Humanitarian action in situations of occupation

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Foreword

This publication is the result of research undertaken, starting in April 2004, by the MSF Foundation think-tank, the Centre de Réflexion sur l'Action et les Savoirs Humanitaires (CRASH). The choice of occupation as a theme for study was motivated by the 2nd Intifada in the Palestinian Territories and the war being waged by the United States and its allies in Iraq and Afghanistan. It was also part of broader reflection on extreme situations in which humanitarian action risks losing its soul. The goal of this study was to assess whether occupation situations are, in essence, contexts in which all independent humanitarian action is doomed to failure or, at the very least, specific environments where this action is subject to particular constraints.

The difficulties that soon arose in defining the notion of occupation led to the decision to proceed in two stages. The topic of humanitarian action in situation of occupations was first addressed through a research paper focused on the experience and positions of the French section of MSF. This paper was completed in December 2005.

The second stage was a one-day conference organised at the MSF Paris office, in January 2006. This event gathered various representatives of the humanitarian community as well as a British military officer and several academics, historians and political scientists. Its goal was to submit the conclusions of the CRASH's study to a public debate and to confront different viewpoints on the notion of occupation and the situations considered as such.

This publication gathers together the two stages of this work. The first part is devoted to the study paper "Humanitarian action and occupation: the MSF viewpoint". The second part is a summary of the presentations and debates held at the conference "Humanitarian action in situations of occupation".

This publication does not aim to provide definite answers, let alone a list of good practices, regarding humanitarian action in situations of occupation. Its sole ambition is to offer some food for thought and to highlight the variety of points of view, which determine, for each actor in these situations, the perception of the issues at stake and the different ways to address them.

In order to facilitate its distribution and make it accessible to as many people as possible in the field and the other sections of the MSF movement, we have decided to publish this document in a bilingual format, in French and English.

We hope you find it useful.

PART 1
Humanitarian action and Occupation: the MSF viewpoint

Introduction

When we at MSF[1] today look at the specific problems and restrictions posed by military occupation, we immediately think of recent situations in which our action has been curtailed, either because we were obliged to terminate a mission, or because the debate behind the choices we had to make in such or such a context led to deep disagreement which - for varying lengths of time - were felt to be paralysing. These examples include our withdrawal from Iraq under American occupation, once the field team concluded in the spring of 2003 that it was unable to work there; our withdrawal from Afghanistan in the summer of 2004 after the murder of 5 members of MSF-Holland, against a backdrop of military/humanitarian confusion and calls for the murder of our members made by a Taliban representative; the dissent of part of the field teams on the Palestine mission in 2001, denouncing the culpable silence of head office and questioning MSF's principle of neutrality, along with the converse and recurring question of the reality of our role in the system of oppression and crushing of the resistance set up by Israel in the occupied territories. Common to these few examples is on the one hand the question of our neutrality, either in the way it is experienced by our teams, or in the way it is perceived by the forces present, thus raising the question of the safety of our personnel particularly acutely. They are also a part of the context of the "war on terror" - or, in the case of Palestine, have been partly reinterpreted in line with this new conceptual framework - and thus oppose a State or coalition of States against opposition groups designated as fundamentalist and terrorist. Are Western humanitarian organisations now faced with an unprecedented situation obliging them to rethink how they act, unless they resign themselves to no longer intervening in situations that are bound to become more commonplace, as those who promote the "war on terror" constantly remind us[2]?

If we look at this problem by starting with the notion of occupation, the choice is then to reposition our approach in terms of a longer historical perspective and to refuse to subscribe from the outset to the principle - implicit in the formula "war on terror" - of a new international context that demands new methods. Moving outside the framework promoted by the very partisans of this war is also to stake a claim to independence by

1. Throughout this article, MSF will refer to MSF-France, because the analysis concerned this section alone. The conclusions expressed here in no way pre-judge or anticipate any areas of agreement or disagreement between the French section and the other sections of the movement.
2. For example, see the article by Cheryl Benard, "Afghanistan Without Doctors", *Wall Street Journal*, 12 August 2004.

looking to adopt a more objective, one could say a more "neutral" viewpoint. However, the decision to choose this notion of occupation then itself becomes problematical. It is a legal notion taken from the law of war and which refers to a *de facto* situation but it has nonetheless entered everyday vocabulary and has taken on a largely normative meaning. The proof is the virtually systematic refusal on the part of those States whose armed forces enter a territory which is not under their jurisdiction to consider themselves as occupiers. They stress instead their role as "liberator", "pacifier", or "saviour". Conversely many groups or political communities speak of occupation to denounce the illegitimate and oppressive nature of the political and/or military authority exercised over what they claim as their territory. Occupation is therefore clearly a highly politically charged notion.

For the purpose of this study, we decided to examine MSF's experiences in a variety of situations over the last 20 to 25 years, in other words from the time of our earliest missions in Afghanistan and our aid programmes for the Cambodian refugees in Thailand. All the contexts studied have in common the fact of having seen intervention by national or multinational armed forces from outside the territory considered, whether this intervention was the event that triggered a conflict or occurred as part of an already existing conflict. This minimal definition aims to avoid over-reliance on the notion of occupation by one or other of the protagonists as a criterion for inclusion in the study - a criterion which would be both too widespread and too partisan - or on the legal qualification by a competent international body - this criterion then being far too restrictive. In this study we therefore include armed interventions under United Nations mandate, even though the Security Council never imparted them the status of occupation, but only when the UN's mandated forces were in direct armed confrontation with at least one of the local armed forces and thereby themselves became a part of the conflict. These "theatres" include Afghanistan, Cambodia, Western Africa - during the ECOMOG intervention period - Somalia, Iraq, Chechnya, Kosovo and the Palestinian territories. This list however is not necessarily exhaustive.

3. For reasons of simplicity, and unless we specify who is speaking and in what context, I will use the terms "occupation", "occupier", "occupying power" and "occupied" during the course of the analysis, but with no value judgement of the parties or situations thereby designated.

The fact that the contexts were not in principle chosen with reference to the political standpoints of the parties involved in these situations does not of course mean that MSF's experience in these theatres is envisaged irrespective of these standpoints and the underlying perceptions and representations.[3] MSF's approach has for a long time included the political environment in which humanitarian action is deployed. This has been the basis, at least since the Ethiopian famine of 1984-85, of our insistence on vigilance and comprehension to avoid our actions being diverted or misappropriated, thereby making us complicit by default in unacceptable mechanisms of oppression. The purpose of this study is therefore to examine if and how military occupation situations represent a particular variation of this general dilemma that is inseparable from humanitarian action, and to ask questions concerning the specific operational constraints we are likely to face as a result.

Finally, to speak of the MSF viewpoint rather than that of humanitarian action in general, is to postulate a separate collective identity, an accumulated specific experience which includes but transcends the individual experiences of its members and which partly determines the scope of what is possible in terms of taking positions and making operational decisions when faced with a given situation. In other words, the aim will be to identify, if applicable, not only the constraints and pitfalls imposed from outside by the political framework of the occupation situations, but also our own institutional and cultural limits when faced with such situations, limits that could be perceived differently by other humanitarian agencies.

In the light of the above, the nature of the debate, the concerns, the positions of principle and operational decisions in the contexts considered will be assessed on the basis of two questions which, sometimes implicitly but in any case repeatedly, underpin any MSF mission: firstly, that of the validity of our intervention and our presence, both in terms of legitimacy and effectiveness - operational know-how; then, that of the meaning of our action in the light of the behaviour of the forces present and the political dynamics at work, and incorporating the risks that our action may imply for our teams and for the populations we are attempting to help. Finally, to conclude, we will examine the specifics of the problems identified with respect to other missions and contexts and will attempt to identify broader areas for reflection around the notion of occupation.

1. "Do we go in? What do we do there?": legitimacy and effectiveness under occupation

BEFORE THE OCCUPATION: THE INVASION

By definition, occupation is the result of invasion, and therefore an act of war. It is this necessary antecedent of war with respect to an occupation situation that from the outset and almost intuitively legitimises intervention by MSF. The birth of the modern humanitarian movement on the battlefield, with the creation of the International Committee of the Red Cross, and the appearance of the "without-borders" movement in the wake of the Biafra war, meant that war and the goal of minimising its effects on the civilian population have been at the core of MSF's realms of intervention. This principle was reaffirmed on several occasions, both in the light of incidents that occurred in certain fields,

and the *de facto* reduction in the share of the organisation's missions as a whole being devoted to areas of conflict. Thus, after the murder of three expatriates in Afghanistan and Sudan between 1989 and 1990, the question brought before the Board, of whether or not to continue with the war missions led to a consensus, "with each person considering that this is one of the underlying and fundamental aspects of MSF."[4] This collective priority was once again underlined at the 2003 General Assembly: "We wished to refocus on the victims of conflict, and that is what we have done"[5]. The presence of MSF in the theatres of war is thus clearly the core of the association's identity, but to maintain this operational direction demands a proactive approach.

Therefore, anticipating the fighting and the care to be given to the victims when the question arises of intervening in an imminent theatre of war has always taken precedence over the possible issues involved in a subsequent occupation. This is clearly shown by MSF's experiences in the two "Gulf Wars". In the summer of 1990, after the invasion of Kuwait by the Iraqi army, the nature of the regime of Saddam Hussein and France's involvement in preparations for the first Gulf War had led to serious misgivings about sending out a mission to Iraq. However, as of the month of October, while the debate was going on internally, the first visa applications for sending out an exploratory mission were sent by MSF to the Iraqi embassy. In January 1991, with the beginning of international military operations against the Iraqi army in Kuwait and then in Iraq itself, the arguments rapidly swung in favour of intervention by MSF. This started at the edges of the conflict, in Jordan and Syria, by taking care of foreigners and refugees fleeing Iraq at war. However, the decision to intervene in Iraq had already been taken and now simply depended on authorisation from Baghdad. The fears of Iraqi manipulation and the risk of a political interpretation of MSF's actions gave way before the need to reaffirm the identity of the association: "the humanitarian principle cannot be called into question", "if we don't propose going to Iraq, then why do we exist?"[6]. From the end of 2002 to the beginning of 2003, as preparations were being made for the second Gulf War and when, unlike the first time, overthrow of the Iraqi regime and occupation of its territory by the American armed forces were Washington's clearly stated goals, logistical preparations and visa requests were made in a similar fashion, even though the decision to intervene had not been taken. Indeed, the in-house debate was continuing, more often than not informally, in an extremely polarised context, both at the international level and inside France. Reservations within MSF abated, even if they did not completely disappear, when a few days before the American offensive was launched, the visas were issued by the Iraqi representation.

Even if triggering of hostilities requires intervention by MSF, it was not during periods of invasion that we managed to build up our operational effectiveness. Experience in the fields covered by this study shows on the contrary that routing and deployment of aid at this stage of a war is extremely haphazard.

4. Rony Brauman, President's Moral Report, 1990
5. Jean-Hervé Bradol, President's Moral Report, 2003
6. Minutes of the meeting by the MSF Board, 25 January 1991

Primarily, the frequent use of shelling or bombing constitutes a considerable risk to the physical safety of the teams and also makes it very hard for the victims to reach the health care structures likely to assist them. To this risk can be added the threat of hostage-taking, of use of the teams as "human shields" or direct reprisals against MSF by the regime or the armed forces targeted by these large-scale attacks. These threats are particularly great when the offensive is being led by western forces and we are perceived either as being linked to them and therefore a legitimate enemy, or as a means of pressure or a valuable bargaining counter with the belligerent western governments. Thus, in March 1999, as of the first days of NATO's aerial bombardment of the Serbian forces in Kosovo and Serbia, we were forced to withdraw from Kosovo to Montenegro.[7] Similarly, in Autumn 2001, MSF expatriate teams left Afghan territory under Taliban control before the beginning of the air strikes against the regime in Kabul by the United States and its allies. In 2003, in Iraq, the Iraqi regime imprisoned two expatriates from the MSF team, which had remained in Baghdad during the American offensive, thereby obliging us to suspend our activities. It is worth noting - and we will come back to this point in the second part - that in these three cases, it is more the threat posed by the regime or armed groups on the receiving end of a western offensive, than the direct risk from bombing, that we felt to be a determining factor in our inability to work during the air strikes.[8]

In invasion situations where we have been able to act in the theatre of war itself, either using expatriates or local teams, assessing these actions has usually proved problematical. Thus, during the Russian offensive on Grozny in the summer of 1996, as during the Israeli offensive on Jenin in 2002, the MSF expatriate team was unable to gain access to the injured and all they could do was ferry medical equipment to the area under attack, with there then being no possibility of assessing how it was used.[9] Although close to the site of the offensive, this action therefore differed little from the donations of drugs and equipment by the MSF teams in Montenegro to groups linked to the UCK crossing the border with Kosovo in the spring of 1999. During this conflict, as in fact in many other cases, emergency aid was concentrated in the neighbouring countries for the refugee populations. In those situations in which local teams who stayed behind after evacuation of expatriate personnel have managed to provide medical care - which is necessarily limited when the offensive is at its fiercest - this has been the result of individual acts of bravery, accepted and indeed praised, but not recommended by head office. This was the case of the MSF Afghan teams during the air-strike phase of the American "Enduring Freedom" operation in autumn 2001.

Unless a major risk of direct political targeting is identified, we can therefore suppose that MSF will not on principle rule out the possibility of maintaining an effective presence during an invasion, even if this phase of hostilities rarely permits large-scale care being provided for its victims. This refusal, confirmed in several contexts, has not however

7. Philippe Biberson, President's Moral Report, 1999: "*At the end of March, the beginning of NATO air-strikes had been preceded by the withdrawal of OSCE observers. As of the initial strikes on Pristina and Belgrade, all the NGOs withdrew their teams and their representatives. This was also the case with Médecins Sans Frontières who, after holding out for a few days more in Pristina - although with instructions to do nothing - decided to leave. Given that it was impossible to act directly inside Kosovo, Médecins Sans Frontières based their actions in the three neighbouring countries.*"

8. We should for example mention the presentation by Graziella Godain to the Board Meeting of 26 March 1999 (two days after the NATO air-strikes began): "*It is very difficult to move around and the situation is fairly confused. We held many security meetings before sending out exploratory missions, because anti-foreigner feelings are running high.*" Also see the presentation by Pierre Salignon to the Board Meeting of 28 September 2001: "*MSF's foreign volunteers were evacuated from the zones controlled by the Taliban in Afghanistan, not so much for fear of American air-strikes but more because there were no*

guarantees from the authorities concerning the safety of foreign personnel (linked to the increasing numbers of non-Afghan Muslim militias). Just when the question was being debated of whether to leave a small team in place, for each of the three sections present on the Taliban side, the authorities ordered the departure of all representatives of "western" institutions."

9. Presentation by François Jean to the Board meeting of 6 September 1996: "*During the period 6 to 20 August, Grozny was under attack from Russian forces and there was a very clear desire to obstruct humanitarian aid in the capital. Drugs and equipment were nonetheless carried on foot from Nazran to Grozny. It was hard to assess the needs, how things were working and what was happening to the wounded.*"

10. This type of disagreement naturally happens in the field but, in the final analysis, it is how the debate is decided at head office that is determining because a negative decision requires evacuation by the whole team, whereas the decision by certain expatriates individually not to stay is not binding on the rest of the team.

11. The authority wielded by François Jean doubtless explains to a large extent why the operation ▸

prevented worries and major disagreements from breaking out at head office over whether or not a team should be maintained in each of these situations.[10] Nonetheless, the absence of any position of principle for this type of context suggests institutional confidence in the ability of certain experienced individuals to creating a working space - even symbolic - during the invasion[11] but also, and doubtless to a greater extent, to paving the way for deployment of effective action once the offensive is over.

INSTALLATION OF THE OCCUPATION

During a time of war, occupation of a territory in principle indicates a military victory and, at least to start with, a significant reduction if not a cessation of fighting, even temporarily. Given the problems, sometimes the impossibility, of maintaining a working space during the offensive or at the height of the fighting, the return to relative calm offers MSF the opportunity to regain the initiative. In Liberia, the ECOMOG intervention in September 1990 and its pacification of Monrovia reopened access to the Liberian capital to MSF in November.[12] In Kosovo, in 1999, it was the capitulation of the Serbian forces, along with the cessation of air-strikes, that enabled the MSF teams to settle in the hospital in Pec even before the deployment of the KFOR. In Afghanistan, on 13 November 2001, the flight of the Taliban from Kabul and the end of air-strikes on the capital opened the way for a return by MSF teams from Panshir, a few hours after the forces of the Northern Alliance entered the city. The Coalition's land forces were not to enter until several days later. In Iraq, the release of the two expatriates from prison, due to the collapse of the Baath regime, was followed immediately by a mission to assess the hospitals in the city, where the bombing had stopped.

Initially conceived as a regional peacekeeping force between the various armed groups in Liberia, ECOMOG was to play no role in organising the health care system. In Kosovo, and in Afghanistan and Iraq however, the international forces which deployed into the field were from the outset to play a determining role in the political issues involved in stabilisation and reconstruction. In these three cases, MSF's role was to fill the void left by the end of the bombing and move back into an area from which the expatriate teams had been excluded. We also had to find our place in health care structures that had been disorganised by the war, before the occupying forces attempted to establish a form of order in which political and authority considerations would radically complicate negotiation of our working space. In the case of Iraq, we were refused permission to set up independent assistance programmes in the hospitals almost immediately by the occupying power. In Kosovo and Afghanistan, the time immediately following the offensive was the time for

MSF to carry out emergency operations: urgent care to be given to the sick and wounded who had received no help at the height of the fighting, urgent need to deploy and organise our actions as independently as possible.

