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Romancing principles and human rights: Are humanitarian principles salvageable?

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Abstract

"Classical" or "Dunantist" humanitarianism has traditionally been constructed around the core principles of neutrality (not taking sides) and impartiality (provision of assistance with no regard to ethnicity, religion, race or any other consideration, and proportional to need), plus the operational imperative (rather than a formal principle) to seek the consent of the belligerent parties. These principles, whilst never unchallenged, have dominated the contemporary discourse of humanitarianism and have been synonymous with or at least reflections of a presumed essential, enduring and universal set of humanitarian values. This paper offers a more dynamic and changing vision of the content of humanitarian action. It maps the origins and content of the "new humanitarian" critique of the humanitarian sector and principles and argues that this has both misrepresented the ethical content of neutrality and obscured what amount to significant operational adaptations that leave traditional humanitarianism well prepared for the contemporary operating environment.

Keywords: humanitarian, new humanitarianism, humanitarian principles, neutrality, impartiality, reform, history.

The dominance of the principles?

During the Cold War, "classical" humanitarian principles[1] clearly occupied a privileged place across a relatively homogenous, albeit fragmented, decentralized and limited humanitarian sector that was ostensibly rooted in the global North.[2] They were enshrined in the declaratory positions of many of the major humanitarian agencies and were embedded in fundamental ways in the legalistic instruments of the humanitarian system itself: the Fundamental Principles of the Red Cross and Red Crescent Movement (the Movement), UN General Assembly Resolution 46/182 and the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1994 Code of Conduct).[3]

1 This paper uses the phrases "classical", "Dunantist" and "traditional" humanitarianism interchangeably and as a euphemism for the form of emergency, life-saving relief assistance and protection historically provided by the International Committee of the Red Cross (ICRC).

2 Odeh defines the global North as the economically developed societies of Europe, North America, Australia, Israel, South Africa and others. He contrasts this with the global South, the "economically backward countries of Africa, India, China, Brazil, [and] Mexico amongst others". He suggests that global North States are "wealthy, technologically advanced, politically stable and aging as their societies tend towards zero population growth". The opposite is the case with global South countries. The global North "has continued to dominate and direct the global south in international trade and politics". Lemuel Ekedegwa Odeh, "A Comparative Analysis of Global North and Global South Economies", *Journal of Sustainable Development in Africa*, Vol. 12, No. 3, 2010, p. 4.

3 ICRC, *The Fundamental Principles of the Red Cross and Red Crescent*, Publication Ref. 0513, 1996, available at: www.icrc.org/eng/assets/files/other/icrc_002_0513.pdf; UNGA Res. 46/182, 19 December 1991, available at: www.un.org/documents/ga/res/46/a46r182.htm; International Federation of Red

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Humanitarianism was also equated by the International Court of Justice with the work and modalities of the International Committee of the Red Cross (ICRC).[4] Variations of the principles also emerged in the Humanitarian Charter and Minimum Standards in Disaster Response elements of the Sphere Project,[5] and there have been various attempts to embed the principles at the field level by the United Nations (UN) and by NGO coordination groups[6] such as the Joint Policy for Operations in Liberia,[7] the Ground Rules framework in Southern Sudan[8] and the Strategic Framework in Afghanistan.[9] As a result, the humanitarian principles have become more than simply a pragmatic mode of access to victims and closer to a motif of humanitarianism itself – they have been gradually elevated from a simple means for securing access to something that, for some, borders on being the "end" of humanitarian action. This is not to say that the ICRC itself sees humanitarian principles as raised to the status of absolute values.[10] Their more limited role as pragmatic guides was clear even to Jean Pictet, long considered the founding father of the Fundamental Principles of the Movement. He framed them as "a rule, based upon judgement and experience, which is adopted by a community to guide its conduct".[11] But throughout most of the twentieth century the principles were variously constructed *simultaneously* as global, permanent and immutable talismans of access and as central motifs *qua* objectives of the humanitarian discourse. In many ways this ensured that challenges to classical humanitarianism as a paradigm of action could be routed through criticisms of the principles themselves.

This paper follows two principal lines. Firstly, it raises the question of whether the humanitarian principles – of humanity, impartiality, independence and neutrality[12] – represent an authentic and fixed consensus on the nature and content of humanitarianism by situating them within a changing vision of the content of humanitarian action. It then maps the origins and content of the

Cross and Red Crescent Societies (IFRC) and ICRC, Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, Geneva, 1994 (1994 Code of Conduct), available at: www.icrc.org/eng/assets/files/publications/icrc-002-1067.pdf (all internet references were accessed in June/July 2015).

4 International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua* v. *United States of America*), Merits, *ICJ Reports 1986*, para. 243.

5 The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response*, 1998, available at: www.spherehandbook.org.

6 Kate Mackintosh, *The Principles of Humanitarian Action in International Humanitarian Law*, Humanitarian Policy Group (HPG) Report No. 5, Overseas Development Institute (ODI), March 2000.

7 Philippa Atkinson, *The War Economy in Liberia: A Political Analysis*, Network Paper No. 22, Relief and Rehabilitation Network, ODI, 1997.

8 Iain Levine, *Promoting Humanitarian Principles: The Southern Sudan Experience*, HPG Network Paper No. 21, May 1997, p. 31.

9 Antonio Donini, "Principles, Politics, and Pragmatism in the International Response to the Afghan Crisis", in Antonio Donini, Norah Niland and Karin Wermester (eds), *Nation-Building Unraveled? Aid, Peace, and Justice in Afghanistan*, Kumarin Press, Bloomfield, CT, 2004.

10 Denise Plattner, "ICRC Neutrality and Neutrality in Humanitarian Assistance", *International Review of the Red Cross*, No. 311, 1996, pp. 161–180.

11 J. Pictet, *The Fundamental Principles of the Red Cross: Commentary*, Henry Dunant Institute, Geneva, p. 8.

12 For further consideration of these Principles, see Jean Pictet's basic works: *ibid.*, pp. 37–60; and Jean Pictet, *Red Cross Principles*, ICRC, Geneva, 1956, pp. 32–76.

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post-Cold War critique of the humanitarian system, and particularly the criticism of the principles levelled in the "new humanitarian" literature. It portrays this critique as the product of an alternative paradigm for assistance that poses an existential threat to humanitarianism through challenging both the ethical content and operational relevance of traditional humanitarian principles.

The paper then deconstructs and evaluates the nature of these criticisms and in particular those levelled against the concept of neutrality. The paper questions whether the context of humanitarian action has changed to such a degree that the principles no longer remain the most effective means of guaranteeing access, suggesting that critics have both misrepresented the ethical content of neutrality and obscured what amount to significant adaptations within the classical system that (arguably) underline its continuing operational relevance. In fact, when operationalized consistently, the principles offer the best mode of access, but at the expense of the much broader aims of the new humanitarianism. The paper also argues that it is inevitable and beneficial that new humanitarian paradigms will emerge (and in fact already are emerging) alongside traditional humanitarianism, but the latter remains valuable and deserving of maintenance.

A permanent humanitarian ethic?

A particular component of the challenge to the principles has been the questioning of their continued relevance. Whilst the traditional principles undoubtedly have a definite air of permanence about them, many authors[13] recognize their historical specificity, seeing them as products of a "particular geopolitical context, in which the only type of conflict was the classic inter-state conflict, with a clear separation of military and civilians, of relief and development assistance, and in which the sovereignty of a state was inviolable".[14] In many respects it is right to challenge whether particular visions of humanitarianism remain relevant, as it has never been entirely fixed in its content. Michael Barnett and Tom Weiss[15] stress this as its continuous evolution, arguing that "humanitarianism" has always represented a "work in progress", with meanings and practices that have changed over the years and continue to do so.

13 Madalina Elena Nan, "New Humanitarianism with Old Problems: The Forgotten Lesson of Rwanda", *Journal of Humanitarian Assistance*, 4 October 2010, available at: https://sites.tufts.edu/jha/archives/780. See also Michael Barnett, *Empire of Humanity: A History of Humanitarianism*, Cornell University Press, New York, 2001; Juliano E. M. Fiori, *The Discourse of Western Humanitarianism*, Institut de Relations Internationales et Stratégiques, 2013, available at: www.iris-france.org/docs/kfm_docs/docs/obs_questions_humanitaires/ENG-JulianoEM-Fiori-october2013.pdf; Antonio Donini, "Decoding the Software of Humanitarian Action: Universal or Pluriversal?", in Volker Heins, Kai Koddenbrock and Christine Unrau (eds), *Humanitarianism and the Challenges of Cooperation*, Routledge, London, forthcoming 2015.

14 M. E. Nan, above note 13.

15 Michael Barnett and Thomas G. Weiss, *Humanitarianism Contested: Where Angels Fear to Tread*, Routledge, Oxford, 2011, p. 105.

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Humanitarianism's fluid content reflects its nature as a socially constructed phenomenon manufactured by the interaction of compassion with human suffering. As Fiori argues, humanitarianism "reflects the politics of its time, and its relationship to suffering and vulnerability is a product of the specificity of the contemporary moment and the trajectory of historical currents leading up to that moment".[16] As a socially constructed phenomenon, ideas of humanitarian action have always reflected a highly fluid politics of compassion. From its origins in European enlightenment ideas of both community and individual freedoms through nineteenth-century social and religious movements seeking the abolition of slavery, Victorian prison reform, improvements to the conditions of the urban poor, enhanced medical care to the battlefield wounded, and improvements to the spiritual and social lives of colonial subjects in Africa, there has been an evolving domain in which a particular politics of compassion has regulated the boundaries and content of humanitarian action as well as the forms of suffering its institutions have been configured to address. Changes in this politics of compassion have arisen from the constant renegotiation of evolving notions of "inhumanity" and "suffering", confronting equally fluid impulses towards solidarity, compassion and shared humanity. As a result, only some situations of "inhumanity" and "suffering" are ever transformed into "humanitarian crises" that are suitable for action by "humanitarian" actors. In other words, the content of humanitarianism has always been determined both by the supply of human suffering and the willingness to set boundaries around those forms of suffering that are considered "appropriate" for responses by a particular group of institutions that define themselves as "humanitarian". In this sense, classical humanitarianism is constructed as a "paradigm" with its own institutions, bureaucracies, principles and repertoires of individual and collective action, a comprehensive model of understanding and interpreting reality that provides individual humanitarians with cognitive maps – viewpoints and rules – on how to look at problems and how to solve them. In effect, humanitarianism is also a mental script that helps to shape the priority and nature of key problems to be explained and the legitimacy of particular actions in responding to them. Also, because the norms of humanitarianism are embedded in social structures and bureaucracies, they are a currency or domain of power, empowering some institutions and individuals to promote particularistic individual as well as collective interests. As such, humanitarianism is a dominant discourse that maintains the dominance of particular institutions and modalities as well as defining the content of purportedly universal values of charity and compassion in *specific* types of situations of crisis that are labelled "humanitarian crises". Arguably, as a socially constructed and exclusive domain, this *inevitably* generates challenges from within and without. Simply because dominant modes of power reflect particular interests and preferences, they inevitably create the potential for challenge by contenders who question the dominance of those very legitimizing institutions, norms and practices.[17] Hence the challenges posed by "new

16 J. E. M. Fiori, above note 13.

17 This is not to suggest that there are no differences; religiously inspired humanitarianism, Wilsonian traditions and military variations all have differing mental scripts. It is also interesting to note that

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humanitarianism" in the 1990s were in part an *inevitable*, alternative and existential threat arising within the global North. The subsequent challenges from the rejectionists (in particular Al Qaeda and the Islamic State in Syria and Iraq), who see no place for humanitarian action unless it is within their own terms, and the broader challenges arising from the decline of the West and the emergence of different, mainly statist approaches to providing succour in times of crisis are equally inevitable. Whilst ostensibly dissimilar, these challenges have shared the tactics of questioning the ethical content and continuing relevance of traditional humanitarian principles. However, in the process of doing so they have obscured significant adaptations that have taken place within the domain of classical humanitarian ideas.

