

The Relevance of Neutrality in Humanitarian Action in the intra-state Conflicts of the 20th and 21st Century.

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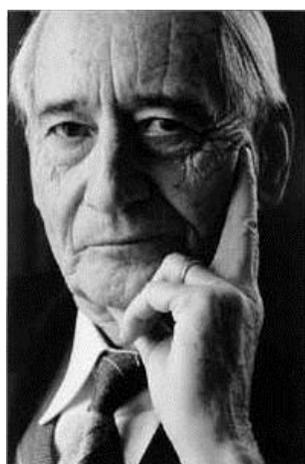


Table of Contents

Research Question:	3
Justification:	3
Methodology	6
Main Narrative / Case study / Analysis	7
The premise of change (historical perspective):	7
The aftermath of World War 2:.....	9
The birth of modern humanitarianism	12
The Cold War.....	13
Vietnam.....	14
Biafra.....	15
Post-Cold War.....	17
Somalia	17
Rwanda and Zaire	18
Kosovo	20
The Agreement on Ground Rules in South Sudan.....	21
The aftermath of the 2001 terrorist attacks on the United States	22
Afghanistan	22
Pakistan (the ACF experience)	25
Why would humanitarian agencies practice neutrality?	27
The axis of neutrality (From IHL regulated inter-state conflict to negotiated access, coercion and compromise)	30
Complexity grows.....	34
Informal axis of neutrality	34
Is negotiation of IHL principles more trouble than it's worth?	36
Dilemmas: The politics of principles, the decline of neutrality and dilemma of accountability	37
Accountability.....	41
The Perceptions of Neutrality:	43
Those aid agencies who care about neutrality (means justify ends)	43
Those aid agencies who don't care about neutrality (ends justify means).....	44
Beneficiaries: What do they think about neutrality?.....	45
Alternatives not always secular or neutral:	47

Conclusion:	49
Bibliography	51
References.....	56

Research Question:

Neutrality in humanitarian action was conceptualized in the 19th century context of inter-state conflict and recognition by state belligerents of the precepts of International Humanitarian Law (IHL). In the late 20th and early 21st century context of intra-state wars involving one or more armed non-state actors, is neutrality in humanitarian action relevant?

Justification:

The concept of neutrality in humanitarian action has its roots in the Red Cross and Red Crescent Movement and morale concept of humanity in providing for war wounded on the battlefield. Beginning in the latter half of the 19th century, the non-interference in hostilities and impartiality of humanitarian actors, and granting of safe access for the provision of aid to the victims of war was advocated for by the founder of the International Committee of the Red Cross (ICRC), Jean Henry Dunant.

The idea of humanitarian principles is simply that war has limits⁷. The Lieber Code of 1863 represents the first attempt to codify the laws regulating war. Although they were prepared during the American Civil war, they correspond to a great extent to the laws and customs of war existing at that time.⁸ The Lieber Code “strongly influenced the further codification of the laws of war and the adoption of similar regulations by other states”⁹. The limits of regulated warfare began to have international legal underpinnings in the late 19th century in Hague law and Geneva law, marking the origins of what are referred to as International Humanitarian Law, outlining the limits and conduct of hostilities and defining who were legitimate military targets and who were not.¹⁰ An aspect of IHL provided for warring parties to give safe access to humanitarian organizations impartial provision of aid predicated on the organization’s non-interference in hostilities¹¹, commonly denoted as neutrality.

The globalizing effects of World War 2 saw the concept of humanity take on a more cosmopolitan expression that was intended to prevent the kind of conflict that had resulted in an estimated 60> million dead¹² and massive suffering of civilian populations caught up in the conflict.¹³ Aid agencies that provided relief and reconstruction in the aftermath of the war had

realized new capacity and longevity made possible through government funding¹⁴ and would turn their eyes to the poverty and suffering of the ‘third world’ and the emergence into statehood of the former European colonies.¹⁵ The architect of the 1949 revision of the Geneva Conventions, Jean Pictet outlined in his 1955 book, the seven fundamental principles of Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality which were formally adopted by the Red Cross in 1965.¹⁶

These seven principles backed up by the considerable weight of IHL serve as the metric by which debate over aid agencies would be measured in the years to come.

Debate over neutrality took place on two fronts, ideological and functional. An ideological debate over its relevance saw different expressions of humanitarianism emerge.

The ideological debate and discourse has essentially been defined by as those for whom the means defines the ends often referred to as ‘Principled’, and those for whom the ends defines the means often referred to as ‘Pragmatists’.

- ‘Pragmatists’ saw provision of assistance to those in need as of paramount importance. This not only opened the door to lack of adherence to apolitical action, it allowed for flexibility on many fronts. If donor government political agendas were aligned with aid agency humanitarian ones, funding would be easier and large results could be realized. This approach also realizes the flexibility for an expanded humanitarian agenda where provision of aid can go beyond lifesaving and address the roots of poverty, and where poverty contributes to the inequities that fuel conflict, the aid could address that as well.¹⁷
- ‘Principled’ aid organizations view the defense of principles as often on an equal par with the need to provide assistance. Maintaining a narrower view of humanitarian assistance as necessarily in the context of conflict, lack of adherence to apolitical behavior either through donor agenda alignment, attained access by any means or development activities ran the risk of becoming partisan, contrary to the concept of humanitarianism.¹⁸

Functionally principled approaches to provision of humanitarian aid predicated on the neutral status of aid agencies and civilians have faced enormous challenges. The end of the Cold War marked a turning point in the way that humanitarian emergencies were perceived.¹⁹ American and Russian disinvestment in non-strategic countries saw a marked proliferation of intra-state armed conflict. The concepts of neutrality in International Humanitarian Law were based on a 19th century inter-state model,²⁰ and in these ‘new wars’ the position of the state in international affairs and on battlefields changed profoundly. War was less centered on protecting borders with large, disciplined conventional armies and more about disputing internal spaces with small, undisciplined irregular forces.²¹ Of greatest concern for aid agencies in the ‘new wars’ context is the increased numbers and range of victims, and the pronounced presence of non-state combatants who often serve as gatekeepers for affected populations.²² In these contexts the

provision of IHL may be breached, and humanitarian access challenged as a deliberate strategy of war.²³

The intra-state conflict 'war economies' see civilian suffering as something that can be manipulated by belligerents into political capital, calling attention to their cause. Humanitarian aid to civilians can be manipulated and converted into military capital, potentially prolonging conflict and exacerbating the humanitarian crisis.²⁴ In such circumstances neutrality sometimes necessarily equates to inaction where atrocities are being committed, as was the case of ICRC in the Biafra conflict in the late 1960's.²⁵

Over time, amendments attempting to expand IHL and aid agency reinterpretations of neutrality to limit IHL restrictiveness have both attempted to adapt to the situation²⁶, with varying degrees of success.

Aid agency attempts to negotiate humanitarian access in these wars predicated on IHL adherence has proven difficult.²⁷ Access agreements have had to rely on coercion of non-cooperative belligerents with the threat of coordinated withdrawal of humanitarian aid. A balancing of the pragmatic interests of aid agencies and belligerents maintains the illusion of IHL adherence.²⁸

The relevance of neutrality also faces challenges from the very organizations projecting it. The largest single source funding for humanitarian aid organizations comes from governments.²⁹ Whether willing or unwilling partners, aid organizations working in fragile states have been used as instruments to promote the stabilization, state building, peace building and, in later years, counter terrorism agendas of donor countries.³⁰ In the age of 'New Humanitarianism'³¹ the increasing securitization of aid and promotion of good governance models that advocate strong central government are often at odds with the local political reality and productive contributions to the peace process.^{32 33} These departures from practiced neutrality have yielded complex outcomes, some of which have compromised not only humanitarian access to civilians but caused the motives and ethos of humanitarian agencies to be put in question.^{34 35}

According to Jean Pictet: "*Humanitarian aid should not be used for political purposes or to meet political agendas; it should be delivered without taking sides or engaging in controversies.*"³⁶

The promotion of political agendas amongst other deficits has seen the International Red Cross describe humanitarian activity as "the world's largest unregulated industry".³⁷ This and the trending towards 'new humanitarianism' brings into question the accountability of aid organizations. Although the Red Cross Code of Conduct purports accountability to donors and beneficiaries alike³⁸, the existing mechanisms bias upwards accountability to donors, leaving the beneficiaries of humanitarian aid largely voiceless.³⁹

Recent efforts to listen to the concerns of beneficiaries have revealed, amongst other things, that neutrality is of little perceived importance to the consumers of humanitarian aid.⁴⁰ In some cultures it is even perceived as having negative connotations.⁴¹

In the face of continued challenges to the functional use of neutrality in intra-state conflicts the question must be asked if neutrality is a necessary and relevant aspect of the principles that guide humanitarian action.

This paper will attempt to address some of the historical events and issues that have informed the debate and discourse.

Methodology

The methodology uses a chronology of events since World War 2 as a vehicle for understanding the premise of change, in that change in the nature of conflict over time has necessarily and correspondingly seen change in the nature of neutrality, its interpretation, utility and relevance.

Historical events identified in this paper by no means encompass all of the experiences that have tested the relevance of neutrality in humanitarian action. They are a series of case studies meant to show an evolution over time that helps illustrate my basic point.

The rationale for highlighting the events I have chosen is that they are some of the most commonly referenced in scholarly literature.

This paper relies almost exclusively on review of secondary data that leans heavily on independent research institutions on the subject of humanitarian aid such as the Overseas Development Institute⁴², The Feinstein International Center⁴³, The Active Learning Network for Accountability and Performance in Humanitarian Action⁴⁴ and The Humanitarian Accountability Partnership⁴⁵.

I am influenced by the work of such eminent scholars as Michael Barnett, Thomas Weiss, Alex De Waal, Hugo Slim, Mark Duffield, Antonio Donini, Peter Walker and Dan Maxwell. In sighting these scholars I am standing on a well-established corner of ideological thought on the subject matter.

The paper reviews the motivation and reasoning behind any aid agency decision to practice neutrality.

The paper then examines how intra-state war economies motivate belligerents to not adhere to the neutrality precepts of IHL. It also examines how aid agencies negotiate access to civilian populations trapped in these conflicts. In explaining how this access is negotiated and maintained on so many formal and informal levels the paper questions the functional relevance of insistence on recognition by belligerents of IHL predicated neutrality.

The paper examines some of the dilemmas inherent in aid agencies practicing neutrality. This includes the issue of aid agency accountability or lack thereof. Review of accountability directs the discussion towards those most silent in the debate, the civilian beneficiaries of humanitarian aid.

The paper's examination of the views of the clients and consumers of humanitarian aid moves to examination of alternatives to the dominant western aid organization model, and to the western dominated debate on the importance of principles.

The paper argues that the utility of neutrality in humanitarian action in conflicts is for the attainment of trust, and that alternatives for attaining trust exist. It goes on to argue that alternatives for attainment of trust have not been pursued adequately by Western aid agencies in that they have a sub-culture that is adverse to change. The paper finally argues that the practice of neutrality is not irrelevant, but is less relevant than previously thought, and merely one of many tools in the toolbox for attaining trust that leads to humanitarian access.

Main Narrative / Case study / Analysis

The premise of change (historical perspective):

Neutrality is a form of political expression which by its refusal to engage with partisan interests in war time exists in a state of endless ethical and political negotiation. As the premise and dynamics of warfare have changed, so has neutrality's negotiated status.⁴⁶

The 19th century saw the first Geneva Convention held in 1864, in which we see the beginnings of a form of operational and universal neutrality with growing underpinnings of International Humanitarian Law. The Geneva Conventions of 1949 was informed by the tragedy of the Second World War, made especially poignant by the discovery of the Nazi concentration camps and the extent of the mass extermination carried out within their walls. The conventions were intended to fill the gaps in international humanitarian law exposed by the conflict.⁴⁷

The Red Cross view expounded by Jean Pictet denoted that humanitarian aid should not be used for political purposes or to meet political agendas; it should be delivered without taking sides or engaging in controversies.⁴⁸ The 1968 Biafra conflict challenged this. Pitting non-state actor against state actor, this intra-state conflict created conditions unforeseen in the precepts of inter-state conflict that informed the design of existing IHL.⁴⁹

The nature of conflict had changed and with it the status of neutrality. The resulting debate over the relevance of neutrality in humanitarian action informed the 1977 Geneva Convention and Additional Protocols (one dealing specifically with internal conflicts),⁵⁰ as well as the formation of a new 'principled' aid organization with its own views on neutrality. Bernard Kouchner, one of the founders of Medicins Sans Frontieres (MSF), argued that, in the Biafra context neutrality imposes silence, and that if one's core value is justice, silence is reprehensible.⁵¹

The ideological debate sparked by Biafra continued. As the cold-war ended intra-state conflicts became more common. The turn of the century and the Global War on Terror (GWOT) further challenged the relevance of neutrality.

The 20th and early 21st century saw distinct changes in the nature of warfare, and for the purpose of examining neutrality's reaction and adaptation to said changes, examination of distinctions between eras is prudent. World War 2, the Cold War era, The post-Cold War era and the post 9/11 Global War On Terror (GWOT) era all marked significant changes in the nature of conflict that affected the utility and status of neutrality.

