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:11 Estado actual del debate y de la práctica humanitaria

:11 Current state of the debate and practice of humanitarian action

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MEDICOS SIN FRONTERAS

Current state of the debate and practice of humanitarian action

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1. Introduction

Modern humanitarian action has been the object of arguments, debates and dilemmas since its origin. If at some early stage they were questions on the role of International Humanitarian Law (IHL) as 'legitimator' of war, or on the role of independent bodies such as the International Committee of the Red Cross (ICRC) firstly, and on other non governmental organisations with respect to States. After this, other subjects have since been incorporated. Similarly, in successive decades new questions have been at the heart of the debate, such as the debate on neutrality, advocacy, the use of force in humanitarian action (HA), the relation of humanitarian work with other areas such as human rights or development, amongst others, these being questions mostly stemming from the difficulty of humanitarian practice and from the challenges that this sets humanitarian organisations and which perhaps make up a setting in which humanitarian work appears as something complex, full of unknowns and confused when the reality is that the motivation and basic concepts that give humanitarian action its origin are clearer.

In any of the cases in the nineties, the peak in humanitarian questions in the international arena, the appropriation of the humanitarian voice and its utilisation on the part of the States and multilateral bodies, the proliferation of actors, the abusive use of the term humanitarian for diverse ends, and the great 'visibility' of humanitarian work has caused as a 'reaction' a great effort in clarification in the humanitarian mouvement such as the Codes of Conduct and other initiatives, which curiously enough have become parallel issues.

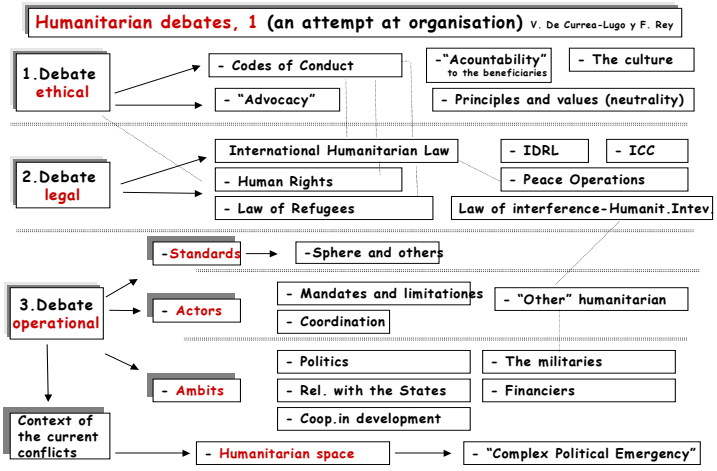
The objective of this report, in this context, is to give a panoramic vision to the current state of the debate and to a lesser extent humanitarian practice, and to highlight those more important aspects, which can mean taking differentiated positions. Regarding its scope, the report will only go deeply into some of the elements, and will outline others so that, depending on the level of interest, they can be more deeply analysed in later reports.

The report tries as objectively as possible to present the state of the humanitarian question from the positions and practice of diverse actors and streams of thought, etc, but it attempts to extract those that are most relevant for the practice of a humanitarian NGO.

2. Structure of the Report

In order to organise the current debates on humanitarian questions and to contribute to the clarity of the Report we have grouped together the subjects to/in debate into three categories:

1. The debates around principles, values, ethical questions and the scope of humanitarian action.
2. The debates and proposals around legal aspects of humanitarian action in the wide sense; in other words, not only International Humanitarian Law (IHL) but also other questions of a legal nature that affect or can affect humanitarian work.
3. Operational debates, arising from recent practice, which submits humanitarian action to the verdict of practice. We have divided this section into three subcategories: a) relating to standards, b) the actors and their mandates, c) the areas related to humanitarian work with other types of intervention.

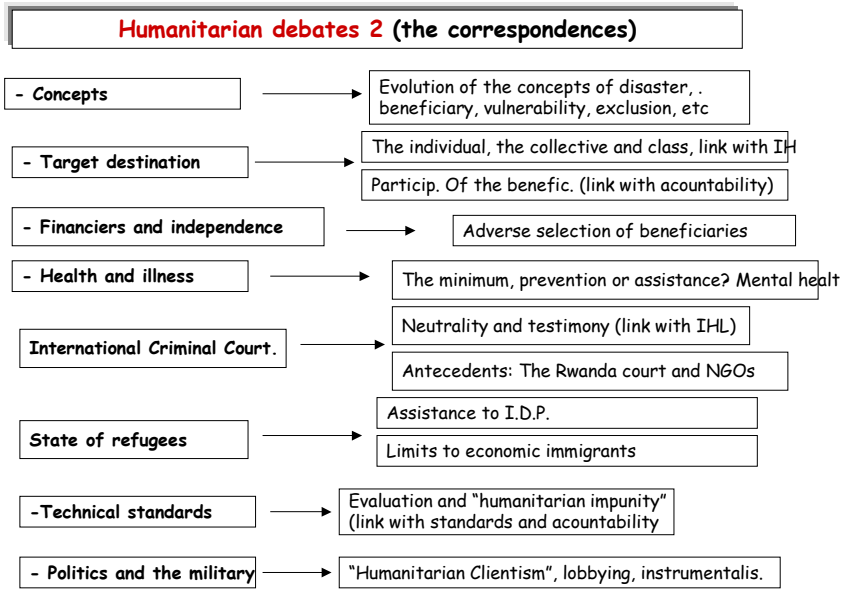


It is obvious that the three categories and the subjects that are grouped together in them are inter-related and for this reason we suggest two other variables of analysis: correspondences and tensions.

The outline of the humanitarian debate that we propose (fig.1) is full of crossed links and the presentation of it in this way is only an attempt to organise the discussion. Each one of the sections would give rise to a wide debate where, tangentially, other secondary debates would appear. For example, the debate on peacekeeping operations brings us to the UN system, to the relationships between States and to the problems of interference, human rights and IHL, etc.

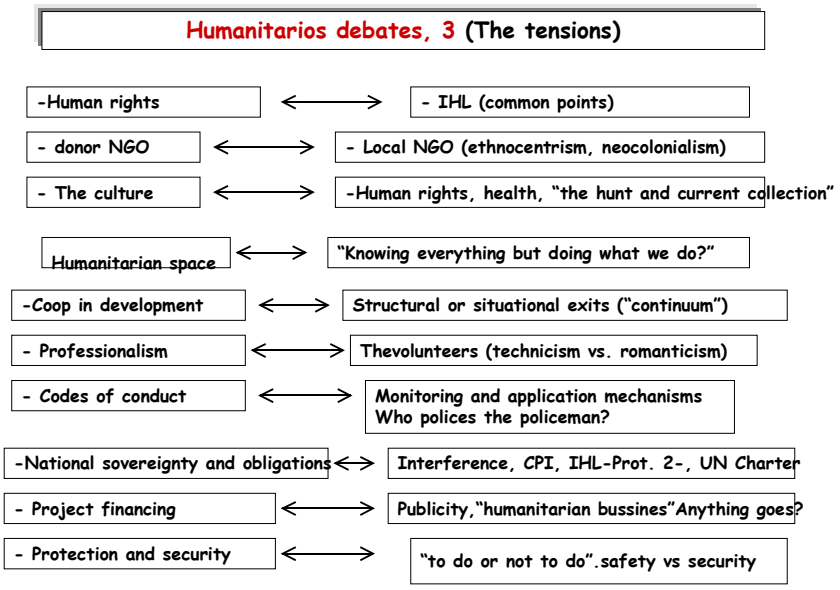
The second part, which we have called correspondences (fig.2), puts us in relationships within one subject or with others. It organises a range of debates coming from the whole field and demonstrates their connections within this internal scheme. In the correspondences we try to put forward an integral view of certain subjects that are related to ethics, law and to operational matters and that therefore go beyond the three

basic categories of analysis. In Human Rights, for example, we would consider what affects the three areas.



The third part, the tensions (fig 3), shows some 'problematic' relationships in a bio-directional way, which can be broached from the left to the right (from the formal sphere to tension) or in the opposite direction (from perceived tension to the sphere in which it materialises).

In the present report the debate is going to be presented from the point of view first outline. The other two views (correspondences and tensions) will serve in the future to incorporate elements in a tri-dimensional model.



By way of introduction, we have included some references and considerations on the contexts and new, more or less novel, ways of interpreting the crises and the role that humanitarian aid plays or can play in them.

We have tried to use many and diverse sources of information and reading materials as it is a fact that in humanitarian action the sources are somewhat diverse and with different priorities in the Anglo-Saxon sphere and the Francophone one, and also between United Nations bodies, the various families of humanitarian NGOs, the ICRC, Medicos Sin Fronteras, other NGOs, other actors somehow connected to HA and the academic sectors linked to the sector, etc. Our origins inevitably lead us to be closer to some positions than to others, but we have tried to respect the different strands of thought and proposals and to present them in a positive way in the different debates.

As authors we both come from different humanitarian working experiences but with a similar logic. From a "positivist" starting point and with training and scientific practice (medicine and biochemistry) we have been gradually getting closer to the social, ethical, legal and political questions while trying to find a more integral vision in humanitarian questions. Furthermore, we have always tried to put forward the critical thought and self-criticism of the action.

3. Changes in the contexts of crisis and the new role of humanitarian action

3.1. The debate on 'complex emergencies'

It turns out to be inevitable when starting a work of this nature, that one will make references, although in this case brief ones, to the changes in the international context which have been caused by, on the one hand the peak in humanitarian questions and on the other, by the bringing into question of some of the points raised by 'classic' humanitarian work and by the start of new debates.

The post Cold War world is not for most of the population of the planet a safer world but rather one much less safe. According to the data and whatever indicator we look at, the number of people in situations of extreme poverty or vulnerability, of refugees and the internally displaced or those excluded from systems of sustenance has increased in the past decade[3]. Although almost the whole world agrees with this statement, the way in which this reality is assessed, the focus taken to study it and the manner of approaching these facts including the terms or slang which is employed, all condition the type of points raised and the humanitarian response.

In this sense, some of the changes in the typology of the conflicts from its causes to its consequences and the variables that are found in them have given rise to a new concept, one which is being used more by the numerous bodies and which means, in our opinion, something more than a simple name change. It means a wider and multi-faceted focus in the analysis of the crisis that humanitarian action confronts. We are referring to the concept of 'complex emergency' [4].

A complex emergency is a situation caused by man in which there are victims from the effects of war, displacements and famine, and where the war (in the vast majority of cases a civil war) combines with a weakening or total collapse of economic and state infrastructures, and at times with a natural disaster to make all this worse. These crises are not caused by the environment, or by the lack of resources (in fact there are many poor countries which do not suffer from this) but by the way in which these resources are distributed[5].

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[3] There are many publications which develop this subject of changes in context. See, for example, ROBERTS, Adam: "El pa pel de las cuestiones humanitarias en la política internacional en los años noventa", in: UNIDAD DE ESTUDIOS HUMANITARIOS, *Los Retos de la acción humanitaria*, Icaria, Barcelona, 1999. Also REY MARCOS, Francisco GONZALEZ- BUSTELO, Mabel: "Las crisis humanitarias del nuevo siglo: aprender de la experiencia", in *Anuario CIP 2000*, Icaria, Barcelona, 2000.

[4] Here we take a part of the article: REY MARCOS, Francisco y GONZALEZ- BUSTELO, Mabel: "Las crisis…" *Op. cit.*

[5] For a review and discussion of complex emergencies see CLIFFE, Lionel and LUCKMAN, Robin, "Complex political emergencies and the state: failure and the fate of the state", in *Third World Quarterly*, Vol 20, Nº 1, 1999, pp. 27-50. Also, KUNDEL, Joakim: "Humanitarian assistance: Breaking the waves of complex political emergencies. A literature survey", *CDR Working paper* 99.5, 1999. Accesable on Internet, at www.cdr.dk/wp-99-5.htm

These complex emergencies demonstrate very different characteristics from disasters with natural causes because they persist for long periods of time and their origin is as much economic as political. Powerful economic and social groups take advantage of them or create them intentionally with the aim of maintaining their political and economic power, and can carry out ethnic or cultural genocide alongside. The copying strategies that the communities set in motion to confront these natural disasters, such as droughts or floods, are not possible in this context, which means that their effects get worse. Their root is political, and if that is not recognised, the factors which perpetuate the violence will not be cut short[6].

However, the concept itself of the complex emergency can be questioned from several points of view. A complex emergency means a breakdown in the economic, social, political and even environmental structures of a country, but fragile states or states on the periphery of the world system live in a situation of permanent crisis. This crisis presents its sharper moments which those viewing from the outside can define as emergencies, but actually the emergency is permanent as it is a consequence of the way in which the country fits into world system and market. For this reason it can be said to be a subjective concept which depends from where one is looking or acting. Furthermore, it is worth asking if they really are political or humanitarian emergencies, because their consequences are humanitarian (victims of combat, hunger, epidemics or refugees) but their causes are always political. Then there are those who use the term complex political emergency (CPE) more and those that utilise complex humanitarian emergency (CHE). To further complicate matters, the more simple complex emergency (CE) is becoming more commonly used. This is the case in the United Nations and many bodies in the Anglo-Saxon sphere[7].

Perhaps the most significant change in the typology of conflicts or EC is that the percentage of civilians in the total number of war victims is currently more than 90%, which is to say that they have become the primary 'military objective' of the combatants[8]. Civilians are directly attacked by the combatants, they are submitted to hunger and forced displacement and are victims of genocide. The collapse of state structures leads to the proliferation of armed groups who fight amongst each other, in surroundings of extreme violence and chaos. In this context, accessing the victims has become increasingly difficult for the humanitarian organisations. They encounter many difficulties in helping the civil population and, above all, in guaranteeing their protection due to the obstruction of the governments or armed groups that control the territories and the lack of guarantees for their security. Humanitarian aid has even started to become a part of the dynamic of the conflict by means of it being taken away from the civilians to be used to pay for bellicose efforts, or by being used to achieve population displacement. Providing food, care and of course protection has become a very complex task.

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[6] MACRAE, Joanna; ZWI, Anthony: "Famine, Complex Emergencies and International Policy in Africa: An Overview", en: MACRAE & ZWI (eds.): *War and Hunger: Rethinking International Responses to Complex Emergencies*. Zed Books & Save the Children Fund. Londres, 1994.

[7] It is significant that "Reliefweb", the webpage of the United Nations for disasters and crises, divides this into two categories: natural disasters and complex emergencies, which means that the use of the term becomes generalised.

[8] RENNER, Michael: "El fin de los conflictos violentos", in *Anuario WorldWatch. La situación del* mundo, WorldWatch Institute, Icaria-FUHEM, Barcelona, 1999, p. 295. For the prevailing definition of military objective see: additional Protocolo II to the Geneva Conventions of 1949, article 52.

Tactics such as ethnic cleansing, genocide, mass violations of human rights, torture and the use of hunger as a weapon of war, etc, force large population displacements. The combatants think that in order to weaken the enemy they have to destroy its civil support. This includes tactics that not only eliminate the civilian population but also pursue its mutilation so as to convert it into a burden for its communities, or to curb its productive capacity (anti-personnel mines, cutting off the hands of country people in Liberia and Sierra Leone, control of food transportation, etc.).

A basic element for understanding complex emergencies is what Mark Duffield calls the political economy of internal war. As well as losers, complex emergencies have winners, powerful social sectors which absorb the assets of those who die or who find themselves obliged to flee. This transfer of resources, which exacerbates poverty and misery, is not an anarchic process but rather one that forms part of a wide parallel economy, not only in the local arena but in the national and international one also. Survival and the control of resources on the part of powerful groups, in the context in which they have lost the alliances and transfers that they had during the Cold War, is a fundamental factor in complex emergencies, as these groups have found themselves obliged to formulate alternative ways to assure their survival[8]. This parallel economy includes the trade of legal and illegal assets, and so the arrival of massive international aid can not be considered a derisory factor in this context, as it becomes yet another element in the spiral of violence through its appropriation and sale for feeding belligerence by the parties involved. Therefore, humanitarian action can not be analysed in isolation without being linked to the dynamics of the conflict itself[9].

Investigators such as Duffield, De Waal, Keen and others who have made efforts to explain the dynamics of certain contemporary wars, have found a common element in them. War has a logic, a function and a clear rationality for certain groups: war is an end in itself. For this reason international assistance can not disconnect itself from the parallel economy which characterises it and from the dynamic itself of the conflict. Humanitarian activity can, without trying to, offers direct or indirect economic or political support to those dominant groups which come out advantageously from these wars. What is more, if these groups are involved in a predatory structure in a framework of conflict with ethnic factors and transfer of resources, the aid can become a basic element of the political economy of the war.

The accusation that HA may have contributed to the prolongation of some conflicts was made above all in relation to the crises of Ethiopia and Sudan in the eighties and Somalia, Bosnia, Liberia and Sierra Leone in the nineties.[10] Despite the fact that aid organisations have made big efforts to prevent this situation, in many cases a proportion of the aid has ended up in the hands of combatants who, either collect it as 'right of passage' in controls, or take it away from its initial recipients, the civilian population.

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[8] "The survival of the dominant groups and classes within these crises is what gives complex emergencies their special nature. This survival is associated with the extension of parallel and extra-legal activities, which themselves provoke ethnic tensions, the transfer of resources, conflicts and population movements", DUFFIELD, Mark: "The political economy of internal war: asset transfer, complex emergencies and international aid", in: MACRAE & ZWI (eds.), *Op. cit.*

[9] STEWART, Frances: *The root causes of conflict: some conclusions,* Queen Elizabeth House, University of Oxford, June 1998.

[10] ROBERTS, Adam: "Humanitarian action in war", *Adelphi Paper nº 305*, Oxford University Press, London, 1996, pag. 58

This does not serve only to feed the troops but to finance new arms purchases. Furthermore, the aid can a substitute for political action when effective measures are being taken to find a solution to the armed conflicts, because when the level of violence is decreased, the necessity for firm action to resolve the conflict with regard to the international community is reduced.[11]

As we can see, the concept of CE can be useful in as far as it obliges us to analyse the many variables that there are in a situation and it helps us to value the risk or limitations of acting alone in one of them. It allows us to better understand the complexity of current crises and the role, ambivalent in many cases, that the aid carries out in them.

However, some consider that it is a simple change in terminology 'the same dogs with different collars'. The acceptance speech when Medicos Sin Fronteras picked up the Nobel Peace Prize is significant: "The 1992 crimes against humanity in Bosnia-Herzegovina. The 1994 genocide in Rwanda. The 1997 massacres in Zaire. The 1999 actual attacks on civilians in Chechnya. These cannot be masked by terms like 'Complex Humanitarian Emergency', or 'Internal Security Crisis'. Or by any other such euphemism - as though they are some random, politically undetermined event. Language is determinant. It frames the problem and defines response, rights and therefore responsibilities. It defines whether a medical or humanitarian response is adequate. And it defines whether a political response is inadequate. No one calls a rape a complex gynaecologic emergency. A rape is a rape, just as a genocide is a genocide. And both are a crime. For MSF, this is the humanitarian act: to seek to relieve suffering, to seek to restore autonomy, to witness to the truth of injustice, and to insist on political responsibility".

It is precisely because language is such a determinant factor that a deepening of this debate, and perhaps the adoption of a position or clarification of terminology regarding it, would seem appropriate[12].

