Nongovernmental Organizations in Situations of Conflict: The Negotiation of Change

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Just as armies plan for the next war by learning the lessons of the last, so nongovernmental organizations (NGOs) in looking towards the future base themselves on the problems and dilemmas of the recent past. If the number of in-house training sessions and conferences are anything to go by, NGOs think they have a variety of problems. The last decade of the twentieth century is confronting them with unexpected challenges in situations of conflict. It is not that the NGOs are unfamiliar with conflict; something about recent conflicts has changed, with particular impact on NGOs.

Some of that change may simply be the prevalence, to a greater degree than in the past, of elements previously present. One such example is the attempt of the fighting parties to control the delivery of humanitarian assistance. This may be accompanied by novel, or apparently novel, forms of fighting. If an object of the fighting requires the direct and indirect targeting of the civilian population, this is likely to have an impact on NGO activities. If, for example, an object of the fighting is to bring about the removal of a portion of the population from an area (e.g., “ethnic cleansing”), the conduct of hostilities is
likely to take a different form from that of conflicts that are in effect a “simple”
power struggle. In both cases, there may be displacement of the civilian population, but the manner in which that happens, the length of the resultant
displacement, and the prospects for ultimate return, will be very different.

Another key change in the past decade with a significant impact on NGO
operations is the likelihood that UN or UN-authorized military personnel,
acting under a “peace-keeping” or “peace-enforcement” mandate, will be found in the theater of conflict.2

These developments have an impact not only on NGOs but also on
inter-governmental organizations (IGOs), such as the United Nations High
Commissioner for Refugees (UNHCR). The fact that both NGOs and IGOs are
adjusting to changes, possibly in different ways, simply adds to the complexity
of the situation. NGOs are more used to working alongside IGOs than with the
military, but the IGOs are subject to different pressures in adjusting to change
than are the NGOs. It can be as difficult to adapt existing relationships as to
forge new ones. That process of adaptation is made more complicated when an
IGO is given the role of co-ordinating NGO activities.3

Once NGOs recognize the need at least to reconsider existing practices, they
are likely to encounter further difficulties. There may be a natural tendency to
assume that existing practices based on experience are right for the particular
NGO; challenges to assumptions, which appear to be truths to those making
them, are painful. Each NGO has its own “mandate” or objective. Other
organizations with different objectives may need to change, but they are the
experts on their own areas of activity; in that field, the particular NGO has
nothing to learn from others. Where, on the other hand, it is recognized that
there may be something to learn from the experience and solutions of other
NGOs, the question becomes, how relevant is the experience of others? To
what extent can one NGO learn from the experience of others? At least by
meeting together and sharing what each perceives to be its difficulties, there is
the opportunity for individual NGOs to reflect on their own assumptions and
practices.

This only serves to emphasize one of the clearest lessons of the past decade:
NGOs cannot be lumped together. Their aims are different and their working
methods are dissimilar. This means that in the same situation different NGOs
will react differently. Both UN and UN-authorized forces and the parties to a
conflict must avoid the assumption that all NGOs will react in the same way.
Seen from outside, NGOs have more in common with one another than they do
with IGOs or other groups present in theater. Seen from within an NGO, however, the view may be otherwise. The goals, working methods, and
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previous experience of a particular NGO may make it easy for it to work with UNHCR, whereas another NGO may have problems with some of UNHCR's working methods.4

This paper will first examine the diversity of NGOs that may be found in conflict situations. There is no attempt to be comprehensive, an attempt that would be doomed to failure. The object rather is to illustrate the diversity. The variety of conflict situations in which NGOs may find themselves will then be considered briefly. There is an interplay between the type of NGO and the varieties of conflict situations which is likely to affect the NGOs' priorities and their perceptions of the problems. There will then be an examination of certain commonly recurring themes. Again, there is no claim to be comprehensive in either the identification of the themes or their treatment. The themes in question are humanitarian assistance, medical activities, neutrality, the reporting of violations of applicable legal norms, and the accountability of NGOs, including the role of the media. The paper will conclude with a highly speculative and personal view of likely trends in the short to medium term.

The Diversity of NGOs

Any attempt to classify NGOs must be accompanied by two notes of caution.5 First, classification is a tool of convenience, not a straitjacket. Second, an NGO may fall into more than one of the categories.6 It must also be remembered, when considering NGOs in situations of conflict, that many of the NGOs present may not be conflict-specific because they were already working in a State when the fighting broke out.7 That can include both local and out-of-country NGOs. This situation is likely to be particularly true of the first category.

Development NGOs. Development NGOs often have long-term projects in a country. Their activities usually fall into the field of economic and social rights. They are involved in the development of the local infrastructure for the provision of essential needs. They may be group specific (e.g., women and children8) or resource or issue specific (e.g., water or appropriate technologies9). They may work throughout one or more States or just within a certain distinct region(s). As the view of such assistance has changed in the West from “charity” to development assistance, much greater attention has been paid to capacity building within the recipient community and to encouraging the participation of those whom the project is designed to assist.10 This involves listening as well as doing. Sustainability is more important than
They find that some of the traditional NGOs may fail to recognize signals of personal danger. A problem arises when, unwittingly, their activities prejudice better organized and more significant (in terms of volume) relief efforts. The individuals involved should be encouraged...
to put their efforts into fund-raising for experienced relief NGOs. The difficulty is that established NGOs can hardly make such an argument; it appears to be born of rivalry or a fear of competition. Others must assume the responsibility for making the argument.

If the group just discussed may be seen as exasperatingly naïve amateurs, a much more serious problem is caused by relief "cowboys." Certain NGOs want to be seen as getting through to the places others cannot reach, whatever the price. The price paid, in terms, for example, of diverted relief supplies, will not be seen on television screens, but their presence will be. They are very dependent on donor support and therefore need to have a high profile presence in the areas of acute need, where the television cameras are most likely to be. Not only do such groups cause problems in theater, where the conflicting parties may assume that they can exact the same price from all relief agencies or that all such NGOs will behave in the same way, but more traditional relief NGOs may find themselves in competition with them for donor support. If the latter are seen to be doing something, they may attract greater financial support from individuals than more responsible, lower profile NGOs. This, in turn, may affect the conduct of the well-established NGOs. In order to maintain donor support, they may be tempted to ignore certain well-established principles of their modus operandi.\(^\text{16}\) There is little that can be done to regulate the "cowboys." The well-established relief NGOs can, however, reinforce their own adherence to certain principles. They can agree with one another to make joint appeals in emergency situations and to distribute the resultant "kitty" according to an agreed formula.\(^\text{17}\) This avoids competitive fund-raising. Under the leadership of the International Committee of the Red Cross (ICRC), a code of principles has been agreed upon for the delivery of humanitarian assistance.\(^\text{18}\) It is to be hoped that governments, which are often, directly or indirectly, very significant donors to relief operations, will make their funding conditional upon adherence to these principles.\(^\text{19}\)

**Medical NGOs.** Development and relief NGOs may, of course, work in the medical field. In addition, however, there are dedicated medical NGOs which offer medical treatment in situations of conflict. What might be termed "medical/development assistance" includes group specific activity, such as that related to the promotion of women's health,\(^\text{20}\) and action related to a specific medical field.\(^\text{21}\) The work may be part of a larger development program or may be the only activity of the organization. Certain medical concerns, notably female reproductive health, need to be handled with even greater cultural sensitivity than general development issues. Where the medical activity
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involves dealings with patients and is handled by medical personnel, issues of medical ethics may arise, particularly with regard to confidentiality.22 The provision of medical services in situations of conflict is particularly the province of the ICRC and Médecins sans Frontières (MSF). This is what distinguishes such organizations from relief agencies that include medical goods in their consignments. The ICRC and MSF send medical teams into the field, including specialists in war surgery.23 The two organizations are keenly aware of what distinguishes them from one another.24 From the outside, it is clear that they have very different ground rules with regard to where they will go and under what conditions. When it comes to the treatment of patients, both sets of medical personnel are bound by and apply the rules of medical ethics.25 They are marked out from other relief organizations not only on account of their adherence to a particular code of ethics; situations in which they have to work often require them to apply the principle of “triage” in assigning priority of treatment. In this, they have much in common with the medical services of armed forces.26 They are not, however, subject to the constraints of a military hierarchy or military discipline.