Having mentioned the origins of International Humanitarian Law and neutrality in humanitarian action, review of the period that established international humanitarian law on a truly global scale, is prudent.

If war is a catalyst and accelerator of change⁵², the change that coalesced in the aftermath of World War 2 marked a maturity in the application of humanitarian action that was unprecedented. It is this significant point in time we will begin with.

The aftermath of World War 2:

The globalizing effects of the aftermath of World War 2 were bold. The excesses of the war and the financial collapse that preceded it served as a catalyst that created a sense of realism and served as a turning point and accelerator of trends towards change in policies and practice.

The pre-World War 1 minimalist government model and free trade ideology of Laissez-faire economics led to people in great need having to fend for them-selves. In the inter-war period, disengaged isolationism led to protectionist barriers that exacerbated the effects of the depression.⁵³

Economic crisis compounded by the devastation wrought by war would made clear the facts that the state needed to be more engaged in the lives of citizens going through hard times and in international coordination that would avoid the preconditions that precipitated such widespread mortality and human suffering.⁵⁴

Previously novel ideas came to the forefront of state and international policy. Economic stability would underpin national and regional security and stability, and the state, newly invigorated in the roll as caretaker of its citizens, would ensure this. The model would be defined by the one Western economy that was not left in tatters and was conversely strengthened by the war; the United States. The economic imperatives of global coordination were realized through the establishment in Bretton Wood, New Hampshire of the World Bank System and the International Monetary Fund (IMF) that would assist in promoting the model of market friendly engaged world states that promoted economic growth, protected the general welfare of its citizens and promoted security.⁵⁵

World War 2 laid bare the huge gaps in existing international diplomatic mechanisms for mediation and coordinated sanction for deterring would-be aggressors. The final piece of the puzzle that would augment the economic stabilization mechanisms of the World Bank and IMF was the creation of the United Nations representing the means by which the international community could influence, contain, and if need be defeat future would-be spoilers of the peace.⁵⁶

Born of the members of the anti-axis powers of the war, the UN's aims, function and structure was agreed on by the United States, the United Kingdom, Russia, and pre-communist China in October 1944. In April of 1945, 50 countries drew up the 111 article charter of the UN, which was ratified by the permanent members in October of the same year. "The basic structure of the new order was finalized when, in December 1948, the UN General Assembly adopted the Universal Declaration of Human Rights."⁵⁷

In short, the UN evolved out of the allied alliance of World War 2 with three explicit purposes:

1. To provide a structure to head off and if necessary deal with future wars;
2. To introduce instruments which would mitigate the worst excesses and failings of capitalism, thus increasing equality
3. Through the declaration of human rights, to promote liberty”⁵⁸

The forum and legal framework had been established for an orderly transition of European colonies into independent states.⁵⁹ This process would, however be complicated by the polarized ideologies of the United States and the Soviet Union.⁶⁰ The cold war rivalry would play itself out in the newly independent states that would emerge in the 20 year period that followed. Choosing to avoid the dangers of direct conflict in a ‘hot war’ the Americans and Soviets would use the vulnerable and fertile ground of former colonies to sew ideological seeds and force alignments to one sphere of influence or the other.⁶¹ Support to new states was less partnership than patronage as they were manipulated often to fight wars as proxies. Colonialism would be replaced by neo-colonialism and its unwilling bed partner neo-humanitarianism.⁶² In this complex political environment “development and modernization became intertwined in doctrines of anticommunism.”⁶³

The 1948 UN General Assembly adoption of the Universal Declaration of Human Rights can be viewed in different ways. As a symbol of globalization, humanitarianism now had a benchmark standard that recognized global citizenry. This was a significant departure from the immature and patronizing motives of past efforts of colonial missionaries and abolitionists which assumed a universality of the human family, with the precondition of Christian salvation and understanding that Western civilization was the pinnacle of social development to be emulated.⁶⁴ Viewed another way the universal declaration of human rights represented a form of political expediency, a clever knee jerk reaction of war weary Europeans who exemplified in their actions the levels to which the existence of inhumanity in the world could commit unspeakable crimes.⁶⁵ Perhaps the era to come, in the sleepy corners and colonies of the world, not direct witnesses to the carnage and death of 60 million people, the claim of western ascendancy to civilizations pinnacle status would be more readily palatable as the model to emulate now that there was some formal expression of humility and equality that came with it.

The expression of a common humanity in uniting the world would still need regulatory frameworks to deal with the possibility of war if the established diplomatic forum did not succeed in thwarting hostilities. 60 million dead made clear the need to put limitations on what was acceptable in warfare and how far it go, or rather reiterate the existing limits and identify and fill gaps where necessary. The idea that war had limits is expressed in international law, specifically in International Humanitarian Law (IHL). “IHL is often divided into two strands: ‘Geneva’ and ‘Hague’ law.”⁶⁶ Hague law concerns the conduct of hostilities, and is codified in a series of declarations and treaties that followed the first Hague conference in 1899. Importantly Hague law principles denote that the right of belligerents to adopt means of injuring each other is not unlimited. Also in this branch of law are the roots of the principles distinguishing civilians as

separate from legitimate military targets.⁶⁷ Aspects of Hague law would later be incorporated into Geneva law.⁶⁸

Geneva law is embodied in the Geneva Conventions. The provision of relief to civilian populations by an impartial body ‘such as’ the International Committee of the Red Cross is stipulated in the Geneva Conventions. Their access predicated, importantly, on the principle of non-interference, commonly interpreted as neutrality. The deficits in the conventions as they existed before WW2 were evident by ICRC inaction over the Nazi death camps. Recognizing the gaps in international humanitarian law exposed by the war, the existing Conventions regarding ‘wounded and sick’ and ‘prisoners of war’ were studied and revised. Most importantly a new Convention was drafted on the condition and protection of civilians in times of war. In 1949 and 1950 staggered ratifications by states established broad, and in the years of emerging states, growing acceptance of the following four conventions.

Article 1:	“Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
Article 2:	Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
Article 3:	Geneva Convention relative to the Treatment of Prisoners of War;
Article 4:	Geneva Convention relative to the Protection of Civilian Persons in Time of War.”

⁶⁹

The most important revision was the addition of the fourth Convention, offering civilians a similar protection to other victims of war, thus closing one of the most serious gaps exposed by, not only the Second World War, but all that came before it.⁷⁰

The birth of modern humanitarianism

The uncoordinated history of private voluntary humanitarian agencies had seen great strides in professionalism in the aftermath of World War 1 and during World War 2. The planning needed had started prior to the end of hostilities. The United Nations Relief and Rehabilitation Administration (UNRRA) was a new muscular body that would address the challenges. In 1945 the Food and Agriculture Organization was established to rebuild Europe's food production capacity, joined in 1946 by the United Nations Children Fund (UNICEF) and the World Health Organization (WHO) focusing on acute and long term institutional health needs respectively. Displaced population needs would be addressed by the 1947 creation of the International Relief Organization, the predecessor of The United Nations High Commission for Refugees (UNHCR).⁷¹

The war had put the world on a new trajectory that had accelerated change to the point where an international community existed with strong enough economic and diplomatic mechanisms to enforce the new order.⁷² The patronizing language that defined the past relations (both for imperial powers and humanitarians) between civilized and uncivilized, between state and its people, between haves and have-nots was replaced with language that denied difference, a language of equality. "After a war in which cruelties were often justified because of perceived differences, it became essential to remove these differences, or at least discredit them."⁷³ A secular inclusive humanity that embraced diversity and a cosmopolitan view of the future found its best expression in the newly focused and newly empowered global aid society.⁷⁴ The pre-war model of aid agencies that lived and died with emergencies⁷⁵, largely sponsored by private donation was replaced by a new fraternity of Non-Governmental Organizations (NGO's) that had been used as the workhorses of government funded post-war recovery, and to an extent, post-war reconstruction.⁷⁶

The template for what was to come had been established. Inspired by a new global ideology of a common humanity and their place in it as a global force for expressing this change, NGO's bureaucratized⁷⁷ to take advantage of the new funding structures available from governments, particularly those of the United States. The dichotomy between government policy to use foreign aid in affecting mechanisms of influence and control over the burgeoning of democracy in the world in the age of neo-colonialism was at some levels at odds with the morale aspirations of aid agencies reliant on it for funding. "Humanitarianisms emerging principles of humanity, impartiality, independence and neutrality were crafted to lift humanitarianism from the muck of politics and power,"⁷⁸ but the dye were cast. The piety of humanitarian principles that gave the allusion of hiding it from political agendas also faced a conflict from within its own ranks. Wartime relief in the midst of belligerents saw the utility of principles flourish, but many agencies that based their values on the profound experiences of post-war activities saw little point in relief without a continuum that addressed root causes of disparity. These 'alchemists', hereto referred to as 'pragmatists' sought to transform social and economic disparity.⁷⁹ Fundamentally this made sense on a humanitarian level, but the implications in terms of political alignment to the foreign

policy that was less altruistic in nature were profound. In the years to come, initial concern over the ironic marriage between neo-colonialism and neo-humanitarianism would prove justified as the effects became more pronounced.

The Cold War

As the ideologically polarized relationship between the Soviet Union and the United States escalated in the early 1950's through Soviet attainment of nuclear capability, the risks of direct conventional confrontation decreased and the cold war promised to play itself out on the global stage as spheres of influence were carved out of vulnerable undeveloped parts of the world. The Global South having emerged from the era of imperial colonialism would host the new debate and in many cases suffer the wrath of whichever great power it had declined allegiance to.⁸⁰

The uncomfortable alliance between western NGO's and their Western donors had not had a major effect on the aid agency principals of neutrality and impartiality as media attention to the geopolitical struggle for influence uncovered the injustices of poverty and deprivation. As long as NGO humanitarian concerns towards impartial identification of need were in sync with the Western policies of development, coexistence seemed to have little to complain about.

In examining how humanitarian principles were affected by the cold war era two examples will be used to elaborate distinct schools of thought that were emerging, and whose ideas and influence will be examined in more detail in latter sections.

- What I shall term as 'principled' organizations define humanitarianism as the neutral, independent, and impartial provision of relief to victims of conflict and believe that humanitarianism and politics must be segregated. In general, principled organizations, which are often accused of seeing themselves as the "high priests" of humanitarianism, fear that the relaxation of their founding principles or expansion of their mandate will open the floodgates to politics and endanger humanitarianism.⁸¹
- What I shall now term as 'pragmatist' organizations, being less adverse to political processes, belief that is possible and desirable to have a more transformative approach that attacks the root causes that leave populations at risk. Aid agencies involved in restoring and fostering economic livelihoods express a pragmatist orientation. Pragmatists organizations are certainly political, at least according to the perspective of principled organizations; however, even those who have subscribed to a transformational agenda present themselves as apolitical to the extent that they claim to act according to universal values and avoid partisan politics."⁸²
- Solidarist. This path goes beyond the provision of assistance and protection to address the root causes of conflict, which are political at the core. Wider than the traditional

humanitarian brief, their anti-poverty thrust and social transformation agenda mixes elements from humanitarian, human rights, and developmental world views, with heavy emphasis on advocacy.⁸³ At times this path leads partisan political stances through choosing the 'right side' in a conflict.

- Faith based organizations. "The world's major religious traditions, western and non-western alike, embody humanitarian affirmations and obligations. The Christian tradition, expressed for example in missionary work, affirms the core values of compassion and charitable service. Islam embraces similar core values and has created organizations to express them that are in some respects similar to western religion-rooted organizations. In addition to international faith-based agencies that do not usually engage in proselytizing, there is a wide variety of religious organizations at the local level. Faith-based entities may themselves embody principled, pragmatist, and/or Solidarist features."⁸⁴

Vietnam

The Soviet / American proxy-war between North and South Vietnam presented an ideological chasm over neutrality between two American funded NGO's that had emerged from the US funding of post-war relief and reconstruction to become powerful players in the arena of international humanitarianism. Two of the leading American organizations benefiting from government funding were Catholic Relief Services (CRS) and CARE. CARE confidently reflected secular ideals of humanity, while exemplifying a pragmatist approach.

CRS, less secular, already had leanings towards catholic minorities in Vietnam⁸⁵, but in 1967 their funneling of aid meant for refugees to South Vietnamese militia groups, and their ignoring the needs of North Vietnamese was exposed by a Catholic Journalist appalled at what he termed CRS's "morale and physical damage to the Vietnamese culture and its people"⁸⁶. They stood accused of essentially being agents of the US military. The comfortable relationship between US government foreign policy and the humanitarian aid agencies funded by the US as an expression of this policy were no longer as they had been.

The United States and a humanitarian organization funded by it were not the solution to a humanitarian emergency, but the cause of it. The US policy of winning of hearts and minds in the communist controlled North through universal humanitarian kindness had demonstrated its covert and hypocritical agenda, and cast doubt on American NGO's as willing partners in this deception.⁸⁷ The perceived fears of politicization that NGO's had since the end of World War 2 were being demonstrated, and the ambivalence towards embracing the principles of independence, neutrality and impartiality in service to a common humanity had shown its downside. This did not discount the virtue of a pragmatists out-look per say, but it did bolster the argument for wartime adherence to these principles by humanitarians.⁸⁸

A second example that changed the understanding of the importance of principled humanitarian action in war time was another geopolitical struggle that played itself out in the global south, however this time it was not a polarized Soviet / American proxy-war, but a harbinger of the deeper complexities to come.