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[11] PERRIN, Pierre: "Efectos de la ayuda humanitaria sobre la evolución de los conflictos", in *Revista Internacional de la Cruz Roja*, nº 146, June 1998. pp. 349-364

[12] The fundamental problem of what to call something determines the place that this thing acquires in speech. When Medicos Sin Fronteras say, on receiving the Nobel prize that "a rape is not a complex gynaecological emergency" it is specifically drawing attention to the name. Another problem is connected with what is included and excluded in the agendas, both political and humanitarian. Amartya Sen, in her lectures to the World Bank (SEN, Anartya: *Development and Freedom.* Spanish edition: *Desarrrollo and Libertad,* Planeta, Madrid, 2000) draws attention to this. When, for example, in human rights someone says that what we call social rights are of a welfare society and someone else says that the Welfare State is also the leisure State, this ends up saying that the diarrhoea health problems in the Third World, no matter how ridiculous it may seem, are a claim for leisure. The debate on terminology is not therefore a technical debate but an ideological one. The World has changed since the Cold War but not by as much as some suggest. The politically correct perception of seeing and naming it has changed more. This is not the place to go into this more deeply, but numerous terms used in humanitarian action are the object of confusion, above all because of their different use in different languages. *Compassion and charity,* which in English have positive connotations are consedered differently in Spanish or French. The same thing happens with *aid*

. El otro problema está relacionado con lo que se incluye y se excluye de las agendas, tanto políticas como humanitarias. Amartya Sen, en sus conferencias frente al Banco Mundial (SEN, Amartya: *Development and Freedom.* Edición en español: *Desarrollo y libertad,* Planeta, Madrid, 2000) llama la atención en este sentido. Cuando, por ejemplo, en derechos humanos alguien dice que los llamados derechos sociales son

3.2. The new role of humanitarian issues in the international 'agenda'. The incoherences of coherence.

Changes in the international context and other variable caused, says Adam Roberts, a peak in humanitarian questions in international politics in the nineties. The implications of this now and furthermore in the future merit a few lines at least in the report.

This 'new humanitarianism', thinks Roberts, 'emerges as a response, when not emerging as a substitution or a supplement to liberal or democratic ideology. Despite offering a response to the crises, it is difficult to know in which direction to direct this humanitarianism when faced with the reality of how difficult post-aggression reconciliation is in conflicts with religious or ethnic roots'[13].

At the same time, other factors such as the growing role of the media in public opinion and governments, the interest of states in finding a 'lowest common denominator' for their responses (which is in many cases humanitarian aid), the neglect of their responsibilities regarding International Law, a greater 'visibility' in humanitarian action compared with other actions such as development co-operation, new definitions of global security and the setting in motion of new crisis management mechanisms, amongst others, have been forming a panorama in which humanitarian action has been consolidating in the international scene.

The increase in funds dedicated to humanitarian aid by donor states and multilateral donors at moments when total ODA (Official Development Aid) is decreasing, has gone hand in hand with these changes. If in the two years of 1985-1986 humanitarian aid made up 1.9% of total ODA, it is currently more than 8% of the total at the end of the nineties[14]. In the case of other donors such as Sweden or Norway, the humanitarian aid component of ODA exceeded 20% of the total.

More importantly in this context is the growing use of what is made of humanitarian aid, of humanitarian discourse let's say, as a specific instrument of foreign policy, and of the growing politicisation of humanitarian action. It converts into one more tool within the myriad of instruments that the international community has to confront crises but it loses the focus of its mandate and objectives. The situation is at the least, paradoxical: in the crises where there is a large interest on the part of the international

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de la sociedad del bienestar y otro dice que el Estado de bienestar es también el Estado del ocio, pues termina diciéndose que los problemas de salud por diarreas en el tercer mundo, en conclusión y por ridículo que parezca, son una reivindicación del ocio. El debate sobre términos no es pues un debate técnico sino un debate ideológico. El mundo ha cambiado desde la guerra fría, pero no tanto como algunos proponen, más ha cambiado la percepción políticamente correcta de verlo y denominarlo que la realidad misma. No es este el lugar para profundizar en ello, pero numerosos términos usados en acción humanitaria son objeto de confusión sobre todo por su diferente uso en diferentes lenguas. *Compassion o charity* que en inglés tiene connotaciones positivas son considerados de otro modo en castellano o francés. Lo mismo sucede con *aid* por ayuda que en castellano tiene una consideración meramente asistencial. Y así *ad infinitum*. Para un debate sobre conceptos en desastres, ver: DE CURREA-LUGO, Víctor: "¿Qué queremos decir cuando decimos ¨desastre¨?" *Revista Española de Desasrrollo y Cooperación, núm. 8* (Madrid, primavera/verano de 2001), pp. 101-117.

13 ROBERTS, *Op. Cit*., p.13.

14 For a review carried out these figures see: IASC (InterAgency Standing Committee), Global Humanitarian Assistance 2000, An independent Report Commissioned by the IASC, IASC-OCHA, Geneva, 2000.

community (Kosovo) humanitarian aid is used instrumentally in the service of politics and this is justified for the sake of 'coherence' with the situation with which the various instruments must act, within an integrated response framework. In the cases where there is not this interest (Chechnia) humanitarian aid becomes the only response and expectations are generated for the role that it can carry out. In both cases the humanitarian aid is put in the service of politics (the apparent lack of politics as in Chechnia is also very political), and its affects and impact are de facto conditioned. As has been said, paraphrasing Clausewitz, "humanitarian action can not become the continuation of politics by other means, or become its substitution, nor become the continuation of war by other means"[15].

In any case, the search for a suitable relationship between humanitarian action and political action in the search for durable solutions to conflicts is a subject which should be looked further into while avoiding the subordination of what is humanitarian to what is political[16].

3.3. The debate on 'humanitarian space'

The considerations above bring us to one of the most interesting concepts of the last few years, one which has tried to clarify and defend what the specific ambit of humanitarian action should be: what is called humanitarian space[17]. Summarising a lot, the idea of humanitarian space tries to demonstrate the need for an arena where humanitarian action, the work of assistance and protection with those who suffer, is possible without subordination to military, political or economic concerns. It means a space, on occasion virtual if you like, where we can act with independence and impartiality. As Ulrike Von Pilar says "most of the confusion around the term humanitarian action is the result of the scarce distinction between the creation and the protection of the space on the one hand, and the way of executing the humanitarian action within it on the other. While the former is a political responsibility (including legal and military aspects), the latter is responsibility of humanitarian organisations". On occasions, this space is a physical space as in the case of what are called humanitarian corridors, but mostly it is about trying to achieve respect for the way of acting which is characteristic of humanitarian action; that's to say its orientation towards the needs of the victims, its principles and its values.

This is important because, as has been seen on numerous occasions, mere physical presence, the simple existence of a 'secure' physical space does not guarantee independence of acting, free evaluation and the rest of the questions that are necessary for a humanitarian operation worthy of this name. Humanitarian action is not only characterised by what it does, but by how it does this. As has been said, emergency aid by itself can not called humanitarian if it is not carried out at the least, with impartiality and with orientation towards the needs of the victims.

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[15] REY MARCOS, Francisco, "La ayuda humanitaria en 1996; visiones y realidades desde la Unión Europea" in: *Anuario CIP 1997*, Icaria, Madrid, 1997.

[16] See on this subject, Devon Curtis*, Politics and Humanitarian Aid: Debates, Dilemmas and Dissension,* HPG Report 10, Overseas Development Institute, April, 2001.

[17] For a deeper discussion on this see VON PILAR, Ulrike: "El espacia humanitario en estado de sitio: apuntes desde la perspectiva de una ONG humanitaria", in: UNIDAD DE ESTUDIOS HUMANITARIOS: *puertes cerradas. El acceso a las victimas en la ayuda humanitaria,* Icaria, 2001.

Whether this concept of humanitarian space is shared or not, and there is debate about this, it is important to understand the specifics of humanitarian action and its way of confronting other forms of intervention.

4. The debate around the principles and the ethical values of humanitarian action

Since its origin humanitarian action has turned round and justified itself in the maintenance of a series of ethical values, or of a vision of the human being, at the margin of ideologies, which has legitimated and differentiated it, as we have already said, from other forms of intervention. This emphasis on values and principles which tends to surprise those who approach the humanitarian field, has been and is one of the distinctive aspects of humanitarian work. It has been picked up on in most documents of principles, charters and mission declarations, etc, of humanitarian organisations and in some international legal texts and documents. There is agreement on some of these values and principles, while others have been creating debates, differences of interpretation and disagreement. We specially refer to those.

The emphasis on values and principles runs the risk of being understood as humanitarian 'fundamentalism' by certain sectors, but having seen the attempt to appropriate humanitarian discourse on the part of other actors and the level of confusion surrounding this, it is a risk that one has to take. As Minear and Weiss say in their well-known *Humanitarian Action in Wartime*: "The principles are not absolute morals, but fundamental objectives towards which humanitarian action must be orientated. In humanitarian activity perhaps more than in other spheres, there may be as many exceptions as rules. But the principles establish their standards with which one can measure how they are kept to, and which help to avoid that a very energetic pragmatism degenerates into unprincipled opportunism"[18]. It is precisely now, at moments when a misunderstood activism lends itself to all kinds of opportunism, when it becomes necessary to say explicitly what the values and principles are that lay the basis for our action.

It is in this way that one must understand the discussion and approval in 1994 of the *Code of Conduct r for the International Movement of the Red Cross and the Red Crescent and Non Governmental Organisations (NGO) in disaster relief,* from now on 'the Code', which has today been signed by hundreds of NGOs[19]. As a positive landmark in the measure in which it defines certain basic, common principles and values of NGO humanitarian action: humanity, orientation according to the needs of the victims, impartiality, independence with respect to governments and accountability, etc,. The Code in fact emerges as a response 'on the defensive' on the part of the Red Cross and certain NGOs at times of great confusion regarding humanitarian concerns. In any case, as a consensus document, in many cases at the lowest common denominator, it leaves many debates open.

The suitability or not of this type of documents as a Code and its greater or lessor utility has been questioned from various points of view, as we will later see. Even signatory organisations of the Code such as MSF have drawn attention to the limits of this focus

[18] MINEAR, L., WEISS, T., *Humanitarian Action in Wartime,* Lynne Rienner Publishers, Boulder, Colorado.1994.

[19] The Code must not be seen as a tool of cordination and it is an error to present it like this. It is an attempt to define clear and common principles at least for the humanitarian NGOs.

on standards for humanitarian action[20] which affects mostly initiatives such as the "Sphere Project", but also the Code.

The idea that principles evolve and adapt to new realities is fundamental. If not, how does one understand that the Red Cross adopted the current version of its Principles in 1965, more than one hundred years after its creation? Or how does one understand the creation of Medicos Sin Fronteras itself? The humanitarian tradition is closer to the empirical tradition that adapts itself to situations than to a Kantian vision of categorical imperative (in this case humanitarian imperative, as some would say), although at times it seems the opposite. What would a seminar suggest titled 'Is aid based around principles possible in a world that does not have them?[21] What validity do they have? For this reason and through analysing the role that aid has played in certain crises, new questions on principles are raised.

Of the four classic Red Cross principles (we are not considering Unity, Universality and its voluntary nature which are organic principles), two of them continue to be considered fundamental, albeit with some debate, there being more discussion around neutrality and independence. As a joke we could say that the four principles are three: humanity and impartiality.

There is, in principle, agreement regarding the principle of humanity understood as the impulse with emerges with the objective of alleviating and preventing human suffering wherever it occurs and of fostering respect and protecting any human being in any circumstances. This consensus also has its representation in legal standards and is at the heart of the Universal Declaration of Human Rights, IHL and the Law of Refugees. To this the Humanitarian Charter of the 'Sphere Project' refers, which is a reminder to the states who are signatories to the standards mentioned of the obligations that they have taken on. What some call the humanitarian imperative, to which we have already made reference, is included in this principle.

The critics of the principle of humanity would say that its nature is too vague to be the base of humanitarian action. It is worth noting that in drawing up this principle for the Red Cross and other organisations at least four ideas were reaffirmed which cemented the principle and detailed the merest existentialist vision: prevention, alleviation, protection and respect. More recently the idea of aid as a right was incorporated. We will return later to the implications that this theme can have and if it is necessary to turn from a focus to aid centred on needs to one centred on rights.

Impartiality is also a universally accepted principle and encapsulates the ideas of non-discrimination, attention according to needs and not other criteria, and the idea of priority treatment for those who need it most by making the difference between individuals abstract. The idea of impartiality constitutes the essence itself of humanitarian action and it is the base of classic medical ethics.

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[20] See the interestion article of : TERRY, Fiona: "The limits and risks of regulating mechanisms for humanitarian action" *Humanitarian Exchange no. 17,* Humanitarian Practice Network, ODI, London, October 2000.

[21] *Principled Aid in an Unprinciples World: Relief, War and Humanitarian Principles.* Papers from a seminar, London, April 1998..

It could be said that even those that advocate more adaptation of traditional humanitarian principles to current times would share the need to maintain the values that sustain the principles of humanity and impartiality. Also a certain idea of universality not only as an organic principle but as an expression of the universalist vocation of humanitarian action.

4.1 The debate on neutrality

The debate on neutrality is old and has been around for years with diverse interpretations, even in the organisations that adopt it. Similarly, in the Red Cross neutrality has two aspects: military neutrality, which is to say not acting in a way that can benefit one of the parties, and ideological neutrality which involves taking a position of reserve and prudence in political, religious and ideological controversies. But it is more. In the latest illustrations of this principle on the part of the ICRC neutrality as a type of behaviour was put forward, which is something different. "We must recognise that it is not always easy to act with neutrality. Firstly, each individual has personal convictions. When disturbances crop up that stir passions, abstaining from expressing ones opinions in the exercise of ones functions requires, on the part of each member of the Red Cross and Red Crescent, great self control. The volunteer is not asked to be neutral – we all have the right to have an opinion – but to behave and act in a neutral way. The shade of meaning is important"[22]. Nobody is asked to be like a stone, to not suffer, to not be indignant at the violations of human rights or at violence, or to not take a position on this. They are asked to behave neutrally so as to maintain the confidence of the parties and to be able to access those who are suffering.

However, many argue that even while attempting this, neutrality is impossible in current CE and that it is naïve to continue arguing in favour of it[23]. Inevitably the provision of assistance and resources and protection for certain sectors has an impact, and the question is to benefit from it in a positive way so that it contributes to the building of capacities and to the laying of the foundations for peace. This is to say replacing classic humanitarianism with a more political form of itself, and one integrated in the foreign policy objectives of security and peace. For this, the pure interpretation of neutrality is difficult to sustain. This type of position at least has the advantage of clearly putting forward the question without recurring to rhetoric of neutrality to hide clear political objectives.

For others, on the contrary, this integration is problematic both in terms of ethics and operationally. Ethically because it is not at all clear that the objectives of the big powers, multinational organisations or the states donating aid coincide with those of the populations affected by the conflicts (East Timor, Chechnia, etc.). Neutrality does not mean being politically blind towards the risk of the aid being manipulated but it is an active concept that requires the humanitarian actors to better analyse the political context to protect the integrity of their action. A distinction is made between a

[22] INTERNATIONAL COMMITTEE OF THE RED CROSS: *The fundamental principles of the Red Cross and the Red Crescent,* Geneva, 2000, pp. 14-15.
[23] Rony Brauman himself argues that: "As in most modern conflicts, humanitarian neutrality lost all real significance". BRAUMAN, Rony: *Refugee Camps, Population Transfers and NGOs, Hard Choices: moral dilemmas in humanitarian intervention, Jonathan Moore Eds., Oxford 1999, pp. 189.*

politically informed focus of humanitarian action and another *politically guided* by the interests of the donor states.

Furthermore, defenders of maintaining the principle of neutrality argue that it is not only for moral reasons but also for practical ones. Negotiating access to the victims with the parties of the conflict serves to prove that the aid can not bring any military advantage to them, and therefore that it must not be a military objective. If the aid is associated with one side in particular it will be taken to be an objective by the combatant thereby reducing the possibility of accessing the victims[24].

In any case, it seems evident that due to the multiple interpretations that are given to the concept of neutrality, it is confusing and for this reason it was left out of the Code of Conduct, in doing so trying to recuperate the idea of impartiality and fill it with positive content. Neutrality brings us back to the combatants, and these are not the target of humanitarian action. The idea of impartiality brings us to victims, to the populations in jeopardy, and it is they who give reason to our action. There are increasingly more people for whom, even for its defenders, neutrality is not a principle at the same level as impartiality or independence. Its goal is action; it is operational and must make the exercise of the principle of humanity possible. Therefore, it would be more on a par with an operative principle than a general characteristic. Françoise Bouchet-Saulnier in his Practical Dictionary of Humanitarian Law shares this idea.

The idea of neutrality in its evolution brings us to the ideas of confidentiality, of testimony and of 'advocacy' and even of denouncement. In its origin, the neutrality of ICRC was associated with silence and for this reason the notion of neutrality itself in MSF was different. The question today would be if in current CE and in cases of flagrant or intentional violations of human rights, IHL, or any other standard and need for political solutions to a crisis, neutrality is an ethical position to take. Or should a position be taken in favour of the victims even though, on occasions, it would mean abandoning neutrality. And continuing this argument the next question would be if humanitarian action is possible if the principle of neutrality was abandoned.

[24] Taken in part from: MACRAE, Joanna: *Humanitarianism: facing new challenges,* Great decisions 2000.

4.1.1. The Colombian case. Active neutrality: strategy of the rural and poor civil society[25]

The «other» civil society that lives in zones of armed conflict has organised itself in different local and/or regional processes with different strategies. Processes that, obeying the lawful instinct of survival, raise a conceptual flag: **active neutrality**, a category in which concepts and notions of international humanitarian law are mixed with a permanent non-definition of borders between civil society and civil population.

Neutrality appears as a military term, now mechanically applied to civilian concerns, since neutrality was understood simply as the <<non participation in hostilities>>, but the matter has now gone beyond that. It has created a whole debate on its validity, a few supposed legal frameworks, a few adjectives (<<active>>) and a conversion of the right to be neutral (indisputable, in terms of law) to the <<duty>> to be neutral.

Neutrality in IHL appeared in the 1864 Geneva Convention to characterise the health services that were accompanying armies, but this notion was transformed. Its use in IHL was reduced to the <<right to neutrality>> that those states outside the conflict could claim, and who could decide to stay like that, and to the International Movement of the Red Cross and other NGOs[26]. In no current document of IHL or in no texts of interpretation is there any mention of the obligation of neutrality for civilians or for NGOs. Therefore it being invoked in the light of humanitarian law only reflects ignorance of IHL. Active neutrality is one thing but the notions of <<civilian population>> and <<non-combatant>> is quite another.

The proposition has been useful and has generated experiences that were no doubt valuable and positive, but also other connected problems. First argument against: in Colombia, what is dangerous is the fact that neutrality (active) has been converted into an indispensable requisite for respecting the civilian population, within an incorrect notion of IHL. Ignorance of IHL leads to <<negotiating>> recognised rights. Similarly, inventing legal justifications only serves to generate false expectations in the face of nonexistent standard frameworks and to neglect the notion of <<civilian population>>, which really does have a clear legal framework. Neutrality rather than an <<ingenious way of refining IHL>>, is a dangerous way of interpreting it.

A second argument against neutrality is on the matter of human rights, in which Colombia has a marked crisis. <<Neutrality>>, rather than bringing the solution brings the problem, since notwithstanding the words with which it is named, the measures taken by the society which arrives at the point of removing its members from political discussion (to avoid being identified as close to some of the armed actors and therefore as non-neutral) and the right to have opinions or to meet, it is a backward step in the exercise of human rights. Active neutrality is a door to denying the right to be a civilian, to participate in collective life and to take decisions. It denies the right to become a politician, politics being (amongst other things) in the sphere of opinion. These methods for forcing the deliberate renouncement of the civil and political rights of people works in the same way as what fear sown by guns seeks. Active neutrality like this is not a <<first step to the reinvestment of democracy>> but its denial[27].

A third argument against is related to when protection is invoked and sought after but did not turn out in such or such a way, and the cost to pay is high. The country people of Carare were the first to opt for active neutrality, but it was not for this that the deaths stopped (would the result have been substantially different if they had declared themselves to be 'civil population' instead of 'actively neutral'?). The

[25] Taken from: DE CURREA-LUGO, Víctor: "Sociedad civil en Colombia: participación ciudadana, entre el miedo y la indefinición" written for: *América Latina Hoy*, (Salamanca, 2001), in print.