Movement NGOs. There are many NGOs working with refugees and asylum seekers, but this tends to be in the country of refuge, rather than in the place from which they are fleeing. Development and relief NGOs may work with refugees and internally displaced persons (IDPs), but they do not generally focus on the cause of displacement; rather, these NGOs deal with current needs. Human rights NGOs may address the causes of refugee displacement, but in the context of human rights violations rather than the resultant displacement. UNHCR is, of course, an agency concerned with the causes and effects of displacement. If there are NGOs that focus specifically on displacement (such as I.O.M.), they are not as well known as the most prominent development, relief, medical or human rights NGOs.

Human Rights NGOs. The majority, and certainly the best known, of the human rights NGOs work principally in the field of civil and political rights. There are, nevertheless, certain NGOs that work outside the area of conflict on what might be seen as survival rights or economic and social rights, such as those to food and shelter.27 In addition, certain development NGOs articulate at least some of their activities in human rights language.28 What the human rights NGOs have in common is that they do not deliver assistance or services in the field in the same way as the organizations so far discussed. This does not
mean that they do not have a field presence; their function is, however, very different.

Insofar as human rights violations are a significant cause, or symptom, of impending conflict, timely and effective response to the concerns articulated in the reports of NGOs would represent a form of conflict prevention. Yet it happens all too rarely.

The principal tool of human rights NGOs is the report. Such reports aim to attract publicity in order to secure the “mobilization of shame.” Human rights NGOs vary significantly in the use they make of their reports for lobbying. Many are not membership organizations, although they may have subscribers. Amnesty International is unusual in being not only a membership organization but one which relies heavily on the campaigning activities of members. This includes putting pressure not only on their own governments with regard to the situation in another country but also on the offending government by letter writing to a wide range of public officials. Many of the human rights NGOs make effective use of the UN human rights machinery by, for example, submitting information to UN thematic and Special Rapporteurs and to the Human Rights Committee established under the International Covenant on Civil and Political Rights. 29

The human rights NGOs once showed a certain initial reluctance to get involved in legal questions arising out of the conduct of hostilities. They often found themselves reporting on violations of human rights that occurred in situations of non-international conflict, particularly in central America, but tended to concentrate on the impact on civilians. Since human rights law directly binds only State authorities, they tended to focus on human rights violations carried out by police and armed forces. 30 This exposed them to the charge of one-sidedness, since they did not address “violations” by non-governmental entities.

The pattern with regard to human rights reporting, however, has changed markedly over the past decade. Human Rights Watch led the way in analyzing situations and particular actions from the standpoint of humanitarian law as well as human rights law. This enabled them to examine the conduct of military operations. 31 Amnesty International has, more cautiously, begun to follow suit. 32 This is partly the product of a change in the pattern of human rights violations. While individual cases of arbitrary detention, torture, and unfair trials continue to exist, situations of gross and systematic violations of human rights have acquired greater prominence through conflicts such as those in Somalia, the former Yugoslavia, and Rwanda.

The human rights NGOs also now seek to address “violations” perpetrated by non-governmental entities. The language used and the campaigning tools
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are different, but these base themselves on the same standards as those applicable to States.

Human rights NGOs need reliable sources of detailed information. One of the obvious potential sources in situations of conflict is the personnel attached to development, relief, and medical NGOs. This has given rise to real dilemmas for the latter, who fear that their neutrality and impartiality may be called into question if they provide information on violations of human rights or humanitarian law, however objective and impartial the reporting. This may prejudice their ability to continue providing relief to those in need. (This problem will be considered further below.)

It has been seen that a wide variety of NGO actors may be found in situations of conflict, with very different functions and views as to the principles applicable to their activities. A further, extremely significant, variable is the type of situation in which they find themselves operating.

The Diversity of Situations

Before the Fighting. Many, but not all, recent conflicts have arisen in States receiving some form of development assistance. In some cases, the assistance has taken a traditional form, that is to say, the development of infrastructures to meet the basic needs of the population. In more recent years, direct or indirect government-funded assistance has sometimes come with strings attached. (Conditionality will be examined further below.) In the case of Eastern Europe and the former Soviet Union, assistance has taken the form of help in adjustment, rather than development. What has been sought, notably by the Organization for Security and Cooperation in Europe (OSCE), has been the promotion of the institutions and mechanisms of civil society.

In many cases, conflict is the direct or indirect result of weak State structures.33 Where chronic instability has prevented effective nation-building, governmental structures are weak, and the outbreak or intensification of fighting presents a challenge that overwhelms them. In other cases, the precipitating element may be the aftershocks brought about by the implosion of the former Soviet Union. Where the conflict is a reaction to an autocratic regime, it may be the indirect result of weak State structures, however paradoxical that may appear. Nervous governments faced with challenges to their authority do not have the confidence to allow space for dissent or to negotiate the challenge; instead, they respond with oppression, thereby contributing to that which they most fear.
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The development NGOs are not well placed to address these concerns, beyond attempting to meet survival needs and, through cooperation with government agencies, seeking to instill good practice. They are, however, well placed to observe and to send warnings to the international community. Development agencies sent the clearest possible signals about the deteriorating situation in Somalia, but to no avail.34 From outside the countries involved, human rights NGOs may send similar warnings. That happened most notably in the case of Rwanda.

During the Fighting. The fighting may make it impossible to continue with development assistance, either on account of the hostilities or of the resultant dislocation, such as the displacement of the population. There will suddenly be a change in the political and legal context, and a plethora of new players in the field. It is all too easy, in an academic or bureaucratic ivory tower, to forget the chaos engendered by an ever-changing political and military situation, about which there is usually inadequate and/or outdated information, and by the constant need to achieve new means of cooperation with ever-changing organizations. It is little wonder if NGOs simply react to events.

NGOs with the most experience in conflict situations are likely to be those which have developed modi operandi to cope with predictable chaos. The difficulty, however, is that while chaos is predictable, its particular form is not. Emergency relief NGOs will not have the experience of the particular society and culture that development NGOs will have gained.