Biafra

In 1967 a secessionist movement in the oil rich Nigerian state of Biafra brought about a remarkable new chapter, which to some was a turning point in the still young era of new-humanitarianism. Many factors contributed to the session, but as in many former African colonies, a young country with little sense of itself as a homogenous entity, and struggling with traditional ethnic tensions⁸⁹ exacerbated by divide-and-rule colonial and post-colonial policies sought equilibrium in bloodshed.

Cold War political logic that left the creation of new states via succession, especially where oil was involved, to the equilibrium of Soviet / American discourse, denoted that UN involvement in either a political or humanitarian way did not occur.

The Nigerian government took tact of cutting off supply lines to literally starve the rebels out. The humanitarian crisis picturing starving children captured world attention, a fact that did not escape the rebel forces. They understood the simple functional, if inhumane equation that western sympathy derived from their starving populations meant political capital, political capital could equate to humanitarian aid, which if diverted could be converted into military capital. The Nigerian government, fearing that military assistance was being disguised as humanitarian aid limited ICRC access to pre-inspected daytime flights from Nigerian airfields. The Biafran authorities banned flights in the daytime, ostensibly on military grounds. The Geneva Conventions didn't cover a scenario like this. Needing state consent to act, ICRC continued to negotiate access as the famine spread. In a principled quagmire over lack of recognition of their neutral status ICRC pulled out.⁹⁰

For many, neutrality seemed like a poor excuse for inaction.⁹¹ Defying the dominant political will of British and American policy that supported the Nigerian government, Oxfam and Catholic Relief Services broke NGO orthodoxy agreements regarding neutrality and sided with the Biafran rebels.⁹² A joint force of church organizations and NGO's facilitated the largest civilian airlift in history⁹³, bringing in food and other relief supplies under cover of night and at considerable risk to personal safety. In the aftermath of this herculean humanitarian effort to save lives, post war accusations emerged that the manipulation of aid by Biafran forces resulted in 18 months of prolonged conflict and 180,000 or more⁹⁴ lost lives as a direct result.

As the conflict in Vietnam demonstrated rifts in the pragmatist camp regarding the downside of not practicing neutrality, so the conflict in Biafra saw a converse rift emerge just as, if not more significant that demonstrated the limits or deficits of practicing neutrality in what would now become the complexity of the principled camp.

Biafra presented a moral and practical conundrum. The dictates of neutrality and subsequent inaction were clearly not acceptable, and yet the moral precepts of the humanitarian imperative⁹⁵ that demanded action equated to “revolutionary humanitarianism”⁹⁶ where an abhorrent calculation is implied. This calculation would derive the median mortality rate between lives saved from famine relief activities and lives lost from the prolonged conflict, indirectly due to said activities. At the time the conundrum was less pronounced. The airlift was an act of heroism, and ICRC inaction brought back memories of past inaction in regard to the Nazi death camps. This comparison was made not outside ICRC ranks but from within.⁹⁷

An ICRC doctor named Bernard Kouchner who witnessed the famine openly criticized the Nigerian government for the blockade and ICRC for inaction, comparing it to their inaction during the holocaust. Kouchner’s advocacy along with other doctors and journalists led to the creation in 1971 of *Medicins Sans Frontieres / Doctors Without Borders (MSF)*. MSF would, in the decades to come have a profound roll in both emergency response and advocacy for crisis affected people. Although in the Pragmatist camp with a charter almost identical to that of ICRC, MSF occupied a complex place in regard to neutrality, embracing and denying aspects of it simultaneously. Committed to the humanitarian imperative, they would not allow themselves to be trapped by issues of sovereignty as ICRC was in Biafra. They would expect recognition of their neutral status by belligerents, and if it was not forthcoming they would put the humanitarian imperative and universal human rights first and combine it with a healthy dose of public advocacy that would name and shame the uncooperative party, a practice denoted as *temoignage*, meaning ‘bearing witness to the suffering one sees’, which was one of MSF’s founding central concepts.⁹⁸

ICRC was profoundly affected by the failure in Biafra. International Humanitarian Law as put forth in the Geneva Conventions was designed to be an adept tool for humanitarian action in times of war, but in the context of Biafra it became impotent. Unable to embrace Oxfam’s radical example, they were still acutely aware that ‘new wars’ like that in Biafra required a revised mandate.

In 1977 Additional protocols were designed to deal with the complexities of the ‘new wars’ in which belligerents were non-state actors (NSA’s). Their focus was primarily to strengthen protection for civilians. The language of existing protocols was also revised to expand fundamental guarantees to persons in the power of an adverse party. As the nature of war would change in years to come, the protocols would be revisited again.⁹⁹

Post-Cold War

As the threat of nuclear war dissipated another shift in the geopolitical front would present further challenges to the principals that guide humanitarian action.

The dichotomy that defined the Cold War promoted state sovereignty and paid leaders handsomely for allegiance and maintenance of the façade.¹⁰⁰ The functionality of these states was less of a concern than their mere existence and allegiance to those who tallied the score card of geopolitical spheres of influence. These policies had promoted authoritarian regimes maintained through the support of their benefactor.

As the new liberal era, perhaps naively, envisaged a natural trend towards greater stability and security through the potential that a truly globalized economy of democratic free market oriented states would bring, a calculation was missed. The Americans and Russians halted the burdensome expenses associated with support of friendly regimes. Colonial constructs that had become nation states during the cold war and the emerging new nations of the former Soviet Union released the pent-up rage against their authoritarian rulers. The politics of ethnic sidelining and economic deprivation sought equilibrium, and an explosion of intra-state conflicts proliferated. These ‘new wars’ created new terminologies such as ‘ethnic cleansing’ and ‘complex humanitarian emergency’ to describe the chaos that unfolded.¹⁰¹ The legacy of weak governments in the developing world was powerless to provide security to conflicts that realized civilians, not as collateral damage, but as the targets and political capital to be won. In irregular wars between non-state actors where civilians were the political capital being fought over, where would IHL or humanitarian principles find relevance?

The UN’s political paralysis during the cold war was over, and it attempted to fill the vacuum left by the super powers in addressing the new situation.¹⁰² Reversing the doctrine of non-interference the UN focused on violence within states, bringing its new political clout to bear in eliciting military support for peace keeping operations. The humanitarian agenda would have to change to clean up the mess left by the cold war. State building that sought sustainable solutions to the vulnerabilities and inequity that often catalyst conflict would now see a reversal in tact from a top down cold war approach to a bottom up approach.¹⁰³

Somalia

The collapse of the Somali regime of Siad Barre in 1991 optimized the afore stated model of cold war supported authoritarianism represented by weak institutions and ethnically sidelined populations seeking equilibrium in a new era. The unfolding of the civil war between rival Somali clans precipitated a growing famine that coincided with a drought in the region,

exacerbating the plight of the population. The UN response came in the form of the UNOSOM peacekeeping / humanitarian operation, heavily supported by American money and troops. Unprepared to invest in the diplomatic political effort of a trusteeship, humanitarians and peacekeepers attempted to apply their trade in an environment absent of legitimate authority, formerly the prerequisite for consent and recognition of humanitarian principals.¹⁰⁴ Non-state actors in the form of war-lords ransomed their people's plight for aid, demanding protection money. It ended in a chaotic withdrawal, the largest refugee camps in the world, confusion over the lack of relevance of humanitarian principles, and a sense of unease towards possible future investment in similar new wars.¹⁰⁵

Although not widely recognized in retrospective analysis of historical events, the tone set by the Somalia debacle was one of apprehension over the possibility of being burned again in another African conflict over counties with little geopolitical value in a post-cold war world.

Rwanda and Zaire

In 1994 in the former Belgian colony of Rwanda polarized relations between Hutu Majority and Tutsi minority ethnic groups that had seen significant displacement of minority populations in the early days of independence. A 1993 UN sponsored peace accord between Tutsi rebels and the Hutu dominated government was being monitored by a small UN peace keeping force. Incremental indications of the potential for ethnic violence on a massive scale realized commendable stretches of neutrality by ICRC to warn the UN, together with the support of the commander of the peace keeping force, General Romeo Dallaire.¹⁰⁶ The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN General Assembly in 1948 was applicable¹⁰⁷, but an intricate debate regarding neutrality, impartiality and the context of mandate that would lead to action¹⁰⁸, whether by ignorance or design the UN opted for inaction and pulled out. An estimated 800,000 ethnic Tutsi and moderate Hutu were slaughtered in the worst genocide since the holocaust. Tutsi rebel forces took the country as one million Hutu civilians and genocide perpetrators fled into neighboring Zaire.¹⁰⁹

This precipitated a secondary humanitarian crisis that led to a cholera epidemic killing and estimated 50,000 people in four weeks. In a knee jerk reaction to the inaction over the genocide led to an enormous humanitarian response. Disease was contained but continued UN and international community inaction allowed genocide perpetrators to use the civilian refugees as human shields as they comfortably rearmed and used the camp to stage future attacks, intent on finishing the genocide they had started. There was discomfort amongst aid agencies about assisting people who had murdered others, particularly since few of the killers expressed remorse, creating a moral dilemma for humanitarians between justice and humanity.¹¹⁰ Some agencies refused to participate and pulled out, but with little effect. In the years that followed the

result of this situation led to further attacks in Rwanda followed by Tutsi government retaliation and multinational civil conflict in the former Zaire that exacerbated and even outlived the civil war in that country.¹¹¹

The dilemma for aid agencies regarding neutrality was that refusing to make a judgment about who is right and who is wrong in many ways assumes a legal and moral equality between oppressors and their victims. Many of the advocacy-based organizations called for international forces to separate combatants and other ge'nocidaires from civilians in the refugee camps. This can be considered as signaling a wider movement in the humanitarian agencies concerned to see individuals brought to justice.¹¹²

The failure to prevent the highest mortality rates ever recorded in a refugee population haunted many organizations and their staff for years to come.¹¹³ Media critique of aid agency performance did not just focus on these deficits, which were considerable. The critique also focused on the appropriate role and mandate of international NGOs. They were accused of indiscriminately feeding the killers, and thus fuelling violence and conflict in the region.¹¹⁴

Part of the answer to defining the impartiality that based humanitarian assistance on need was a process instigated by the International Federation of Red Cross and Red Crescent Societies in 1977 which in 2000 produced the sphere project, Humanitarian Charter and minimum standards in disaster response. The charter and handbook, taken together contributed to an operational framework for accountability in disaster assistance.¹¹⁵ The 'humanitarian imperative'¹¹⁶ and the principle of 'do-no-harm'¹¹⁷ are clearly stated as if in direct response to the crisis in Zaire. It filled a gap in the humanitarian toolbox that was made particularly evident in the aftermath of the drama in Zaire.

A trend emerges from this that the author will imply. Fear over a repeat of the Somali experience that made initial intervention unpalatable to western public sentiment had realized a failure in substituting humanitarian aid for concerted political action on the part of the international community. The result of this was a genocide and the later subverting aid to support the perpetrators.

The failure by Western powers and international organizations to protect civilians in Rwanda in 1994, despite gross violations of international law, had a direct effect on a conflict unfolding in the heart of Europe.¹¹⁸ The failure in Rwanda informed an international community decision to act by threatening military force.¹¹⁹ This swaying of political will for military action in support of humanitarian goals demonstrated that military action has a place in certain intractable conflicts, but it would also create worrying trends for the future.

Kosovo

The former Soviet republic of Yugoslavia was engaged from the early 1990's in the struggle of the autonomous, predominantly Albanian minority province of Kosovo being forced by the Yugoslav president to return to being under federal control. An armed Kosovar rebellion started in 1996, which threatened to escalate into an ethnic cleansing scenario. When a UN arms embargo failed to halt hostilities, and Russia objected to stronger sanctions, the UN Secretary General informed the North Atlantic Treaty Organization, a post-world war 2 western military alliance, that the Kosovo situation was a threat to regional security and could require military action through security council authorization. A resolution was passed, and over Russian objections force was authorized on the cited legal basis of humanitarian intervention. NATO / Yugoslav government tensions escalated and NATO made good on its threat to launch airstrikes against the federal government capital Belgrade.¹²⁰

Fearing Yugoslav retribution on the Kosovar Albanians and armed with the moral purpose of protecting an ethnic minority, the shame of inaction in Rwanda, and regional security considerations, NATO claimed Kosovo a humanitarian war and Kosovar Albanians a protected population. The strategy backfired and under Yugoslav government attack 500,000 Kosovar Albanian refugees fled across the border into Albania. Overwhelmed by the crisis the United Nations High Commissioner for Refugees (UNHCR) requested NATO help out-side of its mandate, as humanitarians.¹²¹

Little was made of this by humanitarian organizations who, although feeling slighted by UNHCR to an extent, saw the intervention as a positive development, and reflective of what they were asking for in Rwanda, Zaire and other locations. MSF did not agree, feeling that cooperation with a belligerent military force in humanitarian action was a violation of basic humanitarian principles of neutrality. Many aid agencies couldn't afford to be so high minded at this juncture in history. NATO represented the donor community that they relied on, and the unprecedented levels of funding that had been seen since the end of the cold war meant that they were helping more people than ever before. Adherence to principles had yielded mixed results at different times and this was a relatively good outcome. It also carried an added bonus: the media coverage for this European event was much higher profile than would be afforded by a crisis in Africa. It was good business to demonstrate NGO humanitarian prowess on the world stage.¹²²

Kosovo revealed that there was more than one way to attain a positive outcome, and humanitarian principles might need to be more flexible if the humanitarian imperative was the most central theme of the constitution of NGO's. It could be argued that MSF demonstrated its ironic embracing and discounting interpretation of neutrality in criticizing NATO involvement. After all, their origins were in protest to neutrality that equated to inaction and the humanitarian

imperative and human rights that were central to their identity were expressed in the Kosovo outcome.