[26] IHL actually only asks the NGOs that work in armed non-international conflicts to be "an impartial humanitarian body" and nobody talks of demanding them to be neutral. What happens is that the Red Cross has adopted on its own accord such a principle but with an interpretation that differs, for example, from that of Medicos Sin Fronteras. See: Numeral 2, article 3 common to the Four Geneva Conventions of 1949.

[27] On the difference between civil disobedience and resistance against the State, see the clear essay of Habermas in: HABERMAS, Jurgen: *Ensayos Politicos,* Ed. Peninsula, Barcelona, 1998. Translation by Ramon Garcia Cotarelo, pp. 49-89.

<<declaration of the indigenous councils and the indigenous organisation of Antioquia>> (Medellin, May 1996), put forward a stance to the war that was no more than that of the civilian population. Other communities claim the right to <<carry out community work, to reject injustice or impunity, to not take part in hostilities and to not hand over information to the parties>>, all of this is simply part of being a civilian population.

The attacks on the peace communities of Uraba were founded on the idea of presenting neutrality as a <<guerilla strategy>> and in this way, instead of granting the protection sought after, it increased the risks. Active neutrality did not avoid the deaths in Uraba, Aguachica or Carare. In no way is it desirable to deny the validity of their claims, nor the heroism of their fight, one wants to show that these same claims were possible after the declaration of the civilian population without the renouncement of the rights that neutrality involves.

Some put forward the idea that in indigenous communities neutrality is possible by confirming that they are <<different>> and that therefore their neutrality has possibilities. This thesis is naïve (Although I am Colombian it does not mean that I don't understand conflicts in other countries) and dangerous as it <<allows>> or at least does not question the attack on non-indigenous people since they are not <<different>>. It is a way of arguing based not on the condition of the person but on the idea of equal / different, on which paradoxically <<social cleansing>>,amongst others, also feeds.

Arguing that peace arrived at some of these regions only because of the action of neutral communities is to not recognise that armed actors impose or contribute new dynamics. We can not deny that in some cases (accepting that it is not always like this) the pacification of certain zones mainly fell to the decision of armed actors because of the political and/or military expediency of such a decision.

Another price is one of avoiding themes in order to not become a <<part of the conflict>>, such as petrol company policies (to not appear to be of the ELN), land reform (FARC), extortion and blackmail (AUC), or the sovereignty and defence of institutions (to not appear to be a member of the Armed Forces). In this sense, the idea expressed by some teachers of <<neutral education community>> would be equivalent to the renunciation of the right to freedom of education and to the academic encroachment of certain subjects, when at least theoretically, the defence of the University is enough as it is.

Two of these considerations (non-avoidance of deaths and accusations of false neutrality) has pushed some of these same communities to think along the road to arms as a form of defence, which is arguing more against active neutrality than in its defence. A community that can not express itself is a community being driven to war as a route of debate with which the circle is closed. And what is even more dangerous is explaining another idea of active neutrality in which armed actors outside the law are said no to, but when there is collaboration with the Armed Forces, as in the declarations of neutrality <<by decree>> of Urrao and Mutata (concept of neutrality promoted by Alvaro Uribe Velez, amongst others).

The habitual confusion between the two concepts of neutrality and impartiality and their consideration within IHL leads us to go a bit further on this point.

4.1.2. Elements for the debate on neutrality

Our starting point for the debate is the classic notions of neutrality and impartiality, which we will continue only with what they actually say and without including what we think they may say or what we want them to say.

Impartiality is: "not making distinction based on nationality, race, religion, social condition or political creed" and "dedicating oneself only to aiding individuals according to their suffering, by finding remedies for their needs and giving priority to the most urgent cases".

Neutrality is "with the aim of maintaining the trust of all, abstaining from taking part in hostilities and at no time political, racial, religious or ideological controversies".

Going deeper into these definitions and logic we have the following:

We start with impartiality. This definition goes against negative discrimination, as does international human rights treaties, but not against positive discrimination, which is not only permitted but is obligatory. If not we would be betraying the second part of the idea of impartiality: prioritising some over others according to criteria that are not on the exclusion list but are an inherent part of health action. For example, giving more food to those who are malnourished, dedicating resources to people who have health complications and who therefore require them. This is compatible with the idea of equity: equal treatment for those who are equal and unequal treatment to those who are unequal.

Regarding neutrality, we begin by saying that it is NOT a demand for the NGOs that work in non-international armed conflicts. IHL only asks that it is an "impartial humanitarian body"[28] and says nothing about demanding neutrality. We remember that IHL considers neutrality to be a right/duty of third party states that do not want to participate the hostilities of the wars of others.

Now, "maintaining trust" involves a limit: the limit of the humanitarian action itself. Action con only be validated badly by "maintaining trust", let's imagine transporting weapons for an organised armed group, taking photos for military ends, etc. And "taking part in hostilities" IS participating in acts of war, is being a direct participant and no other thing, neither more no less[29].

The 'controversies' from which one abstains are those detailed by the following principles: political, racial, religious and ideological. We do not want to fall into the Leninist formula here that "everything is politics", but rather understand that this word defines some concrete actions that we understand to be part of politics, and that humanitarian action is therefore NOT political[30].

The ICRC has added the notion of confidentiality to this neutrality, it being an extension of itself and fruit of: a) a particular logic and b) an operative necessity. Now for our debate we will avoid confusing neutrality (abstention from debates) with confidentiality (opting for silence). But before continuing we want to make clear that the ICRC has set down that even confidentiality, the silence that is derived from this particular extension of neutrality, also has a limit. For example, in the case of Rwanda.

If we understood neutrality and confidentiality as a whole, the position of the Red Cross with respect to 'advocacy' would be a contradiction, except when we understand it in a

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[28] Numeral 2, article 3 common to the Four Geneva Conventions of 1949.
[29] See article 4, Protocol II additional to the Four Geneva Conventions of 1949.
[30] Here we move away from the thesis held by Jorge Castilla, when he says the opposite. See: CASTILLA, Jorge: "Neutrality and the political dimension of humanitarian action", in: MEDICOS SIN FRONTERAS: *Cuadernos para el debate, no. 9, Barcelona, 2001, p. 10. We differentiate between a diplomatic action, a Security Council embargo and an electoral campaign, and the distribution of drinking water since the goals of the latter action are essentially different from those of the the former ones.*

reduced way (as some have translated it) as 'diffusion' or 'awareness'[31]. These are things that the ICRC already does without necessarily adhering to the notion of 'advocacy'. We will return to this. In this context there would be various possibilities:

1). Thinking there is no neutrality or human omission in any action given that, facing up to reality, acting or not acting constitutes the taking of sides (consciously or unconsciously). In such a case neutrality would be incompatible with human life and it would be impossible to claim neutrality or define its limits.

2). Neutrality is silence. In this case neutrality equals confidentiality which means running the risk of confusing one silence with another, whereby silence would stay at the same level by choice, as a means to the end of silence by impunity or complicity (the case of ICRC). In the words of F. Terry, useful for characterising this case: "the word 'neutral' comes from Latin and does mean either one thing or the other. The decision to stay neutral could be not based on the desire to keep oneself above the political affray, but could be born from indifference and cowardliness. Neutrality is not a virtue in itself"[32].

3) Does expressing oneself, demonstrating against something, saying something whereby you are conforming to a reality mean losing neutrality? In such a case, all the declarations of humanitarian organisations (called donor reports or annual reports) would be valued the same as the reports from Amnesty International. Therefore, saying that there has been a massacre or writing a technical report to show malnutrition within a refugee population does not mean a loss of neutrality, or does it? In this logic, no public document, apart from a simple addition of numbers, would be neutral. In other words, we will explore the possibility of whether a testimony is neutral in terms of it conforming to the reality or showing 'technically' a reality without making it an object of debate within the prohibited categories of the principle (of a political, racial, religious or ideological order). But if others do it, this is their own responsibility.

4) What is the limit whereby a document is no longer a 'technical' report and becomes a document of denouncement? In the ICRC Colombia for example, this debate cropped up in relation with the final report of the investigation of attacks on the health sector, included in a book published by the ICRC[33]. There were different points of view specifically on this document, although primacy went to the view that it was not a denouncement is as far as it did not specify the authors and/or potential authors of these breaches of IHL. But the debate continues.

5). Does neutrality mean being silent on the humanitarian debate? Firstly, we should state that the category of 'humanitarian controversy' is not prohibited by neutrality (independent debate is at the limits of it, but it would contain the categories already seen). One thing is supporting the causes of a war, another is discussing HOW to help

[31] See an example of this logic of reducing "advocacy" to awareness in: THE RED CROSS AND THE RED CRESCENT: "The participation of the Movement of the Red Cross and the Red Crescent in awareness campaigns" (working document drawn up by Steven Davey and Jean-Luc Blondel), in: *International Magazine of the Red Cross, no 149,* (Geneva, March 1999), pp. 129-137.

[32] See: TERRY, Fiona: "Is the principle of neutrality relevant for MSF?", in: MEDICOS SIN FRONTERAS: *Cuadernos para el debate, no 9,* Barcelona, 2001, p.27.

[33] DE CURREA-LUGO, Victor: *International Humanitarian Law and the health sector: the Colombian case.* Plaza and Janes Editores, and the International Committee of the Red Cross, Bogota, 1999.

the victims. The humanitarian duties of States in terms of humanitarian action by the parties in a conflict are not a debate in the strict political sense but debates inherent to humanitarian action. And it would be dangerous to extend neutrality to the prohibition of humanitarian controversy.

6). Neutrality is possible in one context (as a choice), independent of whether there is an armed conflict[34] or not or if it is an international or internal conflict[35]. And neutrality can not be against (diametrically opposed) the defence of victims[36].

7) That having been said, we can say that we have various options: a) neutrality understood as a whole with confidentiality, b) understanding that it is possible to talk without losing neutrality, although confidentiality is lost (these being understood as separate), for example, in humanitarian debate or in the supply of information in a non-biased way, c) at times it is necessary to participate in the debate even within the categories excluded by neutrality and to thereby lose neutrality because we think it is morally valid to do so.

4.2. Humanitarian action and political action. Condemned to understand each other or…. The further apart the better?

The debate on neutrality necessarily leads to the question of the relation or lack of relation (its limits, advantages and drawbacks) of humanitarian action with political action to, which we have already made reference. Not of just any type of political action of course, but of a political action (Political with capital letters as some politicians like to say) that contributes to the resolution of conflicts and of the foundation causes that make humanitarian action necessary.

The ex-Commissioner Bonino, a person who is without doubt a representative of the political closening to humanitarian concerns, puts forward the subject in a fairly eloquent way: "We know that the mission of humanitarian aid does not consist of solving the crises or finding ways to end them, but it is clear that without our testimony, without the presence of humanitarian workers in the places of these events (the same can be said of the media) it would be much more difficult to understand the origin of the conflicts, to re-establish a minimum of justice and to find the key to getting out of the crises". At least politicians understand that the aim of the field of humanitarian work, as ONGs have been claiming for decades, is not resolving the conflicts but saving human lives in minimal conditions of dignity. Here is its greatness, but at the same time its limits.

To do this, it is not contradictory to advocate a more independent humanitarian action that could contribute to alleviating the human suffering of human beings and to defending their dignity, nor to be aware of the limitations of this task and of the need therefore of other types of act that complement it. It is here where those linking focuses of aid, rehabilitation and development, *continuums contiguums,* make sense. We will return to this in another section, and to the connection with certain political action: the recognition of the need to give an integral vision – separately to who does it or to

[34] In contrary to this statement, see: CASTILLA, *Op. Cit.,* p. 11.
[35] In contrary to this statement, see: TERRY, *Op. Cit.,* "Is the principle…?" p. 25.
[36] In contrary to this statement, see: *Op. Cit.,* p.26.

whether our organisation does it - to the fight against poverty, for the reduction of vulnerability, the possibility of exercising rights and the resolution of conflicts.

The problem is that some sectors have understood this necessary connection as a simple utilisation of humanitarian action within the foreign policy of states and multilateral bodies. This subordination of humanitarian action to other interests which was already started in the United States years ago, is being strongly put forward now in the ambit of the European Union and Spain. The role of aid within CFSP (Common Foreign and Security Policy), its lessor or greater autonomy with regard to other instruments and its orientation according to the values that gave rise to it such as impartiality are under discussion[37].

Until now there has frequently been not a supplanting of humanitarian concerns by political ones but an opportunist use of the humanitarian field for lack of political will (a good example is the first phases of the Yugoslav conflict). Bonino herself said "we must avoid constantly finding ourselves in situations in which humanitarian aid is used to substitute, or to serve as an alibi for the lack of foreign policy. Without political will which backs the actions of the European Union (from the United States or the UN, for example) in a crisis situation, humanitarian action will not be anything more than a substitute, a drop in the ocean, however much it is justified. Our objective must not be to politicise humanitarian action, but rather to make foreign policy more humanitarian. However, every time that somebody tries to place the ethical dimension at the centre of debates on the conflicts of our century, the explanation that is always given is that apparently it is very difficult, even impossible, to reconcile humanitarian action based on abstract principles and values and a political action that is governed by reality[38].

In the debate on whether humanitarian action is connected or not to politics a difference can clearly be seen between the Anglo-Saxon world and the Francophone and Latin one. In the former, the Peace Agenda of Boutros Gali and the growing role of some armies in various types of peace operations have created a certain tendency, even in many NGOs, to be favourable to this connection with both types of action. There is talk of a so-called 'new humanitarianism' that would surpass the limits of classic humanitarian action by making it more 'efficient', on it being incorporated into the foreign policy agenda[39].

For others, however, this utilisation of the humanitarian field within a more general political agenda would entail many risks and the loss of the possibility of maintaining the humanitarian space and the free working with the victims. In any case it would put neutrality in question.

4.2.1. The approach of humanitarian action of the European Union

[37] Further developing this subject and the "incoherences" of the CSFP with the humanitarian action of the European commision exceeds the objective of this report. For a current account see International Crisis Group, The European Aid Office (ECHO): Crisis Response in the Grey Lane, ICG EU Briefing, Brussels, June, 2001.

[38] BONINO, Emma: "Greatness and misery of humanitarian action", Label France, Ministry of Foreign Affairs, France, 1998.

[39] See on this matter the very significant summary of a Conference organised by the ODI (Overseas Development Institute, Politics and Humanitarian Aid: Debates, Dilemmas and Dissension, HPG report 10, London, April,2000.

The case of the European Union turns out to be a paradigm for many donor bodies of how the relation between humanitarian and political action has been evolving. The creation of ECHO (Humanitarian Office) in 1992 came from the need to give a response, at least in the humanitarian field, to the Balkan conflict and to other crisis situations that were happening at the time and also from the need to reorganise the services of the European Commission that were more centred on development affairs but with no experience of humanitarian and emergency questions. Furthermore, ECHO arose at a time when there was a lack of a common foreign policy and when there were big differences regarding the position of policy in the Yugoslav conflict. As has been said, humanitarian aid fulfilled a role of substitute diplomacy.

The approval of humanitarian aid Regulations in 1996 was without doubt a historic milestone, since it granted legal base to the work of ECHO and to the humanitarian action of the EU, and took on the principles of impartiality and neutrality, recognised the necessary independence of the NGOs (main implementers of community aid) and clearly separated humanitarian action from the foreign policy of the EU, in process of construction.

However, the incorporation of the Common Foreign and Security Policy (CFSP) in the Treaties and the assumption of many of these functions on the part of the European Council and not of the European Commission (on which ECHO depends), has been opening a series of dilemmas which are still not resolved. For example, the role of the EU in the area of the prevention and management of conflicts and crises has been increasing, and also the participation of European armed forces in the *Petersberg Tasks*. This and the need to have other instruments of acting in these crises, of a similar nature to humanitarian work has given rise to the setting up of other initiatives which do not go in the area of humanitarian aid Regulations but are more connected to the CFSP. We refer to questions such as the Rapid Reaction Mechanism, set up in 2000. This has created certain uncertainties in the work of the EU and has put the initial humanitarian conception of many of its actions into question. If we then add the organisational disputes between the Commission and the Council and in the heart of the Commission itself, about seeing who is responsible for what, we will see that the panorama is not yet resolved.
The debate that presents itself is if the aid must be connected more to the CFSP and to the combined Community foreign policy or if humanitarian action must keep a greater level of autonomy with respect to politics.

The position of European NGOs has from the beginning been against this dependency of humanitarian aid on the CFSP and this has been expressed in several forums. VOICE (Voluntary organizations in cooperation in emergencies) which is, if fact the Coordinator of European humanitarian NGOs expresses this emphatically: "Community humanitarian aid must be distributed towards those who most need it, on the basis of non-discrimination and with no political considerations. It must not be subject to political conditions. European humanitarian aid must stay independent of CFSP, which must also commit itself to continuing the provision of humanitarian assistance with no political ties. Community humanitarian aid must have a wide definition, including continuing aid to chronic crises, rehabilitation, preparation in the face of disasters and

the building of capacities for emergency relief activities, and it must direct itself to finding lasting solutions"[40].

4.3. The principle of independence. What are you so proud of…

Much less controversial than neutrality, the principle of independence has also been the subject of discussions and several interpretations. In general, all the humanitarian NGOs claim to be independent, although in some cases they tone down their collaboration with public powers. Independence would involve the will to oppose any interference of any type that would impede the carrying forward of the imperatives of humanity and impartiality. It is the guarantee of being able to freely evaluate the needs of victims and to propose actions that are not watered down, based on proximity to the victims and knowledge of the situation. It therefore has a component of freedom of analysis and action, and another of economic independence to be able to make the former possible. But are we being fair? Is economic independence a guarantee of real independence with respect to, for example, public powers? Obviously not. Of course there are more possibilities for acting independently if the body is also financially independent, but it is not always like this. For example, many forms of private financing linked to campaigns or to companies do not necessarily increase independence and in some cases can limit it.

The drawing up of the fourth point of the Code of Conduct is in this sense significant as it puts forward in a way which is no in way 'neutral', the principle in negative. "We are determined not to act as the tool of government foreign policy" it says, though being more specific with "humanitarian NGOs are organisations that act with independence from governments" with which they collaborate and accept funds "in as far as it coincides with our own independent policies…we try not to depend on a single source of finance".

However, the analysis of many NGO activities, many of whom are signatories of the Code, in conflicts such as Kosova demonstrate the difficulties in exercising this principle and what Eric Dachy calls "humanitarian docility".
The appearance in the nineties of new possibilities for public finance for humanitarian operations (the ECHO case is the most relevant) and the greater reaction and economic support from a public faced with these emergencies, have led to many NGOs placing themselves in this 'market' with very little or no independence and acting as mere subcontractors to the donors. However, in trying to situate this debate we should recognise that the finance model, project to project or operation to operation, has demonstrated itself to be not very efficient in terms of real impact on the populations. And that moving towards greater co-ordination, which on occasions – let's not kid ourselves - means the loss of independence, also seems legitimate in certain cases.

The theme of independence in the diagnosis, the evaluation and in the analysis that for some would be a purely operative principle, becomes fundamental every time that it has an effect on later acts. Some proposals are being discussed along these lines which would try to make independence compatible with efficiency and a greater response capacity. For example Jean-Cristophe Rufin, on learning lessons from the Kosova war,

[40] VOICE, *The future of European humanitarian aid, The NGO view.* Position paper., Brussels, 1999.

put forward the creation of a "High Authority" tool, impartial and neutral, dependent on the United Nations and capable of reacting in real time and with objective criteria when faced with humanitarian crises[41]. Its fundamental mandate would be compiling data and monitoring (a type of early warning), independently evaluating the needs of the populations and keeping the Secretary General informed. The creation of a department of this type at the heart of the United Nations would allow humanitarian diagnosis to be separated from political decision making and, in as far as it was genuinely independent, for it to be useful for NGOs also.

