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DISCUSSION PAPER FOR 2001 MINI-AGS

THE PRINCIPLE OF NEUTRALITY: IS IT RELEVANT TO MSF?

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The question of whether the principle of neutrality is relevant to the actions of MSF has been periodically raised throughout our history. It is rather ironic, in fact, that neutrality was included in the Charter given that MSF was created by, *inter alia*, former Red Cross doctors who were frustrated by the restraints that neutrality imposed on medical action in Biafra. There is a contradiction between claiming to be strictly neutral while adhering to the notion of medical action *sans frontières*, that puts the needs of people and the importance of *temoignage* above respect for the rules of states. This contradiction is often evident in the field, and has given rise to debate about what neutrality really means for MSF. Some people call for the removal of neutrality from the MSF Charter, while others prefer to see MSF adhering to a 'spirit of neutrality', encompassing some, but not all, aspects of neutral intention and behaviour. This discussion paper aims to illuminate some of the issues at stake to provide a basis for discussion at the Mini-AGs.

THE ORIGINS AND PURPOSE OF NEUTRALITY

It is crucial to understand the origins of the concept of neutrality to appreciate the difficulties of applying it to contemporary conflicts. The notion gained currency in the 19th century in Europe in the context of wars fought between professional armies on a battlefield. A third party could be engaged as arbiter, and required the confidence of both sides to play such a role effectively. Thus the concept of neutrality pertained to such arbitrage at a time when wars were fought according to certain rules and at a time when there was a clear distinction between combatants and non-combatants.

From there the concept of neutrality developed as part of international law. States have the right to remain neutral in conflicts between other states by virtue of their sovereignty. This right is recognised in law, and requires that the neutral state remains strictly impartial towards the belligerent parties, refraining from any official act that favours one side over the other. The difficulty of this duty in practice is immediately evident with regard to trade: under international law, normal pattern of trade are permitted with belligerent states but since trade is invariably uneven among states, this will inevitable benefit one state over the other. Some neutral states have tried to avoid this bias by ceasing trade to both sides during the conflict, but to do so only reverses the advantage to the other side.¹

¹ See Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (NY: Basic Books, 1977), pp. 233-250 for a discussion of the neutrality of states.

At the initiative of the Red Cross, and the further development of international law, the neutral status of states was also extended to impartial humanitarian organisations. Neutrality is one of the seven fundamental principles of the Red Cross Movement. ICRC declares that ‘in order to enjoy the confidence of all, the Movement may not take part in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature’. Thus for ICRC, neutrality is a means through which to assure belligerent parties that its actions are solely in the interests of humanity and not in the interests of either party to the conflict. Neutrality is not a value to uphold in itself, but is a tool with which to undertake its mandate – bestowed by international law – to assist victims of war, visit political prisoners, organise the exchange of prisoners of war, disseminate international humanitarian law, and pursue diplomatic negotiations. ICRC believes that retaining a neutral position avoids giving belligerent parties a pretext for denying access to populations in need, or for attacking humanitarian workers, convoys or medical structures. Thus ICRC endeavours to apply strict neutrality in its operations.

MSF has neither a mandate under international law, nor the same range of activities as the Red Cross. Yet it also inscribed neutrality in its Charter, stating that the organisation ‘observes strict neutrality and impartiality in the name of universal medical ethics and the right to humanitarian assistance...’. In its actions, however, MSF has not only engaged in controversies of a political nature, but has, on occasion, overtly taken sides. So what are the limits of neutrality for MSF?

THE PERVERSE SIDE OF NEUTRALITY

Although neutrality might be useful as a tool of humanitarian action under certain circumstances, there are many perverse effects of neutrality that need to be explored. Most of these stem from the fact that the situations of war under which the concept developed are very different to contemporary conflicts. Today’s wars are not undertaken between two states on a defined battlefield but are international or internal conflicts involving ideological, economic, religious, and political stakes, that are played out in urban, rural, populated and unpopulated arenas alike. Civilian casualties and displacement are rarely the unfortunate by-products of conflict, but, as in Bosnia and Rwanda, can be the objective of the conflict itself.