It is therefore clear that the freedom we are given to define how we are to intervene depends to a large extent on the mandate or the political and military objectives of the "occupier", regardless of how one defines it. We will come back to this point later on. However, it is important as of now to stress the fact that this time of "emergency" between the cessation of fighting and deployment of political/military authority varies considerably from one situation to another, precluding any predetermined and systematic approach by MSF. For example, in Somalia, the American military intervention in December 1992 in response to the current famine was regarded with great suspicion. The precarious security situation characterising Mogadishu since 1990 nonetheless led the MSF Board to opt for a position of prudence. This consisted of a press release combining the desire to cooperate with a warning against the possible perverse effects of an international military operation with a relatively vague mandate.[13] This same prudence was advocated by a majority of the members of the Board concerning the situation prevailing in Baghdad in the spring of 2003, in the first few weeks following entry by the American forces into the capital. However, in a political context that was far more heavily polarised than it was surrounding the arrival of the Marines in Mogadishu in 1992, the absence of agreement between the various members of the expatriate team on-site, the head office and the Board, concerning whether or not there was room to work during this period, finally led to withdrawal.[14]

Finally, there are situations in which, despite the cessation of fighting or an initially very low level of resistance, the conquest of a territory or city is associated with an outpouring of violence against the civilian populations, who are made to pay the price of defeat by the victorious army. This was repeatedly the case with the Russian forces in Chechnya and the Rwandan and Ugandan troops in the east of the Democratic Republic of Congo (DRC) between 1998 and 2003. In both cases, these large-scale atrocities took place behind closed doors as a natural extension of the offensive before the imposition of order. We then had absolutely no margin for negotiation for access to the victims, regardless of whether or not after assessment we would have chosen to pull out as we had done in the Rwandan refugee camps in Zaire in 1995. In this type of situation, in the same way as during periods of invasion, it was only possible to assist the victims around the periphery of the conflict, in refugee or displaced persons camps, where the populations who had managed to escape sought sanctuary.

Hence, the variety of conditions in which an army occupies a territory runs counter to adopting a position of principle, and to any predetermined operational response on the part of MSF. It doubtless explains that the notion of occupation only very rarely forms part of

conducted in and around Grozny in the summer of 1996 was ratified by the Board, even after the fact. The cross-border operation in Afghanistan, although it started after the actual invasion by the Red Army, is also a good example, as witnessed by the homage to Dr Gérard Kohout in the 1982 Moral Report: "*Without him, this mission would never have been possible. For more than a year now, this tireless voyager has travelled the length and breadth of the country undercover […] stopping here to give medical care, here to discuss the transit of medical teams with the resistance leaders, or there to debate in a tea house and explain in Farsi that not everyone has abandoned the Afghan people.*" The limits of the mission thus established were not hidden: "*Our great regret is that in the conditions in which we are working, we cannot provide medical care that is as effective as we would wish and we sometimes have the impression of simply distributing drugs, because the war prevents us from envisaging the various aspects of a complete health care intervention.*"

12. See 1990-91 Activity Report, Liberia mission: "*In September 1990, the first intervention troops (ECOMOG) from the Economic* ▶

Community of West African States (ECOWAS) arrived in Monrovia to pacify the capital and separate the protagonists. As of November, Monrovia was once again accessible and enjoyed a situation of precarious calm."

13. See minutes of Board meeting of 4 December 1992. The result of the vote on MSF's position concerning the basic question of intervention by American troops in Somalia shows a lack of consensus on the subject: 7 votes against, 2 votes for, 2 abstentions.

14. From the Board's point of view, see the 2003 Moral Report: "*for the Board, it would have seemed reasonable that the problems of the sick in the immediate aftermath of the war would have led to temporary initiation of activities. If this was not possible in the public hospital system, the situation was probably nonetheless sufficiently open for us to work in the private sector, by ourselves renting premises in order to offer consultations to dress a number of wounds and in particular in the popular quarters of Baghdad, to offer medical emergency aid. This was not the option chosen by the teams, and the board regrets the fact.*"

the debate over the response to be provided to each of these situations. The operation carried out by the United States against Iraq in 2003 could be an exception in this respect. However, the prospect of the American occupation and MSF's lack of familiarity with the Iraqi context both contributed to the failure to reach a consensus on this situation.

LONG-TERM OCCUPATION

Whether they allow a precarious calm to return, or on the contrary justify unbridled violence, occupation situations and their implications for our working conditions evolve with time. It is clearly this evolution that is at the heart of MSF's operational problems. The paradox in fact lies in that, because they are part of a conflict and directly place a foreign army in contact with a civilian population, occupation situations are very clearly legitimate areas for intervention by ourselves, but at the same time, they create pockets of relative peace or normalisation of the war, in which economic and social life resumes - or more precisely adapts - and in which we struggle to define our programmes and characterise the real meaning of our presence. In other words, in MSF language, even though we consider the occupation to be a conflict situation, we are usually obliged to deploy "post-conflict" type programmes, likely to be applicable to the long-term.

This problem with categorisation is apparent in how the notion of occupation is employed by the MSF representatives in describing a situation, or not. We only rarely give the name of occupier to armed intervention forces under a United Nations mandate, even in situations in which they exercise effective control over all or part of a territory. If we distance ourselves from them, it is because they are "parties to the conflict" or are likely to become so. This distancing can nonetheless lead to opposing attitudes depending on the actions of the forces under UN mandate. In Somalia in 1993, bombing of civilians and of a building shared by MSF and ACF led us to file a complaint with the UN concerning the applicability of the Geneva Conventions to its forces. In Kosovo, however, the control exercised over the territory by the 40,000 men of the KFOR, imposed on Serbia as a result of the NATO air-strikes, helped with the widespread deployment of aid. In this context, we terminated our programmes on seeing that reconstruction was under way. Internally, the expatriate team observed that the KFOR was itself the only rampart against a further upsurge in violence between the Serbian and Kosovan communities. Although these notions do not appear in our debates, these two examples suggest that a distinction between "belligerent occupation" and "peacetime occupation" could be useful.

In situations in which armed opposition to foreign troops is being reorganised, then we would tend to use the term "war" rather than occupation to qualify the situation, and to justify our continued presence or our mobilisation, if such a presence were to prove impossible. In his 2001 Moral Report, the President of MSF described the situation in Palestine as the resumption of a "war that dare not speak its name"[15], whereas the situation in Chechnya was a "total war"[16,] a war "referred to as a "counter-terrorist operation" by Moscow"[17] which had to be brought out into the daylight, despite the occupier's claims. In these two contexts, reference to the notion of "occupation" is far less to characterise a particular politico-military situation than the nature of the suffering experienced by the civilian populations: "foreign occupation is a plague on the Palestinian population: in medical, material, moral and psychological terms", occupation and violence contribute to the same "humiliation"[18]; in Chechnya, "the Russian army is deployed like an army of occupation and multiplies the acts of violence (disappearances, rapes, etc.)"[19]. Using the notion of occupation would therefore seem inseparable from situations involving humiliation and widespread abuses. Occupation is thus seen as something which can only generate more violence and a fresh intensification of the war. In short, in a context of occupation, MSF perceives its role as not only that of calling a war a war, but also of anticipating and sounding the alarm concerning a radicalisation of the conflict.[20]

The purpose here is not to contest the analyses made of these various contexts, but to underline the fact that the occupation is not seen by MSF as a particular situation or moment in a war, but more as a series of abuses, usually arbitrary. The persistent violence perpetrated against civilians, the continuation or the emergence of guerrilla actions against the occupying forces is, as far as we are concerned, a sign that the war is real, a war admittedly that can vary in intensity, but in which an emergency is at all times still possible. This is the central motivation for our presence. However, examining those situations in which we have made the decision - often imposed on us - to suspend or even terminate our missions, clearly shows that occupation contexts confront MSF with the limits of its action.

Between 1992 and the first months of 1993, MSF withdrew from three countries which were home to some of its largest missions: Iraqi Kurdistan, Somalia and Liberia. In these three cases, the rising insecurity, primarily borne out by the deliberate targeting of NGOs, was a determining although not the only factor in this withdrawal. In Iraqi Kurdistan, there was perceived to be "no real emergency situation" and despite human rights violations and political problems, there were in the end "few things on which a humanitarian organisation such as MSF could have any real impact".[21] The assessment of the situation in Somalia was similar: "The emergency phase is over, and the time has now come for reconstruction."[22] Finally, in Liberia, our withdrawal was justified "on the one hand by the multitude of humanitarian agencies present in Monrovia, and on the other by the fact that it is impossible to gain effective access to the areas of conflict"[23]. To be sure, the bombing by

15. Jean-Hervé Bradol, 2001 Moral Report
16. Jean-Hervé Bradol, 2003 Moral Report; in his 1995 Moral Report, Philippe Biberson had already described the conflicts in the Caucasus, in particular in Chechnya as "*all-out war situations which make no distinction between combatant and non-combatant populations.*"
17. Jean-Hervé Bradol, 2001 Moral Report
18. Jean-Hervé Bradol, 2002 Moral Report; we find this same meaning in the article by Pierre Salignon, Fouad Ismael and Elena Sgorbati, "Healing the Mind", a prologue to the MSF *Report Palestinian Chronicles: Trapped by war*, July 2002: "*Nearly the entire Palestinian population suffers from the confinement, occupation, fear and an absence of hope for the future on a daily basis.*"
19. Minutes of Board meeting, 28 January 2000; similarly, in denouncing the "colonising attitude" observed among the international contingents arriving in Somalia, Rony Brauman did not talk of a situation of actual occupation, but rather of "*the impunity enjoyed by people who sometimes behave as killers, as all-conquering warriors: they feel that they have the right to take the women and even the lives of anyone who could in any way repre-*

sent the slightest threat to their own safety." Rony Brauman, 1993 Moral Report

20. "*Only the optimism of an ideologist could let one imagine that armed occupation could bring about anything other than more instability and violence.*" Pierre Salignon, Rony Brauman, "Irak : la posture du missionnaire" in Fabrice Weissman (ed.), *A l'ombre des guerres* justes, Flammarion, 2003, p. 291 ; "*The military occupation is becoming more firmly entrenched […]. This clear deterioration in the situation, seen in the high toll of civilian dead and injured over a period of a few weeks, does not bode at all well for the future.*" Jean-Hervé Bradol, "Put to the test", *Palestinian Chronicles*, July 2002

21. Rony Brauman, Moral Report 1993

22. Ibidem

23. Activity report 1992-1993

24. Rony Brauman, Moral Report 1993. It should be noted that the question of the meaning of the MSF presence in Kurdistan had been posed at head office and to the teams, even before the rise of insecurity, culminating with the murder of a Handicap International expatriate, probably at the initiative of the Iraqi regime: "*In the 1992 Moral Report I had already mentioned our role as a relative bystander […] It is in this context that the security problems convinced us to withdraw from Iraq.*" As with Liberia, the ▶

ECOMOG aircraft of an MSF convoy heading towards the rebel zones was, for good reasons, in everyone's minds. However, this incident only occurred after our decision to withdraw from Monrovia's and Bomi's public hospitals, hospitals in which we had got things up and running again and in which the local health authorities now aimed to assume full control. In these three countries, it is therefore the absence of "a fair balance between on the one hand the real impact, and on the other the risks we are prepared to run to ensure an effective mission"[24] which led us to opt for departure.

We have been faced by this dilemma between safety and the added value of our actions in other contexts. In Chechnya, the fall of Grozny in February 1995 and the gradual occupation of the south of the country by the Russian army had created a highly volatile situation, in particular during the first half of the year. Despite the positive results obtained by adapting the size of the programmes to this changing context, the constantly shifting battlefield permanently called into question the pertinence of where the teams were positioned.[25] As of July 1995, a process of reconstruction was begun in Grozny with return of the Chechen refugees on a large scale. However, this was rapidly followed by a rising number of security incidents affecting the NGOs, leading to withdrawal by MSF in November.[26] Finally, in Afghanistan, we publicly stressed the direct threat to our teams as the reason for our withdrawal in the summer of 2004, following the murder of five members of MSF-H with the crime being claimed by a representative of the Taliban. This very real security issue should not however make us forget that our working space and our working prospects were further complicated daily by the influx of NGOs and the Afghan health system reconstruction plan put together by the World Bank.[27]

The problem of the definition and effectiveness of our programmes is thrown into the spotlight by our withdrawals when the safety of the MSF teams is threatened, but it is also the subject of recurring in-house discussions concerning the occupation contexts in which we remain present. Before the decision was taken to wind up the MSF mission in Kosovo - a decision mentioned earlier - the operational choices made by the field teams and the desk responsible for this mission had to be defended internally against a certain scepticism, owing to their atypical nature: emphasis on psychological care after the initial involvement in disorganised and understaffed health structures and in the absence of any large-scale, pressing medical needs; supply of materials for reconstruction of damaged roofs as winter approached.[28] In the Palestinian Territories, the relevance of the psychological care programmes has led to the same soul-searching within MSF, since the first programme of this type opened in 1994.[29] This debate, which is usually expressed informally, or whenever activities and decisions are presented to the operations meeting or to the administrative board, concerns either the value of the psychological care itself in this context, or the fact that it accounts for the majority of MSF actions in the Palestinian Territories. In effect, despite a clear desire on the part of the desk to incorporate a medical

side into the programmes through the presence of a doctor alongside the teams of psychologists and psychiatrists, this medical dimension in practice proved relatively unsatisfactory. First of all, the expatriate doctors had trouble in situating themselves with respect to well-equipped care structures and competent Palestinian medical personnel, who were often extremely reluctant to work with them. Furthermore, this medical presence had hitherto proved unable to provide an appropriate response to the localised emergencies caused by the Israeli operations, either because we were refused access to the victims, or through fear or lack of reactivity on the part of the MSF medical teams in situations where there was very little room for intervention and the number of victims was relatively limited.

Although deadly over time, the occupation situations encountered by MSF in effect only cause few victims on a day to day basis. They require no large-scale care operations by our teams and lead us to question the impact of our activities, all the more so as the violence against the civilian population is increasingly targeted (imprisonment, executions, etc.) leaving us little opportunity to provide care for direct victims of the occupying forces. The particular nature of this type of conflict is not overlooked, as seen in the frequent references to the notion of "low-intensity warfare". This is particularly the case in Palestine since 2001.[30] However, this identification of a particular situation does not seem to have provided answers to the operational difficulties encountered on a constant basis by the MSF teams. Neither has it managed to convince all members of the organisation of the relevance of undertaking atypical programmes, the impact of which it is hard to assess accurately.

The first problem faced by MSF in occupation situations thus arises from the contradiction between, on the one hand, an analysis in which the primary representation is one of war - the theatre of choice for humanitarian action as we conceive of it - and on the other, the solutions we are able to provide in these shifting situations in which violence and even fighting coexist with day to day life for the populations and with possible dynamics of reconstruction. This contradiction triggers a recurring internal debate in these terms: if there is a war, then why do we not respond in a conventional way? If there is no room for programmes tailored to war or if there is not really a war, then why are we going there or why are we staying there? This is for example the debate surrounding the proposed return of the local team to Chechnya that took place during the operations meeting in October 2004. The desk proposed opening a maternity/paediatric health care programme. The terms of the debate surrounding the proposal were precisely focused on this apparent discrepancy between such an approach and the logic of war at work in Chechnya, and the imbalance between the risks involved in returning to Grozny, on the one hand, and the probable impact of such a programme, on the other. The desk's argument of greater safety than before and a certain normalisation of life in Grozny, as manifested by the return en masse of the Chechen refugees from Ingushetia, then raised the question of

withdrawal from Kurdistan was justified by the fact that the areas in which MSF was needed most, zones which were not in fact occupied, were out of reach: "*I would like to underline the fact that even though the spotlight is turned on Iraqi Kurdistan, the greatest difficulties, the greatest human tragedies are in fact occurring in the centre and south of the country, where no humanitarian organisation can penetrate.*" (Ibidem)

25. "*Overall, since the beginning of the ceasefire, there have been far fewer admissions (down by a factor of 10). Is this due to a falling off in the fighting or to the fact that the wounded are being taken elsewhere?*" Minutes of Board meeting of 24 February 1995; "*It is impossible to be with the civilian populations. We estimate the number of displaced persons at about 400,000, but many of them left before the conflict and there is a high proportion of Russians in the population caught in Grozny. […] The problem is to know what do we do in Chechnya. Do we stay or do we leave?*" Minutes of board meeting of 9 June 1995.

26. "*Massive amounts of aid reached Chechnya as of July 1995. The security incidents to which we were exposed for 4 months in succession led to withdrawal of the teams.*" Activity report 1995-1996.

