announcement of the arrest warrant was followed by the expulsion of many NGOs, mostly international but also Sudanese. Attention then focused on the expected effects of a sudden reduction in aid as well as political reactions and condemnations, which obscured the ethical and political issues raised by the accusation of genocide by attrition. In other terms, if this indictment were to proceed, it would make the UN, its Member States and NGOs the “useful idiots” of a genocidal regime through incompetence or blindness.

### **Ambiguous justice**

In addition to this extreme case, relations between humanitarian organisations and the ICC have been marked by a double ambiguity. United in a “Coalition for the ICC”, numerous NGOs (including MSF) campaigned for the adoption of the Rome Statute (1998) to end impunity and promote the general interest, with justice being seen as a prerequisite for peace. For those particularly active in armed conflicts, such as ICRC and MSF, the issue of their possible testimony before the ICC was immediate. Being viewed as a potential witness for the prosecution would complicate the negotiations that are always necessary to gain access to war zones, where acts of

violence take place. For that reason, the ICRC, the humanitarian organisation mandated by the Member States, was granted a special status exempting it from any obligation to cooperate with the ICC. Granted to the ICRC on a permanent basis, this privilege can be claimed by other humanitarian groups on a case-by-case basis consistent with the intent of the statute. While the ambiguity of a 'support to the court without participation' may have been predictable and plausible, the same cannot be said for relations between politics and international justice. It is not, of course, utopian to expect criminal prosecution to have a dissuasive effect but it is futile to think there can be any war without war crimes. Inevitably, therefore, the question becomes who risks being indicted and who does not. To date, only Africans have been indicted, not because of racial bias as some have claimed but because only countries and political players without Security Council protection actually face the threat of prosecution, which is the case for most African nations. Can international justice be dispensed more fairly in a world dominated by power relationships? Is this conceivable when political crimes involve whole sections of society, diluting the concept of individual responsibility in complex processes and interactions – a concept that forms the very foundation of modern justice? Some people are sceptical while others see the possibility of new political opportunities for shaking up the balance of power for the benefit of oppressed populations [Hazan P., 2007]. Everyone must decide for themselves. In any case, the ambiguity here lies in the fallacy of humanitarian organisations' initially positive response, while viewing political balances of power as secondary.

The war in the former Yugoslavia and the Rwandan genocide led to the first international jurisdictions since the Nuremberg and Tokyo trials – the Hague (1993) and Arusha (1994) tribunals followed by the International Criminal Court (2002). The Rwandan genocide was the direct catalyst for the UN's adoption of the "Responsibility to Protect" resolution, known as R2P, in 2005. Meeting the need "to take collective action, in a timely and decisive manner », and seeking to "protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity", the R2P divided the humanitarian sector. Some, including the author of this report, viewed in R2P a dangerous rehabilitation of the "just war" concept, while others focused on its dissuasive effect, with the use of force a last resort and lesser evil. R2P, however, does not impose on the Security Council members to use force in response to mass violence but enables them to do so on the basis of Chapter VII of the UN Charter. The "responsibility to protect" was invoked for the first time during the Libyan crisis in March 2011, resulting in the assassination of Colonel Gaddafi. Resolution 1973, which only authorized setting up a no-fly zone above Benghazi, led to the overthrow of the regime, which makes a certain degree of sense given the regime's threat to the upraised population. This very extensive interpretation supported by the nations that invoked humanitarian considerations during Security Council debates in order to hasten and legalise the preventive use of force. No one can say what would have happened had NATO's "Unified Protector" operation not taken place, but its aftermath in Libya, characterized by a proliferation of armed groups of all kinds, seems to have made R2P something of a nuisance. For example, it was not invoked in Security Council Resolution 2127 authorizing France to protect civilians and disarm militias in the Central African Republic. There was clear evidence of mass violence, however. Whatever the reasons for sidelining R2P in this case, in practice it would not have provided the Security Council with any new tool. Since its creation, the council has had legal instruments enabling it to use force in the event of a "threat against international peace and security", according to the provisions of Chapter VII of the UN Charter, subject to the agreement of its permanent members.

### **Increased risks?**

The rapid growth of humanitarian efforts since the 1970s has led to a proliferation of players, including new NGOs and institutional donors, an expanded mandate for certain UN agencies, such as UNHCR and Unicef, the creation of the UN Office for the Coordination of Humanitarian Affairs (OCHA), and humanitarian military operations. Nearly absent from the media until the late 70's,

humanitarianism is now rife and plays sometimes a central role in the coverage of conflicts. Governments appoint ministers of humanitarian affairs; courses, seminars and university theses are devoted to the issue; and numerous personal accounts and articles are published by people involved in this field. At the same time its resources, recognition and budgets kept expanding - parallel to increasingly numerous and large-scale field projects-, the aid community began discussing growing threats and attacks against humanitarian staff.