Viewed in another way, perhaps MSF's criticism didn't go far enough. Whereas humanitarian principles may require flexibility, the risks of public alignment with belligerents who represent the governments NGO's rely upon (these governments representing the most powerful political and military forces in the world) could have consequences far beyond anything imagined at the time. The principles of impartiality, neutrality and independence were realized and sustained out of profound experiences. Ad-hoc suspension of adherence to them would surely have consequences.

The Agreement on Ground Rules in South Sudan

The civil war between North and South Sudan was one of the longest running wars in Africa and the World.¹²³ Since 1989 international engagement in the conflict revolved around the UN Operation Lifeline Sudan (OLS), charged with the protection and humanitarian assistance of war-affected populations.¹²⁴ Unique agreements with the warring parties in this intra-state conflict had established humanitarian access in the midst of an ongoing war, to war affected populations on all sides. The 'Ground Rules' established six years after OLS's inception was an attempt to strengthen this framework.¹²⁵ The agreement was signed in 1995 separately by the three South Sudan independence movements.¹²⁶

While a heralded as a remarkable achievement in promoting the precepts of IHL amongst belligerents in an intra-state conflict, this experiment in granting neutral status to humanitarian aid agencies exposed cleavages in its design.

- The agreement combined neutrality with capacity building, and in doing so it inherently contradicted the precepts of neutrality which denote that no advantage may be accrued by warring parties as a result of humanitarian assistance.¹²⁷
- In the efforts of expediency and driven by the humanitarian imperative, the ground rules contained no policing mechanism to deal with violations. It was a negotiated agreement that relied on mutual interest, persuasion, pressure and education to ensure adherence.¹²⁸

The South Sudan example raised some critical issues for humanitarians. Where access agreements between belligerent forces that are not signatories to Geneva Conventions:

- How can humanitarian agencies intervene in conflicts where the belligerents are not concerned about political legitimacy without strengthening the actors causing the conflict in the first place?
- What should the roll of humanitarian actors be in conflicts where there is little international will to force settlement?
- How should aid agencies respond to massive human rights violations?
- Can humanitarian intervention strengthen civil society and local capacities for peace, and given the precondition of neutrality, should it?
- What should be the relationship between humanitarian actors and international political actors who may be trying to bring peace?

129

These issues will be examined in greater detail in a later section as I examine the process of negotiated access.

The aftermath of the 2001 terrorist attacks on the United States

Afghanistan

The precipitous event of the September 11th, 2001 Al-Qaida sponsored terrorist attacks in the United States heralded a new era. The so called Global War on Terror (GWOT) quickly realized two new American led wars. One legally sanctioned by the United Nations in Afghanistan and one unilaterally declared in Iraq. For our purposes the war in Afghanistan encapsulates the effect that these new types of war would have on principled humanitarian action, in particular the effect on humanitarian independence and neutrality.

The Americans capitalized on the shock of the terror attacks rushing through new legislation at home to ease restrictions on law enforcement that reduced American civil rights to a level bordering on fascism.¹³⁰ Internationally, any past debt owed to the US would realize that this was the time for payback in the form of unquestioning allegiance. In short, tensions were high and it was an intimidating time to be a US government funded humanitarian implementing partner.

After the pro-al-Qaida Taliban regime was overthrown and a new government installed, the deficits wrought by poor governance that allowed radicalization and a narco-economy to flourish

would be addressed. Unlike Somalia, in Afghanistan political imperatives would see plenty of money and international commitment to bring Afghanistan back into the fold of nation states.

The Bonn agreement of December 2001 that defined the international community's agenda in Afghanistan was a recipe for a fully committed package for state building. It outlined the process of building peace and security, creating legitimacy and building the state, designing and approving the constitution, the structure of the government, the judiciary and the justice system, human rights, elections, and the role of the international community.¹³¹

Stabilization would be the prerequisite for state building and development activities. "Stabilization is premised on an assumption that weak governance, instability, violent conflict and associated poverty and underdevelopment are a direct threat to their strategic interests and international peace."¹³² This ostensibly articulated a security agenda that would foster peace and development through integration of military, political, development and humanitarian action.¹³³

What this agenda realized for humanitarian agencies was an integration that compromised them beyond anything imagined in the aftermath of Kosovo.

Stabilization activities would be led in the field by Provincial Reconstruction Teams (PRT's), which were represented in each province by an international military force. The Bonn agreement that excluded the Taliban from the peace process¹³⁴ exacerbated the dangers of working in Taliban held or influenced areas.

PRT stabilization of insecure areas would see initial military operations followed by military implementation of relief and development activities from discretionary funds called Commander's Emergency Response Program (CERP) funds, intended to win the hearts and minds of local populations.¹³⁵ This approach gained such prominence that it was placed on an equal par in combat operations with conventional weapons. An April 2009 U.S. Army handbook, 'Commander's Guide to Money as a Weapons System' denotes this fact. Expenditures were not based on the consultative science of informed humanitarian experience, but on short term military goals, seen by local populations for what it was, a bribe from a belligerent after a killing spree. This policy was backed up by billions of dollars with very little evidence supporting any causal link between the projects that were funded and actual stability, and that; conversely, it exacerbated tribal rivalries and promoted corruption amongst ethnicities associated with the new government.¹³⁶

NGO presence, predicated on being in an area deemed safe by coalition forces, would come in on the heels of, or work in close proximity to PRT's. The insincere efforts of PRT's, and guilt by association had its effect on local populations view of NGO supposed neutrality.¹³⁷

The pressure from coalition governments towards integrated approaches demanded 'coordinated', 'coherent' and 'complementary' action at both policy and operational levels.

Traditional segregation of military, diplomatic and development spheres were reengineered in an unprecedented fashion.¹³⁸

For the UN mission in Afghanistan (UNAMA), ‘coherence’ saw the traditional separation of political and humanitarian leadership in country of operation merge, and early declaration of a ‘post conflict’ status witness the departure of the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) and subsequent loss of coordinated information on the humanitarian situation in the country, as well as the capacity to communicate with the other side in the conflict. The public support by the Secretary General and his special representative for the military efforts of NATO forces and the new corrupt federal government discredited the UN as a universal body.¹³⁹

With humanitarian agencies only working in government / coalition held areas, insecurity concerns taking the form of bomb-proof bunkers for offices, and UN coherence strategies linking all military action with development, little distinction could be made between humanitarians and belligerents.¹⁴⁰

The humanitarian principles of independence, impartiality and neutrality had debatably never fallen so far off course. To be a western based NGO in this context was to be an agent of the west and its imperial policy towards the Islamic world.

The surrender of humanitarian independence to the political agendas of their donors had not resulted in a positive outcome as some may have viewed the outcome of Kosovo or other previous humanitarian crisis where US foreign policy was in sync with humanitarian concerns. It had, conversely, resulted in the worst of all possible outcomes. Humanitarian agencies were functionally funded by and aligned with the military and political objectives of a belligerent force in a conflict.

What is also of concern is that agencies allowed themselves to be coopted into the political and military agendas of the coalition. Antonio Donini of the Feinstein International Center argues that a window of opportunity, after the fall of the Taliban regime to address structural humanitarian concerns was missed, that apathy and continued acceptance of ‘post-conflictness’ and implementation of government or PTR projects represents a missed opportunity for protesting the situation. Donini also argues that there was an absence of a strong contingent of reputable humanitarian agencies – with the exception of ICRC – willing and able to assert a neutral and impartial humanitarian profile.¹⁴¹

As was recognized by Donini, ICRC was an exception. In the face of broad rejection of neutrality as a guiding principle of humanitarian action by most actors in Afghanistan ICRC persevered. ICRC recognized that the murder of their staff member in 2003 was not a rejection by local populations of the possibility of practicing principled humanitarian action; it was instead a symptom of the context that had become highly polarized. The staff member was killed because he was a westerner, and thus a soft target in a time when most aid organizations had

earned a reputation amongst locals as agents of the imperial west. ICRC persevered, managing to be the one agency to show both sides in the conflict the value of a neutral intermediary, and attaining access and space to needy populations in both coalition and insurgent held territories.¹⁴²

ICRC may see this as a triumph for the reassertion of neutrality's relevance, but functional access attained by others with mandates that did not profess adherence to neutrality questions that interpretation.

Pakistan (the ACF experience)

The Action Against Hunger / Action Contre La Faim (ACF) experience in Pakistan in 2009 and 2010 was to a large extent informed by the NGO experience in Afghanistan. With a principled mandate denoting adherence to independence, impartiality and neutrality, perception of alignment to the Pakistan government and their alliance with American interests would need to be avoided for safe access to local populations in areas sympathetic to the Pakistani arm of the Taliban to be realized.

The 2009 Pakistan military campaign in North West Pakistan to dislodge anti-government Taliban insurgents displaced an estimated 2 million civilians. As civilians returned to their homes ACF efforts to survey the humanitarian needs were already facing similar challenges to those of NGO's in Afghanistan. Access to civilian populations was predicated on government clearance. Coming into an area on the tail of the Pakistan military and their simultaneous humanitarian operations entailed a high level of complexity. The Pakistan military was instrumental in NGO relief activities during the 2005 earthquake, providing logistical support in rebuilding roads and helicopter transport of staff and relief supplies, but now they were belligerents in a military conflict with their own citizens. Local populations living in both alliance and fear of Taliban and Pakistan military were suspicious of ACF's motives as they enquired as to the nationality of international staff, the location of the headquarters, the source of funding, the ethnic origins of local staff, and ACF's political stance on the conflict. Perception was everything as ACF limited its proximity to less principled NGO's, pseudo-NGO's representing US military interests, local NGO's with government or Taliban affiliations, the United Nations (perceived as complicit in Pakistan government stabilization policies), Pakistan military, and carefully vetted local suppliers for possible affiliation to government or Taliban interests.¹⁴³

A precarious access requiring continuous maintenance was slowly realized in a district on the boarder of Afghanistan (Lower Dir), predicated on both government clearance and local community leadership acceptance of ACF's apolitical stance and consultative program design to address the humanitarian needs wrought by the fighting. Whereas formal access was granted by a

government 'non-objection certificate' functional access was based on negotiation and informal demonstrations of neutrality, and promise of humanitarian aid. Although no formal meetings with Taliban insurgents took place, ACF understood that local leadership acceptance carried with it a level of insurgent acceptance, however precarious, and this was considered important.¹⁴⁴

The reason such effort was put into local acceptance, and why local acceptance was predicated on so many questions, was that the presence of NGO's was being seen as a military ploy by the Pakistan government and their American supporters. "As one patient in an MSF health facility at a camp in Lower Dir put it: 'America is paying the people who are fighting against us and destroying our homes [i.e. the Pakistani army] and then they are giving the relief. We don't trust that'."¹⁴⁵

The compromise of the humanitarian community was also fed by comments at different times from UN personal and UN agencies including the UN special Envoy to Pakistan's appealed for more aid in order to "pacify some of the most volatile parts of Pakistan"¹⁴⁶

The dangers of alignment and Taliban retribution was evidenced by the bomb attack on the WFP office in Islamabad in October 2009 which killed five people.¹⁴⁷

In mid-2010 uncommonly heavy monsoon rains created a devastating flood that began in the north west of Pakistan, and over the course of over a month moved down the Indus river displacing more than 10 million people and causing widespread damage to crops and livelihoods, and threatening mass morbidity from communicable disease. With bridges washed out, and the 'humanitarian imperative' to save lives, and in a throwback to the days of the 2005 earthquake some NGO's and UN agencies saw offers of Pakistan military assistance in the form of helicopter transport as necessary.¹⁴⁸

In support of use of military assets a statement from UNHCR claimed that "Making sure 20 million people are rehabilitated ... is an international obligation: we are looking at a geopolitical situation where the stability of Pakistan we feel is in everybody's interest."¹⁴⁹

ACF participation in meetings at the Pakistan Humanitarian Forum (PHF), a coordination body for international NGO's, expressed concern that alignment with the Pakistan government by NGO's and UN agencies in this natural disaster was not the same as the context of the earthquake. As belligerents in a conflict against their own citizens, any association with the Pakistan military could have dangerous repercussions on humanitarian activities in the North West of the country as breached neutrality could invoke Taliban retribution on NGO staff and the populations they are assisting.¹⁵⁰

ACF acceptance of American funding for flood relief activities in Southern Pakistan, latter resulted in returning of said funds and canceling of the contract when US policies insisted on branding that would publicly identify the source of funding as American. Although ACF was not directly compromised by this, as part of the larger humanitarian community, acceptance of US

funding and / or use of Pakistan military assets by other NGO's and UN agencies did create problems in the perception of the entire aid community.¹⁵¹

An example of this compromise in relation to use of military assets feared in in the PHF meeting was that “NGOs that have used military assets to deliver flood assistance in conflict-affected areas, have allowed their lists of beneficiaries to be validated or corrected by the army and have accepted direct political involvement in the recruitment of staff and the distribution of aid.”¹⁵²

The clear problem for NGOs in Pakistan is whether it is possible to engage in activities funded by and / or contributing to the objectives of one party to the conflict without fundamentally undermining a simultaneous engagement in principled humanitarian action. This leaves multi-mandate NGOs like ACF working in northwest Pakistan with a dilemma: although international engagement may represent an opportunity to save lives and improve development outcomes, it is also playing a part in a process that is incompatible with principled humanitarian action.¹⁵³

Why would humanitarian agencies practice neutrality?