Neutral humanitarian action is impossible in situations of total war, where the displacement or death of segments of the population is a goal of the war itself. Any assistance brought to such populations which permits their survival and allows them to remain in situ necessarily impacts on the course of the conflict.² Humanitarian action can never subscribe to the notion of neutrality as the ‘non-interference’ in a conflict since the provision of assistance, like the absence of assistance, always results in some winners and some losers. Both intervention and non-intervention have political impacts, and in some

² For a good discussion of this point see Mark Duffield and John Prendergast, *Without Troops & Tanks: The Emergency Relief Desk and the Cross Border Operation into Eritrea and Tigray* (Lawrenceville, NJ: Red Sea Press, 1994).

cases the choice facing aid organisations is not between a political or a neutral attitude, but between two political attitudes: one active and the other by default.³ Situations like that of total war raise the question of the morality of neutrality itself.

Is Neutrality Morally Acceptable?

Humanitarian action is more than a technical exercise aimed at nourishing a population defined as 'in need', but is a moral endeavour based on solidarity with other members of humanity. Thus the overriding question that we need to pose is whether it is morally acceptable to remain neutral when faced with genocide or grave violations of human rights. Refusing to make a judgement about who is wrong and who is right assumes a legal and moral equality between oppressors and their victims: it places them on an equal footing. Remaining neutral ratifies the law of the strongest.⁴ The French *Opération Turquoise* in Rwanda, by invoking its neutral mandate, placed the victims of genocide on the same level as their killers. French troops did not arrest those responsible for genocide saying 'our mandate does not authorise us to arrest them on our own authority. Such a task could undermine our neutrality, the best guarantee of effectiveness'.⁵ The Bosnian Muslims also recognised neutrality as permitting the strongest to prevail, shouting to humanitarian organisations 'We have no need of you, we need arms to defend ourselves, your food aid and medicines only allow us to die in good health'.

In the past MSF has refused to subscribe to the dictates of neutrality and has taken sides in the defence of victims. In the Afghan-Soviet conflict of the 1980s for example, MSF worked inside Afghanistan with the Mujaheddin, judging that the indiscriminate and disproportionate force employed by Soviet troops warranted aiding the victims of these atrocities, regardless of the violation of state sovereignty and of strict neutrality. 'In Afghanistan, there was never any question as to whether MSF should offer its services to Kabul in order to sit on the fence... we had implicitly picked our side'.⁶ Similarly during the Vietnamese occupation of Cambodia, MSF chose to work with the non-Khmer Rouge factions along the Thai border rather than inside Cambodia.

The word 'neutral' comes from Latin and means neither one thing nor another. The decision to remain neutral might not be rooted in the desire to remain above the political fray, but might also stem from cowardice and indifference; neutrality is not a virtue in itself.⁷ Although Elie Wiesel is hardly the model of morality given his stance on the Armenian and Rwandan genocides, the thoughts he provides for the Holocaust survivor

³ Rony Brauman, 'Refugee Camps, Population Transfers, and NGOs', in Jonathan Moore (ed.), *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (Lanham: Rowman & Littlefield, 1998), pp. 177-193 at p. 181.

⁴ Rony Brauman, *L'action Humanitaire* (Paris: Dominos/Flammarion, 2000), p. 107.

⁵ Assemblée Nationale, Mission d'information commune, *Enquête sur la tragédie rwandaise (1990-1994)*, Tome I, Rapport, p. 325.

⁶ Rony Brauman, 'Foreword', in *World in Crisis: The Politics of Survival at the end of the 20th Century* (London: Routledge and Médecins sans Frontières, 1997), p. xxii.