27. Concerning the questions raised at MSF by the policy of health care system reconstruction, see Simone Rocha, "Use and Abuse of ▶

Humanitarian Aid in post-conflict Afghanistan: the example of health care provision", internal report, July 2004 and Xavier Crombé and Denis Lemasson, "Is Independent Humanitarian Action over in Afghanistan?", *The Afghanistan Monitor,* September 2003.

28. The presentation by Philippe Biberson to the Board on 27 August 1999 clearly shows the underlying effort of explanation required to have this "1000 roofs" opera-tion accepted: "*The question of what is a humanitarian "need" … and what is a luxu-ry is one that will not go away. A roof at a given moment in a specific history may be a humanitarian need in an emergency situation. One of the preconditions determi-ning MSF involvement is also to meet needs that nobody else is meeting.*"

29. See the question from one of the Board members at the meeting of 27 October 1995: "*des-pite its value, is this mission not missing the point? isn't MSF present because a page of history is being written and we had to be there?*"

30. "*The current situation in Palestine, particularly in Gaza and Hebron, can be defined as a state of "low-intensity warfare".*" Christian Lachal, "Gazaouites *et Hébronites*" Mission to assess the emergency program-me in the Palestinian Territories, January 2001; "*A permanent order has been created by the violence. It is*

whether or not there was actually a war and whether our return was relevant in a context of general but low-level insecurity and of reconstruction. The proposition was finally accepted on the principle of an evaluation of our ability to act in such a context through an initial programme in a Grozny maternity clinic. The programme proposed could not therefore constitute the sole operational objective of the mission. As with the psychological care programme in Palestine, the underlying objection - unevenly shared - is that of a "programme by default".

The existence of pockets of normality or dynamics of reconstruction during the course of a conflict is not however specific to occupation situations. Most long-term conflicts go through periods of "neither war nor peace", as we often call them, requiring that the nature of the programmes be adapted to changing needs. As Rony Brauman remarked at the end of the 1980s when talking of wars in general "the transition from open warfare to relative peace, and vice-versa, considerably modifies the needs, particularly owing to the population movements which are one of the primary consequences."[31] For MSF, then, are not the issues of an occupation situation more political in nature, as this dimension is itself at the heart of the question of safety in the field? Occupation contexts would indeed most often seem to be extremely politicised situations, from which neither the humanitarian organisations nor the media are spared. Behind the objection of the "programme by default" then lies, more or less implicitly, the accusation of the "alibi programme". Are MSF missions in occupation situations more exposed than in others to the risks of politicization and of manipulation and targeting by the occupier or the occupied?

2. Why are we really here? How are we perceived?": MSF, the occupier and the occupied

THE WEIGHT OF HISTORY: OCCUPATION AND IDEOLOGY

Like war in general, the notion of occupation has been forged through the experience of the conflicts of the 19th and 20th centuries. This is reflected both in the evolution of international humanitarian law and in the history of ideas concerning international relations. As a historical community, MSF and its members as individuals - albeit with varying degrees of awareness - are of course part of these currents of legal and philosophical thinking. The definition of the rights and duties of the occupying powers contained in the

Hague Peace Conferences of 1899 and 1907 reflected the view of war prevalent at the end of the 19ᵗʰ century, it being an affair of States conducted by professional armies, away from the civilian population. Occupation was seen as a transitional period preceding the signing of a peace treaty, during which the occupier was required to provide a basic level of management of the territory under its control, without affecting the institutions nor the everyday economic and social life of the population. Upon signing of the peace treaty, it was understood that the occupied territory was to be returned to the vanquished State, hence the importance of preserving the *status quo*, or annexed to the victor State, who was now free to exercise sovereign power over it.

The experience of the First and above all the Second World War, marked by the scale of the crimes committed against the civilian populations by the occupying forces of the Axis, demanded a change in the approach to occupation law, which was reflected in the 4ᵗʰ Geneva Convention of 1949. As clearly shown in its title, occupation law was now seen from the viewpoint of "protection of civilians", binding upon the occupier whatever the changes in the status of the territory under its control and regardless of the political regime that existed prior to the occupation. Unlike the Hague regulations, the occupier was now given considerable responsibilities, including not only the obligation to respect the civilians, but also the obligation to provide for their essential needs in the broadest sense. Insofar as these responsibilities were met, the Convention nonetheless recognised certain rights of the occupying power, both to guarantee its own safety and in the requisition of certain public goods and structures, thereby reflecting the interests of the victorious powers of the Second World War, which occupied and oversaw the reconstruction of the Axis territories.

This view changed again in the 1970s, in the wake of decolonisation. The experience of the independence struggles, the rising weight of the former colonies in international bodies and the influence of third-world ideas contributed to condemning occupation as an unacceptable regime of oppression, in the same way as colonisation or apartheid, in the name of the right of peoples to self-determination. The principle of the rights of people to self-determination had already been included in the 1946 United Nations Charter, but had been placed on the back-burner in deference to the sovereignty of States and the strategic demands of the Cold War. It was now back at the forefront of international concerns, demanding recognition of the legitimacy of the peoples' resistance to occupation, of which the Israeli/Palestinian conflict was already the symbol. The influence of this ideological movement was in particular manifested in the 1977 Additional Protocol I to the Geneva Convention. Its first article added the following to the list of international armed conflicts subject to international humanitarian law: "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination."[32]

▶ *the product of a war that is cruel, but of low-intensity and spread out over decades.*" Jean-Hervé Bradol, "Put to the Test", *Palestinian Chronicles:*Trapped by War, July 2002 ; "*Every day one or two civilians are killed, and then another two the following day somewhere else. Usually people going about their daily business but whose movements were felt to be suspect by the soldiers.*" Jean-Hervé Bradol, Moral Report 2002

31. Rony Brauman, President's Moral Report, 1988

32. Article 1 paragraph 4, Protocol of 12 August 1949 relating to the protection of victims of international armed conflicts (Protocol I) (8 June 1977). This historical recapitulation is inspired by the article by Eyal Benvenisti, "*The Security Council and The Law on Occupation: Resolution 1483 on Iraq in Historical Perspective*", Israel Defense Forces Law Review, n° 23, 2003; also see Françoise Bouchet-Saulnier, Dictionnaire *Pratique du Droit Humanitaire*, La Découverte, Paris, 2000 and Eyal Benvenisti, The International Law of Occupation, Princeton University Press, 2004

33. See Anne Vallaeys, Médecins Sans Frontières, la biographie, Fayard, 2004

34. This attitude is particularly clearly expressed in the 1982 Moral Report. Thus, when referring to the Nong Chan refugee camp, it was stated that "*several thousand refugees still live there. Several thousand resolute individuals who had decided not to return to their country as long as it was occupied.*" Similarly, MSF fully assumes the motivations of the volunteers who went out to Afghanistan: "*All of them have accepted the danger of clandestine operations, that of isolation in the interior of the country, that of being caught up in the fighting or imprisoned. They were aware of this danger when they left [...] but they agreed because they felt that this proof of solidarity with the Afghan people was necessary, I was going to say self-evident, at a time when the world is doing everything it can to forget them and sit back and do nothing.*"

35. "*As with the vast majority of humanitarian organisations active in Afghanistan, MSF never sought to take a neutral stance. [...] Like our forerunners in Biafra, we had implicitly picked our side. We had made our choice clear by undermining, deliberately and indirectly, the diplomatic position of our side's enemy. We all saw it as our duty to expose the scale of this war to the world, especially since it was* ▶

This was the context in which MSF was founded and this moral condemnation of occupation, based on the principle of the self-determination of peoples, was initially explicitly stated by its members and its leaders. Starting with the Biafran war, reference to the right of the "Ibo nation" to exist was a powerful driving force behind the solidarity of the future founders of MSF.[33] This solidarity, seen as only natural, with an occupied people - and its desire to resist - was also at the heart of MSF's engagement in Afghanistan and in the refugee camps on the Thai border with Vietnam-occupied Cambodia during the 1980s.[34] For Rony Brauman, looking back, it was these two missions that forged the attitudes of MSF and both significantly contributed to establishing its reputation and shaping its identity. They were both founded on a clear refusal to adopt a neutral stance[35]- a neutrality further made impossible by the belligerents themselves.

The notion of occupation which prevailed during the 1970s and 1980s was not solely the fruit of ideological streams born of anti-colonialism. The creation of the Freedom Without Borders Foundation in the 1980s was in fact a conscious break with the third-worldist movement. For the founders of MSF, as for their successors, the notion of occupation doubtless evoked images of the occupations of the Second World War perhaps more than attacks on the right of peoples to self-determination. As we have seen, occupation as conceived of by the laws of war up to the end of the 19th century, was nothing other than a state of affairs common to most wars between States. During the First World War, in a context of immense patriotic fervour on the part of the vast majority of the populations of the belligerent powers, the term occupation was not felt to be strong enough to mobilise citizens and combatants to win back the land that had passed into German hands. As the historian Annette Becker writes, "throughout the war, the territories are rarely referred to as 'occupied', a *de facto* situation, but as 'invaded', a temporary status meant to be cancelled out by the Allies' victory."[36] For its part, the Second World War was marked by the experience of totalitarian occupations, with the deportation and massacre of entire communities. For the historian Anne Duménil, in the wake of the international brigades who volunteered to fight in the Spanish Civil War, patriotism was no longer the sole motive for joining the resistance: "The notion of war for the rule of law was a strong motivation: engagement in the struggle against tyranny is also one of the springboards to action for the volunteers."[37] One can therefore consider that the political charge of the notion of "occupation" in the eyes of the western humanitarian volunteers themselves, largely sprung at the time - and probably still springs - from this historical reference.

MSF's position on the occupation situations of the 1980s was in fact closely linked to a denunciation of totalitarianism, embodied by the Soviet Union and its Vietnamese ally. The brutality of the occupier towards civilians was seen to be an integral part of totalitarian ideology. As we saw in the first part of this study, occupation is first of all seen as a series of unacceptable abuses. It is by denouncing these practices that MSF aimed to undermine

the legitimacy of the communist ideology in Afghanistan and the camps in Thailand.[38] Consistent with this goal of denouncing a murderous ideology was MSF's refusal in 1979 to work in the camps controlled by the Khmer Rouge, the main force of resistance to the Vietnamese occupation. Hence, from the outset, there were limits to the association's empathy with occupation resistance movements.

For a time, the collapse of the Soviet bloc seemed to change the picture. The departure of Soviet and Vietnamese occupation forces between 1988 and 1989 was accompanied by increasing disillusionment with the Afghan and Cambodian resistance movements. This led to a reconsidering of the chosen affinities of the previous decade, at a time when denunciation of the oppressive nature of communist ideology was losing its *raison d'être*, following the fall of the Berlin Wall. In Cambodia, withdrawal of the Vietnamese troops was followed by a resumption in fighting between the resistance factions and the Hun Sen government, leading to fears of a return to power by the Khmer Rouge. This situation led MSF alongside MDM to denounce the siphoning off of humanitarian aid on the Khmer-Thai border - although this is something that had been done out in the open by all the resistance factions for the past ten years[39] - as well as the Khmer Rouge representation at the UN. They also asked for a neutral camp to be set up by the United Nations. Despite the many internal reservations concerning *de facto* recognition of the pro-Vietnamese government of Hun Sen, the choice was made to open a mission in Cambodia, justified both by the war situation and by the desire to counter the Khmer Rouge.[40] This desire was again demonstrated by the refusal to carry out an exploratory mission into their zones in 1992.[41] In Afghanistan, the departure of the Soviet troops saw the question resurface of a mission to Kabul, still governed by the communist regime of Najibullah. This question led to fierce debate, with certain members of MSF considering it a betrayal to work with the government. The decision was postponed on the principle of impartiality, with the hospital structures in the government zone being considered able to meet the medical needs. Although initially raised to justify the refusal to work in the areas under Soviet occupation, this principle nonetheless proved increasingly hard to support internally in the light of the end of the occupation[42] and the new face shown by the leaders of the "resistance".[43] This refusal by some to "betray" was compounded by the fear of reprisals from certain Mujahideen armed groups. Although mentioned on several occasions, the dispatch of a mission to Kabul was repeatedly postponed. It only finally took place in 1992, after the capture of Kabul by the Afghan parties of the former resistance and the fall of Najibullah, even though MSF had pulled out of the Mujahideen zones in May 1990 after the murder of an expatriate in Badakhshan.

The end of the occupations by Communist regimes at the end of the 1980s broke the link between occupation and totalitarianism. Other forms of oppressive regimes and ideologies with totalitarian intent triggered fresh debate at MSF, at a time when reference

mentioned so seldom in the media during its early years." Rony Brauman, Foreword to MSF, *World in Crisis: the Politics of Survival at the End of the 20th Century*, Routledge, 1997

36. Annette Becker, *Oubliés de la Grande Guerre, humanitaire et culture de guerre 1914-1918,* Noesis 1998, p.33

37. Anne Duménil, "La Guerre au XXème Siècle -2. L'expérience des civils", *La documentation photographique*, n° 8043, March-April 2004

38. "Our aid unapologetically involved publicly denouncing the atrocities committed by the occupier, backing the investigations into its war crimes and speaking out to official bodies […] Resistance strongholds and refugee camps gave other people's trouble a face: that of Soviet imperialism. This explains why the principles which MSF defended in the 1980s owed more to French writers Albert Camus and Raymon Aron than to those who theorised about the Third World.
Our battle was to inform public opinion about the brutality of totalitarian regimes to civilians. We sought to prevent these regimes from misappropriating aid and to defend the independence of humanitarian action." Rony Brauman, Foreword to MSF, *World in Crisis, the politics of survival at the end of the 20th century*, Routledge, 1997

39. Fiona Terry, *Condemned To Repeat :* ▶

the Paradox of Humanitarian Action, Cornell University Press, 2002, chap. 4

40. Minutes of board meeting of 1 December 1989

41. Minutes of board meeting of 28 February 1992

42. "*This decision, taken jointly with all MSF sections, along with MDM and the AMI, after frequent and often fierce debates, was unsatisfactory with respect to our principles and was considered by all to be provisional and to be regularly questioned in the light of the information reaching us from the government zones.*" Rony Brauman, Moral Report 1989

43. "*A certain number of people believed that the departure of the Soviets would mean the end of the Najibullah regime. In fact, this withdrawal revealed the fact that this war in Afghanistan is above all a civil war, which had taken the form of a war against the invader but which, since the Soviet troops have gone, have gone back to being a civil war. Six months after the Russians left, the Najibullah regime is getting stronger. It has become the sole pillar of stability, the only person with whom one can talk. The resistance is fragmented and increasingly resembling the Lebanese model, with the resistance being manipulated by Pakistan into a dead-end. Everything is being confused, the resistance, the fundamentalists, the bandits, the Iranians, etc. …*" Board meeting of 15 September 1989

to human rights and the democratic ideal, closely tied in with the notion of the rights of people to self-determination, appeared to remain unquestioned. Already in the mid-80s, in Hazarajat, a central Afghanistan area with a Shiite majority, the influence of Iranian fundamentalism on the Hazara chiefs and local political rivalries had closed the door to us in this region. One year later, we had to temporarily suspend our mission in Afghanistan departing from Pakistan, faced with the refusal by the resistance leaders to escort expatriate women. MSF had then refused to give way to a measure which would have meant that the teams could only have access to men, in particular to combatants. This further manifestation of religious fundamentalism, allied with an increasingly widespread attitude of defiance and aggressiveness towards westerners, was already eating away at our ability to assist and show our solidarity with the "Afghan people" as victims of the Soviet invasion.[44] This fundamentalism was to reach its culmination in the Taliban regime and the reference to totalitarianism was then explicitly mentioned in MSF's assessment of this regime. This reference was also to contribute to the dilemma in terms of attitude and operations during the continuation of the conflict between the American army, officially working to reconstruct the country under the control of the new Afghan government, and the Taliban guerrilla.[45]

THE ADVERSARIES OF HUMANITARIAN ACTION

As of the early 90s, however, the invasion of Kuwait by Iraq and the prospect of the first Gulf War raised in a new light the question of the position to be adopted by MSF. The risk of manipulation by the Baghdad regime, felt to be totalitarian, was counter-balanced by the fear of adhering by default to the invocation of international law and democratic values as the basis for the international intervention against Iraq. Throughout the Gulf crisis, and more so after deployment of the coalition forces into Iraqi Kurdistan in the name of humanitarian action, this dilemma obliged MSF to seek an always precarious middle ground in defining its positions and its operations. This question of the possible perceptions and interpretations of the positions it then adopted was in fact ever-present. Thus, after an initial position of principle opposed to intervention in Iraq[46], the beginning of the conflict shifted the emphasis to the humanitarian principle of assistance to the victims of the war. To this was added the need to distance ourselves from France's position in the conflict[47], leading to a mission being dispatched to Baghdad as soon as Iraqi visas were obtained.