The apparently rigid principles of the ICRC may give the impression that they can cope with high levels of chaos and rapid change.35 They simply follow their tried and tested principles. The danger, however, is that the principles become a straitjacket that prevent the ICRC from adapting to changing circumstances.36 At least as great a problem is presented by NGOs that have not thought through in sufficient detail their principles of action and cooperation. They may be tossed around by circumstances, consoling themselves with their bottom line: "do no harm."37

It would be presumptuous to propose solutions either to the ICRC or to less experienced NGOs. They can only be urged to take the time to debrief their personnel and attempt to identify, and then learn, the lessons to be learned. Even as they do so, they should avoid reassuring but illusory certainties; just as every NGO is different, so is every conflict.

The same problems will also beset any UN or UN-authorized forces in the field. They need to avoid the dangerous tendency of lumping all NGOs together. This might best be avoided if they got to know them individually. It is
too late when they meet one another in theater. Getting to know and understand the NGOs (and vice versa) needs to happen before deployment, ideally through joint training exercises. This will not remove all causes of conflict, but it may remove some and enable them to predict others. The same is true of the relationships between NGOs. One of the lessons of recent peacekeeping and peace-enforcement operations is that all parties in theater need not only to know their enemies, but also their friends.

**Towards the End of the Fighting.** The fighting may come to a halt owing to war-weariness, temporary or longer-term, or as a result of some form of cease-fire, however fragile. There will inevitably be a need for assistance in reconstruction. Even if there are still legacies of the fighting to be dealt with, such as the disarming of fighters and the (re)creation of an effective and accountable police force, the language of discourse will shift from humanitarian law to human rights law, from relief to development. Since the foundations for the post-conflict future will have been laid during the conflict, it is as important that those laying the foundations understand what will come next as it is that those involved in reconstruction understand the foundations on which they are building. Human rights language is not the same as humanitarian law language, even though both are premised on the inherent dignity of the individual and the protection of the vulnerable. The two types of analysis complement one another. All the players, before, during and after the conflict, need to be familiar with both.

The problems with which NGOs, and governments as major funders of their operations, will have to grapple vary depending on the NGO and the situation. Nevertheless, certain common themes do arise.

**Humanitarian Assistance**

In the constantly changing reality of the situation on the ground in Somalia, the former Yugoslavia, Liberia, and Rwanda, any number of elements may appear to have contributed to the result. That result may be a starving populace, deprived of humanitarian assistance, or the massacre of refugees, or the slaughter of innocents in UN-proclaimed “safe areas.” It may be difficult to distinguish secondary elements from the irreducible kernel of hard choices. That effort must be made by NGOs, IGOs, and governments working together if the dead of this decade are not to have died in vain.

All the conflicts have been marked, to a greater or lesser degree, by the difficulty both NGOs and IGOs experienced in getting humanitarian assistance
to those who needed it. It is not surprising that the attention of NGOs has turned to better coordination of relief efforts and to what must appear to be deficiencies in the legal rules applicable. There is always a need to improve coordination, but that is hardly an answer to denial of access to populations in need. Similarly, any examination of the legal rules applicable, whether in international or non-international conflicts, suggests that the problem does not lie there, although the failure to respect the rules is a problem.

In an international conflict, starvation of civilians as a method of warfare is prohibited. That does not extend to situations where starvation is the foreseeable result but not itself the tactic. Relief operations that are humanitarian and impartial in character should be undertaken, subject to the agreement of the Parties concerned. The Parties are required to allow and facilitate rapid and unimpeded passage of relief, even if it is destined for the civilian population of the adverse Party. The Parties have the right to prescribe the technical arrangements, which include, but are not confined to, the right to search relief convoys to confirm that they do not include military equipment. Relief personnel are to be protected, but their participation is subject to the approval of the Party in whose territory they will carry out their duties. While the language of the provision on humanitarian assistance is mandatory, the requirement of consent is susceptible to abuse.

In non-international conflicts to which Protocol II of 1977 is applicable, relief actions of an exclusively humanitarian character should be undertaken, but subject to the consent of the High Contracting Party concerned. The Protocol does not require the consent of the non-State forces because that might appear to grant a certain status to the “rebels” and would be seen as interference in the internal affairs of the State concerned. Starvation of civilians as a method of combat is again prohibited.

In non-international conflicts to which only common Article 3 of the Geneva Conventions of 1949 is applicable, there is no provision on the delivery of humanitarian assistance. An impartial humanitarian body may, however, offer its services to the Parties to the conflict, and that offer cannot be claimed to constitute an interference in the internal affairs of the State.

No doubt there are gaps, and the law could probably be improved, but that is to miss the point. If the forces in control on the ground will not grant access to populations in need, then either the assistance convoys run the real risk of attack or they must be equipped to protect themselves. The consent of those in de facto control is a practical prerequisite to the unarmed delivery of assistance.

Nor is the explanation plausible that the Parties are simply ignorant of the rules, that if only they knew them, then they would allow access to the
populations in need.51 The reasons for the denial of access may vary, but improved dissemination of the rules is likely to have only a very limited effect.

The problem concerns not only access to populations in need, but also the lack of security of those people, whether they be in Sarajevo, in refugee camps, or in "safe areas."52 A BBC radio news bulletin carried an interview with an inhabitant of Sarajevo during the siege of the city. He commented that the international community seemed not to mind that he would die one day from a sniper's bullet, provided he was not hungry at the time. Humanitarian assistance was a substitute for an overall policy.

The NGOs have recognized the linkage between the delivery of humanitarian assistance and the protection of the civilian population.53 It is far from clear, however, that they have recognized that this may mean hard choices. Governments may be less inclined to assist in the delivery of humanitarian assistance if the price is high.54 For some NGOs, to save one life is to save a universe. They would prefer not to have 90 percent of the aid diverted to people in less need of it. They would prefer not to have to turn a blind eye to the massacre of civilians. They are not prepared, however, to see one person starve if that can be prevented.

NGOs are born of idealism and commitment to those in need. It is not surprising that they should find it difficult to accept that the price of delivery of assistance may be too high. One must also be cautious about the greater willingness of governments, principal donors to NGOs, to contemplate such a possibility, unless it forms part of a policy designed to promote the greater good of the population. Determining that the price to be paid for delivery of humanitarian assistance is too high cannot simply be allowed to be a means whereby governments get themselves "off the hook."

Some NGOs see this attitude on the part of governments as an extension of "conditionality" in the development assistance field. It is submitted that while the two do have something in common, there is a difference in this context. There are two priorities in relation to the population in need. One is their physical security, the other the provision of humanitarian assistance. These priorities may, in a given situation, compete with one another.

The protection of the civilian population may also raise the question of the role of armed forces. In certain circumstances it may be necessary to deploy armed forces that are appropriately configured and equipped, and that have the mandate and, above all, political will to protect the civilian population. The attempts to date by the international community, with the exception of the "safe haven" in Northern Iraq immediately after its designation, have been
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half-hearted and doomed to failure from the outset. It may be that this is a job which should be done properly or not at all.