Both civilians and humanitarian teams were said to become the combatants' objective and target. The end of the Cold War and its supposedly stabilizing qualities were said to be the initial cause, leading to a transformation of conflicts, which were nowadays intra-national battles between factions free of any outside control. Armed groups were described as no longer motivated by a political cause but by greed and sectarianism, a transformation which resulted in the blurring of the line between civilians and combatants, and the non-compliance with humanitarian principles. This discussion is based on actual "security incidents", i.e. violence committed over the past 20 years, particularly the assassination of an ICRC representative during the attack of a humanitarian convoy in Sarajevo in 1992, the murder of six ICRC members in Chechnya in 1996, the deadly attack against the UN headquarters in Baghdad in 2003, the assassination of five Médecins Sans Frontières staff members in Afghanistan in 2004, and the killing of 17 employees of Action Contre la Faim in Sri Lanka in 2006.

The worrying trends laid out in this discussion, like the overall analysis to which it belongs, are nevertheless debatable. It can be argued that this period was actually marked by a growing presence of humanitarian organisations very close to the conflict zones and a spectacular increase in the number of their workers in areas that had previously been largely inaccessible. In view of these developments, the risks run by humanitarian staff working in conflict situations have actually remained stable. While it may be true that most of the conflicts are now domestic in nature, even though all of them have a regional dimension, it is debatable whether civilians are targeted more than they were before the Cold War. Indiscriminate bombing, terror strategies, executions of hostages, militias, massacres of civilians and rapes have all been a common element of most conflicts in which modern humanitarian organisations have operated throughout the 20th century. Moreover, war-related deaths have continually declined since the end of the Cold War [Human Security Report, 2013]. Do atrocities trouble people's consciences more today than in the past? Does this discussion indicate a change in sensibilities, i.e. less tolerance for mass violence? We do not have sufficient hindsight and research to confidently answer this question. It should be noted, however, that characterising the post-Cold War era as the period of civilian massacres unthinkingly relegates the innumerable victims and civilian targets of the "age of extremes" (Eric Hobsbawm) to oblivion.

### **A question of principles**

In reality, the greater danger facing humanitarian teams only concerns a small number of countries, in relation with international military operations. These dangers mainly involve hostage-taking that does not target humanitarian workers as such but as a category of people who are valuable for transaction and protection purposes; the intention is to trade them for cash or use them as human shields. In these situations, humanitarian organisations tend to delegate negotiations with hostage takers to specialized firms, as companies do in other circumstances. Former police or intelligence officers then conduct searches and negotiations with the utmost discretion. This secretive modus operandi is undoubtedly justified when the negotiations involve freeing a company employee. In the case of humanitarian hostages, the validity of secrecy and the effectiveness of simply relying on a financial approach remain to be seen, judging by experience. Political factions vying for control of territory are generally concerned about maintaining the population's support and allowing humanitarian organisations to operate is one way to do so, as mentioned above. An admission of weakness for local political leaders and a source of grievance

for the population, the kidnapping of humanitarian workers in armed conflict areas is not only a tragedy for the victims but also a challenge for political groups who need to restore their damaged political authority. Reducing these challenges to a commercial transaction means ignoring the reality of these balances of power and losing the opportunity to use them for freeing hostages. Humanitarian workers have a special trump card, which explains why a significant number of them have been liberated without a ransom payment after local and international campaigns, public condemnations and political pressure by local players.

Whether the issue is staff safety or the management of the aid operations themselves, the discussion of basic humanitarian principles – neutrality, impartiality and independence – plays a limited role in our analysis of situations and organisational positions. These principles have significance in terms of signalling a commitment to having no other goal than helping victims and acting only out of concern for alleviating their situation. These principles are, in particular, spelled out in international humanitarian law as the rights and obligations of the various parties to a conflict and are important elements in negotiations between relief organisations and political authorities. They have little analytical value, however, because, each one can be interpreted differently, as we discussed above. While fully intended to be neutral and impartial, humanitarian aid for refugees does not appear as such to all local political players. The clandestine work practiced by the occasional NGO in rebel areas displays the same ambivalence. When determining priority needs, a humanitarian organisation is less likely to consider general principles than operational objectives, resource allocations and institutional interests. Needs are implemented through negotiations and acceptable compromises with political authorities, while keeping each party's objectives and requirements in mind. Humanitarian ethics during times of both war and peace reside not in an illusory attempt to keep politics at arm's length, but in knowing what types of politics to pursue and what limitations to impose.

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***Translation by Karen Tucker***

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