An evolving or revolutionary paradigm? Broadening the politics of compassion

The next part of the paper explores the way in which humanitarianism is socially and dynamically constructed. Notwithstanding a variety of roots, throughout most of the late nineteenth and early twentieth centuries, humanitarian ideas and more importantly practices were dominated by an essentially charitable ethic of "giving", while beneficiaries were deserving of help simply because of their status as victims and their capacity to generate pity. This implicitly equated classical humanitarianism with what David Rieff has described as "bed for the night humanitarianism",[18] a form of largely paternalistic and symptomatic relief rather than a transformative or emancipatory agenda for social change.[19]

The geopolitical context of humanitarianism changed from the 1950s, and this had a significant impact on the ambition and nature of this particular politics of compassion. Decolonization processes, liberation struggles, the growth in the reach and resources available to the UN, and the rise of new logistics and information technologies accompanied and in many ways drove the increasing institutionalization of internationalized compassion, making it far more able to engage with distant venues of suffering in both an emotional and practical sense. Similarly, the rise of a powerful liberal discourse in the global North contributed to new perspectives on the nature, reach and purpose of humanitarian action and ideas of "proximity" to beneficiary and recipient communities. This was reflected in the growth of new types of humanitarian NGOs from the late 1960s, in particular the multiplication of solidarity movements, especially following the Biafran War, and NGOs dedicated to removing the deep structural causes of suffering and poverty.[20] There was also an impact on the modes of humanitarian

"humanitarianism" has no equivalent in French, which refers to it not as an ideology but as an activity (*l'action humanitaire*).

18 David Rieff, *A Bed for the Night: Humanitarianism in Crisis*, Vintage, London, 2002.

19 Michael Barnett and Thomas G. Weiss, "Humanitarianism: A Brief History of the Present", in M. Barnett and T. G. Weiss (eds), *Humanitarianism in Question: Politics, Power, Ethics*, Cornell University Press, New York, 2008, pp. 1–48.

20 J. E. M. Fiori, above note 13.

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action: an increasingly strident liberal human rights-based discourse in the global North saw the increasing numbers of NGOs as providers of broad-based solidarity rather than simply limited forms of essentially material support. This was augmented by an emancipatory vocabulary of rights,[21] or what David Rieff describes as a "rights-based universalism"[22] enshrined in an increasingly rights-based and avowedly activist humanitarianism which began to usurp that rooted in charity.[23] Increasingly, suffering was expressed in terms of the violation of rights, and all acts of empowerment in terms of the protection, promotion or defence of those rights.[24] As Kennedy contends, "efforts which cannot be articulated in these terms seem less legitimate, less practical, less worth the effort",[25] reflecting authors such as Hugo Slim's contention that philanthropy without rights threatens to reduce those suffering from disaster to pitiful victims who are unable to act against their own suffering.[26] The rights-based approach therefore sought to correct the powerlessness of those suffering, recognize their inherent rights and empower them to act as agents of their own change.[27] This increasing focus on the realization of natural rights and broader visions of social and individual justice, rather than simply "pity and help", broadened the politics of compassion, making "political space for itself to challenge, mitigate, and even transform the particular politics of violence and war".[28] In such a context, an emphasis on development aid and the protection of human rights (tools for the progress of peoples) that could challenge the structural causes of suffering, rather than simply address the symptomatic relief of suffering through humanitarian relief, became a natural component of the politics of compassion and challenged the compassionate minimalism inherent in traditional or classical humanitarianism – although ironically, this was something of a return to earlier campaigning forms of humanitarian action – such as the anti-slavery movement, Lord Byron's Kouchner-style agitation for the freeing of the Greeks from the Ottoman yoke, and other more or less interested Western concerns for the plight of suffering Christian minorities in the nineteenth century.[29]

21 David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism*, Princeton University Press, Princeton, NJ, 2004.
22 David Rieff, "The Ruthless Luxuries of Peace", *World Policy Journal*, Vol. 17, No. 1, 2000.
23 Stephen Hopgood, "Saying 'No' to WalMart? Money and Morality in Professional Humanitarianism", in Michael Barnett and Thomas G. Weiss (eds), *Humanitarianism in Question: Politics, Power, Ethics*, Cornell University Press, New York, 2008, pp. 98–123; D. Kennedy, above note 21; Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries*, Kumarian Press, Bloomfield, CT, 2002.
24 Alpaslan Özerdem and Gianni Rufini, "Humanitarianism and the Principles of Humanitarian Action in Post-Cold War Context", in Sultan Barakat (ed.), *After the Conflict: Reconstruction and Development in the aftermath of Conflict*, Palgrave Macmillan, London, 2005, available at: www.terzomondo.org/writings/writings/Gianni_Rufini_2005_York_Humanitarianism_and_Principles.pdf.
25 D. Kennedy, above note 21.
26 Hugo Slim, "Why Protect Civilians? Innocence, Immunity and Enmity in War", *International Affairs*, Vol. 79, No. 3, May 2003, pp. 481–501.
27 *Ibid.*
28 Hugo Slim, "Not Philanthropy But Rights: The Proper Politicisation of Humanitarian Philosophy in War", *International Journal of Human Rights*, Vol. 6, No. 2, 2002.
29 Gary J. Bass, *Freedom's Battle: The Origins of Humanitarian Intervention*, Knopf, New York, 2008.

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Broadening the conceptualization of crisis

The changing ethical content of humanitarianism was accompanied by profound changes in the conceptualization of what constitutes humanitarian crises themselves. In the immediate post-Cold War period, disasters were increasingly recast as "complex emergencies" – or complex combinations of natural and man-made causes and diverse sources of vulnerability.[30] For the UN, complex emergencies were conceptualized as humanitarian crises in a country, region or society where there existed a total or considerable breakdown of authority resulting from internal or external conflict and which required an international response that went beyond the mandate or capacity of any single agency and/or the ongoing UN country programme.[31] Commonly, a long-term combination of political, conflict and peacekeeping factors was also involved.[32] In effect the concept of the "complex emergency" transformed the short-term, sudden "innocence" of a "natural" disaster into a major complex political emergency, multi-causal in nature and demanding of a protracted and system-wide response. Increasingly, humanitarian catastrophes were tied both to conflict and to the existence of State and broader political failures.

This conceptualization of crises as complex emergencies demanding comprehensive and coherent international responses focused increased attention on the poor performance of (mainly Western) organized humanitarianism as a whole. In many ways, this was not new. The failure to respond effectively and efficiently as a system had been the source of much controversy following the large-scale emergencies of the 1960s and 1970s: the Biafran War (1967–70), the Great Peruvian earthquake (1970), the Bhola cyclone in East Pakistan (1970) and the Indo-Pakistani War of 1971. This had already precipitated significant reforms of the UN's humanitarian coordination structures. In 1971, the General Assembly passed Resolution 2816,[33] establishing the Disaster Relief Coordinator post and the UN Disaster Relief Organization (UNDRO). Despite what appeared to be a strong mandate to mobilize, direct and coordinate UN humanitarian assistance for natural disasters, and to coordinate UN assistance with the activities of non-UN actors, UNDRO was never able to effectively mobilize the UN's humanitarian system and galvanize a coherent international response. UNDRO lacked the finances and personnel to translate its legal mandate into a robust coordination mechanism. Consequently, parallel, separate and *ad hoc* coordination arrangements emerged within and between UN departments and specialized agencies for specific humanitarian situations. These included

30 IFRC, *World Disasters Report 2003: Ethics in Aid*, IFRC, Geneva, 2003, available at: www.ifrc.org/en/publications-and-reports/world-disasters-report/wdr2003/.

31 UN Inter-Agency Standing Committee, *Civil-Military Guidelines and Reference for Complex Emergencies*, 28 June 2004, p. 8, available at: www.refworld.org/pdfid/47da82a72.pdf.

32 Mark Duffield, "Complex Emergencies and the Crisis of Developmentalism", *IDS Bulletin*, Vol. 25, No. 4, October 1994, pp. 3–4.

33 UNGA Res. 2816 XXVI, 14 December 1971, available at: www.un.org/french/documents/view_doc.asp?symbol=A/RES/2816(XXVI)&TYPE=&referer=http://www.un.org/french/documents/ga/res/26/fres26.shtml&Lang=E.

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little-remembered structures such as the Office of Emergency Operations in Africa (OEOA) and the UN Office for the Coordination of Humanitarian and Economic Assistance Programmes relating to Afghanistan (UNOCA). Often these arrangements were inefficient, worked at cross-purposes or became vehicles or players in the competition for visibility and financial support. While it was often discussed previously, rationalization only occurred in the 1990s, starting on 19 December 1991 with General Assembly Resolution 46/182,[34] which created the UN Department for Humanitarian Affairs and the post of the Emergency Relief Coordinator, and then only as a result of geopolitical changes brought about by the end of the Cold War and the increased focus on systemic performance that derived from it.

From poor performance to existential crisis?

The early 1990s saw the critiques of humanitarianism change. The increasingly complicated environment of the complex emergency witnessed the habitual deployment of UN humanitarian organizations alongside the UN's political and peacekeeping actors. In such a context the chronic shortcomings in the system's performance became more obvious, both because the humanitarian response itself was frequently perceived internally as being poorly led and because coordination with other mission components was perceived as weak by political and military actors. Both the Gulf War of 1990–91 and the ensuing Kurdish refugee crisis at the Iraq–Turkey border highlighted the need for a dedicated and more empowered humanitarian coordination entity that was more able to effectively coordinate responses encompassing both internally displaced persons and refugee caseloads, and to improve the de-confliction between humanitarian agencies and deployed military forces. But it was the wars in the Balkans, the Great Lakes region and Somalia that led to a wave of political pressure for Western States' militaries to support the delivery of humanitarian assistance but also to substitute humanitarian action for robust political and military interventions. The genocide and civil wars in Rwanda and the Great Lakes region in 1994 raised important questions about the international community's willingness to act, the coherence of its responses and the overall levels of competence and professionalism within the humanitarian sector. Despite early warning of the impending genocide, the international community failed to act whilst the Joint Rwandan Evaluation[35] drew attention to the belief that poorly managed and unprofessional relief operations in the refugee camps following the genocide created conditions for a renewal of the conflict and led to thousands of what it described as avoidable deaths.[36]

34 UNGA Res. 46/182, above note 3.

35 ODI, *The Joint Evaluation of Emergency Assistance to Rwanda*, London, June 1996, available at: www.isn.ethz.ch/Digital-Library/Publications/Detail/?lang=en&id=121184.