Along the same lines Médicos del Mundo France proposes, in application of article 22 of the United Nations Charter, the creation of a consultative body, the Humanitarian Commission, in charge of evaluating the needs of the civil populations in case of the breakdown of peace, threats against peace, armed conflict or situations of extreme urgency. It would be formed by independent experts elected according to their competence and integrity.

Independence, yes, but in the service of a greater humanitarian response.

4.4. Debates around other principles

Some organisations such as MSF classically differentiate between humanitarian principles and operational principles which those first in the field would interpret. Whatever they were, they would be derived from humanitarian principles, and amongst which there would be freedom of access, impartial evaluation of needs, proximity to the supposed victims, free supervision of activities or the control over the use of the aid. These would be guarantees of an impartial and independent work from the beginning to the end of the action.

Some organisations and authors have suggested other principles which are under discussion or are not commonly accepted as they stand. Amongst these would be consent of the victims, professional and technical competence – good will is not enough – and testimony, about which we have already talked while on the subject of neutrality. Is testimony a principle or one of the ways that humanitarian action can cloak itself in the benefit of victims.

4.5. The question of testimony and advocacy.

The origins of modern humanitarian action come from the act of testimony together with the basic impulse for solidarity and aid. What else could the publication *a memory of Solferino* after the impact that the suffering of the victims in that battle had on Henri Dunant be? The consolidation of the legal standards of IHL and the emphasis placed by ICRC on the duality of assistance and protection lead to an upturned conception of humanitarian action in the assistance side, although less so in terms of testimony. It was the Biafra crisis of 1968 that gave rise to the creation of MSF, which in turn reopened the testimony side of action. It was then that the use of humanitarian action began to be consolidated to include the classic components of help or assistance and protection together with the tasks connected with advocacy and testimony support.

[41] RUFIN, Jean-Christophe: "Les humanitaires et la guerre du Kosovo: echec ou espoir" in: *Des choix difficiles. Les dilemmes moraux de l'humanitaire,* Gallimard, Paris, 1999.

The practise of testimony in its diverse forms has also given rise to debates and splits in the case of MSF, and to the use of other terminology and other practises such as denouncement, advocacy, lobbying, awareness of public opinion, the greater or better use of the media, and the increase in educative focus which is complementary to work in the field, etc. A "pele-mele de mots" as Eric Stobbaerts[42] says, which is a reflection of a certain degree of confusion. Within these diverse categories testimony would be more a tool for influencing certain social groups, based on the direct knowledge of certain situations (being a witness) in such a way that it can favour the threatened victims or populations. It is a tool compatible with others (lobbying, communications) and complementary to the work of assistance and protection.

This same practice has made it impossible to establish a single focus on the action of testimony and the need to adapt it to each situation. It has also made visible the difficulties with which this work collides and the limits that it has on occasions, as it can have damaging effects on the populations that we want to help. This adaptation to each situation, which comes from common sense, also has its problems as it leaves a big margin for arbitrariness since it is the NGOs who actually decide, and their perceptions of security, of the situations of the victims, and of the suitability of the action can be influenced by other criteria and angles.

Another thought regarding testimony is that of the legitimacy of the NGOs to set themselves up as spokesperson for the populations at risk, justified because they have no other means of expression, or what's more, to claim that the mere presence of NGO personnel constitutes an act of testimony. Is this claim not just a bit arrogant? Would it not be necessary to complement this at least with greater work of the type that is found in what is known as "empowerment" of the populations so that the intermediaries are less necessary?

In any case, it can be said that even the most traditional organisations that are defenders of discretion such as the ICRC have been increasingly incorporating a certain dimension of testimony and advocay, and their role in the area of antipersonnel mines, the International Criminal Court and certain recent declarations on the Palestinian-Isreali conflict is significant, although it can be played down.

4.6. The debate on Codes of Conduct and common principles. And so what is this humanitarian thing?

In previous sections we have made reference to the Code of Conduct, in so far as it encompasses the principles that we have been analysing and tries to give a common nature to questions that were previously in the ambit of the independence of each organisation. Traditional humanitarian organisations already had their principles, charters, etc, and therefore the first question that we should ask is: Why are they embarking on an initiative that is trying to make something common to all? What do they gain in the attempt? The answer is not easy. For some it is only about an attempt to regulate (self-regulation) the sector led by the big NGOs who want to give general values to what are already their principles (or some of them). For others the scope is greater in as far as an attempt is being made to define NGO humanitarian action in a

[42] Mentioned in: LAPEYRE, Bernard: "Operational testimony" *Cuadernos para el debate no. 6,* Medicos Sin Fronteras, Barcelona, 2001.

positive way, while trying to give a clear message to the population of the commitment that we, who are involved in this task, have made.

Code of Conduct for the International Movement of the Red Cross and the Red Crescent and the NGOs in Disaster Relief (Summary)

The Code of Conduct for Disaster Relief, drawn up in 1994 by the Steering Committee for Humanitarian Response (SCHR) which brings together numerous NGOs, has the objective of defining standards of conduct and guaranteeing independence, and the efficiency and repercussions of humanitarian aid operations. The principles drawn up for the NGOs who participate in the humanitarian aid programs for catastrophes include the following:

- The humanitarian imperative comes first; the aid is delivered independently of the race, creed or nationality of the receivers and with no distinction of any type.
- The priorities of the aid are evaluated only according to need; aid shall not be used to promote a determined political or religious point of view.
- The NGOs will try by using all their means to not act as instruments of the foreign policy of governments;
- The NGOs will respect local culture and costumes;
- The NGOs will try to base their response to the catastrophe on local capacities;
- Ways will be sought to involve the beneficiaries of the programs in the management of the humanitarian aid;
- The humanitarian aid will have to do all it can to reduce the future vulnerability in the face of catastrophes, and in doing so satisfying basic needs;
- The NGO will be accountable both to the beneficiaries and to the donors;
- In information activities we will recognise that the victims are dignified human beings and not objects of despair who inspire pity.

Whatever it may be, the Code contains the basic principles; the ideas of humanity, impartiality, independence, together with other more innovative questions such as the commitment to accountability, transparency, the connection between medium-term tasks and development, the image of the targeted people, and others. The debate today does not revolve so much around its content, its utility or the mechanisms for its monitoring and application. The question is: Are these types of instruments based on the good will of who endorses them as being useful, or do they, on the contrary, serve to give theoretical legitimacy when they are later not complied with. The proposal for a humanitarian ombudsman is not yet supported by those who ask the question: who referees the referee? (see *infra,* making accounts available)[43].

The fact that a document such as the Code encompasses a common position in the non-governmental sector over what is humanitarian aid, leaving it clear that emergency activities, if they are not orientated with impartiality and independence can not be called humanitarian, is in our opinion a positive judgement.

Governmental sectors, States and international bodies have not defined with the same clarity as the NGOs their vision of the field of humanitarian action but there are positions to be considered although at times they are forgotten.

[43] We have only talked about the Code of Conduct as it is the most significant and representative but there have been other initiatives such as the People in Aid Code or Codes for specific crisis situations. The in depth thought would in any case be the same.

- The obligations contained in IHL, the international law of human rights and the law of refugees
- The sentence of the International Court of Justice in the Nicaragua versus the United States case for the support for the Contras (1986) which ruled that "above all aid must be realised without discrimination" to be considered as humanitarian.
- The Declaration of Madrid (1995), which emphasised impartiality
- Some standards of a regional nature such as the Humanitarian Aid Regulations of the European Union (1996) or some positions of the Development Aid Committee of the OECD
- The Humanitarian Charter of the Sphere Project (not the standards) which is nothing but a record of the former

As we see, even when toned down, humanitarian action is understood as the collective of interventions whose objectives are preventing and alleviating human suffering and returning dignity, carried out under criteria of impartiality, orientation to the victims according to needs and with no conditions, etc, and directed both to lending assistance and protection. What's more, the conception of humanitarian action that today we handle also encompasses aspects of advocacy or defence of rights, testimony and even denouncement together with these tasks of aid or assistance and protection. Furthermore, it's now some time since the concept of humanitarian action stopped being a synonym of emergency help in order to include attention to refugees in long crises, prevention and other elements.

The poor use of the term has caused some people from various viewpoints to propose that it should not be used, or that it is substituted by other terms. Similarly, from a strictly legal position "we reserve the qualification of *humanitarian* for the Law applicable in situations of armed conflict without prejudice to the inspiring character that the principle of humanity has in the International Law of human rights"[44]. This author speaks of a generic international assistance and holds that the adjective humanitarian "is an impossible balance between charity and justice that must be considered to be anachronistic".

From another more practical position within MSF José Antonio Bastos has also proposed abandoning the term and substituting it for another that would differentiate it from official "humanitarianism[45].

So it is an open debate, although we would propose a contrary strategy: defence of the concept and content of humanitarian action and fight against its utilisation for self-interested purposes and attempts to appropriate it. Along these better lines of clarification of what is and what is not humanitarian action a revision, of the Code has been proposed which would incorporate and emphasise "new dimensions such as gender and protection"[46].

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[44] PERAL, Luis: *Exodus masivos, superviviencia y mantenimiento de la paz,* Editorial Trotta, Madrid, 2001, pp. 19.

[45] BASTOS, Jose Antonio: "Apuntes para un debate abierto", in: UNIDAD DE ESTUDIOS HUMANITARIOS: *Puertas…Op cit.,*

[46] As Stockton says the Code was drawn up in the pre-Goma and pre-Kosova context and now some things must be changed. STOCKTON, Nicolas: "The Code of Conduct: A Personal View", HPG Report, May, 2000.

5. The situation of the legal debates around humanitarian action

The search for humanitarian answers by means of standards recalls the Enlightenment inheritance of recognising people as free, equal and possessors of reason (Locke) and subject to an end in themselves (Kant). This logic gave rise to the recognition of what is moral and at the same time of what is legal, and these two phenomenon which were born close together gave rise to the first debate on what is humanitarian in relation to what is legal: If by chance an ethical project needs standards with incorporated sanction, or it is alone in its ethical conviction and not on the imposition of law, then what is humanitarian takes shape and expression.
This is seen in the different positions:

- An extreme against the "standardisation" of the humanitarian world, as it brings with it the replacement of principles with legal technicalities according to its defenders.
- In the other extreme there are those who consider that the standards by themselves mechanically change reality from the time when they are passed, which means that the best and safest solution to the problems is to reflect in the standards all the actions of people and
- In the middle of the two previous postures, there is a more pragmatic range of views in which, being aware of the limitation of the standard, can be seen an (non-exclusive) answer to the humanitarian problem.

This tension is seen in various places:

- New documents of IHL vs. a greater application of the former,
- Greater constructiveness towards and constitutional recognition of fundamental rights or not, and
- Innovative and even daring suggestions, such as the International Disaster Response Law, etc.

Accepting what is legal, in order to continue the debate half a step, it has a second preliminary debate: the ambit of what is legal versus what is political or economic, for example, in the standards that recognise those "economic and social" rights.

Lastly, a third debate, fed from calls criticising the West and modernity, is in the questioning of the law as a mere instrument in the service of power (Foucault) or of capital (Marx) and is therefore not capable of giving fair answers.

With all this (or despite this), the growth of standards relating to the humanitarian world has been, more or less and very summarised, the following:

- Precedents to humanitarian "norms" in diverse cultures and epochs: Codes of horsemanship, Order of Malta, certain military rules, certain standards of the "Law of people", etc.
- Treaties and standards for military health (John Pringle 1743, Barón de Percy 1800 and others)
- Creation of IHL and the International Committee of the Red Cross (ICRC) after the Battle of Solferino. First Geneva Convention 1864. Other rules applicable to conflicts: Law of The Hague.

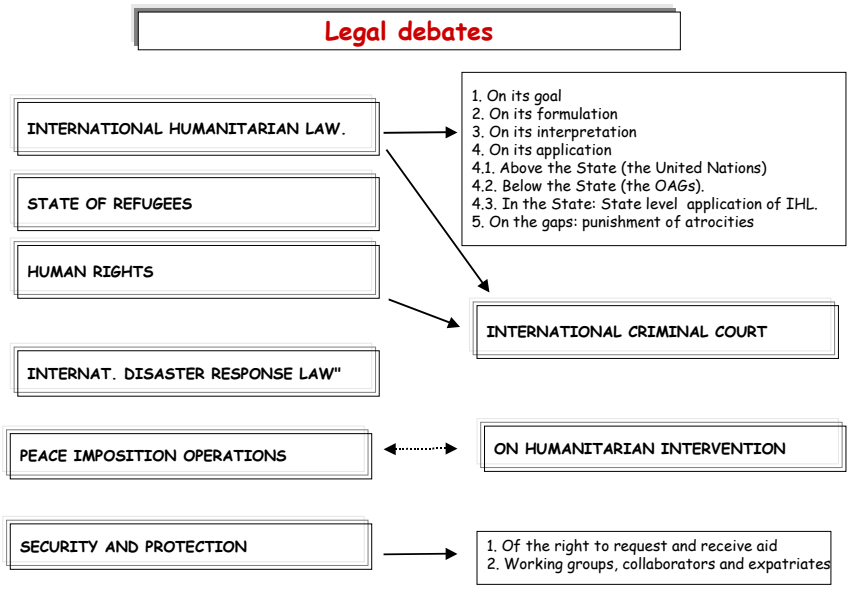
- Slow development of IHL until the arrival of the end of the Second World War during which there was an upheaval in the organisation of the international community and in the norms that regulated the use of force, and furthermore, the protection of certain sectors of the population.
- Charter of the United Nations Organisation (1945), Universal Declaration of Human Rights (1948), Geneva Conventions of 12 August 1949, Convention on the Statute of Refugees (1951), International Pact for Civil and Political Rights and International Pact for Economic, Social and Cultural Rights (1966), Protocol on the Statute of Refugees (1967), additional Protocols I and II of the Geneva Conventions of 1949 (1977), and the International Criminal Court Statute of Rome (1998).

It must be recognised that these instruments have a problem in their formulation which in turn implies a serious problem in their application in other contexts which are different to their initial context: they were all conceived in an almost reactive way (although with important precedents) after the Holocaust of the Second World War.

Regarding the UNO, one would have to take into account that its structure, on which the Peacekeeping / Peace Making Forces rest, was born with a Security Council that was aware more of who were the winners of World War Two than the principle of equality between each one of the States. This system demonstrates difficulties in its application when the situation is one of those "current conflicts" and/or "post Cold War" conflicts, which are precisely those most numerous and cruel and therefore those most in need of humanitarian aid[47].

Despite all of the above, such norms have allowed (or at least guided) with varying degrees of efficiency, the development of the humanitarian actions of our times. And each one of the norms has its "own personality": its achievements and failures, its problems of formulation and application and its limitations of scope, protection and demands.

[47] One way of classifying current conflicts defines them as: a) denaturalised, because the population in more the objective of the combatants than its victim, b) destructured, because of the break in and / or round about nature of the lines of command of the combatants, to the point where there is no obedience to military orders, c) uncontrolled, in terms of the replacement of speaking by instincts. See: DOMESTICI-MET, Marie-Jose: "One hundred years after The Hague, fifty years after Geneva: International Humanitarian Law at times of civil war" *International Magazine of the Red Cross, N 150,* (Geneva, June 1999), p, 72. Of course there are many other ways of establishing conflict typologies but this seems useful to us from the legal point of view.



5.1 Debates on International Humanitarian Law

IHL is a "new" law – if we accept that it is being built and that its last instruments were recently drafted – and it is a law "in crisis" in as far as the debate on its scope continues to be complex. But none of the two characteristics are *per se* negative. On the contrary, the permanent discussion and drafting in the ambit of IHL demonstrate the desire to find answers to current and novel problems derived in part from the new type of conflicts that are found in the world, the development of United Nations Peacekeeping Operations and the advance towards the creation of an international legal system. It is important to underline that almost all the countries in the world have signed the Geneva Conventions of 1949 and that in 1998 152 States had already signed up to the additional Protocol I.

We can, with only the aim of organising the debate, mention five spheres of discussion around IHL: a) debates on its end, b) debates on its formulating, c) debates on its interpretation, d) debates on its application, and e) debates on its gaps.

Before entering the debate we should remember the general ambit of IHL: IHL only responds to questions of war; anything outside this ambit (common delinquency, groups without territorial control, commercial "wars", etc) is not covered by IHL. From here stems one of the problems: expecting more from IHL than what it is (the same thing happens with human rights and law of refugees).

It is a law that is invoked when faced with a given situation and that does not ask for causes (the notion of a "just war" is not discussed). Its raison d'etre is not the pacification of a conflict but its regulation, although eventually it will support the peace making by means of bringing together the parties and the formulation of humanitarian agreements, etc. Seeing an end to the conflict is not the objective of IHL but the protection of certain people and determined assets in the middle of the war itself.

IHL is a traditional, conventional law among States. They are the signatories of Conventions and Protocols, they are the ones who acquire obligations and commitments on its signing and they are the ones responsible for its application and compliance.

From the beginning it must be recognised that the compliance with and punishment of this law is still within the ambit of the States (with the good and the bad that this implies). It was conceived for international wars (with the angles that this denotes), and it is not for the prevention of conflicts (and only responds to questions of a specific type of conflicts). But these specifics, far from being a weakness, represent its strength, as it gives answers within a precise ambit for an equally definable reality, thereby renouncing an overall conception.

5.1.1. On its goal

With relation (principal but not only) to pacifist attitudes, there continues to be a debate as old as IHL itself questioning its goal: a) if it serves to reduce the horrors of war to the benefit of the protection of some people and some assets that are thought to not be taking part in the war and to regularising the use of force, or b) if the norms of IHL see the war as something inevitable, even as something "acceptable" while it is being adapted in some ways to develop it. Furthermore, the fact of accepting the war, since IHL does not prohibit it but seeks its regulation, leads to the acceptance of the war acts themselves and even to the playing down of its atrocities[48].

With the first position, defended by the ICRC, IHL makes sense precisely because the war exists, with its adaptation to the nature of new conflicts being in any case necessary. With the second there are the pacifists: IHL admits war acts which, although they conform to the norms (in a possible war in accordance with IHL) it does not mean they are not terrible and morally unacceptable. Other critics go along the lines of its practical utility: many wars have ended without going through the application of IHL and the application of IHL does not necessarily lead to peace but (potentially) to the perpetuation of hostilities which are unquestionable as to whether they comply with certain rules.

The idea of limitations within a war and of the creation of IHL has been the object of discussions and severe criticism since its origin. But what is the most utopian, to advocate the prohibition of war or to believe that it can be limited and carried out while following certain humanitarian criteria? It is significant to see how the Swedish academy in the granting of the 1901 Nobel Peace Prize did not take a clear position and conceded it *ex aequo* to Henri Dunant and to Francis Passy, a French pacifist who was a supporter of the position against the pragmatism of Dunant.

5.1.2. On its formulation

a). The IHL rules were the product of discussions that sought to generate consensus between military efficiency and humanitarian action. This tension generated legal forms that could not seem balanced but subordinated one argument for another. For example, article 17 of additional Protocol II (to the Geneva Conventions) prohibited the

[48] For example, in a recent declaration of the International Criminal Court the acts carried out by NATO against the civilian population in the process of the war in Kosova were considered to be "collateral damage", thus justifying the NATO attacks.

displacement of persons, but then ruled that it could be possible "for urgent military reasons". There is here an example of joining military necessities with humanitarian demands, which is for some a "vacuous alliance".

b). If one of the fundamental reasons for IHL is the protection of the civilian population, can the debate on nuclear arms be settled by saying that they are conventional arms? This would be evidence that IHL has a limit and that even its humanitarian premises are subordinated to international politics. Nuclear arms are the manifestation of the extension of the concept of military objective, to the point of the loss of all utility as a definition of something limited.

c). The application of international law standards to regulate acts outside the law, as are rebellion, sedition and uprising (names used by many drafters of national law typify the actions of organised groups), which is really a contradiction since it is putting in the norm what is in principle outside it, which in turn brings problems of application and interpretation.