⁷ See Hans Haug, 'Neutrality as a Fundamental Principle of the Red Cross', *International Review of the Red Cross* 315 (November 1996): 627-630.

towards the man at the window who watched his Jewish neighbours deported in *The Town Beyond the Wall*, provide a poignant reminder of the perverse side of neutrality.

This was the thing I had wanted to understand ever since the war. Nothing else. How a human being can remain indifferent. The executioners I understood; also the victims, though with more difficulty. But the others, all the others, those who were neither for nor against, those who sprawled in passive patience, those who told themselves, ‘The storm will blow over and everything will be normal again’, those who thought themselves above the battle, those who were permanently and merely spectators – all those were closed to me, incomprehensible. And as often happens I saw all those neutrals in the features of a single face: the spectator across from the synagogue.⁸

Humanitarian organisations are not merely spectators, but are active witnesses to crises as they unfold. By their presence, they carry an important responsibility. There are limits to what humanitarian action can achieve, and it is the recognition of these limits, and of the silent complicity that neutrality can engender, that inspired MSF to include *temoignage* as an ‘integral part of our humanitarian action’ as ‘an instrument of protection for populations.’ When the actions of totalitarian states or belligerent parties obviate the possibility of securing a humanitarian space in which to operate aid organisations have only one tool left to them, the freedom of speech. We exercised this freedom when leaving the Rwandan refugee camps and North Korea. Thus it is ironic that the most frequent argument invoked against speaking publicly in MSF is that it will violate our neutrality, when such neutrality might be morally reprehensible.

The Contradiction Between Neutrality and Speaking-Out

If strict neutrality requires that humanitarian organisations refrain from engaging in controversies of a political, racial, religious or ideological nature, then MSF is violating the principle of neutrality when it publicly criticises or denounces the actions of one party to the conflict. Many aid organisations invoke their ‘neutrality’ as a reason for not reacting to human rights abuses and criminal behaviour, whether in Ethiopia in the mid-1980s when aid was used as a tool of deportations, or in the mid-1990s in the Rwandan refugee camps. Within MSF, this argument, coupled with the fear of expulsion, has also been used to oppose public *temoignage*.

The question of whether neutrality requires absolute discretion and silence has been an important debate in ICRC since its review of its actions during the Second World War. Although ICRC knew of the existence of concentration camps in 1942, the organisation remained silent about the actions of Nazi Germany in order to avoid compromising its neutrality and its assistance to prisoners-of-war. ICRC recognises this error of the past and now says that it rejects the idea that neutrality imposes silence on the organisation. ICRC prefers to be discreet and to influence parties to the conflict behind closed doors, but claims that it will launch a public appeal if four criteria are met. First there must be grave and repeated violations of international humanitarian law. Second, ICRC must have

⁸ Elie Wiesel, *The Town Beyond the Wall* trans. by Stephen Becker (London: Robson Books, 1975), p. 149.

been privy to these violations. Third, bilateral, discreet negotiations must have been unsuccessful and diplomatic measures exhausted. And fourth, a public appeal must be in the interests of the victims.⁹

For MSF, *temoignage* is a part of our action rather than a last resort. The criteria MSF places on *temoignage* is that MSF personnel were direct witnesses to whatever is being spoken about, and that it must be in the interests of the victims. MSF believes that although speaking out does not always save people, silence can kill.

So the question remains whether speaking-out necessarily violates the principle of neutrality. Does it depend upon what sort of criticism is publicly made? If, for example, MSF criticises the diversion of aid or massive human rights abuses, should this be considered as ‘taking sides’ or simply as reminding combatants of their obligations under international law? Speaking out necessarily involves making a judgement. If by making a judgement one is no longer neutral, then MSF is violating neutrality. So is neutrality a relevant principle for MSF in this case?