36 John Eriksson, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience, Synthesis Report*, Joint Evaluation of Emergency Assistance to Rwanda, March 1996, p. 23, available at: www.oecd.org/derec/sweden/50189495.pdf.

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The necessity for enhanced humanitarian leadership also reflected demands for reform within the humanitarian community – in particular the need to formulate stronger policy and advocacy positions and develop a leadership that was able to safeguard the space for impartial, neutral and independent assistance in the maelstrom of politics that accompanied the increasingly "integrated" or "comprehensive" peacekeeping (and enforcement) missions of the first half of the 1990s. As a result of these failures and pressures, humanitarian action was increasingly characterized as chaotic, poorly managed, instrumentalized and ill-conceived; consequently, and crucially, it was also seen as becoming far more politicized.[37]

Paradigm crisis?

Undoubtedly, the international interventions in Somalia, the former Yugoslavia, Afghanistan, Sudan and Rwanda established conditions in which alternatives to the dominant modes and organization of humanitarianism *could* be considered.[38] Humanitarian workers increasingly perceived themselves to be operating in different and profoundly complex environments in which a multitude of pressures undermined the effectiveness of humanitarian principles as guarantors of access, and even potentially transformed them into a moral liability whereby neutrality meant inaction or complacency in the face of human rights abuses or aid diversion that underpinned elements of the war economy. The perception of widespread abuses of rights and armed actors' failure to uphold the laws of war provided a sense that the context of the so-called asymmetric "new wars" – that followed the end of the Cold War – was increasingly confounding civilian efforts to provide assistance.[39] The perceived instrumentalization and/or rejection of humanitarian assistance by belligerents appeared to subordinate needs-based humanitarianism to strategic political and military objectives and eroded the ability to provide impartial humanitarian assistance.[40] The increasingly protracted nature of emergencies also highlighted the perceived role of external aid in

37 The Synthesis Report of the Joint Evaluation of Emergency Assistance to Rwanda refers to the "hollow core" of the humanitarian system: *ibid.*, p. 31. On politicization in the 1990s, see Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries*, Kumarian Press, Bloomfield, CT, 2002, pp. 75 ff.

38 Dorothea Hilhorst, "Being Good at Doing Good? Quality and Accountability of Humanitarian NGOs", *Disasters*, Vol. 26, No. 3, 2002, pp. 193–212.

39 It is difficult to say authoritatively that there are more abuses today than, say, fifty years ago, but much of the literature inspired by Mary Kaldor's "new wars" thesis draws attention to an increase in violence and an increased ratio of civilian to military casualties. Mary Kaldor herself argues that the ratio of civilians to military casualties used to be eight combatants to one civilian killed in old wars, but that this has dramatically changed in new wars, where it is now approximately eight civilians to one combatant. Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era*, 2nd ed., Polity Press, Cambridge, 2006, p. 9. In addition to the increase in civilian casualties, it is argued that the new wars are "more bloody than any other kind of war since 1945": Herfried Münkler, *The New Wars*, Polity Press, Cambridge, 2002, p. 15.

40 Kurt Mills, "Neo-Humanitarianism: The Role of International Humanitarian Norms and Organizations in Contemporary Conflict", *Global Governance*, Vol. 11, 2011, pp. 161–183.

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fuelling conflict, prolonging war and escalating the levels of violence and suffering amongst civilians.[41] Similarly, the sector's lack of professionalism was portrayed as a blanket characteristic of classical humanitarian organizations themselves, contributing both to a growing sense of the inefficient use of aid resources for unaccountable and counterproductive programmes and the fuelling of conflict and abuse of aid through a lack of conflict sensitivity and adequate processes, effectively delivering perverse and unintended consequences contrary to the charitable spirit motivating much assistance.[42] Similarly, the palliative nature of traditional humanitarianism, particularly where it fuelled crisis and conflict,[43] was increasingly portrayed as unsustainable, and the resort to humanitarian principles as an alibi for avoiding making difficult choices. Neutrality in particular became a "dirty word" within what was increasingly labelling itself as the "new humanitarianism".[44] Overall, the principles were characterized as leading to politically blind acts of charity where the act of giving was more important than delivering positive impact, which was itself made almost impossible by the very nature of complex emergencies. The classical formulation of humanitarian principles was increasingly portrayed by its critics as an anachronism left over from an inter-State system and the Cold War, at best irrelevant and at worst "untenable" and "dysfunctional" in the face of new modes of warfare.[45]

In contrast, the new humanitarianism – the alignment of humanitarian assistance more or less closely with Western liberal peace agendas[46] – offered an extremely attractive vision of a potentially transformative approach able to address the structural conditions that endangered populations. More importantly, it emerged as a "saving idea" in the protracted conditions of complex emergencies, offering to remedy the paradox that simply saving individuals *today* made little sense if they remained in jeopardy *tomorrow*.[47] In such a context, an emphasis on development aid and the protection of human rights appeared to make infinitely more sense than stressing the palliative approaches of traditional emergency relief and material forms of humanitarian assistance, which often had

41 David Chandler, "The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda", *Human Rights Quarterly*, Vol. 23, No. 3, 2001, p. 681.
42 Mary Anderson, *Do No Harm: How Aid Can Support Peace – or War*, Lynne Rienner, Boulder, CO, 1999.
43 Sarah Kenyon Lischer, "Collateral Damage: Humanitarian Assistance as a Cause of Conflict", *International Security*, Vol. 28, No. 1, 2003, pp. 79–109; Pierre Perrin, "The Impact of Humanitarian Aid on Conflict Development", *International Review of the Red Cross*, No. 323, June 1998; S. Neil MacFarlane, "Humanitarian Action and Conflict", *International Journal*, Vol. 54, No. 4, 1999, pp. 537–561; Elena Lucchi and Clea Kahn, "Are Humanitarians Fueling Conflicts?", *Humanitarian Exchange*, No. 43, June 2009, available at: http://odihpn.org/magazine/are-humanitarians-fuelling-conflicts-evidence-from-eastern-chad-and-darfur/; Philippe le Billon, *The Political Economy of War: What Relief Agencies Need to Know*, Humanitarian Practice Network Paper No. 33, ODI, London, July 2000.
44 Fiona Fox, "New Humanitarianism: Does it Provide a Moral Banner for the 21st Century?", *Disasters*, Vol. 25, No. 4, 2002, p. 277.
45 Thomas G. Weiss, *Global Governance: Why? What? Whither?*, Polity Press, London, 2013, p. 68.
46 Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security*, Zed Books, London and New York, 2001.
47 Michael Barnett, *Empire of Humanity: A History of Humanitarianism*, Cornell University Press, Ithaca, NY, 2011, p. 105.

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only a symptomatic impact on contemporary forms of suffering in complex emergencies.

From the horrors of the Rwandan genocide to the battlefields of Afghanistan, externally provided humanitarian action appeared caught between two identities: the one it sought entailed the operationalization of an agenda of a common humanity and universal solidarity, while the one with which it was rudely confronted was that of an instrument of political and economic agendas which delivered outcomes that ran directly counter to the explicit objectives of human philanthropy. There was a perception of a growing incompatibility between the humanitarian responses being proffered by the international community and the kinds of problems increasingly being encountered, and as a consequence, the challenge to humanitarianism evolved from a critique of its performance into a far broader challenge to humanitarian values[48] and to the very idea that the sector was worth reforming at all.[49]

In terms of reform, the new humanitarians sought change through programmes of both professional reform and standard-setting, but also the adoption of more political and emancipatory forms of humanitarianism that offered a radical break from the past. The new humanitarianism promised to support transformative, developmental outcomes and even peacebuilding initiatives.[50] In the words of Daniela Nascimento, it promised a "combination between the immediate needs and future development, reinforcement of local services and structures, empowerment, participation and enhancement of the population's capacities, human rights promotion and protection (including gender issues) and contributions to *peacebuilding*".[51] In particular, it extended humanitarian goals beyond the short-term saving of lives to include peacebuilding and State-building, the empowerment of minority groups and women, bridging the gap between relief and development, and ultimately incorporating a much broader rights-based approach. It also sought to change the focus on the humanitarian *act* – characterized as the charitable impulses of the giver or their compliance with humanitarian principles – to the rights of an empowered beneficiary seeking to realize rights to which s/he was entitled. Consequently, the new humanitarianism set out to expand the boundaries of both the types of "crises of humanity" addressed by humanitarian actors and the repertoire of "acts of compassion" that were considered appropriate for humanitarian actors. In effect, the incorporation of new conceptualizations of crisis, professional technical tools, standard-setting and emancipatory rather than palliative forms of assistance under the new humanitarian label promised a

48 Especially those associated with Dunantist principles encompassing the norms of the International Red Cross and Red Crescent Movement.

49 Joanna Macrae, "The Death of Humanitarianism? An Anatomy of the Attack", *Disasters*, Vol. 22, No. 4, 1998, pp. 309–317.

50 M. Barnett and T. G. Weiss, above note 19.

51 Daniela Nascimento, "One Step Forward, Two Steps Back? Humanitarian Challenges and Dilemmas in Crisis Settings", *Journal of Humanitarian Assistance*, February 2015, available at: https://sites.tufts.edu/jha/archives/2126.

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dramatic corrective to the challenges brought about by classical humanitarianism and enabled the new humanitarianism to portray itself as being capable of delivering a radical rupture with the past. This claim was bolstered in the early 1990s by the post-Cold War, more interventionist posture[52] of many Western States and by the consequent expansion of budgets for foreign and humanitarian aid.

It should be noted, however, that not all segments of the humanitarian enterprise subscribed to the new humanitarianism. As a result, there have been intense and often increasingly polarized debates between "Wilsonian" and solidarist actors (who have adhered to the foreign policy objectives of their funders or espoused particular advocacy positions) and traditional "Dunantist" visions of humanitarian ideals.

A new paradigm and new interests?