The regime's repression of Shiite and Kurdish insurrection movements and the Kurdish exodus to the mountains on the Turkish border then posed the problem of assistance to and

protection of the Kurdish populations. Considering the scale of the crisis, MSF felt that involvement of the coalition forces and the United Nations was necessary. The organisation was however already aware of the risk of "providing an alibi for a deployment of forces which, albeit slightly humanitarian in nature, is also political and strategic." Faced with the deployment of the American army, MSF asked for UN support and supervision both of the assistance programme and the return of the Kurdish refugees. MSF nonetheless refused to place itself under their coordination as their political role in the conflict and the negotiations with Baghdad ran contrary to the declared aim of neutrality.[48] Even though the mission was rapidly restricted to operations in Kurdistan in the absence of authorisation to work with the Shiite populations, MSF retained its coordination office in Baghdad. It nonetheless justified maintaining its presence in Kurdistan, after the emergency phase, by the risk of reprisals from the Iraqi regime after the announced departure by the international troops. MSF's balancing act was to be finally terminated with the closure of the Baghdad mission in June 1992, as a result of the rising tensions with the Iraqi regime and its deliberate targeting of NGOs in the Kurdish areas in the following months. The increasing defiance of MSF head office with respect to the Kurdish parties and the teams' dependence on protection by the Peshmerga combatants was however not totally unrelated to the decision to pull out.

With the episode in Kurdistan, the question of neutrality - challenged in Cambodia and Afghanistan, once again arised for MSF - or rather was imposed on it. For the first time, MSF had to adopt a stance against a belligerent and then, in Iraqi Kurdistan, an occupier that looked very similar to itself and invoked the very principles MSF had referred to in its denunciation of totalitarian occupiers and their practices. To avoid subscribing to the "right of interference" and distance itself from the military deployment by the coalition forces, MSF made the gesture - which was of necessity political in this context - of recognising the sovereignty of Baghdad in Kurdistan by insisting that its teams working in the Kurdish zone obtain Iraqi visas. This in no way prevented these teams from experiencing a very real empathy toward the Kurdish cause against the oppressive Iraqi regime. From the standpoint of Baghdad, MSF was only granted authorisation because of the pressure of events, particularly its military defeat. The obstacles placed in MSF's way in the south, followed by the killing of NGO members, quickly shattered the illusion of a position of neutrality in this crisis. More than the presence of the coalition forces, whose appropriation of the humanitarian slogan MSF contested, while nonetheless recognising the utility of their intervention, it was the multiple roles of the United Nations which posed the problem. Welcomed by MSF in Cambodia and initially in Somalia, the UN in Iraq confused approval of the armed intervention with coordination of the humanitarian assistance that its agencies were negotiating with Baghdad. Although MSF distanced itself from the UN in the light of the political nature of its role as negotiator in this context, it did not in this particular case assimilate it with the international armed forces. Liberia and Somalia were to be a decisive

44. "*This attitude reflects a state of mind that is particularly worrying for the future. The presence of western doctors and journalists would seem to be interpreted in certain regions as offensive to Islam and its fundamental values and thus increasingly unacceptable. If this state of mind gains ground - and there is every indication that some countries in the region are actively doing everything they can to ensure that it will - then it is to be feared that Afghanistan will close itself off completely from the outside world. One can only imagine what the human rights situation would be in this country, sealed off and in the hands of the fanatics. What does appear almost certain now is that the same type of mission as before will be impossible. We will have to adapt or give up.*" Rony Brauman, Moral Report 1986

45. "*The nature of the Taliban regime was clearly a totalitarian one, even if they did not have the material resources or the apparatus of State to implement their doctrine to the extent they would have wished. The excesses of this regime had led us to reduce humanitarian activities in this country in recent years and we were at an impasse. How, in these conditions, could we not celebrate its passing?*" Jean-Hervé Bradol, Moral Report 2002

46. "*In the light of the nature of the Iraqi regime, the humanitarian issues at this stage in the crisis*

and the clear risk of political manipulation of any humanitarian mission on its arrival in Baghdad, the Board declares itself against the principle of intervention in Iraq." Board meeting of 14 September 1990

47. *"This is the opportunity to tell people that MSF is not France. France's involvement complicates the problem, but we must clarify matters."* Presentation by Rony Brauman at the Board meeting of 25 January 1991.

48. See the minutes of the Board meeting of April 1991. Uncertainty over the position to be adopted given the evolution of the crisis is clearly expressed: *"In reality, in the current situation and given the absence of political data, MSF is obliged to improvise. MSF is in Iraq under its own name. The question arises with respect to the various approaches made to it by the allies and by the United Nations. For the time being, the response has been: we are here, but we're aside from them."* MSF's problem with the role played by the United Nations in the Iraqi crisis was to grow and be emphasised by Rony Brauman in the 1992 Moral Report: *"It is in the light of negative aspects that one must understand MSF's refusal to place itself under the UN banner, particularly in Iraq, where UN involvement both in the conflict and in its aftermath is evidently highly problematical."*

49. In the case of Somalia, the ▶

turning point in MSF's search for independence in a world in which the UN was once again bringing its weight to bear.

In Liberia as in Somalia, the political role of the United Nations convinced MSF of the need to adopt a confrontational attitude. In the name of peacekeeping, the ECOMOG regional interposition force, dominated by the Nigerian army, set itself the priority military goal of eliminating one of the protagonists in the Liberian conflict, the NPFL of Charles Taylor. Routing of humanitarian aid into the zones under the control of this rebel movement was felt to be contrary to this goal, in that the aid could help strengthen Taylor, both in terms of material resources and legitimacy among the civilian populations. ECOMOG therefore attempted to ban NGO access to these zones, and in April 1993, it even attacked an MSF convoy. In Somalia, the international contingents, primarily consisting of American Marines, landed in December 1992 with a humanitarian mandate, which included securing Mogadishu and dispatching food aid in response to the famine which had been raging for several months. This mandate was however very quickly reinterpreted as an objective of stabilising the "failed state" that Somalia had become. Here again, this goal led to the attempted elimination in June 1993 of the leading Somalian warlord, General Aidid, and his forces. This military and political goal led to numerous excesses by the foreign troops, including attacks on civilian demonstrations and the bombing of an identified ACF building, housing an MSF team.

As we have seen, these incidents were not the only, nor the main reasons for MSF's temporary withdrawal from these two countries.[49] Central, however to the perception of these excesses by decisions-makers in MSF was the UN's refusal - in both cases - to distance themselves from the international forces they had mandated or to express any condemnation of these practices. Quite on the contrary, the Secretary General's Special Envoy to Liberia, Trevor Gordon Summer, fully endorsed ECOMOG's policy by declaring that "certain organisations have a mandate to provide assistance to populations in need. We have a more important mandate: to bring peace. If assistance stands in the way of the peace process, there will be no assistance".[50] Similarly, his counterpart in Somalia discounted the complaint filed by MSF denouncing failure of the international forces to abide by the Geneva Conventions. In both cases, a UN diplomat who had expressed criticisms of the postures adopted by his organisation was relieved of his functions by the Secretary General. The desire to challenge the limits placed upon its actions and the political message aiming to justify them is certainly not unrelated to the increasing numbers of missions dispatched by MSF to the NPFL zones - and a few years later, to the zones controlled by the RUF in Sierra Leone. If the lack of aid to the populations trapped in these areas was the primary motivation for these initiatives, then UN and ECOMOG intransigence probably partly explains the determination of the teams to try to work there, despite the violence and the predatory practices of the rebel movement. It was also doubtless part of the reason that MSF

undertook new exploratory missions in Somalia, shortly after pulling out. Many in MSF certainly wanted to avoid that this withdrawal be used as proof that humanitarian aid could only be dependent on an offensive military operation. Until one of its expatriates was killed in 1997, MSF thus attempted to redefine its missions in such a way as to dissociate its image from that left behind with the Somalis by the military-humanitarian episode of 1992-93. MSF's return to Kosovo before the deployment of the KFOR must doubtless also be seen in the light of these experiences.

Public condemnation and operational defiance: MSF's adaptation to the new posture adopted by the UN clearly recalls that developed in the face of the Soviet enemy in Afghanistan. Indeed in the same way, the MSF teams had to deal with "a deliberate will to prevent them from providing assistance", were banned from providing the "material and moral support" that aid could represent and, with respect to the criticisms addressed to the UN concerning its forces, they were seen as "troublesome witnesses".[51] This similarity owes nothing to chance, because even if we can say that a humanitarian agency as a third part in a conflict has no enemies, MSF's experience clearly proves that we do have adversaries. They share a common desire to impose a political vision in which humanitarian law and principles are seen at best as a means to an end, which can be discarded when they no longer serve the ends - the values and ideals - heralded by this political vision. Hence, from the viewpoint of humanitarian action as conceived of by MSF, between communist totalitarianism, the UN vision and more recently the war against terror promoted by the United States, there is of course a difference of degree, but not of nature. According to their respective political agendas, independent humanitarian action is a disposable item. To use the terms of Rony Brauman to characterise the stakes for MSF of the communist occupations of the 1980s, the aim was always to denounce the "atrocities of the occupier" - or at least its "war crimes", "abuses" and "excesses" - thereby "indirectly and consciously" contributing to "weakening its diplomatic position", in other words undermining the foundations of these new ideologies.[52] Thus in the mid-90s, MSF was forced to redefine its identity by abandoning references to democratic values and the defence of human rights, which had become the triumphant values of the post-Cold War period and which henceforth provided the UN and the western powers with the justification they needed for occasionally stifling an independent humanitarian space. As with communism, the need once again was to "inform public opinion", to "expose to the world" the reality hidden behind the speeches, this time by denouncing the "western fantasy" contained in the notion of the right of interference[53] and by rejecting the "megalomaniacal vision claiming to wage a universal war for justice and democracy" and the "UN's vision of well-being shared by all".[54] Indeed, the role of the United Nations in what came to be called "complex emergencies" was chosen as the main topic of the 1993 edition of the MSF collective work, *Populations en Danger*, a proof that this concern was crucial to the leaders of the association.[55]

bombing of the ACF building happened several months after the decision to gradually withdraw had been taken.

50. Quoted in Fabrice Weissman, "L'aide humanitaire dans la dynamique du conflict libérien", MSF Internal report, May 1996, p.61

51. "*The future of the French doctors is above all hindered by a deliberate will to prevent them providing assistance. Those who invaded Afghanistan cannot tolerate our presence, both because it provides material and moral support to the population and because we are troublesome witnesses.*" Moral Report 1983

52. see notes 33 and 34

53. "*[In Somalia] under cover of the banner of solidarity, human rights, humanitarian aid, we saw military helicopters attack demonstrations […] This mockery of intervention, or perhaps what was enshrined - this is in any case my opinion - in the very notion of military-humanitarian intervention, perfectly illustrates a western fantasy which we saw beginning to take shape at the time of the Gulf War. It is that of embodying divine providence, and we know that the primary attribute of that is the power to give or protect life as easily as taking it away.*" Rony Brauman, Moral Report 1994

54. "*MSF is not an organisation devoted to emancipation of the people. Its action is somewhere upstream of that. One must beware of the megalomaniacal vision which* ▶

To be sure, occupations under the aegis of the UN are not the only and certainly not the worst occupation situations MSF has had to deal with since the beginning of the 90s. The "total war" as we called the Chechen conflict and that in the DRC, particularly during the period of occupation by the Rwandan and Ugandan forces, went beyond simple "excesses" and were the scene of massive and systematic abuses, forming an integral part of a policy of terror. Furthermore, in this type of context, humanitarian workers are frequently the direct targets of violence in line with that carried out against the civilians, thus preventing them from gaining access to the victims. In the Palestinian Territories, the policy of the Israeli occupiers, particularly since 2000, clearly shows the aim of having Palestinian society as a whole pay the price for the terrorist attacks committed on Israeli soil. There is thus no shortage of situations in which the forms of oppression and the identity of the oppressor trigger far stronger and sometimes partisan feelings of solidarity and empathy with the occupied populations on the part of MSF[56] than in the case of occupation by international forces with a UN mandate. Nonetheless, whether undertaken by authoritarian regimes or western democracies, and whether or not approved by the UN, armed interventions followed by occupation share the three characteristics attributed by Jean-Hervé Bradol to the emerging concept of the war on terror promoted by Washington: "the lack of any clear definition of the enemy, demonisation of this enemy and a massive imbalance between the forces present".[57]

Lack of any clear definition of the enemy: this is the source of the lack of distinction, whether deliberate or incidental, between combatants and civilian populations. Demonisation: whether targeting Palestinian, Chechen or more generally Islamist "terrorists", the members of an ethnic group, or "warmongers" from Taylor to Aidid, it helps build up the picture of the "enemy to be conquered", justifying the use of force and frequently justifying in advance the human cost that will be entailed. Finally, imbalance between the forces present: this is the most commonly accepted image of an occupation situation opposing a regular State or multi-State army against resistance guerrilla groups. MSF's experience since the beginning of the 90s is that these characteristics, which can be applied to the vast majority of occupation situations, are likely to provide legitimacy for a "disproportionate, in other words excessive, use of force in military operations."[58]

THE QUESTION OF PERCEPTIONS: ISSUES AND ILLUSIONS

The lack of any clear definition of the enemy and its demonisation that leads to a blurring of the lines between civilians and combatants, is not the sole preserve of the occupier. In the process of radicalisation that develops over time in an occupation situation, the opposition

▶ *aims to wage a universal struggle for justice and democracy and of the UN's vision of well-being shared by all. We would then be missing the point because this is not our mission and not what endangered populations expect of us."* Philippe Biberson, Moral Report 1996

55. Concerning the internal debates around this choice, see the minutes of the Board meetings of 5 February, 5 March and 26 March 1993.

56. See for example, the first evaluation report by Christian Lachal in the Palestinian territories after the resumption of fighting: *"Daily life in the territories is hell. The decision to go and work in hell is the right one."* Christian Lachal, "Gazaouites et Hébronites" Emergency programme evaluation mission in the Palestinian Territories, January 2001

57. Jean-Hervé Bradol, Moral Report 2002

58. Ibidem

groups generally develop a discourse that is symmetrical to that held by the occupying power to defend the legitimacy and justice of its cause. This symmetry was underlined by the President of MSF when he spoke of the face-to-face situation between "the eternal victim and the victim of the eternal victim" in the Israelo-Palestinian conflict.[59] Superiority, not only military, but also sometimes economic and political, is however the specific characteristic of the occupying power. It is this superiority that pushes MSF to distance itself from the latter - although now, at least at an institutional level, it refrains from approving movements of opposition to the occupier.

First of all, the civilian populations of the occupier are usually remote from the conflict and therefore comprise fewer victims. Furthermore, the medical infrastructures of the occupying power are usually intact and thus able to deal with these victims. In the name of impartiality, in other words on the basis of needs alone, this general state of affairs justifies MSF intervention primarily or even exclusively on behalf of the "occupied" civilians. In addition, the occupier's control of all or part of the territory implies that MSF usually has to negotiate access to the victims with the occupier. Consequently, the teams directly come up against the occupying power's own political and military interests and in many cases are dealt with arbitrarily. Finally, a determining factor in the case of the United States' war on terror, or the interventions by the UN, is that the economic power of Washington and the "international community" through the UN gives these specific occupiers the ability to finance humanitarian aid and reconstruction under their own supervision. This enables them to further legitimise their policies which find their source in an essentially western, dominant vision of peace, stability and democracy. MSF can be easily assimilated with this vision, not only by western public opinion, and therefore its main donors, but also to a greater extent by the assisted populations and armed groups fighting the occupation, whose identity exists through opposition to the discourse and values proclaimed by the occupier. MSF therefore has all the more difficulty in reaffirming its independence when faced with occupiers who resemble it.

The recurrence of security problems in occupied areas bears witness to the extreme difficulty in defining a clear position in this type of context. This difficulty lies as much in the little control we have over the mutual perceptions of the various players in these situations as in the ambivalence contained in our own approach. From the outset, MSF had to deal with a problem of legibility, even within the western world, concerning its criticism of military interventions conducted under the humanitarian banner. In Somalia in 1992, MSF had generally drawn the attention of the media to the victims of the famine and the direct link between this famine and the civil war in progress. However, its message over the military-humanitarian confusion when the international troops landed in December of the same year was given little coverage. This public position was felt to be too complex and too much in contradiction with the calls for mobilisation evoked by the pictures of starving children.[60] Even today, one frequently hears French journalists stating that MSF were the creators of the concept

59. Jean-Hervé Bradol, "Put to the Test", Palestinian Chronicles, July 2002

60. Virginie Raisson, Serge Manoncourt, "MSF-France en Somalie : janvier 1991 - mai 1993", internal evaluation report, February 1994

of the right of interference. This confusion is all the more comprehensible among the armed groups as well as the civilian populations of the countries in crisis, who generally witness an exponential rise in the numbers of humanitarian players in the wake of the deployment of international armed forces. Moreover, the rise of anti-western sentiments cannot be explained by the excesses of the international armies alone. There are other reasons, in particular linked to the apparent wealth of the NGOs. This wealth can be perceived as an attribute of the political and military power of the western states, or as the symbol of a traditional urban dominance over rural areas, as revealed by Fabrice Weissman with respect to the attitude of the Liberian fighters to humanitarian aid.[61]

MSF is rarely perceived in just one way, reflecting the divisions in the societies subject to occupation, divisions which already existed but which evolve along with it. For example, in Afghanistan, during the Soviet occupation, certain groups saw the expatriate teams as natural allies against the invader, all the more so as they often saw in us vectors of political legitimacy and material support from the western countries, a belief that was strengthened by Pakistan's coordination of the Afghan resistance. However, for other groups such as the Hezb-Islami of Gulbuddin Hekmatyar, the representation of the Soviet enemy as an infidel power implied a sometimes violent rejection of the western organisations perceived as Christian or sinful. Conversely, in 2003, the virulent criticism by the NGOs of deployment of the *Provincial Reconstruction Teams*[62] to Bamyan no doubt appeared incomprehensible to the minority Hazara population, who welcomed with open arms the protection and the manna promised by the American army, whose bombings had chased out the Taliban.

