



Between humanitarian law and principles

The principle and practices of "rebellious humanitarianism"

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Between humanitarian law and principles

The principles and practices of "rebellious humanitarianism"

Without a doubt, the 1990s saw a renewed focus on law and humanitarian principles in the official language of the United Nations and national governments, and in the language of NGOs. We should not be surprised by this, nor should we try to pretend that it represents a moral victory for law and principles. Reference to the law is always strongest precisely at those moments when respect for the rules disappears.

We had to wait until the cruelty of ethnic cleansing had reached its logical conclusion in the former Yugoslavia, and until genocide had run its full course in Rwanda, before talk of law and justice replaced talk of realpolitik and the political and humanitarian cover provided for these crimes by international agencies. These massacres shattered the illusion of an all-powerful humanitarianism, underlining the limitations of humanitarian action in certain situations and raising questions about how endangered populations should be protected.

Caught between the requirements of peacekeeping, human rights and humanitarian law, how are NGOs to make use of the law without sacrificing their freedom of operation, and without giving in to legalistic hypocrisy or outright pragmatism?

Humanitarian action and human rights

A number of initiatives emerged after the disasters in Rwanda and the former Yugoslavia, reflecting a desire to improve the quality and standards of humanitarian action. These initiatives also affirmed the importance of making respect for human rights an integral part of humanitarian action and basing that action on principles, in order to limit the acts of violence committed against people.

This desire was embodied in projects such as "Sphere" (an international initiative working to establish technical standards for humanitarian action) and the use of humanitarian mediators. It is reflected in the codes of conduct drawn up by a number of countries with a view to standardizing practices of various humanitarian actors. It also reflected in UN-implemented strategic frameworks - efforts to make humanitarian action part of a broader project that includes the restoration of peace, respect for human rights, and economic reconstruction.

This tendency to adopt a more global approach is an attempt to group humanitarian action together with peacekeeping, the restoration of democracy, and human rights. It is a comforting approach, because it obscures the relatively modest impact of humanitarian action in situations of conflict or crisis, by integrating it within a grander design of conflict resolution and the restoration of peace.

It is also more comfortable for humanitarian organizations themselves, because it places the limited action of each organization into a broader framework. For example, humanitarian organizations that witness massive crimes need only convey the information to human rights organizations, thereby avoiding the difficult choice between denunciation (at the risk of expulsion) and silence (at the risk of complicity).

However, this kind of approach blurs the nature of each organization's responsibility. Public statements made by humanitarian NGOs address not only violations of human rights, but also (and more importantly) the quality of relief actions, and the obstacles placed in their way. This discreet cooperation between humanitarian and human rights organizations is not necessarily synonymous with security.

Indeed, in a context in which human rights are an element of international diplomacy, giving confidential information to human rights groups might be regarded by the authorities as clandestine, suspicious and subversive. Passing on information this way hardly ensures the safety of humanitarian staff working in the field. Moreover, it may make protection of the populations concerned subject to the specific agenda of human rights diplomacy.

Coordination of activities increases the ability of an organization to put pressure on the warring parties. With this approach, however, relief operations become a pawn in a power game that is perilous for humanitarianism. By participating in this process, humanitarian organizations become prey to the weaknesses and failures of the entire system. If, for example, it becomes impossible to maintain peace, humanitarian organizations lose their neutral status in the eyes of whichever warring party has rejected the peace.

As a result, people living in the territories controlled by such parties are deprived of all relief activity. In Sierra Leone, Afghanistan and Angola, for example, this approach — which was supported by the UN — did not lead to an increased respect for humanitarian principles on the part of the warring parties. On the contrary, it served to justify the fact that part of the population was deprived of the humanitarian relief offered by the official international community.

Thus, a genuine conditionality of humanitarian aid has gradually taken hold, in the name of peace and human rights. However, although the practice of conditionality may take refuge behind these noble objectives, it in fact violates the only absolute principle of humanitarian action: impartiality.