The debates between traditional and "new" humanitarians are sufficiently polarized and the differences so profound that it is fair to describe the new humanitarianism as an insurgent idea which sought to replace classical approaches with its own vision – a new paradigm. The attraction of the idea, however, reflected not only the challenges of the post-Cold War era but also the interests of particular actors, particularly donors, Western governments' State security actors and groups of NGOs that had been somewhat marginalized by the dominant, Western and essentially secular humanitarian institutions.[53] The exponential growth in the numbers and diversity of such NGOs led to a rise in the numbers of multi-mandate organizations that co-opted the principles of classical humanitarianism but behaved in ways that differed fundamentally from the modalities of the ICRC. Many developmentally oriented NGOs were anxious to provide a form of normative legitimation to activities that actually fell outside of the traditional humanitarian framework in conditions where relief funding was growing partially at the expense of other forms of official development assistance. The explosion in overall NGO numbers also partially obscured the increasing importance of Western faith-based international NGOs such as World Vision and Catholic Relief Services in the broader pantheon of humanitarian actors. Some faith-based actors (from all religions and denominations) behaved in ways which were inconsistent with traditionally principled humanitarian action, particularly if they engaged in forms of proselytization, and were therefore uncomfortable both with efforts to establish coherence and with the implications for their work of upholding ideas of impartiality, independence and neutrality.

52 Such as the "ethical" foreign policy controversially pioneered by British prime minister Tony Blair's government from 1998.

53 The fault lines were, however, often fluid and dependent on individuals, issue and context. Also, the NGOs moved between these various camps over time, and the fault lines were often as much within as they were between organizations.

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Similarly, the new humanitarianism also promised much to donors, who were anxious both to halt the descent of crises into perpetual emergencies and to bridge the gap between relief and development. Following the Cold War, military doctrine and development policy converged on the assumption that underdevelopment was a powerful motor for national instability and consequently international insecurity. Similarly, while developmentalists recognized the need for conditions of "security" in order to facilitate development outcomes, military strategists increasingly considered development to be a fundamental component of stability and security.[54] This blending of development and security models blurred the boundaries between worlds that had increasingly been seen as separate, even if the historical relationship between the two had actually been one of great intimacy. Also, while *post facto* the process of blurring has often been characterized as that of the non-consensual and instrumental acquisition of development by security actors, the reality has in fact been far more complex and more consensual, with developmentalists pushing for access to the increases in funding made possible by the association with security agendas and at times suggesting that rather than development being securitized, security could be humanized. In such a context, the new humanitarianism was drawn into a powerful vortex in which development priorities and concerns were increasingly being associated with broader security goals.[55]

Dysfunctional principles? The contours of the critique

Having identified the tensions between traditional Dunantist approaches and the more politicized new humanitarian agenda's promise to address both the consequences and the root causes of crises, we now ask whether traditional humanitarianism is in fact reformable. Perhaps the most powerful element of the critique of classical humanitarianism is levelled against the central principle of neutrality,[56] which Fiona Fox argues has "become a dirty word" amongst new humanitarians.[57]

This line of critique certainly questions the moral foundation of classical humanitarianism. Authors such as David Chandler[58] have rejected neutrality on the grounds that since conflicts are themselves a product of the chronic violation of human rights, humanitarianism should pursue a more expansive vision of good. Conflicts by their nature are constructed around victims and perpetrators; hence Fiona Fox argues that humanitarian action should not remain neutral between the "Serb militiamen and the Muslim civilians or between Hutu genocidaires and their Tutsi victims".[59] In a different piece, and citing former

54 M. Duffield, above note 46, p. 3.
55 Björn Hettne, "Development and Security: Origins and Future", *Security Dialogue*, Vol. 41, No. 1, 2010, pp. 31–52.
56 M. Barnett and T. G. Weiss, above note 19.
57 F. Fox, above note 44, p. 277.
58 D. Chandler, above note 41.
59 F. Fox, above note 44, p. 277.

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Médecins Sans Frontières (MSF) president Phillipe Biberson's reference to the ICRC's refusal to compromise its neutrality by condemning human rights abuses, she quotes Biberson as saying that "if we are not sure that words can save, we do know that silence kills".[60]

Neutrality as moral apathy?

Influential liberal authors and commentators such as Alex de Waal,[61] Ed Vulliamy,[62] Tim Judah,[63] Martin Bell[64] and Michael Ignatieff[65] have all adopted similar arguments with regard to the neutral positions adopted by the international community in the Balkans and the Rwandan genocide, contending that adherence to the principle of neutrality, particularly by humanitarian actors, constitutes a form of complicity in the underlying crimes. Some explicitly argue that the ICRC's refusal to make any form of critical public statement about the cost in human suffering of certain methods of combat or kinds of repression constitutes complicity. As a result, both Biberson and MSF (France) itself were content to call for an armed intervention to halt the genocide in Rwanda, as was Alex De Waal,[66] that well-known critic of the "humanitarian international".

But even if these positions represent the high-water mark of the rejection of neutrality by elements of the liberal and humanitarian intelligentsias, it has often been suggested by new humanitarian practitioners that the very presence in the affected country of actors such as the ICRC casts a cloak of respectability on movements or authorities that are striving for recognition. Another frequently voiced criticism is that for some aid agencies, neutrality is used to hide their lack of accountability, needs assessment and other formalized operational procedures.[67]

New criticisms?

But the maximalist criticisms described above are far from new accusations; rather, they reach back at least to the criticism of the ICRC's (lack of) response to the Nazi concentration camps of World War II. The alternative to this position has often been equated with solidarity with the victim, an approach epitomized in the *modus operandi* of MSF and captured in its slogan of "Soigner et témoigner"

60 Fiona Fox, "Conditioning the Right to Humanitarian Aid? Human Rights and the 'New Humanitarianism'", in David Chandler (ed.), *Rethinking Human Rights: Critical Approaches to International Politics*, Palgrave Macmillan, London, 2002, p. 26.
61 Alex de Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa*, James Currey, Oxford, 1997.
62 Ed Vulliamy, *Seasons in Hell: Understanding Bosnia's War*, St Martins Press, New York, 1994.
63 Tim Judah, *Kosovo: War and Revenge*, Yale University Press, New Haven, CT, 2002.
64 Martin Bell, *In Harm's Way*, Icon Books, London, 1995 (revised ed. 1996).
65 Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience*, Metropolitan Books and Henry Holt, New York, 1998.
66 A. de Waal, above note 61.
67 Private interview with Sir John Holmes, former UN Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator, London, 23 November 2014.

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("Heal and witness"). While the solidarist position is still based on the humanitarian principles of neutrality, independence and impartiality, it appears far more cognisant of the potential for neutrality to equate to inactivity and is therefore, superficially at least, enormously appealing.[68] However, this framing of the debate is itself misleading. It reflects a particular set of challenges relating to the mid-1990s, underestimates changes in the way in which the ICRC has managed this dilemma and also misrepresents the implications of all interpretations of neutrality in key ways, particularly the relationship between moral principles and consequences.

In terms of the latter, ethical debates have always considered the relationship between moral principles and desired ends, distinguishing between what are described as deontological and teleological or consequentialist positions. For example, when actions are judged morally right based upon their consequences, it is described as a teleological or consequentialist ethical theory.[69] Such an approach privileges the consequences of an act in the moral calculus; hence, when we make choices that result in the correct consequences, we are acting morally, and when we make choices that result in the incorrect consequences, we are acting immorally. When actions are judged morally right based upon how well they conform to some set of independent moral rules or duties, it is described as a deontological ethical theory. Morality stems directly from following the dictates of duty, and when we fail to follow these, we are obviously behaving immorally. Thus, the prerequisite for making moral choices is an understanding of what our moral duties are. For instance, Immanuel Kant,[70] an absolute deontological thinker, would argue that it is always wrong to lie, no matter what the consequences may be.

Characterizing humanitarian agencies as either deontologically or teleologically rooted is challenging, as both positions are important and have their place in decision-making, but it would be reasonable to suggest that the ICRC's position, rooted in behaving in accordance with humanitarian principles, is frequently conceived as equating most closely with the deontological perspective.[71] While MSF's erstwhile solidarist position has elements of both perspectives, the new humanitarianism is most clearly rooted in teleological perspectives and in this sense sees itself as occupying a different moral universe to that populated by traditional humanitarians.

68 A. Özerdem and G. Rufini, above note 24.

69 For an excellent overview of the differences and similarities between deontological, virtue and consequentialist ethics, see Marcia Baron, Philip Pettit and Michael Slore, *Three Methods of Ethics: A Debate*, Blackwell, Malden, MA, 1997; Hugo Slim, "Claiming a Humanitarian Imperative: NGOs and the Cultivation of Humanitarian Duty", *European Journal of Development Research*, Vol. 11, No. 2, 1999, pp. 87–115; Hugo Slim, "Doing the Right Thing: Relief Agencies, Moral Dilemmas and Moral Responsibility in Political Emergencies and War", *Disasters*, Vol. 21, No. 3, 1997, pp. 244–257; Hugo Slim, "Relief Agencies and Moral Standing in War: Principles of Humanity, Neutrality, Impartiality and Solidarity", *Development in Practice*, Vol. 7, No. 4, 2007, pp. 342–352.

70 Immanuel Kant, "The Metaphysics of Morals", in Hans Reiss (ed.), *Kant: Political Writings*, trans. H. B. Nisbet, 2nd enlarged ed., Cambridge University Press, Cambridge, 1991.

71 A. Özerdem and G. Rufini, above note 24.

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Reinventing neutrality?

However, while the classification of institutions in this way partly explains the vitriolic debates that have raged between classical and new humanitarians, it does not accurately reflect contemporary interpretations of classical humanitarianism's commitment to neutrality. Instead it can be argued that the new humanitarianism constructed a straw man of classical humanitarian ethics in which *neutrality* was portrayed as implicitly deontological and as necessitating the application of a range of duties derived from the humanitarian principles themselves. Arguably this led to an implicit sense that traditional humanitarians, and the ICRC in particular, engaged in visceral, unreflective and unthinking forms of charity and philanthropy that amounted to a denial of politics and favoured the application of the principles as the primary benchmark of success. In effect, the principles were portrayed by the new humanitarians as having become sovereign, leading to a misplaced argument that the principles and the ICRC's working methods had been elevated to a status that was more important than addressing the suffering of the human beings that it was duty-bound to relieve.[72] Equally, from this perspective questioning the moral value of the principles of universality, humanity and neutrality resulted in a different moral calculation[73] – namely, that speaking out only in selected cases was wrong. If all suffering is considered to be genuinely equal, it is incumbent on the ICRC to speak out and denounce the pernicious effects of doctrines and ideas that lead to such appalling levels of misery and death.

However, whilst this critique is a powerful one, it can also be applied to most if not all of the Western relief agencies in the 1990s. In these contexts many agencies privileged their delivery of material assistance in ways that were decidedly unreflective and deontological in approach. This is not to say that the ICRC has been innocent of deontological approaches. Undoubtedly in the ICRC's past, and despite Pictet's very focused sense of their practical rather than ideological nature, the humanitarian principles *have* enjoyed a revered status both within and without the organization. In fact, it would be strange if a hierarchical and essentially Swiss bureaucracy did not coalesce firmly around such principles and police their application; after all, they have conferred significant normative legitimacy both on the organization and in the construction of professional and personal identities amongst humanitarians. But deontological ethics are no longer as compatible as they once were with postmodern societies. European society has undoubtedly become less hierarchical, more individualistic and less supportive of rigidly prescriptive ethical codes, and Swiss society has not been immune to these changes. The growing professionalization of ICRC staff and the impact of media and internet scrutiny have had significant consequences for the organization.