Our insistence on being seen for who we are - or who we think we are - often comes up against cultural or contextual barriers that are hard to overcome. In societies in which allegiances and loyalties are essential preconditions for survival in times of crisis, our principle of independence is not necessarily self-evident. Nor do we insist on this principle quite so strongly when our assumed dependence on the French state becomes the guarantee of a degree of safety, linked for instance to the popularity in the Muslim world of the French president's opposition to the war in Iraq. Nor is the image of neutrality particularly respected in an occupation context where the political identities of the parties to the conflict are defined entirely by attempts to destroy the legitimacy of the enemy. The sometimes fierce internal debates at MSF concerning the reaffirmation of our neutrality in the Israeli-Palestinian conflict is to a large extent meaningless from the viewpoint of the vast majority of the Palestinian population and authorities, for whom there is obviously not a shadow of a doubt concerning our commitment to their cause.[63] The aggressiveness of settlers and some of the Israeli soldiers towards us confirms the fact that this is clear to the protagonists in the conflict at field level. In return, the stated claim by the Israeli chiefs of staff liaison department of wishing to coordinate NGO access to the Palestinian territories is designed to achieve a number of political goals: to exercise control over the activities of the volunteers, to show the Palestinians

61. Fabrice Weissman, "L'aide humanitaire dans la dynamique du conflict libérien", op. cit., p. 55

62. American reserve units usually supervised by special forces members, responsible for contributing to stabilising Afghanistan by carrying out assistance and reconstruction work and acting as a security deterrent. Officially created to shore up the legitimacy of the new Afghan regime among the rural populations, the PRT were also there to improve the image of the American army and provide intelligence in its war against the insurrection movements linked with the Taliban.

63. According to a field manager in Gaza, many Palestinians equate the MSF expatriates with the pacifist militants, including American ones, who place themselves between the Palestinian civilians and the Israeli army. One of them, killed by an Israeli bulldozer, is revered as a martyr by the Palestinians in Rafah.

the clear disparity in treatment between themselves and the NGOs and to help weaken the credibility of the Palestinian Authority.[64] In Afghanistan, the quasi-confrontational position of MSF - and many other NGOs - adopted with respect to the American army, and based on the military-humanitarian confusion embodied by the PRT, was unable to convince the Taliban and their allies, if not of our neutrality then at least of their political interest in recognising us as being outside the conflict. The criticisms made by the western humanitarian NGOs were in fact only expressed to the American army itself and to the representatives of the new Afghan government, who depended on the Americans for their status and indeed their survival. They carried little weight given that our programmes were limited for security reasons to the zones controlled by the very regime whose legitimacy was disputed by the Taliban.[65]

Images of domination, allegiances, partisanship: our interventions can be politically interpreted in a multitude of ways that our public stance can only rarely reverse, or even modify, however slightly. Therefore, the problem we have in defining our programmes in a time of occupation owing to the chronic and low-intensity nature of these conflict situations, as shown in the first part of this study, is further aggravated by the problem of ensuring that our action of assistance and solidarity can be clearly understood by the parties to the conflict and indeed ourselves, in a context where there is little place for neutrality. As shown by the experience of decolonisation, wars of resistance against an occupation are won or lost on the political rather than the military battlefield. Humanitarian aid must therefore find a place for itself in areas of disputed legitimacy. This explains why the position of the occupier usually consists either in barring access to the humanitarian organisations, those "troublesome witnesses", and imposing its order behind closed doors, or in appropriating the humanitarian project as its own, legitimising its occupation by aid that is planned and supervised by itself. These two trends can also be found alternately in the same context, as shown by the Israeli occupation or the American occupations in Afghanistan and above all in Iraq. Faced with this dual risk, MSF's "know-how", in other words its ability to urgently deploy large amounts of logistical and medical resources to the largest possible number of victims proves to be ill-adapted. Philippe Biberson, in his 1995 Moral Report, thus partly ascribed MSF's failure to intervene during the first year of the Chechen conflict to the fact that our resources were not suited to the context. He stressed that "what is an advantage in many situations becomes a straitjacket paralysing us and making us vulnerable because we are too visible and have too much to lose."[66] It was for these same reasons that in 1999, pending a return to Kosovo under the auspices of a new military-humanitarian operation, he called for "highly symbolic and peripheral actions, in other words where the others don't go, to help in that which others have left behind or neglected."[67]

In these areas where legitimacy is disputed, the position of the political representatives of the opposition to the occupation is often the reverse of that of the occupying power: even if they ask for or agree to witnesses and their testimony, they generally contest any aid that can

64. *"The 'coordinations' put in place with the army to enable us to work in the Gaza Strip or the West Bank, are seen by the Israelis as the beginnings of 'collaboration' as witnessed by their charm offensive when we meet them, which are in stark contrast to events in the field, which demonstrate aggressiveness towards the NGOs on the part of the military."* Christian Lachal, "Desolation Row", exploratory mission 30/06-07/07/02 in Jenin (ex-Palestinian territories)

65. This contradiction was once again tragically evident in the motive for our departure after the murder of five members of MSF, invoking the inability and the unwillingness of the Karzai government to identify and punish the guilty parties. This criticism could only service to bolster the Taliban in their claim of responsibility for the attack, which was part of their strategy of contesting the order imposed by the"American occupier" by maintaining a climate of insecurity.

66. *"In Chechnya we were faced with major difficulties linked to the little room available for humanitarian action. However it would seem that our approach also suffered from the somewhat mechanical replication of operational stereotypes. Full Charters, white Toyotas covered with stickers and fluttering* ▶

flags could do nothing in the face of the impenetrable cynicism of the Russian forces, and the VHF radios did nothing to reduce the level of insecurity or even the feeling of insecurity linked to this total war situation.[…] What is an advantage in many situations becomes a straitjacket paralysing us and making us vulnerable because we are too visible and have too much to lose." Philippe Biberson, Moral Report 1995

67. *"Regardless of the developments in this crisis, the humanitarians will have to accompany the process. We know that humanitarian aid on this scale, international humanitarian aid and inevitably military-humanitarian aid will leave little room for a fine discrimination between the needs of the victims and even less so between the actors of the conflict. We will have to take care to ensure that humanitarian aid does not in turn become a source of injustice and discrimination, an instrument of domination and control. For Médecins Sans Frontières, my preference, as we defined it a few years ago, lies with highly symbolic and peripheral actions, in other words where the others don't go, to help in that which others have left behind or neglected."* Philippe Biberson Moral Report 1999

68. *"People feel a very strong need for us to support them and be with them in their ordeal, as well as care for them and finally bear witness to what*

legitimise the position of the occupier. From this viewpoint also, large-scale programmes such as taking over public health care structures are often perceived negatively. Since the Oslo process began in 1993, the issue for the Palestinian Authority has been to stake a claim for itself as the legitimate government of a viable State, a position that Israeli policy since the Netanyahu government, has striven to undermine. From 1994 to 2000, MSF had refused to take the place of the Palestinian health ministry and had simply conducted mental health programmes in partnership with local associations. The resumption of the conflict, marked by a radicalisation of the move to undermine the legitimacy of the Palestinian Authority on the part of Israel, once again forced MSF to ask itself questions about medical or even surgical care in this war context, but any proposals along these lines were rejected by the Palestinian Authorities. The evaluation reports by Christian Lachal highlighted this dual requirement from the Palestinians, which was the presence of witnesses on the one hand,[68] but preservation of the legitimacy of their Public Health system on the other.[69]

It is within this same framework that we ask ourselves the question of the legibility of our actions: implementing atypical programmes, out of step with our usual conception of care, raises all the more questions within the association when it appears justified by the political demands of the "occupied". The promoters of these programmes are thus called on to defend them in terms of both relevance and neutrality. This seems paradoxical as the relevance of these programmes lies precisely in the renunciation of an illusory neutrality, while positioning aid on the margins of the most fiercely contested areas of legitimacy. Clearly however, the identification and more still the success of such programmes is anything but self-evident. First of all, because the symbolic value must be matched by the reality of the needs. Then, because although the media generally report on occupation situation in fixed terms, the changing positions of the parties involved, the fluctuating security conditions and needs, demands considerable reactivity in these changing working spaces. Nonetheless, the necessary gamble involved in setting up these operational innovations has all the more chance of failing when it comes up against internal resistance. This was stated by Rony Brauman as early as 1994, when the MSF mission opened in the Occupied Territories.[70] The lack of any consensus on the appropriateness of such missions leads in most cases to a corresponding discomfort in our public stance, with our denunciatory postures revealing the same disagreement over the analysis of the situation and our ability to convert it into actions. Thus in occupation situations, it is not only our independence and our "humanitarian space" that are put to the test, but also our ability to analyse, adapt and invent.

Conclusion

This study attempted to identify the problems posed for humanitarian action in occupation situations. Focused on the experience of MSF, it shows how our collective identity, in particular with respect to MSF's relationship with conflict, the conception of its independence and the definition of its programmes, influence our way of looking at these situations and our attempts to find our position within them. Clearly many of these problems are not specific to occupation contexts. Violence against civilian populations, evidently, but also demonisation of the enemy or the existence of periods of relative normalisation during long-term conflicts, periods during which our programmes evolve, sometimes imperceptibly, from an emergency to a long term approach, characterised a number of the areas in which we have worked, despite the absence of any external armed intervention. Similarly, the humanitarian blockade sanctioned by the UN around the zones controlled by the NPFL in Liberia and by the RUF in Sierra Leone also affected the zones controlled by UNITA in Angola, as of 1998, without any international military intervention. For its part, the Darfur crisis has involved a guerrilla war waged by a rebel movement disputing the legitimacy of the Sudanese state and the disproportionate, indiscriminate and asymmetrical response by the state - even though political independence was not, at least initially, the main issue in the war. Finally, misunderstanding regarding the goal of our actions or negative perceptions of MSF or simply of its expatriate personnel are not limited to us being associated with an occupier or an occupied, including in situations of occupation.

This observation leads us to make several remarks. The first is that our identity, our organisational mechanisms and our internal limits help create similar dilemmas for us in different situations. The questions raised by occupation situations have their place in more general internal debates within MSF, particularly those concerning the validity of the operational distinction between programmes referred to as "conflict"/"post-conflict" or "exclusion"/"social violence" and those concerning the management of emergencies in the operations department. Secondly, the notion of occupation, as indeed the idea of a clear distinction between war and peace, makes reference to a conception of war as conflict between States or between a State and a people aiming to create its own State. This concept is the dominant one in international law as it is in the approach to crises by the UN and the western powers. According to Anthony Lang, it is the very reason for the drift in and often the failure of state-sponsored "humanitarian" operations: "The lesson to be drawn from humanitarian intervention [conducted by states] is that humanitarian concerns do not exclusively, or even primarily, focus on individual persons, but, in an intervention, on the creation or protection of state agents. This means that while an intervening state may be able to provide some food for starving peoples, it will soon become more concerned with creating a state entity, usually in its own image."

▶ *they are going through.*" Christian Lachal, "Gazaouites et Hébronites" Emergency programme evaluation mission in the Palestinian Territories, January 2001

69. "*We must understand this very real fear on the part of the Palestinians, that everything they have built, particularly since 1993, is escaping from them and will be crushed, bulldozed or handed over to the international NGOs.*" Christian Lachal, "Desolation Row", Exploratory mission 30/06-07/07/02 in Jenin (ex-Palestinian territories)

70. "*It must however be admitted that - particularly here in Paris - MSF is both mentally and mate- rially poorly equipped to support these missions. Our centralisation, our tradition of logistical resources, crisis and emergency interventions, makes us perhaps somewhat obtuse and in any case relatively imper- vious to the highly specific problems involved in this type of mission.*" Rony Brauman, Moral Report 1994

It is because the community or the groups who undergo this intervention reject this image and create their own political identity in reaction to it, that they also end up rejecting the aid brought to them.[71] Although MSF has been involved in a rising number of civil wars since the early 90s, we are culturally heavily influenced by the role of the State in war, in the face of which we maintain an ambivalent attitude. As a non-governmental player, it is first of all by opposition to the State that we affirm our independence and denounce the hijacking of the humanitarian cause. We also call into question the State's legitimacy, intentionally or not, by taking its place in providing care to the civilian populations. However, we do call on States to assume their responsibilities, either in protecting their own populations and the humanitarian personnel, or in exerting pressure to halt a conflict, or intervene politically and materially in the case of a large-scale crisis. In an occupation situation as in a civil war, we tend to lean towards the rebel groups rather than the State - be it occupier or sovereign, but are often faced with the problem, raised by Rony Brauman when talking of Southern Sudan, that it is "sometimes harder to deal with a guerrilla movement than a government. It is harder to exert pressure, to invoke principles with an authority that cares little for its relations with the outside world, whereas a government generally has more concerns of a diplomatic nature."[72] These problems are probably further compounded by the influence of our conception of war as state-centred. Does this perspective not lead us to evaluate in too simple terms the perceptions that warring parties and civilian populations hold of us : are we seen as neutral or not? Are we seen as independent or not? The position of MSF with regard to the State, therefore makes the question of occupation part of a broader question which it would no doubt be worth examining in greater detail.

71. Anthony Lang, *Agency and Ethics: The Politics of Military Intervention*, State University of New York Press, 2002, p.199

72. Rony Brauman, Moral Report 1993

PART 2
Humanitarian Action in Situations of Occupation

[11 January 2006 conference, organised by the MSF Foundation]

PRESENTATION OF THE CONFERENCE

The invasions of Afghanistan and Irak, like the military interventions under UN mandate since the early 1990s, though on a different level, have called again into question the notion of occupation, a notion still imbedded in the experience of the two World Wars of the XXth century. This new questioning comes at a time when humanitarianism is experiencing a spectacular growth, as reflected in the number of its actors and their perimeter of intervention. From Somalia to Afghanistan and from the israeli-palestinian conflict to the "Second Gulf War", the debates on the qualification of these situations and the responsibilities at stake, as well as those elicited by the operational difficulties faced by aid agencies, all demonstrate a lack of consensus and a difficulty to come up with satisfactory answers.

Is the notion of occupation a meaningful one for humanitarian action? Do situations of occupation create specific problems and constraints to aid agencies, whether they are expressed in terms of responsibilities, operational modes or perceptions by the actors of the conflict and the assisted populations? Have humanitarian organisations not become, by their size and the variety of their realms of action, themselves a part of the problem?

MORNING'S PRESENTATIONS

Jean-Hervé Bradol, President of Médecins Sans Frontières:
"Occupation: a problematical notion for the humanitarian actor"

To open the symposium, Jean-Hervé Bradol first of all mentioned the issues involved in defining the notion of occupation. From this viewpoint, the cases in the study undertaken by MSF on this subject were selected on the basis of a factual rather than a legal definition. He first became interested in this notion on observing the spontaneous reactions of humanitarian teams faced with certain concrete situations. Jean-Hervé Bradol noted that the concept of occupation was usually seen negatively "as an injustice committed by the strong against the weak, the denial of the national rights of a human group". Nonetheless, an invasion followed by an occupation may on the contrary also be perceived as an act needed to liberate a territory or put at end to tyranny. This is how he interprets the temptation for humanitarian teams to deal with the operational blockages they encounter and the violence they witness by calling for outside armed intervention. One cannot however ignore the fact that the armed interventions in Iraq and Afghanistan have placed the subject of military occupation firmly in the spotlight, with considerable debate around and opposition to the policies implemented in these two theatres. Although this question has polarised opinions at MSF as much as anywhere else, it would seem however to be something of a "smokescreen issue" masking a far deeper question for humanitarian organisations, that is - regardless of the situation – the question of knowing who benefits from the humanitarian aid given and whether or not it is diverted from its purpose.

Annette Becker, Professor of contemporary history (University Paris X):
"Atypical humanitarian solutions for an atypical front-line: occupations during the First World War."

For Annette Becker, a historical study of periods of occupation leads to a distinction being made between the strictly military periods - invasions – and the longer periods of administrative/military organisation. In a comparative approach, one must also find a balance between the national history of the occupiers and the occupied and the international history of the conflicts, international law and humanitarian interventions. The history of occupations in the 20th century, which began in the first months of the First World War, is one which almost always involves displaced populations, repressive

measures and even extermination policies, repeatedly replayed from one occupation to the next. However, even to this day, memories of the Great War are still almost exclusively those of the combatants, whereas the violence suffered by the civil populations in the occupied regions is to a large extent unknown.

For these populations, the paradox of the time, which is the source of an enduring misunderstanding, was to see themselves as being in the front-line rather than at the rear. Annette Becker describes the occupation as being the place where the conflict was total, constituting a two-fold imprisonment for the civilians. In the occupied areas of northern France and Belgium, the aim of the occupiers was to continue the war through contributions from the civilian population by requisition and forced labour. As they faced difficulty in carrying out these measures, the German military authorities instigated a policy of terror, including multiple measures of collective reprisals, and leading to the creation of concentration camps, to which some 300 to 400,000 people were deported between 1914 and 1918. The sense of imprisonment that the military order imposed on the occupied population was compounded by actual physical imprisonment in the camps.