5.1.3. On its interpretation

a). Thanks to the additional Protocol I of the Geneva Conventions, many categories of these Conventions were defined (combatant, health personnel, military objective, etc[49]) but in the case of Protocol II (for non-international armed conflicts), the States were afraid of generating any type of recognition of rights and/or legal advantages to what is called Organised Armed Groups (OAG) by this route. Expressions such as "superfluous damage or unnecessary suffering"[50], or "urgent military needs" continue to be highly subjective, to the point that on being open formulas they can be disrespected with ease. The same criteria of "civilian population" does not exist as a clear definition, it being as such the persons who are not included in the notion of combatant or are not a member of the Armed Forces.

b). Returning to P. II and to non-international armed conflicts, theoretically, according to the technicalities of the law, the six criteria contained in article one of the P.II outline in which cases they would be applied or not[51]. But practically speaking there exists, beyond these legal technicalities, the wish to define the political validity of those projects which occur alongside OAGs so that they are recognised as part of an armed conflict.

In the case of Sierra Leone or Liberia, are we up against an organised, lawless diamond organisation or a group with political *status*? In Colombia, are we faced with groups of leftist insurgents or narcotics agents[52]? Curiously, it is the ICRC who opened the debate

[49] For these definitions see: for combatant and others connected to this (articles, 43,44,46 and 47 of the P. I), for military objective (art. 52, P.I), for health personnel (articles 8 to 16, P. I).
[50] Art. 35, Protocol II additional to the Geneva Conventions 1949.
[51] Art. 1, Protocol II additional.
[52] On the application of IHL in Colombia see: DE CURREA-LUGO, Victor: "Posibilidades y dificultades del derecho internacional humanitario en el caso colombiano" in: VV.AA: *Colombia: democracia y paz.* Volume III, PNUD, CSIC, Universidad de Antioquia y Universidad Pontificia Bolivariana, Medellin, 2001, pp. 234-274; and DE CURREA-LUGO, Victor: "Es posible humanizar la guerra en Colombia?", in *Papeles de cuestiones internacionales, no 74,* (Madrid, 2001), pp. 29-43.

of how to evaluate Organised Armed Groups so as to include them or not in the classification of armed conflict as such[53].

The first thing is that this discussion must return to the same sources as IHL and reply from there. The references to other type of sources leads to the line being crossed between judgements of fact (that IHL demands) and value judgements, which makes IHL an instrument of public debate and not a humanitarian tool.

c). Another problem is the distinction between combatants and non-combatants. IHL speaks of combatants for the case of members of the Armed Forces, of persons who participate directly in hostilities, and for the case of organised armed groups. But in some conflicts people have taken advantage of the situation in a kind of "indirect participation", in which there have been included cases of "enemy ideologists" and/or forced "collaborators", which in turn "justifies" the death of civilians who live in zones under the control of the enemy or who share some of their ideas.

5.1.4. On its application

IHL was born as the collective of rules for regulating hostilities between States. It later had to give responses to internal armed conflicts (which are curiously defined by their opposite: "non-international armed conflicts"), and it now prepares responses regarding its scope and application in the armed forces which carry out activities in the name of and with the mandate of the United Nations.

5.1.4.1. Beyond the State: The United Nations

a). There is a discussion on the application of IHL in the case of the Peacekeeping Forces[54]. These forces: are impartial, invited and therefore accepted by the parties in the conflict, have a dissuasive affect and a mandate to observe agreements and check the commitment of the parties, and are armed with light weapons for exclusively defensive purposes[55]. With such a nature and mandate, it is clear that the Peacekeeping Forces are not combatants and therefore do not have their responsibilities, but it is not for this reason that they can sometimes act against humanitarian principles[56].

b). The Peace Enforcement Forces ARE part of a conflict, in other words they participate in hostilities. Similarly, as in the case of internal armed conflicts, the ultimate causes that provoked the hostilities are not questioned or validated, neither are they done so here. It is enough to know that there is a group of armed people, organised and with territorial control who are carrying out hostile acts, to be able to expect from them respect for such standards. An ethical debate is that the Peace Enforcement Forces put an end to a negative peace (Galtung) but accept in the case of the cease of hostilities

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[53] See: GROSSRIEDER, Paul: "A future for international humanitarian law and its principles?, *International Magazine of the Red Cross, No. 149,* (Geneva, May-June 1993), pg. 11-17.
[54] INTERNATIONAL COMMITTEE OF THE RED CROSS: *Symposium on Humanitarian Action and Peacekeeping Operations, Report.* Geneva, 1994.
[55] PALWANKAR, Umesh: "Applicability of international humanitarian law to the Peacekeeping Forces of the United Nations", *International Magazine of the Red Cross, No. 117,* (Geneva, May-June, 1993), pg. 233-248.
[56] See in general: CONSIGLI, Alejandro; PABLO VALLADARES, Gabriel: Peacekeeping operations and International Humanitarian Law" (July 1998), in www.icrc.org (24/04/01).

in terms of the army, they are not able to respond to the causes of wars, causes which survive and flourish easily.

Although it is true that the UNO is not a signatory of the Geneva Conventions, which means that it has no punishment mechanisms for the infractions of IHL that its members may possibly commit, and the troops delegated to it by the States are not responsible to their States but act under the responsibility of the UNO, common law standards for outbreaks of hostilities are applicable. Furthermore, in various communications of the Secretary General of theUN, the commitment that the UNO troops have to respect the principles of IHL and ensure that they are respected, is exhorted. In both cases, the Forces act in the name of and with the mandate of the UNO, but the type of mandate is distinguished between, to the point where for the ICRC there are two different legal forms.

c). In the case of conflicts in which a multinational force or a coalition (TIAR, NATO, etc.) act in their own name or by "interpreting" the UNO but without its mandate, it is clear that it is a situation of hostilities between countries and therefore IHL (Kosova case) is without doubt applied. The discussion on the actions of war carried out under the notion of right to humanitarian interference and/or intervention is tangential to IHL, since this is not questioning the causes of the war but the development of it[57].

The problem is made even more complex when the mandates (cases a and b) are mixed (case of the former Yugoslavia)[58], or when regional mechanisms (case c) appropriate non existent mandates from the UNO (Kosova case)[59].

5.1.4.2. Below the State: organised armed groups

Consensus was reached for the draft of the Geneva Conventions in only four months, but Protocol II needed four years to be passed, which shows amongst other things, the fear of the States to give any recognition to non-State actors in internal conflicts. Such groups of guerrillas, militias or paramilitaries, etc, are denominated Organised Armed Groups (OAG) in IHL. Recognising that the Armed Forces of the Signatory States are subject to IHL with respect to the compliance with international pacts, the debate is firstly; defining if such cases of OAG are really just that, in terms of whether they fulfil preconceived requisites, amongst which is territorial control[60], and secondly; if once they have been designated as such, IHL can be imposed on them, whether it be by means of persuasion, by force:

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[57] From the moral point of view it is said that the States must not be passive in the face of crimes in their neighbouring States, but from the legal point of view (art. 2,7 of the Charter of the UNO) the humanitarian intervention called for has no place in the system of the UNO. On this debate see: SANDOZ, Yves: "Law and the right to interfere, what are we talking about?" *International Magazine of the Red Cross, No. 111,* ('Geneva, May-June 1992), pg. 231-234.

[58] Boutros-Boutros Gali, secretary general of the UNO, maintained that "it is possible that an unbreakable dividing line can not be drawn between the peacemaking and peacekeeping activities", quoted in: SANDOZ YVES: "The half century of the Geneva Conventions" *International Magazine of the Red Cross, no. 150,* (Geneva, June 1999), pg. 158.

[59] For the debate on the classification of the different UNO operations: CONSIGLI, Alejandro; PABLO VALLADARES, Gabriel: "Peacekeeping operations and International Humanitarian Law" (July 1998), in: www.icrc.org (24/04/01).

[60] Territorial control is a criteria put forward in additional Protocol II, but which is not present in article 3 common to the Four Geneva Conventions.

a). The compliance with requisites. Some armed organisations do comply with the requisites considered in the additional Protocol II: being an organised armed group, having effective command, exercising territorial control and being able to realise sustained military operations. But others do not have territorial control (case of ETA, in Spain) and therefore are not subject to IHL. This is not a value judgement but a judgement of fact. This does not mean that we are dumb from the point of view of humanitarian values when faced with crimes against civilians and / or crimes of the State, IHL not being applicable in such a situation, but that we simply recognise that IHL is not a source of answers.

b). Another debate is related to the legal status of the parties. Despite the fact that IHL is explicit in that its application will not cause a change in the legal status of the parties[61], some still try to state that it will, thereby seeking a secondary gain. Some spokespeople of high powered military people and civilians allege that the application of IHL to OAGs is a dangerous step towards them achieving the "status of belligerence"[62] and to their search for "international recognition". This implies the impossibility of combating them in an efficient way, which means, this being said, that it is not certain that the application of IHL does not signify a deterioration in the struggle against the OAGs that develop a State within law.

c). To recognise that an OAG as in actor in a conflict is not, *per se*, the same as giving it political recognition, which means that duties in the face of the development of hostilities are confused with political statute and even with the legal liability of its actions.

d). From the ranks of the OAGs themselves the question is asked if a State party, on signing an international pact can commit or not the groups that fight against this conception of the State and who do this outside the law. It is understood that armed conflicts have standards derived from custom and that they are therefore connected via what is known as the public conscience to each and every person who participates in the hostilities.

e). It could also be argued from certain positions that the IHL rules were drawn up by the "international bourgeoisie" in contrary to any revolutionary model and therefore can not be invoked and/or respected by those who fight against a "bourgeois" order. In this case it only leaves us to explore the codes, values and symbols of the OAGs in question to find out if there are elements compatible with IHL. It could be that such elements do not exist, it could be that although they exist, they are interpreted in a restrictive way by the OAGs and lastly, it could be that even accepting such values, they do not pass from theory to practice.

f). A last element is related to the war as a means and the war as an end. Using the categories presented by Hernando Valencia Villa[63] there would be a programatic war (in as far as they have an agenda with which they justified it and that the military option subordinates) and a methodological war (the war as an end in itself). Faced with the latter (war for the sake of war) and programatic wars whose agenda is dogmatic (case of

[61] Article 3, additional Protocol II
[62] The recognition of belligerence requieres the recognition of the guerilla by the other States
[63] VALENCIA VILLA, Hernando: *la justicia de las armas. Una critica normativa de la guerra metodologica en Colombia.* Tercer Mundo Editores, Bogota, 1993.

the Taliban in Afghanistan or the Sendero Luminoso in Peru), the possibilities for IHL are almost nil, above all when, on there not being coercive mechanisms, its application depends on the will of the parties, a will which is non-existent in certain dogmatic agendas or is difficult to examine when the war is self-justified[64].

5.1.4.3. In the State: application of IHL on a State level

The most relevant thing at this level is the incorporation of IHL standards to internal legal systems, both civilian and military. This question, which was initiated in many countries such as Spain, is globally considered to be positive and is not the source of great discussion

5.1.4.4. More on the State, sovereignty and limits

In poor countries with pre-modern societies and / or societies with fragile States and / or complex emergencies, the sovereignty of the States is a young concept that furthermore was born "ill". While the formula of the nation State allows many European peoples to consolidate this stability, now the economic, political, humanitarian and legal dynamics combine to diminish the role of the nation State. In principle this is not always bad (it is not setting, for example, international liability in crimes of harming humanity) but neither is it good (the free market which razes any project of a national making, even if it is minimally protected).

Ecological and environmental demands are laid at the door of "new" States which were not strong in these areas at their time. This weakness allowed for the development of these areas and imposed on the State economic models which obliged it to renounce functions which are an integral part of new States, such as developing welfare and social justice policies which are lacking in poorer societies. As Ludolfo Paramio says: "an authentic welfare state crisis only happens in those countries that do not have it"[65].

Since the Postwar system was created, in principle, national sovereignty has been accepted as a limitation on the action of the UNO itself: according to article 2, number 7: "no stipulation in this Charter authorises the United Nation in those affairs that are not essentially of the internal jurisdiction of the States". But in practice, this has not been so, to the misfortune of the notion of the State:

a).The signing of additional Protocol II of 1977 meant the creation of a standard for recognising in some way an Armed Group that is fighting against the State that has signed the norm.

b).The formulation of an international justice system (The Courts of Rwanda and Ex-Yugoslavia, Pinochet case and the International Criminal Court, etc.) from the outset

[64] In the case of ethnic conflicts the logic is similar to that of religious conflicts in as far as the enemy is not a "opposing army" but a faith or contrary race (sic) and therefore it is not only looking for revenge from the other but its extermination. The war adopts, for this debate, the same position as a methodological war

[65] The commentary of Ludolfo Paramio to: ALONSO, Luis Enrique: "Ciudadania, sociedad del trabajo y Estado de Bienestar: Los derechos sociales en la era de la fragmentation" (pg. 159-198), in: PEREZ LEDESMA, Manuel (comp.): *Ciudadania y democracia,* Ed. Pablo Iglesias, Madrid, 2000, pg 194.

started with a fragile State (that can not judge) or an immune State (that does not want to judge), both cases being contrary to the State,

c).The development of actions known as right of interference and/or humanitarian intervention in theory for protecting rights (Kosova) or for guaranteeing aid (Somalia) that the States should in principle protect and guarantee,

d).The development and growth of numerous NGOs which work internationally without the States being able to formally demand certain duties, an impossibility which happens for two reasons: I) the absence of international standards that regulate the action of the NGOs and ii) the mediating effect that demands of this type would generate against the States.

5.1.5. Debates on gaps: the punishment of atrocities

a).The absence of effective legal mechanisms for trying supposed or real transgressors of these norms (except in the case of Rwanda and ex-Yugoslavia), leads to the transgressions of IHL that are not resolved or were not taken on by the national legal systems remaining with impunity. This legal standard which is devoid of coercion mechanisms is more in the field of moral principles than law.

For years this has been one of the big limitations of IHL and mechanisms set up such as the Survey Commission and others have not been very efficient, compliance with IHL often being at the expense of this initiative, good ICRC offices and other bodies. To fill such a gap the possibility of the International Criminal Court appeared.

b). From both the standard and from the moral value standpoint, there seemed to be two different yardsticks: one for powerful States who act in the name of "x" principle (United States, France, etc) and the rest: poor States and the OAGs. Such "instrumentalisation" of IHL demands compliance from certain armed groups but does not demand it from multinational forces (as in the case of Kosova where hospitals and other civilian property were the object of attacks).

As well as the above, there remain two matters of IHL to mention: a) its use in the case of tension and internal violence that do not constitute internal violence. In such a case civil and political rights must prevail, but no longer IHL, as the distinction here would not be between combatant or non-combatant but between demonstrator and non-demonstrator, which is absurd. And b). the preoccupation for a wider IHL (which would lead us to convert it into a universal criminal code for all crimes) or a more radical one (what would lead to IHL denying war, which is a contradiction of terms).

5.2. Debates on the law of refugees and the internally displaced

a). Current standards for the protection of refugees downgrade their origin, since it would seem that refugees "appeared in the world" with the Second World War. Even the Convention on the State of Refugees of 1951 on refugees gave the possibility for the States to only sign the recognition of the events that happened in Europe during the

Second World War[66]. The temporary nature of the Convention presented the same problem that was not rectified until the Protocol on the State of Refugees of 1967[67].

b). The criteria for the protection of refugees is determined by the creation of a subsidiary mechanism when faced with the non-protection afforded by the State to one of its citizens. In other words, the person must be outside the country and his status of asylum seeker an individual process. The debate here is that the mechanism does not protect the people who are still within the territory of the State from which they want to be protected[68].

c).As well as armed conflicts, globalisation and its consequences (such as de-industrialisation and unemployment) currently contribute to the formation of what are known as Complex Emergencies that we have already mentioned, in which the "new" refugees juggle threats to their lives with the search for new socio-economic conditions, which in turn means that the limit between economic immigrants and refugees is diluted.

In the African context, where 2/3 of the soil has fertility problems, a new category appears: "ecological refugees", people who flee from the dreadful conditions of agricultural production which, together with other political problems, generate exodus of entire peoples.

d). The concept of refugee has acquired new inclusion criteria, as well as those already projected, in Africa and Latin America. For African governments there are new causes as well as the traditional categories[69] for defining a refugee: "every person who, because of an aggression, occupation or foreign domination, or events that seriously disturb public order in a part of or all of the territory of the country of origin, or nationality, is obliged to abandon his normal residence to seek refuge outside the country of origin or the country of his nationality."[70]

In the case of the Americas, a group of governments and academics adopted the Declaration of Cartagena (Colombia, 1984), whereby the definition was widened to persons who flee "because their lives, security or freedom have been threatened by situations of generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances that seriously affect public order."

The African and American amplifications correspond to precise needs, but present two mistakes: a) their universality, as such criteria can not be applied to receiving countries outside the regions mentioned, and b) their formulation, which have too many open clauses of such a type that the legal recognition falls more to the ambit of political will than demandability.

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[66] Art I, literal B, Convention on the State of Refugees.
[67] The Protocol, despite its name, has its own legal weight and can even be signed by States that are not part of the Convention of 1951.
[68] Embassies and other diplomatic places are considered, but not those which are outside national territory, and therefore the mentioned mechanism can not be invoked in this situation.
[69] The traditional categories are: being outside the country of origin, having well-founded fears of persecution for reasons of race, religion, nationality or belonging to a determined social group or political opinion.
[70] ORGANISATION OF AFRICAN UNITY: *Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.*

e). The mechanisms projected on a world level (Convention of 1951 and Protocol of 1967), do not have clear and efficient mechanisms of application and demandability. In 1979, the UNHCR published the "UNHCR manual for prodeedings"[71], to orientate governments on the appropriate interpretation of the Convention and the Protocol. As well as problems of political will, there are problems with interpreting the standards.

The refugee is someone who flees because "well-founded fears" which signifies a definition that includes a) an objective element (well-founded), b) a subjective one (fears). In other words, the definition is so open that an authority in a receiving country could perfectly well consider that in the country of the applicant there are no well-founded reasons for fleeing (whether from ignorance by the authority or for political reasons, for example, if it is a friendly country) and deny the protection requested by this route.

It is clear that not all discrimination generates sufficient reason to receive the international protection projected in the mechanisms mentioned, but only the discrimination that leads to threats on the life, security and freedom of the person seeking protection, but this limit is difficult to establish in some cases.

f). Other criteria such as a) excessive punishment that he is fleeing from, b) the distinction between victim of injustice, and fugitive from the justice system in totalitarian States that have passed laws according to their interests, c) the definition of political misdemeanour, d) the level of government shelter to non-State agents of persecution (military or paramilitary), etc, are wide-ranging formulas. Amnesty International in its reports underlines how, in keeping with biased interpretations of these and other open legal formulas, powerful receiving countries have rejected seekers of asylum and refuge

g).The situation of women as such does not appear as a criteria for conceding asylum when such a condition is acompanied by well-founded threats to life, freedom or security. From the situation of the women in Afghanistan a debate has been raised on the inclusion of the condition of women within the criteria for application for international protection: some respond with including them within the criteria of "belonging to a determined social group".

h). In the world, as well as the 22 million people in the remit of UNHCR, with respect to refugees there is another universe of people who have fled from war, from the systematic violation of human rights or from ethnic persecution but who have not crossed a frontier: Internally Displaced People (IDP). They are counted in the hundreds of thousands in Sudan (4 million), Colombia (1.8), and Angola (1.5-2)[72]. But in the mandate of UNHCR they are not protected (although UNHCR carries out activities to protect them).