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

73 See above note 3 for an identification of humanitarian principles and those applying solely to the International Red Cross and Red Crescent Movement.

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Consequently the ICRC has been forced, like other humanitarian bureaucracies, to adapt to the increasing challenges of complex and protracted emergencies by being more reflective and responding to crises in more nuanced ways. As a consequence, the organization has increasingly engaged in more "thoughtful" forms of humanitarian response, incorporating its own forms of conflict analysis, do-no-harm prescriptions and teleological calculations in much the same way that advocates of the new humanitarianism have argued characterizes change within their own paradigm.[74]

This teleological adaptation can be seen most clearly in the application of the principle of neutrality. Marion Harroff-Tavel[75] implicitly but firmly argues against the deontological understanding of neutrality that is presumed to characterize traditional humanitarianism, solidly rebutting the idea that the ICRC considers its principles and working methods to be more important than its duty to relieve the suffering of human beings. She characterizes the purpose of neutrality as meaning "standing apart from contending parties or ideologies, so that everyone will trust you",[76] and echoes Pictet in her construction of neutrality as a utilitarian instrument rather than ethical position – "a means to an end, not an end in itself".[77] The concealed nature of the ICRC's deliberations on neutrality also leads to the incorrect assumption that neutrality can be equated with "being silent, indifferent, passive, and even cowardly".[78] In a direct echo of the solidarist positions of the new humanitarianism, she argues that the alternatives "overlook the fact that the Movement must never be neutral towards human suffering, but always towards men who are fighting each other and towards the differences that divide them".[79] Here solidarity is expressed in terms of continuing to function in situations where suffering is rife. This interpretation of neutrality is decidedly teleological and consequentialist in its ethics:

> Neutrality does not always mean keeping quiet; it means keeping quiet when to say anything would inflame passions and provide material for propaganda without doing any good to the victims the movement is trying to help. It requires common sense. There is unfortunately no standard way of distinguishing between what can be said and what should not be said. Every case and situation is different from those of the past.[80]

But the ICRC is adamant that the consistent application of humanitarian principles continues to make the organization acceptable in situations where armed actors

74 Rony Brauman, "Médecins Sans Frontièresand the ICRC: Matters of Principle", *International Review of the Red Cross*,Vol. 94, No. 888, 2012.
75 Marion Harroff-Tavel, "Neutrality and Impartiality: The Importance of these Principles for the International Red Cross and Red Crescent Movement and the Difficulties Involved in Applying Them", *International Review of the Red Cross*, Vol. 29, No. 273, 1989, p. 540.
76 *Ibid.*, p. 540.
77 *Ibid.*, p. 540.
78 *Ibid.*, p. 539.
79 *Ibid.*, p. 539.
80 *Ibid.*, p. 540.

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> would never let it in if they feared that it would disclose information of use to their opponents. For example, the ICRC considers that its reports on its visits to places of detention, and the recommendations contained in those reports, are for the confidential information of the authorities to whom they are submitted.[81]

The ICRC's ambitions to intervene in situations that go beyond its formal legal mandates in the more conventional forms of inter-State war also encourage significant caution on its part. In situations of internal disturbances and tensions, States and non-State armed groups are not under a direct international humanitarian law (IHL) obligation to accept the ICRC's presence; instead, the organization has an extremely fragile mandate by virtue of its own Statutes and those of the Movement as a whole, as well as its global reputation for discretion. This creates a particular form of teleological "politics of discretion" as opposed to the apolitical and deontological application of a principle as a *duty*, which, while perhaps not precisely apolitical, arguably has a certain blindness to the ways in which local politics are constructed. The process involves a delicate balancing act that is nicely framed by Etxeberría,[82] quoted in Alp Ozerderm and Gianni Rufini's excellent article,[83] through two related scenarios. The first asks whether, if a humanitarian agency is aware of gross human rights abuses by authorities and armed factions, it should denounce them publicly, which might lead to the organization's expulsion from its area of operations and therefore an increase in the suffering of its targeted population, or ignore those abuses as the trade-off for ensuring the continuation of its programmes. The second asks whether a humanitarian agency should accept some complicity with local militias in its area of operations in order to ensure the provision of humanitarian assistance to civilians – and if it does, what would this mean to the integrity of the twin principles of impartiality and neutrality? In effect, the necessity for confidentiality[84] leaves the ICRC with a severely constrained set of choices that present it with an extremely challenging ethical dilemma: it can only choose to cease its operations if its recommendations to the belligerents consistently have no impact, but this would leave unprotected the very persons that it strives to help, and there is little guarantee that withdrawal would lead to a change in the abusers' behaviour anyway. But this is not to say that adherence to this form of discretionary politics prevents other bodies – humanitarian organizations, churches, journalists, and any other individual or organization concerned – from bearing witness and publicly exposing the repression to which those people are subjected. In fact, the achievement of improved outcomes for "humanity" relies precisely upon this division of labour. However, the ICRC's day-to-day mission[85]

81 *Ibid.*, p. 540.
82 Xabier Etxeberría, "The Ethical Framework of Humanitarian Action", in *Reflections on Humanitarian Action: Principles, Ethics and Contradictions*, Pluto Press, London, 2001.
83 A. Özerdem and G. Rufini, above note 24.
84 See Memorandum, "The ICRC's Privilege of Non-Disclosure of Confidential Information" in this issue of the *Review*.
85 This is not to suggest that the ICRC has no role in other, broader activities, such as prevention.

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is simply to preserve individual human beings from bodily harm and personal indignity, not to resolve all of the problems of an "inhumane" condition. It has the complex and extremely delicate task of maintaining negotiations

> with authorities or movements guided by political or ideological considerations that are often far from humanitarian. Its strength resides in its self-imposed limitations. It refuses to enter into ideological controversy, to express condemnation or approval, to say on which side justice lies. It takes sides only with the victims, and works actively and pragmatically to alleviate their plight.[86]

The politics of discretion and confidentiality

Not only is this "politics of discretion" resplendent with its own ethical challenges, but it also generates new problems of credibility in demonstrating that the ICRC's own pursuit of neutrality does not prevent the organization from expressing its concern with regard to violations of IHL. In effect, the ICRC has difficulty demonstrating that its strategic decision to remain publicly silent is legitimately rooted in calculations of discretion and confidentiality rather than illegitimately resulting from the dogged pursuit of neutrality.[87] Because the future is inherently unpredictable, it is impossible to determine in advance whether better consequences will result from remaining silent rather than disengaging. Furthermore, the particular optics of crisis decision-making privilege visible changes in direction, or "loud decisions" in response to "loud" and consistent abuses, while the ICRC's silence in the face of continued and systematic abuses suggests to many a failure on the part of the international community as a whole to pull out all the stops, creating the risk that the organization will become a convenient symbol of international inertia and amorality. Hence, the ICRC has a tendency to be viewed as a prisoner of what appear to be *status quo* decisions by remaining engaged with abusers but publicly silent regarding their abuses. In effect, it lacks the ability to explain its position in a way that provides ethical credibility in the arena of public morality.

The lack of equivalence between remaining engaged and visible forms of disengagement should come as no surprise. One of John F. Kennedy's favourite quotations, based upon a misinterpretation of Dante's *Inferno*, elaborates on the risks of a neutral position: "The hottest places in Hell are reserved for those who in time of moral crisis preserve their neutrality."[88] Whilst not actually found anywhere in Dante's work, it is based upon a scene in the third canto of the *Inferno*. In this scene,

86 M. Harroff-Tavel, above note 75, p. 542.

87 For an explanation, see Memorandum, "The ICRC's Privilege of Non-Disclosure of Confidential Information" in this issue of the *Review*.

88 John F. Kennedy Presidential Library and Museum, *John F. Kennedy's Favorite Quotations*, available at: www.jfklibrary.org/Research/Research-Aids/Ready-Reference/JFK-Fast-Facts/Dante.aspx.

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> Dante and his guide Virgil, on their way to Hell, pass by a group of dead souls outside the entrance to Hell. These individuals, when alive, remained neutral at a time of great moral decision. Virgil explains to Dante that these souls cannot enter either Heaven or Hell because they did not choose one side or another. They are therefore worse than the greatest sinners in Hell because they are repugnant to both God and Satan alike, and have been left to mourn their fate as insignificant beings neither hailed nor cursed in life or death, endlessly travailing below Heaven but outside of Hell.[89]

However, the ICRC's position is not one of moral ambivalence. Far from being a sin of omission, it is a position that remains based in pragmatic calculations of access. In some ways this calculation is made easier by the rapid growth in media outlets, which increases the probability that moral outrages will be publicized without the ICRC taking an active part. The ICRC has also invested considerably in identifying the conditions under which it *can* make public statements concerning violations of IHL, in part to make sure that any resulting statements can be defended as something clearly other than political opportunism and silence can be seen to imply that the calculus of humanitarian benefits remains, for the time being, stacked in favour of public silence and private advocacy.[90]

However, it is clear that neutrality, alongside "discretion", remains a difficult concept to legitimize, despite the argument that the ultimate goals of humanitarian action and the rights-based approaches of the new humanitarianism ultimately overlap and are therefore analytically compatible,[91] even if they do represent different forms and strategies of humanitarianism. Rather than providing alternatives, James Darcy believes that the rights-based approach and humanitarianism share a common concern for protecting people from violence, and the belief that IHL should be upheld and that those who break it should be held accountable. However, despite this theoretical consistency, neutrality comes with a significant price. As Duffield eloquently states, hinting at its inability to ultimately deliver transformative social outcomes, "the insistence that humanitarianism is 'neutral' and separate from politics, means that humanitarians can only grasp human life as bare life".[92] Alain Desthexe, former secretary-general of MSF and writing in his personal capacity, points to the incompatibility of even more limited forms of justice and neutrality by warning against the widespread adoption of the principle:

> The humanitarian world needs only one neutral organization: the International Committee of the Red Cross (ICRC) is essential and quite sufficient …. Private

89 *Ibid.*

90 See ICRC, "Action by the International Committee of the Red Cross in the Event of Violations of International Humanitarian Law or of Other Fundamental Rules Protecting Persons in Situations of Violence", *International Review of the Red Cross*, Vol. 87, No. 858, 2005, available at: www.icrc.org/eng/assets/files/other/irrc_858_violations_ihl.pdf.

91 See James Darcy, "Locating Responsibility: The Sphere Humanitarian Charter and Its Rationale", *Disasters*, Vol. 28, No. 2, 2004, p. 15; H. Slim, above note 28.