At the time, no international convention dealt with the internment of civilians. *Jus gentium* was an extremely vague notion in a time of conflict, while the conventions of The Hague only afforded protection to wounded soldiers and to prisoners of war. This legal framework from which civilian victims were almost totally absent, explains why the ICRC which, with the Papacy, was the main humanitarian actor in the First World War, was so hesitant in dealing with them. Annette Becker however warns against an anachronistic criticism of the ICRC and stresses that in the conflict it was fighting to apply the law. To be able to help prisoners of war and the wounded, the ICRC scrupulously adhered to the existing laws, which it attempted to have observed by the belligerents who all shared the ideological conviction of fighting a just war. For them, even this conventional law could not apply to an enemy they depicted as brutal and without honour. On both sides, the caricatures of the time show the ICRC as being systematically deceived by the enemy.

Annette Becker therefore summarises in two ideas what she calls the "immense ambiguity of humanitarian action in a time of occupation", two ideas which resonate loudly in the recent political context. The first idea is that of unthinkable neutrality. In a context of total war in the name of law and civilisation, claiming a position of neutrality would seem to be unacceptable and inevitably lead to suspicion. Throughout the Great War, there was in particular a suspicion that secret PoW camps existed and that the ICRC helped to hide them. The second idea concerns the place of humanitarianism between those promoting war and those promoting peace. The ICRC was criticised not only by the belligerents, but also by the pacifists, for whom the aim of "humanising warfare" was an illusion and the only truly valid goal was to end it. This is why the pacifist movement saw

as an affront the fact that the ICRC was awarded the Nobel Peace Price in 1917. According to Annette Becker, this two-fold opposition to the humanitarian idea in the 14-18 war, allied with the amnesia surrounding the civilian victims following the armistice, made a significant contribution to convincing those who were preparing the next conflict of their impunity.

Catherine Deman, political adviser, Operations division, International Committee of the Red Cross: *"The legal notion of occupation and its operational implications: the ICRC experience"*

Catherine Deman underlined the importance for the ICRC of not straying from the legal definition of occupation, as enshrined in the fourth Geneva Convention and universally accepted. The broader factual definition adopted by MSF in its study and proposed for the symposium could be a source of confusion, in that taking control of a territory and its population by an army is not specific to the legal definition of occupation and in fact covers most war situations.

From the viewpoint of international law in general and humanitarian law in particular, there is only an occupation if the occupying power and the occupied territory are both subject to international law, in other words are two States or two entities with international status. Furthermore, the military control exercised by the first over the territory of the second must be against the will of the latter. This definition does not apply to peoples who have not acquired statehood, except for those which the United Nations General Assembly in the 60s and 70s recognised as having an inalienable right to self-determination. Catherine Deman nonetheless pointed out that attributing international status to national liberation movements recognised as being representative of a people, was specific to a particular period in history – now over – linked to the entry of recently decolonised countries into the United Nations. In effect, this recognition concerned only a small number of entities.

Legal recognition of an occupation situation has important ramifications both for the obligations incumbent upon the occupying power towards the civilian population, as well as for eventual resolution of the conflict and the issue of reparations. According to Catherine Deman, legal recognition may thus have a concrete effect on the situation. For the occupier, it entails a ban on annexing the occupied territory and the obligation to administer this territory in the interests of the civilian population, ensure its protection and meet its essential needs. In the longer term, the obligation is to restore the normal working

of the public infrastructures and facilitate the development of the occupied territory. To this is added a ban on modifying the structure of the territory in terms of its institutions, its organisation and its demography. These requirements are safeguards against exploitation of resources or transfer of populations in the territories concerned, although the question of whether they are actually followed remains open.

For the ICRC, the legal status of occupation offers additional legal tools on top of those applying to general conflict situations. These tools, when used to remind the occupying power of the need to meet its obligations, may help limit the particular humanitarian problems created for the civilian population by the presence of settlers or the lack of supplies. Outside this legal framework, particularly in internal conflicts, protection of the populations will depend on other sources of law (law linked to the conduct of hostilities, internal law, international human rights conventions). The main reason the ICRC adheres to the legal definition of occupation is to avoid undermining its application. Most States attempt to contest the applicability of the Fourth Geneva Convention in order to sidestep their obligations. Widening the use of the notion of occupation simply leads to more and more parties claiming that it is not applicable, thereby making it harder to ensure its implementation.

Catherine Deman mentioned another reason for following the legal definition: the recent tendency to differentiate between "good" and "bad" occupations, a distinction centred on the concept developed by certain Anglo-Saxon jurists of "transformational occupation", which runs totally contrary to the spirit and the letter of the fourth Convention. Here again, broadening the definition encourages confusion and justifies a questioning of the existing legal framework. The actions of the ICRC, based on a constant search for balance between the protection that stems from having the authorities recognise the applicable law and their responsibilities, on the one hand, and assistance to the populations on the other, depends on this legal framework. It is that which, without any possibility of contestation, justifies intervention by the ICRC on the basis of its mandate, because recognising an occupation implies the existence of an armed conflict. It is also this framework that marks the boundaries of the types of assistance to be provided, which for example rules out contributing to any action from which the occupier is prohibited, even if it would seem to be in the immediate interests of the civilian population.

Despite the rules established by this legal framework, the ICRC is nonetheless faced with a number of dilemmas common to all humanitarian actors: what balance can be found between substituting local authorities and pressing them to fulfil their responsibilities? Is there complicity in violation of the law when assistance mitigates its effects while enabling it to continue? How to force recognition by one party which has no political desire to do so or which would be disadvantaged by the law in a situation of asymmetrical warfare? In

this respect, Catherine Deman mentioned the case of the Hamas fighters (before their party's electoral victory) for whom wearing a uniform to distinguish themselves from the civilian population would be tantamount to suicide. The ICRC is also faced with the more recent problems linked to acceptance of humanitarian aid, when the aid is not perceived as neutral and impartial, particularly owing to the presence of western armed forces or the large variety of organisations claiming to be humanitarian. These difficulties also come at a time when the general context is one of promoting an integrated approach, conceived as an interweaving of the political, military and humanitarian components.

Catherine Deman concluded by restating the concept of neutrality as perceived by the ICRC, which she distinguishes from impartiality and confidentiality. Neutrality is an attitude towards the belligerents, which implies serving no cause other than that of the populations who are the victims of the conflict. Impartiality is aimed at the populations themselves and constitutes the framework within which assistance will be provided to them. Finally, confidentiality is a means chosen by the ICRC for dialoguing with the parties to the conflict. Speaking out does not necessarily run contrary to neutrality if it applies the same requirements to all the belligerents.

Bernard Juan, **General Secretary of Médecins du Monde:**
"For true humanitarian diplomacy: the population protection issue for MDM"

Bernard Juan started out by declaring that the question of occupation was not the subject of any specific debate at MDM, with the analysis being focused more on conventional notions of crisis, oppression and the elements considered to be pertinent to the post Cold War conflicts: simmering conflicts, ethnic, religious, racial, etc. problems. Without looking to define the notion of occupation, Bernard Juan tried more to show how certain conflictual political situations, spontaneously associated with the idea of occupation, fell into line with MDM's current concerns, in terms of politics and principles, as well as the more concrete concern of how to respond in the field.

He first of all situated these cases in a general context that he referred to as the "end of the humanitarian exception": the end of clandestine actions in the 80s, particularly in Afghanistan, giving way to official missions, implying a work of representation and requests for authorisation; confusion between independent humanitarian action and state humanitarian policies, between humanitarian and military actors and between humanitarian and evangelist organisations. In this context, the problems faced by MDM are linked to the

fact that the "occupiers" are frequently the great powers and consequently the influential players on the international stage and in the United Nations. This problem implies others, such as the search for financial independence from the interests of the funding agencies or clarification of the role of MDM in the eyes of the belligerents and of the civilian populations. This latter preoccupation is linked to the question of the safety of the teams and the values defended by MDM. Offering the example of Chechnya, where MDM remote-controls programmes run by Chechen teams, Bernard Juan defended the idea that this solution to the problem of expatriate safety also helped local development of associative and militant networks. This network development process, even if frequently limited to a region, clan or party, is the pre-condition for active security based on empathy with the civilian populations, who then become the guarantors of humanitarian staff protection rather than the security rules imposed on the teams.

Bernard Juan nonetheless feels that MDM does have a role to protect the population in return, in which he includes defence of the right to health care for all or, in the case of the Palestinian Territories, the right to self-determination. The definition of its actions traditionally employed by MDM, "to help, care and bear witness" is not sufficient for this role. It then becomes necessary to undertake what he called "humanitarian diplomacy", a notion developed by the ICRC but from which he adopts a certain distance in refuting the principle of neutrality for MDM. This principle, to which he prefers that of legitimacy, runs contrary to his perception of commitment to the victims and a choice of action determined by limited financial, logistical and human resources.

SUMMARY OF THE DEBATES

The debates generated by the morning's speakers highlighted the question of the humanitarian players' attitudes to law and to neutrality. These two problems would seem to varying extents to divide the positions of the various parties over the specificity or otherwise of occupation situations, the core issue of the symposium.

From the point of view of the ICRC, represented by Catherine Deman, it is above all the law itself that creates the specificity of occupation situations. Recognising the applicability of the legal framework of the occupation helps to identify specific responsibilities, in other words the additional obligations on the occupying power, which constitute additional tools for protecting the populations. For the ICRC, the issue of this legal definition is thus to know whether or not it has these extra tools, an aspect that makes the legal framework one

of the key factors in analysing the context. The conditions for ICRC intervention in Chechnya are thus to a certain extent determined – and limited – by the fact that the legal framework of occupation does not apply there. It is also with reference to law that Catherine Deman defended the principle of neutrality. The credibility of the ICRC's positions concerning the applicable law, in this case the recognition of a legal situation of occupation by the belligerents, depends on its neutrality towards them, which consists in only speaking out with regard to their attitude towards the populations. In return, according to Danielle Coquoz, head of delegation for the ICRC in France, relying on law is a way of preserving one's neutrality in the face of such a politically charged question as that of occupation. The law enables one to state that the Palestinian Territories are occupied, while a similar statement concerning Chechnya is seen as taking political sides.

Although Bernard Juan recognised the importance of applying law, he pragmatically sees this as a possible tool for negotiation and above all as a demand for justice and reparations for the victims of a conflict. However, in his opinion, the fourth Geneva Convention does not reflect the reality of warfare and the limits of humanitarian law cannot be accepted as the limits of the humanitarian action taken by MDM. On the contrary, the goal is to fight to create new rights. We can thus understand his rejection of neutrality as a refusal to accept the limitations of the existing legal framework. MDM has to focus its limited resources on defending values and extending the recognised rights of the populations. For Bernard Juan, defending this concept of humanitarian action has become harder since the end of the Cold War, particularly in recent years. He preferred not to speak of the specificity of occupation, but rather the specific aspects of remote-controlling operations in Chechnya and the fact of having to negotiate with the Russian authorities in Chechnya or the Americans in Iraq, in contrast to the humanitarian missions of the 80s, particularly in Afghanistan. Jean-Baptiste Richardier, Director general of Handicap International, stated a similar position, stressing the shrinkage of the humanitarian space as something specific to the present time, once again with reference to Afghanistan in the 80s, where the safety of the humanitarian teams relied on a pact with the populations and their leaders. The perception of the neutrality and the singularity of humanitarian interventions has today been degraded.

A number of MSF representatives referred to the notion of totalisation of conflict introduced by Annette Becker to underline the limits of humanitarian law, both in its ability to clarify a given situation and its practical effects for the humanitarian actors in occupation situations.

Loïc Barriquand, Director of human resources at MSF, compared occupation law with that of refugees, which does not apply to displaced persons, despite comparable situations. For him, the situation in Chechnya is in all respects comparable to an occupation, owing to the behaviour of the Russian army. Here also, there is a totalisation of the conflict. It is this

difficulty in choosing between the political and legal definition of occupation, both of which are equally legitimate in his opinion, that led Rony Brauman to consider the notion of occupation as having little pertinence. From the point of view of the humanitarian actor, any occupation situation is a war situation and it is the general context of war that underpins the legitimacy and specificity of humanitarian action. The notion of totalisation of the conflict should however attract the attention of the humanitarian organisations and in this respect is no doubt more relevant than the notion of occupation, in that it indicates, not necessarily generalised terror, but the involvement of an entire society in the logic of conflict.

For Jean-Hervé Bradol, the law itself is not immune from this logic of totalisation. In his opinion, using law to claim that there is no occupation in Iraq or in Chechnya can only be seen by those wishing to liberate these territories as a political stance in favour of the camp opposed to their own. He therefore expressed doubts over the remark by Danielle Coquoz on the ability of law to preserve the neutrality of humanitarian workers in this type of situation. However, like Rony Brauman, Jean-Hervé Bradol underlined the importance of humanitarian law as a point of reference which is generally capable of defusing certain situations. Unlike the position put forward by Bernard Juan, they see law as a necessary bulwark against the claims of values and the moral imperative, which more often than not lead to radicalisation of conflicts. Law nonetheless remains a fragile and sometimes confusing yardstick.

Annette Becker was astonished by the concern on the part of the humanitarian organisations, as Bernard Juan mentioned in his presentation, to be protected by the populations rather than attempting to protect them. She recalled the original concept of neutrality, which gave birth to the ICRC and humanitarian law. The founding notion was that of the neutrality of the victim and it is from this that stems recognition of the principle whereby this neutrality of the victims should be extended to take in those who assist them. The immense complication of occupation situations is that the victim is anything but neutral. Throughout the 20th century, the victims of occupation have taken sides against the occupier and thereby forfeited their neutrality.

In accordance with this historical reference, Rony Brauman underlined the confusion today surrounding the notion of neutrality. Whereas historically, neutrality was linked to a precise place – where victims were given care – on behalf of precise persons – the injured and prisoners of war considered "hors de combat" – this notion is now open to a variety of interpretations. In his opinion, the prevailing and misleading view of neutrality is that which, during the Ethiopian famine of 1984-86, justified simply standing by the victims without questioning the use of humanitarian aid against them. This paradox around the notion of neutrality is paralleled by that which, in his eyes, affects humanitarian law. Humanitarian law was founded at a time when a valid and essential distinction was

recognised by States between combatants and non-combatants. Yet, from the 1914-18 war and the advent of total war on, it has been confronted with a blurring of this fundamental distinction. Throughout the 20th century, the dividing line between combatants and non-combatants has become increasingly unclear. However, he felt that the idea defended by Bernard Juan and Jean-Baptiste Richardier, in which access to the victims is far harder today than in the past, was an error of perspective. Recalling the numerous security incidents and the operational limits on the clandestine action in Afghanistan in the 80s, he issued a warning against an idealised retrospective reading of humanitarian action of that period. A misreading of the past also leads to the NGOs being inaccurately painted as among the victims of the current general context. On the contrary, there never were as many emergency aid workers in as many fields as has been the case since the end of the Cold War.

Although they stressed present difficulties, Bernard Juan and Jean-Baptiste Richardier both considered that the paradox of the protection of aid workers by the populations, raised by Annette Becker, was not however a new one. For Jean-Baptiste Richardier, the protection humanitarian NGOs are likely to provide is not that stipulated by law, but more the care offered and the support for the populations on a long-term basis. For Xavier Crombé, this protection paradox is nonetheless worth looking at a little more closely: while occupation law focuses on the specific obligations of the occupying power, the protection that the aid workers expect from the populations relates to the threat posed to them not from the occupiers, but from the groups in opposition to the occupation. In Iraq as in Afghanistan, it is the armed groups which consider themselves "occupied" that are targetting the humanitarian organisations. As for the prevailing insecurity in Chechnya, it stems as much from the Russian army as from the Chechen resistance. The neutrality of the humanitarian organisations depends on how it is perceived by all parties to the conflicts and their political and tactical interest in recognising it. In Afghanistan, under Soviet occupation, it was however the western NGOs' apparent siding with the occupied, rather than any recognition of their neutrality, which led various Mujahideen groups to offer them protection.

The question of protection in occupation situations also depends on how the humanitarian organisations relate to humanitarian law. For Danielle Coquoz, if there is no violation of the law, nor crimes exclusive to occupation situations, one can in practice and regardless of the legal definition, observe a certain number of constants, a number of abuses or potential abuses in certain situations, which can have a considerable influence on the choice of possible actions for the aid organisations. These constants include: arrests, either on a large scale, or over a period of time; excessive controls and obstacles to the daily life of the populations; a growing stranglehold by the security services, incentives to or pressures for collaboration and a temptation to opt for collective punishment. In an occupation situation, and particularly one that lasts, the civilian population is quickly

considered to be a hostile one, leading to abuses and controls. Although in many conflicts areas usually remain where it is possible to provide care and assistance at a distance from the conflict itself, the phenomenon of totalisation linked to the occupation, whether or not legal, means that the dilemmas of protection cannot be avoided by the humanitarian organisations. It is the core nature of these particular dilemmas that make such situations specific. With protection at the heart of its mandate, the ICRC responds to these particular issues, as to many others, through the law. This is not however the case with all humanitarian organisations.