The forcedly displaced are under the jurisdiction and protection of governments that actually contribute to the phenomenon of forced displacement with their actions. These States do not assume their responsibilities and the humanitarian organisations end up facing up to the dilemma of : a) assisting the victims and therefore subsidising and even

[71] The complete text can be found at: http://www.unhcr.ch/refworld/legal/handbook/handspa
[72] UNHCR: *The situation of the refugees in the world.* Icaria, Barcelona, 2000, pg. 236-237.

replacing the State in its obligations, or b) waiting and even demanding that the State acts, which dilutes its responsibility in bureaucratic procedures by citing the lack of budget.

Despite the fact that IHL has an article on the prohibition of forced displacement (art.17 of the Protocol II) in force, this can happen and without violating IHL in two cases: a) "unless the security of civilians demands it", and b) for "urgent military reasons". Unfortunately, in the latter case, it puts military logic before humanitarian need, and in both cases it leaves a wide margin for interpretation.

So there is this gap in the norms, a gap that is feeding the justification of ways out such as that of humanitarian intervention.

i). Despite the above, there is a collective of "guiding principles of internal displacements"[73]. These vary between an ethical proposal and a collection of principles with legal implications: equality in law, coherence in human rights, application without distinction, State level duties in relation with displaced people in keeping with IHL (Art 18, P.II), etc. Not forgetting that in their conception (humanitarian standards), their origin (UNO) and in the urgent need to guarantee protection to the displaced (ID), their legitimacy is maintained. However, the subject is the object of a great discussion and there is an institutional fight to see which body should be responsible for the ID. Both the OCHA and UNHCR and more recently the IOM (International Organisations for Migrations) have made proposals but the subject is far from being clear. (See box).

5.2.1. National and International Responses to internal displacement[74]
The institutional dimension

Legally, the responsibility for ID falls to the national governments and the local authorities, which ends up being paradoxical as it is they, at times, who are the cause of this displacement. For this reason, one has had to go along the path of international protection for this group of people, which would complement or substitute the local authorities.

The awareness of this, as well as the quantitive increase in the problem, led to the creation by the United Nations in 1992 of the figure of Representative to the Secretary General on Internally Displaced, with the objective of proposing an efficient assistance and protection program for the ID. At the request of the Commission for Human Rights and the General Assembly, the Representative analysed the diverse standards at a national and international level in collaboration with numerous experts, a work which culminated in the proposal for some Guiding Principles for Internal Displacement, which was presented in 1998. The principles propose international criteria that should guide the work of all the actors concerned with the ID, as well as the rights and

[73] UN Guiding principles on Internal Displacement (UN document E/CN.4/1998/53/Add.2), presented by Francis Deng to the Commision on Human Rights of the UNO in April 1999.
[74] Taken is part from DENG, Francis and MC NAMARA, Dennis, *Respuestas Internacionales y nacionales al la difícil situación de los DI*, Migraciones Forzosas, Spanish edition from HEGOA, Bilbao, April-June 2001, pp.13-16.

guarantees to facilitate their protection and assistance. They are not a binding instrument but reflect and are coherent with international law.

However, from the organisational and institutional point of view there is no clarity in the way this problem should be confronted. Some have proposed the creation of a new specialist body, others would widen the mandate of some of the agencies already set up while others would improve co-ordination, and there are other possibilities. The steps taken up to now on institutional matters are scarce and reflect a certain incoherence and insufficiency of will to confront the problem. In 1997 the Secretary General of the United Nations made the Co-ordinator of Emergency Relief of the OCHA (Office for the Co-ordination of Humanitarian Affairs) responsible for being the *focal point* for the ID within the system of the United Nations. This initiative does not seem to have been very efficient and in 2000, recognising that it was necessary to make more of an effort, the Senior Inter-Agency Network for Internal Displacement was created, headed by a special Co-ordinator and with the participation of several agencies. The Network is also supported by the *Inter-Agency Standing Committee* IASC of which the main NGOs form a part.

The objective of the Network is to increase the efforts of the agencies and governments involved in order to effect concrete improvements with regard to the ID. The Network has visited and carried out missions in various countries and has proposed initiatives and acted, is some ways as a defender of the ID within the System of the United Nations.

More recently, in May 2001, a small Unit was created for Internal Displacement within the OCHA without clear operative responsibilities and leaving many responsibilities to the Resident Representative or Resident Humanitarian Co-ordinator in each country. This has led to many NGOs and networks of NGOs to be very sceptical on this question, and to understand that the reforms necessary to approach the problem of the ID are not being taken on[75].

If we add to this the confusion and debate created by the participation of organisations such as the IOM (International Organisation for Migration) which does not depend on the United Nations in certain crises, or the scarce consideration for other institutions with clear mandates such as the ICRC or the NGO, we see that institutional matters which should be contributing to better work with the ID are not resolved. Furthermore, the growing role of the Office of the High Commission on Human Rights in these matters and its more active role in questions of *advocacy* and denouncement bring to light the difficulties of an integral and co-ordinated response.

j). Lastly a debate on practice (not on law), is the presentation of evidence to demonstrate the condition of refugees. According to UNHCR "it is a general principle of law in which the burden of proof lies with the claimant". So far so good, but what often happens is that the claimant can not supply documentary or other types of proof in

[75] On this subject see the position of ICVA (International Council of Voluntary Agencies) which brings together many NGOs and networks at www.icva.ch and connected discussions.

support of his declarations, and the cases in which he can present evidence of all his claims are the exception rather than the rule"[76].

Clarifying the above, the problem of the claimant is one of providing evidence so that the authorities of the receiving country will lend more credibility to his testimony. When people flee from countries, these things are not exactly their priority but rather their lives, so it is difficult for them to bring such proofs. But it is also true that not all those that allege "well-founded fears" really have them and the debate is how to clear up the situation.

The immigration policies of the United States and the European Union are particularly hard and, faced with asylum seekers, not all the reception conditions, information and guarantee of rights that are proclaimed in the international standards are existing[77].

Similarly, the application of standards has revolved more around temporary protection instead of permanent asylum, and it has increased the practice of assisted, and at times forced repatriation. "Taken as a whole, the changes of the last two decades are equivalent to the emergence of a radically different regime for refugees, directed to avoiding floods of refugees and to guaranteeing their return to their country of origin"[78].

In any case, the problem is that at times, the real humanitarian aid for an asylum seeker is not offering blankets or food, but that the status of refugee should be recognised by the signatory States of the Protocol of 1967. This is a context in which the humanitarian aid seems to be a weak favour to the recipient, on favouring the dilution of the reponse at a national level.

5.3. Debates on Human Rights

In the field of human rights there are five relevant debates which interest us: a) on human rights and culture, b) on the possibility of integrating human rights, c) on the demandability and sanction of human rights, d) on the actions using force of the UNO to protect human rights, e) on the relation between IHL and human rights and, and f) on human rights and humanitarian action.

a). The development of standards from human rights, IHL and positive modern law stems from the recognition of the person as an individual. However much collective rights are spoken about and ways are sought to reconcile what is individual with what is cultural, what is true is that the tension between a). defenders of human rights with a positive angle and b) defenders of cultural relativism, prevails.

Humanitarian concerns as a category was born from the first version: the person as an end in itself. The vision that IHL, human rights, the Convention and Protocol on the

[76] UNHCR Proceedings Manual. Second Part: Proceedings for the determination of the condition of refugee, at: http://www.unhcr.ch/refworld/legal/handbook/handspa/hbspp2.htm
[77] See UNHCR: *UNHCR's Recommendation as regards Humanisation of Receptiion Standards for Asylum Seekers in the European Union,* at http://unhcr.ch/issues/asylum/eustandards0007/toc.htm
[78] ROBERTS, Adam: "The role of humanitarian questions in the international politics of the decade of the nineties". *International Magazine of the Red Cross, no. 149* (Geneva, 1999), pg. 31.

state of refugees, the International Pacts on both civil and political rights and social[79] and cultural rights, is that of the person as a unit.

In the desire to develop new legal mechanisms of protection and while forming a type of "third way" for rights, what's known as third generation rights and/or collective rights have been created. This formation is plausible from the moral point of view, but from the legal point of view it only serves to transfer the debate to the limits of culture and human rights.

Defenders of culture, according to Valdecantos, fall into this trap as "the main trap of the concept of culture is, as has already been seen, considering cultures to be natural entities, and forgetting the process that led to them and gave them their identity"[80].

b).The second debate in the field of human rights is related to the integrality of human rights, as much what we call civil, and political rights as what are known as economic and social ones, into a whole. This integrality encompasses what has already been put forward in various international conferences (Teheran, 1968 and Vienna, 1993).

For defenders of Neo-liberalism, human rights must and can be traditional ones since, according to them, liberty and equality are incompatible. The interventionalist State cuts freedom, and the problems of public services (health, education, regulation of employment, etc.) must depend on public policies and not on legal abstractions. That's to say; politics is inward looking and resolves its debates within itself, without consulting the law. And regarding public policy it must fulfil more the goals of efficiency that those of equity.

c). The third debate is related to the claimability of human rights. The idea that international mechanisms are subsidiary to States and that the States are bureaucratic and their legal system also, makes the percentage of cases that pass from a national level to an international one in matters of human rights, infinite. Furthermore, cases such as the Pinochet one, some militaries from South America and *Ad hoc* courts give rays of hope for moving forward along this path.

d). A last note of a more formal matter, is related to the Charter of the UNO: the UNO considers that: "no stipulation of this Charter authorises the United Nations on affairs that are not essentially under the internal jurisdiction of the States [..] but this principle is not opposed to the application of coercive measures prescribed in chapter VII"[81].

The text says "the United Nations" but this does not imply its member States, and b) it says "essentially", and after the Pinochet case, the Rwanda massacres (fact) and numerous failures of international law plus the International Law of Human Rights (law) it places human rights beyond the ambit of what is essentially of the State.

Article 103 of the Charter of the UNO also says: "in the case of conflict between obligations signed up to by the Members of the United Nations in virtue of the present Charter, and their obligations signed up to in virtue of any other international

[79] It is necessary not to confuse the idea of social rights with that of collective rights. While in the former a collective response is assumed, in the second it is the collective of the possesor of the right.
[80] VALDECANTOS, Antonio: *Contra el relativismo,* Visor, Madrid, 1999, pg. 94.
[81] Art. II, numeral 7, Charter of the United Nations, 1945.

convention, the obligations imposed by the present Charter will prevail". What would happen in the face of a possible conflict between international law of human rights and the Charter of the United Nations? From the formal point of view, it could not violate the Charter under the pretext of defending international obligations (furthermore not existing as far as obligations to third parties are concerned) in matters of human rights.

e).The relationship between IHL and human rights. This relationship presents a majority stream of thought (eg: ICRC) which puts forward the idea that there is a basic common core between IHL (rights of the civilian population, assistance to the injured and ill) and human rights, while argueing for protection for the person in which the two legal systems will come together. In turn it is put forward that the norms are complementary.

The critics have two lines of thought: a) that IHL in summary, answers the question of the victim and human rights answer the question of the person, which establishes a different and even irreconcilable logic[82]. b) The other criticism is concerned about firstly human rights; life and the confrontation between the single standard of international public law that, under established circumstances, authorises the killing of another person (enemy) without the argument of legitimate defence mediating (in other words, it can occur in an offensive act). This is IHL, which generates an irreconcilable starting point.

f). Human rights and humanitarian action. Human rights can bring humanitarian action to renounce the criteria of charity and build the criteria of solidarity (relationship among equals). But furthermore it feeds by means of argument, the ultimate goal of humanitarian work: the defence of the person as an end in itself and not as a means to the ends of others (Kant). And lastly, by establishing benchmark scales (eg, those that are used in what we call social rights, benchmark scales such as the mortality rate, etc.) human rights contribute to the definition of basic vital minimums whose technical answer is given by means of tools (such as the Sphere, Qualité, etc.)

5.4. The Debate on the International Criminal Court

In the humanitarian world and in the defence of Human Rights groups the idea of a Permanent International Court has been an old aspiration, and campaigns have been carried out to this effect on the part of numerous NGOs. For this reason the so-called Rome process for the creation of an International Criminal Court has been positively received.

The debate on the International Criminal Court (ICC) appears to be a response to a series of crises and tries to unify and collect the experience of the *Ad hoc* courts of the ex-Yugoslavia and Rwanda. But an important criticism, not against the Court itself but against the goals that it is pursuing, is if such a mechanism is seeking to save the States duties and to convert political crises into legal affairs. "Installing international legal proceedings can be less costly than sending troops to halt atrocities"[83] (eg, Rwanda, 1994).

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[82] RAICH, Jordi: "Evolucion etica de la idea humanitaria" *Papeles de cuestiones internacionales, no. 68* (Madrid, 1999), pg. 11-21.
[83] ROBERTS, "El papel de…" *Op. cit., pg. 25.*

The ICC appears to be a mechanism for the resolution of the problems of international sanction of war crimes, as well as other types of misdemeanours, but several debates spring up.

a). The lack of signatory countries – ratifiers so that the Statute of Rome comes into force (60 States), a fact that delays its future functions.

b). The crimes that can be judged, one of them being crimes of aggression, depending on the definition,

c). The position of the United States regarding the Statute of Rome of 1998. The United States has abstained from incorporating several international treaties, and has not adhered to the additional Protocol I of the Geneva Conventions, the Protocol of 1995 on laser weapons, the Protocol of 1996 on anti-personnel mines, nor to the Convention of Ottawa of 1997 on anti-personnel mines, and it is, in principle, in contrary to the ICC[84].

d). The impossibility of trying crimes whose presumed authors are nationals of a country that has not signed the Statute (if, furthermore the misdemeanour was committed in the territory of a non-signatory country),

e). The impossibility of trying acts which happened before the Statute came in force (Except for forced disappearance)

f). The Statute of the Court, in article 8, draws up lists of war crimes but distinguishes between misdemeanours committed in the framework of an international conflict and an internal conflict. In the Hall of Appeal of the Criminal Court of the ex-Yugoslavia such a distinction is toned down with the clarification that "in the ambit of armed conflicts, the distinction between conflicts between States and civil wars loses value as far as the persons are concerned" since "he who is a criminal between States can not stop being so in a non-international conflict"[85]. Despite this failure, ie. the Tadic case, the existence of lists does not make it easy to resort to its reasoning.

Despite this, the support of the ICC amongst NGOs continues to be practically unanimous.

5.5. The idea of creating an International Disaster Response Law

The development of national legislation for the prevention of and assistance in disasters had a large peak from the nineties onwards, when that period was declared an International Decade for the Mitigation of Natural Disasters by the United Nations. In this regard, the governments were urged to incorporate in their standards aspects such as the obligation to respect the standards of seismic-resistance, town planning with prohibitions and restrictions for avoiding urban growth in high risk zones, and

[84] On this subject see the excellent webpage of the NGO Coalition of International Criminal Court, www.iccnow.org

[85] Criminal Court for the ex-Yugoslavia. *The public prosecutor versus Dusko Tadic.* Failure of 2 October 1995 (Appeal), par. 97 and 134, mentioned in: DOMESTICE-MET, Marie-Jose: "One hundred years after The Hague, fifty years after Geneva international humanitarian law at times of civil war". *International Magazine of the Red Cross, no. 150,* (Geneva, June 1999).

development and/or strengthening of institutions dedicated exclusively to the prevention of and assistance in disasters, etc.

The legislative developments for the prevention of and assistance in disasters fulfils a role that is not only legal but is also ethical and social, in as far as it contributes to the creation of what some call a "culture of disaster prevention".

In the last few years there has been a lot of international legislation in cases of ecological, technological and other types of disasters but there is no reference framework that clarifies the competences of the different bodies, and above all, that establishes the rights of victims of natural disasters or the rights that do not enter in the rest of the standards that we are analysing. For this reason some propose the creation of an International Disaster Response Law

The strongest criticisms would be those questioning the conversion of the responsibility of States into legal affairs, since once the States have dictated a standard, they will be able to demonstrate in its formation their political will and will always know how to find those responsible for the breach of such standards. This would lead to the State being not responsible in matters of the prevention of disasters. The insurance companies themselves, who are increasingly involved in a "business" such as that of assistance in disaster cases that move big numbers, have an interest in the clarification of this subject.

We are concerned about the future that this debate will take in three ways: a) that the international standard points to the need and not to the law of persons, b) that the response is given in these terms, with emphasis on the operational works and not on the legal and political responsibilities, and c) that the standards only favour the "humanitarian parachuting" and not the disaster prevention.

This last concern shows itself in the over importance given to, as a whole with IDRL, restrictions on import taxes, transit of emergency aid, elimination of customs restrictions, elimination of visas to collaborators, recognition of medical qualifications abroad, etc. These aspects are important but are not the only ones, as the list of actions for disaster prevention (such as prohibiting building in high risk zones, seismic resistance codes, etc.) is more of a guarantee of rights of persons. But, this is unfortunate for the governments, as it leads to more political responsibilities than the favoured measures of simple assistance.

5.6. Some debates on Peace Enforcement Operations

The great change in the middle of the eighties up to now in relation with the previous period in the UNO is the increase in humanitarian tasks on the part of the System of the United Nations, basically through UNHCR. From the Agenda for Peace in the Boutros Gali period up to the "weight" of humanitarian concerns now in the System of the United Nations, it has been growing. These tasks have found themselves combined with operations using force in the name of the UNO itself, in such a way that its limit is spreading. This does not only affect the UNO but all humanitarian organisations that find themselves involved in a UNO "dominant position". Furthermore, there are moments in which within the UNO system the reconciliation (already expressed at the beginning) of "military needs and humanitarian demands" is impossible.

The particular debate of Peace Enforcement Operations has two approaches, which are not mutually exclusive but merge together, to analyse its development (each one with its own debates):

a). Since the drawing up of the Charter of the United Nations. In principle, the UNO was born as a Postwar organisation, with two fundamental objectives: I) to maintain international peace and security and ii), to take effective measures to prevent and eliminate threats to peace, and to suppress acts of aggression[86]. In this sense, it falls to the Security Council to determine if there is any threat to peace[87], and furthermore both the Security Council and the General Assembly have the power to create mechanisms or subsidiary working groups to fulfil their objectives and resolutions[88], or to have them carried out.

There are now limits between the General Assembly and the Security Council. If one matter is already dealt with by the Security Council it can not then be examined by the Assembly General (UNO art.11 and 12). Thus the Security Council decides what is a threat and what is not, and therefore it is unlikely that the five permanent members (Russia, United States, France, United Kingdom and China) would vote against themselves to define a threat to peace.

Once a threat to peace is defined by the Security Council, and faced with the failure of the measures thought out in chapter VI (peaceful settlement of controversies), it will be able to act through subsidiary mechanisms created or by means of regional agreements that would then fulfil functions within a specific United Nations mandate (case of East Timor and the troops headed by Australia), and whose action would be regulated by chapter VII ("action in case of threats to peace, breakdowns of peace or acts of aggression").

b). Since the widening of the mandates of "classic" Peace Keeping Operations. In principle, a measure projected by the UNO to facilitate the solution of controversies and, amongst other things, to supervise the compliance of agreements between parties in an armed conflict: the Peace Keeping Operations have been widening and according to the UNOs own jargon many operations responded to "chapter VI and a half", in order to make it understood that they were not traditional peace operations but neither were they of chapter VII. Later some imposition structures were designed under a curiously close name which was similar but with a totally different legal status and nature.

Operations such as Somalia (1992), Rwanda (1994), and Bosnia (1995), changed the vision of Keeping to Imposition, in other words: a more determined military action was authorised. In this last operation, the military was given priority to the point where the humanitarian workers were withdrawn[89].

[86] Art. I, Charter of the United Nations, 1945.
[87] Art. 39, Charter of the United Nations, 1945.
[88] Chapter VII, Charter of the United Nations, 1945.
[89] ROBERTS, "El papel de..."*Op. cit., pg.35.*

After the Brahimi[90] report which asked for, amongst other things, clear mandates for peacekeeping operations, it should be made clear that this type of operations, from the traditional keeping of the peace up to its enforcement, has objectives that are not primarily humanitarian although at times they are seen like this. At most, humanitarian work and aid would be a part of it, and never the most relevant part of the operation.