92 Mark Duffield, *Carry On Killing: Global Governance, Humanitarianism and Terror*, Danish Institute for International Studies Working Paper No. 13, 2004, p. 23.

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> humanitarian action must break free from the double yoke of simple compassion and neutrality and arm itself with a demand for justice.[93]

Perhaps the core conclusion to draw from this debate is that the diversity found within humanitarianism has some positive aspects. Despite the oft-repeated remark by Sir John Holmes, former undersecretary-general for humanitarian affairs and emergency relief coordinator (2007–2010), that the humanitarian system "is not a system in any recognisable state" but "a haphazard collection of organisations",[94] the inherent variety of positions can have beneficial effects. However, while in some situations the blooming of a thousand flowers is positive, in others the *mélange de genres* is potentially confusing and dangerous. There are two issues here. One is that you don't necessarily have to be neutral to do good humanitarian work (in some situations), and that multi-mandate organizations, faith-based groups, solidarists and even (in some situations) the military can do useful work. The other is that pretending to be who you are not (e.g., a multi-mandate NGO in Afghanistan claiming to be humanitarian) is a recipe for confusion or worse. Also, positions taken have consequences over time: the context changes, and yesterday's alignments can be tomorrow's pitfalls. Hence, more clarity and perhaps even a clearer bifurcation between Dunantists and the variegated others would be a good thing.

Access debates and principles

While adherence to the principle of neutrality is not as ethically damaging as the new humanitarians would have us believe, this still leaves their challenge that circumstances and "new wars" have rendered it an impractical instrument for gaining access. In practitioner debates, much has been made of the rising incidents of the targeting of humanitarian agencies by belligerents and the resulting contraction of humanitarian space. However, there is an alternative perspective. Notwithstanding the fact that the blurring of boundaries between humanitarian, political and military choices, the increasing number of attacks on humanitarian organizations and the fragmentation of armed actors in many complex emergencies all create a highly complex and dangerous environment, humanitarian principles continue to be essential to the ICRC's ability to function, though they have clearly demanded significant investment in new resources.[95]

Looking beyond the increasing numbers of violent attacks against aid workers and yearly rising casualty tolls, the empirical data puts into question the raw assumption that the principles are redundant. The evidence undoubtedly depicts a dramatic rise in violence against aid workers from 143 victims in 2003

93 Alain Desthexe, *Rwanda: Essai sur le génocide*, Éditions Complexe, Brussels, 1994, p. 87.
94 Quoted in Paul Cornish, *Humanitarian Response and International Engagement in Fragile States*, Report of the Canada–UK Colloquium, West Sussex, 1–3 November 2011, p. 19.
95 Fiona Terry, "The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action", *International Review of the Red Cross*, Vol. 93, No. 881, 2011, pp. 173–188.

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to 460 in 2013, but it is important to note that only five countries – Syria, South Sudan, Sudan, Afghanistan and Pakistan – accounted for 75% of all attacks.[96] That points to a concentration of incidents within high-violence contexts rather than a tendency applicable to all humanitarian activities. In these, the most dangerous of settings, the majority of attacks can either be attributed to banditry, as was common in Sudan, or to politically oriented efforts to pursue national aims, as in Afghanistan by the Taliban and other insurgent groups.[97] This implies not only that humanitarian personnel become in many cases victims of criminality or nihilistic violence, but also that "security incidents suffered by aid agencies are due to foolish mistakes by ill-prepared individuals, and to faulty appraisals of local conditions".[98] Both Pierre Gassmann and Fiona Terry conclude that the ICRC was able to remain active in such situations due to its long-standing adherence to humanitarian principles and its investment in constructing consent amongst the increasingly fragmented armed actors and local communities.[99] In Terry's analysis of the ICRC's operations in Afghanistan, she argues that while many humanitarian actors abandoned neutrality as a guiding principle, the ICRC persevered and, through some innovative and sometimes risky initiatives, managed to show both sides the benefits of having a neutral intermediary in conflict. As a consequence, the ICRC has been able to continue to expand its humanitarian action in Afghanistan.[100] This was also the case in Kosovo, where the refusal by the ICRC to rebuke Serb atrocities contributed to Milošević's decision to allow the ICRC to negotiate access to Serbia. The ICRC was the only international humanitarian body assisting the victims of NATO bombings in Serbia. In light of this, Cornelio Sommaruga argues that the "humanitarian endeavour and political action must go their separate ways if neutrality and impartiality of humanitarian work are not to be jeopardized".[101]

It is also the case that attacks on ICRC staff did not register significant increases between 2003 and 2013.[102] Hence one can argue that the ICRC's

96 Aid Worker Security Report, *Unsafe Passage: Road Attacks and Their Impact on Humanitarian Operations*, 2014, available at: https://aidworkersecurity.org/sites/default/files/Aid%20Worker%20Security%20Report%202014.pdf.

97 Abby Stoddard, Adele Harmer and Victoria Di Domenico, *Providing Aid in Insecure Environments: 2009 Update Trends in Violence against Aid Workers and the Operational Response*, HPG Policy Brief No. 34, April 2009, available at: www.humanitarianoutcomes.org/sites/default/files/resources/ProvidingAidinInsecureEnvironments20091.pdf.

98 *Ibid.*

99 Pierre Gassmann, "Rethinking Humanitarian Security", *Humanitarian Exchange*, No. 30, June 2005, available at: www.odihpn.org/humanitarian-exchange-magazine/issue-30/rethinking-humanitarian-security; Michael Khambatta, *Humanitarian Space and Stability Operations*, Edges of Conflict Working Paper, 2009, available at: www.ligi.ubc.ca/sites/liu/files/Publications/RC_09_07_edges_report_r4.pdf.

100 See also Marcos Ferreiro, "Blurring of Lines in Complex Emergencies: Consequences for the Humanitarian Community", *Journal of Humanitarian Assistance*, 24 December 2012, available at: http://sites.tufts.edu/jha/archives/1625.

101 "Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations Organization", Statement by Mr Cornelio Sommaruga, President of the ICRC, at the UN General Assembly, New York, 20 November 1992, *International Review of the Red Cross*, Vol. 33, No. 292, 1993, pp. 49–56.

102 Aid Worker Security Report, above note 96.

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increased investment in effective acceptance and humanitarian negotiation strategies (alongside high-quality and relevant programmes) has enabled it to remain in spaces that are closed to other agencies – even whilst recognizing that humanitarian principles still, as historically has always been the case, do not guarantee universal access by all warring parties.[103] In effect, the ICRC's pedigree of providing predictable, reliable, independent and discrete forms of humanitarian action in many highly polarized and fragmented conflicts, plus its investment in manufacturing and maintaining consent amongst numerous localized armed actors, has enabled it to remain clearly distinct from all political and military actors and even many other forms of humanitarian action. Besides the ICRC, and to a lesser degree MSF, few if any humanitarian organizations routinely make the organizational investments necessary to build these required capacities in risk management.[104] This supports Jansen and Hilhorst's[105] argument that rather than spontaneously manifesting as a consequence of humanitarian principles, humanitarian space is socially negotiated between a wide range of actors that shape the emergence of this space. In this process, "humanitarian" actors (broadly defined) employ the principles and the idea of humanitarian space to increase the probability of safe access. Consequently, increasing engagement in high-profile, complex, volatile and fraught environments without appropriate capacities in risk management and negotiation strategies may have a significant part to play in explaining the security challenges faced by the humanitarian sector, rather than a simple association with Western geopolitical interests and the rise of barbarity.[106] Similarly, in an age of mass media, multi-mandate organizations may find it more difficult to establish trust and credibility if they have manifestly failed to uphold commitments to humanitarian principles on a global scale even whilst claiming to do so.

Principles, power and geopolitical shifts: The challenge of universality

Whilst the principle of neutrality has undoubtedly been controversial, there are parallel issues with the universality of the principles – and the way in which it relates to the new humanitarianism. Arguably the discourse relating to the principles has tended to presume the existence of a meaningful "global humanitarian community" that is bound by standards and linked by technology

103 P. Gassmann, above note 99.

104 Jan Egeland, Adele Harmer and Abby Stoddard, *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments*, OCHA Policy and Studies Series, Policy Development and Studies Bureau, New York, 2011.

105 Dorothea Hilhorst and Bram J. Jansen, "Humanitarian Space as Arena: A Perspective on the Everyday Politics of Aid", *Development and Change*, Vol. 41, No. 6, 2010, pp. 1117–1139.

106 Cynthia Brassard-Boudreau and Don Hubert, "Shrinking Humanitarian Space? Trends and Prospects on Security and Access", *Journal of Humanitarian Assistance*, 2010, available at: http://sites.tufts.edu/jha/archives/863.

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and networking.[107] But to what extent can we say that such a humanitarian community actually exists? Even though the majority of agencies within the "sector" have made reference to the humanitarian principles, Fiori notes that there has been a "significant divergence between them on how they are conceived and how they are applied". Moreover, outside of the "sector", other principles are often given primacy over "core humanitarian principles". In South-East Asia, neutrality and independence have been seen as secondary to the principle of non-interference. In China, where the notion of the State as guarantor of the welfare of its people is grounded in Confucian tradition, the independence of humanitarian agencies from governments is not considered to be necessary, desirable or even possible. In fact, Hirono argues that the ideal of a well-ordered State is one of the three central features of Chinese humanitarian ideas.[108] Similarly, in Japan, Osa argues that the social predisposition to view that State as the most legitimate provider of both social and humanitarian services shapes the content of Japanese overseas humanitarianism and the delivery of assistance.[109] And in Latin America, support for those affected by conflict, extreme poverty and disaster "has often been guided by a solidarity that precludes neutrality and impartiality".[110]

In many respects, the claim that principles are universal is based on a pretence that humanitarian principles and compassion are universal and separate from issues of global governance. But during the post-Cold War period it has become clearer that humanitarianism has transformed from being something of an "epiphenomenon" of international relations into being, as Vincent Bernard argues,

> a support for the projectionist will of certain states, including some emerging countries. Its future will depend on the evolution of crises and of political and military actors, but also on its own ability to enhance its quality, its principles, and in particular its independence vis-à-vis donors and recipients.[111]

Without restating the arguments as to whether human rights are locally or universally conceived, it is reasonable to say that humanitarian principles in the hands of multi-mandate NGOs and the UN system have become consubstantial with forms of State, epistemic and cultural power. As such they are only very

107 Peter Walker and Catherine Russ, *Professionalising the Humanitarian Sector*, Enhanced Learning and Research for Humanitarian Assistance, April 2010, available at: www.elrha.org/uploads/Professionalising_the_humanitarian_sector.pdf.

108 Miwa Hirono, "Three Legacies of Humanitarianism in China", *Disasters*, Vol. 37, 2013, pp. 202–220; Hanna B. Krebs, *Responsibility, Legitimacy, Morality: Chinese Humanitarianism in Historical Perspective*, ODI, September 2014, available at: www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9139.pdf.