The tensions within the humanitarian teams must no doubt be looked at against this backdrop of frustration arising from these particular protection dilemmas, the inability to have the law applied or the refusal to accept its limits and the operational limitations on care and assistance. Jean-Hervé Bradol opened the symposium on this subject. With no legal framework or viable space for provision of care, the humanitarian teams are tempted to turn towards military force, no longer with a sole focus on the victims of the conflict, but in order to act upon the conflict itself and its causes. Then, depending on the situation, the occupation is either denounced, with demands for withdrawal of the military forces, or called for in the form of an intervention by an outside military force. With regard to humanitarian action, does not the specificity of occupation or totalisation of the conflict lie in this refusal to accept one's own limits?

AFTERNOON'S PRESENTATIONS

Xavier Crombé, Head of research, Médecins Sans Frontières Foundation:
"Occupation as a revelatory event: responsibilities and limits of humanitarian work according to MSF"

Xavier Crombé presented the conclusions of his study of humanitarian action in occupation situations by recalling the MSF view, which is that of a political reading of a situation, with analysis of humanitarian responsibility within this context. From this point of view, the study showed that occupation did not constitute a category of specific situations for humanitarian action. It is however particularly capable of revealing the limits and contradictions of this action.

The history of MSF's relations with occupation situations covers three main periods. The first, running through the 1980s, was marked by the occupations of Cambodia by Vietnam and Afghanistan by the Soviet Union. The positions adopted by MSF in this context reveal a dual political and philosophical heritage: defence of the right of peoples to self-determination and, above all, anti-totalitarianism. Denouncing the crimes of these two occupiers was in fact a way of denouncing the crimes of communism and the totalitarian systems that it spawned. MSF then assumed its partisan position. However, two limits on this humanitarian commitment against totalitarian occupiers should be mentioned. The first is a limit of principle concerning the support given to groups opposing the occupation: MSF refused to work in the refugee camps controlled by the Khmer Rouge and on several occasions suspended its operations in Afghanistan when it felt that unacceptable restrictions were placed on its access to the civilian populations particularly women. The other limit is a practical one, in that humanitarian assistance was most significant not on the field of battle, but more around the fringes, that is in the refugee camps. It was in these camps, faced with overwhelming needs, that the need for professionalisation of humanitarian work arose.

The second period was that of the 90s: this was characterised by the new role of the United Nations, both a humanitarian and a political player in the conflicts, and by the large number of international military interventions mandated by the Security council. MSF found itself facing new challenges: on the one hand, the values defended by MSF during the previous period now justified international politico-military interventions – defence of human rights and democratic values, supply and protection of humanitarian aid; on the other, the UN and the intervention forces mandated by it wanted to impose their agenda on the humanitarian organisations. The search for or indeed the imposition of peace, in particular, was presented as a higher goal determining whether or not humanitarian aid was let through. It was criticised and sometimes even blocked by military force, to prevent it reaching areas where it could potentially benefit the designated enemies of peace. MSF was gradually to clarify its identity by focusing on the principles of independent humanitarian action, setting aside political values (human rights and democracy), as they could henceforth justify obstruction of its actions.

The NATO intervention in Kosovo was to be a crucial turning point: it was the first explicitly offensive operation against an identified enemy, conducted in the name of humanitarian principles. Furthermore, this operation from the outset involved placing a territory under international control, combining a military presence with a civilian recons-truction plan in which NGOs were to be involved. The challenge facing MSF was then to define action which provided effective answers to the consequences of the conflict on the civilian populations, while remaining outside the political framework of the intervention and reconstruction programme. In this respect, the interventions in Afghanistan and Iraq,

as part of the "war on terror" are more a radicalisation of the problem that emerged in Kosovo than a completely new situation. This radicalisation is mainly visible in the way that humanitarian work is now presented from Washington to London as being part of the war effort and playing a natural role in the Coalition camp.

The way the notion of occupation is used in MSF's internal debates and outside positions is however more specific than could be suggested by the presentation of this general framework and refers, not to the legal notion, but to a set of violence, humiliation and arbitrary acts inflicted on the civilian populations by military forces. Reference to occupation is rarely made at the time of deciding whether to intervene or not. In the same way as for the ICRC, it is the existence of a conflict, whatever it is, which for MSF justifies organising an aid operation. Instead, this reference points to the dilemma that occupation situations create over time for humanitarian action, as conceived by MSF.

If the conflict persists in theory with the presence of the occupier and manifests itself in the violence inflicted on the civilian populations and the guerrilla actions conducted by the opposition groups, for certain periods and in certain areas, occupation also allows a relative normalisation and even certain forms of reconstruction. Reconstruction and the operation of health structures in particular, then raise issues of political legitimacy which force MSF to question the definition of its role, its responsibility and the nature of its programmes, whereas the general framework of the conflict would seem to justify its continued presence. Furthermore, a situation in which the violence inflicted mainly takes the form of targeted imprisonment, execution or assassination, cannot be dealt with through medical care. Consequently, several of the withdrawals decided on by MSF (Liberia, Kurdistan and Somalia in 1993, Afghanistan in 2004) were the result both of growing insecurity characterised by targeting of both civilians and NGOs, and a questioning of the validity and effectiveness of the work being done. In this, occupation reveals the limits of MSF's usual analysis framework ("conflict programmes", "post-conflict programmes", and so on) but also, through the ambivalent and frequently conflictual relations between the MSF teams and the occupiers, the more general question of the relationship between NGOs and States.

Xavier Crombé thus proposes an alternative look at the historical evolution of how the notion of occupation is interpreted in relation to the changing concepts of the role of the State. If the Hague conventions of 1899 and 1907 only took inspiration from the law of nations to regulate relations between the occupier and the occupied populations, it was because war was seen as a matter between States, far from the civilian populations, and the State – both in time of war and time of peace – should interfere as little as possible in the private lives of the citizens. The totalisation of conflict resulting from the national wars of the first half of the 20th century significantly altered this view of things, by blurring the lines between civilians and combatants, particularly in occupation situations, as was

demonstrated by Annette Becker. If the Fourth Geneva Convention of 1949 marks the desire to redefine the responsibilities of the occupying forces in relation to the atrocities committed during the preceding world wars, the extent of the obligations imposed on the occupier with respect to civilians is no doubt linked to the advent in western democracies of the Welfare State, at the same time. The current trend towards privatisation of the functions assumed by the State within the framework of the Welfare State model, is redefining the sharing of responsibilities between the State and private actors which prevailed after the Second World War. This change has implications for the notion of occupation. In Palestine, Iraq and Afghanistan, the NGOs were thus actively sought out to deliver services, in particular health and social services, in the place of and even in the name of the occupying power or local authority.

Occupation can no longer be seen simply through the occupier/occupied relationship, but must take account of the large numbers of players who are today involved. This new situation makes the respective responsibilities of the various parties extremely confusing for the civilian populations as well as for the belligerents and the humanitarian organisations themselves.

Stuart Gordon, Professor at Sandhurst Royal Military Academy:
"Civil-Military Co-operation and Belligerent Occupation: New Paradigms, Problems and Presumptions?"

The perspective adopted by Stuart Gordon in his paper is that of the challenges posed by the situation of belligerent occupation for the civil-military relations. He first of all recalled the circumstances in which the "humanitarian partnership paradigm" emerged. The development of civil-military cooperation began, for the European and North American armed forces, with the United Nations protection force in Bosnia as of 1992. In this conflict, the mandate given to the armed forces by the Security Council was to preserve a humanitarian space. It put them in a situation in which they would interact with the NGOs and these interactions convinced the military that their interests converged with those of the humanitarian organisations, all the more so after the Dayton accords, when the NGOs' emergency programmes were transformed into reconstruction and development programmes, seeming to confirm their ability to exert a stabilising influence. Furthermore, many NGOs expressed their desire for dialogue with the military, which they felt to be a precondition for dissemination of humanitarian principles. From the viewpoint of the military, however, these overtures indicated the possibility of common stabilisation strategies. Stuart Gordon

nonetheless admits that the chiefs of staff are at least as protective of their technical military space and their freedom of action as are the NGOs of their humanitarian space and sometimes attempt to force the humanitarian agencies to fall into line with their own objectives.

The expectations on the part of the armed forces were forged by the legacy of the counter-insurgency strategies employed in the colonised territories. In particular, the British Army's success against the communist guerrillas in Malaya (Malaysia) in the 1950s was, according to Stuart Gordon, the origin of an enduring myth concerning the effectiveness of the "hearts and minds" projects in ensuring the protection of the armed forces. Although the strategy employed in Malaya consisted less in winning hearts than in controlling the population – and indeed proved effective in that regard – the interpretation made of it explains the desire of armies to undertake community rebuilding projects with a two-fold goal of stabilisation and of protection of their own forces. Stuart Gordon nonetheless felt it necessary to recall that the humanitarian partnership paradigm is part of a governmental perception of the trans-national nature of the threats with which they are now faced: environmental problems, poverty, epidemics, migrations, all of which are security issues on which governments believe that NGOs could be profitably put to good use. The NGOs themselves have also contributed to perpetuating this idea by promoting their ability to act on the causes of these problems. This new assessment of the threats has also led to a new military concept – effect-based operations – consisting in acting on the enemy's network through potentially non-military instruments in order to weaken its cohesion. This concept, which justifies the control or destruction of civilian equipment and infrastructures, also has implications in terms of instrumentalising humanitarian work for military purposes.

All these changes thus helped convince the military that it was crucial to develop interactions with civil agencies if they were to be able to carry out their missions. In effect, in most western armies, but also in other countries, one can see the creation of large bureaucracies dedicated to managing civil-military relations. Faced with this growing trend, Stuart Gordon believes that the humanitarian partnership paradigm can take two forms: that of "cooperation" which would see humanitarian action subjected to the political goals of governments and their armed forces, in particular stabilisation, and that based on a principle of differentiation between NGOs ready to respond to requests from governments and work for their strategic goals and those with exclusively humanitarian objectives, whose independence is recognised and respected. Although he is a supporter of this differentiated approach, Stuart Gordon nonetheless stresses the fact that States and NGOs alike are mutually responsible for clarifying this difference.

For the humanitarian movement, these new issues are particularly acute today in Iraq and Afghanistan. Stuart Gordon feels that the salient aspects of these two contexts are the

following: the main donor states are themselves parties to the conflict; references to occupation are extremely politicised and often tied with a broader opposition to the war itself; in both cases, the occupations did not put an end to the conflict and counter-insurgency campaigns are continuing; finally, the civilian capacity of the United Nations and indeed the States themselves have proven to be inadequate to ensure transition from war to a lasting peace, thus requiring the military to intervene directly to rebuild the infras-tructures and essential services of the countries. This latter points leads us on to the broader problem of the response to "*failed States*", in which the role devolved to the military frequently obliges them to carry out duties for which they do not have the necessary skills.

From this point of view, Stuart Gordon considers that *the Provincial Reconstruction Teams* (PRT) are both a necessity and a very real problem. Faced with the weakness of the civilian capability, the PRT – under military command - appear to be necessary to bridge the gap between the aim of stabilisation and the prospects for reconstruction of the country by a local authority. The problem lies in the fact that involvement of the military in community level assistance or reconstruction projects is usually counter-productive, technically, politically and tactically. Stuart Gordon recommends limiting the role of the PRT to rebuilding and reforming the security sector, by encouraging local capabilities in these areas. This would enable a clear dividing line to be drawn between the role of the PRT and that of the humanitarian agencies on the one hand, and the other agencies more interested in reconstruction and local civilian capacity building, on the other. He nonetheless recognises that humanitarian organisations are faced with numerous questions in this type of situation: what attitude to adopt toward the occupiers – both civilian and military – implying a choice between a position of complementarity or one of highlighting their responsibilities; the need to preserve an equal distance between the various parties to the conflict; the increasing confusion arising from the growth of private security companies. However, he does feel that the NGOs are naive in claiming that these private companies and the PRTs are the sole cause of their worsening security conditions. This is the result of a large number of factors, including the behaviours of the NGOs themselves.

Stuart Gordon concluded his presentation by tackling the question of international humanitarian law, in particular how the military deal with the obligations of the fourth Geneva Convention. For most armies, international humanitarian law has only been envisaged from the perspective of the law for combatants and the rules of engagement, ignoring obligations with respect to the civilian population and how to interact with other parties in fulfilling these obligations. Although the experience of Afghanistan and Iraq has led the military to take greater account of these aspects, confusion remains within military institutions over the difference between legal obligations and humanitarian action. The differentiated approach between NGO clusters, which would recognise the specificity of the

strictly humanitarian agencies and their need for independence, would also promote greater understanding by the military of the full scope of the Geneva Conventions.

Pierre-Antoine Braud, head of research, Institute for Security Studies:
"Occupier or proxy? International interventions in the DRC"

Talking about his personal experience as political adviser to the MONUC, Pierre-Antoine Braud presents the situation of the Democratic Republic of Congo (DRC) as a case of uncertain "UN occupation", which he summarises as an "illusion of tutelage".

In absolute terms, the resources deployed by the United Nations in the DRC are significant: one billion dollars annual budget, a peace-keeping force which reached up to 17,000 men, mainly in the east of the country … However, the scale of these resources remains inadequate given the size of the DRC and cannot make up for the structural limits encountered by the international community in its ability to influence local dynamics. According to Pierre-Antoine Braud, we are seeing a dual fragmentation of both players and sectorial politics. The international presence does not involve the UN alone and there are also the embassies of the funding States, the NGOs and the representatives of the multilateral funding groups. This plethora of intervening actors serves to dilute responsibilities and water down the consistency of the policies implemented. The attempts to integrate and coordinate these numerous stakeholders are made according to sectors, following a standardised approach entailing a cease-fire, followed by a power-sharing agreement, then a period of transition, which should lead to presidential elections meant to complete the advent of a stabilised State. Within this general sequence, the process of disarming, restoration of the institutions, education programmes, etc., are all topics requiring coordination among the international actors. The consequences of this dual fragmentation are on the one hand, to multiply bureaucratic logics, often juxtaposed with the local institutions and dynamics, which are largely ignored, and on the other to create many spaces enabling the national actors to exploit the international intervention.

At the national level, the prevailing principle among those staking their claim to power is one of "winner takes all", in contradiction with the international concept of presidential elections as being a factor in stability and power-sharing. In the provinces, the search by the international players for representative persons capable of influencing the local dynamic frequently leads to over-simplification. We then see the fabrication of representatives with no true legitimacy and a lumping together of very different local players. Pierre-Antoine Braud asks that the strategies produced by the Congolese players be reconsidered from a

historical perspective, recalling the country's long history of relations with a foreign presence, particularly a colonial one. The international approach in the DRC is however based on a short-term view. Its ambitions are limited to achieving apparent order, to confirm the success of the process and above all justify the expense incurred and the operational choices made. The presidential elections are presented as the high point of this process of a return to order, whereas the Congolese themselves see this as the starting point for a reduction in MONUC civil and military personnel and gradual disengagement by the international stakeholders. Pierre-Antoine Braud mentions an example of corruption concerning the inflation of the national armed forces manning figures. These diversions of international funds primarily benefit the government, and therefore the President's party. From the viewpoint of the other parties, whose men are to be reincorporated into the national army, the absence of sanctions against these practices encourages them to maintain parallel command structures and keep their own weapons.

For the international forces in charge of supervising the security sector, the lack of resources and personnel encourages them to tend towards a degree of political realism: leave the existing Congolese balance of power in place and even, through abstention, encourage the faction one supports, giving it freedom of movement to consolidate its position. When faced with an attitude such as this, the question is whether the international forces have become nothing more than proxies of the Congolese factions. Pierre-Antoine Braud is more inclined to see a convergence of interests at work here. Thus, in the rebel zones, the deployment of the national army, which is in principle unified but in fact dominated by the party of President Joseph Kabila, benefits the presidency in legitimising extension of its control over the east of the country. This also serves the interests of the international promoters of the peace process, who see in this a demonstration of the legitimacy of the national army they financed and an opportunity to off-load some of the responsibilities hitherto borne exclusively by MONUC. This is also a means of escaping criticism in the event of abuses committed against civilians, as was the case in Ituri, or avoid direct confrontation between the international forces and Rwandan armed groups, as happened in Kivu. There is therefore a growing temptation for MONUC to hide behind the national army.

This unacknowledged transfer of responsibility does however have its limits and in 2004, popular riots broke out against MONUC, condemning its inability to defend a town after it was captured by a rebel general. Not everyone is content with this "illusion of tutelage". The deployment of MONUC created expectations on the part of the Congolese population, who cannot accept an admission of impotence. One must however face the facts that the initial objectives of the international intervention have been clearly, albeit implicitly, scaled down, with talk of good governance and democratisation giving way to simply restoring the authority of the State. Although the various Congolese factions are perfectly capable of talking about democracy in order to protect appearances, the western

powers involved in the peace process are now concentrating on the security and stabilisation aspects, which leads them to reinforce the power in place: the Kabila regime. Realism therefore means that the option adopted is one of a strong and centralised government, without worrying about the nature of this government, which, from Leopold to Mobutu and up to Laurent-Désiré Kabila, is in fact the heart of the Congolese problem. In this configuration, the role given to the NGOs is based on the postulated link between development and security and consequently must itself also contribute to restoring the authority of the State.