NGOs cannot afford to lose their impartiality, but that still leaves them with hard choices. There may be a split between those that come to accept restrictions on the delivery of humanitarian assistance in order better to protect the civilian population, and those that cannot accept such restrictions. If governments channel their funding to the former, the latter will be dependent upon the support of individual donors. There may also be a split, not necessarily along the same lines, between those prepared to work with UN or UN-authorized forces and those that reject such cooperation on the grounds that it prejudices their impartiality. By establishing clear doctrine for peace support operations, including the tactical level, armed forces could contribute significantly to reducing the perceived problem. It probably cannot, however, be completely eliminated. While the question of the role of armed forces and the debate between humanitarian assistance and protection overlap, they also need to be considered separately. The latter presents a real challenge to NGOs, whether or not the military are present.

Medical Assistance

The essential dilemmas faced by those NGOs providing medical services are very similar to those in the field of humanitarian assistance generally, compounded by questions of medical ethics. Impartiality becomes individualized. The individual doctor is required to treat patients simply by reference to medical need. This may be part of the explanation behind a distinction in the operating practice of the ICRC and MSF. For the ICRC, the provision of medical services is usually part of a larger operation. Its practice is to insist on working on both sides of a conflict in order to protect its own neutrality and impartiality. On the other hand, MSF, which similarly adheres to impartiality, sees no conflict between principle and only working on one side, or indeed in only one zone of one side, of the conflict. MSF medical personnel in the exercise of their functions are impartial. They will treat by reference to medical need alone, wherever they happen to be exercising those functions. MSF and the ICRC can work alongside one another, but MSF is also to be found where the ICRC does not or cannot go.

The two organizations also take very different positions in relation to cooperation with human rights investigators and the two ad hoc war crimes tribunals. Again, in the case of the ICRC this may be partly attributable to the fact that it engages in a wider range of activity than the merely medical. There
is clearly a possible question of the confidentiality of the doctor-patient relationship. Giving information with consent, however, is clearly a different question, and the two organizations take very different positions on it. (That will be discussed further in the next section.)

There is one particular medical issue that concerns not only these two organizations, but a wide range of other NGOs. It is best exemplified by the case of Irma Hadzimuratovic, a little girl who was seriously injured in Sarajevo in an incident in which her mother was killed. She needed very swift medical intervention, which the medical personnel in Sarajevo were unable to provide because of their inadequate resources. Irma was eventually evacuated, thanks to the intervention of the British Prime Minister. It was, however, too late. Her injuries were by that time much harder to treat than they would have been, and she died some time later.

This raises some problems similar to the humanitarian assistance/protection debate, compounded by the question of medical treatment. Is the answer to improve the quantity of medical relief if you are simply patching someone up to be injured again later? Is it better to evacuate injured persons for medical treatment if they then have to be returned to a war zone, than to do your best in situ? Should children be evacuated, but only with their parents?

There were and are, in fact, criteria for determining questions of medical evacuation. Irma was regarded as not coming within them. It might be useful if these were reexamined by, among others, the World Health Organization, the United Nations Children’s Fund (UNICEF), medical and children’s NGOs and as wide a range of interested parties as possible. There may be no need for change, but there does seem to be a need for at least a reconsideration of the issue.

Neutrality, Impartiality and The Reporting of Violations of
Humanitarian Law and Human Rights Law

Reporting. Human rights NGOs carry out their function by gathering information, analyzing it in terms of the applicable legal norms, and then publishing the results. To effect change, they need publicity and campaigning. While they would deny that they are other than impartial, their activities may be seen to be, or be claimed to be, “political.” Indigenous human rights NGOs, where they exist, may be particularly vulnerable to suppression. International human rights NGOs tend to work from outside the conflict zone, with only a very limited field presence.
Traditionally, relief agencies kept their distance from human rights NGOs, for a variety of reasons. Particularly during the Cold War, human rights activities were seen as "political." The relief agencies were also worried about stepping outside their "mandate," and there was perhaps a concern about the NGO equivalent of "mission creep." They also saw cooperation with human rights NGOs as calling into question their independence and impartiality. They were worried about the use that might be made of information supplied to another organization and about the protection of witnesses. They were also concerned that their own access to civilian populations would be jeopardized if they were known to be supplying information to other organizations. Last, but by no means least, they felt ignorant about human rights law, which seemed to them a very different type of activity. They did not know on what to report.

There is no doubt that humanitarian agencies have a much larger field presence than human rights NGOs. They also encounter, on a day-to-day basis, the possible victims of violations of human rights law and humanitarian law. Humanitarian NGOs are the passive recipients of information and, in other cases, are well placed to gather the relevant information more positively.

The situation in Rwanda seems to have marked a turning point. Oxfam was the first agency to declare that what was happening was genocide, and it paid a price for doing so. The attitude of NGOs who were blind and/or silent about what was going on around them, provided they could deliver humanitarian assistance, was heavily criticized in a paper by African Rights.

Rwanda precipitated a period of soul searching on the part of relief NGOs. The first sign of a breakthrough was when a significant number of them recognized that evaluating actions in the context of human rights norms did not represent any loss of impartiality. That is to say that, while it may be done in a one-sided way, such reporting is not inherently partial or one-sided. The second breakthrough occurred when the relief agencies stopped to examine their oft-repeated mantra—"neutralité, impartialité, and independence." The ICRC principles dictate that its activities must be based on neutrality and impartiality. Many relief NGOs became very suspicious of neutrality, seeing it as an excuse for remaining silent in the face of atrocities. If neutrality meant never taking sides, they wanted to take the side of upholding universal legal norms based on the rights of all individuals everywhere. They were on the side of victims of violations, whoever they were. In other words, they would be evenhanded in applying the same principles to everyone. This led them to proclaim their impartiality and independence, but not their neutrality.

While this evolution facilitated improved cooperation between relief NGOs and human rights NGOs, it did not, and could not hope to, remove all the
problems. Some difficulties, such as the need to provide a minimum of human rights law training to relief personnel in the field, can be addressed over time. Others are more problematic. Whether being known to provide information to human rights NGOs will result in a relief agency being ordered out of the country or denied continued access to the population in need cannot be answered in the abstract. The experience in that regard is not all negative. Indeed, as noted at the Médecins sans Frontières Conference in February 1996, “the real risks to our operations and our ethics lie in silence. And there are plenty of examples where human rights advocacy has in fact increased access to the victims and improved the safety of our staff, as was the case in Burundi.”

The protection of witnesses is also a very real problem, as the experience of those who have testified in Arusha, Tanzania, before the war crimes tribunal and then returned to Rwanda has shown.

There may, nevertheless, be a shift in attitude. If the starting point of relief NGOs is that they will gather information, in some cases seek it, and then pass it on to responsible human rights NGOs (where they feel it to be safe to do so and where they have the requisite guarantees as to the use to which the information will be put), then the effectiveness of human rights reporting could be transformed. Even if the relief agencies were only able to indicate likely witnesses and sources of information, this would still be of considerable assistance.

What is particularly striking is the leading role played by a medical NGO in promoting the cooperation between relief agencies and human rights NGOs. They might have been thought to have the biggest problem with the sharing of information. Nevertheless, MSF has taken the lead and has encouraged other NGOs by its example. Of course, there is a separate question in relation to the sharing of information. It is one thing to cooperate behind the scenes with human rights NGOs. It is quite another thing to give evidence in criminal proceedings before an international criminal tribunal.