[90] Report commissioned by the United Nations on the future of peacekeeping operations. It contains numerous thoughts and self criticisms on operations without clear mandates that led to real killings (Srebrenica,...). It suggests a series of future alternatives, but it is still is under discusión.

In the so-called "multidimensional operations" an outline model would be:

Component	Function
Military component	• Monitoring and verification of ceasefire. • Deployment • Demobilisation and disarmament • External armed forces co-ordination • Mine clearance • Security for UNO activities and others connected to the peace process
Civil police component	• Crowd control • Establishment and maintenance of legal system • Strengthening of the law • Monitoring, formation, support and strengthening of the authorities in organisational and human rights matters, etc.
Civil component	Political Element: • Supervision of the peace process • Assistance with the rehabilitation of institutions • Support in reconciliation Electoral element • Monitoring and verification of the process • Development of institutions Elements of human rights • Development of HR • Investigation • Promotion Humanitarian element • Distribution of aid • Refugee programs • Resettlement of displaced people • Reintegration of combatants

The debate for the NGO is evaluating up to what point there can or must be deployment in this type of operations without losing independence and without being used and if, in these environments it is possible to maintain a humanitarian space where work can be done in freedom. In any case, here is the diagram of the "humanitarian space" in this multidimensional conception of operations, which is rare and in the service of other objectives.

5.7. The debate on humanitarian intervention

War is prohibited in the UNO system and only military action which looks to re-establish "peace and international security" is justified (art. 42, UNO) or is as a legitimate defence, a right that can not be infringed under any stipulation of the Charter (art. 51). Regarding humanitarian intervention, it must be made clear from the beginning that it is not projected in the United Nations system.

Armed (art. 41) and non-armed (art. 42) coercive actions in the name of and with the mandate of the UNO are possible, but not when taking the name of principles of the UNO as their own (case of NATO in Kosova).

Another eventuality could be the interpretation of a concrete fact that would make the peace vulnerable. It could only be the Security Council (and not a military alliance) which classes it as being so. Furthermore the fact of making peace vulnerable must have such repercussions that it constitutes an affair in the international ambit and not a matter essentially of internal law (what requisite should an armed conflict fulfil in order to stop being one and to become a threat to international peace?)

A military action of a State or some States against another without a UNO mandate, in the light of the UNO Charter does not constitute a "right" (of interference or intervention) but an aggression against international peace (a fact, although the Security Council would say the opposite), against which the State attacked could use its right of legitimate defence (art 51, ONU).

What to do when faced with a systematic violation of human rights or a non-international armed conflict which constitutes a threat to international peace? In law, it is the job of the Security Council to make definitions like these and the job of the States to place troops in the service of and under the mandate of the UNO in order to re-establish peace (art. 43, UNO).

The other possibility is to talk from outside the UNO system. In such a case we have two options: a) from outside the UNO system. When faced with quietness from the Security Council some States decide to "interpret" the Security Council and act in its name, and b) against the United Nations system. In both cases it would be against the Charter or at least outside it and in both cases the only solution is to produce changes within the UNO system.

But what can be done in the face of a violation of human rights of a country while the UNO is being reformed? Naturally this question stems from the acceptance that the States must "do something" and that furthermore this something must be effective (Rwanda case) and that it must transcend humanitarian concerns to get to political ones. But in the field of humanitarian work, how is the protection of aid to be guaranteed when this aid is attacked and when there are still no international measures to punish such infractions? (Somalia 1992).

Given that the formal answer does not fulfil expectations, the final question is: how is war to be accepted specifically to avoid war? And if this were the case, how would we differentiate the just war from the unjust? And lastly, if we got to this level, how can we operate as humanitarians with those which are unjust?

Since the eighties the idea has been put into circulation of the right of humanitarian interference, which has had big repercussions owing specifically to its ambiguity[91], as Françoise Bouchet-Saulnier says lucidly. The increasingly common use of the Anglo-Saxon use term "humanitarian intervention", which is not exactly the same as interference but which is used as a synonym, has contributed to this confusion.

[91] BOUCHET-SAULNIER, Francoise, Diccionario Practico de Derecho Humanitario, Medicos Sin Fronteras, Editorial Peninsular, 2001.

As Sandoz suggests, "the expression "right of interference" is a contradiction in terms since, if you have the right to something, it is not constituted in an interference. And if it constitutes an act of interference, as an idea contrary to an invitation or to an authorised power, it is contrary to a right".

Two debates appear here: one of the use of the term right, since purely speaking, right is that which fulfils not only a moral conception that regards it as the "right to" but also some formalities which, once complied with, allow the expedition of the standard and its recognition as it is, a thing that does not correspond with the so-called "right of interference".

The second debate is if we can regard right as being to all that we consider to be morally valid or to all human need. The indiscriminate use of the word "right" ends up emptying the contents of the word itself, which leads more to the deterioration of a system of standards that protect humanitarian concerns that to its advantage. Some talk of what are known as a "soft law" and a "law of New York" which emanated from the Security Council and which would complete the Geneva Convention on conventional IHL, but the analysis of this exceeds the objective of this work.

In any case it seems clear that the exercise of "right of interference" or of "intervention" in the recent practice of the States and the United Nations, although invoking humanitarian motives, has had more political intervention than anything else.

5.8. Law, security and protection

Security is a term relating to the personnel of the NGOs that carry out humanitarian action, and protection is the expression for designating the safeguard of the rights of the population and/or of the victims of the conflict. As Eguren says "we would like to talk of a duality, security-protection, because it is obvious that both concepts are closely related to each other, both in the key circumstance of occupying the same humanitarian sphere (facing armed actors as we have mentioned before) and because of the moral and political link that unites them"[92]

5.8.1. Right to request and receive aid

The problem that is seen with the right of beneficiaries to access the aid is that this becomes vulnerable, not as a collateral effect of the development of hostilities but because it is increasingly becoming the object of the hostilities. Within the legal ambit it is necessary to emphasise that there are no specific stipulations for guaranteeing access to the aid, although there are numerous useful references, but the solution would not only come from the law. As Domestici says: " the negative of allowing access conforms more to total scorn for law than to the stipulations for this which are too timid"[93]. The denial of access to food, medicine, medical services, sources of drinking water, etc, also breaks the criteria of military objective on it being converted into a lax concept where even the possible help of the enemy is included, whether it be in the past, the present or even in the future.

[92] EGUREN, Luis EnriqueÑ "Notas para formación en Gestion de la seguridad en ayuda humanitaria". Multicopiado. Soto Iruz (Cantabria), May 2000, pg. 3.
[93] DOMESTICI-MET, "cien anos..." *Op. Cit.,* pg. 173.

From a strictly legal point of view there is discussion on who would be the holder of this right of humanitarian assistance. For some, it is the States or the de facto authorities in cases of the disintegration of the State who have the right to request assistance. For others, following professor Carrillo Salcedo, "it is essential to concede due relevance to the legal position of the person in international law after the Charter of the United Nations and the Universal Declaration of Human Rights"[94] and it is therefore essential to place the victims within the coverage of this right to receive humanitarian assistance.

Further to this, and according to Joan Abrisketa[95], the Resolutions of the United Nations and the numerous testimonies of the NGOs have created a climate of opinion around the idea that there is also a duty of humanitarian assistance that is complementary to the right to receive it. One must not forget, furthermore, that apart from the greater or lesser commitment on the part of the States in its defence, there are some rights encompassed in the "hard core" of the Universal Declaration of Human Rights that are recognised as inviolable: right to life, to physical health, to food, etc. All formulation of the right to humanitarian assistance must come from the recognition of these rights.

This "new" right that, as has been said would be in the process of being created and not still a subjective right defined and articulated, would for some form a part of those rights known as third generation rights or rights of solidarity. They are called this to contrast with those of a first generation – civil and political rights – and with those of a second; economic, social and cultural rights.

The temptation to use force in order to guarantee the right to aid and the right to be aided results in interference operations (also called "right of interference" or "humanitarian intervention", see *supra*), as this would seek to prioritise the right of the victims to receive aid above the principle of national sovereignty[96].

5.8.2. Project teams, co-operators, and expatriate and local aid workers

The problem of the security of the personnel of humanitarian organisations is increasing, not only because of what we call complex emergencies, the increase in internal conflicts, the proliferation of NGOs, the also complex response from the humanitarian viewpoint by means of mechanisms such as the "right of interference" or the Peace Enforcement Operations and the greater budget for humanitarian goals, but because the humanitarian commitment is also increasingly large and complex. So as the civilian population has been gradually converted into a "military objective", the NGOs have also been converted into this or into a source of funds and resources.

According to Enrique Eguren "Although there are no global statistics, it is evident that said workers have suffered from a significant increase in threats and attacks resulting in deaths. From amongst the causes of this increase we can emphasise the growth in humanitarian activity (more exposure, more attacks), the increase in activities in intra-

[94] J.A. Carrillo Salcedo, "La asistencia humanitaria en Derecho International contempraneo, Universidad de Sevilla, 1997.
[95] ABRISKETA, Joana: "El derecho a la asistencia humanitaria: fundamentacion y limites", UNIDAD DE ESTUDIOS HUMANITARIOS: *Los desafios de la ayuda humanitaria,* Icaria, Barcelona, 1999.
[96] On access see: UNIDAD DE ESTUDIOS HUMANITARIOS, *Puertas...Op. cit.*

State conflicts of an irregular nature (whose combatants stick even less to the rules of international humanitarian law), the competition between NGOs and humanitarian agencies (who tend to place their staff in the field rapidly, without adequately evaluating the backgrounds and risks and without adequate security training, and especially the fact that the civilian population has been converted not into a (passive) victim of the military action but into an objective of the parties in conflict. In this way the humanitarian aid or the protection of human rights is perceived as partisan (to the other side) by the combatants and it becomes a new political-military objective[97].

In the current background settings of crisis and violence it is never casual and chaotic. On the contrary, it usually forms part of the context in such a way that only deep analysis of it can allow us to take suitable decisions. According to Eguren, "we would like to talk of a duality, *security-protection* because it is obvious that both concepts are closely linked with each other, both because of the key circumstance of occupying the same humanitarian sphere (facing armed actor as we have already mentioned) and because of the moral and political link that unites them".

In 1994 the United Nations formed the Convention on the Security of the Personnel of the United Nations and the Associated Personnel. This measure is a reflection of what has been said before. So it is necessary to ask about the law on this situation. Here we are not only talking about expatriate personnel but also that of the local NGOs and of local health staff[98].

IHL establishes a series of protection standards, and others belong to human rights, but as a whole they claim the right to aid those in need. The debate is in: a) how to give them strength in law (with built in punishment with respect to this type of action or as aggravating circumstance for misdemeanours already outlined), b) creating new standards in accordance with new realities, and c) insisting on respect from more of an ethical position than a legal one.

The publication of the document "Guiding Principle on Internal Displacement" (or Deng Principles) marked an important step forward in the establishment of common standards for acting with regard to internal displacement of population. The document pays a lot of attention to the human rights of the displaced, and emphasises the fact that the role of humanitarian organisations must insure that "due attention to the protection needs and human rights of the displaced population"[99] is paid. This protection "is not a more central point of the list of needs, but fundamentally marks national and regional security and is the defining point of the sincerity of all the international and national actors at the time when the conflict is resolved"[100].

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[97] EGUREN, Enrique: "Notas para formación en gestion de la seguridad en ayuda humanitaria", *Materiales del master en Accion Solidaria Internacional de Europa,* Madrid, 2001, Universidad Carlos III.

[98] In the Colombian case, every 14 days a member of health personnel is murdered in direct connection with the armed conflict, in other words for lending medical assistance to one of the victims, either to sibilinas or to wounded combatants. See: DE CURREA-LUGO, *Derecho Internacional... Op. Cit.*

[99] UN Guiding principles on Internal Displacement (UN document E/CN.4/1998/53/Add.2), presented by Francis Deng to the Comisión of Human Rights of the UN in April 1999.

[100] Bennet (1998), Mentioned in: EGUREN. *Op. Cit.*

Another approach would be granting protection to the humanitarian workers and security to the victims by means of the Armed Forces, which means we would return to the debate on the Peace Keeping Operations: using violence to protect victims of war.

6. From principles to action: operational debates in humanitarian action

Recent humanitarian practice; the lessons learnt from many crises and the verification of some of the limits of traditional humanitarianism has led to the opening of other traditional fronts of discussion on which it is important to take a position and go into more depth. We will analyse some of these subjects, which in many cases reflect future tendencies.

6.1. The debate on common standards: The "Sphere Project" and the "project Qualité"

As we have said, the humanitarian micro-world has been the object of two different types of pressure. One that puts into question its values and principles and even pertinence to current crises and the other questions its efficiency, its professionalism, its capacity with regard to other actors for solving the problems of the victims. We have already mentioned the first pressure in previous chapters and the answer was, amongst others, the Code of Conduct and the defence of certain values. The answer to the second was the increase in the technical, procedural, logistic and operational capacity, etc, on the part of the NGOs and the attempt to prepare common standards such as the Sphere and Qualité projects. We have already referred to the first part of the Sphere project, the Humanitarian Charter which is concerned with aid as a right and contains a record for the international community of its legal obligations. We will not return to this but we stress that it is necessary to see Sphere as a whole: Charter and Standards, if it does not lose all its sense and coherence.

As it should be clear in preamble to the project, the humanitarian Charter and the minimum Standards of humanitarian response in disaster cases explicitly detail how fundamental human rights and human principles are linked to the provision of determined levels of services in matters of the supply of water and sanitation, nutrition, food aid, refuge and shelter and health care. The Charter and the Standards of Sphere project reflect the commitment of the signatory organisations to improve the efficiency of the assistance that they grant and to the responsibility that they assume with regard to the beneficiaries.

However, the fact that signatory bodies that have emphasised the "technocratic" aspects of the Standards and that overlook that sometimes they are in the service of principles and ways of acting, have participated in Sphere together with the NGOs has made some NGOs, above all the large French ones, withdraw from the project and initiate another, called Qualité which shares some focuses but diverges in others.

For Qualité, in the objective of striving for charity, the technical standards can only be used in a framework of politics that include a range of objectives and of orientations that is much wider. The management is without doubt more complex, but it is also has more respect for the particular and changing realities in the contexts. This "focus-charity" will happen in particular because of:

- The improvement in the participation mechanisms for the populations and of the work mechanisms in association with local actors,

- The improvement in the evaluation, geo-political analysis, diagnostic and impact study tools,
- Better training for actors in the field,
- The re-affirmation of the primary responsibility of the States, the respect for these and for the belligerent parties from International Humanitarian Law and of the obligation that is imposed on them to allow access to the victims
- On a general level, greater awareness of humanitarian principles and of humanitarian values for the whole of the actors in the field.[101]

In our opinion the basic focuses are not so different - both come from the search for a better quality of humanitarian action and from a certain autocratic vision of previous actions – and have moved further apart owing to cultural differences between humanitarian organisations from the Francophone world and the rest. Although the quality of the humanitarian aid and the demand for accountability from these actors, objectives announced in these initiatives, constitute two worries that are shared widely by all, a critical debate has arisen. In effect, the paths set out on by these two projects run the risk of resulting in serious deviations and real dangers that it is important to identify and highlight. The debate should be situated around the central subjects:

a). Is it suitable to involve governmental or multilateral actors in a project of this type or should it be something of NGOs? Is there what some call a humanitarian community with common interests in this matter or is it inappropriate? Is there not a risk that the donors employ the NGOs – something they already do - as mere subcontractors with these quality standards.

b). Up to what point is it possible to standardise the humanitarian response and create some benchmark rules from it? What risks does this have? How can one reconcile this technical dimension with principles and values?

c). How does one incorporate aspects such as protection, the humanitarian space, the work of proximity, gender focus, etc.

In any case, for humanitarian NGOs, when one talks about effectiveness or efficiency, one is not talking about a de-ideologicised effectiveness that is only based on technical and logistic aspects. On the contrary, it is concurrent with the compliance with goals, objectives and principles which make up humanitarian action.

6.2. On accountability and evaluation

One thing that the two projects mentioned before have in common, which is shared in general by the humanitarian NGOs, is the need for accountability with regard to beneficiaries and populations, as well as to the donors. Numerous studies and evaluations of complex humanitarian operations carried out both from within, by humanitarian agencies and from the outside, by independent bodies, have thrown light

[101] Taken from the Qualité webpage, July 2001. See: http://www.urd.org/rech/sphere/platform/htm.

on many the lackings, errors and even difficulties in learning lessons from them[102]. This has meant that bit by bit a greater awareness for accountability and a certain culture of evaluation has been incorporated, that furthermore has began to be demanded by many donors.

So that, these evaluations and this accountability process are more credible and transparent and permit the collective of humanitarian organisations to move forward, the creation of a humanitarian ombudsman (now humanitarian accountability project) has been proposed. He would carry out a certain function of monitoring and control of big humanitarian crises and the hypothetical beneficiaries of aid could go to him with their complaints. This trust in independent control mechanisms is also very common in the Anglo-Saxon and Nordic world but is less widespread in the countries of the South. For many, the fact of placing the possibility of complaint with the beneficiaries is inadequate as in the case of instituting a complaint mechanism against humanitarian actors, the risk is run of deviating the responsibility from the local or State authorities towards the humanitarian actors or non-governmental entities. Most of the violations of human rights or IHL and most impediments to humanitarian aid come from State actors and it is from them that one must demand explications.

However, it is worth being aware that the Codes, Standards and any accountability or evaluation mechanisms do not turn out credible if they are not accompanied by any type of tool for monitoring and control. And this should be as independent and impartial as possible and have the support of most of the actors involved. Public opinion, the people that support the NGOs and the populations of the countries themselves in crisis have the right to be kept informed and to know the results of the humanitarian operations, their problems, their difficulties and the humanitarian NGOs (and of course other actors) we must bring out from what has been called "humanitarian impunity", which justifies real incompetence and deterioration of situations in the name of a misunderstood good will.

6.3. On the impact of the aid on conflicts and the "do no harm" focus

We have seen at the start some characteristics of current conflicts and we have analysed the ambivalent role of aid in these situations of complex emergencies. Each conflict develops in a different context and aid of whatever type, when it arrives, becomes a part of it. The aid does not only provide goods or services, but whether wanted or not, also implicitly transmits ethical messages and suggestions which are noticed by the hypothetical beneficiaries and which can contribute to create or aggravate factors in the conflict. So if the aid is distributed with partiality, if certain clans or groups collaborate with aid bodies or give protection to them and not others, if the lifestyle of the co-operators is obscenely superior to that of the people they are trying to help, for the sake of giving a few examples, these facts will transmit messages of inequality, side-taking, frustration, different value on life of one or others, etc, and they will create tensions, mistrust and a culture of more belligerence.

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[102] Amongst the evaluations and studies one can find: V.A.: *International Response to Conflict and Genocide: Lessons from the Rwanda Experience,* David Millwood (Ed), Copenhagen, 1996; it is a work organised into five volumes and one summary volume. V.A.: *The Joint Evaluation of Emergency Assistance to Rwanda: A Review of Follow-up and Impact One YearAfter Publication, 1997; and: The Joint Evaluation of Emergency Assistance to Rwanda: A Review of Follow-up and Impact Fifteen Months After Publication.*

Furthermore, in all conflicts and above all in what is usually called the political economy of the conflict, there are unifying factors, or at least factors of common interest between the communities in conflict, which should be where the co-operation projects centre, in such a way that they create "connecting" links. There are obviously also contrary factors which create tensions and division, and as Mary Anderson says "capacities for war". For this reason the aid bodies must know in depth the context of the conflict and the role that the aid and its implicit messages can play in it, so that with this information decisions can be taken, and in the case that there are doubts on the risks of supplying aid, the hypothetical maximum of no harm can be adopted. From now on known as "do no harm"[103].