This principle dictates that humanitarian aid obey no other imperative than that of the needs of people, and it provides the foundation for humanitarian organizations' right to access conflict areas. And yet, must we be reminded that once the door of conditionality has been opened, we no longer have any way of monitoring how it is being abused for the purposes of other, less humanist agendas?

Paradoxically, the most serious consequence of this approach becomes the subordination of humanitarian aid to non-humanitarian objectives. In this context, it is important that we stop believing in the fantasy of a humanitarian community comprising United Nations organizations, humanitarian relief agencies, human rights groups, and certain democratic, developed countries deemed to be virtuous.

The strength of humanitarian action resides not in the power of a group brought together in the name of the defense of human rights or peace. Instead, it lies in the relevance of the humanitarian action itself, and in the independence in the face of power that makes the humanitarian presence in the field acceptable to warring parties.

This independence is reflected in respect for the operational principles governing the practical side of conducting relief actions. We must therefore go beyond the comforting notion of a humanitarian community. Humanitarian action is not enough to guarantee respect for human rights and may not be used as a bargaining chip to secure respect for human rights in a certain country. We must accept that simply referring to human rights is not an adequate or appropriate way of guaranteeing the quality of humanitarian action.

Humanitarian law and human rights

In order to strengthen the quality of humanitarian action, it is important to specify that, beyond human rights in general, there exist more precise commitments and rights for which humanitarian organizations are more particularly responsible.

Human rights conventions state general principles for the treatment of individuals by governments. These rights are often limited in periods of conflict, and it is governments that are charged with upholding them. The conventions accord no specific rights to NGOs. Human rights allow for acts of denunciation, but they do not constitute a frame of reference for humanitarian relief operations.

Humanitarian law, on the other hand, is concerned with periods of armed conflict. It is enshrined in four conventions signed in Geneva in 1949 and in two additional protocols of 1977. These laws set out specific rules regarding protection and assistance to precise categories of vulnerable people (civilians, the sick and wounded, and those deprived of freedom) in situations of armed international or internal conflict.

The laws also define the rights conferred upon the ICRC and impartial humanitarian organizations to provide humanitarian assistance to endangered populations independently of governments and warring parties.

Some NGOs see the law only as a source of constraint and limitation. Yet it is thanks to the specific provisions of humanitarian law that NGOs are able to claim independence in their actions with respect to governments; demand access to victims; assert control over the distribution of relief; enter a country's territory without prior consent in order to bring medical relief to the wounded and the sick; and identify and denounce war crimes and crimes against humanity.

Humanitarian law does not, therefore, limit the concrete action of NGOs. On the contrary, it ensures that offers of relief made by independent and impartial humanitarian organizations may not be considered interference in a country's internal affairs. It also gives such organizations the responsibility to formulate and propose all initiatives required to ensure the protection of endangered populations. Lastly, humanitarian law stipulates that no sanctions may be imposed on those who have practiced medical activities in an ethical manner, regardless of the circumstances.

Humanitarian law therefore goes far beyond general principles. It provides minimum rights that help guarantee the survival of vulnerable people in situations of danger. It traces the limits between human rights violations and crimes against humanity. It

authorizes and regulates relief action and gives responsibility for such action to independent organizations.

In the conventions mentioned above, states explicitly recognize specific rights of and entrust certain responsibilities to NGOs. Impartial humanitarian organizations are responsible for verifying the overall situation of endangered populations and ensuring that they receive aid. The organizations implement relief operations aimed at protecting such people from the various threats posed by the conflict.

The responsibility of humanitarian NGOs is directed more toward negotiating the concrete conditions governing their aid actions than toward denouncing violations of law or justice after the fact. The humanitarian code of conduct recently devised for NGOs in Sierra Leone, for example, affirmed the commitment of NGOs to improving respect for human rights.

This makes little sense, however, since quite obviously they are not the ones committing the violations. Humanitarian responsibility should not be confused with the monitoring of human rights violations. Nor should humanitarian responsibility be delegated to human rights organizations. Improving humanitarian action requires strengthening the framework and principles which are in its area of responsibility.