Giving Evidence. While the ICRC’s policy is never to cooperate in this way, some intergovernmental agencies, such as UNHCR, have sought to strike a balance between protecting their clients’ confidentiality and giving evidence. Other organizations and individuals, even within the same group, have taken differing positions. Again, MSF has been in the forefront of those promising the greatest possible cooperation with the tribunals. In relation to the giving of evidence at the request of the prosecutor, the rules of evidence give NGOs a certain protection. It remains to be seen what will happen when the defense seeks to call an NGO employee as a witness and argues that the testimony is
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vital for a fair disposal of the case. If the judges agree and subpoena the
individual in question, a refusal to appear may result in contempt proceedings,
even, it would appear, in absentia. It is to be hoped that the judges will
recognize that in some cases there may be legitimate grounds for the refusal to
answer a question. That will be, and should be, determined by the judge and
not the NGO employee.

Advocacy and Campaigning. The twin issues of advocacy and campaigning
raise many of the same issues for NGOs as the reporting of violations of human
rights and humanitarian law. In some cases, the law on charities imposes
restrictions. Some organizations have, nevertheless, become frustrated by
only treating symptoms and have begun to campaign about the causes of the
problems which they are there to address. Oxfam and Christian Aid, for
example, have campaigned regarding the causes of poverty and the cycles of
emergencies. Handicap International, a French-based NGO that provides
prostheses, became concerned about the extent of the need for artificial limbs
on account of injuries from anti-personnel land mines (APMs) and put pressure
on the French government to call for a conference to review the 1980
Conventional Weapons Convention. This resulted in the revision of Protocol
II of that Convention relating to the use of land mines. While the revised text
marked a considerable achievement, most notably by extending its application
to non-international conflicts, it fell far short of what NGOs perceived to be the
need—an outright ban on the use of APMs. (The Review Conference also
adopted a new fourth Protocol on blinding laser weapons.) Subsequently, a
group of States, led by Canada, decided to negotiate a treaty banning the use of
APMs, which was signed in Ottawa by 120 States in December 1997.

The campaign to ban the use, manufacture, and stockpiling of anti-
personnel land mines has been a quite remarkable achievement for NGOs.
Even five years ago, it was unthinkable that such a treaty ban could be
achieved. One may question the impact that the Ottawa treaty banning the
use of APMs will have, since the most important users and manufacturers of
APMs are not Parties to it, but this does not detract from the achievement of
the NGOs.

This was not the work of one NGO or even of a linked group, such as medical
NGOs. It represented a remarkable feat of organization to create a small
international committee, with a coordinating function, and national
organizations, consisting of a loose coalition of NGOs. The arrangements had
to be both loose and flexible, to cope with the variety of mandates, objectives,
and campaigning methods of the different types of organizations involved.
Participating groups included children’s organizations, development NGOs, refugee groups, relief organizations, human rights NGOs, and arms trade groups. All these groups were able to find something which they were able to contribute to the campaign.

The important question for the future is whether this is a precedent or a “one-off” phenomenon. Certain features of the APM issue made it an ideal subject for a campaign. The scale of the problem was, and is, enormous. The principal casualties are civilian. It was relatively easy to understand the technology. The message was simple: what was sought was an outright ban on use, in which case a ban on manufacture and stockpiling was logical. The nature of the injuries and of the victims made a significant visual impact. One only has to consider the campaign on laser weapons designed to blind, which was running at the same time as the land mine campaign, to see how significant such features are. There were essentially only two organizations campaigning about laser weapons, the ICRC and the Arms Project of Human Rights Watch. Those lobbying understood the technology and the issues, but there was never the mobilization of public opinion that occurred in relation to APMs.

The key question then becomes whether there are other weapons that might provoke the same reaction in the public as land mines. Concern has been expressed about the use of small caliber ammunition and cluster weapons, but it seems questionable whether they would lead to a mass campaign. It is more likely to be the specialist NGOs that become involved. If a conflict were to occur with a widespread use of incendiary weapons, that issue might become the focus for a campaign but there is no sign of that at present. There may now be a generally higher level of awareness and concern about the environmental impact of spent munitions and the insecurity which both causes, and is the product of, high levels of expenditure on conventional weapons, but it seems unlikely that that awareness will become sufficiently focused to produce a campaign as effective as that to ban land mines.

At present, it would seem that the land mine campaign is likely to be unique, at least in its scale of public mobilization and the range of participating NGOs. Nevertheless, there are NGOs well placed to campaign about the use of other weapons, and a precedent now exists for a wide range of NGOs to work together. The first group will continue to be involved in campaigns about specific weapons. It is not possible to predict whether one of those weapons will seize the imagination of the public. It takes an unusual combination of factors to do so.
The Accountability of NGOs

Accountability is not, in this context, confined to legal accountability, although it goes without saying that NGOs are subject to the laws of the places in which they work. It includes moral responsibility, particularly where third parties treat NGOs as having some such responsibility for their actions. It also includes accountability in the sense of cause and effect. Where a person or body responds to the activities of an NGO in a way that affects the ability of the NGO to continue with those activities, this might be seen as de facto or effective accountability, irrespective of whether it is “justified” or even reasonable. The NGO has to take into account the possibility of such a reaction when determining its course of action.

In a more restricted sense, accountability usually involves the attainment of goals. A person or body evaluates the performance of the NGO by reference to objective criteria. This requires both measurable goals and objective criteria of evaluation. When the beneficiaries of action are people, there are the usual difficulties in determining whether there should be a qualitative, and not merely quantitative, evaluation and, if so, how to set about it. Is it necessarily the case that NGO One is “better” because it delivers 1,200 tons of relief in the same time and/or for the same cost that NGO Two delivers 1,000 tons? Is it necessary to consider the accountability of NGOs to recipients/beneficiaries and also to donors, both individuals and States? Consideration also needs to be given to the relationship between accountability and the role of the media.

Accountability to Recipients/Beneficiaries. Development NGOs have had, for quite some time, a sense of responsibility toward the people whom they are trying to help. There has been a shift over the past forty or so years from the sense that the recipients are the beneficiaries of charity to a perception that the NGOs are working in collaboration with the local community. This has been articulated through such concepts as empowerment and participation, and has led to greater reflection about the impact of assistance within the community. These ideas began naturally to “leak” from development to relief operations.

There is a different paradigm in the case of activities relating to violations of human rights or humanitarian law. Human rights NGOs and the ICRC have been acutely aware of the potential risk to individuals, rather than the community, in publicizing names. It may be, but this is speculation, that the preoccupation of development/relief NGOs with communities rather than individuals contributed to their silence in the face of human rights violations. The recent recognition by relief NGOs that assistance cannot be divorced from
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protection suggests that their position is evolving. It may be that their focus on communities means that they will only become engaged in protection activities where the violations are widespread and systematic. Provided they recognize that unpunished individual violations may become a practice, it may be necessary, in order to achieve a sensible distribution of roles, for relief NGOs to become involved in action only in the case of widespread violations. Human rights NGOs are probably better suited to dealing with individual cases. In that situation, relief agencies could help by passing on information.

It may be significant that MSF, a medical organization, is at the forefront of moves to get relief NGOs to consider the issue of protection. While medical activities might seem to be a type of relief action, they do involve the relationship between an individual patient and medical personnel. In other words, medical NGOs do not function only at the community level.