“The idea of humanitarian principles is simply that war has limits.”¹⁵⁴ This idea was expressed in the twentieth century in the detailed commitments made by state signatories to the Geneva Conventions and Additional Protocols. International Humanitarian Law sets out, in considerable detail, these limits of war.¹⁵⁵

Although not specifically referred to in the Geneva Conventions, neutrality is implied through reference to ‘non-interference’, and is crucial in IHL legal constructs for the provision of humanitarian relief action to be permitted by belligerents in a conflict.¹⁵⁶

Operational strategies and practices of the ICRC were defined in a 1955 book by Jean Pictet, one of the architects of the 1949 Geneva Conventions. The seven fundamental principles of Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality were formally adopted by the Red Cross in 1965.

The idea of neutrality and other humanitarian principles serve to legitimize humanitarian intervention in conflict, “to position it in a conflict in a way that is both ethically justifiable and politically possible.”¹⁵⁷ It also serves to guide humanitarian staff negotiating the complexities of working in the midst of violence.¹⁵⁸

“According to Jean Pictet, the first principle – humanity – is the greatest principle, the motivating force and ideal of the Movement. All other principles represent the means of

achieving this aim.”¹⁵⁹ The most functionally relevant to these means are the four principles of humanity, impartiality, neutrality and independence.¹⁶⁰

Red Cross terminology in the seven fundamental principles denotes the reason for the practice of neutrality as:

*“In order to continue to enjoy the confidence of all, the Red Cross may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.”*¹⁶¹

This expresses a form of ideological commitment to neutrality through non-participation in hostilities, direct or indirect.¹⁶² Ideologically neutrality seeks to underpin the value of humanity. Humanitarian aid should not be used for political purposes or to meet political agendas; it should be delivered without taking sides or engaging in controversies.¹⁶³

Neutrality is not mentioned in the Geneva Conventions, owing to its technical meaning in international law.¹⁶⁴ The humanitarian access based on neutral status it is expressed in legalese.

As expressed by the Geneva Conventions IV; Article 23:

*“This article provides that a party shall allow free passage of certain goods through its territory, intended for the civilians of another party to the conflict. The obligation is subject to the condition that this party is satisfied that there is no serious reason for fearing: a) that the consignment may be diverted from their destination, b) that the control may not be effective, or c) that a definite advantage may accrue to the military efforts or the economy of the enemy through the substitution of the above mentioned consignment for goods which would otherwise be provided or produced by the enemy or through release of such material, services or facilities as would otherwise be required for the production of such goods.”*¹⁶⁵

Jean Pictet was clear in expressing that neutrality is not a moral value, but simply a form of outward behavior which demands a self-imposed restraint; “it means refusing to express an opinion concerning the qualities of the men or the theories in question.”¹⁶⁶ Humanitarian neutrality is not equal to indifference, on the contrary, the underlying value is humanity, and neutrality is only the operational means of achieving this ideal in an environment that is essentially hostile to it.¹⁶⁷

We have mentioned in the analysis of the Biafra conflict, an ideological rift between the interpretations of what neutrality means in the context of humanitarian action. Bernard Kouchner’s afore mentioned argument that “neutrality imposes silence, and that if one’s core value is justice, silence is reprehensible,”¹⁶⁸ is addressed by Jean Pictet. “For while justice gives to each according to his rights, charity apportions its gifts on the basis of the suffering endured in each case ... It refuses to weight the merits and faults of the individual.”¹⁶⁹

As the experience in the refugee camps of Zaire demonstrates, these issues are complicated.

What is being debated here, to an extent, is the difference between morale and operational neutrality. Morale neutrality implies being indifferent towards issues that fall in the realm of right and wrong.¹⁷⁰ Given the morale concept behind the humanitarian imperative, aid agencies cannot entirely separate the operational from the morale.¹⁷¹ It is however important to understand that operational neutrality was formulated on an idea that has positive morale implications. It exists in order to maintain access and reduce the suffering of victims on both sides of the conflict. When morality is fully operationalized, as in the case of ‘Solidarist’ aid agencies, this end may not be achieved.

The concepts of morale and operational neutrality does not equate to the difference between the ‘Solidarist’ and the ‘Principled’ aid agency. There exists gray area here. The traditional notion of neutrality may have been associated with silence, but agencies such as MSF claim to work in the ‘spirit of neutrality’. They will denounce parties that breach international humanitarian law and commit human-rights abuses, but will not put themselves into a position of solidarity with any particular side in the conflict.¹⁷²

Ideological debates aside, the founding principles of MSF and those of Jean Pictet’s Red Cross are remarkably similar.¹⁷³ In referring to the dichotomy between ‘Pragmatist’ and ‘Principled’ aid agencies, MSF is roughly in the same camp as the Red Cross.

In examining a principled aid agency perspective on operational neutrality, I will take some ‘research methodology’ license, as I did in the previous section on the ACF experience in Pakistan. The charter of ACF adheres to the most ‘important’ principles outlined by Jean Pictet in support of the first principle of ‘humanity’.

As Head of Mission with ACF in Pakistan I was charged with representation of ACF and the interpretation and expression of these principles. In such, my views on operational neutrality are considered relevant. They are as follows:

“Complete operational neutrality is impossible, in that during wartime provision of any material aid such as medicine, food or clothing is of course of benefit to someone. Linked; however with the principle of impartiality that ensures assistance is based only on identification of the most vulnerable, it forms a contract with military forces, where organizational neutrality is recognized by all parties to a conflict, in granting unfettered access to non-combatants affected by the collateral damage wrought by armed hostilities.”¹⁷⁴

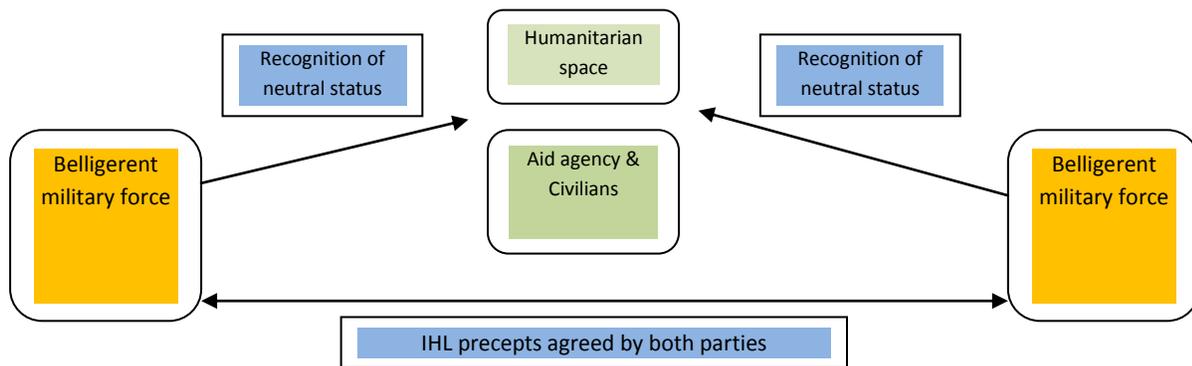
“Practicing operational neutrality necessitates integrating the concept into operational strategies on both a functional and ideological level. Logistical activities such as procurement of relief items, contracting of commercial transport, storage and office facilities would require scrutiny and transparent systems of reasonable accountability with regard to any potential material or social-capital benefit to parties in the conflict.”¹⁷⁵

“Ideological commitment by the organization to neutral and impartial practice of relief activities is necessary for all staff contributions to realize the design and implementation of activities that reflect commitment to the values. Neutrality implies standing apart from the conflict in the understanding that anything less than an apolitical behavior, such as a staff member voicing an opinion, could be construed as sympathy by the opposing side in a conflict and form a legitimate basis for said party to deny humanitarian access.”¹⁷⁶

“For neutrality to work for those projecting it, it must become an organizational state of mind which guides and informs every component of an organization practicing it.”¹⁷⁷

The axis of neutrality (From IHL regulated inter-state conflict to negotiated access, coercion and compromise)

In the context of inter-state war where states are signatories to the Geneva Conventions the neutral status of humanitarian aid agencies and their ability to freely access and provide lifesaving assistance to civilian’s and other non-combatants is not negotiated with belligerent forces. If the aid agencies charter abides by the conditions of non-interference, there neutral status is guaranteed by international humanitarian law, as are rights for civilians.



In what will be termed ‘the axis of neutrality’,¹⁷⁸ (above), a single axis defines the relationship that realizes the neutral status of aid agencies and civilians.

The latter half of the 20th century, and in particular the period between the late 1980’s (marked by the end of the cold war) and the present, has seen the majority of armed conflict being expressed in the context of intra-state war. Armed Non-State Actors (NSA’s)¹⁷⁹ are a common feature of these ‘new wars’.¹⁸⁰

Whatever the label; liberation movements, rebel groups, insurgents, paramilitaries, war lords or private military security companies, or transitional terrorist organizations such as al-Qaida, their presence has largely resulted in deteriorating security conditions for aid workers in the conflict zones in which they operate. NSA military strategies often “compromise the impartiality of aid and the status of civilians by co-opting them for logistical or political support, blurring the distinction between combatant and non-combatant”¹⁸¹

NSA military strategies may use civilians as tactical cover, logistical and intelligence support.¹⁸² Through coercion or voluntary service armed NSA’s may recruit civilians as combatants. NSA’s, viewing control over civilian populations as the political capital to be won in combat operations¹⁸³ may use the provision of humanitarian assistance as a weapon, either blocking access to civilian populations¹⁸⁴, or coercing civilian complicity in diverting aid and converting it into military logistical capital. NSA strategies may even block humanitarian access with little regard for civilian suffering in order to generate a humanitarian crisis, bringing both attention to their political agenda, and the means by which to maintain operational support.¹⁸⁵

Distinctions between civilian and non-state actors, often deriving from ethnically homogeneous populations, may become blurred, either because the population themselves are complicit with the aims of the armed group, or because, with no distinctive military dress code differentiation between civilian and combatant is based solely on whether they are armed at any given time.¹⁸⁶

IHL breaches by NSA’s, whether by ignorance or design present a huge challenge for humanitarian organizations. Where the neutral status of aid agencies and civilians is not recognized, and safe access for the impartial provision of aid to vulnerable civilian populations is not granted, it must be negotiated.¹⁸⁷

Negotiations with armed NSA’s for humanitarian access would have two primary preconditions in reference to minimal operational criteria. The first is assurance of guaranteed safety of aid workers. The second precondition is to secure NSA comprehension of and respect for the rules of IHL, with specificity to the mutual non-interference of aid workers and NSA’s and in recognizing the neutral and protected status of civilians and their right to access to impartial humanitarian assistance.¹⁸⁸

Risks are inherent in negotiation with NSA’s, in particular with NSA’s suspected of or with a propensity towards breaches of IHL, human rights violations or committing crimes against humanity. At times this creates untenable conditions for humanitarian access, in that the access granted is a façade designed to disguise manipulation of aid in support of activities counter to its premise of saving lives and alleviating suffering. Humanitarians should remain aware of the fact that NSA’s learn during the process of negotiation, often becoming skilled at the semantic and physical symbolism that humanitarians need to hear and see in order to tick off boxes that denote an acceptable outcome.¹⁸⁹

Negotiations based on IHL recognition by NSA's would most likely be predicated on said NSA's desire for international legitimacy, functional central command control and willingness to commit to a long political process¹⁹⁰ whose outcome is by no means guaranteed. Reflective of liberation movements,¹⁹¹ this is the less common circumstance. Commonly, the process may more often be a compromise where NSA's perceive an advantage in granting humanitarian access.¹⁹² It's the nature of this compromise that is in question during negotiations.

Given the complexities involved in negotiating, not only safe access, but principled access in the context of a war economy, aid agencies must first of all understand the interests of those they are negotiating with, and their relation to civilians. Based on this information decisions regarding the method of communication must be made, choosing either direct communication or communication through interlockers, with attention given to understanding their interests. Through this process Aid agencies may better gauge the compatibility of interests between themselves and NSA's in reaching an amicable negotiated agreement for safe access and recognition of IHL principles.¹⁹³

Max Glaser, in a June 2005 paper commissioned by ODI, categorized armed NSA interests and movements associated with them.