Caroline Abu-Sada, researcher, doctor in political science (Institut d'Etudes Politiques de Paris): *"Legitimacy issues: the influence of the international community in defining the Palestinian State."*

Caroline Abu-Sada takes the example of a Palestinian NGO, the Palestinian Agricultural Relief Committee (PARC), to analyse the relations between the Palestinian associative sector, the international community, the Palestinian Authority and Israel, as the occupying power. Through this approach, which sheds light on a complex reality comprising numerous players, she demonstrates that humanitarian aid may have many other perverse effects than simply benefiting the occupier.

PARC was set up in 1983 at the initiative of three agronomists affiliated with the Palestinian communist party, the only party that existed at the time – albeit underground – in the Occupied Palestinian Territories (OPT). Caroline Abu-Sada recalls the context of this creation: at the time there was no Palestinian authority, the Palestinian territories had been directly administered by Israel since 1967 and, as of the end of the 1970s, subject to a new policy favourable to the settlers. The Israeli government in fact based this policy on a 19th century Ottoman law, which stated that any land not cultivated for three years fell into the public domain. This change in the forms of occupation made land the central issue in the conflict. The creation of PARC was thus in response to a two-fold objective: the aid it intended to provide to Palestinian farmers was to help develop their means of subsistence, but also to anchor them on their land, thereby resisting the occupation by opposing the expropriations that led to the subsequent settlements. PARC worked by creating committees of agronomists, women and farmers deployed throughout the OPT, which enabled it to play a front-line role in assistance to the Palestinian population, particularly with regard to food, during the first Intifada that broke out in 1987. In the absence of a national authority, the proven effectiveness of these committees ensured that PARC

received the political support of the PLO in exile and financial support from NGOs and international agencies.

In the early 1990s, this success was echoed by the increased interest in the role of "civil society" following the fall of communism and the calls for structural reforms. However, the political issues of the Oslo agreements convinced international donors to concentrate their financing on the new Palestinian Authority (PA), in charge of continuing the peace process with Israel. This new situation implied a drop in the funding previously allocated to the Palestinian NGOs, who adopted three types of strategies in their dealings with the PA: integration, partnership in drafting national policy, or opposition. PARC refused to join the Ministry of Agriculture, preferring to adopt a position as a counterweight. As of 1996, however, the Palestinian NGOs began to be looked on favourably again by donor states, who were beginning to realise the scale of the corruption and nepotism generated by the large-scale yet unsupervised financing of the PA. A redistribution of international financing thus took place in favour of the NGOs.

For Caroline Abu-Sada, the 1990s were therefore characterised by a series of choices made at the initiative of the international community, alternatively in favour of the Palestinian Authority or the local NGOs. These decisions were motivated by a changing perception of what the Palestinian Authority – and the Palestinian State of which it was the forerunner – and Palestinian civil society should be. This perception itself borrowed from a more general view of the rather undemocratic nature of the political regimes in the Arab world and, when seen from the perspective of the peace process, gave civil society the role of counter-balancing Fatah, who held power, and even more so Hamas, whose influence was constantly growing. The prevailing situation at the time the second Intifada broke out, marked by an often imbalanced distribution of responsibilities among the PA and the NGOs and an orientation of NGO programmes towards long-term and development activities, owes much to the choices made by the international donors.

The second Intifada and the nature of the riposte by the Israeli army, had significant consequences for the balance of power between the PA and the NGOs. Initially, the Palestinian NGOs struggled to reorient their programmes to deal with an emergency situation, but the Palestinian authority was reduced to a situation of complete powerlessness. Besieged in Ramallah, it did not have the means to meet the needs of the Palestinian population, in particular as the blockading and division of the territories carried out by Tsahal prevented it from accessing almost 70% of the OPT. For its part, PARC was again able to prove its effectiveness by reactivating its network of committees, which enabled it to act, despite the blockages, both in Gaza and the West Bank. This advantage was reinforced by the international financial support it received in particular from the international NGOs who were back in the OPT, between 2000 and 2002.

The imbalance is today manifest between the resources of PARC and a weakened Ministry of Agriculture (18 million dollar budget per year for PARC as against 11 million for the Ministry). Donor agencies have been receptive to the pronouncements of this Palestinian NGO, which draws extensively on the currently fashionable topics of good governance, transparency or gender, and their support has thus continued to grow. WFP thus assigned it the task of distributing all food aid. PARC however refused to play the sectorial coordination game ordered by the funding agencies, thus condemning to impotence the Ministry of Agriculture, which was supposed to coordinate the actions of the NGOs in this sector. The influence and the resources accumulated by PARC ended up convincing its leaders to enter the political arena, taking advantage of the extensive social base provided by its committees. This change led certain donors, including the WFP, to revise their judgement and adopt a certain distance from this NGO. Nonetheless, this was not enough to change the balance of power between PARC and the PA.

Caroline Abu-Sada concluded her presentation on a critical note with respect to the international community. Its enduring support for Palestinian NGOs such as PARC, alternatively for reasons of expediency or as a matter of principle, has run contrary to the stated aim of building a Palestinian State. To her, this remark invokes a number of more general questions: concerning the position of neutrality claimed by the international aid organisations, how is one to interpret their extensive support for an NGO with known political affiliations (the communist party for PARC) with the aim – in some cases clearly stated – of blocking Hamas? It is today common to consider that the NGOs, active members of civil society, are necessary to make up for the shortcomings of a State. So what happens when the State does not yet exist? Can support for the Palestinian NGOs really contribute to the eventual construction of the State or does this actually constitute an obstacle to this process? Finally, Caroline Abu-Sada drew attention to the largely overlooked consequences of the international presence on Palestinian society: this has in effect created a new Palestinian social class comprising of management level staff working in the international NGOs and UN agencies, who enjoy easy travel within the OPT and abroad, whereas the majority of Palestinians are subjected to a complex regime of permits which prevents them from travelling even from one town to another. International aid is thus also a source of inequality between Palestinians in the face of the occupation.

SUMMARY OF THE DEBATES

The afternoon's speakers provided new elements to the debate, in particular by considering humanitarian organisations no longer as holding a status of externality in conflicts, but as fully-

fledged players in situations in which they interact with a variety of political and military stakeholders. The cases of the DRC and the Palestinian Territories also encouraged an examination of how to distinguish between occupation situations, based on these two contexts but also with reference to the occupations of the Great War, described in the morning by Annette Becker. Here again, the extent to which these distinctions are seen as meaningful ones depends on the logic adopted by each player, those of the various humanitarian organisations as well as that of a regular western army, as presented by Stuart Gordon.

To open the debate, Marc Le Pape expressed his surprise at the fact that the papers on the DRC and the Palestinian territories had not highlighted any aspect that seem specific to these occupation situations. On the contrary, the overall impression was that of "business as usual" for the NGOs. Xavier Crombé sees this general impression reflecting the fact that the notion of occupation is still to a large extent perceived with reference to the historical experience of western societies during the two world wars. However, the number of parties involved in the present cases, their changing roles and responsibilities, particularly with regard to the NGOs themselves, transform the reality and the experience of occupation. For Caroline Abu-Sada, although there can be no doubt – even in legal terms – that an occupation situation exists in the Palestinian Territories, an analysis focused exclusively on the relationship between occupier and occupied is insufficient. It is also important to examine the impact of international aid in the Territories and its role with respect to the responsibilities and policy of the Israeli occupier. The destruction of the UN Club in Gaza is in this respect revealing of the perceptions of some of the Palestinians and their resentment towards the UN. This example should also be compared with the anti-MONUC riots in the DRC, mentioned by Pierre-Antoine Braud in his presentation.

For her part, Annette Becker emphasised the fact that the nature of the problems posed by an occupation was also related to its duration. Whereas the occupations of the two world wars were provisional, lasting from six months to five years, the occupation of the Palestinian Territories is characterised by its extreme length, to the extent that for both Palestinians and Israelis, no end can be seen on the horizon. For Rony Brauman, this fundamental distinction requires the occupation to be considered as an intermediate notion, directing one either "higher", to the general framework of the conflict, or "lower", to the practicalities of each particular occupation, which concretely affect the meaning of the action taken, and how it is taken. The duration of the occupation, which is now multi-generational in Palestine but provisional in the Congo, is what differentiates between the two situations, as does the fact that the Israeli occupation is also a civilian occupation, because apart from the presence of the military, the presence of the settlers to a large extent determines the environment of the Palestinians, the security problems and the choices available to the NGOs. For Xavier Crombé, what brings the cases of the Palestinian Territories and the DRC closer together, while differentiating them from the occupation

situations of the First World War, is that in both the first two cases, the international community and some of the aid agencies find themselves having to make choices concerning the construction and definition of a State. These choices are by default in favour of a centralised and stable state in the Congo, in the person of President Kabila, as mentioned by Pierre-Antoine Braud. They are instead changing choices, according to Caroline Abu-Sada, between the Palestinian authority and civil society in the Territories. The question of duration then points, for all "occupied" populations, to their particular history and collective memory, which no doubt influence the way they perceive the occupation and the international presence.

Their relationship to this duration is also what differentiates the humanitarian players from the other parties involved in an occupation. Taking the example of the Palestinian Territories, Rony Brauman feels that the way of solving the dilemma raised by Caroline Abu-Sada between maintaining assistance liable to contribute to sustaining the occupation order and suspension of this assistance, depends on the time-frame within which it takes place. The short-term approach of the NGOs means that they opt for assistance, at the risk of this becoming a part of the strategy of occupation. A more political perspective, placing more emphasis on the longer-term issues, would no doubt require a different solution. This is the position being defended in particular by the Israeli groups opposed to the occupation, who see a collective suspension of aid as the only way of obliging the occupier to face up to the consequences of its policy. The legal perspective supported by the ICRC, also demands that the long-term be considered. As recalled by Catherine Deman, the obligations of the occupying power apply regardless of the duration of the occupation and have implications for the eventual settlement of the conflict. This legal framework also leads the ICRC to renounce all assistance liable to contribute to compromising the institutional, demographic or territorial *status quo*, such as assistance with resettlement of a population. Finally, from the point of view of the military, as presented by Stuart Gordon, the question of the duration of the occupation depends on the strategies they have to implement. The notion of occupation in fact covers a wide variety of strategies, including both "containment" strategies with no desire for transformation, as well as active transformation strategies perceived to be politically necessary and positive by the western governments.

When questioned by Rony Brauman on the distinction made by the military between humanitarian activities and its legal obligations, Stuart Gordon analysed the legal and political environment in which the armies adopt a stance on these questions. In principle, the activities of an army in a belligerent occupation do not constitute humanitarian acts but are linked to the search for stability and to its legal responsibilities, enshrined in particular in the Fourth Geneva Convention. These activities nonetheless rapidly take on a political dimension owing to the fact that they are used to legitimise the actions of the army in the eyes of domestic public opinion as well as with the civilian populations of the territories in

which they are operating. A clear boundary cannot be drawn between assistance activities by the military and the action of humanitarian organisations, unless the latter adhere to a restrictive concept of humanitarianism, in other words palliative action designed exclusively to prevent the loss of human life. Stuart Gordon nonetheless admitted that the legal obligations and tactical requirements of armies means that they will continue to conduct humanitarian actions on certain occasions. An absolute differentiation would therefore be illusory, but the risk of confusion could be considerably reduced.

Sami Makki, a researcher, felt that this confusion was tending to become more the rule than the exception. The chiefs of staff and governments of the western countries today share a strategic goal of accentuating the logic of civil-military integration. It therefore now seems unlikely that there will be any shift towards the paradigm of differentiation proposed by Stuart Gordon, especially as a new type of player, the private company, seems destined to assume an increasingly important role in this integration, with a two-fold function of logistical support for the armed forces and technical support for the governmental cooperation agencies, such as USAID or DFID. Caroline Abu-Sada remarked that this shift was also under way in the Palestinian Territories with the transformation of check-points into terminals, co-managed by the Israeli army and private security companies.

The debate surrounding the problems posed by these new players in international military interventions, as well as the corresponding solutions, has again highlighted different perspectives among the participants to the conference. Faced with the economic and political interest for western governments and armed forces of using these companies – they are more profitable and the death of one of their "employees" weighs less heavily in political terms than the loss of a soldier – the ICRC, as mentioned by Catherine Deman, is attempting to ensure that these new players abide by the rule of law. It is therefore working at three levels. First of all, it reminds the private companies themselves that they are subject to the same legal framework as governments and armed forces in a conflict. The ICRC also underlines that the choice these companies make to develop their own codes of conduct in the name of professional ethics or business morality does not relieve them of their legal obligations. It then carries out work with the countries in which these companies are based, encouraging them to regulate activities in this sector. This approach has proven to be effective in South Africa, where the political will to promote this country's image in its interventions abroad was being contradicted by the behaviour of mercenaries working for numerous private South African security companies. Finally, the ICRC intervenes with the governments who employ these companies.

Without reference to law, Jean-Hervé Bradol and Rony Brauman nonetheless support a similar logic, which is to see these private companies as just one among many other players in a conflict situation. Jean-Hervé Bradol recalled that generally speaking, from a

humanitarian viewpoint, there is no reason to adopt a stance concerning the war or the occupation itself, nor any dilemma involved in dialoguing or negotiating with the occupying forces, as well as any political or military authority in order to successfully carry out a relief operation. More specifically, for Rony Brauman, from the humanitarian viewpoint, there is no difference between armed forces, regardless of their nature, whether regular troops, blue helmets, rebel militias or private companies. He nonetheless warned against the mistake of considering the humanitarian, military and commercial sectors as self-evident homogeneous categories. On the contrary, one must be aware of the diversity of actors and the multifaceted nature of their interests.

Stuart Gordon recognised the validity of the humanitarian standpoint. The situations in which the occupation forces are confronted by various forms of insurrection are a type of warfare, in which the humanitarian agencies do not have to choose sides, while attempting to reach the populations on both sides of a front-line, no matter how blurred. However, from the viewpoint of a regular army, the fear of being mistakenly tied in with the actions of private military companies obeying no rules is a crucial factor in its own safety and the success of its mission. He feels that it is up to the governments to guarantee the professional regulation and control of these private companies, in the interests of their own armed forces. Significantly, and mirroring the presentation by Bernard Juan in the morning, Stuart Gordon argued that the military need to obtain and maintain legitimacy in the eyes of the communities in which they are operating. According to him, the indiscriminate and unlimited use of violence can lead to defeat. The search for this legitimacy is thus a strategic objective which applies both to regular or private armies as well as "guerrillas", and which involves abiding by the rules of war. However, in the same way as the confusion between the various international, military, commercial and NGO players is a structural phenomenon which needs to be attenuated and organised, but which it would seem difficult to rule out, Stuart Gordon feels that it is just as inconceivable to standardise soldier behaviour at an international level. Among the western armies alone, differences in institutional cultures, not to mention cultural differences in their respective societies regarding the use of firearms by police forces and citizens, are major obstacles to any notion of harmonising military behaviours.

It is with reference to this cultural dimension and more specifically by adopting the notion of a "culture of war" developed by Annette Becker, that Xavier Crombé expressed his scepticism over the ideas of sectorial professionalisation or regulation by law. Whatever the ethics of a profession or the legal framework of its activities, it is how one talks about the enemy and the licence this gives to the public or private armies to exercise violence, which are determining. In line with this general idea, Annette Becker nonetheless stated that one must not ignore the changes that have occurred in the conception of the military since the first half of the 20th century. While the culture of the two world wars was

characterised by the confrontation of national armies, the model of the professional army is being increasingly promoted. A professional soldier in a regular army still in theory represents a nation, but the professional aspect of his or her duties tends to take precedence.

TO CONCLUDE …

This one-day conference has not provided any definitive answers nor any clear consensus on the notion of occupation, nor on the specificity of the concrete situations this covers. The only objective specificity lies in the reference to law: specificity of the legal framework and the obligations and legal tools it defines, central aspect of protection issues. But if this reference is mandatory for the ICRC, the same does not go for those humanitarian players, who base their legitimacy on the public recognition of the usefulness of their actions rather than on a legal mandate. They remain ambivalent to the notion of occupation, a problematical political notion with respect to the general category of conflict, but one that is still too vague to allow accurate identification of the issues and practicalities of each given situation. Despite this shared ambivalence, the nature of the debates highlights the fact that what differentiates the various participants, more than the characterisation of the occupation itself, is their respective conception of action, commitment and their limits. For each humanitarian agency, this conception is not however set in stone nor monolithic. Nor is it any more recognised as such by the parties in a conflict who, as Stuart Gordon remarked, can also be looking for legitimacy with the civilian populations and may consequently see NGOs as potential rivals. The study by Xavier Crombé characterised occupation situations as being spaces of disputed legitimacy. The notion of totalisation of the conflict, contributed to the conference by Annette Becker, suggests that no player, including the humanitarian organisations, can for long claim to be external to the conflict when faced with these situations in which positions and political identities are radicalised. The tensions running through the humanitarian organisations themselves likely reflect this contagion.