Ultimately, it does seem that all NGOs have a sense of responsibility toward recipients/beneficiaries. However, the form it takes differs, depending on the type of activity involved.

Accountability to Donors. It is necessary to draw a distinction between accountability to individual donors and to State or organizational donors, not least because the two constituencies may impose competing, if not conflicting, demands. In addition, organizations and States are more likely to require accountability in the most literal sense. The administration and control involved may deter some NGOs from even seeking such funding. Two different ideas may become confused in the minds of NGOs. One is accountability, which is some type of obligation to another person or body. The other is the desire of NGOs to carry out their activities in as many of the places where they are needed as possible. This requires money. It would be understandable if they sought to tailor their activities to what is most likely to appeal to their donor constituencies. This is not the same thing as an obligation of accountability to donors, even if it is articulated in those terms.

Individual donations may be closely linked to media coverage of the epicenter of a crisis. In that case, the NGO has to be seen to be there. On the other hand, State or organizational funding may have strings attached, either conditionality or something that looks like it. The NGO then has to determine whether it is simply interested in raising as much money as possible, or whether it has a view as to the maximum possible funding from one particular source which is consistent with its independence. For some this may mean a refusal to accept any governmental funding. That is more likely to be the case for human rights NGOs than for relief/development NGOs.
The need to maintain donor support and/or accountability to donors may have a direct impact on the activities undertaken. In particular, it may prompt an NGO to be involved in a highly visible relief program, irrespective of the price paid in terms of the diversion of relief or silence in the face of serious violations of the law.

Accountability and the Media. To consider generally the role of the media in conflict situations is beyond the scope of this paper. Some commentators appear to assume that there is a "CNN factor," while others dispute that it has the significance often ascribed to it. Some journalists think their role is to be objective and detached, whereas others aspire to what Martin Bell has described as "the journalism of attachment." That does not mean biased reporting: it means identifying with and conveying the plight of victims and dating to express anger and outrage.

As seen above, donor support may be affected by the coverage of an NGO's activities. That may, in turn, put pressure on the NGO to be not where there is most need or the greatest possibility of effective action, but where the cameras are. In some cases, NGOs can determine where the cameras go. The NGOs may be a principal source of information for the news media and also a source of relatively secure transport.

NGOs are generally aware of their need for media coverage and, over the years, have spent effort and resources in developing professional media strategies. It is less clear whether they are aware of possible dangers in their ambiguous two-way relationship with the media. In seeking to use the media to their own advantage, they may also be, deliberately or inadvertently, manipulated. It may be necessary to distinguish between the print media and television. When reference is made to the "CNN factor," it is only the latter which is being considered.

The question in this context is the extent to which NGOs are accountable for, first, the impact of media coverage where they make the coverage possible or are the subject of the coverage and, second, the effect of that coverage on their own operations. At the very least, this is a question that responsible NGOs should be asking themselves.

The Future

Speculation is an inherently hazardous activity. It is not possible simply to examine where NGOs are now and to project that forward. There are many other variables, all of which will interact with one another, and which need to
be taken into account. First, there are possible changes in the causes and forms of conflict. Second, there is uncertainty as to the likely international response. The international community may decide that acute crises are too difficult to handle and must simply be contained until they burn out, or else it may discover the will to seek real solutions. Third, IGOs may adjust their priorities and modi operandi in various ways.

It is possible, on the basis of recent experience, to draw up a nightmare scenario. In it, parties to a conflict seek an unlawful goal and consequently engage in systematic violations of humanitarian law. The only concern of NGOs is to ensure that people are fed. They turn a blind eye to the fact that many victims will be dead in a few hours or a few days. Armed forces external to the parties to the conflict are helpless, either owing to inadequate numbers and equipment and an inappropriate mandate or else a fear of casualties, which means that they only move in such large numbers as to be incapable of influencing the situation on the ground. States, in the meantime, use assistance as a substitute for policy and as an excuse for closing frontiers to prevent mass movement of people. Some of these elements have been present in many recent conflict situations. If they are not to recur, lessons must be learned.

There is evidence that at least some NGOs are biting the very painful bullet. They have at least recognized that assistance needs to take account of the need for protection. There is not much value in "better fed than dead" if the recipients are going to be killed later. Some NGOs know they have to strike a difficult balance; discovering appropriate ways of doing so will not be easy. The ICRC, in some ways, exemplifies the dilemma. It has a wealth of experience and is used to relying on its demonstrable neutrality and impartiality. At the same time, this "guardian of humanitarian law" refuses to allow its delegates to give evidence before war crimes tribunals. There will be a certain degree of trial and error as NGOs seek a way forward, and no two situations are the same. Some of the NGOs are, nevertheless, looking for practical solutions.\(^7\) It seems likely that there will be a split in the NGO community. Some will insist on delivering assistance, whatever the price. This group will include not only "cowboys," but those who see themselves as idealists. Others will, with reluctance, see how the wind is blowing, in particular with respect to State and organizational donors, and go along with it. Still others will be convinced of the need for adjustment, seeing it as providing more net help.

In this situation, it is not the responsibility of only the NGOs to adapt and change. States, particularly members of the Security Council, have a huge responsibility. They have so far proved incapable of responding to an impending crisis, even where the NGOs and the UN machinery have made it...
clear what is at stake. Nor have States so far shown a willingness to bite their respective bullets. It is possible that the greatest single contribution that could be made to protecting victims from atrocities would be by breaking the cycle of impunity everywhere. The law of armed conflict is a useful tool because it is based on the equality of belligerents (in other words is impartial) and is based on individual criminal responsibility. To break the cycle of impunity requires an effective international criminal court with an independent prosecutor. States have to be willing to surrender their own soldiers to its jurisdiction. If they create a tribunal with fairness and integrity, and if they train their soldiers not to break the rules, they have nothing to fear from such a court. There is a great deal to gain.

If those resorting to force know that they are likely to be tried if they prosecute the conflict in unlawful ways, but will not be subject to the jurisdiction of the court if they only target combatants and military objectives, this might have a significant effect on their conduct. Not only would it facilitate the task of NGOs in negotiating access for humanitarian assistance, but the fighters would implicitly be recognizing the legitimacy of NGO involvement in the promotion of the rule of law by providing protection. If the belligerents recognize that there are unlawful ways of fighting, it cannot be a sign of bias or lack of neutrality to seek to uphold the law.

Only States, acting diplomatically and where necessary through their armed forces, can break the cycle of impunity. Only States can set effective controls on the transfer of weapons. Only States can wield the sticks and carrots appropriate to a particular situation. There is no shortage of rhetoric and hand wringing. There is, to date, a lack of effective action.

The NGOs, armed forces, and donor States are going to have to surrender long-cherished ideas if they are to reach an accommodation. They have learned that they cannot simply insist on doing things in their own way, without regard to others. They will have to recognize and adjust to the priorities and needs of the other players. This does not mean that they have to adopt them. The first step would be if they all spoke the same language. If they used humanitarian law, human rights law, and refugee law as tools, they might not say the same thing, but they would at least begin to understand one another.