The implications that this can have for humanitarian agencies are big, from the planning processes, which must know the context much better, to a more detailed analysis of the possible factors in the conflict that some have called "conflict impact assessment". They demand that more attention is paid to possible undesired effects of our work, to measuring better our alliances with local and international bodies, to looking after our institutional presence and that of our expatriate staff, to considering the effects that what we do today has on our future, etc, and finally to being more demanding in our work. Some NGOs that have participated in the *Local capacities for peace* project directed by Mary Anderson have prepared a type of guidebook for the better design of programs that encompass these considerations.

These considerations lead to a role being proposed in which the aid can or must have in the prevention of conflicts and the building of peace, and which we have already touched on and will touch on again in other points.

6.4. Humanitarian action and development: the interminable story[104]

The excessive division that there has been for decades between development and specifically humanitarian organisations and, even in the heart of the organisations that work in the area between humanitarian concerns and development ones has been creating ways of working and diverse focuses that people are now trying to surpass. In this debate there are both theoretical aspects and concepts and organisational aspects that are not easy to resolve.

In the conventional viewpoint the relationship between humanitarian aid – understood only as emergency aid – and the development co-operation, is presented within a lineal process with different logic whereby the emergency, rehabilitation and co-operation aid for development and preparation for disasters are phases of this process. From this sequential perspective, the central problem is that of insuring a harmonious transition between the different stages as well as between the implementation agents for each one of the phases, which are usually different. This is called the humanitarian *continuum*[105].

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[103] ANDERSON, Mary B: *Do no harm. How can aid support peace or war,* Lynne Rienner Publishers, Inc, Boulder, Colorado, 1999.

[104] Partly based on: REY MARCOS, Francisco, "Perspectivas de la ayuda humanitaria en la ayuda oficial al desarrollo (AOD)", in SANAHUJA, José Antonio and GOMEZ GALAN, Manuel: *La cooperación al desarrollo en un mundo en cambio*, CIDEAL, Madrid, 2001, pg. 309 et al.

[105] Others talk of a *contiguum* and stress the fact that various types of intervention can coexist, but this debate is more formal than anything else and has little transcendence.

The idea of *continuum* has been criticised from many points of view but it continues to the most widespread in explaining the aid-development relationship.

Some concepts have been gaining ground, such as the vulnerability-capacity duality, and the lessens taken from big disasters such as hurricane Mitch where both humanitarian workers and development people saw their limitations, are allowing positions to be neared. This emphasis on the strengthening of capacities and its complement, the reduction of vulnerabilities is one of the key points of agreement between the great majority of aid bodies at this time and of the areas where there can be common work with "development people" and "humanitarian people" and with an integrated focus[106].

If we analyse the Code of Conduct itself of the NGO we will see that it tries to escape from an old exclusively assistentialist conception of aid and it incorporates aspects that have been classic in the co-operation in development but were not so in humanitarian aid. Aspects such as the respect for local customs, the development of local capacities, the participation of the beneficiaries, the reduction of vulnerability with regard to future risks, etc, (points 5,6,7,8 of the Code) arise from an authoritarian analysis of conventional aid and try to include elements of development.

It any case it ends up being difficult for the same organisation to work with effectiveness and efficiency in both fields and for this reason specialisation and not trying to do everything (badly) is perfectly legitimate. The problem and the debate do not lie here; they are in the analysis of the effects and the conditioning that the operations or projects of today can have on the future. Designing exit strategies, not wanting to work in the so-called "grey zones", and concentrating on emergency work or humanitarian space are perfect options that, to be honest, must recognise that the crises do not end when one withdraws, that the vulnerability factors will possibly continue to be present, that the deep causes of the conflicts will remain and that others will have to work in the medium and long term.

6.5. The eternal business of co-ordination

This need for collaboration between diverse agencies and organisations opens the way to other of the "classic" subjects such as that of co-ordination[107]. A co-ordination that, as has been said, is not good in itself, nor must it become a central objective *per se*, but that must serve as an improvement in the capacity for work with the vulnerable and as an improvement in the situation. Many bodies, above all those of a global reach, have embarked upon initiatives that strengthen co-ordination such as the Consolidated Integrated Appeals System (CAP in the OCHA jargon) or the UN Strategic Framework, or in the community ambit, the Global Plans of ECHO. In any case, the difference of mandates between the different actors, the independence to which we have already referred, the interests of some of them – basically the states and multilateral bodies – in leading this co-ordination, make this more difficult as it is not a case among equals.

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[106] For a discusión on the subject of vulnerability, see: PEREZ DE ARMINO, Karlos: "Vulnerabilidad y desastres. Causas estructurales y procesos de la crisis de Africa", *Hegoa Cuadernos de trabajo,* HEGOA, Bilbao, 1999.

[107] On this subject see: REY MARCOS, Francisco: "La complejidad de actores en la accion humanitaria y el reto de la coordinación", In UNIDAD DE ESTUDIOS HUMANITARIOS: *Los desafios de la accion humanitaria.* (CIP/MSF/ Universidad de Deusto), Icaria, Madrid, 1999.

The importance of the subject of co-ordination within the United Nations system was thrown into light with the transformation of the Department of Humanitarian Affairs (DHA) into the Office for the Co-ordination of Humanitarian Affairs (OCHA) in 1997, which emphasised, already in its own name, the co-ordinating nature of the new body. Despite the advances achieved in co-ordination at least within the UNO system, the problem continued to prevail and the recent report of the Secretary General of the UNO on the subject, presented in July 2001[108], ended up being very significant. In it, apart from analysing the context and the changes from which humanitarian assistance has suffered in the last few years, the diverse mechanisms and co-ordination tools that have been set up were reviewed.

The figure of the Emergency Relief Co-ordinator, created by resolution 46/182 of the General Assembly is justified as the key person at the front of the OCHA. In the same way co-ordination with other actors and NGOs through the IASC is defended, although the functions of consulting and discussion forum are stressed more than operational co-ordination. Similarly it is understood as an advance of the Consolidated Appeals System which has become an effective method for seeking support from donors and dividing work amongst the various agencies of the System.

Of a local nature and present in certain countries and crises, UN Strategic Frameworks have been established which continue to a certain extent the model of the United Nations Development Assistance Framework which has existed for years. In other countries such as the Congo a *United Nations Plan* was carried out that tried to give coherence to all the activities of the UNO, and a *Common Humanitarian Action Plan* was included within it. These creative initiatives and originals that have been started in Afghanistan or Somalia are valued positively but it has not become a general thing nor is there the will for this to be so. However, it is suggested that the figure of the Resident and Humanitarian co-ordinators is re-enforced in each country as was proposed by IASC in 1994.

In any case and despite the participation in the IASC of some NGOs and NGO networks, it would be necessary to differentiate between two levels of co-ordination: the one that is found in the heart of the United Nations System and its diverse operative agencies and the one that would incorporate other actors who are outside the System such as the NGOs. If the first is found to be difficult because of the different focuses of the agencies in certain crises, the second is even more complicated given the diversity of mandates, ideological affairs, organisational culture and experience, etc.

6.6. On the preventative component in humanitarian action

Until now the humanitarian response has been fundamentally this: a necessary but insufficient response with regard to disaster situations, crises and others. The assistance component has been given priority and only recently has the preventative aspect been incorporated. This analysis of the role of aid after numerous crises, above all in cases of natural disaster, has been paving the way for a *prevention is better than cure* element

[108] United Nations,General Assembly. Economic and Social Council, *Strengthening the coordination of emergency humanitarian assistance of the United Nations.* Report of the Secretary General. A756/95 – E/2001/85, New York, 2001.

and a small increase in the projects for preparation for disasters, prevention or mitigation[109].

6.6.1. Disatarer Prevention and Preparedness[110]

When we understand that the phenomena are not supernatural and therefore not God's punishment, nor are they solely natural and therefore foreseeable, nor are their effects the fruit of chance but are chosen in a selective way by the grade of vulnerability that they are presented with, we can then tackle prevention and mitigation as more "economic" weapons, both in terms of human lives and material assets, so that the people can confront these disasters.

Mitigation is a series of measures that can be taken to minimise the destructive and disruptive effects of dangerous natural phenemena and that therefore diminish the magnitude of the disaster.[111] These measures in many cases do not come from theoretical ideas, partly because mitgation, although recognised by many, still has low priority in the agenda of international agencies.

Regarding the broaching of mitigation subject two tendencies are observed:

a). one that opts for the reduction of the threat, and
b). one that puts forward the reduction of vulnerability.

[109] REY MARCOS, Francisco: "Nueve reflexiones y algunas tesis sobre ayuda humanitaria en el siglo XXI", *Revista Española de Desarrollo y Cooperación, no. 8,* (Madrid, primavera/verano 2001), pg. 9-23.
[110] Taken in part from: DE CURREA-LUGO, "¿Qué queremos decir..." pg. 101-117.
[111] MASKREY, Andrew; *El manejo popular de los Desastres Naturales. Estudio de Vulnerabilidad y Mitigación*. Grupo de Tecnología Intermedia para el Desarrollo, ITDG. Lima: 1989.

This last one in turn has two positions:

b.1.). reducing vulnerability by treating the symptoms, . vulnerable housing, or
b.2.). reducing vulnerability from the mitigation of the causes, eg: not permitting human settlement in high risk areas.[112]

What's true is that the mitigation born solely from the reduction of the threat (option a) and that which comes only from the reduction of symptomatic vulnerability (option b1), belong more to a technocratic line of thought. It would not be enough to build non-vulnerable housing without guaranteeing that these homes have, for example, supplies of drinking water; nor would it be helpful to ban human settlement in a high risk zone if the people do not have more life options (from the answer in the framework of option b2).

The ideal situation therefore, is that the mitigation measures centre their activity in the reduction of causal vulnerability. Ideal but only possible when the conception of prevention is understood and incorporates all its implications to the development plans of a society. In other words, the mitigation must include not only technical measures, but also measures of a political nature. Here appears the debate, in several senses:

a). The duty. The central problems of social development which is in fact the most powerful tool against vulnerability, is a State duty that the State can not neglect nor must the NGOs replace them in this. There are even things in the remit of the States (development of legislation on seismic-resistance, for example) in which the NGOs can not supplant it, even if they wanted to and had the resources.

b). The assistentialist vocation of the NGOs. The vast majority of the NGOs, especially those in humanitarian action, almost by distinction act in disaster and not in its prevention. The assistance preparation models for disasters have greater development than plans, programs and training on the analysis of vulnerability.

c). Fundraising. It is easier to move public opinion with photos of destroyed houses than with prevention projects, more so now when the funds are more fought after tooth and nail among the NGOs. The same populations found in high risk areas, generally speaking poor communities, do not have a perception of risk and give priority to other types of day to day things before the prevention of disasters, phenomena which, furthermore they attribute to external factors ("nature", religious belief) rather than to modifiable conditions.

The prohibition of settlement in high risk areas, the programs against malnutrition, the supply of drinking water and the access to education are the primary tools in the prevention of disasters and their aftermath (eg, the immune response of a malnourished child is lower, to the point where a child with another illness and acute malnutrition has a 2.8 times higher risk of dying compared to a well-nourished child with the same illness).[113]

So environmental management, the qualification of the social organisation and the opportune and suitable management of supplies would prevent the complications that

[112] *Op. Cit.*
[113] PERRIN, Pierre: *War and Public Health,* ICRC, Geneva, 1996.

disorganisation and chaos represent for a disaster zone (many authors call the social disorganisation after a disaster the "second disaster"). The preparations of Emergency Hospital Plans would guarantee a better level of response from the health institutions. The suitable management of the environment, the conservation of the ozone layer and the reduction in deforestation would contribute to reduce the vulnerability of the human species. The speed of re-organisation and reconstruction of a community will depend on economic conditions and on the level of social integration prior to the disaster.[114] Once the official aid stops, the level of organisation goes down, which is reflected in greater social disorganisation.[115]

6.6.2. Conflict Prevention.

Many NGOs, especially from the north of Europe, have developed ideas saying that it is more costly, complex and less effective to act once the conflicts have appeared, than to work in their prevention. This implies being familiar with the conflicts in such a way that it permits I) analysing of the causes of it and working in this area, and ii) contributing to the society in question that is searching for pacific solutions to its controversies.

One of the strategies is the development of early warning mechanisms for observation on the ground, not only by the NGOs but also from the diplomatic working groups which allow the crisis to be stopped in its first stages. The prevention of conflicts promotes the climate of trust between the different actors and favours negotiated exits between the parties in a conflict.

But the problem is that in the market of the donors or of public opinion, this type of proposal does not appeal as there are no direct "countable" beneficiaries; however in some sectors of these same donors this is beginning to change. The other problem is that an ongoing humanitarian crisis permits the "giving of a humanitarian response to a political problem", thus disguising the real duties of the States and the international community, while the prevention of conflicts "shows" structural causes which some actors do not always want to tackle. The conflicts prevention is not limited to the previous phase, but it is considered that in the same phases of humanitarian aid and in rehabilitation policies, incorporating elements of conflict prevention allows (not avoid but solve) future conflicts.

The other side is that such a dynamic would imply, for many NGOs, changing the workload on the ground, a workload full of pragmatism and heroism, for one more distant from the action and closer to reflection, ground in which the NGOs are not often strong. And furthermore…. with less visibility.[116]

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[114] BOLTON, P; "Desorganización comunal y familiar después de un desastre". *Serie de Monografías clínicas N. 2*, México: 1989. p. 159-168.

[115] DUNAL, C; GAVIRIA, M; "Evaluación de los problemas en albergues temporales a raíz de una inundación: necesidad de las actividades de investigación". *Serie de Monografías clínicas N. 2*. México: 1989. p. 45-61.

[116] There is abundant literature and significant experience on conflict prevention. For a recent review on the subject see: DEVELOPMENT ASSISTANCE COMMITTEE (DAC), *Helping prevent violent conflict. Orientations for external partners, Supplements to the DAC Guidelines on Conflict, Peace and Development Cooperation on the Thresold of the 21st Century*, DAC-OECD, Paris, 2001. Spending more time on this subject exceeds the objective of this report.

6.7. On counterparts, local entities and strengthening capacities

Another clear difference in a certain way of operating in humanitarian action with regard to co-operation in development has been the great weight that the expatriate staff have compared with local personnel and the lack of stable link with local entities – counterparts – in the execution of projects and operations. This mode of operating has been without doubt justified on many occasions for which, because of the effects of the conflict, it had been impossible to find local entities that have no political connotations or that have a minimum of independence and impartiality demanded for being able to work with guarantees. But on other occasions the NGOs have imposed this "model" of working and of relationship with countries receiving aid without any justification and this has had negative effects on social networks already existing, forms of inter and intra-community relationship that were functioning and that we were not aware of. We have imposed a neo-colonial model of aid which is a creator of dependency and is in most cases, inefficient.

In the ambit of development, the matter is at least theoretically clearer: the development is not exported but it is a local responsibility; the role of external aid must strengthen the local processes by means of many routes; it must, therefore, have stable counterparts that guarantee the future viability of the projects and furthermore the strengthening of capacities and the institutional dimension of the projects must be a prerequisite for these points. But what happens in humanitarian action? What model of action do we have in relation to local entities? Is it pertinent to speak of future viability in specific actions of assistance? In any case, how do we perceive local participation? With what public or public entities do we try to establish links?

It is obvious that some of these questions do not have general answers but it would seem logical to have a certain reference model for working in the field. In cases of open conflict absolute independence is justifiable, but humanitarian work is found in many settings, and even in refugee camps – to give an extreme example – there are social organisation systems that we must make use of, and if it is the case, strengthen.

This debate, here hardly outlined, has affected numerous organisations which have taken diverse positions which range from the creation or strengthening of stable counterparts and a federal model – with all the advantages and drawbacks that this has – to the securing of independent work with few local links. But whatever the option is, the need for work in "capacity building" of people and local entities seems clear. And along these lines of thought, is it not contradictory that a NGO from the North has a counterpart in and capacitates a Ministry from a country from the South when the same is not so with entities of a civil society which should be their homologues?

6.8. On the " competitive selection " of beneficiaries.

In the world of today, of indicators and results, circles of quality and audits, there is hardly any space for things that cannot be converted into numbers. The same thing is happening in the humanitarian world, and means that the well-intentioned development of the goals of coverage and/or the provision of basic services (Esfera, Qualite), is used as a weapon of accounting, without taking into consideration the contexts and the real surroundings which severely affect any indicator in the particular case of the humanitarian world.

In the augur of the "donor" in the decade of the 80s, with the "fatigue"[117] that followed, appears a new type of donor who has the desire to see results. Thus this person has turned from compassionate donation to "strategic donation", either for economic reasons (reducing taxes) or political (supporting this or that cause): the donor-evaluator.

This donor demands results in a blighted NGO atmosphere, where "competitive advantage" could be determined by its results. Such a search for results can easily bring it (the NGO) to choose easily accessible populations as opposed to distant communities in complex emergencies. Nearby populations (The Balkans) furthermore have a greater interest in this case for European donors, or relatively healthy populations rather than hungry ones...

This does not signify a rejection of the keeping of accounts, neither for the beneficiaries nor for the donors referred to above. It signifies a rejection of the de-contextualised use of any indicator, and still more of the mad race for the donors' dollars. This practice, which we have decided to name " competitive selection of beneficiaries " is contrary to the ultimate aims of humanitarian aid and has made the original end - aid - merely a means for getting resources, which is now the new aim and the former means.

As Sylvie Brunel, of Action Against Hunger, says, " The 3M characteristics of colonisation (markets, the military and missionaries) defends this, by spreading into humanitarian action ". The quoted author then adds a fourth M: mercenaries[118].

6.9. On volunteers and professionals. (biased reflections)

The actions of the NGOs are carried out by the people who work in their name. This implies that many of the successes and failures depend on the people (this without denying the value of group work which is also the result of the actions of people) Amongst these so-called humanitarian workers there are as many character profiles as professionals and types of conflicts and/or disasters, but, to be simplistic, we can say that there are two types: a) the voluntary humanitarian worker (voluntary in the sense of taking no salary for his/her work, as opposed to how the Red Cross understands the concept of volunteer) and b). the professional worker.

The first is criticised principally for his lack of professionalism, be it through lack of experience, of solid knowledge or of a defined role. He is vindicated through his spirit of commitment and his vocation of disinterested collaboration.

At the other extreme we have the professional with specific knowledge, a career path some experience in the field and who acts, in principle, giving better results, but for which he is criticised for his lack of commitment and his own vision of humanitarian work, which he sees with the same logic as a bank clerk who has a time to start work and a time to finish.

Of course, there are volunteers with training which allows them to deliver specific aid (doctors, engineers), and within the world of working professionals in the humanitarian field there are people with a higher altruistic vocation, but it is certain that this debate

[117] We are being ironic in our use of very current jargon.
[118] BRUNEL, Sylvie: “Garantizar la protección de las poblaciones: un dilema para la accion humanitaria”, in: *Geopolítica del Hambre. Informe 2001*. Barcelona, 2000, pg. 15.

exists, and that certain practices can make sure that some thrive more than others, with their advantages and virtues.

But in the case of the NGOs, that which differs from the logic of the private company is that neither one nor the other is enough, because they are looking to bring together an end (humanitarian action) and a means (actions and plans which, in their execution, would guarantee such an end, and which, in the administration of resources, need a decent administration and target results.)

POST-SCRIPT

In the days when this text was nearing its final version, the terrorist attacks happened in the United States, which means that apparently another logic will start to function, even in international law and in humanitarian law.

We observe that this crisis will go much deeper than the debates already raised here, which, instead of disappearing will gain importance (the debate on the Security Council and the debate on political and humanitarian concerns, etc.).

We would hope that fitting exits are found within this large path of construction of humanitarian law, The International Criminal Court finds more arguments and arguments plus justice. But the growing confusion between misdemeanours (however atrocious they may be) and acts of war, justice and vengeance, and law and power do not seem to want to agree with our hope.

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