109 Yukie Osa, *Seeking Japanese Conceptions of Humanitarianism*, paper contributed to the Cultures of Humanitarianism: Perspectives from the Asia-Pacific project, October 2012, available at: www.nottingham.ac.uk/iaps/documents/project/osa.pdf.

110 J. E. M. Fiori, above note 13.

111 Vincent Bernard, "The Future of Humanitarian Action", *International Review of the Red Cross*, Vol. 93, No. 884, 2011, p. 897, available at: www.icrc.org/eng/assets/files/review/2011/irrc-884-editorial.pdf.

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partially acceptable outside the Western world, particularly given the rise of the new humanitarians' emphasis on rights.

The argument goes like this: the process of extension of the Western model, which we label, *inter alios*, "coloniality", is seen as an exclusively European phenomenon that has spread with modernity.[112] Starting from the Renaissance, it spread around the world through the Reformation, the Enlightenment and the French Revolution, scientific discoveries, and of course the web-like expansion of the capitalist system. In this way, the myth of Eurocentrism identifies European particularity with universality *tout court*.[113] Coloniality undermines the coexistence of diverse ways of producing and transmitting knowledge because it orders all forms of human knowledge on an epistemological scale from the traditional to the modern, from barbarism to civilization, from the community to the individual, from the North to the South, the West to the East. By way of this strategy of epistemic colonization, European (and later, Western) scientific thought has positioned itself as the only valid form of producing knowledge. The West thus acquired an epistemological hegemony over all the other cultures of the world. Quijano ends this argument with the natural consequence: if knowledge is colonized, the task ahead is to decolonize knowledge. This epistemic decolonization could be achieved either by de-linking from the Western canon or by its implosion and the emergence of a "pluriversality" of systems of knowledge, in this case the emergence of differing forms of humanitarian ideas and practice.[114]

In the past fifteen years or so, humanitarianism and humanitarian action have seen a rise in scholarly analysis aimed at understanding the functions they perform in North–South relations, world ordering and the promotion of liberal peace.[115] While much has been uncovered about how political and humanitarian agendas tend to reinforce each other, it is necessary to dig deeper into the nature of humanitarianism by looking at how – as a discourse, an ideology, a set of institutions and professions, and a political economy – it is deeply embedded in a system of knowledge that professes to be universal but is in reality an extension of European and Western hubris. What Mignolo calls the "Western code" is the hidden software of modernity. It is the *patron de poder*, the matrix of power.[116] It is predicated on the assumption that it is the only game in town and that as the modern (capitalist) system expands, the code replaces all other primitive, non-Western and non-modern codes; hence the inherent coloniality of the code, and by extension the inherent coloniality of all aspects of dominant relations – economic,

112 The coloniality of power is a concept interrelating the practices and legacies of European colonialism in social orders and forms of knowledge. It is advanced in postcolonial studies and Latin American subaltern studies, most prominently by Anibal Quijano. See Anibal Quijano, "Coloniality and Modernity/Rationality", *Cultural Studies*, Vol. 21, No. 2–3, 2007, pp. 168–178; Walter Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options*, Duke University Press, Durham, NC, 2012.

113 Immanuel Wallerstein, *European Universalism: The Rhetoric of Power*, The New Press, New York, 2006.

114 V. Bernard, above note 111.

115 For example, M. Duffield, above note 46; Didier Fassin, *La raison humanitaire: Une histoire morale du temps present*, Gallimard and Seuil, Paris, 2010; Antonio Donini, "The Far Side: The Meta Functions of Humanitarianism in a Globalized World", *Disasters*, Vol. 34, Supplement S2, 2010.

116 W. Mignolo, above note 112.

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cultural, developmental – between the North and the South, including the humanitarian endeavour. According to Mignolo and other "coloniality thinkers", this Western epistemic code still undergirds the processes through which the world is conceptualized, including both liberal and anti-capitalist critiques of the model, and therefore much of current humanitarianism.[117]

The implication of the process is that as long as the West was rising, its epistemic dominance was broadly acceptable. However, now that the East and other centres of power are on the ascendant, the West's dominance is becoming more problematical. Many of the new or emerging powers have no obligation, nor perhaps the inclination, to conform to the boundaries of the traditional humanitarian sector. Indeed, they can, and often do, define "humanitarian" in their own terms, not feeling obliged to follow the structures created by the dominant humanitarian sector – hence the criticism of humanitarian principles coming from non-Western States. Some even postulate the emergence of an "Eastphalian" approach to the incorporation of relief for those affected by conflict and crisis into statist political agendas[118] (not that Westphalian states were innocent of instrumentalizing relief, of course). The West, for its part, has also participated in undermining the principles through the "global war on terror" by press-ganging international NGOs into supporting political-military interventions or the use of anti-terror legislation to deny access to or interaction with certain groups and the populations they control.[119] Our sense therefore is that organized humanitarianism, which has grown in parallel with contemporary forms of Western capitalism, has now reached its structural limits. As globalization becomes more diverse and power transfers to the East, humanitarianism is itself bound to be contested and to change.

The universality of traditional principles is also challenged within the new humanitarian paradigm due to the convergence of the latter with modes of power that seek to "contain" migration using humanitarian instruments, particularly in the context of refugee camps. The new humanitarianism's entry into the exercise of modes of governance has not been easy,[120] as the tragedy of managing *génocidaire*-dominated refugee camps in the aftermath of the Rwandan Genocide

117 A. Quijano, above note 112; W. Mignolo, above note 112.

118 On the intriguing concept of "Eastphalia" as an alternative to the traditional Westphalian concept of the State, see Tom Ginsburg, "Eastphalia and Asian Regionalism", *UC Davis Law Review*, Vol. 44, No. 3, 2010.

119 Research by the Humanitarian Policy Group suggests that donor State counterterrorist polices have increased operating costs, slowed down administrative functions and operational responses, curtailed funding and undermined humanitarian partnerships. They have also prevented access and altered the quality and coordination of assistance, making it more difficult for humanitarian actors to operate in accordance with the principles of neutrality and impartiality. See Sara Pantuliano, Kate Mackintosh and Samir Elhawary with Victoria Metcalfe, *Counter-Terrorism Legislation and Humanitarian Action: Tensions, Impacts and Ways Forward*, HPG Policy Brief, October 2011, available at: www.odi.org.uk/resources/docs/7347.pdf. On the use of anti-terror legislation to deny assistance to proscribed groups, see Mark Bradbury and Robert Maletta, "When State-Building Fails: Famine, Counter-Terrorism and the Politicization of Humanitarian Action in Somalia", in Antonio Donini (ed.), *The Golden Fleece: Manipulation and Independence in Humanitarian Action*, Kumarian Press, London, 2012. See also the article by Phoebe Wynn-Pope, Yvette Zegenhagen and Fauve Kurnadi in this issue of the *Review*.

120 D. Kennedy, above note 21, p. 357.

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amply demonstrated.[121] These spaces of refuge may be "humanitarian" in a sense, but their static and semi-permanent nature means that they cannot be free of governance. This has led to the profusion of labels such as Mariella Pandolfi's "mobile sovereignty"[122] and Laurence McFalls' "Therapeutic Legitimate Domination" and "therapeutic governance".[123] However, a common theme is that containment strategies generate their own modes of iatrogenic violence through reducing life in the camps to the mere maintenance of what Giorgio Agamben describes as "bare life".[124] McFalls for one argues that with the

> proliferation of threats to the survival of the species, from ethnic conflict to global warming, a permanent state of emergency has transformed humanitarian government into a dictatorship above and beyond the discussion, debates, and contestations of ordinary politics. To be sure, it is a benevolent dictatorship, but it is one that suspends or makes obsolete political action in pursuit of a just, equitable or otherwise good social order.[125]

In part this is a reflection of the broader instrumentalization of the new humanitarianism in this global arrangement. From the ethical foreign policy of Tony Blair through the "humanitarian war" launched by NATO in Kosovo in 1999 to the development of a "humanitarian strategy" by powers such as France in 2012 and several of Colin Powell's speeches,[126] the word "humanitarian" has been hijacked, distorted and abused to describe everything including military intervention as legitimately humanitarian and as serving the protection of civilians and enforcing humanitarian access. But far from the humanitarianization of all forms of intervention, Western States' pro-humanitarian intervention stance can be viewed as "the violent externalization of the project of liberal democracy under the label humanitarian intervention",[127] and whilst many NGOs are indeed vocal in their opposition to this process of distortion, many also conveniently and confidently forget or deny that a good number of them have been complicit in these processes. The new humanitarianism has been stretched, adapted, harnessed and used for anything

121 Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action*, Cornell University Press, Ithaca, NY, and London, 2002.

122 Mariella Pandolfi, "L'industrie humanitaire: Une souveraineté mouvante et supracoloniale. Réflexion sur l'expérience des Balkans", *Multitudes*, Vol. 3, November 2000, pp. 97–105; Mariella Pandolfi, "'Moral Entrepreneurs,' souverainetés mouvantes et barbelé: Le bio-politique dans les Balkans post-communistes", *Anthropologie et Sociétés*, Vol. 26, No. 1, 2002, pp. 1–24.

123 Laurence McFalls, "Benevolent Dictatorship: The Formal Logic of Humanitarian Government", in Didier Fassin and Mariella Pandolfi (eds), *Contemporary States of Emergency*, Zone Books, New York, 2013, pp. 317–333, available at: www.mcgill.ca/isid/files/isid/FormalLogic.pdf.

124 Quoted in Mark Duffield, *Development, Security and Unending War: Governing the World of Peoples*, Polity, Malden, MA, 2007, pp. 15, 226–227.

125 L. McFalls, above note 123.

126 Colin Powell, "Remarks to the National Foreign Policy Conference for the Leaders of Nongovernmental Organizations", Washington, DC, 26 October 2001, available at: http://2001-2009.state.gov/secretary/former/powell/remarks/2001/5762.htm.

127 Patricia Owens, "Hannah Arendt, Violence, and the Inescapable Fact of Humanity", in Anthony F. Lang Jr and John Williams (eds), *Hannah Arendt and International Relations: Readings Across the Lines*, Palgrave, London, 2005.

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and everything, to such a degree that is quite reasonable to ask whether it still holds any meaning today. In the face of repeated attacks from States, political leaders, military forces and the media, the new humanitarian NGOs have gradually, but definitively, lost the communications battle to defend the meaning of the word "humanitarian" as they understand it, and the greatest tragedy of all is their refusal to accept their defeat.