This is beginning to happen between armed forces and at least some NGOs, and is most likely between those who have shared the experience on the ground. Donor States are reexamining questions of humanitarian assistance, but there is less evidence that they are assuming their particular responsibilities in relation to conflict prevention and breaking the cycle of impunity.
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NGOs, armed forces, and donor States have recognized that they have the same ultimate goal—the effective assistance and protection of victims. They have also recognized that they need to search for ways forward, both separately and together. There is still a long way to go before they convert these ideas into practical solutions to the problems faced on the ground.

Notes

1. Médecins sans Frontières (MSF) Holland, for example, organized a conference in Amsterdam on February 9, 1996. Conference on the Co-operation between Humanitarian Organisations and Human Rights Organisations. See also Symposium on Humanitarian Action and Peace-keeping Operations, Geneva, June 22–24, 1994, ICRC (Palwankar ed.); von Flüe, International Humanitarian Law and Protection, Report of the Workshop, Nov. 18–20, 1996, ICRC. The Asser Institut in the Netherlands has organized seminars on UN law, human rights, and humanitarian law for Dutch NGO personnel. It is worthy of note that the NGO search for solutions to practical problems has involved training in the applicable legal norms. This suggests a useful role for the law not only in defining acceptable and unacceptable forms of conduct, but also as a common language of discourse through which actual experience can be articulated.

2. By “peacekeeping” is meant an operation based on the consent of the parties at every level, operational and tactical, in which the forces act impartially and can only use force in self-defense. By “peace enforcement” is meant an operation in which force can be used to achieve the mandated objective, not defined in terms of one of the parties. Force is to be used impartially or evenhandedly. There is no need for consent to the presence of the force at every level, though there will generally be some form of strategic political consent, probably halfhearted. See generally Hampson, States’ Military Operations Authorized by the United Nations and International Humanitarian Law, in THE UNITED NATIONS AND INTERNATIONAL HUMANITARIAN LAW, 371–426 (Condorelli ed., 1996).

3. E.g., UNHCR during the United Nations Provisional Force (UNPROFOR) operation in Bosnia-Herzegovina.

4. E.g., the issue of military escorts for the delivery of humanitarian assistance. See infra.

5. The role of the church and church agencies is not included, as such, within the scope of the text. Where a “religious” organization (e.g., Christian Aid) is involved in development or relief, it is considered along with other similar agencies. The specific role of the church is not, however, considered. It should be noted that the form of organization of the church, notably the existence of educated parish priests throughout a territory, represents a potentially invaluable source of detailed information, particularly in the human rights field. Individual priests and ministers, and the church itself, may play a more sinister role, as is alleged to have happened in Rwanda. See AFRICAN RIGHTS, RWANDA: DEATH, DESPAIR AND DEFIANCE (1994); AFRICAN RIGHTS, WITNESS TO GENOCIDE, No. 1, (Oct. 1995).

6. In particular, it is not uncommon for development agencies to remain in theater, adapting their projects to meet the needs of emergency relief, but in the context of their longer-term development goals.

7. E.g., Save the Children Fund (SCF) in Somalia.

8. Some NGOs have specific projects which focus on women’s needs in the context of a broader overall project, e.g., Ethiopia’s Addis Ababa Fistula Hospital project. Other NGOs concern themselves with the role of women in particular societies, notably with regard to health
issues and some agricultural concerns. The formal or informal education of women assumes a particular importance. Even those NGOs which are specifically trying to assist children, such as SCF, often do so through their mothers.

9. Wateraid seeks to assist in providing reliable access to safe drinking water. Intermediate Technology works with communities to develop an appropriate and locally sustainable technological solution to their problem.


11. Certain development NGOs positively seek to work through such structures to encourage participation at all levels to avoid the risks of dependency and to promote sustainability. Even when political government structures have broken down, administrative structures may continue to function for a time (e.g., SCF's experience in Somalia). This gives development NGOs an advantage over incoming relief NGOs when the situation deteriorates into conflict. The former have already established contacts and have built up trust. See generally EDWARDS & HULME, NON-GOVERNMENTAL ORGANISATIONS: PERFORMANCE AND ACCOUNTABILITY, ch.1 (SCF and Earthscan, 1995).

12. This can be a problem in relation to the delivery of humanitarian assistance by relief agencies. See infra.

13. Relief in the form of foodstuffs can have the effect of undermining such activity as there is in the agricultural sector. In some cases, the provision of seeds and tools might provide significant quantities of food while encouraging the maintenance of local economic activity. See generally MACALISTER-SMITH, INTERNATIONAL HUMANITARIAN ASSISTANCE: DISASTER RELIEF ACTIONS IN INTERNATIONAL LAW AND ORGANIZATIONS (1985); MACRAE & ZWI, WAR AND HUNGER (1994).

14. E.g., in some areas in Somalia.

15. This was a particular problem in the case of the former Yugoslavia, probably owing to its proximity to and easy access from Western Europe.

16. This was said to be a problem for certain NGOs in relation to relief activities in Rwanda and adjacent States.

17. In the UK, seven big British aid agencies make up the Disasters Emergency Committeee (DEC) to coordinate fund raising and avoid charges of poaching funds in each other's constituencies. In the early 1990s, the fight both to raise funds and to maintain a high profile with donors put the DEC under more strain than at any time in its nearly thirty year history. THE INDEPENDENT, Dec. 21, 1994.


19. The significance of the role of governments as donors, directly or indirectly (as through European Union (EU) mechanisms) runs the risk of distorting the activities of NGOs and calling into question their independence. They need to maintain a balance between donor income, which ensures their ability to undertake independent action, and ear-marked governmental funding. The more they are dependent on governmental funding, the more they appear to be no more than subcontractors, and the more a government may be tempted to dictate terms.

20. This often involves issues of reproductive health, such as female circumcision and contraception.

21. E.g., Sightsavers which specifically assists in treating eye-conditions and in training local medical personnel to provide basic eye-care treatment.

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23. Since the ICRC surgeons have more experience in the field than most doctors with armed forces, the latter sometimes undertake placement in ICRC field hospitals in order to obtain the necessary experience.


26. For an excellent account of what "triage" actually involves in the context of operations conducted by medical personnel with armed forces, see McMANNERS, THE SCARS OF WAR, ch. 10 (1993), especially pp. 262-3. For a recent example of the real dilemmas which confront medical personnel, see Incidents regarding the medical assistance provided to civilians by the Dutch Defence Hospital Organization (KHO) in former Yugoslavia, Report by the Inspectie voor de Gezondheidszorg, 1996, Rijswijk. Something analogous to the principle of "triage" might be of assistance to relief agencies. See infra.

27. E.g., FIAN deals specifically with the right to food and the Centre on Housing Rights and Evictions (COHRE) with the right to housing.

28. SCF (UK) is increasingly using the language of the UN Convention on the Rights of the Child.

29. The thematic Rapporteurs include the Rapporteurs on Torture and on Extra-Judicial, Summary and Arbitrary Executions. Special Rapporteurs are country specific. States which have ratified the International Covenant on Civil and Political Rights (ICCPR) have an obligation to submit periodic reports on implementation, on which they are questioned by the Human Rights Committee. It should be noted that nonderogable human rights, which include the prohibition of torture, cruel, inhuman, or degrading treatment or punishment and the prohibition of arbitrary killings, remain applicable in situations of conflict. The State is responsible under human rights law for the actions of its armed forces, even where they act extraterritorially. See generally, THE UNITED NATIONS AND HUMAN RIGHTS (Alston ed., 1992), and McGOLDRICK, THE HUMAN RIGHTS COMMITTEE (1994).