NSA political motivation
<p>Protective (symbiotic): the NSA plays an active role in the protection of civilians and the promotion of civil organization. The NSA and civilians share common values and interests. Civilians are not defined by in and out-group divisions. Civilians support NSA aims and fight on a volunteer basis. The NSA actively seeks recognition and is sensitive about human rights concerns. Example: liberation movements.</p>
<p>Competitive (predatory or parasitic): the NSA acts in competition with state or non-state actors, rallying the support of civilians, or denying that support to opponents. Civilians may be implicated with the NSA through labor relations and (illicit) trade, or contracted as fighters, but they do not necessarily share the NSA's interests. Example: factions within a war economy.</p>
<p>Antagonistic (independent or predatory): the NSA is driven by a self-centered identity based on ethnicity or religion. It is supported by, and raises fighters solely from, the in-group, and acts on that group's behalf. It is highly antagonistic towards the out-group, and insensitive to its human rights concerns. It seeks recognition for its function of defending the in-group rights. Examples: groups engaged in genocidal war, ethnic cleansing.</p>
<p>Sectarian (independent): the NSA is driven by extremist ideology or nationalism. Civilians and fighters are mobilized through the promotion of extreme views towards out-groups or opponents (for example, 'the West'). The NSA does not seek legitimacy or recognition, but emphasizes its credibility through hostile actions, and is insensitive to human rights concerns. Example: Islamic</p>

extremist groups.

194

The following table describes the type of relationship between the armed NSA and civilians that would correspond to each category, and the nature of the in-out group dynamics.

	Dependency on civilians	In-out group dynamics
Protective	The NSA is highly dependent on civilian support, and is likely to protect civilians and be open to engagement with humanitarian agencies.	Strong in-group dynamics. The broader this constituency, the more responsive the NSA will be to humanitarian engagement.
Competitive	The NSA vies for control over, or support of, civilians. Depending on its tactical and political position, the NSA may be responsive to humanitarian engagement, but can equally become negative if competing NSAs are deemed to profit from aid, or where civilians are not supportive of an NSA, or of no use to it economically or as fighters.	The NSA is sensitive to in- and out-group dynamics, responds positively to engagement for access purposes, but likely to abuse this for political or war-economy goals.
Antagonistic	NSA depends on support of the in-group against the out-group, and in-group support will be very strong. Humanitarian needs are likely to be very high in the out-groups, and assistance to these out-groups is likely to be strongly opposed by the NSA.	Extremely strong in-out group dynamics. The out-group is the major target in conflict, often defined in political, ethnic or religious terms. A positive response to engagement is vulnerable to abuse for purposes of propaganda or legitimacy.
Sectarian	Independent from broad popular support. Recruits from extreme political groups.	Extremely limited in-group dynamics, if at all. Out-group can be defined as 'the other' in very broad terms. Highly insensitive, engagement unlikely to have an effect.

195

Complexity grows

As adept analysis of the political orientation and NSA relationship to civilians is integrated into strategies of aid agency engagement in negotiations, the process becomes more complex. Decision must be made as to whether negotiation with NSA's should be direct or through an interlocutor, and whether these negotiations should be realized in a transparent open manor or in private, at high level or low level. Each has a bearing on the outcome. The choice of interlocutor requires a similar process of analysis used to define the interests and political motivation of NSA's.¹⁹⁶

The multitude of aid agencies and their differing interests with regard to provision of humanitarian assistance and desire for access must be coordinated. Coordination pools resources and knowledge, strengthening the position of aid agencies at the negotiating table. Unilateral negotiations and access agreements can contribute to the risk of aid manipulation and non-recognition of IHL precepts. The creation of 'agency space' as opposed to coordinated 'humanitarian space' can dilute efforts to isolate belligerents who refuse to accept IHL precepts, by refusing to allow aid to flow to areas where violations of IHL, human rights or crimes against humanity take place.¹⁹⁷

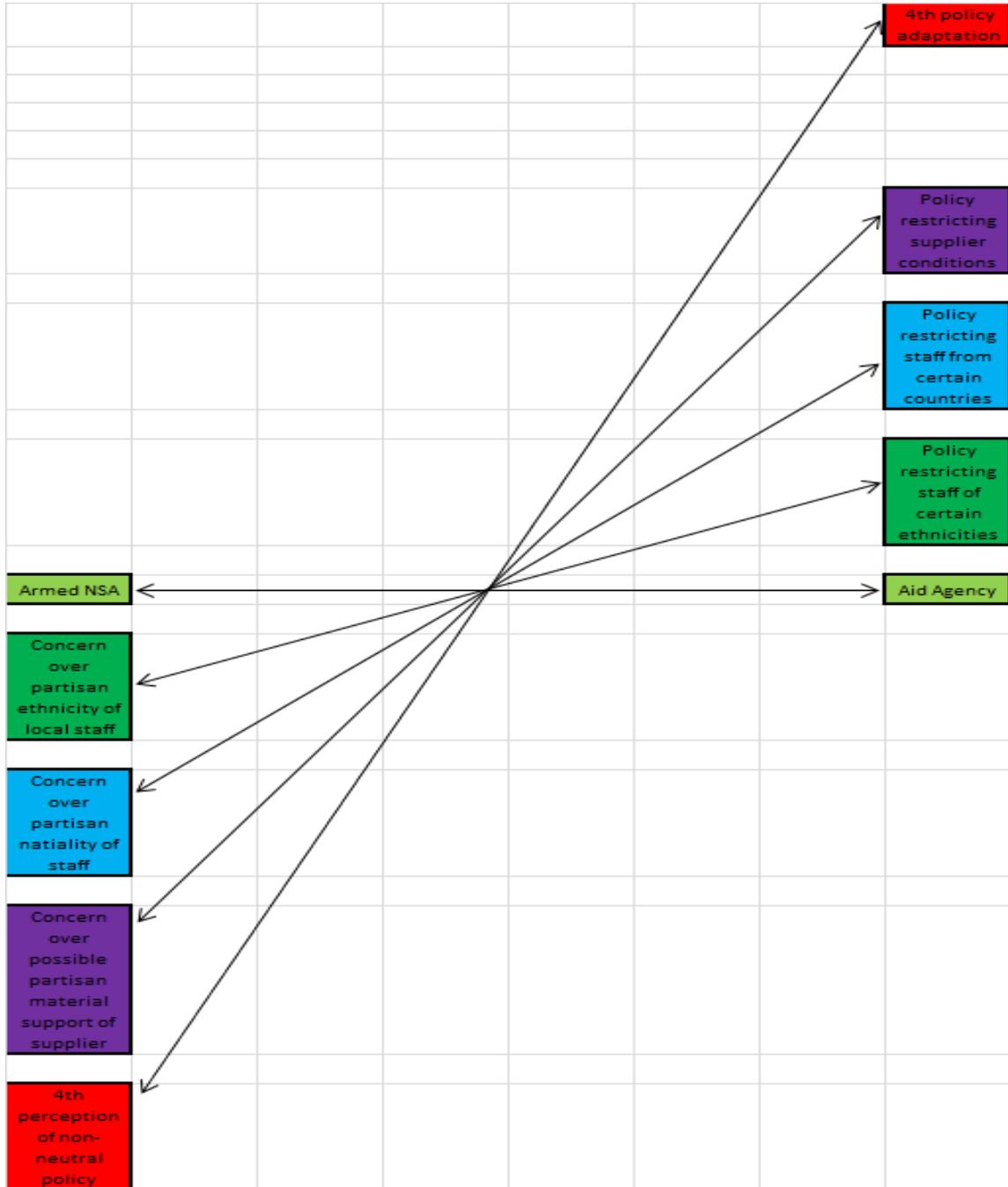
When negotiations lead to access agreements, despite possible guarantees by NSA's and interlocutor's analysis is still required by aid agencies to gauge the reliability of the agreement in terms of NSA willingness and capacity to fulfill the terms of the agreement. When the risks are high, mitigation becomes necessary, often requiring informal efforts by aid agencies to maintain the integrity of the agreements.¹⁹⁸

Informal axis of neutrality

As complex as the process of attaining formal access agreements may seem, it is often the easy part of attainment of access based on IHL precepts. The promotion of respect by NSA's for IHL precepts in all but the 'protective' category of political orientation is based on coercion in the form of coordinated denial of humanitarian aid.¹⁹⁹ In this context it is the behavior of humanitarians on the ground that creates actual functional acceptance of the agreement. Perception, rather than formal documentation informs reality on the ground. The aid agency commitment to impartiality and neutrality is critical.²⁰⁰

Local perception of aid agency apolitical behavior and thus neutrality or lack thereof will inform agency practices. As was demonstrated in the section on Pakistan, dispersing perceptions of partisan behavior may touch issues such as the nationality of aid workers, agency national

origins, funding sources, the ethnicity of local staff, and the gender of aid agency staff to name but a few.²⁰¹ The potential list of ‘perceived’ aid agency bias is almost without end, and beyond the scope of this study to research and categorize. The axis of negotiating ‘perceived’ neutrality concerns begins to look like this:



The initial horizontal line represents IHL based negotiated access. Each additional line denotes informal maintenance based on adverse perceptions.

The capacity for alteration of perceptions over time is indicative of the fact that the process of disproving them is of fleeting and limited value. Aid agency workers have noted: “in volatile environments where contact between international humanitarian actors and local communities or other local actors is often restricted, rumors and allegations can thrive, undermining previously positive perceptions of humanitarian actors.”²⁰²

Is negotiation of IHL principles more trouble than it’s worth?

Promoting IHL principles among NSAs to enhance humanitarian space is a traditional activity of the ICRC and several humanitarian agencies have followed its example. This strategy has produced only limited results. NSAs often act in breach of IHL and abuse civilians as a deliberate strategy or as a survival mechanism. It appears that the willingness of a particular group to accept IHL rules depends on whether doing so coincides with its tactics and interests. Various experiences with promoting IHL demonstrate that NSA commanders can learn to use IHL terminology and language, however, in the application of IHL rules, other tactical and pragmatic interests or sheer opportunism mark their behavior. Since the principles of IHL are nonnegotiable, promoting IHL is more comparable to persuasion, rather than negotiation.²⁰³

The question begs to be asked, if negotiated access based on IHL precepts is in essence an illusion, why do aid agencies maintain repeated efforts towards it? Hoffman and Weiss note “with a few exceptions, humanitarians have yet to factor (the demise of independence, impartiality, neutrality) into their standard operating procedures”²⁰⁴

Perhaps the answer lies in the western secular origins of IHL. The coerced teaching of IHL principles to NSA’s implies that they will see the wisdom of a universal idea, made international law by powerful nations who imposed it on the world as a precondition to financial support. 1) What if they are not ready and there are preconditions in the development continuum that must be met before IHL concepts begin to make sense? It seems that IHL does not address war economies well. 2) Perhaps IHL is not the universal that people thought it was. It appeals to western NGO’s because it’s an idea born in the west. If a secular society that conceived of IHL took one route to development, how likely is the appeal of IHL to people taking another route while stuck in a war economy with the promise that generations will pass before broad based economic rewards and peace dividends are realized?

There exist alternative models to negotiating functional access. These models might involve the relaxation of the deliberate use of humanitarian principles and recognition that other principles and corresponding strategies may bring better security.²⁰⁵

Given the broad existence of conflicts requiring provision of humanitarian assistance, where reliable adherence to IHL principles is not a realistic option, dogmatic adherence to their relevance can serve to accelerate the erosion of the legitimacy of principles. Inherent in this ‘sticking to the guns of principle’ is the idea that the secular revelation that saved Europe will save the world.²⁰⁶ With great power comes the risk of cultural imperialism and the possibility that insistence on IHL universality expresses, to a greater or lesser degree, a Western arrogance.

Dilemmas: The politics of principles, the decline of neutrality and dilemma of accountability

Professing neutrality in humanitarian action has many dilemmas both functional and ideological. Like a truth that is sought but is not self-evident, belief in the relevance of neutrality demonstrates a remarkable capacity to absorb compromises to its integrity and march forward exclaiming its triumph in the face of adversity. This is either evidence of its timeless relevance or of an acceptable fiction to those with enough staying power to keep it alive and rationalize in the face of opposing evidence.