Even the dramatic and apparently unburdened notion of the "humanitarian emergency" has been distorted to, in effect, hide the perpetrator and the nature of the suffering behind the suffering of the victim, depoliticizing the causes involved and converting the response into an essentially technical one. Henry Radice quotes James Orbinski's Nobel lecture at length:

> The 1992 crimes against humanity in Bosnia-Herzegovina. The 1994 genocide in Rwanda. The 1997 massacres in Zaire. The 1999 actual attacks on civilians in Chechnya. These cannot be masked by terms like "Complex Humanitarian Emergency", or "Internal Security Crisis". Or by any other such euphemism – as though they are some random, politically undetermined event. Language is determinant. It frames the problem and defines response, rights and therefore responsibilities. It defines whether a medical or humanitarian response is adequate. And it defines whether a political response is inadequate. No one calls a rape a complex gynecologic [*sic*] emergency. A rape is a rape, just as a genocide is a genocide. And both are a crime. For MSF, this is the humanitarian act: to seek to relieve suffering, to seek to restore autonomy, to witness to the truth of injustice, and to insist on political responsibility.[128]

The point here is not that humanitarianism is dead but that the new humanitarianism is incapable of defending its own boundaries in the way that traditional humanitarianism, consistently applied, has been able to. This point is amplified by Pierre Krähenbühl, a former ICRC director of operations. He argued that it "also means making a strong stand for neutral and independent humanitarian action. Old recipes for a different world? Not in our view certainly. Quite on the contrary, a principled position maintained with conviction in the face of challenge."[129]

Conclusion

The blood-soaked fields of Solferino are generally seen as the birthplace of modern organized humanitarian action. "Humanitarianism 1.0" was the heroic phase articulated around the Dunantist principles of humanity, impartiality and, at

128 Henry Radice, *The Responsibility to Protect as Humanitarian Negotiation: A Space for the 'Politics of Humanity'?*, unpublished mimeo, 2015.

129 Pierre Krähenbühl, "Humanitarian Security: 'A Matter of Acceptance, Perception, Behaviour…'", address given at the High-Level Humanitarian Forum, Palais des Nations, Geneva, 31 March 2004, available at: www.icrc.org/eng/resources/documents/misc/5xsgwe.htm.

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times, neutrality, as well as the European traditions of charity and compassion. It was volunteerist and diverse, and sometimes unstructured. It was also marginal in the sense that it was confined to working outside conflict rather than "in" or "on" it. Geopolitical changes at the end of the Cold War gave birth to a process of unprecedented quantitative and qualitative change: institutionalization, professionalization and proceduralization on the one hand, and because of the important governance functions that humanitarian action performs, instrumentalization on the other. The resulting "humanitarianism 2.0", the new humanitarianism, was based on the sometimes competing "three Cs" of compassion, change and containment,[130] as well as the "two Cs" of capitalism and coloniality. What characterized the diverse agencies that comprised this new humanitarian endeavour, whether they were pressed into the service of liberal peace or not, was the increasing institutionalization, standardization, oligopolization and normalization of an enterprise that remains inescapably (for now) Northern and Western. And of course, the software that this enterprise runs on is still, essentially, the Western code of coloniality through which the world is seen and interpreted from the "zero point" of the West, where the colonial and capitalist endeavour started. Through it, Western knowledge of all kinds deems itself universal; it does not accept that it is fundamentally Eurocentric.[131]

Arguably, classical humanitarianism is rooted in three broad assumptions: that there exists a common humanity, that the human condition is a universal one, and that it is possible to generate consensus on the nature and modalities of the forms of humanitarian action that arise from this. Whilst this article has focused mainly on the challenges to the last of these assumptions, each has now been challenged in fundamental ways by the rise of multiple humanitarianisms, whether "new", faith-based, solidarist or non-Western versions. The critique of the principles followed two main lines, the first a consequentialist one relating to whether the specific conditions that gave rise to the principles had changed to such a degree that the principles no longer remained the most effective means of guaranteeing access, and the second asserting that the version of humanitarianism implied by the principles did not represent a permanent consensus on the nature and content of humanitarianism. In terms of the former, the paper has concluded that the evidence suggests the reverse of this – that the principles, operationalized consistently, did in fact offer the best mode of access, but at the expense of the broader aims of the new humanitarianism. In this sense the process of questioning the principles has reflected a deeper and perpetual struggle to define the fundamental content of an ethic of humanity, compassion and solidarity.

The paper has addressed the challenge of the new humanitarianism's rights-based approach to the fundamental ethical core of traditional

130 Peter Walker and Daniel Maxwell, *Shaping the Humanitarian World*, Routledge, New York and London, 2009, p. 21.

131 I. Wallerstein, above note 113.

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humanitarianism. It argues that this critique has failed to demonstrate the inadequacy of the principles in securing access. Foregoing neutrality in fact threatens the humanitarian access accorded to neutral humanitarians by warring parties and impedes these actors from assisting affected populations.[132] The thrust of this paper accords with authors such as Leebaw[133] and Macrae,[134] who have written that the application of the rights-based approach at the operational level threatens the very basis upon which humanitarianism was founded. Even Jean Pictet has argued that "[o]ne cannot at the same time be a champion of justice and charity. One must choose."[135] Ultimately, traditional and new humanitarianism represent ethical projects that differ in their scope. In this conclusion the paper perhaps differs from writers such as James Darcy,[136] who advocates the "deepening" of humanitarianism to consider human rights implications, as well as those such as Chandler, who pushes for its "broadening" to incorporate more long-term development goals.[137] Traditional humanitarianism is far less ambitious in scope, and the belief that humanitarianism should uncritically embrace aspects of the human rights agenda misinterprets the intentions behind emergency humanitarian action and threatens access for the community as a whole.[138] In particular, the new humanitarianism raises risks that have just as much potential to lead to damaging results as does a formulaic deontological adherence to principles.

In particular, adherence to a rights-based approach risks compromising the universality of aid and establishing a conditionality that creates a hierarchy of "deserving" and "undeserving" victims, which Stockton warns has led to the "demonization of the undeserving disaster victim".[139] Aid policy has become increasingly linked with a range of political and security objectives, and in such an environment it seems strange that the new humanitarianism's attachment to a rights-based approach has the potential to claim a universal entitlement to certain rights but also that some rights (and therefore the needs of some people) are more important and more deserving than others.[140] For example, the controversial humanitarian response to the post-genocide refugee camps in Zaire exemplified a disturbing trend in ranking recipients' rights to aid on criteria other than needs, with different refugee groups being deemed "worthy" or "unworthy" of humanitarian assistance.[141] While the idea of providing material assistance to individuals who had committed crimes against humanity was (and remains) morally uncomfortable, so too was the withholding of aid to those in

132 F. Fox, above note 44.
133 Bronwyn Leebaw, "The Politics of Impartial Activism: Humanitarianism and Human Rights", *Perspectives on Politics*, Vol. 5, No. 2, 2007, pp. 223–239.
134 J. Macrae, above note 49.
135 J. Pictet, above note 11, p. 39.
136 J. Darcy, above note 91.
137 D. Chandler, above note 41.
138 J. Macrae, above note 49.
139 Nick Stockton, "In Defence of Humanitarianism", *Disasters*, Vol. 22, No. 4, 1998, pp. 352–360.
140 H. Slim, above note 28.
141 F. Fox, above note 44.

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need. In the context of the Hutu exodus from Rwanda in 1994, for example, it was inconceivable to assume that all refugees were guilty of the genocide – a conclusion that, if acted upon, itself constituted an egregious violation of the principle of humanity.[142] Similar processes haunted international responses towards Serbia's 8 million-strong population due to alleged apathy in the face of Milošević's atrocities in Kosovo, resulting in a punitive sanctions regime against Serbia and a curtailment of the impartial humanitarian imperative.[143]

Paradoxically, proponents of a rights-based approach have also argued against relief aid in order to avoid the situation in which humanitarian assistance provided Western governments with the "appearance of doing something in the face of a tragedy while providing an alibi to avoid making a riskier political or military commitment that could address the roots of a crisis".[144] Hence, while the rights-based approach's supposed focus on the root political and social causes of conflict and poverty through long-term development aid[145] is laudable, in practice, and more so in crisis situations, multi-mandate organizations find it rather difficult to operationalize both a rights-based approach and the principles of humanitarian action[146] and have frequently promised or implied far more in the way of transformational assistance than they have been able to deliver.

The increased importance of political considerations in decisions to provide aid also increases the potential for the humanitarian system to be manipulated in pursuit of broader political goals that run contrary to purely humanitarian considerations. Most prominent on this list is the risk that humanitarianism can justify military action. David Chandler,[147] Joanna Macrae[148] and David Reiff[149] all argue that the rights-based approach to humanitarian action sets a dangerous precedent, pointing to military campaigns in the Balkans, Afghanistan and Iraq. On a lesser scale, Marc DuBois, former head of MSF (UK), argues that the rights-based approach contributes to a "delusion" that humanitarianism can offer more ambitious forms of protection; it represents itself as a saving idea, but it is one that ultimately cannot save.[150]

The final challenge is that the new humanitarianism fundamentally confuses the issue of who holds rights and obligations in the international system. In a system of States, only States and not NGOs can ever truly be the duty bearers in upholding human rights, as stated *inter alia* by Darcy,[151] Stockton[152]

142 *Ibid.*
143 Geoffrey Robertson, *Crimes against Humanity*, Penguin, London, 1999, p. xvi.
144 D. Chandler, above note 41.
145 F. Fox, above note 142.
146 Lin Cotterrell, *Human Rights and Poverty Reduction: Approaches to Human Rights in Humanitarian Crises*, ODI, October 2005, p. 6, available at: www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4345.pdf.
147 D. Chandler, above note 41.
148 J. Macrae, above note 49.
149 D. Rieff, above note 18.
150 Marc DuBois, "Protection: The New Humanitarian Fig Leaf", *Dialogues*, Vol. 4, 2007, p. 1, available at: www.urd.org/IMG/pdf/Protection_Fig-Leaf_DuBois.pdf.
151 J. Darcy, above note 91.
152 N. Stockton, above note 139, p. 355.

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and Leebaw.[153] The role of the humanitarian community is not to usurp these rights. Even within the camp of the classical humanitarians, few deny the importance of solidarity, compassion, the promotion of human rights, and developmental or peacebuilding agendas – but they do not see these as their role. They remain committed to the sense that there are circumstances in which protecting and saving lives is a valuable objective in itself, and humanitarian principles remain the most pragmatic way of doing so. In such a context, there is clearly a role for solidarity with victims and for the promotion of human rights, but not in a traditional humanitarian guise.

Whilst humanitarianism has perhaps always been the product of the expansion of Western values and economic power, the neoliberal capitalist system, building on its colonial past, has colonized the new humanitarianism. The new humanitarianism has led the sector into the troubled waters of instrumentalization, to levels hitherto unseen. Similarly, given the ways in which beneficiaries in the global South are often uncomfortable with the intrinsic coloniality of Western humanitarianism, and given the emergence of both non-Western approaches amongst new donors (statist, Eastphalian, etc.) and the increasing significance of rejectionists such as Islamic State, the best chances of access and effective humanitarian action are provided by adherence to traditional humanitarian principles.

153 B. Leebaw, above note 133.

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