Responsibility and humanitarian principles

The responsibility of humanitarian organizations is directly related to their role as actors who are present during situations of violence. They are responsible for negotiating relief conditions with the warring parties, in accordance with the protection offered to victims of conflicts under humanitarian law. They are charged with bearing witness to the obstacles encountered while fulfilling their mission to assist and protect populations.

They are also responsible for denouncing situations in which the presence of relief organizations has been diverted from its objective, or in which that presence is used to endanger the population that it is supposed to be protecting. These are particularly grave situations, because the humanitarian presence is being used against the interests of the people.

Médecins Sans Frontières has experienced various situations in which humanitarian organizations were used as a way to locate and attack places where groups of vulnerable people had taken shelter. This happened, for example, with the Rwandan refugees in the Shabunda region of eastern Zaire in 1996. In other instances, aid distribution has been used to bring together people who were subsequently attacked, pulled away from the group, or forcibly displaced.

Relief organizations have in some cases been authorized to provide aid merely in order to give a semblance of normalcy to situations where - despite the assistance provided - populations have been subject to acts of violence and abuse.

In a situation of this kind, it is important that humanitarian organizations be able to evaluate the real nature and effectiveness of their action. Many NGOs are still at a very early stage when it comes to assuming such responsibilities. They mostly limit

themselves to generalized debates on the moral dilemmas surrounding humanitarian work, without being willing to accept the risk of denouncing these abuses or abstaining from relief action.

Clearly, the concept of humanitarian responsibility goes beyond simply denouncing human rights abuses. Humanitarian responsibility is also a concept that does not fit in easily with the complex mechanisms of complementarity and international coordination.

Rebellious humanitarianism

By awarding the Nobel Peace Prize to the "rebellious humanitarianism" of Médecins Sans Frontières, the Nobel Committee chose to reward the sometimes controversial choices made by MSF, which sees acting and speaking as two inseparable elements of providing relief to endangered people.

Médecins Sans Frontières does not see itself as a cog in the machinery of international solidarity, responding to medical needs like some eager hired hand summoned to deal with the failures of states or of global privatization. MSF sees in these medical needs often deliberate choices to exclude certain populations, or symptoms of the dysfunction of societies in general and of international society in particular. In cases such as these, material relief is simply not enough. Indeed, by providing such relief, organizations often run the risk of giving a semblance of normalcy to situations of extreme violence.

In some cases, authorities allow relief operations only in order to more effectively conceal their hostile intentions toward certain populations. They may also intentionally create the suffering and deprivations of such people, in order to attract and more effectively divert the aid provided for them.

In such situations, humanitarian organizations react in various ways. Some believe that they have no responsibility - and no capacity - to influence the political, military or economic context or any potential manipulation and corruption of their actions. They regard themselves as accountable only for their presence and the quality of their intended relief operations. Others, however, believe that relief organizations have operational responsibility, reflected in their ability to negotiate, make public statements, and, perhaps, even suspend their relief activities. This responsibility is an essential counterweight to the significant political, military and economic constraints imposed upon their actions.

Lastly, MSF is a member of the youngest generation of humanitarian organizations. Created after the Second World War, it is among those organizations questioning the role of humanitarianism with regard to genocide. It refuses to accept that silence is a precondition for its operational freedom.

Indeed, for MSF, public statements are a rarely used but indispensable tool that enable NGOs to assume their responsibilities as relief actors. Public statements represent an essential and legitimate aspect of humanitarian action, which in certain circumstances must call into question the dogma of operational freedom at all costs. This attitude was reaffirmed in the words of MSF upon the award of the Nobel Peace

Prize: "We don't know whether words save lives, but we know for sure that silence kills." Public statements express the part of humanitarian responsibility that cannot be delegated to other organizations.

Contrary to the general view, public statements by humanitarian organizations constitute, in extreme circumstances, a guarantee of the quality of their action and an act of protection for endangered populations. They shatter the relationship of passive complicity that is created between the executioner and relief personnel.

However, such statements must focus on the quality of humanitarian space rather than respect for human rights. They derive not from general moral or legal considerations, but from the knowledge that there is an operational responsibility that is specific to humanitarian organizations.

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