Perceptions of neutrality

Finally, we need to recognise that the practical measure of neutrality is its perception by belligerents. Aid organisations can declare that they are neutral, but it is how they are viewed that counts when ensuring the safety of their personnel or access to victims. This perception can be compromised by the very principles to which aid organisations adhere. If aid is given impartially, for example, it means that it is provided solely on the basis of need (and without any discrimination as to nationality, race, religion, political allegiance, etc). But as with the case of trade patterns mentioned above, the needs on two sides of a conflict are rarely equal. As a consequence, more aid is likely to be given to one side than another. Given the ‘side-effects’ of aid that frequently occur, such as its contribution to the economy of war, or the legitimacy it bestows on those receiving aid, humanitarian action might well benefit one party to the conflict over another, or at least be perceived as doing so.

This was certainly the case in Bosnia. Obtaining the consent of warring parties for the passage of convoys through their territory involved accepting the terms of that passage, including the timing and contents of convoys. This was viewed by the other side as giving concessions to their opponents. Aid organisations were not considered neutral in Bosnia by either side. While bombing the hospital and buildings of UNHCR and ICRC, Radovan Karadzic said on CNN: ‘Those people do not represent humanitarian associations, they have chosen their camp, it is normal that we treat them as enemies’. At the same time the Bosnian Muslims rejected any neutral stance, saying ‘if you are not with us, you are against us’.

⁹ See Massimo Lorenzi, *Le CICR, le coeur et la raison: Entretiens avec Cornelio Sommaruga, Président du Comité international de la Croix Rouge* (Lausanne: Favre, 1998).

The contradictions between neutrality and impartiality can also function in the inverse sense. In the current conflict in the Molucca Islands of Indonesia, for example, it is the Christian population who are most in need of assistance. But as an essentially European NGO, MSF is perceived as being pro-Christian. Thus MSF is searching for ways to assist Muslim communities as well as Christian communities to avoid accusations of partiality in the conflict. The need to be perceived as neutral in order to remain present outweighs the importance of basing assistance on the greatest need. However, whether this gesture will succeed in ensuring access if fighting recommences remains to be seen.

Conclusion

This paper has highlighted some of the issues that need to be considered when debating whether neutrality is a relevant principle for MSF, and should remain inscribed in the Charter. The circumstances in which the idea evolved are no longer relevant to contemporary contexts, resulting in many contradictions between respecting neutrality and acting in the best interests of victims. In certain cases, retaining a neutral position might be morally reprehensible. In other cases, aid organisations might intend to avoid taking part in hostilities, but the provision of humanitarian assistance into the heart of conflicts makes this very difficult in practice due to both the nature of conflict, and the nature of humanitarian action.

The most common argument in favour of respecting neutrality, is that it is a useful operational tool to facilitate access to populations and to avoid giving belligerents a pretext for blocking aid or attacking aid organisations. But neutrality does not only need to be asserted, it needs to be proved by aid organisations, and believed by parties to the conflict. Thus a claim of neutrality, if it has any sense, must be accompanied by a rigorous adherence to the principle and its application to practices in the field. If MSF decides to embrace neutrality, then it should logically renounce speaking publicly about any issue that could be perceived as engaging in controversies of a political, ideological, racial or religious nature. It is not possible to be a little bit neutral, or subscribe to a 'spirit of neutrality'. Either MSF is neutral or it is not. MSF has not been neutral throughout its 30 year history, so perhaps it is time that we assume this decision and remove neutrality from the MSF Charter.

Suggested Additional Reading:

Françoise Bouchet-Saulnier, *Dictionnaire Pratique du Droit Humanitaire* (Paris: La Découverte, 2000).

Denise Plattner, 'ICRC neutrality and neutrality in humanitarian assistance', *International Review of the Red Cross* No. 311 (1996): 161-179.

Rony Brauman, *Devant le Mal: Rwanda. Un Génocide en Direct* (Paris: Arléa, 1994).

Hugo Slim, 'Relief agencies and moral standing in war: Principles of humanity, neutrality, impartiality and solidarity', *Development in Practice* Vol. 7, No. 4 (1997): 342-352.