- Western aid agencies could not function at the levels they do without public funding sources, the largest amongst them receiving between 50% and 70+%.²⁰⁷ ICRC receives over 90% of its funding from the public sector, and their largest donor by far is the United States.²⁰⁸ Whereas ICRC are independent as far as lack of programming restriction on their funding, they are ‘reliant on donors’ none the less. Donor priorities disproportionately skew resources towards areas of security concern and away from countries in much greater need.²⁰⁹ This has been the way of things for a long time, from the 1950’s US denoting foreign aid for the purpose of promoting the “mutual security of the free world”²¹⁰, to Henry Kissinger’s 1976 quote: “*Disaster relief is becoming increasingly a major instrument of our foreign policy.*”²¹¹, to post 9/11 references to aid agencies in Iraq and Afghanistan as ‘force multipliers’, ‘part of the combat team’ and elements of ‘soft power’.²¹²

- The end of the cold war and the diplomatic vacuum created by the withdrawal of interests by Western powers in many areas of the world expected development and humanitarian agencies to fill the gap.²¹³ In the context of afore stated proliferation of intra-state wars, this presents some dilemmas for aid agencies. “Unfortunately, states have tended to use humanitarian action as a substitute for political action rather than as a complement to it.”²¹⁴ Substituting aid for political action is often futile.²¹⁵ There is wide spread criticism that humanitarian aid can exacerbate wars and sustain war economies.²¹⁶ With the realization that humanitarian aid can have negative impacts in the intra-state war context, principled approaches, as denoted by adherence to classical Red Cross principles, is considered by many to be inappropriate.²¹⁷

- ‘New humanitarianism’ is a term used to describe how aid agencies have increasingly become an integral part of the political agendas of donor countries responses to complex emergencies. These responses denote comprehensive strategies to transform conflicts, decrease violence and set the stage for liberal development.²¹⁸ This form of alignment is worrying. The Afghanistan example of winning hearts and minds denotes explicit politicization of humanitarian action, and the use of humanitarian aid as a weapon of war. As a result, the concept of humanity is being used for aid delivery in which neutrality and impartiality are no longer relevant.²¹⁹ ” One of the direct consequences of that intervention has been that humanitarian workers are being perceived – at least by some – as part of Western-dominated military and political securitization agendas.”²²⁰

- Neutrality or non-interference, especially if it results in human suffering lacks an ethical element that many aid agencies feel is necessary. Although most aid agencies cannot abide by the approach to neutrality that ICRC takes²²¹ the widely adopted substitutes represented by the Red Cross code of conduct and the Sphere guidelines humanitarian charter emulate the sentiments of IHL adherence while putting the ‘humanitarian imperative’ to respond to suffering at the forefront. The sphere humanitarian charter dances carefully between recognition of state sovereignty, promotion of belligerent responsibilities to promote IHL while recognizing that to ‘do no harm’ could imply creative withholding of aid. It mixes with this the promotion of human rights, a distinctly non-IHL reference.²²² The combining of the legitimacy of IHL with the moral ethics of the humanitarian imperative and the concept of ‘do no harm’ is flexible interagency language that adapts well to the diversity of aid agency mandates. In this broad context where neutrality may be elevated, abandoned, or seconded to development activities, the relevance of neutrality is measured against the net benefit that its use entails.

- The ‘sacred-secular’²²³ status Jean Pictet’s seven principles have been elevated to in the eyes of Western aid agencies, may not represent the ‘universal’ values of all people in the world. The concept of humanity may be universal, but Jean Pictet’s notion that neutrality is one of the means of achieving humanity is struggling against evidence that denotes the concept as culturally relative. For example, the language of neutrality can have negative connotations in Somalia as it is translated as ‘not caring’. The use of the term neutrality as a precept for attaining humanitarian access, is perceived as negotiating on the basis of foreign norms and standards, and can lead to hostility.²²⁴ In Afghanistan, as in many places in the Muslim World, the secular ‘principled’ aid organization may be culturally unacceptable. Equating secularism to atheism, faith-based approaches in-line with the Abrahamic religious tradition may gain greater access than secular agencies. “The Islamic volunteer will always prefer to deal with a ‘Christian’ than an ‘atheist,’”²²⁵ the Western secular aid agency representing Western radical loss of essential morale values.²²⁶

- Agency ‘independence’ can be a real strength in adapting to circumstances on the ground. This can be seen by the example of ICRC in Afghanistan. They demonstrated, or would claim to have demonstrated, that independence allows neutrality to be practiced, and that it is still relevant. To most other aid agencies, this example is a false one. Taking a pragmatic approach; they feel that a principled stance is a luxury only the rich organizations can afford.²²⁷ MSF’s ‘independence’ assertion that they didn’t take money from donors who are belligerents in a conflict like Iraq²²⁸ can arguably be seen as a trick of false altruism for public consumption. Private funding for MSF in Iraq and Afghanistan was disproportionately large as a direct consequence of the politicized nature of the conflict.²²⁹ The reality is that most aid organizations compete for funding. The competition over donor resources and subsequent divisions between agencies presents some dilemmas.²³⁰ Lack of consensus over approach has implications for poor interagency coordination. “Successive bodies, from the ill-fated Disaster Relief Coordinator in the 1970s to today’s Office for the Coordination Humanitarian Affairs (OCHA), have faced major challenges in establishing effective and meaningful coordination among the diverse agencies involved in humanitarian action”²³¹ Poor coordination can compromise security when weak negotiated individual agency access ‘agency space’ erodes the benefits of stronger, broader and more principled coordinated access ‘humanitarian space’. Agency space is more prone to manipulation by belligerents, and the humanitarian space is more promoting of the ‘do-no-harm’ concept. “The shift from an idealized picture of strong states with a single global humanitarian agency (ICRC) strongly routed in principles signed up to by those states in IHL, to the current variety of agencies, working in weak states”²³² as substitutes or proxies for

western political support is a long fall into complexity, presenting many challenges for humanitarian principles.

The positive side is that ICRC cannot possibly meet all humanitarian need, and more money than ever before and a large variety of agencies with a diversity of mandates and capacities can provide flexibility and adaptations to providing aid in complex wars not imagined when IHL was first envisaged. The down sides and dilemmas are many. A multitude of agencies motivated by financial competition, susceptible to political manipulation by donors and belligerents alike with variable principles and an adversity towards coordination has reduced accountability principled or otherwise. Some observers note the loss of accountability has reached a point where agencies act with ‘humanitarian impunity’²³³

Ironically amongst the many attempts to address this lack of accountability, the Red Cross code of conduct, which gained great prominence in the aftermath of the Rwanda genocide, proposes regulation which, in retrospect could more of a problem than a solution. “We hold ourselves accountable to both those we seek to assist and those from whom we accept resources”²³⁴

The precepts of democratic governance, the ethos of for-profit corporations, the laws that govern legitimacy in intellectual and scientific discipline and indeed the very foundations of modern society would never accept as a promise of accountability the statement “we hold ourselves accountable”. Reasonable expectation would be for the opposite to come true.

Since public sector resources, often the largest percentage of funding is already highly regulated; accountability to public sector donors is not of great concern. Of concern is the promise to be accountable to “those who we seek to assist”. The approval or disapproval of aid agency accountability is missing a voice, and the silence is deafening.

The victims of war, the catalyst that sparked the existence of humanitarianism in the 19th century is distinctly missing from the debate, discourse or consensus over accountability. Humanitarians assert strongly that they are accountable not only to their donors but to the people whom they help and that this accountability takes precedence over all others. How an accountability relationship works when it is framed this way is not clear, especially when people in war zones are terrorized by militias and lose their voice.²³⁵ There is a debate whether humanitarian organizations speak *as* the victims, *with* the victims, or *about* the victims of violence in war torn societies.²³⁶ Only humanitarian organizations that are led by people from within war torn societies can be construed as speaking as the victims.²³⁷ This disconnect represented by the debate perhaps demonstrates how removed humanitarian organizations are, and how few mechanisms exist for hearing the voices of the vulnerable people they are so adamantly accountable to.

Accountability

The subject of aid agency accountability is far reaching and beyond the scope of this paper to address fully.

The discussion around accountability of humanitarian agencies is a difficult one. The ethos of principled thought whether voiced in the IHL inspired seven Red Cross principles or the more flexible and broadly accepted Red Cross code of conduct and sphere humanitarian charter is one of selfless volunteers working in the service of the world's most vulnerable, in defense of moral precepts that are beyond reproach. "There is almost a sense of moral outrage among some humanitarians when the subject is raised"²³⁸

"Humanitarian organizations have traditionally been very reluctant to acknowledge that they are powerful, that they dispose of proportionally very large resources in the contexts in which they operate, and that they shape social and economic processes-subtly or unsubtly-through this disposition of resources"²³⁹ Humanitarian aid funding in 2008 totaled USD 16.9 billion with governments providing USD 12.8 billion and private donations totaling USD 4.1 billion.²⁴⁰

Whether or not the aid agency sub-culture is comfortable with their power, the fact is they are powerful. As previously mentioned, aid agencies have been used as substitutes for the diplomatic influence of powerful governments in fragile states afflicted by internal conflicts, sometimes substituting for lack of 'weak states' capacity or interest in caring for their people. In this role of great responsibility enters Alex de Waal and David Rieff's contention that aid can have damaging consequences to those it was intended to help, that aid can prolong and even exacerbate war and with it human suffering, breaking the social contract that sees it as an untouchable moral endeavor. This is where the concept of humanitarian accountability was born.²⁴¹

The why of accountability is relatively easy? The more complicated question is to whom, for what, and how to quantify and qualify this.²⁴²

Aid agencies assert, as in the Red Cross code of conduct, accountability to their funders and to the people they serve (their primary clients). Accountability to public donors is easy to trace, "in part because donors increasingly make their demands explicit".²⁴³ Ironically the sentiment that puts the morality of humanitarian action above scrutiny can conversely promote the idea that humanitarianism and what it represents in terms of expressing the conscience of society, is so important that it should be held to very high standards and broad scrutiny in terms of its accountability.

As tempting as the idea is that more accountability is always better, aid agencies can't be accountable to everyone for everything. "At its core accountability is about trust."²⁴⁴ Aid

agencies must decide which deficits in accountability are most important in terms of maintaining that trust. As has been illuminated in previous sections poor coordination and lack of consensus over how and where to apply principles would seem to be a deficit that has considerable effects on the integrity of humanitarian action and erosion of trust. The other deficit that stands out is the lack of information regarding the trust of the clients (the recipients) of humanitarian aid. Do civilian victims of war trust the actions of aid organizations and of what relevance to them is adherence or lack thereof to the principles of neutrality and impartiality?

Progress on understanding these dynamics means that humanitarian impunity implied by self-regulation requires independent evaluation if any reform process is to be meaningful. Specialist independent organizations such as the Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP)²⁴⁵, as well as ‘The Listening Project’²⁴⁶ are remarkably adept resources for understanding the issues that pertain to humanitarian accountability. What matters is the capacity of aid agencies to utilize the information.

On the macro-level “The humanitarian reform process launched by the international humanitarian community in 2005”²⁴⁷ where technical sectors are coordinated in clusters is intended “to improve the effectiveness of humanitarian response through ensuring greater predictability, accountability and partnership.”²⁴⁸ This macro-level coordination has met with mixed success on a country by country, emergency by emergency basis.

Some progress has been made within aid agencies themselves to change the culture of impunity. As exemplified by the efforts of six large US based aid agencies, the Emergency Capacity Building Project²⁴⁹ has established a Common Humanitarian Accountability Framework²⁵⁰ with the following identified principles:

- Leadership
- Planning, Monitoring & Project Design
- Non-Discrimination and Needs-based Response
- Participation
- Transparency
- Beneficiary Feedback & Complaints Mechanism
- Evaluation and Learning
- Staff Competence and HR Management.

These principles go a long way in the direction of accountability, but frameworks do not equate to action. The sub-culture of emergency humanitarian work does not lend itself easily to the change that greater accountability implies. “Agencies fear ‘paralysis by analysis’ and are more geared to responding to current emergencies than revisiting past actions. They value speed racing from one emergency to the next while devaluing the time and resources spent on reflection.”²⁵¹

The rationale for change is obvious (improved quality, improved security), however the impetus is lacking. “Alex de Waal laments that the international humanitarian system has an ‘extraordinary capacity to absorb criticism, not reform itself, and yet emerge strengthened.’²⁵² It can be argued that they are strengthened because that is what their donors want. Short funding cycles in emergencies promote and reward a ‘can do’ attitude and learning, implicit in the above stated principles, requires that staff take time to document and digest experiences, which may draw limited and skilled personnel away from pressing operations, moreover reviewing failures is not only painful, it can also sour perceptions. Humanitarians have an understandable aversion towards advertising mistakes for fear of donor retaliation.”²⁵³

Thus the movement towards accountability is staggered by coordination issues. The model for accountability is already clearly identified, but embracing change for aid agencies and donors alike is difficult. The Humanitarian Accountability Project (HAP) annual accountability reports bear out the reason for concern over accountability. Beneficiaries rate aid agency accountability much lower than would be expected for those with a moral mission that is beyond reproach.²⁵⁴

The Perceptions of Neutrality:

The lines of demarcation between aid agencies traditions that care about and project neutrality and those that do not see value in its utility can broadly be put into two categories. The ‘Principled’ sometimes referred to as ‘apolitical’ and the ‘Pragmatist’ sometimes referred to as ‘political’ have largely defined the landscape regarding the discourse and debate over the use of neutrality in humanitarian action.