31. This has even extended to full-scale international armed conflicts. See, e.g., MIDDLE EAST WATCH, NEEDLESS DEATHS IN THE GULF WAR (1991). The application of some of the legal rules to the particular facts in that report is, in some cases, controversial.

32. E.g., Amnesty International, Israel/Lebanon, Unlawful Killings during Operation "Grapes of Wrath," in particular the analysis of the Israeli attack on the UN compound at Qana, on April 18, 1996.


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36. Following its recent experiences in Somalia, Rwanda, the former Yugoslavia, and Chechnya, among others, the ICRC has engaged in considerable soul searching regarding its *modi operandi* and in particular how to protect ICRC personnel from deliberate attack. This suggests that it is willing at least to contemplate changing its methods of operation should that prove necessary and desirable. It is less clear that any changes have, in fact, resulted from this process.

37. NATSIOS, supra note 10, at 73.

38. At the conference referred to in note 33, one suggestion was that when armed forces prepare contingency plans, well before there is any question as to their actual deployment, they should work together with NGOs and IGOs. Even if a particular plan were not implemented, the experience might contribute to mutual understanding. On the issue of military-NGO cooperation, see Roberts, *Humanitarian Action in War*, Adelphi Paper 305, 1996, at 65–69, and Palwankar, supra note 1.


40. Even if there is a cease-fire, these activities can pose very real difficulties in the immediate aftermath of conflict. It may be that the disarming of fighters is best done by military forces, but the training of police by an international civilian police force, preferably unarmed. Examples of the difficulty in disarming former fighters include Angola and the position in Banja-Luka, Bosnia-Herzegovina, in the summer of 1997.

41. Hampson, conference paper, supra note 33.


44. Protocol I, art. 70 (1).

45. Id., art. 70 (2).

46. Id., art. 70 (3).

47. Id., art. 71 (1). The protection of NGO relief personnel from attack has been of increasing concern. ICRC delegates, for example, have been the victims of intentional attacks. The answer of the international community has been the UN Convention on the Safety of United Nations and Associated Personnel, G.A. Res. 49/59, Feb. 17, 1995, 34 I.L.M. 482. It may have a limited role to play in the protection of such personnel, where they come within its terms, but the major
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problem is likely to be, as usual, enforcement. The general objection of this author to the Convention in relation to peace enforcement personnel does not apply in relation to associated personnel, but the criticisms based on the drafting are still relevant. See Hampson, The Protection of "Blue Helmets" in International Law, 36 MIL. & L. WAR REV. 203 (1997).

48. Note the high threshold for the applicability of Protocol II of 1977, Additional to the Geneva Conventions of 12 August 1949, even if it has been ratified by the party in question. Protocol II, art. 1. On humanitarian assistance, see id., art. 18.

49. Id., art. 14.

50. Common art. 3, Geneva Conventions of 1949. The article is binding on the parties (not just individuals) to a non-international conflict; in other words, it is not binding just for the State forces. Contrast human rights law, Rodely, supra note 30.

51. The deteriorating respect for international humanitarian law led to the calling of an International Conference for the Protection of War Victims, consisting inter alia of High Contracting Parties to the Geneva Conventions, in the summer of 1993. The Conference asked for an Intergovernmental Group of Experts to study practical means of promoting full respect for and compliance with international humanitarian law. Following a preparatory meeting, the IGE met in January 1995. The recommendations focused principally on the need for increased dissemination and domestic implementing legislation. While these may be necessary, it is submitted that it is inconceivable that they will be sufficient. Effective enforcement, including measures by States to persuade other States to exercise jurisdiction, is essential.

52. On the need for improved protection, see MSF, Conference, supra note 1; Roberts, supra note 38. On "safe areas," see Hampson, supra note 2, especially pp. 407 and 413.

53. MSF, Conference, supra note 1; ICRC, Workshop, supra note 1; MacKintosh, International Responses to Acute Crisis: Supporting Human Rights Through Protection and Assistance, paper for conference at supra note 33.

54. Hampson, supra note 2, at 413.

55. Id. at 383-386; Roberts, supra note 38, at 39-44.

56. Roberts, supra note 38, at 82-84. The hard choices bear a certain resemblance to "triage" in the military field.

57. An example of such a doctrine is the British Army Field Manual, Peace Support Operations, First Draft, 1997. A possible functional distribution of roles is that the military should first create the conditions in which assistance can be delivered and protection afforded to civilians, possibly in demilitarized and geographically defined "safe areas." Then it might be easier for such assistance to be delivered and protection offered without the need for a high profile military presence. The forces would still need to be in theater and might need to patrol the perimeter of "safe areas."

58. Supra note 25.

59. Working together; MSF, Conference, supra note 1, at 17. MSF appears to have been the only external medical NGO in Srebrenica. Supra note 26.

60. There is a significantly qualified recognition of the confidentiality of the relationship in international law. Protocol I, art. 16(3) and Protocol II, arts. 10(3) and (4).


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63. Di Giovanni, supra note 61, at 144.

64. MSF, Conference, supra note 1.

65. E.g., medical personnel may learn how patients received their injuries; those delivering relief may learn how the recipients came to need it.


67. BUGNION, supra note 24.

68. MSF, Conference, supra note 1, at 66.

69. Id. at 15.


71. Id. at 69-70.

72. E.g., some journalists are willing to testify, but not others. Id. at 63.


75. E.g., in the UK the activities of development/relief NGOs are generally charitable, which brings considerable fiscal benefits. In the case of campaigning NGOs, such as Amnesty International or the Campaign against the Arms Trade, only some, if any, of their activities are considered charitable.


81. One of the significant features of the campaign is the mobilisation of medical opinion led by Robin Coupland of the ICRC's Division of Health Operations. This has acquired a momentum of its own and is not confined to the impact on civilians, but is focusing on the nature of the injuries caused by certain weapons. See Coupland, The Effect of Weapons: Defining Superflous Injury and Unnecessary Suffering, 3 Medicine and Global Survival, at A1 (1996);
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THE SIRUS PROJECT: TOWARDS A DETERMINATION OF WHICH WEAPONS CAUSE “SUPERFLOUS INJURY OR UNNECESSARY SUFFERING” (Coupland ed., 1997).


83. Prokosch, Small Calibre Weapon Systems: Bringing the Dum-Dum Ban up to Date, Papers in the Theory and Practice of Human Rights No. 11, Human Rights Centre, University of Essex, 1995; Prokosch, Cluster Weapons, Papers in the Theory and Practice of Human Rights No. 15, Human Rights Centre, University of Essex, 1995. The development noted in note 82 (i.e., the mobilization of professional medical opinion) may result in limited but effective campaigns on particular weapon use, notably anti-personnel use of incendiary weapons.

84. E.g., EDWARDS & HULME, supra note 11.

85. MINEAR et al., supra note 34; Benthall, Disasters, Relief and the Media, 1993 I.B.


87. E.g., the ICRC is organizing a workshop in March 1998 as a practical follow-up to the one referred to in von Flüe, supra note 1. The first workshop is seen as having involved general discussion. The second is designed to be more practical and concrete.