Those aid agencies who care about neutrality (means justify ends)

Operationally ‘Principled’ agencies look at crisis contextually and on ideological terms focusing on the more the apolitical act of lifesaving rather than transformative development work. Principled agencies utilize advocacy and confrontational approaches when circumstances

compromise principles, at times seeing it as more important than the aid operation itself.²⁵⁵ Principled organizations often criticize broader interpretations of humanitarian action outside of lifesaving and of flexible interpretations of principles arguing that the short term good done by such an approach damages the humanitarian community in the long run by opening the door to compromise and manipulation by the political agendas of donors and belligerents alike.²⁵⁶

Those aid agencies who don't care about neutrality (ends justify means)

'Pragmatist' sentiments cover a large body of aid agency thinking. The general stress is on practicality and flexible interpretation of principles. A defining 'Pragmatist' ideal is that a narrow view of humanitarian action as only lifesaving is almost a negligible action, opting instead for a continuum that leads from relief to development. Pragmatist thought sees apolitical status as an illusion and sees humanitarian action as part of a broader agenda that either backs a decent winner through deployment of resources to achieve a political bargain that will promote IHL and human rights violations, or eliminate the root causes of conflict and help promote a more peaceful, stable and legitimate political dialogue and economic system.²⁵⁷

Critique:

Aside from the ICRC who are mandated to uphold the Geneva Convention precepts of non-interference, there is understandably some confusion over the principled agency claims to be apolitical. Many principled organizations including MSF, ACF and Oxfam participate in non-relief poverty elevation activities and regularly make calculated compromises that trade-off neutrality for access. The pragmatist view of a principled agency pulling out of providing assistance where compromise of principles is unavoidable and maintaining at any cost, agency independence, is that it is foolhardy and trades the needs of clients for the needs of organizational ethics. Pragmatists might also take issue with the principled agency claims to apolitical status, arguing that any aid activity in a war context has political repercussions.

Pragmatist agendas carry a large weight of responsibility, at times aligned with donor or belligerent agendas or both, as demonstrated in Afghanistan. This may bias belligerents against aid agency action and put in danger aid agency and client safety. Transformative development activities carry risks of weakening already weak states and, if political dynamics were not well understood, exacerbate ethnic and political rivalries over perceived lack of impartiality.²⁵⁸

Beneficiaries: What do they think about neutrality?

The primary weakness of Principled or Pragmatist agencies is that however their views on the relevance of neutrality, they are speaking from a position of power. Knowing what we know in regard to accountability, a certain air of patronage is conveyed by both camps in pertaining to know what is best. Western dominated aid must live down the weight of history that sees humanitarian action as “something done for and to others, not with them.”²⁵⁹ Since it is clear that NSA’s by and large have little respect or regard for humanitarian principles, viewing them as a semantic game to be mastered for the purpose of manipulation, the last element of the calculus to be accounted for is the view of the beneficiaries themselves.

Review of ‘Listening Project’²⁶⁰ interviews with the beneficiaries and other material regarding the views of the beneficiaries of humanitarian aid in areas affected by natural disasters and intra-state conflict have surprisingly similar results world-wide. The topic of the relevance of aid agency neutrality is remarkably absent. “In a study based on interviews in six conflict affected countries “cultural insensitivity, poor accountability and bad technique” had led to the perception that humanitarian agencies represented a northern, rather than a universal ethos of assistance”²⁶¹

Local community’s impressions of aid agencies are almost never expressed in terms of organizational commitment to impartiality, neutrality or independence. The best agency reviews were for those whose projects addressed the reduced access to essential resources that had resulted from the conflict.²⁶²

The following is the summary of the results of almost 6,000 interviews with people on the receiving end of humanitarian assistance, development cooperation, peace-building activities, human rights work, environmental conservation and other aspects of foreign aid, similar concerns were voiced mostly centering around accountability of aid agencies and donors.

1. People appreciate the assistance, but want greater focus on achieving long-term impacts.

In every location, people consistently expressed appreciation for international assistance efforts. However, with all of the money and time that has been spent (particularly in humanitarian and post-conflict settings where significant sums have been invested by the international community), people expected to see greater improvements and more lasting impacts on their lives. As a government official in Kosovo said, “Without aid, we could not survive and there would be no life in Kosovo. It is not fair to say that no difference was made, but what was possible was not exactly what was done.”

2. The systems and structures of international assistance (the “business model”) are too focused on the quick and efficient delivery of goods and services and not enough on

relationships. People in all places talk about how donors and aid agencies are more focused on spending money quickly rather than on spending it well, and that in this haste they often do not spend enough time to establish and maintain effective relationships with their local partners (whether governmental or non-governmental) and those they are intending to help. As a coordinator of a Lebanese NGO said, “We need strategic, long-term partnerships with donors. The impact doesn’t come overnight. We need to know that we can rely on their support not only tomorrow. If they want to make a change that lasts, they need to start taking longer breaths.”

3. External agendas, priorities, fads and trends determine the types of assistance people receive or can access, but are often disconnected to the realities on the ground As a local government official in Sri Lanka said, “Participatory planning is just a phrase. Money and time are limited from the donor side and an agenda has already been set long before agencies go into communities.” People resent “pre-packaged” approaches and projects, and complain that aid agencies do not consider the local context, resources and capacities when making decisions regarding their humanitarian assistance. As an observer in Kenya said, “The weakness of donors is to sit somewhere and read reports. Quite often, donors assume they know every problem and can therefore prescribe solutions.”

4. People are more concerned about “how” assistance is provided than how much is given. Almost everywhere, people talk about the significant amounts of waste and mismanagement of resources in the aid system, particularly due to the increasing role of “intermediaries.” As a leader of a women’s group in Kenya asked, “Can aid come to the beneficiaries without going through many middlemen so that it reaches the people whole, the way it was given by the donor? For example, a new bottle of water is full, how best can it come down to the people without being opened on the way?” People in communities talk about not having a say in who works with them or is funded by donors, and they are concerned that there is little accountability as the money passes through so many different hands.

5. The aid system limits opportunities and incentives for listening in open-ended ways. Since the aid system is designed to deliver goods and services efficiently, most agencies listen only to people who are in (not outside of) the chain of delivery and they listen primarily for assessments of efficiency or effectiveness of their projects. While listening teams have heard lots of feedback on specific project details, people everywhere consistently expressed concerns that seemed to go deeper than particular programming flaws. They say that donors and aid agencies should “invest the necessary time”, “go more slowly”, and “listen to people” in order to “learn about the real circumstances”, “get to know people”, and “show respect for people’s ideas and opinions” even in the midst of humanitarian emergencies.

6. People in recipient societies place a high value on the presence of donors and aid agencies, saying that “being here matters.” People want staff of donors and aid agencies to be present to 1) better understand the local needs, priorities and resources; 2) determine who should receive assistance; 3) monitor projects, partners, and progress; 4) evaluate the long-term impacts

and the sustainability of aid efforts; 5) share and learn from each other (there are many calls for more solidarity and mutual accountability); and 6) to show respect.

263

Alternatives not always secular or neutral:

The huge challenges faced by Western aid agencies in Afghanistan and Pakistan in terms of their perceived alignment to Western anti-Islamic imperialist agendas are likely to continue. “Increasingly, Western-based aid agencies are working in countries with large Muslim populations.”²⁶⁴ Islamic charitable organizations are growing in prominence in these contexts, and providing an alternative that may be accorded more trust by Muslim communities in that it is more familiar than the declared secular approach. Since their emergence in the late 70’s, alliances with Islamic NGO’s are increasingly seen, especially in a post 9/11 context, as an essential aspect of working in Muslim countries. Although some Islamic NGO’s have signed the Red Cross code of conduct, the real common ground between Western aid agencies and Islamic ones is the precept of charity.²⁶⁵

As we have seen in the debate over principles, the commitment to the ‘humanitarian imperative’ and consultative behavior that yields ‘good results’ has gained prominence and has often become more important in attaining beneficiary community trust than the principles of independence, impartiality and neutrality.

An expression of this trend is realized most strikingly in the success and simple mandate of, what has become the largest NGO in the world. Financially, the Western aid agency World Vision, with an annual budget in 2006 of USD 2.1 billion is the largest NGO in the world.²⁶⁶ Finance however does not necessarily equate to size or impact. World Vision’s 23,000 employees²⁶⁷ are dwarfed, almost counter-intuitively, by an organization based in one of the world’s poorest countries.

With 120,000 staff members²⁶⁸ and a global reach, Bangladesh based BRAC is the largest NGO in the world.²⁶⁹

BRAC is not a western aid agency model. Coming from a poor Muslim nation they have attained access to all 34 provinces²⁷⁰ in Afghanistan, something no Western agency can claim, and yet ideologically they project neither an Islamic partisan, or Western principled agenda. If anything BRAC fits best in the ‘pragmatist’ category, although they are not stereotypical members of the Western ‘New Humanitarianism’ club. BRAC’s vision and mission is a transformative one based on the core values of Innovation, Integrity, Inclusiveness and Effectiveness. BRAC’s Vision and Mission statements are remarkably simple and seem to put the humanitarian imperative and

transformative sentiments center stage without reference to apolitical or political debate, and without being aligned to ‘new humanitarianism’.

“Our Vision: A world free from all forms of exploitation and discrimination where everyone has the opportunity to realize their potential. **Our Mission:** Our mission is to empower people and communities in situations of poverty, illiteracy, disease and social injustice. Our interventions aim to achieve large scale, positive changes through economic and social programs that enable men and women to realize their potential.”²⁷¹

Disconnect between the Western dominated debate over the relevance or lack thereof of principles, and the views of beneficiaries who gauge trust on respect, consultation and relevant out-puts begs for alternative approaches. BRAC can, unlike Western NGO’s profess to speak from a ‘beneficiary country’ standpoint, and their values would tend to negate the importance of debate over Red Cross principles.

However you look at it, attaining access in all 34 provinces in an environment like Afghanistan represents ability in attaining trust, and attaining trust is the key that transcends the debate over the relevance of humanitarian principles in negotiated circumstances.

Conclusion:

The repeatedly stated fact that neutrality was born of one tradition and found itself struggling to rationalize its relevance in another is the central theme of this paper. Intra-state warfare and the response by the international aid community have generally seen the prior perceived relevance of IHL predicated neutrality reduced.

Provision of humanitarian aid whether viewed in a narrow conflict context or a broader one clearly has political ramifications which challenge any assertions that principled approaches imply apolitical behavior.

Principled negotiated access with armed NSA's is a very complex, time consuming process requiring continuous maintenance even after agreements are reached. The motivations of non-state belligerents, excluding a minority seeking international legitimacy, are clearly oriented towards the perpetuation of profiteering in a war economy. For them discussion of IHL adherence is largely a game of semantics. The best efforts of neutral action have not altered this fact.

The agendas of 'New Humanitarianism' and reliance on donors have had a negative effect on principled aid agencies, who have become unwilling partners in political transformation activities in fragile states. When aid is used as a weapon of war, aid agency 'guilt by association'²⁷² negates, to a large extent, the relevance of impartiality and neutrality.

The independence lauded by ICRC and aid agencies with large private funding bases give the resources necessary for practicing neutrality, but to a majority of agencies this is an illusion. Independence is not a pragmatic option for the majority of aid agencies, and the subsequent competition over funding contributes to poor coordination, further shrinking principled humanitarian space for agency space. Poor coordination reduces overall quality, and allows savvy NSA's greater opportunity to manipulate aid.

The ideological debate within the aid community is much more complex than the functional debate on the ground. Aid agencies suffer from anxiety over Ideological compromise. It is perhaps a result of work in a field that has such important morale connotations for humanity.²⁷³

Caught between the ghosts of Jean Pictet, the weight of IHL and what actually works, few coherent, satisfactory answers can be found. If the Red Cross reasoning for the non-interference denoted by neutrality is "*In order to continue to enjoy the confidence of all*"²⁷⁴ then it implies gaining trust, and if trust is what is required then perhaps there are other ways of attaining that trust.

If trust is what we are after than review of the most silent voices in the debate, those of the beneficiaries, regarding the relevance of neutrality would seem important. By and large, even in environments where western aid agencies are perceived as agents of the imperial West, neutrality is not viewed with much importance where access and acceptance is in question. It is aid agency accountability and performance that is much more important. It is also evident in listening to the views of beneficiaries that neutrality per say suffers from a degree of being a culturally relative term and not an ‘absolute value’.²⁷⁵

Alex de Waal’s assertion that that the international humanitarian system has an “extraordinary capacity to absorb criticism, not reform itself, and yet emerge strengthened”²⁷⁶ implies that there are options that are not being pursued. Aid agencies perceived to be genuinely responding to people’s needs are most likely to be afforded trust at the local level. For Western aid agencies, this implies the ability to question the ethos and established methods of the past for their deficits. It implies cultivating a new culture of learning.

Any assumption that cultural proximity alone would provide aptitude regarding understanding of the cultural, religious and political climate is misplaced. Investment in training and promotion of culture of learning that makes humanitarian workers experiment with frameworks other than their own is needed. This would go a long way in ensuring that anyone could work anywhere.²⁷⁷

The access attained by BRAC in Afghanistan and recent alliance with Islamic aid agencies demonstrates that not only do options exist, but that some of them are remarkably functional.

Humanitarian access in the context of the complex dynamics of intra-state conflicts does not negate the relevance of IHL predicated neutrality. Neutrality is an option, but context matters and the evidence shows that its relevance is increasingly diminishing. IHL predicated Neutrality is a functional tool used to gain trust over time for the purpose of attaining humanitarian access to vulnerable populations in need, for the purpose of realizing impartial humanitarian assistance to said population, but it is not the only tool, and the Western humanitarian toolbox is clearly incomplete.

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